

1 International Criminal Court
2 Trial Chamber IX
3 Situation: Republic of Uganda
4 In the case of The Prosecutor v. Dominic Ongwen - ICC-02/04-01/15
5 Presiding Judge Bertram Schmitt, Judge Péter Kovács and Judge Raul Cano
6 Pangalangan
7 Trial Hearing - Courtroom 1
8 Tuesday, 6 December 2016
9 (The hearing starts in open session at 9.31 a.m.)
10 THE COURT USHER: All rise. The International Criminal Court is now in
11 session.
12 PRESIDING JUDGE SCHMITT: Thank you very much. I would like to welcome
13 everybody in the courtroom. Thank you.
14 The first we have to do is to call the case and I would ask the
15 Court Officer, please, to do this.
16 THE COURT OFFICER: Thank you, Mr President. The situation in Uganda, in
17 the case of The Prosecutor versus Dominic Ongwen, case reference
18 ICC-02/04-01/15. We are in open session.
19 PRESIDING JUDGE SCHMITT: Thank you very much.
20 And then I would ask the counsel to introduce themselves for the record.
21 Please, Madam Prosecutor.
22 MS BENSOUDA: Thank you, Mr President. Mr President, your Honours,
23 present in court with me today are Ben Gumpert, senior trial Lawyer;
24 Adesola Adeboyejo, trial lawyer; Ramu Fatima Bittaye, case Manager;
25 Kamran Choudhry, trial lawyer; Sanyu Ndagire, trial lawyer; Hai Do Duc;

1 Julian Elderfield; Yulia Nuzban; and Beti Hohler. Thank you,
2 Mr president.

3 PRESIDING JUDGE SCHMITT: Thank you.

4 And for the Defence, please, Mr Odongo.

5 MR ODONGO: Mr President and your Honours, I am Krispus Ayena Odongo.
6 I'm being assisted by Chief Charles Achaleke Taku, co-counsel; Thomas
7 Obhof, assistant counsel; Tharcisse Gatarama, assistant counsel; number
8 5, Roy Titus Ayena, case manager; Laura Karam, pro bono member of the
9 team. Thank you, Your Honour.

10 PRESIDING JUDGE SCHMITT: And the Legal Representatives for Victims.

11 MS MASSIDDA: Good morning, Mr president, your Honours. The common Legal
12 Representative team appearing today, to my right, Ms Jane Adong, field
13 counsel based in Kampala; behind us, Mr Orchlón Narantsetseg, legal
14 officer; next to him, on the right, Ms Jacqueline Atim, legal
15 professional; and on the left, Ms Tamara Margetic, case manager. I am
16 Paolina Massidda, principal counsel.

17 PRESIDING JUDGE SCHMITT: Thank you.

18 And we have a second team of Legal Representatives for Victims.

19 MR MANOBA: Yes, Mr President. Mr President, your Honours, my name is
20 Joseph Manoba. I am joined by my co-colleague Mr Francisco Cox, and we
21 are assisted by a team of legal consultants, Ms Megan Hirst and Mr James
22 Mawira, together with our case manager, Ms Sepideh.

23 PRESIDING JUDGE SCHMITT: Thank you very much.

24 For the members of the public and also for the parties and participants,
25 since not everybody may know us yet, my name is Bertram Schmitt and I am

1 the Presiding Judge of this Chamber; to my right is Judge Péter Kovács
2 and to my left, Judge Raul Pangalangan.

3 We first have to issue a decision. Before proceeding further, we have to
4 address a Defence request of yesterday. This request is filing 620 in
5 the case record. The Defence requests the following:

6 First, issue an order halting the opening statements of the trial and
7 scheduling a Status Conference instead;

8 Second, order a psychiatric and/or psychological examination to ensure
9 that Mr Ongwen understands the nature of the charges levied against him;

10 Third, order a psychiatric and/or psychological examination of Mr Ongwen
11 to confirm or reject findings by Defence experts that Mr Ongwen suffered
12 and still suffers from a mental disease or defect that destroyed
13 Mr Ongwen's capacity to appreciate the unlawfulness or nature of his
14 conduct;

15 And fourth, order a psychiatric and/or psychological examination to
16 ensure that Mr Ongwen is fit to stand trial.

17 The Prosecution opposes the request in a response which will be notified
18 shortly.

19 In support of these requests, the Defence provides information dating
20 back to September 2015 about various issues Mr Ongwen had had at the ICC
21 Detention Centre. The Defence also informs the Chamber of a 15 November
22 2016 preliminary report from its own two experts. These Defence experts
23 allegedly state that Mr Ongwen does not understand the charges brought
24 against him. The Defence does not provide these preliminary expert
25 reports and indicates that the final reports will be provided and

1 disclosed in due course.

2 The Chamber notes that there is no timeline in the statutory framework
3 stipulating the filing of motions alleging that an accused is unfit to
4 stand trial.

5 The Chamber considers that it falls under its discretion under Article
6 64(2) of the Statute to determine the timeliness of such motions.

7 In this context, the Chamber recalls the Appeals Chamber judgement with
8 document number 2259 of the Katanga and Ngudjolo case. In this
9 judgement, the Appeals Chamber majority concluded that a Trial Chamber
10 did not err in dismissing a request to stay the proceedings for being out
11 of time even in the absence of any express time limit.

12 For the reasons below that we now explain, the Chamber rejects parts 1
13 and 2 of the request, namely, to halt the opening of the trial and
14 appoint experts to ensure that Mr Ongwen understands the charges, as
15 untimely.

16 In Decision 449 the Chamber set a deadline of 28 October 2016 for the
17 filing of any motions requiring resolution prior to the commencement of
18 trial. The Defence's procedural history confirms that, A, the Defence
19 began searching for experts in the field of psychiatry and psychology on
20 28 June 2015 during the confirmation phase of the case; B, the Defence
21 had conducted initial interviews with the two defence experts who
22 authored the preliminary reports as of 21 October 2015; and, C, most of
23 the factual basis supporting the request was known to the Defence well
24 before 28 October 2016.

25 The Defence only filed this request on 5 December 2016, the day before

1 the opening statements in the case and well after the expiry of the 28
2 October 2016 deadline.

3 The Chamber considers that motions to stay the proceedings on grounds
4 that the accused may be unfit to stand trial inevitably risk significant
5 delays or obstructions in the fair conduct of the proceedings. These
6 motions can require significant time and resources to resolve, often
7 requiring resort to experts as envisaged in Rule 135 of the Rules.

8 The Chamber considers that such motions must be filed at the earliest
9 available opportunity and that the Defence had many opportunities to file
10 this request before the 28 October 2016 deadline.

11 The Defence's failure to obtain the preliminary reports of its experts by
12 28 October is not an excuse in this regard. The Defence already was
13 aware of most of the facts underlying its request as of that date, had
14 already retained experts to interview Mr Ongwen on his mental health, and
15 never requested a postponement of the 28 October deadline.

16 Further, even after the reception of the preliminary report on 15
17 November 2016, the Defence failed to file its request in a timely manner,
18 waiting until one day before the opening of the trial to submit the
19 motion.

20 It must also be emphasised that the Defence failed to provide these
21 preliminary reports leading to grave allegations that Mr Ongwen is not
22 fit to commence the trial with no concrete substantiation.

23 The Defence gave no indication during the entire trial preparation phase
24 that Mr Ongwen was unfit to stand trial. It elected to wait until the
25 absolute last moment it could. It is revealing that in its latest

1 request filed before the present one, Mr Ongwen was seeking leave to
2 appeal a previous decision on grounds that witness statements were
3 introduced without being translated into Acholi so that Mr Ongwen could
4 read and understand them.

5 By filing this motion at the eve of trial, the Defence files a request at
6 such an advanced moment that engaging with its merits in any way would
7 force a postponement. The 28 October deadline was set precisely to avoid
8 such a situation. The Chamber will not permit such tactics in the
9 strongest possible terms.

10 The request to halt the opening of this trial is therefore rejected.

11 The request to order psychiatric and/or psychological examination to
12 ensure that Mr Ongwen understands the nature of the charges is equally
13 rejected. The Chamber will determine for itself whether Mr Ongwen
14 understands the nature of the charges later this morning.

15 In relation to part 3 of the request, identified previously, the Chamber
16 also rejects the request for similar examinations to determine the merits
17 of a mental disease or defect defence.

18 The Chamber will not determine the validity of any grounds for excluding
19 criminal responsibility before the Prosecution has even made its opening
20 statements. This rejection is without prejudice to the Chamber later
21 appointing experts to verify the viability of any grounds for excluding
22 criminal responsibility.

23 As for the request to order psychiatric and/or psychological examination
24 of Mr Ongwen to ensure that he is fit to stand trial - this is part 4 of
25 the request as identified above - the Chamber emphasises again that, A,

1 it has been presented with insufficient evidence at this time to conclude
2 that Mr Ongwen is unfit; and, B, no adjournment of the trial is therefore
3 justified.

4 However, the Chamber may order a psychological and psychiatric
5 examination with a view to assessing Mr Ongwen's continued fitness to
6 stand trial. The Registry, in consultation with the parties, must
7 provide recommendations on experts to provide these examinations by
8 Tuesday, 13 December 2016.

9 By this same date, the parties must make their submissions on the
10 Registry's recommendations.

11 Accordingly, except for the order in relation to assessing Mr Ongwen's
12 continued fitness to stand trial, the Defence request is rejected.

13 With this resolved, I wish to make a few remarks about the origins of
14 this case. Then the charges will be read and we will proceed to hear
15 opening statements.

16 On 16 December 2003, the Government of Uganda referred to the Prosecution
17 of the Court the "situation concerning the Lord's Resistance Army". This
18 referral was understood to extend to the entire situation in northern
19 Uganda regardless of who committed the crimes under this investigation.

20 At the request of the Prosecution, the Pre-Trial Chamber on 8 July 2005
21 issued warrants of arrest against Joseph Kony, Vincent Otti, Raska
22 Lukwiya, Okot Odhiambo and Mr Ongwen.
23 Proceedings against Mr Lukwiya and Mr Odhiambo have been terminated due
24 to their death, while the warrants of arrest against Joseph Kony and
25 Vincent Otti remain pending.

1 Mr Ongwen was transferred to the custody of the court in January 2015.
2 This case was severed from the case against Mr Kony and Mr Otti on 6
3 February 2015 and exclusively concerns Mr Ongwen.
4 Charges brought forward by the Prosecutor against Mr Ongwen were
5 confirmed by Pre-Trial Chamber II of the court on 23 March 2016.
6 This case is the first to go to trial from the Uganda situation since the
7 2003 referral was made.
8 In accordance with Article 64(8)(a) of the Statute, the charges will now
9 be read to the accused following which Mr Ongwen will be afforded an
10 opportunity to make an admission of guilt or to plead not guilty.
11 This is an excerpt of the public redacted version of the charges in which
12 the names of a number of alleged victims are redacted and replaced with a
13 pseudonym in counts 50 to 60.
14 These names are redacted only from the public. Mr Ongwen and his Defence
15 team know the identities of the concerned individuals.
16 Court Officer, please read now the portion of the confirmed charges from
17 the decision on the confirmation of charges identified in paragraph 6 of
18 the Decision of the Chamber 497.
19 THE COURT OFFICER: Thank you, Mr President.
20 Count 1, attacks against the civilian population as such as a war crime
21 on or about 10 October 2003, at or near Pajule IDP camp;
22 Count 2, murder as a crime against humanity on or about 10 October 2003,
23 at or near Pajule IDP camp;
24 Count 3, murder as a war crime on or about 10 October 2003, at or near
25 Pajule IDP camp;

1 Count 4, torture as a crime against humanity on or about 10 October 2003,
2 at or near Pajule IDP camp;

3 Count 5, torture as a war crime on or about 10 October 2003, at or near
4 Pajule IDP camp;

5 Count 6, cruel treatment as a war crime on or about 10 October 2003, at
6 or near Pajule IDP camp;

7 Count 7, other inhumane acts as a crime against humanity on or about 10
8 October 2003, at or near Pajule IDP camp;

9 Count 8, enslavement as a crime against humanity on or about 10 October
10 2003, at or near Pajule IDP camp;

11 Count 9, pillaging as a war crime on or about 10 October 2003, at or near
12 Pajule IDP camp;

13 Count 10, persecution on political grounds of civilians perceived by the
14 LRA as being affiliated with or supporting the Ugandan government by
15 attacks against the civilian population, murder, torture, cruel
16 treatment, other inhumane acts, enslavement and pillaging on or about 10
17 October 2003, at or near Pajule IDP camp;

18 Count 11, attacks against the civilian population as such as a war crime
19 on or about 29 April 2004, at or near Odek IDP camp;

20 Count 12, murder as a crime against humanity on or about 29 April 2004,
21 at or near Odek IDP camp;

22 Count 13, murder as a war crime on or about 29 April 2004, at or near
23 Odek IDP camp;

24 THE INTERPRETER: The interpreter requests that the Court Officer slow
25 down.

1 THE COURT OFFICER: Count 14, attempted murder as a crime against
2 humanity on or about 29 April 2004, at or near Odek IDP camp;
3 Count 15, attempted murder as a war crime on or about 29 April 2004, at
4 or near Odek IDP camp;
5 Count 16, torture as a crime against humanity on or about 29 April 2004,
6 at or near Odek IDP camp;
7 Count 17, torture as a war crime on or about 29 April 2004, at or near
8 Odek IDP camp;
9 Count 18, other inhumane acts as a crime against humanity on or about 29
10 April 2004, at or near Odek IDP camp;
11 Count 19, cruel treatment as a war crime on or about 29 April 2004, at or
12 near Odek IDP camp;
13 Count 20, enslavement as a crime against humanity on or about 29 April
14 2004, at or near Odek IDP camp;
15 Count 21, pillaging as a war crime on or about 29 April 2004, at or near
16 Odek IDP camp;
17 Count 22, outrages upon personal dignity as a war crime on or about 29
18 April 2004, at or near Odek IDP camp;
19 Count 23, persecution on political grounds of civilians perceived by the
20 LRA as being affiliated with or supporting the Ugandan government by
21 attacks against the civilian population as such, murder, attempted
22 murder, torture, cruel treatment, other inhumane acts, enslavement,
23 outrages upon personal dignity, and pillaging, on or about 29 April 2004,
24 at or near Odek IDP camp;
25 Count 24, attacks against the civilian population as such as a war crime

1 on or about 19 May 2004, at or near Lukodi IDP camp;
2 Count 25, murder as a crime against humanity on or about 19 May 2004, at
3 or near Lukodi IDP camp;
4 Count 26, murder as a war crime on or about 19 May 2004, at or near
5 Lukodi IDP camp;
6 Count 27, attempted murder as a crime against humanity on or about 19 May
7 2004, at or near Lukodi IDP camp;
8 Count 28, attempted murder as a war crime on or about 19 May 2004, at or
9 near Lukodi IDP camp;
10 Count 29, torture as a crime against humanity on or about 19 May 2004, at
11 or near Lukodi IDP camp;
12 Count 30, torture as a war crime on or about 19 May 2004, at or near
13 Lukodi IDP camp;
14 Count 31, other inhumane acts as a crime against humanity on or about 19
15 May 2004, at or near Lukodi IDP camp;
16 Count 32, cruel treatment as a war crime on or about 19 May 2004, at or
17 near Lukodi IDP camp;
18 Count 33, enslavement as a crime against humanity on or about 19 May
19 2004, at or near Lukodi IDP camp;
20 Count 34, pillaging as a war crime on or about 19 May 2004, at or near
21 Lukodi IDP camp;
22 Count 35, destruction of property as a war crime on or about 19 May 2004,
23 at or near Lukodi IDP camp;
24 Count 36, persecution on political grounds of civilians perceived by the
25 LRA as being affiliated with or supporting the Ugandan government by

1 attacks against the civilian population as such, murder, attempted
2 murder, torture, cruel treatment, other inhumane acts, enslavement,
3 pillaging, and destruction of property on or about 19 May 2004, at or
4 near Lukodi IDP camp;
5 Count 37, attacks against the civilian population as such as a war crime
6 on or about 8 June 2004, at or near Abok IDP camp;
7 Count 38, murder as a crime against humanity on or about 8 June 2004, at
8 or near Abok IDP camp;
9 Count 39, murder as a war crime on or about 8 June 2004, at or near Abok
10 IDP camp;
11 Count 40, attempted murder as a crime against humanity on or about 8 June
12 2004, at or near Abok IDP camp;
13 Count 41, attempted murder as a war crime on or about 8 June 2004, at or
14 near Abok IDP camp;
15 Count 42, torture as a crime against humanity on or about 8 June 2004, at
16 or near Abok IDP camp;
17 Count 43, torture as a war crime on or about 8 June 2004, at or near Abok
18 IDP camp;
19 Count 44, other inhumane acts as a crime against humanity on or about 8
20 June 2004, at or near Abok IDP camp;
21 Count 45, cruel treatment as a war crime on or about 8 June 2004, at or
22 near Abok IDP camp;
23 Count 46, enslavement as a crime against humanity, at or near Abok IDP
24 camp;
25 Count 47, pillaging as a war crime on or about 8 June 2004, at or near

1 Abok IDP camp;

2 Count 48, destruction of property as a war crime on or about 8 June 2004,
3 at or near Abok IDP camp;

4 Count 49, persecution on political grounds of civilians perceived by the
5 LRA as being affiliated with or supporting the Ugandan government by
6 attacks against the civilian population as such, murder, attempted
7 murder, torture, cruel treatment, other inhumane acts, enslavement,
8 pillaging, and destruction of property on or about 8 June 2004, at or
9 near Abok IDP camp;

10 Count 50, forced marriage as a crime against humanity of P-0099 between 1
11 July 2002 and September 2002, of P-0101 between 1 July 2002 and July
12 2004, of P-0214 between September 2002 and 31 December 2005, of P-0226
13 between 1 July 2002 and sometime in 2003, of P-0227 between approximately
14 April 2005 and 31 December 2005;

15 Count 51, torture as a crime against humanity of P-0101 between 1 July
16 2002 and July 2004, of P-0214 between September 2002 and 31 December
17 2005, of P-0226 between 1 July 2002 and sometime in 2003, of P-0227
18 between approximately April 2005 and 31 December 2005;

19 Count 52, torture as a war crime of P-0101 between 1 July 2002 and July
20 2004, of P-0214 between September 2002 and 31 December 2005, of P-0226
21 between 1 July 2002 and sometime in 2003, of P-0227 between approximately
22 April 2005 and 31 December 2005;

23 Count 53, rape as a crime against humanity of P-0101 between 1 July 2002
24 and July 2004, of P-0214 between September 2002 and 31 December 2005, of
25 P-0226 between 1 July 2002 and sometime in 2003, of P-0227 between

1 approximately April 2005 and 31 December 2005;

2 Count 54, rape as a war crime of P-0101 between 1 July 2002 and July

3 2004, of P-0214 between September 2002 and 31 December 2005, of P-0226

4 between 1 July 2004 and sometime in 2003 (sic), of P-0227, between

5 approximately April 2005 and 31 December 2005;

6 Count 55, sexual slavery as a crime against humanity of P-0101 between 1

7 July 2002 and July 2004, of P-0214 between September 2002 and 31 December

8 2005, of P-0226 between 1 July 2002 and sometime in 2003, of P-0227

9 between approximately April 2005 and 31 December 2005;

10 Count 56, sexual slavery as a war crime of P-0101 between 1 July 2002 and

11 July 2004, of P-0214 between September 2002 and 31 December 2005, of

12 P-0226 between 1 July 2002 and sometime in 2003, of P-0227 between

13 approximately April 2005 and 31 December 2005;

14 Count 57, enslavement, a crime against humanity, of P-0099 between 1 July

15 2002 and September 2002, of P-0101 between 1 July 2002 and July 2004, of

16 P-0214 between September 2002 and 31 December 2005, of P-0226 between 1

17 July 2002 and sometime in 2003, of P-0227 between approximately April

18 2005 and 31 December 2005, of P-0235 from September 2002 to 31 December

19 2005, of P-0236 between September 2002 and 31 December 2005;

20 Count 58, forced pregnancy as a crime against humanity of P-0101, two

21 pregnancies between 1 July 2002 and July 2004, of P-0214 sometime in

22 2005;

23 Count 59, forced pregnancy as a war crime of P-0101, two pregnancies,

24 between 1 July 2002 and July 2004, of P-0214 sometime in 2005;

25 Count 60, outrages upon personal dignity, a war crime, of P-0226 sometime

1 in 2002 or early 2003, close to Padongo, northern Uganda, of P-0235
2 sometime in late 2002 or early 2003, at an unspecified location in
3 northern Uganda;
4 Count 61, forced marriage as a crime against humanity from at least 1
5 July 2002 until 31 December 2005;
6 Count 62, torture as a crime against humanity from at least 1 July 2002
7 until 31 December 2005;
8 Count 63, torture as a war crime from at least 1 July 2002 until 31
9 December 2005;
10 Count 64, rape as a crime against humanity from at least 1 July 2002
11 until 31 December 2005;
12 Count 65, rape as a war crime from at least 1 July 2002 until 31 December
13 2005;
14 Count 66, sexual slavery as a crime against humanity from at least 1 July
15 2002 until 31 December 2005;
16 Count 67, sexual slavery as a war crime from at least 1 July 2002 until
17 31 December 2005;
18 Count 68, enslavement as a crime against humanity from at least 1 July
19 2002 until 31 December 2005;
20 Count 69, conscription of children under the age of 15 into an armed
21 group as a war crime, between 1 July 2002 and 31 December 2005, in
22 northern Uganda;
23 Count 70, use of children under the age of 15 to participate actively in
24 hostilities as a war crime, between 1 July 2002 and 31 December 2005, in
25 northern Uganda.

1 Thank you, Mr President.

2 PRESIDING JUDGE SCHMITT: Thank you very much.

3 Mr Ongwen, please rise.

4 Mr Ongwen, as Presiding Judge of this Chamber, I would like to ask you
5 some questions on behalf of the Chamber. Mr Ongwen, on 21 January 2016,
6 do you remember being in this courtroom for your confirmation hearing?

7 THE ACCUSED: (Interpretation) Yes, I do recall.

8 PRESIDING JUDGE SCHMITT: At that hearing, Mr Ongwen, do you remember
9 being asked by a judge if you were fully aware of the charges?

10 THE ACCUSED: (Interpretation) I do recall being asked that question and
11 I do recall answering that I do not understand the charges against me.

12 PRESIDING JUDGE SCHMITT: You say you do recall that you answered that
13 you do not understand the charges. Do you recall saying - give it a
14 second thought - that you have, and I quote, said that you "read and
15 understood the document containing the charges"?

16 THE ACCUSED: (Interpretation) I did understand the document containing
17 the -- I do understand -- I did understand the document containing the
18 charges but not the charges, because the charges -- the charges I do
19 understand as being brought against LRA but not me, because I'm not the
20 LRA. The LRA is Joseph Kony who is the leader of the LRA.

21 PRESIDING JUDGE SCHMITT: Is it correct that you received the decision
22 confirming the 70 charges also in Acholi?

23 THE ACCUSED: (Interpretation) Yes, I did receive the charges in Acholi,
24 but I reiterate it is the LRA who abducted people in northern Uganda.

25 The LRA killed people in northern Uganda. LRA committed atrocities in

1 northern Uganda, and I'm one of the people against whom the LRA committed
2 atrocities. But it's not me, Dominic Ongwen, personally, who is the LRA.

3 PRESIDING JUDGE SCHMITT: Thank you. I think this is enough to give us a
4 certain basis to decide on the question if the accused understands the
5 nature of the charges, but we will have to deliberate on that, of course,
6 for a couple of minutes. I would say we will be back at approximately 15
7 minutes.

8 (Recess taken at 10.19 a.m.)

9 (Upon resuming in open session at 10.36 a.m.)

10 THE COURT USHER: All rise. Please be seated.

11 PRESIDING JUDGE SCHMITT: We have to issue the following decision:

12 The Chamber is satisfied that Mr Ongwen understands the nature of the
13 charges. Mr Ongwen confirmed to Pre-Trial Chamber II that he had read
14 and understood the charges as set out in the document containing the
15 charges at the confirmation hearing.

16 As Mr Ongwen said back in January of this year, "Thank you, your Honour.

17 Well, from my point of view, whether the charges are read or not read is

18 all going to be a waste of time. You may speak five words and only two

19 issues are correct. You may speak ten words and only two things are

20 correct. The reading out these charges, whether they are true or not, is

21 all going to be a waste of time. I've been handed out the document

22 translated in Acholi, so I've read and understood it. Thank you."

23 Other information before the Chamber also confirms that Mr Ongwen

24 understands the charges. First, the charges that Mr Ongwen said he

25 understood in January are not materially different now. All 70 charges

1 alleged by the Prosecution were essentially confirmed. The confirmation
2 decision has been fully translated into Acholi specifically for
3 Mr Ongwen's benefit. The Chamber is not persuaded that Mr Ongwen cannot
4 understand something now he so clearly understood back in January. In
5 this context, the Chamber is also satisfied that Mr Ongwen has been fully
6 informed of the incriminating conduct since the confirmation of charges
7 decision set out the facts of the case with precision, together with
8 their legal characterisation.

9 Lacking further substantiation and in light of Mr Ongwen's own admission
10 at the confirmation stage, the Chamber is unpersuaded that Mr Ongwen at
11 this stage does not understand the nature of the charges as foreseen in
12 Article 64(8)(a) of the Statute.

13 Second, and as mentioned earlier today, the Defence gave no indication
14 that Mr Ongwen was having difficulty understanding the nature of the
15 charges or the proceedings more generally. Quite the contrary, the
16 Defence has made several arguments, such as requests for Acholi
17 translations, reinforcing that their client did understand.

18 Third, the Chamber cannot help but note that Mr Ongwen's alleged lack of
19 understanding comes just after his Defence team alleged it has evidence
20 supporting the notion that he is not fit to stand trial.

21 As stated previously, the Chamber has not received sufficient
22 substantiation to conclude that Mr Ongwen is unfit. In particular, the
23 expert reports which purport to prove the Defence's position have not
24 been provided to the Chamber. The Chamber nevertheless notes that in
25 describing the expert reports, the Defence says the experts conclude that

1 Mr Ongwen, "A, does not understand the charges," and "B, was not aware of
2 the wrongfulness of his actions during his time in the bush." The former
3 statement is a legal question experts cannot determine at the expense of
4 the Chamber, for it is the Chamber who has the final decision on whether
5 Mr Ongwen understands the charges. The latter statement on its face is
6 less about unfitness and more about Mr Ongwen disputing the legal
7 characterisation of his alleged prior conduct.

8 Mr Ongwen's remarks today are no different. Mr Ongwen's remarks that the
9 LRA is not him and that the LRA committed these acts demonstrate an
10 understanding of the confirmed charges. Mr Ongwen's remarks are rather a
11 dispute as to Mr Ongwen's responsibility for these alleged acts. And
12 this is precisely a matter to be discussed during trial and is not
13 properly part of an Article 64(8)(a) determination.

14 For these reasons, the Chamber is satisfied that Mr Ongwen understands
15 the nature of the charges.

16 We will now proceed. And, Mr Ongwen, please rise again.

17 Now, Mr Ongwen, do you make an admission of guilt with respect to any
18 charge?

19 THE ACCUSED: (Interpretation) Your Honour, I haven't responded to your
20 question. I have a question first. I'd like to inform you that I'm very
21 happy because when I was initially brought here, this is an international
22 court. When I was in the bush, I heard people talking about the
23 International Criminal Court. For these reasons, I should have started
24 by crying, and just surrender. If there is anything that has to be done,
25 let them go ahead and do it.

1 First, I would like to ask you if the Court would grant me permission.
2 This is a division of death and life. In my opinion, this amounts --
3 this amounts to my going back into the bush for the second time. The
4 International Criminal Court, do you agree, do you agree that I'm the
5 leader of the LRA? Do you agree that my life was not ruined?
6 PRESIDING JUDGE SCHMITT: You are here before a court and you are not in
7 the position to ask the Court questions. You are in the position to make
8 submissions via your counsel. You will receive a fair and impartial
9 trial, and you may, if you want, answer the questions that the Court puts
10 to you. And I would ask you to answer the question and I repeat it: Do
11 you make an admission of guilt with respect to any charge?
12 THE ACCUSED: (Interpretation) In the name of God, I deny all these
13 charges in respect to the war in northern Uganda.
14 PRESIDING JUDGE SCHMITT: You therefore plead not guilty with respect to
15 all the charges, I assume.
16 THE ACCUSED: (Interpretation) Yes.
17 PRESIDING JUDGE SCHMITT: Thank you. You may sit down, please.
18 As stated previously, in Decision 449, the Chamber set a deadline of 28
19 October 2016 for the filing of any motions requiring resolution prior to
20 the commencement of the trial. The Chamber subsequently ruled on all
21 requests received on or before this date, and with this morning's oral
22 decision has in fact ruled on all pending requests at this time.
23 However, noting Rule 134(2) of the Rules, the Chamber will now ask the
24 parties whether they have any remaining objections or observations
25 concerning the conduct of the proceedings which have arisen since the

1 confirmation hearings. Be mindful that in accordance with Rule 134(2),
2 no such objection or observation may be raised or made again during the
3 trial proceedings without the leave of the Chamber.

4 I first ask the Prosecution, please.

5 MS BENSOUDA: Mr President, no objections from the Prosecution.

6 PRESIDING JUDGE SCHMITT: For the Defence?

7 MR TAKU: May it please your Honours. We've carefully listened to the
8 decision today and want just to say that in the course of the proceedings
9 we expect that specificity be given to aspects of some of the charges
10 which may -- with regard to venue, northern Uganda, within a period of
11 five years, is so huge. So we hope that in relation to the question of
12 specificity as the proceedings proceed, in order to have appropriate
13 notice of some of the charges, we will raise this as the occasion arises
14 in the course of the trial.

15 PRESIDING JUDGE SCHMITT: Yes. Thank you very much. It is now time for
16 the opening statements. We are shortly before the 11.00 break so I would
17 even ask Madam Prosecutor if you would prefer to start after the break.

18 MS BENSOUDA: Perhaps, Mr President, that would be best so that we can
19 continue and have more time to make the full presentation.

20 PRESIDING JUDGE SCHMITT: So we resume, then, on 11.30.

21 THE COURT USHER: All rise.

22 (Recess taken at 10.48 a.m.)

23 (Upon resuming in open session at 11.30 a.m.)

24 THE COURT USHER: All rise.

25 PRESIDING JUDGE SCHMITT: Madam Prosecutor, you have the floor for the

1 opening statement of the Prosecution.

2 MS BENSOUDA: Thank you, Mr President.

3 Mr President, Honourable Judges, this trial is about violence and misery
4 that blighted the lives of millions of people living in northern Uganda.
5 Ordinary citizens, civilians, who wanted no more than to be allowed to
6 live their lives in peace, could no longer live in the villages in which
7 they had been born and raised. Violent attacks on civilian targets by an
8 armed group calling itself the Lord's Resistance Army, or LRA, had
9 resulted in those ordinary people being forced into camps for internally
10 displaced persons (IDPs), and often reduced to dependency on
11 international food aid. These camps were themselves subject to regular
12 and terrifying attacks.

13 According to the United Nations, by the middle of 2005, well over a
14 million people in the Gulu, Kitgum and Pader districts of the Acholi
15 sub-region were registered as living in IDP camps.

16 Meanwhile, in the Apac and Lira districts in the Lango sub-region, there
17 were camps holding just under half a million registered inhabitants.

18 And in the Katakwi, Soroti, Kumi and Kaberamaido districts of the Teso
19 sub-region, a little over 150,000 people were similarly displaced.

20 When these camps were attacked by the Lord's Resistance Army, the
21 attackers murdered the residents, burned their homes, and the survivors
22 were enslaved to carry away the domestic animals, food, clothes, money,
23 and other basic necessities which the inhabitants needed to survive.

24 Children were abducted on a more permanent basis to be conscripted into
25 the ranks of the attackers as child soldiers and to act as sex slaves.

1 In the course of this trial, the Court will hear about four particular
2 attacks which took place between October 2003 and June of 2004. These
3 attacks took place in Pajule, Odek, Lukodi and Abok. A conservative
4 estimate of their combined population at the time of the attacks was
5 about 35,000 people. Approximately 4,000 individuals have made
6 applications to be registered in these proceedings as victims of these
7 four attacks.

8 These locations form a rough triangle. Pajule is in the Pader District.
9 Odek and Lukodi in Gulu District. Abok is just over the boundary in Oyam
10 District of Lango. They have been selected because they are attacks
11 about which the Prosecution has been able to find a significant and
12 coherent body of evidence which demonstrates what happened in detail and
13 which links them to Dominic Ongwen, the accused in this case.

14 That evidence comes, for the most part, in three varieties. Firstly, the
15 Prosecution relies upon accounts given by the victims of these attacks.
16 Secondly, the Prosecution will call former LRA fighters to give evidence
17 about what they did and who ordered them to do it. Lastly, and perhaps
18 most revealing of all, the Prosecution will be able to put before the
19 Court sound recordings and other reliable records of the radio
20 communication passing between LRA commanders at the time these attacks
21 took place. That evidence will clearly demonstrate that these four
22 attacks at Pajule, Odek, Lukodi, and Abok were terrifying.

23 The images now on the screen show that the physical effects of one of
24 these attacks at the camp at Lukodi, and I must warn that some of these
25 images are extremely disturbing.

1 (Viewing of the video excerpt)

2 PRESIDING JUDGE SCHMITT: Is there a problem?

3 MS BENSOUA: The images, Mr President, were not showing on the screen in
4 the courtroom but it seems to have been corrected.

5 PRESIDING JUDGE SCHMITT: But it has worked on the screens here.

6 MS BENSOUA: Indeed. Indeed.

7 (Viewing of the video excerpt)

8 MS BENSOUA: Large numbers of the civilian inhabitants of these camps
9 were killed and wounded. These were innocent people who had no interest
10 in the violent conflict which was taking place in northern Uganda. Some
11 were brutally tortured in various cruel ways. Hundreds of them were
12 abducted and forced to carry away the goods which had been pillaged. If
13 they could not walk fast enough, they were beaten and killed. Nursing
14 mothers, whose babies slowed up their progress or who simply cried too
15 loudly, watched as their babies were callously killed or thrown into the
16 bush and left behind.

17 Pillaging may sound a lesser crime by comparison with others which were
18 committed during these attacks, but it is not. The victims of this crime
19 were living on a knife edge. Items such as domestic animals, cooking
20 pots, clothing, and small amounts of food and cash were the difference
21 between surviving and perishing. For the LRA, the arithmetic was simple.
22 They had the guns so they could pillage the goods, whatever the
23 circumstances were for the victims.

24 Your Honours, the evidence shows that, in each case, Dominic Ongwen
25 played a prominent role in the planning and execution of the four

1 attacks. For all of them save Pajule, he did so as a commander of one of
2 the four principal operational units of the LRA, the Sinia brigade. In
3 addition to his responsibility for the attacks on the four camps, the
4 Prosecution charges him with crimes related to the abduction of children
5 and their use by the LRA as child soldiers or forced wives and sex
6 slaves.

7 The purpose of these proceedings is to establish whether it can be proved
8 beyond a reasonable doubt that Dominic Ongwen bears responsibility for
9 these crimes. In the course of the trial, lights will inevitably be shed
10 more generally on the situation in northern Uganda a decade and a half
11 ago. But there may be many events, many crimes, many perpetrators of
12 crimes, and many victims who will receive only limited attention or none
13 at all. The Prosecution has to make choices guided by the evidence
14 readily available and to limit the scope of the cases that it brings.
15 Our efforts will be to ensure that this trial will establish the truth
16 and nothing but the truth with regard to the charged crimes. We cannot
17 hope to write in this trial a comprehensive history of the conflict in
18 northern Uganda.

19 Your Honours, over the period with which this case is concerned,
20 Dominic Ongwen became one of the most senior commanders in the LRA.
21 Between 2002 and 2005, he was the commander, first, of a battalion and
22 then, following rapid promotion based on his unwavering loyalty and
23 ferocity, of one of the four fighting brigades of the LRA. There is
24 evidence to suggest that, by the second half of 2005, Mr Ongwen was the
25 most senior LRA commander in Uganda.

1 So what was the nature of the LRA, the organisation in which
2 Dominic Ongwen played such an important role and which was causing mayhem
3 and visiting this misery on the people living in northern Uganda?
4 The LRA was founded and led by a man called Joseph Kony. Kony was one of
5 the five individuals against whom arrest warrants were issued by this
6 Court in 2005 and he remains at large. There is good reason to believe
7 that three of the others for whom arrest warrants were issued, Vincent
8 Otti, Raska Lukwiya and Okot Odhiambo, are deceased. Dominic Ongwen is
9 on trial today.

10 It is enough for now to say that LRA is an armed group which came into
11 being in northern Uganda in the late 1980s. It aimed to overthrow the
12 government of Yoweri Museveni, the President of Uganda. At first, it was
13 just one of a number of such groups, but by 1990 Kony's force was the
14 only significant armed unit still fighting against the government in the
15 Acholi homelands.

16 The LRA was a disciplined, hierarchical armed group with a formal rank
17 structure mirroring that of a conventional army. The headquarters unit
18 was known as Control Altar. Its principal active service units were four
19 brigades, namely, Sinia, Gilva, Trinkle, and Stockree.

20 Orders flowed down the chain of command. Reports on operations were
21 transmitted back up the chain of command. By March of 2004 the Sinia
22 brigade was commanded by Dominic Ongwen.

23 Discipline in the LRA was strict and punishments for infraction of the
24 rules were brutal. Attempts to escape were particularly harshly dealt
25 with. Those who were caught were either put to death or caned so

1 severely that permanent injury was often caused. Despite this, the
2 majority of abductees did, in the end, escape from the clutches of the
3 LRA. Many Prosecution witnesses will recount to the Court how they
4 personally were able to escape.

5 There were peace negotiations between the LRA and the Ugandan government
6 in the mid-1990s. When they failed, the Sudanese government began to
7 provide support to the LRA. The LRA set up semi-permanent bases in
8 southern Sudan from which it was able to launch its attacks on Ugandan
9 targets.

10 This continued until 2002, when the Sudanese government permitted the
11 Ugandans to enter Sudanese territory to begin a renewed military campaign
12 against the LRA called "Iron Fist". In the event, Kony and his senior
13 commanders evaded death or capture, but the majority of the LRA forces
14 left Sudan and expanded their campaign in new parts of northern Uganda,
15 including Lira, Soroti, Apac and Katakwi districts. A series of LRA
16 attacks and atrocities, including the four on which this trial will
17 focus, followed with disastrous results.

18 Your Honours, the Prosecution's case is that civilian camps for displaced
19 persons were targeted because the LRA, despite its leader's claim to be
20 fighting for freedom and democracy, viewed the civilian inhabitants of
21 the government-protected IDP camps in northern Uganda as their enemies.

22 The LRA's thinking was simple: It was a case of "if you are not for us,
23 then you are against us." Any civilian who was unwilling to support
24 their struggle against the government was regarded as an enemy. This
25 amounted to persecution on political grounds, a crime against humanity.

1 It was this persecutory policy that Dominic Ongwen and the fighters that
2 he commanded were implementing.

3 The crimes committed at Pajule, Odek, Lukodi, and Abok, were simply part
4 of a widespread and systematic attack on the civilian population.

5 Between July 2002 and December of 2005, there were literally hundreds of
6 attacks on civilian targets. These were not just large-scale set-piece
7 attacks on IDP camps. People being driven in minibuses along the country
8 roads became the subject of ambushes. Commercial vehicles were stopped
9 and looted. Children on their way to school were abducted. These
10 attacks had a devastating effect upon the ordinary people of northern
11 Uganda.

12 The evidence in this case will establish that Dominic Ongwen was directly
13 involved in many of these attacks by the LRA on civilians in northern
14 Uganda. Part of the case which the Prosecution alleges against him is
15 that he knew that the crimes he committed at Pajule, Odek, Lukodi, and
16 Abok were part of the widespread and systematic attack. Mr President,
17 let me give you some examples.

18 LRA fighters attacked civilians in Ojwii in 2002 on Dominic Ongwen's
19 orders.

20 A 14-year-old boy abducted in September 2002 from Palabek Gem recalls
21 Mr Ongwen ordering young children to kill civilian abductees. On one
22 notorious occasion, Mr Ongwen ordered this boy and others to kill an old
23 man by biting him and then stoning him to death.

24 Additionally, in 2002, there were attacks on civilians at Atiak and
25 Pader, led or planned by Dominic Ongwen.

1 In April 2003, Joseph Kony had been complaining in radio exchanges with
2 his senior commanders that the civilian inhabitants of a camp at Lagile
3 had become a "problem." Dominic Ongwen provided Joseph Kony with the
4 solution for that problem. He attacked the camp at Lagile, burning
5 houses, killing 20 civilians, and abducting many others.

6 In September 2003, shortly before the Pajule attack, Dominic Ongwen
7 reported over the radio that he had attacked a church mission at Opit.

8 In October of 2003, Dominic Ongwen played an instrumental role in the
9 charged attack at Pajule.

10 In November 2003, Dominic Ongwen was reported in LRA radio traffic to
11 have led an attack at Labwor Omor where his fighters had posed as Ugandan
12 army soldiers before opening fire on drinkers at a bar. The report
13 stated that civilians were killed, others abducted, and houses set
14 ablaze.

15 In February 2004, Dominic Ongwen reported to his superiors that he had
16 conducted an attack at Koc Ongako, in which he had burned all the houses.

17 In April, May and June of 2004, Dominic Ongwen carried out the charged
18 attacks at Odek, Lukodi, and Abok.

19 And in August of that year, Dominic Ongwen reported the success of an
20 ambush he had carried out on the Awach road, and he recounted that
21 several people had been killed, including the driver of a boda-boda, or
22 motorcycle taxi.

23 At Acet in 2004, in accordance with Dominic Ongwen's orders, boys and
24 girls between the ages of 13 and 15 were abducted.

25 In addition to these attacks, the Prosecution alleges that Dominic Ongwen

1 played an essential role in two long-term activities which were crucial
2 to the continued existence of the LRA. Both involved the abduction of
3 children, some as young as six, from their family homes.
4 In order to sustain the fighting strength of the LRA, children were
5 kidnapped and recruited to become child soldiers. One Prosecution
6 witness, who was himself abducted by the LRA, estimates that the majority
7 of soldiers in Dominic Ongwen's group in 2002, 2003 to 2004, were
8 children younger than 18, and 70 per cent to 80 per cent of those between
9 13 and 15 years old.
10 Child soldiers underwent rudimentary military training and endured brutal
11 disciplinary measures. They were regularly required to participate not
12 only in murderous attacks on civilian camps but in individual acts of
13 torture and murder designed to convince them that there could be no
14 acceptance back in civilian society.
15 When the Rome Statute recognises the age of 15 as being the threshold for
16 the offences of conscription and use of child soldiers, the evidence in
17 this case makes it plain that Dominic Ongwen bears responsibility for
18 crimes committed against children far younger than this. One of the
19 witnesses on whom the Prosecution relies, himself only nine years old
20 when he was abducted during the attack on Odek IDP camp by troops under
21 Dominic Ongwen's command, described children as young as six receiving
22 military training in Ongwen's brigade. He noticed that they were so
23 small that the muzzles of their AK47 rifles dragged on the ground as they
24 carried the guns on their shoulders.
25 Photographs of some of the Prosecution witnesses were taken soon after

1 they escaped from Dominic Ongwen's Sinia brigade. Protection of the
2 witnesses' identity prevent their being shown in public and what follows
3 will not be shown on the screens in the public gallery.

4

5 For those --

6 THE COURT OFFICER: For the persons present in the courtroom, the
7 document will be displaced on the Evidence 1 channel.

8 MS BENSOUDA: For those in the courtroom, the obvious youth of these
9 witnesses, at a time when many had already been with the LRA for a number
10 of years, is shocking.

11 The LRA leader, Joseph Kony, viewed children as easily moulded into the
12 ruthless fighters that he needed to continue his policy of murder and
13 persecution. Thus Kony and other senior LRA commanders, Dominic Ongwen
14 among them, created the horrific spectacle of the perpetrators of these
15 dreadful crimes very often being children who had, a few years or even
16 months earlier, themselves been victims.

17 In what may seem an astonishing display of confidence, Joseph Kony and
18 his deputy Vincent Otti took part in a radio phone-in programme broadcast
19 on Mega FM radio station based in Gulu in December of 2002. Kony spoke
20 about his policy of child abduction to feed the ranks of his fighters.

21 Kony knew that the abduction of children was a sensitive point. Whatever
22 his grand claims about fighting for freedom and democracy, he was plainly
23 embarrassed. He knew that using small boys as soldiers was
24 unjustifiable. At first, he purported to deny the abduction of children
25 by the LRA but in the next breath he conceded, and I'm quoting, he said,

1 "That's the way we recruit."
2 He continued, as if it might be some excuse, "This is the same way
3 Museveni was doing it when he was in the bush by abducting."
4 This was the policy that Dominic Ongwen was carrying out when he
5 conscripted children under 15 into his brigade and when he used them to
6 participate in hostilities.
7 Abductions by the LRA also served a second plan. This involved the
8 abduction of girls and young women with the express aim of forcing them
9 to act as wives and sex slaves of LRA commanders and fighters.
10 Again, there was no secrecy about the LRA's activities in this regard.
11 Vincent Otti's words in the radio programme broadcast in December 2002 to
12 which I have already made reference is very clear. He said, and I quote,
13 "I want to assure you that the girls whom we collect and send to the bush
14 are our mothers." Otti went on, and I'm still quoting him, "We always
15 collect the young ones who are not infected with HIV." Your Honours, the
16 only reasonable interpretation of these words is that the LRA was
17 implementing a policy of abducting young girls for sex.
18 These forced wives were given no choice. They were treated as spoils of
19 war, awarded as prizes, without any more say in the matter than if they
20 had been animals or inanimate objects. When they hesitated or refused to
21 accept the sexual advances of the man whom they had been allotted, they
22 were savagely and repeatedly beaten. If they were suspected of trying to
23 escape, they would be caned or murdered. They were held for months and
24 in many cases they were held for years in sexual slavery and domestic
25 slavery and were subjected to repeated rape. Many of them became

1 pregnant without any choice in the matter, and some gave birth to
2 numerous children who were themselves then ingested into the ranks of the
3 LRA.

4 As a senior LRA commander Dominic Ongwen benefited most from the misery
5 of the abducted women and girls. Of his many, many forced wives, seven
6 women have already given evidence about their personal experiences.

7 By way of example, the Prosecution witness with the pseudonym P-0227 has
8 given evidence concerning her abduction. She told the Court that a
9 little over a month after her abduction, Ongwen summoned her to his
10 house. She was shaking with fear. He demanded sex and she was not able
11 to refuse. She felt that, in her own words, her "whole life was in his
12 hand." He penetrated both her vagina and her anus with his penis by
13 force. And to quiet her when she wept and screamed, he threatened her
14 with his bayonet.

15 After the rape, Ongwen and everyone else around her considered this
16 witness to be his wife. She could not escape. When she was thought to
17 have attempted to do so, she was brutally beaten. On another occasion,
18 Dominic Ongwen ordered that she be beaten for spending time at another
19 LRA fighter's house. She saw the results of Ongwen's suspicions
20 concerning another woman whom he had taken in forced marriage. Believing
21 her to have shown interest in another man, he ordered the child soldiers
22 who served as his escorts to punish her with 100 strokes of the cane.

23 As a result of her rape by Dominic Ongwen, the witness gave birth to a
24 son. This was not her choice. She felt that she was not ready to bear
25 children.

1 Another Prosecution witness, P-0101, 14 years old at the time of the
2 crimes, gave a devastating insight into Dominic Ongwen's behaviour
3 towards the young girls who were placed at his mercy. She spoke both
4 from personal experience of her rape by Ongwen and from more general
5 observations over a period of years. She told the Court that, I quote,
6 "... you are raped while you're still young ... Dominic was the worst
7 when it came to young ... girls ... [H]e ... has sex with them at a very
8 young age."
9 But of course Dominic Ongwen's responsibility is far wider than simply
10 for the crimes that he perpetrated himself. Within the Sinia brigade,
11 Ongwen was commanded structures through which the practice of abduction,
12 forced marriage, rape, torture, slavery and sexual slavery were
13 institutionalised. Hundreds of girls suffered these crimes at the hands
14 of the LRA fighters to whom Dominic Ongwen distributed them.
15 Not only was the physical effects upon such girls and women devastating
16 but there was an enduring mental effect as well. For these those who
17 survived even after their escape or release, they had to live, they still
18 have to live, with the stigma of having been an LRA wife, a perversion of
19 the true meaning of that word. Their future hopes of re-establishing
20 themselves in society and creating new conjugal relationships, despite
21 the efforts of a number of organisations which work to assist and empower
22 them, are blighted. And there is a whole category of other victims: the
23 children born in captivity resulting from these forced marriages, who
24 sometimes face hostility and taunts as a result of their parentage.
25 Mr President, I want to turn lastly to Dominic Ongwen himself. One

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

8 People following the case against Dominic Ongwen may do so with mixed
9 emotions. They will feel horror and revulsion at what he did but they
10 will also feel sympathy. The evidence of many of the child victims in
11 this case could, in other circumstances, be the story of the accused
12 himself. The evidence makes it plain that he could be kind. One
13 Prosecution witness has told the Court that generally Dominic Ongwen was
14 a good man who would play and joke with the boys under his command and
15 was loved by everyone. But the same witness told the Court that at a
16 time when she believed she was still too young to get pregnant, Ongwen
17 had forced her to have sex with him and that she knew that she would be
18 beaten if she refused. She also told the Court that she still bore the
19 scars on her breasts from a beating Ongwen had given her when she failed
20 to make his bed.

21 The reality is that cruel men can do kind things and kind men can do
22 cruel things. A hundred per cent consistency is a rare thing and the
23 phenomenon of perpetrator victims is not restricted to international
24 courts. It is a familiar one in all criminal jurisdictions. Fatherless
25 children in bleak inner cities face brutal and involuntary initiation

1 ordeals into gang life, before themselves taking on a criminal
2 life-style. Child abusers consistently reveal that they have been abused
3 themselves as children.

4 But having suffered victimisation in the past is not a justification or
5 an excuse to victimise others. Each human being must be taken to be
6 endowed with moral responsibility for their actions. And the focus of
7 the ICC criminal process is not on the goodness or the badness of the
8 accused person but on the criminal acts which he or she has committed.

9 We are not here to deny that he was a victim in his youth. We will prove
10 what he did, what he said, and the impacts of those deeds on the many
11 victims. This Court will not decide his goodness or badness, nor whether
12 he deserves sympathy but whether he is guilty of these crimes committed
13 as an adult with which he stands charged.

14 Dominic Ongwen became one of the highest ranking commanders of the LRA.
15 He did so by his enthusiastic adoption of the LRA's violent methods and
16 through demonstrations that he could be more active and more brutal in
17 his methods against the population of northern Uganda than other LRA
18 officers. He was commended by Joseph Kony for the attacks his troops
19 carried out on civilians. He was held up as an example to other less
20 active LRA commanders.

21 As a senior commander Dominic Ongwen had complete operational control
22 over the soldiers under his command. He could at any time simply have
23 ordered that his troops march to the nearest Ugandan army barracks, lay
24 down their arms and surrender. Alternatively, he could have taken the
25 course that so many of the personnel under his control took and made an

1 individual bid for freedom by simply deserting. After all, as the
2 commander, he did not have to fear the brutal canings or peremptory
3 execution which he himself ordered for unsuccessful escapees. He was
4 often separated by several days' or weeks' march from any higher LRA
5 authority. Battalion commanders in his Sinia brigade did indeed escape
6 during this time.

7 Between July 2002 and December of 2005, the Amnesty Commission records
8 show that over 9,000 LRA members surrendered and received amnesty. But
9 Dominic Ongwen did not take that course. Instead, he accepted the power
10 and authority which came with his rank and his appointment. He planned
11 and executed operations which brought misery and death to hundreds of
12 ordinary people and reported the results on the radio with excitement,
13 not regret.

14 One of the logbooks used by the UPDF to record a radio contact between
15 LRA commanders contains a description of Dominic Ongwen announcing his
16 intention in August of 2004 of, and I quote directly, "... starting to
17 kill civilians seriously. He said right now he has already deployed
18 squads for atrocities and very soon people will hear it on the radio."
19 Mr President, let me play to you short portions of a sound recording of
20 an intercepted radio conversation between Vincent Otti, the LRA Deputy
21 Chairman, and Dominic Ongwen. Otti is asking Ongwen to finish his report
22 on Odek which he had begun earlier. And I will pause now while that
23 conversation is played to the Court.

24 (Playing of the audio excerpt)

25 MS BENSOU DA: Mr President, despite the poor sound quality, what you have

1 just heard is important for two reasons. Firstly, it is a direct
2 firsthand confession by Dominic Ongwen. He can be heard admitting to the
3 mass murder of civilians. Second, it demonstrates that while Ongwen has
4 no inhibitions about stating that he has killed people, he is still
5 uncomfortable with the fact that these people are civilians even when
6 speaking to other members of the LRA. He knows that what he has done is
7 wrong. He does not want to use the word openly. And so twice he avoids
8 it, the first time calling his dead civilian victims "our colleagues" and
9 the second time using the standard LRA jargon word "waya". The word
10 means aunt in Acholi, but it was the LRA's slang for civilians. I will
11 play the clips again now, pausing after each one.

12 Ongwen tells Otti that he has, I'm quoting, "Just been shooting our
13 colleagues."

14 (Playing of the audio excerpt)

15 MS BENSOU DA: Otti cannot hear clearly. The sound quality is bad and

16 Otti says, "Just what?"

17 (Playing of the audio excerpt)

18 MS BENSOU DA: And Ongwen repeats, quoting again from him, "I have just
19 come from shooting people."

20 (Playing of the audio excerpt)

21 MS BENSOU DA: A little later, in the same conversation, the subject
22 matter comes back to these people who have been shot. Were these
23 soldiers that Dominic Ongwen had been shooting? No. Ongwen boasts to
24 Otti, again I quote, "Let the people wait to hear about the waya," the
25 civilians, "we have shot all of them."

1 (Playing of the audio excerpt)

2 MS BENSOUA: Mr President, the evidence shows that Dominic Ongwen was a
3 murderer and a rapist. It shows that he commanded attacks which
4 destroyed innocent civilians' livelihood. He presided over a systematic
5 use of child soldiers and sex crimes on young girls in the units that he
6 commanded. The circumstances in which he himself was abducted and
7 conscripted into the LRA many years before may perhaps amount to some
8 mitigation of sentence in the event that he's convicted of these crimes.
9 They cannot begin to amount to a defence or a reason not to hold him to
10 account for the choice that he made; the choice to embrace the murderous
11 violence used by the LRA and to make it the hallmark of operations
12 carried out by his soldiers.

13 Your Honours, Mr President, the victims of Mr Ongwen's brutal crimes have
14 waited long enough to see justice done. It is past time we delivered to
15 them what they are owed. On the strength of the Prosecution's case and
16 the evidence that will be presented during the course of this trial, we
17 hope to do just that.

18 I thank you, Mr President, and, with your kind permission, will now hand
19 over to Senior Trial Lawyer Mr Ben Gumpert to continue with the
20 presentation of the Prosecution's opening remarks.

21 PRESIDING JUDGE SCHMITT: Thank you very much, Madam Prosecutor.

22 Mr Gumpert, you have the floor.

23 Mr Taku.

24 MR TAKU: I have a standing objection. I think I should wait until

25 Mr Gumpert finishes or the Prosecutor finishes and then I can make my

1 objections on the record.

2 PRESIDING JUDGE SCHMITT: I'm not sure if I will allow objections during
3 the opening, but we will wait for what Mr Gumpert has to say.

4 MR TAKU: Yes, your Honour. But if the objections pertain to charges or
5 crime bases, allegations, not in the indictment, that we received no
6 previous -- that were not confirmed, I think it's pertinent to raise
7 them, put them on record.

8 PRESIDING JUDGE SCHMITT: Mr Taku, we have taken notice of that, and, of
9 course, the Chamber is fully aware of the confirmed charges and how far
10 they reach and how far they do not reach.
11 Mr Gumpert.

12 MR GUMPERT: Madam Prosecutor has given the Court an overview of the case
13 against Dominic Ongwen. I shall describe the evidence that will be
14 presented to the Chamber in more detail and explain how the Prosecution
15 puts its case in relation to each of the 70 charges which Dominic Ongwen
16 faces.

17 There has been some public discussion about the number of charges. Let
18 me make the position clear. The large number of charges is not designed
19 to show that this case is more serious than the case against any other
20 accused person. Nor will a trial involving 70 charges last ten times as
21 long as a charge involving only seven. This isn't an arithmetical
22 exercise. It's the evidence which will determine how long this case
23 lasts and whether it can be considered complex or lengthy. There is a
24 great deal of evidence. The large number of charges is a direct result
25 of the Prosecution's efforts to make it clear to the accused person

1 himself, to the Chamber, and to the public the way that the Prosecution
2 puts its case. Thus, for each of the four attacks about which Madam
3 Prosecutor has spoken, there are about a dozen charges, and they will
4 enable the Chamber, at the end of the trial, to determine whether or not
5 Dominic Ongwen is guilty of specific crimes, say murder or enslavement,
6 at each particular location.

7 I'll deal with the charges in sections, one section each for the four
8 charged attacks at Pajule, Odek Lukodi and Abok. Then a section on the
9 sexual and associated crimes alleged to be perpetrated personally by
10 Dominic Ongwen himself. Then will follow a section on similar crimes for
11 which he bears more remote responsibility. And lastly, a section on the
12 conscription and use of children under the age of 15.

13 I shall also deal, although only in outline, with the notice that the
14 Defence has given that it intends to rely upon some of the grounds for
15 excluding criminal responsibility that are set out in the Rome Statute
16 under Article 31. The findings which the Chamber makes in its judgement
17 at the end of this case on those issues will be the first judicial
18 guidance on those provisions at this Court.

19 But first, I want to provide an introduction to some of the most
20 important evidence the Chamber will hear during the trial. This is the
21 evidence about the LRA's radio communications. The Prosecution case is
22 that these communications were intercepted and recorded in real time.
23 Sometimes they were sound recorded but more consistently they were
24 recorded in handwritten logbooks.

25 The Prosecution will call a large number of witnesses to explain and

1 confirm this evidence, and that will include witnesses who were
2 themselves instrumental in the LRA's own radio operation and witnesses on
3 the other side of the coin, witnesses who were involved in the
4 interception operation.

5 The Prosecution suggests that the Court will find the intercept evidence
6 particularly valuable because it's unaffected by human memory's
7 fallibility, and it's free of bias or the suspect motivations that can
8 taint witness testimony. The evidence will show that by 2002, when these
9 charges begin, the LRA had developed a reliable method of communicating
10 by radio.

11 I'm pausing to allow the map to be shown on the screen.

12 After Operation Iron Fist, which began, as Madam Prosecutor told you, in
13 2002, Joseph Kony remained in Sudan. He was often hundreds of kilometres
14 away from his troops who were operating as far south as Apac and Soroti,
15 which can be seen on the map. The map demonstrates the distances
16 involved. And because of this geographical isolation, Kony used
17 high-frequency radio to issue orders and to communicate with his senior
18 commanders who were themselves spread over large distances.

19 LRA radio transmissions occurred every day at set hours on predetermined
20 frequencies. They communicated in the Acholi language. Joseph Kony
21 required senior LRA commanders to call in their location and to report on
22 their activities since the previous communication time. He used the
23 radio to give orders, to enforce discipline, and to supervise operations.

24 Logistics, administration, the coordination of commanders' movements, all
25 of these things depended on radio transmissions.

1 LRA commanders used call-signs when communicating on the radio.
2 Dominic Ongwen's most frequently used call-sign during the period of
3 interest in this trial was "Tem Wek Ibong".
4 The LRA knew that their unencrypted radio communications were being
5 intercepted and so they talked in code to hide their more sensitive
6 communications and they used two types of code.
7 The first was the use of Acholi proverbs or LRA jargon. The Acholi
8 expression, and I must apologise in advance for the poor pronunciation of
9 the Acholi words, the Acholi expression "tye imac gar" literally means
10 "the train's headlights". Proverbially, when something is described as
11 being "in the train's headlights", it means that it's straight ahead.
12 The LRA also used the word "church" to denote a mountain. And so a
13 message might be worded "the church is in the train's headlights" and
14 that would be a report of the position of the person sending the message,
15 indicating that the mountain was straight ahead. As you've already heard
16 in the course of Madam Prosecutor's remarks, the LRA also used the Acholi
17 word "waya" meaning aunty to signify civilians.
18 The second kind of code that was used was called "TONFAS". That's an
19 acronym. It stands for Time, Operator, Nicknames, Frequencies, Address,
20 Security. TONFAS codes were pages of random words that LRA commanders
21 referred to in order to transmit their most sensitive communications.
22 The LRA distributed these pages of words by hand to the commanders with a
23 radio.
24 Radios were issued to commanders of the LRA active service units, the
25 brigades, but also to lower-ranked commanders if they were particularly

1 active. The radios themselves were operated by trained signallers who
2 were allocated to particular units.

3 In total during this trial, the Chamber will hear live evidence from over
4 30 different witnesses, all former members of the LRA or abductees, who
5 confirm that the LRA communicated by radio. Many of these have personal
6 knowledge of Dominic Ongwen's use of the radio to transmit reports and to
7 receive orders.

8 So, can the Chamber rely on LRA radio transmissions as an accurate record
9 of their plans and operations? The Prosecution suggests that there are
10 many reasons to conclude that this is so.

11 The LRA was fighting a war. Their aim was to topple the Ugandan
12 government. At the time relevant to this trial, they were able to
13 conduct coordinated attacks and complex troop movements. All of that
14 depended on the accuracy and reliability of reports that commanders made
15 by radio about the situation on the ground. Their capacity to carry on
16 this conflict is itself a testament to the fact that their radio
17 communications generally reflected what was happening.

18 There is extrinsic corroboration of the accuracy of LRA radio
19 communications. The most obvious in this trial is in respect of the four
20 attacks with which this trial is principally concerned. The Prosecution
21 will present copious evidence, evidence from victims, evidence from the
22 attackers, photographs, videos, evidence that the attacks on which
23 Dominic Ongwen and others reported on the radio did indeed take place and
24 took place in the way that they had been reported.

25 Of course, there is extrinsic corroboration in the many publicly

1 available media articles that cover the same events that LRA commanders
2 were reporting in their internal radio communications and which were
3 recorded and collected in logbooks.

4 LRA commanders were incentivised to report their operations on the radio
5 because it brought them recognition, promotion, and rewards. The Court
6 will hear evidence from the LRA's former Director of Signals. You will
7 also hear evidence from the Ugandan army's Director of Technical
8 Intelligence, in other words, the top men on each side of this conflict
9 so far as radio communications and their interception is concerned. And
10 they both concur that the radio reporting was mostly accurate. It's only
11 fair to say that both of them also note that occasionally LRA commanders
12 would report incorrectly. Mostly that would be to avoid Kony's wrath.
13 They would perhaps disguise the number of their own casualties in battles
14 with the UPDF or exaggerate the number of UPDF soldiers killed.

15 Dominic Ongwen himself, as the Chamber has just heard from Madam
16 Prosecutor, claimed to have killed all the civilians at the Odek camp.
17 In fact, the death toll was in the region of 60 out of the approximately
18 6,000 inhabitants.

19 Some commanders would also claim to have carried out disciplinary
20 killings within the ranks of the LRA and in accordance with Kony's orders
21 when in fact they had not. Indeed, the Court will hear numerous examples
22 within the intercept material where senior commanders discuss the lack of
23 zeal of others among their number. On one memorable occasion, having
24 just been promoted in rank, Dominic Ongwen threatens, as he puts it, to
25 "lay hands" on non-performing LRA commanders.

1 But in the main, LRA commanders reported accurately because of the threat
2 of reprimand or punishment if they were found not to be truthful. They
3 knew that Kony was able to cross-check their reports against the local
4 radio station in Gulu, Mega FM, and other public radio broadcasts.
5 The Ugandan authorities came to realise that LRA radio communications
6 were a source of valuable intelligence and, thus, in the mid-1990s, the
7 Ugandan government began to set up interception operations. Eventually,
8 three separate operations were established by the Internal Security
9 Organisation of the Ugandan government (the "ISO"), by the Ugandan army
10 (the "UPDF"), and later by the Ugandan Police force.
11 By 2001, the ISO and the UPDF had permanent offices at the UPDF barracks
12 in Gulu. They were intercepting radio communications from the LRA on a
13 daily basis, with trained staff working full time. At various times,
14 UPDF logbooks were being compiled quite separately in locations in
15 Soroti, Acholi Pii, and even in Sudan, as interceptors accompanied UPDF
16 troops on active operations. The police operation was at a different
17 location also. That was based at Kamdini, about 60 kilometres south of
18 the barracks at Gulu.
19 I'm pausing while the next image appears on the screen.
20 This is the room in which the ISO carried out its operations. It shows
21 the desk at which one of the Prosecution witnesses worked. The larger
22 piece of equipment on the left under the headphones is the radio set that
23 he used for interception, and to its right is the tape recorder on which
24 sound recordings were made.
25 The Prosecution relies on evidence from 18 different individuals involved

1 at all levels of the ISO, UPDF, and police in their interception
2 operations. These witnesses, particularly the radio operators, were
3 intimately familiar with the LRA. They could break the TONFAS code, they
4 knew the LRA command structure, and they could identify commanders by
5 their voices alone.

6 One of the features of this evidence which demonstrates its reliability
7 is the fact that interception operations were being carried out not by
8 one but by three separate operations.

9 The interceptors would tune in to the LRA's regular frequencies at the
10 fixed broadcast times and their first job was to take shorthand rough
11 notes of the conversations.

12 The book you can see on the slide is a book of UPDF shorthand rough
13 notes. These notes were entered between March and July of 2004 and, of
14 course, that's the period during which the Prosecution alleged that
15 Dominic Ongwen led attacks on Odek, Lukodi, and Abok IDP camps. UPDF
16 radio operator, who is Prosecution witness P-0003, has confirmed that he
17 wrote in this very book.

18 At the top of the page, you can see the date and the time of a particular
19 intercepted communication. Down the left-hand side of the page is a list
20 of call-signs of LRA commanders who were on air, meaning that they had
21 called in their presence on the radio at that time. And this represents
22 the radio operator recording the TONFAS code. Winpipe, that's the name
23 of the code. The cracked code is written out in Acholi at the bottom of
24 the page underneath the figures.

25 Later, the interceptors would decode their shorthand rough notes and make

1 handwritten entries numbered consecutively in logbooks in English. These
2 logbook entries were the most important records that the organisations
3 produced. The Prosecution is able to produce these logbooks to the
4 Chamber for physical inspection. I have a sample in my hand and I will
5 make arrangements for it to be made available to the Chamber and the
6 parties and participants during the breaks in this presentation.
7 The Chamber will receive evidence from 12 witnesses who are able to
8 recognise their handwriting in logbooks such as this, and who will
9 confirm the genuine nature of these logbooks.

10 This is a page from an ISO logbook. The book covers communications from
11 May to August of 2003. You'll see that before each entry, radio
12 operators wrote the date and the time of the communication. They also
13 wrote the reference number of the tape that was used to record that
14 transmission. In this case, you can see it's number 657. And using that
15 number, we can match up each logbook entry to a corresponding tape and
16 confirm the content in each.

17 Also routinely noted were the commanders who signed on. Dominic Ongwen
18 is most frequently referred to by his first name, Dominic, as here.

19 From the logbooks, the UPDF and the police would produce intelligence
20 reports summarising the important material, and this was for transmission
21 up the chain of command. From at least 2003, the UPDF and the ISO
22 sound-recorded LRA radio communications. Sound recordings were not
23 intended to cover the entirety of each communication. They were used as
24 a backup in case radio operators missed the meaning or the content of
25 communications during live transmissions. They could use these sound

1 recordings to go back and check what had been said in order to complete
2 their logbook entry.

3 It will be important to assess the authenticity and the reliability of
4 the intercepted communications in their various recorded forms.

5 Let me start by conceding that there were some shortcomings. LRA
6 commanders were communicating over long distances. Atmospheric
7 conditions sometimes meant that LRA commanders themselves had difficulty
8 understanding what each other was saying. On some occasions an informal
9 relay system had to be used, where communications from a distant
10 commander were repeated by another commander who was closer to Kony. And
11 this meant that it was sometimes hard for the interceptors to hear and
12 understand what was being said.

13 The collected material was intercepted and recorded, sound-recorded, with
14 rudimentary equipment over ten years ago, and it was done in the context
15 of an armed conflict. That too hampered the ability of radio operators
16 to intercept and record all the LRA's communications. Recordkeeping
17 wasn't always meticulous. Sometimes the labels fell off the sound
18 recordings, and at one time the ISO's archive was affected by damp.

19 Sometimes communications recorded in one logbook are not reflected in
20 another or can't be discerned in the corresponding sound recording.

21 On the other hand, the interceptors were trained professionals. They
22 listened to the LRA for years without a break. The material that each
23 organisation produced was distinct and independently compiled. An
24 examination of those separately compiled records produces a high degree
25 of corroboration.

1 The Prosecution will call, as the second witness at this trial, an
2 analyst who studied the intercept evidence from the periods around the
3 four charged attacks in order to explore the level of consistency in
4 reporting between the different strands of evidence.

5 Looking firstly at the attack on the Pajule IDP camp, the analyst notes
6 that the various logbooks are unanimous in recording transmissions in
7 which Vincent Otti and another LRA senior commander, Raska Lukwiya,
8 report the attack on the Pajule camp in October 2003.

9 The analyst draws attention to considerable variation in the various
10 logbooks as to other commanders involved in the attack, but he points out
11 that there is mention of Ongwen's involvement in three logbooks compiled
12 by the UPDF in separate locations.

13 Turning to Odek, the analyst found that the details of radio
14 communications recorded in the logbooks of the ISO and the UPDF
15 concerning that attack were consistent in recording the details of the
16 number of people killed or, for example, the equipment seized.

17 There is also uniformity in the recording of a report by Ongwen about the
18 pillaging of a diamond during the attack.

19 The analyst points out inconsistency in the recording of the identity of
20 the LRA commander who initially reported the attack. The ISO logbook
21 attributes it to an LRA commander with an unknown call-sign. Two of the
22 UPDF logbooks attribute it to an LRA commander called Abudema. A third
23 UPDF logbook names another commander, Labongo.

24 But the analyst notes that the transmission on which the compilers of
25 these three conflicting logbooks are reporting is one of those for which

1 there is a sound recording. We ourselves, the Court, can listen to the
2 transmission on which those compilers were basing their conflicting
3 records. And the analyst points out that four witnesses listening to
4 those transmissions have each identified the voice of the commander
5 making the report as not Abudema or Labongo but Dominic Ongwen.
6 The analyst, turning to Lukodi, observes that all the logbooks from the
7 various sources are consistent and they record that it was Dominic Ongwen
8 who reported that he had carried out the attack at Lukodi and in
9 recording the details of the report that he made.
10 The analyst notes again that four witnesses have each identified the
11 voice of Dominic Ongwen as being the commander who makes the report.
12 Lastly, in relation to Abok, the analyst notes that the UPDF logbook for
13 9 July 2004 records Dominic Ongwen reporting his responsibility for that
14 attack. But on that day, the 9th, the ISO logbook is silent.
15 The analyst notes that on 10 June, the position is reversed. It's the
16 ISO logbook that records Ongwen's claim of responsibility and there is
17 nothing in the UPDF logbook.
18 Perhaps most significantly he notes once again that the sound recording
19 made by the ISO interceptors has again been transcribed and listened to
20 by four Prosecution witnesses. They know Ongwen's voice. They all
21 identify him as the speaker.
22 The accuracy of the material produced can be demonstrated in a different
23 way. On at least one occasion, intercepted communications were used
24 successfully to prevent an LRA attack. In 2002 or 2003, the ISO
25 intercepted and decoded an LRA radio communication about an upcoming

1 attack on a place called Abim. One of the Prosecution witnesses will
2 testify that he himself then gave that information to the UPDF prior to
3 the attack, and so, when the LRA arrived, UPDF forces ambushed them and
4 killed an LRA commander.

5 The Ugandans were also fighting a war, just like the LRA. The intercept
6 material was collected for intelligence-gathering purposes, not to build
7 a criminal case a decade later. Many of the most significant documents
8 and records came into the possession of the Prosecution before arrest
9 warrants naming particular individuals had even been issued. The fact
10 that Dominic Ongwen would eventually be prosecuted and that it would be
11 useful to have records of his transmissions, sound recordings of his
12 voice wasn't something that could possibly have been known to the
13 interceptors.

14 Finally, the chain of custody is a secure one. Witnesses will explain to
15 the Chamber that after they had produced and used the intercept evidence,
16 it was stored under lock and key or alternatively sent to the their
17 superiors in Kampala or Gulu. Having discovered the existence of the
18 material, the Prosecution made requests for assistance from the Ugandan
19 government and in response to that, as the relevant witnesses will
20 confirm, the intercept evidence was handed over personally to Prosecution
21 investigators.

22 Your Honours, the reality is that the intercepted LRA radio
23 communications represent a unique opportunity to step inside the mind of
24 Dominic Ongwen and other LRA commanders at a time before any prospect of
25 Prosecution could possibly have influenced their thoughts or their

1 actions. The Chamber will be able to hear Dominic Ongwen's voice
2 recorded over ten years ago claiming responsibility for the Odek, Lukodi
3 and Abok IDP camp attacks.

4 Your Honours, I've concluded that section. I intend to move now to the
5 structure of the LRA and Dominic Ongwen's involvement in that. It may be
6 that now would be a good time to break and to resume, perhaps, five
7 minutes earlier than we would have done otherwise.

8 PRESIDING JUDGE SCHMITT: I agree. So we have the lunch break now until
9 2.30.

10 THE COURT USHER: All rise.

11 (Lunch recess taken at 12.54 p.m.)

12 (Upon resuming in open session at 2.31 p.m.)

13 THE COURT USHER: All rise. Please be seated.

14 PRESIDING JUDGE SCHMITT: Mr Gumpert, you still have the floor.

15 MR GUMPERT: Thank you, Your Honour.

16 I turn now to the LRA unit with which Dominic Ongwen is most closely
17 connected.

18 For the large majority of the time with which this trial is concerned,
19 Dominic Ongwen was a leading and active member of the Sinia brigade.
20 It's worth looking in detail at that unit during the period between 2002
21 to 2005.

22 The brigade was commanded by an officer of the rank of Brigadier, Colonel
23 or Lieutenant Colonel. It had a brigade headquarters composed of various
24 departments including an operations room, an intelligence officer, a
25 brigade major and a brigade administrator. The brigade was made up of

1 three battalions named Oka, Terwanga, and Siba. Battalions varied in
2 size but were generally composed of at least 100 men. Each battalion had
3 a commander, usually at the rank of Major or Lieutenant Colonel. There
4 was also a deputy commander, an intelligence officer, a commander for
5 support weapons, and an adjutant who maintained records. Each battalion
6 was composed of a number of companies. Each company had a commander and
7 a deputy commander. Each battalion also had an operations room, and the
8 operations room would select troops would carry out patrols and to
9 provide and to receive briefings.

10 Discipline was enforced strictly. There were many rules. Breaking them
11 was punishable by caning or sometimes death. If an infraction was
12 suspected, the battalion intelligence officer and adjutant would
13 investigate and they would report to the battalion commander. People who
14 tried to escape from Sinia brigade were often punished by death, and
15 those who committed other serious infractions, such as sleeping with the
16 forced wife of another fighter, were often beaten or killed.

17 The Sinia brigade was able to carry out complex operations. Before an
18 attack, intelligence officers gathered information from LRA personnel who
19 were familiar with the area. They would also capture civilians. Attacks
20 were planned and a tactical command was established to oversee each
21 operation. There were special tactics for ambushes and for other types
22 of attack. And Sinia brigade maintained a standby force to be used if
23 the primary attacking forces were compromised. Ammunition and heavy
24 weapons were distributed within the brigade in an organised way.

25 Witnesses who were abducted as children will tell the Chamber how, in the

1 Oka battalion that Dominic Ongwen commanded before he became the brigade
2 commander, they were taught to serve as armed escorts to perform guard
3 duty and to patrol. One witness in particular will describe how Ongwen
4 trained the fighters under his command to march, to salute the senior
5 personnel, and to show respect.

6 On 1 July 2002, Dominic Ongwen was promoted by Joseph Kony from Captain
7 to the rank of Major. His progress, both in terms of the positions that
8 he occupied and the ranks that he held, can be seen on this graphic. He
9 served as the commander of Oka battalion in the Sinia brigade from
10 mid-2002 to March 2004, which is when he took command of the brigade
11 itself.

12 The brigade commander at this time was Buk Abudema. Lapaniyikwara, also
13 known as Lapaico, was his deputy.

14 As a battalion commander, Dominic Ongwen was active. One witness
15 describes an attack on Pajule camp sometime in mid-2002, over a year
16 before the attack with which this trial is primarily concerned, and that
17 prior attack was carried out by soldiers of Oka battalion led by Ongwen.

18 Another witness recalls an attack on Achol-Pii IDP camp in August in
19 which Ongwen's battalion took part. Witnesses, several of them, describe
20 Ongwen leading his battalion into battle at Lanyatido and Atanga around
21 September 2002. Another witness, one of the other battalion commanders,
22 states that Ongwen was the commander of Oka battalion at the time of an
23 attack on Patongo in late 2002 or early 2003.

24 Dominic Ongwen was wounded in approximately November 2002 and stayed for
25 some time in "sick-bay". This was the name the LRA used for the units

1 where wounded LRA fighters could convalesce. Ongwen's continued position
2 of authority is indicated by the fact that he was visited while in
3 sick-bay by the brigade commander, Abudema, and other senior LRA
4 commanders such as Tabuley. Ongwen continued to have access to a radio
5 and signallers and he remained active while he was in the sick-bay. He
6 was ordering and later, when he could walk again, leading troops under
7 his command on attacks and abduction operations. By February 2003,
8 Ongwen was reporting attacks carried out by his subordinates, and by
9 March, he was fit enough for Kony to give instructions for Ongwen to go
10 on a mission to retrieve hidden weapons.

11 Shortly afterwards, operational once again, Ongwen personally deployed
12 for attacks on Opit and Awere which he commanded. His orders were that
13 the attackers should kill anything that they could not bring back alive.
14 During this period, Dominic Ongwen and one of the Prosecution's witnesses
15 were arrested briefly within the LRA for obtaining a mobile phone,
16 allegedly to talk to the Ugandan government. But when he was released
17 again, Ongwen retained his position of authority, and in mid-2003, he
18 participated in and led troops during an LRA campaign in the Teso
19 sub-region.

20 Dominic Ongwen reported to Vincent Otti, the vice-chairman of the LRA,
21 that he had attacked the Catholic mission at a location called Bario on 6
22 September 2003 and another attack at Oaii Bar Onyio on 14 September 2003.
23 In September of that year, Ongwen was appointed second in command of the
24 Sinia brigade, but around this period, on orders from Joseph Kony, Ongwen
25 moved to Control Altar. That was the central command, the headquarters

1 of the LRA. Kony stated in a radio transmission captured by the
2 interceptors, that, and I quote from the logbook, "Dominic should remain
3 behind with Otti" because "he," Ongwen, "has good plans." Hence, at the
4 time of the Pajule attack, the first of the four with which this trial is
5 particularly concerned, in October 2003, Ongwen was also a commander in
6 Control Altar.

7 Shortly after playing a significant role in that attack, Dominic Ongwen
8 was promoted again to lieutenant Colonel. This pattern was repeated
9 throughout Ongwen's career, participating in or leading successful
10 attacks and then receiving a promotion shortly thereafter. In November
11 2003, he led his battalion in an attack at Labwor Omor, and he continued
12 this pattern of attacks in 2004.

13 In March 2004, Dominic Ongwen took another step upwards in position and
14 authority.

15 I'm just pausing because I'm hoping the graphic -- thank you.

16 He became the commander of Sinia brigade. He took over the brigade from
17 Labongo who had been the acting commander after Buk Abudema had been
18 transferred.

19 It was at this point that Dominic Ongwen gained control over the
20 hierarchical military structure of the entire Sinia brigade.

21 He was now at the apex of the brigade's structure and in full control of
22 its activities. He commanded this brigade during numerous operations in
23 2004 and 2005, including those at Odek in April, Lukodi in May, and Abok
24 IDP camp in June 2004.

25 These three attacks are examples of Ongwen's control over his subordinate

1 troops. After each attack, he received reports from his subordinate
2 commanders. Ben Acellam, one of the commanders of the Odek attack under
3 Ongwen, Alex Ocaka, an officer in Sinia brigade and the ground commander
4 of the Lukodi attack, reported to Ongwen and were his direct
5 subordinates. Ben Acellam was the commander of Oka battalion, Alex Ocaka
6 was the support commander in Sinia brigade, and Okello Franco Kalalang
7 was initially the brigade major in the brigade headquarters and then the
8 Terwanga battalion commander.

9 The Lukodi attack resulted in yet another step upwards in
10 Dominic Ongwen's rise as a leader. Kony promoted Ongwen to the rank of
11 Colonel on 2 July -- I beg your pardon, 2 June 2004.
12 In December 2004, he was further promoted to brigadier.

13 On 16 March 2005, Ongwen and another officer were appointed deputies to
14 Otti. And in the latter half of 2005, Ongwen was the most senior LRA
15 commander who remained within Uganda. And he remained the Sinia brigade
16 commander until at least 31 December 2005.

17 Dominic Ongwen was instrumental in maintaining discipline in his units.
18 This was the case both when he commanded at battalion level and at
19 brigade level. One witness will describe how the chain of command was
20 used for this purpose. When a punishment was implemented in a low-level
21 subordinate unit, its leader would report what had happened to a
22 mid-level leader. He in turn would report it to Ongwen's
23 second-in-command and thence the report would go to Ongwen himself.

24 One of the child soldiers acting as an escort to Dominic Ongwen heard him
25 state that anyone who tried to escape would be killed. Another described

1 how two men who were suspected of plotting to escape were killed by one
2 of Dominic Ongwen's subordinate officers. There was no need for direct
3 orders in this case because Ongwen had already decreed that attempted
4 escapees should be killed immediately. Many of Ongwen's forced wives saw
5 escapees being killed. Two of them avoided this penalty only at the cost
6 of severe beatings when they themselves were caught escaping.

7 Several of Dominic Ongwen's forced wives were beaten, sometimes to a
8 state of unconsciousness, by Ongwen personally or by his escorts on his
9 orders. The reasons varied: failing to make his bed, giving food to
10 other women while preparing a meal for him, or even appearing to look
11 dirty. One witness described how Ongwen, while still a battalion
12 commander, ordered the beating of one of his wives for defecating near a
13 well. On occasions when the escorts did the beating, Ongwen would sit
14 and watch. Once, when an escort fell over whilst carrying out a beating,
15 Ongwen intervened and started to beat the escort.

16 Dominic Ongwen's unchallenged life-or-death authority over women in his
17 battalion is illustrated by his radio report to his superiors recorded on
18 24 March 2003. He's reported as saying, and I quote from the logbook,
19 "The Karamajong and Sudanese girls he kept had become stubborn and
20 therefore he had decided to kill them all."

21 Dominic Ongwen had the power to prevent crimes being committed by his
22 subordinates and the power to moderate the brutal punishments handed out
23 for infractions of the LRA rules. One Prosecution witness recalls that
24 Dominic Ongwen once stopped one of his escorts from killing a recently
25 abducted girl. His willingness to commute death sentences to beatings

1 when it was his own wives who were concerned has been noted already.

2 Another indicator of Dominic Ongwen's authority and control over his

3 troops was the fact that he was viewed within all echelons of the LRA as

4 being a highly effective commander. He initiated operations autonomously

5 and enthusiastically. Joseph Kony and Vincent Otti frequently described

6 Dominic Ongwen as an example for other LRA commanders to follow. His

7 fellow officers and his subordinates saw him in the same light. By

8 contrast, Kony frequently criticised other commanders and compared them

9 unfavourably to Ongwen. Kony liked and rewarded commanders who showed

10 initiative and that's evident in Ongwen's rapid rise through the ranks of

11 the LRA, from Captain to Brigadier General within two and a half years.

12 Your Honours, I turn now to the crime of persecution. Counts 10 -- we

13 have a glitch. I don't think I can afford to wait. My time is running

14 out.

15 Counts 10, 23, 36 and 49 are crimes of persecution. I deal with them

16 together, although as you can see from the screen there is one for each

17 camp attack.

18 The LRA attacked the civilians in these four camps because they

19 considered the inhabitants to be siding with the government. In the

20 course of those attacks, Dominic Ongwen's fighters committed crimes which

21 deprived the inhabitants of fundamental rights, such as the right to life

22 by the commission of murder. The LRA were targeting the inhabitants on

23 political grounds, to punish this perceived support of the government.

24 That is the crime of persecution.

25 The evidence in this case will demonstrate that Joseph Kony issued orders

1 to attack IDP camps throughout northern Uganda. This was no secret. The
2 LRA would send open letters to IDP camp residents, warning them to leave
3 the camps or to be attacked.

4 The radio intercept logbooks record Kony ordering that when LRA fighters
5 attacked IDP camps, they should treat all the inhabitants as if they were
6 UPDF soldiers and shoot them.

7 He also ordered that the Acholi people should be truly killed and, if
8 possible -- I'm very sorry. I know I'm using up time, but the purpose of
9 the graphics is to isolate the passages which I am speaking of so that
10 they appear on the screens in front of your Honours and generally, and
11 that's not happening just at the moment.

12 May I just have a moment's indulgence.

13 PRESIDING JUDGE SCHMITT: Yes, of course, but indeed you are using up
14 your time. You know that.

15 (Pause in the proceedings)

16 MR GUMPERT: Kony's orders included the requirement that the Acholi
17 people, the people of the Acholi region in northern Uganda, should be,
18 and I quote directly from an entry in the logbook, "truly be killed and
19 if possible wiped off totally because instead of running to the bush to
20 join hands with the LRA ... they go to Museveni."

21 An Acholi clan chief, one of the many people abducted during the Pajule
22 attack in October 2003, recalled that after that attack, the LRA's deputy
23 chairman Vincent Otti threatened to kill the Pajule abductees, saying
24 that they shouldn't be in the camp and that they were government
25 supporters. Another Pajule abductee recalled that Otti had declared that

1 all the Acholi people living in the camps would be killed.

2 Joseph Kony also targeted other ethnic groups, such as the Langi and the

3 Itesos, who were perceived to support the government and the UPDF.

4 Memorably he instructed his commanders that they should, and again

5 I quote from the logbook, "weigh the minds of the people in a particular

6 area and decide whether they support the LRA or not ... if not, the

7 people in that area should be killed: all."

8 In early 2003, Joseph Kony ordered one of his commanders to kill Itesos

9 civilians who were "not cooperating, who were stubborn." He

10 congratulated another commander for killing Langi civilians since the

11 Langi are, according to Kony, Museveni supporters. He ordered that Langi

12 women should be killed because "they are the ones producing militias who

13 are killing the LRA." A month later, speaking to one of his senior

14 commanders he said explicitly "we are fighting against people who support

15 Museveni." There is a sound recording of that statement.

16 Civilians were persecuted for a wide variety of actions that the LRA

17 interpreted as resistance to its cause: failing to reveal UPDF positions,

18 refusing to follow LRA orders, moving to IDP camps instead of joining the

19 LRA, raising an alarm when the LRA was near, running away from the LRA.

20 Suspicious conduct so far as the LRA was concerned included innocuous

21 activities like carrying a telephone or moving in vehicles on a road.

22 Proof was an unnecessary luxury. In September 2002, an LRA commander

23 reported to Kony his suspicion, no more than that, that civilians on

24 bicycles had told the UPDF about his position. Kony ordered the

25 commander to return to that area and, again I quote from the logbook,

1 "kill all persons he can see including babies, dogs, etc. and burn down
2 all houses."
3 So what has this to do with Dominic Ongwen? What's his role in these
4 crimes? The Prosecution case is that senior LRA commanders relayed
5 Kony's orders down the chain of command. For example, November 2003, Buk
6 Abudema, Ongwen's then brigade commander, said that the LRA's "major
7 problem is civilians who cling to Museveni like ticks." He went on, and
8 I quote, "The civilians must be killed until they ... accept to join the
9 LRA and to remove Museveni." Ongwen himself passed along Kony's
10 persecutory orders to his troops. Witnesses will tell the Court of him
11 speaking of how the Acholi people should be killed because they are
12 "pigheaded" or because they "want to stay in the camps".
13 And it was those commanders, Ongwen amongst them, who took the active
14 steps to put Kony's persecutory plan into action. The attacks on the IDP
15 camps, planned and executed by those commanders, were a direct response
16 to Kony's persecutory orders.
17 In April 2003, Ongwen targeted Lagile IDP camp in the Pader District for
18 attack, and that was planned on the basis of the civilian population's
19 perceived opposition to the LRA. Ongwen had discussed with Kony how the
20 people of Lagile had long been a problem and it was the very next day
21 that Ongwen reported that he had attacked Lagile IDP camp, burnt down the
22 houses, killed 20 civilians, and abducted many others.
23 During the attack at Pajule, in which Ongwen played a prominent part, he
24 told a local chief who had been abducted, tied up and brought before
25 Ongwen as a prisoner, that the LRA was going to kill all the civilians

1 because they were supporting the government.

2 One of Dominic Ongwen's subordinate commanders in the Sinia brigade

3 recalls Ongwen and Kony speaking on the radio prior to the attack on

4 Odek.

5 They agreed that the people in Odek were very difficult people and that

6 they needed to be taught a lesson.

7 And one of the brigade officers who participated in the Odek attack

8 confirmed that Ongwen, relaying an order from Kony, ordered the killing

9 of the people who remained in the camp because they were supporting the

10 government and as a result they were to be considered enemies. That

11 officer was clear that one purpose of the Odek attack was to show the

12 civilians that the government could not protect them in the camps.

13 Following that attack at Odek, Ongwen addressed his men and the people

14 who had been abducted. One of them heard Ongwen say that he had informed

15 Joseph Kony that he had attacked Odek and killed many people and that

16 Kony had laughed at the news. Kony's response was, anyone living in the

17 camp should be killed.

18 One of the LRA fighters who participated in the Lukodi attack will give

19 evidence that shortly before it happened, Ongwen told his troops they

20 would kill the Acholis because they were - the words become something of

21 a theme - because they were "stubborn", because they were "pigheaded",

22 because they "want to stay in the camps".

23 During the Abok attack, one of the camp leaders overheard LRA fighters

24 discussing Ongwen's orders to kill everyone who was not one of them, and

25 he meant kill the civilians siding with the government.

1 Still other witnesses describe Ongwen as continuing thereafter to be a
2 vocal advocate of the LRA's persecutory campaign. For example, a child
3 soldier conscripted into Ongwen's group in February 2005 heard
4 Dominic Ongwen say that they must attack people in the camps because they
5 do not support Kony, and that they must attack civilians and kill them
6 because they were supporting the government.

7 That concludes the remarks I want to make in respect to the charges of
8 persecution and I now turn to the four attacks on the IDP camps on which
9 this trial focuses in particular.

10 I'll deal firstly with the attack on the Pajule IDP camp in October 2003.
11 Pajule and Lapul IDP camps were set up in 1996. Located in Aruu County,
12 in Pader District, the two camps were bisected by a road which was
13 referred to as the Kitgum to Lira road. Pajule IDP camp was situated on
14 the east side of the road and Lapul on the west side of the road, but in
15 effect they constituted a single camp and I shall refer to it as Pajule.

16 The Prosecution will now ask the Court Officer to arrange for the playing
17 of a short video. It has an explanatory voiceover and it gives some
18 visual guidance to the various locations at Pajule which will be of
19 significance during this trial.

20 THE COURT OFFICER: The video will be displayed on the Evidence 2
21 channel.

22 (Viewing of the video excerpt)

23 THE COURT OFFICER: I'll invite the parties and the participants in the
24 courtroom to switch back to the Evidence 1 channel to follow the rest of
25 the presentation.

1 MR GUMPERT: Thank you.

2 The evidence will show that this attack resulted from a common plan that
3 was conceived and implemented by Dominic Ongwen together with other
4 senior commanders of the LRA.

5 Shortly before 10 October 2003, Vincent Otti, deputy chairman, summoned
6 LRA fighters to a meeting not far from Pajule. Dominic Ongwen attended.

7 The Prosecution will call witnesses who were also present. The meeting
8 lasted about two hours.

9 During the course of the meeting, a plan was formed to attack Pajule.

10 The aim was to attack the soldiers guarding the camp and thus demonstrate
11 the LRA's power to carry out such attacks and also to punish the
12 civilians residing at the camp who were perceived to support the
13 government. Civilian property was to be pillaged and the residents
14 abducted to carry away the loot and, where their age meant they were
15 suitable, they were also to be abducted to serve as conscripts in the
16 LRA.

17 As seen on the video, LRA fighters attacking the camp divided into
18 groups. One group headed by an LRA fighter called Bogi was to attack the
19 barracks. Other groups were to attack the civilian areas. One of them
20 targeted the Catholic mission. Dominic Ongwen was to lead the group
21 attacking the civilian trading centre and yet another group was to set an
22 ambush for any government reinforcements.

23 The commanders, including Dominic Ongwen, ordered their subordinates to
24 select fighters to participate in the attack and then left for the camp.

25 A small group remained behind under Vincent Otti.

1 UPDF and ISO logbooks confirm that in the days leading up to the attack,
2 the co-perpetrators were planning to attack Pajule, that Dominic Ongwen
3 was in company with Vincent Otti and other commanders who were all part
4 of the plan.

5 On 5 October a UPDF logbook records an LRA report that Otti had joined
6 Abudema's group, together with Dominic and others. On the same date, the
7 ISO logbook records that LRA forces under Abudema were manoeuvring in
8 the vicinity of Pajule.

9 On 7 October, a UPDF logbook again records LRA transmissions reporting
10 that Dominic Ongwen was moving with Otti and Raska Lukwiya before the
11 attack.

12 On 9 October, that's the day before, an ISO logbook records Kony speaking
13 to Otti and Abudema. Although Pajule is not mentioned by name, Kony
14 orders that, and I quote from the logbook, "This time ... killing should
15 be the order of the day."

16 The attack started at around 5:30 or 6 in the morning. A group of LRA
17 fighters attacked the barracks. Other groups attacked the civilian areas
18 as planned. As they approached, LRA fighters armed with knives, machetes
19 and guns were whistling, ululating, firing their weapons. Estimates of
20 their number ranged from a minimum of 40 to many more. Some witnesses
21 claim that the number of LRA fighters was closer to 150. The attack
22 lasted about an hour after which the LRA were forced to withdraw. That's
23 because about 150 UPDF and Local Defence Unit soldiers guarding the camp,
24 helped by some reinforcements from the UPDF, were able to repel them.

25 I turn firstly to Count 1, an attack directed against the civilian

1 population.

2 The Prosecution case is that the attackers were under the joint control

3 of a group of co-perpetrators, that is to say, the officers who planned

4 and who were leading the attack, and that group included Dominic Ongwen.

5 And they intended the attack to be against the civilian population of the

6 camp. In addition to his role in planning the attack, his leading role

7 in its execution is demonstrated by a number of observations made by two

8 separate Prosecution witnesses. They saw Ongwen directing the movements

9 of LRA fighters by pointing with a stick. They saw him at the centre of

10 a group of LRA fighters, some of whom were saluting him. They heard him

11 giving orders to LRA fighters, including an order to pillage items. And

12 they saw him communicating with other LRA fighters using radio equipment.

13 In the course of this attack, this attack on the civilian population,

14 various more specific crimes were committed.

15 Murder, both as a war crime and as a crime against humanity. The Court

16 will hear evidence that LRA fighters shot civilian residents. They aimed

17 particularly at those who were trying to escape or those who refused to

18 carry pillaged items. Civilians were killed and these were acts of

19 murder. Among the dead were civilians Pangarasio Onek, Kinyera Lacung,

20 and Agnes Aciro.

21 A witness to Lacung's murder explained that he was killed because he was

22 working for the government. The witness heard his killer say that this

23 was the reason for killing him and the witness then saw the LRA fighter

24 stab Lacung with a bayonet. Other witnesses saw the dead body of Lacung

25 after it had been brought back from the bush and others still attended

1 his funeral.

2 Onek was murdered because he refused to carry items which had been given

3 him by the LRA. A witness saw him shot three times in the head and

4 another witness later saw his body.

5 But there is evidence of many other killings where the witnesses cannot

6 name the victims. Some witnesses speak of seeing dead bodies of

7 civilians killed by the LRA during the attack. A UPDF soldier who wrote

8 a report on the attack saw dead bodies of both civilians and LRA fighters

9 at the camp.

10 This is a photograph of some of the dead bodies that were seen by that

11 witness of whom I've just spoken.

12 One of the residents abducted from the camp saw LRA fighters shoot a

13 civilian resulting in his intestines spilling out.

14 Yet another saw LRA fighters place children in a hut which was then

15 locked. They intended to burn the hut down with the children inside.

16 They were only prevented from doing so by the arrival of a UPDF

17 helicopter on the scene.

18 Dominic Ongwen himself was seen and heard to threaten to kill civilians

19 that refused to move as he instructed. Other witnesses saw people who

20 refused to carry pillaged goods or failed to move quickly enough killed.

21 The four crimes of torture as a crime against humanity and a war crime,

22 cruel treatment and inhumane acts have different legal elements to which

23 the Prosecution has made reference in detail in its written submissions.

24 But the essence of the acts underlying the commission of these crimes at

25 Pajule is much the same. The civilian residents of the camp were beaten

1 and forced to carry heavy loads, often for long distances, while tied to
2 each other. They were terrorised by the beating and killing of other
3 abductees either too weak to carry on or trying to escape. These acts
4 caused severe physical and mental pain and suffering. This amounted to
5 torture. It also amounted to the war crime of cruel treatment and the
6 crime against humanity of inhumane acts.

7 LRA fighters used an axe to break into one witness's home and they tied
8 up the witness and members of his family. They had to carry heavy
9 pillaged items away from the camp. And it was this same witness who saw
10 the attempt to burn children alive.

11 Another civilian resident of the camp, an Acholi chief, was forcibly
12 removed from his home which was located near the trading centre. His
13 home can be seen marked on the aerial photograph on the screen, at the
14 bottom. He was kicked, beaten with the butt of a gun, and tied up. Then
15 he was taken to a location north of the trading centre. It's also marked
16 on the photograph. And there he was presented to Dominic Ongwen. Ongwen
17 kicked him and abused him, as well as other civilians brought to him at
18 that time.

19 Other witnesses, cowering in their homes, were forced out at gunpoint,
20 tied up, made to carry pillaged items, and, on one occasion at least,
21 made to carry wounded LRA fighters. Family members were separated, not
22 knowing if they would ever see each other again. They witnessed other
23 people who refused to carry things or failed to move quickly being beaten
24 or killed.

25 One of the attackers who participated in the attack directly under the

1 command of Dominic Ongwen corroborates these accounts from the victims.
2 Your Honours will hear that following orders, he abducted civilians and
3 forced them to carry pillaged goods. He too confirms that people who
4 moved too slowly were beaten.
5 These abductions and the forced labour in carrying away pillaged goods
6 also amount to the crime of enslavement. Just as their commanders had
7 planned, the LRA fighters were treating the abductees as if they owned
8 them. They were deprived of their liberty. They were treated as slaves.
9 Dominic Ongwen himself played a direct role in enslaving civilians from
10 Pajule. Numerous witnesses saw him ordering civilians to carry things
11 and start moving. He moved up and down the line of abductees, commanding
12 them to move faster. One of the Prosecution witnesses was an attacker
13 under Ongwen and he explained that he personally abducted two civilians,
14 and I quote, "because Ongwen ordered me to do so." One of
15 Dominic Ongwen's forced wives has already given evidence that she saw
16 Dominic Ongwen returning from this attack with seven civilian abductees
17 carrying pillaged goods.
18 One abductee estimated that at least 200 civilian residents were abducted
19 and enslaved following the attack on the camp but other witnesses put the
20 number much higher. One of the attackers estimates that 400 civilians
21 were abducted. The witness flying in the UPDF helicopter, which was the
22 saviour of the children who were about to be burnt to death, saw what he
23 estimated to be about 300 being abducted.
24 These abductees were assembled at a meeting point where they were
25 addressed as a group by senior LRA commanders including Vincent Otti and

1 Dominic Ongwen. Many were later released but some were not. And one
2 witness recalls that Ongwen divided the abductees among his troops.
3 Others were integrated into other LRA brigades, one by the name of
4 Trinkle.
5 Apart from the demonstration of strength which the attack represented,
6 pillaging was one of the most important aims of the common plan.
7 Ongwen's role was to lead a group to the trading centre, the most likely
8 source of goods to pillage. And LRA fighters under his command took food
9 items and other personal property for their private or personal
10 consumption and use.
11 One witness came across the dead body of an LRA soldier whom he estimated
12 to be about 13 years old. True to his age, perhaps, he had been
13 pillaging bubble gum when he met his death and the scattered sweets lay
14 around his corpse.
15 LRA fighters attacked and pillaged the trading centre in order to loot
16 and to abduct. Civilian victims and LRA fighters describe how homes and
17 shops were broken into, sometimes on Dominic Ongwen's direct orders.
18 Pillaged items included maize, soda, ground nuts, beans, rice, salt,
19 sweets, medicine, soap and salt.
20 After the attack, the UPDF and ISO logbooks record numerous radio
21 communications between Otti and Kony speaking about the success of the
22 attack in Pajule IDP camp.
23 On 10 October 2003 - that's the day of the attack - an ISO logbook
24 records a report by Otti that he had sent a big force under the command
25 of Raska Lukwiya to attack Pajule.

1 Lukwiya is recorded as reporting himself that he had attacked Pajule
2 barracks and that the plan had been successfully carried out.
3 On the same date, a UPDF logbook identifies Otti as stating that he had
4 deployed forces under the commands of Raska Lukwiya, Dominic Ongwen, and
5 other commanders to attack the mission, IDP camp, trading centre, and
6 barracks.
7 A separate UPDF logbook contains an entry recording a transmission that
8 Dominic/Bwona's task was to attack the mission to loot medicine and other
9 items.
10 LRA radio communications were intercepted on 13 and 14 October as well.
11 And these were sound-recorded by the ISO. In the sound recording, Kony,
12 Otti and other senior LRA commanders, particularly one called Onen
13 Kamdule, can be heard discussing the attack on Pajule. And your Honours
14 will hear Otti mentioning the intervention of the government helicopter,
15 about which I have already made mention, and also recounting how almost
16 300 people were abducted and gathered together and that he had told them
17 that the purpose of the attack that day was to show who was powerful.
18 (Playing of the audio excerpt)
19 MR GUMPERT: Next I turn to the attack on Odek IDP camp in April 2004.
20 This camp was situated around the village of Odek, in Odek Sub-County,
21 Omoro County, Gulu District. The camp was created in mid-2003.
22 Approximately 6,000 civilians lived there at the time of the attack.
23 Dominic Ongwen and other senior LRA officers are responsible as the
24 co-perpetrators of a common plan to attack the camp at Odek.
25 There was a pre-attack briefing. Dominic Ongwen instructed the attackers

1 to kill civilians and to abduct beautiful girls and good boys to work as
2 soldiers. He gave orders to pillage, telling his men that since they had
3 no food, they should go and collect it at Odek. The last words uttered
4 by Ongwen before the attack were "nothing should be left alive in Odek."
5 Ongwen personally led the attack. It began at about 5.00 p.m.
6 The video which you're about to see gives some visual guidance as to the
7 various locations at Odek that will be of significance during this trial.
8 And, again, I ask that the Court Officer make provision that this be
9 played on what I think will be the Evidence 2 channel. Thank you.

10 (Viewing of the video excerpt)

11 MR GUMPERT: I think we need to switch back to Evidence 1 for some of the
12 images which are to follow.

13 A large number of civilians were shot dead, and the LRA fighters pillaged
14 food and enslaved people who were beaten and made to carry away the
15 pillaged goods. Some of the men who were abducted were later murdered by
16 LRA fighters. Children were conscripted into the ranks.

17 Following the attack, Dominic Ongwen addressed both his men and the
18 people they abducted. For one of these, it was the second time that she
19 had been abducted by Ongwen's fighters and so she recognised him
20 immediately. And she heard him tell the crowd that he had informed
21 Joseph Kony that he attacked Odek and that he had killed many people. He
22 went on to tell the crowd that Kony had laughed at this news, saying that
23 anyone living in the camp should be killed. Another witness, one of
24 Dominic Ongwen's senior subordinates, is clear. As far as he was
25 concerned, nothing happened during the Odek attack that was not ordered

1 by Dominic Ongwen.

2 This was an attack on the civilian population and Dominic Ongwen intended
3 that it should be so. He told the attackers that any civilian found was
4 to be shot, that boys and girls should be abducted, and that the
5 inhabitants' food should be pillaged. The ways in which that attack on
6 the civilian inhabitants was carried out are the subject of more specific
7 crimes.

8 I start with murder. At least 61 civilians were murdered in the camp.
9 They were shot in the back as they ran away from the LRA. Others were
10 elderly people, over 80 years old in some cases. One of the victims was
11 a heavily pregnant woman and her unborn child.

12 One of the attackers will testify that he was ordered to spray bullets
13 inside civilian houses. He shot dead a civilian in his 30's as he sat on
14 the ground. Another witness, a female LRA fighter, watched as a hut with
15 civilians inside it was set on fire by the attackers. Other civilians
16 were shot down before her eyes. The camp resident abducted during the
17 attack witnessed an LRA fighter open the door of a hut and shoot dead a
18 woman inside. His LRA captor later warned him, referring to a dead body
19 nearby, "if you try to run, we will kill you like him."

20 Young children were also targeted and killed. Another of the attackers
21 witnessed one of his fellow LRA fighters pierce the body of a baby with a
22 bayonet. Two others saw the bodies of many dead civilians in the camp,
23 women and children, some so badly beaten that their brains had become
24 exposed. After the attack, the 4-year-old son of an LDU soldier
25 stationed in the camp was found shot dead close to the barracks,

1 alongside the body of his father.

2 As they were being abducted, camp residents saw many dead civilians lying
3 scattered throughout the camp. The day after the attack, a former camp
4 resident saw corpses everywhere, including those of her own children.

5 The murder of civilians from Odek wasn't confined to the camp itself.
6 Civilians abducted from the camp who were unable to walk fast enough, or
7 who struggled, or who tried to escape, were killed. Nine men abducted
8 from Odek were first made to carry an injured commander, LRA commander,
9 and then murdered for their pains.

10 The day after the attack, on 30 April 2004, a logbook maintained by the
11 UPDF records the commander reporting the attack over the radio to Kony,
12 speaking of killing, and I quote from the book, "many civilians in Odek
13 ... more than 10 in number."

14 Dominic Ongwen's report to that effect is confirmed in logbooks
15 maintained by the ISO and the police.

16 The Chamber has already heard today an audio recording from the same date
17 in which Ongwen can be heard saying, "I've just come from shooting
18 people."

19 Confirmation of what can be heard on the sound recording will be heard
20 from witnesses familiar with Dominic Ongwen's voice through listening to
21 LRA radio communications for years. Ongwen said that during the attack
22 on Odek, his fighters had shot all of the waya, the civilians.

23 Vincent Otti later reported back to Joseph Kony that so many civilians
24 had died in this attack that Ongwen did not know the number.

25 On some occasions LRA fighters attacked their victims with lethal force

1 intending to kill them, but the victim did not die. That's the crime of
2 attempted murder.

3 For example, one camp resident locked herself in her hut when the attack
4 began. LRA fighters fired shots through the door, wounding her husband
5 and hitting her in the neck. She survived but her husband later died of
6 his wounds. They were among the injured civilians transported to Lacor
7 Hospital just outside Gulu town after the attack. Similarly, former camp
8 leader, one of the Prosecution witnesses, found another woman shot in the
9 cheek, her baby still tied to her back. He helped to nurse her wounds
10 and she survived.

11 The essence of the acts underlying the commission of these four crimes
12 is, as I remarked before, much the same. In various ways the civilians
13 inhabitants of the camp were caused physical and mental pain and
14 suffering so severe that it amounts to torture, to cruel treatment, and
15 to inhumane acts. A female camp resident was sexually assaulted by
16 another woman, an LRA fighter. That fighter penetrated her vagina, first
17 with a comb and then with a stick used for cooking, while forcing her
18 husband to watch. It was done with such force that she bled and the
19 attacker then threw her to the floor and stepped on her chest. After the
20 attacker ran away, the victim had to remove the stick from her own body.

21 A 9-year-old boy was beaten with sticks and with a grenade launcher. A
22 female camp resident was beaten with a gun.

23 As the abductees were led away, they were forced to carry extremely heavy
24 loads. One female resident was made to carry a sack of maize weighing an
25 estimated 50 kilogrammes. They were beaten if they walked too slowly.

1 They were beaten if their babies were crying too much.

2 This forced labour amounted to enslavement. LRA fighters treated the
3 abductees as if they owned them. Two of the abductees recall carrying
4 their loads at least four kilometres to a location called Lakim. Others
5 were made to carry an LRA fighter as well as large weaponry. One of the
6 attackers recalls abducting a young boy at gunpoint together with his
7 father and forcing them to carry away food. Other children were tied
8 together with ropes and dragged away from their homes. This enslavement
9 was not just for the temporary purpose of carrying pillaged goods. For
10 some it was intended to be permanent. As I've told the Court, the
11 attackers were instructed by Dominic Ongwen to abduct and return with
12 beautiful girls. That order was carried out. One of the senior LRA
13 commanders concerned estimates that 35 civilians were abducted, including
14 seven girls.

15 The day after the attack, on 30 April 2004, the abduction of eight young
16 boys from Odek is recorded in a UPDF logbook. There are other records
17 which confirm this number.

18 One witness, the forced wife of one of Dominic Ongwen's many subordinate
19 officers, recalled the abduction of people after the attack at Odek. The
20 younger ones were taken to the brigade headquarters and the witness knew
21 that it was Ongwen, the brigade commander, who distributed abductees.
22 Later on the same day, the man to whom she herself had been distributed,
23 brought back two new girls. They were about 16 years old.

24 In the course of the attack, LRA fighters pillaged food from homes in the
25 camp. It had recently received a World Food Programme distribution. The

1 attackers broke into stores in the trading centre. They looted flour,
2 salt and soda. And as a result of that pillaging, many of the camp
3 residents suffered intense hunger thereafter.

4 One LRA fighter saw Dominic Ongwen himself go pillaging in the trading
5 centre. And, as you will see shortly, a valuable diamond was pillaged
6 during the attack by one of Ongwen's subordinate officers.

7 The attackers humiliated, degraded, or otherwise violated the dignity of
8 Odek residents thereby committing outrages upon personal dignity. One
9 victim was forced to kill a man with a club. He suffered extreme mental
10 anguish as a result. But then for the next three days, he was forced to
11 look at the decomposing bodies, including that of his own father, to
12 ensure that they were all dead.

13 As they herded the enslaved inhabitants away from the camp, LRA fighters
14 forced women to abandon their children at the side of the road. One
15 witness recalled, "If you are a mother carrying your baby on your back,
16 they will tell you to remove that baby ... you just untie the baby, while
17 one hand is holding what you are carrying on your head. So, the baby
18 would drop on the road."

19 The first post-attack report from the 30th of April was recorded by the
20 ISO in Gulu. Using his call-sign, "Tem Wek Ibong", Dominic Ongwen
21 claimed responsibility for this attack. You can hear the report that
22 Ongwen made now.

23 (Playing of the audio excerpt)

24 MR GUMPERT: When Kony asked Ongwen if he had cleaned the "backside of
25 his mother" in Odek, that was the use of jargon/slang. The evidence of

1 Prosecution witnesses familiar with this slang is that this is a query
2 referring to the killing of civilians. And in response to that query,
3 Dominic Ongwen replied "kichi kichi", which is the Acholi for completely.
4 The second post-attack report by Dominic Ongwen was made the next day.
5 This report was recorded in both the UPDF and the ISO logbooks for 1 May
6 2004. This is the ISO logbook. Ongwen reported to Kony that in his
7 report the previous day, he'd forgotten to mention that he had captured a
8 diamond of high value.

9 I turn now to the attack on Lukodi IDP camp. Your Honour, this will take
10 us a little past 5.00.

11 PRESIDING JUDGE SCHMITT: I don't hope that you're talking about 5.00,
12 but if you mean 4.00, I think we will have no problem to have five or ten
13 minutes longer. Thank you.

14 MR GUMPERT: Thank you. Yes, 4.00, indeed. I'm getting short-sighted.
15 Lukodi IDP camp is situated north of Gulu town in Bangatira Sub-County,
16 Aswa County, in Gulu District. There were about 7,000 people living in
17 the camp in May 2004 and there were 30 soldiers stationed at the barracks
18 to protect them.

19 The video you're about to see again gives visual guidance to the various
20 locations which will be of significance, and once again, I would be
21 grateful if the Court Officer could help with the playing of that video
22 on Evidence 2, I should say.

23 (Viewing of the video excerpt)

24 MR GUMPERT: The government soldiers withdrew after a short engagement
25 and that left the civilian population defenceless and so the civilians

1 became the sole target of the LRA. The attack lasted perhaps an hour or
2 two but it caused chaos. The attackers killed and injured civilians,
3 adults and children alike. They set huts on fire. They pillaged food
4 and other property. They abducted men and women to carry the loot and
5 conscripted children to serve as fighters and sex slaves. The damage
6 done was so bad that the camp later had to be abandoned.

7 Dominic Ongwen had control over this attack and control over the
8 attackers. He had conceived, planned, and ordered the attack. On 17 May
9 2004, two or three days before the attack, he requested permission from
10 Kony to attack camps to pillage food, and he'd been granted permission.
11 In preparation for the attack, he gathered fighters from Major Olak
12 Tulu's Gilva sick-bay which was situated near the Aswa River. These
13 forces were under Ongwen's command on an ad hoc basis for the duration of
14 the attack on Lukodi. Ongwen was able to do so because he was senior to
15 Tulu in the LRA 's hierarchy.

16 Shortly before the attack, Ongwen told his fighters to kill the Acholi
17 inhabitants of the camp because they were "stubborn", "pigheaded", and
18 they "want to stay in the camps". And he selected fighters, he briefed
19 the attack group, and it was he who sent them to execute his orders.

20 Ongwen chose Captain Ocaka as the overall commander on the ground,
21 assisted by two officers who will appear before the Chamber as
22 Prosecution witnesses. Ongwen ordered his subordinates to shoot
23 soldiers, burn houses, loot everything, and return with food. And he
24 warned them, "If you don't complete your mission, don't return."

25 This was an attack on the civilian population and Ongwen intended that it

1 should be so. In the course of the attack, LRA fighters killed more than
2 45 civilians, including at least 12 children. In contrast, not a single
3 government soldier was killed during this attack. The number of murdered
4 and wounded civilians, the nature of the crimes, the ages and identities
5 of the victims, and the extent of the property destruction all
6 demonstrate that this was a deliberate attack on the civilian population
7 of Lukodi. The ways in which that attack was carried out are the subject
8 of more specific crimes.

9 Murder. Civilians were shot, stabbed, strangled, burnt and beaten to
10 death. One witness's 8-year-old daughter was shot in the stomach and
11 bled to death in front of her. Another watched LRA fighters throw her
12 own daughter and two other children inside a burning house. When the
13 children tried to escape, LRA fighters caught them and threw them back
14 inside where they perished. They were just 4 years old. The same
15 witness's mother, son and uncle were also shot and killed.

16 The killing of civilians wasn't confined to the camp itself. The LRA
17 killed abductees, mainly men, after they had left Lukodi. That night,
18 one of the abducted women could hear the sound of other abductees being
19 beaten to death. She thought it was the sound of chopping wood at first.

20 Other witnesses saw the corpses of male and female abductees at a
21 distance from the camp and these were never collected or buried.

22 The LRA attackers didn't hide their murderous intent. LRA fighters could
23 be heard saying, "Kill them all." One LRA commander told an abductee
24 that the LRA were "supposed to kill all of you".

25 The day after the attack, Lukodi residents buried their dead in and

1 around the camp. In the following days, a government pathologist from
2 Kampala exhumed and reburied 35 -- sorry, 25 bodies on the site as part
3 of a local investigation into this incident. Another witness, arriving
4 at the camp at 9.00 in the morning after the attack to assess the
5 security situation, saw bodies hacked in a barbaric way. This witness
6 recorded 38 bodies of men, women and children, all civilians, including a
7 3-year-old girl and elderly people.

8 Circumstances sometimes intervened to prevent the best efforts to kill
9 people from being successful. An LRA fighter threw one Prosecution
10 witness, a child at the time, inside a burning hut because he was
11 interfering with the movement of other abductees. Against the odds, the
12 child survived.

13 Other LRA attackers hit a witness with a bayonet and then shot him when
14 he tried to escape and, again, he survived despite their best efforts.

15 One camp resident and her two daughters were at home. Five LRA fighters
16 started shooting directly into their house. The mother and her elder
17 daughter were wounded but the younger child died.

18 As I remarked before, the underlying acts which are the essence of these
19 four crimes of torture, cruel treatment and inhumane acts are much the
20 same despite their legal ingredients. The attackers committed all of
21 these crimes. They behaved with ruthless cruelty to civilians, in
22 particular to small children. One witness saw two girls, including her
23 own daughter, being beaten when they tried to escape from a burning
24 house. Mothers with babies and elderly people were forced to carry loot
25 while being beaten and under threat of death. One witness was stabbed

1 for dropping a heavy load and beaten for allowing a looted goat to escape
2 when she had to hide from a helicopter gunship.

3 As LRA fighters marched the abductees out of the camp, again they forced
4 mothers to abandon their children under threat of death. The LRA
5 fighters threw them, some just babies, into the bush because they were
6 crying and because they were distracting their mothers from their task to
7 carry pillaged goods. Little children that tried to rejoin their mothers
8 were kicked back into the undergrowth. These crimes caused physical and
9 mental pain and suffering so severe that it amounts to torture and to the
10 war crime of cruel treatment and to the crime of inhumane acts.

11 Enslavement. During the attack, a designated group of LRA fighters
12 systematically abducted civilians. Abductees were tied up and marched
13 from the camp to the LRA's rendezvous point, in the LRA jargon, the "RV",
14 and this was under armed guard. These abductees - they were mainly women
15 aged between 20 and 50 - were used as slave labour to carry looted goods
16 such as beans, sim-sim, sorghum. One witness with a 2-week-old baby on
17 her back was forced to carry two basins of beans on her head. Most women
18 were subsequently released after they reached the RV, although not all
19 abductees were that fortunate. And that was because, as was the pattern
20 in these attacks, boys and girls were abducted with the intention of
21 turning them into child soldiers and sex slaves.

22 Before the attack, relief organisations had distributed emergency
23 supplies to Lukodi residents: beans, maize, cooking oil, soap, cooking
24 utensils, and blankets, emergency provisions of that kind. These sorely
25 needed items were pillaged by the LRA. They took the food, sweets,

1 livestock, clothes, soap, and other items, both from civilian houses and
2 from shops alike.

3 The LRA fighters destroyed property belonging to civilians in Lukodi,
4 viewing them, as they did, as their adversaries or enemies. Over 200
5 civilian huts in the camp, ordinary people's homes containing their few
6 possessions, were burnt. The video images of the destruction with the
7 huts still smoking the following day were played during the course of
8 Madam Prosecutor's presentation.

9 Two days after the attack, there is a sound recording of an intercepted
10 radio communication containing exchanges between Vincent Otti and
11 Dominic Ongwen about the Lukodi attack.

12 (Playing of the audio excerpt)

13 MR GUMPERT: Ongwen confirms that it is he who is responsible for the
14 attack on Lukodi.

15 (Playing of the audio excerpt)

16 MR GUMPERT: There is also the corroboration of the sound recording to be
17 found in a UPDF logbook. It's an entry for 21 May. It's on the screen
18 in front of your Honours. It reads, "Otti reported to Kony that radio
19 news reported that a certain LRA group under unknown commanders attacked
20 and killed 25 civilians including young people and burnt about 100 houses
21 in Lukodi trading centre in Bungatira." The logbook goes on, "Dominic
22 immediately told Otti that he is the one who made that deployment."
23 That's what your Honours have just heard.

24 The ISO logbook from the same date records the same details. I'll just
25 pause so that your Honours can see that on the screen.

1 The LRA's director of signals, who is a Prosecution witness - he'll
2 appear in this courtroom - personally heard Dominic Ongwen's report about
3 this Lukodi attack when it was transmitted live. He recalled Ongwen
4 describing the houses he'd burnt and the people he had killed. Three
5 days later, 24 May 2004, UPDF, ISO and police logbooks all record that
6 Dominic Ongwen provided a more complete report. This is the UPDF
7 logbook. Ongwen said that he had caused havoc and decided to kill all
8 living things in Lukodi. In the ISO logbook, Ongwen is reported as
9 saying in respect of the Lukodi attack that "if civilians die he feels
10 happy."
11 About ten days after the Lukodi attack, Kony promoted Dominic Ongwen from
12 Lieutenant Colonel to Colonel, and Tulu, who had provided a contingent of
13 the attacking troops from his sick-bay, was promoted from Major to
14 Lieutenant Colonel. There is a sound recording of Kony announcing this
15 promotion.
16 The Police logbook for 2 June contains a record of a conversation which
17 reveals much about the newly promoted Colonel Ongwen's enthusiasm for the
18 dreadful things that he was doing, and it reveals his contempt for other
19 LRA officers who were operating less vigorously. It reads, "Kony, in
20 particular, lauded Colonel Ongwen Dominic following his recent
21 performances in Odek and Lukodi. Colonel Ongwen Dominic himself informed
22 Kony that he would lay hands in arresting non-performing officers."
23 Your Honours, I'm grateful for that indulgence. I've concluded the
24 section on Lukodi, and this may be an appropriate place to break for
25 today.

1 PRESIDING JUDGE SCHMITT: Indeed.

2 We have now reached the end of today's hearing. We adjourn and resume

3 tomorrow at 9.30.

4 (The hearing ends in open session at 4.07 p.m.)

5 CORRECTION REPORT

6 The format of the transcript has been restored to the in-house standard format.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25