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Judge Péter Kovács
Judge Raul C. Pangalangan

SITUATION IN UGANDA

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

PUBLIC

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I. Introduction

1. Between 1 July 2002 and 31 December 2005, the Lord's Resistance Army ("LRA") victimised thousands of innocent civilians in northern Uganda. Mr Ongwen, a senior LRA commander, ordered and led attacks on civilians (including the charged attacks at Pajule, Odek, Lukodi, and Abok) during which LRA fighters murdered, tortured, and otherwise mistreated civilians, partly in retaliation for their perceived support for the Ugandan government. Mr Ongwen and his LRA fighters systematically abducted civilians, forcing boys to become child soldiers and women and girls to become forced wives and enslaved domestic servants known as *ting tings*. Mr Ongwen personally participated in and eventually supervised the implementation of an ongoing system of sexual and gender-based crimes ("SGBC") in his Sinia Brigade, all as alleged in the Decision on the confirmation of charges.¹

2. During approximately three years of trial, the Trial Chamber heard from more than 200 witnesses, orally and in writing, and the Parties and Participants formally submitted more than 4,500 items of evidence for the Chamber's consideration. Mindful of the page limit set by the Trial Chamber,² the Prosecution does not attempt in this Closing Brief to address all that evidence comprehensively. Instead, the Prosecution focuses on issues that it considers a) likely to bear significantly on the Chamber's deliberations or b) disputed by the Parties. Each of Sections II through X below includes reference to the evidence relied upon by the Prosecution, a brief statement of the Prosecution's case theory, and detailed discussion of the key issues identified by the Prosecution with regard to Mr Ongwen's position and authority (Section II) and the charged crimes (Sections III to X). Sections XI and XII address the potential grounds for excluding criminal responsibility raised by the Defence.

3. Consistent with a focused approach, the Prosecution does not separately address the contextual elements of charged war crimes and crimes against humanity.³ As discussed in the Prosecution's Pre-Trial Brief,⁴ which is incorporated here by reference, the evidence demonstrates that the charged war crimes took place in the context of a protracted armed conflict between Ugandan government forces and the LRA, an organised armed group, and that Mr Ongwen was aware of such armed conflict. The evidence also shows that the charged crimes against humanity were committed, and Mr Ongwen knew and intended that they be

¹ ICC-02/04-01/15-422-Conf, p. 71-104 ("Confirmation Decision").

² ICC-02/04-01/15-1226, para. 3-4.

³ Some sections of this Closing Brief address these elements incidentally. *See, e.g.*, Section II below.

⁴ ICC-02/04-01/15-533, para. 9-61.

committed, as part of a widespread and systematic attack against the civilian population of northern Uganda pursuant to LRA policy.

4. Nor will the Prosecution generally address the applicable law or the legal elements of the charged offences or modes of liability. The Prosecution limits its discussion of legal issues to discrete aspects disputed by the Parties or otherwise warranting separate discussion, such as the legal requirements for duress under article 31(1)(d) of the Rome Statute (“the Statute”) in Section XII (which had not been previously addressed in this case).

5. The Prosecution also incorporates by reference the discussions of intercepted LRA radio communications and related evidence in its Pre-Trial Brief⁵ and intercepts-related bar table motion.⁶ Former intercept operators P-0003, P-0059, P-0339, and P-0125 testified about the procedures they used, the records they kept, and specific intercepted communications.⁷ Several former LRA signallers and commanders, including [REDACTED], P-0016, P-0070, P-0138, P-0142, D-0032, and D-0100, also testified about LRA radio communications. This Closing Brief will address intercept evidence as it relates to specific issues, charges, or attacks.

6. With regard to modes of liability, the Prosecution specifies in each section below the mode which it submits best characterises Mr Ongwen’s participation in the particular charged crimes. However, the Prosecution requests that the Trial Chamber enter findings regarding all charged modes of liability, because such findings may affect Mr Ongwen’s sentence or become relevant in any future appeal.

7. Finally, in Sections XI and XII below, the Prosecution addresses the grounds for excluding criminal responsibility raised by the Defence. The evidence shows that Mr Ongwen did not suffer from a mental disease or defect that destroyed his capacity to appreciate the unlawfulness or nature of his conduct, or his capacity to control his conduct, as required by article 31(1)(a) of the Statute. The evidence also demonstrates that he was not acting under duress as specified in article 31(1)(d) of the Statute. The circumstances in which Mr Ongwen was abducted into the LRA approximately 15 years before the charged period,

⁵ ICC-02/04-01/15-533, para. 62-88.

⁶ ICC-02/04-01/15-580.

⁷ These four witnesses testified live before the Chamber. The witness statements of several other intercepts-related witnesses were submitted pursuant to rule 68(2)(b) of the Rules of Procedure and Evidence: P-0027, P-0029, P-0032, P-0126, P-0291, P-0301, P-0303, P-0337, P-0370, P-0384, P-0385, P-0386, P-0400, and P-0404.

and the conditions in which he lived as an LRA commander during the charged period, may be relevant to the Trial Chamber's determination of sentence if Mr Ongwen is convicted. They do not relieve him of criminal responsibility.

8. This Closing Brief is filed confidentially pursuant to regulation 23*bis*(1) of the Regulations of the Court because it refers to confidential evidence and contains information which might identify protected witnesses. A public redacted version is filed simultaneously.

II. Mr Ongwen's position of authority and control over fighters within the organised and hierarchical structure of the LRA

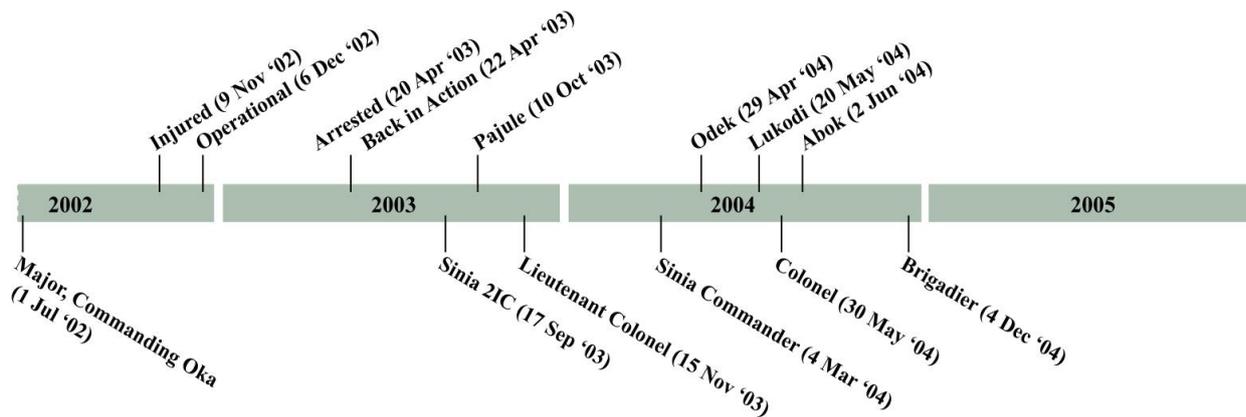
A. Introduction

9. This section addresses key issues regarding Dominic Ongwen's position of authority and control over fighters during the charged period. It is relevant to each of Sections III to XII below, but particularly to the Chamber's consideration of modes of liability under articles 25 and 28 of the Statute and to the contextual elements for war crimes and crimes against humanity. The Prosecution case regarding Mr Ongwen's position of authority and control over fighters is based on the evidence of more than twenty LRA fighters, former LRA forced wives and *ting tings*, former LRA radio signallers, ISO and UPDF officers who intercepted LRA radio communications during the charged period, as well as audio recordings, logbooks of LRA radio communications, and other documentary evidence.

B. Prosecution case theory

10. During the charged period, the LRA was an organised and hierarchical structure. The commander-in-chief of the LRA was Joseph Kony. The LRA had a headquarters, brigades, battalions, and companies, with a commander assigned to each unit. Sinia Brigade, one of four LRA brigades, consisted of a brigade headquarters and a number of battalions and companies. Orders were generally communicated from Kony and other leaders to the brigade commander, who communicated them to the battalion commanders, who in turn passed them to their subordinates.

11. During the charged period, Mr Ongwen was a military commander in the LRA, commanding units first at the battalion, and then at the brigade, level. Between July 2002 and March 2004, Mr Ongwen commanded at the battalion level in Sinia Brigade. On 4 March 2004, Mr Ongwen became the commander of Sinia Brigade and retained his command until at least the end of 2005.



12. Mr Ongwen was in a position of authority and had effective command and control over his subordinates during the charged period. He mobilised his authority and power in the LRA to secure compliance with his orders and cause his subordinates to carry out the conduct underlying the charges in this case. This allowed him to exert control over the crimes charged, and to prevent or repress any misconduct by his subordinates if he wished to do so.

C. Key issues related to Mr Ongwen's position and authority

13. The Prosecution addresses five key issues which appear to be disputed by the Parties or may inform the Trial Chamber's decision making:

1. Between July 2002 and March 2004, when commanding at the battalion level, was Mr Ongwen in a position of authority and did he have control over the fighters in his unit?
2. Did Mr Ongwen, while commanding at the battalion level, contribute to the functioning of the entire Sinia Brigade?
3. Did the injury suffered by Mr Ongwen in November 2002 deprive him of his position of authority or control over the fighters in his unit, and if so, for what period?
4. Did Mr Ongwen's arrest in April 2003 deprive him of his position of authority or control over his fighters, and if so, for what period?
5. Between March 2004 and December 2005, when commanding at the brigade level, was Mr Ongwen in a position of authority and did he have control over the fighters in Sinia Brigade?

1. When commanding at the battalion level was Mr Ongwen in a position of authority and did he have control over the fighters in his unit?

14. The charged period began with Mr Ongwen as Commander of Oka Battalion in Sinia Brigade.⁸ On 1 July 2002, he was promoted by Kony from Captain to Major in Sinia Brigade.⁹ He continued at the level of Battalion Commander (“CO”) in Sinia Brigade from mid-2002 to March 2004. This meant that he could both: 1) exert control over the activities of his unit; and 2) contribute to the overall operations of Sinia Brigade, including Sinia units not directly supervised by him, as an integral part of the brigade leadership.

15. Mr Ongwen’s position of authority and control over the fighters in Oka Battalion is evident from a) the organised and hierarchical nature of the LRA, b) the fact that he was an effective and independent-minded Battalion Commander who ensured discipline, c) his key role in distributing women and girls, d) his key role in distributing young male abductees, and e) the active operational tempo he and his unit maintained.

(a) The LRA, including Sinia Brigade, was organised and hierarchical

16. During the period between July 2002 and December 2005, the LRA was an organised and hierarchical structure with Joseph Kony at its apex. The LRA headquarters was called “Control Altar”. The remaining LRA fighters were divided, *inter alia*, into four brigades: Stockree, Trinkle, Gilva, and Sinia.¹⁰

17. Sinia Brigade, like the LRA generally, was an organised and hierarchical structure during the period between 1 July 2002 and 31 December 2005. It consisted of three battalions: Oka, Terwanga, and Siba.¹¹ It had a brigade headquarters including an operations room,¹² an intelligence officer, a brigade major, and a brigade administrator.¹³ The operations room

⁸ P-0205, T-47, p. 18. See also ISO logbook, UGA-OTP-0064-0093 at 0166 (right page)-0167 (left page). On 20 September 2002, Kony confirmed on the radio that Mr Ongwen was a battalion commander in Sinia Brigade, under the command of Buk Abudema and Lapaico. Notably, the Defence has, on occasion, conceded that Mr Ongwen was a “senior” member of the LRA (T-59, p. 39); a person of higher rank (T-59, p. 71); and one of the “big people” (T-59, p. 72), during examination of witnesses regarding this part of the charged period. The Prosecution notes that, unless otherwise specified, all transcript citations in this Closing Brief are to the English transcripts of case number ICC-02/04-01/15. Where a corrected (CT) version is available, the Prosecution relies on that version. Where no CT version is yet available, the Prosecution relies on the edited (ET) version.

⁹ ISO logbook, UGA-OTP-0063-0194 at 0248 (right page), 0223 (left page).

¹⁰ ISO logbook, UGA-OTP-0064-0093 at 0166 (right page)-0167.

¹¹ P-0205, T-47, p. 10-11; P-0054, T-93, p. 11; P-0142, T-70, p. 17; P-0264, T-64, p. 38.

¹² P-0205, T-48, p. 52-55.

¹³ P-0205, T-48, p. 51-55.

coordinated the operations of the brigade, and was supervised by the brigade commander.¹⁴ Sinia Brigade was able to carry out complex operations. Fighters gathered intelligence before attacks,¹⁵ attacks were planned, fighters were selected for attacks,¹⁶ and Sinia Brigade maintained a standby force to carry out operations.¹⁷

18. Each battalion had a commander, a deputy commander,¹⁸ an intelligence officer,¹⁹ a commander for support weapons,²⁰ and an adjutant who maintained records.²¹ Battalions were composed of more than one hundred men.²² Each battalion also had an operations room.²³ P-0379 testified that when a “convoy” went on an operation, only the person who worked in the operations room and the Battalion Commander were privy to the plan. The Battalion Commander gave the operations room the authority to select participants for operations.²⁴ Each battalion was composed of a number of companies (“coys”).²⁵ Each company had a commander and a deputy commander.²⁶

19. The Defence has argued that the LRA was a non-hierarchical group in which ranks meant nothing and that Kony would frequently give direct orders to junior officers,²⁷ bypassing Mr Ongwen as a Battalion Commander.²⁸ This is incorrect. Brigade commanders received orders from Kony and Otti.²⁹ They then communicated these orders to their battalion commanders.³⁰ Battalion commanders in turn issued orders to their deputies³¹ and company commanders³² in the battalion, who communicated them to the rank and file.³³ As a corollary,

¹⁴ P-0205, T-48, p. 51-52.

¹⁵ P-0205, T-47, p. 30, 36 (Use of intelligence for the Opiit attack).

¹⁶ P-0205, T-47, p. 42-43 (See p. 19 (Patongo plan), 39 (BM and IO made plans and relayed instructions from senior commanders), T-47, p. 55, (See p. 22, 44 and 54 for Ngora, Odek and Lukodi standby); P-0142, T-70, p. 25-26.

¹⁷ P-0205, T-48, p. 55. (See T-47, p. 22, 44 and 54 for Ngora, Odek and Lukodi standby).

¹⁸ P-0379, T-57, p. 73-74. P-0205, T-48, p. 51-53.

¹⁹ P-0205, T-47, p. 61-62; T-48, p. 51-54.

²⁰ P-0205, T-48, p. 54.

²¹ P-0205, T-48, p. 52.

²² P-0205, T-48, p. 27-28, 48. See also P-0379, T-59, p. 16.

²³ P-0379, T-56, p. 25. See also P-0379, T-59, p. 16.

²⁴ P-0379, T-57, p. 73. T-58, p. 56. P-0379's presence in Oka Battalion was confirmed by P-0309 (T-60, p. 26-28, 30).

²⁵ P-0205, T-47, p. 9-39 (discusses Terwanga, Oka Battalions and their COs); P-0379, T-57, p. 67-72; [REDACTED].

²⁶ [REDACTED].

²⁷ T-179, p. 29-31. See also ICC-02/04-01/15-404-Red2, para. 26, 28, 29, 30.

²⁸ ICC-02/04-01/15-404-Red2, para. 31, 33.

²⁹ P-0205, T-48, p. 20. See also P-0016, T-34, p. 86; D-0032, T-199, p. 52-54.

³⁰ P-0205, T-47, p. 39, T-48, p. 20, P-0016, T-32, p. 20-21; P-0264, T-64, p. 40.

³¹ P-0379, T-57, p. 73-74.

³² P-0205, T-48, p. 20; D-0068, T-223, p. 10, 12-13.

³³ P-0379, T-57, p. 73-74. D-0068, T-223, p. 4, D-0056, T-229, p. 11-12.

personnel reported up the chain of command to battalion commanders,³⁴ and battalion commanders also reported up to the brigade commander.³⁵ This ensured, among other things, that the brigade and/or battalion commander who ordered or authorised operations, the distribution or training of abductees, etc., was aware of whether, and how, his instructions were implemented.

20. The Prosecution does not dispute that Kony was a mercurial commander, who occasionally adapted or circumvented conventional procedures. Nevertheless, the evidence establishes that the LRA, including Sinia Brigade, generally followed a well-defined, hierarchical chain of command. P-0016, [REDACTED]³⁶ [REDACTED]³⁷ [REDACTED], explained the limited manner in which the phenomenon of “bypassing” took place. While agreeing that Kony, on occasion, would bypass his deputy and chief of staff, P-0016 stated that “Kony can choose to send his message to the CO directly”.³⁸ It was “not that he bypasses CO and goes to platoon commander. A platoon commander does not have a radio. Radios are with COs only. The CO then informs the platoon commander and then gives you the message and the instruction that you should do”.³⁹ In any case, the evidence set out below demonstrates that Mr Ongwen retained control over his battalion, and was in a position to secure compliance with his orders and cause his subordinates to carry out the conduct underlying the charges in this case.

(b) Mr Ongwen was an effective and independent-minded Battalion Commander who ensured discipline

21. Mr Ongwen’s position as an effective Battalion Commander at the apex of Oka Battalion during this period is evident from witness testimony: P-0379 stated that “Lapwony Odomi” at the headquarters was the overall commander of Oka.⁴⁰ P-0379 and D-0056 described how Mr Ongwen would make decisions regarding the battalion’s deployment, planning, and movement, coordinating with his second-in-command and company commanders.⁴¹ Similarly,

³⁴ D-0068, T-223, p. 13, 21; P-0205, T-48, p. 29. *See also* P-0379, T-58, p. 58 (in the context of intelligence officers).

³⁵ P-0205, T-48, [REDACTED], 29.

³⁶ [REDACTED].

³⁷ [REDACTED].

³⁸ P-0016, T-34, p. 86. *See also* D-0032, T-199, p. 52-54 (D-0032, [REDACTED], emphasised that, as a rule, orders passed from Kony down a hierarchical chain of command and that even when Kony gave an order to a commander without going through his superior, that superior would be informed).

³⁹ P-0016, T-34, p. 86.

⁴⁰ P-0379, T-56, p. 25, T-57, p. 37-38. [REDACTED].

⁴¹ P-0379, T-56, p. 37-38, 43-44; D-0056, T-229, p. 11-12, 24-25.

D-0068 described how Mr Ongwen would call his subordinate commanders together, and order them to select fighters for participation in a “standby”. Mr Ongwen would select one of the fighters as the operation commander, and would receive an after-action report from that person.⁴² [REDACTED], P-0245, added that Mr Ongwen was a “very hard-working person and [...] a very good [...] revered fighter”.⁴³

22. Mr Ongwen was also an independent-minded commander. For example, D-0056 stated that Mr Ongwen would only do what he knew he could accomplish. He explained that Mr Ongwen’s fighters “loved him” because he would discuss the feasibility of an operation with his officers and, where they judged something not to be practical, would “object to doing that”. Equally, he gained the “fear and respect” of his fighters because he would work them hard to carry out operations which he judged to be feasible.⁴⁴ Mr Ongwen also clashed frequently with Abudema, his direct superior in Sinia Brigade for some time, who considered him insubordinate.⁴⁵

23. Mr Ongwen maintained strict discipline within his battalion. P-0309, a child soldier who was one of his escorts, described Mr Ongwen’s behaviour: “He sat [...] before everybody and started telling us why people were escaping from LRA and going back home. He said he would kill those who were newly abducted. Then [...] he did that. Those four people were killed before us [...] and we were warned that if we attempted [...] to escape that’s what would happen to us”.⁴⁶ Describing Mr Ongwen’s orders for pursuit of escaped abductees, P-0379 explained: “I do not think anybody else can issue an order to follow any escaped abductees other than him”.⁴⁷ Mr Ongwen also maintained discipline and compliance amongst the women and girls in his units via beatings or threatened killings,⁴⁸ and at times used child soldiers to carry out the punishments.⁴⁹ P-0379 described how the newly abducted in Mr Ongwen’s unit were taught discipline, respect, and the procedures to be followed by the “veterans” or the “commander in whose command you were”.⁵⁰ P-0309 also said he was trained “how to be

⁴² D-0068, T-223, p. 4-5; P-0205, T-48, p. 54-55.

⁴³ P-0245, T-99, p. 10. *See also* D-0032, T-201, p. 4-5.

⁴⁴ D-0056, T-229, p. 33-34.

⁴⁵ P-0231, T-122, p. 36; D-0075, T-225, p. 43-44. Notably, while the Prosecution case is that D-0075 did not tell the truth about the Odek attack, *see* para. 266-272 below, his testimony regarding the clashes between Abudema and Mr Ongwen is corroborated and hence reliable.

⁴⁶ P-0309, T-60, p. 40. *See also* P-0379, T-59, p. 5.

⁴⁷ P-0379, T-59, p. 6. *See also* P-0227, T-10, p. 37; P-0330, T-52, p. 79-80, T-51, p. 68; P-0235, T-17, p. 24.

⁴⁸ P-0235, T-17, p. 41-45; P-0236, T-16, p. 12-14; P-0227, T-10, p. 55, 61; P-0236, T-16, p. 13; P-0226, T-8, p. 50, 52, T-9, p. 5-6, 52; P-0379, T-57, p. 40-41.

⁴⁹ P-0379, T-57, p. 40-41.

⁵⁰ P-0379, T-57, p. 67-68.

respectful to the commanders like Dominic, the battle-hardened LRA soldiers”, and was told “that whenever I am called by Dominic I should go and salute him and show respect”.⁵¹

(c) Mr Ongwen had a key role in abducting and distributing women and girls

24. As Battalion Commander, Mr Ongwen played a key role in abducting and distributing women and girls. He oversaw abductions by his subordinates.⁵² Moreover, P-0379, a fighter in Oka Battalion, recalled that Mr Ongwen alone “had authority to give the girls out”.⁵³ Similarly, Defence Witness D-0068, who was in Mr Ongwen’s battalion, described what happened to abducted girls:

“[T]he battalion commander will make the decision as to where the girls should be sent to the different coys. If he decides that out of the three girls that have been abducted, let's say three girls have been abducted, if he decides that two girls should be sent to A coy, one girl should be sent to C coy and that's how it's done”.⁵⁴

P-0245 added similarly that “[w]henver there are abductions, everyone is brought [...] to the operation room and handed over to Mr Ongwen. From there, he would now identify which one goes to his household and the other ones would go to the respective households”.⁵⁵

(d) Mr Ongwen had a key role in abducting, distributing, and training boys

25. Mr Ongwen also had a central role in abducting and distributing male abductees.⁵⁶ Here too, he oversaw abductions by his subordinates.⁵⁷ Additionally, D-0068 described how, when LRA fighters came back with abducted boys, it was Mr Ongwen as the Battalion Commander who made a decision about their distribution.⁵⁸ Mr Ongwen supervised the military training of abductees and would receive reports every morning from each company commander.⁵⁹ The training in Mr Ongwen’s battalion included how to act as armed escorts, perform guard duty, and patrol.⁶⁰

⁵¹ P-0309, T-61, p. 34.

⁵² P-0379, T-56, p. 35. *See also* T-56, p. 15, 16, T-57, p. 53.

⁵³ P-0379, T-57, p. [REDACTED], 36-37.

⁵⁴ D-0068, T-223, p. 15.

⁵⁵ P-0245, T-98, p. 55.

⁵⁶ This paragraph should be read together with para. 91-97 below.

⁵⁷ P-0379, T-56, p. 11, 15, 16.

⁵⁸ D-0068, T-223, p. 16. *See also* P-0309, T-60, p. 19-20; P-0205, T-48, p. 31-32.

⁵⁹ D-0068, T-223, p. 20-21. *See also* P-0379, T-56, p. 26-27.

⁶⁰ P-0379, T-56, p. 26-27. *See also* P-0314, T-74, p. 25.

(e) Mr Ongwen maintained an active operational tempo

26. Mr Ongwen's command authority and control over his fighters was also manifest in the active operational tempo maintained during his command at battalion level. Reports of Mr Ongwen's attacks were made frequently, either by him or by other commanders, on the radio. The fact that Mr Ongwen led (or led jointly, with other commanders) these attacks is an important indicator of his position of authority throughout his years commanding at battalion level, as well as his control over LRA fighters.

27. P-0245 confirmed that in August 2002, at the attack on Acholi Pii IDP camp, Mr Ongwen was the commander of Oka Battalion.⁶¹ Shortly afterwards, Mr Ongwen carried out attacks on 8 September,⁶² on 13 September 2002 at Pader road,⁶³ on 16 September 2002 at Lanyatido,⁶⁴ and on 20 September 2002 in Atanga.⁶⁵ P-0309, P-0379, and P-0235 also described Mr Ongwen leading his battalion in operations at Lanyatido.⁶⁶ P-0235 noted that Mr Ongwen was in charge of the attack,⁶⁷ and that "[a]fter the separation with Buk [Abudema], it was Ongwen" who was the senior commander at this time.⁶⁸ P-0309 stated similarly that Mr Ongwen was the "overall commander".⁶⁹ P-0379 and P-0309 corroborated the evidence regarding Mr Ongwen's command of the attack on Atanga.⁷⁰ Mr Ongwen attacked Pajule on 23 and 25 September 2002.⁷¹ [REDACTED].⁷² [REDACTED].⁷³ The Lanyatido, Atanga, and Pajule attacks featured the use of fighters under the age of 15.⁷⁴ Other witnesses also described various attacks and abductions carried out by Mr Ongwen and his subordinates around this time.⁷⁵ Notably, the "gross total" of all those abducted in a mere two weeks - 13-25 September 2002 - during operations by Mr Ongwen, was reported as "127 recruits".⁷⁶

⁶¹ P-0245, T-98, p. 31-32.

⁶² UGA-OTP-0064-0093 at 0121 (left page):8 September 2002, Lapaniyikwara reported an attack deployment by Mr Ongwen on his instructions.

⁶³ ISO logbook, UGA-OTP-0068-0002 at 0021 (right page).

⁶⁴ ISO logbook, UGA-OTP-0068-0002 at 0021 (right page).

⁶⁵ ISO logbook, UGA-OTP-0068-0002 at 0022 (right page).

⁶⁶ P-0309, T-61, p. 14-16, 17, [REDACTED].

⁶⁷ P-0235, T-17, p. 14.

⁶⁸ P-0235, T-17, p. 15-16.

⁶⁹ P-0309, T-61, p. 14.

⁷⁰ P-0379, T-56, p. 43-47, P-0309, T-61, p. 22-23.

⁷¹ UGA-OTP-0068-0002 at 0022 (left page).

⁷² [REDACTED].

⁷³ [REDACTED].

⁷⁴ P-0379, T-56, p. 38-39 (Lanyatido), p. 46 (Atanga), p. 48-49 (Pajule).

⁷⁵ D-0056, T-229, p. 20-21; P-0309, T-61, p. 25-31.

⁷⁶ ISO logbook, UGA-OTP-0068-0002 at 0022 (left page). *See also* 0022 (right page)-0023 (left page): Mr Ongwen reported that his recruits had looted weapons and had high morale and discipline.

28. As detailed at paragraphs 37-56 below, Mr Ongwen continued this practice of launching operations, which often included abductions of females and males, and the use of children under the age of 15 years, throughout his career as a Battalion Commander until his promotion to the post of Brigade Commander in March 2004.

2. Did Mr Ongwen, while commanding at the battalion level, contribute to the functioning of the entire brigade?

29. Even in the period before Mr Ongwen became the commander of Sinia Brigade, he made an essential contribution to the functioning of the entire brigade. These contributions included: a) jointly leading attacks and abduction operations with Sinia leaders outside Oka Battalion, b) sharing abductees and resources with Sinia leaders outside Oka Battalion, and c) supervising Sinia groups and fighters who were not in Oka Battalion, and deploying them on attacks.

(a) Jointly leading attacks and abduction operations with Sinia leaders outside Oka Battalion

30. Mr Ongwen carried out joint attacks and abduction operations with Sinia leaders outside Oka Battalion. In July 2002, Mr Ongwen (commanding Oka) and Tabuley (commanding Sinia)⁷⁷ led an attack on Patongo.⁷⁸ P-0205, [REDACTED], explained that it “was done by Sinia Brigade during the time of Tabuley”.⁷⁹ Mr Ongwen was the “overall commander for the attack” and Tabuley attacked the centre.⁸⁰ Similarly, P-0379 described being abducted around August 2002 from Pajule along with “about 150 people and perhaps more than a hundred children”,⁸¹ by fighters under the command of Ojok Ot Ngec (who was, at that point, Mr Ongwen’s deputy in Oka Battalion).⁸² P-0379 was then brought to the location of a combined group of fighters under the command of Mr Ongwen and Lapaico, who was then commander of Terwanga Battalion and second-in-command of Sinia.⁸³

⁷⁷ Tabuley commanded Sinia Brigade prior to Abudema. See P-0205, T-47, p. 20-21.

⁷⁸ P-0205, T-47, p. 21.

⁷⁹ P-0205, T-47, p. 19.

⁸⁰ P-0205, T-47, p. 19-20.

⁸¹ P-0379, T-59, p. 10-11.

⁸² P-0379, T-56, p. 10-15, 25.

⁸³ P-0379, T-56, p. 13-19. See also T-58, p. 27, 30.

(b) Sharing abductees and resources with Sinia leaders outside Oka Battalion

31. Additionally, Mr Ongwen also shared abductees and resources with Sinia leaders outside Oka. For example, P-0205 described how, sometime after June 2002,⁸⁴ Mr Ongwen as Oka CO, abducted boys (aged 12-15) and girls at Laliya and “handed them over to Tabuley” when “Tabuley was [...] commander of Sinia”.⁸⁵ Tabuley and Mr Ongwen then shared the abductees.⁸⁶ Similarly, the numerous persons abducted with P-0379 around August 2002 were shared between Mr Ongwen and Lapaico.⁸⁷ Notably, in this context, Mr Ongwen’s and Lapaico’s forces would often move together,⁸⁸ and Lapaico often relayed reports of attacks and abductions carried out by Mr Ongwen during this period, including, for example, on 8,⁸⁹ 13,⁹⁰ 16,⁹¹ and 20 September 2002.⁹² Kony, having received such reports, provided collective instructions directed at both Mr Ongwen and Lapaico regarding abductions.⁹³ Mr Ongwen also often shared other resources with the Sinia Brigade Commander and battalion commanders.⁹⁴

(c) Supervising Sinia groups and fighters who were not in Oka Battalion and deploying them on attacks

32. Moreover, Mr Ongwen supervised Sinia groups, and fighters who were not in Oka Battalion. P-0205, who was in Sinia Brigade [REDACTED] but not in Oka during Mr Ongwen’s time in the sickbay, mentioned reporting to Mr Ongwen every two weeks.⁹⁵ When questioned why he was “going to see the commander of a different battalion”, P-0205 responded that Mr Ongwen “was the only leader of Sinia who was nearby”, that “[h]e was taking charge of that group at that time”, [REDACTED].⁹⁶ Notably, the women under P-0205’s command at this time were “from [...] Sinia brigade, but different battalions” and included a

⁸⁴ P-0205, T-47, p. 18.

⁸⁵ P-0205, T-47, p. 18-19. *See also* UGA-OTP-0263-3040 at 3041. Tabuley commanded Sinia Brigade prior to Abudema. *See* P-0205, T-47, p. 21.

⁸⁶ P-0205, T-47, p. 18-19.

⁸⁷ P-0379, T-58, p. 36.

⁸⁸ P-0379, T-58, p. 37.

⁸⁹ UGA-OTP-0064-0093 at 0121 (left page): 8 September 2002, Lapanyikwara/Lapaico reported an attack deployment by Mr Ongwen on his instructions.

⁹⁰ ISO logbook, UGA-OTP-0068-0002 at 0021 (right page).

⁹¹ ISO logbook, UGA-OTP-0068-0002 at 0021 (right page).

⁹² ISO logbook, UGA-OTP-0068-0002 at 0022 (left page).

⁹³ ISO logbook, UGA-OTP-0068-0002 at 0022 (right page).

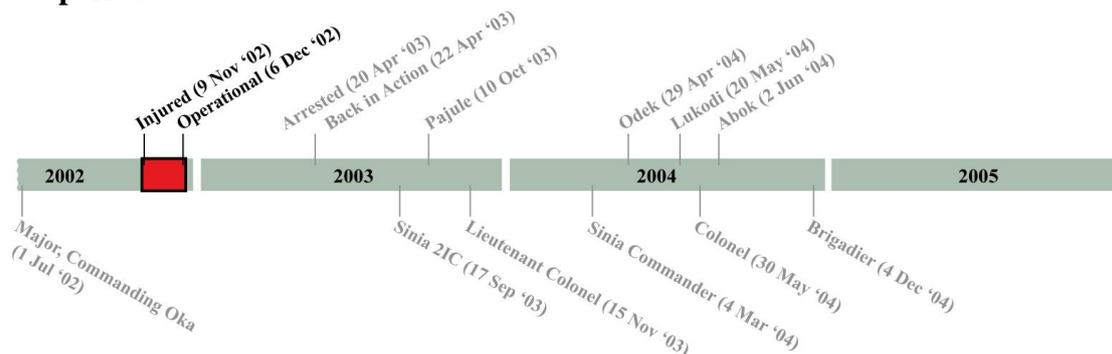
⁹⁴ ISO logbook, UGA-OTP-0068-0002 at 0031 (left side) (Abudema, Lapaico, and Mr Ongwen jointly collecting material from a “coordinator”).

⁹⁵ P-0205, T-49, p. 61.

⁹⁶ P-0205, T-49, p. 61.

forced wife of the brigade commander.⁹⁷ Additionally, Mr Ongwen deployed Sinia fighters who were not in Oka on attacks. For example one of the attacks on Opit launched by Mr Ongwen featured Sinia fighters (including officers as well as children under the age of 15) who were not in Mr Ongwen's unit at the time.⁹⁸ During this period, Mr Ongwen also reported his attacks, such as an attack on Opit, via other Sinia commanders.⁹⁹ Mr Ongwen also authorised, during this time, the provision of weapons to children under the age of 15, who were in Sinia, but not serving in his "bay" at the time.¹⁰⁰ Similarly, the attack on Palaro, led by Mr Ongwen prior to taking command of Sinia Brigade, featured fighters from both Oka and Terwanga Battalions.¹⁰¹ Mr Ongwen's appointment¹⁰² in September 2003 as second-in-command of Sinia Brigade¹⁰³ is further evidence of his ability to contribute to the functioning of the entire brigade, prior to him taking over command of Sinia.

3. Did the injury suffered by Mr Ongwen in November 2002 deprive him of his position of authority or control over the fighters in his unit, and if so, for what period?



33. Mr Ongwen was injured on or around 9 November 2002,¹⁰⁴ and stayed for some time in an LRA sickbay. At the time he was injured, he was the commander of Oka Battalion.¹⁰⁵ The Defence argued that Mr Ongwen was severely injured and had no control over fighters, and was inactive for a lengthy period in 2002-2003, and so cannot be responsible for the crimes

⁹⁷ P-0205, T-47, p. 27.

⁹⁸ P-0205, T-47, p. 30-33 [REDACTED].

⁹⁹ For example, Mr Ongwen reported a mid-2003 attack on Opit via Lapanyikwara/Lapaico. *See* ISO logbook, UGA-OTP-0068-0146 at 0228 (right page), 0229 (left page).

¹⁰⁰ [REDACTED].

¹⁰¹ P-0245, T-99, p. 41.

¹⁰² For a more detailed discussion of Mr Ongwen's promotion to deputy commander of Sinia, *see* para. 53 below.

¹⁰³ ISO logbook, UGA-OTP-0232-0234 at 0414. The next day, Otti confirmed that Mr Ongwen was fit to take over that post (ISO logbook, UGA-OTP-0232-0234 at 0422).

¹⁰⁴ P-0379, T-56, p. 54-57, P-0205, T-47, p. 22-25; P-0406, T-154, p. 16-17. P-0406 mentioned that the injury occurred in September. However, logbook evidence makes it clear that Mr Ongwen was injured in early November. *See, e.g.*, ISO logbook, UGA-OTP-0065-0002 at 0025 (right page).

¹⁰⁵ P-0205, T-47, p. 22-23.

charged during this period. The Defence even extended the period of Mr Ongwen's injury-based incapacitation up to the time of the Pajule attack.¹⁰⁶

34. The evidence makes it clear that the Defence is mistaken. While Mr Ongwen was in the sickbay for some time during this period, it is clear that his *presence in the sickbay was not synonymous with inactivity, loss of authority, or loss of control over fighters*. The fact that Mr Ongwen was in sickbay during a certain period does not mean that he was incapable of securing compliance with his orders and causing his subordinates to carry out the conduct underlying the charges in this case. That is because a) Mr Ongwen retained control over a number of Sinia fighters, and b) Mr Ongwen was operational again by at least 6 December 2002.

(a) Mr Ongwen retained control over Sinia fighters

35. When Mr Ongwen was injured, a number of Oka fighters separated from him, forming a more mobile group.¹⁰⁷ Other Oka fighters stayed with Mr Ongwen.¹⁰⁸ Although their number was now smaller, Mr Ongwen continued to maintain control over them.¹⁰⁹ As clarified by P-0309, the personnel with Mr Ongwen “were not only people from Ongwen's home”; there were also “other LRA soldiers who were in the homes of the other commanders under Dominic”.¹¹⁰ Mr Ongwen also retained abducted women and children under the age of 15 in his unit.¹¹¹ Despite being injured, Mr Ongwen remained a valued commander, retained his position, and maintained contact with senior LRA leadership.¹¹² Notably, P-0235,¹¹³ [REDACTED],¹¹⁴ and P-0205¹¹⁵ all confirmed that at this time, Mr Ongwen had a radio which he used to communicate. Mr Ongwen was the “most senior” person in the unit¹¹⁶ and remained a Battalion Commander in Sinia Brigade.¹¹⁷

¹⁰⁶ See, e.g., D-0068, T-222 at p. 52-53, D-0056, T-228, p. 66.

¹⁰⁷ P-0205, T-49, p. 65. Some of the fighters who separated came back under Mr Ongwen's command in “two to three months”. P-0314, T-74, p. 26.

¹⁰⁸ P-0379; T-58, p. 65; P-0309, T-61, p. 38.

¹⁰⁹ P-0101, T-13, p. 56-57; P-0309, T-61, p. 38.

¹¹⁰ P-0309, T-62, p. 28. See also [REDACTED].

¹¹¹ P-0379, T-57, p. 6; P-0235, T-17, p. 40; P-0205, T-47, p. 25-26; P-0309, T-61, p. 38; [REDACTED].

¹¹² For example, he was visited during this time by Kony (P-0235, T-17, p. 69), as well as the then head of Sinia Brigade, Abudema, and other senior commanders, such as Odhiambo and Tabuley (P-0379, T-57, p. 5-6). See also [REDACTED].

¹¹³ P-0235, T-17, p. 67-68.

¹¹⁴ [REDACTED].

¹¹⁵ P-0205, T-47, p. 27.

¹¹⁶ P-0309, T-61, p. 39.

¹¹⁷ ISO logbook, UGA-OTP-0065-0002 at 0079. See also *id.* at 0083 for a repetition of this information the next day.

36. During this post-injury period, Mr Ongwen continued to maintain strict discipline in his unit. On one occasion, he is recorded as having reported that the Karamajong girls and Sudanese girls he kept became stubborn and therefore he decided to kill all of them.¹¹⁸ On another, Mr Ongwen reported that he had arrested a soldier named Obalim, who had had sex with the “wives” of Abudema and another senior commander, Otim Charles.¹¹⁹ The next day, in compliance with Kony’s orders, Mr Ongwen informed Otti that he had killed Obalim,¹²⁰ and then confirmed this to Kony himself.¹²¹

(b) Mr Ongwen was operational again by at least 6 December 2002

37. While in sickbay, Mr Ongwen continued to issue orders and launch operations, deploying, *inter alia*, children under the age of 15.¹²² P-0379, who was with Mr Ongwen at this time, explained that even “during the time when [Mr Ongwen] was not yet able to move [...] Cow would go to [Mr Ongwen] and get instructions, then come back to the rest of the post, select the standby to go and carry out operations”.¹²³ “Cow” in this context is Odong Cow, the deputy commander of Oka Battalion under Mr Ongwen.¹²⁴ P-0205, a long-time member of Sinia Brigade, recalled similarly about Mr Ongwen that “while he was at the sickbay, he would send people to work”,¹²⁵ and that “in December the same year that he was injured, he [...] sent people to collect [...] cattle from Pajule”.¹²⁶ Intercepted communications confirm that by December 2002, Mr Ongwen was already reporting attacks carried out by his subordinates. For example, he informed Kony that on 6 December he ambushed and burned a vehicle on the Kitgum-Gulu road, exchanged fire with UPDF, and looted some items.¹²⁷ Mr Ongwen was on air several times during LRA radio calls in December 2002, including every day from 3 to 8 December.¹²⁸

¹¹⁸ ISO logbook, [UGA-OTP-0065-0143](#) at 0208 (left side, 24 March 2003).

¹¹⁹ ISO logbook, [UGA-OTP-0063-0002](#) at 0071-0072.

¹²⁰ ISO logbook, [UGA-OTP-0063-0002](#) at 0073 (right side).

¹²¹ UPDF logbook, [UGA-OTP-0197-2162](#) at 2303-2304. *See also* UPDF logbook, [UGA-OTP-0197-1670](#) at 1767 (left side).

¹²² P-0379, [T-57](#), p. 13. *See also id.* p. 10, 12, for use of children under 15 during post-attack executions.

¹²³ P-0379, [T-59](#), p. 78-79. *See also id.* p. 35-45. The presence of P-0245 in the sickbay with Mr Ongwen is corroborated by a number of witnesses. *See, e.g.*, [REDACTED].

¹²⁴ P-0205, [T-47](#), p. 26.

¹²⁵ P-0205, [T-47](#), p. 28-29. *See also* P-0101, [T-13](#), p. 56-57; P-0379, [T-57](#), p. 15, 59 (abduction of Sunday and Lakica while at the bay).

¹²⁶ P-0205, [T-47](#), p. 29.

¹²⁷ ISO logbook, [UGA-OTP-0065-0002](#) at 0093 (right side).

¹²⁸ ISO logbook, [UGA-OTP-0065-0002](#) at 0079 (right side), 0081 (left side), 0084 (right side), 0085 (left side), 0086 (left side), 0087 (left side), 0089 (right side), 0090 (right side), 0091 (right side), 0093 (right side); ISO

38. By January 2003, Mr Ongwen was mobile, coordinating with senior leaders and capable of executing missions. For example, on 21 January 2003, records of intercepted radio communications state “Kony told Otti that he sh[oul]d [...] organize 1 LRA comm[an]d[e]r especially between Lagoga and Ongwen Dominic to move up to Gulu” to find out the cause of death of the father of a relative.¹²⁹ Mr Ongwen continued to be operational in February 2003. On 1 February 2003, UPDF personnel intercepting radio communications noted operational coordination between Mr Ongwen and Tabuley,¹³⁰ and Mr Ongwen was on air on 5¹³¹ and 6¹³² February. On 7 February 2003, intercepts record Vincent Otti’s orders for Mr Ongwen and Ojok, a commander in Sinia Brigade,¹³³ to meet Lapaico,¹³⁴ the deputy commander of Sinia Brigade.¹³⁵

39. On 9 February, radio intercept records show that “Comm[an]d[e]r Dominic said that he was the one fighting with UPDF but the result was fruitless”.¹³⁶ On 10 February, Mr Ongwen told Raska Lukwiya that Pokot was with him, but Ojok had deployed for another mission.¹³⁷ Since Pokot and Ojok were members of Sinia Brigade,¹³⁸ this indicates Mr Ongwen’s operational coordination with other Sinia officers. On 12 February, Mr Ongwen reported having ambushed a civilian vehicle the previous day between Opit and Lagogi and named Ojok again.¹³⁹

40. Mr Ongwen remained active in March 2003. [REDACTED],¹⁴⁰ confirmed that Mr Ongwen could walk at this date.¹⁴¹ This was corroborated by [REDACTED],¹⁴² [REDACTED].¹⁴³ On 15 March, Tabuley reported that a “mobile” captured a mortar. Kony

logbook, [UGA-OTP-0066-0201](#) at 0256-0257, 0259, 0261-0264, 0268-0269, 0272; *see also* ISO logbook, [UGA-OTP-0066-0201](#) at 0297 (left side).

¹²⁹ UPDF logbook, [UGA-OTP-0197-2162](#) at 2184 (left side).

¹³⁰ UPDF logbook, [UGA-OTP-0197-2162](#) at 2205 (left side).

¹³¹ UPDF logbook, [UGA-OTP-0197-2162](#) at 2209.

¹³² UPDF logbook, [UGA-OTP-0197-2162](#) at 2211.

¹³³ ISO logbook, [UGA-OTP-0064-0093](#) at 0167.

¹³⁴ Lapaico was also known as Lapanyikwara. *See, e.g.*, ISO logbook, [UGA-OTP-0232-0234](#) at 0414; Intelligence Report, [UGA-OTP-0016-0206](#) at 0207; [UGA-OTP-0195-0144](#).

¹³⁵ UPDF logbook, [UGA-OTP-0197-2162](#) at 2213 (right side).

¹³⁶ UPDF logbook, [UGA-OTP-0197-2162](#) at 2216 (right side).

¹³⁷ UPDF logbook, [UGA-OTP-0197-2162](#) at 2218 (left side).

¹³⁸ *See, e.g.*, ISO logbook, [UGA-OTP-0064-0093](#) at 0167; ISO logbook, [UGA-OTP-0232-0234](#) at 0447.

¹³⁹ UPDF logbook, [UGA-OTP-0197-2162](#) at 2220 (left side).

¹⁴⁰ [REDACTED].

¹⁴¹ [REDACTED].

¹⁴² [REDACTED].

¹⁴³ [REDACTED].

stated that the mortar was “for Ongwen”.¹⁴⁴ On 17 March, a priest involved in the peace process requested a reply from Kony to “the letter I gave to Dominic to be taken to Tabuley”.¹⁴⁵ On the same day Otti instructed Mr Ongwen to plant landmines.¹⁴⁶ On 18 March, intercepts record that Mr Ongwen and Obaldo were moving together and that Tabuley cautioned Obaldo because “Dominic said he came across certain nyayo” (tracks) which might be UPDF.¹⁴⁷ On 19 March, Kony instructed Otti to tell Mr Ongwen to retrieve hidden weapons, and it was recorded that Obaldo and Mr Ongwen were on a “mission to attack”.¹⁴⁸ The next day, Mr Ongwen reported having been involved in combat; after Tabuley reported hearing shelling, Mr Ongwen said “it was on him as he was trying to cross a road [...] they briefly exchanged fire and crossed the road safely”.¹⁴⁹

41. On 20 March 2003, Mr Ongwen reported that he was moving to meet Tabuley.¹⁵⁰ Around this time, Mr Ongwen ordered [REDACTED] an ambush on UPDF troops on Lalogi road. While Mr Ongwen did not deploy for this attack, his fighters carried out the ambush he had ordered.¹⁵¹ P-0379, [REDACTED], described the central role of Mr Ongwen: “As we were going for that standby, Dominic Ongwen was the one who appointed Kidega to take lead, and all the reports on the guns that were taken and the items that were taken, the reports were given to him”.¹⁵²

42. Mr Ongwen was exceptionally active in April 2003. On 4 April, he reported having ambushed a vehicle and “killed some people” including two UPDF soldiers. A little later, he gave details about how civilians had allegedly spoiled one of his ambushes and that the “civ[ilians]s of Lagile and Awere are not trusted”. Shortly afterwards, Kony ordered that LRA fighters should “finish up the whole civilians in areas of Lagile as soon as possible”.¹⁵³ Mr Ongwen responded immediately, telling Kony on 5 April that the previous day he had “caused some havocs in areas of Lagile” and “killed many civ[ilian]s” and “burn[t] some civ[ilian]

¹⁴⁴ ISO logbook, [UGA-OTP-0063-0002](#) at 0015 (left side).

¹⁴⁵ ISO logbook, [UGA-OTP-0063-0002](#) at 0025 (right side).

¹⁴⁶ ISO logbook, [UGA-OTP-0063-0002](#) at 0026 (right side)-0027 (left side).

¹⁴⁷ ISO logbook, [UGA-OTP-0063-0002](#) at 0027 (left side).

¹⁴⁸ ISO logbook, [UGA-OTP-0065-0143](#) at 0190 (right side); ISO logbook, [UGA-OTP-0063-0002](#) at 0029 (left side).

¹⁴⁹ ISO logbook, [UGA-OTP-0063-0002](#) at 0032 (left side).

¹⁵⁰ ISO logbook, [UGA-OTP-0063-0002](#) at 0033 (left side). P-0379, who was with Mr Onwen in the sickbay [REDACTED], also described joint movements of Mr Ongwen’s bay together with Tabuley’s group [REDACTED].

¹⁵¹ P-0379, [T-57](#), p. 7-8; [REDACTED].

¹⁵² P-0379, [T-57](#), p. 7-8; [T-59](#), p. 36.

¹⁵³ UPDF logbook, [UGA-OTP-0197-2162](#) at 2305 (right side).

houses”. Mr Ongwen added that he abducted some people, including “staff of red cross”,¹⁵⁴ and that one of his officers named Kalalang had been injured.¹⁵⁵ On 20 April, Otti reported to Kony that Mr Ongwen had reported some days ago that when he was “operating in areas of Odek Awere” he had “deployed his force for ambush whereby they hit UPDF”.¹⁵⁶

43. P-0379, who was with Mr Ongwen during this time, testified that he ordered two attacks on “Awere” (Lagile Parish is in Awere sub-county). During the first, which was to obtain food, P-0379 explained that a civilian raised an alarm and government soldiers shot at the LRA fighters, who reported it to Mr Ongwen. Mr Ongwen responded by launching a second attack on Awere, ordering his subordinates “when you reach there, do not leave anything. Anything that is living don’t leave alive because the people do not want us. They want us to die here in the bush”.¹⁵⁷ Notably, Mr Ongwen was sufficiently fit to deploy in person for this second attack.¹⁵⁸ He could “still move for a standby” and “would identify people to go for operations”.¹⁵⁹ P-0379 described the aftermath of the attack on Awere: [REDACTED].¹⁶⁰

44. On 10 April, Kony ordered that Mr Ongwen should plan an ambush on the UPDF so that he could be promoted.¹⁶¹ Notably, Kony’s reference here to merit-based promotion contradicts the Defence’s theory that ranks and positions in the LRA were essentially meaningless.¹⁶² On 11 April, Mr Ongwen was discussing UPDF positions with Nyeko, a senior commander, and coordinating a meeting with Otti, Lakati, and Tabuley.¹⁶³ Similarly, on 13 April, Raska Lukwiya requested that Mr Ongwen and certain other commanders move and meet him.¹⁶⁴ The next day, Mr Ongwen gave orders for the selection of fighters to be sent to

¹⁵⁴ UPDF logbook, [UGA-OTP-0197-2162](#) at 2308 (left side). *See also* [UGA-OTP-0063-0002](#) at 0083 (right side). *See also* UPDF logbook, [UGA-OTP-0254-3399](#) at 3558 (left side); ISO logbook, [UGA-OTP-0065-0143](#) at 0246 (left and right side).

¹⁵⁵ [UGA-OTP-0063-0002](#) at 0083 (right side). *See also* ISO logbook, [UGA-OTP-0065-0143](#) at 0246 (right side). As evident from Section X below on the Abok attack, Kalalang would continue under Mr Ongwen as an officer in Sinia for a substantial part of the charged period.

¹⁵⁶ UPDF logbook, [UGA-OTP-0254-0455](#) at 0504. *See also* ISO logbook, [UGA-OTP-0060-0002](#) at 0013 (Otti reports on Mr Ongwen having sent out ambushes).

¹⁵⁷ P-0379, [T-57](#), p. 8-9.

¹⁵⁸ P-0379, [T-57](#), p. 9-14.

¹⁵⁹ P-0379, [T-59](#), p. 76.

¹⁶⁰ [REDACTED]. For similar orders by Mr Ongwen, *see* P-0309, [T-60](#), p. 39-41.

¹⁶¹ ISO logbook, [UGA-OTP-0065-0143](#) at 0266 (right side); [UGA-OTP-0063-0002](#) at 0103 (right side).

¹⁶² [ICC-02/04-01/15-404-Red2](#), para. 27-28.

¹⁶³ ISO logbook, [UGA-OTP-0063-0002](#) at 0106 (right side). P-0379, who was with Mr Ongwen in the sickbay [REDACTED], also described joint movements of Mr Ongwen’s bay together with Otti’s and Tabuley’s groups (P-0379, [T-59](#), p. 79).

¹⁶⁴ ISO logbook, [UGA-OTP-0063-0002](#) at 0113 (right side).

Otti immediately.¹⁶⁵ These interchanges underscore Mr Ongwen's ability to gather intelligence, marshal and deploy fighters, and coordinate with members of the LRA's senior leadership.

45. Mr Ongwen continued to be considered a Battalion Commander by Kony during this period, despite his injury. For example, in mid-April 2003 Kony criticised Mr Ongwen for being targeted by a helicopter, threatening that "if Dominic is not careful then he will be demoted so that another off[ice]r take charge of that B[attalion]N".¹⁶⁶ Mr Ongwen also played a role in working with LRA collaborators and civilian intermediaries at this time. For example, Kony directed Mr Ongwen to hide Lamola in the home of a collaborator.¹⁶⁷ Around the same time, on 19 April 2003, intercepts record senior LRA leaders choosing Mr Ongwen to make contact with Rwot Oywak in Pajule.¹⁶⁸

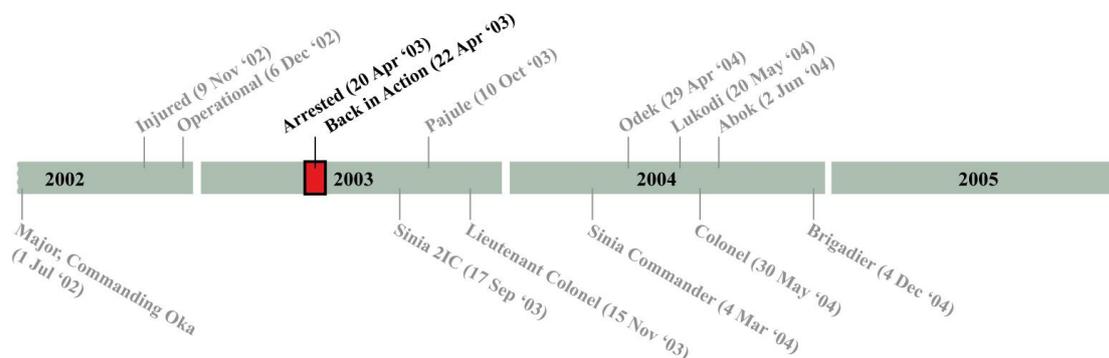
¹⁶⁵ ISO logbook, [UGA-OTP-0063-0002](#) at 0115 (left side).

¹⁶⁶ ISO logbook, [UGA-OTP-0063-0002](#) at 0124 (right side). *See also* UPDF logbook, [UGA-OTP-0197-1224](#) at 1241-1242.

¹⁶⁷ ISO logbook, [UGA-OTP-0063-0002](#) at 0130 (left side).

¹⁶⁸ ISO logbook, [UGA-OTP-0063-0002](#) at 0131 (right side). *See also* UPDF logbook, [UGA-OTP-0254-0455](#) at 0503 (bottom).

4. Did Mr Ongwen’s arrest in April 2003 deprive him of his position of authority or control over troops, and if so, for what period?



46. Around 20 April 2003, Mr Ongwen [REDACTED] “arrested”¹⁶⁹ briefly,¹⁷⁰ reportedly in connection with [REDACTED] contact with a senior UPDF commander, Salim Saleh.¹⁷¹ The Defence argued that Mr Ongwen was under arrest and incapacitated for a long period in 2003, lacking authority and control over fighters. The Defence claimed that, as a result, he cannot be responsible for the crimes charged during this period. The Defence claimed further that the period of Mr Ongwen’s arrest and incapacitation extended even beyond the date of the 10 October 2003 attack on Pajule. Here too, the Defence is mistaken. This is evident from the fact that Mr Ongwen was a) back in action two days after his arrest, b) promoted to second-in-command of Sinia Brigade in September 2003, c) an influential commander by the time of the attack on Pajule, playing a key role in the attack, and d) promoted and remained active after the Pajule attack.

(a) Mr Ongwen was back in action two days after his arrest

47. On 22 April 2003, Mr Ongwen reported to Kony that he had forgotten the location of certain hidden arms and asked Kony to direct him.¹⁷² Shortly after, he reported that he had sent one of his commanders to go and retrieve the arms.¹⁷³ On 25 April 2003, Mr Ongwen reported to other commanders that a radio station had reported the LRA had attacked at Palabek and that

¹⁶⁹ The evidence indicates that “arrest” and “imprisonment” in the LRA did not always mean physical incarceration. *See, e.g.*, [UGA-D26-0015-0948](#) at 0965. Mr Ongwen described himself leading the attack on Koc Ongako as the “commanding officer”, but simultaneously described himself as being “in prison”. Here is clear that Mr Ongwen’s understanding of “prison” did not prevent him from serving as an operational LRA commander.

¹⁷⁰ [REDACTED].

¹⁷¹ [REDACTED].

¹⁷² UPDF logbook, [UGA-OTP-0254-0455](#) at 0512.

¹⁷³ ISO logbook, [UGA-OTP-0063-0002](#) at 0141 (right side).

he had heard from radio news about an attack at Kitgum Matidi.¹⁷⁴ Mr Ongwen was on air on 26 April¹⁷⁵ and 27 April.¹⁷⁶ On 28 April 2003, he sent his location to Raska Lukwiya using code.¹⁷⁷ In sum, days after his arrest, Mr Ongwen was active, mobile, in command of his fighters, and coordinating with senior commanders.

48. Importantly, the fact that Mr Ongwen spent time with Vincent Otti after his release does not mean that Mr Ongwen was incapacitated. As D-0056 testified, no commander who was under arrest would lead attacks or make operational reports,¹⁷⁸ as Mr Ongwen regularly did in the weeks and months following his “arrest” (discussed below). Moreover, even if it were the case that Mr Ongwen was under scrutiny at this time, this clearly did not impede his position of authority, control over fighters, or general operational status.¹⁷⁹ To the contrary, Mr Ongwen was transmitting almost daily around this period, communicating his location, giving operational reports, and coordinating with top-level LRA leadership.

49. For example, on 28 April 2003, in response to a query from Kony, Mr Ongwen reported that “Lagile area is empty with no sign of human being”.¹⁸⁰ He reported that people had shifted from Lagile to camps in Awere and other places.¹⁸¹ The trust that Kony placed in Mr Ongwen at this time, and his continuing ability to conduct operations, is indicated by Kony’s instruction that Mr Ongwen should “continue checking Lagile” to see “if any civilian still remained” and that he should “just destroy”.¹⁸² At this time, Mr Ongwen was communicating with Otti about operations and making plans to meet him.¹⁸³ He was on air again on 29 April.¹⁸⁴ On 1 May 2003, Mr Ongwen sent a message to Tabuley to collect a commander named “Cele” from the home of “Okeca”.¹⁸⁵ Mr Ongwen was on air on 3¹⁸⁶ and 4 May.¹⁸⁷ On 5 May, he sent a sick

¹⁷⁴ UPDF logbook, [UGA-OTP-0254-0455](#) at 0522-0523.

¹⁷⁵ UPDF logbook, [UGA-OTP-0254-0455](#) at 0525.

¹⁷⁶ UPDF logbook, [UGA-OTP-0254-0455](#) at 0527.

¹⁷⁷ UPDF logbook, [UGA-OTP-0254-0455](#) at 0530.

¹⁷⁸ D-0056, T-229, p. 25-26.

¹⁷⁹ See, e.g., [UGA-D26-0015-0948](#) at 0965.

¹⁸⁰ UPDF logbook, [UGA-OTP-0254-0455](#) at 0531.

¹⁸¹ ISO logbook, [UGA-OTP-0063-0002](#) at 0161 (left side).

¹⁸² ISO logbook, [UGA-OTP-0063-0002](#) at 0161 (left side).

¹⁸³ ISO logbook, [UGA-OTP-0063-0002](#) at 0164 (left side).

¹⁸⁴ UPDF logbook, [UGA-OTP-0254-0455](#) at 0534, 0536.

¹⁸⁵ ISO logbook, [UGA-OTP-0063-0002](#) at 0171.

¹⁸⁶ UPDF logbook, [UGA-OTP-0254-0455](#) at 0552.

¹⁸⁷ UPDF logbook, [UGA-OTP-0254-0455](#) at 0559.

report regarding personnel in his unit to Kony.¹⁸⁸ He and his subordinates carried out ambushes on 6 and 7 May 2003.¹⁸⁹ He was also on air on 8 and 9 May 2003.¹⁹⁰

50. Mr Ongwen's control over LRA fighters, his position of authority, and his capacity to contribute to crimes committed by Sinia fighters during this period is exemplified by his attacks on Opit. P-0379, who escaped from the bush [REDACTED],¹⁹¹ described an attack led by Mr Ongwen on Opit while he was still in Mr Ongwen's sickbay in 2003.¹⁹² P-0379 testified that Mr Ongwen personally deployed for the Opit attack and was the most senior person present.¹⁹³ Like other operations launched by Mr Ongwen during this period, this attack featured LRA fighters below the age of 15 years.¹⁹⁴ P-0379 confirmed that around this time, Mr Ongwen was commander of Oka Battalion.¹⁹⁵ Intercepted radio communications¹⁹⁶ also showed Mr Ongwen's command role in attacks on Opit in late May and early June 2003. On 26 May 2003, Mr Ongwen reported that he "attacked Opit y[ester]/day night (dawn) and charged a lot of drugs of various types from the mission" and that "one recruit managed to escape".¹⁹⁷ On 7 June 2003, Lapaico, then commander of Terwanga Battalion and second-in-command of Sinia Brigade, told Otti that "the Com[man]d[e]r who attacked Opit was Dominic" and that he had "burnt all the camp mission and trading centre".¹⁹⁸ P-0205 also described an attack on Opit in this period.¹⁹⁹ He stated that at this time "[Mr Ongwen] was with the sickbay", and that Mr Ongwen ordered the attack on Opit.²⁰⁰ P-0205 confirmed that around this time Mr Ongwen was

¹⁸⁸ UPDF logbook, [UGA-OTP-0197-1224](#) at 1278 (left side).

¹⁸⁹ UPDF logbook, [UGA-OTP-0197-1224](#) at 1281 (right side), 1282 (right side); ISO logbook, [UGA-OTP-0068-0146](#) at 0147, 0149.

¹⁹⁰ UPDF logbook, [UGA-OTP-0254-0455](#) at 0570, 0572.

¹⁹¹ [REDACTED].

¹⁹² P-0379, [T-57](#), p. 8, 12-14; P-0379, [T-59](#), p. 33.

¹⁹³ P-0379, [T-57](#), p. 13. P-0379, present at both the Awere and Opit attacks with Mr Ongwen, confirmed that he "was able to walk at the time" (P-0379, [T-57](#), p. 14) albeit with a limp (P-0379, [T-59](#), p. 35-45, 78-79).

¹⁹⁴ P-0379, [T-57](#), p. 13.

¹⁹⁵ P-0379, [T-59](#), p. 52.

¹⁹⁶ ISO logbook, [UGA-OTP-0068-0146](#) at 0199 (right side), 0202 (right side); ISO logbook, [UGA-OTP-0060-0002](#) at 0074, 0077; UPDF logbook, [UGA-OTP-0242-6212](#) at 6366, 6367.

¹⁹⁷ ISO logbook, [UGA-OTP-0068-0146](#) at 0199 (right side); ISO logbook, [UGA-OTP-0060-0002](#) at 0074; UPDF logbook, [UGA-OTP-0242-6212](#) at 6366-6367.

¹⁹⁸ ISO logbook, [UGA-OTP-0068-0146](#) at 0228-0229. *See also* [UGA-OTP-0060-0002](#) at 0100-0101; UPDF logbook, [UGA-OTP-0197-1224](#) at 1328-1329.

¹⁹⁹ P-0205, [T-48](#), p. 41 (referring to an Opit attack that was prior to the death of Tabuley, and after the start of Teso campaign).

²⁰⁰ P-0205, [T-47](#), p. 29-30. *See* [UGA-OTP-0240-0078-R01](#) for a diagram of the Opit attack drawn by P-0205. P-0205 also describes another attack on Opit ordered by Ongwen with the intention of obtaining a short wave radio. *See* P-0205, [T-47](#), p. 29, 31.

commander of Oka Battalion.²⁰¹ P-0205 explained that Mr Ongwen at this time was “a CO of Sinia [...] he was the overall [...]. He was taking charge of that group”, [REDACTED].²⁰²

51. In other words, despite his injury in November 2002 and arrest in April 2003, Mr Ongwen could deploy fighters and personally participate in operations. He also arranged regular rendezvous with other Sinia commanders, including [REDACTED].²⁰³ Mr Ongwen continued to be operational in June and July 2003, coordinating with senior LRA and Sinia leaders, sharing ammunition with senior Sinia leaders, and participating in combat along with the head of Sinia Brigade. On 14 June 2003, radio intercepts record that Otti said that Opio Makas, Ojok, and Dominic are operating successfully in northern parts of Lango.²⁰⁴ On 21²⁰⁵ and 26 June 2003,²⁰⁶ intercepts record Mr Ongwen meeting Kony and other senior LRA commanders. On 7 July 2003, Abudema, Ojok, and Mr Ongwen were coordinating to meet,²⁰⁷ and on 9 July 2003, Sinia second-in-command Lapaico told Apar, an LRA commander, to meet with Mr Ongwen, and then to jointly move and meet Lapaico.²⁰⁸ On the same day, Nyeko reported to Otti that he had recently given Mr Ongwen and Lapaico a tin of ammunition to share.²⁰⁹ On 10 July 2003, Apar informed Abudema that he had met Mr Ongwen and Ojok.²¹⁰ On 15 July 2003, Abudema ordered Ocen, Lapaico, and Mr Ongwen to reinforce him.²¹¹

52. Mr Ongwen was on air on 10 September 2003,²¹² and again on 15 September 2003.²¹³ The following day, 16 September 2003, he told Otti that he had sent a squad to attack Te-Okic Catholic mission 10 days earlier, to loot a radio.²¹⁴ He also reported another attack on 12 September 2003, on the Acet road.²¹⁵ On 16 September 2003, Kony suggested that Mr Ongwen and another commander should attack the mambas (government armoured vehicles) in Gulu town, and ordered Otti to supply Mr Ongwen with a radio.²¹⁶ On the same day, Mr Ongwen

²⁰¹ P-0205, T-47, p. 33. See also Police intelligence report [UGA-OTP-0256-0340](#) at 0341.

²⁰² P-0205, T-49, p. 61 [REDACTED].

²⁰³ [REDACTED].

²⁰⁴ ISO logbook, [UGA-OTP-0068-0146](#) at 0247 (left side).

²⁰⁵ ISO logbook, [UGA-OTP-0068-0146](#) at 0268 (right side).

²⁰⁶ ISO logbook, [UGA-OTP-0068-0146](#) at 0280 (right side).

²⁰⁷ ISO logbook, [UGA-OTP-0068-0146](#) at 0301 (left side).

²⁰⁸ ISO logbook, [UGA-OTP-0068-0146](#) at 0303-0304.

²⁰⁹ ISO logbook, [UGA-OTP-0068-0146](#) at 0304 (right side).

²¹⁰ ISO logbook, [UGA-OTP-0068-0146](#) at 0305 (right side).

²¹¹ ISO logbook, [UGA-OTP-0068-0146](#) at 0313 (right side).

²¹² ISO logbook, [UGA-OTP-0232-0234](#) at 0382.

²¹³ ISO logbook, [UGA-OTP-0232-0234](#) at 0407.

²¹⁴ ISO logbook, [UGA-OTP-0232-0234](#) at 0409–0410; UPDF logbook, [UGA-OTP-0254-0725](#) at 0990.

²¹⁵ ISO logbook, [UGA-OTP-0232-0234](#) at 0409–0410; UPDF logbook, [UGA-OTP-0254-0725](#) at 0990.

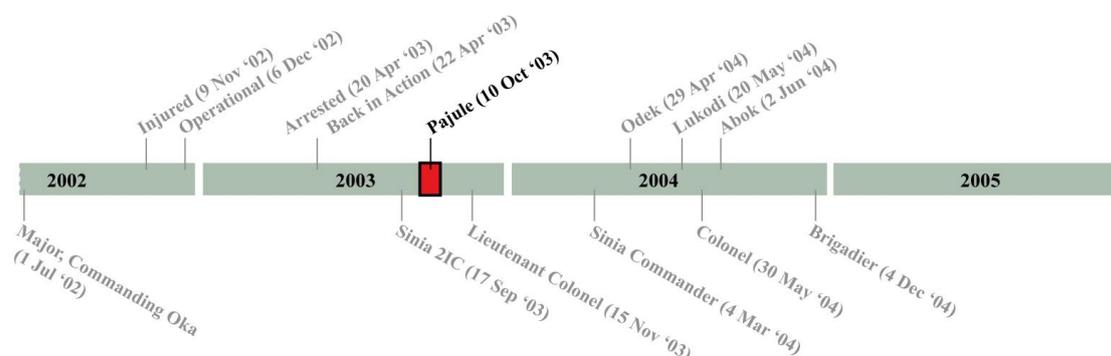
²¹⁶ ISO logbook, [UGA-OTP-0232-0234](#) at 0410–0411.

requested permission from Ocan Bunia to distribute machine gun ammunition to his fighters for ambushes.²¹⁷

(b) Mr Ongwen was promoted to second-in-command of Sinia Brigade

53. Contrary to the Defence case theory, Mr Ongwen was not stripped of his rank or authority during this period. In fact, his position of authority and control over fighters was buttressed by a promotion. On 17 September 2003, Mr Ongwen was appointed second-in-command of Sinia Brigade,²¹⁸ and on 18 September, in response to an inquiry from Kony, Otti confirmed that Mr Ongwen was fit enough to take up the post.²¹⁹ On 22 September 2003, Kony instructed Otti to send him the names of “all the COs” (battalion commanders) in Uganda. Otti responded, listing Mr Ongwen as a Major in Sinia Brigade.²²⁰ On 27 September 2003, Kony singled Mr Ongwen out from among commanders in Sinia for praise as a hardworking commander. By contrast, Kony criticised a number of other commanders in Sinia, including another battalion commander, Pokot, as well as the then-commander of Sinia, Abudema, warning Abudema that he might be replaced as the head of Sinia Brigade.²²¹

(c) Mr Ongwen was an influential commander by the time of the attack on Pajule and played a key role in the attack



54. In late September 2003, Otti requested that Bogi, Mr Ongwen, and certain other commanders meet him.²²² This rendezvous is notable because it occurred a few weeks before the Pajule attack, and involved three leaders who played key roles in the attack.²²³ On 30 September 2003, Kony instructed that “Dominic should remain behind with Otti” because “he

²¹⁷ ISO logbook, [UGA-OTP-0232-0234](#) at 0411.

²¹⁸ ISO logbook, [UGA-OTP-0232-0234](#) at 0414.

²¹⁹ ISO logbook, [UGA-OTP-0232-0234](#) at 0422.

²²⁰ ISO logbook, [UGA-OTP-0232-0234](#) at 0447-0448.

²²¹ ISO logbook, [UGA-OTP-0232-0234](#) at 0477.

²²² ISO logbook, [UGA-OTP-0232-0234](#) at 0431.

²²³ See Section VII below for an analysis of key issues regarding the attack on Pajule.

has good plans which can help Otti”.²²⁴ The Prosecution submits that Mr Ongwen remained in Sinia Brigade throughout this period, although he moved physically with Otti.²²⁵

55. The Defence contends that, at the time of the Pajule attack, Mr Ongwen was stripped of all positions and had no power. The Defence also argues a variation of this theme, that Mr Ongwen was a very junior commander at the time of Pajule, and hence could not have had any impact on (or made an essential contribution to) the Pajule common plan. However, as is clear from the evidence summarised in the preceding pages, at the time of the Pajule attack on 10 October 2003, Mr Ongwen was a person of significant rank (a Major), of high position (second-in-command of Sinia), and had been operational for at least nine months already following his injury. Moreover, as explained in detail in Section VII below, Mr Ongwen had sufficient authority to personally lead one of the attacking groups in this large-scale, coordinated attack involving multiple LRA brigades and Control Altar. Sinia fighters, including Mr Ongwen and his subordinates, participated in the Pajule attack.²²⁶

(d) Mr Ongwen was promoted and remained active after the Pajule attack

56. Having been a Major at the time of the attack on Pajule,²²⁷ on 15 November 2003, Mr Ongwen was promoted to Lieutenant Colonel.²²⁸ This was a pattern repeated throughout Mr Ongwen’s career: participating in or leading successful attacks, and then receiving a promotion shortly thereafter. After Pajule, Mr Ongwen continued in a position of authority. P-0205 confirmed that, at the time of Tabuley’s death in October 2003, Mr Ongwen was “still in charge of Oka” and moving in the same convoy as Vincent Otti.²²⁹ Mr Ongwen continued to use his control over LRA forces to carry out further attacks and other operations. On or about 23 November 2003, he personally led Oka Battalion and parts of Terwanga Battalion during an attack in Labworomor parish in Palaro subcounty.²³⁰ Civilians were abducted during this

²²⁴ ISO logbook, [UGA-OTP-0232-0234](#) at 0501. Notably, in the same communication, Kony removed another Sinia Battalion commander, Alfred Okello Pokot, from his post, replacing him with Ocan Labongo so that Pokot can start learning how to command afresh (ISO logbook, [UGA-OTP-0232-0234](#) at 0501). This is in stark contrast to the manner in which Mr Ongwen was treated at the same time, and is indicative of Mr Ongwen’s position of authority at this time.

²²⁵ Notably, P-0235, having confirmed that Mr Ongwen was located in Control Altar at the time, also stated that “he was also in Sinia”. P-0235, [T-17](#), p. 68.

²²⁶ P-0309, [T-60](#), p. 50. [REDACTED] P-0379, who was a resident of Pajule IDP camp when it was attacked on 10 October 2003, also confirmed seeing a subordinate of Mr Ongwen, an Oka Battalion fighter named Okello Tango, amongst the attackers. See P-0379, [T-57](#), p. 22-24.

²²⁷ P-0309, [T-60](#), p. 49.

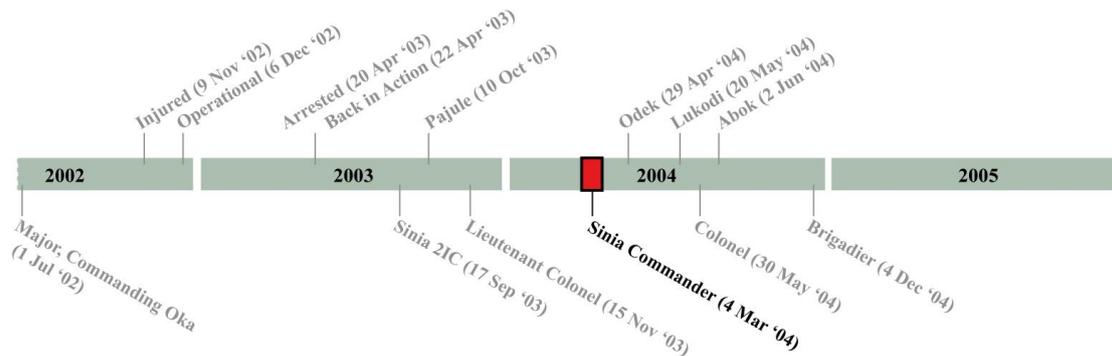
²²⁸ ISO logbook, [UGA-OTP-0066-0002-R01](#) at 0051 (left side).

²²⁹ P-0205, [T-47](#), p. 35.

²³⁰ Audio recording of intercepted communication [UGA-OTP-0239-0101](#), Track 1, 00:36 to 06:47 (Otti, Kony and Raska Lukwiya discussing Mr Ongwen’s attack on Palaro). The voices on this audio were identified by P-

attack.²³¹ In January 2004, Mr Ongwen reported fighting the UPDF.²³² On 2 February 2004, he attacked Koc Ongako.²³³ On 12 February 2004, Kony praised Mr Ongwen for his attack on Koc Ongako, holding him up as an example to others.²³⁴ This is an attack which Mr Ongwen has himself acknowledged, to the Defence medical experts, that he led.²³⁵

5. Between March 2004 and December 2005, when commanding at the brigade level, was Mr Ongwen in a position of authority and did he have control over the fighters in his unit?



57. On or about 4 March 2004, Mr Ongwen took another step upwards in position and authority: he became the Commander of Sinia Brigade.²³⁶ He took over the brigade from Ocan Labongo, who had been acting Commander after Abudema was transferred.²³⁷ Contrary to the Defence's contention, after his appointment Mr Ongwen was not sharing command with Ocan Labongo, or any other Sinia commander. For example, a few days after Mr Ongwen was appointed Brigade Commander, Kony relayed a message from Mr Ongwen (who had handed

0059 (T-37, p. 42-47. See transcript annotated by P-0059 at [UGA-OTP-0258-0791-R01](#)) and P-0016 (T-33, p. 40. See transcript annotated by P-0016 at [UGA-OTP-0265-0439](#)). ISO logbook, [UGA-OTP-0066-0002-R01](#) at 0087. See also UPDF Intelligence Report, [UGA-OTP-0025-0656](#) at 0657, 0660; P-0309, T-61, p. 17-22; P-0372, T-148, p. 33-39; P-0245, T-99, p. 39-45. Notably, the intercepted communications and other witness testimony regarding the Palaro attack corroborates P-0245's account of the nature of the attack on Palaro, regarding, for example, the use of UPDF uniforms by the attackers. This indicates the reliability of P-0245's evidence on this point.

²³¹ P-0309, T-61, p. 75.

²³² ISO logbook, [UGA-OTP-0066-0002-R01](#) at 0163, 0166.

²³³ Audio recording of intercepted communication [UGA-OTP-0239-0079](#), track 1, 27.22 to 31.46. The voices on this audio were identified by P-0016 (T-33, p. 16. See transcript annotated by P-0016 at [UGA-OTP-0259-0106](#)) and P-0059 (T-37, p. 37-42. See transcript annotated by P-0059 at [UGA-OTP-0258-0772-R01](#)); UPDF logbook, [UGA-OTP-0197-0697](#) at 0780.

²³⁴ ISO logbook, [UGA-OTP-0061-0002](#) at 0069 (right page).

²³⁵ [UGA-D26-0015-0948](#) at 0965-0966.

²³⁶ Audio recording of intercepted communication [UGA-OTP-0239-0085](#), track 1, 28:18 to 30:59. The voices on this audio were identified by P-0059 (T-37, p. 26-29. See transcript annotated by P-0059 at [UGA-OTP-0258-0782-R01](#)) and P-0016 (T-32, p. 67-68. See transcript annotated by P-0016 at [UGA-OTP-0259-0094](#)). ISO logbook, [UGA-OTP-0061-0002](#) at 0122 (right page); See also [UGA-OTP-0197-0697](#) at 0813-0816; [UGA-OTP-0197-1866](#) at 2009-2013; [UGA-OTP-0242-7309](#) at 7403-7406. See also a list made by Police radio operative P-0125, who intercepted LRA radio communications, in early 2004, [UGA-OTP-0170-0034](#) at 0036; P-0205, T-47, p. 36-37; P-0142, T-70, p. 18-20; P-0264, T-64, p. 37.

²³⁷ ISO logbook, [UGA-OTP-0061-0002](#) at 0128 (left page).

his own radio to Lapaico)²³⁸ to Labongo, that Labongo should “give his r[a]dio to Dominic because Dominic is the B[rigade] Co[mmander]”.²³⁹ As explained by P-0205, [REDACTED]²⁴⁰ [REDACTED]²⁴¹ [REDACTED], at this point Mr Ongwen was “the overall commander, the one who was having full control” in Sinia Brigade.²⁴² Hence, Ocan Labongo was under his command,²⁴³ as were all other Sinia Battalion Commanders. Mr Ongwen was now at the apex of the brigade structure and in full control of its activities.

58. The Defence has argued, additionally, that Mr Ongwen’s rise in rank and position was meaningless and that these were “sham promotions”.²⁴⁴ The Defence has also made a related argument: that Kony bypassed Mr Ongwen, giving orders to Mr Ongwen’s subordinates directly, and therefore that Mr Ongwen did not exert control over the charged crimes. On both points, the Defence is mistaken. While it is true that Kony, on occasion, bypassed brigade commanders to issue orders to battalion commanders, the evidence set out below demonstrates that Mr Ongwen retained control over his brigade, and was in a position to secure compliance with his orders and cause his subordinates to carry out the conduct underlying the charges in this case. Mr Ongwen’s position of authority and control over the fighters in his brigade is evident from a) the fact that he was an effective Brigade Commander who ensured compliance with his orders, b) his key role in abducting and distributing women and girls in the brigade, c) his key role in abducting and distributing boys in the brigade, and d) the fact that he led many operations, including large-scale attacks, using his brigade.

(a) Mr Ongwen was an effective Brigade Commander who ensured compliance with his orders

59. Mr Ongwen was an effective Brigade Commander. Once he took command of Sinia Brigade, he convened the fighters and leaders of the brigade, informed them that he was now the Brigade Commander, and then authorised the dispersal of LRA fighters in an organised manner.²⁴⁵ He authorised Sinia battalions to deploy on missions.²⁴⁶ Mr Ongwen explained the mission objectives: if they “found anybody who can participate in the army”, then “that person

²³⁸ ISO logbook, [UGA-OTP-0061-0002](#) at 0146 (left page).

²³⁹ ISO logbook, [UGA-OTP-0061-0002](#) at 0147 (left page).

²⁴⁰ [REDACTED].

²⁴¹ [REDACTED].

²⁴² P-0205, [T-49](#), p. 44.

²⁴³ P-0205, [T-49](#), p. 47.

²⁴⁴ [T-179](#), p. 22.

²⁴⁵ P-0205, [T-47](#), p. 38; *See also* [REDACTED].

²⁴⁶ P-0205, [T-47](#), p. 40.

should be abducted”²⁴⁷ He also instructed the battalions to carry out attacks.²⁴⁸ His fighters complied with his orders. P-0205, who was in Sinia Brigade under Mr Ongwen,²⁴⁹ explained, “[i]f he instructs you to go and attack a place on this day, then you attack a place” and “if he says go and abduct people [...] you abduct them”²⁵⁰ P-0264, who was in Sinia Brigade when Mr Ongwen was Brigade Commander, added that “whenever [Mr Ongwen] gives instructions, people work accordingly”²⁵¹ Mr Ongwen maintained regular communications with his battalion commanders.²⁵² When meeting his battalion commanders, including [REDACTED] and Kalalang, he “explained how the battalion should do its work” and “appointed new leaders”²⁵³

60. Moreover, discipline was enforced strictly in Sinia Brigade. There were many rules, and breaking them was punishable by caning and sometimes death.²⁵⁴ P-0205 explained that, while Kony set the rules with regard to the punishment of escapees, these rules were communicated to LRA commanders for implementation.²⁵⁵ When there was a breach of a rule, brigade headquarters was to be informed via Sinia chain of command: from company commander to battalion commander to the brigade commander. Thereafter, the brigade commander decided the matter.²⁵⁶ P-0264 described how, when Oka Commander Acellam Ben carried out disciplinary action, the “issue was forwarded to Dominic Ongwen”, the Brigade Commander, via radio.²⁵⁷

(b) Mr Ongwen played a key role in the abduction and distribution of women and girls in Sinia

61. Mr Ongwen’s position of authority and control over LRA fighters is evident in the key role he played in the abduction and distribution of women and girls to fighters in his brigade.²⁵⁸ The Defence position appears to be that the brigade commander had no role in these matters. The Defence is mistaken. As discussed more fully below in Sections IV and V, abductions in Sinia Brigade were carried out “with the authority issued by Dominic on abduction of

²⁴⁷ P-0205, T-47, p. 41.

²⁴⁸ P-0205, T-47, p. 41.

²⁴⁹ P-0309, T-61, p. 3.

²⁵⁰ P-0205, T-47, p. 41.

²⁵¹ P-0264, T-64, p. 84, 87.

²⁵² P-0264, T-65, p. 19; [REDACTED].

²⁵³ [REDACTED].

²⁵⁴ P-0264, T-65, p. 15-16.

²⁵⁵ P-0205, T-49, p. 9.

²⁵⁶ P-0205, T-48, p. 44, 46, T-49, p. 8.

²⁵⁷ P-0264, T-65, p. 8.

²⁵⁸ For a detailed description of Mr Ongwen’s role regarding the abduction and distribution of women and girls, *see* Section IV below.

people”²⁵⁹ and pursuant to Mr Ongwen’s orders.²⁶⁰ On occasion, Mr Ongwen authorised abductions even where such abductions had been forbidden by Kony.²⁶¹ As for distribution of women, it was generally brigade commanders who assigned women as “wives”, having received requests from their subordinate commanders,²⁶² and obtained approval from Kony.²⁶³ On occasion, however, brigade commanders made decisions of their own accord on distribution.²⁶⁴ In Sinia Brigade, Mr Ongwen adopted both the former²⁶⁵ and latter²⁶⁶ approaches to distribution. He distributed women to his fighters, *inter alia*, as a reward for good work.²⁶⁷

(c) Mr Ongwen played a key role in abducting and distributing boys

62. As discussed more fully below in Section III, the Sinia Brigade Commander, like all brigade commanders in the LRA, also played a key role in abducting and distributing male abductees within the brigade.²⁶⁸ When Mr Ongwen met his battalion commanders and “explained how the battalion should do its work”, this included an “order [...] to abduct [...] boys”.²⁶⁹ D-0068 stated that, when LRA fighters came back to brigade headquarters with abducted young boys, the Brigade Commander would distribute the boys amongst the units within brigade headquarters.²⁷⁰ P-0205 confirmed that, at the brigade level, it was the Brigade Commander who assigned boys of 12-13 years to a particular unit.²⁷¹

(d) Mr Ongwen led many operations, including large-scale attacks

63. Mr Ongwen’s command authority and his control over his fighters is also manifest in the active operational tempo he and his units maintained during his command at brigade level. Reports of Mr Ongwen’s attacks were made frequently, either by him or by other LRA commanders, on the radio in 2004 and 2005. For example, in March 2004, a few weeks after taking over Sinia Brigade, Mr Ongwen combined his forces with those of Okot Odhiambo, a

²⁵⁹ [REDACTED].

²⁶⁰ [REDACTED].

²⁶¹ P-0205, T-48, p. 21-22.

²⁶² [REDACTED].

²⁶³ [REDACTED].

²⁶⁴ [REDACTED], 29; P-0264, T-65, p. 3; *See also* D-0068, T-223, p. 15-16 (authority of the brigade commander to distribute women).

²⁶⁵ [REDACTED].

²⁶⁶ [REDACTED]; P-0264, T-64, p. 86-88; P-0235, T-17, p. 20-21. Mr Ongwen also allocated ting tings to women. (P-0227, T-10, p. 45-46).

²⁶⁷ P-0264, T-64, p. 86-88.

²⁶⁸ For a detailed description of Mr Ongwen’s role regarding the abduction and distribution of boys under the age of 15, *see* Section III below.

²⁶⁹ [REDACTED].

²⁷⁰ D-0068, T-223, p. 16-17.

²⁷¹ P-0205, T-48, p. 32-33.

senior LRA commander, to attack the barracks at the Lira Palwo camp.²⁷² From April 2004 onwards, Mr Ongwen carried out three of the four attacks charged in this case (Odek, Lukodi, and Abok). During this period, Kony regularly held up Mr Ongwen as a commander to be emulated. For example, on 18 May 2004 (shortly after the Odek attack), Kony told LRA commanders on the radio, “you just look at [Ongwen], how good [he] is working”.²⁷³ Similarly, on 24 May 2004, Kony praised Mr Ongwen after the Lukodi attack.²⁷⁴ The Lukodi attack resulted in yet another promotion for Mr Ongwen – to the rank of Colonel on 30 May 2004.²⁷⁵

64. Mr Ongwen’s command of the Odek, Lukodi, and Abok attacks is reflective of his general position of authority and control over fighters as the commander of Sinia Brigade. Ben Acellam, one of the commanders of the Odek attack under Mr Ongwen, Alex Ocaka, an officer in Sinia Brigade and the ground commander of the Lukodi attack, and Okello Franco Kalalang, the ground commander of the Abok attack, all reported to Mr Ongwen and were his direct subordinates. Ben Acellam was the commander of Oka Battalion,²⁷⁶ Alex Ocaka was the support commander in Sinia Brigade,²⁷⁷ and Okello Franco Kalalang was initially the brigade Major in Sinia Brigade headquarters²⁷⁸ and later Terwanga Battalion Commander.²⁷⁹ [REDACTED].²⁸⁰ Subordinate commanders reported to Mr Ongwen on completed operations, ensuring that he was aware of whether, and how, his instructions were implemented. For example, subordinate officers reported to Mr Ongwen following the Odek²⁸¹ and Lukodi attacks.²⁸²

65. After Odek, Lukodi, and Abok, Mr Ongwen’s operational tempo stayed high. On 29 June 2004, in the logbook of LRA radio intercepts he compiled for the Ugandan police, P-0125 recorded that “Col. Ongwen Dominic and Lt. Col. Ocan Labongo have proved dangerous,

²⁷² ISO logbook, [UGA-OTP-0061-0002](#) at 0165 (right page).

²⁷³ Audio of intercepted communication [UGA-OTP-0235-0043](#), track 2, 03:22 – 06:31. The voices on this audio were identified by P-0016 ([T-33](#), p. 6-7. See transcript annotated by P-0016 at [UGA-OTP-0259-0044](#)) and P-0059 ([T-37](#), p. 13-15. See transcript annotated by P-0059 at [UGA-OTP-0248-0436-R01](#)).

²⁷⁴ ISO logbook, [UGA-OTP-0061-0206](#) at 0329 (right page).

²⁷⁵ Audio of intercepted communication [UGA-OTP-0239-0112](#), track 2, 12.25 to 15.47. The voices on this audio were identified by P-0016 ([T-33](#), p. 3-4. See transcript annotated by P-0016 at [UGA-OTP-0259-0116](#)) and P-0059 ([T-37](#), p. 23-26. See transcript annotated by P-0059 at [UGA-OTP-0248-0381-R01](#)). ISO logbooks, [UGA-OTP-0061-0206](#) at 0341-0342, [UGA-OTP-0062-0002](#) at 0003-0006; UPDF logbooks [UGA-OTP-0197-1670](#) at 1748-1749, [UGA-OTP-0255-0228](#) at 0301-0310. Police intelligence report, [UGA-OTP-0256-0309](#) at 0310.

²⁷⁶ P-0264, [T-64](#), p. 16, P-0205, [T-47](#), p. 12-13, 39.

²⁷⁷ P-0054, [T-93](#), p. 16-17, 30-31.

²⁷⁸ P-0205, [T-47](#), p. 39.

²⁷⁹ P-0054, [T-93](#), p. 34; P-0264, [T-64](#), p. 39.

²⁸⁰ [REDACTED].

²⁸¹ P-0142, [T-70](#), p. 30.

²⁸² P-0101, [T-13](#), p. 30-33; P-0205, [T-47](#), p. 61-63.

destructive to both property and lives and have vowed to continue with their acts”.²⁸³ On 18 July 2004, intercepted communications record Otti stating that Mr Ongwen was “working very well”. Kony replied that Mr Ongwen “always plans first before moving to attack” and that is why “he is performing very well”.²⁸⁴ It is clear during this time too that subordinate commanders reported to Mr Ongwen on completed operations, ensuring that he was aware of whether, and how, his orders were implemented. For example, on 2 August 2004, Battalion Commander Labongo reported on the radio to his Brigade Commander, Mr Ongwen, that he had carried out an ambush, hitting both the UPDF and civilians.²⁸⁵

66. Mr Ongwen retained, and continued to increase, his authority and control over LRA units to the end of the charged period. Mr Ongwen was promoted to Brigadier in December 2004.²⁸⁶ On 16 March 2005, Kony’s signaller announced that Mr Ongwen [REDACTED]²⁸⁷ were appointed deputies to Otti.²⁸⁸ In the latter half of 2005, Mr Ongwen was the most senior LRA commander in Uganda.²⁸⁹ For example, on 20 June 2005, Mr Ongwen was given command of fighters from brigades other than Sinia, namely those formerly under senior LRA commanders Okello Okuti and Thomas Kwoyelo.²⁹⁰ Intercepts in July 2005 record five separate ambushes of UPDF forces by Mr Ongwen and his fighters.²⁹¹ On 2 October 2005, Mr Ongwen carried out an attack on Obalanga.²⁹² Mr Ongwen continued to be Sinia Brigade commander until at least 31 December 2005.²⁹³

²⁸³ Police logbook, [UGA-OTP-0037-0002](#) at 0072. *See also* ISO logbook, [UGA-OTP-0062-0002](#) at 0090 (left page): on 7 July 2004, Kony praised Mr Ongwen for having a good number of soldiers and said that he should be carrying on with operations.

²⁸⁴ ISO logbook, [UGA-OTP-0062-0002](#) at 0111 (right page).

²⁸⁵ ISO logbook, [UGA-OTP-0062-0145](#) at 0156 (right page).

²⁸⁶ ISO logbook, [UGA-OTP-0163-0007](#) at 0165. *See also* UPDF logbook, [UGA-OTP-0254-1077](#) at 1363-1364.

²⁸⁷ [REDACTED].

²⁸⁸ [REDACTED].

²⁸⁹ P-0233, [T-111](#), p. 17-18; Police logbook, [UGA-OTP-0151-0016](#) at 0017; Police Intelligence Report, [UGA-OTP-0256-0241](#).

²⁹⁰ ISO logbook, [UGA-OTP-0163-0007](#) at 0130-0131.

²⁹¹ ISO logbook, [UGA-OTP-0163-0007](#) at 0170-0171.

²⁹² ISO logbook, [UGA-OTP-0163-0292](#) at 0314-0315.

²⁹³ P-0189, [T-96](#), p. 37-38; P-0355, [T-96](#), p. 87.

III. Conscription and use of child soldiers (Counts 69 and 70)

A. Introduction

67. The Prosecution's case regarding conscription and use of child soldiers is based on the testimony of over 50 Prosecution and Defence witnesses. They include former LRA fighters,²⁹⁴ nine Prosecution witnesses who were themselves child soldiers in Sinia Brigade during the charged period,²⁹⁵ forced wives in the LRA,²⁹⁶ and victims of LRA attacks and other persons who testified about children under 15 years old in the LRA.²⁹⁷ The Prosecution also relies on logbook records of intercepted LRA radio communications, and other documentary evidence such as photographs, UN reports, research publications and books,²⁹⁸ as well as materials documenting the age of the nine former child soldiers who testified.²⁹⁹

68. This evidence establishes that children younger than 15 were abducted and conscripted into Sinia Brigade (Count 69)³⁰⁰ and used to participate actively in hostilities (Count 70)³⁰¹ between 1 July 2002 and 31 December 2005 in northern Uganda, and that Mr Ongwen is criminally responsible for these crimes. The Prosecution submits that Mr Ongwen is liable as an indirect co-perpetrator pursuant to article 25(3)(a) of the Statute. The evidence also supports his conviction under articles 25(3)(b), 25(3)(d), and 28(a) of the Statute.³⁰²

B. Prosecution case theory

69. The LRA had a longstanding policy of abducting and conscripting children, including children under 15 years old, into its ranks. This policy was implemented in all its units, and

²⁹⁴ *E.g.* P-0205, P-0054, P-0379, P-0245, P-0231, P-0233, P-0144, P-0340, P-0200, P-0372, P-0406, P-0145, P-0070, P-0130, P-0440, P-0138, P-0045, P-0142, P-0250, D-0024, D-0056, D-0068, D-0092.

²⁹⁵ P-0097, P-0252, P-0264, P-0275, P-0307, P-0309, P-0314, P-0330, P-0410.

²⁹⁶ P-0099, P-0101, P-0226, P-0227, P-0236, P-0352, P-0396, P-0374, P-0366, D-0049.

²⁹⁷ *E.g.* P-0067, P-0006, P-0009, P-0268, P-0270, P-0185, P-0015, P-0325, P-0282, P-0284, P-0189, P-0249, P-0269, P-0359, P-0280, P-0218, P-0047, P-0293, D-0105.

²⁹⁸ *E.g.*, UN reports: [UGA-OTP-0231-0148](#), [UGA-OTP-0231-0150](#), [UGA-OTP-0132-0423](#); Human Rights Watch Publications: [UGA-OTP-0133-0059](#), [UGA-OTP-0015-0098](#); Photographs [UGA-OTP-0028-0058](#), [UGA-OTP-0028-0073](#), [UGA-OTP-0245-0039](#), [UGA-OTP-0245-0040](#), [UGA-OTP-0245-0041](#); Report of P-0422, [UGA-OTP-0270-0004](#); Book chapter, [UGA-OTP-0272-0002](#) at 0146 to 0169.

²⁹⁹ See table in subsection B below and documents referenced therein for the age of P-0097, P-0252, P-0264, P-0275, P-0307, P-0309, P-0314, P-0330, and P-0410 respectively.

³⁰⁰ *E.g.* P-0205, [T-47](#), p. 18, [T-48](#), p. 31-32; P-0379, [T-56](#), p. 10-11, 15-25, 46, 49, [T-57](#), p. 35-36, 48-50; P-0054, [T-93](#), p. 22, 29, 52 and [T-94](#), p. 27-28; P-0231, [T-122](#), p. 38, 41-43; D-0068, [T-223](#), p. 17-18, 20-21. See also the evidence of the nine child soldiers in Sinia Brigade during the charged period: P-0097, P-0252, P-0264, P-0275, P-0307, P-0309, P-0314, P-0330, P-0410 and other evidence referenced in this chapter.

³⁰¹ See evidence cited in para. 100-104 below.

³⁰² With regard to Mr Ongwen's criminal responsibility, this chapter should be read together with Chapter II above.

Sinia Brigade between 1 July 2002 and 31 December 2005 was no exception. Boys were abducted to become LRA fighters, and girls were abducted to become forced wives and *tings*.³⁰³

70. Every unit in Sinia Brigade had children under 15 in its ranks during the charged period. Based on the evidence, the Prosecution submits that:

- a) Abductions were a standard part of Sinia Brigade operations;
- b) Children, including children under 15, were abducted to fill the ranks of the brigade throughout the charged period;
- c) The preferred age for abduction of boys was around 12 years, although boys as young as eight or nine years were sometimes abducted as well;
- d) After abduction, boys usually underwent a ritual and were beaten as part of their initiation into the LRA;
- e) Boys were trained with weapons and taught about LRA rules;
- f) They were assigned to various fighters, often those who abducted them;
- g) When deemed sufficiently reliable, boys were armed with guns; and
- h) Children under 15 were used as escorts in Sinia Brigade. They were placed in observation posts, acted as guards, and carried food, weapons, and ammunition. They took part in attacks on civilians, ambushes, and battles with the UPDF, and they were used to kill, pillage, and abduct.

71. Mr Ongwen was a member of Sinia Brigade's leadership throughout the charged period, first as Battalion Commander, and from March 2004 onward, as Brigade Commander.³⁰⁴ Together with his co-perpetrators – other members of Sinia Brigade leadership and Kony – he pursued a common plan of abducting children in northern Uganda and conscripting them into Sinia Brigade in order to ensure a constant supply of fighters. As a result, children, including those under 15 years old, were conscripted and used to participate actively in hostilities in Sinia Brigade. Mr Ongwen, *inter alia*, ordered abductions, monitored the training of children, himself used children under 15 as escorts or part of his entourage, and deployed children on military operations. Mr Ongwen regularly interacted with these children and even specifically inquired about their ages. It is clear that he knew that they were younger than 15.

³⁰³ This section centres on abductions and victimisation of males. The abductions and victimisation of girls and women within the LRA and Sinia Brigade in particular is discussed further in Chapter IV below.

³⁰⁴ See also Chapter II above.

72. Witnesses P-0097, P-0252, P-0264, P-0275, P-0307, P-0309, P-0314, P-0330, and P-0410 are former child soldiers who were in Sinia Brigade during the charged period. P-0309 and P-0330 were Mr Ongwen's escorts. The immediate superiors of P-0097, P-0252, P-0264, P-0275, P-0307, P-0314, and P-0410 were other fighters or commanders in Sinia Brigade. Some of these nine individuals remained with the brigade for less than a year, others for much longer. They were all under 15 for at least part of the charged period and were all used to participate actively in hostilities whilst they were younger than 15. The table below sets out the age of each of the nine individuals, the time they spent in Sinia Brigade, and examples of how they were used to participate actively in hostilities. The submissions about the ages of children are calculated on the basis of the evidence they gave and available documents, referencing their date of birth or age.

Witness number	Time spent in Sinia Brigade during charged period	Age while in Sinia Brigade within the charged period	Examples of use while in Sinia Brigade ³⁰⁵
P-0097	February 2005 ³⁰⁶ – November 2005 ³⁰⁷	14 years or less, most likely 11-12 years ³⁰⁸	Carried looted goods. ³⁰⁹
P-0252	29 April 2004 ³¹⁰ - around 20 June 2004 ³¹¹	14 years or less ³¹² , likely 11 ³¹³	Carried his superior's gun and other supplies during the unit's movements. Fought with a gun. Acted as O.P. (looking out in an observation post for the enemy). Participated in killing of civilians. ³¹⁴
P-0264	[REDACTED] ³¹⁵ – 31 December 2005 ³¹⁶	[REDACTED] – [REDACTED] ³¹⁷ [REDACTED]. ³¹⁸ [REDACTED]. ³¹⁹ Even	Participated in killings of civilians. Escort to fighters in Sinia Brigade. Participated in combat and attacks on civilians. ³²⁰

³⁰⁵ The list is not exhaustive.

³⁰⁶ P-0097, T-108, p. 7.

³⁰⁷ P-0097, T-108, p. 54.

³⁰⁸ P-0097, T-108, p. 6. *See also*: ID Card, UGA-OTP-0269-0735, Birth Certificate, UGA-OTP-0272-0939; Vaccination Card, UGA-OTP-0269-0737 at 0738; School ID, UGA-OTP-0263-2470; School Report, UGA-OTP-0269-0739; School ID, UGA-OTP-0269-0740; School Record, UGA-OTP-0269-0733 at 0734.

³⁰⁹ P-0097, T-108, p. 9-10.

³¹⁰ P-0252, T-87, p. 10. [REDACTED].

³¹¹ Amnesty Card, UGA-OTP-0269-0722; P-0252, T-89, p. 50-52, T-88, p. 14.

³¹² P-0252, T-87, p. 26.

³¹³ ID Card, UGA-OTP-0269-0730; Voter Location Slip, UGA-OTP-0269-0732; ID Card, UGA-OTP-0269-0726 at 0727, Grower Registration Form, UGA-OTP-0269-0728; Birth Certificate, UGA-OTP-0272-1018.

³¹⁴ P-0252, T-87, p. 45, 53-56, 65-73(Binya, Wii-Aceng, unnamed ambush).

³¹⁵ [REDACTED].

³¹⁶ [REDACTED].

³¹⁷ [REDACTED].

		if ID card is correct, witness would have been under 15 until 5 July 2004, thus for two years while in Sinia Brigade.	
P-0275	[REDACTED] ³²¹ The witness explained that he returned from the bush in July 2004 and why he knows the time. ³²² According to a rehabilitation centre document, the witness returned in May 2004. ³²³	9 ³²⁴	Carried looted goods. Carried a gun for a fighter. Acted as O.P. ³²⁵
P-0307	September 2002 or 2003 ³²⁶ - July 2004 ³²⁷	12/13 - 14 ³²⁸	Carried loot from attacks. Escort to a Sinia Brigade fighter. Participated in attacks on civilians with a gun and looted. [REDACTED]. ³²⁹
P-0309	[REDACTED] ³³⁰ - September 2004 ³³¹ .	[REDACTED] ³³²	Escort to Dominic Ongwen. Participated in attacks armed or unarmed. Acted as O.P. ³³³
P-0314	[REDACTED] ³³⁴ - September 2004 ³³⁵	14 (2002) - 16 (2004) ³³⁶	[REDACTED]. ³³⁷

³¹⁸ [REDACTED].

³¹⁹ P-0264, T-65, p. 45-46.

³²⁰ P-0264, T-64, p. 17-18, 26-28, 33-34 (Teso area, specifically Obalanga, Morungatuny, Dital, Kabermado), 38-47, 51-65 (Odek), T-65, p. 23-28.

³²¹ [REDACTED].

³²² P-0275, T-124, p. 73-74; UGA-OTP-0244-3419.

³²³ Rehabilitation Centre Form, UGA-OTP-0097-0452 at 0455.

³²⁴ P-0275, UGA-OTP-0244-3398-R01 at 3400; ID Card, UGA-OTP-0244-3418; Immunisation Card, UGA-OTP-0269-0711; Birth Certificate, UGA-OTP-0244-3417; School Report, UGA-OTP-0269-0719; School Report, UGA-OTP-0269-0710; School Report, UGA-OTP-0269-0714; School Report, UGA-OTP-0269-0712; Voter Location Slip, UGA-OTP-0269-0720; Reunion Letter, UGA-OTP-0244-3419.

³²⁵ P-0275, UGA-OTP-0244-3398-R01 at 3401 and 3402 (Odek), 3404 and 3409.

³²⁶ P-0307, UGA-OTP-0266-0425-R01 at 0428, 0429 and T-152, p. 73, T-153, p. 6; World Vision File, UGA-OTP-0170-0338 at 0338.

³²⁷ World Vision File, UGA-OTP-0170-0338 at 0338.

³²⁸ UGA-OTP-0266-0425-R01 at 0428; Immunisation Card, UGA-OTP-0266-0446 at 0446; ID Card, UGA-OTP-0266-0448; Birth Certificate, UGA-OTP-0272-0951.

³²⁹ P-0307, T-152, p. 65-67 (Pajule (not the charged attack), UGA-OTP-0266-0425-R01 at 0433, 0435, 0438-0439.

³³⁰ [REDACTED].

³³¹ Amnesty Application Form, UGA-OTP-0248-0974 at 0977.

³³² [REDACTED], T-61, p. 48, 63; Drivers Permit, UGA-OTP-0249-1044 and UGA-OTP-0249-1045.

³³³ P-0309, T-60, p. 24-25, p. 59, 60-61 (Pajule); T-62, p. 12-13, 28; P-0309, T-61, p. 14-15, 17 (Lanyatido), p. 19 (Palaro/Labwor Omor), p. 22-24 (Atanga). *See also* P-0309, T-61, p. 28-30 (Barogal), T-61, p. 25-27 (Bar-Rio).

³³⁴ [REDACTED].

P-0330	2002 – November 2004 ³³⁸ The witness did not recall the year of his abduction, but stated he was 12 when abducted. His testimony suggests he may have been abducted before Operation Iron Fist commenced in March 2002. ³³⁹	12 (July 2002) - 15 (November 2004) ³⁴⁰	[REDACTED]. ³⁴¹
P-0410	June/July 2002 ³⁴² - around June 2004 ³⁴³	[REDACTED] ³⁴⁴	[REDACTED]. ³⁴⁵

C. Key issues related to the conscription and use of child soldiers

73. The Prosecution has identified seven issues which appear to be disputed by the Defence, or may otherwise inform the Trial Chamber's deliberations:

- 1) Are the age estimates provided by witnesses who observed children under 15 in Sinia Brigade reliable?
- 2) Were the nine witnesses whom the Prosecution says were child soldiers in Sinia Brigade less than 15 years old during the charged period?
- 3) Did Mr Ongwen know that some children in Sinia Brigade were younger than 15 years?
- 4) How did Mr Ongwen contribute to the conscription and use of child soldiers in Sinia Brigade?
- 5) Was P-0330 a member of Sinia Brigade and Mr Ongwen's escort?
- 6) How were children in Sinia Brigade used to participate actively in hostilities?
- 7) Is the Chamber required to enter findings about exact dates and exact locations of instances where child soldiers were used to participate actively in hostilities?

³³⁵ P-0314, T-75, p. 32; Amnesty Application Form, UGA-OTP-0249-0322 at 0324; Reunion Letter, UGA-OTP-0269-0708.

³³⁶ P-0314, T-75, p. 36-37; ID card, UGA-OTP-0258-0869-R01; Driving permit, UGA-OTP-0269-0703; List of family members and their dates of birth, UGA-OTP-0269-0705, in conjunction with P-0314, T-75, p. 39-40.

³³⁷ P-0314, T-74, p. 9-10, 25, 50, 51, T-76, p. 53.

³³⁸ Rachele Centre Intake Form, UGA-OTP-0124-0358 at 0358. See also P-0330, T-53, p. 27.

³³⁹ P-0330, T-51, p. 66, T-54, p. 5-6.

³⁴⁰ P-0330, T-51, p. 51; ID Card, UGA-OTP-0269-0697; Birth Certificate, UGA-OTP-0269-0696.

³⁴¹ P-0330, T-51, p. 66-69, [REDACTED].

³⁴² P-410, T-151, p. 6.

³⁴³ P-0410, T-151, p. 75-76. The witness narrated how he escaped soon after the attack on Lukodi (19 May 2004).

³⁴⁴ [REDACTED].

³⁴⁵ [REDACTED].

1. Are the age estimates provided by witnesses who observed children under 15 in Sinia Brigade reliable?

74. The Defence did not dispute the existence of an LRA policy to conscript and use children in its ranks.³⁴⁶ Nor did it suggest that the policy was not implemented in Sinia Brigade during the charged period. The Defence only appears to challenge the reliability of the age estimates provided by various witnesses who observed children under 15 in Sinia Brigade. In other words, the Defence seems to accept that children were conscripted and used in Sinia Brigade, but suggests that they were all at least 15 years old.

75. The Prosecution acknowledges that many witnesses could not be certain about the age of the children they described in their testimony. The witnesses were often, although not always, estimating the age of the children they saw, and they openly said so.³⁴⁷ Despite the Defence's attempts to challenge the accuracy of those estimates, the Prosecution maintains that they are reliable, for reasons discussed below. Moreover, the fact that dozens of witnesses who gave evidence about Sinia Brigade testified that children under 15 were present and used in the Brigade is in itself significant. It is impossible that every single one of these witnesses was mistaken, given the volume and reliability of the evidence to the contrary. Finally, even if the Trial Chamber approached the estimates with a margin of error of one or two years, many of the children the witnesses observed would still have been under 15 years old.

(a) Abducting children under 15 was the explicit policy of the LRA

76. Abducting children under 15 did not occur by accident in the LRA; it was the policy of the armed group.³⁴⁸ According to P-0231, when the LRA came across people who were at least 10, they were abducted.³⁴⁹ P-0233 stated that, when going on abduction missions, the age group the LRA was looking for was 13 years and older.³⁵⁰ In light of this, the witnesses' evidence about the presence of children under 15 in Sinia Brigade was therefore not unusual, but was to be expected.

³⁴⁶ The Defence itself called witnesses and elicited evidence about LRA targeting children for abduction, like D-0133, and about child soldiers being conscripted and used in the LRA during the charged period, like D-0105.

³⁴⁷ *E.g.* T-0379, T-59, p. 14-15; P-0249, T-80, p. 5; P-0314, T-74, p. 29.

³⁴⁸ *E.g.* P-0233, T-111, p. 25; P-0138, T-120, p. 23-24; P-0070, T-105, p. 86-87.

³⁴⁹ P-0231, T-122, p. 73.

³⁵⁰ P-0233, T-111, p. 25.

77. Kony envisioned that children “will grow as soldiers”.³⁵¹ He considered that children were easier to work with and train to become LRA fighters.³⁵² Those aged above 15 years old were sometimes viewed as “problems”, and therefore less desirable recruits than younger children.³⁵³ On at least one occasion during the charged period, Kony specifically instructed his commanders to abduct boys as young as 10.³⁵⁴ On other occasions, Kony instructed commanders to abduct “young boys and girls”.³⁵⁵ Two former Sinia fighters confirmed that children were targeted for abduction because they adjusted more quickly to life in the bush and were considered less likely to escape (though many children did in fact escape).³⁵⁶

(b) The witnesses explained the basis for their testimony about the age of children they observed

78. Some witnesses testified that they asked children how old they were and were therefore effectively relaying those answers to the Trial Chamber.³⁵⁷ Several witnesses, like P-0205, P-0054, P-0245, and P-0379, explicitly named individuals who were under 15 in Sinia Brigade.³⁵⁸ The estimates of these witnesses are particularly reliable, because they had a proximate relationship with the children, sometimes one of escort/commander. Similarly, some of the nine child soldiers recalled the names of other children who were under 15, [REDACTED].³⁵⁹

79. Witnesses who estimated the ages of children were routinely asked by the examining counsel and sometimes by the Presiding Judge about how they came to make their estimates. Most explained that they drew conclusions about the age of the children on the basis of their size, voice, behaviour and/or their (in)ability to carry out certain tasks.³⁶⁰ P-0379, for example, concluded that some children in Oka Battalion were no more than 11 years old, because they were not strong enough to carry their guns and had to drag them on the ground.³⁶¹ P-0275 and

³⁵¹ ISO logbook, [UGA-OTP-0064-0093](#) at 0121 (right page).

³⁵² ISO logbook, [UGA-OTP-0065-0002](#) at 0065 (left page).

³⁵³ ISO logbook, [UGA-OTP-0065-0002](#) at 0049 (right page). *See also* ISO logbook, [UGA-OTP-0065-0002](#) at 0073.

³⁵⁴ ISO logbook, [UGA-OTP-0065-0002](#) at 0035 (left page).

³⁵⁵ *E.g.* UPDF logbook, [UGA-OTP-0242-6018](#) at 6164 (left page).

³⁵⁶ P-0264, [T-64](#), p. 26; P-0245, [T-98](#), p. 48, 52-53.

³⁵⁷ *E.g.* P-0205, [T-48](#), p. 44.

³⁵⁸ *E.g.* P-0205, [T-48](#), p. 36-37; P-0054, [T-93](#), p. 22- 24; P-0379, [T-57](#), p. 53; P-0245, [T-99](#), p. 14.

³⁵⁹ *E.g.* P-0314, [T-75](#), p. 24-26, 30-32; [REDACTED].

³⁶⁰ *E.g.* P-0205, [T-48](#), p. 44; P-0097, [T-108](#), p. 12-13, 19 and 24; P-0309, [T-60](#), p. 30; P-0249, [T-79](#), p. 12; P-0144, [T-91](#), p. 33; P-0245, [T-98](#), p. 38; P-0189, [T-95](#), p. 41.

³⁶¹ P-0379, [T-59](#), p. 13. The standard gun in the LRA was an AK47.

P-0009 made similar observations with regard to the age of the children they saw who were too small to carry their guns.³⁶²

80. The nine child soldiers testified that they estimated the ages of other children in the brigade by comparing them to their own size and age.³⁶³ Witnesses also spoke of “kadogos” or “kadogi” (Swahili word meaning small). P-0236 explained that the term was used in the LRA for children aged 10-12, and she even heard Mr Ongwen use it.³⁶⁴ Child soldier P-0264, who stayed with Sinia Brigade throughout the charged period, recalled: “There were a number of us who were the same size, were referred to as kadogis”.³⁶⁵

81. Two witnesses commented on the age of children they saw depicted in photographs, which gave the Trial Chamber a visual understanding of what the witness meant when describing a child of a certain age.³⁶⁶ One witness explained that he estimated the ages on the basis of experience with his own children.³⁶⁷

82. Witnesses also spoke of nicknames given to children in Sinia Brigade on the basis of their size or behaviour. These nicknames are telling. For example, a boy called Adiri, who was Mr Ongwen’s escort, was named after a very small bird, because he too was very small.³⁶⁸ Another boy, who was estimated to be about 10 years old when he was in Terwanga Battalion, was nicknamed “Cio,” after the sound that a small bird makes.³⁶⁹ He received the nickname because his voice was “very, very tiny”.³⁷⁰

(c) The witnesses’ own ages and backgrounds are relevant factors that make their age estimates reliable

83. Many witnesses who testified about children in Sinia Brigade were themselves children or young adults at the time. Some were under 15 or not much older.³⁷¹ These individuals were well placed to estimate the ages of children whose age was close to theirs.

³⁶² P-0275, [UGA-OTP-0244-3398-R01](#) at 3407; P-0009, [T-81](#), p. 16.

³⁶³ P-0330, [T-52](#), p. 23; P-0309, [T-60](#), p. 16; P-0097, [T-108](#), p. 10-13; P-0252, [T-87](#), p. 24; P-0264, [T-64](#), p. 35, and 63-64; P-0307, [T-152](#), p. 64, 67; P-0309, [T-60](#), p. 16, 30, [T-61](#), p. 75-76; P-0314, [T-74](#), p. 19-20.

³⁶⁴ P-0236, [T-16](#), p. 33.

³⁶⁵ P-0264, [T-64](#), p. 35. *See also* P-0275, [UGA-OTP-0244-3398-R01](#) at 3403; P-0330, [T-52](#), p. 60-61.

³⁶⁶ P-0189, [T-95](#), p. 47-48; P-0009, [T-81](#), p. 42-47, referring to children pictured in [UGA-OTP-0245-0040](#) and [UGA-OTP-0245-0041](#).

³⁶⁷ P-0189, [T-95](#), p. 41.

³⁶⁸ P-0245, [T-98](#), p. 48-49.

³⁶⁹ P-0245, [T-99](#), p. 14.

³⁷⁰ P-0245, [T-99](#), p. 14.

³⁷¹ *E.g.* P-0379, P-0054 and the nine former child soldiers: P-0097, P-0252, P-0264, P-0275, P-0307, P-0309, P-0314, P-0330, P-0410.

84. The witnesses who testified about the age of children in Sinia Brigade were also all from the same geographical region and similar background as the children they were describing, and very often from the same ethnicity. This further enhances the reliability of their age estimates. Most witnesses were themselves members of the LRA. They lived in the same environment and shared the same living conditions with the observed children. [REDACTED].³⁷² Whilst exhaustion and malnutrition may have played some part in how the children in Sinia Brigade looked, the suggestion that *all* children in Sinia Brigade were older than 15 and merely *looked* younger to the dozens of people around them is unsupported by any evidence and is contrary to common sense.

2. Were the nine witnesses, whom the Prosecution says were child soldiers in Sinia Brigade, less than 15 years old during the charged period?

85. During their examination of P-0097, P-0252, P-0264, P-0275, P-0307, P-0309, P-0314, P-0330, and P-0410, the Defence repeatedly challenged the witnesses' purported age or date of birth. However, the Prosecution submits that the totality of evidence related to the age of these witnesses supports the fact that all nine were under 15 during at least part of the charged period.

86. The Trial Chamber does not have to make a finding about the exact birth date or even age of an individual in order to conclude that he or she was a child soldier. Rather, the Appeals Chamber confirmed that it suffices if the Trial Chamber is satisfied that a person was under the age of 15 years at the relevant time.³⁷³

87. The recording of age and date of birth in northern Uganda during the armed conflict was largely unreliable. There was no central civil register of births, and contemporaneous documents, even where they did exist, were frequently lost or destroyed.³⁷⁴ The documents recording the age of the nine witnesses that are available to the Trial Chamber include ID cards, birth certificates, school records, school ID cards, immunisation cards, voting slips, and driving permits.³⁷⁵

³⁷² [REDACTED].

³⁷³ *Lubanga Appeals Judgment*, para. 198.

³⁷⁴ *E.g.* P-0252, T-88, p. 43, 46; [REDACTED]; P-0309, T-61, p. 64; P-0410, T-152, p. 6-7.

³⁷⁵ *E.g.* UGA-OTP-0244-3418; UGA-OTP-0269-0711; UGA-OTP-0269-0719; UGA-OTP-0269-0720; UGA-OTP-0244-3419; UGA-OTP-0266-0446; UGA-OTP-0272-0951; UGA-OTP-0269-0703. *See also* table in subsection B of this chapter above with relevant documents listed for each of the nine child soldiers and the Prosecution's submissions about their age.

88. The Prosecution accepts that these documents are often based on self-reporting, either by the witness or his parents. This, however, does not make them unreliable. The nine witnesses gave detailed testimony about their date of birth or their age at the time of abduction, and how they came to know it. When questioned on this issue by the Parties and the Presiding Judge, they explained potential discrepancies between their stated age and the age recorded in the various documents. [REDACTED].³⁷⁶

89. The nine witnesses most often cited their parents (almost always the mother) as their source of knowledge of their dates of birth or ages.³⁷⁷ The Prosecution suggests that these sources are reliable. A mother who gives birth to a child will ordinarily be in the best position to know when that birth occurred. The information would then pass to the witnesses in contexts unrelated to litigation.³⁷⁸ Even the Defence observed that a mother knows a child's date of birth better than anyone else,³⁷⁹ seemingly accepting it as a reliable source.

90. Moreover, photographs taken of some of the former child soldiers shortly after they escaped from the LRA further corroborate their stated age. Although a photograph by itself cannot reveal a child's exact age or date of birth, it is evidence of physical appearance from which inferences about age or age range can validly be drawn. The witnesses confirmed it was them pictured in the photographs and it can also be established when or where the photographs were made.³⁸⁰ Some examples:³⁸¹

³⁷⁶ [REDACTED].

³⁷⁷ [REDACTED]; P-0309, [REDACTED], [T-61](#), p. [REDACTED], 63; P-0314, [T-75](#), p. 37; P-0410, [T-151](#), p. 6, [T-152](#), p. 6; [REDACTED].

³⁷⁸ *E.g.* P-0314, [T-75](#), p. 37.

³⁷⁹ [T-124](#), p. 25.

³⁸⁰ *E.g.* Photograph of P-0097, [UGA-OTP-0165-0050](#) in conjunction with [T-108](#), p. 59; photographs of P-0275, [UGA-OTP-0244-3419](#), [UGA-OTP-0244-3415](#) in conjunction with [T-124](#), p. 10; photograph of P-309, [UGA-OTP-0258-0836-R01](#) in conjunction with [T-61](#), p. 47; photograph of P-0314, [UGA-OTP-0269-0708](#) in conjunction with P-0314, [T-75](#), p. 40; photograph of P-0307, [UGA-OTP-0170-0338](#) in conjunction with [T-152](#), p. 72.

³⁸¹ From left to right: P-0097, [UGA-OTP-0165-0050](#); P-0275, [UGA-OTP-0244-3415](#); P-0314, [UGA-OTP-0269-0699](#) at 0700.

[REDACTED]

3. Did Mr Ongwen know that some of the children in Sinia Brigade were younger than 15?

91. Mr Ongwen knew that children under 15 were conscripted into Sinia Brigade, not least because some children directly reported their age to him. When P-0309 was abducted, Mr Ongwen asked him how old he was and P-0309 responded that he was 14 years old.³⁸²

92. Children under 15 were around Mr Ongwen throughout his career in Sinia Brigade,³⁸³ and he regularly interacted with them.³⁸⁴ Witnesses have repeatedly emphasised how it was a notable characteristic of Mr Ongwen that he liked to spend time and play with his escorts and other children in his unit.³⁸⁵ P-0236 heard Mr Ongwen use the word “kadogi”, a term reserved for child soldiers aged 10-12.³⁸⁶

93. Mr Ongwen also intentionally targeted children for abduction and there is no evidence whatsoever that he intended to depart from the established LRA policy and restrict abductions in Sinia brigade to children who were at least 15 years old. One witness heard Mr Ongwen say that the LRA should abduct young people, because they would not be able to escape.³⁸⁷ When P-0097 was abducted, he was taken to Mr Ongwen, who did not react in any way despite P-0097 appearing to be under 15.³⁸⁸ Other child soldiers in Sinia Brigade also looked well under 15 years, as evidenced by photographs taken of the witnesses shortly after they had escaped from the LRA.³⁸⁹

³⁸² P-0309, [T-60](#), p. 15, 20, [T-62](#), p. 6.

³⁸³ P-0097, [T-108](#), p. 18, [REDACTED]; P-0252, [T-87](#), p. 48; P-0264, [T-65](#), p. 83; P-0307, [UGA-OTP-0266-0425-R01](#) at 0434; [REDACTED].

³⁸⁴ P-0097, [T-108](#), p. 58; P-0252, [T-87](#), p. 46.

³⁸⁵ P-0099, [T-14](#), p. 41-44; D-0049, [T-243](#), p. 30; D-0100, [T-234](#), p. 34.

³⁸⁶ P-0236, [T-16](#), p. 33.

³⁸⁷ P-0330, [T-52](#), p. 59.

³⁸⁸ P-0097, [T-108](#), p. 15-16. *See* P-0097’s photograph in 2005 above at para. 90.

³⁸⁹ Photograph of P-0097, [UGA-OTP-0165-0050](#); Photographs of P-0275, [UGA-OTP-0244-3419](#), [UGA-OTP-0244-3415](#); Photograph of P-0309, [UGA-OTP-0258-0836-R01](#); Photograph of P-0314, [UGA-OTP-0269-0699](#) at 0700; [UGA-OTP-0269-0722](#) at 0723, Photograph of P-0252, [UGA-OTP-0269-0708](#); Photograph of P-0307, [UGA-OTP-0170-0338](#).

4. How did Mr Ongwen contribute to conscription and use of child soldiers in Sinia Brigade?

94. By 1 July 2002, Mr Ongwen was an accomplished LRA commander, advancing the very policy of which he was once a victim.³⁹⁰ He was a member of Sinia Brigade leadership throughout the charged period, and played an essential role in conscripting and using child soldiers in the brigade.³⁹¹

95. Mr Ongwen led by example, personally using children under 15 as escorts and in his personal entourage.³⁹² Both as Battalion Commander and as Brigade Commander, he ordered his fighters to abduct children to replenish LRA ranks. According to one Sinia Brigade fighter, children as young as 10 were targeted for abduction.³⁹³ When addressing the fighters that were to attack Odek in June 2004, for example, Mr Ongwen explicitly said they should go and abduct children.³⁹⁴ P-0205, an officer in Sinia Brigade, who described abduction missions in which children under 15 were abducted,³⁹⁵ explained Mr Ongwen's instructions about abductions as follows: "If he says go and abduct people, you walk, wherever you find somebody along the way you abduct them and keep on walking".³⁹⁶

96. Mr Ongwen instructed and monitored children's training,³⁹⁷ and decided when children should be armed.³⁹⁸ D-0068 testified that Mr Ongwen was given regular reports about the training of recruits, who included children under 15.³⁹⁹ Mr Ongwen also ordered punishments against child soldiers, some of which were described by P-0097 and P-0307, themselves child soldiers. P-0097 was taken to Mr Ongwen when he lost the saucepans he was carrying, and Mr Ongwen ordered his beating.⁴⁰⁰ On another occasion, Mr Ongwen ordered the same witness to watch a boy who tried to escape being killed, in order to dissuade

³⁹⁰ During his initial appearance on 26 January 2015, Mr Ongwen stated that he was 14 when he was abducted by the LRA in 1988. See [T-4](#), p. 4.

³⁹¹ This subchapter should be read in conjunction with other chapters of this Closing Brief, in particular Chapter II above.

³⁹² P-0330, [T-51](#), p. 68-69; P-0309, [T-60](#), p. 24-25, [REDACTED]; P-0314, [T-74](#), p. 50, 52, [T-75](#), p. 30-32; P-0226, [T-8](#), p. 48-50.

³⁹³ E.g. P-0054, [T-93](#), p. 22, [T-94](#), p. 27-28.

³⁹⁴ P-0314, [T-75](#), p. 4. See also P-0314, [T-75](#), p. 2 and 8.

³⁹⁵ E.g. P-0205, [T-47](#), p. 18.

³⁹⁶ P-0205, [T-47](#), p. 41.

³⁹⁷ D-0068, [T-223](#), p. 20-21; P-0245, [T-98](#), p. 51-52; T-0379, [T-56](#), p. 21; P-0307, [T-153](#), p. 20-22 and [UGA-OTP-0266-0425-R01](#) at 0440.

³⁹⁸ P-0245, [T-98](#), p. 37-38; P-0054, [T-93](#), p. 23.

³⁹⁹ D-0068, [T-223](#), p. 18-21.

⁴⁰⁰ P-0097, [T-108](#), p. 50.

the witness from attempting escape as well.⁴⁰¹ P-0307 described an occasion when he had failed to salute Mr Ongwen, and Mr Ongwen's reaction: "[H]e got up with a knife and he said, 'Hey, is this a civilian home that you are entering like this?' and then he ordered that I should lie down and they should beat me at the back of my head. I lay down and, put my face to the ground and they hit my head gently".⁴⁰²

97. Children under 15 were deployed on military operations under Mr Ongwen's authority and otherwise used to participate actively in hostilities when Mr Ongwen was Battalion Commander as well as when he was Brigade Commander.⁴⁰³ During the Pajule attack, he directly ordered P-0309, a child soldier at the time, to abduct two people.⁴⁰⁴ [REDACTED].⁴⁰⁵

5. Was P-0330 a member of Sinia Brigade and Mr Ongwen's escort?

98. The Defence suggested that P-0330 was not a member of Mr Ongwen's unit or his escort.⁴⁰⁶ The evidence shows otherwise.

99. First, P-0330 repeatedly and unequivocally stated that Mr Ongwen was his commander, several times directly rejecting the Defence's challenges to the contrary.⁴⁰⁷ [REDACTED]⁴⁰⁸ – [REDACTED].⁴⁰⁹ Third, although P-0330 did not recognise the names of some Sinia Brigade fighters, this is easily explained: as a low-ranking escort he was not necessarily privy to the names of other commanders. For a child of his age and stature in the LRA, every soldier was a "lapwony" (an Acholi word for "teacher", used as a respectful form of address for LRA commanders).⁴¹⁰ That said, P-0330 *did* name several commanders whose affiliation with Sinia Brigade in the charged period is undisputed, like Kidega Pakpala,⁴¹¹ Kalalang,⁴¹² and Abongomek⁴¹³. Similarly, the witness named some of Mr Ongwen's forced

⁴⁰¹ P-0097, T-108, p. 51. See also P-0097, T-108, p. 42 (describing how Mr Ongwen ordered a boy to be beaten because he did not cook well).

⁴⁰² P-0307, T-153, p. 12. See also UGA-OTP-0266-0425-R01 at 0430.

⁴⁰³ See para. 100-104 below. See also P-0307, UGA-OTP-0266-0425-R01 at 0433; P-0097, T-108, p. 21-22; P-0245, T-99, p. 12-13; P-0067, T-125, p. 25-26.

⁴⁰⁴ P-0309, T-60, p. 62-63.

⁴⁰⁵ [REDACTED].

⁴⁰⁶ Defence Examination of P-0330, T-55, p. 29-30, 50-51, 78-79.

⁴⁰⁷ P-0330, T-51, [REDACTED], 53-56, 78, T-52, p. 13, T-53, p. 81-82, T-55, p. 50, 77-79.

⁴⁰⁸ [REDACTED].

⁴⁰⁹ [REDACTED].

⁴¹⁰ P-0330, T-55, p. 45. See also P-0307, T-153, p. 24.

⁴¹¹ P-0330, T-53, p. 22.

⁴¹² P-0330, T-51, p. 57.

⁴¹³ P-0330, T-51, p. 75-77; T-52, p. 14, 31; T-55, p. 79.

wives,⁴¹⁴ which he would not be able to do if he were not close to Mr Ongwen. P-0330 also spoke extensively about a fighter named Odoki,⁴¹⁵ who was confirmed to be a fighter in Sinia Brigade by [REDACTED] and P-0264.⁴¹⁶ In conclusion, P-0330's testimony is credible and reliable because it is internally consistent and corroborated by other sources.

6. How were children in Sinia Brigade used to participate actively in hostilities?

100. The Appeals Chamber in *Lubanga* found that, in order to determine whether an activity constitutes the crime of using child soldiers "it is necessary to analyse the link between the activity for which the child is used and the combat in which the armed group is engaged".⁴¹⁷ Such a link exists where children were used for, *inter alia*, gathering of information, transmitting orders and military information, transporting arms, ammunition and foodstuffs, scouting, spying, and acting as bodyguards.⁴¹⁸ Children under 15 in Sinia Brigade performed these and other activities linked to combat. As one child soldier vividly explained: "We were like small ants. [...] We wait for orders. You know, when the ordinary ants are sent, they would do whatever they are told to do".⁴¹⁹

101. P-0054 confirmed that children in Sinia Brigade were using guns after Operation Iron Fist (*i.e.*, after March 2002).⁴²⁰ One Sinia Brigade child soldier stated: "We were given the guns and we were told that this [gun] was our mother, our father, [and that] our life is dependent on the gun and so if we lose it, then that will also be the end of us".⁴²¹

102. Children under 15 directly participated in combat against the UPDF and when mounting attacks on civilian locations.⁴²² They were also in Sinia Brigade as part of security, including in the "dog adaki",⁴²³ which in the LRA referred to those standing guard at a particular location.⁴²⁴ When laying ambushes, the children participated alongside LRA

⁴¹⁴ P-0330, T-52, p. 64-65.

⁴¹⁵ P-0330, T-51, p. 67, 75-76; [REDACTED].

⁴¹⁶ [REDACTED]; P-0264, T-64, p. 72-73.

⁴¹⁷ *Lubanga Appeals Judgment*, para. 340; *Ntaganda Trial Judgment*, para. 1108.

⁴¹⁸ *Lubanga Appeals Judgment*, para. 340. *See also Ntaganda Trial Judgment*, para. 1108.

⁴¹⁹ P-0252, T-87, p. 48-49.

⁴²⁰ P-0054, T-93, p. 24. For the timing of Operation Iron Fist *see, e.g.*, P-0422, UGA-OTP-0270-0004 at 0027.

⁴²¹ P-0314, T-74, p. 20.

⁴²² P-0205, T-48, p. 33-34, 38-41; P-0054, T-93, p. 28; P-0245, T-98, p. 32, 41, 50-51; P-0264, T-64, p. 33-35; *See also* P-0307, [REDACTED], p. 65; P-0309, T-60, p. 59, 60-61 (Pajule), T-61, p. 14-15, 17 (Lanyatido), T-61, p. 18-19 (Palaro/Labwor Omor), T-61, p. 22-24 (Atanga); P-0231, T-122, p. 75-76; D-0068, T-223, p. 22.

⁴²³ P-0379, T-56, p. 29-30; P-0330, T-51, p. 67. *See also* D-0056, T-229, p. 15.

⁴²⁴ *E.g.* P-0379, T-56, p. 29, T-57, p. 70-72; P-0406, T-154, p. 37-38 and UGA-OTP-0263-2804.

fighters.⁴²⁵ Children were also used as scouts in observation posts (commonly referred to by witnesses as “O.P.s”) to keep watch and alert Sinia Brigade fighters about the enemy’s movements.⁴²⁶

103. Commanders and fighters in Sinia Brigade, including Mr Ongwen, routinely used children under 15 as escorts.⁴²⁷ Mr Ongwen’s escorts were always with him.⁴²⁸ Escorts followed their superiors into battle⁴²⁹ and everywhere else. As P-0307, an escort to a fighter in Sinia Brigade, noted: “If you are an escort of somebody, you do not remain anywhere. You go wherever he goes”.⁴³⁰ The role of escorts included carrying their commander’s weapons and other belongings, and ensuring his security.⁴³¹ Escorts were also tasked with guarding women and girls in the households of commanders.⁴³² Children under 15 carried food, ammunition, and other items during movements.⁴³³

104. Children under 15 in Sinia Brigade participated in attacks on IDP camps,⁴³⁴ including the four charged attacks in Pajule,⁴³⁵ Odek,⁴³⁶ Lukodi⁴³⁷ and Abok⁴³⁸. As one of the child soldiers noted, the commanders did not segregate adults from children prior to the attack; they were all lined up together.⁴³⁹ Children had different roles during the attacks. Those who were armed with guns fought in the attacks;⁴⁴⁰ [REDACTED].⁴⁴¹ [REDACTED],⁴⁴² [REDACTED].⁴⁴³ Those who were not armed during attacks were tasked with raising the alarm or making noise to

⁴²⁵ P-0379, T-56, p. 29-31; P-0252, T-87, p. 53-55; P-0245, T-99, p. 12-13; D-0068, T-223, p. 23.

⁴²⁶ P-0309, T-62, p. 28; P-0252, T-87, p. 56; P-0264, T-64, p. 35; P-0275, UGA-OTP-0244-3398-R01 at 3409; P-0379, T-56, p. 28-29.

⁴²⁷ P-0379, T-56, p. 26, 32; P-0264, T-64, [REDACTED] 26-27; P-0249, T-79, p. 48; P-0307, T-152, p. 64-65, UGA-OTP-0266-0425-R01 at 0432; P-0314, T-74, p. 50, 52, T-75, p. 30-31; P-0330, T-51, p. 68-69; P-0236, T-16, p. 28-29.

⁴²⁸ P-0314, T-74, p. 52; P-0379, T-56, p. 26.

⁴²⁹ P-0307, T-152, p. 65. *See also* P-0314, T-74, p. 52.

⁴³⁰ P-0307, T-152, p. 65.

⁴³¹ P-0252, T-87, p. 44-45; P-0264, T-64, p. 26-28; P-0309, T-60, p. 24-25, [REDACTED]; P-0330, T-51, p. 68.

⁴³² P-0330, T-51, p. 69; P-0264, T-64, p. 26; P-0314, T-74, p. 52.

⁴³³ D-0056, T-229, p. 12-13.

⁴³⁴ P-0379, T-56, p. 37-40, 46; P-0275, UGA-OTP-0244-3398-R01 at 3407; P-307, T-152, p. 66; P-0245, T-99, p. 41-42.

⁴³⁵ P-0309, T-60, p. 59-61; P-0330, T-51, p. 73, 81, [REDACTED]; P-0249, T-79, p. 11-12, 33; P-0009, T-81, p. 16; P-0144, T-91, p. 33.

⁴³⁶ P-0054, T-93, p. 29; P-0264, T-64, p. 38-54; P-0275, UGA-OTP-0244-3398-R01 at 3401; P-0309, T-60, p. 76; P-314, T-75, p. 5; P-0410, T-151, p. 29, 39-40; P-0330, T-52, p. 14-28.

⁴³⁷ P-0245, T-99, p. 70; P-0410, T-151, p. 64.

⁴³⁸ P-0252, T-89, p. 40; P-0330, T-52, p. 28-29, 32, 35-36.

⁴³⁹ P-0252, T-87, p. 76.

⁴⁴⁰ P-0330, T-52, p. [REDACTED], 44, 50; P-0144, T-91, p. 33.

⁴⁴¹ [REDACTED].

⁴⁴² [REDACTED].

⁴⁴³ [REDACTED]; P-0245, T-99, p. 53-54.

exaggerate the perception of LRA strength.⁴⁴⁴ Thereafter, children under 15 were used to carry looted items from attack sites.⁴⁴⁵ In fact, many abducted children were forced to carry loot from the attacked locations *as* they were being abducted.⁴⁴⁶

7. Is the Chamber required to enter findings on exact dates and exact locations of instances where child soldiers were used to participate actively in hostilities?

105. For the reasons explained below, the Prosecution submits that exact findings regarding location and date of the use of child soldiers actively participating in hostilities are not necessary, provided that the Trial Chamber is satisfied that the events took place within the temporal and geographical scope of the charges (northern Uganda, 1 July 2002 – 31 December 2005).⁴⁴⁷

106. Given the nature of the armed conflict and the way in which the LRA, including Sinia Brigade, operated, identifying exact dates and locations at which child soldiers were conscripted and used is sometimes not possible. This is particularly true for instances of use such as escorting, carrying ammunition and foodstuffs, or scouting in observation posts. The victims and perpetrators moved every few days in the bush.⁴⁴⁸ They often travelled in remote areas, away from named settlements, covering large distances, and moved in a roundabout way rather than directly between locations.⁴⁴⁹ Most witnesses who were rank and file fighters, some of them children and young adults, were not familiar with the areas of movement and could not name the locations of the events they were describing. Occasionally, they overheard seasoned LRA fighters discuss locations and drew inferences from that.⁴⁵⁰

107. Similar observation can be made for the passage of time. The vast majority of witnesses abducted by the LRA had difficulty remembering the exact timing of events in the bush.⁴⁵¹ The LRA was moving constantly, and ordinary fighters had little autonomy, just following and

⁴⁴⁴ P-0252, T-87, p. 32-33, P-0275, T-124, p. 44; P-0410, T-151, p. 43.

⁴⁴⁵ P-0054, T-93, p. 29; P-0307, T-152, p. 66.

⁴⁴⁶ P-0097, T-108, p. 9-10; P-0275, UGA-OTP-0244-3398-R01 at 3401; P-0410, T-151, p. 17; P-0061, UGA-OTP-0144-0043-R01 at 0046.

⁴⁴⁷ *Ntaganda Confirmation Decision*, para. 83.

⁴⁴⁸ P-0097, T-108, p. 18. *See also* P-0314, T-75, p. 51.

⁴⁴⁹ P-0307, UGA-OTP-0266-0425-R01 at 0430-0431; P-0340, T-102, p. 14-15; P-0252, T-89, p. 19; P-0309, T-61, p. 58; P-0314, T-75, p. 79-80, T-76, p. 6, 11-13, 28, 51.

⁴⁵⁰ P-0097, T-109, p. 29-30; P-0275, UGA-OTP-0244-3398-R01 at 3408; [REDACTED].

⁴⁵¹ P-0330, T-54, p. 51 (“I don’t understand the concept of years”); P-0275, T-124, p. 64 and 67 (“[T]hings related to dates and days, you don’t think about them while in the bush”, “[W]hen it comes to days and seasons and periods, it’s not very important. It was not important then”); P-0307, T-153, p. 24 (“When you are in the bush you do not count time and dates. You do not know when, the day and the date and all that”). *See also* P-0309, T-62, p. 40; P-0314, T-75, p. 68.

executing orders of their superiors.⁴⁵² This was particularly true for children, including the nine witnesses who are former child soldiers. One stated that two years in the bush seemed like fifty years.⁴⁵³ Keeping track of days, months and years in the bush was difficult, and the concept of time was understandably elusive. A requirement of precision in this regard, if the Chamber were otherwise satisfied that the crimes took place within the temporal and geographical scope of the charges, would defeat the aims of justice.

⁴⁵² P-0097, T-108, p. 18; P-0252, T-87, p. 49.

⁴⁵³ P-0314, T-75, p. 71.

IV. Sexual and gender-based crimes not directly perpetrated by Mr Ongwen (Counts 61-68)

A. Introduction

108. Many witnesses testified regarding the abduction of women and girls by the LRA, and by Sinia Brigade in particular, and their ensuing victimisation through SGBC. The testimony of 16 SGBC victims,⁴⁵⁴ 28 commanders and fighters,⁴⁵⁵ and the other evidence cited in this section is illustrative of the evidence on which the Trial Chamber can rely to convict Mr Ongwen of Counts 61-68.

109. This evidence established that abducted women and girls in Sinia Brigade were enslaved (Count 68),⁴⁵⁶ sexually enslaved (Counts 66-67),⁴⁵⁷ raped (Counts 64-65),⁴⁵⁸ tortured (Counts 62-63),⁴⁵⁹ and forcibly married (Count 61).⁴⁶⁰ It also demonstrates that Mr Ongwen, as one of Sinia Brigade's battalion commanders and later as the Brigade Commander, played a central role in the commission of SGBC. The Prosecution submits that Mr Ongwen's individual criminal liability for these crimes is best characterised as indirect co-perpetration under article 25(3)(a) of the Statute, although the evidence would support conviction under any of the charged modes of liability.

⁴⁵⁴ P-0099, P-0101, P-0214, P-0226, P-0227, P-0235, P-0236, P-0351, P-0352, P-0366, P-0374, P-0396, P-0269, P-0448, D-0049, D-0117.

⁴⁵⁵ P-0142, P-0406, P-0205, P-0245, P-0379, P-0448, P-0250, P-0070, P-0264, P-0233, P-0252, P-0275, P-0309, P-0330, P-0410, D-0056, D-0068, P-0097, P-0138, P-0231, P-0200, P-0372, P-0307, P-0314, P-0085, D-0134, D-0026, P-0172.

⁴⁵⁶ *E.g.*, P-0366, [T-147](#), p. 19, [UGA-OTP-0260-0289-R01](#), at 0293, 0300-0301; P-0351, [T-129](#), p. 7-8, [UGA-OTP-0263-0002-R01](#) at 0006-0009, 0012-0013; P-0352, [UGA-OTP-0260-0315-R01](#) at 0318-0320, 0326-0327, [T-67](#), p. 16, 21-22; P-0374, [T-150](#), p. 7, 10, [UGA-OTP-0263-0023-R01](#) at 0030-0031, 0039; P-0396, [UGA-OTP-0267-0246-R01](#) at 0250-0252, 0258; P-0448, [UGA-OTP-0236-0557-R01](#) at 0560-0561, 0566-0567, [T-156](#), p. 33-34, 37-38, [T-157](#), p. 9. *See also* additional examples referenced in para. 156, fn. 547 and 548.

⁴⁵⁷ *E.g.*, P-0366, [UGA-OTP-0260-0289-R01](#) at 0300-0301; P-0351, [UGA-OTP-0263-0002-R01](#) at 0012-0013; P-0352, [T-67](#), p. 26-27, 32; P-0374, [T-150](#), p. 7, 14-15, [UGA-OTP-0263-0023-R01](#), p. 0031; P-0396, [UGA-OTP-0267-0246-R01](#) at 0257; *See* additional examples referenced in para. 156, fn. 547 and 548.

⁴⁵⁸ *E.g.*, P-0366, [T-147](#), p. 24, [UGA-OTP-0260-0289-R01](#) at 0301-0302; P-0351, [T-129](#), p. 8-9, [UGA-OTP-0263-0002-R01](#) at 0013; P-0352, [T-67](#), p. 20-21, 32, 39-40; P-0374, [T-150](#), p. 14-15, [UGA-OTP-0263-0023-R01](#) at 0037-0038; P-0396, [T-126](#), p. 66-67, [UGA-OTP-0267-0246-R01](#) at 0257; *See* additional examples referenced in para. 156, fn. 547 and 548.

⁴⁵⁹ *E.g.*, P-0366, [T-147](#), p. 12-16, 22 and 24, [UGA-OTP-0260-0289-R01](#) at 0297-0298, 0301-0302, 0304; P-0351, [T-129](#), p. 8-9, 11, [UGA-OTP-0263-0002-R01](#) at 0007, 0013; P-0352, [UGA-OTP-0260-0315-R01](#) at 0321-0322, 0330; [T-67](#), p. 20-21, 32, 39-40; P-0374, [T-150](#), p. 13-15; [UGA-OTP-0263-0023-R01](#) at 0032, 0034, 0037-0038; P-0396, [T-126](#), p. 66-67, [UGA-OTP-0267-0246-R01](#) at 0257; *See* additional examples referenced in para. 156, fn. 547 and 548.

⁴⁶⁰ *E.g.*, P-0366, [T-147](#), p. 12-16, [UGA-OTP-0260-0289-R01](#) at 0300-0301; P-0351, [T-129](#), p. 7-8, 11, [UGA-OTP-0263-0002-R01](#) at 0012-0013; P-0352, [T-67](#), p. 26-28, 32; P-0374, [T-150](#), p. 7, [UGA-OTP-0263-0023-R01](#) at 0037-0038; P-0396, [T-126](#), p. 63-64, 67, [UGA-OTP-0267-0246-R01](#) at 0249, 0254-0256; P-0448, [UGA-OTP-0236-0557-R01](#) at 0560-0561, 0566-0567, [T-156](#), p. 33-34, 37-38; *See* additional examples referenced in para. 156, fn. 547 and 548.

B. Prosecution case theory

110. SGBC against women and girls was a defining feature of the LRA. Over decades, including the charged period, thousands of women and girls, often when they were still children, were abducted, distributed to LRA fighters and commanders, and subjugated to the LRA's SGBC regime.

111. The Prosecution's case is that, just as in other LRA units, hundreds of women and girls were abducted, forcefully kept, and further victimised in Sinia Brigade throughout the charged period. Women and girls in Sinia Brigade were abducted and distributed to fighters and commanders with no choice on their part and, according to their age, either enslaved to perform household tasks until they were older (as *ting tings*), or raped, and sexually enslaved. They were unable to refuse performing their tasks or being forcibly married and raped throughout their forced marriages, as resistance resulted in beatings or death. These SGBC were committed in an environment of fear, threat, and coercion against them. Many of the victims continue to suffer the consequences and stigmatisation today.

112. Mr Ongwen was at the heart of these crimes committed in Sinia Brigade. As the commander first of Oka Battalion and later of the entire brigade, he facilitated and actively ordered the abductions of women and girls. He played a key role in their distribution; sometimes he chose them for his own use, but more often he distributed them to his subordinates as a reward or incentive.

C. Key issues related to SGBC not directly perpetrated by Mr Ongwen

113. The Prosecution addresses four key issues which appear to be disputed by the Parties, or may inform the Trial Chamber's decision making:

- a. How was the LRA's policy of SGBC implemented in Sinia Brigade?
- b. What was Mr Ongwen's role in the SGBC perpetrated in Sinia Brigade?
- c. Did LRA rules regulating sex and "marriage" have an impact on the conduct charged in Counts 61, 64 and 65?
- d. Did P-0351, P-0352, P-0366, P-0374, and P-0396 testify credibly about their experiences in Sinia Brigade?

1. How was the LRA's policy of SGBC implemented in Sinia Brigade?

114. The Trial Chamber received evidence from seven victims of SGBC committed by Mr Ongwen himself,⁴⁶¹ and further examples from P-0351, P-0352, P-0366, P-0374 and P-0396, who were victims of SGBC committed by LRA fighters in Sinia Brigade. This and other evidence shows that SGBC in Sinia Brigade were carried out in an institutionalised manner, essentially replicating the systematic pattern by which the LRA abducted, enslaved, forcibly married, raped, sexually enslaved, and tortured women and girls. Tellingly, the Defence does not appear to contest that such a system existed, or even that it was implemented in Sinia Brigade. It has, however, challenged some of the details alleged in the charges and in the victims' testimony.

115. The Prosecution emphasises that the evidence of SGBC committed in Sinia given by P-0351, P-0352, P-0366, P-0374, and P-0396 should not be viewed in a vacuum, but rather in the context of each other's testimony and the evidence as a whole. Within their accounts, in addition to their own victimisation, each of these witnesses gave examples of SGBC committed against other women and girls in Sinia Brigade and in the LRA. Several other witnesses, including victims and former LRA fighters and commanders, also gave specific examples of SGBC in Sinia Brigade. Taken together, this evidence gives rise to a powerful inference that almost all the abducted women and girls in Sinia Brigade (indeed in the LRA) had broadly similar experiences of victimisation.

116. Witnesses [REDACTED] and [REDACTED] testified that they received their forced wives at the specific direction of Mr Ongwen.⁴⁶² P-0314 testified about specific commanders in Sinia who had "wives", such as Otto, Okello, and Okot. He testified that the abducted girls were handed over to Mr Ongwen. After Mr Ongwen had selected some of the abducted girls for himself, the rest of the girls would either be given as "wives" to boys of age, or be assigned to households as *ting tings* and then later be given as "wives". The girls had no choice in the matter. [REDACTED].⁴⁶³

⁴⁶¹ P-0099, P-0101, P-0214, P-0226, P-0227, P-0235, P-0236. *See also* Section V below.

⁴⁶² [REDACTED]; [REDACTED].

⁴⁶³ [REDACTED].

117. P-0070, a senior commander [REDACTED], stated that most commanders in the LRA had “wives”. Some had 10 or 20. Kony himself had 90 “wives”.⁴⁶⁴ P-0142 testified that there were a huge number of women and girls in Sinia Brigade in the 2003-2004 period, ranging between 13 and 20 years old, all of whom had been abducted. He estimated there were more than 100 “wives” during that period, and anywhere between 30 and 70 younger girls who were not yet married. Any Sinia officer of higher rank would have one, two, or three “wives”. [REDACTED].⁴⁶⁵ P-0226 testified that in 2002, when they returned to Uganda, Mr Ongwen himself had about 20 “wives”, whom he rotated as his nocturnal partners.⁴⁶⁶ P-0374 estimated that, during the time she was with the group, between 200-300 of the 500 people in Sinia Brigade were “wives” or *ting tings*.⁴⁶⁷

118. These crimes of enslavement, torture, forced marriage, rape, and sexual slavery were committed in a coercive environment and according to strict rules and expectations.⁴⁶⁸ For example, women and girls were forced to beat or kill other abductees for attempting escape or breaking rules, often on Mr Ongwen’s orders.⁴⁶⁹ Women and girls were threatened and had to obey the demands of the men to whom they were distributed, or else be killed or severely punished.⁴⁷⁰ P-0374 testified that she was raped by the fighter to whom she was given, who told her she was going to be his “wife”, sleep with him, and have his children. He beat and threatened to kill her if she disrespected him or refused to do what he told her. P-0374 stated that she does not know of any girl or woman who willingly became a “wife”.⁴⁷¹

119. Mr Ongwen maintained and reinforced the atmosphere of fear, threats, and intimidation surrounding women and girls in Sinia Brigade,⁴⁷² directly ensuring that his orders regarding women and girls were executed. P-0366, for example, having witnessed Mr Ongwen distribute her and four other girls to his escorts, described how Mr Ongwen oversaw their “marriage” ceremony and told them to stay with and obey the person he gave them to or else be beaten. Her “husband” told her that she would live with him, as she had now been initiated. When she

⁴⁶⁴ P-0070, [T-105](#), p. 40-41, [T-106](#), p. 38-39; *see also* P-0379, [T-57](#), p. 44-47; P-0226, [T-8](#), p. 36; D-0134, [T-241](#), p. 5-6.

⁴⁶⁵ [REDACTED].

⁴⁶⁶ P-0226, [T-8](#), p. 45.

⁴⁶⁷ P-0374, [T-150](#), p. 7.

⁴⁶⁸ P-0351, [UGA-OTP-0263-0002-R01](#) at 0010, [UGA-OTP-0260-0315-R01](#) at 0322; P-0352, [T-67](#), p. 53-54; P-0374, [UGA-OTP-0263-0023-R01](#) at 0035-0036, [T-150](#), p. 45; D-0049, [T-243](#), p. 47-48.

⁴⁶⁹ P-0366, [UGA-OTP-0260-0289-R01](#) at 0298, [T-147](#), p. 21-22; P-0352, [UGA-OTP-0260-0315-R01](#) at 0330.

⁴⁷⁰ P-0396, [UGA-OTP-0267-0246-R01](#) at 0257; D-0049, [T-243](#), p. 56-57.

⁴⁷¹ P-0374, [UGA-OTP-0263-0023-R01](#) at 0037-0038, [T-150](#), p. 14-15.

⁴⁷² P-0396, [UGA-OTP-0267-0246-R01](#) at 0256, [T-126](#), p. 63-64; P-0351, [UGA-OTP-0263-0002-R01](#) at 0012-0013, [T-129](#), p. 7-8.

refused, Mr Ongwen ordered that she be caned by 60 strokes, and watched as the punishment was administered. P-0366 was subsequently raped, believing that if she did not have sex with her “husband”, she would be taken back to Mr Ongwen and killed. None of the girls, said P-0366, could refuse to be a “wife”. She saw them being beaten if they refused, and heard of others being killed for the same reason.⁴⁷³ P-0352 witnessed Mr Ongwen issuing a similar threat to a girl and telling her to “choose between going to this man or death”.⁴⁷⁴

2. What was Mr Ongwen’s role in the SGBC committed in Sinia Brigade?

(a) Mr Ongwen played an essential role in the abduction of women and girls

120. The Defence has suggested that Kony had the sole authority to order abductions of women and girls in the LRA (and therefore Sinia Brigade).⁴⁷⁵ That is not the case. The evidence shows that abductions were carried out by Sinia fighters under Mr Ongwen’s own orders, even at times when Kony had issued temporary orders to stop abductions. For example, P-0205 testified about abductions carried out under Mr Ongwen’s orders. When asked how some of these would have occurred at the time of a revoked order, P-0205 testified that a fighter could do more than what was authorised in a particular job and that a particular commander could order abductions on his own initiative, hide the abductees, and report on them after an elapsed period. [REDACTED].⁴⁷⁶

121. Even if, for the sake of the argument, Kony ordered the abduction of every individual woman or girl, Mr Ongwen’s role in the implementation of those orders in Sinia Brigade was still of critical importance. Kony could not have personally abducted all the women and girls himself, nor could he have determined specifically when and where abductions should take place. Instead, he had to rely on his subordinates for the implementation and execution of his orders.⁴⁷⁷ P-0233, for example, testified that orders were given to commanders in an area where people could be abducted. If Kony wanted the abduction of girls to become “wives”, he would give that order to the commanders in Uganda, and those orders would be sent to fighters below

⁴⁷³ P-0366, [UGA-OTP-0260-0289-R01](#) at 0300-0302 and 0304.

⁴⁷⁴ P-0352, [UGA-OTP-0260-0315-R01](#) at 0326.

⁴⁷⁵ [T-179](#), p. 49. *See also* [ICC-02/04-01/15-404-Red2](#), para. 26.

⁴⁷⁶ [REDACTED]; *See also* P-0245, [T-98](#), p. 15-16, 18-19; P-0233, [T-111](#), p. 52-54, 56-57.

⁴⁷⁷ *See*, for example, para. 16-20 above.

to put them into action.⁴⁷⁸ For the abduction of *ting tings* as well, the intercept evidence shows that Kony relied on his subordinates, including Mr Ongwen.⁴⁷⁹

122. P-0205 testified that if Mr Ongwen ordered his fighters to go and abduct people, they would do so wherever they found their victims. He also testified that, in 2004, Mr Ongwen told the fighters who were meant to attack Odek IDP camp that if they “found good girls they should be abducted”. They abducted girls on Mr Ongwen’s orders and brought them back to him.⁴⁸⁰ P-0245 testified about the abduction of children in Odek, and described Mr Ongwen releasing the older abductees and keeping the young boys and girls. He also stated that the fighters returned with children, including girls, from Lukodi.⁴⁸¹ [REDACTED].⁴⁸²

123. P-0379 was abducted by Mr Ongwen’s group along with 150 other people, 100 of whom were young. Fifty of these young abductees were distributed to Oka Battalion, commanded by Mr Ongwen at the time. Whenever there was an operation, abductions were part of it.⁴⁸³ P-0054, a member of Mr Ongwen’s brigade, testified that in 2004 the fighters were abducting boys and girls in large numbers and that the abductions were ordered by the Brigade Commander.⁴⁸⁴

124. [REDACTED].⁴⁸⁵

125. Mr Ongwen’s operational control over Sinia Brigade is also apparent from the reporting of abductions.⁴⁸⁶ When radio-ing in his operational report about Odek, with Kony and Otti on air, Mr Ongwen stated that he had captured eight men and women.⁴⁸⁷ Mr Ongwen received reports about abductions by P-0205 and issued instructions about how, where, and by whom abductees should be kept. [REDACTED].⁴⁸⁸

⁴⁷⁸ P-0233 at T-111, p. 25-26, *See also* P-0138, T-120, p. 23; P-0070, T-105, p. 85-87.

⁴⁷⁹ ISO logbook, UGA-OTP-0163-0007 at 0169; *See also* ISO logbook, UGA-OTP-0063-0002 at 0151 and UPDF logbook, UGA-OTP-0254-0725 at 1069.

⁴⁸⁰ P-0205, T-47, p. 41, 44, 47[REDACTED]. P-0406 similarly said that, before the attack on Odek, Ongwen told the fighters to abduct people under 18. P-0406 at T-154, p. 43.

⁴⁸¹ P-0245, T-99, p. 54-55, 64, 72.

⁴⁸² [REDACTED].

⁴⁸³ P-0379, T-56, p. 10-11, 18-19, 45-46, 49, 51-52. *See also* P-0264, T-66, p. 36-37.

⁴⁸⁴ P-0054, T-94, p. 27.

⁴⁸⁵ [REDACTED].

⁴⁸⁶ *See*, for example, para. 19, 26-28, 36, 61 above.

⁴⁸⁷ P-0059, T-37, p. 7-9.

⁴⁸⁸ [REDACTED].

126. These examples show that Mr Ongwen played an essential role in the abduction of women and girls by Sinia Brigade during the charged period. Whether he was implementing Kony's orders, or acting on his own initiative, the evidence demonstrates that Mr Ongwen ordered and supervised abductions.

(b) Mr Ongwen played an essential role in the distribution of women and girls

127. The Defence has also suggested that nobody apart from Kony could decide on the distribution of women and girls in the LRA.⁴⁸⁹ If that was the case, Kony must have personally authorised the distribution of every one of the thousands of women and girls abducted by the LRA during the charged period,⁴⁹⁰ matching each to an individual commander or fighter in one of the coys, battalions, brigades, or other units of the LRA. While the Prosecution acknowledges that Kony played a significant role in the distribution of women and girls in the LRA, at least until Operation Iron Fist, the Defence's position is not supported by the evidence, which makes clear that commanders subordinate to Kony, including Mr Ongwen, played an essential role in distribution.

128. According to P-0142, for example, the authority to distribute "wives" came from Kony, based on reports of how many commanders or fighters needed a "wife" and how many girls were available. However, it was officers like Mr Ongwen who decided how to implement the instructions to distribute girls within their brigades. P-0142 distinguished between the distribution of girls within the LRA as an overall group, which was done by Kony and his commanders, and distribution within a particular brigade like Sinia, which was done by Mr Ongwen and his operations room.⁴⁹¹ P-0264 similarly said that rules pertaining to women in the LRA were issued by Kony, but that the distribution of women as *ting tings* was done at battalion level and reported up to the brigade commander.⁴⁹² P-0085, [REDACTED], testified about the distribution at the brigade and battalion level in Sinia. The brigade commander, having enquired with the battalion commander about the men fit to have "wives", would hand over the requisite number of girls to him. The battalion commander would then distribute the girls and report back to the brigade commander.⁴⁹³

⁴⁸⁹ T-107, p. 43-44; T-179, p. 49; ICC-02/04-01/15-404-Red2, para. 26. See also D-0056, T-228, p. 25-28.

⁴⁹⁰ P-0422, UGA-OTP-0270-0004 at 0028-0029.

⁴⁹¹ P-0142, T-71, p. 27, 31, 57-58.

⁴⁹² P-0264, T-66, p. 38-40. See also P-0138, T-120, p. 27-28; P-0372, T-149, p. 53.

⁴⁹³ P-0085, T-158, p. 46-48.

129. D-0068 testified that Kony was the one to distribute girls as “wives” to his commanders. However, he also stated that Kony would receive lists from brigade commanders of which fighters did not already have “wives”, and then the brigade commanders would distribute girls to those fighters according to the instruction given.⁴⁹⁴ P-0070 stated that Kony was the only one to issue orders to distribute “wives”, but that the commander in charge of each unit or department would “make the decision to give a particular man a ‘wife’ in order to boost their morale”.⁴⁹⁵

130. After Operation Iron Fist, with the LRA units’ departure to northern Uganda, often hundreds of kilometres away from Kony in Sudan, the unit commanders controlled the distribution of women and girls to the fighters under their command to an even greater extent. D-0117, for example, having stated that at first most of the orders came from Kony, testified how that changed over time and how she saw other commanders ordering distribution of women. There were so many commanders involved that D-0117 said Kony eventually gave up on monitoring the distribution; groups abducting girls would just distribute the girls amongst themselves and would only send to Kony those few girls they selected for him.⁴⁹⁶

131. When discussing the distribution of women in 2004-2005, P-0205 explained that the company commanders would report to their battalion commanders which fighters were ready to receive a woman, and the battalion commanders then reported it to the brigade commander, who sent it upward. [REDACTED].⁴⁹⁷ [REDACTED].⁴⁹⁸

132. Regardless of Kony’s role, there is copious evidence about how Mr Ongwen determined who would be distributed to whom within his units. Fighters under his command testified that no one other than Mr Ongwen had the authority to give out girls.⁴⁹⁹ P-0245 testified that, whenever there were abductions, the abductees were handed over to Mr Ongwen and that, after having chosen for himself, he would decide where the others would go.⁵⁰⁰ D-0068 testified that abducted girls were brought before his Battalion Commander, Mr Ongwen, who decided to which coys they should be sent.⁵⁰¹ P-0235 testified that she observed Mr Ongwen distribute

⁴⁹⁴ D-0068, [T-223](#), p. 10-13.

⁴⁹⁵ P-0070, [T-106](#), p. 37, [T-107](#), p. 43-44. *See also* D-0134, [T-241](#), p. 5-6.

⁴⁹⁶ D-0117, [T-215](#), p. 22-24.

⁴⁹⁷ [REDACTED].

⁴⁹⁸ [REDACTED].

⁴⁹⁹ P-0379, [T-56](#), p. 52, [T-57](#), p. 15, 36-37.

⁵⁰⁰ P-0245, [T-98](#), p. 55.

⁵⁰¹ D-0068, [T-223](#), p. 15.

girls in Uganda and that he would decide this distribution on his own and later inform Kony.⁵⁰² P-0227 testified that Mr Ongwen allocated *ting tings*.⁵⁰³ Other subordinates to Mr Ongwen testified that he distributed women to his fighters as a reward for the “good work” they had done.⁵⁰⁴ P-0352 stated that abducted girls would be brought to Mr Ongwen and distributed to specific households on the day they arrived. These girls were initially distributed as *ting tings*, but after two weeks they could also become “wives”.⁵⁰⁵

133. The evidence even contains examples of Mr Ongwen’s direct defiance of Kony’s orders regarding distribution. When Kony’s escorts went to collect P-0226 and bring her to him, because Kony had learned how beautiful she was, Mr Ongwen said that he would rather divide P-0226 in two, or kill her, before giving her to Kony, because it was he who had abducted her. Rather than giving in to Kony’s demands, Mr Ongwen hid P-0226 under his bed.⁵⁰⁶

(c) Mr Ongwen oversaw the commission of SGBC by fighters under his command

134. In addition to his contributions to the abduction and distribution of women and girls discussed above, the evidence establishes that Mr Ongwen, as a Battalion Commander and later as Sinia Brigade Commander, facilitated SGBC in several other ways.

135. First and foremost, Mr Ongwen led by example, personally abducting women and girls, coercing them to become his “wives” and sex slaves, and raping and torturing them.⁵⁰⁷

136. Mr Ongwen also received reports and decided on issues of discipline. He would often publicly order his subordinates to beat women and girls for disciplinary purposes or when they refused to submit to sex. For example, Mr Ongwen ordered his escorts to beat P-0226, when she was only about 10 years old, because she refused to have sex with him. She was beaten for one week until she finally submitted.⁵⁰⁸ He ordered her beaten for other violations of the rules too, and sat watching as she was beaten.⁵⁰⁹ P-0379 corroborated this account in

⁵⁰² P-0235, T-17, p. 20-21.

⁵⁰³ P-0227, T-10, p. 45-46.

⁵⁰⁴ P-0264, T-64, p. 86-87.

⁵⁰⁵ P-0352, UGA-OTP-0260-0315-R01 at 0327.

⁵⁰⁶ P-0226, T-8, p. 34, 42.

⁵⁰⁷ See, e.g., para. 159 below. See also P-0245, T-98, p. 23-25.

⁵⁰⁸ P-0226, T-8, p. 38-40.

⁵⁰⁹ P-0226, T-9, p. 5-6.

detail, describing the gruesome beating of P-0226 by several escorts and fighters in Mr Ongwen's unit, naming at least nine of them, on Mr Ongwen's direct and specific orders.⁵¹⁰

137. Mr Ongwen's subordinates administered similar beatings to abducted women in their households. [REDACTED].⁵¹¹ P-0205 testified about an example of the discipline procedure within Sinia Brigade at the time Mr Ongwen was the Brigade Commander. He stated that, when Acie was beaten for being a witch, and later killed, a report went from the coy to the Battalion Commander, who reported it to the Brigade Commander, who confirmed the beating. It was Mr Ongwen, as the Brigade Commander, who decided on the matters of discipline.⁵¹²

138. Mr Ongwen also coordinated his actions with the other SGBC co-perpetrators, including through use of radio. The intercept evidence shows that he regularly received orders, reported what he had done, and was informed of and expressed support for the SGBC common plan over the radio.⁵¹³

139. Mr Ongwen not only failed to prevent or repress the SGBC committed by his fighters; he promoted and encouraged the commission of such crimes by rewarding his fighters with women as "wives". P-0352, for example, stated that "some of the boys who lived in the trenches would be sent to an attack and they would do hard work. Then, when they returned, they would be given a wife". She believed that the fighter she was given to as a "wife" had

⁵¹⁰ P-0379, T-57, p. 40-44.

⁵¹¹ [REDACTED].

⁵¹² P-0205, T-48, p. 46.

⁵¹³ See, e.g., ISO logbook, [UGA-OTP-0197-1670](#) at 1821 (left side); ISO logbook, [UGA-OTP-0062-0145](#) at 0164 (left side, bottom), 0277 (right side, top); ISO logbook, [UGA-OTP-0163-0007](#) at 0139 and 0169; ISO logbook, [UGA-OTP-0063-0002](#) at 0071 (right side, bottom), 0073 (right side, bottom), 0148 (right side, top), 0151 (left side, bottom to right side, top); ISO logbook, [UGA-OTP-0061-0002](#) at 0038 (left side, top), 0085 (right side, top), 0090 (right side, top), 0101 (right side, top), 0105 (left side, bottom) and 0137 (left side, bottom); ISO logbook, [UGA-OTP-0065-0002](#) at 0113 (left side, bottom), 0115 (right side, top); UPDF logbook, [UGA-OTP-0197-0308](#) at 0353 (left side, bottom), 0371 (right side, top), 0375 (left side, bottom); ISO logbook, [UGA-OTP-0163-0007](#) at 0090; ISO logbook, [UGA-OTP-0061-0206](#) at 0338 (left side); ISO logbook, [UGA-OTP-0064-0093](#) at 0105, 0130, 0156 (left side, top); ISO logbook, [UGA-OTP-0062-0002](#) at 0028 (left side, top), 0074 (right side, bottom), 0077-0078, 0096 (right side), 0098 (left side); UPDF logbook, [UGA-OTP-0254-0725](#) at 1069; UPDF logbook, [UGA-OTP-0254-1077](#) at 1285, 1338, 1346, 1405; UPDF logbook, [UGA-OTP-0197-0697](#) at 0780 (left side, top), 0790 (right side, bottom), 0794 (right side), 0816 (right side, bottom) 0817 (left side, top), 0820 (right side, bottom); UPDF logbook, [UGA-OTP-0242-6212](#) at 6396 (right side); UPDF logbook, [UGA-OTP-0242-6018](#) at 6164 (left side, bottom); UPDF logbook, [UGA-OTP-0255-0228](#) at 0319, 0329; UPDF logbook, [UGA-OTP-0255-0451](#) at 0590; UPDF logbook, [UGA-OTP-0242-7500](#) at 7619.

been promoted and that is why they gave her to him.⁵¹⁴ P-0264 also testified that Mr Ongwen rewarded fighters by giving them women.⁵¹⁵

140. The evidence suggests that this conduct by Mr Ongwen went beyond minimal compliance with LRA policies regarding women and children. When comparing Sinia Brigade to his own, P-0233 testified that he saw many women and girls in Mr Ongwen's group. He said there were more than in his unit, because there was a lot of work being done by Mr Ongwen's unit. He knew Mr Ongwen distributed women as "wives", because he was told so by the lower ranking officers, the sergeants and those hard-working ones that had received them. P-0233 also testified that women were distributed to boys who were doing good work and that this system of distribution was in place at all times during his stay in the bush (from June 2002 until 2013). P-0233 testified that, in deciding to give a woman or a girl as a "wife" to his fighters, Mr Ongwen generally sent the information about hardworking fighters upwards and ordered attacks of places to abduct girls. Sometimes, however, Mr Ongwen would not even communicate the information to Kony.⁵¹⁶

3. Did LRA rules regulating sex and "marriage" have an impact on the conduct charged in Counts 61, 64, and 65?

141. The Defence has repeatedly made reference to an LRA rule prohibiting "rape", at least as that term was understood by the LRA.⁵¹⁷ The Prosecution accepts that the LRA prohibited sex outside "marriage".⁵¹⁸ However, this rule did not mean that the LRA prohibited rape as defined in the Rome Statute. Instead, it was primarily intended to ensure the exclusivity of commanders' sexual access to their "wives" and to control the sexuality of abducted girls and women. By no means did LRA rules prohibit the rape of "wives" as charged in Counts 64-65.

142. The context or the meaning of Defence questions regarding "rape" in the LRA was often unclear. For example, P-0142 testified that LRA rules did not allow sex outside "marriage", but when specifically asked about rape, he said he did not have an answer because the question was not clear. The rule he spoke of prohibited only the rape of civilians during or after an attack.⁵¹⁹ Even in somewhat clearer cases, the testimony was quite compelling in establishing the opposite of what the Defence appeared to have sought. For example, when P-

⁵¹⁴ P-0352, [UGA-OTP-0260-0315-R01](#) at 0326-0327, 0337.

⁵¹⁵ P-0264, [T-64](#), p. 87-88.

⁵¹⁶ P-0233, [T-111](#), p. 52-56.

⁵¹⁷ [T-67](#), p. 79; [T-179](#), p. 49.

⁵¹⁸ P-0142, [T-71](#), p. 25, [T-72](#), p. 50; P-0366, [T-147](#), p. 39; P-0340, [T-102](#), p. 44.

⁵¹⁹ P-0142, [T-72](#), p. 50-52. *See also* D-0056, [T-228](#), p. 25.

0264 was asked by the Defence about an instance of rape that took place in front of others, the exchange was as follows:

“Q: ...[R]ape of any form, including that of one’s own wife, was not tolerated in the LRA?”

A: Yes, that’s correct. That happened in front of people and it wasn’t pleasant.

Q: Could it have been different if he had done it in the own house, do you think?

A: *Yeah, there’s no prohibition on that...*⁵²⁰

143. From the outset of these proceedings, it has been clear that the rape charged in Counts 64 and 65 is the act of forced sexual intercourse against women and girls by Sinia Brigade fighters to whom they were distributed as “wives” or, in a few cases, *ting tings*, not opportunistic rape committed during attacks. Save perhaps for the very small number of women like D-0013 who were “widowed” and then permitted to choose their new partner, women and girls in the LRA were raped, and sex was forced by their “husbands”. They were often threatened at gun point and had to obey the demands of the men to whom they were distributed, or else be killed or severely punished.⁵²¹

144. At times, the Defence also asked witnesses whether men in the LRA could choose their “wives” or, even whether they could choose to be “married” at all in the LRA. When asked about this topic, P-0142, [REDACTED] and a subordinate of Mr Ongwen, to whom he referred as his long-term “brother and commander”,⁵²² testified that “there was no man that [he] saw being forced to marry somebody”. When P-0142 was questioned directly about whether young LRA officers would have any more choice than the women concerned about when and to whom they were to be married, he was quite firm. He rejected the suggestion that such officers had no choice, as well as the more subtle insinuation by the Defence that if they rejected too many women they would be suspected of being homosexuals and killed. No, he said, it might be suspected that one was impotent, but there was no pressure on men to take “wives” and no suspicion of homosexuality in respect of those who declined.⁵²³

145. D-0026, having stated that the higher ranking commanders of the LRA could turn down a woman once, added that the consequence of them refusing more than once was simply that they were not given a “wife” on another occasion.⁵²⁴

⁵²⁰ P-0264, T-66, p. 47 (emphasis added).

⁵²¹ See, for example, the testimonies of P-0226, P-0227, P-0101, P-0099, P-0214, P-0236, P-0235 as well as of P-0396, P-0351, P-0352, P-0366, and P-0374.

⁵²² P-0142, T-71, p. 24.

⁵²³ P-0142, T-72, p. 48-50.

⁵²⁴ D-0026, T-191, p. 38.

146. Even if, arguendo, some junior LRA fighters could not choose their “wives” or whether or not to be “married”, this has no impact on Mr Ongwen’s criminal responsibility for Count 61 of the charges. This charge is about the crime of forced marriage that the women and girls were subjected to by fighters in Sinia Brigade and Mr Ongwen’s role therein.

4. Did P-0351, P-0352, P-0366, P-0374, and P-0396 testify credibly about their experiences in Sinia Brigade?

147. P-0351, P-0352, P-0366, P-0374, and P-0396 gave detailed accounts of their own victimisation and that of others like them.⁵²⁵ Their statements, discussed elsewhere,⁵²⁶ are not summarised here again. The Prosecution submits that their accounts are reliable because of the level of detail provided and the fact that they are corroborated by each other and by other evidence as discussed below.

148. The Defence challenged various aspects of these victims’ testimony. Sometimes these witnesses gave testimony in court which, in some details, was inconsistent with what they had said previously, or with what others had said. In particular, dates, movements, names, unit affiliations, and ranks sometimes proved hard to remember accurately. At other times they appeared to simply accept the repeated, and often confusing, propositions put to them by the Defence.

149. Such inconsistencies are to be expected when testimony is about traumatic events, many years ago, which often occurred when the witnesses were very young and not part of the LRA’s military structure. They are not surprising given the role, involvement, and recollection of the events or even, as the Presiding Judge observed, particular witnesses’ personalities.⁵²⁷ The Defence appears to have accepted that these witnesses could not be expected to know “the timelines... the exact distances and ...places” and that on these matters the best such witnesses could do was to estimate.⁵²⁸

150. Irrespective of the above, the Prosecution submits that these inconsistencies do not negate the essential reliability of the core accounts given by these victims with regard to the

⁵²⁵ P-0351, [UGA-OTP-0263-0002-R01](#); P-0352, [UGA-OTP-0260-0315-R01](#); P-0366, [UGA-OTP-0260-0289-R01](#); P-0374, [UGA-OTP-0263-0023-R01](#); P-0396, [UGA-OTP-0267-0246-R01](#).

⁵²⁶ See, e.g., [ICC-02/04-01/15-533](#), para. 616-641.

⁵²⁷ P-0351, [T-129](#), p. 21-22, 47.

⁵²⁸ P-0351, [T-129](#), p. 21.

SGBC they underwent or observed whilst in Sinia Brigade. On key issues, these witnesses corroborated each other, and are corroborated by other evidence.

151. [REDACTED]⁵²⁹ [REDACTED].⁵³⁰

152. In a similar vein, P-0352 was consistent in identifying Mr Ongwen as the leader of the group within Sinia that she moved to, and as the person who first assigned her as a *ting ting*.⁵³¹ When the Defence suggested that her “husband” did not work with Mr Ongwen, she unequivocally dismissed the suggestion as untrue, because she “stayed with him”.⁵³² [REDACTED].⁵³³ The Defence’s attempt to challenge P-0352’s rape failed because she provided a spontaneous (as the Defence itself pointed out),⁵³⁴ consistent, detailed, and sincere account of how the man she was given to raped her.⁵³⁵ The Defence’s proposition that her “husband” suffered from erectile dysfunction was unsubstantiated. The fact that her survey form had a box marked “never had sex” ticked also did not compromise her credibility. As she pointed out, she could neither read nor write, and she offered a reasonable explanation that perhaps the person who ticked the box had decided to do so based on her young age and size at the time.⁵³⁶

153. [REDACTED].⁵³⁷ [REDACTED].⁵³⁸ [REDACTED].⁵³⁹ [REDACTED].⁵⁴⁰
[REDACTED].⁵⁴¹ [REDACTED].⁵⁴²

154. P-0366’s account is also credible and corroborated. She provided a coherent and detailed account of being in Mr Ongwen’s household. Her Rachele file, compiled shortly after her return from the bush, [REDACTED], further strengthening the reliability of her account.⁵⁴³

⁵²⁹ [REDACTED].

⁵³⁰ [REDACTED].

⁵³¹ P-0352, T-67, p. 21-22.

⁵³² P-0352, T-68, p. 10.

⁵³³ [REDACTED].

⁵³⁴ P-0352, T-67, p. 20.

⁵³⁵ P-0352, T-67, p. 19-21; P-0352, UGA-OTP-0260-0315-R01 at 0325.

⁵³⁶ P-0352, T-67, p. 65, T-68, p. 24-25, UGA-OTP-0270-0166.

⁵³⁷ [REDACTED].

⁵³⁸ [REDACTED].

⁵³⁹ [REDACTED].

⁵⁴⁰ [REDACTED].

⁵⁴¹ [REDACTED].

⁵⁴² [REDACTED].

⁵⁴³ P-0366, UGA-OTP-0244-1958 at 1961.

155. P-0374's account that she was in Sinia Brigade during the charged period, and that she was distributed to one of Mr Ongwen's subordinates, is also reliable. Her references to members of Mr Ongwen's unit⁵⁴⁴ confirm that she was part of Sinia Brigade during the charged period. She gave a measured account - for example, she did not claim to have witnessed the orders for her own distribution, and did not speculate about who gave them.⁵⁴⁵ When confronted by the Defence, she provided a credible answer as to why she did not tell the others about [REDACTED] telling her she would be his "wife". She was angry and did not want to talk to anyone about it.⁵⁴⁶

156. Lastly, the Prosecution again emphasises that these five accounts are simply examples of many contained in the entirety of the evidence. Several other witnesses, who were either subjected to SGBC themselves or were in a position to observe such crimes, testified about their commission in Sinia Brigade and Mr Ongwen's role therein. For example, Mr Ongwen's former forced wives, in addition to their own direct victimisation by Mr Ongwen, gave further evidence and examples of the commission of SGBC against women and girls in Sinia Brigade.⁵⁴⁷ In addition, many former commanders and fighters in Sinia Brigade and in the LRA gave evidence and further examples of the subjugation of women and girls to SGBC in Sinia Brigade.⁵⁴⁸ This evidence provides crucial context to the evidence of the five victim witnesses, and further demonstrates that their testimony is credible.

⁵⁴⁴ UGA-OTP-0263-0023-R01 at 0029; P-0374, T-150, p. 42.

⁵⁴⁵ P-0374, UGA-OTP-0263-0023-R01 at 0028-0029, P-0374, T-150, p. 52.

⁵⁴⁶ P-0374, T-150, p. 53.

⁵⁴⁷ E.g., P-0226, T-8, p. 12, 22, 25, 29-32, 39-46, 62-63, 65, T-9, p. 27; P-0227, T-10, p. 11, 15-16, 38-39, 46-48, T-11, p. 15; P-0101, T-13, p. 31, 49, 71-72; P-0099, T-14, p. 16, 24, 52-53; P-0214, T-15, p. 8, 11-15; P-0236, T-16, p. 7-9, 11-12, 33, 37; P-0235, T-17, p. 6, 16, 20-24, 27, 38, 53.

⁵⁴⁸ E.g., P-0205, T-47, p. 11-14, 18, 27, 46-49, T-48, p. 6-10, 12-17, 22, 27-30; P-0245, T-98, p. 15-18, 23-26, 56; P-0314, T-74, p. 56-59; P-0330, T-52, p. 26, 34-35, 52-54, 57, 59-67; T-53, p. 34-35; P-0410, T-151, p. 53-58; P-0309, T-60, p. 35-39; P-0307, UGA-OTP-0266-0425-R01 at 0439-0440; P-0275, UGA-OTP-0244-3398-R01 at 3403 and 3411; T-124, p. 50, 79-81; P-0264, T-66, p. 35-39, 42-44; T-64, p. 23-24, 65; T-65, p. 2-4, 9-11; P-0252, T-88, p. 3, T-89, p. 34; P-0097, T-108, p. 24-27; P-0379, T-56, p. 10-11, 19, 27-31, 33-36, 47-52; T-57, p. 5-6, 14-15, 35-37, 37-39; D-0068, T-223, p. 7-9; P-0142, T-71, p. 26-27, 31-41; P-0233, T-111, p. 19-22, 25-26, 49-54, 56-59; P-0406, T-154, p. 20-22, 35-37, 40, 50-51, T-155, p. 72-73; T-156, p. 6; P-0250, T-141, p. 18-22; P-0138, T-120, p. 26-31; P-0231, T-122, p. 38-40, 75-77; P-0200, T-145, p. 25-28; P-0372, T-148, p. 8-9, 43-44, 50-51, 54-55, 57-58; T-149, p. 17-19, 53; P-0070, T-105, p. 85-87; T-106, p. 6-12, 35-39; T-107, p. 42-43; P-0085, T-158, p. 46-48, 50-52.

V. Sexual and gender-based crimes perpetrated directly by Mr Ongwen (Counts 50-60)

A. Introduction

157. In 2015, the Single Judge of the Pre Trial Chamber heard the evidence of seven women who were Mr Ongwen's forced wives during the charged period pursuant to article 56 of the Rome Statute.⁵⁴⁹ That evidence has been formally submitted in the trial proceedings.⁵⁵⁰ The Prosecution adopts its discussion of this evidence in its Pre-Trial Brief.⁵⁵¹

158. During the trial, the Chamber heard additional SGBC-related testimony from numerous Prosecution⁵⁵² and Defence⁵⁵³ witnesses, many of whom were former LRA fighters or subordinates of Mr Ongwen during the charged period, or forced wives of other LRA commanders. These witnesses powerfully corroborated the testimony of Mr Ongwen's forced wives heard during the article 56 proceedings, [REDACTED]⁵⁵⁴ [REDACTED],⁵⁵⁵ [REDACTED],⁵⁵⁶ [REDACTED],⁵⁵⁷ [REDACTED],⁵⁵⁸ [REDACTED].⁵⁵⁹

159. The evidence together establishes that Mr Ongwen, as the commander of Oka Battalion and later Sinia Brigade, faithfully carried out the LRA's policy towards young girls and women,⁵⁶⁰ and led by example, by personally forcibly marrying (Count 50),⁵⁶¹ torturing (Counts 51 and 52),⁵⁶² raping (Counts 53 and 54),⁵⁶³ sexually enslaving (Counts 55 and 56),⁵⁶⁴ enslaving

⁵⁴⁹ P-226 and P-227 testified between 15 and 19 September 2015, *see* T-8; T-9; T-10; T-11. P-0099, P-0101, P-0214, P-0235 and P-0236 testified between 9 and 17 November 2015, *see* T-13; T-14; T-15; T-16; T-17. For the audio-visual recordings of these hearings, *see* ICC-02/04-01/15-351-Conf-Anx1; ICC-02/04-01/15-351-Conf-Anx2; ICC-02/04-01/15-354-Conf-Anx1; ICC-02/04-01/15-354-Conf-Anx2; ICC-02/04-01/15-355-Conf-Anx1; ICC-02/04-01/15-358-Conf-Anx1; ICC-02/04-01/15-358-Conf-Anx2; ICC-02/04-01/15-356-Conf-Anx1; ICC-02/04-01/15-357-Conf-Anx1; ICC-02/04-01/15-352-Conf-Anx1.

⁵⁵⁰ ICC-02/04-01/15-520.

⁵⁵¹ ICC-02/04-01/15-533, para. 500-611.

⁵⁵² *See, e.g.*, P-0045, P-0054, P-0070, P-0142, P-0205, P-0233, P-0245, P-0252, P-0314, P-0330, P-0351, P-0352, P-0366, P-0374, P-0379, P-0396, and P-0414.

⁵⁵³ *See e.g.* D-0013, D-0026, D-0056, D-0068, D-0074, D-0117, and D-0118.

⁵⁵⁴ [REDACTED].

⁵⁵⁵ [REDACTED].

⁵⁵⁶ [REDACTED].

⁵⁵⁷ [REDACTED].

⁵⁵⁸ [REDACTED].

⁵⁵⁹ [REDACTED].

⁵⁶⁰ *See* Section IV above.

⁵⁶¹ *See* P-0099, T-14, p. 36; P-0101, T-13, p. 16-18; P-0214, T-15, p. 22-28; P-0226, T-8, p. 44; T-9, p. 27-29; P-0227, T-10, p. 38-39.

⁵⁶² *See* P-0101, T-13, p. 21; P-0214, T-17, p. 43-44, P-0226, T-9, p. 5-6; P-0227, T-10, p. 54-55.

⁵⁶³ *See* P-0101:T-13, p. 18-19; P-0214, T-15, p. 23-24; P-0226, T-8, p. 41-42; P-0227, T-10, p. 39.

⁵⁶⁴ *See* P-0101, T-13, p. 19-21; P-0214, T-15, p. 27-28; P-0226, T-8, p. 40-41, 47; P-0227, T-10, p. 44.

(Count 57),⁵⁶⁵ and subjecting to forced pregnancy (Counts 58 and 59)⁵⁶⁶ these women, in the course of committing a range of outrages on their personal dignity (Count 60).⁵⁶⁷ The Prosecution submits that Mr Ongwen is individually criminally liable for these crimes as a direct perpetrator under article 25(3)(a) of the Statute.

B. Prosecution case theory

160. Between the months of July 2002 and December 2005, Mr Ongwen directly perpetrated SGBC against P-0099, P-0101, P-0214, P-0226, P-0227, P-0235, and P-0236 (the “victim witnesses”). Some of the victim witnesses were distributed to him, others he personally abducted. He enslaved all of them, subjected them to domestic servitude, tortured them, raped them, and sexually enslaved them. He forcibly married, confined, and continued to rape them for the period they were under his control, sometimes resulting in their forced pregnancy. Although the rape and sexual enslavement of some of the victim witnesses occurred outside of the charged period (and in some cases, beyond the Court’s temporal jurisdiction), that evidence provides vital context for the Chamber’s understanding of the coercive environment that existed during Mr Ongwen’s commission of the crimes during the charged period.

161. The victim witnesses did not freely consent to take Mr Ongwen as their sexual partner, nor to the subsequent sexual activity. They effectively had no choice, as any act of resistance resulted in beatings and threats of death.

162. None of the victim witnesses was allowed to independently determine her marital partner or to exercise her choice in starting a family. None of the traditional rituals of marriage were observed. These girls and women had no reproductive autonomy, and the forcible imposition of marriage contributed to the stigma they have suffered since escaping from Mr Ongwen and the LRA.

C. Corroborative Evidence

163. The fact that Mr Ongwen had “wives” in the LRA, including the seven victim witnesses, does not seem to be in dispute. Indeed, almost all the former LRA fighters and

⁵⁶⁵ See P-0099, T-14, p. 40; P-0101, T-13, p. 38; P-0214, T-15, p. 20; P-0226, T-8, p. 36-37; P-0227, T-10, p. 44; P-0235, T-17, p. 13; P-0236, T-16, p. 14.

⁵⁶⁶ See P-0101, T-13, p. 11, 16, 19, 21. [REDACTED].

⁵⁶⁷ See P-0226, T-8, p. 62-63; P-0235, T-17, p. 23-25.

subordinates of Mr Ongwen who testified confirmed this fact. [REDACTED],⁵⁶⁸ [REDACTED].⁵⁶⁹ [REDACTED].⁵⁷⁰

164. The corroborative evidence at trial went well beyond the existence of Mr Ongwen's forced wives, to substantiate numerous facts relevant to the SGBC charges. As discussed below, the evidence of witnesses during the trial confirmed the evidence of the seven victim witnesses, that Mr Ongwen confined and controlled the movement of his "wives"; subjected them to domestic servitude; subjected them to acts of a sexual nature; denied them the freedom to consensual marriage and to observe the rituals of marriage; demanded of them an exclusive conjugal alliance; and subjected them to forced pregnancies.

1. Mr Ongwen confined and controlled the movement of the forced wives and *ting tings*

165. [REDACTED],⁵⁷¹ [REDACTED]. She testified that commanders such as Mr Ongwen had the power to release their "wives" (a notion supported by P-0352,⁵⁷² P-0374,⁵⁷³ and [REDACTED]⁵⁷⁴), but that Mr Ongwen chose not to. In fact, D-0013 asked Mr Ongwen to release her, but he refused, although he had previously released [REDACTED].⁵⁷⁵

166. Mr Ongwen used armed guards and the threat of force to ensure that his forced wives and *ting tings* remained with him and complied with his orders.⁵⁷⁶ P-0330, an escort to Mr Ongwen during the charged period, testified that part of his role was to guard Mr Ongwen's forced wives, and to escort them to him when he wanted to have sex with them.⁵⁷⁷ When P-0235 tried to escape, she was hunted down and returned to Mr Ongwen, whereupon she was severely beaten.⁵⁷⁸

167. Pregnancy and childbearing were in themselves another means of controlling and restricting the movement of women, particularly when mothers were confined to specific locations far from home (D-0013 named Nsitu as one place where pregnant women would be

⁵⁶⁸ [REDACTED].

⁵⁶⁹ [REDACTED].

⁵⁷⁰ [REDACTED].

⁵⁷¹ [REDACTED].

⁵⁷² P-0352, T-67, p. 62.

⁵⁷³ P-0374, T-150, p. 51.

⁵⁷⁴ [REDACTED].

⁵⁷⁵ D-0013, T-244, p. 58-59.

⁵⁷⁶ P-0245, T-98, p. 17-18; D-0068, T-222, p. 42.

⁵⁷⁷ P-0330, T-51, p. 69.

⁵⁷⁸ P-0235, T-17, p. 10, 11.

sent).⁵⁷⁹ In the words of P-0233, “if you have been told that this is your husband, how can you refuse? Where will you go if you refuse”.⁵⁸⁰

2. Mr Ongwen subjected the forced wives and *ting tings* to domestic servitude

168. Several witnesses agreed that *ting tings* and forced wives performed domestic chores and services – such as cooking, collecting firewood, and babysitting - once they were placed in a household.⁵⁸¹ The women could not refuse to perform domestic chores.⁵⁸² D-0013 named the women that lived with her in Mr Ongwen’s household – forced wives [REDACTED], and *ting tings* [REDACTED].⁵⁸³

169. P-0366 testified that [REDACTED] were responsible for cooking for Mr Ongwen while he was in the sick bay.⁵⁸⁴ P-0245 identified [REDACTED] as the *ting tings* who were with Mr Ongwen at the sick bay.⁵⁸⁵ P-0252, a civilian abducted during the Odek attack also testified that he knew Ongwen had other forced wives, but he could only remember [REDACTED] by name as a “wife” who was always with Mr Ongwen and who “performed duties that she [wa]s given”.⁵⁸⁶

3. Mr Ongwen subjected the forced wives and *ting tings* to acts of a sexual nature

170. All of the victim witnesses testified that Mr Ongwen subjected them to acts of a sexual nature, and this evidence was corroborated at trial. [REDACTED].⁵⁸⁷ [REDACTED].⁵⁸⁸ [REDACTED].⁵⁸⁹ P-0233 testified that marriage in the LRA “include[d] sexual intercourse”.⁵⁹⁰ [REDACTED].⁵⁹¹ Finally, P-0414 testified that the DNA forensic tests established that Mr Ongwen fathered children with [REDACTED],⁵⁹² which (under the circumstances of life in the LRA) is powerful evidence that Mr Ongwen at least had sex with those victim witnesses.

⁵⁷⁹ D-0013, [T-244](#), p. 44.

⁵⁸⁰ P-0233, [T-111](#), p. 58.

⁵⁸¹ P-0054, [T-93](#), p. 37; P-0142, [T-71](#), p. 36; P-245, [T-98](#), p. 54; P-0374, [T-150](#), p. 52; P-0351, [UGA-OTP-0263-0002-R01](#) at 0010, 0014.

⁵⁸² P-0379, [T-57](#), p. 39; [REDACTED].

⁵⁸³ D-0013, [T-244](#), p. 40.

⁵⁸⁴ P-0366, [T-147](#), p. 88.

⁵⁸⁵ P-0245, [T-99](#), p. 15.

⁵⁸⁶ P-0252, [T-87](#), p. 48.

⁵⁸⁷ [REDACTED].

⁵⁸⁸ [REDACTED].

⁵⁸⁹ [REDACTED].

⁵⁹⁰ P-0233, [T-111](#), p. 58.

⁵⁹¹ [REDACTED].

⁵⁹² P-0414, [T-137](#), p. 5-15; P-0414, [UGA-OTP-0278-0529](#) at 0534-0539, [UGA-OTP-0265-0106](#) at 0115-0116, [UGA-OTP-0266-0019](#) at 0028-0029, [UGA-OTP-0267-0160](#) at 0169-0170.

4. Mr Ongwen denied the forced wives the freedom to consensually marry and to observe the rituals of marriage

171. Both Prosecution and Defence witnesses stated that, once abducted, young girls and women had no choice in determining the person who was chosen as their “husband”.⁵⁹³ If they refused, they were beaten, and if they continued to refuse, they were killed.⁵⁹⁴ Even when a widow was allowed to choose a partner, that right was subject to the permission of commanders.⁵⁹⁵

172. No traditional or cultural rites of courtship or marriage were observed within the LRA.⁵⁹⁶ P-0070 said that in the LRA, courtship in the traditional sense was not permitted.⁵⁹⁷ P-0379 stated that “there [wa]s nothing like marriage” in the LRA, and that if a marriage were to take place in the villages, the couple would have had courtship and a dowry would be paid.⁵⁹⁸ These practices denied the victim witnesses many of the social benefits accruing from marriage, and contributed to the stigma they suffered after they escaped the bush.

5. Mr Ongwen subjected the forced wives to exclusive conjugal alliances

173. Mr Ongwen’s forced wives were expected to maintain an exclusive sexual relationship with him and have sex with him on demand.⁵⁹⁹ [REDACTED].⁶⁰⁰ [REDACTED].⁶⁰¹ [REDACTED].⁶⁰² [REDACTED].⁶⁰³

6. Mr Ongwen subjected the forced wives to forced pregnancies

174. Mr Ongwen’s forced wives were confined and monitored such that they could not refuse to become pregnant, or determine when to get pregnant, as they had no control over their bodies, no contraceptives, and no family planning was practised.⁶⁰⁴ It was effectively impossible for them to avoid becoming pregnant. Pregnancy was also “welcomed with joy” within the LRA, as Kony sought to “birth... a new breed of Acholi”; anyone caught trying to

⁵⁹³ P-0070, T-106, p. 36; P-0379, T-57, p. 38-39; D-0117, T-215, p. 24; D-0026, T-191, p. 38.

⁵⁹⁴ P-0252, T-87, p. 49; P-0233, T-111, p. 61.

⁵⁹⁵ P-0045, T-104, p. 72.

⁵⁹⁶ P-0366, T-147, p. 41.

⁵⁹⁷ P-0070, T-107, p. 45.

⁵⁹⁸ P-0379, T-57, p. 40.

⁵⁹⁹ P-0233, T-111, p. 62.

⁶⁰⁰ [REDACTED].

⁶⁰¹ [REDACTED].

⁶⁰² [REDACTED].

⁶⁰³ [REDACTED].

⁶⁰⁴ P-0045, T-104, p. 16; [REDACTED].

abort a pregnancy was severely punished.⁶⁰⁵ D-0118 testified that women who experienced miscarriages were suspected of having induced abortions to facilitate their escape from the LRA – it was understood that pregnancy made it more difficult for women to escape.⁶⁰⁶ P-0245 described the abduction of [REDACTED] and their [REDACTED],⁶⁰⁷ [REDACTED].⁶⁰⁸ Although those pregnancies postdate the charged period, they provide context for the Trial Chamber to understand the experiences of [REDACTED] and the other victims.

175. [REDACTED].⁶⁰⁹ [REDACTED],⁶¹⁰ [REDACTED].⁶¹¹ [REDACTED].⁶¹²
[REDACTED].

⁶⁰⁵ D-0118, [T-216](#), p. 25.

⁶⁰⁶ D-0118, [T-216](#), p. 25.

⁶⁰⁷ [REDACTED].

⁶⁰⁸ [REDACTED].

⁶⁰⁹ [REDACTED].

⁶¹⁰ [REDACTED].

⁶¹¹ [REDACTED].

⁶¹² [REDACTED].

VI. Persecution (Counts 10, 23, 36, and 49)

A. Introduction

176. Mr Ongwen is charged with the crime of persecution, on political grounds, at all four charged IDP camp attacks (Counts 10, 23, 36, and 49). These persecution charges are addressed in a stand-alone section, rather than under each attack section, because it is necessary to examine the LRA's overall persecutory campaign to understand Mr Ongwen's persecutory intent in relation to the four charged attacks. The modes of liability for the persecution charges vary according to Mr Ongwen's role in the charged attacks, as specified elsewhere.⁶¹³

177. The Prosecution's case on persecution relies primarily on records of intercepted LRA communications. As the Prosecution argued in its motion requesting submission of intercept-related material from the bar table, this body of evidence is highly probative and reliable because it is voluminous, contemporaneous, internally corroborative, and corroborative of other Prosecution evidence.⁶¹⁴ The intercept-related evidence is also corroborated by other documentary evidence and the testimony of over 30 Prosecution and Defence witnesses.⁶¹⁵

B. Prosecution case theory

178. Between 1 July 2002 and 31 December 2005, the LRA targeted for attack northern Ugandan civilians whom it considered to be supporting the Ugandan government. The victims of this persecution did not need to show overt partisanship. It was enough for them to reside in the government-established IDP camps for the LRA to consider them to be supporting the government. Kony and other senior LRA commanders issued regular orders to target these civilians.

179. Mr Ongwen was well aware of the LRA's persecutory campaign, including because his position of authority gave him regular access to LRA radio communications. He endorsed that campaign, as demonstrated by his words and actions during the charged period. He also furthered the LRA's persecutory campaign during the four charged attacks. Taken together,

⁶¹³ See para. 206 (Pajule), 256 (Odek), 298 (Lukodi), 344 (Abok) below.

⁶¹⁴ See [ICC-02/04-01/15-580](#), para. 3, 14, 25-34, 38.

⁶¹⁵ D-0032, P-0003, P-0009, P-0016, P-0018, P-0040, P-0059, P-0067, P-0070, P-0081, P-0084, P-0085, P-0096, P-0138, P-0142, P-0145, P-0185, P-0195, P-0209, P-0233, P-0245, P-0249, P-0269, P-0280, P-0293, P-0306, P-0340, P-0352, P-0359, P-0379, P-0406, P-0410, P-0422.

these factors lead to the inevitable inference that Mr Ongwen acted with discriminatory intent at the charged attacks.

C. Key issues related to the persecution charges

180. The Prosecution focuses on three key issues which appear to be disputed by the Parties:

- 1) Did the LRA have a persecutory policy to target civilians whom it perceived as government supporters?
- 2) Were the LRA's attacks on the four IDP camps carried out with discriminatory intent to target civilians whom it perceived as government supporters?
- 3) Did Mr Ongwen have the requisite discriminatory intent for the four charged attacks?

1. Did the LRA have a persecutory policy to target civilians whom it perceived as government supporters?

181. The Defence contended that no persecutory policy existed in the LRA, arguing that the LRA considered Museveni and the UPDF to be its enemy, not civilians.⁶¹⁶ This contention is contradicted by virtually all the relevant evidence.

182. Throughout the records of intercepted LRA radio communications, Kony and other LRA commanders refer to civilians in derogatory terms like “first enemy”⁶¹⁷ and “the worst enemy”⁶¹⁸ and vow to “cause some havocs against them”⁶¹⁹ and carry out “atrocities”⁶²⁰ where “even mothers with children should not be spared”.⁶²¹ The LRA's consistent rhetoric, as documented in these records and discussed further below,⁶²² makes clear that civilians were targeted because of their perceived support for the government instead of the LRA. In addition, numerous former LRA fighters, including Defence Witness D-0032, confirmed in their testimony that the LRA attacked civilians for political reasons, namely their perceived lack of support for the LRA or support for the government.⁶²³

⁶¹⁶ T-179, p. 21-23, 32. Persecution on political grounds may be committed against categories of persons viewed by the perpetrator as presumed political opponents. *See* Situation in the Republic of Burundi, ICC-01/17-9-Red, Art.15 Decision, 25 Oct. 2017, para. 133, 136; ECCC, Case 002/01 Appeal Judgment, 23 Nov. 2016, para. 669.

⁶¹⁷ ISO logbook, UGA-OTP-0062-0002 at 0007 (right side); [REDACTED].

⁶¹⁸ ISO logbook, UGA-OTP-0062-0002 at 0040 (left and right sides).

⁶¹⁹ UPDF logbook, UGA-OTP-0254-0455 at 0689-0691, esp. 0690 (bottom half); D-0032, T-201, p. 14-15.

⁶²⁰ ISO logbook, UGA-OTP-0065-0143 at 0171-0172, esp. 0171 (right side, top half); D-0032, T-201, p. 8.

⁶²¹ ISO logbook, UGA-OTP-0232-0234 at 0610-0613, esp. 0612 (bottom half) – 0613 (top half).

⁶²² *See* para. 183-185, 191, 193, 196, 198, 201-202 below; *see also* ICC-02/04-01/15-533, para. 164-168 (citing further examples).

⁶²³ D-0032, T-201, p. 8, 13-14, 36; P-0138, T-120, p. 20-22, 68-69; [REDACTED]; P-0140, T-151, p. 28; P-0145, T-143, p. 51-52; P-0233, T-111, p. 31-35.

183. Civilians living in IDP camps were targeted because the LRA considered residing in a government-established IDP camp to be a sign of political affiliation with the government. As one long-time LRA fighter explained, Kony would say “all the people in the camps are people who supported Museveni because they are people who moved to the camps. So if you found people in the camps, people should be attacked”.⁶²⁴ Records of radio communications show that the LRA’s position was that civilians living in IDP camps were considered “government agents” and “civilians who want[ed] to survive should not stay in the camps”.⁶²⁵

184. The evidence further demonstrates that the LRA perceived Acholi, Langi, and Iteso civilians to be political opponents of LRA, and thus targeted them for attack on political grounds.⁶²⁶ Typical of the orders issued during the charged period is a 26 February 2004 radio communication in which Vincent Otti called for the LRA to continue with the killing of the “stupid” Acholi, Langi, and Iteso people “who have rejected to support [the] LRA”.⁶²⁷ D-0032 confirmed that Kony ordered attacks on Acholi, Lango, and Teso civilians because he thought they were supporting the government against the LRA.⁶²⁸

185. The following are examples of LRA radio communications demonstrating the LRA’s persecutory policy against civilians perceived as government supporters. Mr Ongwen was on air for all of these communications:

- On 10 November 2002, Kony authorised LRA commanders to attack “soft target[s]” because they are “Museveni’s p[eo]ple”, and instructed that “even p[eo]ple traveling on bicycles can be shot using support weapons”.⁶²⁹
- On 3 December 2002, Kony stated that even people from his home area of Odek have joined the homeguards and that the LRA “always kills such categories of p[eo]ple who are against them”.⁶³⁰

⁶²⁴ P-0245, [T-99](#), p. 46; *see also* P-0245, [T-101](#), p. 27; P-0009, [T-81](#), p. 11; [ICC-02/04-01/15-533](#), para. 162, 164 (citing additional evidence).

⁶²⁵ ISO logbook, [UGA-OTP-0068-0146](#) at 0151 (left and right sides); *see also e.g.*, ISO logbook, [UGA-OTP-0068-0002](#) at 0053 (right side; after Otti referred to camps, Kony ordered the killing of civilians because they were siding with Museveni); ISO logbook, [UGA-OTP-0063-0002](#) at 0179 (Otti planned to attack IDP camps because “all Acholi are stupid and agents of Museveni”).

⁶²⁶ UPDF logbook, [UGA-OTP-0254-0455](#) at 0689-0691, esp. 0690 (bottom half) (D-0032 confirmed that these types of orders were issued – *see* [T-201](#), p. 14-15).

⁶²⁷ UPDF logbook, [UGA-OTP-0197-1866](#) at 1992 (right side, bottom); corroborated by ISO logbook, [UGA-OTP-0061-0002](#) at 0103; ISO rough notes, [UGA-OTP-0242-3451](#) at 3471.

⁶²⁸ D-0032, [T-201](#), p. 14.

⁶²⁹ ISO logbook, [UGA-OTP-0065-0002](#) at 0020 (left side). *See also* ISO logbook, [UGA-OTP-0067-0148](#) at 0281 (right side) (Mr Ongwen is recorded as speaking right before and after Kony’s persecutory order).

⁶³⁰ ISO logbook, [UGA-OTP-0065-0002](#) at 0082 (left side, bottom).

- On 18 March 2003, in discussion with a priest, Kony justified LRA ambushes on roads by saying that all people moving in vehicles are agents of Museveni who must all be killed.⁶³¹
- On 31 March 2003, Kony instructed Ocan Bunia to kill over 800 civilians at Oroko IDP camp because the people there were “useless” and if left alive, they would be working for Museveni.⁶³²
- On 16 April 2003, Kony issued an instruction that 50 tins of ammunition should be given out to units in Uganda “purposely for killing civilians” because “these are p[eo]ple who are very dang[e]rous to [the] LRA.”⁶³³
- On 24 February 2004, Kony stated “all people should know that those who support Museveni will all be killed by LRA”.⁶³⁴
- On 26 February 2004, Otti directed that “what Od[hi]jambo did in Lango by killing p[eo]ple in camps must be done by all LRA wherever they are”,⁶³⁵ and that the “LRA will kill all useless civilians who are siding with the gov[ernmen]t”.⁶³⁶
- On 6 May 2004, Kony instructed Otti to tell LRA political representatives that civilians should go back to the villages instead of staying in the camp and being protected by the UPDF, and if civilians do not go back, they will be killed.⁶³⁷
- On 1 August 2004, various LRA commanders vowed to raise the level of attacks on civilians to its highest since “they support Museveni” and “should be destroyed all”.⁶³⁸

⁶³¹ ISO logbook, [UGA-OTP-0063-0002](#) at 0026. *See also* UPDF rough notes, [UGA-OTP-0242-4434](#) at 4463-4464 (indicating that “89”—a call sign associated with Mr Ongwen in this period, *see* UPDF rough notes, [UGA-OTP-0242-6808](#) at 6874 and ISO logbook, [UGA-OTP-0066-0201](#) at 0261—was on air).

⁶³² ISO tape 638, [UGA-OTP-0241-0303](#), track 1, mins. 26:30-29:08; Transcript of ISO tape 638, [UGA-OTP-0286-0165](#) at 0195-0198, esp. lns. 667, 686-691; UPDF rough notes, [UGA-OTP-0242-6808](#) at 6836-6837 (“89” on air); ISO faxed copy, [UGA-OTP-0242-1274](#) at 1274-1275; ISO logbook, [UGA-OTP-0063-0002](#) at 0067 (left side); UPDF logbook, [UGA-OTP-0254-3399](#) at 3545 (left side); D-0032, [T-201](#), p. 16.

⁶³³ ISO logbook, [UGA-OTP-0063-0002](#) at 0122-0125, esp. 0124. *See also* UPDF logbook, [UGA-OTP-0254-0455](#) at 0490; UPDF rough notes, [UGA-OTP-0242-6808](#) at 6894 (“89” on air).

⁶³⁴ ISO logbook, [UGA-OTP-0061-0002](#) at 0098 (left side). *See also* UPDF logbook, [UGA-OTP-0197-0697](#) at 0795 (right side); ISO rough notes, [UGA-OTP-0242-3451](#) at 3464-3465 (indicating that “LC” was on air; the call sign “Lima Charlie”—commonly abbreviated as “LC” in the intercept records—was associated with Mr Ongwen in this period; *see* P-0059, [T-37](#), p. 26-28, 41; P-0003, [T-42](#), p. 53; P-0016, [T-32](#), p. 23, 68 and [T-33](#), p. 16-17; UPDF logbook, [UGA-OTP-0242-7309](#) at 7326 (right side); UPDF logbook, [UGA-OTP-0197-1866](#) at 2039); UPDF rough notes, [UGA-OTP-0197-1360-R01](#) at 1642-1643 (“LC” on air).

⁶³⁵ ISO logbook, [UGA-OTP-0061-0002](#) at 0103 (left side, middle). *See also* ISO rough notes, [UGA-OTP-0242-3451](#) at 3470 (“LC” on air).

⁶³⁶ ISO logbook, [UGA-OTP-0061-0002](#) at 0104 (right side, bottom). *See also* UPDF logbook, [UGA-OTP-0197-1866](#) at 1992 (right side, bottom); ISO rough notes, [UGA-OTP-0242-3451](#) at 3471.

⁶³⁷ UPDF logbook, [UGA-OTP-0197-1670](#) at 1703-1704. *See also* UPDF rough notes, [UGA-OTP-0197-2319](#) at 2463 (“Tem Wek”—a call sign for Mr Ongwen, *see, e.g.*, P-0016, [T-32](#), p. 23; [REDACTED]—on air).

⁶³⁸ ISO logbook, [UGA-OTP-0062-0145](#) at 0156 (top of left side). *See also* UPDF logbook, [UGA-OTP-0197-1670](#) at 1854.

2. Were the LRA's attacks on the four IDP camps carried out with discriminatory intent to target civilians whom it perceived as government supporters?

186. The Defence has argued that the LRA's attacks on IDP camps were out of "necessity", because they were "the only place where food could be found in the whole of northern Uganda".⁶³⁹ This claim is demonstrably unfounded in respect of the four charged attacks.

187. The Prosecution agrees that the LRA sought food during its attacks on IDP camps and accepts that certain attacks during the charged period occurred in part because the IDP camp in question was a source of food. However, the evidence demonstrated that the four charged attacks were not narrowly-conceived raids to "collect" food; rather, they were large-scale in nature and designed to target the civilian residents for killings, abductions, enslavement, destruction of property, and other crimes.⁶⁴⁰ Acts such as the murder of children at Lukodi, Odek, and Abok, as well as the deliberate burning of huts and the abduction and long-term enslavement of civilians at all attacks, are inconsistent with the notion that the LRA was focused exclusively on food gathering.⁶⁴¹ On the contrary, they reveal a persecutory policy designed to punish civilians for living in the camps, including by destroying their physical shelter and sense of safety.

3. Did Mr Ongwen have the requisite discriminatory intent for the four charged attacks?

188. The Defence has suggested that Mr Ongwen did not act with intent to target civilians on political grounds.⁶⁴² The Prosecution submits that the only reasonable conclusion to be drawn from the evidence is that Mr Ongwen acted with discriminatory intent, considering his knowledge and endorsement of the overall LRA persecutory campaign and his words and actions in relation to the charged attacks.

(a) Mr Ongwen was well aware of the LRA's persecutory campaign

189. First, the examples cited in the sections above and below⁶⁴³ make clear that, throughout the charged period, Mr Ongwen was on air during radio conversations in which

⁶³⁹ T-179, p. 16 and 32.

⁶⁴⁰ See para. 204, 206, 225, 227, 239-247, 254, 256, 276, 278, 285-294, 296, 298, 301, 303, 306-311, 315-336, 342, 344, 347, 350-363 below.

⁶⁴¹ See footnote above; P-0067, T-125, p. 18, 69; P-0249, T-79, p. 12-13; P-0249, T-80, p. 16; [REDACTED].

⁶⁴² See, e.g., T-179, p. 15-16, 21-22, 32.

⁶⁴³ See para. 185 above and para. 191, 196, 198, 201-202 below.

Kony and other senior LRA commanders discussed how civilians should be targeted for their perceived political opposition.

(b) Mr Ongwen endorsed the LRA’s persecutory campaign

190. Second, the evidence demonstrates that Mr Ongwen not only knew about the LRA’s persecutory campaign but also actively participated in it. The Prosecution submits that this contextual factor weighs heavily in favour of the inference that Mr Ongwen had the requisite discriminatory intent in relation to the four charged attacks.

191. On numerous occasions throughout the charged period, in addition to the communications related to the charged attacks,⁶⁴⁴ Mr Ongwen spoke or was reported to act in ways that demonstrate his endorsement of the LRA’s overall persecutory campaign. For example:

- According to records of intercepted communications, on 4 April 2003, Mr Ongwen reported that the “p[eo]ple of Lagile once sees LRA they make alarm and joint[l]y gang against any LRA moving in their area”.⁶⁴⁵ Kony responded that the people of Lagile had long been a “problem” and instructed Otti to organise an operation on Lagile where everyone would be killed; Otti ordered Mr Ongwen to conduct that operation.⁶⁴⁶ The next day, Mr Ongwen reported that he had attacked Lagile IDP camp, burning down many houses, killing over 20 civilians and abducting many others.⁶⁴⁷ On 28 April 2003, Mr Ongwen reported that all people had shifted from Lagile, and Kony told him that he wanted it that way and that “Dominic should continue checking Lagile to find if any civilian still remained there and should just destroy”.⁶⁴⁸
- According to P-0379, who was with Mr Ongwen at the time, before an attack on Awere (likely the same as the 5 April 2003 attack on Lagile described in the above-cited intercepted communications),⁶⁴⁹ Mr Ongwen instructed his fighters to “work on

⁶⁴⁴ See para. 198, 201-202 below.

⁶⁴⁵ ISO written notes, [UGA-OTP-0242-1241](#) at 1242.

⁶⁴⁶ *Id.* See also ISO tape 639B, [UGA-OTP-0258-0193](#); Transcript of ISO tape 639B, [UGA-OTP-0274-2424](#) at 2441-2442, l. 388-413 and at 2450-2452, l. 579-627; UPDF rough notes, [UGA-OTP-0242-6808](#) at 6855-6856 (“89” on air).

⁶⁴⁷ ISO logbook, [UGA-OTP-0063-0002](#) at 0083 (right side). See also UPDF logbook, [UGA-OTP-0254-3399](#) at 3558 (left side); UPDF rough notes, [UGA-OTP-0242-6808](#) at 6860 (“89” on air).

⁶⁴⁸ ISO logbook, [UGA-OTP-0063-0002](#) at 0161 (left side). See also UPDF logbook, [UGA-OTP-0254-0455](#) at 0531 (middle of page), UPDF rough notes, [UGA-OTP-0242-6808](#) at 6939 (“89” on air).

⁶⁴⁹ See para. 42-43 above.

the civilians of Awere” and to not leave anything living “because the people there do not want us”.⁶⁵⁰ [REDACTED].⁶⁵¹

- On 25 February 2004, Mr Ongwen was on air when LRA commander Onen told Kony that some boys in Lira-Palwo had been willing to assist an LRA soldier posing as a defector, and Kony stated that “p[eo]ple in Lira Palwo are very bad p[eo]ple and Onen should organise and kill them seriously”.⁶⁵² A few weeks later, on 19 March 2004, Mr Ongwen jointly with other commanders attacked Lira-Palwo IDP camp,⁶⁵³ killing over 20 civilians and burning huts.⁶⁵⁴
- On 1 August 2004, Mr Ongwen dismissed radio reports that he had instructed his fighters to return home, declaring that he would shock the people who had been happy about these reports by “starting to kill civilians seriously” and stating that “he has already deployed squads for atrocities”.⁶⁵⁵
- On 4 August 2004, Mr Ongwen agreed with another LRA commander that the LRA “should not leave any person they come across alive”.⁶⁵⁶
- On 29 September 2004, Mr Ongwen stated: “UPDF and civilians always keep singing that LRA should all come out of the bush if they don’t want to get finished”. He said that “all those are rubbish”, and that “as they keep saying that, he will organise more atrocities”.⁶⁵⁷
- On 12 November 2004, Mr Ongwen reported that he wanted to attack a particular place and kill many civilians; in response, another LRA commander indicated his support of that plan since those civilians were purportedly becoming “indisciplined”.⁶⁵⁸

⁶⁵⁰ P-0379, T-57, p. 9.

⁶⁵¹ [REDACTED].

⁶⁵² ISO logbook, [UGA-OTP-0061-0002](#) at 0101. *See also* ISO rough notes, [UGA-OTP-0242-3451](#) at 3469 (“LC” on air); UPDF rough notes, [UGA-OTP-0254-1675](#) at 1969 (“LC” on air); Sound recording, [UGA-OTP-0247-0934](#) (enhanced), Transcript of sound recording, [UGA-OTP-0274-2741](#) at 2752-2754, esp. rows 152-166.

⁶⁵³ ISO logbook, [UGA-OTP-0061-0002](#) at 0165 (right side).

⁶⁵⁴ [UGA-OTP-0018-0028](#) at 0040. *See also* Sound recording, [UGA-OTP-0239-0106](#) (enhanced); Transcript annotated by P-0059, [UGA-OTP-0266-0260](#) at 0266-0279, esp. rows 280-281; Transcript annotated by P-0016, [UGA-OTP-0265-0402](#) at 0407-0421, esp. rows 280-281; ISO logbook, [UGA-OTP-0061-0002](#) at 0165 (right side); ISO rough notes, [UGA-OTP-0242-3389](#) at 3437-3438 (“LC” on air).

⁶⁵⁵ ISO logbook, [UGA-OTP-0062-0145](#) at 0152-0153, esp. at 0153 (left side). *See also* UPDF logbook, [UGA-OTP-0197-1670](#) at 1854 (right side); Sound recording, [UGA-OTP-0258-0143](#) (enhanced); Transcript of sound recording annotated by P-0059, [UGA-OTP-0266-0146](#) at 0155, l. 191; P-0059, T-37, p. 33-37; Transcript of sound recording annotated by P-0016, [UGA-OTP-0265-0481](#) at 0490, l.191; P-0016, T-33, p. 24-31.

⁶⁵⁶ ISO logbook, [UGA-OTP-0062-0145](#) at 0164 (left side).

⁶⁵⁷ ISO logbook, [UGA-OTP-0062-0145](#) at 0299 (left side).

⁶⁵⁸ UPDF logbook, [UGA-OTP-0197-0308](#) at 0435 (left side, top).

(c) Mr Ongwen acted with discriminatory intent in relation to the four charged attacks

i) Mr Ongwen furthered the LRA's persecutory campaign at Pajule IDP Camp

192. The evidence clearly demonstrates that the LRA targeted civilians at Pajule IDP camp because of their perceived opposition to the LRA. Prior to the attack, the LRA warned the Pajule camp residents repeatedly, upon threat of death, that they should leave the camp.⁶⁵⁹ The LRA considered the civilians' continued residence in the camp a sign of support for the government.⁶⁶⁰

193. On the day of the Pajule attack, as documented in the transcript of a voice-authenticated sound recording,⁶⁶¹ Kony responded to Otti's report about the attack on Pajule by saying that civilians are "very bad people"⁶⁶²; Otti then said that he told the fighters to "burn houses more than that of Atyak, even all civilian homes should be burnt, anything that is found should be done".⁶⁶³ A corresponding logbook entry records Kony talking about targeting civilians at Pajule because "they are the ones making UPDF to continue following LRA" and specifying that the Pajule tribal chief should be targeted because "he is one of the bad elements who hates LRA so much".⁶⁶⁴ In a voice-authenticated sound recording⁶⁶⁵ from 13 October 2003, a few days after the attack, after Otti confirms having killed civilians at Pajule, Kony laughs.⁶⁶⁶

194. Mr Ongwen was aware of the persecutory targeting of civilians at Pajule and actively contributed to it. During the attack, Mr Ongwen told the Pajule tribal chief, P-0009 that the people abducted from Pajule were going to be killed because they supported the

⁶⁵⁹ P-0009, T-81, p. 10-11; [REDACTED].

⁶⁶⁰ P-0009, T-81, p. 24; [REDACTED].

⁶⁶¹ Sound recording, UGA-OTP-0247-1102 (enhanced), track 2, timestamp 28:45 to 31:32 (voice-authenticated by P-0003 [see T-43, p. 3-5] and P-0138 [see T-120, p. 65-67]); Transcript of sound recording annotated by P-0003, UGA-OTP-0132-0105-R01 at 0134-0136.

⁶⁶² Transcript annotated by P-0003, UGA-OTP-0132-0105-R01 at 0134.

⁶⁶³ Transcript annotated by P-0003, UGA-OTP-0132-0105-R01 at 0134; see also P-0138, T-120, p. 66-67.

⁶⁶⁴ ISO logbook, UGA-OTP-0232-0234 at 0547-0548.

⁶⁶⁵ Sound recording, UGA-OTP-0247-1110 (enhanced), timestamp 12:09 – 16:00 (voice-authenticated by P-0003 [see T-43, p. 12-14 and annotated transcript, UGA-OTP-0132-0243-R01 at 0265-0269], P-0016 [see T-33, p. 53-54], and P-0138 [see T-120, p. 54-57 and annotated transcript, UGA-OTP-0191-0624-R01 and range from UGA-OTP-0191-0635 to UGA-OTP-0191-0639-R01]).

⁶⁶⁶ Sound recording, UGA-OTP-0247-1110 (enhanced), timestamp 12:37-12:42; P-0003, annotated transcript, UGA-OTP-0132-0243-R01 at 0265, 0267. D-0032 testified that he recalled hearing Kony on the radio laughing after Otti reported having killed and abducted civilians and burned houses at Pajule. D-0032, T-200, p. 30-31 and T-201, p. 29-30.

government.⁶⁶⁷ He kicked and beat P-0009 (and other people) with a stick he was carrying.⁶⁶⁸ P-0067, one of the civilians abducted during the attack, described how Otti addressed the Pajule abductees, in the presence of Mr Ongwen,⁶⁶⁹ and said that the LRA did not want civilians staying in the camps⁶⁷⁰ and that they would be killed if they continued to stay there.⁶⁷¹

195. The behaviour of other LRA commanders on the ground further indicates that the Pajule attack was part of the LRA's persecutory campaign. P-0067 testified that an LRA commander informed him and other abductees during the attack that the LRA would "show you that it is not good to stay in the camp" and would "take" the older people and burn the children inside the houses.⁶⁷² P-0067 also described how he heard that same LRA commander inform a civilian named Lacung that he was going to be killed because he was a government worker, after which he saw LRA fighters stab Lacung to death.⁶⁷³

ii) Mr Ongwen furthered the LRA's persecutory campaign at Odek IDP Camp

196. As Mr Ongwen knew, Kony had long called for attacks on civilians in Odek because of their perceived lack of support for the LRA.⁶⁷⁴ The charged attack on Odek was a continuation of this persecutory pattern. P-0410, who participated in the attack, was together with Kony when he ordered Odek to be attacked because the people there "did not like the rebels".⁶⁷⁵ Similarly, shortly before the attack,⁶⁷⁶ D-0032 heard Kony on the radio telling other commanders that the people of Odek were "stubborn" and "needed to be punished someday".⁶⁷⁷ P-0245 also heard Kony on the radio calling for the attack of the "extremely stubborn" people at Odek so that they would flee from the camp and return home.⁶⁷⁸

⁶⁶⁷ P-0009, [T-81](#), p. 22.

⁶⁶⁸ P-0009, [T-81](#), p. 12-13, 19-20. P-0249 also confirmed that Mr Ongwen was using a stick during the Pajule attack. [T-79](#), p. 15-17.

⁶⁶⁹ P-0067, [T-125](#), p. 34, 37; P-0067, [T-126](#), p. 12.

⁶⁷⁰ P-0067, [T-125](#), p. 34.

⁶⁷¹ P-0067, [T-125](#), p. 38. *See also* P-0009, [T-81](#), p. 14-15, 24 (describing an assembly where Mr Ongwen was present in which Otti addressed the abductees).

⁶⁷² P-0067, [T-125](#), p. 12.

⁶⁷³ P-0067, [T-125](#), p. 30-31. P-0081 confirmed that Lacung was a government worker ([UGA-OTP-0137-0002-R01](#) at 0008), though he had a different (secondhand) understanding of why he was killed by the LRA.

⁶⁷⁴ *See* ISO logbook, [UGA-OTP-0065-0002](#) at 0082 (left side, bottom); ISO logbook, [UGA-OTP-0068-0146](#) at 0229 (left side, top).

⁶⁷⁵ P-0410, [T-151](#), p. 28.

⁶⁷⁶ D-0032, [T-200](#), p. 23.

⁶⁷⁷ D-0032, [T-200](#), p. 23.

⁶⁷⁸ P-0245, [T-99](#), p. 49-50.

197. Mr Ongwen intended to further the LRA's persecutory campaign at Odek, as is reflected in the testimony of three LRA fighters who participated in the attack. P-0410 testified that Mr Ongwen instructed the fighters to "exterminate" everything in Odek.⁶⁷⁹ P-0245 stated that Mr Ongwen and Okwonga Alero ordered that civilians be chased away from the camp and that "if there's anyone who does not want to leave, you just kill, because that person would be supporting Museveni".⁶⁸⁰ P-0269 described how, the morning after the Odek attack, he heard Mr Ongwen state that he had informed Kony about the Odek attack, and that Kony had been happy to hear the news, saying that if civilians continue living in the camp, they should be killed.⁶⁸¹

iii) Mr Ongwen furthered the LRA's persecutory campaign at Lukodi IDP Camp

198. The records of intercepted communications support the contention that Mr Ongwen carried out the attack on Lukodi IDP camp as part of the LRA's persecutory campaign. As discussed above, in February 2004, Otti had directed that "what Od[hi]ambo did in Lango by killing p[eo]ple in camps must be done by all LRA wherever they are"⁶⁸² and that the "LRA will kill all useless civilians who are siding with the gov[ernmen]t".⁶⁸³ On 21 May 2004, after Mr Ongwen's report on the Lukodi attack, Otti told Mr Ongwen that he and other LRA commanders should continue attacking civilians in the IDP camps until civilians abandon them entirely.⁶⁸⁴ A few days later, on 24 May 2004, Mr Ongwen boasted about the Lukodi attack on the radio, reporting that he decided to "kill all l[i]ving things in that camp" and that therefore he is sure that Museveni will "note him" just as he did Odhiambo for his attack on Barlonyo IDP camp⁶⁸⁵ (an attack which was notorious for its violence toward civilians).⁶⁸⁶

199. According to D-0032, civilians were killed at Lukodi as retaliation for Lukodi civilians having joined the local defence forces and to drive civilians out of the camp and disperse them; Kony wanted children, in particular, to be killed so that nobody would go back to Lukodi.⁶⁸⁷ P-0245 also testified that civilians at Lukodi were targeted for killing; according

⁶⁷⁹ P-0410, T-151, p. 34, 38.

⁶⁸⁰ P-0245, T-99, p. 52.

⁶⁸¹ P-0269, T-85, p. 45.

⁶⁸² ISO logbook, UGA-OTP-0061-0002 at 0103 (left side, middle).

⁶⁸³ ISO logbook, UGA-OTP-0061-0002 at 0104 (right side, bottom).

⁶⁸⁴ UPDF logbook, UGA-OTP-0255-0228 at 0264; *see also* para. 307-308 below; ISO logbook, UGA-OTP-0061-0206 at 0321; UPDF rough notes, UGA-OTP-0197-2319 at 2530.

⁶⁸⁵ UPDF logbook, UGA-OTP-0254-2982 at 3050 (left side); *see also* para. 309 below; ISO logbook, UGA-OTP-0061-0206 at 0329; UPDF rough notes, UGA-OTP-0197-2319 at 2541.

⁶⁸⁶ *See, e.g.*, [REDACTED]; D-0032, T-201, p. 15; [REDACTED].

⁶⁸⁷ D-0032, T-201, p. 36.

to his understanding, the reason was to punish the family of Walter Odoch Ochora, a government representative and UPDF colonel, who had been making anti-LRA announcements over the radio.⁶⁸⁸

200. Others who participated in the Lukodi attack confirmed that Mr Ongwen's orders called for specific targeting of civilians, a fact that is suggestive of his discriminatory intent. P-0142 described Mr Ongwen's orders for the attack as including killing civilians, looting food, and burning houses.⁶⁸⁹ P-0406 confirmed that Mr Ongwen ordered Lukodi camp to be burned.⁶⁹⁰ Similarly, P-0018 stated that Mr Ongwen instructed her and the other fighters to kill any Acholi they found on the road, including children and the elderly, because they had become "stubborn";⁶⁹¹ Mr Ongwen went on to explain that the Acholi people were "stubborn" because the LRA wanted them to return to their villages but instead they were staying in the IDP camps.⁶⁹²

iv) Mr Ongwen furthered the LRA's persecutory campaign at Abok IDP Camp

201. Around the time of the attack at Abok IDP Camp, Mr Ongwen was repeatedly instructed to continue attacking civilians in the IDP camps. As mentioned above, on 21 May 2004, Otti ordered Mr Ongwen to continue attacking civilians in the IDP camps until civilians abandon them entirely.⁶⁹³ A few days later, on 24 May 2004, Kony again directed Mr Ongwen to continue killing civilians in the IDP camps and stated that more than 50 civilians should be killed for every dead LRA fighter.⁶⁹⁴ On 31 May 2004, while Mr Ongwen was on air, Otti called for Tulu to continue killing civilians like he and Mr Ongwen had done at Lukodi since "civilians are their first enemy".⁶⁹⁵ On 1 June 2004, Kony directed LRA commanders to "uplift the standard of massacre in the IDP [camps]" and Mr Ongwen was directed to begin "serious operations against the IDP [camps] and maximum death rate be

⁶⁸⁸ P-0245, T-99, p. 67-68.

⁶⁸⁹ P-0142, T-70, p. 46-47.

⁶⁹⁰ P-0406, T-154, p. 57.

⁶⁹¹ P-0018, T-68, p. 58.

⁶⁹² P-0018, T-68, p. 60.

⁶⁹³ See para. 198 above.

⁶⁹⁴ UPDF logbook, UGA-OTP-0255-0228 at 0278.

⁶⁹⁵ ISO logbook, UGA-OTP-0062-0002 at 0007 (right side); ISO tape 831B, UGA-OTP-0262-0493; Partial transcript of ISO tape 831B, UGA-OTP-0286-0771 at 0775, l. 77; UPDF rough notes, UGA-OTP-0197-2319 at 2565-2567 ("Tem (Odomi)" on air).

maintained”.⁶⁹⁶ On that same day, Mr Ongwen told Abudema that “he is going to kill many civ[ilian]s and he will send the result to Kony whereby Kony will be happy about it”.⁶⁹⁷

202. A week later, Mr Ongwen carried out that pledge. Fighters under his command attacked Abok, shooting, stabbing, beating and burning civilians to death and destroying civilian homes and property by setting them on fire. During the attack, P-0293, a camp leader, overheard LRA fighters discussing Mr Ongwen’s order to “shoot anyone that you find”.⁶⁹⁸ P-0406, who participated in the attack, reported that Mr Ongwen’s orders for Abok included to burn down the camp.⁶⁹⁹ P-0330, who was Mr Ongwen’s escort at the time of the Abok attack and participated in it, [REDACTED].⁷⁰⁰ The day after the Abok attack, Mr Ongwen reported having burned civilians to death in their huts and having set houses ablaze; Otti encouraged him to “continue with such plans”.⁷⁰¹

⁶⁹⁶ UPDF logbook, [UGA-OTP-0255-0228](#) at 0314.

⁶⁹⁷ UPDF logbook, [UGA-OTP-0197-1670](#) at 1751-1752.

⁶⁹⁸ P-0293, T-138, p. 27-28.

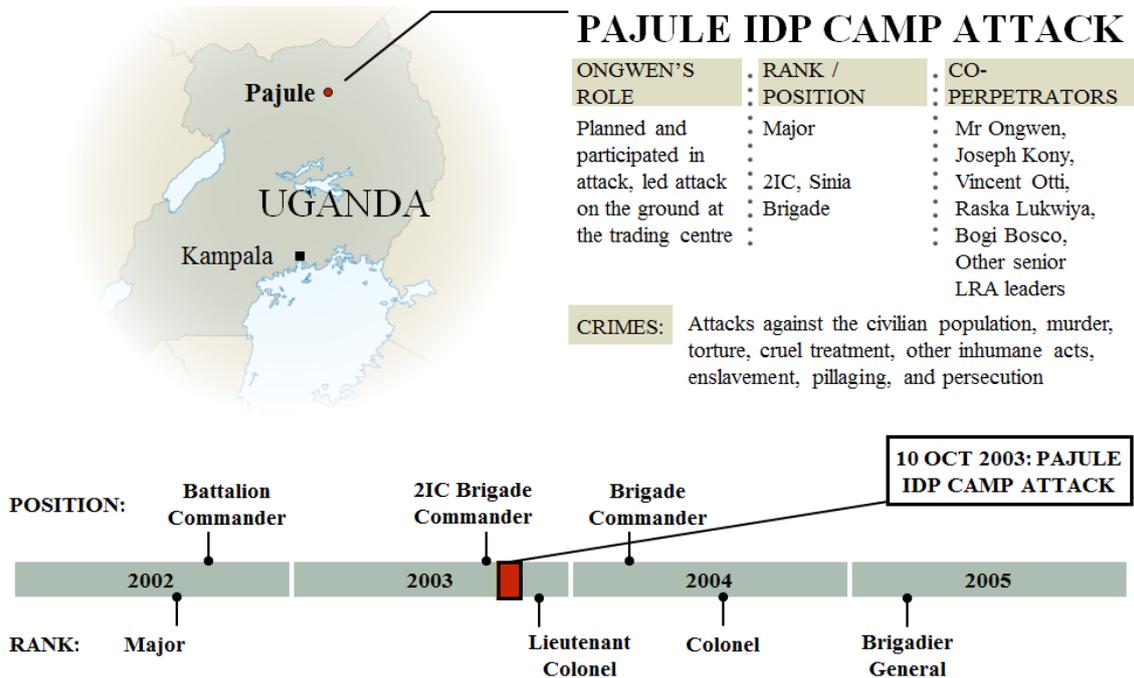
⁶⁹⁹ P-0406, T-154, p. 66.

⁷⁰⁰ [REDACTED].

⁷⁰¹ UPDF logbook, [UGA-OTP-0255-0228](#) at 0324 (bottom).

VII. The 10 October 2003 attack on Pajule IDP camp (Counts 1-10)

A. Introduction



203. The Prosecution case regarding the attack at Pajule IDP camp is based on the testimony of twelve former LRA fighters,⁷⁰² eleven victims of the attack,⁷⁰³ and three other witnesses;⁷⁰⁴ they include witnesses called by both the Prosecution and Defence. In addition, there is evidence from intercepted LRA radio communications,⁷⁰⁵ sketches of the camp,⁷⁰⁶ photographs,⁷⁰⁷ and contemporaneous records listing the names or number of people killed during the attack.⁷⁰⁸

⁷⁰² P-0045, P-0067, P-0138, P-0144, P-0209, P-0309, P-0330, P-0372, D-0026, D-0032, D-0092, D-0134.

⁷⁰³ P-0001, P-0006, P-0007, P-0008, P-0009, P-0061, P-0081, P-0249, P-0379, D-0076, D-0081.

⁷⁰⁴ P-0047, P-0084, P-0101.

⁷⁰⁵ UPDF logbook, [UGA-OTP-0197-1078](#) at 1130 (right page), 1133 (left page), 1134 (left page), 1140 (right page), 1143, at 1146 (left page); ISO logbook, [UGA-OTP-0133-0289](#) at 0395 (right page), 0396 (left page), 0397-0398, 0404; UPDF logbook, [UGA-OTP-0242-6018](#) at 6159 (right page), 6160 (left page), 6163 (right page); UPDF logbook, [UGA-OTP-0254-0229](#) at 0237-0238; ISO logbook, [UGA-OTP-0232-0234](#) at 0409-0411, 0431, 0477, 0501, 0562; ISO fax notes, [UGA-OTP-0242-0755](#) at 0758.

⁷⁰⁶ [UGA-OTP-0260-0067](#), [UGA-OTP-0266-0071](#) sketch by P-0379; [UGA-OTP-0258-0835-R01](#), [UGA-OTP-0258-0834-R01](#), [UGA-OTP-0258-0833-R01](#), [UGA-OTP-0258-0834-R01](#), sketch by P-0309; [UGA-OTP-0238-0795-R01](#), sketch by P-0249; [UGA-OTP-0241-0555](#), sketch by P-0009; [UGA-OTP-0243-0503](#), [UGA-OTP-0243-0504](#), sketch by P-0144; [UGA-OTP-0027-0198](#), sketch by P-0047.

⁷⁰⁷ P-0249, [UGA-OTP-0238-0806](#), [UGA-OTP-0238-0814](#), [UGA-OTP-0238-0817](#), [UGA-OTP-0238-0804](#), [UGA-OTP-0238-0805](#); P-0009, [UGA-OTP-0241-0556](#), [UGA-OTP-0245-0037](#); P-0047, [UGA-OTP-0037-0281](#).

⁷⁰⁸ P-0047, [UGA-OTP-0037-0282](#); P-0007, [UGA-OTP-0147-0214-R01](#) at 0220-0221, [UGA-OTP-0147-0225](#) at 0234; P-0008, [UGA-OTP-0137-0002-R01](#) at 0009, para. 39, [UGA-OTP-0137-0029](#); P-0001, [UGA-OTP-0138-0002-R01](#) at 0006, para. 16; P-0084, [UGA-OTP-0069-0416](#) at 0419; Military intelligence report, [UGA-OTP-0255-0810](#).

204. This evidence establishes that on 10 October 2003, in the early hours of the morning after Ugandan Independence Day, LRA fighters attacked the camp. In the course of the attack, LRA fighters attacked the civilian population (Count 1)⁷⁰⁹ and committed murder (Counts 2-3),⁷¹⁰ torture (Counts 4-5),⁷¹¹ cruel treatment (Count 6),⁷¹² and other inhumane acts (Count 7).⁷¹³ They enslaved members of the civilian population of Pajule (Count 8),⁷¹⁴ and pillaged their homes and shops (Count 9).⁷¹⁵ As discussed above in Section VI, these crimes were committed as part of a campaign of persecution (Count 10).⁷¹⁶

205. The evidence also demonstrates that Mr Ongwen played an essential role in the planning and execution of the attack. He led a group of attackers to the trading centre. The Prosecution submits that Mr Ongwen's individual criminal responsibility is best characterised as indirect co-perpetration under article 25(3)(a) of the Statute, although the evidence would support conviction under any of the charged modes of liability under articles 25 and 28.

B. Prosecution case theory

206. The Prosecution case theory concerning the attack on Pajule is that:

- a. In the days leading up to the attack, Vincent Otti ordered LRA commanders to meet him in Pader. Mr Ongwen joined Otti on 5 October 2003.
- b. Shortly before 10 October 2003, Otti, Mr Ongwen, and other senior commanders discussed and agreed to attack Pajule IDP camp.
- c. LRA fighters converged approximately 10km east of Pajule near Wanduku.

⁷⁰⁹ The Prosecution submits that the following facts and footnotes relating to counts 2-3 (murder), counts 4-5 (torture), count 6 (cruel treatment) and count 7 (other inhumane acts), count 8 (enslavement), and count 9 (pillaging) qualify as the underlying conduct of the war crime of attacks directed against the civilian population.

⁷¹⁰ See para. 239-247 below.

⁷¹¹ P-0006, [UGA-OTP-0144-0072-R01](#) at 0075-0076; P-0379, [T-57](#), p. 24, 33; P-0309, [T-60](#), p. 63; P-0330, [T-52](#), 6 and 7; P-0009, [T-81](#), p. 12, 17 and 19; [T-82](#), p. 75, 76; P-0067, [T-125](#), p. 9, 11-12, 23, 25; P-0081, [T-118](#), p. 27, 34-36, [UGA-OTP-0070-0029-R01](#) at 0033; P-0249, [T-79](#), p. 10, 13, 33-34; D-0076, [T-219](#), p.11-13, 16, 19, 20, 27, 29, 38.

⁷¹² See fn. 711 above.

⁷¹³ See fn. 711 above.

⁷¹⁴ P-0006, [UGA-OTP-0144-0072-R01](#) at 0075-0076; P-0379, [T-57](#), p. 25, 31; P-0045, [T-104](#), p. 5; P-0309, [T-60](#), p. 63, 69, 70, [T-63](#), p. 11; P-0330, [T-52](#), p. 6-7, 10; P-0009, [T-81](#), p. 14, 23; P-0047, [UGA-OTP-0027-0177-R01](#) at 0182; P-0067, [T-125](#), p. 9, 11-12, 23, 25; P-0081, [T-118](#), p. 34-35, [UGA-OTP-0070-0029-R01](#) at 0035; P-0249, [T-79](#), p. 10-13, 21-22, 28, 33-.34; D-0032, [T-201](#), p. 29; D-0076, [T-219](#), p. 11-13, 16, 19, 20, 27, 29, 33-34, 38.

⁷¹⁵ P-0006, [UGA-OTP-0144-0072-R01](#) at 0075; P-0379, [T-57](#), p. 26; P-0045, [T-104](#), p. 5, 10; P-0309, [T-60](#), p. 62-63; P-0330, [T-52](#), p. 9-10; P-0067, [T-125](#), p. 22-23; P-0081, [T-118](#), p. 34-35; P-0249, [T-79](#), p. 14 18-20, 28.

⁷¹⁶ See para. 176-202 above.

- d. LRA fighters were selected to participate in the attack. Mr Ongwen helped and instructed his subordinates to select LRA fighters to participate in it.
- e. At dawn on 10 October 2003, LRA fighters attacked the camp. They were divided into four groups. Mr Ongwen was assigned to lead a group to attack the trading centre area within the camp. The “overall” commander on the ground, in charge of all four groups, was Raska Lukwiya.
- f. LRA fighters in Mr Ongwen’s group broke into shops and civilian homes where they pillaged a variety of items. They abducted civilians at gunpoint and forced them to carry looted items. Civilians who were unable or refused to carry items given to them were either beaten or killed. Mr Ongwen was present in the centre of the camp when this occurred.
- g. After the attack, Mr Ongwen and the LRA attackers returned to the rendezvous point (“RV”), taking with them pillaged items and a large number of civilian abductees.
- h. The LRA released most of the civilians, but kept younger ones as new LRA fighters or forced wives or *ting tings*.

C. Key issues related to the attack on Pajule IDP camp

207. The Prosecution addresses four key issues which appear to be disputed by the Parties:

- 1) Was Mr Ongwen involved in planning the attack at Pajule IDP camp?
- 2) Did Mr Ongwen personally participate in the attack?
- 3) Did LRA fighters intentionally kill civilian residents of the camp?
- 4) Did the LRA pillage civilian property?

1. Was Mr Ongwen involved in planning the attack at Pajule IDP camp?

208. The evidence suggests that there were several meetings where an attack on Pajule IDP camp was discussed, and that Mr Ongwen took part in one or more of these meetings with Otti and other LRA commanders. The evidence also establishes that Mr Ongwen helped to select fighters to participate in the attack.

209. The Defence’s notification that it intended to rely on alibi,⁷¹⁷ and its reliance on Witnesses D-0032 and D-0092, make clear that it is not disputed that Mr Ongwen was together

⁷¹⁷ [ICC-02/04-01/15-519-Conf.](#)

with Otti at an RV immediately before the Pajule attack.⁷¹⁸ However, the Defence disputes that Mr Ongwen played a part in planning the attack and participated in it. It suggests that Mr Ongwen was under arrest and injured at the time, which prevented him from planning or participating in the attack.⁷¹⁹ It also claims that Mr Ongwen was too junior to have participated in any pre-attack meetings with Otti.⁷²⁰

(a) Neither arrest nor injury prevented Mr Ongwen’s participation in the attack

210. Mr Ongwen was travelling with Otti before the Pajule attack, not because he was under arrest, as the Defence suggested, but because on 30 September 2003 Kony had ordered that “Dominic should remain behind with Otti” because “he has good plans which can help Otti”.⁷²¹ This order appears to have been in response to a request by Otti that Bogi and Mr Ongwen meet him.⁷²² All three commanders played key roles in the Pajule attack.

211. Evidence detailed elsewhere in this Closing Brief⁷²³ also demonstrates that, by 10 October 2003, neither arrest nor injury was significantly curtailing Mr Ongwen’s activities. Despite having been injured in November 2002 (11 months before the Pajule attack) and briefly arrested in April 2003, the evidence shows that Mr Ongwen retained his rank and authority, was operationally active throughout the summer of 2003, and was promoted to second-in-command of Sinia Brigade in September 2003. In short, by October 2003, Mr Ongwen was a senior and influential LRA commander, well placed to take a leading role at Pajule.

(b) Mr Ongwen participated in pre-attack planning meetings

212. Intercepted LRA communications show that Mr Ongwen met with Otti on 5 October 2003,⁷²⁴ and was with him at the conclusion of the Pajule attack.⁷²⁵

213. P-0309 and P-0330 testified that Mr Ongwen took part in a meeting or meetings involving Otti and other LRA commanders shortly before the attack. P-0309 was an escort for Mr Ongwen at the time. He saw a meeting take place and provided a sketch of where he was

⁷¹⁸ D-0032, [T-200](#), p. 23; D-0092, [T-208](#), p. 63-64.

⁷¹⁹ P-0144, [T-92](#), p. 24-25; P-0045, [T-105](#), p. 26; P-0209, [T-161](#), p. 40-41.

⁷²⁰ D-0026, [T-191](#), p. 33; P-0045, [T-104](#), p. 66, [T-105](#), p. 25-26.

⁷²¹ ISO logbook, [UGA-OTP-0232-0234](#) at 0501.

⁷²² ISO logbook, [UGA-OTP-0232-0234](#) at 0431.

⁷²³ See para. 14-56 above.

⁷²⁴ UPDF logbook, [UGA-OTP-0197-1078](#) at 1130 (right page), 1133 (left page).

⁷²⁵ P-0101, [T-13](#), p. 22, 24-26.

when it happened.⁷²⁶ He testified that “the commanders gathered together, Dominic and Otti was among them”, and that following the meeting “[c]ommander Dominic gave orders from his group to choose people to go for an operation”.⁷²⁷ P-0309 then went with Mr Ongwen to attack Pajule.

214. P-0330, another escort to Mr Ongwen, testified that prior to the attack “[t]here was a standby between the leaders [...] there was Otti Vincent's group and that of Odomi”. P-0330 saw this meeting take place. The following day a “standby” of LRA fighters was selected for the attack.⁷²⁸

215. It is unclear whether P-0309 and P-0330 are speaking about the same or different meetings. Intercepted LRA communications recorded in the UPDF and ISO logbooks show that in the days leading up to the attack, Otti met, travelled with, and then separated from a variety of LRA commanders.⁷²⁹ They show that Otti may have been discussing an attack on Pajule IDP camp with LRA commanders as early as 16 September 2003.⁷³⁰ They also show that Mr Ongwen had been travelling with Otti since 5 October 2003,⁷³¹ and would have been in a position to attend any meetings at which an attack on Pajule was discussed.

216. Mr Ongwen’s involvement in planning meetings is also corroborated by other evidence. P-0209, a member of Trinkle Brigade, testified that when his brigade reached the RV point “Vincent summoned the high-ranking officers”.⁷³² His Brigade Commander, Charles Kapere, attended that meeting. As soon as Kapere returned from the meeting he confirmed to P-0209 that Otti and Mr Ongwen had been at that meeting,⁷³³ and that “Vincent explained [...] that there is going to be an operation”⁷³⁴ and that “Vincent distributed roles to each of them”.⁷³⁵

217. Although the Trial Chamber did not hear first-hand evidence of what was discussed at those meetings, the meetings’ participants, and their proximity in time and space to the Pajule

⁷²⁶ [UGA-OTP-0258-0834-R01](#) (sketch by P-0309).

⁷²⁷ P-0309, [T-60](#), p. 45.

⁷²⁸ P-0330, [T-51](#), p. 74-75, 77.

⁷²⁹ ISO logbook, [UGA-OTP-0232-0234](#) at 0408-0412, 0531-0533, 0538, 0543, 0546; ISO logbook, [UGA-OTP-0133-0289](#) at 0374-0376, 0384-0385, 0388-0390; UPDF logbook, [UGA-OTP-0197-1078](#) at 1130-1131, 1136; ISO logbook, [UGA-OTP-0133-0289](#) at 0386-0387; UPDF logbook, [UGA-OTP-0242-6018](#) at 6157; UPDF logbook, [UGA-OTP-0254-0725](#) at 1061.

⁷³⁰ ISO logbook, [UGA-OTP-0232-0234](#) at 0410-0411.

⁷³¹ UPDF logbook, [UGA-OTP-0197-1078](#) at 1130 (right page), 1133 (left page).

⁷³² P-0209, [T-160](#), p. 21.

⁷³³ P-0209, [T-160](#), p. 21.

⁷³⁴ P-0209, [T-160](#), p. 22.

⁷³⁵ P-0209, [T-160](#), p. 21.

attack, suggest that the only reasonable inference is that the meetings concerned preparations for the attack (perhaps among other topics).

(c) P-0138’s testimony that Mr Ongwen did not attend a meeting with Otti should be given little weight

218. The Defence may argue that testimony provided by P-0138, an escort to Otti, casts doubt on Mr Ongwen’s participation in a pre-attack planning meeting. P-0138 testified about a meeting before the Pajule attack at which Mr Ongwen was not present.⁷³⁶ However, the evidence suggests that P-0138 was describing a different and earlier meeting to those described by P-0209, P-0309, and P-0330. The meeting P-0138 described was attended by Tabuley.⁷³⁷ But radio intercepts show that between 29 September and 9 October 2003, Tabuley was nowhere near Otti, instead moving in Teso and Soroti several hundred kilometres away from Pajule.⁷³⁸

219. Other evidence also suggests that P-0138 was describing an earlier meeting. First, P-0138 suggested that the meeting occurred whilst Otti was still moving, rather than at any particular RV point: he recalled that the “meeting started at around 1. *We had sat somewhere to rest because we had been moving*”.⁷³⁹ Second, it is unclear whether P-0138’s testimony is based on his own personal experience, or whether he was speculating about how the attack had been planned. His testimony stating “*I think all these commanders must have sat down to come out with a plan*” suggests the latter.⁷⁴⁰ Third, P-0138’s position in the LRA is another factor why he may not have mentioned Mr Ongwen being present at any meeting. P-0138 was an escort for Otti. Unlike P-0309 and P-0330, P-0138’s primary focus was Otti and not Mr Ongwen. As noted below, the evidence establishes the presence of up to 600 fighters at the RV. Based on these factors, the Prosecution submits that P-0138’s testimony does not undermine the credible evidence provided by P-0209, P-0309, and P-0330, that Mr Ongwen took part in the planning of the Pajule attack.

⁷³⁶ P-0138, T-120, p. 36.

⁷³⁷ P-0138, T-120, p. 37.

⁷³⁸ UGA-OTP-0133-0289 at 0365, 0369, 0372, 0374, 0377, 0379, 0387-0388, 0393-0395; UGA-OTP-0232-0234, at 0516, 0532, 0543, 0546; UGA-OTP-0197-1078 at 1139 (right page).

⁷³⁹ P-0138, T-120, p. 37 (emphasis added).

⁷⁴⁰ P-0138, T-120, p. 35 (emphasis added).

(d) Other evidence of Mr Ongwen’s planning

220. Beyond evidence of his role in the strategic planning, Mr Ongwen was, according to four separate witnesses, involved in the vital practical preparations before the LRA attacked Pajule. P-0309 explained that, following his meeting with other LRA commanders, Mr Ongwen ordered a senior escort to “select people that should go to fight”.⁷⁴¹ P-0101, a former forced wife of Mr Ongwen, testified that he “commanded and he selected the fighters that went to Pajule”.⁷⁴² P-0372 testified that Mr Ongwen informed LRA fighters that they were going to attack Pajule.⁷⁴³ P-0330 testified that he provided LRA fighters with instructions of what to do: “[m]y commander said that...I should bring him a goat or a chicken, so if we get a chicken, we should also bring it to him, we should not leave it behind”.⁷⁴⁴

(e) Mr Ongwen’s rank

221. The Prosecution accepts that there were LRA commanders who were senior in rank to Mr Ongwen at the RV before the attack. However, Mr Ongwen was sufficiently senior to have played an important role in planning and executing the attack. He had held the rank of Major since July 2002,⁷⁴⁵ and had been promoted to second-in-command of Sinia Brigade just two weeks before the Pajule attack.⁷⁴⁶ Moreover, Kony held Mr Ongwen in high regard at the time. Intercepted LRA communications record that on 27 September 2003, “Kony praised Dominic so much for his hard work he is doing”.⁷⁴⁷ As noted above, Kony had specifically requested that Mr Ongwen should help Otti with planning.⁷⁴⁸ Otti himself reported in September 2003 that Mr Ongwen was ready to take on the role of second-in-command of Sinia Brigade.⁷⁴⁹ P-0209 also explained that Mr Ongwen was “part of the high command” for the Pajule attack.⁷⁵⁰ Based on his personal experience, LRA fighters with the rank of Major and above were always part of attack planning meetings.⁷⁵¹

⁷⁴¹ P-0309, T-60, p. 50.

⁷⁴² P-0101, T-13, p. 58.

⁷⁴³ P-0372, T-148, p. 17.

⁷⁴⁴ P-0330, T-51, p. 78.

⁷⁴⁵ See para. 14, 53-56 above; P-0138, T-120, p. 36; P-0144, T-91, p. 20; P-0209, T-161, p. 36; P-0309, T-60, P. 49.

⁷⁴⁶ See para. 14, 53-56 above; ISO logbook, UGA-OTP-0232-0234 at 0414.

⁷⁴⁷ ISO logbook, UGA-OTP-0232-0234 at 0477.

⁷⁴⁸ ISO logbook, UGA-OTP-0232-0234 at 0501.

⁷⁴⁹ ISO logbook, UGA-OTP-0232-0234 at 0422.

⁷⁵⁰ P-0209, T-161, p. 37.

⁷⁵¹ P-0209, T-161, p. 38.

2. Did Mr Ongwen personally participate in the attack?

222. The evidence shows that Mr Ongwen personally participated in the attack. Witnesses saw him leave for the attack. They also saw him at the trading centre during it. The Defence disputes this and predominately relies on D-0025, D-0068, and D-0056 to do so.⁷⁵² However, for reasons explained below, the witnesses relied on by the Defence were either describing a different attack or were unreliable.

(a) Mr Ongwen was seen leaving the RV

223. P-0138 testified that “Ongwen was part of the people who went to attack Pajule”.⁷⁵³ Similarly, P-0101 testified that she saw him leave for the attack at Pajule and later return with abductees.⁷⁵⁴ P-0144 testified that, after they left the RV, he personally saw Mr Ongwen shortly before all the groups split and entered the camp.⁷⁵⁵ P-0372 testified that, after leaving the RV, he was still with Mr Ongwen at a point where Mr Ongwen issued instructions to LRA fighters.⁷⁵⁶

224. It is true that not all the witnesses who might have had an opportunity to do so recalled seeing Mr Ongwen at the RV or amongst LRA fighters moving towards the camp. However, the large number of LRA fighters must have made it difficult to identify who exactly was present. P-0144 estimated that there were approximately 500 LRA fighters at the RV.⁷⁵⁷ D-0134 thought it was closer to 600.⁷⁵⁸ D-0076 and P-0047 estimated that the number of LRA fighters they saw were approximately 300 and 400 respectively.⁷⁵⁹ P-0045, P-0209, P-0372, and Defence Witness D-0026 all confirmed there were “many” LRA fighters at the RV.⁷⁶⁰ In addition, P-0209 and D-0026 testified that LRA fighters did not all sit in the same location at the RV.⁷⁶¹ Conditions while moving towards the camp also would have made identification difficult. P-0372, P-0045, P-0309, and D-0134 explained that LRA fighters left the RV in the evening when it was dark.⁷⁶² P-0372 remembered that it was raining.⁷⁶³

⁷⁵² D-0068, T-222, p. 52; D-0056, T-228, p. 66; D-0025, T-226, p. 63; ICC-02/04-01/15-519-Conf.

⁷⁵³ P-0138, T-120, p. 37.

⁷⁵⁴ P-0101, T-13, p. 22, 24-26.

⁷⁵⁵ P-0144, T-91, p. 30.

⁷⁵⁶ P-0372, T-148, p. 18.

⁷⁵⁷ P-0144, T-91, p. 20.

⁷⁵⁸ D-0134, T-241, p. 11.

⁷⁵⁹ D-0076, T-219, p. 27; P-0047, UGA-OTP-0027-0177-R01 at 0191.

⁷⁶⁰ P-0045, T-103, p. 91, T-104, p. 65-66; P-0209, T-160, p. 13; P-0372, T-149, p. 67; D-0026, T-191, p. 26.

⁷⁶¹ P-0209, T-161, p. 46; D-0026, T-191, p. 26.

⁷⁶² P-0372, T-149, p. 56, 65; P-0045, T-104, p. 68; P-0309, T-63, p. 5; D-0134, T-240, p. 58.

(b) Mr Ongwen was seen at the camp centre during the attack

225. Two LRA fighters [REDACTED] testified that they went with and saw Mr Ongwen at the centre of Pajule. [REDACTED].⁷⁶⁴ P-0144 similarly testified that he saw Mr Ongwen whilst LRA fighters were making their way back to the RV after the attack.⁷⁶⁵ Mr Ongwen was carrying a “walkie-talkie”.⁷⁶⁶

226. Civilian witnesses present during the attack corroborate the accounts of P-0309 and P-0144. P-0009 was a local Acholi chief. He played a key role in mediating between the LRA and the government of Uganda⁷⁶⁷ and was familiar with different LRA commanders. P-0084, a UPDF intelligence officer, stated that P-0009 “had received security clearance to meet with the rebels before the attack in Pajule [and...] went to meet with rebels in about August 2003”.⁷⁶⁸

227. P-0009 testified that during the attack at Pajule, LRA fighters broke into his home and abducted him at gunpoint.⁷⁶⁹ He was taken to part of the camp near the police station.⁷⁷⁰ There P-0009 recognised Mr Ongwen, who:

“was holding [...] an army radio [and ...] had a gun. Whenever [Mr Ongwen] wanted to communicate, he would take out the radio. He would also, when he wanted to fire [...]. He had a stick [...] He would move from one place to another [...] he was a tall, tall person, stocky, a lot of hair. He had a limp on one leg”.⁷⁷¹

He also testified that Mr Ongwen was surrounded by his escorts. These fighters were calling Mr Ongwen “Lapwony Dominic”, and Mr Ongwen was issuing instructions to them to “to go and abduct people, to go and take stuff, to burn things and to fire guns”.⁷⁷² P-0009 testified that he was beaten and kicked by Mr Ongwen.⁷⁷³ He also testified that Mr Ongwen led a group of abducted civilians away from the camp after the attack finished.⁷⁷⁴

⁷⁶³ P-0372, T-149, p. 56, 65.

⁷⁶⁴ [REDACTED].

⁷⁶⁵ P-0144, T-91, p. 44.

⁷⁶⁶ P-0144, T-91, p. 32.

⁷⁶⁷ D-0134, T-240, p. 54; P-0070, T-106, p. 30; P-0138, T-120, p. 46; P-0144, T-91, p. 48.

⁷⁶⁸ P-0084, UGA-OTP-0139-0149-R01 at 0174.

⁷⁶⁹ P-0009, T-82, p. 75-76.

⁷⁷⁰ P-0009, T-81, p. 12.

⁷⁷¹ P-0009, T-81, p. 19-20.

⁷⁷² P-0009, T-81, p. 19-22.

⁷⁷³ P-0009, T-81, p. 12-13.

⁷⁷⁴ P-0009, T-81, p. 13-16.

228. During his evidence, P-0009 stated that he knew Mr Ongwen because he had met him before the attack at Pajule.⁷⁷⁵ The Presiding Judge noted that this diverged from a previous statement, which suggested that P-0009 had never previously met Mr Ongwen. However, several factors demonstrate that P-0009's testimony during trial was an accurate, credible, and reliable account of events.

229. First, P-0009's testimony that he had met Mr Ongwen previously is independently corroborated by different sources. A report dated 2002, produced by religious and cultural leaders, records that Mr Ongwen met and personally interacted with P-0009.⁷⁷⁶ Intercepts recorded in October 2002 also refer to an occasion where Mr Ongwen and P-0009 met each other.⁷⁷⁷

230. Second, P-0009's identification of Mr Ongwen during the attack was corroborated by another civilian resident, P-0249, who was in the same group of abductees. P-0249 testified that, after he was abducted, he saw "Mr Ongwen with a number of soldiers" at Pajule.⁷⁷⁸ Both P-0249 and P-0009 agreed that Mr Ongwen's identity could be established because the LRA fighters around Mr Ongwen were addressing him by his name.⁷⁷⁹

231. Moreover, P-0249 described Mr Ongwen in almost identical terms to P-0009. He explained that Mr Ongwen "had on army uniform [...] held a stick in his hand [...] and] had some hand-held gadgets, some sort of communication gadget, some sort of radio".⁷⁸⁰ Mr Ongwen actually identified himself to P-0249 and others after they were abducted.⁷⁸¹

232. P-0249 also corroborated P-0009's account of Mr Ongwen's behaviour during the attack. He too saw Mr Ongwen surrounded by other LRA fighters and using his stick to issue orders to them. P-0249 heard Mr Ongwen give orders to loot items from shops.⁷⁸² He observed LRA fighters complying with Mr Ongwen's orders.⁷⁸³

233. P-0009 and P-0249's testimony that Mr Ongwen used a stick during the attack is another common feature in their evidence. Both described the stick in similar terms. P-0009

⁷⁷⁵ P-0009, T-81, p. 18.

⁷⁷⁶ UGA-OTP-0195-0105 at 0106.

⁷⁷⁷ ISO logbook, UGA-OTP-0068-0002 at 0072 (right page).

⁷⁷⁸ P-0249, T-79, p. 13-14.

⁷⁷⁹ P-0249, T-79, p. 42; P-0009, T-81, p. 19.

⁷⁸⁰ P-0249, T-79, p. 15, 26.

⁷⁸¹ P-0249, T-79, p. 14.

⁷⁸² P-0249, T-79, p. 15, 17-18.

⁷⁸³ P-0249, T-79, p. 18-20, 25.

said “it was a long stick”.⁷⁸⁴ P-0249 said it was “possibly from the length of [his] shoulder to [his] arm”.⁷⁸⁵ This also tallies with the evidence about Mr Ongwen’s injury and the evidence of D-0092, who stated that Mr Ongwen used a long stick to help him walk.⁷⁸⁶

234. Third, it is clear that P-0009’s testimony was not fabricated or embellished for trial, because he gave an account of Mr Ongwen’s participation in the attack to Defence Witness D-0076 just three weeks after the attack happened.⁷⁸⁷ This was two years before Mr Ongwen was publicly identified as being wanted by the ICC, and almost twelve years before charges concerning his role at Pajule were brought.

(c) Mr Ongwen was put in charge of the group sent to attack the trading centre

235. Several witnesses testified that Mr Ongwen took on a leadership role for the attack. P-0144 testified that “there were three groups: the group that went to the barracks and to the centre and the group that went for the ambush. So of these three groups there were three different commanders. The one that went....to the centre was Dominic”.⁷⁸⁸ P-0209 confirmed that “Dominic ... would lead the group going to the centre”.⁷⁸⁹ P-0045 confirmed that “Odomi was in charge of the group going to the Centre”.⁷⁹⁰

(d) D-0068 and D-0056 testified about a different attack

236. The Defence appears to rely on Witnesses D-0068 and D-0056 in suggesting that Mr Ongwen did not take part in the Pajule attack.⁷⁹¹ These witnesses were discussing a different attack.

237. D-0068 expressly accepted that the attack he was talking about occurred in early 2003.⁷⁹² D-0056 was unable to recall the date of the attack that he described,⁷⁹³ but the details of his description make clear that he was not referring to the charged attack. His attack occurred at around 2am whilst it was still dark;⁷⁹⁴ Otti personally participated in that attack and led a

⁷⁸⁴ P-0009, T-81, p. 20.

⁷⁸⁵ P-0249, T-79, p. 17.

⁷⁸⁶ D-0092, T-208, p. 64.

⁷⁸⁷ D-0076, T-219, p. 21-22.

⁷⁸⁸ P-0144, T-92, p. 45.

⁷⁸⁹ P-0209, T-160, p. 23.

⁷⁹⁰ P-0045, T-103, p. 94.

⁷⁹¹ D-0068, T-222, p. 52; D-0056, T-228, p. 66.

⁷⁹² D-0068, T-223, p. 32.

⁷⁹³ D-0056, T-228, p. 64.

⁷⁹⁴ D-0056, T-228, p. 70, T-229, p. 28.

convoy of LRA fighters.⁷⁹⁵ D-0056 also failed to make any mention of a key feature of the attack at Pajule, namely that a large number of civilians were abducted during the attack and returned to the RV point.

(e) D-0025's testimony regarding Pajule should be disregarded

238. Defence Witness D-0025 testified that Mr Ongwen did not participate in the attack because he was both under arrest and injured at the time.⁷⁹⁶ However, his testimony is not credible. He was trying to protect Mr Ongwen rather than tell the truth. A compelling demonstration of this was D-0025's reaction during testimony to a sketch that he had himself drawn previously. D-0025 accepted that the sketch was accurate and used the sketch to explain Raska Lukwiya's movements during the attack. He also accepted that the initials he had written, RL, were intended to refer to Raska Lukwiya.⁷⁹⁷ However, when it came to the initials DO marked on the same sketch (the location of which contradicted the testimony that he had given), D-0025 departed from his prior statement and claimed that the initials DO did not stand for Dominic Ongwen.⁷⁹⁸ When the Presiding Judge read portions of D-0025's prior statement which suggested that the letters DO plainly did refer to Dominic Ongwen, and marked where the witness had previously said Mr Ongwen met up "with the group that went to the IDP camp to collect food", D-0025's response was unconvincing. He was first unable to tell the court what the initials DO stood for, if not Dominic Ongwen.⁷⁹⁹ When pushed by the Presiding Judge, he incomprehensibly explained that it "indicate[d] their return to that point".⁸⁰⁰ D-0025 also disavowed his previous statement which claimed that Mr Ongwen had a limp but was "okay" and not injured.⁸⁰¹ As a consequence, the Prosecution submits that D-0025's testimony should not be relied upon.

3. Did LRA fighters intentionally kill civilian residents of the camp?

239. The Defence's questioning of witnesses during trial suggests that it does not dispute that civilians were killed at Pajule. However, it appears to dispute that civilians were killed by LRA

⁷⁹⁵ D-0056, [T-228](#), p. 68.

⁷⁹⁶ D-0025, [T-226](#), p. 63.

⁷⁹⁷ D-0025, [T-227](#), p. 29.

⁷⁹⁸ D-0025, [T-227](#), p. 34.

⁷⁹⁹ D-0025, [T-227](#), p. 33-35.

⁸⁰⁰ D-0025, [T-227](#), p. 35.

⁸⁰¹ D-0025, [T-227](#), p. 17, [UGA-D26-0010-0443](#) at 0451.

fighters,⁸⁰² or to suggest that civilian deaths were the result of “cross-fire”.⁸⁰³ The evidence establishes that LRA fighters intentionally directed attacks at, and murdered, civilians.⁸⁰⁴

240. P-0061 stated that he personally saw LRA rebels “shooting unarmed civilians at random”⁸⁰⁵ within the camp, and that government soldiers were nowhere in the vicinity at the time.⁸⁰⁶ He remembered “seeing a man about thirty years old being shot down [...] when he attempted to escape”.⁸⁰⁷

241. P-0067 saw LRA fighters kill a local government worker called Kinyera Lacung. He stated that Lacung was murdered because he was unable to carry items and because he was a government worker: LRA fighters “picked a knife and fixed it on the barrel of the gun and then stabbed Lacung in the mouth and Lacung fell down and died”.⁸⁰⁸ Evidence of Lacung’s death was corroborated by P-0081, who explained that Lacung had a disability and limp and that as a result he was struggling to carry an injured LRA fighter back to the RV. LRA fighters accused Lacung of feigning his limp. They asked him if he wanted to continue or rest. Lacung was then untied and told to go and rest under a tree. Although P-0081 did not see Lacung killed, he later learned from others that LRA fighters had killed him.⁸⁰⁹ P-0008, a former camp resident, confirmed that he saw the dead body of Lacung and was told by returning abductees that he was killed because he was unable to carry items given to him.⁸¹⁰ P-0001 learned on the day of the attack that Lacung had been killed because he had failed to carry items.⁸¹¹ P-0007, a former camp resident, attended Lacung’s funeral.⁸¹²

242. P-0067 witnessed the murder of local shop keeper, Pangarasio Onek. He testified that he and Onek were in the same group when they were abducted. He explained that Onek struggled to carry items that the LRA pillaged from the camp and that, as a result, LRA fighters shot Onek at point blank range three times in the head.⁸¹³ P-0008 saw Onek’s bloodied and

⁸⁰² See, e.g., P-0067, [T-126](#), p. 3-4.

⁸⁰³ See, e.g., P-0067, [T-126](#), p. 4; P-0209, [T-161](#), p. 19 – 20.

⁸⁰⁴ P-0009, [T-81](#), p. 17; P-0047, [T-115](#), p. 31-33; P-0006, [UGA-OTP-0144-0072-R01](#) at 0080; P-0007, [UGA-OTP-0147-0214-R01](#) at 0218; P-0008, [UGA-OTP-0137-0002-R01](#) at 0007-0008; P-0081, [UGA-OTP-0070-0029-R01](#) at 0033.

⁸⁰⁵ P-0061, [UGA-OTP-0144-0043-R01](#) at 0047.

⁸⁰⁶ P-0061, [UGA-OTP-0144-0043-R01](#) at 0047.

⁸⁰⁷ P-0061, [UGA-OTP-0144-0043-R01](#) at 0047.

⁸⁰⁸ P-0067, [T-125](#), p. 31.

⁸⁰⁹ P-0081, [UGA-OTP-0070-0029-R01](#) at 0033.

⁸¹⁰ P-0008, [UGA-OTP-0137-0002-R01](#) at 0008.

⁸¹¹ P-0001, [UGA-OTP-0138-0002-R01](#) at 0006.

⁸¹² P-0007, [UGA-OTP-0147-0214-R01](#) at 0218.

⁸¹³ P-0067, [T-125](#), p. 27.

swollen dead body on the day of the attack.⁸¹⁴ D-0076, a resident who was himself abducted during the attack, testified that he saw two dead bodies during the attack, one was Onek.⁸¹⁵ D-0076 explained that Onek had been killed “by gunshots”.⁸¹⁶

243. P-0249 learned that his close business colleague, Onek Apang, refused to carry items given to him by the LRA whilst they were in the centre. He learned from several people, including Apang’s wife, that Apang was killed by LRA as a result.⁸¹⁷ Apang’s murder was corroborated by D-0081 and P-0007.⁸¹⁸

244. P-0008 stated that several civilians who had returned after being abducted during the attack informed him that LRA fighters murdered civilians “for trying to escape or for not being able to walk any more”.⁸¹⁹ He heard LRA fighters instruct others to “just shoot the drunkards”.⁸²⁰ P-0249 and P-0007, both residents of the camp, stated that LRA fighters fired shots at their houses and those of other civilians.⁸²¹ LRA fighters also set fire to civilian houses.⁸²² P-0001, a camp leader who arrived at the camp in the afternoon after the attack, was told that people living in the camp died “from beatings or being shot directly by the LRA”.⁸²³

245. Witnesses also testified to seeing the dead bodies of other unnamed civilians. P-0067 saw the body of a dead woman in the trading centre area. The woman’s body was lying faced down, “[h]er neck was cut and had a deep cut wound”.⁸²⁴ It appeared to P-0067 as if the woman’s injuries had been caused by a machete.⁸²⁵ Sitting beside the body were three children who were crying and saying “[o]ur mother has been killed”.⁸²⁶ P-0067’s description of the manner in which the woman was killed shows that it was LRA fighters that murdered her. This is because witnesses, including P-0047 and P-0249, testified that the LRA attackers carried weapons such as “hoes, pangas, and spears” and “axe[s]”⁸²⁷ capable of causing her injuries. Although the Defence allege that deaths may have occurred in crossfire, there is no suggestion

⁸¹⁴ P-0008, [UGA-OTP-0137-0002-R01](#) at 0007-0008.

⁸¹⁵ D-0076, [T-219](#), p. 31.

⁸¹⁶ D-0076, [T-219](#), p. 16.

⁸¹⁷ P-0249, [T-79](#), p. 35-36.

⁸¹⁸ D-0081, [T-221](#), p. 47; P-0007, [UGA-OTP-0147-0214-R01](#) at 0219.

⁸¹⁹ P-0008, [UGA-OTP-0137-0002-R01](#) at 0008.

⁸²⁰ P-0008, [UGA-OTP-0137-0002-R01](#) at 0005.

⁸²¹ P-0249, [T-79](#), p. 10; P-0007, [UGA-OTP-0147-0214-R01](#) at 0217.

⁸²² P-0009, [T-81](#), p. 12; [REDACTED]; P-0379, [T-57](#), p. 24-25.

⁸²³ P-0001, [UGA-OTP-0138-0002-R01](#) at 0006.

⁸²⁴ P-0067, [T-125](#), p. 18.

⁸²⁵ P-0067, [T-125](#), p. 17.

⁸²⁶ P-0067, [T-125](#), p. 18.

⁸²⁷ P-0047, [UGA-OTP-0027-0177-R01](#) at 0192; P-0067, [T-125](#), p. 8.

of soldiers from the UPDF or Local Defence Units (LDUs) attacking civilians with such weapons at Pajule.

246. P-0084 also explained that a fact-finding mission following the attack concluded that civilians were killed by LRA fighters during the attack.⁸²⁸ Contemporaneous records produced by other camp leaders and investigators confirm this and record the names of some of the civilians killed during the attack.⁸²⁹

247. Finally, D-0032 testified that after the attack he heard Otti report to Kony over the LRA radio. He heard Otti report that civilians had been killed during the attack, and that civilian houses had been burned. Kony responded by laughing.⁸³⁰

4. Did the LRA pillage civilian property?

248. LRA fighters sent to attack Pajule IDP camp (and all other charged IDP camps) took food and other items from civilian residents, in the context of broader campaigns of killing, abduction, and property destruction. The fighters took the items by force, for fighters' private or personal use, and without owners' consent.⁸³¹

249. At various stages of the trial, the Defence suggested that the LRA was justified in taking food from IDP camps because it was "necessary" for LRA fighters' survival.⁸³² However, the Defence has not provided formal notification of its intention to rely on necessity as a ground for excluding criminal responsibility for pillaging under article 31 of the Statute.

250. The evidence shows that the items pillaged during the Pajule IDP camp attack were intended for the private and personal use of LRA commanders and members of their households. P-0309 was specifically asked what happened to food items taken from Pajule after the attack. His response was: "[t]hose items are our foodstuff, so whoever picked those items will take it to their home and that's what they will use as their food".⁸³³ P-0309's

⁸²⁸ P-0084, [UGA-OTP-0069-0416](#) at 0419; P-0084, [UGA-OTP-0139-0149-R01](#) at 0152, 0156, 0169; Military intelligence report, [UGA-OTP-0255-0810](#) at 0812.

⁸²⁹ P-0007, [UGA-OTP-0147-0214-R01](#) at 0220-0221, [UGA-OTP-0147-0225](#) at 0234; P-0008, [UGA-OTP-0137-0002-R01](#) at 0009, [UGA-OTP-0137-0029](#); P-.0001, [UGA-OTP-0138-0002-R01](#) at 0006.

⁸³⁰ D-0032, [T-201](#), p. 29-30.

⁸³¹ P-0006, [UGA-OTP-0144-0072-R01](#) at 0075; P-0379, [T-57](#), p. 26; P-0045, [T-104](#), p. 5, 10; P-0309, [T-60](#), p. 62-63; P-0330, [T-52](#), p. 9-10; P-0067, [T-125](#), p. 22-23; P-0081, [T-118](#), p. 34-35; P-0249, [T-79](#), p. 14 18-20, 28.

⁸³² [T-179](#), p. 16 and 32.

⁸³³ P-0309, [T-60](#), p. 73.

account is corroborated by P-0101, who saw Mr Ongwen return to his household after the attack “with luggage and about seven civilians he had abducted from Pajule”.⁸³⁴

251. The property pillaged from Pajule was not limited to food alone. In compliance with Mr Ongwen’s broad order to “go and take stuff”,⁸³⁵ fighters attacking the camp took any item they were able to lay their hands on, regardless of any purpose it could serve the LRA. P-0081 testified that the fighters would open the doors of homes they passed and “take any loot they thought interesting”.⁸³⁶ In the aftermath of the attack, camp leaders P-0007 and P-0008 compiled lists of pillaged items, which included women’s formal clothes (gomasi); school books; saucepans, clothes, money, livestock, and bedsheets, blankets; clothes (bongi), saucepans (cufuria), money, a suitcase, plates, jerrycan, radio, cooking bowls, hoes, axes, dresses, serving trays (sania); trousers (treaser); soap; radios; shirts; shoes; storage containers; and cups.⁸³⁷

252. The nature of the items pillaged, the context in which they were taken, and the use to which they were ultimately put demonstrate that the Defence’s claims concerning necessity are unfounded.

⁸³⁴ P-0101, T-13, p. 26.

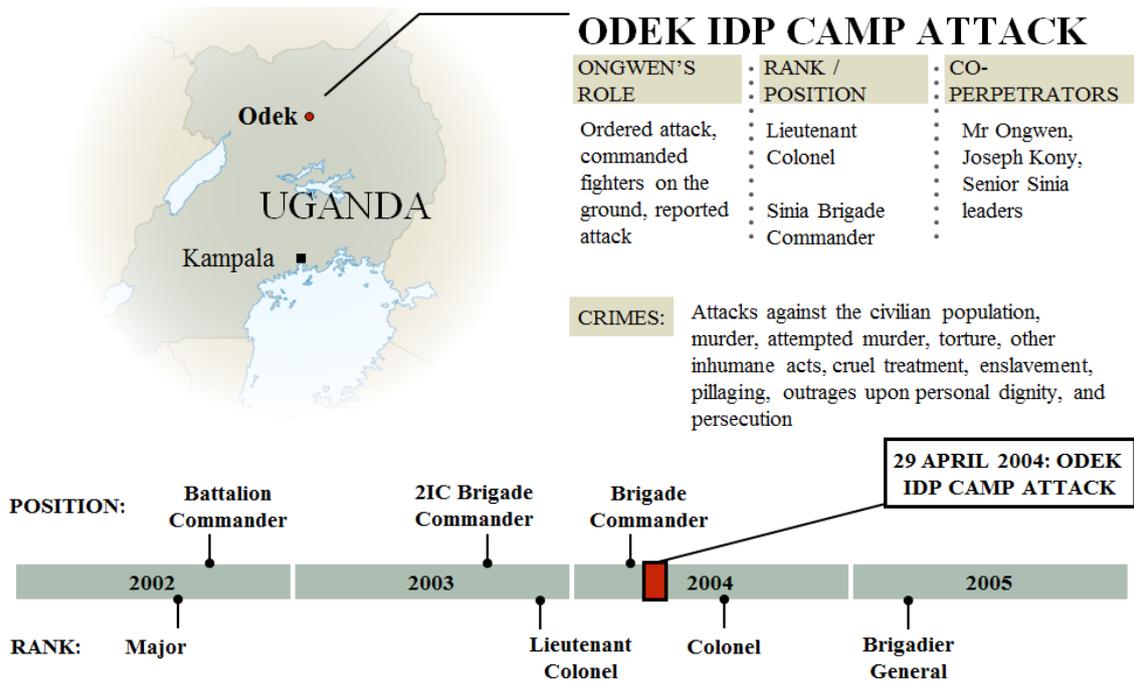
⁸³⁵ P-0009, T-81, p. 22.

⁸³⁶ P-0081, UGA-OTP-0070-0029-R01 at 0034.

⁸³⁷ P-0007, UGA-OTP-0150-0124; P-0008, UGA-OTP-0137-0051; UGA-OTP-0137-0068; UGA-OTP-0137-0089; UGA-OTP-0137-0123; UGA-OTP-0137-0145.

VIII. The 29 April 2004 attack on Odek IDP camp (Counts 11-23)

A. Introduction



253. The Prosecution case regarding the attack on Odek IDP camp is based on the testimony of 17 former LRA fighters,⁸³⁸ [REDACTED] former LRA radio signallers,⁸³⁹ eight victims,⁸⁴⁰ two ISO officers,⁸⁴¹ two UPDF officers,⁸⁴² and one Ugandan police officer.⁸⁴³ The Prosecution also relies on logbook records and audio recordings of LRA radio communications intercepted on 30 April and 1 May 2004,⁸⁴⁴ as well as sketches of the Odek IDP camp⁸⁴⁵ and of the attack,⁸⁴⁶ annotated maps of Odek and the surrounding area,⁸⁴⁷ and the IDP camp leader's contemporaneous personal diary entries recording the names of people killed or injured in the attack.⁸⁴⁸

⁸³⁸ Prosecution Witnesses P-0054, P-0085, P-0142, P-0205, P-0245, P-0264, P-0309, P-0314, P-0330, P-0340, P-0352, P-0372, P-0406, and P-0410, and well as Defence Witnesses D-0032, D-0066, and D-0075.

⁸³⁹ P-0016 [REDACTED].

⁸⁴⁰ P-0218, P-0252, P-0269, P-0275, P-0268, P-0270, P-0274, and P-0325.

⁸⁴¹ P-0059 and P-0301.

⁸⁴² P-0003 and P-0359.

⁸⁴³ P-0125.

⁸⁴⁴ See para. 277-284 below for discussion of Odek-relevant intercept evidence.

⁸⁴⁵ See, e.g., [UGA-OTP-0238-0731-R01](#) (sketch drawn by P-0218); [UGA-OTP-0244-3388-R01](#) (sketch drawn by P-0274); [UGA-OTP-0264-0252-R01](#) (sketch drawn by P-0325).

⁸⁴⁶ See, e.g., [UGA-OTP-0237-0198](#) (sketch drawn by P-0245); [UGA-OTP-0256-0178](#) and [UGA-OTP-0256-0179](#) (sketches drawn by P-0264).

⁸⁴⁷ See, e.g., [UGA-OTP-0233-1386](#) (map annotated by P-0205); [UGA-REG-0001-0001](#) (map annotated by P-0205 in court during his testimony).

⁸⁴⁸ P-0274, [UGA-OTP-0244-3375-R01](#), at 3386, para. 85; [UGA-OTP-0244-3391](#); [UGA-OTP-0244-3392](#); [UGA-OTP-0244-3393](#); [UGA-OTP-0244-3395](#).

254. This evidence establishes that the LRA attacked Odek IDP camp on the evening of 29 April 2004 and that, in the course of the attack, LRA fighters attacked the civilian population⁸⁴⁹ (Count 11), murdered and attempted to murder civilians⁸⁵⁰ (Counts 12-15), tortured and otherwise criminally mistreated civilians⁸⁵¹ (Counts 16-19), abducted and enslaved civilians⁸⁵² (Count 20), pillaged food and other items⁸⁵³ (Count 21), and humiliated, degraded, and otherwise violated the dignity of civilians⁸⁵⁴ (Count 22). As discussed elsewhere in this Closing Brief, these crimes were committed as part of a campaign of persecuting civilians perceived by the LRA as supporting the Ugandan government⁸⁵⁵ (Count 23).

255. The evidence also demonstrates that Mr Ongwen played a central role in the attack and in a common plan to commit the charged crimes.⁸⁵⁶ The Prosecution submits that Mr Ongwen's individual criminal responsibility is best characterised as indirect co-perpetration under article 25(3)(a), although the evidence would support conviction under any of the charged modes of liability under articles 25 and 28.⁸⁵⁷

B. Prosecution case theory

256. The Prosecution case theory concerning the attack on Odek is that:

- a. In April 2004, Joseph Kony ordered the LRA to attack his own birthplace of Odek, in south-eastern Gulu District, because the people there did not support the LRA.
- b. On 28 or 29 April 2004, Mr Ongwen – then Sinia Brigade Commander – ordered LRA fighters to attack the Odek IDP camp and to kill and abduct civilians and pillage their food.

⁸⁴⁹ See para. 285-289 below.

⁸⁵⁰ More than 60 civilians were killed during or as a result of the Odek attack. The evidence shows that at least 27 of them were intentionally killed by the LRA attackers. See para. 287-294 below.

⁸⁵¹ The LRA attackers subjected civilians to severe physical and mental pain and suffering, including through severe beatings, forcing victims to carry heavy loads, often for long distances, and forcing them to witness the beatings and killings of others. See para. 288-294 below.

⁸⁵² See para. 288-289, 293 below.

⁸⁵³ See para. 289 below.

⁸⁵⁴ This humiliation, degradation and violation of dignity took many forms. For example, [REDACTED]. The LRA also forced mothers to abandon their babies and small children as they were marched out of the camp by the LRA. See, e.g., P-0274, UGA-OTP-0244-3375-R01, at 3381, para. 43; P-0275, UGA-OTP-0244-3398-R01, at 3402, para. 31.

⁸⁵⁵ See para. 176-202 above.

⁸⁵⁶ See para. 274-276 below.

⁸⁵⁷ Mr Ongwen is charged in relation to the Odek attack under articles 25(3)(a), (b), (d), and (f), as well as article 28(a). See [Confirmation Decision](#), p. 80-81.

- c. After briefing the fighters, Mr Ongwen personally led the attack on the ground, accompanied by senior Sinia Brigade commanders including Ben Acellam, Okwer, Kalalang, and Ocan Labongo.
- d. On 29 April 2004, Mr Ongwen's fighters split into groups as they approached the IDP camp. One group attacked the military barracks, killing soldiers and burning the barracks. A second group moved through the camp to the trading centre; they murdered civilians, burned civilian homes, and abducted civilian men, women, and children to carry away pillaged food and other goods. Some of those abducted civilians were later killed by the LRA, while others were conscripted into the LRA ranks as fighters or forced to be "wives" or *ting tings*.
- e. On 30 April and 1 May 2004, Mr Ongwen reported the results of the Odek attack, by radio, up his chain of command to Kony and Vincent Otti.

C. Key issues related to the 29 April 2004 attack on the Odek IDP camp

257. The Prosecution addresses four key issues which appear to be disputed by the Parties:

- 1) Did Mr Ongwen personally participate in the Odek attack?
- 2) Did Mr Ongwen report the Odek attack over LRA radio?
- 3) Did the LRA intentionally target civilians during the attack?
- 4) Were the deaths of civilians at Odek caused by "crossfire"?

1. Did Mr Ongwen personally participate in the Odek attack?

258. The Defence has suggested that Mr Ongwen did not participate in the Odek attack and was not physically present.⁸⁵⁸ However, several eyewitnesses saw Mr Ongwen inside or within meters of the Odek IDP camp during the attack, and the testimony of Witnesses P-0142, P-0205, P-0314, and D-0075 suggesting that he did not participate should be given little weight or disregarded as unreliable.

(a) Five eyewitnesses saw Mr Ongwen at the attack

259. P-0054 testified that Mr Ongwen led a group of fighters to the Odek trading centre to pillage food.⁸⁵⁹ Witness P-0245 testified that Mr Ongwen was in the group that went to attack

⁸⁵⁸ T-179, p. 40; Defence questioning of P-0205, T-50, p. 28; Defence questioning of P-0054, T-94, p. 25.

⁸⁵⁹ P-0054, T-93, p. 15, 19-20.

the barracks.⁸⁶⁰ P-0340⁸⁶¹ and P-0309⁸⁶² each saw Mr Ongwen moving towards or entering the camp with the attackers. P-0264 saw Mr Ongwen within sight of the camp just before the attack began.⁸⁶³ Despite some inconsistencies in the details of their accounts, these witnesses together presented powerful direct evidence of Mr Ongwen's participation in the attack.

260. Witnesses P-0269 and P-0252, who were both abducted during the attack, testified to seeing Mr Ongwen after the attack was over.⁸⁶⁴ It is understandable that these victims did not identify Mr Ongwen amongst their attackers. First, given the size of the camp,⁸⁶⁵ the duration of the attack,⁸⁶⁶ and the fact that the attackers were split into several groups,⁸⁶⁷ it is unlikely that anyone in the camp could have seen all of the LRA attackers. Moreover, P-0252 had never seen Mr Ongwen before, and thus could not have recognised him even if he did see him. He was also at most 14 years old at the time.⁸⁶⁸ Remarkably, P-0269 did know Mr Ongwen from her prior abduction by the LRA,⁸⁶⁹ but she testified that she hid inside her home for part of the attack⁸⁷⁰ before being captured by one LRA fighter and led from the camp with other abductees.⁸⁷¹ Only after spending a night in the wilderness did P-0269 see the attackers' overall commander, whom she immediately recognised as Mr Ongwen, telling his fighters that he had reported the attack to Kony.⁸⁷²

(b) P-0142, P-0205, and P-0314's testimony that Mr Ongwen did not go to the attack should be given little weight

261. Three Prosecution Witnesses, P-0142, P-0205, and P-0314, testified that Mr Ongwen did not go personally to attack the camp, but instead remained behind at the location of the pre-attack RV. However, this part of these witnesses' evidence is significantly limited by their

⁸⁶⁰ P-0245, T-99, p. 61-63, referring to UGA-OTP-0237-0198 (sketch). Dominic Ongwen, marked as "Odomi", is indicated as being in the centre of the attacking group in Odek.

⁸⁶¹ P-0340, T-102, p. 28-29, T-103, p. 47-50.

⁸⁶² P-0309, T-60, p. 77-78. When challenged by Defence counsel, P-0309 stated that he did not see Mr Ongwen in the trading centre itself, but he maintained that Mr Ongwen was "together" with him when they entered Odek. See P-0309, T-63, p. 23-24.

⁸⁶³ P-0264, T-64, p. 45-47.

⁸⁶⁴ See P-0269, T-85, p. 44-46; T-86, p. 78-84; P-0252, T-88, p. 8.

⁸⁶⁵ See, e.g., P-0274, UGA-OTP-0244-3375-R01, at 3377, para. 16-17 (the camp had about 2,000 residents and was divided into two zones and six blocks); Sketch drawn by P-0274, UGA-OTP-0244-3388-R01.

⁸⁶⁶ The attack lasted for at least an hour. See P-0218, UGA-OTP-0238-0720-R01 at 0724; P-0274, UGA-OTP-0244-3375-R01 at 3379; P-0268, UGA-OTP-0248-0013-R01 at 0019; P-0340, T-102, p. 37.

⁸⁶⁷ See, e.g., P-0314, T-76, p. 56; P-0264, T-64, p. 45.

⁸⁶⁸ P-0252, T-87, p. 26. See also para. 72 (table).

⁸⁶⁹ See, e.g., P-0269, T-85, p. 15-16, 25, 45-46.

⁸⁷⁰ P-0269, T-85, p. 34-36.

⁸⁷¹ P-0269, T-85, p. 36-43.

⁸⁷² P-0269, T-85, p. 44-45.

knowledge and vantage points, and for that reason the evidence of the five eyewitnesses who testified to Mr Ongwen's presence at Odek should be preferred.

262. P-0142, [REDACTED], explained that he did not participate in the pre-attack briefing, although he saw the fighters gathered and heard at least some of what was said.⁸⁷³ He also explained that he was not "together" with Mr Ongwen while the attackers were away, having remained at his position, and he did not report seeing or hearing Mr Ongwen again until after the attack, when the "overall" commander for the attack reported to Mr Ongwen.⁸⁷⁴

263. P-0205, [REDACTED], also did not participate in the attack.⁸⁷⁵ He testified that he was present at the pre-attack RV where Mr Ongwen gave orders to the attackers.⁸⁷⁶ However, when the attackers left for Odek, P-0205 returned to his position and did not purport to have interacted with or observed Mr Ongwen until after the attack was over.⁸⁷⁷

264. P-0314, [REDACTED],⁸⁷⁸ [REDACTED].⁸⁷⁹ He testified that Mr Ongwen addressed his group⁸⁸⁰ but remained behind when they went to the attack.⁸⁸¹ The next time he saw Mr Ongwen was after the attack, when Mr Ongwen thanked the fighters for their work.⁸⁸² However, P-0314 also explained that he could not see who was in the other attacking groups apart from his own.⁸⁸³

265. All three of these witnesses gave credible evidence about Mr Ongwen's key role before and after the Odek attack. Each may have understandably deduced from his own experiences, and from seeing others report to Mr Ongwen, that Mr Ongwen did not personally accompany the attackers. However, none of these witnesses was with Mr Ongwen during the attack itself, nor could any of them testify regarding the whereabouts of groups other than their own during the attack. Consequently their testimony does not undermine the credible, first-hand accounts of P-0054, P-0245, P-0340, P-0309, and P-0264 placing Mr Ongwen in or near the camp.

⁸⁷³ P-0142, T-70, p. 25-31.

⁸⁷⁴ P-0142, T-70, p. 29-30.

⁸⁷⁵ P-0205, T-50, p. 28.

⁸⁷⁶ P-0205, T-47, p. 42-45; T-50, p. 28.

⁸⁷⁷ P-0205, T-47, p. 44-45.

⁸⁷⁸ [REDACTED].

⁸⁷⁹ [REDACTED].

⁸⁸⁰ P-0314, T-75, p. 6-8; T-76, p. 55.

⁸⁸¹ P-0314, T-75, p. 9; T-76, p. 56.

⁸⁸² P-0314, T-75, p. 13, 17.

⁸⁸³ P-0314, T-76, p. 56.

(c) D-0075's testimony regarding Mr Ongwen's location was not credible

266. The evidence proved that Mr Ongwen was in a position to participate personally in the attack, based on his physical location and his interaction with the attacking fighters just prior to the attack. Former Ongwen escort P-0309 testified that before the attack Mr Ongwen blessed the fighters and gave them instructions at an RV in Loyo Ajonga.⁸⁸⁴ P-0205 was cross-examined extensively by the Defence regarding Mr Ongwen's location in the days before the Odek attack, and was adamant that Mr Ongwen was on the Gulu side of the Aswa River, in the area of Lalogi (the sub-country directly west of Odek, where Loyo Ajonga is located).⁸⁸⁵ The Defence itself also appeared to place Mr Ongwen in Loyo Ajonga around the time of the Odek attack during its questioning of Witnesses P-0269⁸⁸⁶ and P-0309.⁸⁸⁷

267. Despite this evidence, the Defence has suggested that Mr Ongwen was not present at Odek at the time of the attack, but instead across the Aswa River, to the east, in Pader District.⁸⁸⁸ This position appears to be based on the testimony of Defence Witness D-0075, whose evidence was not credible for reasons discussed below.

268. First, D-0075's testimony was directly contradicted by substantial credible evidence from other witnesses regarding both D-0075's own location and Mr Ongwen's location. [REDACTED].⁸⁸⁹ At least five former LRA fighters testified that [REDACTED],⁸⁹⁰ [REDACTED].⁸⁹¹ In order to accept D-0075's suggestion that he was somewhere else entirely when he first learned of the Odek attack, the Trial Chamber would have to disbelieve the consistent and credible testimony of those five witnesses. Furthermore, to the extent D-0075 said he was together with Mr Ongwen somewhere else at the time of the attack, the Trial Chamber would also have to reject the credible testimony of Witnesses P-0054, P-0245, P-0264, P-0340 and P-0309, noted above, all of whom placed Mr Ongwen in Odek during the

⁸⁸⁴ P-0309, T-60, p. 74-75, T-61, p. 3, T-62, p. 66. Loyo Ajonga is located on the same side of the Aswa River as Odek, approximately 20 km away, a distance walkable in a matter of hours. See UGA-OTP-0237-0118 (map).

⁸⁸⁵ P-0205, T-50, p. 35-37, 40-42.

⁸⁸⁶ P-0269, T-86, p. 67.

⁸⁸⁷ P-0309, T-63, p. 14-20. At least two witnesses also placed Mr Ongwen in the Loyo Ajonga area in the weeks after the Odek attack. See P-0172, T-113, p. 19-21; P-0145, T-143, p. 21.

⁸⁸⁸ See, e.g., Defence questioning of P-0054, T-94, p. 25; P-0205, T-50, p. 35. Note that P-0142 and P-0205, who testified that Mr Ongwen did not personally participate in the Odek attack, both placed him at the pre-attack RV on the west, or Gulu, side of the Aswa River. See P-0142, T-70, p. 28-29, 40, T-72, p. 67-69; P-0205, T-50, p. 35. Their evidence, therefore, directly contradicts the testimony of D-0075.

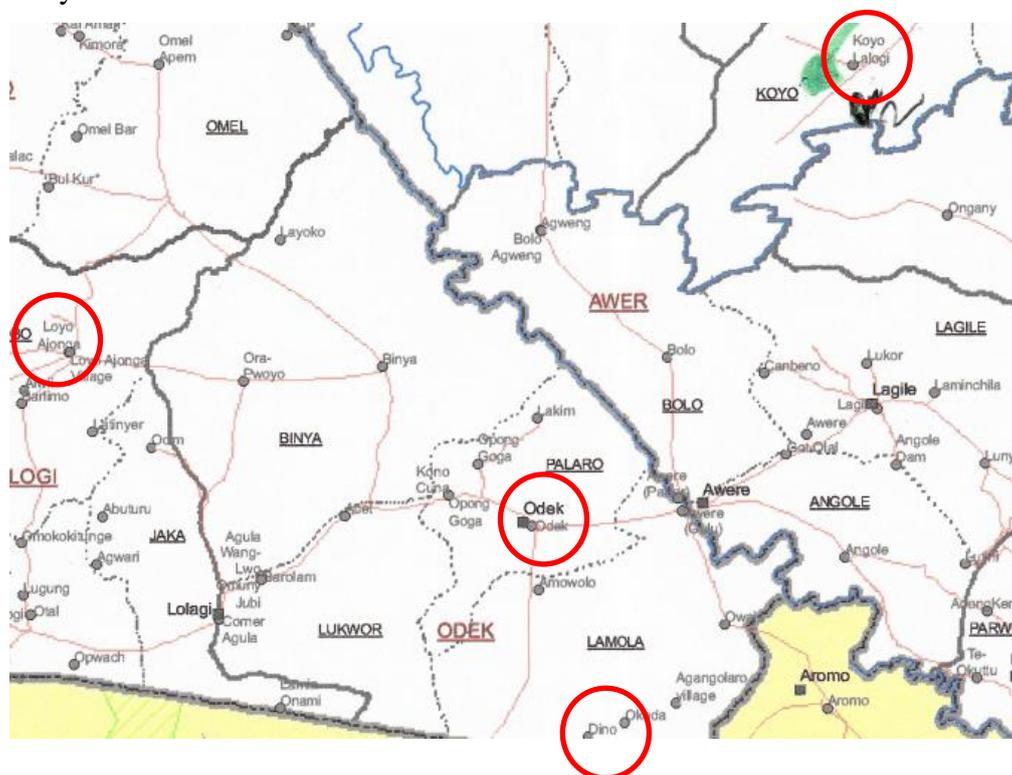
⁸⁸⁹ [REDACTED].

⁸⁹⁰ [REDACTED].

⁸⁹¹ [REDACTED].

attack, as well as that of P-0142, P-0205, and P-0314, all of whom placed Mr Ongwen at an RV near Odek prior to the attack.

269. Second, even standing on their own, D-0075's statements about the attack and Ongwen's location at the time were fundamentally inconsistent over time and highly unreliable. When first interviewed by the Prosecution in June 2015, D-0075 told investigators that he first learned about the Odek attack while near Koyo Lalogi, in Pader District, east of the Aswa River; he was together with Oka Battalion, and he heard Oka Battalion CO Ben Acellam communicating with Mr Ongwen about the attack over LRA radio. At the time, D-0075 said, Mr Ongwen was located on the "other side" of the Aswa River, around Dino or Loyo Ajonga, both of which are in Gulu District.⁸⁹² Each of those locations can be found on the following map,⁸⁹³ which shows portions of Gulu District to the West and Pader District to the east, separated by the Aswa River:



270. When D-0075 was interviewed by the Defence in August 2017, his account changed. D-0075 told the Defence that he was actually *together* with Mr Ongwen, east of the Aswa River, when he learned about the Odek attack over FM radio. He said he heard that the attack was carried out by Ben Acellam and other commanders using elements of Oka and Terwanga

⁸⁹² OTP Interview of D-0075, [UGA-OTP-0271-0661-R01](#) at 0675-0677, 0684-0689.

⁸⁹³ This map is an excerpt from [UGA-OTP-0237-0118](#). The red circles have been added by the Prosecution to highlight the named locations.

Battalions.⁸⁹⁴ In effect, D-0075 changed his account regarding 1) how he learned of the attack (LRA radio versus FM radio), 2) Mr Ongwen's location (west of the Aswa versus east of the Aswa), 3) Ben Acellam's location (east of the Aswa versus west of the Aswa), and 4) implicitly whether the attackers were led by Mr Ongwen or by Ben Acellam.

271. When D-0075 testified before the Chamber in June 2019, he did not adopt either of those narratives completely, offering confused evidence which the Prosecution submits is incapable of casting reasonable doubt on Mr Ongwen's personal participation in the April 2004 Odek attack. In court, D-0075 initially said that he was *not* with Mr Ongwen when he first heard about the Odek attack; that he was "in the Pader area" (*i.e.*, east of the Aswa River) while Mr Ongwen "was around Loyo Ajonga" (*i.e.*, west of the Aswa River), consistent with his OTP interview.⁸⁹⁵ However, upon further questioning, D-0075 said that when he heard about the attack, he was together with Mr Ongwen near Lapak, on the east side of the Aswa River.⁸⁹⁶ When questioned by the Prosecution and the Presiding Judge about the apparent discrepancies between his various accounts, D-0075 could not reconcile the conflicting narratives and was unable even to specify which of at least three attacks on Odek he was speaking about.⁸⁹⁷

272. The Prosecution therefore submits that the Trial Chamber should reject D-0075's evidence regarding the Odek attack. D-0075's denial of his own participation in the attack was not credible, and his trial testimony perpetuated fundamental contradictions between his OTP and Defence interviews, ultimately failing to clearly state where Mr Ongwen was located at the time of the April 2004 Odek attack.

273. Finally with regard to Mr Ongwen's location, the Defence has at times suggested that the Aswa River could not be crossed in April 2004, and therefore either that Mr Ongwen could not have been present at the Odek attack or that Prosecution witnesses' accounts of the attack were unreliable.⁸⁹⁸ This argument fails for several reasons. First, as discussed above, the trial testimony demonstrated that Mr Ongwen was already on the Gulu (*i.e.*, Odek) side of the Aswa

⁸⁹⁴ UGA-D26-0022-0301, at 0310-0311, para. 36-40.

⁸⁹⁵ D-0075, T-224, p. 74-75. This is also consistent with the testimony of P-0205 and P-0309 that the pre-attack RV was held near Loyo Ojonga and Mr Ongwen was present. *See* P-0309, T-60, p. 75; P-0205, T-50, p. 37-38.

⁸⁹⁶ D-0075, T-224, p. 76.

⁸⁹⁷ D-0075, T-225, p. 51-62. When asked a clear and simple question by the Presiding Judge regarding which Odek attack the witness had in mind when he described being on opposite sides of the Aswa River from Mr Ongwen, the witness said: "[I]t would be certainly difficult for me to talk to – to talk about the attacks in Odek, but I know there were three different attacks in Odek. There could also be others. So it wasn't specific to me which one they wanted me to talk about". *See id.* p. 61.

⁸⁹⁸ *See, e.g.*, Defence questioning of P-0205, T-50, p. 21-27; Defence questioning of P-0314, T-76, p. 62.

River prior to the day of the attack,⁸⁹⁹ and thus his ability to cross the river on that day is irrelevant. Second, the evidence demonstrated the LRA's willingness and ability to cross rivers even when they were full and fast-moving, occasionally at the cost of lives.⁹⁰⁰ P-0410, for example, described crossing a fast-moving Aswa later in 2004 using ropes,⁹⁰¹ a technique also mentioned by other witnesses.⁹⁰² Third, the testimony suggested that the flow of the Aswa even during the rainy season fluctuated depending on the day and conditions, and that the LRA, where possible, chose favourable locations for river-crossing in order to reduce the risks.⁹⁰³

(d) Mr Ongwen is responsible even if he did not personally participate in the attack

274. Considered as a whole, the evidence demonstrates that Mr Ongwen personally led the Odek attack. However, even if the Trial Chamber were not satisfied that Mr Ongwen participated personally in the attack, all of the elements of indirect co-perpetration (which does not require physical participation) have been established.

275. First, the evidence shows the existence of a common plan to attack the Odek IDP camp. Kony himself called for such an attack shortly before it occurred.⁹⁰⁴ A large number of LRA fighters and commanders were then assembled,⁹⁰⁵ including fighters from all three battalions of Sinia Brigade.⁹⁰⁶ Several Sinia Brigade commanders participated, either in the attack itself or at the pre-attack RV, including Ben Acellam (Oka Battalion CO),⁹⁰⁷ Okwer (Sinia Brigade

⁸⁹⁹ P-0410, [T-152](#), p. 35; P-0314, [T-76](#), p. 61-62; P-0205, [T-50](#), p. 35-36; P-0309, [T-60](#), p. 74-75; *see also* P-0264, [T-66](#), p. 58-59 (witness was not familiar with the area but did not recall crossing the Aswa on the way to Odek).

⁹⁰⁰ P-0205, [T-50](#), p. 21-22; [REDACTED]; *see also* ISO Gulu logbook, [UGA-OTP-0232-0234](#) at 0361 (Caesar Acellam reporting that some recruits drowned while crossing a flooded river with heavy loads); P-0410, [T-151](#), p. 75-76 (describing some people being swept away while crossing a fast-flowing Aswa River).

⁹⁰¹ P-0410, [T-151](#), p. 75-76.

⁹⁰² D-0026, [T-191](#), p. 8; P-0205, [T-50](#), p. 22.

⁹⁰³ P-0205, [T-50](#), p. 23-27 (noting, for example, that the LRA would cross at wide spots in the river where the current was not very strong); P-0245, [T-101](#), p. 27 (saying the LRA crossed the Aswa at a place which was not too dangerous); P-0314, [T-76](#), p. 61 (stating that the river was not overflowing at the time of the Odek attack).

⁹⁰⁴ P-0410, [T-151](#), p. 28; P-0245, [T-99](#), p. 49-50; D-0032, [T-200](#), p. 23-25; P-0142, [T-71](#), p. 5. P-0003 suggested that Mr Ongwen attacked Odek without an order from Kony, because Kony expressed surprise when Mr Ongwen reported the attack. P-0003, [T-45](#), p. 27. The Prosecution submits that this was speculation on P-0003's part and does not undermine the other evidence that Kony called for an attack on Odek. The passage of some days or even weeks between Kony's instructions and Mr Ongwen's implementation of the attack adequately explains any apparent surprise or desire for details by Kony.

⁹⁰⁵ P-0410, [T-152](#), p. 36-37.

⁹⁰⁶ P-0142, [T-70](#), p. 25-28; P-0054, [T-93](#), p. 20; P-0264, [T-64](#), p. 38-39; P-0340, [T-102](#), p. 28; *See also* P-0205, [T-47](#), p. 42 (referring to participation of fighters from Terwanga Battalion and Sinia HQ).

⁹⁰⁷ P-0264, [T-64](#), p. 39; P-0142, [T-70](#), p. 25; P-0205, [T-47](#), p. 43-44.

Intelligence Officer, or BIO),⁹⁰⁸ Kalalang (Terwanga Battalion CO),⁹⁰⁹ and Ocan Labongo (Siba Battalion CO).⁹¹⁰ Members of Trinkle Brigade also appear to have participated.⁹¹¹

276. The evidence further demonstrates Mr Ongwen's essential, indeed central, role in the common plan. As noted above, Mr Ongwen briefed the LRA fighters gathered at the pre-attack RV. Several witnesses testified that he ordered the attackers to kill civilians and destroy the camp.⁹¹² After returning from the attack, Mr Ongwen received reports from his subordinate commanders⁹¹³ and, as discussed below, reported the attack – including the killing and abduction of civilians – over LRA radio to Kony.

2. Did Mr Ongwen report the Odek attack over LRA radio?

277. The Trial Chamber heard audio recordings of two intercepted LRA radio communications from the days after the Odek attack, in which Mr Ongwen personally reported the attack and some of its consequences, including the killing and abduction of civilians. The Defence have at times suggested that it was Ocan Labongo, rather than Mr Ongwen, who made those reports.⁹¹⁴ As discussed below, the evidence clearly establishes that it was Mr Ongwen.

(a) Mr Ongwen reported the attack on 30 April 2004

278. The first report was audio-recorded by the ISO in Gulu on 30 April 2004.⁹¹⁵ At trial, former LRA radio signallers P-0016⁹¹⁶ and [REDACTED],⁹¹⁷ as well as UPDF and ISO radio operators P-0003⁹¹⁸ and P-0059,⁹¹⁹ listened to and commented on this recording; they all recognised the voice of Mr Ongwen (using the call sign Tem Wek Ibong) reporting the Odek attack. Each of the witnesses highlighted specific and consistent information in the recording.

⁹⁰⁸ P-0142, [T-70](#), p. 25; P-0264, [T-64](#), p. 72; [REDACTED]; P-0410, [T-151](#), p. 33, 41; P-0205, [T-47](#), p. 43-44.

⁹⁰⁹ P-0264, [T-64](#), p. 39; P-0205, [T-47](#), p. 43-44; P-0330, [T-52](#), p. 14.

⁹¹⁰ P-0264, [T-64](#), p. 39.

⁹¹¹ P-0245, [T-99](#), p. 51; D-0032, [T-200](#), p. 24-25.

⁹¹² P-0205, [T-47](#), p. 43-44; P-0245, [T-99](#), p. 52; P-0410, [T-151](#), p. 34-35, 38.

⁹¹³ *See, e.g.*, P-0142, [T-70](#), p. 30.

⁹¹⁴ *E.g.*, P-0003, [T-45](#), p. 39 *et seq.*; P-0359, [T-110](#), p. 48-50. *See also* Defence opening statement, [T-179](#), p. 34 (suggesting that George Labongo was the person taking credit for the Odek attack).

⁹¹⁵ Sound recording, [UGA-OTP-0051-0074](#) (original). The recording was subsequently enhanced and transcribed by the Prosecution. Sound recording, [UGA-OTP-0235-0038](#), Track 2 (enhanced). The ICC transcript and translation of the recording is [UGA-OTP-0274-0004](#), starting at 0042. In addition, P-0016, [REDACTED], P-0003, and P-0056 each annotated that transcript. *See* Audio transcript annotation by P-0016, [UGA-OTP-0259-0065](#); [REDACTED]; Audio transcript annotation by P-0003, [UGA-OTP-0248-0263-R01](#); Audio transcript annotation by P-0059, [UGA-OTP-0248-0462-R01](#).

⁹¹⁶ P-0016, [T-32](#), p. 42-64; Audio transcript annotation by P-0016, [UGA-OTP-0259-0065](#).

⁹¹⁷ [REDACTED].

⁹¹⁸ P-0003, [T-43](#), p. 18-31; Audio transcript annotation by P-0003, [UGA-OTP-0248-0263-R01](#).

⁹¹⁹ P-0059, [T-37](#), p. 2-13; Audio transcript annotation by P-0059, [UGA-OTP-0248-0462-R01](#).

For example, each heard Kony ask Mr Ongwen whether he had “cleaned the backside of his mothers”,⁹²⁰ which P-0003 [REDACTED] explained meant “have you killed everybody?”⁹²¹—to which Mr Ongwen replied, “completely”.⁹²² Each witness heard the report of seized weapons.⁹²³ [REDACTED] witnesses also heard Mr Ongwen refer to civilians casualties,⁹²⁴ while P-0016, P-0059, and P-0003 all heard him report the abduction of male and female civilians.⁹²⁵

279. This powerful direct evidence is corroborated in many details by logbooks contemporaneously created by the ISO,⁹²⁶ UPDF,⁹²⁷ and the Ugandan police.⁹²⁸ One logbook, however, ascribes the report of the Odek attack to Labongo.⁹²⁹ This reference appears to be the basis for the Defence’s argument that Ocan Labongo, rather than Mr Ongwen, reported the attack on Odek.⁹³⁰ When the evidence is examined, this theory fails for the following reasons:

- First and most significantly, as described above, the testimony of P-0016, [REDACTED], P-0003, and P-0059 is consistent and unequivocal that Mr Ongwen is the person taking responsibility for the Odek attack on the 30 April 2004 audio-recorded intercept. That intercept is a recording of Mr Ongwen himself speaking, and thus constitutes more direct and authoritative evidence of who spoke than the transcribed notes in the logbooks. All of these witnesses were well placed to recognise Mr Ongwen’s voice, [REDACTED].⁹³¹ [REDACTED].⁹³² Their evidence is also corroborated by

⁹²⁰ [REDACTED]; P-0016, [T-32](#), p. 49-50, referring to audio transcript annotation by P-0016, [UGA-OTP-0259-0065](#) at 0067 (row 748); P-0059, [T-37](#), p. 2-3; P-0003, [T-43](#), p. 19-21, referring to audio transcript annotation by P-0003, [UGA-OTP-0248-0263-R01](#) at 0301 (row 748).

⁹²¹ P-0003, [T-43](#), p. 19-21, referring to audio transcript annotation by P-0003, [UGA-OTP-0248-0263-R01](#) at 0301 (row 748); [REDACTED].

⁹²² [REDACTED]; P-0016, [T-32](#), p. 50, referring to audio transcript annotation by P-0016, [UGA-OTP-0259-0065](#) at 0067 (row 749); P-0059, [T-37](#), p. 3.

⁹²³ [REDACTED]; P-0016, [T-32](#), p. 60; P-0059, [T-37](#), p. 8; P-0003, [T-43](#), p. 26.

⁹²⁴ [REDACTED]; P-0016, [T-32](#), p. 60; P-0059, [T-37](#), p. 8; P-0003, [T-43](#), p. 26.

⁹²⁵ P-0016, [T-32](#), p. 63, referring to audio transcript annotation by P-0016, [UGA-OTP-0259-0065](#) at 0075 (rows 1315-1319); P-0059, [T-37](#), p. 8, 12-13, referring to audio transcript annotation by P-0059, [UGA-OTP-0248-0462-R01](#) at 0521-0522 (row 1313-1325); P-0003, [T-43](#), p. 30, referring to audio transcript annotation by P-0003, [UGA-OTP-0248-0263-R01](#) at 0324 (rows 1319-1323).

⁹²⁶ ISO logbook, [UGA-OTP-0061-0206](#) at 0270 (left page).

⁹²⁷ UPDF Gulu logbook, [UGA-OTP-0254-2982](#) at 3004 (left page); UPDF Sudan logbook, [UGA-OTP-0242-7194](#) at 7245 (right page).

⁹²⁸ Police logbook, [UGA-OTP-0037-0002](#) at 0144-0146.

⁹²⁹ UPDF Gulu logbook, [UGA-OTP-0254-2982](#) at 3004.

⁹³⁰ *E.g.*, P-0003, [T-45](#), p. 39; P-0359, [T-110](#), p. 49-50.

⁹³¹ P-0003, [T-42](#), p. 47-48; P-0059, [T-36](#), p. 46-49; P-0016, [T-32](#), p. 19-23; [REDACTED].

⁹³² [REDACTED].

Defence Witness (and former LRA signaller) D-0100's identification of Mr Ongwen as the speaker on the 1 May 2004 "diamond" tape (discussed further below).⁹³³

- Second, on the audio recording, the person reporting the attack uses the call sign "Tem Wek Ibong". Witnesses P-0016, [REDACTED], P-0003, and P-0059 all testified that Mr Ongwen used that call sign,⁹³⁴ as did police communications interceptor P-0125.⁹³⁵ The post-attack report for the Lukodi attack three weeks later was also made by Tem Wek Ibong,⁹³⁶ and there is no suggestion that Ocan Labongo reported that attack.⁹³⁷ Indeed, the only suggestion during trial that someone other than Mr Ongwen used the call sign Tem Wek Ibong came from Defence Witness D-0100, who stated that it referred to Buk Abudema.⁹³⁸ However, D-0100 himself identified Mr Ongwen as the speaker on the 1 May 2004 Odek "diamond" audio,⁹³⁹ where Mr Ongwen uses the call sign Tem Wek Ibong.⁹⁴⁰ D-0100 also confirmed Abudema's use of the call sign "Madilu",⁹⁴¹ the very person to whom Tem Wek Ibong reported the Odek attack on 30 April 2004.⁹⁴² Together, this evidence leaves no doubt that Tem Wek Ibong was Mr Ongwen's alias, not Abudema's.

- Third, as explained by P-0016⁹⁴³ and P-0003,⁹⁴⁴ Ocan Labongo was also on air at the time of the Odek attack report by Mr Ongwen. Those two witnesses clearly distinguished between the words spoken by Mr Ongwen and Labongo in their annotated transcripts (by marking "ONG" and "LAB" respectively).⁹⁴⁵ In other words, while Labongo did

⁹³³ D-0100, [T-234](#), p. 51-52.

⁹³⁴ P-0016, [T-32](#), p. 23, [REDACTED]; P-0003, [T-42](#), p. 27; P-0059, [T-36](#), p. 49.

⁹³⁵ P-0125, [T-135](#), p. 73.

⁹³⁶ [UGA-OTP-0239-0123](#), from time stamp 23:24 to 24:30; P-0016, [T-32](#), p. 75-76; audio transcript annotation by P-0016, [UGA-OTP-0129-0419](#) at 0428; P-0003, [T-42](#), p. 79.

⁹³⁷ P-0205 testified that he heard Mr Ongwen reporting to Kony about the Odek and Lukodi attacks using Ocan Labongo's radio set. However, P-0205 said that this report was made several months after the charged attacks in this case, and it is clear from his testimony that it was Mr Ongwen making the report, not Labongo. P-0205, [T-48](#), p. 4-8.

⁹³⁸ D-0100, [T-234](#), p. 46.

⁹³⁹ D-0100, [T-234](#), p. 51-52.

⁹⁴⁰ [UGA-OTP-0235-0015](#), track 1 at 00:29; [UGA-OTP-0258-0809-R01](#) at 0810 (transcript annotated by P-0059).

⁹⁴¹ D-0100, [T-234](#), p. 46.

⁹⁴² [UGA-OTP-0248-0462-R01](#), at 0499-0500, lns.714 *et seq.*; [REDACTED].

⁹⁴³ P-0016, [T-32](#), p. 42-43; *See also* ISO logbook, [UGA-OTP-0061-0206](#) at 0269 (right page); UPDF Gulu logbook, [UGA-OTP-0254-2982](#) at 3004 (right page) where both "Dominic" and "Labongo" are recorded as being on air.

⁹⁴⁴ P-0003, [T-43](#), p. 19.

⁹⁴⁵ *See, e.g.*, audio transcript annotation by P-0016, [UGA-OTP-0259-0065](#) at 0068 (rows 780-788); Audio transcript annotation by P-0003, [UGA-OTP-0248-0263-R01](#) at 0302-0303 (rows 780-788).

participate in the attack and was on air during the post-attack report, the evidence is clear that Mr Ongwen, not Labongo, made the report to Kony and Otti.

- Finally, the reference to “Labongo” in the long-hand UPDF Gulu logbook entry and UPDF intelligence report – the only places in which the name appears – is most likely the result of a transcription error. The corresponding short-hand rough note refers only to “Dominic” taking responsibility.⁹⁴⁶ As explained by P-0029, the long-hand entries directly informed the content of the UPDF intelligence reports.⁹⁴⁷ Thus, an incorrect transcription from the short-hand rough note to the long-hand entry was apparently repeated in the intelligence report.⁹⁴⁸

280. This consistent and overwhelming evidence is further corroborated by first-hand witness testimony. Abductee P-0269 overheard Mr Ongwen speaking to Kony on the radio the day after the Odek attack.⁹⁴⁹ She then saw Mr Ongwen tell his men that “he had called Kony and told Kony that he had an attack in Kony’s place”.⁹⁵⁰ Another Odek abductee, P-0252, saw Mr Ongwen use a radio with a long antenna the day after the Odek attack,⁹⁵¹ while LRA fighter P-0205 heard Mr Ongwen say he had reported over the radio that he had sent fighters to attack Odek.⁹⁵² P-0085 also testified that he heard Mr Ongwen report an attack on Odek over the radio and even discussed it with him personally.⁹⁵³

(b) Mr Ongwen reported the attack again on 1 May 2004

281. The second Odek post-attack report was made by Mr Ongwen on 1 May 2004 at approximately 11h00. It too was audio-recorded by the ISO in Gulu.⁹⁵⁴ During this communication, Mr Ongwen reported additional details of the Odek attack to Kony, in

⁹⁴⁶ UPDF logbook, [UGA-OTP-0197-2319](#) at 2439 (bottom of page) to 2440 (short-hand).

⁹⁴⁷ P-0029, [UGA-OTP-0267-0455](#), at 0458-0459; [UGA-OTP-0027-0231-R01](#) at 0240.

⁹⁴⁸ UPDF Intelligence report, [UGA-OTP-0017-0150](#), at 0154.

⁹⁴⁹ P-0269, [T-86](#), p. 56. P-0269 was first abducted into Mr Ongwen’s group in 1999, before escaping in 2002. During her time in the group that she called “Sinia”, she saw Mr Ongwen on a regular basis, knew him as “Odomi”, and saw him issuing orders to his subordinates to discipline his men, conduct operations and attack civilians caught in the bush. *See generally*, P-0269, [T-85](#), p. 13-31. When she saw Mr Ongwen after Odek, she recognised him from her previous captivity in his group. P-0269, [T-85](#), p. 45.

⁹⁵⁰ P-0269, [T-85](#), p. 45-46. *See also* P-0269, [T-86](#), p. 50-52.

⁹⁵¹ P-0252, [T-88](#), p. 8.

⁹⁵² P-0205, [T-48](#), p. 6.

⁹⁵³ P-0085, [T-159](#), p. 37.

⁹⁵⁴ Sound recording, [UGA-OTP-0039-0006](#) (original), [UGA-OTP-0235-0015](#) (enhanced).

particular the pillaging of a diamond. In court, [REDACTED],⁹⁵⁵ P-0059,⁹⁵⁶ and Defence Witness D-0100⁹⁵⁷ all identified Mr Ongwen as the person making this report.

282. [REDACTED] heard Mr Ongwen inform Kony that he had captured a “grade A” diamond and that a second lieutenant named Okot Martin was responsible.⁹⁵⁸ ISO radio operator P-0059 also recognised Mr Ongwen reporting to Kony the capture of a “grade A diamond”.⁹⁵⁹ Defence Witness D-0100, a former LRA signaller, testified that the recording depicted Mr Ongwen reporting the recovery of a diamond during operations, that a junior soldier named Okot Martin had found the diamond, and that Kony told Mr Ongwen that Okot should be given the rank of lieutenant.⁹⁶⁰

283. This radio report was also recorded in the UPDF⁹⁶¹ and ISO⁹⁶² logbooks on 1 May 2004, including the same details of the conversation described by [REDACTED], P-0059, and D-0100 above.

284. In light of the above, the Defence’s suggestion that Ocan Labongo, rather than Mr Ongwen, reported the Odek attack is unsustainable. The evidence established that Mr Ongwen personally reported the attack on both 30 April and 1 May 2004.

3. Did the LRA intentionally target civilians during the attack?

285. Mr Ongwen is charged in Count 11 of the DCC with intentionally directing attacks against the civilian population of Odek, a war crime, and in Count 23 with persecution of civilians perceived by the LRA as supporting the Ugandan government, a crime against humanity. The Defence has defended these charges in part by arguing that LRA attacks on IDP camps during the charged period were not directed at civilians, but aimed exclusively at military targets and obtaining food for the LRA.⁹⁶³ Although obtaining food does appear to have been one motive for the attack on Odek, and although the LRA did attack the military barracks

⁹⁵⁵ [REDACTED].

⁹⁵⁶ P-0059, T-37, p. 47-50; Audio transcript annotation by P-0059, UGA-OTP-0258-0809-R01.

⁹⁵⁷ D-0100, T-234, p. 51-52.

⁹⁵⁸ [REDACTED].

⁹⁵⁹ P-0059, T-37, p. 48-49.

⁹⁶⁰ D-0100, T-234, p. 51-52. [REDACTED].

⁹⁶¹ UPDF Gulu logbook, UGA-OTP-0254-2982 at 3006 (right page); UPDF logbook, UGA-OTP-0197-2319 at 2445 (short-hand); UPDF Sudan logbook, UGA-OTP-0242-7194 at 7248 (left page).

⁹⁶² ISO logbook, UGA-OTP-0061-0206 at 0272 (right page) to 0273 (left page).

⁹⁶³ Defence Opening Statement, T-179, p. 15-16, and 32.

there, the evidence clearly establishes that the LRA specifically targeted the civilian population of Odek in numerous ways.

286. The intention to target civilians at Odek was manifest even before the attack began. Each of the witnesses who heard Kony's initial order to attack Odek described him referring to the people of Odek, rather than to the UPDF stationed there. According to P-0410, Kony said Odek should be used as an example because "they did not like the rebels".⁹⁶⁴ Defence Witness D-0032 recalled Kony saying that "the people of Odek" were "stubborn" and needed to be punished,⁹⁶⁵ language also recalled by P-0245.⁹⁶⁶

287. Mr Ongwen's own express orders to kill and abduct civilians – in the words of one eyewitness to the order, to "destroy Odek completely"⁹⁶⁷ – make clear that he too intended to target the civilian population. P-0245 heard Mr Ongwen and Okwonga Alero order that any civilian who did not want to leave Odek should be killed, "because that person would be supporting Museveni".⁹⁶⁸ Mr Ongwen also used a telling division of labour for the attack: at the pre-attack RV, he instructed one group of fighters to go to the military barracks, while he sent another group specifically to attack the civilian portion camp, in particular the trading centre.⁹⁶⁹ This evidence refutes any suggestion that harm to civilians in Odek was merely an unintended consequence of a legitimate military attack.

288. The conclusion that the LRA deliberately targeted civilians in Odek also follows from the manner in which civilians were killed, abducted, tortured, and enslaved during and after the attack. A number of elderly people, mothers, and young children were deliberately killed during the attack,⁹⁷⁰ including civilians over 80 years old⁹⁷¹ and a heavily pregnant woman and her unborn child.⁹⁷² P-0410 saw crying babies thrown against trees, and other children pierced with knives.⁹⁷³ Camp resident P-0325 came upon a dead mother shot in the head, her crying

⁹⁶⁴ P-0410, [T-151](#), p. 28.

⁹⁶⁵ D-0032, [T-200](#), p. 23.

⁹⁶⁶ P-0245, [T-99](#), p. 49-50.

⁹⁶⁷ P-0205, [T-47](#), p. 43. Mr Ongwen told the fighters to abduct boys and girls, but to kill anyone over 18 years old. P-0205, [T-47](#), p. 44. P-0410 also said that Mr Ongwen told the attackers to be "merciless" and "exterminate everything". P-0410, [T-151](#), p. 34-35, 38.

⁹⁶⁸ P-0245, [T-99](#), p. 52.

⁹⁶⁹ *See, e.g.*, P-0372, [T-148](#), p. 42; P-0314, [T-75](#), p. 7; P-0406, [T-154](#), p. 43.

⁹⁷⁰ P-0218, [T-90](#), p. 13.

⁹⁷¹ P-0218, [UGA-OTP-0238-0720-R01](#) at 0725.

⁹⁷² P-0325, [UGA-OTP-0264-0242-R01](#) at 0245-0246.

⁹⁷³ P-0410, [T-151](#), p. 46-47, 49.

baby still tied to her back.⁹⁷⁴ Abductee P-0269 returned to find that her mother-in-law had been shot dead in her house, together with her grandson.⁹⁷⁵ None of these victims could reasonably have been mistaken for combatants.

289. The deliberate targeting of civilians is also clear from the non-lethal mistreatment of Odek's civilian population. The evidence was overwhelming and uniform that LRA attackers systematically abducted civilians from their homes and shops, forced them at gunpoint to carry heavy loads of stolen property into the bush, and beat or killed those who refused or were unable.⁹⁷⁶ Again, there can be no suggestion that these victims were anything other than defenceless civilians. Even the LRA's plan for pillaging food from Odek, offered by the Defence as justification for the attack, was centred on civilians in at least two critical ways: first, the attackers' plan for carrying away stolen food relied on abducted civilians to carry it, and second, the theft of so much food from the camp, including most of the food from a recent aid delivery, inevitably left the camp's residents with a dire food shortage.⁹⁷⁷

4. Were the deaths of civilians at Odek caused by “crossfire”?

290. The Defence⁹⁷⁸ and two of the LRA fighters who attacked the camp⁹⁷⁹ have suggested that civilians killed during the Odek attack were accidentally shot during so-called “crossfire”, *i.e.*, the exchange of gunfire between LRA attackers and government defenders of the camp. Similarly, one LDU soldier who fled from the fighting testified that people were injured and killed when government forces fired into the camp in an effort to repel the LRA attackers.⁹⁸⁰ While it is entirely possible, even likely, that some civilians may have died in circumstances such as these, the overwhelming evidence establishes that the LRA intentionally killed at least 27 civilians.⁹⁸¹

⁹⁷⁴ P-0325, [UGA-OTP-0264-0242-R01](#) at 0246.

⁹⁷⁵ P-0269, [T-85](#), p. 50.

⁹⁷⁶ *See, e.g.*, P-0309, [T-60](#), p. 83, [T-61](#), p. 8-12; P-0314, [T-75](#), p. 12-13; P-0264, [T-64](#), p. 51; P-0252, [T-87](#), p. 12-15; P-0325, [UGA-OTP-0264-0242-R01](#), at 0248, para. 40; P-0268, [UGA-OTP-0248-0013-R01](#), at 0017-0018, para. 26-31, 41; D-0066, [T-214](#), p. 29-32.

⁹⁷⁷ P-0325, [UGA-OTP-0264-0242-R01](#), at 0249, para. 44-45. The evidence shows that this food was divided and taken to individual commanders' homes. *See* P-0314, [T-75](#), p. 18.

⁹⁷⁸ Defence questioning of P-0269, [T-86](#), p. 25.

⁹⁷⁹ P-0372, [T-148](#), p. 46; P-0264, [T-64](#), p. 53-56, [T-66](#), p. 66.

⁹⁸⁰ D-0066, [T-214](#), p. 22-29.

⁹⁸¹ *See* the table below at the end of this section.

291. During the Odek attack, LRA attackers were directly seen killing men, women, and children, principally (though not exclusively) by gunshot.⁹⁸² P-0252, who was abducted during the attack, saw an LRA fighter open the door of a hut and shoot dead a lady inside.⁹⁸³ P-0269 watched as the attackers shot dead two neighbours inside their houses.⁹⁸⁴ P-0352 saw “Holy soldiers” shoot down civilians and torch civilian huts.⁹⁸⁵ P-0264, [REDACTED], described seeing civilians with bullet wounds in the head and chest,⁹⁸⁶ body areas he said were targeted by the LRA to ensure death.⁹⁸⁷ The LRA shot civilians in the back as they ran away.⁹⁸⁸ P-0330 saw civilians stabbed, clubbed to death, and burnt in their huts by LRA attackers.⁹⁸⁹

292. Further, the killing of civilians at Odek was not confined to the camp. [REDACTED].⁹⁹⁰ [REDACTED] was killed because his feet were too swollen for him to walk any further.⁹⁹¹ P-0330 saw civilians abducted from Odek killed in the bush because it was thought they would inform the government about the LRA’s location.⁹⁹² He testified how these civilians were tied up and beaten on the back of their heads until they died.⁹⁹³ P-0309 also spoke of how two civilians abducted from Odek were shot dead because they tried to escape.⁹⁹⁴

293. In one particularly harrowing incident, corroborated across testimony from both LRA fighters and abductees from Odek, nine men who were abducted and made to carry an injured LRA commander were later murdered when that commander died from his injuries.⁹⁹⁵ [REDACTED].⁹⁹⁶ [REDACTED].⁹⁹⁷ Even Defence Witness D-0066, who suggested that Odek

⁹⁸² P-0410, T-151, p. 47-48; P-0218, UGA-OTP-0238-0720-R01 at 0726 and T-90, p. 12.

⁹⁸³ P-0252, T-87, p. 14; *see also* P-0252, T-87, p. 21.

⁹⁸⁴ P-0269, T-85, p. 37.

⁹⁸⁵ P-0352, UGA-OTP-0260-0315-R01 at 0333. *See also* P-0406, T-154, p. 47; P-0330, T-52, p. 20; P-0325, UGA-OTP-0264-0242-R01, at 0245, para. 20. The Prosecution notes and accepts evidence that some huts in Odek had been destroyed by a fire some time before the attack. *See, e.g.*, P-0275, T-124, p. 34; P-0252, T-88, p. 43. This evidence does not, however, undermine the eyewitness accounts of fires set by the LRA during the attack.

⁹⁸⁶ P-0264, T-64, p. 60.

⁹⁸⁷ P-0264, T-64, p. 60.

⁹⁸⁸ P-0325, UGA-OTP-0264-0242-R01 at 0245.

⁹⁸⁹ P-0330, T-52, p. 20-21.

⁹⁹⁰ [REDACTED].

⁹⁹¹ [REDACTED]; P-0270, UGA-OTP-0241-0168-R01 at 0174; P-0218, UGA-OTP-0238-0720-R01 at 0727.

⁹⁹² P-0330, T-52, p. 25.

⁹⁹³ P-0330, T-52, p. 26.

⁹⁹⁴ P-0309, T-61, p. 11-12.

⁹⁹⁵ P-0252, T-87, p. 35; P-0269, T-85, p. 40, 41-43, 44; P-0275, UGA-OTP-0244-3398-R01 at 3408; P-0340, T-102, p. 31-32; *See also* P-0218, UGA-OTP-0238-0720-R01 at 0727 and T-90, p. 13-14; P-0268, UGA-OTP-0248-0013-R01 at 0019-0022; P-0325, UGA-OTP-0264-0242-R01 at 0248-0249. While several witnesses referred to nine men killed in this incident, P-0252 also stated that at the time of their deaths he saw the dead bodies of 29 or 30 people. P-0252, T-88, p. 27.

⁹⁹⁶ [REDACTED].

⁹⁹⁷ [REDACTED].

camp residents died in crossfire, testified to the LRA's killing of these men, who included his own brother.⁹⁹⁸ None of these murders can be attributed to crossfire.

294. In conclusion, the evidence demonstrated that the LRA attacked Odek with the express aim of killing civilians. Even if some civilian deaths could be attributed to "crossfire", of more than 60 civilians who died during or as a result of the Odek attack,⁹⁹⁹ at least the following victims were killed intentionally by LRA fighters:

Victim	Manner of death
Okoya, a man aged 20 and recently married	Shot in the back by LRA attackers as he attempted to run away ¹⁰⁰⁰
Aciro Monica, a pregnant woman around 26 years old	Shot in the legs by LRA attackers and later died at hospital (along with her unborn child) ¹⁰⁰¹
A man named Opio	Shot by LRA attackers ¹⁰⁰²
Okec Kejikiya and Auma Veronica	Killed and mutilated in their house ¹⁰⁰³
A man named Gali and his wife	Shot together by LRA attackers ¹⁰⁰⁴
One civilian	Stabbed to death ¹⁰⁰⁵
One or more civilians	Clubbed on the back of their heads ¹⁰⁰⁶
One or more civilians	Burnt inside their huts ¹⁰⁰⁷
One or more babies or small children	Hit against trees ¹⁰⁰⁸
One or more children	Pierced with knives ¹⁰⁰⁹
Female resident	Shot dead in her hut ¹⁰¹⁰
Two residents	Shot dead in their house ¹⁰¹¹

⁹⁹⁸ D-0066, [T-214](#), p. 24.

⁹⁹⁹ P-0218, [UGA-OTP-0238-0720-R01](#) at 0726; *see also* ISO Field Report, [UGA-OTP-0249-0438-R01](#) at 0438-0442; Selected LRA Atrocities Report, [UGA-OTP-0032-0038-R01](#) at 0043, 0077-0078. Some of the deceased listed in the report are also cited by P-0218 as having been killed during the attack: Kilama Hilary, Ojara, Odoki, Ojok, Kidega, Titus Latigo, Ayela Fabio Otoo (*see* P-0218, [UGA-OTP-0238-0720-R01](#) at 0727) are each mentioned by P-0218 as being abducted and killed following the attack on Odek. *See also* [UGA-OTP-0250-0265](#), a local memorial plaque in Odek listing the names of 44 civilians killed by the LRA during the attack on 29 April 2004. The testimony of P-0325 also recounts the burial of around 16 bodies of victims of the attack, many killed by gunshot wounds, including women and children. *See* P-0325, [UGA-OTP-0264-0242-R01](#) at 0247, para. 30-33. P-0325 stated that around 48 civilians were shot dead in the camp during the attack, *see id.* para. 36, as well as more in the trading centre, *see id.* para. 37.

¹⁰⁰⁰ P-0325, [UGA-OTP-0264-0242-R01](#), at 0245, para. 22-23; P-0252, [T-87](#), p. 17.

¹⁰⁰¹ P-0325, [UGA-OTP-0264-0242-R01](#), at 0245, para. 22, 24.

¹⁰⁰² P-0274, [UGA-OTP-0244-3375-R01](#), at 3382, para. 55; P-0268, [UGA-OTP-0248-0013-R01](#), at 0018, para. 33.

¹⁰⁰³ P-0274, [UGA-OTP-0244-3375-R01](#), at 3383, para. 56; P-0268, [UGA-OTP-0248-0013-R01](#), at 0018, para. 32-24.

¹⁰⁰⁴ P-0252, [T-87](#), p. 21.

¹⁰⁰⁵ P-0330, [T-52](#), p. 20.

¹⁰⁰⁶ P-0330, [T-52](#), p. 20.

¹⁰⁰⁷ *See, e.g.*, P-0330, [T-52](#), p. 20.

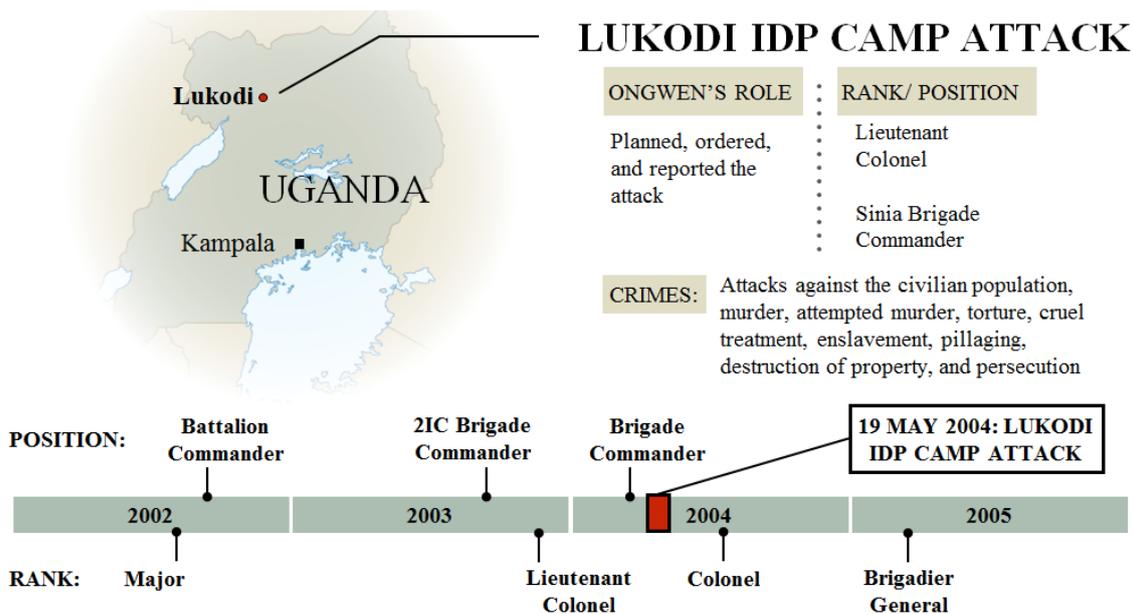
¹⁰⁰⁸ P-0410, [T-151](#), p. 46-47.

¹⁰⁰⁹ P-0410, [T-151](#), p. 49-50.

¹⁰¹⁰ P-0252, [T-87](#), p. 14, 21.

Boy	[REDACTED] ¹⁰¹²
[REDACTED]	Killed because his feet were too swollen to walk further ¹⁰¹³
Nine men, including Latiko James, Ojok David, Atir, [REDACTED], and D-0066's brother	Forced to carry an injured LRA fighter and then beaten to death in the bush ¹⁰¹⁴
Female resident	Shot dead for failing or refusing to carry looted food ¹⁰¹⁵

IX. The 19 May 2004 attack on Lukodi IDP camp (Counts 24-36)



A. Introduction

295. The Prosecution bases its case regarding Lukodi on the testimony of seven camp residents,¹⁰¹⁶ thirteen former LRA members,¹⁰¹⁷ and six government officials,¹⁰¹⁸ as well as intercepted LRA radio communications (recorded in logbooks, sound recordings, and

¹⁰¹¹ P-0269, T-85, p. 37.

¹⁰¹² [REDACTED].

¹⁰¹³ [REDACTED].

¹⁰¹⁴ [REDACTED]; P-0269, T-85, p. 40, 41-43, 44; P-0275, UGA-OTP-0244-3398-R01 at 3408; P-0340, T-102, p. 31-32; D-0066, T-214, p. 24; P-0269, T-85, p. 42-43 [REDACTED]. See also P-0218, UGA-OTP-0238-0720-R01 at 0727 and T-90, p. 13-14; P-0268, UGA-OTP-0248-0013-R01 at 0019-0022; P-0325, UGA-OTP-0264-0242-R01 at 0248-0249, para. 41, [REDACTED]; P-0274, UGA-OTP-0244-3375-R01 at 3381, 3384, para. 44, 72; P-0268, UGA-OTP-0248-0013-R01 at 0020, 0022, para. 49, 58.

¹⁰¹⁵ D-0066, T-214, p. 25-26.

¹⁰¹⁶ P-0024, P-0026, P-0060, P-0185, P-0187, P-0195, P-0196.

¹⁰¹⁷ P-0016, P-0018, P-0054, P-0101, P-0142, P-0145, P-0172, P-0205, P-0231, P-0245, P-0406, P-0410, [REDACTED].

¹⁰¹⁸ P-0003, P-0017, P-0035, P-0036, P-0059, P-0301.

intelligence reports), other contemporaneous records (video recording,¹⁰¹⁹ photographs,¹⁰²⁰ notebooks,¹⁰²¹ forensic¹⁰²² and investigation records¹⁰²³), and sketches and maps.¹⁰²⁴

296. This evidence demonstrates that LRA fighters attacked Lukodi IDP camp on Mr Ongwen's orders in the evening of 19 May 2004. In the course of the attack, LRA fighters attacked the civilian population (Count 24),¹⁰²⁵ murdered or attempted to murder civilians (Counts 25-28),¹⁰²⁶ tortured or otherwise mistreated civilians (Counts 29-32),¹⁰²⁷ enslaved civilians (Count 33),¹⁰²⁸ pillaged (Count 34)¹⁰²⁹ and destroyed property (Count 35),¹⁰³⁰ as part of the LRA's persecutory campaign on political grounds (Count 36).¹⁰³¹

297. With respect to Counts 24-36, Mr Ongwen's individual criminal responsibility is best characterised as indirect perpetration under article 25(3)(a), but the evidence would support conviction under any of the charged modes of liability under articles 25 and 28.

B. Prosecution case theory

298. The Prosecution case theory concerning the attack on Lukodi is that:

- a. Before 19 May 2004, Mr Ongwen ordered LRA fighters to attack Lukodi IDP camp and target civilians, including by killing, burning, and looting civilian properties.
- b. On or about 19 May 2004 (around 18h00), a group of armed LRA fighters under Mr Ongwen's command attacked Lukodi IDP camp and committed a series of crimes against its civilian residents.
- c. On 21 May 2004 (18h30), Mr Ongwen made a preliminary report on the LRA radio and took responsibility for attacking Lukodi IDP camp, including killing and burning.
- d. On 24 May 2004 (18h30), Mr Ongwen made a supplemental report on the LRA radio and confirmed his responsibility for attacking Lukodi IDP camp.

¹⁰¹⁹ Video, [UGA-OTP-0023-0008](#). Lukodi Primary School is visible at 00:07:54 and 00:11:45.

¹⁰²⁰ Photographs, [UGA-OTP-0023-0311](#) to [UGA-OTP-0023-0360](#), [UGA-OTP-0023-0391](#) to [UGA-OTP-0023-0407](#).

¹⁰²¹ P-0060, [UGA-OTP-0069-0049](#), [UGA-OTP-0069-0054](#), [UGA-OTP-0069-0092](#); [UGA-OTP-0146-0145](#).

¹⁰²² P-0036, Forensic medical report, [UGA-OTP-0023-0188](#).

¹⁰²³ P-0017, CID report, [UGA-OTP-0023-0022](#).

¹⁰²⁴ P-0035, [UGA-OTP-0036-0094](#); P-0036, [UGA-OTP-0036-0063](#); P-0060, [UGA-OTP-0069-0048](#); P-0142, [UGA-OTP-0251-0642](#); P-0205, [UGA-OTP-0233-1386](#); [UGA-OTP-0233-1387](#); [UGA-OTP-0233-1388](#); P-0245, [UGA-OTP-0251-0659](#); P-0406, [UGA-OTP-0263-2807](#).

¹⁰²⁵ See para. 303, 315-330 below.

¹⁰²⁶ See para. 303, 318, 321, 336 below.

¹⁰²⁷ See para. 319-321, 340 below.

¹⁰²⁸ See para. 317, 320, 340 below.

¹⁰²⁹ See para. 303, 337-340 below.

¹⁰³⁰ See para. 303, 328-330 below.

¹⁰³¹ See para. 198-200 below.

C. Key issues related to the Lukodi attack

299. The Prosecution focuses on four key issues which are disputed by the Parties:

- 1) What was Mr Ongwen's role in the Lukodi attack?
- 2) Did Mr Ongwen and the LRA intentionally target civilians during the attack?
- 3) Were the deaths of civilians at Lukodi caused by "crossfire"?
- 4) Did the LRA pillage civilian property in Lukodi?

1. What was Mr Ongwen's role in the Lukodi attack?

300. The Defence has claimed that Mr Ongwen had nothing to do with the attack at Lukodi.¹⁰³² However, Mr Ongwen's own subordinates, as well as contemporaneous LRA intercepts, make it plain that he intended, planned, prepared, ordered, and reported the attack. P-0205 and P-0142, [REDACTED], testified about Mr Ongwen's key role in it. Former LRA fighters P-0018, P-0145, P-0406, and P-0410, whom Mr Ongwen sent to execute the attack, as well as former LRA members P-0016, P-0054, P-0101, P-0172, P-0231, and [REDACTED], corroborate evidence of his key contribution.

(a) Mr Ongwen planned, prepared, and ordered the Lukodi attack

301. On 17 May 2004 (09h00), during an LRA radio communication, Mr Ongwen requested permission from Kony to attack camps and pillage food.¹⁰³³ Mr Ongwen then issued orders to LRA fighters under his command to kill, loot, and destroy property at Lukodi. Mr Ongwen's officers helped him to design the exact plan of attack.¹⁰³⁴

302. As part of the attack preparation, Mr Ongwen handpicked and briefed fighters from Sinia Brigade and also obtained fighters from a Gilva Brigade sickbay.¹⁰³⁵ Himself a skilled and respected fighter, Mr Ongwen selected some of his most experienced officers from Sinia Brigade to lead the attack on the ground. Mr Ongwen assigned Ocaka (now deceased), a commander in Sinia Brigade, to be the overall commander.¹⁰³⁶ Although the Defence has

¹⁰³² Defence opening submissions, T-179, p. 40; P-0054, T-94, p. 19; P-0059, T-38, p. 72, T-39, p. 19.

¹⁰³³ UPDF logbook, UGA-OTP-0197-1670 at 1723 (right page). See also ISO logbook, UGA-OTP-0061-0206 at 0314 (right page).

¹⁰³⁴ P-0205, T-47, p. 39-41; P-0410, T-151, p. 63.

¹⁰³⁵ P-0142, T-70, p. 43-44. See also D-0032, T-201, p. 34, 23-35.

¹⁰³⁶ [REDACTED]; P-0142, T-70, p. 44-47; P-0018, T-69, p. 6; P-0054, T-93, p. 30; P-0245, T-99, p. 65; P-0016, T-35, p. 35, 38; [REDACTED].

suggested that Ocaka was not part of Sinia Brigade,¹⁰³⁷ former LRA fighters P-0142 and [REDACTED] and an ISO logbook entry dated 26 April 2004, all confirm that Captain Alex Ocaka (Support) was an officer under Mr Ongwen's command.¹⁰³⁸

303. Mr Ongwen gave specific orders to the attackers. During a pre-attack briefing, he told them not to fail.¹⁰³⁹ He divided the attackers into two sub-groups: one group would primarily engage the military defence, while the other would target the civilian camp.¹⁰⁴⁰ He ordered them to shoot soldiers, burn houses, loot everything, and return with food.¹⁰⁴¹ Mr Ongwen personally ordered the attackers to kill civilians and spare nobody, not even mothers giving birth, children, or the elderly.¹⁰⁴² Having received Mr Ongwen's orders, the commanders relayed them to their subordinates. P-0410 received instructions that Lukodi should be worse than Odek, and each attacker "should come back with bloodstains on his clothes to show that you have worked well".¹⁰⁴³

(b) Armed fighters under Mr Ongwen's command carried out the Lukodi attack

304. The Defence has suggested that Mr Ongwen did not carry out the Lukodi attack.¹⁰⁴⁴ While Mr Ongwen did not go to the attack site, remaining near Atoo Hills,¹⁰⁴⁵ he did send his officers to execute his orders.¹⁰⁴⁶ The core group of attackers consisted of well-armed fighters from Mr Ongwen's Sinia Brigade,¹⁰⁴⁷ supplemented by Tulu's armed fighters and food "collectors".¹⁰⁴⁸ Captain Alex Ocaka led the attack, [REDACTED].¹⁰⁴⁹ Aside from disputing Ocaka's affiliation, the Defence did not contest that Ocaka, [REDACTED] executed the Lukodi attack.

¹⁰³⁷ P-0145, [T-144](#), p. 27; P-0018, [T-69](#), p. 30; P-0016, [T-35](#), p. 34; P-0059, [T-39](#), p. 21.

¹⁰³⁸ P-0142, [T-70](#), p. 44; [REDACTED]; ISO logbook, [UGA-OTP-0061-0206](#) at 0257; UPDF logbook, [UGA-OTP-0197-1670](#) at 1683 (left page). It also lists Captain Robert Okwer (Brigade Intelligence Officer), Lieutenant David Oyenga (2IC Terwanga Battalion), and Lieutenant Kobi Bongo as officers under Mr Ongwen's command. *See also* P-0016, [T-35](#), p. 34-36.

¹⁰³⁹ P-0245, [T-99](#), p. 69.

¹⁰⁴⁰ [REDACTED]; P-0018, [T-68](#), p. 52; D-0032, [T-201](#), p. 34-35. *See also* P-0018, [T-69](#), p. 9; P-0410, [T-151](#), p. 59-60; P-0406, [T-154](#), p. 53.

¹⁰⁴¹ P-0142, [T-70](#), p. 46; [REDACTED]; P-0406, [T-154](#), p. 53.

¹⁰⁴² [REDACTED]; P-0018, [T-68](#), p. 58-60; P-0142, [T-70](#), p. 47; P-0245, [T-99](#), p. 69; P-0410, [T-151](#), p. 60-61.

¹⁰⁴³ P-0410, [T-151](#), p. 59-61.

¹⁰⁴⁴ Defence opening submissions, [T-179](#), p. 40; [REDACTED].

¹⁰⁴⁵ P-0142, [T-70](#), p. 58; P-0054, [T-93](#), p. 30; D-0032, [T-201](#), p. 35.

¹⁰⁴⁶ [REDACTED]; P-0054, [T-94](#), p. 19; [REDACTED]; D-0134, [T-241](#), p. 15-16; P-0245, [T-99](#), p. 65.

¹⁰⁴⁷ P-0410, [T-151](#), p. 64; P-0142, [T-70](#), p. 60. *See also* P-0035, [UGA-OTP-0036-0082-R01](#) at 0088.

¹⁰⁴⁸ P-0145, [T-143](#), p. 18-19; [REDACTED].

¹⁰⁴⁹ [REDACTED].

305. The Defence suggested alternative case theories concerning the attack's overall tactical commander. For example, D-0032, D-0068, and D-0056 claimed to have heard from an unnamed source that Kalalang attacked Lukodi.¹⁰⁵⁰ Although Okello Kalalang did not in fact lead the Lukodi attack, he was in any event an officer in Sinia Brigade, under Mr Ongwen's command, so his participation would not exculpate Mr Ongwen.

(c) Mr Ongwen received reports from his officers and transmitted them to the LRA's senior commanders

306. Before his fighters returned, Mr Ongwen learned about the killing of civilians and burning of Lukodi IDP camp on Mega FM.¹⁰⁵¹ On their return, having gathered information from the attackers, Ocaka and Ojok Kampala gave oral and written reports to Mr Ongwen.¹⁰⁵² Mr Ongwen "appreciated the work well done" after receiving the complete report.¹⁰⁵³ He then relayed it over the LRA radio to Kony, Vincent Otti, and other LRA leaders.¹⁰⁵⁴ Government radio operators from the ISO, UPDF, and Ugandan police intercepted and recorded these LRA radio communications.

307. On 21 May 2004 (18h30), the ISO audio-recorded Mr Ongwen (using the call sign "Tem Wek Ibong") giving his preliminary report to Vincent Otti (call sign "Wat Pa Dano") and Kony (call sign "Layom Cwiny").¹⁰⁵⁵ In it, Mr Ongwen confirmed having attacked Lukodi, and reported hearing that 25 people were killed and more than 100 houses were burned. On the recording, Mr Ongwen can be heard laughing and bragging about the attack. Corresponding ISO and UPDF logbook entries corroborate this audio evidence.¹⁰⁵⁶ The content of the recording confirms that Mr Ongwen learned the early details from an FM radio prior to arrival of his fighters with a first-hand report.¹⁰⁵⁷

¹⁰⁵⁰ D-0032, [T-201](#), p. 34; D-0068, [T-222](#), p. 66; D-0056, [T-228](#), p. 73.

¹⁰⁵¹ P-0245, [T-99](#), p. 71, 74; [REDACTED]; P-0142, [T-70](#), p. 66; P-0054, [T-93](#), p. 30, 32; P-0145, [T-143](#), p. 23; P-0231, [T-122](#), p. 69.

¹⁰⁵² P-0205, [T-47](#), p. 56, [T-51](#), p. 11, 13; [REDACTED]; P-0245, [T-99](#), p. 72. *See also* P-0187, [T-164](#), p. 13. [REDACTED].

¹⁰⁵³ P-0205, [T-47](#), p. 61-63; P-0245, [T-99](#), p. 73.

¹⁰⁵⁴ P-0205, [T-47](#), p. 65-66, [T-48](#), p. 5-6.

¹⁰⁵⁵ Sound recording, [UGA-OTP-0054-0046](#) (original, track 2), [UGA-OTP-0239-0123](#) (enhanced version); P-0059, [T-38](#), p. 67-68, [T-39](#), p. 5-6.

¹⁰⁵⁶ ISO logbook, [UGA-OTP-0061-0206](#) at 0321 (left and right pages); UPDF logbook, [UGA-OTP-0197-1670](#) at 1732 (left page); UPDF logbook, [UGA-OTP-0242-7194](#) at 7291 (left page), 7292 (right page). *See also* UPDF intelligence report, [UGA-OTP-0017-0268](#) at 0271, 0273.

¹⁰⁵⁷ P-0016, [T-35](#), p. 31-33; P-0205, [T-47](#), p. 61-62. Compare with identical numbers in UPDF intelligence report, [UGA-OTP-0017-0268](#) at 0271, 0273.

308. Former government and LRA radio operators listened to the 21 May 2004 recording in court and recognised the voices of the speakers. Government operators P-0003 and P-0059, who had been listening to intercepted LRA transmissions for years in the course of their duties, recognised the voices as those of Otti and Mr Ongwen.¹⁰⁵⁸ Likewise, [REDACTED] P-0016 and P-0440 listened to the recording and recognised the voices of Otti and Mr Ongwen.¹⁰⁵⁹ In each case, their voice recognition of Mr Ongwen went unchallenged.

309. Three days later, on 24 May 2004 (18h30), the UPDF, ISO, and Ugandan police logbooks record Mr Ongwen making a supplemental report.¹⁰⁶⁰ They record Mr Ongwen reporting that he “had caused havoc” in Lukodi, overrunning the UPDF forces and the civilian camp, and that when “civilians die he feels happy”.¹⁰⁶¹ In reply, Kony congratulated him for his actions, adding that if even a single UPDF soldier died with 450 civilians during an LRA attack, that was “good fighting”.¹⁰⁶²

310. Finally, [REDACTED] and P-0245 were present when Mr Ongwen made a report about the attack over the LRA radio in May 2004. Mr Ongwen, they recalled, reported houses burned, people killed, and UPDF weapons captured.¹⁰⁶³

311. In addition to Mr Ongwen’s reports, other LRA commanders discussed the Lukodi attack on the LRA radio several times. On 30 May 2004 (18h30), the ISO sound-recorded another intercepted communication,¹⁰⁶⁴ where Kony promoted Mr Ongwen from Lieutenant Colonel to Colonel for his performance at Odek and Lukodi.¹⁰⁶⁵ On 31 May 2004 (18h30), the ISO sound-recorded Otti telling Kony about UPDF Lieutenant Colonel Walter Ochora, who was upset about the Lukodi attack on Mega FM because Tulu and Mr Ongwen “finished people off in [...] Lukodi”.¹⁰⁶⁶ Mr Ongwen was on air during this communication.¹⁰⁶⁷

¹⁰⁵⁸ P-0003, [T-42](#), p. 78-88; P-0059, [T-36](#), p. 73-77, [T-39](#), p. 9, 16-19, [UGA-OTP-0266-0084](#) at 0137-0138.

¹⁰⁵⁹ P-0016, [T-32](#), p. 75-77, [UGA-OTP-0129-0419](#) at 0428; P-0440, [T-40](#), p. 30, 32-36, [REDACTED].

¹⁰⁶⁰ UPDF logbook, [UGA-OTP-0197-1670](#) at 1736 (left page); UPDF logbook, [UGA-OTP-0242-7194](#) at 7299 (left page); ISO logbook, [UGA-OTP-0061-0206](#) at 0329 (left and right pages); Police logbook, [UGA-OTP-0037-0002](#) at 0114.

¹⁰⁶¹ ISO logbook, [UGA-OTP-0061-0206](#) at 0329 (left and right pages); UPDF intelligence report, [UGA-OTP-0016-0522](#) at 0525.

¹⁰⁶² UPDF intelligence report, [UGA-OTP-0016-0522](#) at 0525.

¹⁰⁶³ [REDACTED]; P-0245, [T-99](#), p. 73. *See also* P-0059, [T-36](#), p. 64-65; P-0440, [T-40](#), p. 19.

¹⁰⁶⁴ Sound recording, [UGA-OTP-0239-0112](#) (enhanced, track 2), [UGA-OTP-0052-0056](#) (original); Transcript, [UGA-OTP-0248-0381-R01](#) at 0417-0420; ISO logbook, [UGA-OTP-0062-0002](#) at 0004 (left side).

¹⁰⁶⁵ UPDF intelligence report, [UGA-OTP-0016-0486](#) at 0490-0491; UPDF logbook, [UGA-OTP-0197-1670](#) at 1748 (right page), 1752 (left page); Police logbook, [UGA-OTP-0037-0002](#) at 0102-0103, 0107. *See also* P-0205, [T-48](#), p. 4; P-0440, [T-40](#), p. 42-43, [UGA-OTP-0262-0425-R01](#) at 0442; P-0059, [T-37](#), p. 23-26.

¹⁰⁶⁶ ISO audio recording, [UGA-OTP-0262-0493](#); Transcript, [UGA-OTP-0286-0771](#) at 0775; ISO logbook, [UGA-OTP-0062-0002](#) at 0007 (right side); Police logbook, [UGA-OTP-0037-0002](#) at 0104-0105.

(d) Tulu's role in the Lukodi attack was peripheral

312. The Defence did not dispute that the LRA attacked Lukodi, but claimed that Olak Tulu (aka Toolbox) was in charge of the attack.¹⁰⁶⁸ This is incorrect. Despite his age and experience, Tulu (now deceased) was inferior to Mr Ongwen in rank and appointment. In May 2004, Tulu was a Major in charge of a sickbay of the Gilva Brigade.¹⁰⁶⁹ As such, Tulu had no authority to give orders to Sinia Brigade officers without Mr Ongwen's agreement.

313. According to an ISO logbook, Mr Ongwen reported on 13 May 2004 (18h30) that he would "meet with Tulu on Saturday [15 May 2004] as they had arranged with him".¹⁰⁷⁰ At the time, Mr Ongwen's forces and Tulu's sickbay remained close to each other, in the area of Atoo Hills.¹⁰⁷¹ Subsequently, Mr Ongwen collected a group of able-bodied fighters from Tulu's sickbay, including P-0018 and P-0145, and merged it with his standby group.¹⁰⁷² P-0172, a Captain in Tulu's sickbay,¹⁰⁷³ did not go to Lukodi, but overheard the pre-attack preparations and observed Mr Ongwen collecting Tulu's fighters.¹⁰⁷⁴

314. Mr Ongwen involved Tulu's fighters for no reason other than to pillage food for the sickbay.¹⁰⁷⁵ According to P-0142, "they brought people from Gilva [sickbay] so they could also go get food and help the people who are in the bay".¹⁰⁷⁶ Tulu's fighters observed that Mr Ongwen's group was much bigger.¹⁰⁷⁷ Kony's acknowledgment and promotion of Tulu on 30 May 2004, along with Mr Ongwen,¹⁰⁷⁸ recognised Tulu's role in the attack, but is no support for the contention that he was its principal author.

¹⁰⁶⁷ ISO logbook, [UGA-OTP-0062-0002](#) at 0007 (left side).

¹⁰⁶⁸ P-0018, [T-69](#), p. 50; P-0054, [T-94](#), p. 19.

¹⁰⁶⁹ P-0172, [T-113](#), p. 15-16; P-0145, [T-143](#), p. 11, 20, 35; [REDACTED].

¹⁰⁷⁰ ISO logbook, [UGA-OTP-0061-0206](#) at 0307 (left page). *See also* UPDF logbook, [UGA-OTP-0242-7194](#) at 7267 (right page).

¹⁰⁷¹ P-0016, [T-35](#), p. 39; P-0142, [T-72](#), p. 71 (Omel and Kanu).

¹⁰⁷² P-0018, [T-68](#), p. 40-42, 53-54; P-0145, [T-143](#), p. 11, 13-17; P-0172, [T-113](#), p. 22-23; P-0142, [T-70](#), p. 49, [T-72](#), p. 74. *See also* D-0032, [T-201](#), p. 31-33.

¹⁰⁷³ P-0172, [T-113](#), p. 12; ISO logbook, [UGA-OTP-0061-0206](#) at 0307 (right page); UPDF logbook, [UGA-OTP-0197-1670](#) at 1717 (right page); UPDF logbook, [UGA-OTP-0242-7194](#) at 7268 (left page).

¹⁰⁷⁴ P-0172, [T-113](#), p. 20-22.

¹⁰⁷⁵ P-0018, [T-68](#), p. 53, 63; P-0145, [T-143](#), p. 12-13.

¹⁰⁷⁶ P-0142, [T-72](#), p. 72. [REDACTED].

¹⁰⁷⁷ P-0145, [T-143](#), p. 14; P-0018, [T-68](#), p. 67. [REDACTED].

¹⁰⁷⁸ UPDF intelligence report, [UGA-OTP-0016-0486](#) at 0490-0491; ISO logbook, [UGA-OTP-0062-0002](#) at 0004 (left side); Police logbook, [UGA-OTP-0037-0002](#) at 0103, 0107.

2. Did Mr Ongwen and the LRA intentionally target civilians during the attack?

315. The Defence suggested that the LRA did not target civilians in the attack.¹⁰⁷⁹ The evidence, however, shows that Mr Ongwen gave express orders to his subordinates to target civilians and civilian properties, and that his orders were carried out.

(a) The attack focused on civilians, including vulnerable persons

316. Lukodi IDP camp included two main civilian areas, a military barracks, a school, and a trading centre.¹⁰⁸⁰ About 7,000 civilians lived in the camp in May 2004,¹⁰⁸¹ having moved there from the neighbouring villages to avoid LRA attacks.¹⁰⁸² Just 30 LDU soldiers were stationed at the barracks,¹⁰⁸³ about the size of a platoon, making it an easy target for Mr Ongwen's fighters. Mr Ongwen's fighters knew the position of the barracks and civilian areas before the attack.¹⁰⁸⁴ Mr Ongwen himself knew that Lukodi was not well protected, as evident from the instructions he gave to his fighters before the attack.¹⁰⁸⁵

317. After a reconnaissance mission, Mr Ongwen's fighters attacked the camp in the evening,¹⁰⁸⁶ carefully choosing the time and direction of the attack. The attackers approached the camp from the east, from its least protected side, having crossed the Unyama River.¹⁰⁸⁷ They split into two groups, one attacking from the side of the barracks and another from the IDP camp.¹⁰⁸⁸ This tactic effectively insulated them from the government troops, turning the civilians into human shields. Camp resident P-0185 observed that "the shooting started at the very edge of the camp where there were only civilians".¹⁰⁸⁹

¹⁰⁷⁹ Defence opening submissions, T-179, p. 16.

¹⁰⁸⁰ P-0060, Sketch, UGA-OTP-0069-0048; P-0035, Sketch, UGA-OTP-0036-0094; P-0205, Sketch, UGA-OTP-0233-1387; P-0036, Sketch, UGA-OTP-0036-0063.

¹⁰⁸¹ P-0017, UGA-OTP-0036-0007-R01 at 0035; P-0017, CID Report, UGA-OTP-0023-0022 at 0022.

¹⁰⁸² P-0195, UGA-OTP-0233-1046-R01 at 1049-1050; P-0060, UGA-OTP-0069-0034-R01 at 0035-0036, 0038; [REDACTED]; P-0024, T-77, p. 19, T-78, p. 17.

¹⁰⁸³ P-0035, UGA-OTP-0036-0082-R01 at 0084; P-0187, T-164, p. 18; P-0024, T-77, p. 19, T-78, p. 19, 34.

¹⁰⁸⁴ P-0142, T-70, p. 57; P-0245, T-99, p. 68, 72; P-0410, T-151, p. 62.

¹⁰⁸⁵ [REDACTED].

¹⁰⁸⁶ P-0142, T-70, p. 60 (18h45); P-0018, T-69, p. 9 (18h00); P-0187, T-164, p. 8 (16h00-17h00); P-410, T-151, p. 59 (17h00-18h00); P-0024, T-77, p. 20 (17h00); P-0406, T-154, p. 62 (17h00-18h00).

¹⁰⁸⁷ P-0142, T-70, p. 58, T-71, p. 9; P-0145, T-144, p. 44; P-0187, T-164, p. 8, 15; P-410, T-151, p. 59, 61; P-0035, UGA-OTP-0036-0082-R01 at 0087. *See also* P-0245, T-99, p. 68.

¹⁰⁸⁸ P-0410, T-152, p. 47; P-0187, T-164, p. 10; P-0035, UGA-OTP-0036-0082-R01 at 0087.

¹⁰⁸⁹ P-0185, UGA-OTP-0233-1020-R01 at 1023. *See also* D-0072, T-212, p. 46.

318. Overpowered, LDU soldiers stationed at the camp fled soon after the attack started.¹⁰⁹⁰ At that point, the civilians became the sole target of the LRA. During the attack, which lasted no more than an hour or two, LRA fighters deliberately killed civilians, looted relief supplies like food and household items, set civilian huts on fire, abducted mature men and women as porters, and young boys and girls to become future fighters and forced wives.¹⁰⁹¹ Mr Ongwen's fighters shot, stabbed, hacked to death, and burned civilians alive inside the huts, and threw babies in the bush to die.¹⁰⁹² Civilians killed inside and outside the camp ranged in age from newborns to above 80.¹⁰⁹³ The attackers did not kill a single government soldier.¹⁰⁹⁴

319. Following Mr Ongwen's orders not to spare anyone, the attackers targeted mothers with small children, babies, the elderly, and sick men and women. The LRA attackers assaulted civilians, including small children.¹⁰⁹⁵ Mr Ongwen's fighters threw children into burning huts, and kicked them back inside when they tried to escape.¹⁰⁹⁶ An LRA fighter threw P-0196, aged seven at the time, inside a burning hut because the child was "interfering with the movement of other abductees".¹⁰⁹⁷ P-0024 watched the LRA fighters beat two small girls, including her own daughter, when they tried to escape from a burning house. Both girls survived, but sustained long-term injuries.¹⁰⁹⁸ P-0024 also testified how the LRA fighters killed her baby daughter, teenage son, elderly mother and uncle.¹⁰⁹⁹

320. Anticipating the arrival of the UPDF reinforcements, the LRA soon hastily retreated with looted items and abducted children and adults (mostly women) who failed to escape.¹¹⁰⁰ The attackers beat abducted civilians, forcing them to carry heavy loads, often for long distances while tied to each other under constant threat of harm.¹¹⁰¹ The attackers made the abductees witness the beatings and killings of fellow abductees for being too weak or

¹⁰⁹⁰ P-0145, [T-143](#), p. 12, 23; P-0187, [T-164](#), p. 8, 19-20; P-0245, [T-99](#), p. 72; P-0410, [T-151](#), p. 59; P-0024, [T-77](#), p. 22, [T-78](#), p. 39; D-0072, [T-212](#), p. 38-39; P-0035, [UGA-OTP-0036-0082-R01](#) at 0088.

¹⁰⁹¹ P-0018, [T-69](#), p. 8-9; P-0145, [T-143](#), p. 12, 23-27; P-0187, [T-164](#), p. 10-19; P-0245, [T-99](#), p. 71-72; P-0410, [T-151](#), p. 59-68; P-0024, [T-77](#), p. 20-34; [REDACTED]; [UGA-OTP-0146-0144](#).

¹⁰⁹² P-0018, [T-69](#), p. 12, 61; P-0026, [UGA-OTP-0069-0018-R01](#) at 0021-0024; P-0196, [UGA-OTP-0233-1061-R01](#) at 1064-1066; P-0410, [T-151](#), p. 64-65; P-0187, [T-164](#), p. 18, 21.

¹⁰⁹³ P-0187, [T-164](#), p. 21-22; P-0024, [T-77](#), p. 40; P-0036, Forensic medical report, [UGA-OTP-0023-0188](#) at 0193; [UGA-OTP-0146-0145](#).

¹⁰⁹⁴ P-0035, [UGA-OTP-0036-0082-R01](#) at 0089; P-0018, [T-69](#), p. 57; [REDACTED]; P-0024, [T-77](#), p. 22-23.

¹⁰⁹⁵ P-0195, [UGA-OTP-0233-1046-R01](#) at 1055; P-0024, [T-77](#), p. 23-25, [REDACTED]; P-0035, [UGA-OTP-0036-0082-R01](#) at 0088.

¹⁰⁹⁶ P-0187, [T-164](#), p. 21; [REDACTED]; P-0410, [T-151](#), p. 64.

¹⁰⁹⁷ P-0196, [UGA-OTP-0233-1061-R01](#) at 1065. [REDACTED].

¹⁰⁹⁸ P-0024, [T-77](#), p. 25, 31, 33-34; [UGA-OTP-0069-0189-R01](#) at 0193.

¹⁰⁹⁹ P-0024, [T-77](#), p. 17, 26, 33, 37-38.

¹¹⁰⁰ [REDACTED]; P-0018, [T-69](#), p. 16-18; P-0410, [T-151](#), p. 67, [T-152](#), p. 52; P-0187, [T-164](#), p. 11-13, 38; P-0024, [T-77](#), p. 27, [T-78](#), p. 46-48.

¹¹⁰¹ P-0024, [T-77](#), p. 20, 27, [T-78](#), p. 51.

attempting to escape.¹¹⁰² All this caused severe physical and mental pain and suffering to the victims. Female resident P-0195, abducted with her breastfeeding daughter, described how all she could think of was death.¹¹⁰³

321. Abducted mothers, who carried heavy loads through the bushes in the dark, endured another level of suffering. As the LRA fighters marched abductees out of the camp, they forced mothers to abandon their small children under threat of death. The LRA fighters either killed breastfeeding babies and toddlers or threw them in the bush at night, outside the camp, because the children were crying and making it difficult for their mothers to carry pillaged goods.¹¹⁰⁴

322. The next morning, wounded civilians were hospitalised in Gulu, but some succumbed to their injuries.¹¹⁰⁵

(b) The attackers intended to kill civilians

323. LRA fighters deliberately killed or attempted to kill civilians, in compliance with Mr Ongwen's explicit order to do so.¹¹⁰⁶ D-0032 confirmed that the killing of civilians in Lukodi was intentional because Kony wanted civilians to die as retaliation for their perceived support of the government of Uganda, and to drive them out of the camp.¹¹⁰⁷ After retreating from the camp, an LRA fighter told abductee P-0195 that Kony was very upset with civilians, and that the LRA fighters were "supposed to kill all of you".¹¹⁰⁸

324. The LRA fighters made it plain that they intended to kill civilians. During the attack, camp resident P-0185 overheard LRA fighters say: "Kill all of them".¹¹⁰⁹ P-0187 hid in a house together with two other women. When the attackers discovered them, one said: "You people will all die today".¹¹¹⁰ P-0024 recalled that LRA fighters "were laughing while they were cutting people into pieces". P-0024 was "waiting for death", fearing she would be the next victim. P-0024 recalled that her abductors were joking about wasting bullets on soldiers

¹¹⁰² P-0018, T-69, p. 16-22; P-0410, T-151, p. 68; P-0024, T-77, p. 29, 37-38, T-78, p. 49.

¹¹⁰³ P-0195, UGA-OTP-0233-1046-R01 at 1052. *See also* P-0024, T-78, p. 51.

¹¹⁰⁴ P-0195, UGA-OTP-0233-1046-R01 at 1051-1052; P-0187, T-164, p. 13, 24-26; P-0024, T-77, p. 20, 39-42, 64, T-78, p. 51; P-0018, T-69, p. 16-17.

¹¹⁰⁵ P-0187, T-164, p. 35-36, 40, UGA-OTP-0023-0008 (01:21:01-01:21:06), UGA-OTP-0023-0395; P-0024, T-77, p. 21, 55, UGA-OTP-0023-0396, UGA-OTP-0023-0397.

¹¹⁰⁶ P-0018, T-68, p. 55, 60; P-0245, T-99, p. 69.

¹¹⁰⁷ D-0032, T-201, p. 35-36. *See also* P-0172, T-114, p. 6; P-0245, T-99, p. 69.

¹¹⁰⁸ P-0195, UGA-OTP-0233-1046-R01 at 1054.

¹¹⁰⁹ P-0185, UGA-OTP-0233-1020-R01 at 1024; P-0017, UGA-OTP-0036-0007-R01 at 0038.

¹¹¹⁰ P-0187, T-164, p. 10, 20.

and civilians, instead of just hitting everyone “on their skulls”.¹¹¹¹ When P-0196 finally managed to escape from a burning hut, after being thrown inside, an LRA fighter shouted that he should be shot.¹¹¹²

325. Former LRA fighter P-0410 testified that LRA attackers shot civilians, burning those who had failed to flee alive in the huts.¹¹¹³ Civilian residents confirmed that LRA fighters shot at civilians. P-0026 and her two daughters were at home when five LRA fighters started shooting into their house. P-0026 and her older daughter were shot and wounded, while her eight-year-old daughter was shot in the stomach and bled to death in front of her.¹¹¹⁴ Abductee P-0196, a seven-year-old child, was hiding with his siblings and others in a grass-thatched hut when an LRA fighter fired a shot inside.¹¹¹⁵ Similarly, LRA fighters hit P-0185 with a bayonet, and shot at him when he tried to escape.¹¹¹⁶

(c) LRA attackers could distinguish between civilians and government soldiers

326. The Defence suggests that the proximity between the civilian areas and the military barracks caused civilian casualties.¹¹¹⁷ Although the camp and barracks were a few hundred metres apart, there were no civilian huts in the immediate surrounding of the military detachment.¹¹¹⁸ P-0142, for example, recalled that the distance between the barracks and the civilian camp was “not far”, between 100 and 500 metres.¹¹¹⁹ However, he could clearly distinguish between the two, repeating several times that he “did not actually go into the camp”.¹¹²⁰

327. There was also a clear distinction between civilians and soldiers.¹¹²¹ P-0024, speaking about the government soldiers stationed at Lukodi, observed that “all of them had uniforms because they were sent from town to come and protect the people”.¹¹²² D-0072 testified that the “rule also did not allow someone with a gun to go and freely interact with the civilians,

¹¹¹¹ P-0024, [T-78](#), p. 25, 34, 51.

¹¹¹² P-0196, [UGA-OTP-0233-1061-R01](#) at 1065. *See also* Photograph, [UGA-OTP-0023-0401](#).

¹¹¹³ P-0410, [T-151](#), p. 60, 65.

¹¹¹⁴ P-0026, [UGA-OTP-0069-0018-R01](#) at 0022; P-0187, [T-164](#), p. 17; Medical records, [UGA-OTP-0069-0355](#) at 0355-0358; P-0024, [T-77](#), p. 49.

¹¹¹⁵ P-0196, [UGA-OTP-0233-1061-R01](#) at 1065.

¹¹¹⁶ P-0185, [UGA-OTP-0233-1020-R01](#) at 1024.

¹¹¹⁷ P-0024, [T-78](#), p. 24; P-0187, [T-165](#), p. 4.

¹¹¹⁸ P-0035, [UGA-OTP-0036-0082-R01](#) at 0084; P-0026, [UGA-OTP-0069-0018-R01](#) at 0020.

¹¹¹⁹ P-0142, [T-70](#), p. 62. *See also* P-0018, [T-69](#), p. 53; P-0024, [T-78](#), p. 24; P-0187, [T-165](#), p. 4.

¹¹²⁰ P-0142, [T-71](#), p. 61. *See also* P-0410, [T-152](#), p. 49.

¹¹²¹ P-0187, [T-165](#), p. 9-10.

¹¹²² P-0024, [T-78](#), p.23. *See also* P-0187, [T-165](#), p. 9-10.

you have to stay away”.¹¹²³ The evidence shows that the LRA attackers knew the difference between the civilians and the military, and targeted them on that basis. P-0410 described one such incident when he opened a hut and “found many civilians crowded there”. He spared them, pretending not to see anyone. But another fighter noticed them, bolted the people inside the hut, set it on fire, and waited until they had burned to death.¹¹²⁴

(d) Mr Ongwen’s fighters deliberately set civilian houses on fire

328. The Defence suggested that Mr Ongwen’s fighters had no intention to burn civilian houses, and that the use of weapons close to civilian structures resulted in fires.¹¹²⁵ Camp residents who survived the attack disagreed, describing how LRA fighters deliberately burned civilian huts and property that remained after the looting.¹¹²⁶ For example, abductee P-0187 recalled that every time they passed and removed things from a house, the LRA fighters would torch it.¹¹²⁷ P-0187 observed that “if they had come for food only, they would not have killed people, they would not have torched houses. They came prepared and ready to kill [...] they wanted to kill people”.¹¹²⁸ Former LRA fighters P-0018 and P-0410 confirmed that the attackers intentionally set civilian huts ablaze after removing items.¹¹²⁹

329. Over 200 civilian huts in the camp, not counting the military detachment, were burned.¹¹³⁰ Extensive damage to civilian properties, as well as the distance between the individual huts, are visible in video footage and photographs taken in the aftermath of the attack.¹¹³¹ This result is consistent with Mr Ongwen’s pre-attack orders to burn the camp.

¹¹²³ D-0072, [T-212](#), p. 21.

¹¹²⁴ P-0410, [T-151](#), p. 66. P-0410’s attempt to spare the lives of civilians, despite Mr Ongwen’s orders, almost cost him his own life.

¹¹²⁵ D-0072, [T-212](#), p. 45-47.

¹¹²⁶ P-0195, [UGA-OTP-0233-1046-R01](#) at 1051; P-0024, [T-77](#), p. 26-27, 62-63; P-0196, [UGA-OTP-0233-1061-R01](#) at 1066; P-0185, [UGA-OTP-0233-1020-R01](#) at 1025; P-0026, [UGA-OTP-0069-0018-R01](#) at 0022; P-0035, [UGA-OTP-0036-0082-R01](#) at 0088. *See also* P-0187, [T-164](#), p. 11, 19.

¹¹²⁷ P-0187, [T-164](#), p. 11, 20.

¹¹²⁸ P-0187, [T-165](#), p. 31.

¹¹²⁹ P-0410, [T-151](#), p. 60; P-0018, [T-69](#), p. 12-14.

¹¹³⁰ P-0017, [UGA-OTP-0036-0007-R01](#) at 0037; P-0017, CID report, [UGA-OTP-0023-0022](#) at 0024; Police intelligence report, [UGA-OTP-0256-0312](#). *See also* P-0035, [UGA-OTP-0036-0082-R01](#) at 0090.

¹¹³¹ Video, [UGA-OTP-0023-0008](#), timestamps 00:08:17, 00:09:25, 00:12:30, 00:13:45, 00:14:40, 00:16:10, 00:20:45, 00:28:30, 00:33:50, 00:35:54, 00:44:25, showing burning huts in Lukodi; Photographs, [UGA-OTP-0023-0311](#) to [UGA-OTP-0023-0360](#), [UGA-OTP-0023-0391](#) to [UGA-OTP-0023-0407](#); P-0036, Forensic medical report, [UGA-OTP-0023-0188](#) at 0191-0194; P-0301, [UGA-OTP-0249-0423-R01](#) at 0433.

(e) The extensive damage confirms the intentions of Mr Ongwen’s fighters

330. Despite the short duration of the attack, Mr Ongwen’s fighters managed to inflict extensive harm on civilians and civilian properties. The number of wounded and murdered civilians, the nature of crimes, the ages and identities of victims, and the extent of damaged civilian property all demonstrate that Mr Ongwen’s fighters attacked the civilian population of Lukodi deliberately.¹¹³² Fearing for their lives, with the camp largely destroyed, almost all surviving residents abandoned the Lukodi IDP camp after the attack.¹¹³³

3. Were the deaths of civilians at Lukodi caused by “crossfire”?

331. The Defence did not dispute that civilians died in the course of the Lukodi attack, but it has blamed the deaths in IDP camps generally on “crossfire” between the LRA fighters and government soldiers.¹¹³⁴ It has also suggested that civilians were killed as a result of gunfire from a UPDF “detach” separate from the barracks in the camp, or by UPDF reinforcements.¹¹³⁵ None of these contentions is supported by the evidence.

332. There is no reliable evidence of civilian deaths in crossfire at Lukodi. The Trial Chamber should reject the testimony of those former LRA officers who blamed civilian deaths at Lukodi on crossfire¹¹³⁶ as self-serving attempts to deflect responsibility. Even if some deaths occurred because of crossfire, this argument fails to address the extensive evidence of deliberate killing and attempted killing of civilians by shooting, stabbing, bludgeoning, and burning inside houses, as set out above.¹¹³⁷

333. The evidence also shows that the actual exchange of fire between the LRA attackers and the camp’s defenders was short. P-0142 recalled that the exchange of fire was brief because the LDU soldiers simply fled.¹¹³⁸ Camp resident P-0187 recalled that LDU soldiers fled without exchanging fire at all.¹¹³⁹ These accounts undermine any suggestion that civilian deaths at Lukodi were an unintended by-product of a protracted, confusing battle.

¹¹³² Video, [UGA-OTP-0023-0008](#); Photographs, [UGA-OTP-0023-0311](#) to [UGA-OTP-0023-0360](#), [UGA-OTP-0023-0391](#) to [UGA-OTP-0023-0407](#); P-0036, Forensic medical report, [UGA-OTP-0023-0188](#) at 0191-0194.

¹¹³³ P-0060, [UGA-OTP-0069-0034-R01](#) at 0036-0037; P-0187, [T-164](#), p. 7, 42; P-0024, [T-77](#), p. 48.

¹¹³⁴ Defence opening submissions, [T-179](#), p. 16; P-0187, [T-165](#), p. 31-32.

¹¹³⁵ D-0072, [T-212](#), p. 13-16, 32.

¹¹³⁶ *See, e.g.*, P-0142, [T-70](#), p. 66; P-0172, [T-113](#), p. 25; [REDACTED].

¹¹³⁷ *See* para. 323-325 above.

¹¹³⁸ P-0142, [T-70](#), p. 62. *See also* ISO logbook, [UGA-OTP-0061-0206](#) at 0329 (left page); P-0410, [T-151](#), p. 59; P-0024, [T-78](#), p. 39.

¹¹³⁹ P-0187, [T-164](#), p. 18.

334. Contrary to the Defence's suggestions, there was also no UPDF "detach" on a hill, in addition to the LDU barracks in the camp.¹¹⁴⁰ P-0024 and P-0060 testified that the barracks moved from its former location near the school to the hill after the attack.¹¹⁴¹ Apart from D-0072,¹¹⁴² who appeared to be the Defence's sole source for this claim, no other witness spoke about two sets of barracks at the time of the attack. D-0072's testimony, meanwhile, contained other inaccuracies and contradictions, such as the alleged dismantling of the old barracks before the attack, its unique arrangement, curfew time, belated arrival of food relief, timing and duration of the attack,¹¹⁴³ all of which undermine the reliability of his account. Most importantly, perhaps, D-0072 testified that he fled "very far away", making it hard to see the attack from his hiding place.¹¹⁴⁴

335. Finally, there was no fighting with UPDF reinforcements, which included armoured vehicles and additional soldiers. By the time of their arrival, the attackers had already left the camp.¹¹⁴⁵ Witnesses also confirmed that the UPDF helicopter gunship, which arrived as the attackers were retreating with abductees, did not "bombard" them.¹¹⁴⁶

336. Even if some deaths were the result of "crossfire", the evidence shows that LRA attackers intentionally killed at least the following civilians during the attack:

¹¹⁴⁰ P-0145, [T-144](#), p. 43; D-0072, [T-212](#), p. 43; P-0410, [T-152](#), p. 51.

¹¹⁴¹ P-0024, [T-78](#), p. 21; P-0060, [UGA-OTP-0069-0034-R01](#) at 0037. *See also* P-0145, [T-144](#), p. 43.

¹¹⁴² D-0072, [T-212](#), p. 13-16, 32.

¹¹⁴³ D-0072, [T-212](#), p. 15, 17, 19, 23-25, 37-39.

¹¹⁴⁴ D-0072, [T-212](#), p. 40-41, 47.

¹¹⁴⁵ P-0035, [UGA-OTP-0036-0082-R01](#) at 0089; P-0142, [T-72](#), p. 73; P-0026, [UGA-OTP-0069-0018-R01](#) at 0023.

¹¹⁴⁶ P-0018, [T-69](#), p. 52; P-0142, [T-72](#), p. 74; P-0187, [T-164](#), p. 11-12, 24; P-0410, [T-151](#), p. 60; P-0024, [T-77](#), p. 21, 39-40, [T-78](#), p. 47-49; P-0026, [UGA-OTP-0069-0018-R01](#) at 0022. *See also* UPDF intelligence report, [UGA-OTP-0016-0522](#) at 0525, where Mr Ongwen reported that his fighters "suffered no casualties".

Victim	Manner of death
Jasinta Aol (F)	Machete wound at the back of head, bullet exit wounds ¹¹⁴⁷
Jojina Angom (F)	Burnt to death ¹¹⁴⁸
Keneri Okot (M)	Burnt to death ¹¹⁴⁹
Jeneth Lakot (F)	Burnt to death ¹¹⁵⁰
Christine Ajok Odong (F)	Neurogenic shock (crushed mandible, burns left hand and forearm) ¹¹⁵¹
David Otim (M)	Multiple stab wounds (left scapular and sub-scapula regions) ¹¹⁵²
Ojoko / Ajok (M)	Crushed mandible, deep burns ¹¹⁵³
Akello Acii, Wilfred Lalobo and Eveline Ataro's daughter (F)	Neurogenic shock (extensive deep burns) ¹¹⁵⁴
Innocent Okello (M)	Burnt to death ¹¹⁵⁵
Aloyo Kilama (M)	Burnt to death ¹¹⁵⁶
Kidega Kilama (F)	Burnt to death ¹¹⁵⁷
Milly Anek, Pyerina Ayaa's daughter (F)	Shot and killed ¹¹⁵⁸
Jennifer Atenyo (F)	Died after abduction ¹¹⁵⁹
Charles Okwera (M)	Shot and killed ¹¹⁶⁰
Aleka (M)	Shot and killed ¹¹⁶¹
Beatrice's son (M)	Broken neck ¹¹⁶²
Lalobo's son (M)	Shot in the mouth ¹¹⁶³
Sunday Onencan (M)	Broken neck ¹¹⁶⁴
Abducted camp resident (M)	Stabbed in the chest with a bayonet ¹¹⁶⁵
Charles Anywar (M)	Shot and killed ¹¹⁶⁶
Charles Odong (M)	Shot and killed ¹¹⁶⁷
Tejera Oroma (F)	Shot and killed ¹¹⁶⁸
Santa Oroma (F)	Shot and burnt to death ¹¹⁶⁹

¹¹⁴⁷ P-0036, [UGA-OTP-0146-0218](#); P-0026, [UGA-OTP-0069-0018-R01](#) at 0024; [UGA-OTP-0146-0145](#).

¹¹⁴⁸ P-0036, [UGA-OTP-0146-0175](#); P-0187, [T-164](#), p. 18, 22; [UGA-OTP-0146-0145](#).

¹¹⁴⁹ P-0036, [UGA-OTP-0146-0154](#); P-0060, [UGA-OTP-0069-0034-R01](#) at 0043; P-0187, [T-164](#), p. 18, 22.

¹¹⁵⁰ P-0036, [UGA-OTP-0146-0172](#); P-0060, [UGA-OTP-0069-0034-R01](#) at 0043; P-0187, [T-164](#), p. 18.

¹¹⁵¹ P-0036, [UGA-OTP-0146-0197](#); P-0060, [UGA-OTP-0069-0034-R01](#) at 0043.

¹¹⁵² P-0036, [UGA-OTP-0146-0160](#); P-0185, [UGA-OTP-0233-1020-R01](#) at 1025.

¹¹⁵³ [REDACTED]; P-0036, [UGA-OTP-0146-0221](#); [UGA-OTP-0146-0145](#).

¹¹⁵⁴ P-0036, [UGA-OTP-0146-0182](#); [REDACTED]; P-0187, [T-164](#), p. 21-22.

¹¹⁵⁵ P-0036, [UGA-OTP-0146-0188](#); [REDACTED].

¹¹⁵⁶ P-0036, [UGA-OTP-0146-0227](#); P-0060, [UGA-OTP-0069-0034-R01](#) at 0043; [UGA-OTP-0250-1476](#).

¹¹⁵⁷ P-0036, [UGA-OTP-0146-0191](#); P-0060, [UGA-OTP-0069-0034-R01](#) at 0043; [UGA-OTP-0250-1476](#).

¹¹⁵⁸ P-0026, [UGA-OTP-0069-0018-R01](#) at 0020, 0022; P-0187, [T-164](#), p. 17; [UGA-OTP-0146-0145](#).

¹¹⁵⁹ P-0196, [UGA-OTP-0233-1061-R01](#) at 1066.

¹¹⁶⁰ P-0195, [UGA-OTP-0233-1046-R01](#) at 1055; P-0187, [T-164](#), p. 23; [UGA-OTP-0146-0145](#).

¹¹⁶¹ P-0195, [UGA-OTP-0233-1046-R01](#) at 1055; P-0024, [T-77](#), p. 28-29.

¹¹⁶² P-0195, [UGA-OTP-0233-1046-R01](#) at 1056.

¹¹⁶³ P-0195, [UGA-OTP-0233-1046-R01](#) at 1055.

¹¹⁶⁴ P-0195, [UGA-OTP-0233-1046-R01](#) at 1056; [UGA-OTP-0146-0145](#).

¹¹⁶⁵ P-0018, [T-69](#), p. 16.

¹¹⁶⁶ P-0187, [T-164](#), p. 17; P-0036, [UGA-OTP-0146-0203](#); [UGA-OTP-0146-0145](#).

¹¹⁶⁷ P-0187, [T-164](#), p. 18; P-0036, [UGA-OTP-0146-0157](#); [UGA-OTP-0146-0145](#).

¹¹⁶⁸ P-0187, [T-164](#), p. 18; P-0036, [UGA-OTP-0146-0166](#).

¹¹⁶⁹ P-0187, [T-164](#), p. 22; P-0036, [UGA-OTP-0146-0209](#).

Okema's son (M)	Beaten to death ¹¹⁷⁰
Nancy Akello, Lucy Akot's daughter (F)	Killed after abduction ¹¹⁷¹
Charles Obwoya (M)	Killed, swollen body ¹¹⁷²
Onek Wilson (M)	Killed after abduction ¹¹⁷³
Olanya Kidega (M)	Killed after abduction ¹¹⁷⁴
Justine Omony (M)	Shot and killed ¹¹⁷⁵

4. Did the LRA pillage civilian property?

337. The Defence suggests that the taking of food and other items from the civilian residents of Lukodi was justified to sustain the LRA fighters as a matter of necessity.¹¹⁷⁶ This argument disregards the LRA's methods and circumstances of food "collection".

(a) Mr Ongwen's fighters appropriated items for private or personal use

338. Mr Ongwen's fighters engaged in economic exploitation of civilians in Lukodi IDP camp for the private or personal gain of themselves and their households. LRA attackers looted a variety of items from the Lukodi IDP camp.¹¹⁷⁷ For example, P-0142 recalled that LRA fighters appropriated from civilians items like beans, groundnuts, biscuits, sodas, and lotion.¹¹⁷⁸ P-0018 testified that Tulu ordered them to "collect food items for their respective households".¹¹⁷⁹ According to P-0172, items pillaged from Lukodi, such as clothes and food, were taken to Tulu's place and all distributed amongst the people.¹¹⁸⁰ Mr Ongwen's 24 May 2004 report over the LRA radio covered military items only (captured SMG guns, uniforms, magazines, and gumboots),¹¹⁸¹ making no mention of civilian items. This evidence shows that the items looted from the camp, including food, were intended for the commanders' personal households, and not exclusively for military purposes.

¹¹⁷⁰ P-0187, [T-164](#), p. 24.

¹¹⁷¹ P-0187, [T-164](#), p. 26-27; P-0024, [T-77](#), p. 28; [UGA-OTP-0146-0145](#); [UGA-OTP-0146-0144](#).

¹¹⁷² P-0187, [T-164](#), p. 40-41; P-0060, [UGA-OTP-0069-0049](#) at 0051; [UGA-OTP-0146-0145](#).

¹¹⁷³ P-0187, [T-164](#), p. 41; P-0024, [T-77](#), p. 27-28; [UGA-OTP-0146-0145](#).

¹¹⁷⁴ P-0187, [T-164](#), p. 41; P-0024, [T-77](#), p. 27-29; [UGA-OTP-0146-0145](#).

¹¹⁷⁵ [REDACTED].

¹¹⁷⁶ Defence opening submissions, [T-179](#), p. 16, 32. *See also* para. 248, 249 above.

¹¹⁷⁷ P-0145, [T-143](#), p. 27 (chicken, beans, flour, soya beans, dried and fresh cassava); P-0410, [T-151](#), p. 68 (beans, flour, chicken, clothes, saucepans, *etc*); P-0187, [T-164](#), p. 41 (goats, chicken); P-0035, [UGA-OTP-0036-0082-R01](#) at 0090 (beans, clothes, flour); P-0026, [UGA-OTP-0069-0018-R01](#) at 0022 (cooking oil, beans, clothes).

¹¹⁷⁸ P-0142, [T-70](#), p. 68.

¹¹⁷⁹ P-0018, [T-68](#), p. 63, [T-69](#), p. 5. *See also* P-0145, [T-143](#), p. 17.

¹¹⁸⁰ P-0172, [T-113](#), p. 24-25. *See also* P-0145, [T-143](#), p. 27.

¹¹⁸¹ UPDF logbook, [UGA-OTP-0197-1670](#) at 1736 (left page); ISO logbook, [UGA-OTP-0061-0206](#) at 0329 (left and right pages); Police logbook, [UGA-OTP-0037-0002](#) at 0114. *See also* P-0245, [T-99](#), p. 72.

339. To make matters worse, Mr Ongwen and his fighters disregarded the economic situation of the civilian residents of the Lukodi IDP camp. Deprived of normal access to their cultivation lands, the civilians had to rely on food relief and occasional access to their fields to survive.¹¹⁸² The resources were scarce. As P-0024 put it, “even when you’re hungry, you just sit there because you did not have anything”.¹¹⁸³ Prior to the attack, relief organisations had distributed emergency supplies to Lukodi residents, such as beans, maize, cooking oil, soap, plates, cooking utensils, and blankets.¹¹⁸⁴ Mr Ongwen’s fighters looted or destroyed these items,¹¹⁸⁵ in effect leaving the civilian residents of the Lukodi IDP camp to starve.

(b) LRA attackers took items without the owners’ consent

340. Despite LRA attackers describing pillage of the camp as going to “collect food”, civilians could not give meaningful consent to Mr Ongwen’s fighters taking their property because of the coercive environment.¹¹⁸⁶ Some fled the attackers, abandoning their properties out of fear for their lives.¹¹⁸⁷ Others – including elderly people and mothers with babies – were abducted to act as temporary porters of the looted items, while being beaten and under threat of death.¹¹⁸⁸ For example, armed LRA fighters violently abducted female camp residents P-0024, P-0187, and P-0195 to carry the looted items. P-0024 was forced to act as a porter despite the fact that she was still recovering after giving birth.¹¹⁸⁹ LRA fighters would beat, stab, or shoot those unable to continue carrying heavy loot.¹¹⁹⁰ P-0187 was stabbed for dropping a heavy load, and beaten for allowing a looted goat to escape when told to hide from UPDF helicopter gunship.¹¹⁹¹ This evidence underscores that the LRA’s “collection” was nothing more than a violent, non-consensual appropriation.

¹¹⁸² P-0195, [UGA-OTP-0233-1046-R01](#) at 1050; P-0024, [T-77](#), p. 20, 30; P-0187, [T-164](#), p. 8-9; P-0060, [UGA-OTP-0069-0034-R01](#) at 0041.

¹¹⁸³ P-0024, [T-78](#), p. 33.

¹¹⁸⁴ P-0018, [T-69](#), p. 21; P-0026, [UGA-OTP-0069-0018-R01](#) at 0022; P-0187, [T-164](#), p. 8; P-0195, [UGA-OTP-0233-1046-R01](#) at 1050, 1057; P-0024, [T-77](#), p. 26, [T-78](#), p. 24, 27.

¹¹⁸⁵ P-0187, [T-164](#), p. 8-9; P-0018, [T-69](#), p. 23; P-0024, [T-77](#), p. 26-27, [T-78](#), p. 24.

¹¹⁸⁶ P-0142, [T-70](#), p. 63-65; P-0145, [T-143](#), p. 27; P-0026, [UGA-OTP-0069-0018-R01](#) at 0022.

¹¹⁸⁷ P-0026, [UGA-OTP-0069-0018-R01](#) at 0022; P-0060, [UGA-OTP-0069-0034-R01](#) at 0042; P-0035, [UGA-OTP-0036-0082-R01](#) at 0088.

¹¹⁸⁸ P-0024, [T-77](#), p. 20, 29; P-0142, [T-70](#), p. 68, [T-71](#), p. 12; P-0187, [T-164](#), p. 10-11.

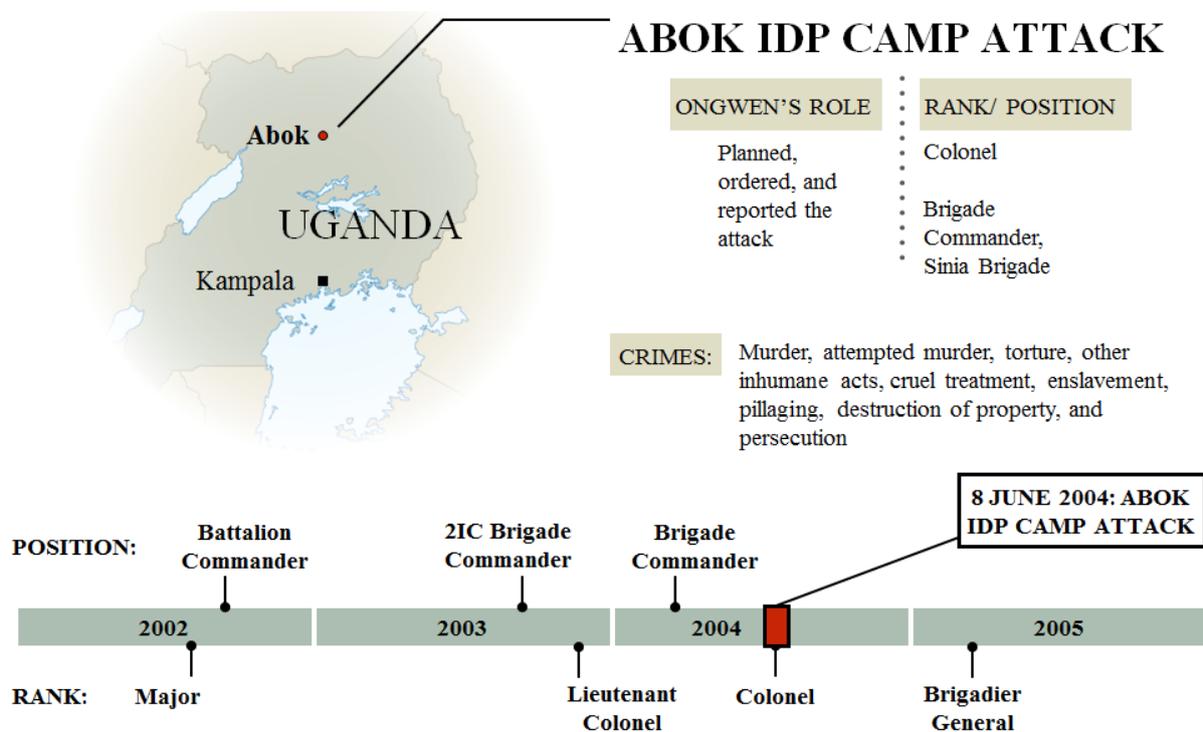
¹¹⁸⁹ P-0024, [T-77](#), p. 39, [T-78](#), p. 32, 38, 49.

¹¹⁹⁰ P-0024, [T-77](#), p. 37-39; P-0018, [T-69](#), p. 16.

¹¹⁹¹ P-0187, [T-164](#), p. 11-12. *See also* P-0017, [UGA-OTP-0023-0395](#).

X. The 8 June 2004 attack of Abok IDP camp (Counts 38-49)

A. Introduction



341. The Trial Chamber heard testimony about the LRA attack on Abok IDP camp from ten former LRA members,¹¹⁹² eight victims of the crimes the LRA fighters committed there,¹¹⁹³ two former Abok IDP camp leaders,¹¹⁹⁴ two intelligence officers from the UPDF and ISO,¹¹⁹⁵ a UPDF colonel who monitored LRA movements at the time,¹¹⁹⁶ two former officers of local armed forces that were deployed at Abok,¹¹⁹⁷ and a regional local government chairperson.¹¹⁹⁸ This testimony is corroborated by logbook records and an audio recording of the LRA radio communications intercepted between 8 and 10 June 2004,¹¹⁹⁹ a police intelligence report,¹²⁰⁰ sketches of the camp at the time of the attack,¹²⁰¹ and lists that the

¹¹⁹² P-0016, P-0205, P-0330, P-0252, P-0054, P-0340, P-0406, [REDACTED], D-0105 and D-0085.

¹¹⁹³ P-0280, P-0286, P-0304, P-0279, [UGA-OTP-0258-0478-R01](#); P-0281, [UGA-OTP-0261-0257-R01](#); P-0282, [UGA-OTP-0261-0246-R01](#) and [UGA-OTP-0261-0255](#); P-0284, [UGA-OTP-0244-1180-R01](#); P-0287, [UGA-OTP-0261-0268-R01](#).

¹¹⁹⁴ P-0306 and P-0293.

¹¹⁹⁵ P-0003 and P-0059.

¹¹⁹⁶ P-0359.

¹¹⁹⁷ [REDACTED].

¹¹⁹⁸ D-0084.

¹¹⁹⁹ UPDF logbooks, [UGA-OTP-0197-1670](#) at 1764-1766; [UGA-OTP-0254-2982](#) at 3078-3080; [UGA-OTP-0255-0228](#) at 0324-0325; ISO logbook, [UGA-OTP-0062-0002](#) at 0022-0025; Sound recording, [UGA-OTP-0235-0049](#) (enhanced), [UGA-OTP-0053-0006](#) (original).

¹²⁰⁰ Police Intelligence Report, [UGA-OTP-0256-0307](#).

Abok IDP camp leaders compiled in the immediate aftermath of the attack bearing the names of people killed or injured.¹²⁰²

342. This evidence establishes that on the night of 8 June 2004 LRA fighters led on the ground by Okello Franco Kalalang,¹²⁰³ one of Mr Ongwen's subordinate commanders,¹²⁰⁴ attacked Abok IDP camp upon Mr Ongwen's orders;¹²⁰⁵ that in so doing the LRA fighters murdered (Counts 38-39),¹²⁰⁶ attempted to murder (Counts 40-41),¹²⁰⁷ tortured (Counts 42-43),¹²⁰⁸ and committed inhumane acts against the civilian population of Abok (Count 44);¹²⁰⁹ and that the LRA fighters treated the civilians cruelly (Count 45),¹²¹⁰ enslaved them (Count 46),¹²¹¹ and pillaged (Count 47)¹²¹² and destroyed their property (Count 48).¹²¹³ As discussed

¹²⁰¹ P-0280, [UGA-OTP-0247-1265-R01](#); P-0286, [UGA-OTP-0248-0091-R01](#); P-0304, [UGA-OTP-0261-0244](#); P-0306, [UGA-OTP-0261-0285](#); P-0293, [UGA-OTP-0248-0057-R01](#), [UGA-OTP-0248-0058-R01](#).

¹²⁰² P-0293, [UGA-OTP-0244-1201](#); P-0306, [UGA-OTP-0247-1269](#), [UGA-OTP-0247-1270-R01](#).

¹²⁰³ P-0205, [T-47](#), p. 67; P-0280, [T-83](#), p. 67; P-0054, [T-93](#), p. 33; P-0286, [T-131](#), p. 19-20; P-0304, [T-133](#), p. 28-29; [UGA-OTP-0261-0233-R01](#) at 0241; D-0085, [T-239](#), p. 21, 25; D-0121, [T-213](#), p. 42; P-0306; [UGA-OTP-0261-0277-R01](#) at 0283.

¹²⁰⁴ P-0280, [T-83](#), p. 67; P-0330, [T-52](#), p. 28; P-0359, [T-109](#), p. 65-66; P-0286, [T-131](#), p. 47; P-0293, [T-138](#), p. 35; [UGA-OTP-0248-0040-R01](#) at 0050, para 44.

¹²⁰⁵ P-0330, [T-52](#), p. 28-29; P-0252, [T-87](#), p. 74-76; P-0054, [T-93](#), p. 33-34; P-0293, [T-138](#), p. 27, 35-38; P-0406, [T-154](#), p. 66.

¹²⁰⁶ P-0280, [T-83](#), p. 51, 54 and [T-84](#), p. 9-10; P-0330, [T-52](#), p. 32-33, 35-36; P-0286, [T-131](#), p. 10; P-0293, [T-138](#), p. 38-40; P-0252, [T-87](#), p. 83-84; P-0304, [T-133](#), p. 24, 36-37; D-0065, [T-211](#), p. 21-22; 27-28; P-0048, [UGA-OTP-0209-0337-R01](#) at 0361; P-0281, [UGA-OTP-0261-0257-R01](#) at 0263; P-0282, [UGA-OTP-0261-0246-R01](#) at 0250-0251; P-0284, [UGA-OTP-0244-1180-R01](#) at 1187; P-0287, [UGA-OTP-0261-0268-R01](#) at 0270-0271; Intelligence Report, [UGA-OTP-0016-0434](#) at 0439; Intelligence Report, [UGA-OTP-0016-0440](#) at 0444; Intelligence Report, [UGA-OTP-0017-0353](#) at 0357; Report, [UGA-OTP-0032-0038-R01](#) at 0057-0058; Report, [UGA-OTP-0037-0153](#) at 0177-0178.

¹²⁰⁷ P-0286, [T-131](#), p. 10, 25-26, 55, 66-68; P-0304, [T-133](#), p. 21-22, 45-47, 59-60; P-0279, [UGA-OTP-0258-0478-R01](#) at 0483-0484; P-0282, [UGA-OTP-0261-0246-R01](#) at 0250-0251; P-0284, [UGA-OTP-0244-1180-R01](#) at 1187.

¹²⁰⁸ P-0280, [T-83](#), p. 57-58; P-0286, [T-131](#), p. 11, 27-30, 55; P-0304, [T-133](#), p. 22-23; P-0279, [UGA-OTP-0258-0478-R01](#) at 0483-0484; P-0281, [UGA-OTP-0261-0257-R01](#) at 0261; P-0287, [UGA-OTP-0261-0268-R01](#) at 0271-0272.

¹²⁰⁹ P-0280, [T-83](#), p. 51-53, 57-58; P-0054, [T-93](#), p. 36; P-0286, [T-131](#), p. 11, 17-18, 20-21, 55-56; P-0306, [T-130](#), p. 9; P-0304, [T-133](#), p. 7-8, 23-24, 37, 45-47; P-0293, [T-138](#), p. 41-44; P-0279, [UGA-OTP-0258-0478-R01](#) at 0483-0484; P-0281, [UGA-OTP-0261-0257-R01](#) at 0261; P-0282, [UGA-OTP-0261-0246-R01](#) at 0251; P-0287, [UGA-OTP-0261-0268-R01](#) at 0272.

¹²¹⁰ P-0280, [T-83](#), p. 51-53, 57-58; P-0054, [T-93](#), p. 36; P-0286, [T-131](#), p. 11, 17-18, 20-21, 55-56 and [T-132](#), p. 9; P-0304, [T-133](#), p. 7-8, 23-24, 37, 45-47; P-0293, [T-138](#), p. 43-44; P-0279, [UGA-OTP-0258-0478-R01](#) at 0483-0484; P-0281, [UGA-OTP-0261-0257-R01](#) at 0261.

¹²¹¹ P-0330, [REDACTED]; P-0280, [T-83](#), p. 50, 53-55, 59; P-0252, [T-87](#), p. 80; P-0286, [T-131](#), p. 10, 33, 39-41, 55, 66-68; P-0304, [T-133](#), p. 7-8, 15-16, 18-19, 45-47; P-0293, [T-138](#), p. 34-38; P-0406, [T-154](#), p. 66-67; P-0279, [UGA-OTP-0258-0478-R01](#) at 0483, 0486; P-0282, [UGA-OTP-0261-0246-R01](#) at 0252; P-0284, [UGA-OTP-0244-1180-R01](#) at 1188; P-0287, [UGA-OTP-0261-0268-R01](#) at 0271; D-0065, [T-211](#), p. 21; Police Intelligence Report, [UGA-OTP-0256-0307](#).

¹²¹² P-0330, [REDACTED]; P-0054, [T-93](#), p. 34; P-0252, [T-87](#), p. 80; P-0286, [T-131](#), p. 10, 11, 17, 33; P-0304, [T-133](#), p. 8, 18; P-0293, [T-138](#), p. 24-25; P-0281, [UGA-OTP-0261-0257-R01](#) at 0261-0262; P-0282, [UGA-OTP-0261-0246-R01](#) at 0250-0251; P-0284, [UGA-OTP-0244-1180-R01](#) at 1188; D-0085, [T-239](#), p. 28, 29, 34.

¹²¹³ P-0280, [T-83](#), p. 45-46 and [T-84](#), p. 10; P-0286, [T-131](#), p. 10, 18; P-0293, [T-138](#), p. 41-42; P-0281, [UGA-OTP-0261-0257-R01](#) at 0262; P-0282, [UGA-OTP-0261-0246-R01](#) at 0249, 0251; P-0284, [UGA-OTP-0244-1180-R01](#) at 1186, 1188; P-0287, [UGA-OTP-0261-0268-R01](#) at 0270-0271; D-0065, [T-211](#), p. 21; Sound Recording, [UGA-OTP-0235-0049](#) (enhanced); [UGA-OTP-0053-0006](#) (original); P-0003, [T-43](#), p. 33-34, 37;

elsewhere in this Closing Brief, all of these crimes were perpetrated as part of the LRA's persecutory campaign (Count 49).¹²¹⁴

343. The evidence also establishes that Mr Ongwen planned and organised the attack. The Prosecution therefore submits that Mr Ongwen's individual criminal responsibility is best characterised as indirect perpetration under article 25(3)(a), though the evidence would also support conviction under any of the charged modes of liability under articles 25 and 28 of the Statute.

B. Prosecution case theory

344. The Prosecution case theory concerning the attack on Abok is that:

- a. On 8 June 2004, while at Atoo Hills, Mr Ongwen appointed Kalalang to select and lead LRA fighters from Sinia Brigade in an attack on Abok IDP camp. Mr Ongwen ordered the attackers to shoot anyone found at Abok, abduct people, collect food, and attack and burn down the camp and barracks.
- b. Kalalang selected LRA fighters from Sinia Brigade and led them to Abok; ordering them to kill civilians by burning them or smashing their heads with clubs, in order to save bullets.
- c. Armed with guns and pangas or machetes, Mr Ongwen's fighters descended upon the camp in the evening at about 19h30 or 20h00. The Ugandan government soldiers and local armed forces were unable to protect the civilians living in the camp and were chased away by the LRA fighters.
- d. The LRA fighters that attacked the camp did just as they were ordered: they shot, stabbed, beat, and burned civilians to death and injured others. Mr Ongwen's fighters also pillaged civilian property and food and destroyed civilian homes and property by setting them on fire. Civilians were abducted and forced to carry loot which the LRA fighters had pillaged from the camp. Under the threat of death, the abducted civilians were taken out of the camp by their captors; some of them were beaten or killed, and others were later recruited into the LRA.

Audio transcript annotation by P-0003, [UGA-OTP-0248-0106-R01](#) at 0127; P-0059, [T-37](#), p. 15-17; Audio transcript annotation by P-0059, [UGA-OTP-0248-0524-R01](#) at 0542; ISO logbook, [UGA-OTP-0062-0002](#) at 0023 (right page); UPDF logbook, [UGA-OTP-0254-2982](#) at 3078; [UGA-OTP-0255-0228](#) at 0325.

¹²¹⁴ See Section VI above.

- e. In the early hours of the following day, government soldiers pursued the LRA fighters, who by then had left the camp, but only managed to rescue a few abducted civilians. Mr Ongwen later met the LRA fighters and the civilians abducted from Abok at a rendezvous point, Atoo Hill, where he was informed of the results of the attack.
- f. On 9 and 10 June 2004, Mr Ongwen reported the successful attack his fighters had carried out at Abok over the LRA radio communication to Raska Lukwiya, Vincent Otti, and Kony. Mr Ongwen's voice can be heard on the recorded radio communication confirming having sent out a deployment that was shooting at anything moving.

C. Key issues related to the charged attack on the Abok IDP camp

345. The Prosecution has identified five issues which appear to be disputed by the Parties:

- 1) Did Mr Ongwen have control over the LRA fighters who attacked Abok IDP camp?
- 2) Did the LRA intentionally target civilians during the attack on Abok IDP camp?
- 3) Were the deaths of civilians at Abok caused by crossfire?
- 4) Were the civilian victims at Abok mistakenly killed by UPDF, Amuka, or LDU forces?
- 5) Did Mr Ongwen report the Abok attack over the LRA radio?

1. Did Mr Ongwen have control over the LRA fighters who attacked Abok IDP camp?

346. The Defence contended that Mr Ongwen did not lead the attack at Abok IDP camp and did not have control over the LRA fighters that attacked the camp.¹²¹⁵ The evidence establishes that, while Mr Ongwen did not physically lead the LRA fighters into battle or take the role of ground commander during the attack, Mr Ongwen ordered and planned the attack on Abok IDP camp and then reported it to the LRA leadership over the radio.

(a) Mr Ongwen ordered and planned the attack on Abok

347. On 1 June 2004, Mr Ongwen spoke to senior LRA commander Abudema and stated that he was “going to kill many civilians and he will send the result to Kony [who] will be

¹²¹⁵ T-179, p. 32-33.

happy about it”.¹²¹⁶ This was no idle threat. Witnesses P-0330, P-0252, P-0406, and P-0054 [REDACTED] Mr Ongwen issued orders for the attack on Abok IDP camp.¹²¹⁷ He appointed his subordinate Kalalang to select and lead the LRA fighters to the camp.¹²¹⁸ Mr Ongwen ordered the attackers to abduct people, shoot anyone found there or who attempts to run away, collect food, and burn down the camp and barracks.¹²¹⁹

348. Although Mr Ongwen did not himself participate, he retained overall command of Kalalang and the fighters that went to Abok under his authority. Former fighters under Kalalang’s command during the attack and civilians that were enslaved during the attack attested to Kalalang having been subordinate to Mr Ongwen.¹²²⁰ Abok camp leader P-0293 heard LRA fighters at Abok IDP camp say that Mr Ongwen would be extremely happy because the attack was successful.¹²²¹ Mr Ongwen’s overall command was also demonstrated by his presence at the rendezvous point to meet and carry out a head count of the LRA fighters and abducted civilians that came from Abok IDP camp.¹²²²

(b) Mr Ongwen reported the results of his fighters’ attack over the radio

349. After the attackers returned to the rendezvous point, Mr Ongwen was informed of the results of the attack, which he then reported over the LRA radio to Raska Lukwiya, Otti, and Kony. P-0330 heard his line commander report to Kalalang how the operation had been carried out and what items they had brought back, and this information was in turn relayed by Kalalang to his superior, Mr Ongwen.¹²²³

350. Mr Ongwen’s report was intercepted by UPDF and ISO radio operators and recorded in logbooks between 8 and 10 June 2004. Intercepted reports were also sound-recorded by the ISO. In Mr Ongwen’s 9 June report, he confirmed that his fighters burned about 600 civilian houses.¹²²⁴ In the 10 June report he stated: “Yesterday, I went for an attack”; that he was “just

¹²¹⁶ UPDF logbook, [UGA-OTP-0197-1670](#) (right page) at 1751-1752, LRA sitrep at 18h30 on 01.06.04.

¹²¹⁷ P-0252, [T-87](#), p. 74-76 ; P-0406, [T-154](#), p. 66

¹²¹⁸ P-0330, [T-52](#), p. 28-29; P-0054, [T-93](#), p. 33; P-0406, [T-154](#), p. 66.

¹²¹⁹ P-0293, [T-138](#), p. 27; P-0406, [T-154](#), p. 66; [REDACTED] at 1118-1119; P-0054, [T-93](#), p. 34; [REDACTED].

¹²²⁰ P-0054, [T-93](#), p. 34; P-0280, [T-83](#), p. 66-67; P-0286, [T-131](#), p. 40-42, 47; P-0293, [T-138](#), p. 35; P-0304, [T-133](#), p. 26-29.

¹²²¹ P-0293, [T-138](#), p. 36-37.

¹²²² P-0330, [T-52](#), p. 38-39; [REDACTED].

¹²²³ P-0330, [T-52](#), p. 39.

¹²²⁴ UPDF logbook, [UGA-OTP-0254-2982](#) at 3078; UPDF logbook, [UGA-OTP-0255-0228](#) at 0324.

coming from warming the bodies of the boys” – LRA terminology which meant that he had been fighting – and that he abducted some “waya” – a code word for civilians.¹²²⁵

2. Did the LRA intentionally target civilians during the attack on Abok IDP camp?

351. The evidence overwhelmingly demonstrates that the civilian population at Abok was the primary target of the LRA attack. Mr Ongwen ordered his fighters to shoot anyone found at Abok,¹²²⁶ abduct people, collect food, and attack and burn down the camp and barracks.¹²²⁷ When asked by the Defence whether he could tell that the LRA fighters were targeting the camp and not the barracks, D-0065, [REDACTED], unequivocally stated that the LRA fighters came to the camp and not the barracks.¹²²⁸ P-0330, an LRA fighter who participated in the attack and was one of Mr Ongwen’s escorts at the time, said of the LRA’s attacks on IDP camps “once we decide to go and attack then ... we have to do the worst, commit the worst atrocities”.¹²²⁹ With specific reference to the attack on Abok he confirmed that an order to set houses on fire and for civilians to be killed was relayed to the LRA fighters taking part in the attack by Bomek [REDACTED] and Odoki, two of Mr Ongwen’s subordinate commanders in Sinia Brigade.¹²³⁰ During the attack one of the camp leaders, P-0293, overheard LRA fighters applauding Kalalang for having changed the orders that Mr Ongwen gave to shoot anyone they find; Kalalang ordered the LRA fighters to save their bullets and instead kill people by burning them in fire or smashing their heads with clubs.¹²³¹

352. The manner in which civilians were killed, tortured, and enslaved during and after the attack on Abok is testament to the LRA fighters’ compliance with Mr Ongwen’s orders and further illustrates that the civilians were in fact a deliberate target of the attackers. LRA fighters attacking the camp shot at, stabbed, hacked, and beat civilians to death as they hid or attempted to flee.¹²³² Civilian inhabitants were bolted inside their homes by LRA fighters and those homes set on fire.¹²³³ Some of the civilians deliberately attacked by Mr Ongwen’s

¹²²⁵ Sound recording, [UGA-OTP-0235-0049](#) (enhanced), [UGA-OTP-0053-0006](#) (original); P-0003, [T-43](#), p. 34-35, audio transcript annotation by P-0003, [UGAOTP-0248-0106-R01](#) at 0124; P-0059, [T-37](#), p. 17-18, audio transcript annotation by P-0059, [UGA-OTP-0248-0524-R01](#) at 0541-0542; [REDACTED].

¹²²⁶ P-0293, [T-138](#), p. 27; [UGA-OTP-0270-1116-R01](#) at 1118-1119.

¹²²⁷ P-0406, [T-154](#), p. 66; P-0054, [T-93](#), p. 34; [REDACTED].

¹²²⁸ D-0065, [T-211](#), p. 25.

¹²²⁹ P-0330, [REDACTED], p. 28-29, [REDACTED].

¹²³⁰ P-0330, [REDACTED], 80.

¹²³¹ P-0293, [T-138](#), p. 27-28.

¹²³² P-0280, [REDACTED], 50, 51, 54; [REDACTED]; D-0065, [T-211](#), p. 22, 25, 28; [REDACTED].

¹²³³ P-0330, [T-52](#), p. 32; P-0406, [T-154](#), p. 70; D-0065, [T-211](#), p. 21; P-0284, [UGA-OTP-0244-1180-R01](#) at 1187.

fighters included young children and elderly people.¹²³⁴ P-0054, [REDACTED], saw LRA fighters kick, beat, and slap a small boy they found in the camp.¹²³⁵ P-0284's [REDACTED] was abducted by LRA fighters during the attack on the camp.¹²³⁶ P-0279, [REDACTED],¹²³⁷ was repeatedly beaten, slapped, strangled, and cut with a machete when she could no longer bear the weight of the beans, goats, and heavy bag she was forced to carry.¹²³⁸ In the aftermath of the attack, P-0280 found that his [REDACTED] cousin had been killed,¹²³⁹ while P-0293 found the body of [REDACTED] clubbed to death on the head, with his brains spilled out.¹²⁴⁰ The victims of these crimes could not possibly have been military targets.

353. The evidence also establishes that in the course of their attack the LRA fighters at Abok destroyed civilian homes and property by setting them on fire,¹²⁴¹ abducted civilians from their homes under the threat of death, and forced them to carry heavy loads and property pillaged from the camp.¹²⁴² In the process, the LRA fighters beat,¹²⁴³ attempted to kill, and in other instances killed¹²⁴⁴ civilians who refused, resisted, or were unable to do so. It simply cannot be said that these acts of murder, enslavement, and cruel and inhumane treatment were consistent or compatible with a lawful attack on one or more military objectives.

354. The Defence has suggested LRA attacks on IDP camps like Abok were not directed at civilians but exclusively at military targets and for purposes of obtaining food.¹²⁴⁵ The Prosecution response is that Abok IDP camp was not a lawful military objective but, at most, a location in which a smaller number of potential military objectives were co-located with a large number of civilians and civilian objects which had to be distinguished from one another in any attack. The failure of the LRA fighters to do so could not be justified, even for the sake of argument, by the motive of obtaining food. The evidence further demonstrates that the LRA relied primarily on civilians for the purpose of pillaging food and other items from Abok IDP camp; one of the reasons why LRA fighters abducted civilians was to carry away

¹²³⁴ P-0286, [T-131](#), p. 54-55; P-0304, [T-133](#), p. 45-47; [REDACTED]; P-0410, [T-151](#), p. 72-73

¹²³⁵ P-0054, [T-93](#), p. 36.

¹²³⁶ [REDACTED].

¹²³⁷ [REDACTED].

¹²³⁸ [REDACTED].

¹²³⁹ P-0280, [T-83](#), p. 79.

¹²⁴⁰ P-0293, [T-138](#), p. 39-40.

¹²⁴¹ [REDACTED]; P-0286, [T-131](#), p. 18; P-0286, [T-132](#), p. 10-11; P-0293, [T-138](#), p. 22-24; [REDACTED].

¹²⁴² [REDACTED]; P-0280, [T-83](#), p. 50, 51, 53, 57-58; P-0252, [T-87](#), p. 80; P-0286, [T-131](#), p. 10-11, 27-30, 33-38, 55 and [T-132](#), p. 16; P-0304, [T-133](#), p. 8; P-0293, [T-138](#), p. 36; [REDACTED].

¹²⁴³ P-0286, [T-131](#), p. 25-27; P-0304, [T-133](#), p. 21-22, 59-60; [REDACTED]; ISO logbook [UGA-OTP-0062-0002](#) at 0023, 0025.

¹²⁴⁴ P-0286, [T-131](#), p. 25-26; P-0304, [T-133](#), p. 21-22, 59-60; [REDACTED].

¹²⁴⁵ [T-179](#), p. 15-17, 32; D-0105, [T-190](#), p. 28; D-0085, [T-239](#), p. 23.

property and food looted during the attack.¹²⁴⁶ It is the Prosecution’s submission that the food, bedsheets, radios, drinks, money, biscuits, cooking oil, sweets, salt, sacks of beans, and goats¹²⁴⁷ were appropriated for private or personal use – for distribution to commanders within the brigade and to Mr Ongwen’s household¹²⁴⁸ – rather than for military purposes.

3. Were the deaths of civilians at Abok caused by crossfire?

355. The Defence has argued that civilians who died during the attack on Abok were killed in “crossfire”.¹²⁴⁹ While some civilians may have died during crossfire between the LRA and government forces at Abok, the overwhelming evidence establishes that the LRA intentionally killed at least 28 civilians.¹²⁵⁰

356. During P-0280’s examination by the Defence, he refuted the Defence’s theory that civilians died as a result of being caught in the crossfire between UPDF and LRA fighters. He said of the LRA fighters: “when they entered the camp, the soldiers [...] were already fleeing because they had no bullets [...] in the middle of the camp there was no more exchange because no one was shooting at them”.¹²⁵¹ P-0286 too confirmed that the civilians in the camp were left unprotected because the LRA fighters were stronger and managed to chase away the government soldiers.¹²⁵²

357. Further, evidence of the manner in which people died is incompatible with the Defence’s crossfire theory. Aside from death by gunshot, people were murdered by stabbing, being beaten to death, and being burned to death in the homes where they lived.¹²⁵³ P-0330 told the Chamber that he [REDACTED].¹²⁵⁴ P-0406 saw his commander bolt the door of a civilian house with its occupants still inside and set the house on fire.¹²⁵⁵ [REDACTED].¹²⁵⁶ D-0065, [REDACTED], saw civilian inhabitants being shot by LRA fighters and pushed into

¹²⁴⁶ P-0280, [T-83](#), p. 53; P-0286, [T-131](#), p. 33; P-0293, [T-138](#), p. 27-28.

¹²⁴⁷ P-0330, [REDACTED]; P-0286, [T-131](#), p. 11, 17, 33 P-0304, [T-133](#), p. 18; [REDACTED]; D-0085, [T-239](#), p. 34.

¹²⁴⁸ P-0330, [T-52](#), p. 39-40; P-0406, [T-154](#), p. 76-77.

¹²⁴⁹ [T-179](#), p. 16, 33; P-0280, [T-84](#), p. 44.

¹²⁵⁰ [REDACTED]; P-0280, [T-83](#), p. 51, 54; P-0280, [T-84](#), p. 9–10; P-0293, [T-138](#), p. 38-39.

¹²⁵¹ P-0280, [T-84](#), p. 44.

¹²⁵² P-0286, [T-131](#), p. 10.

¹²⁵³ P-0280, [T-83](#), p. 51, 54, and [T-84](#), p. 9–10; P-0330, [REDACTED], p. 29, [REDACTED]; P-0286, [T-131](#), p. 10; P-0293, [T-138](#), p. 27-28; P-0306, [T-130](#), p. 7-8; D-0065, [T-211](#), p. 21, 28; P-0282, [REDACTED] at 0250-0251; P-0287, [REDACTED] at 0270-0271; Intelligence Report, [UGA-OTP-0016-0434](#) at 0439; Intelligence Report, [UGA-OTP-0016-0440](#) at 0444; Intelligence Report, [UGA-OTP-0017-0353](#) at 0357; Report, [UGA-OTP-0032-0038-R01](#) at 0057; Report, [UGA-OTP-0037-0153](#) at 0177.

¹²⁵⁴ [REDACTED].

¹²⁵⁵ [REDACTED].

¹²⁵⁶ [REDACTED].

fires.¹²⁵⁷ P-0286 confirmed that a child was burned to death in one of his father's houses during the attack.¹²⁵⁸ In the aftermath of the attack, P-0293 saw dead civilians burned in houses and whose heads were battered and cut up.¹²⁵⁹ P-0293's account was corroborated by D-0065 who, in the aftermath of the attack, also found corpses in the camp and saw dead bodies whose heads had been smashed.¹²⁶⁰ After the attack, camp leaders P-0306 and P-0293 went through the camp, identifying the bodies of dead civilians and the manner in which they were killed; the lists they compiled included [REDACTED].¹²⁶¹

358. The murder of civilians from Abok was not confined to the camp itself. There were killings in the immediate aftermath which cannot possibly have been the result of crossfire. [REDACTED].¹²⁶² P-0286 confirmed that during the exodus from the camp, a 12 or 13-year-old girl who could not stop crying was taken a distance away by the LRA fighters and beaten until she was not crying anymore.¹²⁶³ He testified of this girl:

“when I hear you crying and you stop crying, you don't come back to us, I assume that you are no more [...] And even when you come back home later you realise that when she left the bush she never reached home, so I assume that she was killed in the bush”.¹²⁶⁴

4. Were the civilian victims at Abok mistakenly killed by UPDF, Amuka, or LDU soldiers?

359. The Defence has also suggested that civilians were killed by UPDF, Amuka and LDU soldiers returning from an ambush that shot into the camp, believing that the LRA fighters were still there.¹²⁶⁵ This position appears to be based solely on the testimonies of D-0105 and D-0121, who suggested that any crimes committed (and in particular the deaths and injuries among the civilian population and the destruction of their camp) were attributable to the actions of government forces.¹²⁶⁶ The Trial Chamber should not accept these aspects of either witness' testimonies, because they were discussing an attack or attacks different than the charged attack.

¹²⁵⁷ D-0065, T-211, p. 21, 28.

¹²⁵⁸ P-0286, T-131, p. 54-55.

¹²⁵⁹ P-0293, T-138, p. 25-27.

¹²⁶⁰ D-0065, T-211, p. 28.

¹²⁶¹ P-0306, T-130, p. 8-9, 66-67; UGA-OTP-0247-1270-R01.

¹²⁶² [REDACTED].

¹²⁶³ P-0286, T-131, p. 26-27.

¹²⁶⁴ P-0286, T-131, p. 26-27.

¹²⁶⁵ D-0121, T-213, p. 38- 41.

¹²⁶⁶ D-0105, T-190, p. 32-34.

360. D-0105 spoke of an attack of which the sole purpose was to “collect” food and in which no civilians were abducted.¹²⁶⁷ He suggested that the LRA collected food within the camp for about an hour before the government forces arrived, firing gunshots into the camp which forced the LRA fighters to flee the camp.¹²⁶⁸ He claimed to have seen tracer bullets, with some form of fire, being shot into the camp from the southern side as the LRA fighters fled, but could not see who fired them because it was dark.¹²⁶⁹ The events D-0105 described do not tally with the charged attack on Abok IDP camp. The attack in which he allegedly took part, at the age of 11, also occurred on 6 August 2004, during the rainy season.¹²⁷⁰ Even Defence witnesses agreed that the charged attack occurred on 8 June 2004,¹²⁷¹ and the Defence itself has argued that the attack was for recruitment purposes.¹²⁷² In short, D-0105 testified about a different Abok attack than the one charged.

361. D-0121, [REDACTED] from about April 2004, also testified regarding an LRA attack on 6 August 2004. He was in the barracks at about 19h30 when he heard gunfire at the centre. D-0121’s group allegedly exchanged fire with the LRA fighters, driving them southwards out of the camp towards Ariba. He alleged that the civilian killings in the camp were perpetrated by the UPDF, Amuka and LDU soldiers.¹²⁷³ This too is inconsistent with the evidence relevant to the charged attack, which was an LRA victory, not a defeat. Moreover, by his own account, D-0121 was not in position to know the truth of the matter, because he was away from the camp for three hours at a distance of about four kilometres and therefore could not see what was happening.¹²⁷⁴

362. D-0121’s attack did not feature LRA fighters looting shops, abducting people, or forcing them to carry food from the camp, all well established features of the charged attack according to Defence and Prosecution witnesses who were present or participated.¹²⁷⁵ In order to accept both D-0105 and D-0121’s suggestion that LRA fighters committed no crimes when they attacked Abok IDP camp, the Trial Chamber would have to disbelieve the consistent and

¹²⁶⁷ D-0105, T-190, p. 28, 35.

¹²⁶⁸ D-0105, T-190, p. 32, 33.

¹²⁶⁹ D-0105, T-190, p. 34.

¹²⁷⁰ D-0105, T-190, p. 26.

¹²⁷¹ D-0065, T-211, p. 13; D-0085, T-239, p. 20-21.

¹²⁷² T-179, p. 13-15.

¹²⁷³ D-0121, T-213, p. 38-41.

¹²⁷⁴ D-0121, T-213, p. 47-48.

¹²⁷⁵ D-0065, T-211, p. 8, 13, 21; D-0085, T-239, p. 28, 34; P-0252, T-87, p. 78- 80 and T-88, p. 5; [REDACTED]; P-0280, T-83, p. 51-53, 57-58; P-0286, T-131, p. 10-11, 27-30, 55 and T-132, p. 16; P-0304, T-133, p. 21-22, 59-60; [REDACTED].

credible testimony of Witnesses P-0252, P-0406, P-0280, P-0286, P-0304, D-0065, and D-0085, all of whom either witnessed these crimes or were victims thereof.

363. Irrespective of the theory advanced by the Defence (whether crossfire or mistaken targeting by government forces) the evidence demonstrates that of the 28 civilians who died during or as a result of the attack on Abok IDP camp, the following victims were killed intentionally by LRA fighters:

Victim	Manner of death
P-0280's brother	Shot by LRA fighters after they told him to lie face down ¹²⁷⁶
P-0280's father and neighbour	Shot after LRA fighters summoned them out of a hole where they hid during the attack ¹²⁷⁷
P-0293's father	Clubbed to death on the head, with brains spilled out ¹²⁷⁸
An unnamed civilian.	Stabbed to death by an LRA fighter named Oyo ¹²⁷⁹
One or more civilians	Stabbed with bayonets and beaten over the head with clubs or axes by LRA fighters ¹²⁸⁰
P-0282's uncle	Shot by LRA fighters after they asked him for money during the attack ¹²⁸¹
One or more civilians	Bolted inside their homes by LRA fighters and those homes set on fire ¹²⁸²
One or more civilians	Shot by LRA fighters and pushed into fires in the camp ¹²⁸³

5. Did Mr Ongwen report the Abok attack over the LRA radio?

364. In its opening statement, the Defence suggested that it was George Labongo who reported the Abok attack on the LRA radio on 9 and 10 June 2004.¹²⁸⁴ There is no evidence of any kind to support this assertion. The trial evidence establishes that it was Mr Ongwen who reported the success of his fighters' attack on Abok IDP camp.

¹²⁷⁶ P-0280, T-83, p. 54; P-0306, T-130, p. 8-9, 66-67; [REDACTED].

¹²⁷⁷ P-0280, T-83, p. 50-51, 54.

¹²⁷⁸ P-0293, T-138, p. 39-40; [REDACTED], person listed as number 14; P-0306, T-130, p. 8-9, 66-67; [REDACTED].

¹²⁷⁹ [REDACTED].

¹²⁸⁰ [REDACTED]; D-0065, T-211, p. 22, 28.

¹²⁸¹ [REDACTED].

¹²⁸² [REDACTED]; D-0065, T-211, p. 21; [REDACTED].

¹²⁸³ D-0065, T-211, p. 21, 28

¹²⁸⁴ T-179, p. 34.

365. On 9 June 2004 at 18h30, a UPDF radio operator heard and recorded in his logbook Mr Ongwen's report over the LRA radio network about having attacked "Aboke Centre", burned about 600 civilian houses, and that the attack took place at about 21h00 and the UPDF ran away.¹²⁸⁵ On 10 June between 09h00 and 09h35, an ISO radio operator sound-recorded¹²⁸⁶ and noted in his logbook Mr Ongwen's report over the LRA radio network in which he confirmed to Vincent Otti, Kony, Labalpiny, and Ocen that he had carried out the attack on (as the interceptors transcribed it) "Aboke" centre.¹²⁸⁷

366. At trial, [REDACTED], as well as P-0003 and P-0059, who were respectively the UPDF and ISO radio operators that intercepted the two reports (and made the relevant entries in the logbooks), listened to the audio recording¹²⁸⁸ capturing both the 9 and 10 June reports. All confirmed they recognised Mr Ongwen's voice (using the call-sign "Tem Wek Ibong") reporting the attack.¹²⁸⁹

367. Although the location of Abok is not mentioned in the audio recording, all four witnesses identified specific details of the recording which match those in the reports about the attack registered in the 9 and 10 June 2004 records of the UPDF and ISO logbooks; most notably Mr Ongwen's voice confirming having returned from "'heating up' or 'warming' or 'heating' the boys"¹²⁹⁰ – which in LRA terminology means he had just been attacking a place or fighting the UPDF.¹²⁹¹ They also heard Mr Ongwen state that civilians raised an alarm or became aware of the LRA's presence,¹²⁹² that the LRA burned the barracks and camp¹²⁹³ or houses,¹²⁹⁴ the shelling by mamba vehicles,¹²⁹⁵ and having stated "Yesterday I went for an attack" and "we burnt everything that was there including all the huts even the camp and the barracks".¹²⁹⁶

¹²⁸⁵ UPDF logbook, [UGA-OTP-0197-1670](#) at 1764 sitrep of 9 June 2004 at 18h30; UPDF logbook, [UGA-OTP-0254-2982](#) at 3078, sitrep of 9 June 2004 at 18h30; UPDF logbook, [UGA-OTP-0255-0228](#) at 0324.

¹²⁸⁶ [UGA-OTP-0053-0006](#) (original); Sound recording, [UGA-OTP-0235-0049](#), Track 1 (enhanced).

¹²⁸⁷ ISO logbook, [UGA-OTP-0062-0002](#) at 0023-0024, Ref 837 A/G Time 0900-0935.

¹²⁸⁸ Sound recording, [UGA-OTP-0235-0049](#), Track 1 (enhanced).

¹²⁸⁹ [REDACTED]; P-0003, [T-42](#), p. 27 and [T-43](#), p. 35; P-0059, [T-36](#), p. 49 and [T-37](#), p. 17; [UGA-OTP-0248-0106-R01](#) at 0124, line 408; [UGA-OTP-0248-0524-R01](#) at 0542, line 408.

¹²⁹⁰ [REDACTED]; P-0003, [T-43](#), p. 35; P-0059, [T-37](#), p. 17.

¹²⁹¹ [REDACTED]; P-0003, [T-43](#), p. 35; P-0059, [T-37](#), p. 17.

¹²⁹² [REDACTED]; P-0003, [T-43](#), p. 38; P-0059, [T-37](#), p. 21.

¹²⁹³ P-0059, [T-37](#), p. 16.

¹²⁹⁴ P-0003, [T-43](#), p. 34.

¹²⁹⁵ P-0003, [T-43](#), p. 34; P-0059, [T-37](#), p. 16.

¹²⁹⁶ P-0003, [T-43](#), p. 33-34; P-0059, [T-37](#), p. 18.

368. P-0003 heard Mr Ongwen's voice confirm that the civilians became aware of his presence at about 21h00,¹²⁹⁷ while [REDACTED] and P-0059 heard his voice confirm having captured some "waya" (civilians) during the attack.¹²⁹⁸

369. When considered together, this overwhelming documentary, audio, and witness evidence confirms that on 9 and 10 June 2004, Mr Ongwen was the person using the call sign "Tem Wek Ibong" to report the 8 June LRA attack on Abok IDP camp. The unsupported Defence assertion that Labongo reported the Abok attack therefore cannot stand.

XI. Mental disease or defect (article 31(1)(a))

A. Introduction

370. In 2016, the Defence Experts¹²⁹⁹ diagnosed Mr Ongwen as suffering from Dissociative Identity Disorder (DID), Post-Traumatic Stress Disorder (PTSD), and Major Depressive Disorder (MDD).¹³⁰⁰ In 2018, they added Dissociative Amnesia and Obsessive Compulsive Disorder to their list.¹³⁰¹ They suggest that these disorders amount to grounds for excluding his criminal responsibility for some of the charged crimes because they "interfered with his ability to distinguish right from wrong" and rendered him unable to control his behaviour or to refrain from taking part in those crimes.¹³⁰²

371. Mr Ongwen refused to be examined by the Prosecution Experts.¹³⁰³

372. The Prosecution case is that there is no reliable evidence from which the Trial Chamber can determine that Mr Ongwen was suffering from any of the five mental health conditions identified by the Defence Experts at the time of the conduct constituting the charged crimes, let alone that those symptoms had destroyed his statutory capacities. The evidence shows that, on the contrary, he was in full possession of all those capacities.

373. Mr Ongwen's refusal to be examined by the Prosecution Experts¹³⁰⁴ is part of a pattern of calculation and manipulation on his part concerning mental health issues by which he is

¹²⁹⁷ P-0003, T-43, p. 34.

¹²⁹⁸ [REDACTED]; P-0059, T-37, p. 18.

¹²⁹⁹ Dr Dickens Akena, D-0041, and Professor Emilio Ovuga, D-0042.

¹³⁰⁰ D-0041 and D-0042, UGA-D26-0015-0004.

¹³⁰¹ D-0041 and D-0042, UGA-D26-0015-0948.

¹³⁰² D-0041 and D-0042, UGA-D26-0015-0948 at 0975.

¹³⁰³ Dr Catherine Abbo, P-0445; Professor Gillian Mezey, P-0446; and Professor Roland Weierstall-Pust, P-0447.

seeking to avoid conviction of the charged crimes.¹³⁰⁵ His purpose in refusing was to prevent the Prosecution Experts from conducting examinations that would result in findings contrary to those of the Defence Experts. Despite his refusal, the two Prosecution Experts who expressed an opinion on the matter concluded that there is no sufficient evidence that Mr Ongwen was suffering from any of the mental diseases or defects identified by the Defence Experts at the time of the alleged crimes.¹³⁰⁶

374. The Defence Experts, throughout the course of their frequent examinations and report writing,¹³⁰⁷ failed to take any adequate precautions to exclude the possibility (the Prosecution says the reality) of malingering on the part of Mr Ongwen.¹³⁰⁸ The symptoms they recorded are sometimes incoherent,¹³⁰⁹ and their diagnoses are flawed¹³¹⁰ and inconsistent.¹³¹¹ Their uncritical approach to the person whom they repeatedly referred to as their “client” is exemplified by D-0041’s answer to a question concerning Mr Ongwen’s alleged multiple suicide attempts while in the bush. D-0041 conceded that it was unlikely that a person would indeed fail on so many occasions if they were serious about it, but then immediately added “I think the client is testimony to the fact that you can attempt to kill yourself many times and not die.” In other words, for D-0041, Mr Ongwen’s account of matters is self-proving,¹³¹² and need not be checked, even where court transcripts demonstrate it to be false.¹³¹³ The Defence Experts have, in D-0041’s own words,¹³¹⁴ entered into a “therapeutic alliance” with Mr Ongwen. The blurring of their role as both treating physicians and forensic experts has led to a loss of objectivity on their part.

375. The evidence, except assertions originating from Mr Ongwen himself at a time when he knew his future freedom might depend upon it, suggests that he was in full possession of all the relevant capacities at the time of the alleged crimes. This is demonstrated by testimony

¹³⁰⁴ P-0445, [UGA-OTP-0280-0732](#) at 0733; P-0446, [UGA-OTP-0280-0786](#) at 0789; P-0447, [UGA-OTP-0280-0674](#) at 0676.

¹³⁰⁵ P-0446, [UGA-OTP-0280-0786](#) at 0814, [T-163](#), p. 99.

¹³⁰⁶ P-0446, [UGA-OTP-0280-0786](#) at 0811, [T-163](#), p. 6; P-0447, [UGA-OTP-0280-0674](#) at 0700-0701.

¹³⁰⁷ D-0041 estimated that, in total, he and D-0042 had spent 15 to 18 sessions of between two and three hours with Mr Ongwen. *See* [T-248](#), p. 35. D-0041 and D-0042 are the joint authors of four reports: [UGA-D26-0015-0154](#) (9 February 2016), [UGA-D26-0015-0004](#) (undated), [UGA-D26-0015-0948](#) (28 June 2018), and [UGA-D26-0015-1219-R01](#) (25 January 2019).

¹³⁰⁸ P-0447, [UGA-OTP-0287-0072](#) at 0076 and 0077, para. 2.2.

¹³⁰⁹ P-0446, [T-163](#), p. 9.

¹³¹⁰ P-0446, [UGA-OTP-0280-0786](#) at 0809-0810; P-0447, [UGA-OTP-0287-0072](#) at 0076-0080, para. 2.2-2.8.

¹³¹¹ P-0447, [T-169](#), p. 65-66, [T-170](#), p. 24-25.

¹³¹² D-0041, [T-249](#), p. 23 and 35.

¹³¹³ D-0041, [T-249](#), p. 35-40.

¹³¹⁴ D-0041, [T-248](#), p. 87-88, [T-249](#), p. 29.

about his words and actions at relevant times received from witnesses (both Prosecution and Defence), by his utterances which were manually recorded in the radio intercept logbooks (and sometimes electronically recorded on cassette tapes), and by his reported answers to questions which the Defence Experts asked him in the course of their examinations.

376. In any event, the Defence Experts advance very limited propositions in respect of the application of article 31(1)(a) to this case. Firstly, their evidence has no bearing at all upon the crimes alleged in Counts 50 to 68. As D-0042 stated: “the brief given to us, that is, Dr Akena and myself, that we should not concern ourselves with sexual offences.”¹³¹⁵ Secondly, their conclusion is no more than that “certain actions [...] particularly on the battlefield, *might have been* due to dissociation, depression, suicidal feelings and the complications of PTSD”¹³¹⁶ (emphasis added). At no stage in their evidence did the Defence Experts specify which of the 51 remaining crimes might have been affected in this way.

377. Even those modest conclusions must be regarded as seriously affected by a limitation which D-0042 himself accepted. It is clear that, until they received the materials for cross-examination and were questioned about those materials, the Defence Experts had not reviewed the trial testimony reflecting on Mr Ongwen’s state of mental functioning at the time of the charged crimes. D-0042 conceded that “our conclusions and our reports might have been substantially different had we had other corroborating or discrepant material.”¹³¹⁷

378. Aside from the reports from the Prosecution and Defence experts, the Chamber is also in possession of a report dated December 2016 from Professor de Jong.¹³¹⁸ This report was commissioned by the Chamber¹³¹⁹ in response to a Defence request for an examination of Mr Ongwen with a view to ascertaining his fitness to stand trial.¹³²⁰ It says nothing concerning the article 31(1)(a) criteria. Reference to Professor de Jong’s report is made herein only where it has been referred to by another expert.

B. Key issues related to article 31(1)(a)

379. The Prosecution has identified three key issues related to the application of article 31(1)(a) to this case:

¹³¹⁵ D-0042, T-251, p. 70. *See also* p. 67.

¹³¹⁶ D-0042, T-251, p. 89.

¹³¹⁷ D-0042, T-251, p. 10.

¹³¹⁸ UGA-D26-0015-0046-R01.

¹³¹⁹ ICC-02/04-01/15-637-Conf.

¹³²⁰ ICC-02/04-01/15-620-Conf.

- 1) Is there a burden of proof on either Party?
- 2) Was Mr Ongwen suffering from a mental disease or defect at the time of the charged conduct?
- 3) Had the mental capacities listed in article 31(1)(a) been “destroyed” by mental disease or defect at the time of the charged conduct?

1. Is there a burden of proof on either party?

380. The Prosecution contends that neither Party bears a burden to prove the applicability (or not) of article 31(1)(a). It has set out its arguments on this issue elsewhere.¹³²¹ They are not repeated here. The Prosecution adds only that the use of the word “destroyed” in article 31(1)(a) implies that, absent such destruction, an accused person is presumed to possess the “capacity to appreciate the unlawfulness or nature of his or her conduct” and the “capacity to control his or her conduct to conform to the requirements of the law”.

2. Was Mr Ongwen suffering from a mental disease or defect at the time of the charged conduct?

381. The question of whether Mr Ongwen should be excused from criminal liability because he was suffering from a mental disease or defect cannot be considered as a generalised concept applicable to the charged crimes as a whole. Article 31(1)(a) requires that, in respect of each individual instance of allegedly criminal conduct, the Chamber shall determine whether, *at the time of that conduct*, a mental disease or defect had destroyed his capacity either to understand the nature of what he was doing, or to understand that what he was doing was unlawful, or to control what he was doing so that it conformed to the requirements of law.

382. The Defence Experts, who alone had the chance to do so, have given conflicting accounts of whether they even attempted to ascertain what Mr Ongwen’s state of mental health was at the time of each alleged crime. D-0041 accepted that, in domestic proceedings, he would have done so. However, he suggested that in this case he and D-0042 simply accepted Mr Ongwen’s assertion that he had not committed any of the 70 crimes he is charged with, and so had concluded that asking him about the details of each individual crime would “not yield the results that we wanted”.¹³²²

¹³²¹ [ICC-02/04-01/15-1439](#); *see also* [ICC-02/04-01/15-1494](#).

¹³²² D-0041, T-249, p. 41-44.

383. D-0042 agreed that it was important to establish whether or not there was a link between any illness and particular crimes¹³²³ and went on to contradict D-0041 by saying that they had indeed asked Mr Ongwen about specific crimes with which he is charged.¹³²⁴ If that is correct, the reports and testimony of the Defence Experts are lamentably lacking in this regard.

384. The issue the Trial Chamber must decide is not Mr Ongwen's state of mental health now or at the time the diagnoses were made, but at the time of each of the charged crimes. One of the difficulties facing the mental health experts in this case is that their attempts to determine Mr Ongwen's state of mental health at particular times between 2002 and 2005 are being made more than a decade later.¹³²⁵ This difficulty is nowhere acknowledged in the reports of the Defence Experts.

385. This failing was clearly exposed by P-0447 in his rebuttal report. The fundamental principles of forensic practice require the expert to establish whether there is any link between mental disorder and diminished responsibility for each crime.¹³²⁶ Instead of this, as P-0447 observed, the Defence Experts were clear that they did not "want to put the client in a situation where they are boxed into a little corner and they must provide information".¹³²⁷ Here, as elsewhere, the troubling conflict between the therapeutic alliance of the treating physician and the objective approach of the forensic expert is visible.¹³²⁸

(a) None of the Prosecution Experts found evidence that Mr Ongwen suffered from a mental disease or defect during the charged period

386. P-0445, P-0446, and P-0447 all made it clear that even if Mr Ongwen is now correctly diagnosed as suffering from a mental illness (neither P-0446 or P-0447 is satisfied of this), this does not mean that he was suffering from that disorder between 2002 and 2005.¹³²⁹

387. P-0445 noted that the Defence Experts provided "hardly any evidence of which particular symptoms of these disorders lead to [Mr Ongwen] committing of which alleged

¹³²³ D-0042, [T-251](#), p. 70.

¹³²⁴ D-0042, [T-251](#), p. 66.

¹³²⁵ P-0446, [T-162](#), p. 40-41.

¹³²⁶ P-0447, [UGA-OTP-0287-0072](#) at 0075, para. 2.1.1-2.1.2.

¹³²⁷ D-0041, [T-248](#), p. 65.

¹³²⁸ P-0447, [UGA-OTP-0287-0072](#) at 0075, para. 2.1; D-0041, [T-249](#), p. 29-33.

¹³²⁹ P-0445, [T-166](#), p. 24; P-0446, [T-162](#), p. 28, [UGA-OTP-0280-0674](#) at 0683.

crimes [...] thus the direct link of [Mr Ongwen]’s mental illnesses and the alleged crime is lacking [...]”.¹³³⁰ P-0445 did not engage with the diagnosis of the Defence Experts that Mr Ongwen is currently mentally ill.¹³³¹ She looked carefully at the mechanism as to how this may have come about. She concluded that his early psychosocial development was good, that he developed positive social bonds within the LRA, and that it was not until shortly before his final falling out with Joseph Kony, and his subsequent capture and transfer to The Hague, that his mental health began to deteriorate.¹³³² On this basis, Mr Ongwen’s current state of mental health, even if impaired, has no bearing at all upon his mental capacities at the time of the charged crimes.

388. P-0446’s opinion was that there is no evidence to show that Mr Ongwen is currently suffering, or has at any time suffered, from any significant mental illness or disorder. She pointed out that such illness would have been incompatible with him thriving within the LRA for over 20 years.¹³³³ She said:

“So if we are talking about serious mental illness we are talking about hallucinations, delusions, loss of weight, loss of appetite, an inability to function, which would include an inability to function as a soldier, as a fighter. Yes, I would expect his comrades to pick up on that and to have noticed it and commented on it. And yet there is no comment at all about anything that causes them concern or that is suggestive of illness”.¹³³⁴

She noted contrary evidence that Mr Ongwen was diligent, likeable, and a good administrator while in the bush. She considered this to be “incompatible with any suggestion that he was suffering from severe mental health problems whilst in the bush”.¹³³⁵

389. As P-0447 put it, “many of these symptoms that are reported [in the Defence reports] refer to the current psychopathological status and there is not much evidence provided that these symptoms [...] have really been present in the past and especially not in the period between 2002 and 2005”.¹³³⁶ P-0447 drew upon the account which Mr Ongwen gave to Professor de Jong of his time in the LRA (promotion through fighting skills, good at using

¹³³⁰ P-0445, [UGA-OTP-0280-0732](#) at 0739.

¹³³¹ P-0445, [T-166](#), p. 24.

¹³³² P-0445, [UGA-OTP-0280-0732](#) at 0741-0744.

¹³³³ P-0446, [UGA-OTP-0280-0786](#) at 0811 and 0813.

¹³³⁴ P-0446, [T-163](#), p. 86-87.

¹³³⁵ P-0446, [UGA-OTP-0280-0786](#) at 0809.

¹³³⁶ P-0447, [T-169](#), p. 20.

different types of ammunition, a diplomat) to conclude that it was highly unlikely that he suffered from a severe mental disorder, at least not for a long period of time.¹³³⁷

(b) The clinical notes of the prison psychiatrist do not support a finding that Mr Ongwen suffered from a mental disease or defect during the charged period

390. P-0446 indicated that reading the reports of previous treating psychiatrists to see whether symptoms of mental illness were reported spontaneously was an important part of attempting to come to a historical diagnosis.¹³³⁸ The clinical notes of Dr Lefrandt, the prison psychiatrist first treating Mr Ongwen on his arrival in The Hague, compiled over many months in 2016, provide an opportunity to do exactly that. She noted that Mr Ongwen’s “perception is clear, there are no cognitive disorders [...]. Form and content of thoughts are normal”.¹³³⁹ While noting symptoms consistent with PTSD, she came to the conclusion that Mr Ongwen was “stable, no mental health conditions”.¹³⁴⁰

391. Commenting on these notes, P-0446 observed that, “although Mr Ongwen has occasionally complained of symptoms that could be consistent with posttraumatic stress symptomology, these complaints have lacked the persistence or quality sufficient to warrant a full diagnosis of [PTSD] or for any other mental disorder”.¹³⁴¹ To her, the notes contradict evidence of these disorders being present and active since his detention.¹³⁴²

392. P-0447 also considered that the clinical records from the Detention Centre, while suggesting that some mental health symptoms were present, “do not support the diagnoses of a manifest mental disorder”.¹³⁴³

393. D-0041 was somewhat dismissive of these clinical records. He said such notes were “written differently from notes that are written for other purposes [...] they don’t necessarily help in that diagnosis per se”.¹³⁴⁴ He suggested that, when Dr Lefrandt wrote that Mr Ongwen had “no mental health conditions”, she may not really have meant it.¹³⁴⁵ His estimation of their value may have been affected by the fact that he does not seem ever to have assembled

¹³³⁷ P-0447, [UGA-OTP-0280-0674](#) at 0685, [T-169](#), p. 36-37.

¹³³⁸ P-0446, [T-162](#), p. 40, [UGA-OTP-0280-0786](#) at 0792, para. 19.

¹³³⁹ [UGA-D26-0015-0106](#) at 0107.

¹³⁴⁰ [UGA-D26-0015-0100](#) at 0100.

¹³⁴¹ P-0446, [UGA-OTP-0280-0786](#) at 0812, para. 108.

¹³⁴² P-0446, [UGA-OTP-0280-0786](#) at 0798, para. 48.

¹³⁴³ P-0447, [UGA-OTP-0280-0674](#) at 0695. *See also* P-0447, [T-169](#), p. 33.

¹³⁴⁴ D-0041, [T-249](#), p. 12.

¹³⁴⁵ D-0041, [T-249](#), p. 57.

them in a chronological order.¹³⁴⁶ At no stage in their reports or testimony were D-0041 or D-0042 able to explain why they did not think it was worth engaging seriously with these records, given that they pointed to a conclusion as to Mr Ongwen's mental health in 2015 and 2016 so radically different from their own.

394. The first examination of Mr Ongwen by the Defence Experts, in February 2016, supports much of what Dr Lefrandt noted. Although the report¹³⁴⁷ resulting from that examination stated that his condition was "suggestive" of PTSD and a depressive illness, it recorded that his thought process was coherent; his train of thought well connected; his short-term memory, concentration and judgment good; and that he had an intact executive functioning. He had no "overt episodes of hearing voices of people he couldn't see, or seeing things others could not see during the day".¹³⁴⁸

395. Thus, a year after Mr Ongwen was first detained, despite the presence of symptoms consistent with PTSD and some form of depression, no firm diagnosis of any of the five mental health conditions now contended for by the Defence Experts had been, or (at least on the basis of the clinical notes) could have been, made. Most obviously that is because all five of them, as defined in the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), require that the patient's symptoms "cause clinically significant distress or impairment in social, occupational, or other important areas of functioning".¹³⁴⁹ The clinical notes demonstrate that such impairment was not present.

396. The Prosecution submits that the legal requirements of the Rome Statute and the medical requirements of the DSM-5 are reassuringly in step here. The law and medicine both recognise that a person may be suffering from some symptoms consistent with mental illness (for example, low mood, flashbacks, feelings of dissociation) without these symptoms being sufficiently troubling, in terms of a person's functioning, to permit a formal diagnosis of a mental disorder or to amount to a destruction of the mental capacities which would excuse them from criminal responsibility for their actions.

397. If the Trial Chamber concludes that there is no evidence Mr Ongwen was suffering from a mental disease or defect at the time of the various diagnoses by the Defence Experts,

¹³⁴⁶ D-0041, T-249, p. 13.

¹³⁴⁷ D-0041 and D-0042, UGA-D26-0015-0154.

¹³⁴⁸ D-0041 and D-0042, UGA-D26-0015-0154 at 0155.

¹³⁴⁹ See, e.g., UGA-OTP-0287-0040 at 0041 (PTSD); UGA-OTP-0287-0020 at 0021 (MDD).

that does not in itself rule out the possibility that such a disease or defect was present a decade and more earlier during the charged period. But it would require a detailed and methodical explanation of the evidence which leads the doctors, and ultimately the Trial Chamber, to conclude that a mental disorder had indeed been present at the time of one or more of the charged crimes and that it had led to the destruction of mental capacities specified in article 31(1)(a), but had later spontaneously resolved. No such explanation has been advanced.

(c) The Defence Experts failed meaningfully to address the possibility of malingering

398. The Defence's assertion that Mr Ongwen was suffering from a mental disorder at the time of charged crimes is wholly based on accounts which he himself has given. The Defence Experts' failure to meaningfully address the possibility of malingering renders their conclusions unreliable.

399. P-0446 warned the Chamber that it was possible for a person to "game the system" and to fake the symptoms of mental disease for their own advantage.¹³⁵⁰ She described the Defence Experts as having taken "an uncritical and credulous approach to Mr Ongwen's self-report" with a failure to challenge inconsistencies. The Defence Experts, in her opinion, failed to consider the possibility of malingering, which is very common in forensic settings.¹³⁵¹

400. P-0446 explained that many of the accused persons with whom she deals in a courtroom setting (she appears as an expert witness in 20 to 30 cases a year¹³⁵²) try to exculpate themselves by malingering or "faking bad". Repeated contact with mental health experts can provide the prompts from which a person learns how to answer questions and claims to suffer from symptoms which may result in "secondary gain".¹³⁵³ Forensic experts thus have to be careful not to rely solely on the accounts given by such persons, and to confront them with inconsistencies within those accounts and between those accounts and other sources. There was no sign of the Defence Experts having taken such an approach.¹³⁵⁴

¹³⁵⁰ P-0446, [T-162](#), p. 23.

¹³⁵¹ P-0446, [UGA-OTP-0280-0786](#) at 0800, 0804 and 0806.

¹³⁵² P-0446, [T-162](#), p. 9.

¹³⁵³ P-0446, [T-163](#), p. 60.

¹³⁵⁴ P-0446, [T-162](#), p. 18.

401. P-0447 also considered that what he called “dissimulation or fraud” is a major issue in forensic assessment of mental health. He spoke of the use of standardised psychometric assessment tools and the accounts of third parties with direct contact with an accused person as a means to test this possibility, and stated that there is a duty on forensic experts, according to commonly accepted professional standards, to use such methods.¹³⁵⁵ In a case such as this, psychometric testing was “absolutely essential”¹³⁵⁶ to enable the “fundamental issue” of malingering to be properly evaluated.

402. Many of the indicators of malingering listed by P-0447 are present in Mr Ongwen’s case: he reported rare symptoms absent even in severely impaired patients (e.g., two Dominics fighting each other or playing the piano competitively); there is conflicting information from previous records; his reported symptoms do not match the observable level of functioning; and he has adopted a defence strategy of multiple explanations.¹³⁵⁷

403. The Defence Experts also acknowledged the possibility that Mr Ongwen’s late reported symptoms might not be truthful. They recounted how they had challenged him in three different ways to test whether his account of those symptoms was “fantasy”.¹³⁵⁸ In reality, their tests were inadequate, since each of them presupposed that Mr Ongwen’s account was accurate and truthful, rather than “fantasy”. Taken as a whole, the approach adopted by the Defence Experts towards the possibility that Mr Ongwen is malingering fails to make use of the wealth of assessment recommendations from the scientific literature, and fails to use the multiple sources of information available in conformity with international guidelines and publications.¹³⁵⁹ In particular, the failure of the Defence Experts to use psychometric testing to rule out malingering is contrary to best practice.¹³⁶⁰

404. D-0041, in his testimony, effectively refused to engage with the issue of malingering, even though he himself had accepted that gathering collateral information helped to check the account from the patient.¹³⁶¹ Speaking for himself and D-0042, his response was “[W]e really don’t see why the client would do that”.¹³⁶² In fact, his subsequent answers¹³⁶³ tend to suggest

¹³⁵⁵ P-0447, [UGA-OTP-0280-0674](#) at 0682, [T-169](#), p. 55-57.

¹³⁵⁶ P-0447, [T-252](#), p. 10.

¹³⁵⁷ P-0447, [UGA-OTP-0287-0072](#) at 0081, para. 2.10.

¹³⁵⁸ D-0041 and D-0042, [UGA-D26-0015-0948](#) at 0955.

¹³⁵⁹ P-0447, [UGA-OTP-0287-0072](#) at 0076-0077, para. 2.2.

¹³⁶⁰ P-0447, [UGA-OTP-0287-0072](#) at 0087-0088.

¹³⁶¹ D-0041, [T-248](#), p. 37-52.

¹³⁶² D-0041, [T-249](#), p. 79.

¹³⁶³ D-0041, [T-249](#), p. 80-81.

that he may not even have understood the nature of the suggestion being made, namely that Mr Ongwen is hoping to escape being found guilty by falsely claiming to have suffered from mental disease at the time of the crimes. For D-0041, malingering has no relevance to Mr Ongwen's case because, in D-0041's judgment, Mr Ongwen is genuinely ill and genuinely wants to get better, unlike malingerers who "actually want to confirm that they have an illness". Thus, despite knowing they were available, he and D-0042 made no use at all of psychometric tests to guard against the possibility of malingering, even after they had been made aware that malingering was an issue in the case.¹³⁶⁴ D-0041 was either unable or unwilling to name a single example of the type of test that might have been used. Interestingly, D-0042 was less dismissive of such tests. For him it was the shortage of time which had prevented their use,¹³⁶⁵ this despite the fact that between them the Defence experts had between 15 and 18 sessions lasting two to three hours each with Mr Ongwen.¹³⁶⁶

405. D-0042's testimony suggests that his rejection of malingering on Mr Ongwen's part may have an emotional component. He professed to believe that Mr Ongwen has asked the Chamber, or would like to ask, for the death penalty. A "faker" would not, D-0042 said, ask for the death penalty.¹³⁶⁷ Far from asking for death, Mr Ongwen has denied any responsibility and asked for a not guilty verdict. The suggestion he seems to have made to D-0042 that he had asked for death is likely to be a further attempt at manipulation.

(d) Cultural differences do not undermine the Prosecution Experts' opinions

406. The Defence has suggested that the Prosecution Experts' opinions in this case fail to account for, or are undermined by, their unfamiliarity with the relevant cultural context. The precise mechanism by which the Prosecution Experts are handicapped or even disqualified from coming to reliable expert opinions is not specified by the Defence.

407. P-0445 is a Ugandan psychiatrist. Her doctoral area of study was in transcultural psychiatry. She lectures in transcultural psychiatry at Gulu University. She has published (jointly with D-0042) on the concept of Cen in Acholi culture.¹³⁶⁸ She does not, any more than

¹³⁶⁴ D-0041, [T-249](#), p. 81.

¹³⁶⁵ D-0042, [T-251](#), p. 19.

¹³⁶⁶ D-0041, [T-248](#), p. 35.

¹³⁶⁷ D-0042, [T-250](#), p. 32.

¹³⁶⁸ P-0445, [T-166](#), p. 6-7, [UGA-OTP-0280-0732](#) at 0771.

D-0042, come from precisely the same ethnic background as Mr Ongwen, but she is plainly familiar with Acholi culture.

408. P-0446 is a Professor of Forensic Psychiatry in London. Coming from a cosmopolitan city, she estimated that about 40% of the individuals whom she sees professionally are of non-European ethnicity.¹³⁶⁹ She has previously worked in an East African context, in which she grappled with the problem of making historical diagnoses.¹³⁷⁰ She accepted that there were cultural differences in the expression of mental diseases, referencing particularly PTSD. But she concurred with the findings of another expert¹³⁷¹ that, although the way symptoms manifest themselves can vary, the core criteria remain unchanged.

409. One of P-0447's primary fields of research has been in the study of appetitive aggression, and his published work¹³⁷² makes frequent reference to his primary research among former LRA child soldiers. He rejected the suggestion¹³⁷³ that it was necessary, or a significant advantage, to come from the same culture as a subject in order to make a safe diagnosis of mental illness. In cross-examination, he responded robustly to this challenge:

“[Y]ou can make this point, but I think it's not one against the other [...] we have to acknowledge what are principles that are [...] shared in the scientific community and among experts and what is the cultural application [...] we refer to the principles of good scientific practice, we refer to the [...] common consensus, for example, by using the DSM [...] which means the person, no matter which culture he comes from, has to fulfil the diagnostic criteria [...] the guidelines, for example, the AAPL guidelines, do not significantly differ from the [...] guidelines and literature you find in other countries and other cultures”.¹³⁷⁴

(e) The Defence Expert's suggestion that Mr Ongwen “masked” his depression cannot explain why none of Mr Ongwen's contemporaries noticed abnormal behaviour on his part

410. D-0042 proposed “masked depression” as a reason why the people around Mr Ongwen, in his household and his military unit, may not have noticed anything “amiss” while he was in the bush and during the charged period.¹³⁷⁵

¹³⁶⁹ P-0446, T-162, p. 10.

¹³⁷⁰ P-0446, T-163, p. 42-43.

¹³⁷¹ P-0446, T-162, p. 24-25; ICC-01/04-01/06-1729-Anx1.

¹³⁷² P-0447, UGA-OTP-0280-0674. *See, e.g.*, p. 0722-0723.

¹³⁷³ P-0447, UGA-OTP-0287-0072 at 0079, para. 2.7.

¹³⁷⁴ P-0447, T-253, p. 61-62.

¹³⁷⁵ D-0042, T-251, p. 40-41.

411. P-0445 dismissed the idea that Mr Ongwen, if he were severely depressed, would be able to “mask” his symptoms, saying: “People who I have seen who are severely depressed, even before they open their mouth, I mean, they walk into the room and [...] just the air that they breathe out makes you feel depressed, you as a clinician”.¹³⁷⁶

412. P-0446 concurred. She stated that it was very difficult for people with severe mental illness to mask their symptoms for a sustained period of time. She rejected suggestions that Mr Ongwen was masking his true feelings of turmoil and distress with a cheerful front. This was, in her view, a perverse interpretation of the evidence available, and one which the experts putting it forward had not tested in any way.¹³⁷⁷ On the contrary, for her, the discrepancy was further grounds for suspecting the possibility of malingering.¹³⁷⁸

413. She noted that it would be incongruous for Mr Ongwen to have been so open in respect of some of his emotions and experiences, but to hide others. In general, she was aware of a phenomenon whereby middle-aged men would attempt to mask symptoms of depression for “macho” reasons. She pointed out that individuals suffering from severe mental disorder do not have control over their symptoms to be able to suppress them in this way. She emphasised that it was the ordinary, everyday behaviour of individuals which would be the best clues to diagnosis: failing to eat, losing weight, sleeping badly, being restless and agitated, rather than relying exclusively on a person’s self-report.¹³⁷⁹

414. P-0447 described the Defence Expert’s description of “masked depression” as a fundamental misunderstanding. Its true clinical picture is where a patient expresses their depression through bodily symptoms.¹³⁸⁰

415. Ultimately, D-0041 himself acknowledged the limitations of masking the symptoms of depression: “Sometimes when people have what you’d call a typical depression, you could actually have individuals who are looking – smiling and everything looks OK [...]. So it’s possible to mask symptoms of psychological distress, although not for long [...]”.¹³⁸¹

¹³⁷⁶ P-0445, [T-167](#), p. 68.

¹³⁷⁷ P-0446, [T-163](#), p. 70.

¹³⁷⁸ P-0446, [T-162](#), p. 38.

¹³⁷⁹ P-0446, [T-162](#), p. 39, [T-163](#), p. 45-47, 51, 52, and 82.

¹³⁸⁰ P-0447, [UGA-OTP-0287-0072](#) at 0091.

¹³⁸¹ D-0041, [T-248](#), p. 110.

(f) The Defence Experts' diagnosis of Dissociative Identity Disorder (DID) is not valid

416. The Defence Experts' first examination of Mr Ongwen in February 2016 resulted in a finding that is crucial evidence that Mr Ongwen cannot properly be diagnosed with DID.

417. Mr Ongwen was found to have a good long-term memory. He had "no amnesia of the events that happened while in the LRA ranks".¹³⁸² However, a finding of "recurrent gaps in the recall of everyday events, important personal information and/or traumatic events that are inconsistent with ordinary forgetting" is one of the key diagnostic criteria for DID.¹³⁸³ The Defence Experts have provided no coherent explanation of how Mr Ongwen's later claimed amnesia, for periods of time (implicitly periods coinciding with the charged crimes) which he was earlier able to remember, can be robust evidence of his having been suffering from DID during the charged period.

418. The Defence Experts first diagnosed a dissociative disorder in their undated report based on interviews conducted between February and November 2016.¹³⁸⁴ Relying solely on Mr Ongwen's account, the Defence Experts identified "up to" eight episodes between 1989 and 2014 of altered mental state characterised by loss of consciousness or "dying and then rising up from the dead".¹³⁸⁵

419. The Defence Experts stated that dissociation makes it "difficult for the individual to choose right from wrong under a pressing and life-threatening stressful experience" and that "[d]uring an episode of dissociation, an individual automatically [...] assumes another personality for whom mental capacity to know right from wrong does not exist".¹³⁸⁶ Lastly, they contended that "[s]uch an assumed new individual cannot be regarded to have intent to knowingly engage in an act in question on behalf of the displaced normal personality".¹³⁸⁷

420. The observations they made were not related in any organised way to the established signs and symptoms of DID. On both occasions when the condition was used as a heading in

¹³⁸² D-0041 and D-0042, [UGA-D26-0015-0154](#) at 0155-0156.

¹³⁸³ [UGA-OTP-0287-0032](#) at 0033; [UGA-OTP-0280-0786](#) at 0802.

¹³⁸⁴ D-0041 and D-0042, [UGA-D26-0015-0004](#) at 0005.

¹³⁸⁵ D-0041 and D-0042, [UGA-D26-0015-0004](#) at 0008.

¹³⁸⁶ D-0041 and D-0042, [UGA-D26-0015-0004](#) at 0015-0017.

¹³⁸⁷ D-0041 and D-0042, [UGA-D26-0015-0004](#) at 0017.

the text of the report,¹³⁸⁸ the Defence Experts simply regurgitated Mr Ongwen's words. Objective analysis and reasoned diagnosis was entirely absent.

421. P-0445, an expert in child psychiatry, noted that the Defence Experts were labouring under a misunderstanding about the developmental nature of DID. Her evidence was that experts on DID agree that it develops as a result of severe and chronic childhood trauma that began before the age of eight years.¹³⁸⁹ There is no evidence of any such trauma in Mr Ongwen's case.

422. P-0445 also pointed out that there was no evidence that Mr Ongwen had actually been in a dissociative state at the time of the alleged crimes, that such evidence of dissociation as there was appeared not to be directly related to combat, and that there was evidence which suggested that he was fully functional, not in a dissociated state, while in combat. In particular she cited the radio recording after the Odek attack. She noted that the voice which is suggested to be that of Mr Ongwen was presenting a coherent report on the events of the attack. She considered it "unlikely" that this could have been the case if he had been in a dissociative state, or had recently been in such a state. Lastly, she was clear that a person suffering from severe forms of dissociation would be obviously out of touch with what was happening around him, even to a lay person.¹³⁹⁰

423. P-0446's report states that the evidence which the Defence Experts advanced in support of their diagnosis was insufficient, and that there was ample evidence that Mr Ongwen clearly recalled acts that he is alleged to have perpetrated, whereas persons in an acute state of dissociation would not do so.¹³⁹¹ She stated that "Mr Ongwen does not meet the criteria required for a diagnosis of Dissociative Disorder".¹³⁹²

424. In her court testimony, P-0446 observed that people suffering from the highly uncommon disorder of DID (she had seen one case in 30 years) had two distinct personalities, unaware of each other's existence, and were often not aware that they had the disorder. It would, however, be noticed by people around them, and there would be marked problems in the sufferer's social and operational functioning on a day-to-day basis.¹³⁹³

¹³⁸⁸ D-0041 and D-0042, [UGA-D26-0015-0004](#) at 0008 and 0013.

¹³⁸⁹ P-0445, [UGA-OTP-0280-0732](#) at 0745-0747, [T-166](#), p. 31.

¹³⁹⁰ P-0445, [UGA-OTP-0280-0732](#) at 0745-0747, [T-166](#), p. 32-33, [T-167](#), p. 47-48.

¹³⁹¹ P-0446, [UGA-OTP-0280-0786](#) at 0809.

¹³⁹² P-0446, [UGA-OTP-0280-0786](#) at 0804. *See also* 0809.

¹³⁹³ P-0446, [T-162](#), p. 42.

425. P-0446 testified that a person who commits a crime while in a dissociative state “would have complete amnesia”, because dissociation prevents the sufferer from retaining what they are doing.¹³⁹⁴ But the evidence in this case establishes that Mr Ongwen had a clear grasp of the events which had taken place at, for example, Lukodi¹³⁹⁵ and Abok.¹³⁹⁶ P-0446’s attention was drawn to the Odek recording in the extracts of evidence on which P-0445 had commented.¹³⁹⁷ She stated that the words attributed to Mr Ongwen were inconsistent with any kind of dissociative episode, since the capacity to register, process, and recall such information would have been severely impaired.¹³⁹⁸ She made similar observations¹³⁹⁹ in respect of Mr Ongwen’s intentions and actions, in extracts of evidence given by [REDACTED] and P-0226, in raping P-0226 and boasting about taking her virginity.¹⁴⁰⁰ She pointed out that crimes associated with dissociative behaviour tended to be impulsive and motiveless and to bear no resemblance to the planned attacks for which Mr Ongwen is charged.¹⁴⁰¹

426. P-0447 pointed out that the eight dissociative episodes identified by the Defence Experts amounted, on average over a period of 25 years, to one episode every 3 years and thus probably no more than 2 such episodes during the charged period of 42 months. He was concerned that the lack of discussion of the underlying psychological mechanism proposed by the Defence Experts, and their failure to address contradictions in the accounts they had received from Mr Ongwen, meant that the validity of their conclusions was dubious.¹⁴⁰² P-0447 took the view that a person dissociating and losing control of his senses would be highly unlikely to “survive a war scenario, especially not for a period of such a long time” as Mr Ongwen had done.¹⁴⁰³

427. In their most recent report of 28 June 2018, written shortly after the testimony of the Prosecution Experts, the Defence Experts’ account of Mr Ongwen’s reported dissociative experiences changed dramatically. They record Mr Ongwen speaking of experiencing an

¹³⁹⁴ P-0446, [UGA-OTP-0280-0786](#) at 0803, 0809, [T-162](#), p. 46.

¹³⁹⁵ See para. 307-309 above.

¹³⁹⁶ See para. 365-369 above.

¹³⁹⁷ [UGA-OTP-0283-1386](#) at 1393.

¹³⁹⁸ P-0446, [T-162](#), p. 62.

¹³⁹⁹ P-0446, [T-162](#), p. 63.

¹⁴⁰⁰ P-0446, [UGA-OTP-0283-1386](#) at 1395.

¹⁴⁰¹ P-0446, [T-163](#), p. 9-10. See also P-0445, [T-167](#), p. 48.

¹⁴⁰² P-0447, [UGA-OTP-0280-0674](#) at 0690-0691.

¹⁴⁰³ P-0447, [T-169](#), p. 39-40.

“alter personality”, or “Dominic B”, who wanted to fight all the time and prevented him from withdrawing from the frontline during battles.¹⁴⁰⁴ These episodes sometimes occurred many times a week while he was in the LRA. Mr Ongwen described episodes which he said occurred in Pajule around 2002, and elsewhere in 2005, during one of which he had confronted attacking UPDF troops unarmed. He claimed that D-0075 and one of his forced wives witnessed these incidents.¹⁴⁰⁵

428. D-0075 mentioned no such incident when he testified,¹⁴⁰⁶ and the Defence did not call the person named with regard to the other incident. Not a single witness with a personal knowledge of Mr Ongwen at this time (including his forced wives), whether called by the Prosecution or the Defence, has described episodes where he behaved in a way which was uncharacteristically reckless, nor has any witness given evidence of him speaking of these episodes at the relevant time.

429. By this time, more than two years after he was first visited by the Defence Experts, and just a few weeks after he had listened to (and clearly understood) the testimony of the Prosecution Experts, Mr Ongwen knew what he could best say to enable the Defence Experts to conclude that he was suffering from Dissociative Identity Disorder, and the account he gave was designed to elicit that conclusion, rather than being based on the truth. He was, as P-0446 put it, “faking bad”.

430. P-0447’s rebuttal report¹⁴⁰⁷ notes the failure of the Defence Experts: 1) to specify the quality and quantity of the suspected dissociations, 2) to verify all DSM-5 criteria, 3) to consider differential diagnoses thoroughly, 4) to link fulfilment of the diagnostic criteria to the time of the alleged crimes, and 5) to determine the extent to which Mr Ongwen’s self-control had been impaired at the time of the crime. He concluded that the current diagnosis of DID is not justified.¹⁴⁰⁸ Importantly, in light of D-0042’s assertion that Mr Ongwen (or Dominic A) may have been able to suppress Dominic B in domestic situations, or meetings with his fellow fighters,¹⁴⁰⁹ P-0447 noted that the ability to initiate and end dissociative states is one of the core features to differentiate between healthy and pathological states. Thus “once severe dissociative experiences would have been triggered in [Mr

¹⁴⁰⁴ D-0041 and D-0042, [UGA-D26-0015-0948](#) at 0952-0953.

¹⁴⁰⁵ D-0041 and D-0042, [UGA-D26-0015-0948](#) at 0953.

¹⁴⁰⁶ D-0075, [T-224](#) and [T-225](#).

¹⁴⁰⁷ P-0447, [UGA-OTP-0287-0072](#) at 0083.

¹⁴⁰⁸ P-0447, [UGA-OTP-0287-0072](#) at 0084.

¹⁴⁰⁹ P-0042, [T-251](#), p. 31.

Ongwen] and were highjacking the functions of consciousness, it would have been unlikely to mask those symptoms voluntarily”.¹⁴¹⁰ P-0447 cited D-0042’s own published research to support this proposition.

431. Perhaps most significantly, P-0447 raised the question of whether, even if Mr Ongwen could be established to be in the throes of dissociation at all times relevant to all 70 crimes with which he is charged, it can simply be assumed that Dominic B was unable to appreciate the nature and unlawfulness of his conduct, or to control it. There is, as he points out, no such evidence in this case.¹⁴¹¹

(g) The Defence Experts’ diagnosis of Dissociative Amnesia is not valid

432. Dissociative Amnesia is a condition which results in abnormal forgetting. As such, it cannot be advanced as a mental disease or defect which would have destroyed Mr Ongwen’s capacity to *understand* the nature or unlawfulness of his conduct, or his ability to control that conduct, at the time the conduct occurred. At most, it could only mean that he no longer remembered the conduct. In any event, it cannot properly be diagnosed where the inability to recall is better explained as part of a wider diagnosis of DID.¹⁴¹² Given the concurrent diagnosis of DID by the Defence Experts, Dissociative Amnesia cannot be taken as a separate mental disease or defect for consideration in terms of article 31(1)(a).¹⁴¹³

(h) The Defence Experts’ diagnosis of PTSD is not valid

433. P-0445 accepted that, if Mr Ongwen had indeed been suffering from PTSD at the time of the alleged crimes, one of the symptoms could have been that he lost the “meaning of life, laws and conventional social norms”. However she noted that the evidence demonstrated that Mr Ongwen was “one person who held on to everything that could give him meaning of life in the bush”. She also dismissed a second possible mechanism within the parameters of PTSD, namely dissociative flashbacks. She observed that behaviours during dissociative flashbacks are unpremeditated, sudden, and uncharacteristic of the individual. No such behaviour is evidenced, and P-0445 pointed out that the evidence rather presents a picture of “pre-meditated, well-orchestrated and planned attacks, followed by discussions [...]”.¹⁴¹⁴ In

¹⁴¹⁰ P-0447, [UGA-OTP-0287-0072](#) at 0084-0085.

¹⁴¹¹ P-0447, [UGA-OTP-0287-0072](#) at 0086-0087.

¹⁴¹² [UGA-OTP-0287-0072](#) at 0088-0089.

¹⁴¹³ P-0447, [UGA-OTP-0287-0032](#) at 0039.

¹⁴¹⁴ P-0445, [UGA-OTP-0280-0732](#) at 0749.

her testimony, she stated that dissociative flashbacks would, in any event, typically last minutes or at most hours (and thus not the longer periods during which Mr Ongwen is alleged to have planned, directed, and ultimately reported back upon many of the charged attacks, let alone the “systemic crimes” represented by Counts 61 to 70).¹⁴¹⁵

434. P-0446 acknowledged the reported presence of PTSD symptoms. She pointed out that they are not uncommon responses to difficult or stressful situations, without indicating the presence of mental illness. She stated that a diagnosis of PTSD was incompatible with Mr Ongwen’s presentation.¹⁴¹⁶ In particular, she considered that Mr Ongwen’s willingness to talk about, and indeed write about, his experiences in the LRA clearly demonstrated that he does not exhibit the core diagnostic criterion of avoidance.¹⁴¹⁷ Given examples of Mr Ongwen displaying angry and violent behaviour while in the detention facility, she suggested that these were normal reactions to the sort of life stresses which were confronting him since he had been detained rather than automatic post-traumatic responses.¹⁴¹⁸

435. P-0447 noted that patients with severe PTSD symptoms usually find interviews with doctors, in which they have to confront their trauma, exhausting. He noted that, in his interviews with Professor de Jong, Mr Ongwen seemed unaffected. This speaks against the diagnosis of PTSD.¹⁴¹⁹ He also testified that “it is relatively easy to feign symptoms [of PTSD]”.¹⁴²⁰

436. P-0447 also pointed out that Mr Ongwen’s mere exposure to traumatic events did not mean that he would develop PTSD or symptoms thereof. He referred to his own research demonstrating that in many cases, people exposed to trauma process their experiences in an “appetitive” way, whereby they avoid suffering from the symptoms which would disable others. Typically, he said, these were the more functional individuals, better capable of adapting to their violent environments.¹⁴²¹ He pointed out that the Defence Experts have a “fundamental misunderstanding” of the concept of appetitive aggression.¹⁴²²

¹⁴¹⁵ P-0445, [T-166](#), p. 35.

¹⁴¹⁶ P-0446, [UGA-OTP-0280-0786](#) at 0801-0802, 0808.

¹⁴¹⁷ P-0446, [T-163](#), p. 49-50.

¹⁴¹⁸ P-0446, [T-163](#), p. 77.

¹⁴¹⁹ P-0447, [UGA-OTP-0280-0674](#) at 0688, [T-169](#), p. 30-31.

¹⁴²⁰ P-0447, [UGA-OTP-0287-0072](#) at 0081.

¹⁴²¹ P-0447, [T-169](#), p. 32.

¹⁴²² P-0447, [UGA-OTP-0280-0674](#) at 0692-0693.

437. The likelihood that Mr Ongwen was one of these “more functional individuals”, and the unlikelihood of his suffering from PTSD at the time of the charged crimes, was emphasised in court by P-0447: “[i]n the military, if you have someone who suffers from PTSD, you wouldn’t send him to the front line because he will make mistakes [...] he is not able to follow orders [...] he is not even able to control a weapon”. The fact that Mr Ongwen was regarded as good soldier and regularly promoted meant that he “couldn’t have suffered from severe PTSD symptoms”.¹⁴²³ Above all, said P-0447, PTSD is dominated by fear. The conclusion reached by the Defence Experts that Mr Ongwen was regarded by other members of the LRA as fearless was exactly the opposite of what would have been the case had he been suffering from PTSD at this time.¹⁴²⁴

438. D-0041 was challenged in cross-examination about why he and D-0042 had not used the “gold standard” CAPS psychometric test,¹⁴²⁵ or any other equivalent to validate their diagnosis. He agreed that it was a useful tool. He refused to engage with questions that would have enabled him to explain why he and D-0042 did not use it in their diagnosis of Mr Ongwen.¹⁴²⁶ It appears that he did not have a good answer.

439. D-0042 agreed with suggestions in cross-examination that it would be expected that people in Mr Ongwen’s household would notice if he was having recurrent involuntary and intrusive memories and nightmares, as would be typical of a person suffering from PTSD, although he expected that they would regard it as spirit possession.¹⁴²⁷ His reservation misses the point. Whatever the cause ascribed to it, those close to Mr Ongwen at the time of the charged crimes could have been expected to tell the court about such behaviour when asked to say what kind of person he was. No such evidence was presented at trial.

440. P-0447 in his rebuttal report noted the rarity of PTSD as a diagnosis playing any role in what he described as “insanity type defences”. If a link is to be made to a possible dissociative flashback, it requires collateral evidence and a thorough assessment of all the circumstances under which a crime was committed. This, he noted, is wholly lacking in the Defence Experts’ approach. They fail to rule out differential diagnoses, fail to assess the diagnostic criteria for PTSD in a proper, systematic way, and fail to provide convincing

¹⁴²³ P-0447, [T-169](#), p. 35.

¹⁴²⁴ P-0447, [T-169](#), p. 37.

¹⁴²⁵ P-0447, [UGA-OTP-0287-0072](#) at 0093.

¹⁴²⁶ D-0041, [T-249](#), p. 116-120.

¹⁴²⁷ D-0042, [T-251](#), p. 52.

examples for the avoidance and hyperarousal criteria. As a result, the diagnosis is not justified.¹⁴²⁸

(i) The Defence Experts' diagnosis of Major Depressive Disorder (MDD) is not valid

441. The notes of Mr Ongwen's contact with the treating psychiatrist and psychologist when he first came into the custody of the ICC suggest that, at that time, he was not suffering from significant depression beyond that which might be expected of a person who had recently been incarcerated and knew that he was likely to be prosecuted for serious crimes. Between June 2015 and February 2016, the notes characterise him as "cheerful",¹⁴²⁹ "able to make jokes and fool around",¹⁴³⁰ "neutral [mood] with appropriate affect; there is no suicidality",¹⁴³¹ "laughs a lot",¹⁴³² and "[i]s friendly in contact. Laughs frequently".¹⁴³³

442. It was only after the intervention of the Defence Experts that complaints consistent with Major Depressive Disorder emerge in the notes kept by his treating medical professionals within the Detention Centre. When confronted, in May 2016, with the contradiction between the various accounts he had given, Mr Ongwen claimed that he had deliberately withheld information from those treating him. He now claimed to be suffering from minimal appetite, excessive sleep, feelings of worthlessness and guilt, and other symptoms typical of depression.¹⁴³⁴ Interestingly, when this was subjected to measurement under the Hamilton rating scale, the score placed him in the category of "mild" depression, and earlier in the same week the psychologist had received the impression that Mr Ongwen was "cheerful".¹⁴³⁵

443. A completely independent assessment of Mr Ongwen's mental state took place in September 2016. Dr Buijs carried out this assessment. She found him to be capable of understanding the consequences of his actions and angry about his perceived ill-treatment in the Detention Centre. Far from diagnosing him with Major Depressive Disorder (or indeed

¹⁴²⁸ P-0447, UGA-OTP-0287-0072 at 0092-0093.

¹⁴²⁹ UGA-D26-0015-0135.

¹⁴³⁰ UGA-D26-0015-0098 at 0099.

¹⁴³¹ UGA-D26-0015-0102 at 0102.

¹⁴³² UGA-D26-0015-0113 at 0114.

¹⁴³³ UGA-D26-0015-0152.

¹⁴³⁴ UGA-D26-0015-0149.

¹⁴³⁵ UGA-D26-0015-0148.

any other mental disease), Dr Buijs found that his mood was “slightly pessimistic, but the affect modulates normally”.¹⁴³⁶

444. P-0445 rejected MDD as a mechanism whereby Mr Ongwen could have committed the charged crimes and yet not be legally responsible. She accepted that there was a potential link between extreme depression and violence, although she noted that this link was most commonly demonstrated when depressed individuals killed friends and loved ones, before their own suicide, which would have no bearing on Mr Ongwen’s situation. She concluded that there was in fact no evidence to support the proposition advanced by the Defence Experts that depression led Mr Ongwen to commit the alleged crimes.¹⁴³⁷

445. Asked about Mr Ongwen’s [REDACTED] post-arrest, P-0446 referred to her years of experience working as a psychiatrist in secure detention facilities. Acts of [REDACTED] and violent disturbance, what she termed [REDACTED], are common. In her experience, they can be manifestations of mental disorder or simply a reflection of a person’s extreme frustration and anger at being detained.¹⁴³⁸ She cautioned against any confusion between acts which are impulsive and those which are irrational,¹⁴³⁹ and suggested that the anxiety symptoms which the Defence Experts recorded Mr Ongwen as suffering from were simply the product of his being under threat, in a strange culture and environment, and facing an uncertain future.¹⁴⁴⁰

446. P-0446 confirmed that making a historical diagnosis of depression became more difficult the longer the period between the present symptoms and the time under consideration. Witness statements about the subject’s behaviour during the charged period would be important in making such an assessment.¹⁴⁴¹

447. P-0447 concluded that the Defence Experts were wrong to diagnose Mr Ongwen as ever having suffered from MDD. He concluded further that they had failed to demonstrate a link between the purported symptoms and the charged period, and in any event had failed to

¹⁴³⁶ UGA-D26-0015-0141.

¹⁴³⁷ P-0445, UGA-OTP-0280-0732 at 0749-0751, T-166, p. 36.

¹⁴³⁸ P-0446, T-163, p. 74-75.

¹⁴³⁹ P-0446, T-163, p. 96-97.

¹⁴⁴⁰ P-0446, T-162, p. 40-41.

¹⁴⁴¹ P-0446, T-162, p. 35-36.

show how those symptoms could be relevant to an assessment of diminished or destroyed capacity.¹⁴⁴²

448. Even D-0042 accepted that witness testimony about Mr Ongwen being a skilled military commander is inconsistent with the MDD diagnostic criterion of “diminished ability to think or concentrate, or indecisiveness, nearly every day”.¹⁴⁴³

(j) The Defence Experts’ diagnosis of Obsessive Compulsive Disorder is not valid

449. The Defence Experts did not make a formal diagnosis of this disease or defect, speaking instead of “symptoms of obsessive compulsive [d]isorder”.¹⁴⁴⁴ D-0042 acknowledged that the necessary element of impairment in functioning resulting from the symptoms they observed is not present.¹⁴⁴⁵ For this reason alone, it cannot be considered as a mental disease or defect for consideration in terms of article 31(1)(a).

450. P-0447 concluded that the Defence Experts’ diagnosis of the symptoms of this condition is based on a misunderstanding of its clinical characteristics, both with regard to the reported “obsession” (which has to be an irrational fear causing deep anguish and despair) and the reported “compulsion” (which has to be an involuntary behaviour carried out to prevent perceived harm). He suggested that the battle lust the Defence Experts appear to present as satisfying both of these components cannot reasonably be considered to do so. He also dismissed their links between Obsessive Compulsive Disorder and dissociation or appetitive aggression as being without foundation in the scientific literature.¹⁴⁴⁶

3. Had the mental capacities listed in article 31(1)(a) been “destroyed” by mental disease or defect at the time of the charged conduct?

451. Even if the Trial Chamber were to conclude that Mr Ongwen suffered from a mental disease or defect at the time of the charged conduct, for article 31(1)(a) to apply, the Trial Chamber would also have to find that such disease or defect “destroyed” one of Mr Ongwen’s relevant capacities. The evidence makes plain that all of his relevant capacities were intact.

¹⁴⁴² P-0447, [UGA-OTP-0287-0072](#) at 0091-0092.

¹⁴⁴³ D-0042, [T-251](#), p. 50; [UGA-OTP-0287-0020](#) at 0021.

¹⁴⁴⁴ D-0041 and D-0042, [UGA-D26-0015-0948](#) at 0972.

¹⁴⁴⁵ D-0042, [T-250](#), p. 33.

¹⁴⁴⁶ P-0447, [UGA-OTP-0287-0072](#) at 0093-0096.

452. Some suggestion was made in the testimony of D-0041 and D-0042¹⁴⁴⁷ that the testimony of witnesses who were close to Mr Ongwen about his behaviour during the charged period are not a reliable guide to diagnosis, and that such evidence needs to be “filtered” through the expert understanding of a psychiatrist before it can be relied upon. The Prosecution rejects this approach. P-0447 stated that the professional consensus was flatly to the contrary, and that it was vital to use the observations made by people in a close environment of patients or people accused as part of a forensic case.¹⁴⁴⁸

453. Whatever conclusion the Chamber arrives at with regard to this dispute, the correctness of the use of such testimony to arrive at a determination not of a medical issue (the appropriate diagnosis), but a legal one (the capacities of an accused person), is beyond question. Testimony given by Mr Ongwen’s household members and subordinates about his manner and conduct is likely, all other things being equal, to be some of the best evidence available concerning his capacities. That testimony comes from witnesses called by both the Prosecution and the Defence. It is strikingly consistent. It points inexorably to the conclusion that Mr Ongwen’s capacities to understand and control his own conduct were in full working order. A selection of that testimony is discussed below.¹⁴⁴⁹

454. D-0056, an officer in a different unit who spent time with Mr Ongwen in sickbay during the charged period, testified how Ongwen’s fighters loved him because he would not accept impossible orders from his superiors, risking the lives of his men.¹⁴⁵⁰ D-0075, [REDACTED], confirmed that Mr Ongwen, as Battalion Commander, presided over a fair system of military justice for fighters who had broken the rules.¹⁴⁵¹ P-0142, one of Mr Ongwen’s longstanding subordinates in Sinia Brigade, testified that Mr Ongwen was good to his fighters, although he was tough on the rules.¹⁴⁵² P-0142 particularly recalled how Mr Ongwen had understood P-0142’s reservations about attacking [REDACTED], but had threatened to kill P-0142 if he did not take part in the attack.¹⁴⁵³ P-0231, a long-term

¹⁴⁴⁷ See, e.g., D-0041, [T-249](#), p. 91-96.

¹⁴⁴⁸ P-0447, [T-252](#), p. 18-19.

¹⁴⁴⁹ Fuller selections, prepared in accordance with the Chamber’s direction (ICC-02/0401/15-1073), are at [UGA-OTP-0283-1386](#) and [UGA-OTP-0287-0063](#). These were the subject of comment during the testimony of the Prosecution Experts as follows: P-0445, [T-166](#), p. 40-51; P-0446, [T-162](#), p. 57-64; P-0447, [T-169](#), p. 70-73 and [T-252](#), p. 27-35.

¹⁴⁵⁰ D-0056, [T-229](#), p. 33.

¹⁴⁵¹ D-0075, [T-225](#), p. 26.

¹⁴⁵² P-0142, [T-73](#), p. 16.

¹⁴⁵³ P-0142, [T-70](#), p. 55-56.

subordinate of Mr Ongwen, including during the charged period, told the Chamber that Mr Ongwen was one commander who would not give arbitrary orders, but preferred to discuss matters with all his officers once instructions came for an operation.¹⁴⁵⁴ P-0264, a child soldier in Sinia Brigade, testified that whenever Mr Ongwen led an operation, he would encourage the fighters who were frightened so that they were able to take part, and that he would reward them for good work by giving them abducted women.¹⁴⁵⁵

(a) Mr Ongwen’s capacity to understand the nature of his conduct was not destroyed

455. P-0445 devoted an entire section of her report¹⁴⁵⁶ to the issue of motivation. She explained that she did so because a careful psychiatric assessment of this issue shone light upon Mr Ongwen’s understanding of the nature of his behaviour. She looked in detail at Mr Ongwen’s likely development, because the fact that he had been abducted between the ages of 9 and 14 was important in considering his mental health at the relevant time. She concluded that the evidence suggested that he had, as an adult, reached a post-conventional level of moral development (the highest level). The clear evidence of his forming good, solid relationships during his time in the LRA led her to a similar conclusion. Thus, for P-0445, the motivation for those actions which are alleged to be crimes is likely to have been the hope of reward, by way of promotion or the granting of greater authority, and not the result of mental illness.¹⁴⁵⁷ She cited an extract of evidence concerning P-0142’s unhappiness at being required to attack [REDACTED], and Mr Ongwen’s understanding of his distress, but insistence that he must do so. This was an example, for P-0445, of Mr Ongwen’s ability to think about the impact of his behaviour upon another person’s thought processes: a “higher mental functioning”.¹⁴⁵⁸ She stated unequivocally that, in her opinion, there was no evidence to show that during the charged period, Mr Ongwen’s capacity to appreciate the nature of his conduct had been destroyed.¹⁴⁵⁹

456. P-0446, reviewing extracts from the testimony of various witnesses,¹⁴⁶⁰ noted that Mr Ongwen was “able to describe [...] explain and justify his actions in a way that makes sense

¹⁴⁵⁴ P-0231, [T-123](#), p. 82.

¹⁴⁵⁵ P-0264, [T-64](#), p. 87.

¹⁴⁵⁶ P-0445, [UGA-OTP-0280-0732](#) at 0738-0739.

¹⁴⁵⁷ P-0445, [T-166](#), p. 20-21.

¹⁴⁵⁸ P-0445, [T-166](#), p. 46.

¹⁴⁵⁹ P-0445, [T-166](#), p. 60.

¹⁴⁶⁰ [UGA-OTP-0283-1386](#).

to himself. So his behaviours are not being portrayed as behaviours that are inexplicable to him [...] or behaviours and actions that he is not aware of”.¹⁴⁶¹

457. P-0447 rejected the suggestions made by the Defence Experts that Mr Ongwen’s mental disorders resulted in him being unable to understand the nature of his conduct. He considered that their conclusions were not based on a “coherent and convincing disease model” and were arrived at without providing any evidence to support their validity.¹⁴⁶² For him there is a high probability, based on the evidence, that Mr Ongwen maintained an intact level of functioning during the charged period and had insight into his actions.¹⁴⁶³ P-0447 commented on how a number of testimony extracts which he had considered demonstrated Mr Ongwen’s ability to carry out “sophisticated reasoning” and that he retained the capacity to think about the consequences of his own behaviour.¹⁴⁶⁴

458. Remarks Mr Ongwen made in interviews conducted between February and November 2016, recorded by the Defence Experts in their undated report, make it plain that his capacity to understand the nature of his conduct remained intact at all material times. He is recorded as saying that he “believes that he did not like any of the things he saw or did” while in the LRA.¹⁴⁶⁵ More specifically, he said repeatedly that what he disliked most about bush life was the hardship of LRA fighters and the atrocities that they committed.¹⁴⁶⁶

459. D-0042 agreed that “careful planning” and a “detailed recall” (such as are exhibited in the crimes related to the attacks on the four IDP camps) are two features of a crime which make it unlikely to have been committed by a person whose capacity to understand what he is doing has been destroyed by mental illness.¹⁴⁶⁷

460. The discussion which follows, of the evidence relevant to Mr Ongwen’s capacity to understand that his conduct was unlawful, is, of course, equally relevant to this more general treatment of his capacity to understand the nature of his conduct.

¹⁴⁶¹ P-0446, [T-162](#), p. 58.

¹⁴⁶² P-0447, [UGA-OTP-0280-0674](#) at 0692-0693.

¹⁴⁶³ P-0447, [UGA-OTP-0280-0674](#) at 0701.

¹⁴⁶⁴ P-0447, [T-252](#), p. 29-30.

¹⁴⁶⁵ D-0041 and D-0042, [UGA-D26-0015-0004](#) at 0015.

¹⁴⁶⁶ D-0041 and D-0042, [UGA-D26-0015-0004](#) at 0010.

¹⁴⁶⁷ D-0042, [T-251](#), p. 73.

(b) Mr Ongwen’s capacity to understand that his conduct was unlawful was not destroyed

461. Mr Ongwen told the Defence Experts that, following his attainment of “the highest possible rank” in the LRA, he began openly to question the “moral basis of the LRA war”.¹⁴⁶⁸ But, he stated, although he may not have felt able to voice it until later, he had understood that what the LRA was doing was “wrong” since shortly after his abduction, when he had experienced the killing of four boys who had attempted to escape and of his “cousin-sister”.¹⁴⁶⁹ This had led him to conclude, even at this early stage, that the LRA were killers.¹⁴⁷⁰ Mr Ongwen had then, and retains now, the capacity to make the explicit connection between unlawful actions and punishment; he told the Defence Experts that he wants to be killed for the bad things he carried out in the bush.¹⁴⁷¹ Furthermore, he is angry with himself because of the “terrible things” he did in the bush, which give rise to feelings of remorse and guilt.¹⁴⁷²

462. Despite these accounts, the Defence Experts uncritically accepted Mr Ongwen’s claim that, when he was in the bush, he did not appreciate the wrongfulness or unlawfulness of his acts.¹⁴⁷³ Stripped of the difficulties caused by the therapeutic alliance¹⁴⁷⁴ into which they entered with Mr Ongwen, the most candid expression of their appreciation of Mr Ongwen’s capacity to understand the nature and unlawfulness of his actions, and to control those actions, came at the end of the cross-examination of D-0041. He was asked: “The account which he gave you was that, from start to finish, he knew that what the LRA was doing was wrong, was atrocious. That at first he couldn’t do anything about it, he had to keep his mouth shut, but when he got more senior he got more [...] defiant and uncaring about the possible consequences”. D-0041 agreed that this was a fair summary of Mr Ongwen’s position.¹⁴⁷⁵

463. In her report, P-0445 noted Mr Ongwen’s remark to Professor de Jong that he “hated most punishing, by beating or putting soldiers in prison who tortured and killed civilians”.¹⁴⁷⁶ She observed that such a remark demonstrated a “moral reciprocity” within Mr Ongwen. She instanced various other remarks which he had made either to Professor de Jong or the

¹⁴⁶⁸ D-0041 and D-0042, [UGA-D26-0015-0004](#) at 0011.

¹⁴⁶⁹ D-0041, [T-249](#), p. 106.

¹⁴⁷⁰ D-0041 and D-0042, [UGA-D26-0015-0004](#) at 0010.

¹⁴⁷¹ D-0041 and D-0042, [UGA-D26-0015-0004](#) at 0009.

¹⁴⁷² D-0041 and D-0042, [UGA-D26-0015-0004](#) at 0007.

¹⁴⁷³ D-0041 and D-0042, [UGA-D26-0015-0004](#) at 0014.

¹⁴⁷⁴ D-0041, [T-248](#), p. 87.

¹⁴⁷⁵ D-0041, [T-249](#), p. 139.

¹⁴⁷⁶ [UGA-D26-0015-0046-R01](#) at 0059.

Defence Experts. These, she considered, demonstrated that Mr Ongwen had attained the “highest level of moral development” characterised by the “pursuance of impartial interests [...] as well as the establishing of self-chosen moral principles”.¹⁴⁷⁷ P-0445 was clear that mental illness had not destroyed Mr Ongwen’s capacity to understand the unlawfulness of his own actions.¹⁴⁷⁸

464. In her testimony, P-0445 commented upon one of the extracts from previous testimony in which P-0231 had spoken about Mr Ongwen disagreeing with Kony about whether P-0231 should be killed or not.¹⁴⁷⁹ She noted that it showed Mr Ongwen to have developed values which were not in line with those of Kony, and which he used in a way that was advantageous to other people. She stated that she had seen no evidence sufficient to establish that Mr Ongwen’s capacity to appreciate the unlawfulness of his actions had been destroyed by mental illness.¹⁴⁸⁰

465. P-0446, in reviewing extracts from the testimony of witnesses, observed: “There are a number of entries which also indicate that he has moral awareness or an awareness of the difference between right and wrong and is able to differentiate, at least in his own mind, between those he considers to be legitimate victims or legitimate targets and people who are not legitimate targets”.¹⁴⁸¹

466. P-0447 drew upon descriptions that Mr Ongwen gave to Professor de Jong of his thought processes and activities while in the LRA, to conclude that Mr Ongwen’s capacity to tell right from wrong remained intact. He instanced accounts of Mr Ongwen punishing fighters who tortured and killed civilians, and how he was good at protecting the injured as well as mothers and children.¹⁴⁸² He drew similar conclusions for remarks recorded in the report of the Defence Experts.¹⁴⁸³ He concluded his first report with the following words: “[T]he probability that Mr Ongwen had [...] sufficient insight in the wrongfulness of his actions for most of the time is high [...] the probability that the insight was impaired by a

¹⁴⁷⁷ P-0445, [UGA-OTP-0280-0732](#) at 0740-1741, [T-166](#), p. 16.

¹⁴⁷⁸ P-0445, [UGA-OTP-0280-0732](#) at 0749.

¹⁴⁷⁹ P-0445, [T-166](#), p. 45 commenting on [UGA-OTP-0283-1386](#) at 1392.

¹⁴⁸⁰ P-0445, [T-166](#), p. 60.

¹⁴⁸¹ P-0446, [T-162](#), p. 57.

¹⁴⁸² P-0447, [UGA-OTP-0280-0674](#) at 0686.

¹⁴⁸³ P-0447, [T-169](#), p. 38.

mental disorder in a way as it is required to apply Article 31 – assuming that any diagnostic criteria were fulfilled – is low”.¹⁴⁸⁴

(c) Mr Ongwen’s capacity to control his conduct so that it conformed to the requirements of law was not destroyed

467. P-0445 commented on the extracts of testimony of witnesses who knew Mr Ongwen in detail.¹⁴⁸⁵ She commented that a number of them appeared to show that Mr Ongwen’s behaviour demonstrated that he was functioning well or even at a “superior level” in his household, socially and occupationally. She assessed him, on the basis of the totality of this material, as functioning between 81 and 90 on a Global Assessment of Functioning scale running between 0 and 100. This was someone who was functioning well, with no observable symptoms of mental illness.¹⁴⁸⁶ She noted in particular observations about him being a good negotiator and a commander who was able to intervene when Kony issued what he considered to be bad orders. She considered that this demonstrated that he had a degree of control over his environment, which is inconsistent with the proposition that his capacity to control his own conduct (so as to keep it in conformity with the law) had been destroyed.¹⁴⁸⁷

468. P-0445 concluded her report and her testimony by observing that the evidence suggested that Mr Ongwen, abducted as child, had had no control over the hostile *environment* in which he found himself, but that he “beat all the odds”¹⁴⁸⁸ and improved that environment by rising and being promoted. There was no evidence she had seen that would show that his capacity to control *his conduct* had been destroyed.¹⁴⁸⁹

469. P-0446 characterised two evidential extracts [REDACTED]¹⁴⁹⁰ as examples of agency inconsistent with the destruction of Mr Ongwen’s capacity to control his conduct. Indeed she considered the extracts in general showed a degree of control, an awareness of the difference between right and wrong, and an ability to differentiate between people he considered to be legitimate targets and those he did not.¹⁴⁹¹

¹⁴⁸⁴ P-0447, [UGA-OTP-0280-0674](#) at 0701.

¹⁴⁸⁵ P-0445, [T-166](#), p. 40-50.

¹⁴⁸⁶ P-0445, [T-166](#), p. 40-42.

¹⁴⁸⁷ P-0445, [T-166](#), p. 43-45.

¹⁴⁸⁸ P-0445, [T-166](#), p. 58.

¹⁴⁸⁹ P-0445, [T-166](#), p. 59-61.

¹⁴⁹⁰ [UGA-OTP-0283-1386](#) at 1386-1387.

¹⁴⁹¹ P-0446, [T-162](#), p. 57-64.

470. P-0447, presented with the same extracts,¹⁴⁹² noted the deception inherent within the “worst criminals” extract, which he thought relevant to the likelihood of malingering on Mr Ongwen’s part. More generally, he considered that these extracts did not depict a person suffering from severe mental illness, or whose mental capacities to understand the nature and unlawfulness of his conduct, or to control that conduct, had been destroyed. P-0447 was clear that even if diagnoses of PTSD, depression, and a dissociative disorder could properly be made during the charged period, this was not sufficient to determine whether or not Mr Ongwen was able to control his behaviour at the time of a particular crime.¹⁴⁹³

471. Remarks made during the February and November 2016 interviews with the Defence Experts reveal that Mr Ongwen’s control of his own actions remained intact while he was in the bush, and had not been destroyed by any mental disorder from which he may have been suffering. He recounted how, during peace talks in Garamba, he had refused Kony’s orders to kill religious leaders and elders who had attended those talks. He recalled a story where he pleaded with Kony to spare the life of his “adulterous wife” who had been caught making love with one of his escorts (in 2007). He claimed to have been placed “on death row” for repeated disobedience to Kony following his promotion to a senior position. Shortly before the charged period, in 2000 or 2001, he was part of “an elaborate escape plan” involving many others in the LRA.¹⁴⁹⁴ Reflecting on these remarks, P-0447 concluded that “[t]here are substantial signs that speak for an intact level of functioning”.¹⁴⁹⁵

¹⁴⁹² P-0447, [T-169](#), p. 70-73.

¹⁴⁹³ P-0447, [UGA-OTP-0280-0674](#) at 0680.

¹⁴⁹⁴ D-0041 and D-0042, [UGA-D26-0015-0004](#) at 0007, 0010-0012. *See also* P-0236, [T-16](#), p. 14-16.

¹⁴⁹⁵ P-0447, [UGA-OTP-0280-0674](#) at 0691-0693.

XII. Duress (article 31(1)(d))

A. Introduction

472. The Defence has claimed that Mr Ongwen is not criminally responsible for the charged crimes because, if he committed them at all, he committed them under duress.¹⁴⁹⁶ That claim should be rejected.

473. Article 31(1)(d) of the Statute provides that, in order for Mr Ongwen's criminal responsibility to be excluded on the grounds of duress, three cumulative elements must be met:

- a) Mr Ongwen's conduct was caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against himself or another person; and
- b) Mr Ongwen's conduct was necessary and reasonable to avoid any such threat; and
- c) Mr Ongwen did not intend to cause a greater harm than the harm he sought to avoid.

474. The text of article 31(1)(d) consistently uses the relevant terms in singular form: "a crime", "a threat", "this threat", "a greater harm". It follows that to exclude criminal responsibility for any one of them, the elements of duress must be assessed in relation to each of the 70 charged crimes.¹⁴⁹⁷ As Pre-Trial Chamber II in this case stated, article 31(1)(d) does not afford blanket immunity to perpetrators who are members of organisations with brutal disciplinary systems.¹⁴⁹⁸ The duress analysis under article 31(1)(d) must be threat- and crime-specific.

475. The evidence at trial established that the requirements for duress under article 31(1)(d) are not met for any of the charged crimes. As discussed in the following subsections:

- a. Although the LRA sometimes inflicted severe punishment on its members for breaking the armed group's rules, the Chamber has heard no evidence that Mr

¹⁴⁹⁶ [ICC-02/04-01/15-404-Red2](#), para. 3-4, 8, 22, 38, 50-57, 114, 132, 135; Defence opening statement: [T-179](#), p. 40-41, 73, 84-86; Confirmation of charges hearings: [T-22](#), p. 41-42, 52, 56-57 and [T-23](#), p. 1, 3-10; *see also* [ICC-02/04-01/15-517](#).

¹⁴⁹⁷ [Confirmation Decision](#), para. 153. *See also* *Prosecutor v. Mrda*, IT-02-59-S, Sentencing Judgment, 31 March 2004, para. 65-68; *Prosecutor v. Kaing Guek Eav alias Duch ("Duch")*, Case No. 001/18-07-2007/ECCC/TC, Judgment, 26 July 2010, para. 553-558.

¹⁴⁹⁸ [Confirmation Decision](#), para. 153.

Ongwen's conduct was caused by a threat of imminent death or imminent or continuing serious bodily harm against him or another person.

- b. Even if, *arguendo*, such a threat to Mr Ongwen or another person did exist and did cause Mr Ongwen to commit the charged crimes, his conduct was neither necessary nor reasonable under the circumstances.
- c. Finally, there is no evidence that Mr Ongwen ever considered, let alone formed an intention about, the relative gravity of the harm posed by the alleged threats and the harm caused by his charged conduct. Without such evidence, the Chamber cannot exclude Mr Ongwen's criminal liability under article 31(1)(d) of the Statute.

476. As the Prosecution has previously submitted, while the Parties may assist the Chamber in determining the applicability of article 31(1)(d), neither Party is required to prove or disprove the existence of a ground for excluding criminal responsibility. Any ground for excluding criminal responsibility under article 31 must be based upon a substantial evidentiary basis, and common sense suggests that the Defence will often both have an interest in doing so and be in a position to do so. However, the ultimate responsibility for determining the applicability of article 31 grounds lies with the Chamber.¹⁴⁹⁹

477. The Prosecution accepts that conditions of life in the LRA were difficult, and that Mr Ongwen likely endured physical and psychological hardship early in his LRA tenure. However, the evidence, including Mr Ongwen's own statements, demonstrates that, as time went on, he became loyal to Kony and the LRA's mission¹⁵⁰⁰ and was largely motivated by the benefits he received as he rose in rank, including increasingly powerful positions,¹⁵⁰¹ praise from his superiors,¹⁵⁰² the admiration of his comrades,¹⁵⁰³ respect from his

¹⁴⁹⁹ [ICC-02/04-01/15-1439](#).

¹⁵⁰⁰ ISO logbooks: [UGA-OTP-0152-0002](#) at 0162 (left page); [UGA-OTP-0061-0002](#) at 0069 (right page); [UGA-OTP-0061-0206](#) at 0270 (left page); [UGA-OTP-0062-0002](#) at 0073 (right page), 0128 (right page); [UGA-OTP-0062-0145](#) at 0183 (left page), 0299 (left page). *See also* [UGA-OTP-0255-0451](#) at 0468-0469.

¹⁵⁰¹ P-0189, [T-96](#), p. 37-38; P-0355, [T-96](#), p. 92; P-0233, [T-111](#), p. 17-18; Police logbook: [UGA-OTP-0151-0016](#); Police Intelligence Report: [UGA-OTP-0256-0241](#); ISO logbooks: [UGA-OTP-0061-0002](#) at 0122 (right page), 0128 (left and right page); [UGA-OTP-0232-0234](#) at 0422; [UGA-OTP-0065-0143](#) at 0266; UPDF logbooks, [UGA-OTP-0254-1077](#) at 1208; [UGA-OTP-0037-0002](#) at 0107.

¹⁵⁰² P-0016, [T-33](#), p. 6-7 referring to audio [UGA-OTP-0235-0043](#) (annotated transcript: [UGA-OTP-0259-0044](#)); ISO logbooks: [UGA-OTP-0232-0234](#) at 0477, 0501; [UGA-OTP-0061-0206](#) at 0300 (left and right page), 0329 (right page); [UGA-OTP-0062-0002](#) at 0025 (right page), 0073 (right page), 0090 (left page), 0111 (right page); [UGA-OTP-0248-0436-R01](#), at 0442; [UGA-OTP-0017-0214](#) at 0216; [UGA-OTP-0037-0002](#) at 0072.

¹⁵⁰³ P-0245, [T-99](#), p. 10; D-0027, [T-202](#), p. 43; D-0056, [T-229](#), p. 33-34; [UGA-OTP-0061-0206](#) at 0330 (left page).

subordinates,¹⁵⁰⁴ a relatively better life in the bush including greater physical and food security,¹⁵⁰⁵ and women and girls to have sex with and to perform his household chores.¹⁵⁰⁶ Any hardship or threats endured by Mr Ongwen during the charged period did not rise to the level required by article 31(1)(d). They would at most constitute a mitigating circumstance for the purposes of sentencing in the event of conviction, under rule 145 of the Rules of Procedure and Evidence.

B. Was Mr Ongwen’s charged conduct caused by duress resulting from a threat of imminent death or imminent or continuing serious bodily harm?

478. Article 31(1)(d) applies only where the charged conduct is caused by duress resulting from a threat of imminent death or imminent or continuing bodily harm to the accused or another person. This entails both 1) the existence of a threat, and 2) a causal link between the threat and the charged crime.

479. The Prosecution submits that a mere possibility of death in the future is not a sufficient threat for purposes of article 31(1)(d). Nor is an abstract danger or an elevated probability that a dangerous situation might occur.¹⁵⁰⁷ Furthermore, a threat of psychological harm, which the Defence appears to suggest existed in the LRA,¹⁵⁰⁸ is insufficient; article 31(1)(d) makes this clear by using the term “bodily harm”.

480. The Defence has argued, somewhat confusingly, that Mr Ongwen was under a “continuing threat” of imminent death and an “imminent threat” of serious bodily harm.¹⁵⁰⁹ This use of the words “continuing” and “imminent” to qualify the purported “threat” misstates the threshold under article 31(1)(d) and is erroneous as a matter of law. There is no requirement that the threat itself be either imminent or continuing. Rather, it is the *harm* that is threatened which is qualified as imminent. Where the alleged threatened harm is “serious bodily harm”, then the harm can be either imminent or continuing (*i.e.*, “we will continue doing what we are doing to you if you do not commit the crime”). Where the threatened harm is death, then the threatened death must be imminent.

¹⁵⁰⁴ P-0264, T-64, p. 84, 86-87.

¹⁵⁰⁵ D-0019, T-236, p. 41-42; P-0250, T-142, p. 7-8.

¹⁵⁰⁶ See Section V above.

¹⁵⁰⁷ Albin Eser, “Article 31 - Grounds for Excluding Criminal Responsibility”, in Otto Triffterer (Ed.), *Commentary on the Rome Statute of the International Criminal Court – Observers’ Notes, Article by Article*, C.H. Beck/Hart/Nomos, München/Oxford/Baden-Baden (2016), p. 1151.

¹⁵⁰⁸ Defence opening statement, T-179, p. 40.

¹⁵⁰⁹ ICC-02/04-01/15-517, para. 5.c. See also T-179, p. 85 (“We submit that the threats against Mr Ongwen were imminent and continuing.”).

481. The terms of article 31(1)(d) also require a clear link between the threat and the charged conduct. In other words, the threat must result in duress which in turn causes the alleged criminal action.¹⁵¹⁰

482. The Defence has at various times suggested five different sources of threat to Mr Ongwen during the charged period:

- an alleged threat from Joseph Kony and the LRA disciplinary regime;¹⁵¹¹
- an alleged threat of collective punishment against Mr Ongwen's home village (in case of escape);¹⁵¹²
- an alleged threat from spies within the LRA;¹⁵¹³
- an alleged threat from, or enhanced by, spirits;¹⁵¹⁴ and
- an alleged threat of "arrest", demotion, or other punishment.¹⁵¹⁵

483. As discussed below, none of these alleged threats could constitute a threat of imminent death or imminent or continuing bodily harm against Mr Ongwen or another person, and none caused any of the charged crimes. Moreover, the Defence has alleged these threats generally, and not in relation to each crime charged.

1. Was Mr Ongwen's criminal conduct caused by duress resulting from a threat of imminent death or imminent or continuing serious bodily harm by Joseph Kony or, by extension, the LRA's disciplinary system?

484. The Defence's duress arguments at trial focused primarily on one person: Joseph Kony.¹⁵¹⁶ The Defence portrayed Kony as the source of all orders in the LRA, the maker of all decisions, and in particular, the person responsible for executions (such as that of Otti Lagony, and later Vincent Otti and others) and other punishments.¹⁵¹⁷ In this way, it would appear that even threats from LRA standing orders and rules, such as punishment of death for attempted escape, trace their origin back to Kony. However, on the evidence, these alleged

¹⁵¹⁰ Eser in Triffterer Commentary (2016), p. 1152.

¹⁵¹¹ T-179, p. 4, 30, 48, 85.

¹⁵¹² T-179, p. 85; ICC-02/04-01/15-1619-Conf, para. 19.

¹⁵¹³ T-179, p. 4, 5, 47 and 91.

¹⁵¹⁴ T-179, p. 4, 5, 40, 41, 44, 48 and 85. *See also* the Defence questioning of D-0027, T-202, p. 14, 15.

¹⁵¹⁵ Defence questioning of P-0016, T-34, p. 82; P-0330, T-59, p. 35; P-0138, T-121, p. 39, 49, and T-122, p. 13; [REDACTED]; D-0060, T-197, p. 58-60; D-0075, T-224, p. 61-65; D-0056, T-228, p. 27; D-0134, T-240, p. 21-22. *See also* T-179, p. 70.

¹⁵¹⁶ T-179, p. 84-85.

¹⁵¹⁷ T-179, p. 30, 46-49, 59, 76, 85.

threats were neither threats of imminent harm nor threats related in any causal way to the charged crimes.

485. First, as held by Pre-Trial Chamber II,¹⁵¹⁸ the mere possibility of subsequent disciplinary measures, even death or corporal punishment, cannot constitute a threat for the purposes of article 31(1)(d). Evidence reveals that the risk of death or other serious punishment potentially faced by Mr Ongwen during the charged period was, taken at its highest, an elevated risk, or an increased danger. This is insufficient. To the contrary, Kony was frequently challenged by his subordinates, including Mr Ongwen, without serious consequences.¹⁵¹⁹

486. This is particularly true because the source of the alleged threat, Kony, was located far away from Mr Ongwen for most of the charged period,¹⁵²⁰ and because Mr Ongwen operated with increased autonomy and power as he rose in rank. By March 2004, as Sinia Brigade Commander, he was the highest ranking person in his unit; all of the fighters surrounding him were under his command and presumably loyal to him.¹⁵²¹ Any order by Kony for Mr Ongwen's killing or serious bodily harm, therefore, would have required fighters loyal to Kony to travel to Mr Ongwen's location. Even if potential executioners had reached Mr Ongwen, they would have found him surrounded by armed and loyal fighters, further attenuating any threat to Mr Ongwen posed by Kony.

487. Even if the Chamber were satisfied that Kony (and by extension, LRA disciplinary apparatus) posed a threat of imminent death or serious bodily harm to Mr Ongwen, the trial included absolutely no evidence connecting such a threat to any of the specific crimes confirmed by the Pre-Trial Chamber. No witness or other evidence suggested, for example, that Kony told Mr Ongwen to kill civilians at Lukodi or other attacks or else face death, or to rape his forced wives to escape severe corporal punishment. The mere existence of a general threat, without any connection to a charged crime, cannot justify application of article 31(1)(d).

¹⁵¹⁸ [Confirmation Decision](#), para. 153.

¹⁵¹⁹ ISO logbooks: [UGA-OTP-0017-0262](#) at 0265; [UGA-OTP-0064-0002](#) at 0077 (left page); [UGA-OTP-0062-0002](#) at 0088 (right page). *See also* [UGA-OTP-0061-0206](#) at 0309 (right page).

¹⁵²⁰ P-0422, T-29, p. 54. *See also* ISO logbook: [UGA-OTP-0062-0145](#) at 0162 (left page) (Kony saying there was "nothing he can do" about reported LRA defections).

¹⁵²¹ There has been no evidence presented about disloyal fighters under Mr Ongwen's command who could be perceived as a source of threat.

2. Was Mr Ongwen’s criminal conduct caused by duress resulting from a threat of imminent death or imminent or continuing serious bodily harm to others, in the form of collective punishment?

488. The Defence has suggested that Mr Ongwen feared the LRA would kill his family members and other persons from his village if he escaped.¹⁵²² This fear is said to have prevented him from escaping. The Defence has also stated that “[collective] punishment is a part of [its] overall affirmative defence of duress”.¹⁵²³

489. The Prosecution does not dispute that the LRA command threatened abductees with collective punishment if they escaped, and that this may have impacted some LRA members’ plans to escape. However, for others, the possibility of collective punishment was not a deterrent.¹⁵²⁴ As the Defence itself pointed out,¹⁵²⁵ collective punishment for escape occurred mainly in the 1980s and 1990s.¹⁵²⁶ In the 2000s, collective punishment was enforced much more rarely,¹⁵²⁷ and was directed towards punishing LRA members who escaped with weapons,¹⁵²⁸ or civilians who retrieved LRA hidden weapons and handed them to the UPDF.¹⁵²⁹ D-0032 explained this change as a result of increased responses from government forces.¹⁵³⁰ In addition, individuals subjected to collective punishment were generally low ranking, or were not in the LRA for a long time.¹⁵³¹ These factors suggest that Mr Ongwen likely did not perceive any significant threat of collective punishment for escape during the charged period.

490. It is also clear that any threatened collective punishment was not imminent. The Defence has not suggested that LRA fighters were stationed near Mr Ongwen’s home village, waiting to launch a revenge attack in the event Mr Ongwen escaped. Rather, its claim appears to be that if Mr Ongwen escaped, Kony could then send LRA fighters to Mr Ongwen’s village to commit atrocities, or perhaps that the LRA might attack the village next time it was

¹⁵²² T-179, p. 85; ICC-02/04-01/15-1619-Conf, para. 19.

¹⁵²³ ICC-02/04-01/15-1619-Conf, para. 31.

¹⁵²⁴ D-0068, T-222, p. 72-73; [REDACTED].

¹⁵²⁵ ICC-02/04-01/15-1619-Conf, para. 20.

¹⁵²⁶ [REDACTED].

¹⁵²⁷ D-0068, T-222, p. 73 (D-0068 was in the LRA from 1997 to approximately 2005, *id.* p. 13, 71-72).

¹⁵²⁸ D-0092, T-208, p. 51-52; D-0024, T-192, p. 20-21; D-0025, T-226, p. 12; D-0134, T-240, p. 21; D-0074, T-187, p. 43-44; D-0079, T-189, p. 20; D-0075, T-224, p. 15-16; D-0134, T-240, p. 21; P-0138, T-121, p. 9-10.

¹⁵²⁹ P-0330, T-53, p. 12-14; [REDACTED].

¹⁵³⁰ [REDACTED].

¹⁵³¹ Cf. P-0205, T-49, p. 3-4 (discussing collective punishment after escape of abductees rather than LRA fighters or commanders); D-0032, T-199, p. 17, 18 [REDACTED] (same).

in the area. This is a speculative risk, merely an increased possibility that the threatened harm might occur. As such, it lacks the imminence required by article 31(1)(d).

491. In any event, there is no evidence connecting a threat of collective punishment to Mr Ongwen's potential refusal to commit the charged crimes (as opposed to escape), and no evidence that any fear of collective punishment played a role in Mr Ongwen's decision to commit the charged crimes. Without such a causal nexus, the threat of collective punishment cannot relieve Mr Ongwen of criminal responsibility.

3. Was Mr Ongwen's criminal conduct caused by duress resulting from a threat of imminent death or imminent or continuing serious bodily harm as a result of alleged spies embedded in LRA units?

492. The Defence has suggested that Kony used spies to ensure Mr Ongwen's compliance with his orders, and to prevent Mr Ongwen's escape.¹⁵³² While the Prosecution accepts that intelligence officers in the LRA likely were monitoring the conduct of commanders and fighters, the Chamber heard no concrete evidence to support the assertion that Mr Ongwen was specifically targeted or at any greater risk than anyone else. The Defence questioned P-0406, P-0231, D-0075, and P-0189 about their spy network theory. P-0406 stated that he knew nothing about officers deployed in Sinia Brigade to spy on Mr Ongwen and report back to Kony.¹⁵³³ P-0231¹⁵³⁴ and D-0075¹⁵³⁵ did not know about the roles or duties of LRA officers who were sent to join Sinia Brigade. P-0189 emphasised that Mr Ongwen was strong, powerful, and in full control of the LRA group. He added that Major Adjumani and Achaye Pito – two individuals who, according to the Defence, were sent by Kony to prevent Mr Ongwen from defecting to the UPDF¹⁵³⁶ – “were very meek, as meek as I should say lambs in the presence of Mr Dominic Ongwen”.¹⁵³⁷ The Prosecution also notes that many commanders at Mr Ongwen's level or higher did escape during the charged period, which further undermines the idea that spies posed a serious threat.

493. The primary purposes of the LRA intelligence service were to collect information for military purposes, write reports for LRA commanders, and ensure the security of LRA

¹⁵³² T-179, p. 4-5; P-0189, T-96, p. 45-47.

¹⁵³³ P-0406, T-155, p. 24-25.

¹⁵³⁴ P-0231, T-123, p. 71.

¹⁵³⁵ D-0075, T-225, p. 13-14.

¹⁵³⁶ P-0231, T-123, p. 70-71; P-0189, T-96, p. 47.

¹⁵³⁷ P-0189, T-96, p. 46-47.

fighters during operations.¹⁵³⁸ There was no indication that spies would be prepared to personally kill or harm Mr Ongwen; the suggestion seemed to be that such spies would send information back to Kony, who could then issue orders regarding Mr Ongwen. As stated above, the threat from Kony was itself not imminent for article 31(1)(d) purposes, and the threat posed from any LRA spies was even more attenuated.

494. In any event, there is again no evidence connecting a threat posed by LRA spies to any of the charged crimes. No witness suggested that Kony planted LRA spies to ensure that Mr Ongwen raped his forced wives or ordered the torture of civilians at Odek, for example. Absent any connection between the alleged role of spies and any of the charged crimes, the application of article 31(1)(d) must be rejected.

4. Do the spiritual practices and beliefs of the LRA affect the issue of whether Mr Ongwen committed the charged crimes under duress?

495. The Defence has suggested that “the conventional understanding of the principle of [...] being under immediate danger, apprehension of immediate danger, does not hold good in a spiritual world where Joseph Kony, though not physically around hovering a gun over Dominic Ongwen, was perceived to be around anyway in spirit”.¹⁵³⁹ This unconventional theory from the Defence does not warrant the application of article 31(1)(d) and is not supported by evidence.

496. The claim that Mr Ongwen perceived a threat from spirits acting through, or in combination with, Kony is not supported by the evidence. First, despite assertions about his spirituality, Kony’s spiritual orders and rules were not always followed by his subordinates,¹⁵⁴⁰ including Mr Ongwen.¹⁵⁴¹ Second, many LRA commanders (including some who, like Mr Ongwen, had been abducted at a young age, grew up in the bush, and became LRA commanders) questioned or did not believe in the existence of spirits and Kony’s spiritual powers.¹⁵⁴² Witnesses who had personal interactions with Kony and were part of his inner circle, like Mr Ongwen, also frequently questioned his spiritual powers.¹⁵⁴³ Similarly,

¹⁵³⁸ P-0142, T-70, p. 12-14, 24, [REDACTED]; P-0144, T-91, p. 15; P-0085, T-159, p. 10.

¹⁵³⁹ T-179, p. 40.

¹⁵⁴⁰ UGA-OTP-0017-0262 at 0265; ISO logbooks: UGA-OTP-0061-0002 at 0013; *see also* UGA-OTP-0061-0206 at 0309 (right page).

¹⁵⁴¹ P-0226, T-8, p. 34-35; P-0233, T-112, p. 42.

¹⁵⁴² P-0145, T-143, p. 58-59; D-0026, T-191, p. 48; D-0024, T-192, p. 17-19; D-0075, T-225, p. 47-48; D-0056, T-228, p. 44-45; P-0209, T-161, p. 53; P-0205, T-49, p. 20-21.

¹⁵⁴³ D-0074, T-188, p. 39; D-0006, T-195, p. 23, [REDACTED]; D-0075, T-225, p. 47-48.

for the several senior commanders who did leave the LRA during the charged period,¹⁵⁴⁴ the very act of escaping shows that any spiritual belief they did have was insufficient to deter them from escape.

497. It is also relevant that the Defence does not appear to argue that there was a threat of imminent harm from the spirits themselves. With a few exceptions, such as being shot in the genitals for having sex before battle (which is irrelevant for present purposes),¹⁵⁴⁵ the Defence appears to suggest that the threat from the spirits arose from the fact that they could inform Kony of disobedience or attempts to escape. In effect, the spirits allegedly allowed Kony to watch Mr Ongwen from afar.¹⁵⁴⁶ In this respect, any threat emanating from the spirits is again attenuated, because whatever action Kony might have taken would still necessarily come from afar, through intermediaries, and over time.

498. Finally, there is again no evidence connecting the role of alleged spirits to any particular charged crime. No witness suggested that Mr Ongwen was visited by spirits prior to or during any of the charged attacks, nor was the threat of spirits ever connected specifically to the charged SGBC or conscription and use of child soldiers. Consequently, the spiritual beliefs alleged by the Defence cannot justify application of article 31(1)(d).

5. Does the alleged threat of arrest, demotion or other punishment affect the issue of whether Mr Ongwen committed the charged crimes under duress?

499. The evidence reveals only one explicit threat that Mr Ongwen received throughout the charged period: a threat of demotion.¹⁵⁴⁷ The evidence also reveals that Mr Ongwen was arrested briefly in April 2003, after being accused by Otti of having spoken to the Government of Uganda, with a view to escape.¹⁵⁴⁸

500. Even if threats of demotion or arrest were understood to have continued to operate on Mr Ongwen throughout the charged period, both are clearly of insufficient severity to bring his conduct within the scope of the article 31(1)(d). As noted above, the definition of duress in the Statute requires that threats are of “death” or “serious bodily harm”. Other kinds of threats do not qualify.

¹⁵⁴⁴ P-0355, [T-96](#), p. 77-78; P-0172, [T-113](#), p. 34; D-0028, [T-182](#), p. 18; D-0074, [T-188](#), p. 38-39.

¹⁵⁴⁵ [REDACTED]; D-0092, [T-208](#), p. 59; P-0060, [T-197](#), p. 25-26.

¹⁵⁴⁶ [T-179](#), p. 40 (“Joseph Kony, though not physically around hovering a gun over Dominic Ongwen, was perceived to be around anyway in spirit”).

¹⁵⁴⁷ ISO logbook, [UGA-OTP-0063-0002](#) at 0124. *See also* [UGA-OTP-0242-0646](#) at 0650.

¹⁵⁴⁸ P-0231, [T-122](#), p. 61-64. *See also* para. 46 above.

C. Was Mr Ongwen's conduct necessary and reasonable?

501. Even if, *arguendo*, a sufficient threat against Mr Ongwen or another person would have caused him to engage in the charged crimes, the cumulative requirements of necessity and reasonableness are not met.

502. Conduct is considered “necessary” for article 31(1)(d) purposes where there is no alternative path available for a person to achieve a desired outcome (here, to avoid a threat). In other words, a threat can result in duress only if it is not otherwise avoidable.¹⁵⁴⁹ For conduct to be considered “reasonable”, it must be proportionate to the threat posed.¹⁵⁵⁰

503. Mr Ongwen's conduct was neither necessary nor reasonable, in light of alternative courses of action he could have taken to avoid any threatened harm. In particular, as discussed below, Mr Ongwen could have refused to commit the charged crimes, could have chosen to remain inactive or in sickbay, or could have escaped the LRA as did so many others.

1. Mr Ongwen could have refused to engage in charged conduct

504. Within the LRA, straightforward refusals of orders were not rare.¹⁵⁵¹ Within the charged period, Kony was recorded admitting that his commanders had become ill-disciplined, and that they frequently disobeyed his instructions.¹⁵⁵² Mr Ongwen often disagreed with Kony, and did not comply with his orders on a number of occasions.¹⁵⁵³ For example, despite Kony's prohibitions of abduction of young girls during a particular period, Mr Ongwen continued to abduct girls to enslave them, and to later turn them into his forced wives.¹⁵⁵⁴ He explicitly refused Kony's and Otti's orders to surrender P-0226 to them, because he wanted to make her his forced wife.¹⁵⁵⁵ According to P-0226¹⁵⁵⁶ and [REDACTED],¹⁵⁵⁷ Mr

¹⁵⁴⁹ Eser in Triffterer Commentary (2016), p. 1153.

¹⁵⁵⁰ Eser in Triffterer Commentary (2016), p.1153-1154; *Prosecutor v Erdemović*, IT-96-22-A, Separate and dissenting opinion of Judge Cassese, 7 October 1997, para. 41-42.

¹⁵⁵¹ D-0117, T-215, p. 22-24; P-0040, UGA-OTP-0209-0569-R01 at 0583, UGA-OTP-0220-0678-R01 at 0697; P-0440, T-39, p. 83-84; ISO logbook: UGA-OTP-0152-0002 at 0029 (left page).

¹⁵⁵² [REDACTED]; ISO logbooks: UGA-OTP-0064-0002 at 0075 (right page), 0076 (left page); UGA-OTP-0061-0002 at 0013 (left page); UGA-OTP-0061-0206 at 0309 (right page). *See also* UGA-OTP-0017-0262 at 0265.

¹⁵⁵³ P-0231, T-123, p. 83-84; P-0233, T-112, p. 42; [REDACTED]; UPDF logbook: UGA-OTP-0197-1670 at 1815 (right page).

¹⁵⁵⁴ P-0245, T-98, p. 15-19.

¹⁵⁵⁵ P-0226, T-8, p. 34-35.

¹⁵⁵⁶ P-0226, T-9, p. 35-36.

Ongwen did not suffer any consequences for his disobedience. The Prosecution submits that Mr Ongwen's preparedness to disobey orders in furtherance of his own interests, despite alleged threats to himself, could and should have extended to a refusal to commit the charged crimes.

2. Mr Ongwen could have chosen to be inactive

505. P-0440 testified that commanders could make up excuses for not participating in LRA operations.¹⁵⁵⁸ P-0040 stated, for example, that Ocan Bunia, the Gilva Brigade Commander, had refused to take part in Kony's missions for as long as two years. Nothing happened to him, and he continued to hold positions of authority in the LRA.¹⁵⁵⁹ P-0138 stated that if a soldier did not want to go into battle, he could tell his commander to select someone else without serious punishment.¹⁵⁶⁰

506. Some commanders secured release from the LRA, or from participation in battles, on the grounds of (sometimes feigned) sickness or injury.¹⁵⁶¹ Mr Ongwen could have feigned or exaggerated injury without fear of punishment, or have taken advantage of the serious injuries that he did suffer, to avoid taking part in operations.

3. Mr Ongwen could have escaped

507. Finally, the Prosecution submits that Mr Ongwen could have escaped the LRA rather than commit the serious war crimes and crimes against humanity with which he is charged. Although the Prosecution recognises that escape was not easy or without significant risk, Mr Ongwen could have avoided any alleged threat against him, without committing the charged crimes, by leaving the LRA as countless others did. Instead, the evidence showed that Mr Ongwen refused opportunities to escape. These refusals are fundamentally inconsistent with a claim of duress.

508. The evidence shows that escape from the LRA was not only possible, but was in many ways the norm.¹⁵⁶² Up until 2005, covering the charged period, thousands of LRA

¹⁵⁵⁷ [REDACTED].

¹⁵⁵⁸ P-0440, T-40, p. 4-7.

¹⁵⁵⁹ P-0040, UGA-OTP-0209-0569-R01 at 0575, 0583, UGA-OTP-0220-0678-R01 at 0697.

¹⁵⁶⁰ P-0138, T-122, p. 16.

¹⁵⁶¹ P-0440, T-40, p. 6-7.

¹⁵⁶² D-0074, T-188, p. 40-41; P-0009, T-82, p. 39-40; [REDACTED]; P-0245, T-99, p. 35; ISO logbooks: UGA-OTP-0063-0002 at 0020 (right page); UGA-OTP-0068-0146 at 0335 (left page); UGA-OTP-0061-0206 at 0267 (left page), 0301 (right page), 0338 (left page); UGA-OTP-0062-0002 at 0071 (right page), 0079 (left and right

members left the armed group's ranks, despite its formal policy that any escapee who was recaptured would be killed or severely beaten.¹⁵⁶³ In the words of Defence Witness D-0134, LRA fighters “would escape every day”.¹⁵⁶⁴

509. LRA members who escaped from the armed group varied in profile, and included lower ranking fighters,¹⁵⁶⁵ senior commanders,¹⁵⁶⁶ children,¹⁵⁶⁷ and forced wives of LRA commanders.¹⁵⁶⁸ Lower ranking fighters frequently escaped during military operations (either immediately before or during battles and attacks),¹⁵⁶⁹ or when their commanders were absent.¹⁵⁷⁰ For example, P-0138 testified about the circumstances in which he and other LRA fighters left the bush during constant UPDF attacks [REDACTED].¹⁵⁷¹ On 21 February 2004, Mr Ongwen reported to Kony that the “wife” of an LRA commander and a number of LRA abductees had escaped during a UPDF helicopter attack.¹⁵⁷²

510. Senior commanders also regularly escaped the LRA. In 2004, Captain James Owino¹⁵⁷³ and Brigadier Sam Kolo¹⁵⁷⁴ left the bush. P-0070, a senior officer [REDACTED], escaped in 2004 [REDACTED].¹⁵⁷⁵ In 2005, several high-ranking commanders, including Brigadier Acellam Ceasar, Lieutenant Colonel Oyat Francis, and Major Michael Acaye, all escaped while on mission.¹⁵⁷⁶

page), 0132 (right page); [UGA-OTP-0062-0145](#) at 0164 (right page), 0198 (left and right page), 0199 (left and right page), 0200 (left page), 0222 (left page), 0226 (right page), 0239 (right page), 0261 (left page), 0296 (left page), 0319 (left page); [UGA-OTP-0152-0002](#) at 0024 (left page), 0036 (left page), 0082 (left page), 0152 (left and right page). *See also* [UGA-OTP-0016-0500](#) at 0502; [UGA-OTP-0016-0503](#) at 0505; [UGA-OTP-0016-0522](#) at 0526; [UGA-OTP-0017-0150](#) at 0152.

¹⁵⁶³ P-0422, [T-28](#), p. 60-63; [UGA-OTP-0272-0002](#) at 0149; [UGA-OTP-0270-0004](#) at 0029. *See also* [UGA-OTP-0015-0098](#).

¹⁵⁶⁴ D-0134, [T-241](#), p. 18.

¹⁵⁶⁵ [REDACTED]; P-0018, [T-69](#), p. 60.

¹⁵⁶⁶ D-0027, [T-202](#), p. 55; D-0028, [T-182](#), p. 24; P-0264, [T-65](#), p. 44; P-0145, [T-143](#), p. 59; P-0070, [T-106](#), p. 47-48; P-0355, [T-96](#), p. 77-78; ISO logbooks: [UGA-OTP-0064-0093](#) at 0122 (right page); [UGA-OTP-0061-0206](#) at 0301 (right page); [UGA-OTP-0062-0002](#) at 0065 (left page), 0076 (left page), 0131 (left page), 0133 (left page); [UGA-OTP-0062-0145](#) at 0148, 0202, 0203, 0222 (left page); [UGA-OTP-0152-0002](#) at 0024 (left page), 0082 (left page), 0143 (right page), 0152 (left and right page), 0161 (right page), 0162 (left page). *See also* [UGA-OTP-0016-0503](#) at 0505; [UGA-OTP-0017-0150](#) at 0153; [UGA-OTP-0016-0335](#) at 0337-0338.

¹⁵⁶⁷ [UGA-OTP-0016-0503](#) at 0505; [UGA-OTP-0016-0522](#) at 0526.

¹⁵⁶⁸ [UGA-OTP-0016-0503](#) at 0505; [UGA-OTP-0017-0232](#) at 0234; [UGA-OTP-0025-0427](#) at 0429.

¹⁵⁶⁹ P-0018, [T-69](#), p. 60, 70; [REDACTED]; D-0028, [T-181](#), p. 25; ISO logbooks: [UGA-OTP-0037-0002](#) at 0058; [UGA-OTP-0025-0427](#) at 0429; [UGA-OTP-0231-0188](#) at 0221.

¹⁵⁷⁰ D-0105, [T-190](#), p. 57-58; ISO logbook: [UGA-OTP-0152-0002](#) at 0031 (right page), 0033-0034, 0085 (left page). *See also* P-0145, [T-143](#), p. 32.

¹⁵⁷¹ [REDACTED].

¹⁵⁷² [UGA-OTP-0016-0097](#) at 0099; ISO logbook [UGA-OTP-0061-0002](#) at 0090 (right page).

¹⁵⁷³ [UGA-OTP-0016-0538](#) at 0540.

¹⁵⁷⁴ P-0355, [T-96](#), p. 77; ISO logbook: [UGA-OTP-0152-0002](#) at 0164 (left page), 0180 (left page) (referring to Otto Sam).

¹⁵⁷⁵ [REDACTED].

¹⁵⁷⁶ ISO logbook: [UGA-OTP-0066-0002-R01](#) at 0020.

511. The Chamber heard directly from a total of 50 witnesses who escaped from the LRA in a range of circumstances.¹⁵⁷⁷ They included the previously mentioned P-0070, [REDACTED],¹⁵⁷⁸ and D-0119, a girl abducted into the LRA who attempted to escape three times despite being severely beaten and threatened with death following two unsuccessful attempts.¹⁵⁷⁹ LRA captain P-0172¹⁵⁸⁰ and one of Mr Ongwen's escorts, D-0068,¹⁵⁸¹ each escaped with a group of fighters while on mission to get food. [REDACTED],¹⁵⁸² [REDACTED].¹⁵⁸³ LRA commander D-0134 escaped from a sickbay.¹⁵⁸⁴

512. Mr Ongwen was undoubtedly aware of the frequency of escape, which was regularly reported over the LRA military radio.¹⁵⁸⁵ Mr Ongwen himself reported escapes to LRA leadership, including Kony and Otti,¹⁵⁸⁶ and witnessed escapes of his own forced wives¹⁵⁸⁷ and subordinates.¹⁵⁸⁸ As Mr Ongwen rose in rank, and certainly by the time of the charged offences, his seniority would have increased and not decreased his opportunities for escape.¹⁵⁸⁹

¹⁵⁷⁷ The witnesses who escaped during the charged period: P-0016, [REDACTED], P-0330, P-0379, P-0309, P-0018, P-0142, P-0314, P-0280, P-0252, P-0144, P-0054, P-0245 ([REDACTED]), P-0340, P-0045, P-0070, P-0097, P-0233, P-0172, P-0081, P-0138, P-0250, P-0145, P-0200, P-0410, P-0307, P-0406, P-0085, P-0286, D-0079, D-0032, D-0092, D-0118, D-0081, D-0068, D-0134. The witnesses who escaped outside the charged period: P-0205, P-0264, P-0231, P-0372, P-0448, P-0209, D-0105, D-0026, D-0024, D-0027, D-0017, D-0117, D-0075, D-0025, D-0056.

¹⁵⁷⁸ P-0070, [T-106](#), p. 47-48.

¹⁵⁷⁹ D-0119, [T-196](#), p. 35-37, 41-43.

¹⁵⁸⁰ P-0172, [T-113](#), p. 31-33.

¹⁵⁸¹ D-0068, [T-222](#), p. 68-70.

¹⁵⁸² [REDACTED].

¹⁵⁸³ [REDACTED].

¹⁵⁸⁴ D-0134, [T-240](#), p. 70.

¹⁵⁸⁵ *E.g.*, ISO logbooks: [UGA-OTP-0068-0002](#) at 0016, 0022, 0082, 0105, 0106; [UGA-OTP-0068-0146](#) at 0148, 0163, 0179, 0204, 0235; [UGA-OTP-0232-0234](#) at 0509; [UGA-OTP-0066-0002-R01](#) at 0011, 0019, 0033, 0098, 0099, 0138, 0141, 0162, 0179; [UGA-OTP-0061-0002](#) at 0027; [UGA-OTP-0061-0206](#) at 0290, 0291, 0292; [UGA-OTP-0062-0145](#) at 0171, 0191, 0202, 0203, 0204, 0206, 0214, 0222, 0226, 0227, 0228, 0239, 0279, 0292, 0296, 0318, 0319; [UGA-OTP-0152-0002](#) at 0008, 0022, 0029, 0036, 0082, 0124, 0139; [UGA-OTP-0163-0007](#) at 0060, 0127, 0131. *See also* [UGA-OTP-0016-0500](#) at 0502; [UGA-OTP-0064-0093](#) at 0110, 0122, 0129, 0138, 0140; [UGA-OTP-0068-0002](#) at 0054, 0074, 0106, 0113; [UGA-OTP-0065-0002](#) at 0104; [UGA-OTP-0063-0002](#) at 0020; [UGA-OTP-0068-0146](#) at 0174, 0180; [UGA-OTP-0066-0002-R01](#) [UGA-OTP-0061-0206](#) at 0267; [UGA-OTP-0062-0002](#) at 0065; [UGA-OTP-0017-0150](#) at 0152; [UGA-OTP-0197-1670](#) at 1675.

¹⁵⁸⁶ ISO logbooks: [UGA-OTP-0061-0206](#) at 0306; [UGA-OTP-0062-0145](#) at 0217. *See also* [UGA-OTP-0037-0002](#) at 0058; [UGA-OTP-0016-0335](#) at 0338; [UGA-OTP-0255-0228](#) at 0240, 0338, 0372.

¹⁵⁸⁷ P-0172, [T-113](#), p. 30; P-0352, [T-67](#), p. 17-18; ISO logbooks: [UGA-OTP-0064-0093](#) at 0156; [UGA-OTP-0062-0145](#) at 0164.

¹⁵⁸⁸ P-0330, [T-53](#), p. 15-16; [REDACTED]; ISO logbooks: [UGA-OTP-0061-0002](#) at 0032. *See also* [UGA-OTP-0017-0232](#) at 0233; [UGA-OTP-0017-0499](#) at 0503; [UGA-OTP-0242-7309](#) at 7358.

¹⁵⁸⁹ *Cf.* P-0138, [T-121](#), p. 12.

513. Moreover, three witnesses – P-0355,¹⁵⁹⁰ then Resident District Commissioner for Kitgum, and P-0359¹⁵⁹¹ and P-0189¹⁵⁹², both UPDF Colonels – testified about a specific escape opportunity that Mr Ongwen refused during an impromptu roadside meeting on 4 September 2006. P-0355 described an offer of amnesty that was made, which Mr Ongwen refused.¹⁵⁹³ All three witnesses also described the requests that they made to Mr Ongwen to release the child soldiers in his company.¹⁵⁹⁴ Mr Ongwen refused these requests and said to P-0189 “you call those kids children, but I call them my soldiers”.¹⁵⁹⁵ Although this event took place after the charged period, it is indicative of Mr Ongwen’s attitude during the charged period as well.

514. The Prosecution accepts that escape from the LRA was dangerous. However, the evidence submitted in this trial also demonstrates that the punishment for escape or attempted escape was not always death. On many occasions, Kony did not order any punishment at all for escapees,¹⁵⁹⁶ or ordered lesser forms of punishment.¹⁵⁹⁷

515. Kony’s inaction in response to members leaving the LRA reflects the LRA senior leadership’s broader feelings of frustration and impotence in the face of constant escapes.¹⁵⁹⁸ Although concerned by rates of escape, the sheer number of escapees was such that LRA leaders simply could not punish everyone who left.¹⁵⁹⁹ After Ayoli defected in May 2004, Kony prayed to God that Ayoli would receive a “heavy punishment,”¹⁶⁰⁰ and did not take further action.¹⁶⁰¹ Kony and Otti began treating escapes as an inevitable part of their operations,¹⁶⁰² and, from early 2003, shifted their focus to retaining weapons.¹⁶⁰³ Mr Ongwen

¹⁵⁹⁰ P-0355, [T-96](#), p. 91-92.

¹⁵⁹¹ P-0359, [T-109](#), p. 78.

¹⁵⁹² P-0189, [T-95](#), p. 41-43.

¹⁵⁹³ P-0355, [T-96](#), p. 92.

¹⁵⁹⁴ P-0355, [T-96](#), p. 87, 91, 92; P-0189, [T-95](#), p. 42, 43, 44; P-0359, [T-109](#), p.78.

¹⁵⁹⁵ P-0189, [T-95](#), p. 43.

¹⁵⁹⁶ D-0117, [T-215](#), p. 34; ISO logbooks: [UGA-OTP-0066-0002-R01](#) at 0020; [UGA-OTP-0068-0146](#) at 0180, 0196, 0335; [UGA-OTP-0232-0234](#) at 0253.

¹⁵⁹⁷ ISO logbook: [UGA-OTP-0068-0146](#) at 0174 (right page).

¹⁵⁹⁸ ISO logbooks: [UGA-OTP-0066-0002-R01](#) at 0020, 0138; [UGA-OTP-0062-0002](#) at 0065, 0079, 0133; [UGA-OTP-0062-0145](#) at 0148; [UGA-OTP-0062-0145](#) at 0162, 0171, 0191, 0214, 0217, 0226, 0227, 0238, 0239; [UGA-OTP-0152-0002](#) at 0106.

¹⁵⁹⁹ ISO logbooks: [UGA-OTP-0068-0146](#) at 0180, 0196, 0335; [UGA-OTP-0232-0234](#) at 0253.

¹⁶⁰⁰ [UGA-OTP-0016-0503](#) at 0505; [UGA-OTP-0016-0532](#) at 0534.

¹⁶⁰¹ [UGA-OTP-0017-0262](#) at 0265.

¹⁶⁰² ISO logbooks: [UGA-OTP-0068-0002](#) at 0113, 0137; [UGA-OTP-0061-0206](#) at 0267.

¹⁶⁰³ ISO logbooks: [UGA-OTP-0065-0002](#) at 0104; [UGA-OTP-0063-0002](#) at 0028; [UGA-OTP-0066-0002-R01](#) at 0018, 0028, 0095; [UGA-OTP-0062-0145](#) at 0207; [UGA-OTP-0152-0002](#) at 0022.

was privy to these developments and aware that, in most cases, escapees suffered no consequences for leaving the LRA.¹⁶⁰⁴

4. Mr Ongwen's brutality towards his victims was neither necessary nor reasonable

516. Further evidence that Mr Ongwen's conduct was not necessary or reasonable is that, on a number of occasions, Mr Ongwen behaved with extreme violence towards his victims. The Prosecution draws attention to the following examples:

- a. Mr Ongwen expressed hatred towards civilians. For example, after the Lukodi attack, he stated that when "civilians die he feels happy".¹⁶⁰⁵ Not all LRA commanders demonstrated hatred towards civilians at the same degree as Mr Ongwen. For example, P-0070 testified that Charles Tabuley released civilians instead of killing them and therefore the murder of innocent civilians was not necessarily expected of LRA commanders.¹⁶⁰⁶
- b. During the preparation meetings before the attacks at Odek, Lukodi, and Abok, Mr Ongwen ordered for civilians to be murdered without mercy.¹⁶⁰⁷ Prior to the Odek attack, Mr Ongwen expressly ordered LRA fighters under his command to kill and abduct civilians, and to "destroy Odek completely".¹⁶⁰⁸ Before the Lukodi attack, Mr Ongwen ordered LRA fighters to kill civilians and spare nobody, not even mothers giving birth, children, or the elderly.¹⁶⁰⁹ In relation to the Abok attack, Mr Ongwen issued orders to his subordinate commander to shoot anyone found at Abok.¹⁶¹⁰ [REDACTED].¹⁶¹¹
- c. After the attacks at Odek, Lukodi, and Abok, Mr Ongwen reported to the LRA chain of command how his fighters killed civilians in compliance with his orders.¹⁶¹² While reporting the Lukodi attack to Otti, Mr Ongwen demonstrated particular callousness, laughing that civilians had been killed and their houses burned.¹⁶¹³

¹⁶⁰⁴ UGA-OTP-0017-0262 at 0264; UGA-OTP-0016-0532 at 0534.

¹⁶⁰⁵ ISO logbook, UGA-OTP-0061-0206 at 0329 (left and right pages). *See also* [REDACTED]; para. 309 above.

¹⁶⁰⁶ P-0070, T-106, p. 43-45.

¹⁶⁰⁷ *See* para. 276 above (Odek); para. 303, 316, 319 above (Lukodi); para. 347, 351 above (Abok).

¹⁶⁰⁸ P-0205, T-47, p. 43-44; P-0410, T-151, p. 34-35, 38.

¹⁶⁰⁹ [REDACTED]; P-0018, T-68, p. 58-60; P-0142, T-70, p. 47; P-0245, T-99, p. 69; P-0410, T-151, p. 60-61.

¹⁶¹⁰ P-0293, T-138, p. 27. *See also* P-0330, T-52, p. 28-29; P-0252, T-87, p. 74-76; P-0054, T-93, p. 33; P-0406, T-154, p. 66.

¹⁶¹¹ [REDACTED].

¹⁶¹² *See* Section VIII.C.2 above (Odek); para. 306-311 above (Lukodi); Section X.C.5 above (Abok).

¹⁶¹³ *See* para. 307, 309 above.

517. The SGBC Mr Ongwen committed against his own forced wives and the underage girls in his household clearly takes his conduct far beyond the requirements of what might have been necessary or reasonable:

- a. The evidence reveals several instances of Mr Ongwen raping girls as young as 10,¹⁶¹⁴ in apparent violation of LRA policy.
- b. Mr Ongwen threatened P-0101 with a gun when he raped her, leaving her bleeding and in pain.¹⁶¹⁵ P-0226 was raped when she was 10.¹⁶¹⁶ After raping her, Mr Ongwen laughed and boasted to his subordinates about having torn her “kavera”¹⁶¹⁷ and broken her “polythene bag”,¹⁶¹⁸ while she was in pain in the house a few meters away.¹⁶¹⁹ P-0214 was threatened with sticks if she did not submit to rape.¹⁶²⁰ P-0227 was raped in both her vagina and her anus.¹⁶²¹
- c. P-0235 was around 12 when Mr Ongwen captured her and took her to his house to rape her. She managed to escape, but was apprehended.¹⁶²² Mr Ongwen ordered her beating for escaping¹⁶²³ and raped her multiple times during a single night, threatening to kill her if she cried.¹⁶²⁴ Although this conduct is not charged and occurred in 2006, the Prosecution submits that it offers circumstantial evidence of Mr Ongwen’s state of mind during the charged period.
- d. Mr Ongwen severely punished, sometimes to a state of unconsciousness, his forced wives and *ting tings* for failing to perform domestic tasks as requested.¹⁶²⁵ P-0379 testified that Mr Ongwen ordered the beating of a girl living in his household after she defecated near a water source. P-0379 described how, within Mr Ongwen’s earshot, his escorts took turns beating her with tree branches, rotating at ten-stroke intervals.¹⁶²⁶

¹⁶¹⁴ See, e.g., P-0227, T-10, p. 48-50; P-0226, T-8, p. 41-42, 45.

¹⁶¹⁵ P-0101, T-13, p. 17-19, 50.

¹⁶¹⁶ P-0226, T-8, p. 41-42, 45.

¹⁶¹⁷ [REDACTED].

¹⁶¹⁸ P-0226, T-8, p. 42.

¹⁶¹⁹ P-0226, T-9, p. 41-42.

¹⁶²⁰ P-0214, T-15, p. 22-23.

¹⁶²¹ P-0227, T-10, p. 39.

¹⁶²² P-0235, T-17, p. 10.

¹⁶²³ P-0235, T-17, p. 10.

¹⁶²⁴ P-0235, T-17, p. 34-36; P-0226, T-8, p. 54-55.

¹⁶²⁵ P-0235, T-17, p. 42-45; P-0236, T-16, p. 13-14; P-0226, T-9, p. 5-6; P-0227, T-10, p. 55.

¹⁶²⁶ P-0379, T-57, p. 39-44.

518. These SGBC offences were mostly committed in private, in a household in which Mr Ongwen was the undisputed leader. There is no basis on which to claim that the sexual offences Mr Ongwen perpetrated were necessary responses to a threat that he had faced, given that on most occasions nobody was present to know whether Mr Ongwen performed any particular act at all. In fact, Mr Ongwen's treatment of his own forced wives suggests that he actually *hid* aspects of his conduct from those around him.

5. Mr Ongwen's criminal conduct was not proportionate to any threatened harm

519. Even if the Chamber were to conclude that none of the avoidance opportunities above was available to Mr Ongwen, the Chamber should nevertheless find commission of the charged crimes was not "reasonable" because the crimes were not proportionate to any threat posed. Mr Ongwen is charged with serious war crimes and crimes against humanity, including murder, torture, crimes of sexual violence, and crimes against children. Even if Mr Ongwen had been faced with a threat of imminent death, specifically connected to his commission of these crimes, that risk would not have justified, for example, the murder of numerous innocent civilians, including women and children.

520. The Prosecution recognises that this proportionality analysis will not be the same for all of the charged crimes. A given threat might conceivably justify pillage but not murder. Because, as discussed above, the evidence does not establish the existence of any threat of imminent death or imminent or continuing serious bodily harm with a causal link to any particular charged crimes, the Prosecution does not propose to explore all the possible combinations in this Closing Brief. However, if the Chamber were inclined to entertain application of article 31(1)(d), the Prosecution restates its submission that such consideration would be necessary for each charged crime.

D. Did Mr Ongwen not intend to cause greater harm than the harm he allegedly sought to avoid?

521. Still *arguendo*, if a sufficient threat existed and caused Mr Ongwen to commit the charged crimes, and his conduct was both necessary and reasonable, the Chamber must also be satisfied that Mr Ongwen did not intend to cause greater harm than the one he sought to avoid. Like proportionality, this analysis is threat- and crime-specific.

522. In this regard, the evidence set out above strongly suggests that, if Mr Ongwen mentally balanced the harms at all, he was clearly willing to inflict, and in fact did inflict, much greater harm on others than the harm with which he was allegedly threatened.

523. The Defence has suggested that Mr Ongwen could not have intended to cause a harm greater than the one he sought to avoid, because he suffered from a mental disease or defect that destroyed his capacity to form the requisite intent.¹⁶²⁷ The Defence and its mental health Experts, however, failed to explain how any alleged mental health condition might, in concrete terms, have affected Mr Ongwen's mental state at the time of the charged crimes. This may be a result of the Defence Experts' failure to assess Mr Ongwen's conduct or mental state in connection with any particular crimes.¹⁶²⁸ As discussed in detail in Section XI of this Brief, the evidence does not establish that Mr Ongwen suffered from any mental disease or defect during the charged period, nor that any such disease or defect impacted on any of his relevant capacities.

¹⁶²⁷ T-179, p. 85.

¹⁶²⁸ D-0041, T-249, p. 41-44; D-0042, T-251, p. 66. D-0042 avoided a clear answer as to whether the two Defence mental health Experts asked Mr Ongwen about his state of mind for each of the crimes he committed. D-0042 testified that they enquired about Mr Ongwen's state of mind "for almost each of those years that he was in captivity" rather than in relation to each crime. *Id.*

XIII. Conclusion

524. The evidence in this case has shown Mr Ongwen to be a pivotal figure in the LRA's campaign of terror across northern Uganda in the early 2000s. He planned, directed, and reported with enthusiasm upon persecutory attacks which left dozens dead and destroyed the livelihoods and hopes of thousands of others. He presided over a regime of human misery whereby children were forced to become murderers and sex slaves. His treatment of the women and girls under his control set the tone for the behaviour of his subordinate officers and fighters. During the course of trial, he has sought to hide behind excuses involving mental illness and duress, which have been exposed as false.

525. For the reasons discussed above, and based on all the evidence, the Prosecution requests that the Chamber find Mr Ongwen guilty on all counts.



Fatou Bensouda, Prosecutor

Dated this 24th day of February 2020

At The Hague, The Netherlands