

1 International Criminal Court
2 Trial Chamber IX
3 Situation: Republic of Uganda
4 In the case of The Prosecutor v. Dominic Ongwen - ICC-02/04-01/15
5 Presiding Judge Bertram Schmitt, Judge Péter Kovács and
6 Judge Raul Cano Pangalangan
7 Closing Statements - Courtroom 3
8 Wednesday, 11 March 2020
9 (The hearing starts in open session at 9.31 a.m.)
10 THE COURT USHER: [9:31:02] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE SCHMITT: [9:31:22] Good morning, everyone. Could the
14 court officer please call the case.
15 THE COURT OFFICER: [9:31:30] Good morning, Mr President and your Honours.
16 Situation in Uganda, in the case of The Prosecutor versus Dominic Ongwen, case
17 reference ICC-02/04-01/15.
18 And for the record, we are in open session
19 PRESIDING JUDGE SCHMITT: [9:31:47] Thank you.
20 I ask for the appearances of the parties. Ms Adeboyejo.
21 MS ADEBOYEJO: [9:31:58] Good morning, your Honour.
22 Adesola Adeboyejo appears for the Prosecution with Mr Benjamin Gumpert, Colin
23 Black, Colleen Gilg, Beti Hohler, Yulia Nuzban, Nikila Kaushik and Grace Goh.
24 PRESIDING JUDGE SCHMITT: [9:32:11] And then for the Legal Representatives of
25 the Victims, Mr Manoba.

1 MR MANOBA: [9:32:14] Good morning, Mr President, your Honours. Myself,
2 Joseph Manoba, Francisco Cox, Ms Radziejowska, Maria, Priscilla Aling at the back
3 and Ms Listowel Atto.

4 Thank you, Mr President.

5 PRESIDING JUDGE SCHMITT: [9:32:27] Thank you.

6 And for the Common Legal Representatives, Ms Massidda.

7 MS MASSIDDA: [9:32:30] Mr President, for the Common Legal Representative team,
8 Orchlon Narantsetseg, Caroline Walter, and I am Paolina Massidda.

9 PRESIDING JUDGE SCHMITT: [9:32:37] Thank you.

10 And now for the Defence.

11 MR AYENA ODONGO: [9:32:43] Mr President, I hope to do better today. Today,
12 I'm assisted by Chief Charles Achaleke Taku, Beth Lyons, Kifudde Gordon,
13 Thomas Obhof, Morganne Ashley. And our client, Mr Dominic Ongwen, is in
14 Court.

15 PRESIDING JUDGE SCHMITT: [9:33:06] Thank you very much.

16 As we are all aware of, today we hear the closing statements of the representatives of
17 the victims. We start in the first session with the Legal Representatives of the
18 Victims, in the second session the so-called Common Legal Representatives.
19 And I give first, Mr Manoba, the floor.

20 MR MANOBA: [9:33:27] Thank you, Mr President and your Honours, for this
21 opportunity to present statements on behalf of the victims that we represent.

22 Your Honours, I will start with a quote, and quotes are going to be a very significant
23 feature of our statements this morning. Some of the quotes, you may wish to know,
24 might be a little bit longer, but this is intentional because the quotes, we believe,
25 speak and represent a number of concerns and views by our clients.

1 And I start:

2 "... they entered into the camp. We started running, we hid in a hole. There were
3 about six of us hiding in that ditch. My neighbourhood and people from my
4 household. While we were in that ditch we were quiet because there were gunshots
5 and the people who were firing the gunshots had surrounded us. One girl, wife to
6 one of the rebels, slipped. She slipped and she was about to fall into the ditch.
7 When she slipped she shone her torch into the ditch. When she shone her torch into
8 the ditch she saw us and she shouted, 'The enemy is here. There is a soldier here.'
9 "When she shouted that 'There is a soldier here' there is a number of people, about 30
10 rebels who were -- bore arms, they came and they surrounded the ditch. When they
11 surrounded the ditch they said, 'Is there a soldier amongst you?' My father
12 responded and said, 'No, it's only civilians. There is no soldier.' The rebel
13 responded 'If you are all civilians come out of the ditch.' I was the first one to come
14 out of the ditch. They took me out first. I was pushed out of the ditch. They told
15 me to lie down on my stomach. When I lay down they took me and sent me to
16 another direction where there were other people.
17 "When I came out they sent me to another group of people. The neighbour and the
18 people I listed earlier were all taken out. The neighbour was killed instantly. My
19 brother was also killed. Immediately thereafter I got up, I left. I left Abok as well.
20 When I left Abok I was still very young. They had a sack of beans, approximately
21 four basins full. They told me to carry that on my head and move with it, but I was
22 very young and I did not have the strength to carry that. I did try, but they took it,
23 they carried that and put it on my head and told me to start moving.
24 "They shot my father when he had come out of the ditch. My neighbour came out,
25 my father came out, and that's when they were shot. The person who was standing

1 with the neighbour was shot as soon as they came out of the ditch. The person who
2 was with -- the person who was standing with my father shot him immediately. He
3 noticed that the neighbour had been shot. My other brother was taken. They
4 walked with him for a short distance. Not very far from that ditch they told him to
5 lie down and they shot him. When I left with them, I knew that those people had
6 already lost their lives." End of quote.

7 If this story or quote sounds familiar, it is because it is. It is the account of P-280 who
8 testified before this Court concerning the attack on Abok.

9 This testimony, your Honours, speaks to many of the other experiences in the camps
10 in Lukodi and Odek, where our clients hailed from. P-280, as the Chamber would be
11 aware, is also a victim represented by the LRVs in this case. And his account, while
12 disconcerting, is sadly too familiar.

13 P-280, as the Chamber would be aware also, is also a victim that we have had the
14 honour to represent and his story of loss and devastation is one that a significant
15 number of our clients have experienced, as I had indicated earlier.

16 The trial of Mr Ongwen therefore marks the beginning of a significant phase of
17 recovery from a dark past. A past tainted with memories of atrocities committed
18 predominantly by the LRA fighters against an already vulnerable civilian population.
19 As we heard from the closing statements from the Prosecution yesterday, Mr Ongwen
20 was a significant player and author of some of the worst crimes in northern Uganda
21 and, in particular, in the locations of Odek, Lukodi, Abok and Pajule IDP camps.
22 Mr Ongwen and the LRA benefitted and drank from what we would term as the
23 spoils of the armed conflict and left behind broken individuals and shattered
24 communities; destroyed all sources of basic human living and sustenance, resulting in
25 a life of deprivation.

1 Their acts of terror created memories of the lives of loved ones wasted in burning
2 houses; shot down with bullets, and others battered to death in a barbaric fashion as
3 though bloodshed and life were meaningless. A history of productive life replaced
4 by a revolting life of squalor in the IDP camps.

5 Your Honours, the African child who was the source of hope and a transformative
6 future, replaced with a life of illiteracy, frustration, misery, envy, alcoholism, and
7 land conflicts, amongst others. This past is one which the victims that we represent
8 do not wish to see again and would not survive if it were to reoccur.

9 It is the victims' hope that, through this trial, their experiences have been heard and
10 Mr Ongwen is and will be held responsible for his actions and/or omissions as an
11 LRA fighter and commander, as we heard from the Prosecution yesterday.

12 And this trial can be a great message to all those outside there who wish to act in the
13 same way that Mr Ongwen and others may have acted: That tolerance and love for
14 peace and togetherness can be achieved without resorting to violence and/or
15 committing atrocities in society.

16 For the public, your Honours, the victims with status before this Court are
17 represented by us because we were granted participation rights -- or the victims were
18 granted participation rights in which they were allowed access to the case record;
19 they were allowed to make filings and respond to filings of the other parties and
20 participants; with leave of the Chamber, question witnesses presented by the parties
21 and participants, and also attend the proceedings as we have done. It is on this basis
22 that the LRVs and team members have identified specific areas of the trial of
23 Mr Ongwen that they wish to address in these closing statements.

24 And I will address the first two parts, which are victims' expectations before the case;
25 and life in the camp and its impact on social fabric. And my colleague, Francisco

1 will address the other parts of our statement.

2 I now turn to the first part, victims' expectations before this -- before the case.

3 Your Honours, before the commencement of the proceedings against

4 Dominic Ongwen, most victims had resigned themselves to the outlook that there

5 would be no justice in their lifetime for the grave violations that they had endured

6 during the course of the conflict between the UPDF and the LRA in northern Uganda.

7 It had been more than a decade between the referral of the situation in Uganda to the

8 ICC and the arrest of Mr Ongwen. During this time, three of the five LRA suspects

9 under investigation were reported to have been killed in the bush and the other two

10 had remained elusive.

11 In this period, your Honours, a significant number of victims would die from the

12 misery of the aftermath of the crimes, with no hope of justice and accountability for

13 the indignity that characterised their lives as a result of the conflict.

14 Our clients recall that for a time, it appeared as though none of the top LRA

15 commanders indicted by this Court would be brought to account for their actions

16 until they heard and/or watched on Ugandan radio and television that

17 Dominic Ongwen had been apprehended in the Central African Republic, thereby

18 re-opening the potential for justice to be realised for the first time in the history of the

19 armed conflict in northern Uganda.

20 The victims were eager to be involved in a process that would seek to establish the

21 truth about whether or not Mr Dominic Ongwen was responsible for the crimes that

22 were committed against them. The Legal Representatives for Victims in this case

23 have had the honour of representing over 2,600 victims of the crimes that were subject

24 of these proceedings, crimes for which Mr Dominic Ongwen has been charged.

25 Your Honours, we would wish to state that there are many other victims who have

1 expressed and continue to express their desire to be part of this justice process.

2 It is noteworthy - from our engagement with the participating victims - that they have

3 never been interested in finding a scapegoat. The victims have been principally

4 interested in a process that seeks to establish the truth. Was Mr Ongwen responsible

5 for the crimes committed against them, and if so, how?

6 For the victims, the process of truth-telling was and remains essential to their

7 understanding of what amounts to justice in this context. The victims, while

8 confident in the capacity of the Prosecution to present its case, remain open to the

9 deliberations and contestation of the facts through the trial process, appreciating that

10 it would be through this process that the truth would be ascertained.

11 The victims we represent, your Honours, suffered the devastating effects of the

12 attacks on the IDP camps in Odek, in Lukodi, and Abok. As you have heard several

13 accounts of witnesses that have testified here, some were abducted and forced to

14 engage in the criminal actions of the LRA, while others were given as wives to the

15 LRA soldiers who repeatedly raped them.

16 The charges, therefore, brought against Mr Ongwen for the attack on each of these

17 locations reflects the experiences of harm suffered by the participating victims.

18 Through the judicial process, the victims have been keen to observe the extent to

19 which the evidence would retell the story of their suffering at the hands of the LRA.

20 The victims have also been keen to discover if and to what extent Mr Ongwen was

21 responsible for the crimes.

22 I will now turn to the second part of our statement, which is life in the camp and its

23 impact on social fabric.

24 Your Honours, the victims recall how severely the situation had deteriorated, forcing

25 them to leave their homes, farms and for the majority their entire livelihoods in order

1 to seek some degree of safety in the IDP camps, which would be protected by the
2 UPDF forces.

3 What we are saying, your Honours, is that because of the insecurity that the LRA
4 created within all these locations, it was pertinent for the victims to find a place which
5 would promise some level -- some degree of security, and this is the IDP camps as we
6 have heard before this Court.

7 The living conditions in the camps were not only very harsh and challenging, but
8 quite different from how they traditionally lived before the conflict. In the camps,
9 diseases became common due to the lack of proper health and sanitary conditions.
10 There were little sources of income and people merely depended on support from
11 humanitarian agencies to get the little food and basic supplies. Having been
12 previously self-sufficient, the victims struggled to find means to sustain themselves
13 while in the camp. As P-24 noted concerning the situation in Lukodi IDP camp, and
14 I quote:

15 "... we could not grow crops because there were so many -- there were so many within
16 the villages, they had killed so many people. And even when they killed people,
17 they did not disperse at all, so the government decided to send some soldiers to help
18 us reach our farms. If you are not lucky, sometimes they follow you up to the edge
19 of the camp. For that reason, we were not able to access our farms. All our crops,
20 including cassava, was used -- was consumed by them. We were staying like that in
21 a manner that was not human. There were -- there was no space for keeping animals
22 such as goats and cattle. We thought we would stay well in the camp, unfortunately
23 it became a problem."

24 Your Honours, the gravity of the life in the camps by the victims is again captured in
25 the testimony of D-26 in response to a question put to him by the Presiding Judge,

1 when he explained, and I quote:
2 "So, Mr President, first of all, these IDP camps ... were crowded together without
3 defined structures for homes, maybe houses, and the kind of materials people were
4 using for making their small huts, tarpaulins, if you find one, a bit of grass, if you find
5 because it's also -- it was difficult also to find grasses, you couldn't move out and find
6 grasses ... And the spaces were too concentrated and very small. So the human
7 condition, first of all, the housing wasn't there. What was there I don't know how to
8 call it, how to define it because it was deplorably bad and the people were too many ...
9 So it was so bad in terms of housing.
10 In terms of feeding, there were no foods. Remember people were being forced out to
11 leave their home and come in the camp without carrying things or food. Remember
12 there were no distribution of food by government. There were also no -- at the
13 beginning there was nothing from NGOs until when some of us came in, and with
14 very little, very few NGOs actually in Lango region, very few NGOs went there
15 because of restriction and little knowledge about the situation there. So there was
16 a lot of malnutrition in the camps ... children, babies, the elderly, the disabled would
17 die" - as expressed by the witness - "like a one-day-old chick ...
18 So in terms of feeding, there was a lot of problem which caused a lot of malnutrition
19 and many children ... died as a result of that. Secondly, hygiene and sanitation, my
20 area of specialisation ... I was the water and sanitation officer ... it took us about two
21 months to do -- two to three months to do hygiene and health education first to try to
22 train people how they could manage waste, human waste. There were no latrines ...
23 but you're talking of 30,000 people."
24 And he continues to say:
25 "... So the sanitation was terribly bad and many people caught other diseases and died

1 as a result of poor hygiene and sanitation. Illness like diarrhoea, cholera, typhoid
2 and what -- those things you couldn't avoid. It was just a normal thing that people
3 have to get it and they have to die because there were also no medical facilities.
4 Nothing. And again in the camps, it was now very risky for people who were in the
5 camp. If you want to move out, you're not sure whether you go out and come back.
6 It was even more risky for them to be in the camp because you're not very sure
7 whether you're going home and you will come back.
8 So people were just there now dying painfully or suffering painfully as they were in
9 the camp. That's why many people were not very comfortable in the camp, but they
10 had no option. So life in the camp was really bad ... So many people died as a result
11 of the poor and deplorable situation in the camps."

12 Your Honours, this statement by D-26, a Defence witness, tells you the experiences of
13 the victims as they lived in the IDP camps.

14 Thank you for listening to me, and I will invite my colleague to continue with our
15 statements.

16 MR COX: [10:02:31] Thank you, your Honours.

17 PRESIDING JUDGE SCHMITT: [10:02:36] Mr Manoba, your microphone.

18 MR COX: [10:02:41] The consequences of crime have been long lasting for our
19 victims and people we represent. The Chamber has heard significant evidence
20 regarding the harms suffered by victims as a result of these crimes for which
21 Mr Dominic Ongwen is charged.

22 The key source of such evidence include evidence of the three participating victims
23 called by the LRV; evidence given by a large number of other victims who were called
24 as witnesses, either by the Defence or by the OTP; the expert evidence that was
25 provided and introduced by this team; and the expert evidence provided and given

1 by the Common Legal Representatives.

2 What are the consequences?

3 One of these consequences is the separation and lasting harm to family relationships
4 due to abduction. As evidence has shown, where people were abducted by the LRA,
5 a significant form of harm was caused by the separation of families. For the family
6 members of the abductee this is almost an inevitable cause of significant worry and
7 distress. Parents are still until today suffering from the anguish of not knowing the
8 fate of their children. Each time an abductee would return, families would go to this
9 person and seek information of their families, see if they had seen their children,
10 know the fate of their children. This anguish is still occurring.

11 But not only the family left behind suffers pain, the abductee also suffers great anxiety
12 about the unknown fate of their family members. For children, this separation also
13 removes their first line of support and protection which ordinarily comes from family.
14 They are eager to know how their parents are doing, how are their siblings, did they
15 suffer the same fate as they did? And always longing for their family and
16 community.

17 But you must remember, your Honours, that some abductee victims were forced to
18 kill members of their own family or even of their own communities. Just think for
19 a moment the consequences of these actions and how they -- and what effect they
20 have upon the relationship of a family the community.

21 Nevertheless, many abductees returned to their families and communities.

22 Unfortunately, some returned to family members whom they felt they no longer
23 knew. Others described how their relationship with their family members could
24 never be repaired because of their abduction.

25 We must all -- we probably all remember the story of V-2, a witness that the Chamber

1 authorised to testify for the LRV. This testimony is exemplary of what I am trying to
2 say. After returning from the bush, his family welcomed him home and tried to help
3 him return to normal life. But they also feared him. V-2 described how the first
4 day he met his father again. They sat through a whole night awake and watching
5 each other, scared of each other. Although things have improved with time, their
6 relationship remains permanently changed. He experiences episodes of extreme
7 anger, which began after his return from the bush, and this has meant that his family
8 continues to fear him.

9 Speaking of his father, he said, and I quote:

10 "[Before my abduction] We had a very strong and good relationship. We stayed
11 together, we would converse and chat. But after my return, I think he looked at me
12 or was studying me and felt that my mind had changed. I was not the same person
13 as I was before. So he started fearing me."

14 V-2 is now a father himself, and yet when he spoke of his relationship with his
15 children, he noted:

16 "And up until now our children, even the older ones and the young ones fear me. If
17 anything happens, any slight thing happens, they just, you know, have that fear of
18 me."

19 Within the communities affected by the crimes, neither the parents nor the guardians
20 were provided with sufficient training or guidance on how to deal with the behaviour
21 of returned children, or how to react appropriately when these children showed signs
22 of anger.

23 Another last consequence of the crimes is stigma.

24 Returnees were called names, prevented from playing with other children, or
25 generally kept at a distance from their community. This stigmatisation led to

1 returnees dropping out of school or to perform poorly when they tried to continue
2 with their education.

3 You may recall, once again, the vivid testimony of witness V-2 who, after enduring
4 name-calling and shunned from his fellow students, was persuaded by his said
5 teacher to open up and tell him about his experience in the bush, in confidence, in
6 secrecy, he thought, only to have this confidence betrayed when the headteacher
7 spoke openly before the entire school about the victim's experience.

8 V-2 would, after that, be chased from school, and the next day the headteacher
9 advised all the students in the school assembly to stay away from V-2 because he was
10 a killer. V-2 explained to your Honours how this impacted his further study. He
11 said:

12 "I went to class to continue studying, but I wasn't paying attention anymore. I built
13 a wall around myself and secluded myself. I wouldn't even write whatever was on
14 the chalkboard."

15 V-2's family moved him to a new school, but his stigmatisation continued there.
16 Eventually, he could no longer bear to attend school either.

17 Another witness, P-252, spoke about how he was stigmatised once and
18 managed -- once he had managed to escape from the LRA. He stated that other
19 children would call him names and therefore it was extremely difficult for him to
20 return to school.

21 The causes for exclusion of those that returned came from various factors:
22 communities were fearful that returnees had infected -- had been infected by evil
23 spirits or *cen*; that they had killed while in the bush. Some feared that they could
24 continue to kill; that they were prone to violence.

25 In sum, they were scared of returnees. And returnees suffered deeply from the

1 isolation and stigma that was cast upon them.

2 Women and girls returning from the bush who had a child had to bear a special

3 burden and were specially discriminated against. And some even just for the fact of

4 being abducted and being a women or a girl were stigmatised or excluded.

5 P-352 stated that she faced stigma from her community, her family and her husband's

6 family after returning from the bush. Girls or women who escaped and brought

7 back their children from the bush were subject to a particular stigma and isolation.

8 You may remember P-422, who explained the difficulties for women and girls who

9 returned from the bush with children, since they were viewed, the children, as the

10 children of LRA commanders. P-422 further stated that these women have

11 difficulties forming and managing stable relationships.

12 This was confirmed by P-187, who explained that her daughter married after

13 returning from the bush, but on discovering - the husband - that she was pregnant as

14 a result of her time in the LRA, her husband left her.

15 P-269 explained:

16 "One of my colleagues came back with one" -- a children from the bush.

17 "The first problem comes from man with whom you remarry. During your courtship

18 days he would tell you that he's ready to take care of everything that you have,

19 including your child, but after remarriage would turn around and reject such a child

20 and this leaves the children without anywhere to live. They normally go back to

21 their grandparents to live, but the grandparents do not have capacity to take care of

22 them. Those who are now growing up do not have any property, do not have lands

23 to inherit, they don't have anything."

24 She's speaking about the children that were brought from the bush.

25 Another consequence of the crime is the loss of education.

1 Through a variety of means, the crimes interfered with the victims' education.
2 Children who were abducted by the LRA suffered the most direct effect on their
3 education. Their psychosocial problems made it difficult for children to re-adjust to
4 the behaviour expected by teachers or students. As said before, stigma caused
5 children to drop out of school or prevented them to properly engaging with their
6 education.
7 You might also recall the testimony given by the professor, V-3, who explained:
8 "The abduction of children in particular, some of the children who were abducted, on
9 their way back, some of them passed through rehabilitation centres, some of them did
10 not have the opportunity to directly go through these centres, they would go back
11 home and stay home. The children who went through the rehabilitation centres,
12 some of these children were counselled, they were advised on how to enter back into
13 the community, but the children who did not go through the rehabilitation centres
14 and especially the children who had been in the bush for a long time, had misbehaved
15 a lot, because on most occasions the children would come and mix, the ones from the
16 rehabilitation centre and the ones who did not go to the rehabilitation centre. And if
17 somebody, especially someone from the bush did something that was wrong, they
18 will always castigate the child and [they would] tell the person, 'Do not start your
19 behaviour that you brought in the bush'. And that was extremely painful to those
20 children who had returned."
21 I continue with a quote because I think it's graphic of what happened to many
22 children and many of our victims:
23 "And in the end, those children became disrespectful. And when they found that life
24 was extremely difficult, they would stop school. They would just stop their
25 education because as far as they are concerned, the school was unable to help them

1 and they would decide to go back home. And this actually disrupted a lot of
2 education for children. There are some children who were abducted, for example,
3 the girls, some of them came back with children. Some of them did not have
4 children but they did not -- they are no longer interested in education, so this also
5 interfered with this -- with their education ... you know, with our children in this part
6 of the country." End of the quote.

7 However, the loss of education system and opportunity was not the form of harm
8 only suffered by abductees and returnees. The entire school system of northern
9 Uganda suffered serious damages as a result of the LRA's activities, including the
10 crimes charged.

11 The experience of Lukodi Primary School of which Witness V-3 testified, is an
12 example:

13 "From 2002 the school was suffering because of LRA attacks. Students and teachers
14 were often unable to travel to school because of LRA activity, or only managed to
15 attend late. Children and teachers alike faced difficult living conditions, including
16 having to sleep in the bush at night without light so as to hide from rebels, meaning
17 that teachers could not prepare for classes, and children could not do homework.
18 The LRA would attack the school, stealing supplies and abducting people to help
19 them carry food."

20 Eventually, as you might remember, it was decided to relocate the school to a location
21 on the outskirts of Gulu town, in Laliya - I hope I pronounce that correctly - which is
22 around 14 to 15 kilometres from Lukodi. Conditions in Laliya were extremely
23 challenging. Classrooms ordinarily used for Laliya Primary School was now shared
24 with an additional five other schools. They moved five schools to one school,
25 including Lukodi Primary School. The result was a classroom, which was intended

1 to accommodate around 50 pupils, was now accommodating 150 to 200, one
2 classroom, with students sitting on the floor in the heat, in conditions so crowded that
3 the teacher could not walk among them.

4 Outside of their classes, the students continued to face the challenges. They had
5 been sent to live in Laliya because of its perceived a relatively safe place, but often
6 parents remained in Lukodi to work and produce food.

7 Many children were looked after by siblings with only visits from their parents when
8 security conditions allowed it. In these conditions, children's education suffered
9 from inability to focus on their education and lack of parental protection. They did
10 not have time to study and many girls dropped out or married as a result of
11 pregnancy.

12 Even when Lukodi was able to return to its original location, it faced many more
13 obstacles. The school grounds and buildings had been largely destroyed and its
14 moveable property stolen or scattered. Even students began to report problems
15 because of *cen*.

16 Academic records maintained by the school showed the devastating consequences
17 that all these factors have had on the students' learning, not only at the time of the
18 conflict, but for many years after and until now.

19 The lasting nature of poorer educational outcome is also confirmed by the victims'
20 expert study, which found negative effects on education also in relation to children
21 born after the attacks charged in this case.

22 This might be explained by various factors. One could be the lasting damage to the
23 well-being of students in the community, children who are at risk of psychological
24 problems, stigmatisation, have less capacity for doing well in school. This applies
25 also to the children who are at risk because of their -- how vulnerable they are or

1 stigmatisation. In addition, other factors such as lasting material harm done to
2 children's family members, disabilities preventing other family members from
3 working can result in children dropping out of school in order to contribute to the
4 household.

5 For example, P-24 explained that none of the children in her household are attending
6 school and that she cannot afford for them to go to school. Other witnesses also
7 testify about their families' poor economic circumstances led for their children to drop
8 out of school.

9 Other losses suffered by the crimes charged in this case is the loss of homes and
10 personal property, including livestock. Many victims reported suffering terrible
11 material losses as a result of crimes. In the attacks on Lukodi, Abok and Odek IDP
12 camps, most of the huts were burned. The rebels systematically burned each house
13 after looting -- looting it. All personal items which people kept in those huts were
14 either stolen or burned. Nothing survived.

15 Communities' livestock, one of the primary sources of wealth, was looted. As you
16 heard from many witnesses, livestock plays a key role in the lives of family and
17 community. As well as being a source of food and/or a means of farming, these
18 animals are used for traditional rituals, marriage and economic transactions. As
19 P-306 informed this Court:

20 "Livestock, especially cattle, was very useful in the community."

21 He said:

22 "It was used for paying bride wealth. It is used for ploughing. It is used as a source
23 of beef. You also use the cattle to pay school fees because you sell and [you] pay
24 with [them]. When you are sick you sell your livestock to get treatment. Things
25 like goats, for example, help also in the same way.

1 Goats are used for helping treat people in so many ways. There are some conditions
2 like madness, they use goats in a traditional way to heal it. And for rituals that are
3 culturally important for the community, they use goats to carry outside rituals.
4 When there are funerals that are taking place in the community, the guests are fed on
5 goats and cattle, and for that matter, this was an important element in the culture of
6 Acholi, economically and socially."
7 This is what 306 conveyed to you, your Honours.
8 This loss of material wealth has had a long-lasting impact on the communities. They
9 have still not recovered today.
10 V-4, a community leader, explained in this court, and I quote:
11 "Our people are poor these days, because of the variable situations that people live in.
12 In the past people had livestock. People had cattle. People had goats, chickens and
13 other things. But all these things have been taken away and it's not easy to gain
14 back.
15 For me, as an example, I had cattle, I had goats ... I had worked hard. But now I'm
16 not able to farm enough resources to farm and raise enough resources to buy
17 livestock.
18 ... People are desperate, desperately in a poor, living in a poor condition."
19 This is what V-4 testified here. It is probably hard to grasp the magnitude of the
20 harm when one lives in a place like this or where we live. But cattle, goats, chicken
21 is a fundamental asset for people, our represented victims.
22 There is also physical and psychosocial consequences from the crimes. For a very
23 large number of victims, continuing physical injuries and psychosocial problems
24 interfere with their day life. The victims' expert study, presented by Dr Teddy
25 Atim, assessed victims' present-day level of disability. She defined it as a substantial

1 functional limitation of daily activities caused by a physical, mental or emotional
2 impairment and environmental barriers that result in limiting a person's participation.
3 The study found that around two-thirds of the victims we represent reported having
4 a disability. This compares only with 21 per cent of the general population who
5 reported a disability.
6 More than half of those disabled individuals reported that their disability either
7 completely prevented them from working or interferes a lot with their work.
8 Witness P-24 described her continuing injuries caused by the crimes and how they
9 impact her daily life to this day. And I quote once again:
10 "... even before coming here, I was from the hospital, my ears still disturbed me, I
11 have pain in my ears all the time. I'm not able to work, I cannot go to do my farm
12 work, because I find my body is aching all the time. I cannot walk for long distances.
13 My ears keep aching also and I have to struggle with it like that.
14 ... I am not able to dig with ease, but I have no option. I go and dig a little. I cannot
15 dig for long like my colleagues do. I just do what I can and stay home."
16 Not only physical, but also psychosocial problems interfere with the victims' ability to
17 continue an economically and socially productive life. V-4 explained:
18 "There are some people who do not have any mental problem in the past [and] are
19 now being behaving like mad people. Some people who were very able, who were
20 hard working are no longer able to do what they used to do. They're like wasted in
21 trading centres. There are some people who have given up in life. They live as if
22 their spirits has deserted them. There are people who are secluded and they keep to
23 themselves alone, even if they were not like that before. That is what I'm observing
24 as a result of trauma which people are living with.
25 Some of the community members lost so many people, and they do not know what to

1 do."

2 The study also demonstrated that this increased level of disability affects the

3 well-being, not only of individuals at the household as a whole, victims surveyed had

4 an average of two disabled members, compared with 0.5 in the general population,

5 contributing to a high average of proportion of dependents per household: 70 per

6 cent in the victim population, compared to 47 per cent in the general population.

7 All this makes it a higher problem because there is lack of treatment and support

8 service. The various forms of harm suffered by the victims have not yet been

9 adequately addressed by the provisions of appropriate services.

10 This lack of support for victims is a significant negative factor in their ability to

11 recover from trauma. In other contexts, professional treatment could be used to fill

12 this void until victims are recovered sufficiently to build new relationships and

13 rebuilt existing one.

14 However, the victims' community have largely been deprived of psychosocial

15 treatment services. The victim expert witness study showed that the victim

16 population continues to suffer significant barriers to accessing health services. They

17 require significantly more time than members of the general population to access

18 a health centre and are less likely to obtain the treatment that they require when they

19 get there.

20 Mental health treatment and psychosocial support services are still desperately

21 needed in the victims' communities.

22 The lack of mental services is mirrored by an inadequacy of resources to allow the

23 victim communities to undertake traditional rituals, which would have assisted them

24 in recovery. This is directly linked with the loss of livestock. Such rituals are able

25 to alleviate the problem of *cen*.

1 Traditional rituals are also necessary upon the death of a community member and if
2 not performed, problems for family and communities may result, as V-4 explained.

3 And I quote:

4 "Cultural practices require that you should find these animals to use for rituals. For
5 example, if someone was raped in the bush and there is need to use a goat to carry out
6 a ritual to cleanse this person, because if you don't cleanse it, the person may get mad
7 or may not bear children or may actually die. You have to look for a goat so that
8 ritual is conducted and the person is cleansed."

9 But there are no goats. They were taken.

10 The consequences have also had -- the crimes have also had consequences in the
11 collapse of community social structures.

12 As V-3 said, there is a collective sense of suffering and hopelessness:

13 "And that attack left a lot of bitterness in the people of Odek. Even up to now, if you
14 go for a meeting in Odek, you will find more women than men because most of the
15 men died, some were abducted, and some never returned up to now. People are not
16 sure whether they are still alive or no longer. Some people are still missing their
17 children. All the school-going children were abducted and their parents are still
18 missing them. People are very embittered, but there is nothing else they can do so
19 they are carrying on with life."

20 Whereas, in the past, the community valued and were seen as a solution to problems,
21 the experience of the attacks led some people to fear community life and instead seek
22 isolation.

23 And I quote again:

24 "In the past, people would come together like in a cooperative society to do things
25 together in the community. They would go farming together, they would have a lot

1 of activities that was done communally. But with what took place, people fear
2 coming together. They fear that when you are found living together, they will finish
3 you like they finished people in the past. And they fear that when you are like five
4 or 10, you can all be taken."

5 Social support structures, which existed before, have been eroded. Dependency on
6 aid was created. Young people began to lose their sense of cultural practices and
7 respect for the elders. Ethnic identity and practices were corroded. Alcohol and
8 other substance abuse used increasingly, and did -- also the levels of crime.

9 Violence, including domestic violence, has increased. Young men expected to
10 provide for families are without any means of income and turn instead to socially
11 destructive behaviour. I'm quoting from PCV-2.

12 Traditions relating to succession and land ownership were undermined. The
13 children of girls and women abducted in the LRA could not inherit land and these
14 families would then have no land to work. These are the long-lasting consequences
15 of the crimes that your Honours are here to judge.

16 I would like to finalise with the victims' experience of the trial and their expectations
17 of justice.

18 Your Honours, victims have followed closely the proceedings. They have attended in
19 large numbers to the screenings when such viewings have been provided. They
20 travel huge distances to meet with our team - and probably with Mrs Massidda's team,
21 too - to be informed about what is happening in the proceedings.

22 They are grateful. This is the only justice they will get for the horrendous crimes
23 they have suffered. This is the only kind of formal proceeding where many of the
24 dual-status witnesses and the victims that were allowed to give evidence have had
25 the chance to tell their story in a formal setting. They see this act of giving statement

1 before this Court as the beginning of the healing process. This opportunity has
2 enabled some victims to contribute to the truth about the LRA attacks on IDP camps
3 in Odek, Lukodi and Abok.

4 For most of the victims, the opportunity given by the Court to be represented by their
5 lawyers in the proceedings, to express their views, their concerns and convey their
6 questions, has been a first of its kind for them and is greatly appreciated.

7 However, despite the unprecedented scope of charges brought by the Prosecution
8 against Mr Dominic Ongwen, the evidence presented by the Prosecution did not fully
9 portray and totally portray the suffering of the victims. Some of more -- of the more
10 grievous forms of torture and inhumane treatment meted out by some LRA rebel
11 fighters were not shown.

12 During the course of the engagements with our clients, several victims opened up and
13 conveyed to us that rape occurred also during the attack against both male and
14 female members of the community. Evidence presented by the Prosecution confirm
15 this view.

16 Witness 187 testified how she was raped by an LRA fighter in the aftermath of
17 a Lukodi attack. She was abducted, forced to carry looted items, raped by the LRA
18 fighter and released. The LRVs would like to therefore emphasise that the harm
19 suffered by victims goes far beyond the material presented by the Prosecution.

20 The participating victims we represent note that whilst they have been fortunate to
21 meaningfully participate in these proceedings, they are aware that many others were
22 not given the same opportunity because of the time limits set by this Court.

23 Finally, your Honours, victims in the community, as previously stated, thought this
24 day would never come. They have put faith in these proceedings and in this Court.
25 They have seen the evidence presented before your Honours and believe it's

1 compelling and that it should result in a conviction on all charges.

2 This conviction, your Honours, will be the first step towards reconciliation among the
3 communities and the reparation of the harm they suffered as individuals, but also
4 as communities.

5 Thank you, your Honour.

6 PRESIDING JUDGE SCHMITT: [10:39:39] Thank you, Mr Cox.

7 Thank you, Mr Manoba.

8 We will have now a break. We can permit ourselves a little bit longer break until
9 11.30, and then we continue with Ms Massidda, I assume. And you switch rows, I
10 also assume.

11 THE COURT USHER: [10:39:56] All rise.

12 (Recess taken at 10.39 a.m.)

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

14 THE COURT USHER: [11:31:08] All rise.

15 Please be seated.

16 PRESIDING JUDGE SCHMITT: [11:31:22] We continue with the closing arguments
17 by the Common Legal Representatives of the victims, and I give Ms Massidda the
18 floor.

19 MS MASSIDDA: [11:31:38] Thank you Mr President.

20 Your Honours, in light of the already extensive submissions before the Chamber,
21 including in relation to victimisation of our clients, as eloquently transmitted to the
22 Chamber this morning by my colleague and which I share, my closing remarks today
23 will address the main issues of interest of the victims we represent who are, for the
24 vast majority, Acholi.

25 I will first address the LRA policy of attacking the civilian population. I will then

1 turn to the policy of abducting girls and women, as well as children under the age of
2 15, and I will finally discuss the liability of Mr Ongwen and conclude with some
3 words about the expectation of victims from this trial.

4 The Prosecution has presented evidence which allow concluding that all crimes
5 charged against Mr Ongwen have been proven beyond reasonable doubt and that the
6 accused bears criminal responsibility for said crimes.

7 Some elements contained in the description of events by victims corroborate the
8 evidence presented at trial.

9 As reflected by the victims' account of the events, since 1986, there was increased
10 tension and multiple episodes of violence in northern Uganda. The raising of the
11 LRA, as insurgency movement aiming at overthrowing President Museveni's
12 government, spread violence in different areas of the country, including: Gulu,
13 Kitgum, Pader, Lira, Adjumani and Soroti. All areas where our clients lived or still
14 live.

15 As a consequence, a conflict of a non-international character started between the
16 government of Uganda and the LRA. The LRA had a clear hierarchy, was well
17 structured and well organised, armed and able to plan and successfully implement
18 hundreds of attacks against the civilian population, in the course of which numerous
19 crimes were committed. The LRA not only had effective tactics in implementing
20 attacks, but had significant military ability. Mr Ongwen was aware of the existence
21 of the armed conflict and engaged in military operations.

22 The victims' account of events reveals that they were unarmed men, women and
23 children who suffered from a series of acts of violence or, put in other words, a
24 campaign or operation carried out against them by the LRA in the localities where
25 they lived.

1 The victims' account of events also reveals that the crimes they suffered from were
2 neither spontaneous nor isolated acts of violence but, rather, part of a planned,
3 directed and organised attack against them, targeted mainly because, as residents of
4 the IDP camps, they were perceived as supporters of the government or as helping
5 the UPDF and not supporting the LRA insurgency against President Museveni.

6 The attack was perpetrated over a long period of time and it was both widespread
7 and systematic.

8 In this regard, the number of victims affected by the events within the charges is one
9 of the most relevant factors to be taken into account for the purpose of determining
10 under the chapeau of Article 7(1) of the Statute whether the attack launched by the
11 LRA against the civilian population was widespread and/or systematic.

12 The broad geographical spread of victimisations, as heard by the Chamber this
13 morning, and the large number of victims participating in this case, 4,065 to date,
14 confirm the widespread nature of the attack against the civilian population. In fact,
15 the vast majority of participating victims suffered from the four attacks charged
16 against Mr Ongwen and had to flee their homes, lost at least one or more of their
17 family members, they were injured in the course of the attacks, their properties were
18 pillaged or destroyed. Women and girls were either raped or subjected to other
19 gender-based crimes. Some got pregnant and gave birth to children in the bush who
20 have in turn been victimised and stigmatised ever since.

21 According to the expert on Acholi culture and trauma who testified at trial, Professor
22 Musisi, quote:

23 "[t]he LRA raided villages, stole the people's food and livestock, plundered villages
24 and kidnapped children. They burnt peoples' houses as well as the food granaries
25 and left them to the mercy of the elements. They kidnapped the young boys and

1 men and abducted the girls including school girls. Over 30,000 children were
2 kidnapped or abducted by the LRA between 1986 and 2007 when the LRA was kicked
3 out of Uganda and the insurgency ended ... The Acholi village life and self-sustenance
4 traditions were all lost. Farming traditions, family cohesion, culturalization,
5 schooling and food security were all lost." End of quote.

6 There is ample evidence in the case record before this Chamber supporting such a
7 *modus operandi* of the LRA in its operations. Victims of the four charged attacks
8 recall a particular pattern of the LRA in attacking IDP camps: the attack was well
9 planned and well executed, following a standard *modus operandi* which aimed at
10 targeting the UPDF on one side and the civilians on the other side.

11 Victims also put emphasis on the brutality with which the attacks were conducted,
12 indicating that the LRA rebels put houses on fire, often leaving or throwing people
13 inside, including babies; obliged residents of the camps to lie down on the ground
14 and brutally mistreated, beaten and killed them with no pity for children, elderly and
15 women who often were also raped before being killed. Victims recall the abductions
16 of adults and children as young as seven years old to use them as soldiers; the
17 pillages and the destruction of private and commercial properties, explaining that the
18 LRA took everything they owned, including all goods necessary to sustain life in the
19 difficult conditions in northern Uganda; pans, cups, clothes, as well as livestock,
20 constituting the key source of income of families and other properties carrying a
21 specific meaning for the affected communities, notably, as also recalled this morning
22 by my colleague, for the accomplishment of traditional rituals.

23 The ones who survived the attacks had to leave their homes, to flee and take refuge
24 far away from their places of residence, often leaving back members of their families.

25 The severity of attacks appear to come in waves, with major massacres interspersed

1 across an ongoing campaign of low intensity with small-scale assaults. The LRA
2 rebels routinely cut off lips, ears and breasts, gouged eyes and amputated limbs.
3 Many of these mutilations were carried out to prevent betrayals. Victims were
4 abducted to help carry looted goods, causing them psychological and physical harm,
5 such as feet, chest and back pain. When too old to stay as an abductee, they were
6 either released after a short period of time or more often killed.

7 According to the victims, the recognition of a crime of persecution in connection with
8 the attacks is therefore an important element shown by the evidence presented at
9 trial.

10 The LRA rebels severely deprived, contrary to international law, the civilian residents
11 in Pajule, Lukodi, Odek and Abok of their fundamental rights to life, liberty and
12 security, freedom of movement, private property, not to be subjected to torture or to
13 cruel and inhuman or degrading treatment and not to be held in slavery or servitude.

14 The evidence heard at trial allows concluding, as shown by the Prosecution, that:

15 One, the LRA had the capacity to commit a widespread or systematic attack against
16 the civilian population.

17 Two, the LRA was a group, in an established hierarchical way with a capacity to
18 impose a policy on its members and to sanction them.

19 Three, the LRA had communication ability, weapons, and ammunition in order to
20 carry out the attack against the civilian population.

21 Four, the LRA acted for a long period of time for a common purpose of overthrowing
22 the Ugandan government.

23 Five, the LRA followed a regular pattern in implementing its policy of persecuting,
24 murdering, pillaging, torturing, enslaving, raping or otherwise committing
25 gender-based crimes, inflicting cruel or inhuman treatment and abducting adults and

1 children.

2 Mr Ongwen had knowledge of the attack and contributed substantially to the
3 common plan.

4 I will now turn to the LRA policy and practice of abducting women and girls.

5 Victims indicate that rape, sexual violence, sexual slavery, forced marriage and forced
6 pregnancy were crimes systematically committed by the LRA rebels, including by
7 senior commanders, and notably by Mr Ongwen, on the one hand to recreate a new
8 generation of Acholi people nested in the LRA beliefs, and on the other hand, as
9 rewards and slaves for soldiers.

10 Abductions were normally perpetrated during the attacks.

11 Top commanders would describe the type of girls they wanted, including age,
12 physical appearance, and intelligence. If recent abductees matched these desired
13 characteristics, then they were collected and distributed to the commanders. It was
14 an order to go to those men and become their wives. Resistance was punishable by
15 rape, severe beating, torture or even death. Once the senior commanders selected
16 the girls they wanted, the lower-ranking fighters would do the same or were
17 distributed the ones left.

18 Several witnesses testified about the phenomenon.

19 P-0099 explained, and I quote:

20 The leader Kony calls for an assembly. Sometimes he calls this assembly on Sundays.
21 Then these girls are paraded, then if he decides to give an order that the girls be
22 distributed, then that will be done so; but if he decides that the girls be sent to
23 someone's home, then they can do that.

24 End of quote.

25 P-0214 recalled that each commander would come and point to the girl that they

1 wanted. As explained by P-0226, and I quote again:

2 The girls who were selected do not have a voice. If you are told to go there, then you
3 must go [...] If you refuse, you were either beaten or killed. [...] Some of them
4 were used as babysitters, others as wives.

5 End of quote.

6 P-0235 directly saw Mr Ongwen distributing girls in Uganda and in Congo. During
7 her testimony, she said:

8 The girls would not be able to choose because when you are abducted you don't even
9 have the feeling of staying with a man. You only keep on thinking about your home.
10 So we would not choose the men.

11 End of quote.

12 Mr Ongwen was implementing the policy of abduction of the LRA even at times
13 when Kony himself has suspended the practice. In this regard, P-0245 remembered
14 one occasion when the accused came across to two young girls and commented,
15 "They are too beautiful to be left behind". As a result, the girls were abducted.

16 The Chamber also heard several accounts of what the life looked like for a forced wife:
17 Performing different domestic duties, such as cooking, fetching water, washing,
18 doing laundry, collecting vegetables, cutting grass, carrying utensils, gardening under
19 constant fear of being beaten or killed.

20 In the words of P-0236, quote:

21 If you do anything wrong, you're beaten. [...] If your things are dirty, you would be
22 beaten. If you're not listening, you would be beaten. [...] If you listen, you're not
23 beaten. If you listen to what they are telling you, you're not beaten. But if you
24 forget, then you're beaten.

25 End of quote.

1 Forced marriage is prohibited by many human rights instruments providing that no
2 marriage shall be entered into without the free and full consent of intending spouses.
3 While forced marriage does involve rape, sexual violence and enslavement, the
4 crucial element of the crime is the mental and moral trauma resulting from the
5 imposition by force arising from the perpetrator's words or conduct of a forced
6 conjugal association and a relationship of exclusivity between the so-called couple.
7 Forced marriages are coercive relationships without valid consent of the women.
8 They have the characteristics of shared domicile, bearing of children, domestic
9 responsibilities, exclusivity and sex. The nature of these relationships forced girls to
10 take on roles as sexual partners, mothers to the children born from these relationships,
11 cooks, domestic workers, water collectors, porters. The relationship consists of a
12 familial aspect where children are born and raised by abducted mothers and their
13 captor husbands.
14 The use of the label "wife" causes a unique psychological suffering which often leads
15 to stigmatisation and rejection of the victims by their families and communities.
16 Forced marriage also inflicts grave physical injury and result in long-term moral and
17 psychological suffering of the victims.
18 All affected victims we represent indicate that their condition of wife had and still
19 continue to have serious repercussions on their possibility of restoring what they call
20 a normal relationship with men, and even if they are reintegrated in the community,
21 they feel the said reintegration is not - to use again their word - full and sometimes
22 only dictated by social conventions more than by a genuine will to help them in
23 rebuilding their lives.
24 As explained by Professor Musisi in this courtroom, what happened to the abducted
25 girls in the LRA is not only criminal, but runs astray of their cultural landmarks.

1 What these girls went through while in captivity remains a taboo in their families and
2 communities. Once back, they carry the stamp of having been forcibly married in
3 the bush, while no official marriage had in fact occurred in accordance with Acholi
4 traditions. This creates - another point also made by my colleagues this
5 morning - identity problems, difficulties for daily subsistence and land issues.
6 The evidence demonstrates beyond reasonable doubt that soldiers under
7 Mr Ongwen's command committed gender-based crimes against many girls and
8 women and that the accused gave orders and instructions for the commission of said
9 crimes.
10 This is proven, your Honour, rendering meritless the Defence's argument addressed
11 in the closing brief at paragraph 475, according to which, and I quote:
12 "[...] Kony created a coercive environment in which survival depended on following
13 the rules."
14 Including --
15 "[...] regarding relationship between men and women within the LRA."
16 In the specific case of Mr Ongwen, a distinction must be carefully drawn between
17 following the rules, which in itself is not exculpatory for the modes of liability alleged
18 in any case, and exceeding the rules.
19 The fact that trauma triggers survival skills in children and adults alike, as recalled by
20 the Defence at paragraph 588 of its closing brief, is undisputed. Whether exceeding
21 the rules and unleashing total brutality can be qualified as survival skills is hardly
22 doubtful.
23 In this regard, the testimony of Professor Wessells offers some contrasting
24 information about the possibility to react to a coercive environment. Quote:
25 Well some people have said that when they were given the orders to fire, they fired in

1 ways that were ineffective. Sometimes they moved slower on a march, sometimes
2 they tried to leave clues that they were around. So it really depended on the
3 individual. And sometimes even children who had become low-level commanders
4 but who had some status within the LRA reported doing those things. This too,
5 I think, indicates that despite following the orders and even to some extent getting
6 caught up in the propaganda of the LRA, quite a number of people still knew right
7 and wrong and wanted to protect members of their own family." End of quote.

8 Mr Ongwen is also charged with the direct commission of a number of gender-based
9 crimes against at least seven women.

10 The testimonies of Mr Ongwen's forced wives shed light on common elements of their
11 stories: they were fairly young when they were abducted and chosen to become his
12 wives, which invariably happened by a first act of rape committed by the accused,
13 followed by repeated forced sexual intercourses, with a rotation amongst the wives,
14 depending on whom the accused was calling at night. They did not have a choice.
15 They started by doing some tasks in the household as *ting tings*, tasks they continued
16 doing once they became wives. They were under constant guard from the accused
17 and/or his armed soldiers, subjected to beatings and cruel and violent acts, either
18 directly perpetrated by Mr Ongwen or ordered by him. Daily forced to do things
19 they did not want. Living in constant fear, thinking of home, missing their loved
20 ones, worrying about their fate; exposed to the dangers of attacks and combats in
21 which the LRA engaged, and some of them sustained injuries.

22 The traumatic experiences they suffered from and the physical harms inflicted on
23 them by cruel and inhumane treatments and torture have affected them permanently
24 and they suffer from different types of trauma. They gave birth to children born in
25 the bush and fathered by the accused, children who in turn were seriously affected by

1 the difficult conditions in which they lived during the very first essential years of
2 their life. As a consequence both children and mothers have been facing enormous
3 difficulties in reintegrating in their families and communities, in making a living to
4 support their children and their own daily subsistence, in going back to their lives, let
5 alone to continue their education, and start rebuilding a new life for themselves and
6 their children.

7 The Prosecution has quoted yesterday the account of P-0227 describing how she
8 became a wife to the accused.

9 That account is not unique. A similar account was provided by the other forced
10 wives who testified.

11 P-0214 recalled, quote:

12 "The security guards scared me with the sticks so I went to Ongwen's place. He told
13 me that I had already been smeared and I was therefore ready to be his wife. He
14 told me he will teach me how we were supposed to stay with him. He said when a
15 man/ your husband calls you, you should not refuse. ... Ongwen told me to lie down
16 and I did as I was scared of the security guards with their sticks. He pulled his
17 shorts down but did not remove them completely. I looked at him and saw his penis
18 which was uncircumcised. I did not see anything else. Ongwen took his penis and
19 put it inside of my vagina. ... I was scared as he wanted to sleep with me and I have
20 never slept with a man before. ... I was crying as I was told at home that I should not
21 sleep with a man in the bush. I was told that if I slept with a man in the bush
22 I would not have children or the children would die ... [Having sex with him] wasn't
23 my choice."

24 The account is even more shocking, your Honour, when heard by P-0226, a 10 years
25 girl at the time she was first raped by the accused. Quote:

1 "I was not sexually mature. ... He asked me to bring him water. ... When I took the
2 water, he held on my arm. He refused to take the water from me. ... He told me that
3 he wanted to have sex with me. I dropped the water, it fell on the bed, and I ran out.
4 He called his escorts to beat me. ... [H]e instructed his escorts to get sticks and start
5 beating me. ... They used bamboo sticks. ... I was on the ground. I was being beaten.
6 He [meaning Dominic Ongwen] was sitting there watching. ... I was beaten for
7 about a week because every time he asked me [to have sex with him as his wife] I
8 refused and I was beaten. My hands and my buttocks were all swollen and I could
9 not sit properly. ... I could not take the beatings anymore, so I let him have sex with
10 me. [I]t was very painful." End of quote.

11 The evidence demonstrates beyond reasonable doubt that Mr Ongwen directly
12 committed the crime of rape towards at least seven women during the period covered
13 by the charges, by inflicting them with multiple, repeated and regular acts of
14 penetration under coercive circumstances and conditions of which the accused was
15 undoubtedly aware and conscious based on the victims' reactions. There is equally
16 substantial evidence demonstrating that the victims were abducted and kept against
17 their will in the LRA, in the midst of an armed conflict.

18 The evidence also demonstrates beyond reasonable doubt that Mr Ongwen
19 committed the crime of sexual slavery by engaging in one or more acts of sexual
20 nature while exercising a power of ownership on his victims (Overlapping speakers)

21 THE INTERPRETER: Your Honour, could we please ask Ms Massidda to slow
22 down a little.

23 PRESIDING JUDGE SCHMITT: [12:05:09] Ms Massidda, it's the first time today that
24 I have to say that, so we improved in comparison with yesterday, but please slow
25 down a little bit.

1 MS MASSIDDA: [12:05:15] Thank you. I was also alerted by my team. Thank you,
2 your Honour.

3 The evidence further demonstrates beyond reasonable doubt that Mr Ongwen
4 committed the crime of forced marriage by imposing a so-called marriage on girls and
5 women in his household, perfectly aware of the coercive environment and actions he
6 was imposed upon the victims.

7 The Pre-Trial Chamber in confirming the charges against the accused held for the first
8 time before this Court that forcing another person to serve as a conjugal partner may,
9 per se, amount to an act of a similar character to the ones explicitly enumerated by
10 Article 7(1) of the Statute, intentionally causing great suffering or serious injury to
11 body or to mental or physical health. And that the crime of forced marriage is not
12 subsumed by the crime of sexual slavery, a finding further confirmed more recently
13 in the Al Hassan case by both the Pre-Trial Chamber and the Appeals Chamber.

14 Victims ask the Trial Chamber to confirm this interpretation of law recognising that
15 restrictions on the freedom of movement, repeated sexual abuses, forced pregnancies,
16 or forced labour, in particular, forced performance of domestic duties, are all factors
17 which indicate a situation of forced marriage. Victims also asked to recognise that
18 the central element of a crime is the imposition of marriage on the victim, against her
19 will, if a consequent social stigma deriving from it.

20 Victims finally ask that the separate and additional harm caused by this crime as
21 opposed to the crime of sexual slavery or other gender crimes is recognised, since this
22 offence violates the independently recognised basic right to consensually marry and
23 establish a family.

24 The evidence also demonstrates that Mr Ongwen committed the crime of forced
25 pregnancy by confining girls and women he forcibly made pregnant, with the intent

1 to carry out grave violations of international law, including using them as wives and
2 mothers and to rape, sexually enslave and torture them.

3 As recalled by P-0235: "[Becoming pregnant in the bush] wasn't my choice." In her
4 victim's application form she specified the difficult conditions of pregnancies in the
5 LRA captivity, and I quote:

6 "It was a very terrible time for me as I gave birth in the bush. It was a very hard time
7 for me as I was helped by my co-wife who was not even an expert in the field of
8 giving birth."

9 P-0236 similarly stated:

10 "I gave birth to two sons with Dominic Ongwen and I am taking care of them without
11 anyone to help me since I have no source of become because I am jobless. I feel I
12 have lost my dignity as a woman because I was forced into sexual intercourse by a
13 rebel and I could not do anything to defend myself that I even gave birth to two sons."
14 End of quote.

15 The words of the forced wives explain in plain words what Professor Reicherter
16 described as consequences of forced pregnancy in following terms, quote:

17 "Women who become pregnant following incidents of rape ... face the scorn of their
18 community. ... In Uganda, forced pregnancy causes the mother and child stigma in
19 their communities. Children of forced pregnancies serve as a symbol and reminder
20 of the history of atrocities committed by the LRA, and are therefore subjects of blame,
21 scorn, rejection in their communities, often being automatically labelled as a criminal,
22 rebel, or murderer. ... [C]hildren born of LRA-forced pregnancies are deeply affected
23 by their biological origins and subsequent treatment by society. ... [I]nequities [are
24 noted] in relation to children's access to health, education, and employment.

25 "[A]n additional form of stigmatisation is the naming of the children. A study

1 conducted in a reception centre in Gulu showed that 71 per cent of their sample had
2 names that had negative connotations. ... [T]hese children received names with
3 negative connotation because their names were a reminder of the suffering and their
4 captivity. Although many reception centres changed these children's names, they
5 carry the stigma of their name into their reintegration. The children end up isolated
6 from other children because of their upbringing." End of quote.

7 Your Honours, the LRA has also been notorious for its policy and practice of
8 abducting children to serve as soldiers.

9 I first address one of the most significant evidentiary issues that affect the interests of
10 the victims we represent, which is the determination that children were under the age
11 of 15 during the time frame of the charges. The Defence indeed in its closing brief
12 alleges that the age requirement I quote has not been established beyond reasonable
13 doubt by the Prosecution.

14 The issue of age determination is not new to the jurisprudence of the Court and other
15 international tribunals. The practice of the Court has accepted the evidence of
16 witnesses who, assessing the physical appearance, the behaviour and/or the
17 development of children, concluded that they were under the age of 15. The
18 Appeals Chamber in the Lubanga case in its judgment of 1 December 2014 accepted
19 visual assessments of age even when witnesses provided said evidence several years
20 after the events. In paragraphs 233 to 235 of the judgment, the Appeals Chamber
21 clarified that such evidence does not need corroboration and can be relied upon
22 under the only condition the Chambers apply a sufficient margin of error.

23 More recently, Trial Chamber VI in its judgment in the Bosco Ntaganda case,
24 judgment of 8 July 2019, considered that witnesses' age assessment is reliable in light
25 of factors like information provided by members of the family or observed behaviour

1 by witnesses. The reference, your Honour, are contained in footnote 999 of the
2 Ntaganda judgment.
3 Child soldiers. Two simple words. But they describe a world of atrocities
4 committed against children and sometimes by children.
5 Children were used as disposable porters by the LRA, walked quickly. This both
6 increased the LRA mobility and enhanced its capacity to carry loads of looted foods
7 over long distances. Forcing children to kill their friends or family members in front
8 of other abductees instilled fear and discouraged them from escaping. In the words
9 of one of our client, former child soldier, "Sometimes they get the new people to kill.
10 You never refuse to kill, otherwise they will kill you." It also forced a clean break
11 with the past, as they were less likely to return to a community where they murdered
12 or looted.
13 The evidence demonstrates beyond reasonable doubt that, during the period of the
14 charges, Kony and other senior LRA commanders, including Mr Ongwen, pursued a
15 common plan to abduct children in the territory of northern Uganda and conscript
16 them into the LRA, including in Sinia brigade, in order to ensure a constant supply of
17 fighters. Abduction of children was a widespread and established practice in the
18 LRA. Therefore, Mr Ongwen was aware of the fundamental features of the LRA and
19 the factual circumstances that enabled him, together with the co-perpetrators, to
20 jointly exercise control over the crime.
21 As a result of the common plan, children under the age of 15 were abducted at
22 various locations in northern Uganda and forcibly integrated into the Oka battalion
23 and the Sinia brigade. Following their recruitment, they were trained for active
24 participation in hostilities and participated actively in combats and activities linked to
25 combat in the four charged locations, as well as in other places. Abducted children,

1 your Honours, boys and girls, served as fighters, lookouts, porters, escorts and
2 bodyguards to LRA commanders, including Mr Ongwen, and were forced into sexual
3 intercourses.

4 Mr Ongwen contributed to the realisation of a common plan by personally using
5 children under the age of 15 as escorts; ordering his subordinates to abduct children
6 under the age of 15; supervising and monitoring military training of children under
7 the age of 15. And he knew that children conscripted into the LRA and used to
8 actively participate in hostilities were younger than 15 years old.

9 The abduction of children was a deliberate strategy aiming at indoctrinating them
10 into a way of acting and thinking. Witnesses at trial recounted how LRA
11 commanders adopted different strategies to indoctrinate abductees.

12 Professor Allen affirmed that accounts about the initiation processes of new recruits
13 varied substantially from one person to another. Some recounted being required to
14 participate in numerous prayer meetings, others forced to perform violent acts, others
15 forced to kill friends and relatives. Witnesses also testified about abductees who
16 didn't walk fast enough or refused to obey orders being severely beaten or killed for
17 refusing to do so.

18 The prolonged stay in the bush had a profound impact on the ability of children to
19 reintegrate in their families and in their community.

20 Victims participating in this case are former child soldiers who either managed to
21 escape or were captured by the UPDF and later set free.

22 Parents of former child soldiers also participate in these proceedings. Some of them
23 have never seen their children again since their abduction and have lost any hope to
24 embrace them again. Others still keep hope of seeing their children coming back one
25 of these days.

1 The ones who had the chance, if we can call it that way, of returning to their families
2 and communities face enormous challenges in trying to return to normal life. They
3 have difficulty processing their experiences and reintegrating in the society. They
4 need healing from traumatic experiences, help with physical and emotional
5 difficulties, education, vocational training and to re-establish the link with their
6 community.

7 The way from child soldier to formerly abducted child, to finally just a child or a
8 young adult is a long mile to walk, particularly because of the persistent mixed
9 perception of former child soldier as victims, on the one hand, and perpetrators, on
10 the other.

11 And this leads me, your Honour, to the part of this presentation which relates to the
12 criminal liability of Mr Ongwen.

13 The Defence challenges the criminal liability of Mr Ongwen on several bases.

14 First, the Defence alleges that Mr Ongwen is only a victim, abducted at a young age,
15 psychologically manipulated, subjected while in the LRA to injuries, constant fear of
16 death or serious bodily harm and long-term mental impairment. Consequently, in
17 the view of the Defence, Mr Ongwen cannot be held responsible.

18 This is an argument, your Honour, which victims consider totally unfounded in fact
19 and in law, and, worst, disrespectful of their sufferings.

20 It is not disputed that Mr Ongwen might have been a victim of one or several crimes
21 when he was a minor. However, this fact alone does not constitute a legal basis for
22 excluding criminal liability under the Rome Statute. The fact that Mr Ongwen has
23 been abducted at a young age does not absolve him from criminal liability for his acts
24 and conducts as an adult.

25 By arguing once a victim always a victim, the Defence not only negates the

1 paramount principles of human resilience and agency, but it also fails to acknowledge
2 blatant facts such as that not all victims become perpetrators and criminals, let alone
3 powerful and cruel ones.

4 The events Mr Ongwen might have been a victim as a child when abducted are
5 extraneous to this trial. What this trial is about is the conducts of Mr Ongwen as an
6 adult and the actions he choose to take or not to take at the time of the charged
7 crimes.

8 Even if one accepts at face value the Defence's allegation with regards to
9 Mr Ongwen's lack of maturity due to his captivity and isolation from society, the
10 childlike conduct of the accused that has been referred to bountifully in these
11 proceedings has not been established by real and uncontested evidence. The charges
12 that the accused is facing constitute, to use the words of the preamble of the Rome
13 Statute, some of the most serious crimes of concern to the international community as
14 a whole.

15 Victims are of the view that it is impossible to seriously envisage that Mr Ongwen did
16 not understand at all the extremely grave nature of the criminal acts in which he
17 engaged as demonstrated by ample evidence in this case.

18 Contrary to what the Defence is suggesting, the evidence demonstrates beyond
19 reasonable doubt that, during the period covered by the charges, Mr Ongwen was a
20 military commander in the LRA. He commanded a battalion in the Sinia brigade for
21 much of mid-2002 to March 2004 and then on or about 5 March 2004, he became the
22 commander of the Sinia brigade. In that capacity, he had effective command and
23 control or authority and control over his subordinates during the entire period
24 covered by the charges.

25 Mr Ongwen knew about the common plan to attack the civilian population; in

1 particular, the Acholis and anyone perceived as government supporters. He
2 participated in meeting to plan the attacks charged, gave orders to his subordinates,
3 explicit orders to loot, murder, abduct.
4 More importantly, throughout the period covered by the charges, Mr Ongwen had
5 the necessary mens rea in accordance with Article 30 of the Statute. Indeed, the
6 evidence demonstrates that within the meaning of each of the alternative forms of
7 liability pleaded by the Prosecution and in relation to each crime charged,
8 Mr Ongwen meant to engage in the conduct and cause ensuing consequences or was
9 aware that they will occur in the ordinary course of events.
10 None of the grounds for excluding criminal liability have been proven by the Defence.
11 As far as mental illness is concerned, in accordance with Article 31(1)(a) of the Statute,
12 in order for an insanity defence to succeed, an accused should be diagnosed with a
13 pathology which qualifies either as a mental disease, a disorder, an illness or a defect
14 in accordance with the symptoms enumerated in one of the instruments used in the
15 medical profession for that specific purpose, and notably, the DSM-5, which was
16 extensively used by the experts and referred to by all the experts heard by the
17 Chamber.
18 Not only the existence of a specific condition, but importantly its severity must be
19 observed and confirmed - in other words, proven - at the time of the events. This
20 means that the fact that the accused is allegedly suffering from any specific condition
21 now or at any time since he has been in the custody of the Court is neither conclusive,
22 nor sufficient evidence that said condition was indeed present during the charged
23 period.
24 The evidence heard at trial point at the opposite direction, as also argued yesterday
25 by the Prosecution, because there is evidence that Mr Ongwen took active part in

1 maintaining and enforcing the system of terror that the LRA operated. He took
2 initiatives, decisions and actions that fostered the crimes ordered by Joseph Kony.
3 Mr Ongwen is known amongst the victims as the most brutal of the men who served
4 Joseph Kony. He has a record of protracted atrocities against his own people and
5 brutality against his forced very young wives. He was proud of his achievements in
6 the battlefield. He showed no remorse.

7 From the totality of information presented in this case, the victims are of the view that
8 Mr Ongwen cannot be considered as someone who had been suffering from a mental
9 disease or defect that completely destroyed his capacity to appreciate the
10 unlawfulness of his conduct or his capacity to control his conduct to conform to the
11 requirements of law, within the meaning of Article 31(1)(a) of the Statute.

12 The fact that the accused may have faced during the period of the charges extremely
13 difficult, personal or emotional situations does not remove legal responsibility off his
14 shoulder, because it's not demonstrated that his volitional and cognitive capabilities
15 were destroyed at the time of the commission of the crime.

16 In particular, the general statement by the Defence, according to which expert - I
17 quote:

18 [u]nequivocally placed the mental illnesses of Mr Ongwen suffers in the context of a
19 mass trauma experienced in Acholiland in the period 2002-2005 [...]

20 - is inapposite because unspecific to the situation of the accused.

21 In this regard, Professor Wessells pointed out, quote:

22 [...] over 25 per cent of children who experienced extensive traumatic exposures
23 exhibited post-traumatic resilience in that they did not develop post-traumatic stress
24 disorder, depression, or any behavioural or emotional problems of clinical concern.
25 Consistent with a trend seen worldwide, formerly abducted children in northern

1 Uganda have shown greater resilience than many had expected, based on the
2 children's massive exposure to traumatic events. Two-thirds of former abducted
3 children reported low to medium levels of emotional distress and over 90 per cent
4 showed fairly high levels of functioning.

5 End of quote.

6 As explained by Professor Musisi, based on his experience as a psychiatrist who
7 treated many LRA victims, young abducted children can be very suggestible and can
8 be convinced easily. Children exposed to severe stress in childhood get distorted in
9 their ways sometimes, but they do not lose judgments over right and wrong.

10 The three experts called by the Prosecution concurred that being exposed to trauma is
11 not sufficient for a diagnosis of a trauma-related disorder. Dr Abbo clearly stated
12 that she did not find any evidence or evidence sufficient to establish that the mental
13 disease or defect destroyed Mr Ongwen's capacity to appreciate the nature of his
14 conduct.

15 Professor Mezey echoed this conclusion and interestingly indicated that it would be
16 highly improbable and psychologically incoherent to suggest that there was a
17 continuous and ongoing mental abnormality during the time period of the four
18 charged attacks, spanning over a period of months, or that a mental abnormality
19 occurred coincidentally with each of the four attacks.

20 This, because the attacks appear to have been planned and premeditated rather than
21 impulsive, which would not be compatible with a person dissociating every day
22 through months or years as alleged by the Defence.

23 In her opinion, the likelihood of the accused suffering from mental illness every day
24 throughout the period of the charges - almost three years - while committing planned
25 and premeditated conducts that continued over time, such as, forced marriage,

1 slavery or conscription of child soldiers, would be entirely implausible from a
2 medical standpoint.

3 Your Honour, even assuming that the accused was allegedly suffering from an illness
4 at the time of the crimes - a conclusion that we challenge, having been made by the
5 Defence expert years after the events - the only reasonable inference from the expert
6 testimonies and the evidence taken as a whole is that certainly said illness did not
7 reach the degree of severity required to destroy Mr Ongwen's cognitive or volitional
8 capacity.

9 Nor the argument of the Defence in its closing brief that Mr Ongwen was, and I
10 quote:

11 "Having dissociative amnesia in battle [...] made it impossible for him to control his
12 conduct."

13 End of quote.

14 Can be seriously upheld. If this was true, the fact that the accused survived all
15 attacks and ambushes while in the bush is quite miraculous.

16 The Defence also alleges that any acts during the charged period would have been
17 committed under duress caused by Joseph Kony and his close advisers.

18 However, as also pointed out yesterday by the Prosecution, there is no indication in
19 the record of the case that Mr Ongwen, during the period covered by the charges, was
20 actually under duress. Several witnesses testified that the accused was not afraid at
21 all of Kony, arriving at questioning his orders openly on several occasions and
22 disagreeing with him.

23 Several witnesses also testified about the initiatives taken by the accused when
24 deciding to attack locations, showing that Mr Ongwen was quite proactive and
25 ingenious in implementing the LRA's policy of brutality, negating duress.

1 Duress is an excuse which is premised on the idea that the actor is incapable of
2 making a moral choice due to the overwhelming force of a threat. While it could be
3 argued that children under the age of 15 may not be always able to distinguish what
4 is wrong and what is right, and that the conditions of their forced recruitment imply
5 threats, this assumption cannot be valid for someone who reached the age of reason,
6 who was in position of power in the LRA, and was able to make a distinction and
7 subsequently choose between what was wrong and what was right.

8 The Defence also appears to argue that the spirituality within the LRA, namely, the
9 spiritual powers supposedly exercised by Kony, posed a threat of imminent death or
10 of continuing or imminent serious bodily harm against Mr Ongwen.

11 In its closing brief, the Defence asserts that what makes this case peculiar, is its
12 specific factual situation, and I quote: "[...] shrouded in spiritualism and [...] mystical."
13 Self-evidently, in a procedure in which the majority of the participating victims are
14 Acholi, and in which a considerable number of witnesses were heard on cultural
15 aspects of importance for people living in northern Uganda, the cultural issue is an
16 important one.

17 Understanding the cultural context is certainly of paramount importance out of
18 respect of all participants in this proceeding. But it is also central to appreciate the
19 impacts of the crimes committed. This being said, specific cultural features cannot
20 be used to imply lack or to diminish liability.

21 While being witnesses testified about the religious and spiritual beliefs in the LRA,
22 the evidence shows that not everybody in the LRA believed the so-called spiritual
23 powers of Joseph Kony.

24 In any case, there are evidence showing that Mr Ongwen willingly remained in the
25 LRA, sharing the objectives and purpose of the organisation.

1 And in fact, the absence of any meaningful sign that the accused wanted to dissociate
2 himself from the LRA and from the criminal acts that he committed negates duress.
3 Therefore, your Honours, the victims consider that the evidence heard at trial
4 militates for concluding that Mr Ongwen had, at the time of the charged crimes, the
5 knowledge and intent to commit all the charged crimes.

6 Mr President, your Honours, at the beginning of this trial the Chamber was presented
7 with a short video in which victims expressed their expectations from these
8 proceedings. I will recall briefly two quotes from that video which summarise the
9 hopes of victims.

10 Victim a/06051/15 indicated, and I quote:

11 "The sufferings I went through were enormous. Life is hard now. I was abducted
12 as a young girl and forced to become a rebel's wife. ... Every time I mention what
13 happened to me, I feel the trauma and the bad images come back. ... I wish I could
14 leave for another place so that I can live in peace with my children. Here I am
15 stigmatised because people do not completely forgive us and keep pointing out at us
16 as the ones who were in the LRA. The sufferings I went through can never be
17 compensated but the Court should make us feel that justice is done so that we can live
18 knowing that justice exists." End of quote.

19 Another victim, a/07041/15 stated, and I quote again:

20 "When I think about justice, I mean that I want the truth about the events I suffered
21 from, and like me many others in Uganda. We want the truth to be established so
22 that we may be satisfied. I want the Court to work well ... and this case to end in a
23 just manner. I trust the Court to dispense justice for us survivors."

24 The duty to establish the truth is not limited to establish the guilt or innocence of the
25 accused. Part of the truth to be determined by this Chamber is the victimisation, the

1 suffering and harm caused to the ones who directly affected by the crimes committed.
2 During the course of the trial, the Chamber heard evidence about the crimes
3 committed, as well as factual and emotional accounts of the agony suffered by victims,
4 their families, relatives, and communities.
5 Victims expect that in its evaluation of the evidence, the Chamber gives also due
6 consideration to their accounts and to the harms they suffered from.
7 The extent of the prejudice suffered by civilians in northern Uganda, and in particular
8 the Acholis, is tremendous, as also recalled this morning.
9 The horrific and prolonged consequences of the war had an impact not only on the
10 individuals, but devastated the society and particularly eroded the solid and rich
11 culture of the Acholi social structure.
12 One final word, your Honours, on the issue of accountability of Mr Ongwen in light
13 of the Defence's request that the accused be placed under the authority of the Acholi
14 justice system to undergo the *mato oput* ritual if declared guilty.
15 It's evident, your Honours, that the request cannot be entertained by this Chamber
16 because such a remedy is certainly not enshrined in the legal text of the Court.
17 But my point, and more importantly, said request is contrary to the interests of the
18 victims participating in this trial.
19 *Mato oput*, literally, drinking the bitter herb, is a traditional practice of Acholis only to
20 resolve interclan disputes, such as the killing of one clan member by a person of
21 another clan. It's a long process, very elaborate ritual, which was never intended to
22 deal with mass atrocities, nor with killings during times of war. It's a specific
23 tradition for Acholi. Not all victims participating in these proceedings are Acholi
24 and, for them, said ritual may not meaningful.
25 In any case, victims have throughout the entire proceedings expressed their

1 expectation for justice. They want a Court of law to establish that Mr Ongwen is
2 guilty of the crimes they have suffered from and the acknowledgment by the accused
3 of his wrongdoings.

4 Victims express the view that the request that Mr Ongwen simply undertake a *mato*
5 *oput* ceremony equals to a request of impunity.

6 Impunity: The only word they hoped to never hear again after the surrender of
7 Mr Ongwen, certainly not in this court of law.

8 In conclusion, your Honours, victims considered that the liability of Mr Ongwen has
9 been established beyond reasonable doubt for all charges brought against him and
10 ask the Chamber to declare the accused guilty of all crimes.

11 Before I sit, your Honour, allow me to remember my sister Jane Adong, who through
12 the circumstances of life will not be able to see the end of this trial. Without her
13 invaluable contribution and advice, I would have never been able to represent before
14 this Chamber the interests of our clients.

15 And I will thank you, your Honours, and our clients will thank you.

16 (Interpretation) Thank you. Thank you very much.

17 PRESIDING JUDGE SCHMITT: [12:50:43] Yes, please, Mr Ayena, what's --

18 MR AYENA ODONGO: [12:50:44] Mr President and your Honours, we have some
19 very serious objections to raise about the manner in which the submissions of
20 Ms Massidda, Mrs Massidda. Your Honours, she has gone far beyond her mandate
21 as counsel for the victims. Your Honours should be reminded that it is the duty of
22 the Prosecution to challenge -- or, rather, to prove the guilt of the accused and it is not
23 the role of counsel for victims. What does -- what her submission amounts to, your
24 Honours will appreciate that there is this principle of equality of arms in this court.
25 Look at the array of learned people on that side. If they were to be merged together,

1 as Mrs Massidda has now done, then the concept of equality of arms in this court will
2 diminish.

3 Actually, I think we shall propose, and I think conveniently, that all counsel of
4 Defence teams should approach the CSS to remove the Office of the Counsel for
5 Victims from the other corner and bring them to this corner of the building, because
6 in effect they are one and the same with the Prosecution.

7 And what does this lead me to?

8 Mr President and your Honours, it is our strong view that the submissions of
9 Ms Massidda should be expunged from the Court record because they were
10 overboard.

11 Thank you very much.

12 MR TAKU: [12:52:58] Your Honours, just one thing.

13 PRESIDING JUDGE SCHMITT: [12:53:00] No, I think this is --

14 MR TAKU: [12:53:01] (Overlapping speakers)

15 PRESIDING JUDGE SCHMITT: No, we have, we have now -- no, we don't start now
16 a prolonged litigation about past presentations.

17 MR TAKU: [12:53:09] Just one point, your Honours.

18 PRESIDING JUDGE SCHMITT: [12:53:11] Keep it very shortly, please.

19 MR TAKU: [12:53:12] (Overlapping speakers) You reserved a discrete issue for
20 further submissions and establish a timeline. She's got up now, instead of respecting
21 the Court order she tries to address that issue here with these submissions.

22 And furthermore, you defined the role in the decision of victim representation before
23 this Court several times. She has clearly abused that mandate, your Honour.

24 PRESIDING JUDGE SCHMITT: [12:53:37] Of course I have to give you,

25 Ms Massidda, shortly the floor also for response.

1 MS MASSIDDA: [12:53:42] Thank you, Mr President.

2 I made clear when I started my presentation that my presentation was based on the
3 concerns and interests of my clients. All the points that I have raised related to their
4 interests, including, and of course Mr President, the issue of liability of Mr Ongwen.
5 This is a core interest for our clients. We have been intervening on this point
6 throughout the entire trial.

7 Thank you very much, your Honour.

8 PRESIDING JUDGE SCHMITT: [12:54:14] I think the Chamber has already
9 conferred.

10 The objection is overruled and, especially, there will be no expunging of any
11 presentation by the common Legal Representative of Victims.

12 It has to be reminded that the purpose of closing statements is for the parties and
13 participants to state their final position on the case to the Chamber. They are
14 not - and this has to be underlined and there is a difference to what we have done
15 before - they are not evidence. The presentation of evidence has long been closed.

16 In fact, closing statements are arguments and counsel are to be given considerable
17 latitude in making them. This coincides with the practice of national jurisdictions
18 and international tribunals.

19 So the important point is we are hearing here legal factual arguments and not
20 evidence as put to the Chamber, and you know you have this different approach to
21 evidence put by representatives of victims.

22 And you, especially Defence, can be sure that the Chamber understands this
23 distinction and is able to properly put into perspective everything what has been said
24 in this courtroom during the past days and will be said tomorrow during the closing
25 statements.

- 1 This concludes this short ruling.
- 2 We conclude the hearing for today. Reconvene tomorrow 9.30 with the presentation
- 3 by the Defence.
- 4 THE COURT USHER: [12:55:55] All rise.
- 5 (The hearing ends in open session at 12.56 p.m.)