Annex C

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Before: **Judge Cuno Tarfusser, Presiding Judge**
Judge Marc Perrin de Brichambaut
Judge Chang-ho Chung

SITUATION IN UGANDA

IN THE CASE OF
THE PROSECUTOR v. DOMINIC ONGWEN

Public Redacted Version

Pre-confirmation brief, 21st December 2015, ICC-02/04-01/15-375-Conf-AnxC

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I. INTRODUCTION

1. The Prosecution submits its pre-confirmation brief pursuant to rule 121(9) of the Rules of Procedure and Evidence. This brief sets out detailed submissions on points of fact and law: what the Prosecution considers to be the elements of the crimes charged, and how the evidence satisfies them.

2. The Prosecution's evidence is authentic, accurate, and corroborated. The brief demonstrates overwhelmingly that there exist substantial grounds to believe that Dominic Ongwen committed the crimes charged in the document containing the charges.

The Chamber's assessment of the evidence

3. The evidentiary burden established by article 61(7) is met upon the presentation of concrete and tangible evidence demonstrating a clear line of reasoning underpinning the Prosecution's specific allegations.[1] Several Chambers have observed that the confirmation hearing is not a mini-trial or a "trial before the trial";[2] instead, the confirmation process is designed to protect Dominic Ongwen from wrongful and unfounded charges and to distinguish between those cases that should go to trial and those that should not.[3]

4. For purposes of confirmation, the Chamber should accept as dispositive the Prosecution's evidence, as long as it is relevant and not expressly found to be

[1] ICC-01/04-01/06-803-tEN, para. 39; ICC-01/04-01/07-717, para. 65; ICC-01/05-01/08-424, para. 29; ICC-02/05-02/09-243-Red, para. 37; ICC-01/09-01/11-373, para. 40.
[2] ICC-01/04-01/07-412 at p. 4; ICC-01/04-01/07-428-Corr, para. 5-6; ICC-01/04-01/07-621, para. 66; ICC-01/04-01/07-717, para. 64; ICC-01/09-01/11-221, para. 9; ICC-01/09-02/11-321, para. 8; ICC-01/04-01/07-475, para. 68; ICC-02/11-01/11-T-11-Red-FRA, p. 3; ICC-01/05-01/13-T-3-Red-ENG, p. 9.
[3] ICC-01/04-01/06-803-tEN, para. 37; ICC-01/04-01/07-717, para. 63; ICC-01/04-01/07-428-Corr, para. 5; ICC-01/05-01/08-424, para. 28; ICC-02/05-02/09-243-Red, para. 39; ICC-02/05-03/09-121-CORR-RED, para. 31.

inadmissible.[4] The Chamber should not reject evidence for lack of corroboration, since a reasonable trier of fact may reach findings based on uncorroborated evidence.[5] The Chamber should proceed with great caution in seeking to resolve any apparent contradictions in the evidence, because such resolution is impossible without the full airing of the evidence, and careful weighing of the credibility of witnesses. That will occur at trial. The confirmation hearing is not an "end in itself, but rather serves the purpose of filtering out those cases and charges for which the evidence is insufficient to justify a trial".[6] It is only where the Prosecution case can be shown to be "riddled with ambiguities, inconsistencies, contradictions or doubts as to credibility"[7] that the Chamber should decline to rely upon evidence so affected.

Multiple legal characterisations of the same facts

5. At this stage of the proceedings, the Chamber may be presented with facts, supported with evidence, which may satisfy more than one mode of liability or more than one crime.[8] When multiple legal characterisations of the same facts are established by the evidence, it is appropriate that the charges be confirmed with all of the various modes of liability available, in order for the Trial Chamber to determine whether any of those legal characterisations is established to the applicable standard of proof at trial.[9]

6. The Prosecution submits that this approach promotes judicial efficiency and reduces the potential disruptive effect at the trial stage of notification that the

[4] *See* e.g., ICC-01/04-01/07-717, para. 66; see also ICC-01/04-01/06-803-tEN, para. 97-98.
[5] See rule 63(4) of the Rules of Procedure and Evidence; see also *Prosecutor v. Bagosora et al*., ICTR-98-41-T, Decision on Motions for Judgment of Acquittal, 2 February 2005, para. 10; *Prosecutor v. Rwamakuba*, ICTR-98-44C-R98bis, Decision on Defence Motion for Judgment of Acquittal, 28 October 2005, para. 13.
[6] ICC-01/04-01/10 OA 4, para. 47.
[7] ICC-01/04-01/10 OA 4, para. 46.
[8] ICC-01/04-02/06-309, para. 100.
[9] ICC-02/11-02/11-186, para. 133.

legal characterisation of the facts may change. Ultimately, the Trial Chamber is better poised to evaluate which modes of liability may be retained or dismissed, on the basis of the evidence presented by both parties.[10]

7. Similarly, the Prosecution seeks to proffer cumulative charges against Dominic Ongwen for certain aspects of his criminal conduct. For instance, the charge of torture under articles 7(1)(f) and 8(2)(c)(i), in respect of the same conduct. Such cumulative charging is permissible when one crime contains a "materially distinct element not present in the other".[11] The Trial Chamber is better poised, after the parties' presentation of the evidence, to evaluate which of the charges may be retained, based upon the sufficiency of the evidence.[12] This Chamber should give deference to the Trial Chamber, which, following a full trial, will be better placed to resolve questions of concurrence of offences.[13]

Structure of the pre-confirmation brief

8. This brief is organised into thematic sections: attacks on internally displaced persons' ("IDP") camps in Pajule, paragraphs 148 to 228, Odek, paragraphs 229 to 312, Lukodi, paragraphs 313 to 336, and Abok, paragraphs 337 to 427, sexual and gender based crimes ("SGBC"), [REDACTED], and conscription and use of child soldiers, paragraphs 617 to 666. Elements of Dominic Ongwen's individual criminal responsibility common to all thematic sections, paragraphs 73 to 110, and

[10] ICTY, *Prosecutor v. Delalić*, IT-96-21-A, Appeal Judgement, 20 February 2001, para. 400; see further, Pre-Trial Practice Manual (September 2015), p. 18 (available at https://www.icc-cpi.int/iccdocs/other/Pre-Trial_practice_manual_(September_2015).pdf. Last accessed on 11 December 2015).
[11] See ICC-01/04-01/07-3436 -tENG, para. 1695; ICC-02/11-02/11-186, para. 119-121; ICC-02/11-01/11-656, para. 197-203; ICC-01/09-01/11-373, para. 280-281; ICC-01/05-01/08-424, para. 202; see also, *Prosecutor v. Delalić*, IT-96-21-A, Appeal Judgement, 20 February 2001, para. 412-413; Pre-Trial Practice Manual (September 2015), p. 18 (available at https://www.icc-cpi.int/iccdocs/other/Pre-Trial_practice_manual_(September_2015).pdf. Last accessed on 11 December 2015).
[12] *Prosecutor v. Delalić*, IT-96-21-A, Appeal Judgement, 20 February 2001, para. 400.
[13] Pre-Trial Practice Manual, *supra*, p. 18.

the contextual elements of the crimes, paragraphs 13 to 58, are set out separately in additional sections to reduce repetition.

9. The brief also contains a section at paragraphs 59 to 72 that provides background to, and explains how to navigate, the evidence of intercepted LRA radio communications that the Prosecution has collected from the Ugandan government.

10. Finally, the charges of persecution linked to the four IDP camp attacks – counts 10, 23, 36, and 49 – are addressed in a stand-alone section at paragraphs 111 to 147. To best understand Dominic Ongwen's persecutory intent in relation to these attacks, it is necessary to detail the broader persecutory aims and activities of the LRA from at least 1 July 2002 to 31 December 2005, and Dominic Ongwen's role in and knowledge of it.

Dominic Ongwen's names

11. Dominic Ongwen is also known as Odomi,[14] Wai Wai (YY),[15] or Wanyama.[16] On the radio, his call sign was Tem Wek Ibong[17] or simply, Tem.[18]

II. CONFIDENTIALITY

12. This is a public redacted version of the confidential filing made under regulation 23*bis*(1) of the Regulations of the Court on 21 December 2015, ICC-02/04-01/15-

[14] P-0224, UGA-OTP-0244-2995 at 3022; P-0237, UGA-OTP-0244-2662 at 2672; P-0040, UGA-OTP-0209-0461 at 0480; UPDF Report, UGA-OTP-0026-0027.
[15] P-0245, UGA-OTP-0244-0363 at 0370; P-0240, UGA-OTP-0244-0142 at 0159.
[16] P-0258, UGA-OTP-0243-1708 at 1729-1730; P-0125, UGA-OTP-0175-0300-R01 at 0304.
[17] P-0125, UGA-OTP-0175-0300-R01 at 0304; P-0125, UGA-OTP-0175-0300-R01 at 0304; P-0019, UGA-OTP-0218-0594-R01 at 0616; P-0059, UGA-OTP-0248-0328-R01 at 0332, 0334, 0335; P-0003, UGA-OTP-0248-0094-R01 at 0099, 0101; P-0245, UGA-OTP-0244-0545-R01 at 0546.
[18] P-0016, UGA-OTP-0223-0034-R01 at 0055-0057; P-0003, UGA-OTP-0069-0803-R01 at 0808.

Conf-AnxC. Redactions have been made to protect the identity of witnesses and other evidence disclosed confidentially.

III. CONTEXTUAL ELEMENTS OF WAR CRIMES AND CRIMES AGAINST HUMANITY

1. Background

13. Yoweri Museveni took power in Uganda in 1986 at the head of the National Resistance Army ("NRA"). In the following years, various armed groups sought to contest his rule, particularly in northern Uganda and among the people of Acholi ethnicity.

14. One of these was the Holy Spirit Movement begun by Alice Auma,[19] who claimed spiritual powers and was also commonly called "Alice Lakwena", meaning Alice the "spirit" or "messenger".[20] Lakwena claimed that, in fighting the NRA, she was carrying out the Christian Holy Spirit's will. Among Lakwena's practices was to require her followers to undergo "cleansing" rituals and to observe the Ten Commandments.[21] Lakwena marched south with her forces from the Acholi region and the NRA defeated them in late 1987 at Jinja.[22]

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[19] Gersony, R., "The anguish of northern Uganda. Results of a field based assessment of the civil conflicts in northern Uganda", submitted to the United States Embassy, USAID Mission, Kampala, August 1997 (hereafter "The anguish of northern Uganda"), UGA-OTP-0231-0271 at 0299; Human Rights Watch, "Abducted and abused: Renewed conflict in northern Uganda", Vol. 15, No. 12, July 2003 (hereinafter "Abducted and abused"), UGA-OTP-0231-0188 at 0200; Refugee Law Project, "Behind the violence: causes, consequences and the search for solutions to the war in northern Uganda", Working Paper No. 11, February 2004 (hereinafter "Behind the violence"), UGA-OTP-0231-0383 at 0389.
[20] The anguish of northern Uganda, UGA-OTP-0231-0271 at 0299; Abducted and abused, UGA-OTP-0231-0188 at 0200; Behind the violence, UGA-OTP-0231-0383 at 0389.
[21] The anguish of northern Uganda, UGA-OTP-0231-0271 at 0299; Abducted and abused, UGA-OTP-0231-0188 at 0200.
[22] Behind the violence, UGA-OTP-0231-0383 at 0389; The anguish of northern Uganda, UGA-OTP-0231-0271 at 0300; Abducted and abused, UGA-OTP-0231-0188 at 0200.

15. Joseph Kony was an officer in the Uganda National Liberation Army, which was defeated by the NRA in 1986. He may be related to Alice Lakwena.[23] He instituted himself as Lakwena's successor. He and his followers continued armed resistance to the Ugandan government. Like Lakwena, he claimed to be guided by the Holy Spirit. Kony's military group was initially called the United Holy Salvation Army. A vestige of this name can be observed in the evidence of a number of witnesses in this case who refer to the Lord's Resistance Army ("LRA") as "The Holy".[24] The group's name changed subsequently to the United People's Democratic Christian Army, or the United Democratic Christian Army, and later settled on its current name, the LRA.[25]

16. From the late 1980s to February 1994, armed conflict continued at a low level of intensity. The Ugandan government launched a military offensive called "Operation North" in 1991, which purportedly weakened Kony's insurgency but failed to extinguish it. Local officials formed "bow and arrow" civil defence units, to defend against attacks by Joseph Kony's rebels. Even in these early years, the LRA killed and abducted civilians and children.[26]

17. There were unsuccessful peace negotiations in 1993 and 1994. Following this, the LRA, with the support of the Sudanese government, established bases in southern Sudan and replenished their supply of arms.[27]

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[23] Behind the violence, UGA-OTP-0231-0383 at 0390; The anguish of northern Uganda, UGA-OTP-0231-0271 at 0305.
[24] [REDACTED]
[25] The anguish of northern Uganda, UGA-OTP-0231-0271 at 0306; Abducted and abused, UGA-OTP-0231-0188 at 0200; Behind the violence, UGA-OTP-0231-0383 at 0397; Amnesty International, "Uganda, "Breaking God's commands": the destruction of childhood by the Lord's Resistance Army", AI index: AFR 59/01/97, 18 September 1997 (hereinafter "The destruction of childhood by LRA"), UGA-OTP-0231-0438 at 0442.
[26] The anguish of northern Uganda, UGA-OTP-0231-0271 at 0299, 0306; Behind the violence, UGA-OTP-0231-0383 at 0390.
[27] The anguish of northern Uganda, UGA-OTP-0231-0271 at 0308-0310; Behind the violence, UGA-OTP-0231-0383 at 0390, 0397.

18. Thereafter the LRA began mounting attacks in northern Uganda. There were notorious attacks at Atiak, in northern Gulu district in 1995, and at a girls' school near Aboke town in Apac district in 1996, where over one hundred schoolgirls were abducted.[28]

19. In the later 1990s, the effect of this armed conflict on northern Ugandan civilians escalated because of continuing LRA attacks and the Ugandan government's decision, in September 1996, to create IDP camps for internally displaced people.[29]

20. Beginning in 2001, Uganda's national military, the Uganda People's Defence Force ("UPDF"), entered Sudan and raided LRA bases there. This military offensive, which the Ugandan government called operation Iron Fist, followed the signing of an agreement between the Ugandan government and the Sudanese government, which permitted the UPDF to take action against the LRA on Sudanese territory.[30]

21. In June 2002, as a result of the intensification of UPDF action, the LRA began crossing from Sudan back into Uganda.[31]

22. On 1 July 2002, the Rome Statute entered into force. Crimes committed from this time on are within the temporal jurisdiction of the Court. This date is also the start date of many of the charges against Dominic Ongwen.

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[28] The anguish of northern Uganda, UGA-OTP-0231-0271 at 0313-0319; The destruction of childhood by LRA, UGA-OTP-0231-0438 at 0442.
[29] The anguish of northern Uganda, UGA-OTP-0231-0271 at 0324-0328; Human Rights and Peace Center and Liu Institute for Global Issues, "The hidden war: The forgotten people. War in Acholi land and its ramifications for peace and security in Uganda", 30 October 2003 (hereinafter "War in Acholi land"), UGA-OTP-0231-0484 at 0580, UGA-OTP-0151-0167-R01 at 0174.
[30] Behind the violence, UGA-OTP-0231-0383 at 0402; War in Acholi land, UGA-OTP-0231-0484 at 0573-0576.
[31] War in Acholi land, UGA-OTP-0231-0484 at 0575; Abducted and abused, UGA-OTP-0231-0188 at 0202; [REDACTED]

2. Contextual elements of war crimes

23. From at least 1 July 2002 to 31 December 2005, an armed conflict not of an international character was taking place in northern Uganda. The parties to that conflict were the LRA and the UPDF together with associated local armed forces raised for the purpose of resisting LRA attacks.

24. Each of the war crimes charged and described in this document should be read in conjunction with this section to establish their objective and subjective elements. The conduct that amounts to charges 1, 3, 5, 6, 9, 11, 13, 15, 17, 19, 21, 22, 24, 26, 28, 30, 32, 34, 35, 37, 39, 41, 43, 45, 47, 48, [REDACTED]63, 65, 67, 69 and 70, which are charged as war crimes, took place in the context of and were associated with that armed conflict. As a senior LRA commander and a key participant in the armed conflict, Dominic Ongwen was aware of the factual circumstances that established its existence.

The conflict was between governmental authorities and an organised armed group:

25. A non-international armed conflict will exist "whenever there is […] protracted armed violence between governmental authorities and organized armed groups".[32] The non-international armed conflict in northern Uganda from at least 1 July 2002 to 31 December 2005 was between the LRA on one side and the UPDF together with associated local armed forces raised for the purpose of resisting LRA attacks on the other. The evidence below establishes the requirements of a non-international armed conflict as set out in the *Katanga* trial judgment.[33]

[32] ICTY, *The Prosecutor v. Dusko Tadic*, IT-94-1-A, 2, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, October 1995, para. 70; see also ICC-01/04-01/07-3436-tENG, para. 1185-1187.
[33] ICC-01/04-01/07-3436-tENG, para. 1186-1187.

26. The UPDF was Uganda's national military. Its engagement in armed conflict with the LRA is the subject of widespread and reliable independent public record. It was sufficiently well-structured, commanded, organised and armed so to act.[34] The associated local armed forces were named "Amuka", local defence units ("LDUs") or "Arrow boys". They were integrated into UPDF command structures.[35]

27. The LRA was well-structured, well-armed, and possessed the required sufficient degree of organisation that enabled it to carry out protracted armed violence. It was composed of Kony's headquarters, called Control Altar, a division, and four brigades: Stockree, Sinia, Trinkle and Gilva.[36] The section in this document on the common elements of modes of liability, paragraphs 73 to 110, addresses the LRA command structure in more detail, as well as discipline, ranks, and promotions. The section on intercepted LRA radio communications, paragraphs 59 to 72, addresses in detail a key indicator of its organisation, its means of communicating and transmitting orders, and by inference its effective internal hierarchy, command structure, and rules. The evidence in this section on contextual elements, paragraphs 23 to 58, demonstrates the LRA's ability to plan military operations and put them into effect, the military equipment that it possessed, and the extent, seriousness, and intensity of its military operations.

The non-international armed conflict was protracted:

[34] The anguish of northern Uganda, UGA-OTP-0231-0271 at 0311-0312; Abducted and abused, UGA-OTP-0231-0188 at 0192, 0202, 0253; War in Acholi land, UGA-OTP-0231-0484 at 0539-0540.
[35] The anguish of northern Uganda, UGA-OTP-0231-0271 at 0305; Behind the violence, UGA-OTP-0231-0383 at 0421-0425; War in Acholi land, UGA-OTP-0231-0484 at 0540-0541.
[36] P-0070, UGA-OTP-0208-0214-R01 at 0232-0239, 0246; ISO logbook, UGA-OTP-0064-0093 at 0166-0167; P-0070, UGA-OTP-0208-0214-R01 at 0239-0246; P-0142, UGA-OTP-0244-0776-R01 at 0779-0786, P-0142's Map, UGA-OTP-0233-1361.

28. There is abundant evidence, covering years of ongoing clashes and attacks, demonstrating that an armed conflict took place between the LRA and the UPDF together with associated local armed forces, throughout northern Uganda from at least 1 July 2002 to 31 December 2005. The fighting was neither sporadic nor isolated nor of low intensity. It spread all over northern Uganda.

29. Perhaps the most striking evidence of the existence of this armed conflict is Kony's own admission, in December 2002, that the LRA was involved in what he called a "war with the government of Uganda". This admission was made in the course of a public radio broadcast on the Mega FM radio station in Gulu.[37] Other remarks by Kony during the course of the broadcast included assertions that "[t]hose who are ambushed, shot and killed […] should know that that is war", "I will fight until I overthrow the government of Museveni", and that "this type of war which is called guerilla warfare […] this is the first one which happened between Kony and Museveni". Kony also makes specific reference to the LRA having shot down a Ugandan government gunship in the recent past.[38]

30. Evidence of the existence of an armed conflict, and of Dominic Ongwen's participation in this conflict as an LRA commander, is also found in the records of intercepted LRA radio communications compiled by the Ugandan authorities in the course of their intelligence operations against the LRA. The radio evidence is discussed in more detail at paragraphs 59 to 72. Although many of the examples below feature Dominic Ongwen, the Prosecution does not primarily seek here to establish his involvement or culpability, only the existence of an ongoing armed conflict between the LRA, of which Ongwen was a part, and Ugandan government forces.

[37] Sound recording (hereinafter "Mega FM sound recording"), UGA-OTP-0023-0002; Mega FM translation and transcript, UGA-OTP-0023-0011 at 0011.
[38] Translation and transcript, UGA-OTP-0023-0011 at 0017.

- On 9, 10 and 12 November 2002, Ongwen is recorded as reporting an attack upon his forces by the UPDF and receiving orders to ambush the UPDF group following his fighters,[39] reporting that his forces had been attacked by two UPDF battalions,[40] and that there had been 54 casualties during fighting with the UPDF at Olung Primary School.[41]
- On 9 May 2003, while Dominic Ongwen is recorded as being sick, his second-in-command continued to engage in hostilities against the UPDF, reporting that on 6 May 2003, following a failed ambush, there was a prolonged confrontation between LRA fighters and the UPDF resulting in many UPDF soldiers being killed.[42]
- Entries in the logbooks for 1 and 2 January 2004 record Dominic Ongwen reporting that he had been engaged in fighting against the UPDF for the last two days, and had lost many soldiers to gunship attacks.[43]
- On 20 March 2004, Okot Odhiambo, a senior LRA commander, is recorded as reporting that the previous day he, Dominic Ongwen, and a [REDACTED]commander called [REDACTED]had combined their forces to attack the barracks at the Lira Palwo camp.[44]
- On 22 August 2004, the logbooks record Dominic Ongwen exhorting [REDACTED]that the LRA "must not spare" the UPDF, and that the UPDF "must be hit daily".[45]
- In a logbook entry dated 2 March 2005, Dominic Ongwen reported successful ambushes and attacks against the UPDF on 21 January, 30 January, and 26 February 2005, resulting in UPDF soldiers killed and

[39] ISO logbook, UGA-OTP-0065-0002 at 0015, 0018.
[40] ISO logbook, UGA-OTP-0065-0002 at 0019-0020.
[41] ISO logbook, UGA-OTP-0065-0002 at 0025.
[42] ISO logbook, UGA-OTP-0068-0146 at 0149.
[43] ISO logbook, UGA-OTP-0066-0002-R01 at 0163, 0166.
[44] ISO logbook, UGA-OTP-0061-0002 at 0165.
[45] ISO logbook, UGA-OTP-0062-0145 at 0217.

equipment captured. Dominic reported that his soldiers had very high morale. He vowed to continue attacking the UPDF.[46]

- An entry dated 10 July 2005 records Dominic Ongwen's reports of five separate ambushes of UPDF forces by his fighters.[47]
- An entry dated 2 December 2005 records a clash between LRA fighters and "the enemy" in which one enemy soldier was killed.[48]

31. [REDACTED][49]to the existence of an armed conflict between the LRA and the UPDF [REDACTED]proceedings.
    - P-0101 [REDACTED] of attacks by government soldiers on the LRA, following information given by civilians.[50]
    - P-0214 [REDACTED]of a UPDF attack on the LRA group of which she was a part that resulted in the wounding of one of her fellow [REDACTED].[51]
    - P-0226 [REDACTED]that she had been present when LRA fighters under the command of Dominic Ongwen and another more senior commander attacked a camp at Patongo sometime in late 2002 or early 2003. After an exchange of fire the government soldiers who had been stationed at the camp ran away.[52]
    - P-0227 said that on the day after her abduction, the UPDF attacked the LRA group that had abducted her.[53]
    - P-0235 [REDACTED]of an attack by a group of LRA led by Dominic Ongwen on a UPDF barracks at a place called Lanyatilo.[54]

[46] ISO logbook, UGA-OTP-0152-0002 at 0169-0170.
[47] ISO logbook, UGA-OTP-0163-0007 at 0170-0171.
[48] ISO logbook, UGA-OTP-0170-0077 at 0097.
[49] [REDACTED]
[50] [REDACTED].
[51] [REDACTED]..
[52] [REDACTED]..
[53] [REDACTED]..
[54] [REDACTED]..

- P-0236 [REDACTED]to an occasion when the LRA group of which she was a part had to flee from a UPDF attack in the course of which she was wounded.[55]

32. Many former LRA commanders and fighters have made statements in which they confirm the existence and set out the detail of the armed conflict between the LRA and the UPDF from at least 1 July 2002 to 31 December 2005.
    - P-0019, [REDACTED], spoke about attacks and ambushes perpetrated by the LRA.[56] He said that these were mostly on UPDF vehicles and that the purpose of attacks upon the UPDF was, in part, to gather weapons and equipment.
    - P-0037, [REDACTED], spoke about an attack in which he took part at Madi Pakele. He was leading a combined force of 60 LRA fighters and attacked the barracks at that location.[57] He also spoke about having frequently seen LRA personnel who had been shot or killed in combat by Ugandan government forces.[58]
    - P-0070, a Major and a battalion commander in the LRA, spoke about "uncountable times" when he, as a member of one of the LRA units known as "Sick Bay", was subject to attack by UPDF helicopters called in by government ground troops. He described how the helicopters attacked at low altitude but were forced higher by return fire using an SPG (self-propelled grenade).[59]
    - P-0133, formerly a Lieutenant commanding a company in the second battalion of Gilva brigade, described how his return to Ugandan

[55] [REDACTED]..
[56] P-0019, UGA-OTP-0218-0571-R01 at 0579-0582.
[57] P-0037, UGA-OTP-0221-0979-R01 at 1004-1007.
[58] P-0037, UGA-OTP-0221-0869-R01 at 0884.
[59] P-0070, UGA-OTP-0228-3165-R01 at 3191-3197, UGA-OTP-0228-2331-R01 at 2333.

society from the LRA was prompted by a "useless war", and that the army was fighting and killing a lot of the LRA.[60]

- P-0048, formerly a Captain in the LRA, spoke about three military operations of which he was part, close in time to each other in 2002. In the first of these, at Katire, P-0048 was part of a group of about 500 LRA fighters who engaged Ugandan army forces in battle. Many people were wounded in the fighting.[61] P-0070[62] and P-0040,[63] a Captain in the LRA, also spoke about this battle.
- P-0205, an officer in Sinia brigade, gave a graphic description of combat in November 2002 between LRA fighters and UPDF troops at Ngora, between Patongo and Kalongo. The LRA fell into an ambush and Dominic Ongwen received a gunshot wound. P-0205, his [REDACTED], had to rescue him.[64]
- P-0231 served under Dominic Ongwen in Oka battalion, which Ongwen commanded before he was promoted to command the entire Sinia brigade. P-0231 spoke of battles between the LRA and Ugandan government forces at Patongo (in 2002 and again in 2003) and Porogali in 2003.[65]
- P-0045, a high-ranking female LRA fighter, spoke of an occasion, shortly before the attack on Pajule in October 2003, when the LRA unit with which she was serving was ambushed by UPDF troops and many LRA fighters were wounded.[66] P-0045 was also present at the Pajule attack, in which she formed part of the unit that attacked the military

[60] P-0133, UGA-OTP-0180-0009-R01 at 0021.
[61] P-0048, UGA-OTP-0221-0280-R01 at 0292.
[62] P-0070, UGA-OTP-0208-0299-R01 at 0322.
[63] P-0040, UGA-OTP-0220-0833-R01 at 0836.
[64] P-0205, UGA-OTP-0243-0544-R01 at 0563, UGA-OTP-0243-0574-R01 at 0581-0583.
[65] P-0231, UGA-OTP-0243-2087-R01 at 2098-2104.
[66] P-0045, UGA-OTP-0218-0223-R01 at 0238.

barracks.[67] P-0048, who was shot during the Pajule attack,[68] confirmed P-0045's presence at Pajule.

- P-0145, formerly a Second Lieutenant in the second battalion of Gilva brigade, said that in 2004 at Lamin Ladera in Gulu district, UPDF forces exchanged fire with LRA troops, of which he was part. P-0145 was shot in the neck during the fighting.[69]
- P-0146, an LRA fighter in Trinkle brigade who took part in the attack on Pajule, was asked to describe the occasions when he had a machine gun in combat with the UPDF. He spoke about combat with Ugandan government troops before and during May 2005 at Akilok in Pader District, at Tim Pa Lukok, at Koyo Lalogi in Pader District, and at Binya.[70]
- P-0104, formerly a second Lieutenant in Dominic Ongwen's Sinia brigade, described three instances of combat between the UPDF and LRA fighters in 2005. These occurred in Patongo, Pader and Lapul. There were fatalities on the LRA side.[71]
- P-0016, formerly a [REDACTED] in Gilva brigade, recalled the combat in 2006, in which LRA army commander Raska Lukwiya died. P-0016 was not present, but heard reports of the action in which government forces had used many military airplanes against the LRA, causing the deaths of about 39 LRA fighters.[72]

33. The conduct described in detail in the sections of this document on the four IDP camp attacks likewise involved combat between LRA forces and UPDF soldiers, and demonstrates the protracted nature of the conflict and the LRA's

[67] P-0048, UGA-OTP-0209-0204-R01 at 0218-0219.
[68] P-0048, UGA-OTP-0209-0179-R01 at 0185.
[69] P-0145, UGA-OTP-0219-0180-R01 at 0186-0187, UGA-OTP-0219-0143-R01 at 0177.
[70] P-0146, UGA-OTP-0228-4397-R01 at 4427-4428.
[71] P-0104, UGA-OTP-0223-0345-R01 at 0362-0366.
[72] P-0016, UGA-OTP-0228-3416-R01 at 3436-3438.

organisation.[73] Similarly, the conduct described in the sections on persecution, paragraphs 111 to 147, on SGBC, [REDACTED], and on conscription and use of child soldiers, paragraphs 617 to 666, supports the existence of the armed conflict.

The conduct that is charged as war crimes took place in the context of and was associated with the non-international armed conflict:

34. Each of the war crimes charged and described in this document took place in the context of and was associated with the non-international armed conflict in northern Uganda between the LRA and the UPDF. Each of the war crimes charged occurred in the time period 1 July 2002 to 31 December 2005, during which the armed conflict existed, and in northern Uganda, which was the geographical scope of the conflict at the time.

35. For each of the war crimes charged, Dominic Ongwen's conduct was closely linked to the hostilities taking place in the territory of northern Uganda.[74] The four charged IDP camp attacks on Pajule, Odek, Lukodi and Abok, described respectively at paragraphs 148 to 228, 229 to 312, 313 to 376, and 377 to 427, formed part of a continuous series of clashes between the two parties to the conflict: the LRA and the UPDF and its associated local armed forces.[75] Dominic Ongwen's conscription and use of child soldiers, described at paragraphs 617 to 666, was closely linked to the fighting and done primarily to sustain the ranks of the LRA, and particularly the Sinia brigade, in its armed conflict against the UPDF. The sexual and gender based crimes, described in [REDACTED], were committed primarily in temporary military camps by Dominic Ongwen and other LRA fighters, who were regularly participating in hostilities. The crimes occurred

[73] See para. 153-155 (Pajule), 232 (Odek), 314-315 (Lukodi) and 380 (Abok).
[74] See *Katanga* trial judgment, establishing this as a relevant factor. ICC-01/04-01/07-3436-tENG, para. 1176.
[75] *See* para. 153-155 (Pajule), 232 (Odek), 314-315 (Lukodi) and 380 (Abok); see *Katanga* trial judgment, establishing this as a relevant factor. ICC-01/04-01/07-3436-tENG, para. 1231.

often immediately preceding or following armed clashes with the UPDF. The presence, use and threat of weapons heightened the coercive nature of the environment in which the victims found themselves.[76]

Dominic Ongwen was aware of the factual circumstances that established the existence of the armed conflict:

36. Dominic Ongwen was aware of the factual circumstances that established the existence of the non-international armed conflict. As a long-term member of the LRA who held a number of command positions, he knew about the conflict. Among other things, as the section on intercepted LRA radio communications describes in detail at paragraphs 59 to 72, this meant that Dominic Ongwen had a radio throughout this period, which allowed him to report on his own military operations, to hear the reports of other commanders of engagement with the UPDF, to receive orders from Joseph Kony and other senior commanders regarding future operations, and to issue orders to his own troops. As the primary means of communication between senior LRA commanders, the transmissions that Dominic Ongwen gave and heard made him aware of the factual circumstances that established the existence of the armed conflict, in particular the breadth of the conflict and its impact across the region.

37. Further, as the evidence in this section on the contextual elements of the non-international armed conflict details, Dominic Ongwen and fighters under his command committed many of these attacks. By virtue of his participation in these attacks, which occurred over several years and in different locations in northern Uganda, Dominic Ongwen knew about the conflict.

[76] See *Katanga* trial judgment, establishing this as a relevant factor. ICC-01/04-01/07-3436-tENG, para. 1233, 1234.

3. Contextual elements of crimes against humanity

38. From at least 1 July 2002 to 31 December 2005, the LRA committed a widespread and systematic attack directed against the civilian population of northern Uganda. It engaged in a course of conduct that involved the multiple commission of acts, pursuant to an organisational policy.

39. The conduct that amounts to charges 2, 4, 7, 8, 10, 12, 14, 16, 18, 20, 23, 25, 27, 29, 31, 33, 36, 38, 40, 42, 44, 46, 49, [REDACTED]61, 62, 64, 66 and 68, which are charged as crimes against humanity, was committed as part of that attack. Dominic Ongwen knew that his conduct was part of or intended the conduct to be part of the widespread and systematic attack directed against the civilian population of northern Uganda. Each of the crimes against humanity charged and described in this document should be read in conjunction with this section to establish their objective and subjective elements.

The LRA's conduct involved the commission of multiple acts of violence referred to in article 7(1) directed against a civilian population:

40. As described in detail below, from at least 1 July 2002 to 31 December 2005, the LRA carried out a campaign directed against the civilian population.[77] Multiple acts referred to in article 7(1) were committed. As explained below, and also in the section on persecution, paragraphs 111 to 147, the civilian population of northern Uganda was targeted in sufficient number and in such a manner that it is clear it was the primary target of the attack.[78]

[77] See *Katanga* trial judgment, establishing this as a relevant factor. ICC-01/04-01/07-3436-tENG, para. 1101.
[78] See *Katanga* trial judgment, establishing this as a relevant factor. ICC-01/04-01/07-3436-tENG, para. 1104.

The LRA acted pursuant to an organisational policy:

41. The geographical spread and frequency of LRA attacks, and the similar manner in which they were committed, demonstrates that they were not spontaneous and separate acts but instead were committed pursuant to an organisational policy. The evidence set out in paragraphs 46 to 56 shows that the LRA intended to carry out an attack against a civilian population[79] and actively promoted or encouraged[80] the attack. In particular, the evidence set out in the section on persecution, paragraphs 111 to 147, shows that the LRA launched attacks with the particular purpose of punishing the civilian population for their failure to support the LRA and for their purported support of the government. This buttresses the existence of an organisational policy.

42. The intercepted LRA radio communications also show that the organisational policy was adopted and disseminated according to a pre-established design. For example, on 7 May 2003, Joseph Kony is recorded in a logbook of intercepted LRA radio communications as ordering that the LRA should "wage serious atrocities" in northern Uganda so that the community "blame[s] the government".[81] On 23 January 2004, the same source records his instruction that the killing of civilians from infant to old age was to start "seriously", because civilians are the ones who put pressure on the government to fight LRA.[82]

43. The fact that these attacks were not random acts of violence committed by local commanders, but rather a systematic application of LRA policy that could be started and stopped in accordance with orders ultimately dictated by Joseph

[79] See *Katanga* trial judgment, establishing this as a relevant factor. ICC-01/04-01/07-3436-tENG, para. 1108, 1113.
[80] ICC Statute, Elements of Crimes, article 7, Introduction, para. 3.
[81] ISO logbook, UGA-OTP-0063-0002 at 0191.
[82] ISO logbook, UGA-OTP-0061-0002 at 0016.

Kony, is demonstrated by an instruction from Kony to his subordinates on 19 November 2004. At this time, peace talks were being discussed and a complaint had been received of LRA attacks that were in breach of the conditions of the talks. Kony's instruction was that LRA forces in Uganda should not, at this time, continue attacks on civilians.[83] Attacks resumed at the start of 2005.[84]

44. The existence of this policy is further proved by the targeting of civilians to obtain food and other supplies, the abduction of civilians, including children under the age of 15 years, to ensure a supply of fighters for the LRA, and the abduction of women and girls to distribute them among LRA fighters to serve as their forced exclusive conjugal partners and/or domestic slaves. This evidence is discussed in detail under the respective sections on the IDP camp attacks, paragraphs 175 to 178, (Pajule), 253 to 260 (Odek), 334 to 336 (Lukodi), 400 to 401 (Abok), as well as in the sections on SGBC, [REDACTED], and on conscription and use of child soldiers, paragraphs 617 to 666.

45. With its military structure, established means of communications, and access to weapons, the LRA was an organisation that had the capacity to commit the attack.[85] As a result of the attack, from at least 1 July 2002 to 31 December 2005, thousands of civilians were killed, wounded, abducted, or otherwise victimised.[86]

The attack on the civilian population of northern Uganda was widespread and systematic:

46. The evidence below demonstrates that the LRA attack was both widespread and systematic.

[83] ISO logbook, UGA-OTP-0152-0002 at 0049.
[84] ISO logbook, UGA-OTP-0152-0002 at 0121, 0122, 0123-0124.
[85] See *Katanga* trial judgment, establishing this as a relevant factor. ICC-01/04-01/07-3436-tENG, para. 1119.
[86] Atrocities Committed by LRA Rebels in Northern and Eastern Uganda, August 2004 (hereinafter "List of LRA atrocities"), UGA-OTP-0037-0153; The Uganda Human Rights Commission Annual Report, 2003, UGA-OTP-0044-0044 at 0044.

47. There is significant evidence that the LRA carried out a systematic and widespread attack on the civilian population in northern Uganda in the words used by Joseph Kony in the December 2002 Mega FM public radio broadcast in Gulu.[87] While purporting to deny the abduction of children by the LRA he conceded, "that's the way we recruit". He continued "we took them because of difficulties; this is the same way Museveni was doing it when he was in the bush by abducting".[88]

48. Vincent Otti, Joseph Kony's second in command, spoke publicly in the same broadcast. He said, "I want to assure you that the girls whom we collect and send to the bush are our mothers. We always collect the young ones who are not infected with HIV".[89] The only reasonable interpretation of these words is that the LRA was implementing a policy of abducting young girls for sex.

49. Without more, the four attacks at Pajule, Odek, Lukodi and Abok that form the basis for many of the charges in this document alone constitute a widespread and systematic attack on the civilian population of northern Uganda. The four attacks are in multiple administrative districts. Their locations form a roughly equilateral triangle of which the sides are approximately 80 kilometres long; the widespread nature of these four components of the attack is thereby demonstrated.[90]

50. Each of the four attacks occurred according to a pattern. Defending soldiers were engaged and the civilian population was then attacked. Civilians were murdered

[87] Mega FM sound recording, UGA-OTP-0023-0002; Mega FM translation and transcript, UGA-OTP-0023-0011.
[88] Mega FM translation and transcript, UGA-OTP-0023-0011 at 0013.
[89] Mega FM translation and transcript, UGA-OTP-0023-0011 at 0020.
[90] See UGA-OTP-0252-0352. The location of Abok IDP camp and the red triangle are not part of the map originally prepared by OCHA (see the original at UGA-OTP-0252-0353). These elements were added to the map by the OTP Forensic Science Section.

or gravely wounded, and civilian stocks of foodstuffs, cooking utensils, and other goods were pillaged. Surviving members of the camp population were enslaved either temporarily, to act as porters for the pillaged goods, or permanently, to be used as fighters, child soldiers or domestic and sex slaves in the LRA.

51. These attacks, however, do not stand alone. They are simply four examples of a much larger number of attacks by LRA fighters on civilian targets in northern Uganda from at least 1 July 2002 to 31 December 2005. Other examples are found in the intercepted radio communications contained in the logbooks listed immediately below. Again, the Prosecution does not primarily seek here to establish Dominic Ongwen's involvement or culpability, only the existence of a widespread and systematic attack, in which Dominic Ongwen took part.

- In the months from July to August 2002 there were LRA attacks on civilians in Luwero,[91] Pajule,[92] and in Mucwini sub-county.[93]
- On 24 November 2002, Kony ordered the LRA to "concentrate on killing" with the aim that Acholiland would become depopulated of civilians so as to facilitate the LRA's struggle against the UPDF.[94]
- Between March and June 2003 there were LRA attacks on civilians in Oroko,[95] Pabbo,[96] and Pajok.[97]
- On 5 April 2003, Dominic Ongwen (in what was apparently a direct response to an order from Kony to attack the civilian inhabitants of a camp at Lagile who had become a "problem"[98]) reported that he had attacked a camp at Lagile, burning many houses, killing twenty civilians and abducting many others. Criticised for having engaged in

[91] ISO logbook, UGA-OTP-0063-0194 at 0219.
[92] ISO logbook, UGA-OTP-0063-0194 at 0221.
[93] ISO logbook, UGA-OTP-0063-0194 at 0327.
[94] ISO logbook, UGA-OTP-0065-0002 at 0058.
[95] ISO logbook, UGA-OTP-0060-0002 at 0012.
[96] ISO logbook, UGA-OTP-0060-0002 at 0123.
[97] ISO logbook, UGA-OTP-0060-0002 at 0103.
[98] ISO logbook, UGA-OTP-0063-0002 at 0079, 0123.

fighting with UPDF forces during the attack, Dominic Ongwen responded that had he not done so he would not have been able to attack the civilians.[99]

- On 5 May 2003, Vincent Otti told Joseph Kony that his major objectives were to "step up serious operations" so that the "entire northern Uganda will all cry", and that, as per Kony's instructions, he was deploying forces in all parts of Acholi, Lango, and Madi to attack camps, schools, centres, and towns.[100]
- In June 2003, during an LRA attack at a location in Otuboi, Kaberamaido, over 56 schoolgirls were abducted.[101] A far larger abduction of children, both boys and girls, is reported to have occurred between Gere Gere and Lira Palwo on 2 July 2003.[102]
- In September 2003 there were LRA attacks on civilians on the Soroti-Lira road and in the area of Wera.[103] On 16 September, Dominic Ongwen reported that he had attacked Opit church mission, pillaging money and radios.[104]
- On 25 November 2003, Dominic Ongwen was reported to have recently led an attack at Labwor Omer (Palaro) in which his fighters posed as UPDF soldiers before opening fire on drinkers in a bar. Many civilians were reported as having been killed, others abducted, and houses were set ablaze.[105]

[99] ISO logbook, UGA-OTP-0063-0002 at 0083.
[100] ISO logbook, UGA-OTP-0063-0002 at 0185.
[101] ISO logbook, UGA-OTP-0060-0149 at 0154.
[102] ISO logbook, UGA-OTP-0060-0149 at 0178.
[103] ISO logbook, UGA-OTP-0060-0149 at 0274.
[104] UPDF logbook, UGA-OTP-0197-1078 at 1085.
[105] ISO logbook, UGA-OTP-0066-0002-R01 at 0087.

- In February 2004, Okot Odhiambo reported to Kony that he had attacked a civilian camp at Bar Olonyo (Barlonyo) in Ogur and had killed UPDF soldiers and civilians indiscriminately.[106]
- On 13 February 2004, Dominic Ongwen reported that in the course of an attack on the UPDF at Koc Ongako he had burned "all houses".[107]
- In August 2004, Dominic Ongwen reported to Buk Abudema, a senior LRA commander, that he had ambushed and killed people on the Awach road including a "boda boda" (motorcycle taxi).[108]
- In February and March 2005, LRA field commanders reported ambushes on vehicles in which civilians died.[109]
- On 10 July 2005, Dominic Ongwen indicated that he was aware of Kony's continuing order to abduct young girls and that he was "going to work on that himself".[110]
- On 23 November 2005, senior LRA commanders are recorded discussing ambushes on vehicles in the Pader district in which a total of 18 people were killed.[111]

52. Many former LRA commanders and fighters have made statements in which they confirm the existence and set out the detail of attacks on civilian targets taking place between 1 July 2002 and 31 December 2005.

- P-0233, an LRA fighter in Stockree brigade, took part in an abduction mission at Acet that was carried out pursuant to Dominic Ongwen's orders. The targets of the mission were boys and girls between 13 and 15.[112]

[106] ISO logbook, UGA-OTP-0061-0002 at 0093.
[107] UPDF logbook, UGA-OTP-0197-0697 at 0780.
[108] ISO logbook, UGA-OTP-0062-0145 at 0181.
[109] ISO logbook, UGA-OTP-0152-0002 at 0179, 0183.
[110] ISO logbook, UGA-OTP-0163-0007 at 0169.
[111] ISO logbook, UGA-OTP-0170-0077 at 0088.
[112] P-0233, UGA-OTP-0243-1149-R01 at 1151-1162.

- P-0245 was Dominic Ongwen's [REDACTED]when the latter commanded Oka battalion and before his promotion to brigade commander. P-0245 listed 10 locations where abductions, particularly of young girls, had taken place between 2002 and 2004, either under Dominic Ongwen's direct command or by troops under his control.[113]
- P-0231 spoke of an attack at Ojwii, in which he took part in 2002 on Dominic Ongwen's orders. The purpose of the attack was to obtain food. The witness was aware that abductions were being carried out at this time by other units.[114]
- P-0224, former LRA fighter and Dominic Ongwen's [REDACTED], recalled that in 2003 and 2004, the principal activity of the LRA was killing and abducting civilians.[115]
- P-0205 spoke of an open order from Kony, which Dominic Ongwen relayed to his subordinates, to abduct children as young as 10 or 12. The order was issued in 2003, and was in force until peace negotiations in 2006.[116]
- P-0048 spoke about attacks by the LRA in Soroti starting in June 2003.[117] Before these attacks, Vincent Otti had addressed the attackers and told them that the purpose of the attacks was to force the people living there to join the LRA, to bring chaos and to reduce the influence of the government in the area.[118]
- P-0040 recalled hearing Kony giving orders in December 2003 that civilians be killed in large numbers to draw the attention of the

[113] P-0245, UGA-OTP-0244-0520-R01 at 0523-0536.
[114] P-0231, UGA-OTP-0243-2025-R01 at 2039-2040.
[115] P-0224, UGA-OTP-0244-3160-R01 at 3163.
[116] P-0205, UGA-OTP-0243-0819-R01 at 0825-0833.
[117] P-0048, UGA-OTP-0221-0314-R01 at 0331.
[118] P-0048, UGA-OTP-0209-0227-R01 at 0231.

international community and to put pressure on the Ugandan government to talk to the LRA.[119]

- P-0037 recalled hearing Kony give orders at the end of 2003 that civilians aged between 13 and 17 should be abducted in Teso. P-0037 himself was ordered to attack a hospital and did so. He described Kony's order as a punishment to show that he (the witness) had a bad heart and so that he would not later change his mind, defect from the LRA, and join the government. [120]
- P-0146, recalled hearing about the attack which Okot Odhiambo had led at Barlonyo in early 2004. He heard from one of Odhiambo's escorts, who had been present, that many civilians were killed in the attack.[121] P-0104 heard about this attack and that civilians had been killed.[122] P-0054, a Sinia company commander, also heard about the attack, first on the radio and then by talking to a soldier who had participated. He heard that 230 people died.[123]
- P-0133 spoke about an attack by the LRA on a camp at Pagak (also known as Wiya Nono) in March 2004.[124] This attack was planned by Vincent Otti. It was a revenge attack on the home area of a recently escaped LRA officer.[125] P-0133 selected the fighters who were to take part in the attack. More than ten civilians were abducted, all of whom were then killed [REDACTED], on Vincent Otti's orders.[126] P-0070 confirmed that the motivation for the attack at Wiya Nono (Pagak) was the escaped LRA officer.[127]

[119] P-0040, UGA-OTP-0220-0678-R01 at 0685-0686.
[120] P-0037, UGA-OTP-0221-0979-R01 at 0995-1015.
[121] P-0146, UGA-OTP-0228-4397-R01 at 4412.
[122] P-0104, UGA-OTP-0223-0482-R01 at 0483-0484.
[123] P-0054, UGA-OTP-0221-1757-R01 at 1777-1791.
[124] P-0133, UGA-OTP-0180-0009-R01 at 0013.
[125] P-0133, UGA-OTP-0228-0677-R01 at 0678-0680.
[126] P-0133, UGA-OTP-0228-0677-R01 at 0693-0697.
[127] P-0070, UGA-OTP-0228-3039-R01 at 3045-3046.

53. On 14 December 2004, P-0038, a UPDF officer assigned by the Ugandan government to liaise with the Prosecution, provided[128] a copy of a document entitled: Atrocities Committed by LRA Rebels in Northern and Eastern Uganda.[129] The document lists attacks on the civilian population attributed to the LRA between July 2002 and August 2004. There were 51 attacks in Apac district, 164 in Lira district, 88 in Pader district, 118 in Gulu district, 126 in Kitgum district, 32 in a district that is not identified, and 133 in the combined districts of Soroti, Katakwi, Kabermaido and Kotido.[130] The attacks include murder, abductions and pillaging.

54. The conduct described in detail in the section on persecution, paragraphs 111 to 147, SGBC, [REDACTED], and on the conscription and use of child soldiers, paragraphs 617 to 666, also supports the existence of the widespread and systematic attack.

The conduct that is charged as crimes against humanity was committed as part of a widespread and systematic attack directed against a civilian population of northern Uganda:

55. Each of the crimes against humanity charged and described in this document was committed as part of this widespread and systematic attack directed against the civilian population of northern Uganda. Each crime against humanity charged occurred in the period 1 July 2002 to 31 December 2005, during which the attack took place. Each crime against humanity charged occurred in northern Uganda, which was the geographical scope of the attack.

[128] P-0038, UGA-OTP-0244-0912-R01 at 0916, para. 29 ("Update Atrocities Report Aug 04").
[129] List of LRA atrocities, UGA-OTP-0037-0153.
[130] List of LRA atrocities, UGA-OTP-0037-0153 at 0249-0256.

56. For each of the crimes against humanity charged, Dominic Ongwen's conduct was consistent with the other acts that formed the basis of the widespread and systematic attack. As described in the respective sections on the IDP camp attacks, paragraphs 148 to 228 (Pajule), 229 to 312 (Odek), 313 to 376 (Lukodi), and 377 to 427 (Abok), the aims of the four IDP camp attacks were consistent and the consequences, for example the pattern of the crimes and the type of victims they occasioned, were similar.[131] Dominic Ongwen's conscription and use of child soldiers, described in the section on conscription and use of child soldiers at paragraphs 617 to 666, occurred on a regular basis and in the same manner to bolster the ranks of the LRA, and particularly the Sinia brigade. [REDACTED] sexual and gender based crimes on women and girls who had been abducted from civilian centres, described in the section on SGBC, [REDACTED],, was a facet of the LRA's organisational policy to attack civilians.

Dominic Ongwen knew that his conduct was part of or intended the conduct to be part of the widespread and systematic attack directed against the civilian population of northern Uganda:

57. Dominic Ongwen knew that his conduct was part of or intended his conduct to be part of the widespread and systematic attack directed against the civilian population of northern Uganda. As a long-term member of the LRA who held a number of command positions, he knew about the conflict. Among other things, this meant that Dominic Ongwen had a radio throughout this period. The transmissions that Dominic Ongwen gave and heard made him aware of the factual circumstances that established the widespread and systematic attack

[131] See *Katanga* trial judgment, establishing this as a relevant factor. ICC-01/04-01/07-3436-tENG, para. 1124.

directed against the civilian population.[132] His access to the made it certain that he knew that his conduct was of a similar nature to that of other LRA commanders.

58. By his words and conduct, including those described in the section on persecution, paragraphs 111 to 147, and in the sections on the four IDP camp attacks, paragraphs 148 to 228 (Pajule), 229 to 312 (Odek), 313 to 376 (Lukodi), and 377 to 427 (Abok), Dominic Ongwen had knowledge of the LRA's organisational policy and demonstrated his subscription to it. As such, he deliberately carried out the IDP camp attacks in furtherance of it. Similarly, understanding the LRA's policy with respect to the abduction of boys and girls to use primarily as child soldiers and forced wives respectively, Dominic Ongwen continued with the commission of these crimes because he personally benefited from the policy: [REDACTED]by obtaining praise and promotion for carrying out attacks pursuant to or in furtherance of the policy.

IV. NOTE ON INTERCEPTED LRA RADIO COMMUNICATIONS

59. In addition to the witness statements that the Prosecution is tendering to support the charged crimes, the Chamber will also have access to the LRA's own radio communications, which were intercepted and recorded contemporaneously by the Ugandan government. This body of intercepted communications is too voluminous and its sources too diverse to be anything other than genuine and highly probative evidence of the LRA's words and conduct at relevant times.

60. From at least the early 1990s, the LRA used high-frequency radios to communicate internally.[133] After operation Iron Fist in mid-2002 destroyed the

[132] See *Katanga* trial judgment, establishing this as a relevant factor. ICC-01/04-01/07-3436-tENG, para. 1125.
[133] P-0301, UGA-OTP-0249-0423-R01 at 0426; P-0029, UGA-OTP-0027-0231-R01 at 0235; ISO logbook, UGA-OTP-0063-0194 at 0208.

LRA's base of operations in Sudan, communication through these radios became critical to its survival. After operation Iron Fist, Joseph Kony remained in Sudan, while his forces streamed into northern Uganda. He used high-frequency radio to issue orders to and communicate with his senior commanders, who were spread over large distances.[134]

61. By 2002, the LRA had developed a sophisticated method of communicating by radio.[135] The LRA transmitted punctually: every day at set times, on pre-determined frequencies.[136] Kony required senior LRA commanders to call in their location[137] and to report on their activities since the previous communication time. He also used the radio to give orders and to enforce discipline.[138] Kony issued radios to Brigade commanders and above[139] and lower-ranked commanders who were particularly active.[140] From at least 1 July 2002 to 31 December 2005, this included Dominic Ongwen.[141]

62. The LRA communicated in Acholi.[142] They knew that their unencrypted radio communications were being intercepted, so they used coded language often.[143] For example, they used call-signs for commanders like "Tem Wek Ibong" for Dominic Ongwen,[144] Acholi proverbs,[145] and LRA jargon like "aunty" for

[134] P-0003, UGA-OTP-0027-0214-R01 at 0226; P-0059, UGA-OTP-0027-0244 at 0249.
[135] P-0003, UGA-OTP-0027-0214-R01 at 0224; P-0059, UGA-OTP-0027-0244 at 0251.
[136] P-0059, UGA-OTP-0027-0244 at 0249; P-0291, UGA-OTP-0246-0061-R01 at 0066; P-0003, UGA-OTP-0027-0214-R01 at 0221, 0224, UGA-OTP-0246-0077-R01 at 0083; [REDACTED].
[137] P-0291, UGA-OTP-0246-0061-R01 at 0066.
[138] P-0003, UGA-OTP-0027-0214-R01 at 0226.
[139] P-0003, UGA-OTP-0027-0214-R01 at 0225; P-0029, UGA-OTP-0027-0231-R01 at 0239.
[140] P-0059, UGA-OTP-0027-0244 at 0250.
[141] P-0003, UGA-OTP-0027-0214-R01 at 0225; [REDACTED]; [REDACTED] ; ISO logbook, UGA-OTP-0064-0002 at 0077 (Ongwen reporting on the radio on 27 August 2002); ISO logbook, UGA-OTP-0064-0093 at 0130 (Ongwen reporting on the radio on 10 September 2002); ISO logbook, UGA-OTP-0163-0007 at 0247 (Ongwen reporting on the radio on 20 August 2005), see also 0090, 0155-0156, 0187, 0230.
[142] P-0291, UGA-OTP-0246-0061-R01 at 0066; P-0003, UGA-OTP-0027-0214-R01 at 0226.
[143] P-0291, UGA-OTP-0246-0061-R01 at 0066; P-0301, UGA-OTP-0249-0423-R01 at 0426.
[144] P-0125, UGA-OTP-0175-0300-R01 at 0304; P-0003, UGA-OTP-0248-0094-R01 at 0101; P-0059, UGA-OTP-0248-0328-R01 at 0332.

"civilian".[146] For their most sensitive communications,[147] the LRA used a code system called "Tonfas",[148] an internally distributed book containing random words that commanders referred to in order to transmit a sentence.[149] The Prosecution has collected some examples of these.[150]

63. In the mid-1990s, the Ugandan government recognised the strategic significance of the radio communications to its military campaign against the LRA.[151] Independently, two radio interception operations were set up: by the UPDF,[152] and by the Internal Security Organisation ("ISO").[153] By 2001, both organisations had established permanent offices at the UPDF barracks in Gulu, and were intercepting LRA radio communications daily, with trained staff, on a full-time basis.[154] Their mandate was to intercept and record radio communications to inform UPDF military decisions.[155] Gulu was selected as the permanent operating base because that region was the main theatre of LRA operations and closest to the UPDF decision-makers.[156]

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[145] P-0003, UGA-OTP-0027-0214-R01 at 0224 ("Another example is 'tye imac gar'. This means the train's headlights. This means 'it is still in front.' The LRA also call mountains 'churches'. If the church is in the train's headlights, the mountain is still ahead".).
[146] P-0003, UGA-OTP-0248-0094-R01 at 0098; P-0059, UGA-OTP-0248-0328-R01 at 0335; the LRA used the code "M7" to refer to Museveni, see ISO logbook UGA-OTP-0068-0002 at 0084; ISO logbook, UGA-OTP-0232-0234 at 0309; ISO logbook, UGA-OTP-0061-0002 at 0104; ISO logbook, UGA-OTP-0063-0194 at 0274; ISO logbook, UGA-OTP-0064-0093 at 0103; ISO logbook, UGA-OTP-0064-0093 at 0149.
[147] P-0003, UGA-OTP-0027-0214-R01 at 0217, UGA-OTP-0069-0803-R01 at 0805-0806; P-0059, UGA-OTP-0027-0244 at 0250; P-0291, UGA-OTP-0246-0061-R01 at 0067; P-0125, UGA-OTP-0170-0047-R01 at 0053-0054; ISO logbook, 8 July 2003 at 1300, UGA-OTP-0068-0146 at 0303 ("Otti sent a msg to all stns that beginning fm today onwards, no chatting on the radio. Everything must be sent in msg form using tonfas and only signallers shd do it strictly".).
[148] P-0003, UGA-OTP-0246-0077-R01 at 0085; P-0301, UGA-OTP-0249-0423-R01 at 0430.
[149] P-0003, UGA-OTP-0027-0214-R01 at 0217-0220.
[150] See an example of LRA Tonfas code at UGA-OTP-0053-0082; see also P-0003, UGA-OTP-0246-0077-R01 at 0085; see other examples of Tonfas at UGA-OTP-0053-0092, UGA-OTP-0053-0105, UGA-OTP-0053-0118, UGA-OTP-0053-0137.
[151] P-0059, UGA-OTP-0027-0244 at 0246; P-0301, UGA-OTP-0249-0423-R01 at 0426, 0428.
[152] P-0003, UGA-OTP-0027-0214-R01 at 0216; P-0029, UGA-OTP-0027-0231-R01 at 0234.
[153] P-0027, UGA-OTP-0249-0444-R01 at 0446.
[154] P-0003, UGA-OTP-0246-0077-R01 at 0081; P-0027, UGA-OTP-0207-0256-R01 at 0257.
[155] P-0291, UGA-OTP-0246-0061-R01 at 0064; P-0027, UGA-OTP-0249-0444-R01 at 0446, 0448-0449, UGA-OTP-0207-0256-R01 at 0257-0258.
[156] P-0027, UGA-OTP-0249-0444-R01 at 0449.

64. The Ugandan police force also intercepted communications from mid-2003, although its operation was more modest.[157]

65. The interception process was similar across the UPDF, the ISO and the police. Radio operators switched on the radio prior to the set communication time.[158] They took short-hand rough notes during the communication.[159] These were then de-coded after the communication was finished and entered in English, in long-hand, into a logbook.[160] These logbook entries were the most important record produced.[161] They were used to report to their superiors and also to show to the UPDF Division Commander at Gulu barracks.[162] The ISO also sent them by fax to Kampala.[163] This procedure was followed after each LRA communication time.[164]

66. From at least 2003,[165] the UPDF and the ISO tape-recorded LRA radio communications, in case the radio operators missed the meaning or content of communications during the live broadcast.[166] The police did not tape-record.[167]

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[157] P-0125, UGA-OTP-0170-0047-R01 at 0050-0055.
[158] P-0003, UGA-OTP-0246-0077-R01 at 0083; P-0291, UGA-OTP-0246-0061-R01 at 0067-0068; P-0059, UGA-OTP-0027-0244 at 0246; P-0125, UGA-OTP-0170-0047-R01 at 0051; a photograph of the ISO radio, UGA-OTP-0244-3325.
[159] P-0003, UGA-OTP-0027-0214-R01 at 0222-0223; P-0291, UGA-OTP-0246-0061-R01 at 0068; P-0059, UGA-OTP-0027-0244 at 0247. See an example of the short-hand rough notes at UGA-OTP-0197-2319.
[160] P-0003, UGA-OTP-0027-0214-R01 at 0219, 0223, UGA-OTP-0246-0077-R01 at 0084-0085; P-0291, UGA-OTP-0246-0061-R01 at 0068-0069; P-0059, UGA-OTP-0027-0244 at 0247; P-0125, UGA-OTP-0170-0047-R01 at 0051-0052.
[161] P-0003, UGA-OTP-0246-0077-R01 at 0084. See an example of a UPDF logbook entry at UGA-OTP-0197-0308.
[162] P-0003, UGA-OTP-0027-0214-R01 at 0223, UGA-OTP-0069-0803-R01 at 0804, UGA-OTP-0246-0077-R01 at 0083; P-0291, UGA-OTP-0246-0061-R01 at 0069; P-0029, UGA-OTP-0027-0231-R01 at 0237; P-0032, UGA-OTP-0069-0796-R01 at 0799, UGA-OTP-0246-0003-R01 at 0010; P-0059, UGA-OTP-0027-0244 at 0248; P-0125, UGA-OTP-0170-0047-R01 at 0053.
[163] P-0291, UGA-OTP-0246-0061-R01 at 0069; P-0032, UGA-OTP-0069-0796-R01 at 0799, UGA-OTP-0246-0003-R01 at 0010; P-0059, UGA-OTP-0027-0244 at 0248.
[164] P-0032, UGA-OTP-0246-0003-R01 at 0010.
[165] P-0003, UGA-OTP-0246-0077-R01 at 0083; P-0291, UGA-OTP-0246-0061-R01 at 0068-0069; P-0032, UGA-OTP-0069-0796-R01 at 0800.
[166] P-0003, UGA-OTP-0246-0077-R01 at 0083; P-0291, UGA-OTP-0246-0061-R01 at 0068; P-0059, UGA-OTP-0027-0244 at 0247; a photograph of the ISO tape recorder, UGA-OTP-0244-3325. See an example of a UPDF tape at UGA-OTP-0038-0065.
[167] P-0125, UGA-OTP-0170-0047-R01 at 0055.

67. The UPDF interception operation also had a direction-finding capability.[168] They produced typed intelligence reports containing summaries of the logbooks and geographic coordinates of transmitting radios pinpointed by direction-finding computer software.[169]

68. The Prosecution has collected the records that these organisations generated, covering the period 2002-2005: approximately 675 pages of short-hand rough notes, 6,000 pages of logbooks, 300 UPDF intelligence reports, and 600 tapes.[170] It has interviewed nine persons involved at all levels of the ISO's, UPDF's, and police's interception operation.[171] These persons, and particularly the radio operators, were intimately familiar with the LRA. P-0003 was one of the most highly trained radio operators in the UPDF[172] and listened to LRA radio communications almost every day for six years.[173] P-0059 is an ISO radio operative, a native Acholi speaker, who listened to them for about ten years.[174] They could break the LRA's Tonfas code,[175] they knew the LRA's command structure,[176] and they could identify LRA commanders by their voices alone.[177]

[168] P-0003, UGA-OTP-0246-0077-R01 at 0082-0083.
[169] P-0003, UGA-OTP-0246-0077-R01 at 0082-0083, 0086; P-0029, UGA-OTP-0027-0231-R01 at 0240. See an example of a UPDF intelligence report at UGA-OTP-0017-0017.
[170] These numbers are fluid. As of the time of writing this document, more records have been collected, but not yet registered as evidence or analysed. For example, there are only 477 tapes recorded in the spreadsheet referred to in paragraph 69 because some tapes have not yet been analysed.
[171] P-0003, P-0029 (UPDF); P-0027, P-0032, P-0059, P-0291, P-0301 (ISO); P-0125 (Police), P-0038 (UPDF liaison).
[172] P-0003, UGA-OTP-0246-0077-R01 at 0081.
[173] P-0003, UGA-OTP-0027-0214-R01 at 0216, UGA-OTP-0248-0094-R01 at 0096.
[174] P-0059, UGA-OTP-0027-0244 at 0246, UGA-OTP-0248-0328-R01 at 0331.
[175] P-0003, UGA-OTP-0027-0214-R01 at 0217-0220; P-0059, UGA-OTP-0027-0244 at 0250; ISO logbook, 5 June 2003 at 0800, UGA-OTP-0068-0146 at 0222-0223 ("Nyeko told Otti that he recently got a notebook showing clearly that UPDF monitor and brake through their codes. That he compared the info he got in that notebook with the msg they had been sending using their Tonfas and found that their tonfas like (Disco, CILINDI, TLIGOU & battery) were all broken".).
[176] P-0032, UGA-OTP-0246-0003-R01 at 0008; P-0059, UGA-OTP-0150-0022-R01 at 0023; P-0003, UGA-OTP-0027-0214-R01 at 0227; P-0029, UGA-OTP-0027-0231-R01 at 0234; a photograph of an ISO list of LRA commanders dated 25 January 2005 on the wall of the ISO interception office in Gulu, UGA-OTP-0244-3328.
[177] P-0059, UGA-OTP-0027-0244 at 0251; P-0003, UGA-OTP-0027-0214-R01 at 0225.

69. Tapes that contain communications on dates most relevant to the charges against Ongwen have been transcribed and translated. Because of the LRA's use of coded language, the Prosecution has verified their content with the same radio operators who first de-coded those communications[178] and with escaped or captured LRA fighters who were familiar with the system of radio communication.[179] To assist the Chamber and the Defence to navigate the body of collected material, the Prosecution has compiled a spreadsheet and a visual aid that links the tapes to other intercept material generated by the UPDF, the ISO and the police on that same date.[180]

70. The body of LRA radio communications, intercepted and recorded in the context of a civil war, with rudimentary equipment,[181] over 10 years ago, is not without flaws. Record-keeping was not meticulous.[182] Corroboration between the sources of intercept evidence is not always consistent. For example, sometimes communications recorded in one logbook are not recorded in another, or cannot be discerned on the corresponding tape.[183] Although the records that the various organisations maintained were distinct and independently compiled, staff from these organisations worked in close proximity and commingled.[184] And the Prosecution provided financial assistance to the UPDF's interception operation.[185]

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[178] *See* e.g., P-0003, UGA-OTP-0132-0002-R01, UGA-OTP-0248-0094-R01; P-0059, UGA-OTP-0150-0037-R01, UGA-OTP-0248-0328-R01.
[179] *See* e.g., P-0138, UGA-OTP-0228-0604-R01, UGA-OTP-0191-0623-R01 to UGA-OTP-0191-0653-R01; P-0016, UGA-OTP-0228-3535-R01 at 3541, UGA-OTP-0167-0042-R01; P-0142, UGA-OTP-0228-4583-R01 at 4598.
[180] Explanatory note, UGA-OTP-0251-0833; Spreadsheet of radio evidence, UGA-OTP-0251-0836; Timeline of written radio evidence, UGA-OTP-0251-0835.
[181] See photographs of the interception house in Gulu, UGA-OTP-0244-3308 to UGA-OTP-0244-3358.
[182] P-0003, UGA-OTP-0246-0077-R01 at 0083-0084; P-0059, UGA-OTP-0027-0244 at 0248; P-0027, UGA-OTP-0207-0256-R01 at 0259-0260; photographs of the ISO archive in Gulu, UGA-OTP-0244-3320, UGA-OTP-0244-3355.
[183] P-0027, UGA-OTP-0207-0256-R01 at 0259; P-0003, UGA-OTP-0246-0077-R01 at 0083-0084.
[184] P-0291, UGA-OTP-0246-0061-R01 at 0064-0065, 0070-0071; P-0032, UGA-OTP-0246-0003-R01 at 0006-0007, 0013; P-0027, UGA-OTP-0249-0444-R01 at 0449; P-0003, UGA-OTP-0246-0077-R01 at 0087.
[185] P-0003, UGA-OTP-0246-0077-R01 at 0088.

71. Despite these cavils, the intercepted LRA radio communications are authentic, reliable, and will assist the Chamber to arrive at the truth. They offer a unique insight into the thoughts and actions of LRA commanders at a time before the threat of ICC prosecution.[186] For example, the Chamber can hear Dominic Ongwen's voice, recorded over 15 years ago, when he claims responsibility for the Odek, Lukodi, and Abok IDP camp attacks.

72. The interceptors were trained professionals. They were ordered to collect as much information as they could on the LRA for intelligence purposes, rather than to assess criminality. Recorded contemporaneously and stored securely in the intervening years, the intercepted LRA radio communications do not suffer from human memory's frailty.

V. ELEMENTS OF MODES OF LIABILITY COMMON TO MULTIPLE CATEGORIES OF CHARGES

1. Introduction

73. This section addresses elements of Dominic Ongwen's individual criminal responsibility pursuant to articles 25(3)(a), 25(3)(b), and 28(a) that are common to multiple categories of the charges in this document. The Prosecution requests the Chamber to confirm the charges against Dominic Ongwen on the basis of multiple modes of liability.

74. The submissions in each section of this document should be read in conjunction with this section.

[186] ICC arrest warrants for five LRA commanders were unsealed on 13 October 2005.

2. Common elements of article 25(3)(a) (indirect perpetration and indirect co-perpetration)

The LRA including Sinia brigade was an organised and hierarchical apparatus of power:

The LRA

75. The LRA, including the Sinia brigade, was an organised and hierarchical apparatus of power. The implementation of the various common plans cited in this document was effected via units within this organised hierarchy.

76. The LRA had a well-defined structure that mirrored broadly that of conventional national military forces. Joseph Kony was the spiritual leader and commander-in-chief of the LRA.[187] P-0099[REDACTED], and others held a genuine belief that Joseph Kony had supernatural powers.[188] Joseph Kony's headquarters was called Control Altar. Control Altar was composed of multiple departments, including political affairs, operations, religious affairs, support, and personnel administration.[189] Each of these had a director or leader.[190] Some of the LRA fighters were also assigned to a division. The division was an operational unit, headed by a commander, with constituent troops separate from the brigades. This was headed by a commander. The remaining LRA fighters were divided into four brigades: Stockree, Sinia, Trinkle and Gilva.[191] Each brigade had a commander, who commanded through a group called the brigade headquarters.[192] Each

[187] [REDACTED]; P-0032, UGA-OTP-0150-0030-R01 at 0032.
[188] [REDACTED]
[189] P-0070, UGA-OTP-0208-0214-R01 at 0232-0239, 0246.
[190] P-0070, UGA-OTP-0208-0214-R01 at 0232-0239.
[191] ISO logbook, UGA-OTP-0064-0093 at 0166-0167; P-0070, UGA-OTP-0208-0214-R01 at 0239-0246; P-0142, UGA-OTP-0244-0776-R01 at 0779-0786, P-0142's Map, UGA-OTP-0233-1361.
[192] ISO logbook, UGA-OTP-0064-0093 at 0166-0167; P-0070, UGA-OTP-0208-0214-R01 at 0239-0246.

brigade was composed of battalions, each of which also had a commander.[193] Regular and widespread conscription, described in detail in the section on conscription and use of child soldiers, paragraphs 617 to 666, ensured that the organisation had at its disposal a large number of easily replaceable individuals.

77. LRA commanders coordinated their activities carefully, both vertically and horizontally in the organisation. They were able to do so, despite their geographical distance from each other, by communicating daily, at pre-set times, by radio. The LRA's system of communication is described in detail in the section of this document on intercepted LRA radio communications, paragraphs 59 to 72.

78. The LRA had a rigid command structure. Superiors were only able to issue orders to subordinates.[194] Joseph Kony sat at the top of the LRA command structure; he issued orders and communicated his strategies and policies over the radio.[195] Vincent Otti relayed these messages and also issued orders himself, to brigade commanders and other commanders with a radio.[196] Brigade commanders then communicated these orders to their battalion commanders and other subordinates.[197]

79. Commanders including brigade commanders ensured that orders and policies were implemented by selecting the specific village, road, or IDP camp to attack. LRA commanders reported up the chain of command their movements, their

[193] ISO logbook, UGA-OTP-0064-0093 at 0166-0167.
[194] UPDF logbook, UGA-OTP-0197-1866 at 1931 (Kony said that orders need to be followed from top to bottom and that lower officers challenging higher commanders would be punished).
[195] P-0003, UGA-OTP-0027-0214-R01 at 0226; P-0059, UGA-OTP-0027-0244 at 0249-0251; P-0016, UGA-OTP-0221-1100-R01 at 1139-1140, UGA-OTP-0221-1142-R01 at 1150.
[196] P-0003, UGA-OTP-0027-0214-R01 at 0226-0227; P-0029, UGA-OTP-0027-0231-R01 at 0239; P-0059, UGA-OTP-0150-0022-R01 at 0023, UGA-OTP-0027-0244 at 0250; P-0032, UGA-OTP-0150-0030-R01 at 0031; P-0205, UGA-OTP-0247-0481-R01 at 0493; P-0231, UGA-OTP-0243-1972-R01 at 1981.
[197] P-0016, UGA-OTP-0221-1142-R01 at 1147 ("if there was any message from KONY, he would communicate to those who had radios, say to the Brigade Commanders who had radios … all those who have no radios would be put under a unit with a radio").

engagements with the UPDF, and their attacks upon civilians.[198] LRA fighters were promoted and demoted according to their performance.[199]

80. The LRA maintained a disciplinary system that guaranteed adherence to a superior's orders. It was applied to all aspects of life in the LRA.

81. **Following orders**. P-0099 said that it was not possible for any commander, including Dominic Ongwen, to disobey orders of superior officers.[200] P-0226, [REDACTED], said that she never saw "any officer of a lower rank who was given orders and who disobeyed the orders [. If they did] they are badly beaten or they kill them".[201] On 18 December 2002, "Kony ordered that [… a] woman be beaten 50 strokes for defying his order".[202] P-0224 was given 120 lashes for refusing an order to kill.[203] On 21 January 2004, "Lukwiya told Otti that he called [REDACTED] and solved the problem which his soldiers were complaining that he is too rude to them. But Kony said [the] ring leader of those soldiers who started misbehaving to [REDACTED]should be killed. […] Otti said if he comes back to Uganda, such pple who misbehave to their comdrs, he will kill them all".[204] P-0146 observed, "there was no way anybody other than the senior commanders […] would do anything other tha[n] what they had been told to do".[205]

[198] P-0016, UGA-OTP-0221-1142-R01 at 1147 ("If there is … anything to talk, they would communicate to the Brigade Commander. So he would … then relay that message back to Kony"), UGA-OTP-0221-1100-R01 at 1130 ("I was hearing how civilians were being killed. I was even hearing orders coming through the radio"): P-0142, UGA-OTP-0228-4542-R01 at 4555 ("you know what happen after any operation, if you see the aerial of the radio call being thrown up, then you just know they are sending the information to Kony"); see also P-0003, UGA-OTP-0027-0214-R01 at 0227, para. 76; P-0291, UGA-OTP-0246-0061-R01 at 0066; P-0029, UGA-OTP-0027-0231-R01 at 0239.
[199] ISO logbook, UGA-OTP-0063-0194 at 0246, 0248.
[200] [REDACTED].
[201] [REDACTED].
[202] ISO logbook, UGA-OTP-0065-0002 at 0115.
[203] P-0224, UGA-OTP-0244-2961-R01 at 2979.
[204] ISO logbook, UGA-OTP-0061-0002 at 0011.
[205] P-0146, UGA-OTP-0228-4224-R01 at 4233.

82. **Executing attacks**. On 10 June 2003, "Otti said the operation should be marred with massive killing of civilians and burning of all houses in those areas. He said that if this is not done, then he will use his position as LRA A/C [army commander] to punish those comdrs who can't concure [sic] with his orders".[206] P-0146 recounted that if an order was given to attack civilians for the purpose of obtaining food and "you did not go, or you went but you did not do what you were told to do, when you come back you the commander and the people will be arrested and may be killed […] when you are sent to do anything, you had to do exactly as you are told or else you come back ready to be locked up or maybe punished very badly".[207]

83. **Escaping fighters**. Soon after they were abducted, abductees were warned that any attempt to escape would be punished with death.[208] This was done by beating, hacking, or shooting to death. A commander's order to kill was typically carried out in view of all fighters, so everyone saw the punishment being carried out. P-0226 recalled that one day a girl attempted to escape. She was killed and her head was cut off. Okot Odhiambo made each abductee carry the severed head for one day to dissuade them from escaping.[209] P-0146 recalled that after his abduction two abductees from his group were killed as a demonstration of what would occur in the event of escape.[210] When P-0010, a former Captain in the LRA, attempted to escape, his commander ordered that he be beaten with tree branches and a machete.[211] On 26 April 2004, "Kony ordered Kapere to punish the commdr who was commanding [an] escapee seriously".[212]

[206] ISO logbook, UGA-OTP-0068-0146 at 0238.
[207] P-0146, UGA-OTP-0228-4278-R01 at 4301-4302.
[208] P-0205, UGA-OTP-0247-0130-R01 at 0143.
[209] [REDACTED]..
[210] P-0146, UGA-OTP-0228-4310-R01 at 4313-4315.
[211] P-0010, UGA-OTP-0218-0272-R01 at 0282-0283.
[212] UPDF logbook, UGA-OTP-0197-1670 at 1681.

84. **Sexual relations**. As explained in detail in the section on SGBC, [REDACTED], the LRA's organised nature included maintaining a code on sexual relations, which was strictly enforced. On 14 April 2003, "Odyambo […] said Sgt. [REDACTED]raped a woman with very young kid and gave her STD. Kony said Odyambo should beat him 100 canes and make him carry B10 gun for three weeks".[213] On 1 August 2002, "Kony […] ordered that no LRA comdr apart from Otti, Nyeko, Matata, Tabuley, [REDACTED], Odyambo has the right to give out or sleep with a woman as his wife. […] He said anybody who will be found doing this will be killed or punished seriously by canning [*sic*]".[214] P-0236, [REDACTED], was taken to Kony when [REDACTED]. [REDACTED].[215] P-0224 said that a fighter would be killed if he approached a girl and indicated that he was interested in her, observing that "LRA killed so many people because of this reason, more than even a war".[216]

Sinia brigade

85. The Sinia brigade consisted of three battalions: Oka, Terwanga, and Siba.[217] It also had a brigade headquarters composed of various departments, an intelligence officer, a brigade Major, and a brigade administrator.[218] Battalions were composed of more than one hundred men.[219] Each battalion had a commander, a deputy commander, an intelligence officer,[220] a commander for support weapons,[221] and an adjutant who maintained records.[222] Each battalion was composed of three

[213] ISO logbook, UGA-OTP-0063-0002 at 0116.
[214] ISO logbook, UGA-OTP-0063-0194 at 0339-0340.
[215] [REDACTED]..
[216] P-0224, UGA-OTP-0248-0712-R01 at 0733-0735.
[217] P-0205, UGA-OTP-0243-0520-R01 at 0531; P-0054, UGA-OTP-0221-1722-R01 at 1754-1755; P-0142, UGA-OTP-0244-0667-R01 at 0680.
[218] P-0205, UGA-OTP-0247-0076-R01 at 0085.
[219] P-0205, UGA-OTP-0247-0197-R01 at 0213.
[220] P-0205, UGA-OTP-0247-0316-R01 at 0331, 0335.
[221] P-0205, UGA-OTP-0247-0418-R01 at 0441-0442, 0445.
[222] P-0205, UGA-OTP-0247-0447-R01 at 0453-0456.

companies.[223] Each company had a commander and a deputy commander.[224] Orders were communicated from Joseph Kony to the brigade commander by radio, who communicated them to the battalion commanders, who in turn would pass them to the fighters in their respective battalion. This would be the case, for example, regarding orders to abduct girls.[225] Each battalion had a radio for communication.[226]

86. Discipline was enforced strictly in Sinia brigade. If an infraction was suspected, the battalion intelligence officer and adjutant would investigate and report to the battalion commander.[227] People who attempted to escape from Sinia brigade were punished with death.[228] Those who committed other serious infractions, such as sleeping with the wife of another commander, were often beaten or killed. [229] Ongwen's subordinates were punished if they did not follow his orders.[230] A fighter could not act on his own, unless his commander authorised it.[231]

87. Sinia brigade was able to carry out complex operations. Sinia brigade fighters gathered intelligence prior to conducting an attack.[232] They did this through intelligence officers, personnel familiar with the area, and by capturing civilians for information.[233] Attacks were planned,[234] fighters were selected,[235] and a tactical command was established to oversee the operation. Special tactics were

[223] P-0205, UGA-OTP-0243-0819-R01 at 0820-0821; P-0054, UGA-OTP-0221-1722-R01 at 1754; P-0245, UGA-OTP-0244-0256-R01 at 0263.
[224] P-0245, UGA-OTP-0244-0256-R01 at 0263-0266.
[225] P-0205, UGA-OTP-0247-0481-R01 at 0493-0495.
[226] P-0245, UGA-OTP-0244-0313-R01 at 0317.
[227] P-0205, UGA-OTP-0247-0447-R01 at 0454-0455; P-0142, UGA-OTP-0244-0667-R01 at 0689, UGA-OTP-0244-0693-R01 at 0695-0696.
[228] P-0205, UGA-OTP-0247-0130-R01 at 0143-0144, UGA-OTP-0247-0147-R01 at 0167; [REDACTED].
[229] P-0205, UGA-OTP-0247-0147-R01 at 0170-0171; P-0142, UGA-OTP-0244-0693-R01 at 0702.
[230] P-0142, UGA-OTP-0228-4620-R01 at 4623; P-0245, UGA-OTP-0244-0363-R01 at 0387-0388; P-0037, UGA-OTP-0221-0731-R01 at 0762.
[231] P-0142, UGA-OTP-0244-0693-R01 at 0701.
[232] P-0205, UGA-OTP-0247-0147-R01 at 0153.
[233] P-0205, UGA-OTP-0247-0147-R01 at 0150.
[234] P-0224, UGA-OTP-0244-2995-R01 at 3012.
[235] P-0205, UGA-OTP-0247-0147-R01 at 0153; P-0142, UGA-OTP-0244-0693-R01 at 0700.

developed, for example, for ambushes[236] and other types of attacks.[237] Sinia brigade maintained a standby force that would be used if attacking forces were compromised. This force rotated; a person may be selected to serve in it for three days, one week, or one month. It was led by an appointed senior Sinia brigade fighter.[238] Further details are outlined in the sections on the four IDP camp attacks, paragraphs 148 to 228 (Pajule), 229 to 312 (Odek), 313 to 376 (Lukodi), and 377 to 427 (Abok).

88. Ammunition was distributed in an organised and hierarchical manner. The "operation room" of the brigade, which included administrative personnel from the brigade headquarters, the brigade Major, and the intelligence officer, was responsible for re-supplying the fighters with ammunition. The brigade commander took possession of it when it arrived. He then instructed the operation room to distribute it to the different battalions.[239] Similarly, when a battalion commander ordered a heavy weapon to be used for an operation, he instructed the support commander in the battalion to ensure that the weapon was available along with personnel trained to deploy it. [240]

Dominic Ongwen had control over units under his command and his subordinates complied almost automatically with his orders:

89. From at least 1 July 2002 to 31 December 2005, Dominic Ongwen was a military commander in the LRA, commanding units first at the battalion, and then at the brigade, level. He spent the majority of this time in Sinia brigade.

[236] P-0205, UGA-OTP-0247-0147-R01 at 0154-0156; P-0054, UGA-OTP-0221-1796-R01 at 1812, 1821.
[237] P-0205, UGA-OTP-0247-0147-R01 at 0157-0158. See a similar description of LRA attack tactics in a 2003 report by the ISO following interviews with escaped LRA fighters: UGA-OTP-0242-0195 at 0196-0197.
[238] P-0205, UGA-OTP-0247-0147-R01 at 0172-0174; P-0224, UGA-OTP-0244-2995-R01 at 3018-3019.
[239] P-0205, UGA-OTP-0247-0418-R01 at 0438.
[240] P-0205, UGA-OTP-0247-0418-R01 at 0441-0442; P-0054, UGA-OTP-0221-1796-R01 at 1806-1807.

90. Dominic Ongwen commanded a battalion in Sinia brigade for most of mid-2002 to March 2004. P-0245 confirmed that in August 2002, at the attack on Acholi Pii IDP camp, Dominic Ongwen was the commander of Oka battalion in Sinia brigade.[241] On 20 September 2002, Kony said on the radio that Dominic Ongwen was a battalion commander in Sinia brigade, under the command of Buk Abudema and [REDACTED], [REDACTED] of Sinia brigade.[242] P-0205 said that Dominic Ongwen was the commander of Oka battalion at the time of the Patongo attack in late-2002 or early 2003,[243] during combat at Ngora in November 2002,[244] and at the attacks on Opit in late-May and early-June 2003.[245] Witnesses and intercepted radio communications[246] confirm that Dominic Ongwen ordered the Opit attack[247] and prepared the plan of attack.[248] Despite being injured at Ngora,[249] by the time of the LRA's move to the Teso region in the spring of 2003, Ongwen was once more operational.[250]

91. In or about September 2003, Dominic Ongwen moved to Control Altar, the central command of the LRA.[251] On or about 17 September 2003, Dominic Ongwen was appointed second-in-command of the Sinia brigade. On 18 September 2003, Vincent Otti confirmed that Dominic Ongwen was now capable of handling the second-in-command slot.[252] At the time of the Pajule attack on or about 10 October 2003 (described in detail in the section on Pajule IDP camp, paragraphs 148 to

[241] P-0245, UGA-OTP-0244-0227-R01 at 0246-0247, UGA-OTP-0248-0911-R01 at 0929.
[242] ISO logbook, UGA-OTP-0064-0093 at 0166-0167.
[243] P-0205, UGA-OTP-0243-0644-R01 at 0651, 0654-0656, 0660-0662; [REDACTED]..
[244] P-0205, UGA-OTP-0243-0544-R01 at 0563, UGA-OTP-0243-0564-R01 at 0566.
[245] P-0205, UGA-OTP-0243-0520-R01 at 0541-0542.
[246] ISO logbook, UGA-OTP-0068-0146 at 0199, 0202, UGA-OTP-0060-0002 at 0074, 0077 (24 May 2003 attack); UPDF logbook, UGA-OTP-0197-1224 at 1328-1329; ISO logbook, UGA-OTP-0068-0146 at 0228-0229, UGA-OTP-0060-0002 at 0100-0101 (4 June 2003 attack).
[247] P-0205, UGA-OTP-0243-0520-R01 at 0540-0541, UGA-OTP-0243-0602-R01 at 0615.
[248] P-0205, P-205UGA-OTP-0243-0602-R01 at 0616, UGA-OTP-0243-0602-R01 at 0621-0622.
[249] P-0205, UGA-OTP-0243-0544-R01 at 0563.
[250] P-0245, UGA-OTP-0244-0341-R01 at 0344.
[251] P-0105, UGA-OTP-0228-4952-R01 at 4986-4987, UGA-OTP-0228-4996-R01 at 5036-5038, UGA-OTP-0228-5212-R01 at 5221-5228. P-0144, UGA-OTP-0228-1450-R01 at 1452-1456.
[252] ISO logbook, UGA-OTP-0232-0234 at 0422.

228), Dominic Ongwen was a commander in Control Altar. Shortly afterwards, on or about 23 November 2003, he led a battalion of the Sinia brigade to attack Labwor Omer (Palaro).[253]

92. On or about 5 March 2004, Dominic Ongwen became the commander of Sinia brigade.[254] [REDACTED].[255] He commanded this brigade during numerous operations in 2004 and 2005, including in three of the four attacks that form the basis for charges in this document: on Odek IDP camp on or about 29 April 2004, on Lukodi IDP camp on or about 19 May 2004, and on Abok IDP camp on or about 8 June 2004. Dominic Ongwen was on the ground and personally led the Odek attack.[256] Dominic Ongwen was Sinia brigade commander until at least 31 December 2005.[257]

93. Alex Ocaka, an officer in Sinia brigade and the ground commander of the Lukodi attack, and Okello Franco Kalalang, the ground commander of the Abok attack, reported to Dominic Ongwen and were his direct subordinates. They served in the Sinia brigade headquarters: Alex Ocaka was a Lieutenant and the support commander in Sinia Brigade in charge of artillery;[258] Okello Franco Kalalang was initially the brigade Major in Sinia brigade headquarters[259] and then Terwanga battalion commander.[260]

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[253] ISO logbook, UGA-OTP-0066-0002-R01 at 0087; P-0245, UGA-OTP-0244-0445-R01 at 0446-0460; see also UPDF Intelligence Report, UGA-OTP-0025-0656 at 0657, 0660.
[254] ISO logbook, UGA-OTP-0061-0002 at 0122; see also UGA-OTP-0242-1032 at 1033; see a list made by a Police radio operative, who intercepted LRA radio communications, in early 2004, UGA-OTP-0170-0034 at 0036 (explanation at UGA-OTP-0175-0300-R01 at 0303-0304).
[255] ISO logbook, UGA-OTP-0061-0002 at 0128; P-0224, UGA-OTP-0244-2995-R01 at 3003-3004; P-0142, UGA-OTP-0228-4513-R01 at 4521-4523.
[256] *See further*, section on Odek IDP camp, para. 229-312.
[257] P-0003, UGA-OTP-0027-0214-R01 at 0227; P-0032, UGA-OTP-0150-0030-R01 at 0032; see also a list made by ISO radio operatives, who intercepted LRA radio communications, in January 2005: UGA-OTP-0242-1021 at 1021.
[258] P-0205, UGA-OTP-0247-0089-R01 at 0106; P-0054, UGA-OTP-0221-1796-R01 at 1810.
[259] P-0205, UGA-OTP-0247-0089-R01 at 0090-0091.
[260] P-0054, UGA-OTP-0251-0101-R01 at 0122.

94. In the latter half of 2005, Dominic Ongwen was the most senior LRA commander in Uganda.[261] For example, on 20 June 2005, [REDACTED], a senior LRA commander, gave Dominic Ongwen command of fighters from brigades other than Sinia, namely those formerly under senior LRA commanders [REDACTED], [REDACTED]and [REDACTED].[262]

95. Between 1 July 2002 and 31 December 2005, Dominic Ongwen was successively promoted from the rank of Major to Brigadier General. On 1 July 2002, already in Sinia brigade, he was promoted to the rank of Major.[263] On 2 December 2002, Dominic Ongwen is referred to as a Major and battalion commander in Sinia Brigade under Colonel Buk Abudema [REDACTED].[264] Ongwen was promoted to Lieutenant Colonel in November 2003,[265] to Colonel on 30 May 2004,[266] and to Brigadier General in December 2004.[267]

96. The authority and control that Dominic Ongwen wielded over the units that he commanded manifested itself in a number of ways.

97. **Discipline**. Dominic Ongwen ensured that discipline was maintained in his units. He did so by punishing brutally any infraction or insubordination. On 3 April 2003, "Kony also asked Comm Dominic whether he have already killed Obalim as per his instruction of y/day b[ecau]se that rebel was the ring leader of indiscipline[d] rebel but Dominic said that he have killed Obalim y/day through

[261] P-0233, UGA-OTP-0243-1149-R01 at 1157.
[262] ISO logbook, UGA-OTP-0163-0007 at 0130-0131.
[263] ISO logbook, UGA-OTP-0063-0194 at 0246, 0248.
[264] ISO logbook, UGA-OTP-0065-0002 at 0083.
[265] ISO logbook, UGA-OTP-0066-0002-R01 at 0051.
[266] ISO logbook, UGA-OTP-0062-0002 at 0004; Tape, UGA-OTP-0248-0143-R01 at 0179-0182 (see explanation by P-0003, UGA-OTP-0248-0094-R01 at 0099-0100); Tape, UGA-OTP-0248-0381-R01 at 0417-0420 (see explanation by P-0059, UGA-OTP-0248-0328-R01 at 0336-0337).
[267] ISO logbook, UGA-OTP-0163-0007 at 0165.

firing sq[ua]d".[268] On 11 June 2004, Ongwen reported to Buk Abudema that an officer in his unit by the name of [REDACTED]defected to UPDF, "fearing that he may face firing squad and sincerely he was going to kill that off[ice]r b[ecau]se of indiscipline".[269]

98. Refusal to carry out even minor tasks, or committing minor suspected infractions, was also punished with severe beatings. [REDACTED].[270] On occasions when the escorts did the beating, he would sit and watch.[271] P-0226 recalled an occasion in which Ongwen ordered an escort to beat her and when the escort fell, he started to beat the escort.[272] P-0226 said that if a commander, including Ongwen, gave an order to kill, his escorts would immediately do so.[273]

99. Attempts to escape Sinia brigade were usually punished with death. P-0226 witnessed escapees being killed by other boys and girls.[274] P-0236, [REDACTED], witnessed the execution of two escapees.[275] P-0101, [REDACTED], observed attempted escapees "killed without mercy".[276] P-0099 said that the difference between escaping and being caught trying to escape was the difference between life and death.[277] P-0227, [REDACTED], [REDACTED]that guards were ordered to beat her brothers so that they would forget their homes[278] and that Dominic Ongwen gave orders to [REDACTED].[279] P-0227 was severely beaten when

[268] UPDF logbook, UGA-OTP-0197-2162 at 2303-2304.
[269] UPDF logbook, UGA-OTP-0197-1670 at 1767.
[270] [REDACTED]; [REDACTED]; P[REDACTED]; P[REDACTED].
[271] [REDACTED]; [REDACTED].
[272] [REDACTED].
[273] [REDACTED].
[274] [REDACTED]; [REDACTED].
[275] [REDACTED].
[276] [REDACTED].
[277] [REDACTED].
[278] [REDACTED].
[279] [REDACTED].

suspected of trying to escape[280] and P-0235, [REDACTED], was ordered to be beaten severely when attempting to do so.[281]

100. Dominic Ongwen himself ordered beatings. The punishment often took place in the operation room at brigade headquarters, in front of the intelligence officer and the brigade commander. A young fighter was usually picked to administer the punishment.[282] P-0142, [REDACTED],[283] observed that he was compelled to follow Ongwen's orders: "And of course I fear if I don't act to his orders, then I will actually [be] punished for that".[284] As brigade commander, Ongwen was solely responsible for communicating disciplinary issues to Kony.[285] P-0142 recounted that on one occasion, Ongwen indicated that if anyone committed a crime he would send that person's name to Kony.[286]

101. Just occasionally, Dominic Ongwen exercised his power (thereby demonstrating its existence) to prevent crimes being committed in relation to abductees. P-0202, an LRA fighter abducted before the Lukodi IDP attack, recalled that Dominic Ongwen once stopped an escort from killing an abducted girl.[287]

102. **Initiation and command of attacks**. Ongwen's continuous command authority and his control over his troops is manifest in the active operational tempo maintained by him and his units from at least 1 July 2002 to 31 December

[280] [REDACTED].
[281] [REDACTED].
[282] P-0205, UGA-OTP-0247-0175-R01 at 0178.
[283] P-0205, UGA-OTP-0243-0690-R01 at 0695-0697, UGA-OTP-0247-0109-R01 at 0112; P-0245, UGA-OTP-0244-0363-R01 at 0384-0385; P-0224, UGA-OTP-0244-2995-R01 at 3014-3017; [REDACTED].
[284] P-0142, UGA-OTP-0228-4620-R01 at 4623.
[285] P-0142, UGA-OTP-0244-0693-R01 at 0702.
[286] P-0142, UGA-OTP-0244-0776-R01 at 0807 (commanders did not think, for example, that killing a civilian was a crime), 0807-0808 (in the LRA, it was a failure to kill civilians or abduct, enslave and rape young girls which would likely be perceived as a crime).
[287] P-0202, UGA-OTP-0243-1062-R01 at 1079.

2005. Reports of Dominic Ongwen's attacks were made frequently, either by him or by other LRA commanders on the radio, in 2002,[288] 2003,[289] 2004,[290] and 2005.[291] For each reported attack, Dominic Ongwen had authority and exercised control over his troops. P-0224 confirmed that Dominic Ongwen was responsible for numerous attacks.[292] Dominic Ongwen planned these attacks and gave orders to his fighters.[293] At each of these attacks, he had the authority to send forces to the site of hostilities and to withdraw them at any time.

103. **Receipt of attack reports**. Subordinate commanders reported to Dominic Ongwen after operations. For example, after the Lukodi IDP camp attack, Dominic Ongwen received both an oral and written report from the person who led the attack on the ground and the intelligence officer who participated in the

[288] *See* e.g., ISO logbook, OTP-0064-0002 at 0024 (7 August 2002, Lukwiya reported attack carried out by Dominic Ongwen),0060 (22 August 2002, Lukwiya reported an attack carried out by his splinter group under Dominic Ongwen), UGA-OTP-0064-0093 at 0105 (5 September 2002, Lukwiya reported an attack carried out by his splinter group under Dominic Ongwen), 0121 (8 September 2002, Lapanikwara reported an attack deployment by Dominic Ongwen on his instructions), 0129-0130 (10 September 2002, [REDACTED]reported an ambush carried out by Dominic Ongwen on 6 September 2002), 0158 (17 September 2002, Dominic Ongwen reportedly killed two UN staff), UGA-OTP-0068-0002 at 0021-0022 ([REDACTED] reports attacks carried out by Dominic Ongwen including in Pader on 13 September 2002, Lanyatido on 16 September 2002, Pajule on 25 September 2002. Joseph Kony said that he is very happy with Dominic), 0073 (15 October 2002, Buk Abudema reported that Dominic Ongwen has attacked Acholibur).

[289] *See* e.g., UPDF logbook, UGA-OTP-0197-2162 at 2220 (Ambush between Opit and Lagogi on or about 12 February 2003), 2308 (Attack on Lagile on or about 5 April 2003); ISO logbook, UGA-OTP-0066-0002-R01 at 0087 (Dominic Ongwen's attack on Labwor Omer (Palaro) on or about 23 November 2003); ISO logbook, UGA-OTP-0068-0146 at 0199, 0202, UGA-OTP-0060-0002 at 0074, 0077 (Dominic Ongwen's 24 May 2003 attack on Opit); UPDF logbook, UGA-OTP-0197-1224 at 1328; ISO logbook, UGA-OTP-0068-0146 at 0228, 0229, UGA-OTP-0060-0002 at 0100, 0101 (Dominic Ongwen's 4 June 2003 attack on Opit).

[290] *See* e.g., ISO logbook, UGA-OTP-0061-0002 at 0069 (Dominic Ongwen's attack on Koc Ongako on or about 2 February 2004), 0128 (Dominic Ongwen's attack on Alero on or about 6 March 2004), 0165 (Dominic Ongwen's attack on Lira Palwo on or about 20 March 2004), UGA-OTP-0061-0206 at 0270 (Dominic Ongwen's attack on Odek on or about 29 April 2004), 0300 (Dominic Ongwen's attack on Opit on or around 10 May 2004), 0321 (Dominic Ongwen's attack on Lukodi on or about 19 May 2004), UGA-OTP-0062-0002 at 0007 (Dominic Ongwen's attack on the UPDF on 31 May 2004), 0023 (Dominic Ongwen's attack on Abok on or about 8 June 2004), 0106 (Dominic Ongwen's attack on Ojwii IDP camp on or about 16 July 2004), UGA-OTP-0062-0145 at 0205-0206 (Dominic Ongwen's ambush on Odek road on or about 17 August 2004), 0273 (Dominic Ongwen reported the killing of a boda boda driver).

[291] *See* e.g., ISO logbook, UGA-OTP-0163-0292 at 0314-0315 (Dominic Ongwen's attack on Obalanga on or about 2 October 2005).

[292] P-0224, UGA-OTP-0244-2995-R01 at 3000-3002.

[293] P-0224, UGA-OTP-0244-2995-R01 at 3018-3020; P-0142, UGA-OTP-0228-4542-R01 at 4562, UGA-OTP-0228-4620-R01 at 4629.

attack.[294] Subordinate officers also reported to Ongwen following the Odek attack.[295] Similarly, on 24 July 2004 and 2 August 2004, battalion commander [REDACTED]reported on the radio to his brigade commander, Dominic Ongwen, that he had carried out two ambushes, hitting both the UPDF and civilians.[296]

104. **Authority to distribute women and girls**. Dominic Ongwen controlled the distribution of women and girls to troops in his battalion and later his brigade. For example, P-0205 described how, having received Kony's approval, Dominic Ongwen authorised P-0205 to have a wife.[297] When P-0205 reported abductions to Dominic Ongwen, Ongwen gave permission to P-0205 to distribute the women and girls to men within P-0205's unit.[298] P-0235 [REDACTED]that, "at times Ongwen would say that girls should be distributed" and that she observed Ongwen distributing girls in Uganda and in Congo. She said that, "At times he would just decide on his own and give women to soldiers who didn't have wives. Then he would inform Kony afterwards that this is what he had done".[299] Ongwen also allocated *ting tings* (babysitters) to women.[300]

105. **Being an exemplary commander**. Dominic Ongwen's authority and control in his brigade was reinforced by being a highly capable LRA commander. He followed orders to the letter and expected the same from fighters under his command.[301] He was viewed by his subordinates as "very good, a brilliant fighter".[302] Ongwen ordered attacks and then distributed the loot from such

[294] P-0142, UGA-OTP-0228-4620-R01 at 4622; [REDACTED]; P-0142, UGA-OTP-0228-4542-R01 at 4568-4571; P-0205, UGA-OTP-0247-0109-R01 at 0118-0120.
[295] P-0142, UGA-OTP-0228-4542-R01 at 4551-4556, UGA-OTP-0244-0710-R01 at 0712-0713.
[296] ISO logbook, UGA-OTP-0062-0145 at 0156.
[297] P-0205, UGA-OTP-0247-0504-R01 at 0526.
[298] P-0205, UGA-OTP-0243-0819-R01 at 0830-0831.
[299] [REDACTED]
[300] [REDACTED]
[301] P-0224, UGA-OTP-0244-2995-R01 at 3017-3020, UGA-OTP-0244-3024-R01 at 3026.
[302] P-0245, UGA-OTP-0244-0313-R01 at 0320.

attacks among his fighters, "so […] people would follow what would come out of [his] mouth".[303]

106. Joseph Kony frequently described Dominic Ongwen as an example for other LRA commanders to follow.[304]

- On 27 September 2003, Kony praised Dominic Ongwen and criticised the rest of the Sinia brigade leadership. He warned that brigade commander Buk Abudema might get replaced.[305]
- On 12 February 2004, Kony praised Dominic Ongwen for his attack on Koc Ongako, holding him up as an example.[306]
- On 18 May 2004, Kony told LRA commanders on the radio, "you just look at ODOMI, how good ODOMI is working, OVER".[307]
- On 24 May 2004, Kony praised Dominic Ongwen after the Lukodi attack.[308]
- On 29 June 2004, it was said on the radio that, "Col. Ongwen Dominic and [REDACTED]have proved dangerous, destructive to both property and lives and have vowed to continue with their acts. The two are known to Lt. Gen. Kony and Lt. Gen. Otti Vincent as the most discipline officers who always comply to orders".[309]
- On 7 July 2004, Kony praised Dominic Ongwen for having a good number of soldiers and said that he should be carrying on with operations.[310]

[303] P-0245, UGA-OTP-0244-0313-R01 at 0323.
[304] P-0224, UGA-OTP-0244-3024-R01 at 3041-3042.
[305] ISO logbook, UGA-OTP-0232-0234 at 0477.
[306] ISO logbook, UGA-OTP-0061-0002 at 0069.
[307] P-0059, UGA-OTP-0248-0328-R01 at 0331-0332 (Tape, UGA-OTP-0248-0436-R01 at 0442); see also P-0003, UGA-OTP-0248-0094-R01 at 0103 (Tape, UGA-OTP-0248-0198-R01 at 0204).
[308] ISO logbook, UGA-OTP-0061-0206 at 0329.
[309] Police Logbook, UGA-OTP-0037-0002 at 0072.
[310] ISO logbook, UGA-OTP-0062-0002 at 0090.

Dominic Ongwen was aware of the fundamental features of the organised structure of the LRA and Sinia brigade:

107. Dominic Ongwen, as a military commander in the LRA, commanding units first at the battalion and then at the brigade level, was aware of the position he held within the organisation.[311] The above evidence demonstrates that Dominic Ongwen knew this because when he issued an order, it was carried out. He knew that he had the ability to stop crimes being committed, a power that he exercised on occasion. He knew that he had to obey superiors' orders and did so, demonstrating that he understood his position in the LRA chain of command. This knowledge was facilitated by his access to a radio, from at least 1 July 2002 to 31 December 2005.

108. Dominic Ongwen was also aware of the essential features of the organisation that secured functional automatism.[312] The above evidence demonstrates that Dominic Ongwen knew about the LRA's system of rules because he abided by them, including with respect to sexual relations (see section on SGBC, [REDACTED]). Dominic Ongwen knew that troops under his command carried out his orders automatically because he was responsible for implementing the LRA's harsh discipline system in Sinia brigade when his orders were not obeyed. Dominic Ongwen carried out some of the punishments himself, demonstrating the importance he placed on discipline. He was aware that fighters under his command were fungible because of his position as a long time commander within the LRA and Sinia brigade. He knew that the LRA and Sinia brigade were composed of a sufficient number of individuals, and that this number was replenished regularly through abductions that he led and ordered.

[311] See the *Katanga* trial judgment, which establishes this as a relevant factor. ICC-01/04-01/07-3436-tEN, para. 1415.
[312] ICC-01/04-01/07-3436-tEN, para. 1415.

3. Common elements of articles 25(3)(b), ordering, and 28(a), command responsibility

109. The facts as described in the section on article 25(3)(a), paragraphs 75 to 108, satisfy an element of the mode of liability of ordering pursuant to article 25(3)(b) common to that addressed in the section on common elements of modes of liability: that the person is in a position of authority.[313]

110. The facts also satisfy elements of the mode of liability of command responsibility pursuant to article 28(a) common to that addressed in this section on common elements of modes of responsibility, paragraphs 75 to 108: that the person must be either a military commander or a person effectively acting as such;[314] and that the person must have effective command and control, or effective authority and control over the forces (subordinates) who committed one or more of the crimes set out in articles 6 to 8.[315]

VI. PERSECUTION

1. Introduction

111. The Prosecution is charging Dominic Ongwen with persecution with respect to the four IDP camp attacks. These are counts 10, 23, 36, 49. They are dealt with separately in a stand-alone section, rather than under each IDP camp attack section, because it is necessary to examine the LRA's broader persecutory aim and

[313] See *Ntaganda* confirmation decision, ICC-01/04-02/06-309, para. 145.
[314] See *Ntaganda* confirmation decision, ICC-01/04-02/06-309, para. 164.
[315] See *Ntaganda* confirmation decision, ICC-01/04-02/06-309, para. 164.

conduct to understand Dominic Ongwen's persecutory intent in relation to these attacks.

112. This section, paragraphs 111 to 147 applies equally to all four persecution charges. It details the persecutory campaign carried out by the LRA from at least 1 July 2002 to 31 December 2005, and Ongwen's role in and knowledge of it.

113. Since its inception, the LRA has aimed to overthrow the Ugandan government, headed by President Yoweri Museveni. In furtherance of this aim, the LRA attacked civilians who the LRA perceived to be supporting the government or government-affiliated bodies.

114. The LRA discriminated against civilians on the basis of their identity as perceived political supporters of the government. The LRA perceived this political support to exist in almost any circumstances where civilians lived in government-built and -funded IDP camps, as well as where civilians were perceived to be associated with local militia under the UPDF or helping the UPDF. This conduct amounts to persecution on political grounds, in violation of article 7(1)(h).[316]

115. Intercepted radio communications and statements by escaped or captured LRA fighters demonstrate the existence of continuous persecutory orders. The evidence shows that Dominic Ongwen was aware of, endorsed, and executed these orders.

2. The LRA targeted civilians they perceived as supporting the government

[316] *See* ICC-02/11-02/11-186, para. 122-123; see also, ICC-01/09-01/11-373, para. 269-274; ICC-01/09-02/11-382, para. 283.

The alleged political affiliation of civilians:

The LRA considered civilians residing in IDP camps as supporters of the government

116. As a result of the LRA insurgency, in about 2000/2001,[317] civilians in northern Uganda were forced into IDP camps with UPDF protection,[318] because they were considered to be too exposed to LRA attacks in their villages.[319] Joseph Kony issued orders to attack IDP camps throughout northern Uganda, as he considered civilians residing in them to be siding with the government.[320] On 26 November 2002, Kony told his commanders that if civilians were in the IDP camps, "any person that you will meet you will know that you have met with UPDF and shoot straight away on sight".[321]

117. P-0028, [REDACTED], P-0245, and P-0061 and P-0067, Pajule abductees, confirmed that civilians living in IDP camps were perceived by the LRA as supporters of the government.[322] Their discrimination was explicit: the LRA sent civilians open letters, warning them that staying in the camps indicated their support to the government.[323] P-0067 recalled Otti's threat that if civilians stayed in camps, the LRA would execute them.[324] All LRA brigades implemented this persecutory campaign under the leadership of their respective commanders. The

[317] P-0009, UGA-OTP-0151-0167-R01 at 0174.
[318] P-0017, UGA-OTP-0036-0007-R01 at 0010; see also P-0280, UGA-OTP-0247-1252-R01 at 1256.
[319] P-0280, UGA-OTP-0247-1252-R01 at 1255-1256.
[320] ISO logbook, UGA-OTP-0068-0002 at 0053; see also ISO logbook, UGA-OTP-0064-0002 at 0086; P-0040, UGA-OTP-0209-0461-R01 at 0487-0488; see also P-0245, UGA-OTP-0244-0285-R01 at 0292.
[321] ISO logbook, UGA-OTP-0065-0002 at 0064.
[322] P-0028, UGA-OTP-0217-0171-R01 at 0175-0176; P-0245, UGA-OTP-0244-0285-R01 at 0291, 0292, 0308; P-0061, UGA-OTP-0151-0167-R01 at 0177; P-0067, UGA-OTP-0139-0193-R01 at 0203; see also P-0138, UGA-OTP-0228-6443-R01 at 6469; P-0018, UGA-OTP-0159-0002-R01 at 0010.
[323] P-0084, UGA-OTP-0139-0149-R01 at 0162; ISO logbook, UGA-OTP-0064-0002 at 0086.
[324] P-0067, UGA-OTP-0139-0193-R01 at 0203.

persecutory campaign, although solely based on political grounds, ultimately affected several ethnicities, which the LRA perceived to be supporting the government.[325] Kony primarily sought political support from people of his own ethnic group, the Acholi.[326] When the Acholi did not join his fight against the Ugandan government, Kony issued orders for them to be killed.[327] He ordered that Acholi "truly be killed and if possible wiped off totally because instead of running to the bush to join hands with LRA so that Museveni is toppled, they go to Museveni".[328] Kony also sought the support of other ethnic groups, such as the Langi and the Itesos. The Langis' perceived support for the UPDF[329] and the government[330] prompted Kony to order their abduction[331] and killing.[332] Two victims abducted from Abia confirmed that the LRA was attacking the Langi population because they allegedly supported the government.[333] Likewise, Kony instructed Charles Tabuley to go to Soroti (Teso) and kill Iteso civilians who were "not cooperating" and "stubborn".[334] He ordered that everyone who "doesn't want to […] join us […] is an enemy".[335]

[325] ISO Logbook, UGA-OTP-0061-0002 at 0103, 0104 (Dominic ONGWEN on air). *See also* ISO Logbook, UGA-OTP-0066-0002 at 0038.
[326] P-0028, UGA-OTP-0217-0148 at 0168-0169, UGA-OTP-0217-0171 at 0174.
[327]; P-0085, UGA-OTP-0215-0593 at 0605-0606, 0614, UGA-OTP-0215-0047 at 0073; P-0023, UGA-OTP-0150-0063 at 0070; P-0028, UGA-OTP-0217-0148 at 0168-0169; UGA-OTP-0217-0171 at 0174-0175; P-0083, UGA-OTP-0218-0797 at 0812-0813; ISO Logbook, UGA-OTP-0065-0002 at 0105; UPDF Logbook, UGA-OTP-0197-2162 at 2190; ISO Logbook, UGA-OTP-0066-0002 at 0147; UGA-OTP-0063-0002 at 0157, 0179; ISO Logbook, UGA-OTP-0061-0002 at 0045 (Dominic ONGWEN on air). *See also* UPDF Logbook, UGA-OTP-0197-1078 at 1215.
[328] ISO Logbook, UGA-OTP-0066-0002 at 0147. Regarding the execution of this order see also P-0028, UGA-OTP-0217-0171 at 0174-0175. See further Kony's orders to kill, abduct, burn houses and ambush vehicles around Gulu, ISO Logbook, UGA-OTP-0064-0002 at 0005. *See also* ISO Logbook, UGA-OTP-0068-0002 at 0084; P-0028, UGA-OTP-0217-0171 at 0189; P-0138, UGA-OTP-0228-6331 at 6337; P-0245, UGA-OTP-0244-0313 at 0316.
[329]; P-0040, UGA-OTP-0209-0461 at 0488; UGA-OTP-0220-0704 at 0707.
[330] UPDF Logbook, UGA-OTP-0197-2040 at 2050.
[331] P-0028, UGA-OTP-0217-0171 at 0176.
[332] P-0098, UGA-OTP-0165-0002 at 0010; P-0057, UGA-OTP-0069-0515 at 0519; P-0016, UGA-OTP-0228-3348 at 3558. For instance, *see* ISO Logbook, UGA-OTP-0066-0002 at 0025, 0028, 0035.
[333] UGA-OTP-0024-0256 at 0257; UGA-OTP-0024-0265 at 0267 (collected by the Ugandan police and provided by [REDACTED] P-0017).
[334] P-0040, UGA-OTP-0220-0678 at 0702; see also P-0151, UGA-OTP-0228-6065 at 6075.
[335] P-0069, UGA-OTP-0220-0170 at 0176-0177. Tabuley relayed the order, *see* ISO Logbook, UGA-OTP-0068-0146 at 0273. Regarding the execution of the order, *see also* P-0151, UGA-OTP-0228-6065 at 6076-6077.

The LRA considered civilians they perceived to be associated with the LDUs as supporters of the government

118. Kony ordered the killing of any civilian who he believed to be willing or able to join the local defence units assisting the UPDF.[336] P-0138, a sergeant in Sinia brigade and later in Control Altar, confirmed that "what spoiled the relationship between […] civilians with us, was the guns distributed to the people in other words the formation of the Arrow Group. […] So the order was that […] If you get a civilian who was a man, it is assumed that he has a gun so he should be killed".[337]

119. P-0070 said that orders to attack the Lango region increased after Charles Tabuley's, brigade commander of Stockree, death in October 2003, as Kony blamed the civilians for forming Amuka and Arrow groups:[338] "[s]o everything that had life had to be killed now because all of them were involved in supporting UPDF against LRA".[339] Kony ordered that Langi women should be killed because, "they are the ones producing militias who are killing them [LRA]".[340]

The LRA considered civilians they perceived to be helping the UPDF as supporters of the government

[336] P-0138, UGA-OTP-0228-0467-R01 at 0496, 0498-0499, UGA-OTP-0228-0503-R01 at 0521-0522; P-0076, UGA-OTP-0036-0067-R01 at 0072; P-0152, UGA-OTP-0200-0015-R01 at 0022; P-0070, UGA-OTP-0228-2891-R01 at 2902; P-0258, UGA-OTP-0243-1824-R01 at 1828; P-0069, UGA-OTP-0220-0170-R01 at 0176; ISO logbook, UGA-OTP-0232-0234 at 0257, 0309, 0317-0318, 0348, 0368-0369, 0612; ISO logbook, UGA-OTP-0062-0002 at 0049; UPDF logbook, UGA-OTP-0197-2162 at 2239; see also P-0017, UGA-OTP-0036-0007-R01 at 0017; P-0028, UGA-OTP-0217-0125-R01 at 0141.
[337] P-0138, UGA-OTP-0228-0503-R01 at 0521; see also P-0138, UGA-OTP-0228-0467-R01 at 0496, UGA-OTP-0228-6443-R01 at 6456, UGA-OTP-0228-6419-R01 at 6439; P-0245, UGA-OTP-0244-0313-R01 at 0327-0328; P-0258, UGA-OTP-0243-1824-R01 at 1828.
[338] P-0070, UGA-OTP-0208-0146-R01 at 0169-0170, UGA-OTP-0228-2891-R01 at 2902.
[339] P-0070, UGA-OTP-0228-2891-R01 at 2902; see also P-0040, UGA-OTP-0220-0704-R01 at 0707; ISO logbook, UGA-OTP-0066-0002-R01 at 0012, 0025, 0035; UPDF logbook, UGA-OTP-0197-1078 at 1212.
[340] ISO logbook, UGA-OTP-0066-0002-R01 at 0038.

120. Kony and the other senior commanders worried that civilians were government spies[341] who revealed LRA positions and other information to the UPDF.[342] Internal LRA manifestos instructed: "We the LRAM/A should see to it that there are no camps in Gulu and Kitgum because they are like the gate and source of information for our enemies".[343] Civilians were killed to prevent LRA information being revealed to the UPDF.[344] Kony made plans to attack the non-governmental organisation GUSCO,[345] as he thought it was a place where information was fed to the UPDF.[346]

121. The LRA also considered the following actions by civilians as being indicative of their support for the UPDF or the government: staying close to the UPDF barracks,[347] failing to reveal UPDF positions to LRA,[348] refusing to follow LRA orders,[349] carrying a phone,[350] calling the UPDF and or the government for help,[351]

[341] ISO logbook, UGA-OTP-0152-0002 at 0030; ISO logbook, UGA-OTP-0068-0146 at 0151, 0262, 0269; ISO logbook, UGA-OTP-0060-0002 at 0144; ISO logbook, UGA-OTP-0066-0002-R01 at 0173; ISO logbook, UGA-OTP-0064-0093 at 0111.
[342] P-0202, UGA-OTP-0243-1035-R01 at 1039; P-0045, UGA-OTP-0220-1087-R01 at 1109; P-0096, UGA-OTP-0228-1901-R01 at 1908; P-0105, UGA-OTP-0228-4952-R01 at 4981-4982; ISO logbook, UGA-OTP-0061-0206 at 0222-0223; ISO logbook, UGA-OTP-0063-0002 at 0028, 0064; ISO logbook, UGA-OTP-0068-0146 at 0154, 0166, 0170-0172, 0249, 0250; ISO logbook, UGA-OTP-0232-0234 at 0547; ISO logbook, UGA-OTP-0066-0002-R01 at 0015.
[343] UGA-OTP-0026-0094 at 0095 (original Acholi version), UGA-OTP-0253-0162 at 0164 (translation); UGA-OTP-0026-0273 at 0274 (original Acholi version), UGA-OTP-0253-0165UGA-OTP-0253-0165 at 0167 (translation).
[344] P-0028, UGA-OTP-0217-0305-R01 at 0323-0324; P-0045, UGA-OTP-0220-1087-R01 at 1109; P-0200, UGA-OTP-0243-0107-R01 at 0110; P-0096, UGA-OTP-0228-1901-R01 at 1906, 1908; P-0245, UGA-OTP-0244-0461-R01 at 0485-0486; ISO logbook, UGA-OTP-0064-0093 at 0140.
[345] GUSCO stands for "Gulu support the children organisation".
[346] ISO logbook, UGA-OTP-0066-0002-R01 at 0087.
[347] P-0152, UGA-OTP-0200-0015-R01 at 0035; P-0245, UGA-OTP-0244-0269-R01 at 0276.
[348] P-0096, UGA-OTP-0228-1901-R01 at 1906.
[349] UPDF logbook, UGA-OTP-0197-1078 at 1125; ISO logbook, UGA-OTP-0064-0002 at 0086.
[350] ISO logbook, UGA-OTP-0068-0146 at 0154; ISO logbook, UGA-OTP-0232-0234 at 0276; see also P-0105, UGA-OTP-0228-4952-R01 at 4981-4982.
[351] P-0105, UGA-OTP-0228-4952-R01 at 4982; ISO logbook, UGA-OTP-0061-0002 at 0016.

making the UPDF follow the LRA,[352] communicating with the UPDF or escaping from LRA.[353]

Joseph Kony issued continuous persecutory orders:

122. From at least 1 July 2002 to 31 December 2005, Joseph Kony continually issued orders to attack and kill[354] civilians who did not support the LRA.[355] Joseph Kony instructed his commanders to, "weigh the minds of the people in a particular area and decide whether they support LRA or not. That if not, the people in that area should be killed all".[356] He repeatedly gave directives to kill civilians "who are siding with Museveni government"[357] but not those who are "pro-LRA".[358] P-0105, an [REDACTED], confirmed that homesteads belonging to civilians sympathetic to the LRA were not attacked "because […] these people are already […] helping us".[359]

[352] ISO logbook, UGA-OTP-0063-0002 at 0067; ISO logbook, UGA-OTP-0066-0002-R01 at 0015; ISO logbook, UGA-OTP-0061-0206 at 0222-0223.
[353] P-0085, UGA-OTP-0222-0462-R01 at 0469; ISO sound recording, UGA-OTP-0054-0010 (track 2), UGA-OTP-0247-1102 (enhanced, track 2); Translation, UGA-OTP-0132-0105-R01 at 0134; ISO logbook, UGA-OTP-0152-0002 at 0030.
[354] P-0070, UGA-OTP-0208-0107-R01 at 0111-0113; P-0138, UGA-OTP-0228-0467-R01 at 0496; P-0085, UGA-OTP-0215-0047-R01 at 0073; P-0084, UGA-OTP-0139-0149-R01 at 0174; P-0023, UGA-OTP-0150-0063-R01 at 0070; P-0028, UGA-OTP-0217-0171-R01 at 0188-0189.
[355] From 2002: ISO logbook, UGA-OTP-0063-0194 at 0216, 0250; ISO logbook, UGA-OTP-0064-0002 at 0086; ISO logbook, UGA-OTP-0064-0093 at 0103, 0111. From 2003: ISO logbook, UGA-OTP-0063-0002 at 0028-0029, 0064, 0147-0148, 0157, 0179, 0191; ISO logbook UGA-OTP-0068-0146 at 0151, 0154, 0170-0172, 0249, 0250; ISO logbook, UGA-OTP-0232-0234 at 0307, 0333-0334, 0349, 0383, 0403, 0544; ISO logbook UGA-OTP-0060-0149 at 0267; ISO logbook, UGA-OTP-0066-0002-R01 at 0015, 0025, 0037-0038, 0145; UPDF logbook, UGA-OTP-0197-1866 at 2029; UPDF logbook, UGA-OTP-0197-2162 at 2190, 2239, 2248. From 2004-2005: ISO logbook, UGA-OTP-0061-0002 at 0016, 0103, 0104 (Dominic ONGWEN on air); ISO logbook, UGA-OTP-0061-0206 at 0222-0223; ISO logbook, UGA-OTP-0062-0145 at 0249, 0288, 0295; ISO logbook, UGA-OTP-0152-0002 at 0123, 0124, 0030; see also P-0028, UGA-OTP-0217-0100-R01 at 0103, UGA-OTP-0217-0125-R01 at 0140-0141, UGA-OTP-0217-0171-R01 at 0189; P-0040, UGA-OTP-0220-0704-R01 at 0707.
[356] ISO logbook, UGA-OTP-0064-0093 at 0122.
[357] ISO logbook, UGA-OTP-0064-0002 at 0025; see also ISO logbook, UGA-OTP-0061-0002 at 0104.
[358] ISO logbook, UGA-OTP-0063-0194 at 0327-0328.
[359] P-0105, UGA-OTP-0228-0260-R01 at 0272; see also P-0293, UGA-OTP-0248-0040-R01 at 0052.

123. In an intercepted communication recorded on 25 November 2003, Joseph Kony told Buk Abudema, "Yes, we are fighting against people who support YOWERI, those who support MUSEVENI, OVER".[360]

124. Kony ordered that individuals supporting Museveni and his government should be executed, together with their "home people", meaning their family or village.[361] For example, on 29 August 2003, Kony denounced [REDACTED], a government employee, for her support of Museveni. He told Otti to attack the whole of Gulu because of it.[362] He also ordered religious leaders who demanded the LRA to engage in peace talks with the government be killed.[363]

125. Senior commanders relayed Kony's orders down the chain of command.[364] For example, Vincent Otti said in an intercepted radio communication that the "problems are the ones siding with Museveni"[365] and that the LRA "have now given enough warning to the civilians never to stay close to military defences and camps. So anybody found there is their own mistake".[366] Likewise, Buk Abudema, at the time Dominic Ongwen's superior,[367] said that the LRA's "major problem is

[360] ISO sound recording, UGA-OTP-0239-0062 (enhanced, track 2, at 00:25:31 (voices have been identified by P-0059, UGA-OTP-0248-0328-R01 at 0337 [Transcript at UGA-OTP-0248-0342-R01] and P-0003, UGA-OTP-0248-0094-R01 at 0102, [Transcript at UGA-OTP-0248-0224-R01]), UGA-OTP-0037-0314 (original).
[361] ISO logbook, UGA-OTP-0068-0002 at 0058; see also P-0067, UGA-OTP-0139-0193-R01 at 0201; P-0245, UGA-OTP-0244-0461-R01 at 0480; P-0028, UGA-OTP-0217-0100-R01 at 0103.
[362] ISO logbook, UGA-OTP-0060-0149 at 0268; ISO logbook, UGA-OTP-0232-0234 at 0336; see also ISO logbook, UGA-OTP-0232-0234 at 0333-0334, 0349, 0379, 0380; ISO logbook, UGA-OTP-0060-0149 at 0267.
[363] ISO logbook, UGA-OTP-0064-0093 at 0157.
[364] For instance, Charles Tabuley relayed orders, *see* ISO logbook, UGA-OTP-0232-0234 at 0489; see also ISO logbook, UGA-OTP-0063-0194 at 0289; ISO logbook, UGA-OTP-0063-0194 at 0028, ISO logbook, UGA-OTP-0063-0194 at 0029; P-0151, UGA-OTP-0228-6065-R01 at 6075-6077.
[365] ISO logbook, UGA-OTP-0063-0194 at 0307.
[366] ISO logbook, UGA-OTP-0063-0194 at 0312; see also P-0067, UGA-OTP-0139-0193-R01 at 0203; P-0245, UGA-OTP-0244-0269-R01 at 0276; P-0152, UGA-OTP-0200-0015-R01 at 0035; ISO logbook, UGA-OTP-0232-0234 at 0333-0334, 0349; ISO logbook, UGA-OTP-0060-0149 at 0267; ISO logbook, UGA-OTP-0068-0146 at 0248; ISO logbook, UGA-OTP-0064-0093 at 0122.
[367] *See* section on common elements of modes of liability, para. 75-110.

civilians who still clings on Museveni like ticks. That civilians must be killed until they whole accept to join LRA to remove Museveni".[368]

3. Dominic Ongwen's individual criminal responsibility

126. Contrary to international law, Dominic Ongwen severely deprived the civilians residing at Pajule, Odek, Lukodi and Abok IDP camps of their fundamental rights to life, to liberty and security of person, to freedom of movement, to private property, not to be subjected to torture or to cruel, inhumane or degrading treatment, and not to be held in slavery or servitude.

127. The charged crimes of attacking civilians,[369] murder,[370] attempted murder,[371] torture/other inhumane acts/cruel treatment,[372] enslavement,[373] pillaging,[374] destruction of property[375] and outrages on personal dignity[376] form the underlying conduct of the persecution of the civilian population on political grounds at Pajule, Odek, Lukodi and Abok IDP camps.[377]

128. As detailed in the sections on the four IDP camp attacks, paragraphs 184 to 228 (Pajule), paragraphs 269 to 312 (Odek), paragraphs 343 to 376 (Lukodi), and paragraphs 408 to 427 (Abok), Dominic Ongwen is responsible for the crime of persecution under articles 25(3)(a) (as an indirect co-perpetrator at the Pajule and Odek IDP camp attacks and as in indirect perpetrator at the Lukodi and Abok

[368] ISO logbook, UGA-OTP-0066-0002-R01 at 0086-0087; see also ISO logbook, UGA-OTP-0062-0145 at 0288.
[369] Counts 1 (Pajule), 11 (Odek), 24 (Lukodi), 37 (Abok).
[370] Counts 2, 3 (Pajule), 12, 13 (Odek), 25, 26 (Lukodi), 38, 39 (Abok).
[371] Counts 14, 15 (Odek), 27, 28 (Lukodi), 40, 41 (Abok).
[372] Counts 4, 5 (Pajule), 16, 17 (Odek), 29, 30 (Lukodi), 42, 43 (Abok).
[373] Counts 8 (Pajule), 20 (Odek), 33 (Lukodi), 46 (Abok).
[374] Counts 9 (Pajule), 21 (Odek), 34 (Lukodi), 47 (Abok).
[375] Count 35 (Lukodi), 48 (Abok).
[376] Count 22 (Odek).
[377] *See* ICC-01/04-02/06-309, para. 58; see also, ICC-02/11-02/11-186, para. 122-123; ICC-01/09-01/11-373, para. 269-274.

IDP camp attacks), (b) (ordering), (d)(i) and (ii) and 28(a). He acted with the requisite intent and knowledge under article 30.

Dominic Ongwen acted with special discriminatory intent:

129. In addition to the *mens rea* under article 30, Dominic Ongwen acted with the intent to severely deprive the group of civilians of Abok, Lukodi, Odek, and Pajule IDP camps of fundamental rights and to target these groups on the basis of their perceived support for the Ugandan government.

130. The evidence described in this section, paragraphs 111 to 147, viewed in its totality, establishes substantial grounds to believe that Dominic Ongwen had the discriminatory intent to attack civilians on the basis of their perceived affiliation and support for the Ugandan government.

Dominic Ongwen was aware of the persecutory campaign

131. From at least 1 July 2002 to 31 December 2005, Dominic Ongwen was aware of the persecutory campaign orchestrated by Kony, and executed Kony's persecutory orders. In particular, Ongwen himself,[378] or his superior at the time,[379] was recorded as being on air when persecutory orders were issued or discussed during the period charged.

[378] ISO logbook, UGA-OTP-0065-0002 at 0020; ISO logbook, UGA-OTP-0063-0002 at 0067; ISO logbook, UGA-OTP-0066-0002-R01 at 0164; ISO logbook, UGA-OTP-0061-0002 at 0098; ISO logbook, UGA-OTP-0062-0002 at 0040, 0049; Intelligence Report, UGA-OTP-0016-0308 at 0311.
[379] ISO logbook, UGA-OTP-0068-0146 at 0260. Pursuant to the LRA's strict command structure described in the section on common elements of modes of liability, para. 75-110, this order would have reached Dominic Ongwen.

132. For example, Dominic Ongwen was on air on 10 November 2002, when Kony instructed him and other commanders to kill civilians because they are "Museveni's p[eo]ple".[380]

133. On 23, 24, and 26 February 2004, Dominic Ongwen was on air when Kony instructed all LRA units in Uganda to attack and kill civilians because "it's the same civilians which Museveni recruit to fight LRA",[381] that "all people should know that those who support Museveni will all be killed by LRA",[382] and that these attacks should be conducted against Acholi, Langi and Itesos.[383]

134. Finally, he was on air on 25 March 2004, when the LRA leadership decided to distribute letters warning civilians that if they wanted peace, they should "stop supporting those people [Museveni or [REDACTED]]".[384]

Dominic Ongwen's own words show his discriminatory intent

135. In addition to the evidence brought forward in relation to the four camp attacks described immediately below, Dominic Ongwen expressed his discriminatory intent on several occasions.[385] For instance, in P-0018's presence, an abductee recruited into the LRA and involved in the Lukodi attack under Dominic Ongwen, Dominic Ongwen said that the camps should be attacked as, "people of Acholi supports Museveni […] and then should all be killed".

[380] ISO logbook, UGA-OTP-0065-0002 at 0020; see also ISO logbook, UGA-OTP-0063-0002 at 0067; P-0028, UGA-OTP-0217-0100-R01 at 0105. Similar orders followed throughout the year, including orders to attack Acholibur, Lagile and Okinga, *see* ISO logbook, UGA-OTP-0063-0002 at 0134; see also ISO logbook, UGA-OTP-0060-0002 at 0012; ISO logbook, UGA-OTP-0068-0146 at 0260; ISO logbook, UGA-OTP-0068-0146 at 0263; ISO logbook, UGA-OTP-0068-0146 at 0276; UPDF logbook, UGA-OTP-0197-1078 at 1125.
[381] ISO logbook, UGA-OTP-0061-0002 at 0096.
[382] ISO logbook, UGA-OTP-0061-0002 at 0098; see also at 0102 and ISO logbook, UGA-OTP-0066-0002-R01 at 0164.
[383] ISO logbook, UGA-OTP-0061-0002 at 0103-0104.
[384] UGA-OTP-0016-0308 at 0311; see also ISO logbook, UGA-OTP-0061-0002 at 0196-0197.
[385] ISO logbook, UGA-OTP-0062-0145 at 0152-0153, 0156 (Dominic ONGWEN on air), 0164; Intelligence report, UGA-OTP-0017-0480 at 0485.

136. P-0018 also said that Dominic Ongwen gave a speech to new recruits in which he ordered them to attack Gwendia and to "kill everyone and that no one should remain" because "the government had sent helicopters to kill our leaders".[386] Similarly, on 29 September 2004, Dominic Ongwen said that "civilians always keep singing that LRA should all come out of the bush if they don't want to get finished", presuming that they supported the government. "He said as they keep saying that, he will organise more atrocities".[387]

Dominic Ongwen's conduct at attacks other than those charged demonstrates his discriminatory intent

137. Dominic Ongwen's conduct in attacks before and after the charged incidents further demonstrates his discriminatory intent. On 4 April 2003, Kony ordered that civilians in Lagile should be killed because they have become a "problem".[388] Complying with this order, Dominic Ongwen attacked Lagile IDP camp on or about 5 April 2003, burning down many houses, killing twenty civilians and abducting many others.[389]

138. On 2 February 2004, Dominic Ongwen attacked Koc Ongako IDP camp.[390] P-0245 said that the camp was attacked because a civilian had reported the LRA sickbay to the government.[391] Dominic Ongwen reported the successful looting

[386] P-0018, UGA-OTP-0159-0002-R01 at 0010.
[387] ISO logbook, UGA-OTP-0062-0145 at 0299.
[388] ISO logbook, UGA-OTP-0063-0002 at 0079-0080.
[389] ISO logbook, UGA-OTP-0063-0002 at 0083; see also P-0197, UGA-OTP-0241-0022-R01 at 0032.
[390] Intelligence report, UGA-OTP-0016-0026 at 0028; ISO logbook, UGA-OTP-0061-0002 at 0072.
[391] P-0245, UGA-OTP-0244-0461-R01 at 0485.

and burning of houses, and the death of four persons (including two UPDF soldiers) at the camp.[392]

139. On 19 March 2004, Dominic Ongwen jointly with other senior commanders attacked Lira-Palwo IDP camp.[393] He and his fighters killed, injured, and abducted civilians, looted the camp and burned huts.[394] Shortly before, on 25 February 2004, Kony had instructed that "people in Lira Palwo are very bad people and [REDACTED]should organise and kill them seriously".[395] Dominic Ongwen was on air when Kony issued this instruction.

Evidence specific to the four IDP camp attacks:

Count 10 – persecution at Pajule IDP camp

140. Dominic Ongwen implemented Kony's persecutory orders by attacking Pajule IDP camp on or about 10 October 2003. Ongwen told Pajule abductee P-0009 that the LRA was going to kill all the civilians there because they were supporting the government.[396] He kicked P-0009 and also kicked and/or caned every other person brought to him.[397] P-0009 said that Ongwen "was bitter and he wanted to kill people and overthrow the Government", that he "was very fierce and he was very anti-governmental, claiming that the government would use us [the civilians] to locate the LRA where they were".[398]

[392] UPDF logbook, UGA-OTP-0197-0697 at 0780; UPDF intelligence report, UGA-OTP-0016-0059 at 0060; ISO logbook, UGA-OTP-0061-0002 at 0072.
[393] ISO logbook, UGA-OTP-0061-0002 at 0165.
[394] UGA-OTP-0018-0028 at 0040; ISO logbook, UGA-OTP-0061-0002.
[395] ISO logbook, UGA-OTP-0061-0002 at 0101.
[396] P-0009, UGA-OTP-0241-0546-R01 at 0551; *see further* P-0084, UGA-OTP-0139-0149-R01at 0162.
[397] P-0009, UGA-OTP-0241-0546-R01 at 0551.
[398] P-0009, UGA-OTP-0241-0546-R01 at 0552.

141. P-0084, a UPDF soldier who formed part of the post-attack fact-finding mission, confirmed P-0009's account. He recalled a conversation with P-0009, who had told him that one of the reasons Pajule was attacked was that the "people of Pajule were not supporting the rebels but were accusing and reporting them to the government troops so the rebels wanted to show them their power that the people are not protected and the rebels can do anything" and that the "people should leave the camps".[399]

Count 23 – persecution at Odek IDP camp

142. Dominic Ongwen implemented Kony's persecutory orders by attacking Odek IDP camp on or about 29 April 2004. P-0224 heard Dominic Ongwen tell Kony on the radio that he planned to attack Odek because the civilians of Odek were "stubborn".[400]

143. P-0245, who participated in the attack, confirmed that Ongwen, relaying an order by Kony, ordered to kill "those ones who remain in the camp" as they "are supporting Government"[401] and should be considered as enemies.[402] P-0245 said that the purpose was to show the civilians that the government or the UPDF was not able to protect them.[403]

Count 36 – persecution at Lukodi IDP camp

144. Dominic Ongwen implemented Kony's persecutory orders by attacking Lukodi IDP camp on or about 19 May 2004. Lukodi was attacked, *inter alia*,

[399] P-0084, UGA-OTP-0139-0149-R01 at 0174.
[400] P-0224, UGA-OTP-0244-3050-R01 at 3062-3063, 3065, 3071-3072.
[401] P-0245, UGA-OTP-0244-0285-R01 at 0291, 0308.
[402] P-0245, UGA-OTP-0244-0313-R01 at 0317.
[403] P-0245, UGA-OTP-0244-0269-R01 at 0276, UGA-OTP-0244-0313-R01 at 0316; see also P-0028, UGA-OTP-0217-0171-R01 at 0189.

because the LRA were looking to revenge the public criticism of the LRA by a UPDF officer from Lukodi.[404]

145. P-0202 heard Dominic Ongwen order his fighters "to work in Lukodi because these people are stubborn".[405] She explained this to mean that they cooperate with the government soldiers by reporting LRA's positions.[406]

Count 49 – persecution at Abok IDP camp

146. Dominic Ongwen implemented Kony's persecutory orders by attacking Abok IDP camp on or about 8 June 2004. P-0293, [REDACTED], overheard LRA fighters discussing Ongwen's order to "kill everyone who was not one of them",[407] meaning civilians siding with the government. He reported that the LRA rebels had previously told the civilians that the "good government was with them; they asked people to support them, not to support the government in power".[408]

147. P-0286, an Abok abductee, confirmed that the civilians at Abok IDP camp did not support the LRA.[409] He said that the rebels talked about overthrowing the government and abducting civilians to increase their strength for this goal.[410] P-0293 further recounted that a civilian resident was beaten in a prior attack on Abok IDP camp, when he had merely asked questions that the rebels perceived to be opposing the LRA.[411]

VII. ATTACK ON PAJULE IDP CAMP

[404] P-0245, UGA-OTP-0244-0363-R01 at 0389-0390.
[405] P-0202, UGA-OTP-0243-0907-R01 at 0925, UGA-OTP-0243-1011-R01 at 1025-1026.
[406] P-0202, UGA-OTP-0243-1035-R01 at 1039.
[407] P-0293, UGA-OTP-0248-0040-R01 at 0049.
[408] P-0293, UGA-OTP-0248-0040-R01 at 0051.
[409] P-0286, UGA-OTP-0248-0060-R01 at 0086.
[410] P-0286, UGA-OTP-0248-0060-R01 at 0086.
[411] P-0293, UGA-OTP-0248-0040-R01 at 0051.

1. Introduction

148. Pajule and Lapul IDP camps were set up in 1996.[412] The camps were bisected by a north-south road, the Kitgum to Lira road. Pajule IDP camp was situated on the east side of the road. Lapul IDP camp was situated on the west side.[413]

149. Along the road there were shops that formed a trading centre.[414] The inhabitants of the camps lived in and around the trading centre.[415] It is estimated that in October 2003, there were between 15,000 and 30,000 civilians living at the camp.[416] In addition to a trading centre, the camp contained a Catholic mission[417] and the barracks of UPDF and LDU soldiers who served as guards.[418]

150. Pajule and Lapul IDP camps were treated as one large camp by aid agencies. For this reason, this submission will use the term "Pajule IDP camp" to refer to both camps unless otherwise stated.

151. On or about 10 October 2003, shortly after Ugandan Independence Day, Dominic Ongwen together with other senior members of the LRA, including Joseph Kony, Vincent Otti, Raska Lukwiya and Bogi Bosco ("Pajule co-perpetrators") implemented a common plan to attack Pajule IDP camp, then located in Aruu County, Pader District ("Pajule common plan").

[412] P-0081, UGA-OTP-0070-0029-R01 at 0031.
[413] P-0047, UGA-OTP-0027-0177-R01 at 0184.
[414] P-0047, UGA-OTP-0027-0177-R01 at 0184.
[415] P-0084, UGA-OTP-0139-0149-R01 at 0155.
[416] P-0084, UGA-OTP-0139-0149-R01 at 0161; P-0008, UGA-OTP-0137-0058 at 0058-0059.
[417] P-0084, UGA-OTP-0139-0149-R01 at 0155, UGA-OTP-0139-0178.
[418] P-0084, UGA-OTP-0139-0149-R01 at 0152-0153.

152. The purpose of the attack was to demonstrate the LRA's power, to express LRA dissatisfaction with civilians residing at the camp who were perceived to support the Ugandan government,[419] to pillage items, and to abduct civilian residents in order to carry pillaged items and serve as conscripts in the LRA.[420]

153. The attack started at around 05:30-06:00.[421] At least 40 LRA fighters[422] armed with guns and knives entered the camp, shooting, whistling, and ululating.[423] Civilian residents within the camp described being woken up to the sound of gunfire and seeing LRA fighters dressed in a mix of military-style uniforms and civilian clothing.[424] Some of the LRA fighters were bare-chested or had their shirts tied around their waist and were wearing gumboots.[425]

[419] *See further*, section on persecution, para. 111-147.
[420] P-0009, UGA-OTP-0151-0167-R01 at 0177; P-0015, UGA-OTP-0043-0131-R01 at 0146; P-0048, UGA-OTP-0209-0179-R01 at 0184; P-0070, UGA-OTP-0228-3010-R01 at 3036; P-0084, UGA-OTP-0139-0149-R01 at 0161-0162, UGA-OTP-0069-0416 at 0417; [REDACTED]; P-0130, UGA-OTP-0191-0272-R01 at 0278-0279; P-0138, UGA-OTP-0228-0568-R01 at 0593, UGA-OTP-0228-6290-R01 at 6316, UGA-OTP-0228-6290-R01 at 6312, 6316, 6322, 6328; P-0144, UGA-OTP-0228-1376-R01 at 1397; P-0209, UGA-OTP-0243-0354-R01 at 0365, 0375.
[421] P-0006, UGA-OTP-0144-0072-R01 at 0075; P-0007, UGA-OTP-0147-0214-R01 at 0217; P-0008, UGA-OTP-0137-0002-R01 at 0005; P-0009, UGA-OTP-0151-0167-R01 at 0175, UGA-OTP-0241-0546-R01 at 0549; P-0045, UGA-OTP-0218-0113-R01 at 0139, UGA-OTP-0218-0143-R01 at 0161, UGA-OTP-0220-1035-R01 at 1057-1058; P-0047, UGA-OTP-0027-0177-R01 at 0190-0191; P-0052, UGA-OTP-0207-0196-R01 at 0204-0205; P-0061, UGA-OTP-0144-0043-R01 at 0046; P-0067, UGA-OTP-0139-0193-R01 at 0195; P-0081, UGA-OTP-0070-0029-R01 at 0032; P-0084, UGA-OTP-0139-0149-R01 at 0163; P-0107, UGA-OTP-0169-0002-R01 at 0014; P-0130, UGA-OTP-0191-0272-R01 at 0280; P-0209, UGA-OTP-0243-0379-R01 at 0389, 0395; P-0249, UGA-OTP-0238-0771-R01 at 0773.
[422] P-0047, UGA-OTP-0027-0177-R01 at 0191; P-0061, UGA-OTP-0144-0043-R01 at 0046; P-0084, UGA-OTP-0139-0149-R01 at 0164, UGA-OTP-0069-0416 at 0417; P-0107, UGA-OTP-0169-0002-R01 at 0013; P-0130, UGA-OTP-0191-0272-R01 at 0279; P-0309, UGA-OTP-0249-0472-R01 at 0486.
[423] P-0006, UGA-OTP-0144-0072-R01 at 0075; P-0007, UGA-OTP-0147-0214-R01 at 0217; P-0009, UGA-OTP-0241-0546-R01 at 0549; P-0047, UGA-OTP-0209-0153-R01 at 01912; P-0061, UGA-OTP-0144-0043-R01 at 0046; P-0067, UGA-OTP-0139-0193-R01 at 0196; P-0081, UGA-OTP-0070-0029-R01 at 0032; P-0130, UGA-OTP-0191-0272-R01 at 0280; P-0249, UGA-OTP-0238-0771-R01 at 0773-0777.
[424] P-0006, UGA-OTP-0144-0072-R01 at 0075-0076; P-0009, UGA-OTP-0151-0167-R01 at 0175, UGA-OTP-0241-0546-R01 at 0549; P-0047, UGA-OTP-0027-0177-R01 at 0191; P-0052, UGA-OTP-0207-0196-R01 at 0206-0207; P-0061, UGA-OTP-0144-0043-R01 at 0046; P-0084, UGA-OTP-0139-0149-R01 at 0164; P-0309, UGA-OTP-0249-0472-R01 at 0486.
[425] P-0006, UGA-OTP-0144-0072-R01 at 0075-0076; P-0047, UGA-OTP-0027-0177-R01 at 0191; P-0052, UGA-OTP-0207-0196-R01 at 0206.

154. The LRA fighters attacking the camp were divided into groups.[426] One group attacked the barracks at the camp. Another group attacked the civilian areas, including the trading centre and the Catholic mission. LRA fighters were also tasked with ambushing reinforcements that were sent to repel the attack.[427] Dominic Ongwen led a group of LRA fighters who attacked the trading centre area within the camp.[428]

155. After approximately one hour of intense fighting at the barracks, the UPDF/LDU forces managed to repel the LRA fighters.[429] A UPDF helicopter was also sent to assist.[430] This caused LRA fighters who attacked the barracks to withdraw to other areas of the camp.[431] The LRA fighters then retreated to a meeting point, taking with them items that they had pillaged and the civilians they had abducted.[432]

156. Intercepted radio communications between LRA commanders, statements from former LRA fighters and statements from civilian victims of the attack establish substantial grounds to believe that the attack resulted in the crimes charged. The evidence establishes that Dominic Ongwen bears individual criminal responsibility as a result of his planning and execution of the attack.

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[426] P-0081, UGA-OTP-0070-0029-R01 at 0039; P-0047, UGA-OTP-0027-0177-R01 at 0191-0193.
[427] P-0006, UGA-OTP-0144-0072-R01 at 0076-0077; P-0007, UGA-OTP-0147-0214-R01 at 0217; P-0008, UGA-OTP-0137-0002-R01 at 0006; P-0015, UGA-OTP-0043-0131-R01 at 0146; P-0045, UGA-OTP-0220-1035-R01 at 1058, UGA-OTP-0218-0113-R01 at 0139; P-0130, UGA-OTP-0191-0272-R01 at 0278-0279; P-0138, UGA-OTP-0228-0568-R01 at 0593, UGA-OTP-0228-6290-R01 at 6312; P-0144, UGA-OTP-0228-1376-R01 at 1399.
[428] P-0045, UGA-OTP-0218-0143-R01 at 0160, UGA-OTP-0220-1035-R01 at 1051, 1057, UGA-OTP-0220-1064-R01 at 1074; [REDACTED]; P-0138, UGA-OTP-0228-6385-R01 at 6403-6404; P-0144, UGA-OTP-0228-1376-R01 at 1401-1402, 1405, 1410; P-0146, UGA-OTP-0228-4224-R01 at 4249.
[429] P-0047, UGA-OTP-0027-0177-R01 at 0182, 0187; P-0084, UGA-OTP-0069-0416 at 0418.
[430] P-0047, UGA-OTP-0027-0177-R01 at 0192.
[431] P-0309, UGA-OTP-0249-0472-R01 at 0486.
[432] P-0006, UGA-OTP-0144-0072-R01 at 0076-0077; P-0008, UGA-OTP-0137-0002-R01 at 0006; P-0045, UGA-OTP-0218-0143-R01 at 0161-0162; P-0047, UGA-OTP-0027-0177-R01 at 0187-0188, 0193; P-0048, UGA-OTP-0209-0179-R01 at 0186; P-0084, UGA-OTP-0069-0416 at 0418; P-0130, UGA-OTP-0191-0272-R01 at 0278, 0281; P-0144, UGA-OTP-0228-1376-R01 at 1413.

2. Crimes committed

Count 1 – attacks directed against the civilian population (article 8(2)(e)(i)):

157. LRA fighters under the joint control of the Pajule co-perpetrators including Dominic Ongwen carried out an attack against the civilian population of Pajule IDP camp as such, or individual civilians not taking direct part in the hostilities. Dominic Ongwen intended the civilian population as such, or individual civilians not taking direct part in the hostilities, to be the object of the attack.

158. The following submissions under counts 2-3 (murder), counts 4-5 (torture), count 6 (cruel treatment) and count 7 (other inhumane acts), count 8 (enslavement), and count 9 (pillaging) qualify as the underlying conduct of the war crime of attacks directed against the civilian population.

Counts 2-3 – murder (articles 7(1)(a) and 8(2)(c)(i)):

159. During the course of the attack, LRA fighters shot at civilian residents who tried to escape or refused to carry pillaged items, resulting in the killing of civilians.

160. Among the dead were [REDACTED]and [REDACTED].[433] P-0067 saw [REDACTED]being murdered by LRA fighters after the attack.[434] According to P-0067, "[REDACTED]was killed bacuse [sic] he was working for the government. I hear one of the LRA say that you are an employee of the government and I am

[433] P-0006, UGA-OTP-0144-0072-R01 at 0080; P-0007, UGA-OTP-0147-0214-R01 at 0218; P-0008, UGA-OTP-0137-0002-R01 at 0007, 0008; P-0067, UGA-OTP-0139-0193-R01 at 0200, 0201; P-0081, UGA-OTP-0070-0029-R01 at 0033.
[434] P-0067, UGA-OTP-0139-0193-R01 at 0201.

going to killed you […] he opened a bayonet knife, affixed on top of a gun, and pierced him on the side".[435] P-0008, a former camp resident, explained that he saw the dead body of [REDACTED]after it had been brought back "from the bush" by relatives of the deceased.[436] P-0008 was also informed that [REDACTED] "body was found about one kilometre away from the Pajule side of the camp".[437] P-0007, a former camp resident, attended the funeral of [REDACTED].[438]

161. P-0067 also heard LRA fighters order [REDACTED]to be shot in the head because he refused to carry items given to him by the LRA.[439] He saw an LRA fighter point "a small foldable gun in the middle of the back of [REDACTED]head and he was shot three times in the head".[440] P-0008 later saw the dead body of [REDACTED].[441]

162. Other witnesses saw bodies of other people killed by the LRA during the attack.[442] P-0047, a UPDF soldier, saw dead bodies of civilians around the barracks area of the camp.[443] P-0067 saw the dead body of a 40 year old female at the trading centre area with her children crying beside her.[444] A fact finding mission conducted by P-0084 after the attack concluded that civilians were killed by LRA fighters during the attack.[445]

163. There is no doubt that LRA fighters who participated in the attack had the express intent to kill civilians and were armed with guns and knives for this

[435] P-0067, UGA-OTP-0139-0193-R01 at 0201.
[436] P-0008, UGA-OTP-0137-0002-R01 at 0008; see also P-0067, UGA-OTP-0139-0193-R01 at 0201.
[437] P-0008, UGA-OTP-0137-0002-R01 at 0008.
[438] P-0007, UGA-OTP-0147-0214-R01 at 0218.
[439] P-0067, UGA-OTP-0139-0193-R01 at 0200.
[440] P-0067, UGA-OTP-0139-0193-R01 at 0201.
[441] P-0008, UGA-OTP-0137-0002-R01 at 0010.
[442] P-0084, UGA-OTP-0139-0149-R01 at 0152.
[443] P-0047, UGA-OTP-0027-0177-R01 at 0183, 0193, 0194.
[444] P-0067, UGA-OTP-0139-0193-R01 at 0197, 0198.
[445] P-0084, UGA-OTP-0069-0416 at 0419; P-0084, UGA-OTP-0139-0149-R01 at 0152, 0156, 0169.

purpose.[446] P-0249, a civilian abducted from the camp, saw LRA fighters shoot at a civilian which resulted in his "intestines [being] spilled out".[447] Several civilian victims state that the LRA fighters who attacked Pajule IDP camp threatened to either shoot[448] or kill them.[449] LRA fighters threatened to kill children of civilians in the camp and locked children in a hut for this purpose.[450]

164. Dominic Ongwen was himself seen and heard to threaten to kill civilians that refused to move as he instructed.[451]

Counts 4-5 - torture (articles 7(1)(f) and 8(2)(c)(i)) and count 6 - cruel treatment (article 8(2)(c)(i)), count 7 – other inhumane acts (article 7(1)(k)):

Legal characterisation of counts 4-7

165. The Prosecution submits that the beating of civilians, forcing them to carry heavy loads, often for long distances while tied to each-other under constant threat of harm, being subjected to punitive conditions, and witnessing the beatings and killings of other abductees who were either too weak or who attempted to escape caused severe physical or mental pain or suffering, amounting to torture under articles 7(1)(f) and 8(2)(c)(i).[452]

[446] P-0006, UGA-OTP-0144-0072-R01 at 0075; P-0052, UGA-OTP-0207-0196-R01 at 0206; P-0061, UGA-OTP-0144-0043-R01 at 0046; P-0067, UGA-OTP-0139-0193-R01 at 0196; P-0130, UGA-OTP-0191-0272-R01 at 0280; P-0249, UGA-OTP-0238-0771-R01 at 0774.
[447] P-0249, UGA-OTP-0238-0771-R01 at 0774.
[448] P-0008, UGA-OTP-0137-0002-R01 at 0005; P-0061, UGA-OTP-0144-0043-R01 at 0047; P-0249, UGA-OTP-0238-0771-R01 at 0774.
[449] P-0006, UGA-OTP-0144-0072-R01 at 0075; P-0008, UGA-OTP-0137-0002-R01 at 0005; P-0067, UGA-OTP-0139-0193-R01 at 0196.
[450] P-0067, UGA-OTP-0139-0193-R01 at 0196.
[451] P-0249, UGA-OTP-0238-0771-R01 at 0779.
[452] *See Prosecutor v Brdjanin*, IT-98-36-A, Appeal Judgement, 3 April 2007, para. 251: "Acts inflicting physical pain may amount to torture even when they do not cause the amount of pain of the type accompanying serious injury. Whether an act causes severe pain or suffering is determined on a case-by-case basis"; see further, section on persecution, para. 111-147.

166. The crime against humanity requires a "specific purpose",[453] while the war crime requires "control".[454] These are materially distinct elements, thus permitting the cumulative charging of this crime. On the permissibility of such cumulative charging, see the submissions at paragraph 7.

167. Further, the Prosecution also submits that this conduct amounts to the war crime of cruel treatment under article 8(2)(c)(i) and the crime against humanity of other inhumane acts under article 7(1)(k).[455] Both crimes require the infliction of severe physical or mental pain or suffering against civilians,[456] or those *hors de combat*.[457]

168. The Chamber should confirm the charges of torture and cruel treatment and other inhumane acts, in respect of the same conduct, here and in respect of similar conduct committed in the subsequent charged attacks on Odek,[458] Lukodi[459] and Abok.[460]

Torture, cruel treatment and other inhumane acts in Pajule

[453] Torture as a war crime requires that a specific purpose be proven ("specific purpose requirement"), whereas torture as a crime against humanity does not contain this requirement. *Compare* Elements of Crimes, article 8(2)(c)(i)-4, para. 2 *with ibid*., article 7(l)(f), fn. 14.
[454] Torture as a crime against humanity includes a requirement that "[s]uch person or persons were in the custody or under the control of the perpetrator" ("control requirement"), something that is not required for torture as a war crime. *Compare* Elements of Crimes, article 7(l)(f), para. 2 *with ibid*., article 8(2)(c)(i)-4.
[455] For the purposes of applying the "materially distinct" test, the legal elements of the crime may include the *chapeau* requirements of the particular crime. *See* ICC-01/04-01/07-3436-tENG, para. 1696; see also, ICC-01/04-01/07-717, para. 419; see further, *Prosecutor v Natelic & Martinovic*, IT-98-34-A, Appeal Judgement, 3 May 2006, para. 562.
[456] Per Element 1 of the crime against humanity of other inhumane acts: "The perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act"; see Elements of Crimes, article 7(1)(k), para. 1.
Similarly, Element 1 of the war crime of cruel treatment requires: "The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons". *See* Elements of Crimes, article 8(2)(c)(i)-3, para. 1.
[457] Per Element 2 of the war crime of cruel treatment: "Such person or persons were either hors de combat, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities". *See* Elements of Crimes, article 8(2)(c)(i)-3, para. 2.
[458] *See* submissions on Counts 15-19, below.
[459] *See* submissions on Counts 29-32, below.
[460] *See* submissions on Counts 42-45, below.

169. In the course of the attack on Pajule, LRA fighters inflicted severe physical and mental pain or suffering on civilians taking no active part in hostilities. Such pain or suffering did not arise from, and was not inherent in or incidental to, lawful sanctions.

170. This treatment was carried out to intimidate and/or punish the civilian population because of their perceived support for the government.[461] Furthermore, this treatment was carried out when the victims were under the control of the LRA attackers.[462]

171. P-0067 was abducted during the attack. He explained that LRA fighters selected children of civilians in order to burn them. The children were placed in a hut which was then locked. However, LRA fighters were prevented from carrying out their actions by a UPDF helicopter that arrived at the scene.[463] LRA fighters used an axe to break into P-0067's home before using rope to tie up the witness and his family members. He was made to carry pillaged items.[464]

172. P-0009 was forcibly removed from his home located near the trading centre. He was kicked and beaten with the butt of a gun by LRA fighters. He was then tied with his arms behind his back.[465] P-0009 was taken to Dominic Ongwen who was present at the trading centre area. Dominic Ongwen kicked him as well as other civilians that were brought to him.[466]

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[461] Per Element 2 of the war crime of torture: "The perpetrator inflicted the pain or suffering for such purposes as: obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind". *See* Elements of Crimes, article 8(2)(c)(i)-4, para. 2. *See generally*, the section on persecution, para. 111-147. *See especially*, the submissions on persecution under Count 10, para. 140-141.
[462] Per Element 2 of the crime against humanity of torture: "Such person or persons were in the custody or under the control of the perpetrator". *See* Elements of Crimes, article 7(1)(f), para. 2.
[463] P-0067, UGA-OTP-0139-0193-R01 at 0196.
[464] P-0067, UGA-OTP-0139-0193-R01 at 0195-0196, 0200.
[465] P-0009, UGA-OTP-0151-0167-R01 at 0175; P-0009, UGA-OTP-0241-0546-R01 at 0549.
[466] P-0009, UGA-OTP-0241-0546-R01 at 0551.

173. LRA fighters attacked P-0061, ripped off his shirt and used it to tie his hands behind his back.[467] He was then made to carry pillaged items.[468] LRA fighters fired shots at the house of P-0249 demanding that he come out.[469] P-0249 had no choice but to yield to LRA demands. Once he and his wife exited, they were separated. P-0249 was then tied up.[470]

174. According to P-0081, an abductee, abducted civilians were forced to carry heavy items that had been pillaged as well as wounded LRA fighters.[471] These civilians were forced to march to an LRA meeting point.[472] Civilians who refused to carry items or failed to move quickly enough were beaten or killed.[473] P-0309, who participated in the attack, said that "if someone was moving slowly with their carried goods the LRA fighters who they were carrying the food for would beat them".[474]

Count 8 – enslavement (article 7(1)(c)):

175. LRA fighters deprived civilians of their liberty by abducting them and placing them under military guard to prevent their escape. LRA fighters abducted hundreds of civilians and made them carry food items and other equipment that they had looted from the camp. In doing so, attackers exercised any or all of the powers attaching to the right of ownership over the abductees including by depriving them of their liberty and exacting forced labour, reducing them to a

[467] P-0061, UGA-OTP-0144-0043-R01 at 0045-0047.
[468] P-0061, UGA-OTP-0144-0043-R01 at 0046.
[469] P-0249, UGA-OTP-0238-0771-R01 at 0773-0774.
[470] P-0249, UGA-OTP-0238-0771-R01 at 0774.
[471] P-0081, UGA-OTP-0070-0029-R01 at 0033-0036, 0040.
[472] P-0081, UGA-OTP-0070-0029-R01 at 0034.
[473] P-0006, UGA-OTP-0144-0072-R01 at 0075; P-0009, UGA-OTP-0241-0546-R01 at 0550, 0551; P-0081, UGA-OTP-0070-0029-R01 at 0035; P-0015, UGA-OTP-0043-0131-R01 at 0146, 0147; P-0045, UGA-OTP-0218-0171-R01 at 0172; P-0061, UGA-OTP-0144-0043-R01 at 0046, 0047; P-0067, UGA-OTP-0139-0193-R01 at 0200; P-0144, UGA-OTP-0228-1418-R01 at 1429-1430; P-0309, UGA-OTP-0249-0472-R01 at 0487.
[474] P-0309, UGA-OTP-0249-0472-R01 at 0487.

servile status. The exertion of powers which may be associated with the right of ownership may include detention or captivity, restrictions on freedom to come and go or on any freedom of choice or movement, or, more generally, any measure taken to prevent or deter any attempt at escape.[475]

176. LRA fighters abducted, tied up, and forced civilians to carry pillaged items as well as wounded LRA fighters to an LRA meeting point.[476] Civilians who could not move quickly enough or comply with instructions were caned, beaten[477] or killed. Among them was P-0009, who was forced to carry a bag of rice.[478] P-0061, only 15 at the time, was forced to carry a crate of soda.[479]

177. P-0138 estimated that at least two hundred civilian residents not taking part in hostilities were abducted and enslaved following the attack at the camp.[480] Some witnesses place this number higher. P-0144, a former LRA fighter who participated in the attack, estimated that four hundred civilians were abducted during the attack.[481] P-0250, an abductee,[482] estimated that around three hundred civilians were abducted.[483] P-0084 flew over the camp in a helicopter during the attack. He saw that approximately three hundred civilians had been abducted.[484] P-0047 was present during the attack. He was informed that approximately three hundred civilians were abducted during the attack.[485]

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[475] *Katanga* trial judgment, ICC-01/04-01/07-3436-tENG, para. 1976 ("The use of threats, force or other forms of physical or mental coercion, the exaction of forced labour, the exertion of psychological pressure, the victim's vulnerability and the socioeconomic conditions in which the power is exerted may also be taken into account"); *see also*, *Prosecutor v Kunarac et al*, No. IT-96-23&23/1, Appeal Judgement, 12 June 2002, para. 119.
[476] P-0081, UGA-OTP-0070-0029-R01 at 0033-0036, 0040.
[477] P-0067, UGA-OTP-0139-0193-R01 at 0199-0200; P-0249, UGA-OTP-0238-0771-R01 at 0776.
[478] P-0009, UGA-OTP-0151-0167-R01 at 0176-0177, UGA-OTP-0241-0546-R01 at 0550.
[479] P-0061, UGA-OTP-0144-0043-R01 at 0046.
[480] P-0138, UGA-OTP-0228-0568-R01 at 0598.
[481] P-0144, UGA-OTP-0228-1418-R01 at 1426.
[482] P-0250 was [REDACTED] in February 2002, he was in Sinia brigade under the command of [REDACTED] – and ultimately Dominic Ongwen. *See* P-0250, UGA-OTP-0243-1353-R01 at 1363-1364.
[483] P-0250, UGA-OTP-0243-1311-R01 at 1323.
[484] P-0084, UGA-OTP-0139-0149-R01 at 0164-0165, UGA-OTP-0069-0416 at 0419.
[485] P-0047, UGA-OTP-0027-0177-R01 at 0182, 0191.

178. As described in further detail below in the section on Dominic Ongwen's essential contribution, paragraphs 199 to 210, Ongwen himself played a direct role in enslaving civilians from Pajule. P-0067 and P-0249 saw Dominic Ongwen lead a group of abducted civilians.[486] After the civilians had returned to the LRA meeting point they were addressed by senior LRA commanders including Vincent Otti and Dominic Ongwen.[487] Some of the civilians were later released. Others were retained and distributed to serve as recruits within the LRA.[488] P-0309, for example, said that Ongwen and his group "took some abductees with [them and that Ongwen] divided the abductees amongst his troops".[489]

Count 9 - pillaging as a war crime (article 8(2)(e)(v)):

179. LRA fighters under Dominic Ongwen's command appropriated food items and other personal property. They intended to deprive the owners of their food and property and to appropriate it for private or personal consumption and use. The owners did not consent to the appropriation. The pillaging was not justified by military necessity.[490]

[486] P-0067, UGA-OTP-0139-0193-R01 at 0199-0200; P-0249, UGA-OTP-0238-0771-R01 at 0776-0777.
[487] P-0009, UGA-OTP-0151-0167-R01 at 0177; P-0081, UGA-OTP-0070-0029-R01 at 0036-0037.
[488] P-0006, UGA-OTP-0144-0072-R01 at 0080; P-0009, UGA-OTP-0151-0167-R01 at 0176-0177; P-0015, UGA-OTP-0043-0131-R01 at 0146-0147; P-0061, UGA-OTP-0144-0043-R01 at 0049-0050; P-0067, UGA-OTP-0139-0193-R01 at 0202-0203; [REDACTED]; P-0249, UGA-OTP-0238-0771-R01 at 0780; P-0250, UGA-OTP-0243-1353-R01 at 1362; P-0309, UGA-OTP-0249-0472-R01 at 0488.
[489] P-0309, UGA-OTP-0249-0472-R01 at 0488.
[490] See *Katanga* trial judgement, ICC-01/04-01/07-3436-tENG, para. 894, 952-953; In the context of pillaging food, the *Hadžihasanović* Trial Chamber at the ICTY held: "To plead a defence of necessity and for it to succeed, the following conditions must be met: (i) there must be a real and imminent threat of severe and irreparable harm to life existence; (ii) the acts of plunder must have been the only means to avoid the aforesaid harm; (iii) the acts of plunder were not disproportionate and, (iv) the situation was not voluntarily brought about by the perpetrator himself. *See Prosecutor v. Hadžihasanović and Kubura*, IT-01-47-T, Trial Judgment 15 March 2006, para. 53, 1895. This finding was upheld on appeal. See *Prosecutor v. Hadžihasanović*, IT-01-47-A, Appeals Judgment, 22 April 2008, para. 351.

180. LRA fighters attacked and pillaged the trading centre area in the camp in order to loot items and abduct civilians.[491] According to P-0309, LRA fighters "started to break into shops, taking sugar, salt anything to eat".[492]

181. P-0249 witnessed Dominic Ongwen himself carrying out this function by ordering LRA fighters to pillage food items and supplies from shops and homes within the camp.[493]

182. Statements obtained from numerous civilian victims and LRA fighters describe how LRA fighters broke into homes and shops and pillaged items without the consent of the owner. Items pillaged included: maize, soda, groundnuts, beans, soap, salt and rice.[494]

Count 10 - persecution (article 7(1)(h)):

183. The Prosecution submits that the facts described above under counts 1 (attack on civilians), counts 2-3 (murder), counts 4-5 (torture), count 6 (cruel treatment) and count 7 (other inhumane acts), count 8 (enslavement), and count 9 (pillaging) form the underlying conduct of the crime of persecution. See further, the submissions in the section on persecution, paragraphs 111 to 147, which are incorporated here by reference.

3. Dominic Ongwen's individual criminal responsibility

[491] P-0045, UGA-OTP-0218-0143-R01 at 0160, UGA-OTP-0220-1035-R01 at 1051-1057, UGA-OTP-0220-1064-R01 at 1074; P-0101, UGA-OTP-0173-0109-R01 at 0112-0113; P-0138, UGA-OTP-0228-6385-R01 at 6403-6404; P-0144, UGA-OTP-0228-1376-R01 at 1397, 1401-1402, UGA-OTP-0228-1376-R01 at 1401-1402, 1405, 1406; P-0146, UGA-OTP-0228-4224-R01 at 424; P-0309, UGA-OTP-0249-0472-R01 at 0487.
[492] P-0309, UGA-OTP-0249-0472-R01 at 0486-0487.
[493] P-0249, UGA-OTP-0238-0771-R01 at 0775.
[494] P-0001, UGA-OTP-0138-0002-R01 at 0006; P-0008, UGA-OTP-0137-0002-R01 at 0005-0006; P-0015, UGA-OTP-0043-0131-R01 at 0146; P-0061, UGA-OTP-0144-0043-R01 at 0046; P-0067, UGA-OTP-0139-0193-R01 at 0195-0196, 0198; P-0084, UGA-OTP-0139-0149-R01 at 0152, 0154, 0170.

184. As described below, there are substantial grounds to believe that Dominic Ongwen bears individually criminal responsibility for the crimes charged pursuant to article 25(3)(a) as an indirect co-perpetrator.[495] He is also responsible under articles 25(3)(b) or (d)(i) and (ii), or as a military commander pursuant to article 28(a).

Dominic Ongwen is criminally responsible under article 25(3)(a):

i. Dominic Ongwen was part of a common plan or an agreement with one or more persons

185. Dominic Ongwen committed each of the charged crimes in concert with others through his contribution to the Pajule common plan, by means which included the commission of crimes.

186. Joseph Kony, Vincent Otti, Raska Lukwiya, Dominic Ongwen and others were co-perpetrators of the Pajule common plan. The plan was conceived during a meeting that took place a short distance away from the camp the evening prior to the attack. At the time of the attack, Ongwen was a Major and a member of Control Altar.[496]

[495] *See* ICC-02/11-02/11-186, para. 134-137; ICC-01/04-02/06-309, para. 104. The Prosecution adopts the following elements for indirect co-perpetration:
i. Dominic Ongwen was part of a common plan or an agreement with one or more persons.
ii. Dominic Ongwen carried out an essential contribution in a coordinated manner with other co-perpetrators that resulted in the fulfilment of the material elements of the crime.
iii. Dominic Ongwen had joint control over the organisation, which consisted of an organised and hierarchical apparatus of power.
iv. The execution of the crimes was secured by almost automatic compliance with orders.
v. Dominic Ongwen was aware of the factual circumstances that allowed him to exert joint control over the crime.
vi. Dominic Ongwen had knowledge and intent as prescribed by article 30 and specific to the crime.

[496] *See* P-0144, UGA-OTP-0228-1376-R01 at 1402; P-0309, UGA-OTP-0249-0472-R01 at 0485-0487. *See also* P-0045, UGA-OTP-0218-0171-R01 at 0178.

187. P-0309 and P-0101 were present when Ongwen, Vincent Otti, Raska Lukwiya and other commanders met to plan the attack.[497] After the meeting, "Otti announced to 80-100 LRA fighters […] that they were going to attack Pajule".[498]

188. Intercepted LRA communications, recorded in the UPDF and ISO logbooks, confirm that that in the days leading up to the attack, the co-perpetrators were planning to attack Pajule, and that Dominic Ongwen was travelling together with Vincent Otti and other LRA commanders:

5 October

189. On 5 October 2003, the UPDF logbook records that Otti had joined with Abudema's group, together with "Dominic" and others who had all reached the rendezvous point.[499] On the same date, the ISO logbook records: "Abudema was moving to attack Pajule T/centre".[500]

7 October

190. On 7 October 2003, the UPDF logbook again records Ongwen moving with Otti before the attack: "Otti has told Kony that he has divided the movements of the Comdrs as follows: Angola is moving with Bogi Coach, Dominic is moving with him (Otti)".[501] Later that day, the same logbook records that Otti "is moving together with Dominic, Raska Lukwiya, and [REDACTED]".[502]

9 October

[497] P-0309, UGA-OTP-0249-0472-R01 at 0485; [REDACTED].
[498] P-0309, UGA-OTP-0249-0472-R01 at 0485.
[499] UPDF logbook, UGA-OTP-0197-1078 at 1130 (right page).
[500] ISO logbook, UGA-OTP-0133-0289 at 0384.
[501] UPDF logbook, UGA-OTP-0197-1078 at 1133 (left page).
[502] UPDF logbook, UGA-OTP-0197-1078 at 1134 (left page).

191. The day before the attack on Pajule, on 9 October 2003, the ISO logbook records Kony speaking to Otti and Abudema:

> "Kony said this time, killing should be the order of the day […] he will not forget to get the ring leaders of Acholi who are spearheading the struggle against LRA".[503]

10 October

192. On the day of the attack on Pajule, on 10 October 2003, the ISO logbook records that:

> "Otti said he sent a big force on an attack. Otti said under the command of Lukwiya Raska to attack PAJULE T/c but they have not come back. Kony said Otti's main target should have been civilians because they are the ones making UPDF continue following LRA.[504]
>
> […]
>
> Otti said he instructed his soldiers to target all the big people in Pajule including [REDACTED], the priests. Lukwiya 1mm came on air briefly and said they went and attacked PAJULE BARRACKS.
>
> […]
>
> He said they succeeded in attacking all positions which were in their plan".[505]

193. On the same date, the UPDF logbook records similar details, including "Dominic's" role in an attack where the mission, trading centre and UPDF barracks were all targeted by the LRA.[506]

194. In the days after the attack, the UPDF and ISO logbooks record numerous radio communications between Otti and Kony speaking about the success of the

[503] ISO logbook, UGA-OTP-0133-0289 at 0393 (left page).
[504] ISO logbook, UGA-OTP-0133-0289 at 0395 (right page).
[505] ISO logbook, UGA-OTP-0133-0289 at 0396 (left page).
[506] UPDF logbook, UGA-OTP-0197-1078 at 1140 (right page).

attack in Pajule IDP camp, including noting the weapons that were captured.[507] Otti reported on 13 October that that an estimated 200-300 civilians were abducted.[508]

195. An audio recording of the radio communications from 13 to 14 October 2003 was intercepted and recorded by the ISO (attribution of voices provided by P-0138[509] and UPDF officer P-0003[510]).[511] Otti confirms that he led the attack, stating the number of abducted – 200 to 300 – which is the same number recorded in the logbooks:

> (Otti): We gathered almost two hundred people, almost three hundred people then we addressed them and told them that, today was the day to show who was powerful. Over.
>
> (Kony): That is it. Over.[512]

196. Although the camp was not named, the only reasonable interpretation of the captured intercept is that it relates to the attack at Pajule IDP camp.

197. Dominic Ongwen's presence among the Pajule co-perpetrators is supported by the statements of LRA fighters P-0138, P-0146, P-0309, P-0101, and UPDF soldier P-0084, who was monitoring LRA movements at the time.[513]

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[507] ISO logbook, UGA-OTP-0133-0289 at 0397-0398; UPDF logbook, UGA-OTP-0197-1078 at 1143, 1146.
[508] ISO logbook, UGA-OTP-0133-0289 at 0404.
[509] P-0138, UGA-OTP-0228-6331-R01 at 6337, 6355, UGA-OTP-0228-6361-R01 at 6374.
[510] P-0003, UGA-OTP-0132-0002-R01 at 0010-0011, Audio transcript annotation by P-0003, UGA-OTP-0132-0243-R01 at 0265; see also P-0070, UGA-OTP-0228-2349-R01 at 2357; P-0016, UGA-OTP-0228-3535-R01 at 3557.
[511] Sound recording, UGA-OTP-0054-0014 (original), UGA-OTP-0247-1110 (enhanced, track 1); UGA-OTP-0247-1118 (enhanced, track 2).
[512] Audio transcript annotation by P-0003, UGA-OTP-0132-0243-R01 at 0267; P-0003, UGA-OTP-0132-0002-R01 at 0011.
[513] P-0084, UGA-OTP-0139-0149-R01 at 0161; [REDACTED]; P-0138, UGA-OTP-0228-0503-R01 at 0518, UGA-OTP-0228-6385-R01 at 6404; P-0146, UGA-OTP-0228-4224-R01 at 4249; P-0309, UGA-OTP-0249-0472-R01 at 0485.

198. At the meeting between the Pajule co-perpetrators, it was agreed that LRA fighters would attack different parts of Pajule IDP camp.[514] P-0101 said that Dominic Ongwen was selected and agreed to lead one of the groups during the attack. P-0101 later saw Ongwen and others leave in order to attack.[515]

ii. Dominic Ongwen carried out an essential contribution in a coordinated manner with other co-perpetrators that resulted in the fulfilment of the material elements of the crimes

199. Each of the co-perpetrators made coordinated contributions to the realisation of their common plan. Otti organised the planning meetings. Lukwiya led a group of fighters on the ground in Pajule IDP camp. As a commander holding positions within the Control Altar and the Sinia brigade of the LRA at the time of the attack, Dominic Ongwen provided an essential contribution to the implementation of the common plan, which resulted in the commission of the crimes charged.

200. According to P-0309, [REDACTED], Ongwen was directly involved in planning the attack with other senior LRA commanders.[516] He further held a leadership role on the ground during the attack.[517] P-0309 explains that during the attack, Ongwen ordered fighters under his command to "join troops at the trading centre".[518] He further instructed LRA fighters to commit crimes.[519] Other LRA fighters who participated in the attack confirm Ongwen's leadership role

[514] P-0015, UGA-OTP-0043-0131-R01 at 0146; P-0045, UGA-OTP-0220-1035-R01 at 1051; P-0105, UGA-OTP-0228-4996-R01 at 5016; P-0107, UGA-OTP-0169-0002-R01 at 0013-0014; P-0138, UGA-OTP-0228-6290-R01 at 6312, 6316; P-0144, UGA-OTP-0228-1376-R01 at 1395-1397; P-0146, UGA-OTP-0228-4224-R01 at 4247, 4249, 4251; P-0209, UGA-OTP-0243-0354-R01 at 0366-0367, 0369, 0372-0375; P-0209, UGA-OTP-0243-0379-R01 at 0389.
[515] [REDACTED].
[516] P-0309, UGA-OTP-0249-0472-R01 at 0485.
[517] P-0309, UGA-OTP-0249-0472-R01 at 0485-0487.
[518] P-0309, UGA-OTP-0249-0472-R01 at 0486.
[519] P-0309, UGA-OTP-0249-0472-R01 at 0486-0487.

during the attack. P-0144 saw Ongwen at the trading centre area during the attack.[520]

201. Several civilian victims also described Ongwen's essential command role whilst on the ground. Civilian victims P-0009 and P-0249 describe that during the attack Ongwen was wearing military uniform and holding a stick. Ongwen was surrounded by LRA fighters, some of whom saluted him.[521] Ongwen used the stick to instruct LRA fighters[522] and was seen to issue orders to LRA fighters under his command, including an order to pillage items.[523] He also deployed LRA fighters to different parts of the camp during the attack.[524] He directed LRA fighters where to shoot.[525]

202. P-0309 participated in the attack under Ongwen's command. He said that Ongwen initially led a group of LRA fighters to attack the barracks area before leading them to attack the trading centre area. This is where several of the crimes charged were ordered by Ongwen and committed.[526]

203. Ongwen ordered P-0309 to abduct two civilians[527] and other LRA fighters "to abduct people in order to carry the looted food".[528] His group "broke into houses to abduct people who had not fled into the bush". Dominic Ongwen was present with P-0309 when this was done.[529] He also said that after the attack, Ongwen and

[520] P-0144, UGA-OTP-0228-1376-R01 at 1405, 1415-1417.
[521] P-0009, UGA-OTP-0241-0546-R01 at 0551.
[522] P-0249, UGA-OTP-0238-0771-R01 at 0774-0775.
[523] P-0009, UGA-OTP-0241-0546-R01 at 0551; P-0249, UGA-OTP-0238-0771-R01 at 0775.
[524] P-0249, UGA-OTP-0238-0771-R01 at 0775.
[525] P-0249, UGA-OTP-0238-0771-R01 at 0775.
[526] P-0309, UGA-OTP-0249-0472-R01 at 0486-0487.
[527] P-0309, UGA-OTP-0249-0472-R01 at 0487.
[528] P-0309, UGA-OTP-0249-0472-R01 at 0487.
[529] P-0309, UGA-OTP-0249-0472-R01 at 0486-0487.

his group "took some abductees with [them and that Ongwen] divided the abductees amongst his troops".[530]

204. Other witnesses confirm that Ongwen led LRA fighters who attacked the trading centre area, in order to pillage items and abduct civilians.[531]

205. Ongwen himself also physically assaulted civilians, including P-0009.[532] His conduct and presence expressly encouraged LRA fighters to commit crimes. During the course of the attack, Ongwen failed, while under a duty stemming from his position, to take any steps to prevent, repress or punish the perpetrators of the crimes charged.

206. Dominic Ongwen's essential contribution continued as the LRA fighters retreated from the attack and returned to their meeting point. P-0249 saw Dominic Ongwen threaten to kill abducted civilians if they did not move.[533] He led a group of abducted civilians away from the camp.[534]

207. P-0067 saw Dominic Ongwen lead a group of abducted civilians.[535] P-0101 saw Ongwen return with seven civilian abductees who were carrying "luggage" - a term used for items that had been pillaged.[536]

208. Once the LRA fighters had returned to their meeting point, Dominic Ongwen addressed the civilians that had been abducted.[537] P-0009, a civilian victim who

[530] P-0309, UGA-OTP-0249-0472-R01 at 0488.
[531] P-0045, UGA-OTP-0218-0143-R01 at 0160, UGA-OTP-0220-1035-R01 at 1051, 1057, UGA-OTP-0220-1064-R01 at 1074; P-0138, UGA-OTP-0228-6385-R01 at 6404; P-0144, UGA-OTP-0228-1376-R01 at 1401-1402, 1405, 1410; P-0146, UGA-OTP-0228-4224-R01 at 4249.
[532] P-0009, UGA-OTP-0241-0546-R01 at 0550-0551.
[533] P-0249, UGA-OTP-0238-0771-R01 at 0779.
[534] P-0067, UGA-OTP-0139-0193-R01 at 0200.
[535] P-0067, UGA-OTP-0139-0193-R01 at 0199-0200.
[536] [REDACTED].

had been abducted, heard Ongwen tell civilians that they could never return home.[538] Ongwen also ordered that abducted civilians be divided among his group.[539]

209. Dominic Ongwen's contributions, individually and cumulatively, had a direct effect on the commission of crimes. They were essential to the success and implementation of the common plan leading to the commission of the crimes charged. In particular, Ongwen's role was essential to the attack at the trading centre area of the camp.

210. Further, Dominic Ongwen's contribution demonstrates that he and other Pajule co-perpetrators intentionally caused an attack against civilian residents from Pajule IDP camp. He was aware that the common plan involved an element of criminality.

iii. Dominic Ongwen had joint control over the organisation, which consisted of an organised and hierarchical apparatus of power

211. This element is satisfied by reference to the section on common elements of modes of liability, paragraphs 73 to 110.

iv. The execution of the crimes was secured by almost automatic compliance with orders

212. This element is satisfied by reference to the section on common elements of modes of liability, paragraphs 73 to 110.

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[537] P-0009, UGA-OTP-0151-0167-R01 at 0176-1777.
[538] P-0009, UGA-OTP-0151-0167-R01 at 0177.
[539] P-0309, UGA-OTP-0249-0472-R01 at 0488.

v. Dominic Ongwen was aware of the factual circumstances that allowed him to exert joint control over the crimes

213. This element is satisfied by reference to the section on common elements of modes of liability, paragraphs 73 to 110.

214. Further, as described in detail above in the sections on Dominic Ongwen's role in the Pajule common plan, paragraphs 185 to 198, and his essential contributions, paragraphs 199 to 210, Dominic Ongwen was aware of the factual circumstances that allowed him to exert control over the crimes committed in Pajule.

215. Dominic Ongwen's knowledge of the factual circumstances that enabled him to exercise control over the crimes jointly with his co-perpetrators can be established from the following facts:

- he was aware that he exercised *de jure* and *de facto* command authority over a group of LRA fighters in Pajule IDP camp;[540]
- his knowledge that other co-perpetrators who espoused the Pajule common plan were willing to implement it and also exercised command and control over the LRA troops;[541]
- his role in planning the attack;[542]
- his coordination of the attack on the ground;[543]
- his knowledge that the LRA had an effective structure and hierarchy;[544]
- his knowledge of the size and structure of the LRA, and its composition of trained fighters with obedience to hierarchy.[545]

[540] *See* sections on the Pajule common plan, para. 185-198, and Dominic Ongwen's essential contribution to the Pajule common plan, para. 199-210.
[541] *See* section on the Pajule common plan, para. 185-198.
[542] *See* section on Dominic Ongwen's essential contribution to the Pajule common plan, para. 199-210.
[543] *Id*.
[544] *See* the section on common elements of the modes of liability, para. 75-110.

vi. Dominic Ongwen had knowledge and intent as prescribed by article 30 and specific to the crimes

216. Dominic Ongwen intended to bring about the objective elements of the crimes, and/or was aware that they would occur in the ordinary course of events in implementing the Pajule common plan.

217. Dominic Ongwen's intent and/or knowledge is established from the following facts:

- he and his co-perpetrators adopted the Pajule common plan;[546]
- he knew that his co-perpetrators espoused the Pajule common plan;[547]
- he knew about the roles that other co-perpetrators were assigned in the Pajule common plan and the means they had at their disposal to implement it;[548]
- he was aware of the contribution that other members of the Pajule common plan provided towards its implementation;[549]
- he gave instructions to his subordinates to implement the Pajule common plan;[550]
- he coordinated the attack operation in the trading centre.[551]

Dominic Ongwen is criminally responsible under article 25(3)(b):

[545] *Id*.
[546] *See* section on the Pajule common plan, para. 185-198.
[547] *Id*.
[548] *Id*.
[549] *Id*.
[550] *See* section on Dominic Ongwen's essential contribution to the Pajule common plan, para. 199-210.
[551] *Id*.

218. Dominic Ongwen is also individually criminally responsible pursuant to article 25(3)(b) for the crimes charged. Dominic Ongwen ordered the commission of crimes, holding a position of authority.[552] He had command authority over the troops and issued military orders during the course of the attack. As described above, his orders had a direct effect on the commission of crimes,[553] including pillaging[554] and the abduction of civilians.[555] He witnessed his orders being executed.

Dominic Ongwen is criminally responsible under article 25(3)(c):

219. Dominic Ongwen is also individually criminally responsible pursuant to article 25(3)(c) for the crimes charged. For the purpose of facilitating the commission of the charged crimes, he aided, abetted or otherwise assisted in their commission.

220. Based on the above evidence, Dominic Ongwen's participation in the common plan and the dominant role he played on the ground facilitated the commission of crimes by LRA fighters. His presence at the trading centre as witnessed by P-0009, P-0144, P-0249, and P-0309 provided moral support and encouragement to LRA fighters.[556] As described above, in commanding, deploying and coordinating LRA fighters during the attack, Dominic Ongwen's actions also provided practical assistance and had the effect of strengthening the capability of LRA fighters to commit the crimes charged. In particular, his violent treatment of civilians served

[552] *Id*.
[553] P-0249, UGA-OTP-0238-0771-R01 at 0775; P-0309, UGA-OTP-0249-0472-R01 at 0486.
[554] See P-0309, UGA-OTP-0249-0472-R01 at 0486-0488; P-0249, UGA-OTP-0238-0771-R01 at 0775.
[555] P-0309, UGA-OTP-0249-0472-R01 at 0486-0487.
[556] P-0009, UGA-OTP-0241-0546-R01 at 0550-0551; P-0144, UGA-OTP-0228-1376-R01 at 1405, 1415-1416; P-0249, UGA-OTP-0238-0771-R01 at 0774-0775; P-0309, UGA-OTP-0249-0472-R01 at 0486-0487.

as an example to LRA fighters who participated in the attack.[557] The cumulative effect of the assistance provided by Dominic Ongwen was substantial.

221. Dominic Ongwen's conduct during the attack was intentional and was performed for the purpose of facilitating the commission of crimes by LRA fighters. As a commander leading the attack at the trading centre, he knew that his presence and conduct would facilitate LRA fighters to commit crimes. He was aware that LRA fighters participating in the attack intended to commit crimes.

Dominic Ongwen is criminally responsible under article 25(3)(d)(i) and (ii):

222. Dominic Ongwen also contributed to the commission or attempted commission of crimes by a group of persons, including Otti and Lukwiya, who were acting with a common purpose to further their criminal activity or criminal purpose to attack the camp, by means which involved the commission of crimes.[558]

223. Dominic Ongwen knew the group's intention to commit the crimes. As described above, Ongwen intentionally contributed to the commission of these crimes by means including his planning of the operation, his deployment of troops, issuing orders during the attack, and participating in the attack itself, in which crimes against civilians were committed. He did so with the aim of furthering the crimes and criminal purpose of the group or, at least, knowing of the group's intention to commit the crimes.

Dominic Ongwen is criminally responsible under article 28(a):

[557] P-0009, UGA-OTP-0241-0546-R01 at 0551.
[558] *See* section on the Pajule Common Plan, para. 185-198.

224. Dominic Ongwen is also individually criminally responsible as a military commander pursuant to article 28(a) for the crimes charged. At the time of the attack, Ongwen was a Major and a member of Control Altar and led a group of LRA fighters to attack the trading centre.[559]

225. Dominic Ongwen knew or, owing to the circumstances at the time, should have known that the LRA fighters were committing or were about to commit the crimes in Pajule, though, *inter alia*:

- his own involvement in the preparation, planning and/or execution of such crimes;[560]
- his personal observation of the commission of such crimes.[561]

226. Dominic Ongwen also failed, while under a duty stemming from his superior position, to take adequate steps to prevent, repress, or punish the perpetrators of the crimes committed at or near Pajule IDP camp during the attack or during its aftermath.[562]

227. The acts and omissions of Dominic Ongwen that demonstrate his failure to take all such necessary and reasonable measures include:

- his failure to order or initiate genuine or adequate investigations of crimes by LRA forces under his command;
- his failure to discipline, dismiss, demote or refrain from promoting or rewarding members of the LRA forces who were involved in the attack;

[559] *See* P-0144, UGA-OTP-0228-1376-R01 at 1402; P-0309, UGA-OTP-0249-0472-R01 at 0485-0487. *See also* P-0045, UGA-OTP-0218-0171-R01 at 0178.
[560] *See* section on the Pajule common plan, para. 185-198.
[561] *See* section on Dominic Ongwen's essential contribution to the Pajule common plan, para. 199-210.
[562] *See* section on common elements of the modes of liability, para. 75-110.

- his failure to issue orders that were necessary and reasonable in the circumstances to prevent or repress the commission of crimes by the LRA fighters in Pajule.

228. Dominic Ongwen's failure to exercise his duty to prevent crimes increased the risk that the forces would commit these crimes.

VIII. ATTACK ON ODEK IDP CAMP

1. Introduction

229. Odek IDP camp was previously situated around the village of Odek in Odek Sub-County, Omoro County, Gulu District. The camp was created in mid-2003 as a result of rising insecurity due to the ongoing conflict between the LRA and the UPDF.[563] The civilian population moved to the camp to seek refuge and protection from the LRA, who were attacking civilians in their villages and looting their property.[564] An estimated 2,000-2,600 people inhabited the camp in grass-thatched huts. The camp remained in existence until it was disbanded in 2008.[565]

230. On or about 29 April 2004, Joseph Kony, Dominic Ongwen, the Sinia brigade leadership, [REDACTED], [REDACTED] Trinkle brigade, and other LRA commanders ("Odek co-perpetrators") implemented a common plan to attack Odek IDP camp ("Odek common plan").

[563] P-0218, UGA-OTP-0238-0720-R01 at 0722; P-0274, UGA-OTP-0244-3375-R01 at 3377.
[564] P-0218, UGA-OTP-0238-0720-R01 at 0722.
[565] P-0274, UGA-OTP-0244-3375-R01 at 3377; ISO Field Report, UGA-OTP-0242-0199 at 0199; see also, sketches of the camp drawn by P-0218 (UGA-OTP-0238-0731-R01) and P-0274 (UGA-OTP-0244-3388-R01).

231. As the day was drawing to a close, the civilian residents of the camp gathered underneath a mango tree. An LDU soldier named [REDACTED], addressed the residents, warning them to be vigilant as the LRA were believed to be operating in the area, having attacked some civilians nearby earlier that day. As he was finishing his address, at approximately 17:00, the LRA attacked without warning.[566]

232. Entering from the northern side, a large group of LRA fighters advanced into the camp.[567] The attackers split in two groups, with one group moving toward the barracks, killing the soldiers there and burning it down.[568] The LDU soldiers defending the camp were quickly overwhelmed.[569] The other group spread throughout the camp and down into the trading centre.[570] Civilians panicked, running in all directions to escape the gunfire.[571] LRA fighters fired their weapons at civilians during the attack,[572] which continued for at least one hour.[573]

233. Dominic Ongwen told his fighters that any civilian found was to be shot. This order was executed to devastating effect; at least 61 civilians were shot dead. LRA fighters pillaged food and enslaved civilians, who were beaten and made to carry food away. Men, women and children were abducted. Some abducted men were

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[566] P-0218, UGA-OTP-0238-0720-R01 at 0723; P-0274, UGA-OTP-0244-3375-R01 at 3378; P-0268, UGA-OTP-0248-0013-R01 at 0016; P-0309, UGA-OTP-0249-0472-R01 at 0492.
[567] P-0218, UGA-OTP-0238-0720-R01 at 0723; ISO Field Report, UGA-OTP-0242-0199 at 0199.
[568] P-0245, UGA-OTP-0244-0285-R01 at 0294-0296, 0311; P-0218, UGA-OTP-0238-0720-R01 at 0726; P-0054, UGA-OTP-0251-0070-R01 at 0078, 0100; P-0252, UGA-OTP-0243-0428-R01 at 0431; P-0275, UGA-OTP-0244-3398-R01 at 3402; P-0274, UGA-OTP-0244-3375-R01 at 3379; P-0309, UGA-OTP-0249-0472-R01 at 0492; P-0142, UGA-OTP-0244-0693-R01 at 0703; ISO Field Report, UGA-OTP-0242-0199 at 0199; UPDF logbook of internal radio correspondence collected from the UPDF 4th Div. barracks in Gulu (hereafter, "UPDF 4th Div. Report"), UGA-OTP-0233-0383 at 0405-0408.
[569] P-0218, UGA-OTP-0238-0720-R01 at 0725; P-0252, UGA-OTP-0243-0428-R01 at 0432; P-0309, UGA-OTP-0249-0472-R01 at 0492.
[570] P-0218, UGA-OTP-0238-0720-R01 at 0726; P-0054, UGA-OTP-0251-0070-R01 at 0078, 0085-0086, 0100; P-0309, UGA-OTP-0249-0472-R01 at 0492.
[571] P-0218, UGA-OTP-0238-0720-R01 at 0724; P-0252, UGA-OTP-0243-0428-R01 at 0431; P-0270, UGA-OTP-0241-0168-R01 at 0171.
[572] P-0309, UGA-OTP-0249-0472-R01 at 0492.
[573] P-0218, UGA-OTP-0238-0720-R01 at 0724; P-0274, UGA-OTP-0244-3375-R01 at 3379; P-0268, UGA-OTP-0248-0013-R01 at 0019.

later murdered by LRA fighters, while children were conscripted into the ranks of the LRA.

234. Intercepted radio communications between LRA commanders, statements from former LRA fighters and statements from civilian victims of the attack establish substantial grounds to believe that the attack resulted in the crimes charged. The evidence also establishes that Dominic Ongwen bears individual criminal responsibility as a result of his planning and execution of the attack.

2. Crimes committed

Count 11 – attacks directed against the civilian population (article 8(2)(e)(i)):

235. LRA fighters under the joint control of the Odek co-perpetrators including Dominic Ongwen carried out an attack against the civilian population of Odek IDP camp as such, or individual civilians not taking direct part in the hostilities. Dominic Ongwen intended the civilian population as such, or individual civilians not taking direct part in the hostilities, to be the object of the attack.

236. The prosecution submits that the following facts described under counts 12-15 (murder and attempted murder), counts 16-17 (torture), count 18 (other inhumane acts), count 19 (cruel treatment), count 20 (enslavement), count 21 (pillaging) and count 22 (outrages on personal dignity) qualify as the underlying conduct of the war crime of attacks directed against the civilian population.

Counts 12-13 – murder (articles 7(1)(a) and 8(2)(c)(i)):

237. In the course of the attack, men, women and children were brutally murdered. Anyone found remaining in the camp was to be killed.[574] The principal cause of death was by gunshot. Among the victims were elderly residents over 80 years old, some of them shot in the back.[575] P-0252, who was abducted in the attack at the age of 11, saw an LRA fighter open the door of a hut and shoot dead a lady inside.[576]

238. Young children were also targeted and killed. The four-year old son of an LDU soldier stationed in the camp was found shot dead close to the barracks, alongside the body his father.[577]

239. As they were being abducted, abductees P-0252,[578] P-0275,[579] P-0268[580] and P-0269[581] saw many dead civilians lying scattered throughout the camp, murdered by the LRA. The day after the attack, P-0270, [REDACTED], saw corpses everywhere in the camp, including those of her own children.[582] All of the deceased had gunshot wounds.[583]

240. At least 61 civilians were murdered in the camp.[584] Bodies also lay strewn in the trading centre.[585] The dead were buried hastily in scattered graves close to the

[574] P-0245, UGA-OTP-0244-0285-R01 at 0291, 0306, UGA-OTP-0244-0313-R01 at 0316; see also, P-0054, UGA-OTP-0251-0101-R01 at 0107-0110.
[575] P-0218, UGA-OTP-0238-0720-R01 at 0725.
[576] P-0252, UGA-OTP-0243-0428-R01 at 0433.
[577] P-0218, UGA-OTP-0238-0720-R01 at 0725.
[578] P-0252, UGA-OTP-0243-0428-R01 at 0433-0434.
[579] P-0275, UGA-OTP-0244-3398-R01 at 3402.
[580] P-0268, UGA-OTP-0248-0013-R01 at 0018.
[581] P-0269, UGA-OTP-0248-0026-R01 at 0032.
[582] P-0270, UGA-OTP-0241-0168-R01 at 0173-0174.
[583] P-0218, UGA-OTP-0238-0720-R01 at 0724-0725; P-0274, UGA-OTP-0244-3375-R01 at 3380.
[584] P-0218, UGA-OTP-0238-0720-R01 at 0726; see also, ISO Field Report, UGA-OTP-0242-0199 at 0199-0201; P-0224, UGA-OTP-0244-3256-R01 at 3284. Selected LRA Atrocities Report, UGA-OTP-0032-0038-R01 at 0043, 0077-0078. Some of the deceased listed in the report are also cited by P-0218 as having been killed during the attack: [REDACTED] (*see* UGA-OTP-0238-0720-R01 at 0727) are each mentioned by P-0218 as being abducted and killed following the attack on Odek. *See further*, Acholi Religious and Cultural Leaders Peace Initiative Report, UGA-OTP-0195-0105 at 0131.
[585] P-0309, UGA-OTP-0249-0472-R01 at 0493.

camp, and along the banks of the Odek River.[586] P-0218, a former camp resident, personally buried some of the bodies, including that of his uncle and a young girl who was found face-down in the Odek River, shot in the back.[587]

241. The murder of civilians from Odek was not confined to the camp. P-0275's young brother, abducted along with him during the attack, was later killed because he was unable to walk any further as his feet were too swollen.[588] According to P-0309, who participated in the attack, abductees who struggled or tried to escape were killed.[589] Nine men abducted from Odek were first made to carry an injured LRA commander, before they were killed in the bush.[590] P-0252 was forced to kill one of these men with a club,[591] while his father was similarly murdered.[592]

242. The day after the attack on 30 April 2004, Dominic Ongwen reported the deaths of "more than 10 civilians" in Odek on LRA radio – a report which was recorded in UPDF,[593] ISO[594] and police[595] logbooks, described in further detail below.

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[586] P-0218, UGA-OTP-0238-0720-R01 at 0728; P-0270, UGA-OTP-0241-0168-R01 at 0174; P-0269, UGA-OTP-0248-0026-R01 at 0034; ISO Field Report, UGA-OTP-0242-0199 at 0202-0203.
[587] P-0218, UGA-OTP-0238-0720-R01 at 0728.
[588] P-0275, UGA-OTP-0244-3398-R01 at 3402, 3410; P-0270, UGA-OTP-0241-0168-R01 at 0174; P-0218, UGA-OTP-0238-0720-R01 at 0727.
[589] P-0309, UGA-OTP-0249-0472-R01 at 0494.
[590] P-0252, UGA-OTP-0243-0428-R01 at 0439; P-0275, UGA-OTP-0244-3398-R01 at 3408; P-0218, UGA-OTP-0238-0720-R01 at 0727; P-0268, UGA-OTP-0248-0013-R01 at 0019-0022.
[591] P-0252, UGA-OTP-0243-0428-R01 at 0440-0441.
[592] [REDACTED]. *Compare* P-0218, UGA-OTP-0238-0720-R01 at 0727 with P-0252, UGA-OTP-0243-0428-R01 at 0440; see also, P-0275, UGA-OTP-0244-3398-R01 at 3408.
[593] UPDF logbook, UGA-OTP-0197-2319 at 2440 (short-hand rough note): "Dead, 09 killed on spot + many civs"; UPDF logbook, UGA-OTP-0197-1670 at 1691, left page (logbook): "Kony asked [REDACTED]whether he had killed many civilians in Odek which is more than 10 in no, but [REDACTED]said that they are more than that."; see also, UPDF Intelligence report, UGA-OTP-0017-0150 at 0154, UGA-OTP-0017-0157 at 0160; UPDF 4th Div. Report"), UGA-OTP-0233-0383 at 0408-0409, 0414, 0441.
[594] ISO logbook, UGA-OTP-0061-0206 at 0270 (left page): "Kony asked whether the no of civilians Dominick killed if it can reach 10, but Dominic claimed that he killed more than 10 civilians"; see also, ISO Field Report, UGA-OTP-0242-0199 at 0202-0203.
[595] Police Logbook, UGA-OTP-0037-0002 at 0145-0146 ("Tem Wek Ibong who led the attack […] said he was from killing people […] the number of civilians killed was put at more that 10 (ten) but he said is expected to rise").

243. An audio recording from the same date, verified by UPDF and ISO radio operators P-0003 and P-0059,[596] also described in further detail below, records Dominic Ongwen reporting the attack on Odek: "I've just been shooting our fellows",[597] including "all of the *waya* [civilians]".[598] Otti relayed his report that so many civilians died "he did not know the number".[599]

244. On 15 May 2004, an ISO officer P-0301 visited Odek to investigate the incident.[600] He recorded the names of 25 civilians murdered as a result of the attack, and the locations of three separate burial sites.[601]

Counts 14-15 - attempted murder (articles 7(1)(a) and 8(2)(c)(i)):

245. On some occasions during the attack on Odek, murders resulting from the implementation of the Odek common plan were not fully carried out because of independent circumstances. These comprised acts of attempted murder. LRA fighters commenced the crime by means of the substantial step of attacking the victim with lethal force, but the victim did not die.

246. For example, camp resident [REDACTED] locked herself in her hut when the attack began. An LRA fighter fired shots through the door, hitting her husband and hitting her in the neck. She survived, but her husband later died of his

[596] *See* P-0059, UGA-OTP-0248-0328-R01 at 0332-0334, Audio transcript annotation by P-0059, UGA-OTP-0248-0462-R01; P-0003, UGA-OTP-0248-0094-R01 at 0097-0099, Audio transcript annotation by P-0003, UGA-OTP-0248-0263-R01.
[597] P-0003, UGA-OTP-0248-0094-R01 at 0099, Audio transcript annotation by P-0003, UGA-OTP-0248-0263-R01 at 0516, rows 1181-1182.
[598] "*Waya*" was a code-word for civilians. See P-0059, UGA-OTP-0248-0328-R01 at 0334, Audio transcript annotation by P-0059, UGA-OTP-0248-0462-R01 at 0519, row 1256; see also, P-0003, UGA-OTP-0248-0094-R01 at 0101-0102.
[599] Audio transcript annotation by P-0003, UGA-OTP-0248-0263-R01 at 0323 (rows 1302-1304); P-0059, Annotated transcript, UGA-OTP-0248-0462-R01 at 0521 (rows 1302-1304).
[600] P-0301, UGA-OTP-0249-0423-R01 at 0435; ISO Field Report, UGA-OTP-0242-0199.
[601] ISO Field Report, UGA-OTP-0242-0199 at 0199-0203.

wounds.[602] They were among the injured civilians transported to Lacor Hospital after the attack.[603] Similarly, [REDACTED], P-0274, found another woman shot in the cheek, her baby still tied to her back. He helped to nurse her wounds and she survived.[604]

Counts 16-17 - torture (articles 7(1)(f) and 8(2)(c)(i)) or count 18 – other inhumane acts (article 7(1)(k)) or count 19 - cruel treatment (article 8(2)(c)(i)):

Legal characterisation of counts 16-19

247. The beating of civilians, forcing them to carry heavy loads, often for long distances while tied to each-other under constant threat of harm, being subjected to punitive conditions, and witnessing the beatings and killings of other abductees who were either too weak or who attempted to escape caused severe physical or mental pain or suffering.[605] This amounted to torture under articles 7(1)(f) and 8(2)(c)(i), the war crime of cruel treatment under article 8(2)(c)(i) and the crime against humanity of other inhumane acts under article 7(1)(k).[606]

Torture, cruel treatment and other inhumane acts in Odek

248. In the course of the attack on Odek, LRA fighters inflicted severe physical and mental pain or suffering on civilians taking no active part in hostilities. Such pain

[602] P-0218, UGA-OTP-0238-0720-R01 at 0725; P-0268, UGA-OTP-0248-0013-R01 at 0022.
[603] P-0218, UGA-OTP-0238-0720-R01 at 0725; P-0268, UGA-OTP-0248-0013-R01 at 0022; see also, ISO Field Report, UGA-OTP-0242-0199 at 0201, where [REDACTED] is listed as being among the injured.
[604] P-0274, UGA-OTP-0244-3375-R01 at 3380.
[605] *See Prosecutor v Brdjanin*, IT-98-36-A, Appeal Judgement, 3 April 2007, para. 251 ("Acts inflicting physical pain may amount to torture even when they do not cause the amount of pain of the type accompanying serious injury. Whether an act causes severe pain or suffering is determined on a case-by-case basis").
[606] For the purposes of applying the "materially distinct" test, the legal elements of the crime may include the *chapeau* requirements of the particular crime. *See* ICC-01/04-01/07-3436-tENG, para. 1696; see also, ICC-01/04-01/07-717, para. 419; see further, *Prosecutor v Natelic & Martinovic*, IT-98-34-A, Appeal Judgement, 3 May 2006, para. 562.

or suffering did not arise from, and was not inherent in or incidental to, lawful sanctions.

249. This treatment was carried out to intimidate and/or punish the civilian population because of their perceived support for the government.[607] Furthermore, this treatment was carried out when the victims were under the custody or control of the LRA attackers.[608] The pain inflicted amounted to torture, cruel treatment, and other inhumane acts.[609]

250. For example, P-0275, a nine year old boy, was beaten with sticks and an RPG.[610] P-0268, a female camp resident, was abducted and beaten with a gun.[611] P-0252 was kicked to the ground before being abducted.[612] His LRA captor later warned him: "if you try to run, we will kill you".[613]

251. P-0270, [REDACTED], was sexually assaulted by another female LRA fighter, who penetrated her vagina, first with a comb, then with a stick used for cooking, as her husband was forced to watch.[614] It was done with such force that she began to bleed.[615] The attacker then threw her to the floor and stepped on her chest.[616] After the attacker ran away, P-0270 had to remove the stick from her own body, causing her immense pain and mental anguish.[617]

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[607] Per Element 2 of the war crime of torture: "The perpetrator inflicted the pain or suffering for such purposes as: obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind". *See* Elements of Crimes, article 8(2)(c)(i)-4, para. 2. *See generally*, the section on persecution, para. 111-147. *See especially*, the submissions on persecution under Count 23, para. 142-143.
[608] Per Element 2 of the crime against humanity of torture: "Such person or persons were in the custody or under the control of the perpetrator". *See* Elements of Crimes, article 7(1)(f), para. 2.
[609] *See further* section on the crime of persecution, para. 111-147.
[610] P-0275, UGA-OTP-0244-3398-R01 at 3403.
[611] P-0268, UGA-OTP-0248-0013-R01 at 0017-0018.
[612] P-0252, UGA-OTP-0243-0428-R01 at 0433.
[613] P-0252, UGA-OTP-0243-0428-R01 at 0434.
[614] P-0270, UGA-OTP-0241-0168-R01 at 0172.
[615] P-0270, UGA-OTP-0241-0168-R01 at 0172.
[616] P-0270, UGA-OTP-0241-0168-R01 at 0172.
[617] P-0270, UGA-OTP-0241-0168-R01 at 0172, 0175.

252. As abductees were led away from Odek, they were forced to carry heavy loads. Among them was P-0268, who was made to carry a sack of maize weighing 50 kilograms.[618] Civilians were beaten if they walked too slowly.[619] In the bush, women were beaten with guns by their LRA captors because their babies were crying too much.[620]

Count 20 – enslavement (article 7(1)(c)):

253. During the course of the attack, LRA fighters deprived civilians of their liberty. Men, women and children were abducted.[621]

254. LRA fighters forced women to carry away the looted food.[622] Among them were P-0268[623] and P-0269.[624] They were made to carry the goods at least four kilometres, to a location called Lakim.[625] Most of the women were kept in captivity for a number of days before being released.[626] Adult male abductees were made to carry an injured LRA fighter, as well as large weaponry.[627]

[618] P-0268, UGA-OTP-0248-0013-R01 at 0018.
[619] P-0268, UGA-OTP-0248-0013-R01 at 0019.
[620] P-0268, UGA-OTP-0248-0013-R01 at 0020.
[621] P-0245, UGA-OTP-0244-0313-R01 at 0319; P-0218, UGA-OTP-0238-0720-R01 at 0726; P-0224, UGA-OTP-0244-3256-R01 at 3284-3285; P-0309, UGA-OTP-0249-0472-R01 at 0494; P-0142, UGA-OTP-0228-4542-R01 at 4552, 4546-4547, UGA-OTP-0244-0693-R01 at 0705-0706; ISO Field Report, UGA-OTP-0242-0199 at 0201-0202; Selected LRA Atrocities Report, UGA-OTP-0017-0157 at 0160, which reports that 16 civilians were abducted; UPDF 4th Div. Report, UGA-OTP-0233-0383 at 0408-0409, 0419.
[622] P-0218, UGA-OTP-0238-0720-R01 at 0726.
[623] P-0268, UGA-OTP-0248-0013-R01 at 0017-0019.
[624] P-0269, UGA-OTP-0248-0026-R01 at 0032-0034.
[625] P-0218, UGA-OTP-0238-0720-R01 at 0727; P-0252, UGA-OTP-0243-0428-R01 at 0435; P-0275, UGA-OTP-0244-3398-R01 at 3402.
[626] P-0268, UGA-OTP-0248-0013-R01 at 0021-0022; P-0269, UGA-OTP-0248-0026-R01 at 0032-0034; P-0218, UGA-OTP-0238-0720-R01 at 0726; P-0252, UGA-OTP-0243-0428-R01 at 0436; P-0270, UGA-OTP-0241-0168-R01 at 0174.
[627] P-0252, UGA-OTP-0243-0428-R01 at 0436.

255. Children were also abducted in the course of the attack.[628] A female LRA commander was in charge of handling the abducted girls.[629] All of P-0270's children were abducted,[630] including P-0275.[631] Children were tied together with ropes and dragged away from their homes.[632]

256. P-0224,[633] P-0245,[634] P-0142[635] and P-0309[636] all saw abductees from Odek during and after the attack. The LRA attackers were instructed to abduct and return with "beautiful" girls.[637] P-0245 estimated that 35 civilians were abducted, including seven girls.[638] At least one girl was later made to be a forced wife.[639] P-0286, a civilian abducted in the later attack on Abok IDP camp, met two abducted women in the bush and was told they were from Odek.[640]

257. Some abductees stayed in the bush for days or weeks, while others such as P-0252 stayed for over a year.[641]

258. As described in further detail below, the day after the attack on 30 April 2004, the abduction of "8 young boys" from Odek is recorded in the UPDF logbook.[642]

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[628] P-0218, UGA-OTP-0238-0720-R01 at 0727; P-0270, UGA-OTP-0241-0168-R01 at 0171, 0174; P-0245, UGA-OTP-0244-0285-R01 at 0306; Gusco File, UGA-OTP-0098-0085 at 0089-0090; P-0205, UGA-OTP-0247-0481-R01 at 0495-0496, 0499; P-0275, UGA-OTP-0244-3398-R01 at 3401.
[629] P-0252, UGA-OTP-0243-0428-R01 at 0434.
[630] P-0270, UGA-OTP-0241-0168-R01 at 0171.
[631] P-0270, UGA-OTP-0241-0168-R01 at 0174 (referred to as "[REDACTED]"); P-0275, UGA-OTP-0244-3398-R01 at 3401; see also, P-0275's GUSCO file: UGA-OTP-0244-3419 and ISO Field Report, UGA-OTP-0242-0199 at 0202.
[632] P-0275, UGA-OTP-0244-3398-R01 at 3401-3402; P-0252, UGA-OTP-0243-0428-R01 at 0433, 0435; see also, P-0218, UGA-OTP-0238-0720-R01 at 0727.
[633] P-0224, UGA-OTP-0244-3050-R01 at 3074, UGA-OTP-0244-3256-R01 at 3284-3285, UGA-OTP-0248-0688-R01 at 0704.
[634] P-0245, UGA-OTP-0244-0313-R01 at 0310, UGA-OTP-0244-0520-R01 at 0523.
[635] P-0142, UGA-OTP-0228-4542-R01 at 4552, 4546.4547, UGA-OTP-0244-0693-R01 at 0705-0706.
[636] P-0309, UGA-OTP-0249-0472-R01 at 0494.
[637] P-0205, UGA-OTP-0247-0481-R01 at 0495-0496.
[638] P-0245, UGA-OTP-0244-0313-R01 at 0319-0320.
[639] P-0275, UGA-OTP-0244-3398-R01 at 3403.
[640] P-0286, UGA-OTP-0248-0060-R01 at 0082, 0084.
[641] P-0252, UGA-OTP-0243-0428-R01 at 0433-0451; see also, P-0142, UGA-OTP-0228-4542-R01 at 4552, UGA-OTP-0244-0693-R01 at 0705; P-0245, UGA-OTP-0244-0313-R01 at 0319; see further, section on conscription and use of child soldiers, para. 617-666.

The police logbook also records the number of "eight missing".[643] The following day, on 1 May 2004, the ISO logbook records a second report by Ongwen on the Odek attack. Otti refers to a Mega FM report on the incident, which stated "30 civilians were missing" as a result of the attack on Odek.[644]

259. An audio recording from 30 April 2004, verified by P-0059 and described in further detail below, records Dominic Ongwen stating that he had abducted "eight males" from Odek.[645] Both P-0003 and P-0059 confirm that the abductees were reported as being "mixed", a reference to their mixed gender.[646]

260. On 15 May 2004, P-0301, visiting Odek to investigate the incident,[647] recorded the names of 16 abducted civilians, including nine children.[648] Included in his list of abducted are the names of P-0252 and P-0275.[649]

Count 21 – pillaging (article 8(2)(e)(v)):

261. LRA fighters appropriated food items and other personal property in Odek. They intended to deprive the owners of their food and property and to appropriate it for private or personal consumption and use. The owners did not consent to the appropriation. The pillaging was not justified by military necessity.

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[642] UPDF logbook, UGA-OTP-0197-1670 at 1690, right page (long-hand): "[h]e claimed to have attacked Odek and the following have been charged fm them […] 08 young boys were abducted"; UPDF logbook, UGA-OTP-0197-2319 at 2440 (short-hand): "Abductees 08"; see also, UPDF Intelligence report, UGA-OTP-0017-0150 at 0154, UGA-OTP-0017-0157 at 0160; UPDF 4th Div. Report, UGA-OTP-0233-0383 at 0408-0409, 0414, 0441.
[643] Police Logbook, UGA-OTP-0037-0002 at 0145.
[644] ISO logbook, UGA-OTP-0061-0206 at 0273 (left page): at (18:30-19:45 hrs): "OTTI then mentions that the Odek incident had been reported on Mega FM, and that 23 people were killed and 30 were missing".
[645] P-0059, UGA-OTP-0248-0328-R01 at 0334 and Audio transcript annotation by P-0059, UGA-OTP-0248-0462-R01 at 0522, rows 1138-1324.
[646] P-0003, UGA-OTP-0248-0094-R01 at 0099; P-0059, UGA-OTP-0248-0328-R01 at 0334.
[647] P-0301, UGA-OTP-0249-0423-R01 at 0435, ISO Field Report, UGA-OTP-0242-0199.
[648] ISO Field Report, UGA-OTP-0242-0199 at 0202.
[649] ISO Field Report, UGA-OTP-0242-0199 at 0202.P-0252 is no. 9: "REDACTED].", while P-0275 is "REDACTED].", listed under the heading: "Abducted but escaped[

262. In the course of the attack, LRA fighters pillaged food from the camp.[650] They also broke into the stores in the trading centre, looting the contents.[651] P-0054 saw the attackers pillaging food and personal possessions from the homes of civilians.[652] Women were made to carry away the looted foodstuffs, such as posho, beans and sugar.[653] Among them was P-0268, who was made to carry a sack of maize,[654] P-0269, who carried looted flour,[655] And P-0252, who carried away maize and cow peas.[656]

263. During the attack, P-0245 saw these civilians carrying the pillaged food away.[657] P-0142[658] and P-0224[659] saw them after the attack. LRA fighter, P-0054, who participated in the attack, saw Ongwen himself go to pillage from the trading centre.[660] Evidence also points to a valuable diamond being pillaged from Odek.[661]

Count 22 - outrages upon personal dignity (article 8(2)(c)(ii)):

[650] P-0218, UGA-OTP-0238-0720-R01 at 0726; P-0054, UGA-OTP-0251-0101-R01 at 0102.
[651] P-0252, UGA-OTP-0243-0428-R01 at 0434; P-0245, UGA-OTP-0244-0285-R01 at 0293-0294; P-0309, UGA-OTP-0249-0472-R01 at 0493.
[652] P-0054, UGA-OTP-0251-0101-R01 at 0104; see also, P-0270, UGA-OTP-0241-0168-R01 at 0171; P-0142, UGA-OTP-0244-0693-R01 at 0705.
[653] P-0218, UGA-OTP-0238-0720-R01 at 0726; P-0309, UGA-OTP-0249-0472-R01 at 0494.
[654] P-0268, UGA-OTP-0248-0013-R01 at 0018.
[655] P-0269, UGA-OTP-0248-0026-R01 at 0032-0033.
[656] P-0252, UGA-OTP-0243-0428-R01 at 0436.
[657] P-0245, UGA-OTP-0244-0285-R01 at 0311.
[658] P-0142, UGA-OTP-0244-0693-R01 at 0705, UGA-OTP-0228-4542-R01 at 4544-4557.
[659] P-0224, UGA-OTP-0244-3050-R01 at 3074.
[660] P-0054, UGA-OTP-0251-0070-R01 at 0078, 0085-0086, 0094, 0099, UGA-OTP-0240-0068-R01 (sketch) at 0069. Dominic Ongwen, marked as "*DO*", is indicated as going to the trading centre during the Odek attack.
[661] P-0224, UGA-OTP-0244-3050-R01 at 3069, 3074-3080, UGA-OTP-0248-0688-R01 at 0699; ISO logbook, UGA-OTP-0061-0206 at 0272 (right page) to 0273 (left page); UPDF logbook, UGA-OTP-0197-1670 at 1692, right page (long-hand): "Dominic reported that he had charged a certain Diamond from Odek". UPDF logbook, UGA-OTP-0197-2319 at 2445 (short-hand); UPDF Intelligence Report, UGA-OTP-0017-0157 at 0160; ISO logbook, UGA-OTP-0061-0206 at 0272 (right page) – 0273 (left page): "Dominic told Kony that y/day he had forgotten of one thing to inform him about. That he got a diamond which worth 10 million dollars is in the glass".

264. The attackers humiliated, degraded or otherwise violated the dignity of Odek residents. The severity of the humiliation, degradation or other violations was of such degree as to be generally recognised as an outrage upon personal dignity.

265. Outrages upon personal dignity are constituted by any act or omission which would be generally considered to cause serious humiliation, degradation or otherwise be a serious attack on human dignity.[662] The severity of the humiliation and degradation may be such that any reasonable person would be outraged.[663] The focus of violations of dignity is primarily on acts, omissions, or words that do not necessarily involve long-term physical harm, but which nevertheless are serious offences deserving of punishment.[664]

266. For example, P-0252 was forced to kill an abducted man with a club, suffering extreme mental anguish as a result. For the next three days, he was forced to look at the decomposing bodies, including that of his own father, to ensure everyone had died.[665]

267. During the attack, LRA fighters forced women to abandon their children on the side of the road.[666] P-0275 saw an abandoned baby, naked and crying.[667] Similarly, P-0268, an abductee, saw a two year old boy left on the roadside. His mother, forced to abandon him, was among the abductees.[668]

Count 23 – persecution (article 7(1)(h):

[662] *Kunarac, Kovac and Vokovic*, IT-96-23&IT-96-23/1-A, Judgement (Appeals Chamber), June 12, 2002, para. 163, (hereafter, "*Kunarac* Appeals Judgement").
[663] *Ibid*, para. 162.
[664] *Prosecutor v Kvocka et al*, IT-98-30/1-T, Trial Judgement, 2 November 2001, para. 172.
[665] P-0252, UGA-OTP-0243-0428-R01 at 0440-0441.
[666] P-0270, UGA-OTP-0241-0168-R01 at 0174.
[667] P-0275, UGA-OTP-0244-3398-R01 at 3402.
[668] P-0268, UGA-OTP-0248-0013-R01 at 0019.

268. The Prosecution submits that the above submissions under counts 11 (attack on civilians) counts 12-15 (murder and attempted murder), counts 16-17 (torture), count 18 (other inhumane acts), count 19 (cruel treatment), count 20 (enslavement), count 21 (pillaging) and count 22 (outrages on personal dignity) qualify as the underlying conduct of the crime of persecution. See further, the submissions in the section on persecution, paragraphs 111 to 147, which are incorporated here by reference.

3. Dominic Ongwen's individual criminal responsibility

269. There are substantial grounds to believe that Dominic Ongwen is individually criminally responsible for the crimes charged pursuant to article 25(3)(a) as an indirect co-perpetrator.[669] He is also responsible under articles 25(3)(b), (d)(i) and (ii), or (f), or as a military commander pursuant to article 28(a).

Dominic Ongwen is criminally responsible under article 25(3)(a):

i. Dominic Ongwen was part of a common plan or an agreement with one or more persons

[669] *See* ICC-02/11-02/11-186, para. 134-137; ICC-01/04-02/06-309, para. 104. The Prosecution adopts the following elements for indirect co-perpetration:
i. Dominic Ongwen was part of a common plan or an agreement with one or more persons.
ii. Dominic Ongwen carried out an essential contribution in a coordinated manner with other co-perpetrators that resulted in the fulfilment of the material elements of the crime.
iii. Dominic Ongwen had control over the organisation, which consisted of an organised and hierarchical apparatus of power.
iv. The execution of the crimes was secured by almost automatic compliance with orders.
v. Dominic Ongwen was aware of the factual circumstances that allowed him to exert control over the crime.
vi. Dominic Ongwen had knowledge and intent as prescribed by article 30 and specific to the crime.

270. Dominic Ongwen committed each of the charged crimes in concert with others through his contribution to the Odek common plan, by means which included the commission of crimes.

271. Joseph Kony,[670] Dominic Ongwen as commander of Sinia brigade, the Sinia brigade leadership,[671] [REDACTED], [REDACTED] Trinkle brigade[672] and others[673] were co-perpetrators of the Odek common plan. The common plan was conceived when Kony gave an order to Dominic Ongwen to attack Odek.[674]

272. This order was relayed by Ongwen[675] to his subordinate troops in Sinia.[676] Ongwen said that the people of Odek "are very stubborn" and needed to be punished for supporting the government.[677]

273. The aim of the attack was dual in purpose: (i) to attack the military barracks and get supplies;[678] and (ii) to attack the civilians - in order to force them out of the camp, and return them to living in their villages.[679] Any civilians found

[670] P-0245, UGA-OTP-0244-0269-R01 at 0276; P-0142, UGA-OTP-0244-0667-R01 at 0675.
[671] P-0142, UGA-OTP-0244-0667-R01 at 0677; P-0205, UGA-OTP-0247-0447-R01 at 0448-0449, UGA-OTP-0247-0076-R01 at 0084.
[672] P-0245, UGA-OTP-0244-0227-R01 at 0248-0249, 0250-0251, UGA-OTP-0244-0269-R01 at 0279.
[673] P-0142, UGA-OTP-0244-0710-R01 at 0719-0721; see also, the list transcribed by P-0125: UGA-OTP-0170-0034 at 0036.
[674] P-0245, UGA-OTP-0244-0227-R01 at 0248, UGA-OTP-0244-0269-R01 at 0276, UGA-OTP-0244-0285-R01 at 0290-0291, UGA-OTP-0244-0313-R01 at 0316; P-0142, UGA-OTP-0244-0667-R01 at 0675; P-0224, UGA-OTP-0244-3050-R01 at 3060-3066; see also, P-0258, UGA-OTP-0243-1795-R01 at 1816-1817.
[675] P-0245, UGA-OTP-0244-0285-R01 at 0291, UGA-OTP-0244-0313-R01 at 0317, UGA-OTP-0244-0227-R01 at 0253, UGA-OTP-0244-0256-R01 at 0262.
[676] P-0245, UGA-OTP-0244-0227-R01 at 0253, UGA-OTP-0244-0285-R01 at 0291; P-0142, UGA-OTP-0244-0693-R01 at 0698; P-0224, UGA-OTP-0244-3256-R01 at 3283-3284.
[677] P-0224, UGA-OTP-0244-3050-R01 at 3065, 3071-3072, UGA-OTP-0244-3256-R01 at 3285; see further, the section on persecution, para. 111-147.
[678] P-0245, UGA-OTP-0244-0269-R01 at 0278-0279, UGA-OTP-0244-0285-R01 at 0290, UGA-OTP-0244-0313-R01 at 0316; P-0142, UGA-OTP-0244-0693-R01 at 0698.
[679] P-0245, UGA-OTP-0244-0227-R01 at 0248-0249, UGA-OTP-0244-0285-R01 at 0290-0291, UGA-OTP-0244-0313-R01 at 0317; P-0142, UGA-OTP-0244-0693-R01 at 0698.

remaining in the camp were to be killed, as they were deemed to be supporting the government.[680]

274. Troops were also supplied by [REDACTED],[681] [REDACTED] Trinkle brigade,[682] thus making it a joint attack between Sinia and Trinkle brigades.[683] According to LRA fighters P-0245 and P-0309, Ongwen was the commander with the most authority on the ground.[684] Ongwen was superior to [REDACTED] within the hierarchy in the LRA.[685]

275. Pre-attack briefings were held in Omel Kuru[686] and Bolo,[687] where hundreds of LRA fighters were present. Approximately 200 fighters were selected for the attack,[688] an estimated 100 from Sinia brigade, and 100 from Trinkle brigade.[689] Troops from each Sinia battalion took part.[690]

276. Ongwen briefed and instructed the troops to attack Odek.[691] He expressly ordered his troops to attack and kill civilians,[692] to abduct "good boys and girls",[693] to pillage food[694] and to attack the military barracks.[695]

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[680] P-0245, UGA-OTP-0244-0285-R01 at 0291, UGA-OTP-0244-0313-R01 at 0317; see further, the section on persecution, para. 111-147.
[681] P-0245, UGA-OTP-0244-0269-R01 at 0279-0280.
[682] P-0245, UGA-OTP-0244-0227-R01 at 0250, UGA-OTP-0244-0269-R01 at 0279.
[683] P-0245, UGA-OTP-0244-0227-R01 at 0252-0253, UGA-OTP-0244-0285-R01 at 0296.
[684] P-0245, UGA-OTP-0244-0269-R01 at 0277; P-0054, UGA-OTP-0251-0070-R01 at 0078.
[685] P-0245, UGA-OTP-0244-0269-R01 at 0277.
[686] P-0142, UGA-OTP-0244-0667-R01 at 0675, UGA-OTP-0244-0693-R01 at 0698, UGA-OTP-0228-4542-R01 at 4550; P-0205, UGA-OTP-0247-0447-R01 at 0448-0449.
[687] P-0245, UGA-OTP-0244-0269-R01 at 0279, UGA-OTP-0244-0256-R01 at 0259, UGA-OTP-0244-0227-R01 at 0249-0250, 0255.
[688] P-0245, UGA-OTP-0244-0269-R01 at 0279; P-0142, UGA-OTP-0244-0667-R01 at 0675; UPDF 4th Div. Report, UGA-OTP-0233-0383 at 0408.
[689] P-0245, UGA-OTP-0244-0269-R01 at 0280.
[690] P-0054, UGA-OTP-0251-0070-R01 at 0080; P-0142, UGA-OTP-0244-0693-R01 at 0700; P-0205, UGA-OTP-0247-0076-R01 at 0084-0085.
[691] P-0142, UGA-OTP-0244-0693-R01 at 0698; P-0245, UGA-OTP-0244-0269-R01 at 0278-0279, UGA-OTP-0244-0313-R01 at 0316.
[692] P-0245, UGA-OTP-0244-0285-R01 at 0291, 0308, UGA-OTP-0244-0313-R01 at 0317; P-0054, UGA-OTP-0251-0070-R01 at 0080.
[693] P-0205, UGA-OTP-0247-0481-R01 at 0495-0496, 0499.

277. The troops left Bolo, moving to approximately two kilometres outside Odek. Ongwen and [REDACTED] moved with separate companies of fighters towards the camp.[696] Before the attack commenced, a civilian was abducted to provide intelligence on the camp and its defences,[697] which was reported as being under-protected and vulnerable.[698]

278. As described above, this common plan was then successfully executed with devastating effects on the civilian population, resulting in the commission of the crimes charged above.

ii. Dominic Ongwen carried out an essential contribution in a coordinated manner with other co-perpetrators that resulted in the fulfilment of the material elements of the crimes

279. Each of the co-perpetrators made coordinated contributions to the realisation of their common plan. Kony ordered Dominic Ongwen to commit the attack. [REDACTED] provided troops. Dominic Ongwen contributed to the crimes charged in the following ways:

- briefing and instructing the troops prior to the attack;[699] Dominic Ongwen said: "Let us go there (to Odek) and fight".[700]
- planning the attack itself;[701]

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[694] P-0142, UGA-OTP-0244-0693-R01 at 0698-0699, UGA-OTP-0228-4542-R01 at 4546, 4549-4551; P-0054, UGA-OTP-0251-0070-R01 at 0080, UGA-OTP-0251-0101-R01 at 0121-0122.
[695] P-0205, UGA-OTP-0247-0447-R01 at 0470; P-0245, UGA-OTP-0244-0285-R01 at 0288; P-0142, UGA-OTP-0244-0693-R01 at 0698-0699; P-0054, UGA-OTP-0251-0070-R01 at 0080.
[696] P-0245, UGA-OTP-0244-0269-R01 at 0280, UGA-OTP-0237-0198 (sketch), indicating Ongwen and [REDACTED] being at the centre of the attacking group in Odek.
[697] P-0245, UGA-OTP-0244-0269-R01 at 0282-0284, UGA-OTP-0244-0285-R01 at 0286.
[698] P-0245, UGA-OTP-0244-0285-R01 at 0286.
[699] P-0142, UGA-OTP-0244-0667-R01 at 0675, UGA-OTP-0244-0693-R01 at 0698; P-0205, UGA-OTP-0247-0447-R01 at 0465-0467.
[700] P-0245, UGA-OTP-0244-0269-R01 at 0278-0279.

- ordering fighters under his command to commit crimes;[702]
- deploying troops to Odek;[703]
- commanding and coordinating the attack on the ground. P-0054,[704] P-0245[705] and P-0309,[706] who all participated in the attack, each place Ongwen on the ground, and that he went to attack the trading centre;
- blowing a whistle to signal the commence of the attack;[707]
- conscripting and using young children under the age of 15 to participate actively in hostilities;[708]
- failing, while under a duty stemming from his position, to take adequate steps to prevent, repress or punish the perpetrators of such crimes.[709]
- communicating with his superiors before and after on the radio.[710]

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[701] P-0142, UGA-OTP-0244-0667-R01 at 0675, UGA-OTP-0244-0693-R01 at 0698; P-0245, UGA-OTP-0244-0269-R01 at 0277; P-0224, UGA-OTP-0244-3050-R01 at 3060-3066, 3071-3072; P-0205, UGA-OTP-0247-0261-R01 at 0269, UGA-OTP-0247-0447-R01 at 0448-0449.
[702] P-0245, UGA-OTP-0244-0285-R01 at 0308, UGA-OTP-0244-0313-R01 at 0316; P-0142, UGA-OTP-0244-0693-R01 at 0699; P-0224, UGA-OTP-0244-3256-R01 at 3283-3284; P-0205, UGA-OTP-0247-0261-R01 at 0269, UGA-OTP-0247-0447-R01 at 0465-0467,0470, UGA-OTP-0247-0481-R01 at 0495-0496; UPDF 4th Div. Report, UGA-OTP-0233-0383 at 0419.
[703] P-0245, UGA-OTP-0244-0269-R01 at 0279-0280; P-0054, UGA-OTP-0251-0070-R01 at 0078; P-0224, UGA-OTP-0244-3256-R01 at 3283-3284; P-0205, UGA-OTP-0247-0261-R01 at 0271, UGA-OTP-0247-0447-R01 at 0465-0467, 0470, UGA-OTP-0247-0471-R01 at 0472.
[704] P-0054, UGA-OTP-0251-0070-R01 at 0078, 0085-0086, 0094, 0099; see also, P-0054, UGA-OTP-0240-0068-R01 (sketch) at 0069. Dominic Ongwen, marked as "DO", is indicated as going to the trading centre during the Odek attack.
[705] P-0245, UGA-OTP-0244-0227-R01 at 0251-0252, UGA-OTP-0244-0285-R01 at 0296-0298 and 0302-0305; see also, P-0245, UGA-OTP-0237-0198 (sketch), UGA-OTP-0237-0199 (sketch). Dominic Ongwen, marked as "Odomi" and "DO", is indicated as being in the centre of the attacking group in Odek
[706] P-0309, UGA-OTP-0249-0472-R01 at 0492-0495.
[707] P-0245, UGA-OTP-0244-0285-R01 at 0299-0300.
[708] P-0218, UGA-OTP-0238-0720-R01 at 0727; P-0252, UGA-OTP-0243-0428-R01 at 0433-0451; P-0275, UGA-OTP-0244-3398-R01 at 3401; see further, the section on conscription and use of child soldiers, para. 617-666.
[709] P-0142, UGA-OTP-0244-0710-R01 at 0713, UGA-OTP-0244-0776-R01 at 0808.
[710] Police Logbook, UGA-OTP-0037-0002 at 0144-0146; ISO logbook, UGA-OTP-0061-0206 at 0270-0273; UPDF logbook, UGA-OTP-0197-1670 at 1690-1691 (long-hand); UPDF logbook, UGA-OTP-0197-2319 at 2439, 2440, 2445 (short-hand); P-0245, UGA-OTP-0244-0285-R01 at 0309, UGA-OTP-0244-0269-R01 at 0276; P-0142, UGA-OTP-0228-4542-R01 at 4555; P-0224, UGA-OTP-0244-3050-R01 at 3060-3066, 3072-3073, UGA-OTP-0244-3256-R01 at 3285, UGA-OTP-0248-0688-R01 at 0699, 0701-0705; P-0309, UGA-OTP-0249-0472-R01 at 0495; UPDF Report, UGA-OTP-0017-0150 at 0153; UPDF Report, UGA-OTP-0017-0157 at 0160; P-0019, UGA-OTP-0218-0594-R01 at 0596-0597.

280. On this last contribution, logbooks and an intercepted LRA radio communication record two post-attack reports by Dominic Ongwen.

First post-attack report – 30 April 2004

281. The post-attack report from 30 April 2004 was recorded by the ISO in Gulu.[711] It has been verified by UPDF and ISO radio operators P-0003 and P-0059 as containing the voice of Dominic Ongwen, reporting on the Odek attack.[712] In this audio, Dominic Ongwen, using his call sign "Tem Wek Ibong", took responsibility for the Odek attack.[713]

282. "Tem" initially signed on and said:

"I am just from beating someone in Odek".[714]

283. Kony asked Ongwen if he had cleaned the "backside of his mother" in Odek.[715] This query was a reference to the killing of civilians.[716] Dominic Ongwen replied: "Completely, OVER".[717] He said that he has burned "everything including the barracks".[718]

284. Later, Otti again called Ongwen, using his call-sign: "TEM WEK IBONG, TEM WEK IBONG", asking if he had finished his earlier report on Odek. Ongwen said:

[711] Sound recording, UGA-OTP-0235-0038, Track 2 (enhanced), UGA-OTP-0051-0074 (original).
[712] *See* P-0059, UGA-OTP-0248-0328-R01 at 0332-0334 and Audio transcript annotation by P-0059, UGA-OTP-0248-0462-R01; P-0003, UGA-OTP-0248-0094-R01 at 0097-0099, Audio transcript annotation by P-0003, UGA-OTP-0248-0263-R01.
[713] *See* P-0059, UGA-OTP-0248-0328-R01 at 0332-0334 and Audio transcript annotation by P-0059, UGA-OTP-0248-0462-R01; P-0003, UGA-OTP-0248-0094-R01 at 0097-0099, Audio transcript annotation by P-0003, UGA-OTP-0248-0263-R01.
[714] P-0059, Audio transcript annotation, UGA-OTP-0248-0462-R01 at 0499 (rows 733-737); Audio transcript annotation by P-0003, UGA-OTP-0248-0263-R01 at 0300 (rows 733-737).
[715] P-0059, UGA-OTP-0248-0328-R01 at 0332-0334; P-0003, UGA-OTP-0248-0094-R01 at 0097-0099.
[716] P-0003, UGA-OTP-0248-0094-R01 at 0097-0098, Audio transcript annotation by P-0003, UGA-OTP-0248-0263-R01 at 0301, rows 748-750.
[717] P-0003, UGA-OTP-0248-0094-R01 at 0098.
[718] P-0059, UGA-OTP-0248-0328-R01 at 0333.

"[l]et the people wait to hear about the *waya*, we have shot all of them, OVER".[719]

285. "*Waya*" was a code word for civilians.[720]

286. Otti later relayed Ongwen's report that he had killed so many civilians, "he did not know the number".[721]

287. The report finished by Dominic Ongwen noting that "eight males" were abducted from Odek.[722] Both P-0003 and P-0059 confirm that the abductees were reported as being "mixed", a reference to their mixed gender.[723]

288. P-0224 held the radio for Ongwen when he made this report. Ongwen said that he had "attacked Odek very well because these people are difficult [… and] don't listen".[724] P-0019 heard this admission by Dominic Ongwen live on the LRA radio, as well as Kony praising Ongwen.[725]

289. This report is corroborated by the logbook entries recorded by the UPDF, ISO and police.

290. On 30 April at 18:30, the ISO logbook records Dominic Ongwen reporting that he had attacked the camp and the barracks, "burning it to the ground

[719] P-0059, UGA-OTP-0248-0328-R01 at 0334.
[720] P-0059, UGA-OTP-0248-0328-R01 at 0334.
[721] P-0059, Audio transcript annotation, UGA-OTP-0248-0462-R01 at 0522 (rows 1302-1304); see also, Audio transcript annotation by P-0003, UGA-OTP-0248-0263-R01 at 0323 (rows 1302-1304);
[722] P-0059, UGA-OTP-0248-0328-R01 at 0334, Audio transcript annotation by P-0059, UGA-OTP-0248-0462-R01 at 0522, rows 1318-1324.
[723] P-0003, UGA-OTP-0248-0094-R01 at 0099; P-0059, UGA-OTP-0248-0328-R01 at 0334.
[724] P-0224, UGA-OTP-0248-0688-R01 at 0704-0705.
[725] P-0019, UGA-OTP-0218-0594-R01 at 0596-0597.

completely", and captured weapons. Ongwen claimed he had "killed more than 10 civilians".[726]

291. Also on 30 April at 18:30, the UPDF logbook records a report of the attack by "Dominic [REDACTED]" on Odek.[727] The reference to "[REDACTED]" is likely a transcription error, given that the short-hand rough note refers only to "Dominic" taking responsibility.[728] Notably, [REDACTED]at the same time of the Odek attack report.[729] On hearing of the attack, Kony said that he wanted "those of Odek to be killed seriously b[ecau]se they refused to support him and yet he is born of that place".[730] Kony asked if any civilians had died, to which Ongwen replied: "more than 10".[731] The entry records the abduction of "8 young boys" from Odek, as well as a list of weapons seized.[732]

292. The relevant police logbook entry records "Tem Wek Ibong", known to be Dominic Ongwen's alias, reporting that he "was from killing people" and listing seized weapons. The number of dead civilians was put at "more than 10".[733] The death toll was expected to rise as "some were killed in the bush".[734] It also records the number of "8 missing", a reference to the abductees taken from Odek.[735] P-0125, the police constable intercepting LRA radio communications, transcribed

[726] ISO logbook, UGA-OTP-0061-0206 at 0269-0270.
[727] UPDF logbook, UGA-OTP-0197-1670 at 1690-1691 (long-hand).
[728] UPDF logbook, UGA-OTP-0197-2319 at 2439, 2440, 2445 (short-hand).
[729] See P-0059, UGA-OTP-0248-0328-R01 at 0332; UPDF logbook, UGA-OTP-0197-1670 at 1690 (long-hand); ISO logbook, UGA-OTP-0061-0206 at 0269.
[730] UPDF logbook, UGA-OTP-0197-1670 at 1691; see also, P-0231, UGA-OTP-0243-2087-R01 at 2093.
[731] UPDF logbook, UGA-OTP-0197-1670 at 1691.
[732] UPDF logbook, UGA-OTP-0197-1670 at 1690, right page (long-hand): "[h]e claimed to have attacked Odek and the following have been charged fm them […] 08 young boys were abducted"; UPDF logbook, UGA-OTP-0197-2319 at 2440 (short-hand): "Abductees 08"; see also, UPDF Intelligence report, UGA-OTP-0017-0150 at 0154, UGA-OTP-0017-0157 at 0160; UPDF 4th Div. Report, UGA-OTP-0233-0383 at 0408-0409, 0414, 0441.
[733] Police Logbook, UGA-OTP-0037-0002 at 0144-0146.
[734] Police Logbook, UGA-OTP-0037-0002 at 0146; see also, P-0125, UGA-OTP-0175-0300-R01 at 0304, UGA-OTP-0170-0034 at 0036, listing the perpetrators responsible for the Odek attack, with Dominic ONGWEN as the commander.
[735] Police Logbook, UGA-OTP-0037-0002 at 0145.

a list of fighters responsible for the attack, recording Dominic Ongwen as being the commander responsible.[736]

Second post-attack report – 1 May 2004

293. The second Odek post-attack report by Dominic Ongwen was made on 1 May 2004 at approximately 11:00. This report was recorded in the UPDF and ISO logbooks.

294. The ISO logbook records Dominic Ongwen coming on air and saying that he had not completed his report from the previous day. He said that he also successfully pillaged a "diamond" from Odek.[737] Kony instructed Ongwen to promote the officer responsible and to "keep it well". Otti mentioned that Mega FM had reported on the Odek attack: that "23 people were reported killed and 30 missing".[738] The UPDF logbook records the same details.[739]

295. Dominic Ongwen later admitted to LRA fighter P-0085 that over thirty people had been killed in the attack on Odek.[740] According to P-0245, nothing happened in the attack that was not ordered by Ongwen.[741]

296. Dominic Ongwen**'s** contributions, individually and cumulatively, were essential to the success of the Odek common plan leading to the commission of the crimes charged. By their coordinated contributions, the co-perpetrators—including Ongwen—exercised control over the crimes committed as a consequence of the common plan.

[736] *See* P-0125, UGA-OTP-0175-0300-R01 at 0304, UGA-OTP-0170-0034 at 0036.
[737] ISO logbook, UGA-OTP-0061-0206 at 0272-0273; UPDF logbook, UGA-OTP-0197-1670 at 1692; P-0224, UGA-OTP-0248-0688-R01 at 0699.
[738] ISO logbook, UGA-OTP-0061-0206 at 0272-0273.
[739] UPDF logbook, UGA-OTP-0197-1670 at 1692 (long-hand); UPDF logbook, UGA-OTP-0197-2319 at 2445 (short-hand).
[740] P-0085, UGA-OTP-0215-0182-R01 at 0190-0191.
[741] P-0245, UGA-OTP-0244-0285-R01 at 0301-0302.

iii. Dominic Ongwen had joint control over the organisation, which consisted of an organised and hierarchical apparatus of power

297. This element is satisfied by reference to the section on common elements of modes of liability, paragraphs 73 to 110.

iv. The execution of the crimes was secured by almost automatic compliance with orders

298. This element is satisfied by reference to the section on common elements of modes of liability, paragraphs 73 to 110.

v. Dominic Ongwen was aware of the factual circumstances that allowed him to exert joint control over the crimes

299. This element is satisfied by reference to the section on common elements of modes of liability, paragraphs 73 to 110.

300. Further, as described in detail above in the sections on Dominic Ongwen's role in the Odek common plan, paragraphs 270 to 278, and his essential contribution to the implementation of the plan, paragraphs 279 to 296, Dominic Ongwen was aware of the factual circumstances that allowed him to exert control over the crimes committed in Odek.[742]

[742] *See* sections on the Odek common plan, para. 270-278, and Ongwen's essential contribution to the Odek common plan, para. 279-296.

301. Dominic Ongwen's knowledge of the factual circumstances that enabled him to exercise control over the crimes jointly with his co-perpetrators can be established from the following facts:

- he was aware that he exercised *de jure* and *de facto* command authority over the LRA troops;[743]
- his knowledge that other co-perpetrators who espoused the common plan were willing to implement it and also exercised command and control over the LRA troops;[744]
- his role in planning the attack;[745]
- his coordination of the attack on the ground;[746]
- his knowledge that the LRA had an effective structure and hierarchy;
- his knowledge of the size and structure of the LRA, and its composition of trained fighters with obedience to hierarchy.[747]

vi. Dominic Ongwen had knowledge and intent as prescribed by article 30 and specific to the crimes

302. Dominic Ongwen intended to bring about the objective elements of the crimes, and/or was aware that they would occur in the ordinary course of events in implementing the Odek common plan.

303. Dominic Ongwen's intent and/or knowledge is established from the following facts:

- he and his co-perpetrators adopted the Odek common plan;[748]
- he knew that his co-perpetrators espoused the Odek common plan;[749]

[743] *See* section on the Odek common plan, para. 270-278.
[744] *Id*.
[745] *See* section on Dominic Ongwen's essential contribution to the Odek common plan, para. 279-296.
[746] *Id*.
[747] *See* section on common elements of modes of liability, para. 73-110.
[748] *See* section on the Odek common plan, para. 270-278.

- he knew about the roles that other co-perpetrators were assigned in the Odek common plan and the means they had at their disposal to implement it;[750]
- he gave instructions to his subordinates to implement the Odek common plan;[751]
- he was aware of the contribution that other members of the Odek common plan provided towards its implementation;[752]
- he coordinated the attack on the ground.[753]

Dominic Ongwen is criminally responsible under article 25(3)(b):

304. Dominic Ongwen is also individually criminally responsible pursuant to article 25(3)(b) for the crimes charged. Dominic Ongwen ordered the commission of crimes, holding a position of authority as Commander of Sinia brigade.[754] He had command authority over the troops and issued military orders during the course of the attack. His orders had a direct effect on the commission or attempted commission of the crimes.

Dominic Ongwen is criminally responsible under article 25(3)(d)(i) and (ii):

305. Dominic Ongwen also contributed to the commission or attempted commission of crimes by a group of persons, including Kony and [REDACTED], who were acting with a common purpose to further their criminal activity or

[749] *Id*.
[750] *Id*.
[751] *Id*.
[752] *Id*.
[753] *See* section on Dominic Ongwen's essential contribution to the Odek common plan, para. 279-296.
[754] *Id*.

criminal purpose to attack the camp, by means which involved the commission of crimes.[755]

306. Dominic Ongwen knew the group's intention to commit the crimes. As described above, Ongwen intentionally contributed to the commission of these crimes by means including his planning of the operation, his deployment of troops, issuing orders before the attack, and participating in the attack itself, in which crimes against civilians were committed. He did so with the aim of furthering the crimes and criminal purpose of the group or, at least, knowing of the group's intention to commit the crimes.

Dominic Ongwen is criminally responsible under article 25(3)(f):

307. As described above in the section on attempted murder, paragraphs 245 to 246, on some occasions during the attack, murders resulting from the implementation of the co-perpetrators' common plan, and/or Ongwen's orders, were not fully carried out because of independent circumstances. These comprised acts of attempted murder. Dominic Ongwen is individually criminally responsible under article 25(3)(f) for these acts. As described in the article 25(3)(a) knowledge and intent section, paragraphs 302 to 303, Ongwen possessed the necessary knowledge and intent for these crimes.

Dominic Ongwen is criminally responsible under article 28(a):

308. Dominic Ongwen is also individually criminally responsible as a military commander pursuant to article 28(a) for the crimes charged. At the time of the attack, Ongwen was the commander of Sinia brigade.

[755] *See* section on the Odek common plan, para. 270-278.

309. Dominic Ongwen knew or, owing to the circumstances at the time, should have known that the LRA fighters were committing or were about to commit the crimes in Odek, though, *inter alia*:

- his own involvement in the preparation, planning and/or execution of such crimes;[756]
- his receipt of information about the commission of such crimes from members of the LRA;
- his personal observation of the commission of such crimes.[757]

310. He took responsibility for the attack on LRA radio. Dominic Ongwen also failed, while under a duty stemming from his superior position, to take adequate steps to prevent, repress, or punish the perpetrators of the crimes committed at or near Odek during the attack or during its aftermath.[758]

311. The acts and omissions of Dominic Ongwen that demonstrate his failure to take all such necessary and reasonable measures include:

- his failure to order or initiate genuine or adequate investigations of crimes by LRA forces under his command;
- his failure to discipline, dismiss, demote or refrain from promoting or rewarding members of the LRA forces who were involved in the attack;
- his failure to issue orders that were necessary and reasonable in the circumstances to prevent or repress the commission of crimes by the LRA fighters.

[756] *See* section on the Odek common plan, para. 270-278.
[757] *See* section on Dominic Ongwen's essential contribution to the Odek common plan, para. 279-296.
[758] *See* section on common elements of modes of liability, para. 75-110.

312. Dominic Ongwen's failure to exercise his duty to prevent crimes increased the risk that the forces would commit these crimes.

IX. ATTACK ON LUKODI IDP CAMP

1. Introduction

313. Lukodi IDP camp was situated north of Gulu town in Bungatira sub-county, Aswa county, Gulu district.[759] About 7,000 people lived in the Lukodi camp in May 2004.[760]

314. On or about 19 May 2004, at around 18:00, a large group of LRA fighters attacked Lukodi IDP camp from the east or north-east.[761] The attack started with a whistle.[762] Dressed in a mix of military-style uniforms and civilian clothing, the LRA were armed with firearms, sticks, spears, and machetes.[763] Men, women, and children were among the attackers.[764] Approximately 30 government soldiers stationed at the camp withdrew after a short engagement with the LRA, leaving the remaining civilian population defenceless.[765] After defeating the military detachment, the LRA went on to intentionally target civilians.[766]

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[759] CID Report, UGA-OTP-0023-0022 at 0022.
[760] P-0017, UGA-OTP-0036-0007-R01 at 0035; CID Report, UGA-OTP-0023-0022 at 0022.
[761] P-0024, UGA-OTP-0069-0189-R01 at 0191; P-0185, UGA-OTP-0233-1020-R01 at 1027; P-0187, UGA-OTP-0233-1031-R01 at 1034; P-0195, UGA-OTP-0233-1046-R01 at 1050; P-0042, UGA-OTP-0150-0191-R01 at 0197; P-0119, UGA-OTP-0171-0064-R01 at 0067-0068. According to other witness accounts, the attack took place on 20 May 2004. See e.g., P-0026, UGA-OTP-0069-0018-R01 at 0021; P-0060, UGA-OTP-0069-0034-R01 at 0041; P-0017, UGA-OTP-0036-0007-R01 at 0036; P-0035, UGA-OTP-0036-0082-R01 at 0087 (between 20 and 22 May). While witness accounts differ as to the date and time of the attack, they are consistent in their description of the attack.
[762] P-0018, UGA-OTP-0159-0002-R01 at 0011.
[763] P-0024, UGA-OTP-0069-0189-R01 at 0191, 0193; P-0026, UGA-OTP-0069-0018-R01 at 0021; P-0035, UGA-OTP-0036-0082-R01 at 0088; P-0119, UGA-OTP-0171-0064-R01 at 0068.
[764] P-0035, UGA-OTP-0036-0082-R01 at 0088.
[765] P-0024, UGA-OTP-0069-0189-R01 at 0191; P-0018, UGA-OTP-0159-0002-R01 at 0011; P-0202, UGA-OTP-0243-0907-R01 at 0922-0923; P-0035, UGA-OTP-0036-0082-R01 at 0084.
[766] P-0202, UGA-OTP-0243-0907-R01 at 0919; P-0253, UGA-OTP-0243-2287-R01 at 2290-2291.

315. The attack itself did not last long.[767] Nevertheless, the attackers caused chaos in the camp. Civilian huts were set on fire; food and other property was looted. Abducted men and women were made to carry the loot and children were conscripted to serve as LRA fighters. Civilians, adults and children, were intentionally injured and killed. UPDF reinforcements arrived shortly after the LRA had retreated from the camp, in an east or north-easterly direction.[768] The wounded were transported to Gulu Regional Referral Hospital; some later died.[769] Because of the attack, most civilians abandoned the camp.[770]

316. Dominic Ongwen controlled over the attack and the attackers. He conceived, ordered and planned the attack. Before the attack, he selected fighters, appointed leaders, delegated responsibilities, and briefed the attack group. After the attack – he did not participate himself – Ongwen received a report from his officers and communicated the results of the attack on the radio to Kony, Otti, and other senior LRA commanders.

317. There are substantial grounds to believe that, in the course of the attack, the following charged crimes were committed.

2. Crimes committed

Count 24 - attack directed against the civilian population (article 8(2)(e)(i)):

[767] P-0035, UGA-OTP-0036-0082-R01 at 0088; P-0187, UGA-OTP-0233-1031-R01 at 1038.
[768] P-0026, UGA-OTP-0069-0018-R01 at 0022-0023; P-0187, UGA-OTP-0233-1031-R01 at 1036; P-0205, UGA-OTP-0247-0109-R01 at 0117; P-0035, UGA-OTP-0036-0082-R01 at 0089.
[769] P-0026, UGA-OTP-0069-0018-R01 at 0024; P-0035, UGA-OTP-0036-0082-R01 at 0089; P-0036, UGA-OTP-0036-0042-R01 at 0056; P-0017, UGA-OTP-0036-0007-R01 at 0037.
[770] P-0060, UGA-OTP-0069-0034-R01 at 0037; P-0042, UGA-OTP-0150-0191-R01 at 0195; P-0026, UGA-OTP-0069-0018-R01 at 0025.

318. LRA fighters under the command of Dominic Ongwen carried out an attack against the civilian population of Lukodi IDP camp as such, or individual civilians not taking direct part in the hostilities. Dominic Ongwen intended the civilian population as such, or individual civilians not taking direct part in the hostilities, to be the object of the attack.

319. The number of murdered and wounded civilians, the character of the crimes, the ages and identities of victims, and the extent of destroyed civilian property – which can be seen in video footage and photographs taken in the aftermath of the attack – further illustrate the deliberate nature of the attack against the civilian population of Lukodi.[771]

320. The Prosecution submits that the following facts described under counts 25-28 (murder and attempted murder), counts 29-30 (torture), count 31 (other inhumane acts), count 32 (cruel treatment), count 33 (enslavement), count 34 (pillaging) and count 35 (destruction of property) qualify as the underlying conduct of the war crime of attacks directed against the civilian population.

Counts 25-26 - murder (articles 7(1)(a) and 8(2)(c)(i)):

321. In the course of the attack, LRA fighters killed more than 45 civilians, including at least 12 children.[772] These civilians were taking no active part in hostilities.[773] In contrast, no government soldiers were killed in the attack.[774] These children and adults died as a result of multiple gunshot or stab wounds, broken

[771] Video, UGA-OTP-0023-0008; Photographs, UGA-OTP-0023-0311 to UGA-OTP-0023-0360, UGA-OTP-0023-0391 to UGA-OTP-0023-0407; P-0036, Forensic Medical Report, UGA-OTP-0023-0188 at 0191-0194.
[772] P-0042, List of Dead, UGA-OTP-0146-0145 at 0145; P-0035, UGA-OTP-0036-0082-R01 at 0090; P-0038, Photograph, UGA-OTP-0016-0637; P-0060, UGA-OTP-0069-0049 at 0050; P-0037, UGA-OTP-0221-0731-R01 at 0760; P-0237, UGA-OTP-0244-2588-R01 at 2594.
[773] P-0202, UGA-OTP-0243-0928-R01 at 0944-0945.
[774] P-0035, UGA-OTP-0036-0082-R01 at 0089; P-0018, UGA-OTP-0159-0002-R01 at 0012.

necks, being burned inside their houses, or being beaten to death.[775] Camp resident P-0026's eight-year old daughter was shot to death in front of her.[776] Abductee P-0024 saw three four-year old children – her daughter and those of two relatives – thrown inside a burning house.[777] P-0024's mother, uncle, and son were shot and killed during the attack.[778]

322. The killing of civilians was not confined to the camp itself. The LRA continued killing abductees, mainly men, after they left Lukodi.[779] That night, abductee P-0187 heard the sound of other abductees being beaten to death.[780] After her release, abductee P-0195 saw an old man's body with a gunshot wound near the Unyama River.[781] Similarly, P-0187 saw the corpses of male and female abductees at a distance from Lukodi camp, which were never collected and buried.[782]

323. The LRA attackers did not hide their murderous intent. Abductee P-0185 heard LRA fighters say, "Kill all of them".[783] P-0195, who was abducted to carry the loot, was told by an LRA commander that Joseph Kony was very upset with civilians, and that they (the attackers) were "supposed to kill all of you".[784]

324. The next day, Lukodi residents buried their dead in and around the camp.[785] In the following days, P-0036, a government pathologist from Kampala, exhumed

[775] P-0036, UGA-OTP-0036-0042-R01 at 0058-0059; P-0196, UGA-OTP-0233-1061-R01 at 1066; P-0185, UGA-OTP-0233-1020-R01 at 1025; P-0195, UGA-OTP-0233-1046-R01 at 1052, 1055-1056; P-0187, UGA-OTP-0233-1031-R01 at 1038; P-0202, UGA-OTP-0243-0907-R01 at 0914-0915, 0919-0920; P-0035, UGA-OTP-0036-0082-R01 at 0089-0090; P-0301, UGA-OTP-0249-0423-R01 at 0433.
[776] P-0026, UGA-OTP-0069-0018-R01 at 0022.
[777] P-0024, UGA-OTP-0069-0189-R01 at 0193.
[778] P-0024, UGA-OTP-0069-0189-R01 at 0195.
[779] P-0187, UGA-OTP-0233-1031-R01 at 1038, 1042; P-0202, UGA-OTP-0243-0907-R01 at 0915; P-0119, UGA-OTP-0171-0064-R01 at 0068-0069.
[780] P-0187, UGA-OTP-0233-1031-R01 at 1038-1039.
[781] P-0195, UGA-OTP-0233-1046-R01 at 1055; P-0024, UGA-OTP-0069-0189-R01 at 0193.
[782] P-0187, UGA-OTP-0233-1031-R01 at 1038, 1042.
[783] P-0185, UGA-OTP-0233-1020-R01 at 1024.
[784] P-0195, UGA-OTP-0233-1046-R01 at 1054.
[785] P-0035, UGA-OTP-0036-0082-R01 at 0089; P-0036, UGA-OTP-0036-0042-R01 at 0058.

and re-buried 25 bodies on the site as part of a local investigation into the incident.[786] P-0301 travelled to Gulu at 09:00 the morning after the attack. He remained there until midday. He saw "bodies hacked in a barbaric way",[787] and recorded 38 bodies of men, women and children. The dead included a three year old girl and elderly civilians.[788]

Counts 27-28 - attempted murder (articles 7(1)(a) and 8(2)(c)(i)):

325. On some occasions during the attack on Lukodi, murders were not fully carried out because of independent circumstances. These constitute acts of attempted murder. LRA fighters commenced the crime by means of the substantial step of attacking the victim, but the victim did not die.

326. LRA fighters shot at children and adults who were taking no active part in hostilities.[789] At least 16 civilians were wounded in the course of the attack.[790] For example, P-0026 and one of her daughters were wounded, while another daughter did not survive.[791] Similarly, LRA fighters hit P-0185 with a bayonet, and shot at him when he tried to escape.[792] Abductee P-0196, a seven-year-old child, was hiding with his siblings and others in a grass-thatched hut when an attacker fired a shot inside.[793] It was entirely by chance that these persons survived despite the attackers' intention to kill them.

[786] P-0017, UGA-OTP-0036-0007-R01 at 0037; P-0036, UGA-OTP-0036-0042-R01 at 0056-0059; P-0036, Forensic Medical Report, UGA-OTP-0023-0105 at 0108-0111; 25 Post-Mortem Requests and 25 Reports, UGA-OTP-0146-0153 to UGA-OTP-0146-0227; P-0035, UGA-OTP-0036-0082-R01 at 0090-0091; P-0301, UGA-OTP-0249-0423-R01 at 0433.
[787] P-0301, UGA-OTP-0249-0423-R01 at 0433.
[788] P-0301, UGA-OTP-0249-0423-R01 at 0432-0433.
[789] P-0024, UGA-OTP-0069-0189-R01 at 0191; P-0026, UGA-OTP-0069-0018-R01 at 0022, 0024.
[790] CID Report, UGA-OTP-0023-0022 at 0024; P-0060, Notebook, UGA-OTP-0069-0049 at 0052-0053; P-0035, UGA-OTP-0036-0082-R01 at 0089.
[791] P-0026, UGA-OTP-0069-0018-R01 at 0022.
[792] P-0185, UGA-OTP-0233-1020-R01 at 1024.
[793] P-0196, UGA-OTP-0233-1061-R01 at 1065.

327. Children were thrown into burning huts, and kicked back inside when they tried to escape.[794] An LRA fighter threw P-0196 inside a burning hut because the child was "interfering with the movement of other abductees". When P-0196 finally managed to get outside, an LRA fighter shouted that he should be shot.[795]

Counts 29-30 - torture (articles 7(1)(f) and 8(2)(c)(i)) or count 31 – other inhumane acts (articles 7(1)(k)) or count 32 - cruel treatment (article 8(2)(c)(i)):

Legal characterisation of counts 29-32

328. The beating of civilians, forcing them to carry heavy loads, often for long distances while tied to each-other under constant threat of harm, being subjected to punitive conditions, and witnessing the beatings and killings of other abductees who were either too weak or who attempted to escape caused severe physical or mental pain or suffering.[796] This amounted to torture under articles 7(1)(f) and 8(2)(c)(i), the war crime of cruel treatment under article 8(2)(c)(i) and the crime against humanity of other inhumane acts under article 7(1)(k).[797]

Torture, cruel treatment and other inhumane acts in Lukodi

329. In the course of the attack on Lukodi, LRA fighters inflicted severe physical and mental pain or suffering on civilians taking no active part in hostilities. Such

[794] P-0187, UGA-OTP-0233-1031-R01 at 1037; P-0024, UGA-OTP-0069-0189-R01 at 0193.
[795] P-0196, UGA-OTP-0233-1061-R01 at 1065.
[796] *See Prosecutor v Brdjanin*, IT-98-36-A, Appeal Judgement, 3 April 2007, para. 251: "Acts inflicting physical pain may amount to torture even when they do not cause the amount of pain of the type accompanying serious injury. Whether an act causes severe pain or suffering is determined on a case-by-case basis"; see further, section on persecution, para. 111-147.
[797] For the purposes of applying the "materially distinct" test, the legal elements of the crime may include the *chapeau* requirements of the particular crime. *See* ICC-01/04-01/07-3436-tENG, para. 1696; see also, ICC-01/04-01/07-717, para. 419; see further, *Prosecutor v Natelic & Martinovic*, IT-98-34-A, Appeal Judgement, 3 May 2006, para. 562.

pain or suffering did not arise from, and was not inherent in or incidental to, lawful sanctions.

330. This treatment was carried out to intimidate and/or punish the civilian population because of their perceived support for the government.[798] Furthermore, this treatment was carried out when the civilians were under the control of the LRA attackers.[799] The pain inflicted amounted to torture, cruel treatment, and other inhumane acts.[800]

331. Attackers ruthlessly assaulted civilians, including small children.[801] P-0024 saw girls, including her own daughter, being beaten when they tried to escape from a burning house.[802]

332. Abducted civilians – including mothers with babies and elderly people – were forced to carry heavy loot while being beaten and under threat of death.[803] Those not able to continue carrying heavy loot were shot.[804] P-0187 was stabbed for dropping a heavy load, and was beaten for allowing a looted goat to escape when trying to hide from a helicopter gunship.[805]

333. As LRA fighters marched abductees out of the camp, they forced mothers to abandon their children under threat of death. The LRA fighters threw small

[798] Per Element 2 of the war crime of torture: "The perpetrator inflicted the pain or suffering for such purposes as: obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind". *See* Elements of Crimes, article 8(2)(c)(i)-4, para. 2. *See generally*, the section on persecution, para. 111-147. *See especially*, the submissions on persecution under Count 36, para. 144-145.
[799] Per Element 2 of the crime against humanity of torture: "Such person or persons were in the custody or under the control of the perpetrator". *See* Elements of Crimes, article 7(1)(f), para. 2.
[800] *See further* section on persecution, para. 111-147.
[801] P-0195, UGA-OTP-0233-1046-R01 at 1055; P-0024, UGA-OTP-0069-0189-R01 at 0191, 0194; P-0035, UGA-OTP-0036-0082-R01 at 0088.
[802] P-0024, UGA-OTP-0069-0189-R01 at 0193.
[803] P-0024, UGA-OTP-0069-0189-R01 at 0192.
[804] P-0024, UGA-OTP-0069-0189-R01 at 0193; P-0018, UGA-OTP-0159-0002-R01 at 0012.
[805] P-0187, UGA-OTP-0233-1031-R01 at 1036.

children, including babies, in the bush because the children were crying, making it difficult for their mothers to carry pillaged goods.[806] Children that tried to re-join their mothers were kicked back into the bush.[807]

Count 33 – enslavement (article 7(1)(c)):

334. LRA fighters under Dominic Ongwen's command deprived civilians of their liberty by abducting them and placing them under military guard to prevent their escape. Men, women and children were abducted, conscripted into the LRA, forced to perform manual labour, or otherwise reduced to a servile status.

335. During the attack, a designated group of LRA fighters systematically abducted civilians.[808] Abductees were tied up and marched from the camp to the LRA's rendezvous point ("RV") under armed guard.[809] These abductees – mainly women aged 20 to 50 – were used as slave labour to carry looted items such as beans, sim-sim, and sorghum.[810] P-0195, [REDACTED], was abducted with their young daughter, but was later released.[811] Most women were subsequently released after they reached a resting point, although not all abductees were this fortunate.[812]

[806] P-0195, UGA-OTP-0233-1046-R01 at 1051-1052; P-0187, UGA-OTP-0233-1031-R01 at 1037; P-0024, UGA-OTP-0069-0189-R01 at 0194; P-0202, UGA-OTP-0243-0907-R01 at 0915, 0920; P-0018, UGA-OTP-0159-0002-R01 at 0013.
[807] P-0024, UGA-OTP-0069-0189-R01 at 0194.
[808] P-0119, UGA-OTP-0171-0064-R01 at 0068-0069; P-0205, UGA-OTP-0243-0719-R01 at 0726; P-0142, UGA-OTP-0228-4583-R01 at 4591; P-0202, UGA-OTP-0243-0928-R01 at 0939, 0943, UGA-OTP-0243-0948-R01 at 0951-0952.
[809] P-0195, UGA-OTP-0233-1046-R01 at 1051; P-0187, UGA-OTP-0233-1031-R01 at 1035-1036, 1038; P-0024, UGA-OTP-0069-0189-R01 at 0192; P-0119, UGA-OTP-0171-0064-R01 at 0068-0069.
[810] P-0196, UGA-OTP-0233-1061-R01 at 1065; P-0024, UGA-OTP-0069-0189-R01 at 0193; P-0195, UGA-OTP-0233-1046-R01 at 1053-1054; P-0205, UGA-OTP-0247-0109-R01 at 0117.
[811] P-0185, UGA-OTP-0233-1020-R01 at 1026-1027.
[812] P-0187, UGA-OTP-0233-1031-R01 at 1039, 1041; P-0205, UGA-OTP-0247-0109-R01 at 0117.

336. In compliance with Joseph Kony's orders, boys and girls were abducted with the intention of turning them into soldiers or wives.[813] P-0196, [REDACTED] and other civilians were taken from a hut where they were hiding. P-0196's [REDACTED] never returned, and his fate remains unknown.[814] Abductee P-0119, aged fifteen at the time, was abducted with six other children when trying to flee the attack. He was enslaved in the bush for at least six and a half months.[815]

Count 34 – pillaging (article 8(2)(e)(v)):

337. LRA fighters appropriated food items and other personal property from Lukodi. They intended to deprive the owners of their food and property and to appropriate it for private or personal consumption and use. The owners did not consent to the appropriation. The pillaging was not justified by military necessity.

338. Prior to the attack, relief organisations had distributed emergency supplies to Lukodi residents, such as beans, maize, cooking oil, soap, cooking utensils, and blankets.[816] These items were subsequently looted by the LRA.

339. During the attack, the LRA fighters entered civilian houses and shops to take food, livestock, clothes, and household items.[817] P-0185 saw the LRA loot sugar, salt, sweets, and soap from a shop.[818] LRA fighters also forced civilians to collect food and household items from civilian houses, and to carry the loot to the RV

[813] P-0205, UGA-OTP-0243-0690-R01 at 0701, UGA-OTP-0243-0819-R01 at 0825-0827.
[814] P-0196, UGA-OTP-0233-1061-R01 at 1066.
[815] P-0119, UGA-OTP-0171-0064-R01 at 0068-0069.
[816] P-0026, UGA-OTP-0069-0018-R01 at 0022; P-0187, UGA-OTP-0233-1031-R01 at 1034; P-0195, UGA-OTP-0233-1046-R01 at 1050, 1057; P-0018, UGA-OTP-0159-0002-R01 at 0011; P-0202, UGA-OTP-0243-0948-R01 at 0954.
[817] P-0026, UGA-OTP-0069-0018-R01 at 0022; P-0018, UGA-OTP-0159-0002-R01 at 0011; P-0202, UGA-OTP-0243-0928-R01 at 0943-0944.
[818] P-0185, UGA-OTP-0233-1020-R01 at 1024.

point under armed guard.[819] P-0195 and [REDACTED] were forced to carry beans and maize bags taken from her house.[820] LRA fighters forced P-0024, with a [REDACTED] baby on her back, to carry two basins of beans on her head.[821]

Count 35 - destruction of property (article 8(2)(e)(xii)):

340. LRA fighters destroyed property belonging to civilians in Lukodi, whom they viewed as adversaries. The property was protected from destruction under the international law of armed conflict. The destruction was not required by military necessity.

341. The attackers deliberately burned civilian huts and the property that remained after their looting.[822] The extent of destroyed civilian property, visible in video footage and photographs taken in the aftermath of the attack, illustrates the deliberate nature of the destruction. The video cited at footnote 771 shows Ugandan police, the UPDF, medical personnel, and local officials inspecting the camp after the attack.[823] Burned civilian huts are visible throughout the video.[824] P-0301 also saw "the remains of burned out huts".[825]

Count 36 - persecution (article 7(1)(h)):

[819] P-0187, UGA-OTP-0233-1031-R01 at 1035-1036, 1038; P-0024, UGA-OTP-0069-0189-R01 at 0192; P-0202, UGA-OTP-0243-0907-R01 at 0924; P-0035, UGA-OTP-0036-0082-R01 at 0090-0091.
[820] P-0195, UGA-OTP-0233-1046-R01 at 1051.
[821] P-0024, UGA-OTP-0069-0189-R01 at 0192.
[822] P-0195, UGA-OTP-0233-1046-R01 at 1051; P-0187, UGA-OTP-0233-1031-R01 at 1036-1037, 1042; P-0024, UGA-OTP-0069-0189-R01 at 0192; P-0202, UGA-OTP-0243-0907-R01 at 0924-0925; P-0196, UGA-OTP-0233-1061-R01 at 1066; P-0185, UGA-OTP-0233-1020-R01 at 1025; P-0026, UGA-OTP-0069-0018-R01 at 0022; P-0035, UGA-OTP-0036-0082-R01 at 0088; P-0018, UGA-OTP-0159-0002-R01 at 0011-0012.
[823] Video, UGA-OTP-0023-0008. Lukodi Primary School is visible at 00:07:54 and 00:11:45, confirming the location; P-0036, Forensic Medical Report, UGA-OTP-0023-0105 at 0108-0111.
[824] *See* Video, UGA-OTP-0023-0008, time stamps: 00:08:17, 00:09:25, 00:12:30,00:13:45, 00:14:40, 00:16:10, 00:20:45, 00:28:30, 00:33:50, 00:35:54, 00:44:25, where burning huts in Lukodi are visible; see also, Photographs, UGA-OTP-0023-0311 to UGA-OTP-0023-0360, UGA-OTP-0023-0391 to UGA-OTP-0023-0407.
[825] P-0301, UGA-OTP-0249-0423-R01 at 0433.

342. The Prosecution submits that the facts described above under count 24 (attack on civilians) counts 25-28 (murder and attempted murder), counts 29-30 (torture), count 31 (other inhumane acts), count 32 (cruel treatment), count 33 (enslavement), count 34 (pillaging) and count 35 (destruction of property) form the underlying conduct of the crime of persecution. See further, the submissions in the section on persecution, paragraphs 111 to 147, which are incorporated here by reference.

3. Dominic Ongwen's individual criminal responsibility

343. As described below, there are substantial grounds to believe that Dominic Ongwen is individually criminally responsible for the crimes charged pursuant to article 25(3)(a) as an indirect perpetrator.[826] The Prosecution case is that he had control over the crimes described above because the persons who directly perpetrated the crimes were acting as his 'tools'. This is in contra-distinction to the crimes committed at Pajule and Odek, where the Prosecution characterises his responsibility as being that of an indirect co-perpetrator. He is also responsible under articles 25(3)(b), (d)(i) and (ii), or (f), or as a military commander pursuant to article 28.

Dominic Ongwen is criminally responsible under article 25(3)(a):

i. Dominic Ongwen exerted control over the crimes whose material elements were brought about by one or more persons

[826] *See* ICC-01/04-01/07-3436-tENG, para. 1399. The Prosecution adopts the following elements for indirect perpetration as held in *Katanga*:
"In the Chamber's view, and in accordance with its aforegoing definition of perpetrator, criminal responsibility as an indirect perpetrator is incurred where a person:
i. exerts control over the crime whose material elements were brought about by one or more persons;
ii. meets the mental elements prescribed by article 30 and the mental elements specific to the crime at issue; and
iii. is aware of the factual circumstances which allow the person to exert control over the crime".

344. The following facts demonstrate Dominic Ongwen's control over the crimes committed in Lukodi, the material elements of which were brought about by persons under his control. The submissions that follow should be read in conjunction with paragraphs 73 to 110 of this document, which deal with modes of liability common to many of the charges brought against Dominic Ongwen.

345. First, Dominic Ongwen devised the plan to attack Lukodi IDP camp, which included attacking a military detachment, abducting and killing civilians, and burning and looting civilian homes.[827] He considered the civilians at Lukodi to be "stubborn".[828] According to P-0142 and P-0172, a former captain in the LRA[829] attached to the Gilva Brigade sickbay at the time of the Lukodi attack, other LRA officers helped Ongwen to design the exact plan of the attack.[830] On 17 May 2004, Ongwen requested permission from Kony to attack camps and pillage food during a radio communication.[831]

346. Second, Dominic Ongwen exerted control over the Sinia brigade and Gilva brigade sickbay forces who executed the attack on Lukodi. He had gathered fighters from Major Olak Tulu's Gilva sickbay near the Aswa River one day before the attack.[832] Dominic Ongwen was able to do so because he was senior to

[827] P-0018, UGA-OTP-0159-0002-R01 at 0009-0010; P-0019, UGA-OTP-0218-0571-R01 at 0590-0591.
[828] P-0202, UGA-OTP-0243-0907-R01 at 0925-0926; P-0018, UGA-OTP-0159-0002-R01 at 0010.
[829] P-0142, UGA-OTP-0243-2356-R01 at 2358.
[830] P-0172, UGA-OTP-0243-2468-R01 at 2475; P-0142, UGA-OTP-0244-0732-R01 at 0738.
[831] UPDF logbook, UGA-OTP-0197-1670 at 1723; P-0224, UGA-OTP-0244-2961-R01 at 2963.
[832] P-0172, UGA-OTP-0243-2331-R01 at 2341-2343, UGA-OTP-0243-2468-R01 at 2472-2473, 2474-2476, UGA-OTP-0243-2519-R01 at 2528, 2533, 2535, 2540; P-0145, UGA-OTP-0219-0213-R01 at 0221, 0223, 0228-0229; P-0224, UGA-OTP-0244-2961-R01 at 2978; P-0142, UGA-OTP-0244-0732-R01 at 0738, 0741; [REDACTED]; P-0237, UGA-OTP-0238-0020-R01 at 0027; P-0018, UGA-OTP-0159-0002-R01 at 0009-0010; P-0016, UGA-OTP-0228-3464-R01 at 3480-3484. According to P-0172, most of [REDACTED]fighters joined Ongwen's group (*See* UGA-OTP-0243-2519-R01 at 2541). According to P-0145, Ongwen arrived at Gilva sickbay location and addressed the officers telling them to prepare people because he already had a standby force (*See* UGA-OTP-0219-0213-R01 at 0222). [REDACTED]was also known under the names [REDACTED].

Tulu in the LRA hierarchy. These forces were under Dominic Ongwen's command on an *ad hoc* basis for the duration of the Lukodi attack.

347. Third Dominic Ongwen gave specific orders to his subordinates about the attack on Lukodi.[833] Before the attack, he selected a core group of fighters from the Sinia brigade.[834] During a pre-attack briefing near Atoo Hills, he instructed the attack group on how to enter the camp, and how to ensure that the soldiers were defeated.[835] He divided the attackers into groups: one group specifically for combat, another to collect food.[836] He ordered his subordinates to shoot soldiers, burn houses, loot everything, and to return with food.[837] The evidence suggests that he made conflicting pronouncements on the subject of the presence of civilians: on one account Dominic Ongwen claimed that there were no civilians in Lukodi.[838] But on other accounts Ongwen told his fighters: "go and kill anything that breathes",[839] to "kill all of them",[840] and he warned them: "If you don't complete your mission, don't return".[841] Ongwen instructed that the post-attack RV was to be the same as the pre-attack RV.[842] After the commanders received the briefing, they relayed the orders to their subordinates.[843]

[833] P-0142, UGA-OTP-0228-4620-R01 at 4622; P-0016, UGA-OTP-0228-3464-R01 at 3486.
[834] P-0142, UGA-OTP-0228-4542-R01 at 4562; P-0018, UGA-OTP-0159-0002-R01 at 0009-0010; P-0145, UGA-OTP-0219-0213-R01 at 0228.
[835] P-0245, UGA-OTP-0244-0393-R01 at 0398; P-0142, UGA-OTP-0244-0732-R01 at 0741; P-0205, UGA-OTP-0243-0690-R01 at 0701, UGA-OTP-0247-0109-R01 at 0110.
[836] P-0205, UGA-OTP-0243-0690-R01 at 0712-0713, UGA-OTP-0247-0089-R01 at 0107-0108.
[837] P-0142, UGA-OTP-0244-0732-R01 at 0741; [REDACTED]; P-0205, UGA-OTP-0247-0109-R01 at 0111; P-0018, UGA-OTP-0159-0002-R01 at 0011; P-0202, UGA-OTP-0243-0907-R01 at 0925.
[838] P-0142, UGA-OTP-0228-4542-R01 at 4574.
[839] P-0202, UGA-OTP-0243-0948-R01 at 0955, UGA-OTP-0243-1011-R01 at 1026; see also P-0245, UGA-OTP-0244-0363-R01 at 0389; P-0142, UGA-OTP-0228-4542-R01 at 4574.
[840] P-0142, UGA-OTP-0228-4542-R01 at 4574.
[841] P-0245, UGA-OTP-0244-0393-R01 at 0399; P-0205, UGA-OTP-0247-0109-R01 at 0111.
[842] P-0205, UGA-OTP-0243-0690-R01 at 0702. Ongwen said he would not be at the RV point, but would send someone to collect them.
[843] P-0245, UGA-OTP-0244-0393-R01 at 0398.

348. Fourth, Dominic Ongwen appointed specific subordinates to carry out the attack in lieu of his presence.[844] Ocaka from Sinia brigade was to be the commander on the ground,[845] assisted by P-0142 and P-0205, [REDACTED].[846] Both P-0142 and Ocaka were selected because they knew the area.[847] Dominic Ongwen made P-0142 responsible for abducted civilians.[848] Ocaka assigned [REDACTED], LRA fighter from Gilva Brigade,[849] to lead the group responsible for pillaging food.[850] Both P-0142 and P-0245 said that had P-0142 not followed Ongwen's orders in relation to the Lukodi attack, he would have been punished.[851]

349. Fifth, Dominic Ongwen received reports from his subordinates after the attack. The day after the attack, fighters re-joined Ongwen and others at the RV near Atoo Hills.[852] After receiving a written report produced by the intelligence officer, Ongwen thanked the fighters.[853] Ocaka [REDACTED] also described verbally to Ongwen what happened at Lukodi.[854] The report included the numbers of ammunition and uniforms captured.[855] After the attack, the intelligence officer reported the capture of these items in Lukodi on LRA radio.[856]

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[844] [REDACTED]; P-0245, UGA-OTP-0244-0363-R01 at 0384-0385; P-0018, UGA-OTP-0159-0002-R01 at 0013; P-0016, UGA-OTP-0228-3464-R01 at 3483.
[845] P-0205, UGA-OTP-0243-0690-R01 at 0731, UGA-OTP-0247-0089-R01 at 0106; P-0245, UGA-OTP-0244-0363-R01 at 0384-0386; [REDACTED]; P-0016, UGA-OTP-0228-3464-R01 at 3481; P-0037, UGA-OTP-0221-0731-R01 at 0754-0755.
[846] P-0205, UGA-OTP-0243-0690-R01 at 0695-0697, UGA-OTP-0247-0089-R01 at 0106-0107.
[847] P-0224, UGA-OTP-0244-2961-R01 at 2971; P-0245, UGA-OTP-0244-0363-R01 at 0386.
[848] P-0205, UGA-OTP-0243-0719-R01 at 0726; P-0142, UGA-OTP-0228-4583-R01 at 4591.
[849] P-0205, UGA-OTP-0243-0690-R01 at 0714, 0731.
[850] P-0205, UGA-OTP-0243-0690-R01 at 0714, 0731; P-0018, UGA-OTP-0159-0002-R01 at 0011.
[851] P-0142, UGA-OTP-0228-4620-R01 at 4623; P-0245, UGA-OTP-0244-0363-R01 at 0387-0388.
[852] P-0205, UGA-OTP-0243-0719-R01 at 0737-0738; P-0245, UGA-OTP-0244-0418-R01 at 0420.
[853] P-0142, UGA-OTP-0228-4620-R01 at 4622.
[854] [REDACTED]; P-0142, UGA-OTP-0228-4542-R01 at 4568-4571; P-0205, UGA-OTP-0247-0109-R01 at 0118-0120.
[855] P-0205, UGA-OTP-0243-0719-R01 at 0741-0743, 0747.
[856] P-0205, UGA-OTP-0243-0719-R01 at 0736.

The day after the attack, the co-opted Gilva troops returned to their location with guns, food, and clothes.[857]

350. Sixth, Dominic Ongwen reported his responsibility for the Lukodi attack during radio communication with senior LRA commanders,[858] a report that was intercepted and noted in the UPDF and ISO logbooks, as well as recorded by the ISO in Gulu.[859]

21 May 2004

351. A sound recording[860] of an intercepted radio communication on 21 May, verified by P-0003[861] and P-0059,[862] contains exchanges between Joseph Kony, Vincent Otti and Dominic Ongwen about the Lukodi attack.

352. The first portion includes a communication between "Wat Pa Dano" (Otti) and "Layom Cwiny" (Kony):[863]

> Otti: I heard that some groups […] attacked Lukodi
>
> Kony: Lukodi?
>
> Otti: Lukodi seem[s] to be a small centre in Bungatira…I heard that they shot and killed more than 25 people […], they burnt down more than 100 houses. […] Yesterday, but I do not know which group it was […] [T]he Division Commander of Gulu […] said that if LRA comes civilians should run to the

[857] P-0172, UGA-OTP-0243-2331-R01 at 2343-2344, UGA-OTP-0243-2468-R01 at 2475, UGA-OTP-0243-2478-R01 at 2479-2480, UGA-OTP-0243-2519-R01 at 2536.
[858] P-0142, UGA-OTP-0228-4542-R01 at 4582; P-0224, UGA-OTP-0248-0688-R01 at 0707; P-0205, UGA-OTP-0247-0109-R01 at 0120-0121; P-0019, UGA-OTP-0218-0571-R01 at 0588-0591.
[859] UPDF Report, UGA-OTP-0017-0268 at 0271, 0273; ISO logbook, UGA-OTP-0061-0206 at 0321; P-0016, UGA-OTP-0223-0034-R01 at 0054-0073; P-0070, UGA-OTP-0228-2188-R01 at 2195-2196; Sound recording, UGA-OTP-0054-0046 (original, track 2), UGA-OTP-0239-0123 (enhanced); see also P-0253, UGA-OTP-0243-2174-R01 at 2196, UGA-OTP-0243-2287-R01 at 2290-2291.
[859] UPDF Report, UGA-OTP-0016-0522 at 0525; ISO logbook, UGA-OTP-0061-0206 at 0329; see also P-0253, UGA-OTP-0243-2174-R01 at 2196.
[860] Sound recording, UGA-OTP-0054-0046 (original, track 2), UGA-OTP-0239-0123 (enhanced version).
[861] P-0003, UGA-OTP-0132-0002-R01 at 0005.
[862] P-0059, UGA-OTP-0150-0037-R01 at 0039-0041.
[863] P-0003, UGA-OTP-0069-0803-R01 at 0808.

bush. […] They should not run to the barracks as that would bring lots of confusion. […] [T]hat is what I heard".[864]

353. The second portion[865] (annotated with the identities of the speakers by P-0003)[866] includes a conversation between "Tem" (Dominic Ongwen[867]) and "Wat Pa Dano" (Otti):

"Otti: Who was responsible for the Lukodi attack/who hit Lukodi?

DO: That was me

Otti: Could you first repeat?

DO; Me […] it happen[ed] in the new year. […]

Otti: Ah confirmed.

DO: I heard that they burnt more than one hundred houses

Otti: It happened just as you said

DO: They killed more than fifty-[t]wenty [f]ive people […] like that".[868]

354. Both P-0003[869] and P-0059,[870] who had been listening to intercepted LRA transmissions for years in the course of their duties, identified the voices as being those of Ongwen and Otti.

355. P-0016 listened to the recording and recognised the voices of Vincent Otti and Ongwen. He said that they were speaking about the attack on Lukodi".[871]

356. P-0070 also identifies the voices of Kony and Otti on this sound recording.[872]

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[864] Intercept Transcript, UGA-OTP-0132-0077-R01 at 0086-0087.
[865] Sound recording, UGA-OTP-0054-0046 (original, track 2), UGA-OTP-0239-0123 (enhanced version).
[866] P-0003, UGA-OTP-0132-0002-R01 at 0005
[867] *See* P-0125, UGA-OTP-0175-0300-R01 at 0304; P-0003, UGA-OTP-0248-0094-R01 at 0101; P-0059, UGA-OTP-0248-0328-R01 at 0332.
[868] Transcript, UGA-OTP-0132-0093-R01 at 0102-0103.
[869] P-0003, UGA-OTP-0132-0002-R01 at 0005-0006, UGA-OTP-0027-0214-R01 at 0225.
[870] P-0059, UGA-OTP-0150-0037-R01 at 0039-0040.
[871] P-0016, UGA-OTP-0223-0034-R01 at 0054-0059.

357. The UPDF logbook entry on 21 May corroborates the above audio evidence, recording the following at 18:30:

> "Otti reported to Kony that radio news reported that a certain LRA group under unknown commanders attacked and killed 25 civs including young people and burnt about 100 houses in Lokoti centre in Bungatira. Dominic immediately told Otti that he is the one who made that deployment".[873]

358. Similarly, the ISO logbook entry from the same date records:

> "Otti told Kony that he heard that group of LRA hit Lukodi, a trading centre in Bungatira, killing about 25 pple. That they burnt about 100 huts. Otti said that the 4th Div IO said civilians should run to the barracks. Kony commented that why doesn't he tell them to run to town. Both Kony and Otti were very happy with the killing…Otti asked Dominic, who attacked Lukodi. Dominic replied that he is the one who attacked. Otti said that is the only style for them to maintain".[874]

359. P-0019 heard Dominic Ongwen's report live on the LRA radio. Ongwen described the houses he had burned, people he had killed and the weapons he had captured from the UPDF soldiers. P-0019 recalls that Kony was pleased with this action. He said, "Odomi… I want to thank you very much for what you have done. May God protect you and help you to do more that type of work".[875]

24 May 2004

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[872] P-0070, UGA-OTP-0228-2188-R01 at 2189- 2191.
[873] UPDF logbook, UGA-OTP-0197-1670 at 1732 (left page); see also, UPDF Intelligence Report, UGA-OTP-0017-0268 at 0271.
[874] ISO logbook, UGA-OTP-0061-0206 at 0321 (left page).
[875] P-0019, UGA-OTP-0218-0571-R01 at 0590-0593.

360. Three days later, on 24 May 2004, the UPDF,[876] ISO[877] and police[878] logbooks all record that Ongwen again reported on the radio, taking responsibility for the attack. He said that "he had caused havoc" in Lukodi, overrunning the UPDF forces and the civilian camp. Ongwen added that he had captured 3 SMGs, 60 magazines, 20 pairs of gumboots, 25 uniforms, and killed 3 UPDF soldiers. Dominic Ongwen said that when "civilians die he feels happy".[879] In reply, Kony congratulated Ongwen for his actions, adding that even if one UPDF dies with 450 civilians during an LRA attack, that is "good fighting".[880]

30 May 2004

361. About 10 days after the Lukodi attack, Kony promoted Dominic Ongwen from Lieutenant Colonel to Colonel, and Tulu from Major to Lieutenant Colonel.[881] This promotion was announced in a radio transmission that took place on 30 May 2004.[882] P-0059 has verified the speaker who announced these promotions as being Joseph Kony.[883]

362. These promotions were recorded in the ISO[884] and UPDF[885] logbook entry for 30 May 2004. The police logbook entry for 2 June 2004 contains a summary of a radio communication intercepted on that day, which noted the following promotions of LRA officers:

[876] UPDF logbook, UGA-OTP-0197-1670 at 1736 (left page).
[877] ISO logbook, UGA-OTP-0061-0206 at 0329.
[878] Police logbook, UGA-OTP-0037-0002 at 0114.
[879] ISO logbook, UGA-OTP-0061-0206 at 0329.
[880] ISO logbook, UGA-OTP-0061-0206 at 0329; UPDF Intelligence Report, UGA-OTP-0016-0522 at 0525; see also P-0253, UGA-OTP-0243-2174-R01 at 2196.
[881] UPDF Intelligence Report, UGA-OTP-0016-0486 at 0490-0491; P-0205, UGA-OTP-0243-0760-R01 at 0765-0767; P-0019, UGA-OTP-0218-0594-R01 at 0597.
[882] Sound recording UGA-OTP-0239-0112 (enhanced, track 2), UGA-OTP-0052-0056 (original), Transcript, UGA-OTP-0248-0381-R01 at 0417-0420.
[883] P-0059, UGA-OTP-0248-0328-R01 at 0336-0337.
[884] ISO Logbook, UGA-OTP-0062-0002 at 0004.
[885] UPDF Logbook, UGA-OTP-0197-1670 at 1748.

"Kony, in particular, lauded Col. Ongwen Dominic following his recent performances in Odek and Lukodi. Col. Ongwen Dominic himself informed Kony that he would lay hands in arresting non-performing officers. […] On the promotions released on 30/5/2004 by Kony himself, some details are below as new ranks:-

….(iii) Colonels (Col) – Ongwen Dominic Wanyama

….(iv) Leiutenant [sic] Colonels (Lt. Col) – [REDACTED]…[886]

ii. Dominic Ongwen had knowledge and intent as prescribed by article 30 and specific to the crimes

363. Dominic Ongwen intended to bring about the objective elements of the crimes, and/or was aware that they would occur in the ordinary course of events.

364. Dominic Ongwen's intent and/or knowledge is established from, inter alia, the following facts, as described above:[887]

- he planned the attack on Lukodi;
- he gave instructions to his subordinates to attack and commit crimes in Lukodi;
- he deployed troops for the attack on Lukodi;
- he knew about the crimes committed by LRA forces in Lukodi, and reported on the success of the attack on LRA radio.

365. With respect to the crimes committed above, Dominic Ongwen knew that the victims were civilians, as demonstrated by his remarks in radio transmissions when reporting the attack.

[886] Police logbook, UGA-OTP-0037-0002 at 0102-0103.
[887] *See* section on Dominic Ongwen exerting control over the crime whose material elements were brought about by one or more persons, para. 316, 344-362.

iii. Dominic Ongwen was aware of the factual circumstances which allowed him to exert control over the crimes

366. Dominic Ongwen's knowledge of the factual circumstances that enabled him to exercise control over the crimes through other persons is established from inter alia, the following facts, as described above:[888]

- he was aware that he exercised *de jure* and *de facto* command authority over the LRA troops that he deployed to Lukodi;
- his role in planning the attack on Lukodi;
- his issuing of instructions to his subordinates who attacked Lukodi.

Dominic Ongwen is criminally responsible under article 25(3)(b):

367. Dominic Ongwen is also individually criminally responsible for the crimes charged pursuant to article 25(3)(b). He ordered the commission of crimes, holding a position of authority as the commander of Sinia brigade, and as a Lieutenant Colonel over the Gilva brigade fighters who participated in the attack. He had command authority over the troops and issued military orders before the attack. His orders had a direct effect on the commission or attempted commission of the crimes which were committed with intent and knowledge.

Dominic Ongwen is criminally responsible under article 25(3)(d)(i) and (ii):

368. Dominic Ongwen also contributed to the commission or attempted commission of crimes by a group of persons, including Ocaka and Tulu, who were acting with a common purpose to further their criminal activity or criminal

[888] *Ibid.*

purpose to attack the camp, by means which involved the commission of crimes.[889]

369. Dominic Ongwen knew the group's intention to commit the crimes. As described above, Ongwen intentionally contributed to the commission of these crimes by means including his planning of the operation, his deployment of troops, issuing orders before the attack, in which crimes against civilians were committed. He did so with the aim of furthering the crimes and criminal purpose of the group or, at least, knowing of the group's intention to commit the crimes.

Dominic Ongwen is criminally responsible under article 25(3)(f):

370. As described above, on some occasions during the attack on Lukodi, murders were not fully carried out because of independent circumstances. These comprised acts of attempted murder. As a result, Dominic Ongwen is individually criminally responsible under article 25(3)(f) of the Statue for these acts. As described above, Ongwen possessed the necessary knowledge and intent for these crimes.

Dominic Ongwen is criminally responsible under article 28(a):

371. Dominic Ongwen is also individually criminally responsible for the crimes charged as a military commander pursuant to article 28(a). At the time of the attack, Ongwen held effective command and control over the attacking fighters

[889] See section on Dominic Ongwen's control over the crime, para. 344-362.

by virtue of his command of Sinia brigade and as a Lieutenant Colonel and the highest ranking LRA officer present.[890]

372. Dominic Ongwen knew or, owing to the circumstances at the time, should have known that the LRA fighters were committing or were about to commit the crimes in Lukodi, through, *inter alia*:

- his own involvement in the preparation, planning and/or execution of such crimes;
- his receipt of information about the commission of such crimes from members of the LRA under his command.

373. Dominic Ongwen took responsibility for the attack in intercepted LRA radio communications. He also failed, while under a duty stemming from his superior position, to take adequate steps to prevent, repress, or punish the perpetrators of the crimes committed at or near Lukodi during the attack or during its aftermath.

374. The acts and omissions of Dominic Ongwen that demonstrate his failure to take all such necessary and reasonable measures include:

- his failure to order or initiate genuine or adequate investigations of crimes by LRA forces under his command. P-0205 personally delivered a report regarding civilian deaths and civilians caught in crossfire to Ongwen;
- his failure to discipline, dismiss, demote or refrain from promoting or rewarding members of the LRA forces who were involved in the attack;

[890] P-0205, UGA-OTP-0243-0690-R01 at 0731; P-0245, UGA-OTP-0244-0363-R01 at 0384-0385; P-0054, UGA-OTP-0221-1757-R01 at 1760; P-0245, UGA-OTP-0244-0363-R01 at 0386; P-0046, UGA-OTP-0215-0528-R01 at 0552.

- his failure to issue orders that were necessary and reasonable in the circumstances to prevent or repress the commission of crimes by the LRA fighters.

375. When LRA fighters heard about Lukodi deaths on public radio, they discarded it as government propaganda.[891] It was reported on Mega FM that people were killed in Lukodi, with P-0245 hearing the report before the Lukodi attack group arrived back at the RV.[892] Likewise, P-0205 heard Ongwen being accused of killing 24 civilians on the radio.[893] When Ongwen heard about the Mega FM report on Lukodi, he said, "These people finished the mission. This is what the leader wanted".[894]

376. Dominic Ongwen's failure to exercise his duty to prevent crimes increased the risk that the forces would commit these crimes.

X. ATTACK ON ABOK IDP CAMP

1. Introduction

377. On or about 8 June 2004, Dominic Ongwen used his subordinate LRA officers and LRA fighters in Sinia brigade to attack Abok IDP camp, then located in Ngai sub-county, Apac district.[895] In the course of the attack, LRA fighters murdered, tortured, treated cruelly, abducted and enslaved civilians, and looted and destroyed civilian property.

[891] P-0205, UGA-OTP-0243-0719-R01 at 0724, UGA-OTP-0247-0175-R01 at 0187.
[892] P-0245, UGA-OTP-0244-0418-R01 at 0420.
[893] P-0205, UGA-OTP-0243-0719-R01 at 0722, UGA-OTP-0247-0109-R01 at 0120.
[894] P-0245, UGA-OTP-0244-0418-R01 at 0421.
[895] UPDF Report, UGA-OTP-0032-0038-R01 at 0043; UPDF Report, UGA-OTP-0037-0153 at 0177.

378. From the 1980s to the early 2000s, frequent LRA raiding in areas of northern Uganda displaced civilians from their villages and forced them to seek refuge at locations like Abok trading centre.[896] These locations were attractive because of their ability to provide basic essentials and because of the presence of administrative and military support.[897] Instability around Abok peaked in 2003 and 2004,[898] leading to the formal establishment of Abok as a camp for internally displaced persons.[899] The camp population swelled to at least 7,400 residents,[900] with some tallies as high as 13,000.[901] This amassing of property and human bodies, however, made Abok an inevitable target of the LRA: "Abok camp was like a bee-hive they were waiting to go and harvest honey from at the right time".[902]

379. That "harvesting" fell on 8 June 2004. During the daytime, Abok camp residents witnessed LRA troops moving across the roads.[903] A UPDF force was sent from the barracks to track them,[904] but the LRA out-manoeuvred the pursuers and hid near Abok IDP camp.[905]

380. The LRA commenced its attack in the evening.[906] Their primary targets were the UPDF barracks and the civilian centre.[907] The UPDF force of about 15 soldiers, while able to defend its own barracks,[908] was unable to prevent the LRA from

[896] P-0293, UGA-OTP-0248-0040-R01 at 0044.
[897] P-0284, UGA-OTP-0244-1180-R01 at 1184; P-0293, UGA-OTP-0248-0040-R01 at 0043-0044.
[898] *See* P-0286, UGA-OTP-0248-0060-R01 at 0064.
[899] P-0284, UGA-OTP-0244-1180-R01 at 1183; P-0293, UGA-OTP-0248-0040-R01 at 0044.
[900] P-0306, UGA-OTP-0247-1269.
[901] P-0284, UGA-OTP-0244-1180-R01 at 1183, 1185; P-0293, UGA-OTP-0248-0040-R01 at 0045, UGA-OTP-0244-1197.
[902] P-0284, UGA-OTP-0244-1180-R01 at 1189.
[903] P-0284, UGA-OTP-0244-1180-R01 at 1185-1186; P-0293, UGA-OTP-0248-0040-R01 at 0046-0047; P-0280, UGA-OTP-0247-1252-R01 at 1257.
[904] P-0284, UGA-OTP-0244-1180-R01 at 1185-1186; P-0293, UGA-OTP-0248-0040-R01 at 0047.
[905] P-0284, UGA-OTP-0244-1180-R01 at 1185-1186; P-0293, UGA-OTP-0248-0040-R01 at 0047.
[906] P-0280, UGA-OTP-0247-1252-R01 at 1257; P-0284, UGA-OTP-0244-1180-R01 at 1185; P-0286, UGA-OTP-0248-0060-R01 at 0069; P-0293, UGA-OTP-0248-0040-R01 at 0046-0048.
[907] P-0286, UGA-OTP-0248-0060-R01 at 0072-0073; P-0293, UGA-OTP-0248-0040-R01 at 0047-0048.
[908] P-0280, UGA-OTP-0247-1252-R01 at 1258.

flooding into the camp.[909] The LRA killed civilians, burned huts, pillaged personal property, and abducted civilians to carry those pillaged goods, under armed guard and threat of death.[910]

381. Some camp residents were burned in their homes; others were shot dead on their doorsteps or in their backs as they ran from the camp.[911] The next morning, survivors returned to find about 28 bodies strewn throughout the camp, including children.[912]

382. Intercepted radio communications between LRA commanders, statements from former LRA fighters, and statements from civilian victims of the attack establish substantial grounds to believe that the attack resulted in the crimes charged. The evidence also establishes that Dominic Ongwen bears individual criminal responsibility as a result of his control of the perpetrators.

2. Crimes committed

Count 37 - attack against the civilian population (article 8(2)(e)(i)):

383. LRA fighters under the control of Dominic Ongwen carried out an attack against the civilian population of Abok IDP camp as such, or individual civilians not taking direct part in the hostilities. Dominic Ongwen intended the civilian population as such, or individual civilians not taking direct part in the hostilities, to be the object of the attack.

[909] *See e.g.*, P-0293, UGA-OTP-0248-0040-R01 at 0048.
[910] *See e.g.*, P-0280, UGA-OTP-0247-1252-R01; P-0286, UGA-OTP-0248-0060-R01; P-0293, UGA-OTP-0248-0040-R01; Intelligence Report, UGA-OTP-0016-0434 at 0439; Intelligence Report, UGA-OTP-0016-0440 at 0444; Intelligence Report, UGA-OTP-0017-0353 at 0357; UPDF Report, UGA-OTP-0032-0038-R01 at 0057; UPDF Report, UGA-OTP-0037-0153 at 0177.
[911] P-0280, UGA-OTP-0247-1252-R01 at 1262; P-0293, UGA-OTP-0244-1201. *see* P-0286, UGA-OTP-0248-0060-R01 at 0071-0072.
[912] P-0284, UGA-OTP-0244-1180-R01 at 1187; P-0293, UGA-OTP-0248-0040-R01 at 0051.

384. The following facts described under counts 38-41 (murder and attempted murder), count 42-43 (torture), count 44 (other inhumane acts) and count 45 (cruel treatment), count 46 (enslavement), count 47 (pillaging), and count 48 (destruction of property) qualify as the underlying conduct of the war crime of attacks directed against the civilian population.

Counts 38-39 - murder (articles 7(1)(a) and 8(2)(c)(i)):

385. At least 28 persons were killed at Abok IDP camp. Witnesses,[913] intercepted radio communications,[914] and other documentary evidence[915] demonstrate that LRA fighters shot, burned, and beat civilians to death during the attack.[916]

386. P-0293, [REDACTED], hid at a nearby banana plantation where he was able to witness and document the attack.[917] From this vantage point, he saw rebels beating civilians to death, and saw that LRA fighters took grass from burning thatched roofs to spread fire to other homes.[918]

387. P-0280, a resident of Abok camp, hid in a latrine hole, but was discovered when an LRA child fighter with a torch saw him and called thirty LRA fighters to the hole. The fighters called P-0280 out and forced him to carry a sack of beans. They shot three others who were hiding with him: [REDACTED] and a

[913] P-0284, UGA-OTP-0244-1180-R01 at 1187; P-0293, UGA-OTP-0248-0040-R01 at 0051; P-0252, UGA-OTP-0243-0428-R01 at 0445; P-0048, UGA-OTP-0209-0337-R01 at 0361.
[914] ISO logbook, UGA-OTP-0062-0002 at 0023, 0025; Intelligence Report, UGA-OTP-0016-0434 at 0435; Intelligence Report, UGA-OTP-0017-0358 at 0359.
[915] UPDF Report, UGA-OTP-0032-0038-R01 at 0057; UPDF Report, UGA-OTP-0037-0153 at 0177; P-0293, UGA-OTP-0244-1201; P-0306, UGA-OTP-0247-1270-R01 at 1271.
[916] Intelligence Report, UGA-OTP-0016-0434 at 0439; Intelligence Report, UGA-OTP-0016-0440 at 0444; Intelligence Report, UGA-OTP-0017-0353 at 0357; Report, UGA-OTP-0032-0038-R01 at 0057; Report, UGA-OTP-0037-0153 at 0177; P-0245, UGA-OTP-0244-0494-R01 at 0499.
[917] P-0293, UGA-OTP-0248-0040-R01 at 0048.
[918] P-0293, UGA-OTP-0248-0040-R01 at 0048-0049.

neighbour.[919] P-0280 recounted that one abducted girl was killed in the bush. She could not stop crying, and was taken away from view and beaten "until she was not crying anymore".[920]

388. Returning to the camp in the morning after the attack, P-0293 compiled a list of the dead; he documented the deaths of 28 civilians killed by gunshots, burning, and beating.[921] The cause of death was apparent from inspection of the bodies: a person burned to death had skin turned charcoal black from fire, while a person killed by gunshot had wounds with small entry points and large exits.[922] P-0284, also a [REDACTED] Abok camp, escorted a group of officials through the camp the next morning, and "saw all the dead bodies", 28 in total.[923] He observed civilians killed by bullets and by burning.

389. Dominic Ongwen personally reported that he "killed many people" at Abok when he reported to Kony on the radio on 10 July at 09:00.[924] Before the attack, Dominic Ongwen issued an order to "kill everyone who was not one of them"; additionally, Kalalang Okello issued a second directive to conserve ammunition by either beating people to death or abducting them.[925] P-0293 heard LRA fighters discussing which of these two orders to follow.[926] Regardless of the manner of killing, deaths resulted because these orders were transmitted to LRA fighters attacking Abok.[927]

Counts 40-41 - attempted murder (articles 7(1)(a) and 8(2)(c)(i)):

[919] P-0280, UGA-OTP-0247-1252-R01 at 1257.
[920] P-0286, UGA-OTP-0248-0060-R01 at 0087.
[921] P-0293, UGA-OTP-0244-1201.
[922] P-0293, UGA-OTP-0248-0040-R01.
[923] P-0284, UGA-OTP-0244-1180-R01 at 1187.
[924] ISO logbook, UGA-OTP-0062-0002 at 0023.
[925] P-0293, UGA-OTP-0248-0040-R01 at 0049.
[926] P-0293, UGA-OTP-0248-0040-R01 at 0049.
[927] P-0293, UGA-OTP-0248-0040-R01 at 0049.

390. On some occasions during the attack on Abok, murders were not fully carried out because of independent circumstances. LRA fighters commenced the crime by means of a substantial step—attacking the victim, or burning the victim's home—but the victim did not die.

391. LRA fighters shot at fleeing civilians in order to kill them, and burned civilian homes with no regard for civilians trapped inside.[928] For example, P-0293 learned after the attack that the LRA had abducted and interrogated a resident to learn the location of the UPDF barracks. The resident was shot in the leg as he ran away from the LRA rebels, and feigned death to escape.

392. P-0279 was an abductee who was forced to carry beans and goats.[929] When she could no longer carry them, the rebels told her to "rest" and beat her all over her body.[930] She was hit with the butt of a gun and [REDACTED], and then left for dead.[931] She awoke at dawn covered in blood, and was then rescued by UPDF forces.[932]

Counts 42-43 - torture (articles 7(1)(f) and 8(2)(c)(i)), count 44 – other inhumane acts (article 7(1)(k)), count 45 - cruel treatment (article 8(2)(c)(i)):

Legal characterisation of counts 42-45

393. The beating of civilians, forcing them to carry heavy loads, often for long distances while tied to each-other under constant threat of harm, being subjected

[928] P-0284, UGA-OTP-0244-1180-R01 at 1187; P-0293, UGA-OTP-0248-0040-R01 at 0051, UGA-OTP-0244-1201; P-0286, UGA-OTP-0248-0060-R01 at 0071-0072.
[929] P-0279, UGA-OTP-0244-1135-R01 at 1137.
[930] P-0279, UGA-OTP-0244-1135-R01 at 1137.
[931] P-0279, UGA-OTP-0244-1135-R01 at 1137.
[932] P-0279, UGA-OTP-0244-1135-R01 at 1137.

to punitive conditions, and witnessing the beatings and killings of other abductees who were either too weak or who attempted to escape caused severe physical or mental pain or suffering.[933] This amounted to torture under articles 7(1)(f) and 8(2)(c)(i), the war crime of cruel treatment under article 8(2)(c)(i) and the crime against humanity of other inhumane acts under article 7(1)(k).[934]

Torture, cruel treatment and other inhumane acts in Abok

394. In the course of the attack on Abok, LRA fighters inflicted severe physical and mental pain or suffering on civilians taking no active part in hostilities. Such pain or suffering did not arise from, and was not inherent in or incidental to, lawful sanctions.

395. This treatment was carried out to intimidate and/or punish the civilian population because of their perceived support for the government.[935] Furthermore, this treatment was carried out when under the control of the LRA attackers.[936] The pain inflicted amounted to torture, cruel treatment, and other inhumane acts.

396. In preparation for the Abok IDP camp attack, the LRA abducted two young men from outside the nearby Itubara camp.[937] They interrogated both men to

[933] *See Prosecutor v Brdjanin*, IT-98-36-A, Appeal Judgement, 3 April 2007, para. 251 ("Acts inflicting physical pain may amount to torture even when they do not cause the amount of pain of the type accompanying serious injury. Whether an act causes severe pain or suffering is determined on a case-by-case basis").
[934] For the purposes of applying the "materially distinct" test, the legal elements of the crime may include the *chapeau* requirements of the particular crime. *See* ICC-01/04-01/07-3436-tENG, para. 1696; see also, ICC-01/04-01/07-717, para. 419; see further, *Prosecutor v Natelic & Martinovic*, IT-98-34-A, Appeal Judgement, 3 May 2006, para. 562.
[935] Per Element 2 of the war crime of torture: "The perpetrator inflicted the pain or suffering for such purposes as: obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind". *See* Elements of Crimes, p. article 8(2)(c)(i)-4, para. 2. *See generally*, the section on persecution, para. 111-147. *See especially*, the submissions on persecution under Count 49, para. 146-147.
[936] Per Element 2 of the crime against humanity of torture: "Such person or persons were in the custody or under the control of the perpetrator". *See* Elements of Crimes, article 7(1)(f), para. 2.
[937] P-0293, UGA-OTP-0248-0040-R01 at 0047.

learn the location of the UPDF barracks.[938] One of the two civilians led the rebels to the old barracks location, and was shot for his failure to bring them to the new location. The second civilian was shot in the leg as he tried to run away.[939] P-0293 learned this information after the attack.[940]

397. When rebels entered the home of P-0286, they fired three shots at him, and then presented a choice: be killed, or "work" with the LRA.[941] After P-0286 chose to "work", he was bound with a rope. An LRA fighter stomped on his injured foot, and forced him to lead the LRA to the barracks and the shops.[942] One shop was empty, so P-0286 was beaten with the butt of a gun. They threatened that if the next shop was empty, they would kill him.[943] These gunshots and beatings were meant to intimidate and coerce P-0286 into submission, and to obtain information about the location of shops that could be looted.

398. On the march away from the camp, LRA fighters ordered P-0286 to carry a wounded fighter.[944] An LRA fighter struck him with a gun to motivate him to action.[945] As a result, he suffered back and chest pain.[946] P-0286 was then forced to march on his injured foot for two days, and knew that stopping or asking for assistance could result in being killed.[947] During this march, P-0286 saw an elderly female abductee being beaten because she could no longer walk. LRA fighters passed her on the road in single file, each one slapping or hitting her, until she defecated on herself.[948] These blows and beatings were inflicted as punishment for

[938] P-0293, UGA-OTP-0248-0040-R01 at 0047.
[939] P-0293, UGA-OTP-0248-0040-R01 at 0047.
[940] P-0293, UGA-OTP-0248-0040-R01 at 0047.
[941] P-0286, UGA-OTP-0248-0060-R01 at 0070.
[942] P-0286, UGA-OTP-0248-0060-R01 at 0070.
[943] P-0286, UGA-OTP-0248-0060-R01 at 0072.
[944] P-0286, UGA-OTP-0248-0060-R01 at 0076.
[945] P-0286, UGA-OTP-0248-0060-R01 at 0076.
[946] P-0286, UGA-OTP-0248-0060-R01 at 0076.
[947] P-0286, UGA-OTP-0248-0060-R01 at 0076, 0078.
[948] P-0286, UGA-OTP-0248-0060-R01 at 0075.

not being able to continue walking, and to intimidate other abductees to continue without stopping or resting.[949]

399. P-0279 was abducted and forced to carry beans and goats.[950] When she could no longer carry them, the rebels told her to "rest" and beat her all over her body.[951] She was hit the butt of a gun and [REDACTED], and then left for dead.[952] She awoke at dawn covered in blood, and was then rescued by UPDF forces.[953]

Count 46 – enslavement (article 7(1)(c)):

400. LRA fighters under Dominic Ongwen's command deprived civilians of their liberty by abducting them and placing them under armed guard to prevent their escape. Men, women and children were abducted, conscripted into the LRA, forced to perform manual labour, or otherwise reduced to a servile status.

401. During the attack, civilians were captured and used to carry looted goods away from the camp under threat of death.[954] P-0280 and P-0286 together were forced to carry a wounded LRA fighter.[955] P-0280 was taken to the Atoo foothills where the LRA had its base. He saw many other abductees there.[956] He was forced to kill another abductee, as a lesson others who were thinking of escaping.[957] P-0280 stayed in the bush for five months.[958] P-0286 was forced to participate in attacks on Opit and Acet before he escaped.[959]

[949] P-0286, UGA-OTP-0248-0060-R01 at 0076.
[950] P-0279, UGA-OTP-0244-1135-R01 at 1137.
[951] P-0279, UGA-OTP-0244-1135-R01 at 1137.
[952] P-0279, UGA-OTP-0244-1135-R01 at 1137.
[953] P-0279, UGA-OTP-0244-1135-R01 at 1137.
[954] *See* P-0280, UGA-OTP-0247-1252-R01 at 1258; P-0286, UGA-OTP-0248-0060-R01 at 0075-0078.
[955] P-0280, UGA-OTP-0247-1252-R01 at 1258; P-0286, UGA-OTP-0248-0060-R01 at 0076.
[956] P-0280, UGA-OTP-0247-1252-R01 at 1260.
[957] P-0280, UGA-OTP-0247-1252-R01 at 1260-1261.
[958] P-0280, UGA-OTP-0247-1252-R01 at 1261.
[959] P-0286 at UGA-OTP-0248-0060-R01 at 0078-0085.

Count 47 – pillaging (article 8(2)(e)(v)):

402. LRA fighters under Dominic Ongwen's command appropriated food items and other personal property. They intended to deprive the owners of their food and property and to appropriate it for private or personal consumption and use. The owners did not consent to the appropriation. The pillaging was not justified by military necessity.

403. A group of about 50 women and children was selected to accompany LRA fighters to Abok, specifically to carry away pillaged goods.[960] P-0293 saw LRA fighters taking food items, clothing, cooking utensils, and first aid provisions from homes that had not yet been set ablaze.[961] P-0286 was forced to lead rebels to the trading centre shops, where LRA fighters "packed away whatever items they could carry," including sugar, cooking oil, salt, soap, and biscuits.[962] LRA fighters blew whistles to signal to the carriers to meet the fighters and receive the looted goods. P-0252, one of the LRA loot carriers, was given beans. He also observed that fighters came back with maize, cooking oil, and other goods from the shops.[963]

Count 48 - destruction of property (article 8(2)(e)(xii)):

404. LRA fighters destroyed property belonging to civilians in Abok, whom they viewed as adversaries. The property was protected from destruction under the international law of armed conflict. The destruction was not required by military necessity.

[960] P-0252, UGA-OTP-0243-0428-R01 at 0443.
[961] P-0293, UGA-OTP-0248-0040-R01 at 0049.
[962] P-0286, UGA-OTP-0248-0060-R01 at 0072-0073.
[963] P-0252, UGA-OTP-0243-0428-R01 at 0443-0445.

405. LRA fighters set huts on fire at the commencement of the attack.[964] So much of the camp was set on fire that it was difficult to discern the number of affected structures, or to accurately assess the damage afterwards.[965] P-0286 observed that LRA fighters lit every other house on fire, knowing that they were built close enough for the fire to spread to adjacent structures.[966]

406. Witness estimates of the number of homes burned range between 160 and 1,000.[967] An intercepted communication after the attack recorded a conversation between Vincent Otti, Raska Lukwiya, and [REDACTED]signaller,[968] discussing the results of the Abok attack. Otti said, "Weren't there 30 left?" [REDACTED]replied, "Out of 600, 30 remained.[969] Dominic then came on the air, and said "Then we started firing at anything at all that was there. We burnt all the houses including the camp and the barracks. All of them were burnt".[970]

Count 49 - persecution (article 7(1)(h)):

407. The Prosecution submits that the facts described above under count 37 (attack on civilians) counts 38-41 (murder and attempted murder), count 42-43 (torture), count 44 (other inhumane acts) and count 45 (cruel treatment), count 46 (enslavement), count 47 (pillaging), and count 48 (destruction of property) form the underlying conduct of the crime of persecution. See further, the submissions

[964] P-0284, UGA-OTP-0244-1180-R01 at 1186; P-0286, UGA-OTP-0248-0060-R01 at 0069; P-0293, UGA-OTP-0248-0040-R01 at 0048.
[965] P-0286, UGA-OTP-0248-0060-R01 at 0072; *see* P-0252, UGA-OTP-0243-0428-R01 at 0444.
[966] P-0286, UGA-OTP-0248-0060-R01 at 0071; *see* P-0293, UGA-OTP-0248-0040-R01 at 0049.
[967] P-0280, UGA-OTP-0247-1252-R01 at 1262; P-0284, UGA-OTP-0244-1180-R01 at 1188.
[968] P-0059, UGA-OTP-0248-0328-R01 at 0332.
[969] Sound recording, UGA-OTP-0235-0049 (enhanced), UGA-OTP-0053-0006 (original); P-0003, UGA-OTP-0248-0094-R01 at 0101, Audio transcript annotation by P-0003, UGA-OTP-0248-0106-R01 at 0124; P-0059, Audio transcript annotation, UGA-OTP-0248-0524 at 0542.
[970] Sound recording, UGA-OTP-0235-0049 (enhanced), UGA-OTP-0053-0006 (original); P-0003, UGA-OTP-0248-0094-R01 at 0101, Audio transcript annotation by P-0003, UGA-OTP-0248-0106-R01 at 0124; P-0059, Audio transcript annotation, UGA-OTP-0248-0524 at 0542.

in the section on persecution (paragraphs 111 to 147), which are incorporated here by reference.

3. Dominic Ongwen's individual criminal responsibility

408. As described below, there are substantial grounds to believe that Dominic Ongwen is individually criminally responsible for the crimes charged pursuant to article 25(3)(a) as an indirect perpetrator.[971] The Prosecution case is that he had control over the crimes described above because the persons who directly perpetrated the crimes were acting as his 'tools'. He is also responsible under articles 25(3)(b), (d)(i) and (ii), or (f), or as a military commander pursuant to article 28(a).

Dominic Ongwen is criminally responsible under article 25(3)(a):

i. Dominic Ongwen exerted control over the crimes whose material elements were brought about by one or more persons

409. The following facts demonstrate Dominic Ongwen's control over the crimes committed in Abok, the material elements of which were brought about by persons under his control.

[971] *See* ICC-01/04-01/07-3436-tENG, para. 1399. The Prosecution adopts the following elements for indirect perpetration as held in *Katanga*:
"In the Chamber's view, and in accordance with its aforegoing definition of perpetrator, criminal responsibility as an indirect perpetrator is incurred where a person:
i. exerts control over the crime whose material elements were brought about by one or more persons;
ii. meets the mental elements prescribed by article 30 and the mental elements specific to the crime at issue; and
iii. is aware of the factual circumstances which allow the person to exert control over the crime".

410. First, Dominic Ongwen was involved in the preparation stages of the attack. Prior to the attack, he was present at a parade of Sinia brigade fighters, where one of his subordinate commanders selected the attackers.[972]

411. Second, Ongwen appointed Kalalang Okello of Sinia's Oka battalion to be the sub-leader on the ground.[973] Dominic Ongwen himself retained overall command: P-0280 and P-0286 heard LRA fighters indicate that Ongwen was their overall leader.[974] P-0054, a Sinia brigade member, went to the Abok attack in Kalalang's group.[975] He confirmed that Kalalang was in charge on the ground, while the overall commands came from Ongwen.[976] It "must have been [Ongwen]" who decided to launch the attack; Kalalang was obligated to follow the instructions of his superior, and at the time, that superior was Ongwen.[977] Through Kalalang, Ongwen's instructions were conveyed to the LRA fighters. P-0286 saw that Kalalang Okello was obeyed whenever he gave orders, and was called "Adit," meaning boss.[978] After the Abok attackers had separated from Ongwen, Ongwen and the remainder of his group went to wait at Atoo Hills.[979] The attackers reported to him there and Dominic Ongwen was present during a head count of the LRA fighters after the attack.[980]

412. Third, Dominic Ongwen transmitted the results of the attack over the radio to Joseph Kony and other LRA commanders, receiving commendations and critique of his tactical decisions in return. These reports were captured and intercepted by

[972] P-0252, UGA-OTP-0243-0428-R01 at 0443.
[973] P-0252, UGA-OTP-0243-0428-R01 at 0443; P-0280, UGA-OTP-0247-1252-R01 at 1259; P-0286, UGA-OTP-0248-0060-R01 at 0073; P-0232, UGA-OTP-0233-0459 at 0461.
[974] P-0280, UGA-OTP-0247-1252-R01 at 1260; P-0286, UGA-OTP-0248-0060-R01 at 0082, 0083.
[975] P-0054, UGA-OTP-0251-0128 at 0140.
[976] P-0054, UGA-OTP-0251-0128 at 0137.
[977] P-0054, UGA-OTP-0251-0128 at 0141.
[978] P-0286, UGA-OTP-0248-0060-R01 at 0071, 0073 & 0076.
[979] P-0252, UGA-OTP-0243-0428-R01 at 0443.
[980] P-0252, UGA-OTP-0243-0428-R01 at 0445.

the UPDF and ISO logbooks between 8 and 10 June 2004, as well as recorded by the ISO, in Gulu.[981]

413. Dominic Ongwen reported that, "Yesterday, I went for an attack"; that he was "just coming from warming the bodies of the boys," meaning that he had just participated in fighting; and that he "abducted some *waya*," a code word for civilians.[982] He reported that "we started firing at anything at all that was there. We burnt all the houses including the camp and the barracks. All of them were burnt".[983]

414. The conversation continued with Joseph Kony giving Dominic Ongwen tactical advice for better results in future attacks. He said to "first reduce in size" meaning to establish a camp, and then "to send soldiers to abduct civilians".[984] Dominic Ongwen responded "I actually did it like that," but complained that civilians "would all start making alarm".[985] Kony explained, "If you fail to do this you'll get a missed call," a term meaning the failed execution of a plan.[986] Kony then gave the example of a previous ambush led by [REDACTED], commander of Gilva brigade, at Alero, asking Ongwen to "try doing it that way, but having done it don't keep doing the same thing over and over again".[987] This exchange

[981] UPDF logbook, UGA-OTP-0197-1670 at 1764-1766; ISO logbook, UGA-OTP-0062-0002 at 0022-0025; Sound recording, UGA-OTP-0235-0049 (enhanced), UGA-OTP-0053-0006 (original).
[982] Sound recording, UGA-OTP-0235-0049 (enhanced), UGA-OTP-0053-0006 (original); P-0003, UGA-OTP-0248-0094-R01 at 0101, Audio transcript annotation by P-0003, UGA-OTP-0248-0106-R01 at 0124; P-0059, UGA-OTP-0248-0328-R01 at 0335, Audio transcript annotation by P-0059, UGA-OTP-0248-0524 at 0541-0542.
[983] Sound recording, UGA-OTP-0235-0049 (enhanced), UGA-OTP-0053-0006 (original); P-0003, UGA-OTP-0248-0094-R01 at 0101, Audio transcript annotation by P-0003, UGA-OTP-0248-0106-R01 at 0124.
[984] Sound recording, UGA-OTP-0235-0049 (enhanced), UGA-OTP-0053-0006 (original); P-0003, UGA-OTP-0248-0094-R01 at 0102; P-0059, UGA-OTP-0248-0328-R01 at 0335-0336.
[985] Sound recording, UGA-OTP-0235-0049 (enhanced), UGA-OTP-0053-0006 (original); P-0003, UGA-OTP-0248-0094-R01 at 0102.
[986] Sound recording, UGA-OTP-0235-0049 (enhanced), UGA-OTP-0053-0006 (original); P-0059, UGA-OTP-0248-0328-R01 at 0336.
[987] Sound recording, UGA-OTP-0235-0049 (enhanced), UGA-OTP-0053-0006 (original); P-0003, UGA-OTP-0248-0094-R01 at 0102, Audio transcript annotation by P-0003, UGA-OTP-0248-0106-R01 at 0132; P-0059, UGA-OTP-0248-0328-R01 at 0336, Audio transcript annotation by P-0059, UGA-OTP-0248-0524 at 0550.

shows that Ongwen and Kony each had preferred tactics to optimise the effectiveness of attacks, and that Ongwen had the discretion to carry out the attack with his preferred method.

ii. Dominic Ongwen had knowledge and intent as prescribed by article 30 and specific to the crimes

415. Dominic Ongwen intended to bring about the objective elements of the crimes, and/or was aware that they would occur in the ordinary course of events.

416. Dominic Ongwen's intent and/or knowledge is established from, *inter alia*, the following facts described in detail above:

- he planned the attack on Abok;
- he gave instructions to his subordinates to attack and commit crimes Abok;
- he deployed troops for the attack on Abok;
- he knew about the crimes committed by LRA forces in Abok, the success of which he reported on LRA radio;
- LRA commanders, while commending his successful attack through the radio, also critiqued those tactics which failed to optimise the amount of death and destruction.

417. With respect to the crimes committed above, Dominic Ongwen's formulation of a plan to attack a civilian camp, and his discussion with Joseph Kony about the best way to deal with civilians during such an attack demonstrates that he knew the victims were civilians.

iii. Dominic Ongwen was aware of the factual circumstances which allowed him to exert control over the crimes

418. Dominic Ongwen's knowledge of the factual circumstances that enabled him to exercise control over the crimes through other persons is established from inter alia, the following facts, which are described in detail above:

- he was aware that he exercised *de jure* and *de facto* command authority over the LRA troops that he deployed to Abok;
- his role in planning the attack on Abok;
- his appointment of a sub-leader;
- his issuing of instructions to his subordinates who attacked Abok.

Dominic Ongwen is criminally responsible under article 25(3)(b):

419. Dominic Ongwen is also individually criminally responsible pursuant to article 25(3)(b) for the crimes charged. Dominic Ongwen ordered the commission of crimes, holding a position of authority as commander of Sinia brigade. He had command authority over the troops and issued military orders during the course of the attack. His orders had a direct effect on the commission or attempted commission of the crimes.

Dominic Ongwen is criminally responsible under article 25(3)(d)(i) and (ii):

420. Dominic Ongwen contributed to the commission or attempted commission of crimes by a group of persons, including Kony and Kalalang Okello, who were acting with a common purpose, to further their criminal activity or criminal purpose to attack the camp, by means which involved the commission of crimes.[988]

[988] See section on Dominic Ongwen's control over the crime, para. 409-411.

421. Dominic Ongwen knew the group's intention to commit the crimes. As described above, Ongwen intentionally contributed to the commission of these crimes by means including his planning of the operation, his deployment of troops, and issuing orders before the attack, in which crimes against civilians were committed. He did so with the aim of furthering the crimes and criminal purpose of the group or, at least, knowing of the group's intention to commit the crimes.

Dominic Ongwen is criminally responsible under article 25(3)(f):

422. As described above, on some occasions during the attack on Abok, murders were not fully carried out because of independent circumstances. These comprised acts of attempted murder. As a result, Dominic Ongwen is individually criminally responsible under article 25(3)(f) for these acts. As described above, Ongwen possessed the necessary knowledge and intent for these crimes.

Dominic Ongwen is criminally responsible under article 28(a):

423. Dominic Ongwen is also individually criminally responsible as a military commander pursuant to article 28(a). At the time of the attack, Dominic Ongwen was the commander of Sinia brigade.

424. Dominic Ongwen knew, or, owing to the circumstances at the time, should have known that the LRA fighters under his command or authority were committing the charged crimes at Abok IDP camp. This is demonstrated through Dominic Ongwen's own involvement in the preparation and planning of the attack, as well as his reports conveyed to other senior LRA commanders about the results of the attack.

425. Dominic Ongwen also failed, while under a duty stemming from his superior position, to take adequate steps to prevent, repress, or punish the perpetrators of the crimes committed at or near Abok during the attack or during its aftermath.

426. The acts and omissions of Dominic Ongwen that demonstrate his failure to take all such necessary and reasonable measures include:

- his failure to order or initiate genuine or adequate investigations of crimes by LRA forces under his command;
- his failure to discipline, dismiss, demote or refrain from promoting or rewarding members of the LRA forces who were involved in the attack;
- his failure to issue orders that were necessary and reasonable in the circumstances to prevent or repress the commission of crimes by the LRA fighters.

427. Dominic Ongwen's failure to exercise his duty to prevent crimes increased the risk that the forces would commit these crimes.

XI. SEXUAL AND GENDER BASED CRIMES

1. Introduction

428. The regime of sexual abuse of girls and women in the LRA is arguably its defining feature. Although the abduction and rape of girls and women in conflict areas is not exclusive to the LRA, the systematic nature of its conduct and its strict system of rules governing sexual relations were singular.

429. Abducted women and girls were treated like chattels, allocated to various masters and 'husbands'. There was no genuine consent to any of the sexual activity. The women and girls were punished if they failed in their domestic duties, and if they tried to escape they were brutally caned or murdered. Some were made to fight. The LRA's rules and strict discipline meant that this experience applied to the overwhelming majority of abducted girls and women.

430. All units of the LRA were involved in the abduction of girls and women and their subsequent subjugation into a forced exclusive conjugal relationship. As a battalion commander in, and later as a brigade commander of, Sinia brigade, Dominic Ongwen faithfully carried out the LRA's brutal policy toward girls and women. He also made sure that the LRA policy was followed by fighters in the Sinia brigade under his command. From at least 1 July 2002 to 31 December 2005, he committed, together with others and through Sinia fighters, the crimes of forced marriage, rape, sexual slavery, enslavement, and torture.

431. [REDACTED].[989] Having wives was considered by LRA fighters to be a symbol of rank, seniority, or privilege.

432. [REDACTED].

2. [REDACTED]

[REDACTED]:

(i) [REDACTED]

[989] [REDACTED].

433. Forced marriage is an inhumane act of a character similar to the acts set out in article 7(1)(a)-(j). The Appeals Chamber of the Special Court for Sierra Leone held that an accused who, by force, threat of force, or coercion, or by taking advantage of coercive circumstances, caused one or more persons to serve as a conjugal partner, and knew that his actions were part of a widespread or systematic attack against a civilian population and amounted to the infliction of great suffering, or serious injury to body or to mental or physical health sufficiently similar in gravity to the crimes against humanity described in article 2 of the Statute of the SCSL, is guilty of the offence of forced marriage as an "other inhumane act".[990] There is no difference between the Statute of the Special Court for Sierra Leone and the Rome Statute that warrants different treatment of this crime at this court; thus the crime of forced marriage is properly comprehended within article 7(1)(a)-(j) and supported by the following submissions.

434. There was a rule within the ranks of the LRA that there was to be no sex outside 'marriage'. As explained in the section [REDACTED] SGBC (paragraphs 537-616), the exclusivity of this forced conjugal union pertained only to the 'wife'; the 'husband' could have many wives. Mandated by Joseph Kony and propagated by his senior commanders, the rule was strictly patrolled and breaches of it severely punished. Forced wives were protected from sexual violence at the hands of LRA fighters who had not had enforced upon them the status of "wife". This crime served as the gateway for the other sexual and gender based crimes perpetrated upon abducted women and girls, such as rape and sexual slavery. It is this 'gateway' feature, and the element of exclusivity, absent from any of the other crimes charged, which merit the charging of forced marriage as a separate crime.

[990] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-A, Appeal Judgement, 26 October 2009, para. 735-736.

435. Forced marriage irrevocably changed the status of its victims, both in the way that they perceived themselves and how they were perceived by others. Women and girls [REDACTED], without any reference to their wishes in the matter, frequently continue to regard themselves as [REDACTED] 'wives' to this day. For some of them, this self-image comes freighted with mixed emotions towards the man who forcibly married them. They are often burdened with residual regard and even affection for the man who subjected them to forced marriage, as well as raping them and holding them in sexual slavery — no doubt arising from the fact that, over the months or years of their association [REDACTED] behaviour towards them was not always brutal and violent. This is particularly the case when [REDACTED] is the father of their children. Other people within the society to which the victims have returned following their escape from the LRA also refer to these victims as LRA 'wives' and they are frequently regarded with suspicion and sometimes hostility. [REDACTED].[991]

436. The jurisprudence of the *ad hoc* tribunals illustrates two aspects of forced marriage that support its existence as a separate crime appropriately placed within the category of "other inhumane acts", rather than being subsumed in the crime of sexual slavery.[992] First, unlike sexual slavery, the perpetrator of forced

[991] [REDACTED].

[992] Oosterveld, V., "The Gender Jurisprudence of the Special Court for Sierra Leone: Progress in the Revolutionary United Front Judgments", *Cornell International Law Journal*, Vol. 44 (2011), p. 49, 65(hereafter, Oosterveld, V.); s*ee e.g. Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-A, Appeal Judgment, 22 February 2008 (hereafter, "AFRC Appeal Judgement"), para. 195, 201-203, overturning the characterisation of forced marriage as a mere form of the crime of sexual slavery; *Prosecutor v. Sesay et al*, SCSL-04-15-T, Trial Judgement, 2 March 2009 (hereafter, "RUF Trial Judgement"), p. 678, 682, finding the Accused liable for the other inhumane act of forced marriage; *Prosecutor v. Nuon et al.*, Case 002/19-09-2007-ECCC-OCIJ, D427, Closing Order, 15 September 2010 (hereafter, "Case 002 Closing Order") which confirmed charges of forced marriage, and highlighting that forced sexual intercourse was merely one aspect of the harm suffered by the victims; *Prosecutor v. Nuon et al.*, Case 002/19-09-2007-ECCC-OCIJ, D268/2, Order on Request for Investigative Action Concerning Forced Marriages and Forced Sexual Relations, 18 December 2009, para. 10 (hereafter, "Case 002/02 Investigative Action Decision"), affirming the constitutive aspects of forced marriage as articulated in the AFRC case, in particular the fact that proof of forced sexual relations was not required, but could be evidence of harm to the victim; *Prosecutor v. Nuon et al*., Case 002/19-19-2007-ECCC/TC, E301/9/1, Decision on Additional Severance of Case 002 and Scope of Case 002/02, 4 April 2014, confirming the separate charge of forced marriage on a national scale.

marriage demands exclusive conjugal and domestic "duties" of the victim, such as bearing children, cooking and cleaning, in addition to forcing sexual intercourse upon the victim.[993] The Special Court for Sierra Leone emphasised this distinction in finding that separate counts of sexual slavery and the other inhumane act of forced marriage were established independently,[994] and noted that the latter was "not predominantly a sexual crime".[995]

437. Secondly, as a consequence, the victims of forced marriage suffer separate and additional harm to those of the crime of sexual slavery.[996] Distinct from the sexual harm, the crime of forced marriage violates the independently recognised right to consensually marry and establish a family.[997] The domestic duties required of the forced wives curtail their liberty in a manner independent of the restriction on sexual freedom.[998] The whole concept of marriage – its social status, property rights, inheritance rights, legitimising effect upon children, importance as the foundation of the family unit, and potential source of comfort and companionship to marital partners – is perversely reconstructed for the victims of forced marriage. Having been denied the right to practice any of the traditional rituals associated with the marriage ceremony, they are forced to endure all the burdens and receive none of the benefits of this social institution.[999] Finally, the physical and psychological damage of the experience itself is, for victims of forced marriage, also supplemented by the "lasting social stigma which hampers their recovery and reintegration into society".[1000]

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[993] *See e.g.* RUF Trial Judgement, para. 1211-13, 1293, 1295, 1413.
[994] RUF Trial Judgement, para. 1460-1461, 1472.
[995] AFRC Appeal Judgement, para. 195.
[996] Case 002/02 Investigative Action Decision, para. 10.
[997] International Covenant on Civil and Political Rights, 999 UNTS 14668 (1966), art. 23; Universal Declaration of Human Rights, United Nations General Assembly Resolution 217 A(III) (1948), art. 16; Convention on the Elimination of All Forms of Discrimination Against Women, 1249 UNTS 13 (1981), art. 16; RUF Trial Judgement, para. 1293, 1471; AFRC Appeal Judgement, para. 195; Case 002 Closing Order, para. 217, 845.
[998] Universal Declaration of Human Rights, art. 3; ICCPR, art. 3.
[999] Case 002 Closing Order, para. 217, 855, 1447.
[1000] RUF Trial Judgement, para. 1296, 1351; Oosterveld, V., p. 65.

438. [REDACTED].[1001] [REDACTED].[1002]

439. [REDACTED].[REDACTED].[1003] [REDACTED].[1004] [REDACTED}.[1005] [REDACTED].[1006]

440. [REDACTED].[1007] [REDACTED].[1008] [REDACTED],[1009] [REDACTED].[1010] [REDACTED][1011] [REDACTED].[1012]

441. [REDACTED].[1013] [REDACTED].[1014] [REDACTED].[1015] [REDACTED].[1016] [REDACTED].[1017] [REDACTED].

442. [REDACTED]. [REDACTED].[1018] [REDACTED].

443. [REDACTED].

444. [REDACTED].[1019] [REDACTED].[1020] [REDACTED].[1021]

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[1011] ISO logbook, UGA-OTP-0068-0146 at 0172.
[1012] ISO logbook, UGA-OTP-0068-0146 at 0204.
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445. [REDACTED].[1022] [REDACTED],[1023] [REDACTED].[1024] [REDACTED].

446. [REDACTED].[1025] [REDACTED].[1026] [REDACTED].[1027] [REDACTED].[1028] [REDACTED].[1029]

447. [REDACTED],[1030] [REDACTED].[1031] [REDACTED].

448. [REDACTED].

(ii) [REDACTED]

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453. [REDACTED].

454. [REDACTED].

455. [REDACTED].

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457. [REDACTED].[1050] [REDACTED].[1051] [REDACTED],[1052] [REDACTED][1053]. [REDACTED].[1054]

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460. [REDACTED].[REDACTED].[1063]

(iii) [REDACTED]

461. [REDACTED][1064][REDACTED].[1065] [REDACTED].[1066] [REDACTED].[1067] [REDACTED].[1068] [REDACTED].[1069] [REDACTED].[1070] [REDACED].[1071]

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468. [REDACTED].[1098] [REDACTED].[1099]

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470. [REDACTED].[1106]

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474. [REDACTED].[1112] [REDACTED].[1113]

(iv) [REDACTED]

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483. [REDACTED].

484. [REDACTED].

485. [REDACTED].

(v) [REDACTED]

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496. [REDACTED].

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503. [REDACTED].[1205] [REDACTED].[1206] [REDACTED].[1207]

504. [REDACTED]. [REDACTED].[1208] [REDACTED].[1209] [REDACTED].[1210]

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506. [REDACTED].

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508. [REDACTED].

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(vii) [REDACTED]

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(viii) [REDACTED]

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[1271] [REDACTED].
[1272] [REDACTED].
[1273] [REDACTED].
[1274] [REDACTED].
[1275] [REDACTED].
[1276] [REDACTED].
[1277] [REDACTED].
[1278] [REDACTED].
[1279] [REDACTED].
[1280] [REDACTED].
[1281] [REDACTED].
[1282] [REDACTED].
[1283] [REDACTED].
[1284] [REDACTED].
[1285] [REDACTED].
[1286] [REDACTED].
[1287] [REDACTED].
[1288] [REDACTED].
[1289] [REDACTED].

526. [REDACTED].[1290] [REDACTED].[1291] [REDACTED].[1292] [REDACTED][1293] [REDACTED][1294] [REDACTED].[1295] [REDACTED].[1296]

527. [REDACTED].[1297] [REDACTED].[1298] [REDACTED]. [REDACTED],[1299] [REDACTED].

528. [REDACTED].[1300] [REDACTED].[1301] [REDACTED].[1302] [REDACTED].[1303] [REDACTED].[1304]

529. [REDACTED].[1305] [REDACTED].[1306] [REDACTED].[1307] [REDACTED].[1308] [REDACTED].[1309] [REDACTED].[1310]

530. [REDACTED].[1311] [REDACTED].[1312] [REDACTED].

531. [REDACTED].

[1290] [REDACTED].
[1291] [REDACTED].
[1292] [REDACTED].
[1293] [REDACTED].
[1294] [REDACTED].
[1295] [REDACTED].
[1296] [REDACTED].
[1297] [REDACTED].
[1298] [REDACTED].
[1299] [REDACTED].
[1300] [REDACTED].
[1301] [REDACTED].
[1302] [REDACTED].
[1303] [REDACTED].
[1304] [REDACTED].
[1305] [REDACTED].
[1306] [REDACTED].
[1307] [REDACTED].
[1308] [REDACTED].
[1309] [REDACTED].
[1310] [REDACTED].
[1311] [REDACTED].
[1312] [REDACTED].

3. [REDACTED]

532. [REDACTED]. [REDACTED].[1313]

533. [REDACTED].

534. [REDACTED].

535. [REDACTED].

536. [REDACTED]:

- [REDACTED].
- [REDACTED].
- [REDACTED].

4. Crimes committed [REDACTED]

Crimes committed:

537. Dominic Ongwen, together with other senior commanders of the LRA and through fighters in Sinia brigade, indirectly perpetrated sexual and gender based crimes against women and girls. The objective elements of these crimes as set out in charges 61 to 68 of the document containing the charges are satisfied as a result of an inevitable inference: under the practices of the LRA, the overwhelming majority of abducted girls and women had [REDACTED] experience of victimisation [REDACTED].

[1313] [REDACTED].

538. This inference is drawn from several facts. First, women and girls were abducted by fighters in Sinia brigade. Second, the LRA had strict rules on sexual conduct, which dictated that these abducted women and girls were forced to marry LRA fighters, as set out in paragraphs 540 to 552. Third, forced marriage for these abducted women and girls meant that they were raped, tortured, sexually enslaved, enslaved, and forced to bear children [REDACTED]. Fourth, the LRA hierarchy and its strict system of discipline ensured total adherence to its rules, as set out in the section on common elements of modes of liability, paragraphs 73 to 110 which meant that the overwhelming majority of abducted girls and women [REDACTED].

539. The Chamber need not identify specific instances of forced marriage, rape, sexual slavery, enslavement and torture (although there is evidence of such instances). There is ample evidence establishing substantial grounds to believe that the crimes were committed as a matter of routine and that they can be attributed to Dominic Ongwen.

Count 61 – forced marriage as an inhumane act (article 7(1)(k)) in northern Uganda from 1 July 2002 to 31 December 2005

540. The initiation of the forced marriage was ritualised. When P-0226, [REDACTED], arrived at the LRA base in Jebellin, Sudan, after her abduction in 1998, she and other female abductees had shea butter smeared on their body in a purification ritual.[1314] P-0214, [REDACTED], recalled that girls were smeared with ashes and eggs.[1315] P-0101, [REDACTED], recalled the same ceremony.[1316] After

[1314] [REDACTED].
[1315] [REDACTED].
[1316] [REDACTED].

such rituals, Joseph Kony and other commanders selected girls to be their forced wife.[1317]

541. Sometimes the ritual was less public. P-0227, [REDACTED] described a ritual performed [REDACTED] involving the smearing of a white substance on her body [REDACTED].[1318] P-0226 recalled that girls were selected to be *ting tings* or wives depending on their perceived maturity. The girls and women had no choice but to accede. If they refused they would be beaten or killed.[1319]

542. P-0233 said that when an abducted woman or girl was judged ready for a man, she would be given to one. If she refused, it was taken to mean that she planned to escape from LRA, so she would be killed.[1320] P-0253, who was abducted by the LRA as a schoolboy and [REDACTED] in Sinia brigade, confirmed that girls were forcibly given to their husband. If a girl refused she would be threatened with death, and the threat would be carried out.[1321]

543. P-0202, who was in captivity for five months, recalled that if girls refused to be assigned as wives they were killed. She saw this happen in Odek.[1322] P-0099, [REDACTED], said that Joseph Kony decided which commanders could have forced wives. The women had no choice in the matter.[1323] Although P-0099 was allowed to choose her husband – probably because of her uncle's close links to Kony[1324] – her choice was made in coercive circumstances; ultimately she would have had to accept somebody.[1325]

[1317] [REDACTED].
[1318] [REDACTED].
[1319] [REDACTED].
[1320] P-0233, UGA-OTP-0243-1284-R01 at 1292-1293.
[1321] P-0253, UGA-OTP-0243-2310-R01 at 2327.
[1322] P-0202, UGA-OTP-0243-1062-R01 at 1077.
[1323] [REDACTED].
[1324] [REDACTED].
[1325] [REDACTED].

544. P-0142 said that Dominic Ongwen was in charge of distributing the women and girls to different battalions within the brigade.[1326] They were distributed as follows: abducted women and girls were first taken to the brigade headquarters; the brigade commander then considered which battalions had people without wives, and would distribute the women and girls to those battalions; the battalion commanders would decide who got the women and girls at the battalion level.[1327] P-0198, [REDACTED], said that when there were many girls to distribute Dominic Ongwen instituted a lottery procedure, whereby girls were allocated to men on the basis of the ownership of a garment picked from a pile.[1328] This "happened a lot".[1329]

545. P-0250 recalled that LRA commanders and soldiers abducted and raped women and girls of 14 to 17 years and turned them into their forced wives.[1330]

546. All commanders in the LRA had forced wives. P-0099 said that Joseph Kony had about 40 wives in Sudan.[1331] P-0226 recalled that at one time he had about 80.[1332] P-0226 said that Dominic Ongwen had about 20.[1333] P-0142 estimated that about 250 to 300 men in Sinia brigade had wives. Some had two or three. The women were all abductees;[1334] they could not refuse to become wives because they were with people who were armed.[1335]

[1326] P-0142, UGA-OTP-0244-0755-R01 at 0765-0766.
[1327] P-0142, UGA-OTP-0244-0755-R01 at 0765-0766.
[1328] P-0198, UGA-OTP-0235-0217-R01 at 0226.
[1329] P-0198, UGA-OTP-0235-0217-R01 at 0226.
[1330] P-0250, UGA-OTP-0243-1311-R01 at 1322.
[1331] [REDACTED].
[1332] [REDACTED].
[1333] [REDACTED].
[1334] P-0142, UGA-OTP-0244-0755-R01 at 0768-0769.
[1335] P-0142, UGA-OTP-0244-0755-R01 at 0773-0774.

547. Dominic Ongwen gave P-0205 a girl named [REDACTED] as a wife on the occasion of P-0205's promotion by Joseph Kony.[1336] P-0253 recalled three girls being abducted by Sinia brigade fighters while it was commanded by Buk Abudema. One had been abducted from Pajule, another from Okinga and another from Atanga. After a month, they were given forcibly to Sinia brigade soldiers as wives. It was Buk Abudema who decided who they would be married to. Normally, they would not have married the men they were given to, but they had no choice.[1337]

548. P-0142 said that a woman called [REDACTED] was abducted from Obalanga in 2003, with three other girls. Buk Abudema gave her to P-0142 with the remark: "you have no wife: take this one".[1338] Later, P-0142 had other wives: [REDACTED], abducted as a young girl from Pangira,[1339] and [REDACTED], an abductee from Pabbo.[1340] P-0198 confirmed that, "I had seen Ongwen give wives to other soldiers. When a girl was abducted they would pick her by the hand and give her to a soldier. He would be the one giving the orders and saying this one goes with this one".[1341] In Sinia brigade, [REDACTED] was the wife of a fighter named [REDACTED]. [REDACTED] was the wife of [REDACTED].[1342] P-0227 said that Dominic Ongwen allocated a girl named [REDACTED] to be a wife to a soldier known as [REDACTED], who was Dominic Ongwen's direct subordinate.[1343]

549. For the abducted women and girls, forced marriage meant being forced to maintain an exclusive sexual relationship with their husband, have sex with him

[1336] P-0205, UGA-OTP-0243-0786-R01 at 0802-0804.
[1337] P-0253, UGA-OTP-0243-2310-R01 at 2323-2324.
[1338] P-0142, UGA-OTP-0244-0732-R01 at 0752-0753.
[1339] P-0142, UGA-OTP-0244-0755-R01 at 0756.
[1340] P-0142, UGA-OTP-0244-0755-R01 at 0761-0763.
[1341] P-0198, UGA-OTP-0235-0217-R01 at 0226.
[1342] P-0198, UGA-OTP-0235-0217-R01 at 0229.
[1343] [REDACTED].

on demand, and perform domestic chores. This latter conduct is described at paragraphs 553 to 568. If they were seen to have failed in their duties, the women and girls were beaten or caned, as described at paragraphs 569 to 575.

550. The exclusive aspect of the marriage was strictly enforced. On 1 April 2003, Dominic Ongwen reported to Joseph Kony on the radio that one of his soldiers had had sex with the wives of Buk Abudema and [REDACTED] and impregnated them. Joseph Kony ordered Dominic Ongwen to kill the soldier and that the two women be "put in jail […] while awaits their final judgements".[1344] The next day, Dominic Ongwen reported that he had killed the soldier in question.[1345]

551. P-0099 said that the rules did not allow a wife to sleep with any other man than that assigned to her.[1346] [REDACTED]. P-0226 confirmed that wives believed to be showing an interest in a man who was not their husband would be killed and so would the man.[1347]

552. The forced marriages of abducted women and girls to fighters in Sinia brigade were inhumane acts that caused these women and girls great suffering, or serious injury to their body or to their mental or physical health of a character similar in gravity to other crimes against humanity charged in this document.

Count 64 – rape (article 7(1)(g)) and count 65 – rape (article 8(2)(e)(vi)) in northern Uganda from 1 July 2002 to 31 December 2005

[1344] ISO logbook, UGA-OTP-0063-0002 at 0068 (1 April 2003), 0071-0072.
[1345] ISO logbook, UGA-OTP-0063-0002 at 0072 (2 April 2003), 0073.
[1346] [REDACTED].
[1347] [REDACTED].

553. LRA fighters in Sinia brigade had sex with the women and girls they abducted by force, or by threat of force or coercion, or by taking advantage of the coercive environment of the LRA.

554. They were ordered to have sex with the women and girls they abducted. On 4 April 2003, Joseph Kony told his commanders on the radio, "with women, those once got should be captured and raped seriously without mercy".[1348] P-0101 said that, "when young girls are abducted, you are raped while you're still young. If you're 11 years old or 12 years old, if there is a high-ranking commander who is kind, then they will let you actually mature a little bit, but with the rest of them they will just abduct you and make you a wife at a very young age. […][REDACTED].[1349]

555. P-0250 recalled that LRA commanders and fighters abducted and raped women and girls of 14 to 17 years, and turned them into their wives.[1350] Although P-0142 was not forthcoming about his conduct towards his own wife, [REDACTED], abducted from Obalang in 2003, sex occurred: they had two children together.[1351] Similarly, although P-0198 is not explicit, she said that [REDACTED] was the wife of [REDACTED] – one of the top soldiers in Dominic Ongwen's unit – and [REDACTED] had a child with him called [REDACTED].[1352] P-0205 mentioned that his first wife, [REDACTED], gave birth.[1353]

556. Pursuant to paragraph 538, the only realistic appreciation of the sexual intercourse which took place between LRA fighters and their abducted forced wives is that it took place by force or threat of force, or in circumstances where

[1348] UGA-OTP-0063-0002 at 0080 (left side).
[1349] [REDACTED].
[1350] P-0250, UGA-OTP-0243-1311-R01 at 1322.
[1351] P-0142, UGA-OTP-0244-0732-R01 at 0752.
[1352] P-0198, UGA-OTP-0235-0217-R01 at 0229.
[1353] P-0205, UGA-OTP-0243-0786-R01 at 0802-0804.

any purported consent by the women concerned was vitiated by the coercive circumstances in which the women found themselves. Thus, women who were forcibly married to fighters in Sinia brigade were raped in northern Uganda from 1 July 2002 to 31 December 2005.

Count 66 – sexual slavery (article 7(1)(g)), count 67 – sexual slavery (article 8(2)(e)(vi)), and count 68 – enslavement (article 7(1)(c)) in northern Uganda from 1 July 2002 to 31 December 2005

557. LRA fighters in Sinia brigade, to whom abducted women and girls were given as forced wives, exercised powers attaching to the right of ownership over these women and girls by imposing on them a deprivation of liberty which included causing them to engage in acts of a sexual nature including sexual intercourse and forcing them to perform domestic duties, which reduced them to a servile status. This exercise of power included confining them by means of force or threat of force after they were abducted, with the purpose of forced labour and servitude.

558. The LRA's system of distributing women and girls to husbands was one way in which LRA fighters demonstrated their power attaching to the right of ownership over abducted women and girls. The women were treated as chattels or spoils of war, awarded as prizes without any more say in the matter than if they had been animals or inanimate objects. P-0099 described Joseph Kony's distribution of girls who were paraded at an assembly after Friday prayers in Sudan.[1354] P-0235, [REDACTED], described Dominic Ongwen's central role in the distribution of abducted women and girls, as well as his communication with

[1354] [REDACTED].

Joseph Kony on the subject.[1355] P-0142,[1356] P-0198,[1357] P-0200 and P-0205,[1358] also recall Dominic Ongwen's role in this distribution.

559. P-0214 described how commanders pointed to the girls they wanted [REDACTED].[1359] The extent to which women and girls were treated as objects to be possessed, traded and disposed of is exemplified by [REDACTED].[1360] [REDACTED].[1361]

560. Detail of LRA fighters in Sinia brigade causing these abducted women and girls to engage in one or more acts of a sexual nature including sexual intercourse is addressed in paragraph 553 to 556.

561. A second way that LRA fighters in Sinia brigade exercised powers attaching to the right of ownership over abducted girls and women was to force them to perform domestic chores. The husbands of abducted women and girls made them cut grass for bedding,[1362] collect firewood,[1363] cook,[1364] make up beds, take care of small children, and do laundry.[1365]

562. LRA fighters perceived the women's and girls' execution of these domestic duties as critical to their survival. On 11 July 2004, Dominic Ongwen reported on the radio to Buk Abudema that the wives of a subordinate officer had escaped. He said that he had informed the subordinate officer to abduct other young girls

[1355] [REDACTED].
[1356] P-0142, UGA-OTP-0244-0755-R01 at 0765-0766.
[1357] P-0198, UGA-OTP-0235-0217-R01 at 0226.
[1358] P-0205, UGA-OTP-0243-0819-R01 at 0829-0832, UGA-OTP-0243-0786-R01 at 0802-0804.
[1359] [REDACTED].
[1360] [REDACTED].
[1361] [REDACTED].
[1362] [REDACTED].
[1363] [REDACTED].
[1364] [REDACTED].
[1365] [REDACTED].

because "there is no way he [REDACTED] can survive in the bush without women".[1366]

563. P-0142 said that girls too young to become wives were distributed as *ting tings*. They were supposed to take care of the children and work like house-girls for the other women.[1367] P-0202 recalled that abducted girls aged 14 or 15 would be given to men as wives, while *ting tings* would look after children at a commander's home.[1368] *Ting tings* performed the same domestic chores as the forced wives.

564. A third way that LRA fighters in Sinia brigade exercised powers attaching to the right of ownership over abducted girls and women was to prevent them from escaping by killing them or threatening to kill them if they escaped or tried to do so. P-0250 said that abductees were killed, with everyone watching, if they tried to escape.[1369] P-0233 saw women executed for trying to escape. One of them was called [REDACTED]. She was the wife of [REDACTED], a captain.[1370] P-0101 made a radio appeal the moment she arrived back in Uganda, [REDACTED]. [REDACTED].[1371] She said that attempted escapees who were caught were killed without mercy, and that she had seen this happen.[1372]

565. P-0236, [REDACTED], said that she would have been killed if she had tried to leave the LRA.[1373] She said that it was common for people who attempted to

[1366] UPDF logbook, UGA-OTP-0197-1670 at 1821.
[1367] P-0142, UGA-OTP-0244-0755-R01 at 0768-0769.
[1368] P-0202, UGA-OTP-0243-1062-R01 at 1071.
[1369] P-0250, UGA-OTP-0243-1328-R01 at 1348.
[1370] P-0233, UGA-OTP-0243-1266-R01 at 1278-1281.
[1371] [REDACTED].
[1372] [REDACTED].
[1373] [REDACTED].

escape to be killed.[1374] She knew about two girls [REDACTED] – who tried or allegedly tried to escape but were arrested and caned.[1375]

566. P-0099 said that those who tried to escape were very badly beaten.[1376] She and others believed that Joseph Kony genuinely possessed supernatural powers. She thought that Joseph Kony could predict someone even considering escape, and kill them, which made her terrified of escaping.[1377]

567. P-0226 recalled that if the person who tried to escape was a boy, then other boys were ordered to kill him. If it was a girl, other girls were ordered to do so.[1378] P-0235 recounted how even admitting to being homesick was something which could lead to harsh physical punishment.[1379]

568. A fourth way that LRA fighters in Sinia brigade exercised powers attaching to the right of ownership over abducted girls and women was to forcibly marry them. Their husbands had total control over their lives, as described in detail in paragraphs 540 to 552.

Count 62 – torture (article 7(1)(f)) and count 63 – torture (article 8(2)(c)(i)) in northern Uganda from 1 July 2002 to 31 December 2005

569. LRA fighters inflicted severe physical or mental pain or suffering amounting to torture on women and girls in their custody or control. They did so by, among other things: (i) having sexual intercourse with them by force, or by threat of force or coercion, or by taking advantage of the coercive environment of the LRA, as set

[1374] [REDACTED].
[1375] [REDACTED].
[1376] [REDACTED].
[1377] [REDACTED].
[1378] [REDACTED].
[1379] [REDACTED].

out in the section on rape [REDACTED]; (ii) making them perform cruel and unusual acts including for the purpose of intimidation; and (iii) beating or caning them for the purpose of punishment for perceived wrongdoing, for refusal to follow instructions, or if they tried to escape.

570. Women and girls in Sinia brigade were made to perform cruel and unusual acts including for the purpose of intimidation. P-0200 said that shortly after the attack on Barlonyo IDP camp, when food ran short as the group he was leading approached the border with Sudan, Dominic Ongwen forced young abductees under his control to hack a middle-aged woman to death, boil her in a pot, and eat her.[1380] P-0226 described how after an attack on Patongo led by Dominic Ongwen, Dominic Ongwen ordered recent female abductees to beat a captured soldier to death, and threatened that anyone who refused would themselves be killed. Dominic Ongwen watched while his orders were carried out.[1381]

571. From their first days in the LRA, women were tortured by brutal beatings and canings. Anyone abducted, young or old, was put through initiation by way of a caning.[1382] P-0250 saw a girl named [REDACTED], abducted from Koyo, northern Uganda, being beaten in this way.[1383] P-0236 was whipped by Dominic Ongwen's escorts shortly after being abducted in September 2002, [REDACTED].[1384]

572. After they were forcibly married, women and girls were beaten for any small or perceived failure to do what they were told. P-0233 saw women beaten for alleged infidelity, planning to escape and not cooking properly. He saw many public beatings. If the victim cried during the beating, a gun would be put to her

[1380] P-0200, UGA-OTP-0243-0133-R01 at 0138-0147.
[1381] [REDACTED].
[1382] P-0250, UGA-OTP-0243-1464-R01 at 1475.
[1383] P-0250, UGA-OTP-0243-1464-R01 at 1474-1476.
[1384] [REDACTED].

head and she would be told that if she tried to run she would be shot.[1385] P-0245 saw women beaten for coming late to parade, for example a girl called [REDACTED], the wife of a fighter called [REDACTED].[1386]

573. P-0236 recalls that when she was in Gulu, Dominic Ongwen told a *kadogo* named [REDACTED] to beat her, because she was said to be dirty.[1387] Dominic Ongwen sat close by while this occurred.[1388] P-0236 said that wives were also beaten when they did something wrong, for example not listening to their husband, or forgetting what their husbands said, or not doing the laundry properly.[1389] P-0099 [REDACTED].[1390]

574. P-0202 saw girls heavily beaten "very many times".[1391] She recalled that no girl ever refused an order to be a *ting ting* because they would be beaten.[1392] P-0250 said that abducted girls and women were tortured "a lot".[1393]

575. The most serious beatings were reserved for those who tried to escape their miserable situation. P-0236 spoke of two women being caned for such attempts.[1394] P-0099 said that if you tried to escape you were very badly beaten.[1395]

5. Dominic Ongwen's individual criminal responsibility ([REDACTED])

[1385] P-0233, UGA-OTP-0243-1284-R01 at 1289-1290.
[1386] P-0245, UGA-OTP-0244-0554-R01 at 0560.
[1387] [REDACTED].
[1388] [REDACTED].
[1389] [REDACTED].
[1390] [REDACTED].
[1391] P-0202, UGA-OTP-0243-1062-R01 at 1076.
[1392] P-0202, UGA-OTP-0243-1062-R01 at 1076.
[1393] P-0250, UGA-OTP-0243-1446-R01 at 1460.
[1394] [REDACTED].
[1395] [REDACTED].

Dominic Ongwen is criminally responsible as an indirect co-perpetrator[1396] under article 25(3)(a)

i. Dominic Ongwen was part of a common plan or an agreement with one or more persons

576. From at least 1 July 2002 to 31 December 2005, in northern Uganda, Dominic Ongwen, Joseph Kony, and the Sinia brigade leadership ("SGBC co-perpetrators") implemented a common plan to abduct girls and women to serve as domestic servants (enslavement), forced exclusive conjugal partners (forced wives), and sex slaves (sexual slavery) in the Sinia brigade ("SGBC common plan"). The implementation of the common plan in the ordinary course of events resulted in the commission of rape and torture.

577. Although the SGBC co-perpetrators were geographically distant, they implemented the SGBC common plan in a coordinated manner through high-frequency radio. LRA radio use is explained in detail in the section on intercepted LRA radio communications (paragraphs 59 to 72). Joseph Kony, as the commander-in-chief of the LRA, provided the strategic direction to the SGBC common plan, and relied on his commanders, including Dominic Ongwen and other senior leaders in Sinia brigade to implement it, through Sinia brigade fighters. Dominic Ongwen adhered to the SGBC common plan. This is

[1396] *See* ICC-02/11-02/11-186, para. 134-137; ICC-01/04-02/06-309, para. 104. The Prosecution adopts the following elements for indirect co-perpetration:
i. Dominic Ongwen was part of a common plan or an agreement with one or more persons.
ii. Dominic Ongwen carried out an essential contribution in a coordinated manner with other co-perpetrators that resulted in the fulfilment of the material elements of the crime.
iii. Dominic Ongwen had joint control over the organisation, which consisted of an organised and hierarchical apparatus of power.
iv. The execution of the crimes was secured by almost automatic compliance with orders.
v. Dominic Ongwen had knowledge and intent as prescribed by article 30 and specific to the crime(s).
vi. Dominic Ongwen was aware of the factual circumstances that allowed him to exert joint control over the crimes.

demonstrated by his: (i) executing Joseph Kony's orders without hesitation through his command structure; (ii) [REDACTED]; and (iii) making statements propagating the aims of the SGBC common plan or conduct in furtherance of the SGBC common plan.

578. The SGBC common plan had four facets. The first was to abduct women and girls. This was the necessary precursor to the commission of the crimes charged in this section (paragraphs 540 to 575). This facet of the SGBC common plan is demonstrated by Joseph Kony's orders.

- P-0040 heard Joseph Kony issue the order to abduct girls on a number of occasions, particularly in connection with the kidnappings from Aboke and Lwala schools.[1397]
- P-0142 heard, in 1997 and 1998, Joseph Kony order LRA commanders Matata and Otti Lagony in words such as, "You're going to Uganda. If there are some big boys among you there, you go and abduct girls as wives".[1398] P-0142 heard this order given about three times but he believed that Joseph Kony must have issued it many other times.[1399]
- P-0245 confirmed that it was Joseph Kony who gave the orders for women to be abducted because, "there is the human nature, you have to get a woman to sleep with".[1400]
- P-0224, in constant contact with Dominic Ongwen and [REDACTED] Dominic Ongwen communicated with Joseph Kony, recalled that orders, including for abductions, came from Joseph Kony.[1401]

[1397] P-0040, UGA-OTP-0220-0779-R01 at 0791-0804, UGA-OTP-0220-0805-R01 at 0811-0812.
[1398] P-0142, UGA-OTP-0244-0755-R01 at 0767.
[1399] P-0142, UGA-OTP-0244-0755-R01 at 0767-0768.
[1400] P-0245, UGA-OTP-0244-0545-R01 at 0553.
[1401] P-0224, UGA-OTP-0244-3050-R01 at 3062.

- P-0233 recalled that orders to abduct girls between 13 and 15 were passed over the radio from Joseph Kony to his commanders. It was not a secret.[1402]
- P-0138 recalled that Kony gave the order on the radio to abduct boys and girls aged 11 to 15 because they were easy to teach. This order was given by Joseph Kony and passed through Vincent Otti to other LRA commanders. As [REDACTED], P-0138 heard Joseph Kony's order himself.[1403]

579. The most senior LRA commanders acknowledged publicly the existence of this facet of the SGBC common plan. In December 2002, Joseph Kony participated in a public broadcast on Mega FM radio station in Gulu.[1404] He said, "that's the way we recruit". He continued, "We took them [Acholi girls and women] because of difficulties; this is the same way Museveni was doing it when he was in the bush by abducting".[1405] Vincent Otti also spoke: "I want to assure you that the girls whom we collect and send to the bush are our mothers. We always collect the young ones who are not infected with HIV".[1406] By his reference to HIV, Vincent Otti acknowledged that these women and girls were abducted for sex.

580. Sometimes, possibly for political reasons or as punishment, Joseph Kony ordered the abduction of girls and women to stop temporarily.[1407] P-0205 said that Kony would pass the 'stop' order to Vincent Otti, who would send that message to the division commander. The division commander relayed the message to the brigade commanders, who passed it on to the battalion and the lower

[1402] P-0233, UGA-OTP-0243-1149-R01 at 1159-1160.
[1403] P-0138, UGA-OTP-0228-0538-R01 at 0551-0552.
[1404] Mega FM sound recording, UGA-OTP-0023-0002, translation and transcript, UGA-OTP-0023-0011.
[1405] UGA-OTP-0023-0011 at 0013.
[1406] UGA-OTP-0023-0011 at 0020.
[1407] ISO logbook, UGA-OTP-0232-0234 at 0280-0281.

commanders.[1408] The way that P-0205 described orders relating to the abduction of women and girls being passed on demonstrates the systematic fashion in which the LRA implemented the SBGC common plan. Without such 'stop' orders, the default position was that abductions should be carried out.

581. The second facet of the SGBC common plan was the forced marriage of women and girls after they were abducted. P-0142 said that typically Joseph Kony issued an order to abduct on the radio. When the order was carried out, the women and girls were brought to Sinia brigade headquarters and the brigade commander (at the relevant times Buk Abudema and then Dominic Ongwen) informed Joseph Kony of the number and kind of girls abducted. Joseph Kony then ordered them to be distributed.[1409]

582. Joseph Kony required LRA fighters to not have sex with any women or girl before he was given the opportunity to select the ones that he wanted. P-0040 said that in 2002, Buk Abudema, then commanding Sinia brigade, had disobeyed this command, and was punished.[1410] P-0209, a captain in Trinkle brigade, said that when girls were abducted, no one was supposed to have sexual intercourse with them until they were officially distributed.[1411]

583. P-0040 recalled that Joseph Kony's view was that LRA fighters did not have time to persuade girls, so women and girls were not allowed to refuse whoever they were distributed to. The man could not refuse either.[1412]

[1408] P-0205, UGA-OTP-0243-0819-R01 at 0826.
[1409] P-0142, UGA-OTP-0244-0755-R01 at 0765.
[1410] P-0040, UGA-OTP-0220-0779-R01 at 0791-0804.
[1411] P-0209, UGA-OTP-0243-0399-R01 at 0405.
[1412] P-0040, UGA-OTP-0220-0805-R01 at 0811-0812.

584. The third facet of the SGBC common plan was for women and girls to submit to rape and sexual slavery by, and perform domestic duties for, the LRA fighters with whom they were paired. On 4 April 2003, in the course of radio exchanges during which Dominic Ongwen is on air, and shortly after Vincent Otti instructed Dominic Ongwen to move to the Lagile area and "sweep off any living being",[1413] Joseph Kony said: "with women, those once got should be captured and raped seriously without mercy".[1414]

585. SGBC co-perpetrators intended sexual relations to be exclusively between man and wife. The radio exchange on 1 and 2 April 2003 between Dominic Ongwen and Joseph Kony on this subject is detailed in paragraph 550.

586. The fourth facet of the SGBC common plan, which arose in the ordinary course of events as a result of its implementation, was to coerce girls and women when they refused or failed to submit or perform as ordered, by beatings and threats of beatings or death. On 17 and 18 December 2002, Joseph Kony ordered on the radio that abductees who were deemed difficult to control, specifically those that did not submit to the orders of the commanders, to be killed[1415] or beaten.[1416] P-0245 observed that a merciful commander was one who, when he captured escapees, would only cane them.[1417]

587. Dominic Ongwen coordinated his actions with his SGBC co-perpetrators, regularly communicating on the radio about the SGBC common plan. He received orders, reported on what he had done in furtherance of, and expressed his support for, the SGBC common plan.

[1413] ISO logbook, UGA-OTP-0063-0002 at 0079 (right side).
[1414] ISO logbook, UGA-OTP-0063-0002 at 0080 (left side).
[1415] ISO logbook, UGA-OTP-0065-0002 at 0113.
[1416] ISO logbook, UGA-OTP-0065-0002 at 0115.
[1417] P-0245, UGA-OTP-0244-0554-R01 at 0563.

- On 24 March 2003, Dominic Ongwen informed Joseph Kony that he decided to kill Karamajong and Sudanese girls that he had been keeping because they had become stubborn.[1418]
- On 1 April 2003, Dominic Ongwen reported to Joseph Kony on the radio that one of his soldiers had had sex with the wives of Buk Abudema and [REDACTED] and impregnated them. Joseph Kony ordered Dominic Ongwen to kill the soldier and that the two women be "put in jail […] while awaits their final judgements".[1419] On 2 April 2003, Dominic Ongwen reported that he had killed the soldier in question.[1420]
- On 10 March 2004, Joseph Kony complained on the radio to Dominic Ongwen that he had let all the senior LRA women with him escape. Dominic Ongwen replied that he had many female "recruits" who could replace the escapees.[1421]
- On 11 July 2004, Dominic Ongwen sent a message to Buk Abudema that the wives of one of his (Dominic Ongwen's) subordinate officer had escaped. He asked for permission to inform that officer to abduct other young girls because "[REDACTED]".[1422]
- On 4 August 2004, a senior LRA commander asked on the radio about his wife, whom he had left with Dominic Ongwen. He instructed Dominic Ongwen to ensure that she did not escape.[1423]
- On 26 June 2005, Dominic Ongwen indicated to [REDACTED], a superior commander, on the radio that two women, one of them the

[1418] UGA-OTP-0065-0143 at 0208 (K'jong is an abbrev. for Karamajong, a nomadic indigenous group that lives in northern Uganda).
[1419] ISO logbook, UGA-OTP-0063-0002 at 0068 (date), 0071-0072.
[1420] ISO logbook, UGA-OTP-0063-0002 at 0072 (date), 0073.
[1421] ISO logbook, UGA-OTP-0061-0002 at 0137.
[1422] UPDF logbook, UGA-OTP-0197-1670 at 1821.
[1423] ISO logbook, UGA-OTP-0062-0145 at 0164.

"wife of [REDACTED]", wanted to escape. He was instructed to ensure that they did not.[1424]

- On 10 July 2005, [REDACTED]asked Dominic Ongwen if he had abducted *ting tings* for Kony. Dominic Ongwen said, "not yet [… but that] Kony should not worry because he is going to work on that himself".[1425]

ii. Dominic Ongwen carried out an essential contribution in a coordinated manner with other co-perpetrators that resulted in the fulfilment of the material elements of the crimes

588. The contribution that Dominic Ongwen made to the SGBC common plan was an essential one. As discussed in the section on common elements of modes of liability (paragraphs 73 to 110), by virtue of the LRA's strict hierarchy, Dominic Ongwen had operational control over Oka battalion and then Sinia brigade and was thus able to control what fighters under his command did. It was he who gave the orders at an operational level to ensure that the SGBC common plan was carried out in the units that he commanded. It was he who enforced discipline to ensure that it was followed by fighters under his command. And it was he who, [REDACTED] [REDACTED]. According to P-0235, he was explicit that, in doing so, he was following LRA rules that required wives to submit to their husbands.[1426]

589. First, Dominic Ongwen made an essential contribution by ordering fighters under his command to implement the SGBC common plan. P-0205 recalled that

[1424] ISO logbook, UGA-OTP-0163-0007 at 0139.
[1425] ISO logbook, UGA-OTP-0163-0007 at 0169.
[1426] [REDACTED].

on one occasion Dominic Ongwen asked him whether he had abducted anyone; P-0205 confessed that he had not yet. Dominic Ongwen told him to go back and organise his unit to abduct.[1427]

590. On occasions, P-0205 reported, Dominic Ongwen would give a general order that abductions of women and girls should be carried out. His subordinates would decide the precise time and location. This was the case in respect of an abduction raid at a village called Omia Pachwa.[1428]

591. P-0250 recalled that after the death of Ocitti (at Amuria), Dominic Ongwen ordered that a lot of abductees be taken to "replace" Ocitti's death.[1429] Among the five abductees who joined P-0250's unit, two were girls. P-0250's commander, [REDACTED] took one to become his wife. The other was taken to headquarters.[1430] [REDACTED].[1431]

592. P-0233, [REDACTED] of Gilva brigade, recalled that Dominic Ongwen ordered a combined group of soldiers from Stockree and Sinia brigade to abduct boys and girls between the age of 13 and 15 from Acet.[1432] P-0233 went to Acet. They took four boys and one 14 year old girl named [REDACTED].[1433] P-0233's account of Dominic Ongwen giving these orders is corroborated by P-0205.[1434]

593. P-0142 said that it was Dominic Ongwen who gave the order to attack Odek on or about 30 April 2004.[1435] Civilians taking no active part in hostilities

[1427] P-0205, UGA-OTP-0243-0867-R01 at 0874.
[1428] P-0205, UGA-OTP-0243-0819-R01 at 0823-0827.
[1429] P-0250, UGA-OTP-0243-1414-R01 at 1416.
[1430] P-0250, UGA-OTP-0243-1400 at 1417-1418.
[1431] P-0250, UGA-OTP-0243-1414-R01 at 1426.
[1432] P-0233, UGA-OTP-0243-1149-R01 at 1150-1153.
[1433] P-0233, UGA-OTP-0243-1149-R01 at 1154-1155.
[1434] P-0205, UGA-OTP-0243-0520-R01 at 0526.
[1435] P-0142, UGA-OTP-0228-4542-R01 at 4549.

including girls and women were abducted during the course of that attack. P-0142 was involved in the attack on Lukodi, which Dominic Ongwen ordered. P-0142 was responsible for the abducted civilians. There were about 20 of them, according to P-0142, mostly women.[1436]

594. P-0205 gave numerous examples of locations where abductions were carried out by the Sinia brigade and other fighters under the control of Dominic Ongwen and on his orders. He instanced an abduction of a girl carried out by a subordinate named [REDACTED],[1437] the abduction of a girl from Otwal by a subordinate called [REDACTED],[1438] and abduction missions that it seems [REDACTED] in 2004 at Onegwok[1439] and Paicho.[1440]

595. P-0245 recalled that abductions under the command of Dominic Ongwen took place at Lacani, Acholibur, Omel Kuru, Odek, Lukodi and Palaro.[1441] Abductions of young girls in particular were performed by the Oka battalion of the Sinia brigade at Wol, Kitgum Matidi, Kalong and Atanga,[1442] in which P-0245 took part. About 20 girls between the ages of about 14 to 16 were abducted from a school in Atanga to become LRA wives in 2002, after operation Iron Fist. The leader of the raid was [REDACTED] and it was Dominic Ongwen who had given the command to carry out the raid.[1443]

596. P-0200 described Dominic Ongwen as an active and brutal LRA commander and noted his role in the abduction and distribution of girls to be sex slaves for

[1436] P-0142, UGA-OTP-0228-4583-R01 at 4591.
[1437] P-0205, UGA-OTP-0243-0520-R01 at 0527-0528.
[1438] P-0205, UGA-OTP-0243-0520-R01 at 0534-0535.
[1439] P-0205, UGA-OTP-0243-0867-R01 at 0872-0873.
[1440] P-0205, UGA-OTP-0243-0867-R01 at 0872, 0876.
[1441] P-0245, UGA-OTP-0244-0520-R01 at 0523-0524.
[1442] P-0245, UGA-OTP-0244-0520-R01 at 0524-0525.
[1443] P-0245, UGA-OTP-0244-0520-R01 at 0526-0528.

other commanders.[1444] He was one of many children abducted from Arute village in Amuria district by Dominic Ongwen.[1445]

597. P-0198 was abducted from [REDACTED], northern Uganda[1446] on [REDACTED] 2003, by armed LRA fighters.[1447] She was about 10 years old.[1448] They tied a rope around her waist and force-marched her to Awelu.[1449] There she met Charles Tabuley, Dominic Ongwen, and about 20 other abductees also tied with ropes.[1450] Tabuley and Ongwen were in communication with the soldiers who had abducted her.[1451]

598. As described above in paragraphs 578 and 580, the abduction of girls inevitably led to their forced marriage and then their rape, sexual slavery, slavery and torture.

599. Second, Dominic Ongwen made an essential contribution by having operational control over the implementation of the SGBC common plan in Oka battalion and then the Sinia brigade.

600. P-0205 recalled that after abductions had taken place, senior commanders in Sinia brigade met Dominic Ongwen to decide on distribution.[1452]

601. Pursuant to Dominic Ongwen's directive, P-0205 ordered one of his [REDACTED] officers, [REDACTED], to go to Omia Pachwa and come back with

[1444] P-0200, UGA-OTP-0243-0043-R01 at 0046.
[1445] P-0200, UGA-OTP-0243-0043-R01 at 0044.
[1446] P-0198, UGA-OTP-0235-0217-R01 at 0219.
[1447] [REDACTED].
[1448] [REDACTED].
[1449] [REDACTED].
[1450] [REDACTED].
[1451] [REDACTED].
[1452] P-0205, UGA-OTP-0243-1149-R01 at 1160.

girls, boys and food. The raiders came back with five girls. P-0205 brought three of them to Dominic Ongwen in Koyo Lalogi. Dominic Ongwen then gave his permission for P-0205 to pass them on to others. One was eventually distributed to Joseph Kony and another to an LRA officer in headquarters called [REDACTED].[1453]

602. P-0250 saw Dominic Ongwen at the attack on Amuria in Teso, together with another commander called Ocitti.[1454] Dominic Ongwen was the second in command at the attack on Amuria.[1455] During this attack, civilians, including young children, were abducted.[1456] Dominic Ongwen was in charge of taking them back to Tabuley. Some remained with Tabuley; others were taken to Otti and other commanders.[1457] The girls were divided among the commanders at a place called Katakwi. [REDACTED], who was in P-0250's unit, was given a girl.[1458]

603. P-0231 said that in August 2002, Dominic Ongwen sent his troops to attack Pajule. There, they abducted about 50 people including children as young as 12. These abductees from Pajule were divided the morning after being taken.[1459]

604. P-0198 confirmed that, "We were four girls who were abducted in 2003 all the other girls there had already been given to husbands. I knew the other four girls. [REDACTED] and I. […] I had seen Ongwen give wives to other soldiers. When a

[1453] P-0205, UGA-OTP-0243-0819-R01 at 0823-0832.
[1454] P-0250, UGA-OTP-0243-1400 at 1405.
[1455] P-0250, UGA-OTP-0243-1400 at 1406.
[1456] P-0250, UGA-OTP-0243-1400 at 1407.
[1457] P-0250, UGA-OTP-0243-1400 at 1408.
[1458] P-0250, UGA-OTP-0243-1400 at 1410-1411.
[1459] P-0231, UGA-OTP-0244-0341-R01 at 0351-0523.

girl was abducted they would pick her by the hand and give her to a soldier. He would be the one giving the orders and saying this one goes with this one".[1460]

605. [REDACTED].

606. Fourth, Dominic Ongwen made an essential contribution by ensuring strict discipline in Oka battalion and then Sinia brigade, as described in detail in the section on common elements of modes of liability (paragraphs 75 to 110). This prevented girls and women from misbehaving or escaping, so that the commission of crimes could continue. It also meant that LRA rules in relation to abductions, forced marriage, rape, domestic tasks, and punishments – as described above – were followed.

iii. Dominic Ongwen had joint control over the organisation, which consisted of an organised and hierarchical apparatus of power

607. This is addressed the section on common elements of modes of liability, paragraphs 73 to 110.

iv. The execution of the crimes was secured by almost automatic compliance with orders

608. This is addressed in the section on common elements of modes of liability, paragraphs 73 to 110.

[1460] P-0198, UGA-OTP-0235-0217-R01 at 0226.

v. Dominic Ongwen had knowledge and intent as prescribed by article 30 and specific to the crimes

609. Dominic Ongwen intended to bring about the objective elements of the crimes or, alternatively, was aware that the crimes would occur in the ordinary course of events when implementing the common plan. This is demonstrated most powerfully by his own words on the LRA radio, as described above in paragraph 587. [REDACTED]. His knowledge of the existence of the SGBC common plan and his intent to implement it is demonstrated by the same.

vi. Dominic Ongwen was aware of the factual circumstances that allowed him to exert joint control over the crimes

610. Dominic Ongwen was aware that his role in the implementation of the common plan, and hence in the commission of the crime, was essential. This element is detailed in the section on the common elements of modes of liability, paragraphs 73 to 110.

Dominic Ongwen is criminally responsible under article 25(3)(b)

611. On the basis of the evidence set out above, Dominic Ongwen is also individually criminally responsible pursuant to article 25(3)(b) for ordering the crimes charged. He held a position of authority as a commanding officer within the LRA as described in the section on common elements of modes of liability, paragraphs 73 to 110. He routinely issued orders to his subordinates, including to abduct women and girls and to distribute them to himself and other LRA fighters, as described in paragraphs 588 to 606. His orders and inducement had a direct effect on the crimes committed, as described above.

Dominic Ongwen is criminally responsible under article 25(3)(d)(i) and (ii)

612. On the basis of the evidence set out above, Dominic Ongwen contributed to the commission of crimes by a group of persons, including Joseph Kony and other senior LRA commanders, who were acting with a common purpose. Dominic Ongwen's contribution was made with the aim of furthering their criminal activity or criminal purpose to abduct girls and women to serve as forced exclusive conjugal partners (forced wives), domestic servants (enslavement), and sex slaves (sexual slavery), which also resulted in the ordinary course of events in the commission of rape and torture.

613. As described above in paragraphs 588 to 606, Dominic Ongwen made a substantial contribution to these crimes. He did so with the aim of furthering the crimes and criminal purpose of the group or, at least, knowing of the group's intention to commit the crimes.

Dominic Ongwen is criminally responsible under article 28(a)

614. On the basis of facts and evidence elaborated above, Dominic Ongwen is also responsible for the charged crimes as a military commander pursuant to article 28(a). The status of Dominic Ongwen as a military commander throughout the charged period is set out in the section on common elements of modes of liability, paragraphs 73 to 110.

615. The charged crimes were committed by troops under Ongwen's effective command and control or effective authority and control as a result of his failure to exercise control properly. Dominic Ongwen knew or, owing to the circumstances at the time, should have known that girls and women were being abducted to serve as forced exclusive conjugal partners (forced marriage), to have sexual

intercourse with them without their consent (rape and sexual slavery), to force them to perform domestic and other duties (enslavement), and to punish them when they refused or failed to submit or perform as ordered (torture). This is demonstrated by Ongwen's own involvement in the planning and execution of the crimes, the reports conveyed to him about the commission of crimes by his subordinates and his personal observation of the crimes, as described in paragraphs 588 to 606.

616. Dominic Ongwen failed to take any of the necessary and reasonable measures within his power to prevent these crimes being committed by his subordinates. Nor did he submit them for prosecution by competent authorities. This is not surprising since Ongwen was himself at the heart of the crimes being committed. Not only did he fail to do anything to stop the crimes, the evidence summarised above demonstrates that he actively encouraged them.

XII. CONSCRIPTION AND USE OF CHILD SOLDIERS

1. Introduction

617. The LRA has been notorious for its widespread conscription and use of child soldiers for over two decades. The rationale behind abducting children was to sustain the ranks of the LRA. Male children were abducted exclusively for the purpose of becoming LRA fighters. Abducted young girls were generally not envisioned for fighting roles, and used primarily as domestic servants, sex slaves

and/or forced exclusive conjugal partners.[1461] Some girls however did also receive military training and/or participated in hostilities.[1462]

618. Across northern Uganda, all LRA units abducted children as young as six years old to be trained and used as fighters. Children were targeted because they were considered easy to control and adapted more quickly to the life in the bush.[1463] In the words of one former Sinia brigade fighter, children were easily indoctrinated by the LRA, because they "did not know life".[1464] They were also considered less likely to escape.[1465] To prevent them from escaping, children were threatened with death if they attempted to run away.[1466] If they were caught trying to escape, children were routinely killed or beaten, often by other children in order to instil fear in them.[1467]

619. By 2002, the abduction of children had become the almost exclusive method of recruitment of the LRA. Former LRA fighters assert that none of the children joined the LRA voluntarily, all of them were abducted.[1468] LRA fighters interviewed by the Prosecution in the course of this investigation were themselves abducted, trained and first deployed when younger than 15. By 2002, several of these witnesses were experienced fighters in their twenties.

[1461] P-0245, UGA-OTP-0244-0520-R01 at 0528; P-0224, UGA-OTP-0248-0712-R01 at 0736; see further the section on SGBC, para. 428-432, 537-539.
[1462] P-0198, UGA-OTP-0245-0223-R01 at 0229; P-0199, UGA-OTP-0236-0557-R01 at 0567-0568; P-0018, UGA-OTP-0159-0002-R01 at 0009-0012.
[1463] ISO logbook, UGA-OTP-0066-0201 at 250; P-0245, UGA-OTP-0244-0520-R01 at 0532; P-0224, UGA-OTP-0248-0712-R01 at 0717-0718; P-0200, UGA-OTP-0248-0822-R01 at 0829; P-0231, UGA-OTP-0243-1939-R01 at 1940-1944.
[1464] P-0224, UGA-OTP-0248-0712-R01 at 0718.
[1465] P-0245, UGA-OTP-0244-0520-R01 at 0532-0533.
[1466] P-0205, UGA-OTP-0247-0130-R01 at 0144.
[1467] P-0205, UGA-OTP-0243-0520-R01 at 0536; P-0245, UGA-OTP-0244-0554-R01 at 0563; [REDACTED]; P-0200, UGA-OTP-0243-0057-R01 at 0061, UGA-OTP-0244-0059-R01 at 0084; P-0275, UGA-OTP-0244-3398-R01 at 3403; P-0309, UGA-OTP-0249-0472-R01 at 0477.
[1468] P-0224, UGA-OTP-0248-0712-R01 at 0713-0714; P-0200, UGA-OTP-0243-0107-R01 at 0110-0111. See generally on abductions of children into the LRA Human Rights Watch Report, Stolen Children: Abduction and Recruitment in Northern Uganda, UGA-OTP-0133-0059; Uganda Human Rights Commission Annual Report 2003, UGA-OTP-0132-0678 at 0750.

620. From at least 1 July 2002 to 31 December 2005, Dominic Ongwen, Joseph Kony and the Sinia brigade leadership implemented a common plan to abduct children under 15, in northern Uganda, and use them to participate actively in hostilities. The charges against Dominic Ongwen are limited to Sinia brigade, in which he played a key role throughout the relevant period, first as a battalion commander and then as brigade commander.[1469]

621. Evidence from more than 30 witnesses, including four former child soldiers who served in LRA units under Dominic Ongwen's command, the LRA's own radio communications, and other documentary evidence establish substantial grounds to believe that Dominic Ongwen is criminally responsible for the crimes of conscription and use of child soldiers pursuant to article 8(2)(e)(vii) from at least 1 July 2002 to 31 December 2005.

2. Crimes committed

Count 69 - Conscription of children under 15 years into Sinia brigade (article 8(2)(e)(vii)):

622. Conscription is a form of recruitment into an armed force or group. The distinction with enlistment is the added element of compulsion. The Appeals Chamber in *Lubanga* held that "the element of compulsion necessary for the crime of conscription can be established by demonstrating that an individual under the age of fifteen years joined the armed force or group due to, *inter alia*, a legal obligation, brute force, threat of force, or psychological pressure amounting to coercion".[1470] The Appeals Chamber also noted the jurisprudence of the Special Court for Sierra Leone, which held that the enrolment into an armed group by

[1469] *See further* section on common elements of modes of liability, para. 75-110.
[1470] ICC-01/04-01/06-3121-Red, para. 278.

brute force, such as abduction, constituted the crime of conscription.[1471] Abduction has been considered a particularly egregious form of conscription.[1472]

623. The crime of conscription of child soldiers is a continuous crime. It is committed the moment the child is forced to join the armed group and ends only when the child reaches 15 years of age or leaves the armed group.[1473] As the Chamber held in the *Ntaganda* case, the Prosecution need not identify specific locations and dates of conscription or use of children under 15 to participate actively in hostilities, provided it is demonstrated that a child was integrated in the armed group or was used to participate actively in hostilities within the temporal and geographical scope of the charges.[1474]

Abductions of children under 15 carried out by LRA fighters under Dominic Ongwen's command

624. The evidence of former LRA fighters and the records of intercepted LRA radio communications show that Joseph Kony throughout the relevant period ordered his commanders to abduct young men and boys to serve as LRA fighters.[1475] Joseph Kony explicitly articulated the ideal ages of the abductees. On 21 October 2002, the UPDF logbook records that "Kony said that no LRA should abduct ppl fm 15 years old and above because they are problems".[1476]

[1471] ICC-01/04-01/06-3121-Red, para. 281.
[1472] *Prosecutor v. Brima et al (AFRC case)*, SCSL-04-16-T, Trial Judgment, 20 June 2007, para. 1276.
[1473] See ICC-01/04-01/06-2842, para. 618.
[1474] ICC-01/04-02/06-309, para. 83.
[1475] *E.g.*, ISO logbook, UGA-OTP-0063-0002 at 0148; ISO logbook, UGA-OTP-0065-0002 at 0034-0035; P-0205, UGA-OTP-0247-0481-R01 at 0494-0498.
[1476] ISO logbook, UGA-OTP-0065-0002 at 0049.

625. The above-mentioned abduction orders, which remained in force at least to the start of peace talks in 2006,[1477] were transmitted to LRA brigade and battalion commanders, including Dominic Ongwen, via radio.[1478] The brigade and battalion commanders were entrusted with executing orders, thereby securing the influx of new fighters. P-0205 recalled Dominic Ongwen ordering his units to abduct civilians aged 10 years and older to replenish their ranks.[1479]

626. Adhering to Dominic Ongwen's orders, fighters under his command continuously abducted boys and young men across northern Uganda in the relevant period to serve as fighters.[1480] P-0224 said that abductions occurred daily; children were abducted from their homesteads as well as from the side of the roads.[1481] P-0205 and P-0245 explained that boys were abducted as long as they looked healthy and able to fight, even when they were only 10 or 12 years old.[1482]

627. Dominic Ongwen regularly ordered his troops to abduct.[1483] By way of example: Dominic Ongwen organised an abduction mission to Acet, in which P-0233 took part. Its objective, among others, was to abduct boys between 13 and 15 years of age. Boys in that age range were abducted from Acet and conscripted into the Sinia brigade.[1484] During the briefing prior to the attack on Odek IDP camp on or about 29 April 2004, Dominic Ongwen instructed his fighters that if

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[1477] P-0205, UGA-OTP-0243-0819-R01 at 0827.
[1478] P-0205, UGA-OTP-0247-0481-R01 at 0493-0498; P-0231, UGA-OTP-0243-2025-R01 at 2041; ISO logbook, UGA-OTP-0063-0002 at 0148; ISO logbook, UGA-OTP-0065-0002 at 0034-0035.
[1479] P-0205, UGA-OTP-0243-0819-R01 at 0825-0827, 0832-0833.
[1480] P-0205, UGA-OTP-0243-0819-R01 at 0824-0825, UGA-OTP-0247-0481-R01 at 0497-0500; ISO logbook, UGA-OTP-0064-0093 at 0129-0130; P-0224, UGA-OTP-0244-3186-R01 at 3193-3198.
[1481] P-0224, UGA-OTP-0244-3186-R01 at 3191-3192, UGA-OTP-0248-0712-R01 at 0714; *see* P-0245, UGA-OTP-0244-0341-R01 at 0355-0356, UGA-OTP-0244-3186-R01 at 3193-3198; P-0097, UGA-OTP-0165-0035-R01 at 0036; P-0198, UGA-OTP-0235-0217-R01 at 0219; P-0252, UGA-OTP-0243-0428-R01 at 0433; P-0275, UGA-OTP-0244-3398-R01 at 3400-3402.
[1482] P-0205, UGA-OTP-0247-0481-R01 at 0498-0500, UGA-OTP-0243-0819-R01 at 0833; *see also* P-0245, UGA-OTP-0244-0520-R01 at 0524; [REDACTED].
[1483] P-0205, UGA-OTP-0243-0520-R01 at 0530-0531; P-0224, UGA-OTP-0244-3186-R01 at 3193-3198; P-0245, UGA-OTP-0244-0520-R01 at 0523-0528.
[1484] P-0233, UGA-OTP-0243-1149-R01 at 1151-1162.

they find "good boys or girls" they should return with them. As explained by P-0205 who was present at the briefing, this instruction meant those capable of being soldiers, with 12 being the preferred starting age.[1485] Boys under 15 were subsequently abducted in the Odek attack and conscripted into Sinia brigade, including P-0252 who was 11 years old at the time and P-0275 who was nine years old.[1486] Ongwen reported abducting eight boys from Odek in an intercepted radio communication on 30 April 2004.[1487]

628. Other locations at which children under 15 were abducted and conscripted into the LRA with the participation of fighters in Sinia brigade between 1 July 2002 and 31 December 2005 in northern Uganda included, *inter alia*, Pajule IDP camp on or about 10 October 2003,[1488] Abok IDP camp on or about 8 June 2004,[1489] Acholibur most likely in 2003,[1490] and the area of the Ibong mountains in August 2002.[1491]

Presence of children under 15 in Sinia brigade between 1 July 2002 and 31 December 2005

629. Sinia brigade like other LRA units relied on abductions of children, including those below 15 years, to sustain its fighting capacity. Witnesses confirm that

[1485] P-0205, UGA-OTP-0247-0481-R01 at 0499-0500.
[1486] P-0252, UGA-OTP-0243-0428-R01 at 0430-0435; P-0275, UGA-OTP-0244-3398-R01 at 3400; P-0218, UGA-OTP-0238-0720-R01 at 0726-0727; ISO Field Report, UGA-OTP-0242-0199 at 0201-0202.
[1487] UPDF logbook, UGA-OTP-0197-1670 at 1690, right page (long-hand); UPDF Intelligence report, UGA-OTP-0017-0150 at 0154, UGA-OTP-0017-0157 at 0160; UPDF 4th Div. Report, UGA-OTP-0233-0383 at 0408-0409, 0414, 0441; Police Logbook, UGA-OTP-0037-0002 at 0145; P-0059, UGA-OTP-0248-0328-R01 at 0334 and Audio transcript annotation by P-0059, UGA-OTP-0248-0462-R01 at 0522, rows 1138-1324; see further, section on the Odek IDP camp attack, para. 229-312.
[1488] P-0009, UGA-OTP-0151-0167-R01 at 0176, 0178; P-0199, UGA-OTP-0236-0557-R01 at 0561-0563; P-0217, UGA-OTP-0243-0194-R01 at 0200-0201; P-0144, UGA-OTP-0228-1418-R01 at 1429-1431; P-0250, UGA-OTP-0243-1383-R01 at 1394-1395.
[1489] *See* P-0293, UGA-OTP-0248-0040-R01 at 0050; P-0284, UGA-OTP-0244-1180-R01 at 1188; P-0286, UGA-OTP-0248-0060-R01 at 0087; P-0054, UGA-OTP-0251-0128 at 0139 ("most of the children went to the centre").
[1490] P-0245, UGA-OTP-0244-0363-R01 at 0364-0372.
[1491] P-0245, UGA-OTP-0244-0341-R01 at 0351-0357.

many children under 15 served in the Sinia brigade from at least 1 July 2002 to 31 December 2005. Boys under 15 served in all four battalions of the brigade—Oka, Terwanga, Siba and the brigade headquarters.[1492] After their abduction, the recruits were assigned to individual soldiers who were responsible for them and who were usually the ones that trained them. Often, children were assigned as escorts to the fighters who abducted them.[1493]

630. P-0231 described children as young as 10 joining the battalion in the relevant time period.[1494] P-0200 said that most soldiers in Dominic Ongwen's group were children below 18 years. Within that category, 70 to 80 *per cent* were between 13 and 15 years old.[1495]

631. Former fighters attached to the brigade named children under 15 who served in Sinia during the charged period. P-0205 remembered that Oka's [REDACTED] [REDACTED]'s escorts were aged 12 to 14, and that they participated in operations.[1496] The witness also named a boy under 15, [REDACTED], who served in Terwanga battalion with an LRA fighter called Nyero.[1497] [REDACTED] participated in several operations with Nyero. P-0205 deployed both of them for the Odek attack on or about 29 April 2004. Okello was 14 when he died in combat in 2004.[1498] P-0231 described two 10-year olds serving under commander [REDACTED]in the Oka battalion. One of them was called [REDACTED]and was abducted in 2002.[1499]

[1492] P-0054, UGA-OTP-0251-0101-R01 at 0121-0122; P-0205, UGA-OTP-0243-0520-R01 at 0529-0534, 0541-0543, UGA-OTP-0243-0544-R01 at 0545-0563; see also P-0224, UGA-OTP-0248-0712-R01 at 0725-0726; P-0249, UGA-OTP-0238-0771-R01 at 0775, 0777, 0778; P-0249, UGA-OTP-0238-0771-R01 at 0778; P-0280, UGA-OTP-0247-1252-R01 at 1260.
[1493] P-0252, UGA-OTP-0243-0428-R01 at 0432-0435, 0438; P-0275, UGA-OTP-0244-3398-R01 at 3402-3406.
[1494] P-0231, UGA-OTP-0243-2025-R01 at 2047-2048; P-0205, UGA-OTP-0243-0819-R01 at 0833.
[1495] P-0200, UGA-OTP-0248-0822-R01 at 0829-0830; P-0200, UGA-OTP-0243-0133-R01 at 0146.
[1496] P-0205, UGA-OTP-0243-0520-R01 at 0536, UGA-OTP-0243-0544-R01 at 0553-0555.
[1497] P-0205, UGA-OTP-0243-0520-R01 at 0542-0543.
[1498] P-0205, UGA-OTP-0243-0544-R01 at 0545-0548.
[1499] P-0231, UGA-OTP-0243-2049-R01 at 2050-2053.

632. Several Prosecution witnesses – former officers in the Sinia brigade – described children under 15 years serving as their direct subordinates, mostly as escorts. [REDACTED]was an armed escort to P-0245 and had fought at least since 2002. By autumn 2003 he was about 13 or 14 years old.[1500] [REDACTED]participated as a fighter in the attacks on Odek IDP camp on or about 29 April 2004 and in Palaro in 2003. He also fought alongside Dominic Ongwen in Acholi Pii.[1501] [REDACTED]was a young recruit who served under P-0054 and who participated in the attack on Odek IDP camp on or about 29 April 2004.[1502]

633. Children under 15 served directly under Dominic Ongwen, including as his escorts.[1503] P-0224 estimates that the number of children with Dominic Ongwen was over 40.[1504] The young age of some of Dominic Ongwen's escorts is vividly described by [REDACTED] described that besides instructing his escorts, he would sometimes go and "play with them".[1505] P-0205 described Dominic Ongwen's escort named [REDACTED]. [REDACTED]was 12 years old in 2002[1506] and accompanied Dominic Ongwen wherever he went.[1507] Dominic Ongwen and his escorts trained him to use a gun and he wore a uniform that he received from Dominic Ongwen.[1508] [REDACTED] was killed in 2004 when 14 years old.[1509] P-0275, himself only nine years old at the time, described children as young as six years from Dominic Ongwen's group of escorts being trained. He could tell they

[1500] P-0245, UGA-OTP-0244-0520-R01 at 0525, UGA-OTP-0248-0877-R01 at 0881-0898; Photograph of [REDACTED], UGA-OTP-0240-0084.
[1501] P-0245, UGA-OTP-0248-0877-R01 at 0881-0898, UGA-OTP-0248-0911-R01 at 0929, 0932-0937, 0939.
[1502] P-0054, UGA-OTP-0251-0101-R01 at 0115-0118, 0123-0126.
[1503] P-0054, UGA-OTP-0251-0101-R01 at 0115-0116; [REDACTED]; P-0224, UGA-OTP-0248-0712-R01 at 0718-0726; [REDACTED].
[1504] P-0224, UGA-OTP-0248-0712-R01 at 0725.
[1505] [REDACTED].
[1506] P-0205, UGA-OTP-0243-0564-R01 at 0565.
[1507] P-0205, UGA-OTP-0243-0544-R01 at 0561.
[1508] P-0205, UGA-OTP-0243-0544-R01 at 0560-0561, UGA-OTP-0243-0564-R01 at 0572-0573.
[1509] P-0205, UGA-OTP-0243-0574-R01 at 0575-0576.

were so young because the muzzles of their AK 47 rifles dragged on the ground as they carried them on their shoulders.[1510]

The training of children under 15

634. Following their abduction, the children abducted into the Sinia brigade were trained. The aim of the training was to prepare them for active participation in hostilities.[1511] Former child soldiers, LRA military insiders and other witnesses described how children were, for example, taught to parade, handle weapons and shoot.[1512] Children were trained how to move in the bush and what to do during enemy attacks.[1513] They were taught about LRA rules and discipline.[1514] Children as young as six years were trained to fire weapons.[1515] After July 2002, the LRA no longer operated out of permanent military bases. The LRA units were continuously moving and, as a consequence, resorted mostly to training the recruits "on the front line" or during their movements in the bush.[1516]

635. Children under 15 also received uniforms[1517] and were armed with guns.[1518] Some of the children upon recruitment underwent a smearing ritual "to make them rebels".[1519] Child soldiers were disciplined through continuous beatings.[1520]

[1510] P-0275, UGA-OTP-0244-3398-R01 at 3407.
[1511] P-0205, UGA-OTP-0243-0520-R01 at 0536-0538, UGA-OTP-0247-0130-R01 at 0142-0144, UGA-OTP-0243-0630-R01 at 0641-0643; P-0198, UGA-OTP-0245-0223-R01 at 0229-0230; P-0224, UGA-OTP-0248-0712-R01 at 0716-0717, 0727-0730; P-0231, UGA-OTP-0243-1939-R01 at 1940-1944.
[1512] P-0252, UGA-OTP-0243-0428-R01 at 0442; P-0275, UGA-OTP-0244-3398-R01 at 3404; P-0198, UGA-OTP-0245-0223-R01 at 0229; P-0231, UGA-OTP-0243-1939-R01 at 1944-1945; [REDACTED]; see also P-0280, UGA-OTP-0247-1252-R01 at 1260.
[1513] P-0252, UGA-OTP-0243-0428-R01 at 0442; P-0224, UGA-OTP-0248-0712-R01 at 0716-0717, 0727-0730; P-0205, UGA-OTP-0243-0544-R01 at 0551-0553.
[1514] P-0252, UGA-OTP-0243-0428-R01 at 0442.
[1515] P-0275, UGA-OTP-0244-3398-R01 at 3407; P-0198, UGA-OTP-0245-0223-R01 at 0229.
[1516] P-0205, UGA-OTP-0247-0130-R01 at 0142-0144, UGA-OTP-0243-0520-R01 at 0536-0538, UGA-OTP-0243-0544-R01 at 0556, UGA-OTP-0243-0630-R01 at 0632-0633, 0641; P-0200, UGA-OTP-0248-0822-R01 at 0829; [REDACTED].
[1517] P-0252, UGA-OTP-0243-0428-R01 at 0442; P-0205, UGA-OTP-0247-0130-R01 at 0144, UGA-OTP-0243-0544-R01 at 0553.
[1518] P-0054, UGA-OTP-0251-0101-R01 at 0110-0111; P-0205, UGA-OTP-0247-0130-R01 at 0145; P-0252, UGA-OTP-0243-0428-R01 at 0442; see also P-0280, UGA-OTP-0247-1252-R01 at 1260.

Count 70 - Use of children under 15 in hostilities in Sinia brigade (article 8(2)(e)(vii)):

636. Children under 15 performed different tasks in the LRA, including taking part in combat and activities linked to combat.[1521] In addition to functions described below, their tasks also included carrying equipment and belongings for their superiors, including their weapons, collecting firewood for the troops, and disposing of dead bodies.[1522]

637. Children younger than 15 years were used to fight against government soldiers and to kill and abduct civilians.[1523] Witnesses abducted by fighters in Sinia brigade under Dominic Ongwen's command in the relevant period mentioned very young children amongst their abductors.[1524]

638. In ambushes and during attacks on IDP camps and villages, children under 15 who were not armed with guns usually raised the alarm or made noise to exaggerate the perception of LRA strength.[1525] They collected and carried pillaged goods from attack sites. Children burned and pillaged civilian houses during attacks on IDP camps.[1526] When laying ambushes the children participated alongside the LRA combatants.[1527] Children fought against the UPDF in battles and ambushes.[1528] They were also used as scouts.[1529]

[1519] P-0245, UGA-OTP-0244-0520-R01 at 0522-0523; P-0252, UGA-OTP-0243-0428-R01 at 0439.
[1520] P-0252, UGA-OTP-0243-0428-R01 at 0442.
[1521] For the notion of using children under the age of 15 years to participate actively in hostilities the Prosecution takes note of Appeal Chamber Judgment ICC-01/04-01/06-3121-Red, para. 322-340.
[1522] P-0097, UGA-OTP-0165-0035-R01 at 0037; P-0200, UGA-OTP-0248-0822-R01 at 0829; P-0252, UGA-OTP-0243-0428-R01 at 0439-0440; P-0275, UGA-OTP-0244-3398-R01 at 3406.
[1523] P-0198, UGA-OTP-0245-0223-R01 at 0225-0226; P-0252, UGA-OTP-0243-0428-R01 at 0447-0450; P-0245, UGA-OTP-0248-0877-R01 at 0881-0898, UGA-OTP-0248-0911-R01 at 0929, 0932-0937, 0939.
[1524] [REDACTED]; P-0187, UGA-OTP-0233-1031-R01 at 1039.
[1525] P-0252, UGA-OTP-0243-0428-R01 at 0435; P-0275, UGA-OTP-0244-3398-R01 at 3401; see also P-0293, UGA-OTP-0248-0040-R01 at 0048.
[1526] *E.g.*, P-0018, UGA-OTP-0159-0002-R01 at 0012; P-0293, UGA-OTP-0248-0040-R01 at 0049.
[1527] P-0205, UGA-OTP-0243-0520-R01 at 0537.
[1528] P-0252, UGA-OTP-0243-0428-R01 at 0443-0450.

639. Children under 15 were used as escorts and bodyguards for fighters in Sinia brigade. As described above, Dominic Ongwen himself used children under 15 as his escorts.[1530] The escorts accompanied the LRA fighters closely, carrying out their escort and bodyguard activities in an active conflict zone. The children provided physical security to their commander and ensured that anything that their commander requested was done.[1531] Children in Dominic Ongwen's escort participated alongside him in hostilities.

640. Besides instances specifically mentioned elsewhere in this section, children under 15 years participated actively in hostilities in, *inter alia*, the attack on Pajule IDP camp on or about 10 October 2003,[1532] the attack on Lukodi IDP camp on or about 19 May 2004,[1533] the attack on Odek IDP camp on or about 29 April 2004,[1534] the attack on Abok IDP camp on or about 8 June 2004,[1535] and the attack at Omia Pachwa in 2004.[1536]

641. Children under 15 often died or were injured as a result of their active participation in hostilities.[1537]

Evidence of P-0097, P-0198, P-0252, and P-0275 – former child soldiers

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[1529] P-0205, UGA-OTP-0243-0630-R01 at 0642.
[1530] P-0054, UGA-OTP-0251-0101-R01 at 0115-0118, 0123-0126; [REDACTED]; P-0224, UGA-OTP-0248-0712-R01 at 0725-0726; P-0099, UGA-OTP-0234-0049-R01 at 0056-0057; [REDACTED].
[1531] P-0252, UGA-OTP-0243-0428-R01 at 0438; [REDACTED]; P-0205, UGA-OTP-0243-0574-R01 at 0589-0601; see also P-0205, UGA-OTP-0247-0076-R01 at 0079.
[1532] P-0009, UGA-OTP-0241-0546-R01 at 0549; P-0006, UGA-OTP-0144-0072-R01 at 0075.
[1533] P-0018, UGA-OTP-0159-0002-R01 at 0012; see also P-0187, UGA-OTP-0233-1031-R01 at 1039; P-0195, UGA-OTP-0233-1046-R01 at 1052.
[1534] P-0054, UGA-OTP-0251-0101-R01 at 0115-0118, 0123-0126; P-0252, UGA-OTP-0243-0428-R01 at 0435; P-0275, UGA-OTP-0244-3398-R01 at 3401; P-0205, UGA-OTP-0243-0544-R01 at 0545-0546; P-0218, UGA-OTP-0238-0720-R01 at 0724.
[1535] P-0293, UGA-OTP-0248-0040-R01 at 0049; P-0280, UGA-OTP-0247-1252-R01 at 1260; P-0054, UGA-OTP-0251-0128 at 0135-0142.
[1536] P-0205, UGA-OTP-0243-0544-R01 at 0553-0555.
[1537] P-0097, UGA-OTP-0165-0035-R01 at 0037; P-0205, UGA-OTP-0243-0574-R01 at 0575-0576, UGA-OTP-0243-0544-R01 at 0545-0546, 0548.

642. P-0097, P-0198, P-0252 and P-0275 are former child soldiers who were abducted by Dominic Ongwen's subordinates and conscripted into Sinia brigade between 1 July 2002 and 31 December 2005. They were used to participate actively in hostilities. As victims of the alleged crimes, their accounts are particularly compelling.

643. P-0097 was 12 years old when abducted from his home in [REDACTED] in February 2005.[1538] He was abducted by soldiers commanded by Dominic Ongwen,[1539] and served under his command in Gulu and Pader until his escape in November 2005.[1540]

644. P-0252 was abducted during the attack on Odek IDP camp on or about 29 April 2004 when 11 years old.[1541] He described being tied up along with other children and dragged through the IDP camp at the time of his abduction. He was taken into the bush. Once the group escaped the government soldiers, P-0252 was made to carry looted goods from Odek. He learned that he had been abducted by Dominic Ongwen's fighters, and saw Dominic Ongwen most days during his time with the LRA. P-0252 stayed with the same group until his escape in late 2005 or early 2006. He was assigned to serve under an individual named [REDACTED] who belonged to the group of Ongwen's escorts.[1542] There were other children aged between five and eight years who served in the same group and who were the responsibility of the group. The witness was instructed to do various things like collecting food and carrying [REDACTED] things including his assault rifle. On one occasion the witness was made to club an adult to death

[1538] P-0097, UGA-OTP-0165-0035-R01 at 0036.
[1539] P-0097, UGA-OTP-0165-0035-R01 at 0037.
[1540] P-0097, UGA-OTP-0165-0035-R01 at 0037-0038.
[1541] P-0252, UGA-OTP-0243-0428-R01 at 0431.
[1542] [REDACTED].

along with three other children. About a week after his abduction, P-0252 was first taught to parade and how to respond during an attack. He also received military training.[1543]

645. P-0252 took part in attacks and ambushes during his time with the LRA. He participated as a porter of looted goods in the Abok attack on or about 8 June 2004. He was sent to take part in the attack on Acet in 2004 soon after the Abok attack and was armed with a log to beat people in the camp. The witness explained that his group at Acet consisted of some 20 women and children. They were armed with logs and jerry cans to make noise and some fighters also joined his group. The plan was for the witness and others in his group to scatter in the camp. This ultimately did not occur because the government soldiers fought back at the barracks. P-0252 said that the first time he was armed with a gun and fired it was in the bush, somewhere around Binya in 2004. He was made to fire the AK assault rifle at government forces when the latter attacked the LRA position. The witness confirmed that he was part of the battle in Binya. He also fought the government forces in an ambush laid in Layoko, of which the witness also gives a detailed description.[1544]

646. P-0275 was only nine years old when abducted during the attack on Odek IDP camp on or about 29 April 2004 and forced to join the LRA unit that abducted him.[1545] He described being abducted with other children. He referred to the man that took him from Odek, and in whose group he remained, as Lapwony ("teacher", in Acholi).[1546] He was told he had to carry a gun and was taught to assemble, oil and disassemble it. He knows it was an AK 47 rifle although the

[1543] P-0252, UGA-OTP-0243-0428-R01 at 0434-0439 and 0441-0442.
[1544] P-0252, UGA-OTP-0243-0428-R01 at 0443-0450.
[1545] P-0275, UGA-OTP-0244-3398-R01 at 3402.
[1546] P-0275, UGA-OTP-0244-3398-R01 at 3402-3403, 3405.

witness never actually fired it.[1547] P-0275 explained that on one occasion he was brought to stay with the overall commander. Despite not naming the commander, the Prosecution's submission is that it was Dominic Ongwen. This is based on the fact that the witness was abducted from Odek, an attack commanded by Dominic Ongwen, and because the commander travelled with a tent and slept apart from his troops,[1548] which is something Dominic Ongwen did.[1549] The witness described seeing soldiers in the LRA who were even younger than him. He saw them returning from an attack on Pabbo carrying guns. Some of them had injuries. The witness estimated that they were as young as six and as old as fourteen. Most of them were boys and some were girls.[1550] The witness was also sent to participate in the attack on Pabbo camp. His orders were to collect food during the attack. The LRA was, however, chased away by government soldiers before the witness's group entered.[1551]

647. P-0198 was abducted on her way to school on 15 June 2003 when she was about 10 years old.[1552] The commanders of the group that abducted her were Charles Tabuley and Dominic Ongwen. She remained in Tabuley's group and was one of the people who had to abduct children between 11 and 12 years. P-0198 joined Dominic Ongwen's unit in about November 2003, after the death of Tabuley. The witness described in detail the "work" she had to do on Dominic Ongwen's orders, namely abducting and killing people.[1553] Dominic Ongwen trained the witness on how to load and shoot the gun. She saw Dominic Ongwen training other children as well; he was the one giving orders. The younger of the children trained were around nine years old. The children who received the

[1547] P-0275, UGA-OTP-0244-3398-R01 at 3404.
[1548] P-0275, UGA-OTP-0244-3398-R01 at 3405.
[1549] *See e.g.*, P-0252, UGA-OTP-0243-0428-R01 at 0437.
[1550] P-0275, UGA-OTP-0244-3398-R01 at 3407.
[1551] P-0275, UGA-OTP-0244-3398-R01 at 3407.
[1552] [REDACTED].
[1553] P-0198, UGA-OTP-0235-0217-R01 at 0219-0225.

training also later participated in the attacks.[1554] P-0198 further explained she carried a gun and "went to work" with a gun.[1555]

3. Dominic Ongwen's individual criminal responsibility

648. Dominic Ongwen is criminally responsible for conscripting children under 15 and using them to participate actively in hostilities as an indirect co-perpetrator pursuant to article 25(3)(a). Dominic Ongwen is also responsible for ordering the alleged crimes pursuant to article 25(3)(b), or for contributing to the alleged crimes pursuant to article 25(3)(d)(i) and (ii), or bears criminal responsibility as a military commander pursuant to article 28(a).

Dominic Ongwen is criminally responsible pursuant to article 25(3)(a):

i. Dominic Ongwen was part of a common plan or an agreement with one or more persons

649. From at least 1 July 2002 to 31 December 2005, in the context of the on-going non-international armed conflict in northern Uganda, Dominic Ongwen, Joseph Kony, Sinia brigade leadership ("child soldiers co-perpetrators") implemented a common plan to abduct children into Sinia brigade in order to ensure a constant supply of fighters ("child soldiers common plan"). The co-perpetrators meant to engage in their conduct and intended to conscript children under 15 and use them to participate actively in hostilities, or were aware this would occur in the ordinary course of events when implementing the child soldiers common plan.

[1554] P-0198, UGA-OTP-0235-0217-R01 at 0230, UGA-OTP-0245-0223-R01 at 0229-0230.
[1555] P-0198, UGA-OTP-0235-0217-R01 at 0230.

650. Joseph Kony throughout the relevant period issued orders to abduct and train children to replenish the LRA forces. Kony's orders were received by Dominic Ongwen and other brigade and battalion commanders, who were entrusted with their execution.[1556]

651. Kony instructed his commanders to concentrate on abducting only young children because they are easy to control.[1557] He envisioned that children "will grow as their soldiers",[1558] and explained that it is easier to work with children and train them to become LRA soldiers.[1559] Kony articulated the ideal age of abductees. Those aged above 15 years old are "problems", and no one should abduct people older than 15 years.[1560] On one occasion, Kony instructed all of his commanders to abduct boys of 10 years and below.[1561] On 9 May 2003, Kony spoke of abducting people of the "right size",[1562] *i.e.* those the LRA thought were most useful: children under 15. Kony further told his commanders to keep new abductees well because "they are now their fresh fighters",[1563] their "future" fighters,[1564] and the "pillars of LRA".[1565] He also emphasised the importance of abducting and training recruits: "without recruits [the LRA] will not operate effectively";[1566] recruits will "keep [the] LRA [surviving]";[1567] without children the "LRA would be nowhere".[1568]

[1556] P-0231, UGA-OTP-0243-2025-R01 at 2041; P-0205, UGA-OTP-0247-0481-R01 at 0493-0498, UGA-OTP-0243-0819-R01 at 0825-0827, 0832-0833.
[1557] ISO logbook, UGA-OTP-0065-0002 at 0073.
[1558] ISO logbook, UGA-OTP-0064-0093 at 0121.
[1559] ISO logbook, UGA-OTP-0065-0002 at 0065.
[1560] ISO logbook, UGA-OTP-0065-0002 at 0049.
[1561] ISO logbook, UGA-OTP-0065-0002 at 0035.
[1562] ISO logbook, UGA-OTP-0068-0146 at 0150-0151.
[1563] ISO logbook, UGA-OTP-0064-0002 at 0049.
[1564] ISO logbook, UGA-OTP-0068-0146 at 0161; UPDF logbook, UGA-OTP-0197-2162 at 2209.
[1565] ISO logbook, UGA-OTP-0064-0002 at 0052.
[1566] ISO logbook, UGA-OTP-0064-0002 at 0056.
[1567] ISO logbook, UGA-OTP-0068-0002 at 0042.
[1568] ISO logbook, UGA-OTP-0065-0002 at 0049.

652. Reports of intercepted LRA radio communication in the relevant period demonstrate that senior LRA commanders, including Dominic Ongwen, ensured that Kony's orders were carried out. [REDACTED], for instance, reported that on 6 September 2002, Dominic Ongwen abducted 86 recruits after an ambush.[1569] Tabuley on 21 July 2002 reported that [REDACTED], who was the [REDACTED],[1570] had abducted school children.[1571] On 18 August 2002, Lukwiya reported he had abducted a good number of "young children who were undergoing training and had high morale.[1572] Lukwiya also reported that Pokot, a battalion commander in Sinia,[1573] abducted many recruits - "very active and healthy bodied young [people]" who were easily picking up training and the LRA ways of life.[1574] On several occasions, commanders reported to Kony that they had abducted children of "the right size",[1575] *i.e.* children under 15.

653. Dominic Ongwen acted in a coordinated manner with his co-perpetrators to implement the common plan. P-0205 confirmed that Dominic Ongwen relayed Kony's orders to abduct to his subordinates. The same witness recalled that on one occasion, Dominic Ongwen told him that they were free to abduct, so it was at the discretion of the individuals to replenish their forces.[1576] Dominic Ongwen regularly communicated with his co-perpetrators, *inter alia*, reporting on the actions carried out in pursuance of the common plan. For example, following the attack on Odek IDP camp on or about 29 April 2004, Dominic Ongwen reported on the LRA radio that men and women had been abducted in the attack.[1577] On one occasion, when receiving a report on newly abducted recruits from his

[1569] ISO logbook, UGA-OTP-0064-0093 at 0129-0130.
[1570] ISO logbook, UGA-OTP-0064-0093 at 0166-0167.
[1571] ISO logbook, UGA-OTP-0063-0194 at 0308.
[1572] ISO logbook, UGA-OTP-0064-0002 at 0049.
[1573] ISO logbook, UGA-OTP-0065-0002 at 0083.
[1574] ISO logbook, UGA-OTP-0064-0002 at 0052.
[1575] ISO logbook, UGA-OTP-0068-0146 at 0150-0151, 0161.
[1576] P-0205, UGA-OTP-0243-0819-R01 at 0832-0833.
[1577] See para. 259.

subordinate [REDACTED], Dominic Ongwen expressed that the recruits should be kept very well and that abduction "should be at its [peak] because [it is the] LRA future".[1578]

654. The evidence outlined in other paragraphs of this section on the conscription and use of child soldiers also demonstrates that Dominic Ongwen was part of the child soldiers common plan, and that his contribution to its execution was essential.[1579]

ii. Dominic Ongwen carried out an essential contribution in a coordinated manner with other co-perpetrators that resulted in the fulfilment of the material elements of the crimes

655. Dominic Ongwen's contribution to the realisation of the child soldiers common plan included the following:

- He led by example, by personally using children under 15 as escorts or in his personal entourage. These children participated in hostilities alongside him.[1580]
- He ordered his subordinates to abduct children to replenish the ranks of his brigade or battalion,[1581] at times explicitly ordering that children under 15 be abducted.[1582]
- He actively encouraged and endorsed the conscription of children into the LRA.[1583]

[1578] ISO logbook, UGA-OTP-0062-0145 at 0277.
[1579] See para. 625, 627, 632, 633, 639, 647 hereof.
[1580] *See* para. 633.
[1581] P-0224, UGA-OTP-0244-3186-R01 at 3191-3198; P-0205, UGA-OTP-0243-0520-R01 at 0530-0531, UGA-OTP-0247-0481-R01 at 0497-0500, UGA-OTP-0243-0819-R01 at 0825-0827, 0832-0833.
[1582] P-0233, UGA-OTP-0243-1149-R01 at 1151-1162.
[1583] P-0205, UGA-OTP-0243-0819-R01 at 0832-0833.

- He planned, ordered, coordinated and deployed troops under his command for military attacks and attacks against the civilian population, in which children under 15 years actively participated. He personally participated in some of those attacks.[1584]
- He had operational control over the implementation of the child soldiers common plan in the units he commanded by virtue of his position.[1585]
- At least from when he was brigade commander of Sinia, Dominic Ongwen ensured and distributed military supplies for the brigade that included children under 15 in its ranks.[1586]
- He encouraged, supervised and took part in military training of children.[1587]
- He maintained communication with his co-perpetrators and his subordinates.[1588]
- As a battalion commander and then Sinia brigade commander, Dominic Ongwen had effective command and control over troops who conscripted and used children under 15. He failed to take steps to prevent or repress the crimes being committed or to punish the perpetrators.

iii. Dominic Ongwen had control over the organisation, which consisted of an organised and hierarchical apparatus of power

[1584] P-0245, UGA-OTP-0248-0911-R01 at 0895 and 0927-0932; P-0018, UGA-OTP-0159-0002-R01 at 0012; see also P-0187, UGA-OTP-0233-1031-R01 at 1039; P-0195, UGA-OTP-0233-1046-R01 at 1052; P-0054, UGA-OTP-0251-0101-R01 at 0115-0118, 0123-0126, UGA-OTP-0251-0128 at 0135-0142; P-0252, UGA-OTP-0243-0428-R01 at 0435; P-0275, UGA-OTP-0244-3398-R01 at 3401; P-0205, UGA-OTP-0243-0544-R01 at 0545-0546; P-0218, UGA-OTP-0238-0720-R01 at 0724; P-0293, UGA-OTP-0248-0040-R01 at 0049; P-0280, UGA-OTP-0247-1252-R01 at 1260; see further the sections on Pajule (para. 148-228), Odek(229-312), Lukodi (313-376), and Abok (372-427) IDP camps.
[1585] *See further* the section on common elements of modes of liability, para. 75-110.
[1586] P-0205, UGA-OTP-0247-0418-R01 at 0437-0439, 0444; P-0231, UGA-OTP-0243-1972-R01 at 1997.
[1587] P-0198, UGA-OTP-0235-0217-R01 at 0230, UGA-OTP-0245-0223-R01 at 0229-0230; P-0205, UGA-OTP-0243-0564-R01 at 0572-0573.
[1588] *See further* section on intercepted LRA radio communications, para. 59-72.

656. This element is satisfied by reference to the section on common elements of modes of liability, paragraphs 73 to 110.

iv. The execution of the crimes was secured by almost automatic compliance with the orders issued by Dominic Ongwen

657. This element is satisfied by reference to the section on common elements of modes of liability, paragraphs 73 to 110.

v. Dominic Ongwen had knowledge and intent as prescribed by article 30 and specific to the crimes

658. Dominic Ongwen intended to bring about the objective elements of the crimes or, alternatively, was aware that the crimes would occur in the ordinary course of events when implementing the child soldiers common plan.

659. Ongwen's intent and knowledge are evident from his actions of receiving orders to abduct children, including those under 15, to serve in the LRA. He ordered abductions targeting young children and was briefed by his subordinates about them. He was surrounded by children and he himself used children under 15 as escorts. Prior to LRA operations, it was typical that Dominic Ongwen himself briefed his troops, including children under 15, who took part in ambushes, attacks against civilian population, and battles with the UPDF.

660. Dominic Ongwen also knew or should have known that children conscripted in the Sinia brigade were younger than 15 years. The majority of conscripted children were by their very appearance under 15, some manifestly so. This is documented by photographs of former child soldiers taken shortly after their

escape from the LRA.[1589] The children were continuously around Dominic Ongwen, acting as his and other soldiers' porters and escorts. Finally, abducting very young children was in itself a longstanding LRA policy and Dominic Ongwen himself on at least one occasion ordered that children under 15 be abducted.[1590]

vi. Dominic Ongwen was aware of the factual circumstances which allowed him to exert control over the crimes

661. Dominic Ongwen was aware of the factual circumstances that allowed him to exert control over the crimes. Dominic Ongwen knew that he had control over the crimes because he was ordering and overseeing them being committed and committed the crimes himself. He routinely issued orders and had the young recruits produced trained and participating in hostilities. Given the structure and discipline system of the LRA and the Sinia brigade, as well as his commanding role as set out in the section on common elements of modes of liability, paragraphs 73 to 110, Dominic Ongwen was clearly aware of the factual circumstances enabling him to exercise control over the commission of crimes through other persons.

Dominic Ongwen is criminally responsible under article 25(3)(b):

662. In the alternative, Dominic Ongwen is also individually criminally responsible pursuant to article 25(3)(b) for ordering the alleged crimes. He held a position of authority as a commanding officer within the LRA and routinely issued orders to his subordinates, including to carry out abductions and military operations,

[1589] Photograph of P-0097, UGA-OTP-0165-0050; P-0275 Photographs, UGA-OTP-0244-3419, UGA-OTP-0244-3415 at 3415.
[1590] P-0233, UGA-OTP-0243-1149-R01 at 1151-1162.

which resulted in children under 15 being conscripted into units under his command and the children being actively used in hostilities. His orders had a direct effect on the crimes committed, as described above.

Dominic Ongwen is criminally responsible under article 25(3)(d)(i) and (ii):

663. In the alternative, Dominic Ongwen contributed to the commission of crimes by a group of persons, including Joseph Kony and other senior Sinia commanders who were acting with a common purpose. Dominic Ongwen's contribution was made with the aim of furthering their criminal activity or criminal purpose to forcibly recruit children into the LRA, including those younger than 15 and to use them to actively participate in the hostilities. As elaborated above, Dominic Ongwen coordinated and deployed troops to abduct children into the LRA, planned, coordinated and participated in attacks that resulted in the conscription of children in the LRA or in which children were used to actively participate in hostilities; and he trained or supervised the training of children. He did so with the aim of furthering the criminal activity or criminal purpose of the group or, at least, knowing of the group's intention to commit the crimes.

Dominic Ongwen is criminally responsible under article 28(a):

664. Dominic Ongwen is also responsible for the charged crimes as a military commander pursuant to article 28(a). Dominic Ongwen's position of a military commander throughout the charged period is set out in detail in the section on common elements of modes of liability, paragraphs 73 to 110.

665. The charged crimes were committed by troops in Sinia brigade under Dominic Ongwen's effective command and control or effective authority and control as a result of his failure to exercise control properly. Dominic Ongwen knew or, owing

to the circumstances at the time, should have known that the soldiers in Sinia brigade under his command or authority were conscripting children under 15 and using them to participate actively in hostilities. This is demonstrated by Dominic Ongwen's own involvement in the planning and execution of the crimes, the reports conveyed to him about the commission of crimes by his subordinates and his personal observation of the crimes.

666. Dominic Ongwen failed to take any of the necessary and reasonable measures within his power to prevent these crimes being committed by his subordinates. Nor did he submit them for prosecution by competent authorities. This is not unexpected since Dominic Ongwen was at the heart of the crimes being committed. Not only did he fail to do anything to stop the crimes, the evidence summarised above demonstrates that he actively encouraged them.

XIII. CONCLUSION

667. The Chamber should confirm all charges against Dominic Ongwen and commit this case for trial.

Fatou Bensouda,
Prosecutor

Dated this 15th day of February 2016
At The Hague, The Netherlands