

1 International Criminal Court
2 Trial Chamber IX - Courtroom 1

3 Situation: Republic of Uganda

4 In the case of The Prosecutor v. Dominic Ongwen - ICC-02/04-01/15

5 Presiding Judge Bertram Schmitt, Judge Péter Kovács and Judge Raul Cano
6 Pangalangan

7 Trial Hearing

8 Tuesday, 6 December 2016

9 (The hearing starts in open session at 9.31 a.m.)

10 THE COURT USHER: All rise. The International Criminal Court is
11 now in session.

12 PRESIDING JUDGE SCHMITT: Thank you very much. I would like to
13 welcome everybody in the courtroom. Thank you.

14 The first we have to do is to call the case and I would ask the
15 Court Officer, please, to do this.

16 THE COURT OFFICER: Thank you, Mr President. The situation in
17 Uganda, in the case of The Prosecutor versus Dominic Ongwen, case
18 reference ICC-02/04-01/15. We are in open session.

19 PRESIDING JUDGE SCHMITT: Thank you very much.

20 And then I would ask the counsel to introduce themselves for the
21 record.

22 Please, Madam Prosecutor.

23 MS BENSOUA: Thank you, Mr President. Mr President, your
24 Honours, present in court with me today are Ben Gumpert, senior trial
25 Lawyer; Adesola Adeboyejo, trial lawyer; Ramu Fatima Bittaye, case

1 Manager; Kamran Choudhry, trial lawyer; Sanyu Ndagire, trial lawyer;
2 Hai Do Duc; Julian Elderfield; Yulia Nuzban; and Beti Hohler. Thank you,
3 Mr. President.

4 PRESIDING JUDGE SCHMITT: Thank you.

5 And for the Defence, please, Mr. Odongo.

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

11 PRESIDING JUDGE SCHMITT: And the Legal Representatives for
12 Victims.

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

19 PRESIDING JUDGE SCHMITT: Thank you.

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

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

25 PRESIDING JUDGE SCHMITT: Thank you very much.

1 For the members of the public and also for the parties and
2 participants, since not everybody may know us yet, my name is Bertram
3 Schmitt and I am the Presiding Judge of this Chamber; to my right is
4 Judge Péter Kovács and to my left, Judge Raul Pangalangan.

5 We first have to issue a decision. Before proceeding further, we
6 have to address a Defence request of yesterday. This request is filing
7 620 in the case record. The Defence requests the following:

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

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

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

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

20 The Prosecution opposes the request in a response which will be
21 notified shortly.

22 In support of these requests, the Defence provides information
23 dating back to September 2015 about various issues Mr Ongwen had had at
24 the ICC Detention Centre. The Defence also informs the Chamber of a
25 15 November 2016 preliminary report from its own two experts. These

1 Defence experts allegedly state that Mr Ongwen does not understand the
2 charges brought against him. The Defence does not provide these
3 preliminary expert reports and indicates that the final reports will be
4 provided and disclosed in due course.

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

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

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

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

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

1 the factual basis supporting the request was known to the Defence well
2 before 28 October 2016.

3 The Defence only filed this request on 5 December 2016, the day
4 before the opening statements in the case and well after the expiry of
5 the 28 October 2016 deadline.

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

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

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

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

24 It must also be emphasised that the Defence failed to provide
25 these preliminary reports leading to grave allegations that Mr Ongwen is

1 not fit to commence the trial with no concrete substantiation.

2 The Defence gave no indication during the entire trial
3 preparation phase that Mr Ongwen was unfit to stand trial. It elected to
4 wait until the absolute last moment it could. It is revealing that in
5 its latest request filed before the present one, Mr Ongwen was seeking
6 leave to appeal a previous decision on grounds that witness statements
7 were introduced without being translated into Acholi so that Mr Ongwen
8 could read and understand them.

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

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

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

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

23 The Chamber will not determine the validity of any grounds for
24 excluding criminal responsibility before the Prosecution has even made
25 its opening statements. This rejection is without prejudice to the

1 Chamber later appointing experts to verify the viability of any grounds
2 for excluding criminal responsibility.

3 As for the request to order psychiatric and/or psychological
4 examination of Mr Ongwen to ensure that he is fit to stand trial - this
5 is part 4 of the request as identified above - the Chamber emphasises
6 again that, A, it has been presented with insufficient evidence at this
7 time to conclude that Mr Ongwen is unfit; and, B, no adjournment of the
8 trial is therefore justified.

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

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

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

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

22 On 16 December 2003, the Government of Uganda referred to the
23 Prosecution of the Court the "situation concerning the
24 Lord's Resistance Army". This referral was understood to extend to the
25 entire situation in northern Uganda regardless of who committed the

1 crimes under this investigation. At the request of the Prosecution, the
2 Pre-Trial Chamber on 8 July 2005 issued warrants of arrest against
3 Joseph Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo and Mr Ongwen.

4 Proceedings against Mr. Lukwiya and Mr Odhiambo have been
5 terminated due to their death, while the warrants of arrest against
6 Joseph Kony and Vincent Otti remain pending.

7 Mr Ongwen was transferred to the custody of the court in January
8 2015. This case was severed from the case against Mr. Kony and Mr. Otti
9 on 6 February 2015 and exclusively concerns Mr Ongwen.

10 Charges brought forward by the Prosecutor against Mr Ongwen were
11 confirmed by Pre-Trial Chamber II of the court on 23 March 2016.

12 This case is the first to go to trial from the Uganda situation
13 since the 2003 referral was made.

14 In accordance with Article 64(8)(a) of the Statute, the charges
15 will now be read to the accused following which Mr Ongwen will be
16 afforded an opportunity to make an admission of guilt or to plead not
17 guilty.

18 This is an excerpt of the public redacted version of the charges
19 in which the names of a number of alleged victims are redacted and
20 replaced with a pseudonym in counts 50 to 60.

21 These names are redacted only from the public. Mr Ongwen and his
22 Defence team know the identities of the concerned individuals.

23 Court Officer, please read now the portion of the confirmed
24 charges from the decision on the confirmation of charges identified in
25 paragraph 6 of the Decision of the Chamber 497.

1 THE COURT OFFICER: Thank you, Mr President.

2 Count 1, attacks against the civilian population as such as a war
3 crime on or about 10 October 2003, at or near Pajule IDP camp;

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

6 Count 3, murder as a war crime on or about 10 October 2003, at or
7 near Pajule IDP camp;

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

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

12 Count 6, cruel treatment as a war crime on or about 10 October
13 2003, at or near Pajule IDP camp;

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

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

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

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

25 Count 11, attacks against the civilian population as such as a

1 war crime on or about 29 April 2004, at or near Odek IDP camp;

2 Count 12, murder as a crime against humanity on or about 29 April
3 2004, at or near Odek IDP camp;

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

6 THE INTERPRETER: The interpreter requests that the Court Officer
7 slow down.

8 THE COURT OFFICER: Count 14, attempted murder as a crime against
9 humanity on or about 29 April 2004, at or near Odek IDP camp;

10 Count 15, attempted murder as a war crime on or about 29 April
11 2004, at or near Odek IDP camp;

12 Count 16, torture as a crime against humanity on or about 29
13 April 2004, at or near Odek IDP camp;

14 Count 17, torture as a war crime on or about 29 April 2004, at or
15 near Odek IDP camp;

16 Count 18, other inhumane acts as a crime against humanity on or
17 about 29 April 2004, at or near Odek IDP camp;

18 Count 19, cruel treatment as a war crime on or about 29 April
19 2004, at or near Odek IDP camp;

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

22 Count 21, pillaging as a war crime on or about 29 April 2004, at
23 or near Odek IDP camp;

24 Count 22, outrages upon personal dignity as a war crime on or
25 about 29 April 2004, at or near Odek IDP camp;

1 Count 23, persecution on political grounds of civilians perceived
2 by the LRA as being affiliated with or supporting the Ugandan government
3 by attacks against the civilian population as such, murder, attempted
4 murder, torture, cruel treatment, other inhumane acts, enslavement,
5 outrages upon personal dignity, and pillaging, on or about 29 April 2004,
6 at or near Odek IDP camp;

7 Count 24, attacks against the civilian population as such as a
8 war crime on or about 19 May 2004, at or near Lukodi IDP camp;

9 Count 25, murder as a crime against humanity on or about 19 May
10 2004, at or near Lukodi IDP camp;

11 Count 26, murder as a war crime on or about 19 May 2004, at or
12 near Lukodi IDP camp;

13 Count 27, attempted murder as a crime against humanity on or
14 about 19 May 2004, at or near Lukodi IDP camp;

15 Count 28, attempted murder as a war crime on or about 19 May
16 2004, at or near Lukodi IDP camp;

17 Count 29, torture as a crime against humanity on or about 19 May
18 2004, at or near Lukodi IDP camp;

19 Count 30, torture as a war crime on or about 19 May 2004, at or
20 near Lukodi IDP camp;

21 Count 31, other inhumane acts as a crime against humanity on or
22 about 19 May 2004, at or near Lukodi IDP camp;

23 Count 32, cruel treatment as a war crime on or about 19 May 2004,
24 at or near Lukodi IDP camp;

25 Count 33, enslavement as a crime against humanity on or about 19

1 May 2004, at or near Lukodi IDP camp;

2 Count 34, pillaging as a war crime on or about 19 May 2004, at or
3 near Lukodi IDP camp;

4 Count 35, destruction of property as a war crime on or about 19
5 May 2004, at or near Lukodi IDP camp;

6 Count 36, persecution on political grounds of civilians perceived
7 by the LRA as being affiliated with or supporting the Ugandan government
8 by attacks against the civilian population as such, murder, attempted
9 murder, torture, cruel treatment, other inhumane acts, enslavement,
10 pillaging, and destruction of property on or about 19 May 2004, at or
11 near Lukodi IDP camp;

12 Count 37, attacks against the civilian population as such as a
13 war crime on or about 8 June 2004, at or near Abok IDP camp;

14 Count 38, murder as a crime against humanity on or about 8 June
15 2004, at or near Abok IDP camp;

16 Count 39, murder as a war crime on or about 8 June 2004, at or
17 near Abok IDP camp;

18 Count 40, attempted murder as a crime against humanity on or
19 about 8 June 2004, at or near Abok IDP camp;

20 Count 41, attempted murder as a war crime on or about 8 June
21 2004, at or near Abok IDP camp;

22 Count 42, torture as a crime against humanity on or about 8 June
23 2004, at or near Abok IDP camp;

24 Count 43, torture as a war crime on or about 8 June 2004, at or
25 near Abok IDP camp;

1 Count 44, other inhumane acts as a crime against humanity on or
2 about 8 June 2004, at or near Abok IDP camp;

3 Count 45, cruel treatment as a war crime on or about 8 June 2004,
4 at or near Abok IDP camp;

5 Count 46, enslavement as a crime against humanity, at or near
6 Abok IDP camp;

7 Count 47, pillaging as a war crime on or about 8 June 2004, at or
8 near Abok IDP camp;

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

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

17 Count 50, forced marriage as a crime against humanity of P-0099
18 between 1 July 2002 and September 2002, of P-0101 between 1 July 2002 and
19 July 2004, of P-0214 between September 2002 and 31 December 2005, of
20 P-0226 between 1 July 2002 and sometime in 2003, of P-0227 between
21 approximately April 2005 and 31 December 2005;

22 Count 51, torture as a crime against humanity of P-0101 between 1
23 July 2002 and July 2004, of P-0214 between September 2002 and 31 December
24 2005, of P-0226 between 1 July 2002 and sometime in 2003, of P-0227
25 between approximately April 2005 and 31 December 2005;

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

5 Count 53, rape as a crime against humanity of P-0101 between 1
6 July 2002 and July 2004, of P-0214 between September 2002 and 31 December
7 2005, of P-0226 between 1 July 2002 and sometime in 2003, of P-0227
8 between approximately April 2005 and 31 December 2005;

9 Count 54, rape as a war crime of P-0101 between 1 July 2002 and
10 July 2004, of P-0214 between September 2002 and 31 December 2005, of
11 P-0226 between 1 July 2004 and sometime in 2003 (sic), of P-0227, between
12 approximately April 2005 and 31 December 2005;

13 Count 55, sexual slavery as a crime against humanity of P-0101
14 between 1 July 2002 and July 2004, of P-0214 between September 2002 and
15 31 December 2005, of P-0226 between 1 July 2002 and sometime in 2003, of
16 P-0227 between approximately April 2005 and 31 December 2005;

17 Count 56, sexual slavery as a war crime of P-0101 between 1 July
18 2002 and July 2004, of P-0214 between September 2002 and 31 December
19 2005, of P-0226 between 1 July 2002 and sometime in 2003, of P-0227
20 between approximately April 2005 and 31 December 2005;

21 Count 57, enslavement, a crime against humanity, of P-0099
22 between 1 July 2002 and September 2002, of P-0101 between 1 July 2002 and
23 July 2004, of P-0214 between September 2002 and 31 December 2005, of
24 P-0226 between 1 July 2002 and sometime in 2003, of P-0227 between
25 approximately April 2005 and 31 December 2005, of P-0235 from September

1 2002 to 31 December 2005, of P-0236 between September 2002 and 31
2 December 2005;

3 Count 58, forced pregnancy as a crime against humanity of P-0101,
4 two pregnancies between 1 July 2002 and July 2004, of P-0214 sometime in
5 2005;

6 Count 59, forced pregnancy as a war crime of P-0101, two
7 pregnancies, between 1 July 2002 and July 2004, of P-0214 sometime in
8 2005;

9 Count 60, outrages upon personal dignity, a war crime, of P-0226
10 sometime in 2002 or early 2003, close to Padongo, northern Uganda, of
11 P-0235 sometime in late 2002 or early 2003, at an unspecified location in
12 northern Uganda;

13 Count 61, forced marriage as a crime against humanity from at
14 least 1 July 2002 until 31 December 2005;

15 Count 62, torture as a crime against humanity from at least 1
16 July 2002 until 31 December 2005;

17 Count 63, torture as a war crime from at least 1 July 2002 until
18 31 December 2005;

19 Count 64, rape as a crime against humanity from at least 1 July
20 2002 until 31 December 2005;

21 Count 65, rape as a war crime from at least 1 July 2002 until 31
22 December 2005;

23 Count 66, sexual slavery as a crime against humanity from at
24 least 1 July 2002 until 31 December 2005;

25 Count 67, sexual slavery as a war crime from at least 1 July 2002

1 until 31 December 2005;

2 Count 68, enslavement as a crime against humanity from at least 1
3 July 2002 until 31 December 2005;

4 Count 69, conscription of children under the age of 15 into an
5 armed group as a war crime, between 1 July 2002 and 31 December 2005, in
6 northern Uganda;

7 Count 70, use of children under the age of 15 to participate
8 actively in hostilities as a war crime, between 1 July 2002 and 31
9 December 2005, in northern Uganda.

10 Thank you, Mr President.

11 PRESIDING JUDGE SCHMITT: Thank you very much.

12 Mr Ongwen, please rise.

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

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

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

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

23 PRESIDING JUDGE SCHMITT: You say you do recall that you answered
24 that you do not understand the charges. Do you recall saying - give it a
25 second thought - that you have, and I quote, said that you "read and

1 understood the document containing the charges"?

2 THE ACCUSED: (Interpretation) I did understand the document
3 containing the -- I do understand -- I did understand the document
4 containing the charges but not the charges, because the charges -- the
5 charges I do understand as being brought against LRA but not me, because
6 I'm not the LRA. The LRA is Joseph Kony who is the leader of the LRA.

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

9 THE ACCUSED: (Interpretation) Yes, I did receive the charges in
10 Acholi, but I reiterate it is the LRA who abducted people in northern
11 Uganda. The LRA killed people in northern Uganda. LRA committed
12 atrocities in northern Uganda, and I'm one of the people against whom the
13 LRA committed atrocities. But it's not me, Dominic Ongwen, personally,
14 who is the LRA.

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

20 (Recess taken at 10.19 a.m.)

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

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

23 PRESIDING JUDGE SCHMITT: We have to issue the following
24 decision:

25 The Chamber is satisfied that Mr Ongwen understands the nature of

1 the charges. Mr Ongwen confirmed to Pre-Trial Chamber II that he had
2 read and understood the charges as set out in the document containing the
3 charges at the confirmation hearing.

4 As Mr Ongwen said back in January of this year, "Thank you, your
5 Honour. Well, from my point of view, whether the charges are read or not
6 read is all going to be a waste of time. You may speak five words and
7 only two issues are correct. You may speak ten words and only two things
8 are correct. The reading out these charges, whether they are true or
9 not, is all going to be a waste of time. I've been handed out the
10 document translated in Acholi, so I've read and understood it. Thank
11 you."

12 Other information before the Chamber also confirms that Mr Ongwen
13 understands the charges. First, the charges that Mr Ongwen said he
14 understood in January are not materially different now. All 70 charges
15 alleged by the Prosecution were essentially confirmed. The confirmation
16 decision has been fully translated into Acholi specifically for
17 Mr Ongwen's benefit. The Chamber is not persuaded that Mr Ongwen cannot
18 understand something now he so clearly understood back in January. In
19 this context, the Chamber is also satisfied that Mr Ongwen has been fully
20 informed of the incriminating conduct since the confirmation of charges
21 decision set out the facts of the case with precision, together with
22 their legal characterisation.

23 Lacking further substantiation and in light of Mr Ongwen's own
24 admission at the confirmation stage, the Chamber is unpersuaded that
25 Mr Ongwen at this stage does not understand the nature of the charges as

1 foreseen in Article 64(8)(a) of the Statute.

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

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

10 As stated previously, the Chamber has not received sufficient
11 substantiation to conclude that Mr Ongwen is unfit. In particular, the
12 expert reports which purport to prove the Defence's position have not
13 been provided to the Chamber. The Chamber nevertheless notes that in
14 describing the expert reports, the Defence says the experts conclude that
15 Mr Ongwen, "A, does not understand the charges," and "B, was not aware of
16 the wrongfulness of his actions during his time in the bush." The former
17 statement is a legal question experts cannot determine at the expense of
18 the Chamber, for it is the Chamber who has the final decision on whether
19 Mr Ongwen understands the charges. The latter statement on its face is
20 less about unfitness and more about Mr Ongwen disputing the legal
21 characterisation of his alleged prior conduct.

22 Mr Ongwen's remarks today are no different. Mr Ongwen's remarks
23 that the LRA is not him and that the LRA committed these acts demonstrate
24 an understanding of the confirmed charges. Mr Ongwen's remarks are
25 rather a dispute as to Mr Ongwen's responsibility for these alleged acts.

1 And this is precisely a matter to be discussed during trial and is not
2 properly part of an Article 64(8)(a) determination.

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

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

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

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

15 First, I would like to ask you if the Court would grant me
16 permission. This is a division of death and life. In my opinion, this
17 amounts -- this amounts to my going back into the bush for the second
18 time. The International Criminal Court, do you agree, do you agree that
19 I'm the leader of the LRA? Do you agree that my life was not ruined?

20 PRESIDING JUDGE SCHMITT: You are here before a court and you are
21 not in the position to ask the Court questions. You are in the position
22 to make submissions via your counsel. You will receive a fair and
23 impartial trial, and you may, if you want, answer the questions that the
24 Court puts to you. And I would ask you to answer the question and
25 I repeat it: Do you make an admission of guilt with respect to any

1 charge?

2 THE ACCUSED: (Interpretation) In the name of God, I deny all
3 these charges in respect to the war in northern Uganda.

4 PRESIDING JUDGE SCHMITT: You therefore plead not guilty with
5 respect to all the charges, I assume.

6 THE ACCUSED: (Interpretation) Yes.

7 PRESIDING JUDGE SCHMITT: Thank you. You may sit down, please.

8 As stated previously, in Decision 449, the Chamber set a deadline
9 of 28 October 2016 for the filing of any motions requiring resolution
10 prior to the commencement of the trial. The Chamber subsequently ruled
11 on all requests received on or before this date, and with this morning's
12 oral decision has in fact ruled on all pending requests at this time.

13 However, noting Rule 134(2) of the Rules, the Chamber will now
14 ask the parties whether they have any remaining objections or
15 observations concerning the conduct of the proceedings which have arisen
16 since the confirmation hearings. Be mindful that in accordance with Rule
17 134(2), no such objection or observation may be raised or made again
18 during the trial proceedings without the leave of the Chamber.

19 I first ask the Prosecution, please.

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

21 PRESIDING JUDGE SCHMITT: For the Defence?

22 MR TAKU: May it please your Honours. We've carefully listened
23 to the decision today and want just to say that in the course of the
24 proceedings we expect that specificity be given to aspects of some of the
25 charges which may -- with regard to venue, northern Uganda, within a

1 period of five years, is so huge. So we hope that in relation to the
2 question of specificity as the proceedings proceed, in order to have
3 appropriate notice of some of the charges, we will raise this as the
4 occasion arises in the course of the trial.

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

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

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

12 THE COURT USHER: All rise.

13 (Recess taken at 10.48 a.m.)

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

15 THE COURT USHER: All rise.

16 PRESIDING JUDGE SCHMITT: Madam Prosecutor, you have the floor
17 for the opening statement of the Prosecution.

18 MS BENSOUDA: Thank you, Mr President.

19 Mr President, Honourable Judges, this trial is about violence and
20 misery that blighted the lives of millions of people living in northern
21 Uganda. Ordinary citizens, civilians, who wanted no more than to be
22 allowed to live their lives in peace, could no longer live in the
23 villages in which they had been born and raised. Violent attacks on
24 civilian targets by an armed group calling itself the
25 Lord's Resistance Army, or LRA, had resulted in those ordinary people

1 being forced into camps for internally displaced persons (IDPs), and
2 often reduced to dependency on international food aid. These camps were
3 themselves subject to regular and terrifying attacks.

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

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

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

12 When these camps were attacked by the Lord's Resistance Army, the
13 attackers murdered the residents, burned their homes, and the survivors
14 were enslaved to carry away the domestic animals, food, clothes, money,
15 and other basic necessities which the inhabitants needed to survive.
16 Children were abducted on a more permanent basis to be conscripted into
17 the ranks of the attackers as child soldiers and to act as sex slaves.

18 In the course of this trial, the Court will hear about four
19 particular attacks which took place between October 2003 and June of
20 2004. These attacks took place in Pajule, Odek, Lukodi and Abok. A
21 conservative estimate of their combined population at the time of the
22 attacks was about 35,000 people. Approximately 4,000 individuals have
23 made applications to be registered in these proceedings as victims of
24 these four attacks.

25 These locations form a rough triangle. Pajule is in the Pader

1 District. Odek and Lukodi in Gulu District. Abok is just over the
2 boundary in Oyam District of Lango. They have been selected because they
3 are attacks about which the Prosecution has been able to find a
4 significant and coherent body of evidence which demonstrates what
5 happened in detail and which links them to Dominic Ongwen, the accused in
6 this case.

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

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

19 (Viewing of the video excerpt)

20 PRESIDING JUDGE SCHMITT: Is there a problem?

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

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

24 MS BENSOUA: Indeed. Indeed.

25 (Viewing of the video excerpt)

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

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

17 Your Honours, the evidence shows that, in each case,
18 Dominic Ongwen played a prominent role in the planning and execution of
19 the four attacks. For all of them save Pajule, he did so as a commander
20 of one of the four principal operational units of the LRA, the Sinia
21 brigade. In addition to his responsibility for the attacks on the four
22 camps, the Prosecution charges him with crimes related to the abduction
23 of children and their use by the LRA as child soldiers or forced wives
24 and sex slaves.

25 The purpose of these proceedings is to establish whether it can

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

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

19 So what was the nature of the LRA, the organisation in which
20 Dominic Ongwen played such an important role and which was causing mayhem
21 and visiting this misery on the people living in northern Uganda?

22 The LRA was founded and led by a man called Joseph Kony. Kony
23 was one of the five individuals against whom arrest warrants were issued
24 by this Court in 2005 and he remains at large. There is good reason to
25 believe that three of the others for whom arrest warrants were issued,

1 Vincent Otti, Raska Lukwiya and Okot Odhiambo, are deceased.

2 Dominic Ongwen is on trial today.

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

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

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

16 Discipline in the LRA was strict and punishments for infraction
17 of the rules were brutal. Attempts to escape were particularly harshly
18 dealt with. Those who were caught were either put to death or caned so
19 severely that permanent injury was often caused. Despite this, the
20 majority of abductees did, in the end, escape from the clutches of the
21 LRA. Many Prosecution witnesses will recount to the Court how they
22 personally were able to escape.

23 There were peace negotiations between the LRA and the Ugandan
24 government in the mid-1990s. When they failed, the Sudanese government
25 began to provide support to the LRA. The LRA set up semi-permanent bases

1 in southern Sudan from which it was able to launch its attacks on Ugandan
2 targets.

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

11 Your Honours, the Prosecution's case is that civilian camps for
12 displaced persons were targeted because the LRA, despite its leader's
13 claim to be fighting for freedom and democracy, viewed the civilian
14 inhabitants of the government-protected IDP camps in northern Uganda as
15 their enemies. The LRA's thinking was simple: It was a case of "if you
16 are not for us, then you are against us." Any civilian who was unwilling
17 to support their struggle against the government was regarded as an
18 enemy. This amounted to persecution on political grounds, a crime
19 against humanity. It was this persecutory policy that Dominic Ongwen and
20 the fighters that he commanded were implementing.

21 The crimes committed at Pajule, Odek, Lukodi, and Abok, were
22 simply part of a widespread and systematic attack on the civilian
23 population. Between July 2002 and December of 2005, there were literally
24 hundreds of attacks on civilian targets. These were not just large-scale
25 set-piece attacks on IDP camps. People being driven in minibuses along

1 the country roads became the subject of ambushes. Commercial vehicles
2 were stopped and looted. Children on their way to school were abducted.
3 These attacks had a devastating effect upon the ordinary people of
4 northern Uganda.

5 The evidence in this case will establish that Dominic Ongwen was
6 directly involved in many of these attacks by the LRA on civilians in
7 northern Uganda. Part of the case which the Prosecution alleges against
8 him is that he knew that the crimes he committed at Pajule, Odek, Lukodi,
9 and Abok were part of the widespread and systematic attack.

10 Mr President, let me give you some examples.

11 LRA fighters attacked civilians in Ojwii in 2002 on
12 Dominic Ongwen's orders.

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

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

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

24 In September 2003, shortly before the Pajule attack,
25 Dominic Ongwen reported over the radio that he had attacked a church

1 mission at Opit.

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

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

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

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

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

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

20 In addition to these attacks, the Prosecution alleges that
21 Dominic Ongwen played an essential role in two long-term activities which
22 were crucial to the continued existence of the LRA. Both involved the
23 abduction of children, some as young as six, from their family homes.

24 In order to sustain the fighting strength of the LRA, children
25 were kidnapped and recruited to become child soldiers. One Prosecution

1 witness, who was himself abducted by the LRA, estimates that the majority
2 of soldiers in Dominic Ongwen's group in 2002, 2003 to 2004, were
3 children younger than 18, and 70 per cent to 80 per cent of those between
4 13 and 15 years old.

5 Child soldiers underwent rudimentary military training and
6 endured brutal disciplinary measures. They were regularly required to
7 participate not only in murderous attacks on civilian camps but in
8 individual acts of torture and murder designed to convince them that
9 there could be no acceptance back in civilian society.

10 When the Rome Statute recognises the age of 15 as being the
11 threshold for the offences of conscription and use of child soldiers, the
12 evidence in this case makes it plain that Dominic Ongwen bears
13 responsibility for crimes committed against children far younger than
14 this. One of the witnesses on whom the Prosecution relies, himself only
15 nine years old when he was abducted during the attack on Odek IDP camp by
16 troops under Dominic Ongwen's command, described children as young as six
17 receiving military training in Ongwen's brigade. He noticed that they
18 were so small that the muzzles of their AK47 rifles dragged on the ground
19 as they carried the guns on their shoulders.

20 Photographs of some of the Prosecution witnesses were taken soon
21 after they escaped from Dominic Ongwen's Sinia brigade. Protection of
22 the witnesses' identity prevent their being shown in public and what
23 follows will not be shown on the screens in the public gallery.

24

25 For those --

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

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

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

12 In what may seem an astonishing display of confidence,
13 Joseph Kony and his deputy Vincent Otti took part in a radio phone-in
14 programme broadcast on Mega FM radio station based in Gulu in December of
15 2002. Kony spoke about his policy of child abduction to feed the ranks
16 of his fighters.

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

23 He continued, as if it might be some excuse, "This is the same
24 way Museveni was doing it when he was in the bush by abducting."

25 This was the policy that Dominic Ongwen was carrying out when he

1 conscripted children under 15 into his brigade and when he used them to
2 participate in hostilities.

3 Abductions by the LRA also served a second plan. This involved
4 the abduction of girls and young women with the express aim of forcing
5 them to act as wives and sex slaves of LRA commanders and fighters.

6 Again, there was no secrecy about the LRA's activities in this
7 regard. Vincent Otti's words in the radio programme broadcast in
8 December 2002 to which I have already made reference is very clear. He
9 said, and I quote, "I want to assure you that the girls whom we collect
10 and send to the bush are our mothers." Otti went on, and I'm still
11 quoting him, "We always collect the young ones who are not infected with
12 HIV." Your Honours, the only reasonable interpretation of these words is
13 that the LRA was implementing a policy of abducting young girls for sex.

14 These forced wives were given no choice. They were treated as
15 spoils of war, awarded as prizes, without any more say in the matter than
16 if they had been animals or inanimate objects. When they hesitated or
17 refused to accept the sexual advances of the man whom they had been
18 allotted, they were savagely and repeatedly beaten. If they were
19 suspected of trying to escape, they would be caned or murdered. They
20 were held for months and in many cases they were held for years in sexual
21 slavery and domestic slavery and were subjected to repeated rape. Many
22 of them became pregnant without any choice in the matter, and some gave
23 birth to numerous children who were themselves then ingested into the
24 ranks of the LRA.

25 As a senior LRA commander Dominic Ongwen benefited most from the

1 misery of the abducted women and girls. Of his many, many forced wives,
2 seven women have already given evidence about their personal experiences.

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

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

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

22 Another Prosecution witness, P-0101, 14 years old at the time of
23 the crimes, gave a devastating insight into Dominic Ongwen's behaviour
24 towards the young girls who were placed at his mercy. She spoke both
25 from personal experience of her rape by Ongwen and from more general

1 observations over a period of years. She told the Court that, I quote,
2 "... you are raped while you're still young ... Dominic was the worst
3 when it came to young ... girls ... [H]e ... has sex with them at a very
4 young age."

5 But of course Dominic Ongwen's responsibility is far wider than
6 simply for the crimes that he perpetrated himself. Within the Sinia
7 brigade, Ongwen was commanded structures through which the practice of
8 abduction, forced marriage, rape, torture, slavery and sexual slavery
9 were institutionalised. Hundreds of girls suffered these crimes at the
10 hands of the LRA fighters to whom Dominic Ongwen distributed them.

11 Not only was the physical effects upon such girls and women
12 devastating but there was an enduring mental effect as well. For these
13 those who survived even after their escape or release, they had to live,
14 they still have to live, with the stigma of having been an LRA wife, a
15 perversion of the true meaning of that word. Their future hopes of
16 re-establishing themselves in society and creating new conjugal
17 relationships, despite the efforts of a number of organisations which
18 work to assist and empower them, are blighted. And there is a whole
19 category of other victims: the children born in captivity resulting from
20 these forced marriages, who sometimes face hostility and taunts as a
21 result of their parentage.

22 Mr President, I want to turn lastly to Dominic Ongwen himself.
23 One aspect of this case is the fact that not only is Ongwen alleged to be
24 the perpetrator of these crimes, he was also a victim. He himself, so he
25 has told the Court, was abducted from his home by an earlier generation

1 of LRA fighters when he was 14 years old. He himself, therefore, must
2 have gone through the trauma of separation from his family, brutalisation
3 by his captors, and initiation into the violence of the LRA way of life.
4 He has been presented as a victim rather than a perpetrator.

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

18 The reality is that cruel men can do kind things and kind men can
19 do cruel things. A hundred per cent consistency is a rare thing and
20 the phenomenon of perpetrator victims is not restricted to international
21 courts. It is a familiar one in all criminal jurisdictions. Fatherless
22 children in bleak inner cities face brutal and involuntary initiation
23 ordeals into gang life, before themselves taking on a criminal
24 life-style. Child abusers consistently reveal that they have been abused
25 themselves as children.

1 But having suffered victimisation in the past is not a
2 justification or an excuse to victimise others. Each human being must be
3 taken to be endowed with moral responsibility for their actions. And the
4 focus of the ICC criminal process is not on the goodness or the badness
5 of the accused person but on the criminal acts which he or she has
6 committed. We are not here to deny that he was a victim in his youth.
7 We will prove what he did, what he said, and the impacts of those deeds
8 on the many victims. This Court will not decide his goodness or badness,
9 nor whether he deserves sympathy but whether he is guilty of these crimes
10 committed as an adult with which he stands charged.

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

18 As a senior commander Dominic Ongwen had complete operational
19 control over the soldiers under his command. He could at any time simply
20 have ordered that his troops march to the nearest Ugandan army barracks,
21 lay down their arms and surrender. Alternatively, he could have taken
22 the course that so many of the personnel under his control took and made
23 an individual bid for freedom by simply deserting. After all, as the
24 commander, he did not have to fear the brutal canings or peremptory
25 execution which he himself ordered for unsuccessful escapees. He was

1 often separated by several days' or weeks' march from any higher LRA
2 authority. Battalion commanders in his Sinia brigade did indeed escape
3 during this time.

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

11 One of the logbooks used by the UPDF to record a radio contact
12 between LRA commanders contains a description of Dominic Ongwen
13 announcing his intention in August of 2004 of, and I quote directly,
14 "... starting to kill civilians seriously. He said right now he has
15 already deployed squads for atrocities and very soon people will hear it
16 on the radio."

17 Mr President, let me play to you short portions of a sound
18 recording of an intercepted radio conversation between Vincent Otti, the
19 LRA Deputy Chairman, and Dominic Ongwen. Otti is asking Ongwen to finish
20 his report on Odek which he had begun earlier. And I will pause now
21 while that conversation is played to the Court.

22 (Playing of the audio excerpt)

23 MS BENSOUDA: Mr President, despite the poor sound quality, what
24 you have just heard is important for two reasons. Firstly, it is a
25 direct firsthand confession by Dominic Ongwen. He can be heard admitting

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

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

12 (Playing of the audio excerpt)

13 MS BENSOUA: Otti cannot hear clearly. The sound quality is bad
14 and Otti says, "Just what?"

15 (Playing of the audio excerpt)

16 MS BENSOUA: And Ongwen repeats, quoting again from him, "I have
17 just come from shooting people."

18 (Playing of the audio excerpt)

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

24 (Playing of the audio excerpt)

25 MS BENSOUA: Mr President, the evidence shows that

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

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

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

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

20 Mr Gumpert, you have the floor.

21 Mr Taku.

22 MR TAKU: I have a standing objection. I think I should wait
23 until Mr Gumpert finishes or the Prosecutor finishes and then I can make
24 my objections on the record.

25 PRESIDING JUDGE SCHMITT: I'm not sure if I will allow objections

1 during the opening, but we will wait for what Mr Gumpert has to say.

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

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

9 Mr Gumpert.

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

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

1 which Madam Prosecutor has spoken, there are about a dozen charges, and
2 they will enable the Chamber, at the end of the trial, to determine
3 whether or not Dominic Ongwen is guilty of specific crimes, say murder or
4 enslavement, at each particular location.

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

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

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

23 The Prosecution will call a large number of witnesses to explain
24 and confirm this evidence, and that will include witnesses who were
25 themselves instrumental in the LRA's own radio operation and witnesses on

1 the other side of the coin, witnesses who were involved in the
2 interception operation.

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

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

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

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

24 LRA commanders used call-signs when communicating on the radio.
25 Dominic Ongwen's most frequently used call-sign during the period of

1 interest in this trial was "Tem Wek Ibong".

2 The LRA knew that their unencrypted radio communications were
3 being intercepted and so they talked in code to hide their more sensitive
4 communications and they used two types of code.

5 The first was the use of Acholi proverbs or LRA jargon. The
6 Acholi expression, and I must apologise in advance for the poor
7 pronunciation of the Acholi words, the Acholi expression "tye imac gar"
8 literally means "the train's headlights". Proverbially, when something
9 is described as being "in the train's headlights", it means that it's
10 straight ahead. The LRA also used the word "church" to denote a
11 mountain. And so a message might be worded "the church is in the train's
12 headlights" and that would be a report of the position of the person
13 sending the message, indicating that the mountain was straight ahead. As
14 you've already heard in the course of Madam Prosecutor's remarks, the LRA
15 also used the Acholi word "waya" meaning aunty to signify civilians.

16 The second kind of code that was used was called "TONFAS".
17 That's an acronym. It stands for Time, Operator, Nicknames, Frequencies,
18 Address, Security. TONFAS codes were pages of random words that LRA
19 commanders referred to in order to transmit their most sensitive
20 communications. The LRA distributed these pages of words by hand to the
21 commanders with a radio.

22 Radios were issued to commanders of the LRA active service units,
23 the brigades, but also to lower-ranked commanders if they were
24 particularly active. The radios themselves were operated by trained
25 signallers who were allocated to particular units.

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

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

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

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

23 Of course, there is extrinsic corroboration in the many publicly
24 available media articles that cover the same events that LRA commanders
25 were reporting in their internal radio communications and which were

1 recorded and collected in logbooks.

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

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

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

24 But in the main, LRA commanders reported accurately because of
25 the threat of reprimand or punishment if they were found not to be

1 truthful. They knew that Kony was able to cross-check their reports
2 against the local radio station in Gulu, Mega FM, and other public radio
3 broadcasts.

4 The Ugandan authorities came to realise that LRA radio
5 communications were a source of valuable intelligence and, thus, in the
6 mid-1990s, the Ugandan government began to set up interception
7 operations. Eventually, three separate operations were established by
8 the Internal Security Organisation of the Ugandan government (the "ISO"),
9 by the Ugandan army (the "UPDF"), and later by the Ugandan Police force.

10 By 2001, the ISO and the UPDF had permanent offices at the UPDF
11 barracks in Gulu. They were intercepting radio communications from the
12 LRA on a daily basis, with trained staff working full time. At various
13 times, UPDF logbooks were being compiled quite separately in locations in
14 Soroti, Acholi Pii, and even in Sudan, as interceptors accompanied UPDF
15 troops on active operations. The police operation was at a different
16 location also. That was based at Kamdini, about 60 kilometres south of
17 the barracks at Gulu.

18 I'm pausing while the next image appears on the screen.

19 This is the room in which the ISO carried out its operations. It
20 shows the desk at which one of the Prosecution witnesses worked. The
21 larger piece of equipment on the left under the headphones is the radio
22 set that he used for interception, and to its right is the tape recorder
23 on which sound recordings were made.

24 The Prosecution relies on evidence from 18 different individuals
25 involved at all levels of the ISO, UPDF, and police in their interception

1 operations. These witnesses, particularly the radio operators, were
2 intimately familiar with the LRA. They could break the TONFAS code, they
3 knew the LRA command structure, and they could identify commanders by
4 their voices alone.

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

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

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

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

24 Later, the interceptors would decode their shorthand rough notes
25 and make handwritten entries numbered consecutively in logbooks in

1 English. These logbook entries were the most important records that the
2 organisations produced. The Prosecution is able to produce these
3 logbooks to the Chamber for physical inspection. I have a sample in my
4 hand and I will make arrangements for it to be made available to the
5 Chamber and the parties and participants during the breaks in this
6 presentation.

7 The Chamber will receive evidence from 12 witnesses who are able
8 to recognise their handwriting in logbooks such as this, and who will
9 confirm the genuine nature of these logbooks.

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

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

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

1 communications during live transmissions. They could use these sound
2 recordings to go back and check what had been said in order to complete
3 their logbook entry.

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

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

15 The collected material was intercepted and recorded,
16 sound-recorded, with rudimentary equipment over ten years ago, and it was
17 done in the context of an armed conflict. That too hampered the ability
18 of radio operators to intercept and record all the LRA's communications.
19 Recordkeeping wasn't always meticulous. Sometimes the labels fell off
20 the sound recordings, and at one time the ISO's archive was affected by
21 damp. Sometimes communications recorded in one logbook are not reflected
22 in another or can't be discerned in the corresponding sound recording.

23 On the other hand, the interceptors were trained professionals.
24 They listened to the LRA for years without a break. The material that
25 each organisation produced was distinct and independently compiled. An

1 examination of those separately compiled records produces a high degree
2 of corroboration.

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

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

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

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

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

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

1 But the analyst notes that the transmission on which the
2 compilers of these three conflicting logbooks are reporting is one of
3 those for which there is a sound recording. We ourselves, the Court, can
4 listen to the transmission on which those compilers were basing their
5 conflicting records. And the analyst points out that four witnesses
6 listening to those transmissions have each identified the voice of the
7 commander making the report as not Abudema or Labongo but Dominic Ongwen.

8 The analyst, turning to Lukodi, observes that all the logbooks
9 from the various sources are consistent and they record that it was
10 Dominic Ongwen who reported that he had carried out the attack at Lukodi
11 and in recording the details of the report that he made.

12 The analyst notes again that four witnesses have each identified
13 the voice of Dominic Ongwen as being the commander who makes the report.

14 Lastly, in relation to Abok, the analyst notes that the UPDF
15 logbook for 9 July 2004 records Dominic Ongwen reporting his
16 responsibility for that attack. But on that day, the 9th, the ISO
17 logbook is silent.

18 The analyst notes that on 10 June, the position is reversed.
19 It's the ISO logbook that records Ongwen's claim of responsibility and
20 there is nothing in the UPDF logbook.

21 Perhaps most significantly he notes once again that the sound
22 recording made by the ISO interceptors has again been transcribed and
23 listened to by four Prosecution witnesses. They know Ongwen's voice.
24 They all identify him as the speaker.

25 The accuracy of the material produced can be demonstrated in a

1 different way. On at least one occasion, intercepted communications were
2 used successfully to prevent an LRA attack. In 2002 or 2003, the ISO
3 intercepted and decoded an LRA radio communication about an upcoming
4 attack on a place called Abim. One of the Prosecution witnesses will
5 testify that he himself then gave that information to the UPDF prior to
6 the attack, and so, when the LRA arrived, UPDF forces ambushed them and
7 killed an LRA commander.

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

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

25 Your Honours, the reality is that the intercepted LRA radio

1 communications represent a unique opportunity to step inside the mind of
2 Dominic Ongwen and other LRA commanders at a time before any prospect of
3 Prosecution could possibly have influenced their thoughts or their
4 actions. The Chamber will be able to hear Dominic Ongwen's voice
5 recorded over ten years ago claiming responsibility for the Odek, Lukodi
6 and Abok IDP camp attacks.

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

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

13 THE COURT USHER: All rise.

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

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

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

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

18 MR GUMPERT: Thank you, Your Honour.

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

21 For the large majority of the time with which this trial is
22 concerned, Dominic Ongwen was a leading and active member of the Sinia
23 brigade.

24 It's worth looking in detail at that unit during the period
25 between 2002 to 2005.

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

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

22 The Sinia brigade was able to carry out complex operations.
23 Before an attack, intelligence officers gathered information from LRA
24 personnel who were familiar with the area. They would also capture
25 civilians. Attacks were planned and a tactical command was established

1 to oversee each operation. There were special tactics for ambushes and
2 for other types of attack. And Sinia brigade maintained a standby force
3 to be used if the primary attacking forces were compromised. Ammunition
4 and heavy weapons were distributed within the brigade in an organised
5 way.

6 Witnesses who were abducted as children will tell the Chamber
7 how, in the Oka battalion that Dominic Ongwen commanded before he became
8 the brigade commander, they were taught to serve as armed escorts to
9 perform guard duty and to patrol. One witness in particular will
10 describe how Ongwen trained the fighters under his command to march, to
11 salute the senior personnel, and to show respect.

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

18 The brigade commander at this time was Buk Abudema.
19 Lpanyikwara, also known as Lapaico, was his deputy.

20 As a battalion commander, Dominic Ongwen was active. One witness
21 describes an attack on Pajule camp sometime in mid-2002, over a year
22 before the attack with which this trial is primarily concerned, and that
23 prior attack was carried out by soldiers of Oka battalion led by Ongwen.
24 Another witness recalls an attack on Achol-Pii IDP camp in August in
25 which Ongwen's battalion took part. Witnesses, several of them, describe

1 Ongwen leading his battalion into battle at Lanyatido and Atanga around
2 September 2002. Another witness, one of the other battalion commanders,
3 states that Ongwen was the commander of Oka battalion at the time of an
4 attack on Patongo in late 2002 or early 2003.

5 Dominic Ongwen was wounded in approximately November 2002 and
6 stayed for some time in "sick-bay". This was the name the LRA used for
7 the units where wounded LRA fighters could convalesce. Ongwen's
8 continued position of authority is indicated by the fact that he was
9 visited while in sick-bay by the brigade commander, Abudema, and other
10 senior LRA commanders such as Tabuley. Ongwen continued to have access
11 to a radio and signallers and he remained active while he was in the
12 sick-bay. He was ordering and later, when he could walk again, leading
13 troops under his command on attacks and abduction operations. By
14 February 2003, Ongwen was reporting attacks carried out by his
15 subordinates, and by March, he was fit enough for Kony to give
16 instructions for Ongwen to go on a mission to retrieve hidden weapons.

17 Shortly afterwards, operational once again, Ongwen personally
18 deployed for attacks on Opit and Awere which he commanded. His orders
19 were that the attackers should kill anything that they could not bring
20 back alive.

21 During this period, Dominic Ongwen and one of the Prosecution's
22 witnesses were arrested briefly within the LRA for obtaining a mobile
23 phone, allegedly to talk to the Ugandan government. But when he was
24 released again, Ongwen retained his position of authority, and in
25 mid-2003, he participated in and led troops during an LRA campaign in the

1 Teso sub-region.

2 Dominic Ongwen reported to Vincent Otti, the vice-chairman of the
3 LRA, that he had attacked the Catholic mission at a location called Bario
4 on 6 September 2003 and another attack at Oaii Bar Onyio on 14 September
5 2003.

6 In September of that year, Ongwen was appointed second in command
7 of the Sinia brigade, but around this period, on orders from Joseph Kony,
8 Ongwen moved to Control Altar. That was the central command, the
9 headquarters of the LRA. Kony stated in a radio transmission captured by
10 the interceptors, that, and I quote from the logbook, "Dominic should
11 remain behind with Otti" because "he," Ongwen, "has good plans." Hence,
12 at the time of the Pajule attack, the first of the four with which this
13 trial is particularly concerned, in October 2003, Ongwen was also a
14 commander in Control Altar.

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

21 In March 2004, Dominic Ongwen took another step upwards in
22 position and authority.

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

24 He became the commander of Sinia brigade. He took over the
25 brigade from Labongo who had been the acting commander after Buk Abudema

1 had been transferred.

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

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

8 These three attacks are examples of Ongwen's control over his
9 subordinate troops. After each attack, he received reports from his
10 subordinate commanders. Ben Acellam, one of the commanders of the Odek
11 attack under Ongwen, Alex Ocaka, an officer in Sinia brigade and the
12 ground commander of the Lukodi attack, reported to Ongwen and were his
13 direct subordinates. Ben Acellam was the commander of Oka battalion,
14 Alex Ocaka was the support commander in Sinia brigade, and Okello Franco
15 Kalalang was initially the brigade major in the brigade headquarters and
16 then the Terwanga battalion commander.

17 The Lukodi attack resulted in yet another step upwards in
18 Dominic Ongwen's rise as a leader. Kony promoted Ongwen to the rank of
19 Colonel on 2 July -- I beg your pardon, 2 June 2004.

20 In December 2004, he was further promoted to brigadier.

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

25 Dominic Ongwen was instrumental in maintaining discipline in his

1 units. This was the case both when he commanded at battalion level and
2 at brigade level. One witness will describe how the chain of command was
3 used for this purpose. When a punishment was implemented in a low-level
4 subordinate unit, its leader would report what had happened to a
5 mid-level leader. He in turn would report it to Ongwen's
6 second-in-command and thence the report would go to Ongwen himself.

7 One of the child soldiers acting as an escort to Dominic Ongwen
8 heard him state that anyone who tried to escape would be killed. Another
9 described how two men who were suspected of plotting to escape were
10 killed by one of Dominic Ongwen's subordinate officers. There was no
11 need for direct orders in this case because Ongwen had already decreed
12 that attempted escapees should be killed immediately. Many of Ongwen's
13 forced wives saw escapees being killed. Two of them avoided this penalty
14 only at the cost of severe beatings when they themselves were caught
15 escaping.

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

25 Dominic Ongwen's unchallenged life-or-death authority over women

1 in his battalion is illustrated by his radio report to his superiors
2 recorded on 24 March 2003. He's reported as saying, and I quote from the
3 logbook, "The Karamajong and Sudanese girls he kept had become stubborn
4 and therefore he had decided to kill them all."

5 Dominic Ongwen had the power to prevent crimes being committed by
6 his subordinates and the power to moderate the brutal punishments handed
7 out for infractions of the LRA rules. One Prosecution witness recalls
8 that Dominic Ongwen once stopped one of his escorts from killing a
9 recently abducted girl. His willingness to commute death sentences to
10 beatings when it was his own wives who were concerned has been noted
11 already.

12 Another indicator of Dominic Ongwen's authority and control over
13 his troops was the fact that he was viewed within all echelons of the LRA
14 as being a highly effective commander. He initiated operations
15 autonomously and enthusiastically. Joseph Kony and Vincent Otti
16 frequently described Dominic Ongwen as an example for other LRA
17 commanders to follow. His fellow officers and his subordinates saw him
18 in the same light. By contrast, Kony frequently criticised other
19 commanders and compared them unfavourably to Ongwen. Kony liked and
20 rewarded commanders who showed initiative and that's evident in Ongwen's
21 rapid rise through the ranks of the LRA, from Captain to Brigadier
22 General within two and a half years.

23 Your Honours, I turn now to the crime of persecution. Counts
24 10 -- we have a glitch. I don't think I can afford to wait. My time is
25 running out.

1 Counts 10, 23, 36 and 49 are crimes of persecution. I deal with
2 them together, although as you can see from the screen there is one for
3 each camp attack.

4 The LRA attacked the civilians in these four camps because they
5 considered the inhabitants to be siding with the government. In the
6 course of those attacks, Dominic Ongwen's fighters committed crimes which
7 deprived the inhabitants of fundamental rights, such as the right to life
8 by the commission of murder. The LRA were targeting the inhabitants on
9 political grounds, to punish this perceived support of the government.
10 That is the crime of persecution.

11 The evidence in this case will demonstrate that Joseph Kony
12 issued orders to attack IDP camps throughout northern Uganda. This was
13 no secret. The LRA would send open letters to IDP camp residents,
14 warning them to leave the camps or to be attacked.

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

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

23 May I just have a moment's indulgence.

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

1 (Pause in the proceedings)

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

7 An Acholi clan chief, one of the many people abducted during the
8 Pajule attack in October 2003, recalled that after that attack, the LRA's
9 deputy chairman Vincent Otti threatened to kill the Pajule abductees,
10 saying that they shouldn't be in the camp and that they were government
11 supporters. Another Pajule abductee recalled that Otti had declared that
12 all the Acholi people living in the camps would be killed.

13 Joseph Kony also targeted other ethnic groups, such as the Langi
14 and the Itesos, who were perceived to support the government and the
15 UPDF. Memorably he instructed his commanders that they should, and again
16 I quote from the logbook, "weigh the minds of the people in a particular
17 area and decide whether they support the LRA or not ... if not, the
18 people in that area should be killed: all."

19 In early 2003, Joseph Kony ordered one of his commanders to kill
20 Itesos civilians who were "not cooperating, who were stubborn." He
21 congratulated another commander for killing Langi civilians since the
22 Langi are, according to Kony, Museveni supporters. He ordered that Langi
23 women should be killed because "they are the ones producing militias who
24 are killing the LRA." A month later, speaking to one of his senior
25 commanders he said explicitly "we are fighting against people who support

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

2 Civilians were persecuted for a wide variety of actions that the
3 LRA interpreted as resistance to its cause: failing to reveal UPDF
4 positions, refusing to follow LRA orders, moving to IDP camps instead of
5 joining the LRA, raising an alarm when the LRA was near, running away
6 from the LRA. Suspicious conduct so far as the LRA was concerned
7 included innocuous activities like carrying a telephone or moving in
8 vehicles on a road.

9 Proof was an unnecessary luxury. In September 2002, an LRA
10 commander reported to Kony his suspicion, no more than that, that
11 civilians on bicycles had told the UPDF about his position. Kony ordered
12 the commander to return to that area and, again I quote from the logbook,
13 "kill all persons he can see including babies, dogs, etc. and burn down
14 all houses."

15 So what has this to do with Dominic Ongwen? What's his role in
16 these crimes? The Prosecution case is that senior LRA commanders relayed
17 Kony's orders down the chain of command. For example, November 2003, Buk
18 Abudema, Ongwen's then brigade commander, said that the LRA's "major
19 problem is civilians who cling to Museveni like ticks." He went on, and
20 I quote, "The civilians must be killed until they ... accept to join the
21 LRA and to remove Museveni." Ongwen himself passed along Kony's
22 persecutory orders to his troops. Witnesses will tell the Court of him
23 speaking of how the Acholi people should be killed because they are
24 "pigheaded" or because they "want to stay in the camps".

25 And it was those commanders, Ongwen amongst them, who took the

1 active steps to put Kony's persecutory plan into action. The attacks on
2 the IDP camps, planned and executed by those commanders, were a direct
3 response to Kony's persecutory orders.

4 In April 2003, Ongwen targeted Lagile IDP camp in the Pader
5 District for attack, and that was planned on the basis of the civilian
6 population's perceived opposition to the LRA. Ongwen had discussed with
7 Kony how the people of Lagile had long been a problem and it was the very
8 next day that Ongwen reported that he had attacked Lagile IDP camp, burnt
9 down the houses, killed 20 civilians, and abducted many others.

10 During the attack at Pajule, in which Ongwen played a prominent
11 part, he told a local chief who had been abducted, tied up and brought
12 before Ongwen as a prisoner, that the LRA was going to kill all the
13 civilians because they were supporting the government.

14 One of Dominic Ongwen's subordinate commanders in the Sinia
15 brigade recalls Ongwen and Kony speaking on the radio prior to the attack
16 on Odek.

17 They agreed that the people in Odek were very difficult people
18 and that they needed to be taught a lesson.

19 And one of the brigade officers who participated in the Odek
20 attack confirmed that Ongwen, relaying an order from Kony, ordered the
21 killing of the people who remained in the camp because they were
22 supporting the government and as a result they were to be considered
23 enemies. That officer was clear that one purpose of the Odek attack was
24 to show the civilians that the government could not protect them in the
25 camps.

1 Following that attack at Odek, Ongwen addressed his men and the
2 people who had been abducted. One of them heard Ongwen say that he had
3 informed Joseph Kony that he had attacked Odek and killed many people and
4 that Kony had laughed at the news. Kony's response was, anyone living in
5 the camp should be killed.

6 One of the LRA fighters who participated in the Lukodi attack
7 will give evidence that shortly before it happened, Ongwen told his
8 troops they would kill the Acholis because they were - the words become
9 something of a theme - because they were "stubborn", because they were
10 "pigheaded", because they "want to stay in the camps".

11 During the Abok attack, one of the camp leaders overheard LRA
12 fighters discussing Ongwen's orders to kill everyone who was not one of
13 them, and he meant kill the civilians siding with the government.

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

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

23 I'll deal firstly with the attack on the Pajule IDP camp in
24 October 2003.

25 Pajule and Lapul IDP camps were set up in 1996. Located in Aruu

1 County, in Pader District, the two camps were bisected by a road which
2 was referred to as the Kitgum to Lira road. Pajule IDP camp was situated
3 on the east side of the road and Lapul on the west side of the road, but
4 in effect they constituted a single camp and I shall refer to it as
5 Pajule.

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

10 THE COURT OFFICER: The video will be displayed on the Evidence 2
11 channel.

12 (Viewing of the video excerpt)

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

16 MR GUMPERT: Thank you.

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

20 Shortly before 10 October 2003, Vincent Otti, deputy chairman,
21 summoned LRA fighters to a meeting not far from Pajule. Dominic Ongwen
22 attended. The Prosecution will call witnesses who were also present.
23 The meeting lasted about two hours.

24 During the course of the meeting, a plan was formed to attack
25 Pajule. The aim was to attack the soldiers guarding the camp and thus

1 demonstrate the LRA's power to carry out such attacks and also to punish
2 the civilians residing at the camp who were perceived to support the
3 government. Civilian property was to be pillaged and the residents
4 abducted to carry away the loot and, where their age meant they were
5 suitable, they were also to be abducted to serve as conscripts in the
6 LRA.

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

13 The commanders, including Dominic Ongwen, ordered their
14 subordinates to select fighters to participate in the attack and then
15 left for the camp. A small group remained behind under Vincent Otti.

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

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

24 On 7 October, a UPDF logbook again records LRA transmissions
25 reporting that Dominic Ongwen was moving with Otti and Raska Lukwiya

1 before the attack.

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

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

16 I turn firstly to Count 1, an attack directed against the
17 civilian population.

18 The Prosecution case is that the attackers were under the joint
19 control of a group of co-perpetrators, that is to say, the officers who
20 planned and who were leading the attack, and that group included
21 Dominic Ongwen. And they intended the attack to be against the civilian
22 population of the camp. In addition to his role in planning the attack,
23 his leading role in its execution is demonstrated by a number of
24 observations made by two separate Prosecution witnesses. They saw Ongwen
25 directing the movements of LRA fighters by pointing with a stick. They

1 saw him at the centre of a group of LRA fighters, some of whom were
2 saluting him. They heard him giving orders to LRA fighters, including an
3 order to pillage items. And they saw him communicating with other LRA
4 fighters using radio equipment.

5 In the course of this attack, this attack on the civilian
6 population, various more specific crimes were committed.

7 Murder, both as a war crime and as a crime against humanity. The
8 Court will hear evidence that LRA fighters shot civilian residents. They
9 aimed particularly at those who were trying to escape or those who
10 refused to carry pillaged items. Civilians were killed and these were
11 acts of murder. Among the dead were civilians Pangarasio Onek, Kinyera
12 Lacung, and Agnes Aciro.

13 A witness to Lacung's murder explained that he was killed because
14 he was working for the government. The witness heard his killer say that
15 this was the reason for killing him and the witness then saw the LRA
16 fighter stab Lacung with a bayonet. Other witnesses saw the dead body of
17 Lacung after it had been brought back from the bush and others still
18 attended his funeral.

19 Onek was murdered because he refused to carry items which had
20 been given him by the LRA. A witness saw him shot three times in the
21 head and another witness later saw his body.

22 But there is evidence of many other killings where the witnesses
23 cannot name the victims. Some witnesses speak of seeing dead bodies of
24 civilians killed by the LRA during the attack. A UPDF soldier who wrote
25 a report on the attack saw dead bodies of both civilians and LRA fighters

1 at the camp.

2 This is a photograph of some of the dead bodies that were seen by
3 that witness of whom I've just spoken.

4 One of the residents abducted from the camp saw LRA fighters
5 shoot a civilian resulting in his intestines spilling out.

6 Yet another saw LRA fighters place children in a hut which was
7 then locked. They intended to burn the hut down with the children
8 inside. They were only prevented from doing so by the arrival of a UPDF
9 helicopter on the scene.

10 Dominic Ongwen himself was seen and heard to threaten to kill
11 civilians that refused to move as he instructed. Other witnesses saw
12 people who refused to carry pillaged goods or failed to move quickly
13 enough killed.

14 The four crimes of torture as a crime against humanity and a war
15 crime, cruel treatment and inhumane acts have different legal elements to
16 which the Prosecution has made reference in detail in its written
17 submissions. But the essence of the acts underlying the commission of
18 these crimes at Pajule is much the same. The civilian residents of the
19 camp were beaten and forced to carry heavy loads, often for long
20 distances, while tied to each other. They were terrorised by the beating
21 and killing of other abductees either too weak to carry on or trying to
22 escape. These acts caused severe physical and mental pain and suffering.
23 This amounted to torture. It also amounted to the war crime of cruel
24 treatment and the crime against humanity of inhumane acts.

25 LRA fighters used an axe to break into one witness's home and

1 they tied up the witness and members of his family. They had to carry
2 heavy pillaged items away from the camp. And it was this same witness
3 who saw the attempt to burn children alive.

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

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

18 One of the attackers who participated in the attack directly
19 under the command of Dominic Ongwen corroborates these accounts from the
20 victims. Your Honours will hear that following orders, he abducted
21 civilians and forced them to carry pillaged goods. He too confirms that
22 people who moved too slowly were beaten.

23 These abductions and the forced labour in carrying away pillaged
24 goods also amount to the crime of enslavement. Just as their commanders
25 had planned, the LRA fighters were treating the abductees as if they

1 owned them. They were deprived of their liberty. They were treated as
2 slaves.

3 Dominic Ongwen himself played a direct role in enslaving
4 civilians from Pajule. Numerous witnesses saw him ordering civilians to
5 carry things and start moving. He moved up and down the line of
6 abductees, commanding them to move faster. One of the Prosecution
7 witnesses was an attacker under Ongwen and he explained that he
8 personally abducted two civilians, and I quote, "because Ongwen ordered
9 me to do so." One of Dominic Ongwen's forced wives has already given
10 evidence that she saw Dominic Ongwen returning from this attack with
11 seven civilian abductees carrying pillaged goods.

12 One abductee estimated that at least 200 civilian residents were
13 abducted and enslaved following the attack on the camp but other
14 witnesses put the number much higher. One of the attackers estimates
15 that 400 civilians were abducted. The witness flying in the UPDF
16 helicopter, which was the saviour of the children who were about to be
17 burnt to death, saw what he estimated to be about 300 being abducted.

18 These abductees were assembled at a meeting point where they were
19 addressed as a group by senior LRA commanders including Vincent Otti and
20 Dominic Ongwen. Many were later released but some were not. And one
21 witness recalls that Ongwen divided the abductees among his troops.
22 Others were integrated into other LRA brigades, one by the name of
23 Trinkle.

24 Apart from the demonstration of strength which the attack
25 represented, pillaging was one of the most important aims of the common

1 plan. Ongwen's role was to lead a group to the trading centre, the most
2 likely source of goods to pillage. And LRA fighters under his command
3 took food items and other personal property for their private or personal
4 consumption and use.

5 One witness came across the dead body of an LRA soldier whom he
6 estimated to be about 13 years old. True to his age, perhaps, he had
7 been pillaging bubble gum when he met his death and the scattered sweets
8 lay around his corpse.

9 LRA fighters attacked and pillaged the trading centre in order to
10 loot and to abduct. Civilian victims and LRA fighters describe how homes
11 and shops were broken into, sometimes on Dominic Ongwen's direct orders.
12 Pillaged items included maize, soda, ground nuts, beans, rice, salt,
13 sweets, medicine, soap and salt.

14 After the attack, the UPDF and ISO logbooks record numerous radio
15 communications between Otti and Kony speaking about the success of the
16 attack in Pajule IDP camp.

17 On 10 October 2003 - that's the day of the attack - an ISO
18 logbook records a report by Otti that he had sent a big force under the
19 command of Raska Lukwiya to attack Pajule.

20 Lukwiya is recorded as reporting himself that he had attacked
21 Pajule barracks and that the plan had been successfully carried out.

22 On the same date, a UPDF logbook identifies Otti as stating that
23 he had deployed forces under the commands of Raska Lukwiya,
24 Dominic Ongwen, and other commanders to attack the mission, IDP camp,
25 trading centre, and barracks.

1 A separate UPDF logbook contains an entry recording a
2 transmission that Dominic/Bwona's task was to attack the mission to loot
3 medicine and other items.

4 LRA radio communications were intercepted on 13 and 14 October as
5 well. And these were sound-recorded by the ISO. In the sound recording,
6 Kony, Otiti and other senior LRA commanders, particularly one called Onen
7 Kamdule, can be heard discussing the attack on Pajule. And your Honours
8 will hear Otiti mentioning the intervention of the government helicopter,
9 about which I have already made mention, and also recounting how almost
10 300 people were abducted and gathered together and that he had told them
11 that the purpose of the attack that day was to show who was powerful.

12 (Playing of the audio excerpt)

13 MR GUMPERT: Next I turn to the attack on Odek IDP camp in April
14 2004. This camp was situated around the village of Odek, in Odek
15 Sub-County, Omoro County, Gulu District. The camp was created in
16 mid-2003. Approximately 6,000 civilians lived there at the time of the
17 attack.

18 Dominic Ongwen and other senior LRA officers are responsible as
19 the co-perpetrators of a common plan to attack the camp at Odek.

20 There was a pre-attack briefing. Dominic Ongwen instructed the
21 attackers to kill civilians and to abduct beautiful girls and good boys
22 to work as soldiers. He gave orders to pillage, telling his men that
23 since they had no food, they should go and collect it at Odek. The last
24 words uttered by Ongwen before the attack were "nothing should be left
25 alive in Odek." Ongwen personally led the attack. It began at about

1 5.00 p.m.

2 The video which you're about to see gives some visual guidance as
3 to the various locations at Odek that will be of significance during this
4 trial. And, again, I ask that the Court Officer make provision that this
5 be played on what I think will be the Evidence 2 channel. Thank you.
6 (Viewing of the video excerpt)

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

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

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

23 This was an attack on the civilian population and Dominic Ongwen
24 intended that it should be so. He told the attackers that any civilian
25 found was to be shot, that boys and girls should be abducted, and that

1 the inhabitants' food should be pillaged. The ways in which that attack
2 on the civilian inhabitants was carried out are the subject of more
3 specific crimes.

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

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

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

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

1 children.

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

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

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

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

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

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

22 On some occasions LRA fighters attacked their victims with lethal
23 force intending to kill them, but the victim did not die. That's the
24 crime of attempted murder.

25 For example, one camp resident locked herself in her hut when the

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

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

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

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

25 This forced labour amounted to enslavement. LRA fighters treated

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

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

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

22 In the course of the attack, LRA fighters pillaged food from
23 homes in the camp. It had recently received a World Food Programme
24 distribution. The attackers broke into stores in the trading centre.
25 They looted flour, salt and soda. And as a result of that pillaging,

1 many of the camp residents suffered intense hunger thereafter.

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

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

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

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

21 (Playing of the audio excerpt)

22 MR GUMPERT: When Kony asked Ongwen if he had cleaned the
23 "backside of his mother" in Odek, that was the use of jargon/slang. The
24 evidence of Prosecution witnesses familiar with this slang is that this
25 is a query referring to the killing of civilians. And in response to

1 that query, Dominic Ongwen replied "kichi kichi", which is the Acholi for
2 completely.

3 The second post-attack report by Dominic Ongwen was made the next
4 day.

5 This report was recorded in both the UPDF and the ISO logbooks
6 for 1 May 2004. This is the ISO logbook. Ongwen reported to Kony that
7 in his report the previous day, he'd forgotten to mention that he had
8 captured a diamond of high value.

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

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

14 MR GUMPERT: Thank you. Yes, 4.00, indeed. I'm getting
15 short-sighted.

16 Lukodi IDP camp is situated north of Gulu town in Bangatira
17 Sub-County, Aswa County, in Gulu District. There were about 7,000 people
18 living in the camp in May 2004 and there were 30 soldiers stationed at
19 the barracks to protect them.

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

24 (Viewing of the video excerpt)

25 MR GUMPERT: The government soldiers withdrew after a short

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

8 Dominic Ongwen had control over this attack and control over the
9 attackers. He had conceived, planned, and ordered the attack. On 17 May
10 2004, two or three days before the attack, he requested permission from
11 Kony to attack camps to pillage food, and he'd been granted permission.

12 In preparation for the attack, he gathered fighters from Major
13 Olak Tulu's Gilva sick-bay which was situated near the Aswa River. These
14 forces were under Ongwen's command on an ad hoc basis for the duration of
15 the attack on Lukodi. Ongwen was able to do so because he was senior to
16 Tulu in the LRA's hierarchy.

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

22 Ongwen chose Captain Ocaka as the overall commander on the
23 ground, assisted by two officers who will appear before the Chamber as
24 Prosecution witnesses. Ongwen ordered his subordinates to shoot
25 soldiers, burn houses, loot everything, and return with food. And he

1 warned them, "If you don't complete your mission, don't return."

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

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

18 The killing of civilians wasn't confined to the camp itself. The
19 LRA killed abductees, mainly men, after they had left Lukodi. That
20 night, one of the abducted women could hear the sound of other abductees
21 being beaten to death. She thought it was the sound of chopping wood at
22 first. Other witnesses saw the corpses of male and female abductees at a
23 distance from the camp and these were never collected or buried.

24 The LRA attackers didn't hide their murderous intent. LRA
25 fighters could be heard saying, "Kill them all." One LRA commander told

1 an abductee that the LRA were "supposed to kill all of you".

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

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

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

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

21 As I remarked before, the underlying acts which are the essence
22 of these four crimes of torture, cruel treatment and inhumane acts are
23 much the same despite their legal ingredients. The attackers committed
24 all of these crimes. They behaved with ruthless cruelty to civilians, in
25 particular to small children. One witness saw two girls, including her

1 own daughter, being beaten when they tried to escape from a burning
2 house. Mothers with babies and elderly people were forced to carry loot
3 while being beaten and under threat of death. One witness was stabbed
4 for dropping a heavy load and beaten for allowing a looted goat to escape
5 when she had to hide from a helicopter gunship.

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

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

1 Before the attack, relief organisations had distributed emergency
2 supplies to Lukodi residents: beans, maize, cooking oil, soap, cooking
3 utensils, and blankets, emergency provisions of that kind. These sorely
4 needed items were pillaged by the LRA. They took the food, sweets,
5 livestock, clothes, soap, and other items, both from civilian houses and
6 from shops alike.

7 The LRA fighters destroyed property belonging to civilians in
8 Lukodi, viewing them, as they did, as their adversaries or enemies. Over
9 200 civilian huts in the camp, ordinary people's homes containing their
10 few possessions, were burnt. The video images of the destruction with
11 the huts still smoking the following day were played during the course of
12 Madam Prosecutor's presentation.

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

16 (Playing of the audio excerpt)

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

19 (Playing of the audio excerpt)

20 MR GUMPERT: There is also the corroboration of the sound
21 recording to be found in a UPDF logbook. It's an entry for 21 May. It's
22 on the screen in front of your Honours. It reads, "Otti reported to Kony
23 that radio news reported that a certain LRA group under unknown
24 commanders attacked and killed 25 civilians including young people and
25 burnt about 100 houses in Lukodi trading centre in Bungatira." The

1 logbook goes on, "Dominic immediately told Otti that he is the one who
2 made that deployment." That's what your Honours have just heard.

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

5 The LRA's director of signals, who is a Prosecution witness -
6 he'll appear in this courtroom - personally heard Dominic Ongwen's report
7 about this Lukodi attack when it was transmitted live. He recalled
8 Ongwen describing the houses he'd burnt and the people he had killed.
9 Three days later, 24 May 2004, UPDF, ISO and police logbooks all record
10 that Dominic Ongwen provided a more complete report. This is the UPDF
11 logbook. Ongwen said that he had caused havoc and decided to kill all
12 living things in Lukodi. In the ISO logbook, Ongwen is reported as
13 saying in respect of the Lukodi attack that "if civilians die he feels
14 happy."

15 About ten days after the Lukodi attack, Kony promoted
16 Dominic Ongwen from Lieutenant Colonel to Colonel, and Tulu, who had
17 provided a contingent of the attacking troops from his sick-bay, was
18 promoted from Major to Lieutenant Colonel. There is a sound recording of
19 Kony announcing this promotion.

20 The Police logbook for 2 June contains a record of a conversation
21 which reveals much about the newly promoted Colonel Ongwen's enthusiasm
22 for the dreadful things that he was doing, and it reveals his contempt
23 for other LRA officers who were operating less vigorously. It reads,
24 "Kony, in particular, lauded Colonel Ongwen Dominic following his recent
25 performances in Odek and Lukodi. Colonel Ongwen Dominic himself informed

1 Kony that he would lay hands in arresting non-performing officers."

2 Your Honours, I'm grateful for that indulgence. I've concluded
3 the section on Lukodi, and this may be an appropriate place to break for
4 today.

5 PRESIDING JUDGE SCHMITT: Indeed.

6 We have now reached the end of today's hearing. We adjourn and
7 resume tomorrow at 9.30.

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

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