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PRE-TRIAL CHAMBER II

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

SITUATION IN UGANDA

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

Public redacted

With public annex: List of participating victims

Decision on the confirmation of charges against Dominic Ongwen

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Pre-Trial Chamber II of the International Criminal Court hereby issues the decision pursuant to article 61(7) of the Rome Statute (“Statute”) on the confirmation of the charges brought by the Prosecutor against Dominic Ongwen, born on an unknown date in 1975, also known as “Odomi” and as “Wai Wai”, from Coorom, Republic of Uganda (“Uganda”), national of Uganda ([ICC-02/04-01/15-T-4-ENG](#)), currently detained at the seat of the Court.

1. The full text of the charges on which the Prosecutor seeks that Dominic Ongwen be committed for trial is available in the “Document containing the charges” filed by the Prosecutor on 21 December 2015: filing ICC-02/04-01/15-375-Conf-AnxA and, in redacted form, filing [ICC-02/04-01/15-375-AnxA-Red](#).
2. The Prosecutor charges Dominic Ongwen with crimes against humanity under article 7 and war crimes under article 8 of the Statute (jurisdiction *ratione materiae*) committed on the territory of the Uganda (jurisdiction *ratione loci*) between 1 July 2002 and 31 December 2005 (jurisdiction *ratione temporis*, see ICC-02/04-01/15-3-Conf-AnxB), and which fall within the parameters of the situation referred by Uganda to the Prosecutor (ICC-02/04-01/15-3-Conf-AnxA and [ICC-02/04-1](#)). Therefore, in accordance with article 19 of the Statute, the Chamber is satisfied that the Court has jurisdiction over the present case.

I. BACKGROUND AND PROCEDURAL HISTORY

3. In the late 1980s, the Lord’s Resistance Army (LRA), an armed group originating from northern Uganda, began an insurgency against the government of Uganda, with the stated objective to overthrow the government of Yoweri Museveni, who had taken power in 1986 at the head of the National Resistance Army. Until the present day, there has been armed fighting at varying levels of intensity, mostly in northern Uganda, but also in

the neighbouring areas of Uganda, Sudan/South Sudan, the Democratic Republic of Congo and the Central African Republic, between the LRA fighters under the command of Joseph Kony, on the one hand, and the Ugandan government, on the other hand, which in the course of the years launched different military offensives against the LRA. Deliberate targeting of civilians and grave civilian suffering are notorious traits of this long conflict.

4. On 16 December 2003, the government of Uganda referred to the Prosecutor of the Court the “situation concerning the Lord’s Resistance Army”. The Prosecutor proceeded with an investigation, specifying that it would extend to the entire situation in northern Uganda, regardless of who committed the crimes under investigation ([ICC-02/04-1](#), p. 4). At the request of the Prosecutor, the Chamber, on 8 July 2005, issued warrants of arrest against Joseph Kony ([ICC-02/04-01/05-53](#)), Vincent Otti ([ICC-02/04-01/05-54](#)), Raska Lukwiya ([ICC-02/04-01/05-55](#)), Okot Odhiambo ([ICC-02/04-01/15-56](#)) and Dominic Ongwen ([ICC-02/04-01/15-6](#)). Proceedings against Raska Lukwiya and Okot Odhiambo have been terminated due to their deaths ([ICC-02/04-01/05-248](#) and [ICC-02/04-01/05-431](#)), while the warrants of arrest against Joseph Kony and Vincent Otti remain pending.

5. The present case, which was severed from the case against Joseph Kony and Vincent Otti on 6 February 2015 (see [ICC-02/04-01/05-424](#)), concerns exclusively Dominic Ongwen. He was surrendered to the Court by the Central African Republic on 16 January 2015, and made his first appearance before the Chamber on 26 January 2015 ([ICC-02/04-01/15-T-4-ENG](#)).

6. In the subsequent period, disclosure of evidence took place between the parties and several procedural steps were taken under the supervision of Single Judge Cuno Tarfusser. Among the most important such procedural steps were: the provision of a waiver of the requirements of the rule of

speciality by the Central African Republic, upon request by the Court (ICC-02/04-01/15-359-Conf-AnxI and -Conf-AnxII); the restriction of Dominic Ongwen's communications in the Detention Centre to prevent interference with the evidence ([ICC-02/04-01/15-242](#), [-254](#), [-267](#) and [-283](#)), which is currently still in place; and the testimony of eight witnesses before the Single Judge, in closed session, as a measure under article 56 of the Statute to preserve their evidence for the purposes of the trial ("unique investigative opportunity"). Also, the Chamber rejected Dominic Ongwen's application for interim release on 27 November 2015 (ICC-02/04-01/15-349), and confirmed the necessity for Dominic Ongwen's detention in its periodic review under rule 118(2) of the Rules of Procedure and Evidence (the "Rules") on 23 March 2016 (ICC-02/04-01/15-421).

7. The Chamber also established procedural regimes for proceedings in the case at this and any subsequent stages, in particular as concerns: (i) exceptions to disclosure of evidence by the Prosecutor in the form of redaction ([ICC-02/04-01/15-224](#), 23 April 2015); (ii) handling of confidential information during investigations and contact between a party or participant and witnesses of the opposing party or of a participant ([ICC-02/04-01/15-339](#) and [-Anx](#), 11 November 2015); and (iii) admission of victims to participate in the present case ([ICC-02/04-01/15-299](#), 3 September 2015). Under the procedure regulated by the Chamber, 2,026 victims have been admitted to participate in the proceedings. Joseph Akwenyu Manoba and Francisco Cox were chosen by 1,434 victims as their legal representatives; Paolina Massidda was chosen by the Court as common legal representative, within the meaning of rule 90 of the Rules, of the remaining 592 victims.

8. In advance of the confirmation of charges hearing, the Prosecutor, on 21 December 2015, filed: (i) the document containing the charges against Dominic Ongwen, both in terms of the alleged material facts and

circumstances and their legal characterisation (ICC-02/04-01/15-375-Conf-AnxA and, in redacted form, [ICC-02/04-01/15-375-AnxA-Red](#)); (ii) the “Pre-confirmation brief” pursuant to rule 121(9) of the Rules, in which the Prosecutor set out what she considers to be the elements of the crimes charged and how, in her view, the available evidence satisfies them (ICC-02/04-01/15-375-Conf-AnxC and, in redacted form, [ICC-02/04-01/15-375-AnxC-Red](#), “Prosecutor’s Brief”); and (iii) the list of evidence on which the Prosecutor relied for the purpose of the confirmation of charges hearing, complemented on 22 December 2015 (ICC-02/04-01/15-378-Conf-AnxA).

9. The Defence filed its list of evidence on 6 January 2016, adding one item of evidence on 13 January 2016 when it filed a revised list (ICC-02/04-01/15-398-Conf-AnxA), as authorised by the Single Judge on 12 January 2016 ([ICC-02/04-01/15-397](#)). On 18 January 2016, the Defence filed, pursuant to rule 121(9) of the Rules, its submissions in advance of the confirmation of charges hearing (ICC-02/04-01/15-404-Conf and [-Red2](#), “Defence Brief”).

10. On 18 January 2016, Joseph Akwenyu Manoba and Francisco Cox also filed, on behalf of the victims they represent, their written submissions under rule 121(9) ([ICC-02/04-01/15-403](#)), as authorised by the Single Judge on 27 November 2015 ([ICC-02/04-01/15-350](#)).

11. The confirmation of charges hearing took place between 21 and 27 January 2016 (transcripts: ICC-02/04-01/15-T-20-ENG; -T-21-CONF-ENG and [-Red-ENG](#); [-T-22-ENG](#); -T-23-CONF-ENG and [-Red-ENG](#); and [-T-24](#)).

12. On 8 March 2016, the Prosecutor informed the Chamber that she no longer relies upon the evidence of Witness P-198 (ICC-02/04-01/15-413-Conf).

II. PRELIMINARY AND PROCEDURAL MATTERS

A. *Nature and purpose of the present decision*

13. In the present decision, the Chamber renders its determination under article 61(7) of the Statute as to whether there is sufficient evidence to establish substantial grounds to believe that Dominic Ongwen committed the crimes with which he is charged.

14. The purpose of the pre-trial proceedings, and specifically of the confirmation hearing, is to determine whether the case as presented by the Prosecutor is sufficiently established to warrant a full trial. The Statute mandates that this is decided by answering the question whether there are substantial grounds to believe that the person committed the crimes charged. Therefore, it has been stated, the procedure of confirmation of charges protects the suspect from wrongful and unfounded accusations,¹ by ensuring

¹ Pre-Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, “Decision on the confirmation of charges”, 29 January 2007, [ICC-01/04-01/06-803-tEN](#) (“Lubanga Confirmation Decision”), para. 37; Pre-Trial Chamber I, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, “Decision on the confirmation of charges”, 30 September 2008, [ICC-01/04-01/07-717](#) (“Katanga and Ngudjolo Confirmation Decision”), para. 63; Pre-Trial Chamber II, *The Prosecutor v. Jean-Pierre Bemba Gombo*, “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo”, 15 June 2009, [ICC-01/05-01/08-424](#) (“Bemba Confirmation Decision”), para. 28; Pre-Trial Chamber I, *The Prosecutor v. Bahar Idriss Abu Garda*, “Decision on the Confirmation of Charges”, 8 February 2010, [ICC-02/05-02/09-243-Red](#) (“Abu Garda Confirmation Decision”), para. 39; Pre-Trial Chamber I, *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, “Corrigendum of the ‘Decision on the Confirmation of Charges’”, 7 March 2011, [ICC-02/05-03/09-121-Corr-Red](#) (“Banda and Jerbo Confirmation Decision”), para. 31; Pre-Trial Chamber I, *The Prosecutor v. Callixte Mbarushimana*, “Decision on the confirmation of charges”, 16 December 2011, [ICC-01/04-01/10-465-Red](#) (“Mbarushimana Confirmation Decision”), para. 41; Pre-Trial Chamber II, *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, “Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute”, 23 January 2012, [ICC-01/09-02/11-382-Red](#) (“Muthaura *et al.* Confirmation Decision”), para. 52.

that “only those persons against whom sufficiently compelling charges going beyond mere theory or suspicion have been brought” are committed for trial.²

15. Other important procedural objectives of the procedure of confirmation of charges are settling the parameters of the case for trial in making sure that the charges are clear and not deficient in form, and resolving possible procedural issues and preventing that they taint the trial proceedings (cf. rule 122(3)-(6) of the Rules).³ In this regard, the Chamber observes that the Defence of Dominic Ongwen, prior to the opening of the confirmation hearing on the merits, did not raise any issue regarding the form, completeness and clarity of the charges, while being informed that at no subsequent point, including at trial, it might raise any such issue (Transcripts [T-6](#), p. 20, and [T-20](#), pp. 8-9).

16. In sum, the purpose of the pre-trial proceedings is to make sure that only charges which are sufficiently supported by the available evidence and which are clear and properly formulated, in their factual and legal aspects, be submitted to a Trial Chamber for its determination.

17. The evidentiary standard applicable at this stage of proceedings is lower than the one required at trial, and is met as soon as the Prosecutor offers “concrete and tangible proof demonstrating a clear line of reasoning underpinning [her] specific allegations”.⁴ The responsibility of the Pre-Trial

² [Lubanga Confirmation Decision](#), para. 37; [Abu Garda Confirmation Decision](#), para. 39; [Banda and Jerbo Confirmation Decision](#), para. 31; [Mbarushimana Confirmation Decision](#), para. 41.

³ See Transcript of the status conference of 19 May 2015 ([ICC-02/04-01/15-T-6-ENG](#)). See also Pre-Trial Chamber I, *The Prosecutor v. Laurent Gbagbo*, “Decision on the date of the confirmation of charges hearing and proceedings leading thereto”, 14 December 2012, [ICC-02/11-01/11-325](#), para. 27.

⁴ [Lubanga Confirmation Decision](#), para. 39; [Katanga and Ngudjolo Confirmation Decision](#), para. 65; [Bemba Confirmation Decision](#), para. 29; [Abu Garda Confirmation Decision](#), para. 37; [Mbarushimana Confirmation Decision](#), para. 40; [Muthaura et al. Confirmation Decision](#), para. 52; Pre-Trial Chamber II, *The Prosecutor v. Bosco Ntaganda*, “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda”, 9 June 2014, [ICC-01/04-02/06-309](#) (“Ntaganda Confirmation Decision”), para. 9;

Chamber is to ensure that cases do not proceed to trial if “the evidence is so riddled with ambiguities, inconsistencies, contradictions or doubts as to credibility that it is insufficient to establish substantial grounds to believe that the person committed the crimes charged”.⁵

18. The Chamber has assessed the probative value of the relevant evidence bearing in mind that, due to the nature of the confirmation of charges proceedings, such assessment is limited, and, as recognised by the Appeals Chamber with respect to the evaluation of the credibility of witnesses at the confirmation of charges stage, “necessarily presumptive”.⁶ Indeed, the Chamber is mindful of the guidance of the Appeals Chamber that while a Pre-Trial Chamber may evaluate the credibility of witnesses, “it should take great care in finding that a witness is or is not credible”.⁷ The Chamber notes that the Defence disputes the reliability of a number of witnesses. Except for a few instances where the Chamber was in a position to dispose of the matter on the basis of all the evidence available, the Chamber has not taken a view with regard to all challenges, in particular with regard to the credibility of witnesses, as it considers they can only be properly addressed at trial.⁸

Pre-Trial Chamber I, *The Prosecutor v. Laurent Gbagbo*, “Decision on the confirmation of charges against Laurent Gbagbo”, 12 June 2014, [ICC-02/11-01/11-656-Red](#) (“Gbagbo Confirmation Decision”), para. 19; Pre-Trial Chamber II, *The Prosecutor v. Jean Pierre-Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala and Narcisse Arido*, “Decision pursuant to Article 61(7)(a) and (b) of the Rome Statute”, 11 November 2014, [ICC-01/05-01/13-749](#) (“Bemba *et al.* Confirmation Decision”), para. 25; Pre-Trial Chamber I, *The Prosecutor v. Charles Blé Goudé*, “Decision on the confirmation of charges against Charles Blé Goudé”, 11 December 2014, [ICC-02/11-02/11-186](#), (Blé Goudé Confirmation Decision), para. 12.

⁵ Appeals Chamber, *The Prosecutor v. Callixte Mbarushimana*, “Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled ‘Decision on the confirmation of charges’”, 30 May 2012, [ICC-01/04-01/10-514](#) (“Mbarushimana OA 4”), para. 46.

⁶ [Mbarushimana OA 4](#), para. 48. See also [Gbagbo Confirmation Decision](#), para. 21.

⁷ [Mbarushimana OA 4](#), para. 48.

⁸ See also [Gbagbo Confirmation Decision](#), para. 21.

19. The same applies to the arguments advanced by the parties and participants in their submissions, each of which has been carefully considered as part of the Chamber's determination.⁹ In light of the limited scope and purpose of the current proceedings, this decision addresses what the Chamber considers necessary and sufficient for its determination on the charges¹⁰ – namely whether the case brought by the Prosecutor against Dominic Ongwen warrants a trial.

B. Defence request to exclude some evidence relied upon by the Prosecutor

20. In its brief filed on 18 January 2016 ([Defence Brief](#), paras 58 to 67), the Defence raises a preliminary procedural matter, requesting the exclusion of seventeen witness statements and transcripts of interviews which were disclosed by the Prosecutor on 21 December 2015 without translation in Acholi, the language which Dominic Ongwen fully understands and speaks, and which are part of the Prosecutor's list of the evidence relied upon for the purposes of the confirmation of charges hearing.

21. The Chamber recalls that, according to a decision rendered by the former Single Judge in this case on 27 February 2015 ([ICC-02/04-01/15-203](#)), witness statements on which the Prosecutor relies for the purpose of the confirmation hearing did not all need to be translated into Acholi. By this decision, the responsibility to identify relevant portions of such witness statements which required translation upon their disclosure was placed on the Defence. The former Single Judge requested the parties to liaise for this purpose and seize the Chamber only in case of disagreement. No leave to appeal this decision was sought by the Defence; and at no point did the

⁹ See [Gbagbo Confirmation Decision](#), para. 23.

¹⁰ See [Lubanga Confirmation Decision](#), para. 39; [Katanga and Ngudjolo Confirmation Decision](#), para. 69; [Abu Garda Confirmation Decision](#), para. 45; [Banda and Jerbo Confirmation Decision](#), para. 39; [Mbarushimana Confirmation Decision](#), para. 48; [Muthaura et al. Confirmation Decision](#), para. 60; [Gbagbo Confirmation Decision](#), paras 22-23; [Blé Goudé Confirmation Decision](#), paras 15-16.

Defence raise with the current Single Judge concerns about translation of witness statements disclosed by the Prosecutor. The Defence waited until 18 January 2016 (*i.e.* three days before the commencement of the confirmation hearing) to argue a significant prejudice to its preparation arising from the unavailability of seventeen witness statements in Acholi which were disclosed almost one month earlier, on 21 December 2015. Significantly, the Defence in its two requests for postponement of the confirmation hearing did not raise any matter concerning translation into Acholi of witness statements, including in its second request (ICC-02/04-01/15-385-Corr) which was filed on 30 December 2015, after the disclosure of the witness statements and transcripts of which the exclusion is now sought by the Defence.

22. In addition, given the limited amount of material concerned within the broader scope of the evidence relied upon by the Prosecutor, the limited scope and purpose of the hearing on the confirmation of charges and the fact that Dominic Ongwen is assisted by a Defence team with members, including counsel, fluent in English and Acholi, as well as the fact that interpretation services have been provided to him throughout the proceedings, the Chamber considers that no relevant prejudice to Dominic Ongwen's rights has ensued from the fact that this material was not provided in Acholi.

23. In these circumstances, considering the Defence failure to bring the matter to the attention of the Chamber in due time and in the absence of prejudice to the fairness of the present proceedings, the Chamber rejects the Defence request to exclude from the Prosecutor's list of evidence the seventeen witness statements and transcripts disclosed on 21 December 2015 without corresponding Acholi translation.

C. Confidentiality of charges 50 to 60

24. The Prosecutor has presented charges 50 to 60 against Dominic Ongwen on a confidential basis and has redacted them in the public version of the document containing the charges filed on 22 December 2015 ([ICC-02/04-01/15-375-AnxA-Red](#)). On 23 December 2015, the Prosecutor submitted that this is a protective measure required under article 68 of the Statute and rule 87 of the Rules (ICC-02/04-01/15-381-Conf). The Defence responded on 4 January 2016 submitting that it does not object to keeping these charges confidential for the purpose of the confirmation of charges hearing, but that should these charges be confirmed and Dominic Ongwen be committed to a Trial Chamber on these charges, it will argue that the continuation of this protective measure would violate Dominic Ongwen's right to a fair and public trial (ICC-02/04-01/15-386).

25. At the commencement of the confirmation of charges hearing, the Chamber informed the parties and participants that while it would accept that submissions at the hearing concerning charges 50 to 60 would be made in closed session to avoid any possible risk unwarranted at a stage in which it was yet to be determined whether there will be a trial on these charges, the Chamber, should these charges be confirmed, would make them public, either in their entirety or with the appropriate redactions to the identity of the concerned victims, in its decision under article 61(7) of the Statute (Transcript [T-20](#), p. 8). Neither party advanced submissions as to the extent to which these charges could be made public, despite the possibility accorded to them at the hearing.

26. The Chamber observes that in accordance with article 67(1) of the Statute, Dominic Ongwen "[i]n the determination of any charge, [...] shall be entitled to a public hearing". The right to a public trial is indeed a

fundamental right of each accused person. The Chamber therefore considers that committing Dominic Ongwen to trial on charges which are entirely withheld from the public would constitute a significant violation of his fair trial rights. At the same time, the Chamber has a duty, in accordance with article 68 of the Statute, to take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. The same provision explicitly mandates that “[t]hese measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial”. The Chamber is therefore called to strike the appropriate balance between these different interests.

27. Following consultation with the Victims and Witnesses Unit, the Chamber decides to make public charges 50 to 60 to the extent that they are confirmed in the present decision, as this is a fundamental right of Dominic Ongwen the safeguard of which would not bring disproportionate risks to the safety and well-being of the relevant victims. However, in the public version of the present decision, these victims are referred to by their pseudonyms and their names redacted.

28. As explained below, the charges which have been presented confidentially are partly not confirmed. For reasons that originally justified the level of classification and taking into account that the above only applies to charges on which there will be a trial, the analysis related to the part of the charges which is not confirmed, and the text thereof, shall remain confidential.

D. Defence challenge to cumulative charging

29. The Prosecutor presents charges against Dominic Ongwen in which the same set of facts is legally characterised as more than one crime under the Statute. The Defence objects to this approach by the Prosecutor ([Defence Brief](#),

paras 68 to 81; and Transcript [T-23](#), pp. 10 to 12), and argues, relying on minority opinions from the *ad hoc* Tribunals in which dissenting Judges express their disagreement with cumulative convictions, that “cumulative convictions have the same effect as the retrial of the same conduct and should therefore not be allowed on the basis of the principle of *ne bis in idem*”. Also, according to the Defence, “the matter of cumulative charging should be resolved at Pre-Trial [...] in the name of judicial expediency and in light of the fact that Chambers ha[ve] the power to re-characterise crimes at trial [in accordance with regulation 55 of the Regulations of the Court]”. In particular, the Defence takes issue with the Prosecutor’s charging of Dominic Ongwen for both war crimes and crimes against humanity on the basis of the same conduct.

30. The Chamber is not persuaded by the Defence submissions. Arguments concerning the permissibility of cumulative convictions are extraneous to the question of whether this Chamber should allow the Prosecutor to charge Dominic Ongwen with more than one crime on the same set of facts, and present these charges to the Trial Chamber. The Chamber is of the view that questions of concurrence of offences are better left to the determination of the Trial Chamber. Indeed, article 61(7) of the Statute mandates the Chamber to decline to confirm charges only when the evidence does not provide substantial grounds to believe that the person committed the charged crime and not when one possible legal characterisation of the relevant facts is to be preferred over another, equally viable. When the Prosecutor meets the applicable burden of proof, the Chamber shall confirm the charges as presented.

31. Also, the Chamber considers misplaced the Defence argument that cumulative charging should be avoided as there exists the possibility to “re-characterise crimes at trial” in accordance with regulation 55 of the

Regulations of the Court. Regulation 55 provides for a procedural remedy to situations in which the evidence heard at trial warrants a modification to the legal characterisation of the facts confirmed by the Pre-Trial Chamber. This provision does not address or otherwise concern situations in which the same set of facts could constitute simultaneously more than one crime under the Statute, *i.e.* those situations warranting cumulative charging or cumulative convictions.

32. Indeed, and importantly, certain crimes under the Statute may, although based on the same set of facts, be not alternative to each other, but concurrently lead to a conviction. Notably, this is the case when each of these crimes requires proof of a distinct legal element or offends a different protected interest. It is on this ground, for example, that Trial Chamber II entered multiple convictions for Germain Katanga for the crimes of murder constituting crimes against humanity and war crimes,¹¹ as did Trial Chamber III with respect to Jean-Pierre Bemba for the crimes of murder and rape.¹²

33. In conclusion, and also in line with the established practice of Pre-Trial Chambers,¹³ the Chamber considers that, when the relevant evidentiary standard is met, the Prosecutor shall be allowed to present cumulative charges at trial and that deference shall be given to the Trial Chamber, which, following a full trial, will be better placed to resolve questions of concurrence of offences.

¹¹ Trial Chamber II, *The Prosecutor v. Germain Katanga*, “Judgment pursuant to article 74 of the Statute”, 7 March 2014, [ICC-01/04-01/07-3436-tENG](#) (“Katanga Trial Judgment”), paras 1694-1696.

¹² Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, “Judgment pursuant to Article 74 of the Statute”, 21 March 2016, ICC-01/05-01/08-3343, paras 743-751.

¹³ See *e.g.* [Katanga and Ngudjolo Confirmation Decision](#) and [Ntaganda Confirmation Decision](#).

E. Remarks on modes of liability

34. With the exception of charges 50 to 60, in which the Prosecutor alleges Dominic Ongwen's responsibility only as a direct perpetrator, the charges brought against him contain several alternative modes of liability. The Prosecutor requests the Chamber to confirm the charges as presented, thereby maintaining the proposed alternative modes of criminal responsibility, and ultimately permitting these alternatives to be presented to the Trial Chamber for its final determination.

35. The Chamber, consistently with the recent practice of Pre-Trial Chambers,¹⁴ is of the view that when the evidence is sufficient to sustain each of the alternative forms of responsibility for the same conduct presented by the Prosecutor, it is appropriate that the charges be confirmed with the various available alternatives, in order for the Trial Chamber to determine which, if any, is established to the applicable standard of proof at trial. Confirming the different applicable alternative legal characterisations on the basis of the same facts may also reduce future delays at trial and provides early notice to the defence of the different legal characterisations that may be considered by the trial judges.¹⁵

36. The alternative modes of liability with which the Prosecutor charges Dominic Ongwen are:

- Charges 1 to 7: article 25(3)(a) ("indirect co-perpetration") or 25(3)(c) or 25(3)(d)(i) or (ii) or article 28(a) of the Statute;
- Charges 8 and 9: article 25(3)(a) ("indirect co-perpetration") or 25(3)(b) (ordering) or 25(3)(c) or 25(3)(d)(i) or (ii) or article 28(a) of the Statute;

¹⁴ [Ntaganda Confirmation Decision](#), para. 100; [Gbagbo Confirmation Decision](#), para. 227; [Blé Goudé Confirmation Decision](#), para. 133. See also [Bemba et al. Confirmation Decision](#).

¹⁵ See [Gbagbo Confirmation Decision](#), para. 228.

- Charges 10 to 23 and 61 to 70: article 25(3)(a) (“indirect co-perpetration”) or 25(3)(b) (ordering) or 25(3)(d)(i) or (ii) or article 28(a) of the Statute; and
- Charges 24 to 49: article 25(3)(a) (“indirect perpetration”) or 25(3)(b) (ordering) or 25(3)(d)(i) or (ii) or article 28(a) of the Statute.

37. The Defence challenges the existence, under the Statute, of the mode of liability of “indirect co-perpetration”, relied upon by the Prosecutor for Charges 1 to 23 and 61 to 70 ([Defence Brief](#), paras 82 to 84; and Transcript [T-23](#), pp. 12-13). According to the Defence, this mode of liability is not expressly enumerated in the Statute and, therefore, cannot be applied without offending the principle of *nullum crimen sine lege* enshrined in article 22 of the Statute.

38. The expression “indirect co-perpetration”, while not appearing in the Statute, has been used in the jurisprudence of the Court conventionally to refer to situations in which a person commits a crime “jointly with” someone else and “through” someone else within the meaning of article 25(3)(a) of the Statute, and which is a particular form of co-perpetration. In general, co-perpetration (*i.e.* commission of a crime “jointly with another”) describes the situation in which two or more persons work together in the commission of the crime so that the sum of their co-ordinated individual contributions results in the realisation of the objective elements of a crime. As held by the Appeals Chamber, this requires an agreement between the co-perpetrators (whether express or implied, previously arranged or materialising extemporaneously) which ties them together and justifies the reciprocal imputation of their respective acts.¹⁶ In circumstances where a plurality of persons was involved in the commission of a crime within the jurisdiction of

¹⁶ Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, “Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction”, 1 December 2014, [ICC-01/04-01/06-3121-Red](#) (“Lubanga Appeal Judgment”), para. 445.

the Court, the most appropriate criterion to determine whether a person “committed” the crime jointly with others (rather than contributing to a crime committed by someone else) is “control over the crime”, which requires an evaluation of whether the person had control over the crime by virtue of his or her essential contribution within the framework of the agreement with the co-perpetrators and the resulting power to frustrate the commission of the crime.¹⁷ If the answer is in the affirmative, then it can be concluded that the person committed his or her crime, and did not contribute to the crime of another.

39. The Chamber, consistent with the uniform jurisprudence of the Court, is of the view that the Statute criminalises as forms of “commission” not only situations in which the co-perpetrators put in place their respective contributions by directly and personally executing the objective elements of the crime,¹⁸ but also when they do so “through another person” by jointly controlling the action of another person to such a degree that the will of that person becomes irrelevant, and that his or her action must be attributed to the co-perpetrators as if it were their own.¹⁹ This form of responsibility (which has been defined as “indirect co-perpetration” or “joint indirect perpetration”) still rests on the notion of reciprocal imputation of co-ordinated actions performed by each co-perpetrator. The only difference with “direct” co-perpetration is that the objective elements of the crime are executed by other persons who are utilised by the co-perpetrators for the commission of

¹⁷ [Lubanga Appeal Judgment](#), para. 473; [Blé Goudé Confirmation Decision](#), para. 141.

¹⁸ See e.g. [Lubanga Appeal Judgment](#), para. 458 (“article 25 (3) (a) of the Statute does not establish that co-perpetrators need to carry out the crime personally and directly”).

¹⁹ [Blé Goudé Confirmation Decision](#), para. 136. See also e.g. Pre-Trial Chamber I, *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, “Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir”, 4 March 2009, [ICC-02/05-01/09-3](#), para. 213; Pre-Trial Chamber II, *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, “Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute”, 23 January 2012, [ICC-01/09-01/11-373](#) (“Ruto *et al.* Confirmation Decision”), paras 291-292.

the crime. Indeed, as held by Pre-Trial Chamber I, this form of responsibility combines the commission of a crime “jointly with another” (in which each of a plurality of persons has the capacity to frustrate the commission of the crime in the way it is realised by not performing his or her coordinated contributive acts within the framework of an agreement among them) with the commission of a crime “through another person” (in which a person commits the crime by subjugating another person’s will, rather than personally and directly executing the objective elements of the crime).²⁰

40. This latter situation of commission “through another person”, in which the perpetrator has the sole control over the crime and commits it by making use of another person who physically carries out the incriminated conduct, rather than by directly executing the material elements of the crime,²¹ is conventionally referred to in the jurisprudence of the Court as “indirect perpetration”, which is the mode of liability that the Prosecutor attributes to Dominic Ongwen for the crimes charged in charges 24 to 49.

41. The Chamber concludes that the form of responsibility of “indirect co-perpetration” (in the sense of commission of crimes “jointly with” another and “through” another) is provided for by the text of the Statute and that the Defence argument is unfounded. The Chamber notes that, in previous cases, similar challenges have also consistently been rejected.²²

42. Charges 8 to 49 and 61 to 70 contain the alternative of article 25(3)(b) of the Statute, in the form of ordering the commission of the crimes charged. The mode of liability under article 25(3)(b) of the Statute is designed essentially to

²⁰ [Blé Goudé Confirmation Decision](#), para. 136.

²¹ See e.g. [Lubanga Appeal Judgment](#), para. 465.

²² See e.g. [Katanga and Ngudjolo Confirmation Decision](#), paras 490 *et ss*; and [Ruto *et al.* Confirmation Decision](#), paras 286-290.

capture the conduct of prompting another person to commit a crime within the jurisdiction of the Court.²³

43. Charges 1 to 9 contain the alternative of article 25(3)(c) of the Statute, which provides for individual criminal responsibility if a person, for the purpose of facilitating the commission of a crime within the jurisdiction of the Court, “aids, abets or otherwise assists in its commission or attempted commission, including providing the means for its commission”. As held by Pre-Trial Chamber I, “[i]n essence, what is required for this form of responsibility is that the person provides assistance to the commission of a crime and that, in engaging in this conduct, he or she intends to facilitate the commission of the crime”.²⁴ It is nowhere required, contrary to the Defence argument ([Defence Brief](#), para. 99), that the assistance be “substantial” or anyhow qualified other than by the required specific intent to facilitate the commission of the crime (as opposed to a requirement of sharing the intent of the perpetrators).

44. Charges 1 to 49 and 61 to 70 contain the alternative of article 25(3)(d) of the Statute, which criminalises contributing “in any other way” to the commission of a crime by a group of persons acting with a common purpose. It is therefore required that: (i) the crime is committed (*i.e.* realised in its objective elements) by a group of persons acting with a common purpose; and (ii) the person charged provides a contribution to the commission of such a crime. Contrary to the submission by the Defence ([Defence Brief](#), paras 104-105), the Statute does not require that the contribution under article 25(3)(d)

²³ See [Ntaganda Confirmation Decision](#), paras 145 and 153; [Gbagbo Confirmation Decision](#), para. 243; [Bemba *et al.* Confirmation Decision](#), para. 34; [Blé Goudé Confirmation Decision](#), para. 159.

²⁴ [Blé Goudé Confirmation Decision](#), para. 167. See also [Bemba *et al.* Confirmation Decision](#), para. 35.

be “significant” or reach a certain minimum degree.²⁵ With respect to the relevant mental element, this form of responsibility requires that the person meant to contribute to the commission of the crimes. In addition, it is required that the contribution be carried out either: (i) with the aim of furthering the purpose or the activity of the group in the case of a criminal common purpose or activity involving the commission of crimes within the jurisdiction of the Court; or (ii) in the knowledge of the intention of the group to commit the crimes.

45. Finally, charges 1 to 49 and 61 to 70 contain the alternative of article 28(a) of the Statute – command responsibility. As previously observed in the jurisprudence of the Court, article 28 reflects a different form of criminal responsibility than that found in article 25(3)(a) of the Statute in the sense that a superior may be held responsible for the prohibited conduct of his or her subordinates for failing to fulfil his or her duty to prevent or repress their unlawful conduct or submit the matter to the competent authorities.²⁶ Accordingly, as pointed out by Pre-Trial Chamber I,²⁷ a fundamental difference exists between the forms of commission incriminated in article 25 of the Statute, which establish liability for one’s own crimes, and article 28 of the Statute, which establishes liability for violation of duties in relation to crimes committed by others. For this reason, and in light of the facts of the present case, in this decision the allegation of command responsibility is addressed separately from the allegations of commission under article 25(3) of the Statute (see section III.J).

²⁵ See [Ruto et al. Confirmation Decision](#), paras 353-354. See also [Ntaganda Confirmation Decision](#), para. 158 and [Blé Goudé Confirmation Decision](#), para. 172.

²⁶ [Bemba Confirmation Decision](#), para. 405; [Gbagbo Confirmation Decision](#), para. 262; Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, “Judgment pursuant to Article 74 of the Statute”, 21 March 2016, ICC-01/05-01/08-3343, paras 173-174.

²⁷ [Gbagbo Confirmation Decision](#), para. 262.

III. FINDINGS

A. The evidence presented by the parties

46. In accordance with article 61(5) of the Statute, the Prosecutor, for the purpose of the confirmation of charges hearing, primarily relies on: (i) witness statements or transcripts of interviews of a total of 105 witnesses; (ii) records of intercepted LRA radio communications; and (iii) oral testimonies of seven witnesses given before the Single Judge in the presence of the Prosecutor and the Defence in September and November 2015.

47. More specifically, the Prosecutor has presented:

- (i) the witness statements of 48 civilian victims of LRA violence, some of whom were abducted and therefore also provide insider evidence – Witnesses P-1, P-6, P-7, P-8, P-9, P-15, P-18, P-23, P-24, P-26, P-57, P-60, P-61, P-67, P-76, P-81, P-97, P-98, P-99, P-101, P-107, P-119, P-130, P-152, P-185, P-187, P-195, P-196, P-197, P-198, P-199, P-214, P-218, P-226, P-227, P-235, P-236, P-249, P-252, P-268, P-269, P-270, P-274, P-275, P-280, P-284, P-286, P-293 and P-309;
- (ii) the transcripts of interviews, conducted under article 55(2) of the Statute and rule 112 of the Rules, of 40 LRA insiders of various ranks – Witnesses P-10, P-16, P-19, P-28, P-37, P-40, P-45, P-46, P-48, P-54, P-69, P-70, P-83, P-85, P-96, P-104, P-105, P-133, P-138, P-142, P-144, P-145, P-146, P-151, P-165, P-172, P-200, P-202, P-205, P-209, P-217, P-224, P-231, P-233, P-237, P-240, P-245, P-250, P-253, P-258; and
- (iii) the witness statements of 16 members of the Ugandan military or police forces, or persons otherwise associated with the Ugandan authorities – Witnesses P-3, P-17, P-27, P-29, P-32, P-35, P-36, P-38, P-42, P-47, P-52, P-59, P-84, P-125, P-291 and P-301.

48. At the confirmation of charges hearing, the Defence has challenged, entirely or in part, the credibility of Witnesses P-9, P-198, P-200 and P-309.

49. Upon consideration of the available evidence as well as of the challenges brought by the Defence, and in line with the nature and purpose of the confirmation proceedings as described in section II.A above, the Chamber has concluded that the witness statements and the transcripts of interviews presented by the Prosecutor (with the exception of Witness P-198, and, in part, Witness P-200, as explained below at paragraphs 125 to 135) are reliable for the purpose of the present decision, and that any outstanding questions of reliability are more appropriately left to the determination of the Trial Chamber.

50. The Chamber has reached the identical conclusion with respect to the other major category of evidence in the case, which are the records of LRA radio communications intercepted (including immediately before and after the relevant attacks on the four internally displaced persons' (IDP) camps which form the basis of charges 1 to 49) by three branches of the Ugandan government security forces: the Internal Security Organisation (ISO), the Uganda People's Defence Force (UPDF) and the Police. The relevant material relied upon by the Prosecutor includes tapes of LRA radio communications intercepted by the ISO and the UPDF and logbooks of such intercepted communications produced by the ISO, UPDF and the Police, as well as rough notes taken by the interception operators of UPDF during the LRA radio communications and UPDF intelligence reports containing also summaries of the UPDF logbooks.

51. The Defence has not challenged the reliability of this evidence, and has in fact itself relied on it. Noting also that the Prosecutor has provided a detailed explanation of the process of interception and analysis of the LRA

radio communications by the Ugandan government ([Prosecutor's Brief](#), paras 59-72; Transcript [T-20](#), pp. 33-45) and provided statements of nine witnesses involved at all levels of the ISO, UPDF and Police interception operations (Witnesses P-3, P-27, P-29, P-32, P-38, P-59, P-125, P-291 and P-301), the Chamber considers this evidence to be reliable.

52. The available evidence also includes the transcripts of complete testimonies given before Single Judge Cuno Tarfusser in the presence of both the Prosecutor and the Defence in September and November 2015 by seven former so-called "wives" of Dominic Ongwen (Witnesses P-99, P-101, P-214, P-226, P-227, P-235 and P-236). As explained below in section H.2, the Chamber considers the testimonies of these seven witnesses to be fully credible.

53. Also the Defence, under article 61(6)(c) of the Statute, presented evidence for the purpose of the confirmation of charges hearing. In particular, the Defence presented the statements, or summaries thereof, of 18 witnesses (including three former so-called "wives" of Dominic Ongwen who later testified before the Single Judge) and some related material. The Chamber takes note of this evidence but concludes, in line with the analysis below, that the evidence presented by the Defence does not negate the evidentiary threshold applicable for confirmation of charges otherwise sufficiently established by the evidence presented by the Prosecutor.

B. The LRA and Dominic Ongwen's status within the organisation

54. Before addressing in sequence the 70 charges presented by the Prosecutor, the Chamber lays out briefly its conclusions as concerns the nature and structure of the LRA and Dominic Ongwen's status in the organisation at the time relevant for the charges, namely between 1 July 2002 and 31 December 2005. These facts are relevant for all the charges presented,

as they also inform the Chamber's findings with respect to the contextual elements of the crimes charged (section C) and form an integral part of the facts considered by the Chamber when addressing the Prosecutor's allegations that Dominic Ongwen is individually criminally responsible under the Statute for those crimes (sections D-K).

55. Virtually the entire evidence presented by the Prosecutor is relevant for the specific question at issue. The evidence provided by insider witnesses is particularly instructive, as are the records of intercepted LRA radio communications and the statements of civilians who came in contact with the LRA during its attacks or otherwise, and of persons associated with the Ugandan government.

56. The evidence demonstrates that, at the relevant time, the LRA was an organised entity disposing of a considerable operational capacity. The undisputed leader of the organisation was Joseph Kony, from whom emanated all important decisions. To maintain his tight grip on the organisation, Joseph Kony also successfully invoked possession of mystical powers. Directly under Joseph Kony were a central organ known as Control Altar and a so-called Division, which was also an operational unit. Most importantly, however, the operational units of the LRA were its four brigades: Sinia, Gilva, Trinkle and Stockree. These brigades were composed of a considerable number of individuals under an effective command structure, which ensured that orders were executed. A strict system of discipline was used for this purpose, which included capital punishment and imprisonment as sanctions for disobedience. The Chamber notes the argument of the Defence that the LRA was not a proper army and that Joseph Kony frequently bypassed the chain of command (Transcript [T-22](#), pp. 69-70), but does not consider dispositive this objection to the charges. The evidence

overwhelmingly shows that the hierarchical structure was effective, notwithstanding the possibility of deviations as described by the Defence.

57. The evidence shows that the system of hierarchy and discipline was equally effective in the Sinia brigade, on which the charges brought by the Prosecutor focus. The Sinia brigade had a commander, a unit attached to its headquarters, and three battalions, referred to as Oka, Terwanga and Siba.

58. As concerns Dominic Ongwen, the evidence demonstrates that at all times relevant to the charges, he was a commander in position to direct the conduct of the significant operational force subordinate to him. In August 2002, he is reported to have been the commander of Oka battalion. In September 2003, he progressed to the position of second in command of the Sinia brigade, and in March 2004 he became the brigade's commander. It is also notable that the evidence indicates that Dominic Ongwen's performance as commander was valued highly by Joseph Kony, and it is indeed telling that his appointments to more powerful command positions and his rise in rank followed and were associated with his operational performance, which included the direction of attacks against civilians as discussed below.

59. As commander, Dominic Ongwen was aware of the powers he held, and he took sustained action to assert his commanding position, including by the maintenance of a ruthless disciplinary system, abduction of children to replenish his forces, and the distribution of female abductees to his subordinates as so-called "wives".

C. The armed conflict and the LRA attack on the civilian population

60. The Prosecutor charges Dominic Ongwen with both war crimes and crimes against humanity. The evidence provided by insider witnesses, the statements of civilians who came in contact with the LRA during its attacks or

otherwise, and of persons associated with the Ugandan government, as well as the records of intercepted LRA radio communications are all relevant to establish the contextual elements of the war crimes and crimes against humanity charged.

61. In particular, it is a notorious fact, referred to abundantly in the evidence, that in the time period relevant to the charges brought against Dominic Ongwen (*i.e.* between 1 July 2002 and 31 December 2005) in northern Uganda there was protracted armed violence between the LRA on the one side and the Ugandan government, principally its armed forces, the UPDF, together with associated local defence units (LDUs) on the other side. Such protracted armed violence, due to its intensity and its broad geographical scope covering the entire northern Uganda, amounted to an armed conflict not of an international character within the meaning of article 8 of the Statute. Also, due to the time, place and nature, it is satisfactorily established that the conduct with which Dominic Ongwen is charged as amounting to war crimes was closely linked to the hostilities between the LRA and the Ugandan government. Accordingly, the Chamber is satisfied that the contextual elements of the war crimes with which Dominic Ongwen is charged under charges 1, 3, 5, 6, 9, 11, 13, 15, 17, 19, 21, 22, 24, 26, 28, 30, 32, 34, 35, 37, 39, 41, 43, 45, 47, 48, 52, 54, 56, 59, 60, 63, 65, 67, 69 and 70 are established.

62. Simultaneously to these hostilities between armed groups, the LRA also engaged in a pattern of deliberate attacks against civilians, in particular against those residing in IDP camps established by the government. According to the evidence, the leadership of the LRA held the belief that all civilians who resided in such IDP camps were supporting the government, and that this fact alone sufficed to make them legitimate targets. Importantly for the charges brought by the Prosecutor against Dominic Ongwen, there is specific evidence of orders issued and of sentiments otherwise expressed by

Dominic Ongwen which demonstrates that he shared this view (Statements of Witnesses P-9, P-202, P-224, P-245 and P-293).

63. Based on the available evidence, the Chamber finds that, as alleged by the Prosecutor, from 1 July 2002 to 31 December 2005, the LRA carried out an attack directed against the civilian population of northern Uganda. Such attack was widespread as it extended over a wide geographical area and a considerable period of time, and involved a large number of acts of violence victimising a large number of civilians, as well as systematic, as it was planned and the violence followed a discernible pattern. Also, it is sufficiently established that the acts with which Dominic Ongwen is charged as amounting to crimes against humanity share common features in terms of their characteristics, nature, aims, targets and alleged perpetrators, as well as times and locations, with the other acts forming the basis of the LRA attack directed against the civilian population in northern Uganda.

64. Accordingly, the Chamber is satisfied that the contextual elements of the crimes against humanity with which Dominic Ongwen is charged under charges 2, 4, 7, 8, 10, 12, 14, 16, 18, 20, 23, 25, 27, 29, 31, 33, 36, 38, 40, 42, 44, 46, 49, 50, 51, 53, 55, 57, 58, 61, 62, 64, 66 and 68 are established.

D. The attack on Pajule IDP camp on or about 10 October 2003

65. In relation to the attack on Pajule IDP camp on or about 10 October 2003 (which is the basis of charges 1 to 10), the core evidence relied upon by the Prosecutor consists of the statements of a number of LRA fighters who participated in the attack (Witnesses P-45, P-48, P-107, P-130, P-144 and P-309), the statements of other LRA insiders who were in the area or otherwise observed the planning, preparation or results of the attack (Witnesses P-101, P-138, P-146 and P-209), the statements of civilian residents of the IDP camp at the time of the attack who were directly victimised

(Witnesses P-6, P-7, P-8, P-9, P-61, P-67, P-81 and P-249), the records of intercepted LRA radio communications immediately before and on the day of the attack (5, 7, 9 and 10 October 2003),²⁸ the statement of two UPDF soldiers who were stationed at the barracks in Pajule at the time of the attack (Witnesses P-47 and P-52), and of a third who participated in a UPDF fact-finding mission on the day of the attack and observed its aftermath and casualties (Witness P-84).

66. This evidence makes it possible to reconstruct the relevant events with considerable clarity. It demonstrates that Dominic Ongwen, together with other senior leaders of the LRA, including Joseph Kony, Vincent Otti, Raska Lukwiya and others, met to plan the attack on Pajule IDP camp the evening before the attack, as described in particular by Witness P-101. Dominic Ongwen was selected to lead one of the groups on the ground. The purpose of the attack was retribution against civilians perceived as supportive of the government, as well as to supply the LRA with food and abductees.

67. Approximately 15,000-30,000 people were living in Pajule IDP camp in October 2003. On 10 October 2003, early in the morning, the attack took place as planned. Approximately 40 LRA fighters, armed with guns and knives, entered the camp in groups, one attacking the barracks of the UPDF/LDU, where an armed confrontation ensued with the approximately 150 soldiers stationed there, and another immediately attacking the civilian areas. Also as planned in advance, Dominic Ongwen led the group of LRA fighters who attacked the civilian trading centre.

68. In the course of the attack, as stated by, in particular, Witnesses P-67 and P-8, LRA fighters killed at least two civilian residents of the camp. They also

²⁸ For reasons of simplicity, the Chamber refers to dates of intercepted communications throughout the decision. The ERN of the relevant records can be retrieved through the timeline provided by the Prosecutor, see UGA-OTP-0251-0835.

beat civilians (Witness P-9, for example, states that he was physically assaulted by Dominic Ongwen) and threatened them with violence, and pillaged civilian property, in particular food from the trading centre. They abducted residents of the camp, tied them, and forced them to carry pillaged items and wounded LRA fighters. One to four hundred civilians were so abducted, some were soon released, such as Witness P-9, and others were forced to serve as recruits in the LRA, including Witness P-67. The attackers brought with them a number of previously abducted civilians, including Witness P-199, whom they also used to carry pillaged items away from the camp. Witness P-249 explains that Dominic Ongwen ordered LRA fighters under his command to pillage items from shops and homes and threatened to kill civilians who had been abducted. The attack ended after approximately one hour of intense fighting at the barracks, when the – in the meantime reinforced – UPDF/LDU units were able to repel the attackers.

69. In light of the available evidence, the Chamber considers that the objective elements of the following crimes are sufficiently established by the evidence: attacks against the civilian population as such as a war crime pursuant to article 8(2)(e)(i) of Statute (charge 1); murder as a crime against humanity pursuant to article 7(1)(a) of the Statute (charge 2) and as a war crime pursuant to article 8(2)(c)(i) of the Statute (charge 3); torture as a crime against humanity pursuant to article 7(1)(f) of the Statute (charge 4) and as a war crime pursuant to article 8(2)(c)(i) of the Statute (charge 5); cruel treatment as a war crime article 8(2)(c)(i) of the Statute (charge 6); other inhumane acts as a crime against humanity pursuant to article 7(1)(k) of the Statute (charge 7); enslavement as a crime against humanity pursuant to article 7(1)(c) of the Statute (charge 8); pillaging as a war crime pursuant to article 8(2)(e)(v) of the Statute (charge 9); and persecution as a crime against humanity pursuant to article 7(1)(h) of the Statute (charge 10).

70. As concerns the individual criminal responsibility of Dominic Ongwen, the evidence sufficiently demonstrates that he, pursuant to a common plan with other senior LRA leaders, undertook action which was essential for the commission of crimes, and that he contributed to these crimes not only personally but also through the LRA fighters under his command. As such, the evidence enables the conclusion that there are substantial grounds to believe that Dominic Ongwen committed the above mentioned crimes jointly with others and through others within the meaning of article 25(3)(a) of the Statute, as charged by the Prosecutor. Alternatively, Dominic Ongwen's contribution to the abovementioned crimes may be legally qualified under article 25(3)(b) (charges 8 to 10 only, as presented by the Prosecutor), under 25(3)(c) (charges 1 to 9 only, as presented by the Prosecutor), as well as under article 25(3)(d)(i) and (ii) of the Statute, as charged by the Prosecutor.

E. The attack on Odek IDP camp on or about 29 April 2004

71. The main evidence relied upon by the Prosecutor in relation to the attack on Odek IDP camp on or about 29 April 2004 (which forms the basis of charges 11 to 23) includes the statements of witnesses who participated in the attack (Witnesses P-54, P-245 and P-309), of another LRA insider (Witness P-142) and of civilian residents of Odek IDP camp (Witnesses P-197, P-218, P-252, P-268, P-269, P-270, P-274 and P-275). The Chamber has also reviewed the records of intercepted radio communications immediately following the attack (30 April and 1 May 2004).

72. This evidence demonstrates that approximately 200 LRA fighters attacked Odek IDP camp on 29 April 2004 at approximately 17.00 hours. The attackers operated in two groups: one attacked the barracks, where a force of about 40 UPDF and LDU soldiers was stationed, while the other spread in the civilian areas, and in particular the trading centre. At the time of the attack, an

estimated 2,000 to 2,600 people lived in the camp. Many civilians were shot by the LRA attackers: at least 61 died as a result of their injuries, but there is also evidence that some survived the shooting. A number of witnesses, among them Witnesses P-252, P-268, P-269, P-274 and P-275, state to have seen many dead civilians lying scattered around the camp. In addition, the evidence includes references to instances of grave physical abuse, such as beating with sticks and guns or kicking. In one instance, a female LRA attacker raped Witness P-270, a civilian resident of the camp, with a comb and a stick used for cooking, while the victim's husband was forced to watch. The attackers forced Witness P-252 to kill an abducted man, and later to inspect decomposing bodies, including that of his father, to ensure that no one was alive. The LRA also abducted people, and forced them to carry loot and wounded LRA attackers away from the camp. Witness P-245 estimated that 35 civilians were abducted. If the abductees walked too slowly, they were beaten. In order to increase their carrying capacity and walking speed, mothers were forced to abandon their children on the side of the road, as observed by Witnesses P-268 and P-275. Some abductees were released after several days, while others, including Witness P-252, remained in captivity for up to over a year. Witnesses P-218 and P-274 provide partial lists of people who were killed, injured or abducted during the attack. The LRA attackers (including Dominic Ongwen personally, as reported by Witness P-54) also pillaged food and personal items from the trading centre and from civilian homes.

73. According to the evidence, in particular the statement of Witness P-245, the order to attack Odek IDP camp originated from Joseph Kony. The order was relayed by Dominic Ongwen and executed jointly by fighters from Sinia and Trinkle brigades under the command of Dominic Ongwen and other Trinkle and Sinia commanders. The aim of the attack was twofold: to get

supplies and to attack the civilians living in the IDP camp, who were perceived to be supportive of the government. Dominic Ongwen briefed and instructed the troops before the attack. His instructions, described by Witnesses P-54, P-142, P-205 and P-245, included express orders to target civilians, and orders to abduct civilians and to pillage. Dominic Ongwen also participated in the attack on the ground, commanding and coordinating the LRA fighters.

74. In light of the available evidence, the Chamber considers that the objective elements of the following crimes are sufficiently established by the evidence: attacks against the civilian population as such as a war crime pursuant to article 8(2)(e)(i) of Statute (charge 11); murder as a crime against humanity pursuant to article 7(1)(a) of the Statute (charge 12) and as a war crime pursuant to article 8(2)(c)(i) of the Statute (charge 13); attempted murder as a crime against humanity pursuant to articles 7(1)(a) and 25(3)(f) of the Statute (charge 14) and as a war crime pursuant to articles 8(2)(c)(i) and 25(3)(f) of the Statute (charge 15); torture as a crime against humanity pursuant to article 7(1)(f) of the Statute (charge 16) and as a war crime pursuant to article 8(2)(c)(i) of the Statute (charge 17); other inhumane acts as a crime against humanity pursuant to article 7(1)(k) of the Statute (charge 18); cruel treatment as a war crime pursuant to article 8(2)(c)(i) of the Statute (charge 19); enslavement as a crime against humanity pursuant to article 7(1)(c) of the Statute (charge 20); pillaging as a war crime pursuant to article 8(2)(e)(v) of the Statute (charge 21); outrages upon personal dignity as a war crime pursuant to article 8(2)(c)(ii) of the Statute (charge 22); and persecution as a crime against humanity pursuant to article 7(1)(h) of the Statute (charge 23).

75. As concerns the individual criminal responsibility of Dominic Ongwen, the evidence sufficiently demonstrates that he, pursuant to a common plan

with other senior LRA leaders, undertook action which was essential for the commission of crimes pursuant to the common plan, and that he contributed to these crimes not only personally but also through the LRA fighters under his command. As such, the evidence enables the conclusion that there are substantial grounds to believe that Dominic Ongwen committed the above mentioned crimes, jointly with others and through others within the meaning of article 25(3)(a) of the Statute, as charged by the Prosecutor. Alternatively, Dominic Ongwen's contribution to the abovementioned crimes may be legally qualified under article 25(3)(b) as well as under article 25(3)(d)(i) and (ii), as charged by the Prosecutor.

F. The attack on Lukodi IDP camp on or about 19 May 2004

76. The core evidence presented by the Prosecutor in relation to the LRA attack on Lukodi IDP camp on or about 19 May 2004 (which forms the basis of charges 24 to 36) includes the statements of LRA insiders (Witnesses P-18, P-142, P-172, P-205 and P-245), of civilian victims of the attack (Witnesses P-24, P-26, P-60, P-119, P-185, P-187, P-195 and P-196), of a UPDF soldier stationed at Lukodi at the time of the attack (Witness P-35), and of a government pathologist (Witness P-36). The records of intercepts of communications on the days following the attack (21, 24 and 30 May 2004) are also of importance.

77. According to the evidence submitted, LRA fighters attacked Lukodi IDP camp, which was at that time inhabited by approximately 7,000 civilians and defended by approximately 30 soldiers, on 19 May 2004 at around 18.00 hours. The UPDF unit in the camp withdrew after a short fight, and the LRA fighters proceeded to attacking the civilian population in the camp. After looting, they systematically set fire to the civilian houses and other property. The civilian residents, whose statements are relied on by the Prosecutor, consistently describe this fact. The attackers killed at least 45 civilians, by

shooting, stabbing, beating and by burning them inside houses. Evidence of killing is provided by, *inter alia*, Witnesses P-24 and P-26, and by Witness P-36, who examined the bodies the day after the attack. The attackers also left at least 16 camp residents wounded. Moreover, they abducted civilian residents, among them Witnesses P-119, P-195 and P-196, and forced them to carry away goods that they pillaged from the camp. The abductees were beaten, and some were killed even after leaving Lukodi.

78. The evidence demonstrates that Dominic Ongwen devised the plan to attack Lukodi, and sought and obtained permission from Joseph Kony for the attack – this particular radio communication was intercepted on 17 May 2004. To execute the attack, Dominic Ongwen issued orders to the LRA units under his command at the time, which were the Sinia brigade forces and the Gilva brigade sickbay forces. As described by Witness P-205, Dominic Ongwen selected the force which was to attack, organised the attackers into groups, and appointed commanders on the ground. His instructions to the fighters were to attack and kill indiscriminately everyone present in Lukodi, to burn houses and return with food. The order to attack civilians was personally observed by Witness P-202.

79. In light of the available evidence, the Chamber considers that the objective elements of the following crimes are sufficiently established by the evidence: attacks against the civilian population as such as a war crime pursuant to article 8(2)(e)(i) of Statute (charge 24); murder as a crime against humanity pursuant to article 7(1)(a) of the Statute (charge 25) and as a war crime pursuant to article 8(2)(c)(i) of the Statute (charge 26); attempted murder as a crime against humanity pursuant to articles 7(1)(a) and 25(3)(f) of the Statute (charge 27) and as a war crime pursuant to articles 8(2)(c)(i) and 25(3)(f) of the Statute (charge 28); torture as a crime against humanity pursuant to article 7(1)(f) of the Statute (charge 29) and as a war crime

pursuant to article 8(2)(c)(i) of the Statute (charge 30); other inhumane acts as a crime against humanity pursuant to article 7(1)(k) of the Statute (charge 31); cruel treatment as a war crime pursuant to article 8(2)(c)(i) of the Statute (charge 32); enslavement as a crime against humanity pursuant to article 7(1)(c) of the Statute (charge 33); pillaging as a war crime pursuant to article 8(2)(e)(v) of the Statute (charge 34); destruction of property as a war crime pursuant to article 8(2)(e)(xii) of the Statute (charge 35); and persecution as a crime against humanity pursuant to article 7(1)(h) of the Statute (charge 36).

80. As concerns the individual criminal responsibility of Dominic Ongwen, there are substantial grounds to believe that he committed the crimes through the LRA forces subordinate to him, in the sense of article 25(3)(a) of the Statute, as presented by the Prosecutor. Alternatively, Dominic Ongwen's contribution to the abovementioned crimes may be legally qualified under article 25(3)(b) as well as under article 25(3)(d)(i) and (ii) of the Statute, as charged by the Prosecutor.

G. The attack on Abok IDP camp on or about 8 June 2004

81. The Chamber's findings in relation to the LRA attack on Abok IDP camp on or about 8 June 2004 (which is the basis of charges 37 to 49) are based on the core evidence provided by LRA insiders (Witnesses P-54 and P-252), the civilian residents of the camp, who were as such among the victims of the attack (Witnesses P-280, P-284, P-286 and P-293) and on the records of intercepted LRA communications immediately after the attack on 9 and 10 June 2004.

82. On the basis of this evidence, it emerges that Abok IDP camp, where between 7,000 and 12,000 civilians were residing, was attacked by LRA fighters in the evening of 8 June 2004. As in the other attacks described above, the attackers specifically targeted civilians, shooting them, burning them and

beating them, causing the death of at least 28 civilian residents of the camp while certain others survived their injuries. Witness P-293 was able to observe the violence and, the following day, compiled a list of those killed. Dominic Ongwen also reported to Joseph Kony on 10 June 2004 that he had “killed many people” at Abok. Food and other property were pillaged, and civilian residents, including Witness P-286, were abducted and forced to carry the pillaged goods away from the camp. Civilian dwellings and other property were also destroyed by burning. The 15 government soldiers present in the camp at the time of the attack were not able to defend the civilians.

83. The evidence demonstrates that the attack on Abok IDP camp was carried out by LRA Sinia brigade forces under the control of Dominic Ongwen. While he did not directly participate in the attack on the ground, Dominic Ongwen had overall command of the attack, and ensured that his orders were transmitted and obeyed by appointing a leader on the ground. Witness P-54 reports having participated in the attack under a commander subordinate to Dominic Ongwen, and civilian Witnesses P-280 and P-286 heard LRA fighters refer to Dominic Ongwen as their leader. The intercepted radio communications on 9 and 10 June 2004, in which Dominic Ongwen reported the attack to Joseph Kony, are also instructive.

84. In light of the available evidence, the Chamber considers that the objective elements of the following crimes are sufficiently established by the evidence: attacks against the civilian population as such as a war crime pursuant to article 8(2)(e)(i) of Statute (charge 37); murder as a crime against humanity pursuant to article 7(1)(a) of the Statute (charge 38) and as a war crime pursuant to article 8(2)(c)(i) of the Statute (charge 39); attempted murder as a crime against humanity pursuant to articles 7(1)(a) and 25(3)(f) of the Statute (charge 40) and as a war crime pursuant to articles 8(2)(c)(i) and 25(3)(f) of the Statute (charge 41); torture as a crime against humanity

pursuant to article 7(1)(f) of the Statute (charge 42) and as a war crime pursuant to article 8(2)(c)(i) of the Statute (charge 43); other inhumane acts as a crime against humanity pursuant to article 7(1)(k) of the Statute (charge 44); cruel treatment as a war crime pursuant to article 8(2)(c)(i) of the Statute (charge 45); enslavement as a crime against humanity pursuant to article 7(1)(c) of the Statute (charge 46); pillaging as a war crime pursuant to article 8(2)(e)(v) of the Statute (charge 47); destruction of property as a war crime pursuant to article 8(2)(e)(xii) of the Statute (charge 48); and persecution as a crime against humanity pursuant to article 7(1)(h) of the Statute (charge 49).

85. As concerns the individual criminal responsibility of Dominic Ongwen, there are substantial grounds to believe that he committed the crimes through the LRA forces subordinate to him, in the sense of article 25(3)(a) of the Statute, as presented by the Prosecutor. Alternatively, Dominic Ongwen's contribution to the abovementioned crimes may be legally qualified under article 25(3)(b) as well as under article 25(3)(d)(i) and (ii) of the Statute, as charged by the Prosecutor.

H. Sexual and gender based crimes

86. Under charges 50 to 68, the Prosecutor charges Dominic Ongwen with sexual and gender based crimes: charges 50 to 60 concern alleged crimes directly committed by Dominic Ongwen under article 25(3)(a) of the Statute, while charges 61 to 68 concern sexual and gender based crimes for which the Prosecutor alleges Dominic Ongwen's indirect criminal responsibility.

1. Introductory remarks on certain crimes charged

The Prosecutor's charge of "forced marriage" as an other inhumane act

87. The Prosecutor charges Dominic Ongwen with other inhumane acts within the meaning of article 7(1)(k) of the Statute in the form of forced marriage committed both directly and indirectly (charges 50 and 61,

respectively). The Defence, consistent with its general position that the Chamber should refrain from allowing the Prosecutor to charge the same conduct under more than one legal characterisation, argues that the proposed crime of forced marriage is subsumed by the crime of sexual slavery rather than amounting to a category of other inhumane acts ([Defence Brief](#), paras 128-130; Transcript [T-23](#), pp. 14-17).

88. The Statute does not explicitly include “forced marriage” as a crime within the jurisdiction of the Court. The question before the Chamber is therefore whether the conduct attributed to Dominic Ongwen (*i.e.* to have forced women to serve as “conjugal partners” to himself and other LRA fighters in the Sinia brigade) constitutes an other inhumane act of a character similar to the acts set out in article 7(1)(a) to (j) intentionally causing great suffering, or serious injury to body or to mental or physical health. This is largely a question of fact, but the application of the gravity threshold of article 7(1)(k) of the Statute is also a question of law, as is the question of whether the conduct described as “forced marriage” is not otherwise subsumed by the crime of sexual slavery as argued by the Defence.

89. The Chamber notes that the Special Court for Sierra Leone (“SCSL”) has had occasion to deal with very similar factual allegations to those brought by the Prosecutor in the present case, and with an identical legal question. The Appeals Chamber of the SCSL held that forced marriage constitutes an “other inhumane act” as a crime against humanity when:

[The] accused, by force, threat of force, or coercion, or by taking advantage of coercive circumstances, causes one or more persons to serve as a conjugal partner, and the perpetrator’s acts are knowingly part of a widespread or systematic attack against a civilian population and amount to the infliction of

great suffering, or serious injury to body or to mental or physical health sufficiently similar in gravity to the enumerated crimes against humanity.²⁹

90. The Extraordinary Chambers in the Courts of Cambodia equally recognised the commission of other inhumane acts as a crime against humanity through forced marriage, by which victims “are forced to enter into conjugal relationships in coercive circumstances” and endure “serious physical or mental suffering or injury or a serious attack on human dignity of a degree of gravity comparable to that of other crimes against humanity”.³⁰

91. The Chamber agrees that forcing another person to serve as a conjugal partner may, *per se*, amount to an act of a similar character to those explicitly enumerated by article 7(1) of the Statute and may intentionally cause great suffering, and that forced marriage may, in the abstract, qualify as “other inhumane acts” under article 7 of the Statute rather than being subsumed by the crime of sexual slavery.

92. Indeed, the Chamber considers that forced marriage as an other inhumane act differs from the other crimes with which Dominic Ongwen is charged, and notably from the crime of sexual slavery, in terms of conduct, ensuing harm, and protected interests. It may be stated that forced marriage will generally be committed in circumstances in which the victim is also sexually or otherwise enslaved by the perpetrator. Moreover, restrictions on the freedom of movement, repeated sexual abuse, forced pregnancy, or forced labour, in particular the forced performance of domestic duties, are all factors which indicate a situation of “forced marriage”. In the view of the Chamber, however, such facts, in addition to indeed being incriminated under other

²⁹ *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-A, [Appeal Judgement](#), 26 October 2009, para. 736; see also *Prosecutor v. Brima, Kamara and Kanu*, SCSL-2004-16-A, [Appeal Judgment](#), 22 February 2008 (“AFRC Appeal Judgement”), para. 196.

³⁰ Extraordinary Chambers in the Courts of Cambodia, [Case 002 Closing Order](#), 15 September 2010, para. 1443.

provisions of article 7(1) of the Statute, are not in themselves sufficient to establish forced marriage.

93. According to the Chamber, the central element of forced marriage is the imposition of “marriage” on the victim, *i.e.* the imposition, regardless of the will of the victim, of duties that are associated with marriage, as well as of a social status of the perpetrator’s “wife”. The fact that such “marriage” is illegal and not recognised by, in this case, Uganda, is irrelevant. What matters is that the so-called “marriage” is factually imposed on the victim, with the consequent social stigma. The element of exclusivity of this forced conjugal union imposed on the victim is the characteristic aspect of forced marriage and is an element which is absent from any other crime with which Dominic Ongwen is charged. As held by the SCSL, unlike sexual slavery, forced marriage implies a relationship of exclusivity between the “husband” and “wife”, which could lead to disciplinary consequences for breach of this exclusive arrangement and, therefore, is “not predominantly a sexual crime”.³¹

94. Also, the Chamber recognises, as submitted by the Prosecutor ([Prosecutor’s Brief](#), para. 437; Transcript [T-20](#), p. 32), that the victims of forced marriage suffer separate and additional harm to those of the crime of sexual slavery, or other crimes under the Statute. Indeed, forced marriage as defined above violates the independently recognised basic right to consensually marry and establish a family.³² This basic right is indeed the value (distinct from *e.g.* physical or sexual integrity, or personal liberty) that demands

³¹ [AFRC Appeal Judgement](#), para. 195.

³² See [International Covenant on Civil and Political Rights](#), 999 UNTS 14668 (1976), article 23; [Universal Declaration of Human Rights](#), United Nations General Assembly Resolution 217 A(III) (1948), article 16; [Convention on the Elimination of All Forms of Discrimination Against Women](#), 1249 UNTS 13 (1981), article 16.

protection through the appropriate interpretation of article 7(1)(k) of the Statute.

95. In conclusion, the conduct under consideration, insofar as sufficiently demonstrated by the available evidence, constitutes the crime of an other inhumane act within the meaning of article 7(1)(k) of the Statute in the form of forced marriage, which differs from the other crimes with which Dominic Ongwen is charged, and accordingly warrants a specific separate charge, as presented by the Prosecutor.

The charge of forced pregnancy under article 7(1)(g) and 8(2)(e)(vi)

96. Under charges 58 and 59, the Prosecutor charges Dominic Ongwen with the crime of forced pregnancy as a crime against humanity under article 7(1)(g) and as a war crime under article 8(2)(e)(vi) of the Statute.

97. Article 7(2)(f) of the Statute defines the crime of forced pregnancy as “the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law”. Article 8(2)(e)(vi) of the Statute refers to the same provision for the definition of forced pregnancy as a war crime.

98. At the confirmation hearing, the Defence argued that the Prosecutor has not proven to the requisite threshold the specific intent required for this crime (Transcript [T-23](#), pp. 17-18). It appears that the Defence submits, essentially, that the special intent applies to the act of forcibly making the woman pregnant rather than to the act of confinement of a woman forcibly made pregnant as instead argued by the Prosecutor (Transcript T-21, p. 49).

99. It is clear from the statutory provision that the relevant conduct of the crime of forced pregnancy is the “unlawful confinement of a woman forcibly

made pregnant". It is therefore the act of confinement which must be carried out with the required special intent. Indeed, the crime of forced pregnancy does not depend on the perpetrator's involvement in the woman's conception; it is only required that the perpetrator knows that the woman is pregnant and that she has been made pregnant forcibly. It is apparent that the essence of the crime of forced pregnancy is in unlawfully placing the victim in a position in which she cannot choose whether to continue the pregnancy.

100. By the same token, it is not necessary to prove that the perpetrator has a special intent with respect to the outcome of the pregnancy, or that the pregnancy of the woman is in any way causally linked to her confinement. While the first alternative of the special intent requirement (intent of "affecting the ethnic composition of any population") would typically include such component, the second alternative (intent of "carrying out other grave violations of international law") does not call for any such restrictive interpretation.

101. Therefore, the Chamber concludes that the Prosecutor's submissions that Dominic Ongwen confined women who had been forcibly made pregnant, with the intent to carry out grave violations of international law, including to use them as his forced wives and to rape, sexually enslave, enslave and torture them, are adequate under the applicable law, and that therefore, contrary to the argument of the Defence, and to the extent as sufficiently established by the evidence, the charges of forced pregnancy can be confirmed.

2. Sexual and gender based crimes directly committed by Dominic Ongwen

102. The Prosecutor charges Dominic Ongwen for the direct commission of a number of sexual and gender based crimes against eight women. These eight

women testified before Single Judge Cuno Tarfusser in September and November 2015, upon request from the Prosecutor, as a measure to preserve their evidence under article 56 of the Statute in light of the risk that their testimony might not be subsequently available for the purposes of a trial (see ICC-02/04-01/15-277-Conf and -Red of 27 July 2015; and ICC-02/04-01/15-316-Conf and -Red of 12 October 2015). The evidence provided during these testimonies, taken and videorecorded for the purposes of the trial, is also relied upon by the Prosecutor for the purposes of the hearing on the confirmation of charges.

103. The Chamber notes that, with the exception of the testimony of Witness P-198 (see below paragraphs 125 to 135), the testimonies provided by the other seven women are clear and consistent not only internally with respect to each witness's individual story, but also in combination, as the witnesses describe similar facts in a consistent manner and, moreover, provide evidence not only of their own, but also of the other witnesses' victimisation. The Chamber also notes that the Defence, neither during the taking of the testimony of the seven witnesses nor at the confirmation of charges hearing, raised any significant disagreement with the narrative provided by the witnesses, and in fact all but explicitly acknowledged the veracity of their testimonies.

104. In short, the evidence provided by the seven witnesses establishes that: (i) all seven women were abducted by the LRA; (ii) they were all distributed to Dominic Ongwen's household; (iii) they were all made so-called "wives" to Dominic Ongwen – whether immediately upon distribution to him or after a period of being domestic servants (referred to as *ting tings*) in his household; (iv) they were all regularly forced to have sexual intercourse with Dominic Ongwen either by brute force, threat of force, or other forms of coercion; (v) they were all deprived of their personal liberty for the duration of their

abduction; and (vi) all of them, with the exception of [REDACTED] (P-226), became pregnant as a result of rapes by Dominic Ongwen.

105. While these women share the very same experience, the Prosecutor has only charged crimes within the time period between 1 July 2002 and 31 December 2005. The Court indeed does not have jurisdiction over crimes committed before 1 July 2002. As for the end date, the Prosecutor has submitted to the Chamber that the crimes committed after 31 December 2005 were not charged because they “post-date the upper limit of the charged period, 31 December 2005, which was selected because the evidence does not support the existence of a non-international armed conflict between the UPDF and the LRA or a widespread and systematic attack against a civilian population after that date” ([Prosecutor’s Brief](#), paras 522 and 531). While the Prosecutor provides this explicit explanation only with respect to possible crimes committed against [REDACTED] (P-235) and [REDACTED] (P-236) after 31 December 2005, the Chamber understands this also to be the reason for the Prosecutor’s choice not to charge Dominic Ongwen with possible crimes committed against [REDACTED] (P-214) and [REDACTED] (P-227) after 31 December 2005, during the time they remained with the LRA and in particular in Dominic Ongwen’s household.

106. The Chamber does not have the power to interfere with the Prosecutor’s selection of the charges brought against Dominic Ongwen, including as concerns the parameters of the charges pertaining to [REDACTED] (P-214), [REDACTED] (P-227), [REDACTED] (P-235) and [REDACTED] (P-236). However, since the Prosecutor attempts to justify these parameters as required by the applicable law and given that this argument is manifestly incorrect, the Chamber feels compelled to ensure that the record includes the correct statement of the law. This is in order to protect the integrity of the judicial proceedings and the public standing of the Chamber and the Court as

a whole, also considering that ultimately, as a result of the Prosecutor's determination, four victims may have to be denied, at least in part, reparations for the harm suffered.

107. Therefore, for the record, the Chamber notes that crimes against humanity must be committed "as part of" a widespread and systematic attack directed against any civilian population, and war crimes "in the context of" and "associated with" an armed conflict. It is not required that the crimes against humanity are committed during the attack, or war crimes in the midst of the armed conflict, as the required nexus can be established otherwise.³³ This is true irrespective of whether the crimes at issue are continuous crimes or not. In this sense, the Prosecutor's choice of the cut-off date of 31 December 2005 cannot be attributed to the operation of the nexus requirements of articles 7 and 8 of the Statute or any other provision of the Statute or the Rules.

108. In the following sections, the Chamber lays out its analysis of the charges with respect to the eight women who are the alleged victims of the crimes with which Dominic Ongwen is charged under charges 50 to 60.

██████████ (P-99)

109. ██████████ (P-99) testified on 10 November 2015 (ICC-02/04-01/15-T-14-CONF-ENG). According to her testimony, she was abducted in February 1998, when she was 15 years old. She later became a so-called "wife" to Dominic Ongwen, and she was forced to have sex with Dominic Ongwen the

³³ Cf. [Lubanga Confirmation Decision](#), para. 287; [Katanga and Ngudjolo Confirmation Decision](#), paras 380-383; [Bemba Confirmation Decision](#), para. 86; Pre-Trial Chamber II, "Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya", [ICC-01/09-19-Corr](#), para. 98; [Katanga Trial Judgment](#), paras 1124, 1176; [Gbagbo Confirmation Decision](#), para. 212; Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, "Judgment pursuant to Article 74 of the Statute", 21 March 2016, ICC-01/05-01/08-3343, paras 142 to 144, 165.

day that she joined his household. During the time relevant to the charges brought by the Prosecutor (July to September 2002), ██████████ (P-99), while not physically with Dominic Ongwen, was still his so-called “wife” and was deprived of her liberty in the sickbay under coercive circumstances. She was not able to return home or escape until the opportunity arose in September 2002.

110. In light of the available evidence, the Chamber considers that there are substantial grounds to believe that Dominic Ongwen committed pursuant to article 25(3)(a) of the Statute against ██████████ (P-99), between July 2002 and September 2002, the crime of other inhumane acts as a crime against humanity in the form of forced marriage pursuant to article 7(1)(k) of the Statute (charge 50); and the crime of enslavement as a crime against humanity pursuant to article 7(1)(c) of the Statute (charge 57).

██████████ (P-101)

111. ██████████ (P-101) testified on 9 and 10 November 2015 (ICC-02/04-01/15-T-13-CONF-ENG and -T-14-CONF-ENG). She testified that she had been in captivity with the LRA for eight years from her abduction in August 1996 by Dominic Ongwen and other LRA fighters until her escape in July 2004. The day she was abducted, Dominic Ongwen forced her to become his so-called “wife” and continued to have sex with her by force repeatedly until her escape. She was beaten when she refused to have sex with him, and at no time was she able to escape. As his so-called “wife”, Dominic Ongwen also made her perform domestic duties for him, including cooking and fetching and chopping wood. As a result of rapes by Dominic Ongwen, ██████████ (P-101) became pregnant three times. The second and third of her pregnancies fall within the Court’s temporal jurisdiction, and for

the duration of both these pregnancies she remained confined to Dominic Ongwen's household without the possibility of escape.

112. In light of the available evidence, the Chamber considers that there are substantial grounds to believe that Dominic Ongwen committed pursuant to article 25(3)(a) of the Statute against ██████████ (P-101), between July 2002 and July 2004, the crime of other inhumane acts as a crime against humanity in the form of forced marriage pursuant to article 7(1)(k) of the Statute (charge 50); the crime of torture as a crime against humanity pursuant to article 7(1)(f) of the Statute (charge 51) and as a war crime pursuant to article 8(2)(c)(i) of the Statute (charge 52); the crime of rape as a crime against humanity pursuant to article 7(1)(g) of the Statute (charge 53) and as a war crime pursuant to article 8(2)(e)(iv) of the Statute (charge 54); the crime of sexual slavery as a crime against humanity pursuant to article 7(1)(g) of the Statute (charge 55) and as a war crime pursuant to article 8(2)(e)(vi) of the Statute (charge 56); the crime of enslavement as a crime against humanity pursuant to article 7(1)(c) of the Statute (charge 57); as well as the crime of forced pregnancy as a crime against humanity pursuant to article 7(1)(g) of the Statute (charge 58) and as a war crime pursuant to article 8(2)(e)(vi) of the Statute (charge 59) during her two pregnancies within the relevant time.

██████████ (P-214)

113. ██████████ (P-214) testified on 11 November 2015 (ICC-02/04-01/15-T-15-CONF-ENG). According to her testimony, she was abducted by LRA fighters in June 2000 and distributed to Dominic Ongwen's household approximately about one and half years later. During her testimony, she mentioned both March 2002 and September 2002 as the time of her distribution to Dominic Ongwen. The Chamber, while of the view that the available evidence, considered as a whole, indicates that March 2002 is indeed

likely the correct time, takes note that the Prosecutor has chosen to charge Dominic Ongwen with crimes committed against ██████████ (P-214) as of September 2002.

114. ██████████ (P-214) testified that about one month after her distribution to Dominic Ongwen's household, she was forced to become Dominic Ongwen's so-called "wife" and was raped by him for the first time. During the time as a so-called "wife" to Dominic Ongwen, she regularly had sex with him without having a choice and was forced to perform domestic duties. From her arrival in Dominic Ongwen's household and until her escape in 2011, she was kept confined by Dominic Ongwen, including during her first forced pregnancy in 2005, by being guarded by his armed security escorts and through the fear that if she escaped she would be followed, taken back and killed.

115. In light of the available evidence, the Chamber considers that there are substantial grounds to believe that Dominic Ongwen committed pursuant to article 25(3)(a) of the Statute against ██████████ (P-214), between September 2002 and 31 December 2005, the crime of other inhumane acts as a crime against humanity in the form of forced marriage pursuant to article 7(1)(k) of the Statute (charge 50); the crime of torture as a crime against humanity pursuant to article 7(1)(f) of the Statute (charge 51) and as a war crime pursuant to article 8(2)(c)(i) of the Statute (charge 52); the crime of rape as a crime against humanity pursuant to article 7(1)(g) of the Statute (charge 53) and as a war crime pursuant to article 8(2)(e)(iv) of the Statute (charge 54); the crime of sexual slavery as a crime against humanity pursuant to article 7(1)(g) of the Statute (charge 55) and as a war crime pursuant to article 8(2)(e)(vi) of the Statute (charge 56); the crime of enslavement as a crime against humanity pursuant to article 7(1)(c) of the Statute (charge 57); as well as the crime of forced pregnancy as a crime against humanity pursuant to article 7(1)(g) of

the Statute (charge 58) and as a war crime pursuant to article 8(2)(e)(vi) of the Statute (charge 59) sometime in 2005.

██████████ (P-226)

116. ██████████ (P-226) testified on 15 and 16 September 2015 (ICC-02/04-01/15-T-8-CONF-ENG and -T-9-CONF-ENG). She testified that she had been abducted by armed LRA fighters under Dominic Ongwen's command in approximately 1998 when she was about 7 years old. Soon after her abduction, she was made a *ting ting* in Dominic Ongwen's household, performing domestic duties such as fetching water and collecting vegetables for cooking. She was raped by Dominic Ongwen for the first time when she was about 10 years old. Later Dominic Ongwen announced that ██████████ ██████████ (P-226) had become his so-called "wife". Each time that Dominic Ongwen had sex with her until her escape in 2003 it was forced, as she had no choice. She was also forced to perform domestic duties, including cutting grass for bedding, cooking and carrying kitchen utensils. Sometime in late 2002 or early 2003, Dominic Ongwen forced ██████████ (P-226) to beat to death a UPDF soldier whom his fighters had captured during an attack on Patongo in northern Uganda.

117. In light of the available evidence, the Chamber considers that there are substantial grounds to believe that Dominic Ongwen committed pursuant to article 25(3)(a) of the Statute against ██████████ (P-226), from July 2002 to sometime in 2003, the crime of other inhumane acts as a crime against humanity in the form of forced marriage pursuant to article 7(1)(k) of the Statute (charge 50); the crime of torture as a crime against humanity pursuant to article 7(1)(f) of the Statute (charge 51) and as a war crime pursuant to article 8(2)(c)(i) of the Statute (charge 52); the crime of rape as a crime against humanity pursuant to article 7(1)(g) of the Statute (charge 53) and as a war

crime pursuant to article 8(2)(e)(iv) of the Statute (charge 54); the crime of sexual slavery as a crime against humanity pursuant to article 7(1)(g) of the Statute (charge 55) and as a war crime pursuant to article 8(2)(e)(vi) of the Statute (charge 56); the crime of enslavement as a crime against humanity pursuant to article 7(1)(c) of the Statute (charge 57); as well as the crime of outrages upon personal dignity as a war crime pursuant to article 8(2)(c)(iii) of the Statute sometime in 2002 or early 2003 close to Patongo, northern Uganda (charge 60).

██████████ (P-227)

118. ██████████ (P-227) testified on 18 and 19 September 2015 (ICC-02/04-01/15-T-10-CONF-ENG and -T-11-CONF-ENG). She testified that she had been abducted by LRA fighters under Dominic Ongwen's command in approximately April 2005. She was then placed in Dominic Ongwen's household, where she remained until her escape in December 2010, closely guarded and under the threat of being brutally beaten if she had attempted to escape. Soon after her abduction, she became Dominic Ongwen's so-called "wife". Throughout her stay in Dominic Ongwen's household, she was repeatedly forced to have sex with him and forced to perform domestic duties. Evidence of the relevant facts was challenged by the Defence, within the context of the article 56 proceedings, only on the ground that the information given by the witness to the NGO which assisted her immediately after her escape from the LRA did not include information of having been raped. The witness, however, convincingly explained that she concealed this fact because she was interviewed by a man, and that she was exhausted after her escape and not in state to provide a full account of her experience.

119. In light of the available evidence, the Chamber considers that there are substantial grounds to believe that Dominic Ongwen committed pursuant to

article 25(3)(a) of the Statute against ██████████ (P-227), between approximately April 2005 and 31 December 2005, the crime of other inhumane acts as a crime against humanity in the form of forced marriage pursuant to article 7(1)(k) of the Statute (charge 50); the crime of torture as a crime against humanity pursuant to article 7(1)(f) of the Statute (charge 51) and as a war crime pursuant to article 8(2)(c)(i) of the Statute (charge 52); the crime of rape as a crime against humanity pursuant to article 7(1)(g) of the Statute (charge 53) and as a war crime pursuant to article 8(2)(e)(iv) of the Statute (charge 54); the crime of sexual slavery as a crime against humanity pursuant to article 7(1)(g) of the Statute (charge 55) and as a war crime pursuant to article 8(2)(e)(vi) of the Statute (charge 56); and the crime of enslavement as a crime against humanity pursuant to article 7(1)(c) of the Statute (charge 57).

██████████ (P-235)

120. ██████████ (P-235) testified on 17 November 2015 (ICC-02/04-01/15-T-17-CONF-ENG). With respect to the crime of enslavement of ██████████ (P-235), the Prosecutor frames the relevant charge (charge 60) with the temporal timeframe starting from 1 July 2002 or, alternatively, September 2002. This is because, according to the Prosecutor, it remains unclear whether ██████████ (P-235) was abducted in September 2001 or in September 2002, although “[i]t is likely to be September 2002” ([Prosecutor’s Brief](#), para. 509). While the Chamber accepts that there may be particular situations justifying that specific facts be pleaded by the Prosecutor in the charges alternatively, the Chamber is of the view that the present situation does not necessitate such course of action. The matter at hand is an inconsistency in the testimony of ██████████ (P-235), given under article 56 of the Statute. It is true that at one point during her testimony ██████████ (P-235) stated that she was abducted in September 2001 as she was told when she came back after years, while at other points during the testimony she appears to place her abduction in 2002.

This inconsistency can, however, be easily resolved if the witness' evidence as to when she was abducted is looked at in context with the rest of the evidence given by the witness, and with the evidence available to the Chamber as a whole. In the view of the Chamber, the available evidence, considered as a whole, indicates with sufficient precision that [REDACTED] (P-235) was indeed abducted in September 2002 as she had originally declared in her written statement to the Prosecutor to be her own recollection (UGA-OTP-0240-0003) and reiterated at certain points of her testimony. For example: (i) [REDACTED] (P-235) refers to an attack, carried out soon after her abduction, on Lanyatilo which the evidence indicates took place on 16 September 2002; (ii) she states that [REDACTED] (P-236), who was abducted in September 2002, was brought to Dominic Ongwen's household a week after her own abduction; (iii) she states that when she joined Dominic Ongwen's household, [REDACTED] (P-214) – who was distributed to Dominic Ongwen in 2002 – was already there, as confirmed by [REDACTED] (P-214) herself; and (iv) [REDACTED] (P-226) confirms, in her written statement to the Prosecutor (UGA-OTP-0235-0235), that [REDACTED] (P-235) was abducted in September 2002.

121. According to her testimony, [REDACTED] (P-235), after her abduction by the LRA fighters, was placed in Dominic Ongwen's household and was eventually able to return from captivity in the LRA only in April 2015. During the time relevant to the charges brought by the Prosecutor, she worked as a *ting ting* in Dominic Ongwen's household, being deprived of her liberty and reduced to a servile status, performing different domestic duties such as cooking, fetching water, washing, collecting wood and taking things to Dominic Ongwen. In late 2002 or early 2003, Dominic Ongwen ordered [REDACTED] [REDACTED] (P-235), along with other abductees, to beat to death two men who had tried to escape. While she was eventually unable to carry out this task, the experience caused her great mental suffering.

the part of the testimony which was conducted that day, two written witness statements by ██████████ (P-198) (UGA-OTP-0235-0217 and UGA-OTP-0245-0223).

126. ██████████ (P-198) states that ██████████
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127. At the confirmation hearing, the Defence challenged ██████████ (P-198's) testimony arguing that she was never part of Dominic Ongwen's household (Transcript [T-23](#), pp. 20-22). Following this challenge, the Presiding Judge requested clarifications as to ██████████
██████████
██████████). The Prosecutor's representative at the hearing explained that it was an informed choice of the Office of the Prosecutor not to ██████████
██████████.

128. On 3 March 2016, the Prosecutor ██████████
██████████
██████████
██████████

contradicted in its material aspects by the available evidence taken as a whole (which, for the rest, is consistent and coherent) should have been noted by the Prosecutor.

131. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

132. The Prosecutor's choice, despite the overwhelming discrepancies between [REDACTED] (P-198's) statement and the rest of the evidence, not to [REDACTED] until after the end of the confirmation hearing has had the unfortunate effect of depriving the present proceedings of fundamental evidence which would have permitted the matter to be resolved easily much earlier. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

133. The matter however became unmistakably clear to the Chamber with the filing of the list of evidence and the Prosecutor's Brief on 21 December 2015, both indicating that the evidence of [REDACTED] (P-198) and the rest of the evidence are irreconcilable. This problem is not solved by Witness P-200, on which the Prosecutor, in the context of the confirmation proceedings, relies in corroboration of [REDACTED] (P-198's) evidence. It is true that Witness P-200, [REDACTED]
[REDACTED]
[REDACTED], and that Witness P-200 otherwise provided a narrative of events that is similar to and compatible with that of [REDACTED] (P-198). However, there is indication that at least some of the information given by Witness P-200 may not be based on direct observation but was received [REDACTED], in all likelihood from [REDACTED] (P-198) herself whether directly or indirectly (such as [REDACTED]
[REDACTED]); and, in any case, the evidence of Witness P-200 suffers from the same problems as that of [REDACTED] (P-198), in that it is incompatible in several material aspects with the rest of the available evidence, including the testimonies of the seven former so-called "wives" of Dominic Ongwen which the Chamber considers fully credible.

134. Therefore, it is evident to the Chamber that the discussion at the confirmation of charges hearing of the charges related to [REDACTED] (P-198) was unnecessary and could have been avoided had the Prosecutor either recognised the flaws in the evidence or proceeded in a timely fashion to [REDACTED].

135. In any case, to conclude the matter, the Chamber finds, on the basis of the analysis of the evidence provided by [REDACTED] (P-198), in the context

of the rest of the evidence, as well as in light of [REDACTED]
[REDACTED]
[REDACTED], which the Chamber has taken into consideration in the interests of justice, that there are not substantial grounds to believe that Dominic Ongwen committed the crimes charged against [REDACTED] (P-198). As specified below in section IV, the Chamber therefore declines to confirm all related charges.

3. Sexual and gender based crimes indirectly committed by Dominic Ongwen

136. Under charges 61 to 68 the Prosecutor alleges Dominic Ongwen's criminal responsibility for the abduction of girls and women to serve as domestic servants, forced exclusive conjugal partners and sexual slaves in the Sinia brigade. The LRA practice of abduction of women for the purpose of turning them into forced so-called "wives" of LRA fighters, involving the systemic commission of a series of sexual and gender based crimes, is well established in the evidence before the Chamber. It should be added that, in line with the charges, the factual analysis of the Chamber is confined to this practice as it occurred within the Sinia brigade between 1 July 2002 and 31 December 2005. For its conclusions, the Chamber has reviewed the transcripts of the testimonies of Dominic Ongwen's so-called "wives" (P-99, P-101, P-214, P-226, P-227, P-235 and P-236), who observed the relevant facts within the group in which they were confined, as well as the statements of numerous other witnesses who were also present in the Sinia brigade and able to observe this practice and the conduct of Dominic Ongwen in relation to it (P-142, P-199, P-202, P-205, P-233 and P-250). The Chamber has also taken note of the records of intercepted LRA radio communications for the dates of 1 April 2003, 2 April 2003, 10 March 2004, 4 August 2004, 26 June 2005 and 10 July 2005.

137. This evidence demonstrates that there was a common plan between Joseph Kony and the senior leadership of the Sinia brigade, including Dominic Ongwen, to abduct women and girls in order for them to serve as forced “wives”, domestic servants and sex slaves to male LRA fighters. Between 1 July 2002 and 31 December 2005, women and girls were systematically abducted in northern Uganda in line with this plan. They were distributed to LRA fighters as so-called “wives” with no choice on their part and were regularly raped by their so-called “husbands” for protracted periods of time. Also, their movement was confined and they were forced to perform various domestic duties. They lived under constant threat of death or severe physical punishment if they failed to respect the exclusivity of the so-called “marriage” imposed on them, if they did not submit to sexual intercourse, if they tried to escape, or if they failed to perform any other duty assigned to them. Indeed, they were regularly beaten as punishment, coercion or intimidation.

138. The evidence is clear as to the fact that this conduct was ordered by Joseph Kony. The execution of the order in the Sinia brigade depended, however, on the conduct of the brigade’s commanders. The Chamber finds that the practice described above was an inherent design feature of the LRA and that no leading role in the LRA could be obtained or sustained without knowledge of the practice and without an intent to perpetuate it. Indeed, according to the evidence, Dominic Ongwen issued specific orders for abduction of women and girls, regulated the distribution of victims to LRA fighters, and maintained, within his authority as commander of first the Oka battalion and later the Sinia brigade, a disciplinary system which created the coercive environment in which the conduct in question was possible.

139. In light of the available evidence, the Chamber considers that the objective elements of the following crimes are sufficiently established by the

evidence: other inhumane acts as a crime against humanity in the form of forced marriage pursuant to article 7(1)(k) of the Statute (charge 61); torture as a crime against humanity pursuant to article 7(1)(f) of the Statute (charge 62) and as a war crime pursuant to article 8(2)(c)(i) of the Statute (charge 63); rape as a crime against humanity pursuant to article 7(1)(g) of the Statute (charge 64) and as a war crime pursuant to article 8(2)(e)(vi) of the Statute (charge 65); sexual slavery as a crime against humanity pursuant to article 7(1)(g) of the Statute (charge 66) and as a war crime pursuant to article 8(2)(e)(vi) of the Statute (charge 67); and enslavement as a crime against humanity pursuant to article 7(1)(c) of the Statute (charge 68).

140. As concerns the individual criminal responsibility of Dominic Ongwen, the evidence sufficiently demonstrates that he, pursuant to a common plan with other senior LRA leaders, undertook action which was essential for the commission of crimes pursuant to the common plan, and that he contributed to these crimes not only personally but also through the LRA fighters under his command. As such, the evidence enables the conclusion that there are substantial grounds to believe that Dominic Ongwen committed the above mentioned crimes jointly with others and through others within the meaning of article 25(3)(a) of the Statute, as charged by the Prosecutor. Alternatively, Dominic Ongwen's contribution to the abovementioned crimes may be legally qualified under article 25(3)(b), as well as under article 25(3)(d)(i) and (ii) of the Statute, as charged by the Prosecutor.

I. Conscripted and use in hostilities of children under the age of 15

141. The evidence pertaining to the conscription and use in hostilities of children under the age of 15 in the Sinia brigade of the LRA in northern Uganda between 1 July 2002 and 31 December 2005, which are the parameters of charges 69 and 70, is abundant. The Chamber has been provided with the

statements of a series of former LRA members who either were themselves child soldier (Witnesses P-97, P-252 and P-275) or observed the presence of child soldiers in the Sinia brigade (Witnesses P-18, P-54, P-205, P-224, P-233, P-245 and P-280). Evidence of the presence of child soldiers in the LRA is also provided by civilians who were residing in IDP camps attacked by the LRA (Witnesses P-218 and P-293) and in the records of intercepted radio communications, for example for the dates of 21 October 2002, 16 November 2002, 29 November 2002 and 30 April 2004.

142. The statements of these witnesses show that the abduction of children under the age of 15, sometimes even under the age of 10, was a systematic practice and a policy choice of the LRA. Young children were targeted because they were easier to control. After abduction, children of both genders would regularly undergo military training, including in the handling of firearms. These child soldiers were then sent on mission as part of regular LRA units, which included the conduct of hostilities with the UPDF. Another systemic abuse of children in the LRA was their use as “escorts” assigned to fighters. Such escorts would accompany the fighters closely, including in active conflict zones, and would provide physical security and operational assistance.

143. The abductions of children to replenish the LRA combat forces was, according to the evidence, an explicit plan of the LRA leadership, including Joseph Kony and senior commanders, among them Dominic Ongwen. Dominic Ongwen himself used escorts under the age of 15. Moreover, he ordered abductions of children to use as child soldiers, supervised their military training, and coordinated and deployed LRA units which included fighters under 15 years of age.

144. In light of the available evidence, the Chamber considers that the objective elements of the following crimes are sufficiently established by the evidence: conscription of children under the age of 15 into an armed group as a war crime pursuant to article 8(2)(e)(vii) of the Statute (charge 69); and use of children under the age of 15 to participate actively in hostilities as a war crime pursuant to article 8(2)(e)(vii) of the Statute (charge 70).

145. As concerns the individual criminal responsibility of Dominic Ongwen, the evidence sufficiently demonstrates that he, pursuant to a common plan with other senior LRA leaders, undertook action which was essential for the commission of crimes pursuant to the common plan, and that he contributed to these crimes not only personally but also through the LRA fighters under his command. As such, the evidence enables the conclusion that there are substantial grounds to believe that Dominic Ongwen committed the above mentioned crimes jointly with others and through others within the meaning of article 25(3)(a) of the Statute, as charged by the Prosecutor. Alternatively, Dominic Ongwen's contribution to the abovementioned crimes may be legally qualified under article 25(3)(b), as well as under article 25(3)(d)(i) and (ii) of the Statute, as charged by the Prosecutor.

J. Alternative charges of command responsibility (article 28(a) of the Statute)

146. For charges 1 to 49 and 61 to 70, the Prosecutor requests the Chamber to confirm, as an alternative form of responsibility along with those pursuant to article 25(3) of the Statute, command responsibility under article 28(a) of the Statute. As recalled at paragraph 45 above, a fundamental difference exists between the forms of commission incriminated in article 25 of the Statute, which establish liability for one's own crimes, and article 28 of the Statute, which establishes liability for violation of duties in relation to crimes committed by others.

147. In the view of the Chamber, the narrative of the relevant events as emerging from the available evidence is such that Dominic Ongwen's conduct cannot be seen as a mere failure to prevent or repress crimes committed by other persons. To the contrary, as explained above, the Chamber finds that it is precisely the deliberate conduct of Dominic Ongwen that resulted in the realisation of the objective elements of the crimes. At the same time, the Chamber observes that, as a matter of fact, the narrative proposed by the Prosecutor, and accepted in the present decision, by which Dominic Ongwen intentionally committed the crimes charged does, by definition and by necessary logic, include as a corollary that Dominic Ongwen did not "prevent" or "repress" the crimes that he himself committed jointly with others and making use of his subordinates over whom he had indeed, at the relevant time, effective command and control.

148. The Chamber notes that this situation is similar to the one which led Pre-Trial Chamber I not to confirm charges against Laurent Gbagbo under article 28 of the Statute.³⁴ Notwithstanding Pre-Trial Chamber I's conclusion on the basis of the evidence which was before it, and the fact that the Prosecutor had neither requested leave to appeal that decision nor sought an amendment of the charges under article 61(9) of the Statute, the Trial Chamber subsequently gave notice to the Defence of the possibility that the facts underlying the charges against Laurent Gbagbo may be requalified under article 28 of the Statute.³⁵ It did so before hearing any evidence, essentially relying on the references in the confirmation decision to Laurent

³⁴ [Gbagbo Confirmation Decision](#), paras 263-265 ("[B]ased on the knowledge that this Chamber has at the present stage of proceedings, the Chamber is not persuaded that the narrative of the facts, as established by the evidence, points to Laurent Gbagbo's criminal responsibility based on his mere failure to prevent or repress the crimes committed by others pursuant to article 28 of the Statute").

³⁵ Trial Chamber I, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, "Decision giving notice pursuant to Regulation 55(2) of the Regulations of the Court", 19 August 2015, [ICC-02/11-01/15-185](#).

Gbagbo's failure to prevent violence or investigate and punish the authors of the crimes, and on the Prosecutor's submission that the evidence supporting liability under article 28 of the Statute is encompassed by that supporting other charged modes of liability.³⁶ This decision was confirmed by the Appeals Chamber, which held that a Trial Chamber may recharacterise facts and circumstances to include a mode of liability that was considered but not confirmed by the Pre-Trial Chamber and that notice of such recharacterisation may be given even before the opening statements of the trial.³⁷

149. In these circumstances, and considering that, as stated above, the evidence does indicate that, as a matter of fact, Dominic Ongwen did not take action to prevent or repress the commission by forces under his effective command and control of the crimes under charges 1 to 49 and 61 to 70, the Chamber considers it appropriate, regardless of its own understanding of the relevant facts at this stage, to retain in those charges the alternative mode of liability of article 28(a) of the Statute as requested by the Prosecutor.

K. Grounds raised by the Defence to exclude Dominic Ongwen's individual criminal responsibility

150. The Defence has raised several times an argument that circumstances exist that exclude Dominic Ongwen's individual criminal responsibility for the crimes that he may otherwise have committed. One side of this argument is that Dominic Ongwen, who was abducted into the LRA in 1987 at a young age and made a child soldier, should benefit from the international legal protection as child soldier up to the moment of his leaving of the LRA in January 2015, almost 30 years after his abduction, and that such protection

³⁶ *Ibid.*, paras 12-13.

³⁷ Appeals Chamber, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, "Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I entitled 'Decision giving notice pursuant to Regulation 55(2) of the Regulations of the Court'", 18 December 2015, [ICC-02/11-01/15-369](#).

should include, as a matter of law, an exclusion of individual criminal responsibility for the crimes under the Statute that he may have committed (Transcript [T-22](#), p. 46; [Defence Brief](#), paras 36-49). However, this argument is entirely without legal basis, and the Chamber will not entertain it further.

151. The other major argument raised by the Defence is the one of duress (Transcript [T-22](#), pp. 48-49; Transcript [T-23](#), pp. 4-10; [Defence Brief](#), paras 50-57). Duress is, under article 31(1)(d) of the Statute, a ground excluding criminal responsibility. There is no procedural rule precluding the Defence from raising duress at the stage of confirmation of charges, as also confirmed, *a contrario*, by the text of article 31(3) of the Statute. However, considering the nature and purpose of confirmation of charges proceedings, duress may only lead to the non-confirmation of charges when the evidence is so clear that it negates even the low evidentiary standard applicable. Otherwise, a trial is appropriate in order to resolve also this question.

152. For duress to exclude criminal responsibility it is required that: (i) the conduct of the person has been caused by duress resulting from a threat (whether made by other persons or constituted by circumstances beyond the person's control) of imminent death or of continuing or imminent serious bodily harm against that person or another person; and (ii) the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided. The Chamber is of the view that neither requirement is met in the present case.

153. First, there exists no evidence indicating a threat of imminent death or continuing or imminent serious bodily harm against Dominic Ongwen (or another person) at the time of his conduct with respect to the particular crimes charged. The threat described by the Defence, *i.e.* the possibility of later disciplinary measures, was not imminent. Duress is not regulated in the

Statute in a way that would provide blanket immunity to members of criminal organisations which have brutal systems of ensuring discipline as soon as they can establish that their membership was not voluntary.

154. In any case, and this is the second reason why the Defence argument must fail, the circumstances of Dominic Ongwen's stay in the LRA (which in the Defence claim constitutes the source of the threat) cannot be said to be beyond his control (cf. article 31(1)(d)(ii) of the Statute). The evidence demonstrates that escapes from the LRA were not rare. Also, Dominic Ongwen could have chosen not to rise in hierarchy and expose himself to increasingly higher responsibility to implement LRA policies. Instead, the available evidence demonstrates that Dominic Ongwen shared the ideology of the LRA, including its brutal and perverted policy with respect to civilians it considered as supporting the government.

155. Finally, it remains unclear (and unanswered by the Defence) how Dominic Ongwen's conduct alleged to constitute the crimes charged would be necessary (and reasonable) to avoid the alleged threat and could, in any case, satisfy the required intent of proportionality for those crimes committed against the civilian population. If, *arguendo*, Dominic Ongwen could not have avoided accepting ██████████ (P-99), ██████████ (P-101), ██████████ (P-214), ██████████ (P-226) or ██████████ (P-227) as forced wives, he could have avoided raping them, or, at the very least, he could have reduced the brutality of the sexual abuse. Yet, his former so-called "wives" testified they were raped with ruthless regularity. Likewise, the brutality of the punishment for failure to perform domestic duties is not necessitated by any external circumstances causing, *arguendo*, Dominic Ongwen to confine and subject to servile status the abducted women and girls. Similarly, still *arguendo*, if Dominic Ongwen could not have avoided participating as commander in the attacks on civilians in IDP camps, he should have been able

- (ii) at paragraph 108 (former paragraph 118), the words “from 1 July 2002 or September 2002” are replaced with “from September 2002”; at paragraph 109 (former paragraph 119), the words “in September of either 2001 or 2002” are replaced with “in September 2002”; at paragraph 110 (former paragraph 120), the words “from at least 1 July 2002 or September 2002” are replaced with “from September 2002”; in charge 57 the words “of [REDACTED] from at least 1 July 2001 (or alternatively September 2002)” are replaced with “of [REDACTED] (P-0235) from September 2002” (see above paragraph 120);
- (iii) pseudonyms have been inserted after the names of the victims mentioned in the charges to ensure that the charges are comprehensible also when the names are redacted vis-à-vis the public (see above paragraph 27);
- (iv) in paragraphs 17, 29, 123 (former paragraph 133) and 129 (former paragraph 139), which list Dominic Ongwen’s contribution to some of the crimes charged, the words “*inter alia*” are removed, in order for the charges to exhaustively contain all the underlying material facts and circumstances alleged by the Prosecutor (see Transcript of the status conference of 19 May 2015, [ICC-02/04-01/15-T-6-ENG](#), pp. 20-22); and
- (v) the paragraphs and sections of the charges are re-numbered in light of the modifications made.

159. Considering the scope of the confirmed charges, no victim loses his or her status as participant in the case as a result of the present decision. The list of victims entitled to continue participation at trial is transmitted as annex to this decision.

FOR THESE REASONS, THE CHAMBER

CONFIRMS the charges against Dominic Ongwen as follows:

1. THE SUSPECT: DOMINIC ONGWEN

1. Dominic Ongwen, also known as Odomi and Wai Wai, was born in 1975. He is a Ugandan national from Coorom, in Gulu, northern Uganda. Prior to his appearance before the Court, he was a member of the Lord's Resistance Army ("LRA").

2. STATEMENT OF FACTS REGARDING CONTEXTUAL ELEMENTS OF ARTICLE 7 AND ARTICLE 8

Contextual elements of article 7: existence of a widespread or systematic attack, directed against civilian population

2. The LRA carried out a widespread or systematic attack directed against the civilian population of northern Uganda, from at least 1 July 2002 to 31 December 2005.

3. From at least 1 July 2002 to 31 December 2005, the overall objective of the LRA was to overthrow the government of Uganda through armed rebellion. In order to achieve this objective and to sustain its activities, the LRA adopted a number of policies that were implemented throughout the organisation. The LRA adopted a policy of launching attacks on civilians, including those living in protected internally displaced persons' camps ("IDP camps") and abducting civilians; male abductees to be conscripted and used as soldiers and female abductees to serve primarily as domestic servants, sex slaves and forced exclusive conjugal partners.

4. The conduct that forms the basis for the charges in this document was committed as part of a widespread or systematic attack directed against the civilian population of northern Uganda. As a long-term member of the LRA who held a number of command positions, and due to his participation in numerous LRA operations, Dominic Ongwen knew that his conduct was part of this widespread or systematic attack against the civilian population pursuant to, or in furtherance of the organisational policy.

Contextual elements of article 8: existence of a non-international armed conflict

5. From at least 1 July 2002 to 31 December 2005 a protracted armed conflict not of an international character between the LRA and armed forces of the government of Uganda together with associated local armed units existed in northern Uganda. The armed hostilities exceeded, in intensity, internal disturbances and tensions such as riots, isolated and sporadic acts of violence.

6. Both parties were well structured, armed and carried out protracted armed violence. During this time the LRA was an organised armed group with a sufficient degree of organisation to enable it to plan and carry out military operations for a prolonged period of time. The Uganda People's Defence Force ("UPDF") was the regular military of Uganda.

7. The conduct that forms the basis for the charges in this document took place in the context of and was associated with this armed conflict. As a long-term member of the LRA who held a number of command positions, and due to his participation in numerous LRA operations, Dominic Ongwen was aware of the factual circumstances that established the existence of this non-international armed conflict.

8. The statements of material facts and circumstances and legal characterisations in each category of charges should be read in conjunction with this section.

3. STATEMENT OF FACTS REGARDING COMMON ELEMENTS OF MODES OF LIABILITY

9. This statement of facts addresses elements of Dominic Ongwen's individual criminal responsibility pursuant to articles 25(3) (a) (indirect perpetration and indirect co-perpetration), 25(3) (b) (ordering), 25(3) (d) (i) and (ii) and 28(a) (command responsibility) that are common to multiple categories of charges in this document. The statements of material facts and circumstances and legal characterisations in each category of charges should be read in conjunction with this section.

10. Between at least 1 July 2002 and 31 December 2005, the LRA was an organised and hierarchical apparatus of power. It had a headquarters, a division, brigades, battalions and companies, with a commander assigned to each unit. The Sinia brigade, as one of the four LRA brigades, consisted of a brigade headquarters and a number of battalions and companies. Joseph Kony was the commander-in-chief of the LRA. Orders were generally communicated from Joseph Kony and other leaders to the brigade commander, who communicated them to the battalion commanders, who in turn passed them to their subordinates.

11. In the LRA, including the Sinia brigade, subordinates followed the orders of their superiors almost automatically. LRA fighters, conditioned by, and under threat of, physical punishment, obeyed superiors and followed orders. The LRA maintained a violent disciplinary system that guaranteed adherence to orders and rules. The LRA, including the Sinia brigade, was composed of a sufficient number of fungible individuals capable of replacement to guarantee that the orders of superiors were carried out, if not by one subordinate, then by another. Dominic Ongwen was aware of the fundamental features of the LRA,

including the Sinia brigade, as an organised and hierarchical apparatus of power.

12. Between 1 July 2002 and 31 December 2005 Dominic Ongwen was a military commander in the LRA, commanding units first at the battalion, and then at the brigade level. He spent the majority of this time in Sinia brigade, but also served for some time within the LRA headquarters, Control Altar. He commanded a battalion in Sinia brigade for much of mid-2002 to March 2004. On or about 5 March 2004, Dominic Ongwen became the commander of the Sinia brigade.

13. Dominic Ongwen had effective command and control, or authority and control, over his subordinates between 1 July 2002 and 31 December 2005. He mobilised his authority and power in the LRA, including the Sinia brigade, to secure compliance with his orders and cause his subordinates to carry out the conduct described in this document. This allowed him to exert control over the crimes charged as well as to prevent or repress any conduct by his subordinates of which he disapproved. His subordinates complied with his orders. He had the power, *inter alia*, to issue or give orders; to ensure compliance with the orders issued; to order forces or units under his command, whether under his immediate command or at a lower level, to engage in hostilities; to discipline any subordinate; and the authority to send forces to the site of hostilities and to withdraw them at any time.

4. ATTACK ON PAJULE IDP CAMP ON OR ABOUT 10 OCTOBER 2003 (Counts 1-10)

Material facts:

14. The factual allegations set out in Chapter 3 (contextual elements) and Chapter 4 (common elements of modes of liability) are incorporated herein by reference.

15. On or about 10 October 2003, between 05:00-06:00 approximately, Dominic Ongwen together with other senior members of the LRA, including Vincent Otti, Raska Lukwiya, and Bogi Bosco (“Pajule co-perpetrators”) put into action a common plan to attack Pajule and Lapul IDP camps (“Pajule IDP Camp”), then located in Aruu county, Pader district, its environs including the trading centre, barracks and Catholic mission (“Pajule common plan”). The Pajule co-perpetrators, including Dominic Ongwen, meant to engage in their conduct and intended to bring about the objective elements of the crimes of attacks against the civilian population, murder, torture, cruel treatment, other inhumane acts, enslavement, pillaging, and persecution or were aware that they would occur in the ordinary course of events in implementing the Pajule common plan. The victims of these crimes were civilians taking no active part in hostilities. Dominic Ongwen was aware of the factual circumstances that established this status.

16. The Pajule co-perpetrators implemented the Pajule common plan through the hierarchical apparatus of the LRA deployed for the Pajule attack, which they jointly controlled. Dominic Ongwen was aware of the fundamental features of the LRA and the factual circumstances that enabled him, together with other co-perpetrators, to jointly exercise control over the crimes charged in relation to Pajule.

17. Dominic Ongwen contributed to the planning and implementation of the Pajule common plan and to the commission of the charged crimes in relation to Pajule by

- participating in a pre-attack meeting together with other senior LRA members;
- leading a group of LRA fighters to attack the trading centre at the camp;
- personally committing acts of violence against civilians;
- ordering LRA fighters under his command to pillage items from shops and homes within the camp;
- encouraging LRA fighters through his presence to commit crimes;
- threatening to kill civilians that had been abducted if they did not move as the LRA fighters retreated from the attack and returned to their meeting point;
- failing, while being a military commander or person effectively acting as a military commander, to take necessary and reasonable measures within his power to prevent or repress the commission of the charged crimes or failing to submit the matter to the competent authorities for investigation and prosecution. Dominic Ongwen knew or, owing to the circumstances at the time, should have known that the LRA fighters were committing or were about to commit the crimes charged in relation to Pajule.

18. At the time of the attack, Dominic Ongwen had effective command and control, or authority and control, over his subordinates that participated in the attack at the trading centre.

19. When engaging in the above conduct, Dominic Ongwen had the requisite intent and knowledge under articles 25, 28 and 30, and under the elements of the respective crimes listed below.

Attacks against the civilian population

20. LRA fighters under the joint control of the Pajule co-perpetrators including Dominic Ongwen carried out an attack against the civilian

population of Pajule IDP camp as such, or individual civilians not taking direct part in the hostilities. Dominic Ongwen intended the civilian population as such, or individual civilians not taking direct part in the hostilities to be the object of the attack.

Murder

21. LRA fighters who participated in the attack under the joint control of the Pajule co-perpetrators including Dominic Ongwen killed at least two civilian residents of Pajule.

Torture/cruel treatment/other inhumane acts

22. LRA fighters under the joint control of the Pajule co-perpetrators including Dominic Ongwen subjected many Pajule civilians to severe physical or mental pain or suffering or serious injury to body or to mental or physical health. The pain and suffering did not arise from and was not inherent in or incidental to lawful sanctions. The perpetrators carried out this treatment to intimidate and/or punish the Pajule civilian population because of their perceived support for the Ugandan government. This treatment was carried out when the victims were under the custody or control of the LRA attackers. LRA fighters under the joint control of Dominic Ongwen and his co-perpetrators abducted civilians, forced them to carry looted items, forcibly removed civilians from their homes, shot at them, threatened them with acts of violence or physically assaulted them, tied up civilians, separated them from family members and forcibly removed clothing from civilians.

Enslavement

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

Pillaging

24. LRA fighters broke into homes and shops and appropriated food items and other property. They intended to deprive the owners of their food and property and to appropriate it for private or personal consumption and use. The owners did not consent to the appropriation.

Persecution

25. LRA fighters severely deprived, contrary to international law, the civilian residents of Pajule of their fundamental rights to life, to liberty and security of

person, to freedom of movement, to private property, not to be subjected to torture or to cruel, inhumane or degrading treatment, and the right not to be held in slavery or servitude. The Pajule co-perpetrators, including Dominic Ongwen, targeted this group of civilian residents based on political grounds, as they perceived them to be affiliated with and/or supporting the Ugandan government. They did so in connection with the crimes of attacks against the civilian population as such, murder, torture, other inhumane acts, cruel treatment, enslavement, and pillaging committed by the attackers at or near Pajule.

Legal characterisation of the facts:

- 1) **Attacks against the civilian population as such** as a war crime, pursuant to articles 8(2) (e) (i) and 25(3) (a) (indirect co-perpetration), or (c), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 10 October 2003, at or near Pajule IDP camp.
- 2) **Murder** as a crime against humanity, pursuant to articles 7(1) (a) and 25(3) (a) (indirect co-perpetration), or (c), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 10 October 2003, at or near Pajule IDP camp.
- 3) **Murder** as a war crime, pursuant to articles 8(2) (c) (i) and 25(3) (a) (indirect co-perpetration), or (c), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 10 October 2003, at or near Pajule IDP camp.
- 4) **Torture** as a crime against humanity, pursuant to articles 7(1) (f) and 25(3) (a) (indirect co-perpetration), or (c), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 10 October 2003, at or near Pajule IDP camp.
- 5) **Torture** as a war crime, pursuant to articles 8(2) (c) (i) and 25(3) (a) (indirect co-perpetration), or (c) or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 10 October 2003, at or near Pajule IDP camp.
- 6) **Cruel treatment** as a war crime, pursuant to articles 8(2) (c) (i) and 25(3) (a) (indirect co-perpetration), or (c), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 10 October 2003, at or near Pajule IDP camp.
- 7) **Other inhumane acts** as a crime against humanity, pursuant to articles 7(1) (k) and 25(3) (a) (indirect co-perpetration), or (c), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 10 October 2003, at or near Pajule IDP camp.
- 8) **Enslavement** as a crime against humanity, pursuant to articles 7(1) (c) and 25(3) (a) (indirect co-perpetration), or (b) (ordering), or (c) or (d)

(i) and (ii), or 28(a), of the Rome Statute, on or about 10 October 2003, at or near Pajule IDP camp.

9) Pillaging as a war crime, pursuant to articles 8(2) (e) (v) and 25(3) (a) (indirect co-perpetration), or (b) (ordering), or (c), or (d) (i) and (ii) or 28(a), of the Rome Statute, on or about 10 October 2003, at or near Pajule IDP camp.

10) Persecution, on political grounds, of civilians perceived by the LRA as being affiliated with, or supporting the Ugandan government, by attacks against the civilian population, murder, torture, cruel treatment, other inhumane acts, enslavement, and pillaging on or about 10 October 2003, at or near Pajule IDP camp pursuant to article 7(1) (h) and 25(3) (a) (indirect co-perpetration) or (b) (ordering) or (d) (i) and (ii) or 28(a) of the Rome Statute.

5. ATTACK ON ODEK IDP CAMP ON OR ABOUT 29 APRIL 2004 (Counts 11-23)

Material facts:

26. The factual allegations set out in Chapter 3 (contextual elements) and Chapter 4 (common elements of modes of liability) are incorporated herein by reference.

27. On or about 29 April 2004, Dominic Ongwen, Joseph Kony, the Sinia brigade leadership, Okwonga Alero and other Sinia and Trinkle brigade commanders (“Odek co-perpetrators”) put into action a common plan to attack Odek IDP camp, situated in Odek sub-county, Omoro county, Gulu District (“Odek common plan”). The Odek co-perpetrators including Dominic Ongwen meant to engage in their conduct and intended to bring about the objective elements of the crimes of attacks against the civilian population, murder, attempted murder, torture, cruel treatment, other inhumane acts, enslavement, pillaging, outrages upon personal dignity and persecution or were aware that they would occur in the ordinary course of events in implementing the Odek common plan. The victims of these crimes were civilians taking no active part in hostilities. Dominic Ongwen was aware of the factual circumstances that established this status.

28. The Odek co-perpetrators implemented the Odek common plan through the hierarchical apparatus of the LRA deployed for the Odek attack, which they jointly controlled. Dominic Ongwen was aware of the fundamental features of the LRA and the factual circumstances that enabled him together with other co-perpetrators, to jointly exercise control over the crimes charged in relation to Odek.

29. Dominic Ongwen contributed to the implementation of the Odek common plan and to the commission of the crimes charged in relation to Odek by

- planning the attack;
- briefing and instructing the troops prior to the attack;
- ordering fighters under his command to commit crimes in Odek;
- deploying troops to Odek;
- commanding and coordinating the Odek attack on the ground;
- failing, while being a military commander or person effectively acting as a military commander, to take necessary and reasonable measures within his power to prevent or repress the commission of the crimes charged in relation to Odek or failing to submit the matter to the competent authorities for investigation and prosecution. Dominic Ongwen knew or, owing to the circumstances at the time, should have known that the LRA fighters were committing or were about to commit these crimes.

30. At the time of the attack, Dominic Ongwen had effective command and control, or authority and control, over LRA fighters that participated in the attack on Odek.

31. When engaging in the above conduct, Dominic Ongwen had the requisite intent and knowledge under articles 25, 28 and 30, as well as under the elements of the crimes listed below.

Attacks against the civilian population

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

Murder

33. As a result of the attack on Odek, at least 61 civilians – men, women and children – were killed, mainly by gunshot. LRA fighters spread throughout the camp targeting and killing civilians. Some abductees were killed after being taken away from the camp.

Attempted murder

34. Although the LRA fighters commenced the crime of murder by means of the substantial step of attacking the victims, on some occasions the victims did not die due to independent circumstances. The LRA shot, with the intention of killing, a number of civilian residents of Odek. Some victims survived these shootings.

Torture/cruel treatment/other inhumane acts

35. Many civilians in Odek were subjected to severe physical or mental pain or suffering or serious injury to body or to mental or physical health by LRA attackers. The pain and suffering did not arise from and was not inherent in or incidental to lawful sanctions. This treatment was carried out to intimidate and/or punish the Odek civilian population because of their perceived support for the Ugandan government. During this time the victims were in the custody or under the control of the LRA attackers. Civilian residents were beaten, and threatened with death. At least one woman was sexually assaulted. Some abductees were made to carry heavy loads away from Odek IDP camp and were beaten if they walked too slowly. Others were beaten if their children cried.

Enslavement

36. LRA fighters deprived civilians of their liberty by abducting them and placing them under military guard to prevent their escape. Civilian men, women and children were abducted and forced to carry away the looted food from Odek IDP camp. Children were tied together with ropes and dragged away from their homes. In doing so, attackers exercised any or all of the powers attaching to the right of ownership over the abductees including by depriving them of their liberty and exacting forced labour, reducing them to a servile status.

Pillaging

37. The attackers appropriated food items and other property. They intended to deprive the owners of their food and property and to appropriate it for private or personal consumption and use. The owners did not consent to the appropriation. The attackers stole food and personal items from the homes of civilians. The trading centre was also looted.

Outrages upon personal dignity

38. The attackers humiliated, degraded or otherwise violated the dignity of Odek residents. The severity of the humiliation, degradation or other violations was of such degree as to be generally recognised as an outrage upon personal dignity. One individual was forced to kill an abducted man from Odek with a club and forced to inspect decomposing bodies, including that of his father.

Women were forced by LRA attackers to abandon their children on the side of the road.

Persecution

39. The attackers severely deprived, contrary to international law, the residents of Odek of their fundamental rights to life, to liberty and security of person, to freedom of movement, to private property, not to be subjected to torture or to cruel, inhumane or degrading treatment, and the right not to be held in slavery or servitude. The Odek co-perpetrators, including Dominic Ongwen, targeted this group of civilian residents based on political grounds, as they perceived them to be affiliated with and/or supporting the Ugandan government. They did so in connection with the crimes of attacks against the civilian population, murder, attempted murder, torture, other inhumane acts, cruel treatment, enslavement, outrages against personal dignity and pillaging committed by the attackers at or near Odek IDP camp.

Legal characterisation of the facts:

- 11) **Attacks against the civilian population as such** as a war crime, pursuant to articles 8(2) (e) (i) and 25(3) (a) (indirect co-perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 29 April 2004, at or near Odek IDP camp.
- 12) **Murder** as a crime against humanity, pursuant to articles 7(1) (a) and 25(3) (a) (indirect co-perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 29 April 2004, at or near Odek IDP camp.
- 13) **Murder** as a war crime, pursuant to articles 8(2) (c) (i) and 25(3) (a) (indirect co-perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 29 April 2004, at or near Odek IDP camp.
- 14) **Attempted murder** as a crime against humanity, pursuant to articles 7(1) (a) and 25(3) (f) and 25(3) (a) (indirect co-perpetration), or (b) (ordering), or (d) (i) and (ii) or 28(a), of the Rome Statute, on or about 29 April 2004, at or near Odek IDP camp.
- 15) **Attempted murder** as a war crime, pursuant to articles 8(2) (c) (i) and 25(3) (f) and 25(3) (a) (indirect co-perpetration), or (b) (ordering), or (d) (i) and (ii) or 28(a), of the Rome Statute, on or about 29 April 2004, at or near Odek IDP camp.
- 16) **Torture** as a crime against humanity, pursuant to articles 7(1) (f) and 25(3) (a) (indirect co-perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 29 April 2004, at or near Odek IDP camp.

- 17) Torture** as a war crime, pursuant to articles 8(2) (c) (i) and 25(3) (a) (indirect co-perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 29 April 2004, at or near Odek IDP camp.
- 18) Other inhumane acts** as a crime against humanity, pursuant to articles 7(1) (k) and 25(3) (a) (indirect co-perpetration), or (b) (ordering), or (d) (i) and (ii) or 28(a), of the Rome Statute, on or about 29 April 2004, at or near Odek IDP camp.
- 19) Cruel treatment** as a war crime, pursuant to articles 8(2) (c) (i) and 25(3) (a) (indirect co-perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the Rome Statute on or about 29 April 2004, at or near Odek IDP camp.
- 20) Enslavement** as a crime against humanity, pursuant to articles 7(1) (c), and 25(3) (a) (indirect co-perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 29 April 2004, at or near Odek IDP camp.
- 21) Pillaging** as a war crime, pursuant to articles 8(2) (e) (v) and 25(3) (a) (indirect co-perpetration), or (b) (ordering) or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 29 April 2004, at or near Odek IDP camp.
- 22) Outrages upon personal dignity** as a war crime, pursuant to articles 8(2) (c) (ii), and 25(3) (a) (indirect co-perpetration), or (b) (ordering), or (d) (i) and (ii) or 28(a), of the Rome Statute, on or about 29 April 2004, at or near Odek IDP camp.
- 23) Persecution**, on political grounds, of civilians perceived by the LRA as being affiliated with, or supporting the Ugandan government, by attacks against the civilian population as such, murder, attempted murder, torture, cruel treatment, other inhumane acts, enslavement, outrages upon personal dignity and pillaging on or about 29 April 2004, at or near Odek IDP camp pursuant to article 7(1) (h) and 25(3) (a) (indirect co-perpetration) or (b) (ordering) or (d) (i) and (ii) or 28(a) of the Rome Statute.

**6. ATTACK ON LUKODI IDP CAMP ON OR ABOUT 19 MAY 2004
(Counts 24 to 36)**

Material facts:

40. The factual allegations set out in Chapter 3 (contextual elements) and Chapter 4 (common elements of modes of liability) are incorporated herein by reference.

41. On or about 19 May 2004 at approximately 6.00 p.m. Dominic Ongwen attacked Lukodi IDP camp in Bungatira sub-county, Aswa county, Gulu district. Dominic Ongwen meant to engage in his conduct and intended to bring about the objective elements of the crimes of attacks against the civilian population, murder, attempted murder, torture, cruel treatment, other inhumane acts, enslavement, pillaging, destruction of property and persecution or was aware that they would occur in the ordinary course of events during the attack on Lukodi IDP camp. The victims of these crimes were civilians taking no active part in hostilities. Dominic Ongwen was aware of the factual circumstances that established this status.

42. As the commander of the Lukodi attack, Dominic Ongwen exerted control over the crimes through the LRA fighters who carried out the attack. The attackers included members of the Sinia and Gilva brigades. These fighters complied with Dominic Ongwen's orders in carrying out the material elements of the charged crimes. Dominic Ongwen committed the crimes through the hierarchical apparatus of the LRA by planning the attack, selecting fighters and appointing leaders for the attack, instructing the troops prior to the attack, and ordering and deploying troops to commit crimes in Lukodi. Dominic Ongwen was aware of the fundamental features of the LRA and the factual circumstances which allowed him to exert control over the charged crimes.

43. The attackers were under the effective command and control, or effective authority and control, of Dominic Ongwen during the Lukodi attack. Dominic Ongwen failed, while being a military commander or person effectively acting as a military commander, to take necessary and reasonable measures within his power to prevent or repress the commission of the charged crimes or failed to submit the matter to the competent authorities for investigation and prosecution. Dominic Ongwen knew or, owing to the circumstances at the time, should have known that the LRA fighters were committing or were about to commit the crimes charged in relation to Lukodi.

44. When engaging in the above conduct, Dominic Ongwen had the requisite intent and knowledge under articles 25, 28 and 30, and under the elements of the crimes listed below.

Attacks against the civilian population

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

Murder

46. During the attack and its aftermath the attackers killed approximately 45 civilians including at least 12 children. Several Lukodi civilians were killed

during the attack including those inside their houses. The attackers continued to kill civilians abducted from Lukodi IDP camp during their retreat from the camp.

Attempted murder

47. On some occasions, murders were not fully carried out because of circumstances independent of Dominic Ongwen's intention. LRA fighters commenced the crime by means of the substantial step of attacking the victim, but the victim did not die. Despite the fact that LRA fighters shot indiscriminately at the residents of the camp, threw children inside burning houses, and/or kicked them back when they tried to escape in order to kill them, some victims survived.

Enslavement

48. LRA fighters deprived civilians of their liberty by abducting them and placing them under military guard to prevent their escape. Men, women and children were abducted, many of whom were forced to carry away looted goods from Lukodi IDP camp. In doing so, attackers exercised any or all of the powers attaching to the right of ownership over the abductees including by depriving them of their liberty and exacting forced labour, reducing them to a servile status.

Torture/cruel treatment/other inhumane acts

49. The LRA attackers subjected the Lukodi IDP camp residents to severe physical or mental pain or suffering or serious injury to body or to mental or physical health. The pain and suffering did not arise from and was not inherent in or incidental to lawful sanctions. This treatment was carried out to intimidate and/or punish the Lukodi civilian population because of their perceived support for the Ugandan government. The victims were under the custody or control of the LRA attackers. Attackers assaulted civilians, including small children. Abducted civilians were forced to carry heavy loot while being constantly beaten, and under a threat of more beatings or death.

Pillaging

50. The attackers appropriated food items and other property. They intended to deprive the owners of their food and property and to appropriate it for private or personal consumption and use. The appropriation was without the consent of the owners. LRA fighters entered civilian houses and shops and looted food, livestock, clothes and household items.

Destruction of property

51. The attackers destroyed property belonging to the civilian residents of the government-protected Lukodi IDP camp, including by burning their

houses. Dominic Ongwen viewed these civilian residents as adversaries. Such property was protected from destruction under the international law of armed conflict. Dominic Ongwen was aware of the factual circumstances that established the status of the property. The destruction was not required by military necessity.

Persecution

52. The attackers severely deprived, contrary to international law, the residents of Lukodi of their fundamental rights to life, to liberty and security of person, to freedom of movement, to private property, not to be subjected to torture or to cruel, inhumane or degrading treatment, and the right not to be held in slavery or servitude. Dominic Ongwen targeted this group of civilian residents based on political grounds, as he perceived them to be affiliated with and/or supporting the Ugandan government. This conduct was committed in connection with the crimes of attacks against the civilian population, murder, attempted murder, torture, other inhumane acts, cruel treatment, enslavement, destruction of property and pillaging committed by the attackers at or near Lukodi.

Legal characterisation of the facts:

- 24) Attacks against the civilian population as such** as a war crime, pursuant to articles 8(2) (e) (i) and 25(3) (a) (indirect perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 19 May 2004, at or near Lukodi IDP camp.
- 25) Murder** as a crime against humanity, pursuant to articles 7(1) (a) and 25(3) (a) (indirect perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 19 May 2004, at or near Lukodi IDP camp.
- 26) Murder** as a war crime, pursuant to articles 8(2) (c) (i) and 25(3) (a) (indirect perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 19 May 2004, at or near Lukodi IDP camp.
- 27) Attempted murder** as a crime against humanity, pursuant to articles 7(1) (a) and 25(3) (f) and 25(3) (a) (indirect perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 19 May 2004, at or near Lukodi IDP camp.
- 28) Attempted murder** as a war crime, pursuant to articles 8(2) (c) (i) and 25(3) (f) and 25(3) (a) (indirect perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 19 May 2004, at or near Lukodi IDP Camp.

- 29) Torture** as a crime against humanity, pursuant to articles 7(1) (f) and 25(3) (a) (indirect perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 19 May 2004, at or near Lukodi IDP Camp.
- 30) Torture** as a war crime, pursuant to articles 8(2) (c) (i) and 25(3) (a) (indirect perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 19 May 2004, at or near Lukodi IDP Camp.
- 31) Other inhumane acts** as a crime against humanity, pursuant to articles 7(1) (k) and 25(3) (a) (indirect perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 19 May 2004, at or near Lukodi IDP Camp.
- 32) Cruel treatment** as a war crime, pursuant to articles 8(2) (c) (i) and 25(3) (a) (indirect perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 19 May 2004, at or near Lukodi IDP Camp.
- 33) Enslavement** as a crime against humanity, pursuant to articles 7(1) (c) and 25(3) (a) (indirect perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 19 May 2004 at or near Lukodi IDP Camp.
- 34) Pillaging** as a war crime, pursuant to articles 8(2) (e) (v) and 25(3) (a) (indirect perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 19 May 2004, at or near Lukodi IDP Camp.
- 35) Destruction of property** as a war crime, pursuant to articles 8(2) (e) (xii) and 25(3) (a) (indirect perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 19 May 2004, at or near Lukodi IDP Camp.
- 36) Persecution**, on political grounds, of civilians perceived by the LRA as being affiliated with, or supporting the Ugandan government, by attacks against the civilian population as such, murder, attempted murder, torture, cruel treatment, other inhumane acts, enslavement, pillaging and destruction of property on or about 19 May 2004, at or near Lukodi IDP camp pursuant to article 7(1) (h) and 25(3) (a) (indirect perpetration) or (b) (ordering) or (d) (i) and (ii) or 28(a) of the Rome Statute.

7. ATTACK ON ABOK IDP CAMP ON OR ABOUT 8 JUNE 2004 (Counts 37 to 49)

Material facts:

53. The factual allegations set out in Chapter 3 (contextual elements) and Chapter 4 (common elements of modes of liability) are incorporated herein by reference.

54. On or about 8 June 2004, in the evening, Dominic Ongwen launched an attack on Abok IDP camp, then situated in Ngai sub-county, in Apac district. Dominic Ongwen meant to engage in his conduct and intended to bring about the objective elements of the crimes of attacks against the civilian population, murder, attempted murder, torture, cruel treatment, other inhumane acts, enslavement, pillaging, destruction of property and persecution and/or was aware that they would occur in the ordinary course of events during the attack on Abok IDP camp. The victims of these crimes were civilians taking no active part in hostilities. Dominic Ongwen was aware of the factual circumstances that established this status.

55. Dominic Ongwen exerted control over the crimes through the LRA fighters who carried out the attack. These fighters complied with Dominic Ongwen's orders in carrying out the material elements of the charged crimes. Dominic Ongwen committed the crimes at Abok IDP camp through the hierarchical apparatus of the LRA by planning the attack, selecting fighters and appointing leaders for the attack, instructing the troops prior to the attack, and ordering and deploying troops to commit crimes in Abok. Dominic Ongwen was aware of the fundamental features of the LRA and the factual circumstances which allowed him to exert control over the charged crimes.

56. The attackers were under the effective command and authority, or control and authority, of Dominic Ongwen during the Abok attack. Dominic Ongwen failed, while being a military commander or person effectively acting as a military commander, to take necessary and reasonable measures within his power to prevent or repress the commission of the charged crimes or failed to submit the matter to the competent authorities for investigation and prosecution. Dominic Ongwen knew or, owing to the circumstances at the time, should have known that the LRA fighters were committing or were about to commit the crimes charged in relation to Abok.

57. When engaging in the above conduct, Dominic Ongwen had the requisite intent and knowledge under articles 25, 28 and 30, and under the elements of the crimes listed below.

Attacks against the civilian population

58. LRA fighters under the control of Dominic Ongwen carried out an attack against the civilian population of Abok IDP camp as such, or individual

civilians not taking direct part in the hostilities. Dominic Ongwen intended the civilian population as such, or individual civilians not taking direct part in the hostilities to be the object of the attack.

Murder

59. The attackers killed approximately 28 civilian residents of the camp including children. LRA fighters shot, burned, and beat civilians to death during the attack.

Attempted murder

60. On some occasions, murders were not fully carried out because of circumstances independent of Dominic Ongwen's intention. LRA fighters commenced the crime by means of the substantial step of attacking the victim, but the victim did not die. LRA fighters, with the intent to kill, indiscriminately shot at fleeing camp residents, burned down homes with civilians trapped inside, and severely beat others leaving them for dead.

Torture/cruel treatment/inhumane treatment

61. LRA attackers inflicted severe physical or mental pain or suffering or serious injury to body or to mental or physical health on many civilians in Abok IDP camp. The pain and suffering did not arise from and was not inherent in or incidental to lawful sanctions. This treatment was carried out to intimidate and/or punish the civilian population of Abok because of their perceived support for the Ugandan government. This treatment was carried out when the victims were under the custody or control of the LRA attackers. Some civilians were assaulted by the attackers. Certain abductees were forced to march while carrying heavy loot, and/or while injured.

Enslavement

62. LRA fighters deprived civilians of their liberty by abducting them and placing them under military guard to prevent their escape. Before attacking the camp, LRA fighters abducted a number of camp residents. During the attack, attackers abducted approximately 26 men, women and children and forced them to carry looted goods away from the camp under threat of death. The attackers exercised any or all of the powers attaching to the right of ownership over these abductees including by depriving them of their liberty and exacting forced labour, reducing them to a servile status.

Pillaging

63. The attackers appropriated food items and other property. They intended to deprive the owners of their food and property and to appropriate it for private or personal consumption and use. The appropriation was without the consent of the owners. LRA fighters looted food items, clothing, cooking

utensils, and first aid provisions from homes. They also looted shops at the trading centre.

Destruction of property

64. The attackers also destroyed certain property belonging to the civilian residents of the government-protected Abok IDP camp, by, *inter alia*, burning hundreds of houses and destroying the victims' food stocks in the process. Dominic Ongwen viewed these civilians as his adversaries. Dominic Ongwen was aware of the factual circumstances that established the status of the property. The destruction was not required by military necessity.

Persecution

65. The attackers severely deprived, contrary to international law, the residents of Abok of their fundamental rights to life, to liberty and security of person, to freedom of movement, to private property, not to be subjected to torture or to cruel, inhumane or degrading treatment, and the right not to be held in slavery or servitude. Dominic Ongwen targeted this group of civilian residents based on political grounds, as he perceived them to be affiliated with and/or supporting the Ugandan government. This conduct was committed in connection with the crimes of attacks against a civilian population, murder, attempted murder, torture, other inhumane acts, cruel treatment, enslavement, destruction of property and pillaging committed by the attackers at or near Abok.

Legal characterisation of the facts:

- 37) **Attacks against the civilian population as such** as a war crime, pursuant to articles 8(2) (e) (i) and 25(3) (a) (indirect perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 8 June 2004, at or near Abok IDP camp.
- 38) **Murder** as a crime against humanity, pursuant to articles 7(1) (a) and 25(3) (a) (indirect perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 8 June 2004, at or near Abok IDP camp.
- 39) **Murder** as a war crime, pursuant to articles 8(2) (c) (i) and 25(3) (a) (indirect perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 8 June 2004, at or near Abok IDP camp.
- 40) **Attempted murder** as a crime against humanity, pursuant to articles 7(1) (a) and 25(3) (f) and 25(3) (a) (indirect perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 8 June 2004, at or near Abok IDP camp.

- 41) Attempted murder** as a war crime, pursuant to articles 8(2) (c) (i) and 25(3) (f) and 25(3) (a) (indirect perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 8 June 2004, at or near Abok IDP camp.
- 42) Torture** as a crime against humanity, pursuant to articles 7(1) (f) and 25(3) (a) (indirect perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 8 June 2004, at or near Abok IDP camp.
- 43) Torture** as a war crime, pursuant to articles 8(2) (c) (i) and 25(3) (a) (indirect perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 8 June 2004, at or near Abok IDP camp.
- 44) Other inhumane acts** as a crime against humanity, pursuant to articles 7(1) (k) and 25(3) (a) (indirect perpetration), or (b) (ordering), or (d) (i) and (ii) or 28(a), of the Rome Statute, on or about 8 June 2004, at or near Abok IDP camp.
- 45) Cruel treatment** as a war crime, pursuant to articles 8(2) (c) (i) and 25(3) (a) (indirect perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 8 June 2004, at or near Abok IDP camp.
- 46) Enslavement** as a crime against humanity, pursuant to articles 7(1) (c) and 25(3) (a) (indirect perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 8 June 2004, at or near Abok IDP camp.
- 47) Pillaging** as a war crime, pursuant to articles 8(2) (e) (v) and 25(3) (a) (indirect perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 8 June 2004, at or near Abok IDP camp.
- 48) Destruction of property** as a war crime, pursuant to articles 8(2) (e) (xii) and 25(3) (a) (indirect perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the Rome Statute, on or about 8 June 2004, at or near Abok IDP camp.
- 49) Persecution**, on political grounds, of civilians perceived by the LRA as being affiliated with, or supporting the Ugandan government, by attacks against the civilian population as such, murder, attempted murder, torture, cruel treatment, other inhumane acts, enslavement, pillaging and destruction of property on or about 8 June 2004, at or near Abok IDP camp pursuant to article 7(1) (h) and 25(3) (a) (indirect perpetration) or (b) (ordering) or (d) (i) and (ii) or 28(a) of the Rome Statute.

8. SEXUAL AND GENDER BASED CRIMES PERPETRATED DIRECTLY BY DOMINIC ONGWEN (Counts 50 to 60)

Material facts:

8.1. Crimes committed against ██████████ (P-0099)

66. The factual allegations set out in Chapter 3 (contextual elements) are incorporated herein by reference.

67. Unless otherwise indicated, the conduct alleged below took place in northern Uganda and Sudan prior to 1 July 2002 and continued uninterrupted in northern Uganda after 1 July 2002 until ██████████'s (P-0099's) escape in September 2002.

68. ██████████ (P-0099) was abducted by LRA fighters from Purongo, northern Uganda in February 1998 and from there taken by the LRA to Sudan.

69. After her abduction ██████████ (P-0099), in coercive circumstances, became Dominic Ongwen's forced exclusive conjugal partner – his forced wife. As Dominic Ongwen's forced wife, she had to maintain an exclusive sexual relationship with him, have sexual intercourse with him on demand, bear children, perform domestic chores and otherwise do what Dominic Ongwen instructed her to do. Her forced marriage to Dominic Ongwen was an inhumane act that inflicted great suffering or serious injury to her body or to her mental or physical health of a character similar to other crimes against humanity charged in this document. Dominic Ongwen was aware of the factual circumstances that established the character of the inhumane act.

70. Dominic Ongwen exercised any or all of the powers attaching to the right of ownership over ██████████ (P-0099) for the entire period of her forced marriage to him, including between 1 July 2002 and September 2002. He deprived her of her liberty by placing her under military guard, imposing conditions that made it impossible for her to escape and exacted forced labour, reducing her to a servile status. When Dominic Ongwen was not present, he ensured ██████████ (P-0099) continued to be confined. ██████████ (P-0099) was forced to carry out different tasks in Dominic Ongwen's household such as cooking, working in the garden and doing the laundry. If she failed to perform these tasks, she was punished.

71. Dominic Ongwen meant to engage in the conduct described above and meant to cause the consequences or was aware that they would occur in the ordinary course of events.

8.2. Crimes committed against ██████████ (P-0101)

72. The factual allegations set out in Chapter 3 (contextual elements) are incorporated herein by reference.

73. The conduct described below took place in northern Uganda and Sudan before 1 July 2002 and continued uninterrupted after 1 July 2002 in northern Uganda until ██████████'s (P-0101's) escape in July 2004.

74. ██████████ (P-0101) was abducted personally by Dominic Ongwen from Pabwor, northern Uganda in August 1996.

75. ██████████ (P-0101) became Dominic Ongwen's forced exclusive conjugal partner, his forced wife, immediately after her abduction. As Dominic Ongwen's forced wife she had to maintain an exclusive sexual relationship with him, have sexual intercourse with him on demand, bear children, perform domestic chores and otherwise do what Dominic Ongwen instructed her to do. Her forced marriage to Dominic Ongwen was an inhumane act that inflicted great suffering or serious injury to her body or to her mental or physical health of a character similar to other crimes against humanity charged in this document. Dominic Ongwen was aware of the factual circumstances that established the character of the inhumane act.

76. ██████████ (P-0101) was first raped by Dominic Ongwen on the day of her abduction. Dominic Ongwen pinned her down and penetrated her vagina with his penis, using physical force as well as threatening to shoot her if she refused. After the first time, Dominic Ongwen repeatedly raped ██████████ (P-0101), including between 1 July 2002 and July 2004. On each occasion, Dominic Ongwen used force, threat of force or coercion or made use of the existing coercive environment in the LRA to force ██████████ (P-0101) into sexual intercourse. When she refused, Dominic Ongwen beat her.

77. Dominic Ongwen throughout the period of her captivity, including from 1 July 2002 until July 2004, exercised powers attaching to the right of ownership over ██████████ (P-0101). He deprived her of her liberty by imposing conditions that induced fear and prevented her escape and exacted forced labour, reducing her to a servile status. She had to perform different domestic tasks in his household such as cooking, fetching and chopping wood and was repeatedly raped.

78. ██████████ (P-0101) remained under Dominic Ongwen's custody or control until her escape in July 2004. By repeatedly raping and beating her, including between 1 July 2002 and July 2004, Dominic Ongwen with the purpose of coercing, intimidating or punishing her, inflicted severe mental or physical pain or suffering upon ██████████ (P-0101). The pain and suffering did not arise from and was not inherent in or incidental to lawful sanctions. During this time, ██████████ (P-0101) was a civilian taking no active part in hostilities and Dominic Ongwen was aware of the factual circumstances that established her status.

79. ██████████ (P-0101) became pregnant as a result of rapes by Dominic Ongwen. She gave birth to three children fathered by Dominic Ongwen. Dominic Ongwen confined the pregnant ██████████ (P-0101)

during all three pregnancies, including the two pregnancies that she had in northern Uganda from 1 July 2002 to her escape in July 2004. He confined her with the intent to carry out grave violations of international law, including, to use her as his forced wife, and to rape, sexually enslave, enslave, and torture her.

80. Dominic Ongwen meant to engage in the conduct described above and meant to cause the consequences or was aware they would occur in the ordinary course of events.

8.3. Crimes committed against ██████████ (P-0214)

81. The factual allegations set out in Chapter 3 (contextual elements) are incorporated herein by reference.

82. All conduct described below from at least September 2002 to 31 December 2005 took place in northern Uganda and occasionally in Sudan when ██████████ (P-0214) was taken there during the LRA movements.

83. ██████████ (P-0214) was abducted from Laliya, northern Uganda, by LRA fighters in June 2000. From there she was taken by the LRA to Sudan.

84. From approximately September 2002 to at least 31 December 2005 ██████████ ██████████ (P-0214) was Dominic Ongwen's exclusive forced conjugal partner – his forced wife. As Dominic Ongwen's forced wife she had to maintain an exclusive sexual relationship with him, have sexual intercourse with him on demand, bear children, perform domestic chores and otherwise do what Dominic Ongwen instructed her to do. Her forced marriage to Dominic Ongwen was an inhumane act that inflicted great suffering or serious injury to her body or to her mental or physical health of a character similar to other crimes against humanity charged in this document. Dominic Ongwen was aware of the factual circumstances that established the character of the inhumane act.

85. When Dominic Ongwen first ordered ██████████ (P-0214) to sleep in his house, in approximately September 2002, she refused. Dominic Ongwen called his security guards. She was afraid and complied with Dominic Ongwen's instructions. Dominic Ongwen by using force and threat of force penetrated ██████████'s (P-0214's) vagina with his penis. After the first time, Dominic Ongwen repeatedly raped ██████████ (P-0214) until her escape. On each occasion, Dominic Ongwen used force, threat of force, or coercion or made use of the existing coercive environment in the LRA to force ██████████ (P-0214) into having sexual intercourse with him.

86. Dominic Ongwen exercised powers attaching to the right of ownership over her, including from at least September 2002 to 31 December 2005. Dominic Ongwen deprived her of her liberty by ensuring that there were guards who prevented her escape and exacted forced labour, reducing her to a servile

status. She had to perform different domestic tasks in Dominic Ongwen's household such as cooking, washing clothes, nursing Dominic Ongwen when he was injured and had to submit to rape by him.

87. ██████████ (P-0214) remained under Dominic Ongwen's custody or control until her escape. By repeatedly raping her, and beating her, Dominic Ongwen with the purpose of coercing, intimidating or punishing her, inflicted severe mental or physical pain and suffering upon ██████████ (P-0214). The pain and suffering did not arise from and was not inherent in or incidental to lawful sanctions. During this time ██████████ (P-0214) was a civilian taking no active part in hostilities and Dominic Ongwen was aware of the factual circumstances that established this status.

88. As a result of rape by Dominic Ongwen, ██████████ (P-0214) became pregnant four times while in LRA captivity. Dominic Ongwen confined the pregnant ██████████ (P-0214) during these pregnancies, including one pregnancy in 2005 in northern Uganda with the intent to carry out grave violations of international law including to use her as one of his exclusive conjugal partners, rape, sexually enslave, enslave and torture her.

89. Dominic Ongwen meant to engage in all conduct described above and meant to cause the consequences or was aware they would occur in the ordinary course of events.

8.4. Crimes committed against ██████████ (P-0226)

90. The factual allegations set out in Chapter 3 (contextual elements) are incorporated herein by reference.

91. The conduct described below, at least from 1 July 2002, took place in northern Uganda until ██████████'s (P-0226's) escape sometime in 2003.

92. ██████████ (P-0226) was abducted from her home at Patiko Cetkana, Lukome, northern Uganda by LRA fighters under Dominic Ongwen's command around 1998.

93. After her abduction, when ██████████ (P-0226) was about 10 years old, she became Dominic Ongwen's exclusive forced conjugal partner – his forced wife. As Dominic Ongwen's forced wife she had to maintain an exclusive sexual relationship with him, have sexual intercourse with him on demand, perform domestic chores and otherwise do what Dominic Ongwen instructed her to do. Her forced marriage to Dominic Ongwen was an inhumane act that inflicted great suffering or serious injury to her body or to her mental or physical health of a character similar to other crimes against humanity charged in this document. Dominic Ongwen was aware of the factual circumstances that established the character of the inhumane act.

94. When Dominic Ongwen first summoned her to have sexual intercourse with him, ██████████ (P-0226) refused. Dominic Ongwen had his escorts beat her and watched them administer the beatings. Because of the beatings and fear of further beatings she submitted to Dominic Ongwen's demands. Dominic Ongwen tore off her clothes and threatened to kill her if she cried. Dominic Ongwen then by force and threat of force penetrated ██████████'s (P-0226's) vagina with his penis. Thereafter Dominic Ongwen repeatedly raped ██████████ (P-0226), including in the period between 1 July 2002 and her escape sometime in 2003. On each occasion Dominic Ongwen used force, threat of force, or coercion or made use of the existing coercive environment in the LRA to force ██████████ (P-0226) into having sexual intercourse with him.

95. Dominic Ongwen exercised powers attaching to the right of ownership over her for the entire time of her captivity, including from 1 July 2002 to sometime in 2003. Dominic Ongwen deprived ██████████ (P-0226) of her liberty by imposing conditions which induced fear, preventing her escape and exacted forced labour, reducing her to a servile status. She was forced to perform different domestic tasks in Dominic Ongwen's household such as cooking, carrying Dominic Ongwen's dishes and forced to submit to regular rape by him. Dominic Ongwen frequently beat her or had her beaten, sometimes to unconsciousness.

96. Sometime in late 2002 or early 2003 Dominic Ongwen humiliated, degraded or otherwise violated the dignity of ██████████ (P-0226) by forcing her to beat to death a captured UPDF soldier near Patongo, northern Uganda. This experience caused her severe anguish. The severity of the humiliation, degradation or other violation was of such degree as to be generally recognised as an outrage upon personal dignity. During this time, ██████████ (P-0226) was a civilian taking no active part in hostilities and Dominic Ongwen was aware of the factual circumstances that established this status.

97. ██████████ (P-0226) remained under Dominic Ongwen's custody or control until her escape sometime in 2003. By repeatedly raping her, beating her, and forcing her to participate in killings, whilst she was in his custody or control, including from 1 July 2002 to sometime in 2003, Dominic Ongwen with the purpose of coercing, intimidating or punishing her, inflicted severe mental or physical pain and suffering upon ██████████ (P-0226). The pain and suffering did not arise from and was not inherent in or incidental to lawful sanctions. During this time, ██████████ (P-0226) was a civilian taking no active part in hostilities and Dominic Ongwen was aware of the factual circumstances that established this status.

98. Dominic Ongwen meant to engage in all conduct described above and meant to cause the consequences or was aware they would occur in the ordinary course of events.

8.5. Crimes committed against ██████████ (P-0227)

99. The factual allegations set out in Chapter 3 (contextual elements) are incorporated herein by reference.

100. All conduct described below from April 2005 until at least 31 December 2005 took place in northern Uganda.

101. ██████████ (P-0227) was abducted from Pageya, northern Uganda by LRA fighters under Dominic Ongwen's command in approximately April 2005.

102. ██████████ (P-0227) was placed in Dominic Ongwen's household where she performed household tasks like getting water, cutting grass, and collecting firewood. Approximately one month after her abduction, ██████████ (P-0227) became Dominic Ongwen's forced exclusive conjugal partner – his forced wife. As Dominic Ongwen's forced wife she had to maintain an exclusive sexual relationship with him, have sexual intercourse with him on demand, bear children, perform domestic chores and otherwise do what Dominic Ongwen instructed her to do. Her forced marriage to Dominic Ongwen was an inhumane act that inflicted great suffering or serious injury to her body or to her mental or physical health of a character similar to other crimes against humanity charged in this document. Dominic Ongwen was aware of the factual circumstances that established the character of the inhumane act.

103. The first time Dominic Ongwen had sexual intercourse with her, about a month after her abduction, he called ██████████ (P-0227) into his tent, and told her to take off her clothes and lie down. He then by force and threat of force penetrated ██████████'s (P-0227's) vagina and her anus with his penis. She screamed and cried. To quiet her he threatened her with his bayonet. She was screaming and crying and endured severe physical and mental pain. Thereafter Dominic Ongwen repeatedly raped ██████████ (P-0227) until her escape, including from April 2005 to 31 December 2005. On each occasion, Dominic Ongwen used force, threat of force, or coercion or made use of the existing coercive environment in the LRA to force ██████████ (P-0227) into having sexual intercourse with him.

104. Dominic Ongwen exercised powers attaching to the right of ownership over her throughout this period. Dominic Ongwen deprived her of her liberty by placing her under heavy security and exacted forced labour, reducing her to a servile status. She was at all times guarded by his escorts. She had to perform domestic tasks in Dominic Ongwen's household and submit to regular rape by him. Dominic Ongwen had her beaten.

105. ██████████ (P-0227) remained in Dominic Ongwen's custody or control from her abduction until her escape in approximately August 2010, including between April 2005 and 31 December 2005. By repeatedly raping her, Dominic Ongwen with the purpose of coercing, intimidating or punishing her,

inflicted severe mental or physical pain or suffering upon ██████████ (P-0227). The pain and suffering did not arise from and was not inherent in or incidental to lawful sanctions. During this time, ██████████ (P-0227) was a civilian taking no active part in hostilities and Dominic Ongwen was aware of the factual circumstances that established this status.

106. Dominic Ongwen meant to engage in all conduct described above and meant to cause the consequences or was aware they would occur in the ordinary course of events.

8.6. Crimes committed against ██████████ (P-0235)

107. The factual allegations set out in Chapter 3 (contextual elements) are incorporated herein by reference.

108. All conduct described below from September 2002 until 31 December 2005 took place in northern Uganda.

109. ██████████ (P-0235) was abducted by the LRA fighters in Kitgum town in September 2002. After her abduction she was placed in Dominic Ongwen's household.

110. Dominic Ongwen exercised powers attaching to the right of ownership over ██████████ (P-0235) until his surrender, including from September 2002 to 31 December 2005. He deprived her of her liberty by imposing conditions that induced fear and prevented her escape and exacted forced labour, reducing her to a servile status. She had to perform domestic tasks in Dominic Ongwen's household such as cooking, fetching water, washing things, collecting wood, and taking things to Dominic Ongwen.

111. In late 2002 or early 2003 in northern Uganda, soon after ██████████'s (P-0235's) abduction, Dominic Ongwen humiliated, degraded or otherwise violated the dignity of ██████████ (P-0235) by ordering her she will have to, along with other abductees, beat people to death until their blood splashed on them. This caused her severe anguish, although she eventually did not have to carry out the killings. The severity of the humiliation, degradation or other violation was of such degree as to be generally recognised as an outrage upon personal dignity. During this time, ██████████ (P-0235) was a civilian not taking active part in hostilities. Dominic Ongwen was aware of the factual circumstances that established this status.

112. Dominic Ongwen meant to engage in all conduct described above and meant to cause the consequences or was aware they would occur in the ordinary course of events.

8.7. Crimes committed against ██████████ (P-0236)

113. The factual allegations set out in Chapter 3 (contextual elements) are incorporated herein by reference.

114. The conduct described below took place in northern Uganda.

115. ██████████ (P-0236) was abducted from Wang'ya in Ogule, Pajule, northern Uganda by LRA fighters in September 2002. She was distributed to Dominic Ongwen.

116. Dominic Ongwen exercised powers attaching to the right of ownership over ██████████ (P-0236) during the entire period of her captivity, including between September 2002 and 31 December 2005. Dominic Ongwen deprived ██████████ (P-0236) of her liberty by imposing conditions that induced fear and prevented her escape and exacted forced labour, reducing her to a servile status. She had to perform different domestic tasks in Dominic Ongwen's household such as washing, cooking and doing laundry. Dominic Ongwen caused her to watch executions and to be beaten by his escorts. She was beaten frequently.

117. Dominic Ongwen meant to engage in all conduct described above and meant to cause the consequences or was aware they would occur in the ordinary course of events.

Legal characterisation of the facts:

50) Forced Marriage, an inhumane act of a character similar to the acts set out in article 7(1) (a)-(j), as a crime against humanity pursuant to articles 7(1) (k) and 25(3) (a) (direct perpetration) of the Rome Statute of ██████████ (P-0099) between 1 July 2002 and September 2002, of ██████████ (P-0101) between 1 July 2002 and July 2004, of ██████████ (P-0214) between September 2002 and 31 December 2005, of ██████████ (P-0226) between 1 July 2002 and sometime in 2003, of ██████████ (P-0227) between approximately April 2005 and 31 December 2005.

51) Torture as a crime against humanity pursuant to articles 7(1) (f) and 25(3) (a) (direct perpetration) of the Rome Statute of ██████████ (P-0101) between 1 July 2002 and July 2004, of ██████████ (P-0214) between September 2002 and 31 December 2005, of ██████████ (P-0226) between 1 July 2002 and sometime in 2003, of ██████████ (P-0227) between approximately April 2005 and 31 December 2005.

52) Torture as a war crime pursuant to articles 8(2) (c) (i) and 25(3) (a) (direct perpetration) of the Rome Statute of ██████████ (P-0101) between 1 July 2002 and July 2004, of ██████████ (P-0214)

between September 2002 and 31 December 2005, of ██████████ (P-0226) between 1 July 2002 and sometime in 2003, of ██████████ (P-0227) between approximately April 2005 and 31 December 2005.

53) Rape as a crime against humanity pursuant to articles 7(1) (g) and 25(3) (a) (direct perpetration) of the Rome Statute of ██████████ ██████████ (P-0101) between 1 July 2002 and July 2004, of ██████████ ██████████ (P-0214) between September 2002 and 31 December 2005, of ██████████ ██████████ (P-0226) between 1 July 2002 and sometime in 2003, of ██████████ ██████████ (P-0227) between approximately April 2005 and 31 December 2005.

54) Rape as a war crime pursuant to articles 8(2) (e) (vi) and 25(3) (a) (direct perpetration) of the Rome Statute of ██████████ (P-0101) between 1 July 2002 and July 2004, of ██████████ (P-0214) between September 2002 and 31 December 2005, of ██████████ (P-0226) between 1 July 2002 and sometime in 2003, of ██████████ (P-0227) between approximately April 2005 and 31 December 2005.

55) Sexual Slavery as a crime against humanity pursuant to articles 7(1) (g) and 25(3) (a) (direct perpetration) of the Rome Statute of ██████████ ██████████ (P-0101) between 1 July 2002 and July 2004, of ██████████ ██████████ (P-0214) between September 2002 and 31 December 2005, of ██████████ ██████████ (P-0226) between 1 July 2002 and sometime in 2003, of ██████████ ██████████ (P-0227) between approximately April 2005 and 31 December 2005.

56) Sexual Slavery as a war crime pursuant to articles 8(2) (e) (vi) and 25(3) (a) (direct perpetration) of the Rome Statute of ██████████ ██████████ (P-0101) between 1 July 2002 and July 2004, of ██████████ ██████████ (P-0214) between September 2002 and 31 December 2005, of ██████████ ██████████ (P-0226) between 1 July 2002 and sometime in 2003, of ██████████ ██████████ (P-0227) between approximately April 2005 and 31 December 2005.

57) Enslavement, a crime against humanity pursuant to articles 7(1) (c) and 25(3) (a) (direct perpetration) of the Rome Statute of ██████████ (P-0099) between 1 July 2002 and September 2002, of ██████████ ██████████ (P-0101) between 1 July 2002 and July 2004, of ██████████ ██████████ (P-0214) between September 2002 and 31 December 2005, of ██████████ ██████████ (P-0226) between 1 July 2002 and sometime in 2003, of ██████████ ██████████ (P-0227) between approximately April 2005 and 31 December 2005, of ██████████ (P-0235) from September 2002 to 31 December 2005, of ██████████ (P-0236) between September 2002 and 31 December 2005.

58) Forced Pregnancy as a crime against humanity pursuant to articles 7(1) (g) and 25(3) (a) (direct perpetration) of the Rome Statute of

██████████ (P-0101, two pregnancies) between 1 July 2002 and July 2004, of ██████████ (P-0214) sometime in 2005.

59) Forced Pregnancy as a war crime pursuant to articles 8(2) (e) (vi) and 25(3) (a) (direct perpetration) of the Rome Statute of ██████████ ██████████ (P-0101, two pregnancies) between 1 July 2002 and July 2004, of ██████████ (P-0214) sometime in 2005.

60) Outrages upon personal dignity, a war crime pursuant to articles 8(2) (c) (ii) and 25(3) (a) (direct perpetration) of the Rome Statute of ██████████ ██████████ (P-0226) sometime in 2002 or early 2003 close to Patongo, northern Uganda, of ██████████ (P-0235) sometime in late 2002 or early 2003 at an unspecified location in northern Uganda.

9. SEXUAL AND GENDER BASED CRIMES (“SGBC”) NOT DIRECTLY PERPETRATED BY DOMINIC ONGWEN (Counts 61 to 68)

Material facts:

118. The factual allegations set out in Chapter 3 (contextual elements) and Chapter 4 (common elements of modes of liability) are incorporated herein by reference.

119. From at least 1 July 2002 until 31 December 2005, in northern Uganda, Dominic Ongwen, Joseph Kony, and Sinia brigade leadership (the “SGBC co-perpetrators”) pursued a common plan to abduct girls and women to serve as domestic servants, forced exclusive conjugal partners (forced wives) and sex slaves in the Sinia brigade (“SGBC common plan”). The co-perpetrators, including Dominic Ongwen, meant to engage in their conduct and intended to bring about the objective elements of the crimes of rape, torture, enslavement, sexual slavery and forced marriage, or were aware that they would occur in the ordinary course of events in implementing the SGBC common plan. The SGBC co-perpetrators acted in a coordinated manner to implement the common plan through a hierarchically organised structure of the LRA which was jointly controlled by the co-perpetrators. Dominic Ongwen was aware of the fundamental features of the LRA and of the factual circumstances that enabled him, together with other co-perpetrators, to jointly exercise functional control of the crimes.

120. From at least 1 July 2002 to 31 December 2005, women and girls were abducted in northern Uganda by LRA fighters pursuant to the common plan. They were deprived of their liberty and distributed to LRA fighters in Sinia brigade. The women were coerced to become forced exclusive conjugal partners – forced wives of the LRA fighters. They had to maintain an exclusive sexual relationship with the LRA fighter to whom they were distributed, have sexual intercourse with him on demand, bear children, perform domestic chores and otherwise do what their “husband” instructed them to do. This

amounted to an inhumane act that caused great suffering or serious injury to these women's and girls' bodies, and mental and physical health of a character similar to other crimes against humanity charged in this document. Dominic Ongwen was aware of the factual circumstances that established the character of the inhumane act.

121. SGBC co-perpetrators including Dominic Ongwen, through other LRA commanders and fighters, exercised any or all of the powers attaching to the right of ownership over these women and girls. They deprived them of their liberty and exacted forced labour, reducing them to a servile status. The victims had no choice but to submit to rape, enslavement, sexual slavery and become forced wives. Non-compliance with demands for sex and the performance of domestic tasks resulted in severe beatings and other forms of abuse.

122. SGBC co-perpetrators including Dominic Ongwen, through other LRA commanders and fighters, by repeatedly raping and beating women and girls who were in their custody or control, inflicted on them severe physical or mental pain or suffering for the purpose of intimidation, coercion or punishment. The pain and suffering did not arise from and was not inherent in or incidental to lawful sanctions. During this time, these women and girls were civilians taking no active part in hostilities and Dominic Ongwen was aware of this status.

123. Dominic Ongwen contributed to the realization of the common plan by

- leading by example through personally abducting women and girls, coercing them to become his forced wives and sex slaves, raping and torturing them;
- ordering troops under his command to abduct women and girls to serve as forced wives and sex slaves; ordering his subordinates to beat women or girls for disciplinary purposes or when the women or girls refused to submit to sexual intercourse. His orders were complied with and women were abducted at various locations across northern Uganda and subsequently enslaved, sexually enslaved, tortured, raped and made to serve as forced wives of LRA fighters in Sinia brigade;
- overseeing the abduction of women and girls at various locations across northern Uganda and subsequently ensuring that they were enslaved, sexually enslaved, tortured, raped and made to serve as forced wives of LRA fighters in Sinia brigade;
- having operational control over the implementation of the SGBC common plan in Sinia brigade;
- distributing or consenting to the distribution of women and girls to LRA fighters under his command;

- co-ordinating with Joseph Kony and his co-perpetrators about the implementation of the SGBC common plan;
- failing, while being a military commander or person effectively acting as a military commander, to take necessary and reasonable measures within his power to prevent or repress the commission of the charged crimes or failing to submit the matter to the competent authorities for investigation and prosecution. Dominic Ongwen knew or, owing to the circumstances at the time, should have known that the LRA fighters were committing or were about to commit the crimes of rape, torture, enslavement, sexual slavery and forced marriage. Dominic Ongwen had effective command and control, or authority and control, over LRA fighters that committed these crimes.

124. When engaging in the above conduct, Dominic Ongwen had the requisite intent and knowledge under articles 25, 28 and 30, and under the elements of the crimes listed below.

Legal characterisation of the facts:

- 61) Forced marriage**, an inhumane act of a character similar to the acts set out in articles 7(1) (a)-(j), as a crime against humanity, pursuant to articles 7(1) (k), and 25(3) (a) (indirect co-perpetration), or (b) (ordering) or (d) (i) and (ii), or 28(a), of the Rome Statute, from at least 1 July 2002 until 31 December 2005.
- 62) Torture** as a crime against humanity, pursuant to articles 7(1)(f) and 25(3)(a) (indirect co-perpetration), or (b) (ordering) or (d) (i) and (ii), or 28(a), of the Rome Statute, from at least 1 July 2002 until 31 December 2005.
- 63) Torture** as a war crime, pursuant to articles 8(2) (c) (i) and 25(3) (a) (indirect co-perpetration), or (b) (ordering) or (d) (i) and (ii), or 28(a) of the Rome Statute, from at least 1 July 2002 until 31 December 2005.
- 64) Rape** as a crime against humanity, pursuant to articles 7(1) (g) and 25(3)(a) (indirect co-perpetration), or (b) (ordering) or (d) (i) and (ii), or 28(a) of the Rome Statute, from at least 1 July 2002 until 31 December 2005.
- 65) Rape** as a war crime, pursuant to articles 8(2) (e) (vi) and 25(3) (a) (indirect co-perpetration), or (b) (ordering) or (d) (i) and (ii), or 28(a) of the Rome Statute, from at least 1 July 2002 until 31 December 2005.
- 66) Sexual slavery** as a crime against humanity, pursuant to articles 7(1) (g) and 25(3) (a) (indirect co-perpetration), or (b) (ordering) or (d) (i) and (ii), or 28(a) of the Rome Statute, from at least 1 July 2002 until 31 December 2005.

67) Sexual slavery as a war crime, pursuant to articles 8(2) (e) (vi) and 25(3) (a) (indirect co-perpetration), or (b) (ordering) or (d) (i) and (ii), or 28(a) of the Rome Statute, from at least 1 July 2002 until 31 December 2005.

68) Enslavement as a crime against humanity, pursuant to articles 7(1) (c) 25(3) (a) (indirect co-perpetration), or (b) (ordering) or (d) (i) and (ii), or 28(a) of the Rome Statute, from at least 1 July 2002 until 31 December 2005.

10. CONSCRIPTION AND USE OF CHILD SOLDIERS (Counts 69 and 70)

Material facts:

125. The factual allegations set out in Chapter 3 (contextual elements) and Chapter 4 (common elements of modes of liability) are incorporated herein by reference.

126. Between at least 1 July 2002 and 31 December 2005 Dominic Ongwen, Joseph Kony, and the Sinia brigade leadership (“child soldiers co-perpetrators”) pursued a common plan to abduct children in the territory of northern Uganda and conscript them into the Sinia Brigade in order to ensure a constant supply of fighters (“child soldiers common plan”). The co-perpetrators meant to engage in their conduct and intended to bring about the objective elements of the crimes of children under the age of 15 years being conscripted into the LRA and used to participate actively in hostilities or were aware that they would occur in the ordinary course of events in implementing the child soldiers common plan. The co-perpetrators acted in a coordinated manner to implement the common plan through a hierarchically organised structure of the LRA fighters who were jointly controlled by the co-perpetrators. Dominic Ongwen was aware of the fundamental features of the LRA and the factual circumstances that enabled him, together with other co-perpetrators, to jointly exercise functional control of the crimes.

127. As a result of the child soldiers common plan, children younger than 15 were abducted at various locations across northern Uganda and forcibly integrated into the Sinia brigade from at least 1 July 2002 until 31 December 2005. Following their recruitment, the children were trained. The aim of the training was generally to prepare them for active participation in hostilities. Some children were given uniforms and arms.

128. Children under 15 participated actively in hostilities. They participated in combat and activities linked to combat. Children *inter alia*, fought, raised alarms, burnt and pillaged civilian houses, collected and carried pillaged goods from attack sites and were used as scouts. Children under 15 served as escorts and bodyguards of LRA commanders. Dominic Ongwen personally used escorts who were younger than 15.

129. Dominic Ongwen contributed to the realization of the common plan by
- leading by example, by personally using children under 15 as escorts who participated in hostilities alongside him;
 - ordering his subordinates to abduct children to replenish the ranks of his troops, who proceeded to abduct and conscript children under 15 into Sinia brigade as a result of his orders;
 - planning, coordinating, ordering and deploying troops for military attacks and attacks against the civilian population in which children under 15 actively participated;
 - having operational control over the implementation of the child soldiers common plan in the units he commanded;
 - supervising and taking part in military training of children and
 - failing, while being a military commander or person effectively acting as a military commander, to take necessary and reasonable measures within his power to prevent or repress the commission of the charged crimes or failing to submit the matter to the competent authorities for investigation and prosecution. Dominic Ongwen knew or, owing to the circumstances at the time, should have known that the LRA fighters were committing or were about to commit the crimes of conscription and use of child soldiers. Dominic Ongwen had effective command and control, or authority and control, over LRA fighters that committed these crimes.

130. Dominic Ongwen knew or should have known that the children conscripted into the LRA and used to actively participate in hostilities pursuant to the common plan were younger than 15.

131. When engaging in the above conduct, Dominic Ongwen had the requisite intent and knowledge under articles 25, 28 and 30, and under the elements of the respective crimes listed below.

Legal characterisation of the facts:

- 69) Conscription** of children under the age of 15 into an armed group as a war crime, pursuant to articles 8(2) (e) (vii) and 25(3) (a) (indirect co-perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the Rome Statute, between 1 July 2002 and 31 December 2005 in northern Uganda.
- 70) Use** of children under the age of 15 to participate actively in hostilities as a war crime, pursuant to articles 8(2) (e) (vii) and 25(3) (a) (indirect co-perpetration), or (b) (ordering), or (d) (i) and (ii), or 28(a), of the

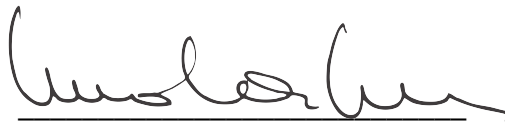
Rome Statute, between 1 July 2002 and 31 December 2005 in northern Uganda.

DECLINES to confirm the remainder of the charges; and

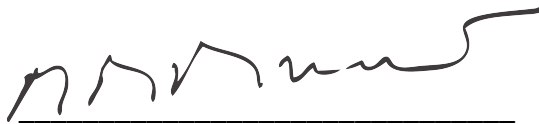
COMMITTS Dominic Ongwen to a Trial Chamber for trial on the charges as confirmed.

Judge Marc Perrin de Brichambaut will append in due course a separate opinion.

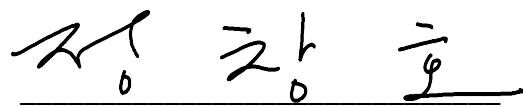
Done in both English and French, the English version being authoritative.



Judge Cuno Tarfusser
Presiding Judge



Judge Marc Perrin de Brichambaut



Judge Chang-ho Chung

Dated this 23 March 2016

At The Hague, The Netherlands