

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
IN THE INTERNATIONAL CRIMES DIVISION (ICD) OF THE HIGH
COURT SITTING AT HIGH COURT KAMPALA
HCT-00-WCD-CRIMINAL CASE NO. 0002 OF 2010 (Arising from
Criminal Case No. BUG RD. COURT CASE 09/2010)

UGANDA ::

PROSECUTOR

VERSUS

THOMAS KWOYELO Alias LATONI ::

ACCUSED

BEFORE HON JUSTICE SUSAN OKALANY

CONFIRMATION OF CHARGES RULING

BACKGROUND

- 1) Mr. Thomas Kwoyelo alias Latoni is the accused against whom the indictment has been brought by the Prosecution in this case.
- 2) On the evidence disclosed by the Prosecution to this Court and also contained in the Summary of the Case on record, it appears that the accused was born in Acut cama ceri village, Pabbo Sub-County, Kilak County, in the present day Amuru District in Northern Uganda.

- 3) It is the prosecution's case that in 1987, Thomas Kwoyelo alias Latoni (the accused) got enlisted into the Lord's Resistance Army (LRA) rebel group under the overall command of Joseph Kony. The LRA waged an armed rebellion against the Government of Uganda from 1987.
- 4) The accused underwent basic military training and quickly rose through the LRA ranks to become a 'colonel', a rank he held until his arrest. As a top LRA officer, he was based in Kilak hills located in the present day Amuru District.
- 5) In 2005, the LRA shifted their fighting base from Northern Uganda and Southern Sudan to the Democratic Republic of Congo. They were based in Garamba National Game Park. The accused was arrested from Garamba National Game Park by the Uganda People's Defence Forces (UPDF), following his injury in a fierce battle on 2nd March 2009.
- 6) Regarding the allegations against Mr. Kwoyelo, it is claimed that in March 1993 or thereabouts, a group of LRA rebels under the command of the accused, attacked at night, Abera Village in Pabbo sub-county in the present day Amuru District.
- 7) The rebels broke into the house of E1 who was sleeping and ordered him to lead them to the home of Albert Obwoya. E1 recognized the accused as the commander of the attacking force with the aid of torches that the rebels were flashing. When they arrived Albert Obwoya's house, the rebels kicked open the door of the house and dragged Albert Obwoya out naked. The accused ordered him to be tied up with a rope. Albert Obwoya attempted to escape by running away. The accused opened gunfire on him killing him instantly.
- 8) On 4th September 1994 or thereabouts, the accused commanded an armed attack in Abera Village, Pabbo Sub-County, in the present day Amuru District. The accused and his forces raided

several civilian homes including the homes of C5, C6, and Onyak Ben. The accused and his forces tortured, maimed and abducted a number of civilians including C4, C5, C19, C20, Odong Menya, Okot Charles, Ojok Patrick, Ogena Simon and others.

- 9) In the course of the attack, the accused and his forces also set on fire huts, bicycles, and looted livestock and foodstuff. The abductees were tied up and forced to carry the loot. The accused and his forces marched the abductees into a jungle near the Sudanese Border to rest for the night. The abductees who failed to comply with the accused's orders on account of fatigue or ill-health were summarily executed at the orders of the accused.
- 10) That upon arriving at the banks of River Ceri, the accused addressed the abductees. During his address, a number of them escaped. Of the many abductees, Ogena Simon and Odong Menya remained in rebel captivity under the command of the accused. They have never been seen since then and are now feared dead.
- 11) In the month of February 1996, the accused commanded another armed attack on Abera Village, Pabbo Sub-County in the present day Amuru District. In the course of the attack, at about 7.00 p.m., the accused and his men met a group of residents of Pabbo Internally Displaced People's (IDP) camp, who were returning home from a funeral. Among them were Ojok Martin, Obote Martin, Okeny Wilson, Jackamino Oruk alias Jaki Ocoo, G1, and many others. That the accused and his forces took all of them hostage and tied up their hands. The rebels forced the hostages to carry their loot and ordered them to march towards Paibi. On the way some of the hostages managed to escape but Jackamino Oruk alias Jaki Ocoo, Okeny Wilson and Ojok Martin remained in captivity.

- 12) The next morning, Jackamino Oruk alias Jaki Ocoo, Okeny Wilson and Ojok Martin were all found dead along Atiak-Paibi Road. Their hands were tied to their backs and they had suffered extensive wounds on the back of their heads. The wounds showed that they were severely beaten.
- 13) Furthermore, the Prosecution alleges that on 4th March 1996, some of the residents of Pabbo IDP camp were at Obiangic in Abera Village, Pabbo Sub-County in the present day Amuru District, performing a cultural ritual. They included B41, B2, B4, Rodento Ochola, Maurenso Okoya, Okot Antonio, Oryem Quirino, Sabino Obooli Oola, Ocii Doctor, Oyet Samuel, Massimo Obama, Onai, and many others. While the ceremony was going on, LRA rebels under the command of the accused attacked and forcefully abducted them. The abductees were forced to carry the rebels' loot and marched to the foot of Kilak Hills. Those who failed to keep up with the walking pace were summarily executed. The accused divided the abductees into three groups consisting of women, young men and the elderly.
- 14) The rebels brutally tortured the women and the accused ordered his men to kill all the elderly captives. The rest of the captives were fatally assaulted using guns, clubs and axes. The rebels also forced the younger captives to kill the elderly ones and those who showed leniency in the process were summarily executed. Several abductees managed to escape. However, Rodento Ochola, Onai, Massimo Obama, Oyet Samuel, Ocii Doctor, Sabino Obooli Oola, Okot Antonio, Oryem Quirino and Okoya Maurenso have never been seen again since their abduction and are now feared dead.
- 15) It is also alleged that between February 1996 and the year 2005, the LRA combatants under the command of the accused made several attacks on several villages in the present day

Amuru District including Perecu and Akwa and killed civilians, destroyed and looted property and took many civilians hostage. In February 1996, the LRA under the command of the accused, attacked Perecu village, Pabbo Sub-County in the present day Amuru District and killed Aceng Christine by hitting her several times on the head with an axe.

- 16) In the same incident, the rebels abducted other civilians amongst them, Loum Acupale, Ngwe Julio, Obalo Bicensio, Gwok Paulo, Arop Jeremiah, Obol Vincent, Arop David, D1, D2, "TR" (protected witness) and many others. The rebels forced their captives to carry loot and marched them for two days up to Arebe hills, where the abductees were paraded before the accused who ordered his men to kill all the abductees, except 'TR' (protected witness).
- 17) The abductees mentioned above were made to lie down in a line with their hands tied to their backs. They were then hit to death with clubs on the back of their heads. Out of sheer luck, D1 and D2 (protected witnesses) regained consciousness the following day, only to realize they were in a heap of dead bodies. They escaped and eventually received medical attention.
- 18) Meanwhile, "TR" remained in rebel captivity. She was subsequently moved to Sudan where she was forced to marry one of the LRA combatants under the direct command of the accused. The forced marriage was with the full knowledge and backing of the accused.
- 19) During the said month of February 1996, the LRA fighters under the command of a one OCAN attacked Rec Ki Ceke village in the present day Amuru District and abducted several persons including 'NS' (a protected witness). At the time of her abduction, 'NS' was aged 11 years and was a pupil in Primary One (P1). 'NS' was taken to Kilak hills where she found the accused. The

accused had two wives who had children with him. 'NS' worked for the accused until she was 13 years when he declared her his wife. 'NS' remained in captivity until 2005 when she managed to escape.

- 20) It is also the prosecution's case that on 14th April 1997, 'LW' (a protected witness) was kidnapped from Abera village near Acakala River together with her sisters at 10:00 pm. At the time of the attack, they were hiding in a bush in fear of an LRA attack on Pabbo IDP camp. After one day, 'LW' together with other abductees were taken to Arebe hills where they met with the accused. The accused retained 'LW' as one of his workers. When she became 13 years old, the accused declared 'LW' his wife. Later on, other abductees were taken to Sudan but 'LW' remained at Kilak hills because she had become pregnant. In 2004, 'LW' managed to escape from Guruguru hills following an attack by the UPDF.
- 21) It is also the case for the Prosecution that on 16th May 2004, the LRA rebels attacked Pagak IDP camp. The attack was coordinated and commanded by, among other LRA commanders, the accused, who was in charge of the command centre. During the attack, the rebels set ablaze more than five hundred and forty four huts and looted food as well as other household items. The rebels abducted many civilians from the said camp mostly women and children. The abductees were tortured and forced to carry the loot.
- 22) The rebels marched their victims towards Guruguru hills, killing a number of them on the way. Upon reaching Guruguru hills, a few captives were chosen to carry the rebels' loot. They led the rest of the abductees a few meters away and made them lie down. They were all hacked to death by hitting them on the back of their heads with clubs, axes and gun butts. The

abductees that were killed included Nyeko Bosco, Among Jennifer, Acan Shida, Atoo Suzan, Akwero Harriet, Anena daughter of Aloyo Concy, Martina Awor, Oyella Betty, Edisa Lapobo, Akwero Nancy, Dorothy Akech, Acayo Josephine, Aciro Rose, Kilama Eric, Amal Ketty, Obita Mateyo, Akwong Christine and Ocira Erick while H34, H35, H36, H37, H38, H39, H67, H68, H69, H70, H71, and H72, survived with serious injuries.

23) During the Pagak attack, the LRA rebels killed 29 civilians, 17 sustained serious injuries while 21 were abducted.

24) Furthermore, it is alleged that on or about 6th January 2005 at about 10:00 a.m., a group of residents of Pabbo IDP Camp left for Bira village, Parubanga Parish, Pabbo Sub-County in the present day Amuru District, to collect firewood. Among them was OCAYA JOHN, OJARA JOHN, OKETAYOT LAWOKO CHARLES, ACAYE OKEMA OCUKE and a one OGWOK. On the way, they were attacked by LRA rebels commanded by the accused. The accused and his men took the group hostage, made them lie down and tied up their hands with rubber bands. Later that day, at about 2:00 p.m., the five people mentioned above were found dead at the place where the rebels had attacked them. Their hands were still tied behind their backs and they had injuries on the back of their heads as well as burns all over their bodies.

25) The prosecution intends to rely on the testimonies of eye witnesses, victims and survivors of the attacks who knew and positively identified the accused during the various incidents. In addition, the prosecution intends to rely on post-mortem reports, police reports, photographs, correspondences, clinical notes, written statements of witnesses, newspapers' extracts and other exhibits with the leave of court.

THE INDICTMENT

26) The Director of Public Prosecutions has indicted the accused - Thomas Kwoyelo alias Latoni with the following offences which I reproduce verbatim below:

PART I: STATEMENT AND PARTICULARS OF OFFENCES FOR COUNTS 1 TO 3, KILLING OF ALBERT OBWOYA IN MARCH 1993:

COUNT 1: MURDER as a CRIME AGAINST HUMANITY pursuant to customary international law.

KWOYELO THOMAS alias LATONI and others still at large in the month of March 1993 or thereabout at Abera village, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being the Commander in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities during which ALBERT OBWOYA was murdered. This crime was committed as part of a widespread and/or systematic attack against the civilian population. KWOYELO THOMAS alias LATONI was aware of factual circumstances that established the existence of a widespread and/or systematic attack against the civilian population and the fact that his acts formed part thereof.

COUNT 2: MURDER as a VIOLATION OF ARTICLE 3 (1) (a) COMMON TO THE GENEVA CONVENTIONS pursuant to customary international law.

KWOYELO THOMAS alias LATONI and others still at large in the month of March 1993 or thereabout at Abera village, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being the Commander in the Lord's Resistance Army commanded an attack on civilians taking no active part in

the hostilities, killed ALBERT OBWOYA, while he was aware of factual circumstances that established such protected status, and the existence of an armed conflict.

In the alternative,

COUNT 3: MURDER, contrary to section 188 and 189 of the Penal Code Act.

KWOYELO THOMAS alias LATONI and others still at large in the month of March 1993 or thereabout at Abera village, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being the Commander in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed ALBERT OBWOYA.

PART II: STATEMENT AND PARTICULARS OF OFFENCES FOR COUNTS 4 TO 12, HOSTAGE TAKING AND KIDNAPPING DURING THE ATTACK ON ABERA ON 4TH SEPTEMBER 1994

COUNT 4: HOSTAGE TAKING as a VIOLATION OF ARTICLE 3 (1) (b) COMMON TO THE GENEVA CONVENTIONS pursuant to customary international law.

KWOYELO THOMAS alias LATONI and others still at large, on the 4/09/1994 or there about at Abera village, Parubanga Parish, Pabbo Sub-CountyKilak County, now Amuru District in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an armed attack against a group of civilians taking no active part in the hostilities, and seized, detained and held hostage C4, C5, C6, C7, C19, C20, ODONG MENYA, OKOT CHARLES, OJOK PATRICK, and OGENA SIMON while he was aware

of factual circumstances that established such protected status and the existence of an armed conflict, and threatened to kill, injure or continue to detain the said C4, C5, C6, C7, C19, C20 ODONG MENYA, OKOT CHARLES, OJOK PATRICK, and OGENA SIMON, with intention to compel the government of Uganda to refrain from launching attacks against the Lord's Resistance Army, as an implicit condition for the safety of all the persons named herein above.

In the alternative,

COUNT 5: KIDNAPPING WITH INTENT TO MURDER, contrary to section 243 (1) (a) of the Penal Code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 4/09/1994 at Abera village, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an armed attack against a group of civilians taking no active part in the hostilities, and by force abducted C4, with the intent that the said C4 would be disposed of as to be put in danger of being murdered.

COUNT 6: KIDNAPPING WITH INTENT TO MURDER, contrary to section 243 (1) (a) of the Penal Code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 4/09/1994 at Abera village, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an armed attack against a group of civilians taking no active part in the hostilities, and by force abducted B4, with the intent that the said

B4 would be disposed of as to be put in danger of being murdered.

COUNT 7: KIDNAPPING WITH INTENT TO MURDER, contrary to section 243 (1) (a) of the Penal Code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 4/09/1994 at Abera village, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an armed attack against a group of civilians taking no active part in the hostilities, and by force abducted ODONG MENYA, with the intent that the said ODONG MENYA would be disposed of as to be put in danger of being murdered.

COUNT 8: KIDNAPPING WITH INTENT TO MURDER, contrary to section 243 (1) (a) of the Penal Code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 4/09/1994 at Abera village, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an armed attack against a group of civilians taking no active part in the hostilities, and by force abducted C5, with the intent that the said C5 would be disposed of as to be put in danger of being murdered.

COUNT 9: KIDNAPPING WITH INTENT TO MURDER, contrary to section 243 (1) (a) of the Penal Code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 4/09/1994 at Abera village, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an armed

attack against a group of civilians taking no active part in the hostilities, and by force abducted ONGOM son of OMOYO, with the intent that the said ONGOM son of OMOYO would be disposed of as to be put in danger of being murdered.

COUNT 10: KIDNAPPING WITH INTENT TO MURDER, contrary to section 243 (1) (a) of the Penal Code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 4/09/1994 at Abera village, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an armed attack against a group of civilians taking no active part in the hostilities, and by force abducted OKOT CHARLES, with the intent that the said OKOT CHARLES would be disposed of as to be put in danger of being murdered.

COUNT 11: KIDNAPPING WITH INTENT TO MURDER, contrary to section 243 (1) (a) of the Penal Code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 4/09/1994 at Abera village, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an armed attack against a group of civilians taking no active part in the hostilities, and by force abducted OJOK PATRICK, with the intent that the said OJOK PATRICK would be disposed of as to be put in danger of being murdered

PART III: STATEMENT AND PARTICULARS OF OFFENCES FOR COUNTS 13 AND 14, PILLAGING AND ROBBERY WITH AGGRAVATION DURING THE ATTACK ON ABERA ON 4TH SEPTEMBER 1994

COUNT 12: KIDNAPPING WITH INTENT TO MURDER, contrary to section 243 (1) (a) of the Penal Code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 4/09/1994 at Abera village, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an armed attack against a group of civilians taking no active part in the hostilities, and by force abducted OGENA SIMON, with the intent that the said OGENA SIMON would be disposed of as to be put in danger of being murdered.

COUNT 13: PILLAGING as a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS pursuant to customary international law

KWOYELO THOMAS alias LATONI and others still at large, on the 4/09/1994 being a Commander in the Lord's Resistance Army commanded an armed attack on Abera village, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda and wantonly and extensively destroyed houses, bicycles, livestock, foodstuff and household property, such destruction not being justified by military necessity, and while he was aware of the factual circumstances that established such protected status, and the existence of an armed conflict.

In the alternative,

COUNT 14: ROBBERY WITH AGGRAVATION, contrary to section 285 and 286 (2) of the Penal Code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 4/09/1994 at Abera village, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being a

Commander in the Lord's Resistance Army commanded an armed attack against a group of civilians taking no active part in the hostilities, and robbed C5 of three bicycles, six goats and foodstuff, and at, or immediately before, or immediately after the said robbery, threatened to use deadly weapons, to wit guns and pangas on the said C5.

**PART IV: STATEMENT AND PARTICULARS OF OFFENCES
FOR COUNTS 15 TO 19, KILLINGS ALONG PAIBI-
ATIAK ROAD IN FEBRUARY 1996**

COUNT 15: MURDER as a CRIME AGAINST HUMANITY pursuant to customary international law.

KWOYELO THOMAS alias LATONI and others still at large, in the month of February 1996 or thereabout along Paibi-Atiak Road, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being a commander in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and killed JACKAMINO ORUK alias JAKI OCOO, OKENY WILSON and OJOK MARTIN. These acts formed part of a widespread and/or systematic attack against the civilian population. KWOYELO THOMAS alias LATONI was aware of the existence of that attack and of the fact that his acts formed part thereof.

COUNT 16: MURDER as a VIOLATION OF ARTICLE 3 (1) (a) COMMON TO THE GENEVA CONVENTIONS pursuant to customary international law.

KWOYELO THOMAS alias LATONI and others still at large, in the month of February 1996 or thereabout along Paibi-Atiak Road, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru

District in Northern Uganda, being a commander in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and killed JACKAMINO ORUK alias JAKI OCOO, OKENY WILSON and OJOK MARTIN while he was aware of factual circumstances that established such protected status, and the existence of an armed conflict.

In the alternative,

COUNT 17: MURDER, contrary to section 188 and 189 of the Penal Code Act.

KWOYELO THOMAS alias LATONI and others still at large, in the month of February 1996 or thereabout along Paibi-Atiak Road, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed JACKAMINO ORUK alias JAKI OCOO.

COUNT 18: MURDER, contrary to section 188 and 189 of the Penal Code Act.

KWOYELO THOMAS alias LATONI and others still at large, in the month of February 1996 or thereabout along Paibi-Atiak Road, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed OKENY WILSON.

COUNT 19: MURDER, contrary to section 188 and 189 of the Penal Code Act.

KWOYELO THOMAS alias LATONI and others still at large, in the month of February 1996 or thereabout along Paibi-Atiak Road, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed OJOK MARTIN.

PART V: STATEMENT AND PARTICULARS OF OFFENCES FOR COUNTS 20 TO 30, KILLINGS IN ABERA VILLAGE IN FEBRUARY 1996

COUNT 20: MURDER as a CRIME AGAINST HUMANITY pursuant to customary international law.

KWOYELO THOMAS alias LATONI and others still at large in the month of February 1996 or thereabout at Abera Village, Parubanga Parish, Pabbo Sub-County, and at Arebe hills in Kilak County, now Amuru District in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and killed ACENG CHRISTINE, LOUM ACUPALE, NGWE JULIO, OBALO BICENSIO, GWOK PAULO, AROP JEREMIAH, OBOL VINCENT, AROP DANIEL and one CHARLES, while he was aware of factual circumstances that established such protected status, and the existence of an armed conflict.

COUNT 21: MURDER as a VIOLATION OF ARTICLE 3 (1) (a) COMMON TO THE GENEVA CONVENTIONS pursuant to customary international law.

KWOYELO THOMAS alias LATONI and others still at large in the month of February 1996 or thereabout at Abera Village,

Parubanga Parish, Pabbo Sub-County, and at Arebe hills in Kilak County, now Amuru district in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and killed ACENG CHRISTINE, LOUM ACUPALE, NGWE JULIO, OBALO BICENSIO, GWOK PAULO, AROP JEREMIAH, OBOL VINCENT, AROP DANIEL and one CHARLES while he was aware of factual circumstances that established such protected status, and the existence of an armed conflict.

In the alternative,

COUNT 22: MURDER, contrary to section 188 and 189 of the Penal Code Act.

KWOYELO THOMAS alias LATONI and others still at large, in the month of February 1996 or thereabout at Abera Village, Parubanga Parish, Pabbo Sub-County, now Amuru in Northern Uganda, being a Commander in the Lord's Resistance Army, commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed ACENG CHRISTINE.

COUNT 23: MURDER, contrary to section 188 and 189 of the Penal Code Act.

KWOYELO THOMAS alias LATONI and others still at large, in the month of February 1996 or thereabout between Abera Village, Parubanga Parish, Pabbo Sub-County, and Arebe hills in Kilak County, now Amuru District in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed LOUM ACUPALE.

COUNT 24: MURDER, contrary to section 188 and 189 of the Penal Code Act.

KWOYELO THOMAS alias LATONI and others still at large, in the month of February 1996 or thereabout between Abera Village, Parubanga Parish, Pabbo Sub-County, and Arebe hills in Kilak, now Amuru District in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed NGWE JULIO.

COUNT 25: MURDER, contrary to section 188 and 189 of the Penal code Act.

KWOYELO THOMAS alias LATONI and others still at large, in the month of February 1996 or thereabout between Abera Village, Parubanga Parish, Pabbo Sub-County, and Arebe hills in Kilak County, now Amuru District in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed OBALO BICENSIO.

COUNT 26: MURDER, contrary to section 188 and 189 of the Penal code Act.

KWOYELO THOMAS alias LATONI and others still at large, in the month of February 1996 or thereabout between Abera Village, Parubanga Parish, Pabbo Sub-County, and Arebe hills, in Kilak County, now Amuru District in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed GWOK PAULO.

COUNT 27: MURDER, contrary to section 188 and 189 of the Penal Code Act.

KWOYELO THOMAS alias LATONI and others still at large, in the month of February 1996 or there about between Abera Village, Parubanga Parish, Pabbo Sub-County, and Arebe hills, in Kilak County, now Amuru District in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed AROP JEREMIAH.

COUNT 28: MURDER, contrary to section 188 and 189 of the Penal Code Act.

KWOYELO THOMAS alias LATONI and others still at large, in the month of February 1996 or thereabout between Abera Village, Parubanga Parish, Pabbo Sub-County, and Arebe hills in Kilak County, now Amuru District in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed OBOL VINCENT.

COUNT 29: MURDER, contrary to section 188 and 189 of the Penal code Act.

KWOYELO THOMAS alias LATONI and others still at large, in the month of February 1996 or thereabout between Abera Village, Parubanga Parish, Pabbo Sub-County, and Arebe hills in Kilak County, now Amuru District in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed AROP DANIEL.

COUNT 30: MURDER, contrary to section 188 and 189 of the Penal Code Act.

KWOYELO THOMAS alias LATONI and others still at large, in the month of February 1996 or thereabout between Abera Village, Parubanga Parish, Pabbo Sub-County, and Arebe hills in Kilak County, now Amuru District in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed a one CHARLES.

PART VI: STATEMENT AND PARTICULARS OF OFFENCES FOR COUNTS 31 TO 41, HOSTAGE TAKING AND KIDNAPPING DURING THE ATTACK ON ABERA ON 4TH MARCH 1996 as well as IMPRISONMENT

COUNT 31: IMPRISONMENT as a CRIME AGAINST HUMANITY pursuant to customary international law.

KWOYELO THOMAS alias LATONI and others still at large on the 4/03/1996 at Abera village, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru district in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an armed attack, against a group of civilians taking no active part in the hostilities, and seized, detained and held hostage RODENTO OCHOLA, MASIMO OBOMA, OYET SAMUEL, OCII DOCTOR, SABINO OBOOLI OOLA, ORYEM QUIRINO, OKOT ANTONIO, OKOYA MAURENSIO and one ONAI while he was aware of the factual circumstances that established such protected status and the existence of an armed conflict, and threatened to kill, injure or continue to detain the said RODENTO OCHOLA, MASIMO OBOMA, OYET SAMUEL, OCII DOCTOR, SABINO OBOOLI OOLA, ORYEM QUIRINO, OKOT ANTONIO, OKOYA MAURENSIO and ONAI, with

intention to compel the government of Uganda to refrain from launching attacks against the Lord's Resistance Army, as an implicit condition for the safety of all the persons named herein above.

COUNT 32: HOSTAGE TAKING as a VIOLATION OF ARTICLE 3 (1)
(b) COMMON TO THE GENEVA CONVENTIONS pursuant
to customary international law.

KWOYELO THOMAS alias LATONI and others still at large on the 4/03/1996 at Abera village, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru district in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an armed attack, against a group of civilians taking no active part in the hostilities, and seized, detained and held hostage RODENTO OCHOLA, MASIMO OBOMA, OYET SAMUEL, OCII DOCTOR, SABINO OBOOLI OOLA, ORYEM QUIRINO, OKOT ANTONIO, OKOYA MAURENSIO and one ONAI while he was aware of factual circumstances that established such protected status and the existence of an armed conflict, and threatened to kill, injure or continue to detain the said RODENTO OCHOLA, MASIMO OBOMA, OYET SAMUEL, OCII DOCTOR, SABINO OBOOLI OOLA, ORYEM QUIRINO, OKOT ANTONIO, OKOYA MAURENSO and ONAI, with intention to compel the government of Uganda to refrain from launching attacks against the Lord's Resistance Army, as an implicit condition for the safety of all the persons named herein above.

In the alternative,

COUNT 33: KIDNAPPING WITH INTENT TO MURDER, contrary
to section 243 (1) (a) of the Penal Code Act.

KWOYELO THOMAS alias Latoni and others still at large on the 4/03/1996 at Abera village, Parubanga parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an armed attack against a group of civilians taking no active part in the hostilities, and by force abducted RODENTO OCHOLA with the intent that the said RODENTO OCHOLA would be disposed of as to be put in danger of being murdered.

COUNT 34: KIDNAPPING WITH INTENT TO MURDER, contrary to section 243 (1) (a) of the Penal Code Act.

KWOYELO THOMAS alias LATONI and others still at large on the 4/03/1996 at Abera village, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an armed attack against a group of civilians taking no active part in the hostilities, and by force abducted MASIMO OBOMA with the intent that the said MASIMO OBOMA would be disposed of as to be put in danger of being murdered.

COUNT 35: KIDNAPPING WITH INTENT TO MURDER, contrary to section 243 (1) (a) of the Penal Code Act.

KWOYELO THOMAS alias LATONI and others still at large on the 4/03/1996 at Abera village, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an armed attack against a group of civilians taking no active part in the hostilities, and by force abducted OYET SAMUEL with the intent that the said OYET SAMUEL would be disposed of as to be put in danger of being murdered.

COUNT 36: KIDNAPPING WITH INTENT TO MURDER, contrary to section 243 (1) (a) of the Penal Code Act.

KWOYELO THOMAS alias LATONI and others still at large on the 4/03/1996 at Abera village, Parubanga parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an armed attack against a group of civilians taking no active part in the hostilities, and by force abducted OCII DOCTOR with the intent that the said OCII DOCTOR would be disposed of as to be put in danger of being murdered.

COUNT 37: KIDNAPPING WITH INTENT TO MURDER, contrary to section 243 (1) (a) of the Penal Code Act.

KWOYELO THOMAS alias LATONI and others still at large on the 4/03/1996 at Abera village, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an armed attack against a group of civilians taking no active part in the hostilities, and by force abducted SABINO OBOOLI OOLA with the intent that the said SABINO OBOOLI OOLA would be disposed of as to be put in danger of being murdered.

COUNT 38: KIDNAPPING WITH INTENT TO MURDER, contrary to section 243 (1) (a) of the Penal Code Act.

KWOYELO THOMAS alias LATONI and others still at large on the 4/03/1996 at Abera village, Parubanga parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an armed attack against a group of civilians taking no active part in the hostilities, and by force abducted ORYEM QUIRINO, with the

intent that the said ORYEM QUIRINO would be disposed of as to be put in danger of being murdered.

COUNT 39: KIDNAPPING WITH INTENT TO MURDER, contrary to section 243 (1) (a) of the Penal Code Act.

KWOYELO THOMAS alias LATONI and others still at large on the 4/03/1996 at Abera village, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru district in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an armed attack against a group of civilians taking no active part in the hostilities, and by force abducted OKOT ANTONIO, with the intent that the said OKOT ANTONIO would be disposed of as to be put in danger of being murdered.

COUNT 40: KIDNAPPING WITH INTENT TO MURDER, contrary to section 243 (1) (a) of the Penal Code Act.

KWOYELO THOMAS alias LATONI and others still at large on the 4/03/1996 at Abera village, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru district in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an armed attack against a group of civilians taking no active part in the hostilities, and by force abducted OKOYA MAURENSIO, with the intent that the said OKOYA MAURENSIO would be disposed of as to be put in danger of being murdered.

COUNT 41: KIDNAPPING WITH INTENT TO MURDER, contrary to section 243(1) (a) of the Penal Code Act.

KWOYELO THOMAS alias LATONI and others still at large on the 4/03/1996 at Abera village, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru district in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an armed

attack against a group of civilians taking no active part in the hostilities, and by force abducted ONAI with the intent that the said ONAI would be disposed of as to be put in danger of being murdered.

**PART VII: STATEMENT AND PARTICULARS OF OFFENCES
FOR COUNTS 42 TO 46, INHUMANE ASSAULTS
AND ATTEMPTED MURDER IN ABERA IN
FEBRUARY 1996**

COUNT 42: OTHER INHUMANE ACT as a CRIME AGAINST HUMANITY pursuant to customary international law.

KWOYELO THOMAS alias LATONI and others still at large in the month of February 1996 at Abera village, Parubanga parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an armed attack against a group of civilians taking no active part in the hostilities, and ordered forces under his command to inhumanely assault DI and D2 while he was aware of the factual circumstances that established such protected status and the existence of an armed conflict, thereby causing great physical pain, suffering and serious bodily injuries to them. This crime was committed as part of a widespread and/or systematic attack against the civilian population.

COUNT 43:

CRUEL TREATMENT as a VIOLATION OF ARTICLE 3 (1) (a) COMMON TO THE GENEVA CONVENTIONS pursuant to customary international law.

KWOYELO THOMAS alias LATONI and others still at large in the month of February 1996 at Abera village, Parubanga parish,

Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an armed attack against a group of civilians taking no active part in the hostilities, and ordered forces under his command to inhumanely assault D1 and D2 while he was aware of the factual circumstances that established such protected status and the existence of an armed conflict, thereby causing great physical pain, suffering and serious bodily injuries to them.

COUNT 44: OUTRAGES UPON PERSONAL DIGNITY as a VIOLATION OF ARTICLE 3 (1) (c) COMMON TO THE GENEVA CONVENTIONS pursuant to customary international law.

KWOYELO THOMAS alias LATONI and others still at large in the month of February 1996 at Abera village, Parubanga parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an armed attack against a group of civilians taking no active part in the hostilities, and ordered forces under his command to inhumanely assault D1 and D2 while he was aware of the factual circumstances that established such protected status and the existence of an armed conflict, thereby causing great physical pain, suffering and serious bodily injuries to them.

In the alternative,

COUNT 45: ATTEMPTED MURDER, contrary to section 204 (a) of the Penal Code Act.

KWOYELO THOMAS alias LATONI and others still at large in the month of February 1996 at Abera village, Parubanga parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern

Uganda, being a Commander in the Lord's Resistance Army commanded an armed attack against a group of civilians taking no active part in the hostilities, and during the said attack attempted unlawfully to cause the death of D1.

COUNT 46: ATTEMPTED MURDER, contrary to sections 204 (a) of the Penal Code Act.

KWOYELO THOMAS alias LATONI and others still at large in the month of February 1996 at Abera village, Parubanga parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being a Commander in the Lord's Resistance Army commanded an armed attack against a group of civilians taking no active part in the hostilities, and during the said attack attempted unlawfully to cause the death of D2.

**PART VIII: STATEMENT AND PARTICULARS OF OFFENCES
FOR COUNTS 47 TO 49, INHUMANE ASSAULTS IN
ABERA on 4th MARCH 1996**

COUNT 47: OTHER INHUMANE ACT as a CRIME AGAINST HUMANITY pursuant to customary international law.

KWOYELO THOMAS alias LATONI and others still at large on the 4/03/1996 at Abera Village, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being a Colonel in the Lord's Resistance Army commanded an armed attack against a group of civilians taking no active part in the hostilities, and ordered forces under his command to inhumanely assault B2, B4, B6, B7, and ANJULINA ORYEM ATARO, all protected persons under the 4th Geneva Convention of 12th August 1949, while he was aware of the factual circumstances that established such protected status and the existence of an

armed conflict, thereby inflicting severe physical pain and suffering upon them. This crime was committed as part of a widespread and/or systematic attack against the civilian population.

COUNT 48: CRUEL TREATMENT as a VIOLATION OF ARTICLE 3 (1) (a) COMMON TO THE GENEVA CONVENTIONS pursuant to customary international law.

KWOYELO THOMAS alias LATONI and others still at large on the 4/03/1996 at Abera Village, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being a Colonel in the Lord's Resistance Army commanded an armed attack against a group of civilians taking no active part in the hostilities, and ordered forces under his command to inhumanely assault B2, B4, B6, B7 and ANJULINA ORYEM ATARO, all protected persons under the 4th Geneva Convention of 12th August 1949, while he was aware of the factual circumstances that established such protected status and the existence of an armed conflict, thereby inflicting severe physical pain and suffering upon them.

COUNT 49: OUTRAGES UPON PERSONAL DIGNITY as a VIOLATION OF ARTICLE 3 (1) (c) COMMON TO THE GENEVA CONVENTIONS pursuant to customary international law.

KWOYELO THOMAS alias LATONI and others still at large on the 4/03/1996 at Abera Village, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being a Colonel in the Lord's Resistance Army commanded an armed attack against a group of civilians taking no active part in the hostilities, and ordered forces under his command to inhumanely assault B2, B4, B6, B7 and ANJULINA ORYEM ATARO, all protected

persons under the 4th Geneva Convention of 12th August 1949, while he was aware of the factual circumstances that established such protected status and the existence of an armed conflict, thereby inflicting severe physical pain and suffering upon them.

**PART IX: STATEMENT AND PARTICULARS OF OFFENCES
FOR COUNTS 50 TO 69, KILLINGS AT OBOO
PARISH ON 16TH MAY 2004:**

COUNT 50: MURDER as a CRIME AGAINST HUMANITY pursuant to customary international law.

KWOYELO THOMAS alias LATONI and others still at large, on the 16/05/2004 at Oboo Parish, Lamogi Sub-County, now Amuru District in Northern Uganda, being a Colonel in the Lord's Resistance Army Coordinated, ordered and directed an armed attack on Pagak Internally Displaced Peoples Camp, and killed NYEKO BOSCO, AMONY JENIFFER, ACAN SHIDA, ATOO SUZAN, AKWERO HARRIET, ANENA daughter of Aloyo Concy, MARTINA AWOR, OYELLA BETTY, EDISA LAPOBO, AKWERO NANCY, DOROTHY AKECH, ACAYO JOSEPHINE, ACIRO ROSE, KILAMA ERIC, AMAL KETTY, OBITA MATEYO, AKWONGO CHRISTINE and OCIRA ERICK who were civilians taking no active part in the hostilities and protected persons under the 4th Geneva convention of 12th August 1949, while he was aware of factual circumstances that established such protected status, and the existence of an armed conflict. This crime was committed as part of a widespread and/or systematic attack against the civilian population.

COUNT 51: MURDER as a VIOLATION OF ARTICLE 3 (1) (a) COMMON TO THE GENEVA CONVENTIONS pursuant to customary international law.

KWOYELO THOMAS alias LATONI and others still at large, on the 16/05/2004 at Oboo Parish, Lamogi Sub-County, now Amuru district in Northern Uganda, being a Colonel in the Lord's Resistance Army Coordinated, ordered and directed an armed attack on Pagak Internally Displaced Peoples Camp, and killed NYEKO BOSCO, AMONY JENIFFER, ACAN SHIDA, ATOO SUZAN, AKWERO HARRIET, ANENA daughter of Aloyo Concy, MARTINA AWOR, OYELLA BETTY, EDISA LAPOBO, AKWERO NANCY, DOROTHY AKECH, ACAYO JOSEPHINE, ACIRO ROSE, KILAMA ERIC, AMAL KETTY, OBITA MATEYO, AKWONGO CHRISTINE and OCIRA ERICK who were civilians taking no active part in the hostilities and protected persons under the 4th Geneva convention of 12th August 1949, while he was aware of factual circumstances that established such protected status, and the existence of an armed conflict.

In the alternative,

COUNT 52: MURDER, contrary to section 188 and 189 of the Penal code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 16/05/2004 at Oboo Parish, Lamogi Sub-County, now Amuru District in Northern Uganda, being a Colonel in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed NYEKO BOSCO.

COUNT 53: MURDER, contrary to section 188 and 189 of the Penal code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 16/05/2004 at Oboo Parish, Lamogi Sub-County, now district in

Northern Uganda, being a Colonel in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed AMONY JENIFFER.

COUNT 54: MURDER, contrary to section 188 and 189 of the Penal code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 16/05/2004 at Oboo Parish, Lamogi Sub-County in Gulu District in Northern Uganda, being a Colonel in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed ACAN SHIDA.

COUNT 55: MURDER, contrary to section 188 and 189 of the Penal code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 16/05/2004 at Oboo Parish, Lamogi Sub-County, now Amuru District in Northern Uganda, being a Colonel in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed ATOO SUZAN.

COUNT 56: MURDER, contrary to section 188 and 189 of the Penal code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 16/05/2004 at Oboo Parish, Lamogi Sub-County, now Amuru District in Northern Uganda, being a Colonel in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed AKWERO HARRIET.

COUNT 57: MURDER, contrary to section 188 and 189 of the Penal code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 16/05/2004 at Oboo Parish, Lamogi Sub-County now Amuru District in Northern Uganda, being a Colonel in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed ANENA daughter of Aloyo Concy.

COUNT 58: MURDER, contrary to section 188 and 189 of the Penal code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 16/05/2004 at Oboo Parish, Lamogi Sub-County now Amuru District in Northern Uganda, being a Colonel in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed MARTINA AWOR.

COUNT 59: MURDER, contrary to section 188 and 189 of the Penal code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 16/05/2004 at Oboo Parish, Lamogi Sub-County in the present day Amur district in Northern Uganda, being a Colonel in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed OYELLA BETTY.

COUNT 60: MURDER, contrary to section 188 and 189 of the Penal code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 16/05/2004 at Oboo Parish, Lamogi Sub-County, now Amuru District in Northern Uganda, being a Colonel in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed EDISA LAPOBO.

COUNT 61: MURDER, contrary to section 188 and 189 of the Penal code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 16/05/2004 at Oboo Parish, Lamogi Sub-County, now Amuru District in Northern Uganda, being a Colonel in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed AKWERO NANCY.

COUNT 62: MURDER, contrary to section 188 and 189 of the Penal code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 16/05/2004 at Oboo Parish, Lamogi Sub-County, now Amuru district in Northern Uganda, being a Colonel in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed AKECH DOROTHY.

COUNT 63: MURDER, contrary to section 188 and 189 of the Penal code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 16/05/2004 at Oboo Parish, Lamogi Sub-County, now Amuru District in Northern Uganda, being a Colonel in the Lord's Resistance Army commanded an attack on civilians taking no

active part in the hostilities and with malice aforethought, killed ACAYO JOSEPHINE.

COUNT 64: MURDER, contrary to section 188 and 189 of the Penal code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 16/05/2004 at Oboo Parish, Lamogi Sub-County, now Amuru District in Northern Uganda, being a Colonel in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed ACIRO ROSE.

COUNT 65: MURDER, contrary to section 188 and 189 of the Penal code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 16/05/2004 at Oboo Parish, Lamogi Sub-County, now Amuru District in Northern Uganda, being a Colonel in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed KILAMA ERIC.

COUNT 66: MURDER, contrary to section 188 and 189 of the Penal code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 16/05/2004 at Oboo Parish, Lamogi Sub-County, now Amuru District in Northern Uganda, being a Colonel in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed AMAL KETTY.

COUNT 67: MURDER, contrary to section 188 and 189 of the Penal code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 16/05/2004 at Oboo Parish, Lamogi Sub-County, now Amuru District in Northern Uganda, being a Colonel in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed OBITA MATEYO.

COUNT 68: MURDER, contrary to section 188 and 189 of the Penal code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 16/05/2004 at Oboo Parish, Lamogi Sub-County, now Amuru District in Northern Uganda, being a Colonel in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed AKWONGO CHRISTINE.

COUNT 69: MURDER, contrary to section 188 and 189 of the Penal code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 16/05/2004 at Oboo Parish, Lamogi Sub-County, now Amuru District in Northern Uganda, being a Colonel in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed OCIRA ERICK.

**PART X: STATEMENT AND PARTICULARS OF OFFENCE
FOR COUNT 70, KILLINGS AT OBOO PARISH ON
16TH MAY 2004:**

COUNT 70: PILLAGE as a VIOLATION OF ARTICLE 3 (1) (a) COMMON TO THE GENEVA CONVENTIONS pursuant to customary international law.

KWOYELO THOMAS alias LATONI and others still at large, on the 16/05/2004 at Oboo Parish, Lamogi Sub-County, now Amuru District in Northern Uganda, being a Colonel in the Lord's Resistance Army coordinated, ordered and directed an armed attack on Pagak Internally Displaced Peoples Camp, extensively and wantonly destroyed 544 huts, foodstuff and household property all being protected property under the 4th Geneva Convention of 12th August 1949, such destruction not being justified by military necessity, and while he was aware of the factual circumstances that established such protected status, and the existence of an armed conflict.

PART XI: STATEMENT AND PARTICULARS OF OFFENCES FOR COUNTS 71 TO 73, INHUMANE ASSAULTS AND ATTEMPTED MURDER AT OBOO PARISH ON 16TH MAY 2004:

COUNT 71: OTHER INHUMANE ACT as a CRIME AGAINST HUMANITY pursuant to customary international law.

KWOYELO THOMAS alias LATONI and others still at large, on the 16/05/2004 at Oboo Parish, Lamogi Sub-County, now Amuru District in Northern Uganda, being a Colonel in the Lord's Resistance Army Coordinated, ordered and directed an armed attack on Pagak Internally Displaced Peoples Camp, and by inhumane acts intentionally assaulted H34, H35, H36, H37, H38, H39, H67, H68, H69, H70, H71, and H72, who were civilians taking no active part in the hostilities and protected persons under the 4th Geneva Convention of 12th August 1949, while he

was aware of the factual circumstances that established such protected status and the existence of an armed conflict, thereby causing great physical pain, suffering and serious bodily injuries to them. This crime was committed as part of a widespread and/or systematic attack against the civilian population.

COUNT 72: CRUEL TREATMENT as a VIOLATION OF ARTICLE 3 (1) (a) COMMON TO THE GENEVA CONVENTIONS pursuant to customary international law.

KWOYELO THOMAS alias LATONI and others still at large, on the 16/05/2004 at Oboo Parish, Lamogi Sub-County, now Amuru District in Northern Uganda, being a Colonel in the Lord's Resistance Army coordinated, ordered and directed an armed attack on Pagak Internally Displaced Peoples Camp, and by inhumane acts intentionally assaulted H34, H35, H36, H37, H38, H39, H67, H68, H69, H70, H71, and H72, who were civilians taking no active part in the hostilities and protected persons under the 4th Geneva Convention of 12th August 1949, while he was aware of the factual circumstances that established such protected status and the existence of an armed conflict, thereby causing great physical pain, suffering and serious bodily injuries to them.

COUNT 73: OUTRAGES UPON PERSONAL DIGNITY as a VIOLATION OF ARTICLE 3 (1) (c) COMMON TO THE GENEVA CONVENTIONS pursuant to customary international law.

KWOYELO THOMAS alias LATONI and others still at large, on the 16/05/2004 at Oboo Parish, Lamogi Sub-County, now Amuru District in Northern Uganda, being a Colonel in the Lord's Resistance Army coordinated, ordered and directed an armed

attack on Pagak Internally Displaced Peoples Camp, and by inhumane acts intentionally assaulted H34, H35, H36, H37, H38, H39, H67, H68, H69, H70, H71, and H72, who were civilians taking no active part in the hostilities and protected persons under the 4th Geneva Convention of 12th August 1949, while he was aware of the factual circumstances that established such protected status and the existence of an armed conflict, thereby causing great physical pain, suffering and serious bodily injuries to them.

**PART XII: STATEMENT AND PARTICULARS OF OFFENCES
FOR COUNTS 74 TO 80, KILLINGS AT KULU PA
OKAL ON 6TH JANUARY 2005:**

COUNT 74: MURDER as a CRIME AGAINST HUMANITY pursuant to customary international law.

KWOYELO THOMAS alias LATONI and others still at large, on the 6/01/2005 at Kulu Pa Okal in Bira Omba village, Parubanga parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being a Colonel in the Lord's Resistance Army commanded an armed attack against civilians taking no active part in the hostilities, and killed OCAYA JOHN, OJARA JOHN, OKETAYOT LAWOKO CHARLES, ACAYE OKEMA OCUKE and one OGWOK ODONG PHILIP who were protected persons under the 4th Geneva Convention of 12th August 1949, while he was aware of factual circumstances that established such protected status, and the existence of an armed conflict. This crime was committed as part of a widespread and/or systematic attack against the civilian population.

COUNT 75: MURDER as a VIOLATION OF ARTICLE 3 (1) (a) COMMON TO THE GENEVA CONVENTIONS pursuant to customary international law.

KWOYELO THOMAS alias LATONI and others still at large, on the 6/01/2005 at Kulu Pa Okal in Bira Omba village, Parubanga parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being a Colonel in the Lord's Resistance Army commanded an armed attack against civilians taking no active part in the hostilities, and killed OCAYA JOHN, OJARA JOHN, OKETAYOT LAWOKO CHARLES, ACAYE OKEMA OCUKE and one OGWOK ODONG PHILIP who were protected persons under the 4th Geneva Convention of 12th August 1949, while he was aware of factual circumstances that established such protected status, and the existence of an armed conflict.

In the alternative,

COUNT 76: MURDER contrary to section 188 and 189 of the Penal code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 6/01/2005 at Kulu Pa Okal in Bira Omba village, Parubanga parish, Pabbo Sub-County, Kilak, now Amuru District in Northern Uganda, being a Colonel in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed OCAYA JOHN.

COUNT 77: MURDER contrary to section 188 and 189 of the Penal code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 6/01/2005 at Kulu Pa Okal in Bira Omba village, Parubanga parish, Pabbo Sub-County, Kilak County, now Amuru District in

Northern Uganda, being a Colonel in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed OJARA JOHN.

COUNT 78: MURDER contrary to section 188 and 189 of the Penal code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 6/01/2005 at Kulu Pa Okal in Bira Omba village, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being a Colonel in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed OKETAYOT LAWOKO CHARLES.

COUNT 79: MURDER, contrary to sections 188 and 189 of the Penal code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 6/01/2005 at Kulu Pa Okal in Bira Omba village, Parubanga parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being a Colonel in the Lord's Resistance Army commanded an attack on civilians taking no active part in the hostilities and with malice aforethought, killed ACAYE OKEMA OCUKE.

COUNT 80: MURDER, contrary to sections 188 and 189 of the Penal code Act.

KWOYELO THOMAS alias LATONI and others still at large, on the 6/01/2005 at Kulu Pu Okal in Bira Omba village, Parubanga parish, Pabbo Sub-County, Kilak County, now Amuru District in Northern Uganda, being a Colonel in the Lord's Resistance Army commanded an attack on civilians taking no active part in the

hostilities and with malice aforethought, killed OGWOK ODONG PHILIP.

**PART XIII: STATEMENT AND PARTICULARS OF OFFENCES
FOR COUNTS 81 TO 83, ENSLAVEMENT OF
WITNESS TR:**

COUNT 81: ENSLAVEMENT as a CRIME AGAINST HUMANITY pursuant to customary international law.

KWOYELO THOMAS alias LATONI and others still at large between February 1996 and January 1998 in Perecu village, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru District and parts of South Sudan, being a commander in the Lord Resistance Army forcefully took away “TR” (Protected witness) and forced her to marry one of the LRA combatants under his direct command. This crime was committed as part of a widespread and/or systematic attack against the civilian population.

COUNT 82: OUTRAGES UPON PERSONAL DIGNITY as a VIOLATION OF ARTICLE 3 (1) (c) COMMON TO THE GENEVA CONVENTIONS pursuant to customary international law.

KWOYELO THOMAS alias LATONI and others still at large between February 1996 and January 1998 in Perecu village, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru District and parts of South Sudan, being a commander in the Lord Resistance Army forcefully took away “TR” (Protected witness) and forced her to marry one of the LRA combatants under his direct command.

In the alternative,

COUNT 83: PROCURATION OF UNLAWFUL CARNAL KNOWLEDGE
C/S 131 (1) (a) Penal Code At.

KWOYELO THOMAS alias LATONI and others still at large between February 1996 and January 1998 in Perecu village, Parubanga Parish, Pabbo Sub-County, Kilak County, now Amuru District and parts of South Sudan, being a commander in the Lord Resistance Army forcefully took away “TR” (Protected witness) and forced her to marry one of the LRA combatants under his direct command.

**PART XIV: STATEMENT AND PARTICULARS OF OFFENCES
FOR COUNTS 84 TO 88, SEXUAL VIOLENCE AND
TORTURE OF WITNESS LW:**

COUNT 84: RAPE as a CRIME AGAINST HUMANITY pursuant to customary international law.

KWOYELO THOMAS alias LATONI between the year 1997 and 2004 in the Kilak Hills, Olinga village, Labala Parish, Pabbo Sub-County, Kilak County, now Amuru District in the Northern Uganda and some parts of South Sudan, being a Commander/Colonel in the Lord’s Resistance Army subjected an abductee, herein identified as Witness “LW” (protected witness), to repeated incidents of forceful sexual intercourse, the conduct which inflicted severe physical or mental or suffering upon Witness LW, being a conduct associated with non-international armed conflict, which he inflicted on a protected person under the Geneva Convention of 12th August 1949, while he was aware of the factual circumstances that established such protected status and the existence of the armed conflict. This crime was committed as part of a widespread and/or systematic attack against the civilian population.

COUNT 85: TORTURE as a CRIME AGAINST HUMANITY pursuant to customary international law.

KWOYELO THOMAS alias LATONI between the year 1997 and 2004 in the Kilak Hills, Olinga village, Labala Parish, Pabbo Sub-County, Kilak County, now Amuru District in the Northern Uganda and some parts of South Sudan, being a Commander/Colonel in the Lord's Resistance Army subjected an abductee, herein identified as Witness "LW" (protected witness), to repeated incidents of forceful sexual intercourse, the conduct which inflicted severe physical or mental or suffering upon Witness LW, being a conduct associated with non-international armed conflict, which he inflicted on a protected person under the Geneva Convention of 12th August 1949, while he was aware of the factual circumstances that established such protected status and the existence of the armed conflict. This crime was committed as part of a widespread and/or systematic attack against the civilian population.

COUNT 86: OUTRAGES UPON PERSONAL DIGNITY as a VIOLATION OF ARTICLE 3 (1) (c) COMMON TO THE GENEVA CONVENTIONS pursuant to customary international law.

KWOYELO THOMAS alias LATONI between the year 1997 and 2004 in the Kilak Hills, Olinga village, Labala Parish, Pabbo Sub-County, Kilak County, now Amuru District in the Northern Uganda and some parts of South Sudan, being a Commander/Colonel in the Lord's Resistance Army subjected an abductee, herein identified as Witness 'LW' (protected witness), to repeated incidents of forceful sexual intercourse, the conduct which inflicted severe physical or mental or suffering upon Witness

'LW', being a conduct associated with non-international armed conflict, which he inflicted on a protected person under the Geneva Convention of 12th August 1949, while he was aware of the factual circumstances that established such protected status and the existence of the armed conflict.

COUNT 87: VIOLENCE TO LIFE AND PERSON, IN PARTICULAR CRUEL TREATMENT AND TORTURE as a VIOLATION OF ARTICLE 3 (1) (a) COMMON TO THE GENEVA CONVENTIONS pursuant to customary international law.

KWOYELO THOMAS alias LATONI between the year 1997 and 2004 in the Kilak Hills, Olinga village, Labala Parish, Pabbo Sub - County, Kilak County, now Amuru District in the Northern Uganda and some parts of South Sudan, being a Commander/Colonel in the Lord's Resistance Army subjected an abductee, herein identified as Witness 'LW' (protected witness), to repeated incidents of forceful sexual intercourse, the conduct which inflicted severe physical or mental or suffering upon Witness 'LW', being a conduct associated with non-international armed conflict, which he inflicted on a protected person under the Geneva Convention of 12th August 1949, while he was aware of the factual circumstances that established such protected status and the existence of the armed conflict.

In the alternative,

COUNT 88: RAPE Contrary to section 123 and 124 of the Penal Code Act

KWOYELO THOMAS alias LATONI between the year 1997 and 2004 in the Kilak Hills, Olinga village, Labala Parish, Pabbo Sub-

County, Kilak County, now Amuru District in the Northern Uganda and some parts of South Sudan, being a Commander/Colonel in the Lord's Resistance Army, had unlawful carnal knowledge of an abductee, herein identified as Witness 'LW' (protected witness), without her consent.

**PART XV: STATEMENTS AND PARTICULARS OF OFFENCES
FOR COUNTS 89 TO 93: SEXUAL VIOLENCE AND
TORTURE OF WITNESS 'NS':**

COUNT 89: RAPE as a CRIME AGAINST HUMANITY pursuant to customary international law.

KWOYELO THOMAS alias LATONI between the year 1996 and 2005 in the Kilak Hills, Olinga village, Labala Parish, Pabbo Sub-County, Kilak County, now Amuru District in the Northern Uganda and some parts of South Sudan, being a Commander/Colonel in the Lord's Resistance Army subjected an abductee, herein identified as Witness 'NS' (protected witness), to a repeated incidents of forceful sexual intercourse, the conduct which inflicted severe physical or mental or suffering upon Witness 'NS' (protected witness), being a conduct associated with non-international armed conflict, which he inflicted on a protected person under the Geneva Convention of 12th August 1949, while he was aware of the factual circumstances that established such protected status and the existence of the armed conflict. This crime was committed as part of a widespread and/or systematic attack against the civilian population.

COUNT 90: TORTURE as a CRIME AGAINST HUMANITY pursuant to customary international law.

KWOYELO THOMAS alias LATONI between the year 1996 and 2005 in the Kilak Hills, Olinga village, Labala Parish, Pabbo Sub-County, Kilak County, now Amuru District in the Northern Uganda and some parts of South Sudan, being a Commander/Colonel in the Lord's Resistance Army subjected an abductee, herein identified as Witness 'NS' (protected witness), to a repeated incidents of forceful sexual intercourse, the conduct which inflicted severe physical or mental or suffering upon Witness 'NS' (protected witness), being a conduct associated with non-international armed conflict, which he inflicted on a protected person under the Geneva Convention of 12th August 1949, while he was aware of the factual circumstances that established such protected status and the existence of the armed conflict. This crime was committed as part of a widespread and/or systematic attack against the civilian population.

COUNT 91: OUTRAGES UPON PERSONAL DIGNITY as a VIOLATION OF ARTICLE 3 (1) (c) COMMON TO THE GENEVA CONVENTIONS pursuant to customary international law.

KWOYELO THOMAS alias LATONI between the year 1996 and 2005 in the Kilak Hills, Olinga village, Labala Parish, Pabbo Sub-County, Kilak County, now Amuru District in the Northern Uganda and some parts of South Sudan, being a Commander/Colonel in the Lord's Resistance Army subjected an abductee, herein identified as Witness 'NS' (protected witness), to a repeated incidents of forceful sexual intercourse, the conduct which inflicted severe physical or mental or suffering upon Witness 'NS' (protected witness), being a conduct associated with non-international armed conflict, which he inflicted on a protected person under the Geneva Convention of 12th August 1949, while

he was aware of the factual circumstances that established such protected status and the existence of the armed conflict.

COUNT 92: VIOLENCE TO LIFE AND PERSON, IN PARTICULAR CRUEL TREATMENT AND TORTURE as a VIOLATION OF ARTICLE 3 (1) (a) COMMON TO THE GENEVA CONVENTIONS pursuant to customary international law.

KWOYELO THOMAS alias LATONI between the year 1996 and 2005 in the Kilak Hills, Olinga village, Labala Parish, Pabbo Sub-County, Kilak County, now Amuru District in the Northern Uganda and some parts of South Sudan, being a Commander/Colonel in the Lord's Resistance Army subjected an abductee, herein identified as Witness 'NS' (protected witness), to a repeated incidents of forceful sexual intercourse, the conduct which inflicted severe physical or mental or suffering upon Witness 'NS' (protected witness), being a conduct associated with non-international armed conflict, which he inflicted on a protected person under the Geneva Convention of 12th August 1949, while he was aware of the factual circumstances that established such protected status and the existence of the armed conflict.

In the alternative,

COUNT 93: RAPE Contrary to section 123 and 124 of the Penal Code Act

KWOYELO THOMAS alias LATONI between the year 1996 and 2005 in the Kilak Hills, Olinga village, Labala Parish, Pabbo Sub-County, Kilak County, now Amuru District in the Northern Uganda and some parts of South Sudan, being a Commander/Colonel in the Lord's Resistance Army, had unlawful carnal knowledge of an

abductee, herein identified as Witness 'NS' (protected witness), without her consent.

27) In summary, the above indictment against the accused contains 93 counts, which include several charges based on international criminal law, with domestic charges in the alternative. The international criminal charges consist of crimes against humanity of murder (Counts 1, 15, 20, 50, 74), enslavement (Count 81), rape (Counts 84, 89), torture (Counts 85, 90), imprisonment (Count 31), and other inhumane acts (Counts 42, 47, 71). The indictment further includes international criminal charges that are serious violations of Common Article 3, a treaty provision of the Geneva Conventions, applicable to internal armed conflict. The Common Article 3 charges in the indictment include; murder (Counts 2, 16, 21, 51, 75), hostage taking (Counts 4, 32), cruel treatment (Counts 43, 48, 72), outrages upon person dignity (Counts 44, 49, 73, 82, 86, 91), violence to life and person as cruel treatment and torture (Counts 87, 92), and pillage (Count 13 & 70). The alternative charges under the Penal Code Act (PCA) are murder (Counts 3, 17, 18, 19, 22, 23, 24, 25, 26, 27, 28, 29, 30, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 76, 77, 78, 79, & 80), kidnapping with intent to murder (Counts 5, 6, 7, 8, 9, 10, 11, 12, 33, 34, 35, 36, 37, 38, 39, 40 & 41), aggravated robbery (Count 14), attempted murder (Counts 45 and 46), procurement of unlawful carnal knowledge (Count 83) and rape (Counts 88 & 93)

PROCEDURAL HISTORY

28) On 4th April 2016 the Hon Justice Lydia Mugambe conducted a Pre-Trial hearing in which she *inter-alia* directed the Prosecution to disclose certain pieces of evidence to the defence team by

12/4/2016 and fixed the case for hearing on 2nd May 2016 before the Trial Panel.

- 29) Subsequently, the Judicature (High Court) (International Crimes Division) Rules, (ICD Rules) SI 40/2016, made under section 41 (1) of the Judicature Act, Cap. 13) were passed and became effective on 15/6/2016.
- 30) Accordingly, it was decided by the Head of the International Crimes Division (ICD) the Hon Justice Moses Mukiibi, in consultation with The Honourable the Principal Judge that in the interest of justice, a de novo Pre- Trial hearing be conducted in the matter, under the said ICD Rules 2016.
- 31) In August 2016, this court was assigned to conduct a de novo Pre-Trial hearing.
- 32) On 15th August 2016, the de novo Pre-trial hearing commenced at the High Court in Gulu. The Court appointed Mr. Dalton Opwonya and Mr. Geoffrey Anyuru to beef up the accused's lawyers on private brief who had not attended court neither had they provided any justification about their absence.
- 33) On 16th August 2016, this Court ordered the Prosecution to disclose their evidence to Counsel on state brief, to enable them prepare to defend Mr. Thomas Kwoyelo. The matter was adjourned to 21/9/2016 to allow the new defence team acclimatize with the Prosecution evidence and confer with the accused.
- 34) On 21/9/2016, this Court rejected the challenge to the Court's jurisdiction made by the defence under Rule 6 (1) of the ICD Rules. The Court also dismissed the challenge made against the de novo hearing and the participation of victim counsel who were alleged to have not applied to Court formally to participate in the Pre-Trial.

- 35) On 22/9/2016, the Court dismissed the oral applications of the defence for stay of proceedings pending their intended appeal to the Court of Appeal, against the ruling dismissing their preliminary objections.
- 36) On 23/9/2016, the Court granted victims the status of participants at all stages of the case subject to their application to participate. This was following objections made by the defence about the extent of victim participation. The Court also provided a schedule for victim Counsel to make the applications for victims who wish to participate and for the defence and Prosecution to reply to the same if they wished so. The Registrar was directed upon receipt of the applications, to fix them for hearing.
- 37) The Court further authorized the Deputy Registrar of the Court to provide reasonable facilitation including research fees, transport funds as well as interpretation and translation services to defence Counsel on state brief, to enable them effectively represent the accused and to promote their effective communication with the accused.
- 38) Regarding objections made by the defence in respect of the status of disclosure by the Prosecution, court upheld the said objections and ordered the Prosecution to disclose its evidence afresh in compliance with Rules 21 and 22 of the ICD Rules.
- 39) Concerning the status of security for all parties, the Deputy Registrar of the court was directed to liaise with the Police to conduct the necessary security assessments and make the relevant arrangements to ensure the wellbeing of all parties.
- 40) On 1/2/2017, the Court dismissed the Prosecution's irregular application for redacted disclosure and gave fresh guidelines to the Prosecution to make the application anew.
- 41) On 23/2/2017, after the reading of the charges in the first indictment, and hearing the defence objections to it as well as

the admissions made by prosecution and victim counsel in its regard, the Court allowed the Prosecution to amend the indictment.

42) The reading of charges in this case was held on 23/2/2017. Thereafter the defence objected to the indictment, arguing *inter-alia* that customary international law is inapplicable in Uganda's legal regime in as far as it is unwritten, breaches the principle of legality and does not provide for sentencing, contravening therefore, Articles 2 and 28 clauses (7) and (12) of the Constitution of the Republic of Uganda. Further, that Common Article 3 of the Geneva Conventions is not a penal provision but a mere guideline between High Contracting Parties which does not bind individuals, and that Legal Notice No. 10 of 2011, limits the jurisdiction of this Court to the international offences provided for therein.

43) On 22/11/2017 the Court gave a decision in accordance with Rule 12(9) of the ICD Rules, dismissing the objections and holding that the Constitution of Uganda does not prohibit the application of customary international law in Uganda's legal order and that to the contrary, it is open to the application of non-written law. Moreover, the offences charged in the Amended Indictment (crimes against humanity and serious violations of Common Article 3) do not contravene the legality principle, because at the time of their alleged commission, the said crimes were well-established bases for individual criminal liability both under treaty law and customary international law, thus giving the accused reasonable foreseeability.

44) The case was fixed for confirmation hearing on 4/12/2017 but the court did not sit for logistical reasons. The Confirmation hearing was subsequently set for 23/7/2018 in accordance with Rule 12 (3) of the ICD Rules and a schedule for skeleton written

submissions was issued to the parties. The said hearing was also adjourned to this date to enable the Deputy Registrar make relevant logistical arrangements to facilitate the sitting of court. The defence failed to comply with the Court order to file written submissions and had tendered no excuse for their failure. This Court's hands are therefore tied and will consider the prosecution submissions and the law applicable in examining the charges.

- 45) I must note that the Pre-Trial hearing envisaged under the ICD Rules, unlike the practice at the ICC and other international tribunals, does not entail hearing of witnesses. (See: **Rule 12 (10) of SI 40/2016**). However, I have no doubt in my mind, after considering Rule 12 (4), (8) and (9) of the ICD Rules, that the pre-trial court, in addition to considering the facts and making necessary orders and directions in ensuring that the case is ready for trial, and that the trial proceeds in an orderly and efficient manner under Rules 6 (2) 7 and 20 of the ICD Rules, is expected to examine the charges basing on the Summary of the Case and the evidence disclosed to the court under Rule 21(1) of the ICD Rules to decide on the sufficiency of evidence available before confirming the charges preferred. Rule 21(1) provides as follows:

“Subject to rule 22, the Prosecution shall provide to the pre-trial Judge and to the accused person for the purpose of the pre-trial hearing, no later than 15 days before the date of the pre-trial hearing, any relevant evidence or material which the Prosecution intends to present at the hearing”

- 46) For that reason, bearing in mind the fact that it has not heard any witnesses, the court will examine the Summary of the case, the witness statements provided as well as other

documentary evidence provided by the prosecution, before deciding whether or not, the charges presented in the indictment or any of them meet the evidential standard necessary to subject the accused to a full trial.

EXAMINATION OF CHARGES

Alternative and cumulative charges

- 47) In the indictment, the DPP has pleaded alternative charges under the Penal Code. This Court will confirm the said alternative charges if the evidence is sufficient to sustain each alternative. It would then be up to the Trial Court, after conducting a full trial, to determine which one, if any, of the confirmed alternative charges is relevant.
- 48) The Prosecution has also presented cumulative charges, i.e. crimes charged which, although based on the same set of facts, are not alternative to each other, but may all, concurrently, lead to a conviction. In this case, this Court will confirm cumulative charges if each of them is sufficiently supported by the available evidence and each crime cumulatively charged contains distinct legal elements. In doing so, the Court will give due regard to the Trial Panel which, following a full trial, will be in a better position to resolve questions regarding the concurrence of the charges.

STANDARD OF PROOF

- 49) Pre-Trial hearings have only recently been introduced to our jurisprudence by the ICD Rules. The Rules themselves do not provide the standard that the prosecution must meet in its evidence to make the case ready for transmission to the Trial Panel. This lacuna in the law notwithstanding, nothing bars this

Court which is established to among other things fulfil the principle of complementarity stipulated in the Rome Statute, from embracing mutatis mutandis, internationally applicable standards that promote its purpose. In that regard the relevant provisions of the Rome Statute come in handy.

- 50) Under article 61(7) of the Statute, the Court shall, on the basis of the evidence disclosed at the pre-trial hearing, determine whether there is sufficient evidence to establish substantial grounds to believe that the accused committed each of the crimes charged.
- 51) And based on its findings, the Court is required to:
- a) Confirm those charges in relation to which it has established that there is sufficient evidence, and commit the accused to a Trial Court for trial on the charges as confirmed;
 - b) Decline to confirm those charges in relation to which it has established that there is insufficient evidence;
 - c) Adjourn the hearing and request the prosecutor to consider providing further evidence in respect to a particular charge in the indictment; or to amend a charge because the evidence submitted appears to establish a different crime triable by the Court.
- 52) To define the concept of “substantial grounds to believe”, this court, having considered the fact of the absence of local authorities, relies on internationally recognised human rights jurisprudence. In ***The Prosecutor Vs Thomas Lubanga Dyilo, ICC-01/04-01/06-803-tEN 14-05-2007 1/157 SL PT***, the Pre-Trial Chamber cited with approval the judgement of the European Court of Human Rights (ECHR) of 7th July 1987 in ***Soering v. United Kingdom, Application No. 14038/88*** which defined this standard as meaning that “**substantial grounds have**

been shown for believing.” The Chamber also cited the joint dissenting opinion appended to the judgement in ***Mamatkulov and Askarov v. Turkey***, of 4th February 2005, (***Applications Nos. 46827/99 and 46951/99***) by Judges Bratza, Bonello and Hedigan in which “**substantial grounds to believe**” were defined as “**strong grounds for believing**”.

53) It is plain to me that for the Prosecution to meet the evidential burden, it must offer concrete proof demonstrating its specific allegations. Furthermore, all the evidence presented for purposes of the Pre-Trial hearing must be assessed as a whole. Having examined the evidence, this Court has to determine whether it is satisfied that the Prosecution’s allegations are sufficiently strong to move the court to confirm the charges and present Thomas Kwoyelo alias Latoni to the Trial Panel.

54) Consequently, the Court will generally examine the statements of the Prosecution witnesses without necessarily evaluating the details therein, which can only meaningfully be done by the Trial Court after hearing the said witnesses. The probative value of the evidence will be fully tested only at trial, thus the Court will therefore limit itself to what is necessary and sufficient for the findings on the charges.

55) **The essential issue for resolution at this point is whether there is sufficient evidence to establish substantial grounds to believe that Thomas Kwoyelo is criminally responsible for the crimes with which he is charged.**

CRIMES AGAINST HUMANITY

As noted above, several counts have been brought under this category.

Contextual elements

56) The Prosecution will have to establish the existence of the following:

- The existence of a widespread or systematic attacks against the civilian population;
- A nexus between the acts of the accused and the attacks; and
- The accused's knowledge of the factual circumstances that there is such an attack and that his acts are part thereof.

*(See: **Prosecutor v. Dragoljub Kunarac, Case Nos. IT-96-23-A & IT-96-23/1-A, paras. 85, 99, 102)***

57) The prosecution submitted that there are reasonable grounds to believe that Kwoyelo Thomas alias Latoni committed the indicted offences. According to the Prosecution, it will show that between 1987 and 2005, the LRA with appropriate mens rea committed widespread and systematic attacks against the civilian populations of northern Uganda. As a senior LRA commander, the accused was a key participant in the armed conflict. These attacks were mostly carried out in Kilak County where Thomas Kwoyelo had a command base. Prosecution submits that the accused knew that the attacks were intended to be widespread and systematic and directed against the civilian population of northern Uganda.

58) The charges in counts 1, 15, 20, 31, 42, 47, 50, 71, 74, 81, 84, 85, 89 and 90 of the indictment are charges of crimes against humanity. This court will briefly discuss the contextual elements of this category of crimes before examining the specific charges brought in this respect.

a) The attack was directed against the civilian population

59) Redacted Statements of C8, C11 and H29 show that LRA under the command of the accused conducted several protracted attacks in Pabbo and Lamogi Sub Counties where civilians in their different localities were identified, attacked and subjected to several forms of hostilities such as raping, killings, wounding and enslavement to mention but a few.

b) The attack was widespread and systematic.

60) According to the Prosecution, each attack targeted a large number of victims, generally reflecting some form of planning or organization in their execution. Prosecution contends and I agree that the attacks were widespread and systematic such as the:

- LRA attacks on 5th April 2003 at Oroko, Pajok and Pabbo;
- LRA attacks against civilian in Pajule on 10th October 2003 and Muchwini Sub-County 2002;
- Attack at Barlonyo on 21st February 2004;
- Attack at Aboke Girls Senior Secondary School in 1996;
- Atiak Massacre of 20th April 1995 led by Otti Vincent and the accused;
- Palabek attack of 1998.

61) It is now trite law that the adjective “systematic” signifies the organized nature of the acts of violence and the improbability of their random occurrence. (See: ***Prosecutor Vs Dragoljub Kunarac Radomir Kovac and Zoran Vukovic, Case No.: IT-96-23-T & IT-96-23/1-T, (Trial Chamber decision), paragraph 429.***) In my humble opinion, the redacted statements of the prosecution in this regard show that the LRA attacks are not isolated incidences.

c) The accused had the requisite knowledge of mind or mens rea

62) Prosecution submitted that Thomas Kwoyelo alias Latoni knew that there were attacks on the civilian population and he participated in the said widespread and systematic attacks that were directed against the civilian population. He held several command positions and voluntarily took important roles in the broader military campaign. The accused led a series of brutalizing attacks killing women and girls who were captured detained and subjected to sexual slavery or rape. The statements of C9 and C11 inter-alia establish this element in my view.

63) Prosecution further submitted that the accused committed the charged offences which amount to crimes against humanity in concert with others in furtherance of the LRA common plan which included killing civilian populations. The accused was aware of the plan/policy to kill civilians who were not taking active part in the hostilities. They targeted the civilians because they perceived the civilians to be supporting the government of Uganda. (The statement of C10) The LRA considered civilians an enemy working with the government to pursue the government's political agenda.

SPECIFIC INGREDIENTS OF THE OFFENCES CHARGED IN THE INDICTMENT AS CRIMES AGAINST HUMANITY:

MURDER

- 64) The requisite elements of murder include the fact that:
- a) The victim is dead

- b) The death resulted from an unlawful act or omission of the accused or a subordinate
- c) At the time of killing the accused or subordinates had the intention to kill or inflict bodily harm on the deceased having known that such bodily harm is likely to cause the victim's death and his reckless whether death ensues or not. (See: **Prosecutor Vs Jean Paul Akayesu Case No. ICTR-96-4-T**). The trial Chamber in the same case held inter alia that:

“Murder must be committed as part of a widespread or systematic attack against a civilian population. The victim must be a member of this civilian population. The victim must have been murdered because he was discriminated against on national, ethnic, racial, political or religious grounds”.

65) **Count 1 - murder of Albert Obwoya**

It is alleged that Thomas Kwoyelo alias Latoni killed Albert Obwoya at Abera Village for the reason that he was an informer of the LRA. This crime was committed as part of the LRA policy of killing civilians following the order given by Joseph Kony. The statement of E1, who witnessed the accused (who was well known to him) shoot the deceased twice in the thigh and at the back of his left hand killing him instantly as well as the statements of E2 and E3 suffice to establish the elements of this offence for the purposes of confirmation of the charge.

66) **Count 15 - murder of Jackamino Oruk alias Jaki Ocoo, Okeny Wilson and Ojok Martin**

The accused is alleged to have ordered for the killings of the named persons while implementing the LRA policy and order to

kill civilians. The deceased persons and others in the month of February 1996 were abducted while on their way from a funeral. They were abducted under his orders and killed at Paibi along Juba Road. The statements of G1, G2, G3, and G4 suffice in my opinion to establish the offence for confirmation of the said charge.

67) **Count 20 - Murder of Aceng Christine, Loum Acupale, Ngwe Julio, Obalo Bicensio, Gwok Paulo, Arop Jeremiah, Obol Vincent, Arop Daniel and a one Charles**

It is also alleged that in the month of February 1996 Thomas Kwoyelo alias Latoni abducted the deceased persons and others and took them to Arebe Hills where he ordered that the deceased persons as well as D1 and D2 be killed because the community were mobilising food for the local guards who were fighting the LRA. The deceased persons were hit on the back of their heads with clubs and bayonets of the rifles. The deceased persons' bodies were never recovered due to the bad security situation at the time. The accused later returned to the scene of murder but found D1 and D2 not among the dead. He informed D3 that the two survived and escaped from the scene. The statements of D1, D2 and D3 suffice in my opinion to establish the elements of the charge for purposes of confirmation of the same.

68) **Count 50 - Murder of Nyeko Bosco, Amony Jenifer, Acan Shida, Atoo Suzan, Akwero Harriet, Anena Daughter of Aloyo Concy, Martina Awor, Oyella Betty, Edisa Lapobo, Akwero Nancy, Dorothy Akech, Acayo Josephine, Aciro Rose, Kilama Eric, Amal Ketty, Obita Mateyo, Akwongo Christine and Ocira Erick.**

According to the prosecution, the accused who was a Colonel commanded the killing of the deceased persons on the 16/05/2004 at Pagak IDP Camp. The statements of H1 to H75 are

relevant and in my view establish the offences charged for the purposes of confirmation of the charge.

69) **Count 74 - Murder of Ocaya John, Ojara John, Oketayot Lawoko Charles, Acaye Okema Ocuke and Ogwok Odong Philip.**

It is further alleged that on 6th January 2005, a group of people from Pabbo Internally Displaced Persons Camp who included Ocaya John, Oketayot Lawoko Charles, Acaye Okema Ocuke, Ogwok and others left for Bira Forest to collect firewood. At Kulu pa Okal, the group were intercepted by a group of rebels led by the accused, who abducted them and ordered that they be tied up using rubber bands from their bicycles. F1 managed to escape and later returned and found his colleagues all murdered. The deceased died as a result of deep cut wounds on their heads as well as burns. The bodies of the deceased persons were later recovered from the scene and buried. The statements of F1, F3 and F5 are relevant and in my view establish the offences charged for the purposes of confirmation of the charge.

70) **Count 31 - Imprisonment**

It is also the prosecution's case that on the 4th March 1996 the accused commanded LRA men and invaded a group of people who had left the camp to Abera village to perform traditional rituals. The rebels abducted the people and took them to Kilak Hills where the said rebels divided the abductees into three groups, separating the elderly, the youth and the women before accused ordered for their killing using clubs, pangas and axes. The accused picked an axe and hit Rodento Ochola on the head, while the youthful rebels were seen hitting the elderly abductees who included Maurenio Okoya, Massimo Obama, Okot Antonio, Onai, Ocii Doctor, Sabino Oola Obooli and Oyet Samuel. They have not been seen again. The elderly women were subjected to

physical assault before being set free. The reason for the beatings and the killings was that the elderly men and women were not blessing the LRA to win the war. Most of the youths survived the killings and beatings that day because they ran off. Prosecution submits that LRA fighters deprived civilians of their liberty by abducting them and placing them under military guard to prevent their escape and later subjected them to physical torture.

To establish the crime of imprisonment as a crime against humanity, the following components must be established:

- a) That an individual is deprived of his or her liberty;
- b) That the deprivation of liberty is imposed arbitrarily, that no legal basis can be invoked to justify the deprivation of liberty;
- c) That the act or omission by which the individual is deprived of his or her physical liberty is performed by the accused or a person or persons for whom the accused bears criminal responsibility, with the intent to deprive the individual arbitrarily of his or her physical liberty or in the reasonable knowledge that his act or omission is likely to cause arbitrary deprivation of physical liberty. (See: ***Prosecutor Vs Milorad Krnojelac Case No. IT-97-25-T.***)

I have examined the statements of B1, B3, B4, and B6. I find that they suffice to establish the charge of imprisonment for purposes of confirmation of the same.

71) **Counts 42, 47, and 71 - other inhumane acts**

The prosecution also contends that on 4th March 1996, a group of rebels abducted unspecified number of civilians and took them to Kilak Hills where they were subjected to all forms of torture

including beating using clubs, pangas and axes because the elders never blessed LRA and were making them not to win the war. Several others were killed on the orders of accused. On the 16th May 2004 at 6:00 pm, H1, who was in Awee camp was surprised to hear gunshots coming from the direction of Pagak camp. The rebels had invaded Pagak camp and had killed many people and burnt down their huts. H1 visited Pagak camp and confirmed that several huts were bunt down and a big number of dead bodies were scattered within the camp. That the accused ordered and directed the armed attack on Pagak IDP. That subsequently, burial sites of the deceased persons were visited by a group of investigators, and their graves were identified and bodies exhumed and examined. The Prosecution submits that assaulting civilians and subjecting others to witness the beatings and killings of other abductees caused severe physical or mental pain or suffering, which amounted to torture.

What are the elements of the offence of other inhumane acts?

- a) The occurrence of an act or omission of similar seriousness to the other enumerated acts;
- b) The act or omission caused serious mental or physical suffering or injury or constituted a serious attack on human dignity; and
- c) The act or omission was performed deliberately by the accused or a person or persons for whose acts and omissions he bears criminal responsibility.” (See: ***Prosecutor Vs Dario Kordi & Mario Cerkez***).

I find that the statements of B2, D1, D2, TR, H1, H33, H35, H37 and H38 are relevant and prove the charges to the relevant standard for the purpose of their confirmation.

72) **Count 81 - Enslavement**

Prosecution further contends that the LRA fighters deprived civilians of their liberty by abducting them and placing them under military guard to prevent their escape. LRA fighters abducted hundreds of civilians and made them carry food items and other equipment that they had looted from the camp. In doing so, attackers exercised any or all of the powers attaching to the right of ownership over the abductees by depriving them of their liberty and exacting forced labour, reducing them to servitude. That LRA fighters enslaved civilian women, men, girls and boys, and subjected them to brutal treatment as soldiers, labourers, sexual slaves etc. Most of these women, men and children who were abducted were not allowed to leave. They were forced to become wives of the rebels or recruited into rebel ranks.

The elements of enslavement are:

- a) The exercise of any or all of the powers attaching to the right of ownership over a person (actus reus); and
- b) The intentional exercise of the said powers (mens rea).

(See: ***The Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic, IT-96-23 and IT-96-23/1, Appeals Chamber decision, paragraphs 116-124.***)

In ***Prosecutor Vs Germain Katanga ICC-01/04-01/07-3728-tENG, paragraph 976*** it was held inter-alia that:

“To prove the exertion of powers which may be associated with the right of ownership or which may ensue therefrom, the Chamber will undertake a case-by-case analysis, taking account of various factors. Such factors may include detention or captivity and their respective duration; restrictions on freedom to come and go or on any freedom

of choice or movement; and, more generally, any measure taken to prevent or deter any attempt at escape. The use of threats, force or other forms of physical or mental coercion, the exaction of forced labour, the exertion of psychological pressure, the victim's vulnerability and the socioeconomic conditions in which the power is exerted may also be taken into account"

This court has considered the statements of TR, C10 and C11 and formed the opinion that they establish the charge for purposes of its confirmation.

73) **COUNTS 84 and 89 - Rape as a crime against humanity.**

Prosecution submits that sexual abuse of girls and women by the LRA was one of the weapons used against civilians who were taking no active part in the hostility. Girls were used as domestic servants for commanders and their households. At the age of thirteen to fifteen, many were forced into sexual slavery as "wives" of LRA commanders and subjected to rape, unwanted pregnancies, and the risk of sexually transmitted diseases, such as HIV/AIDS.

The elements of the offence are:

- a) The sexual penetration, however slight of;
 - the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator;
 - or the mouth of the victim by the penis of the perpetrator; where such sexual penetration occurs without the consent of the victim. Consent for this purpose must be consent given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances; and
- b) The intention to effect this sexual penetration, and

c) The knowledge that it occurs without the consent of the victim

This court has considered the statements of 'LW' and 'NS' and finds that they establish the charges for purposes of their confirmation.

74) **Counts 85 and 90 - Torture as a Crime Against Humanity**

Torture is a crime against humanity if the following further elements are satisfied:

a) Torture must be perpetrated as part of a widespread or systematic attack;

b) The attack must be against the civilian population;

c) The attack must be launched on discriminatory grounds, namely: national, ethnic, racial, religious and political grounds.

It is the prosecution's submission that the above elements for the offence of torture as a crime against humanity are met. The statement of 'NS' is to the effect that she was subjected to repeated incidents of forceful sexual assault, the conduct which, inflicted severe physical, and mental suffering upon her. Similarly, 'LW' states to the same effect. I find therefore that the elements of the offence in the said charges are established for purposes of confirmation of charges.

WAR CRIMES/VIOLATIONS OF COMMON ARTICLE 3 OF THE 1949 GENEVA CONVENTIONS

The prosecution has also brought several counts against Mr. Kwoyelo, under this categorization. The war crimes with which the accused stands indicted are brought under counts 2, 4, 13, 16, 21, 32, 43, 44, 48, 51, 70, 72, 73, 75, 82, 86, 87, 91, and 92.

75) Common Article 3 of Geneva Convention Act protects all persons taking no active part in the hostilities from being subjected to war crimes.

According to the prosecution, there is evidence to show that the charged war crimes, took place in the context of and were associated with armed conflict between the LRA and the UPDF. As a senior LRA commander that actively participated in the armed conflict, prosecution contends that Thomas Kwoyelo was aware of the factual circumstances that established its existence and so he is appropriately indicted with the offences charged.

To amount to war crimes in violation of Common Article 3 of the 1949 Geneva Conventions the prosecution must establish the following contextual ingredients: -

- a) The existence of a non-international armed conflict,
- b) A nexus between the acts of the accused and the armed conflict; and
- c) The accused's knowledge of the factual circumstances that there is an armed conflict and that his acts are part thereof
(See: ***Kunarac Appeal decision supra***).

The prosecution submits that there is evidence to show that from 1987 to 2005, a protracted armed conflict not of an international character existed in the northern part of Uganda between the LRA and armed forces of the government of Uganda known as UPDF and its associated forces like Local Defence Units and the Amuka militia in Lango. The statements of C8, C9, C10, C12, H41 and H42 are relevant in that regard. In addition, Prosecution avers that former LRA commanders and fighters including the accused made statements in which they confirm the existence of

the armed conflict between the LRA and the UPDF from 1987 to 2005 (C9, C10 and C11).

That there is sufficient evidence to show that LRA rebels engaged in armed hostilities that exceeded in intensity, internal disturbances and tensions, as well as isolated and sporadic acts of violence. The conduct that forms the basis of charges on the indictment took place in the context and was associated with this armed conflict (C8, D1, D2 and D12).

SPECIFIC INGREDIENTS OF THE OFFENCES CHARGED IN THE INDICTMENT AS WAR CRIMES:

76) War Crime of Murder (Counts 2, 16, 21, 51 and 75)

The elements of this offence are that:

- a) The perpetrator killed one or more persons;
- b) Such person or persons were civilians, taking no active part in the hostilities;
- c) The perpetrator was aware of the factual circumstances that established this status.
- d) The conduct took place in the context of and was associated with an armed conflict not of an international character.

The statements of E1, E2, E3, G1, G2, G3, G4, D1, D2, D3 F1, F3, F5, as well as H1-H75 suffice in my opinion to establish the elements of the charges for purposes of confirmation of the same.

77) Taking of hostages (counts 4, 32)

The elements of these crimes are:

- a) The seizure or detention of a person and the use of a threat concerning the detained person, including a threat to kill,

injure, or continue to detain, in order to obtain a confession or gain an advantage, and

b) The intention to compel a third party to act or refrain from acting as a condition for the release of the detained person
(See: *Prosecutor Vs Tihomir Blaskic Case No. IT-95-14-A*).

78) The prosecution argues that the accused was central to the implementation of the policy by which hundreds of thousands of civilians from Northern Uganda were detained and executed in retaliation for attacks against LRA by government forces. According to a redacted statement of one of the witnesses, the accused issued and implemented orders for the execution of several civilians. It is also alleged that the abducted civilian populations were used as human shields, wives, in domestic servitudes etc., in violation of Common Article 3. I therefore agree that the evidence disclosed supports the charges of hostage taking preferred to the required standard.

79) **Pillaging (counts 13 and 70)**

The elements are that:

- a) There was appropriation of private or public property intentionally and unlawfully,
- b) The accused acted with the knowledge and intent to acquire property unlawfully, or that the consequences of his actions were foreseeable.

In my opinion, from the statements disclosed, the Prosecution evidence supports the allegations that LRA fighters stole food from the camps including private possessions from the homes of civilians. The abductees especially women from the camps or homes were made to carry the loot and food items such as cassava, beans, domestic animals and birds etc.

Several witnesses whom the prosecution intends to call, including C5, H34, H35, H36, H37, H38, H39, H67, H68, H69, H70, H71, and H72, witnessed the commission of the acts of pillaging. I find that the said evidence supports the charges to the required standard.

80) **Cruel Treatment as a War Crime - Counts 43, 48, and 72**

In *Prosecutor Vs Mladen Naletilic, Aka "Tuta" and Vinko Martinovic, Aka "Štela" (Trial Chamber decision), paragraph. 246:* it was stated that cruel treatment is constituted by an intentional act or omission, which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity, committed against a person taking no active part in the hostilities.

The elements of Cruel Treatment are that:

- There must be an intentional act or omission which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity
- The offence was committed against a person taking no active part in the hostilities. (See: *Zejnir Delalic, Zdravko Mucic (aka "Pavo"), Hazim Delic and Esad Landžo (aka "Zenga") Case No. IT-96-21-A, Paragraph 424.*)

The prosecution plans to call among others D1, D2, B2, B4, B6, B7, Oryem, as well as H34 to H39 and H67 to H 72 to prove these charges. This court finds the evidence contained in their statements are sufficient to confirm the above charges.

81) **Outrages upon personal dignity (counts 44, 49, 73, 82, 86, and 91)**

The elements of this crime are that:

- a) The accused intentionally committed or participated in an act or omission which would be generally considered to

cause serious humiliation, degradation or otherwise be a serious attack on human dignity, and

- b) The accused knew that the act or omission could have that effect.

Prosecution contends that there is sufficient evidence to show that LRA attackers humiliated civilians and subjected abductees to physical and mental trauma as some were forced to kill their fellow abductees while others were killed in their presence to instil fear. In my view the statements of D1, D2, B2, B4, B6, B7, Oryem as well as H34 to H39 and H67 to H 72, 'TR', 'LW' and 'NS' *inter-alia* contain sufficient evidence to confirm the above charges.

82) **Counts 87 and 92 - Violence to life, Cruel Treatment and Torture as a Violation of Article 3 (1) (a) Common to the Geneva Conventions**

Torture has the following elements:

- a) The infliction, by act or omission of severe pain or suffering, whether physical or mental;
- b) The fact that the act or omission was intentional; and
- c) The fact that the act or omission was aimed at obtaining information or confession, or punishing, intimidating or coercing the victim or a third person, or at discriminating, on any ground, against the victim or a third person. (See: ***Kunarach, Trial Judgment, 12 June 2002, paras 142-148***)

The Prosecution submits that the beating of civilians, forcing them to carry loot, walking for long distances while tied to each other under constant threat of harm, being subjected to punitive conditions, and witnessing the beating and killing of other abductees caused severe physical or mental pain or suffering, amounting to torture under customary international law. The

statements of 'LW' and 'NS' *inter- alia* serve to establish these charges for purposes of their confirmation.

ALTERNATIVE CHARGES

83) COUNT 3: Murder contrary to sections 188 & 189 of the Penal Code Act of Albert Obwoya.

The prosecution intends to adduce evidence to prove that on the fateful date in March 1993, LRA rebels led by the accused raided the home of the deceased in the night and shot him dead. The accused was positively identified by witnesses who knew him before, with the aid of torchlight.

The witnesses also confirmed that the deceased had bullet wounds in the chest and thighs, this establishes malice aforethought.

Ingredients of the offence of murder are:

- a) That the deceased died;
- b) That the killing of the deceased was unlawful;
- c) That there was malice aforethought and
- d) That the accused participated in the commission of the offence.

The prosecution proposes to call E1, E2, E3 and E4 to prove that although this attack took place at night, the witnesses positively identified the accused at the scene of the attack, because they knew him and there was torchlight to aid them in the identification of the accused. It also intends to adduce exhibits No. 1 and No. 2, which are pictures of the deceased's grave. The said evidence establishes the charge to the required standard.

84) Counts 5, 6, 7, 8, 9, 10, 11 and 12 - Kidnapping with intent to Murder contrary to section 243 (1) (a) of the Penal Code Act.

The prosecution intends to call witnesses to prove that victims who include C4, C5, ONGOM S/O OMOYO, OKOT CHARLES, OJOK PATRICK and OGENA SIMON were kidnapped by the accused on 04/09/94 at Abera village in Amuru District.

Ingredients of kidnapping with intent to murder are:

- a) That there was a kidnapping of persons on 4/09/1994 at Abera, Amuru District;
- b) That the Kidnapping was accomplished by use of force;
- c) That the kidnapping was against the victims' will;
- d) That the perpetrators of this offence were motivated by an intent to murder and
- e) That the accused participated. (See: ***Uganda vs Kalungi Constance HCCS NO. 43/2002***).

The Witness to be relied upon by the prosecution include; C1, C2, C3, C4, C5, C6, C7, and C8 - C21. I find the said evidence sufficient to establish the said charges for purposes of their confirmation.

85) **Count 14 - Aggravated Robbery contrary to sections 285 and 286 (2) of the Penal Code Act:**

The elements of this offence are:

- a) That there was theft;
- b) That theft was accompanied by violence;
- c) That there was use or threat to use a deadly weapon or that there was death or grievous harm caused; and
- d) Participation of the accused.

The prosecution also intends to call witnesses to prove robbery against one C5 - OUMA JOHN of three bicycles, 6 goats and foodstuff. The prosecution will lead the evidence of the same witnesses listed above to prove the charge of aggravated robbery.

86) **Counts 17, 18 and 19 - Murder contrary to sections 188 &189 of the Penal Code Act, of Jackamino Oruk Alias Jaki Ocoo, Okeny Wilson & Ojok Martin.**

The ingredients of the offence of murder are:

- a) That the deceased died;
- b) That the killing of the deceased was unlawful;
- c) That there was malice aforethought; and
- d) That the accused participated.

The prosecution intends to adduce the evidence of G1, G2 and G4 said to have witnessed the attack and identified the accused as a person they knew before. These three witnesses also saw the bodies of the three deceased persons and stated that they had deep cut wounds caused by bayonets *inter-alia*. Other witnesses are, G3, G5, G6, G7, G8, G9, and G10. In my opinion, their statements establish the elements of murder above, to the required standard. Prosecution Exhibits include pictures of the graves of the deceased and a sketch plan of the scene.

87) **Counts 22, 23, 24, 25, 26, 27, 28, 29, 30 - Murder contrary to sections 188 and 189 of the Penal Code Act, of Aceng Christine, Loum Acupale, Ngwe Julio, Obalo Bicensio, Gwok Paul, Arop Jeremiah, Obol Vincent, Arop Daniel and Charles**

Ingredients of murder:

- a) That each of the 9 deceased persons are dead;
- b) Their killing was unlawful;
- c) They were killed intentionally or with malice aforethought; and
- d) Participation of the accused.

The prosecution intends to adduce the evidence of D1, D2, and D3 who are eye witnesses to the incident. Other witnesses are

(TR), D4, D5, D6, D7, D8, D9, D10, D11 and D12. I have examined the above mentioned statements and conclude that they sufficiently establish the elements of the offence of murder in the respective counts charged, for the purpose of confirming the said charges.

88) **Counts 33, 34, 35, 36, 37, 38, 39, 40, & 41 - Kidnapping with intent to murder contrary to section 243 (1) (a) of the Penal Code Act, of Rodento Ochola, Masimo Oboma, Oyet Samuel, Ocii Doctor, Sabino Obooli Oola, Oryem Quirino, Okot Antonio, Okoya Maurenso and Onai**
Ingredients of Kidnapping with intent to murder are:

- a) That there was a kidnapping of a person;
- b) That the Kidnapping was accomplished by use of force;
- c) That the kidnapping was against the victims' will;
- d) That the perpetrators of this offence were motivated by an intent to murder; and
- e) That the accused participated (See: ***Uganda Vs Kalungi Constance H.C.C.S. NO. 443 OF 2007.***)

The prosecution intends to call B1, B2, B-3, B4, B5, B6, B7, B8, B9, B10, B11, B12 and B13, whose statements this court has examined to prove the said charges. I find the evidence therein sufficient to establish the said charges to the required standard for the purpose of their confirmation.

89) **Counts 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68 and 69 - Murder contrary to sections 188 and 189 of the Penal Code Act of Nyeko Bosco, Amony Jenifer, Acan Shida, Atoo Susan, Akwero Harriet, Anena D/O Aloyo Concy, Martina Awor, Oyella Betty, Edisa Lapobo, Akwero Nancy, Akech Dorothy, Acayo Josephine, Aciro Rose, Kilama Eric, Amal Ketty, Obita Mateyo, Akwongo Christine and Ocira Eric.**

The prosecution contends that the LRA rebels under the leadership of the accused, on 16/05/2004 attacked Pagak IDP camp, burnt houses, and looted property and shot dead 29 persons. Further, that the rebels led some of the IDP captives to the Command centre at Ogoropii, where the accused coordinated the attack. All the captured IDP residents were produced before the accused, who ordered their immediate killing by hitting them on the back of their heads, killing most of them instantly. Out of sheer luck, 13 victims survived with grave injuries and were rushed to St. Mary's Hospital Lacor, Gulu for treatment. The prosecution intends to call 75 witnesses (H1 to H 75) as well as Exhibits 10-45 to prove that the accused participated in this attack and was positively identified at Ogoropii Command centre when he ordered the killing of captured IDP residents and that the killing of the 29 Internally Displace Persons which was done with malice aforethought because most of them were shot dead with guns, stabbed with bayonets, or hit to death on the back of their heads. Prosecution also intends to adduce medical evidence to prove these facts.

Ingredients of Murder:

- a) That the deceased persons are dead;
- b) That their killing was unlawful;
- c) That their killing was committed with malice aforethought;
and
- d) That the accused participated in the commission of the crime.

This court has upon examination of the statements of the proposed witnesses concluded that the evidence therein supports the charges to the required standard.

90) **Counts 76, 77, 78, 79 and 80 - Murder contrary to sections 188 and 189 of the Penal Code Act of Ocaya John,**

Ojara John, Oketayot Lawoko Charles, Acaye Okema Ocuke and Ogwok Odong Philip.

The prosecution intends to lead evidence of ten witnesses, (F1 to F10) to prove that the accused on 6th January 2005 led a group of LRA men under his command and other junior commanders including Kapere and Silvano, ambushed and took hostage of and brutally assaulted Ocaya John, Ojara John, Oketayot Lawoko Charles, Acaye Okema Ocuke and Ogwok Odong Phillip killing them.

Ingredients of murder:

- a) That the 5 deceased persons are dead;
- b) That their killing was unlawful;
- c) That their killing was committed with malice aforethought;
and
- d) That the accused participated in the commission of the crime.

Prosecution intends to call F1, F2, F3, F4, P5, F6, F7, F8, F9 and F10 - D/AIP Odong Andrew. It will also rely on Exhibits such as the pictures of graves of the deceased, marked 46, 47, 48, 49, 50, 51, 52, 53, 54, & 55. This court has studied the said witness' statements and the proposed exhibits and formed the view that the said evidence adequately established the charges to the require standard.

91) **Counts 88, and 93 - Rape contrary to sections 123 and 124 of the Penal Code Act.**

Ingredients of Rape:

- a) Unlawful sexual intercourse with a woman;
- b) Lack of consent; and
- c) Participation of the accused in the unlawful sexual intercourse.

The prosecution intends to call 'LW' and 'NS' among other witnesses to prove these crimes. This court has examined their statements and concluded that they support the charges to the required standard.

92) **Counts 45 & 46 - Attempted Murder contrary to section 204 (a) of the Penal Code Act.**

According to the Prosecution, D1 and D2 were among the three survivors of the February 1996 LRA attack on Perecu village, in Kilak County in the present day Amuru District while Loum Acupale, Ngwe Julio, Obalo Bicensio, Gwok Paulo, Arop Jeremiah, Obol Vincent, and Arop David, and TR were killed.

93) **Count 83 - Procuration of Unlawful Carnal Knowledge contrary to section 131 (1) (a) of the Penal Code Act**

The prosecution intends to adduce evidence to prove that between February 1996 and the year 2005, the accused and rebels under his commanded attacked several villages in Perecu, Akwa and Abera and took several girls and women hostage and sexually abused them. Regarding this charge TR was forced by the accused, to marry one of his fighters.

The Elements of the offence of Procuration of Unlawful carnal knowledge are:

- That the accused procured a girl or woman;
- That the girl was below 18 years or in case of a woman she was below 21 years of age.
- That the accused did as above with the intent that the girl or woman might be, or knowing it likely that she would be

forced or seduced to have unlawful an carnal connection with another person.

I find that the statement of TR among others established this element to the required standard.

Command responsibility/ superior responsibility

- 94) Some of the crimes attributed to the accused were not committed by him in person. The principle of command responsibility is invoked by the prosecution as responsible for his liability. It is contended by the prosecution that the accused had effective command and control, or authority and control over his subordinates between 1992 and 2005. He mobilized his authority and power in the LRA to secure compliance with his orders and he carried out and caused his subordinates to carry out the conducts 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. That despite the effective control he held over his subordinates at the relevant time, he culpably failed to adopt necessary and reasonable measures to prevent or punish their crimes.
- 95) To hold a commander responsible for the crimes of his subordinate, it must be established beyond reasonable doubt that:

- a) There existed a superior-subordinate relationship between the superior and the perpetrator of the crimes;
- b) The superior knew or had reason to know that the criminal act was about to be or had been committed; and
- c) The superior failed to take the necessary and reasonable measures to prevent the criminal act or to punish the perpetrator thereof. (See: *Zlatko Aleksovski, Trial Judgment, 24th March 2000, para 72*).**

From my examination of the statements provided to this court, I find the evidence therein sufficient to prove the fact of command responsibility.

- 96) Consequently, this court finds that the prosecution has established sufficient evidence to establish substantial grounds to believe that Thomas Kwoyelo alias Latoni is responsible for the charges brought in the indictment and accordingly confirms all the charges in the amended indictment. Thomas Kwoyelo alias Latoni is committed to the Trial Panel on the charges as confirmed.
- 97) This decision and the record of the proceedings of the Pre-Trial Court is transmitted to the Registrar of this Court.

Susan Okalany

Judge

30th August 2018

In the presence of:

Her Worship Harriet Ssali – Registrar International Crimes Division

Prosecution Counsel: Mr. Richard Kaamuli – Principal State Attorney -
Lead State Counsel

Mr. William Byansi - Senior Principal State Attorney

Ms. Florence Akello - Principal State Attorney

Victims Counsel: Mr. Kilama Komakech

Defence Counsel: Mr. Caleb Alaka - Lead Counsel on Private Brief

Mr Dalton Opwonya - Defence Counsel on State Brief

Mr. Robert Ochan: Court Clerk/ Acholi language Interpreter.