



**TRIAL CHAMBER IX**

**Before: Judge Bertram Schmitt, Presiding Judge  
Judge Péter Kovács  
Judge Raul C. Pangalangan**

**SITUATION IN UGANDA**

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

**Trial Judgment**

[...]

**A. Applicable law**

Crimes against humanity

a. Contextual element

2673. The chapeau of Article 7(1) of the Statute, which sets out the contextual elements of crimes against humanity, reads: ‘[f]or the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack’. The provision is complemented by Article 7(2)(a) of the Statute which stipulates: “[a]ttack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack’.

*i) Attack against any civilian population*

2674. An ‘attack’ in this context means a ‘course of conduct involving the multiple commission of acts referred to in [Article 7(1)]’. The requirement that the acts form part of a ‘course of conduct’ indicates that Article 7 is meant to cover a series or overall flow of events, as opposed to a mere aggregate of random or isolated acts. The ‘multiple commission of acts’ sets a quantitative threshold involving a certain number of acts falling within the course of conduct.

2675. The course of conduct must be ‘directed against any civilian population’, namely a collective, as opposed to individual civilians. The civilian population must be the primary target

of the attack and not an incidental victim of it. The presence within a civilian population of individuals who do not fall under the definition of ‘civilians’ does not deprive the population of its civilian character. Further, and although the attack must be directed against a civilian population, there is no requirement that the individual victims of crimes be civilians; they need only be ‘persons’ under the Elements of Crimes. In any case, the Chamber notes that there also must be a sufficient nexus to an attack against a ‘civilian’ population.

*ii) Organisational policy*

2676. The ‘course of conduct involving the multiple commission of acts’ must take place ‘pursuant to or in furtherance of a State or organizational policy to commit such attack’ within the meaning of Article 7(2)(a) of the Statute. The Elements of Crimes specify that the “‘policy to commit such attack” requires that the [...] organization actively promote[s] or encourage[s] such an attack against a civilian population’. For the purposes of this judgment, only the ‘organisational policy’ prong is relevant.

2677. As regards the ‘organisation’ pursuing the policy, the Chamber adheres to the definition established by Trial Chamber II:

In the Chamber’s view, the connection of the term “organisation” to the very existence of the attack and not to its systematic or widespread nature presupposes that the organisation has sufficient resources, means and capacity to bring about the course of conduct or the operation involving the multiple commission of acts referred to in article 7(2)(a) of the Statute. It therefore suffices that the organisation [has] a set of structures or mechanisms, whatever those may be, that are sufficiently efficient to ensure the coordination necessary to carry out an attack directed against a civilian population.

2678. As the terms ‘pursuant to or in furtherance of’ imply, the policy requirement ensures that the multiple acts forming the course of conduct are linked. It ensures that acts which are unrelated or perpetrated by individuals acting randomly on their own are excluded. [...]

*iii) Widespread or systematic attack*

2680. The alternative qualifiers of ‘widespread’ or ‘systematic’ serve to characterise the ‘attack’ itself.

2681. The term ‘widespread’ connotes the large-scale nature of the attack and the number of targeted persons. 7098 The assessment of whether the attack is widespread is neither exclusively quantitative nor geographical, but must be carried out on the basis of all the relevant facts of the case.

2682. The term ‘systematic’ reflects the organised nature of the violent acts, referring often to the existence of ‘patterns of crimes’ and the improbability of their random or accidental occurrence. [...]

[b]. Nexus requirement and perpetrators’ awareness

2688. Crimes against humanity must have been committed as part of a widespread or systematic attack directed against a civilian population. When assessing such a nexus, due regard must be given to the characteristics, aims, nature and consequences of the acts concerned. [...]

2690. [The] nexus requiremen[t] find [its] subjective equivalent in the requisite knowledge or awareness of the perpetrator.

2691. In the case of a crime against humanity, the perpetrator must know that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population. However, it is not necessary that the perpetrator be aware of the precise details of the plan or policy of the State or organisation. [...]

2693. These nexus and awareness requirements must be met in order to prove any crime against humanity [...]. All crimes set forth in the next sub-section must have been committed with the required nexus and awareness of the perpetrator.

[...]

## **B. Legal characterisation of the facts**

### *i) Contextual elements of crimes against humanity*

2798. The Chamber found that throughout the period of the charges, i.e. from 1 July 2002 to 31 December 2005, in Northern Uganda, the LRA killed, injured and enslaved a large number of civilians in numerous attacks on individual civilians, IDP camps and other civilian locations. It also abducted and enslaved, and used as sexual slaves and so-called ‘wives’, and as domestic servants, a large number of civilians. This constitutes a course of conduct involving the multiple commission of acts referred to in Article 7(1) of the Statute, directed against a civilian population, i.e. the civilians of Northern Uganda, within the meaning of Article 7(2)(a) of the Statute.

2799. Moreover, as found by the Chamber, the LRA had a hierarchical structure, with Joseph Kony being the highest authority. [...] The LRA was further divided into four brigades: Sinia, Stockree, Gilva and Trinkle. [...] The brigades were divided into battalions and further into companies or ‘coys’. Each of these units was led by a commander. Orders were generally communicated from Joseph Kony [...] to the brigade commanders, who communicated them to the battalion commanders, who in turn passed them to their subordinates. Joseph Kony’s orders were generally complied with. [...]

2800. The LRA had at its disposal weapons and ammunition for use in military operations. It regularly seized weapons from the UPDF during combat. It also obtained weapons and other supplies from Sudan. The LRA supplied itself with food, medicines and other items of use by looting from civilians in Northern Uganda, in particular from IDP camps. The LRA relied on high-frequency radio as the principal mode of communication between units in various locations in Northern Uganda and Sudan.

2801. The Chamber also found that the LRA perceived as associated with the Government of Uganda, and thus as the enemy, the civilians living in Northern Uganda, in particular those who lived in government-established IDP camps in Northern Uganda. LRA commanders routinely declared that civilians were failing to support the LRA in its effort against the government and should be killed by the LRA.

2802. On the basis of these facts, the Chamber finds, first, that the LRA meets the definition of an ‘organisation’ for the purposes of Article 7(2)(a) of the Statute. Further, the repeated occurrence of attacks on individual civilians, IDP camps and other civilian locations, and the LRA’s perception of civilians living in Northern Uganda as associated with the Government of Uganda, and thus as the enemy, of civilians living in Northern Uganda as well as the fact that the LRA abducted and enslaved, and used as sexual slaves and so-called ‘wives’, and as domestic servants, a large number of civilians in a coordinated and methodical effort, reveal that the acts described above as an attack against the civilian population occurred pursuant to a policy to attack the civilian population.

2803. On the basis of the temporal and geographic extent of the attack, the Chamber finds that it was widespread within the meaning of Article 7(1) of the Statute. In addition, considering that throughout the period of the charges the LRA attacked civilians living in Northern Uganda whom, as recalled, it perceived as associated with the Government of Uganda and considering again that the LRA, as part of a coordinated and methodical effort, abducted and enslaved, and used as sexual slaves and so-called ‘wives’, and as domestic servants, a large number of civilians, the Chamber finds that the attack was also systematic in nature. [...]

2805. The Chamber found that Dominic Ongwen knew that throughout the period of charges, in Northern Uganda, the LRA killed and injured a large number of civilians in numerous attacks on individual civilians, IDP camps and other civilian locations, and that it abducted and enslaved, and used as sexual slaves and so-called ‘wives’, and as domestic servants, a large number of civilians. In addition, the Chamber found that Dominic Ongwen knew that the LRA perceived (and also himself perceived) the civilians living in Northern Uganda as associated with the Government of Uganda – and thus as the enemy. On this basis, the Chamber finds that Dominic Ongwen knew that the conduct in relation to the crimes charged under Counts 2, 4, 8, 10, 12, 14, 16, 20, 23, 25, 27, 29, 33, 36, 38, 40, 42, 46, 49, 50, 51, 53, 55, 57, 58, 61, 62, 64, 66 and 68 was part of a widespread and systematic attack directed against a civilian population.

2806. On the basis of the above, the Chamber concludes that the contextual elements are satisfied in respect of the crimes against humanity charged under Counts 2, 4, 8, 10, 12, 14, 16, 20, 23, 25, 27, 29, 33, 36, 38, 40, 42, 46, 49, 50, 51, 53, 55, 57, 58, 61, 62, 64, 66 and 68.

### **Otázky:**

1. Co znamená (jako roli hraje) tzv. kontextuální prvek (*contextual element*) v definici zločinů proti lidskosti?
2. V čem tento prvek spočívá, tj. jaké požadavky z něj vyplývají?