Culture and the Illusion of Self-Evidence: Spiritual Beliefs in the Ongwen Trial

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Abstract

By definition, criminal trials are set to determine the guilt or innocence of the accused. In this process, judges are tasked with assessing not only evidence that presents itself in quantifiable forms, but also as personal experiences. In the case of Dominic Ongwen, a former child soldier and commander of the Lord’s Resistance Army (LRA), the issue of spiritualism played a significant role, particularly in relation to the affirmative defences of mental incapacity and duress. Assessing such culturally charged evidence, inherently interconnected to local beliefs, through the lens of an international criminal law trial raises a number of challenges. In the construction of the legal truth, such immaterial evidence undergoes a process through which only certain elements, which are deemed relevant in light of specific arguments, are ultimately selected, filtered through the legal framework, contested by the parties and ultimately decided upon by the judges. Spiritual beliefs therefore become patterns, and patterns become certainties. Based on an in-depth analysis of 408 trial transcripts, along with main submissions and decisions, this article sheds light into how framing spiritualism according to the criteria laid out in the Rome Statute has played out in the trial of Dominic Ongwen. It maps the way in which cultural concepts related to spirituality have been introduced into the trial, by which parties and for what purpose. It also looks at how the system of spiritual powers guiding the LRA and its fighters was assessed by the judges and potentially why.
Keywords

anthropology – culture – international trials – justice – spiritual beliefs

When I went with that stone I did exactly what I was told, and indeed the stone flew off my hands and it brought an image of the cross like with a colour – like the colour of a rainbow and it went off like a bomb. I was scared. It was the first time seeing such magic. I can never forget that. Up to now I remember it. When you are just told these things, you don’t believe, but many people in Uganda know about this. But there were rules regarding those bombs. No one was allowed to talk about Kony turning stones into bombs or Kony doing magic with those stones. But, for me, who is before this international court, I need to let the world know what took place. God knows I shouldn’t tell lies. That was the first miracle I saw in the LRA.

Dominic Ongwen, Sentencing Hearing

1 Introduction

On 15 April 2021 Ugandan defendant Dominic Ongwen made an unsworn statement in front of the judges at the International Criminal Court (ICC) in the Hague. In what the Chamber later characterized as a ‘display of self-pity’, the former child soldier talked about his brutal(izing) life in the bush. Kidnapped at the age of nine by the Lord’s Resistance Army (the LRA) led by Joseph Kony, his life had been, in his own words, ‘ruined’. He asked the Court to help rehabilitate him. As a victim of the war in Northern Uganda, he felt that his freedom had been taken away and that he had already been condemned twice: once when he was abducted by the rebels, and again when

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1 The title of this article was inspired by van Binsbergen’s paper in which he discusses how ‘culture’ can produce the illusion of self-evidence. See W.M.J. van Binsbergen, ‘Cultures do not exist!: Exploding self-evidences in the investigation of interculturality’, in Intercultural encounters: African and anthropological lessons towards a philosophy of interculturality (LIT, Berlin, 2003), pp. 459–522.

2 ICC, Prosecutor v Dominic Ongwen, Case No. 1CC-02/04-01/15, Trial Chamber IX, Sentencing, 6 May 2021, p. 18.

3 ICC, Prosecutor v Dominic Ongwen, Case No. 1CC-02/04-01/15, Trial Chamber IX, Sentencing Hearing, 15 April 2021, p. 19.

4 ICC, supra note 3, p. 19.
he ‘surrendered’ to the Court and ‘the world just snatched’ him with a rope around his neck.5

Since the start of his trial, this would be the second time that he would address the judges directly. In 2016, when the charges that he stood accused of were read out to him, he stated that he did not understand them because he was ‘not the LRA.’6 He maintained that he should not be held responsible for the crimes of an entire organization. Six years later, during the Sentencing Hearings, he talked for the first time about the indoctrination he was subjected to, about his beliefs in the mystical powers of Joseph Kony. He begged the judges to see that he is ‘just human.’7 He described everything that he endured as ‘despair’8 brought to his life from an early age, a despair so gripping that he felt unlucky to be still alive.9 After six years of various testimonies and expert reports on the belief system of the LRA, all aimed to determine whether Ongwen was indeed under the spirits’ command, the voice of the defendant was finally heard. He recalled his first encounter with the ‘miracles’ and the supernatural powers of Joseph Kony, issues that, as he stated, he was not previously allowed to talk about.10 Perhaps even as he took the stand before the judges, removed from the grip of the rebel forces, he did so with reluctance. He believed that Joseph Kony held everyone ‘in his hands’11 and therefore controlled not only Northern Uganda, but the whole world, which by extension, would (also) mean the Court in the Hague. At the time he made his plea to the judges, he had already been found guilty of 61 counts of war crimes and crimes against humanity.12

From the outset of the trial, the Defence characterized the conflict in Northern Uganda as ‘complex in nature, steeped in metaphysics and spiritualism’,13 words that would be repeated in its Closing Statement.14 The Defence pleaded for an acquittal or for having Ongwen undergo the Acholi process of Mato
On 4 February 2021 Dominic Ongwen was found guilty for most of the charges leveraged against him and on 6 May 2021, he was sentenced to 25 years of imprisonment, five years more than what the Prosecution had suggested. In its opening and Closing Statement, the Prosecution had acknowledged that ‘15 years before he committed these terrible crimes, Mr Ongwen was himself a victim of the LRA’ and that:

the testimony of other former child soldiers is enough to tell us that he probably suffered greatly. He would have been beaten, forced to beat or even kill others, and subjected to spiritual and political indoctrination. He would have suffered hunger, grief, and fear. In effect, the LRA stole from Mr Ongwen his childhood, his education, and his best chance to lead a normal life surrounded by family and friends.

The Prosecution also added that his ‘previous experience as a child soldier does not in any way diminish the gravity of the crimes, nor does it diminish his criminal culpability for those crimes.’ The judges ultimately determined that Ongwen was guilty of most of the crimes he stood accused of, and furthermore, that ‘much of his relevant conduct resulted instead from his own initiative.’ They reasoned that if his past shields him from anything, it is from a sentence of life imprisonment which ‘would surely be in order in the present case.’ On the issue of spirituality, the Chamber concluded that many of the soldiers who had been in the LRA long enough no longer believed in the powers of Joseph Kony and inferred this must have been the case for Ongwen himself.

Through an in-depth analysis of the Ongwen proceedings, which includes all publicly available trial documents in English (one of the working languages of the Court), this paper maps the way in which culture, broadly, and spiritualism in particular, was introduced into the trial and assessed by the parties. A total of 408 trial hearing transcripts, in addition to party submissions and decisions (in particular the trial judgment, the sentence and appeal judgment) were analysed using the qualitative software, Nvivo. Through coding, also known

15 ICC, Prosecutor v Dominic Ongwen, Case No. ICC-02/04-01/15, Trial Chamber IX, Defence Closing Brief, 13 March 2020, p. 197.
16 ICC, supra note 6, pp. 35–36.
17 ICC, Prosecutor v Dominic Ongwen, Case No. ICC-02/04-01/15, Trial Chamber IX, Sentencing Hearing, 14 April 2021, p. 8.
18 Ibid.
19 ICC, supra note 17.
20 ICC, supra note 12, para 2665, p. 935.
21 ICC, supra note 2, para 386, p. 127.
22 Ibid.
as tagging, I identified which key concepts were explicitly defined by the trial participants as cultural, with a particular focus on concepts related to spiritualism. I linked these concepts to the trial participants that addressed them, and I grouped them under broader themes. A map depicting the prevalence of these cultural concepts and their relationship with the actors in the trial emerged from the coding. This map provides: (i) an overview of which concepts were introduced into the proceedings and at what stage during the trial; (ii) by which actor (Prosecution, Defence, Victims’ Representatives, witnesses); (iii) for what purpose were they introduced; (iv) their interaction with the legal framework that governs the trial proceedings; and (v) the way in which they were addressed in the trial decisions (most importantly the judgment and appeal). This paper will therefore highlight the main findings of this qualitative analysis based on an in-depth reading of the court documents pertaining to this trial. In this study, culture is understood as, on the one hand, a ‘a system of inherited conceptions expressed in symbolic forms’ though which people ‘communicate, perpetuate, and develop their knowledge about and attitudes toward life.’23 Spiritual beliefs are therefore part of this system of conceptions. Culture equally manifests as a series of ‘orientations’24 that individuals draw upon in order to navigate daily life, on the other hand. As a product of specific societal norms, law as an ‘objective’ tool is not the opposite of ‘subjective’ culture, but is culture as well.25

In order to map the way in which culture broadly, and spirituality in particular, played a role in the trial of Dominic Ongwen at the ICC, this paper addresses several key issues. First of all, section two provides an overview of the legal framework under which the issue of spirituality was put forward by the Defence. Section three focuses on how culture and spiritual beliefs were presented in order to meet the legal criteria of duress and mental incapacity. Section four looks at how the judges evaluated this type of evidence and highlights the tensions surrounding what is ‘reasonable’ to believe in determining whether Ongwen had ‘a mind of his own.’26 Section five provides a few concluding remarks.

24 Van Binsbergen, supra note 1, p. 476; It must be noted that one limitation of this paper is that it is not devoid of the author’s own ‘cultural orientation’, which stems from her own background and training. To a certain extent this has been mitigated by the fact that the author does not seek to define which submissions are cultural, but to highlight what the parties themselves have identified as ‘culture.’
26 ICC, supra note 13, p. 4.
Legal Framework – the Affirmative Defences of Mental Incapacity and Duress

Arguing duress and mental incapacity, the Defence submitted that Ongwen, who had been subjected to a military and spiritual ‘indoctrination that has shocked the conscience of the world’,\(^\text{27}\) should be acquitted of all charges. The following section will firstly highlight the legal framework under the Rome Statute in relation to the mental elements required for criminal responsibility, with a specific focus on the defences of mental incapacity and duress available at the ICC. It will then show how these affirmative defences were pleaded in relation to the issue of spiritual beliefs.

Article 30 of the Rome Statute\(^\text{28}\) provides several criteria that must be satisfied in order for the Court to find an accused criminally responsible. The accused must have ‘intent’ and ‘knowledge’ which are accordingly defined as requiring that: (i) the accused must mean to engage in the conduct with which he/she is charged and; (ii) that he/she is aware of the consequences that will occur as a result of his actions. In the context of an international criminal trial, such as Ongwen's, the Prosecutor would be required to prove these mental elements beyond a reasonable doubt, in order to satisfy the Trial Chamber that the defendant was criminally responsible. If these mental elements had been lacking, then Dominic Ongwen could not have been held to be criminally responsible.

However, the Rome Statute further provides for, in Article 31,\(^\text{29}\) specific grounds where criminal responsibility can be excluded and contains what can be conceptualized as the ‘affirmative defences’ for an accused. Article 31 of the Statute is somewhat unique in that it represents the first comprehensive codification of ‘affirmative defences’ at the international criminal level.

2.1 Mental Incapacity

Article 31(1)(a) represents the Defence of ‘mental incapacity.’ The phrasing of the provision is disjunctive in that the accused must suffer from a mental disease or defect that destroyed (i) his or her capacity to appreciate the unlawfulness or nature of his or her conduct or (ii) his or her capacity to control his or her conduct to conform to the requirements of the law. Notably, ‘mental disease or defect’ is not further defined in the Statute nor in the Rules of Procedure and Evidence and accordingly, the concept has potentially a wide

\(^{27}\) ICC, supra note 13, p. 21.


\(^{29}\) ICC, supra note 28, Article 31.
interpretation, meaning that there is no requirement that the disease or defect be officially or medically recognised. In addition, Article 31(1)(a) provides for a causative element in that the mental disease or defect must in itself destroy an accused’s aforementioned capacity. The use of the term ‘destroy’ arguably raises the threshold for this Defence to a very high level. A mere impact or influence would not suffice but rather a complete destruction of an accused’s capacity to either appreciate the legality of his or her conduct or his or her ability to control his conduct to conform to the requirements of the law.

2.2 Duress

Article 31(1)(d) of the Statute encompasses the defence of duress. Duress entails the situation where the accused commits a crime within the jurisdiction of the Court, however, he or she cannot be held criminally responsible, because they committed the crime due to threat of imminent death or serious bodily harm against him or her or another person. Essentially, the defence of duress is rooted in the notion that the accused’s actions can be understood due to the circumstances that existed at the time that he or she committed the crime. Under Article 31(1)(d) of the Statute, in order to be successful in this defence, an accused must satisfy several cumulative elements. First, there must be an imminent threat of death or of continuing or imminent serious bodily harm. This threat can either be against the accused himself or against a third party. Second, the accused must have acted necessarily and reasonably to avoid the threat. In this sense, a reaction to a threat will be necessary in that it was the only possible means to deter the threat and that it was reasonable in the circumstances for the accused to react in this way. Third, the person must not intend to cause a greater harm that the one sought to be avoided. This phrasing introduces the requirement that the accused's actions must be proportionate to the harm threatened. It is not explicitly required that the accused causes less harm in fact, by rather that the person intended to cause no greater harm.30

The defence of duress has generated extensive legal discussion amongst academics,31 yet there has been limited jurisprudential analysis at the international criminal level.

Culture as Part of the Evidence

In the Ongwen trial, the Defence tried to show that on the one hand, spiritual beliefs were widespread in Northern Uganda and, more importantly, that the LRA had its own system of belief. It underlined that the horrific and transformative process that Dominic Ongwen went through from an early age left ‘little room for moral development that would enable him to later take independent decisions.’ Intertwining culture into the legal submissions made before the judges would prove to be problematic. According to Anthony Good, culture becomes particularly challenging when is ‘teleologized in courts of law, transformed from a conceptual tool of anthropological analysis into objective evidence,’ or perceived as a direct cause for actions or situations. Such issues become further complicated by the fact that in the courtroom there is no space to inspect the significant differences in how ‘lawyers and social scientists are trained to think and reason.’ Culture can therefore produce ‘the illusion of a self-evidence’ and of meaning, while this meaning can differ greatly from one individual to another.

While contemporary anthropology posits that culture ‘does not cause behaviour, but summarizes and abstracts from it, and is thus neither normative nor predictive,’ the reverse is implied by the way in which ‘culture’ is oftentimes treated in the legal process. In the debate between human rights versus cultural differences, and universalism versus cultural relativism, both sides ‘take for granted an essentialist understanding of cultural communities as clearly bounded and internally homogenous.’ While the starting premise is that laws have universal applications, submitting real-life situations to the lens of the legal framework reveals that they are resistant to the essentialization of such categories. Given that both ‘legal facts’ and the ‘facts of the case’ are social constructs, ‘culture’ is as performative as the legal arguments made by

33 ICC, supra note 13, p. 6.
35 Good, supra note 34.
36 Binsbergen, supra note 24, p. 461.
37 Good, supra note 34, p. 51.
38 Ibid.
39 Good, supra note 34, p. 52.
40 Ibid.
the trial parties. The following section will thus provide an over-view of the ways in which culture was slotted into the legal framework of the Court and to what result.

3.1 Spiritual Beliefs as Evidence

Tell me, if you encounter such things in your life, are you going to be normal? Are you going to remain normal for the rest of your life or are bad things going to happen to you?

DOMINIC ONGWEN, Appeals Hearing

During its Opening Statement, the Defence argued that mental incapacity and duress are ‘totally interrelated’ and that they share the ‘common element of control.’ Applying the Rome Statute criteria to the reality of Northern Uganda, and more particularly of the LRA, the Defence linked the affirmative defences to the supernatural powers of Joseph Kony, powers through which he could exert ‘mental control over the minds of the soldiers.’ In relation to Dominic Ongwen specifically, the Defence argued that the impact of spiritualism led to the situation where ‘Mr Ongwen’s mind was not his own.’

In probing whether during the charged period, 2002–2005, Dominic Ongwen had his mental capacity ‘destroyed’ and was acting under duress due to, in part, the intense spiritual indoctrination and surveillance he was under, several experts were brought in to evaluate him. They submitted reports and testified about the defendant’s mental health during hearings on 18-29 November 2019. While the Chamber relied to a certain extent on the expert witness testimonies and reports, when it came to assessing whether the LRA soldiers believed in the supernatural powers of Joseph Kony, the judges seem to have placed more weight on the testimonies of former LRA soldiers themselves, although in several instances their statements were only briefly mentioned in a footnote.

P-0142 for example, a Prosecution witness, had stated in his cross-examination that Kony’s predictions would often come true. He claimed that

41 Good, supra note 34, p. 52.
42 Prosecutor v Dominic Ongwen, Case No. ICC-02/04-01/15, Appeals Chamber, Trial Transcript, Appeals Hearing, 18 February 2022, p. 39.
43 ICC, supra note 13, 84.
44 Ibid.
45 ICC, supra note 13, p. 83.
46 ICC, supra note 13, p. 85.
47 ICC, supra note 13, p. 4.
his own escape from the armed group was proof of this, as the LRA leader had foreseen it. Nevertheless, when the Defence asked the witness whether he believed that Joseph Kony had spirits, P-0142 responded: ‘I could believe that maybe he has some spirit or in a certain way that the witch doctors would probably operate.’\textsuperscript{48} Several witnesses, such as P-0023\textsuperscript{49} and D-0049,\textsuperscript{50} stated that Joseph Kony was able to read minds and predict whether someone would try to escape and that several of his prophecies had come true. Two witnesses mentioned in the judgment among ‘some’ of the persons who ‘did believe in the spiritual powers of Joseph Kony,’\textsuperscript{51} namely witnesses D-0047 and D-0027, stated that ‘everybody believed’ in Kony’s powers, that people had been ‘working even without any payment because they know they are providing service to God,’\textsuperscript{52} and that ‘anybody who was a member of the LRA had the same belief that I did.’\textsuperscript{53} D-0024 on the other hand added that from ‘from the year 2000’\textsuperscript{54} onwards the spirits had punished and abandoned Kony and some of his prophecies would not come true anymore.\textsuperscript{55} Several witnesses similarly stated that while they believed at first, they later realized it was not true.\textsuperscript{56} P-0379 testified:

\textsuperscript{48} ICC, \textit{Prosecutor v Dominic Ongwen}, Case No. ICC-02/04-01/15, Trial Chamber IX, Trial Transcript, 8 May 2017, p. 20.


\textsuperscript{50} ICC, \textit{Prosecutor v Dominic Ongwen}, Case No. ICC-02/04-01/15, Trial Chamber IX, Trial Transcript, 23 September 2019, p. 22.

\textsuperscript{51} ICC, supra note 12, para. 2645, p. 932.


\textsuperscript{54} ICC, \textit{Prosecutor v Dominic Ongwen}, Case No. ICC-02/04-01/15, Trial Chamber IX, Trial Transcript, 6 November 2018, p. 18.

\textsuperscript{55} ICC, supra note 58, pp. 17-19.

\textsuperscript{56} The witness statements of Simon Tabo and of Kenneth Banya, which are not open to the public, are referenced in the judgment, See \textit{ICC, supra} note 12 paras 2653–2654, p. 932; P-0379 at ICC, \textit{Prosecutor v Dominic Ongwen}, Case No. ICC-02/04-01/15, Trial Chamber IX, Trial Transcript, 27 March 2017, p. 81; See also P-0070 at ICC, \textit{Prosecutor v Dominic Ongwen}, Case No. ICC-02/04-01/15, Trial Chamber IX, Trial Transcript, 18 September 2017, p. 19; See also ICC, \textit{Prosecutor v Dominic Ongwen}, Case No. ICC-02/04-01/15, Trial Chamber IX, Trial Transcript, 2 November 2017, p. 33.
We are told, we are told about these things. But later on I, I became wiser and I decided that the use of things like the holy spirit is done to brain-wash the younger children so that they do not escape.57

While certain witnesses stated that that Kony’s ability to read thoughts was merely guessing,58 they had not completely discounted the possibility that ‘there were spirits’59 or that others believed.60 Nevertheless, the answers were not always as straightforward as the differentiation in the judgment would make them seem. A linguistic analysis of the Ongwen trial reveals that the Judgment obscures the fact that testifying in the courtroom is a collaborative process, in which trial lawyers and judges not only elicit but also ‘co-author’ the evidence.61 And more so, extracting only a few short extracts ‘removes the broader canvas against which trial actors negotiate the meanings of such statements.’62 Witness D-0019 for example is listed in the judgment as a ‘non-believer,’ predominantly because he stated that he had sufficient knowledge to know the spirits do not exist. However, as the following snippet from his examination shows, when he was asked whether he believed in spirits, his answer was not a clear no, or yes. But rather more ambiguous, indicating a sort of oscillation between moments of stronger and lesser belief:

PRESIDING JUDGE SCHMITT: [12:19:24] Mr Witness, did you believe in these spirits?
THE WITNESS: [12:19:45](Interpretation) Sometimes, just like any human being, you can actually be of disbelief. But again, when you see what happens and it happens according to how Kony would predict, again at that

57 ICC, Prosecutor v Dominic Ongwen, Case No. ICC-02/04-01/15, Trial Chamber IX, Trial Transcript, 27 March 2017, p. 81; See also ICC, Prosecutor v Dominic Ongwen, Case No. ICC-02/04-01/15, Trial Chamber IX, Trial Transcript, 1 July 2019, pp. 44–46; See also ICC, supra note 51, pp. 17–19.
58 See, for example, P-0145 in ICC, Prosecutor v Dominic Ongwen, Case No. ICC-02/04-01/15, Trial Chamber IX, Trial Transcript, 17 January 2018, p. 58; P-0209 in ICC, Prosecutor v Dominic Ongwen, Case No. ICC-02/04-01/15, Trial Chamber IX, Trial Transcript, 28 February 2018, p. 52.
59 ICC, Prosecutor v Dominic Ongwen, Case No. ICC-02/04-01/15, Trial Chamber IX, Trial Transcript, 28 February 2018, p. 52.
60 Witness D-0134 stated ‘people who believed in him are still in the bush because they still believe that Kony has a spirit, as he told them’ at ICC, Prosecutor v Dominic Ongwen, Case No. ICC-02/04-01/15, Trial Chamber IX, Trial Transcript, 16 September 2019, p. 37.
62 Ibid.
point you believe. Before that he had, he had predicted that, for him, he will never ever be arrested, will just disappear in thin air. And up to now, unless I am mistaken, Kony has never ever been arrested. So sometimes as a human being, you can actually believe that probably this man's spirits worked. Now, for me, as somebody who has knowledge, a bit of knowledge, I don't believe in those spirits. But since things happened the way Kony had predicted, well, that is how it is.63

Two other crime-based witnesses explained that people did not have a choice but to believe, because they were not allowed to question it,64 so they had to follow the rules.65 As seen from the way in which witnesses oscillate and try to make sense of what guided their past behaviour, it can be seen that spiritual beliefs are not fixed constructs, which remain constant regardless of context or time, but that they are in constant fluctuation and transformation. Ultimately the judges rejected the defences of mental incapacity and the duress by conceptualizing ‘beliefs’ in a binary way which aimed to unveil that Ongwen and other commanders did not truly believe in the spiritual powers, but may have used the system of belief to manipulate the young and the naïve. However, this binary lens was ‘not exclusively the outcome of the judges’ recontextualization efforts,’ but the foundations of such an approach had already been established ‘at entextualization stage, in the questioning by the defence.’66 The way in which the witnesses’ answers are skilfully and subtly directed to follow a specific trajectory, reveal “the underlying “grammar” of the legal language game.”67 Additionally, a detailed reading of the testimonies reveals that a significant number of witnesses, most of which had underwent rituals and had to strictly obey certain regulations, when asked about Kony’s supernatural powers or the spiritual system of beliefs within the LRA, stated that they were unaware of either.68 These witnesses are not mentioned in the judgment. The process of ‘co-authoring evidence’ during trial proceedings and the Chamber’s decisions reduces the issue of spirituality to the believers/
non-believers dichotomy, while overlooking the effect of certain rules on controlling the soldiers' behaviour. What was omitted was the fact that how the soldiers would obey these said rules would most likely benefit from, but would not be entirely dependent on the component of belief.

3.1.1 The Battle of the Experts
Towards the end of the trial and after all crime-base witnesses were heard, mental health experts for the Prosecution, Defence and Victim's Representatives testified. Out of all these experts, Ongwen agreed to meet only those for the Defence: Drs Dickens Akena and Dr Emilio Ovuga. Between 18 and 29 November 2019, the Courtroom became a battle of the experts. Tensions rose high as in one instance the Prosecution labelled an answer that it received from a Defence expert witness as ‘nonsense.’69 Similarly, the Defence called out the Prosecution’s expert witness Weierstall-Pust for characterizing the report of the Defence experts as ‘sloppy.’70 This would culminate during the Appeals Hearings, when, referring to the way in which several testimonies on spirituality were dismissed by the trial chamber, Defence lawyer Ayena stated: ‘I don’t want to emphasise racism very much, but you could easily read it in this because all the evidence that was given by, you know, professors and experts who know better was completely ignored.’71

These exchanges and accusations reveal the contentious nature of such evidence, but also feed into the ongoing criticism that the Court faces in regard with its African bias.72 Additionally, such disagreements between the parties can point to the fact that while looking at the same phenomena, the baseline of the actors engaged in this process is so fundamentally different, that there seems to leave not much room for common ground. Nevertheless, it should be also noted that these exchanges take place during adversarial proceedings and that the nature of the trial itself is generative of very opposing views. Irreconcilable differences between different worldviews might have been at play, but also the views concerning the methodologies employed. For example, one point of disagreement was the possibility of Ongwen malingering or faking symptoms, especially since he had been exposed to hearing a lot of information...

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69 ICC, Prosecutor v Dominic Ongwen, Case No. ICC-02/04-01/15, Trial Chamber IX, Trial Transcript, 22 November 2019, p. 31.
70 ICC, supra note 15, pp. 164-165.
71 ICC, Prosecutor v Dominic Ongwen, Case No. ICC-02/04-01/15, Trial Chamber IX, Trial Transcript, 14 February 2022, p. 20.
about himself during the trial.\textsuperscript{73} The Defence experts nevertheless maintained that Ongwen had nothing to gain by pretending to be mentally ill.\textsuperscript{74}

Another issue of contention was related to cultural differences and the potential misunderstandings arising from this. The Defence argued that because its expert witnesses were Ugandan, they were able to communicate with the defendant in his own language and local dialect allowing them to ‘decode and decipher differences between what is culturally appropriate and what is not.’\textsuperscript{75} In order to show what type of misunderstandings can arise in the context of not being sufficiently familiar with the patient’s (cultural) background, the Defence pointed to one incident that occurred in detention: Ongwen had asked for termites or white ants for lunch and the request was perceived as a joke by the detention psychiatrist, who further reported that the defendant was in a good mood and did not present signs of depression. Defence experts explained that ‘white ants’ is a condiment in Uganda and that Ongwen’s request was a legitimate one and not indicative of being in good humour.\textsuperscript{76} The risk is that in the instances where practitioners ‘draw on their own cultural expectations of how a traumatised person will present, they may not recognise trauma in someone who does not conform to their norms.’\textsuperscript{77} This example is only one of the several put front by the Defence in order to highlight the way in which not having sufficient knowledge on the background of the person, in this case the defendant, can lead to misinterpretation and potentially misdiagnosis.\textsuperscript{78}

Concerning the aspect of spiritual possession, while the two teams of experts broadly agreed that one phenomenon or the same symptoms can have on the one hand a cultural explanation (spiritual possession) and a medical one (dissociation) depending on the person describing them, the issue became contentious when it came to the evidence or the proof that Ongwen had indeed suffered from this affliction. The Defence experts maintained that during the battles, Ongwen was possessed by spirits or that he was dissociating.

\textsuperscript{73} ICC, \textit{Prosecutor v Dominic Ongwen}, Case No. ICC-02/04-01/15, Trial Chamber IX, Prosecution Closing Brief, 24 February 2020, p. 168.
\textsuperscript{74} ICC, \textit{Prosecutor v Dominic Ongwen}, Case No. ICC-02/04-01/15, Trial Chamber IX, Trial Transcript, 21 November 2019, p. 32.
\textsuperscript{75} ICC, \textit{Prosecutor v Dominic Ongwen}, Case No. ICC-02/04-01/15, Trial Chamber IX, Trial Transcript, 18 November 2019, p. 32.
\textsuperscript{76} ICC, The Prosecutor v Ongwen, Case No. ICC-02/04-01/15, Trial Transcript, 19 November 2019, p. 51.
\textsuperscript{78} \textit{Ibid.}
and this could be proven by the fact that numerous witnesses described him as extremely brave, which indicated something ‘abnormal’ about him.\textsuperscript{79} They also underlined that ‘if the patient was dissociating in the context of being spiritually possessed, in the context where everybody was controlled by the spirits,’\textsuperscript{80} other people going through the same possession would not be able to recognize that because it affected their own judgment as well, especially in the context of ‘shared delusions.’\textsuperscript{81} Their assertion was therefore that other LRA members would not be able to notice this dissociative episodes because they were themselves under the spell of the spirits. On the issue of whether spiritual possession could be characterized as a mental disease or not, the Ugandan experts consider that his episodes of being possessed were beyond what would be ‘normal’ within the cultural framework and that he suffered episodes of dissociation.\textsuperscript{82} The Prosecution highlighted that on the one hand, the Defence experts explained how in certain instances, Ongwen’s spiritual possessions/dissociative states were involuntary, while on the other hand, the same experts had suggested that at other times the defendant could suppress or hide these dissociative states from the others. According to the Prosecution experts, such explanations were self-contradictory.\textsuperscript{83}

Moreover, the Prosecution also tried to show that the so-called ‘miracles’ that some of the LRA members had talked about, had been in fact not verified for their truth value. Therefore, when it came to the idea of a shared delusion, it criticized the fact there was no attempt to challenge the explanations given by the former LRA concerned the ‘miracles’ that they observed. On the other hand, the Prosecution took issue with the fact that the Defence did not corroborate Ongwen’s self-reported episodes of spiritual possession. For example, in one instance, the Prosecution asked Dr Akena to explain whether ‘chances are that it’s valid, true, that Joseph Kony could turn stones into bombs’\textsuperscript{84} to which the expert replied that ‘is something that everybody else seems to believe in,’\textsuperscript{85} an answer which was labelled as not helpful.\textsuperscript{86} A similar approach was taken during the cross-examination of Defence expert witness, anthropologist and political scientist Kristof Titeca. The Prosecution also

\textsuperscript{80} Ibid, p. 95.
\textsuperscript{81} Ibid.
\textsuperscript{82} ICC, supra note 81, p. 23.
\textsuperscript{83} ICC, supra note 78, p. 31.
\textsuperscript{84} ICC, supra note 79, p. 109.
\textsuperscript{85} Ibid.
\textsuperscript{86} Ibid.
challenged the witness by stating he should have verified the truth value of the beliefs held by the former LRA s. It implied that there is an objective baseline of reasonableness in establishing what is believable or not. This approach suggests a failure on the part of the Prosecution to appreciate the “emic” nature of the anthropological endeavour (which focuses on the view from within the culture that is researched, or the insider’s perspective), which is very different than the endeavour of a lawyer. This points to what Anthony Good exemplified as a mismatch between how ‘lawyers and social scientists are trained to think and reason’ when dealing with the same phenomenon. Simultaneously, such an approach does not account for the fact that what is deemed reasonable or believable is equally cultural dependent, and not based on universal and objective criteria.

The judges would ultimately not rely on Kristof Titeca’s evidence based on the fact that the expert had not challenged ‘the statements made to him about the spiritual influence on LRA fighters and did not consider it to be his role to make a judgment about the truthfulness or falsity of the statements.’ The judges considered that ‘his evidence is only of very limited value in the present proceedings, especially given the abundance of direct evidence of witnesses.’

Both Prosecution and Victim’s Representatives challenged the idea that the recruits, in particular commanders such as Ongwen, actually believed in the supernatural powers of Joseph Kony. The parties interpreted the fact that the defendant had defied Kony’s order on certain occasions as evidence of his lack of fear and belief in Kony’s spiritual powers, an approach that was ultimately adopted by the Chamber as well. The Defence and its expert witnesses offered a different explanation, suggesting that at one point, Ongwen ‘really didn’t care whether he would be alive or dead’ and that his behaviour was that

88 Good, supra note 37, p. 47.
89 See, for example, Good, supra note 37, pp. 48–50.
90 ICC, supra note 12, para 597, p. 216.
91 Ibid.
92 See, for example, ICC, Prosecutor v Dominic Ongwen, Case No. ICC-02/04-01/15, Trial Chamber IX, Trial Transcript, Confirmation of Charges, 27 January 2016, pp. 25–26; See also ICC, Prosecutor v Dominic Ongwen, Case No. ICC-02/04-01/15, Trial Chamber IX, Trial Transcript, Prosecution Closing Statement, 10 March 2020, p. 10.
93 ICC, supra note 79, p. 107.
of a ‘madman.’ While the parties offered diverging explanations on the correlation between behaviour and belief, they did not explain based on what criteria these inferences could be made. Determining a link between spiritual beliefs and behaviour seemed at times to rely on a presumed universal expectation on how an individual should behave in certain circumstances, and at others, through comparison with how other individuals have behaved in similar situations. When it came to the strength of the defendant’s belief in the power of Joseph Kony, the Defence expert Dr Ovuga also conceded that Ongwen was not entirely under the leader’s spell:

I don’t think he [Ongwen] was 100 per cent convinced, although to us in the clinical interview he did mention certain belief systems related to spirit protection of the soldiers when their bodies are smeared with oil, so that they don’t get hurt. So I think with respect to Mr Ongwen, the influence he’s – maybe 75/25, I’m just speculating, 75 being for and 25 per cent being against.

But the main issue concerning the submissions on the role of spiritualism impacting the behaviour of the defendant was, according to the Prosecution, the fact that the Defence did not show ‘any link between these [spiritual beliefs] and Mr Ongwen’s crimes’ and that this was because ‘no such link can be found in the evidence heard in this case.’ Moreover, it faulted the Defence for not showing that a threat or harm coming from the spirits themselves had existed before each crime and each attack:

No witness suggested that Mr Ongwen was visited by spirits prior to or during any of the charged attacks or the sexual and gender-based crimes and crimes against children. Moreover, despite many assertions about Kony’s spiritual orders and rules, LRA commanders, including Mr Ongwen, frequently violated them.

In his Unsworn Statement during the Sentencing Hearings, Dominic Ongwen would address some of the points raised by the Prosecution. He spoke in open

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94 ICC, supra note 14, p. 8.
95 ICC, Prosecutor v Dominic Ongwen, Case No. ICC-02/04-01/15, Trial Chamber IX, Trial Transcript, 29 November 2019, p. 10.
96 ICC, Prosecutor v Dominic Ongwen, Case No. ICC-02/04-01/15, Trial Chamber IX, Trial Transcript, Prosecution Statement at Sentencing Hearing, 14 April 2021, p. 17 (brackets within quote added).
97 ICC, supra note 100, p. 18.
court about his own beliefs. He described how, at a very early age, he witnessed a stone fly off his hand ‘like a bomb,’ in what he described as ‘magic’ and the ‘first miracle’ by Joseph Kony. He said that if he would have been able to, he would have stopped the spirits ‘from possessing Kony and prohibiting him from committing all these crimes.’ He confirmed that the LRA leader indeed ‘has the spirits.’ He said that there is ‘no jail in the world which is tougher than that of LRA’ and that there has been a moment when he felt that he was going mad, so that he even sometimes refused the orders of Joseph Kony. He pleaded with the Court to help him so in the future he could ‘be a better human being.’ Having mentioned several times that he was a very religious man, he ended his statement with ‘God bless you all.’

4 The Judicial Assessment of Culture: Spirituality and the Rome Statute Criteria

At the end of the trial, in its Closing Statement, Defence lawyer Obhof asked: ‘But the bottom line is, look, whom do you believe? (...) So this is really – that’s really a question at the end of the day.’ The word ‘to believe’ has been indeed used numerous times in the judgment, either referring to what the witnesses, the parties to the trial, or the judges believed ‘to be true.’ While the purpose of the trial is to reach legal truth, when it comes to something as intimate as spiritual beliefs and peeking into the minds of the people holding such beliefs, a court of law might not be best equipped to address such issues. The rigid nature of its purpose is to determine whether an individual is guilty or not of certain crimes, regardless of motives and personal circumstances.

In the trial judgment rendered on 4 February 2021, the Chamber stated that ‘the fact that Joseph Kony acted also as a spiritual leader, building on Acholi traditions, is uncontroversial and well-attested in the evidence.’ However,
when it came to the Defence’s argument that Ongwen had acted under duress while at the LRA, this ‘was examined in the same legalistic manner’\textsuperscript{107} in which the Chamber considered whether, ‘regardless of Ongwen’s past victimization, he could still be held criminally responsible.’\textsuperscript{108} Guided by the Rome Statute, the judges’ role was to determine only whether the LRA’s spiritual indoctrination and brutality constituted ‘a threat of imminent death or continuing or imminent serious bodily harm’ against Ongwen, and in this way quoted ‘verbatim the legal requirements for establishing duress.’\textsuperscript{109} Once the Chamber determined that the facts presented by the Defence did not meet the stringent criteria laid out in the Rome Statute, ‘their potential significance for shedding light on the system of indoctrination within which the defendant had been brought up appeared irrelevant.’\textsuperscript{110}

Additionally, the judges summarily noted that ‘there is evidence that some persons did believe in the spiritual powers of Joseph Kony.’\textsuperscript{111} They then provided a more extensive overview on the testimonies of the witnesses who either never believed in the cosmological order of the LRA, or who had been initially indoctrinated in it, but later ‘became wiser.’ While the testimonies of the ‘believers’ are relegated to a footnote,\textsuperscript{112} those of the non-believers are described in thirteen paragraphs spread over two pages in the judgment. While the judges deemed the testimonies of all these witnesses as overall credible, it is evident that they found the explanation of the former/non-believers much more compelling. The judges concluded that:

All of this evidence leads the Chamber to the conclusion that LRA members with some experience in the organisation did not generally believe that Joseph Kony possessed spiritual powers. There is also no evidence indicating that the belief in Joseph Kony’s spiritual powers played a role for Dominic Ongwen, and in fact the evidence of Dominic Ongwen defying Joseph Kony, discussed above, speaks clearly against any such influence. The Chamber therefore does not discern in the issue of LRA

\begin{thebibliography}{9}
\bibitem{2}{Ibid.}
\bibitem{3}{Ibid.}
\bibitem{4}{Ibid.}
\bibitem{5}{Ibid.}
\bibitem{6}{ICC, supra note 12, para 2645, p. 930 (emphasis added).}
\bibitem{7}{ICC, supra note 12, footnote 7047, p. 930.}
\end{thebibliography}
spirituality a factor contributing to a threat relevant under Article 31(1)(d) of the Statute.\footnote{113}

It is relevant to note a few details concerning the evidence of the witnesses that testified to the fact that LRA soldiers believed in the spiritual powers of Joseph Kony. For example, in relation to witness P-0142 (a believer), through selecting a particular sentence from his testimony, the judges highlighted that the witness used the word ‘maybe’ when it came to the spiritual order within the LRA: ‘maybe [Joseph Kony] has some spirit.’\footnote{114} About witness D-0056, they noted that the witness stated that he ‘did have some kind of belief, but not a hundred per cent belief.’\footnote{115} When it came to evaluating the overall credibility of these witnesses, the Chamber found that in relation to six out of the eleven non-believers and one believer out of the seven, parts of their testimony were not assessed as credible. For their part, the areas of their testimonies that were discounted either had to do with the witnesses minimizing their own role in the commission of a crime or the role of the defendant in an attack. Moreover, concerning two of the ‘believers’ who had stated that ‘everybody believed’ in Kony’s powers,\footnote{116} the Chamber noted that such assertions were ‘proved false by the evidence cited in the following paragraphs,’\footnote{117} therefore finding these generalizing statements as not believable. Determining witness credibility is ‘a balancing act’ and ‘a result of an interplay of various factors relating to each individual witness, assessed in the context of the evidentiary record as a whole.’\footnote{118} As such, inferring how the judges reach such conclusions by merely accessing transcripts of trial hearings and decisions remains therefore speculative. It seems that the judges found some explanations more plausible than others, weighing them against other evidence submitted on the record. The Chamber also added that there ‘is also no evidence indicating that the belief in Joseph Kony’s spiritual powers played a role for Dominic Ongwen, and in fact the evidence of Dominic Ongwen defying Joseph Kony, discussed above, speaks clearly against any such influence.’\footnote{119} This indicates that they found the Prosecution and Victim’s Representative explanation the most convincing.

\footnotetext{113}{ICC, supra note 12, para. 2658, p. 933.}
\footnotetext{114}{ICC, supra note 12, footnote 7047, p. 930.}
\footnotetext{115}{Ibid.}
\footnotetext{116}{ICC, supra note 56; See also ICC, supra note 60.}
\footnotetext{117}{ICC, supra note 12, footnote 7047, p. 930.}
\footnotetext{119}{Ibid.}
The fact that the Defence mental health experts also asserted that Ongwen himself had some doubts about the supernatural powers of Joseph Kony might have also weakened the assertion that Ongwen did not ‘have a mind of his own.’ Concerning the fact that Ongwen defied Kony several times – an issue presented by the Defence as proof of his suicidal tendencies, and by the Prosecution as a lack of fear of and belief in Kony’s powers, the judges determined that such behaviour indicated that Ongwen was not under the influence of the spiritual medium.\textsuperscript{120} Concerning the role of culture in assessing the mental state of Dominic Ongwen, the Chamber underlined that: ‘whereas Professor Ovuga and Dr Akena evoked cultural factors on several occasions, they did not provide any real explanation of what these factors were, how they impacted the analysis, and how their consideration was to take place according to the standards and practices of mental health expertise.’\textsuperscript{121}

The judges considered the issue of Ongwen having requested termites for lunch and being misunderstood as a joke by the detention psychiatrist, and the fact that the word ‘blues’ (to have the blues; to be blue) does not exist in many African languages\textsuperscript{122} as ‘trivial and without serious link to the issue under consideration.’\textsuperscript{123} Given the implications that such ‘trivial’ misunderstandings can have when it comes to misdiagnosing, it is surprising that the judges completely dismissed these suggestions. Moreover, they highlighted that the former LRA\textsuperscript{s} that testified in Court were credible and coherent witnesses\textsuperscript{124} and that none of them had noticed episodes of possession or disassociation in Dominic Ongwen. The chamber concluded that the defendant did not ‘suffer from a mental disease or defect at the time of the conduct relevant under the charges. A ground excluding criminal responsibility under Article 31(1)(a) of the Statute was not applicable.’\textsuperscript{125} Furthermore, in rejecting the spiritual or cultural aspect of the mental health assessment of Dominic Ongwen during the charged period, the judges stated that they were unable to rely on the reports submitted by the Defence expert witnesses. The reason for this exclusion

\begin{itemize}
\item \textsuperscript{120} ICC, supra note 12, para 2658, p. 933.
\item \textsuperscript{121} Ibid.
\item \textsuperscript{122} During the Appeal Hearings, the Defence submitted that: ‘Even the DSM-V acknowledges cultural factors. Dr Akena mentioned there’s no word for feeling, quote, blue in Acholi so that the mental literacy, the communication of psychological distress within the Acholi culture and the other cultures that exist in Uganda need to be considered when this whole topic of eyewitness testimony, what was observed, what was said, is considered.’ In ICC, Prosecutor v Dominic Ongwen, Case No. ICC-02/04-01/15, Appeal Chamber, Trial Transcript, 15 February 2022, p. 8.
\item \textsuperscript{123} ICC, supra note 12, para 2463, p. 871.
\item \textsuperscript{124} Ibid, para 2504, p. 885.
\item \textsuperscript{125} Ibid, para 2580, p. 909.
\end{itemize}
was based on concerns related to their methodology, the fact that it ‘is not in the role of a forensic expert to sustain a relationship of trust and confidence with the person to be examined for the court’\textsuperscript{126} and that their conclusions included ‘contradictions’ that are ‘major and readily apparent.’\textsuperscript{127} The judges noted also the insufficient triangulation of information and the heavy reliance on the defendant’s own self-reporting of symptoms.\textsuperscript{128} On a final note, while the judges did not explain how, the fact that the Defence relied on issue of spiritualism in order to raise the two affirmative defences, had an impact on the way in which the Chamber assessed this type of evidence, they indicated that:

On the one hand, it may be observed that the two grounds for excluding criminal responsibility cannot coexist even in the abstract, given that one is premised on a destruction of the person’s capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of the law, and the other on a conscious choice to engage in conduct which constitutes a crime based on an evaluation of the harm that is caused. On the other hand, the Chamber recognises that similar discussion of facts and evidence partly underlies the analysis of both grounds excluding criminal responsibility discussed in the present case, and to the extent that the Defence in fact aimed to make this point, the Chamber is confident that all relevant considerations have been made under each heading.\textsuperscript{129}

The same aspect was brought up by the Prosecution in its closing statement.\textsuperscript{130} This raises the question: how did the fact that spiritual beliefs were raised in relationship with two legal concepts that are diametrically opposed influence the way in which they were assessed?

For the Appeal Hearings, the Court invited various experts to submit amici curiae on several contentious matters of dispute between the parties, one of which, the issue of Dominic Ongwen’s mental health assessment. Dominic Ongwen took the stand again and described being kidnapped by the \textit{LRA} as joining a ‘spiritual army’\textsuperscript{131} as the ‘the spirits sent them to abduct a young

\begin{thebibliography}{9}
\bibitem{126} ICC, \textit{supra} note 12, para 2531, p. 893.
\bibitem{127}\textit{Ibid}, para 2544, p. 898.
\bibitem{128} \textit{Ibid}, paras 2551–2568, pp. 900–906.
\bibitem{129} ICC, \textit{supra} note 12, para 2671, pp. 937–938.
\bibitem{130} ICC, \textit{Prosecutor v Dominic Ongwen}, Case No. ICC-02/04-01/15, Trial Chamber ix, Trial Transcript, Prosecution Closing Statement, 10 March 2020, p. 55.
\bibitem{131} ICC, \textit{supra} note 46, p. 36.
\end{thebibliography}
child. The rituals that were performed on him clouded his mind and he said that to this day he feels as if he were drunk, although he never had alcohol in his life.

The Appeal Chamber nevertheless upheld the decision of Trial Chamber IX. However, Judge Luz del Carmen Ibáñez Carranza submitted a Partly Dissenting Opinion in which she held that the sentence imposed on Dominic Ongwen should have accounted more for his victim status. The judge highlighted submissions made by Erin Baines, Kamari M. Clarke and Mark Druml in their amici curae who submitted that: ‘Mr Ongwen’s mental and moral development were impacted by his experience as a child soldier, which ‘resulted in a destruction of [his] ability to understand the immorality of his actions.’ She held that Ongwen’s development within the ‘coercive environment of the LRA had a long-lasting impact on his personality, the development of his brain and moral values, and future opportunities. These circumstances merit significant weight in mitigation when imposing a new sentence on Mr Ongwen.’ While the partly dissenting opinion has no bearing on the outcome of the trial, it might be of significance at a later stage, if Ongwen would submit a request for early release.

5 Conclusion

This article aimed to shed light into the potential complications that arise on the one hand from the way in which a concept derived from anthropology has been employed in a legal setting, an arena that functions according to a different epistemic framework than the social sciences. This analysis is therefore not set up to offer definitive answers when it comes to the role of ‘culture’ in international criminal proceedings, but to raise questions concerning the way in which it impacts the delivery of justice. Furthermore, the article offers an overview of various other dynamics that play a role into how spiritual beliefs were assessed. It reveals a mismatch between what the judges expected from the expert witnesses in terms of their methodology, approach, reports and their testimonies and what was submitted to them. Also, while the judges did
not offer details concerning how it impacted their decision, the fact that they view the two affirmative defences as incompatible even in the abstract, might indicate the fact that they regarded certain Defence evidence as internally inconsistent and contradictory.

While speculative, an analysis of the judgment indicates that the Chamber seems to have considered that the extent to which LRA members in general, and Ongwen in particular, believed in the spiritual dimension of the LRA and in Kony’s supernatural powers, could be rationally inferred. According to the judges, this behaviour was in contradiction to Ongwen’s alleged beliefs in the supernatural powers of Kony. They appear to have considered that a direct and clear determinative correlation can be inferred between a person’s belief systems and their behaviour. This approach has been criticized by social scientists who posit that the court did not grasp the role of spiritualism in the LRA. Research into the belief system of the LRA seems to indicate that spirituality was a complex issue and that it played a central role in the way in which the soldiers perceived reality. However, socio-anthropological and political science research differs greatly from the work of a criminal courtroom; the individual asking the interviewee questions, and the (perceived) purpose of the questions, might skew the answers greatly. Confronted with the fact that their past acts are (potentially) criminal, former LRA soldiers might rationalize their lived experiences in different ways. Trials capture only a snippet of a past event that is reinterpreted or explained for very particular reasons and one needs to approach their findings while factoring in their considerable limitations, in particular when it comes to establishing historical truth or advancing understanding on the profile of the perpetrators, their motivations. Furthermore, the judgment does not present an exhaustive


overview of the testimonies of all the witnesses who were questioned on
the issue of spirituality. Only the most ‘contrasting’ answers are selected to
present an almost precise dichotomy of believers and non-believers, while the
testimonies of the witnesses who claimed to be unfamiliar with the issue of
the spirits or Kony’s supernatural powers are not even mentioned. Analysing
how the spiritual beliefs were assessed in this trial therefore needs to be based
on a close inspection of the evidence on the record, which determines the
parameters of how the parties ‘co-created’ the evidence with the witnesses
and how the judges evaluated these issues, and of the strict criteria that had to
be met in order to exclude criminal responsibility for acts so grave that can be
qualified as international crimes.

Thirdly, at a first glance, the judges seem to have taken an approach of
quantifying the extent to which the LRA soldiers believed in the powers of
Joseph Kony by giving an overview of the witnesses who proclaimed to be
believers versus those who were former believers or non-believers. However,
reading that section of the judgment alongside the individual assessment of
each witness, it becomes apparent that the extent to which the judges found
the statements of some witnesses more credible than others probably played
a more decisive role.

Determining the role of ‘culture’ throughout trial proceedings is a complex
task of untangling a myriad of threads, all so intertwined and embedded in
each other, that it is hardly possible to find where one starts and where it ends.
Or where and how they have merged. Submissions about culture more broadly,
and spirituality in particular, have been fused with the legal criteria they had
to measure up to, thus morphing into new concepts, specific to this trial.
Definitions of local cultural concepts have been intertwined with the various
legal, psychological, sociological understanding of them provided by various
experts and legal practitioners or in their description as lived experiences of
individual witnesses. Different views concerning the appropriate methodology
to measure and analyse these cultural concepts also came into play, subjecting
them to every participant’s own frame of reference. And engaging with these
concepts became a battle of diverging and sometimes heated arguments. The
impossibility to find common ground is often the result of the adversarial
nature of the proceedings. But it also reveals that this challenge to reach a
consensus is based on what various actors, all with different vested interests in
this trial, consider to be reasonable, believable, meaningful, not in legal sense,
but in the very subjective interpretation of reality.

139 D’hondt et al., supra note 61.
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