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**International  
Criminal  
Court**

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Date: **4 April 2021**

**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***

**Public**

**Public Redacted Version of**

**“Corrected Version of ‘Defence Brief on Sentencing’, filed on 1 April 2021”**

**Source: Defence for Dominic Ongwen**

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## I. INTRODUCTION

1. Pursuant to the “Decision scheduling a hearing on sentence and setting the related procedural calendar,”<sup>1</sup> the Defence for Dominic Ongwen (‘Defence’) hereby submits these arguments to Trial Chamber IX (‘Chamber’) for the purpose of drawing the Chamber’s attention to different mitigating and personal circumstances of Mr Dominic Ongwen, as well as to anticipated aggravating circumstances.
2. By making these submissions, the Defence does not concede Mr Ongwen’s guilt; nor does it waive its objections to the fair trial right violations, or any, in respect to Mr Ongwen’s right to a full translation of the Trial Judgment, live witnesses at the sentencing hearing, violations to his right – as a mentally disabled defendant – to be treated in full equality with non-disabled defendants and not to be discriminated against.

## II. CONFIDENTIALITY

3. Pursuant to Regulations 23*bis* of the Regulations of the Court, this submission is filed as confidential as it contains evidence not known to the public. The Defence shall file a public redacted version contemporaneously.

## III. APPLICABLE STANDARDS

### A. Purpose of Sentencing

4. Chambers of the Court have already determined that the primary purpose of sentencing at the ICC are retribution and deterrence.<sup>2</sup> The Chamber may also consider the rehabilitation of Mr Ongwen when deciding his sentence.<sup>3</sup>

<sup>1</sup> Trial Chamber IX, *Decision scheduling a hearing on sentence and setting the related procedural calendar*, [ICC-02/04-01/15-1763](#), para. 7.

<sup>2</sup> Trial Chamber VI, *Sentencing judgment*, [ICC-01/04-02/06-2442](#), para. 9 (citing Trial Chamber II, *Decision on Sentence pursuant to article 76 of the Statute*, [ICC-01/04-01/07-3484-tENG](#), para. 38; Trial Chamber III, *Decision on Sentence pursuant to Article 76 of the Statute*, [ICC-01/05-01/08-3399](#), para. 10; Trial Chamber VIII, *Judgment and Sentence*, [ICC-01/12-01/15-171](#), para. 66; Trial Chamber VII, *Decision on Sentence pursuant to Article 76 of the Statute*, [ICC-01/05-01/13-2123-Corr](#), para. 19; and Trial Chamber VII, *Decision Re-sentencing Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba and Mr Jean-Jacques Mangenda Kabongo*, [ICC-01/05-01/13-2312](#), para. 18(i)).

<sup>3</sup> Trial Chamber VI, *Sentencing judgment*, [ICC-01/04-02/06-2442](#), para. 10 (citing Trial Chamber II, *Decision on Sentence pursuant to article 76 of the Statute*, [ICC-01/04-01/07-3484-tENG](#), para. 38; Trial Chamber III, *Decision on Sentence pursuant to Article 76 of the Statute*, [ICC-01/05-01/08-3399](#), para. 11; Trial Chamber VIII, *Judgment and Sentence*, [ICC-01/12-01/15-171](#), para. 67; and Appeals Chamber, *Judgment on the appeals of the Prosecutor, Mr Jean-Pierre Bemba, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled “Decision on Sentence pursuant to Article 76 of the Statute”*, [ICC-01/05-01/13-2276-Red](#), para. 205).

5. Retribution in sentencing is not a means of revenge for the crimes, but “an expression of the international community’s condemnation of the crimes” and an acknowledgement of the harm caused to the victims by issuing a proportionate sentence.<sup>4</sup> Deterrence in sentencing should be enough to discourage individual recidivism and act to discourage others from committing similar crimes in the future.<sup>5</sup> While rehabilitation has been stated as not being a primary motivation in sentencing, it is a relevant factor which the Chamber should consider.<sup>6</sup>

## **B. Standard for mitigating circumstances**

6. Mitigating circumstances must be established by a balance of probabilities.<sup>7</sup> “Mitigating circumstances need not be directly related to the crimes and are not limited by the scope of the charges or Judgment. They must, however, relate directly to the convicted person.”<sup>8</sup>
7. The Chamber “has a considerable degree of discretion in determining what constitutes a mitigating circumstance in addition to those explicitly set out in Rule 145(2)(a) [and Rule 145(1)] of the Rules, and the weight, if any, to be afforded to it.”<sup>9</sup> Factors related to specific

<sup>4</sup> Trial Chamber VI, *Sentencing judgment*, [ICC-01/04-02/06-2442](#), para. 10 (citing Trial Chamber II, *Decision on Sentence pursuant to article 76 of the Statute*, [ICC-01/04-01/07-3484-tENG](#), para. 38; Trial Chamber III, *Decision on Sentence pursuant to Article 76 of the Statute*, [ICC-01/05-01/08-3399](#), para. 11; and Trial Chamber VIII, *Judgment and Sentence*, [ICC-01/12-01/15-171](#), para. 67).

<sup>5</sup> Trial Chamber VI, *Sentencing judgment*, [ICC-01/04-02/06-2442](#), para. 10 (citing Trial Chamber III, *Decision on Sentence pursuant to Article 76 of the Statute*, [ICC-01/05-01/08-3399](#), para. 11; Trial Chamber VIII, *Judgment and Sentence*, [ICC-01/12-01/15-171](#), para. 67; and Trial Chamber VII, *Decision on Sentence pursuant to Article 76 of the Statute*, [ICC-01/05-01/13-2123-Corr](#), para. 19).

<sup>6</sup> Trial Chamber VI, *Sentencing judgment*, [ICC-01/04-02/06-2442](#), para. 10 (citing Trial Chamber II, *Decision on Sentence pursuant to article 76 of the Statute*, [ICC-01/04-01/07-3484-tENG](#), para. 38; Trial Chamber III, *Decision on Sentence pursuant to Article 76 of the Statute*, [ICC-01/05-01/08-3399](#), para. 11; Trial Chamber VIII, *Judgment and Sentence*, [ICC-01/12-01/15-171](#), para. 67; and Appeals Chamber, *Judgment on the appeals of the Prosecutor, Mr Jean-Pierre Bemba, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled “Decision on Sentence pursuant to Article 76 of the Statute”*, [ICC-01/05-01/13-2276-Red](#), para. 205).

<sup>7</sup> See Trial Chamber I, *Decision on Sentence pursuant to Article 76 of the Statute*, [ICC-01/05-01/08-3399](#), para. 34; Trial Chamber II, *Decision on Sentence pursuant to article 76 of the Statute*, [ICC-01/04-01/07-3484-tENG](#), para. 34; Trial Chamber III, *Decision on Sentence pursuant to Article 76 of the Statute*, [ICC-01/05-01/08-3399](#), para. 19; Trial Chamber VIII, *Judgment and Sentence*, [ICC-01/12-01/15-171](#), para. 74; Trial Chamber VI, *Sentencing judgment*, [ICC-01/04-02/06-2442](#), para. 24.

<sup>8</sup> Trial Chamber III, *Decision on Sentence pursuant to Article 76 of the Statute*, [ICC-01/05-01/08-3399](#), para. 19 (citing Trial Chamber III, *Decision on requests to present additional evidence and submissions on sentence and scheduling hearing*, [ICC-01/05-01/08-3384](#), para. 27; Trial Chamber II, *Decision on Sentence pursuant to article 76 of the Statute*, [ICC-01/04-01/07-3484-tENG](#), para. 32; Trial Chamber I, *Decision on Sentence pursuant to Article 76 of the Statute*, [ICC-01/04-01/06-2901](#), para. 34; ICTR Appeals Chamber, *Judgement*, [ICTR-98-44A-A](#), 23 May 2005, para. 298; and ICTR Appeals Chamber, *Judgement*, [ICTR-2001-64-A](#), 7 July 2006, para. 198). See also Trial Chamber VIII, *Judgment and Sentence*, [ICC-01/12-01/15-171](#), para. 74; Trial Chamber VII, *Decision on Sentence pursuant to Article 76 of the Statute*, [ICC-01/05-01/13-2123-Corr](#), para. 24; and Trial Chamber VI, *Sentencing judgment*, [ICC-01/04-02/06-2442](#), para. 24.

<sup>9</sup> Trial Chamber VI, *Sentencing judgment*, [ICC-01/04-02/06-2442](#), para. 22 (citing Appeals Chamber, *Judgment on the appeals of the Prosecutor and Mr Thomas Lubanga Dyilo against the “Decision on Sentence pursuant to Article 76 of the Statute*, [ICC-01/04-01/06-3122](#), paras 43 and 111; Trial Chamber III, *Decision on Sentence pursuant to Article 76 of the Statute*, [ICC-01/05-01/18-3399](#), para. 19; Trial Chamber VIII, *Judgment and Sentence*, [ICC-01/12-01/15-171](#), para. 74; and Appeals Chamber, *Judgment on the appeals of the Prosecutor, Mr Jean-Pierre Bemba, Mr Fidèle Babala*

issues directly related to Mr Ongwen, while not forming part of the charges or crimes for which he was convicted, can be taken into account by the Chamber, such as his specific family situation, how Mr Ongwen's home state of Uganda has handled or is handling persons with similar or worse situations, education and cultural beliefs.

8. "The existence of mitigating circumstances that relate to the convicted person does not lessen the gravity of the offence."<sup>10</sup> Trial Chamber VI stated, "[i]n light of the purpose of sentencing, such circumstances are relevant considerations in determining whether the length of the sentence that would be appropriate on the basis of the gravity of the crime out to be reduced."<sup>11</sup>

### C. Standard for aggravating circumstances

9. Aggravating circumstances must be established beyond a reasonable doubt.<sup>12</sup> Aggravating circumstances must relate to the crimes upon which a person was convicted and to the convicted person himself, and not on alleged crimes not convicted or not forming the charges.<sup>13</sup> "Conduct *after* the offence must not be taken into account for its own sake."<sup>14</sup> "For a factor to be considered as aggravating, there must be a sufficiently proximate link between the factor and the crime or crimes that form the basis of the conviction."<sup>15</sup>

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*Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled "Decision on Sentence pursuant to Article 76 of the Statute", [ICC-01/05-01/13-2276-Red](#), para. 187).*

<sup>10</sup> Trial Chamber VI, *Sentencing judgment*, [ICC-01/04-02/06-2442](#), para. 23 (citing Trial Chamber II, *Decision on Sentence pursuant to article 76 of the Statute*, [ICC-01/04-01/07-3484-tENG](#), para. 77 and Trial Chamber VII, *Decision on Sentence pursuant to Article 76 of the Statute*, [ICC-01/05-01/13-2123-Corr](#), para. 24).

<sup>11</sup> Trial Chamber VI, *Sentencing judgment*, [ICC-01/04-02/06-2442](#), para. 23.

<sup>12</sup> See Trial Chamber I, *Decision on Sentence pursuant to Article 76 of the Statute*, [ICC-01/05-01/08-3399](#), para. 33; Trial Chamber II, *Decision on Sentence pursuant to article 76 of the Statute*, [ICC-01/04-01/07-3484-tENG](#), para. 34; Trial Chamber III, *Decision on Sentence pursuant to Article 76 of the Statute*, [ICC-01/05-01/08-3399](#), para. 18; Trial Chamber VIII, *Judgment and Sentence*, [ICC-01/12-01/15-171](#), para. 73; Trial Chamber VI, *Sentencing judgment*, [ICC-01/04-02/06-2442](#), para. 17.

<sup>13</sup> Trial Chamber III, *Decision on Sentence pursuant to Article 76 of the Statute*, [ICC-01/05-01/18-3399](#), para. 18 (citing ICTY Appeals Chamber, *Judgement and Sentencing Appeal*, [IT-02-61-A](#), 20 July 2005, para. 124 and SCSL Appeals Chamber, *Judgment*, [SCSL-04-15-A](#), 26 October 2009, para. 1276). See also Trial Chamber VI, *Sentencing judgment*, [ICC-01/04-02/06-2442](#), para. 18; Appeals Chamber, *Judgment on the appeals of the Prosecutor, Mr Jean-Pierre Bemba, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled "Decision on Sentence pursuant to Article 76 of the Statute"*, [ICC-01/05-01/13-2276-Red](#), para. 113; ICTY Appeal Chamber, *Judgement, Kunarac et al case*, [IT-96-23-T & IT-96-23/1-T](#), 22 February 2001, para. 850.

<sup>14</sup> Appeals Chamber, *Judgment on the appeals of the Prosecutor, Mr Jean-Pierre Bemba, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled "Decision on Sentence pursuant to Article 76 of the Statute"*, [ICC-01/05-01/13-2276-Red](#), para. 114.

<sup>15</sup> Trial Chamber VI, *Sentencing judgment*, [ICC-01/04-02/06-2442](#), para. 18 (citing Appeals Chamber, *Judgment on the appeals of the Prosecutor, Mr Jean-Pierre Bemba, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled "Decision on Sentence pursuant to Article 76 of the Statute"*, [ICC-01/05-01/13-2276-Red](#), paras 115 and 151; and Trial Chamber VII, *Decision Re-sentencing Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba and Mr Jean-Jacques Mangenda Kabongo*, [ICC-01/05-01/13-2312](#), para. 18(iv)).

10. “A legal element of [a] [...] crime or mode of liability cannot be considered as an aggravating circumstance.”<sup>16</sup> As an example, the crime “of conscription and enlistment of children under the age of 15 and using them to actively participate [sic] in hostilities (Article 8(2)(e)(vii) of the Statute) for which [...] [Mr Ongwen] was convicted, the fact that the victims were under 15 cannot, as such, be considered an aggravating circumstance.”<sup>17</sup>
11. Furthermore, the Appeals Chamber stated that, if a “trial chamber wishes to rely upon facts in aggravation that could not reasonably be expected by the person, it may only do so if proper notice has been provided – for instance in the submissions of the Prosecutor on sentencing – so as to allow the convicted person to defend him- or herself.”<sup>18</sup>
12. “The absence of mitigating circumstance does not constitute an aggravating circumstance.”<sup>19</sup>

#### IV. SUBMISSIONS

13. Mr Ongwen was stolen from his family and his childhood at the age of nine (9) years old and forced to live, grow and work in a rebel cult until his escape on 27 December 2014. He endured torrid moments for the 27 years in the coercive environment in the LRA as the Government of Uganda and the international community hopelessly awaited his surrender, only to indict him on charges related to his unfortunate imposed circumstances. To quote the Office of the Prosecutor, “[t]he harm produced by this cruel treatment continue [sic] even after demobilization. Those who didn’t die as soldiers, they have permanent physical effects or they have ongoing psychological trauma, all them still suffer.”<sup>20</sup> Mr Ongwen is no different from those persons addressed by former Prosecutor Luis Moreno-Ocampo addressed in this statement. Mr Ongwen has permanent physical damage and continuing psychological trauma.

<sup>16</sup> Trial Chamber VI, *Sentencing judgment*, [ICC-01/04-02/06-2442](#), para. 20 (citing Trial Chamber III, *Decision on Sentence pursuant to Article 76 of the Statute*, [ICC-01/05-01/08-3399](#), para. 14; Trial Chamber VIII, *Judgment and Sentence*, [ICC-01/12-01/15-171](#), para. 70; Trial Chamber VII, *Decision on Sentence pursuant to Article 76 of the Statute*, [ICC-01/05-01/13-2123-Corr](#), para. 25; and Appeals Chamber, *Judgment on the appeals of the Prosecutor, Mr Jean-Pierre Bemba, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled “Decision on Sentence pursuant to Article 76 of the Statute”*, [ICC-01/05-01/13-2276-Red](#), para. 129).

<sup>17</sup> Trial Chamber VI, *Sentencing judgment*, [ICC-01/04-02/06-2442](#), para. 20.

<sup>18</sup> Appeals Chamber, *Judgment on the appeals of the Prosecutor, Mr Jean-Pierre Bemba, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled “Decision on Sentence pursuant to Article 76 of the Statute”*, [ICC-01/05-01/13-2276-Red](#), para. 116.

<sup>19</sup> Trial Chamber VI, *Sentencing judgment*, [ICC-01/04-02/06-2442](#), para. 21 (citing Trial Chamber III, *Decision on Sentence pursuant to Article 76 of the Statute*, [ICC-01/05-01/18-3399](#), para. 18; Trial Chamber VIII, *Judgment and Sentence*, [ICC-01/12-01/15-171](#), para. 73; Trial Chamber VII, *Decision on Sentence pursuant to Article 76 of the Statute*, [ICC-01/05-01/13-2123-Corr](#), para. 25; and Trial Chamber VII, *Decision Re-sentencing Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba and Mr Jean-Jacques Mangenda Kabongo*, [ICC-01/05-01/13-2312](#), para. 18(iii)).

<sup>20</sup> Statement of the Office of the Prosecutor, [ICC Prosecutor’s address on the sentencing of Thomas Lubanga](#), 13 June 2012.

The Defence implores the Chamber to remember this when determining the sentence against Mr Ongwen.

## **A. Deterrence, Retribution and Rehabilitation**

### *i. Deterrence in determining a sentence for Mr Ongwen*

14. As noted above, deterrence in sentencing should be enough to discourage individual recidivism and act to discourage others from committing similar crimes in the future.<sup>21</sup> One part of the deterrence factor is to discourage individual recidivism. With individual deterrence, the Chamber must determine an appropriate sentence that would discourage or prevent Mr Ongwen from committing the same or similar type of crimes again.
15. The Defence notes and stresses that while other chambers of the Court have dealt with this issue, no other chamber or international court/tribunal have dealt with this factor against someone who was abducted as a young child and taken during his teen years to a foreign country to fight a war which he had no capacity to understand at the time of his abduction. Even when he became of age, he had been so indoctrinated and brainwashed that he did not possess a mind of his own to lawfully comprehend. While reading these submissions, the Judges of the Chamber are invited to be mindful of the peculiar and personal circumstances which Dominic lived and grew up inside of a rebel cult like the LRA, such as special ability to fight the UPDF from his tender age, which could have been the main reason for his alleged meteoric rise in rank, comparable to none of his age bracket, bringing him to the special attention of the LRA High Comand.
16. Mr Ongwen escaped from the LRA. He left because he wanted to go home.<sup>22</sup> He wanted peace in Uganda before, and he wants to return to his peaceful home now. It stands to reason that if Mr Ongwen wanted to continue a similar life, he would have stayed in the LRA instead of escaping when he did, or trying to escape in April 2003.<sup>23</sup> The fact that he surrendered rather than be captured would strongly suggest that he would have no motivation to repeat the conduct for which he has been convicted. As a matter of fact, it is suggested that deterrence in this case would only act to discourage others from also surrendering. Sentencing Mr Ongwen

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<sup>21</sup> Trial Chamber VI, *Sentencing judgment*, [ICC-01/04-02/06-2442](#), para. 10 (citing Trial Chamber III, *Decision on Sentence pursuant to Article 76 of the Statute*, [ICC-01/05-01/08-3399](#), para. 11; Trial Chamber VIII, *Judgment and Sentence*, [ICC-01/12-01/15-171](#), para. 67; and Trial Chamber VII, *Decision on Sentence pursuant to Article 76 of the Statute*, [ICC-01/05-01/13-2123-Corr](#), para. 19).

<sup>22</sup> See P-0075, [ICC-02/04-01/15-T-225-Red](#), p. 15, l. 5 to p. 16, l. 2.

<sup>23</sup> [REDACTED].

as a personal deterrent will accomplish nothing. He has left that life behind and only wishes to return to Coorom, farm his land, take care of his families and to seek further treatment of his mental disabilities.

17. Another part of the deterrent factor is to discourage others from committing similar crimes in the future. With this general deterrence factor, the Chamber must determine an appropriate sentence that would discourage others from committing the same or similar type of crimes.
18. Like personal recidivism, sentencing Mr Ongwen to a lengthy sentence will not act as a general deterrent against similar persons committing such crimes. Mr Ongwen's situation is too unique and too complex to act as a deterrent to any future persons.
19. Mr Ongwen was abducted at the age of nine (9) from his family and forced to serve in a rebel group based on religious and pseudo-cultural beliefs.<sup>24</sup> Mr Ongwen's situation is nothing short of a religious cult funded by the Government of Sudan.
20. Furthermore, Mr Ongwen is the only person placed on trial at an international tribunal, international court or internationalised/hybrid court to have been abducted and served as a child soldier. Issuing a lengthy sentence to Mr Ongwen shall not act as a general deterrence. It is the Defence's position that issuing a lengthy sentence shall do the exact opposite; it will encourage former child soldiers to remain in rebel groups or hide in isolation for fear of receiving longer prison sentences for their actions for fear of receiving a long prison sentence for their actions.
21. Child soldiers, especially those who grew up from a young age in captivity in conflict, will not care about the general deterrent factor. They have been brainwashed. The goal is strict compliance.<sup>25</sup> As with Mr Ongwen, they are told that if they surrender, they will be killed. They are told that if they do not do as instructed, they will be killed. To them, the issue is always death. A long sentence will not change their minds or bring them home. To them, they will have to accept that they could die and that if it happens, then so be it; if they live, who cares!<sup>26</sup>

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<sup>24</sup> See D-0060, *Expert Report on the LRA's cosmological space*, UGA-D26-0015-1835; D-0060, *Growing in the cosmological space of the LRA*, UGA-D26-0018-3901; and D-0114, *Paper on Dominic Ongwen Sentencing Mitigation*, UGA-D26-0015-1907.

<sup>25</sup> See generally, D-0042, [ICC-02/04-01/15-T-250-Red](#), p. 79, lns 10-20.

<sup>26</sup> For example [REDACTED].

22. One needs only to look at the other international courts, tribunals and hybrid courts. Have trials at the SCSL, ICTY, ICTR, ECCC, KSC,<sup>27</sup> Nuremburg Tribunal, IMTFE or STL hindered international or transnational crimes? The Kosovo war started four years after the formation of the ICTY, and now there is the KSC. Terrorism continues today even though the STL spent years adjudicating its main case. Has the fighting stopped in the Central African Republic because of the opening of the Special Criminal Court? These courts and tribunals are useful and productive, but it is a fallacy to state that they deter criminal activity; they punish them.
23. For the abovementioned reasons, factors of general and personal deterrence should not be considered by the Chamber when determining a sentence for Mr Ongwen.

*ii. Retribution in determining a sentence for Mr Ongwen*

24. Retribution in its ordinary definition means punishment inflicted on someone as vengeance for a wrong or criminal act, *i.e.* rendering someone to pay for the wrong he has committed. However, as clearly enunciated in the paragraphs below, decisions by previous chambers of this Court have set a different standard/purpose for sentencing. They specifically caution that retribution in sentencing is not a means of revenge for the crimes.
25. The Defence understands that the international community has roundly condemned the crimes for which Mr Ongwen was convicted in the Trial Judgment. The Defence doubts though that when the Rome Statute was being constructed, the delegates deliberated on the extraordinary circumstances, steeped in the fear of metaphysical control, Dominic Ongwen – who was abducted at the age of nine (9) years old – found himself in, or whether the extraordinary coercive environment Mr Ongwen lived, grew up and worked in, were considered. With due respect, the Chamber cannot decide this factor of retribution easily because it is doubtful that this scenario was contemplated as it has never happened on the international level before.
26. Retribution in sentencing is not a means of revenge for the crimes, but “an expression of the international community’s condemnation of the crimes” and an acknowledgement of the harm caused to the victims by issuing a proportionate sentence.<sup>28</sup> It is meant to acknowledge the

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<sup>27</sup> The Defence notes that no trials have begun at the KSC, but Kosovo is a country which belonged to the former Yugoslavia. The trials at the ICTY did little to discourage the leaders of Kosovo.

<sup>28</sup> Trial Chamber VI, *Sentencing judgment*, [ICC-01/04-02/06-2442](#), para. 10 (*citing* Trial Chamber II, *Decision on Sentence pursuant to article 76 of the Statute*, [ICC-01/04-01/07-3484-tENG](#), para. 38; Trial Chamber III, *Decision on*

harm to the victims and promote the restoration of peace and reconciliation.<sup>29</sup> It is for this reason that we recognise that the international community has achieved its expression of condemnation of the crimes.

27. The Defence reiterates its submission during its closing statement that surrendering Mr Ongwen to the Acholi Traditional Justice System, which is replete with the promotion and restoration of peace and reconciliation, would go a long way in the promotion of the restoration and promotion of peace and reconciliation. The Defence also reiterates that it requested the Chamber to accept submissions from states, organisations and persons pursuant to Rule 103(1) of the Rules on the issue of sentencing a former child soldier.<sup>30</sup> The Defence avers that, had such submissions been allowed, this factor would be easier for the Chamber to decide. Unfortunately, the Defence's request was opposed by the Prosecution<sup>31</sup> and Legal Representatives,<sup>32</sup> and decided against by the Chamber.<sup>33</sup>
28. The international community and the Government of Uganda left Mr Ongwen in a truly precarious situation. The international community and the Government of Uganda failed to protect Mr Ongwen from being abducted at nine (9) years old,<sup>34</sup> and these entities failed to bring him back home before he was whisked away by the LRA to southern Sudan, a place where escape from the LRA was seemingly impossible.<sup>35</sup>
29. As an entity serving the public, the Government of Uganda attempted to rectify this wrong. Through the lobbying of organisations like Ker Kwaro Acholi,<sup>36</sup> the Ugandan Parliament

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*Sentence pursuant to Article 76 of the Statute*, [ICC-01/05-01/08-3399](#), para. 11; and Trial Chamber VIII, *Judgment and Sentence*, [ICC-01/12-01/15-171](#), para. 67).

<sup>29</sup> Trial Chamber VIII, *Judgment and Sentence*, [ICC-01/12-01/15-171](#), para. 67.

<sup>30</sup> Trial Chamber IX, *Defence Request for Trial Chamber IX to accept Submissions on Sentencing Pursuant to Rule 103 of the Rules of Procedure and Evidence*, [ICC-02/04-01/15-1765](#).

<sup>31</sup> Trial Chamber IX, *Prosecution's Response to Defence Request for Trial Chamber IX to Accept Submissions on Sentencing Pursuant to Rule 103*, [ICC-02/04-01/15-1768](#).

<sup>32</sup> Trial Chamber IX, *CLRV Response to the Defence Request for Trial Chamber IX to accept Submissions on Sentencing Pursuant to Rule 103 of the Rules of Procedure and Evidence*, [ICC-02/04-01/15-1770](#) and *Victims' Response to "Defence Request for Trial Chamber IX to accept Submissions on Sentencing Pursuant to Rule 103 of the Rules of Procedure and Evidence"*, [ICC-02/04-01/15-1771](#).

<sup>33</sup> Trial Chamber IX, *Decision on 'Defence Request for Trial Chamber IX to accept Submissions on Sentencing Pursuant to Rule 103 of the Rules of Procedure and Evidence'*, [ICC-02/04-01/15-1778](#).

<sup>34</sup> D-0133, *The Enduring Impact of being a Child Soldier*, UGA-D26-0015-1022, pp 1029-1030; D-0133, *Report as an Expert Witness at the Sentencing of Mr Ongwen Dominic at the International Criminal Court (ICC) at The Hague: by Major (Retired) Awich Pollar*, UGA-D26-0015-1889, p. 1893; and D-0114, *Paper on Dominic Ongwen Sentencing Mitigation*, UGA-D26-0015-1907, p. 1908. See also [Convention on the Rights of the Child](#), para. 38.

<sup>35</sup> For example, P-0231, [ICC-02/04-01/15-T-123-Red2](#), p. 29, l. 19 to p. 30, l. 15; P-0142, [ICC-02/04-01/15-T-72-Red](#), p. 44, lns 19-23; and P-0172, [ICC-02/04-01/15-T-113-Red](#), p. 45, lns 17-24.

<sup>36</sup> D-0160, *Where does conviction and sentencing Dominic Ongwen Leave the Acholi Society?*, UGA-D26-0015-1812, pp 1819-1820.

passed The Amnesty Act in 2000.<sup>37</sup> The Amnesty Act permits persons who renounce the rebellion against the Government of Uganda and who turn over their weapons, if they have any, to return home without the threat of being “prosecuted or subjected to any form of punishment for the participation in the war or rebellion for any crime committed in the cause of the war or armed rebellion [since 26 January 1986].”<sup>38</sup> The Amnesty Act does not disqualify someone for their alleged rank or position.

30. The Amnesty Act has been utilised by nearly all persons who were abducted or joined the LRA.<sup>39</sup> Persons of senior rank used the Amnesty Act when they returned.<sup>40</sup> In fact, all but one person who has returned has benefitted from the Amnesty Act, included Lieutenant General Caesar Acellam.<sup>41</sup> [REDACTED]<sup>42</sup>
31. In addition to the sentiments of the Government of Uganda, the Chamber must take into account the institutional body charged with Acholi culture, the Ker Kwaro Acholi. Ker Kwaro Acholi is the institutional body charged with Acholi culture and tradition. The Chamber met with the Paramount Chief, Rwot Acana II, and other representatives during the Court’s site visit in northern Uganda. This institution speaks for the Acholi people on issues of culture and heritage with a singular voice.
32. During the conflict, Ker Kwaro Acholi “process[ed] and resettle[d] a large number of ex-LRA fighters including senior commanders using predominantly its long-draw-out traditional mechanisms of justice and accountability.”<sup>43</sup> The Acholi people “maintained the path of peaceful resolution of the conflict and absence of retribution as was embedded in their cultures and traditions.”<sup>44</sup> Ker Kwaro Acholi notes that “[t]he ICC indictment arose out of a

<sup>37</sup> See *The Amnesty Act*, UGA-D26-0018-0092.

<sup>38</sup> *The Amnesty Act*, UGA-D26-0018-0092, pp 0093-0094.

<sup>39</sup> While this list is not exhaustive, a few are D-0081 (UGA-D26-0022-0107), D-0079 (UGA-D26-0022-0445), P-0250 (UGA-OTP-0263-2316), P-0054 (UGA-OTP-0278-0446), P-0070 ([ICC-02/04-01/15-T-107-Red2](#), p. 16, l. 23 to p. 17, l. 3). A list of reporters from 2000-2003 exists in evidence at UGA-OTP-0010-0163 and another from September 2004 to January 2006 at UGA-OTP-0165-0124.

<sup>40</sup> For example see P-0016 ([ICC-02/04-01/15-T-35-Red2](#), p. 43, l. 25 to p. 44, l. 6) and P-0440 ([ICC-02/04-01/15-T-41-Red2](#), p. 5, l. 25 to p. 6, l. 2). See also Ker Kwaro Acholi, *Ker Kwaro Acholi (KKA) submission to the ICC following the judgement on the Dominic Ongwen case on Feb/4/2021*, UGA-D26-0015-1901, p. 1902.

<sup>41</sup> See Article 69(6) of the Rome Statute. It is common knowledge in northern Uganda that Caesar Acellam received amnesty.

<sup>42</sup> [REDACTED].

<sup>43</sup> Ker Kwaro Acholi, *Ker Kwaro Acholi (KKA) submission to the ICC following the judgement on the Dominic Ongwen case on Feb/4/2021*, UGA-D26-0015-1901, p. 1902.

<sup>44</sup> Ker Kwaro Acholi, *Ker Kwaro Acholi (KKA) submission to the ICC following the judgement on the Dominic Ongwen case on Feb/4/2021*, UGA-D26-0015-1901, p. 1902.

failed attempt by the government of Uganda at the time to marshal efforts to end what was going on then.”<sup>45</sup>

33. The Acholi system of justice, which includes *Mato Oput*, accounts for issues of justice in “the physical, psychological and divine justice, [and] leaves no room for one to fail to account for one’s decisions and actions or failure to account led to dire consequences that included divine retribution.”<sup>46</sup> This is compounded by the fact that the conviction allows for reparations, something which Mr Ongwen cannot do financially as he has spent the last 32-plus years either as a child abductee, involuntary LRA member or incarcerated by the ICC.<sup>47</sup> The Acholi system of justice allows for retribution, but in a different manner than which many persons reading this are accustomed to seeing.
34. Recognising and using the traditional mechanisms in Acholi shall stop Mr Ongwen from being punished twice for what he is convicted.<sup>48</sup> It shall help the Acholi people and victims, through Mr Ongwen, to further “break the circle of hatred and enmity between communities affected” by the violence.<sup>49</sup> Likewise, Ker Kwaro Acholi recognises “the mandate of the ICC but [...] [notes] its limitations in delivering conclusive justice and accountability acceptable within the precinct of Acholi traditional justice.”<sup>50</sup>
35. The Defence further notes that the traditional Acholi rituals can be used years after the alleged act. Rwot Baptist Latim noted that several decades after being wronged by former Ugandan President Idi Amin Dada, he performed the Acholi ritual of *Mato Oput* with the relatives of the former president.<sup>51</sup> No matter how grave the alleged crimes are, the Acholi people have their customs and rituals to repent and reconcile with those whom they have wronged.<sup>52</sup>
36. The concept of retribution in Acholiland is different than what many understand. The Defence makes no fallacious attempt to say otherwise. But, while the concept may appear different, the

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<sup>45</sup> Ker Kwaro Acholi, *Ker Kwaro Acholi (KKA) submission to the ICC following the judgement on the Dominic Ongwen case on Feb/4/2021*, UGA-D26-0015-1901, pp 1902-1903.

<sup>46</sup> Ker Kwaro Acholi, *Ker Kwaro Acholi (KKA) submission to the ICC following the judgement on the Dominic Ongwen case on Feb/4/2021*, UGA-D26-0015-1901, p. 1903.

<sup>47</sup> Ker Kwaro Acholi, *Ker Kwaro Acholi (KKA) submission to the ICC following the judgement on the Dominic Ongwen case on Feb/4/2021*, UGA-D26-0015-1901, p. 1903-1904.

<sup>48</sup> Ker Kwaro Acholi, *Ker Kwaro Acholi (KKA) submission to the ICC following the judgement on the Dominic Ongwen case on Feb/4/2021*, UGA-D26-0015-1901, p. 1904.

<sup>49</sup> Ker Kwaro Acholi, *Ker Kwaro Acholi (KKA) submission to the ICC following the judgement on the Dominic Ongwen case on Feb/4/2021*, UGA-D26-0015-1901, p. 1904.

<sup>50</sup> Ker Kwaro Acholi, *Ker Kwaro Acholi (KKA) submission to the ICC following the judgement on the Dominic Ongwen case on Feb/4/2021*, UGA-D26-0015-1901, p. 1905.

<sup>51</sup> D-0163, UGA-D26-0015-1864, paras 10-12.

<sup>52</sup> D-0163, UGA-D26-0015-1864, paras 4-15.

end-product is the same. The communities affected by the conflict shall receive reparations through the ICC by the international community, and they can also receive traditional methods of retribution and restorative justice from Mr Ongwen partaking in traditional methods of healing with the help of Ker Kwaro Acholi. The Defence implores the Chamber to account for the traditional mechanism rooted in the culture of the Acholi people when determining the weight to apply in the retributive factor of sentencing. The traditional form of recognition and repentance has recently been discussed and used in Ugandan courts, and the Defence beseeches the Chamber to do the same.<sup>53</sup>

37. Both the international community and the Government of Uganda are to blame for what happened to Mr Ongwen. Any retributive factor must consider those who are also responsible. For its part, at least the Ugandan Government passed the Amnesty Law to atone for some of its blame, allowing those who rejected the rebellion to return home without fear of retribution from the government for crimes the persons were alleged to have committed.<sup>54</sup> Again, it was the lobbying of organisations like the Ker Kwaro Acholi and Acholi Religious Leaders Peace Initiative ('ARLPI'), the local organisation of northern Uganda, which made this possible.
38. The international community cannot fail in its duty to protect children and then wash itself of said duty now to punish Mr Ongwen for what he has been convicted. It would be a travesty of justice that would reverberate throughout the annals of history if this child soldier and mentally disabled person is made an example by that international community. It would send a message that if the international community makes a mistake, it will not cure the problem, it shall punish you for its failures. The Chamber must send an equally clear message. When considering the retributive factors in sentencing, the Chamber should heavily consider the facts listed above and below, and that the local community has a mechanism which deals with this factor and with the restorative aspect of sentencing.
39. For the abovementioned reasons, the Defence argues that the retributive factor of sentencing suggests that the Chamber issue Mr Ongwen a short sentence, and allow Mr Ongwen to undergo all of the appropriate rituals in northern Uganda, including *Mato Oput*.

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<sup>53</sup> Ker Kwaro Acholi, *Ker Kwaro Acholi (KKA) submission to the ICC following the judgement on the Dominic Ongwen case on Feb/4/2021*, UGA-D26-0015-1901, p. 1905 (citing [Kanyamunyu Mathew v. Uganda](#) (criminal miscellaneous application-2020/151) [2020] UGHCCRD 144 (9 November 2020)). The Defence notes that while the Uganda Court did not grant the request, the Judge took the issue seriously. The defendant ultimately went through the ritual of *Mato Oput* and had his charges reduced by the prosecutor and accepted the plea bargain as argued before the judge. See [Akena murder: Kanyamunyu sentenced to 6 years as girlfriend walks free](#), published 12 November 2020.

<sup>54</sup> See *The Amnesty Act*, UGA-D26-0018-0092.

*iii. Rehabilitation in determining a sentence for Mr Ongwen*

40. While rehabilitation has been stated as not being a primary motivation in sentencing, it is a relevant factor which the Chamber should consider.<sup>55</sup> The Defence argues that considering Mr Ongwen's personal circumstances, the Chamber should look heavily at this factor when deciding Mr Ongwen's sentence. Specifically, the Chamber should consider the mental and social rehabilitation of Mr Ongwen.

**1. The Chamber should consider mental rehabilitation when determining a sentence for Mr Ongwen**

41. First, the Chamber should consider mental rehabilitation as a factor when determining a sentence for Mr Ongwen because the Defence medical experts who testified during the trial proceedings advised that Mr Ongwen return to Uganda for mental rehabilitation. During the proceedings, Mr Ongwen was examined by Dr Ovuga and Dr Akena. After the examinations, Mr Ongwen was diagnosed with various disorders, including [REDACTED], post-traumatic stress disorder and [REDACTED].<sup>56</sup> He was also found to be at a high risk of [REDACTED].<sup>57</sup> In order to treat these diagnoses, Professor Ovuga and Dr Akena recommended an intensive treatment plan that included [REDACTED], 24-hour surveillance, and [REDACTED].<sup>58</sup> They also recommended that Mr Ongwen receive treatment and mental rehabilitation in Uganda.<sup>59</sup>

42. In their report, Professor Ovuga and Dr Akena explained that [REDACTED] is a treatable condition through psychotherapy and rehabilitation.<sup>60</sup> They explained that rehabilitation "will be most feasible in Uganda."<sup>61</sup> Rehabilitation in Uganda is important because, according to

<sup>55</sup> Trial Chamber VI, *Sentencing judgment*, [ICC-01/04-02/06-2442](#), para. 10 (citing Trial Chamber II, *Decision on Sentence pursuant to article 76 of the Statute*, [ICC-01/04-01/07-3484-tENG](#), para. 38; Trial Chamber III, *Decision on Sentence pursuant to Article 76 of the Statute*, [ICC-01/05-01/08-3399](#), para. 11; Trial Chamber VIII, *Judgment and Sentence*, [ICC-01/12-01/15-171](#), para. 67; and Appeals Chamber, *Judgment on the appeals of the Prosecutor, Mr Jean-Pierre Bemba, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled "Decision on Sentence pursuant to Article 76 of the Statute"*, [ICC-01/05-01/13-2276-Red](#), para. 205).

<sup>56</sup> D-0041 and D-0042, *Psychiatric Report*, UGA-D26-0015-0004, 0017-0018. See also D-0042, *Report for Sentence Mitigation*, UGA-D26-0015-1878, pp 1883-1884 and Professor Joop T. de Jong, MD PhD Psychiatry, *Psychiatric examination Pro Justitia regarding Mr Dominic Ongwen YY*, UGA-D26-0015-0046-R01, pp 0050-0051.

<sup>57</sup> D-0041 and D-0042, *Psychiatric Report*, UGA-D26-0015-0004, 0017-0018. See also D-0042, *Report for Sentence Mitigation*, UGA-D26-0015-1878, pp 1883-1884 and Professor Joop T. de Jong, MD PhD Psychiatry, *Psychiatric examination Pro Justitia regarding Mr Dominic Ongwen YY*, UGA-D26-0015-0046-R01, pp 0050-0051.

<sup>58</sup> D-0041 and D-0042, *Psychiatric Report*, UGA-D26-0015-0004, 0017-0018.

<sup>59</sup> D-0041 and D-0042, *Psychiatric Report*, UGA-D26-0015-0004, 0017-0018 and D-0042, *Report for Sentence Mitigation*, UGA-D26-0015-1878, pp 1885-1886.

<sup>60</sup> D-0041 and D-0042, *Psychiatric Report*, UGA-D26-0015-0004, 0017-0018.

<sup>61</sup> D-0041 and D-0042, *Psychiatric Report*, UGA-D26-0015-0004, 0017-0018. See also D-0042, *Report for Sentence Mitigation*, UGA-D26-0015-1878, pp 1885-1887.

Dr Abbo, there are some mental illnesses that can be “culturally [] circumscribed.”<sup>62</sup> In other words, a person’s culture affects how a person communicates his or her symptoms.<sup>63</sup> Verbal communication in particular “yields a greater potential for miscommunication when clinician and patient come from different cultural backgrounds, even if they speak the same language.”<sup>64</sup> Due to this risk, the Chamber should consider the role of culture in Mr Ongwen’s mental rehabilitation. In Uganda, Mr Ongwen will receive culturally competent treatment in Acholi, the only language he speaks and understands. Thus, when determining a sentence for Mr Ongwen, the Chamber should consider Mr Ongwen’s mental rehabilitation and the experts’ recommendation that he receives treatment in Uganda.

## **2. The Chamber should consider social rehabilitation when determining a sentence for Mr Ongwen**

43. Mr Ongwen should be allowed to undergo social rehabilitation and reintegration as soon as possible because 1) he participated in programs provided by the ICC-DC that encourage social rehabilitation and reintegration, 2) he is young and his family is still in Uganda, and 3) *Mato Oput* will facilitate further social rehabilitation and reintegration into his local community.
44. While being held at the ICC-DC, Mr Ongwen participated in programmes that encouraged, facilitated and stimulated social rehabilitation. According to Resolution 69/172, the social rehabilitation and reintegration of a person deprived of their liberty is an “essential aim of the criminal justice system.”<sup>65</sup> In order to rehabilitate and reintegrate a person deprived of their liberty, prison administrators and authorities “should offer education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and health – and sports based nature.”<sup>66</sup>
45. In this case, Mr Ongwen received mental health treatment, completed educational courses, and participated in other programmes that stimulate mental rehabilitation. For example, Mr

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<sup>62</sup> P-0445, [ICC-02/04-01/15-T-168](#), p. 30 lns 8-11.

<sup>63</sup> Department of Health and Human Services of the USA, [Mental Health: Culture, Race, and Ethnicity: A Supplement to Mental Health: A Report of the Surgeon General, Chapter Two: The Influence of Culture and Society on Mental Health](#).

<sup>64</sup> Department of Health and Human Services of the USA, [Mental Health: Culture, Race, and Ethnicity: A Supplement to Mental Health: A Report of the Surgeon General, Chapter Two: The Influence of Culture and Society on Mental Health](#).

<sup>65</sup> Resolution 69/172 [Human Rights in the Administration of Justice](#). See also [United Nations Standard Minimum Rules for the Treatment of Prisoners \(the Nelson Mandela Rules\)](#), citing Resolution 69/172 of 18 December 2014 entitled “Human rights and the administration of justice.”

<sup>66</sup> [Nelson Mandela Rules](#), Rule 4(2).

Ongwen received regular psychological medical treatment while being held at the ICC-DC. The mental health treatment that Mr Ongwen received while detained has facilitated social rehabilitation by allowing him to develop emotional, intellectual, and social skills.

46. Mr Ongwen also completed educational courses that encourage social rehabilitation. When Mr Ongwen arrived at the ICC-DC on 21 January 2015, he had no English language skills. Since his arrival, Mr Ongwen has participated in English language lessons regularly. Mr Ongwen's lessons include weekly instructional classes and assignments. He diligently studies each lesson and completes his assignments. These lessons have continued virtually due to COVID-19 restrictions.<sup>67</sup> Mr Ongwen's commitment to learning English demonstrates his understanding of communication with others. Participating in English classes facilitates social rehabilitation because it allows Mr Ongwen to develop social skills that enable him to participate in group activities and communicate with others, even though at a very basic level.
47. In addition to receiving mental health treatment and completing educational courses, Mr Ongwen also participates in other activities that aid in social rehabilitation. For example, Mr Ongwen regularly receives spiritual guidance from a local priest. He routinely participates in football matches with other detainees and guards, took piano lessons, cared for a pet parakeet, and regularly socialises with other persons who have been detained. These activities contribute to Mr Ongwen's social rehabilitation by allowing him to interact with others in various social settings, challenging him cognitively, and encouraging physical activity.
48. Next, Mr Ongwen's young age at the material time and his family situation will make social rehabilitation easier. In *Katanga*, Trial Chamber II found that Katanga's young age at the material time and his family situation was "likely to make rehabilitation and reintegration easier."<sup>68</sup> Mr Katanga was 24 years old at the material time<sup>69</sup> and was the father of six (6) children.<sup>70</sup> The Chamber stated that arguments based on his age must be "contextualised."<sup>71</sup>
49. Similarly, Mr Ongwen was 24-27 years old at the material time. Although this is ever so slightly older than Mr Katanga, Mr Ongwen's age must also be contextualised. As acknowledged by this Chamber, Mr Ongwen was only nine (9) years old when he was forced

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<sup>67</sup> Currently, these lessons are completed via video-conference. The teacher sends assignments to Mr Ongwen and he completes the assignments before the next class.

<sup>68</sup> Trial Chamber II, *Decision on Sentence Pursuant to article 76 of the Statute*, [ICC-01/04-01/07-3484-t-ENG](#), para. 144.

<sup>69</sup> Trial Chamber II, *Decision on Sentence Pursuant to article 76 of the Statute*, [ICC-01/04-01/07-3484-t-ENG](#), para. 81.

<sup>70</sup> Trial Chamber II, *Decision on Sentence Pursuant to article 76 of the Statute*, [ICC-01/04-01/07-3484-t-ENG](#), para. 88.

<sup>71</sup> Trial Chamber II, *Decision on Sentence Pursuant to article 76 of the Statute*, [ICC-01/04-01/07-3484-t-ENG](#), para. 81.

to become a child soldier<sup>72</sup> and he spent the next 27 years surviving in the bush as a captive of the LRA. This Chamber is aware of the conditions in which Mr Ongwen found himself as a child.<sup>73</sup>

50. Additionally, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules') defines a juvenile as a person "ranging [in age] from seven years to 18 years or above."<sup>74</sup> The age limits are dependent on the respective legal systems to "fully respect the economic, social, political, cultural, and legal systems of Member States."<sup>75</sup> In consideration of the social and cultural system in which Mr Ongwen grew up, Mr Ongwen should be considered a juvenile or "young adult offender."<sup>76</sup> As previously stated, the Chamber is aware of the social and cultural system in which Mr Ongwen was raised.<sup>77</sup> The Chamber is also aware of the trauma inflicted upon Mr Ongwen, the impact of which is described below.
51. Like Mr Katanga, Mr Ongwen also has a large family. For example, Mr Ongwen has 15 children that he communicates with regularly.<sup>78</sup> Since arriving at ICC-DC, Mr Ongwen has attempted to maintain a strong relationship with his family. He regularly speaks with his wives and children in Uganda. He also strives to support his family, despite the distance between them, and encourages his children to pursue educational achievements in various fields, such as medicine, law and astrophysics.<sup>79</sup> Like the chamber in *Katanga*, this Chamber should find that Mr Ongwen's young age at the material time and his family situation will make social rehabilitation and reintegration easier for Mr Ongwen.
52. Finally, the traditional justice system of *Mato Oput* will help Mr Ongwen reintegrate into Acholi society. The principles of restorative justice are the foundation of *Mato Oput* and are deeply embedded in Acholi society.<sup>80</sup> For example, truthfulness is the guiding principle "in

<sup>72</sup> Trial Chamber IX, *Trial Judgment*, [ICC-02/04-01/15-1762-Conf](#), paras 29-30 [*referring to testimonies of [REDACTED], D-0007, D-0008, D-0012 and D-0032*].

<sup>73</sup> See section IV(C)(i) below referring to the testimony of D-0007.

<sup>74</sup> [United Nations Standard Minimum Rules for the Administration of Juvenile Justice \('Beijing Rules'\)](#), Rule 2.2.

<sup>75</sup> *Id.*

<sup>76</sup> Awich Report, UGA-D26-0015-1889, 1898.

<sup>77</sup> See section IV(C)(i) below referring to the testimony of D-0007.

<sup>78</sup> The Defence notes that they are [REDACTED].

<sup>79</sup> The Defence notes that Mr Ongwen does not know what astrophysics is, but he stated that his son [REDACTED] wishes to study the stars and planets.

<sup>80</sup> D-0160, *Where does conviction and sentencing Dominic Ongwen Leave the Acholi Society?*, UGA-D26-0015-1812, pp 1820-1824, See also Ker Kwaro Acholi, *Ker Kwaro Acholi (KKA) submission to the ICC following the judgement on the Dominic Ongwen case on Feb/4/2021*, UGA-D26-0015-1901, p. 1904-1906 and Acholi Religious Leaders Peace Initiative, UGA-D26-0015-1832.

the pursuit for justice and accountability in Acholi [which] transcends human conception.”<sup>81</sup> The pursuit of justice and accountability includes “dialogues, rites and rituals and communion.”<sup>82</sup> The Acholi people believe that a person “is given a second chance to become a useful member of the community,” “regardless of the breaches to society one commits.”<sup>83</sup> This belief is supported by the number of ex-LRA fighters who were successfully reintegrated into society.<sup>84</sup>

53. Although specific rituals like *Mato Oput* are unique to Acholi society, other justice processes have also reintegrated persons into society after they were alleged to have committed serious crimes. For example, the Truth and Reconciliation Commission in South Africa held persons accountable for international crimes while uncovering the truth of what happened during the Apartheid.<sup>85</sup> The TRC allowed for reconciling communities and supporting unity, and proving that South Africans can settle their own problems through open dialogue and honesty. The traditional system of *Mato Oput* is nothing less than an Acholi version of the TRC, and it has been successful in that community.
54. Like other ex-members of the LRA, Mr Ongwen will successfully reconcile with the Acholi community and reintegrate into society through traditional Acholi rituals, including *Mato Oput*. Mr Ongwen will participate in all required discussions, rites and rituals asked of him.<sup>86</sup> The Acholi community believes that persons deserve second chances. This belief, coupled with Mr Ongwen’s efforts to reconcile through traditional rituals, will allow him to successfully reintegrate into society and lead a productive life. These traditional Acholi rituals, including *Mato Oput*, are personal circumstances of Mr Ongwen and should be taken into account when the Chamber deliberates on the sentence.<sup>87</sup>

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<sup>81</sup> D-0160, *Where does conviction and sentencing Dominic Ongwen Leave the Acholi Society?*, UGA-D26-0015-1812, p. 1823.

<sup>82</sup> D-0160, *Where does conviction and sentencing Dominic Ongwen Leave the Acholi Society?*, UGA-D26-0015-1812, p. 1821.

<sup>83</sup> D-0160, *Where does conviction and sentencing Dominic Ongwen Leave the Acholi Society?*, UGA-D26-0015-1812, p. 1821.

<sup>84</sup> D-0160, *Where does conviction and sentencing Dominic Ongwen Leave the Acholi Society?*, UGA-D26-0015-1812, p. 1821.

<sup>85</sup> See [Truth and Reconciliation Commission of South Africa](#).

<sup>86</sup> See Acholi Religious Leaders Peace Initiative, UGA-D26-0015-1832 and Ker Kwaro Acholi, *Ker Kwaro Acholi (KKA) submission to the ICC following the judgement on the Dominic Ongwen case on Feb/4/2021*, UGA-D26-0015-1901.

<sup>87</sup> See Ker Kwaro Acholi, *Ker Kwaro Acholi (KKA) submission to the ICC following the judgement on the Dominic Ongwen case on Feb/4/2021*, UGA-D26-0015-1901; Acholi Religious Leaders Peace Initiative, UGA-D26-0015-1832; and D-0160, *Where does conviction and sentencing Dominic Ongwen Leave the Acholi Society?*, UGA-D26-0015-1812.

55. The Chamber should consider mental and social rehabilitation when determining a sentence for Mr Ongwen. Medical experts advised that Mr Ongwen return to Uganda for further mental rehabilitation, Mr Ongwen has demonstrated his desire for significant social rehabilitation, and social rehabilitation will be facilitated by Acholi rituals, like *Mato Oput*, upon his arrival home. Mr Ongwen will also have support from his family. Thus, the Chamber must consider rehabilitation as a strong mitigating factor for a short sentence when determining a sentence for Mr Ongwen.

### **B. Time served pursuant to an ICC Arrest Warrant**

56. Pursuant to Article 78(2) of the Rome Statute, the Chamber is required to deduct the time served by Mr Ongwen in detention pursuant to a warrant of arrest. Pre-Trial Chamber II issued the Request for Arrest and Surrender of Dominic Ongwen ('Arrest Warrant') on 8 July 2005.<sup>88</sup>

57. Mr Ongwen has been under detention pursuant to the Arrest Warrant since 4 January 2015.<sup>89</sup>

58. Mr Ongwen surrendered to the Séléka in the Central African Republic on 4 January 2015. He was held by the Séléka until being transferred to the United States Special Forces on 6 January 2015.<sup>90</sup> The United States Government detained Mr Ongwen for the next eight (8) days because of the Arrest Warrant.

59. On 14 January 2015, Mr Ongwen was transferred to the custody of UPDF/African Union soldiers in Obo, Central African Republic. Mr Ongwen was detained by the AU mission for two (2) days because of the Arrest Warrant.<sup>91</sup>

60. On 16 January 2015, Mr Ongwen was transferred from Obo to Bangui, Central African Republic and transferred to the custody of the Central African Republic Government for approximately 58 minutes because of the Arrest Warrant.<sup>92</sup>

<sup>88</sup> Pre-Trial Chamber II, *Request for Arrest and Surrender of Dominic Ongwen*, [ICC-02/04-01/15-8](#).

<sup>89</sup> Pre-Trial Chamber II, *Defence Response to 'Prosecution's Appeal against the "Decision Setting the Regime for Evidence Disclosure and Other Related Material"'*, [ICC-02/04-01/15-232](#), para. 3 (noting that before being handed over to the US Special Forces on 6 January 2015, Mr Ongwen was held for 2 days by the Séléka). See also Pre-Trial Chamber II, *Response to The Prosecutor's Submissions concerning the Applicability of Article 101 of the Rome Statute to the Proceedings against Dominic Ongwen*, [ICC-02/04-01/15-243](#), para. 5.

<sup>90</sup> Pre-Trial Chamber II, *Defence Response to 'Prosecution's Appeal against the "Decision Setting the Regime for Evidence Disclosure and Other Related Material"'*, [ICC-02/04-01/15-232](#), para. 3. See also Pre-Trial Chamber II, *Response to The Prosecutor's Submissions concerning the Applicability of Article 101 of the Rome Statute to the Proceedings against Dominic Ongwen*, [ICC-02/04-01/15-243](#), para. 5.

<sup>91</sup> Pre-Trial Chamber II, *Response to The Prosecutor's Submissions concerning the Applicability of Article 101 of the Rome Statute to the Proceedings against Dominic Ongwen*, [ICC-02/04-01/15-243](#), para. 6.

61. On 16 January 2015, Mr Ongwen was transferred to the custody of the International Criminal Court pursuant to the Arrest Warrant.<sup>93</sup>
62. On 21 January 2015, Mr Ongwen arrived at the ICC Detention Centre in The Hague, Netherlands pursuant to the Arrest Warrant.<sup>94</sup> Mr Ongwen has been in detention at the ICC Detention Centre pursuant to the Arrest Warrant since this date.
63. As of the date of this submission, Mr Ongwen has been held in detention, pursuant to the Arrest Warrant, for six (6) years, two (2) months and 28 days. Pursuant to Article 78(2) of the Rome Statute, Mr Ongwen should receive credit for these days, plus the additional days from the date of this submission and the pronouncement of the sentence pursuant to Article 76 of the Rome Statute.

### C. Time spent in the LRA

64. The Defence argues that Mr Ongwen should receive credit for the time he was held captive in the LRA. Alternatively, the Chamber should hold that it is a serious mitigating factor. The Defence explains the time frames into two (2) discrete sections: 1) Time spent in the LRA as a child soldier, and 2) Time spent in the LRA before becoming an “officer”. By using these time frames, the Defence does not acknowledge any of the material elements of the crimes, and does not waive its position as to Mr Ongwen’s mental state at any given time, or the state of duress to which Mr Ongwen was subjected.

#### *i. Time spent in the LRA as a child soldier*

65. Prosecutor Bensouda stated:

One aspect of this case is the fact that not only is Ongwen alleged to be the perpetrator of these crimes, *he was also a victim*. He himself, so he has told the Court, was abducted from his home by an earlier generation of LRA fighters [...]. He himself, therefore, *must have gone through the trauma of separation from his family, brutalisation by his captors, and initiation into the violence of the LRA way of life. He has been presented as a victim rather than a perpetrator.*<sup>95</sup>

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<sup>92</sup> Pre-Trial Chamber II, *Report of the Registry on the voluntary surrender of Dominic Ongwen and his transfer to the Court*, [ICC-02/04-01/15-189](#), paras 1 and 5.

<sup>93</sup> Pre-Trial Chamber II, *Report of the Registry on the voluntary surrender of Dominic Ongwen and his transfer to the Court*, [ICC-02/04-01/15-189](#), para. 5.

<sup>94</sup> Pre-Trial Chamber II, *Report of the Registry on the voluntary surrender of Dominic Ongwen and his transfer to the Court*, [ICC-02/04-01/15-189](#), paras 17-18.

<sup>95</sup> Prosecutor Bensouda, Office of the Prosecutor Opening Statement, [ICC-02/04-01/15-T-26](#), p. 35, l. 23 to p. 36, l. 4 [emphasis added].

66. Prosecutor Bensouda would later state:

The circumstances in which he himself was abducted and conscripted into the LRA many years before *may perhaps amount to some mitigation of sentence* in the event that he's convicted of these crimes.<sup>96</sup>

67. Mr Ongwen was born in 1978<sup>97</sup> and abducted by the rebel group which would later be named the LRA. Mr Ongwen's abduction happened in November 1987 when Mr Ongwen was nine and one-half (9.5) years old.<sup>98</sup> He would remain captive in the LRA until 27 December 2014 when he escaped.

68. Mr Ongwen spent approximately eight and one-half (8.5) years in the LRA as an abductee and child soldier. While the Rome Statute allows persons 15 years and above to enlist or be conscripted into a country's armed forces, Mr Ongwen did neither. Mr Ongwen was forced to remain in the LRA as a child, spending the latter part of his childhood years across an international border in southern Sudan (modern day South Sudan).

69. Opportunities to escape during the pre-Iron Fist era were dangerous and limited,<sup>99</sup> especially in southern Sudan.<sup>100</sup> During the early days of the LRA – when Mr Ongwen was abducted – Joseph Kony required his commanders to keep records of persons abducted so as to enact collective punishment against the family and villages of those who escaped.<sup>101</sup>

70. During the approximate eight and one-half (8.5) years from November 1987 to May 1996, Joseph Kony – through the LRA – detained Mr Ongwen unlawfully and against his will. Mr Ongwen's abduction and detention by Joseph Kony violated Mr Ongwen's rights to live with his natural parents, and to benefit from the Ugandan Government's duty to protect its children.<sup>102</sup> It further deprived Mr Ongwen of his right to be free from detention without due process of law.<sup>103</sup>

<sup>96</sup> Prosecutor Bensouda, Office of the Prosecutor Opening Statement, [ICC-02/04-01/15-T-26](#), p. 4, lns 4-7 [emphasis added].

<sup>97</sup> Trial Chamber IX, *Trial Judgment*, [ICC-02/04-01/15-1762-Conf](#), paras 29-30 [*referring to testimonies of [REDACTED], D-0007, D-0008, D-0012 and D-0032*].

<sup>98</sup> Mr Ongwen was born in May 1978. This would place Mr Ongwen at this approximate age. See Trial Chamber IX, *Trial Judgment*, [ICC-02/04-01/15-1762-Conf](#), para. 30. Furthermore, Mr Ongwen's approximate birth month because of his name, Ongwen, which means that he was born during the time of the white ants in the month of May.

<sup>99</sup> P-0172, [ICC-02/04-01/15-T-113-Red](#), p. 45, l. 17 to p. 46, l. 16.

<sup>100</sup> P-0231, [ICC-02/04-01/15-T-123-Red2](#), p. 29, l. 19 to p. 30, l. 15. See also P-0142, [ICC-02/04-01/15-T-72-Red](#), p. 44, lns 19-23; and P-0172, [ICC-02/04-01/15-T-113-Red](#), p. 45, lns 17-24.

<sup>101</sup> For example see P-0205, [ICC-02/04-01/15-T-49-Red3](#), p. 3, l. 14 to p. 7, l. 16.

<sup>102</sup> See [Convention on the Rights of the Child](#) and [International Covenant on Civil and Political Rights](#).

<sup>103</sup> See [International Covenant on Civil and Political Rights](#), Articles 7-9.

71. Mr Ongwen's rights as a child were violated by the abduction from his parents during a time of war in Uganda.<sup>104</sup> Mr Ongwen had the right to be raised by his family, to have an education and to be free from the violence of war.<sup>105</sup> Instead of enjoying these fundamental rights, Mr Ongwen was stolen away from his parents in November 1987<sup>106</sup> and illegally conscripted into the LRA.<sup>107</sup>
72. The Chamber has heard from numerous witnesses about the treatment of persons under 18 who were abducted into the LRA. Mr Ongwen was no different.<sup>108</sup> Mr Ongwen was forced to commit atrocities under penalty of death, the death of his family and the possible annihilation of his clan.<sup>109</sup> Mr Ongwen was brainwashed as a child and made to believe in the LRA Spirits and in Joseph Kony's omnipresence. He also believed that the actions he took would be known by Joseph Kony and that death for him, his family and his clan would be a likely conclusion.<sup>110</sup>

<sup>104</sup> D-0133, *Report as an Expert Witness at the Sentencing of Mr Ongwen Dominic at the International Criminal Court (ICC) at The Hague: by Major (Retired) Awich Pollar*, UGA-D26-0015-1889, p. 1893 [internal citations omitted].

<sup>105</sup> D-0133, *Report as an Expert Witness at the Sentencing of Mr Ongwen Dominic at the International Criminal Court (ICC) at The Hague: by Major (Retired) Awich Pollar*, UGA-D26-0015-1889, p. 1893 [internal citations omitted].

<sup>106</sup> Trial Chamber IX, *Trial Judgment*, [ICC-02/04-01/15-1762-Conf](#), paras 29-30 [referring to testimonies of [REDACTED], D-0007, D-0008, D-0012 and D-0032].

<sup>107</sup> D-0007, [ICC-02/04-01/15-T-193](#), p. 5, l. 12 to p. 8, l. 9.

<sup>108</sup> D-0114, *Paper on Dominic Ongwen Sentencing Mitigation*, UGA-D26-0015-1907, pp 1909-1912.

<sup>109</sup> P-0226, [ICC-02/04-01/15-T-8-Red2](#), p.22, l. 13 and [ICC-02/04-01/15-T-9-Red](#), p.3, l. 3; P-0099, [ICC-02/04-01/15-T-14-Red](#), p. 23, l. 18-25; P-0236/D-0005, [ICC-02/04-01/15-T-16-Red](#), p. 10, l. 22 to p. 11, l. 5; P-0235/D-0004, [ICC-02/04-01/15-T-17-Red](#), p. 23, l. 19 to p. 24, l. 3; P-0016, ICC-02/04-01/15-T-34-Conf, p. 40, lns 9-17 and p. 41, lns 1-14; P-0440, [ICC-02/04-01/15-T-41-Red2](#), p. 13, lns 12-20; P-0205, ICC-02/04-01/15-T-49-Conf, p. 3, lns 1-3 and p. 6, lns 8-16; P-0205, [ICC-02/04-01/15-T-48-Red2](#), p. 31, lns 7-22; P-0379, [ICC-02/04-01/15-T-56-Red](#), p. 21, lns 23 to p. 22, lns 16; P-0309, [ICC-02/04-01/15-T-60-Red2](#), p. 40, lns 6-12; P-0018, [ICC-02/04-01/15-T-68-Red2](#), p. 61, lns 24-25; P-0249, [ICC-02/04-01/15-T-79-Red2](#), p. 13, lns 1-9; P-0009, [ICC-02/04-01/15-T-82](#), p. 37, l. 23 to p. 38, l. 10; P-0269, ICC-02/04-01/15-T-85-Conf, p. 24, lns 13-19; P-0252, ICC-02/04-01/15-T-87-Conf, p. 67; P-0218, [ICC-02/04-01/15-T-90](#), p. 85, lns 1-6; P-0144, [ICC-02/04-01/15-T-91-Red2](#), p. 10, lns 1-5; P-0355, ICC-02/04-01/15-T-97, p. 16, lns 23-25; P-0045, [ICC-02/04-01/15-T-103-Red2](#), p. 73, l. 8; P-0233, [ICC-02/04-01/15-T-111-Red2](#), p. 10, lns 12-16; P-0138, [ICC-02/04-01/15-T-120-Red2](#), p. 9, lns 4-16; P-0231, [ICC-02/04-01/15-T-123-Red2](#), p. 20, lns 15-20; P-0396, [ICC-02/04-01/15-T-126-Red2](#), p. 9, lns 17-21; P-0006, [ICC-02/04-01/15-T-140-Red2](#), p. 25, l. 22 to p. 26, l. 4; P-0200, ICC-02/04-01/15-T-146-Conf, p. 13, lns 10-14; P-0372, ICC-02/04-01/15-T-148-Conf, p. 59, lns 14-25; P-0374, [ICC-02/04-01/15-T-150-Red](#), p. 45, lns 7-14; P-0307, [ICC-02/04-01/15-T-153-Red](#), p. 19, lns 20-23; P-0448, [ICC-02/04-01/15-T-157-Red2](#), p. 27, l. 20 to p. 28 l. 5; P-0085, [ICC-02/04-01/15-T-158-Red](#), p. 9, lns 8-10; P-0142, [ICC-02/04-01/15-T-72-Red](#), p. 46, lns 2-16; P-0209, [ICC-02/04-01/15-T-160-Red2](#), p. 35, lns 11-18; P-0070, [ICC-02/04-01/15-T-106-Red2](#), p. 59, l. 24 to p. 60, l. 2; P-0264, [ICC-02/04-01/15-T-65-Red](#), p. 25, lns 18-24; V-0002, [ICC-02/04-01/15-T-171-Red](#), p. 12, lns 7-11 and p. 14, lns 5-9; D-0028, [ICC-02/04-01/15-T-181](#), p. 24, lns 9-18; D-0074, [ICC-02/04-01/15-T-187](#), p. 9, lns 1-3; D-0079, [ICC-02/04-01/15-T-189-Red2](#), p. 10, lns 14-25 and p. 19, lns 18-25; D-0024, [ICC-02/04-01/15-T-192-Red2](#), p. 16, lns 4-15; D-0007, [ICC-02/04-01/15-T-193](#), p. 8, lns 1-9; D-0006, [ICC-02/04-01/15-T-194-Red2](#), p. 12, lns 1-7; D-0092, [ICC-02/04-01/15-T-208-Red](#), p. 14, lns 12-25 and p. 22, lns 18-22; D-0076, [ICC-02/04-01/15-T-219-Red](#), p. 20, lns 15-19 ; D-0068, [ICC-02/04-01/15-T-222-Red](#), p. 20, lns 17-21; D-0075, [ICC-02/04-01/15-T-224-Red](#), p. 11, lns 3-8; D-0025, [ICC-02/04-01/15-T-226-Red](#), p. 11, lns 1-11; D-0088, [ICC-02/04-01/15-T-230](#), p. 13, lns 4-11; D-0133, [ICC-02/04-01/15-T-203](#), p. 58, lns 5-11; D-0117, [ICC-02/04-01/15-T-215-Red](#), p. 9, lns 9 to p. 11, lns 21; D-0118, ICC-02/04-01/15-T-216-Red, p. 18, lns 6-10.

<sup>110</sup> D-0060, *Expert Report on the LRA's cosmological space*, UGA-D26-0015-1835, pp 1843-1845. See also P-0172, [ICC-02/04-01/15-T-113-Red](#), p. 54, lns 8-14.

73. The spiritual realm created by the LRA easily influenced the young and simple-minded.<sup>111</sup> Mr Ongwen, being abducted at the age of nine (9) years old, did not escape these influences.<sup>112</sup> The LRA captors forced Mr Ongwen and his fellow abductees to watch the brutal killing of an LRA officer shortly after their abduction because the officer attempted to escape.<sup>113</sup> When the Presiding Judge asked Kakanyero Joe about his observations of Mr Ongwen during the first three and one-half (3.5) months of his abduction, the witness stated,

[B]ut he wasn't feeling easy, he wasn't all by himself. I think he was really depressed, but he didn't have anything to do. We were all children. It was very difficult. If you were in the hands of a beast, you will have to follow the instructions of the beast so that you can survive. If you defy, it can work against you...<sup>114</sup>

74. The suffering did not stop there. During his first few months in captivity, Mr Ongwen, along with Kakanyero Joe and Opio Oloro, were beaten with machetes and sticks for simple infractions like turning right instead of left or not running fast enough.<sup>115</sup> All this happened before Mr Ongwen's tenth birthday.

75. About four (4) years later, [REDACTED], had the unfortunate duty to tell [REDACTED] that his father was dead.<sup>116</sup> Mr Ongwen's mood changed, and he cried for his dead parent, never getting the chance to say goodbye or attend his burial.<sup>117</sup> Mr Ongwen's captivity worsened, a captivity which never should have happened.

76. In 1994, the LRA moved to southern Sudan, forcing those, including Mr Ongwen, still a juvenile, to cross an international border and to live in an area unknown to them with hostile persons living all around them,<sup>118</sup> not to mention large snakes with horns.<sup>119</sup>

77. The path back home was laden with the SPLA, Dinka, deserts, mountains and dangerous wild animals, not to mention the dangers from within the LRA. While not locked behind physical bars, Mr Ongwen was abducted and held captive as a juvenile for approximately eight and

<sup>111</sup> See D-0042, *Report for Sentence Mitigation*, UGA-D26-0015-1878, pp 1880-1883; D-0060, *Expert Report on the LRA's cosmological space*, UGA-D26-0015-1835, pp 1837-1842; D-0060, *Growing in the cosmological space of the LRA*, UGA-D26-0018-3901; and D-0114, *Paper on Dominic Ongwen Sentencing Mitigation*, UGA-D26-0015-1907, pp 1908-1912.

<sup>112</sup> D-0114, *Paper on Dominic Ongwen Sentencing Mitigation*, UGA-D26-0015-1907, pp 1908-1912.

<sup>113</sup> D-0007, [ICC-02/04-01/15-T-193](#), p. 7, l. 17 to p. 8, l. 9 and p. 11, lns 7-19.

<sup>114</sup> D-0007, [ICC-02/04-01/15-T-193](#), p. 19, lns 13-17.

<sup>115</sup> D-0007, [ICC-02/04-01/15-T-193](#), p. 19, l. 19 to p. 20, l. 17.

<sup>116</sup> [REDACTED].

<sup>117</sup> [REDACTED].

<sup>118</sup> For example., P-0231, [ICC-02/04-01/15-T-123-Red2](#), p. 29, l. 19 to p. 30, l. 15. See also P-0142, [ICC-02/04-01/15-T-72-Red](#), p. 44, lns 19-23 and P-0172, [ICC-02/04-01/15-T-113-Red](#), p. 45, lns 17-24.

<sup>119</sup> P-0231, [ICC-02/04-01/15-T-123-Red2](#), p. 85, l. 6 to p. 86, l. 15 (*noting that what the witness described appears to be a horned viper, a native snake to Sudan*).

one-half (8.5) years. Circumstances of this nature were experienced by Mr Ongwen and the thousands of other children taken by the LRA who were led into southern Sudan. It is because of these circumstances that organisations like Ker Kwaro Acholi petitioned, lobbied and ultimately succeeded in getting the Government of Uganda to grant amnesty to persons who returned from the LRA and abandoned the rebellion.<sup>120</sup> Mr Ongwen, like many thousands after him, was stolen from their families and kept under arrest by the LRA with little to no actual help from the Government of Uganda and the international community. The Chamber should take this into account as a mitigating factor in sentencing.<sup>121</sup>

78. The Judges should be aware of the mitigating factors that Mr Ongwen was abducted during a developmental age, continued to develop in the bush, did so in an unfavourable environment, was under the control of Joseph Kony and under a constant state of duress.<sup>122</sup> “As an adolescent, he [Dominic Ongwen] was vulnerable and lacked control over his immediate environment. This means, he can’t be blamed for failing to escape negative influences in his whole environment.”<sup>123</sup>
79. During the time period marked by Mr Ongwen’s abduction to turning 18 years old, Mr Ongwen had no actual way to escape, and the duress caused by the threats of collective punishment against his family should he escape, were real and imminent. Until 1994, the LRA operated solely in northern Uganda, and it was very easy to administer collective punishment to those who escaped. The most common term in northern Uganda used when one describes his or her abduction is “arrest”, regardless of how it is labelled by the Rome Statute. Mr Ongwen was arrested and held without trial by the LRA for almost half of his childhood, and the Chamber must take this, and his serious and real pain and suffering, into account as a mitigating factor when determining his sentence.
80. For the abovementioned reasons, the Defence argues that Mr Ongwen’s time spent in the LRA as a child soldier should be discounted against any sentence, or at the least, weighed heavily in mitigation.

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<sup>120</sup> D-0160, *Where does conviction and sentencing Dominic Ongwen Leave the Acholi Society?*, UGA-D26-0015-1812, pp 1819-1820.

<sup>121</sup> D-0133, *Report as an Expert Witness at the Sentencing of Mr Ongwen Dominic at the International Criminal Court (ICC) at The Hague: by Major (Retired) Awich Pollar*, UGA-D26-0015-1889, p. 1893.

<sup>122</sup> P-0445, [ICC-02/04-01/15-T-166](#), p. 58, lns 1-23 and *Forensic Psychiatric Report of Dominic Ongwen*, UGA-OTP-0280-0732, p. 0755, para. 8.4.

<sup>123</sup> P-0445, *Forensic Psychiatric Report of Dominic Ongwen*, UGA-OTP-0280-0732, p. 0755, para. 8.4.

*ii. Time spent in the LRA as a captive – before being an “officer”*

81. To begin, the Defence does not admit that military ranks in the LRA had actual meaning. These were designations given to persons after moving to Sudan by request of the Sudanese military.<sup>124</sup> The Defence asserts that a military rank in the LRA does not correspond to a normal military rank in government armed forces. Furthermore, while using specific language, the Defence asserts that Mr Ongwen, at all times, was **not a willing participant in the LRA**.
82. At the time in question (1996-1998), the Defence acknowledges that Mr Ongwen was of legal age to lawfully join the military of Uganda. What should instruct the Chamber in its decision is whether Mr Ongwen was a willing participant in the LRA before becoming an officer. The Defence asserts that Mr Ongwen was not a willing participant.
83. Like many others, Mr Ongwen was forced to go to Sudan in 1994. From that point, escape was near impossible.<sup>125</sup> The Chamber must see this time for what it is, the unlawful forcible transfer of a population across an international border. Mr Ongwen witnessed Joseph Kony preach and predict the future, further entrenching Mr Ongwen and those around him into the belief that Joseph Kony was omnipresent, omnipotent, that their escape plans would be known, and they would suffer dire consequences for trying to escape.<sup>126</sup>
84. The Spirits, through Joseph Kony, appointed Mr Ongwen a second lieutenant in 1998, two (2) years after turning 18 years old. The Defence argues that there can be no controversy as to whether Mr Ongwen was a willing participant in the LRA before this time. Until he became an officer, Mr Ongwen was at the complete mercy of all persons holding rank. Mr Ongwen, for the purpose of sentencing, should still be seen to be illegally detained by the LRA, and thus act as a mitigating factor to lessen the Chamber’s sentence against Mr Ongwen.

<sup>124</sup> D-0074, [ICC-02/04-01/15-T-187](#), p. 15, lns 3-10 and D-0032, [ICC-02/04-01/15-T-199-Red](#), p. 52, lns 9-21.

<sup>125</sup> P-0231, [ICC-02/04-01/15-T-123-Red2](#), p. 29, l. 19 to p. 30, l. 15. See also P-0142, [ICC-02/04-01/15-T-72-Red](#), p. 44, lns 19-23 and P-0172, [ICC-02/04-01/15-T-113-Red](#), p. 45, lns 17-24.

<sup>126</sup> See D-0114, *Paper on Dominic Ongwen Sentencing Mitigation*, UGA-D26-0015-1907, p. 1913-1914.

## D. Rule 145(2)(a)(i) of the Rules

### *i. Significantly diminished mental capacity of Mr Ongwen*

85. This Chamber should find that Mr Ongwen's diminished mental capacity at the material time is a mitigating factor in determining a sentence. According to Article 31(1)(a), a person is not criminally responsible for their conduct if "[t]he person suffers from a mental disease or defect that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform with the requirements of law."<sup>127</sup> Circumstances that fall "short of constituting grounds for exclusion of criminal responsibility, such as substantially diminished mental capacity," must be taken into account as a mitigating circumstance during sentencing.<sup>128</sup> This Chamber should find that Mr Ongwen suffered and continues to suffer from substantially diminished mental capacity because 1) he was diagnosed with multiple mental diseases by the Defence experts and 2) the prosecution's experts stated that Mr Ongwen suffered from traumatic events that may impact a person's mental health and capacity in the future.<sup>129</sup>

#### **1. The Chamber should find that Mr Ongwen suffered from substantially diminished mental capacity because he was diagnosed with multiple mental diseases**

86. The Chamber should find that Mr Ongwen suffered, and continues to suffer, from substantially diminished mental capacity at the material time because medical professionals concluded that Mr Ongwen suffered from multiple mental diseases and the Chamber took measures to accommodate Mr Ongwen's mental health and treatment.<sup>130</sup> Although the Chamber found that Mr Ongwen's mental disease and defect did not amount to an Article 31(1)(a) defence for a finding of exclusion of culpability,<sup>131</sup> the Chamber must consider Mr Ongwen's diagnoses to determine whether he experienced substantially diminished mental capacity. The Chamber must consider Mr Ongwen's diagnoses because 1) Mr Ongwen is receiving treatment for PTSD and [REDACTED], and there is evidence on record that these existed, dating back to at least 1989,<sup>132</sup> 2) Dr de Jong, who was preferred and proffered by the Prosecution (who found Dr de Jong) and appointed by the Chamber, also concluded that Mr

<sup>127</sup> Article 31(a) of the Rome Statute.

<sup>128</sup> Rule 145(2) of the Rules.

<sup>129</sup> P-0447, *Forensic Report on the mental health status of Mr. Dominic Ongwen YY*, UGA-OTP0280-0674, p. 0698; P-0445, [ICC-02/04-01/15-T-166](#), p. 21, lns 6-12; and P-0445, UGA-OTP-0280-0732, p. 0756.

<sup>130</sup> D-0041 and D-0042, *Psychiatric Report*, UGA-D26-0015-0004, 0017-0018.

<sup>131</sup> Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), para. 2580.

<sup>132</sup> D-0041 and D-0042, *Psychiatric Report*, UGA-D26-0015-0004, 0008.

Ongwen suffered from mental diseases and defects, and 3) the Chamber, on the advice of the ICC-DC treating physicians, took measures to adjust the trial schedule [REDACTED].

87. First, the Chamber should find that Mr Ongwen likely experienced substantially diminished mental capacity at the material time because he is currently receiving treatment for symptoms of mental diseases and defects as diagnosed by Defence expert witnesses and Dr de Jong. In their report, Professor Ovuga and Dr Akena concluded that Mr Ongwen suffers from “[REDACTED], posttraumatic stress disorder (PTSD), and [REDACTED].”<sup>133</sup> As previously stated, Professor Ovuga and Dr Akena also included a treatment plan and advised 24-hour surveillance to mitigate Mr Ongwen’s [REDACTED].<sup>134</sup> Today, Mr Ongwen receives psychological medical treatment and “a full range of health and social welfare services.”<sup>135</sup> Thus, Professor Ovuga and Dr Akena correctly diagnosed Mr Ongwen.
88. Second, the Chamber should find that Mr Ongwen likely experienced substantially diminished mental capacity at the material time because Dr de Jong also concluded that Mr Ongwen suffers from mental diseases and defects. In his report, Dr de Jong “discussed [Mr Ongwen’s] mental health at the time of preparation of the report.”<sup>136</sup> Dr de Jong concluded that Mr Ongwen suffered from PTSD, [REDACTED], and other specified [REDACTED].<sup>137</sup> As previously stated, Mr Ongwen received psychological medical treatment. Thus, Dr de Jong’s conclusions align with the conclusions of the Defence experts.
89. Third, the Chamber took measures to adjust the trial schedule to accommodate the measures taken by ICC-DC physicians and security team.<sup>138</sup> In its decision, the Trial Chamber “assessed the specific situation of [Mr Ongwen], including his health, and in particular his mental health.”<sup>139</sup> The Chamber also “ordered an examination ‘making a diagnosis as to any mental condition or disorder that [the accused] may suffer.’”<sup>140</sup> After the examination, a report was provided by the examiner.<sup>141</sup> In the report, the examiner stated that “while the

<sup>133</sup> D-0041 and D-0042, *Psychiatric Report*, UGA-D26-0015-0004, 0017-0018. See also D-0042, *Report for Sentence Mitigation*, UGA-D26-0015-1878, pp 1883-1884 and Professor Joop T. de Jong, MD PhD Psychiatry, *Psychiatric examination Pro Justitia regarding Mr Dominic Ongwen YY*, UGA-D26-0015-0046-R01, pp 0050-0051.

<sup>134</sup> D-0041 and D-0042, *Psychiatric Report*, UGA-D26-0015-0004, 0017-0018.

<sup>135</sup> D-0042, *Report for Sentence Mitigation*, UGA-D26-0015-1878, 1885.

<sup>136</sup> Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), para. 2576.

<sup>137</sup> Professor Joop T. de Jong, MD PhD Psychiatry, *Psychiatric examination Pro Justitia regarding Mr Dominic Ongwen YY*, UGA-D26-0015-0046-R01, pp 0050-0053. See also Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), para. 2576.

<sup>138</sup> Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), paras 109-111.

<sup>139</sup> Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), para. 109.

<sup>140</sup> Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), para. 109.

<sup>141</sup> Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), para. 110.

accused suffered from various mental illnesses, ‘he is oriented in time, oriented vis-à-vis his environment and himself. He has a good attention span and maintains his concentration after hours of interviewing.’”<sup>142</sup> Additionally, when Mr Ongwen’s health condition “warranted a break in the proceedings, this was facilitated by the Chamber.”<sup>143</sup> Proceedings only resumed when medical experts from the ICC-DC confirmed that Mr Ongwen’s health allowed for proceedings to resume.<sup>144</sup> Thus, the Trial Chamber considered Mr Ongwen’s diagnoses and his significantly diminished capacity in scheduling trial proceedings. In conclusion, the Chamber should find that Mr Ongwen suffered and continues to suffer from substantially diminished mental capacity as several independent medical professionals diagnosed him with mental diseases and defects and the Chamber took measures to accommodate his mental health treatment. Thus, the Chamber should consider Mr Ongwen’s substantially diminished mental capacity as a mitigating factor when determining a sentence for Mr Ongwen.

**2. The Chamber should find that Mr Ongwen suffered from substantially diminished mental capacity because he suffered from traumatic events that impacted his mental health as an adult**

90. Next, the Chamber should find that Mr Ongwen suffered, and continues to suffer, from substantially diminished mental capacity because the Prosecution experts stated that traumatic events experienced in early life “can leave lasting imprints on the individual.”<sup>145</sup> Although the experts concluded that there is insufficient evidence to justify a diagnosis at the material time, Professor Weierstall-Pust and Dr Abbo concluded that Mr Ongwen suffered traumatic events that may have impacted his mental health as an adult.<sup>146</sup>
91. In his report, Professor Weierstall-Pust concluded that Mr Ongwen experienced traumatic events that may have contributed to the development of a mental disorder.<sup>147</sup> Professor Weierstall-Pust explained that “a person experiences a trauma when confronted with death, threatened death, actual or threatened serious injury – either via direct or indirect exposure - , or by witnessing or being exposed to aversive details.”<sup>148</sup> A person who experiences a trauma

<sup>142</sup> Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), para. 110.

<sup>143</sup> Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), para. 111.

<sup>144</sup> Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), para. 111.

<sup>145</sup> P-0447, *Forensic Report on the mental health status of Mr. Dominic Ongwen YY*, UGA-OTP0280-0674, p. 0679.

<sup>146</sup> P-0447, *Forensic Report on the mental health status of Mr. Dominic Ongwen YY*, UGA-OTP0280-0674, p. 0698; P-0445, [ICC-02/04-01/15-T-166](#), p. 21, lns 6-12; and P-0445, UGA-OTP-0280-0732, p. 0756.

<sup>147</sup> P-0447, *Forensic Report on the mental health status of Mr. Dominic Ongwen YY*, UGA-OTP0280-0674, p. 0698.

<sup>148</sup> P-0447, *Forensic Report on the mental health status of Mr. Dominic Ongwen YY*, UGA-OTP0280-0674, p. 0679.

may develop a “trauma-spectrum disorder.”<sup>149</sup> Early traumatic experiences “have an even more profound impact on an individual’s mental health, as they can leave lasting imprints in the individual, especially when they occur in relevant developmental periods.”<sup>150</sup>

92. Professor Weierstall-Pust also explained that a person may experience two types of trauma.<sup>151</sup> The first type of trauma “means that one specific event happened.”<sup>152</sup> The second type of trauma is “chronic exposure to stress that is not as intense, but that remains or maintains over a longer period.”<sup>153</sup> Both types of trauma “seriously affect [a person’s] mental health.”<sup>154</sup> The way in which a person processes a potentially traumatic event contributes to the “determination of whether a person develops a trauma related mental disorder.”<sup>155</sup> So, according to Professor Weierstall-Pust, a person who experiences a traumatic event or chronic exposure to stress over a long period of time may process the traumatic events in such a way that he or she develops a mental disorder or defect, with early traumatic experiences being particularly harmful.
93. In this case, Professor Weierstall-Pust determined that “Mr Ongwen suffered both types of trauma.”<sup>156</sup> First, Mr Ongwen suffered multiple traumatic experiences at a young age and during developmental periods. For example, Mr Ongwen was kidnapped from his family at the age of nine (9) and witnessed the severe beating or murders of those who tried to escape.<sup>157</sup> Mr Ongwen was also punished by being beaten heavily with a machete shortly after his abduction.<sup>158</sup>
94. Second, Mr Ongwen endured chronic stress for 27 years.<sup>159</sup> This chronic exposure to stress began at the age of nine (9) with his abduction and continued until Mr Ongwen’s escape on 27 December 2014. For example, Mr Ongwen was shot in the leg in November 2002 and

<sup>149</sup> P-0447, *Forensic Report on the mental health status of Mr. Dominic Ongwen YY*, UGA-OTP0280-0674, p. 0678.

<sup>150</sup> P-0447, *Forensic Report on the mental health status of Mr. Dominic Ongwen YY*, UGA-OTP0280-0674, p. 0679.

<sup>151</sup> P-0447, [ICC-02/04-01/15-T-170](#), p. 23, lns 1-6.

<sup>152</sup> P-0447, [ICC-02/04-01/15-T-170](#), p. 23, lns 3

<sup>153</sup> P-0447, [ICC-02/04-01/15-T-170](#), p. 23, lns. 4-5

<sup>154</sup> P-0447, [ICC-02/04-01/15-T-170](#), p. 23, lns 1-6.

<sup>155</sup> P-0447, *Forensic Report on the mental health status of Mr. Dominic Ongwen YY*, UGA-OTP0280-0674, pp 0679-0680.

<sup>156</sup> P-0447, [ICC-02/04-01/15-T-170](#), p. 23, lns 1-13.

<sup>157</sup> D-0007, [ICC-02/04-01/15-T-193](#), p. 7, l. 17 to p. 8, l. 9; p. 11, lns 7-19; and p. 19, l. 13 to p. 20, l. 17.

<sup>158</sup> D-0007, [ICC-02/04-01/15-T-193](#), p. 19, l. 19 to p. 20, l. 17.

<sup>159</sup> Professor Joop T. de Jong, MD PhD Psychiatry, *Psychiatric examination Pro Justitia regarding Mr Dominic Ongwen YY*, UGA-D26-0015-0046-R01, pp 0051-0052.

nearly died.<sup>160</sup> The Chamber is aware of other serious traumatic events that Mr Ongwen endured as a captive of the LRA.

95. After experiencing traumatic events and chronic stress for an extended period of time, Mr Ongwen processed the trauma in such a way that he developed mental diseases. Today, Mr Ongwen receives treatment for PTSD and [REDACTED].<sup>161</sup> It is likely that Mr Ongwen processed the traumatic events he experienced for at least 15 years before the start of the material time in such a way that he developed symptoms of mental disease or defect that substantially diminished his mental capacity at the material time.
96. The Trial Chamber found Professor Weierstall-Pust to be “entirely convincing”.<sup>162</sup> Professor Weierstall-Pust concluded that “there is not sufficient evidence to justify the diagnoses of a manifest mental disorder between 2002 and 2005,” but he conceded that he “found it ‘plausible’ that Dominic Ongwen ‘showed some signs of a mental disorder’ during the period of the charges.”<sup>163</sup> Specifically, Professor Weierstall-Pust stated that there are “hints that support that maybe [Mr Ongwen] suffered from one or the other symptom” and “it’s plausible that he suffered at least from some symptoms.”<sup>164</sup> In fact, Professor Weierstall-Pust explained that he had “no doubts that living in this war scenario might have resulted in being confronted with potentially traumatic events that later in life could have also resulted in a development of a psychopathological disorder.”<sup>165</sup> Mr Ongwen experienced traumatic events and chronic stress and processed those experiences in such a way that he developed mental diseases and defects for which he is currently be treated. Thus, Mr Ongwen likely experienced traumatic events that resulted in symptoms of mental disease or defect and contributed to substantially diminished mental capacity at the material time. Therefore, the Chamber should consider substantially diminished mental capacity as a mitigating factor in determining a sentence for Mr Ongwen.
97. Like Professor Weierstall-Pust, Dr Abbo provided a report and testified before the Chamber. The Chamber found Dr Abbo helpful in the “understanding of the mental disorders in

<sup>160</sup> [REDACTED]. See also UGA-D26-0015-0080 for a photograph of the healed injury.

<sup>161</sup> For example, see Registrar Transmission of a Medical Report from the Medical Officer, ICC-02/04-01/15-1315-Conf-Anx.

<sup>162</sup> Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), para. 2496.

<sup>163</sup> Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), para. 2491.

<sup>164</sup> P-0447, [ICC-02/04-01/15-T-169](#), p. 74 lns 1-9 and *Forensic Report on the mental health status of Mr. Dominic Ongwen YY*, UGA-OTP0280-0674, p. 0698.

<sup>165</sup> P-0447, [ICC-02/04-01/15-T-169](#), p. 18, lns 10-13.

question.”<sup>166</sup> She found that “the complex interactions between individual, societal, and ecological factors over the course of [Mr Ongwen’s] life had gone satisfactorily well,”<sup>167</sup> and that Mr Ongwen had the capacity to appreciate the “unlawfulness of his conduct because he had favourable early childhood development.”<sup>168</sup> Dr Abbo concluded that although Mr Ongwen suffers from mental illness, there is no evidence “that these illnesses are directly linked to the crimes he allegedly committed.”<sup>169</sup> Despite Dr Abbo’s medical conclusions, the Chamber should find that Mr Ongwen had a diminished mental capacity at the material time because Mr Ongwen experienced traumatic events at a young, developmental age. Experiencing trauma at a young, developmental age diminishes value of Mr Ongwen’s life experiences prior to abduction and contributes to the development of mental diseases and defects.

98. First, the Chamber should find that experiencing traumatic events at a young, developmental age diminishes the value of Mr Ongwen’s life experiences prior to abduction and minimizes Mr Ongwen’s capacity to appreciate the unlawfulness of his conduct. According to Dr Abbo, “from conception onward, the intellectual, emotional, and physical attributes individuals develop are strongly influenced by their personal behaviors and physical processes, interactions with the physical environment, and interactions with other people, groups and institutions.”<sup>170</sup>
99. Mr Ongwen’s reports of his early childhood lead Dr Abbo to conclude that, before his abduction, Mr Ongwen’s interactions over the course of his life had gone well.<sup>171</sup> However, after his abduction, Mr Ongwen’s life was “exposed to many extreme traumatic events”<sup>172</sup> According to Dr Abbo, “every minute of everyday [sic] traumatic experiences of [Mr Ongwen], from the time he was abducted, was literally shaping his brain.”<sup>173</sup> In fact, “the younger the brain, the easier to reshape and rewire with experiences.”<sup>174</sup> Dr Abbo asserts that these are mitigating factors – abduction at a developmental age, no choice over his environment, an unfavourable environment under the control of Joseph Kony, and several

<sup>166</sup> Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), para. 2485.

<sup>167</sup> Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), para. 2480; *See also* P-0445, *Forensic Psychiatric Report of Dominic Ongwen*, UGA-OTP-0280-0732, p. 0735.

<sup>168</sup> P-0445, *Forensic Psychiatric Report of Dominic Ongwen*, UGA-OTP-0280-0732, p. 0754.

<sup>169</sup> P-0445, *Forensic Psychiatric Report of Dominic Ongwen*, UGA-OTP-0280-0732, p. 0756.

<sup>170</sup> P-0445, *Forensic Psychiatric Report of Dominic Ongwen*, UGA-OTP-0280-0732, p. 0735.

<sup>171</sup> P-0445, *Forensic Psychiatric Report of Dominic Ongwen*, UGA-OTP-0280-0732, p. 0735.

<sup>172</sup> P-0445, *Forensic Psychiatric Report of Dominic Ongwen*, UGA-OTP-0280-0732, p. 0748.

<sup>173</sup> P-0445, *Forensic Psychiatric Report of Dominic Ongwen*, UGA-OTP-0280-0732, p. 0754.

<sup>174</sup> P-0445, *Forensic Psychiatric Report of Dominic Ongwen*, UGA-OTP-0280-0732, p. 0754.

listed above – at which the Chamber should consider, stating that Mr Ongwen “can’t be blamed for failing to escape negative influences in his whole environment.”<sup>175</sup>

100. Due to reshaping and rewiring of Mr Ongwen’s brain, Professor Weierstall-Pust’s description of the impact of trauma at a young, developmental age – and the fact that Mr Ongwen currently receives treatments for symptoms of PTSD – it is unlikely that Mr Ongwen’s experiences prior to abduction shielded him from the impacts of prolonged and repeated severe trauma. It is also unlikely that Mr Ongwen’s experiences prior to abduction allow him appreciate the unlawfulness of conduct. As stated above, Mr Ongwen endured unimaginable traumas from an exceptionally young age. Any benefit Mr Ongwen may have experienced because of his positive childhood was destroyed by trauma. As a result, the Chamber should find that trauma destroyed any benefit Mr Ongwen may have had from having lived a “satisfactory” early childhood, including any moral developments that would have allowed him to determine right from wrong. Any conclusion otherwise disregards the impact of trauma on a child as described by both Dr Abbo and Professor Weierstall-Pust.
101. In conclusion, the Chamber should find that Mr Ongwen suffered from substantially diminished mental capacity because he suffered from traumatic events that impacted his mental health throughout his life. The Chamber must consider Mr Ongwen’s substantially diminished mental capacity as a mitigating factor in determining Mr Ongwen’s sentence.

*ii. Duress caused by Joseph Kony*

102. While the Chamber decided that Mr Ongwen did not suffer from legal duress during the jurisdiction of the case, Mr Ongwen faced duress daily. The LRA was nothing like a state uniformed military; the LRA was a religious cult which used threats of violence, death and collective punishment to keep people in line. These threats were real and seen by all. The Rules of Procedure and Evidence requires the Chamber to take this into account as a mitigating factor for and a personal circumstance of Mr Ongwen.

**1. The Spiritual realm**

103. Joseph Kony kept the LRA under a tight watch. Kony intertwined the divine with the living and used that to keep control over thousands of people. The control he wielded did so not only on the physical level; he controlled people over the spiritual realm too. His showmanship

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<sup>175</sup> P-0445, *Forensic Psychiatric Report of Dominic Ongwen*, UGA-OTP-0280-0732, p. 0755.

and omnipresence controlled the minds of thousands. Kony would use this power to ensure complete obedience and compliance with his orders and edicts.

104. During the early days of the LRA and into the Sudan years,<sup>176</sup> Joseph Kony was much more visible to everyone who joined and was abducted into the LRA. To quote expert D-0114, “children and young people abducted in the days before *Operation Iron Fist* were more exposed to spirituality issues compared to those that were abducted after March 2002. The overwhelming evidence suggests that Kony more readily found space to lecture his foot soldiers and instil the LRA spirituality and ideologies in them from the Sudan where there was a semblance of stability compared to the bushes of Uganda.”<sup>177</sup> Before *Operation Iron Fist*, Kony was much more visible and was able to infuse his prophet-like being in the minds of those persons in the LRA.<sup>178</sup>

105. This issue behind this spiritual realm that Kony created is not whether it is true, it is whether people believed it was true.<sup>179</sup> Kony perverted the Acholi cultural beliefs to control people, and more importantly, Mr Ongwen.<sup>180</sup> The Chamber should take note of whether this belief system was adopted by Mr Ongwen or if the threats were real enough to scare him.

106. On 15 December 2016, Mr Ongwen told expert D-0060:

Before I went to the bush, I knew these things existed. And there was the introduction we went through, with Moo Ya [*sheanut butter oil*], and there was also the battle: we didn’t take cover! And we came out of the battle unhurt!<sup>181</sup>

107. Like many others, Mr Ongwen fell prey to Kony’s teachings. Mr Ongwen did not become an extension of Kony; Mr Ongwen truly believed in the Spirits and their powers. This is further evidence by ICC-DC medical records where the attending physician noted that Mr Ongwen “still suffers constantly from Mr Kony’s “spirits” and that he can protect himself from them by praying.”<sup>182</sup> Still, just over six (6) years after Mr Ongwen escaped from the LRA, he still believes in and is haunted by the Spirits. Mr Ongwen, like so many others, was scared of the indoctrination into the LRA and felt its power.

<sup>176</sup> By Sudan years, the Defence refers to the pre-Operation Iron Fist time, that being before 2002.

<sup>177</sup> D-0114, *Paper on Dominic Ongwen Sentencing Mitigation*, UGA-D26-0015-1907, p. 1914.

<sup>178</sup> D-0114, *Paper on Dominic Ongwen Sentencing Mitigation*, UGA-D26-0015-1907, p. 1914.

<sup>179</sup> D-0060, *Expert Report on the LRA’s cosmological space*, UGA-D26-0015-1835, p. 1836.

<sup>180</sup> See D-0060, *Expert Report on the LRA’s cosmological space*, UGA-D26-0015-1835, p. 1836-1837 and generally D-0060, *Growing in the cosmological space of the LRA*, UGA-D26-0018-3901.

<sup>181</sup> D-0060, *Expert Report on the LRA’s cosmological space*, UGA-D26-0015-1835, p. 1837.

<sup>182</sup> UGA-D26-0015-1722-R01\_tENG, p. 1722. See also UGA-D26-0015-1723\_tENG, p. 1723 (noting that Mr Ongwen stated that Kony had appeared to him twice in the past week).

108. Joseph Kony would issue rules that covered every action one could take in the LRA. He decided when people could eat certain foods, when people would pray, whether people could fight and how relationships between men and women would take place. These rules were passed down through the Spirits, and took heavily upon those who were indoctrinated early in the LRA.<sup>183</sup>
109. Dreams and the interpretation of dreams were an important fixture in the LRA and Kony's manipulation/brainwashing of its people.<sup>184</sup> Mr Ongwen believed this, and his dreams were reported for interpretation.<sup>185</sup> Mr Ongwen believed in interpreting dreams and that his dreams specifically had relevance to his life and that they could predict the future.<sup>186</sup> Mr Ongwen, like Ray Apire, believed in the powers their individual dreams held.<sup>187</sup>
110. Mr Ongwen very much believed in the Spirits and their powers through Joseph Kony.<sup>188</sup> Mr Ongwen, more so than anyone else, grew up in and grew into the spiritual and cosmological space of the LRA.<sup>189</sup> Having been abducted at nine (9) years old with only a rudimentary understanding of Acholi culture, Mr Ongwen was prime for exploitation and impressions.

## **2. The consequences for violating the rules**

111. Kony instilled fear in those around him. He made prophecies which came true, and he punished those who spoke out against him. He did not care if you were the second-in-command like Otti Lagony or Otti Vincent. If you violated his rules and edicts, your life – and the lives of your loved ones – could be forfeited with a snap of his fingers.
112. The Defence reiterates the words of P-0205, “the elders pronounced that when an individual is abducted you should bear it alone instead of bringing problems to other in the village. And that is why I did not escape.”<sup>190</sup> It was not until the witness was absolutely sure that Kony was no longer able to inflict collective punishment upon P-0205's village – a punishment

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<sup>183</sup> The Defence covered this extensively in its closing brief, [ICC-02/04-01/15-1722-Corr-Red](#).

<sup>184</sup> P-0172, [ICC-02/04-01/15-T-113-Red](#), p. 61, l. 20 to p. 64, l. 23. *See also* UGA-D26-0022-0001, pp 0006-0007.

<sup>185</sup> *For example* UGA-OTP-0025-0523, p. 0525 (Otti reporting to Kony about Mr Ongwen's dreams); UGA-OTP-0016-0088, p. 0090 (Mr Ongwen reporting his dream to Otti); UGA-OTP-0017-0255, p. 0256; and UGA-OTP-0016-0424, p. 0427 (Mr Ongwen asking Raska if he can interpret his dream).

<sup>186</sup> D-0060, *Expert Report on the LRA's cosmological space*, UGA-D26-0015-1835, pp 1843-1844.

<sup>187</sup> D-0060, *Expert Report on the LRA's cosmological space*, UGA-D26-0015-1835, pp 1843-1844.

<sup>188</sup> D-0060, *Expert Report on the LRA's cosmological space*, UGA-D26-0015-1835, pp 1839-1840.

<sup>189</sup> D-0060, *Expert Report on the LRA's cosmological space*, UGA-D26-0015-1835, pp 1839-1840.

<sup>190</sup> P-0205, [ICC-02/04-01/15-T-49-Red3](#), p. 3, lns 7-9 (*citing* UGA-OTP-0247-0076, p. 0080, lns 142-144).

which was meted out against his village in 1989 – did he escape from the LRA.<sup>191</sup> Witness P-0205 knew that if you tried to escape, you would be killed.<sup>192</sup>

113. Witness D-0157 noted:

The next morning, we awoke and went to [REDACTED]. We found out that there were attacks in our area the day before and going into the night. We heard that it started from [REDACTED], to [REDACTED], then [REDACTED], followed by our home in [REDACTED], then to [REDACTED] and ending in [REDACTED]. Everyone in the town centre wondered why the LRA came [REDACTED].<sup>193</sup>

The witness admitted that he knew about collective punishment and that it was widely known in northern Uganda.<sup>194</sup> He admitted that when he escaped with a gun, he was not thinking about his family or village, he was only thinking about saving his own life.<sup>195</sup> Around 60 people died in his and the surrounding villages because of his escape.<sup>196</sup>

114. Witness P-0138 testified to seeing executions of persons who attempted to escape and collective punishment for those who made it home.<sup>197</sup> The witness stated that an attack in Lira around 2002 and at Wianono in 2004 were collective punishments because LRA personnel escaped and went home.<sup>198</sup> The higher the rank of the leaving person, the more likely the LRA was to chase after you.<sup>199</sup>

115. The fear within the LRA existed for many reasons. It existed to strike fear in the newly abducted persons and desensitise them towards death.<sup>200</sup> Even “perceived disobedience was heavily punished.”<sup>201</sup> Mr Ongwen saw a soldier executed for attempting to escape shortly after his abduction, striking fear into him and his friends.<sup>202</sup> Other than fear, “escape was an impossibility driven by the complex arrangement within the rebel settlements, the influence of Joseph Kony, the spirituality factor and the protracted indoctrination of the abductees over the years.”<sup>203</sup>

<sup>191</sup> P-0205, [ICC-02/04-01/15-T-49-Red3](#), p. 5, lns 17-22.

<sup>192</sup> P-0205, [ICC-02/04-01/15-T-48-Red2](#), p. 31, lns 7-22.

<sup>193</sup> D-0157, UGA-D26-0026-0757, para. 31.

<sup>194</sup> D-0157, UGA-D26-0026-0757, para. 39.

<sup>195</sup> D-0157, UGA-D26-0026-0757, paras 39-40.

<sup>196</sup> D-0157, UGA-D26-0026-0757, para. 40.

<sup>197</sup> P-0138, [ICC-02/04-01/15-T-121-Red2](#), p. 9, l. 4 to p. 11, l. 18.

<sup>198</sup> P-0138, [ICC-02/04-01/15-T-121-Red2](#), p. 10, l. 11 to p. 11, l. 5.

<sup>199</sup> P-0138, [ICC-02/04-01/15-T-121-Red2](#), p. 11, lns 8-18.

<sup>200</sup> D-0114, *Paper on Dominic Ongwen Sentencing Mitigation*, UGA-D26-0015-1907, pp 1908 and 1913.

<sup>201</sup> D-0114, *Paper on Dominic Ongwen Sentencing Mitigation*, UGA-D26-0015-1907, p. 1908.

<sup>202</sup> D-0007, [ICC-02/04-01/15-T-193](#), p. 7, l. 17 to p. 8, l. 9 and p. 11, lns 7-19.

<sup>203</sup> D-0114, *Paper on Dominic Ongwen Sentencing Mitigation*, UGA-D26-0015-1907, p. 1910.

116. Another chilling incident happened which many persons in the LRA attributed to a violation of the rules, the incident involving [REDACTED] genitalia.<sup>204</sup> In the report from P-0028, P-0172 and D-0074, this type of punishment is listed, yet it does not come from Joseph Kony, it is a punishment from the Spirits.<sup>205</sup> “The punitive power of the spirits is related with their all-encompassing, and controlling character. They are at all times able to know, and control behaviour.”<sup>206</sup> This type of control comes directly from the rituals performed on the newly abducted persons and those done specifically by Joseph Kony.<sup>207</sup>
117. The abovementioned actions are but a few which the Chamber heard during the presentation of evidence and through the submission of documentary evidence. The Defence beseeches the Chamber to determine that, while not amounting to a complete defence under Article 31(1)(d), Mr Ongwen sustained duress throughout his time in the LRA because of the spiritual actions taken by Joseph Kony and the punishments handed down by Kony. The Defence argues that this issue is both a mitigating factor and a personal circumstance which warrants a reduced sentence.

## **E. Rule 145(1)(c) of the Rules**

### *i. Mr Ongwen’s education*

118. As stated above, Mr Ongwen was abducted from his family at the age of nine (9) years old.<sup>208</sup> He spent the next 27 years of his life held captive in the LRA. During this time, Mr Ongwen was deprived of many of his rights, one of which was his right to an education.
119. Mr Ongwen’s formal education ended in November 1987. At that time, he was finishing his second year in the second grade.<sup>209</sup> While Mr Ongwen’s father took pride in educating his family, the LRA ensured that he would not get that chance.
120. During his time in the LRA, Mr Ongwen did not have a chance to gain further education. Instead of moving on from primary into secondary education, Mr Ongwen was forced to

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<sup>204</sup> [REDACTED].

<sup>205</sup> UGA-D26-0022-0001, p. 0002. *See also* D-0060, *Expert Report on the LRA’s cosmological space*, UGA-D26-0015-1835, p. 1841.

<sup>206</sup> D-0060, *Expert Report on the LRA’s cosmological space*, UGA-D26-0015-1835, p. 1841.

<sup>207</sup> D-0060, *Expert Report on the LRA’s cosmological space*, UGA-D26-0015-1835, p. 1841.

<sup>208</sup> Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), paras 29-30 [*referring to testimonies of [REDACTED], D-0007, D-0008, D-0012 and D-0032*].

<sup>209</sup> The story told in Coorom was that Mr Ongwen’s father greatly appreciated education, and that he felt that young Dominic Ongwen did not master second grade to his liking, so Mr Opobo required Dominic Ongwen to re-take second grade.

travel to southern Sudan under threat of death and death of his family. The LRA did not have an educational system. Its abductees did not attend school, and did not go to the prestigious Tanzanian Military Academy in Monduli to be trained as forced soldiers.

121. Mr Ongwen has received more of a standardised education from the ICC-DC than he did during the first 36 years of his life at home and in the bush. Mr Ongwen has tried to continue his education since arriving at the ICC-DC, but his efforts were hampered by the trial proceedings, the language barrier and the current pandemic.
122. Mr Ongwen is not like the normal persons prosecuted before courts like this. Mr Ongwen is not educated like Slobodan Milošević. Mr Ongwen is not the leader of a nation taken to war. Mr Ongwen is a man who was robbed of his education at the age of nine (9) years old.
123. Mr Ongwen is not a complex person who attempted to position himself for political or social power; he is a simple man from a small village. He knew nothing of hate, politics or death until the LRA stole him from his family. Had Mr Ongwen been older and better educated, his life may have turned out differently. He may have stood up to Joseph Kony like Otti Lagony, Okello Can-Adonga or Otti Vincent. He may have tried to escape and succeed, only to have his village destroyed like [REDACTED].<sup>210</sup> The Defence contends that the Chamber should consider Mr Ongwen's lack of an education as a mitigating factor when determining an appropriate sentence for Mr Ongwen.

*ii. Mr Ongwen's social and economic situation*

124. Mr Ongwen is not a man of money or worldly possessions. Mr Ongwen's possessions are that which he has with him at the ICC-DC. While Mr Ongwen is a rich man in term of children and love for them, he is a poor man in terms of physical possessions. Furthermore, Mr Ongwen is not alleged to have pillaged from persons to gain possessions or money. Mr Ongwen's wish, as will be elaborated below, is to return to his family home and become a farmer. There, in Coorom, lies his true value – the ability to provide for his family by farming on his family's land.
125. The Chamber should take Mr Ongwen's personal economic status into account when determining a sentence as Mr Ongwen's only possessions are what is in his holding cell at the

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<sup>210</sup> See D-0157, UGA-D26-0026-0757, paras 29-35 and 39-40.

ICC-DC. Imposing a low sentence would allow him to become a productive member of the community in Coorom and in Acholi society.

126. Furthermore, as the eldest living person of his bloodline, Mr Ongwen has the burden of being the patriarch of the family.<sup>211</sup> This places an additional social burden on Mr Ongwen, one which is best suited to do at home instead of in a foreign prison cell.
127. With the very recent death of one of Mr Ongwen's brothers, his direct family is dwindling. His guidance now will be needed even more at home than before, and his family looks to him for help.<sup>212</sup> Entrenched in Acholi culture, the eldest male leads the family, making important decisions on behalf of the family. Until recently, this burden has befallen on his brothers. With the loss of one, the power in the family is diminishing.
128. The importance of the patriarchal system in Acholi may seem foreign to some, but it is the system in which Mr Ongwen's family operates. While these traditions are lessening in the recent years, they still prevail in Mr Ongwen's village. The importance of having Mr Ongwen at home to make family decisions should not be overlooked and should be taken seriously. The Defence requests that the Chamber consider Mr Ongwen's role as the eldest son at home and take this into account as a mitigating factor that warrants a shorter sentence when it determines a sentence for Mr Ongwen.<sup>213</sup>

*iii. Mr Ongwen's age and military education*

129. The Chamber should consider Mr Ongwen's age at the time of the crimes for which he was convicted and his current age when determining a sentence. Such issues can and should form the basis for factors in mitigation of a sentence.<sup>214</sup>
130. As written above and acknowledged in the Trial Judgment, Mr Ongwen was a child when he was abducted by the LRA.<sup>215</sup> One witness stated, "I also looked at the client and his age, and I

<sup>211</sup> D-0161, UGA-D26-0015-1858, para. 1.

<sup>212</sup> See D-0008, UGA-D26-0015-1855, para. 5; D-0009, UGA-D26-0015-1851, para. 9; D-0161, UGA-D26-0015-1858, paras 1 and 3; and D-0162, UGA-D26-0015-1861, para. 3.

<sup>213</sup> See Appeals Chamber Review Panel, *Decision on the review concerning reduction of sentence of Mr Germain Katanga*, [ICC-01/04-01/07-3615](#), paras 108-110.

<sup>214</sup> See Trial Chamber II, *Decision on Sentence pursuant to article 76 of the Statute*, [ICC-01/04-01/07-3484-ENG](#), paras 88 and 144.

<sup>215</sup> Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), paras 29-30 [referring to testimonies of [REDACTED], D-0007, D-0008, D-0012 and D-0032).

looked back at that time and I, like, oh my goodness, this could have actually been me.”<sup>216</sup> During the jurisdiction of the case, Mr Ongwen would have been between the ages of 24-27, or better written, Mr Ongwen was still a youth. By the time the Court’s jurisdiction took effect, Mr Ongwen had already spent 14.5 years captive in the LRA. The Defence highlights Mr Ongwen’s personal circumstance of growing up in the LRA,<sup>217</sup> but also the young age at which the actions for which he was convicted happened. By the time the Court’s jurisdiction started, Mr Ongwen had spent 60.6% of his entire life, and all his adult life, in the LRA.<sup>218</sup>

131. The Chamber determined that Mr Ongwen was granted the rank of major on 1 July 2002.<sup>219</sup> The Defence questions whether, in any real military, a person who just turned 24 years old would receive a commission as a battalion commander with the rank of major. Mr Ongwen was granted, by Joseph Kony through the Spirits, this rank and position with little to no training or education.
132. No person at the age of 24 years old is ready to attain the duties and responsibilities associated with the rank of major and the position of a battalion commander, especially not one whose education ended at second grade. Joseph Kony, the Spirits, and the entire LRA placed Mr Ongwen in a precarious situation, one very few people on this Earth can understand. At a young age, after being brainwashed and forced to stay in the LRA under threat of death and the destruction of his family and village, an uneducated Mr Ongwen was ordered to take control of a battalion.
133. As a comparison, in September 2017, the United States Armed Forces had 11 officers out of 229,286 who had not attained a high school degree or its equivalent.<sup>220</sup> The UPDF has the Non Commissioned Officer Academy for new NCOs.<sup>221</sup> Unlike the LRA, enlisted personnel in the US Armed Forces are required to attend officer candidate school.<sup>222</sup> The Chamber has

<sup>216</sup> D-0041, [ICC-02/04-01/15-T-248-Red](#), p. 42, lns 13-14.

<sup>217</sup> See D-0060, *Expert Report on the LRA’s cosmological space*, UGA-D26-0015-1835; D-0060, *Growing in the cosmological space of the LRA*, UGA-D26-0018-3901; D-0114, *Paper on Dominic Ongwen Sentencing Mitigation*, UGA-D26-0015-1907; D-0133, *The Enduring Impact of being a Child Soldier*, UGA-D26-0015-1022; *Report as an Expert Witness at the Sentencing of Mr Ongwen Dominic at the International Criminal Court (ICC) at The Hague: by Major (Retired) Awich Pollar*, UGA-D26-0015-1889; and D-0042, *Report for Sentence Mitigation*, UGA-D26-0015-1878.

<sup>218</sup> Mr Ongwen was born in May 1978, abducted in November 1987, and the Court’s jurisdiction started July 2002. Mr Ongwen was approximately 114 months old when abducted and 289 months old when the Court’s jurisdiction started.

<sup>219</sup> Trial Chamber IX, *Trial Judgment*, [ICC-02/04-01/15-1762-Red](#), para. 134.

<sup>220</sup> See Department of Defense for the United States of America, [2017 Demographics / Profile of the Military Community](#), 2017 Demographics Report, p. 43, Chart 2.54 (PDF page 70).

<sup>221</sup> See Ministry of Defence and Veteran Affairs, [Non Commissioned Officer Academy](#), last accessed on 29 March 2021.

<sup>222</sup> For example see [US Army Careers & Jobs](#), last accessed 29 March 2021.

heard no concrete evidence of the LRA having either a non-commissioned officer academy or an officer candidate school, and it should be inferred that no such training existed.

134. At the age of 24, Mr Ongwen was thrown to the wolves. Mr Ongwen did not have the mental or maturity levels necessary for the duties and responsibilities associated with the rank of major and position of a battalion commander. Mr Ongwen lacked the education received by officers in conventional militaries before being given command, and he lacked the basic education guaranteed to everyone in Uganda. The Chamber should account for Mr Ongwen's age and his lack of military education when determining its sentence. The Defence argues that this factor, while personal to Mr Ongwen as a personal circumstance, should also be considered as a mitigating circumstance which warrants a shorter sentence by the Chamber.

#### **F. Mr Ongwen's family situation**

135. Rule 145(1)(b) requires the Chamber to consider Mr Ongwen's personal situation when determining a sentence. While previous chambers of the Court have determined that the family situation of individuals were not exceptionally different than other persons prosecuted before international courts,<sup>223</sup> Mr Ongwen's family situation is markedly different.
136. Trial Chamber II determined that a defendant's family situation can be considered as a mitigating circumstance.<sup>224</sup> The Chamber may use the defendant's young age, chances at rehabilitation and reintegration, and number of children.<sup>225</sup> The Defence reserves this section specifically for Mr Ongwen's family.
137. The Defence stresses the number of children Mr Ongwen has fathered. Mr Ongwen's eldest, [REDACTED], turned 22 years old just after the Trial Judgment.<sup>226</sup> Mr Ongwen's youngest child is nearly three (3) years old. During his life, Mr Ongwen's family states that he has fathered approximately 20 children.<sup>227</sup>

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<sup>223</sup> See Trial Chamber VII, *Decision on Sentence pursuant to Article 76 of the Statute*, [ICC-01/05-01/13-2123-Corr](#), paras 62, 90, 189 and 244 (citing Trial Chamber III, *Decision on Sentence pursuant to Article 76 of the Statute*, [ICC-01/05-01/08-3399](#), para. 78).

<sup>224</sup> Trial Chamber II, *Decision on Sentence pursuant to article 76 of the Statute*, [ICC-01/04-01/07-3484-tENG](#), paras 88 and 144.

<sup>225</sup> Trial Chamber II, *Decision on Sentence pursuant to article 76 of the Statute*, [ICC-01/04-01/07-3484-tENG](#), paras 88 and 144.

<sup>226</sup> P-0101, UGA-OTP-0164-0102, para. 9.

<sup>227</sup> D-0008, UGA-D26-0015-1855, para. 5; D-0009, UGA-D26-0015-1851, para. 9; D-0161, UGA-D26-0015-1858, para. 3; and D-0162, UGA-D26-0015-1861, para. 3.

138. Mr Ongwen's children have slowly come into the lives of his family as they have returned from the bush. His children are no strangers in Coorom. [REDACTED] lived in Coorom for a little over a year before they were reunited with their mothers [REDACTED]. [REDACTED], Mr Ongwen's eldest child, fled to Coorom recently when [REDACTED].<sup>228</sup> Most of his children have, at one time or the other, been to Coorom for an extended period of time during this pandemic.<sup>229</sup> Mr Ongwen's eldest daughter [REDACTED].
139. With Mr Ongwen's family traveling to Coorom more since he escaped from the LRA, it has placed a considerable burden on his family.<sup>230</sup> Mr Ongwen's aunt and uncle, his traditional parents as Mr Ongwen's biological parents have died, cannot take care of these children as they come along.<sup>231</sup> Mr Ongwen's brothers have children of their own.<sup>232</sup> With the unfortunate recent death of another brother of Mr Ongwen, Kilama, there will be an increased burden placed on the family. Currently, the family must care for the children of Mr Ongwen's brother in addition to the children of Mr Ongwen. The need to have Mr Ongwen in Coorom is more than ever now with the death of Kilama.<sup>233</sup>
140. The Defence notes that it was informed by the family of Mr Ongwen [REDACTED].
141. If released, Mr Ongwen would continue his fatherly duties. He would return home and help raise and feed his children. This is something which is not new to this Chamber. Mr Ongwen has fought for his right to speak with and support his children.<sup>234</sup> Mr Ongwen supplies funds for his children when he can.<sup>235</sup> [REDACTED].<sup>236</sup>

<sup>228</sup> The Defence notes that this information came after the 26 February 2021 deadline for additional evidence. The Defence implores the Chamber to take heed of this new information in its decision.

<sup>229</sup> See generally D-0008, UGA-D26-0015-1855, para. 5; D-0009, UGA-D26-0015-1851, para. 9; D-0161, UGA-D26-0015-1858, para. 3; and D-0162, UGA-D26-0015-1861, para. 3.

<sup>230</sup> D-0008, UGA-D26-0015-1855, para. 5; D-0009, UGA-D26-0015-1851, para. 9; D-0161, UGA-D26-0015-1858, para. 3; and D-0162, UGA-D26-0015-1861, para. 3.

<sup>231</sup> D-0009, UGA-D26-0015-1851, paras 9-10.

<sup>232</sup> D-0161, UGA-D26-0015-1858, para. 3.

<sup>233</sup> See Appeals Chamber Review Panel, *Decision on the review concerning reduction of sentence of Mr Germain Katanga*, [ICC-01/04-01/07-3615](#), paras 108-110.

<sup>234</sup> Trial Chamber IX, *Defence Response to the Prosecution Filing ICC-02/04-01/15-482-Conf*, ICC-02/04-01/15-490-Conf, para. 23-49 ([public redacted version](#)) and Trial Chamber IX, *Joint Defence and Prosecution Observations Pursuant to ICC-02/04-01/15-521, Paragraph 18*, ICC-02/04-01/15-606-Conf. See also Trial Chamber IX, *Registry's Report on Mr Ongwen's Requests to Add New Persons to his Non-Privileged Telephone Contact List*, ICC-02/04-01/15-539-Conf; Trial Chamber IX, *Registry's addendum to "Report on Mr Ongwen's Requests to Add New Persons to his Non-Privileged Telephone Contact List"* (ICC-02/04-01/15-539-Conf-Exp), ICC-02/04-01/15-545-Conf; and Trial Chamber IX, *Decision on Mr Ongwen's Request to Add New Persons to his Non-Privileged Telephone Contact List*, [ICC-02/04-01/15-553](#).

<sup>235</sup> For example see UGA-D26-0018-3428, pp 3428-3433. See also Trial Chamber IX, *Defence Response to the Prosecution Filing ICC-02/04-01/15-482-Conf*, ICC-02/04-01/15-490-Conf ([public redacted version](#)); Trial Chamber IX, *Joint Defence and Prosecution Observations Pursuant to ICC-02/04-01/15-521, Paragraph 18*, ICC-02/04-01/15-

142. Mr Ongwen, through his Defence, has fought to keep family connections with his children.<sup>237</sup> Until the pandemic, Mr Ongwen spoke to most of his children, through the facilitation of the Registry and Prosecution, on a rotational basis. Mr Ongwen is currently engaged in litigation against the Registrar for the right to have video-conferencing with his children as his family cannot visit because of the SARS-CoV-2 pandemic.<sup>238</sup> Mr Ongwen loves his children, and it would be in the best interest of those children if Mr Ongwen is released quickly and he can provide them with food he grows and financing for education. With the possibility of [REDACTED], this has become more important.
143. As it can be inferred above, almost all of Mr Ongwen's children are either school-going age or near school-going age. Mr Ongwen has helped with school fees where he could, but it is impossible for him to come near the amount of money required to school all of his children while in prison. Mr Ongwen wants for his children what he was denied as a child, an education.
144. Primary education in Uganda is free, but free does not mean free. Even though parents do not have to pay for primary education, hidden costs exist. Schools require children to wear uniforms, which cost money. Schools often require parents to pay for some type of provision. The provision could be a 25-kilogram sack of beans for the school-time meal, or for concrete for repairs to the school, or for pencils and paper for the teachers and students to write. When it is all said and done, each child costs, on the average, 100,000 UGX per quarter to attend primary school, and the costs dramatically increase for students in high school.

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606-Conf; Trial Chamber IX, *Registry's Report on Mr Ongwen's Requests to Add New Persons to his Non-Privileged Telephone Contact List*, ICC-02/04-01/15-539-Conf; Trial Chamber IX, *Registry's addendum to "Report on Mr Ongwen's Requests to Add New Persons to his Non-Privileged Telephone Contact List" (ICC-02/04-01/15-539-Conf-Exp)*, ICC-02/04-01/15-545-Conf; and Trial Chamber IX, *Decision on Mr Ongwen's Request to Add New Persons to his Non-Privileged Telephone Contact List*, [ICC-02/04-01/15-553](#).

<sup>236</sup> The Defence again makes note that this happened after the 26 February 2021 cut-off dates for new evidence.

<sup>237</sup> Trial Chamber IX, *Defence Response to the Prosecution Filing ICC-02/04-01/15-482-Conf*, ICC-02/04-01/15-490-Conf, para. 23-49 ([public redacted version](#)) and Trial Chamber IX, *Joint Defence and Prosecution Observations Pursuant to ICC-02/04-01/15-521, Paragraph 18*, ICC-02/04-01/15-606-Conf. See also Trial Chamber IX, *Registry's Report on Mr Ongwen's Requests to Add New Persons to his Non-Privileged Telephone Contact List*, ICC-02/04-01/15-539-Conf; Trial Chamber IX, *Registry's addendum to "Report on Mr Ongwen's Requests to Add New Persons to his Non-Privileged Telephone Contact List" (ICC-02/04-01/15-539-Conf-Exp)*, ICC-02/04-01/15-545-Conf; Trial Chamber IX, *Decision on Mr Ongwen's Request to Add New Persons to his Non-Privileged Telephone Contact List*, [ICC-02/04-01/15-553](#).

<sup>238</sup> The Defence notes that at the time of this submission, the Registrar has not decided upon the request. The Registrar decided that he needed more time to conduct an inquiry into the feasibility of Mr Ongwen having regular video-conference calls with his family and children. The Defence reminded the Registrar of his duty to provide an answer on 31 March 2021, giving him a deadline of 2 April 2021 to respond (the Registrar's self-given extension has expired with no answer).

145. The problems associated with educational costs are not unique to him, but the size of Mr Ongwen's family is. Mr Ongwen's family stated that it has approximately 20 children.<sup>239</sup> Feeding, clothing and preparing these children for school is by no means a small task. Mr Ongwen deserves the ability to help these children, even if they do not live with him. If one child needs to supply beans for his class to attend school, he would be able to deliver the goods to the school to offset the fees. If one of the children must buy a new school uniform, he can buy it with the revenue he earns from working on his family farm. While this is not generally unique, the amount of children Mr Ongwen has makes it a unique situation for him. The Chamber should look at this factor as a mitigating circumstance. It is not merely a right of a father to provide for his children, but the right of the children to have an education. Mr Ongwen wants to fulfil this right for his children, one which was robbed from him by the LRA.
146. While the education of Mr Ongwen's children, a right which he was denied as a child, is highly important to him, the health of his children is paramount. While detained at the ICC-DC facility, Mr Ongwen has had to deal with health issues of his children.<sup>240</sup> This is no small matter for a father. Issues with him being away from his children and family are not unique to him, but the necessity to aid in the health of so many children is. Mr Ongwen cannot provide the necessary tools needed to help the children's mothers provide a healthy lifestyle if he is incarcerated for years to come.
147. Just like with an education, Mr Ongwen's situation is unique. He has the responsibility to ensure that his children have food to eat and can seek medical attention when needed. With the size of his family, this is something which cannot be done if he is given a lengthy sentence. He must be able to return home, earn a living and provide for his children.
148. The Chamber should consider Mr Ongwen's family situation as a mitigating factor. The Defence appreciates that this is generally not considered a mitigating factor in sentencing, but the Chamber can, as another chamber has done, use these personal family circumstances in mitigation when determining an appropriate sentence for Mr Ongwen.

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<sup>239</sup> D-0008, UGA-D26-0015-1855, para. 5; D-0009, UGA-D26-0015-1851, para. 9; D-0161, UGA-D26-0015-1858, para. 3; and D-0162, UGA-D26-0015-1861, para. 3.

<sup>240</sup> *For example see* UGA-D26-0018-3428, pp 3428-3433.

**G. Rule 145(1)(b) of the Rules – Mr Ongwen’s good character**

*During all my time with him, I didn't see any bad thing he did to me. And even if you ask other people who returned from the bush, you will realise that most of them indeed liked*

*Ongwen.*<sup>241</sup>

149. Mr Ongwen’s life has been marred with pain and suffering since he was nine (9) years old. Throughout this time though, he has tried to make the best with what he has. Mr Ongwen’s character while in the LRA has been discussed by many.

150. When deciding a sentence, the Chamber should take into account the personal circumstances of the person pursuant to Rule 145(1)(b) of the Rules, which includes the good character of the person and good acts.<sup>242</sup>

*i. The lives Mr Ongwen saved while in the LRA*

151. The Defence does not submit that the below mentioned persons represent an all-inclusive list of persons who Mr Ongwen saved. The persons discussed below are merely a sample of the lives of persons who were in the LRA which Mr Ongwen intervened in to save. The Defence asserts that these examples, and the countless unmentioned ones, should be considered and weighed heavily as a mitigating factor in sentencing.

152. The Defence recalls the Article 56 testimony of P-0236/D-0005. During her testimony, the Defence asked the witness about Mr Ongwen’s character towards her. The witness confirmed that Joseph Kony ordered her execution for an incident in which she was involved with another person named Nyeko.<sup>243</sup> Mr Ongwen plead for her life and P-0236/D-0005 is alive today only because of Mr Ongwen’s actions.<sup>244</sup>

153. Before escaping the LRA, witness P-0209 confided in Dominic his plans to escape and return home.<sup>245</sup> The witness knew the punishment for trying to escape was death, and that if the plans were discovered, he would be killed.<sup>246</sup> The witness briefly named an instance when

<sup>241</sup> P-0016, ICC-02/04-01/15-T-34-CONF, p. 42, lns 8-10.

<sup>242</sup> See generally Trial Chamber VII, *Decision on Sentence pursuant to Article 76 of the Statute*, [ICC-01/05-01/13-2123-Corr](#), para. 92.

<sup>243</sup> P-0236/D-0005, [ICC-02/04-01/15-T-16-Red](#), p. 46, lns 1-7.

<sup>244</sup> P-0236/D-0005, [ICC-02/04-01/15-T-16-Red](#), p. 46, lns 1-7.

<sup>245</sup> P-0209, [ICC-02/04-01/15-T-160-Red2](#), p. 36, lns 3-9.

<sup>246</sup> P-0209, [ICC-02/04-01/15-T-160-Red2](#), p. 35, lns 11-23. See also [ICC-02/04-01/15-T-161-Red2](#), p. 8, l. 13 to p. 10, l. 3 and p. 54, l. 22 to p. 55, l. 2.

this happened to a person named Ocira.<sup>247</sup> Even though the witness understood and appreciated the perils of attempting to escape, he told Mr Ongwen about his plans.<sup>248</sup> Knowing this information, Mr Ongwen did not kill witness P-0209 for planning to escape; Mr Ongwen kept the information secret and allowed P-0209 to escape without any action from Mr Ongwen.<sup>249</sup> The witness escaped from the LRA and is alive today because of Mr Ongwen.

154. At a very young age, D-0049 was walking across a river on her way to Sudan.<sup>250</sup> The strong river current began to overtake the witness. Mr Ongwen, still only around 16 years old, went to the witness and saved her from being swept away by the current.<sup>251</sup> Mr Ongwen saved the life of the witness, a person unknown to him at the time, while putting himself in jeopardy from the river. Witness D-0049 is alive today because of the heroic actions of Mr Ongwen while he was still a teenager.
155. Witness P-0231 testified about what happened around the time he escaped.<sup>252</sup> [REDACTED].<sup>253</sup> [REDACTED].<sup>254</sup> [REDACTED].<sup>255</sup> Had it not been for the intervention of Mr Ongwen, P-0231 would have been executed [REDACTED].
156. Witness P-0231 spoke of others for whom Mr Ongwen intervened to stop their executions [REDACTED]. Witness P-0231 testified that at least three (3) other persons were to be executed [REDACTED].<sup>256</sup> These additional three (3) persons were able to live and see another day, all of whom eventually escaped from the LRA and returned home.<sup>257</sup>
157. Finally, P-0205 stated that he cheated death [REDACTED] because of Mr Ongwen.<sup>258</sup> P-0205 stated that he too was supposed to be executed [REDACTED], and that Mr Ongwen intervened to save his life.<sup>259</sup> Witness P-0205, like several others written about above, would be dead today if not for Mr Ongwen.

<sup>247</sup> P-0209, [ICC-02/04-01/15-T-160-Red2](#), p. 35, lns 11-23.

<sup>248</sup> P-0209, [ICC-02/04-01/15-T-160-Red2](#), p. 36, l. 3 to p. 38, l. 1.

<sup>249</sup> P-0209, [ICC-02/04-01/15-T-160-Red2](#), p. 36, l. 3 to p. 38, l. 1.

<sup>250</sup> D-0049, [ICC-02/04-01/15-T-243-Red2](#), p. 29, l. 9 to p. 30, l. 9.

<sup>251</sup> D-0049, [ICC-02/04-01/15-T-243-Red2](#), p. 29, l. 9 to p. 30, l. 9.

<sup>252</sup> P-0231, ICC-02/04-01/15-T-123-CONF, p. 7, l. 23 to p. 14, l. 20.

<sup>253</sup> See P-0231, ICC-02/04-01/15-T-123-CONF, p. 7, l. 23 to p. 14, l. 20.

<sup>254</sup> P-0231, ICC-02/04-01/15-T-123-CONF, p. 12, l. 2 to p. 13, l. 2 and [REDACTED].

<sup>255</sup> P-0231, ICC-02/04-01/15-T-123-CONF, p. 13, lns 3-6.

<sup>256</sup> P-0231, [ICC-02/04-01/15-T-123-Red2](#), p. 83, lns 6-21.

<sup>257</sup> See [REDACTED].

<sup>258</sup> P-0205, ICC-02/04-01/15-T-51-CONF, p. 35, lns 2-9.

<sup>259</sup> P-0205, ICC-02/04-01/15-T-51-CONF, p. 35, lns 2-9.

158. Mr Ongwen saved these persons' lives and the lives of countless others. The Chamber must recognise that Mr Ongwen helped people out of kindness and goodwill, and the Chamber should consider Mr Ongwen's good character as a mitigating factor when determining a sentence.

*ii. Acts performed by Mr Ongwen which demonstrate his good character in the LRA*

159. In addition to saving persons' lives at a risk to his own, Mr Ongwen's character while in the LRA was second to none. Mr Ongwen, while being afflicted with trauma and mental diseases, tried to treat those around him better than other persons in the LRA. The testimonies below are merely a sample of the lives of persons who were in the LRA which Mr Ongwen intervened upon to make better. The Defence asserts that these examples, and the countless unmentioned ones, should be considered and weighed heavily as a mitigating factor in sentencing.

160. Witness P-0309 told the Chamber that his younger sister was abducted [REDACTED].<sup>260</sup> The witness told the Chamber that Mr Ongwen took interest in having P-0309's sister being released. The witness stated that Mr Ongwen instructed him to stay close so the witness could identify his sister and that Mr Ongwen could try to secure her release.<sup>261</sup> As it came to be, the Witness's sister was released independently during the search.<sup>262</sup> Mr Ongwen's willingness to aid P-0309 in his quest to have his sister released demonstrates the good character of Mr Ongwen.

161. Witness D-0081 was abducted at Pajule. He spent several weeks in the LRA before being sent to Mr Ongwen's group.<sup>263</sup> The witness spent approximately one week with Mr Ongwen.<sup>264</sup> During this time, other LRA members assaulted the witness for overturning a jerrycan.<sup>265</sup> Once the group had settled, Mr Ongwen walked over the LRA members who assaulted D-0081, issuing them a stern warning that beating someone for what D-0081 did would not be tolerated, and that if Mr Ongwen saw them do it again, they would receive a severe

<sup>260</sup> P-0309, ICC-02/04-01/15-T-60-CONF, p. 69, lns 10-25.

<sup>261</sup> P-0309, ICC-02/04-01/15-T-60-CONF, p. 69, lns 10-25.

<sup>262</sup> P-0309, ICC-02/04-01/15-T-60-CONF, p. 69, lns 10-25.

<sup>263</sup> See D-0081, [ICC-02/04-01/15-T-220-Red](#). See also UGA-D26-0022-0107, paras 35-41.

<sup>264</sup> D-0081, [ICC-02/04-01/15-T-220-Red](#), p. 32, lns 8-16.

<sup>265</sup> D-0081, [ICC-02/04-01/15-T-220-Red](#), p. 40, lns 5-17.

punishment.<sup>266</sup> Like before, Mr Ongwen helped someone whom he did not have to help because he is a good man.

162. Witness D-0119 spoke of an interaction with Mr Ongwen. The witness testified about how she was falling behind in a march.<sup>267</sup> She noted how the normal result of someone falling behind in a march was death.<sup>268</sup> This was not the case with Mr Ongwen. When D-0119 started falling behind, Mr Ongwen did not “let her rest there”, Mr Ongwen took control of the baby she was carrying and walked down the hill by her side to ensure her safety and that of the child.<sup>269</sup> Witness P-0119 further testified that:

*He [Mr Ongwen] didn't give help only to me, but to very many other people. I saw the way he was treating people. He was not a harsh commander. He was a good person. I can confirm that he was a very good person.*<sup>270</sup>

163. Witness P-0099 stated that:

*Additionally, there were a lot of people that he released at the time that they were abducting people in Uganda. He released quite a number of people. And as long as I was there, [...] I did not actually observe or witness him doing anything bad to the boys in his homestead...*<sup>271</sup>

164. The same witness described Mr Ongwen as a good man.<sup>272</sup> Mr Ongwen would talk to his people like human beings, make sure that they had food to eat, play with the young children, and “**he took care of all his wives**”.<sup>273</sup> Witness P-0099 was with Mr Ongwen from [REDACTED], and in all this time, she “**did not witness him [Mr Ongwen] do anything bad.**”<sup>274</sup>

165. Finally, P-0205 discussed about an attack in Patongo. During this attack, two police officers were captured.<sup>275</sup> At the end of the attack, the two police officers were released.<sup>276</sup>

166. Statements like these about Mr Ongwen are not unique to these witnesses, but they are unique to Mr Ongwen. Mr Ongwen did something which no other commander did in the LRA, he

<sup>266</sup> D-0081, [ICC-02/04-01/15-T-220-Red](#), p. 40, lns 5-17.

<sup>267</sup> D-0119, [ICC-02/04-01/15-T-196-Red](#), p. 33, lns 1-19.

<sup>268</sup> D-0119, [ICC-02/04-01/15-T-196-Red](#), p. 33, lns 11-13.

<sup>269</sup> D-0119, [ICC-02/04-01/15-T-196-Red](#), p. 33, lns 11-17.

<sup>270</sup> D-0119, [ICC-02/04-01/15-T-196-Red](#), p. 33, lns 17-19.

<sup>271</sup> P-0099, [ICC-02/04-01/15-T-14-Red](#), p. 58, lns 21-24.

<sup>272</sup> P-0099, [ICC-02/04-01/15-T-14-Red](#), p. 58, l. 4 to p. 59, l. 8.

<sup>273</sup> P-0099, [ICC-02/04-01/15-T-14-Red](#), p. 58, l. 4 to p. 59, l. 8 [emphasis added].

<sup>274</sup> P-0099, [ICC-02/04-01/15-T-14-Red](#), p. 58, lns 9-10 [emphasis added].

<sup>275</sup> P-0205, [ICC-02/04-01/15-T-47-Red](#), p. 19, l. 12 to p. 20, l. 7.

<sup>276</sup> P-0205, [ICC-02/04-01/15-T-47-Red](#), p. 19, l. 12 to p. 20, l. 7. The Defence notes that the fate of the UPDF soldier is attributed to Charles Tabuley, not Mr Ongwen.

cared about people. The Chamber must recognise that Mr Ongwen helped people, and the Chamber should consider Mr Ongwen's good character as a mitigating factor when determining a sentence.

*iii. General reputation about Mr Ongwen by former LRA persons*

167. Mr Ongwen's good character is further bolstered by his general reputation in the LRA. The Defence avers that while reputation itself may not be a mitigating factor, it supports the Defence's assertions in sections IV(G)(i) and (ii) above. Reputation should also be considered as a personal circumstance of Mr Ongwen while bolstering the mitigating circumstances in this section.

168. "In calling or in reference I should call Ongwen my son. He was a good person. He would listen. He's respectful and is mindful of the people. That is how I saw Ongwen."<sup>277</sup> Ray Apire's sentiments on 26 September 2017 would hold true for many witnesses.

169. Witness P-0016 stated:

I didn't observe anything bad with him because all the soldiers under him liked him, because for him, he would always talk the truth. [...] And during all my time with him, I didn't see any bad thing he did to me. And even if you ask other people who returned from the bush, you will realise that most of them indeed liked Ongwen.<sup>278</sup>

170. Witness P-0209, a former LRA member in Kony's Trinkle Brigade, told the Chamber that the stories he heard about Mr Ongwen were about his good nature and how he did not mistreat his soldiers.<sup>279</sup>

171. Witness P-0205 told the Chamber:

Dominic Ongwen was a nice person, he was straightforward and he cared about people. He helped me. He helped me as well. [REDACTED]. [REDACTED], and that's why I can clearly say that he's a nice person. There's no animosity between Dominic and myself.<sup>280</sup>

172. Witness P-0233 testified to the Chamber that:

Regarding Dominic Ongwen, well, I will not just be speaking well of him or supporting him, but I will be talking about what I have witnessed and seen. In his

<sup>277</sup> P-0172, [ICC-02/04-01/15-T-113-Red](#), p. 13, lns 19-21.

<sup>278</sup> P-0016, ICC-02/04-01/15-T-34-CONF, p. 42, lns 3-10.

<sup>279</sup> P-0209, [ICC-02/04-01/15-T-161-Red2](#), p. 18, lns 15-25.

<sup>280</sup> P-0205, ICC-02/04-01/15-T-51-CONF, p. 35, lns 4-9.

whole life he's been living very well with the people. He would really ensure that his soldiers were happy. He wouldn't – he would never give instructions about killing of civilians. I never heard him instruct or give instructions for the killing of civilians. His soldiers loved him so much and whenever he was identified to go for a standby, even when the battle ahead is a very difficult one, people would willingly join him to go and fight. I personally used to love him. I used to like him a lot because I never saw anything so bad that he ordered for. He never ordered for the killing of any civilian. He never ordered for the killing of anyone. I did not see or hear of that.<sup>281</sup>

173. Witness P-0142 spoke about how great Mr Ongwen was when they were younger.<sup>282</sup> He was liked by everyone and loved to share jokes and laughter.<sup>283</sup> Even when the Spirits, through Kony, gave Mr Ongwen ranks, he was still good to and liked by his soldiers.<sup>284</sup>
174. These are but a few of the testimonies about Mr Ongwen's character while being captive in the LRA by Joseph Kony. There are more within the evidence, and even more which the Chamber will never hear. Mr Ongwen was one of the most liked persons in the LRA because of his heart, his compassion to help others. The Defence asserts that Mr Ongwen's good character, as shown in this entire section, should act in mitigation and significantly lessen the sentence issued by the Chamber.

#### **H. Sentencing per act, not count**

175. Thirty-six of the counts on which Mr Ongwen was convicted consist of overlapping war crimes and crimes against humanity based on the same underlying facts. These counts involve 18 different criminal acts, not 36. In each of the 18 instances, there were two crimes charged on the basis of the same underlying facts, resulting in 36 counts. Although the Defence acknowledges (but reserves for appeal) the Chamber's finding that different interests are protected by the *convictions* for war crimes and crimes against humanity based on the same underlying facts,<sup>285</sup> the Defence urges the Chamber to distinguish for *sentencing* purposes the overlap of convictions for the same underlying conduct. For the reasons explained below, the Defence contends that Mr Ongwen should only be sentenced on 18 of the 36 counts.
176. As the Chamber recognised in paragraph 2797 of the Trial Judgment, both a war crime and a crime against humanity were charged for the same underlying facts in the following combinations of counts:

<sup>281</sup> P-0233, [ICC-02/04-01/15-T-112-Red2](#), p. 39, lns 7-17.

<sup>282</sup> P-0142, [ICC-02/04-01/15-T-73-Red2](#), p. 16, lns 5-22.

<sup>283</sup> P-0142, [ICC-02/04-01/15-T-73-Red2](#), p. 16, lns 5-22.

<sup>284</sup> P-0142, [ICC-02/04-01/15-T-73-Red2](#), p. 16, lns 5-22.

<sup>285</sup> Trial Chamber IX, *Trial Judgment*, [ICC-02/04-01/15-1762-Red](#), para. 2820.

- Murder and attempted murder: Counts 2-3, 12-13, 14-15, 25-26, 27-28, 38-39 and 40-41
- Torture: Counts 4-5, 16-17, 29-30, 42-43, 51-52, and 62-63
- Rape: Counts 53-54 and 64-65
- Sexual slavery: Counts 55-56 and 66-67
- Forced pregnancy: Counts 58-59

177. Mr Ongwen was convicted of each of the counts identified above. However, pursuant to Article 76(1), the Chamber must determine the *appropriate* sentence for the convictions.<sup>286</sup> Rule 145(1)(c) provides that the Chamber should give consideration “to the extent of the damage caused, in particular the harm caused to the victims and their families...” Further, as the Chamber noted in paragraph 2792 of the Trial Judgment, “the provisions on sentencing may be considered in themselves adequate to address, in the context of the determination of the sentence to be imposed, those instances in which a person is convicted of more than one crime on the basis of the same conduct.” Sentencing is thus a proper time for the Chamber to consider the effect of war crimes and crimes against humanity that are based on the same underlying facts.

178. The Defence contends that, despite different contextual elements for war crimes and crimes against humanity, the actual harm caused to the victims and their families is the same for each of the specific underlying factual bases. For example, the harm caused by murder is the killing of a human being, whether it is charged as a war crime or a crime against humanity. For the victims and their families, the loss is the death of the individual, regardless of the categorisation of the crimes for other purposes.

179. The Defence maintains that sentencing on only one of the overlapping convictions will both vindicate the harm to the victims and appropriately punish the conduct for which Mr Ongwen was convicted. As the Chamber noted in paragraph 2792 of the Trial Judgment, quoted above in paragraph 177, sentencing is a way in which to address multiple convictions based on the same conduct. Sentencing on only one of each of the overlapping counts achieves an appropriate sentence for the harm caused and the culpability of the defendant for the actual acts that caused the harm. In each of the 18 instances, the harm caused by the overlapping counts of war crimes and crimes against humanity of murder, attempted murder, torture, rape, sexual slavery and forced pregnancy occurred once, not twice. As a tenet of fundamental

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<sup>286</sup> Article 76 (1) provides, “In the event of a conviction, the Trial Chamber shall consider the appropriate sentence to be imposed...”

fairness, the sentence should reflect only the 18 different situations for which Mr Ongwen was convicted; 36 different underlying factual bases do not exist in this case. Mr Ongwen should not face either the stigma or the consequences of sentencing on the overlapping 18 counts.

180. The Defence does not take a position on whether the war crime or the crime against humanity is the correct crime on which to sentence in the overlapping situations. The Rome Statute does not establish a hierarchy of crimes. The Defence believes that the Chamber should assess each of the overlapping criminal acts to determine whether a war crime or a crime against humanity is more appropriate under the circumstances.
181. On the basis of the reasons stated, the Defence requests that the Chamber sentence Mr Ongwen on 18, not 36, counts for either the war crime or the crime against humanity for each of the overlapping counts identified in paragraph 176 above.

## **V. RELIEF**

182. Affirming that Mr Ongwen shall go through the Acholi rituals requested of him by Ker Kwaro Acholi and the people of northern Uganda, the Defence respectfully requests Trial Chamber IX to consider the mitigating and personal circumstances outlined above and which appear in the evidence, and issue Mr Ongwen a sentence of time served.
183. Should the Chamber decide to issue a longer sentence, and still affirming that Mr Ongwen shall go through the Acholi rituals requested of him by Ker Kwaro Acholi and the people of northern Uganda, the Defence argues that the Chamber should sentence Mr Ongwen to a maximum sentence of 10 years. Mr Ongwen has suffered his entire life, and to issue anything more, with respect, would not be necessary and still serve justice to the victims.

Respectfully submitted,



.....  
Hon. Krispus Ayena Odongo  
On behalf of Dominic Ongwen

Dated this 4<sup>th</sup> day of April, 2021

At The Hague, Netherlands