

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: **ICC-02/04-01/15**

Date: **21 May 2021**

APPEALS CHAMBER

Before:

**Judge Luz del Carmen Ibáñez Carranza, Presiding Judge
Judge Piotr Hofmański
Judge Solomy Balungi Bossa
Judge Reine Alapini-Gansou
Judge Gocha Lordkipanidze**

SITUATION IN UGANDA

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

PUBLIC

Defence Notification of its Intent to Appeal the Trial Judgment

Source: Defence for Dominic Ongwen

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:**The Office of the Prosecutor**

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I. INTRODUCTION

1. On 4 February 2021, Trial Chamber IX rendered its Judgment under Article 74 of the Rome Statute (the “Judgment” and the “Statute”).¹ The Judgment found Mr Ongwen (the “Appellant”) guilty of 61 of the 70 charges held against him.
2. Article 81(1)(b) of the Statute provides that a decision under Article 74 may be appealed in accordance with the Rules of Procedure and Evidence (“Rules”), and that the convicted person may make an appeal on any (i) procedural error, (ii) error of fact, (iii) error of law, or (iv) any other ground that affects the fairness or reliability of the proceedings or decision.
3. Rule 150 of the Rules provides that an appeal against a decision of conviction or acquittal under Article 74 of the Statute may be filed not later than 30 days from the date on which the party filing the appeal is notified of the decision.
4. Regulation 57 of the Regulations of the Court (“RoC”) provides that for the purposes of Rule 150, “the appellant shall file a notice of appeal which shall state:
 - a. The name and number of the case;
 - b. The title and date of the decision of conviction or acquittal, sentence or reparation order appealed against;
 - c. Whether the appeal is directed against the whole decision or part thereof;
 - d. The specific provision of the Statute pursuant to which the appeal is filed;
 - e. The grounds of appeal, cumulatively or in the alternative, specifying the alleged errors and how they affect the appealed decision; [sic]
 - f. The relief sought.”
5. On 24 February 2021, the Appeals Chamber rendered its “**Decision on Mr Ongwen’s request for time extension for the notice of appeal and on translation**”, in which it varied the time limit for

¹ Trial Chamber IX, *Trial Judgment*, ICC-02/04-01/15-1762-Conf (and [redacted version](#)) (‘Judgment’).

the submission of Mr Ongwen’s Notice of Appeal under Rule 150(2) until 21 April 2021, and his Appeal Brief to 21 June 2021.²

6. On 9 April 2021, the Appeals Chamber issued its “**Decision on Mr Ongwen’s second request for time extension**” in which it again varied the time limit for the submission of the Notice of Appeal and Appeal Brief, to 21 May 2021 and 21 July 2021, respectively.³ Pursuant to that decision, Mr Ongwen files the present Notice of Appeal.
7. Pursuant to Article 81(1)(b), Rule 150(1) and Regulation 57 RoC, the Appellant hereby gives notice of appeal against the Judgment. While specific paragraphs are identified below for convenience, the appeal is directed against the whole decision.⁴ The Appellant reserves the right to amend, delete or to otherwise revise the errors identified in this pleading. The Appellant also reserves the right to re-characterize these errors, some of which are “hybrid” and fall into more than one category under Article 81(1)(b)(I-iv).
8. The grounds of appeal are organized into Parts A - N. As set out below, each error of law materially affects and invalidates the conviction. Each error of fact alleged gives rise to a miscarriage of justice, given that no reasonable trier of fact could have rendered the particular finding of fact beyond reasonable doubt. The procedural errors raised each materially affect the conviction, meaning that in the absence of the procedural error, the Judgment would have been substantially different from the one rendered.
9. The violations of Mr Ongwen’s fair trial rights alleged in Part A individually and collectively invalidate the Judgment in its entirety. The concurrence errors in Part B invalidate the convictions impermissibly entered. The Trial Chamber’s errors in Parts C, D, E, G, H, I and K also invalidate the Judgment in its entirety. The errors identified in Parts F, I, L, M, and N invalidate the convictions specified therein.

² Appeals Chamber, *Decision on Mr Ongwen’s request for time extension for the notice of appeal and on translation*, [ICC-02/04-01/15-1781](#).

³ Appeals Chamber, *Decision on Mr Ongwen’s second request for time extension*, [ICC-02/04-01/15-1811](#).

⁴ With the exception of the 9 counts which were found to be concurrent, and which the Chamber did not enter convictions.

II. SUBMISSIONS

A. PART A: ERRORS RESULTING IN VIOLATIONS OF APPELLANT’S FAIR TRIAL RIGHTS

i. Article 56 hearings

GROUND 1: The Trial Chamber (‘Chamber’) erred in law and procedure in finding that no fair trial rights of the Appellant were violated in the Article 56 hearings, where the Pre-Trial Chamber erred by improperly collecting evidence under Article 56 of the Statute at a time when Mr Ongwen was not given notice of the charges against him in a language he reads and understands, the Single Judge refused to consider procedural challenges and failed to provide a reasoned statement as per Article 74(5) and witnesses were not asked for whom they wanted to testify,⁵ thereby occasioning a miscarriage of justice against the Appellant and materially tainting Counts 50-60.

GROUND 2: The Chamber erred in law and procedure by finding there was no Article 67(1)(a) violation regarding notice after rejecting as “without merit” the Defence interpretation that Article 56 proceedings can only proceed after charges are submitted,⁶ thereby occasioning a miscarriage of justice against the Appellant and materially tainting Counts 50-60.

GROUND 3: The Chamber committed an error of law and procedure by admitting into evidence, for the purpose of trial, the transcripts of the Article 56 proceedings which were conducted in violation of Articles 56, 57(2)(b), 61(11), 64(6)(a), 67(1)(e) and 69 of the Statute, and by relying on them to convict Dominic Ongwen, rendering the trial unfair and the convictions unsafe.⁷

ii. Trial proceedings

GROUND 4: The Chamber erred in law and in procedure by proceeding to trial based on an illegal plea which was not voluntary, knowing, informed and unequivocal in violation of Article 64(8)(a).⁸ This includes the error in its assessment of Defence Expert evidence during the pre-trial

⁵ Judgment, paras 62-71.

⁶ Judgment, para. 64.

⁷ Judgment, paras 65-71. *See also* [ICC-02/04-01/15-464](#); [ICC-02/04-01/15-492](#); [ICC-02/04-01/15-520](#); [ICC-02/04-01/15-522](#); and [ICC-02/04-01/15-535](#).

⁸ Judgment, paras 73-82.

stage and in not granting a postponement of the 6 December 2016 hearing,⁹ thereby tainting the entire trial proceedings.

iii. Errors in respect to notice

GROUND 5: The Chamber erred in law and fact by conducting proceedings based on a Confirmation of Charges Decision (“CoC Decision”) which was legally defective, failed to provide a reasoned opinion and failed to provide notice pursuant to Article 67(1)(a).¹⁰ These errors resulted in a miscarriage of justice and materially affected the entire trial proceedings. The Chamber erred, *inter alia*:

- In law by proceeding to trial with a CoC Decision which failed to outline the facts and circumstances of the case against the Appellant, thus violating his right to notice of the charges levied against him;¹¹
- In law by dismissing *in limine* in the Judgment the Defence motions alleging defects in the Confirmation Decision;¹²
- In law by concluding that the Appellant had control over the crimes, because the elements were defectively pleaded and not proven beyond a reasonable doubt;¹³
- In law by finding that there was agreement or common plan regarding the conscription of children, because the mode of liability is defectively pleaded and not based on the evidence;¹⁴
- In law and fact by concluding that the Appellant had “control over the crimes”, based on his essential contribution and resulting power to frustrate their commission;¹⁵ and
- In law and fact by its legal characterisation of the facts underpinning essential contribution, which was defectively pleaded.¹⁶

⁹ Judgment, paras 79-80.

¹⁰ Judgment, paras 83-84.

¹¹ [ICC-02/04-01/15-423](#), paras 25-35. See also [ICC-02/04-01/15-422-Anx-tENG](#) and [ICC-02/04-01/15-428-Anx-tENG](#).

¹² Judgment, paras 37-40. See also *Judgment on the appeal of Mr Dominic Ongwen against Trial Chamber IX’s ‘Decision on Defence Motions Alleging Defects in the Confirmation Decision’* (‘Interlocutory Appeal Judgment’), [ICC-02/04-01/15-1562](#), paras 69, 154, and 160; *Corrected Version of “Defence Closing Brief”* (‘Defence Closing Brief’), filed on 24 February 2020, [ICC-02/04-01/15-1722-Corr-Red](#), paras 37-40.

¹³ Judgment, paras 2864, 2918, 3095 and 3111.

¹⁴ Judgment, para. 3106.

¹⁵ Judgment, paras 2864, 2918, 3095 and 3111.

¹⁶ Judgment, paras 2864, 2918, 3095 and 3111. See also [ICC-02/04-01/15-1431](#).

GROUND 6: The Chamber erred in law and procedure by violating the Appellant’s right to notice by a) expanding the material, temporal and geographic scope of the charges beyond the parameters of the charged crimes, and b) relying on evidence of acts not charged, causing prejudice, making the trial unfair,¹⁷ and materially affected the Article 31(1) defences and Counts 69-70.

iv. Errors regarding legal standards and burden of proof

GROUND 7: The Chamber erred in law and fact throughout the Judgment by failing to correctly apply the standard of proof of beyond a reasonable doubt, in assessing the Prosecution evidence, in respect to the Defence’s affirmative defences,¹⁸ as well as in its assessment of all the other evidence in convicting the Appellant of crimes and modes of liability,¹⁹ thereby materially affecting the entire Judgment and causing a miscarriage of justice.

GROUND 8: The Chamber erred in law and procedure by failing to articulate the burden of proof standard for affirmative defences prior to the presentation of the Defence evidence.²⁰ It also erred in law by shifting the burden of proof to the Defence in its analysis of the affirmative defences in the standard and presentation of evidence for Article 31(1)(a).²¹

v. Prejudicial evidentiary regime

GROUND 9: The Chamber erred in law and in procedure by implementing a prejudicial evidentiary regime,²² which deferred admissibility, relevance and probative value assessments until the Judgment, and in failing to provide a reasoned statement on many procedural and evidentiary objections raised by the Defence at trial, causing legal uncertainty and prejudice, and rendering the entire trial unfair.²³ The Chamber erred in law by concluding that the evidentiary regime of submission did not prejudice the Appellant’s fair trial rights.²⁴

¹⁷ Judgment, para. 2586. *See also* paras 2009, 2096, 2404, 2636, 2640-41.

¹⁸ Judgment, paras 85-93. *See also* CoC, paras 150-155; Defence Closing Brief, paras 11-21.

¹⁹ The Judgment refers to “reasonable doubt” paras 229-231, 2455, 2588) but makes only one finding in respect to reasonable doubt (para. 656).

²⁰ Judgment, paras. 85-93. The Chamber’s error of law relating to the standard effectively applied in the Judgment will be discussed in a separate ground of appeal.

²¹ Judgment, paras 89 and 92.

²² Judgment, paras 94-102.

²³ Judgment, paras 94-102 and 237-240.

²⁴ Judgment, para. 102.

GROUND 10: The Chamber erred in law and in procedure by concluding that the Defence failed to demonstrate prejudice to the Appellant’s fair trial rights, and erred in refuting the Defence’s allegations, *inter alia*, in respect to the admissibility of parts of the report of the Legal Representative of Victims’ expert, PCV-1, the rebuttal expert report of P-0447, and the role of Major Ocira (P-0078) in obtaining evidence,²⁵ thereby tainting evidence and rendering the trial proceedings unfair.

vi. Translations

GROUND 11: The Chamber erred in law and in procedure by finding that the lack of a full translation of the CoC Decision in Acholi was immaterial, violating Article 67(1)(a) of the Statute.²⁶ This includes the error committed by the Chamber by not ruling in the Judgment on the Defence objections dealing with the lack of translation or interpretation into Acholi.²⁷ This error resulted in a miscarriage of justice which materially affected the entire trial proceedings.

vii. Disclosure

GROUND 12: The Chamber erred in law by not ruling in the Judgment on the Defence objections to the Prosecution’s investigation and disclosure practices, violating Appellant’s right to a fair trial,²⁸ thereby occasioning miscarriage of justice

viii. Chamber Errors regarding the OTP’s selection of witnesses and collection of evidence

GROUND 13: The Chamber erred in law and in procedure by not ruling during the trial proceedings on the Defence objections dealing with the lack of impartial selection of the Prosecution witnesses and collection of evidence by P-0078, violating the Appellant’s to a fair trial, and by concluding that the “Defence’s assertion is unsubstantiated and irrelevant”. It additionally erred in fact and law in finding that the Defence did not raise any particular violation and prejudice caused by the participation of P-0078, an active UPDF soldier who sourced around 40 Prosecution witnesses/interviewees, most of whom were former LRA persons conscripted into the UPDF.²⁹

²⁵ Judgment, paras 96-102.

²⁶ Judgment, paras 81-82; Defence Closing Brief, paras 86-90; and [ICC-02/04-01/15-1536-Corr](#), paras 16-18.

²⁷ Defence Closing Brief, para. 88 and [ICC-02/04-01/15-1668](#), paras 4-32.

²⁸ Defence Closing Brief, paras 108-117 and Judgment, paras 103-105.

²⁹ Judgment, para. 525; Defence Closing Brief, para. 10 fn. 103; and [ICC-02/04-01/15-1519-Red2](#), paras 27-35.

ix. Discrimination

GROUND 14: The Chamber erred in law and in fact when it came to the erroneous conclusion that the Defence allegations that it conducted the proceedings in a discriminatory manner against the Appellant, a mentally disabled defendant, are baseless and untenable, and that this discrimination impacted on the Appellant's exercise of his fair trial right,³⁰ thereby leading to biased and unfair findings, which blurred its consideration and decision, and led to a miscarriage of justice, materially affecting the entire proceedings.

GROUND 15: The Chamber erred in law when it abused its discretion by refusing to apply, in a timely manner consistent with its obligations under Articles 21(3) and 64(2)³¹ and based on the medical officer's recommendations on the sitting schedule to accommodate the Appellant's mental disability,³² relevant standards on equal and meaningful participation by the Appellant, a defendant with mental disabilities, thereby arriving at a wrong decision, causing injustice to the Appellant.

x. Requests for Leaves to Appeal

GROUND 16: The Chamber erred in law and in procedure by denying all but one of the Appellant's requests for leave to appeal, resulting in the violation of the Appellant's right to appellate review on legal issues which were relevant to, and affected the fairness and reliability of the proceedings.³³

xi. Stay of Proceedings

GROUND 17: The Chamber erred in law and in procedure by denying a stay of proceedings based on fair trial grounds after erroneously finding that the Defence submissions in respect to Article 56 pre-trial proceedings were unfounded, requests for experts not necessary, and rejecting other

³⁰ Judgment, paras 106-115.

³¹ Footnote: Judgment, paras 106-115; Defence Closing Brief, paras 120-124.

³² Judgment, paras 113-114 and Defence Closing Brief, paras 136-145. See also Defence Closing Brief, Conf Annex E.

³³ Requests for leave to appeal denials are listed below by document number of Decision: Doc [1777](#); Doc [1748](#); Doc [1696](#) - TJ:99; Doc [1680](#) - TJ:254-256; Doc [1652](#); Doc [1644](#) - TJ:99; Doc [1640](#) - TJ:109-115; Docs [1589](#) and [1617](#) - TJ:72); Doc [1563](#) - TJ: 94-102; Doc [1547](#); Doc [1525](#) - TJ:83-84; Doc [1517](#); Doc [1516](#) - TJ:85-93, 230-231; Doc [1482](#) - TJ: 2526; Doc [1474](#); Doc [1468](#) - TJ:106-120; Doc [1473](#); Doc [1426](#); Doc [1389](#); Doc [1364](#); Doc [1361](#); Doc [1344](#) - TJ: 111-115; Doc [1331](#) - TJ:237; Doc [1290](#) - TJ:98; Doc [1268](#) -TJ:97; Doc [1263](#); Doc [1259](#); Doc [1179](#) - TJ:105; Doc [1173](#); Doc [1176](#) - TJ:81-82; Doc [1126](#); Doc [971](#); Doc [744](#); Doc [650](#) - TJ:109 and 2576-2578; Doc [645](#) - TJ; 76-80; Doc [641](#) - TJ:237; Doc [622](#) - TJ:237; Doc [529](#); Doc [535](#) - TJ:62-71; Doc [428](#) (and [partially dissenting opinion](#)); Doc [373](#); Doc [287](#) - TJ:67; Doc [135](#) (*noting* this was in 2008).

Defence arguments/submissions, which materially affected its decision on the matter, leading to a miscarriage of justice.³⁴

xii. Other fair trial violations

GROUND 18: The Chamber was biased and erred in law and in procedure by denying the Defence's request to call an expert witness on SGBC in violation of Article 67(1)(e).³⁵ The witness's testimony would have impacted the Judgment as it would have supported the Defence's theory on the allegations of SGBC.

GROUND 19: The Chamber was biased and erred in law and in fact by selectively representing findings in Professor de Jong's expert's report which supported the Chamber's position, and ignoring findings favourable to the Defence,³⁶ thereby occasioning a miscarriage of justice that materially affected the Article 31(1) affirmative defences.

B. PART B: CUMULATIVE CONVICTIONS

GROUND 20: The Chamber erred in law in the test for impermissible concurrence of crimes, *inter alia* by: 1) rejecting the principle of *ne bis in idem* as a basis to guide its assessment of concurrences³⁷ and in the full formulation of a test for permissible concurrence of crimes,³⁸ leading to prejudice and injustice to the Appellant in Counts 50-68.

GROUND 21: The Chamber erred in law and in fact in finding that war crimes and crimes against humanity based on the same underlying conduct are permissible concurrences.³⁹

GROUND 22: The Chamber erred in law and in fact in finding that rape and sexual slavery are a permissible concurrence.⁴⁰ The Chamber also erred in law and in fact in failing to find other

³⁴ Judgment, paras 45, 71-72, 82, 84, 93, 105 and 120.

³⁵ Judgment, para. 72. *See also* Defence Closing Brief, para. 72, fn. 65. The Defence notes that the CLRV called an expert on SGBC.

³⁶ Judgment, para. 110.

³⁷ Judgment, paras 2794-2795.

³⁸ Judgment, paras 2795-2797, 2818-2821 and 2823.

³⁹ Judgment, 2818-2821. *See also* Defence Sentencing Brief, para. 176.

⁴⁰ Judgment, paras 3038-3039.

impermissible concurrences, including but not limited to, forced marriage and sexual slavery.⁴¹ This caused impermissible prejudice to the Appellant and materially affected Counts 50-68.

C. PART C: EVIDENTIARY LEGAL ERRORS

GROUND 23: The Chamber erred in law in finding that it does not have an obligation to state the outcome of its evidentiary rulings, including probative value and relevance, under Article 74(5) of the Statute for every item of evidence in its judgment (or annex to it) and that the Chamber only needs to refer to the assessment of evidence as appropriate,⁴² causing prejudice to the appeal process.

GROUND 24: The Chamber erred in law by failing to articulate a criterion for credibility and reliability of evidence, leading to inconsistent and arbitrary determinations on evidence without reason,⁴³ thereby materially affecting the Judgment as a whole and the appeal process.

D. PART D: ERRORS REGARDING GROUNDS EXCLUDING CRIMINAL RESPONSIBILITY

i. Errors regarding Article 31(1) Defences

GROUND 25: The Chamber erred in law by not applying the standard of proof beyond a reasonable doubt to the affirmative defences, *i.e.*, making no findings as to whether the Prosecution met its burden to disprove each element of the affirmative defences beyond a reasonable doubt, materially affecting the entire Judgment.

GROUND 26: The Chamber erred in law and fact by disregarding the evidence of the age, abduction, and indoctrination of the Appellant and his childhood development within the LRA when making an evaluation of his affirmative defences.⁴⁴

⁴¹ Judgment, paras 3021-3026 and 3044-3049. *For example*, counts 50, 55, 56.

⁴² Judgment, paras 237, 238, 247 and fn. 266 and *see generally* paras 233-248.

⁴³ Judgment, paras 296 (fn 1687), 947 (fn. 2043), 1044, 1068, 1396 (fn3213), 1397, 1407 (fn. 3267), 1416, 1455, 1690-1691, 1843, 1908 (fn. 5806), 2122 and 2314. Judgment, paras 295-296, 947, 1330, 1332, 2314 (fn. 1687), (fn. 2043), paras 1044, 1068, 1101, 1396, (fn. 3213), 1407, 1422, (fns 1674-1675); *see* (fn. 3213), (fn. 5806), paras 1843; P-0054, paras 1397, (fn. 3267), paras 1416, 1690-1691, 1455, 1416, 2122 and 1908.

⁴⁴ Judgment, paras 2317 and 2506; CoC, para. 60.

ii. Article 31(1)(a) Defence

GROUND 27: The Chamber erred in law and in fact in finding that the ground excluding criminal responsibility under Article 31(1)(a) was not applicable to the Appellant, and failed to provide a reasoned statement for its finding,⁴⁵ thereby materially affecting the entire Judgment.

GROUND 28: The Chamber erred in law and in fact by disregarding evidence of Dominic Ongwen’s abduction, indoctrination and childhood experience, and by finding that it was not relevant to the central issues in the case while relying on incriminating evidence of uncharged crimes, crimes outside the temporal and geographic scope of the charges and evidence of abductions, indoctrination, and other crimes committed by the LRA and Joseph Kony to convict or support the conviction of the Appellant,⁴⁶ thereby materially affecting the entire Judgment.

GROUND 29: The Chamber erred in law by failing to provide a reasoned statement, as per Article 74(5), for its total rejection of the Defence Experts’ reports,⁴⁷ materially affecting the Judgment.

iii. Evidence of Prosecution Experts

GROUND 30: The Chamber erred in law and in fact by concluding that P-0446 and P-0447 did not ignore or dismiss cultural factors, and by finding 'trivial' the Defences arguments regarding the Appellant's food request and the absence of the word 'blues' in many African languages.⁴⁸

GROUND 31: The Chamber erred in law and fact by finding P-0446’s report clear and convincing, and “of great assistance to the Chamber in making its findings.”⁴⁹ Particularly, the Chamber erroneously relied on P-0446’s conclusions about the Appellant’s understanding and awareness of his actions⁵⁰ based on paragraph 113 in her Expert Report⁵¹ which provides no sources for her conclusions, thereby materially affecting the Article 31(1) defences and the entire Judgment.

GROUND 32: The Chamber erred in law and in fact by finding that the evidence of P-0447 was “entirely convincing and his testimony in the courtroom impressive in its clarity and

⁴⁵ Judgment, para. 2580.

⁴⁶ Judgment, paras 2592 and 2852.

⁴⁷ Judgment, paras 2522-2574.

⁴⁸ Judgment, para. 2463.

⁴⁹ Judgment, paras 2470-2478.

⁵⁰ Judgment, para. 2474.

⁵¹ Judgment, fn. 6720.

comprehensibility”, and in finding he was of “great assistance...in respect to the determination of the issue...in relation to the behaviour of during the period of the charges.”⁵² It further erred in its evaluation of P-0447 testimony, including, but not limited to: 1) finding that his expertise was not limited due to the fact that he is a clinical psychologist and not a psychiatrist,⁵³ 2) concluding that P-0447’s evidence was consistent in respect to functionality and mental illness, and 3) that there no indicia of impairment on the part of the Appellant,⁵⁴ which materially affected the Judgment.

GROUND 33: The Chamber erred in law and in fact by relying only on inculpatory conclusions in P-0445’s report and evidence, and totally disregarding potentially exculpatory findings.⁵⁵

GROUND 34: The Chamber erred in law by rejecting the Defence’s admissibility objections to P-0447’s report,⁵⁶ which was, as demonstrated in the Judgment, relied upon to reject the Appellant’s Article 31(1)(a) defence and the Appellant’s arguments in respect to the role of culture.⁵⁷

GROUND 35: The Chamber erred in law and in fact by concluding that it had no methodological concerns with the Prosecution experts,⁵⁸ thereby materially affecting the Article 31(1) defences.

iv. Corroboration and Article 31(1)(a)

GROUND 36: The Chamber erred in law and in fact by misrepresenting the evidence of the Defence experts on whether lay persons would have noted some symptoms of mental illness⁵⁹ and erroneously concluded that witnesses may regard symptoms of mental disorders as spirit possession was “immaterial.”⁶⁰ The Chamber erroneously parsed phrases from the testimony, and selectively omitted the complete evidence, including its cultural context.⁶¹

⁵² Judgment, para. 2496.

⁵³ Judgment, para. 2487.

⁵⁴ Judgment, paras. 2489-2495.

⁵⁵ See Defence Closing Brief for references: para. 571 (fn. 947 and 948); para. 572 (fn. 949) (Appellant’s “child-like” development); para. 578 (fn. 957) (adverse environment of LRA, offering no alternatives to abductees); para. 590 (fn. 979); and para. 659 (fn. 1068) (Dr Abbo appears to accept the PTSD diagnoses in Defence Experts’ and Prof de Jong’s Reports); [T-166](#), p. 58, lns 1-23, p. 27, lns 19-20, p. 16, ln. 23 to p. 17, ln. 13; [T-168](#), p. 29, ln. 24 to p. 30, ln. 5.

⁵⁶ [T-252](#), p. 3, ln. 21 to p. 6, ln. 14 and p. 7, ln. 16 to p. 8, ln. 13.

⁵⁷ Judgment, paras 99, 2461, 2486-2489, 2488, 2499, 2530, 2532-34, 2537, 2540-42, 2547, 2550, 2555 and 2560.

⁵⁸ Judgment, paras 2464-2469. The Defence notes that the Chamber is correct that P-0445 acknowledged the limitations of not having a clinical interview with the client, and misstated this in the Defence Closing Brief at para. 657. The Defence amends its critique to include only P-0446 and P-0447.

⁵⁹ Judgment, para. 2500, fn. 6769.

⁶⁰ Judgment, para. 2501.

⁶¹ Judgment, para. 2500; See, Defence Closing Brief, para. 626.

GROUND 37: The Chamber erred in law and in fact in its assessment of, and weight given to:

- Corroborating evidence from “ordinary LRA members” who lived/worked with the Appellant about his mental health while it disregarded corroboration from the Defence experts,⁶² and
- Observations of lay persons, relying on them to corroborate P-0446 and P-0447 and concluding that a “large number of witnesses...did not provide any testimony which could corroborate a historical diagnosis of mental disease or defect.”⁶³ These errors materially affected the Article 31(1) Defences.

GROUND 38: The Chamber erred in law and in fact by concluding that witnesses did not observe symptoms indicating Appellant’s mental health diseases and made impermissible inferences based on this evidence,⁶⁴ thereby materially affecting the Article 31(1)(a) defence and the Judgment.

GROUND 39: The Chamber erred in law and in fact by claiming that it was not looking for corroborating evidence for the purpose of diagnoses, but for identification of symptoms,⁶⁵ but yet, by relying on these observations to support the Prosecution experts⁶⁶ and to reject the Appellant’s affirmative defence,⁶⁷ thereby materially affecting the Appellant’s Article 31(1)(a) defence.

GROUND 40: The Chamber erred in fact by rejecting Defence evidence about masking and resiliency,⁶⁸ thereby materially affecting the Appellant’s Article 31(1)(a) defence.

v. Evidence of Defence Experts

GROUND 41: The Chamber erred in law and fact by concluding that, based on six factors affecting reliability, it could not rely on any evidence of Defence experts D-0041 and D-0042 and their diagnoses of the Appellant’s mental disorders.⁶⁹ The Chamber misrepresented the evidence on the record in respect to each factor, through its complete disregard for Defence evidence refuting each factor, and by reversing the burden of proof to the Defence, causing prejudice to the Appellant.

⁶² Judgment, paras 2497-2499. See UGA-D26-0015-0004, pp 0020-0023 (Annex 1: Collateral Interviews).

⁶³ Judgment, paras 2506-2521.

⁶⁴ Judgment, paras 2506-2520.

⁶⁵ Judgment, para. 2501.

⁶⁶ Judgment, para. 2518.

⁶⁷ Judgment, para. 2521.

⁶⁸ Judgment, para. 2503.

⁶⁹ Judgment, paras 2527-2574.

- Factor No. 1 - The Chamber erred in law and fact by concluding that D-0041's and D-0042's role as both treating and forensic physicians was blurred, and negatively affected the reliability of their reports.⁷⁰
- Factor No. 2 - The Chamber erred in law and fact by concluding that the Defence experts did not apply scientifically validated methods and tools in reaching their conclusions.⁷¹
- Factor No. 3 - The Chamber erred in law and fact by accepting the Prosecution submission and P-0447 evidence that the "symptoms recorded in the Defence Experts' reports were 'sometimes incoherent' and the diagnoses 'inconsistent.'⁷²
- Factor No. 4 - The Chamber erred in law and fact by finding that the conclusions of the Defence experts are invalidated by their failure to take into account other sources about the Appellant which were available to them.⁷³
- Factor No. 5 - The Chamber erred in law and fact by misstating and rejecting the evidence of the Defence Experts in respect to the Prosecution's claim that the Appellant was malingering.⁷⁴
- Factor No. 6 - The Chamber erred in law and fact by not relying on the Defence Experts' report because its findings were not "anchored on the relevant period and the more specific factual contexts in which Dominic Ongwen acted."⁷⁵

vi. Errors regarding the Reports of Professor de Jong & Professor Musisi

GROUND 42: The Chamber erred in law and in fact by not relying on the evidence of Professor de Jong, a court-appointed expert to whom it had requested in December 2016 to conduct a psychiatric examination of the Appellant, because it found it irrelevant to his conduct during the charged period,⁷⁶ thereby materially affecting the Article 31(1) defences.

GROUND 43: The Chamber erred in law and in fact by disregarding the evidence of Professor Musisi's expert report, which addressed the "interplay of Acholi culture with traumas and PTSD," on Acholi cultural approaches to crimes and traumas, and rituals in healing⁷⁷ and did not provide

⁷⁰ Judgment, paras 2528-2531.

⁷¹ Judgment, paras 2532-2535.

⁷² Judgment, paras 2536-2544.

⁷³ Judgment, paras 2545-2557.

⁷⁴ Judgment, paras 2558-2568.

⁷⁵ Judgment, paras 2569-2573.

⁷⁶ Judgment, para. 2578.

⁷⁷ Judgment, para. 602.

specific information concerning whether the Appellant suffered from a mental disease or defect during the charged period,⁷⁸ thereby materially affecting the Appellant's Article 31(1)(a) defence.

vii. Article 31(1)(d)

GROUND 44: The Chamber erred in fact and in law in its statutory interpretation of Article 31(1)(d)⁷⁹ and its findings that Article 31(1)(d) is not applicable because the Appellant was not subjected to a threat of imminent death or imminent or continuing serious bodily harm to himself or another person at the time of his conduct underlying the charged crimes.⁸⁰

1. Evidentiary Errors

GROUND 45: The Chamber erred in law by not applying the burden and standard of proof beyond a reasonable doubt, as articulated in paragraph 2588 of the Judgment, to the evidence on the record concerning duress, thereby materially affecting the Appellant's Article 31(1)(d) defence.

GROUND 46: The Chamber committed multiple errors of fact and law when it disregarded, downplayed, rejected or omitted to consider evidential factors on record in its assessment of the totality of factors had enduring or immediate effect on the Appellant during the charged period; and further misrepresented, misinterpreted or misapplied the relevant law on the Affirmative defence of duress, ending up with the wrong findings and conclusions that the Appellant was never put under duress during the charged period, thereby occasioning a miscarriage of justice. The Chamber in its assessment of, and conclusions about, the evidence of Joseph Kony's control over the Appellant.⁸¹ The Chamber disregarded evidence on the record to conclude that the Appellant "took his own decisions on the basis of what he thought was right or wrong" and that he was not completely dominated by, and a subject of, Joseph Kony.⁸²

- The Chamber erred in law and in fact by failing to apply the statutory legal and evidentiary standard of proof in its "totality of circumstances" and "comparable circumstances" assessment of the threats suffered by Dominic Ongwen, causing prejudice and rendering the trial unfair;⁸³

⁷⁸ Judgment, para. 2579.

⁷⁹ Judgment, paras 2581-2585.

⁸⁰ Judgment, paras 2668-2671.

⁸¹ Judgment, paras 2590.

⁸² Judgment, paras 2590-2606.

⁸³ Judgment, para. 2583.

- The Chamber erred in law and in fact in its interpretation of evidence on the disobedience to the orders of Joseph Kony and the finding that high commanders of the LRA had a considerable degree of choice and independence to disobey the orders of Joseph Kony, and in relying on this finding to reject Dominic Ongwen’s affirmative defence of duress, causing prejudice and making the trial unfair.⁸⁴

GROUND 47: The Chamber erred in law and in fact by discounting all evidence of the influence and effect of the Appellant’s childhood, especially his abduction, on his life in the LRA, including during the charged period and continuing through the present,⁸⁵ making the Judgment unsafe.

GROUND 48: The Chamber erred in fact when it concluded, notwithstanding the practice in all armed forces and evidence on record, that there is no evidence on record to provide any basis for consideration of spies or a spy network as a separate phenomenon,⁸⁶ thereby materially affecting the Article 31(1)(d) defence.

GROUND 49: The Chamber erred in law and in fact by totally disregarding and hence, misrepresenting evidence on record that neither men nor women had choice when partners were distributed,⁸⁷ and by accepting the Prosecution argument that evidence on SGBC had “persuasive force” for the Chamber’s conclusion that duress does not apply.⁸⁸

GROUND 50: The Chamber erred in law and in fact by mischaracterizing and rejecting the Defence evidence that senior LRA commanders were executed on Joseph Kony’s orders.⁸⁹

GROUND 51: The Chamber erred in law and in fact by not relying on the evidence regarding the Appellant and Salim Saleh without making a credibility assessment and presenting a reasoned opinion about the evidence presented.⁹⁰

⁸⁴ Judgment, paras 268-270, 274, 866, 868, 871, 854, 2159-2165, 2593-2603, 2594, 2604-2606, 2612 and 2614.

⁸⁵ Judgment, para. 2592.

⁸⁶ Judgment, para. 2607.

⁸⁷ *For examples of evidence disregarded, see Defence Closing Brief, para. 683 at fn. 1105.*

⁸⁸ Judgment, para. 2667.

⁸⁹ Judgment, paras 2609-2618.

⁹⁰ Judgment, paras 1054 and 2618.

2. Escape

GROUND 52: The Chamber erred in law and in fact by not applying the standard of proof beyond a reasonable doubt to its conclusions about the possibility of escape in the LRA and rejecting credible evidence that escape occurred because of opportunity,⁹¹ thereby materially affecting the Article 31(1)(d) defence.

GROUND 53: The Chamber erred in law and in fact by concluding that “escaping from or otherwise leaving the LRA was a realistic option available to the [Appellant] at the time of the conduct relevant for the charges [and that the] fact that he did not take this option is further indicative that he was not under serious threat.”⁹² In reaching its conclusion in paragraph 2635, the Chamber’s errors include, but are not limited to:

- applying an incorrect standard of overwhelming evidence;⁹³
- misinterpreting/mis-appreciating evidence,⁹⁴ *inter alia*, making inculpatory inferences based on circumstantial evidence as to the Appellant’s awareness of crimes, and negating the duress defence;⁹⁵ rejecting credible evidence by D-0013;⁹⁶ misinterpreting the evidence of D-0018;⁹⁷
- failing to individualize the circumstances relevant and applicable to the Appellant;⁹⁸
- concluding that the Appellant’s position and rank placed him in a “relatively better position to escape” compared to lower-ranking LRA members;⁹⁹
- relying on acts outside the temporal jurisdiction of the Court (his alleged refusal to surrender in September 2006) as a basis to conclude that an element of the duress was not met, and reversing the burden of proof from the Prosecution to the Defence;¹⁰⁰ and

⁹¹ Judgment, paras 2621, 2630 and 2635. Examples of witnesses escaping due to an opportunity, *see* Judgment, fn. 887, paras 1034, 1809, 1818-1820, 1828-1829, 2086-2087, 2088, fn. 5806 and paras 2622-2624.

⁹² Judgment, paras 2619-2635.

⁹³ Judgment, para. 2621.

⁹⁴ Judgment, paras 2622-2642.

⁹⁵ Judgment, para. 2629.

⁹⁶ Judgment, para. 2620.

⁹⁷ Judgment, para. 2630.

⁹⁸ Judgment, paras 2592-2599, 2602, 2615, 2618, 2620, 2621-2627, 2635, 2639, 2642, 2645, 2658 and 2668.

⁹⁹ Judgment, para. 2634.

¹⁰⁰ Judgment, paras 2640-2641.

- drawing unreasonable and unwarranted inferences from comparable circumstances which arose outside the legal and factual context of the charged crimes to make adverse inferences on Dominic Ongwen’s affirmative defences, causing prejudice and making the trial unfair.¹⁰¹

GROUND 54: The Chamber erred in law and fact by failing to give a reasoned statement as why the possibility of collective punishment for escape did not apply to the Appellant,¹⁰² especially in light of the Chamber’s contradictory holding on this evidence. The Chamber held that evidence, for example, on the attack on Mucwini, “added to believability of the threat” and found consistent evidence that LRA members were threatened with collective punishment of their home areas if they attempted to escape.¹⁰³ This err materially affected the Appellant’s Article 31(1) defences.

3. Spiritual powers of Joseph Kony

GROUND 55: The Chamber erred in law and fact when, while considering the evidence pointing to commanders who successfully defied Kony without serious consequences, it failed to consider the evidence on record of Kony’s unpredictability and of periods when he proclaimed that Spirits had ordered that there should be no killing or no abduction, etc.¹⁰⁴ The Chamber erred, *inter alia*:

- By concluding that “LRA spirituality is not a factor contributing to a threat relevant under 31(1)(d);”¹⁰⁵
- By giving no weight to cultural factors in assessing the culpability of the Appellant, although it found credible the accounts of other abductees describing the role of the Spirits in the LRA;¹⁰⁶
- By concluding that belief in spiritual powers of Joseph Kony was stronger in the young abductees and “subsided and disappeared in those who stayed in the LRA longer”;¹⁰⁷
- By disregarding evidence that the Appellant was affected by the spiritualism, and concluding there is “no evidence indicating that the belief in Joseph Kony’s spiritual powers played a role

¹⁰¹ UGA-OTP-0217-0148-R01, p. 0160, ln. 434 to p. 0161, ln. 443.

¹⁰² Judgment, para. 2642.

¹⁰³ Judgment, paras 991-998.

¹⁰⁴ Judgment, paras 2593-2606.

¹⁰⁵ Judgment, paras 2643-2658.

¹⁰⁶ Judgment, paras 515, 517-518, 597, 602, 608, 2463, 2652 and fn. 6973.

¹⁰⁷ Judgment, para. 2645.

for Dominic Ongwen” and misinterpreting (or misconstruing) the evidence of the Appellant “defying Joseph Kony”;¹⁰⁸

- By failing to provide a reasoned opinion as to why it concluded that the spiritual influence did not apply to the Appellant, although it accepted the credibility of a number of witnesses on spirituality and its practices in the LRA;¹⁰⁹ and
- In assessing Defence Expert D-0060’s evidence on spiritualism as of “limited value,”¹¹⁰ and Defence witness’s D-0111’s evidence as “not considered directly relevant”;¹¹¹ D-150’s evidence as “irrelevant”;¹¹² and its failure to consider evidence from D-0074, who the Chamber found credible.¹¹³

4. Joseph Kony and the Appellant’s Role in the LRA

GROUND 56: The Chamber erred in law and in fact by misinterpreting the evidence and concluding that the Appellant’s conduct in the LRA during the relevant period is incompatible with him being under threat from Kony.¹¹⁴ The Chamber erred when finding that many of the commanders who were killed on Kony’s order were in fact killed because of political power, thereby ignoring evidence in the Appellant’s favour that he would be killed if he defied Kony’s orders.¹¹⁵ This err materially affected the Appellant’s Article 31(1)(d) defence.

GROUND 57: The Chamber erred in law and fact by concluding that the attacks on Lukodi and Abok IDP camps were “conceived and set in motion by Dominic Ongwen completely independently” and such conduct was incompatible with a threat to his life.¹¹⁶ The Chamber erred when it failed to properly evaluate the evidence on record and relied on contradictory, inconsistent and unreliable evidence regarding the planning and attack on Lukodi, thereby occasioning a miscarriage of justice.¹¹⁷ These errs materially affected the counts related to Lukodi and Abok.

¹⁰⁸ Judgment, para. 2658.

¹⁰⁹ *For example see* Judgment, P-0209 (para. 274); D-0027 (para. 282); D-0074 (para. 286); and D-0028 (para. 515).

¹¹⁰ Judgment, para. 568.

¹¹¹ Judgment, para. 518.

¹¹² Judgment, para. 608.

¹¹³ Judgment, para. 286.

¹¹⁴ Judgment, paras 2659-2665.

¹¹⁵ Judgment, paras 2611-2618.

¹¹⁶ Judgment, para. 2665.

¹¹⁷ Judgment, paras 1651-1688.

E. PART E: Other grounds that affect fairness or reliability of the proceedings or decision (Article 81((1)(b)(iv) - Errors regarding the Appellant's status

GROUND 58: The Chamber erred in law and fact by finding that evidence on the age and abduction of the Appellant was not relevant to the charges,¹¹⁸ thereby materially affecting the entire trial proceedings and rendering the Judgment unfair. The Chamber made a series of errors including, *inter alia*:

- concluding that the Appellant was culpable as an adult for crimes for which he was convicted and erroneously rejected the Defence child soldier expert evidence that the effects of abduction on child soldiers continue beyond the age of 18;¹¹⁹
- concluding that the Appellant's childhood experience in the LRA was not central to his situation as a battalion and brigade commander during the period of the charges;¹²⁰
- misrepresenting the Defence position as implying that victimhood immunized victims from committing crimes;¹²¹ and
- failing to respond to Defence arguments that Uganda had a legal duty to protect the Appellant as a child.¹²²

GROUND 59: The Chamber erred in law and fact by rejecting without a reasoned statement the evidence of the traumas and disabilities suffered by Dominic Ongwen in the LRA criminal environment from the time he was abducted as a young child, causing prejudice and making the trial unfair.

F. PART F: EVIDENTIARY GROUNDS/ERRORS

i. Expert Evidence

GROUND 60: The Chamber erred in law and fact by disregarding and failing to provide a reasoned statement on the expert evidence of D-0139 on IDP camps, which was directly relevant to the findings on the political objectives of Dominic Ongwen and the identification of discriminatory

¹¹⁸ Judgment, para. 27.

¹¹⁹ Judgment, paras 2672, 612 and 27-31; CoC para. 150; Defence Closing Brief, paras 4, 11-16, 19, 23-25, 27-28, 32-35 and 50-57.

¹²⁰ Judgment, para. 2592.

¹²¹ Judgment, para. 2672.

¹²² There is no Judgment reference because the Chamber made no finding on this issue, raised in the evidence of D-0133.

intent, which were the basis of for the convictions for the crime of persecution.¹²³ The Chamber also mis-assessed the expert evidence by favouring direct evidence over his expert opinion.¹²⁴

GROUND 61: The Chamber erred in law and fact by failing to provide a reasoned opinion for its assessment of D-0133’s expert evidence, by which it deemed his testimony credible while also rejecting evidence that supported the Defence case on the effects throughout one’s life of being a child soldier. The Chamber erred in law and in fact by concluding that “the remainder of Pollar Awich’s testimony does not go to issues of relevance to the disposal of the charged crimes.”

GROUND 62: The Chamber erred in law and in fact by finding that D-0133’s evidence about escape was “incredible considering the ample evidence received to the contrary” based on: 1) the Chamber’s misrepresentation of the record¹²⁵ and 2) a disregard for the cultural and linguistic issues involved in the concept of escape. This err materially affected the Appellant’s Article 31(1)(d) defence.

GROUND 63: The Chamber erred in law and fact by selectively relying on evidence from certain witnesses to convict the Appellant, while ignoring exculpatory evidence from the same witnesses which contradicted its findings in the Judgment in paragraph 612 regarding escape.¹²⁶

G. PART G: THE CHAMBER ERRED IN ITS FINDINGS AND CONCLUSIONS OF THE APPELLANT’S INDIVIDUAL CRIMINAL RESPONSIBILITY

GROUND 64: The Chamber erred in law and fact in its findings and conclusions on the Appellant’s individual criminal responsibility for the attack on IDP camps,¹²⁷ *inter alia*:

- By finding that the Appellant committed, as an individual, SGBC;¹²⁸

¹²³ See Judgment, para. 598.

¹²⁴ Judgment, para. 598.

¹²⁵ For example, D-0133 at fn. 1087, lns 4-15 (“Rehabilitation in general terms is that when a child is recovered from LRA, and I’m using the word “recovered” deliberately because there are not known cases where children escaped on, on voluntary.”).

¹²⁶ These include witnesses who escaped when there was an opportunity, for example, during battle (P-0138, P-0209) or while in sickbay (P-0099). See for example, P-0138 (Judgment, para. 2632; [T-120](#), p. 69, lns 3-14) and the Chamber relied upon for inculpatory evidence (Judgment, paras 564, 566, 616, 698, 708, 1194, 1198, 1199, 1217, 1232, 1331, 1333, 1356, 1369, 1378, 1382, 2180, 2221, 2329 and 2356); P-0099 ([T-14](#), p 47, lns 11-25; Judgment, paras 2086-2087) and Chamber used evidence to convict (Judgment, paras 2011-12, 2029, 2036, 2037, 2042, 2042-2044, 2070, 2072 and 2519); P-0209 (Judgment, para. 2628, [T-160](#), p. 39 lns 7-19 ad p. 35, lns 20-21) and Chamber relied on evidence to convict (Judgment, paras 1181-82, 1191-1194 and 1206).

¹²⁷ Judgment, Pajule (para. 2874); Odek (para. 2927); Abok (para. 3020); and Lukodi (para. 2973).

¹²⁸ Judgment, paras 3026, 3034, 3043, 3049, 3055, 3062 and 3068.

- By finding that the Appellant was criminally responsible for SGBC not directly perpetrated by him;¹²⁹
- By finding that the Appellant was criminally responsible for the conscription of children, and their use in armed hostilities as a war crime;¹³⁰ and
- By concluding that the Appellant had control over the crimes charged under Counts 61-68 and Counts 69-70¹³¹ “by virtue of his essential contribution to them, and the resulting power to frustrate their commission.”¹³²

GROUND 65: The Chamber erred in law and fact by disregarding favourable evidence and evidence raising reasonable doubt, and by imputing on Dominic Ongwen a “resulting power” to frustrate the charged crimes without a reasoned statement and without notice of the means by which he should have frustrated the crimes in the confirmed charges, without a reasoned statement and proof beyond reasonable doubt.¹³³ Errors include, *inter alia*:

- Finding that the LRA had a “functioning hierarchy”; and that it relied on the independent actions and initiatives of commanders at division, brigade and battalion levels, was a collective project and all of its actions [should not be] attributed only to him [Joseph Kony];¹³⁴
- Attributing to the Appellant the responsibility for the attack on Abok IDP camp, by LRA fighters and their individual conduct;¹³⁵ and
- Attributing conduct of individual Sinia brigade members to the Appellant.¹³⁶

H. PART H: Errors regarding the Appellant’s culpability within the LRA

GROUND 66: The Chamber erred in law and fact by concluding that the Appellant, Joseph Kony and the leadership of Sinia brigade executed an agreement to commit crimes over which the Appellant exercised control, through a “coordinated and methodical effort...to abduct and distribute women and girls in Northern Uganda”¹³⁷ Errors include, *inter alia*:

¹²⁹ Judgment, para. 3100.

¹³⁰ Judgment, para. 3115.

¹³¹ Judgment, paras 3108-3111.

¹³² Judgment, paras 3094-3095.

¹³³ Judgment, paras 2918, 2864, 2915, 2915, 2864 and 3095.

¹³⁴ Judgment, paras 873, 123-124, 864, 869, 872-873,970, 1392, 2665, 2911-2912 and 3010.

¹³⁵ Judgment, para 3010-3011.

¹³⁶ Judgment, paras 3091 and 3108.

¹³⁷ Judgment, paras 2156-2182, 3089 and 3092-3093.

- Disregarding abundance of evidence that showed that the so called “wives” were held at the pleasure of Joseph Kony, and finding that the Appellant exercised any or all of the powers attaching to the right of ownership of the so called “wives” thereby convicting him of the crime of sexual slavery;¹³⁸
- Without first determining that the union between the Appellant and the alleged so-called “wives” were indeed marriages, the Chamber found that the elements of the offence of “forced marriage” are covered under Article 7(1)(k);¹³⁹
- Relying on inconsistent, unreliable and uncorroborated evidence of the seven so-called “wives” outside the temporal and geographic parameters of the charges to convict the Appellant;¹⁴⁰ and
- Concluding that when Kony was “geographically removed from LRA units, brigade and battalion commanders took their own initiatives”¹⁴¹ and concluding that Kony’s role in SGBC was of “little relevance” to the “disposal of charges” against the Appellant.¹⁴²

GROUND 67: The Chamber erred law and fact by finding that the LRA had a functioning hierarchy which relied on the independent actions and initiatives of commanders at division, brigade and battalion levels; and that the LRA was a collective project and all of its actions were not attributed to Kony.¹⁴³ Errors included, *inter alia*:

- Finding that Kony relied on the cooperation of various commanders to execute LRA policies, but disregarding the evidence that defiance of orders issued based on such reliance had consequences which the Appellant necessarily avoided while carrying out his orders;¹⁴⁴
- Finding that the “LRA soldiers as a whole functioned as a tool of Dominic Ongwen, Joseph Kony and the Sinia brigade leadership”, but attributing responsibility for their conduct to the Appellant;¹⁴⁵ and
- Mischaracterising the status of the Appellant as a battalion commander and brigade commander in the Sinia Brigade from which it made impermissible inferences to support his conviction.¹⁴⁶

¹³⁸ Judgment, para. 3046.

¹³⁹ Judgment, paras 2741-2753.

¹⁴⁰ Judgment, paras 2009-2093.

¹⁴¹ Judgment, para. 2799.

¹⁴² Judgment, paras 2156-2157.

¹⁴³ Judgment, paras. 873 123-124, 864, 8869, 872-873,970, 1392, 2911-2912, 3010, 2665, and 2927(common plan to attack Odek); 3089 and 3092-3093 (common plan re SGBC abduction and distribution).

¹⁴⁴ Judgment, paras 864, 873 and 2590-2591.

¹⁴⁵ Judgment, paras 3091 and 3108 (Sinia), para. 2858 (Pajule), para. 2914 (Odek), para. 2964 (Lukodi), para. 3011 (Abok).

¹⁴⁶ [ICC-02/04-01/15-580](#), para. 11; [T-40](#), pp 42-43; Judgment, paras 1071-1072, 2620, 2659, 2643 and 2658.

GROUND 68: The Chamber erred in law and fact by disregarding evidence of the appellant’s “conditions of recruitment, initiation, training, and service in the LRA” which made him to function as a tool of Kony while otherwise finding that he subjected LRA fighters who attacked IDP camps to these conditions and that as a result, they functioned as his tools leading the Chamber to attribute their conduct to the Appellant.¹⁴⁷

I. PART I: Errors regarding common plan and essential contribution

GROUND 69: The Chamber erred in law and in fact by finding that there was agreement or common plan regarding the conscription of children below the age of 15, because the mode of liability was defectively pleaded and was not proven beyond a reasonable doubt.¹⁴⁸

J. PART J: ERRORS IN FINDINGS & CONCLUSIONS REGARDING IDP CAMPS

GROUND 70: The Chamber erred in law and fact by disregarding favourable evidence or evidence raising reasonable doubt in its findings and conclusions reached on corroborative evidence, impermissible inferences, hearsay, evidence of self-incriminated witnesses and witnesses who concealed their criminal involvement in the crimes to convict or support multiple convictions against the Appellant.¹⁴⁹ Errors include, *inter alia*:

- Misrepresenting the evidence by imputing by association, without a reasoned statement and proof beyond reasonable doubt, the persecutory policies of Joseph Kony and Vincent Otti, from which the Chamber impermissibly inferred the intention to attack to IDP camps in Northern Uganda;¹⁵⁰ and
- Disregarding favourable evidence and evidence raising reasonable doubts by relying on self-incrimination by witnesses, in particular, P-0264, P-0205, P-0054, P-0252, P-0406, P-0410, P-0330, P0085 and P-0009, as a criterion or index of credibility and reliability to convict or

¹⁴⁷ Judgment, paras 27 and 30, (ranks of witnesses relied to convict Appellant) paras 268-269, 272, 274, 295, 304, 319, 321, 329, 341, 349, 354, 361, 363, 555 2626, 2628, 2659 and 2672, (Appellant using LRA members as a tool) paras 2858-2859, 2914, 2964, 3011, 3091 and 3108; Defence Closing Brief, paras 11-12.

¹⁴⁸ Judgment, para. 3106.

¹⁴⁹ Judgment, paras 1321-1325, 1407, 1342, 1581 and 1819 (all examples of husband/wife corroborated evidence), Judgment, paras 1223, 1274-1276, 1282, 1283, 1338, 1350, 1494, 1825, 1867, 1953, 1957. Judgment, paras 1078, 1390, 1396, 1397, 1407, fn. 3426 (para. 1467), 1484, 1641, 1841, 1854-1856, 2664. Judgment, paras 124, 272, 273, 853-855, 866- 868, 871-873, 890, fn. 1609, fn. 1632-1633, fn. 1687, paras 951, 959-991, 1014, 1021-1023, 1027, 1030, fns 2039-2040, fn. 1687, fn. 1719, fn. 2039, para. 1035, fn. 2043, paras 1043, 1066, 1068, 1044, 1046, 1155, 1870, 2100, 2115, 2118, 2256, 2314, 2676-2679, fns 7045 & 7047, paras 2921-2922, 2967-2968 and 3014-3015; CoC, paras. 27, 41 and 54.

¹⁵⁰ Judgment, paras 2852 and 2868.

support the conviction of Dominic Ongwen on multiple charges without meeting the statutory standard and burden of proof.¹⁵¹

GROUND 71: The Chamber erred in law by making credibility and reliability assessments predeterminations detached from the facts of the trial record without a discernible criteria or statutory evidentiary standard.¹⁵²

K. PART K: The admission and assessment of logbook entries, intercepts of radio communications, and shorthand notes

GROUND 72: The Chamber erred in law and fact in its evidentiary assessment of intercepted LRA radio communication evidence without a fair cognisable criteria; by not providing a reasoned statement and by relying on the evidence for impermissible inferences and corroboration in support of multiple convictions without meeting the standard of proof beyond reasonable doubt.¹⁵³ Errors include, *inter alia*:

- Impermissibly substituting contemporaneous shorthand notes of intercepted LRA radio communications (which raised reasonable doubts) with logbook summaries of interceptor's recollections (which it mischaracterised as contemporaneous written records) to incriminate and convict Dominic Ongwen;¹⁵⁴
- Relying on the criteria of "general discussion of the reliability of intercept evidence" to make inculpatory findings against Appellant without a reasoned opinion and without meeting the burden of proof;¹⁵⁵

¹⁵¹ Judgment, paras 1328, 1334, 1370, 1372-1375, 1382, 1388, 1389, 1390-1391, 1394, 1407, 1411-1412, 1414, 1417, 1421-1422, 1428, 1586, 1694, 1890 and 1911. For P-0410 → paras 372-374, 1389, 1394, 1404, 1407, 1419, 1433, 1679 and 1702. For P-0085 → 1484 and 1641. For P-0009 → 1274-1276 and 1348. See also Judgment, fn.1609, fn.1632-1633, fn.1687, paras 866, 890, 932-934, 943, 968, 991, 1009, fn. 2039-2040, paras 1021, 1023, 1030, 1035, 1040-1041, 1043, 1066, 1068, 1159, 1396, 1674-1675, 1927, fn. 5490, fn. 5806, paras 2091, 1843, 2100, 2110, 2115, 2118, 2162, 2335, 2337-2339, 2650; Defence Closing Brief, paras 366 and 416.

¹⁵² Judgment, paras 295-296, 947, 1330,1332, 2314, fn. 1687, fn. 2043, paras 1044, 1068, 1101, 1396, fn. 3213, paras 1407, 1422, fn. 1674-1675, fn. 3213, fn. 5806, paras. 1843, 1397, fn. 3267, P-0054 → paras 1416, 1455, 1690-1691, 1455, 1908 and 2122.

¹⁵³ Judgment, paras 559-567, 574, 648-666, 669, 675, 683, 707-708 and 778; Defence Closing Brief, paras 186, 195-198, 225, 300 and 320; [T-25](#), p. 11; UGA-OTP-0272-0446, para. 129; [T-36](#), pp. 20 and 28; UGA-OTP-0027-0244 at p. 0247 (para 18); [T-40](#), p. 7, lns 16-18 and pp 42-43; [T-41](#), p. 33; [T-44](#), p. 49, lns 4-13, and pp 55-57; [T-116](#), pp 41-43; [T-256](#), p. 49; P-0403, UGA-OTP-0262-0032, para. 11, 12, 18 and fn. 51.

¹⁵⁴ Judgment, paras 558, 574, (fn. 1019), 630, 633, 641, 643, 658, 664 and 667-669.

¹⁵⁵ Judgment, para. 1047 and UPDF Logbook (Gulu), UGA-OTP-0254-3399, at p. 3459.

- Failing to review all evidence to establish the truth as required by Article 74(2);¹⁵⁶
- Concluding that intercept evidence was reliable when it failed to consider the technical issues and failed to address problems which were identified by Prosecution witnesses and evidence before it;¹⁵⁷ and
- Relying on the evidence to impermissibly impute the persecutory policy of Joseph Kony and LRA and other forms of criminal responsibility on Dominic Ongwen without a reasoned statement and proof beyond reasonable doubt.¹⁵⁸

GROUND 73: The Chamber erred in law and in fact by making numerous findings based upon chains of inferences drawn from the intercept material. The Chamber first inferred that it could rely generally on the log-books as accurate accounts of radio conversations based upon a limited number of comparisons to audio intercepts discussed in testimony.¹⁵⁹ The Chamber then drew inferences from the texts of these log-books which the Chamber found to be accurate. These inferences included resolving ambiguities and inconsistencies between various sources against Mr Ongwen and inferring incriminating factual conclusions from textual excerpts. The individual inferences and cumulative effect of the chains of inferences introduced legal and factual errors to the Judgment that cut across the charges. This stacking of inferences impacted upon the convictions with respect to persecution,¹⁶⁰ SGBC not perpetrated by the Appellant,¹⁶¹ and the conscription and use of child-soldiers in armed hostilities.¹⁶²

L. PART L: IDP camps legal and evidentiary errors

GROUND 74: The Chamber erred in law and fact by disregarding the evidence on the command and spiritual authority of Joseph Kony over the LRA and the Appellant by finding without a reasoned statement and proof beyond a reasonable doubts, that the Appellant, Joseph Kony, Vincent Otti, Raska Lukwiya, and unspecified “other LRA commanders” and Sinia leadership executed an agreement or plan to attack Pajule IDP camp and relying on it to convict or support

¹⁵⁶ Judgment, paras 229, 642-644, 663-664 and 650.

¹⁵⁷ Judgment, paras 642, 644, fn. 1317, 1342, 1352, 1363, 1378, 1407 and 1430. *See also* Defence Closing Brief, paras 225(a) and 233.

¹⁵⁸ Judgment, paras 1108-1141, 1084-88, 1090-1147, 2847-48, 2852, 2868-2869, 2907, 2910, 2960 and 3007. UGA-OTP-0217-0148, p. 0150; *see also* P-0205, P-0440, P-0330.

¹⁵⁹ Judgment, paras 140, 643-644, 650, 658-659, 664 and 666.

¹⁶⁰ Judgment, paras 1108-1143, 1145-1146, 2852, 2868, 2907, 2922, 2960, 2968 and 3007.

¹⁶¹ Judgment, paras 212, 2101-2108, 2112, 2116, 2279 and 2308.

¹⁶² Judgment, paras 223, 2322-2327, 2331-2334 and 2337.

the conviction the Appellant.¹⁶³ It erred by concluding that crimes of soldiers at Pajule should be attributed to the Appellant and others where there is no conviction for Appellant for ordering under Article 25, or conviction for command responsibility and no specificity as to which crimes were attributed to any of the four named commanders and unidentified “other LRA commanders.”¹⁶⁴

GROUND 75: The Chamber erred in law and fact by disregarding favourable evidence or evidence which raised reasonable doubts in attributing criminal responsibility for the attack and crimes in Pajule and by finding that the Appellant exercised control over the crimes by virtue of his essential contribution and the resulting power to frustrate the commission of the crimes based on a mischaracterisation of evidence, impermissible inferences, hearsay, evidence of acts not charged, when the burden of proof beyond a reasonable doubt was not met.¹⁶⁵

i. Injury and Alibi - Pajule

GROUND 76: The Chamber erred in fact by failing to properly assess and evaluate the impact and consequences of the injury the Appellant suffered in November 2002, and his arrest in April 2003, on his capacity to play an essential role in planning and executing operations of the LRA during the charged period.¹⁶⁶ The Chamber also erred by disregarding the evidence concerning the gravity of the injury of the Appellant and failing to evaluate and consider the defence of alibi or such relevant facts placing the Appellant outside the crime scenes set up by the Appellant.¹⁶⁷

ii. Odek legal and evidentiary errors

GROUND 77: The Chamber erred in law and fact by concluding that Appellant “committed, jointly with Joseph Kony and other Sinia brigade leaders and through LRA soldiers...” crimes against humanity and war crimes” at Odek IDP camp.¹⁶⁸

¹⁶³ CoC, paras 15-17, 26-29 and 126. *See also* Judgment, paras 950-970, 2874, fn. 2679, fn. 1571, paras 1021-1024, 1044, 1066, 1068, 1177-1182, 1192-1193, 1269-1271, 2851, 2859 and 2861.

¹⁶⁴ Judgment, paras 2858 (Pajule), 2914 (Odek); *see also*, 2964 and 3011 (crimes at Lukodi and Abok attributed solely to Appellant) and 3091 and 3108 (crimes attributed to Appellant, Joseph Kony and other Sinai brigade leaders as their own).

¹⁶⁵ Judgment, paras 1177, 1181, 1184, 1187-1191, 1194-1195, 1200-1223, 2864, 2867 and 2967-2968.

¹⁶⁶ Judgment, paras 1017-1070, fn. 2039 and para, 1286; Defence Closing Brief, paras 312-314, 317-322, 325, 330, 331 and 336; [T-47](#), pp 18-22.

¹⁶⁷ Judgment, paras 1021, 1023, 1024, 1027, fn. 2039, 2040, 1035, 1040-1045, 1066, 1068, fn. 2039, 1264, 1286 and 2449; Defence Closing Brief, paras 312-314, 317-322, 325, 330, 331, 336; P-0205, [T-47](#), pp 18-22

¹⁶⁸ Judgment, para. 2927.

GROUND 78: The Chamber erred in law and fact by disregarding evidence that raised reasonable doubt by finding that the Appellant, Joseph Kony, unspecified LRA commanders and Sinia leadership engaged in an agreement or common plan to attack Odek IDP camp and that the Appellant ordered the attack on the IDP camp when the agreement and the charges laid out in the CoC Decision were not proved beyond a reasonable doubt.¹⁶⁹

GROUND 79: The Chamber erred in law and fact by relying on inconsistent, unreasonable and unwarranted evidentiary findings to convict Dominic Ongwen for co-perpetration of the attack on Odek IDP camp when the constituent elements of co-perpetration in the crimes were not proved beyond reasonable doubt.¹⁷⁰ Errors include, *inter alia*,

- Disregarding or according insufficient or no weight on favourable evidence or which raised reasonable doubts and relying on witnesses who the Chamber found unreliable on major significant details of the attack on Odek;¹⁷¹
- Finding that Dominic Ongwen ordered LRA fighters kill all civilians at the Odek IDP camp and to punish the civilian population for supporting President Museveni and the government of Uganda pursuant to orders from Joseph Kony based on impermissible inferences and without proof beyond reasonable doubt;¹⁷² **and**
- Finding without a reasoned statement and proof beyond a reasonable doubt, that Dominic Ongwen made an essential contribution and exercised control over the crimes with a resulting power to frustrate the crimes when he was not provided appropriate notice in the CoC Decision.¹⁷³

¹⁶⁹ Judgment, paras 1358-1359, 1362, 1365, 1367, 1370, 1372-1375, 1382, 1387-1392, 1412, fn. 3276, 2665, 2799, 2812, 2915, 3010, 3093, 3092, 3089, 2927, 2918, 2917, 2915, 2910, 3100, 3102, 3106, 3108, 3274 and fn. 586.1393-1408 TJ, CoC, para. 27. *See also* Judgment, paras 1387, 1394, 1411, 2799, 2915, 1618, 1821-1822, 1358, 1359, 1362, 1365, 1367, 1370, 1372-1375, 1382, 1387-1392 1412, fn. 3276, paras 2799, 2812, 2665, 2915, 3108, 3106, 3102, 3100, 3010, 3089, 3092-3093, 2927, 2918, 2917, 2915, 2910, 3274, fn. 586); for Pajule, *see* paras 15, 26, 29, 126; [ICC-02/04-01/15-1351](#), paras 27-39 and 70. *See also* Judgment paras 279, 1387, 1392, 1394, 1411-1412, 2799, 2915 and fn. 3276.

¹⁷⁰ Judgment, paras 970, 2927, 2910, fn. 3276, fn. 3274, paras 1394-1396, 1400, 1405, 1407, 1419, fns 3205 and 3212-3213, paras 1394, 1398, 1401, 1415-1416, 1683-1684 and 1688; CoC, paras 27-29.

¹⁷¹ Judgment, para.1421, fn. 3271-3272, paras 1686, 1688 and 2506.

¹⁷² Judgment, paras 1156, 1387-1392, 1394-1395, 1397, 1398-1399, 1401-1402, 1559, 1580-1581 and 2921-2922; CoC, para. 26.

¹⁷³ Judgment, paras 269, 272-274, 1407, 1422, 2508, 1395-1397, 1405, 1416, 1418, 1425, 2352-2353, 1830-1931, 1666, 1675, 1680, 1682, 1688, 2910-2912, and 2915-2921.

iii. Abok legal and evidentiary errors

GROUND 80: The Chamber erred in law by convicting the Appellant on the attack on Abok IDP camp without proof beyond a reasonable doubt.¹⁷⁴

iv. Lukodi legal and evidentiary errors

GROUND 81: The Chamber erred in law and fact by disregarding favourable evidence and evidence which raised reasonable doubts, by relying on inconsistent and unreliable evidence to convict the Appellant for the attacks and resulting crimes perpetrated in Lukodi IDP camp without proof beyond a reasonable doubt.¹⁷⁵

GROUND 82: The Chamber erred in law by disregarding exculpatory evidence provided by witness P-0205 and P-0264 relating to civilian casualties and evidence that raised reasonable doubt, and by relying on inconsistent testimony provided by the same witnesses to make the impermissible inference that the order to attack Lukodi logically included killing civilians, without a reasoned statement and proof beyond a reasonable doubt.¹⁷⁶

M. PART M: Conscription of Child Soldiers legal and evidentiary errors

GROUND 83: The Chamber erred in law by finding that Dominic Ongwen made an essential contribution to the conscription of children who were younger than 15 years old to actively participate in hostilities through a common plan which he developed with Joseph Kony, “LRA commanders” and “Sinia Leadership” acting as “child soldiers co-perpetrators” without notice or proof of the identity of the members of the common plan and essential contribution and without discharging the burden of proof beyond a reasonable doubt.¹⁷⁷

GROUND 84: The Chamber erred in law and fact by disregarding favourable evidence and evidence which raised reasonable doubts in finding, without a reasoned statement, the existence of an agreement or common plan by which Dominic Ongwen, Joseph Kony and the Sinia brigade

¹⁷⁴ Judgment, para. 3030.

¹⁷⁵ Judgment, para. 2973; CoC, para. 41.

¹⁷⁶ Judgment, paras 1651, 1656, 1660, fn. 4206, paras 1666, 1674-1682, 1688, 1843 and 1847, 2000, 1865, 1867, 1870, fn. 4931 and fn. 4935.

¹⁷⁷ Judgment, paras 3106-3112; CoC, paras. 16, 129, 130 / Odek, paras 27-29 / Lukodi, para. 41 / Abok, para. 54, SGBC, paras 50-60 and 119-123 / child soldiers, paras 126-130.

leadership engaged in a “coordinated and methodical effort” to rely on LRA soldiers under their control to abduct children under 15 years of age in Northern Uganda and force them to serve as Sinia fighters when the agreement or common plan was not proved beyond reasonable doubt.¹⁷⁸

GROUND 85: The Chamber erred in law and in fact by relying on evidence of the conscription and deployment of child soldiers by Joseph Kony and the LRA in Northern Uganda outside the geographic and temporal parameters of the charges for contextual elements to impute knowledge, *mens rea*, and inferences to inculcate the appellant without proof beyond reasonable doubt.¹⁷⁹

GROUND 86: The Chamber erred in law and fact by disregarding favourable evidence and evidence which raised reasonable doubt by relying on “mere estimates” and inconsistent variable factors in determining the ages of child soldiers which did not fulfil the age requirement of Article 8(1)(2)(a)(xvii), and by not meeting the statutory legal and evidentiary standard, to convict or to support the conviction of Dominic Ongwen.¹⁸⁰ The Chamber also erred by relying on impermissible inferences to satisfy the mental elements for crimes, including for abduction of children under the age of 15¹⁸¹ and SGBC in counts 61-68.¹⁸²

N. PART N: SGBC legal and evidentiary errors

GROUND 87: The Chamber erred in law and fact by disregarding favourable evidence and evidence raising reasonable doubt by relying on impermissible inferences and deductions to find that Dominic Ongwen, Joseph Kony and the Sinia brigade leadership engaged in an agreement and a coordinated and methodical effort to abduct and distribute women and girls in Northern Uganda without proof beyond reasonable doubt.¹⁸³ The Chamber also erred in law by relying on evidence outside the temporal and geographical scope of the charges for contextual elements and for inferences¹⁸⁴ and corroboration of evidence of the charged SGBC crimes.¹⁸⁵

¹⁷⁸ Judgment, 970, 2100, 2115, 2118, 2165, 3100, 3102 and 3106.

¹⁷⁹ Judgment, paras 255, 1879, fn. 4085, 2312-2337, 2341-2346, 2365-2379 and 2402-2403 and [T-148](#), p. 5, lns 10-19.

¹⁸⁰ Judgment, paras 30, 334-339, 357, 2314, 2391, 2315-2316, 329-330, 2352, 2401 and 2425.

¹⁸¹ Judgment, para. 3114.

¹⁸² Judgment, para. 3098.

¹⁸³ CoC, paras 119-120 and 136. *See also* Judgment, 2022, 2309, 3089, 3090 and 3093.

¹⁸⁴ Judgment, paras 3032, 3042, 3048, 3054, 3060 and 3067.

¹⁸⁵ Judgment, paras 2216-2247; Prosecution Closing Brief, 160.

GROUND 88: The Chamber erred in law and in fact by finding that the Appellant forcefully confined impregnated women in order to carry out other grave violations of international law which (1) failed to identify the specific grave violations; (2) was not based on proof beyond a reasonable doubt and by failing to provide a reasoned statement, causing prejudice and rendering the trial unfair and the conviction unsafe.¹⁸⁶

GROUND 89: The Chamber erred in law and fact by finding without a reasoned statement, that the Appellant was one of the commanders who developed and implemented the LRA policy of abduction of women in Northern Uganda which started prior to his abduction, without meeting the evidentiary burden of proof required at law, causing prejudice and making the trial unfair.¹⁸⁷

GROUND 90: The Chamber erred in fact and in law in relation to the relationship between the Appellant, Kony and the LRA High Command in respect to SGBC when, without firstly determining that the union between appellant and the alleged so-called “wives” were indeed marriages, it found that the elements of the offence of “forced marriage” are covered under Article 7(1)(k), thereby finding appellant guilty of the offence of Forced Marriage thus occasioning a miscarriage of justice,¹⁸⁸ thereby convicting him of the crimes of sexual slavery thereby erroneously convicting him of the crimes of sexual slavery.

Respectfully submitted,



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

Dated this 21st day of May, 2021
 At Lira, Uganda

¹⁸⁶ Judgment, paras 2717, 2727 and 2729.

¹⁸⁷ Defence Closing Brief, paras 101, 566, 570- 571, 573, 576, 580, 582-584, 692-693, 715-716, 718, 722 and 724; CoC paras 54-59; Judgment, paras 30, 123, 126-133, 158, 854, 864, 866-869, 872, 895, 970, 985, 970, 1084, 1160, fn. 2348, paras 1357, 1390-1391, 2100, 2110, 2115, 2118, 2120, 2131, 2132-2133, 2154, 2162, 2165, 2335, 2414-2425, 2519, 2914, 3010, 3089, 3094, 3108, fn. 7045, and fn. 7047.

¹⁸⁸ Judgment, paras 2741-2753.