

1 International Criminal Court
2 Trial Chamber IX
3 Situation: Republic of Uganda
4 In the case of The Prosecutor v. Dominic Ongwen - ICC-02/04-01/15
5 Presiding Judge Bertram Schmitt, Judge Péter Kovács and
6 Judge Raul Cano Pangalangan
7 Sentencing Hearing - Courtroom 1
8 Wednesday, 14 April 2021
9 (The hearing starts in open session at 9.31 a.m.)
10 THE COURT USHER: [9:31:32] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE SCHMITT: [9:31:59] Good morning, everyone.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:32:06] Good morning, Mr President, your Honours.
16 Situation in the Republic of Uganda, in the case of The Prosecutor versus
17 Dominic Ongwen, case reference ICC-02/04-01/15.
18 And for the record, we are in open session.
19 PRESIDING JUDGE SCHMITT: [9:32:20] Thank you.
20 First I ask the participants to introduce themselves for the record. Mr Black first for
21 the Prosecution.
22 MR BLACK: [9:32:29] Good morning, your Honour. Colin Black for the Office of
23 the Prosecutor. Together with me are Beti Hohler, Colleen Gilg, Shkelzen Zeneli.
24 Adesola Adeboyejo and Jasmina Suljanovic are following along in their offices and
25 will come in at some point. We'll rotate at the break, hopefully.

1 PRESIDING JUDGE SCHMITT: [9:32:49] Thank you very much.

2 We turn now to representative of the victims. Ms Massidda first.

3 MS MASSIDDA: [9:32:54] Good morning, Mr President, your Honours. For the
4 Common Legal Representative team appearing today, Mr Orchlon Narantsetseg and
5 myself, Paolina Massidda.

6 PRESIDING JUDGE SCHMITT: [9:33:01] Thank you very much.

7 And Mr Mawira.

8 MR MAWIRA: [9:33:04] Good morning, Mr President and your Honours.

9 Following from video link is Mr Joseph Manoba. And myself James Mawira in the
10 court. Thank you.

11 PRESIDING JUDGE SCHMITT: [9:33:15] Thank you.

12 And now we turn to the Defence, Mr Ayena.

13 MR AYENA ODONGO: [9:33:19] (Microphone not activated)

14 PRESIDING JUDGE SCHMITT: [9:33:23] If you feel more comfortable you can take
15 off the mask, but you have to turn on the microphone, please. But only if you feel
16 more comfortable. If you would like to wear the mask, it's up to you.

17 MR AYENA ODONGO: [9:33:38] Mr President and your Honours, I'm
18 Krispus Ayena Odongo. I'm being assisted by Tom Obhof, Mr Kifudde and
19 Ashley Morganne. Our client, Mr Dominic Ongwen, is in court. And
20 Mr Charles Achaleke Taku and Beth are following from the United States.

21 PRESIDING JUDGE SCHMITT: [9:34:03] Okay. Interesting. Thank you very
22 much.

23 This is the hearing on sentence under Article 76 of the Statute. It will take place
24 today, possibly/probably tomorrow. This hearing has been scheduled by the
25 Chamber on 4 February 2021, simultaneously with the issuance of the conviction in

1 the present case. It's for the purpose of obtaining any additional evidence and
2 submissions relevant to the appropriate sentence to be imposed on Dominic Ongwen
3 for the crimes of which he has found guilty.

4 I recall in this regard that additional evidence for the purpose of sentencing has been
5 submitted by the Defence in writing, while the Prosecution and the Legal
6 Representatives of the Victims chose not to present any additional evidence.

7 In the absence of any live evidence, this hearing is, therefore, limited to receiving the
8 oral submissions by the participants on the sentence.

9 All participants have also filed on 1 April 2021 written submissions in advance of this
10 hearing, as authorised by the Chamber.

11 The Chamber emphasises again that there is no need to reiterate at this hearing the
12 submissions already made in writing. They will be considered by the Chamber in its
13 determination of sentence even if not reiterated orally.

14 As part of their oral submissions, the participants may of course respond to each
15 other's written submissions, as appropriate.

16 The Chamber stresses once again that, after the hearing, no further written
17 submissions will be authorised. So the present hearing is the last opportunity to
18 raise any argument for consideration of the Chamber in this regard.

19 Also, as previously stated, in case at the conclusion of the oral submissions any need
20 for responses or reply arises, this will be dealt with orally.

21 No subsequent written requests to supplement submissions or otherwise respond to
22 other participant submissions will be entertained by the Chamber.

23 In terms of timing, the Chamber has provided a schedule of the hearing, taking into
24 account the requests received from the participants. Three hours have been
25 allocated to the Prosecution and to the Defence, and one hour -- one and a half hour in

1 total to the two teams of the Legal Representatives of Victims to divide between them.

2 This brings the hearing to a total of five court sessions of one and a half hours each,
3 which will be held between today and tomorrow as scheduled.

4 The Chamber is, however, confident that the hearing may be kept shorter than
5 envisaged and that the oral submissions, considering the detailed written submissions
6 already filed, will take less time than currently allocated.

7 In this respect, as already clarified, the Chamber reiterates that, in principle, the
8 participants shall stand ready to commence their oral presentations as soon as the
9 previous one has completed its own.

10 We can start now with the oral submissions. We begin with the Prosecution which,
11 as requested, has been allocated a total of three hours.

12 I assume that Mr Black will start.

13 MR BLACK: [9:37:46] Yes, thank you, your Honour.

14 Your Honours, you have convicted Dominic Ongwen of more than 60 counts of war
15 crimes and crimes against humanity.

16 In connection with attacks against the IDP camps at Pajule, Odek, Lukodi and Abok,
17 in 2003 and 2004, he has been convicted of attacks against the civil population,
18 murder, attempted murder, torture, enslavement, outrages upon personal dignity,
19 pillaging, and destruction of property.

20 He has been convicted of conscripting child soldiers, and also of using them to
21 participate actively in hostilities, between July 2002 and the end of 2005.

22 During that same three and a half year period, Mr Ongwen sustained and
23 implemented the systematised exploitation of women and girls in the LRA's Sinia
24 brigade. The crimes he committed in that context include forced marriage, torture,
25 rape, sexual slavery, and enslavement.

1 And finally, Mr Ongwen has been convicted of raping and torturing seven victims
2 who he forced to be his domestic servants and so-called wives. In addition to raping
3 and torturing them, he enslaved and sexually enslaved them, submitted them to
4 forced marriage and forced pregnancy, and subjected them to outrages upon personal
5 dignity.

6 This long list of extremely serious crimes underlines something that your Honours
7 know very well after three years of trial, the crimes in this case were exceedingly
8 grave. For example, you heard evidence of innocent civilians being locked inside
9 their homes and deliberately burnt to death, or bashed on the head with logs until
10 they died. LRA attackers at Odek and Lukodi abducted mothers and then forced
11 them to abandon their infant children by the side of the road as they carried away the
12 LRA's loot. Some of Mr Ongwen's so-called wives described how they were beaten
13 until they submitted to being raped by him, or how he threatened them with a gun or
14 a bayonet while he raped them, in many cases while they were still girls. In fact, one
15 victim said that he was, quote, "the worst when it came to young girls".

16 As your Honours found in the trial judgment, Mr Ongwen fully intended all of these
17 crimes and he played a key role in their commission. He committed many of the
18 crimes in his capacity as commander of the LRA's Oka battalion and later the Sinia
19 brigade, ordering and encouraging his LRA fighters to kill and abduct innocent
20 civilians. He helped to plan the Pajule attack and personally participated in it. At
21 the other attacks, it was Mr Ongwen who decided to launch the attacks. He selected
22 the fighters, he selected the ground commanders. He laid the plans, gave the
23 instructions, and then reported the result up his chain of command over the LRA
24 radio.

25 For the child soldier and sexual and gender-based crimes, Mr Ongwen was even more

1 intimately involved. In addition to his role as a commander, he personally abducted
2 children and he personally distributed boys, girls, and women within his units.
3 Many of the children told him directly to his face that they were under 15 years old.
4 Some of those young boys became Mr Ongwen's own escorts, living with him,
5 carrying his tent, his chair, his weapon. He also kept women and girls for his own
6 so-called household, forcing the youngest to be his servants and babysitters, while
7 those that he deemed old enough were forced to be his so-called wives, obliged to
8 have sex with him, to bear and to care for his children.

9 In other words, your Honour, those victims were forced to live with Mr Ongwen, for
10 months or even years, during which time he controlled most aspects of their daily life.
11 It's no wonder that many of them still bear physical and emotional scars from their
12 experiences.

13 But even among the victims of the attacks, which were more restricted in time, I recall
14 the expert report of Teddy Atim, which says that for many, I quote, "the LRA attacks
15 on Abok, Lukodi, and Odek represent a turning point in their lives, as well as the
16 lives of their family and their entire community". End quote.

17 Rule 145(2)(b) of the Rules of Procedure and Evidence identifies various so-called
18 aggravating circumstances, and several of them apply in this case.

19 For example, there were multiple victims. Your Honours found that Mr Ongwen's
20 fighters murdered more than 130 people during these attacks on the IDP camps, and
21 attempted to murder at least 25 others. Hundreds of civilians were abducted,
22 tortured, and enslaved during those same attacks. A large number of children were
23 conscripted into the LRA, and used actively to participate in hostilities, during the
24 charged period. And although the precise number is not known, we surely submit
25 that it is also in the hundreds. And in addition to the seven women and girls who

1 were forced to be Mr Ongwen's wives and servants, your Honours concluded that
2 there were over one hundred abducted women and girls in the Sinia brigade at any
3 one time during the charged period.

4 Many of these victims were particularly defenceless, another aggravating
5 circumstance under the Rules. Boys and girls as young as 9 or 10 years old were
6 abducted and forced to be child soldiers or domestic servants. Mr Ongwen raped
7 some of his victims, like P-101, P-226, when they were still girls. As I've mentioned,
8 at some of the attacks mothers were forcibly separated from babies so young that they
9 were still breastfeeding. Elderly people, pregnant women were also killed and
10 tortured during the attacks.

11 You heard evidence that these crimes went beyond mere violence to particular cruelty.
12 And I've already described some of those circumstances. I just recall that others
13 were also forced to kill people or forced to beat people or to inspect dead bodies.
14 And finally on aggravating circumstances, you found that the crimes were committed
15 with a discriminatory motive, as punishment for civilians whom the LRA considered
16 to be their enemy, to support the Ugandan government, usually just because they
17 lived in camps for internally displaced people.

18 Mr Ongwen shared that intent and motive.

19 Now, why have I recounted all these facts, facts which I know your Honours already
20 know, which are in the trial judgment? I've done so to make absolutely clear our
21 position that the crimes committed in this case, and Mr Ongwen's participation in the
22 crimes, would ordinarily warrant a sentence at the very highest range available under
23 the Rome Statute, 30 years or even life imprisonment.

24 The participating victims in this case have recommended just such a sentence, life
25 imprisonment. And we share their desire for justice and we respect their views. In

1 another case, against another accused, we might well agree with their
2 recommendation. At the very least, we agree that 30 years or life imprisonment is
3 the point of departure for any sentencing analysis in this case.
4 However, as you know from our sentencing brief, the Prosecution is recommending a
5 sentence lower than that, but not less than 30 years. Why is that?
6 As Prosecutor Bensouda recognised at the very beginning of this trial, there is one
7 circumstance which sets this case apart from all the others tried at this Court.
8 Approximately 15 years before he committed these terrible crimes, Mr Ongwen was
9 himself a victim of the LRA. Your Honours found that he was 9 years old when he
10 was abducted while walking to school. He was forced to become a child soldier in
11 the LRA. And although your Honours heard little evidence about his own
12 experience, the testimony of other former child soldiers is enough to tell us that he
13 probably suffered greatly. He would have been beaten, forced to beat or even kill
14 others, and subjected to spiritual and political indoctrination. He would have
15 suffered hunger, grief, and fear. In effect, the LRA stole from Mr Ongwen his
16 childhood, his education, and his best chance to lead a normal life surrounded by
17 family and friends.
18 Now, these sad events, your Honours, his abduction and his time as a child soldier,
19 they do not relate in any direct way to the crimes of conviction or to his culpable
20 conduct. They happened more than a decade earlier, and there's been no link shown
21 between his victimisation and the crimes, any of the crimes that he later committed as
22 an adult in his twenties over a period of three and a half years. And the
23 Prosecution's view is that Mr Ongwen's previous experience as a child soldier does
24 not in any way diminish the gravity of the crimes, nor does it diminish his criminal
25 culpability for those crimes.

1 Nevertheless, we consider them to be exceptional individual circumstances, of a kind
2 that warrant a significant reduction in sentence. Specifically, the Prosecution has
3 recommended up to a one-third reduction in sentence from the 30 years which we
4 think would otherwise apply, down to something not less than 20 years in prison.

5 I would emphasise that we feel strongly that anything less than 20 years would be
6 disproportionately low, given the gravity of the crimes in this case and their impact,
7 long-lasting and devastating impact on the victims. However, on balance - and
8 sentencing is always a question of striking the right balance - on balance, we think
9 that a sentence of at least 20 years would sufficiently reflect the severity of the crimes,
10 Mr Ongwen's participation, and the harm to the victims, while appropriately taking
11 account of his individual circumstances.

12 Your Honours, during the remainder of the Prosecution's allotted time, my colleagues
13 will address you on several discrete topics. We take on board, your Honours and
14 Presiding Judge, what you've said. We know you've sat through already an entire
15 trial, you've received additional Defence sentencing evidence, and you've read our
16 briefs. And so we won't summarise our positions any more than I've already done
17 this morning. Instead, we'll focus on issues and arguments that have been raised in
18 the Defence sentencing brief.

19 First, my colleague Beti Hohler will respond to the Defence's arguments related to the
20 purposes of sentencing. She'll next address the argument that Mr Ongwen should
21 receive credit for his alleged good character while in the LRA. And she'll conclude
22 her portion with a discussion of duress and explain why we feel that it does not
23 constitute a mitigating circumstance in this case.

24 Shkelzen Zeneli will then address the Defence's arguments that the Chamber should
25 effectively disregard 18 counts, either of war crimes or crimes against humanity,

1 because they were based on the same conduct as other counts of conviction. He will
2 address the Ugandan Amnesty Act and its impact, if any, on this case. And he will
3 also address the argument that Mr Ongwen should receive so-called time served
4 credit for some of the years he spent in the LRA.

5 Colleen Gilg will then address Mr Ongwen's mental health as it relates to sentencing.
6 And she'll explain why the evidence does not show that Mr Ongwen suffered from
7 substantially diminished mental capacity at the time of the crimes. She'll also
8 address the Defence's arguments regarding his current mental health, and explain our
9 position that any ongoing mental health care or treatment can and should be
10 administered while he serves his sentence, not in lieu of a sentence.

11 And finally, Adesola Adeboyejo will address the question of Mr Ongwen's social
12 rehabilitation, including the Defence's assertions about his family situation and also
13 their proposal that his sentence be reduced so that he may undergo Acholi traditional
14 justice.

15 Your Honours, we're of course ready to take your questions at any time before,
16 during or after our presentations. But, as I mentioned, some of us will be changing
17 places and coming in and out of the courtroom, so I would encourage you, if you
18 have a question from someone who's speaking, to go ahead and put the questions to
19 us as we're on our feet.

20 With that, your Honours, and with your permission, I'll give the floor to Ms Hohler.

21 We will take just a moment to switch spots. Thank you.

22 MS HOHLER: [9:55:15] Your Honours, I will start -- I will start by addressing the
23 arguments of the Defence related to the purposes of this sentencing procedure.

24 Your Honours, the Trial Chambers and the Appeals Chamber of this Court have
25 consistently held that the primary objectives of sentencing in the ICC proceedings are

1 retribution and deterrence.

2 Retribution is considered an expression of the international community's
3 condemnation of the crimes. It acknowledges the harm caused to the victims by
4 issuing a proportionate sentence.

5 Deterrence aims to prevent future crimes by addressing both the accused, specific
6 deterrence, and the general public, general deterrence.

7 Rehabilitation of the convicted person is a consideration, but a minor one. As
8 emphasised by other Trial Chambers and the Appeals Chamber of this Court,
9 rehabilitation should not be given undue weight in light of the serious crimes that this
10 Court adjudicates.

11 I underline the relationship between these sentencing objectives, your Honours,
12 because the Defence in its written submissions focuses extensively on rehabilitation
13 and it asks you, I quote, "to look heavily at this factor". The Defence is in effect
14 asking your Honours to make Mr Ongwen's rehabilitation the central aim of this
15 sentencing procedure. It goes even further and asks you to altogether ignore
16 deterrence as an objective. Perhaps unsurprisingly, the Defence says very little
17 about retribution.

18 To start with, your Honours, the Prosecution submits that deterrence is a relevant
19 factor for this sentencing proceeding.

20 International criminal justice as a whole, and this Court in particular, are built on the
21 notion that holding individuals responsible for grave crimes they have committed
22 and punishing them, will help prevent future atrocities. The preamble of this Court
23 reiterates this very clearly.

24 It is not true, as the Defence would have you believe, that the work of this Court and
25 the sentence it imposes on Mr Ongwen do not matter.

1 THE INTERPRETER: [09:58:24] Your Honour, could counsel slow down a bit?

2 MS HOHLER: [9:58:28] (Overlapping speakers) Whilst it is difficult to scientifically
3 measure the effect of general deterrence in international criminal proceedings, we say
4 one thing, your Honours: An overly lenient sentence, like the one suggested by the
5 Defence, will have no deterrent effect whatsoever.

6 THE INTERPRETER: [09:58:42] Your Honour, could counsel slow down a bit?

7 MS HOHLER: [9:58:47] The Prosecution also emphasises that deterrence as a
8 sentencing objective cannot be divorced from the gravity of the crimes and the
9 conduct of the accused. The two namely go hand in hand.

10 As pointed out by the ICTY Appeals Chamber in Krajisnik case -- in the Krajisnik case,
11 a sentence proportional to the gravity of the criminal conduct and individual
12 culpability will always also provide sufficient retribution and deterrence.

13 The Prosecution also emphasises the importance of retribution as the other primary
14 objective of sentencing. Retribution, your Honours, is not about revenge. It is
15 about expressing, as I have mentioned, the international community's condemnation
16 of the crimes and respecting the harm caused to the victims.

17 When your Honours sentence Mr Ongwen, that sentence should make plain that the
18 international community is not ready to tolerate serious violations of international
19 humanitarian law and human rights law. It should show that acts like rape, torture,
20 murder, sexual slavery, pillaging, abduction of children, and other crimes, are taken
21 seriously by the Court and are appropriately punished. It should also show that
22 while cognisant of Mr Ongwen's individual circumstances, these do not overshadow
23 his conduct and the suffering of the victims.

24 Finally on this point, your Honours, I want to briefly address the issue of
25 rehabilitation which the Defence puts so much emphasis on. While Mr Ongwen's

1 own rehabilitation may be taken into consideration, it should not take central stage.

2 In fact, Mr Ongwen's mental and social rehabilitation are predominantly issues for the

3 enforcement of sentence rather than an issue for determining the length of

4 Mr Ongwen's sentence. And as Mr Black has hinted, my colleagues, Ms Gilg and

5 Ms Adeboyejo, will address this in more detail in their upcoming submissions.

6 I will now move away, your Honours, from the purposes of sentencing and address

7 the Defence's argument that Mr Ongwen's character and kind acts while he was in the

8 LRA should be considered a mitigating circumstance.

9 Mr Ongwen spent some 27 years in the LRA. The Prosecution accepts that during

10 this time he may commit -- he may have committed some acts of kindness and have

11 even intervened to save lives. The Defence in its closing brief lists examples of such

12 interventions. Individual acts of kindness, however, do not in any way negate the

13 crimes that Mr Ongwen has committed against hundreds of victims.

14 Put in context, what the Defence is referring to by listing examples of Mr Ongwen's

15 interventions is what the jurisprudence of international criminal tribunals, including

16 of this Court, has called "selective assistance" to victims.

17 This factor has typically been afforded little or no weight in the international

18 sentencing practice. The jurisprudence of the ad hoc tribunals says that only highly

19 exceptional cases of intervention, such as those involving, I quote, "clear and

20 compelling cases of assistance to victims" may be considered in mitigation.

21 In the ICTR case Ndahimana, when faced with this argument, the judges compared

22 the number of victims the accused was said to assist with the much larger number of

23 the victims of his crimes. The judges found that the disproportionate result of this

24 comparison showed that the accused Ndahimana's assistance was relatively selective

25 and it refused to consider it as a substantial mitigating factor.

1 In another case before the International Criminal Tribunal for Rwanda, the Kajelijeli
2 case, the ICTR Appeals Chamber noted that the evidence of selective assistance
3 cannot diminish the weight of the evidence going to the accused's culpability so as to
4 merit a reduction in sentence.

5 At the ICC, your Honours, the issue most recently arose in the Ntaganda case, where
6 the Appeals Chamber held that only a substantial humanitarian act could be
7 considered a mitigating factor. The Chamber rejected Ntaganda's claim that saving
8 the lives of 64 enemy combatants was such an act. It held that the accused's actions
9 in fact benefited the common plan and that his ulterior motive diminished the value
10 of his actions.

11 The same, your Honours, can be said for several of the examples cited by the Defence
12 in relation to Mr Ongwen's actions. Mr Ongwen for the most part intervened only to
13 save lives of selected few; people close to him, people he liked and trusted, such as
14 P-236 who became his forced wife, and his trusted ranked soldiers like Witness P-205
15 and P-231.

16 Mr Ongwen, your Honours, afforded no such protection, no such generosity to the
17 women and children in his brigade more generally, or to the residents of the attacked
18 IDP camps in Pajule, Lukodi, Odek and Abok.

19 Quite to the contrary, your Honours, you have heard dozens of women and children
20 in Mr Ongwen's Sinia brigade describe how they feared for their life and were
21 mistreated on a daily basis as a result of Mr Ongwen's crimes and, very often, his
22 direct orders and actions. You have heard evidence of Mr Ongwen instructing his
23 soldiers before the attack on Odek to, I quote, "exterminate" everything in the camp,
24 "even ants, even flies", and similar other orders given in relation to the other attacks.

25 The Prosecution emphasises that only some of the examples of Mr Ongwen's acts of

1 kindness cited by the Defence took place during the charged period, and that the
2 examples in fact span across the entire time Mr Ongwen was in the LRA. But even
3 then, the number of victims Mr Ongwen intervened for is by far outnumbered by the
4 number of victims of his crimes in the three and a half years of the charged period.
5 This Trial Chamber found that there were over a hundred women in Sinia brigade at
6 any given time who were tortured, raped, enslaved or sexually enslaved. The
7 Chamber found that more than 130 people were murdered in the four attacks charged.
8 Hundreds more were enslaved and tortured in those same attacks. The Chamber
9 found that large numbers of children were conscripted and used as child soldiers in
10 the Sinia brigade.

11 Your Honours, the examples cited by the Defence in its sentencing brief try to show
12 that Mr Ongwen was sometimes kind. But the reality is that, just as easily,
13 Mr Ongwen was also cruel. The testimonies of witnesses in this case are full of just
14 such examples. Let me mention a few.

15 Child soldier P-97 almost drowned crossing a big river. Fighting for his life in the
16 water, he lost the saucepans he was instructed to carry. Mr Ongwen showed no
17 sympathy when the witness was brought before him. He ordered that P-97 be
18 beaten because he lost the saucepans.

19 Witness P-226 was about 10 years old when Mr Ongwen summoned her to have sex
20 with him. She was disgusted and frightened. She refused. Mr Ongwen ordered
21 his escorts to beat her and watched them do it. After one week of constant beatings,
22 she submitted to Mr Ongwen's sexual demands. On another occasion the same
23 witness was beaten to unconsciousness on Mr Ongwen's orders as punishment for
24 relieving herself in the water. She also described an incident when Mr Ongwen beat
25 her personally.

1 Another young girl, P-227, was abducted by Mr Ongwen's soldiers together with her
2 brothers. Mr Ongwen suggested he might release one of them, giving the siblings a
3 glimmer of hope that at least one of them could be saved. The brothers begged for
4 their sister's release, while P-227 herself asked Mr Ongwen to release her little brother
5 who had just undergone an operation a recent while ago. And what did Mr Ongwen
6 do? He released no one and instead ordered his guards to beat the children so badly
7 that they forget their home.

8 Insofar the Defence's assertions about Mr Ongwen's reputation as a good man in the
9 LRA are concerned, they must be put in context, your Honours.

10 Yes, Mr Ongwen was considered a skilled soldier who took care of his fighters, but
11 this reputation came on the back of attacks against thousands of civilians in northern
12 Ugandan, in which people were killed, tortured and enslaved, their properties
13 pillaged or destroyed.

14 Yes, Mr Ongwen was liked by his soldiers, but an important reason for this was that
15 he rewarded them with women. Those women, your Honours, were frightened
16 teenage girls abducted from their homes, who were then beaten into submission,
17 brutally raped, turned into sex slaves and forced wives.

18 Yes, your Honours, in comparison to some other LRA commanders, Mr Ongwen may
19 not have been the cruellest, but he was also not the kind man and benevolent leader
20 that the Defence would have you believe. Your Honours only need to look in the
21 evidence of the women and child soldiers in Sinia brigade, such as Mr Ongwen's own
22 forced wives like P-226, P-227, P-214, and others, and child soldiers like P-330, P-314,
23 P-097 and others.

24 In conclusion on this point, your Honours, individual acts of kindness and alleged
25 goodwill that Mr Ongwen may have shown at times do not amount to a mitigating

1 circumstance and do not warrant any reduction of sentence.

2 Finally, your Honours, I want to address the question of whether duress constitutes a
3 mitigating circumstance in this case.

4 Your Honours have already rejected duress as a ground excluding Mr Ongwen's
5 criminal responsibility. The Defence is now asking you to take the alleged duress
6 into consideration as a mitigation factor and as a personal circumstance, in order to
7 reduce Mr Ongwen's sentence.

8 As we have argued in more detail in our written submissions, the Prosecution
9 submits that duress does not constitute a mitigating factor for Mr Ongwen. This is
10 because there is no evidence that any sort of pressure or threat played any role in the
11 commission of Mr Ongwen's crimes.

12 Rule 145(2)(a)(i) of the Rules of Procedure and Evidence states that circumstances
13 falling short of constituting grounds for exclusion of criminal responsibility, such as
14 duress, may constitute a mitigating circumstance. Duress, your Honours, is a
15 specific legal concept and for it to constitute a mitigating factor, it still requires a link
16 between the crimes committed and the pressure alleged.

17 The Defence in its written submissions elaborates on the role of spiritualism,
18 all-powerful Joseph Kony, and the expectation to comply with the LRA rules. The
19 Defence, however, does not demonstrate any link between these and Mr Ongwen's
20 crimes. This is because we say no such link can be found in the evidence heard in
21 this case.

22 Your Honours, there has been no suggestion that Joseph Kony threatened to hurt
23 Mr Ongwen if he did not, for example, attack Lukodi, rape women or abduct children.
24 In fact, a number of Mr Ongwen's crimes were committed in private, in circumstances
25 where any threats or pressure potentially made against Mr Ongwen would not have

1 any effect.

2 The Defence does not appear to suggest that there was a threat of harm from the
3 spirits themselves. No witness suggested that Mr Ongwen was visited by spirits
4 prior to or during any of the charged attacks or the sexual and gender-based crimes
5 and crimes against children.

6 Moreover, despite many assertions about Kony's spiritual orders and rules, LRA
7 commanders, including Mr Ongwen, frequently violated them. P-233, for example,
8 quite clearly testified that Mr Ongwen did not always follow the rules. P-226
9 described how Mr Ongwen directly defied Joseph Kony's rules specifically to commit
10 crimes. Mr Ongwen namely hid P-226 in order to keep her for himself rather than
11 send her to Joseph Kony. Even Defence's own examples of Mr Ongwen intervening
12 to save lives also demonstrate that Mr Ongwen did not hesitate to counter Joseph
13 Kony when he wanted to.

14 The evidence also shows that LRA members who, like Mr Ongwen were abducted as
15 children, grew up in the bush, and became LRA commanders regularly questioned or
16 simply did not believe in the existence of spirits and Kony's spiritual powers.

17 Witnesses D-75, D-74 and D-6, who were part of Mr Kony's inner circumstance, like
18 Mr Ongwen, are just some of the examples.

19 Your Honours have also observed that there is consistent evidence that for many
20 persons who stayed in the LRA for a longer period of time, their belief gradually
21 subsided and even disappeared.

22 Insofar as the Defence refers to the threat of punishment for violating LRA rules,
23 these examples again have no link to the crimes Mr Ongwen has been convicted of.

24 It is important to remember that during the charged period, Mr Ongwen was an
25 accomplished battalion and brigade commander, operating far away from

1 Joseph Kony and Control Altar. He was in full control of the soldiers and many
2 women and children in his unit. He planned abductions and attacks on IDP camps.
3 He distributed women and oversaw the training of children. Whatever his early life
4 in the LRA may have entailed, as your Honours have observed in the trial judgment,
5 Mr Ongwen's status and experience during the charged period was fundamentally
6 different from that of low-level LRA members and recent abductees.

7 To conclude on this point, your Honours, there is no evidence that Mr Ongwen
8 committed his crimes because of any threat or pressure, therefore duress as a
9 mitigating circumstance should also be rejected.

10 This, your Honours, concludes my own submissions. Unless you have any
11 questions, I will hand over the floor to Mr Zeneli. Thank you.

12 PRESIDING JUDGE SCHMITT: [10:20:34] Fine, thank you.

13 MR ZENELI: [10:21:19] Good morning, your Honours.

14 I'll start with Defence argument related to sentencing per act, not count, and I make
15 reference to paragraph 175 and 181 of their brief.

16 Defence submits that 36 counts for which Mr Ongwen was convicted consists of
17 overlapping war crimes and crimes against humanity based on the same underlying
18 facts. It lists those counts in paragraph 176 of their brief and they say that, because
19 of this overlap, you should only convict on 18 of them and then drop the rest.

20 Defence commission is legally incorrect and, for that reason, for also arguments that I
21 will elaborate further in my submission, it should be rejected.

22 As provided in Article 78(3) of the Rome Statute, and as has been consistently held by
23 the jurisprudence of this Court, the Chamber should sentence separately on each
24 crime. This ensures that the sentence reflects the totality of the culpable conduct of
25 the convicted individual. The assessment of Mr Ongwen's unlawful behaviour, or

1 the means he employed to execute the crimes and, even more specifically, his degree
2 of participation and intent for each of them must be considered in the context of the
3 different interests and rights that he has violated.

4 First, with regard to his arguments on these issues, Mr Ongwen repeats his closing
5 submissions and effectively seeks to negate any effect to the cumulative convictions
6 for war crimes and crimes against humanity. And these are arguments which you
7 have already dismissed in your judgment, your Honours. I refer to paragraph 2820
8 of the trial judgment. You rejected the Defence's request that the contextual chapeau
9 elements for war crimes and crimes against humanity must not form part of any
10 assessment whether to enter multiple convictions for individual crimes when based
11 on the same facts. And your conclusion was clear: The chapeau elements are not
12 neutral or qualitatively different from the specific elements attaching to each crime.
13 As such, they distinguish crimes, and also reflect the fact that the crimes protect
14 different interests.

15 Now, Trial Chambers of this Court in different cases like Ntaganda, Bemba and
16 Katanga, all took the same position. They are also referenced in footnote 7348 of
17 your judgment.

18 The ad hoc tribunals took the same approach. Such would be, for example, the
19 Nahimana et al appeals judgment, paragraph 1019, Musema appeals judgment,
20 paragraph 363, where consequently the Trial Chamber entered cumulative
21 convictions for war crimes and crimes against humanity.

22 In addition to the differences between these two crimes based on the contextual
23 elements, for some of these crimes, their respective provisions provide further and/or
24 different elements, such as, for example, the crime of torture as a war crime and as a
25 crime against humanity. You have yourself noted in paragraph 2702 of the

1 judgment that there are some notable differences between the elements of torture as a
2 crime against humanity and that of torture as a war crime.

3 And, yet again, in this case you have torture committed in the context of the attacks,
4 again charged as a war crime and crimes against humanity, as well as torture in the
5 context of sexual and gender-based crimes. I refer to counts 4, 5, 16, 17, 29, 30, 42
6 and 43 for the first category, and then counts 51, 52, 62 and 63 for the second one.

7 For each of these crimes, as you would have noticed, your Honours, we have
8 proposed that the Court pronounces different periods of imprisonment as a sentence:

9 From 14 years of imprisonment for the first category and from 20 years of
10 imprisonment for the second category.

11 But let's assume for a moment that you actually do what the Defence suggests, so let's
12 assume that you convict on only 18 and drop the rest. Let's assume that you take
13 only the war crime of torture and then leave out the war crime of torture as a crime
14 against humanity. And let's assume that in appeal this count is overturned on
15 grounds that nevertheless leaves the other count intact. So what would happen then?

16 Because Mr Ongwen was not convicted on one of the counts he should walk free?

17 That can't be the case. It's a position the Defence can't seriously be supporting.

18 Your Honours, as the Defence has itself noted - and I reference their submissions in
19 paragraph 177 - and as you have yourself so indicated - I refer to paragraph 2792 of
20 the judgment - you will take into consideration all those instances in which

21 Mr Ongwen is convicted for more than one crime on the basis of the same conduct
22 when determining the sentence to be imposed.

23 When doing so, the Trial Chamber must follow the two-step sentencing process

24 outlined in Article 78(3) of the Rome Statute and consistently endorsed by the

25 Appeals Chamber, for example, in the cases of Ntaganda and Bemba et al, which

1 mandates the Trial Chamber to impose, first, a sentence for each crime, and second, a
2 joint sentence that cannot be lower than the highest individual sentence. I refer here
3 to Ntaganda sentencing appeal judgment, paragraph 129, and Bemba et al judgment
4 on the sentencing appeal judgment, paragraph 238.

5 The factual overlap among the crimes should be considered in assessing the total
6 sentence, that's the second step, but it cannot result in the Chamber not considering a
7 war crime or a crime against humanity for the purposes of sentencing. That would
8 be contrary to the two-step process sanctioned in Article 78(3).

9 Now, it may well be, your Honours, that the sentence you impose for war crime and a
10 crime against humanity based on the same underlying conduct end up being the
11 same. In fact, we the Prosecution, have ourselves recommended that. But that does
12 not mean that the results of it, as the Defence suggests, would be to pronounce a
13 corresponding sentence to only 18 of the overlapping counts and then drop the rest.
14 Instead, you should sentence Mr Ongwen for all the crimes of conviction. But also,
15 because all of the sentences will be served simultaneously, this will result in no extra
16 hardship for Mr Ongwen.

17 That brings me to the second issue. This is the arguments made by the Defence with
18 regard to the Amnesty Act of Ugandan.

19 They suggest that Mr Ongwen should receive a lighter sentence because all other
20 former LRA members, with the exception of one, have benefited from the Ugandan
21 Amnesty Act. I make reference to paragraphs 29-30 of the Defence brief.

22 Now, your Honours, before this Court, the Ugandan Amnesty Act has no force. The
23 International Criminal Court does not, as it should not, recognise unconditional
24 amnesty or immunity from prosecution for the crimes against humanity and war
25 crimes listed in the Rome Statute. And Mr Ongwen was charged and found guilty of

1 exactly such crimes.

2 It's also not correct that Mr Ongwen has been unfairly singled out. I recall, your
3 Honours, that Mr Ongwen was charged together with four other LRA commanders,
4 three of whom are presumed dead with one still at large. And none of these men
5 have received amnesty.

6 Mr Ongwen has been convicted of serious crimes and for that he should receive the
7 appropriate sentence. A sentence which must reflect his crimes and his conduct.
8 What someone else may or may not have done, or whether they have or have not
9 received amnesty or were not prosecuted is essentially irrelevant to Mr Ongwen's
10 sentence.

11 For the last issue, the arguments made with regard to time spent in the LRA, the
12 Defence argues that Mr Ongwen should receive credit for the time he was held
13 captive in the LRA or, in the alternative, that the Chamber should hold that that is a
14 serious mitigating factor.

15 And it makes those arguments under two separate timelines, one for the time he
16 spent as a child, and another to the point he became a commander in the LRA.

17 Reference is made to paragraph 64 of their brief.

18 Your Honours, time served is covered by Article 78(2) of the Statute, which says that
19 the Trial Chamber must deduct time spent in detention "in connection with the
20 conduct underlying the crime". No provision of the Rome Statute authorises the
21 Trial Chamber to deduct time spent in detention prior to the crimes being committed
22 and for completely unrelated reasons.

23 That's why you should dismiss the Defence request.

24 And here's a reference to this Court's jurisprudence on the issue. It's found in
25 Katanga's sentencing decision number 3484, at paragraphs 154 to 168, where the

1 Chamber found, and I quote:

2 "Regarding the deduction of any other time spent in detention in relation to conduct
3 underlying the crimes, the Chamber considers, in particular in light of a combined
4 reading of the English, French and Spanish versions of Article 78(2) of the Statute, that
5 only a period of detention for acts constituting the same crimes for which the accused
6 person is convicted may be deducted from the sentence pronounced."

7 Having said this, your Honours, this does not mean that we consider Mr Ongwen's
8 abduction and time as a child soldier in the LRA to be irrelevant. As explained
9 earlier by my colleague Mr Black, we, the Prosecution, believe that the personal
10 experiences of Mr Ongwen warrant a reduction in his sentence. Not as a deduction
11 for time served, but as an individual circumstance.

12 At this point, unless you have any questions, I'll give the floor to my colleague -- or,
13 actually, she's not here, right?

14 MR BLACK: [10:35:22] No, it's Colleen.

15 MR ZENELI: [10:35:28] Oh, okay.

16 PRESIDING JUDGE SCHMITT: [10:35:29] Okay.

17 MS GILG: [10:36:04] Your Honours, I will address the issues related to mental health.

18 In essence, the Defence argument is that Mr Ongwen's sentence should be reduced
19 because he has been mentally ill for over 30 years, from shortly after his abduction
20 into the LRA until today. This argument is not supported by the evidence. It
21 should be rejected.

22 Today I will first argue that the Defence have not met their burden of showing that it's
23 more likely than not that Mr Ongwen suffered from substantially diminished mental
24 capacity.

25 Second, I will argue that any mental health needs Mr Ongwen currently has should

1 not affect the length of his sentence.

2 I'll move to the first topic now.

3 The Defence base their argument on paragraph 2(a)(i) of Rule 145. That provision
4 provides for mitigation where an accused suffered from substantially diminished
5 mental capacity.

6 The Defence appear to consider that both the past and current state of Mr Ongwen's
7 mental health is relevant here, but there is only one material time for the purposes of
8 Rule 145. That time is the period during which Mr Ongwen was committing the
9 crimes he was convicted of.

10 This Chamber has already found that Mr Ongwen did not suffer from a mental
11 disease or defect at the time of the crimes. The Prosecution submits that there is no
12 reliable evidence that Mr Ongwen's mental capacities were diminished in any way at
13 the time of the crimes. And there is certainly no reliable evidence that they were
14 substantially diminished.

15 MR OBHOF: [10:38:09] Your Honours, I am very sorry for interrupting Ms Gilg.

16 There is a problem with the translation for Mr Ongwen. He's not currently receiving
17 the Acholi translation of what Ms Gilg is saying.

18 PRESIDING JUDGE SCHMITT: [10:38:24] We have, of course, to solve this problem
19 first, and then you might continue.

20 Perhaps I can get a notice if this can be solved quickly.

21 Thank you very much also for the intervention, Mr Obhof.

22 And, Ms Gilg, you may (Overlapping speakers)

23 MR OBHOF: [10:38:54] Thank you very much. And, again, my apologies to
24 Ms Gilg.

25 MS GILG: [10:38:58] The Defence cites to three sources of expert opinion to support

1 their position. I will address each in turn.

2 First, the Defence relies on the findings of their two mental health experts. But the

3 Trial Chamber has already found that the Defence experts' findings are unreliable.

4 There is no reason why those findings should be considered any more reliable now.

5 The Defence have submitted a new report from Professor Ovuga for sentencing.

6 This report suffers from the same deficiencies as the prior reports Professor Ovuga

7 contributed to, and it further underscores the Defence experts' lack of objectivity and

8 detachment.

9 As your Honours have observed, there is an inherent incompatibility between the

10 duties of a treating physician and a forensic expert. The primary objective of a

11 forensic expert, the primary obligation is to the Court, not to the accused person.

12 And yet, in the new report, Professor Ovuga confirms that the Defence experts'

13 forensic sessions sometimes turn to therapeutic sessions. He also confirms that they

14 coordinated care with Mr Ongwen's doctors, and he pledges to continue to provide

15 mental health support and therapy to Mr Ongwen when he is released. I refer your

16 Honours to UGA-D26-0015-1878 at pages 1881 and 1886.

17 The Defence also cites to the Prosecution's mental health experts, but their findings do

18 not suggest that Mr Ongwen suffered from substantially diminished mental capacity.

19 They stand for the contrary. For example, Dr Mezey found no indication that

20 Mr Ongwen was mentally unstable at the time of the crimes. Professor

21 Weierstall-Pust found that, quote, "The rise of Mr Ongwen in the LRA and his ability

22 to survive in this adverse environment is closely related to an intact level of

23 functioning."

24 Dr Abbo considered that Mr Ongwen reached the highest level of moral development.

25 She also found that he benefited from a favourable early childhood experience prior

1 to the LRA which helped him understand the unlawfulness of his later conduct.

2 The Prosecution agrees with the Defence that the type of violence Mr Ongwen was
3 undoubtedly exposed to could lead to mental health issues. This is uncontroversial.

4 The Prosecution experts obviously acknowledge the point. But they also
5 emphasised that while mental health problems could arise as a result of exposure to
6 that type of violence, they would not necessarily arise. This is because violence or
7 other potentially traumatic events can affect individuals in many different ways. No
8 automatic assumptions can be made.

9 Professor Weierstall-Pust explained in detail his research about appetitive aggression.
10 According to what this research found, some individuals process potentially
11 traumatic events in a way where it does not cause them distress, instead they process
12 the event in a positive way, as appealing or rewarding. He gave one example, that
13 of a combat-related cue such as the screaming of a dying person. Some individuals,
14 particularly some wartime combatants, will not be traumatised by hearing this type of
15 screaming because they have ended up processing this type of event in a positive way,
16 an appetitive way, as something stimulating or exciting. And this is explained in his
17 first report, UGA-OTP-0280-0674 at 0679.

18 To be clear, the theory of appetitive aggression is just one example for why potentially
19 traumatic events may not result in mental health issues. There are various others.

20 The bottom line is that it cannot be assumed, as the Defence would have us do, that a
21 person who is exposed to violence, even a person exposed to frequent and intense
22 violence, that they will process that experience in a way that leads to mental
23 impairment.

24 In other words, it is not enough for the Defence to say that because Mr Ongwen
25 experienced violence from an early age, his mental capacities must have been

1 substantially diminished ever since. And here I'm referring to paragraphs 96 to 97 of
2 the Defence brief.

3 It is also not enough for the Defence to say that because Mr Ongwen is currently
4 receiving mental health treatment, his mental capacities must have been substantially
5 diminished at the time of the crimes. And here I'm referring to paragraph 87 of the
6 Defence brief.

7 The present-day diagnosis of a particular mental health disorder could be a relevant
8 piece of information. It might make it more likely that Mr Ongwen had some form
9 of mental health issue in the past, but it is not sufficient to establish that.

10 For one thing, it is commonplace for individuals in detention to develop mental
11 health issues, not because of their past experiences, but because of the stressful
12 change in their living conditions.

13 Even if the Chamber were to accept that Mr Ongwen currently has a trauma-related
14 mental health disorder, it still cannot be assumed, as the Defence would apparently
15 have us do, that Mr Ongwen suffered impairment from such a disorder at the time of
16 the crimes. That's because some people who experience trauma may manage to cope
17 for a while and only fall ill years later. Other people may manage to cope with an
18 initial period of trauma but end up developing a trauma-related disorder because of a
19 completely separate event, something that happens later on.

20 Other people may start to struggle right away but go through periods where their
21 symptoms impact them greatly and periods where their symptoms are much less
22 prominent. I refer your Honours here to Dr Abbo's report at UGA-OTP-0280-0732,
23 at 0742 to 0744, and Professor Weierstall-Pust's first report, UGA-OTP-0280-0674, at
24 pages 0679 to 0680 and 0699.

25 I'll turn now to the report of the Court-appointed expert, Professor de Jong. This

1 report is of little use in assessing the question at hand. It was prepared for a
2 different purpose. His assessment of Mr Ongwen took place some 12 years after the
3 crimes. And for the reasons I've just explained, a contemporary diagnosis of a
4 particular mental health disorder doesn't tell us much about the state of a person's
5 mental health many years earlier.

6 Your Honours, the Defence has made submissions in their brief about the expert
7 testimony in this case, but it seemingly ignores the other witness testimony which is
8 perhaps even more important. None of that evidence supports the Defence position.

9 As your Honours are well aware, many people who knew Mr Ongwen in the LRA
10 appeared before this Court as witnesses. These people lived and fought alongside
11 Mr Ongwen for years, and yet none of them described him acting strangely or acting
12 in any way that would suggest he was mentally impaired. Instead, they described
13 him as a skilled fighter, a good leader, a friendly and likeable person, someone who
14 took good care of his soldiers and someone who could plan and execute complex
15 military operations.

16 The Defence had every opportunity to call their own witnesses to show that
17 Mr Ongwen was behaving unusually in this period or otherwise demonstrating signs
18 of mental instability. They had every opportunity to question the Prosecution's
19 witnesses and elicit such testimony. And yet there's nothing on the record to
20 indicate that Mr Ongwen was mentally impaired in this period at all, let alone
21 seriously impaired.

22 Your Honours, all in all, the Defence have not met their burden of showing that it's
23 more likely than not that Mr Ongwen suffered from substantially diminished mental
24 capacity at the time of the crimes and no mitigation of his sentence is warranted on
25 that basis.

1 I'll move now to the current state of Mr Ongwen's mental health.
2 We submit that any mental health issues that Mr Ongwen currently has should be
3 considered in the execution of his sentence but not affect the length of his sentence.
4 The standard for taking into account an accused's current health in determining their
5 sentence is extremely high. International courts and tribunals, including this one,
6 have stated that this factor may only be considered in rare or exceptional
7 circumstances. One example of this might be where an individual is suffering from
8 a terminal disease and is fast approaching the end of their life. But normally the
9 health issues of a convicted person should be considered only in how the sentence is
10 carried out.

11 The Defence spends significant time in their brief on the topic of Mr Ongwen's
12 purported need for mental rehabilitation. But Mr Ongwen doesn't need to be
13 released to receive mental health treatment. In fact, Mr Ongwen has already been
14 treated while in ICC custody. It can be expected that similar treatment will be
15 provided in the future if it's required. If the Chamber thinks that Mr Ongwen could
16 be more effectively treated in Uganda, that might affect the decision on where
17 Mr Ongwen should serve his sentence. It should not affect the length of his
18 sentence.

19 At paragraph 89 of their brief, the Defence calls for inferences to be drawn from the
20 Trial Chamber's decision to adjust the trial schedule on certain occasions. Here, the
21 Prosecution simply notes that the Chamber never made a factual finding, explicitly or
22 implicitly, about whether Mr Ongwen currently suffers from a mental health disorder.
23 The Chamber merely took appropriate account of the information that it received
24 about Mr Ongwen's health needs from the Registry and the ICC detention centre.
25 That concludes the Prosecution's submission on mental health-related issues.

1 PRESIDING JUDGE SCHMITT: [10:52:25] Thank you very much. Who will be next
2 for the Prosecution?

3 It might, perhaps, be an idea to have the coffee break. What do you think? Yeah,
4 then we have a coffee break until 11.30 and then we continue.

5 THE COURT USHER: [10:52:40] All rise.

6 (Recess taken at 10.52 a.m.)

7 (Upon resuming in open session at 11.30 a.m.)

8 THE COURT USHER: [11:30:58] All rise.

9 Please be seated.

10 PRESIDING JUDGE SCHMITT: [11:31:23] Good morning again.

11 I give Ms Adeboyejo the floor.

12 MS ADEBOYEJO: [11:31:30] Thank you, Mr President, your Honours.

13 Mr President, your Honours, you have already heard my colleagues Ms Hohler and
14 Ms Gilg discuss the general principles on sentencing and touch on mental
15 rehabilitation.

16 I will now address you on the issues of social rehabilitation in the context of the
17 Acholi traditional justice mechanism and then move on to address you on the family
18 situation of the convicted person.

19 The Defence in its sentencing brief implores the Chamber to account for the Acholi
20 traditional mechanism of restorative and retributive justice called *mato oput* in its
21 determination of Mr Ongwen's sentence.

22 As your Honours have already heard, the Rome Statute has a comprehensive system
23 for sentencing, limited to terms of imprisonment and imposition of fines. It makes
24 no allowance for traditional justice mechanism, whether of the *mato oput* or any other
25 such traditional justice system.

1 The jurisprudence of this Court has established that rehabilitation can be considered
2 by a Chamber when considering sentencing, quote, "but it should not be given undue
3 weight in the context of the crimes for which the accused person has been convicted".
4 End quote.

5 In particular, the Chamber may consider the restoration of peace and reconciliation in
6 affected communities as one factor relevant to sentencing. However, such social
7 rehabilitation goal cannot be the primary purpose for sentencing, particularly in the
8 context of international criminal law.

9 To be clear, the Prosecution does not oppose Mr Ongwen undergoing *mato oput*, if
10 that is what he and the victims wish. But this could and should happen after he
11 serves his sentence, or even during the serving of his sentence, if the necessary
12 arrangements can be made. However, these are questions for reparation or the
13 execution of his sentence, and do not bear on the question of whether and how long
14 he should remain in prison. In other words, your Honours, the Rome Statute makes
15 allowance for such transitional justice measures at a different phase of proceedings
16 but not for the determination of sentence.

17 As your Honours are undoubtedly aware, rehabilitation focuses on the need for
18 restoring or re-establishing relationships and socio-economic status eroded by
19 criminal acts as a means of correcting the wrongdoing and achieving justice for
20 victims and their communities. It focuses on rebuilding relationships and repairing
21 the harm caused by criminal behaviour. It may encompass social rehabilitation and
22 re-integration where the convicted person accepts responsibility for his or her
23 misconduct and harm caused to the community, is willing to participate in the
24 restoration of the emotional and material losses that have occurred as a result of the
25 crimes, and is willing to make amends for the harm caused.

1 Rehabilitation in the context of *mato oput* deals primarily with reconciliation and the
2 reconciliation rites, including purification, making confession, compensation, eating
3 together and then drinking from the same calabash. But these activities have to be
4 preceded by the person admitting that he has done wrong. In the instant case,
5 Mr Ongwen has not admitted that he has done wrong and it will be difficult to
6 determine how the reconciliatory nature of the process can be triggered without such
7 an admission.

8 The Defence further submitted that this traditional justice mechanism has been
9 discussed and used in Ugandan courts and urged this Chamber to do the same.
10 However, the case cited by the Defence stands for a different proposition, as we will
11 explain shortly. Contrary to what the Defence asserted, the traditional justice
12 mechanism of *mato oput* was not used or applied by the Ugandan Court but was
13 instead rejected by this court.

14 In the case cited, Kanyamunyu Matthew versus Uganda, the applicant had tried to
15 use the *mato oput* mechanism as a basis to request for an adjournment in a murder
16 trial for which he was the defendant.

17 Ruling on the application, the Ugandan Court held, and I quote:

18 "In its current form, *mato oput* has no effective system of regulation and review in
19 place. It is shrouded in legal ambiguity and as a result its interface with formal
20 criminal justice is opaque."

21 Indeed the view of the Ugandan Court was that, considering the limited published
22 data on the traditional justice mechanism, it should play a complementary role to the
23 formal justice system, not serve to displace, undermine or delay it.

24 Like the Ugandan courts, this Chamber should find that traditional justice
25 mechanisms such as *mato oput* should supplement criminal proceedings, but they

1 should not supplant them.

2 As the Court noted, and I quote again:

3 "Noble as the goal (of a traditional mechanism for reconciliation and rehabilitation)
4 may be, courts have never been equipped nor had sufficient resources to fully achieve
5 the peace-building role. If the court is to aid reconciliation in the manner suggested
6 by the applicant, it is essential that it is well informed about *mato oput* and
7 understands its processes, yet there is very little published data concerning this
8 traditional justice mechanism". End quote.

9 Finally on this point your Honours, although the Ugandan Court later reintroduced
10 the sentence of the accused person, it was on the basis of the plea bargain, which is a
11 formal legal process, rather than as a result of the *mato oput*.

12 I will now move to the issue of the family circumstances of Mr Ongwen.

13 The Defence made submissions on the family circumstances of Mr Ongwen, arguing
14 that they justify a reduction of sentence. The Defence compared Mr Ongwen's
15 family circumstances to those of Mr Katanga, asserting that those of Mr Katanga were
16 considered in mitigation by Trial Chamber II.

17 The Prosecution submits that although Trial Chamber II considered the family
18 circumstances of Mr Katanga when determining its sentence -- his sentence, it held
19 that it could not play a determinant role considering the nature of the crimes for
20 which he was convicted. And so his family circumstances were accorded limited
21 weight.

22 The Prosecution submits Mr Ongwen's family circumstances should not be
23 considered a mitigating factor.

24 In Mr Ongwen's case, almost all his children are the product of sexual and
25 gender-based crimes committed against young and vulnerable victims. And where

1 children are the victims of crimes, as in this instance, the best interest of the child or
2 children should guide any decision-making process.

3 Such children, as expressly stated in various international human rights instruments,
4 have the right to express their views in matters and proceedings affecting them.

5 Throughout the duration of this trial, Mr Ongwen filed various applications
6 requesting to add various individuals to his non-privileged telephone contact list,
7 including a request to communicate with his children. The Chamber in various
8 decisions ordered the Registry to facilitate consultations with the, quote, "forced
9 wives", unquote, of Mr Ongwen as the primary care givers of the children to
10 determine whether they wanted such contact and in what manner the communication
11 would be executed, taking into consideration the protective measures in place for
12 these victims. Some of those victims did not want to have any contact with
13 Mr Ongwen.

14 This Chamber has taken this sensitive approach throughout the duration of this trial
15 and nothing so far suggests that this approach should change.

16 The Prosecution notes with interest the joint filing of the Common Legal
17 Representative for victims and the Legal Representative for Victims on the views and
18 concerns of the victims in the case and submits that the voices of the, quote, "forced
19 wives", unquote, and children should be taken into consideration. Mr Ongwen
20 should not receive a reduced sentence for his family situation if in fact they do not
21 want him to be part of their lives.

22 For these and other reasons we have already submitted in our sentencing brief, and
23 which do not need repeating, the Prosecution submits that Mr Ongwen's family
24 circumstances should not be considered a mitigating factor. And even if arguendo
25 they were considered in mitigation, they should be accorded little weight.

1 Your Honours, for the reasons the Prosecution has articulated, we recommend that
2 Mr Ongwen should receive a total sentence of not less than 20 years in prison.
3 Barring any questions from your Honours, that will be all from the Prosecution.
4 PRESIDING JUDGE SCHMITT: [11:44:34] Thank you very much, Ms Adeboyejo.
5 I think there are no questions.
6 Then we give the floor to Ms Massidda for the Common Legal Representatives of the
7 victims.
8 MR OBHOF: [11:44:44] Your Honour, one quick --
9 PRESIDING JUDGE SCHMITT: Yeah, yeah.
10 MR OBHOF: [11:44:47] One quick procedural note. Ms Abigail Bridgman has
11 joined the Defence in the courtroom.
12 PRESIDING JUDGE SCHMITT: [11:44:51] Yes, I recognise her, barely, but I do.
13 So welcome, after quite a long time in the courtroom.
14 Thank you for informing us.
15 Ms Massidda, you have the floor.
16 MS MASSIDDA: [11:45:04] Mr President, Mr Manoba will start first and I will
17 conclude. Thank you very much.
18 PRESIDING JUDGE SCHMITT: [11:45:09] Fine with us.
19 Then Mr Manoba has the floor.
20 MR MANOBA: [11:45:12] (Microphone not activated)
21 PRESIDING JUDGE SCHMITT: [11:45:23] We can't hear you at the moment, so we
22 have to solve this first, I think.
23 MR MANOBA: [11:45:30] (Via video link) Mr President, can you hear me now?
24 PRESIDING JUDGE SCHMITT: [11:45:32] Yes, now we hear you very well.
25 MR MANOBA: [11:45:35] (Via video link) Thank you, Mr President and

1 your Honours.

2 Once again we thank you for the opportunity to address you at this time in the
3 submissions on behalf of the victims.

4 Mr President and your Honours, Article 77(1)(b) of the Rome Statute sets out that the
5 Court may impose a sentence of life imprisonment when justified by the extreme
6 gravity of the crime and the personal circumstances of the accused. The victims
7 represented by the LRVs in the case overwhelmingly support a sentence of life
8 imprisonment and argue that extreme gravity of the crimes Mr Ongwen has been
9 convicted for, aggravating circumstances as well as lack of mitigating circumstances,
10 warrant the imposition of a life sentence.

11 Mr President and your Honours, on the question of extreme gravity and aggravating
12 circumstances, it goes without saying that Mr Ongwen has been convicted of the most
13 crimes compared to any other accused in the history of this Court. What is more
14 salient is the gruesome nature of the crimes committed by Mr Ongwen, the extensive
15 vulnerability of his victims and extent of the harm that they had suffered in result of
16 these crimes.

17 The LRV represents 2,605 victims in the case. Alongside the OPCV, the participating
18 victims in the case amount to just over 4,040 victims. By conservative estimates,
19 these victims represent merely 10 per cent of the total number of victims that were the
20 subject of the attacks on Pajule, Odek, Lukodi and Abok, and for which Mr Ongwen
21 has been found guilty by your Honours.

22 These victims, some voluntarily and others by government directive, had been
23 seeking refuge from the LRA in highly overcrowded IDP camps. The Court has
24 heard how within those camps, the victims were forced to endure appalling
25 humanitarian conditions from food, clothing, health and sanitation. By all accounts,

1 the victims had been rendered destitute and dependent by circumstances beyond
2 their control as a result of the atrocities of the LRA.

3 These camps, your Honours, were like gulags, with the minor luxury of not having to
4 engage in forced labour.

5 In spite living in conditions that many following these proceedings can hardly
6 conceive enduring, the victims strove to hold their families and their dignity together.
7 That was until the nights of the respective attacks -- the night of the respective attacks.

8 Your Honours, these attacks took anywhere between one to six hours. One to six
9 hours that led to irrevocable devastation, between one to six -- devastation for the
10 defenceless victims of Mr Ongwen's crimes.

11 Mr President and your Honours, as evidenced by the LRV expert witness V-0001 in
12 her evidence and her report, UGA-V40-0001-0010, not only individual victims, but
13 entire communities continue to suffer from the consequences of these crimes up until
14 today.

15 In the few hours, your Honours, at least 2 out of 5 victims represented by the LRV
16 had lost a family member or a close relative; 3 out of 4 had their property looted
17 and/or destroyed by malicious arson; 3 out of 10 would suffer injuries; and at least 90
18 individuals would report experiencing incidences of rape and sexual violence. Yet
19 the victims participating in this case represent a conservative estimate of nearly
20 10 per cent of the entire body of victims affected by the crimes for which Mr Ongwen
21 is convicted.

22 Compounding the vulnerability of the victims and the scale of the crimes was the
23 manner in which they were conducted. The murders were shatteringly obscene.
24 Some of the victims had to watch their young children being thrown into burning
25 huts, being placed into gunny bags and stomped to death or being flung head first

1 against tree trunks to quell their frightened cries. Some of the victims were fortunate
2 to escape only to find the remains of their loved ones mouldering in the ashes of
3 burnt-out huts, chopped to pieces, stabbed or shot with their remains being
4 consumed in some cases by animals.

5 And for what, your Honours? What could possibly have been the cause for this
6 incredibly cruel assault? The mere misfortune of being perceived to have failed to
7 support the LRA by seeking refuge in camps -- by seeking refuge in camps. Excuse
8 me. Mr Ongwen and the LRA were determined to teach the victims a lesson for not
9 being eager to sacrifice their sons, their daughters and the fruits of their labour to a
10 war that they had not supported, a war that had brought them nothing but dread and
11 despair.

12 Your Honours, the effects of that lesson continue to haunt the victims of their
13 communities to this day. Perhaps a few examples could shed some light on the
14 impact of this lesson in quotes:

15 Victim a/00048/16 who was 65 years old at the time of the attack was caught by the
16 rebels while attempting to escape and beaten until he had been rendered unconscious.
17 His son was abducted and has never returned. He developed a urinary tract
18 infection from being kicked repeatedly to the lower abdomen and has been unable to
19 stand upright or move without pain since the attack.

20 How about victim a/06730/15, whose son was shot dead as he watched. He was,
21 thereafter, viciously beaten. The victim later suffered a stroke as a result of the
22 injuries caused by the beating which has left him partially paralysed.

23 These vicious assaults did not discriminate between the elderly or the young, male or
24 female.

25 Your Honours, victim a/06764/15 was beaten, stabbed to the head -- stabbed to the

1 head, arms and waist and shot in the ankle of the left leg. The victim has since been
2 rendered physically weak and unable to walk without crutches. He was 70 years old
3 at the time of the attack.

4 Another victim, a/67-- a/06722/15, was 76 years old at the time of the attack. He was
5 abducted and beaten again viciously to his body and head. The victim lost his
6 eyesight due to the trauma to the head.

7 Similarly, victim a/06685/15 was four years old at the time of the attack on Abok IDP
8 camp. She was stabbed in the head and had rebels stomp on her waist, dislocating
9 bones therein. She has since been mentally unstable owing to the stab wound to the
10 head.

11 Your Honours, if we had a couple of hours, the LRVs could provide example after
12 example, description after another, of the savage, senseless and unprovoked attacks
13 on the residents of the four IDP camps, charged locations. All inconceivably cruel
14 and all completely unnecessary without any justification. The unarmed and
15 destitute victims posed no threat to the rebels. To the contrary, they were
16 completely defenceless after the rebels had strategically scattered the few UPDF
17 soldiers that had been their last line of protection. Yet they were met with ravenous
18 and implacable cruelty.

19 The Chamber, the parties and the victims all heard the voice of Mr Ongwen proudly
20 boast of the devastation he had caused and the lives he had snuffed out after each
21 attack. Lives such as those of the wife and son of victim a/06731/15, who were killed
22 as he helplessly watched. Or the lives of the family members of victim a/06423/15,
23 whose father, mother and grandparents all met their death on the same day, leaving
24 her an orphan at just four years of age.

25 The Chamber honourably gave recognition to the lives that were lost in its oral and

1 written verdict. The Chamber also noted how callously Mr Ongwen had reported
2 about the lives he had ended shortly thereafter.

3 Mr President and your Honours, compounding the gruesome deaths, the vicious
4 physical assaults and the wanton destruction of property were the incidences of
5 abduction followed by sexual violence that befell a number of victims. And I would
6 like to highlight some of these victims.

7 Victim a/00260/16 was found in her house and gang-raped by the rebels. Afterwards,
8 they tied her up and tried to force her brother to rape her. When he declined, he was
9 chopped to the head and killed. She was abducted and taken into captivity but was
10 fortunate to escape after five days. She returned home to find that her husband had
11 also been killed on the day of the attack and that her daughter also had been abducted.
12 The victim has not seen her daughter since.

13 Victim a/01096/16 was caught while attempting to escape the attack and abducted.
14 When they reached a stop, she was gang-raped by four rebels who thereafter
15 proceeded to viciously insert sticks into her private parts. The rebels left her to die
16 after she began to bleed profusely. She was -- she was fortunate to be found by
17 UPDF soldiers who took her to hospital. She later discovered that her bladder had
18 erupted as a result of the gang-rape and to this day she struggles to contain her urine.
19 These, your Honours, are but a few of the grievous accounts of sexual violence, and
20 the LRVs have left out the more gruesome accounts.

21 Beyond the attacks on the IDP camps were victims that were abducted and given as
22 forced wives for whom the instances of rape would persist until their escape, or in
23 some sad cases until their hopeless submission into the role, as we have heard from
24 the submissions of the Prosecution. But still, your Honours, I would like to highlight
25 examples of our clients who suffered similar experiences.

1 Victim a/06797/15 was found in her hut and abducted with her 8-year-old daughter.

2 While in captivity, she watched as her daughter was handed to one of the rebels as a

3 wife and was herself given as a wife to another rebel who proceeded to rape her

4 almost every day of the two weeks she was in captivity. Even at the point when her

5 uterus protruded from her body, the rebel would not restrain himself from raping her.

6 She was fortunate again -- she was fortunate to escape, but she has never seen her

7 daughter since. The injuries caused by the multiple rapes have rendered her barren,

8 a further indignity that she must endure for the rest of her life.

9 Mr President and your Honours, the LRVs note that the abductions and the

10 distribution of young girls as domestic slaves referred to as ting tings or forced wives

11 for which Mr Ongwen has been found guilty occurred over a period of three years.

12 Victim a/01288/16 was 8 years old when she was abducted during the attack on Odek

13 IDP camp. From the second day of her captivity she was raped by the rebels as she

14 would move in the bush. She was forced to participate in killings and in desecration

15 of dead bodies. Later she was given a wife to a rebel that she estimates was about

16 40 years old, who proceeded to rape her for at least two years -- for at least the two

17 years that she stayed in captivity until her escape. She returned home to discover

18 that her father and mother had been shot dead on the same night of the attack.

19 Similar to the abduction and distribution of young women and girls, Mr Ongwen

20 oversaw the abduction and conscription of children into the LRA to take part in

21 hostilities. The conscription of freshly abducted children involved inhumane

22 initiation processes that were geared to bring the victim into submission to his or her

23 then fate. I highlight an example here:

24 Victim a/07089/15 was 13 years old when he was abducted in 2002. At his initiation,

25 his back was marked with the sign of a cross using a machete that had been heated

1 over a flame -- over a flame. At times he was ordered to participate in the killing of
2 older people by beating them to death. The victim remained in captivity for two
3 years until he managed to devise a means to escape.

4 Your Honours, the attacks on the victims' communities, at their most vulnerable, were
5 particularly diabolical and sought to achieve total devastation. The attacks
6 intentionally set out to violate the victims' physical integrity for their ostensible
7 refusal to support the LRA. The attacks were intended to take away their material
8 provision by not only looting those items the victims depended on for their daily
9 survival, but by also destroying everything that could not be carried away. The
10 attacks intentionally sought to take away the victims' sense of safety and security,
11 targeting both the armed personnel in the army barracks and the adult males in the
12 camps for destruction. The attacks were geared towards compromising the integrity
13 of the social structures with the adults being killed or severely brutalised and the
14 children being abducted to serve the LRA. Mr Ongwen planned and ordered this
15 devastation. Mr Ongwen was successful in achieving this devastation.

16 Mr Ongwen, your Honours, spoke proudly of this devastation.

17 I will now address some of the issues, your Honours, concerning the personal
18 circumstances of Mr Ongwen and lack -- and the lack of mitigating circumstances.

19 Your Honours, to date, Mr Ongwen has shown little remorse for the attacks and the
20 grievous crimes committed against his victims. To the contrary, Mr Ongwen
21 attempted to deny being responsible for the attacks. What is particularly troubling
22 for the victims is how Mr Ongwen has sought to fashion himself as the actual victim
23 of the crimes for which he has been brought to justice.

24 The Defence, in their sentencing brief, has sought to accomplish this first -- to
25 accomplish this first by appealing to Mr Ongwen's abduction at a young age, and

1 additionally arguing that through indoctrination and supposed brainwashing,
2 Mr Ongwen, and I quote, "did not possess a mind of his own to lawfully
3 comprehend". This is paragraph 15 of the Defence brief, your Honours.
4 However, this argument of the Defence completely ignores the evidence on the record
5 of the case and the findings of the judgment concerning defences raised by
6 Mr Ongwen, both the mental disease or defect and duress arguments. Furthermore,
7 the submissions of the Defence are self-contradictory.
8 On the one hand, the Defence claim that, and I quote:
9 "Mr Ongwen witnessed Joseph Kony preach and predict the future, further
10 entrenching Mr Ongwen and those around him into the belief that Joseph Kony was
11 omnipresent, omnipotent, that their escape plans would be known and they would
12 suffer dire consequences for trying to escape." This is paragraph 83 of the Defence
13 brief.
14 In the same breath, while attempting to support the claim of Mr Ongwen's supposed
15 good character, the Defence posits that Mr Ongwen kept secret the escape plans of
16 one of his comrades who successfully escaped in spite of the supposed omniscience of
17 Joseph Kony. And I refer to paragraph 153 of the Defence filing.
18 The Defence also assert, and I quote:
19 "Had Mr Ongwen been older and better educated, his life may have turned out
20 differently. He may have stood up to Joseph Kony like Otti Lagony,
21 Okello Can Odonga or Otti Vincent. He may have tried to escape and succeed ..."
22 end of quotes. And I'm making reference to paragraph 123 of the Defence brief.
23 And at the same time, your Honours, the Defence point to two instances where
24 Mr Ongwen successfully intervened to reverse death sentences allegedly set by
25 Joseph Kony, in respect of P-205 and P-231.

1 In one of these instances, your Honours, the witness supposedly saw Mr Ongwen
2 successfully arguing with Joseph Kony to rescind a death sentence which was
3 substituted for several lashes. This is paragraph 155 of the Defence brief.

4 Your Honours, these examples show how selective Mr Ongwen's supposed good
5 character was. Sadly, the men, women and children that were bludgeoned to death
6 shortly after their abduction from the attacks on the IDP camps saw the limits of
7 Mr Ongwen's compassions, as did the young girls taken and given as forced wives
8 and serially raped for their entire duration in the LRA. The children Mr Ongwen
9 abducted saw nothing of his purported compassion. Such was their experience of
10 Mr Ongwen's compassion that they opted to risk death and escape than spend more
11 time within Mr Ongwen's unit.

12 The implication of the Defence submissions is that far from being a hapless unwilling
13 instrument under Kony's full control, Mr Ongwen would on occasion choose to
14 exercise kindness and compassion towards his fellows. Mr Ongwen could have
15 chosen to show compassion to the victims of the IDP camp attacks. He could have
16 shown compassion to the abductees prior to having them subjected to sexual violence
17 as forced wives or prior to having them conscripted for use as child soldiers. Instead,
18 Mr Ongwen chose extreme cruelty to these victims and exercised callous indifference
19 to their suffering.

20 For the victims, the attempt to paint Mr Ongwen solely as the victim is just another
21 display of this indifference. Since the judgment, which was greeted quite fondly by
22 the victims represented by the LRVs, the victims have witnessed one person after
23 another attempt to mollify the gravity of Mr Ongwen's crimes by emphasising his
24 abduction -- by emphasising his abduction and previous status as a child soldier to
25 the complete disregard of the actual victims of his crimes.

1 Your Honours, it may be helpful to note that Mr Ongwen was not just an ordinary
2 LRA fighter, but a high-ranking member of the LRA.

3 The victims that we represent are surprised to find that even the Prosecution have
4 succumbed to this mawkish notion of Mr Ongwen's abduction as suitable mitigation
5 for the crimes for which he has been convicted, in the face of a complete lack of
6 acknowledgement or expression of remorse for his crimes, as the Prosecution
7 themselves have acknowledged in their submissions.

8 Mr Al Hassan has in this very Court been sentenced to 10 years imprisonment for acts
9 that involved the destruction of historical sites, acts for which Mr Hassan admitted
10 responsibility. Yet, the Prosecution in this case recommends just 10 more years for
11 acts that violated the sexual integrity, liberty, life and physical well-being of
12 thousands of defenceless victims. And while -- and while the destruction of a
13 religious World Heritage site is indeed grave, the crimes committed by Mr Ongwen
14 are profoundly more grievous given their nature and the number of people affected
15 by them. Acts for which Mr Ongwen has neither acquiesced nor shown any
16 remorse.

17 Your Honours, to appreciate the absurdity of this approach, perhaps it may help to
18 change the context. If Mr Ongwen from Uganda had instead been a Mr X who from
19 a young age had been forced to undergo a strict religious and armed training within a
20 warring Islamic fundamentalist organisation, and on achieving adulthood, the Mr X
21 was given charge of a company of young soldiers that proceeded to murder, torture,
22 rape and pillage civilian communities in the name of a religious cause or a divine
23 purpose, would the experience of his youth be entertained or counted to outweigh the
24 gravity, magnitude, extent and impact of crimes he had committed as an adult?

25 The sentence proposed by the OTP undermines the solid conviction delivered by this

1 Chamber and the function of retribution and deterrence that punishment has in the
2 Rome Statute. The sentence, we submit, must be adequate to the number and
3 gravity of the crimes for which Mr Ongwen has been convicted, and also in the
4 context of the Court's sentencing practice to date. Otherwise, the Court will send a
5 message to present -- to present and future perpetrators that no matter how grave
6 their crimes -- no matter how graves their crimes are, how many people and
7 communities they violated, they can expect a lenient punishment if an appeal can be
8 made to their peculiar privations of their youth.

9 Your Honours, I would like to now address the last part of our submission, which is
10 on the relevance of the *mato oput* ritual that has been addressed by the Defence in
11 their brief.

12 The Defence attempts to make the case that their availability of *mato oput* traditional
13 Acholi dispute resolution mechanism should at least partly substitute a Court ordered
14 imprisonment sentence for 62 counts of war crimes and crimes against humanity.

15 However, the Defence's request in this regard is manifestly detached from the reality
16 of this case, primarily the number and extreme gravity of the crimes for which
17 Mr Ongwen has been convicted. The Defence seems to forget that the communities
18 harmed as a result of Mr Ongwen's actions are not limited to the Acholi community,
19 but rather, the victim communities include the Langi and the Teso communities.

20 Therefore, any traditional Acholi reconciliatory mechanisms are of limited application
21 in this case as they do not extend to all affected communities.

22 As regards statements provided before this Chamber, among others by the
23 representative of the Ker Kwaro Acholi, victims are shocked by their calls for the
24 substitution of Dominic Ongwen's judicial sentence with the *mato oput* cultural
25 process. Our clients -- our clients find it troubling that institutions like the

1 Ker Kwaro Acholi make such submission without seeking views from victims of his
2 crimes on the matter. The victims are adamant of their disapproval of the suggested
3 *mato oput* process.

4 And, your Honours, I would like to briefly highlight some of the views expressed on
5 this matter by our clients.

6 Victims a/05601/15 noted, and I quote, "*Mato oput* happens only when there is
7 acceptance. If I as the victim refuses, it cannot be conducted. I want him
8 imprisoned so that he suffers like the rest of us. We do not want *mato oput*".

9 Victim a/05207/15 noted that *mato oput* cannot be utilised for the crimes that Dominic
10 Ongwen committed, including the abuse of young girls and women and other
11 atrocious acts. She went on to state, "If it was a single crime, we would resort to
12 possible use of *mato oput*, but because of the nature of the crimes Mr Ongwen
13 committed, we cannot consider the use of *mato oput*."

14 Victim a/05270/15, who sits on the Ker Kwaro Acholi council also noted as follows:

15 "*Mato oput* is very important, but if there is no admission, then *mato oput* cannot
16 happen. *Mato oput* happens when the two clans convene and admit that they are
17 ready to engage in this ritual of *mato oput*. And it happens when they have offered
18 compensation and they meet the requirement" for -- "and they meet the requirement,
19 but for Ongwen's case, it is hard. Ker Kwaro shouldn't come in. I am a member of
20 the council, but they shouldn't barge in. Did they consult the victims? We were
21 harmed and they weren't here. Will they pay? Each of the four locations has its
22 own clans. So they shouldn't impose themselves. They should let him remain there.
23 What will Lamogi do for us? I have rejected it and I am not happy with their actions,
24 along with religious leaders. They shouldn't intrude. Did their children die?
25 Were their property destroyed?" End of quote.

1 Your Honours, contrary to the cultural dispute resolution, victims overwhelmingly
2 support a sentence of life imprisonment. These victims in no way share the
3 sentimental affections for Mr Ongwen's status as a former child soldier.

4 Victim a/06667/15 lost her grandmother who was burnt to death in her hut during the
5 attack and her stepson was placed in a sack and stomped by the rebels to death. Her
6 view is clear, and I quote: What Dominic Ongwen did to us here ... the punishment
7 he deserves is death, but if that is not an option then he should not be allowed to -- he
8 should not be allowed to return because our loved ones are in the ground and we
9 cannot bear the sight of him.

10 Another victim, a/06308/15 explained this sentiment as follows, and I quote:

11 "There is anger which is leading people to recommend life." To recommend life.

12 "People are angry because, (i) he says he was a child, but when he attacked, he was an
13 adult who should have had mercy because others showed mercy. He had no mercy
14 and the ways" -- "and the ways he killed. He should have had mercy as
15 someone" -- "as someone as a human. (ii) They abused children who were under age
16 while others were harmed as they were running. (iii) He had no mercy even though
17 now he is asking to be shown mercy. He should have asked for forgiveness then,
18 not now. If he were my own child, I would say he should die for his crimes so that
19 the people who suffered can get justice."

20 Another victim, a/06134/15 was followed to the place where she had sought to hide
21 from the attack and raped in front of her child. Moreover, she had one uncle shot
22 dead during the attack and another abducted and killed in captivity. She observed
23 as follows, and I quote:

24 "Because of what I experienced that painfully affected me, I think he should be
25 imprisoned for life and he shouldn't get to see the faces of his children. I say this

1 because he caused the loss of so many" people -- "so many people's lives and children
2 remained without knowing the faces of their fathers and mothers. His children
3 should also experience the same. His actions led to death in Lukodi that was painful
4 and the running he made us do caused injuries to people. And then he denied the
5 charges. If he had -- if he had admitted earlier, we would have forgiven, but he kept
6 denying so he should be imprisoned for life."

7 Your Honours, one last highlight here is victim a/05508/15 escaped the attack only to
8 return and find that her husband, her brother-in-law, her sister-in-law and their
9 children had been burnt to death. Placing aside her affliction at the hands of
10 Mr Ongwen, he rationally pointed out the broader impact of the crimes on the
11 community -- she, yes, she rationally pointed out the broader impact of the crimes on
12 the community when she noted that, and I quote:

13 "Mr Ongwen's crimes includes recruitment. He abducted children and taught them
14 to kill. He abducted girls and made them become his wives. Both these categories
15 of former abductees are dealing with mental illness. In the past when someone
16 killed, compensation needed to be done. If someone hurts you badly, they have to
17 pay compensation to sooth the victims. The children who were abducted returned
18 to find the parents are" -- "the parents are killed and that causes more trauma. When
19 they return with children to find their parents gone, it increases mental health
20 problems." End of quote.

21 And she further emphasised that, and I quote:

22 "The crimes are too big to forgive so he should be imprisoned for life. These
23 children's lives is not well. Their minds are confused. They have no education.
24 They consume alcohol and then they start to remember their experiences and they
25 become aggressive. They don't speak English and get offended when spoken to. It

1 is very common here." End of quote.

2 With more time, your Honours, the LRVs could provide similar views after view of
3 the victims expressing their preferences for a life sentence. And even among the few
4 that do not seek a life sentence, significantly long sentences are preferred.

5 As a way of example, victim a/05295/15 is 82 years old. He was 65 years old at the
6 time of the attack when his elderly father was stabbed to the belly and killed. He
7 observes that, and I quote:

8 For one to be convicted -- "For one convicted over 60 counts of crime, it sounds
9 inconceivable that he would be given a few years in prison. He should be
10 imprisoned for about 40 to 60 years. He should stay there for long so that the
11 people" -- "so that people my age die before they see him. We can't look at him with
12 good intentions because he reminds us of the harm we suffered. If he stays there,
13 maybe by the time he returns the children who remain won't remember what
14 happened."

15 Similarly, victim a/05385/15 was of the -- was of the view that, and I quote:

16 "For what Ongwen did gravely against people, like killing, looting, sexual violence
17 against women and more, I would suggest that the ICC considers sentencing him to
18 serve a year for each count of crime. The 61 counts should be equivalent to the
19 number of years to be served. If not, then he should either be killed like someone
20 earlier said or imprisoned for life. I recommend 61 years because of the nature of the
21 crimes that he committed; the punishment should be proportionate to the acts he
22 committed. He was a big person and he abducted young girls whom he abused and
23 spoiled their ability to have children." End of the quote.

24 This victim's father was shot and burnt to death in the attack, his two sons were also
25 murdered on that day, and his mother would later succumb to a gunshot wound to

1 the leg sustained during the attack.

2 In conclusion, your Honours, the victims would like to emphasise that Mr Ongwen is
3 the perpetrator and not the victim in these proceedings. And while his abduction
4 was entirely unfortunate, Mr Ongwen, like other victims in the case, had a choice to
5 either remain in captivity or seek to escape the LRA.

6 For a large number of our clients there will never be a day when they are not afflicted
7 by the harm he caused. For those who lost their loved ones, there will never be a
8 day when those loved ones will return. For those who were raped, there will never
9 be a day when they will be free from its physical, social and psychological indignities.
10 Those who are dead will never again see or aid their loved ones. Those who lost
11 their limbs or were grievously injured will never be whole again. The victims that
12 were rendered impoverished and destitute after the looting and destruction of their
13 property -- of their property continue to struggle to restart their livelihoods. Those
14 who dropped out of school can only hope to find such unskilled labour as would
15 enable them to successfully educate their children and break the cycle of poverty and
16 ignorance, their -- and ignorance, their dreams of a better life having been dashed
17 from a young age. All at the hands of Mr Ongwen.

18 The victims have found great value in having their experiences accurately reflected in
19 the truth-seeking process. The LRVs are pleased to report that the victims have been
20 greatly satisfied by the conduct of the judicial proceedings and by the well-reasoned
21 and satisfactory judgment on the crimes for which Mr Ongwen stands convicted.

22 The victims have thought a great deal of what their hopes and aspirations are for a
23 just outcome of the trial proceedings. They have been waiting for this moment for
24 over 15 years.

25 They now ask your Honours to complete the delivery of justice in this case, to give

1 Mr Ongwen the just penalty deserved for his crimes, the maximum sentence that
2 reflects the full extent, gravity and impact of his crimes not only on the lives of the
3 individual victims, but to the physical, psychological, material and social well-being
4 of their communities and to the prospects of life and the futures of their generations.

5 The victims, your Honours, overwhelmingly support a sentence of life imprisonment
6 for Mr Ongwen for the ruinous crimes visited upon them both as individuals and as a
7 community.

8 This ends the submissions of the Legal Representatives for Victims on sentencing.

9 Thank you, Mr President, and thank you, your Honours.

10 PRESIDING JUDGE SCHMITT: [12:36:25] Thank you, Mr Manoba.

11 Ms Massidda, do you already know how long it will take you? Because we are some
12 20 minutes before a lunch break.

13 MS MASSIDDA: [12:36:35] I would say maximum of 30, 35 minutes. I will not
14 use 45, but 35.

15 PRESIDING JUDGE SCHMITT: [12:36:42] Then I think you can start, I would
16 suggest.

17 MS MASSIDDA: [12:37:09] Mr President, your Honours, victims wish first to convey
18 to the Chamber their appreciation for the recognition of their victimisation and the
19 extent of their sufferings notably during the reading of the summary of the judgment
20 on 4 February this year.

21 For them, the necessary corollary of recognition of Mr Ongwen's guilt is an exemplary
22 sentence which will fully recognise the extreme gravity of the crimes committed and
23 the significant role played by the convicted person in the commission of said crimes.

24 A sentence which will recognise the large-scale, protracted in time, and serious
25 violations by Mr Ongwen of the fundamental human rights of his victims.

1 Victims' voices have to be listened to and duly taken into account at this crucial stage
2 of the proceedings. In fact, many studies show the increase in victims'
3 empowerment when involved in the sentencing process and how, when victims'
4 voices are heard and duly comprised in the sentence decided by the judges, it plays a
5 major role in their path of healing and reconstruction, as well as on the possible
6 reconciliation within affected communities.

7 In recalling entirely the written submissions jointly filed with my esteemed colleagues
8 representing the other group of victims in this proceedings, I will today focus only on
9 some aspects of the Prosecution's and Defence's written submissions on sentencing
10 which have a clear, specific impact on the interest of the victims I represent.

11 Starting with the Prosecution position.

12 The Prosecution recognised the extremely grave nature of the crimes for which
13 Mr Ongwen is being convicted, as well as the harm he inflicted on thousands of
14 victims, but recommends to diminish the sentence to be eventually imposed by one
15 third. To reach this conclusion, the Prosecution indicates that the personal, social
16 and economic circumstances of Mr Ongwen warrant not only to discharge him of the
17 highest sentence foreseen in the legal texts of the Court, life imprisonment, but also
18 should lead the Chamber to substantially reduce his sentence.

19 This conclusion appears to the victims inconsistent with recognised extreme gravity
20 or, to quote the Prosecution this morning "exceedingly grave crimes committed."

21 The Prosecution itself recalls, inter alia in paragraph 15 of its submission, the crimes
22 and the gravity of the crimes as follows, I quote:

23 "He [Mr Ongwen] raped, tortured, enslaved, sexually enslaved, forcibly married and
24 forcibly impregnated several women and girls. He was a key participant in the
25 crimes, planning or commanding the attacks, ordering abductions and other crimes

1 and perpetuating and enforcing the LRA's large-scale and systematic sexual and
2 gender-based crimes and conscription and use of child soldiers." End of quote.

3 The personal circumstances to which the Prosecution refers to request not more than
4 20 years of imprisonment is the fact that Mr Ongwen was abducted at the age of 9,
5 had a very difficult childhood and adolescence in the LRA.

6 Your Honours, in the views of the victims, these circumstances cannot balance, let
7 alone diminish, the fact that subsequent to his abduction, Mr Ongwen chose to
8 remain in the LRA, rose through its ranks till reaching a senior status which, to use
9 the words of the Prosecution, afforded him "prestige, power and relative comfort" and
10 committed the 62 crimes mentioned in the judgment against thousands of innocent
11 and defenceless victims.

12 With all due respect, the sentence requested by the Prosecution in this case is at the
13 minimum inconsistent with the findings in the judgment and even with prior practice
14 of the Prosecution before this Court on sentencing. In cases involving much less
15 charges for crimes committed in a narrower period of time and in which the extent of
16 the victimisation is not comparable at all to the one in this case, the Prosecution asked
17 higher sentences compared to the one it requested in the present case. In the
18 Lubanga case, the Prosecution asked 30 years of imprisonment. In the Bemba case,
19 not less than 25 years of imprisonment.

20 Victims do not intend to minimise or deny the fact that Mr Ongwen was abducted at
21 a young age and was faced with many sufferings himself. However, they do not see
22 this part of his history as a reason justifying the path he chose to take in the LRA and
23 warranting any reduction of his sentence.

24 In the victims' views, Mr Ongwen chose to commit the crimes, committed them
25 against particularly defenceless and vulnerable victims, aging from a few months (the

1 babies thrown in the bush, for instance) to the oldest age reached by elderly members
2 of the community (thrown in houses and burnt alive or stabbed to death), victimised
3 children instead of protecting them, sexually tortured and enslave girls and women
4 for years, deprived families from their life, tearing them apart, decimating them and
5 leaving them with nothing to eventually rebuild even a semblance of life.

6 The judgment unequivocally recognised Mr Ongwen's status in the LRA hierarchy,
7 his power and authority, his loyalty to Joseph Kony and the fact that he fully shared
8 the purpose of the LRA and fully contributed to it by executing and ordering the
9 commission of the crimes.

10 Contrary to the attempts by the Defence to portray the good character of Mr Ongwen
11 by indicating that he saved lives while in the LRA and showed kindness and mercy to
12 some people, the judgment recognised that he killed and harmed thousand others
13 and that he did so with a level of incomparable cruelty. The same goes for the fact
14 that he released a few abducted people while he kept under his custody hundreds of
15 others, among whom wounded, pregnant women, women with babies and young
16 children.

17 Therefore, your Honours, victims cannot share the -- victims cannot share the position
18 expressed by the Prosecution that it is unlikely that Mr Ongwen would have
19 committed the crimes he did in 2002-2005 had he not been abducted on his way to
20 school in 1987 and that the sentence should not ignore Mr Ongwen's experience as a
21 child soldier in the LRA.

22 Victims are, on the contrary, of the opinion that Mr Ongwen would not have
23 committed the crimes he did in 2002-2005 had he escaped from the LRA or chosen to
24 behave in a different manner while in a position of power in the LRA. Mr Ongwen
25 chose not to leave the LRA when afforded the opportunity to escape and reunite with

1 his community and refused to do so by continuing to stay in the rebel group and
2 commit the crimes he is now convicted for.

3 For these reasons, victims are of the view that Mr Ongwen's prior history in the LRA
4 cannot be a factor sufficient to diminish his sentence.

5 Turning to the Defence's submissions. The Defence submissions are entirely centred
6 on the alleged specific circumstances of Mr Ongwen which should be taken into
7 account by the Chamber in deciding on the appropriate sentence.

8 Some of these circumstances constitute a mere repetition of arguments already
9 submitted during trial and adequately considering the judgment, such as the fact that
10 Mr Ongwen would have been indoctrinated and brainwashed to a point that, and I
11 quote again, as my learned colleague, from paragraph 15 of the Defence submissions,
12 "he did not possess a mind of his own to lawfully comprehend." End of quote.

13 This assertion, while lengthily argued and carefully assessed during the trial, was
14 proven incorrect on the basis of credible evidence presented at trial. Therefore, it
15 cannot reasonably inform the sentencing decision.

16 The Defence line of arguments also insists on the fact that Mr Ongwen was a child
17 soldier and he is allegedly a mentally disabled person. To use the words of the
18 Defence in paragraph 13 and 38 of its submission, and I quote, "He was stolen from
19 his family [...] at the age of 9 and forced to live, grow and work in arable cult", having
20 "permanent physical damage and continuing psychological trauma." Therefore, it
21 "would be a travesty of justice that would reverberate throughout the annals of
22 history if this child soldier and mentally disabled person is made an example by the
23 international community." End of quote.

24 Your Honours, Mr Ongwen is not a child soldier and was not convicted for crimes he
25 might have committed as a child soldier. It was also not established before the

1 Chamber that Mr Ongwen is a mentally disabled person, and in this respect we fully
2 share the Prosecution's submission presented this morning.

3 Mr Ongwen is a man who was faced with a very difficult childhood, part of which
4 was in the LRA, and who, when becoming an adult, decided in full conscience and
5 following his free will to commit the most atrocious crimes in the most unspeakable
6 manner for which he has been convicted by this Chamber. Therefore - and again
7 also argued by the Prosecution this morning - all Defence arguments related to duress
8 and the alleged diminished mental capacity of the convicted person should not be
9 considered by the Chamber when deciding on the sentence. The same applies to the
10 argument that Mr Ongwen could not escape. This factor has no relevance for
11 sentencing purposes and eventually it is a factor running against the personal
12 circumstances pleaded by the Defence because countless of other abductees did
13 choose and manage to escape from the LRA.

14 As noted already in our written submissions, in accordance with the legal framework
15 of the Court and its relevant practice, the determination and imposition of a sentence
16 shall be based on the principles of retribution and deterrence.

17 In this regard, victims disagree with the Defence's argument suggesting that a long
18 sentence against Mr Ongwen would not discourage others from committing similar
19 crimes in the future, but rather encourage former child soldiers to remain in the rebel
20 groups or hide for fear of receiving long prison sentences for their actions.

21 To the contrary, victims submit that because of the extreme gravity of the crimes, the
22 sentence has to be exemplary in order to discourage individuals to commit similar
23 crimes as the one for which the accused was convicted.

24 An exemplary sentence will have a deterrence effect because it will show
25 unequivocally that someone was abducted at a young age, became a child soldier,

1 rose in ranks, becoming a commander, chose to commit through his own initiative the
2 most horrifying crimes, refusing to surrender when given the chance to, and finally
3 recognised guilty of the most serious offences against mankind in the terms the
4 judgment does, will face the right consequences of his behaviour in a court of law.

5 Above all, it will show that justice for victims exists and that impunity will never
6 prevail.

7 During the recent consultations held with victims, one of them stated that,
8 and I quote:

9 "A longer sentence would act as a deterrent and prevent those who have the intention
10 of committing similar crimes to realise that there is punishment as a consequence."

11 End of quote.

12 This view was reiterated by other victims who highlighted that a long sentence would
13 deter others from forming or joining rebel groups and, I quote again, "his punishment
14 should be seen to be a punishment for all the crimes he committed". End of quote.

15 Another victim stated clearly, quote:

16 "The crimes Dominic Ongwen committed are painful so he deserves life
17 imprisonment. If he's given a lighter sentence it will encourage other people to
18 commit crimes. Even if he was my brother, I cannot change my mind, it will
19 encourage people to commit crime". End of quote.

20 Victims also disagree with the suggestion to surrender Mr Ongwen to the Acholi
21 traditional justice system. Besides the fact that that suggestion is not an option in the
22 ICC legal framework, victims wish and ask as part of the acknowledgment of their
23 victimisation that this Chamber imposes a sentence which reflects the gravity of the
24 crimes for which Mr Ongwen was convicted, but also the sufferings they endured and
25 continue to sustain as a result of the commission of his crimes.

1 In this regard, victims emphasise once more that any traditional ceremonies and
2 rehabilitation rituals could only be followed separately from and eventually in
3 addition to the sentencing proceedings, more adequately between Mr Ongwen's clan
4 and the victims' clans and communities rather than between Mr Ongwen himself and
5 the thousands of victims individually concerned by the crimes he committed. Such
6 rituals in the victims' views should eventually complement reparations measures
7 awarded by the Court and are not seen by the victims as incompatible with a sentence
8 of life imprisonment.

9 Because victims attach great importance to the judicial process, they do not share the
10 Defence's attempt - through witnesses from the Ker Kwaro Acholi - to let the
11 Chamber and everyone following these proceedings believe that there would only be
12 one culturally appropriate way to respond to the situation of Mr Ongwen both for his
13 rehabilitation and for the communities affected by his crimes, namely by surrendering
14 him to them in lieu of any sentence of imprisonment.

15 The thousands of victims consulted in the last month for the purpose of this
16 sentencing hearing seem to approach the situation quite differently and to see other
17 ways to move forward that would be culturally appropriate for them, their families
18 and their communities.

19 Referring to their tradition and the need for reconciliation, victims insisted on two key
20 aspects: First, that the ceremonies could and should only happen after they have
21 benefited from reparations and not as a part of the sentence; second, that said
22 ceremonies could only happen if Mr Ongwen would sincerely ask for their
23 forgiveness.

24 The fact that the Defence already announced its intention to appeal the judgment in
25 itself represents an affront for them and a contradiction with any future expression of

1 sincere remorse. The same goes, your Honours, with the most recent Defence's
2 assertion in its submission on sentencing that it does not concede Mr Ongwen's guilt.
3 In this regard, I wish to recall the statement made by Ugandan cultural, religious
4 community and civil society leaders attending the opening of the trial of Mr Ongwen
5 at the seat of the Court back in December 2016, and I quote:

6 "Today, the case of Dominic Ongwen remains very important to us because it is a
7 milestone in defining one way in the attempt to secure justice and accountability for
8 the people of Northern Uganda, and ultimately to help people reconcile with their
9 past and move towards peace. As leaders and representatives of various groups and
10 interests in the Acholi region, we note that various grave crimes were committed in
11 Northern Uganda during the time the LRA was active; the nature of the crimes
12 committed violated traditional, Ugandan and international law and therefore
13 warranted action against perpetrators in terms of securing justice for the victims and
14 holding the perpetrators accountable." End of quote.

15 I'm turning to the very last part of my presentation, your Honour. It will take I think
16 five minutes.

17 Specifically on the quantification of the sentence proposed by the Defence - and again
18 we share the arguments proposed by the Prosecutor this morning - Article 78(3) of the
19 Statute and Rule 145 of the Rules of Procedure and Evidence clearly prescribe the
20 determination of the sentence by a Chamber for each crime committed and not per
21 acts. Finally, the Defence's request that the time spent by Mr Ongwen in the LRA be
22 deducted from his sentence is equally deprived of any legal basis. Indeed, the
23 applicable provisions are clear in indicating that only the time spent in detention
24 pursuant to a warrant of arrest issued by this Court may be deducted for that
25 purpose.

1 Your Honours, victims practically unanimously expressed their strong wish that
2 Mr Ongwen be imprisoned for the rest of his life. Many of them fear the day
3 Mr Ongwen might be allowed to come back to Uganda.

4 In accordance with Article 78(1) of the Statute, the totality of the sentence must be
5 proportionate and reflect the culpability of the convicted person and should be
6 tailored to the gravity of the crimes.

7 Gravity is the principal consideration in the imposition of a sentence. In the present
8 case, the nature of the crimes, the particular circumstances of the conduct constituting
9 elements of the mode of liability recognised by the Chamber, and the factors under
10 Rule 145(1)(c) of the Rules relating to the elements of the offence and modes of
11 liability are all elements militating for the extremely grave nature of the crimes
12 committed.

13 Moreover, in the victims' views, some factors should also be considered as
14 aggravating circumstances: One, the extreme cruelty and brutality in the
15 commission of the crimes; two, the particular defencelessness of the victims; three, the
16 high number of victims; and four, the abuse of power by and/or the official capacity
17 of Mr Ongwen.

18 In light of the evidence presented at trial and the findings of the Chamber in its
19 judgment, no mitigating circumstances apply in the present case. In particular, none
20 of the mitigating circumstances contemplated by the Defence can be considered as
21 established, duress, mental illness, and therefore none of them would warrant to
22 reduce the length of the sentence that would be appropriate on the basis of the
23 extreme gravity of the crimes for which Mr Ongwen was convicted.

24 And finally, your Honour, nothing in Mr Ongwen's individual circumstances appear
25 to reduce the need for the highest sentence possible.

1 Victims request that Mr Ongwen be sentenced to life imprisonment.

2 Such a sentence appears to be the only appropriate punishment in light of the extreme
3 gravity of the crimes which were marked by their infamous cruelty and
4 inhumaneness, causing immeasurable harms to the victims, their families and their
5 communities. Life imprisonment is the only adequate response to the incurable pain
6 inflicted to more than 4,065 victims who still face, more than 15 years after the events,
7 unprecedented challenges in recovering from the harm they suffer from as a result of
8 the crimes Mr Ongwen committed. Life imprisonment is the only adequate response
9 to the memory of thousands of victims who could not see justice done in a court of
10 law.

11 Your Honours, Mr Ongwen was not convicted for ordinary crimes, but for the most
12 serious crimes of international concern. And extraordinary crimes, as the ones for
13 which he was declared guilty, call for an extraordinary sentence.

14 This concludes, your Honours, my submissions on behalf of victims I represent.

15 Thank you very much.

16 PRESIDING JUDGE SCHMITT: [13:06:21] Thank you, Ms Massidda.

17 This would be now the time for a lunch break, after which we would hear the oral
18 submissions by the Defence on behalf of the convicted persons. I have already said
19 there is a total of three hours.

20 Can you already envisage how much time it will take you for your submissions.

21 Mr Ayena, please.

22 MR AYENA ODONGO: [13:06:41] Thank you very much, Mr President and
23 your Honours. Unfortunately, we have allotted some time to the convict to make a
24 statement and, because of his peculiar arrangement with the prison people, he had
25 not carried his material for this afternoon. So, since we wanted him to start, that was

1 the arrangement, we are making a request that we continue tomorrow.

2 PRESIDING JUDGE SCHMITT: [13:07:17] Of course. This is -- this is fine with the
3 Chamber I assume. That's not a problem. So you want to start -- you want to start
4 with Mr Ongwen speaking tomorrow morning then?

5 MR AYENA ODONGO: [13:07:28] Yes.

6 PRESIDING JUDGE SCHMITT: [13:07:29] And you, you would, or Mr Obhof,
7 whoever, would come afterwards.

8 MR AYENA ODONGO: [13:07:33] Yes, please.

9 PRESIDING JUDGE SCHMITT: [13:07:35] Yeah. It is fine with the Chamber if you
10 don't overstep the three hours of allotted time, I would say.

11 MR AYENA ODONGO: [13:07:44] We promise.

12 PRESIDING JUDGE SCHMITT: [13:07:46] Okay, good.

13 MR AYENA ODONGO: We promise.

14 PRESIDING JUDGE SCHMITT: [13:07:48] Then we finish the hearing for today and
15 meet again tomorrow at 9.30.

16 THE COURT USHER: [13:07:56] All rise.

17 (The hearing ends in open session at 1.08 p.m.)