

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 Delivery of Sentencing Decision - Courtroom 1
8 Thursday, 6 May 2021
9 (The hearing starts in open session at 11.01 a.m.)
10 THE COURT USHER: [11:01:12] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE SCHMITT: [11:01:47] Good morning, everyone.
14 Could the court officer please call the case.
15 THE COURT OFFICER: [11:01:53] 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: [11:02:09] Thank you.
20 At first, I ask the parties and participants to introduce themselves for the record.
21 Madam Prosecutor, first.
22 MS BENSOUA: [11:02:17] Thank you, Mr President.
23 Mr President, your Honours, the Office of the Prosecutor is represented today by
24 Mr Colin Black, trial lawyer; Ms Beti Hohler, trial lawyer; and Shkelzen Zeneli, trial
25 lawyer, and myself Fatou Bensouda, Prosecutor.

1 PRESIDING JUDGE SCHMITT: [11:02:38] Thank you.

2 The representatives of the victims.

3 MS MASSIDDA: [11:02:42] Good morning, Mr President, your Honours. For
4 the common legal representative team appearing today, Ms Caroline Walter,
5 Mr Orchlón Narantsetseg, and myself Paolina Massidda.

6 PRESIDING JUDGE SCHMITT: [11:02:51] Thank you.

7 MS SEHMI: [11:02:56] Good morning, Mr President, your Honours. On behalf of
8 the Legal Representatives for Victims we have Joseph Manoba, Listowel Atto,
9 Priscilla Aling, attending in Kampala; and here in court James Mawira, and myself
10 Anushka Sehmi. Thank you.

11 PRESIDING JUDGE SCHMITT: [11:03:11] Thank you.

12 And I turn to the Defence.

13 MR AYENA ODONGO: [11:03:13] Good morning, Mr President and your Honours.
14 I'm Krispus Ayena Odongo. I'm being assisted by Tom Obhof, assistant to counsel;
15 Abigail, assistant to counsel, Mr Gordon Kifudde, assistant to counsel. And our
16 client, Mr Dominic Ongwen is in Court. Thank you.

17 PRESIDING JUDGE SCHMITT: [11:03:40] Thank you, Mr Ayena.

18 Today, the Chamber pronounces the sentence on Dominic Ongwen for the crimes of
19 which he was convicted on 4 February of this year.

20 MR AYENA ODONGO: [11:03:53] Sorry.

21 PRESIDING JUDGE SCHMITT: [11:03:54] Yeah.

22 MR AYENA ODONGO: [11:03:56] Mr President and your Honours, I forgot to
23 inform you that Mr -- I mean Chief Achaleke Taku and Beth Lyons and
24 Morganne Ashley and Helene-Marie are on line with us.

25 PRESIDING JUDGE SCHMITT: [11:04:17] Thank you very much, that is indeed

1 information that I think the Chamber, in light of the long case that we had, that we
2 would want to have. Thank you, Mr Ayena.

3 MR AYENA ODONGO: [11:04:27] And Mr Owiso Owiso, who was an intern under
4 my Defence team, is attending, he is in the gallery.

5 PRESIDING JUDGE SCHMITT: [11:04:35] Okay. Thank you very much,
6 Mr Ayena.

7 MR AYENA ODONGO: [11:04:37] Thank you.

8 PRESIDING JUDGE SCHMITT: [11:04:38] The written decision has been issued this
9 morning and will be notified shortly after the conclusion of this hearing. It remains
10 the only authoritative document.

11 At the outset, it is recalled that the system at this Court envisages a sentencing in
12 two steps.

13 First, the Chamber shall pronounce an individual sentence for each of the crimes of
14 which the convicted person has been found guilty. Therefore, in this case, 61
15 individual sentences for the 61 crimes of which Dominic Ongwen was convicted.

16 Second, the Chamber shall specify a total period of imprisonment as a joint sentence
17 for all crimes. The law mandates that this joint sentence be no less than the highest
18 individual sentence and no more than 30 years of imprisonment or exceptionally, in
19 case of extreme gravity, life imprisonment.

20 The Chamber has followed these two consecutive steps in its written decision.

21 Individual sentences for each crime are duly pronounced in the written decision,
22 following specific assessment of each such crime.

23 In the present hearing the Chamber will, however, as you will see later, concentrate
24 mostly on the joint sentence, that is the actual penalty imposed on Dominic Ongwen.

25 This is a very special case, as exemplified by the sheer range of submissions of the

1 participants in these proceedings. The Prosecution recommended a total sentence of
2 at least 20 years of imprisonment; the Legal Representatives of the Victims, life
3 imprisonment; the Defence, a sentence of time served or, at most, a total period of
4 10 years of imprisonment. According to the Defence, Dominic Ongwen should
5 rather undergo mechanisms of Acholi traditional justice.

6 In the decision, the Chamber addressed, first, these arguments by the Defence
7 concerning traditional justice mechanisms. It was unpersuaded by them.

8 The judicial system of this Court, including its penalty and sentencing regime, is
9 founded upon the principle of legality. The applicable penalties are exhaustively
10 identified in the Statute of the Court. There exists no possibility for the Chamber to
11 replace a term of imprisonment with traditional justice mechanisms, or to incorporate
12 traditional justice mechanisms into the sentence in any other way.

13 The Chamber, however, noted that the arguments presented by the Defence, if taken
14 at face value, may create the impression that the Chamber is insensitive to established
15 cultural norms and processes. Thus, the Chamber found it appropriate to express
16 some further considerations in this regard.

17 The Chamber noted, while pleadings advocating for Acholi traditional justice
18 mechanisms - especially in the form of the so-called *mato oput* - have been made in
19 strong terms, the discussion has been largely abstract.

20 In fact, it is quite clear to the Chamber from the record that Acholi traditional justice
21 mechanisms are not in widespread use, to the extent that they would replace of
22 formal justice. This has also been expressed by the High Court of Uganda, which
23 found, quote, "that in its current form *mato oput* has no effective system of regulation
24 and review in place" and that traditional justice should "not serve to displace,
25 undermine or delay", quote end, the formal justice system.

1 The Chamber also noted that the Acholi traditional rituals are reserved to
2 the members of the Acholi community. The use of Acholi traditional justice would
3 mean, therefore, that some victims belonging to other ethnic groups would be
4 excluded due to not being Acholi.

5 But most importantly, the Chamber recognised that reconciliation, whatever its form,
6 is a process in which victim participation is essential.

7 For this reason, the Chamber paid due regard to the views and concerns of the victims,
8 expressed through their legal representatives. It is clear that many of the victims of
9 the crimes committed by Dominic Ongwen do not support the idea of traditional
10 justice in the present case. On the contrary, they have also criticised the fact that
11 submissions in this regard were made to the Chamber without consulting them.

12 The Chamber acknowledges the views and concerns of the participating victims, as
13 expressed through their legal representatives as follows, quote:

14 "Victims emphasise in the strongest terms that the position put forward by
15 the Defence with regard to alleged culturally appropriate rituals and proceedings that
16 should take place for the purpose of reintegration and reconciliation of the affected
17 communities in northern Uganda in lieu of punishment in the form of imprisonment
18 does not correspond to their views." Unquote.

19 In addition, there was a widespread view amongst the victims that community
20 organisations and leaders should not intervene in this issue, and - again as expressed
21 by the Legal Representative of Victims - quote, "in no way represent their wishes and
22 needs." Unquote.

23 Thus, independently of the principle of legality under Article 23 of the Rome Statute,
24 the Chamber was in any case unpersuaded by the Defence's claim that following
25 the Court's formal process and rules on sentencing would in any way run counter to

1 the culture of the people of northern Uganda.

2 To the contrary, the Chamber is convinced, on the basis of the evidence and the views
3 and concerns of the victims participating in the proceedings, that, even though there
4 may be a wide range of individual opinions, the victims relate to and, in a certain way,
5 own the Court's process of justice under the Statute.

6 Turning to the determination of the sentence, the Chamber addressed the gravity of
7 each of the 61 crimes.

8 It considered, first, the several mitigating and aggravating circumstances alleged by
9 the participants as applicable to all such crimes.

10 The Chamber decided to given certain weight in mitigation to the circumstances of
11 Dominic Ongwen's childhood, his abduction by the LRA at a very young age and his
12 early stay with the LRA. All individual sentences have been determined taking this
13 mitigating circumstance into due account.

14 Instead, the Chamber did not follow the Defence argument that two mitigating
15 circumstances in the form of circumstances falling short of constituting grounds for
16 exclusion of criminal responsibility were applicable: substantially diminished mental
17 capacity and duress. The Chamber has rejected both as entirely unconvincing.

18 In this context, the Chamber referred back to its analysis of evidence in the judgment
19 issued on 4 February 2021. At that time, the Chamber found that Dominic Ongwen
20 did not suffer from a mental disease or defect at the time of the conduct relevant
21 under the charges. Instead, the evidence clearly shows that he was in full possession
22 of his mental faculties and exercised his role as commander effectively.

23 The Chamber based this assessment on reliable expert evidence and on
24 the overwhelming evidence of many witnesses who spent time with
25 Dominic Ongwen in the LRA.

1 The Defence also argued that Dominic Ongwen's current mental health should be
2 considered a mitigating circumstance. The management of the convicted person's
3 health is primarily a matter for the enforcement of the imposed sentence. In line
4 with international criminal tribunal jurisprudence, poor health can be considered
5 a mitigating circumstance only in exceptional cases. The present case is not such
6 a case, as explained in detail in the written decision.

7 As concerns duress, the Chamber previously found in the judgment that
8 Dominic Ongwen was not subjected to a threat of imminent death or imminent or
9 continuing serious bodily harm to himself or another person at the time of the crimes.
10 He was not in situation of complete subordination vis-à-vis Joseph Kony, but
11 frequently acted independently and even contested orders received from Joseph Kony.
12 He also had a realistic possibility of leaving the LRA, which he did not pursue.
13 Rather, he rose in rank and position. He also committed some of the crimes in
14 private, in circumstances where any threats otherwise made to him could have no
15 effect.

16 Basing itself on the same analysis, while also addressing the new evidence submitted
17 by the Defence, the Chamber found that neither substantially diminished mental
18 capacity nor duress as a mitigating circumstance are applicable in the present case.
19 The Chamber also declined to consider in mitigation Dominic Ongwen's family
20 circumstances and good character that had been alleged by the Defence. The reasons
21 for this are provided in detail in the written decision.

22 Likewise, for the reasons explained in the decision, the Chamber did not find
23 the aggravating circumstance of the abuse of power or official capacity in
24 the commission of the crimes as alleged by the Legal Representatives of the Victims.
25 Following these more general conclusions, the Chamber analysed one by one

1 the gravity of each of the 61 crimes for which Dominic Ongwen was convicted. It
2 found several aggravating circumstances applicable to some or even most crimes.
3 For example, the Chamber found the aggravating circumstance of commission for
4 a motive involving discrimination on political grounds for most crimes relating to
5 the attacks on IDP camps. Indeed, civilians in northern Uganda, in particular those
6 who lived in government-established IDP camps, were targeted because they were
7 perceived as being associated with the government of Uganda, and thus as the enemy.
8 For the sexual and gender-based crimes, the Chamber found the aggravating
9 circumstance of commission for a motive involving discrimination against women,
10 and as such on the grounds of gender.
11 Further, for most crimes the Chamber took into account as an aggravating
12 circumstance the fact that there were multiple victims. In some cases, where
13 the victims that were abducted were held in abusive conditions, or where the victims
14 were particularly young, the Chamber held that the victims were also particularly
15 defenceless, and took this into account.
16 Also for several crimes, the Chamber identified and took into account as an
17 aggravating circumstance particular cruelty in the commission of the crime, for
18 example, in instances where murder was committed by burning people alive inside
19 houses, and in relation to the extremely harsh treatment of children integrated as
20 soldiers into Sinia brigade.
21 The relevant crime-by-crime assessment of their gravity and the aggravating
22 circumstances applicable to each of the 61 crimes can be found in the written decision,
23 together with the individual sentences pronounced for each of them. The Chamber
24 does not consider it necessary to recite them in full in the present oral summary,
25 given the sheer number of crimes, and corresponding individual sentences.

1 Suffice it to say that, upon individual assessment, the Chamber found certain crimes
2 to be of the utmost gravity.

3 This is the case for:

4 The crimes of murder and persecution in the context of the attacks on Pajule, Odek,
5 Lukodi and Obok IDP camps;

6 the crimes of sexual slavery, rape, forced marriage and forced pregnancy;

7 the crimes of enslavement and torture as sexual and gender-based crimes; and

8 the crime of conscription of children under the age of 15 and their use to participate
9 activity in the hostilities.

10 For each of these crimes, the Chamber pronounced an individual sentence of 20 years
11 of imprisonment. This also constitutes the highest individual sentence pronounced.

12 The Chamber also pronounced an individual sentence of 14 years of imprisonment for
13 a number of other crimes. They are:

14 The crimes of attacks against the civilian population as such, attempted murder,
15 enslavement and torture in the context of the attacks on Pajule, Odek, Lukodi and

16 Abok IDP camps; and

17 the crimes of outrages upon personal dignity.

18 Finally, individual sentences of eight years of imprisonment have been pronounced
19 for the crimes of pillaging and destruction of property committed during the attacks
20 on the four IDP camps.

21 As recalled, each individual sentence for each of these 61 crimes is specified in
22 the written decision.

23 And, as said, all these individual sentences are determined taking into account also
24 the mitigation as a result of circumstances of Dominic Ongwen's childhood and early
25 stay in the LRA. The Chamber will say more to that soon.

1 Following the determination of these individual sentences for even of the 61 crimes,
2 the Chamber has determined the most adequate joint sentence, that is, the total time
3 of actual imprisonment to be imposed as punishment for all the crimes committed.
4 This oral summary will now focus on the determination of the joint sentence.
5 On the one end of the spectrum, the Chamber could have imposed a joint sentence of
6 20 years of imprisonment. This was the minimum possible according to the law, as
7 it corresponds, as I explained, to the highest individual sentence, which was
8 pronounced for several crimes. The Chamber, however, considered such a sentence
9 to be incapable of reflecting Dominic Ongwen's total culpability.
10 The Chamber is aware that there is some degree of overlap in the factual basis of
11 certain crimes of which Dominic Ongwen was convicted. This, however, does not
12 have a significant bearing in the determination of the joint sentence in the present case.
13 This is because of the strikingly large number of distinct convictions, holding entirely
14 different factual basis, which have been pronounced by the Chamber.
15 In fact, there are entirely separate crimes independent from each other, each carrying
16 its own blameworthiness.
17 For example, the crimes of murder committed in the context of the four attacks on
18 the IDP camps are completely different from the crimes of sexual slavery committed
19 by Dominic Ongwen against his four so-called "wives" and other women and girls
20 within the Sinia brigade. The crime of conscription of children under the age of 15
21 and their use to participate actively in the hostilities has an entirely different factual
22 basis from the crimes of destruction of property and pillaging. And so on.
23 These are just examples to illustrate the point that, in this case, there's a large amount
24 of distinct criminal conducts underlying different crimes.
25 This, in brief, is why, contrary to what has been proposed by the Prosecution, a joint

1 sentence corresponding to the highest individual sentence pronounced for one crime
2 only, that is 20 years of imprisonment, could not capture the culpability for all
3 the numerous crimes committed.

4 On the other end of the spectrum, the Chamber has considered the possibility of
5 imposing life imprisonment. This was the recommendation by the legal
6 representatives of the participating victims.

7 The Chamber recalls the extreme gravity of the numerous crimes committed by
8 Dominic Ongwen, both in themselves and when considered jointly, and the presence
9 for each such crime of at least one aggravating circumstance, often times even two or
10 more. On these grounds, life imprisonment would truly be in order.

11 The extreme gravity of the crimes, especially when considered cumulatively, is in fact
12 quite evident. As is quite evident the very high degree of Dominic Ongwen's
13 culpability.

14 More than one 130 people were killed during the attacks on IDP camps, and at least
15 25 others managed to survive only for reasons independent of the will of
16 Dominic Ongwen - or the fighters under his control. Civilians have been killed in
17 many different and terrible ways. The stories of the victims are recounted in detail
18 in the trial judgment. Furthermore, hundreds of civilians were abducted, tortured
19 and enslaved during those same attacks.

20 A large number of children were abducted, integrated into the Sinia brigade and used
21 actively to participate in the hostilities. Seven women and girls were forced to be
22 Dominic Ongwen own so-called "wives" and servants. In addition, there were over
23 100 abducted women and girls in the Sinia brigade at the relevant time.

24 Many of these victims - who were targeted for motives involving
25 discrimination - were particularly defenceless. Particularly young boys and young

1 girls were abducted and forced to be child soldiers or domestic servants. During
2 the attacks, individuals who had been abducted, including children, elderly people,
3 pregnant women, were then killed and tortured.

4 Dominic Ongwen fully intended all of these crimes. He played a key role in their
5 commission. He participated in the planning of the attack on Pajule IDP camp and
6 personally took part in it. At the other attacks, at Odek, Lukodi and Abok
7 IDP camps, it was he who decided to launch the attacks: he selected the fighters and
8 the ground commanders and issued specific instructions ahead of each attack. He
9 reported the result up the chain of command over the LRA radio after each attack was
10 concluded and took credit for it.

11 Also for the sexual and gender-based crimes and the abduction and integration of
12 children under the age of 15, Dominic Ongwen's involvement is striking. He
13 personally abducted children and distributed boys, girls and women within his units.
14 Some abducted young boys became Dominic Ongwen's own escorts, living with him,
15 following him, guarding him, and fighting on his orders. He also kept women and
16 girls for his own household, forcing the youngest to be his domestic servants, while
17 those that he deemed old enough were forced to be his so-called "wives", obliged to
18 have sex with him and bear his children.

19 And beyond that, in his role of commander, he exercised an essential role in
20 sustaining the methodical abduction and abuse of women and girls. This is reflected
21 in the convictions for sexual and gender-based crimes. He furthermore played an
22 essential role in the conscription of children under the age of 15 years. They were
23 brutally integrated in the LRA in large numbers and used to participate actively in
24 hostilities.

25 As said, the extreme gravity of the crimes committed by Dominic Ongwen, including

1 the degree of his culpable conduct, would strongly militate for a joint sentence of life
2 imprisonment.

3 The Chamber has, however, decided not to impose life imprisonment. In this oral
4 summary, it wishes to explain, briefly, why it decided so.

5 Importantly, this shall not be understood as lessening in any way the gravity of the
6 crimes that were committed, including the tremendous impact they have had on
7 the numerous victims. This is entirely appreciated by the Chamber. It wishes to
8 stress this again in the strongest possible terms.

9 Nonetheless, in accordance with the Statute of this Court, life imprisonment is an
10 exceptional sentence. Amongst all the considerations that are part of this assessment,
11 the Statute also refers to the, I quote, "individual circumstances of the convicted
12 person". Therefore, the Chamber had to look at and take into consideration these
13 individual circumstances of Dominic Ongwen to determine if life imprisonment was
14 in fact justified. The Chamber took also note of Dominic Ongwen's personal
15 statement in court during the sentencing hearing, where he spoke lucidly for about
16 one hour and 45 minutes, sustaining a structured and coherent declaration, while
17 speaking largely freely - as opposed to reading out a prepared speech.

18 The Chamber is confronted in the present case with a unique situation. It is
19 confronted with a perpetrator who wilfully brought tremendous suffering upon his
20 victims. However, it is also confronted with a perpetrator who himself had
21 previously endured extreme suffering himself at the hands of the group of which he
22 later became a prominent member and leader.

23 The Chamber was greatly impressed by the account given by Dominic Ongwen at the
24 hearing on sentence about the events to which he was subjected upon his abduction
25 when he was only 9 years old. This account finds support in the evidence heard

1 during the trial.

2 Dominic Ongwen was abducted by the LRA when he was 9 years old. This has
3 indeed been established. His abduction at such a young age meant that he was torn
4 away from a caring and protective environment in his family and community. His
5 abduction at such young age also meant that he had to interrupt his education.
6 According to credible descriptions on the record, he was a gifted child with an
7 intellect far above the average. He had all possibilities to become a valuable member
8 of his community and of society in the normal course of events. All these
9 possibilities, all his positive potential, all his hopes for a bright future came to a brutal
10 halt on the day when he was abducted. Instead of a promising development of his
11 personality in his community, his socialisation took place in an environment as
12 violent as the LRA. In the LRA he undoubtedly experienced acute suffering while
13 growing up. He was forced to become a child soldier at a young age in the harshest
14 conditions. He had to witness many terrible crimes as a young child, including
15 violent death. He was forced to participate in such violent incidents. Soon after his
16 abduction, he came to know that his parents had been killed, further contributing to
17 the feeling of loneliness and despair. In sum, the Chamber heard specific evidence
18 indicating that Dominic Ongwen suffered greatly, physically and emotionally, in
19 the first years following his abduction.

20 The circumstances of Dominic Ongwen's childhood after his abduction are
21 compelling. The Chamber cannot disregard them in the determination of whether
22 life imprisonment represents the just sentence in the present case.

23 The fact that Dominic Ongwen did not, at first, choose to be part of the LRA, but was
24 abducted and integrated into it when he was still a child, in no way justifies or
25 rationalises the heinous crimes he wilfully choose to commit as a fully responsible

1 adult.

2 However, these circumstances, in the view the Chamber, make the prospect of
3 committing him to spend the rest of his life in prison excessive.

4 The Chamber fully understands, and is wholeheartedly sympathetic to the legitimate
5 desire of the victims to receive justice. It comprehends that justice indeed demands
6 that an adequate punishment be imposed on Dominic Ongwen.

7 The Chamber is, however, called to determine a sentence which does not constitute
8 a means for revenge as such.

9 By no means does Dominic Ongwen's personal background overshadow his culpable
10 conduct and the suffering of the victims - it is worth repeating this again.

11 Nevertheless, the specificity of this case, of his history, of his situation cannot be put
12 aside in deciding whether he must be sentenced to life imprisonment for his crimes.

13 Envisaging a concrete prospect for Dominic Ongwen to eventually rebuild his
14 life - while being adequately punished for the crimes committed - in a new, more
15 healthily environment than the extremely violent one of the LRA in which he grew up
16 and operated at length, is one of the conflicting driving forces for the Chamber's
17 ultimate consideration on the appropriate joint sentence in the present case.

18 The Chamber believes that such concrete opportunity shall not be denied to
19 Dominic Ongwen, given his peculiar personal background and history.

20 This is why the Chamber has decided not to sentence Dominic Ongwen to
21 the exceptional penalty of life imprisonment.

22 The Chamber has thus excluded a joint sentence corresponding to the minimum
23 possible, that is 20 years of imprisonment, and the maximum possible, that is life
24 imprisonment. It had therefore to situate the joint sentence at some point between
25 these two extremes, meaning between 20 and 30 years of imprisonment.

1 The final joint sentence must be just and adequate. The Chamber will now go on to
2 pronounce this final joint sentence.

3 And for this, Mr Ongwen, I would like to ask you to rise.

4 In light of the gravity of the crimes that you committed, the applicable mitigating and
5 aggravating circumstances, and your specific individual circumstances, the Chamber
6 sentences you to a total period of imprisonment of 25 years, as a joint sentence for
7 the 61 crimes of which you were found guilty.

8 You will receive credit for the period between 4 January 2015 and today, 6 May 2021,
9 during which you have been detained in accordance with an order of this Court, or in
10 connection with conduct underlying your crimes. This period will be deducted from
11 the total time of imprisonment imposed on you.

12 You may sit down, Mr Ongwen.

13 Thus, the Chamber considers the appropriate joint sentence to be 25 years of
14 imprisonment.

15 This decision, however, has not been unanimous. Judge Pangalangan would have
16 sentenced Dominic Ongwen to a total period of imprisonment of 30 years.

17 The majority of the Chamber is of the view that a total term of 25 years of
18 imprisonment is proportionate to the gravity of the crimes Dominic Ongwen
19 committed and congruous with his specific individual circumstances arising from his
20 abduction as a child; it thus conforms to the fundamental purposes of retribution and
21 deterrence underlying sentencing in the system of this Court.

22 Indeed, the majority is confident that this joint sentence adequately reflects
23 the strongest condemnation by the international community of the crimes committed
24 by Dominic Ongwen and acknowledges the great harm and suffering caused to
25 the victims. It is also adequate with a view to deterring others from committing

1 similar crimes in the future and discouraging Dominic Ongwen's own recidivism. In
2 the Chamber's view, no imprisonment for a period shorter than 25 years could
3 constitute an adequate, proportionate and just joint sentence in light of all the relevant
4 circumstances of the present case.

5 At the same time, such a joint sentence acknowledges Dominic Ongwen's unique
6 personal history and safeguards the prospect of his successful social rehabilitation
7 and, consequently, the concrete possibility of future reintegration into society. This
8 is also a relevant situation in a peculiar case like the present one.

9 The Chamber also notes that under the Statute, after Dominic Ongwen has served
10 two-thirds of his sentence, the Court shall review the sentence to determine, in light
11 of certain criteria, whether it should be reduced.

12 These are, in brief, the reasons underlying the sentence rendered today.

13 As recalled, the determination of a joint sentence of a total of 25 years of
14 imprisonment has been taken by majority. Judge Pangalangan has expressed
15 a different position. I now give him the floor for some brief remarks on this matter.

16 JUDGE PANGALANGAN: [11:40:41] Thank you very much, Mr President.

17 I had earlier joined the unanimous verdict of 4 February 2021 finding the accused
18 guilty beyond reasonable doubt of 61 crimes against humanity and war crimes.

19 Today, I likewise join the majority as regards the individual sentences. However, I
20 consider that a higher joint sentence would be more appropriate, and it is solely in
21 this regard that I differ with the majority.

22 The Chamber declares in today's decision, and with this I fully concur, that imposing
23 a joint sentence - and I'm quoting from the majority - "is manifestly incapable of
24 reflecting Dominic Ongwen's total culpability for all the numerous crimes that he
25 committed." The Chamber also finds, and again I quote, that "all things considered,

1 from the perspective of the extreme gravity of the crimes committed ... including
2 the degree of his culpable conduct, a joint sentence of life imprisonment would
3 surely be in order in the present case".

4 The majority thus finds that the extreme gravity threshold has been met. That is
5 most significant especially considering that the Court's jurisdiction covers not
6 ordinary crimes tried in national jurisdiction but, in the words of the Statute,
7 "the most serious crimes of concern to the international community as a whole", and
8 further, recognises the suffering of, quote, "victims of unimaginable atrocities that
9 deeply shock the conscience of humanity." End of quote. That means that, even
10 within the already grim calculus of the most egregious wrongdoing, the crimes for
11 which Dominic Ongwen has been found guilty are still considered to be of extreme
12 gravity.

13 So for that reason, in my opinion, since a life sentence is the most severe penalty that
14 can be imposed under the Statute, the mere fact of not imposing a life sentence
15 already takes into account the truly unfortunate personal situation of the convicted
16 person.

17 Furthermore, setting the joint sentence even lower at 25 years, rather than at the
18 statutory maximum of 30, would fail to give due weight to the victims' suffering,
19 rather -- victims' suffering, which, in the context of mass atrocity crimes, is certainly
20 no less than if crimes such as murder, rape, or torture were committed as ordinary
21 crimes. The scale and cruelty with which these crimes were committed in this case
22 are not outweighed by the said twist of fate of a 9-year-old boy abducted on that
23 fateful morning and his conscription as a child soldier. Indeed, as adequately
24 observed by the majority, and here I quote, "by no means does Dominic Ongwen's
25 personal background overshadow his culpable conduct and the suffering of the

1 victims". End of quote.

2 The Rules require the Court to balance all relevant factors, among them, the harm
3 caused to the victims and their families. And the Appeals Chamber has recognised
4 that this involves an exercise of discretion with the aim to impose a proportionate
5 sentence that reflects the culpability of the convicted person.

6 I am of the view that imposing a joint sentence of 30 years would guard against
7 the Court giving such weight to the individual circumstances of the convicted person
8 that the heinous character of the crimes pales in comparison.

9 It is exactly because of the extreme gravity of the crimes and, in particular, the deep
10 and permanent physical and psychological harm caused to the victims and their
11 families, that I find that in order to reflect - in the words of the
12 majority - "the strongest condemnation by the international community and
13 acknowledge the great harm and suffering caused to the victims", end of quote, that
14 a total term of 25 years is not adequate, and that the crimes for which the convicted
15 person has been found guilty, warrant a sentence of 30 years of imprisonment.

16 Thank you, Mr President.

17 PRESIDING JUDGE SCHMITT: [11:45:32] Thank you, Judge Pangalangan.

18 The Chamber wishes to conclude this hearing with some final remarks.

19 The decision rendered today has been particularly difficult and it has weighed
20 significantly on the three of us.

21 We felt at all times the highest responsibility to determine the most appropriate
22 sentence in light of all relevant, often conflicting, circumstances. Some of these
23 circumstances are in irreconcilable tension with each other. Some which may have
24 made us interrogate ourselves on the very essence and meaning of punishment.

25 Not everyone will be satisfied with today's decision. This is in the nature of

1 a process as personal as the one of establishing an appropriate punishment for
2 the wrongdoing of others. In essence, it conforms to the individual sense of justice of
3 any given person.

4 The difference of opinions among the judges on the joint sentence in this case reflects
5 precisely this: our own individual sense of justice as judges entrusted with
6 the responsibility to decide this case in accordance with the discretion that the law
7 provides us with. This is not expression of a fundamental disagreement between us.
8 We concur, in full, both on the law and the facts of the case. We also concur entirely
9 on all individual sentences, on the exclusion of life imprisonment, on imposing a joint
10 sentence higher than the statutory minimum. Simply, in determining the final joint
11 sentence, the majority of the Chamber gave some more weight to Dominic Ongwen's
12 individual circumstances than Judge Pangalangan would have.

13 The Chamber has exercised his discretion to the best of each judge's conscience and in
14 strict accordance with the law.

15 It has endeavoured to explain how it arrived to the decision it took, such that it can be
16 understood and accepted as legitimate, even if not universally concurred with.

17 Some victims may not agree with the decision not to impose life imprisonment.
18 Dominic Ongwen and the Defence may not agree with the decision to sentence him
19 for a period of imprisonment longer than what he hoped for or thinks to deserve.

20 Contrasting views on the adequate sentence may also be held by others that have
21 been interested in this case, but that not always may know in full all relevant facts
22 and all relevant evidence contained in the record of the case.

23 This is understandable. As judges, however, we must only respond to the rules of
24 the law and to our conscience. We are confident that the sentence pronounced today
25 conforms to both.

1 This has been a long and complex trial. In the view of the Chamber, the trial has
2 been successful in the sense that it brought to light all the evidence that was
3 considered necessary for the establishment of the truth. The result of this is the long
4 and detailed judgment issued three months ago on 4 February. Another result is
5 today's sentence.

6 All in all, we hope that the work of the Court in this case, including the voluminous
7 record of testimonies and other evidence that was created, has been and will continue
8 to be useful to victims, northern Ugandans and others, shedding some light on
9 a complex and painful chapter of history. We also hope that these entire
10 proceedings up to this point may contribute to bring some justice to the victims of the
11 crimes committed and affirm that the international community in general, and this
12 Court in particular, are on their side.

13 A further step in this direction will commence immediately with the opening of the
14 proceedings concerning reparations in favour of the victims of the crimes committed
15 by Dominic Ongwen. Today the Chamber has issued an order for submissions on
16 reparation. The right of victims to reparations is also an essential part of the system
17 of justice at this Court. It is a further acknowledgment of the suffering and harm
18 that the victims experienced, and it aims at redressing it. The Chamber will push
19 forward the reparation stage of the proceedings with vigour and the utmost care.
20 This concludes today's hearing for the delivery in open court of the sentence in
21 the case of the Prosecutor v Dominic Ongwen.

22 The Court is adjourned.

23 THE COURT USHER: [11:51:26] All rise.

24 (The hearing ends in open session at 11.51 a.m.)