

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 Thursday, 15 April 2021
9 (The hearing starts in open session at 9.35 a.m.)
10 THE COURT USHER: [9:35:56] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE SCHMITT: [9:36:22] Good morning, everyone.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:36:29] Good morning, Mr President, your Honours.
16 Situation in the Republic of Uganda, in the case of The Prosecutor versus Dominic
17 Ongwen, case reference ICC-02/04-01/15.
18 And for the record, we are in open session.
19 PRESIDING JUDGE SCHMITT: [9:36:45] Thank you.
20 I ask for the appearances of the parties.
21 Mr Black for the Prosecution first, please.
22 MR BLACK: [9:36:52] Good morning, your Honours. Thank you very much.
23 Colin Black for the Office of the Prosecutor, together with Adesola Adebeyejo,
24 Beti Hohler, Shkelzen Zeneli and Colleen Gilg. Jasmina Suljanovic is following from
25 her office but will come in at the next break.

1 PRESIDING JUDGE SCHMITT: [9:37:09] Thank you. I turn now to

2 the Representatives of the Victims. Ms Massidda first.

3 MS MASSIDDA: [9:37:14] Good morning, Mr President, your Honours. For

4 the Common Legal Representative team appearing today, Ms Caroline Walter and

5 myself, Paolina Massidda.

6 PRESIDING JUDGE SCHMITT: [9:37:23] And Mr Mawira.

7 MR MAWIRA: [9:37:25] Good morning, Mr President, your Honours.

8 James Mawira for the LRVs. Unfortunately, Mr Manoba is having connection

9 difficulties, but they're trying to reconnect at the moment. Thank you.

10 PRESIDING JUDGE SCHMITT: [9:37:36] As you are perhaps aware of, we

11 give -- have given a couple of minutes to reconnect. But since it seems to be

12 uncertain, I think we could not wait any longer, but we hope that the connection will

13 soon be established.

14 We turn now to the Defence. Mr Ayena, please.

15 MR AYENA ODONGO: [9:37:52] Good morning, Mr President and your Honours.

16 I'm Krispus Ayena Odongo for the Defence. This morning I'm accompanied by

17 Mr Thomas Obhof, Ms Abigail, Mr Kifudde, and we shall be joined by Chief Achaleke

18 Taku and Lyons from the United States online.

19 PRESIDING JUDGE SCHMITT: [9:38:21] And you know that it's now the turn of

20 the Defence for their final submissions.

21 MR AYENA ODONGO: [9:38:25] Yes.

22 PRESIDING JUDGE SCHMITT: [9:38:26] And I give you the floor, or if you want to

23 have the accused speak first, it's up to you, of course, how you arrange that.

24 MR AYENA ODONGO: [9:38:32] Mr President, I shall introduce.

25 Mr President and your Honours, it is a pleasant duty to have to address you again on

1 this important matter of sentencing.

2 This morning we are going to have three people making representations. Our client,
3 Mr Ongwen, is going to make a personal statement for about one hour, between
4 45 minutes to one hour, if he can sustain that, or even less.

5 After that Mr Obhof shall take the floor and will make some comments about some
6 responses to what was said here yesterday by both the Prosecution and the victims.

7 Then I shall take over from there to the end.

8 We should imagine it will not take much more than the hour allocated to us. We
9 could be short of that time by at least 30 minutes. Thank you very much,

10 your Honours.

11 PRESIDING JUDGE SCHMITT: [9:39:54] So we will see.

12 So first Mr Ongwen wants to speak.

13 MR AYENA ODONGO: [9:39:57] Mr Ongwen.

14 PRESIDING JUDGE SCHMITT: [9:39:58] Okay. Thank you very much for
15 the moment.

16 I address Mr Ongwen directly now. Mr Ongwen, you may speak. You may speak
17 now. You may remain seated, if you wish to do so. It's up to you. And you also
18 may remove your mask if you wish to do so. It's also up to you. You have
19 the floor.

20 MR ONGWEN: [9:41:02](Interpretation) First of all, thank you very much,
21 Mr President and your Honours, for giving me this opportunity to address the Court,
22 this world court. This is an issue which affects me. If I wasn't here, there would be
23 no issue.

24 And, firstly, Mr President and your Honours, during the proceedings I was not
25 feeling well. From the onset when I arrived here, I didn't consider myself human

1 because what I was going through, the people in the detention centre know what
2 I was going through at that time, especially concerning my mental health. It was
3 a surprise to many people.

4 When I started getting assistance and I started meeting different doctors and experts,
5 they started assessing me and what they told me was that ever since they started
6 attending to victims of trauma, they have never got anyone with such trauma that I
7 have because of the extreme nature of my trauma at the time. I was given treatment.
8 Even at the time that I was coming to the courtroom here, I kept telling people that I
9 wasn't feeling fine, but no one accepted that.

10 I heard some people also say that if Dominic does not want to come to the courtroom,
11 we shall bring him by force. But considering all that took place, what I understood
12 from some witnesses and whatever was said in this courtroom, I could have
13 understood only about 40 to 60 per cent -- rather, I understood 40 per cent. I didn't
14 understand 60 per cent of what was said.

15 Right now, I am able to address you and speak because I was undergoing EMDR
16 treatment for the last four or so years, including other tablets. It was not an easy
17 treatment. Sometimes it makes me hallucinate, it makes me see dead soldiers and
18 brings back memories of the past. Sometimes I collapse and I am carried back to my
19 room while sweating profusely. Sometimes I sweat like a whole basin of sweat. It
20 wasn't easy, but I'm grateful to God that I was able to heal and the intensity reduced.
21 I also got some training in the process.

22 Let me now start with my abduction by the LRA. The LRA abducted me in the year
23 1987. I was on my way to school, together with my peers at the time. They were
24 much older than I was at that time. When we met the LRA, they asked us and we
25 told -- and they told us that in northern Uganda education does not help any more.

1 The most helpful thing is to hold a gun. They threw our books by the roadside and
2 they gave me a load to carry. At the time, I did not think I would be a soldier.
3 I was going to school without knowing what career path I would take, but I knew I
4 would finish education and help my parents and help my kinsmen. Unfortunately,
5 it did not go as I'd expected when I finished school.
6 Thirdly, the rules regarding escape and other rules while we were in the bush was
7 disseminated to us. They taught us about the rules in the LRA. And up to now, if
8 you go to LRA, it is still taking place. The first thing you are told is do not escape.
9 If you escape, the end result is death.
10 At that time when I was abducted, it was not the same as other abductions. At that
11 time, if you were abducted they can make you kill your own parents. It didn't
12 happen to me, but people who killed my parents are different. Those who went with
13 me after the abduction were different from those who killed my parents. But later,
14 when they abducted other people, it started happening. They would make you kill
15 your own parents so that you do not escape to come back home.
16 There were many rules that were given, but that was one of them. Some of the rules
17 concerned the life of the Holy Spirit Movement -- or life in the Holy Spirit Movement.
18 At that time it was still called Holy Spirit Movement.
19 There were two older men who wanted to take us at that time. We were much
20 younger. They had actually planned that we should escape together with them
21 about midnight. We walked with them till morning. We continued walking until
22 midday of the next day, and we realised that we were actually coming back to
23 the same barrack of the Holy Spirit Movement. When we arrived back, they told us,
24 okay, there's no problem. At that time, there were two departments of technician
25 and controller. If you escaped, they would start doing a ritual with your name using

1 water and you would come back on your own to the defence where the LRA are
2 based.

3 They asked us -- they started by asking me, "Kadogo, why did you escape?" I told
4 them I was going to see my mother and father. Then they told us that, "Your mother
5 and father are no more. They were killed." I thought that they were actually
6 deceiving me, but that was the truth. The commander who abducted me was called
7 Jermaine Peck (phon). He comes from Odek. They were the first people to go to
8 the bush, and he was called Jermaine Peck.

9 The commander who was asking me about escape was called Okot. He also comes
10 from Odek. Then they told me, "No problem. Those who were older should be tied
11 up." And they were tied up, they were hung on a tree. Then they gave us a very
12 sharp knife. The two of us each were given a knife and we were ordered to kill these
13 people. I told them I had never killed in my life and I had never seen a dead person.
14 They told us, "If you want to live, kill these people." They put up -- they put up
15 a fire and then they put the machetes in the fire to heat up.

16 My other colleague was much older than me, so they hit him with a machete -- with
17 a heated machete on his back. For me, I was beaten with a wire lock. They ordered
18 us to slaughter these people with a knife, remove their intestines and hang their
19 intestines on the tree. Part of their intestines we were ordered to hang on our necks,
20 and we were told to say this was an electric wire. We did all that.

21 When they were hung up, of course there was blood dripping from them. They
22 brought food and we were ordered to eat beans. We sat where blood was dripping,
23 and they put our plate of beans under the people who were dripping, the bodies that
24 were dripping with blood and the blood was dripping on those plates. They asked
25 us to eat, but I refused. But they told us that is what we want you to do. So we

1 were forced to eat beans mixed with human blood. Even though I grew up in
2 the bush, I know that in Acholi culture humans are not eaten. I don't know if there
3 are other tribes or clans that eat people, but in Acholi human beings cannot be eaten.
4 When I finished eating I started feeling drowsy. I collapsed and I became
5 unconscious. I vomited.

6 At that time for a whole year and -- for a whole year and eight months I could not eat
7 meat. Every time I saw meat, I would vomit. Up to now, I do not like to eat meat.
8 I prefer other sources. Even if I eat, I do not enjoy it because of what I went through.
9 That is what happened in my first attempt to escape. It wasn't easy.

10 The image of what we did as we slaughtered those people still comes to me. It
11 appears I will go to my grave with that image in my mind. Whatever happens,
12 I cannot forget that image. It is imprinted in my image now.

13 Concerning abduction of children, the Holy Spirit Movement and the LRA started
14 abducting children. When they started abduction of children, I was the first victim
15 of child abduction in northern Uganda. Joseph Kony and his soldiers started by
16 abducting me. Today I am before this international court with so many charges, and
17 yet I am the first victim of child abduction. Other people came after me. Other
18 children were abducted after me.

19 When I reached there, they told me that the children who were being abducted were
20 being abducted to show their might, to show the might of God and the Holy Spirit.
21 And indeed, what happened to me, especially the slaughtering of those people, I
22 stayed. Then they took me to the home of Kony. I was a cook in Kony's homestead.
23 He did not have any wife at the time, except there was a woman he had in the village
24 who would come and visit. I remember a witness -- a witness also said that that
25 woman was raped to death. I have no idea who raped her, whether civilians or

1 other soldiers.

2 He started teaching me, he started telling me what is going on and giving me his
3 personal bag to carry. He said that is the bag of might and magic which makes him
4 do a lot of things. I was taught many things while in the bush -- they gave me
5 a stone to go to the battlefield. That was the first time I was going to the battlefield.
6 It was a small white stone, and at that time it was called a stone bomb. That stone,
7 when you go with it, you open your palm and put the stone in your hand and you
8 start praying and praising God. And this stone would flash in different colours and
9 fly off your hand.

10 When I went with that stone I did exactly what I was told, and indeed the stone flew
11 off my hands and it brought an image of the cross like with a colour -- like the colour
12 of a rainbow and it went off like a bomb. I was scared. It was the first time seeing
13 such magic. I can never forget that. Up to now I remember it. When you are just
14 told these things, you don't believe, but many people in Uganda know about this.
15 But there were rules regarding those bombs. No one was allowed to talk about
16 Kony turning stones into bombs or Kony doing magic with those stones.

17 But, for me, who is before this international court, I need to let the world know what
18 took place. God knows I shouldn't tell lies. That was the first miracle I saw in
19 the LRA.

20 The sixth thing I want to talk about is the suffering I went through while I was in
21 the LRA. If I compare with what other people have gone through and some people
22 talk about what they went through, it is not comparable to mine. What happened to
23 me, I believe did not even happen to Jesus Christ. Jesus, whom everybody adores
24 and prays to, I believe I went through a lot more. For me, as Dominic, as a human,
25 I'm not a servant of God. I'm not an appointed person of God. I am just human.

1 But I went through a lot.

2 If -- if it was like water, if the suffering I went through was like water, I wouldn't
3 finish it. Among them, carrying extraordinarily heavy loads, walking very long
4 distances, crossing large, deep rivers, hunger, thirst for a long time. I drank urine.
5 There was no water, you would urinate and drink your own urine while we were in
6 Sudan. Climbing very high mountains, clearing very thick bush, the beatings,
7 the imprisonment, the internal imprisonments, among other things.

8 The most painful thing that happened to me is the injury that I got. I was shot 11
9 times in my life in the LRA. If you ask any soldier in this world, even those who
10 fought in the world war, no one was shot 11 times with 11 bullets like me. Even if it
11 was an elephant, these 11 bullets would have killed the elephant, but I am still alive.

12 Why is this so? I asked an old man who was in the bush at that time. He was
13 called Santo Alit. He was very familiar with Acholi culture. I asked the old man
14 and he told me that in Acholi culture, when you are in the army and you are innocent
15 you do not kill people unintentionally and you don't do bad things, you will be in
16 the army until you grow old.

17 Indeed, other Acholi people also concur with this old man. I'm sure now they are
18 also approving what I am saying. But if you do bad things as a soldier, you will not
19 be able to come home alive. This is what the old man told me.

20 Spirits, human spirits are unforgiving. If you do something like this to people, it's
21 unforgiving. I have been through many battles. I've fought so many battles, more
22 than 1,000 battles. But some of my friends who perished, more than 25,000 people,
23 people who were abducted, people's children who were abducted from northern
24 Uganda who died, who perished, if you ask how come I managed to survive, how
25 come I'm still alive up to this date? What's the meaning behind this? Why am I

1 special? The wars and the battles that people said Dominic is a brave commander,
2 Dominic is a fierce fighter, Dominic likes fighting, all the battles that I went to, when I
3 went to battle I went with the intention of being killed. I wanted a bullet to shoot me
4 and kill me. Most of the battles I went for, I went with anger, I went with
5 resentment. But for some reason I did not get killed. I was unlucky I did not get
6 killed. Some of my fellow members were killed, but I was unlucky not to get killed,
7 and I was not very happy about that either.

8 My seventh point, all these things resulted in despair in my life. I do not think that
9 all these things that I passed through, all these things that I went through, will ever
10 make my life the same. All the things that I'm talking about, all the things that
11 happened to my fellow children, these things were not easy. You heard different
12 witnesses. You heard many witnesses who came here. There are some people who
13 stayed in the LRA for one year. They came and told you of the experiences, the
14 extremely bad experiences that they went through. Someone who was there for two
15 years comes and explains the experiences that they went through. But how about
16 me? I was in the bush for 27 years. So, please believe me, because I'm also human.
17 I bleed. I was also created by God. Those people were also human.

18 My eighth point, my arrest and detention are because I met Salim Saleh. I heard
19 some witnesses talking about these. I heard this being discussed during the trial, but
20 it seems as if there was no belief in what was being said. When I met Salim Saleh, it
21 was extremely -- things were extremely difficult for me, and at the time I was
22 planning to escape and go back home.

23 At the time that I met Salim Saleh -- but before that, previously, I had made several
24 attempts, I had made several plans to escape. People that I killed, that wasn't
25 the first time that I'd killed people, but I had -- people had been killed or -- for

1 attempting to escape, but all these times that I attempted to escape and did not get
2 killed while other people got killed, it's -- it's a mystery to me. I don't know why
3 that happened. I was injured. My knees were shot and shattered. When I was in
4 the sickbay, I planned to send a commander to meet -- to meet with government
5 soldiers because I wanted to come back home.

6 When we were there, Kony sent a report. He sent a report to Otti Vincent and other
7 commanders to come and find me and arrest me, but I believe that there were
8 two -- two things that happened. One, there was a phone call from civilians saying
9 that I should go and be arrested. Maybe the other one came -- the other message
10 came from the spirits, but there are two things that happened. One of my sisters
11 who was with him, who was his wife, when she heard this she started crying. And
12 secondly, Kony himself said that -- Silindi said that they should not kill any soldier.
13 You know, in the LRA they used to refer to me as Silindi's commander. Those of us
14 who had witnessed miracles, we were referred to as Silindi's soldier, so it was
15 prohibited to kill me. I was taken from the sickbay and taken to where the convoy
16 was. When we kept walking, my feet, my Wellington boots kept filling up with
17 blood. They kept filling up with blood. Every time I walked my shoes filled up
18 with blood. They started calling me, at the time, Salim Saleh's commander. They
19 kept on referring this to me until we went to the battle that -- the battle that happened
20 in Pajule, the battle that they're alleging I'm responsible for. If you had seen me at
21 the time, you would have actually -- it was pitiful. It was a pitiful sight at the time.
22 I was a very pitiful sight.

23 I do not know why he came there. He wanted to -- he came there for his own
24 business purposes. I must stand before you and before God and speak the truth.
25 I am a Christian. My father taught religion. My mother was a saved person, and

1 all this information has been brought out in court. You are aware of it. I am
2 extremely religious. Even in the -- among the detainees, they know me. I'm very
3 religious. They've given me three priests that I meet from time to time and I pray
4 with them. We have discussions about God, and I still do that up to now.
5 It was extremely difficult for me at the time, the meeting with the government
6 soldiers. Well, if you ask yourself at the time, Salim Saleh was my enemy, so maybe
7 I had planned to go and get food. If your enemy plans to kill you, are you supposed
8 to ask them to bring -- can you make plans with your enemy, your enemy who wants
9 to kill you, who is planning to kill you on every occasion that they can to bring you
10 food? Do you think that will happen? If you yourself do not have a plan to leave,
11 do you think that person will do that for you?
12 On the ninth point, some of the things that I've heard and some of the things that I've
13 read, they said that the LRA killed civilians because civilians did not support
14 the LRA.
15 Which civilians in northern Uganda did not provide support to the LRA? Even up
16 to now, as I speak, there are some civilians who told me, "Do not escape." This
17 particular civilian that I'm talking about, he's a cultural leader. There are also some
18 civilians within the government that told me, "Don't come back home." If I die today,
19 if I stay in detention, then this person is also partially responsible for this. If in
20 the future I'm asked to reveal who this person is, I will reveal that person. I know
21 that this person is scared at the moment. This person also came to court and gave
22 testimony. He gave testimony so that I could be convicted and I could be put into
23 prison because he was scared. But, with the help of God, I will inform the Acholi
24 people who this person is.
25 You know, the war in northern Uganda was like a business for some people. Some

1 of these people did not want the war to end. They wanted the war to continue.
2 Let me tell you one thing, people who died, people who died in the bush were crying.
3 They were crying because the supporters prohibited us from going back home. They
4 would shoot us. People would be shot. People would come and they would cry
5 saying, "I'm dying, I'm dying because there are Acholi people out there who are
6 supporting this war."
7 There was something, a lesson, that Kony kept on talking about, about the oboke leaf,
8 which was -- the olwedo leaf which apparently was given to him by the cultural
9 leaders. Apparently, he was told to keep fighting and he told us that this oboke leaf
10 is the cause of our death. This oboke leaf is what is causing us to perish. He would
11 look at us with sadness, and he would tell us that this is what is going to happen.
12 There was a lot of support that civilians were giving. I'm not saying -- not all
13 civilians in northern Uganda. There are some civilians in northern Uganda who
14 were not supporting it, they did not know what was going on. But there were some
15 civilians who were actually supporting this and it resulted in the prolonged and
16 protracted war in northern Uganda.
17 If it wasn't merely because of Kony's Holy Spirit, I think people would have been able
18 to witness this. But one of the things that resulted in this protracted war,
19 Mr President, your Honours, is because of the support that the people were giving.
20 There were some people who would go and train with the LRA, train how to bury
21 landmines, to set up landmines, and these would explode, blow up cars, blow up
22 people. Sometimes LRA would give them guns and they would go and use these
23 particular guns to kill people. They were not happy when the LRA left and went to
24 the DRC. They were not happy when the LRA left and went to the Central African
25 Republic. They were not happy about this.

1 In addition to what I have just said, we will talk about the peace talks. The peace
2 talks that was widely spoken about, we were the ones who were present. We were
3 the ones who wanted the peace talks to happen. Some of these people came with
4 blood on their hands. One of the reasons why I say this is because some of the
5 things that they would say, some of the discussions they had with Kony, Kony would
6 come back and relay that information to us.

7 Even as I speak, the amount of phone calls that are being made to Kony in Congo is
8 indescribable. Even when I had the Thuraya phone, I would receive phone calls.
9 They would tell me, "Please do not accept the peace talks. Continue with the fight."
10 Because I suppose the way they looked at us, we were like chattel, something that
11 could be sold, something that could be traded for whatever purposes they wanted.
12 Some of the people who were in the -- who were on the side of northern Uganda who
13 were doing these particular things were there. Any forgiveness that they are asking,
14 I -- I cannot actually ask everybody in northern Uganda for forgiveness when there
15 were actually other people in northern Uganda who were corrupt, other people in
16 northern Uganda who were encouraging this. How can I ask forgiveness from these
17 people as well? How can I ask forgiveness from everybody? Even how is -- how
18 will God look at that? How will the spirits, the traditional spirits or the cultural
19 spirits see that when they were the ones who were actually encouraging us? These
20 people who made these plans, these people who told Kony to go to the bush, who
21 supported him, and the people who provided us and Kony with extreme support,
22 and Kony himself who abducted me, and me, as I am presently, if you are to ask,
23 among all these people, including myself, who is the worst perpetrator, you will find
24 out that I'm the last on that list because there are other people who did worse things
25 than I did.

1 With respect to escape, in 2002 I probably wouldn't have been here because there
2 were four people who planned to escape. There was Tabuley, there was
3 Opiro Livingstone, there was Okello Lawara and myself, Dominic. Tabuley was my
4 brigade commander. Opiro Livingstone Was the commander of Gilva and Tabuley
5 was in Sinia. Okello Lawara was -- he was from Control Altar, and I was
6 the battalion commander of Oka.

7 When Tabuley initiated this plan saying all the commanders should start contacting
8 each other, Tabuley and Livingstone said, "No, this -- when we are supposed to
9 contact each other, what we need to do is to get together and leave together with
10 some of the Control Altar people that are under the leadership of Okello Lawara."
11 He was a trusted person. There was this person that we contacted, he was
12 a contacted person -- well, a trusted person. He was a cultural leader and they
13 contacted him. Tabuley and Livingstone called this person. The two of us did not
14 say anything. They explained to this person the problems we have, why are we
15 killing our fellow Acholis? Why are we killing fellow Ugandans? And we are
16 fighting a war that has no purpose. How would you advise us?

17 And the person asked us, "My children, what exactly are you looking for? Why do
18 you want to leave the bush? Look at you. You look good. You have wives in
19 the bush. You have countries that are providing you with support. You have
20 countries like Sudan that are providing you with support. You have ammunition,
21 you have armoury, you have guns that can shoot, gunships. You have everything.
22 What exactly do you want? What do you want?"

23 And he said, "Let me give you an example. Do you know what happened to
24 a commander called Kilama Part I? At the time I did not know about -- I did not
25 know anything about Kilama Part I, but at the time when Kilama Part I surrendered,

1 do you know what happened to these people? They went to the president and
2 the president took his gun and said, 'Kilama, so you are unable to fight anymore.' So
3 he took out his pistol and started shooting these people on the heads.
4 Tabuley started crying. But Opiro Livingstone was braver so he said, "Okay. If this
5 is the situation, no problem." He told us, "Go and fight. Go fight and win because I
6 also want to be a minister." Tabuley would not have been able -- Tabuley would not
7 have gone to Tabuley. Tabuley is from Palabek. What was he looking for in Teso?
8 He died in war. Opiro Livingstone also fought and died. He did not go back home.
9 Okello Lawara who is from Pajule also fought and died. He did not go back home.
10 Dominic, me, from Amuru, I fought, but I'm still alive up to today. But -- so you ask
11 yourself, why is it that of all these things Ongwen always survives? What is
12 Ongwen? Is he human or inhuman? So these are some of the questions that need
13 to be asked.

14 So, Mr President, your Honours, this is not -- this is not a small matter. These things,
15 the case that has been brought is extremely grave. Anybody from Uganda who has
16 been -- there is nobody in Uganda who has been charged with such grave matters.
17 There is nobody in this world who has been charged for such a huge amount of
18 counts as I have been charged. If you hear stories about things that happened to me
19 from that time to today, all these things need to be analysed. They need to be deeply
20 analysed.

21 The tenth point, Mr President, your Honours, I did not have any capacity to stop
22 the things that were happening. If God had given me the capacity to stop these
23 things, Kony would not have gone to the bush. If God had given me the power to do
24 these things, to prohibit certain things, the Acholi leaders that Kony is blaming, and
25 those people who supported this war, would not have supported the war.

1 If I was able to, people from northern Uganda, those who died in the bush, those who
2 died at home, would not have died. If I was able to -- to do that, my parents would
3 have not been killed. If I had the capacity, I would have been educated, I would
4 have finished my education and I would have had -- perhaps I would have been
5 helping other people, maybe two or three other people. If I had the opportunity,
6 the Acholi, the Langi, the Teso and the Madi would not have had such complaints as
7 stand today. If I was able to, I would have stopped the spirits. I don't know where
8 are those spirits from, whether they came from heaven, but I would have stopped
9 those spirits from possessing Kony and prohibiting him from committing all these
10 crimes. I would have stopped all these things.

11 Mr President, your Honours, I would have stopped all these things, but because I was
12 not able to, I did not have the capacity, I did not have the strength, all these things
13 happened because I could not stop them. All these things happened in northern
14 Uganda.

15 I'm kind of surprised as well, when I came here, started watching TV and started
16 seeing all the different things that happen around the world, I started actually
17 becoming aware and asking myself why are all these different organisations around
18 the world fighting? I started asking myself these questions. And it's a total
19 surprise for me that the world is such a huge world. It has different systems. All
20 these things, I was not aware of. There are different types of people. There are
21 people who fight for people's human rights, there are people who do all these things.
22 When the war started in northern Uganda, where was the world? Why wasn't
23 the world paying attention? If they had been paying attention, all these would have
24 not happened to me, Dominic Ongwen.

25 Did these rules, the international rules protecting human rights, did they start in 2002

1 or 2005, the years that are being referred to? If rules exist protecting people,
2 protecting everybody's human rights, including I, Dominic Ongwen, as a human,
3 when did these rules, international rules come into effect? I always ask myself this
4 question. Sometimes I talk to myself as a mad person asking myself when did these
5 rules come into effect, but up to now I do not know.

6 I asked myself, people who protect other people, security people, why didn't they
7 protect me, too, so that I could not be abducted? If I had not been abducted, who
8 would have come and stood in front of this Court here today? My abduction, was it
9 God's plan or was it a human plan? I always ask myself these questions, but I do not
10 have any answers to these questions.

11 I came to you, I came to the world and asked the world to heal me. I asked
12 the world to help me. I asked the world to teach me, so I came out, I came out to
13 the world because I had not heard about this. Maybe something to this effect has
14 happened, but if there is anybody who knows that they have committed such
15 numerous crimes, such a person cannot actually come out and surrender to the world.
16 It's not possible.

17 I can give you an example. There are some terrorists like Osama bin Laden and
18 others, have you ever heard of anybody who has surrendered to the world like I did?
19 Do you think Kony will surrender just as I did? Because I know, I know it wasn't my
20 responsibility. I'm not the one who started all this. I was not the one who killed
21 the animals. I was not the person who married these women. The -- I am not
22 the one responsible for killing and finishing the tribe. The responsible person is
23 there.

24 I hear what people -- when people talk about escape, saying Dominic did not want to
25 escape. If I did not want to escape, do you think I would be here right now? Do

1 you think they would be holding a trial against Dominic? Nobody went and
2 captured me, nobody. I came out. I came out personally. I came out myself
3 because I knew that I come with clean hands. My life was also ruined. I came out
4 to the world, asking the world to help me.

5 When I came out, surrendered to the world, the world just snatched me with a rope
6 around my neck. I realised that I started asking myself was it a good thing for me to
7 come out, or would I -- would I have been better off staying in the role, in the bush?
8 Was I born in the bush? But, no, I was born at home. So I thought I should go back
9 home.

10 All these things should not be my responsibility. I came out, came out to the world
11 to ask for help, to ask for support. Right now I'm getting treatment and this
12 treatment is making me into a better human being. Right now I'm able to speak to
13 people. I'm able to speak to people in America, to speak to people in Europe and to
14 speak to people in other parts of the world. I never would have apprehended that
15 this would have happened to me. I never would have thought I would have
16 the opportunity to speak to any white person in this whole world, but today I'm
17 speaking to people. I understand their language. They do also understand my
18 language, which is a miracle.

19 I thank God and I ask -- I ask you to help me. In the future, I could be a better
20 human being. All these things have exhausted me. All these things were on me.
21 They totally exhausted me. If you look -- look at it, I left the bush. In the LRA, life
22 is not good. If I think of the amounts of time that I sat down and laughed, had
23 a very good guttural laugh, it's not possible. Because if you ask yourself how many
24 times was I able to laugh, sometimes I wonder how many times have I been able to
25 laugh properly in this world, but sometimes I sit down and ask myself. But most

1 times I just sit down and keep quiet and people make assumptions that Dominic is
2 a bad person, he's not social, he doesn't talk to people, but I'm always concerned
3 about me. I'm always concerned about what is happening to me personally.
4 I cannot always be happy. It's not possible. Even within the LRA as a commander,
5 that any of those -- the powers that you have as a commander are nothing, because as
6 far as Kony told us, Kony told us that he holds us in his hands. We are his. People
7 in northern Uganda, he holds them in his hands. People in northern Uganda are his.
8 The world is in his hands. Nobody stopped Kony. The government of Uganda did
9 not stop Kony. Kony continued, did whatever he wanted to do. He mistreated us
10 as much as he wanted to do, and he continued till he went to another (inaudible).
11 And, Mr President and your Honours, this is not true, Kony has his own unique
12 character. Even now I stand here and witness that Kony is a person with different
13 character, difficult to understand and very difficult to work with.
14 Kony has the spirits that you have heard were mentioned in this court, like Silindi,
15 Who Are You, Jean Brickey, Bianca, Juma Oris, Debohr, Owora and many other
16 spirits that were mentioned. If Kony is possessed with any of these spirits, he will
17 speak any language that is spoken in this world, any language he will speak. And
18 you might think that his primary level education that he stopped in, you might think
19 that he has had a much higher level of education than that, but it is because of that
20 spirit. I do not know if these spirits were good spirits or bad spirits, but what I see
21 and saw later on that these were bad spirits because the spirits should not make
22 people suffer, the spirit should not leave people with tears. But, in my belief, I
23 confirm that he has the spirits.
24 Indeed, up until now the world is looking for Kony, but they are defeated, how many
25 people have been defeated? Even soldiers from America, soldiers from China all

1 combined to fight Kony. But it is just this one Kony who defeated them are -- still
2 alluded them. So if Kony has defeated them, then what about me, why can't I be
3 helped? Why can't I be taught so that I can regain my life and begin to lead a normal
4 life.

5 So, indeed I am here as a witness for what happened in northern Uganda.

6 Everything that was brought against me, I am a witness before God and before
7 the world. I am a witness to the things that happened in northern Uganda. And
8 the spirits of everyone who died in northern Uganda, as I speak now, they are
9 all -- they have all lined behind me. That is why I have gone through several fights, I
10 came out, I escaped them, I was able to come out and I am still alive. Otherwise, if it
11 was not because of that, as I told you, people who have been killed can have serious
12 impact on your life. So that means these spirits are behind me.

13 In addition to that, your Honours, the kind of things that happened in various
14 households in northern Uganda, in Acholiland, in Lango, in Teso, and in Madi, some
15 parts of Madi, all these problems that happened in these places, it is not that I do not
16 feel remorseful about them, I do feel remorse. I am remorseful about them. As
17 a person, as a human being, I feel about it. It has now happened in some households,
18 they have really suffered in different places. There were camps, there were trading
19 centres in northern Uganda went through these similar problems. In some cases,
20 were very serious, more serious than in other places.

21 So what I can only say now, there is nothing else that I can do, that we can do. We
22 need now to find a way to begin a new life, because the people who have been killed
23 can never come back. The things that have been destroyed can never come back,
24 including my own family also went through this same problem. The way my
25 parents were killed, as I learnt later on, was not -- was brutal. My other siblings who

1 followed me, one was still suckling, their parents were killed right in front of them as
2 they were seeing. Until now, as I speak, those, my siblings are not mentally okay.
3 They have never got any treatment. But at least for me here, I'm better because I
4 have got treatment. I believe if I had gone back home straight, by now I would be
5 a madman. But luckily I am here, I was able to get this treatment which I'm very
6 happy about. But those people back home do not have this same treatment, because
7 they saw their parents killed right in front of them. And one of my young sibling
8 was still a toddler who was breast-feeding and his parents were killed.
9 So how can I be happy for all these things that happened in northern Uganda? I am
10 not happy about it.
11 Now, one of my brother that at least was caretaking home, was taking responsibility
12 at home, just last month he committed suicide. And I also believe that that's part of
13 the effect of what he went through.
14 So what kind of happiness do I get about what happened, even if some people say
15 that I am happy about what happened or whatever they say, that I do not want to
16 apologise? When I returned, I apologised, asked -- I asked for forgiveness about
17 what happened in northern Uganda. If you are someone who has killed someone, if
18 you killed someone, if you were forced to kill someone, how can you fail to ask for
19 forgiveness? I asked for forgiveness for people that I was ordered to kill. I asked
20 for forgiveness for people that I was given to be my wife and I gave birth to. Those
21 are the peoples that I ask for forgiveness for. But I cannot ask for forgiveness for
22 the things that were brought against me, because I was not asked one by one on
23 the issues that were brought against me.
24 I cannot say that because the world is looking at me, the issues, the world court is
25 looking at me, so I cannot accept things under fear. I cannot accept under fear and I

1 stand before God that I am speaking the truth. I have to speak the truth.

2 And for some of the issues that were brought, if the world would accept, for example,

3 if according to the Acholi tradition, if there is tension between two sides, if you think

4 there is something that has to be done, they would actually say if you are not

5 accepting, then you have to jump over, go through a traditional process to really

6 confirm whether you have done that thing or not.

7 So I really do confirm that of the issues that were brought against me, let's bring

8 soldiers who have been trained in target shooting and then we look and we -- they

9 put them, people who have been accused and we tie these people on the pole and

10 then we put them on firing squad and we see how many would be -- the bullets will

11 shoot at. If you look at me, I might be -- I might escape because I will not get that

12 bullet shot at me. That means it will show that it was not me who planned.

13 For example, the Pajule camp that has been mentioned here, that time I was in

14 a serious condition, I was walking with a limp, my condition was very serious. If

15 really people are serious, if people are not using other people's blood for whatever

16 purpose they want, the issue of Pajule should not be brought on me. It is someone

17 from Pajule who called Otti that, "My brother, where are you? I heard that you are

18 in to the north of Pajule, you come, I know you have some good soldiers. We know

19 that there are some good girls who are here celebrating Uhuru." And this person

20 told Otti that, "You know, we know that there are soldiers, but you come. But when

21 you come, you should remember about me." And Otti responded and said, "No

22 problem, I am aware of that. I will come."

23 It was that person from Pajule who called LRA. LRA was not even interested to go

24 to Pajule and God -- I speak the truth, that God knows that I am speaking the truth.

25 Some of my lawyers actually also got some rumours of what happened, but no one

1 wants to come up with this information, with this detail. So myself, I was not even
2 prepared to come and point a finger on someone. But since the Court has now
3 followed me, since the world has now followed me, yes, I am also going to unearth
4 them, I will pinpoint them out. What will the people do to those people? You,
5 the person who called and people were killed, your people were killed, what will
6 the community do? What will the world do? Will these people be taken to the
7 courts? Will they be tried? Will they be forgiven?
8 These questions I ask myself. And later on the dawn will come and the Acholi
9 people will understand. If you allow me to tell this person, to mention out this name,
10 I will do that. But if you do not allow me or if you don't want, yes, I will leave it.
11 So, for that case I should not be held as a scapegoat.
12 And if you ask yourself, all the commanders of the LRA at that time, the brigade
13 commanders like the one of Trinkle, all these commanders are there. And myself,
14 I was a prisoner from a sickbay, I was a sick person. I'm also here. I was actually
15 there in that meeting. I was under control, I was under protection because I was
16 being referred to as Salim Saleh's commander. So what kind of power would I have
17 to jump the rank? Because my rank at that time, I was only a major. But there were
18 generals, there were brigade generals, there were major generals, there were colonels,
19 there were lieutenant colonels. How many of them were there at that time? I didn't
20 have any position at the time. So if you ask yourself, all of these commanders and
21 the person who called the LRA and Joseph Kony and myself, Dominic Ongwen, of all
22 these people, who killed people in Pajule? If you ask yourself.
23 So, Mr President and your Honours, I am telling you this, but this is not a simple
24 issue, it's a big issue. But if it was something that indeed you see and know that you
25 did it, yes, then you can carry the burden, but, if not, then the burden becomes too

1 heavy that sometimes you can just fall down and collapse.
2 The other issue is the anger of Joseph Kony on his own tribes mates.
3 First of all, Kony said that he is not happy about his own tribes mates, the Odek
4 people, because the people of Odek are the ones who gave him the go-ahead to go to
5 the bush. He went to the bush with all these people until when other Acholi elders
6 blessed him and gave him the olwedo leaves as the sign of blessing, and then later on
7 it is the people of Odek who turned against his own people, his own family. So, for
8 him, he is going to wash his hands and, once he has washed his hands, he will give
9 that cup in which he washed his hand, he will give that cup to a commander called
10 Ben Acellam.
11 At that time, indeed I was not in Uganda -- I was not in Sudan, I was in Uganda, but
12 what I'm telling you now is what I heard, I was told. So at that time Kony appointed
13 Ben Acellam from Control Altar to come to Sinia brigade as battalion commander of
14 Oka. And with that appointment, he would begin that appointment with operation
15 against the people of Odek. That is what happened, because Kony was angry about
16 his own tribes mate. And that is what happened. Ben Acellam was the one who
17 went and laid that attack. And even some witnesses mentioned this here. But it
18 was not that myself Ongwen who sat on a chair and planned that go and do this, go
19 and do this, go and do that.
20 There is one problem which I have now realised that is about communication.
21 Because in LRA, whatever happens, even if it is your soldiers who conducted that
22 operation, it has to be you to send. Even if the command came from Kony, it has to
23 be you to send. Kony mentioned very clearly that he is going to, to swap all his
24 commanders who are back at home because he has now learnt that most of his
25 commanders want to -- to leave him. So, indeed, that is what happened.

1 In addition to that, my request to you, Mr President and your Honours, my request to
2 you is one, if you mind about the sufferings that I have explained to you. All these
3 things that I am telling you are just summaries, brief, because there is not a lot of time.
4 If you are mindful about the sufferings that I have gone through, then you should not
5 take this judgment, this sentencing with a lot of anger. I request you, I appeal to you
6 that you should also be mindful of the sufferings I went through. I know that you
7 have heard a lot of evidence before this Court, but of what happened I am also
8 remorseful. I feel bad for the things that have happened. The things that happened
9 on me, on my family were also grievous things. But there is no difference.
10 I was -- I'm a person, my parents were also humans. Those other victims that those
11 things happened to them are also humans. So we all went through the same
12 grievous harm. So if indeed you mind about my suffering that I went through, then
13 please look at it because I also want to become free and lead a free life.
14 Since the LRA abducted me 27 years ago, I was already in jail. Then I came here six
15 month -- six years and three months, I am still in jail. Now, if you add all these years,
16 almost 36 years I am still in jail. Now if you add another more years, then that will
17 be beyond, it will not be proportionate to the kind of suffering. Even if God -- even
18 God would not give this kind of punishment. So my request, my appeal to you.
19 And in addition to that, I am happy, I am free with about a hundred steps, because
20 since I left the LRA I feel I have left the jail, the prison, since I left the LRA. I feel I
21 have left jail. Even now here I don't feel -- I don't feel like I am in -- in prison. But
22 when I was in LRA, that was the real prison, that was the real prison, the real jail and
23 a very difficult one. But at least I am happy I'm here, more free, a hundred times
24 more free if I compare my life now with the life in the LRA. There is no jail in
25 the world which is tougher than that of LRA. You've heard from the evidence here,

1 from the witnesses, there is no happiness in the LRA, then what about me,
2 Dominic Ongwen, as a normal human being? Means that -- going through all this
3 jail means that I am not happy about what happened. If I compare myself with other
4 people, some people stayed for a short time and they came out. For them, I think
5 they were lucky to get that -- to get out earlier. So my request to you is that
6 precisely.

7 To add on to that, in my own observation, there were no detailed discussions on this
8 issue, or if it was there, then I would request that more detailed analysis of these
9 issues should be done. Why did it start? How did it go? Which ways did it take?
10 Why has it reached to the stage it has reached?

11 I -- this should have been analysed in detail. And in my own -- if it were for my own
12 accord, this case would have gone for even 10 years so that every issue which has
13 been raised here could be analysed, could be understood. I would be happy, I
14 would be happy that even if this case had taken ten years so that -- but as long as
15 people have been brought to discuss and analyse this in detail, people should be
16 brought from LRA and people should be brought from Teso, from Lango, from
17 Acholi, from Madi, former LRA would have come here so that detailed
18 understanding of what happened would be given to you, you would understand
19 more details of what happened. And although it is now coming to end, but this
20 would be the best things that would have been done.

21 On the issue -- on the issue of amnesty, which has been talked about, this amnesty
22 was not just about only LRA in the bush, because the government is not stupid,
23 the government is aware of what was happening in northern Uganda. That is why
24 they refer to as blanket amnesty, not just for LRA only.

25 For example, I told you that some people were doing dirty work, they were doing

1 underhand work even more than the LRA who were in the bush, so the -- the amnesty
2 which was given, was it also given to everyone, including the civilians who were
3 collaborators, apart from myself as Dominic? I am the only one who was not given
4 amnesty. Why? Why? Maybe they wanted that this -- the real truth should come
5 out. Maybe that's what God wanted, that the real truth should come out.
6 So, myself, since I have now come to you, to the world, I am like a messenger who has
7 been sent to come and tell the truth about Kony and other issues that are at hand, but
8 the issues about Kony is too heavy, too much. If I am to narrate, it cannot -- I cannot
9 finish. It probably needs a book to be published. I can do that and some people can
10 read about Kony and what happened in northern Uganda. That's what I can offer to
11 do.

12 Now, when I return to the issue of having wives in the bush, for example, the issue of
13 Witness P-0226, this person was a person that I myself rescued from a commander
14 called Abudala. The wife of this commander would mistreat this person. Then I
15 ordered that that person should be taken away from that commander. I took that
16 person. I took care of her. She would not carry any load. She stayed until
17 the time of the operation Iron Fist. We went to Uganda and this person stayed all
18 along. All along I stay, she would tell me, "Teacher, this issue of *ting ting*, forget
19 about it. From today onwards I am no longer a *ting ting*." She would be telling, she
20 would always be talking about it, she would be talking about it. So she stayed until
21 at some point when the -- there was a fight and she was shot. When she was shot,
22 the government rescued her and she was taken back home. So, in my own thinking,
23 maybe it was because she was not happy, that's why she probably thought that she
24 should come and talk about it, because I denied her or rejected her at that time.
25 Then Witness P-236 -- as for Witness P-236, this person, it was not me who abducted

1 her. She had escaped from a commander called Buk Abudema. Because in
2 the LRA the rule is that you should take care of the wife or the person assigned to you.
3 If you are not taking care of that person, that person can be taken away from you. So
4 this person left Commander Buk and came to me, told me that "I do not want to go
5 back to this other person, I want to stay with you". So this person, I also helped her
6 when she was going to be killed while she was in Congo. I saved her life when she
7 was going to be killed.

8 Then P-99. That person, she was the one who chose me, selected me. She was
9 a *ting ting* in Kony's household. Kony wanted to turn her to be his wife, but she
10 refused. So you look at this. If Kony, as ruthless as he is, even a wife, a wife can
11 actually refuse him, then this person refused, rejected him, rejected his advance.

12 Then Kony asked him, of all the officers that you see here, my officers, who do you
13 want? This person chose me, that "I want Dominic". I do not know why this
14 person chose me.

15 Then Witness P-235, this person also chose me, that you -- she wants to stay with me.
16 Regarding P-101, for her, she did not choose me, but Kony ordered Commander Buk,
17 and Buk gave her to me. I did not abduct her. She did not choose me. That is not
18 how it was.

19 So, all these people whom I lived with them, I took care of them, and they gave
20 evidence here. Even those people know, if I don't take care of them -- rather, if I did
21 not take care of them, why are they waiting for me now if I was as bad as portrayed?
22 There are so many men in Uganda, I am not the only one in Uganda. Why can't they
23 get other men? Why are they waiting for me since they have been made to paint me
24 as a bad person? That means I took care of them. I was not violent to them. I did
25 not subject them to foster sex or sexual slavery like it has been said because that is not

1 there in the LRA. It is true the LRA abducts women and takes to the bush. There
2 are also rules that regard the way women are given in the LRA. You should also
3 woo the woman even if you are given. They accepted to live with me. I took care
4 of them. Some of them were witnesses here, but they came to see me in The Hague,
5 here. First, she wrote a letter expressing her unhappiness. I don't know whether
6 the Court saw that letter. She was expressing how she was -- she was expressing
7 how she was sad and thinks that I have now refused her since she was forced to give
8 testimony pinning him.

9 We -- when she came she told me that they took photos of very nice houses in Gulu
10 and told them that "If you give evidence against Dominic, you will be given these
11 houses and you will live a very good life. Even if Dominic does not come back, don't
12 worry, this will be your property. Don't worry about him. Your children will be
13 well taken care of. These houses will have been bought for you and you should
14 forget about Dominic."

15 But they did not see anything coming. She apologised to me and told me that she
16 was deceived to give testimony and it was not right to be deceived. It was also not
17 right for them to speak the way they spoke, because they know that I took care of
18 them.

19 That made me to conclude that all the witnesses who came did not give true evidence,
20 because you take an oath in the court. That means some of them were giving
21 evidence with the hope of benefiting after giving his testimony in the court.

22 That is happening to many people in northern Uganda as well. They have no idea
23 that everything you say, God is involved. As humans, sometimes only 80 per cent
24 trusts God. The few percentage of people who trust God, I'm among them, and
25 I believe in God. I saw what God did to me. I went through a difficult time, a lot of

1 miraculous things happened to me. I was actually attacked by six lions, but I
2 survived. I talked to the lions and the lions did not harm me, and I give thanks to
3 God for what happened.

4 If I was bad, those people could not be taking for me now. Some people actually
5 were already there with new men, but when they heard that I was out of the bush,
6 they separated with the men whom they were living with. If I was that bad, why do
7 you separate with your current husband waiting for Dominic?

8 That means that I treated them well, not the way people are saying.

9 PRESIDING JUDGE SCHMITT: [11:07:26] I think it would be time for a break, or
10 would you want it to finish relatively soon? You have the time you want to have,
11 that is clear, but ...

12 MR ONGWEN: [11:07:43](Interpretation) I can actually finish, but since it is
13 required that we go for a break, we can go for a break.

14 PRESIDING JUDGE SCHMITT: [11:07:52] No, I think we have a couple of minutes
15 more. You may finish if you think you can finish in a couple of minutes. But
16 I don't want to interrupt you and to stop you. You have the time to speak, to say
17 what you want to say.

18 MR ONGWEN: [11:08:04] (Speaks English) Okay. Thank you.

19 PRESIDING JUDGE SCHMITT: [11:08:05] Then please continue.

20 MR ONGWEN: [11:08:13] (Interpretation) In addition to what I have said,
21 Mr President and your Honours, on my own, I think God forgot me somehow. It
22 seems I should have been born in a different planet, not in this planet. This planet is
23 full of bad things, killings, lies, killings, politics, poverty. It seems I was not created
24 for this planet. God must have forgotten. I am seeing a lot of things happening,
25 and so much is going on in the world. I believe that I should have been in a different

1 planet, but God really put me in this planet. That is why a lot of things has been
2 happening to me, and I'm being blamed for whatever is going on. I am like the blind
3 man in the community, or a deaf person in the community because those people are
4 mistreated in the community. They can make you stand on black hands if you are
5 blind. They want you to be beaten by the hands. Since I am not seeing, I am not
6 listening, I do not know what is going on.

7 So it appears that the proceeding on me is like a proceeding on a mad person,
8 a proceeding on a baby, or a proceeding on somebody who is nonexistent or a dead
9 person because I am almost like a dead person. I have been living like a dead person.
10 I just started coming to life when I came here.

11 Another thing is that Kony was trying his level best that they should start a new
12 Acholi. That is why Kony was abducting women and girls, and also some men,
13 because he wants to start a new Acholi since he plans to finish the old Acholi. Kony
14 abducted girls and women and started teaching them a different language, like that
15 the language came from heaven from the angels, but the language is very difficult.
16 The only name I captured in that language is the brigade name. The names of the
17 brigades that you've been hearing in this courtroom doesn't exist in any language in
18 the world.

19 I know the meaning of these names, according to the language which has -- which
20 was taught to us, all the name of the divisions, I know what they mean. Kony tried
21 his level best to start a new race. Even if he is alone in that race, he would start that
22 race alone. Indeed, Kony has children, close to 380 to 400 children. That is what I
23 know about Kony.

24 Mr President and your Honours, I am begging you. My suffering has made by
25 drunk as if I took marijuana mixed with the liquor. Most times I am unconscious. I

1 have lost sleep. I don't know if people in the detention centre write their reports and
2 you read. I do not sleep. I cannot distinguish between day and night because I am
3 awake throughout. Sometimes I just take a nap of 30 minutes and that's enough for
4 the day. Sometimes I sleep for 15 minutes and that is enough for the day. What
5 brings that? Is it a health complication? Is it suffering? I believe it is intense
6 suffering which I have gone through. It is as if I am high on marijuana and alcohol.
7 Every time I get hallucinations, I hear gunshots, I hear people talking, I see dead
8 bodies, people I killed, people I slaughtered, soldiers whom I shot. The image is
9 stuck on my mind. I believe that image will not go anywhere until my death.
10 I am about to finish my speech. I have one thing that I need to respond to what I
11 heard yesterday. I heard Manoba speak about message from victims, that that
12 person is a chief head of a clan, the issue of the clan or tribe. He said that if
13 the Lamogi people or the Amoro people are supposed to pay for the crimes which
14 have been committed, will the people of Lamogi manage to pay? Mr President and
15 your Honours, do not involve my clan in this because Kony, who started this war,
16 people are talking about Kony, not his clan. For this matter, I think this is instigation
17 of a war between clans and tribes like Acholi and Lango. We cannot involve the clan
18 because people are living together, people are teaching the young children to know
19 the good life, and I'm saying that whatever was said can instigate a war among clans.
20 The way I see it, indeed things happened in northern Uganda, the entire northern
21 Uganda up to South Sudan and to Congo and now to Central Africa Republic. Even
22 in Central African Republic it went up to Darfur and up to Chad. Other people went
23 up to Cameroon, up to Nigeria. If we are to say compensation, they will ask where
24 is Kony from. They will say Kony is from Africa. He's from East Africa. He's
25 a Ugandan. In Uganda he is from the north. In the north which tribe is he? He is

1 a Luo. And in the -- among the Luo, which Luo community does he come from?
2 He comes from Acholi. And they will ask which clan does he come from. And
3 then they will say he is from Palaro of Odek.
4 So if they say that the people of Odek should pay for all the harm on the children of
5 Uganda and to the different countries I have mentioned, how will they respond to it?
6 How will people take it? How will they also feel? Because it is the people of Odek
7 who abducted me and they are the ones who made me to slaughter a human being.
8 That's why I'm even feeling the way I'm feeling now. How will they respond to that?
9 I know I am not well educated, but I think that is not a statement of a leader.
10 The person who's -- who talked about the clan is not a statement from a leader.
11 Indeed, things have happened in northern Uganda. People who have died are not
12 coming back. People who have lost their lives are not coming back any more. We
13 should look for a way of improving lives instead.
14 Your Honour, the way I think, that statement is not good. If we start the issue of
15 compensation, they should leave it. They should not involve the clan in it. Clans
16 are not involved. The people of Amoro are not involved. The people of Lamogi are
17 not involved. The people of Coorom are not involved. And my family is not
18 involved, my children are not involved in this, my wives, my brothers are not
19 involved in this case. This is my case. This is a case of Kony, which has been -- for
20 which I have been blamed.
21 I am also begging the people of Uganda and the people of northern Uganda, they
22 should now make me become a son of Odek because people are forgetting where
23 the real issue is. Whatever Kony has done has now been blamed on me.
24 If they accept now, let them change my clan and they say I am Joseph Kony. I am
25 not Dominic. For me, I am now from Odek. It looks like people have forgotten

1 about me.

2 Lastly, Mr President and your Honours, the issue of rehabilitating life -- rather,
3 the issue of saving people's lives. I saved so many lives. It's not like people would
4 say that I saved only a few lives or selected people. If we are to look at the total
5 number of people whose lives I saved, it is well over 400 people. There are so many
6 examples.

7 When we were in Congo during the peace talks, when Kony ordered that those who
8 came as delegates of the peace talks should all be killed, there were well over 250
9 people, including UN representatives, chiefs and members of parliament from
10 Uganda, Acholi chiefs, Lango chiefs, Teso chiefs, Madi chiefs, and chiefs from
11 Bunyoro were also there, including government officials and representatives. There
12 were people who were mediating the talks from South Sudan. Kony ordered that all
13 of them should be killed. At that time, I felt like I was mad. That is why they say
14 that Dominic sometimes refuses what Kony orders. I refused in Congo. And if this
15 allegation was about what happened in Congo, I would accept. I accepted that Kony
16 can kill me. That is when I heard Kony talk about trauma at that time. Kony and
17 Odhiambo, together with Buk and his chief security called Otto Agweng, they
18 planned and Otto Agweng was ordered. Luckily, I already had some power. I was
19 the chief operation commander in Congo. When they told me that, "This is the order.
20 These people should not go back, they should all be killed", I started asking them, I
21 asked them, "Are you aware you are the one who invited the world for peace talks?
22 If you kill all these people, how shall we be labelled? Won't we be labelled terrorists?
23 Some of you are older, you went to school, you grew up with your parents, you know
24 the law better than me." Then one of the commanders called Bok became rude and
25 starting shouting, calling me a child, saying that they're the ones who carried me as

1 a child when we were crossing rivers, and you are the one now violating Kony's
2 orders that these people should be killed. What will they help you with? All these
3 are government representatives, even Ayena who is here, would have been dead
4 because he was among those ones who were supposed to be killed.

5 I started knowing Ayena from there that he was a lawyer. At that time I thought
6 Ayena was the only lawyer in the world, but when I came here I found there are so
7 many lawyers in the world. I actually thought Ayena was the only lawyer in
8 the world. I discovered that there are so many lawyers.

9 At that time I told him, "You start by killing me." And when other commanders saw
10 what I was saying, people became divided and some commanders were on my side.
11 Kony saw that it was becoming difficult. He -- he was afraid. Then he said, "Okay,
12 you leave it now." That is why he was saying that Silindi is for Dominic, not for me,
13 Kony. The people of Acholi know that thing. When they came to visit me here in
14 The Hague, they asked me about that issue and I told them what happened. If you
15 ask yourself, didn't I save over 250 people? I did save their lives. I struggled.

16 You cannot say that Dominic is a really bad person. Even if I am feeling sickly, I
17 have intentions to save people's lives always. I think about people's lives also, and I
18 spare their lives.

19 The problem is that, Mr President and your Honours, with due respect, I did not get
20 any training in the bush while I was growing up. As a child, when you are growing
21 up, you are supposed to be trained, whatever you learn gets stuck in your head. I
22 grew up knowing that Kony was my life and there was no one more powerful than
23 Kony in this world. My entire life I grew up with Kony and he was then training me
24 how to cross the water body. I'm not even sure I was nine already at the time
25 because I was even being carried to cross the river. Kony was the one carrying me

1 himself. Kony is actually a very good swimmer. Sometimes you see him
2 swimming across a big river as if he is just walking. He was the one who would
3 carry me to cross the river.
4 I was not taught about human rights law or respecting human rights. I did not get
5 any training. I am begging the world, the international community to train me. If
6 I am rehabilitated, I can become a good person and I can become someone who
7 advocates for human rights. You might see me on TV advocating for human rights.
8 Help me and rehabilitate me, train me. I wasn't trained.
9 Indeed I know how to use a weapon, I know how to fight, but that is the only thing
10 that I was trained.
11 I don't have much to say. Thank you very much, Mr President and your Honours.
12 Thank you for giving me the opportunity to speak and address the world so that
13 the world can listen to me, can hear what I have to say -- to say. I thank the world
14 for bringing me here. I am grateful that I am before this Court as a witness for
15 the international community. I have been in detention, but I feel that I am almost
16 a hundred steps towards freedom. God bless you all. Thank you.
17 PRESIDING JUDGE SCHMITT: [11:26:54] Thank you.
18 We will have now a break until 12. I would ask Defence, Mr Ayena, Mr Obhof, to
19 think about, during the break, if you can adjust what you want to say. It's up to you.
20 I will not -- I will not limit you, but Mr Ongwen has told us a lot of things. You can
21 discuss this amongst you.
22 Break until 12.
23 THE COURT USHER: [11:27:22] All rise.
24 (Recess taken at 11.27 a.m.)
25 (Upon resuming in open session at 12.02 p.m.)

1 THE COURT USHER: [12:02:11] All rise.

2 Please be seated.

3 PRESIDING JUDGE SCHMITT: [12:02:37] I understand that Mr Obhof is now going
4 to speak, is this correct?

5 MR OBHOF: [12:02:44] Thank you, your Honour.

6 Good afternoon.

7 For the Court record too, Ms Morganne Ashley is in the courtroom with the Defence.

8 Your Honours, I shall briefly discuss a specific issue that we take with the victims'

9 joint submission on sentence and the submissions given yesterday by the Legal

10 Representatives. As the Defence was instructed to respond to these arguments

11 during the oral pleadings, the Defence waited until now to raise this objection.

12 Your Honours, on 4 February 2021, this Chamber ordered the parties and participants

13 to submit evidence for sentencing by 26 February. The Defence was the only party

14 or participant to request such submissions. And in document 1780 of the Court

15 record, the Common Legal Representative for Victims specifically notified the

16 Chamber that she would not be introducing additional evidence.

17 The Defence spent three weeks during this pandemic trying to meet with potential

18 witnesses for sentencing, and it submitted 18 items into evidence. Following that,

19 the Defence then had to get all of these statements notarised, pursuant to the Rules of

20 Procedure and Evidence. The Defence worked tirelessly these past two months to

21 protect its client's rights and abide by the Chamber's orders.

22 Needless to say, the Defence was dismayed and perplexed as to paragraphs 99 to 115

23 of the victims' joint submission on sentencing. These 17 paragraphs are rife with

24 testimonial statements, statements which do not have citations to submitted evidence

25 to this Court. As an example, paragraphs 105 and 110 are nothing but long

1 quotations of testimonial evidence.

2 Your Honour, through these submissions and through their submissions yesterday,
3 they are submitting testimonial evidence from the bar. And, your Honours, with
4 respect, this cannot be allowed. These submissions should have been signed,
5 requested to the Court, and certified through one of the mechanisms in the Rules of
6 Procedure and Evidence.

7 Through these oral submissions, the Defence requests the Chamber to expunge from
8 the record the testimonial evidence found in paragraphs 99 to 115 of the victims' joint
9 submissions on sentencing, including the testimonial evidences in the footnotes, and
10 those contained yesterday within their respective submissions.

11 On a different topic, we wish to respond to some arguments made yesterday. We're
12 responding to the family situation of Mr Ongwen discussed yesterday by
13 the Prosecution. The Defence's arguments withinside of its brief have shown that
14 Mr Ongwen and his children want to be in each other's lives, and that the mother of
15 these children want Mr Ongwen in the child's -- in their children's lives. This
16 Chamber knows the extent that the Defence, the Prosecution, the Registry and even
17 the Common Legal Representative for the Victims went through to see that
18 Mr Ongwen maintains a relationship with his children. Mr Ongwen made
19 supervised -- made his first supervised phone call with his children in December of
20 2016 and proceeded therein. These calls encompassed between 15 to 16 children in
21 total and children from five different women.

22 Your Honours, I'm going to quickly read out some stuff for the record that these calls
23 encompassed. That, your Honours, in 2017 Mr Ongwen made two supervised calls
24 in April, one in May, June, July, August, September, October and December. In 2018
25 Mr Ongwen made supervised calls in March, April, June, July, September, October,

1 November and December. In 2019 he made supervised calls in February, March,
2 April, May, June, July, August, September, October, November and December. Now,
3 the pandemic caused the cessation of these phone calls. The Defence currently is in
4 the midst of ex parte litigation with the Registry to make these supervised phone calls
5 into supervised video calls, now that people can safely travel within Uganda. Again,
6 we make these submissions to combat assertions implied by the Office of the
7 Prosecutor yesterday that Mr Ongwen's family situation should not be taken into
8 account. And considering my submissions just a few minutes ago, we realise that
9 this is not in evidence, the exact months of the phone calls. But the Defence asks
10 the Chamber for its indulgence since the Defence could not have predicted
11 the Prosecution's statements yesterday, especially considering the many parties,
12 which include the Office of the Prosecutor, who took part in this process to allow
13 Mr Ongwen to speak to his children.

14 And finally from me, your Honours, we heard the victims talk about what their
15 clients discussed and what their clients, the general feelings on sentencing.

16 Now, after I was hired I was sent down to northern Uganda, and I lived there for
17 the better part of 11 months. And for those first eight months nobody knew what I
18 did, except for the witnesses with whom I met. In January of 2016 I flew up here,
19 was part of the confirmation process and my face became plastered all over
20 the television. Suddenly everybody in northern Uganda knew what I did. When I
21 returned, just before the presidential elections in February of 2016 - and I've told this
22 story a dozen times or hundreds of times, but I will give the censored
23 version - the persons with whom I met that day, I received two hugs, I received 11
24 thank yous and one F-you. And during my 11 months and the preceding three years
25 of spending about four months a year in northern Uganda, this tends to be the general

1 consensus, whether people are upset with what Mr Ongwen did. These are
2 the people that I see. Not necessarily the people from Lukodi or Pajule, but
3 the population as a whole, between 80 to 90 per cent of the people, now that there is
4 a conviction especially, say that they would like Mr Ongwen to return and return
5 back home and be treated like the many thousands of other persons who escaped and
6 received amnesty. And they don't want him treated like the tens of thousands of
7 people who died in captivity in the LRA.

8 Thank you, your Honour, I shall turn the floor over to our counsel,
9 Mr Ayena Odongo.

10 PRESIDING JUDGE SCHMITT: [12:12:07] Thank you, Mr Obhof.
11 Mr Ayena.

12 MR AYENA ODONGO: [12:12:24] Mr President and your Honours, I'm highly
13 indebted to you for this opportunity to have a last say in these proceedings.

14 Mr President, my role has been substantially lessened by the compelling statement
15 that came from the horse's mouth himself.

16 Mr President, that is the kind of person the victims' counsel jointly thinks should be
17 sacrificed, almost terminally, at the altar of the wrongs of the LRA as a whole and of
18 Kony in particular.

19 But, Mr President and your Honours, before I begin my formal presentation, at the
20 risk of being misunderstood for trying to relitigate what was already -- what has
21 already been covered by the -- covered in the judgment, permit me, Mr President and
22 your Honours, to reiterate and reaffirm and put on record our apprehension - and my
23 co-counsel Chief Charles Taku and Beth Lyons and other members of my team - of
24 and complaint about the persistent fair trial violations which has characterised
25 the proceedings before this Court against our client.

1 We take particular exception that the same violations have now seemingly
2 overlapped into these sentencing proceedings. We deem that our client's rights as
3 a mentally disabled defendant to have the 1077-page judgment translated to him into
4 a language he fully understands and speaks - that is Acholi - was seriously violated
5 when his request was rejected. Together with the rejection of his request for
6 provision of extra time to enable him to read and comprehend the judgment in order
7 for him to assist his counsel to prepare for the sentencing hearing, given that he is
8 a mentally disabled defendant, was clearly prejudicial to Mr Ongwen. These are
9 violations of his fair trial rights under Article 67 of the Rome Statute. This is just for
10 the record, Mr President and your Honours.

11 Mr President and your Honours, at this early juncture of the introductory part of my
12 presentation, I must take a pause and raise a red flag about a fatally serious flaw in
13 the joint victims' brief, which unfortunately seems to have set the tone for their
14 arguments yesterday. I'm doing this so that the Chamber appreciates the tone of my
15 presentation.

16 On the other hand, Mr President, based on their submission on aggravating
17 circumstances, Prosecution recommends that all circumstances taken into account,
18 Dominic Ongwen should be sentenced to serve a prison sentence of 20 years. This
19 recommendation is based on their argument that, whereas they find no serious
20 mitigating factors in favour of Mr Ongwen, there are serious aggravating factors to
21 condemn him to 20 years in prison. The Defence thinks otherwise, for the following
22 reasons:

23 Even with the minimal concession but -- by the Prosecution giving their reasons for it,
24 counsel for victims have come down -- have come down heavy on the Prosecution.
25 They are recommending life imprisonment, completely oblivious of the personal

1 circumstances of Mr Ongwen, well recognised by both the Chamber and
2 the Prosecution.

3 On our part, Mr President and your Honours, we submit that taking into account
4 the extremely unusual individual circumstances of Mr Ongwen, both during
5 the charged period, even before and now, we are of the view that Mr Ongwen has
6 outlived his hospitality in captivity. He should be immediately released. If he
7 must be given any prison sentence, your Honours, we humbly submit that it must be
8 one that, after due deductions of his -- of time served in prison, shall afford him
9 immediate release.

10 The Defence presentation shall now -- it shall not have a fundamental departure from
11 the Defence sentencing brief already filed in Court. Therefore, we shall just
12 highlight areas that need particular clarity and, of course, we shall also respond to
13 the submissions of the Prosecution and the joint counsel for victims, much as my
14 colleague, Mr Obhof, has already made some allusions to them.

15 Mr Ongwen, like the Prosecution and victims, has now been asked under provisions
16 of Article 76(2) to be heard on additional evidence or submissions relevant to
17 the sentence in accordance with the Rules of Procedure and Evidence. That is why,
18 Mr President and your Honours, these proceedings under Rule 143 of the Rules of
19 Procedure and Evidence has been convened, pursuant to Article 76(2) -- oh, I have
20 already mentioned that. Well, "Pursuant to article 76, paragraphs 2 and 3, for
21 the purpose of holding a further hearing on matters related to sentence".

22 Mr President and your Honours, among the evidence Mr Ongwen wishes to be heard
23 on his evidence -- I mean, in his mitigation, is the evidence of his good character.
24 His good conduct, testified to by those who knew him under the hard bush
25 conditions, should now be given its due weight and consideration at this -- I mean, as

1 his individual circumstances.

2 Mr President, apart from the clear provisions of the Statute and Rules of Procedure
3 which were elaborately covered in our Defence sentencing brief, and over which there
4 seem to be no serious disagreements, the Defence proposes to start with highlighting
5 some principles that should guide your consideration for sentencing. We shall also
6 discuss some matters of the interpretation of the provisions -- of the relevant
7 provisions of the Statute and Rules of Procedure and Evidence.

8 Mr President, what Court should consider when balancing between mitigating and
9 aggravating circumstances shall be discussed in the course of our submission. We
10 can only repeat what has already been stated by the Prosecution and the joint victims
11 that chambers of this Court have already determined that the primary purpose of
12 sentencing at the ICC are retribution and deterrence. That the person was
13 convicted -- as an example -- there is some mishap here.

14 It is a clear principle, your Honours, that conduct after the offence must not be taken
15 into account for its own sake. It must be for a factor -- I mean, for a factor to be
16 considered as aggravating circumstance or factor, there must be a sufficiently
17 proximate link between the factor and the crime or crimes that form the basis of the
18 conviction.

19 As an example, the crime of conscription and enlistment of children under the age of
20 15 and using them to actively participate in hostilities - that is under Article 8(2)(e)(vi)
21 of the Statute - for which Mr Ongwen was convicted, the fact that the victims were
22 under 15 cannot, as such, be considered an aggravating circumstance.

23 Further, the Appeals Chamber stated, if a Trial Chamber wishes to relay on facts in
24 aggravation that could not reasonably be expect by the person, it may only do so if
25 proper notice has been provided - for instance, in the submission of the Prosecutor on

1 sentencing - so as to follow the convicted person to defend him or herself against it.
2 Mr President, this brings me to refer back to what my colleague Thomas Obhof was
3 saying about the presentation of Mr Manoba yesterday. He dwelt on reciting many
4 sources which are not before this Court. Your Honours, the Prosecution and
5 the victim - particularly the victim - should know better that there are procedures to
6 be followed in this Court if you want evidence to be relied upon. Like my colleague
7 said, Mr Manoba and his colleague Madam Massidda, had all the time, and they of
8 their own volition decided not to file in any evidence or statement, for that matter, to
9 be considered in their presentation before you. So it defeats logic to hear
10 Mr Manoba raising sentimental issues and, as if to impress the public, people reciting
11 things that should not have come before you.
12 I repeat the statement of my colleague that these documents -- I mean, the statement
13 really -- I mean, raised in Mr Manoba's presentation of yesterday, are totally out of
14 place and should be expunged from Court record.
15 Furthermore, the Appeals Chamber stated that, if a Trial Chamber wishes to rely on
16 facts in aggravation that could not reasonably be expected -- I think I have already
17 covered this.
18 Mr President, the absence of mitigating circumstances in this Court does not
19 constitute an aggravating circumstance.
20 Mr President, although Court ruled against the Defence evidence of the enduring
21 effects of the coercive environment of the LRA on Mr Ongwen, we submit that this
22 can nonetheless still be evaluated in the context of your function in sentencing under
23 Rule 145(2)(a) of the Rules of Procedure. Surely, Mr President, Mr Ongwen may
24 have failed to prove that it was more likely than not that his mental capacity may
25 have been diminished during the charged period, but that's not to say that this

1 Chamber would not make a finding that he still indeed suffered.

2 On the other hand, the founding Prosecutor of this Court, Mr Moreno Ocampo, in
3 the ICC's Prosecutor's address on the sentencing of Thomas Lubanga, said of child
4 soldiers, and I quote: "[t]he harm produced by this cruel treatment continue even
5 after demobilisation. Those who didn't die as soldiers..."

6 (Counsel confer)

7 I'm sorry, Mr President.

8 "Those" -- I will backtrack a bit, Mr President.

9 The weight given to Mr Ongwen's key role in the crimes for which he was convicted
10 should be considered on the background of his individual circumstances.

11 The Prosecution explicitly admits that the evidence suggests that

12 Mr Ongwen -- Ongwen's years as a child and adolescent in the LRA must have had
13 extremely difficult -- must have been extremely difficult, and it is unlikely that he
14 would have committed the crimes he did in 2002-2005 had he not been abducted on
15 his way to school in 1987.

16 Nothing could be clearer than this. Mr Ongwen's individual circumstances are all to
17 blame for the conduct he has been convicted for.

18 From the arguments of the Prosecution and the joint counsel for victims, evidence of
19 Ongwen's good conduct is not relevant. The Defence invites your Honours to
20 outrightly reject this interpretation of the law.

21 Mr President, the Prosecution should be hoisted to its own petard after recognising in
22 their paragraph 2 of their submission that one circumstances -- one circumstance sets
23 this case apart from others tried before at the Court, and warrants some reduction in
24 the sentence. The Chamber found that Mr Ongwen was abducted at the age of 9 and
25 forced to become a child soldier in the LRA, a grim foreshadowing of the crimes he

1 would himself commit some 15 years later. The evidence suggests Mr Ongwen's
2 years as a child and adolescent in the LRA must have been extremely difficult, and it
3 is unlikely that he would have committed the crimes he did in 2005 had he not been
4 abducted on his way to school in 1987.

5 Mr President, I will constantly keep on reminding you that this is the description of
6 the person who it is suggested should now be sent for life imprisonment.

7 Without prejudice, Mr President -- first of all, I should have said this before, but allow
8 me to say this, the Defence appreciates the enormous task performed by this Court in
9 coming to the conclusion of the case and convicting Mr Ongwen. The rest are
10 matters for the future and within the rights of Mr Ongwen. But you did your part,
11 Mr President. And, Mr President, your Honours, you accomplished your task with
12 commendable accmpt.

13 The Defence appreciates and agree that the function of this Court during judgment
14 could not have been better summarised, Mr President, than by the Chief Prosecutor
15 when she stated in her opening statement on the 16 December 2016, and I quote:

16 "And the focus of the ICC criminal process is not on the goodness or the badness of
17 the accused person but on the criminal acts which he or she has committed.

18 This Court will not decide his goodness or badness, nor whether he deserves
19 sympathy but whether he is guilty of the crimes committed as an adult with which he
20 stands charged."

21 Indeed, the goodness or the badness of the accused person, that is his conduct, must
22 now count, we submit, your Honours.

23 But, Mr President, contrary to the -- to Article 76(1) of the Statute to the effect that
24 the Trial Chamber shall consider the appropriate sentence by taking into account
25 the evidence presented and submissions made during the trial that are relevant to the

1 sentence, that is essential elements contained in the judgment and the assessment of
2 all factors to be considered based on the Chamber's intimate knowledge of the case,
3 the joint victim counsel are trying to make statements from the bar by quoting from
4 unsubstantiated sources. These include alleged victims and members of the
5 communities who were never before this Court. And neither have they filed any
6 notarised statements before this Court, as already stated by my colleague. They
7 have made quotations, which we have already referred to. The Defence submits
8 that -- we repeat our submission earlier that they should be expunged.

9 On the other hand, Mr President, your Honours, the victims' counsel are making
10 a challenge against the efficacy of *mato oput*, a celebrated Acholi alternative justice
11 system that has stood the test of time. This, Mr President, from the bar, without
12 the courtesy of placing any evidence before this Court. The Defence, Mr President,
13 regrets to say that, contrary to the guidance in the above-quoted provision, counsel
14 for victims are approaching their role in these proceedings like a bloodhound on a
15 frolic to catch a rogue convict, devoid of the least spark of human compunction, and
16 who should be given the ultimate penalty of the law. We caution, Mr President and
17 your Honours, that in your evaluation you should guard against this overzealousness
18 on the part of the counsels for victims. They seem to completely be oblivious to
19 appreciate any mitigating factors to merit consideration of the Chamber while
20 sentencing Ongwen.

21 Mr President, I was saying that -- I made a quotation of the founding father -- I mean,
22 the founding Prosecutor of this Court, Mr Ocampo. And in our view, Mr President
23 and your Honours, this statement was tacit admission that the harm caused by
24 mistreatment of children in armed conflict of a similar albeit -- albeit less exacting
25 nature to those under consideration endured even after cessation of the war situation.

1 The Prosecution should not be allowed to change the goalpost to say in these
2 sentencing proceedings that in the case of Dominic Ongwen, however, the situation is
3 different. The harm produced on him by the cruel treatment under the extremely
4 coercive LRA environment, according to them, did not continue on him during
5 the charged period and even up to now, or that he does not have ongoing
6 psychological trauma which he still suffers. In our view, this departure is extremely
7 unfortunate and should be ruled against them.

8 We invite Court, in particular, to take note of the Prosecution's recognition that
9 Ongwen's individual circumstance as a child soldier was a grim foreshadowing of the
10 crimes he would himself commit some 15 years later. This statement should be
11 given its due weight by the Chamber when considering what the Prosecution refers to
12 as careful balance of Mr Ongwen's individual circumstances against the gravity of the
13 crime, his own key role and the impact on the victims.

14 Mr President and your Honours, having recognised the individual circumstances of
15 Mr Ongwen as stated above, the Prosecution cannot be heard to water down the effect
16 of such individual circumstances of Mr Ongwen within only five years of his
17 transition from childhood into an adult -- into an adult.

18 Assuming for a moment that he transitioned into the age of criminal liability, both
19 physically and mentally, on the stroke of midnight of the 18th birthday in 1996/1997,
20 which we deny, your Honours, account must be taken of the five years of his
21 adolescence during the charged period between 1 July 2002 and 31 December 2005.

22 The chamber should also take into consideration whether such individual
23 circumstances had a bearing on the gravity of the crime, his own key role and
24 the impact on the victims, in view of the Prosecution's recognition of a grim
25 foreshadowing of the crimes he would himself commit some 15 years later.

1 I shall now take briefly about the unlawful behaviour and the means employed to
2 execute them. These means to execute them, your Honours, include the weapons
3 and soldiers put at his disposal by LRA. The back and forth question that should
4 respectfully preoccupy the Chamber's mind throughout these proceedings should be:
5 would Ongwen have pursued the unlawful behaviour and employed the means he
6 employed to execute the crimes if he had not been abducted and gone through
7 the harsh and coercive environment in the LRA? If the answer is no, then this must
8 be considered as mitigating factors.

9 Ongwen's behaviour is construed vis-à-vis the different categories of charges against
10 him, sexual and gender-based violence, murders, attack on civilian population,
11 the -- his conduct -- alleged -- I mean, his conduct at the scene of crimes, and many
12 others. If you look at the way Ongwen behaved himself, particularly on
13 the background that he was not acting of his own volition, he belonged to a group of
14 people and he was under the command of some higher authorities. Would Ongwen
15 as a person have behaved differently if he was left in a world of his own where he had
16 to take decisions without supervision from any higher authority, whose brutality
17 knew no boundaries?

18 Sexual and gender-based crimes.

19 Mr President and your Honours, this is an area where we would indulge
20 the Chamber to take a backseat and seriously consider the individual circumstances
21 of Mr Ongwen vis-à-vis the submissions of the Prosecution. We first and foremost
22 remind the Chamber of the caution with which it considered the institution of
23 the so-called marriage in the LRA. Throughout your judgment, your Honours,
24 the Chamber referred to the women in Ongwen's life in the bush as "so-called wives",
25 well and correctly recognising that indeed they were not his wives.

1 It would be insensitive for Mr Ongwen to deny that sexual and gender-based crimes
2 are not grave crimes. Yes, they are very grave, and Ongwen accepts that. But all
3 Ongwen is asking for is that, as your Honours consider the gravity of the crimes
4 committed, you should also consider his individual circumstances in the situation
5 against the background of an institutional policy over which he had no control.
6 When Prosecution says Mr Ongwen committed sexual -- I mean, the sexual and
7 gender-based crimes, and the so-called wives were reduced to servile status, they
8 forget that Mr Ongwen's status at that time was not any different. He was also
9 serving forced labour in the LRA, being forced to participate in a war he had no
10 capacity to understand since he was abducted. He was being subjected to LRA
11 policy positions and standing orders that were instituted long before he was abducted
12 and even after his abduction, long before he became of reasoning age. And,
13 therefore, he did not participate in those policy formulations, but nevertheless he had
14 to comply with them.

15 Mr President, it is not too much to ask that Mr Ongwen's status as such should be
16 contemporaneously considered when sentencing him. Mr Ongwen was an
17 adolescent adult, about 27 years old, by the end of the charged period. He was also
18 under duty to obey the strict orders regarding women possession, arising from
19 the LRA policy on woman-man relationship in the LRA. This assertion,
20 Mr President and your Honours, is clearly borne out by the Prosecutor's own
21 admissions.

22 The Prosecutor had this to say about LRA's policy on abduction of women and girls
23 in paragraph 87 of the Prosecutor's Amended Application for Warrants of Arrest
24 under Article 58 of the Statute, and I quote:
25 "For girls abducted into the LRA, a critical event was the time at which they were

1 perceived by LRA commanders to have reached sexual maturity. As Vincent Otti
2 admitted during the 28 December 2002 FM radio broadcast, the LRA practice was to
3 collect girls when they are still young and have no AIDS." End of quote.
4 Mr President and your Honours, referring to the above statement in our opening
5 statement in 2016, the Prosecutor had this to say, and I quote again:
6 "Vincent Otti's words in the radio programme broadcast in December 2002 to which I
7 have already made reference is very clear. He said..." and she quoted, "I want to
8 assure you that the girls whom we collect and send to the bush are our mothers. We
9 always collect the young ones who are not infected with HIV."
10 On the other hand, among the statements made by former LRA commanders, there
11 are those that corroborated -- that corroborate that the policy was long-standing and
12 pre-dated Dominic Ongwen's adulthood or any policy making -- policy decision
13 making in the LRA. They identified Kony, Mr President and your Honours, as
14 the source of that policy, and not Mr Ongwen.
15 UGA-OTP-P-0085 stated that Kony gave orders to abduct schoolgirls, as in the attack
16 in 1996 of Aboke high school girls. In the then Apac district, now Kole district in
17 Lango sub-region.
18 UGA-OTP-P-0083, a former LRA who was abducted in the early '90s and escaped in
19 2004', stated that younger girls were abducted because the senior officers said they
20 were clean and without infections.
21 Charles Abola stated that Kony said that girls from 18 years and over have diseases
22 and that is why he would like younger ones to be the ones to be abducted and
23 distributed as wives.
24 UGA-OTP-P-0070 said girls as young as 11 or 12 were abducted. Kony did not allow
25 men to touch them or try and sleep with them before they got sent back to Kony to

1 protect against diseases and bad spirits.

2 Mr President and your Honours, after Operation Iron Fist, when Kony ordered
3 the ranks of the LRA to expand -- to be expanded with new men and women, brigade
4 commanders also had authority to cleanse girls and distribute them far more quickly
5 than Kony previously had allowed. This is still the statement of former LRA
6 commanders.

7 This underscores the fact that brigade commanders, Dominic Ongwen inclusive, did
8 not of their own volition assume the role of abducting and distributing wives. It was
9 a delegated authority based on clearly laid down policy.

10 These are Mr Ongwen's individual circumstances, Mr President, that he should be
11 weighed -- that should be weighed in when considering an appropriate sentence for
12 him on the issue of sexual and gender-based crimes.

13 Consideration should be taken of the fact that man-woman cohabitation was an
14 institutional policy of the LRA over which Ongwen had no control. The policy was
15 to maintain discipline - and these are facts which were fully given in evidence before
16 your Honours - to maintain discipline, avoid promiscuity, tie soldiers to the family to
17 avoid escapes, et cetera, et cetera, not to mention the creation of a new Acholi of the
18 10 Commandment purity and to replenish the LRA's ranks. Mr Dominic Ongwen
19 very competently expatiated on this fact of creating new Acholi.

20 Therefore, according to Kony's policy, men were used as production machines while
21 the women were the production lines for Mr Kony's pure Acholi and future soldiers.
22 So, once a girl was abducted and distributed according to the standing orders of the
23 LRA high command, the rest followed as day follows night.

24 Mr President, an assessment should be made of a situation of an adolescent forced to
25 live under the same roof with a woman for eternity where there was no hope of ever

1 getting out of the LRA situation, and the individual circumstances of Mr Ongwen
2 under those conditions must be considered as a mitigating factor. Yes, what he did
3 was unlawful, it was a crime. But given the circumstances, could there be any silver
4 line in the cloud for considering that Ongwen was overwhelmed under
5 the circumstances to commit some of these sexual crimes? Did he have a choice?
6 Put in the same situation - and this is a question maybe your Honours may want to
7 ask - is there any evidence before your Honours that any of the people who were in
8 the bush who were put in the same condition as Mr Ongwen never did exactly what
9 Mr Ongwen did? If the answer is yes, although the crime of another person does not
10 constitute an excuse for the other, reason would seem to suggest that this must be
11 taken into account that he was put under very unfortunate circumstances. And he
12 capitulated under those.

13 Mr President and your Honours, the Defence submits that the so-called wives were
14 not exclusive, and this should also be considered. They were actually not exclusive
15 to the person to whom they were assigned. As a matter of fact, they were held at the
16 pleasure and behest of the LRA high command. Actually, they were institutional
17 property of LRA. There is overwhelming evidence on record that, for example, once
18 it was discovered - and Mr Ongwen talked about this - once it was discovered that
19 the man was not treating the woman well, the woman was taken away from him and
20 distributed to another man. This is on Court record, your Honour. On the other
21 hand, if Kony coveted a woman under the charge of another man, he would take her
22 at will.

23 In the report by -- authored by Ray Apire, Acama Jackson and Mzee Kenneth Banya,
24 which we have already referred to above, these senior commanders stated as follows:
25 In 2001, when Joseph Kony ordered for the arrest of a total of 29 officers, namely

1 Jackson, Ray, Hillary Lagen, Livingstone Nyeko Lubul, and many others for trying to
2 cause a mass defection, they were -- their wives were taken away.

3 D-27 stayed in the bush for close to 27 years and was so close to Joseph Kony. On
4 whether one had a choice when given a wife in the LRA, he testified thus: "You do
5 not have a choice. Whether you are a man or a woman. Even if you are given to
6 somebody you are not interested in."

7 P-172 testified how, notwithstanding pleas from his Kony -- notwithstanding pleas
8 from her husband to execute Bunia Ocan's wife, a senior commander, because she
9 attempted to escape, Kony nevertheless executed her. Everyone's life belonged to
10 Kony, and even women distributed to senior commanders were still at the mercy of
11 Kony and his decisions.

12 D-0092 stated, "Even the wife given to you, the woman given to you is not yours.

13 The woman is, he - meaning Kony - says that the woman is for the movement. If, for
14 instance, he says that the woman should go and do work in this location and you
15 decide your wife not to go, he will take away the woman from you."

16 Mr President and your Honours, in relation to what is stated above, Ongwen's cruelty
17 towards his so-called wives -- I mean, in relation to Ongwen's cruelty to his so-called
18 wives, it should be noted that the fact that there is no evidence to show that any
19 so-called wives was removed from Mr Ongwen or ran away and took refuge away
20 from Mr Ongwen. Yet on the other hand, there is ample evidence -- there is ample
21 evidence on record by some so-called wives and other witnesses, including
22 Prosecution witnesses, that Ongwen was a good man and treated his family,
23 including his so-called wives, well.

24 This should go to show that, although he was found guilty of cruelty and
25 mistreatment of his so-called wives on account of evaluation of Prosecution evidence,

1 which was believed by the Chamber, there is also evidence just -- which just fell short
2 of meeting the threshold of exculpating Mr Ongwen. This is the kind of scenario
3 provided for under Rule 145. Yes, he was found guilty, but at this point in time
4 when it behoves this Court to consider his individual circumstances in the matter,
5 Court is still invited to consider that, although the evidence that was provided was
6 heavy enough to find him guilty, there were nevertheless circumstances which, all
7 considered, would have found him -- I mean, found that there is mitigating
8 circumstance.

9 PRESIDING JUDGE SCHMITT: [13:04:44] Mr Ayena, may I ask you how much time
10 you would need further? Because I think it would be good if we could finish before
11 the lunch break, meaning that we could end the hearing before the lunch break. I
12 think that should be possible.

13 MR AYENA ODONGO: [13:05:05] How much time do I have?

14 (Counsel confer)

15 MR AYENA ODONGO: [13:05:07] I'll try my best. I would need maybe about
16 40 minutes more.

17 PRESIDING JUDGE SCHMITT: [13:05:12] Forty?

18 MR AYENA ODONGO: [13:05:14] Yeah. I have 25 now. If I could be given 15
19 more, I should finish it.

20 PRESIDING JUDGE SCHMITT: [13:05:21] I think then we should make -- then we
21 should have the break now and - because this is too long then - until 2 o'clock I think.
22 So then we have the lunch break. I think until 2 o'clock is enough and then, then we,
23 you can finish your presentation. Okay.

24 MR AYENA ODONGO: [13:05:38] Much obliged.

25 THE COURT USHER: [13:05:42] All rise.

1 (Recess taken at 1.05 p.m.)

2 (Upon resuming in open session at 2.01 p.m.)

3 THE COURT USHER: [14:01:34] All rise.

4 Please be seated.

5 PRESIDING JUDGE SCHMITT: [14:01:59] Good afternoon, everyone.

6 Mr Ayena, you still have the floor.

7 MR AYENA ODONGO: [14:02:25] (Microphone not activated)

8 PRESIDING JUDGE SCHMITT: [14:02:27] Microphone, please.

9 MR AYENA ODONGO: [14:02:32] Yes, good afternoon again, Mr President and
10 your Honours.

11 Your Honours, the Trial Chamber, having found Mr Ongwen responsible as an
12 indirect co-perpetrator, should find this a mitigating factor from the perspective of his
13 individual circumstances. Given that he was, for all purpose and intent, just
14 carrying out orders from above in compliance with the laid down LRA policies,
15 there's no reason why this should not, whatever the manner and nature of his conduct,
16 constitute individual mitigating circumstances for him.

17 Talking about Mr Ongwen's conduct, your Honours, I have to remember to thank him
18 for protecting my life. That is the conduct of a person who, against all odds, could
19 even dare Mr Joseph Kony. But, your Honours, this should not be taken in the -- in
20 abstract, should be considered from the perspective of what processes were going on
21 in the mind of Mr Ongwen at the time he did this. Ongwen mentioned himself this
22 morning that he had adopted suicidal tendencies at that time. That during those
23 moments when he went to battle and those moments which people have isolated out
24 for his being very brave, were moments when he had hoped that he would die
25 anyway. So this should be seen as somebody who had a substantial problem with

1 his mental capacity.

2 And, together with this, your Honours may remember that some people said, some
3 witnesses testified before this Court saying that there were moments in Ongwen's
4 character when he would feel very detached, he would be very quiet. And there are
5 these moments which the victims and Prosecution talked about when he would kind
6 and then another time he was this and this. These are the tendencies, hallmarks of
7 PTSD, as described before this Court by the experts who gave evidence before this
8 Court.

9 If these were truly the findings, which the Prosecution and the victims seems -- seem
10 to agree with, then there is a clear line of evidence indicating that indeed at the time
11 of the convicted conduct, and far beyond it, Mr Ongwen was suffering from
12 suppressed mental capacity. And this also extends to duress. You know, his belief
13 in Kony's spiritualism, which he again emphasised to your Honours this morning,
14 were all signs that the man was always acting, at any moment he was acting under
15 duress, save for those moments when he gave himself up and said come what may,
16 what will be will be. And he took those daring suicidal confrontations with
17 the enemy, including Kony himself.

18 The Prosecution recommends that the Chamber should enter separate sentences for
19 each separate crimes, reflecting the particular harm inflicted by conscripting a child
20 into an armed force by coercion or compulsion, and by using that child to participate
21 actively in hostilities. Your Honours, to say the least, this is very insensitive to
22 the fact that Mr Ongwen was, in the first place, a victim in the same manner and had
23 been through and, by his personal circumstances, learnt what he was expected to do
24 in such circumstances.

25 Your Honours, for those who are dog owners know that a dog will act according to

1 how he is taught. Children in the position of Mr Ongwen were reduced to the level
2 of dogs, who just took instructions without thinking about repercussions.
3 And we talk about lawfulness. Your Honours may have to pause a bit again and
4 reflect about which law were we talking about when we are talking about
5 the unlawful conduct of Mr Ongwen. Granted, this Court may have found
6 otherwise, but isn't it true, Mr President and your Honours, that the circumstances
7 under which Dominic Ongwen was abducted at the age of 9 and never allowed to
8 relate or interface with open society, did not afford him the opportunity to know
9 what is the law of the country, international law, and so on and so forth. To him,
10 the law was that which was taught to him by Joseph Kony, the 10 Commandments as
11 interpreted by Joseph Kony. So when he was ordered, he turned to no more than
12 the law of Joseph Kony.

13 All these factors, your Honours, should be compelling enough for you to consider
14 that, well, yes, we found him guilty because of the high threshold of international
15 criminal law standard of proof. But, as a matter of fact, these circumstances
16 nevertheless existed and should be given weight.

17 Mr President, the Defence seriously objects to the analogy which was made by
18 Mr Manoba comparing the individual circumstances of Mr Ongwen addressed by
19 the Prosecutor to a supposed fundamentalist Muslim war criminal. The submission
20 is entirely inappropriate and should be disregarded. There was absolutely no legal
21 basis for such an analogy.

22 Your Honours, unlike the child recruit who is firstly a Muslim religion believer who
23 normally voluntarily joins fundamentalist groups, sometimes out of conviction,
24 sometimes because of the monetary inducements attached to them, or, at the extreme,
25 because of a promise to go to heaven, Dominic Ongwen was forcefully abducted and

1 conscripted into the LRA ranks against his will. How does he compare to a -- to
2 a fundamentalist? The analogy was therefore totally unwarranted and unfortunate
3 and should be disregarded. Ongwen was a victim of circumstances beyond his
4 control, unlike recruits of Muslim fundamentalist movements.

5 The victims have recommended imprisonment for life but have provided no legal
6 basis on how that sentence was calculated, apart from emphasising the brutality of
7 the crimes. Your Honours will be -- will respectfully be reminded that that factor
8 was already taken into consideration by the Chamber in the conviction of Mr Ongwen.
9 To do it again, your Honours, would amount to double counting. By acknowledging,
10 though, the -- what they have said, in effect, counsel for the CLRV acknowledges that
11 the Chamber took the gravity of the crimes against the victims when convicting
12 Dominic Ongwen. The Chamber read out the names of individual victims per
13 crime -- per crime base and per crime committed and emphasised the specific features
14 of the injury or harm suffered. The jurisprudence of international courts and
15 tribunals do not allow double counting, by relying on the same factors in conviction
16 and sentencing. Your Honours will find these decisions in the case of Lubanga
17 Trial Chamber decision on sentence of 10 July 2012 at paragraph 35; of the Bemba case
18 Trial Chamber decision sentence, 21 June 2016 at paragraph 14; Al Mahdi case,
19 Trial Chamber judgment and sentence, 27 September 2016 at paragraph 70; Ntaganda
20 case Trial Chamber sentencing judgment, 7 November 2019 at paragraph 13.

21 Mr Chairman, this reminds me about what Mr Manoba said yesterday. I don't know
22 whether he said it consciously or unconsciously. He was talking about conviction of
23 Al Hassan for 10 years. Unless I -- I slumbered and I did not know what has been
24 going on in these courts, I am not aware that Al Hassan has been convicted and I am
25 not even aware that there has been any conviction in this court for 10 years. So,

1 your Honours, maybe you would safely disregard that submission of Mr Manoba as
2 misguided or misinformed.

3 Mr President and your Honours, where the discriminatory intent was considered as
4 part of the common plan and thus the mode of liability, it would not be considered
5 separately as an aggravated -- aggravating circumstance. This was again
6 the finding -- I mean, the decision in the Ntaganda case, Trial Chamber sentencing
7 judgment of 7 November 2019 at paragraphs 125, 151 and 169.

8 I will now talk about the mental health of Mr Ongwen. The Prosecution and victims
9 yesterday argued that there is no evidence on record to suggest that Dominic Ongwen
10 did suffer from substantially diminished mental capacity during the charged period
11 to warrant it being considered as a mitigating factor as per para -- Rule 145(2)(a)(i) of
12 the Rules of Procedure. They further stated that the evidence of various witnesses
13 testified that they did not notice any mental problems in him whilst in the bush.

14 Your Honours, D-41 and D-42 testified that as a direct consequence of his experiences
15 in the bush, Mr Ongwen suffered from multiple psychiatric disorders that included
16 post-traumatic stress disorder, major depressive disorder, dissociative amnesia,
17 dissociative identity disorder, DID, obsessive-compulsive disorder, OCD, and suicidal
18 ideation. Mr President, I've already made references especially about suicidal
19 ideation. This was very evident in Mr Ongwen's own testimony. Mr Ongwen
20 looks at the world in a different way we look at the world, the way he was saying it.
21 That underlies the fact that the man is sick, doesn't look at the world in the way you
22 and I look at it. For him, the world has left him behind. In fact, he belongs to
23 a different world and that different world, for those of us he has been discussing with
24 us, is a place with God. And every time we've had occasion to discuss some of those
25 suicidal tendencies which he has attempted on several occasions, this is what it tells

1 us.

2 And yet he loves life and yet he loves his children, he loves his family. Why would

3 he say this, save for the fact that he's mentally depressed?

4 D- -- yeah, the only mental illnesses that ordinary people, according to D-41 and D-42,

5 they stated the only mental illnesses that ordinary people can recognise easily are

6 those involving the brain substance directly, such as dementia, brain infection,

7 the aftermath of brain trauma as a result of traumatic injury to -- traumatic injury to

8 the skull, as well as psychotic conditions that manifest with hallucinations, seeing or

9 hearing nonexistent objects. Delusions, false beliefs and convictions that are not

10 shared by members of the sick person's social groups and irrational behaviour.

11 Referring to his conduct in the bush as reckless or -- I mean, as reckless, at least two

12 witnesses we interviewed claimed that Mr Ongwen's behaviour and conduct was

13 more than just being brave, indicating that there was something irrational with

14 the behaviour of Mr Ongwen that his close friends noticed on occasions.

15 Mr President and your Honours, you will agree with me that is directly opposed to

16 the proposition of the Prosecution and the victims. That, as a matter of fact, nobody

17 ever mentioned anything about, you know, funny, funny things Ongwen was doing.

18 But even if that was true, psychiatric, a psychiatric expert at the highest educational

19 level attainable and a well honoured professor of psychiatry said, you know, it is not

20 for common men to discern some of these features. Many of these features can only

21 be discerned by expert. For you and me, we can only see the obvious things which

22 they described. So, therefore, it is our fervent submission, Mr President and

23 your Honours, that you may be pleased to reconsider this matter, although they were

24 not worthy of a finding that he was not criminally liable, nevertheless it should be

25 found that his capacity, mental capacity was substantially diminished.

1 Mr Ongwen, as he himself stated this morning, that what people considered in him as
2 bravery was suicidal attempts. He was tired of living dog's life, so every time he
3 went to war he defied all conventional wisdom of keeping safe distance from enemy
4 fire. His hope was always that he would, like many of his deceased peers, die and
5 end it there.

6 Mr President and your Honours, this is not the thinking of a mentally alert person.
7 This is deranged. Somebody who might have wanted to throw himself into fire or
8 into hot water, that's a madman, at least at that time when he got taking this decision.
9 And these moments included the period -- I mean, included the convicted period.
10 That was a description of his conduct at the peak of what he has been charged and
11 convicted of.

12 Your Honours, Professor Ovuga as a licensed physician discovered the mental health
13 condition of Dominic Ongwen while examining him for his expert report. He was
14 mandated by his professional oath and ethical duty to provide him medical assistance.
15 That does not make him the treating physician, nor alter his position as an expert.
16 Besides, his conclusions about the effect of spiritualism, indoctrination were
17 corroborated by the ICC detention physician notes, tying his present mental health
18 disability to the traumas he suffered from his abduction and continuing to date.

19 Mr President and your Honours, maybe I should again take it from what Mr Ongwen
20 said this morning that the Defence team is overly gratified by the bold decision by
21 you to allow for psychiatric and psychological support for treatment for Mr Ongwen.
22 We are proud that the man we could not risk to come and testify before Court about
23 three years ago has now come of age. At that time, as far as we were concerned, he
24 was still a child in the mind. We assessed his capacity to come and be here and talk
25 to you, talk to Court in a responsible manner and found that he could not. But

1 the end -- at the end, after serious assessment, we found that this is now completely
2 brand new Mr Ongwen. You heard him this morning. I made my own impressions,
3 but I'm sure you too made your impressions about Mr Ongwen. If only you could
4 detect the way he was conducting himself here at the beginning of the trial and
5 the person now before you, you will agree with me that, yes, there was a problem
6 before he attained the medical attention that was given to him in prison.
7 And, Mr President and your Honours, the Prosecution further downplayed
8 the findings of the Court-appointed Professor de Jong, the expert who, after
9 examination of the convict, concluded that he suffers from mental illness among
10 which include PTSD. You may be reminded that you acknowledged Mr Ongwen's
11 present mental health disability and suicide ideation and took measures during
12 which -- I mean, during the trial to accommodate his needs by, *inter alia*, altering
13 the sitting schedule. It is thus our submission that this aspect should be considered
14 as a mitigating circumstance for Mr Ongwen.
15 Again referring, if I may, back to Mr Ongwen's conduct. Your Honours may do
16 your own findings from records from the prison that Mr Ongwen, among
17 the prisoners, is one of the most loved by every inmate in prison, save for the -- for
18 the few occasions when he was provoked. And those few occasions, unfortunately,
19 according to our own assessment and perhaps assessment of the prison officials, was
20 triggered easily because of his health condition, because of his mental health
21 condition. But -- and of course you saw one such thing in court here. A sick man of
22 his type is extremely sensitive. The way he behaved in court at the hearing that one
23 of the witnesses who was testifying before this Court could have been responsible for
24 the death of his brother, will tell you that, at least at that time, Mr Ongwen was not
25 normal.

1 But a lot of sensitive things was said here yesterday and he responded to some of
2 them, especially regarding incriminating his entire clan by Mr Manoba, who he refers
3 to as "agent provocateur". He was still cool about it. Ongwen has come of age.
4 And this should be taken and put on his credit side.

5 Mr President, I shall talk about --

6 PRESIDING JUDGE SCHMITT: [14:32:08] You are cognisant of the time.

7 MR AYENA ODONGO: [14:32:12] Pardon?

8 PRESIDING JUDGE SCHMITT: [14:32:12] You are cognisant of the time.

9 MR AYENA ODONGO: [14:32:18] Ten minutes, shall I finish.

10 PRESIDING JUDGE SCHMITT: Good.

11 MR AYENA ODONGO: Shall I finish.

12 A false impression has been created by the victims that Dominic Ongwen never
13 attempted to escape. He has already spoken about this and I do not need to repeat,
14 but save for the emphasis that, you know, the downplayed attempt to escape by
15 contacting General Salim Saleh was very unfortunate. It would take a madman, you
16 know -- and he talked about it. That is a distinctive fact that shows that Ongwen
17 was willing to go all out to escape. I mean, reaching -- for those who know
18 the terrain of politics in Uganda, it takes a very brave man, a determined person, to
19 reach the level of a general of Salim Saleh's standing.

20 In response to paragraph 2 of the victims' statement, the Defence submits that
21 the framework for sentencing provided for under Article 78 of the Rome Statute
22 should be interpreted in the context of other related provisions of the relevant laws.
23 Again, at the risk of being misunderstood for wanting to relitigate the Defence of
24 duress, which was rejected by the Chamber, it behoves us to reiterate to the Chamber
25 the provisions of Rule 145(2)(a)(i) to the effect that at the time of the conduct for

1 which he has been charged, nevertheless there existed circumstances which just fell
2 short of finding of diminished mental capacity or duress which otherwise constitute
3 grounds for inclusion of criminal responsibility.

4 In paragraph 5 of her same opening statement, the Prosecution said:

5 "The evidence of many of the child victims in this case could, in other circumstances,
6 be the story of the accused himself. The evidence makes it plain that he could be
7 kind. One Prosecution witness has told the Court that generally Dominic Ongwen
8 was a good man who would play and joke with the boys under his command and
9 was loved by everyone."

10 In other words, what those child victim soldiers -- witnesses are saying is
11 a lamentation, Mr President and your Honour, that had it not been for his individual
12 circumstances, Dominic Ongwen would not have committed the crimes for which he
13 has been convicted. This surely cannot go unnoticed by the Chamber as a mitigating
14 factor when considering appropriate sentence for Mr Ongwen.

15 The Defence respectfully invites the Chamber to consider the assessments of medical
16 history of Mr Ongwen, as already stated.

17 In respect to consideration, *inter alia*, of the extent of the damage caused, in particular
18 the harm caused to the victims and their families, we would respectfully ask
19 the Chamber to refer back to what we have stated about the policy directives of the
20 LRA. He did it under, you know, on the orders based on those policies.

21 While considering the nature of the unlawful behaviour and the means employed to
22 execute the crime, the degree of participation of Mr Ongwen, the degree of his intent,
23 the circumstances of manner, time and location, and his age, education, social and
24 economic condition of Mr Ongwen, the Chamber should take into account all
25 the things we have already alluded to.

1 The Defence position in sentencing consideration is that Mr Ongwen Dominic has
2 overstayed -- I repeat, he has overstayed his hospitality in captivity; 27 years in
3 Joseph Kony's prison without walls and more than six years at the Court's
4 Detention Centre as a result of this Chamber's order. That is a total of more than
5 33 years of imprisonment. Under Article 77(a) of the Rome Statute, the maximum
6 sentence a convict can serve is 30 years. Mr Ongwen has already been in prison for
7 three years more than what this Court is permitted to render. He must be set free to
8 go home and participate in the Acholi traditional rituals to have a holistic
9 rehabilitation.

10 Therefore, your Honours, as I conclude, we are asking that notwithstanding what we
11 stated in our closing brief, on further consideration, especially when I arrived in
12 The Hague and convened with my staff, we considered that all circumstances
13 considered, your lordships can weigh the individual -- should weigh the individual
14 circumstances of Mr Ongwen. Think about his children, think about the family at
15 home. And I am sure, as members of the international community, your ears are on
16 the ground on what is happening in Uganda, on what the international community is
17 saying about this. The international community, like I do, together with my team,
18 totally agree that you had a right to come to the decision you took, because it is about
19 your finding. If we want to appeal, it is now a new ball game. And I am totally
20 surprised that the intention to appeal should go on the debit side of Mr Ongwen for
21 being unapologetic and therefore he is -- he is not, you know.

22 Mr President and your Honours, I am sure members of the legal fraternity are aware
23 that appeal is a right and that appeal does not in any case -- in any way militate
24 against or undermine the decision of the lower court. It is only exercised in view of
25 the fact that there might be certain things that the lower court may not have seen and,

1 therefore, since the law allows the convict a further appeal to a higher court, it is only
2 right that he goes there. So this submission of Madam Massidda I think should be
3 seen in its context and should get disregarded.

4 We also take -- last, this will be the last -- we take exception to the way the victims'
5 counsel have treated the *mato oput* institution. This is very unfortunate, because it
6 would appear to confirm that counsels have been actually making statements from
7 the bar, because they are not in touch with the traditional systems, not only in Acholi
8 but in the entire African context. Because to say that because *mato oput* is only
9 a practice in Acholi, it cannot apply to Lango, it cannot apply to Teso, it means
10 somebody does not understand actually the cross-cutting application of these systems.
11 Just like in marriage, if you go to marry in Acholi you don't -- you are a Lango, if
12 somebody is a Lango, you are going to marry an Acholi, you don't carry your Lango
13 custom to Acholi. You go and comply with the Acholi customary norms for that
14 marriage. By the same token, *mato oput* is exercised in the same way.

15 Mr President and your Honours, my Defence team and I are exceedingly grateful for
16 the very professional guidance you have given to this Court, and we say this without
17 any pretence at all. The way you have guided this Court, in my view, I shall sing it
18 on the rooftops, regardless of the convictions that our client has got. I want to thank
19 you again. May God bless you.

20 Thank you very much.

21 PRESIDING JUDGE SCHMITT: [14:43:17] Thank you, Mr Ayena.

22 This concludes the oral presentation by the participants. The Chamber reiterates
23 that no written request for responses or reply to these oral submissions will be
24 entertained. The present hearing is closed.

25 The Chamber will now retire to deliberate. It will render the sentence with

- 1 the reasoning on Thursday, 6 May at 11 o'clock and, of course, here in the courtroom
- 2 the summary of the reasoning.
- 3 This concludes the hearing on sentence under Article 76 of the Statute.
- 4 The Court is adjourned.
- 5 THE COURT USHER: [14:43:59] All rise.
- 6 (The hearing ends in open session at 2.44 p.m.)