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Pénale
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**International
Criminal
Court**

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

Date: **1 April 2021**

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Raul C. Pangalangan

SITUATION IN UGANDA

IN THE CASE OF

THE PROSECUTOR v. DOMINIC ONGWEN

Public

Prosecution's Sentencing Brief

Source: The Office of the Prosecutor

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I. Introduction

1. Dominic Ongwen has been convicted of 62 counts of War Crimes and Crimes Against Humanity, including Murder, Torture, Rape, Forced Marriage, Forced Pregnancy, Sexual Slavery, the Conscription and Use of Child Soldiers, Persecution, and others. The Prosecution submits that the extreme gravity of his crimes, numerous aggravating circumstances, and Mr Ongwen's key role in the crimes, would ordinarily warrant a sentence at the highest range available under article 77(1) of the Rome Statute ("the Statute").

2. However, the Prosecution also recognises that one circumstance sets this case apart from others tried before at the Court, and warrants some reduction in the sentence. The Chamber found that Mr Ongwen was abducted at the age of 9 and forced to become a child soldier in the LRA, a grim foreshadowing of the crimes he would himself commit some 15 years later. The evidence suggests that Mr Ongwen's years as a child and adolescent in the LRA must have been extremely difficult, and it is unlikely that he would have committed the crimes he did in 2002-2005 had he not been abducted on his way to school in 1987.

3. Consequently, sentencing in this case requires a careful balance. The Chamber need not choose whether to view Mr Ongwen as a victim *or* a perpetrator, but must fashion a sentence that takes *both* realities into account. Such a sentence should not ignore Mr Ongwen's experience as a child soldier in the LRA, but it must also reflect the gravity of the crimes for which he has been convicted, his own key role, and the impact on victims.

4. Section II below briefly addresses the law applicable to these sentencing proceedings. Sections III and IV discuss the factors relevant to Mr Ongwen's sentences for sexual and gender-based crimes ("SGBC") and child-soldiering offences, respectively. Section V addresses crimes committed during the attacks on the Pajule, Odek, Lukodi, and Abok IDP camps. In section VI, the Prosecution addresses three potentially mitigating circumstances, none of which warrants a significant reduction in Mr Ongwen's sentence. Section VII discusses "other individual circumstances of the convicted person", including Mr Ongwen's abduction and time as a child soldier, which does, in the Prosecution's view, warrant a reduced sentence. The Prosecution's recommended sentences, per crime as well as a joint total sentence, are set out in section VIII.

II. Applicable law

5. Articles 76 to 78 of the Statute, and rules 145 to 147 of the Rules of Procedure and Evidence (“the Rules”), read together with the underlying objectives stated in the Preamble of the Statute, establish a comprehensive framework for sentencing.¹ The sentence must be proportionate to the crime and the culpability of the convicted person.² The Trial Chamber, guided by the facts of each individual case, enjoys considerable discretion in identifying and balancing all factors relevant for sentencing.³ Some factors are not neatly distinguishable,⁴ and may reasonably be considered under more than one heading, so long as the same factor is not counted more than once.⁵

6. One of the principal considerations in determining an appropriate sentence is the gravity of the crime.⁶ Gravity is generally measured *in abstracto*, by analysing the constituent elements of the crime, and *in concreto*, in light of the particular circumstances of the case, and by considering both qualitative and quantitative aspects.⁷ The gravity assessment should take into account both the gravity of the crimes, including the particular acts satisfying the elements of the offence, and also the gravity of the convicted person’s culpable conduct, in particular conduct constituting the elements of the relevant mode of liability. Factors that the Trial Chamber does not consider in its assessment of gravity may be taken into account separately as aggravating circumstances.⁸

7. Aggravating circumstances are listed in rule 145(2)(b)(i) to (v) in a non-exhaustive

¹ *Prosecutor v. Lubanga*, Judgment on the appeals of the Prosecutor and Mr Thomas Lubanga Dyilo against the “Decision on Sentence pursuant to Article 76 of the Statute”, [ICC-01/04-01/06-3122](#), 1 December 2014 (“*Lubanga SAJ*”), para. 32.

² *Lubanga SAJ*, para. 40; *Prosecutor v. Bemba*, Decision on Sentence pursuant to Article 76 of the Statute, [ICC-01/05-01/08-3399](#), 21 June 2016 (“*Bemba SJ*”), para. 11; *Prosecutor v. Al Mahdi*, Judgment and Sentence, [ICC-01/12-01/15-171](#), 27 September 2016 (“*Al Mahdi JS*”), para. 67.

³ *Prosecutor v. Bemba et al.*, Decision on Sentence pursuant to Article 76 of the Statute, [ICC-01/05-01/13-2123-Corr](#), 22 March 2017 (“*Bemba et al. SJ*”), para.36; *Prosecutor v. Lubanga*, Decision on Sentence pursuant to Article 76 of the Statute, [ICC-01/04-01/06-2901](#), 10 July 2012 (“*Lubanga SJ*”), para. 25-26, 36; *Lubanga SAJ*, para. 31-34.

⁴ *Prosecutor v. Bemba et al.*, Judgment on the appeals of the Prosecutor, Mr Jean-Pierre Bemba Gombo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled “Decision on Sentence pursuant to Article 76 of the Statute”, [ICC-01/05-01/13-2276-Red](#), 8 March 2018 (“*Bemba et al. SAJ*”), para. 112. See also *Lubanga SAJ*, para. 85; *Prosecutor v. Ntaganda*, Sentencing Judgment, [ICC-01/04-02/06-2442](#), 7 November 2011 (“*Ntaganda SJ*”), para. 13; *Prosecutor v. Katanga*, Decision on Sentence pursuant to article 76 of the Statute, [ICC-01/04-01/07-3484-tENG-Corr](#), 23 May 2014 (“*Katanga SJ*”), para. 71.

⁵ *Ntaganda SJ*, para. 13; *Bemba et al. SJ*, para. 23.

⁶ *Ntaganda SJ*, para. 14; *Lubanga SJ*, para. 36; *Bemba SJ*, para. 15.

⁷ *Lubanga SAJ*, para. 40, 62; *Ntaganda SJ*, para. 11, 16; *Katanga SJ*, para. 43.

⁸ *Ntaganda SJ*, para. 17.

manner.⁹ The Chamber must be convinced of the existence of an aggravating circumstance beyond reasonable doubt.¹⁰ Such circumstances must relate to the crimes for which the person is being sentenced or to the convicted person himself or herself.¹¹ A legal element of the crime or of a mode of liability cannot be considered an aggravating circumstance.¹² However, considering non-essential factual findings as aggravating circumstances is not double-counting.¹³ In limited circumstances, criminal conduct taking place *after* the crime of conviction may amount to an aggravating circumstance, provided there is a sufficiently proximate link between the two and the convicted person has received adequate notice of the relevant facts.¹⁴ Likewise, the consequences of a crime may be taken into account to aggravate the sentence provided that they are sufficiently linked, were objectively foreseeable to the convicted person, and are established beyond reasonable doubt.¹⁵

8. Examples of mitigating circumstances are listed in rule 145(2)(a), also in a non-exhaustive manner. The Chamber must be satisfied of their existence on the balance of probabilities.¹⁶ A mitigating circumstance must relate directly to the convicted person, but need not relate to the crimes of which the person is convicted.¹⁷ Mitigating circumstances are also not limited by the scope of the charges, or the Chamber's findings in the judgment.¹⁸ The existence of mitigating circumstances related to the convicted person does not lessen the gravity of the offences¹⁹ nor does it automatically reduce the sentence.²⁰ Rather, "any modification of sentence [resulting from a mitigating factor] needs to be assessed in light of all the circumstances of the case and cannot be limited to a simple mathematical diminution of the sentence otherwise to be imposed."²¹

⁹ Rules of Procedure and Evidence ("Rules"), Rule 145(2)(b)(vi).

¹⁰ [Ntaganda SJ](#), para. 17.

¹¹ [Ntaganda SJ](#), para. 18.

¹² [Bemba et al. SAJ](#), para. 129; [Ntaganda SJ](#), para. 20; [Al Mahdi JS](#), para. 70.

¹³ [Bemba et al. SAJ](#), para. 128.

¹⁴ [Bemba et al. SAJ](#), para. 115-116.

¹⁵ *Prosecutor v Ntaganda*, Judgment on the appeal of Mr Bosco Ntaganda against the decision of Trial Chamber VI of 7 November 2019 entitled "Sentencing judgment", [ICC-01/04-02/06-2667-Red](#), 30 March 2021, para. 2, 100-106; [Bemba et al. SAJ](#), para. 5, 263, 334.

¹⁶ [Ntaganda SJ](#), para. 24.

¹⁷ [Ntaganda SJ](#), para. 24.

¹⁸ [Ntaganda SJ](#), para. 24; [Lubanga SJ](#), para. 34; [Bemba et al. SJ](#), para. 24; [Al Mahdi JS](#), para. 74.

¹⁹ [Ntaganda SJ](#), para. 23; [Bemba et al. SJ](#), para. 24; [Katanga SJ](#), para. 77.

²⁰ ICTY, *Prosecutor v Bralo*, IT-95-17-A, Judgment on Sentencing Appeal, 2 April 2007 ("[Bralo SAJ](#)"), para. 83; ICTY, *Prosecutor v. Stakic*, [IT-97-24-A, Appeal Judgment](#), 22 March 2006, para. 407; ICTR, *Prosecutor v Nahimana et al*, [ICTR-99-52-A, Appeal Judgment](#), 28 November 2007, para. 1038.

²¹ [Bralo SAJ](#), para. 85. See also [Ntaganda SJ](#), para. 23.

9. Insofar as the same underlying conduct supports distinct contextual elements, resulting in a conviction both for a War Crime and a Crime Against Humanity, Trial Chambers of this Court have typically addressed the sentence for such crimes together, taking that circumstance into account.²²

III. Sexual and gender-based crimes

10. The Trial Chamber found Mr Ongwen guilty of two counts of Forced Marriage as an Other Inhumane Act, a Crime Against Humanity, two counts of Torture as a War Crime and two counts of Torture as a Crime Against Humanity, two counts of Rape as a Crime Against Humanity and two counts as a War Crime, two counts of Sexual Slavery as a Crime Against Humanity and two counts as a War Crime, one count of Forced Pregnancy as a Crime Against Humanity and one count as a War Crime, two counts of the Crime Against Humanity of Enslavement, and one count of the War Crime of Outrages upon Personal Dignity. All nineteen of these convictions arose from the abduction and sexual abuse perpetrated by Mr Ongwen directly against seven victims and indirectly against hundreds of other victims abducted and distributed within Sinia Brigade during the charged period.

11. Based on the gravity of these sexual and gender-based crimes, the aggravating circumstances, and Mr Ongwen's culpable conduct, without consideration of Mr Ongwen's individual circumstances, the Prosecution would recommend a sentence of 30 years of imprisonment. However, considering the individual circumstances addressed in section VII below, the Prosecution recommends that Mr Ongwen receive a sentence of 20 years of imprisonment for each of these crimes.

A. Gravity of the crimes

1. Nature of the offences, including the time, manner, and location of crimes and the means employed

12. Each of the sexual and gender-based crimes for which Mr Ongwen has been convicted is inherently grave.²³ Viewed concretely, moreover, the accounts of victimisation

²² [Ntaganda SJ](#), para. 31.

²³ *Prosecutor v. Bemba*, Judgment pursuant to Article 74 of the Statute, [ICC-01/05-01/08-3343](#), 21 March 2016, para. 99, 102, 105; ICTR, *Prosecutor v. Akayesu*, [ICTR-96-4-T, Judgement](#), 2 September 1998, para. 598, 685-688; ICTY, *Prosecutor v. Furundzija*, [IT-95-17/1-T Judgement](#), 10 December 1998, para. 185; ICTR, *Prosecutor v. Musema*, [ICTR-96-13-A, Judgement and Sentence](#), 27 January 2000, para. 226; ICTY, *Prosecutor v. Kunarac et al*, IT-96-23-T & IT-96-23/1-T, Trial Judgment, 22 February 2001 ("[Kunarac et al. TJ](#)"), para.

by the so-called “wives” of Mr Ongwen were particularly shocking.²⁴ These women were abducted from their homes in Northern Uganda,²⁵ as part of the LRA’s deliberate and systematic policy to abduct women and girls for use as domestic servants and so-called “wives” of men in the LRA.²⁶

13. The Trial Chamber found that once Mr Ongwen’s so-called “wives” were distributed to his household, or he personally abducted them, they were subjected to great physical and mental suffering in a coercive environment, deprived of their liberty, and forced to maintain an exclusive conjugal relationship with him.²⁷ Mr Ongwen had “sex by force” with P-0101, P-0214, P-0226, and P-0227 during the charged period,²⁸ and consequently impregnated P-0101 and fathered a boy and a girl with her during the charged period. In 2005, he impregnated P-0214 and fathered a girl with her.²⁹ Throughout the period of their pregnancies, the women could not leave, as they were under heavy guard and were told they would be killed if they tried to escape.³⁰

14. Sex with Mr Ongwen was compulsory; the women had no choice. P-0227, for example, stated that Mr Ongwen “showed me his gun” and “[t]he gun had something sharp on top of it like a bayonet”,³¹ at which point she was cowed into continuing to have sex with him. P-0226 was beaten for a week on Mr Ongwen’s orders until she submitted to having sex with him.³² Refusal to have sex was punished by beating³³ and could result in death.³⁴ The beatings left the victims scarred,³⁵ intimidated, and terrified.³⁶ Their suffering also included being reduced to a servile status, in which they had no choice but to carry out domestic chores for Mr Ongwen and his household.³⁷

460, 655; ICTR, [Prosecutor v. Muhimana, ICTR-95-IB-T](#), Judgement and Sentence, 28 April 2005, para 550; [Ntaganda SJ](#), para 96.

²⁴ [Trial Judgment](#), para. 395-397, 2011-2093.

²⁵ [Trial Judgment](#), para. 2011, 2013, 2014, 2016-2017, 2021, 2025, 2027.

²⁶ [Trial Judgment](#), para. 2028.

²⁷ [Trial Judgment](#), para. 3023, 2046.

²⁸ [Trial Judgment](#), para. 207.

²⁹ [Trial Judgment](#), para. 207.

³⁰ [Trial Judgment](#), para. 206.

³¹ [Trial Judgment](#), para 2058.

³² [Trial Judgment](#), para. 2052-2053.

³³ [Trial Judgment](#), para. 2047, 2073; P-0101, [T-13](#), p.21.

³⁴ [Trial Judgment](#), para. 2046; P-0101, [T-13](#), p.17.

³⁵ [Trial Judgment](#), para. 208, 2052, 2080.

³⁶ [Trial Judgment](#), para. 2061.

³⁷ [Trial Judgment](#), para. 208.

15. The Chamber convicted Mr Ongwen of both Rape and Sexual Slavery in order to reflect the “full scope” of his culpable conduct.³⁸ Rape and Sexual Slavery are distinct crimes, with materially distinct legal elements,³⁹ and they protect different interests. The prohibition of Rape protects a victim’s rights to physical and mental integrity and sexual autonomy, while the criminalisation of Sexual Slavery protects a victim’s right not to be reduced to a servile status or deprived of liberty to engage in acts of a sexual nature. Where the acts or conduct underlying convictions for both crimes is the same, such circumstance may be relevant to sentencing (though not, in the Prosecution’s respectful view, to the question of cumulative convictions). However, even a total overlap of the underlying conduct should not result in an automatic reduction of the sentence. Rather, the totality of the circumstances must determine the sentence.⁴⁰ Mr Ongwen’s sentence should reflect his convictions for *both* crimes, and the distinct harms caused by each.

16. The horrendous experience of Mr Ongwen’s so-called “wives” was replicated in the experiences of the so-called “wives” of his subordinates. The indirect SGBC victims who testified before the Chamber represent a much larger number of women and girls⁴¹ who were systematically victimised in Sinia Brigade. In addition to their testimony, the gravity of the victimisation of women and girls in Sinia Brigade was also demonstrated by the evidence of LRA insiders, other women testifying about their analogous personal experiences in the LRA, and other relevant evidence.⁴² These victims’ condition of enslavement is also reflected in the testimony that Mr Ongwen “gave” women to his soldiers “as a reward”.⁴³

2. Harm suffered by victims, families and society

17. Findings in the Trial Judgment and evidence presented during trial show that all the SGBC victims suffered tremendous physical, mental, and psychological harm, and the crimes also affected their families and communities.

³⁸ [Trial Judgment](#), para. 3036-3039. The Chamber found that “the crimes of rape cannot be said to be fully consumed within the crimes of sexual slavery nor [does] there exist[] a relation of subsidiarity between the two crimes”. *Id.* para. 3039.

³⁹ [Trial Judgment](#), para. 3036-3039.

⁴⁰ *Prosecutor v. Bemba et al*, Judgment pursuant to Article 74 of the Statute, [ICC-01/05-01/13-1989](#), 19 October 2016, para. 956; [Bemba et al. SJ](#), para. 146, 194, 249; *Prosecutor v. Ntaganda*, Judgment, [ICC-01/04-02/06-2359](#), 8 July 2019 (“*Ntaganda TJ*”), para. 1202-1203; [Ntaganda SJ](#), para. 94.

⁴¹ [Trial Judgment](#), para. 2141 (estimating that there were over one hundred abducted women and girls in Sinia Brigade at any one time during the charged period).

⁴² [Trial Judgment](#), para. 2097, 2215-2227.

⁴³ [Trial Judgment](#), para. 2225.

18. The victims described the harm they suffered in “clear, nuanced and compelling accounts”.⁴⁴ P-0099 said that when first raped by Mr Ongwen, she told him “you have hurt me”,⁴⁵ and he did not respond and showed no empathy or remorse. P-0101 was 15 years old, and still in her school uniform, when she was pinned down by Mr Ongwen’s escorts while he raped her.⁴⁶ P-0226 was about 10 years old⁴⁷ and so small she had to be lifted onto the bed so Mr Ongwen could rape her.⁴⁸ P-0227 said she felt like her “whole body was being torn apart”⁴⁹ during her oral and anal rape.

19. The victims also described long-lasting physical, psychological, and social harm. P-0226 stated that the beatings still cause her chest problems.⁵⁰ In P-0235’s case, the beatings left her with a permanent scar on her breast.⁵¹ P-0227, when recounting the impact of Mr Ongwen’s crimes, referenced the long-term impact on her education and the attendant health challenges.⁵² Perhaps it was P-0236 who best captured the enduring impact of Mr Ongwen’s crimes, when she alluded to its effect on her ability to be a productive member of society, because her peers are “working” and “in a much better position” than she is.⁵³

20. The harm suffered by the direct victims of Mr Ongwen is also reflected in the accounts of the five representative victims of SGBC indirectly perpetrated by Mr Ongwen. The Trial Chamber found that P-0315, P-0352, P-0366, P-0374, and P-0396 all gave clear examples of the institutionalised manner and systematic pattern of abduction, enslavement, forcible marriage, rape, sexual slavery, and torture of women and girls in Sinia Brigade. The Chamber found that, as a result of the sexual and physical violence, the living conditions to which they were subjected, and its accompanying physical and mental pain,⁵⁴ the abducted women and girls endured “severe psychological suffering”.⁵⁵

21. The Chamber also heard expert evidence on the long-lasting consequences of these

⁴⁴ [Trial Judgment](#), para. 395.

⁴⁵ [Trial Judgment](#), para. 2042.

⁴⁶ [Trial Judgment](#), para. 2013, 2046.

⁴⁷ [Trial Judgment](#), para. 2054.

⁴⁸ [Trial Judgment](#), para. 2053.

⁴⁹ [Trial Judgment](#), para. 2058.

⁵⁰ [Trial Judgment](#), para. 2052.

⁵¹ [Trial Judgment](#), para. 2080.

⁵² [Trial Judgment](#), para. 2090.

⁵³ [Trial Judgment](#), para. 2093.

⁵⁴ [Trial Judgment](#), para. 221.

⁵⁵ [Trial Judgment](#), para. 2309.

crimes.⁵⁶ Victims of SGBC had a poorer psychosocial well-being than their peers, because they experienced stigmatisation, shame, and social isolation in their communities upon return.⁵⁷ The society also suffered transgenerational effects of the sexual violence and the social transmission of stress and trauma because victims' parenting styles had been affected.⁵⁸ Victims who returned with a child or children born of rape suffered an additional level of victimisation, as they were often not accepted by their communities and they had particularly difficulty reintegrating into the community.⁵⁹

B. Aggravating circumstances

22. Rule 145(2)(b)(iv) recognises the commission of a crime against multiple victims as an aggravating circumstance. Mr Ongwen directly perpetrated sexual and gender-based crimes against the seven victims of Counts 50-60. With regard to the systemic SGBC victims, the Chamber found that over 100 abducted women and girls were in Sinia Brigade at any time during the charged period.⁶⁰ To the extent Mr Ongwen's criminal conduct continued *after* the charged period, that too should be considered an aggravating circumstance.

23. Rule 145(2)(b)(iii) characterises as an aggravating circumstance the commission of a crime against a victim who is particularly defenceless. In this case, victims as young as 10 years old were abducted, beaten, drafted into domestic servitude as *ting tings*, and ultimately used as sexual slaves.⁶¹ P-0101, for instance, was only 15 when she was abducted and raped.⁶² P-0101 stated that Mr Ongwen "was the worst when it came to young – when it came to young girls".⁶³ The so-called "wives" of other Sinia Brigade commanders had similar experiences; P-0374, for example, was 10-12 years old when she was forced to have sex with the commander to whom she was distributed.⁶⁴

24. Rule 145(2)(b)(iv) states that commission of a crime with "particular cruelty" is another aggravating circumstance. Mr Ongwen used extreme violence when raping and

⁵⁶ UGA-V40-V-0001, [T-174](#), p. 27, 30, 31, 33; [UGA-V40-0001-0010](#). *See also* UGA-PCV-0001, [T-175](#), p. 32-37.

⁵⁷ UGA-V40-V-0001, [T-174](#), p. 28, 34; UGA-PCV-0001, [T-175](#), p. 30-31.

⁵⁸ UGA-PCV-0001, [T-175](#), p. 31.

⁵⁹ UGA-V40-V-0001, [T-174](#), p. 22, 34; UGA-PCV-0001, [T-175](#), p. 31.

⁶⁰ [Trial Judgment](#), para. 213, 2125, 2126, 2128.

⁶¹ [Trial Judgment](#), para. 217.

⁶² [Trial Judgment](#), para. 2013; P-0101, [T-13](#), p. 16.

⁶³ [Trial Judgment](#), para. 2040.

⁶⁴ [Trial Judgment](#), para. 2211.

sexually enslaving his victims. He threatened P-0227 with a gun while he raped her.⁶⁵ P-0101, just 15 years old, was pinned down by Mr Ongwen's escorts as he raped her.⁶⁶ P-0226, who was about 10 years old,⁶⁷ was beaten into submission over the course of a week and then told by Mr Ongwen, as he raped her, that if she cried he would kill her;⁶⁸ she could not walk or work for a week afterward.⁶⁹ The indirect SGBC victims reported similar experiences. Women distributed as "wives" were told, including by Mr Ongwen personally, to choose between forced marriage and death.⁷⁰ Those who resisted were beaten until they accepted.⁷¹

25. Rule 145(2)(b)(v) states that commission of a crime for a discriminatory motive is also an aggravating circumstance. Mr Ongwen's crimes were in furtherance of the LRA policy to abduct women and girls for use as domestic servants and sexual slaves,⁷² which was inherently discriminatory on grounds of gender. It was also undergirded by the discriminatory motive to target civilians of northern Uganda who were perceived as supporting the Government of Uganda and thus as enemies of the LRA.

C. Mr Ongwen's culpable conduct: degree of participation and intent

1. Direct SGBC

26. Mr Ongwen was convicted of SGBC as a direct perpetrator. During the charged period, he had "sex by force" with P-0101, P-0214, P-0226, and P-0227,⁷³ and consequently impregnated, confined, and fathered a boy and a girl with P-0101 during the charged period. In 2005, he impregnated, confined, and fathered a girl with P-0214.⁷⁴

27. Mr Ongwen also subjected all seven of his direct SGBC victims to domestic servitude with orders to cook, carry his dishes, and make his bed. Disobedience meant that he beat them⁷⁵ or ordered his escorts to beat them.⁷⁶ He deprived all seven of their personal liberty,

⁶⁵ [Trial Judgment](#), para. 2058.

⁶⁶ [Trial Judgment](#), para. 2046.

⁶⁷ [Trial Judgment](#), para. 2054.

⁶⁸ [Trial Judgment](#), para. 2053.

⁶⁹ [Trial Judgment](#), para. 2052, 2054.

⁷⁰ [Trial Judgment](#), para. 2152, 2205, 2212, 2221.

⁷¹ [Trial Judgment](#), para. 2226-2227.

⁷² [Trial Judgment](#), para. 212.

⁷³ [Trial Judgment](#), para. 207.

⁷⁴ [Trial Judgment](#), para. 207.

⁷⁵ [Trial Judgment](#), para. 2073, 2077, 2080

⁷⁶ [Trial Judgment](#), para. 2072, 2075, 2076, 2078, 2079, 2081.

“restricted and dictated their movement”, and subjected them to physical and psychological threats and abuse.⁷⁷

28. Mr Ongwen was a senior commander in Sinia Brigade with the power to determine life or death for his victims. He directly abducted⁷⁸ or ordered Sinia fighters to abduct women and girls, some of whom were placed in his household.⁷⁹ He placed the women under heavy guard, ensured they could not leave or escape,⁸⁰ and forced them to maintain an exclusive conjugal relationship with him.

29. Regarding the degree of his intent, the Chamber found that “due to the nature of the acts” and their “sustained character over a long period of time”, Mr Ongwen “meant to engage in the relevant conduct”. Specifically for the crime of Forced Pregnancy, the Chamber found that Mr Ongwen “confined P-0101 and P-0214” with the “intent of sustaining the continued commission of the crimes in particular forced marriage, torture, rape and sexual slavery”.⁸¹

2. Indirect SGBC

30. Mr Ongwen’s treatment of the women and girls in his household served as a clear example to his subordinates,⁸² an example which encouraged the systemic victimisation through rape, sexual enslavement, forced marriage, forced labour, and physical and mental abuse of more than 100 other women and girls in Sinia Brigade at any time during the charged period.⁸³ Mr Ongwen ordered his fighters to abduct women and girls, he personally decided on their “distribution”, and he used his position of authority to enforce so-called “marriage” in Sinia Brigade.⁸⁴ As the Chamber found, “Dominic Ongwen was among the persons who helped define and, through their actions over a protracted period, sustained the system of abduction and victimisation of civilian women and girls in the LRA. Within Sinia, his role was *crucial and indispensable*.”⁸⁵

⁷⁷ [Trial Judgment](#), para. 3046.

⁷⁸ [Trial Judgment](#), para. 2013.

⁷⁹ [Trial Judgment](#), para. 2023 205, 213.

⁸⁰ [Trial Judgment](#), para. 206.

⁸¹ [Trial Judgment](#), para. 3061.

⁸² [Trial Judgment](#), para. 2113.

⁸³ [Trial Judgment](#), para. 2141-2142.

⁸⁴ [Trial Judgment](#), para. 3093.

⁸⁵ [Trial Judgment](#), para. 3094 (emphasis added).

31. Mr Ongwen consciously maintained and coordinated the systematic abduction, forced marriage, and sexual violence against women and girls in Sinia Brigade. The Trial Chamber heard the testimony of P-0351, P-0352, P-0366, P-0372, and P-0396, who were “simply examples of a much larger group of women who were the victims of these crimes”.⁸⁶ Mr Ongwen distributed them, forced them into marriage, and threatened them that if they refused the marriage or tried to escape, they would be killed.⁸⁷

32. P-0054,⁸⁸ P-0252,⁸⁹ P-0314,⁹⁰ and P-0379⁹¹ all testified to Mr Ongwen distributing girls in Sinia Brigade. P-0352 saw Mr Ongwen ask a girl who was refusing to “marry” to choose between accepting or death.⁹² P-0351 was instructed by Mr Ongwen to become Kalalang’s so-called “wife”.⁹³ P-0352 joined Mr Ongwen’s household and was forced to become Okwer’s so-called “wife”.⁹⁴ P-0366 stated that Mr Ongwen “told us we should stay with the person we were given”.⁹⁵ P-0396 described Mr Ongwen walking to them and giving them to their husbands; she was handed over to an LRA soldier called Okeny.⁹⁶ Other LRA insiders corroborated the accounts of Mr Ongwen’s systematic abuse of women and young girls. P-0045, P-0138, P-0252, P-0264, P-0307, P-0406, and others described the practice of so-called “wives” being assigned to Sinia Brigade commanders and fighters.⁹⁷

33. Regarding his intent, Mr Ongwen took ownership of his participation in the systematic abduction and distribution of women and girls. He is recorded telling Kony that “he has many female recruits which can replace these ones who escaped”;⁹⁸ when asked if he had abducted any girls, he responded “not yet” but that “he will work on that himself”.⁹⁹

⁸⁶ [Trial Judgment](#), para. 2097.

⁸⁷ [Trial Judgment](#), para. 2188, 2189, 2203, 2212.

⁸⁸ [Trial Judgment](#), para. 2172.

⁸⁹ [Trial Judgment](#), para. 2174.

⁹⁰ [Trial Judgment](#), para. 2174.

⁹¹ [Trial Judgment](#), para. 2174.

⁹² [Trial Judgment](#), para. 2152.

⁹³ [Trial Judgment](#), para. 2203.

⁹⁴ [Trial Judgment](#), para. 2205.

⁹⁵ [Trial Judgment](#), para. 2207.

⁹⁶ [Trial Judgment](#), para. 2212.

⁹⁷ [Trial Judgment](#), para. 2217-2227.

⁹⁸ [Trial Judgment](#), para. 2104; ISO logbook (Gulu), [UGA-OTP-0061-0002](#) at 0137. *See also* UPDF Logbook (Gulu), [UGA-OTP-0254-4143](#) at 4277.

⁹⁹ [Trial Judgment](#), para. 2107; [UGA-OTP-0163-0007](#) at 0169.

34. As the Chamber found, Mr Ongwen’s “personal acts prove his knowledge and conscious participation in the LRA system of abduction and abuse of women and girls”.¹⁰⁰ As discussed in the preceding paragraphs, he personally distributed women and girls to Sinia Brigade commanders and fighters and kept them in a coercive environment by threatening them with death if they refused to obey. It was not an idle threat; P-0138 testified that she saw a girl killed because she refused a “husband”.¹⁰¹

IV. Conscription and use of child soldiers

35. The Trial Chamber found Mr Ongwen responsible as an indirect co-perpetrator for conscripting children under the age of 15 years (count 69) and using them to participate actively in hostilities (count 70).

36. Conscription and use of child soldiers are two separate crimes, as held by the Trial Chambers in *Lubanga* and *Katanga*.¹⁰² Because they are separate crimes, the Chamber should enter separate sentences for each,¹⁰³ reflecting the particular harms inflicted by conscripting a child into an armed force by coercion or compulsion, and by using that child to participate actively in hostilities. Based on the gravity of the crimes, the aggravating circumstances, and Mr Ongwen’s culpable conduct, without consideration of Mr Ongwen’s individual circumstances, the Prosecution would recommend a sentence of no less than 24 years of imprisonment for each of these crimes. However, taking into consideration the circumstances discussed below in section VII, the Prosecution recommends a sentence of 16 years for each.

A. Gravity of the crimes

1. Nature of the offences, including the time, manner, and location of crimes and the means employed

37. Conscripting children under the age of 15 into an armed group and using them to participate actively in hostilities are very serious crimes.¹⁰⁴ These prohibitions are intended to protect children under the age of 15 from risks associated with armed conflict and to secure

¹⁰⁰ [Trial Judgment](#), para. 2113.

¹⁰¹ [Trial Judgment](#), para. 2222.

¹⁰² *Prosecutor v. Lubanga*, Judgment pursuant to Article 74 of the Statute, [ICC-01/04-01/06-2842](#), 5 April 2012, para. 609 and 620 (“*Lubanga TJ*”) (noting that use of the word “or” in article 8(2)(e)(vii) includes “three alternatives [which] are separate offences”); *Prosecutor v. Katanga*, Judgment pursuant to article 74 of the Statute, [ICC-01/04-01/07-3436-tENG](#), 7 March 2014 (“*Katanga TJ*”), para. 1041.

¹⁰³ Statute, art. 78(3).

¹⁰⁴ [Lubanga SJ](#), para. 37; [Ntaganda SJ](#), para. 179.

their physical and psychological well-being.¹⁰⁵ As noted by other Trial Chambers of this Court, “[t]he vulnerability of children means that they need to be afforded particular protection, going beyond the general population.”¹⁰⁶

38. The abduction of children has been one of the fundamental features of the LRA during its entire existence.¹⁰⁷ The Chamber found that recruitment of children was a specific and methodically-pursued organisation-wide policy of the LRA,¹⁰⁸ and that Mr Ongwen, Joseph Kony, and the Sinia Brigade leadership engaged in a coordinated effort to abduct children under 15 years of age across northern Uganda and force them to serve as Sinia fighters during the charged period.¹⁰⁹ It is significant that the recruitment of children was not incidental or a result of disregard for the age of the recruits, but that Mr Ongwen and his co-perpetrators specifically targeted children under 15 years of age.¹¹⁰

39. The Chamber found that witnesses P-0097, P-0252, P-0264, P-0275, P-0307, P-0309, P-0314, P-0330, and P-0410 were all abducted into the LRA as children under 15.¹¹¹ However, they do not represent the totality of victims, but are mere examples of a much larger number of child soldiers who were victims of Mr Ongwen. The accounts of these witnesses are particularly relevant for determining the gravity of the offences, because they paint a vivid picture of how children were treated in the LRA and the harms they endured. Their testimonies have many similarities, which allows the Chamber to conclude that their stories are representative of the experience of most, if not all, children in the brigade.

40. The Prosecution underlines that Mr Ongwen was convicted of crimes spanning a period of 3.5 years and a vast geographical area of northern Uganda. The manner of abductions shows that no place was safe. Children were most commonly abducted from their own homes, often in groups.¹¹² P-0097 was abducted while the family was celebrating his

¹⁰⁵ [Lubanga TJ](#), para. 605.

¹⁰⁶ [Ntaganda SJ](#), para. 179. *See also* [Lubanga SJ](#), para. 37 (and references contained therein).

¹⁰⁷ [Trial Judgment](#), para. 2310.

¹⁰⁸ [Trial Judgment](#), para. 2313.

¹⁰⁹ [Trial Judgment](#), para. 2313.

¹¹⁰ [Trial Judgment](#), para. 2313. *See also id.* para. 2316, 2317, 2369 (LRA insider witnesses explained that children “could still be ‘mentored’ and ‘influenced to do what you want the person to do’” and “‘it’s easy to indoctrinate them so that they cannot escape’” and “[i]t was very easy to change their mindsets so that they could be part of the soldiers. Children could also easily forget”).

¹¹¹ [Trial Judgment](#), para. 299 (P-0097), 323 (P-0252), 338-339 (P-0307), 346, and 2345 (P-0309), 348 (P-0314), 2378 (P-0330), 374 (P-0410), 487 and 2360 (P-0275), 2343 (P-0264).

¹¹² P-0314, [T-74](#), p. 8. *See also* [Trial Judgment](#), para. 2350; P-0410, [T-151](#), p. 7.

sister's wedding,¹¹³ and P-0410 was abducted on his way back from school.¹¹⁴ When P-0264 was abducted, his mother pled with the LRA soldiers on her knees, but to no avail.¹¹⁵

41. The manner of integrating abducted children into the LRA was particularly grave. It followed a pattern designed to impress upon the victims that they were now part of a military organisation and there was no way out. Almost all children were beaten as a form of initiation. Witnesses described flogging, caning, or hitting “to beat the civilian” out of them.¹¹⁶ If children tried to escape and were caught, they were severely punished, or killed, often by other children, to set an example.¹¹⁷ The children generally believed that if they tried to escape and were caught, they would be killed.¹¹⁸ Despite this, many did attempt to escape, which in itself demonstrates how unbearable life in the armed group was for them. P-0275 explained his decision to escape as follows: “I could no longer bear the, the hunger, the worries, my concerns about the people that were at home, and seeing all the bad things that happened in the bush. And for those reasons I decided that no matter what, I had to escape. If I’m killed – if I’m apprehended, then I will be killed and that’s fine.”¹¹⁹

42. In addition, the children were trained and used to participate actively in hostilities. The Chamber found that children took part in fighting, facilitated LRA attacks by raising alarms, burnt and pillaged civilian houses, collected and carried pillaged goods from attack sites, and acted as scouts.¹²⁰ The Trial Chamber also found that children were used as escorts in Sinia Brigade, including by Mr Ongwen himself.¹²¹ By using children under 15 in this way, the LRA put them in the line of fire and exposed them to death and injuries.¹²² Children were typically used already *as* they were being abducted, usually by making them carry pillaged goods.¹²³

¹¹³ P-0097, [T-108](#), p. 6-7. *See also* [Trial Judgment](#), para. 2342.

¹¹⁴ P-0410, [T-151](#), p. 7.

¹¹⁵ P-0264, [T-64](#), p. 10.

¹¹⁶ [Trial Judgment](#), para. 2373 *et seq.*

¹¹⁷ P-0379, [T-57](#), p. 76, 77, 78; P-0226, [T-8](#), p. 64 and [T-9](#), p. 3; P-0309, [T-60](#), p. 39-40; P-0252, [T-88](#), p. 33. *See also* [Trial Judgment](#), para. 971-990.

¹¹⁸ P-0330, [T-52](#), p. 72.

¹¹⁹ P-0275, [T-124](#), p. 19.

¹²⁰ [Trial Judgment](#), para. 225, 2415-2447, 3103.

¹²¹ [Trial Judgment](#), para. 224, 2395-2402, 3102.

¹²² With respect to use of children as escorts or bodyguards, see *e.g.*, [Lubanga SAI](#), para. 337; [Ntaganda TJ](#), para. 1126, 1129.

¹²³ P-0097, [T-108](#), p. 9-10; P-0275, [UGA-OTP-0244-3398-R01](#) at 3401; P-0410, [T-151](#), p. 17; P-0061, [UGA-OTP-0144-0043-R01](#) at 0046.

2. Harm suffered by the victims, their families, and society

43. The system of abducting children into the LRA had a devastating impact on the victims.¹²⁴ The victims suffered and continue to suffer long-term physical, psychological, material, and social harm, as addressed in the expert evidence of Michael Wessels.¹²⁵

44. Beatings were a regular occurrence, and children under 15 were beaten for the smallest of infractions.¹²⁶ For example, P-0314 was once beaten 60 strokes because he forgot some salt on the ground.¹²⁷ Mr Ongwen put a knife on P-0307's chest and made him believe that he would be killed because he forgot to salute him properly.¹²⁸ Children had to walk long distances and carry heavy loads almost daily.¹²⁹ As a result of their use in hostilities, they were often wounded or killed.¹³⁰ They had no access to medical treatment, and their wounds were treated with mere hot water and shea butter and took a long time to heal (if they healed at all).¹³¹ Even when wounded, children had to walk long distances, carry luggage, and perform other tasks.¹³² The children did not have sufficient food and water and were often hungry and thirsty, which amplified their physical exhaustion.¹³³

45. Further, the traumatic recruitment, separation from their families, exposure to brutal violence, the acts they were made to perform, and the fear they experienced resulted in psychological consequences. Whilst in the LRA, the children were largely resigned to the dismal circumstances. Because forming any sort of friendship was regarded as suspicious, children did not dare to form relationships with other victims, which further increased their mental suffering and their feeling of abandonment.¹³⁴

46. Many former child soldiers continue to suffer from nightmares many years after they left the armed group.¹³⁵ P-0330 stated: "The spirits of people I killed would come and stab

¹²⁴ [Trial Judgment](#), para. 2310.

¹²⁵ PCV-0002, [UGA-PCV-0002-0076](#).

¹²⁶ P-0252, [T-88](#), p. 33-34

¹²⁷ P-0314, [T-75](#), p. 43.

¹²⁸ [Trial Judgment](#), para. 2389.

¹²⁹ P-0314, [T-75](#), p. 42-43.

¹³⁰ P-0314, [T-75](#), p. 44; P-0330, [T-53](#), p. 36-37; P-0097, [T-108](#), p. 72; P-0307, [T-152](#), p. 74.

¹³¹ P-0314, [T-75](#), p. 45; P-0330, [T-53](#), p. 37; P-0252, [T-88](#), p. 31-32; P-0275, [T-124](#), p. 18.

¹³² P-0314, [T-75](#), p. 45; P-0330, [T-53](#), p. 37.

¹³³ P-0252, [T-88](#), p. 30, 35; P-0309, [T-61](#), p. 58; P-0330, [T-53](#), p. 47; P-0309, [T-75](#), p. 52; P-0097, [T-108](#), p. 70-71.

¹³⁴ P-0252, [T-88](#), p. 34-25; P-0330, [T-53](#), p. 47; P-0309, [T-75](#), p. 52.

¹³⁵ P-0097, [T-108](#), p. 77; P-0309, [T-61](#), p. 59-60; P-0317, [T-152](#), p. 3.

me. There are particular months which I have these problems and I cry in the night alone.”¹³⁶ P-0252 said he still “feels haunted”.¹³⁷

47. The harm suffered by children in Sinia Brigade did not stop if or when they managed to escape. The former child soldiers who testified at trial described how being abducted interrupted their education and how their lives were derailed. The witnesses sometimes became emotional during this part of their testimony, which reflects the harm they continue to suffer as a result of events that occurred more than 15 years ago. Irrespective of whether they were in the LRA for a few weeks or a number of years, the experience has had a profound and long-lasting impact on them. Expert witness Michael Wessels noted that child soldiers are known to develop a mixture of internalising problems such as anxiety and depression, and externalising problems such as rule breaking, aggressive behaviour, and lack of pro-social behaviour.¹³⁸ He made a conservative estimate that 30-40% of formerly abducted children suffered PTSD as a consequence of abduction into the LRA.¹³⁹

48. Former child soldiers returning from the LRA also found themselves alienated from the community and stigmatised.¹⁴⁰ P-0309 remarked that he lost a lot of friends and finds it difficult to converse with people.¹⁴¹ He reported feeling like a freak show.¹⁴² P-0252 felt stigmatised and was constantly insulted, including in school.¹⁴³

49. Finally, the harm caused by Mr Ongwen’s crimes goes far beyond the harm inflicted on the children who were conscripted and used in hostilities. Expert witness Michael Wessels detailed a myriad of psychological, social, behavioural, developmental, and other effects on the families and communities of the abducted children.¹⁴⁴ He noted that “the abductions of children [...] tore at the fabric of Acholi communities and society.”¹⁴⁵ The families experienced intense fear as an ongoing psychological reaction and feelings of enormous guilt for being unable to protect their children from abduction.¹⁴⁶ The situation of families with

¹³⁶ P-0330, [T-53](#), p. 38, 39.

¹³⁷ P-0252, [T-88](#), p. 29-30, 39-40.

¹³⁸ PCV-0002, [UGA-PCV-0002-0076](#) at 0086-0087.

¹³⁹ PCV-0002, [UGA-PCV-0002-0076](#) at 0087.

¹⁴⁰ P-0097, [T-108](#), p. 77; P-0307, [T-152](#), p. 75; P-0330, [T-53](#), p. 40.

¹⁴¹ P-0309, [T-61](#), p. 60.

¹⁴² P-0309, [T-61](#), p. 61.

¹⁴³ P-0252, [T-88](#), p. 35-36.

¹⁴⁴ PCV-0002, [UGA-PCV-0002-0076](#) at 0099-0104.

¹⁴⁵ PCV-0002, [UGA-PCV-0002-0076](#) at 0103.

¹⁴⁶ PCV-0002, [UGA-PCV-0002-0076](#) at 0100.

abducted children suffered adverse effects on child-rearing practices, and the siblings of abducted children experienced negative developmental effects.¹⁴⁷ The abductions also caused significant damage to community development.¹⁴⁸

B. Aggravating circumstances

50. The seriousness of these crimes is underscored by several aggravating circumstances. First, the crimes were committed against multiple victims.¹⁴⁹ The Chamber found that large numbers of children under 15 were conscripted and used in hostilities during the charged period in Sinia Brigade.¹⁵⁰ Although it is impossible to determine the exact number of victimised children, the methodical manner in which the LRA targeted children, the length of the charged period (3.5 years), the available information about the extent of abductions by the LRA in northern Uganda generally,¹⁵¹ and the evidence of LRA insiders who testified about continuous abductions and the presence of children under 15 years in Sinia Brigade specifically,¹⁵² all support the conclusion that the number of victims is indeed large.

51. Second, the way children under 15 were abducted and treated in Sinia Brigade should be considered a further aggravating factor.¹⁵³ As noted above, children were, as a rule, beaten in order to ensure compliance and create a climate of fear.¹⁵⁴ P-0252 was beaten with canes and a machete,¹⁵⁵ P-0097 was whipped,¹⁵⁶ and P-0330 was beaten with a wire lock.¹⁵⁷ The children constantly lived in fear, did not have enough food, and were made to walk long distances in the bush, suffering from exhaustion.

52. Third, the extreme youth and consequent vulnerability of some of the victims is also an aggravating circumstance. While an element of the crime (that victims were under 15 years old) cannot constitute an aggravating factor, the *extreme* youth of some of the victims

¹⁴⁷ PCV-0002, [UGA-PCV-0002-0076](#) at 0102.

¹⁴⁸ PCV-0002, [UGA-PCV-0002-0076](#) at 0104.

¹⁴⁹ Rule 145(2)(b)(iv).

¹⁵⁰ [Trial Judgment](#), para. 223, 3102.

¹⁵¹ P-0422, [UGA-OTP-0270-0004](#) at 0028; UN, “Uganda: Child soldiers at centre of mounting humanitarian crisis”, [UGA-OTP-0231-0148](#); UNICEF, “Children bear the brunt of Uganda’s 19-year conflict”, [UGA-OTP-0231-0150](#); Human Rights Watch Report, Stolen Children: Abduction and Recruitment in Northern Uganda, [UGA-OTP-0133-0059](#); Uganda Human Rights Commission 6th Annual Report, 2003, [UGA-OTP-0132-0678](#) at 0750.

¹⁵² [Trial Judgement](#), para. 2329 *et seq.*

¹⁵³ Rule 145(2)(b)(iv); [Ntaganda SJ](#), para. 193.

¹⁵⁴ [Trial Judgment](#), para. 907-915, 2373.

¹⁵⁵ [Trial Judgment](#), para. 2374.

¹⁵⁶ [Trial Judgment](#), para. 2375-2376.

¹⁵⁷ [Trial Judgment](#), para. 2378.

(8-10 years old) made them particularly defenceless.¹⁵⁸ For example, the Chamber found that P-0275 was nine years old when abducted during the attack on Odek IDP Camp.¹⁵⁹ P-0015 recalled that the youngest of children abducted during the attack on Pajule IDP camp were eight years old.¹⁶⁰ P-0054 was “given” a ten-year-old boy as an escort.¹⁶¹ P-0372 stated that children as young as eight to ten were trained with a gun in Mr Ongwen’s group.¹⁶²

53. Fourth, the fact that Mr Ongwen continued to commit these crimes *after* the charged period should also be considered an aggravating circumstance. P-0189 stated that when he met Mr Ongwen in 2006, the group of fighters with Mr Ongwen included around ten children between 9 and 14 years old.¹⁶³ The Trial Chamber found P-0189’s age estimates reliable.¹⁶⁴

C. Mr Ongwen’s culpable conduct: degree of participation and intent

54. The Chamber found that Mr Ongwen, together with Joseph Kony and the Sinia Brigade leadership, engaged in a coordinated and methodical effort, relying on the LRA fighters under their control, to abduct children under 15 years of age and force them to serve as Sinia fighters.¹⁶⁵ Mr Ongwen exercised control over the crimes by virtue of his essential contribution, made in several different ways.

55. Mr Ongwen ordered Sinia fighters to abduct children to serve as recruits, and he was personally involved in abductions. Witness P-0205 described how Mr Ongwen abducted boys and girls from Laliya, including boys aged 12-15 years.¹⁶⁶ Mr Ongwen was also personally involved in distributing boys to different units and commanders. P-0142 noted that distribution of children in Sinia was done by Mr Ongwen and his “operation room”.¹⁶⁷ Mr Ongwen would ask the abducted children to state their age and was told by many that they were under 15.¹⁶⁸ Further, Mr Ongwen’s immediate household included a number of children under 15 years of age,¹⁶⁹ including escorts.¹⁷⁰ P-0314 testified that there were numerous

¹⁵⁸ Rule 145(2)(b)(iii); *Ntaganda SJ*, para. 195.

¹⁵⁹ [Trial Judgment](#), para. 487, 2360.

¹⁶⁰ P-0015, [UGA-OTP-0043-0131-R01](#) at para. 93; [Trial Judgment](#), para. 2354.

¹⁶¹ P-0054, [T-93](#), p. 25; [Trial Judgment](#), para. 2367.

¹⁶² [Trial Judgment](#), para. 2392.

¹⁶³ [Trial Judgment](#), para. 2406-2408.

¹⁶⁴ [Trial Judgment](#), para. 2406, n. 6550.

¹⁶⁵ [Trial Judgment](#), para. 222, 3110.

¹⁶⁶ [Trial Judgment](#), para. 2351.

¹⁶⁷ [Trial Judgment](#), para. 2366.

¹⁶⁸ [Trial Judgment](#), para. 2413-2414.

¹⁶⁹ [Trial Judgment](#), para. 2372.

escorts in Mr Ongwen’s household, and that he would “constantly” change them or alternate between them.¹⁷¹

56. Mr Ongwen’s degree of intent is perhaps best exemplified by his own words during an interaction with P-0189 in 2006. Although the event took place after the charged period, it is nonetheless relevant, as noted by the Chamber.¹⁷² During a meeting, P-0189 pleaded with Mr Ongwen to release the youngest children, but Mr Ongwen refused, saying: “You call those kids children, but I call them my soldiers. So we are talking about my soldiers. We are not talking about the children you are talking about.”¹⁷³ When P-0189 tried to convince Mr Ongwen to release just one boy, Mr Ongwen became irritated and again refused.¹⁷⁴

57. In conclusion, Mr Ongwen acted with the highest possible degree of intent and participation when he committed the crimes of Conscription and Use of Child Soldiers. Although he was himself a child when first abducted into the LRA, his own experience did not stop him – once he was a senior LRA commander – from inflicting the same fate on children abducted in 2002-2005.

V. Crimes related to the attacks on IDP camps

A. Murder, attempted murder, and attacks against the civilian population

58. The Trial Chamber found Mr Ongwen guilty of four counts of the War Crime of Attacks Against the Civilian Population, four counts of Murder as a Crime Against Humanity, four counts of Murder as a War Crime, three counts of Attempted Murder as a Crime Against Humanity, and three counts of Attempted Murder as War Crime. All eighteen of these convictions arose from the direct and violent targeting of civilians by LRA fighters under Mr Ongwen’s command during and shortly after the four charged attacks.

59. Based on the gravity of the crimes, the aggravating circumstances, and Mr Ongwen’s culpable conduct, without consideration of Mr Ongwen’s individual circumstances, the Prosecution would recommend sentences of 18 years of imprisonment for Attacks Against the Civilian Population, 30 years for Murder, and 20 years for Attempted Murder. However,

¹⁷⁰ [Trial Judgment](#), para. 2398.

¹⁷¹ [Trial Judgment](#), para. 2399.

¹⁷² [Trial Judgment](#), para. 2404.

¹⁷³ [Trial Judgment](#), para. 2408.

¹⁷⁴ [Trial Judgment](#), para. 2409-2410.

considering the circumstances discussed in section VII below, the Prosecution recommends that Mr Ongwen receive sentences of 12 years of imprisonment for Attacks Against the Civilian Population, 20 years for Murder, and 14 years for Attempted Murder.

1. Gravity of the crimes

a. Nature of the offences, including the time, manner, and location of crimes, and the means employed

60. Murder and Attempted murder are inherently amongst the most serious crimes. They cause or aim to cause the ultimate harm – loss of life. That ultimate harm is further amplified by its impacts on the victim’s family, dependants, relatives, and friends.¹⁷⁵

61. When considered in the abstract, the crime of directing Attacks Against the Civilian Population is less serious than Murder, because it is focused on the attack as such and does not require any actual harm. However, it remains a very serious crime, because it violates a core principle of international humanitarian law – distinction between civilians and combatants. Without that distinction, the lives of civilians are no longer protected. In addition, as a result of intentional targeting through such attacks, civilians are often subjected to further and unnecessary suffering and victimisation in the midst of armed conflict.¹⁷⁶

62. When considered against the concrete circumstances in which these crimes were committed in this case, discussed below, their gravity is evident.

Attacks against the civilian populations of Pajule, Odek, Lukodi, and Abok IDP camps

63. Thousands of civilians were targeted in the Pajule, Odek, Lukodi, and Abok IDP camps.¹⁷⁷ Large numbers of LRA fighters attacked the camps, armed with an assortment of weapons, including SPG-9s, AK-47s, a 12.7 mm anti-aircraft gun, RPGs, a PKM machine gun, as well as machetes and knives, which they used against the civilians of the camps.¹⁷⁸ The intensity of the attacks was overwhelming. As they spread through the camp, LRA

¹⁷⁵ [Ntaganda SJ](#), para. 44, 86.

¹⁷⁶ [Ntaganda SJ](#), para. 53, 88.

¹⁷⁷ The Chamber found that at the time of the attack at Pajule IDP camp, an estimated 15,000 to 30,000 people lived there. [Trial Judgment](#), para. 144, 1174. The number of civilians living within Lukodi IDP camp at the time of the attack was also large. [Trial Judgment](#), para. 1644. Odek IDP camp had between 2,000 and 3,000 people at the time of the attack. [Trial Judgment](#), para. 159, 1384. Abok IDP camp also contained thousands, with estimates ranging from 7,000 to just over 13,000 residents. [Trial Judgment](#), para. 190, 1858.

¹⁷⁸ [Trial Judgment](#), para. 147, 163-164, 180-181, 2824, 2876.

attackers broke into homes and shops, looting and raiding. They attacked the civilians, shooting, burning, or beating them, and setting their huts on fire. The LRA abducted hundreds of civilians and forced them to carry heavy looted items. As further discussed below, they killed and attempted to kill hundreds of civilians during these attacks.¹⁷⁹

Murders and attempted murders of civilians in the camps

64. The murders and attempted murders committed during the attacks were also extremely serious. At Pajule IDP camp, for example, the Chamber found that most of the victims were abductees who were killed because they tried to escape or refused to carry looted goods.¹⁸⁰ The attackers cut them with machetes,¹⁸¹ stabbed them to death,¹⁸² or hit or shot them in the head.¹⁸³

65. In Odek, LRA attackers killed at least 52 civilians and attempted to kill at least 10 more. Many civilians were shot as they fled. The attackers sprayed bullets inside civilian houses with people inside, or set huts on fire with civilians inside.¹⁸⁴ Others were beaten or stabbed to death.¹⁸⁵ Witnesses spoke of civilians being “killed in a terrible way” and their bodies desecrated.¹⁸⁶ One heavily-pregnant civilian was killed.¹⁸⁷ Some civilians were killed when they struggled or tried to escape.¹⁸⁸ In one instance, a man was beaten so badly that his brain was exposed. Another was killed because his feet were too swollen and he could not walk any further.¹⁸⁹ Nine other abductees were killed after the LRA commander they were forced to carry died from his injury; they were hacked to death with machetes.¹⁹⁰

66. In Lukodi, civilians were shot, burnt, and beaten to death by the LRA. At least 48 civilians were killed during the LRA attack and in their retreat from the camp, and at least another 11 were victims of attempted killings.¹⁹¹ LRA fighters put civilians, including

¹⁷⁹ [Trial Judgment](#), para. 152, 167-169, 182-184, 188, 197-199, 201-202, 2826, 2876, 2929, 2975.

¹⁸⁰ [Trial Judgment](#), para. 152.

¹⁸¹ [Trial Judgment](#), para. 1314.

¹⁸² [Trial Judgment](#), para. 1315-1317.

¹⁸³ [Trial Judgment](#), para. 1319, 1324.

¹⁸⁴ [Trial Judgment](#), para. 167-169, 1492, 1495, 1500-1501, 1520-1522, 1525.

¹⁸⁵ [Trial Judgment](#), para. 1498.

¹⁸⁶ [Trial Judgment](#), para. 1521.

¹⁸⁷ [Trial Judgment](#), para. 1524.

¹⁸⁸ [Trial Judgment](#), para. 174.

¹⁸⁹ [Trial Judgment](#), para. 174, 1595, 1597.

¹⁹⁰ [Trial Judgment](#), para. 174, 1602.

¹⁹¹ [Trial Judgment](#), para. 182-184, 1779.

children, into houses, locked the doors, and set the houses on fire.¹⁹² P-0301 testified that he saw “bodies hacked in a barbaric way”.¹⁹³ When children, as young as three, came out of a burning house, LRA fighters cut them and threw them back into the burning house, or beat them to a pulp and left them for dead.¹⁹⁴ Civilians were killed by stabbing them multiple times.¹⁹⁵ LRA fighters put children into sacks and beat them to death.¹⁹⁶

67. In Abok, the LRA killed at least 28 civilians and attempted to kill at least another four. These civilians were killed by shooting, burning, or beating them. In one instance, a commander entered a house with over ten inhabitants and, after forcing several to carry loot, closed the others inside the house and set it on fire.¹⁹⁷ Civilians were stabbed, beaten, or hit on the backs of their heads with clubs.¹⁹⁸ Amongst the civilians killed were children as young as two, three, or four years old.¹⁹⁹ Other victims were burnt to death.²⁰⁰ The Chamber concluded that the LRA purposefully shot at civilians, burnt down homes resulting in civilians trapped in burning buildings, and severely beat others, leaving them for dead.²⁰¹

b. Harm suffered by the victims, their families, and communities

68. The crime of intentionally attacking the civilian population does not require any actual harm. However, as shown above, the impact of this crime was devastating for the civilian populations of the Pajule, Odek, Lukodi, and Abok IDP camps. All four attacks were of high intensity and targeted thousands of civilians. As a result, hundreds of civilians were subjected to other crimes, such as murders, attempted murders, abductions, and torture, and saw their livestock and property looted and their houses and camps set on fire.

69. The facts summarised above demonstrate that the murders committed by LRA fighters caused serious harm to the victims, their families, and their communities. Those murdered lost their lives. The manner in which they were killed also points to immense pain and suffering before they died. Victims were cut, thrown and locked inside houses and

¹⁹² [Trial Judgment](#), para. 1741-1744, 1755-1756.

¹⁹³ [Trial Judgment](#), para. 1751.

¹⁹⁴ [Trial Judgment](#), para. 1758.

¹⁹⁵ [Trial Judgment](#), para. 1761.

¹⁹⁶ [Trial Judgment](#), para. 1764.

¹⁹⁷ [Trial Judgment](#), para. 197-199, 1927-1928.

¹⁹⁸ [Trial Judgment](#), para. 1931, 1955.

¹⁹⁹ [Trial Judgment](#), para. 1935, 1956.

²⁰⁰ [Trial Judgment](#), para. 1932-1935, 1956.

²⁰¹ [Trial Judgment](#), para. 1961-1962.

burnt.²⁰² Some died of the pain from burn injuries,²⁰³ while others were beaten to death or stabbed multiple times.²⁰⁴

70. These killings, and the manner in which they were done, also had a major impact on victims' loved ones and their communities. P-0067, for example, testified how he found three children around the body of their mother, who had been killed by a machete, crying "[o]ur mother has been killed".²⁰⁵ P-0252, who had witnessed the killing of his own father, described the anguish he felt. Because of it, he would just break down and cry, wherever he was. Other witnesses testified of how the community would take P-0252 for prayers to try and calm his feelings. P-0252 had himself been a victim of attempted killing.²⁰⁶

71. Survivors of attempted murders still bear permanent injuries and scars caused by bullets in their neck, mouth, shoulders, legs, or other parts of their bodies.²⁰⁷ P-0026 was shot in her leg and could not move. Her daughter was killed instantly and fell on her. Her other daughter was also shot on her left foot.²⁰⁸ When another victim, a child of seven years old, tried to run for her life from a burning house, she was beaten and left for dead. An injury to her eye was so severe that she has not yet fully recovered.²⁰⁹ P-0196 testified that he was thrown by the LRA into a burning hut to be killed so that they did not "waste the bullet". He was only seven years old. He spent three months in the hospital recovering from burn wounds on his left leg and stomach, and still experiences pain.²¹⁰

72. In addition to such accounts from the victims, evidence from expert witnesses also emphasised the extent and lasting impact of the harm from these crimes. In expert witness Teddy Atim's report, for example, the killing of a family member (excluding a spouse or a child) was one of the two most experienced War Crimes and Crimes Against Humanity, experienced by an astonishing 87 percent of the Odek, Lukodi, and Abok population.²¹¹ Teddy Atim's report gives examples of the deep trauma and daily struggles that the killings

²⁰² [Trial Judgment](#), para. 1741-1742, 1751, 1755-1758, 1926-1933, 1956.

²⁰³ [Trial Judgment](#), para. 1760.

²⁰⁴ [Trial Judgment](#), para. 1498, 1761.

²⁰⁵ [Trial Judgment](#), para. 1314.

²⁰⁶ [Trial Judgment](#), para. 1536, 1607-1608.

²⁰⁷ [Trial Judgment](#), para. 1511, 1534, 1545, 1958.

²⁰⁸ [Trial Judgment](#), para. 1757.

²⁰⁹ [Trial Judgment](#), para. 1758.

²¹⁰ [Trial Judgment](#), para. 1762.

²¹¹ V40-0002, [UGA-V40-0001-0010](#) at 0035.

of loved ones had on those left behind.²¹² Many that survived attempted murders were left with crippling disabilities, with direct impacts not only on their own physical and psychological well-being, but also that of their families.²¹³

2. Aggravating circumstances

73. The Chamber found that all four attacks in Pajule, Odek, Lukodi, and Odek constituted Attacks Against the Civilian Population. This in itself evidences the large scale of the crimes. As already elaborated, the attacks targeted thousands of civilians and resulted in a multitude of grave crimes, including murders and attempted murders, committed with particular cruelty. All of these factors constitute aggravating circumstances.

74. All four attacks were also carried out pursuant to the LRA's discriminatory policy against the civilians living in all of the four IDP camps.²¹⁴ That discriminatory motive can and should be taken into account as an aggravating factor for all the attack-related crimes other than Persecution. This is because "every conviction should stand on its own [and] aggravating circumstances must be considered for every crime separately."²¹⁵

75. With regard to Murder and Attempted Murder, the Chamber convicted Mr Ongwen of the murder of a total of at least 132 civilians and the attempted murder of at least 25 others across the four attacks. This establishes the commission of crimes against multiple victims as envisaged by rule 145(2)(b)(iv). The particular cruelty with which these crimes were committed, as well as the particular defencelessness of victims, are discussed above. Lastly, the discriminatory motive with which these crimes were committed constitutes another aggravating circumstance.

²¹² V40-0002, [UGA-V40-0001-0010](#) at 0060.

²¹³ V40-0002, [UGA-V40-0001-0010](#) at 0061-0062.

²¹⁴ [Trial Judgment](#), para. 2846-2848, 2868, 2906-2907, 2922, 2959-2960, 2968, 3006-3007, 3015.

²¹⁵ ICTY, *Prosecutor v. Vasiljevic*, [IT-98-32-A, Appeal Judgment](#), 25 February 2004, para. 172-173. *See also Ntaganda SJ*, para. 84, 86 (taking into account discriminatory intent as an aggravating circumstance for a murder even though that conduct was part of the conduct underlying the Persecution conviction); ECCC, *Prosecutor v. Duch*, [001/18-07-2007/ECCC/TC, Trial Judgment](#), 26 February 2010, para. 605 (considering the Accused's discriminatory intent as an aggravating factor for sentencing on War Crimes even though those convictions were based on the same conduct underlying the Persecution conviction).

3. Mr Ongwen's culpable conduct: degree of participation and intent

a. Attacks against the civilian population

76. The Chamber found Mr Ongwen to have committed attacks against the civilian populations of the Pajule, Odek, Lukodi, and Abok IDP camps under article 25(3)(a) of the Statute. As elaborated below, his degree of participation and intent in the commission of this war crime was substantial.

77. Mr Ongwen agreed to attack Pajule, the civilian population of which he considered the enemy.²¹⁶ He participated in the planning and preparation of this punitive attack,²¹⁷ was directly involved in its execution on the ground,²¹⁸ and directly benefited from it.²¹⁹ He threatened to kill anyone who escaped or dropped looted goods.²²⁰

78. Aware of Kony's order to attack the people of Odek, in order to punish them, Mr Ongwen decided to attack Odek IDP camp. For him, the Odek population was the enemy.²²¹ He coordinated with his subordinate commanders, chose the ones to lead the attack on the ground, and ordered the fighters to target everyone, loot, and abduct.²²² He had full operational control.²²³ He encouraged and thanked his fighters before and after the attack.²²⁴

79. It was Mr Ongwen again who decided to attack Lukodi, the population of which he considered to be the enemy.²²⁵ He selected the commanders, ordered the fighters to attack, and took responsibility for the attack.²²⁶

80. This was also the case for the Abok attack. Mr Ongwen ordered his fighters to attack the camp, including the civilians, whom he considered to be the enemy.²²⁷ His fighters entered the camp, firing their guns, and attacked the civilians by shooting, burning, and

²¹⁶ [Trial Judgment](#), para. 141, 2852-2854, 2868-2869.

²¹⁷ [Trial Judgment](#), para. 2851, 2860-2861, 2866.

²¹⁸ [Trial Judgment](#), para. 2862, 2866, 2871.

²¹⁹ [Trial Judgment](#), para. 2863.

²²⁰ [Trial Judgment](#), para. 2862, 2871.

²²¹ [Trial Judgment](#), para. 141, 2920-2922.

²²² [Trial Judgment](#), para. 2910.

²²³ [Trial Judgment](#), para. 2917.

²²⁴ [Trial Judgment](#), para. 2920.

²²⁵ [Trial Judgment](#), para. 141, 2960, 2968.

²²⁶ [Trial Judgment](#), para. 2963.

²²⁷ [Trial Judgment](#), para. 141, 3007, 3010, 3015.

beating them and burning hundreds of civilian homes. Just like with the other attacks, Mr Ongwen intended the Abok civilians to be attacked.²²⁸

b. Murder and attempted murder

81. With regard to the murders and attempted murders committed during the attacks on Pajule, Odek, Lukodi and Abok, the Chamber found Mr Ongwen to have committed them under article 25(3)(a), in conjunction with article 25(3)(f) for the attempted murders.

82. In relation to the attack on Pajule, the Prosecution reiterates its above submissions on the degree of participation and intent regarding his intentional targeting of the civilians.²²⁹ In addition, it notes that Mr Ongwen agreed to and helped plan an attack which, in the ordinary course of events, would result, and did in fact result, in the killing of civilians.²³⁰ Mr Ongwen was also directly involved in abductions and looting at Pajule, and as the Chamber found, most of the Pajule murder victims were abductees who were killed because they tried to escape or refused to carry looted goods.²³¹

83. Similarly, with regard to the murders and attempted murders at Odek, Lukodi, and Abok, the above submissions on the degree of participation and intent regarding Mr Ongwen's intentional targeting of the civilians in these camps are reiterated.²³² In addition, the Chamber found that Mr Ongwen had full operational control of the attacks,²³³ ordering his fighters to attack, including for them to shoot, target everyone, abduct, loot, and burn down the camps.²³⁴ Ultimately, for Mr Ongwen the civilians in the Odek, Lukodi, and Abok IDP camps were his enemy, and he meant for them to be killed.²³⁵

84. In relation to the attempted murders, the Chamber found that the completion of the crime of Murder failed only due to independent circumstances.²³⁶ In this sense, Mr Ongwen's degree of participation and intent are the same as with regard to Murder.

²²⁸ [Trial Judgment](#), para. 3014.

²²⁹ See para. 77 above.

²³⁰ [Trial Judgment](#), para. 2853-2854, 2869.

²³¹ [Trial Judgment](#), para. 152, 1315-1325.

²³² See para. 78-80 above.

²³³ [Trial Judgment](#), para. 2918-2919, 2966.

²³⁴ [Trial Judgment](#), para. 1395, 1405, 1407, 208, 2916, 2966, 3010.

²³⁵ [Trial Judgment](#), para. 2921-2922, 2967-2968, 3014-3015.

²³⁶ [Trial Judgment](#), para. 2882, 2935, 2981.

B. Torture, enslavement, and outrages upon personal dignity

85. The Trial Chamber found Mr Ongwen guilty of four counts of Torture as a War Crime, four counts of Torture as a Crime Against Humanity, four counts of the Crime Against Humanity of Enslavement, and one count of the War Crime of Outrages upon Personal Dignity. All of these convictions arose from the abduction and mistreatment of civilians by LRA fighters under Mr Ongwen's command during and shortly after the four charged attacks.

86. Based on the gravity of the crimes, the aggravating circumstances, and Mr Ongwen's culpable conduct, without consideration of Mr Ongwen's individual circumstances, the Prosecution would recommend sentences of at least 20 years of imprisonment for each of these crimes. However, considering the circumstances discussed in section VII below, the Prosecution recommends a sentence of 14 years of imprisonment for each.

1. Gravity of the crimes

a. Nature of the offences, including the time, manner, and location of crimes, and the means employed

87. Considered in the abstract, the crime of Torture is "among the most serious crimes in international criminal law".²³⁷ Enslavement is also "particularly serious".²³⁸ The War Crime of Outrages upon Personal Dignity is also serious, because it represents a particularly outrageous assault on the dignity of a civilian or other non-combatant.²³⁹

88. In the concrete circumstances of this case, all of these crimes were particularly grave, as demonstrated by the Chamber's factual findings in the Trial Judgment. At the Pajule attack, for example, the Chamber found that LRA fighters abducted hundreds of civilian camp residents and forced them to carry heavy loads for long distances, sometimes without shoes.²⁴⁰ These abductees were held under armed guard, constantly threatened with death, and threatened with or actually subjected to beatings.²⁴¹

²³⁷ See ICTY, *Prosecutor v. Simic*, IT-95-9/2-S, Sentencing Judgment, 17 October 2002 ("*Simic SJ*"), para. 34; ICTY, *Prosecutor v. Zelenovic*, IT-96-23/2-S, Sentencing Judgment, 4 April 2007, para. 36.

²³⁸ *Kunarac et al. TJ*, para. 858 (calling crimes of rape, enslavement, and other mistreatment "particularly serious offences").

²³⁹ See ICC Elements of Crimes, article 8(2)(c)(ii).

²⁴⁰ *Trial Judgment*, para. 153-154, 2829.

²⁴¹ *Trial Judgment*, para. 153, 2829, 2839.

89. The LRA's actions during the Odek attack were similar, with the Chamber emphasising the "grave physical abuse" suffered by civilians.²⁴² One victim was raped during the attack.²⁴³ One civilian abductee was forced to kill another with a club and to inspect corpses; another was forced to watch someone being killed; and some mothers were forced to abandon their small children at the side of the road.²⁴⁴

90. During and after the Lukodi attack, the Chamber found that the LRA "severely mistreated civilians" by abducting them, tying some together, and forcing them to carry heavy loads for long distances, under constant threat.²⁴⁵ Witness P-0187 was wounded and raped during the attack; others were beaten; mothers were forced to abandon small children; and the LRA fighters threw babies into the woods because they were crying.²⁴⁶

91. The findings for the Abok attack were similar. There too civilians were abducted, forced to carry heavy loads, as well as an injured fighter, for long distances and under constant threat of beatings or death. Abductees were beaten, and one was forced to kill another as a lesson to any who might consider attempting to escape.²⁴⁷

b. Harm suffered by the victims, their families, and society

92. The facts summarised above demonstrate that these crimes caused serious harm to the victims, their families, and their communities. In addition, the evidence shows that many victims suffered long-lasting physical and psychological consequences. For example, a civilian named Okony escaped from the LRA about one week after he was abducted from the Pajule IDP camp, but he stayed in the hospital for a long time because he was vomiting blood.²⁴⁸ P-0249, another victim from Pajule, still has scars on his shoulders from carrying an injured LRA fighter. When he was no longer able to walk, LRA fighters beat him until he was unconscious and left him for dead, after which he dragged himself for nine days trying to reach home.²⁴⁹ Oryema Kadogo was also beaten and left for dead, but government soldiers found him and took him to a hospital; he remains disabled to this day.²⁵⁰

²⁴² [Trial Judgment](#), para. 171-174, 2885, 2895.

²⁴³ [Trial Judgment](#), para. 166, 2885.

²⁴⁴ [Trial Judgment](#), para. 173, 2902-2903.

²⁴⁵ [Trial Judgment](#), para. 187, 2938, 2948.

²⁴⁶ [Trial Judgment](#), para. 187, 2938.

²⁴⁷ [Trial Judgment](#), para. 201, 2984, 2994.

²⁴⁸ [Trial Judgment](#), para. 1338.

²⁴⁹ [Trial Judgment](#), para. 1344.

²⁵⁰ [Trial Judgment](#), para. 1350.

93. Hellen Adong, a victim from Odek, testified that after she was forced by the LRA to leave her breast-feeding baby behind, her baby stopped eating and died a week later.²⁵¹ As the LRA marched Hilary Kilama and other abductees from Odek, Kilama's feet were so swollen that he couldn't walk.²⁵²

94. P-0024, a victim from Lukodi, testified that she lost some teeth and has problems with her ears as a result of beatings by LRA attackers, and that she is "still weak up to now."²⁵³ Her infant son was one of the children thrown into the bush by the LRA, after which he was too sick to breastfeed.²⁵⁴ The Chamber found that P-0024's experience "is still deeply disturbing to her."²⁵⁵ Victims who were thrown or locked into burning homes at Lukodi camp suffered horribly; a forensic examination of Christine Ajok determined that she died from the pain she suffered;²⁵⁶ Joel Opiyo, a seven-year-old boy at the time, survived, but he spent three months in a hospital recovering from his burns, and still experiences pain.²⁵⁷

95. After the Abok attack, Robson Oper lost the feeling in his foot after an LRA fighter kicked his wound. He was later forced to carry an 80 kilogram LRA fighter, initially alone and later with another man, for a whole night and day, resulting in "a lot of pain."²⁵⁸ Gwentorina Akite was strangled and beaten and left for dead by the LRA, but she managed to crawl, bleeding, to safety.²⁵⁹

96. The Chamber also heard expert evidence regarding the lasting consequences for victims, their families, and their communities. The report of expert witness Teddy Atim, for example, found that:

For participant victims, the LRA attacks on Abok, Lukodi and Odek represent a turning point in their lives, as well as the lives of their family and their entire community. Our data demonstrate a significant relationship between the LRA attacks on the three IDP camps and impaired psychosocial functioning in both male and female victim participants from those camps. Often, these wounds of war are experienced as internalized issues most closely related to depression and

²⁵¹ [Trial Judgment](#), para. 1580.

²⁵² [Trial Judgment](#), para. 1597.

²⁵³ [Trial Judgment](#), para. 1808.

²⁵⁴ [Trial Judgment](#), para. 1821-1822.

²⁵⁵ [Trial Judgment](#), para. 1812.

²⁵⁶ [Trial Judgment](#), para. 1760.

²⁵⁷ [Trial Judgment](#), para. 1762.

²⁵⁸ [Trial Judgment](#), para. 1981-1984.

²⁵⁹ [Trial Judgment](#), para. 1989-1992.

anxiety. For many, however, there have also been physical impacts due to LRA atrocities.²⁶⁰

Teddy Atim's evidence, and that of the other expert witnesses called by the LRVs, underscores that the harm from these crimes is, for many victims, an ongoing daily burden.

2. Aggravating circumstances

97. Rule 145(2)(b)(iv) recognises the commission of a crime against multiple victims as an aggravating circumstance. In its Trial Judgment, the Chamber concluded that “hundreds” of civilians were abducted from the Pajule IDP camp.²⁶¹ At least 40 civilians were abducted from Odek IDP camp,²⁶² and at least 29 from Lukodi.²⁶³ The Chamber found that “many” civilians were abducted from Abok, citing evidence referring to 26 or 36 abductees.²⁶⁴ The Trial Judgment recounts in detail the suffering of many of those victims, and the Prosecution submits that most or all of the civilians abducted during the attacks were victims of Torture, Enslavement, or Outrages upon Personal Dignity.

98. Rule 145(2)(b)(iv) also states that commission of a crime with “particular cruelty” is an aggravating circumstance. The Prosecution notes that cruelty is not an element of Torture, Enslavement, or Outrages upon Personal Dignity, and thus may properly be considered an aggravating circumstance. The facts described above, and in the Trial Judgment, including instances of the LRA fighters throwing children into burning homes, forcing abductees to kill others, and forcing mothers to abandon their infant children in the bush, amply demonstrate that these crimes were committed with *particular* cruelty, above and beyond the violence inherent in the crimes of conviction.

99. Rule 145(2)(b)(iii) characterises as an aggravating circumstance the commission of a crime against a victim who is particularly defenceless. In *Ntaganda*, the Trial Chamber found particularly defenceless victims to include people “who had been previously captured or detained, a pregnant woman, babies and very young children and sick and disabled persons unable to flee”.²⁶⁵ At Pajule, Benson Ojok saw abductees as young as nine years old.²⁶⁶ The

²⁶⁰ V40-0002, [UGA-V40-0001-0010](#) at 0060. The report, which is full of specific examples, also notes that physical disabilities, which were prevalent among the victims, affected the whole household. *See id.* at 0062.

²⁶¹ [Trial Judgment](#), para. 153, 1355.

²⁶² [Trial Judgment](#), para. 171, 1591.

²⁶³ [Trial Judgment](#), para. 187, 1830.

²⁶⁴ [Trial Judgment](#), para. 201, 1999-2000.

²⁶⁵ [Ntaganda SJ](#), para. 82.

Chamber found that children as young as 11 or 12 were abducted from Odek.²⁶⁷ Nursing mothers were forced to abandon their babies by the roadside, and a two-month-old child was left on a trash pit.²⁶⁸ P-0269 was six-months pregnant when abducted.²⁶⁹ The LRA also forced mothers to abandon their children, and threw babies into the bush, following the Lukodi attack.²⁷⁰ These are just a few examples, but they leave no question that Mr Ongwen's sentences for Torture and Enslavement should be increased to account for the defenceless condition of the victims.

100. Rule 145(2)(b)(v) states that commission of a crime for a discriminatory motive is an aggravating circumstance. The acts of Torture, Enslavement, and Outrages upon Personal Dignity discussed above were motivated by political discrimination against the civilian residents of the IDP camps.²⁷¹

3. Mr Ongwen's culpable conduct: degree of participation and intent

101. As noted above in the context of Murder and related crimes, Mr Ongwen's participation in the four charged attacks varied in some respects. He personally participated in the Pajule attack, where his group of fighters abducted civilians.²⁷² He was among the commanders present when the Pajule attack was planned,²⁷³ and he addressed abductees after the attack, telling them that anyone who escaped or dropped goods would be killed.²⁷⁴

102. Mr Ongwen did not personally enter the IDP camps during the attacks at Odek, Lukodi, and Abok. However, he was instrumental in each attack. At Odek, for example, the Chamber concluded that "Dominic Ongwen was the person who decided that the attack would take place and set in motion the preparations".²⁷⁵ The Chamber likewise found that Mr Ongwen made the decisions to attack Lukodi and Abok.²⁷⁶ At Odek, Mr Ongwen appointed subordinates to lead the attack on the ground, selected fighters, encouraged them and ordered them to abduct civilians, leading the Chamber to conclude that he "had full operational

²⁶⁶ [Trial Judgment](#), para. 1345.

²⁶⁷ [Trial Judgment](#), para. 172.

²⁶⁸ [Trial Judgment](#), para. 173, 1565-1568, 2902.

²⁶⁹ [Trial Judgment](#), para. 1582.

²⁷⁰ [Trial Judgment](#), para. 187, 1820-1827.

²⁷¹ [Trial Judgment](#), para. 2846-2848, 2868, 2906-2907, 2922, 2959-2960, 2968, 3006-3007, 3015.

²⁷² [Trial Judgment](#), para. 149-150, 1271, 1284, 1327.

²⁷³ [Trial Judgment](#), para. 146.

²⁷⁴ [Trial Judgment](#), para. 156.

²⁷⁵ [Trial Judgment](#), para. 1393.

²⁷⁶ [Trial Judgment](#), para. 179, 192.

control of the attack”.²⁷⁷ For Lukodi and Abok, similarly, Mr Ongwen selected subordinate commanders to command on the ground, issued orders to the LRA fighters, and later reported to his own superiors regarding the attacks, such that the Chamber attributed the conduct of the LRA attackers to Mr Ongwen “as his own”.²⁷⁸

103. Mr Ongwen’s intent to enslave civilians is demonstrated by his order to P-0309 to abduct two people from Pajule IDP camp and make them carry looted goods.²⁷⁹ P-0249 testified that Mr Ongwen told abductees not to drop their “luggage”, and that he was present while the LRA fighters beat abductees.²⁸⁰ Before the Odek attack, according to P-0264, Mr Ongwen said that people who could be recruited into the LRA should be abducted, and civilians abducted to carry looted food.²⁸¹ After the Odek attack, he reported to Kony that his fighters had abducted male and female civilians.²⁸² Before the Lukodi attack, Mr Ongwen also ordered the attackers to abduct civilians.²⁸³

104. Mr Ongwen’s intent to torture, meanwhile, is clear from his orders to kill and the language he used, as well as his statements after the attack. Mr Ongwen told the Odek attackers, for example, to “exterminate” everything in the camp, “even ants, even flies”.²⁸⁴ P-0018 testified that, before the Lukodi attack, Mr Ongwen told his fighters “to go and kill everybody, even if we find a woman who is giving birth, we should kill her”.²⁸⁵ After the Odek attack, according to P-0341, Mr Ongwen “saw what his junior commanders had done and he was happy”.²⁸⁶ In relation to the attack on Lukodi, Mr Ongwen was said to have appreciated “the work well done”.²⁸⁷

C. Pillaging and destruction of property

105. The Trial Chamber found Mr Ongwen guilty of four counts of Pillaging as a War Crime and two counts of Destruction of Property as a War Crime. These six convictions arose

²⁷⁷ [Trial Judgment](#), para. 2916-2917.

²⁷⁸ [Trial Judgment](#), para. 2963-2964, 3010-3011.

²⁷⁹ [Trial Judgment](#), para. 1330.

²⁸⁰ [Trial Judgment](#), para. 1331, 1336-1337.

²⁸¹ [Trial Judgment](#), para. 1398.

²⁸² [Trial Judgment](#), para. 1617, 1642.

²⁸³ [Trial Judgment](#), para. 192, 1865, 1870.

²⁸⁴ [Trial Judgment](#), para. 1395-1396, 1405, 1407-1408. Mr Ongwen gave similar orders prior to the Lukodi attack. *See* [Trial Judgment](#), para. 1674, 1676-1681.

²⁸⁵ [Trial Judgment](#), para. 1676. *See also id.* para. 1677, 1679.

²⁸⁶ [Trial Judgment](#), para. 1615.

²⁸⁷ [Trial Judgment](#), para. 1842.

from the ruthless manner in which food and other property was looted from civilians or destroyed by LRA fighters during and shortly after the four charged attacks.

106. Based on the gravity of the crimes, the aggravating circumstances, and Mr Ongwen's culpable conduct, without consideration of Mr Ongwen's individual circumstances, the Prosecution would recommend sentences of 12 years of imprisonment for each of these crimes. However, considering the circumstances discussed in section VII below, the Prosecution recommends that Mr Ongwen receive a sentence of eight years for each.

1. Gravity of the crimes

a. Nature of the offences, including the time, manner and location of crimes and the means employed

107. Considered in the abstract, Pillaging is recognised as a serious crime within the chapeau of article 8(2)(e), which "encompasses other serious violations of the laws and customs applicable in conflicts not of an international character".²⁸⁸ To determine the gravity of a charge of pillaging, due regard must be had for the particular circumstances of the case.²⁸⁹ It will be considered serious where there are severe economic consequences for the victims or where many people were deprived of their property.²⁹⁰ The Prosecution submits that a similar approach is appropriate for assessing the gravity of destruction of property.

108. At the Pajule attack, the Chamber found that LRA fighters raided the trading centre and broke into the shops and homes of civilians in the camp, and appropriated food items like beans, flour, salt, and sugar, and household items like beddings, clothing, and saucepans, without their consent.²⁹¹ They forced abductees to carry these items for long distances²⁹² to the LRA meeting place, where they were then distributed within the LRA, including to Mr Ongwen's group.²⁹³

109. At the Odek IDP camp, the LRA broke into homes and shops, where they looted food and other items which had recently been distributed to the camp inhabitants as food aid. They

²⁸⁸ Statute, article 8(2)(e). *See also* [Katanga TJ](#), para. 909.

²⁸⁹ *Ibid.* para. 909; ICTY, *Prosecutor v. Kordic and Cerkez*, [IT-95-14/2-A, Appeal Judgment](#), 17 December 2004, para. 80-82.

²⁹⁰ ICTY, *Prosecutor v. Naletilic and Martinovic*, [IT-98-34-T, Trial Judgment](#), 31 March 2003, para. 614.

²⁹¹ [Trial Judgment](#), para. 150, 1290-1300.

²⁹² [Trial Judgment](#), para. 153.

²⁹³ [Trial Judgment](#), para. 155.

looted items such as beans, cooking oil, maize, flour, clothes, saucepans, bedding, and shoes from the shops at the trading centre and from the homes of civilians.²⁹⁴

110. At the Lukodi attack, the Chamber found that the LRA entered civilian homes and shops, and looted food and other property, such as beans, maize, cooking oil, soap, cooking utensils, chickens, and clothes.²⁹⁵ The Chamber further found that the LRA burnt approximately 210 huts, destroying civilian household items and food stocks. Domestic animals were also burnt by the LRA.²⁹⁶

111. At the Abok attack, LRA attackers looted civilian houses and shops at the trading centre, violently appropriating food and household items like radios, clothing, medicine, and money.²⁹⁷ The Chamber found that attackers set huts on fire and that several hundred civilian homes were burnt during the attack.²⁹⁸ Civilian food stocks were also destroyed.²⁹⁹ P-0304 returned to the camp three months after the attack and described the scale of destruction, saying people did not have clothes and had lost goats, chickens, and many other things.³⁰⁰ Similarly, P-0281 saw the camp all burnt up, goats burnt, and cows shot.³⁰¹

b. Harm suffered by the victims, their families, and society

112. Victims testified that, in all four camps, LRA attackers violently broke into their homes and shops and forcibly looted food and other household items, including some which had been provided by humanitarian aid agencies. The LRA purposely burnt homes, typically along with what was left of the residents' food and household items. The Chamber, in the context of the Abok attack, found that the "scale of damage to homes was enormous",³⁰² and the same was true for the other camps. Moreover, the LRA destroyed productive assets like tools and domestic animals, leaving residents without any means of earning a living or passing on inter-generational wealth.³⁰³

²⁹⁴ [Trial Judgment](#), para. 165, 1459-1470.

²⁹⁵ [Trial Judgment](#), para. 185, 1781-1784.

²⁹⁶ [Trial Judgment](#), para. 186, 1785-1795.

²⁹⁷ [Trial Judgment](#), para. 195.

²⁹⁸ [Trial Judgment](#), para. 196.

²⁹⁹ [Trial Judgment](#), para. 196.

³⁰⁰ [Trial Judgment](#), para. 1924.

³⁰¹ [Trial Judgment](#), para. 1923.

³⁰² [Trial Judgment](#), para. 1915.

³⁰³ V40-0002, [T-174](#), p. 27; [UGA-V40-0001-0010](#).

113. These crimes left the surviving victims at risk of starvation, or going without clothes and other basic necessities. Another effect was a debilitating lack of economic empowerment. According to expert witness Teddy Atim, victims suffered psychological harm, retardation in the distribution of asset wealth, and a relative lack of education and social protection.³⁰⁴ Her report was corroborated by the testimony of victims regarding how the attacks brought economic devastation to communities already struggling with a lack of access to their cultivated land due to their mandatory residence in the IDP camps.

2. Aggravating circumstances

114. The pillaging and destruction described above impacted thousands of camp residents, an aggravating circumstance under rule 145(2)(b)(iv).

115. The commission of these crimes was also particularly cruel, another aggravating circumstance under rule 145(2)(b)(iv). LRA attackers threatened camp residents with violence, and many victims were beaten or killed for refusing or failing to help the LRA carry away stolen goods. Some residents were locked into their burning houses, their lives destroyed along with their belongings.³⁰⁵

116. These crimes were also motivated by political discrimination against the civilian residents of the IDP camps.³⁰⁶

3. Mr Ongwen's culpable conduct: degree of participation and intent

117. In addition to his role in the attacks generally, described above, Mr Ongwen gave specific orders related to pillaging and destruction. In Pajule, for example, Mr Ongwen personally ordered the attackers to break into homes and shops to loot property, and the attackers complied with the order.³⁰⁷ Mr Ongwen directed that abductees be given goods to carry, and he threatened the abductees not to lose any of the luggage.³⁰⁸ P-0249 testified that Mr Ongwen was commanding the looting on the ground, stating “[t]here was no other person

³⁰⁴ V40-0002, [T-174](#), p. 27-28; [UGA-V40-0001-001](#) at 0047-0088.

³⁰⁵ See, e.g., [Trial Judgment](#), para. 1742.

³⁰⁶ [Trial Judgment](#), para. 2846-2848, 2868, 2906-2907, 2922, 2959-2960, 2968, 3006-3007, 3015.

³⁰⁷ [Trial Judgment](#), para. 150.

³⁰⁸ [Trial Judgment](#), para. 153.

there than Ongwen.”³⁰⁹ Subsequently, the looted items were distributed, including to Mr Ongwen’s group.³¹⁰

118. The Chamber found that Mr Ongwen “explicitly instructed LRA attackers to loot food in the attack on Odek IDP camp.”³¹¹ The Trial Chamber also found that the LRA indeed “looted widely” from the homes of civilians,³¹² just as Mr Ongwen had instructed.

119. The Chamber found that Mr Ongwen “also specifically directed the attackers on Lukodi IDP camp to loot food.”³¹³ P-0142 recounted Mr Ongwen’s order as follows: “go to Lukodi, go and disperse the soldiers in Lukodi, burn their homes, loot food and come back”.³¹⁴

120. The Chamber found that Mr Ongwen chose to attack Abok IDP camp and instructed his soldiers to, amongst other things, collect food and burn down the camp.³¹⁵ After the attack, Mr Ongwen reported the results to Kony and other commanders saying: “[w]e burnt everything that was there including all the huts”.³¹⁶

D. Persecution

121. The Trial Chamber found Mr Ongwen guilty of four counts of Persecution. These convictions were based on the same conduct as that underlying the other crimes committed during the attacks on the Pajule, Odek, Lukodi, and Abok IDP camps, discussed above.

122. The Prosecution recommends that Mr Ongwen receive a sentence no lower than the highest sentence imposed for any of the underlying crimes that form the basis for the Persecution convictions.³¹⁷ The Prosecution’s highest proposed sentence for an attack-related crime in this case is for Murder, where the Prosecution’s recommendation would have been 30 years, but with consideration of Mr Ongwen’s individual circumstances is 20 years of

³⁰⁹ [Trial Judgment](#), para. 1295. *See also* P-0249, [T-79](#), p. 20.

³¹⁰ [Trial Judgment](#), para. 1357.

³¹¹ [Trial Judgment](#), para. 161.

³¹² [Trial Judgment](#), para. 1465.

³¹³ [Trial Judgment](#), para. 179.

³¹⁴ [Trial Judgment](#), para. 1677. *See also* P-0142, [T-70](#), p. 46. P-0142, upon having his memory refreshed, accepted that Mr Ongwen’s instructions also included an order to kill. P-0142, [T-70](#), p. 47.

³¹⁵ [Trial Judgment](#), para. 192.

³¹⁶ [Trial Judgment](#), para. 2001 & n. 5404.

³¹⁷ *Cf.* [Ntaganda SJ](#), para. 177 (fixing the individual sentence for the persecution charge at 30 years, the same as for murder, which was the highest individual sentence for any of the underlying crimes amounting to persecution).

imprisonment. Therefore, the Prosecution recommends that same sentence be imposed for Persecution. This recommendation is based on the gravity of the crimes, several aggravating circumstances, and Mr Ongwen’s own culpable conduct, as discussed below, as well as his individual circumstances addressed in section VII.

1. Gravity of the crimes

123. Persecution is an inherently grave offence. As the *Ntaganda* Trial Chamber observed, “the prohibition of persecution as laid down in Article 7(1)(h) of the Statute is intended to protect the right of all individuals not to be discriminated against on the basis of political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognised as impermissible under international law.”³¹⁸ International criminal courts and tribunals have described Persecution as one of the most “serious”³¹⁹ and “vicious”³²⁰ Crimes Against Humanity.

124. The Persecution convictions in this case are particularly grave, because they are based on numerous underlying acts, and because all the underlying acts constitute serious crimes in and of themselves, as discussed above in sections V.A to V.C.

2. Aggravating circumstances

125. Almost all of the aggravating circumstances that apply to the other attack-related crimes also apply to the Persecution counts. The one exception is the aggravating circumstance of discriminatory motive. Because discriminatory intent is an element of the crime of Persecution, the discriminatory dimension of the crime cannot be taken into account as an aggravating circumstance. However, the following aggravating circumstances described above³²¹ do apply equally to the Persecution convictions: the multiplicity of victims, the particular defencelessness of the victims, and commission of the crime with particular cruelty.

³¹⁸ [Ntaganda SJ](#), para. 175.

³¹⁹ [Ntaganda SJ](#), para. 175.

³²⁰ ICTY, *Prosecutor v. Kupreskic et al.*, [IT-95-16-T, Trial Judgment](#), 14 January 2000, para. 751.

³²¹ See para. 73-75, 97-100, 114-116 above.

3. Mr Ongwen's culpable conduct: degree of participation and intent

126. As described above in the sections on the other attack-related crimes, Mr Ongwen was an active participant in those crimes.³²² He was moreover a vigorous contributor to the LRA's persecutory policy, as demonstrated by the brutal nature of the attacks on civilians at Pajule, Lukodi, Odek, and Abok, and the nature of the orders he gave prior to those attacks.³²³ Mr Ongwen did not just target the LRA's perceived civilian opponents for attacks; he targeted them for particularly ruthless attacks, instructing his fighters "to exterminate everything"³²⁴ and "only leave bare ground."³²⁵

127. As noted above, the Chamber found that Mr Ongwen intended the violent consequences of all four charged attacks.³²⁶ Furthermore, the Chamber found that Mr Ongwen shared the LRA's intent to discriminate against civilians perceived to support the Ugandan Government,³²⁷ and that he meant for civilian residents of the four camps to be severely deprived of their rights by reason of their identity.³²⁸ In addition to the evidence about the nature of the attacks, the Trial Judgment also cites favourably to other evidence that reflects Mr Ongwen's enthusiastic embrace of the LRA's discriminatory policy. This includes Mr Ongwen's report to Kony after the Lukodi attack where he is recorded as saying that he had "decided to kill all living things in that camp",³²⁹ and Mr Ongwen's words a week prior to the attack on Abok IDP camp, when he said he "was going to kill many [civilians] and he will send the result to Kony whereby Kony will be happy about it."³³⁰

³²² See para. 76-84, 101-104, 117-120 above.

³²³ See para. 63-72, 88-96, 108-113 above.

³²⁴ [Trial Judgment](#), para. 1395, 1405, 1407.

³²⁵ [Trial Judgment](#), para. 1396.

³²⁶ See para. 76-84, 101-104, 117-120 above.

³²⁷ [Trial Judgment](#), para. 140-141, 1146.

³²⁸ [Trial Judgment](#), para. 2852 (Pajule), 2868 and 2968 (Lukodi), 2907, 2922 (Odek), 3015 (Abok).

³²⁹ [Trial Judgment](#), para. 1850 (citing the UPDF logbook's recording of the communication). The ISO logbook from that same day and time records Dominic Ongwen as describing his "achievements" at Lukodi and stating "if civilians die he feels happy," words which similarly suggest a whole-hearted endorsement of the LRA's discriminatory policy. See [Trial Judgment](#), para. 1848. See also *id.* para. 1674 (accepting the testimony of P-0205 who stated that Dominic Ongwen ordered "everybody" found in the camp to be killed), 1844 (noting that Dominic Ongwen "appear[ed] to laud the killings" at Lukodi), 1857.

³³⁰ [Trial Judgment](#), para. 1863. The Trial Chamber also twice referenced P-0009's evidence that Mr Ongwen said "all the people from Pajule were going to be killed because they were supporting the government." See [Trial Judgment](#), para. 1128, 1274. See also *id.* para. 445 ("[P-0009] was not alone in placing Dominic Ongwen at the attack"), 1272 ("Rwot Oywak testified that he encountered Dominic Ongwen in the trading centre").

VI. Potentially mitigating circumstances

128. Rule 145(2)(a) identifies, in a non-exhaustive fashion, several mitigating circumstances that must be taken into consideration, if present, when sentencing a convicted person. None of the listed circumstances applies in this case. One related circumstance, Mr Ongwen's current mental health condition, is not so exceptional as to warrant a reduction in sentence.

A. Mr Ongwen's mental capacity was not substantially diminished

129. Rule 145(2)(a)(i) specifies, as possible mitigating circumstances, "the circumstances falling short of constituting grounds for exclusion of criminal responsibility, such as substantially diminished mental capacity or duress." The explicit reference to article 31(1) "grounds for exclusion of criminal responsibility" makes clear that this provision refers to circumstances present at the time of the crimes, rather than circumstances at the time of sentencing, because the introductory portion of article 31(1) establishes that grounds for excluding criminal responsibility are assessed "at the time of the person's conduct."³³¹

130. The Chamber found that the evidence did not establish that Mr Ongwen suffered from any mental disease or defect at the time of the charged conduct.³³² Therefore, the Chamber did not need to address whether Mr Ongwen's mental capacities had been "destroy[ed]" in the way required for exclusion of criminal responsibility under article 31(1)(a).

131. Similarly, the evidence does not establish that Mr Ongwen suffered from "substantially diminished mental capacity" at the time of the charged conduct. Indeed, there is no reliable evidence that Mr Ongwen suffered from *any* type of diminished mental capacity at the time of the crimes, let alone "substantially" diminished mental capacity.

³³¹ Statute, art. 31(1) ("In addition to other grounds for excluding criminal responsibility provided for in this Statute, a person shall not be criminally responsible *if, at the time of that person's conduct*: [...]") (emphasis added). Various trial chambers at the ICTY have also interpreted this type of mitigating circumstance as relating to the person's state at the "moment of the crime." See, e.g., ICTY, *Prosecutor v. Todorovic*, [IT-95-9/1-S, Sentencing Judgment](#), 31 July 2001, para. 93 (finding that where an accused argues "diminished mental responsibility" in mitigation, he must show that, more probably than not, "such a condition existed *at the relevant time*") (emphasis added); ICTY, *Prosecutor v. Erdemovic*, IT-96-22-Tbis, Sentencing Judgment, 5 March 1998 (["Erdemovic SJ"](#)), p. 14 ("when the accused committed the killings"); ICTY, *Prosecutor v. Vasiljevic*, IT-98-32-T, [Trial Judgment](#), 29 November 2002, para. 295 ("at the time of the [charged] incident").

³³² [Trial Judgment](#), para. 2580.

132. First of all, the Chamber declined to rely on the main mental health-related evidence presented by the Defence, namely the expert reports and testimony of Professor Ovuga and Dr Akena (“Defence Experts”). The Chamber considered this evidence unreliable for various reasons,³³³ including because of “the absence of any engagement with th[e] manifest challenge” of determining, more than a decade later, Mr Ongwen’s state of mental health at particular times during 2002 and 2005.³³⁴ There is no reason to think the Defence Experts’ evidence should be considered any more reliable for sentencing purposes.

133. Second, expert evidence that the Chamber did accept as reliable does not support a claim that Mr Ongwen had any diminished capacity at the time of the crimes. Dr Abbo, a child and adolescent psychiatrist at Makerere University in Uganda, “evaluated the moral development attained by Dominic Ongwen and concluded that he attained the highest level of moral development, the post conventional level.”³³⁵ Professor Mezey examined various extracts of witness testimonies during trial and testified that she found no evidence of “any suggestion of mental instability or behaviours that might amount to instability being reported in any of the abstracts.”³³⁶ Similarly, Professor Weierstall-Pust concluded that:

Even if Mr Ongwen suffered from some of his experiences, it is highly unlikely that his level of functioning was severely impaired, at least not for a longer period of time. He must have adapted to the war scenario in order to make the achievements he himself describes and which are not only limited to promotion in the armed force but also include his support of other people and his psychosocial abilities.³³⁷

134. Third, corroborating evidence from the trial does not support a finding that Mr Ongwen had any diminished capacity at the time of the charged conduct. As the Chamber

³³³ [Trial Judgment](#), para. 2457, 2527, 2574, 2580. These issues included: (1) a loss of objectivity due to their blurring of the roles of treating physician and forensic expert ([Trial Judgment](#), para. 2528-2531); (2) “major doubts” about the validity of the methods employed by the Defence experts ([Trial Judgment](#), para. 2535); (3) the “unexplained contradictions” in the “various statements and observations made, or between such statements and observations and the conclusions finally drawn” ([Trial Judgment](#), para. 2536); (4) “failure to take into account other sources of information about Dominic Ongwen which were readily available to them” ([Trial Judgment](#), para. 2545); (5) failure to properly assess the possibility of malingering ([Trial Judgment](#), para. 2567); and (6) “the absence of any engagement with th[e] manifest challenge” of determining, more than a decade later, Dominic Ongwen’s state of mental health at particular times during 2002 and 2005 ([Trial Judgment](#), para. 2569).

³³⁴ [Trial Judgment](#), para. 2569.

³³⁵ [Trial Judgment](#), para. 2481.

³³⁶ [Trial Judgment](#), para. 2473.

³³⁷ [Trial Judgment](#), para. 2491. *See also id.* para. 2518 (noting Professor Weierstall-Pust’s assessment of the witness testimonies on record as “present[ing] a coherent picture contradicting the clinical picture he ‘would expect on a severely – for example, depressed or traumatised individual’”).

noted, the way Mr Ongwen is described by various witnesses who lived and fought alongside him in the bush is inconsistent with the notion that Mr Ongwen was suffering from symptoms of mental disorders during the charged period.³³⁸ Witnesses consistently described Mr Ongwen as a skilled fighter, good leader, and a friendly and likeable person.³³⁹ Furthermore, the Chamber noted “in particular” that “many of the actions undertaken by Dominic Ongwen, as found by the Chamber, involved careful planning of complex operations, which is incompatible with a mental disorder.”³⁴⁰ The Prosecution submits that the ability to design and oversee complex military operations – and to report back to headquarters about them in real-time – is equally incompatible with the presence of “substantially diminished mental capacity.”

135. In sum, in the absence of any reliable evidence that Mr Ongwen suffered from *any* degree of diminished mental capacity during the charged period, the record does not support that he suffered from “substantially diminished mental capacity” at the relevant times. Accordingly, the Trial Chamber should not consider this factor as a mitigating circumstance.

B. Mr Ongwen’s current mental health does not warrant mitigation

136. The evidence also does not show that Mr Ongwen’s *current* mental health is exceptionally poor, nor that it warrants mitigation of his sentence. Any future or ongoing need that Mr Ongwen may have for mental health treatment should be considered in the execution of his sentence.

137. International courts and tribunals have found that a convicted person’s current mental or physical health may be taken into account as a mitigating factor only in “rare” or “exceptional” circumstances,³⁴¹ and should normally be considered in relation to execution of

³³⁸ [Trial Judgment](#), para. 2517 (“The witnesses, when prompted by general, even very broad questions about Dominic Ongwen or his personality, did not provide answers indicating any particularity which could represent a symptom of the mental disorders under discussion.”), 2520 (noting that none of the many witnesses who described Mr Ongwen’s actions and interactions with others at times relevant to the charges provided “any testimony which could corroborate a historical diagnosis of mental disease or defect”), 2502 (finding that while “fluctuation of symptoms may indeed be the reason for contradictions in evidence in cases where there is in fact a mental disorder present, it is an unconvincing explanation in the case of a *complete absence of evidence of facts which could be seen as symptoms of mental disorders*”) (emphasis added).

³³⁹ See [Trial Judgment](#), para. 2506-2520.

³⁴⁰ [Trial Judgment](#), para. 2521.

³⁴¹ [Bemba et al. SJ](#), para. 187 (stating that “reasons of ill health can only be considered in exceptional cases” and rejecting a poor health claim on the facts); ICTY, *Prosecutor v. Blaskic*, [IT-95-14-A, Appeal Judgment](#), 29 July 2004, para. 696 (“Poor health is to be considered only in exceptional or rare cases.”); ICTY, *Prosecutor v. Galic*, [IT-98-29-A, Appeal Judgment](#), 30 November 2006, para 436; ICTY, *Prosecutor v. Rasic*, [IT-98-32/1-](#)

the sentence.³⁴² The current state of a convicted person’s health is not related to the conduct underlying the crimes, nor is it connected to the principal objectives of sentencing in international criminal cases, namely retribution and deterrence.³⁴³

138. In this case, the evidence of the various mental health experts is consistent in finding indications that Mr Ongwen now suffers (or has recently suffered) from some symptoms of a mental health condition.³⁴⁴ However, there is conflicting evidence about whether he currently has all the symptoms required for a diagnosis of a particular mental health condition.³⁴⁵

139. As noted above, the Chamber deemed the Defence Experts’ evidence unreliable, so it is of very limited use in assessing whether Mr Ongwen is currently suffering from a mental health condition. Meanwhile, two of the Prosecution’s experts explicitly stated that they considered the material they had reviewed – which included the Defence Experts’ reports – insufficient to establish the presence of the diagnosed mental health disorders. For example, Professor Mezey concluded that “[b]ased on a review of all the material I have been provided with, I do not consider that there is evidence to show that Mr Ongwen is currently, or has at any time, suffered from [the three disorders diagnosed by the Defence mental health experts] or any other significant mental illness or disorder.”³⁴⁶ Notably, the Prosecution’s other mental health expert, Dr Abbo, made no findings on this point and simply assumed for the purpose of her report that Mr Ongwen suffered from the disorders diagnosed by the Defence

[R77.2, Written Reasons for Oral Sentencing Judgement](#), 6 March 2012, para. 30. *See also* ICTY, *Prosecutor v. Krstic*, [IT-98-33-T, Trial Judgment](#), 2 August 2001, para. 723 (declining to take into account the accused’s ongoing health issues, related to a war-time injury that resulted in partial amputation of his leg, where the Chamber concluded it was “not related to the objectives of sentence”); ICTR, *Prosecutor v. Rutaganda*, [ICTR-96-3-T, Judgement and Sentence](#), 6 December 1999, para. 472-743 (recognizing that “Rutaganda is in poor health and has had to seek medical help continuously” but still deciding to impose a life sentence); [Erdemovic SJ](#), para. 5-6, 16 (containing no mention of current ill health as a mitigating factor for sentencing, even though, only six months earlier, a Chamber-commissioned medical panel “reported that the accused was suffering from post-traumatic stress of such severity that he was unfit to stand trial,” resulting in a months-long delay of the trial).

³⁴² [Simic SJ](#), para. 98.

³⁴³ [Bemba et al. SJ](#), para. 19.

³⁴⁴ P-0447, [UGA-OTP-0280-0674](#) at 0695 (stating that “[t]he documents suggest that at least some mental health symptoms were present at the time of assessment” and citing various passages from the ICC Detention Centre clinical notes); P-0446, [UGA-OTP-0280-0786](#) at 0806 (accepting that Mr Ongwen has had “mild, transient depressive symptoms during his incarceration”); P-0445, [UGA-OTP-0280-0732](#) at 0756 (Dr Abbo); [Trial Judgment](#), para. 2524-2525 (Professor Ovuga and Dr Akena); para. 2576-2577 (Professor de Jong).

³⁴⁵ *Cf.* [Trial Judgment](#), para. 2471 (Professor Mezey); [UGA-OTP-0280-0674](#) at 0695 (Professor Weierstall-Pust) with [Trial Judgment](#), para. 2524-2525 (Professor Ovuga and Dr Akena), 2576-2577 (Professor de Jong).

³⁴⁶ [Trial Judgment](#), para. 2471. *See also* First report of P-0447, [UGA-OTP-0280-0674](#) at 0695, 0700; Rebuttal report of P-0447, [UGA-OTP-0287-0072](#) at 0084, 0092-0093, 0095-0096.

Experts.³⁴⁷ As such, her report does not constitute any type of corroboration of the Defence Experts' findings, as the Chamber noted in the Trial Judgment.³⁴⁸

140. The other relevant trial evidence does not establish that Mr Ongwen's current mental health status is exceptionally poor or unusual. The Chamber did not make any specific findings in the Trial Judgment about the reliability of Professor De Jong's report.³⁴⁹ However, two experts whom the Chamber considered of "great assistance"³⁵⁰ both expressed concern about the report's methodology³⁵¹ and what they viewed as Professor De Jong's failure to seriously test whether Mr Ongwen might be malingering.³⁵² Information contained in clinical notes from the ICC Detention Centre is also conflicting regarding Mr Ongwen's current mental health state,³⁵³ and as noted by the Chamber, some of the content "seemed to contradict the diagnoses made by the Defence experts."³⁵⁴

141. Given these inconsistencies and the competing positions of the various experts, there is not a sufficient basis to consider that Mr Ongwen's current mental health is so exceptionally or unusually poor as to warrant a reduction in sentence. Any question of necessary treatment can and should be addressed during the execution of his sentence. Alternatively, if the Trial Chamber were to take Mr Ongwen's current health status into consideration as mitigation, the Prosecution submits that it should be given only very limited weight, especially when juxtaposed against the grave crimes of which he has been convicted and the immense harm suffered by the victims of those crimes.

C. Mr Ongwen did not commit the crimes under any form of duress

142. The Chamber also rejected duress as a ground excluding Mr Ongwen's criminal responsibility.³⁵⁵ It found that the first element articulated in article 31(1)(d) – the existence of a threat of imminent death or of imminent or continuing serious bodily harm – was not met

³⁴⁷ [Trial Judgment](#), para. 2485.

³⁴⁸ [Trial Judgment](#), para. 2482 (rejecting the Defence argument that the Prosecution experts "were divided on the diagnosis of PTSD" as "ill-founded").

³⁴⁹ [Trial Judgment](#), para. 2578.

³⁵⁰ The Chamber noted that both Professor Mezey and Professor Weierstall-Pust's evidence was "of great assistance" to the Chamber in making its findings. [Trial Judgment](#), para. 2478, 2496.

³⁵¹ P-0446, [UGA-OTP-0280-0786](#) at 0795-0804; P-0447, [UGA-OTP-0280-0683](#) at 0683-0689. *See also* [Trial Judgment](#), para. 2471 (noting that Professor Mezey had "engaged critically" with Professor De Jong's report).

³⁵² P-0446, [UGA-OTP-0280-0786](#), esp. para. 37, 44, 54, 72; P-0447, [UGA-OTP-0280-0683](#) at 0684, 0687-0689.

³⁵³ *See* Prosecution Closing Brief, [ICC-02/04-01/15-1719-Red](#), para. 390-395 (citing sources).

³⁵⁴ [Trial Judgment](#), para. 2550.

³⁵⁵ [Trial Judgment](#), para. 2581-2672.

in Mr Ongwen’s case, and it was therefore not necessary, or even possible, to consider the remaining elements.³⁵⁶ Significantly, the Chamber emphasised that, due to his status as a battalion and brigade commander, Mr Ongwen’s situation during the charged period was fundamentally different from that of low-level LRA members or recent abductees.³⁵⁷

143. Duress, even when “falling short of a ground excluding criminal responsibility”, may still constitute a mitigating circumstance in sentencing pursuant to rule 145(2)(a)(i) of the Rules. In the case of Mr Ongwen, however, there is no evidence that the crimes of conviction were caused by *any* threat, and hence duress cannot be a factor in determining his sentence. Mr Ongwen’s own experience as a child soldier 15 years before the crimes were committed is irrelevant to this question, although it constitutes a separate individual circumstance that should be considered by the Chamber, as discussed below in section VII.

144. Specifically in relation to the Defence’s position that a threat to Mr Ongwen existed since his abduction into the LRA, the Chamber found that even if a threat were to start when Mr Ongwen was abducted, it would have to have expressed itself at the time of the charged conduct and be discernible from the abundant evidence that relates to this period.³⁵⁸ Instead, the evidence shows a commander in control of his unit, directing its organisation and its actions according to his own planning.³⁵⁹ As also pointed out by the Chamber, “whereas some of Dominic Ongwen’s conduct in relation to the crimes was undertaken directly upon orders from Joseph Kony, much of his relevant conduct resulted from his own initiative.”³⁶⁰ In addition, Mr Ongwen contested orders from Kony,³⁶¹ and also had a realistic possibility of leaving the LRA, which he did not pursue.³⁶²

145. Finally, the sexual and gender-based crimes committed directly by Mr Ongwen demonstrate that his actions are incompatible with an individual experiencing any form of duress. As noted by the Chamber, the crimes in Counts 50-60 were largely committed in the relative privacy of his household, or even the complete privacy of his sleeping quarters.³⁶³ In

³⁵⁶ [Trial Judgment](#), para. 2585.

³⁵⁷ [Trial Judgment](#), para. 2591.

³⁵⁸ [Trial Judgment](#), para. 2592.

³⁵⁹ [Trial Judgment](#), para. 2665.

³⁶⁰ [Trial Judgment](#), para. 2665. *See also id.* para. 866-873.

³⁶¹ [Trial Judgment](#), para. 2668.

³⁶² [Trial Judgment](#), para. 2668.

³⁶³ [Trial Judgment](#), para. 2666-2667.

other words, Mr Ongwen did not commit these crimes under any threat, and there is no basis for mitigation of his sentence under rule 145(2)(a)(i).

VII. Individual circumstances of the convicted person

146. Article 78(1) of the Statute mandates that the Chamber, at sentencing, must take into account “the individual circumstances of the convicted person”. Some examples of individual circumstances are listed in rule 145(1)(c), including “the age, education, social and economic condition of the convicted person.” Generally, “individual circumstances” refer to factors which are not directly related to the crimes or culpable conduct of the convicted person.³⁶⁴

A. Age

147. As determined by the Chamber, all of the crimes in this case were committed when Mr Ongwen was approximately 24-27 years old.³⁶⁵ Consequently, his age warrants no reduction in his sentence.³⁶⁶

148. The Defence argued at trial that Mr Ongwen was “child-like” during the charged period.³⁶⁷ However, the evidence does not bear that assertion out. Dr Abbo, whose evidence the Chamber found to be pertinent and valuable, particularly on this point, concluded that Mr Ongwen had attained the highest level of moral development by the time of the crimes.³⁶⁸ The testimony of Mr Ongwen’s peers regarding the charged period also showed a brave, tough, smart, and skilled military leader.³⁶⁹ When D-0026 testified that Mr Ongwen “led a kind of childish life”, he clearly meant that Mr Ongwen was playful and unpretentious, not that he was physically, mentally, or morally immature.³⁷⁰

B. Education and intelligence

149. The evidence suggested that Mr Ongwen was in his third year of primary school when he was abducted by the LRA.³⁷¹ While unfortunate, Mr Ongwen’s limited formal education

³⁶⁴ See *Bemba et al. SJ*, para. 58.

³⁶⁵ *Trial Judgment*, para. 31.

³⁶⁶ Compare *Katanga SJ*, para. 81, 88 (according “very limited weight” to several factors, including the convicted person’s age of 24 years old at the relevant time).

³⁶⁷ Defence Closing Brief, *ICC-02/04-01/15-1722-Corr-Red*, para. 602; *T-163*, p. 27 (Defence questioning of Dr Mezey).

³⁶⁸ *Trial Judgment*, para. 2481, 2485.

³⁶⁹ See, e.g., *Trial Judgment*, para. 2506-2517.

³⁷⁰ *Trial Judgment*, para. 2513.

³⁷¹ *Trial Judgment*, para. 29.

does not appear to have any connection to his criminal conduct, and it should have no significant impact on his sentence.

150. Dr Abbo concluded that Mr Ongwen has above-average intelligence, notwithstanding his low score on an IQ test administered at the ICC Detention Centre. She expressed doubts about the reliability of such tests when applied to a person in Mr Ongwen's circumstances, and explained:

[F]rom the reports that have been written, from the way he reasons, from the way he makes references even about culture, I think this gives me an impression that he is, you know, he is thoughtful and, and, and he is able to understand beyond really average. If he – had he gotten opportunity to study, I think he would have done very well.³⁷²

The trial evidence regarding Mr Ongwen's military skills and leadership abilities also suggests normal or above-average intelligence.³⁷³

C. Family circumstances

151. A convicted person's family circumstances are accorded limited, if any, weight at sentencing, unless exceptional.³⁷⁴ The only exceptional aspect of Mr Ongwen's family situation is that several of his so-called "wives" are victims in this case. The children he fathered in the bush are, through no fault of their own, a result of Mr Ongwen's criminal conduct. He should not receive a reduced sentence because his crimes of sexual violence resulted in the birth of children or ongoing social and economic ties with their mothers.

D. Social and economic condition, including Mr Ongwen's abduction as a child and his experience as a child soldier

152. Where Mr Ongwen's case is genuinely complex is in regard to his social and economic condition. The Chamber found that Mr Ongwen was abducted on the way to school at the age of nine, and the Prosecution does not doubt that the next several years of his life were extremely difficult. Like other child soldiers in the LRA, he likely suffered physical hardship, hunger, and grief, lived under a constant threat of violence, and was forced to

³⁷² [Trial Judgment](#), para. 2480 (citing Dr Abbo's Report, [UGA-OTP-0280-0732](#) at 0741-44); [T-166](#), p. 16-17. Dr Mezey similarly advised a "heavy degree of caution" in accepting the results of Mr Ongwen's IQ test, and noted the reports of his intelligence. [T-163](#), p. 27-28.

³⁷³ [Trial Judgment](#), para. 2507 (quoting P-0231: "when it comes to military matters, [Mr Ongwen] is very knowledgeable"), 2511, 2516. *See also* [Prosecution Closing Brief](#), para. 453-454.

³⁷⁴ [Bemba SJ](#), para. 78 & n.243 (and cases cited therein).

witness and commit violence himself. He would have been subject to indoctrination in the LRA's spiritual and political ideologies, all while far away from his home and the family whom he was apparently told had been killed. In effect, the LRA robbed Mr Ongwen of his childhood and adolescence, and to some extent at least, deprived him of the chance to live a "normal" life. The testimony of other child soldiers in this case makes clear the devastating impacts of abduction, and of conscription and use as a child soldier, including lasting social and economic consequences, as discussed above.

153. However, the example of those same former child soldiers demonstrates that not all hope was lost when Mr Ongwen was forced to join the LRA as a child. Many other child soldiers successfully escaped from the LRA, returned home, and have worked to re-integrate into and contribute to their families and communities. The Chamber found that escape was also a realistic option for Mr Ongwen by the charged period.³⁷⁵ Yet he stayed in the LRA, and over time his station in life changed. By 2002, Mr Ongwen was a battalion commander, and by March 2004, a brigade commander. He was now the one issuing orders to kill and abduct defenceless civilians, and threatening abductees with beatings or death should they attempt to escape.³⁷⁶ Instead of carrying a commander's chair, his own chair was carried. He had escorts to carry his weapon and pitch his tent. He had enslaved *ting tings* and so-called wives to prepare his food, bear and care for his children, and satisfy his sexual desires. As the Chamber noted in the Trial Judgment, "Dominic Ongwen's situation in the LRA was not analogous to that of any low-level member or recent abductee."³⁷⁷ Indeed, by 2002-2005, compared to most around him, Mr Ongwen enjoyed prestige, power, and relative comfort.

154. The Prosecution therefore submits that Mr Ongwen's abduction as a child and his experience in the LRA as a child and adolescent are relevant to the Chamber's sentencing determination, and they warrant some reduction in his sentence. However, they do not directly diminish his responsibility.³⁷⁸ The Chamber must balance any understandable sympathy with Mr Ongwen's misfortune at a young age with respect for those he victimised as an adult. Any reduction in his sentence must be such that the overall term of imprisonment still reflects the gravity of his crimes and the fact that he committed them as a grown man, of sound body and mind, and by his own choice.

³⁷⁵ [Trial Judgment](#), para. 2635.

³⁷⁶ See, e.g., [Trial Judgment](#), para. 2212.

³⁷⁷ [Trial Judgment](#), para. 2591.

³⁷⁸ See also Section VI above.

VIII. Conclusion and recommended sentences

155. In conclusion, the crimes committed by Mr Ongwen were extremely serious, and the harm he inflicted on hundreds of victims (and their families and communities) has been devastating and enduring. Mr Ongwen was a key participant in the crimes, planning or commanding the charged attacks, ordering abductions and other crimes, and perpetuating and enforcing the LRA's large-scale and systematic sexual and gender-based crimes and conscription and use of child soldiers. He personally raped, tortured, enslaved, sexually enslaved, forcibly married, and forcibly impregnated several women and girls. On that basis, if there were no mitigating or attenuating circumstances in this case, the Prosecution submits that a total sentence of 30 years or even life imprisonment would be fully justified.

156. The evidence, however, establishes one circumstance that merits a reduction in the sentence which would otherwise correspond to Mr Ongwen's crimes. The Chamber found that he was abducted at age nine and forced to be a child soldier, growing up in the bush with no family other than the LRA. Although the trial, quite correctly, did not focus on Mr Ongwen's own experiences as a child soldier, the trial evidence provides sufficient grounds to conclude that his life in the late 1980s and early 1990s must have been extremely difficult and deprived him of the chance to live a "normal" life. In the Prosecution's view, these circumstances warrant approximately a one-third reduction in the length of his prison sentence.

157. The Prosecution submits that Mr Ongwen cannot be accurately viewed as simply a victim *or* a perpetrator. On the evidence, he has been *both*, and the Chamber should fashion a sentence that takes account of Mr Ongwen's own victimisation as a child, while still reflecting his full responsibility during the charged period, the extreme gravity of his crimes, and the devastating harm he caused to the victims.

158. Bearing in mind article 78(3)'s requirement that the Chamber pronounce a sentence "for each crime" as well as a joint sentence specifying the total period of imprisonment, the Prosecution recommends that Mr Ongwen be sentenced on the various crimes of conviction as follows:

Crime(s)	Crime Against Humanity (CAH) and/or War Crime (WC)	Count(s)	Recommended Sentence without Consideration of Individual Circumstances (years of imprisonment)	Final Recommended Sentence (years of imprisonment)
Attacks Against the Civilian Population	WC	1, 11, 24, 37	18	12
Murder	CAH, WC	2, 3, 12, 13, 25, 26, 38, 39	30	20
Attempted Murder	CAH, WC	14, 15, 27, 28, 40, 41	20	14
Torture (in the context of the attacks)	CAH, WC	4, 5, 16, 17, 29, 30, 42, 43	20	14
Enslavement (in the context of the attacks)	CAH	8, 20, 33, 46	20	14
Outrages Upon Personal Dignity (in the context of the Odek attack)	WC	22	20	14
Pillaging	WC	9, 21, 34, 47	12	8
Destruction of Property	WC	35, 48	12	8
Persecution	CAH	10, 23, 36, 49	30	20
Forced Marriage	CAH	50, 61	30	20
Torture (in the context of SGBC)	CAH, WC	51, 52, 62, 63	30	20
Rape	CAH, WC	53, 54, 64, 65	30	20
Sexual Slavery	CAH, WC	55, 56, 66, 67	30	20
Enslavement (in the context of SGBC)	CAH	57, 68	30	20
Forced Pregnancy	CAH	59	30	20
Outrages Upon Personal Dignity (in the context of SGBC)	CAH	60	30	20
Conscription of Child Soldiers	WC	69	24	16
Use of Child Soldiers	WC	70	24	16

159. Given the number of crimes, their duration and occurrence over time, and the cumulative harm caused to the victims, as well as Mr Ongwen's personal history as a former child soldier, the Prosecution recommends a total joint sentence of not less than 20 years of imprisonment. Although the Chamber could impose a total joint sentence higher than the highest of the individual sentences, the Prosecution considers that unnecessary in this case. The Prosecution notes in this regard that Mr Ongwen spent more than 25 years in the LRA, immediately followed by pre-trial and trial detention of approximately six years.

160. While serving his sentence, the Prosecution recommends that Mr Ongwen receive any necessary medical care and the opportunity to continue his education. He must also receive credit for time served since he was detained on this Court's arrest warrant, under article 78(2) of the Statute.

161. The Prosecution submits that a sentence of not less than 20 years of imprisonment, under these conditions, would appropriately reflect Mr Ongwen's crimes and culpability and the suffering of his victims, while offering him a realistic chance of one day regaining his liberty and reintegrating into, and contributing positively to, his family and his community in northern Uganda.

A handwritten signature in black ink that reads "James K. Stewart." The signature is written in a cursive, flowing style.

James Stewart, Deputy Prosecutor

Dated this 1st day of April 2021
At The Hague, the Netherlands