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RESUMEN

[En el presente trabajo se aborda los crímenes de "embarazo forzado" y "matrimonio forzado", a la luz del caso Prosecutor vs. Ongwen ante la Corte Penal Internacional. En ese sentido, esta sentencia sanciona, por primera vez, por embarazo forzado como un crimen de lesa humanidad y de guerra, además que identifica la sanción de matrimonio forzado como un crimen de lesa humanidad, a través de la cláusula residual "otro acto inhumano" (7.1.k del Estatuto de Roma). Ante ello, sostenemos que, si bien la sentencia de culpabilidad resulta importante a efectos de la rendición de cuentas y de la justicia hacia miles de víctimas, consideremos que la Sala de Primera Instancia no desarrolla el bien jurídico protegido sobre "autonomía reproductiva", ello a razón de las implicancias que conlleva su reconocimiento y ejercicio del mismo, en virtud de los instrumentos internacionales de derechos humanos, principalmente el artículo 16 de la CEDAW. Por otro lado, consideramos que con la sanción por "embarazo forzado", mediante"otro acto inhumano" (7.1.k del Estatuto de Roma), se da el reconocimiento de un nuevo crimen independiente de la lista contemplada en el artículo 7.1 del Estatuto de Roma, lo cual permite abordar el bien jurídico protegido de "autonomía conyugal". Por lo tanto, en la primera parte del trabajo se aborda de manera histórica y conceptual los crímenes de violencia sexual y reproductiva. Seguidamente, se desarrollan los crímenes de embarazo forzado y matrimonio forzado, a partir de la sentencia del caso Ongwen. Finalmente, ante el actual estado de proceso de apelación del caso, abordamos cuatro amicus curiae, los cuales nos permiten sustentar nuestra posición.]

Palabras clave

[embarazo forzado, matrimonio forzado, autonomía]

ABSTRACT

[This paper deals with the crimes of "forced pregnancy" and "forced marriage", in light of the Prosecutor vs. Ongwen before the International Criminal Court. In this sense, this sentence sanctions, for the first time, for forced pregnancy as a crime against humanity and war, in addition to identifying the sanction of forced marriage as a crime against humanity, through the residual clause "another inhuman act " (7.1.k of the Rome Statute). Given this, we maintain that, although the sentence of guilt is important for the purposes of accountability and justice towards thousands of victims, we consider that the Trial Chamber does not develop the protected legal interest on "reproductive autonomy", this due to the implications of its recognition and exercise of the same, by virtue of international human rights instruments, mainly article 16 of the CEDAW. On the other hand, we consider that with the sanction for "forced pregnancy", by means of "another inhuman act" (7.1.k of the Rome Statute), a new crime independent of the list contemplated in article 7.1 of the Statute is recognized. of Rome, which allows addressing the protected legal right of "marital autonomy". Therefore, in the first part of the work, the crimes of sexual and reproductive violence are addressed historically and conceptually. Next, the crimes of forced pregnancy and forced marriage are developed, based on the sentence of the Ongwen case. Finally, given the current status of the appeal process of the case, we address four amicus curiae, which allow us to support our position.]

Keywords

[forced pregnancy, forced marriage, autonomy]

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Introducción

Este trabajo aborda los crímenes de violencia sexual y de género en el Derecho Penal Internacional. En ese sentido, partiendo desde una revisión histórica y cronológica en la identificación y sanción de los mismos, pudimos evidenciar que dichos crímenes habían sido claramente invisibilizados por parte de tribunales penales y también se consideraban parte de la vida privada de las personas, lo cual, aparentemente, no merecía su juzgamiento en tribunales públicos. Ello también generó un impacto en la regulación normativa internacional, que abordamos en el presente trabajo, pues existe una clara diferencia y evolución en el entendimiento sobre el bien jurídico protegido con la sanción de los crímenes sexuales y de género. Seguidamente, otro punto relevante desarrollado en el primer capítulo es el desarrollo jurisprudencial de los Tribunales Internacionales de la ex Yugoslavia y Ruanda, los cuales representan un giro absoluto, desde el Derecho Penal Internacional, en el reconocimiento y sanción de crímenes de violencia sexual y de género. Además, que dichas sentencias abordaron crímenes no antes sancionados a nivel internacional, lo cual generó un importante precedente jurisprudencial, que influenciaron a otros tribunales penales internacionales *ad hoc,* como el Tribunal Especial para Sierra Leona, Tribunal de Camboya. Específicamente, para efectos de este trabajo, hicimos referencia con respecto a los crímenes de embarazo forzado y matrimonio forzado, que son analizados en los siguientes capítulos.

En ese sentido, después de referirnos a la parte histórica, lo cual nos permite entender y abordar los pronunciamientos jurisprudenciales, los cuáles inspiraron la creación del Tribunal Internacional con carácter permanente y universal como es la Corte Penal Internacional. Asimismo, a partir de la sentencia Prosecutor vs. Ongwen, abordamos la misma desde los crímenes de embarazo forzado y matrimonio forzado, cargos bajo los cuáles fue sentenciado Dominic Ongwen por la Sala de Primera Instancia de la CPI, el año 2021. Con ello, nuestro análisis se centra en el abordaje de los elementos estipulados en el Estatuto de Roma, sobre los crímenes mencionados, para posteriormente identificar los derechos que protegen los mismos. Por ende, después, nos enfocamos en el análisis del derecho a la autonomía reproductiva, como bien jurídico protegido por el crimen de embarazo forzado, como también abordamos el derecho a la autonomía conyugal o a decidir sobre una unión o asociación conyugal, desde el crimen de matrimonio forzado, como un crimen de lesa humanidad, en virtud de la cláusula residual de “otro acto inhumano”. Ello, nos permite sostener, que la Sala de Primera instancia no aborda de manera clara, ni define qué implica el “derecho a la autonomía reproductiva”; por ende, nuestra propuesta es que, en virtud del artículo 21.3 del ER, esta debe ser interpretada de acuerdo a los instrumentos de derechos humanos, como es la Convención de la CEDAW y otras. Del mismo modo, abordamos que la identificación del crimen de matrimonio forzado permite la creación de un nuevo crimen de lesa humanidad, distinto a los estipulados por el artículo 7.1 del ER, lo cual permite de manera positiva la identificación de los elementos particulares del mismo.

Finalmente, en este trabajo concluimos con el desarrollo de cuatro *amicus curiae*, los cuáles fueron presentados por expertas en la materia sobre temas de violencia sexual y de género en el Derecho Penal Internacional, las cuáles interpretaron de manera académica los elementos de los crímenes de embarazo forzado y matrimonio forzado, con motivo del proceso de apelación del estado actual del caso. Asimismo, los amicus

nos permite sustentar nuestra posición ya mencionada, además que las mismas realizan grandes aportes a efectos que la Sala de Apelaciones de la CPI, realice una interpretación de los estándares probatorios y elementos requeridos por ambos crímenes desde una perspectiva de género.

1. Antecedentes en la incorporación de crímenes de violencia sexual y de género en el Estatuto de Roma

1.1. La evolución de la categoría de violencia sexual desde el Derecho Clásico

La violencia sexual, dirigida principalmente a mujeres y niñas, es un fenómeno que lamentablemente se ha suscitado con frecuencia en los contextos de conflictos armados. En ese sentido, un punto de vital importancia en la evolución y, posteriormente, en la sanción en el ámbito del Derecho Penal Internacional, es que estos crímenes de violencia sexual y de género han sido empleados como un método de guerra, cuya significación era situar como objeto a la víctima. Evidentemente, tuvo que pasar un largo proceso para su inclusión y tipificación en el Estatuto de Roma como un crimen internacional.

Asimismo, es importante precisar que, en los contextos de conflictos armados, los actos perpetrados, usualmente dirigidos a niñas y mujeres, engloban una sistematicidad múltiple y compleja. Por ello, también es importante tener en cuenta el bien jurídico protegido en los crímenes de violencia sexual, y cómo estos han ido evolucionando conforme a los paradigmas a lo largo de la historia. Asimismo, ya desde el Derecho Internacional clásico se veía la necesidad de sancionar estos actos repudiables, que causan un grave impacto en las víctimas a nivel físico, psicológico y social. Con ello, como menciona Odio Benito, desde los tiempos de los juristas clásicos como Francisco de Vitoria y Hugo Grocio, hasta las Convenciones de la Haya de 1899 y 1907, se entendía como bien jurídico protegido al honor y los derechos de la familia (2014, p. 250). Con ello, es notable el reflejo de los paradigmas patriarcales de la sociedad de ese entonces y el rol que se le atribuía a la mujer, lo cual no solo tenía un impacto en ella, sino que se traslucía en una obligación de no dañar la moralidad que podía afectar su ámbito familiar. Desde luego, este paradigma es sumamente criticable, pero nos permite evidenciar cómo se percibía a la mujer e incluso la carga de responsabilidad que se le atribuía a ella y no al agresor; es decir, la mujer no sólo se enfrentaba a las consecuencias de dichos actos, sino que existía un rechazo y carga social sobre ella, desde la óptica del juzgamiento.

Estos paradigmas, desde los cuales se abordaron los crímenes de violencia sexual y de género, estuvieron presentes en los instrumentos jurídicos como las leyes y costumbres de la guerra en el Derecho Internacional Humanitario. Como señala Pascual, el jurista clásico Hugo Grocio aborda, en su tratado, los actos cometidos en contra del honor de las mujeres en los conflictos bélicos; sin embargo, como dice la autora, plantea el tema desde un enfoque religioso y moral, en la cual reprueba la conducta humana, pero no sigue el ámbito de la sanción (2017, p. 68). No será hasta el Código de Lieber de 1863, en la guerra civil de los Estados Unidos de América, que, en el ámbito jurídico normativo, se refleja la tipificación de estos crímenes, específicamente en su artículo 44.

Si bien pasarán muchos años para cambiar la concepción y trascendencia de los crímenes sexuales, cabe señalar la importancia de este Código, que evidentemente no era acorde a los Derechos Humanos al proponer la pena de muerte, pero lo resaltante es la necesidad de sancionar y poner un límite en los actos de agresión sexual por parte de las tropas.

Por otro lado, como hemos referido, los crímenes de violencia sexual también fueron abordados en las Convenciones de La Haya de 1899, relativas a las leyes y costumbres de la guerra terrestre, en la cual se hace mención a los crímenes en violencia sexual, pero de manera superflua. Siguiendo a Pascual, por ejemplo, solo existen dos artículos que podrían referirse o estar dirigidos a la población civil en ese sentido. Uno de ellos con referencia a la proscripción del derecho a un uso ilimitado de medios para dañar al oponente y, por otro lado, con respecto al artículo 28 referido al pillaje. Aquí cabe resaltar, que la autora menciona que el "pillaje" se había sobreentendido que implicaba la violencia sexual a las mujeres, más allá del daño propio a la propiedad privada; de ahí, el reflejo de la concepción de entender a la mujer como un botín de guerra (2017, p. 69); es decir, las mujeres y niñas no eran vistas como sujetos de derechos, sino todo lo contrario. Del mismo modo, en la Convención de la Haya de 1907, se puede observar que en el artículo 46 se hace referencia al respeto del honor y los derechos de la familia, los cuáles también se entiende que se subsumían en los crímenes de violencia sexual, pues no existe ningún otro artículo que mencione ello de manera explícita.

Asimismo, el IV Convenio de Ginebra de 1949 en su artículo 27, hace referencia a la protección especial hacia las mujeres; sin embargo, cabe advertir que relaciona la "violación y prostitución forzada" con el honor y pudor. Ante ello, es relevante señalar, la diferenciación con los instrumentos normativos mencionados previamente, pues ya no se hace alusión a la lesión a la familia, entendida en términos morales, sino que dicho artículo se centra en la vulneración a la propia víctima, lo cual es importante a efectos de la visibilización de tales crímenes.

Años posteriores, después de la II Guerra Mundial, el 08 de agosto de 1945, los países vencedores firmaron el Tratado de Londres, con la finalidad de sancionar los crímenes perpetrados por los nazis y japoneses. En ese sentido, se da la creación del Tribunal de Nuremberg, considerado como un hito en la historia y en la evolución del Derecho Penal Internacional, pues fue la primera vez que se constituyó y adoptó un tratado para sancionar a individuos. Con respecto a los crímenes tipificados en dicho tratado, se encuentran los crímenes contra la paz, crímenes de guerra, y crímenes contra la humanidad. En ese sentido, en este tribunal se juzgó a 22 líderes nazis y se estableció como sanción la pena de muerte, mediante sentencia en 1946. Además, una característica importante de ambos tribunales es el establecimiento del carácter universal de dichos crímenes internacionales (Novak, 2001, p. 30). Sin embargo, el Tribunal de Nuremberg, a pesar de los innumerables casos con respecto a la violencia sexual, no llegó a juzgar a ningún acusado por los mismos, además de no recoger en su tratado constitutivo ningún artículo referido a la sanción de estos crímenes.

Por otro lado, en el Tribunal de Tokio solo se procedió a la condena de los generales Toyoda y Matsui por la responsabilidad de no haber impedido las violaciones masivas de mujeres en la ciudad de Nanking; en este, se procesó a los mismos por crímenes de

guerra, pues las fuerzas perpetradoras de los crímenes sexuales se encontraban bajo sus respectivos mandos. Sin embargo, aquí es importante hacer mención, a lo señalado por las autoras Martín y Lirola sobre la existencia de otras víctimas de violencia sexual que fueron ignoradas, y lo han sido hasta la actualidad, como es el caso de las "Comfort Women". Las mismas refieren que, este caso, gira en torno a las mujeres que fueron secuestradas y obligadas a mantener relaciones sexuales con militares japoneses en los países ocupados por dicho Estado durante el periodo de la II Guerra Mundial. En ese sentido, gracias al accionar de la Dra. *Radica Coomaraswamy*, y sobre la base del -*Informe de misión en la República de Corea y Japón sobre crímenes de violencia sexual,* se pudo lograr que las víctimas sobrevivientes puedan dar su testimonio. Ante ello, el Estado de Japón, en el año 2007, reconoció los hechos y pidió perdón a las víctimas, además estableció compensaciones económicas a las mismas (2013, p.15). Por lo tanto, en alusión al caso "comfort women" se puede evidenciar que las víctimas eran tomadas como "objetos" y eran instrumentalizadas, recluidas en establecimientos destinados "para el uso exclusivo de los generales militares". Aún con lo mencionado previamente, es de señalar que los Tribunales de Nuremberg y Tokio no representaron un avance significativo en la tipificación y sanción debida por crímenes de violencia sexual y de género, que normalmente comprendían como víctimas a mujeres y niñas.

1.2. Los crímenes de violencia sexual en los Tribunales Penales Internacionales para la ex Yugoslavia y Ruanda

Los tribunales penales *ad hoc* para la ex Yugoslavia y Ruanda representan uno de los avances más importantes con respecto al reconocimiento y sanción de los crímenes de violencia sexual.

Por un lado, el conflicto armado de la ex Yugoslavia data del año 1992 en los Balcanes, causado principalmente por razones religiosas y políticas. Además, como señalan Salmón y García este conflicto bélico fue uno de los más cruentos de la década, pues los serbios, que tenían como líder a "Slobodan Milosevic", tenían como objetivo tomar el control de la ex- Yugoslavia e implantarse como la única etnia, a través de la llamada "limpieza étnica"; ello, con la finalidad de llegar a formar la "Gran Serbia", a través de masacres catalogados como actos genocidas, lo cual generó aproximadamente 50,000 muertos y 2 millones de desplazados (2000, p.14). Asimismo, con respecto al Estatuto del Tribunal Penal Internacional para la Ex Yugoslavia, en esta ya se contempla el crimen de violación sexual como un crimen de lesa humanidad (artículo 5. g). Asimismo, cabe mencionar que, en este instrumento normativo, ya no se hace alusión al honor como el bien jurídico lesionado, sino que se enfoca en la dignidad e integridad de las víctimas; con ello, es posible ampliar la concepción de los crímenes de violencia sexual, los cuales habían sido mencionados desde un paradigma conservador en los Convenios de Ginebra.

Del mismo modo, uno de los aportes fundamentales es su jurisprudencia con los casos *Tadic* y *Akayesu*, pues incluyó el crimen de violación sexual y otros de naturaleza sexual calificandolos como tortura, actos inhumanos, además de considerar la inclusión de crímenes de connotación sexual, en la lista no exhaustiva del artículo 3 del Estatuto del TPIY, con referencia a las violaciones de las leyes y usos de la guerra (2013, p.17). Con lo mencionado, es de afirmar que la jurisprudencia de ambos tribunales ad hoc

permitieron la incorporación, no solo de la violación sexual como un crimen internacional, sino otros actos, como la prostitución forzada, esclavitud forzada, embarazo forzado, ya desde un enfoque basado en la dignidad, libertad, autonomía e intimidad de parte de los derechos humanos de las víctimas.

Por otro lado, con respecto al genocidio de Ruanda, este se llevó a cabo en el año de 1994 y el establecimiento del Tribunal ad hoc también fue realizada por el Consejo de Seguridad de las Naciones Unidas, ante esta masacre en el contexto de conflicto entre las etnias Tutsi y Hutu. En este conflicto, se perpetuó el crimen de genocidio por parte de la etnia hutu, que había llegado al poder. Ahora bien, con respecto al Estatuto para la creación del TPIR, también se incluye la violación sexual como crimen de lesa humanidad (artículo 3, g), pero en este también se incorpora como un crimen de guerra, con respecto al artículo 3 de los Convenios de Ginebra y también en el Protocolo Adicional II.

Ahora bien, después de haber descrito la experiencia de los tribunales penales ad hoc, se puede concluir que representaron un avance positivo e importante con respecto a la evolución del bien jurídico protegido en los crímenes de violencia sexual y de género. Asimismo, que los criterios jurisprudenciales resueltos por ambos tribunales representan un precedente jurídico importante para el actual abordaje y sanción por crímenes de género.

1.3. Los crímenes de violencia sexual y género en el Estatuto de Roma

Después de un largo periodo para finalmente establecer un Tribunal Penal Internacional de carácter permanente, este se llevó a cabo el 9 de diciembre de 1991, pues la Asamblea General de Naciones Unidas, mediante la Resolución 46/54, dictaminó a la Comisión de Derecho Internacional emprender el estudio y proceso para la creación de lo que actualmente se conoce como la Corte Penal Internacional. En ese sentido, como señala Zorrilla, esta decisión adoptada por la Asamblea General fue a instancia de la petición realizada por el Estado de Trinidad y Tobago en 1989, ya que este Estado mencionó la necesidad de retomar la idea de sancionar crímenes como por ejemplo el tráfico de mujeres, el terrorismo, entre otros. (2005, p.21). Ante ello, cabe mencionar que, en el Proyecto de Código, solo se consideraron los crímenes internacionales desarrollados en el Código de Crímenes contra la Paz y Seguridad de la Humanidad, los cuales habían sido elaborados en base a los principios de Nuremberg, pues en ellos se contemplaban al genocidio, los crímenes de guerra, los crímenes contra la humanidad y el crimen de agresión, como los más graves que afectaban a toda la comunidad internacional. Posteriormente, la Asamblea General de las Naciones Unidas, mediante resolución 51/207, el 17 de diciembre de 1996[1], estableció celebrar la conferencia diplomática de plenipotenciarios con el objetivo de establecer de forma definitiva una convención internacional para la creación de la CPI. Asimismo, ya en la resolución 52/160 del 15 de diciembre de 1997, el gobierno de Italia había ofrecido ser sede de dicha Conferencia Diplomática, llevándose a cabo el 17 de julio de 1998 en la ciudad de Roma.

[1] A/CONF.183/10

En la Conferencia de plenipotenciarios participaron 160 Estados, 33 organizaciones intergubernamentales y 236 ONGs agrupadas en coalición y esta se desarrolló en virtud a los trabajos previamente realizados por el Comité Preparador (Zorrilla, 2005, p. 23). Con respecto a la inclusión de crímenes de violencia sexual y de género, es claro mencionar que existió un gran aporte por parte de asociaciones de mujeres, ONGs y activistas feministas que desarrollaron un trabajo constante desde las reuniones de la Comisión Preparatoria (PrepCom) enfocadas en la inclusión de crímenes que afectaban con preeminencia a las mujeres. Ante ello, se encuentra el trabajo de "Women's Caucus for Gender Justice", la cual engloba a mujeres feministas que impulsaron y lograron la inclusión de la perspectiva de género en la redacción del Estatuto de Roma. En ese sentido, en diciembre de 1997, esta asociación presentó ante el PrepCom recomendaciones y comentarios sobre la redacción del Estatuto de Roma. Por ejemplo, mencionó la necesidad de que el Estatuto de la CPI deba contar con la estipulación y aplicación de principios generales para eliminar la discriminación y los estereotipos basados en género de acuerdo al Derecho Internacional.

> "The Statute should contain a direction that the development and application of general principles of law must eliminate discrimination and gender stereotypes pursuant to international law. This direction could appropriately be contained in section 2(2) regarding the "Further Elaboration by the Court of General Principles..." or in a chapeau to the section on general principles." (Recomendación 6, p.15)

De lo anterior, es de mencionar que, actualmente en el artículo 21(3) del Estatuto de Roma sobre el "Derecho aplicable", se hace esta mención sobre la proscripción de la discriminación en base al género. Ahora bien, si bien el Estatuto de la Corte Penal Internacional marca un hito en la inclusión de la categoría de "género", pues, en el Derecho Internacional Humanitario, se adolecía de la misma al momento de abordar el tratamiento de la violencia sexual; sin embargo, la definición que se plasma en el Estatuto de Roma sobre "género" es realmente cuestionable, pues define a la misma desde una perspectiva biologicista, equiparándola a sexo (artículo 7.3 del Estatuto de Roma).

Como mencionan Martin y Lirola, esta redacción, bastante cuestionable, fue producto de las negociaciones entre las Asociaciones feministas con las posturas radicales de la Santa Sede y los países islamistas por tratar de encontrar un punto medio en la inclusión de la categoría de género. Asimismo, las autoras mencionan que, dicha definición en el ER es evidentemente contraria a lo previamente establecido en la Declaración de Beijing (Objetivo 3 y 19); además, dicha redacción no abarca la problemática de los estereotipos y la construcción social de los roles de género y la discriminación estructural (2013, p. 35). Ante ello, nos parece importante mencionar cómo es abordada la definición para Women's Initiatives for Gender Justice, pues hacen referencia a que la CPI, al ser una institución importante para alcanzar la justicia penal internacional y en base a la rendición de cuentas, es imprescindible que la misma establezca estándares para la integración de género en todas sus áreas de trabajo (2018, p.132); por ello, propone adoptar la definición del Consejo Económico y Social de la ONU (ECOSOC) sobre la perspectiva de género.

Como señala ONU Mujeres[2], dicha perspectiva del ECOSOC (1997), se refiere a que la equidad de género es parte del desarrollo general y la inclusión de la perspectiva de género aborda la incorporación de un conjunto de enfoques específicos y estratégicos a nivel institucional para alcanzar los objetivos planteados. Por ello, se pretende que se incluya la perspectiva de género en las instituciones tanto públicas como privadas de la sociedad, en las leyes, normas, prácticas comunitarias que históricamente han restringido la participación y acceso a las mujeres en los espacios públicos. Entonces, es de mencionar que la definición sobre género, tal y como esta redactada en el ER, es restrictiva de derechos humanos al no llegar a visibilizar la problemática estructural de discriminación arraigada históricamente hacia las mujeres y precisamente con dicha inclusión de la "perspectiva de género" se pretende desterrarla.

Por otro lado, es importante destacar la acción del Caucus de Mujeres sobre la inclusión de una cláusula general con respecto a la conducta de violencia sexual, pues esta puede ser constitutiva de otros crímenes contemplados en el ER, como tortura, genocidio y otros. Los mismos, ya habían sido incluidos en la jurisprudencia de los Tribunales Penales Internacionales de Ruanda y Yugoslavia, lo cual constituía un avance en cuanto a la sanción de crímenes de violencia sexual y de género. En ese sentido, en el caso *Prosecutor V Jean- Paul Akayesu,* el TPIY mencionó que la violación sexual constituía el crimen de tortura cuando la conducta se producía por la aquiescencia de un funcionario público u otra persona con dicha capacidad.

> " (...)Like torture, rape is a violation of personal dignity, **and rape in fact constitutes torture when inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity**." (subrayado es nuestro) (Fundamento 597)

Del mismo modo, se mencionó que las mujeres Tutsis habían sido objeto de violación sexual por el mismo hecho de pertenecer a esta etnia y que esta había sido con la intención de destruirla.

> ""(...) As stated above, Akayesu himself, speaking to the Interahamwe who were committing the rapes, said to them: "don't ever ask again what a Tutsi woman tastes like". This sexualized representation of ethnic identity graphically illustrates **that tutsi women were subjected to sexual violence because they were Tutsi. Sexual violence was a step in the process of destruction of the tutsi group - destruction of the spirit, of the will to live, and of life itself**". (Subrayado es nuestro) (Fundamento 732)

Asimismo, cabe mencionar que la violación sexual no constituye un crimen específico en el Derecho Penal Internacional, sino que este se encuentra incluido en las categorías de crímenes como la tortura, el genocidio, como las graves violaciones a los Convenios de Ginebra de 1949 y crímenes de lesa humanidad (De Vito y Short, 2009, p.30). Actualmente, en el Estatuto de Roma, la violación sexual se encuentra tipificado explícitamente como parte de los crímenes de lesa humanidad (art. 7.1. g) y los crímenes de guerra (8.2.xxii); además, también se contemplan otros delitos internacionales como la esclavitud forzada, la prostitución forzada, el embarazo forzado, la esterilización forzada o cualquier otra forma de violencia sexual de gravedad

[2] ONU Mujeres. "Incorporación de la perspectiva de género"

comparable. De igual manera, se encuentra estipulado una cláusula abierta sobre "Otros actos inhumanos de carácter similar" (artículo 7.1.k), a través de la cual se ha podido sancionar por matrimonio forzado en el presente caso *de Dominc Ongwen* ante la CPI, la cual es materia de análisis en este trabajo. En ese sentido, a continuación, pasaremos a desarrollar los elementos del crimen de embarazo forzado y matrimonio forzado.

1.3.1. El crimen de "embarazo forzado"

El Estatuto de Roma contempla al embarazo forzado dentro de las categorías de crímenes de lesa humanidad (artículo 7.1. g del ER) y crímenes de guerra (artículos 8.2a.xxii y 8.2e.vi del ER). Asimismo, en los términos de este tratado internacional, se define el crimen de embarazo forzado como:

> *"el confinamiento ilícito de una mujer a la que se ha dejado embarazada por la fuerza, con la intención de modificar la composición étnica de una población o de cometer otras violaciones graves del derecho internacional. En modo alguno se entenderá que esta definición afecta a las normas de derecho interno relativas al embarazo" (artículo 7.2.f del ER).*

Con ello, en la definición propuesta en el ER debe advertirse la cláusula negativa sobre otra forma de interpretación con respecto a leyes internas vinculadas a embarazo forzado, lo cual se deriva del proceso de negociaciones en las conferencias de Roma por la inclusión de este tipo de crimen en el Estatuto. Ello, en virtud a que existía preocupación por parte de los países conservadores y de la Santa Sede, pues se creía que su inclusión podría llevar a que los Estados se vean en la necesidad de modificar su normativa interna relacionado al tema del aborto; por ello, la Santa Sede, durante las conferencias del 16 de marzo al 3 de abril de 1998, propuso reemplazar el embarazo forzado por impregnación forzada.

Con ello, como señala Fernández de Gurmendi, esta propuesta de la Santa Sede, con el apoyo de países árabes y de América Latina, no comprendía las prácticas que se pretendía sancionar, como las ocurridas en Bosnia, pues "impregnación forzada" abordaba prácticamente lo mismo que la violación sexual (2003, p.403). Asimismo, gracias a la participación del Caucus de Mujeres, esta propuesta no fue avalada en la redacción del ER. Es así, que el 26 de junio de 1998, esta asociación se pronuncia al respecto, en la cual señaló que la posición contraria, que pretendía la introducción del tema del aborto, se encontraba fuera de lugar en las negociaciones sobre el crimen de embarazo forzado. Además, con dicho cambio se estaba desconociendo que este era un crimen de comisión y no de omisión, pues este es cometido con intencionalidad y genera graves daños a las víctimas. Del mismo modo, comentó el contexto de conflicto que había acontecido en los Balcanes y la razón de sancionar dicho crimen: "El ejemplo más reciente y publicitado de embarazo forzado ocurrió en Bosnia y Herzegovina, donde los soldados violaron a mujeres hasta que quedaron embarazadas y luego continuaron encarcelándolas." (Women's Caucus for Gender Justice,1998)

Asimismo, como señala Grey, la violencia reproductiva, específicamente con respecto al embarazo forzado, había sido invisibilizada en la práctica del Derecho Penal Internacional.

En ese sentido, la autora menciona que dicho crimen sí había tenido lugar a lo largo de la historia en los siglos XX y XXI e incluso contemporáneamente en el conflicto del Estado Islámico. Además, un aspecto importante a considerar es que este crimen internacional, a parte de negar la autonomía reproductiva del individuo y causar graves lesiones físicas y daños psicológicos, también causa un impacto directo en la mujeres y niñas, pues debido a su capacidad reproductiva y a los estereotipos de género asignados en la sociedad, las mismas son víctimas de este crimen y enfrentan las consecuencias posteriores. Como ejemplo de ello, se encuentra el riesgo de muerte o lesiones en el parto, el estigma social y la carga desproporcionada con respecto a la crianza de sus hijos, que podría agravar la situación de pobreza en muchas de ellas (2017, p.907). Con lo anterior, es de mencionar que en la jurisprudencia tanto de los TPIY y TPIR, si bien se habían abordado el delito de violación sexual y representaba un avance en cuanto a sancionar este tipo de crímenes, como refiere la autora citada, se había dejado de lado la sanción en cuento a la violencia reproductiva (embarazos forzados, estetizaciones forzadas, abortos forzados) y de género, que usualmente enfrentan las víctimas con mayor frecuencia durante los contextos de conflictos armados; por ello, el caso de *Prosecutor Vs Dominc Ongwen* representa un gran avance entorno a la visibilización y sanción de este tipo de crímenes, como también genera un espacio de apertura con respecto a otros crímenes de violencia reproductiva, pasibles de ser identificados y sancionados en casos futuros.

1.3.1.1. Elementos del crimen de embarazo forzado en el Estatuto de Roma

Con respecto a los elementos de este crimen, por un lado, como ya referimos previamente, el embarazo forzado puede ser abordado como un crimen de lesa humanidad y como un crimen de guerra, este último ante la existencia de un conflicto de carácter internacional o no internacional

En primer lugar, de acuerdo a los elementos que se desprenden del artículo (7.1.g-4) del Estatuto de Roma se pueden evidenciar tres puntos a considerar.

> **"Crimen de lesa humanidad de embarazo forzado**
> **Elementos**
> 1. Que el autor haya confinado a una o más mujeres que hayan quedado embarazadas por la fuerza, con la intención de modificar la composición étnica de una población o de cometer otra infracción grave del derecho internacional.
> 2. Que la conducta se haya cometido como parte de un ataque generalizado o sistemático dirigido contra una población civil.
> 3. Que el autor haya tenido conocimiento de que la conducta era parte de un ataque generalizado o sistemático dirigido contra una población civil o haya tenido la intención de que la conducta fuera parte de un ataque de ese tipo."[3]

En ese sentido, de acuerdo a lo citado, se debe entender que el *actus reus* del embarazo forzado es el "confinamiento ilegal de una mujer embarazada", lo cual fue mencionado por la Sala II de Cuestiones Preliminares de la CPI en el año 2016, en cuanto a la confirmación de cargos en el caso de Dominic Ongwen, que más adelante detallaremos con detenimiento.

[3]Elementos de los crímenes del Estatuto de Roma.

Por lo tanto, el crimen de embarazo forzado, se enfoca en la lesión a la autonomía sexual y reproductiva de la víctima, la cual ha sido ilegalmente confinada en virtud al Derecho Internacional. Con ello, como señala Amnistía Internacional, este encierro ilegal, impide a la víctima tener el control sobre su propia salud, incluidos los referentes a los derechos sexuales y reproductivos, además de gozar de una atención adecuada a los servicios médicos de salud (2020, p.9-10). Ello, también es mencionado en la Observación general N° 22 (2016) del Comité de Derechos Económicos, Sociales y Culturales sobre el derecho a la salud sexual y reproductiva, en la cual se menciona que la vulneración a este tipo de derechos puede llegar a considerarse como tortura o trato cruel, inhumano o degradante.

Ello nos parece relevante a efectos de comprender las consecuencias del embarazo forzado, pues la víctima, al estar confinada ilegalmente, carece de toda facultad de elección sobre optar por un tratamiento para llevar a cabo su embarazo de manera segura o incluso impedir la continuación del mismo.

Por otro lado, sobre el segundo punto de los elementos del crimen de lesa humanidad de embarazo forzado, cabe mencionar que debe cumplirse con los requisitos propios del crimen de lesa humanidad que es el ataque generalizado o sistemático contra la población civil (artículo 7.1 del ER). Para entender el mismo, recurriremos a la jurisprudencia en el caso Katanga ante la CPI, en la cual la Sala de Cuestiones Preliminares mencionó una definición del mismo al no estar de manera explícita en el ER.

> [T]he expression "widespread or systematic" in article 7(1) of the Statute excludes random or isolated acts of violence. Furthermore, the adjective "widespread" connotes the large-scale nature of the attack and the number of targeted persons, whereas the adjective "systematic" refers to the organized nature of the acts of violence and the improbability of their random occurrence. (CPI, 2008, párr.394)

En ese sentido, se entiende por “generalizado o sistemático” a la naturaleza del ataque que es a gran escala y al gran número de personas que afecta el mismo, además de referirse a la naturaleza organizativa de los actos, descartando que estos sean cometidos por azar. Del mismo modo, nos parece relevante indicar que, en jurisprudencia posterior, como en el caso *Prosecutor V Jean- Pierre Bemba,* se precisó que por “ataque generalizado” no solo toma en cuenta el aspecto cuantitativo, sino que debe comprenderse en base a los hechos individuales (CPI, 2016, párr. 163).

Sobre el tercer punto de los elementos del crimen de lesa humanidad de embarazo forzado, se hace referencia a los elementos mentales sobre el conocimiento o la intención del ataque. Por un lado, con respecto al *conocimiento* este se encuentra definido en el artículo 30.3 del ER. Con ello, debe entenderse que, en el embarazo forzado, debe demostrarse que el acusado estaba al tanto de que la víctima haya sido embarazada a la fuerza; en ese sentido, dicho conocimiento puede adquirirse, a través de características como la apariencia física de la víctima, síntomas comunes del embarazo, la denegación para acceder a servicios médicos de salud reproductiva, entre otros. Del mismo modo, con respecto a la *intención*, esta se encuentra estipulada en el artículo 30.2 del ER; con ello, se entiende que, para la sanción por el crimen de

embarazo forzado, el acusado debió tener la intención de confinar ilegalmente a la víctima que ha sido embarazada a la fuerza con finalidad alternativa que establece la definición del delito: afectar la composición étnica de toda la población o llevar a cabo violaciones graves al derecho internacional. Por ende, queda descartado, la interpretación restrictiva de que únicamente se mantenía recluida a la víctima para mantenerla embarazada. (Amnesty International, 2020, p.17-18).

En segundo lugar, el crimen de embarazo forzado también puede ser sancionado como parte del crimen de guerra, si se da en el contexto de un Conflicto Armado Internacional (CAI) estipulado en el artículo 8. 2. b.xxii-4 del ER; por el contrario, si se da en la situación de un Conflicto Armado No Internacional (CANI), previsto en el artículo 8. 2. e. vi-4 del mismo tratado. En ese sentido, es de señalar que al entender el embarazo forzado como un crimen de guerra se debe tener en cuenta las normas establecidas en los Convenios de Ginebra de 1949, al momento de comprender una detención o reclusión ilegal, como es exigido en el crimen que estamos abordando. Asimismo, se debe tener en cuenta a las normas consuetudinarias del Derecho Internacional Humanitario, la cual menciona que se encuentra proscrito la privación arbitraria de libertad, tanto en contexto de CAI y CANI[4]. Por último, con respecto a los elementos subjetivos de conocimiento o intención, de la redacción de los elementos, se puede advertir que no difiere de lo ya abordado previamente.

1.3.2. El crimen de “matrimonio forzado”

En el Derecho Penal Internacional, el crimen de matrimonio forzado ha sido discutido y abordado en la jurisprudencia de los Tribunales Especiales para Sierra Leona y, en la actualidad, en la Corte Penal Internacional, en los casos más recientes de Dominc Ongwen y Al Hassan. En ese sentido, también es de señalar que la jurisprudencia ha servido en los avances que se han dado entorno al reconocimiento y juzgamiento de este crimen, pues este no es abordado en el Estatuto de Roma de manera específica, sino que se ha tendido a interpretar el mismo como parte del crimen de esclavitud sexual en la modalidad de crimen de lesa humanidad y, por otro lado, también se ha identificado dentro de la categoría de “otros actos inhumanos”.

1.3.2.1. El matrimonio forzado en el Tribunal Especial para Sierra Leona

Con fecha 09 de agosto del año 2000, el presidente de la República de Sierra Leona (Alhaji Ahmad Tejan Kabbah), solicitó al Consejo de las Naciones Unidas crear un Tribunal Especial para este Estado, con la finalidad llevar a cabo los juicios contra los miembros del Frente Revolucionario Unido (FRU)[5]. En ese sentido, el Consejo de seguridad conforme a las Resolución 1315 (2000) encomendó realizar los acuerdos correspondientes al Secretario General de la ONU con el gobierno solicitante, con el objetivo de crear un Tribunal Especial independiente, posteriormente este llega a instaurarse el 16 de enero del 2002 (Blanc, 2003, 107-108).

[4] Norma 99. “Queda prohibida la privación arbitraria de la libertad”.
[5] S/2000/786 Consejo de Seguridad de la ONU

En el caso *Prosecutor V. Brima, Kamara y Kanu (Caso AFRC)*, la fiscalía alegó que los matrimonios forzados calificaban como “otros actos inhumanos” sancionables en base al artículo 2.i de su Estatuto. Asimismo, señaló que los elementos de dicho crimen no se subsumían en el de esclavitud forzada, pues si bien usualmente este implica el acto de violación sexual, el “matrimonio forzado” posee sus propios elementos como el rol que cumplen las mujeres como esposas.

Sin embargo, por mayoría, la Sala de Primera instancia del TESL, no tomó en consideración dicho alegato por la fiscalía, pues concluyó que los cargos alegados se subsumían en el crimen de esclavitud sexual y que no existía ninguna laguna normativa para separar el crimen de “matrimonio forzado” e incluirla dentro de “otros actos inhumanos”, además rechazó lo alegado por duplicidad en la acusación y mencionó que la cláusula residual, era aplicable a los actos de naturaleza no sexual.

Posteriormente, este caso llegó a apelación y la Sala adoptó una posición contraria con respecto a interpretar de manera restrictiva la categoría de “otros actos inhumanos”, en los cuales se podía incluir otros crímenes del mismo carácter, con referencia a la violencia sexual y de género. (Bou, 2015, p. 89). En ese sentido, con lo referido por la Sala de Apelaciones, el matrimonio forzado podía ser calificado como un crimen de lesa humanidad de esclavitud sexual y, por otro lado, también podía estar comprendido en “otros actos inhumanos”; sin embargo, como señala Bou Franch, esta evolución en el juzgamiento por matrimonio forzado llegó a revertirse con el caso *Prosecutor V Charles Taylor,* pues se omitió toda la creación jurisprudencial y finalmente el mismo quedó subsumido en el crimen de esclavitud sexual como lo había referido la Sala de Primera Instancia en el caso AFRC (2015, p.100). Por ende, con este último caso, el desarrollo del crimen de matrimonio forzado vuelve a cero y queda subsumida en el crimen de esclavitud sexual que, a nuestra consideración, no recogía los elementos propios de esta.

1.3.2.2. El matrimonio forzado en la jurisprudencia de la Corte Penal Internacional: Casos Dominc Ongwen y Al Hassan

En la jurisprudencia penal internacional contemporánea, se ha imputado el crimen de matrimonio forzado mediante la cláusula residual de “otros actos inhumanos” como parte de los crímenes de lesa humanidad. En ese sentido, en la actualidad existen dos casos el de Dominic Ongwen y Al Hassan, los cuáles han confirmado los cargos en acusación por este crimen, mediante la cláusula residual del ER (7.1.k).

Por un lado, en el caso *Prosecutor V. Dominic Ongwen*, quien fue el líder y comandante del Ejército de Resistencia del Señor en el norte de Uganda. Asimismo, este fue acusado por diversos cargos de crímenes de violencia sexual y de género, entre ellos el de embarazo forzado y matrimonio forzado (Osterveld, 2018, p. 1278). Por lo tanto, en la confirmación de cargos la Sala mencionó que el matrimonio forzado se debía interpretar conforme a la cláusula de “otros actos inhumanos” de crímenes de lesa humanidad, pues la conducta que, se pretendía sancionar con esta, era el de obligar a mantener una unión conyugal de manera no voluntaria; por ende, desestima que pueda considerarse dentro de los crímenes estipulados en el artículo 7.1.a-j, incluidos en ellos el crimen de esclavitud sexual, la cual había sido alegado por la defensa.

Por otro lado, se encuentra el caso de Prosecutor V. Al Hassan, en el cual se imputaron crímenes internacionales por los actos perpetrados en Timbuktú, Mali, durante los años 2012 al 2013. En este caso, Al Hassan, en su calidad de jefe de facto de la policía islámica y también involucrado en estar bajo las órdenes de Al Qaeda, también fue acusado por el crimen de matrimonio forzado. En este, al igual que el caso anterior comentado brevemente, la fiscalía ha presentado cargos por crímenes de violencia sexual y género, como parte de crímenes de lesa humanidad y crímenes de guerra. En ese sentido, como señala la autora Oosterveld, queda esperar si dicho caso sigue la línea jurisprudencial de Dominic Ongwen, pues el mismo se encuentra en proceso. (2018, p.1280).

Con los casos abordados previamente, se puede vislumbrar dos tendencias en la jurisprudencia penal internacional, por un lado, considerar al matrimonio forzado como parte del crimen de esclavitud sexual y subsumirla en la misma, como fue establecida en la experiencia del Tribunal Especial para Sierra Leona. Por otro lado, también el matrimonio forzado ha sido considerado como parte de "otros actos inhumanos" del crimen de lesa humanidad, lo cual parece ser la tendencia contemporánea, pues, en el caso Ongwen, se aborda de manera distinta el mismo, pues más allá de identificar los roles desempeñados como "esposas", el criterio se centra en sancionar la violencia y falta de voluntad en las víctimas para mantener una unión conyugal.

2. La importancia del caso de Dominic Ongwen en el avance significativo de la jurisprudencia de la CPI en el juzgamiento de crímenes de violencia sexual y de género

El caso *Prosecutor Vs. Ongwen,* el cual analizamos en el presente trabajo, representa un hito contemporáneo en la investigación y sanción de crímenes de violencia sexual y de género a nivel internacional, pues es la primera vez, en la historia de la CPI, que esta Corte sanciona por el crimen de embarazo forzado y de matrimonio forzado, esta última en virtud del empleo de la cláusula residual subsumida en "otros actos inhumanos" como crimen de lesa humanidad del artículo 7.1.k del Estatuto de Roma. Asimismo, la importancia de este caso recae en visibilizar el impacto y la magnitud que genera la comisión de estos crímenes en las víctimas y que los mismos sean debidamente abordados tanto por la fiscalía, como por los jueces de la CPI, desde una perspectiva de género como lo dispone el Estatuto de Roma. A continuación, señalaremos de manera general los casos más relevantes ante la CPI, en los cuáles se haya sentenciado por los crímenes de violencia sexual y género, usualmente crímenes invisibilizados.

2.1. La evolución del juzgamiento de crímenes de violencia sexual en la jurisprudencia de la CPI

En la historia del juzgamiento de crímenes de violencia sexual y de género, se ha tendido a invisibilizar su sanción en el Derecho Penal Internacional, pues como lo señalamos en el capítulo precedente, se concebía estos crímenes desde el bien jurídico de la afectación a la familia o el honor, más no desde la propia víctima. Asimismo, estos crímenes suelen darse con mayor preponderancia en los contextos de Conflicto Armado, como fue la experiencia de las dos Guerras Mundiales; sin embargo, la sanción, por razón de género al existir un impacto diferenciado con respecto a las víctimas mujeres y niñas, han tenido que evolucionar y visibilizarse con el pasar de los

años. En ese sentido, un avance importante fue las sentencias emitidas por lo Tribunales Internacionales de la ex Yugoslavia y Ruanda, al criminalizar por violencia sexual y de género, lo cuál también trajo a colación el reconocimiento de las victimas sobre el bien jurídico protegido de "la autonomía reproductiva", a razón de lo acontecido con las mujeres bosnias.

Ahora bien, ya desde la creación de CPI, podemos señalar que ha existido una evolución con respecto a los casos abordados sobre la sanción de crímenes de violencia sexual y de género, el presente caso de análisis de Dominic Ongwen podría confirmar dicha evolución; sin embargo, a la CPI aún le queda seguir avanzando en dicha evolución, sobre todo con respecto a no crear espacios de impunidad, especialmente con víctimas de violencia sexual y de género, según lo dispone el objetivo y fin del Estatuto de Roma.

2.1.1. El primer caso de juzgamiento ante la CPI y la invisibilización en cuanto a crímenes de violencia sexual y de género: Thomas Lubanga Dyyilo

Nos parece acertado empezar por el primer caso de juzgamiento ante la CPI, pues de esa manera se puede evidenciar la evolución con relación a la sanción de crímenes de violencia sexual y de género. En ese sentido, el 14 de marzo del 2012, la CPI emitió su primera sentencia contra el ex presidente de la Unión de Patriotas Congoleses y de la Fuerza Patriótica por la Liberación del Congo, por alistar y reclutar niños para participar activamente en las hostilidades. Sin embargo, a efectos de identificar la sanción por crímenes de violencia sexual y de género, cabe mencionar que el fiscal no realizó acusaciones por violación sexual, esclavitud sexual, entre otros crímenes relacionados, a pesar que, en la República Democrática del Congo, se reportaban dichos casos. Ante ello, asociaciones como Women's Initiatives for Gender Justice criticó este accionar e incluso en el 2006 hizo llegar a la fiscalía testimonios de víctimas; sin embargo, nada de ello fue considerado ni por la Fiscalía, ni los Tribunales de la CPI (Arjona, 2014, p.94-95). De lo anterior, podríamos señalar que efectivamente en este caso existe una invisibilización por parte de los propios funcionarios de la CPI, pues en virtud a sus competencias, gozan de la discrecionalidad para imputar los cargos, lo cual, desde nuestro punto de vista, debe abordarse teniendo en cuenta una perspectiva de género, en virtud a las víctimas afectadas, como también lo dispone el Estatuto de Roma.

2.1.2. El juzgamiento por crímenes de violencia sexual y género en el caso Jean-Pierre Bemba

Otro de los casos importantes a efectos de la sanción de crímenes de violencia sexual y de género, represente el de Jean- Pierre Bemba Gombo, ex Presidente y comandante en jefe del Movimiento de Liberación del Congo. En ese sentido, los cargos de detención fueron por crímenes de lesa humanidad y de guerra, en los cuales se encontraba el crimen de violación sexual cometidos en el periodo de tiempo del 2002 y 2003 en la República Centroafricana. Es así que el 21 de marzo del 2016, la Sala de Primera Instancia III de la CPI condenó a Jean Pierre Bemba, por el crimen de violación sexual como crimen de

guerra y lesa humanidad, entre otros[6]. Si bien el caso fue apelado y en segunda instancia fue absuelto, el razonamiento para el mismo fue la falta de constatación de la Responsabilidad de mando (artículo 28 del ER) de Bemba durante las operaciones en la República Centroafricana.

Por ende, este caso ya representa un avance en la identificación y sanción de crímenes de violencia sexual y de género, además, en comparación con la anterior jurisprudencia de la CPI, el caso de Jean Pierre Bemba visibiliza dichos crímenes, al menos el más común de ellos que es el de violación sexual, sobre cual la CPI tiene competencia

2.1.3. La condena por crímenes de violencia sexual y género en el caso Bosco Ntanganda

Finalmente, otro de los casos que nos gustaría referirnos es el de Bosco Ntaganga, exjefe del Estado Mayor y comandante de operaciones de las Fuerzas Patrióticas por la Liberación del Congo. Es así que este fue sentenciado en primera instancia y se confirmó los cargos en apelación (30 de marzo del 2021)[7]. En este caso, nos parece relevante mencionar que se evidencia un avance significativo por parte de la Fiscalía en la imputación de cargos con respecto a crímenes de violencia sexual y de género, pues Ntaganda fue sentenciado por el crimen de violación y esclavitud sexual, entro otros, tanto como crimen de lesa humanidad, como crimen de guerra.

Del mismo modo, en este caso, se observa una clara diferencia en la imputación de cargos, pues en comparación con el caso Lubanga, también este se refirió al reclutamiento de niños, niñas, para la participación en las hostilidades, los cuáles también fueron víctimas de crímenes de género, inadvertido por parte de la fiscalía en el caso Lubanga como señalamos.

2.2. El juzgamiento y condena de Dominic Ongwen por la Sala de Primera instancia de la CPI

De acuerdo a los hechos del caso, Dominic Ongwen era un excomandante de la brigada Sinia del Ejército de Resistencia del Señor, conocido por sus siglas en inglés LRA (Lord 's Resistance Army). En esa línea procedimental, el 29 de julio del 2004, el Estado de Uganda remitió la situación del norte del país a la Oficina del Fiscal de la CPI. Este, a su vez determinó una base razonable, para abrir una investigación preliminar. Seguidamente, el 18 de mayo del 2005 el fiscal presentó la solicitud de órdenes de arresto para Joseph Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo y Dominic Ongwen. Con respecto a este último procesado, el 6 de febrero del 2015, la Sala de Cuestiones Preliminares II separó la investigación de manera individual, con el propósito de no retrasar el proceso, pues los otros investigados se encontraban no habidos. La audiencia de confirmación de cargos se llevó a cabo del 21 al 27 de enero del 2016, es así que el 23 de marzo del 2016, la Sala de Cuestiones Preliminares II confirmó los cargos presentados por la fiscal (Fatou Bensouda) y se derivó a juicio el presente caso. En ese sentido, cabe resaltar que la Fiscal

[6] Véase la Hoja de Información del Caso. Situación en la República Centroafricana, El fiscal vs. Jean.Pierre Bemba Gombo. ICC-01/05-01/08

[7] Véase la Hoja de información del caso. Situación en la República Democrática del Congo. El Fiscal vs. Bosco Ntaganda. ICC-01/04-02/06

encargada del caso, había incluido la acusación por crímenes de violencia sexual y de género, entre los que se encontraban el embarazo forzado, tanto como un crimen de lesa humanidad (7.1.g), como un crimen de guerra (8.2.e.vii), según el Estatuto de Roma; además, también se incluyó el crimen de "matrimonio forzado" como "otro acto inhumano" (7.1.k del ER). Del mismo modo, cabe precisar que la CPI analizó los hechos e imputó los cargos en virtud a los cuatro ataques a los "campamentos de desplazados internos" al norte de Uganda: Pajule, Odek, Lukodi y Abok, acontecidos en el periodo comprendido del 1 de julio del 2002 al 31 de diciembre del 2005. Finalmente, el 4 de febrero del 2021, la Sala de Primera Instancia IX de la CPI declaró la responsabilidad penal internacional de Dominc Ongwen, superando el estándar probatorio de la culpabilidad de "más allá de toda duda razonable", sobre 61 crímenes bajo su autoría, entre los cuáles se encontraban incluidos crímenes de lesa humanidad y crímenes de guerra. Asimismo, con respecto a crímenes de violencia sexual y de género, Ongwen fue sentenciado por tortura, violación sexual, esclavitud sexual, ultrajes a la dignidad personal, matrimonio forzado y embarazo forzado.

Actualmente, el estado del caso se encuentra en apelación, pues la defensa presentó sus escritos, durante el 21 de julio y el 26 de agosto del 2021, contra la sentencia. Por lo tanto, si bien consideramos que el presente caso representa un avance importante en la sanción de crímenes de violencia sexual y reproductiva a nivel internacional, ya que incluye crímenes no antes tratados en virtud de su competencia por la CPI, sin embargo, desde nuestro punto de vista y en virtud a futuros casos ante la CPI, existen algunos temas que pudieron ser abordados de manera más amplia por la Sala de Primera instancia.

Por un lado, sostenemos que, en la sentencia, se pudo abordar de manera mucho más clara y explicativa la implicancia de lesionar el bien jurídico de "la autonomía reproductiva" con respecto al crimen de embarazo forzado, lo anterior también de cara a ser abordado por la Sala de apelaciones y que la misma zanje los cuestionamientos sobre alguna implicancia en el Derecho interno de los Estados partes del Estatuto de Roma, con respecto a la sanción de este crimen a nivel internacional. Además, también sostenemos que, con respecto a la intención requerida por este crimen, específicamente sobre "cometer otras violaciones graves del derecho internacional" (artículo 7.1.f del ER) no debe ser interpretado sólo en virtud a los crímenes contemplados en el Estatuto de Roma, sino como la contravención a los derechos humanos, en consonancia con realizar una interpretación sistemática con el artículo 21.3 del Estatuto de Roma, lo cual incluye la proscripción de realizar una distinción prohibida basada en motivos de género.

Por otro lado, con respecto al crimen de matrimonio forzado, nos parece relevante resaltar la sanción en virtud de la cláusula residual de otros actos inhumanos (artículo 7.1.k del ER), el cual recoge elementos particulares (la lesión a la autonomía) que los distinguen de otros crímenes, como se mencionó previamente con respecto a los Tribunales Penales Internacionales para la ex Yugoslavia y Ruanda, además de señalar que ello permite visibilizar la importancia de crímenes de género, pues este, al ser entendido como la imposición de una unión conyugal, evidencia los roles de género de las llamadas "*esposas"* de Dominic Ongwen, además de incidir en las consecuencias, no solo a nivel físico, sino psicológico que ocasiona este crimen en la víctimas mujeres y niñas.
A continuación, se abordarán los crímenes de embarazo forzado y matrimonio forzado, en virtud de la sentencia de culpabilidad de Dominic Ongwen por la CPI. Además, también se

tratará la relevancia de los *amicus curiae*, en cuanto a la interpretación de los elementos de cada de los crímenes abordados en el presente trabajo, como también la importancia que los mismos sean empleados en el razonamiento por parte de la Sala de Apelaciones de la CPI, de acuerdo al objeto y fin del Estatuto de Roma sobre poner fin a la impunidad[8].

2.2.1. La condena por el crimen de "embarazo forzado" ante la Corte Penal Internacional en el caso Ongwen: bien jurídico de "autonomía reproductiva"

En la presente sentencia *Prosecutor Vs Dominc Ongwen,* bajo los cargos 59 y 60 el exlíder de la LRA fue encontrado culpable, por la Sala de Primera instancia de la CPI, bajo el crimen de embarazo forzado como un crimen de lesa humanidad (7.1.g del ER) y crimen de guerra (8.2.e.vii del ER) en contra de dos víctimas mencionadas bajo los acrónimos de (P-0101) y (P-0214), esta última fue pasible de dos embarazos forzados y ambas fueron víctimas directas de Ongwen (CPI, 2021, párr. 3062). Como ya mencionamos previamente, en el capítulo 1, los elementos requeridos para el crimen de embarazo forzado, ahora nos centraremos en el análisis que realizó la Sala de Primera Instancia con respecto al bien jurídico protegido de la "autonomía reproductiva" y sobre la intención especial en el caso específico de Ongwen.

En primer lugar, esta sentencia tiene gran importancia en el reconocimiento de los derechos sexuales y reproductivos de las mujeres y niñas, además de incidir en la sanción de los mismos si llegan a ser vulnerados en el Derecho Penal Internacional. En ese sentido, se observa que la Sala de Primera Instancia, en su fundamentación, señala de manera explícita que el crimen de "embarazo forzado" protege el bien jurídico de "la autonomía personal y reproductiva" (CPI, 2021, párr. 2717). Asimismo, vuelve a confirmar su argumentación, al mencionar que este crimen deber ser debidamente identificado y nombrado como tal *"the principle of fair labelling*", además de ser identificado como independientemente de los otros crímenes de violencia sexual (violación sexual, detención ilegal), pues este particularmente implica el confinamiento ilegal de la víctima que ha sido embarazada de manera forzada, lo cual genera la privación del derecho a la mujer sobre su "autonomía reproductiva".

Ahora bien, si bien la Sala da un pronunciamiento evolutivo, en cuanto al reconocimiento y abordaje de crímenes de violencia sexual y de género, desde nuestro punto de vista, esta cita los instrumentos pertinentes para el abordaje de este derecho, más no desarrolla en su argumentación la implicancia y el concepto de la "autonomía reproductiva", lo cual, a nuestra consideración, permitiría una mayor comprensión y abordaje de este crimen, de acuerdo a los principios del Derecho Internacional. Ello implica el Derecho Internacional de los Derechos Humanos (artículo 21.1.c), en relación con los elementos tanto materiales como subjetivos, con el objetivo de cerrar espacios de impunidad y que los tribunales de la CPI realicen el mayor esfuerzo para dar interpretación sobre cada crimen perpetuado.

En primer lugar, teniendo en cuenta el artículo 21.3 del Estatuto de Roma, el bien jurídico que protege el crimen de "embarazo forzado" debe ser interpretado de acuerdo a instrumentos internacionales de derechos humanos. En ese sentido, para interpretar qué

[8] Preámbulo del Estatuto de Roma de la Corte Penal Internacional.

comprende el derecho a una “autonomía reproductiva” es pertinente hacer mención a la Convención sobre la eliminación de todas las formas de discriminación contra la mujer (conocido por sus siglas en inglés CEDAW), partiendo de la proscripción de todo acto de discriminación hacia la mujer[9] basada en razones de género, en virtud a un goce pleno y efectivo en el ejercicio de sus derechos humanos. Asimismo, en relación al derecho a la autonomía reproductiva, es claro referirnos al artículo 16.1.e de la CEDAW, en la cual se menciona al derecho a las mujeres a decidir, a nuestra interpretación, sobre su maternidad, que implica la autonomía de decidir sobre su planificación para llevar a cabo el mismo (ello con referencia al número de hijos y el intervalo de los nacimientos). Del mismo modo, cabe hacer énfasis en que también este derecho a la autonomía reproductiva comprende el acceso y medios que permitan su ejercicio.

En segundo lugar, de manera breve, nos gustaría hacer mención que tribunales internacionales de derechos humanos, específicamente la CorteIDH se han pronunciado sobre el reconocimiento al derecho a la “autonomía reproductiva”. Por un lado, en el *Caso Artavia Murillo y otros Vs. Costa Rica,* la CorteIDH señaló que el derecho al acceso del progreso científico y el acceso a los medios efectivos como servicios de salud y asistencia reproductiva, garantizan el ejercicio efectivo del derecho a la autonomía reproductiva. Además, la proscripción para interceder en las decisiones reproductivas que le corresponde a cada persona (2012, párr.150). Del mismo modo, en el reciente *Caso Manuela y otros Vs. El Salvador,* la CorteIDH reconoce de manera explícita que el derecho a la vida privada, en consonancia con el artículo 11.2 de la CADH, involucra el derecho a la autonomía reproductiva, como indispensable para el libre desarrollo de la personalidad; además, también puede comprenderse que la Corte, al referirse al derecho a la vida privada y su relación con el derecho a la salud, está haciendo referencia directa al acceso a servicios de salud reproductiva (2021, párr.204-206). Por otro lado, el Comité de Derechos Humanos de la ONU, como el Comité de la CEDAW se han pronunciado sobre el derecho a la autonomía reproductiva en los casos K.L. y L.C Vs. Perú[10] respectivamente, en los cuáles se ha señalado su reconocimiento de este derecho tanto en el artículo 17.1 del Pacto Internacional de Derechos Civiles y Políticos, como el artículo 16.1.e sobre la Convención sobre la eliminación de todas las formas de discriminación contra la mujer. Con los casos mencionados previamente, no es nuestra intención entrar en el debate sobre el tema del aborto, pues, a efectos del presente trabajo, se aborda la sanción del crimen de embarazo forzado desde el Derecho Penal Internacional; para ello, queremos centrar nuestro enfoque sobre el bien jurídico protegido de la autonomía reproductiva en el caso Ongwen, en el cual se pueda dotar de contenido este derecho, centrado principalmente en la capacidad de decisión de mujeres y niñas a decidir sobre su maternidad y sobre los medios de acceso que garanticen el mismo.

Por lo tanto, en referencia al caso Ongwen, queda evidenciado que a las víctimas se las privaron de este derecho, pues las mismas no podían elegir sobre su propia maternidad, sino que se las impuso de manera forzada, además que no gozaban de los medios y el acceso para llevar a cabo sus embarazos de manera segura, lo cual pudo generar consecuencias en la afectación de otros derechos como a la vida (CEDAW, 2017, párr.15). Asimismo, el Comité señala de forma clara que el “embarazo forzado” constituye formas de

[9] Artículos 1 y 2° de la CEDAW
[10] Véase en el caso L.C Vs. Perú ante la CEDAW (2005) (párr. 7.13. y 7.14), Caso K.L Vs. Perú ante el Comité de Derechos Humanos (2005) (párr.3.6)

violencia por razón de género e incluso podrían llegar a constituir tortura (CEDAW, 2017, párr.18). También, el Comité de Derechos Económicos, Sociales y Culturales de la ONU, en su observación general número 22, hace mención al derecho a la autonomía reproductiva como parte fundamental del disfrute de otros derechos humanos en relación a la salud física y mental[11](Comité DESC, 2016, párr.11). Por ende, en virtud a los instrumentos de Derechos Humanos mencionamos y sus pronunciamientos e interpretación al respecto, podemos señalar que el derecho a la "autonomía reproductiva" forma parte del núcleo duro de los derechos de las mujeres y niñas, ello, a nuestra consideración, por la capacidad de gestación inherente a las mismas, que debe ser interpretado como el derecho a respetar su decisión sobre cómo y en qué momento llevar a cabo su maternidad, lo cual también implica el derecho a tener acceso a los medios adecuados para llevar a cabo este proceso, como también para limitar el mismo y que por ello las víctimas no sufran de consecuencias negativas en afectación de otros derechos humanos, pues todo ello realmente engloba el derecho a la autonomía reproductiva.

2.2.2. El análisis para el juzgamiento del crimen de "matrimonio forzado" como lesa humanidad en la cláusula de "otros actos inhumanos"

En la sentencia de culpabilidad del *caso Prosecutor Vs. Ongwen*, sobre el crimen de matrimonio forzado, este fue encontrado culpable bajo el cargo 50 sobre la perpetuación de este, como un crimen de lesa humanidad, en virtud de la cláusula de "otros actos inhumanos" (artículo 7.1.k), contra cinco víctimas, identificadas con acrónimos con la finalidad de cautelar su identidad: (P-0099), (P-0101), (P-0214), (P-0226), (P-0227). En ese sentido, como ya desarrollamos en el capítulo 1, este crimen fue abordado de manera indistinta por los Tribunales Penales Internacionales, como es el caso del Tribunal de Sierra Leona; sin embargo, cabe mencionar que es la primera vez que la CPI emite una sentencia con la sanción de este crimen, desde nuestro punto de vista, individualizandolo de otros crímenes, en empleo de la cláusula "otros actos inhumanos"; por ende, ello permite identificar el bien jurídico protegido de este crimen y también faculta su distinción de otros como el crimen de esclavitud sexual, forzada y servidumbre, además de incidir en la afectación al derecho a la salud mental.

En primer lugar, abordaremos la mención del Sala de Primera instancia con respecto al bien jurídico protegido del crimen de matrimonio forzado como se observa en el siguiente fundamento.

> "The conduct underlying forced marriage – as well as the impact it has on victims – are not fully captured by other crimes against humanity. To focus on sexual slavery and rape in particular, these crimes and **forced marriage exist independently of each other**. While the crime of sexual enslavement penalises the perpetrator's restriction or control of the victim's sexual autonomy while held in a state of enslavement, **the 'other inhumane act' of forced marriage penalises the perpetrator's imposition of 'conjugal association' with the victim"**. (subrayado es nuestro) (CPI, 2021, Párr.2750)

Con ello, desde nuestro punto de vista, la CPI reconoce un crimen independiente de "matrimonio forzado" como "otro acto inhumano", pues este comprende de manera acertada los elementos de este crimen de lesa humanidad, particularmente, el bien jurídico

[11] Ello al interpretar el artículo 12 del PIDESC.

protegido que es la autonomía a decidir sobre una unión o asociación conyugal. Ello se encuentra reconocido en la Convención sobre la eliminación de todas las formas de discriminación contra la mujer, en virtud al derecho a elegir de manera libre al cónyuge y a contraer matrimonio (artículo 16.1.b). Del mismo modo, en el Pacto Internacional de Derechos Civiles y Políticos (artículo 23) se reconoce el derecho a la autonomía conyugal, con respecto al consentimiento libre de la persona. Ahora bien, es importante señalar, a nuestra consideración, que la perpetuación de este crimen, usualmente se emplea cómo móvil para la comisión de otros, como violación sexual, esclavitud sexual, trabajo forzado, como se pudo evidenciar en las llamadas esposas o "ting tings" de Dominic Ongwen (CPI, 2021, párr. 217). Lo anterior, también debe entenderse en referencia a lo mencionado por la Comisión de Derechos Humanos sobre que el "matrimonio forzado" era empleado como pretexto para que las víctimas fueran sometidas a múltiples abusos sexuales, torturas, esclavitud, entre otros crímenes, sobre todo cuando las mismas eran retenidas en centros de detención o instalaciones militares (1998, párr.10).

En segundo lugar, nos parece de suma relevancia el abordaje que realiza la Sala de Primera Instancia de la CPI, sobre las consecuencias que conlleva un "matrimonio forzado" que, además de mantener los deberes sobre una exclusividad conyugal forzada, este crimen incide de manera negativa en el aspecto psicológico de las víctimas (CPI, 2021, párr. 2748), pues las mismas pueden ser estigmatizadas socialmente, teniendo en cuenta sus creencias y convicciones; además, otro aspecto de importancia nos parece la relación que menciona, de manera un poco escueta la Sala, sobre el impacto emocional del matrimonio forzado al interrelacionarse con la imposición de una maternidad forzada, el cual lamentablemente suele darse al ser víctimas de mantener esta unión conyugal forzada, que implica la perpetuación de otros crímenes de violencia sexual y de género. Del mismo modo, en base a "Los Principios de la Haya sobre la violencia sexual" se hace mención que la violencia sexual implica violencia psicológica (principio 2, pag.13), que pueden darse en virtud a un entorno de coacción, en la cual se encuentre la víctima como sucede en el caso Ongwen, tomando como referencia lo expresado por las mismas en la sentencia de análisis.

Por ende, en virtud al artículo 21.3 del Estatuto de Roma, por un lado, consideramos que la Sala de Primera Instancia de la CPI, al haber sancionado a Dominic Ongwen por el crimen de matrimonio forzado (artículo 7.1.k), evidencia e identifica de manera clara el bien jurídico sobre la autonomía a decidir sobre una unión conyugal, entendida esta como la manifestación de forma libre de su consentimiento; por otro lado, consideramos que este crimen también aborda la discriminación basada en género en la afectación y el impacto psicológico en mujeres y niñas, inmersas en un contexto y escenario jerárquico, patriarcal, en los cuáles se impone mandatos y roles atribuidos a ser cumplidos al ser comprendidas como "esposas", como fue mencionado por las víctimas en el presente caso.

3. El proceso de apelación y el llamado a amicus curiae

Como mencionamos en los hechos del presente caso de análisis *Prosecutor Vs Dominic Ongwen*, actualmente el mismo se encuentra en proceso de apelación; por ende, consideramos necesario abordar lo mencionado en tres *Amicus Curiae* por especialistas y expertas en violencia sexual y de género, con el objetivo de brindar sus aportes, en virtud al artículo 31.1.d del Estatuto de Roma, sobre la interpretación de los crímenes de

“embarazo forzado”, “matrimonio forzado”, además de abordar “la coacción y los estándares aplicables para analizar la evidencia sexual”.

3.1. Amicus Curiae Observaciones sobre la definición del Estatuto de Roma de “embarazo forzado” por Rosemary Grey, Global Justice Center, Women’s Initiatives for Gender Justice y Amnesty International

Este *amicus curiae* aborda de manera clara tres cuestiones: 1) sobre la irrelevancia de las leyes nacionales de los Estados para la sanción del crimen de embarazo según el Estatuto de Roma, 2) los elementos del crimen de embarazo forzado como un crimen de lesa humanidad y crimen de guerra y 3) la fundación del crimen de embarazo forzado en virtud a los derechos humanos, al proteger los derechos de autonomía personal, sexual y reproductiva. Con ello, a efectos del presente trabajo, abordaremos los aspectos más relevantes a nuestra consideración, con el objetivo de reforzar nuestro planteamiento sobre la implicancia del derecho a la “autonomía reproductiva” y su interpretación con relación a los elementos requeridos del crimen de embarazo forzado, a partir del caso Ongwen.

Con respecto al elemento material, sobre el encierro o confinamiento ilegal, se sustenta que el Estatuto de Roma no establece, que dicho acto de “confinar ilegalmente” a la víctima, cumpla un determinado o específico periodo de tiempo; por ende, como se menciona en el presente Amicus, la víctima que se encuentre embarazada de manera forzada, puede ser privada de su libertad sobre cualquier periodo de tiempo (2021, párr. 21). Con ello, se sustenta que, si la víctima ha quedado confinada ilegalmente, entiéndase ello como contrario a las normas del derecho internacional, por más breve que sea el tiempo, ya se habría cumplido con este requisito. Seguidamente, con respecto al artículo 30 del Estatuto de Roma y los elementos subjetivos requeridos por este crimen, debe entenderse que este no requiere que el perpetrador prive de manera ilegal a la víctima, con la intención de mantenerla embarazada (Grey, 2021, párr. 23), sino que basta que este haya tenido la intención de participar en el *actus reus* del confinamiento ilegal de la víctima.

Ahora bien, con respecto a la intención especial, en el presente caso contra Ongwen, se menciona a la segunda conducta alternativa sobre “otras violaciones graves del derecho internacional” (artículo 7.2.f del ER), el cual no solo debe ser interpretado como actos que constituya crímenes estipulados de manera explícita en el ER y sobre los cuáles la CPI tiene jurisdicción, sino además también debe incluirse otras violaciones graves al derechos internacional, en cual engloba la violación grave a los derechos humanos, ello en virtud a lo ya mencionado previamente en este trabajo en relación al artículo 21.3 del ER.

Asimismo, con respecto a los derechos que lesiona este crimen de “embarazo forzado”, este amicus aborda el bien jurídico protegido desde el derecho a la autonomía personal, sexual y reproductiva lo cual queda lesionado al confinar de manera ilegal a la víctima, pues con ello se les impide el acceso a los servicios de salud e incluso a interrumpir el mismo (2021, párr. 37). Si bien como referimos en el capítulo precedente, no pretendemos entrar al tema sobre la legislación de los Estados sobre el aborto, ya que la CPI no ostenta la capacidad de intervenir en la modificación sobrela legislación interna de un Estado, como también fue contemplado en el artículo sobre la definición de este crimen (artículo 7.2.f del ER); sin embargo, sí compartimos lo señalado en este amicus al instar que la CPI

debe pronunciarse sobre el derecho a la autonomía reproductiva, el cual es un aspecto inherente a la dignidad humana (2021, párr. 38). Ello, desde nuestra consideración, también de cara a futuros casos que se presenten ante este tribunal penal internacional sobre embarazo forzado con el objetivo de desterrar espacios de impunidad.

3.2. Amici Curiae sobre matrimonio forzado

Con respecto a este amicus, nos gustaría mencionar la identificación del crimen de matrimonio forzado como "otro acto inhumano" como distinto de otros actos mencionados en el artículo 7.1 del Estatuto de Roma y la identificación del bien jurídico protegido. Asimismo, la identificación de este crimen como uno de carácter continuo y finalmente las implicancias de este crimen en el aspecto psicológico de las víctimas como relevante en la reparación de las mismas.

Por un lado, como ya mencionamos Dominic Ongwen fue sancionado por el crimen de matrimonio forzado, bajo la cláusula residual de "otros actos inhumanos" como crimen de lesa humanidad (7.1.k del ER). En ese sentido, este amicus señala que la Sala de primera instancia reconoce de manera acertada que este crimen implica la vulneración a la autonomía relacional de las víctimas, en virtud a la imposición de contraer matrimonio, sin contar con el consentimiento libre de las mismas (Baines et al., 2021, párr. 13). Del mismo modo, la interpretación de este crimen como "otros actos inhumanos" si bien hace referencia a la similitud de gravedad con respecto a los crímenes reconocidos en el artículo 7.1 del ER, este no se restringe a ellos o se subsume. Ello, en virtud a los elementos particulares que comprende el crimen de embarazo forzado, como la imposición de mantener esta unión conyugal, basada en una relación forzada de exclusividad, además que este crimen genera consecuencias propias que inciden en el aspecto psicológico de las víctimas (traumas, estigmas), lo cual también refuerza la negativa sobre subsumirse en los otros crímenes contemplados en el ER (Baines et al., 2021, párr. 19). Con respecto a ello, desde nuestra posición, que la Sala de Primera instancia haya reconocido este crimen como "otros actos inhumanos", permite el reconocimiento de manera independiente del mismo como un crimen de lesa humanidad, y también crea una línea jurisprudencial en el cual se reconoce el derecho a la autonomía de una unión o asociación conyugal.

Por otro lado, sobre la identificación del crimen de "matrimonio forzado" como un crimen continuado, debe entenderse que la comisión del mismo comprende que puede ser llevado a cabo por un largo periodo de tiempo y en múltiples lugares (Baines et al., 2021, párr.30), en la cual se obliga a la víctima a mantener, de manera forzada, esta unión conyugal, las cuales, según los testimonios de las víctimas en el caso, se libraron de la misma cuando lograron escapar del dominio de los perpetradores.

Finalmente, este amicus también sustenta un aspecto mencionado previamente sobre la implicancia del crimen matrimonio forzado con respecto al aspecto psicológico de las mismas. Además, este amicus señala la importancia de identificar lo referido, con respecto a las reparaciones, pues incide en señalar que este crimen genera impactos en la salud tanto física, como psicológica a largo plazo, lo cual puede ser considerado como un aspecto agravante y también tener efectos sobre la indemnización a las víctimas (Baines et al., 2021, párr. 36). Ello, desde nuestra consideración, nos parece fundamental, pues reconoce la afectación amplia en los derechos humanos que genera el "matrimonio

forzado", por ejemplo, con especial énfasis en los niños/niñas que, debido a su minoría de edad, son parte de un grupo en situación de vulnerabilidad, pero que también implica el impacto en el aspecto de su desarrollo físico, emocional y social.

3.3. Amici Curiae sobre la Coacción y los Estándares Aplicables para Evaluar la Evidencia sobre violencia sexual

El pronunciamiento de este amicus es importante para efectos de abordar los elementos probatorios en el caso Ongwen desde una perspectiva de género y que ello pueda ser abordado por la Sala de Apelaciones de la CPI.

Con respecto al artículo 31.1.d del ER, sobre las causales eximentes de responsabilidad penal, mencionado por la defensa de Ongwen, este amicus incide en identificar el rol que tenía el sentenciado en primera instancia dentro de la brigada sinia, pues era uno de los ex líderes que comandaba el mismo. Además, y ello nos parece de suma importancia, este amicus menciona que la "coacción" en referencia al artículo del ER citado, no se aplica a los crímenes de violencia sexual y de género, pues Dominic Ongwen había creado un entorno, en el cual la comisión de dichos crímenes se encontraba normalizados (Arimatsu et al., 2021, párr. 17). Del mismo modo, se menciona la importancia de aplicar la doctrina de la culpa previa, pues Ongwen usó su cargo de autoridad para promover un orden jerárquico y enfocado en el mantenimiento de la desigualdad, lo cual se evidenciaba en la relación de dominación, opresión sobre las víctimas de los diversos crímenes sexuales y de género. Por ello, a nuestra consideración, dichas prácticas de subordinación también se traslucen en los actos, basados en motivos de género, que eran impuestos a las víctimas como, por ejemplo, las llamadas "esposas" de Dominic Ongwen.

Por otro lado, con respecto a Regla 63.4 del RPE la Sala de Apelaciones de la CPI no debe requerir corroboración con respecto a las pruebas presentadas, sobre todo con respecto a los crímenes de violencia sexual. Asimismo, estos crímenes no deben estar sujetos a estándares más altos con relación a otros, lo anterior en congruencia con el principio de no discriminación; por ende, con respecto a la prueba testimoniales de las víctimas, alguna incongruencia en el relato por parte de las mismas sobre los hechos y lo acontecido, no debe per se catalogar el mismo como poco confiable (Arimatsu et al., 2021, párr. 26). Lo anterior, desde nuestro punto de vista, también desde el aspecto de cautelar la no revictimización de las víctimas pasibles de crímenes sexuales y reproductivos, lo cual generaría el agravamiento sobre los traumas y las consecuencias psicológicas en las misma.

Finalmente, consideramos importante la mención por parte de este amicus sobre la evaluación contextual de la evidencia sexual para prevenir una evaluación perjudicial de las mismas. En ese sentido, a nuestra consideración, resulta vital lo señalado por este amicus sobre las circunstancias coercitivas en las cuáles se perpetuaron los crímenes de violencia sexual y de género en el caso Ongwen (Arimatsu et al.,2021, párr. 35). Ello nos permite hacer referencia a que los crímenes tanto de embarazo forzado, como el de matrimonio forzado, analizados en el presente trabajo, fueron perpetrados en un contexto de coerción, en el cual vivían las víctimas. De ahí, de cuestionarnos sobre si es posible de hacer mención sobre el consentimiento de las mismas, lo cual, a nuestra consideración, esta capacidad de "decisión y autonomía" se encontraba anulada en el caso Ongwen, pues

de los testimonios de las víctimas, mencionados previamente, se puede mencionar que efectivamente, debido al contexto de subordinación que ocupaban y el poder que ostentaba Ongwen, las misma comprendían que la oposición a la perpetuación de alguno de los crímenes sexuales y reproductivos sentenciados, implicaba el asesinato de las mismas. Por ende, no podríamos estar hablando de un espacio de "consentimiento", de la cual gozaban las víctimas en el presente caso; por eso, nos parece importante que la Sala de Apelaciones incida en este análisis y no direccione la carga probatoria solo en el testimonio sobre la capacidad de consentir de las mismas, sino que debe contrastarse con un análisis debido del entorno de coacción de la cual fueron víctimas al norte de Uganda.

3.4. Amici Curiae Observaciones sobre delitos sexuales y de género, en particular sobre embarazo forzado, y sobre los Estándares de Prueba Requeridos para la Violencia Sexual y Reproductiva

Con respecto a este amicus, si bien aborda en gran medida lo ya mencionado por los otros anteriores; sin embargo, nos parece importante mencionar un aspecto relevante del mismo, sobre la prueba indirecta para establecer la comisión de crímenes sexuales y reproductivos. En ese sentido, se hace mención a la relevancia de los testigos indirectos como fue abordado por la Corte IDH en los casos "masacres de el Mozote vs. El Salvador", "campo algodonero vs. México", en los cuáles mediante el relato de una víctima indirecta se pudo constatar la comisión de crímenes de violencia sexual de manera sistémica. Ello también, con referencia a la prueba contextual como también hace referencia esta amicus con respecto al pronunciamiento del Tribunal Europeo de Derechos Humanos (TEDH) sobre el caso X y otros vs. Bulgaria (Ardila et al.,2021, párr.25).

Lo anterior, desde nuestro punto de vista, debe ser considerado por la Sala de Apelaciones para el caso Dominic Ongwen, pues en la sentencia de culpabilidad de la Sala Primera Instancia de la CPI, se pudo identificar que, en los relatos de varios testigos y víctimas, aludían a la práctica sistemática y normalizada sobre la perpetuación de crímenes de violencia sexual y reproductivas a las cuáles se encontraban sometidas, con preponderación, niñas y mujeres, lo cual también es necesario para relacionarlo con "la coacción", desde el entorno contextual, en el cuál vivían las víctimas, Asimismo, que la acción probatoria por parte de la Sala de Apelaciones debe estar centrado y basar su enfoque en la identificación de dichos elementos contextuales, más que en la búsqueda del consentimiento de la víctima, pues ese entorno habría anulado esa capacidad en las mismas.

Conclusiones

En ese trabajo, al abordar de manera amplia los crímenes de violencia sexual y de género, nos gustaría expresar las siguientes conclusiones.

1. Por un lado, los crímenes de violencia sexual y de género, usualmente perpetrados en contra de mujeres y niñas, han sido largamente invisibilizados en la sociedad, lo cual se condice con el escaso abordamiento que tuvo desde el Derecho Penal Internacional.

2. Si bien el Tribunal de Nuremberg representó un hito en la sanción de crímenes internacionales desde el Derecho Penal Internacional, este no abordó los crímenes de violencia sexual y de género.

3. Los Tribunales Penales Internacionales para la ex Yugoslavia y Ruanda representan un hito en el avance jurisprudencial en la sanción de crímenes de violencia sexual y de género. Asimismo, sus pronunciamientos cobran relevancia hasta el día de hoy, con respecto al abordaje de estos crímenes.

4. Con respecto al caso analizado (Prosecutor vs Ongwen) consideramos que representa una evolución positiva por parte de la Corte Penal Internacional en la identificación y sanción de crímenes de violencia sexual y de género, ello con referencia a los anteriores casos jurisprudenciales mencionados en este trabajo.

5. Consideramos histórico que, por primera vez, se haya sentenciado por los crímenes de embarazo forzado y matrimonio forzado; sin embargo, consideramos que la CPI debe abordar los derechos reconocidos y protegidos en virtud de estos crímenes, ello con referencia al artículo 21.3 del Estatuto de Roma que incluye a los derechos humanos.

6. En virtud al crimen de embarazo forzado, concluimos que la CPI deba pronunciarse sobre la implicancia del bien jurídico protegido del derecho a la autonomía reproductiva, con el objetivo de que los elementos requeridos para este crimen y también el estándar probatorio puedan ser interpretados en concordancia con los principios de derechos humanos (no discriminación basada en género) , ello de acuerdo a lo dispuesto en el Estatuto de Roma.

7. Con respecto al crimen de matrimonio forzado, consideramos que su inclusión como “otro acto inhumano”, permite referirnos a un crimen nuevo de lesa humanidad, que se diferencia de los otros mencionados en el artículo 7.1 del ER, lo cual permite la identificación de elementos particulares de este al momento de establecer tanto la sanción, como a efectos de reparación en las víctimas, ya que incide de manera distinta en el aspecto psicológico de las mismas.

8. Finalmente, me gustaría concluir con resaltar la importancia de los *amicus curiae* representado por el grupo de expertas académicas en el tema, pues permite un abordaje de estos crímenes de violencia sexual, desde un enfoque de género, lo cual permite, a nuestra consideración, erradicar espacios de impunidad desde el Derecho Penal Internacional, lo cual también es acorde al objeto y fin del Estatuto de Roma que crea la CPI.

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Cour Pénale Internationale

International Criminal Court

Original:

No.: **ICC-02/04-01/15**
Date: **6 May 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 Redacted

Sentence

To be notified, in accordance with Regulation 31 of the Regulations of the Court, to:

The Office of the Prosecutor
Fatou Bensouda
James Stewart

Counsel for the Defence
Krispus Ayena Odongo

Legal Representatives of Victims
Joseph Akwenyu Manoba
Francisco Cox
Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar
Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Others

Table of Contents

Trial Chamber IX ('Chamber') of the International Criminal Court ('Court') hereby pronounces the sentence against Dominic Ongwen pursuant to Articles 76, 77 and 78 of the Rome Statute and Rules 145 and 146 of the Rules of Procedure and Evidence.

I. BACKGROUND AND SUBMISSIONS

A. Procedural history

1. On 4 February 2021, the Chamber delivered its judgment pursuant to Article 74 of the Statute, convicting Dominic Ongwen of a total of 61 crimes comprising crimes against humanity and war crimes.[1]

2. On the same day, the Chamber issued the 'Decision scheduling a hearing on sentence and setting the related procedural calendar', whereby it: (i) decided to hold a hearing under Article 76(2) of the Statute, in the presence of Dominic Ongwen, his defence counsel, representatives of the Office of the Prosecutor ('Prosecution') and the legal representatives of the victims participating in the proceedings, to hear further submissions and any additional evidence relevant to the appropriate sentence to be imposed on Dominic Ongwen; and (ii) identified the relevant steps, and set out the related procedural calendar, leading to the hearing under Article 76(2) of the Statute and to the imposition of the sentence on Dominic Ongwen.[2]

3. On 23 February 2021, the Prosecution informed the Chamber that it did not intend to propose any additional evidence for the sentencing stage of the proceedings.[3] On 24 and 25 February 2021, both teams of legal representatives of the victims participating in the proceedings likewise stated that they did not intend to present new evidence.[4]

4. On 26 February 2021, the Defence submitted a number of items of evidence, requested the introduction of seven witness statements under Rule 68(2)(b) or (3) of the Rules, and proposed three witnesses for live testimony before the Chamber.[5] Responses to the

[1] Trial Judgment, ICC-02/04-01/15-1762-Conf and its public redacted version, ICC-02/04-01/15-1762-Red.
[2] ICC-02/04-01/15-1763.
[3] Prosecution's Notification regarding Presentation of Additional Evidence in the Sentencing Stage of the Proceedings, ICC-02/04-01/15-1779.
[4] CLRV's Notification Regarding Presentation of Additional Evidence On Sentencing, ICC-02/04-01/15-1780; Victims' Notification regarding Presentation of Additional Evidence at the Sentencing Stage of Proceedings, ICC-02/04-01/15-1782.
[5] Defence request to submit additional evidence for Trial Chamber IX's determination of the sentence, ICC-02/04-01/15-1783-Conf (public redacted version available: ICC-02/04-01/15-1783-Red2); Defence Addendum to

Defence request were filed by the Prosecution and the legal representatives of the participating victims on 10 March 2021.[6]

5. On 19 March 2021, the Chamber issued a decision whereby it recognised as submitted the documentary evidence presented by the Defence, and allowed the introduction under Rule 68(2)(b) of the Rules of all ten witnesses subject to the Defence request, conditional on the filing in the record of the case, by 1 April 2021, of their declarations under Rule 68(2)(b)(ii) and (iii) of the Rules.[7] The declarations of five witnesses were filed in the record of the case on 31 March 2021,[8] while those of the remaining five were filed – following two extensions of the time limit[9] – on 13 April 2021.[10]

6. On 1 April 2021, the Prosecution,[11] the legal representatives of the participating victims (jointly),[12] and the Defence[13] filed their written submissions on the sentence to be imposed on Dominic Ongwen.

7. On 14 and 15 April 2021, the Chamber held a hearing on sentence under Article 76(2) of the Statute in the presence of the Prosecution, Dominic Ongwen and his Defence, and both teams of the legal representatives of the participating victims.[14]

"Defence request to submit additional evidence for Trial Chamber IX's determination of the sentence", filed on 26 February 2021 as ICC-02/04-01/15-1783-Conf, ICC-02/04-01/15-1785. *See also* Defence Filing in the Record of the Case the Expert Report of UGA-D26-P-0114, 12 March 2021, ICC-02/04-01/15-1792, with Annex A.

[6] CLRV Response to the "Defence request to submit additional evidence for Trial Chamber IX's determination of the sentence", ICC-02/04-01/15-1787-Conf (hereinafter: 'CLRV Response'); Prosecution's response to the Defence request to submit additional evidence at sentencing, ICC-02/04-01/15-1788 (hereinafter: 'Prosecution's Response'); Victims' Response to the "Defence request to submit additional evidence for Trial Chamber IX's determination of the sentence", ICC-02/04-01/15-1789-Conf (hereinafter: 'LRV Response'). *See also* Prosecution's response to the Defence request regarding the proposed report and testimony of D-0114, 16 March 2021, ICC-02/04-01/15-1795.

[7] Decision on the 'Defence request to submit additional evidence for Trial Chamber IX's determination of the sentence', ICC-02/04-01/15-1801 (hereinafter: 'Decision on Defence Request to Submit Additional Evidence').

[8] Defence Notification of the Attestation Forms for the Statements and Expert Reports for Sentencing pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence, ICC-02/04-01/15-1805 and annexes.

[9] Email from Trial Chamber IX, 23 March 2021, at 16:09; email from Trial Chamber IX, 31 March 2021, at 15:23.

[10] Defence Notification of the Attestation Forms for Statements to be used in Sentencing pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence, ICC-02/04-01/15-1814 and annexes.

[11] Prosecution's Sentencing Brief, ICC-02/04-01/15-1806 (hereinafter: 'Prosecution Brief').

[12] Victims' Joint Submissions on sentencing, ICC-02/04-01/15-1808 (hereinafter: 'Victims Brief').

[13] Defence Brief on Sentencing, ICC-02/04-01/15-1809-Conf-Corr (hereinafter: 'Defence Brief'; public redacted version available, *see* ICC-02/04-01/15-1809-Corr-Red).

[14] Transcript of hearing, ICC-02/04-01/15-T-260-ENG (hereinafter: 'T-260'); Transcript of hearing, ICC-02/04-01/15-T-261-ENG (hereinafter: 'T-261'; also all other transcripts of this case will be referenced in similar short forms).

B. Submissions

8. The present decision is based primarily on the facts as established in the Trial Judgment, and the comprehensive assessment of evidence conducted to that purpose therein. The Chamber has also taken into account the entire evidentiary basis made available to it at trial and the arguments and submissions advanced in the course of the entire proceedings. Furthermore, as recalled, the Chamber has afforded the Prosecution, the Defence and the participating victims the opportunity to present additional evidence and submissions relevant to the sentence.

9. The Prosecution – which did not present any additional evidence – submits that 'the extreme gravity of [Dominic Ongwen's] 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'.[15] It, however, recognises that 'one circumstance merits a reduction in the sentence which would otherwise correspond to Mr Ongwen's crimes',[16] referring to Dominic Ongwen's abduction into the Lord's Resistance Army (LRA) at a young age, and that 'Mr Ongwen's years as a child and adolescent in the LRA must have been extremely difficult'.[17] The Prosecution states that, in its view, 'these circumstances warrant approximately a one-third reduction in the length of [the] prison sentence to be imposed on Dominic Ongwen'.[18] Following a series of specific arguments, the Prosecution proposes sentences for each of the crimes for which Dominic Ongwen was convicted, and finally, 'recommends a total joint sentence of not less than 20 years of imprisonment'.[19] As is clear from further submissions at the sentencing hearing to the effect that 'anything less than 20 years would be disproportionately low', and that the sentence should be 'at least 20 years',[20] the Prosecution does not propose a specific joint sentence, but identifies a minimum sentence, recommending at the same time a sentence lower than 30 years imprisonment.[21]

[15] Prosecution Brief, para. 1.
[16] Prosecution Brief, para. 156.
[17] Prosecution Brief, para. 2.
[18] Prosecution Brief, para. 156.
[19] Prosecution Brief, paras 158-159.
[20] T-260, p. 9, lines 5-11.
[21] T-260, p. 8, lines 2-5.

10. The Defence made a series of submissions in relation to what, in its view, are circumstances militating in favour of a lenient sentence for Dominic Ongwen, and submits in conclusion that, '[a]ffirming that Mr Ongwen shall go through the Acholi rituals requested of him by Ker Kwaro Acholi and the people of northern Uganda, the Defence respectfully requests Trial Chamber IX to consider the mitigating and personal circumstances […] and issue Mr Ongwen a sentence of time served'.[22] At the same time, the Defence submits that '[s]hould the Chamber decide to issue a longer sentence, and still affirming that Mr Ongwen shall go through the Acholi rituals requested of him by Ker Kwaro Acholi and the people of northern Uganda, the Defence argues that the Chamber should sentence Mr Ongwen to a maximum sentence of 10 years'.[23]

11. As stated above, the Defence also submitted evidence specifically for the purpose of sentencing. The Chamber has duly assessed this evidence, and addresses its relevance and probative value, as necessary, below in the most appropriate contexts as part of its consideration of the specific submissions by the Defence allegedly supported by such additional evidence.

12. The legal representatives of the participating victims, who did not present additional evidence for the purpose of sentencing, submit that in light of the 'extremely grave nature of the crimes committed', the several aggravating circumstances, discussed in their brief, and in light of the absence of mitigating circumstances, Dominic Ongwen should be sentenced to life imprisonment, which, in their submission, 'appears to be the only appropriate punishment in light of the extreme gravity of the crimes which were marked by their infamous cruelty and inhumaneness, causing immeasurable harm to the victims, their families and their communities'.[24]

13. The legal representatives also devoted a section of their joint written submissions to presenting the views and concerns of some the participating victims, as expressed by those participating victims themselves.[25] Also during the hearing on sentence the legal representatives of victims quoted the views of some of their clients.[26] At the hearing, the

[22] Defence Brief, para. 182.
[23] Defence Brief, para. 183.
[24] Victims Brief, paras 3-6.
[25] Victims Brief, paras 99-115.
[26] *See* T-260, p. 39, line 12 – p. 40, line 10; p. 41, lines 7-18; p. 42, line 1 – p. 43, line 3; p. 48, line 4 – p. 52, line 5.

Defence argued that such quotes ought to be expunged from the record on the ground that they constituted testimonial evidence submitted in violation of the law and the directions of the Chamber.[27] The Chamber does not adhere to the argument of the Defence. The submissions by the legal representatives of the views and concerns of the participating victims, even if they take the form of direct quotation of communications by some victims, are not evidence. They are submissions of authorised participants in the proceedings, and are considered by the Chamber as any other submissions made before it in the proceedings. The fact that they are communicated to the Chamber in the words of the victims themselves, rather than being paraphrased by their legal representatives, in no way transforms such submissions into evidence. Indeed, the concerned victims express their own views as participants in the proceedings, rather than as witnesses to any fact purportedly underlying relevant findings requested of the Chamber. Accordingly, the Chamber rejects the Defence request to expunge from the record or disregard those submissions by the participating victims which have been specifically communicated to the Chamber by way of quotes in the submissions by their legal representatives.

14. It is also noted that, at the hearing on sentence, the Defence further disputed the submissions by the legal representatives concerning the views of the participating victims on sentencing, stating that, contrary to such submissions, 'the population as a whole, between 80 to 90 per cent of the people […] would like Mr Ongwen to return and return back home and be treated like the many thousands of other persons who escaped and received amnesty'.[28] This statement by the Defence – which appears to be based on anecdotal or personal assessment on the part of associate counsel – requires clarification on two points. First, any reference to 'victims' in the procedural context of the trial is a reference to the 4095 identified individuals who have been individually admitted to take part in these proceedings and whose views and concerns are communicated to the Chamber through their legal representatives. Second, the legal representatives are trusted, as professional and accountable counsel appearing before the Court, to make submissions to the Court in line with the instructions of their clients – the participating victims. Thus, the Chamber will not turn elsewhere in order to comprehend the views and concerns of the victims participating in the proceedings.

[27] T-261, p. 38, line 8 – p. 39, line 10.
[28] T-261, p. 40, line 14 – p. 41, line 6.

C. Defence submissions and evidence in relation to traditional justice mechanisms

15. As a preliminary matter, and prior to its assessment of the relevant factors and circumstances bearing on the determination of the sentence to be imposed on Dominic Ongwen, the Chamber finds it appropriate to address the Defence submissions that 'Mr Ongwen shall go through the Acholi rituals requested of him by Ker Kwaro Acholi and the people of northern Uganda' and that, on this basis, the Chamber should pronounce 'a sentence of time served', or, alternatively, sentence Dominic Ongwen to 'a maximum sentence of 10 years'.[29]

16. A considerable portion of the Defence submissions on sentencing, and of its evidence presented for this purpose, is devoted to advocating in favour of the so-called 'Acholi Traditional Justice System'.[30] With a view to demonstrating the merits of traditional mechanisms of justice in the case of Dominic Ongwen, the Defence has submitted a number of statements, reports and letters.[31] The relevance of this material in the present proceedings is logically connected to the relevance of the corresponding Defence submissions to the determination of the sentence to be imposed on Dominic Ongwen. In light of the Chamber's conclusions hereunder, it is thus not necessary to separately assess the nature, relevance and probative value of this additional evidence presented by the

[29] Defence Brief, paras 182-183.
[30] *See* Defence Brief, paras 27-39.
[31] This additional evidence includes, in particular, a report by Olaa Ambrose, Prime Minister of Ker Kwaro Acholi (UGA-D26-0015-1812); a witness statement of Baptist Latim, cultural head of the Pawel clan (UGA-D26-0015-1864); and a report by Pollar Awich (UGA-D26-0015-1889). Pollar Awich previously testified in the trial. *See* Trial Judgment, para. 612. In addition, the Defence submitted letters by the Acholi Religious Leaders Peace Initiative (UGA-D26-0015-1832), Wang-oo Heritage (UGA-D26-0015-1833), and Ker Kwaro Acholi (UGA-D26-0015-1901; it is noted that the letter is written '[u]nder the seal of the Prime Minister of Ker Kwaro Acholi', and indeed bears an identical signature to the report of Prime Minister Olaa Ambrose), which, as previously determined by the Chamber, are actually 'pleadings' rather than 'evidence'. *See* Decision on Defence Request to Submit Additional Evidence, para. 26 ('The Chamber considers that three letters under consideration, rather than "evidence" – whether testimonial or not, are in reality submissions made by the concerned organisations for the Chamber's consideration. They do not contain any information directed at proving or disproving facts under consideration by the Chamber, nor are they, as emanating from organisations, otherwise attributable to a specific individual providing relevant testimony to the Chamber. Rather, they are pleadings to the Chamber on what factors should be considered in the determination of the sentence in the present case. The Chamber recalls in this regard that a request by the Defence to allow submissions of, *inter alia*, organisations on issues concerning the determination of the sentence to be imposed on Dominic Ongwen was specifically considered and rejected, in that the Chamber did not – and does not – find it appropriate to receive submissions, other than from the parties and participants, on the considerations to be taken into account for the determination of the sentence. The fact that these submissions from certain organisations have now been presented as "evidence" rather than as submissions from prospective *amici curiae* does not change the (non-evidentiary) nature of the material under consideration'.) (footnotes omitted).

Defence; its evaluation is rather part of the Chamber's disposal of the Defence arguments concerning the mechanisms of traditional justice in the present case.

17. It is also noted that the Defence had submitted on the occasion of the closing statements in the trial that in the event that the Chamber found Dominic Ongwen guilty, 'punishment be suspended and that the Court should […] order Mr Ongwen to be placed under the authority of the Acholi justice system to undergo the Mato Oput process of Accountability and Reconciliation as the final sentence for the crimes for which he is convicted; and […] [t]hat this remedy should be granted on condition that the Acholi Cultural Institution accepts and signs an undertaking that it will comply with the Order of the Court'.[32]

18. The Defence submits that '[t]he Acholi system of justice, which includes *Mato Oput*, accounts for issues of justice in "the physical, psychological and divine justice, [and] leaves no room for one to fail to account for one's decisions and actions or failure to account led to dire consequences that included divine retribution"'.[33] The Defence continues that '[r]ecognising and using the traditional mechanisms in Acholi shall stop Mr Ongwen from being punished twice for what he is convicted', and that it shall 'help the Acholi people and victims, through Mr Ongwen, to further "break the circle of hatred and enmity between communities affected" by the violence'.[34] In conclusion, the Defence argues that 'the retributive factor of sentencing suggests that the Chamber issue Mr Ongwen a short sentence, and allow Mr Ongwen to undergo all of the appropriate rituals in northern Uganda, including *Mato Oput*'.[35]

19. In response to these submissions by the Defence, the Prosecution states that 'the Rome Statute has a comprehensive system for sentencing, limited to terms of imprisonment and imposition of fines' and that it 'makes no allowance' for traditional justice mechanisms.[36] The Prosecution submits that it 'does not oppose Mr Ongwen undergoing *mato oput*, if that is what he and the victims wish', but that this 'could and should happen after he

[32] Corrected Version of "Defence Closing Brief", 6 March 2020, ICC-02/04-01/15-1722-Conf-Corr (public redacted version also available, *see* ICC-02/04-01/15-1722-Corr-Red) (hereinafter: 'Defence Closing Brief'), para. 733 (emphasis omitted).
[33] Defence Brief, para. 33, referring to UGA-D26-0015-1901, at 1903.
[34] Defence Brief, para. 34, referring to UGA-D26-0015-1901, at 1904.
[35] Defence Brief, para. 39.
[36] T-260, p. 31, lines 22-25.

serves his sentence, or even during the serving of his sentence, if the necessary arrangements can be made'.[37] However, in the view of the Prosecution, 'these are questions for reparation or the execution of his sentence, and do not bear on the question of whether and how long he should remain in prison'.[38]

20. In relation to the process of *mato oput* as such, the Prosecution emphasises that it concerns reconciliation and reconciliation rites, which have to be preceded by the person admitting that he has done wrong, which Dominic Ongwen has not done, and that 'it will be difficult to determine how the reconciliatory nature of the process can be triggered without such an admission'.[39]

21. The legal representatives of the victims participating in the proceedings, after having argued that traditional methods of restorative justice are irrelevant under the legal regime of the Court,[40] in any case submit that the 'victims wish to draw the attention of the Chamber on the Defence's attempts to either replace or supplant their voices, views and preoccupations by the opinions of some witnesses and organisations purporting to represent the voices of Northern Uganda, and by doing so, create misperceptions in the minds of the Judges and of persons following these proceedings'.[41] They submit that the proposal of the Defence does not correspond to the victims' views[42] and 'inform the Chamber that the witnesses and organisations put forward by the Defence, while pretending to provide the views of people of Northern Uganda, have never consulted with the thousands of victims of the crimes committed by Mr Ongwen […] and in no way represent their wishes and needs'.[43]

22. The legal representatives also submit that '[v]ictims have chosen to be represented in the proceedings and to participate in the trial, thereby recognising the Court path and procedures as an adequate way to address their situations and the crimes they have been suffering from'.[44]

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[37] T-260, p. 32, lines 9-12.
[38] T-260, p. 32, lines 12-14.
[39] T-260, p. 33, lines 1-7.
[40] LRV Response, para. 15; CLRV Response, para. 30.
[41] Victims Brief, para. 109.
[42] Victims Brief, para. 109; *see also* paras 35-36 below.
[43] Victims Brief, para. 109.
[44] Victims Brief, para. 111.

23. It is also submitted that some victims suggested that reconciliation would be possible 'only after reparations have been given to them (as per the tradition of *mato oput* too)'.[45] Victims further insist that the perpetrator should be the one to make the first move in seeking forgiveness and reconciliation, and 'bitterly observe that Mr Ongwen's behaviour has shown until now the opposite of such intention'.[46]

24. It is noted that the Defence, in its written submissions, made a cursory reference to the Ugandan Amnesty Act,[47] to which the Prosecution responded, stating that such an act has no force before the Court, and is in any case irrelevant for the issue of sentencing.[48] The Chamber observes that the Defence does not make an independent argument based on the Ugandan Amnesty Act, but only refers to it, in passing, in arguing in favour of traditional justice. Accordingly, there is no need for the Chamber to engage directly and separately with this issue.

25. Turning to the main point, it is not clear what the Defence aims to achieve with its submission in relation to Acholi traditional justice, and what role, in its own pleading, such traditional justice system should play in the context of the pronouncement of the sentence on Dominic Ongwen. In this regard, the Chamber observes that, in its closing brief, the Defence argued that a referral to the traditional justice system should be ordered by the Chamber *in lieu* of the sentence.[49] While this argument appears to have been abandoned in those terms, the latest submissions of the Defence nevertheless include an incorporation of Acholi traditional justice into the sentence.[50]

26. Article 23 of the Statute provides that a person convicted by the Court may be punished only in accordance with the Statute. In turn, Article 77 of the Statute specifies – exhaustively – the penalties to be imposed for the commission of crimes within the jurisdiction of the Court. Any Defence submission to incorporate traditional justice mechanisms into the sentence imposed on the convicted person under Article 76 of the Statute must therefore fail directly as a result of this principle of *nulla poena sine lege*.

[45] Victims Brief, para. 112.
[46] Victims Brief, para. 112.
[47] *See* Defence Brief, paras 29-30.
[48] T-260, p. 22, line 17 – p. 23, line 10.
[49] Defence Closing Brief, para. 733.
[50] The Defence requests the Chamber to 'allow' Dominic Ongwen to undergo the traditional justice process, and to 'affirm' that he shall do so. *See* Defence Brief, paras 39, 182.

Indeed, as emphasised in this regard by the Appeals Chamber, 'the Statute and related provisions contain an exhaustive identification of the types of penalties that can be imposed against the convicted person' and '[t]he corresponding powers of a trial chamber are therefore limited to the identification of the appropriate penalty among the ones listed in the Statute and a determination of its *quantum*'.[51] In light of the principle of legality, the Chamber is thus precluded from introducing 'unregulated penalties or sentencing mechanisms not otherwise foreseen in the legal framework of the Court'.[52]

27. The Chamber could thus reject solely on this ground any attempt on the part of the Defence to have the Chamber, in the determination of the appropriate sentence, impose on Dominic Ongwen – or otherwise envisage him undergoing – a 'traditional justice process' in replacement of, or in addition to, a term of imprisonment as required by Article 77 of the Statute. Nevertheless, and while bearing in mind the principle of legality under Article 23 of the Statute and the exhaustive and comprehensive penalties and sentencing regime before the Court, the Chamber, in light of the submissions received and the evidence on the record, finds it appropriate to express the following additional considerations. This is also because it may appear from the Defence submissions, if taken at face value, that the Chamber is insensitive to established cultural norms and processes. As explained below, this is not the case.

28. At first, the Chamber notes that while making strong statements about the efficiency of traditional justice mechanisms, their widespread acceptance in Northern Uganda and the desirability of making use of them in the present case, the Defence did not provide a comprehensive definition of any such mechanism. The letters of the Acholi Religious Leaders Peace Initiative, the Wang-oo Heritage of Acholi Leaders, and the Ker Kwaro Acholi – which, as previously explained,[53] are in any case not of evidentiary nature – refer to Acholi traditional justice mechanisms as an established fact, and a clear possibility in the present case, without further detail. The same can be said of the statement of witnesses, introduced under Rule 68(2)(b) of the Rules on the request of the

[51] Appeals Chamber, *The Prosecutor v. Jean-Pierre 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", 8 March 2018, ICC-01/05-01/13-2276-Red (hereinafter: 'Bemba *et al*. Appeal Sentencing Judgment'), para. 77 (footnotes omitted).
[52] Bemba *et al*. Appeal Sentencing Judgment, para. 77.
[53] Decision on Defence Request to Submit Additional Evidence, para. 26.

Defence, which discuss the applicability of traditional justice mechanisms to the case of Dominic Ongwen.[54]

29. However, in the course of the trial the Chamber heard evidence in relation to traditional justice mechanisms in Northern Uganda, and in particular in relation to the Acholi ritual of *mato oput*. For example, Rwot Yusuf Adek (Witness D-0028) provided a definition of this process, explaining that it serves to reconcile members of two clans where a member of one clan kills a member of the other, and that its essential elements are the payment of compensation (referring in his testimony to livestock) and a ritual of reconciliation intended to prevent revenge killings.[55] Ojwiya James Okot (Witness D-0087)[56] and Eric Awich Ochen (D-0114)[57] provided very similar evidence. Evidence was also presented about the traditional ritual of *nyono tongweno* or 'stepping on an egg': Eric Awich Ochen testified that this process was done 'to welcome somebody who had stayed for long outside home'.[58]

30. It is important to note that these traditional rituals are reserved to the members of the Acholi community. In fact, separate similar customs exist among other ethnic groups in Northern Uganda, such as the Lango.[59] As stated by the legal representatives of victims in response to the Defence submission of additional evidence for sentencing, victims of the crimes committed by Dominic Ongwen belonging to this other ethnic groups are excluded from participation in such traditional rituals of the Acholi community.[60] The Chamber agrees with this observation, and considers significant that the use of Acholi traditional justice would indeed mean that some victims would be excluded due to not being Acholi. The Chamber notes that the Defence sought to counter this point at the sentencing hearing by stating that it is 'not in touch with the traditional systems not only in Acholi but in the entire African context' and continuing, referring to the 'cross-cutting application of these systems':

> Just like in marriage […], if somebody is a Lango, you are going to marry an Acholi, you don't carry your Lango custom to Acholi. You go and comply with the

[54] *See* D-0160 Statement, UGA-D26-0015-1812; D-0163 Statement, UGA-D26-0015-1864.
[55] D-0028: T-181, p. 59, line 8 – p. 62, line 20.
[56] D-0087: T-184, p. 21, line 3 – p. 22, line 3.
[57] D-0114: T-247, p. 30, lines 4-18.
[58] D-0114: T-247, p. 29, line 15 – p. 30, line 3.
[59] *See* P-0306: T-130, p. 73, line 11 – p. 74, line 22.
[60] LRV Response, para. 16; T-260, p. 47, lines 17-21.

> Acholi customary norms for that marriage. By the same token, *mato oput* is exercised in the same way.[61]

31. The Chamber finds this argument unconvincing on its face, on the one hand because the analogy between marriage and reconciliation following the commission of a series of crimes against humanity and war crimes appears simplistic and inappropriate, and, on the other hand, because it is entirely unfounded to purport that one tradition could or should prevail over another, and it is in any case not explained whose should prevail over whose and on what basis.

32. Furthermore, as part of his testimony, Professor Tim Allen expressed his scepticism about *mato oput*, noting that 'somewhat romantic associations that some activists directed towards those rituals ha[ve] been set to one side',[62] and making the following important point:

> I think also I had real concerns about the emphasis on Acholi rituals as being a kind of solution to the Lord's Resistance Army. It somehow suggested that the Acholi people have different ideas about terrible events to other people and are prepared to accept them and have mechanisms for dealing with them that make them less significant or important. That has never been my experience. Acholi people suffer just as much as anyone else from terrible events.[63]

33. The Chamber notes that these observations by Professor Allen are based on extensive work in the field, and therefore valuable.[64] Moreover, they are corroborated by Professor Musisi, who referred during his testimony to 'traditional reconciliatory mechanisms', but also expressed a strong reservation about them, stating that their use was 'an idealistic wish of the elders as keepers of the custom, of the culture, of the society in which they live'.[65] The Chamber recalls that in light of his background, Professor Musisi was well-placed to make this observation.[66]

34. Indeed, whereas pleadings advocating for Acholi traditional justice mechanisms have been made to the Chamber in strong terms, the discussion has been largely abstract. In fact, it is quite apparent to the Chamber that Acholi traditional justice mechanisms are

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[61] T-261, p. 68, lines 4-14.
[62] P-0422: T-28, p. 74, lines 11-16. This point is also discussed in a publication authored by Professor Allen in 2010 and submitted as evidence, *see* UGA-D26-0018-3612, at 3749-3756.
[63] P-0422: T-28, p. 74, line 25 – p. 75, line 5.
[64] *See* Trial Judgment, para. 595. *See also* P-0422: T-28, p. 5, line 21 – p. 6, line 11.
[65] PCV-0003: T-178, p. 26, lines 15-22.
[66] *See* Trial Judgment, para. 602.

not in widespread use in Acholi areas of Northern Uganda, to the extent that they would stand *in lieu* of formal justice. The Defence refers to a recent judgment of the High Court of Uganda,[67] but that judgment noted that the performance of the ceremony of *mato oput* 'is relatively rare in contemporary Acholi, especially in the reintegration of former LRA combatants'.[68] Further, as also pointed out by the Prosecution,[69] the High Court of Uganda found that '[i]n its current form, *mato oput* has no effective system of regulation and review in place' and 'is shrouded in legal ambiguity and as a result its interface with formal criminal justice is opaque'.[70] The High Court held that 'traditional justice should play a complementary role to the formal justice system, but not serve to displace, undermine or delay it'.[71]

35. Most importantly, the Chamber does not consider persuasive the Defence claims about traditional justice mechanisms being readily available and accepted in light of the views and concerns of the victims participating in the proceedings. On this specific point, which involves the determination of the interests of victims of the crimes for which Dominic Ongwen was convicted, it is the views and concerns of the participating victims, as presented by their legal representatives, that are the most important. Indeed, reconciliation as discussed in the present context, whatever its form, is a process in which victim participation is essential. Thus, the Chamber acknowledges the views and concerns of the participating victims, expressed through their legal representatives as follows:

> Victims emphasise in the strongest terms that the position put forward by the Defence with regard to alleged culturally appropriated rituals and proceedings that should take place for the purpose of reintegration and reconciliation of the affected communities in Northern Uganda *in lieu* of punishment in the form of imprisonment does not correspond to their views. To the contrary, victims disagree with such a proposition. They wish to take this opportunity to inform the Chamber that the witnesses and organisations put forward by the Defence, while pretending to provide the views of people of Northern Uganda, have never consulted with the thousands of victims of the crimes committed by Mr Ongwen (who are also stakeholders in the social institution) and in no way represent their wishes and needs.[72]

[67] *See* Defence Brief, para. 36, n. 53.
[68] Paragraph 28 of the Judgment hyperlinked by the Defence at footnote 53 of the Defence Brief.
[69] *See* T-260, p. 33, lines 8-23.
[70] Paragraph 27 of the Judgment hyperlinked by the Defence at footnote 53 of the Defence Brief.
[71] Paragraph 32 of the Judgment hyperlinked by the Defence at footnote 53 of the Defence Brief.
[72] Victims Brief, para. 109.

36. The victims, through their legal representatives, even go as far as to express further scepticism in relation to the organisations advocating for the use of Acholi traditional justice mechanisms in the present case. Indeed, in the words of the legal representatives conveying the victims' views and concerns:

> It is the fear of many victims that the local organisations which the Defence is trying to involve in the proceedings, as much as they are presumed to be composed by honest women and men, people who know about their own culture, nonetheless could be pursuing other interests aiming at putting them at the centre of claimed ceremonies and rituals, thereby putting their own needs before the needs of the victims.[73]

37. At the sentencing hearing, the legal representatives of the victims submitted, concerning the statements provided to the Chamber in particular on behalf of Ker Kwaro Acholi, that 'victims are shocked by their calls for the substitution of Dominic Ongwen's judicial sentence with the *mato oput* cultural process', and that '[their] clients find it troubling that institutions like the Ker Kwaro Acholi make such submission without seeking views from victims of his crimes on the matter'.[74]

38. The Chamber also notes as relevant and important the submissions of the legal representative of victims which were in fact direct quotations of the views expressed to them by some participating victims individually. As explained above, these submissions do not constitute evidence and do not underlie any finding of fact.[75] Rather, in these specific circumstances in which the Defence bases an argument on its own interpretation of the interests of the victims of the crimes for which Dominic Ongwen was convicted,[76] it is appropriate to refer directly to the submissions of the victims as expression of their will and opinion. Thus, the Chamber notes that the legal representatives submitted to the Chamber the views of a participating victim who opposed the use of *mato oput* categorically,[77] of a victim who opined that such process was not suitable because of the nature of Dominic Ongwen's crimes,[78] and of a participating victim who sits on the Ker Kwaro Acholi council and who noted that *mato oput* was not possible because Dominic

[73] Victims Brief, n. 189.
[74] T-260, p. 47, line 22 – p. 48, line 2.
[75] *See* para. 13 above.
[76] *See, for example,* Defence Brief, paras 34, 36.
[77] T-260, p. 48, lines 6-8.
[78] T-260, p. 48, lines 9-13.

Ongwen did not admit to his crimes and who was also of the view that the Ker Kwaro Acholi and other organisations and leaders should not intervene in this issue.[79]

39. The common legal representative of the participating victims stated as follows:

> Referring to their tradition and the need for reconciliation, victims insisted on two key aspects: First, that the ceremonies could and should only happen after they have benefited from reparations and not as part of the sentence; second, that said ceremonies could only happen if Mr Ongwen would sincerely ask for their forgiveness.[80]

40. It is also noted that the claims made by the participating victims conform to the testimonies of Professor Allen and Professor Musisi reporting skepticism towards traditional justice mechanisms.

41. On this basis, and independently of the text of Article 23 of the Statute which precludes incorporation in any manner of elements of traditional justice into the sentence imposed on Dominic Ongwen, the Chamber is also unpersuaded by the Defence's claim that imposing a sentence under Article 76 of the Statute would run counter to the culture of the people of Northern Uganda. To the contrary, the Chamber is convinced, on the basis of the evidence and the views and concerns of the victims participating in the proceedings, that, even though there may be a wide range of individual opinions, the victims relate to and, in a certain way, own the Court's process of justice under the Statute.

42. Finally in this regard, the Chamber notes that the discussion of the use of traditional mechanisms of justice presupposes an element of expression of remorse on the part of the perpetrator, in this case Dominic Ongwen. An expression of genuine remorse would have to be considered, as a matter of law, as a potential mitigating circumstance under Rule 145(2)(a)(ii) of the Rules. However, it must be noted that Dominic Ongwen has not expressed any such remorse. The absence of remorse became very clear during his personal statement at the sentencing hearing,[81] where, in a display of self-pity, he acknowledged the suffering of (presumably) the victims of his crimes only to claim that his own suffering was equal.[82]

[79] T-260, p. 48, lines 14-25.
[80] T-260, p. 60, lines 19-23.
[81] In this regard, *see also* para. 104 below.
[82] T-261, p. 26, lines 4-13.

43. Accordingly, in addition to the incorporation of elements of traditional justice into the sentence under Article 76 of the Statute being precluded by the principle of legality under Article 23, there is also nothing in the facts underlying the Defence submissions in this regard which would bear upon the determination of the sentence for Dominic Ongwen. The Defence submissions and evidence concerning the 'Acholi Traditional Justice System' will thus not be considered any further in the present decision.

II. DETERMINATION OF THE CHAMBER

44. In accordance with Article 77 of the Statute, the Chamber may impose on a person convicted of a crime within the jurisdiction of the Court a term of imprisonment for a maximum of 30 years, or, 'when justified by the extreme gravity of the crime and the individual circumstances of the convicted person', a term of life imprisonment. Rule 145(3) of the Rules further specifies that life imprisonment may be imposed when justified by the extreme gravity of the crime and the individual circumstances of the convicted person, as evidenced by the existence of one or more aggravating circumstances. In addition to imprisonment, the Chamber may also order the imposition of a fine and/or the forfeiture of proceeds, property and assets derived directly or indirectly from the crime.

45. Pursuant to Article 78(3) of the Statute, when a person has been convicted of more than one crime, the Chamber 'shall pronounce a sentence for each crime and a joint sentence specifying the total period of imprisonment'. Dominic Ongwen was indeed convicted of more than one crime. Thus, the determination of the appropriate sentence to be imposed on him requires two consecutive steps: first, the determination of an individual sentence for each crime of which a conviction has been entered (*infra*, Section A.); and, second, the determination of the joint sentence (*infra,* Section B.). Below, the Chamber proceeds to these two steps in turn.

A. Determination of an individual sentence for each crime

1. Applicable law

46. The principal provision regulating the determination of the sentence is Article 78(1) of the Statute, which states that 'the Court shall, in accordance with the Rules of Procedure and Evidence, take into account such factors as the gravity of the crime and the individual circumstances of the convicted person'.

47. Rule 145(1)(b) of the Rules provides that the Court shall '[b]alance all the relevant factors, including any mitigating and aggravating factors and consider the circumstances both of the convicted person and of the crime'.

48. Rule 145(1)(c) of the Rules then states that the Court shall, '[i]n addition to the factors mentioned in article 78, paragraph 1, give consideration, *inter alia*, to the extent of the damage caused, in particular the harm caused to the victims and their families, the nature of the unlawful behaviour and the means employed to execute the crime; the degree of participation of the convicted person; the degree of intent; the circumstances of manner, time and location; and the age, education, social and economic condition of the convicted person'.

49. Rule 145(2) of the Rules states that in addition to the factors mentioned above, the Court shall take into account, as appropriate, mitigating circumstances, such as 'circumstances falling short of constituting grounds for exclusion of criminal responsibility, such as substantially diminished mental capacity or duress' and '[t]he convicted person's conduct after the act, including any efforts by the person to compensate the victims and any cooperation with the Court', and as aggravating circumstances: (i) any relevant prior criminal convictions for crimes under the jurisdiction of the Court or of a similar nature; (ii) abuse of power or official capacity; (iii) commission of the crime where the victim is particularly defenceless; (iv) commission of the crime with particular cruelty or where there were multiple victims; (v) commission of the crime for any motive involving discrimination on any of the grounds referred to in article 21, paragraph 3; and (vi) other circumstances which, although not enumerated above, by virtue of their nature are similar to those mentioned.

50. The relevant provisions of the Statute and the Rules establish a comprehensive system for the determination of a sentence. The Chamber must first identify and assess the

relevant factors in accordance with Article 78(1) of the Statute and Rule 145(1)(c) and (2), and then weigh and balance all such factors in accordance with Rule 145(1)(b) and pronounce a sentence for each crime.[83] As pointed out by the Appeals Chamber, the Court's legal texts do not lay down any explicit requirements for how the factors should be balanced.[84] Indeed, 'the weight given to an individual factor and the balancing of all relevant factors in arriving at the sentence is at the core of a Trial Chamber's exercise of discretion'.[85]

51. As reflected in Article 81(2)(a) of the Statute and Rule 145(1) of the Rules, and emphasised by the Appeals Chamber,[86] the sentence must be proportionate to the crime and the culpability of the convicted person.

52. One of the principal considerations in determining an appropriate sentence is the gravity of the crime. 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.[87] The assessment of the gravity must take into account both the gravity of the crime (including the particular act fulfilling its elements) and also the gravity of the convicted person's culpable conduct (in particular the conduct constituting the elements of the relevant mode of liability).[88] Factors that the Chamber does not consider in its assessment of gravity may be taken into account separately as aggravating circumstances.[89]

53. With respect to the aggravating circumstances which are listed – though in a non-exhaustive manner – in Rule 145(2)(b), the Chamber must be satisfied of their existence

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[83] Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals of the Prosecutor and Mr Thomas Lubanga Dyilo against the "Decision on Sentence pursuant to Article 76 of the Statute", 1 December 2014, ICC-01/04-01/06-3122 (hereinafter: '*Lubanga* Appeal Sentencing Judgment'), paras 32-34.
[84] *Lubanga* Appeal Sentencing Judgment, para. 40.
[85] *Lubanga* Appeal Sentencing Judgment, para. 43.
[86] *Lubanga* Appeal Sentencing Judgment, para. 40 ('Proportionality is generally measured by the degree of harm caused by the crime and the culpability of the perpetrator and, in this regard, relates to the determination of the length of sentence. While proportionality is not mentioned as a principle in article 78 (1) of the Statute, rule 145 (1) of the Rules of Procedure and Evidence provides guidance on how the Trial Chamber should exercise its discretion in entering a sentence that is proportionate to the crime and reflects the culpability of the convicted person.') (footnote omitted).
[87] Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Sentencing judgment, 7 November 2019, ICC-01/04-02/06-2442 (hereinafter: '*Ntaganda* Sentence'), para. 11; referring to *Lubanga* Appeal Sentencing Judgment, paras 40, 62.
[88] *Ntaganda* Sentence, para. 16.
[89] *See Ntaganda* Sentence, para. 17.

beyond reasonable doubt.[90] It must be emphasised that a legal element of the crime or of the mode of liability cannot be considered an aggravating circumstance.[91] This limitation, however, applies only to such legal elements – or the material factual findings underpinning them – and does not extend to those non-essential factual findings which only served to prove the legal elements of the crimes of which the person was convicted, or the relevant mode of liability, and may thus be considered aggravating factors.[92]

54. Contrary to the aggravating circumstances, mitigating circumstances – examples of which are listed, in a non-exhaustive manner, in Rule 145(2)(a) – must be established 'on the balance of probabilities', and need not to relate to the crimes of which the person was convicted.[93] Furthermore, they are not limited by the scope of the charges, or the findings made by the Chamber in its judgment under Article 74 of the Statute.[94] It is recalled that, depending on the different circumstances in each case, the Chamber has a considerable degree of discretion in determining what constitutes a mitigating circumstance in addition to those explicitly set out in Rule 145(2)(a) of the Rules, as well as in deciding how much weight, if any, to be accorded to the mitigating circumstances identified.[95]

55. The Chamber is attentive to the considerations expressed by the Appeals Chamber to the effect that certain factors referred to in different provisions as being relevant to the determination of the sentence are not neatly distinguishable from each other and are not mutually exclusive categories.[96] This is the case, for example, as concerns the interplay between the 'gravity of the crime' under Article 78(1) of the Statute, the 'extent of the damage caused', the 'degree of participation of the convicted person' under Rule 145(1)(c) of the Rules and the aggravating circumstances listed in Rule 145(2)(b) of the Rules.[97] Indeed, as explained by the Appeals Chamber, 'certain facts may reasonably be considered under more than one of the categories', and '[w]hat is of importance, therefore, is not so much in which category a given factor is placed, but that the Trial Chamber

[90] *Ntaganda* Sentence, para. 17.
[91] *Bemba et al.* Appeal Sentencing Judgment, paras 128-129.
[92] *Bemba et al.* Appeal Sentencing Judgment, para. 128.
[93] *Ntaganda* Sentence, para. 24.
[94] *Ntaganda* Sentence, para. 24.
[95] *Bemba et al.* Appeal Sentencing Judgment, para. 187; *see also* *Lubanga* Appeal Sentencing Judgment, para. 43, n. 73.
[96] *Bemba et al.* Appeal Sentencing Judgment, para. 4.
[97] *Bemba et al.* Appeal Sentencing Judgment, para. 4.

identifies all relevant factors and attaches reasonable weight to them in its determination of the sentence, carefully avoiding that the same factor is relied upon more than once'.[98]

56. For the determination of each individual sentence to be imposed on Dominic Ongwen the Chamber will therefore identify all facts which – also in light of the submissions advanced by the participants in these proceedings – it deems to be relevant to its assessment of the factors referred to in the applicable provisions and their balancing. Irrespective of the individual category under which any such fact/factor is placed, the Chamber will not consider the same factor more than once for the purpose of the determination of the appropriate sentence for each crime of which Dominic Ongwen was convicted.

57. The Chamber recalls that the sentence 'must be proportionate to the crime or offence and reflect the culpability of the convicted person' and that '[t]he convicted person is sentenced for the crime […] for which he or she was convicted, not for other crimes […] that that person may also have committed, but in relation to which no conviction was entered'.[99] Indeed, as clarified by the Appeals Chamber, '[i]f it were otherwise, the sentencing phase could, in fact, be used to enlarge the scope of the trial – which would be incompatible with the Court's procedural framework'.[100]

58. At the same time, it must be emphasised that, in its determination of the sentence for a particular crime, the Chamber must assess, *inter alia*, the gravity of such crime, including the harm caused.[101] In doing so, the Chamber shall take into account also the consequences of the crime at issue, while at the same time ensuring that the eventual sentence reflects the actual culpability of the convicted person without punishment beyond such culpability.[102] Accordingly, as held by the Appeals Chamber, consequences of a crime, including when such consequences could have constituted material facts underlying other crimes of which no conviction was entered, may be taken into account to aggravate 'in one way or another' the sentence for a crime of which the convicted

[98] *Bemba et al.* Appeal Sentencing Judgment, para. 4. *See also Lubanga* Appeal Sentencing Judgment, paras 61-65 (There are potential alternative interpretations of the interplay between the factors in Article 78(1) of the Statute and those in Rule 145(1)(c) of the Rules. However, in the end, regardless of which interpretation is followed, 'the issue is whether the Trial Chamber considered all the relevant factors and made no error in the weighing and balancing exercise of these factors in arriving at the sentence'.).
[99] *Bemba et al.* Appeal Sentencing Judgment, para. 113 (emphasis omitted).
[100] *Bemba et al.* Appeal Sentencing Judgment, para. 113.
[101] *Bemba et al.* Appeal Sentencing Judgment, para. 5.
[102] *Bemba et al.* Appeal Sentencing Judgment, para. 5.

person was convicted – whether as circumstances informing the gravity of the crime or as aggravating circumstances – provided that the following conditions are met: (i) there must exist a sufficiently 'proximate link' between the crime and such consequence(s); (ii) it must be demonstrated that these consequences were, at least, objectively foreseeable by the convicted person; and (iii) the convicted person must have sufficiently been put on notice of the facts that are taken into account to aggravate the sentence.[103] On this latter point, the Appeals Chamber further clarified that:

> If a trial chamber relies upon facts in aggravation that were established in its decision on conviction under article 74 of the Statute, there is, barring exceptional circumstances, also no further notice required to the convicted person as these facts clearly form part of the context of the conviction. The convicted person must, therefore, expect that they may be taken into account by the trial chamber in sentencing.[104]

59. The Chamber recalls that in the sentencing regime applicable at the Court, it is required under Article 78(3) of the Statute, as a first step, to pronounce a sentence for each crime of which the convicted person was convicted. In calculating such individual sentence, all relevant circumstances concerning the gravity of the crime and the individual circumstances of the convicted person must be considered. While between two or more such crimes there may be instances of overlap in the relevant facts – whether as facts underlying such crimes as their constitutive element(s) or as factual circumstances somehow relevant to the calculation of the corresponding individual sentences, it is nonetheless required that each of the concerned sentences is proportionate and adequate to the specific crime at issue. Each individual sentence must therefore be calculated separately, with reference to all relevant facts and circumstances applicable to the crime concerned. It is then in the context of the second step required in the statutory sentencing regime – i.e. the determination of the joint sentence – that any relevant factual overlap

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[103] *Bemba et al.* Appeal Sentencing Judgment, paras 5, 114-116; Appeals Chamber, *The Prosecutor v. Bosco Ntaganda*, Judgment on the appeal of Mr Bosco Ntaganda against the decision of Trial Chamber VI of 7 November 2019 entitled "Sentencing judgment", 30 March 2021, ICC-01/04-02/06-2667-Red (hereinafter: '*Ntaganda* Appeal Sentencing Judgment'), paras 100, 104. It is also recalled, as stated above, that facts underlying aggravating circumstances must be established beyond reasonable doubt. Further, the Chamber observes that, in concrete cases, facts underlying aggravating circumstances for the purpose of sentencing may in fact be intended features of the conduct or consequences of the crime. This may occur, for instance, in relation to the multiplicity of victims, characteristics of the victims or particularities of the mode of commission. In such cases, and as confirmed by the Appeals Chamber's use of the qualifier 'at least', such aggravating consequences will be covered by the mental element of the crime, as established by the Chamber, rather than being (only) 'objectively foreseeable' by the convicted person.

[104] *Bemba et al.* Appeal Sentencing Judgment, para. 116.

between two or more crimes is duly taken into account with a view to ensuring that the convicted person is not actually punished beyond his or her real culpability.

60. Finally, the Chamber recalls that the relevant provisions of the Statute (including its Preamble) and the Rules design a sentencing regime aimed primarily at retribution for the crimes committed and deterrence (both individual and general); rehabilitation of the sentenced person, albeit to a lesser extent, may also constitute a relevant consideration in this context.[105]

2. Factors and circumstances generally applicable to all crimes

61. As observed, the Statute requires the Chamber to first determine an individual sentence for each of the crimes for which Dominic Ongwen was convicted, and proceed thereafter to the determination of a single joint sentence. It is, however, also entirely logical that a number of factors, and underlying facts, to be considered for the determination of each individual sentence are not specific to the individual crimes, but are relevant to several or even all of the crimes and the sentences to be determined. For this reason, and in light of the submissions received from the parties and participants in the proceedings, the Chamber will first address such factors and circumstances generally applicable to all crimes, before turning to more specific considerations.

62. The Chamber recalls that in accordance with Article 78(1) of the Statute the Court, in determining the sentence, shall take into account, *inter alia,* 'the individual circumstances of the convicted person'. Similarly, Rule 145(1)(b) mandates the Court to consider 'the circumstances […] of the convicted person'. Moreover, Rule 145(1)(c) provides that the Court shall, in addition, give consideration, *inter alia*, to 'the age, education, social and economic condition of the convicted person'. The 'individual circumstances of the convicted person' are then also referred to in Article 77(1)(b) of the Statute and Rule 145(3) of the Rules as an aspect of relevance for consideration of penalty of life imprisonment as an individual sentence for any specific crime (as well as, by virtue of Article 78(3) of the Statute, as a joint sentence in case of conviction of more than one crime).

[105] *See e.g.* *Ntaganda* Sentence, paras 9-10.

63. This set of circumstances relates to the convicted person as such, and, in this sense, is not 'crime-specific'. They are thus addressed at this juncture. As explained in more detail below, they include the circumstances, purported by the Defence to act in mitigation of the sentence to be imposed on Dominic Ongwen, concerning his childhood and, more generally, his personal background, his current family circumstances and his alleged 'good character'. Despite their disposal, in the present written reasoning, at a juncture prior to the crime-by-crime assessment required for the determination of the corresponding individual sentences, it must be clarified that any conclusion on the part of the Chamber in terms of establishing the presence of any such circumstance and/or of evaluating the relevance and weight of any such factor related to the convicted person as such is then duly taken into account – and balanced with the 'crime-specific' circumstances and factors – for the determination of the individual sentence for each of the crimes of which Dominic Ongwen was found guilty.

64. The same applies also for certain other circumstances that, despite in principle being (at least partly) crime-specific, have been raised by the parties as applicable to all crimes in the present case. In light of this, and given the similarity of the relevant facts underlying the different crimes, such circumstances are addressed, exclusively for clarity of the written reasoning, at this juncture, prior to the assessment of the specific circumstances applicable to each individual crime. Following the relevant submissions of the parties, this is the case for: (i) the purported mitigating circumstances of circumstances falling short of constituting grounds excluding criminal responsibility under Rule 145(2)(a)(i), alleged by the Defence; and (ii) the purported aggravating circumstance of 'abuse of power or official capacity' under Rule 145(2)(b)(ii) of the Rules, alleged by the legal representatives of the victims. Also these circumstances/factors, if established, would need to be recalled and 'balanced' with the other relevant ones in the determination of the individual sentence for each crime.

i. Dominic Ongwen's abduction as a child

65. A significant consideration that applies for the determination of the individual sentences for all crimes of which Dominic Ongwen has been convicted is the fact that he was abducted by the LRA at a young age – when he was around nine years old.

66. The Prosecution 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'.[106] At the same time, the Prosecution cautions that 'they do not directly diminish his responsibility' and that '[t]he Chamber must balance any understandable sympathy with Mr Ongwen's misfortune at a young age with respect for those he victimised as an adult'.[107]

67. The Defence submits that the Chamber should hold that the time that Dominic Ongwen spent 'captive' in the LRA since his abduction in 1987 when he was nine and one-half years old should be considered – at least – a 'serious mitigating factor'.[108] On this specific issue, the Defence emphasises in particular that Dominic Ongwen 'was abducted during a developmental age, continued to develop in the bush, did so in an unfavourable environment, was under the control of Joseph Kony'.[109] The Defence argues that 'had it not been for his individual circumstances, Dominic Ongwen would not have committed the crimes for which he has been convicted' and that '[t]his surely cannot go unnoticed by the Chamber as a mitigating factor when considering appropriate sentence'.[110]

68. The legal representatives of the participating victims submit that while they 'do not intend to deny or at any point downplay the fact that Mr Ongwen was abducted into the LRA at an early age', they 'contend that the crimes for which Mr Ongwen was convicted correspond to acts he chose to commit as an adult, after rising through the ranks of the LRA and becoming commander of the Sinia Brigade as recognised by the Chamber'.[111] In their submission, the 'exceptional magnitude' of the crimes of which Dominic Ongwen was found guilty and the presence of several aggravating circumstances 'neutralise any limited impact that the Defence is portraying as mitigating factors'.[112] In the course of the hearing, the common legal representative of victims further submitted that '[v]ictims do not intend to minimise or deny the fact that Mr Ongwen was abducted at a young age and was faced with many sufferings himself', but that 'they do not see this part of his history as a reason justifying the path he chose to take in the LRA and

[106] Prosecution Brief, para. 154.
[107] Prosecution Brief, para. 154.
[108] Defence Brief, paras 64, 67; *see also, more generally,* paras 65-84.
[109] Defence Brief, para. 78.
[110] T-261, p. 66, lines 11-14.
[111] Victims Brief, para. 88.
[112] Victims Brief, para. 82.

warranting any reduction of his sentence'.[113] In particular, the common legal representative stated that 'victims cannot share the position […] that it is unlikely that Mr Ongwen would have committed the crimes he did in 2002-2005 had he not been abducted on his way to school in 1987', but that '[v]ictims are, on the contrary, of the opinion that Mr Ongwen would not have committed the crimes he did in 2002-2005 had he escaped from the LRA or chosen to behave in a different manner while in a position of power in the LRA'.[114]

69. It needs to be kept in mind that the issue under discussion is not whether Dominic Ongwen should be held criminally responsible in light of his personal history. As explained in the Trial Judgment, he committed the relevant crimes when he was a fully responsible adult. Importantly, and beyond the potential relevance of the underlying facts to the grounds excluding criminal responsibility expressly regulated under the Statute and which have been extensively considered in the Trial Judgment,[115] the fact of having been (or being) a victim of a crime in any case does not constitute, in and of itself, a justification of any sort for the commission of similar or other crimes.[116] The Chamber will not further consider any submission on the part of the Defence challenging or putting into question the Chamber's analysis and findings made in the Trial Judgment, as the current stage of proceedings is exclusively dedicated to the determination of the appropriate sentence to be imposed on Dominic Ongwen for the crimes of which he was found guilty.

70. That said, the Chamber considers that the issue of Dominic Ongwen's personal history is relevant among the factors bearing – as a circumstance concerning the convicted person – on the appropriate gradation of the sentence to be imposed on him.

71. The Chamber found in the Trial Judgment that Dominic Ongwen was born in or around 1978 and was abducted into the LRA in 1987.[117] P'Atwoga Okello, who was a teacher at

[113] T-260, p. 55, lines 20-23.
[114] T-260, p. 56, lines 17-24.
[115] *See* Trial Judgment, section IV.D.
[116] Trial Judgment, para. 2672.
[117] Trial Judgment, para. 30.

Dominic Ongwen's primary school, testified that he remembered Dominic Ongwen as 'a very active student' who enjoyed arts.[118]

72. Joe Kakanyero, who was abducted together with Dominic Ongwen and provided relevant details of this event, knew Dominic Ongwen before the abduction, and described him as 'a very good child', calm and well-behaved.[119] The witness testified that they were abducted in the morning, on their way from Coorom to Alero primary school,[120] and taken to a place with many soldiers, where a ceremony was performed on them using shea butter.[121] The Chamber believes Joe Kakanyero's testimony that the ceremony frightened them, and that they thought that something else would happen to them.[122] Joe Kakanyero described meeting with a bigger LRA group on the day after the abduction, and then being taken to a so called 'training wing' on the fourth day, where they were trained in marching, parading, 'how to dodge the bullets' as well as in how to assemble and reassemble a gun.[123] He stated that they were beaten during their training.[124] Joe Kakanyero also described witnessing the killing of a recaptured escapee, and stated that they were told that this was 'a lesson to those who want to escape and those who want to frustrate the LRA movement' and that whoever wanted to escape would not survive.[125] At this time, Joe Kakanyero was still together with Dominic Ongwen.[126] Joe Kakanyero stated that he separated from Dominic Ongwen after about three and a half months in the bush.[127] He testified that during this time, Dominic Ongwen's situation was 'very difficult', that he 'wasn't feeling easy' and the witness thought that 'he was really depressed, but he didn't have anything to do'.[128]

73. The Chamber observes that the testimony of Joe Kakanyero about Dominic Ongwen's abduction and integration into the LRA overlaps in principal lines with the narrative given by Dominic Ongwen in court during the sentencing hearing. In particular, Dominic

[118] D-0012 Statement, UGA-D26-0010-0336, at 0339, para. 6.
[119] D-0007: T-193, p. 9, line 24 – p. 10, line 3.
[120] D-0007: T-193, p. 6, lines 1-6. Johnson Odong (Dominic Ongwen's uncle) and P'Atwoga Okello confirmed the details of the abduction from their perspective. *See* D-0008 Statement, UGA-D26-0010-0307, at 0310-0311, paras 5-6; D-0012 Statement, UGA-D26-0010-0336, at 0339-0340, para. 7.
[121] D-0007: T-193, p. 6, lines 7-12.
[122] D-0007: T-193, p. 6, lines 13-14.
[123] D-0007: T-193, p. 6, line 15 – p. 7, line 13.
[124] D-0007: T-193, p. 20, lines 3-17.
[125] D-0007: T-193, p. 7, line 17 – p. 8, line 9.
[126] D-0007: T-193, p. 11, lines 7-14.
[127] D-0007: T-193, p. 12, lines 4-5.
[128] D-0007: T-193, p. 19, lines 11-15.

Ongwen stated that he was abducted in the year 1987 on his way to school.[129] He explained how the disciplinary rules of the LRA were taught to him following his abduction, in particular that he should not escape and that he would be killed if he did.[130] He stated that he was forced to slaughter some people, hang their intestines on a tree and to eat beans mixed with their blood.[131] He added that he collapsed and became unconscious as a result, and that to this day, he cannot forget this image.[132]

74. Acama Jackson testified that he was in the LRA when Dominic Ongwen was abducted, under the command of the same person.[133] He described Dominic Ongwen as 'so young', but also 'very loyal, disciplined and obedient'.[134] He stated that Dominic Ongwen's role at the time was 'batman', providing mostly domestic services to his commander as he was still too young to go for battle.[135]

75. D-0027 testified that he was abducted in 1990 and that some time after that he met Dominic Ongwen while in sickbay with his commander.[136] He estimated that he spent about one and a half years together with Dominic Ongwen and stated that they were friends.[137] He mentioned that they played cards together as well as other games.[138] D-0027 described Dominic Ongwen as someone who liked other people, who was non-discriminatory and playful.[139] When asked if he discussed with Dominic Ongwen their situation in the LRA, D-0027 stated that they talked about the threats when they were together, but that they did not have any way out.[140]

76. According to the evidence received during the trial, sometime around 1991 Dominic Ongwen met another abductee in the bush who informed him that his parents had been

[129] T-261, p. 4, line 22 – p. 5, line 5.
[130] T-261, p. 5, line 6 – p. 6, line 8.
[131] T-261, p. 6, line 9 – p. 7, line 1.
[132] T-261, p. 7, lines 1-12.
[133] D-0074: T-188, p. 13, line 25 – p. 14, line 6. Even though the answers on this topic were not entirely clear and possibly contradictory, the Chamber understands the evidence of the witness to be that he got to know Dominic Ongwen shortly after his abduction. *See* T-188, p. 14, line 15 – p. 15, line 14.
[134] D-0074: T-188, p. 14, lines 5-6.
[135] D-0074: T-188, p. 15, lines 15-22.
[136] D-0027: T-202, p. 10, lines 6-23.
[137] D-0027: T-202, p. 11, lines 11-21.
[138] D-0027: T-202, p. 12, lines 8-13.
[139] D-0027: T-202, p. 11, line 22 – p. 12, line 2.
[140] D-0027: T-202, p. 13, lines 4-8.

killed, and Dominic Ongwen cried as a result.[141] Dominic Ongwen himself stated during the sentencing hearing that he was informed of the brutal death of his parents 'later on'.[142]

77. Evelyn Amony testified precisely and credibly about the circumstances of meeting Dominic Ongwen for the first time in 1994, and described him as somebody who liked people, in particular children, and recalled that 'whenever he would meet me, he would greet me in a jolly manner'.[143]

78. D-0032 also testified that he knew Dominic Ongwen from 1990.[144] He testified that Dominic Ongwen was still young at the time, and that they trained him in 'how to take care of himself as a soldier'.[145] Asked to explain what made him describe Dominic Ongwen as 'young', the witness stated that Dominic Ongwen at the time was not yet able to cross water bodies on his own, walk long distances and carry out tasks which the adults could carry out.[146] D-0032 testified that in 1996, Dominic Ongwen was promoted to a cadet officer.[147] Asked why Dominic Ongwen was promoted, D-0032 stated that they considered the year he was abducted, his training, and also that he was already knowledgeable and experienced as a soldier.[148] He added that Dominic Ongwen was also promoted 'so that he can be encouraged to stay in the bush'.[149] The Defence states, without citing to evidence, that Dominic Ongwen was appointed second lieutenant in 1998.[150] The Chamber notes the Defence argument that 'a military rank in the LRA does not correspond to a normal military rank in government armed forces',[151] but considers it to be immaterial, as there is reliable evidence that already in 1996 Dominic Ongwen was considered knowledgeable and experienced.

79. Indeed, it is clear from the evidence that by around 1996, when Dominic Ongwen was approximately 18 years old, his performance as an LRA fighter started to be recognised in the LRA, and Dominic Ongwen began his rise through the ranks. D-0032 testified that

[141] [redacted] *See also* D-0032: T-200, p. 30, line 16 – p. 31, line 1.
[142] T-261, p. 21, lines 24-25.
[143] D-0049: T-243, p. 29, line 9 – p. 30, line 17.
[144] D-0032: T-200, p. 26, line 25 – p. 27, line 4.
[145] D-0032: T-200, p. 28, lines 13-17.
[146] D-0032: T-200, p. 28, line 18 – p. 29, line 3.
[147] D-0032: T-200, p. 32, lines 17-20.
[148] D-0032: T-200, p. 32, line 24 – p. 33, line 4.
[149] D-0032: T-200, p. 33, lines 5-6.
[150] Defence Brief, para. 84.
[151] Defence Brief, para. 81.

during approximately [redacted], he was Dominic Ongwen's commanding officer.[152] He stated that Dominic Ongwen took great care of the soldiers in his group and that that was the reason why they liked him.[153] Then, as found in the Trial Judgment, on 1 July 2002 Dominic Ongwen was battalion commander in charge of the Oka battalion of Sinia brigade, and promoted to the rank of major.[154]

80. The Chamber's findings in relation to sexual and gender based crimes are also relevant in this context because they corroborate the conclusion that by the late 1990s, Dominic Ongwen was already a significant member of the LRA with some status. The Chamber found that P-0101 was abducted in August 1996 by Dominic Ongwen and immediately taken into his household by Dominic Ongwen.[155] Dominic Ongwen raped P-0101 for the first time on the same day.[156] In February 1998, P-0099 was abducted and became Dominic Ongwen's so-called 'wife' some time after.[157] P-0226 was abducted around 1998 by soldiers under Dominic Ongwen's command.[158]

81. In addition to the evidence of witnesses who observed Dominic Ongwen and interacted with him at the relevant time, the Chamber also notes the evidence of Dr Catherine Abbo, who gave expert evidence in relation to Dominic Ongwen's development on the basis of documentary material. Dr Abbo prepared a report and testified before the Chamber in relation to the issue of mental disease or defect.[159] As part of her work, Dr Abbo conducted a developmental assessment of Dominic Ongwen, a task squarely within her specific professional competence,[160] and found that he attained the highest level of moral development (the post conventional level), that he impressed as demonstrating above average intelligence, and noted under 'societal development' that, just like street gang socialisation, there was bush socialisation that could have helped Dominic Ongwen to cope.[161] She concluded in her report that Dominic Ongwen 'would seem to have matured developmentally against all odds with flexibility of moral reasoning which seem to have

[152] D-0032: T-201-Conf, p. 4, lines 5-9.
[153] D-0032: T-201, p. 4, lines 16-20.
[154] *See* Trial Judgment, para. 134.
[155] *See* Trial Judgment, para. 205.
[156] *See* Trial Judgment, paras 2045-2046.
[157] *See* Trial Judgment, para. 205.
[158] *See* Trial Judgment, para. 205.
[159] *See* Trial Judgment, paras 2479-2485.
[160] *See* Dr Abbo's Report, UGA-OTP-0280-0732, at 0769-0783.
[161] Dr Abbo's Report, UGA-OTP-0280-0732, at 0740-0744.

been not fully exercised before he becomes top commander'.[162] She stated that while '[e]very minute of everyday traumatic experiences of [Dominic Ongwen], from the time he was abducted' had an impact on the development of Dominic Ongwen's brain, 'favourable early childhood experiences' contributed to his continued resilience.[163]

82. Finally, as stated above, the Chamber takes into account the evidence heard in the trial generally about the cruel treatment of abductees in the LRA, in particular children.[164] Even though removed in time, the Chamber accepts that the experience of Dominic Ongwen following his abduction in 1987 was not dissimilar.

83. On the basis of all the available evidence, it is evident to the Chamber that Dominic Ongwen's abduction at the age of around nine years and subsequent early years in the LRA brought to him great suffering, and led to him missing out on many opportunities which he deserved as a child. In this regard, the Chamber notes, for example, Rwot Oywak's testimony that at a peace negotiation meeting at Palabek around 2004 Dominic Ongwen threatened to kill people, repeatedly stating that his education had been interrupted.[165] It is clear that Dominic Ongwen suffered following his abduction into the LRA, even though – as found in the Trial Judgment – this trauma did not lead to a mental disease or disorder and had no lasting consequences from that viewpoint.

84. At the same time, the Chamber cannot ignore that the evidence laid out above, specifically concerning various time periods between Dominic Ongwen's abduction in 1987 and 2002, the beginning of the period of the charges, indicates that whereas during the first years following his abduction, Dominic Ongwen's stay in the LRA was extremely difficult, he was soon noticed for his good performance as a commander – already in the mid-1990s, at approximately 18 years old. His adaption into the LRA, including with its violent methods, indeed occurred relatively early. For example, as recalled above, already in 1996, Dominic Ongwen abducted P-0101, raped her and made her his so-called 'wife'.

85. As found in the Trial Judgment, the Chamber also recalls that throughout its long years of activity, the LRA abducted a great number children (in some cases even younger than

[162] Dr Abbo's Report, UGA-OTP-0280-0732, at 0753.
[163] Dr Abbo's Report, UGA-OTP-0280-0732, at 0754.
[164] *See* Trial Judgment, sections IV.C.2.ii, IV.C.12.iii.
[165] P-0009: T-81, p. 55, lines 7-11.

Dominic Ongwen at the time of his abduction), integrating them into its ranks, and many others fathered by LRA soldiers were born in the bush to abducted women. Only a small minority of them made such a steep and purposeful rise in the LRA hierarchy as Dominic Ongwen did. This must be acknowledged for fairness towards the many other people who, in circumstances oftentimes very similar to those in which Dominic Ongwen found himself, made choices different than him.

86. It is further worth reiterating in this regard that there exists no basis to conclude that Dominic Ongwen was in any way forced to commit the crimes of which he was found guilty. As explained in the Trial Judgment, nothing in the evidence provides any indication to this effect. Rather, as the Chamber established upon assessment of the evidence on the record, Dominic Ongwen, a commander at the relevant time, ordered others to commit many crimes and did so often after careful planning and evaluation of the advantages and disadvantages of specific attacks. He had the possibility not to do so – and, equally, not to commit further crimes personally – but chose otherwise. He also chose not to leave the bush or escape from the LRA when he had the possibility to do so, contrary to other high ranking commanders who did leave.

87. That said, the Chamber is required to strike a difficult balance between all the conflicting considerations expressed above – as well as all other relevant factors that, in terms of structure of written reasoning are indicated below in the present decision. As part of this balancing exercise, the Chamber deems that Dominic Ongwen's personal history and circumstances of his upbringing, since his young age, in the LRA – in particular his abduction as a child, the interruption of his education, the killing of his parents, his socialisation in the extremely violent environment of the LRA – must be given a certain weight in the determination of the length of each individual sentence. The present considerations must therefore be read as incorporated into the individual assessments conducted below concerning each crime.

88. In this regard, the Chamber is not persuaded by the victims' submission that the 'exceptional magnitude' of the crimes of which Dominic Ongwen was found guilty and the presence of several aggravating circumstances 'neutralise any limited impact that the Defence is portraying as mitigating factors'.[166] As explained below, the Chamber indeed

[166] Victims Brief, para. 82.

recognises the several factors and circumstances indicating the utmost gravity of the crimes at issue and the high degree of culpability on the part of Dominic Ongwen. It however reiterates its view that Dominic Ongwen's abduction and early experience in the LRA constitute specific circumstances bearing a significant relevance in the determination of the sentence, which shall be carefully balanced with all other relevant factors and circumstances in order to determine the most appropriate individual sentence for each of the crimes of which Dominic Ongwen was convicted. In approximate terms, and as a broad indication, the Chamber considers the Prosecution's recommendation to consider these circumstances as warranting 'approximately a one-third reduction', in the length of the sentences that, in their absence, Dominic Ongwen would otherwise receive,[167] to be generally fitting and reasonable – obviously depending on the particulars of each crime.

ii. Other mitigating circumstances alleged by the Defence

89. The Defence has raised several additional general mitigating circumstances. However, the Chamber considers that they are either not established or are not properly accorded a mitigating effect on the sentence. In the following paragraphs, they are addressed in turn.

90. First, the Defence submits that Dominic Ongwen committed the crimes he was convicted of while in a state of 'substantially diminished mental capacity'.[168] The Defence submits that 'medical professionals concluded that Mr Ongwen suffered from multiple mental diseases and the Chamber took measures to accommodate Mr Ongwen's mental health and treatment',[169] and also that 'Prosecution experts stated that traumatic events experienced in early life "can leave lasting imprints on the individual"'.[170]

91. In response, the Prosecution points to the Chamber's previous finding that Dominic Ongwen did not suffer from a mental disease or defect at the time of the crimes, and submits that there is no reliable evidence that his mental capacities were diminished in any way at the time of the crimes.[171]

[167] *See* Prosecution Brief, para. 156.
[168] Defence Brief, paras 85-101.
[169] Defence Brief, para. 86.
[170] Defence Brief, para. 90.
[171] T-260, p. 25, lines 10-13.

92. Substantially diminished mental capacity is a mitigating circumstance explicitly provided for in Rule 145(2)(a)(i) of the Rules. As a 'circumstance[] falling short of constituting grounds for exclusion of criminal responsibility', it is linked to mental disease or defect under Article 31(1)(a) of the Statute. The question of substantially diminished mental capacity, like the question of mental disease and defect under Article 31(1)(a) of the Statute, must be determined by reference to the time of the relevant conduct.[172] As emphasised by the Prosecution at the hearing on sentence, there exists indeed 'only one material time' that is of relevance to the matter under consideration.[173]

93. The possibility of mental disease or defect was discussed at trial and ultimately excluded in the Trial Judgment on the basis of a detailed analysis of evidence, including expert evidence.[174] The Chamber found that Dominic Ongwen did not suffer from a mental disease or defect at the time of the conduct relevant under the charges, basing itself on the reliable expert evidence of Professor Mezey, Dr Abbo and Professor Weierstall-Pust, and on the corroborating evidence heard during the trial, which is incompatible with any such mental disease or disorder.[175] In particular, the Chamber heard from a number of witnesses who spent a considerable period of time in close proximity of Dominic Ongwen, living and fighting alongside him, and who – when asked 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.[176] The Chamber further noted that nothing in the testimonies of P-0099, P-0101, P-0214, P-0226, P-0227, P-0235 or P-0236 indicates that these women, who were, as discussed above, held as so-called 'wives' or otherwise captive in Dominic Ongwen's immediate proximity at various times over the course of around 20 years, observed behaviour on the part of Dominic Ongwen suggestive of a mental disease or defect.[177] Still further, the Chamber observed that the evidence of Dominic Ongwen's conduct in relation to the charges was of importance for assessing whether there was a possibility that, at the time, Dominic Ongwen suffered from a mental disease or defect, and indeed found it significant that the large number of witnesses who described Dominic Ongwen's actions

[172] *See* Trial Judgment, para. 2454.
[173] T-260, p. 25, lines 6-9.
[174] *See* Trial Judgment, section IV.D.1.
[175] *See* Trial Judgment, para. 2580.
[176] *See* Trial Judgment, para. 2517.
[177] *See* Trial Judgment, para. 2519.

and interactions with others, at various times relevant to the charges and in numerous contexts, did not provide any testimony which could corroborate a historical diagnosis of mental disease or defect.[178] The Chamber, also following expert evidence, finally considered 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.[179]

94. While in its submissions for sentencing, the Defence does not directly contradict the findings of the Trial Judgment, it is clear that the results of the detailed evidentiary analysis of the possibility of mental disease or defect in Dominic Ongwen are also incompatible with any consideration of substantially diminished mental capacity.

95. The Defence makes reference in its sentencing submissions to the expert evidence of Professor Ovuga and Dr Akena.[180] However, for reasons explained in the Trial Judgment,[181] the Chamber does not rely on this evidence. As to Professor Ovuga's subsequent report prepared specifically for the purposes of sentencing, the Chamber notes that the report is built on the premise of the conclusions in previous reports prepared by Professor Ovuga and Dr Akena.[182] Moreover, the Chamber considers that the same methodological concerns exist with respect to the subsequent report.[183] Accordingly, the Chamber does not rely on the additional report of Professor Ovuga.

96. The Defence argues that 'the Chamber should find that Mr Ongwen likely experienced substantially diminished mental capacity at the material time because he is currently receiving treatment for symptoms of mental diseases and defects'.[184] The Chamber rejects this proposed inference as entirely unconvincing in light of the reliable expert

[178] *See* Trial Judgment, para. 2520.
[179] *See* Trial Judgment, para. 2521.
[180] *See* Defence Brief, para. 87.
[181] Trial Judgment, section IV.D.1.iv.
[182] *See* Professor Ovuga's Report, UGA-D26-0015-1878, at 1880.
[183] First, there is a blurring of Professor Ovuga's roles as forensic expert and treating doctor. *See* Professor Ovuga's Report, UGA-D26-0015-1878, at 1881 ('the sessions of assessment sometimes turned to therapeutic sessions'), 1886 ('In the course of interacting with Mr. Ongwen at the ICC Detention Centre, we provided care to Dominic Ongwen, and coordinated with his detention physicians about his mental health and other health conditions'. *See also* Trial Judgment, para. 2531. Second, there was excessive reliance on a clinical interview with Dominic Ongwen. *See* Professor Ovuga's Report, UGA-D26-0015-1878, at 1878-1879. *See also* Trial Judgment, paras 2545-2557. Third, the possibility of malingering was not adequately addressed, as evidenced also by the entirely incredible statement that 'clients say the truth unless they have sociopathic personality disorder'. *See* Professor Ovuga's Report, UGA-D26-0015-1878, at 1887. *See also* Trial Judgment, paras 2558-2568.
[184] Defence Brief, para. 87.

evidence of Professor Mezey, Dr Abbo and Professor Weierstall-Pust, which goes precisely to the issue of Dominic Ongwen's mental health at the relevant time, and in light of the multitude of corroborating information from the trial, as discussed extensively in the Trial Judgment and briefly recalled above.

97. Next, the Defence argues that 'the Chamber should find that Mr Ongwen likely experienced substantially diminished mental capacity at the material time because Dr de Jong also concluded that Mr Ongwen suffers from mental diseases and defects'.[185] However, as explained in the Trial Judgment, considering that Professor De Jong's report was prepared for a different purpose, having as its object of examination Dominic Ongwen's mental health at the time of the examination during the trial, and not at the time of his conduct relevant under the charges, the Chamber does not consider that it can rely on that report directly for its conclusions with respect to the issue at hand.[186]

98. Finally, the Defence points to the fact that the Chamber 'took measures to adjust the trial schedule to accommodate the measures taken by ICC-DC physicians and security team' and '[t]hus, the Trial Chamber considered Mr Ongwen's diagnoses and his significantly diminished capacity'.[187] The Defence interpretation of the Chamber's managerial decisions during trial is untenable. Suffice it to say that at no point, even in the context of such decisions of trial management, did the Chamber find or otherwise express the view that Dominic Ongwen suffered from 'significantly diminished capacity' as implied by the Defence. On the side, the Chamber further notes that the Defence argument appears opportunistic, considering that the Defence previously took the opposite position and claimed that the Chamber ignored Dominic Ongwen's mental health and did not take adequate measures during the trial.[188]

99. At the hearing, the Defence emphasised Dominic Ongwen's own statement that he went into battles with the intention of dying, made earlier that day in court, as the attitude of a 'madman'.[189] The Chamber recalls that this statement is not new, it was made previously

[185] Defence Brief, para. 88.
[186] Trial Judgment, paras 2576-2579.
[187] Defence Brief, para. 89.
[188] *See* Defence Closing Brief, paras 121, 136-146. This submission is addressed in the Trial Judgment, see Trial Judgment, paras 107-115.
[189] T-261, p. 63, lines 1-8. *See also* p. 10, lines 1-7 (Dominic Ongwen stating in court that he went into all his battles with the intention of being killed, but was unlucky that he did not get killed).

to experts and was known at the time of the Trial Judgment.[190] The hypothesis of suicidality in Dominic Ongwen while he was in the LRA was also discussed with Professor Weierstall-Pust, who rejected it.[191] The matter has been addressed, and the repetition of the same does not alter anything in this respect.

100. The Chamber reiterates that the evidence establishes clearly that at all relevant times for the charges, Dominic Ongwen did not suffer from a mental disease or defect. The evidence indicates that he was in full possession of his mental faculties and exercised his role as commander effectively. Persons around him at the time, who fought with him or under his command, or who were very close to him physically as women and girls abducted and assigned to his household as so-called 'wives', did not provide anything in their testimonies which would suggest otherwise. Accordingly, the Chamber finds that the mitigating circumstance of substantially diminished mental capacity does not apply in the present case.

101. In addition to the argument alleging a substantially diminished mental capacity within the meaning of Rule 145(2)(a)(i) of the Rules, the Defence also makes an argument concerning Dominic Ongwen's current mental health, which is based on essentially the same evidence. In particular, the Defence argues that 'the Chamber should consider mental rehabilitation as a factor when determining a sentence for Mr Ongwen because the Defence medical experts who testified during the trial proceedings advised that Mr Ongwen return to Uganda for mental rehabilitation'.[192]

102. The Prosecution submits that 'any mental health issues that Mr Ongwen currently has should be considered in the execution of his sentence but not affect the length of his sentence'.[193]

103. In the view of the Chamber, and in line with international criminal tribunal jurisprudence to the effect that poor health is mitigating only in exceptional cases,[194] the health of the convicted person at the time of sentencing need not automatically be taken into account

[190] *See* Trial Judgment, paras 2538, 2549.
[191] P-0447: T-169, p. 30, line 9 – p. 31, line 4; T-170, p. 49, line 20 – p. 51, line 24.
[192] Defence Brief, paras 41-42.
[193] T-260, p. 30, lines 2-3.
[194] *See* ICTY, Appeals Chamber, *Prosecutor v. Šainović et al*, Judgement, 23 January 2014, IT-05-87-A, para. 1827; ICTY, Appeals Chamber, *Prosecutor v. Galić*, Judgement, 30 November 2006, IT-98-29-A, para. 436; ICTY, Appeals Judgment, *Prosecutor v. Blaškić*, Judgement, 29 July 2004, IT-95-14-A, para. 696.

and poor health as such should not automatically be seen as a mitigating circumstance. As pointed out by the Prosecution,[195] the management of the convicted person's health is primarily a matter for the enforcement of the imposed sentence, rather than a factor bearing upon the determination of its length. Only in extreme and exceptional cases can it be imagined that a very serious health condition, or perhaps terminal disease, may have to be taken into account as a mitigating circumstance. But it is not necessary in the present case to attempt to specify precisely in what cases that may be, as none of the information available to the Chamber as to Dominic Ongwen's mental health at various times during his detention at the seat of the Court, or even the Defence submissions, point to anything exceptional.

104. In fact, the Chamber finds itself greatly impressed by Dominic Ongwen's personal statement in court during the sentencing hearing.[196] Dominic Ongwen spoke lucidly for one hour and 45 minutes, without a break, sustaining a structured and coherent declaration, while speaking largely freely (as opposed to reading out a prepared speech). The Chamber notes that Dominic Ongwen demonstrated a great and detailed understanding of the trial, including of legal and procedural matters. His argument, while on occasion at odds with the Trial Judgment and of no consequence to the sentencing proceedings, related to topics the relevance of which for the case was clear. Also remarkably, Dominic Ongwen made sure, without mistakes, not to refer to confidential information when discussing sensitive topics. Not at all unimportantly, Dominic Ongwen himself stated that treatment in the detention centre helped him and that his life in detention was better than in the bush with the LRA.[197]

105. Accordingly, the Chamber considers that Dominic Ongwen's current mental health cannot be taken into account as a mitigating circumstance with respect to his sentencing.

106. Second, the Defence also 'beseeches the Chamber to determine that, while not amounting to a complete defence under Article 31(1)(d), Mr Ongwen sustained duress throughout

[195] T-260, p. 30, lines 2-10.
[196] *See* T-261, p. 3, line 20 – p. 37, line 16.
[197] T-261, p. 22, lines 3-6; p. 26, lines 19-25.

his time in the LRA because of the spiritual actions taken by Joseph Kony and the punishments handed down by Kony'.[198]

107. The Prosecution responded at the sentencing hearing, reiterating that there is no evidence that Dominic Ongwen committed his crimes because of any threat or pressure and that therefore duress as a mitigating circumstance should be rejected.[199]

108. Duress, when falling short of constituting a ground for exclusion of criminal responsibility under Article 31(1)(d) of the Statute, can still be a mitigating circumstance as provided for by Rule 145(2)(a)(i) of the Rules. In the view of the Chamber, this mitigating circumstance can be found in cases of duress not meeting the thresholds of necessity or reasonableness of the action taken by the perpetrator to avoid the threat, or where the specific mental element is not met. Needless to say, the application of this mitigating circumstance is not automatic in cases of duress not meeting all of the criteria of Article 31(1)(d) of the Statute, but must be assessed on the facts of each case.

109. Importantly, in all cases, a finding of duress is still necessary, in the sense of the conduct constituting a crime being caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person.

110. In the Trial Judgment, the Chamber undertook a detailed analysis of all facts and evidence relevant to the potential applicability of duress under Article 31(1)(d) of the Statute.[200] The Chamber found as follows:

> [T]here is no basis in the evidence to hold that Dominic Ongwen was subjected to a threat of imminent death or imminent or continuing serious bodily harm to himself or another person at the time of his conduct underlying the charged crimes. In fact […], the Chamber finds that Dominic Ongwen was not in a situation of complete subordination vis-à-vis Joseph Kony, but frequently acted independently and even contested orders received from Joseph Kony. The evidence indicates that in the period of the charges, Dominic Ongwen did not face any prospective punishment by death or serious bodily harm when he disobeyed Joseph Kony. Dominic Ongwen also had a realistic possibility of leaving the LRA, which he did not pursue. Rather, he rose in rank and position, including during the period of the charges. Finally, he committed some of the charged crimes in private, in circumstances where any threats otherwise made to him could have no effect.

[198] Defence Brief, para. 117; *see also* paras 102-116.
[199] T-260, p. 19, lines 7-9.
[200] *See* Trial Judgment, section IV.D.2.

> Based on a thorough analysis of the evidence, the Chamber finds that Dominic Ongwen was not under threat of death or serious bodily harm to himself or another person when engaging in conduct underlying the charged crimes. […]
>
> The actions which Dominic Ongwen took and which underlie the crimes charged and found in this judgment were, within the meaning of Article 31(1)(d), free of threat of imminent death or imminent or continuing serious bodily harm. Duress as a ground excluding criminal responsibility under Article 31(1)(d) of the Statute is therefore not applicable.[201]

111. Based on a thorough analysis of evidence, duress was excluded in the present case as the conduct constituting the crimes Dominic Ongwen was convicted of was not caused by a threat of death or serious bodily harm to Dominic Ongwen or another person. Accordingly, on the same basis, the Chamber also concludes that duress is not applicable in the present case as a mitigating circumstance pursuant to Rule 145(2)(a)(i) of the Rules.

112. The Chamber notes that the Defence cites to evidence in its submissions for the purpose of sentencing,[202] but the arguments relate squarely to issues already resolved in the Trial Judgment. In particular, the hierarchical relationship between Dominic Ongwen and Joseph Kony was fully explored in the Trial Judgment specifically in light of the alleged applicability of Article 31(1)(d) of the Statute, and the Chamber found – as quoted just above – that a situation of complete subordination did not exist, but that Dominic Ongwen frequently acted independently and even contested orders received from Joseph Kony.[203] The Chamber also reviewed the evidence in relation to Joseph Kony's alleged spiritual powers, and found that LRA members with some experience in the organisation did not generally believe that Joseph Kony possessed spiritual powers, that there was no evidence indicating that the belief in Joseph Kony's spiritual powers played a role for Dominic Ongwen, and that, in fact, the evidence of Dominic Ongwen defying Joseph Kony spoke clearly against any such influence.[204]

113. The Defence also cites to two new items of evidence it submitted specifically for the purpose of sentencing, i.e. to the prior recorded statements of Professor Kristof Titeca (D-0060) and Eric Awich Ochen (D-0114).

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[201] Trial Judgment, paras 2668-2670.
[202] *See* Defence Brief, paras 103-117.
[203] *See* Trial Judgment, para. 2668; *see also* section IV.D.2.ii.
[204] *See* Trial Judgment, para. 2658 and generally section IV.D.2.v.

114. Professor Titeca, who previously already provided a report and testified at trial,[205] prepared a report on 'the LRA's cosmological space'.[206] Professor Titeca's new report seeks to explore the LRA's 'belief system' and in particular Dominic Ongwen's involvement in it. The report is based on 'the available literature on this issue', 'previous interviews with ex-LRA combatants', and 'primarily […] interviews with Dominic Ongwen'.[207] Professor Titeca visited Dominic Ongwen in the detention centre seven times between November 2016 and April 2017, and held with him one online conversation on 22 February 2021.[208] Indeed, the report extensively refers to and quotes statements coming directly from these interviews. However, the report does not contain any critical assessment of the statements received in particular from Dominic Ongwen, which appear to have been taken at face value. As such, in the assessment of the Chamber, the report is not suitable for use as evidence in these proceedings. It is re-emphasised on this occasion that the issue of spiritual beliefs in the LRA was discussed in the Trial Judgment, where conclusions have been made on the basis of an extensive assessment of all reliable evidence. To the extent that such conclusions equally bear upon excluding the relevance of any such matter to the sentence to be imposed on Dominic Ongwen, they remain undisturbed and shall thus be understood as incorporated herein.

115. Erich Awich Ochen provided a 'paper' after previously having already testified in the trial.[209] In his paper, he writes that he 'plead[s] for leniency and compassion for Dominic Ongwen' and 'request[s] the learned Justices to look into the complicated and difficult circumstances of Dominic Ongwen'.[210] He then provides a narrative of various topics relating to the abduction and indoctrination of children in the LRA, spiritualism and the coercive environment, explaining in terms of methodology that it is based on his work with children affected by war in Northern Uganda over a period of 20 years of 'actual work and development consultancy supporting interventions in the region, and designing post-conflict recovery programmes', and further stating that he 'relied on [his] own and other researches within northern Uganda, and consulted with both published and unpublished organisation reports'.[211] The Chamber does not rely on the paper of Eric

[205] T-197; UGA-D26-0018-3901. *See also* Trial Judgment, paras 596-597.
[206] UGA-D26-0015-1835.
[207] UGA-D26-0015-1835, at 1835.
[208] UGA-D26-0015-1835, at 1835.
[209] UGA-D26-0015-1907; T-247; *see also* Trial Judgment, para. 607.
[210] UGA-D26-0015-1907, at 1907.
[211] UGA-D26-0015-1907, at 1907-1908.

Awich Ochen, considering that it relates directly to issues that were resolved in the Trial Judgment based on reliable evidence, mainly from witnesses who directly interacted with Dominic Ongwen in the LRA at the relevant time. Additionally, the Chamber considers that the value of the paper in the present proceedings is diminished by virtue of the author declaring a motivation to achieve a specific result – a more lenient sentence for Dominic Ongwen. Considering that the witness is a highly educated person, testifying about topics related to his professional engagement, and on the basis of indirect sources, the fact that the paper is motivated by a certain prospective result negatively affects its reliability.

116. Finally, the Chamber notes that the report prepared for the purposes of the sentencing stage in this trial by Pollar Awich, already referred to above,[212] also contains certain statements about spiritualism in the LRA and related issues.[213] However, noting the stated basis for the report,[214] the Chamber does not consider that it is suitable for use as evidence in the case in relation to the issue at hand.

117. Third, the Defence has also emphasised the family circumstances of Dominic Ongwen as a factor which should, in its view, be recognised as a mitigating factor. In particular, the Defence submits that Dominic Ongwen has fathered 'approximately 20 children'.[215] According to the Defence, Dominic Ongwen's children 'have slowly come into the lives of his family as they have returned from the bush'.[216] The essence of the argument of the Defence is that the care of children places a heavy burden on Dominic Ongwen's family, and that he should be given an opportunity to 'return home and help raise and feed his children'.[217]

118. The Prosecution submits that Dominic Ongwen's family circumstances should not be given weight in mitigation and, in particular, that Dominic Ongwen 'should not receive a reduced sentence because his crimes of sexual violence resulted in the birth of children

[212] *See* para. 16, n. 31.
[213] UGA-D26-0015-1889.
[214] UGA-D26-0015-1889, at 1889 (stating that the report is based on 'insights acquired from years of interaction with abducted children', that it 'garners insight from the eight years of service on the CRC committee, numerous public discourses and interactions with State Parties, other members of the Committee and the various stakeholders', that it is 'also based on [Pollar Awich's] own experience and recollection of what happened to [him] and other abductees', and that it also makes reference to 'relevant reports, publications and legal texts').
[215] Defence Brief, para. 137.
[216] Defence Brief, para. 138.
[217] Defence Brief, paras 139-148.

or ongoing social and economic ties with their mothers'.[218] It argues that consequences should also be drawn from the fact that some of the children's mothers did not want to have any contact with Dominic Ongwen when he made requests for telephone communications from the Court's detention centre.[219]

119. The legal representatives of the participating victims submit that Dominic Ongwen's family circumstances are common to many convicted persons and are not exceptional so as to constitute a mitigating circumstance, and, moreover, that '[t]o the contrary, the fact that his marital situation stems out [of] situations of forced marriages he enforced while in the bush and that his children were born out of rape of his forced wives while in the LRA would rather plead to the contrary, if at all'.[220]

120. At the sentencing hearing, the Defence replied to the Prosecution, stating that records demonstrate that Dominic Ongwen and his children 'want to be in each other's lives' and that the mothers of the children 'want Mr Ongwen […] in their children's lives'.[221]

121. The argument of the Defence is also based on the statement of four relatives of Dominic Ongwen: Akot Madelena,[222] Odongo Johnson,[223] Ojara Charles,[224] and Onekalit David Johnson.[225] The Chamber does not have doubts as concerns the reliability of their statements, but notes that they provide little evidence relevant to the determination of the sentence. Their statements mostly consist of a plea for the Court to be lenient on Dominic Ongwen so that he can return home and provide for his many children, thereby reducing the economic pressure on his relatives.

122. Little is known about the children fathered by Dominic Ongwen. The submissions of the Defence refer to them as a category and by approximate number, only giving specific information about his eldest daughter and youngest child.[226] Evidence was available at trial regarding 13 children born at some point inside or outside the period of the charges to P-0099, P-0101, P-0214, P-0227, P-0235 and P-0236, victims of sexual and gender-

[218] Prosecution Brief, para. 151.
[219] T-260, p. 34, line 24 – p. 35, line 13.
[220] Victims Brief, para. 93.
[221] T-261, p. 39, line 11 – p. 40, line 13.
[222] UGA-D26-0015-1851.
[223] UGA-D26-0015-1855.
[224] UGA-D26-0015-1858.
[225] UGA-D26-0015-1861.
[226] *See* Defence Brief, paras 137, 141.

based crimes directly perpetrated by Dominic Ongwen.[227] Florence Ayot (D-0013) also testified to giving birth to two children fathered by Dominic Ongwen.[228]

123. The Chamber considers that while Dominic Ongwen may harbour certain notions about his responsibilities as a father, it would be improper and even cynical, in the circumstances of the present case, to consider his fatherhood as a circumstance somehow warranting mitigation of his sentence. The assumption that, if allowed to return to Coorom, Dominic Ongwen would make a meaningful contribution to the lives of his children, thereby reducing also the economic pressure on his other relatives, places more faith in Dominic Ongwen than justifiable on the basis of his prior behaviour. It cannot be overlooked that while, as a result of his rapes, children were born in the bush to women and girls abducted into the LRA and forced to live with him as so-called 'wives', those children were then kept with their mothers in the same coercive environment. This was not inevitable, as Dominic Ongwen had a realistic possibility of escaping or leaving the LRA.[229] The Chamber does not believe that Dominic Ongwen is genuinely motivated by the responsibility to take care of his children, when he so obviously and so cruelly failed to take care of them when he had the chance.

124. For this reason, the Chamber does not consider Dominic Ongwen's family circumstances as a mitigating circumstance.

125. Finally, the Defence submits that, for the determination of the sentence, Dominic Ongwen's 'good character' shall also be taken into account, as part of his 'personal circumstances' within the meaning of Rule 145(1)(b) of the Rules.[230] In its submission, 'Mr Ongwen's good character […] should act in mitigation and significantly lessen the sentence issued by the Chamber'.[231] More specifically, the Defence refers to evidence indicating that Dominic Ongwen: (i) while in the bush, saved the lives of a number of persons in the LRA (as well as 'countless unmentioned ones');[232] (ii) 'tried to treat those around him better than other persons in the LRA' and 'intervened upon [lives of persons

[227] *See* Trial Judgment, paras 2069-2070.
[228] *See* D-0013: T-244, p. 45, lines 21-24; p. 46, lines 15-17.
[229] *See* Trial Judgment, section IV.D.2.iv.
[230] Defence Brief, paras 149-174.
[231] Defence Brief, para. 174.
[232] Defence Brief, paras 151-158.

who were in the LRA] to make better';[233] and (iii) enjoyed a favourable general reputation in the LRA.[234]

126. In response to this argument by the Defence, the Prosecution, at the sentencing hearing, submitted that '[i]ndividual acts of kindness […] do not in any way negate the crimes that Mr Ongwen has committed against hundreds of victims'.[235] It argues that this 'selective assistance' to victims has typically been afforded little or no weight in the international sentencing practice.[236] The Prosecution argues that 'Mr Ongwen for the most part intervened only to save lives of selected few; people close to him, people he liked and trusted', but 'afforded no such protection, no such generosity to the women and children in his brigade more generally, or to the residents of the attacked IDP camps in Pajule, Lukodi, Odek and Abok'.[237] It also argues that whereas Dominic Ongwen was sometimes kind, he could also be cruel, and cites to examples from the evidence heard at trial.[238]

127. The legal representatives of the victims participating in the proceedings argued that the submissions of the Defence in regard of Dominic Ongwen's alleged good character are self-contradictory.[239] In addition, they submitted that Dominic Ongwen's 'supposed good character' was selective, and that '[s]adly, the men, women and children that were bludgeoned to death shortly after the abduction from the attacks on IDP camps saw the limits of Mr Ongwen's compassions, as did the young girls taken and given as forced wives and serially raped for their entire duration in the LRA'.[240] According to the legal representatives, such was the experience of Dominic Ongwen's compassion of the children he abducted that they 'opted to risk death and escape [rather] than spend more time within Mr Ongwen's unit'.[241]

128. The common legal representative of victims made similar submissions, stating that contrary to the Defence portrayal of Dominic Ongwen's good character by indicating

[233] Defence Brief, paras 159-166.
[234] Defence Brief, paras 167-174.
[235] T-260, p. 13, lines 9-13.
[236] T-260, p. 13, line 14 – p. 14, line 10.
[237] T-260, p. 14, lines 12-18.
[238] T-260, p. 14, line 19 – p. 15, line 10.
[239] T-260, p. 44, line 6 – p. 45, line 3.
[240] T-260, p. 45, lines 5-9.
[241] T-260, p. 45, lines 9-11.

that he saved lives while in the LRA and showed kindness and mercy to some people, 'the judgment recognised that he killed and harmed thousand others and that he did so with a level of incomparable cruelty', and that similarly, 'he released a few abducted people while he kept under his custody hundreds of others, among whom wounded, pregnant women, women with babies and young children'.[242]

129. The Chamber acknowledges that, as pointed out by the Defence, the evidence on record indeed contains several references to the fact that Dominic Ongwen was generally liked by his soldiers, but is unable to accord any particular weight to this in mitigation of the sentence to be imposed on him. If anything, the episodes referred to by the Defence of instances when Dominic Ongwen saved lives of other members of the LRA, including by standing up to Joseph Kony, indicate to the Chamber, once more, that Dominic Ongwen was fully able to appreciate the value of human life – and, correspondingly, at no time he was unable to understand the disvalue inherent to acts of violence against individuals. Further, they suggest that the circumstances of his upbringing, and stay, within the LRA constituted no obstacle to him forming his own views, and acting accordingly, in spite of the positions of other members of the group, including individuals higher than him in the LRA hierarchy and Joseph Kony himself. These episodes – alongside the other instances referred to by the Defence in which Dominic Ongwen helped people in the bush because he 'cared about people'[243] – cannot but demonstrate further that at no time he lost his ability to distinguish between right and wrong and to act independently. More generally, Dominic Ongwen's 'good character' in the bush, and the fact that he 'was one of the most liked persons in the LRA because of his heart, his compassion to help others' and that he 'loved to share jokes and laughter',[244] do not constitute, in the view of the Chamber, circumstances which should act in mitigation for the heinous crimes that he committed, in that they further confirm, as previously considered, the absence of any mental disorder.

130. The Chamber indeed observes, as submitted by the Prosecutor, that the actions emphasised by the Defence as acts of kindness, in particular saving lives, were related to his soldiers or other persons present in the LRA in relation to whom Dominic Ongwen

[242] T-260, p. 56, lines 10-16.
[243] Defence Brief, para. 166. *See*, more generally, paras 159-166.
[244] Defence Brief, paras 173-174.

had an interest, such as notably the abducted women and girls assigned to him as so-called 'wives' or *ting tings*.[245] The Chamber in particular rejects the – especially cynical – argument that Dominic Ongwen should be commended for saving the life of P-0236 when Joseph Kony ordered her execution,[246] when it was himself who constrained her and made her stay in the LRA in his household first as a *ting ting*, and later as his so-called 'wife', rather than releasing her as he could have done. More generally, the Chamber considers it equally cynical to place emphasis on selected acts which can be seen as positive, given the overwhelming extent of the criminal acts for which Dominic Ongwen was convicted, including acts of extreme cruelty as described in detail in the Trial Judgment and recalled below. Accordingly, the Chamber does not consider that there exists a mitigating circumstance on the ground of Dominic Ongwen's 'good character'.

iii. Aggravating circumstance applicable to all crimes alleged by the victims

131. Both the Prosecutor and the victims submit that several aggravating circumstances are applicable to the crimes of which Dominic Ongwen was convicted. As these circumstances are crime-specific, the Chamber will identify the applicable ones below as part of its assessment of the gravity of each such crime and Dominic Ongwen's culpability therefor.

132. That said, the Chamber, however, notes that the legal representatives of the participating victims argue, *inter alia,* that among the different aggravating circumstances the Chamber shall also take into account 'the abuse of power by and or/or the official capacity of Mr Ongwen in the commission of the crimes', within the meaning of Rule 145(2)(b)(ii) of the Rules, '[i]n light of Mr Ongwen's actions, decisions, roles, influences, control of and example given to his soldiers while being in a clear position of authority

[245] The Chamber notes that, as part of his submissions at the sentencing hearing, Dominic Ongwen stated that he saved the lives of over 250 people during the peace talks 'in Congo', including UN representatives, traditional chiefs and Members of Parliament from Uganda, by talking Joseph Kony out of his order to have them all killed (T-261, p. 35, line 7 – p. 36, line 18). Irrespective of any other consideration in this regard, the Chamber finds it sufficient to note that Dominic Ongwen's own account of this episode suggests that the motive for such action, rather than humanitarian or borne out of 'kindness', was mostly 'political' and utilitarian in nature (He stated that that he told to Joseph Kony and the other commanders: 'Are you aware you are the one who invited the world for peace talks? If you kill all these people, how shall we be labelled? Won't we be labelled terrorists? Some of you are older, you went to school, you grew up with your parents, you know the law better than me.' *See* T-261, p. 35, lines 21-24).

[246] *See* Defence Brief, para. 152.

and of his concordant appalling behaviours towards them and towards his victims'.[247] In the victims' submission, this aggravating circumstance applies to all crimes of which Dominic Ongwen was convicted. In light of this, and considering that the facts underlying all such crimes are comparable in this regard, the Chamber finds it appropriate to briefly address the victims' relevant submissions at this juncture notwithstanding the nature of the alleged aggravating circumstance at issue as a crime-specific circumstance.

133. The Chamber recalls that, as explained, in order to determine whether such aggravating circumstance is established, what matters is not the position of authority taken alone, but that position coupled with the manner in which the authority was exercised.[248]

134. While it is true that Dominic Ongwen committed the crimes he was convicted of by way of exercising his power as an LRA commander, the Chamber does not consider this to be an 'abuse of power or official capacity' within the meaning of Rule 145(2)(b)(ii) of the Rules. Indeed, there was no special lawful relationship between Dominic Ongwen and his victims which he would have abused for the commission of the crimes, neither could, in any case, any 'proper' way be identified of exercising the authority as an LRA commander which Dominic Ongwen would culpably have departed from. While this does not entail any lessening of Dominic Ongwen's culpability, the Chamber is of the view that the aggravating circumstance under Rule 145(2)(b)(ii) of the Rules is not established in the present case.

3. Factors and circumstances specifically related to individual crimes

135. As recalled above, Article 78 of the Statute provides that, in determining the sentence, the Court, in addition to the 'individual circumstances' of the convicted person, shall also take into account 'the gravity of the crime', including the gravity of the culpable conduct. Rule 145(1)(b) of the Rules similarly mandates the Court to consider, and balance with any other relevant factors, 'the circumstances […] of the crime'. Moreover, Rule 145(1)(c) provides that the Court shall, in addition, give consideration, *inter alia*, to: (i) the extent of the damage caused, in particular the harm caused to the victims and their families, the nature of the unlawful behaviour and the means employed to execute the crime; (ii) the degree of participation of the convicted person; (iii) the degree of intent;

[247] Victims Brief, paras 68, 79-81. *See also* T-260, p. 62, lines 13-17.
[248] *Lubanga* Appeal Sentencing Judgment, paras 82-84.

and (iv) the circumstances of manner, time and location. Finally, Rule 145(2)(b) includes amongst the aggravating circumstances the commission of the crime: (i) where the victim is particularly defenceless; (ii) with particular cruelty or where there were multiple victims; (iii) for any motive involving discrimination. The Chamber reiterates in this regard that, as emphasised by the Appeals Chamber, some of these factors are not neatly distinguishable and may reasonably be considered under more than one category, provided that the same factor is not relied more than once.[249]

136. In addition, as concerns matters related to 'double-counting', the two-step sentencing process prescribed under Article 78(3) of the Statute must be emphasised again. Indeed, when a person – like Dominic Ongwen in the present case – is convicted of more than one crime, the Chamber shall, first, impose an individual sentence for each crime that fully reflects the convicted person's culpability for that particular crime. As explained by the Appeals Chamber, '[t]he calculation of an individual sentence necessarily entails an assessment of all the circumstances relevant to a particular crime', including those circumstances that may be relevant to the determination of more than one individual sentence.[250] Indeed, 'if the circumstances relevant to more than one individual sentence were to be excluded from the calculation of any of those individual sentences, the true culpability of a convicted person for a particular crime would be unclear'.[251]

137. In the present section, the Chamber addresses such crime-specific considerations in relation to each of the 61 crimes for which Dominic Ongwen was convicted. This is done within the seven 'sets' of crimes under the different relevant counts, grouping convictions which are partly based on the same facts: crimes committed in the context of the attack on Pajule internally displaced person (IDP) camp (Counts 1-5, 8-10); crimes committed in the context of the attack on Odek IDP camp (Counts 11-17, 20-23), crimes committed in the context of the attack on Lukodi IDP camp (Counts 24-30, 33-36), crimes committed in the context of the attack on Abok IDP camp (Counts 37-43, 46-49), sexual and gender based crimes directly perpetrated by Dominic Ongwen (Counts 50-60), sexual and gender based crimes not directly perpetrated by Dominic Ongwen (Counts 61-68), and the crime of conscription of children under the age of 15 and their use to participate actively in the hostilities (Counts 69 and 70). With the exception of the last-

[249] *Bemba et al.* Appeal Sentencing Judgment, para. 4.
[250] *Ntaganda* Appeal Sentencing Judgment, paras 129-130.
[251] *Ntaganda* Appeal Sentencing Judgment, para. 130.

mentioned, each of these sections includes also some more general considerations applying to all crimes within the set. Again, this is merely a matter of structure and clarity of written reasoning, as the Chamber has duly taken into account such more generally applicable considerations in the determination of each individual sentence.

i. Crimes committed in the context of the attack on Pajule IDP camp

138. Dominic Ongwen has been convicted of eight crimes which he committed – within the meaning of Article 25(3)(a) of the Statute – in the context of the attack carried out by LRA fighters on Pajule IDP camp on 10 October 2003: attack against the civilian population as such as a war crime (Count 1); murder as a crime against humanity and as a war crime (Counts 2 and 3); torture as a crime against humanity and as a war crime (Counts 4 and 5); enslavement as a crime against humanity (Count 8); pillaging as a war crime (Count 9); and persecution as a crime against humanity (Count 10).

139. The Chamber observes that these crimes committed in the context of the attack on Pajule IDP camp share a number of features, in particular as concerns the individual criminal responsibility of Dominic Ongwen. Before turning to the assessment of each of the crimes for the purpose of determining the appropriate sentence, the Chamber will thus address certain relevant circumstances applicable to all of them. These circumstances relate to the nature of the unlawful behaviour and the means employed to execute the crime, as well as to the degree of participation and the degree of intent of Dominic Ongwen.

140. As laid out in detail in the Trial Judgment, Dominic Ongwen committed the eight crimes at issue jointly with and through others, within the meaning of Article 25(3)(a) of the Statute. In particular, the Chamber found that the attack on Pajule IDP camp took place pursuant to an agreement involving Dominic Ongwen, Vincent Otti, Raska Lukwiya, Okot Odhiambo and other LRA commanders.[252] The Chamber concluded that the LRA soldiers selected and sent for the attack on Pajule IDP camp as a whole functioned as a tool of Dominic Ongwen, Vincent Otti, Raska Lukwiya, Okot Odhiambo and other LRA commanders, through which they were able to execute their agreement to attack Pajule IDP camp, including the commission of crimes, and that, accordingly, the conduct of the individual LRA fighters in the execution of the crimes during the attack on Pajule IDP

[252] Trial Judgment, para. 2853.

camp must be attributed to Dominic Ongwen, Vincent Otti, Raska Lukwiya, Okot Odhiambo and other LRA commanders as their own.[253]

141. The Chamber observes that Dominic Ongwen had control over all the crimes committed in the context of the attack on Pajule IDP camp: their commission would have been frustrated had not it been for Dominic Ongwen's own personal contribution thereto.[254] At the same time, other individuals (i.e. Dominic Ongwen's co-perpetrators) provided their own contribution, the sum of which resulted in the commission of the crimes under consideration. In other words, Dominic Ongwen was not the only one having control over the crimes committed in the context of the attack on Pajule IDP camp as the co-perpetrators had to rely on each other (as well as on individual LRA fighters on the ground) for the commission of the crimes pursuant to the common plan. Also on the ground, whereas Dominic Ongwen's participation in the attack in a leading position is consistent with his high position within the LRA hierarchy, the overall leadership of the attack was assigned to Raska Lukwiya.[255] In this context, while emphasising that Dominic Ongwen's level of contribution to, and participation in these crimes reached the level of 'commission' within the meaning and for the purpose of Article 25(3)(a) of the Statute, the Chamber is at the same time mindful that his contribution was necessary but not in itself sufficient for the crimes to be committed pursuant to the common plan and that his role in the commission of these crimes was accordingly not absolute.

142. Nonetheless, and while acknowledging that, depending on all relevant circumstances, this is generally a relevant consideration in terms of the 'degree of participation' under Rule 145(1)(c) of the Rules, the Chamber considers that it does not in and of itself lessen such a degree of participation in a manner that should be given a noticeable impact on the individual sentences for the crimes committed in the context of the attack on Pajule IDP camp. In general terms, the Chamber is of the view that the fact that control over a crime is shared among more individuals – as is in the nature of co-perpetration, in which the crime is committed 'jointly with others' – does not in and of itself entail a lesser degree of participation compared to instances in which the perpetrator (whether 'direct' or 'indirect') exercises exclusive control over the crime. Equally, the fact that amongst the co-perpetrators, each providing their own essential contribution to the commission of

[253] Trial Judgment, para. 2858.
[254] Trial Judgment, para. 2864.
[255] Trial Judgment, para. 146.

the crime, some may have been at a higher hierarchical position compared to that of others, and acted accordingly in the context of the commission of the relevant crime, does not as such signal a necessarily higher degree of participation on their part, and *vice versa*. Indeed, this aspect, which mostly concerns the relative importance of a co-perpetrator's contribution to the commission of the crime compared to that of the other co-perpetrators, should not be given undue weight, when considered together with all relevant circumstances, in the assessment of the convicted person's degree of participation in absolute terms.

143. Specifically on the crimes committed in the context of the attack on Pajule IDP camp, the fact that Dominic Ongwen's control over such crimes was not exclusive (and that some of his co-perpetrators may have contributed to those crimes from a more 'leading position' than his) is not, in the view of the Chamber, an aspect that, all relevant circumstances considered, would generally warrant, as such, assessing as lesser the gravity of Dominic Ongwen's culpability for the crimes concerned. The attack at issue was designed by Dominic Ongwen and his co-perpetrators, and carried out precisely as a joint 'operation' of different units, the combination of which is the source of its large scale and magnitude, and ensuing large extent of victimisation. The participation of several groups and different commanders in diverse roles and positions constituted an essential feature of the attack under consideration and was in fact an important element of the co-perpetrators' common plan. In its implementation, Dominic Ongwen exercised an important role, leading a group of attackers to the barracks, and after that to the trading centre.[256] The division of roles for the attack on Pajule IDP camp means that, factually, the relative importance of Dominic Ongwen's participation in the commission of the crimes at issue may be compared to that of his co-perpetrators. However, such a comparison, in a case of an attack as the one launched on the Pajule IDP camp, does not in itself justify that the gravity of Dominic Ongwen's relevant culpable conduct be assessed any lower or that the individual sentences for the ensuing crimes be otherwise mitigated in any way on this ground alone. All facts considered, including those set out below, the Chamber assesses the degree of Dominic Ongwen's participation in the crimes under consideration as very high.

[256] Trial Judgment, para. 149.

144. As concerns the degree of intent, the Chamber, in its legal findings in the Trial Judgment, distinguished between the two forms of intent in relation to the consequence contemplated in Article 30(2)(b) of the Statute, each applicable to a sub-set of the crimes committed during the attack on Pajule IDP camp.[257] While noting this different degree of intent with respect to two categories of crimes committed during the attack on Pajule IDP camp as a factor relevant for sentencing under Rule 145(1)(c) of the Rules, the Chamber of the view that the difference is relatively minor, consisting merely of nuances in *dolus directus*, and should not be given undue weight in the determination of the corresponding individual sentences, when considered together with all other relevant circumstances informing the gravity of the concerned crimes.

145. Another feature common to the crimes of attack against the civilian population as such, murder, torture, enslavement and pillaging in the context of the attack on Pajule IDP camp is that they were all committed for motives involving discrimination – within the meaning of Rule 145(2)(b)(v) of the Rules – in that the civilians living in Northern Uganda, in particular those who lived in government-established IDP camps, were targeted by reason of their identity as perceived, including by Dominic Ongwen himself, as associated with the Government of Uganda, and thus as the enemy. This aspect therefore informs the Chamber's consideration of the gravity of the crimes under Counts 1, 2-3, 4-5, 8 and 9. The Chamber is aware that this 'discriminatory dimension' is also reflected in the separate crime of persecution for which a conviction was entered under Count 10 and which, in turn, was committed by way of the same acts and conduct as those giving rise to the other crimes. However, as recently stated by the Appeals Chamber, the determination of an individual sentence for each crime – that fully reflects the convicted person's culpability for that particular crime – 'necessarily entails an assessment of all the circumstances relevant for that particular crime'.[258] Specifically for the crime of persecution this means that, when a conviction was entered concurrently, on the basis of the same conduct for both such crime and one or more additional crimes, 'certain circumstances (*i.e.* the underlying factual conduct or those establishing the "discriminatory dimension" of persecution) are […] relevant to the calculation of more than one individual sentence'.[259] Indeed, '[i]n such a case, if the circumstances relevant

[257] Trial Judgment, paras 2867-2869.
[258] *Ntaganda* Appeal Sentencing Judgment, para. 129.
[259] *Ntaganda* Appeal Sentencing Judgment, para. 130.

to more than one individual sentence were to be excluded from the calculation of any one of those individual sentences, the true culpability of a convicted person for a particular crime would be unclear'.[260] While, therefore, in imposing the individual sentence for the crimes concerned the Chamber will take into account the same underlying conduct (including its 'discriminatory dimension', whether as an aggravating circumstance for the crimes under Counts 1, 2-3, 4-5, 8 and 9 or as a constitutive element of the crime of persecution under Count 10), it will then consider such overlap in its determination of the joint sentence.

146. Similarly, the Chamber recalls that certain crimes for which Dominic Ongwen was convicted were qualified simultaneously as both war crimes and crimes against humanity on the basis of the same conduct (entirely or essentially, in the case of torture), distinguished only by the circumstances of the corresponding contextual elements. Given the overlap of the underlying facts, the Chamber addresses below jointly the relevant factors and circumstances applicable to such facts underlying a war crime and a crime against humanity at the same time. This is done solely for the purpose of streamlined written reasoning. Indeed, contrary to the submission by the Defence that, for those 36 instances in which Dominic Ongwen was convicted of overlapping war crimes and crimes against humanity based on the same underlying facts, the Chamber shall enter individual sentences 'per act, not per count' and thus 'only […] on 18 of the 36 counts',[261] the Chamber recalls that Article 78(3) of the Statute mandates that separate sentences be pronounced for each of the crimes of which the person was convicted. The Chamber is mindful of the relevant factual overlap between the two sets of crimes, but considers that this aspect shall be taken account in the context of the determination of the appropriate joint sentence. This does not disaccord with the Defence statement – with which the Chamber in principle agrees – that '[s]entencing is [...] a proper time for the Chamber to consider the effect of war crimes and crimes against humanity that are based on the same underlying facts'.[262]

[260] *Ntaganda* Appeal Sentencing Judgment, para. 130.
[261] Defence Brief, paras 175-181.
[262] Defence Brief, para. 177.

147. The Chamber turns at this point to the specific considerations and conclusions concerning each of the individual crimes committed by Dominic Ongwen in the context of the attack on Pajule IDP camp on 10 October 2003.

148. The war crime of attack against the civilian population as such – of which, in the context of the attack on Pajule IDP camp, a conviction was entered under **Count 1** – violates the principle of distinction, which is at the core of international humanitarian law.[263] The purpose of this principle, and of the incrimination of intentional attacks on civilians in the Statute, is to protect lives and to avoid the suffering of individuals not taking a direct part in hostilities during an armed conflict.[264]

149. The Chamber notes that the war crime of attacking the civilian population as such is a conduct crime which, for its commission, does not require a result in terms of infliction of an actual harm on civilians.[265] In the present case, such an actual harm was, however, inflicted, and, in this sense, qualifies the gravity of the crime at issue. At the same time, the Chamber observes that the consequences suffered by the civilian population of Pajule IDP camp as a result of the attack constitute the relevant facts underlying other crimes of which Dominic Ongwen was convicted under separate counts. In order to ensure that the full extent of the gravity of the crime at issue – including in terms of Dominic Ongwen's culpability for it – is duly reflected in the individual sentence for this crime, all circumstances relevant to it must necessarily be considered.[266] This includes those consequences which, while non-essential for the commission of the crime of attack against the civilian population as such, constitute the material facts underlying other crimes committed by Dominic Ongwen. This overlap, while having no impact in and of itself on the determination of the individual sentences for the crimes concerned, shall however be taken into account as part of the determination of the joint sentence with a view to ensuring that, in this sense, Dominic Ongwen is not punished more than once for the same underlying conduct and related consequences.

150. On the basis of the concrete circumstances, in particular as concerns the extent of the harm caused, the degree of Dominic Ongwen's participation in the crime and the degree of his intent, the Chamber considers the crime under Count 1 of attack against the civilian

[263] *See also* *Ntaganda* Sentence, para. 53.
[264] *See also* *Ntaganda* Sentence, para. 53.
[265] *Ntaganda* Appeal Sentencing Judgment, para 101; *Ntaganda* Sentence, para. 53.
[266] *See, similarly*, *Ntaganda* Appeal Sentencing Judgment, para. 129.

population as such to be of high gravity. In addition to the considerations expressed above in relation to all crimes committed by Dominic Ongwen in the context of the attack on Pajule IDP camp, the Chamber considers the magnitude of the attack to be of particular relevance to the assessment of the crime under consideration. Such magnitude can be assessed by reference to the fact that an estimated 15,000 to 30,000 people lived in the camp at the time,[267] and that the attack was executed by several hundred LRA fighters – acting under joint control of Dominic Ongwen and the other co-perpetrators – armed with an assortment of weapons, including firearms.[268] A large group of these fighters went to attack the civilian camp,[269] where they broke into homes and shops.[270] The evidence also suggests that they burnt down a limited number of civilian huts within the camp.[271] The Chamber also recalls the testimony of Benson Ojok, who testified that he saw people in the camp being shot at by the rebels, as well as that he saw four people, both males and females, who had been shot at their doors.[272] In addition, Rwot Oywak, asked to describe the situation in Pajule IDP camp upon his return from abduction the day after the attack, stated:

> People were extremely upset. People were sad. People's houses had been burnt. People's children had not come back. People's things had been taken. So people were extremely angry, people were not happy about the event, in the way that things had happened.[273]

151. The Chamber further recalls that Dominic Ongwen himself directed a group of fighters to attack the trading centre within Pajule IDP camp.[274]

152. In light of the above, weighing and balancing all the relevant factors, concerning both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[275] as well as the presence of the aggravating circumstance of commission of the crime for a motive involving discrimination,[276] the

[267] Trial Judgment, para. 144.
[268] Trial Judgment, para. 147.
[269] Trial Judgment, para. 147.
[270] Trial Judgment, para. 150.
[271] Trial Judgment, para. 1260.
[272] Trial Judgment, para. 1310.
[273] P-0009: T-81 p. 79, lines 7-13.
[274] Trial Judgment, para. 149.
[275] *See* above section I.C.2.i.
[276] *See* para. 145 above.

Chamber sentences Dominic Ongwen to a term of 14 years of imprisonment for the war crime of attack against the civilian population as such (Count 1).

153. Turning to the crime against humanity of murder (**Count 2**) and the war crime of murder (**Count 3**), the Chamber observes at the outset that the value protected by the incrimination is human life, which is a strong factor of gravity. In this regard, the Chamber agrees that '[m]urder is inherently one of the most serious crimes'.[277]

154. Also in the concrete circumstances of the case, the Chamber considers the gravity of the crimes of murder under Counts 2 and 3 to be very high. As concerns the extent of victimisation, the Chamber found that in the course of the attack on Pajule IDP camp, LRA fighters killed at least four civilians, most of whom were abductees killed because they tried to escape or refused to carry looted goods.[278] The aggravating circumstance of multiplicity of victims under Rule 145(2)(b)(iv) of the Rules is therefore established. The Chamber previously found that the agreement involving Dominic Ongwen and other LRA commanders aimed at engaging in conduct during the attack on Pajule IDP camp which, in the ordinary course of events, would result in murder, and that Dominic Ongwen was aware of this.[279] On the same basis, the Chamber also considers that Dominic Ongwen knew that in the ordinary course of the events there would be multiple victims.

155. Considering that most of the victims of murder were abductees killed because they tried to escape or refused to carry looted goods,[280] and noting the evidence as concerns the treatment to which abducted persons were subjected,[281] the Chamber considers that the victims of murder were particularly defenceless. In this regard, and to the extent that Dominic Ongwen knew and accepted that the attack on Pajule IDP would result in killings of civilians, and especially – due to the LRA's consolidated *modus operandi* – of civilian abductees, the Chamber is also satisfied that Dominic Ongwen knew that particularly defenceless victims would be killed. The Chamber further recalls in this regard that Dominic Ongwen himself was directly involved in abductions and looting during the attack on Pajule IDP camp. The Chamber accordingly finds that the crime of

[277] *Ntaganda* Sentence, para. 44.
[278] Trial Judgment, para. 152.
[279] Trial Judgment, paras 2854, 2869.
[280] Trial Judgment, para. 152.
[281] Trial Judgment, paras 1326-1355.

murder committed by Dominic Ongwen in the context of the attack on Pajule IDP camp is aggravated by the relevant circumstance under Rule 145(2)(iii) of the Rules.

156. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[282] as well as the presence of the aggravating circumstances of the victims being particularly defenceless and the multiplicity of victims, as just discussed, and the aggravating circumstance of commission of the crime for a motive involving discrimination,[283] the Chamber sentences Dominic Ongwen to a term of 20 years of imprisonment for the crime against humanity of murder (Count 2) and to a term of 20 years of imprisonment for the war crime of murder (Count 3).

157. Turning to the crimes of torture – of which in the context of the attack on Pajule IDP camp Dominic Ongwen was convicted under **Count 4** (torture as a crime against humanity) and **Count 5** (torture as a war crime) – the Chamber first observes that torture is a particularly heinous act, violating the right not to be subjected to torture recognised in customary and conventional international law and as a norm of *ius cogens*.[284] Torture represents an assault on the personal human dignity, security and mental well-being of the victims.[285] As such, the gravity of the crime of torture is in the abstract very high. The Chamber notes that the crime against humanity of torture and the war crime of torture each have a specific legal element not contained in the other, but is of the view that it cannot be said in the abstract that the presence of this legal element, or more precisely of the facts typically underlying it, means that the crime against humanity of torture is in the abstract graver than the war crime of torture, or *vice versa*.

158. Also in the concrete circumstances of the case, the Chamber considers the gravity of the crimes of torture under Counts 4 and 5 to be high. The Chamber recalls the large number of victims of the crimes of which Dominic Ongwen was convicted under Counts 4 and 5. In particular, the Chamber found that in the course of the attack on Pajule IDP camp,

[282] *See* above section I.C.2.i.
[283] *See* para. 145 above.
[284] *See* ICTY, Trial Chamber, *Prosecutor v. Milan Simić*, Sentencing Judgment, 17 October 2002, IT-95-9/2-S, para. 34. *See also*, ICTY, Trial Chamber, *Prosecutor v. Dragan Zelenović*, Sentencing Judgement, 4 April 2007, IT-96-23/2-S, para. 36.
[285] *See* ICTY, Trial Chamber, *Prosecutor v. Milan Simić*, Sentencing Judgment 17 October 2002, IT-95-9/2-S, para. 34.

hundreds of civilians – who were abducted by the LRA – were forced to carry injured LRA fighters and looted items from the camp, including heavy loads, for long distances.[286] They were under armed guard to prevent their escape and were under constant threat of beatings or death, some were tied to each other, and many of the abductees were forced to walk barefoot or not fully clothed through the bush for a long distance.[287] The Chamber also found that LRA fighters beat abductees to make them walk faster.[288]

159. The high number of victims must be qualified as an aggravating circumstance of multiplicity of victims under Rule 145(2)(b)(iv) of the Rules, also considering that, by the same token as above,[289] the Chamber considers that Dominic Ongwen knew that there would be multiple victims.

160. While the important degree of pain and suffering caused to the victim is part of the legal elements of the crimes,[290] the Chamber heard evidence on the lasting consequences of the acts underlying the crimes of torture under Counts 4 and 5. P-0081, who was abducted during the attack on Pajule IDP camp, testified that as a result of injuries sustained during his captivity he could no longer do hard labour and could not do the work he did before.[291] Oryema Kadogo, who was one of the persons abducted from Pajule IDP camp by LRA attackers and later beaten and left for dead, remains disabled to this day.[292]

161. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[293] as well as the presence of the aggravating circumstance of the multiplicity of victims, as just discussed, and the aggravating circumstance of commission of the crime for a motive involving discrimination,[294] the Chamber sentences Dominic Ongwen to a term of 14 years of imprisonment for the crime against

[286] Trial Judgment, para. 153.
[287] Trial Judgment, para. 153.
[288] Trial Judgment, para. 153.
[289] *See* para. 154 above.
[290] *See* Trial Judgment, para. 2701.
[291] P-0081: T-118, p. 17, lines 10-20.
[292] Trial Judgment, para. 1350.
[293] *See* above section I.C.2.i.
[294] *See* para. 145 above.

humanity of torture (Count 4) and to a term of 14 years of imprisonment for the war crime of murder (Count 5).

162. Under **Count 8**, Dominic Ongwen was convicted of the crime against humanity of enslavement. This incrimination protects the individual's personal liberty, making the crime of enslavement *in abstracto* a crime of considerable gravity.

163. In the concrete circumstances, the Chamber considers the gravity of the crime of enslavement in the context of the attack on Pajule IDP camp to be high. As found by the Chamber, hundreds of civilians from the Pajule IDP camp were abducted and enslaved. They were forced to carry looted items, including heavy loads, for long distances while retreating from the camp.[295] For example, P-0006, whose story is discussed in more detail in the Trial Judgment, testified that seven armed LRA fighters entered her house and abducted her, making her carry items out of the house.[296] She explained how she was beaten, as were other abductees, and that she was made to carry 'extremely heavy' items, and that she also saw other abductees struggling to carry the load.[297] She testified that despite the fact that the LRA rebels were beating abductees to make them walk faster, the abductees could only walk slowly because of the heavy items they were carrying.[298] Other very detailed individual accounts are referred to in the Trial Judgment, demonstrating the nature and extent of the conduct of the LRA attackers with respect to the persons they abducted during the attack on Pajule IDP camp, and the nature and extent of the harm suffered by the victims.[299]

164. The large amount of victims of this crime is particularly striking. The Chamber recalls in this regard that the abduction of civilians was in fact one of the main purposes of the attack on Pajule IDP camp as designed by a number of LRA commanders, including Dominic Ongwen himself.[300] The high number of victims – which was therefore specifically intended by Dominic Ongwen – must thus be qualified as an aggravating circumstance of multiplicity of victims under Rule 145(2)(b)(iv) of the Rules.

[295] Trial Judgment, para. 153.
[296] *See* Trial Judgment, para. 1340.
[297] *See* Trial Judgment, para. 1340.
[298] *See* Trial Judgment, para. 1340.
[299] *See* Trial Judgment, paras 1341-1353.
[300] *See* Trial Judgment, paras 2851-2853.

165. The Chamber also pays due attention to the fact that some persons abducted by the LRA stayed in captivity for a considerable period of time. As discussed in the Trial Judgment, P-0006 and P-0081 escaped only in April 2004,[301] Sunday Abalo also some time in 2004,[302] whereas Santo Oweka stayed for about five months.[303] P-0081 testified that during his captivity in the LRA,[304] his family suffered greatly as a result of believing that he had been killed, and also he himself was extremely stressed and worried about his family.[305] P-0249 testified that when he could not walk further after two weeks of being with Dominic Ongwen's group, LRA fighters beat him until he was unconscious and left him, after which he managed to drag himself for nine days to get home.[306] In the assessment of the Chamber, it is important to pay sufficient attention also to the psychological harm done to the victims and their family members. The Chamber deems this harm to be inherent to the exercise of powers attaching to the right of ownership over one person and thus an entirely foreseeable consequence of the conduct underlying the crime of enslavement.

166. Further, the Chamber makes note at this point of the evidence of the witnesses who testified about the lasting consequences for themselves and their families of their abduction by LRA fighters during the attack on Pajule IDP camp. P-0006, who spent a considerable time in the LRA following abduction during the attack, including being distributed to a commander as a so-called 'wife', being raped and becoming pregnant,[307] testified about her and her child's suffering as a result in an open and compelling manner. She testified about the problems in her education upon her return, as well as about psychological problems.[308] P-0081 testified about the lengthy and difficult process of reintegration into his community, which took approximately five years.[309] P-0249 testified that at the time of his testimony he still had scars on his shoulders from having had to carry an injured LRA soldier on a stretcher, as well as an injury on his sole.[310] He

[301] Trial Judgment, paras 1340-1341.
[302] Trial Judgment, para. 1350.
[303] Trial Judgment, para. 1352.
[304] Trial Judgment, para. 1341.
[305] P-0081: T-118, p. 17, line 18 – p. 19, line 10.
[306] Trial Judgment, para. 1344.
[307] Trial Judgment, para. 1340.
[308] P-0006: T-140-Conf, p. 28, line 16 – p. 30, line 8.
[309] P-0081: T-118, p. 20, line 11 – p. 22, line 15.
[310] P-0249: T-79, p. 47, line 19 – p. 48, line 1; p. 53, line 11 – p. 54, line 5; p. 59, lines 13-24. *See also* Photograph, UGA-OTP-0238-0804; Photograph, UGA-OTP-0238-0805.

also stated that at the time of his testimony he continued to experience pain, and described himself as 'not free' as a result.[311] He stated that he cannot not walk very well, and cannot carry heavy loads or work hard.[312] P-0379 testified that one abductee by the name of Okony stayed in Kitgum hospital for a long time after his return because he was vomiting blood.[313] Ugandan People's Defence Force (UPDF) commander Joseph Balikudembe testified that the abductees rescued some days after the attack were 'exhausted', and some had swollen legs from moving barefoot.[314]

167. The Chamber further recalls that the enslavement of civilians was one of the main purposes of the attack on Pajule IDP camp, as designed by Domenic Ongwen and other members of the LRA hierarchy involved in its planning and execution. In addition to this, the Chamber also notes that on the ground, Dominic Ongwen personally ordered a subordinate to abduct civilians, and that this order was executed.[315] Dominic Ongwen also personally led a group of abductees and ordered abductees to carry looted goods and instructed them not to drop items.[316] After the attack, some abductees remained in the LRA and were distributed to various units, including among Dominic Ongwen's group.[317]

168. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[318] as well as the presence of the aggravating circumstance of the multiplicity of victims, as just discussed, and the aggravating circumstance of commission of the crime for a motive involving discrimination,[319] the Chamber sentences Dominic Ongwen to a term of 14 years of imprisonment for the crime against humanity of enslavement (Count 8).

169. In relation to the war crime of pillaging (**Count 9**), the Chamber notes that it is a crime against the right of property. As such, it is in principle of lesser gravity than the crimes

[311] P-0249: T-79, p. 79, line 22 – p. 80, line 7.
[312] P-0249: T-79, p. 80, lines 8-12.
[313] Trial Judgment, para. 1338.
[314] Trial Judgment, para. 1335.
[315] Trial Judgment, para. 153.
[316] Trial Judgment, para. 153.
[317] Trial Judgment, para. 157.
[318] *See* above section I.C.2.i.
[319] *See* para. 145 above.

against life, physical integrity, and personal liberty and dignity.[320] However, the actual gravity of this crime is variable and depends also on the economic consequences for the victims who were deprived of their property. When such consequences are severe, like in the present case, the crime of pillaging reaches a considerable level of gravity. This is also the case if a large number of individuals were deprived of their property.

170. In this regard, the Chamber recalls that, on the basis of its analysis of evidence, it found that the looting during the attack on Pajule IDP camp was widespread.[321] Due attention in the assessment must be paid to the fact that the attackers looted from the trading centre, taking food items and supplies.[322] Among the items looted by the LRA attackers were foodstuffs like beans, flour, salt, sugar, cooking oil, maize, sweets, biscuits, groundnuts, soda as well as household goods such as bedding, clothing, a radio set, saucepans and items such as medicine, livestock and money.[323] These items represented the basic means of survival for the population living in Pajule IDP camp,[324] and the deprivation of the residents of these essential items, which cannot have been without knowledge on the part of Dominic Ongwen, represents a significant factor of gravity. Furthermore, the large amount of victims whose property was looted as part of the attack on Pajule IDP camp – and which was inherent to the very objectives of the attack itself as designed by Dominic Ongwen and his co-perpetrators – establish the presence of the related aggravating circumstance under Rule 145(2)(b)(iv) of the Rule.

171. Indeed, the Chamber recalls that the agreement between Dominic Ongwen and other members of the LRA hierarchy in connection with the attack on Pajule IDP camp covered specifically the widespread looting within the camp. In addition to this – which demonstrates a high degree of intent on the part of Dominic Ongwen in the commission of the crime under consideration – the Chamber also notes that Dominic Ongwen personally ordered LRA attackers to loot within the trading centre, ordering them to loot items from shops and homes within the camp, and that LRA attackers complied with this

[320] *See also* *Ntaganda* Sentence, para. 136; Trial Chamber VIII, *The Prosecutor v. Ahmad Al- Faqi Al Mahdi* Judgment, Judgment and Sentence, 27 September 2016, ICC-01/12-01/15-171 (hereinafter: '*Al Mahdi* Judgment'), para. 77.
[321] Trial Judgment, para. 150.
[322] Trial Judgment, para. 150.
[323] Trial Judgment, para. 150.
[324] John Lubwama confirmed that the looted items were important for the survival of the residents of Pajule IDP camp. P-0047: T-114, p. 38, lines 2-16.

order.[325] Moreover some looted items were distributed within Dominic Ongwen's group after the attack.[326]

172. Finally, it is important to correctly appreciate the immediate factual context in which the pillaging took place – during an armed attack by LRA fighters on Pajule IDP camp, which led to killings and abductions of civilians. In this regard, the Chamber considers that the modalities of the commission of the crime of pillaging – as carried out on the ground, but also as designed in advance as acts of looting to be performed as part of and through an armed attack on civilians – included particular cruelty which, rather than being a constitutive element of the crime at issue, constitutes the aggravating circumstance of particular cruelty within the meaning of Rule 145(2)(b)(iv) of the Rules.

173. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[327] as well as the presence of the aggravating circumstance of the multiplicity of victims and the commission with particular cruelty, as just discussed, and the aggravating circumstance of commission of the crime for a motive involving discrimination,[328] the Chamber sentences Dominic Ongwen to a term of 8 years of imprisonment for the war crime of pillaging (Count 9).

174. In relation to the crime against humanity of persecution (**Count 10**), it is noted that persecution is essentially a crime against equality of all persons regardless of their political, racial, national, ethnic, cultural, religious or gender affiliation or identity, and regardless of any other ground of discrimination universally recognised as impermissible under international law. The blameworthiness of the crime of persecution lies in the blameworthiness of the deprivation of fundamental rights underlying it, and additionally – and crucially – in the discrimination on the part of the perpetrator in selecting the target(s). It is clear that as such, persecution is a particularly heinous crime.

175. In the concrete circumstances, the Chamber deems the gravity of the crime of persecution to be very high. Targeting residents of Pajule IDP camp by reason of their identity as

[325] Trial Judgment, para. 150.
[326] Trial Judgment, para. 155.
[327] *See* above section I.C.2.i.
[328] *See* para. 145 above.

perceived supporters of the Ugandan government, the LRA attackers deprived a large number of civilians of the right to life, the right not to be subjected to cruel, inhuman or degrading treatment, the right to personal liberty, the right not to be held in slavery or servitude, and/or the right to private property.[329] It is noted that the facts which in the concrete circumstances form the severe deprivation of fundamental rights are identical to the facts otherwise underlying the convictions for murder, torture, enslavement and pillaging.[330] In the concrete circumstances, and as explained,[331] considerations expressed above in relation to each of these crimes are accordingly also of relevance for persecution, while this overlap is properly dealt with below in the determination of the joint sentence.

176. The high number of victims must be qualified as an aggravating circumstance of multiplicity of victims under Rule 145(2)(b)(iv) of the Rules, also considering that in light of the Chamber's findings it is clear that this was also intended by Dominic Ongwen.[332]

177. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[333] as well as the presence of the aggravating circumstance of the multiplicity of victims, as just discussed, the Chamber sentences Dominic Ongwen to a term of 20 years of imprisonment for the crime against humanity of persecution (Count 10).

ii. Crimes committed in the context of the attack on Odek IDP camp

178. Dominic Ongwen has been convicted of 11 crimes which he committed – within the meaning of Article 25(3)(a) of the Statute – in the context of the attack carried out by LRA fighters on Odek IDP camp on 29 April 2004: attack against the civilian population as such as a war crime (Count 11); murder as a crime against humanity and as a war crime (Counts 12 and 13); attempted murder as a crime against humanity and as a war crime (Counts 14 and 15); torture as a crime against humanity and as a war crime (Counts 16 and 17); enslavement as a crime against humanity (Count 20); pillaging as a war crime

[329] Trial Judgment, paras 2846-2847.
[330] *See* Trial Judgment, para. 2846.
[331] *See* above para. 146.
[332] *See* Trial Judgment, paras 2865-2873.
[333] *See* above section I.C.2.i.

(Count 21); outrages upon personal dignity as a war crime (Count 22); and persecution as a crime against humanity (Count 23).

179. Also with respect to the crimes committed in the context of the attack on Odek IDP camp the Chamber commences its analysis by looking at the shared features, in particular as concerns the individual criminal responsibility of Dominic Ongwen.[334]

180. As laid out in detail in the Trial Judgment, knowing of an order issued by Joseph Kony shortly before,[335] Dominic Ongwen decided that LRA soldiers under his command would attack Odek IDP camp.[336] He coordinated with subordinate commanders and issued orders.[337] The Chamber found that Dominic Ongwen committed the 11 crimes at issue 'jointly with' and 'through' others within the meaning of Article 25(3)(a) of the Statute. In particular, the Chamber found that the attack on Odek IDP camp took place pursuant to an agreement involving Dominic Ongwen, Joseph Kony and other Sinia brigade leaders.[338] The Chamber concluded that the LRA soldiers selected and sent for the attack on Odek IDP camp as a whole functioned as a tool of Dominic Ongwen, Joseph Kony and other Sinia brigade leaders, through which they were able to execute their agreement to attack Odek IDP camp, including the commission of crimes, and that, accordingly, the conduct of the individual LRA fighters in the execution of the crimes during the attack on Odek IDP camp must be attributed to Dominic Ongwen, Joseph Kony and other Sinia brigade leaders as their own.[339]

181. The Chamber considers, on the basis of its findings in the Trial Judgment, that the degree of Dominic Ongwen's participation, as well as the degree of his intent, were very high in respect of all the crimes he has been convicted of as concerns the attack on Odek IDP camp on 29 April 2004. Whereas the order to attack Odek came from Joseph Kony and was known to Dominic Ongwen at the time, it was Dominic Ongwen who decided that the attack would indeed take place, organised it, and issued instructions to the LRA fighters executing the attack. He issued specific orders which directly encompassed the

[334] *See also* para. 139 above.
[335] Trial Judgment, paras 159-160.
[336] Trial Judgment, para. 161.
[337] Trial Judgment, para. 161.
[338] Trial Judgment, para. 2912.
[339] Trial Judgment, para. 2914.

commission of the crimes. He singularly exercised control over the fighters who went and attacked Odek IDP camp pursuant to his orders.

182. The Chamber further observes that the crimes of attack against the civilian population as such, murder, attempted murder, torture, enslavement, pillaging and outrages upon personal dignity in the context of the attack on Odek IDP were all committed for motives involving discrimination – within the meaning of Rule 145(2)(b)(v) of the Rules – in that the civilians living in Northern Uganda, in particular those who lived in government-established IDP camps, were targeted by reason of their identity as perceived, including by Dominic Ongwen himself, as associated with the Government of Uganda, and thus as the enemy. This aspect therefore informs the Chamber's consideration of the gravity of the crimes under Counts 11, 12-13, 14-15, 16-17, 20, 21 and 22. In this regard, the Chamber also refers to the considerations expressed above as concerns the interplay between the crimes under Counts 1, 2-3, 4-5, 8 and 9, on the one hand, and the crime of persecution under Count 10, as applicable, *mutatis mutandis*, also to the crimes of the same nature committed in the context of the attack on Odek IDP camp.[340]

183. The Chamber also recalls the above clarification in relation to the joint analysis of analogous crimes against humanity and war crimes.[341]

184. The Chamber turns at this point to the specific considerations and conclusions concerning individual crimes for which Dominic Ongwen was convicted in relation to the attack on Odek IDP camp on 29 April 2004.

185. In relation to the war crime of attack against the civilian population as such (**Count 11**), the Chamber refers to the preliminary considerations expressed above in the analysis of the attack on Pajule IDP camp on 10 October 2003.[342] In the concrete circumstances of the attack on Odek IDP camp, the Chamber deems the gravity of the crime of attack against the civilian population to be high. In relation to the magnitude of the attack, the Chamber found that between 2000 and 3000 people lived in Odek IDP camp at the time of the attack on 29 April 2004.[343] The camp was attacked by at least 30 LRA attackers,

[340] *See* para. 145.
[341] *See* para. 146.
[342] *See* paras 148-149.
[343] Trial Judgment, para. 159.

acting pursuant to Dominic Ongwen's orders, with an assortment of arms including AK guns, a mortar and an RPG, a PK and a 'B-10' gun.[344] LRA fighters spread into the civilian area, including the trading centre, where they dispelled several government soldiers and proceeded to attack the civilian residents, shooting, beating, abducting and forcing them to carry looted goods.[345]

186. In light of the above, weighing and balancing all the relevant factors, concerning both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[346] as well as the presence of the aggravating circumstance of commission of the crime for a motive involving discrimination,[347] the Chamber sentences Dominic Ongwen to a term of 14 years of imprisonment for the war crime of attack against the civilian population as such (Count 11).

187. Turning to the crime against humanity of murder (**Count 12**) and the war crime of murder (**Count 13**), the Chamber reiterates that the value protected by the incrimination is human life, and that murder is inherently one of the most serious crimes.[348]

188. In the concrete circumstances of the case, the Chamber considers the gravity of the crimes of murder Count 12 and 13 to be very high. This is so in particular because of the number of victims: the Chamber found that at least 52 civilians died as a result of the injuries sustained in the camp or in the course of the retreat.[349] The bodies of the dead were scattered everywhere across the camp.[350] The Chamber found that under orders to shoot civilians in the chest and head to ensure that they died, LRA fighters fired their weapons at civilians during the attack.[351] The aggravating circumstance of multiplicity of victims under Rule 145(2)(b)(iv) of the Rules is therefore established, also considering that, in light of the Chamber's findings as to the mental elements,[352] and in particular in light of the fact that Dominic Ongwen ordered the attackers to target everyone, including

[344] Trial Judgment, para. 163.
[345] Trial Judgment, para. 164.
[346] *See* above section I.C.2.i.
[347] *See* para. 182 above.
[348] *See* para. 153 above.
[349] Trial Judgment, para. 167.
[350] Trial Judgment, para. 167.
[351] Trial Judgment, para. 167.
[352] Trial Judgment, paras 2919-2926.

civilians,[353] such widespread extent of killings as part of the attack was intended by Dominic Ongwen.

189. Many civilians were shot as they ran away from the LRA.[354] Among the victims were elderly civilians, children, a pregnant woman as well as women carrying babies tied to their back.[355] An LRA fighter was ordered to spray bullets inside civilian houses.[356] LRA fighters also set on fire at least one hut with civilians inside.[357] The Chamber discussed in the Trial Judgment evidence of great brutality of the killings during the attack on Odek IDP camp, such as the brutal killings of Kejikiya Okec and Veronica Auma,[358] the shooting of Monica Aciro, a heavily pregnant woman attempting to flee the attackers,[359] and the killing of a woman who could no longer walk because pus was coming out of her swollen wounds – she was struck on her head so that her head split with the rear of her skull falling forward.[360] In the assessment of the Chamber, this manner of killing people, which was entirely foreseeable by Dominic Ongwen given his order to target everyone at Odek IDP camp,[361] represents particular cruelty, and as such qualifies as an aggravating circumstance under Rule 145(2)(b)(iv) of the Rules.

190. Furthermore, the Chamber found that at least 14 people were killed in the course of the LRA attackers' retreat from Odek IDP camp, after having been abducted and forced to carry looted items or an injured fighter while being subjected to grave physical abuse.[362] In this situation, the victims were particularly defenceless within the meaning of Rule 145(2)(b)(iii) of the Rules, necessitating that this be taken into account as an aggravating circumstance. Again, the Chamber considers that in light of the orders given by Dominic Ongwen ahead of the attack,[363] he knew and intended that abducted and enslaved civilians would be among the persons killed.

[353] Trial Judgment, para. 161.
[354] Trial Judgment, para. 167.
[355] Trial Judgment, para. 167.
[356] Trial Judgment, para. 167.
[357] Trial Judgment, para. 167.
[358] Trial Judgment, para. 1521.
[359] Trial Judgment, para. 1524.
[360] Trial Judgment, para. 1571.
[361] Trial Judgment, para. 161.
[362] Trial Judgment, paras 171-175.
[363] Trial Judgment, para. 161.

191. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[364] as well as the presence of the aggravating circumstances of the victims being particularly defenceless, particular cruelty of the crime and the multiplicity of victims, as just discussed, and the aggravating circumstance of commission of the crime for a motive involving discrimination,[365] the Chamber sentences Dominic Ongwen to a term of 20 years of imprisonment for the crime against humanity of murder (Count 12) and to a term of 20 years of imprisonment for the war crime of murder (Count 13).

192. As concerns the crime against humanity of attempted murder (**Count 14**) and the war crime of attempted murder (**Count 15**), the Chamber's analysis is guided by similar considerations as that under murder. The Chamber deems the gravity of the crimes in the concrete circumstances to be high, noting that the LRA fighters attempted to kill at least ten civilians,[366] who eventually did not lose their life for reasons entirely outside the LRA fighters' (or Dominic Ongwen's) control.

193. Also, the aggravating circumstance of the multiplicity of victims under Rule 145(2)(b)(iv) of the Rules is present. As explained above, the Chamber considers that Dominic Ongwen intended for there to be multiple killings.[367]

194. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[368] as well as the presence of the aggravating circumstance of the multiplicity of victims, as just discussed, and the aggravating circumstance of commission of the crime for a motive involving discrimination,[369] the Chamber sentences Dominic Ongwen to a term of 14 years of imprisonment for the crime against humanity of attempted murder (Count 14) and to a term of 14 years of imprisonment for the war crime of attempted murder (Count 15).

[364] *See* above section I.C.2.i.
[365] *See* para. 182 above.
[366] Trial Judgment, para. 169.
[367] *See* para. 188 above.
[368] *See* above section I.C.2.i.
[369] *See* para. 182 above.

195. Turning to torture as a crime against humanity (**Count 16**) and torture as a war crime (**Count 17**), the Chamber reiterates that torture is a particularly heinous act generally of very high gravity.[370] The Chamber considers the gravity of these crimes in the specific circumstances to be high. In this regard, the Chamber notes the findings in the Trial Judgment to the effect that civilians who had been abducted suffered instances of grave physical abuse at the hands of the LRA fighters, such as beatings with sticks and guns.[371] Based on the findings in the Trial Judgment, the aggravating circumstance of multiplicity of victims under Rule 145(2)(b)(iv) of the Rules is present, and in light of the fact that Dominic Ongwen ordered the attackers to target everyone, including civilians,[372] the Chamber also considers that Dominic Ongwen intended for there to be multiple victims of torture.

196. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[373] as well as the presence of the aggravating circumstance of the multiplicity of victims, as just discussed, and the aggravating circumstance of the commission of the crime for a motive involving discrimination,[374] the Chamber sentences Dominic Ongwen to a term of 14 years of imprisonment for the crime against humanity of torture (Count 16) and to a term of 14 years of imprisonment for the war crime of torture (Count 17).

197. With respect to the crime against humanity of enslavement (**Count 20**), the Chamber refers to its considerations above as to the gravity of this crime *in abstracto*.[375] In the concrete circumstances, the Chamber considers the gravity of the crime to be high. The Chamber found that the LRA attackers abducted at least 40 civilian residents from the camp, including men, women and children.[376] Abductees, including children as young as 11 or 12 years old, were forced to carry looted items away from the camp.[377] Apart from the abductees killed during the retreat, some abductees were released after a few days in

[370] *See* para. 157 above.
[371] Trial Judgment, para. 173.
[372] Trial Judgment, para. 161.
[373] *See* above section I.C.2.i.
[374] *See* para. 182 above.
[375] *See* para. 162 above.
[376] Trial Judgment, para. 171.
[377] Trial Judgment, para. 172.

the bush, others were integrated into the LRA, including into Dominic Ongwen's household.[378] P-0252 testified about being abducted during the attack on Odek IDP camp and about his subsequent experience in the LRA before his return from captivity sometime in June 2004.[379]

198. As noted in the Trial Judgment, P-0252 testified that older women and very young children were sent home, but some girls, approximately 14 years old and upwards, were kept.[380] P-0252 further testified that children from 10-14 years were taken to the bush and recruited as fighters in the LRA.[381]

199. On the basis of the facts as found, the Chamber finds the presence of the aggravating circumstance of multiplicity of victims under Rule 145(2)(b)(iv) of the Rules, also considering that given his order issued to the attackers in advance,[382] Dominic Ongwen intended it.

200. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[383] as well as the presence of the aggravating circumstance of the multiplicity of victims, as just discussed, and the aggravating circumstance of commission of the crime for a motive involving discrimination, [384] the Chamber sentences Dominic Ongwen to a term of 14 years of imprisonment for the crime against humanity of enslavement (Count 20).

201. In relation to the war crime of pillaging (**Count 21**), the Chamber reiterates the considerations expressed above on the gravity *in abstracto* of this crime.[385] In the concrete circumstances, the Chamber assesses the gravity of the crime to be considerable. The Chamber found that LRA attackers broke into homes and shops and looted food and other items from the camp, both from shops in the trading centre and from civilian homes.[386] The food aid which had been recently distributed to the camp was looted by

[378] Trial Judgment, para. 176.
[379] Trial Judgment, paras 321-328.
[380] Trial Judgment, para. 1611.
[381] Trial Judgment, para. 1611.
[382] Trial Judgment, para. 161.
[383] *See* above section I.C.2.i.
[384] *See* para. 182 above.
[385] *See* para. 169.
[386] Trial Judgment, para. 165.

the attackers.[387] This meant that the impact on the residents was great. Indeed, Zakeo Odora, one of the camp's leaders, stated that the camp residents suffered a great deal as a result of the attackers having stolen the food.[388] He stated that many people suffered from intense hunger, and that other nearby IDP camps in Awere, Acept and Aromo donated some of their food to assist the residents of Odek IDP camp.[389]

202. On the basis of the facts as found, the Chamber finds the presence of the aggravating circumstance of multiplicity of victims under Rule 145(2)(b)(iv) of the Rules, also considering that given his order issued to the attackers in advance,[390] Dominic Ongwen intended it.

203. It is also important to note that the pillaging took place during an armed attack by LRA fighters acting on Dominic Ongwen's order. The killings, injuries and abductions of civilians, and the looting of houses and shops in the Odek camp trading centre formed part of a single design. In fact, the physical violence employed against civilians must be seen as a method of looting. As explained above,[391] such violence is not inherent to pillaging as a war crime and is not its constitutive element; rather, it must be qualified as the aggravating circumstance of particular cruelty within the meaning of Rule 145(2)(b)(iv) of the Rules.

204. The Chamber also considers it of relevance that items looted from Odek IDP camp were then distributed to the households of different commanders, including Dominic Ongwen.[392]

205. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[393] as well as the presence of the aggravating circumstances of the multiplicity of victims and particular cruelty, as just discussed, and the aggravating circumstance of commission of the crime for a motive involving discrimination,[394] the

[387] Trial Judgment, para. 165.
[388] P-0325 Statement, UGA-OTP-0264-0242-R01, at 0249, para. 45.
[389] P-0325 Statement, UGA-OTP-0264-0242-R01, at 0249, para. 45.
[390] Trial Judgment, para. 161.
[391] *See* para. 172.
[392] Trial Judgment, para. 165.
[393] *See* above section I.C.2.i.
[394] *See* para. 182 above.

Chamber sentences Dominic Ongwen to a term of 8 years of imprisonment for the war crime of pillaging (Count 21).

206. In the context of the attack on Odek IDP camp, Dominic Ongwen was further convicted for the war crime of outrages upon personal dignity (**Count 22**). The value protected by this incrimination is human dignity, and in spite of the crime not necessarily involving physical consequences for the victim, the Chamber considers it important not to understate the gravity of the crime. The elements of the crime require a humiliation, degradation or other violation of the victims' dignity of such severity that it is generally recognised as an outrage upon personal dignity. As such, the Chamber considers the gravity of the crime in the abstract to be high.

207. Noting the concrete facts on the basis of which Dominic Ongwen was convicted for this crime, in particular that an abductee was forced to kill another abductee with a club and forced to inspect corpses, that another abductee was forced to watch someone being killed, and that some mothers were forced to abandon their children on the side of the road,[395] the Chamber considers also the crime in the concrete circumstances to be of high gravity.

208. In this regard, the Chamber notes the specific evidence in relation to the long-lasting psychological suffering experienced by one of the victims of the crime, including recurring painful memories.[396]

209. The crime of outrages upon personal dignity was committed against persons who had previously been abducted during the attack from Odek IDP camp, were forced to carry looted items or an injured fighter, and were subjected to grave abuse by the LRA fighters.[397] In this situation, the victims were particularly defenceless within the meaning of Rule 145(2)(b)(iii) of the Rules, necessitating that this be taken into account as an aggravating circumstance. Again, in light of the order given by Dominic Ongwen before the attack on Odek IDP camp he knew and intended that acts underlying the crime of outrages upon personal dignity would be committed against abducted persons.

[395] Trial Judgment, para. 173.
[396] [redacted]
[397] Trial Judgment, paras 171-175.

210. On the basis of the facts as found, the Chamber further finds the presence of the aggravating circumstance of multiplicity of victims under Rule 145(2)(b)(iv) of the Rules, a multiplicity of victims which was also intended by Dominic Ongwen given the order he gave prior to the attack on the camp.[398]

211. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[399] as well as the presence of the aggravating circumstances of the victims being particularly defenceless and the multiplicity of victims, as just discussed, and the aggravating circumstance of commission of the crime for a motive involving discrimination,[400] the Chamber sentences Dominic Ongwen to a term of 14 years of imprisonment for the war crime of outrages upon personal dignity (**Count 22**).

212. Finally in relation to the attack on Odek IDP camp, the Chamber addresses the conviction for the crime against humanity of persecution (**Count 23**), noting at first the general considerations expressed above.[401]

213. In the concrete circumstances, the Chamber deems the gravity of the crime of persecution to be very high. Targeting residents of Odek IDP camp by reason of their identity as perceived supporters of the Ugandan government, the LRA attackers deprived a large number of civilians of the right to life, the right not to be subjected to cruel, inhuman or degrading treatment, the right to personal liberty, the right not to be held in slavery or servitude, and the right to private property.[402] It is noted that the facts which in the concrete circumstances form the severe deprivation of fundamental rights are identical to the facts otherwise underlying the convictions for murder, attempted murder, torture, enslavement, outrages upon personal dignity and pillaging.[403] In the concrete circumstances, considerations expressed above in relation to each of these crimes are accordingly also of relevance for persecution. As explained above, this overlap is properly dealt with below in the determination of the joint sentence.

[398] Trial Judgment, para. 161.
[399] *See* above section I.C.2.i.
[400] *See* para. 182 above.
[401] *See* paras 145, 174.
[402] Trial Judgment, paras 2906-2907.
[403] *See* Trial Judgment, para. 2906.

214. The high number of victims must be qualified as an aggravating circumstance of multiplicity of victims under Rule 145(2)(b)(iv) of the Rules, also considering that in light of the Chamber's findings it is clear that this was also intended by Dominic Ongwen.[404]

215. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[405] as well as the presence of the aggravating circumstance of the multiplicity of victims, as just discussed, the Chamber sentences Dominic Ongwen to a term of 20 years of imprisonment for the crime against humanity of persecution (Count 23).

iii. Crimes committed in the context of the attack on Lukodi IDP camp

216. Dominic Ongwen has been convicted of 11 crimes which he committed – within the meaning of Article 25(3)(a) of the Statute – in the context of the attack carried out by LRA fighters on Lukodi IDP camp on or about 19 May 2004: attack against the civilian population as such as a war crime (Count 24); murder as a crime against humanity and as a war crime (Counts 25 and 26); attempted murder as a crime against humanity and as a war crime (Counts 27 and 28); torture as a crime against humanity and as a war crime (Counts 29 and 30); enslavement as a crime against humanity (Count 33); pillaging as a war crime (Count 34); destruction of property as a war crime (Count 35); and persecution as a crime against humanity (Count 36).

217. Also with respect to the crimes committed in the context of the attack on Lukodi IDP camp the Chamber commences its analysis by looking at the shared features, in particular as concerns the individual criminal responsibility of Dominic Ongwen.[406]

218. Dominic Ongwen was convicted for the crimes in relation to the attack on Lukodi IDP camp as an indirect perpetrator under Article 25(3)(a) of the Statute. In particular, the Chamber found that it was Dominic Ongwen who decided that the LRA would attack Lukodi IDP camp.[407] For the purpose of the attack, Dominic Ongwen gathered the

[404] Trial Judgment, paras 2919-2926.
[405] *See* above section I.C.2.i.
[406] *See also* para. 139 above.
[407] Trial Judgment, para. 179.

soldiers and gave them the instruction to attack Lukodi IDP camp and everyone present at that location, including civilians, and to take food from the camp.[408] He appointed a subordinate to be commander on the ground.[409] The Chamber concluded that the LRA soldiers selected and sent for the attack on Lukodi IDP camp as a whole functioned as a tool of Dominic Ongwen, through which he was able to execute his plan to attack Lukodi IDP camp, including the commission of crimes, and that, accordingly, the conduct of the individual LRA fighters in the execution of the crimes during the attack on Lukodi IDP camp must be attributed to Dominic Ongwen as his own.[410]

219. The Chamber considers, on the basis of its findings in the Trial Judgment, that the degree of Dominic Ongwen's participation, as well as the degree of his intent, was very high in respect of all the crimes he has been convicted of as concerns the attack on Lukodi IDP camp on or about 19 May 2004.

220. The Chamber further observes that the crimes of attack against the civilian population as such, murder, attempted murder, torture, enslavement, pillaging and destruction of property in the context of the attack on Lukodi IDP camp were all committed for motives involving discrimination – within the meaning of Rule 145(2)(b)(v) of the Rules – in that the civilians living in Northern Uganda, in particular those who lived in government-established IDP camps, were targeted by reason of their identity as perceived, including by Dominic Ongwen himself, as associated with the Government of Uganda, and thus as the enemy. This aspect therefore informs the Chamber's consideration of the gravity of the crimes under Counts 24, 25-26, 27-28, 29-30, 33, 34 and 35. In this regard, the Chamber also refers to the considerations expressed above as concerns the interplay between the crimes under Counts 1, 2-3, 4-5, 8 and 9, on the one hand, and the crime of persecution under Count 10, as applicable, *mutatis mutandis*, also to the crimes of the same nature committed in the context of the attack on Lukodi IDP camp.

221. The Chamber also recalls the above clarification in relation to the joint analysis of analogous crimes against humanity and war crimes.[411]

[408] Trial Judgment, para. 179.
[409] Trial Judgment, para. 179.
[410] Trial Judgment, para. 2964.
[411] *See* para. 146.

222. The Chamber turns at this point to the specific considerations and conclusions concerning individual crimes for which Dominic Ongwen was convicted in relation to the attack on Lukodi IDP camp on or about 19 May 2004.

223. In relation to the war crime of attack against the civilian population (**Count 24**), the Chamber refers to the preliminary considerations expressed above in the analysis of the attack on Pajule IDP camp on 10 October 2003.[412] In the concrete circumstances of the attack on Lukodi IDP camp on or about 19 May 2004, the Chamber deems the gravity of the crime of attack against the civilian population to be high. The Chamber found that at least 80 LRA fighters, including fighters under the age of 15, executed Dominic Ongwen's orders and armed with an assortment of weapons, including an RPG, an SMG, a PK, AK-47s, and a '12', as well as machetes/pangas, attacked Lukodi camp.[413] The LRA fighters went into the civilian areas of the camp, where they targeted civilians within the camp with acts of violence.[414] Civilians in Lukodi IDP camp were shot, burnt and beaten and huts were set on fire.[415]

224. In light of the above, weighing and balancing all the relevant factors, concerning both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[416] as well as the presence of the aggravating circumstance of commission of the crime for a motive involving discrimination,[417] the Chamber sentences Dominic Ongwen to a term of 14 years of imprisonment for the war crime of attack against the civilian population as such (Count 24).

225. Turning to the crime against humanity of murder (**Count 25**) and the war crime of murder (**Count 26**), the Chamber reiterates that the value protected by the incrimination is human life, and that murder is inherently one of the most serious crimes.[418]

226. In the concrete circumstances of the case, the Chamber considers the gravity of the crimes of murder under Counts 25 and 26 to be very high. The high number of victims, at least

[412] *See* paras 148-149.
[413] Trial Judgment, para. 180.
[414] Trial Judgment, para. 181.
[415] Trial Judgment, paras 182, 184, 186.
[416] *See* above section I.C.2.i.
[417] *See* para. 220 above.
[418] *See* para. 153 above.

48,[419] justifies this conclusion, as does the fact that men, women and children were among the victims.[420] The aggravating circumstance of multiplicity of victims under Rule 145(2)(b)(iv) of the Rules is therefore established, also considering that in light of Dominic Ongwen's order to attack Lukodi IDP camp and everyone present in that location, including civilians,[421] it was also intended by him.

227. The Chamber finds, as an aggravating circumstance under Rule 145(2)(b)(iv) of the Rules, that the crime was committed with particular cruelty, which – given the ordinary *modus operandi* of the LRA in attacks and Dominic Ongwen's own orders prior to the attack on Lukodi IDP camp – was also entirely foreseeable by him. The Chamber finds such cruelty in particular in the cases of civilians who were locked into houses and burnt to death,[422] observing that this way of killing involves protracted pain and unthinkable agony. P-0018 testified that LRA fighters sent people into their houses, locked the doors and set the houses on fire with the people inside the houses.[423] LRA fighter P-0410 described seeing another fighter bolt the door of a house with many civilians crowded inside, lock it with a padlock, and set the house on fire.[424] According to P-0410, the fighter waited there until the people had burnt down.[425] Several specific instances of burning people to death were discussed in detail in the Trial Judgment.[426]

228. Furthermore, the Chamber found that at least six people were killed in the course of the LRA attackers' retreat from Lukodi IDP camp, after having been abducted and forced to carry heavy loads while being subjected to grave physical abuse.[427] In this situation, the victims were also particularly defenceless within the meaning of Rule 145(2)(b)(iii) of the Rules, necessitating that this be taken into account as an aggravating circumstance. Again, the Chamber considers that in light of the orders given by Dominic Ongwen ahead of the attack,[428] it must be held that he knew and intended that abducted and enslaved civilians would be among the persons killed.

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[419] Trial Judgment, para. 182.
[420] Trial Judgment, para. 182.
[421] Trial Judgment, para. 179.
[422] Trial Judgment, para. 182; see also para. 184.
[423] Trial Judgment, para. 1742.
[424] Trial Judgment, para. 1744.
[425] Trial Judgment, para. 1744.
[426] Trial Judgment, paras 1755-1756, 1758.
[427] Trial Judgment, paras 187-188.
[428] Trial Judgment, para. 179.

229. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[429] as well as the presence of the aggravating circumstances of the victims being particularly defenceless, particular cruelty of the crime and the multiplicity of victims, as just discussed, and the aggravating circumstance of commission of the crime for a motive involving discrimination,[430] the Chamber sentences Dominic Ongwen to a term of 20 years of imprisonment for the crime against humanity of murder (Count 25) and to a term of 20 years of imprisonment for the war crime of murder (Count 26).

230. As concerns the crime against humanity of attempted murder (**Count 27**) and the war crime of attempted murder (**Count 28**), the Chamber's analysis is guided by similar considerations as that under murder. The Chamber deems the gravity of the crimes in the concrete circumstances to be high, noting that the LRA fighters attempted to kill at least 11 civilians,[431] who eventually did not lose their life for reasons entirely outside the LRA fighters' (or Dominic Ongwen's) control. Also, the aggravating circumstance of multiplicity of victims under Rule 145(2)(b)(iv) of the Rules is established, also considering that, as discussed just above in respect of the crime of murder, this was intended by Dominic Ongwen.

231. Moreover, in the cases of civilians, including children, who were thrown into burning houses, [432] the Chamber finds the presence of the aggravating circumstance of commission of the crime with particular cruelty, under Rule 145(2)(b)(iv) of the Rules. The Chamber notes in this context the evidence of Joel Opiyo, referred to in the Trial Judgment. Joel Opiyo, who was seven years old at the time of the attack, was thrown into a burning hut by the LRA attackers and survived, stating that he was later taken to a hospital in Gulu where he spent three months recovering from burn wounds on his left leg and stomach, and that he still experiences pain on his back and knees.[433] In light of the order given by Dominic Ongwen ahead of the attack, the Chamber considers that this mode of commission was entirely foreseeable to him.

[429] *See* above section I.C.2.i.
[430] *See* para. 220 above.
[431] Trial Judgment, para. 184.
[432] Trial Judgment, para. 184.
[433] Trial Judgment, para. 1762.

232. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[434] as well as the presence of the aggravating circumstances of the particular cruelty of the crime and the multiplicity of victims, as just discussed, and the aggravating circumstance of commission of the crime for a motive involving discrimination,[435] the Chamber sentences Dominic Ongwen to a term of 14 years of imprisonment for the crime against humanity of attempted murder (Count 27) and to a term of 14 years of imprisonment for the war crime of attempted murder (Count 28).

233. Turning to torture as a crime against humanity (**Count 29**) and torture as a war crime (**Count 30**), the Chamber reiterates that torture is a particularly heinous act generally of very high gravity.[436] The Chamber considers the gravity of these crimes in the specific circumstances to be high. This assessment is based on the facts that civilians were forced to carry heavy loads, some for long distances, while tied together and under constant threat of harm, and were also injured by the LRA.[437] P-0187 in particular was wounded and raped.[438] Witness P-0024 was beaten throughout her abduction.[439] P-0024 stated during her testimony in 2017 that her ears continued to be injured as a result of the beatings received from the LRA attackers who abducted her.[440] Furthermore, mothers were forced to abandon their children in the bush.[441] LRA fighters threw small children, including babies, into the bush because the children were crying and making it difficult for their mothers to carry looted goods.[442] Based on the findings in the Trial Judgment, the aggravating circumstance of multiplicity of victims under Rule 145(2)(b)(iv) of the Rules is present, and in light of the order he gave in advance of the attack,[443] the Chamber also considers that it was intended by Dominic Ongwen.

234. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to

[434] *See* above section I.C.2.i.
[435] *See* para. 220 above.
[436] *See* para. 157 above.
[437] Trial Judgment, para. 187.
[438] Trial Judgment, para. 187.
[439] Trial Judgment, para. 187.
[440] P-0024: T-77, p. 27, line 16 – p. 28, line 1.
[441] Trial Judgment, para. 187.
[442] Trial Judgment, para. 187.
[443] Trial Judgment, para. 179.

his personal history,[444] as well as the presence of the aggravating circumstance of the multiplicity of victims, as just discussed, and the aggravating circumstance of commission of the crime for a motive involving discrimination,[445] the Chamber sentences Dominic Ongwen to a term of 14 years of imprisonment for the crime against humanity of torture (Count 29) and to a term of 14 years of imprisonment for the war crime of torture (Count 30).

235. With respect to the crime against humanity of enslavement (**Count 33**), the Chamber refers to its considerations above as to the gravity of this crime *in abstracto*.[446] In the concrete circumstances, the Chamber considers the gravity of the crime to be high. This is because LRA fighters abducted at least 29 civilians, men, women and children, to carry looted goods from the camp.[447] Some of the abductees were tied together.[448] The abductees were under armed guard to prevent their escape and were under constant threat of beatings or death.[449]

236. On the basis of the facts as found, the Chamber finds the presence of the aggravating circumstance of multiplicity of victims under Rule 145(2)(b)(iv) of the Rules, and in light of the order he gave in advance of the attack,[450] the Chamber also considers that it was intended by Dominic Ongwen.

237. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[451] as well as the presence of the aggravating circumstance of the multiplicity of victims, as just discussed, and the aggravating circumstance of commission of the crime for a motive involving discrimination,[452] the Chamber sentences Dominic Ongwen to a term of 14 years of imprisonment for the crime against humanity of enslavement (Count 33).

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[444] *See* above section I.C.2.i.
[445] *See* para. 220 above.
[446] *See* para. 162 above.
[447] Trial Judgment, para. 187.
[448] Trial Judgment, para. 187.
[449] Trial Judgment, para. 187.
[450] Trial Judgment, para. 179.
[451] *See* above section I.C.2.i.
[452] *See* para. 220 above.

238. In relation to the war crime of pillaging (**Count 34**), the Chamber reiterates the abstract considerations expressed above.[453] In the concrete circumstances, the Chamber assesses the gravity of the crime to be considerable. The Chamber found that LRA fighters entered civilian homes and shops in Lukodi IDP camp and looted food and other property from them.[454] Among the items stolen by the attackers were beans, maize, cooking oil, soap, cooking utensils, chickens, money and clothes.[455] P-0024 testified that food was looted from her house which had been distributed two days earlier by Caritas NGO.[456] Santo Ojera, one of the camp's leaders, testified that he observed the following day that a lot of food had been taken from the trading centre.[457] The facts indicate to the Chamber that the impact of the pillaging on the residents of Lukodi IDP camp was considerable.

239. On the basis of the facts as found, the Chamber finds the presence of the aggravating circumstance of multiplicity of victims under Rule 145(2)(b)(iv) of the Rules, also considering that given his order issued to the attackers in advance,[458] Dominic Ongwen intended it.

240. The pillaging at Lukodi IDP camp took place during an armed attack by LRA fighters acting on Dominic Ongwen's order. The killings, injuries and abductions of civilians, and the looting of houses and shops in the Lukodi camp trading centre formed part of a single design. In fact, the physical violence employed against civilians must be seen as a method of looting. As explained above,[459] such violence is not inherent to pillaging as a war crime and is not its constitutive element; rather, it must be qualified as the aggravating circumstance of particular cruelty within the meaning of Rule 145(2)(b)(iv) of the Rules.

241. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[460] as well as the presence of the aggravating circumstances of the multiplicity of victims and particular cruelty, as just discussed, and the aggravating

[453] *See* para. 169.
[454] Trial Judgment, para. 185.
[455] Trial Judgment, para. 185.
[456] Trial Judgment, para. 1783.
[457] Trial Judgment, para. 1783.
[458] Trial Judgment, para. 179.
[459] *See* para. 172.
[460] *See* above section I.C.2.i.

circumstance of commission of the crime for a motive involving discrimination,[461] the Chamber sentences Dominic Ongwen to a term of 8 years of imprisonment for the war crime of pillaging (Count 34).

242. Turning to the war crime of destruction of property (**Count 35**), the Chamber observes that it is, like pillaging, a crime against the right to property. Similar considerations apply in the abstract as expressed above with respect to pillaging as a war crime, in that the gravity of the crime is variable and depends also on the consequences for the victims who were deprived of their property.[462] Further, the Chamber is of the view that in addition to the deprivation of the owner of the right of property, destruction of property may also have additional gravity depending on the *de facto* economic, social, cultural or environmental function of the property destroyed.

243. In the concrete circumstances, the gravity of the crime is considerable. LRA fighters set huts on fire and approximately 210 civilian huts in the camp were burnt.[463] Civilians' household goods, including food stocks, were destroyed in these fires.[464] Domestic animals such as goats were also burnt by the LRA.[465]

244. On the basis of the facts as found, the Chamber finds the presence of the aggravating circumstance of multiplicity of victims under Rule 145(2)(b)(iv) of the Rules, also considering that given his order issued to the attackers in advance,[466] Dominic Ongwen intended it.

245. Santo Ojera's testimony illustrates the impact of the destruction by the LRA attackers of the residential huts in Lukodi IDP camp. He testified that when he returned to his houses and he found that the roof and everything inside was burnt, he decided that he should immediately leave the camp with his family.[467] His family walked to Unyama camp with no possessions other than a blanket saved by the witness's wife.[468]

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[461] *See* para. 220 above.
[462] *See* para. 169.
[463] Trial Judgment, para. 186.
[464] Trial Judgment, para. 186.
[465] Trial Judgment, para. 186.
[466] Trial Judgment, para. 179.
[467] P-0060 Statement, UGA-OTP-0069-0034-R01, at 0043, paras 63, 66.
[468] P-0060 Statement, UGA-OTP-0069-0034-R01, at 0043, para. 66.

246. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[469] as well as the presence of the aggravating circumstance of the multiplicity of victims, as just discussed, and the aggravating circumstance of commission of the crime for a motive involving discrimination,[470] the Chamber sentences Dominic Ongwen to a term of 8 years of imprisonment for the war crime of destruction of property (Count 35).

247. Finally in relation to the attack on Lukodi IDP camp, the Chamber addresses the conviction for the crime against humanity of persecution (**Count 36**), noting at first the general considerations expressed above.[471]

248. In the concrete circumstances, the Chamber deems this crime of persecution to be of very high gravity. Targeting residents of Lukodi IDP camp by reason of their identity as perceived supporters of the Ugandan government, the LRA attackers deprived a large number of civilians of the right to life, the right not to be subjected to cruel, inhuman or degrading treatment, the right to personal liberty, the right not to be held in slavery or servitude, and the right to private property.[472] It is noted that the facts which in the concrete circumstances form the severe deprivation of fundamental rights are identical to the facts otherwise underlying the convictions for murder, attempted murder, torture, enslavement, outrages upon personal dignity and pillaging.[473] In the concrete circumstances, considerations expressed above in relation to each of these crimes are accordingly also of relevance for persecution. As explained above, this overlap is properly dealt with below in the determination of the joint sentence.

249. The high number of victims must be qualified as an aggravating circumstance of multiplicity of victims under Rule 145(2)(b)(iv) of the Rules, also considering that in light of Dominic Ongwen's order to attack Lukodi IDP camp and everyone present in that location, including civilians,[474] it was also intended by him.

[469] *See* above section I.C.2.i.
[470] *See* para. 220 above.
[471] *See* paras 145, 174.
[472] Trial Judgment, paras 2959-2960.
[473] *See* Trial Judgment, para. 2960.
[474] Trial Judgment, para. 179.

250. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[475] as well as the presence of the aggravating circumstance of the multiplicity of victims, as just discussed, the Chamber sentences Dominic Ongwen to a term of 20 years of imprisonment for the crime against humanity of persecution (Count 36).

iv. Crimes committed in the context of the attack on Abok IDP camp

251. Dominic Ongwen has been convicted of 11 crimes which he committed – within the meaning of Article 25(3)(a) of the Statute – in the context of the attack carried out by LRA fighters on Abok IDP camp on or about 8 June 2004: attack against the civilian population as such as a war crime (Count 37); murder as a crime against humanity and as a war crime (Counts 38 and 39); attempted murder as a crime against humanity and as a war crime (Counts 40 and 41); torture as a crime against humanity and as a war crime (Counts 42 and 43); enslavement as a crime against humanity (Count 46); pillaging as a war crime (Count 47); destruction of property as a war crime (Count 48); and persecution as a crime against humanity (Count 49).

252. Also with respect to the crimes committed in the context of the attack on Abok IDP camp the Chamber commences its analysis by looking at the shared features, in particular as concerns the individual criminal responsibility of Dominic Ongwen.[476]

253. Dominic Ongwen was convicted for the crimes in relation to the attack on Abok IDP camp as an indirect perpetrator under Article 25(3)(a) of the Statute. The Chamber found that it was Dominic Ongwen who chose to attack Abok IDP camp.[477] Prior to the attack, he ordered LRA fighters subordinate to him to attack this camp, including civilians.[478] He gave instructions to go and collect food, abduct people, attack the barracks and burn down the camp and the barracks.[479] The Chamber concluded that the LRA soldiers selected and sent for the attack on Abok IDP camp as a whole functioned as a tool of Dominic Ongwen, through which he was able to execute his plan to attack Abok IDP

[475] *See* above section I.C.2.i.
[476] *See also* para. 139 above.
[477] Trial Judgment, para. 192.
[478] Trial Judgment, para. 192.
[479] Trial Judgment, para. 192.

camp, including the commission of crimes, and that, accordingly, the conduct of the individual LRA fighters in the execution of the crimes during the attack on Abok IDP camp must be attributed to Dominic Ongwen as his own.[480]

254. The Chamber considers, on the basis of its findings in the Trial Judgment, that the degree of Dominic Ongwen's participation, as well as the degree of his intent, were very high in respect of all the crimes he has been convicted of as concerns the attack on Abok IDP camp on or about 8 June 2004.

255. The Chamber further observes that the crimes of attack against the civilian population as such, murder, attempted murder, torture, enslavement, pillaging and destruction of property in the context of the attack on Abok IDP were all committed for motives involving discrimination – within the meaning of Rule 145(2)(b)(v) of the Rules – in that the civilians living in Northern Uganda, in particular those who lived in government-established IDP camps, were targeted by reason of their identity as perceived, including by Dominic Ongwen himself, as associated with the Government of Uganda, and thus as the enemy. This aspect therefore informs the Chamber's consideration of the gravity of the crimes under Counts 37, 38-39, 40-41, 42-43, 46, 47 and 48. In this regard, the Chamber also refers to the considerations expressed above as concerns the interplay between the crimes under Counts 1, 2-3, 4-5, 8 and 9, on the one hand, and the crime of persecution under Count 10, as applicable, *mutatis mutandis*, also to the crimes of the same nature committed in the context of the attack on Abok IDP camp.

256. The Chamber also recalls the above clarification in relation to the joint analysis of analogous crimes against humanity and war crimes.[481]

257. The Chamber turns at this point to the specific considerations, and conclusions concerning individual crimes for which Dominic Ongwen was convicted in relation to the attack on Abok IDP camp on or about 8 June 2004.

258. In relation to the war crime of attack against the civilian population (**Count 37**), the Chamber refers to the preliminary considerations expressed above in the analysis of the attack on Pajule IDP camp on 10 October 2003.[482] In the concrete circumstances of the

[480] Trial Judgment, para. 3011.
[481] *See* para. 146.
[482] *See* paras 148-149.

attack on Abok IDP camp on or about 8 June 2004, the Chamber deems the gravity of the crime of attack against the civilian population to be high.

259. At least 20 LRA fighters attacked Abok IDP camp with an assortment of arms, including guns.[483] The LRA fighters went past the old barracks in the south of the camp and entered the camp, firing their guns.[484] The LRA fighters attacked the civilians in the camp, shooting, burning and beating them.[485] The Chamber also noted in the Trial Judgment that while the evidence is not uniform on this point, estimates range from there being at least 7,000 to just over 13,000 residents in the camp at the time of the June 2004 attack.[486]

260. In light of the above, weighing and balancing all the relevant factors, concerning both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[487] as well as the presence of the aggravating circumstance of commission of the crime for a motive involving discrimination,[488] the Chamber sentences Dominic Ongwen to a term of 14 years of imprisonment for the war crime of attack against the civilian population as such (Count 37).

261. Turning to the crime against humanity of murder (**Count 38**) and the war crime of murder (**Count 39**), the Chamber reiterates that the value protected by the incrimination is human life, and that murder is inherently one of the most serious crimes.[489]

262. In the concrete circumstances of the case, the Chamber considers the crimes of murder under Counts 38 and 39 to be of very high gravity. Indeed, the Chamber found that the LRA attackers killed at least 28 civilian residents of Abok IDP camp, and that they killed civilians by shooting, burning and/or beating them.[490] The aggravating circumstance of multiplicity of victims under Rule 145(2)(b)(iv) of the Rules is therefore established, also considering that in light of the Chamber's findings as to the mental elements it was also objectively foreseeable by Dominic Ongwen.[491]

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[483] Trial Judgment, para. 193.
[484] Trial Judgment, para. 194.
[485] Trial Judgment, paras 196-197.
[486] Trial Judgment, para. 1858.
[487] *See* above section I.C.2.i.
[488] *See* para. 255 above.
[489] *See* para. 153 above.
[490] Trial Judgment, para. 197.
[491] *See* Trial Judgment, paras 3012-3019.

263. The Chamber finds, as an aggravating circumstance under Rule 145(2)(b)(iv) of the Rules, that the crime was committed with particular cruelty. This conclusion applies specifically in relation to the victims who were burnt to death by the LRA attackers, observing, as above, that this way of killing involves protracted pain and unthinkable agony.[492] Given the ordinary *modus operandi* of the LRA during attacks and in light of the Chamber's findings as to the mental elements,[493] this was also entirely foreseeable by him.

264. Furthermore, the Chamber found that some people were killed after having been abducted from Abok IDP camp by the LRA attackers and forced to carry heavy looted goods, and an injured fighter, while subjected to grave physical abuse.[494] In this situation, the victims were particularly defenceless within the meaning of Rule 145(2)(b)(iii) of the Rules, necessitating that this be taken into account as an aggravating circumstance. Again, in light of the Chamber's findings as to the mental elements,[495] it must be held that he knew and intended that abducted and enslaved civilians would be among the persons killed.

265. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[496] as well as the presence of the aggravating circumstances of the victims being particularly defenceless, particular cruelty of the crime and the multiplicity of victims, as just discussed, and the aggravating circumstance of commission of the crime for a motive involving discrimination, [497] the Chamber sentences Dominic Ongwen to a term of 20 years of imprisonment for the crime against humanity of murder (Count 38) and to a term of 20 years of imprisonment for the war crime of murder (Count 39).

266. As concerns the crime against humanity of attempted murder (**Count 40**) and the war crime of attempted murder (**Count 41**), the Chamber's analysis is guided by similar considerations as that under murder. The Chamber deems the gravity of the crimes in the concrete circumstances to be high, noting that the LRA fighters attempted to kill at least

[492] *See* para. 227.
[493] Trial Judgment, paras 3012-3019.
[494] Trial Judgment, paras 201-203.
[495] Trial Judgment, paras 3012-3019.
[496] *See* above section I.C.2.i.
[497] *See* para. 255 above.

four civilians,[498] who eventually did not lose their life for reasons entirely outside the LRA fighters' (or Dominic Ongwen's) control. In addition, the aggravating circumstance of multiplicity of victims under Rule 145(2)(b)(iv) of the Rules is established, also considering that in light of the Chamber's findings as to the mental elements it was also objectively foreseeable to Dominic Ongwen.[499]

267. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[500] as well as the presence of the aggravating circumstance of the multiplicity of victims, as just discussed, and the aggravating circumstance of commission of the crime for a motive involving discrimination, [501] the Chamber sentences Dominic Ongwen to a term of 14 years of imprisonment for the crime against humanity of attempted murder (Count 40) and to a term of 14 years of imprisonment for the war crime of attempted murder (Count 41).

268. Turning to torture as a crime against humanity (**Count 42**) and torture as a war crime (**Count 43**), the Chamber reiterates that torture is a particularly heinous act generally of very high gravity.[502] The Chamber considers the gravity of these crimes in the specific circumstances to be high. The Chamber makes this assessment based on the fact that LRA fighters beat civilians as a means of punishment for not being able to continue walking and to intimidate other abductees to continue without stopping or resisting, and the fact that LRA fighters forced an abductee to kill another abductee with a club, as a lesson to others who were thinking of escaping.[503] Based on the findings in the Trial Judgment, the aggravating circumstance of multiplicity of victims under Rule 145(2)(b)(iv) of the Rules is present, and, in light of the Chamber's findings as to the mental elements,[504] it must be held that it was also intended by Dominic Ongwen.

269. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to

[498] Trial Judgment, paras 199, 202.
[499] *See* Trial Judgment, paras 3012-3019.
[500] *See* above section I.C.2.i.
[501] *See* para. 255 above.
[502] *See* para. 157 above.
[503] Trial Judgment, paras 201-202.
[504] *See* Trial Judgment, paras 3012-3019.

his personal history,[505] as well as the presence of the aggravating circumstance of the multiplicity of victims, as just discussed, and the aggravating circumstance of commission of the crime for a motive involving discrimination, [506] the Chamber sentences Dominic Ongwen to a term of 14 years of imprisonment for the crime against humanity of torture (Count 42) and to a term of 14 years of imprisonment for the war crime of torture (Count 43).

270. With respect to the crime against humanity of enslavement (**Count 46**), the Chamber refers to its considerations above as to the gravity of this crime *in abstracto*.[507] In the concrete circumstances, the Chamber considers the gravity of the crime to be high. This is because in the course of the attack, the LRA fighters deprived many civilians of their liberty by abducting them and forcing them to carry looted goods, as well as an injured fighter, for long distances.[508] Some of the abductees were tied to each other.[509] The abductees were under armed guard to prevent their escape and were under constant threat of beatings or death.[510] Some abductees were killed in captivity, at times for failing to keep up with their captors, others eventually escaped and returned home, some remained with the LRA.[511]

271. On the basis of the facts as found, the Chamber finds the presence of the aggravating circumstance of multiplicity of victims under Rule 145(2)(b)(iv) of the Rules, and, in light of the Chamber's findings as to the mental elements, it must be held that it was also intended by Dominic Ongwen.[512]

272. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[513] as well as the presence of the aggravating circumstance of the multiplicity of victims, as just discussed, and the aggravating circumstance of commission of the crime for a motive involving discrimination, [514] the Chamber

[505] *See* above section I.C.2.i.
[506] *See* para. 255 above.
[507] *See* above, para. 162.
[508] Trial Judgment, para. 201.
[509] Trial Judgment, para. 201.
[510] Trial Judgment, para. 201.
[511] Trial Judgment, para. 203.
[512] *See* Trial Judgment, paras 3012-3019.
[513] *See* above section I.C.2.i.
[514] *See* para. 255 above.

sentences Dominic Ongwen to a term of 14 years of imprisonment for the crime against humanity of enslavement (Count 46).

273. In relation to the war crime of pillaging (**Count 47**), the Chamber reiterates the abstract considerations expressed above.[515] In the concrete circumstances, the Chamber assesses the gravity of the crime to be considerable. The Chamber found that the LRA fighters looted civilian houses and shops at the trading centre, taking away food items such as sugar, flour, beans, maize, goats, cooking oil, biscuits and salt, as well as a radio, money, clothing, cooking utensils and medicine.[516] The Chamber notes that Cyprian Ayoo testified that when the people returned in the morning after the attack, there were no food items left, the rebels took the food items as well as cooking utensils that were newly distributed.[517] This indicates the considerable impact of the crime of pillaging on the residents of Abok IDP camp.

274. On the basis of the facts as found, the Chamber finds the presence of the aggravating circumstance of multiplicity of victims under Rule 145(2)(b)(iv) of the Rules, also considering that given his order issued to the attackers in advance,[518] Dominic Ongwen intended it.

275. Also, the pillaging at Abok IDP camp took place during an armed attack by LRA fighters acting on Dominic Ongwen's order. The killings, injuries and abductions of civilians, and the looting of houses and shops in the Lukodi camp trading centre formed part of a single design. The Chamber also specifically found that at times, while demanding the goods, LRA fighters would use violence.[519] In fact, the physical violence employed against civilians must be seen as a method of looting. As explained above,[520] such violence is not inherent to pillaging as a war crime and is not its constitutive element; rather, it must be qualified as the aggravating circumstance of particular cruelty within the meaning of Rule 145(2)(b)(iv) of the Rules.

[515] *See* para. 169.
[516] Trial Judgment, para. 195.
[517] Trial Judgment, para. 1901.
[518] Trial Judgment, para. 192.
[519] Trial Judgment, para. 195.
[520] *See* para. 172.

276. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[521] as well as the presence of the aggravating circumstances of the multiplicity of victims and particular cruelty, as just discussed, and the aggravating circumstance of commission of the crime for a motive involving discrimination, [522] the Chamber sentences Dominic Ongwen to a term of 8 years of imprisonment for the war crime of pillaging (Count 47).

277. Turning to the war crime of destruction of property (**Count 48**), the Chamber reiterates the considerations stated above.[523] In the concrete circumstances, the gravity of the crime is considerable, in view of the fact that several hundred civilian homes were burnt during the attack, and that civilians' food stocks were also destroyed.[524] One witness also specifically testified that when he returned to the camp around three months after the attack, there were a lot of changes – people did not have clothes and had lost their goats and chickens and many other things.[525]

278. On the basis of the facts as found, the Chamber finds the presence of the aggravating circumstance of multiplicity of victims under Rule 145(2)(b)(iv) of the Rules, also considering that given his order issued to the attackers in advance,[526] Dominic Ongwen intended it.

279. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[527] as well as the presence of the aggravating circumstance of the multiplicity of victims, as just discussed, and the aggravating circumstance of commission of the crime for a motive involving discrimination, [528] the Chamber sentences Dominic Ongwen to a term of 8 years of imprisonment for the war crime of destruction of property (Count 48).

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[521] *See* above section I.C.2.i.
[522] *See* para. 255 above.
[523] *See* para. 242.
[524] Trial Judgment, para. 196.
[525] Trial Judgment, para. 1924.
[526] Trial Judgment, para. 192.
[527] *See* above section I.C.2.i.
[528] *See* para. 255 above.

280. Finally in relation to the attack on Abok IDP camp, the Chamber addresses the conviction for the crime against humanity of persecution (**Count 49**), noting at first the general considerations expressed above.[529]

281. In the concrete circumstances, the Chamber deems the gravity of the crime of persecution to be very high. Targeting residents of Abok IDP camp by reason of their identity as perceived supporters of the Ugandan government, the LRA attackers deprived a large number of civilians of the right to life, the right not to be subjected to cruel, inhuman or degrading treatment, the right to personal liberty, the right not to be held in slavery or servitude, and the right to private property.[530] It is noted that the facts which in the concrete circumstances form the severe deprivation of fundamental rights are identical to the facts otherwise underlying the convictions for murder, attempted murder, torture, enslavement, outrages upon personal dignity and pillaging.[531] In the concrete circumstances, considerations expressed above in relation to each of these crimes are accordingly also of relevance for persecution. As explained above, this overlap is properly dealt with below in the determination of the joint sentence.

282. The high number of victims must be qualified as an aggravating circumstance of multiplicity of victims under Rule 145(2)(b)(iv) of the Rules, also considering that in light of the Chamber's findings as to the mental elements it was also intended by Dominic Ongwen.[532]

283. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[533] as well as the presence of the aggravating circumstance of the multiplicity of victims, as just discussed, the Chamber sentences Dominic Ongwen to a term of 20 years of imprisonment for the crime against humanity of persecution (Count 49).

[529] *See* paras 145, 174.
[530] Trial Judgment, paras 3006-3007.
[531] *See* Trial Judgment, para. 3006.
[532] Trial Judgment, paras 3012-3019.
[533] *See* above section I.C.2.i.

v. Sexual and gender-based crimes directly perpetrated by Dominic Ongwen

284. Dominic Ongwen has been convicted of 11 crimes which he committed – 'as an individual' within the meaning of Article 25(3)(a) of the Statute – against seven women who had been 'distributed' to him and placed into his household: forced marriage as an other inhumane act as a crime against humanity (Count 50); torture as a crime against humanity and as a war crime (Counts 51 and 52); rape as a crime against humanity and as a war crime (Count 53 and 54); sexual slavery as a crime against humanity and as a war crime (Counts 55 and 56); enslavement as a crime against humanity (Count 57); forced pregnancy as a crime against humanity and as a war crime (Counts 58 and 59); and outrages upon personal dignity (Count 60).

285. The Chamber assesses the appropriate sentence for each of these crimes in turn, bearing in mind what is said above in relation to analogous crimes against humanity and war crimes.[534] Before doing so, the Chamber addresses three aggravating circumstances which are present equally, or very similarly, with respect to each of the 11 crimes.

286. First, although not all of the crimes were committed against all the seven women, it is evident that each of the crimes was committed against multiple victims, representing the aggravating circumstance provided for in Rule 145(2)(b)(iv) of the Rules. In light of the degree of Dominic Ongwen's participation in each of the crimes, it is also clear that the multiplicity of victims was known to him, and was in fact intended by him.

287. Second, the Chamber considers that the victims of the crimes were particularly defenceless within the meaning of Rule 145(2)(b)(iii), and that the relevant aggravating circumstance is therefore present as concerns the crimes under consideration.[535] Indeed, all seven women were abducted and suffered the crimes under consideration at a young age, with some of them being only children at that time.[536] Most strikingly, P-0226 was only around seven years old when abducted and around 12 years old when becoming Dominic Ongwen's so-called 'wife', while P-0236 was 11 years old when she was abducted and 'distributed' to Dominic Ongwen, and P-0235 14 or 15. The other four women (P-0099, P-0101, P-0214 and P-0227) were of an age between approximately 19

[534] *See* para. 146.
[535] *See also* Prosecution Brief, para. 23.
[536] *See* Trial Judgment, section IV.C.10.i.

and 21 years old at the time relevant to the crimes committed against them of which Dominic Ongwen was found guilty under the charges brought against him. Dominic Ongwen was obviously aware of the fact that the seven girls were of a young age, making them particularly defenceless with respect to the crimes committed against them; in fact he even intended the girls abducted by, or distributed to him to be of such young and vulnerable age.

288. Third, the Chamber finds, as also submitted by the Prosecution,[537] and considering the fact that all of the seven victims of the crimes at issue are women, and that Dominic Ongwen, Joseph Kony and the Sinia brigade leadership engaged in a coordinated and methodical effort, relying on the LRA soldiers under their control, to abduct women and girls in Northern Uganda and force them to serve in Sinia brigade as so-called 'wives' of members of Sinia brigade, and as domestic servants,[538] that the crimes were committed with a discriminatory motive, on the grounds of gender. This constitutes an aggravating circumstance under Rule 145(2)(b)(v) of the Rules.

289. Under **Count 50**, Dominic Ongwen has been convicted of the crime of forced marriage, as an inhumane act under article 7(1)(k) of the Statute of a character similar to the acts set out in Article 7(1) (a)-(j) of the Statute, of [redacted] (P-0099) between 1 July 2002 and September 2002, of [redacted] (P-0101) between 1 July 2002 and July 2004, of [redacted] (P-0214) between September 2002 and 31 December 2005, of [redacted] (P-0226) between 1 July 2002 and sometime in 2003, of [redacted] (P-0227) between approximately April 2005 and 31 December 2005.

290. In the Trial Judgment, the Chamber already provided its view as to the relevant protected interests and the consequences and victimisation suffered by the victims of the conduct underlying the crime at issue.[539] The incrimination of forced marriage protects the fundamental right to enter a marriage with the free and full consent of another person, and as such also marriage as a social institution.[540] The central element, and underlying act of forced marriage is the imposition of this status on the victim, i.e. the imposition, regardless of the will of the victim, of duties that are associated with marriage – including

[537] Prosecution Brief, para. 25.
[538] *See* Trial Judgment, para. 212.
[539] *See* Trial Judgment, paras 2741-2753.
[540] Trial Judgment, para. 2748.

in terms of exclusivity of the (forced) conjugal union imposed on the victim – as well as the consequent social stigma.[541] Such a state, beyond its illegality, has also social, ethical and even religious effects which have a serious impact on the victim's physical and psychological well-being.[542] The victim may see themselves as being bonded or united to another person despite the lack of consent.[543] Additionally, a given social group may see the victim as being a 'legitimate' spouse.[544] To the extent forced marriage results in the birth of children, this creates even more complex emotional and psychological effects on the victim and their children beyond the obvious physical effects of pregnancy and child-bearing.[545] Accordingly, the harm suffered from forced marriage can consist of being ostracised from the community, mental trauma, the serious attack on the victim's dignity, and the deprivation of the victim's fundamental rights to choose his or her spouse.[546] Whereas gravity of forced marriage in concrete cases depends on many variables, the Chamber considers that it is inherently a very grave crime.

291. Also on the concrete facts of the case, the Chamber considers the crime to be of very high gravity. It concerns five victims, and durations of between three months and more than three years. The means employed to commit the crime are also revealing of very high gravity: the five victims were not allowed to leave, Dominic Ongwen placed them under heavy guard and they were told or came to understand that if they tried to escape they would be killed.[547] Dominic Ongwen placed the five victims into the situation of forced marriage and sustained that situation over a long period of time. He engaged in essentially identical conduct systematically with respect to all the victims. Therefore, the Chamber assesses Dominic Ongwen's degree of participation and degree of intent as very high.

292. Factual consequences arising (also) from the imposition of these 'marriages' also inform the gravity of the crime under consideration. That is particularly the case for the continuing nature, beyond the period of time of the established crime and even to date, of the features of at least some of these forced 'conjugal' relationships. Forced 'marriage' was in fact designed and intended by Dominic Ongwen as a purportedly valid continuous relationship, and as such binding on the victims. Dominic Ongwen himself – as well as

[541] Trial Judgment, para. 2748.
[542] Trial Judgment, para. 2748.
[543] Trial Judgment, para. 2748.
[544] Trial Judgment, para. 2748.
[545] Trial Judgment, para. 2748.
[546] Trial Judgment, para. 2749.
[547] Trial Judgment, para. 206.

his counsel on his behalf – still refers to them as his 'wives', and also the concerned women still perceive themselves (and are generally perceived) as somehow associated with him. This association is exacerbated by the fact that, as part, and consequence of this imposition of forced marriage, children fathered by Dominic Ongwen were also born to P-0099, P-0101, P-0214 and P-0227.[548] This circumstance further perpetuates the continuing bond between Dominic Ongwen and his victims, extending beyond the psychological and social pressure created by the (forced) 'marriage' itself.

293. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[549] as well as the presence of the aggravating circumstances of the multiplicity of victims, the victims being particularly defenceless and a discriminatory motive, as discussed above,[550] the Chamber sentences Dominic Ongwen to a term of 20 years of imprisonment for the crime against humanity of forced marriage, as an inhumane act under article 7(1)(k) of the Statute of a character similar to the acts set out in Article 7(1) (a)-(j) of the Statute (Count 50).

294. Under **Count 51** and **Count 52**, Dominic Ongwen has been convicted of, respectively, the crime against humanity of torture and the war crime of torture of [redacted] (P-0101) between 1 July 2002 and July 2004, of [redacted] (P-0214) between September 2002 and 31 December 2005, of [redacted] (P-0226) between 1 July 2002 and sometime in 2003, and of [redacted] (P-0227) between approximately April 2005 and 31 December 2005.

295. The Chamber reiterates that torture is a particularly heinous act generally of very high gravity.[551] In the concrete circumstances, the Chamber considers the gravity of torture to be very high. For a long period of time, the four victims were subjected to beating at Dominic Ongwen's command at any time.[552] They were hit with canes and sticks.[553]

[548] Trial Judgment, paras 2069-2070. Insofar as the bearing of children fathered by Dominic Ongwen constitutes a consequence, and a significant part of the (continuing) imposition, as a matter of fact, of a forced 'marriage' on the women concerned, it is of no relevance for the point made here by the Chamber that not all such children were actually conceived during the specific, narrower timeframe of the crime of forced marriage of which Dominic Ongwen was convicted under Count 50.
[549] *See* above section I.C.2.i.
[550] *See* paras 286-288.
[551] *See* para. 157 above.
[552] Trial Judgment, para. 208.
[553] Trial Judgment, para. 208.

Some beatings knocked them unconscious, left them unable to walk and left permanent scars.[554]

296. Just as an example, the Chamber discussed in the Trial Judgment the evidence of P-0226 in this regard. P-0226 described many beatings at Dominic Ongwen's command, including an incident where Dominic Ongwen ordered an escort to beat her after hearing that she had 'eased [her]self' in nearby water.[555] P-0226 testified that Dominic Ongwen watched as P-0226 was beaten with long sticks to unconsciousness.[556]

297. Dominic Ongwen engaged in conduct amounting to torture over a protracted period and against four different victims. Therefore, the Chamber assesses Dominic Ongwen's degree of participation and degree of intent as very high.

298. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[557] as well as the presence of the aggravating circumstances of the multiplicity of victims, the victims being particularly defenceless and a discriminatory motive, as discussed above,[558] the Chamber sentences Dominic Ongwen to a term of 20 years of imprisonment for the crime against humanity of torture (Count 51) and to a term of 20 years of imprisonment for the war crime of torture (Count 52).

299. Under **Count 53** and **Count 54**, Dominic Ongwen has been convicted of, respectively, the crime against humanity of rape and the war crime of rape of [redacted] (P-0101) between 1 July 2002 and July 2004, of [redacted] (P-0214) between September 2002 and 31 December 2005, of [redacted] (P-0226) between 1 July 2002 and sometime in 2003, of [redacted] (P-0227) between approximately April 2005 and 31 December 2005.

[554] Trial Judgment, para. 208.
[555] Trial Judgment, para. 2075.
[556] Trial Judgment, para. 2075.
[557] *See* above section I.C.2.i.
[558] *See* paras 286-288.

300. Rape is the central crime against sexual self-determination and sexual integrity. It is of inherent gravity, which has been widely recognised also in the jurisprudence of international courts.[559]

301. Turning to the concrete facts, the Chamber finds the rapes for which Dominic Ongwen has been convicted under Counts 53 and 54 to be of very high gravity. Dominic Ongwen had sex by force with the four victims on a repeated basis, whenever he wanted.[560] He committed the rapes by placing the victims in a situation of detention, where they were also beaten at his command.[561] Some details of Dominic Ongwen's conduct are analysed in the Trial Judgment, including details of specific instances of rape revealing the brutality of his actions.[562] The Chamber also recalls that, as a result of rapes, some of the concerned victims became pregnant and gave birth to children fathered by Dominic Ongwen.

302. Dominic Ongwen engaged in conduct amounting to rape over a protracted period and against four different victims. Therefore, the Chamber assesses Dominic Ongwen's degree of participation and degree of intent as very high.

303. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[563] as well as the presence of the aggravating circumstances of the multiplicity of victims, the victims being particularly defenceless and a discriminatory motive, as discussed above,[564] the Chamber sentences Dominic Ongwen to a term of 20 years of imprisonment for the crime against humanity of rape (Count 53) and to a term of 20 years of imprisonment for the war crime of rape (Count 54).

304. Under **Count 55** and **Count 56**, Dominic Ongwen has been convicted of, respectively, the crime against humanity of sexual slavery and the war crime of sexual slavery of [redacted] (P-0101) between 1 July 2002 and July 2004, of [redacted] (P-0214) between September 2002 and 31 December 2005, of [redacted] (P-0226)

[559] *Ntaganda* Sentence, para. 96 and the cited jurisprudence.
[560] Trial Judgment, para. 207.
[561] Trial Judgment, paras 206, 208.
[562] Trial Judgment, paras 2041-2070.
[563] *See* above section I.C.2.i.
[564] *See* paras 286-288.

between 1 July 2002 and sometime in 2003, of [redacted] (P-0227) between approximately April 2005 and 31 December 2005.

305. The crime of sexual slavery essentially combines the crime of enslavement,[565] and causing the victims to engage in acts of sexual nature. The latter is in itself a grave act of sexual violence, given the coercion inherent in enslavement. As a result, the Chamber deems sexual slavery in general to be a particularly grave crime.

306. In the concrete circumstances, the crime for which Dominic Ongwen was convicted was of very high gravity. The victims were held captive in Dominic Ongwen's household for a protracted period of time, during which they were subjected to physical and psychological abuse as discussed in the Trial Judgment.[566] They were forced to perform domestic work.[567] They were forced to have sex with Dominic Ongwen on a repeated basis whenever Dominic Ongwen wanted.[568]

307. Dominic Ongwen engaged in conduct amounting to sexual slavery over a protracted period and against four different victims. Therefore, the Chamber assesses Dominic Ongwen's degree of participation and degree of intent as very high.

308. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[569] as well as the presence of the aggravating circumstances of the multiplicity of victims, the victims being particularly defenceless and a discriminatory motive, as discussed above,[570] the Chamber sentences Dominic Ongwen to a term of 20 years of imprisonment for the crime against humanity of sexual slavery (Count 55) and to a term of 20 years of imprisonment for the war crime of sexual slavery (Count 56).

309. Under **Count 57**, Dominic Ongwen has been convicted of the crime against humanity of enslavement of [redacted] (P-0099) between 1 July 2002 and September 2002, of [redacted]

[565] *See* para. 162 above.
[566] Trial Judgment, paras 206, 208.
[567] Trial Judgment, para. 208.
[568] Trial Judgment, para. 207.
[569] *See* above section I.C.2.i.
[570] *See* paras 286-288.

[redacted] (P-0235) from September 2002 to 31 December 2005, and of [redacted] (P-0236) between September 2002 and 31 December 2005.

310. The Chamber refers to its considerations above as to the gravity of this crime *in abstracto*.[571]

311. The crime for which Dominic Ongwen has been convicted under Count 57 is of very high gravity. The victims were held captive by Dominic Ongwen in his household for a protracted period of time, during which they were subjected to physical and psychological abuse as discussed in the Trial Judgment,[572] and forced to perform household work as domestic servants.[573]

312. The Chamber also considers that the gravity of the crime under consideration is also informed by what two of the victims, namely P-0235 and P-0236, experienced subsequently. The Chamber is aware that, in the Court's legal framework, the sentencing is not, procedurally, a moment to broaden the scope of the case, and recalls that the Prosecutor chose to bring charges for crimes committed against P-0235 and P-0236 only up to 31 December 2005, when both victims, given their young age, were still domestic servants (*ting tings*) in Dominic Ongwen's household. Such a state of enslavement in which they were kept at the relevant time (and of which Dominic Ongwen was convicted under Count 57) led however to certain further consequences after the conclusion of the period relevant to the charges.

313. The two women were indeed kept by Dominic Ongwen in such an uninterrupted state of coercion – which would continue for nine years, until his surrender to the Court –, in the context of which they were also raped by him, forcibly made by him his so-called 'wives' and mothers of children fathered by him.[574] While satisfied beyond any reasonable doubt of the occurrence of these subsequent facts, the Chamber does not – and cannot – enter a conviction on Dominic Ongwen for these additional crimes given that they have not been charged as such. It however considers them a 'natural' outcome, which Dominic Ongwen put in place as soon as the two girls were mature enough, of their abduction and

[571] *See* para. 162 above.
[572] Trial Judgment, paras 206, 208.
[573] Trial Judgment, para. 208.
[574] Trial Judgment, paras 2034, 2036, 2060-2064, 2066, 2068, 2070, 2092-2093.

enslavement. Even more, the enslavement of very young girls was – beyond their immediate use as *ting tings* – generally preliminary, in time and causation, to their transformation into forced so-called 'wives' as soon as considered to have reached a certain degree of physical and sexual maturity.[575] In this sense the enslavement of these young girls, and notably, as far as the crime under Count 57 is concerned, P-0235 and P-0236, was somehow preparatory to – let alone having just a link of sufficient 'proximity' with[576] – subsequent criminal conduct put in place against them by Dominic Ongwen. In a context as that of the LRA, and considering Dominic Ongwen's own past conduct, it was thus at least 'objectively foreseeable' by Dominic Ongwen, if not specifically intended by him, that the enslavement of P-0235 and P-0236 would continue uninterrupted and involve their further victimisation. The Chamber reiterates that these additional facts – on which evidence was obtained even prior to the commencement of the trial and which are explicitly referred to in the Trial Judgment – are not taken into account for their own sake: they do not form the basis of any crime of which Dominic Ongwen was convicted, nor of any additional 'crime' of which he is punished as a result of the present sentence without a conviction having been entered; they however inform the gravity of the crime of enslavement under Count 57. Indeed, as cautioned by the Appeals Chamber as concerns instances of this kind, while the person is sentenced only for the crime for which he or she was convicted, 'conduct – including criminal conduct – that occurred after the [crime] for which the convicted person is convicted may also be relevant for the sentencing phase' as 'inform[ing] the assessment of the gravity of the crime […] or the convicted person's culpability or giv[ing] rise to an aggravating circumstance'.[577] This is because '[i]t would be arbitrary to exclude such conduct merely because it could potentially have been charged as a separate [crime]'.[578] In the Chamber's view, this is precisely the situation of Dominic Ongwen's subsequent conduct informing the gravity of the crime of the crime of enslavement under Count 57.

314. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[579] as well as the presence of the aggravating circumstances of the

[575] *See* Trial Judgment, paras 2248-2255.
[576] *See* *Bemba et al.* Appeal Sentencing Judgment, paras 114-116.
[577] *See* *Bemba et al.* Appeal Sentencing Judgment, para. 114.
[578] *See* *Bemba et al.* Appeal Sentencing Judgment, para. 114.
[579] *See* above section I.C.2.i.

multiplicity of victims, the victims being particularly defenceless and a discriminatory motive, as discussed above,[580] the Chamber sentences Dominic Ongwen to a term of 20 years of imprisonment for the crime against humanity of enslavement (Count 57).

315. Under **Count 58** and **Count 59**, Dominic Ongwen has been convicted of, respectively, the crime against humanity of forced pregnancy and the war crime of forced pregnancy of [redacted] (P-0101, two pregnancies) between 1 July 2002 and July 2004, and of [redacted] (P-0214) sometime in 2005.

316. As explained in the Trial Judgment, **t**he crime of forced pregnancy is grounded in the woman's right to personal and reproductive autonomy and the right to family.[581] The crime of forced pregnancy depends on the unlawful confinement of a (forcibly made) pregnant woman, with the effect that the woman is deprived of reproductive autonomy.[582]

317. In the Chamber's assessment, the gravity of the crime in the concrete circumstances is very high. The crime involved three instances of unlawful confinement of a woman forcibly made pregnant, against two women. The Chamber notes as a factor of gravity also that the victims became pregnant through acts of rape by Dominic Ongwen.[583]

318. Dominic Ongwen engaged in conduct amounting to forced pregnancy at different times on three separate occasions, against two victims – even twice with one of them. Therefore, the Chamber assesses Dominic Ongwen's degree of participation and degree of intent as very high.

319. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[584] as well as the presence of the aggravating circumstances of the multiplicity of victims, the victims being particularly defenceless and a discriminatory motive, as discussed above,[585] the Chamber sentences Dominic Ongwen to a term of 20 years of imprisonment for the crime against humanity of forced pregnancy (Count 58)

[580] *See* paras 286-288.
[581] Trial Judgment, para. 2717.
[582] Trial Judgment, para. 2722.
[583] Trial Judgment, paras 2068-2069.
[584] *See* above section I.C.2.i.
[585] *See* paras 286-288.

and to a term of 20 years of imprisonment for the war crime of forced pregnancy (Count 59).

320. Under **Count 60**, Dominic Ongwen has been convicted of the war crime of outrages upon personal dignity of [redacted] (P-0226) sometime in 2002 or early 2003 close to Patongo, Northern Uganda, and of [redacted] (P-0235) sometime in late 2002 or early 2003 at an unspecified location in Northern Uganda.

321. The Chamber's general considerations in relation to the war crime of outrages upon personal dignity are expressed above.[586]

322. The crime for which Dominic Ongwen was convicted comprises two separate episodes and is of high gravity. The victims were respectively approximately 11 and approximately 15 years old at the time of the crime.[587] Both victims reported severe anguish resulting from the experience.[588]

323. Dominic Ongwen committed the crime of outrages upon personal dignity by directly imposing his will upon the victims and forcing them to take part in killings. The Chamber assesses his degree of participation and degree of intent as very high.

324. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[589] as well as the presence of the aggravating circumstances of the multiplicity of victims, the victims being particularly defenceless and a discriminatory motive, as discussed above,[590] the Chamber sentences Dominic Ongwen to a term of 14 years of imprisonment for the war crime of outrages upon personal dignity (Count 60).

vi. Sexual and gender-based crimes not directly perpetrated by Dominic Ongwen

325. Dominic Ongwen has been convicted of eight crimes which he committed – within the meaning of Article 25(3)(a) of the Statute – in the context of a coordinated and methodical effort in Sinia brigade between 1 July 2002 and 31 December 2005: forced

[586] *See* para. 207.
[587] *See* Trial Judgment, paras 2016, 2025.
[588] Trial Judgment, paras 209-210.
[589] *See* above section I.C.2.i.
[590] *See* paras 286-288.

marriage as an other inhumane act as a crime against humanity (Count 61); torture as a crime against humanity and as a war crime (Counts 62-63); rape as a crime against humanity and as a war crime (Counts 64-65); sexual slavery as a crime against humanity and as a war crime (Counts 66-67); and enslavement as a crime against humanity (Count 68).

326. Before turning to the assessment of each of the crimes for the purpose of the determination of the appropriate sentence, the Chamber will addresses certain relevant circumstances applicable to all of them.

327. As laid out in detail in the Trial Judgment, Dominic Ongwen committed the eight crimes at issue 'jointly with' and 'through' others within the meaning of Article 25(3)(a) of the Statute. The Chamber found that Dominic Ongwen, Joseph Kony and the Sinia brigade leadership engaged in a coordinated and methodical effort, relying on the LRA soldiers under their control, to abduct women and girls in Northern Uganda and force them to serve in Sinia brigade as so-called 'wives' of members of Sinia brigade, and as domestic servants.[591]

328. The crimes considered in this section were all committed as part of this common plan. The Chamber held that 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.[592] Among the specific factual findings, the Chamber found that Sinia brigade soldiers abducted civilian women and girls in execution of Dominic Ongwen's orders, that, in the exercise of his authority, Dominic Ongwen personally decided on the 'distribution' of abducted women and girls, and that Dominic Ongwen personally assigned women and girls as so-called 'wives' and used his authority as LRA commander to enforce the so-called 'marriage' in Sinia brigade.[593]

329. Accordingly, for the purpose of sentencing, the Chamber considers Dominic Ongwen's degree of participation and degree of intent very high in respect of all of the crimes discussed hereunder.

[591] Trial Judgment, para. 212.
[592] Trial Judgment, para. 3094.
[593] Trial Judgment, paras 213-214, 216.

330. There are also three aggravating circumstances which are present equally, or very similarly, with respect to each of the eight crimes, and are thus addressed at the outset.

331. First, in relation to the scale of the crimes, while precise findings as to the number of victims were not possible, the Chamber found in the Trial Judgment that at any time between 1 July 2002 and 31 December 2005 there were over one hundred abducted women and girls in Sinia brigade.[594] Each of the crimes was committed against multiple victims, representing the aggravating circumstances explicitly provided for in Rule 145(2)(b)(iv) of the Rules. In light of the degree of Dominic Ongwen's participation in each of the crimes, it is also clear that the multiplicity of victims was known to him, and was in fact intended by him.

332. Second, the Chamber considers that the facts demonstrate the presence of the aggravating circumstance under Rule 145(2)(b)(iii), i.e. that the victims were particularly defenceless,[595] given, at least, the very young age at which many of the concerned women and girls were subject to the crimes under consideration and of which Dominic Ongwen was fully aware.

333. Third, as discussed above,[596] the Chamber considers that the crimes were committed for a discriminatory motive, on the grounds of gender. This constitutes an aggravating circumstance under Rule 145(2)(b)(v) of the Rules.

334. The Chamber also recalls the above clarification in relation to the joint analysis of analogous crimes against humanity and war crimes.[597]

335. Turning to the individual crimes for which Dominic Ongwen was convicted, the Chamber notes in respect of the crime against humanity of forced marriage, as an other inhumane act (**Count 61**), the general considerations expressed above.[598]

336. In the view of the Chamber, the crime as committed was of very high gravity. As discussed in the Trial Judgment, the abduction of women and girls into Sinia took place in a coordinated effort on the part of Dominic Ongwen, Joseph Kony and the Sinia

[594] Trial Judgment, para. 213.
[595] *See also* Prosecution Brief, para. 23.
[596] *See* para. 288.
[597] *See* para. 146.
[598] *See* para. 290.

brigade leadership.[599] Whereas a number of different crimes were committed against the abducted women and girls, the subjection of the victims to forced marriage was the central conduct, which – pursuant to the criminal design – regulated and legitimised their brutal treatment. This is apparent in the evidence as analysed in the Trial Judgment, and in particular in the evidence demonstrating the institutional commission of the crime.[600] To recall just one example in this place, P-0045, a woman who spent a long time in the LRA and was herself assigned as so-called 'wife', albeit not in Sinia, stated that there was a general practice for women and girls to become someone's 'wife', and that under the 'rules of the movement', the woman or girl could not refuse.[601]

337. It is important to fully appreciate the brutality of the crime and the situation in which victims were placed. P-0366, who was assigned to a male Sinia member as a so-called 'wife', testified that she saw some girls, including two that she was able to name, who tried to refuse but would be beaten.[602] P-0366 also testified that Dominic Ongwen asked her specifically if she knew what they had done to one of the girls.[603]

338. P-0374 described in the following manner her situation after a male member of Sinia called and told her that she would be his 'wife':

> I became fearful and started shaking because I thought that he was going to start to sleep with me and I was just a child. [redacted] was quite big, much older than me, maybe between 20 and 30 years old. I did not respond because I feared that if I replied he would beat me. I think he expected me to say that I accepted to be his wife. He told me that from that day I had to make his bed, wash his clothes and go to sleep with him. I did not want to be his wife because I was too young. I did not know what it was to be with a man and it was not my wish to be with him.[604]

339. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[605] as well as the presence of the aggravating circumstances of the multiplicity of victims, the victims being particularly defenceless and a discriminatory motive, as discussed above,[606] the Chamber sentences Dominic Ongwen to a term of 20

[599] Trial Judgment, para. 212.
[600] Trial Judgment, paras 2202-2247.
[601] Trial Judgment, para. 2217.
[602] Trial Judgment, para. 2209.
[603] Trial Judgment, para. 2209.
[604] Trial Judgment, para. 2210.
[605] *See* above section I.C.2.i.
[606] *See* paras 331-333.

years of imprisonment for the crime against humanity of forced marriage, as an inhumane act under article 7(1)(k) of the Statute of a character similar to the acts set out in Article 7(1) (a)-(j) of the Statute (Count 61).

340. As concerns torture as a crime against humanity (**Count 62**) and torture as a war crime (**Count 63**), the Chamber reiterates that torture is a particularly heinous act generally of very high gravity.[607] The Chamber considers the gravity of these crimes in the specific circumstances to be very high. Brutal physical force and the constant threat of brutal physical force were a constant presence in the lives of abducted women and girls. As found by the Chamber, they were severely beaten for attempting escape or if they failed to perform the work demanded of them.[608] Physical coercion was also employed by Sinia members to force abducted women and girls into sexual intercourse.[609] As already specifically assessed and found in the Trial Judgment, as a result of the sexual and physical violence, and the living conditions to which they were submitted, the abducted women and girls suffered severe physical and mental pain.[610]

341. Many witnesses testified of abducted women and girls being beaten, or about being beaten themselves. An example is the story of P-0352, who provided a detailed account on how she was made to lay down on her stomach, held down by two soldiers who sat on her, and then given 50 strokes with sticks – simply for having been seen talking to a boy from her village.[611] The man to whom she was assigned as so-called 'wife' sat and watched while P-0352 was being beaten.[612]

342. Abducted women and girls were also beaten if they did not perform the labour assigned to them. The extreme difficulty of their situation is demonstrated by P-0351:

> I was beaten many times mainly because of dropping what I was carrying during attacks. I believed that if government soldiers caught me they would rape me so I would drop the food to be able to run.[613]

[607] *See* para. 157 above.
[608] Trial Judgment, paras 215, 220.
[609] Trial Judgment, para. 218.
[610] Trial Judgment, para. 221.
[611] Trial Judgment, para. 2185.
[612] Trial Judgment, para. 2185.
[613] Trial Judgment, para. 2291.

343. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[614] as well as the presence of the aggravating circumstances of the multiplicity of victims, the victims being particularly defenceless and a discriminatory motive, as discussed above,[615] the Chamber sentences Dominic Ongwen to a term of 20 years of imprisonment for the crime against humanity of torture (Count 62) and to a term of 20 years of imprisonment for the war crime of torture (Count 63).

344. Turning to rape as a crime against humanity (**Count 64**) and rape as a war crime (**Count 65**), the Chamber reiterates the inherent gravity of the crime of rape.[616] In the concrete circumstances, the gravity of the crime for which Dominic Ongwen was convicted is very high. Sinia brigade members regularly forced abducted women and girls who had been 'distributed' to them into sexual intercourse.[617] The women and girls were coerced, due to the physical force used by the Sinia brigade members and due to the threat of punishment for disobedience and their dependence on the Sinia brigade members for survival.[618] As such, the rape of abducted women and girls was systemic, a feature of the elaborate system of abuse of women and girls in the Sinia brigade, consciously maintained by the LRA leadership through coordinated action.[619]

345. The Chamber heard a number of personal stories laying bare the suffering that the crime brought to victims. P-0351 notably testified about her own experience: 'I did nothing, I was only crying. I did not say anything nor refuse to sleep with him because I was fearful because he was a commander and if I said anything or refused I would be killed'.[620] P-0352 stated: 'I did not say anything. I was fearful because he was much older than me and I could not speak. When we finished he slept and I just stayed there, next to him'.[621] P-0374 recounted in great detail the first occasion that she was raped, including how she felt a lot of physical pain during the act, how she was forced to stay next to the man who had raped her for the entire night and how she was threatened that she would be killed if

[614] *See* above section I.C.2.i.
[615] *See* paras 331-333.
[616] *See* para. 300 above.
[617] Trial Judgment, para. 218.
[618] Trial Judgment, para. 218.
[619] *See* Trial Judgment, para. 2098.
[620] Trial Judgment, para. 2256.
[621] Trial Judgment, para. 2258.

she left or 'disrespected' him.[622] P-0396 also described in detail the grave pain and the death threats she received during the first rape, and stated that afterwards, the man to whom she was assigned would sleep with her by force many times after that; if she tried to refuse he would take his gun and tell her he would shoot her.[623]

346. The Chamber also notes the institutionalised nature of the rapes, as evidenced by the testimonies of witnesses who spoke about forced sexual intercourse with their assigned 'husbands' being part of the role of so-called 'wives'.[624]

347. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[625] as well as the presence of the aggravating circumstances of the multiplicity of victims, the victims being particularly defenceless and a discriminatory motive, as discussed above,[626] the Chamber sentences Dominic Ongwen to a term of 20 years of imprisonment for the crime against humanity of rape (Count 64) and to a term of 20 years of imprisonment for the war crime of rape (Count 65).

348. In relation to sexual slavery as a crime against humanity (**Count 66**) and sexual slavery as a war crime (**Count 67**), the Chamber reiterates that it deems sexual slavery in general to be a particularly grave crime.[627] The crime for which Dominic Ongwen was convicted is of very high gravity. As concerns the sexual violence dimension of this crime, the considerations expressed just above are equally applicable.

349. In addition, the crime of sexual slavery captures the element of enslavement. As found by the Chamber, civilian women and girls were abducted and then 'distributed' to members of Sinia brigade.[628] They were placed in a violent and coercive environment, under heavy guard.[629] Escaping was repressed: abducted women and girls were threatened with death if they attempted to escape, and in some cases, women and girls were in fact killed for attempting to escape.[630] P-0396 testified about a specific occasion

[622] Trial Judgment, para. 2260.
[623] Trial Judgment, para. 2264.
[624] Trial Judgment, paras 2265-2269.
[625] *See* above section I.C.2.i.
[626] *See* paras 331-333.
[627] *See* para. 305 above.
[628] Trial Judgment, para. 214.
[629] Trial Judgment, para. 215.
[630] Trial Judgment, para. 215.

when a girl was brought to the commanders after having been caught trying to escape, whereupon everybody was called together and the girl was killed by beating in front of everyone 'so that we know what will happen to us if we try to escape'.[631] P-0396 specified that Dominic Ongwen was present when the girl was killed.[632] In other cases, abducted women and girls who attempted escape were severely beaten.[633] As a form of control, abducted women and girls were also forced to beat or kill other abductees for attempting escape or breaking rules.[634]

350. The abducted women and girls were forced to perform work, such as household work and carrying items.[635] As indicated by the evidence, this was a structural feature of the LRA, which relied systemically on the forced labour performed by abducted women and girls for the performance of these tasks.[636] Also this rule was strictly enforced by physical punishment.[637]

351. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[638] as well as the presence of the aggravating circumstances of the multiplicity of victims, the victims being particularly defenceless and a discriminatory motive, as discussed above,[639] the Chamber sentences Dominic Ongwen to a term of 20 years of imprisonment for the crime against humanity of sexual slavery (Count 66) and to a term of 20 years of imprisonment for the war crime of sexual slavery (Count 67).

352. Turning to the crime against humanity of enslavement (**Count 68**), the Chamber refers to its considerations above as to the gravity of this crime *in abstracto*.[640]

353. The crime for which Dominic Ongwen was convicted under Count 68 is of very high gravity. The conviction for enslavement under Count 68 applies to those abducted women and girls who were not victims of sexual slavery, but nevertheless lived following

[631] Trial Judgment, para. 2189.
[632] Trial Judgment, para. 2189.
[633] Trial Judgment, para. 215.
[634] Trial Judgment, para. 215.
[635] Trial Judgment, para. 220.
[636] Trial Judgment, paras 2289-2308.
[637] Trial Judgment, para. 220.
[638] *See* above section I.C.2.i.
[639] *See* paras 331-333.
[640] *See* para. 162 above.

their abduction into Sinia in identical circumstances of enslavement.[641] The relevant analysis just above is therefore also applicable in this place.

354. The Chamber also attributes weight to the designed purpose for which younger girls abducted into the LRA were kept in circumstances qualifying as the crime of enslavement. Indeed, as found in the Trial Judgment,[642] and recalled above in the context of the crime of enslavement under Count 57,[643] younger abducted girls were used as household servants, referred to as *ting tings*, until they were considered mature enough to become so-called 'wives'. Witnesses uniformly described a system by which young girls would stay as domestic servants until a point in their physical development at which they were considered mature, and would then be assigned to a male LRA member as so-called 'wives'.[644]

355. Weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[645] as well as the presence of the aggravating circumstances of the multiplicity of victims, the victims being particularly defenceless and a discriminatory motive, as discussed above,[646] the Chamber sentences Dominic Ongwen to a term of 20 years of imprisonment for the crime against humanity of enslavement (Count 68).

vii. Crime of conscription of children under the age of 15 and their use to participate actively in the hostilities

356. Dominic Ongwen has been convicted of the crime of conscription of children under the age of 15 and their use to participate actively in the hostilities (Counts 69 and 70) between 1 July 2002 and 31 December 2005 in Northern Uganda.

357. The Chamber agrees entirely with the assessment of the Trial Chambers of the Court which have previously dealt with the issue, in that conscripting or enlisting children under the age of fifteen years or using them to participate actively in hostilities is undoubtedly very serious; it subjects children to combat and the associated risks entailed therein to

[641] *See* Trial Judgment, paras 3086-3087.
[642] Trial Judgment, para. 217.
[643] *See* paras 312-313 above.
[644] Trial Judgment, paras 2249-2254.
[645] *See* above section I.C.2.i.
[646] *See* paras 331-333.

their life and well-being, including to the risk of being wounded or killed.[647] The vulnerability of children means that they need to be afforded particular protection, going beyond that which applies to the general population.[648]

358. Looking at the concrete facts of the case, the Chamber considers the crime of conscription of children under the age of 15 and their use to participate actively in the hostilities to be of very high gravity. In the present case, the extent of this crime is in fact particularly striking. It covers the integration into the Sinia brigade of a large number of children under 15 years of age in Northern Uganda throughout the period between 1 July 2002 and 31 December 2005.[649] The recruitment of children into the LRA to serve as soldiers was not incidental or a result of disregard for the age of the recruits, but was a specific and methodically pursued organisation-wide policy, which Dominic Ongwen shared and actively sustained.[650] In addition, beside the 'mere' forced integration of children into the armed group – which, as explained, is already a very serious crime – the modalities by which such integration took place and remained sustained through time make this crime committed by Dominic Ongwen particularly heinous.

359. Indeed, the Chamber considers that the gravity of the crime under consideration is significantly heightened, first, by the modalities of physical coercion by which the children were recruited into the group. For example, P-0097 was abducted at his sister's wedding, when LRA fighters arrived and started shooting and setting houses on fire.[651] Children under 15 years of age were also abducted in midst of the attacks on Pajule, Odek, Lukodi and Abok IDP camps, during which a series of violent crimes were committed against the civilian residents.[652]

360. Moreover, in addition to the systemic kidnapping of children, it is important to evaluate correctly also the conditions of the abducted children's stay in the LRA, both, upon their arrival in the group and throughout their stay. Notably, over and beyond being recruited as soldiers and used to participate actively in the hostilities, the abducted children were

[647] *Ntaganda* Sentence, para. 179; Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Decision on Sentence pursuant to Article 76 of the Statute, 10 July 2012, ICC-01/04-01/06-2901 (hereinafter: '*Lubanga* Sentence'), para. 37.
[648] *Ntaganda* Sentence, para. 179; *Lubanga* Sentence, para. 37.
[649] Trial Judgment, para. 223.
[650] Trial Judgment, paras 222, 2313.
[651] Trial Judgment, para. 2341.
[652] Trial Judgment, paras 2352-2365.

also detained and kept in captivity with cruel methods of physical and psychological coercion, imposed to prevent their escape and to ensure obedience. They very often remained in this situation for a long period of time, some for years. Witnesses consistently testified about beating shortly after their abduction, as a way to ensure compliance with orders and create a climate of fear, and as a way of impressing upon them that they were now part of a military organisation. One such witness is P-0252, who – aged 11 at the time – was beaten with canes and a machete and explained that this was done so that he would leave his civilian life behind.[653] The children were also subject to the violent disciplinary regime of the LRA.[654] The physical and psychological violence and coercion were therefore not limited to the act of conscription through abduction and subsequent initiation rituals but extended uninterrupted throughout the relevant period in a continuing manner.

361. The Chamber considers that the extremely harsh treatment which children integrated into the Sinia brigade were subjected to must be considered as an aggravating factor for the determination of the sentence for the crime under consideration.[655]

362. The Chamber is also attentive to the emotional suffering that the abduction and integration into the LRA brought upon the direct victims, as well as their families, who were separated from their children and left without any information about them for a long time, if not indefinitely. As to the abducted children themselves, the Chamber considers that they suffered greatly during their stay in the LRA. The Prosecution correctly pointed out the evidence to the effect that 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.[656]

363. In sum on this point, the Chamber finds the presence of the aggravating circumstance of particular cruelty under Rule 145(2)(b)(iv) of the Rules, which in this case reached the level of the utmost gravity. In light of all findings in relation to Dominic Ongwen's

[653] Trial Judgment, para. 2374.
[654] Trial Judgment, section IV.C.2.ii.d.
[655] *See, similarly, Ntaganda* Sentence, para. 193.
[656] P-0252: T-88, p. 34, line 14 – p. 35, line 2; P-0309: T-75, p. 52, lines 8-16; P-0330: T-53, p. 47, lines 10-15. *See* Prosecution Brief, para. 45.

participation in the crime and the mental element, it is clear that he intended such treatment of children abducted and integrated into Sinia.

364. The abducted children were trained, in some cases received guns, and were assigned to service in Sinia.[657] The Chamber notes that the children under 15 years of age integrated into Sinia as soldiers were then used to participate in hostilities in a variety of ways – they took part in fighting directly, but also facilitated LRA attacks by raising alarms, burning and pillaging civilian houses, collecting and carrying pillaged goods from attack sites and serving as scouts.[658]

365. As stated above *in abstracto*, the inclusion of conscription, enlistment and use of children under 15 years old in hostilities as a war crime is partly justified by the fact that such acts place children at risk associated with combat. Also *in concreto*, there is evidence of children under 15 years old losing their lives in LRA operations. For example, LRA fighter P-0379 stated that during the attack on Pajule he saw a very young boy, who appeared to be a rebel, who was shot around the shoulders and on his head and was dead and it appeared he had been holding bubble gum in his hand but it fell next to him.[659]

366. It is clear that the impact of the crime on the victims was devastating. The Chamber notes in this context the evidence of Professor Michael Wessells, who prepared a report and testified about the psychological, social, developmental and behavioural consequences of this crime for the victims.[660] Witnesses who had been integrated into Sinia as soldiers before the age of 15 years old testified that they continued to suffer from nightmares about their experience even many years after the facts. P-0309 testified:

> Sometimes when I go to bed at night, when I'm asleep, I wake up suddenly. I always feel as if there is somebody who is creeping me after me with a gun. Sometimes I hear gunshots above my head but when I wake up there's nothing happening. When I was at home before my abduction I did not have these kind of dreams, so it's because of the fact that I was in the bush, that's why I suffer these nightmares. Sometimes when I'm sleeping or when I'm just sitting, I -- I visualise the things that happened in the bush, I see them, they always come, they always spring up in my mind.[661]

[657] Trial Judgment, para. 224.
[658] Trial Judgment, para. 225.
[659] Trial Judgment, para. 1239.
[660] PCV-0001 Report, UGA-PCV-0001-0020; T-175.
[661] P-0309: T-61 p. 59, line 20 – p 60, line 5.

367. P-0097, P-0317 and P-0330 also testified about suffering from nightmares,[662] while P-0252 stated that after returning home, he continued to be haunted by his experiences.[663] The Chamber considers that this evidence makes very clear the tremendous impact that the crime of enlistment and use in hostilities of children under the age of 15 years old for which Dominic Ongwen was convicted had on the victims, and must consequently bear on the Chamber's assessment of the gravity of the crime for the purpose of sentencing.

368. As concerns the aggravating circumstances listed in Rule 145(2)(b) of the Rules, the Chamber considers that the aggravating circumstance of multiplicity of victims of Rule 145(2)(b)(iv) is present. That a large number of children were to be integrated, through abduction, as fighters into the Sinia brigade and forcibly made to participate actively in relevant military operations was indeed the precise purpose that Dominic Ongwen and his co-perpetrators intended to achieve though their coordinated and methodical effort to this effect.

369. The Chamber observes that the crime under consideration is, by definition, committed against children under the age of 15 years old, and that the particularly vulnerability of the victims is therefore part of the gravity of the crime as such. Nevertheless, it must be recognised that even within this – necessary – category of vulnerable victims, some may even be of – unnecessary – additional vulnerability due to their particularly young age and qualify on this ground, even in the context of the crime under consideration, as 'particularly defenceless' within the meaning of the relevant aggravating circumstance under Rule 145(2)(b)(iii).[664] The Chamber is satisfied that this is the case in the present context, given the considerable amount of evidence that even children under 10 years old were abducted and integrated to serve in Sinia by Dominic Ongwen and his co-perpetrators.[665] In this regard, P-0015 testified that children as young as eight years old were abducted from Pajule during the attack on 10 October 2003.[666] P-0275 was nine years old when he was abducted during the attack on Odek IDP camp on 29 April 2004.[667] P-0372 testified that children as young as eight to 10 years old were trained with a gun in Dominic Ongwen's group.[668] The Chamber, also noting its findings on the mental

[662] P-0097: T-108 p. 77, lines 16-22; P-0317: T-152 p. 3, lines 10-20; P-0330: T-53 p. 38, lines 3-16.
[663] P-0252: T-88 p. 29, line 18 – p. 30, line 4.
[664] *See, similarly, Ntaganda* Sentence, para. 195.
[665] This is also the submission of the Prosecutor, see T-260 p. 7, lines 4-6.
[666] Trial Judgment, para. 2354.
[667] Trial Judgment, paras 487, 2360.
[668] Trial Judgment, para. 2392.

elements in relation to the crime, considers that Dominic Ongwen was aware that particularly young children under 10 years old were abducted and integrated into Sinia.

370. At this juncture, the Chamber recalls that Dominic Ongwen himself had in the past been a victim of the same crime, having been abducted as a child and integrated as a fighter into the LRA ranks. He himself described the great suffering of the children abducted by the LRA, when providing an account of his own experience – an experience which the Chamber, as explained, has in fact acknowledged and significantly taken into account as a relevant mitigating circumstance for the purpose of the entirety of this decision and all the 61 crimes that he committed. At the same time, in discussing specifically the crime under Counts 69 and 70, it cannot go unnoticed that Dominic Ongwen, despite well aware of such suffering which he himself had been subjected to several years earlier and fully appreciating its wrongfulness, did nothing to spare similar experiences to other children after him, but, on the contrary, willfully sustained and contributed to perpetuate the systemic, methodical and widespread abduction, integration and use as fighters of large number of children by the LRA.

371. The relevant facts indicate that Dominic Ongwen's degree of participation and degree of intent in relation to the crime under counts 69 and 70 are indeed very high. In the Trial Judgment, the Chamber found that Dominic Ongwen, Joseph Kony and the Sinia brigade leadership engaged in a coordinated and methodical effort, relying on the LRA soldiers under their control, to abduct children under 15 years of age in Northern Uganda and force them to serve as Sinia fighters.[669] The material elements of the crime were executed by LRA soldiers, who as a whole functioned as a tool of Dominic Ongwen, Joseph Kony and the Sinia brigade leadership, through which they were able to execute their agreement and commit the crimes.[670] The Chamber found that the conduct of the individual Sinia brigade members in the execution of the crimes must be attributed to Dominic Ongwen, Joseph Kony and other Sinia brigade leaders as their own.[671]

372. The Chamber also found that Dominic Ongwen had control over the crimes by virtue of his essential contribution to them, and the resulting power to frustrate their

[669] Trial Judgment, para. 222.
[670] Trial Judgment, para. 3108.
[671] Trial Judgment, para. 3108.

commission.[672] On the facts, the Chamber found that Dominic Ongwen ordered Sinia soldiers to abduct children to serve as Sinia soldiers, and also abducted children himself.[673] In some cases, Dominic Ongwen himself assigned abducted children to service within the Sinia brigade.[674] Children served as escorts in Sinia brigade in general and specifically in Dominic Ongwen's own household.[675] Children under the age of 15 years were also sent as fighters in all four attacks on IDP camps relevant to the charges,[676] including the ones on Odek, Lukodi and Abok IDP camps which were carried out under Dominic Ongwen's exclusive control.

373. In conclusion, weighing and balancing all the relevant factors, taking into account both the gravity of the crime and the individual circumstances of Dominic Ongwen, including in relation to his personal history,[677] as well as the presence of the aggravating circumstances of the multiplicity of victims and some of the victims being particularly defenceless, the Chamber sentences Dominic Ongwen to a term of 20 years of imprisonment for the war crime of conscription of children under the age of 15 and their use to participate actively in the hostilities (Counts 69 and 70).

[672] Trial Judgment, para. 3111.
[673] Trial Judgment, para. 223.
[674] Trial Judgment, para. 224.
[675] Trial Judgment, para. 224.
[676] Trial Judgment, para. 225.
[677] *See* above section I.C.2.i.

B. Determination of the joint sentence

374. After having determined the individual sentence for each of the crimes for which Dominic Ongwen was convicted, the Chamber, in accordance with Article 78(3) of the Statute, shall determine the joint sentence, 'specifying the total period of imprisonment'. The same provision requires that such total period 'shall be no less than the highest individual sentence pronounced' – which in this case is 20 years of imprisonment – but 'shall not exceed 30 years imprisonment or a sentence of life imprisonment in conformity with article 77, paragraph 1 (b)'.

375. All relevant circumstances and factors related to the gravity of the specific crimes as well as the personal circumstances of Dominic Ongwen have been taken into account for the determination of the individual sentence for each of the crimes of which he was convicted. At this juncture, the Chamber is required to determine, within the statutory parameters, the extent of accumulation of the individual sentences which shall constitute the 'total period of imprisonment' as the joint sentence for all crimes, reflecting Dominic Ongwen's 'total culpability'.[678] To do so, the Chamber, first, shall consider to what extent the criminal conduct underlying each of the crimes – and corresponding blameworthiness as expressed in the related individual sentences – overlap in the concrete circumstances, or must be (separately) reflected in the joint sentence.

376. In this regard, the Chamber recalls that a number of crimes of which Dominic Ongwen was convicted are in concurrence with each other, in that the same conduct and consequence are characterised as more than one crime. This is indeed the case for the analogous war crimes and crimes against humanity, which are distinguished only by different contextual elements, not by the conduct of the perpetrator or its consequence. As explained above,[679] while this was found in the Trial Judgment to be a permissible concurrence of crimes,[680] the relationship between the two sets of crimes is relevant in the determination of the joint sentence. As pointed out by the Defence, albeit, incorrectly, in the context of the determination of the individual sentence, '[s]entencing is […] a

[678] *See also* *Bemba et al.* Appeal Sentencing Judgment, para. 57 ('the determination of the total culpability […] must indeed be reflected in the ultimate joint sentence'); and, more generally, *Lubanga* Appeal Sentencing Judgment, para. 33 ('rule 145 (1) (a) of the Rules of Procedure and Evidence contains the overarching requirement that "the totality of any sentence […] must reflect the culpability of the convicted person"').
[679] *See* para. 146 above.
[680] Trial Judgment, paras 2818-2821.

proper time for the Chamber to consider the effect of war crimes and crimes against humanity that are based on the same underlying facts'.[681]

377. In addition, there exist a number of instances of (partial) overlap in the underlying conduct between different crimes – which are thus qualified by additional conduct and/or different consequence(s) – committed by Dominic Ongwen in the context of each of the attacks on Pajule, Odek, Lukodi and Abok IDP camps. More specifically, as observed above, the crimes of attacks against the civilian population as such (Counts 1, 11, 24 and 37, respectively) were committed – with respect to each of the four attacks – by way of acts and conduct, and resulted in actual harm on civilians which, in turn, constituted facts underlying (also) the separate crimes committed in the contexts of these attacks.[682] In addition, the crimes of persecution committed in the course of each of the four attacks (Counts 10, 23, 36 and 49, respectively) were committed through acts constituting also other crimes committed in the same context, qualified by the element of discrimination on political grounds.[683] In turn, such 'discriminatory dimension' underlying the corresponding legal element of the crimes of persecution also constitutes a specific circumstance aggravating the other crimes committed in the course of the four attacks.[684] Still with respect to the crimes committed as part of the attacks on Pajule, Odek, Lukodi and Abok IDP camps, the Chamber recalls that, in the context of each of those attacks, the conduct underlying the crimes of torture and the conduct underlying the crimes of enslavement significantly overlap.[685] In addition, it is noted in this regard that, logically, instances of factual overlap in underlying conduct and/or consequence between different crimes, in turn, result in corresponding (partial) overlap in the related factors informing the gravity of the individual crimes concerned and their specific aggravating circumstances.

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[681] Defence Brief, para. 177.
[682] *See* Trial Judgment, paras 2824, 2876, 2929 and 2975, respectively. *See also*, para. 2823.
[683] *See* Trial Judgment, paras 2846-2847, 2906-2907, 2959-2960 and 3006-3007 respectively.
[684] *See* paras 145, 182, 220, 255 above.
[685] This is the case, as concerns the attack on Pajule IDP camp, for the crimes under Counts 4-5 and 8, respectively (*see* Trial Judgment, paras 2829 and 2839); as concerns the attack on Odek IDP camp, for the crimes under Counts 16-17 and 20, respectively (*see* Trial Judgment, paras 2885 and 2895); as concerns the attack on Lukodi IDP camp, for the crimes under Counts 29-30 and 33, respectively (*see* Trial Judgment, paras 2938 and 2948); as concerns the attack on Abok IDP camp, for the crimes under Counts 42-43 and 46, respectively (*see* Trial Judgment, paras 2984 and 2994).

378. Still further, partial overlap in Dominic Ongwen's relevant criminal conduct exists also with respect to the sexual and gender-based crimes directly committed by Dominic Ongwen against four of his forced so-called 'wives'. In particular, the crimes of sexual slavery under Counts 55 and 56 encompass, as the relevant acts of sexual nature, their repeated rapes by Dominic Ongwen, of which he was also separately convicted under Counts 53 and 54.[686] In turn, the acts partly underlying the findings in relation to deprivation of liberty as an element of sexual slavery (Counts 55 and 56)[687] and the acts of coercion underlying the crimes of rape (Counts 53 and 54)[688] also underlie the crimes of torture of which Dominic Ongwen was convicted under Counts 51 and 52.[689] The same relationship of partial factual overlap exists between the crimes of torture, rape and sexual slavery which Dominic Ongwen committed – beyond his own forced so-called 'wives' – against girls and women in the Sinia brigade (Counts 62-63, 64-65 and 66-67, respectively).[690]

379. The Chamber is well aware of these instances of concurrence or partial overlap in the factual basis of certain crimes of which Dominic Ongwen was convicted (and of corresponding factors and circumstances informing their individual gravity) as well as of the need to take this into due account to prevent that he be punished beyond his actual culpability. However, the Chamber does not consider any such overlap – considered individually or in combination – to have a significant bearing in the determination of the joint sentence in the present case, given the strikingly large number of distinct convictions, holding entirely different factual basis, which have been pronounced by the Chamber.

380. Indeed, with the exception of the instances identified above within 'sets' of crimes committed in (broadly) the same factual context, a large number of other crimes of which Dominic Ongwen was convicted, and which are each largely designed to safeguard wholly distinct protected interests, cannot be said to be in any relation of absorption, consumption or – even partial – overlap in terms of relevant conduct. Rather, they are completely separate crimes independent from each other. To illustrate this point, the

[686] *See* Trial Judgment, paras 3035-3043 (on Counts 53-54) and paras 3044-3049 (on Counts 55-56).
[687] *See* Trial Judgment, paras 3045-3046.
[688] *See* Trial Judgment, para. 3041.
[689] *See* Trial Judgment, para. 3028.
[690] *See* Trial Judgment, paras 3073 (on Counts 62-63), 3079-3080 (on Counts 64-65) and 3082-3084 (on Counts 66-67).

Chamber finds it sufficient to refer, just as mere examples, to the crimes of murder committed in the context of the four attacks on IDP camps vis-à-vis the crimes of sexual slavery committed by Dominic Ongwen against his forced so-called 'wives' and other women and girls within the Sinia brigade, or to the crime of conscription of children under the age of 15 and their use to participate actively in the hostilities vis-à-vis the crimes of destruction of property and pillaging.

381. In other words, Dominic Ongwen was convicted for a large number of crimes which he committed by way of a number of distinguishable criminal conducts (including several for which the highest individual sentence of 20 years of imprisonment is pronounced), each carrying its own distinct blameworthiness not otherwise absorbed within any other crime and corresponding individual sentence(s).

382. Thus, and while mindful of the need to avoid that a single conduct or circumstance that is reflected in more than one individual sentence be subsequently 'double-counted' on this ground in the determination of the joint sentence, the Chamber does not consider, in the concrete circumstances of this case, any such issue to weigh noticeably in the present determination.[691] Similarly, and by the same token, given the large amount of distinct criminal conducts underlying the different crimes of which Dominic Ongwen was found guilty, the Chamber considers that a joint sentence corresponding to the highest individual sentence pronounced, as proposed by the Prosecution,[692] is manifestly incapable of reflecting Dominic Ongwen's total culpability for all the numerous crimes that he committed.

383. The Chamber has considered the possibility of imposing life imprisonment as a single joint sentence for the numerous grave crimes committed by Dominic Ongwen, as also recommended by the legal representatives of the participating victims. The Chamber observes that, in accordance with Article 78(3) of the Statute, read in conjunction with Article 77(1)(b) of the Statute, a sentence of life imprisonment may be imposed 'when justified by the extreme gravity of the crime[s] and the individual circumstances of the

[691] Indeed, and for the reasons explained, even if, *ad absurdum*, the Chamber, in its consideration of the joint sentence, were to exclude altogether the individual sentences for any crime having a factual basis even partially overlapping with that of any other crime – as is obviously not allowed under the Statute which requires that the ultimate joint sentence reflects the total culpability of the convicted person – , this would have no practical impact given the circumstances of the present case.
[692] Prosecution Brief, para. 159.

convicted person', which, as specified in turn by Rule 145(3) of the Rules, are 'evidenced by the existence of one or more aggravating circumstances'.

384. The Chamber is acutely aware of the extreme gravity of the numerous crimes of which Dominic Ongwen was convicted, especially when considered jointly; the Chamber's assessment of the gravity of each of those crimes and Dominic Ongwen's degree of culpability in their regard undoubtedly demonstrates so. Several aggravating circumstances have also been identified for most of the crimes committed. Considering – jointly – the long list of extremely serious crimes, and referring to the analysis above on the relevant considerations with respect to each of these crimes, the Chamber recalls the very large extent of cumulative victimisation of the crimes committed by Dominic Ongwen. More than 130 people were killed during the attacks on IDP camps, and at least 25 others managed to survive only for reasons independent of the will of Dominic Ongwen – or LRA fighters under his control. Hundreds of civilians were abducted, tortured and enslaved during those same attacks. A large number of children were abducted, integrated into the Sinia brigade and used actively to participate in the hostilities. In addition to the seven women and girls who were forced to be Dominic Ongwen's so-called 'wives' and servants, there were over one hundred abducted women and girls in the Sinia brigade at the relevant time. Many of these victims – who were targeted for motives involving discrimination – were particularly defenceless. Particularly young boys and young girls were abducted and forced to be child soldiers or domestic servants. During the attacks, individuals who had been abducted, including children, elderly people and pregnant women, were then killed and tortured.

385. As recalled above – and explained in detail in the Trial Judgment – Dominic Ongwen fully intended all of these crimes and played a key role in their commission. He participated in the planning of the attack on Pajule IDP camp and personally took part in it. At the other attacks, at Odek, Lukodi and Abok IDP camps, it was he who decided to launch the attacks: he selected the fighters and the ground commanders, issued specific instructions ahead of each attack, and reported the result up the chain of command over the LRA radio after each attack was concluded. Also for the sexual and gender-based crimes and the abduction and integration of children under the age of 15, Dominic Ongwen's involvement in the crimes was striking. He personally abducted children and distributed boys, girls and women within his units. Some abducted young boys became

Dominic Ongwen's own escorts, living with him, following him, guarding him, and fighting on his orders. He also kept women and girls for his own household, forcing the youngest to be his domestic servants, while those that he deemed old enough were forced to be his so-called 'wives', obliged to have sex with him and bear his children. And beyond that, in his role of commander, he exercised an essential role in sustaining the methodical abduction and abuse of women and girls, reflected in the convictions for sexual and gender-based crimes, and of children under the age of 15 years, who were brutally integrated in large numbers and used to participate actively in hostilities.

386. All things considered, from the perspective of the extreme gravity of the crimes committed by Dominic Ongwen, including the degree of his culpable conduct, a joint sentence of life imprisonment would surely be in order in the present case. Upon due consideration of all relevant circumstances, the Chamber has, however, decided not to sentence Dominic Ongwen to life imprisonment, for the following reasons.

387. In this regard, the Chamber recalls that the Statute qualifies life imprisonment as an exceptional sentence the justification of which must be rooted in extraordinary circumstances revealing extreme gravity. It is the presence of such extraordinary circumstances that renders what would otherwise be the 'ordinary' statutory limit of a term of imprisonment up to a period of 30 years disproportionately low in relation to the gravity of the crimes. As recalled, within the circumstances that must be duly considered in deciding whether life imprisonment shall be imposed a prominent relevance is also attributed to the 'individual circumstances of the convicted person'.

388. The Chamber is confronted in the present case with a unique situation of a perpetrator who willfully and lucidly brought tremendous suffering upon his victims, but who himself had previously endured grave suffering at the hands of the group of which he later became a prominent member and leader. The Chamber was greatly impressed by the account given by Dominic Ongwen at the hearing on sentence about the events to which he was subjected upon his abduction when he was only 9 years old. As discussed above, Dominic Ongwen's statements in this regard find support in the evidence heard during the trial. The circumstances of Dominic Ongwen's childhood are indeed compelling, and the Chamber cannot disregard them in the determination of whether life imprisonment represents the just sentence in the present case. The fact that Dominic Ongwen did not, at first, choose to be part of the LRA, but was abducted and integrated

into it when he was still a child, whose education was thus abruptly interrupted and replaced by socialisation in the extremely violent environment of the LRA, in no way justifies or rationalises the heinous crimes he willfully chose to commit as a fully responsible adult; however, these circumstances, in the view of the Chamber, make the prospective of committing him to spend the rest of his life in prison (despite the hypothetical early release or reduction of sentence after 25 years of imprisonment under Article 110 of the Statute) excessive.

389. The Chamber fully understands, and is wholeheartedly sympathetic to the legitimate desire of the victims to receive justice, and comprehends that justice indeed demands that an adequate punishment be imposed on Dominic Ongwen. The Chamber is, however, called to determine a sentence which – while suitable to express in full the condemnation of the international community and the necessary acknowledgment of the harm to the victims – does not constitute a means for revenge as such. The required retribution and deterrence, as the primary purposes of sentencing, can only be achieved if all relevant circumstances are duly taken into account. By no means does Dominic Ongwen's personal background overshadow his culpable conduct and the suffering of the victims – the Chamber wishes to emphasise this point again in the strongest terms. Nevertheless, the specificity of his situation cannot be put aside in deciding whether he must be sentenced to life imprisonment for his crimes. As observed by the Prosecution, this is 'one circumstance [which] sets this case apart from others tried before the Court, and warrants some reduction in the sentence'.[693]

390. Envisaging a concrete prospect for Dominic Ongwen to eventually re-build his life – while adequately punished for the crimes committed – in a new, more healthy environment than the extremely violent one of the LRA in which he grew up and operated at length is one of the conflicting driving forces for the Chamber's ultimate consideration on the appropriate joint sentence in the present case. The Chamber believes that such a concrete opportunity shall not be denied to Dominic Ongwen, given his peculiar personal background. The possibility of a reduction of the sentence after (at least) 25 years of imprisonment – envisaged by Article 110 of the Statute when life imprisonment is pronounced – is, at this point in time, too much of a hypothetical and speculative nature

[693] Prosecution Brief, para. 2.

to be capable to outweigh the undeniable value of foreseeing today a more concrete prospect of re-insertion into society after an (adequately long) prison sentence.

391. It is with these considerations in mind that the Chamber has decided not to sentence Dominic Ongwen to the – exceptional – penalty of life imprisonment.

392. Having excluded this possibility, and recalling that the determination of the joint sentence involves an exercise of discretion with the aim to impose a proportionate sentence that reflects Dominic Ongwen's total culpability,[694] the Chamber, by majority, determines that, in the present case, the appropriate joint sentence is imprisonment for a total of 25 years.

393. In the Chamber's view, no imprisonment for a period shorter than 25 years could constitute an adequate, proportionate and just joint sentence in light of all relevant circumstances of the present case. The Chamber is guided in this regard by the considerations expressed above, including as concerns the combined magnitude of the committed crimes and their tremendous impact on the victims as already repeatedly pointed out. The Chamber also recalls, as emphasised above, that, despite the limited, partial overlap in conduct and/or consequences in the factual basis of some of the 61 crimes of which Dominic Ongwen was convicted, the different blameworthiness of several distinct criminal conducts shall be accounted for in the ultimate joint sentence imposed by the Chamber, and adequately reflected therein. The Chamber also gives due regard to the fact that such a large number of serious and diverse crimes have been committed by Dominic Ongwen in the relatively short period of time that constituted the temporal basis of the charges brought by the Prosecutor against him, suggesting a considerable propensity towards criminal acts of the utmost gravity. Equal propensity, including from the viewpoint of their incommensurable scale when jointly considered, can be detected from the fact that such heterogeneous crimes targeted different types of individuals, for different reasons and in separate contexts (i.e. civilian residents of IDP camps, young girls and women, children under the age of 15 years) and that these crimes offended distinct protected interests of great importance: from the right to life to the right to personal liberty, from the right to sexual integrity to the right to personal property, from the right not to be subjected to cruel or degrading treatment to the right to

[694] *See, generally,* *Lubanga* Appeal Sentencing Judgment, para. 34.

consensually form a family. All such rights deserve the utmost protection by this Court and the entire international community, and the extreme gravity of their violations cannot go unnoticed and unaccounted for. Furthermore, the crimes committed by Dominic Ongwen were all part of an even larger pattern of violence of which he was, willfully, an essential part and which he significantly sustained and contributed to perpetuating. He at all material times shared the criminal methods of the LRA in targeting civilians and committed the crimes at issue also for his own personal advantages, including that of rising – as he successfully did – in the hierarchy of the LRA.

394. In addition, while not an aggravating factor in and of itself or an element otherwise impinging as such on the length of the prison sentence to be imposed in the present case, the Chamber cannot overlook the absence, in Dominic Ongwen's submissions during the hearing on sentence, of any expression of empathy for the numerous victims of his crimes – and even less of any genuine remorse – supplanted by a lucid, constant focus on himself and his own suffering eclipsing that of anyone else.

395. Having considered and balanced together all the relevant circumstances, and mindful of its ultimate obligation to ensure a just and adequate joint sentence, the Chamber reiterates its firm view that any total term of imprisonment shorter than 25 years would be incapable of reflecting the totality of Dominic Ongwen's culpable conduct for the several crimes of which he was found guilty. It is also noted in this regard that such a joint sentence is also in line with the submissions by the Prosecution, which recommended a total sentence lower than 30 years of imprisonment, but of 'at least' 20 years of imprisonment.

396. The Majority of the Chamber considers a total term of 25 years of imprisonment to be proportionate to the crimes Dominic Ongwen committed, congruous to his specific individual circumstances arising from his abduction as a child, and suitably conforming to the fundamental purposes of retribution and deterrence underlying sentencing in the system of the Court. Indeed, it is of the view that this joint sentence adequately reflects the strongest condemnation by the international community of the crimes committed by Dominic Ongwen and acknowledges the great harm and suffering caused to the victims, as well as deterring others from committing similar crimes in the future and discouraging Dominic Ongwen's own recidivism. At the same time, such a joint sentence safeguards the prospect of a successful social rehabilitation and, consequently, the concrete

possibility of future re-integration into society which, as explained above, is a relevant consideration in a peculiar case like the present one. The Chamber also recalls in this respect that Article 110 of the Statute, read in conjunction with and Rules 223 and 224 of the Rules, foresees the possibility that, upon specific review and under certain criteria, the sentence be reduced when the sentenced person has served two thirds of it.

397. Finally, the Chamber clarifies that it considers the term of imprisonment imposed on Dominic Ongwen to be sufficient as a penalty in the present case. Thus, and also considering the convicted person's personal circumstances, including his solvency, the Chamber does not impose also a fine or forfeiture of proceeds in addition to the penalty of imprisonment.

C. Remaining time of imprisonment

398. The Chamber recalls that in accordance with article 78(2) of the Statute '[i]n imposing a sentence of imprisonment, the Court shall deduct the time, if any, previously spent in detention in accordance with an order of the Court.' The Court 'may' also deduct any time 'otherwise spent in detention in connection with conduct underlying the crime'.

399. Dominic Ongwen has been in custody of the Court since 16 January 2015.[695] Earlier on the same day he had been handed over, by the UPDF, to the authorities of the Central African Republic, which, acting as the 'custodial State' executed the relevant proceedings under Article 59 of the Statute and surrendered him to the Court.[696]

400. The Chamber is not persuaded by the cursory assertion made by the Defence in its written submissions that 'Mr Ongwen has been under detention pursuant to the Arrest Warrant [issued by the Court] since 4 January 2015'.[697] While it indeed appears that Dominic Ongwen left the LRA on 4 January 2015 when he surrendered to the 'Séléka' group in Central African Republic, and was subsequently transferred, first, to the United States Special Forces (on 6 January 2015) and, then, in turn, to the UPDF/African Union (on 14 January 2015) before finally been handed over, two days later, to the authorities of the Central African Republic, none of these steps between 4 and 16 January 2015 occurred

[695] Report of the Registry on the voluntary surrender of Dominic Ongwen and his transfer to the Court, 22 January 2015, ICC-02/04-01/15-189, para. 4.
[696] Report of the Registry on the voluntary surrender of Dominic Ongwen and his transfer to the Court, 22 January 2015, ICC-02/04-01/15-189, paras 1-3.
[697] Defence Brief, para. 57.

pursuant to the warrant of arrest issued by the Court. In other words, the 'Séléka' group, the United States Special Forces and the UPDF/African Union at no time acted as custodial states in execution of the request for Dominic Ongwen's arrest and surrender issued under Part 9 of the Statute by the Court, nor did they accordingly 'detain' him in implementation of any such request on the part of the Court. Only the authorities of the Central African Republic did so, when they obtained custody of Dominic Ongwen on 16 January 2015.

401. Accordingly, the Chamber clarifies that Dominic Ongwen has been in detention 'in accordance with an order of the Court' within the meaning of Article 78(2) of the Statute since 16 January 2015. The time he spent in detention between 16 January 2015 and the date of the present decision shall therefore be deducted from the term of imprisonment imposed on him by the Chamber.

402. The Chamber, however, recalls that, besides such mandatory deduction of time, it has also the statutory power, which falls within its discretion, to deduct from the term of imprisonment any time 'otherwise spent in detention in connection with conduct underlying the crime', even if not 'in accordance with an order of the Court'. The Chamber considers that the detention under which Dominic Ongwen has been placed between his surrender to the 'Séléka' group on 4 January 2015 and his transfer to the competent authorities of the Central African Republic on 16 January 2015, while not pursuant to an order of this Court, was in any case due to his status as an LRA commander and for his acts and conduct performed in this role. As such acts and conduct include also the conduct underlying the crimes of which he was convicted, the Chamber decides to exercise its discretion in this regard and orders that also the time between 4 January 2015 and 16 January 2015 be deducted from the term of imprisonment imposed on Dominic Ongwen in the present decision.

403. As a final note the Chamber observes the Defence submission, in the context of the discussion of Dominic Ongwen's abduction as a child, that 'Mr Ongwen should receive credit for the time he was held captive in the LRA'.[698] This is, however, manifestly not detention in accordance with an order of the Court, or time otherwise spent in detention

[698] Defence Brief, para. 64; *see also* para. 80.

in connection with conduct underlying the crime, and will thus not be considered any further.

404. In conclusion, the time between 4 January 2015 and the day of the present pronouncement of the sentence (that is, 6 May 2021), must be deducted from the total time of imprisonment imposed on Dominic Ongwen.

III. DISPOSITION

FOR THE FOREGOING REASONS, THE CHAMBER

a) PRONOUNCES the following sentences for each of the crimes committed by Dominic Ongwen:

- For the **war crime of attack against the civilian population as such** committed on 10 October 2003, at or near Pajule IDP camp (Count 1) a term of **14 years of imprisonment**;
- For the **crime against humanity of murder** committed on 10 October 2003, at or near Pajule IDP camp (Count 2) a term of **20 years of imprisonment**;
- For the **war crime of murder** committed on 10 October 2003, at or near Pajule IDP camp (Count 3) a term of **20 years of imprisonment**;
- For the **crime against humanity of torture** committed on 10 October 2003, at or near Pajule IDP camp (Count 4) a term of **14 years of imprisonment**;
- For the **war crime of torture** committed on 10 October 2003, at or near Pajule IDP camp (Count 5) a term of **14 years of imprisonment**;
- For the **crime against humanity of enslavement** committed on 10 October 2003, at or near Pajule IDP camp (Count 8) a term of **14 years of imprisonment**;
- For the **war crime of pillaging** committed on 10 October 2003, at or near Pajule IDP camp (Count 9) a term of **8 years of imprisonment**;
- For the **crime against humanity of persecution** committed on 10 October 2003 at or near Pajule IDP camp (Count 10) a term of **20 years of imprisonment**;

- For the **war crime of attack against the civilian population as such** committed on 29 April 2004, at or near Odek IDP camp (Count 11) a term of **14 years of imprisonment**;

- For the **crime against humanity of murder** committed on 29 April 2004, at or near Odek IDP camp (Count 12) a term of **20 years of imprisonment**;

- For the **war crime of murder** committed on 29 April 2004, at or near Odek IDP camp (Count 13) a term of **20 years of imprisonment**;

- For the **crime against humanity of attempted murder** committed on 29 April 2004, at or near Odek IDP camp (Count 14) a term of **14 years of imprisonment**;

- For the **war crime of attempted murder** committed on 29 April 2004, at or near Odek IDP camp (Count 15) a term of **14 years of imprisonment**;

- For the **crime against humanity of torture** committed on 29 April 2004, at or near Odek IDP camp (Count 16) a term of **14 years of imprisonment**;

- For the **war crime of torture** committed on 29 April 2004, at or near Odek IDP camp (Count 17) a term of **14 years of imprisonment**;

- For the **crime against humanity of enslavement** committed on 29 April 2004, at or near Odek IDP camp (Count 20) a term of **14 years of imprisonment**;

- For the **war crime of pillaging** committed on 29 April 2004, at or near Odek IDP camp (Count 21) a term of **8 years of imprisonment**;

- For the **war crime of outrages upon personal dignity** committed on 29 April 2004, at or near Odek IDP camp (Count 22) a term of **14 years of imprisonment**;

- For the **crime against humanity of persecution** committed on 29 April 2004, at or near Odek IDP camp (Count 23) a term of **20 years of imprisonment**;

- For of the **war crime of attack against the civilian population as such** committed on or about 19 May 2004, at or near Lukodi IDP camp (Count 24) a term of **14 years of imprisonment**;

- For the **crime against humanity of murder** committed on or about 19 May 2004, at or near Lukodi IDP camp (Count 25) a term of **20 years of imprisonment**;

- For the **war crime of murder** committed on or about 19 May 2004, at or near Lukodi IDP camp (Count 26) a term of **20 years of imprisonment**;

- For the **crime against humanity of attempted murder** committed on or about 19 May 2004, at or near Lukodi IDP camp (Count 27) a term of **14 years of imprisonment**;

- For the **war crime of attempted murder** committed on or about 19 May 2004, at or near Lukodi IDP Camp (Count 28) a term of **14 years of imprisonment**;

- For the **crime against humanity of torture** committed on or about 19 May 2004, at or near Lukodi IDP Camp (Count 29) a term of **14 years of imprisonment**;

- For the **war crime of torture** committed on or about 19 May 2004, at or near Lukodi IDP Camp (Count 30) a term of **14 years of imprisonment**;

- For the **crime against humanity of enslavement** committed on or about 19 May 2004, at or near Lukodi IDP Camp (Count 33) a term of **14 years of imprisonment**;

- For the **war crime of pillaging** committed on or about 19 May 2004, at or near Lukodi IDP Camp (Count 34) a term of **8 years of imprisonment**;

- For the **war crime of destruction of property** committed on or about 19 May 2004, at or near Lukodi IDP Camp (Count 35) a term of **8 years of imprisonment**;

- For the **crime against humanity of persecution** committed on or about 19 May 2004, at or near Lukodi IDP camp (Count 36) a term of **20 years of imprisonment**;

- For the **war crime of attack against the civilian population as such** committed on 8 June 2004, at or near Abok IDP camp (Count 37) a term of **14 years of imprisonment**;

- For the **crime against humanity of murder** committed on 8 June 2004, at or near Abok IDP camp (Count 38) a term of **20 years of imprisonment**;

- For the **war crime of murder** committed on 8 June 2004, at or near Abok IDP camp (Count 39) a term of **20 years of imprisonment**;

- For the **crime against humanity of attempted murder** committed on 8 June 2004, at or near Abok IDP camp (Count 40) a term of **14 years of imprisonment**;

- For the **war crime of attempted murder** committed on 8 June 2004, at or near Abok IDP camp (Count 41) a term of **14 years of imprisonment**;

- For the **crime against humanity of torture** committed on 8 June 2004, at or near Abok IDP camp (Count 42) a term of **14 years of imprisonment**;

- For the **war crime of torture** committed on 8 June 2004, at or near Abok IDP camp (Count 43) a term of **14 years of imprisonment**;

- For the **crime against humanity of enslavement** committed on 8 June 2004, at or near Abok IDP camp (Count 46) a term of **14 years of imprisonment**;

- For the **war crime of pillaging** committed on 8 June 2004, at or near Abok IDP camp (Count 47) a term of **8 years of imprisonment**;

- For the **war crime of destruction of property** committed on 8 June 2004, at or near Abok IDP camp (Count 48) a term of **8 years of imprisonment**;

- For the **crime against humanity of persecution** committed on 8 June 2004 at or near Abok IDP camp (Count 49) a term of **20 years of imprisonment**;

- For the **crime against humanity of forced marriage as another inhumane act** of P-0099, P-0101, P-0214, P-0226 and P-0227 (Count 50) a term of **20 years of imprisonment**;

- For the **crime against humanity of torture** of P-0101, P-0214, P-0226 and P-0227 (Count 51) a term of **20 years of imprisonment**;

- For the **war crime of torture** of P-0101, P-0214, P-0226 and P-0227 (Count 52) a term of **20 years of imprisonment**;

- For the **crime against humanity of rape** of P-0101, P-0214, P-0226 and P-0227 (Count 53) a term of **20 years of imprisonment**;

- For the **war crime of rape** of P-0101, P-0214, P-0226 and P-0227 (Count 54) a term of **20 years of imprisonment**;

- For the **crime against humanity of sexual slavery** of P-0101, P-0214, P-0226 and P-0227 (Count 55) a term of **20 years of imprisonment**;

- For the **war crime of sexual slavery** of P-0101, P-0214, P-0226, and P-0227 (Count 56) a term of **20 years of imprisonment**;

- For the **crime against humanity of enslavement** of P-0099, P-0235 and P-0236 (Count 57) a term of **20 years of imprisonment**;

- For the **crime against humanity of forced pregnancy** of P-0101 and P-0214 (Count 58) a term of **20 years of imprisonment**;

- For the **war crime of forced pregnancy** of P-0101 and P-0214 (Count 59) a term of **20 years of imprisonment**;

- For the **war crime of outrages upon personal dignity** of P-0226 and P-0235 (Count 60) a term of **14 years of imprisonment**;

- For the **crime against humanity of forced marriage as another inhumane act**, from at least 1 July 2002 until 31 December 2005 (Count 61) a term of **20 years of imprisonment**;

- For the **crime against humanity of torture**, from at least 1 July 2002 until 31 December 2005 (Count 62) a term of **20 years of imprisonment**;

- For the **war crime of torture**, from at least 1 July 2002 until 31 December 2005 (Count 63) a term of **20 years of imprisonment**;

- For the **crime against humanity of rape**, from at least 1 July 2002 until 31 December 2005 (Count 64) a term of **20 years of imprisonment**;

- For the **war crime of rape**, from at least 1 July 2002 until 31 December 2005 (Count 65) a term of **20 years of imprisonment**;

- For the **crime against humanity of sexual slavery**, from at least 1 July 2002 until 31 December 2005 (Count 66) a term of **20 years of imprisonment**;

- For the **war crime of sexual slavery**, from at least 1 July 2002 until 31 December 2005 (Count 67) a term of **20 years of imprisonment**;

- For the **crime against humanity of enslavement**, from at least 1 July 2002 until 31 December 2005 (Count 68) a term of **20 years of imprisonment**;

- For the **war crime of conscripting children under the age of 15 into an armed group and using them to participate actively in hostilities**, between 1 July 2002 and 31 December 2005 in Northern Uganda (Counts 69 and 70) a term of **20 years of imprisonment**.

b) BY MAJORITY, SENTENCES Dominic Ongwen to a total period of imprisonment of 25 years as a joint sentence;

c) ORDERS that the time between 4 January 2015 and 6 May 2021 be deducted from the total period of imprisonment.

Done in both English and French, the English version being authoritative.

Judge Raul C. Pangalangan appends a partly dissenting opinion on point b) of the disposition (determination of the joint sentence).

Judge Bertram Schmitt, Presiding Judge

Judge Péter Kovács

Judge Raul C. Pangalangan

Dated 6 May 2021

At The Hague, The Netherlands