

**PUBLIC REDACTED
VERSION OF
SUBSTANTIVE
ANNEX A**

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ICC-02/04-01/15-1871-Conf-AnxA

D. Rule 145(2)(a)(i) of the Rules

i. Significantly diminished mental capacity of Mr Ongwen

85. This Chamber should find that Mr Ongwen's diminished mental capacity at the material time is a mitigating factor in determining a sentence. According to Article 31(1)(a), a person is not criminally responsible for their conduct if "[t]he person suffers from a mental disease or defect that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform with the requirements of law."¹²⁷ Circumstances that fall "short of constituting grounds for exclusion of criminal responsibility, such as substantially diminished mental capacity," must be taken into account as a mitigating circumstance during sentencing.¹²⁸ This Chamber should find that Mr Ongwen suffered and continues to suffer from substantially diminished mental capacity because 1) he was diagnosed with multiple mental diseases by the Defence experts and 2) the prosecution's experts stated that Mr Ongwen suffered from traumatic events that may impact a person's mental health and capacity in the future.¹²⁹

1. The Chamber should find that Mr Ongwen suffered from substantially diminished mental capacity because he was diagnosed with multiple mental diseases

86. The Chamber should find that Mr Ongwen suffered, and continues to suffer, from substantially diminished mental capacity at the material time because 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.¹³⁰ Although the Chamber found that Mr Ongwen's mental disease and defect did not amount to an Article 31(1)(a) defence for a finding of exclusion of culpability,¹³¹ the Chamber must consider Mr Ongwen's diagnoses to determine whether he experienced substantially diminished mental capacity. The Chamber must consider Mr Ongwen's diagnoses because 1) Mr Ongwen is receiving treatment for PTSD and [REDACTED], and there is evidence on record that these existed, dating back to at least 1989,¹³² 2) Dr de Jong, who was preferred and proffered by the Prosecution (who found Dr de Jong) and appointed by the Chamber, also concluded that Mr

¹²⁷ Article 31(a) of the Rome Statute.

¹²⁸ Rule 145(2) of the Rules.

¹²⁹ P-0447, *Forensic Report on the mental health status of Mr. Dominic Ongwen YY*, UGA-OTP0280-0674, p. 0698; P-0445, [ICC-02/04-01/15-T-166](#), p. 21, lns 6-12; and P-0445, UGA-OTP-0280-0732, p. 0756.

¹³⁰ D-0041 and D-0042, *Psychiatric Report*, UGA-D26-0015-0004, 0017-0018.

¹³¹ Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), para. 2580.

¹³² D-0041 and D-0042, *Psychiatric Report*, UGA-D26-0015-0004, 0008.

Ongwen suffered from mental diseases and defects, and 3) the Chamber, on the advice of the ICC-DC treating physicians, took measures to adjust the trial schedule [REDACTED].

87. First, 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 as diagnosed by Defence expert witnesses and Dr de Jong. In their report, Professor Ovuga and Dr Akena concluded that Mr Ongwen suffers from “[REDACTED], posttraumatic stress disorder (PTSD), and [REDACTED].”¹³³ As previously stated, Professor Ovuga and Dr Akena also included a treatment plan and advised 24-hour surveillance to mitigate Mr Ongwen’s [REDACTED].¹³⁴ Today, Mr Ongwen receives psychological medical treatment and “a full range of health and social welfare services.”¹³⁵ Thus, Professor Ovuga and Dr Akena correctly diagnosed Mr Ongwen.
88. Second, 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. In his report, Dr de Jong “discussed [Mr Ongwen’s] mental health at the time of preparation of the report.”¹³⁶ Dr de Jong concluded that Mr Ongwen suffered from PTSD, [REDACTED], and other specified [REDACTED].¹³⁷ As previously stated, Mr Ongwen received psychological medical treatment. Thus, Dr de Jong’s conclusions align with the conclusions of the Defence experts.
89. Third, the Chamber took measures to adjust the trial schedule to accommodate the measures taken by ICC-DC physicians and security team.¹³⁸ In its decision, the Trial Chamber “assessed the specific situation of [Mr Ongwen], including his health, and in particular his mental health.”¹³⁹ The Chamber also “ordered an examination ‘making a diagnosis as to any mental condition or disorder that [the accused] may suffer.’”¹⁴⁰ After the examination, a report was provided by the examiner.¹⁴¹ In the report, the examiner stated that “while the

¹³³ D-0041 and D-0042, *Psychiatric Report*, UGA-D26-0015-0004, 0017-0018. See also D-0042, *Report for Sentence Mitigation*, UGA-D26-0015-1878, pp 1883-1884 and Professor Joop T. de Jong, MD PhD Psychiatry, *Psychiatric examination Pro Justitia regarding Mr Dominic Ongwen YY*, UGA-D26-0015-0046-R01, pp 0050-0051.

¹³⁴ D-0041 and D-0042, *Psychiatric Report*, UGA-D26-0015-0004, 0017-0018.

¹³⁵ D-0042, *Report for Sentence Mitigation*, UGA-D26-0015-1878, 1885.

¹³⁶ Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), para. 2576.

¹³⁷ Professor Joop T. de Jong, MD PhD Psychiatry, *Psychiatric examination Pro Justitia regarding Mr Dominic Ongwen YY*, UGA-D26-0015-0046-R01, pp 0050-0053. See also Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), para. 2576.

¹³⁸ Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), paras 109-111.

¹³⁹ Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), para. 109.

¹⁴⁰ Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), para. 109.

¹⁴¹ Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), para. 110.

accused suffered from various mental illnesses, ‘he is oriented in time, oriented vis-à-vis his environment and himself. He has a good attention span and maintains his concentration after hours of interviewing.’”¹⁴² Additionally, when Mr Ongwen’s health condition “warranted a break in the proceedings, this was facilitated by the Chamber.”¹⁴³ Proceedings only resumed when medical experts from the ICC-DC confirmed that Mr Ongwen’s health allowed for proceedings to resume.¹⁴⁴ Thus, the Trial Chamber considered Mr Ongwen’s diagnoses and his significantly diminished capacity in scheduling trial proceedings. In conclusion, the Chamber should find that Mr Ongwen suffered and continues to suffer from substantially diminished mental capacity as several independent medical professionals diagnosed him with mental diseases and defects and the Chamber took measures to accommodate his mental health treatment. Thus, the Chamber should consider Mr Ongwen’s substantially diminished mental capacity as a mitigating factor when determining a sentence for Mr Ongwen.

2. The Chamber should find that Mr Ongwen suffered from substantially diminished mental capacity because he suffered from traumatic events that impacted his mental health as an adult

90. Next, the Chamber should find that Mr Ongwen suffered, and continues to suffer, from substantially diminished mental capacity because the Prosecution experts stated that traumatic events experienced in early life “can leave lasting imprints on the individual.”¹⁴⁵ Although the experts concluded that there is insufficient evidence to justify a diagnosis at the material time, Professor Weierstall-Pust and Dr Abbo concluded that Mr Ongwen suffered traumatic events that may have impacted his mental health as an adult.¹⁴⁶
91. In his report, Professor Weierstall-Pust concluded that Mr Ongwen experienced traumatic events that may have contributed to the development of a mental disorder.¹⁴⁷ Professor Weierstall-Pust explained that “a person experiences a trauma when confronted with death, threatened death, actual or threatened serious injury – either via direct or indirect exposure - , or by witnessing or being exposed to aversive details.”¹⁴⁸ A person who experiences a trauma

¹⁴² Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), para. 110.

¹⁴³ Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), para. 111.

¹⁴⁴ Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), para. 111.

¹⁴⁵ P-0447, *Forensic Report on the mental health status of Mr. Dominic Ongwen YY*, UGA-OTP0280-0674, p. 0679.

¹⁴⁶ P-0447, *Forensic Report on the mental health status of Mr. Dominic Ongwen YY*, UGA-OTP0280-0674, p. 0698; P-0445, [ICC-02/04-01/15-T-166](#), p. 21, lns 6-12; and P-0445, UGA-OTP-0280-0732, p. 0756.

¹⁴⁷ P-0447, *Forensic Report on the mental health status of Mr. Dominic Ongwen YY*, UGA-OTP0280-0674, p. 0698.

¹⁴⁸ P-0447, *Forensic Report on the mental health status of Mr. Dominic Ongwen YY*, UGA-OTP0280-0674, p. 0679.

may develop a “trauma-spectrum disorder.”¹⁴⁹ Early traumatic experiences “have an even more profound impact on an individual’s mental health, as they can leave lasting imprints in the individual, especially when they occur in relevant developmental periods.”¹⁵⁰

92. Professor Weierstall-Pust also explained that a person may experience two types of trauma.¹⁵¹ The first type of trauma “means that one specific event happened.”¹⁵² The second type of trauma is “chronic exposure to stress that is not as intense, but that remains or maintains over a longer period.”¹⁵³ Both types of trauma “seriously affect [a person’s] mental health.”¹⁵⁴ The way in which a person processes a potentially traumatic event contributes to the “determination of whether a person develops a trauma related mental disorder.”¹⁵⁵ So, according to Professor Weierstall-Pust, a person who experiences a traumatic event or chronic exposure to stress over a long period of time may process the traumatic events in such a way that he or she develops a mental disorder or defect, with early traumatic experiences being particularly harmful.
93. In this case, Professor Weierstall-Pust determined that “Mr Ongwen suffered both types of trauma.”¹⁵⁶ First, Mr Ongwen suffered multiple traumatic experiences at a young age and during developmental periods. For example, Mr Ongwen was kidnapped from his family at the age of nine (9) and witnessed the severe beating or murders of those who tried to escape.¹⁵⁷ Mr Ongwen was also punished by being beaten heavily with a machete shortly after his abduction.¹⁵⁸
94. Second, Mr Ongwen endured chronic stress for 27 years.¹⁵⁹ This chronic exposure to stress began at the age of nine (9) with his abduction and continued until Mr Ongwen’s escape on 27 December 2014. For example, Mr Ongwen was shot in the leg in November 2002 and

¹⁴⁹ P-0447, *Forensic Report on the mental health status of Mr. Dominic Ongwen YY*, UGA-OTP0280-0674, p. 0678.

¹⁵⁰ P-0447, *Forensic Report on the mental health status of Mr. Dominic Ongwen YY*, UGA-OTP0280-0674, p. 0679.

¹⁵¹ P-0447, [ICC-02/04-01/15-T-170](#), p. 23, lns 1-6.

¹⁵² P-0447, [ICC-02/04-01/15-T-170](#), p. 23, lns 3

¹⁵³ P-0447, [ICC-02/04-01/15-T-170](#), p. 23, lns. 4-5

¹⁵⁴ P-0447, [ICC-02/04-01/15-T-170](#), p. 23, lns 1-6.

¹⁵⁵ P-0447, *Forensic Report on the mental health status of Mr. Dominic Ongwen YY*, UGA-OTP0280-0674, pp 0679-0680.

¹⁵⁶ P-0447, [ICC-02/04-01/15-T-170](#), p. 23, lns 1-13.

¹⁵⁷ D-0007, [ICC-02/04-01/15-T-193](#), p. 7, l. 17 to p. 8, l. 9; p. 11, lns 7-19; and p. 19, l. 13 to p. 20, l. 17.

¹⁵⁸ D-0007, [ICC-02/04-01/15-T-193](#), p. 19, l. 19 to p. 20, l. 17.

¹⁵⁹ Professor Joop T. de Jong, MD PhD Psychiatry, *Psychiatric examination Pro Justitia regarding Mr Dominic Ongwen YY*, UGA-D26-0015-0046-R01, pp 0051-0052.

nearly died.¹⁶⁰ The Chamber is aware of other serious traumatic events that Mr Ongwen endured as a captive of the LRA.

95. After experiencing traumatic events and chronic stress for an extended period of time, Mr Ongwen processed the trauma in such a way that he developed mental diseases. Today, Mr Ongwen receives treatment for PTSD and [REDACTED].¹⁶¹ It is likely that Mr Ongwen processed the traumatic events he experienced for at least 15 years before the start of the material time in such a way that he developed symptoms of mental disease or defect that substantially diminished his mental capacity at the material time.
96. The Trial Chamber found Professor Weierstall-Pust to be “entirely convincing”.¹⁶² Professor Weierstall-Pust concluded that “there is not sufficient evidence to justify the diagnoses of a manifest mental disorder between 2002 and 2005,” but he conceded that he “found it ‘plausible’ that Dominic Ongwen ‘showed some signs of a mental disorder’ during the period of the charges.”¹⁶³ Specifically, Professor Weierstall-Pust stated that there are “hints that support that maybe [Mr Ongwen] suffered from one or the other symptom” and “it’s plausible that he suffered at least from some symptoms.”¹⁶⁴ In fact, Professor Weierstall-Pust explained that he had “no doubts that living in this war scenario might have resulted in being confronted with potentially traumatic events that later in life could have also resulted in a development of a psychopathological disorder.”¹⁶⁵ Mr Ongwen experienced traumatic events and chronic stress and processed those experiences in such a way that he developed mental diseases and defects for which he is currently be treated. Thus, Mr Ongwen likely experienced traumatic events that resulted in symptoms of mental disease or defect and contributed to substantially diminished mental capacity at the material time. Therefore, the Chamber should consider substantially diminished mental capacity as a mitigating factor in determining a sentence for Mr Ongwen.
97. Like Professor Weierstall-Pust, Dr Abbo provided a report and testified before the Chamber. The Chamber found Dr Abbo helpful in the “understanding of the mental disorders in

¹⁶⁰ [REDACTED]. See also UGA-D26-0015-0080 for a photograph of the healed injury.

¹⁶¹ For example, see Registrar Transmission of a Medical Report from the Medical Officer, ICC-02/04-01/15-1315-Conf-Anx.

¹⁶² Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), para. 2496.

¹⁶³ Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), para. 2491.

¹⁶⁴ P-0447, [ICC-02/04-01/15-T-169](#), p. 74 lns 1-9 and *Forensic Report on the mental health status of Mr. Dominic Ongwen YY*, UGA-OTP0280-0674, p. 0698.

¹⁶⁵ P-0447, [ICC-02/04-01/15-T-169](#), p. 18, lns 10-13.

question.”¹⁶⁶ She found that “the complex interactions between individual, societal, and ecological factors over the course of [Mr Ongwen’s] life had gone satisfactorily well,”¹⁶⁷ and that Mr Ongwen had the capacity to appreciate the “unlawfulness of his conduct because he had favourable early childhood development.”¹⁶⁸ Dr Abbo concluded that although Mr Ongwen suffers from mental illness, there is no evidence “that these illnesses are directly linked to the crimes he allegedly committed.”¹⁶⁹ Despite Dr Abbo’s medical conclusions, the Chamber should find that Mr Ongwen had a diminished mental capacity at the material time because Mr Ongwen experienced traumatic events at a young, developmental age. Experiencing trauma at a young, developmental age diminishes value of Mr Ongwen’s life experiences prior to abduction and contributes to the development of mental diseases and defects.

98. First, the Chamber should find that experiencing traumatic events at a young, developmental age diminishes the value of Mr Ongwen’s life experiences prior to abduction and minimizes Mr Ongwen’s capacity to appreciate the unlawfulness of his conduct. According to Dr Abbo, “from conception onward, the intellectual, emotional, and physical attributes individuals develop are strongly influenced by their personal behaviors and physical processes, interactions with the physical environment, and interactions with other people, groups and institutions.”¹⁷⁰
99. Mr Ongwen’s reports of his early childhood lead Dr Abbo to conclude that, before his abduction, Mr Ongwen’s interactions over the course of his life had gone well.¹⁷¹ However, after his abduction, Mr Ongwen’s life was “exposed to many extreme traumatic events”¹⁷² According to Dr Abbo, “every minute of everyday [sic] traumatic experiences of [Mr Ongwen], from the time he was abducted, was literally shaping his brain.”¹⁷³ In fact, “the younger the brain, the easier to reshape and rewire with experiences.”¹⁷⁴ Dr Abbo asserts that these are mitigating factors – abduction at a developmental age, no choice over his environment, an unfavourable environment under the control of Joseph Kony, and several

¹⁶⁶ Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), para. 2485.

¹⁶⁷ Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), para. 2480; *See also* P-0445, *Forensic Psychiatric Report of Dominic Ongwen*, UGA-OTP-0280-0732, p. 0735.

¹⁶⁸ P-0445, *Forensic Psychiatric Report of Dominic Ongwen*, UGA-OTP-0280-0732, p. 0754.

¹⁶⁹ P-0445, *Forensic Psychiatric Report of Dominic Ongwen*, UGA-OTP-0280-0732, p. 0756.

¹⁷⁰ P-0445, *Forensic Psychiatric Report of Dominic Ongwen*, UGA-OTP-0280-0732, p. 0735.

¹⁷¹ P-0445, *Forensic Psychiatric Report of Dominic Ongwen*, UGA-OTP-0280-0732, p. 0735.

¹⁷² P-0445, *Forensic Psychiatric Report of Dominic Ongwen*, UGA-OTP-0280-0732, p. 0748.

¹⁷³ P-0445, *Forensic Psychiatric Report of Dominic Ongwen*, UGA-OTP-0280-0732, p. 0754.

¹⁷⁴ P-0445, *Forensic Psychiatric Report of Dominic Ongwen*, UGA-OTP-0280-0732, p. 0754.

listed above – at which the Chamber should consider, stating that Mr Ongwen “can’t be blamed for failing to escape negative influences in his whole environment.”¹⁷⁵

100. Due to reshaping and rewiring of Mr Ongwen’s brain, Professor Weierstall-Pust’s description of the impact of trauma at a young, developmental age – and the fact that Mr Ongwen currently receives treatments for symptoms of PTSD – it is unlikely that Mr Ongwen’s experiences prior to abduction shielded him from the impacts of prolonged and repeated severe trauma. It is also unlikely that Mr Ongwen’s experiences prior to abduction allow him appreciate the unlawfulness of conduct. As stated above, Mr Ongwen endured unimaginable traumas from an exceptionally young age. Any benefit Mr Ongwen may have experienced because of his positive childhood was destroyed by trauma. As a result, the Chamber should find that trauma destroyed any benefit Mr Ongwen may have had from having lived a “satisfactory” early childhood, including any moral developments that would have allowed him to determine right from wrong. Any conclusion otherwise disregards the impact of trauma on a child as described by both Dr Abbo and Professor Weierstall-Pust.
101. In conclusion, the Chamber should find that Mr Ongwen suffered from substantially diminished mental capacity because he suffered from traumatic events that impacted his mental health throughout his life. The Chamber must consider Mr Ongwen’s substantially diminished mental capacity as a mitigating factor in determining Mr Ongwen’s sentence.

ii. Duress caused by Joseph Kony

102. While the Chamber decided that Mr Ongwen did not suffer from legal duress during the jurisdiction of the case, Mr Ongwen faced duress daily. The LRA was nothing like a state uniformed military; the LRA was a religious cult which used threats of violence, death and collective punishment to keep people in line. These threats were real and seen by all. The Rules of Procedure and Evidence requires the Chamber to take this into account as a mitigating factor for and a personal circumstance of Mr Ongwen.

1. The Spiritual realm

103. Joseph Kony kept the LRA under a tight watch. Kony intertwined the divine with the living and used that to keep control over thousands of people. The control he wielded did so not only on the physical level; he controlled people over the spiritual realm too. His showmanship

¹⁷⁵ P-0445, *Forensic Psychiatric Report of Dominic Ongwen*, UGA-OTP-0280-0732, p. 0755.

and omnipresence controlled the minds of thousands. Kony would use this power to ensure complete obedience and compliance with his orders and edicts.

104. During the early days of the LRA and into the Sudan years,¹⁷⁶ Joseph Kony was much more visible to everyone who joined and was abducted into the LRA. To quote expert D-0114, “children and young people abducted in the days before *Operation Iron Fist* were more exposed to spirituality issues compared to those that were abducted after March 2002. The overwhelming evidence suggests that Kony more readily found space to lecture his foot soldiers and instil the LRA spirituality and ideologies in them from the Sudan where there was a semblance of stability compared to the bushes of Uganda.”¹⁷⁷ Before *Operation Iron Fist*, Kony was much more visible and was able to infuse his prophet-like being in the minds of those persons in the LRA.¹⁷⁸

105. This issue behind this spiritual realm that Kony created is not whether it is true, it is whether people believed it was true.¹⁷⁹ Kony perverted the Acholi cultural beliefs to control people, and more importantly, Mr Ongwen.¹⁸⁰ The Chamber should take note of whether this belief system was adopted by Mr Ongwen or if the threats were real enough to scare him.

106. On 15 December 2016, Mr Ongwen told expert D-0060:

Before I went to the bush, I knew these things existed. And there was the introduction we went through, with Moo Ya [*sheanut butter oil*], and there was also the battle: we didn’t take cover! And we came out of the battle unhurt!¹⁸¹

107. Like many others, Mr Ongwen fell prey to Kony’s teachings. Mr Ongwen did not become an extension of Kony; Mr Ongwen truly believed in the Spirits and their powers. This is further evidence by ICC-DC medical records where the attending physician noted that Mr Ongwen “still suffers constantly from Mr Kony’s “spirits” and that he can protect himself from them by praying.”¹⁸² Still, just over six (6) years after Mr Ongwen escaped from the LRA, he still believes in and is haunted by the Spirits. Mr Ongwen, like so many others, was scared of the indoctrination into the LRA and felt its power.

¹⁷⁶ By Sudan years, the Defence refers to the pre-Operation Iron Fist time, that being before 2002.

¹⁷⁷ D-0114, *Paper on Dominic Ongwen Sentencing Mitigation*, UGA-D26-0015-1907, p. 1914.

¹⁷⁸ D-0114, *Paper on Dominic Ongwen Sentencing Mitigation*, UGA-D26-0015-1907, p. 1914.

¹⁷⁹ D-0060, *Expert Report on the LRA’s cosmological space*, UGA-D26-0015-1835, p. 1836.

¹⁸⁰ See D-0060, *Expert Report on the LRA’s cosmological space*, UGA-D26-0015-1835, p. 1836-1837 and generally D-0060, *Growing in the cosmological space of the LRA*, UGA-D26-0018-3901.

¹⁸¹ D-0060, *Expert Report on the LRA’s cosmological space*, UGA-D26-0015-1835, p. 1837.

¹⁸² UGA-D26-0015-1722-R01_tENG, p. 1722. See also UGA-D26-0015-1723_tENG, p. 1723 (noting that Mr Ongwen stated that Kony had appeared to him twice in the past week).

108. Joseph Kony would issue rules that covered every action one could take in the LRA. He decided when people could eat certain foods, when people would pray, whether people could fight and how relationships between men and women would take place. These rules were passed down through the Spirits, and took heavily upon those who were indoctrinated early in the LRA.¹⁸³
109. Dreams and the interpretation of dreams were an important fixture in the LRA and Kony's manipulation/brainwashing of its people.¹⁸⁴ Mr Ongwen believed this, and his dreams were reported for interpretation.¹⁸⁵ Mr Ongwen believed in interpreting dreams and that his dreams specifically had relevance to his life and that they could predict the future.¹⁸⁶ Mr Ongwen, like Ray Apire, believed in the powers their individual dreams held.¹⁸⁷
110. Mr Ongwen very much believed in the Spirits and their powers through Joseph Kony.¹⁸⁸ Mr Ongwen, more so than anyone else, grew up in and grew into the spiritual and cosmological space of the LRA.¹⁸⁹ Having been abducted at nine (9) years old with only a rudimentary understanding of Acholi culture, Mr Ongwen was prime for exploitation and impressions.

2. The consequences for violating the rules

111. Kony instilled fear in those around him. He made prophecies which came true, and he punished those who spoke out against him. He did not care if you were the second-in-command like Otti Lagony or Otti Vincent. If you violated his rules and edicts, your life – and the lives of your loved ones – could be forfeited with a snap of his fingers.
112. The Defence reiterates the words of P-0205, “the elders pronounced that when an individual is abducted you should bear it alone instead of bringing problems to other in the village. And that is why I did not escape.”¹⁹⁰ It was not until the witness was absolutely sure that Kony was no longer able to inflict collective punishment upon P-0205's village – a punishment

¹⁸³ The Defence covered this extensively in its closing brief, [ICC-02/04-01/15-1722-Corr-Red](#).

¹⁸⁴ P-0172, [ICC-02/04-01/15-T-113-Red](#), p. 61, l. 20 to p. 64, l. 23. See also UGA-D26-0022-0001, pp 0006-0007.

¹⁸⁵ For example UGA-OTP-0025-0523, p. 0525 (Otti reporting to Kony about Mr Ongwen's dreams); UGA-OTP-0016-0088, p. 0090 (Mr Ongwen reporting his dream to Otti); UGA-OTP-0017-0255, p. 0256; and UGA-OTP-0016-0424, p. 0427 (Mr Ongwen asking Raska if he can interpret his dream).

¹⁸⁶ D-0060, *Expert Report on the LRA's cosmological space*, UGA-D26-0015-1835, pp 1843-1844.

¹⁸⁷ D-0060, *Expert Report on the LRA's cosmological space*, UGA-D26-0015-1835, pp 1843-1844.

¹⁸⁸ D-0060, *Expert Report on the LRA's cosmological space*, UGA-D26-0015-1835, pp 1839-1840.

¹⁸⁹ D-0060, *Expert Report on the LRA's cosmological space*, UGA-D26-0015-1835, pp 1839-1840.

¹⁹⁰ P-0205, [ICC-02/04-01/15-T-49-Red3](#), p. 3, lns 7-9 (citing UGA-OTP-0247-0076, p. 0080, lns 142-144).

which was meted out against his village in 1989 – did he escape from the LRA.¹⁹¹ Witness P-0205 knew that if you tried to escape, you would be killed.¹⁹²

113. Witness D-0157 noted:

The next morning, we awoke and went to [REDACTED]. We found out that there were attacks in our area the day before and going into the night. We heard that it started from [REDACTED], to [REDACTED], then [REDACTED], followed by our home in [REDACTED], then to [REDACTED] and ending in [REDACTED]. Everyone in the town centre wondered why the LRA came [REDACTED].¹⁹³

The witness admitted that he knew about collective punishment and that it was widely known in northern Uganda.¹⁹⁴ He admitted that when he escaped with a gun, he was not thinking about his family or village, he was only thinking about saving his own life.¹⁹⁵ Around 60 people died in his and the surrounding villages because of his escape.¹⁹⁶

114. Witness P-0138 testified to seeing executions of persons who attempted to escape and collective punishment for those who made it home.¹⁹⁷ The witness stated that an attack in Lira around 2002 and at Wianono in 2004 were collective punishments because LRA personnel escaped and went home.¹⁹⁸ The higher the rank of the leaving person, the more likely the LRA was to chase after you.¹⁹⁹

115. The fear within the LRA existed for many reasons. It existed to strike fear in the newly abducted persons and desensitise them towards death.²⁰⁰ Even “perceived disobedience was heavily punished.”²⁰¹ Mr Ongwen saw a soldier executed for attempting to escape shortly after his abduction, striking fear into him and his friends.²⁰² Other than fear, “escape was an impossibility driven by the complex arrangement within the rebel settlements, the influence of Joseph Kony, the spirituality factor and the protracted indoctrination of the abductees over the years.”²⁰³

¹⁹¹ P-0205, [ICC-02/04-01/15-T-49-Red3](#), p. 5, lns 17-22.

¹⁹² P-0205, [ICC-02/04-01/15-T-48-Red2](#), p. 31, lns 7-22.

¹⁹³ D-0157, UGA-D26-0026-0757, para. 31.

¹⁹⁴ D-0157, UGA-D26-0026-0757, para. 39.

¹⁹⁵ D-0157, UGA-D26-0026-0757, paras 39-40.

¹⁹⁶ D-0157, UGA-D26-0026-0757, para. 40.

¹⁹⁷ P-0138, [ICC-02/04-01/15-T-121-Red2](#), p. 9, l. 4 to p. 11, l. 18.

¹⁹⁸ P-0138, [ICC-02/04-01/15-T-121-Red2](#), p. 10, l. 11 to p. 11, l. 5.

¹⁹⁹ P-0138, [ICC-02/04-01/15-T-121-Red2](#), p. 11, lns 8-18.

²⁰⁰ D-0114, *Paper on Dominic Ongwen Sentencing Mitigation*, UGA-D26-0015-1907, pp 1908 and 1913.

²⁰¹ D-0114, *Paper on Dominic Ongwen Sentencing Mitigation*, UGA-D26-0015-1907, p. 1908.

²⁰² D-0007, [ICC-02/04-01/15-T-193](#), p. 7, l. 17 to p. 8, l. 9 and p. 11, lns 7-19.

²⁰³ D-0114, *Paper on Dominic Ongwen Sentencing Mitigation*, UGA-D26-0015-1907, p. 1910.

116. Another chilling incident happened which many persons in the LRA attributed to a violation of the rules, the incident involving [REDACTED] genitalia.²⁰⁴ In the report from P-0028, P-0172 and D-0074, this type of punishment is listed, yet it does not come from Joseph Kony, it is a punishment from the Spirits.²⁰⁵ “The punitive power of the spirits is related with their all-encompassing, and controlling character. They are at all times able to know, and control behaviour.”²⁰⁶ This type of control comes directly from the rituals performed on the newly abducted persons and those done specifically by Joseph Kony.²⁰⁷
117. The abovementioned actions are but a few which the Chamber heard during the presentation of evidence and through the submission of documentary evidence. The Defence beseeches the Chamber to determine that, while not amounting to a complete defence under Article 31(1)(d), Mr Ongwen sustained duress throughout his time in the LRA because of the spiritual actions taken by Joseph Kony and the punishments handed down by Kony. The Defence argues that this issue is both a mitigating factor and a personal circumstance which warrants a reduced sentence.

E. Rule 145(1)(c) of the Rules

i. Mr Ongwen’s education

118. As stated above, Mr Ongwen was abducted from his family at the age of nine (9) years old.²⁰⁸ He spent the next 27 years of his life held captive in the LRA. During this time, Mr Ongwen was deprived of many of his rights, one of which was his right to an education.
119. Mr Ongwen’s formal education ended in November 1987. At that time, he was finishing his second year in the second grade.²⁰⁹ While Mr Ongwen’s father took pride in educating his family, the LRA ensured that he would not get that chance.
120. During his time in the LRA, Mr Ongwen did not have a chance to gain further education. Instead of moving on from primary into secondary education, Mr Ongwen was forced to

²⁰⁴ [REDACTED].

²⁰⁵ UGA-D26-0022-0001, p. 0002. See also D-0060, *Expert Report on the LRA’s cosmological space*, UGA-D26-0015-1835, p. 1841.

²⁰⁶ D-0060, *Expert Report on the LRA’s cosmological space*, UGA-D26-0015-1835, p. 1841.

²⁰⁷ D-0060, *Expert Report on the LRA’s cosmological space*, UGA-D26-0015-1835, p. 1841.

²⁰⁸ Trial Chamber IX, Trial Judgment, [ICC-02/04-01/15-1762-Red](#), paras 29-30 [referring to testimonies of [REDACTED], D-0007, D-0008, D-0012 and D-0032].

²⁰⁹ The story told in Coorom was that Mr Ongwen’s father greatly appreciated education, and that he felt that young Dominic Ongwen did not master second grade to his liking, so Mr Opobo required Dominic Ongwen to re-take second grade.