

1 International Criminal Court
2 Trial Chamber IX
3 Situation: Republic of Uganda
4 In the case of The Prosecutor v. Dominic Ongwen - ICC-02/04-01/15
5 Presiding Judge Bertram Schmitt, Judge Peter Kovacs and
6 Judge Raul C. Pangalangan
7 Trial Hearing - Courtroom 3
8 Thursday, 9 March 2017
9 (The hearing starts in open session at 9.41 a.m.)
10 THE COURT USHER: [9:41:37] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE SCHMITT: [9:41:54] Good morning, everyone.
14 Everybody recognises that we are not complete and that we are not ready to start.
15 I heard that this problem might be solved and we expect it, sort of, that it will be solved.
16 No reason from the side of the Bench to put even more pressure and tension into the
17 matter, I would say.
18 Because of that, we postpone the start of this day until 11.30, so everybody has enough
19 time, especially -- not everybody, especially Defence has enough time if client arrives to
20 talk to him and perhaps make things clear what it's about here and what we expect from
21 him and from you.
22 So, as I said, this is unfortunate but it's nothing what should arise, an excitement, over the
23 top, I would say. This can happen.
24 So until 11.30 we see each other.
25 THE COURT USHER: [9:43:09] All rise.

1 (Recess taken at 9.43 a.m.)

2 (Upon resuming in open session at 11.35 a.m.)

3 THE COURT USHER: [11:35:30] All rise.

4 PRESIDING JUDGE SCHMITT: [11:35:48] Could the court officer please call the case.

5 THE COURT OFFICER: [11:35:51] Thank you, Mr President.

6 This is the situation in the Republic of Uganda, in the case of The Prosecutor versus

7 Dominic Ongwen, case reference ICC-02/04-01/15.

8 And for the record, we are in open session.

9 PRESIDING JUDGE SCHMITT: [11:36:07] Thank you very much.

10 I ask for the appearances of the parties.

11 MR SACHITHANANDAN: [11:36:12] Good morning, your Honour. I appear today

12 with Beti Hohler, Benjamin Gumpert, Sanyu Ndagire, Colleen Gilg, Yulia Nuzban,

13 Mari Pilvio, Xinwei Liu, Ramu Fatima Bittaye and Julian Elderfield.

14 PRESIDING JUDGE SCHMITT: [11:36:29] Thank you.

15 Mr Cox.

16 MR COX: [11:36:33] Good morning, your Honour. I appear with Mr James Mawira.

17 PRESIDING JUDGE SCHMITT: [11:36:38] Thank you.

18 MR NARANTSETSEG: [11:36:42] Good morning, your Honours. For the Legal

19 Representative, Orchlon Narantsetseg with Jacqueline Atim. Thank you very much.

20 PRESIDING JUDGE SCHMITT: [11:36:49] Thank you.

21 The Defence, please.

22 MR OBHOF: [11:36:52] Good morning, your Honour. Thank you. Today we have

23 counsel Krispus Ayena Odongo, Ms Abigail Bridgman assisting the counsel; our associate

24 counsel Chief Charles Achaleke Taku; our client Mr Dominic Ongwen; and myself,

25 Thomas Obhof.

Trial Hearing
WITNESS: UGA-OTP-P-0205

(Private Session)

ICC-02/04-01/15

- 1 PRESIDING JUDGE SCHMITT: [11:37:09] Mrs Kerwegi.
- 2 MS KERWEGI: [11:37:11] Good morning, your Honours, I'm Sarah Kerwegi.
- 3 PRESIDING JUDGE SCHMITT: [11:37:16] Thank you.
- 4 We go to private session.
- 5 (Private session at 11.37 a.m.)
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25 (Open session at 12.00 p.m.)

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(Open Session)

ICC-02/04-01/15

1 THE COURT OFFICER: [12:00:21] We are back in open session, Mr President.

2 PRESIDING JUDGE SCHMITT: [12:00:23] Thank you.

3 MR OBHOF: [12:00:30]

4 Q. [12:00:30] Now, yesterday you corrected what was written on the -- what we read
5 through here and corrected in your previous statement saying that it was Celestino Akuri
6 not Okello Pokot who took control of the mobile Oka battalion whilst Dominic was in
7 sickbay; is that correct?

8 A. [12:00:58] I request that I be allowed to explain deeply the movement so that he
9 may understand because he seems not to know this very well. So if it's possible, I would
10 like to explain further.

11 PRESIDING JUDGE SCHMITT: [12:01:16] You have the possibility and the time to
12 explain this further. And if it becomes too long, we will interrupt you, but please
13 continue and explain.

14 THE WITNESS: [12:01:38] (Interpretation) The reason why I said that Cele was
15 working with the Oka battalion is that when Dominic was in the bay another part of Oka
16 was in the convoy being led by Cele. When Dominic was picked from the bay and when
17 he proceeded to Otti Vincent, Cele was still continuing moving with the Oka battalion.
18 When we went and met Tabuley, Dominic had remained with Otti. For us, we continued
19 up to Kaberamaido. When Tabuley died we left Kaberamaido and came back. And we
20 again met with Dominic Ongwen after some period of time and after he had left Otti.

21 MR OBHOF: [12:02:39]

22 Q. [12:02:39] Thank you, Mr Witness. During what time frame were you in Amuria?

23 A. [12:02:55] We were picked in 2003, August.

24 Q. [12:03:08] So in your statement to the Prosecution -- or, sorry, in your interview
25 with the Prosecution, at tab 12 still, page 2 -- 0251, line 765 to 770 when you said, "When

1 we were in Amuria Dominic remained in that bay." So you're in Amuria at the same
2 time when Dominic is in that bay, that's what you said, so you are changing in fact part of
3 your interview with the Prosecution; is that correct?

4 A. [12:03:56] When you want the truth, that's what I'm giving you now. I'm telling
5 you the truth.

6 Q. [12:04:02] So pardon me for asking this, so were you not telling the truth when the
7 Prosecution asked?

8 A. [12:04:14] I'm telling the truth.

9 MR SACHITHANANDAN: [12:04:17] Your Honour, I'm sorry to disturb. Could we
10 get that entire sentence read out because I think only half of that was read out.

11 MR OBHOF: [12:04:29] No problem.

12 MR SACHITHANANDAN: Line 767 (Overlapping speakers).

13 PRESIDING JUDGE SCHMITT: [12:04:30] I think there might be no problem to do that.
14 (Overlapping speakers).

15 MR OBHOF: [12:04:31] The remaining -- sorry about that off, sorry to cut you off,
16 Judge. Sorry.

17 The remaining was: "... he was already better and he was almost coming back to mobile.
18 We were leaving the area, we met him. Then he joined us in the group."
19 So he was still in the bay and almost mobile.

20 Q. So how -- when you left to go to Amuria when you say that Otti Vincent collected
21 Dominic, how was he walking at that time?

22 A. [12:05:36] He was limping. He would walk, but he was limping.

23 Q. [12:05:43] In your opinion how bad was the limp?

24 A. [12:05:59] Yeah, he was limping but still he was able to walk, he had ability to
25 walk.

1 Q. [12:06:07] Could he walk at a normal pace like you or I, or was he walking very,
2 very slow, or just very slow?

3 A. [12:06:33] Well, if someone was injured and the way he would walk and how he
4 would go about doing his or our work, at the time he was walking, he was walking at a
5 normal speed just like other people were actually walking.

6 Q. [12:06:55] So you're saying after this injury with the picture that we showed you
7 yesterday that Mr Ongwen can walk the normal speed of everybody else?

8 A. [12:07:18] Sir, you know, according to my knowledge I can only see when
9 somebody is walking. And when he's walking together with the people, yes, I say he is
10 walking at the -- he's walking together with people at that pace. Of course that does not
11 rule out the injury that person has because even people who have only one leg, when
12 they're still moving together with people, yes, they're also, you know, referred or
13 considered as moving together with the group.

14 MR OBHOF: [12:08:25] Your Honours, now we're going to have to go back into private
15 session, please.

16 PRESIDING JUDGE SCHMITT: [12:08:30] Private session please.

17 MR OBHOF: [12:08:32] And for those in the audience, it will be for 20 or 30 minutes.

18 (Private session at 12.08 p.m.)

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- 15 (Open session at 12.28 p.m.)
- 16 THE COURT OFFICER: [12:28:29] We are back in open session, Mr President.
- 17 MR OBHOF: [12:28:48]
- 18 Q. [12:28:48] Now, Mr Witness, what is the month of April like in Uganda, and by
- 19 that I mean what is the weather? Remember that these Judges might not have ever been
- 20 to Uganda.
- 21 PRESIDING JUDGE SCHMITT: [12:29:20] Mr Witness, the Judges are aware of the fact
- 22 that you are not the weatherman of Uganda, so to speak, but as a citizen, as a person
- 23 living there you have perhaps an idea and you have an experience how normally the
- 24 weather would be in April. I think nothing more Mr Obhof wants to hear from you.
- 25 THE WITNESS: [12:29:50] (Interpretation) The month of April there is now rain and

1 people can begin farming. The people -- some people could have planted the first maize
2 with the first rain and it's already doing well.

3 MR OBHOF: [12:30:11]

4 Q. [12:30:11] And during the months of March, April, May, those are what
5 they -- what everybody considers, which is that to be the heavy rain season, as in we have
6 a snowy season here, and that is one of the biggest rainy seasons in Uganda; correct?

7 A. [12:30:33] Yes, that's correct.

8 Q. [12:30:37] Are the rivers usually very high, flowing very fast?

9 A. [12:30:54] Yeah, when there's a lot of rain the rivers can go very high.

10 Q. [12:31:08] And how about the Aswa river? The Aswa river, is that a big river?

11 A. [12:31:28] Aswa is a big river.

12 Q. [12:31:33] So around this time the Aswa would be pretty high, pretty fast moving;
13 correct?

14 A. [12:31:54] Yeah, the river would be high and full and fast moving. That depends
15 on which day this happens and also that depends on how heavy the rain was and that will
16 affect the nature of the river. At times it wouldn't really be flowing so fast.

17 Q. [12:32:18] So if it was raining so heavy one day that you couldn't even
18 communicate by radio, would that we considered a heavy rain do you think?

19 A. [12:32:42] If the river is full and stops us from crossing that will -- that will be not
20 the cause of the rain, but rather that will be caused by the river. The rain cannot stop
21 people from moving.

22 Q. [12:32:57] I don't mean moving, Mr Witness, I mean the rain, if the rain was so
23 heavy that radio communication stopped because of the very heavy rainfall, would
24 you -- or, because of the rainfall, would you consider that heavy that it would even affect
25 radio communication?

- 1 A. [12:33:28] When it is raining it is important to protect the radio because the radio
2 used by the LRA is put in a bag and carried on the back.
- 3 Now, if one was to communicate with the radio, then the antennas are pulled up and then
4 they talk. But if it is raining, this is not possible, you cannot do that because you would
5 not be protecting the radio. So you will not use the radio when it is raining because you
6 want to protect the radio.
- 7 Q. [12:34:10] Would the heavy rains of April and May generally slow people down in
8 the LRA?
- 9 A. [12:34:37] That depends on a particular unit and its location and where they're
10 heading to. Rain cannot stop the LRA from moving if they want to go somewhere.
11 And the rain cannot even slow down their pace, their speed.
- 12 Q. [12:34:58] Now assume there is a very heavy rain and it's during the rainy season,
13 towards the end of the rainy season, and it is raining very heavy and you have to cross the
14 Aswa river without using a bridge, wouldn't that take some time to find some place to
15 cross?
- 16 A. [12:35:34] Sir, the LRA, ever since they have been moving around, once they
17 have -- they have already planned to cross a river nothing will stop them from crossing
18 that river, unless they are stopped by the enemy soldiers. So if the LRA has already
19 prepared something because the LRA uses ropes for crossing the river, if the rope is there
20 with that person, then they will cross the river. And if not, they would use a radio call
21 for communication. But if there's no rope for crossing the river, they will have to find
22 other means of getting that rope so that they can cross.
- 23 Q. [12:36:38] But so what if there's no radio communication because the rain is so
24 heavy you cannot communicate on the radio? Not because the radio might get wet, but,
25 again, because the radio waves are being obstructed by the rain?

1 A. [12:37:10] Yes, at that time you cannot use the radio call. But the rain also cannot
2 fall for over -- for a week. It may rain for a whole day, but the following day it will be
3 clear and therefore you can use the radio once again.

4 Q. [12:37:36] Now you talked about how you do use ropes to cross larger rivers.
5 Would that be done -- when would that usually be done?

6 A. [12:37:50] If the ropes are available, as soon as you reach the river those who can
7 swim, would go with one end of the rope to the other bank of the river and people would
8 therefore use that rope to cross the river.

9 Q. [12:38:11] And it's normal practice to do this at night when there is no moon and
10 it's raining; is that correct?

11 A. [12:38:38] In accordance with the movement orders and also given the location of
12 the river, things may be different. Also another factor is if you are being pursued by the
13 government soldiers. And if there are so many soldiers pursuing you, then you will do
14 your all best, you do your level best to cross the river. However, if there are no soldiers
15 you may spend the night and then cross the river the following morning.

16 Q. [12:39:12] Mr Witness, how wide is the Aswa river? Well, say how wide is it
17 around Awere?

18 A. [12:39:43] Awere is a large area. Now which particular location, because Awere is
19 a large area? So you want which side of Awere?

20 Q. [12:39:58] The town of Awere, on the map behind you, which is not too far from
21 Odek.

22 A. [12:40:17] Now which side of Awere? Awere towards Gulu or Awere towards
23 Pader district?

24 Q. [12:40:25] It doesn't make a difference. I'm talking about the Aswa river, so how
25 wide is the Aswa river where it joins? Right there, if you go to Odek, and then you

1 head ...

2 A. [12:40:47] If it is Awere on the Gulu side and going towards Odek, then there the
3 widths are different and I cannot well compare the distance because I don't have
4 something for measuring. But there are some portions which are wide and others which
5 are not.

6 Q. [12:41:12] Where would you cross the Aswa river from if you were on the east side
7 of the river? So if you were on the east side of the river and north of Odek where would
8 you cross the Aswa river at?

9 A. [12:41:43] Could you please repeat the question?

10 Q. [12:41:49] If you were in Bolo?

11 A. [12:41:53] Bolo.

12 Q. [12:41:54] Bolo, sorry. Yes, Bolo, where would you cross the Aswa river at?

13 A. [12:42:13] I cross the river from the point I would like to cross from. I can cross
14 from Lacekocot (phon) where the river Agago (phon) joins the river Aswa. I can cross
15 from that part. That is towards the west.

16 Q. [12:42:37] And there's another bridge just south of that as well, correct, just south
17 of Bolo?

18 A. [12:42:55] A bridge on Aswa river after Bolo, there isn't any. Between Awere and
19 Cwero, there's no bridge along that portion. Unless you are talking about river Agago,
20 there I could make you understand better.

21 Q. [12:43:25] No, I know where river Agago is?

22 PRESIDING JUDGE SCHMITT: [12:43:28] But, Mr Obhof, we have still not established
23 how wide --

24 MR OBHOF: [12:43:32] That's what --

25 PRESIDING JUDGE SCHMITT: [12:43:34] -- the river is, may I ask you.

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1 MR OBHOF: [12:43:37]

2 Q. [12:43:37] Mr Witness, now at the widest point about how wide does the river
3 Aswa get?

4 A. [12:43:55] Some parts of Aswa river are as large as the width of this room, in other
5 parts they are much wider.

6 MR OBHOF: [12:44:06] Your Honours, I'm going to pull up the map on evidence 2 so it
7 will be easier to show him some certain areas.

8 MR GUMPERT: [12:44:18] Your Honours, just while that's being done, in the light of
9 the witness's last comment as to the width of the room, I don't know whether
10 your Honours have with you the trial notebook, but on page 18.

11 PRESIDING JUDGE SCHMITT: [12:44:38] I have it with me, yes. Page 18, yes.

12 MR GUMPERT: [12:44:44] We have --

13 PRESIDING JUDGE SCHMITT: [12:44:45] And now you are counting, you are telling
14 me how wide it is.

15 MR GUMPERT: [12:44:50] Your Honour, no, I'm merely referring you to this as a point
16 of possible reference.

17 PRESIDING JUDGE SCHMITT: [12:44:56] Yes.

18 MR GUMPERT: [12:44:57] I wasn't going to mention any figures.

19 PRESIDING JUDGE SCHMITT: [12:44:59] You can -- we can do this exercise ourselves
20 you want to say.

21 MR GUMPERT: [12:45:04] Indeed that's the purpose of the notebook.

22 PRESIDING JUDGE SCHMITT: [12:45:07] Okay, thank you very much.

23 Please continue, Mr Obhof. I think we have it now on the screen.

24 MR OBHOF: [12:45:16] For the people up in the booth it is Prosecution binder 1,
25 tab 1, 0233-1386.

1 Q. Can you see the little cursor moving around, Mr Witness, right there where it says
2 "Awere"?

3 A. [12:45:40] Yes, I'm seeing it.

4 Q. [12:45:41] Now the Aswa river, and we understand you're not a, you know, a
5 professional estimator, but about how wide is the river there?

6 A. [12:46:09] I said in some parts it's as wide as this room, but in other parts it is much
7 wider.

8 Q. [12:46:17] So a small place to cross would be the size of this room, that's a small
9 section; correct?

10 A. [12:46:34] In most cases, the LRA when they are moving they look for the larger
11 areas, the portions where the river is wider because there the current is not very strong.
12 So they prefer sometimes crossing where the river is wider. But at times they also cross
13 at points which are much wider than this room. It depends on the nature of water in the
14 river.

15 Q. [12:47:05] And we're discussing, Mr Witness, during the peak of rainy season, at
16 the end of April.

17 Now I'm going to move a little bit ahead, so you see Bolo right here?

18 PRESIDING JUDGE SCHMITT: [12:47:20] May I ask something?

19 MR OBHOF: [12:47:22] Yes.

20 PRESIDING JUDGE SCHMITT: [12:47:22] In the meantime, Mr Witness, how deep
21 would the water be in April during the rainy season? Can you say that?

22 THE WITNESS: [12:47:40] (Interpretation) Aswa river is very deep. At some points
23 it can be from the floor up to the ceiling. In other parts it may not be as deep. In other
24 parts it may be just, for example, from the floor up to our heads. The river has some
25 parts where there are rocks beneath, and there it will not be so deep, but in other parts

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1 where there are no rocks it is very deep.

2 PRESIDING JUDGE SCHMITT: [12:48:25] Thank you very much, Mr Witness. So we
3 can imagine this I think now.

4 THE COURT OFFICER: [12:48:31] I'm sorry to interrupt, would counsel confirm the
5 confidentiality level of this. Thank you.

6 MR SACHITHANANDAN: [12:48:42] As long as the signature is not shown it can be
7 shown publicly.

8 MR OBHOF: We don't intend to go any further than right here.

9 Q. [12:48:53] Now, Mr Witness, do you see the cursor I'm moving around right now?

10 A. [12:49:05] Yes, I'm seeing it.

11 Q. [12:49:07] Now if you can remember, and we understand if you don't, do you
12 know about how wide the Aswa river is? And we're thinking of rainy season.

13 A. [12:49:33] The width of Aswa river, in my own estimation, sir, I wonder whether
14 the width of this room could be perhaps 70 metres or 50 metres? So in other parts of the
15 river it can be even up to 100 metres. In other sections it may be about 25 metres. So
16 the width of this river varies according to a particular area.

17 Q. [12:50:17] Now in April, towards the end of April, how fast would the water flow
18 in the river, especially considering if it was raining?

19 A. [12:50:42] I cannot really be specific. I can see with my own eyes that the water is
20 moving fast, but I don't have any equipment for really measuring the exact speed.

21 Q. [12:50:54] That's okay, the word "fast" is just fine.

22 MR OBHOF: [12:51:04] Your Honour, we might, out of precaution I'd prefer the last 10
23 minutes in private session.

24 PRESIDING JUDGE SCHMITT: [12:51:10] Private session then.

25 (Private session at 12.51 p.m.)

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1 (Redacted)
2 (Redacted)
3 (Recess taken at 1.00 p.m.)
4 (Upon resuming in open session at 2.31 p.m.)
5 THE COURT USHER: [14:31:47] All rise.
6 PRESIDING JUDGE SCHMITT: [14:32:05] We are in open session.
7 And Mr Obhof has the floor.
8 MR GUMPERT: [14:32:13] Your Honour, may I interrupt?
9 PRESIDING JUDGE SCHMITT: [14:32:15] Yes, you may.
10 MR GUMPERT: [14:32:16] I'm grateful. I want to make what might be described as an
11 ex post facto objection. I didn't interrupt Mr Obhof because I didn't think that it would
12 be helpful to do so, but there is a point of principle which I want to seek to persuade the
13 Bench of and which is best illustrated by looking at today's transcript page 24, line 21.
14 PRESIDING JUDGE SCHMITT: [14:32:57] Okay.
15 MR GUMPERT: [14:32:58] Mr Obhof said to the witness:
16 "Now, Mr Witness, may I suggest that you're in fact mistaken on the last time you
17 operated in Lira Palwo."
18 Thus far I would submit no objection could possibly be taken, a perfectly proper question
19 or proposition for the witness to agree or disagree with.
20 PRESIDING JUDGE SCHMITT: [14:33:23] I agree insofar.
21 No overlapping speakers there.
22 MR GUMPERT: [14:33:27] My objection comes in the next two lines, he went on to the
23 witness:
24 "Knowing that we have hundreds of hours of material from the UPDF and thousands of
25 pages as well."

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1 The danger with including within a question such a proposition which frankly isn't a
2 question at all, it's not something the witness can possibly comment upon, is that a less
3 robust witness might be inclined to agree with the first proposition, thinking to
4 themselves "Gosh, I better agree with that otherwise I might look a bit of a fool if I'm
5 contradicted by thousands of pages to the contrary." And I would respectfully submit
6 that my learned friend should refrain from that kind of addition to his otherwise proper
7 questions.

8 PRESIDING JUDGE SCHMITT: [14:34:20] Do you want to answer to that?
9 Mr Taku.

10 MR TAKU: [14:34:25] Indeed, your Honours, the witness gave an answer. If the
11 witness was able to provide an answer and provide an answer that did not lead to the
12 speculation that my colleague has made, then there is no reason for any objection or for
13 you to re-open the matter. He stated what he knew. And the answer is clear from the
14 record. And there's no indication from the answer he gave that, in a way, he was
15 persuaded by what happened. I think the problem was in the date he gave, he said "Well,
16 if that date" and he qualified his answer.

17 Secondly, that answer -- that objections were interjected at the time the question was
18 asked, and your Honours will rule on that. At this point in time we're in a completely
19 different issue. It is untimely and it is potentially disruptive.

20 PRESIDING JUDGE SCHMITT: [14:35:20] That is not so difficult to answer. You
21 yourself, Mr Gumpert, classified it as a post facto. Of course we very much prefer to
22 have present facto objections. As a matter of principle we have noted it, but the witness
23 has answered this question and there is nothing. And he has not been, as I have
24 understood it, not been submitted to any suggestion that might have been in this question.
25 So there is nothing to discuss, to relitigate, so to speak, what has been in the past.

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1 We have noted that, we are attentive to that. But nevertheless I would suggest next time
2 immediately step up and object to it if you have something like that.

3 MR GUMPERT: [14:36:11] Very well, your Honour.

4 PRESIDING JUDGE SCHMITT: [14:36:13] Then please continue, Mr Obhof.

5 MR OBHOF: [14:36:17] Thank you, your Honour. As a housekeeping that you asked
6 me this morning, I will try but I really think we're going to be using 30 to 45 minutes
7 tomorrow morning for this witness as well. So we'll try to finish today, but it -- yes.

8 PRESIDING JUDGE SCHMITT: [14:36:31] Please continue.

9 MR OBHOF:

10 Q. [14:36:40] Good afternoon, Mr Witness. What distance would you say that you
11 could cover in a day?

12 A. [14:36:56] That I would be moving in whose interest?

13 Q. [14:37:02] If you were moving to an RV point or to someplace to work.

14 A. [14:37:28] My movement and my speed and the order that I have been given is
15 what I follow.

16 Q. [14:37:40] But on an average, if you're moving, like say when you are ordered to go
17 to RV3, how long would that -- how many -- how long would that have taken and what is
18 the approximate distance you would have walked?

19 A. [14:38:05] I would be coming from which location?

20 Q. [14:38:11] Let's just keep using this as an example, where you were at before you
21 went to RV3 and going to RV3.

22 A. [14:38:29] Where I was was not a far-off distance. I told you I moved for one
23 hour.

24 Q. [14:38:37] And how far did you move in that one hour?

25 A. [14:38:59] Well that kind of estimate is what makes it difficult because since I

1 didn't have any measuring equipment and I couldn't, you know, time my movement.

2 Well it's difficult for me to estimate the distance, but I used the hour that I already
3 mentioned.

4 Q. [14:39:26] Now you previously stated that it took about a day to a day and a half to
5 get from the -- actually, your Honour, we might need to go to private for this, for this part.

6 PRESIDING JUDGE SCHMITT: [14:39:40] We go to private session.

7 (Private session at 2.39 p.m.)

8 (Redacted)

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15 (Redacted)

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2 (Open session at 3.11 p.m.)

3 THE COURT OFFICER: [15:12:01] We're back in open session, Mr President.

4 MR OBHOF: [15:12:13]

5 Q. [15:12:13] Now, Mr Witness, the other day -- you told Court on Monday, sorry,
6 that Mr Ongwen said, and at the RV, in relation to the orders to go to Odek:

7 "And there were not so many soldiers there. There were a few soldiers at Odek,
8 therefore, the standby should go and destroy Odek completely, they should only leave
9 bare ground. Nothing should be left in Odek."

10 T-47 page 43, lines 16 through 19.

11 Now, when you interviewed with the Prosecution, you stated that Mr Ongwen went
12 through and said that "... if we overrun Odek he does not want to see any house of a
13 soldier standing. He does not want to see anything that belongs to the military."

14 A few pages before -- that's in tab 22, UGA-OTP-0247-0447, page 0470, line 749 to 753.

15 You also stated a few pages before that, on page 0466, Mr Ongwen told the standby to get
16 uniforms and weapons. And in nowhere there was there any mention of burning
17 everything to the ground, it was strictly related to military items.

18 Could you explain why on Monday you talked about burning everything to the ground
19 but yet when you interviewed with the Prosecution there was no mention of that?

20 A. [15:14:49] What Mr Obhof said or asked me, there was talk about everything being
21 burnt. I was asked what Odomi said at the standby and then I said what I heard. It's
22 not me who said it. I just repeated what Odomi said and that's what I told them.

23 PRESIDING JUDGE SCHMITT: [15:15:21] No, I think he has not understood the
24 problem. Perhaps, may I, if you ...

25 Mr Witness, it is -- what Mr Obhof has quoted is from a former statement that you gave.

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1 And I think he simply wants to know if what you said at the time, today you would say
2 that was correct. I think that is -- and I repeat, you were asked was there anything
3 significant, any other briefing that you heard about the attack apart from what you've
4 already told us. That was the question, was there anything significant.

5 And your answer was:

6 "I was still continuing with what he said because he also made mention that if we overrun
7 Odek he does not want to see any house of a soldier standing."

8 And you added:

9 "He does not want to see anything that belongs to the military."

10 And the question would be if -- that what you have said at the time if this is still today
11 your recollection?

12 THE WITNESS: [15:16:40] (Interpretation) That is what I said and it is the correct
13 one, sir.

14 PRESIDING JUDGE SCHMITT: [15:16:44] I think you can continue. This is ...

15 MR OBHOF: [15:16:48]

16 Q. [15:16:50] So why do you have a different story today than you did --

17 PRESIDING JUDGE SCHMITT: [15:16:55] I think you need not ask that because I had
18 the impression that it was not really a contradiction, what he said in court --

19 MR OBHOF: [15:17:06] You'll see that -- sorry, your Honour, you'll see it in the next
20 question, too, after this.

21 PRESIDING JUDGE SCHMITT: [15:17:11] Okay, good. But I -- you see, it might well
22 be, so what is important is what he said at the time, he says today is correct, still today
23 correct. That is important.

24 What he said on Monday was a little bit more unspecific, but not necessarily a
25 contradiction, I would say. But this is just an impression that I have. And, of course,

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1 you have your point, so to speak.

2 MR OBHOF: [15:17:49]

3 Q. [15:17:50] And Mr Witness, you also talked on Monday where you said "... those
4 who were above 18 should ... be brought, they should be killed instead."

5 That's from T-47, page 44, lines 7 through 9.

6 Now, Mr Witness, a lot of people in this room have read your interviews cover to cover
7 and I have never read you saying anything like this. And the Prosecution kept
8 specifically talking about civilians in their interview, would ask you consistent questions
9 about civilians. Why was this not mentioned during your interviews and now all of a
10 sudden today -- or sorry, on Monday, you talk about this even though the Prosecution did
11 repeatedly ask about civilians in your prior interviews?

12 PRESIDING JUDGE SCHMITT: [15:18:48] May I have again the exact quotation from
13 the transcript perhaps.

14 MR OBHOF: [15:18:53] "... those who were above 18 should not be brought, they
15 should be killed instead."

16 PRESIDING JUDGE SCHMITT: [15:19:00] Thank you.

17 MR OBHOF: [15:19:02] You're welcome.

18 THE WITNESS: [15:19:29] (Interpretation) As I tried to explain a short while ago,
19 there are things which happened a long time ago. If what happened, what was said is
20 important or not important, then I am sorry to have brought this issue out, as you said,
21 but that was one of the addresses he made at the standby which I heard. And if a dead
22 person could resurrect that person would also confirm what I'm saying.

23 MR OBHOF: [15:20:23]

24 Q. [15:20:26] Then, sir, your explanation is that you forgot when the Prosecution
25 asked you about this?

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1 A. [15:20:50] Yes, sir, I did forget.

2 Q. [15:20:55] We're going to move on and talk some more about these things that you
3 forgot, Mr Witness.

4 Now, during your interview you told the Prosecution that it was Sinia headquarters and
5 Terwanga battalion that attacked Lukodi and only those units with the exception of two
6 people; is that still correct?

7 MR SACHITHANANDAN: [15:21:20] Your Honour, citation please.

8 PRESIDING JUDGE SCHMITT: [15:21:23] Yes, please.

9 MR OBHOF: [15:21:25] Tab 5, UGA-OTP-0273 -- I'm sorry, I have the --

10 PRESIDING JUDGE SCHMITT: [15:21:35] I'm actually happy because I could not
11 follow. So take your time. You were too quick, because of that I could not follow.

12 MR OBHOF: [15:22:21] Sorry, tab 5, UGA-OTP-0247-0089, page 0098, starting around
13 line 303:

14 "Sinia brigade went and attacked the soldiers who were in Lukodi."

15 "In which part of Sinia brigade?"

16 "Terwanga and headquarters."

17 MS KERWEGI: [15:22:58] I'm sorry to interrupt, your Honour, maybe to remind the
18 witness that we're in open session as he's answering these questions.

19 PRESIDING JUDGE SCHMITT: [15:23:09] Might be advisable, yes. We go to -- thank
20 you very much, Mrs Kerwegi.

21 We go to private session.

22 (Private session at 3.23 p.m.)

23 (Redacted)

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- 15 (Redacted)
- 16 (Open session at 3.29 p.m.)
- 17 THE COURT OFFICER: [15:29:43] We are back in open session, Mr President.
- 18 MR OBHOF: [15:29:48] I'll say it again for the transcript.
- 19 PRESIDING JUDGE SCHMITT: [15:29:55] Probably not only.
- 20 MR OBHOF: [15:29:57]
- 21 Q. [15:29:57] Mr Witness, who is the late lieutenant colonel Tulu?
- 22 A. [15:30:15] I can't answer that question, but what I said is that Tulu is one officer in
- 23 Gilva brigade.
- 24 Q. [15:30:33] Have you ever worked with him?
- 25 A. [15:30:42] No, I did not work with Tulu.

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1 Q. [15:30:48] In the middle of 2004, specifically May, do you know what his position
2 was?

3 A. [15:31:05] In 2005, which year -- which month?

4 Q. [15:31:15] In May 2004.

5 A. [15:31:33] I have no idea.

6 Q. [15:31:46] Mr Witness, do you know where he was stationed? Sorry, in May 2004.

7 A. [15:32:13] Tulu was in Omel. He was in a place called Omel.

8 Q. [15:32:32] Is that the town of Omel or in the county?

9 A. [15:32:47] That is a village. The village is called Omel.

10 Q. [15:33:00] Where is it in terms of its location, with the reference point of Lukodi?

11 A. [15:33:32] When you are in Lukodi and you look at the direction of Omel, I guess, I
12 guess it is in the southeastern direction.

13 Q. [15:34:11] Do you have an approximate distance which Omel is from Lukodi?

14 A. [15:34:22] No, it's difficult to estimate the distance. I could estimate in terms of
15 the movement and the area from which we entered to go to Lukodi.

16 Q. [15:34:52] If we pulled up that nice little map on evidence 1 would you be able to --

17 PRESIDING JUDGE SCHMITT: [15:34:58] This was exactly what I at this point in time
18 wanted to suggest. Perhaps we do this again. I recall that I have seen Omel there, but
19 I'm not one hundred percent sure.

20 This is now too small for my eyes.

21 Thank you. Keep it like it is at the moment. I think, Mr Obhof, now on the screen -- we
22 have not the whole Lukodi also on the screen as even I see correctly.

23 MR OBHOF: [15:36:38] Yes, it would have to be moved a little bit, so.

24 PRESIDING JUDGE SCHMITT: [15:37:18] Now this is getting a little bit, now let me
25 put it friendly, tedious.

1 MR OBHOF: [15:37:28] It would be much nicer if we could take control.

2 PRESIDING JUDGE SCHMITT: [15:37:38] Perhaps any guidance, any guidance what
3 part of the map we need now. So we have Omel. And to which, where to do we have
4 to switch this to get Lukodi on?

5 MR OBHOF: [15:38:00] Lukodi is to the -- yeah, to the west on the map. Still need to
6 show more of the west side of the map. Yeah, move it so the west side, more of the west
7 part of the map is showing.

8 PRESIDING JUDGE SCHMITT: [15:38:26] (Microphone not activated)

9 MR OBHOF: [15:38:29] Now I'm getting mixed up going back and forth. I'm sorry.

10 PRESIDING JUDGE SCHMITT: [15:38:34] (Microphone not activated)

11 MR OBHOF: Yes.

12 PRESIDING JUDGE SCHMITT: Really, you know, I think there will become a time
13 when we go back to analogue resources, I would say, meaning doing what my fellow
14 Judge Kovács is doing, which seems to be very sensible.

15 MR OBHOF: [15:39:18] Well, your Honour, if that wasn't actual evidence, I would ask
16 him to go up and draw on it, but.

17 PRESIDING JUDGE SCHMITT: [15:39:33] So we can give you the opportunity, you can
18 be the master of the map, so to speak.

19 We give you the opportunity, Mr Obhof, which of course does not only give you the
20 opportunity, but also you are then in charge of it.

21 MR GUMPERT: [15:39:49] Your Honours, too many cooks can spoil the broth, I know,
22 and perhaps my intervention isn't welcome, but I'm very familiar with this map. If we
23 are looking for the word Lukodi on it, I think we are going to be disappointed.

24 MR OBHOF: [15:40:12] We are actually looking for Omel.

25 PRESIDING JUDGE SCHMITT: [15:40:14] No, it's -- obviously it's late in the day, and

1 it's not -- we are not nearing the evening but it's obviously late afternoon now. Omel we
2 have since I think 15 minutes on our plate, but if Lukodi is not on the map it is of course a
3 problem.

4 MR AYENA ODONGO: [15:40:33] In fairness, your Honour, Omel -- I mean Lukodi is
5 around the area of Bungatira. So if you go to Bungatira it should be somewhere around
6 there.

7 PRESIDING JUDGE SCHMITT: [15:40:49] This is helpful indeed.

8 MR AYENA ODONGO: [15:40:51] Which is to the extreme left of Gulu.

9 PRESIDING JUDGE SCHMITT: [15:41:01] Thank you very much, Mr Ayena. But of
10 course what Mr Gumpert has said is also correct. We can look for hours and hours and
11 entertain this exercise. If it is not on the map, we won't find it.

12 MR AYENA ODONGO: [15:41:16] Your Honour, my view is that since the witness is
13 couth in matters of the geographical arrangement around Gulu and Bungatira I'm sure he
14 would point to where around Bungatira Lukodi is.

15 PRESIDING JUDGE SCHMITT: [15:41:40] I also think so. That is a good idea,
16 Mr Ayena, and I think now we have a, really a part of the map that clearly shows
17 everything that you want to head at, Mr Obhof. So please I think now, considering this
18 back and forth, you would have to formulate a question again, please.

19 MR OBHOF: [15:42:04]

20 Q. [15:42:04] Mr Witness, could you please draw on your computer to where Omel
21 is at, where you had -- where you stayed at the -- Omel. Sorry. So Omel where Tulu
22 was at.

23 A. [15:43:28] From this map that I'm seeing, the area is a little hidden. Omel I can see,
24 but the exact area is hidden, so probably needs to be adjusted.

25 Q. [15:43:57] They adjusted it for you, Mr Witness. If you look down it should be big,

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1 with a wider view.

2 PRESIDING JUDGE SCHMITT: [15:45:05] I think could we give this exercise progress
3 somewhat?

4 THE WITNESS: [15:45:17] (Interpretation) The area is called Omel Kuru.

5 MR OBHOF: [15:45:29] I think that will suffice because I can find that on a map and
6 show him tomorrow.

7 PRESIDING JUDGE SCHMITT: [15:45:37] No, no. No, we have this on the map.

8 Now for our interest and for the assistance of the Chamber where would you, then we
9 would have to make the map a little bit bigger then again, where would you locate Lukodi?
10 This was what Mr Ayena has told us that you might know that.

11 THE WITNESS: [15:46:12] (Interpretation) Yes, I can point to where Lukodi is
12 located.

13 PRESIDING JUDGE SCHMITT: Please do that.

14 THE WITNESS: (Interpretation) This is where Lukodi is, where I have marked, put a
15 circle.

16 PRESIDING JUDGE SCHMITT: [15:46:34] Thank you.

17 And now the question, Mr Obhof, please continue.

18 MR OBHOF: [15:46:46]

19 Q. [15:46:50] Mr Witness, do you know where Tulu was from?

20 A. [15:47:07] I don't know.

21 Q. [15:47:15] Now, Mr Witness, to the best of your knowledge, did Gilva brigade send
22 a standby force to fight on Lukodi on or around the same day which you state Sinia sent
23 forces to Lukodi?

24 A. [15:47:44] I didn't know about that.

25 Q. [15:47:57] Mr Witness, is it possible then that a splinter group from Gilva brigade

1 entered Lukodi on or around the same time which you state Terwanga and Sinia HQ
2 attacked the UPDF at Lukodi?

3 A. [15:48:29] If it's different from the two people that moved together with Terwanga
4 and the Sinia brigade, then I don't know them, I don't know about them. The two people
5 that moved with the Sinia brigade are the ones that I know. I did not know if there was
6 another different group, together with the two people also went to Lukodi on the same
7 day.

8 Q. [15:49:07] Thank you, Mr Witness. Mr Witness, I put it to you that there is
9 information that Tulu led a splinter group or that Tulu commanded a splinter group
10 which attacked Lukodi (Redacted). What do you say to that?

11 MS KERWEGI: [15:49:46] Your Honour, I'm sorry, I want to remind counsel again that
12 we're in open session. Because looking at the transcript, that last question.

13 PRESIDING JUDGE SCHMITT: [15:49:55] Let me have a short look at it too again.

14 Yes, I think we go to private session. Thank you very much, Mrs Kerwegi.

15 (Private session at 3.50 p.m.)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Trial Hearing
WITNESS: UGA-OTP-P-0205

(Private Session)

ICC-02/04-01/15

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Trial Hearing
WITNESS: UGA-OTP-P-0205

(Private Session)

ICC-02/04-01/15

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Trial Hearing
WITNESS: UGA-OTP-P-0205

(Private Session)

ICC-02/04-01/15

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25 (The hearing ends in private session at 4.01 p.m.)