

Trial Hearing
WITNESS: UGA-OTP-P-0038

(Open Session)

ICC-02/04-01/15

1 International Criminal Court
2 Trial Chamber IX
3 Situation: Republic of Uganda
4 In the case of The Prosecutor v. Dominic Ongwen - ICC-02/04-01/15
5 Presiding Judge Bertram Schmitt, Judge Péter Kovács and Judge Raul Pangalangan
6 Trial Hearing - Courtroom 3
7 Tuesday, 3 October 2017
8 (The hearing starts in open session at 9.30 a.m.)
9 THE COURT USHER: [9:30:54] All rise.
10 The International Criminal Court is now in session.
11 PRESIDING JUDGE SCHMITT: [9:31:17] Good morning, everyone.
12 Good morning, Mr Kanyogonya.
13 WITNESS: UGA-OTP-P-0038 (On former oath)
14 (The witness speaks English)
15 (The witness gives evidence via video link)
16 THE WITNESS: [9:31:30] Good morning.
17 PRESIDING JUDGE SCHMITT: [09:31:31] I hope you had a good rest until this
18 morning.
19 Could the court officer please call the case.
20 THE COURT OFFICER: [9:31:40] Good morning, Mr President, your Honours.
21 The situation in the Republic of Uganda, in the case of The Prosecutor and
22 Dominic Ongwen, case reference ICC-02/04-01/15.
23 And for the record, we are in open session.
24 PRESIDING JUDGE SCHMITT: [9:31:52] Thank you.
25 For the appearance of the parties, the Prosecution, Mr Black, please.

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- 1 MR BLACK: [9:31:57] Good morning, your Honours.
- 2 Colin Black for the Office of the Prosecutor, together with Julian Elderfield,
- 3 Benjamin Gumpert, Yulia Nuzban, Yeasin Khan and Ramu Bittaye.
- 4 PRESIDING JUDGE SCHMITT: [9:32:09] Thank you.
- 5 Mr Manoba, the first team of the Legal Representatives of Victims.
- 6 MR MANOBA: [9:32:14] Good morning, your Honours. Joseph Manoba and
- 7 James Mawira.
- 8 PRESIDING JUDGE SCHMITT: [9:32:17] And Mr Narantsetseg.
- 9 MR NARANTSETSEG: [9:32:19] Good morning, your Honours.
- 10 Orchlon Narantsetseg with Ms Caroline Walter.
- 11 PRESIDING JUDGE SCHMITT: [9:32:27] Thank you.
- 12 And finally the Defence. Mr Ayena, please.
- 13 MR AYENA ODONGO: [9:32:30] Good morning, Mr President, your Honours.
- 14 Today I'm assisted by Chief Charles Taku, Mr Michael Rowse, and our client
- 15 Dominic Ongwen is in Court.
- 16 PRESIDING JUDGE SCHMITT: [9:32:41] Thank you very much, Mr Ayena.
- 17 MR AYENA ODONGO: [9:32:44] May I remain standing?
- 18 PRESIDING JUDGE SCHMITT: [9:32:46] Of course you may remain standing.
- 19 QUESTIONED BY MR AYENA ODONGO:
- 20 Q. [9:33:19] Good morning, Mr Witness.
- 21 A. [9:33:20] Good morning, your Honours.
- 22 Q. [9:33:21] I thought you were going to take another sip of water. That's why I
- 23 gave you space.
- 24 Mr Kanyogonya, I think we know each other pretty well. And I must express my
- 25 delight at the opportunity to talk to you about a subject both of us seem to know

1 pretty well.

2 A. [9:33:52] Thank you.

3 Q. [9:33:56] I must start by lauding you for being a paragon of peace, because
4 I am aware of your involvement in the search for peace during the Juba peace talks.

5 A. [9:34:15] Thank you very much, Counsel, your Honours.

6 Q. [9:34:22] Now, Mr Kanyogonya, I have looked at your CV, and this was very
7 competently canvassed by my learned friend during cross-examination yesterday, but
8 in particular I note that you were during the charged period the legal officer of the
9 chieftaincy of military intelligence. I also note that the chieftaincy of military
10 intelligence was, so to speak, the Control Altar of all intelligence gathering, where all
11 intelligence agencies reported.

12 I also gather from your CV, Mr Kanyogonya, that as a matter of fact, you've been in
13 the UPDF since 1986. Now, this gives a very good background to your competence
14 to assist this Court to understand the intricacies about the conflict in Uganda.

15 Mr Witness, I'll start with the history of the conflict. From your intelligence reports
16 and analysis, can you briefly describe to this Court the emergence of the LRA and
17 government of Uganda conflict?

18 A. [9:37:16] Thank you, your Honours. The conflict, as I understand it, began
19 because of a perception that the former rulers, who were mainly northerners,
20 northern-based Ugandans, had lost out to the southerners after the 1986 revolution
21 led by President Museveni, who comes from the south, and the loss of privilege,
22 opportunities, jobs, many soldiers having left the army after being removed from
23 power.

24 So these were the ingredients that led, in my view, to the conflict. But I believe there
25 are scholars who have studied in depth this problem. So this is how I look at it,

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1 your Honours.

2 PRESIDING JUDGE SCHMITT: [9:38:48] Thank you. That was quite interesting.

3 We are, of course, all aware of the fact that you are not a historian, Mr Kanyogonya,
4 but we had a very distinguished scholar here in the courtroom seven or eight months
5 ago, and if I compare what you have said with what he has said, I would say this was
6 really interesting. So even so, as I have pointed out that you are not a historian, not a
7 scholar in that respect, that was quite remarkable, I would say.

8 I think you allow me this remark, Mr Ayena.

9 THE WITNESS: [9:39:29] Thank you, Mr President.

10 MR AYENA ODONGO: [9:39:31]

11 Q. [9:39:32] Now, Mr Witness, you talked about the perception of lost
12 opportunities by people of northern Uganda precipitating the conflict. Can you tell
13 this Court whether this conflict was an isolated case of maybe mindless reactionary
14 people, or it was contemporaneous with other insurgencies around the country?

15 A. [9:40:21] Your Honours, there was an element of other rebel groups coming up
16 around the same time, probably with the similar causes, and the one which has lived
17 to see another day for the longest is the LRA.

18 MR AYENA ODONGO: [9:40:57] Mr President and your Honours, I would wish
19 to refer to Defence binder, tab 63, UGA-0012-371, and then UGA-0012-373 and
20 then 374.

21 Q. [9:41:51] Mr Witness, in view of what you have just stated, would you agree
22 with me that by 1998 our country was on fire from armed groups from all corners of
23 Uganda?

24 A. [9:42:07] I would not say all corners of Uganda, neither would I say the
25 country was on fire.

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1 PRESIDING JUDGE SCHMITT: [9:42:25] I do not interrupt, but of course you are
2 asking for opinions here.

3 MR AYENA ODONGO: [9:42:31] Yes, yes.

4 PRESIDING JUDGE SCHMITT: [9:42:33] So we had this relatively often in this
5 courtroom, and I reiterate that we have of course charged incidents here in front of us,
6 but we have also a historical, social, culture environment where things happened, and
7 because of that, we let it go. But we should not forget that we in the end have the
8 task to verify if the charged incidents, the confirmed incidents, have really happened,
9 to be attributed to your client or not.

10 MR AYENA ODONGO: [9:43:10] Mr President, I'm inclined to suspect that you
11 think I'm going in some direction. I will not go there and I feel directed now.

12 PRESIDING JUDGE SCHMITT: [9:43:21] And as I said, it was interesting and I
13 have -- my first remark after the first answer of Mr Kanyogonya was he's not a scholar,
14 but his answers are scholarly.

15 MR AYENA ODONGO: [9:43:35] I treat him as a very intelligent man.

16 Q. [9:43:42] Mr Witness, in your intelligence and counterintelligence work at the
17 highest apex, can you tell Court whether LRA had any political agenda or policy?

18 A. [9:44:12] Your Honour, from the materials available, the literature which I
19 went through, the LRA had some policy of following the ten commandments. And
20 apart from that, I noticed that they violated all the ten commandments.

21 Q. [9:44:35] Your Honours, I wish to refer to Defence binder tab 65,
22 UGA-0025-388, then UGA-0012-373 and 374.

23 Your Honours, I wish to draw your attention to the fact that we have no translation of
24 these but --

25 PRESIDING JUDGE SCHMITT: [9:45:45] It was --

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1 MR AYENA ODONGO: [9:45:48] -- under --

2 PRESIDING JUDGE SCHMITT: [9:45:50] We see that at first sight, so to speak.

3 MR AYENA ODONGO: [9:45:54] Yes. But with the benefit, my special benefit of
4 knowing this language, I found this very instructive and I would indulge Court to ask
5 for a translation of this document.

6 PRESIDING JUDGE SCHMITT: [9:46:13] But I would not, would not want to have
7 that we do this exercise here now.

8 MR AYENA ODONGO: [9:46:18] No, no, no.

9 PRESIDING JUDGE SCHMITT: [9:46:20] Not here. Okay, good. So then we can
10 do this outside via --

11 MR AYENA ODONGO: [9:46:24] Yes, I'm just drawing your attention.

12 PRESIDING JUDGE SCHMITT: [9:46:27] Okay, okay. Good. I thought you
13 wanted --

14 MR AYENA ODONGO: [9:46:30] To do it now?

15 PRESIDING JUDGE SCHMITT: [9:46:32] No, no.

16 MR AYENA ODONGO: [9:46:34] I wouldn't do that.

17 Q. [9:46:38] Now, Mr Witness, I want us to discuss, you help Court to understand,
18 the background to the referral of this case to this Court. You will agree with me that
19 this case in which Dominic Ongwen was subsequently investigated by the OTP and
20 charged before this Court was referred against five commanders of the LRA way back
21 in January 2004.

22 Mr Witness, aware of your peculiar position as not only an intelligence officer but an
23 acclaimed lawyer, I'm sure you will tell this Honourable Court the choice of those five
24 commanders and not the others to be brought before this Court. What informed the
25 decision to refer those five people?

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1 A. [9:48:12] Your Honours, first of all, it is the ICC which chose the five
2 commanders. For us as government, we had given them information about 10, 15
3 notorious LRA commanders and I think after the investigations they chose the five.
4 So it was not us that chose the five.

5 PRESIDING JUDGE SCHMITT: [9:48:49] I think this is definitely correct, I would
6 say, if Prosecution does not contradict.

7 MR AYENA ODONGO: [9:49:04]

8 Q. [9:49:04] Mr Witness, for the sake of clarity, can you -- would you remember
9 these 15?

10 A. [9:49:21] Your Honours, I do not, but I can just add a few names. I remember
11 there was somebody called Lapanyikwara, a notorious commander whom I did not
12 see coming out. There was Thomas Kwoyelo. These are the additional I can
13 remember offhand.

14 Q. [9:49:47] Mr Witness, there was a conflict, there was a war situation between
15 two opposing forces. During your referral or during your -- yes, your referral, did it
16 occur to you that it might be necessary under your duty to provide exculpatory
17 evidence to also indicate other notorious commanders on the other side of the battle?

18 A. [9:50:43] Your Honours, I'm not aware of notorious commanders in the UPDF.

19 Q. [9:50:58] Mr Witness, can you tell or confirm to this Court whether there were
20 also hues and cries about, in these incidents of indiscipline, by some officers of the
21 UPDF in the prosecution of the war against LRA, especially within the civil
22 population?

23 A. [9:51:36] Your Honours, for emphasis, I do not know of any commanders that
24 carried out atrocities being members of the UPDF. We routinely, we routinely
25 discipline errant officers, we have court martials, court martial all over the country.

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1 Each division has the court martial and anybody who goes, violates the rules is
2 court-martialed.

3 Q. [9:52:25] Mr Witness, is a great opportunity that you are a lawyer, and for that
4 purpose can you as a lawyer give in outline the criminal jurisdiction of courts in
5 Uganda?

6 PRESIDING JUDGE SCHMITT: [9:52:54] Mr Gumpert.

7 MR GUMPERT: [9:52:55] Your Honour, with respect, this witness should not be
8 testifying, shouldn't be asked to testify about the criminal jurisdiction of that court, or
9 this Court, or any other. He's a witness to give evidence about the facts of which he
10 has personal knowledge. Your Honours will decide questions of jurisdiction.

11 PRESIDING JUDGE SCHMITT: [9:53:15] Yes. I agree, Mr Ayena. So you would
12 have to go -- move to another point. We can't -- you know, we are not discussing
13 Ugandan law and Ugandan jurisdiction. It's about the jurisdiction of the ICC, it's
14 about the Rome Statute, about the elements of crime, whatsoever, and I would ask
15 you to move to another point.

16 So this objection is sustained.

17 MR AYENA ODONGO: [9:53:45] With due respect, your Honours. I don't know
18 whether it is not relevant, especially when we have somebody with a professional
19 capacity and somebody who is an intelligence officer and knows how cases were
20 achieved in Uganda. To talk about --

21 PRESIDING JUDGE SCHMITT: [9:54:16] Perhaps if you are a little bit more
22 specific with -- you know, when you started with how the jurisdiction is, this could be
23 endless then, this question. What are you heading at, so to speak?

24 MR AYENA ODONGO: [9:54:35] What I am heading to, your Honours, is to lay a
25 foundation and put on record the fact that the case before your Honours is not any

1 different from many cases that are being handled in Uganda at the moment.

2 PRESIDING JUDGE SCHMITT: [9:55:04] So if -- I'm not sure if the witness can

3 meaningfully answer that because we -- because there might be a lot of cases that are

4 handled and we cannot discuss the cases that are handled in Uganda at the moment.

5 You see what I mean? This overburdens the evidence and the taking of the evidence

6 in this case. Because we -- even if the witness now says we have a case such as this

7 case, we have this case, we cannot assess as a Chamber if it is really in any sense

8 comparable, whatever effect that would have on our proceedings. This is the

9 problem that I have.

10 MR AYENA ODONGO: [9:55:52] You know, your Honours, like the witness has

11 already said, Uganda has a hard history of armed rebellion, and in the course of that

12 armed rebellion there were alleged similar crimes that were committed and many of

13 those were arraigned and actually were either prosecuted in the courts of law of

14 Uganda or are still being prosecuted now.

15 And I do not see how I can dodge the question of jurisdiction here. Of course I know

16 that we should have raised it during the pre-trial, but I do not know whether we are

17 completely precluded at the end, if we canvass it at this point, to raise it one time.

18 PRESIDING JUDGE SCHMITT: [9:56:55] Mr Gumpert.

19 MR GUMPERT: [9:56:56] Your Honours, with respect, I think there's some

20 confusion here. My respectful submission is that the questioning of this witness

21 must be about matters of fact, where there is a reasonable prospect in your Honours'

22 discretion that he can give answers which will be useful for the determination of the

23 issues in this trial. There is, I submit, no reasonable prospect that this witness can

24 give evidence which will be useful to any determination of jurisdiction as to the

25 admissibility of this case at the time, I respectfully submit, for the assessment of that is

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1 long gone.

2 As your Honour really started this exchange by saying to my learned friend we need
3 to concentrate on the charged crimes, the 70 crimes which are in the Document
4 Containing the Charges. These questions and any answers which this witness may
5 give to them are simply not going to assist the Court with that issue. If my learned
6 friend wants to make legal submissions about now questioning the basis of
7 jurisdiction or admissibility, he's at liberty to do so. I await them with interest.

8 But the course of -- I won't say cross-examination -- the questioning of this witness by
9 the non-calling party, I choose my words carefully, simply is not the moment for
10 these matters to be raised. We're wasting time and energy, with the greatest of
11 respect.

12 MR TAKU: [9:58:34] May it please the Court, very brief, your Honours. I plead to
13 be heard on this issue, your Honours.

14 (Trial Chamber confers)

15 PRESIDING JUDGE SCHMITT: [9:58:58] Shortly, Mr Taku.

16 MR TAKU: [9:59:00] Yes, your Honours. It may be, your Honours, my colleague
17 knows so well that much as you, you call upon to make determination on charges
18 before you. But one of the fundamental purposes of a criminal trial, special
19 international trials is for the historical record, and that's why you have here victims
20 and others and participants and the trials are public, so that a hundred years from
21 now, as we did with Nuremberg, they look at the record of this case and they will not
22 only talk about, no longer talk about Mr Ongwen or Mr Kony, but they will talk about
23 what happened in Uganda and the jurisprudence will come here, the facts of this case
24 and what is determined in this case will help your Honours to direct other trials and
25 the development of the law.

1 It may be as your Honour said about the formulation of the question, but I think the
2 issue is not totally an issue that can be ruled out to say, "Look, Mr Ongwen is alleged
3 in this Court that at the time that the alleged crime were committed there were one,
4 two, three, four, five other people. The people must be accounted for. Are they
5 dead or alive? And if they are alive, where are they?"

6 Look at the forms of criminal liability, 70 of them, some of them almost stretch to the
7 abstract. Your Honours will now know, clearly, that this question is extremely
8 relevant for your Honours to know exactly, like where are they? What happened?
9 Why did they bring someone here and here they're leading evidence about the form
10 of liability to people who are somewhere in Uganda, others were -- amnesty, or
11 prosecuted or not prosecuted. What happens? At the time of your deliberations
12 you will be faced with this issue. And I think, however, your Honour, it's in order to
13 have raised it.

14 It may be the word jurisdiction, as the case may be, may be a problem. But even
15 with jurisdiction, even if it was not raised, you have the right, your Honours, as you
16 know, that you yourself, upon some of the evidence, you can always determine that
17 we do not have the jurisdiction. And therefore, all the information that will help you
18 make that determination must be put before your Honours. That's my humble
19 submission.

20 PRESIDING JUDGE SCHMITT: [10:01:22] As you have obviously recognised, we
21 had a short discussion with the Judges and the Bench in its entirety is of the opinion
22 that the initial decision by the Presiding Judge should be confirmed, so the objection
23 by Mr Gumpert maintains sustained, so to speak.

24 What you can do of course is you can make legal submissions in that respect, you can
25 forward documents to the Chamber and we will have to assess this in the end. And

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1 what I would allow is one additional question because it results out of what the
2 witness has already said. This would be the question I would personally also be
3 interested in if the -- perhaps I can ask it then.

4 Mr Kanyogonya, you mentioned that initially 10 or 15 people were, so to speak, in the
5 focus of, or were those that you, I think you said the notorious commanders, how you
6 worded it. And you correctly pointed out that the selection, so to speak, of the five
7 was a process internally done by the ICC. But do you know what came out of the
8 other 10 remaining then from, if you have 10, 15, were there any proceedings in
9 Uganda that you know of?

10 THE WITNESS: [10:02:58] Thank you, Mr President, your Honours, the problem
11 with the LRA has always been that they are not available, they are in the jungles, they
12 are in Central African Republic, they are in southern Sudan. They are in the
13 Democratic Republic of Congo, so we have not been able, apart from one
14 Thomas Kwoyelo, who is being -- who is undergoing trial in Uganda. The rest have
15 either been -- have either remained outside our jurisdiction in terms of territorial, and
16 some of them have died like Vincent Otti, so that is the problem.
17 I cannot comment about the others because, first of all, I don't even remember some of
18 the names.

19 PRESIDING JUDGE SCHMITT: [10:04:09] Thank you very much,
20 Mr Kanyogonya. Also for your patience, that you have listened to the lengthy
21 discussions here in the courtroom, but since you are a lawyer I think you have an
22 understanding for such proceedings.

23 And an additional remark to the question of raising admissibility arguments, of
24 course we all know the Article 19(4), which tells you when normally to make such
25 submissions, but it is not completely excluded that something comes later, so we

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1 leave it at that.

2 And I think, Mr Ayena, you are not completely unsatisfied with the unfolding, so
3 please continue.

4 MR AYENA ODONGO: [10:04:56] Mr President and your Honours, you've made
5 my day. All that I needed to be reassured about is that this is not an open-and-shut
6 matter. It can be canvassed later.

7 PRESIDING JUDGE SCHMITT: [10:05:15] Which does not say that it will be.

8 MR AYENA ODONGO: [10:05:18] I said may be.

9 PRESIDING JUDGE SCHMITT: [10:05:20] May be, yeah.

10 MR AYENA ODONGO: [10:05:22] Yes.

11 PRESIDING JUDGE SCHMITT: [10:05:23] And I only referred to the wording of
12 Article 19(4), there is no assurance by the Chamber or by the Presiding Judge.

13 MR AYENA ODONGO: [10:05:32] I was relying on that. You always counsel, not
14 beyond it, within what you have cited.

15 Q. [10:05:51] Mr Witness, let's look at the nature of the conflict. Mr Witness, for
16 a long time between 1986 and 2005 the LRA government of Uganda conflict oscillated
17 between the territories of Uganda and Sudan; is that correct?

18 A. [10:06:21] Your Honours, that is correct.

19 Q. [10:06:26] Can you tell Court the main actors in this melodrama of the theatre
20 of that conflict?

21 A. [10:06:37] Your Honours, that question is not clear to me because we have well
22 known that the armed conflict was between the LRA and the government of Uganda,
23 so by "main actors" I don't know what you mean.

24 PRESIDING JUDGE SCHMITT: [10:06:58] You know, it is this -- the expression
25 "actors" derives from the metaphor that Mr Ayena used to word his question. And

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1 it's of course really wide open for interpretation what "main actors" might be.

2 Perhaps you can be a little bit more specific.

3 MR AYENA ODONGO: [10:07:24]

4 Q. [10:07:25] Mr Witness, what I -- maybe to put it more succinctly, apart from
5 the government of Uganda and the LRA, were there other actors who were involved?
6 By way of assisting either the government -- assisting or collaborating with either the
7 government of Uganda or the LRA?

8 A. [10:08:16] Your Honours, I cannot speak with authority about that kind of
9 matter.

10 Q. [10:08:35] Mr Witness, given that you are a very high-ranking intelligence
11 officer and you also got involved in the Juba peace talks, can you confirm to this
12 Court whether, during your association with those who got directly involved in the
13 peace talks, you got to know whether the government of south -- I mean the
14 government, the Khartoum government of Sudan, was giving arms and other
15 supplies to the LRA?

16 A. [10:09:26] Your Honours, I decline to comment about something that I don't
17 have personal knowledge of.

18 PRESIDING JUDGE SCHMITT: [10:09:35] I think we have to accept this answer.
19 We are -- we cannot ask the witness for opinions or what he has heard of if he doesn't
20 have personal knowledge. I think we have to accept that.

21 MR AYENA ODONGO: [10:09:50] Thank you, your Honour. But let me put it in
22 another way.

23 Q. [10:09:55] Mr Witness, you have submitted or at least you are aware that the
24 government of Uganda has submitted many documents relating to the conflict
25 between LRA and the government of Uganda. Are you aware that there are some

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1 documents available and which have been provided to the Defence by the
2 Prosecution indicating a connection between the government of Sudan supplying
3 arms and supplies to the LRA?

4 A. [10:11:00] Your Honours, I would request that counsel refers me to the
5 documents he's talking about.

6 MR AYENA ODONGO: [10:11:11] All in good time, your Honours.

7 Your Honour, I want to refer to Defence binder, tab 28, UGA-0025-0205, which
8 actually came from the witness. This is a letter from the chairman of LRA through a
9 certain Lieutenant Colonel Salehi talking about supply of food and weapons to the
10 LRA.

11 PRESIDING JUDGE SCHMITT: [10:13:06] No, I think we see it's relatively -- and
12 it's not a huge document, but the question to the witness would be?

13 MR AYENA ODONGO: [10:13:13] Yes. I want to refer to a raft of documents so
14 that he can answer at once.

15 Your Honours, these are documents which were captured and turned over to this
16 Court by the government of Uganda, very likely through the witness. We refer
17 again, your Honours, to tab 27, tab 27.

18 PRESIDING JUDGE SCHMITT: [10:14:16] I thought so.

19 MR AYENA ODONGO: [10:14:19] Yes.

20 PRESIDING JUDGE SCHMITT: [10:14:21] I did not want to intervene, but I
21 thought you would also refer to 27.

22 MR AYENA ODONGO: [10:14:27] I know you are ahead of us, your Honour,
23 which is ...

24 PRESIDING JUDGE SCHMITT: [10:14:33] Meaning it's UGA-0025-0257.

25 MR AYENA ODONGO: [10:14:38] Yes, your Honour. And then again tab 26.

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1 PRESIDING JUDGE SCHMITT: [10:14:56] Okay. I think we have it on record.

2 But 26 we would also need. It's 0255-0027.

3 MR AYENA ODONGO: [10:15:04] Yes.

4 PRESIDING JUDGE SCHMITT: [10:15:07] But then we would need a question.

5 MR AYENA ODONGO: [10:15:09] Your Honour, I want to look for another one,
6 where there was an agreement which was sponsored by the Carter Centre, signed by
7 the government of Uganda, the government of South Sudan and witnessed by the
8 Canadian government.

9 PRESIDING JUDGE SCHMITT: [10:15:31] So if you have it, so please tell us where
10 it is.

11 MR AYENA ODONGO: [10:15:46] If you could (Microphone not activated).

12 PRESIDING JUDGE SCHMITT: [10:15:48] Yes, of course.

13 (Counsel confers)

14 PRESIDING JUDGE SCHMITT: [10:16:27] And we have also the possibility to
15 come back to that after the break. We have a long time to go to the break, but you
16 can also continue, I would say.

17 MR AYENA ODONGO: [10:16:38] (Microphone not activated)

18 PRESIDING JUDGE SCHMITT: [10:16:41] Or whenever Mr Rowse or Mr Taku has
19 found it.

20 MR AYENA ODONGO: [10:16:46] Yes.

21 Q. [10:16:47] Mr Witness, in view of what you have seen, would you agree with
22 me that there was a connection, or a collaboration at best, between the government of
23 Sudan and the LRA?

24 A. [10:17:15] Your Honours, from the face of it, it would appear there was a
25 connection, but because these are letters that I can't authenticate - I don't even know

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1 who these people are, Lieutenant Colonel Salehi and so on - I'm very conscious about
2 drawing conclusions. The ICC is better placed, they must have collaborated these
3 documents.

4 PRESIDING JUDGE SCHMITT: [10:17:50] Mr Kanyogonya, indeed. And also,
5 Mr Ayena, I think that's a fair answer, I would say. Because witness cannot
6 comment and cannot draw conclusions and cannot assess the evidence by himself,
7 and he has said on the face of it, but he has not authenticated it. I think we have to
8 accept that. Because otherwise we could go through all the documents that went at
9 some point in time over the desk of the witness and ask him what he thinks of it or
10 how he would put it into perspective and into the frame of the whole proceedings.
11 That would be difficult.

12 MR AYENA ODONGO: [10:18:35] Mr President and your Honours, if this was an
13 ordinary witness who did not have knowledge about the internal workings within the
14 conflict, that might have been fair.

15 PRESIDING JUDGE SCHMITT: [10:18:50] No, I just commented on the answer of
16 the witness. I did not, did not stop you with your questioning. It was just
17 (Overlapping speakers)

18 MR AYENA ODONGO: [10:18:59] No, your Honours, this is a witness who,
19 according to -- although he assisted, the fact that he analysed some of these
20 documents, these documents basically passed through him, he must have -- and he
21 said he passed them on the basis of relevance. So if they were relevant --

22 PRESIDING JUDGE SCHMITT: [10:19:22] That's a fair point by you, indeed. So
23 please continue.

24 MR AYENA ODONGO: [10:19:27] Yes.

25 Q. [10:19:28] So, Mr Witness, in view of this -- oh, there is this one other,

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1 tab -- tab 62.

2 PRESIDING JUDGE SCHMITT: [10:19:35] Is this the one you mentioned already.

3 MR AYENA ODONGO: [10:19:38] Yes, tab 62. This is what we were looking for.

4 That is UGA-0012-0404.

5 Q. [10:20:06] Mr Witness, in view of the documents that you have looked at, can
6 you tell Court whether you came to know why the Khartoum government of Sudan
7 was giving such supplies to the LRA?

8 A. [10:20:40] Your Honours, on the question of why, I don't think I can answer
9 that.

10 Q. [10:20:48] Mr Witness, I want to remind you that these are documents that
11 passed through you, you analysed them before sending them. Did you during your
12 analysis read these documents?

13 A. [10:21:09] Your Honour, the way the system works is not the way counsel is
14 presenting it. We have a whole intelligence department with so many different
15 actors. There is an analysis branch of this department, where I belong. I was
16 scanning through basically thousands of documents. I do not think I even had the
17 competence to go through all these letters that I handed over to the ICC. There's no
18 way. It would have taken me years. Some of these documents I'm just even
19 reading them now, selecting documents because of relevance does not mean I have
20 read them thoroughly. I would like the Court to take note of that. There are certain
21 things I did as a conduit, not because I said this is very relevant and therefore I must
22 pass it over to the ICC. Other departments in the intelligence department also went
23 through these documents.

24 PRESIDING JUDGE SCHMITT: [10:22:30] May I ask you something,

25 Mr Kanyogonya: Would it be correct to say that the process, given, given the

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1 enormity of, the number of evidence going over your desk, that your assessment was
2 one of, that you worded as assessment of relevance was one of -- that you discarded
3 evidence or let it in at first glance, so to speak, because you didn't have the time to
4 really analyse it, or would this be incorrect?

5 THE WITNESS: [10:23:05] Mr President, I would qualify it and say I would
6 not -- I would not discard at first glance. I would scan through the document like
7 I'm doing here. Even here as I'm answering these questions I'm just scanning
8 through, because I'm not being told which paragraph to read. So this is the kind of
9 thing I would do when I was passing over the documents I thought as being relevant,
10 first of all, because of the temporal jurisdiction; secondly, because of who was writing
11 to who, and then I would discard some because they were totally irrelevant to the
12 case. So I would use my commonsense to say that this is what the ICC would be
13 interested in given the charges, given the request for assistance.

14 PRESIDING JUDGE SCHMITT: [10:23:59] Thank you, Mr Kanyogonya. I think
15 that is good for the understanding how you worked with these documents and with
16 the tapes and photographs and all of the evidence that you had in front of you.
17 Mr Ayena, please continue.

18 MR AYENA ODONGO: [10:24:40]

19 Q. [10:24:40] Mr Witness, from the point of view of chain of responsibility, as the
20 final person and the focal person to whom all intelligence documents and intercepts
21 were brought, of course by different actors, intelligence branches and so on and so
22 forth, would I be right to say that you would be held accountable for what finally
23 came to the ICC?

24 MR BLACK: [10:25:14] Objection, your Honour.

25 PRESIDING JUDGE SCHMITT: [10:25:15] Mr Black.

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1 MR BLACK: [10:25:17] I'm not sure that this accurately states the evidence. The
2 witness hasn't been asked if he was the final person and the focal persons for all
3 intelligence documents and intercepts. Certainly many intercepts went through him,
4 and some intelligence documents, but if he's going to ask him about accountability in
5 these questions I think he has some more foundational work to do, with respect,
6 your Honour.

7 PRESIDING JUDGE SCHMITT: [10:25:39] Perhaps, Mr Ayena, you can restrict
8 your question to the evidence that really was, that the witness was responsible for
9 and then you can put your question this way.

10 MR AYENA ODONGO: [10:25:54] Yes. Thank you very much Mr Black,
11 although not particularly black. I shall rephrase my question.

12 Q. [10:26:06] For those documents which passed through you, would I be correct
13 to say that you were accountable for them?

14 A. [10:26:29] Your Honour, I would say responsible. But accountable, I don't
15 know what you mean by accountable.

16 PRESIDING JUDGE SCHMITT: [10:26:34] Accountable is too negative.
17 Responsible is more related to the person, yeah, to the person working with it.
18 Accountable is something that describes the potential relation to the outside world.
19 But I think you're heading at this exactly.

20 MR AYENA ODONGO: [10:26:53] Yes, I'll give him the benefit of doubt in the
21 choice of the word he wants to ascribe to this.

22 Q. [10:27:02] Yes, let's use the word responsible, Counsel Kanyogonya. Would
23 you agree with me that for documents that came to the ICC through you you should
24 be held responsible?

25 MR BLACK: [10:27:21] Objection, your Honour.

1 PRESIDING JUDGE SCHMITT: [10:27:22] Yeah, Mr Black.

2 MR BLACK: [10:27:23] I'm sorry to interrupt again, but responsible in what sense?

3 Responsible to his superiors? Responsible to his contacts at the ICC? Criminally

4 responsible? Administratively responsible? This question it too vague.

5 PRESIDING JUDGE SCHMITT: [10:27:40] That is correct. It could also mean, for

6 example -- and I don't mean this with irony, emotionally, personally, subjectively

7 responsible could also be, indeed, as I said, without any irony, because when people

8 want -- normally I have the impression that people want to do decent work.

9 So please, Mr Ayena.

10 MR AYENA ODONGO: [10:28:04] But, Mr President, the witness himself has

11 volunteered that word and said he was responsible. Let him --

12 PRESIDING JUDGE SCHMITT: [10:28:10] Then ask him in which way, in which

13 way he felt responsible.

14 MR AYENA ODONGO: [10:28:12] So in this case --

15 PRESIDING JUDGE SCHMITT: [10:28:16] It's okay. In which way felt he

16 responsible.

17 MR AYENA ODONGO: [10:28:18] Correct. I thought that was the necessary

18 procession towards that question. I was going to ask that. But all the same, thank

19 you, Counsel.

20 Q. [10:28:30] Mr Kanyogonya, can you tell Court in what sense you would -- you

21 should be held responsible for those documents?

22 A. [10:28:43] Your Honour, first of all, responsible to my superiors? I work

23 under a chain of command. The person who gave me the authority to do this work

24 is the one whom I report to and I use the word "responsible" in that context. I am

25 not -- if you say held responsible, it's as if I made a mistake and somebody is looking

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1 for culpability. I had the authority to hand over these documents, so responsible
2 meaning what really? I just did my work.

3 Q. [10:29:34] Well, I can't canvass this any further.

4 But, Mr Witness, from the documents it would appear that whereas the LRA was
5 being assisted by the government of Sudan, on the other hand the government of
6 Uganda was collaborating with the South Sudan People's Liberation Army; is that
7 correct?

8 A. [10:30:22] Your Honour, I don't understand the question. Collaborating
9 meaning what? There is diplomacy, there is -- I mean, I don't understand your
10 question.

11 PRESIDING JUDGE SCHMITT: [10:30:38] In which way do you mean
12 collaborating?

13 MR AYENA ODONGO: [10:30:44] They were --

14 PRESIDING JUDGE SCHMITT: [10:30:47] You have to question the witness, of
15 course.

16 MR AYENA ODONGO: [10:30:51]

17 Q. [10:30:51] Can you tell Court whether the SPLA at some point were fighting
18 side by side by UPDF against the LRA?

19 A. [10:31:07] Your Honour, I'm not competent to talk about matters of operations.
20 Somebody else would be able to answer that kind of question.

21 Q. [10:31:21] Very well. Let's look at the UPDF war strategies and policies.
22 Mr Witness, in your counterintelligence role, did you ever get to know whether
23 assassination was one of the UPDF war strategies, assassination of the enemy forces,
24 members of the enemy forces?

25 A. [10:31:59] Your Honour, I know as a broad policy, not because of

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1 counterintelligence, I know as a broad policy we do not carry out assassinations.

2 Q. [10:32:16] Would it therefore surprise you, Mr Witness, that there is evidence
3 before this Court and which was admitted by the perpetrator, that during one of the
4 peace talks visits a UPDF officer holding a high administrative position in one of the
5 districts of northern Uganda planted a bomb which was meant to kill the late Vincent
6 Otti, but which ended up exploding and killing Otti's bodyguard?

7 PRESIDING JUDGE SCHMITT: [10:33:08] What we can ask the witness, if he has
8 any knowledge of that.

9 MR AYENA ODONGO: [10:33:11] Yes.

10 Q. [10:33:12] Do you have any knowledge?

11 A. [10:33:14] Your Honour, I do not have any knowledge of that. I'm hearing it
12 for the first time. And even then, if that officer had done what you allege, that
13 would not be a policy of the government.

14 Q. [10:33:42] Now, Mr Witness, would you agree with me, yesterday you were
15 asked about whether you could comment about the Iron Fist and you seemed to
16 suggest that you could not because you were not involved in the field operations. I
17 want to seek your indulgence one more time to assist government -- I mean to assist
18 this Honourable Court to understand whether after the Iron Fist operation there were
19 consequences in Uganda, in Acholiland, in Lango and in Teso?

20 PRESIDING JUDGE SCHMITT: [10:35:10] Consequence is also very, very broad.
21 But perhaps --

22 MR AYENA ODONGO: [10:35:17] Okay.

23 PRESIDING JUDGE SCHMITT: [10:35:18] It's not easy for the witness, I think, to
24 understand what you mean by consequences. I think you can be more direct, in my
25 opinion.

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1 MR AYENA ODONGO: [10:35:24] You know, maybe I'm being -- I'm
2 overestimating the witness. You know, we are dealing with a very intelligent person,
3 so when I talk about consequences he will decipher and comment about what
4 happened after the --

5 PRESIDING JUDGE SCHMITT: [10:35:43] Okay.

6 MR AYENA ODONGO: [10:35:44] -- Iron Fist.

7 PRESIDING JUDGE SCHMITT: [10:35:47] Then let him first try to decipher, and if
8 you don't get, if you don't get further you are more specific.

9 MR AYENA ODONGO: [10:35:53] Maybe, okay, now that I'm minded.

10 Q. [10:35:55] Mr Kanyogonya, can you tell Court what happened in Uganda after
11 the Iron Fist, especially post-2002?

12 A. [10:36:11] Mr President, your Honours, I would request counsel to be specific.
13 Actually the last time I was still waiting for the question when he talked of
14 consequences, because I cannot respond to broad concepts. Consequences, for
15 instance, there are so many things that can be consequences.

16 PRESIDING JUDGE SCHMITT: [10:36:41] Mr Ayena, so now we are -- but you
17 tried it.

18 MR AYENA ODONGO: [10:36:45] I tried it. I can still make it better.

19 Q. [10:36:54] Mr Witness, after the Iron Fist, isn't it true that when the LRA were
20 flushed out of Sudan they came and spread throughout northern Uganda, went from
21 Acholi subregion to Lango subregion and ended up in Teso subregion?

22 A. [10:37:41] Your Honour, that kind of analysis can best be made by somebody
23 else. I do not know whether it is the flushing out of LRA from the southern Sudan
24 that led them to proliferate other areas, I'm not competent enough to comment on
25 that.

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1 Q. [10:38:17] Mr Witness, let me put it another way. Isn't it true, Mr Witness,
2 that the LRA spread into these subregions after 2002?

3 A. [10:38:40] Your Honour, I must be cautious because I cannot remember the
4 years, and I therefore would not like to comment on something like that.

5 MR AYENA ODONGO: [10:39:07] Your Honours, at this point I wish to indulge
6 the witness to be more discreet because there are documents which were actually sent
7 by him which indicates that --

8 PRESIDING JUDGE SCHMITT: [10:39:30] Then, I think then show us and the
9 witness the documents and perhaps he enlarges his answer afterwards.

10 MR AYENA ODONGO: [10:39:42]

11 Q. [10:39:45] Witness, I will first of all refer to Defence tab 69, tab 69,
12 UGA-0002-5043 at pages 45 to 47.

13 Mr Witness, do you recognise that document?

14 A. [10:40:37] Your Honours, I do not. But I can say that it is a statement by one
15 of Okot Peter. Definitely it wasn't taken by me.

16 PRESIDING JUDGE SCHMITT: [10:40:56] Yeah, it is one of these many, many
17 documents that you processed, so to speak, in the manner you already explained and
18 we cannot expect from the witness to read through it and comment on it, but we
19 have -- it's now on the record and, yeah, if you have other documents in your binder
20 that you want to refer to, perhaps you can do that now. And then perhaps you draw
21 again out of these documents if you want to go in this direction further another
22 question to the witness in that respect and that that be it.

23 MR AYENA ODONGO: [10:41:34] (Microphone not activated)

24 Mr President and your Honours, I was particular about this document and I --

25 PRESIDING JUDGE SCHMITT: [10:41:45] Do you have a special wording, a

1 special part of it that you want to put to the witness?

2 MR AYENA ODONGO: [10:41:50] Yes, yes. I want to refer to -- on page 45,

3 starting from the middle where -- starting from "Tabuley":

4 "Tabuley took his troops to go to Teso where he was assigned to go and operate in.

5 We all followed Tabuley with his 2IC Okot Ayoli. From Teso there was no killing of

6 civilians and civilians were so friendly to us. Otti called Tabuley to come back to

7 Lango area and to make RV where troops of various sections came together. When

8 we came back Etesots started claiming that they had fought gallantly and chased LRA

9 soldiers from there."

10 He continues: "When Otti heard he contacted Kony what to do, what Etesots who

11 claimed the defeated LRA. From there Kony gave order that they should kill all the

12 men in Teso leaving children and women who should be beaten and left from"

13 (Overlapping speakers)

14 PRESIDING JUDGE SCHMITT: [10:43:58] Do you want to go further?

15 MR AYENA ODONGO: [10:44:01] Where I am -- I think on this particular point --

16 PRESIDING JUDGE SCHMITT: [10:44:06] But --

17 MR AYENA ODONGO: [10:44:07] I think that's sufficient. Yes.

18 PRESIDING JUDGE SCHMITT: [10:44:09] Yeah. But we have to keep in mind

19 that, again, the witness has not produced the document, he is not referred to in the

20 document, so you would have to draw something, I think we had this before, would

21 have to draw something out of it and put it to the witness, if you want.

22 MR AYENA ODONGO: [10:44:26] Yes.

23 PRESIDING JUDGE SCHMITT: [10:44:27] Because he cannot, as he correctly said,

24 he does not know who is the witness supposed to have given this statement and he

25 has not taken the statement.

1 MR AYENA ODONGO: [10:44:35] Yes.

2 Q. [10:44:47] Mr Witness, I will not remove the protection given to you by Court,
3 but may I ask whether in view of these statements you would agree with me that
4 post-2002 LRA went to Teso and Lango?

5 A. [10:45:18] Your Honour, that's what would be implied, but I don't know
6 whether I'm the right person to answer. Maybe the person who took this statement
7 would be more competent what kind of witness was he taking the statement from. I
8 have no background knowledge about all this. So for me to make an assessment of
9 this statement is very, very difficult.

10 Q. [10:45:51] Mr Witness, from your CV you are -- or, were at the material time an
11 intelligence officer. In that capacity, Mr Witness, can you tell this Court whether it
12 would be possible for you, as the apex intelligence officer in the UPDF, to know or to
13 get information about operations in the field?

14 A. [10:46:34] Your Honour, my main, my core duties are legal advice to my chain
15 of command, it does not require me to deal with these kind of issues, operations,
16 unless I am specifically tasked by my superiors. I'm not even -- you are saying apex,
17 but really that's not even correct. I'm not in the apex, I'm in the middle. I'm a
18 middle-ranking officer.

19 Q. [10:47:24] But, Mr Witness, you have told Court that intercepted radio
20 communications and documents which were captured during battles would find their
21 way to the chieftaincy of military intelligence and that you as the legal adviser,
22 especially for purposes of the ICC, would scan through this. In that position would
23 you not have known about this, what we are talking about in Lango and Teso?

24 A. [10:48:22] Your Honours, I would have generalities. For instance, this
25 statement you have referred me to, even though I could have passed it over, I would

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1 not read details, even for the ICC task of focal point, I would not be able to read all
2 this material. But generalities, yes, I would know, even just by reading newspapers.

3 Q. [10:49:00] Thank you very much, Mr Witness.

4 Mr Witness, at a certain point you gave in your statement that there were auxiliary
5 forces that were recruited to assist the UPDF in their operations against the LRA; is
6 that correct?

7 A. [10:49:45] Your Honour, I'm not sure about whether that is in my statement,
8 but I know that we had auxiliary forces called local defence units.

9 Q. [10:50:06] In Teso they were called the Arrow Boys, in Lango they were called
10 Amuka, in Acholi they were called LDU; is that correct?

11 A. [10:50:18] That is correct.

12 Q. [10:50:21] Now, Mr Witness, would you agree with me that the involvement of
13 these militias in the prosecution of war against LRA alongside UPDF was greatly
14 responsible for the retributive and retaliatory attacks on civilians in the IDP camps?
15 And before you answer I want to refer you to Defence tab 69, UGA-0002-043 at pages
16 45 to 47. I think it's the same document.

17 PRESIDING JUDGE SCHMITT: [10:51:17] It's the same document and the same
18 pages that we had already.

19 MR AYENA ODONGO: [10:51:20] Yes. Same pages. But --

20 PRESIDING JUDGE SCHMITT: [10:51:22] So we don't -- yeah, this is again one
21 statement by another witness, but --

22 MR AYENA ODONGO: [10:51:27] But I want to draw his attention to what this
23 witness said, which was not captured in my ...

24 (Counsel confer)

25 PRESIDING JUDGE SCHMITT: [10:52:04] But this is the reference that you, that

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1 you -- the reference that you make and the witness may I think answer and express
2 his own, own opinion in that respect.

3 MR AYENA ODONGO: [10:52:11] Yes.

4 PRESIDING JUDGE SCHMITT: [10:52:23] You have asked the question
5 already, so ...

6 MR AYENA ODONGO: [10:52:27] Your Honour, I wanted to --

7 PRESIDING JUDGE SCHMITT: [10:52:31] You want to add or to --

8 MR AYENA ODONGO: [10:52:33] Yes.

9 PRESIDING JUDGE SCHMITT: [10:52:35] Okay. Please, please continue.

10 MR AYENA ODONGO: [10:52:37] Yes. Relevant to -- the other one was
11 about -- this is about the involvement of putting civilians in harm's way.

12 Q. [10:52:50] When Langi declared that all people should go to the camp and
13 recruit Amuka, Amuka militia soldiers, then Kony reversed his order and ordered
14 that they should kill everybody in Lango, including children, so that in future there
15 will be no people to join Amuka. That is how killing of Langi started, because of
16 Amuka and -- and they say without Amuka there would be no killing.

17 PRESIDING JUDGE SCHMITT: [10:53:42] So this is the statement --

18 MR AYENA ODONGO: [10:53:45] This is the statement.

19 PRESIDING JUDGE SCHMITT: [10:53:47] -- we had already, and the question has
20 been already put to Mr Kanyogonya, and perhaps he may answer or he can answer
21 what he thinks about this.

22 THE WITNESS: [10:53:59] Mr President, thank you. I have -- from my knowledge I
23 don't see the nexus between us using the auxiliary forces and the killings by the LRA.
24 I even don't understand the statement of this witness. Maybe you should have
25 called him to explain his statement.

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1 PRESIDING JUDGE SCHMITT: [10:54:36] No, and it's -- I think we cannot expect
2 that the witness that we have at the video link viva voce is commenting and on
3 another witness's statement, but you drew the proposition out of it, that was correct.
4 So please continue.

5 MR AYENA ODONGO: [10:54:57] Yes.

6 Q. [10:55:00] In addition to the above, can you confirm to Court whether there
7 was always sufficient manpower and weapons to protect the respective IDP camps?
8 And in this respect, your Honours, I want to refer the witness to Defence tab 69 again,
9 UGA --

10 PRESIDING JUDGE SCHMITT: [10:55:30] We have it already, the UGA number.

11 MR AYENA ODONGO: [10:55:35] Yeah.

12 PRESIDING JUDGE SCHMITT: [10:55:38] So do you know, Mr Witness,
13 something about the protection of these camps and if it was sufficient or not?

14 THE WITNESS: [10:55:49] Mr President, I'm not competent to comment about
15 operational matters. I don't know whether they were sufficient or not.

16 MR AYENA ODONGO: [10:56:01]

17 Q. [10:56:03] Again, Mr Witness, I wish to refer you to one of the documents I'm
18 sure passed through you to the OTP.

19 That is Defence binder tab 53. OTP-0255-0930 at page 931.

20 I want you to look at number 6. It is stated "at the time of attack". This is a report
21 on enemy attack on Pajule by the UPDF. "During the same" -- no, no: "At the time
22 of attack, the defence had only remained with only 80 soldiers compared with the
23 enemy's 300 armed."

24 PRESIDING JUDGE SCHMITT: [10:57:59] But --

25 MR AYENA ODONGO: [10:58:00] Yeah (Overlapping speakers)

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1 PRESIDING JUDGE SCHMITT: [10:58:03] No, we have the reference now.

2 MR AYENA ODONGO: [10:58:04] Yeah.

3 PRESIDING JUDGE SCHMITT: [10:58:05] But again there is, of course, witness has
4 not produced the document and does not have immediate knowledge by himself
5 about what has happened there, I would say. So we simply have to accept that.
6 And of course witness does not sort of adopt all the evidence that comes before
7 his eyes.

8 Looking at the time, Mr Ayena, would -- or do you have a question that you think
9 you would really want to ask in this session?

10 MR AYENA ODONGO: [10:58:40] Yes, just about two or three questions, can be
11 finished in five minutes.

12 PRESIDING JUDGE SCHMITT: [10:58:46] Okay. Good. Please then continue.

13 MR AYENA ODONGO: [10:58:49]

14 Q. [10:58:50] Mr Witness, did you ever get to know from intelligence report that
15 at the time of attack on Obuk IDP camp which was hosting 4,000 person there were
16 only 19 soldiers, mainly LDUs, from your intelligence?

17 A. [10:59:11] Your Honour, I did not get to know about that and really it's not
18 even my duty.

19 Q. [10:59:28] Mr Witness, from your intelligence gathering was denial of food to
20 LRA part of the war strategies?

21 And I want to refer, your Honour, to -- your Honours, to Defence tab 56,

22 UGA-OTP-255-67. And --

23 PRESIDING JUDGE SCHMITT: [11:00:18] I think witness can answer to that
24 question, yes.

25 THE WITNESS: [11:00:27] Mr President, I would request that the counsel points me

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1 to the particular paragraph he's interested in.

2 MR AYENA ODONGO: [11:00:39]

3 Q. [11:00:43] Mr Witness, I want you to look at the last paragraph of page 68,
4 where it is stated:

5 "Once denied food, then the following will happen: One, they will desperately
6 attack IDP camps like Otti did in Pajule. Once they do that then we are sure of
7 reducing their numbers like at Pajule recently put out of action their commanders,
8 seven of them. They will be hungry, desperate" and so on and so forth.

9 The gist.

10 A. [11:02:23] Your Honour, I would not like to comment about something I am
11 not aware of. I don't even know who wrote this. From this second page, it's not clear
12 where this message is coming from.

13 PRESIDING JUDGE SCHMITT: [11:02:36] I think --

14 THE WITNESS: [11:02:38] But in any case, I don't know about it.

15 PRESIDING JUDGE SCHMITT: [11:02:41] Yeah, Mr Ayena, I would be interested,
16 if you look at the first page of this document, if we can identify who wrote this and
17 who was the producer, so to speak.

18 MR AYENA ODONGO: [11:02:52] Yes.

19 Q. [11:02:54] Can you help Court --

20 PRESIDING JUDGE SCHMITT: [11:02:57] Perhaps, Mr Witness, you can help us
21 with your knowledge, if you can.

22 THE WITNESS: [11:03:01] Mr President, from what I can see here it's supposed to
23 have come from the army commander to the 5th division commander.

24 PRESIDING JUDGE SCHMITT: [11:03:12] Thank you.

25 THE WITNESS: [11:03:13] That's from the first page. But when you go to the

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1 second page, I'm not sure whether this is a continuation.

2 PRESIDING JUDGE SCHMITT: [11:03:23] Indeed, that's indeed not clear. It
3 could also be a new document.

4 THE WITNESS: [11:03:29] Could be a new document, depends on how they stapled
5 it. Because now, normally when you are continuing the message you don't have the
6 left margin. If you look at the top of page 68 it again starts with some -- okay, now
7 you look at the page 69, for instance, that's what I would have expected for a
8 continuation. But on 68 you start again with something like information and so on.
9 So this could have been a different message altogether.

10 PRESIDING JUDGE SCHMITT: [11:04:01] That is an acute observation, let me put
11 it this way. And you're also, also at least a sort of an expert in assessing documents.

12 MR AYENA ODONGO: [11:04:12] You see, he has confirmed it.

13 Q. [11:04:16] But you see on page 67 the point I'm trying to make is made, about
14 denial of food and making the LRA desperate. That is the gist of my concern and the
15 question was --

16 PRESIDING JUDGE SCHMITT: [11:04:33] And he has answered the question, and
17 he says he has no own knowledge and cannot comment on, but nevertheless it's an
18 interesting document.

19 MR AYENA ODONGO: [11:04:41] Okay.

20 Q. [11:04:42] And then, Mr Witness, are you aware that the problem of IDPs, the
21 involvement of auxiliary forces became a topic of discussion in parliament, and I
22 mean in regard to food and things like that?

23 A. [11:05:16] Your Honour, I'm not aware about that unless you give me specifics.

24 MR AYENA ODONGO: [11:05:25] Your Honours, I want to refer to Defence tab 14,
25 UGA-D26-0014-0142 at page 151.

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1 PRESIDING JUDGE SCHMITT: [11:05:48] This is, I think we had this document
2 yesterday, and this is a long one.

3 MR AYENA ODONGO: [11:05:52] Yes. But it's talking about food.

4 PRESIDING JUDGE SCHMITT: [11:05:56] Yeah. Where exactly, please?

5 MR AYENA ODONGO: [11:06:01] Your Honour, I want to read this -- if you go
6 to 151, page 151, 3.21, the minister of state for defence, Ms Ruth Nankabirwa:

7 "Thank you very much, Mr Speaker. I would like to add my voice to those of
8 members" --

9 PRESIDING JUDGE SCHMITT: [11:06:44] I think you can go to the second
10 paragraph from the bottom.

11 MR AYENA ODONGO: [11:06:48] Yes, you see.

12 "Mr Speaker, the security situation is generally calm in the entire country apart from
13 the LRA terrorists who still remain the only source of unrest in some parts of northern
14 Uganda especially in Gulu, Kitgum and Pader. However, with the on-going
15 operations both in southern Sudan and northern Uganda, the LRA's capacity to
16 continue with terrorism has been greatly weakened in terms of
17 manpower/ammunitions and their lines of supply for both food and equipment are
18 greatly affected."

19 Q. So, Mr Witness, this is what your minister, our minister of state for defence
20 stated to parliament, food supply was greatly affected. In that case, would you say
21 that one of the ways of fighting the LRA was to deny them food?

22 A. [11:08:43] Your Honour, I would just make a general comment on that.

23 Warfare, as I understand it, is to deny the enemy means of sustenance. If you can
24 cut off their lines of supply every commander would do it so that you end or weaken
25 the force that is fighting you. So even without what the minister said, I recognise it

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1 as one of the ways of defeating an enemy.

2 Q. [11:09:33] And, Witness, I also want to refer to tab 14 again.

3 PRESIDING JUDGE SCHMITT: [11:09:56] Paragraph on the same page, last
4 sentence.

5 MR AYENA ODONGO: [11:09:58] Yes. The creation of IDP camps, assembling of
6 people in camps which are protected which the UPDF denies rebels the chance to
7 mingle with the population who are vulnerable to forced recruitment and being used
8 as shield against the UPDF pursuing process.

9 PRESIDING JUDGE SCHMITT: [11:10:26] But I think the answer would not be
10 different by the witness, but it's on record now, indeed.

11 MR AYENA ODONGO: [11:10:33] Yeah.

12 Q. [11:10:34] But now, Mr Witness, as a student of humanitarian law, was this a
13 correct strategic as you have already said?

14 PRESIDING JUDGE SCHMITT: [11:10:41] Mr Black.

15 MR BLACK: [11:10:42] Objection, your Honour. It calls for a legal conclusion,
16 which is your Honours' purview.

17 PRESIDING JUDGE SCHMITT: [11:10:48] Yes. Sustained.

18 Legal conclusions are drawn by the competent authorities in a courtroom, so to speak.

19 MR AYENA ODONGO: [11:11:03] Since I've heard it from the horse's mouth, I can
20 assure you that I rest my case there.

21 But let me ask just one more question.

22 Q. [11:11:14] Mr Witness, would you agree with me that in the state of such
23 desperation as stated in the above document, the law of necessity would come into
24 play and, as correctly observed in the document we have referred to, LRA would look
25 for a soft target, which in this case was the IDP camps, with the resultant otherwise

1 avoidable loss of lives and property?

2 A. [11:11:47] Mr President, your Honours, the alternative would always be to
3 leave the rebellion, as thousands of LRA did. It's not that they had to choose to
4 attack the civilians just because of that. We always received thousands of LRAs
5 deserting and coming back to their homes. So it's not that because you did this, then
6 the other one would follow as a consequence.

7 PRESIDING JUDGE SCHMITT: [11:12:22] I think it would really be now time for a
8 break, wouldn't it?

9 MR AYENA ODONGO: [11:12:27] Absolutely. And I thank you for your
10 indulgence.

11 PRESIDING JUDGE SCHMITT: [11:12:35] Thank you.

12 Break until quarter to 12.

13 THE COURT USHER: [11:12:38] All rise.

14 (Recess taken at 11.12 a.m.)

15 (Upon resuming in open session at 11.45 a.m.)

16 THE COURT USHER: [11:45:53] All rise.

17 PRESIDING JUDGE SCHMITT: [11:46:14] Mr Ayena, please continue.

18 MR AYENA ODONGO: [11:46:21]

19 Q. [11:46:26] Mr Witness, I hope you had good coffee break, like I did.

20 PRESIDING JUDGE SCHMITT: [11:46:38] I think even without a verbal answer,
21 the facial expression has shown that he had.

22 MR AYENA ODONGO: [11:46:49] Oh, yes. You know, every time I think about
23 coffee I remember he had given me a coffee date just about the beginning of June
24 when I met him down within the court premises. And then he vanished. He has a
25 debt.

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1 PRESIDING JUDGE SCHMITT: [11:47:10] But I think we will not --

2 MR AYENA ODONGO: [11:47:13] Go into that.

3 PRESIDING JUDGE SCHMITT: [11:47:15] -- go into that further, I would say. This
4 is something between -- not here inside the courtroom -- between you, perhaps.

5 MR AYENA ODONGO: [11:47:23] Yes. That is just in zest, Mr President.

6 Q. [11:47:33] Mr Witness, yesterday my learned colleague tried to canvass from
7 you the nature of your functions in relation to the documents and intercepts that came
8 into your possession and found their way into the OTP.

9 Now, first of all, Mr Witness, you had an office where you had some officers at the 4th
10 division in Gulu; is that correct?

11 A. [11:48:35] That is correct.

12 Q. [11:48:47] Mr Witness, apart from the UPDF intelligence officer responsible for
13 the intercept, are you aware that there was another security agency housed within the
14 same building?

15 A. [11:49:12] Your Honour, I am aware that we had members of the ISO as well.

16 Q. [11:49:23] Now, Mr Witness, yesterday in answer to what the ISO, what the
17 Internal Security Organisation is, your answer was that it is a civilian intelligence
18 organisation. Did I get it right?

19 A. [11:49:49] Yes, the Internal Security Organisation is one of the two branches of
20 intelligence, civil intelligence; you have the internal and the external branches.

21 Q. [11:50:08] Mr Witness, I have a -- have neither illusion nor qualm that you
22 have information about the leadership of ISO from its inception up to now. Can you
23 tell Court who was -- I mean in succession, who headed the intelligence -- I mean ISO.

24 A. [11:50:55] Your Honour, if I recall, we had, we had General Jim Muhwezi as
25 the first director general of ISO. After him I think we had Mr Philip Idro. So I am

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1 going to mix up the order. We had also General Koreta at one time, and we had also
2 Dr Mukumbi, Mukumbi Thomas. And after that we had brigadier general -- just
3 trying to recall the brigadier general who is now deployed outside the country, and
4 currently we have --

5 Q. [11:52:23] Would you -- the name Balya?

6 A. [11:52:27] Yes, that is Mr Balya, or Brigadier Balya, who was the one before the
7 current one, who is called Mr Bagyenda.

8 PRESIDING JUDGE SCHMITT: [11:52:40] Now, this seems indeed to be a nearly
9 exhaustive list.

10 MR AYENA ODONGO: [11:52:44] Yes. Yes, and I'm really indebted to him. I
11 told you he's a very intelligent man.

12 PRESIDING JUDGE SCHMITT: [11:52:54] Please continue.

13 MR AYENA ODONGO: [11:52:56]

14 Q. [11:52:56] Now, Mr Witness, there was an officer of ISO in Gulu division. Do
15 you know whether he was a civilian or a soldier?

16 A. [11:53:19] Your Honours, that question is not clear. There was a member?
17 Who was that member?

18 PRESIDING JUDGE SCHMITT: [11:53:28] I think what -- the question is if you
19 have knowledge that there was an officer of ISO in the Gulu division, and if so, if this
20 person was a civilian or a soldier?

21 THE WITNESS: [11:53:43] Your Honour, Gulu division is big. I don't know
22 whether he's referring to the office where the intercepts were being made, because
23 Gulu division is very big and there must be many ISO officers, ISO officers in Gulu.

24 PRESIDING JUDGE SCHMITT: [11:54:09] You would have to specify then perhaps
25 more, Mr Ayena.

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1 MR AYENA ODONGO: [11:54:13] I'm surprised -- I would be surprised if I didn't
2 specify. You had thought the precursor to my question was in respect to the office
3 that was shared, the intercept office, but in case I was not clear.

4 Q. [11:54:31] Mr Witness, I mean the intercept office in Gulu.

5 A. [11:54:38] Your Honours, I am not sure of whether the person who was
6 recording intercepts from ISO was a civilian or a soldier. I have never met them and,
7 yes, I'm not sure.

8 MR AYENA ODONGO: [11:55:01] Mr President, can we go to private session for
9 just one question?

10 PRESIDING JUDGE SCHMITT: [11:55:07] Then we go to private session for this
11 one question.

12 (Private session at 11.55 a.m.)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Open session at 11.56 a.m.)

22 THE COURT OFFICER: [11:56:36] We are back in open session.

23 MR AYENA ODONGO: [11:56:38] Thank you.

24 Q. [11:56:41] Mr Witness, did you during your collation of intercept information
25 come across intercepts and documents collected by ISO from Gulu?

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1 A. [11:57:09] Your Honours, yes, I did.

2 Q. [11:57:15] Who delivered them to you?

3 A. [11:57:24] Your Honours, I would prefer not to -- I would request that I don't
4 name people here.

5 PRESIDING JUDGE SCHMITT: [11:57:30] You can name them in private session.
6 That's fair enough.

7 THE WITNESS: [11:57:34] Yes.

8 PRESIDING JUDGE SCHMITT: [11:57:38] So we go to private session.

9 (Private session at 11.57 a.m.)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)
2 (Redacted)
3 (Redacted)
4 (Redacted)
5 (Redacted)
6 (Redacted)
7 (Redacted)
8 (Redacted)
9 (Redacted)
10 (Redacted)
11 (Redacted)
12 (Redacted)
13 (Open session at 12.00 p.m.)
14 THE COURT OFFICER: [12:00:37] We are back in open session.
15 (Counsel confers)
16 MR AYENA ODONGO: [12:01:22]
17 Q. [12:01:24] Mr Witness, some of the documents you provided to the OTP have
18 very significant redactions to them. I'll give you an example of a document under
19 tab 75, Defence tab 75, UGA-OTP-0255-0016.
20 PRESIDING JUDGE SCHMITT: [12:02:15] We've seen it. So the question.
21 MR AYENA ODONGO: [12:02:17]
22 Q. [12:02:18] Mr Witness, can you tell Court why it was necessary to so heavily
23 redact these documents?
24 A. [12:02:32] Your Honour, there are certain matters that are for the UPDF and
25 there's no reason why I would give internal communications about the UPDF to

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1 the ICC.

2 Q. [12:02:57] That is quite curious, given that quite a number of them were given
3 nevertheless. But anyway, we can move on.

4 MR AYENA ODONGO: [12:03:31] Now, Mr President and your Honours, can we
5 go to private session for introduction of a witness and then we come back to the
6 questions.

7 PRESIDING JUDGE SCHMITT: [12:04:02] Okay. Private session.

8 (Private session at 12.04 p.m.)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Open session at 12.05 p.m.)

22 MR AYENA ODONGO: [12:05:12]

23 Q. [12:05:14] Mr Witness, what --

24 PRESIDING JUDGE SCHMITT: [12:05:15] You are too quick, Mr Ayena.

25 THE COURT OFFICER: [12:05:18] Indeed. We are back in open session.

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1 PRESIDING JUDGE SCHMITT: [12:05:21] Better too quick than too slow, of
2 course.

3 MR AYENA ODONGO: [12:05:25] It would appear. But I hope you now forgive
4 my inadequacies about this. It's becoming addictive. I hope to improve.

5 Q. [12:05:38] Mr Witness, can you again reiterate the role of this gentleman?

6 A. [12:05:57] Your Honour, the role of the gentleman was field -- especially field
7 work for me and also assisting me in the tasks I would give him in relation to the ICC.

8 Q. [12:06:18] And what tasks for instance?

9 A. [12:06:24] Your Honours, one of them would be in managing contacts, for
10 instance. Bringing, gathering the evidence and any other, including what I would
11 ordinarily do. If I'm not around, then I would task him to do it for me.

12 Q. [12:06:50] Do I therefore understand you to mean that you were in touch with
13 field operations through this officer?

14 A. [12:07:16] Your Honours, I would not say field operations. I would say field
15 contacts.

16 Q. [12:07:32] Now, Mr Witness, was -- why was this person chosen to work with
17 escapees or returnees, LRA returnees? What considerations were involved in
18 picking him?

19 A. [12:07:56] Your Honour, first of all, I'm not the one who chose him, so I would
20 not want to comment on that.

21 Q. [12:08:08] Fair enough. As an officer under you, do you know whether this
22 gentleman had knowledge about LRA operations?

23 A. [12:08:34] Your Honour, I don't know whether he had knowledge or not.

24 Q. [12:08:41] If you didn't know, Mr Witness, how did you come to consider
25 documents he picked from the field?

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1 A. [12:09:07] Your Honour, as I earlier stated, the documents would come from
2 the field IOs, not that officer I'm talking about, and they would be channelled through
3 the various departments that I earlier mentioned.

4 His work was not to go and pick documents or gather evidence. That was a
5 different role, and I have already said he helped me in managing contacts and also
6 aiding the OTP officers who would be going to different places. But it wasn't for
7 gathering the evidence, as I have already said.

8 MR AYENA ODONGO: [12:10:04] Your Honours, I want to refer the witness to
9 tab 10, UGA-OTP-0266-0407. And I want to read some short sections, especially the
10 second paragraph, from:

11 "It is stated in this assessment that UGA-OTP-P-0078 has worked as a counter
12 intelligence officer for a long time and has been arresting people who give intelligent
13 information to the LRA and that he is concerned about that."

14 And then the other part is the second -- the penultimate paragraph on that page:

15 "UGA-OTP-P-0078 also states that a lot of people, most of whom are themselves
16 witnesses, know that the witness is a contact person for other witnesses for the ICC."

17 Q. Now, Mr Witness, would this refresh your memory about other dimensions of
18 the functions of this witness?

19 A. [12:12:07] Your Honour, first of all, I don't have the tab in front of me and I'm
20 not clear about what your question is about.

21 PRESIDING JUDGE SCHMITT: [12:12:21] So I think there this P-78 is the person
22 we talked about, and it is stated here in an investigation report by the ICC that this
23 person allegedly has worked as counterintelligence for a long time - you have heard
24 this - and also as a contact person for other witnesses.

25 So since you did not produce this report and are not mentioned in the report, what

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1 you can be asked -- what you can be asked is if you knew about these functions.

2 And I think this is what Mr Ayena wants to know, if you knew about these functions
3 of the person we are talking about.

4 THE WITNESS: [12:13:05] Thank you, Mr President. I'm aware that the officer
5 we're talking about worked just like me or any other officer in other capacities,
6 including being a 4 div counterintelligence officer, and I also said he was managing
7 contacts. So yes, yes.

8 PRESIDING JUDGE SCHMITT: [12:13:35] Thank you.

9 Please continue, Mr Ayena.

10 MR AYENA ODONGO: [12:13:41]

11 Q. [12:13:43] Timothy, did this witness or did this person, officer, have discretion
12 regarding who would meet the OTP officers?

13 A. [12:14:01] Your Honour, the ICC or the OTP officers, usually in their request
14 for assistance, they usually point out who they want to meet. And as a general rule,
15 once you give an officer of a certain rank a task, how he does his job is up to him, as
16 long as he does it and achieves the required result. So I don't micromanage
17 subordinates. There is something we call mission command; as long as he does the
18 job and gets the result, that is fine.

19 Q. [12:14:54] Timothy, did you or any other person give this man, this officer, any
20 terms of reference for his work?

21 A. [12:15:10] Your Honour, always officers given tasks are given terms of
22 reference, and they also have their own capacity to do some of the things that you
23 assign them by virtue of the training they have received.

24 Q. [12:15:33] Would you be so kind as to provide a copy of this to Court?

25 A. [12:15:44] Your Honour, it's not always written terms of reference can be by

1 way of a briefing. I don't remember giving the said officer any written terms of
2 reference.

3 Q. [12:16:04] You know, Timothy, since this gentleman was dealing with
4 returnees, escapees, some of whom had been child soldiers, abducted and kept in the
5 bush for upwards of one decade, do you know whether this officer had any
6 background in psychology of post-traumatic shock?

7 A. [12:16:41] Your Honour, this officer was not handling, as far as I know, the
8 returnees on his own. There was a centre called GUSCO - I don't remember how it
9 fits in now, Gulu Support something, I think it was Gulu Support Children
10 Organisation - and his role did not extend to offering the psychosocial assistance.
11 There were experts who would do that.

12 Q. [12:17:31] Do you know whether his functions included debriefing these
13 returnees?

14 A. [12:17:46] Your Honour, I'm not aware. Maybe they did. Maybe they didn't.
15 Because there's also the 4th division, which had its own organisation. I don't know
16 who was doing what.

17 Q. [12:18:06] And, Mr Witness, you have just told Court that you did not appoint
18 him. Do you know who appointed him to serve under you?

19 A. [12:18:25] Your Honour, we are all under command. If you are in my
20 department, the person who makes the appointments is known, but I don't think I
21 need to go into that, with respect.

22 Q. [12:18:50] Timothy, from what we have seen from documents available on
23 record here, it would appear that this witness knew who were the other witnesses. I
24 want to refer you to Defence tab 10 again. I think it's UGA-OTP-0266-0407 at
25 page -- I mean 407.

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1 A. [12:19:48] Your Honour, I don't have the tab.

2 PRESIDING JUDGE SCHMITT: [12:19:50] But nevertheless, again the witness can
3 only comment on if he had knowledge of that.

4 MR AYENA ODONGO: [12:19:57] Of the document.

5 PRESIDING JUDGE SCHMITT: [12:19:59] No, not of the document, of the facts or
6 the alleged facts that are entailed in the document.

7 MR AYENA ODONGO: [12:20:06] Yes.

8 PRESIDING JUDGE SCHMITT: [12:20:07] And what was your question?

9 MR AYENA ODONGO: [12:20:11] Did you -- yes.

10 PRESIDING JUDGE SCHMITT: [12:20:14] Meaning that it would appear that these
11 witnesses knew who were the other witnesses. So what we can ask meaningfully the
12 witness is, by drawing this factual allegation out of this document, if he knew this or
13 not, if he had knowledge about it.

14 MR AYENA ODONGO: [12:20:34]

15 Q. [12:20:35] I couldn't have put the question better than his Lordship. Can you
16 answer that, Mr Witness?

17 A. [12:20:46] Your Honour, the question is not clear to me.

18 PRESIDING JUDGE SCHMITT: [12:20:49] Then let me ask it. Mr Ayena draws
19 out of this document that we have already discussed that witnesses knew about other
20 witnesses in this case. Did you have knowledge about this or can you comment on
21 that?

22 THE WITNESS: [12:21:10] Mr President, I have no knowledge about it.

23 MR AYENA ODONGO: [12:21:19]

24 Q. [12:21:20] As an officer under you, maybe -- Mr Witness, perhaps -- I think that
25 was sufficiently answered. I'll stop at that.

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1 Now, we are looking at the intercepts. Let's look at the intercepts. Mr Witness, I
2 want to draw your attention to Defence tab 1 UGA-OTP-0069-0784-R01.

3 PRESIDING JUDGE SCHMITT: [12:22:35] That's your former -- that's your
4 statement, Mr Witness.

5 THE WITNESS: [12:22:39] Mr President, I have it in front of me.

6 MR AYENA ODONGO: [12:22:42] Yes.

7 Q. [12:22:44] And in that statement at page -- at paragraph 22 you said:

8 "I confirm that a study that took place by the CMI to find the original tapes of
9 intercepts that were made about two weeks before and two weeks after six key
10 incidents involving the LRA that are currently being investigated by the ICC and that
11 relevant to those incidents. The study was undertaken to provide all relevant tapes
12 of such intercepts, from both an incriminatory and exculpatory perspective."

13 A. [12:23:36] That is correct, your Honour.

14 Q. [12:23:44] Now, can you please kindly refresh our memory about these six
15 incidents you are talking about.

16 A. [12:24:01] Your Honour, I cannot recall the six incidents, but I think these are
17 the major attacks of Pajule, Barlonyo and so on.

18 Q. [12:24:21] Now, Mr Witness, did you have a copy of the warrant of arrest for
19 Dominic Ongwen?

20 A. [12:24:40] Your Honour, I did not.

21 Q. [12:24:45] Then, Mr Witness, how did you come to know what was
22 incriminatory and what was exculpatory?

23 A. [12:25:07] Your Honour, the way I look at it is not that I needed to know what
24 was incriminatory or exculpatory for Dominic Ongwen, but for LRA, LRA top
25 commanders. We gave a lot of evidence about their incidents of attacks and

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1 atrocities but also where we would find evidence of say demotions because of some
2 crimes that even the LRA considered too wicked, they would also sometimes order
3 their forces to kill people. This kind of evidence was given to the ICC, but I think
4 that is exculpatory.

5 PRESIDING JUDGE SCHMITT: [12:26:06] May I shortly address the Prosecution
6 because you might know the dates better than the Presiding Judge, but wasn't the
7 warrant of arrest issued later than the statement we are talking about here by the
8 witness? So the statement is from 2004, as I understand it, and I have in my mind
9 that the warrant of arrest is later, has been issued later.

10 MR GUMPERT: [12:26:31] Your Honours, the statement I'm looking at is dated
11 18 March 2005, that's when it's signed in any event.

12 PRESIDING JUDGE SCHMITT: [12:26:42] The interview, the interview was taken
13 22 November 2004 we are talking about.

14 MR GUMPERT: [12:26:47] Yes.

15 PRESIDING JUDGE SCHMITT: [12:26:48] So when the -- and of course the
16 interview was after the witness had undertaken his tasks and looked through the
17 evidence. Speaking it the other way around, this has been taken place before
18 November 2004 and I think the warrant of arrest was issued in 2005.

19 MR GUMPERT: [12:27:11] It was indeed, although there were two dates perhaps
20 of relevance, one is its issue, I'm speaking from memory, in the first half --

21 PRESIDING JUDGE SCHMITT: Yes.

22 MR GUMPERT: -- I would say of 2005 and it's been made public in the second half.

23 PRESIDING JUDGE SCHMITT: [12:27:24] But nevertheless, he could not have had
24 the warrant of arrest when he, when he went the process of discussing -- of looking
25 through the evidence brought before him, or am I wrong?

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1 MR GUMPERT: [12:27:36] No. Your Honour is right.

2 PRESIDING JUDGE SCHMITT: [12:27:38] All right.

3 Please continue, Mr Ayena.

4 MR AYENA ODONGO: [12:27:42] Yes.

5 Q. [12:27:43] So would you in that frame of things say that you were properly
6 seized to execute your duty to give indications about what was exculpatory and what
7 was incriminatory?

8 A. [12:28:22] Your Honour, even without the ICC warrants, that is why I was
9 given this job because I'm a lawyer. I know what constitutes murder, I know what
10 constitutes mass atrocity, I know what is exculpatory. I don't need the warrants to
11 help me to know what a crime is.

12 PRESIDING JUDGE SCHMITT: [12:28:54] And we are talking at the time when the
13 witness conducted his task there were a lot of suspects more I think on the table
14 potentially.

15 MR AYENA ODONGO: [12:29:27]

16 Q. [12:29:28] So in that case, Mr Witness, to your recollection would it be correct
17 to say that none of the RFAs to you required you to search and turn over to the
18 Prosecutor evidence relating to the personal circumstances of Mr Ongwen?

19 A. [12:29:53] Your Honour, by personal circumstances counsel means what?

20 Q. [12:30:04] Well, Mr Witness, you've just impressed upon Court that, you know,
21 you have capacity to have very wide interpretations. Now, in this case when we talk
22 about the personal circumstances of Mr Kanyogonya, I am sure you know that I'm
23 talking about your family background, how you live. Like in the case of Dominic
24 Ongwen, you know, his family background, how he was abducted, how he
25 surrendered and all that kind of thing. That's what I mean by personal

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1 circumstances.

2 A. [12:30:47] Thank you. Your Honour, I respond to questions, I don't like
3 speculating, and now that you have brought it out clearly, I will say one thing: It is
4 up to the ICC to receive all the documents and make their case. If it includes the
5 personal circumstances of the accused, it's up to them to look for it in the
6 documentation and to do the necessary research. It's really not up to me.

7 PRESIDING JUDGE SCHMITT: [12:31:26] But I think the question was more if you
8 came across documents and evidence in that respect, and if so, what you did with
9 these documents and with this evidence.

10 Mr Ayena, is this --

11 MR AYENA ODONGO: [12:31:45] Yes.

12 PRESIDING JUDGE SCHMITT: -- correctly --

13 THE WITNESS: [12:31:46] Mr President, the ICC is best suited to answer that. I
14 can't recall all the thousands of documents I gave, whether they included the CV of
15 Dominic Ongwen, but it's likely that was included. And that's why I don't like
16 giving an answer that I'm not sure about.

17 PRESIDING JUDGE SCHMITT: [12:32:13] That's okay, of course. Thank you.
18 Mr Ayena.

19 MR AYENA ODONGO: [12:32:23]

20 Q. [12:32:24] But, Mr Witness, do you remember whether you got an RA -- I mean
21 RFA for this? Were you asked to provide them? Did you receive a letter? Did
22 you receive a request?

23 A. [12:32:51] Your Honours, what I can answer is general that for each
24 commander that the ICC was interested in we gave background information about
25 them, not just Dominic Ongwen.

1 Q. [12:33:16] Thank you, Mr Witness. Now, under paragraph 11 of your
2 statement, that is the same statement of 22 November 2004, you stated and I quote:
3 "As the Head of the Legal department of the CMI of the UPDF, I look through the
4 product and establish that it is relevant to the request made by the ICC."

5 Now, Mr Witness, in view of that, when you said you look through the product and
6 establish, now, save for the purposes of semantics, is that anything short of saying "I
7 analysed"?

8 A. [12:34:19] Your Honour, I would stick to look through the product and
9 establish whether it's relevant because an analysis might include much more than that.
10 As I said, I scanned through the documents. If you have seen the massive
11 documents we handed over to the ICC, it was not possible for me to do that.

12 Q. [12:34:54] And under Defence tab 5, UGA-OTP-0263-0376 at page 377 you also
13 said that regarding certain materials, you just threw it away if it is, for example, so
14 smelly or dirty that it is of no use any way. Could you kindly estimate how much of
15 those materials you threw away because they were smelly and dirty?

16 A. [12:35:51] Your Honours, I would not to go into speculation about numbers,
17 but I know it's not -- as a reasonable person I would know what is useless and what is
18 useful.

19 Q. [12:36:20] So, Mr Witness, did -- you did not provide open source materials
20 seized from the LRA to the ICC?

21 And in this context I refer to Defence tab 1 at paragraph -- I mean at 790, paragraph 28
22 where you said:

23 "... I ... assumed that documentation that can be found anywhere in the world and that
24 has nothing to do with the LRA and which is useless as far as the situation is
25 concerned, would not be relevant and need not be provided to the ICC."

1 A. [12:37:27] Your Honour, in that what I meant was, for instance, we used to
2 find textbooks, for instance, dictionaries and without even anything written on them
3 that would aid the ICC in their investigations. And they are quite bulky, I must add.
4 So those ones I excluded them because they had no evidential value.

5 Q. [12:38:04] Mr Witness, would you agree with me that their assessment of the
6 evidential value of a document would have been best assessed by the Prosecution and
7 of course proceeding to convince their Lordships about their value?

8 A. [12:38:36] Your Honours, we should remember the OTP officers were always
9 in touch with me, including when they were asking me or taking these interviews.
10 It's not that -- if they had wanted, just like yesterday we talked about the stamp, very
11 heavy stamp of the LRA, which they did not even take into evidence. So if they had
12 wanted to look at the material which I had excluded, they were free to do so.

13 Q. [12:39:13] How would they have known about the existence when you had
14 thrown them away because they were smelly?

15 A. [12:39:23] Your Honour, I'm saying that we had a lot of interactions with these
16 officers, they would even come to my office. They would know by talking to me.

17 Q. [12:39:39] Mr Witness, would you agree with me that unless they were nearby
18 and they could smell them, there was no way they would know that they were
19 materials which was dirty and smelly?

20 A. [12:39:54] Your Honour, the role of -- my role is also to assist. I'm not just
21 there, I have my abilities as well to know what is right and what is wrong and what is
22 useful. That's why I was put there.

23 PRESIDING JUDGE SCHMITT: [12:40:17] So the role of Mr Kanyogonya seems to
24 have been sort of a service provider you could say.

25 MR AYENA ODONGO: [12:40:28] Well, yeah, okay.

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1 Q. [12:40:30] Now, can you assist Court to understand what you mean by
2 indecipherable documents?

3 A. [12:40:47] Your Honour, if you looked at the documents that would come from
4 the battlefield, they would bring them in sacks or boxes, some of them were very wet
5 and none of us could make any sense of them, you couldn't read them, some of them
6 were even stuck, pages would be stuck because of the conditions they were in and
7 therefore those ones were of no use as far as I would see.

8 Q. [12:41:32] Mr Witness, from the sheer volume of documents provided to the
9 OTP, even those that were provided by you, it is easily comprehensible that they were
10 documents relating to the period between 1996 and 2000 and very little from the
11 charged period. Could there be a reason for this?

12 A. [12:42:20] Your Honour, I'm not aware about that, otherwise how would the
13 OTP frame the charges?

14 Q. [12:42:41] Very well.

15 Now, Mr Witness, under paragraph 12 of your statement, immediately after what
16 I had referred you to, you said:

17 "All of the intercepts that I have received have been passed over to the ICC in
18 accordance with that system. It is then for the ICC to decide whether an intercept is
19 relevant or not".

20 And I also want to refer you to paragraphs 15, 16 and 17.

21 PRESIDING JUDGE SCHMITT: [12:43:49] We don't have to read out these
22 paragraphs.

23 MR AYENA ODONGO: [12:43:52] No, no, no.

24 PRESIDING JUDGE SCHMITT: Yes.

25 MR AYENA ODONGO: No, I'm not.

1 Q. [12:43:55] Now, Mr Witness, drawing from those paragraphs I've referred to,
2 can you tell Court whether in that frame of things your role was merely to pass the
3 intercepts to the ICC the way you received them, whether -- and also whether, for that
4 matter, therefore, your function as a liaison officer of such majesty had been reduced
5 to that of a mere clerk, passing over, you know?

6 A. [12:44:45] Your Honours, the sieving process was not just a mere passing over
7 and indeed I do not say I just merely passed over. I sieved through, that's why
8 you're talking about removing duplicates, looking at relevance. Relevant, the word
9 relevant, in other words, those I thought were irrelevant were removed. So I was not
10 just merely passing over.

11 Q. [12:45:19] Now, Mr Witness, you will sympathize with me that my capacity to
12 understand some of these things may not be necessarily the same with yours. And
13 just in case the Court also finds itself in my stead, can you assist Court to reconcile
14 these two apparent dichotomy in your statement, did you pass over to the ICC all of
15 the intercepts that you received for them to decide whether an intercept is relevant or
16 not, as stated by you, or did you analyse, that is -- or, for that matter, let me I mean
17 restrict myself to your choice of words, or did you look through the product and
18 establish that it is relevant to the request made by the ICC?

19 A. [12:46:33] Your Honours, you would -- there is always a qualification, even if
20 there was all intercepts, then if you go to 16, paragraph 16, you will find exceptions,
21 exceptions. Then you go to -- so the fact is that I looked through the material and, as
22 I said earlier, there are those which were not in the period of concern from 2002, some
23 were earlier, there are those which would not be talking about the area of interests
24 that the ICC would have pointed out. So those ones would be removed.

25 Q. [12:47:34] And, Mr Witness, in ascertaining relevance, were you concerned

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1 with evidence, intercepts relating to the 15 persons or wider, considering that the
2 evidence may lead others not among the 15 -- I mean may implicate others not among
3 the 15?

4 A. [12:48:07] Your Honours, if I recall, we provided intercepts for a lot of LRA
5 communications and whether 15 or even more, but the ICC is the one which came up
6 with what they wanted.

7 Q. [12:48:52] Mr Witness, talking about documents that you provided and given
8 that finally they led to the charges, would you agree with me that the documents you
9 provided and the charges preferred against Dominic Ongwen is as if there were
10 charges against the LRA as an institution?

11 A. [12:49:28] Your Honours, I would not agree with you because there is personal
12 responsibility for crimes, but I would not like to go into an academic debate. What I
13 know is that I supplied documentation about LRA and what the ICC did with it
14 is -- they know best. I'm not in the OTP.

15 PRESIDING JUDGE SCHMITT: [12:49:57] I think we can only tell the witness that
16 he is correct insofar, I would say. He's not in the position to comment on what the
17 ICC did with the information or the OTP did with the information that he provided.

18 MR AYENA ODONGO: [12:50:17]

19 Q. [12:50:18] Now, Mr Witness, Timothy, you met the Prosecution in 2015. Did
20 the Prosecution review these documents with you again to ascertain whether any of
21 these records you turned over to them in 2004 - and remember that his Lordship, the
22 Presiding Judge, has clarified on this position - did you review with them to see
23 whether they were still relevant to the charges against Dominic Ongwen in 2015?

24 A. [12:51:06] Your Honours, what I know is that in 2015 another interview took
25 place with me and some officers of the ICC and it was not for reviewing documents.

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1 It was for -- it was to get an update on what I'm doing now and confirming that the
2 annex, the registration forms were the ones I authenticated. But it was not reviewing
3 evidence. I was only I think authenticating what I had given earlier.

4 Q. [12:51:55] And, Timothy, did the Prosecution ask you for any assistance in
5 interpreting the roughly 1,500 documents turned over to you?

6 A. [12:52:11] Your Honours, I am not sure about what counsel means by
7 "interpreting".

8 Q. [12:52:27] Mr Witness, when we talk about interpretation, I mean making
9 sense of some of these documents.

10 A. [12:52:54] Your Honours, I'm not sure about that question, making sense.
11 That's what I was trying to do. In my role as legal adviser, I would try to make sense
12 myself of the documents and then hand them over. I don't recall them asking me
13 about what sense I made out of them. That was up to them.

14 PRESIDING JUDGE SCHMITT: [12:53:25] So perhaps, Mr Kanyogonya, at the time,
15 2015, when you went through all these forms and reviewed them - that was your
16 formulation in paragraph 19 of the statement at the time - did you discuss the content
17 of the respective documents with the Prosecution at the time, discussing meaning,
18 reviewing, interpreting, giving an opinion on them, for example?

19 THE WITNESS: [12:53:59] Thank you, Mr President. I did not. The only thing I
20 did was just look at the registration forms. There was no content. It was just a
21 summary, that I gave a hundred tapes on this day, I signed this document, matters of
22 that kind.

23 (Counsel confers)

24 MR AYENA ODONGO: [12:54:51] (Microphone not activated)

25 PRESIDING JUDGE SCHMITT: [12:54:53] Microphone, please.

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1 MR AYENA ODONGO: [12:54:55] Oh, sorry.

2 Q. [12:54:57] Mr Witness, relevant to the chain of custody, I'll put a few questions
3 to you. Although I know that you may no longer have a list of material passed over
4 to you, would it still be possible to generate a list of materials seized from the LRA?

5 A. [12:55:30] Your Honours, probably. But I think it's very complicated because
6 I think that would involve looking at the various divisions that they gave us -- the
7 information that they gave us, and I think the answer is really with the ICC. What I
8 gave the ICC, they know what I gave them. What I did not give them, it's difficult
9 also to say what I didn't give them because some of it is in the Registry, maybe some
10 of it was destroyed because it's useless.

11 Q. [12:56:31] Now, Mr Witness, did the Prosecutor present to you enhanced
12 copies of tapes and sought your assistance to ascertain if they were from the
13 signals -- I mean the original copies you gave them?

14 A. [12:57:03] Your Honours, I don't think that would have been me. You see, the
15 OTP interviewed so many of us. If they were talking about tapes, they would have
16 talked to the people in the civil intelligence, not me to look at the product, whether it
17 was enhanced or not. I don't see how I would help them on that.

18 Q. [12:57:33] Mr Witness, I'm talking about what you had given them. Did you
19 get to know whether at a certain point they were enhanced, and if you did, did you
20 assess to find out whether they still remained or contained the information you gave
21 them?

22 A. [12:58:07] Your Honours, I don't recall that. And I even don't think it would
23 have been useful for me to listen to them because I -- most of those recordings were in
24 Acholi. I don't speak Acholi.

25 PRESIDING JUDGE SCHMITT: [12:58:25] Mr Ayena, the time.

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1 MR AYENA ODONGO: [12:58:26] Yes. We cheated on time the other time. I'm
2 sure this would be a logical point to retire.

3 PRESIDING JUDGE SCHMITT: [12:58:37] Yes. We then have the lunch break,
4 and after the lunch break at 2.30 we have with this witness the last session.

5 THE COURT USHER: [12:58:52] All rise.

6 (Recess taken at 12.58 p.m.)

7 (Upon resuming in open session at 2.29 p.m.)

8 THE COURT USHER: [14:29:51] All rise.

9 PRESIDING JUDGE SCHMITT: [14:30:06] I thought we remain partially in the dark,
10 but fortunately we are enlightened, so to speak. Partially, at least.

11 So, Mr Ayena, it's still your turn. Please continue.

12 MR AYENA ODONGO: [14:30:21] It's the dawn of civilisation when we see light.

13 PRESIDING JUDGE SCHMITT: [14:30:27] I also like this expression, yes. For the
14 witness, you could not see that, so to understand why we made these remarks. We
15 had the curtain closed when we came in, so it was partially not so much light in the
16 courtroom than it used to be.

17 So please, Mr Ayena.

18 MR AYENA ODONGO: [14:30:44]

19 Q. [14:30:44] Good afternoon, Timothy.

20 A. [14:30:46] Good afternoon, your Honour.

21 PRESIDING JUDGE SCHMITT: [14:30:48] I assume you know each other.

22 THE WITNESS: [14:30:50] We know each other.

23 MR AYENA ODONGO: [14:30:51] Unless he would say otherwise. Otherwise, we
24 know each other pretty well.

25 PRESIDING JUDGE SCHMITT: [14:30:59] And I think Mr Kanyogonya would

1 complain if you would not know each other, I would say. So please continue.

2 MR AYENA ODONGO: [14:31:15] We put our stamp on the peace process together
3 with him.

4 PRESIDING JUDGE SCHMITT: [14:31:19] I understand.

5 MR AYENA ODONGO: [14:31:22] Yes.

6 Q. [14:31:23] Timothy, we were talking about these documents. Now, while you
7 were looking through the product to establish the relevance to the ICC, were you alert
8 to your duty -- or alert to the duty under the ICC rules of procedure to provide to the
9 ICC both incriminating as well as exculpatory evidence?

10 A. [14:32:00] Your Honours, I was alive to that, and indeed it's also in my
11 statement.

12 Q. [14:32:07] Now, Mr Kanyogonya, under that duty, did you indicate to the ICC
13 those grey areas where it was not ascertainable, during crossfire, for instance, whether
14 deaths to civilians were caused by LRA or UPDF fire?

15 A. [14:32:45] Your Honours, that kind of matter is not in my competence. I was
16 not in the field. There is no way I would have been able to say that this was done by
17 that, that entity or the other.

18 Q. [14:33:09] Mr Witness, when I put this question to you, I am being guided by
19 your measure of a reasonable person that you referred to earlier on, that normally
20 when you did this and that, as a reasonable person, you do this and that. So in this
21 case, as a reasonable person, where there was crossfire in a situation and some people
22 died, as a reasonable person, would you, with certainty, say that one was killed by
23 UPDF, the other one was killed by LRA and so on and so forth?

24 A. [14:34:05] Your Honour, my answer to this will just be general. The UPDF, if
25 encountering the LRA, we expect casualties on both sides, and indeed that happened.

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1 But with the LRA, the problem was that they were targeting civilian populations,
2 including IDPs, so those ones, there was no doubt about who was the perpetrator.

3 PRESIDING JUDGE SCHMITT: [14:34:40] May I shortly, Mr Ayena?

4 Mr Kanyogonya, and I come to the -- back to the question that has been put to you by
5 Mr Ayena. Would you say that you would have discarded any such information as
6 irrelevant? You see what I mean? It might be -- it might be -- there might be two
7 processes of thinking in your mind. First of all, can it be relevant at all, and, second,
8 might it be discriminatory or exculpatory?

9 So I understood at least your statement in a way that what you did was mainly about
10 relevance and not about ascertaining in which direction certain potentially relevant
11 information would lead. Is that correct or is my understanding not correct?

12 THE WITNESS: [14:35:39] Mr President, to put it in my own words, I would say,
13 first of all, the way I understood the question from counsel about whether there
14 would be deaths on both sides, definitely if it is an engagement between the two
15 forces. But as to whether I would discard information if it -- if I had information that
16 there were people who were killed by the UPDF by engagement, I would not
17 discard it.

18 PRESIDING JUDGE SCHMITT: [14:36:25] Thank you.

19 Microphone, please, Mr Ayena.

20 MR AYENA ODONGO: [14:36:46]

21 Q. [14:36:47] Timothy, you have gone through very appreciable levels to discuss
22 issues of intercepted LRA communications. Can you tell Court, Timothy, whether
23 UPDF also kept records of their own radio communications between the field
24 commanders and their headquarters during engagement with -- I mean before and
25 after attacks, especially in the charged areas?

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1 A. [14:37:44] Your Honours, I am not aware that the UPDF was taping its own
2 conversations.

3 Q. [14:38:02] Did the UPDF field commanders have some field diaries of what went
4 on in the battlefields, especially in the charged areas?

5 A. [14:38:29] Your Honours, what I know about is how the army communicates is
6 by what we call sitreps, or situation reports, and these are some of the radio signal
7 messages that a commander sends to another commander either instructing or
8 informing.

9 Q. [14:39:00] Did you deliver this to the Prosecution, Mr Witness?

10 A. [14:39:13] Your Honours, there was -- there is really -- there was really no need
11 for me to give -- the army is a secretive institution worldwide. There is no reason
12 why I would give information about the UPDF to the ICC when the UPDF was not
13 being -- first of all, the investigation was about the LRA, as I understood it.

14 Q. [14:39:59] Now, Mr Witness, I want to refer you to your statement,
15 paragraph 19.

16 I don't think I need to quote the tab number.

17 PRESIDING JUDGE SCHMITT: [14:40:23] No, no. I think we know it and 19, it's, it
18 is tab 1, I think I know already.

19 MR AYENA ODONGO: [14:40:31] Yes.

20 PRESIDING JUDGE SCHMITT: [14:40:32] And it's about the cross-checking, I
21 assume.

22 MR AYENA ODONGO: [14:40:38] Yes.

23 Q. [14:40:39] Now, and I want to -- so that we are thinking together:

24 "The tape recordings are cross-checked by the intelligence departments to verify that
25 the tapes contain the information they are said to contain. This is an important

1 verification process otherwise we could be misled. For example, if a person is bribed
2 and provides a fake transmission we could rely upon it with disastrous results."

3 My question, Mr Witness, can you explain to Court whether it was possible actually
4 to doctor messages, for messages, intercept messages to be doctored?

5 A. [14:42:02] Your Honours, that questions is outside my scope of competence, but
6 the way intelligence departments work is that we have the signal intelligence
7 department with experts, we have other departments. So there, by me, by me
8 talking about this in paragraph 19, it's because I know how -- what would be done.
9 It's not that I was the one who was doing it.

10 Q. [14:42:37] In that case, Mr Witness, can you explain to Court what prompted
11 you to express this opinion?

12 A. [14:42:50] Your Honours, this interview was between me and the OTP personnel,
13 and as they recorded the interview I was responding to their questions, that's what
14 prompted me.

15 Q. [14:43:12] I put it to you, Timothy, that this clearly indicates that you are aware
16 that it was possible for intercept messages to be doctored, and that is why you had to
17 cross-check and, if you are lucky, you got it right, if you are not lucky, you didn't get
18 there.

19 A. [14:43:49] Your Honours, I have no problem with your assertion.

20 Q. [14:43:54] Very good. This, Mr Witness, now brings you -- brings me to the
21 fundamental question of custody of the intercept messages that you sent to
22 the Prosecution.

23 When you came to review the intercept messages with the Prosecution in 2015, did
24 they show you the list of the intercepts that you had given to them?

25 A. [14:44:52] Your Honour, the 2015 interview was not about me reviewing

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1 evidence, it was about updating the interviewer of the OTP about what had happened
2 since the last interview, including my status in 2015 and looking at the registration
3 forms by way of authentication, not by way of reviewing the evidence which I had
4 given in form of tapes, in form of the massive documents that I handed over. That
5 was not the purpose.

6 PRESIDING JUDGE SCHMITT: [14:45:42] And may I shortly, just a comment by me
7 because we have Prosecutor sitting here on the right side, the custody you are
8 speaking of, Mr Ayena, was the custody of the Prosecution at the time, or wasn't it,
9 2015? Yeah? So it was not in the custody of the witness anymore. He had handed
10 it over to the Prosecution and from then on it was in the custody of the Prosecution.

11 THE WITNESS: [14:46:16] Thank you, Mr President. And that is correct.

12 MR AYENA ODONGO: [14:46:19] Mr President, if you had allowed me space,
13 perhaps you would have appreciated where I was going.

14 PRESIDING JUDGE SCHMITT: [14:46:26] You know, sometimes, you know, as
15 you are also, sometimes I'm too quick, stepping forward too quickly.

16 MR AYENA ODONGO: [14:46:33] Yes. In this case, Mr President, I just wanted to
17 find out from the witness, and he used the right word, you know, I sometimes
18 wonder how we think so much alike. When I miss a word which I should have used
19 for him, he introduces it. In this case he used the word "authentication", he had
20 come to authenticate.

21 Q. So in this case did you authenticate the intercepts that you had given to them?

22 A. [14:47:09] Your Honours, I will say again that I was authenticating the
23 registration forms and nothing else. Not the evidence, not the content of what was
24 handed over. The evidence was already in The Hague.

25 Q. [14:47:35] Very well. In that case, Timothy, at that point when you were

1 authenticating the list, the forms, did the Prosecution tell you that the intercepts you
2 had given them had been enhanced?

3 A. [14:48:10] Your Honours, I did not put questions to the OTP. I was responding
4 as usual to an interview, and I don't remember telling -- them telling me about
5 enhanced tapes.

6 Q. [14:48:35] Thank you very much. Now, in view of your statements in
7 paragraphs 11, 12, 15, 16, 17 and 19, which we already referred to, Timothy, can you
8 confirm to Court whether the tapes you provided to ICC included work products of
9 all the intelligence agencies mentioned therein, especially under the auspices of JIC?

10 A. [14:49:26] Your Honours, I would confirm that the tapes were a product of the
11 ISO, some of them, and the UPDF. I cannot confirm that they were the product of
12 the police or the external security.

13 Q. [14:49:57] Mr Witness, you will excuse me, that sounds a bit of contradiction in
14 terms. In view of the fact that you said there was, you know, a central committee for
15 processing these, you know, intelligence information, from the UPDF that is CMI,
16 from the police, that is the CID, from ISO, that is Internal Security Organisation, and
17 from ESO, why was it necessary after doing joint analysis for the agencies to go their
18 way and present their pieces of evidence differently to the Prosecution?

19 A. [14:51:06] Your Honours, I've referred to tapes, and that's why I always want to
20 answer specific questions. If you talk about reports, that's a different matter. If you
21 talk about documentary evidence, if you talk about forensics, some of the work was
22 done by JIC subcommittee. I know that the taping was done by the UPDF and the
23 ISO. Not the others. At least to the best of my knowledge.

24 Q. [14:51:42] So, Mr Witness, do you want to confirm to Court that when you sat as
25 JIC you did not consider intercept tapes?

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1 A. [14:52:08] Your Honours, first of all, the tapes, if -- I am sure you have reviewed
2 already in the Court, those tapes would not ordinarily be understood by anybody
3 without special knowledge of how they were coded, so there is no -- there is no way
4 we would have reviewed tapes which were -- which were full of codes, which were
5 full of signage which was special, and you know, whether I believe listened to those
6 who testified about the tapes who were not competent to deal with those tapes.

7 Q. [14:53:03] Now, Mr Witness, I have just drawn my attention again to paragraph
8 29 of your statement, which seems to cut across -- or, rather, make contradictions
9 about what you have said before.

10 And with your permission, your Honours, for purposes of emphasis I would want to
11 read it.

12 PRESIDING JUDGE SCHMITT: [14:53:35] Yes.

13 MR AYENA ODONGO: [14:53:36] "I have provided all documents to the ICC that
14 are related to the LRA, including their operational documents, their documents
15 regarding the LRA's military, administration, records of people in their camps,
16 civilians, military, mothers and children, the sick, escapees, the dead. Any document
17 regarding the LRA is submitted to the ICC".

18 PRESIDING JUDGE SCHMITT: [14:54:19] And where's the contradiction?

19 Or Mr Black, what did you --

20 MR BLACK: [14:54:26] I apologise, your Honour, just for completeness and for
21 context I want to note that that paragraph falls under a heading that's called
22 "Captured documents" (Overlapping speakers)

23 PRESIDING JUDGE SCHMITT: [14:54:37] Yes. Exactly that -- exactly that is what I
24 wanted to say also.

25 And I also wanted to ask Mr Ayena to clarify where he sees a contradiction to what

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1 the witness has said before.

2 MR AYENA ODONGO: [14:54:57] Your Honour will remember that when we put
3 questions which were operation related the witness said he was not a field
4 operation -- a field commander.

5 PRESIDING JUDGE SCHMITT: [14:55:14] No, I think this paragraph 29 can be read
6 insofar as it simply means that any document that has something to do with the LRA,
7 was LRA-originated, was related to the LRA. As he said, he has provided pieces of
8 evidence. He has provided to the Prosecution, I have understood it this way. So
9 it's prone to interpretation of course what you understand how far this goes, but it's
10 not talking about intercepts, it's talking about documents that have been seized, for
11 example. And, yeah, any document regarding the LRA is submitted to the ICC and
12 a work product, I think, for example, would perhaps not fall under a document
13 related to the LRA. Because it's something that has been produced out of evidence
14 that was really to the LRA, so it's prone to interpretation what is meant.

15 MR AYENA ODONGO: [14:56:15] My lord, with absolute humility and respect I
16 want to suggest that these LRA-related documents could only have been got from the
17 field, and if they were got from the field that means they were got during operations,
18 and therefore the witness cannot be heard to say he had no knowledge of operational
19 matters.

20 PRESIDING JUDGE SCHMITT: [14:56:55] I think we let, we let the witness answer
21 that. But, frankly speaking, he could have gotten -- I don't want to speak for the
22 witness, perhaps we first let the witness try to answer the question, but I assume that
23 I know the answer.

24 Please, Mr Witness.

25 MR AYENA ODONGO: [14:57:13] I am much obliged, although it's a bit prejudicial

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1 (Overlapping speakers)

2 THE WITNESS: [14:57:18] Mr President, Mr President, I got these documents from
3 the field IOs and I did not get them myself. When I say supplied the LRA (inaudible)
4 the operational documents, it doesn't mean that I was in the operational theatre. I
5 only got the documents into my office through the chain of custody that I have
6 mentioned before.

7 PRESIDING JUDGE SCHMITT: [14:57:53] Frankly speaking, this is what I had
8 expected. So please continue.

9 MR AYENA ODONGO: [14:58:01] Yes.

10 Q. [14:58:02] Now, Mr Kanyogonya, in view of the fact that the documents we are
11 talking about were Dominic Ongwen ICC case related, in your summary to
12 the Prosecutor did you indicate whether at the time the documents were obtained
13 Dominic Ongwen was in the top decision-making echelon of the LRA?

14 A. [14:58:37] Your Honour, I did not make summaries or conclusions. We gave
15 the documents the ICC. It was clear that he was the senior brigade commander.
16 And there were just a few brigades in the LRA, so by necessary inference he was in
17 the high command of the LRA. But that was up to the ICC. I don't think I made
18 deductions for the ICC.

19 Q. [14:59:17] The next question was earlier on canvassed, but for purposes of
20 emphasis I shall put it to you again.

21 Timothy, apart from documents captured from the LRA, could the JIC have been
22 privy to documents indicating that the government of Sudan was fighting a proxy
23 war against the government of Uganda through the LRA, as the government of
24 Uganda was fighting a proxy war against the government of Sudan through SPLA?
25 And, your Honours, I want to refer to Defence binder tab 61, UGA-0013-594 at 595

1 and 596 and then tab 62, UGA-0012-404. I think one, we may have already gone
2 through that. And then tab 61, UGA-00025-260 at page 261.

3 PRESIDING JUDGE SCHMITT: [15:00:44] So I think we, you yourself pointed it out,
4 we had this question already, but I am -- perhaps the witness can answer it.

5 MR AYENA ODONGO: [15:00:55] Yes, I'm much obliged.

6 PRESIDING JUDGE SCHMITT: [15:01:00] And I think he does not need to look at
7 the documents because it is not alleged that he has produced the documents nor is it,
8 is he referred to. And the documents, Mr Ayena, are in evidence. So this is --

9 MR AYENA ODONGO: [15:01:13] Important.

10 PRESIDING JUDGE SCHMITT: [15:01:14] Yes.

11 MR AYENA ODONGO: [15:01:14] Much obliged.

12 PRESIDING JUDGE SCHMITT: [15:01:14] So, Mr Witness, please, I know you have
13 already -- the question has already been put to you, but yeah, please answer it.

14 THE WITNESS: [15:01:25] Thank you, Mr President.

15 As I said, I always am very cautious about speculation, and intelligence information is
16 not always what you -- people take it to be. So I don't rely on documents like this
17 one to show that we were fighting proxy wars, as counsel has insinuated.

18 MR AYENA ODONGO: [15:02:13]

19 Q. [15:02:13] Now, Mr Witness, first of all, now that we have touched on the
20 operations of LRA, from your intelligence report can you tell Court whether you got
21 to know the number -- I mean, can you describe from evidence available to you from
22 your intelligence reports the structure of LRA, how many brigades were there, if there
23 were any, how many divisions were there, if there were any, and in each of those, you
24 know, brigades, whether you knew or you got to know the number of battalions there
25 were and their strength?

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1 A. [15:03:07] Your Honour, that kind of detailed information would be found in
2 reports and I don't have those reports with me.

3 Q. [15:03:21] And as a military officer I am sure you have the competence to tell
4 Court how ordinarily big a brigade is, how many people are in a brigade.

5 A. [15:03:49] Your Honour, the way I looked at the LRA as an armed group is not
6 the same way I look at the UPDF because, first of all, the establishment of armies,
7 even regular armies do not have the same strength in a battalion or in a section. But
8 I can give you, in general, a brigade is formed of three battalions; three brigades
9 would make up a division, plus support elements.

10 But in the case of LRA, I remember when we were in Juba we talked about the LRA
11 ranks and I remember I put it to the chief mediator that if a person is a major general
12 and the strength under him is just 200, I would find it strange have that kind of a rank
13 with a total strength of 200 people. So the LRA is not constituted like a regular army
14 and the -- what you would find as a brigade in the UPDF and a brigade in the LRA is
15 very different.

16 PRESIDING JUDGE SCHMITT: [15:05:15] Thank you, Mr Witness. A short
17 addendum, so to speak, to my last remark. I am informed that tab 61 and 62 of the
18 Defence are not currently recognised as formally submitted. So this would have to
19 be, if you want, you can wish them to be considered as evidence, but you would have
20 to do that. That's not already been done.

21 Mr Rowse is nodding, so he will be in charge, if you want. You can discuss it
22 between yourselves.

23 MR AYENA ODONGO: [15:05:49] (Microphone not activated)

24 PRESIDING JUDGE SCHMITT: [15:05:51] And if you put on your microphone it
25 would have more force, your wish.

1 MR AYENA ODONGO: [15:05:58] Yes, your Honour, I want to formally put it to
2 you that I want this on record.

3 PRESIDING JUDGE SCHMITT: [15:06:05] But since I have heard it anyway, I think
4 it could be -- it could have been disputed that it is then sort of on the record even so.

5 MR AYENA ODONGO: [15:06:15] Yes, my Lord, yes.

6 PRESIDING JUDGE SCHMITT: [15:06:17] So please continue.

7 MR AYENA ODONGO: [15:06:18]

8 Q. [15:06:19] So, Timothy, in view of what you have said, would I be right to say
9 that the claim of the structures of LRA -- and I remember you have been very
10 consistent. I don't know whether you also said -- but I think you also -- that you -- I
11 mean these were so-called lieutenant general, so-called brigadier and so on. So
12 would I be right to say that the claim of structures of brigades, divisions and those
13 titles were mere mimicry of -- I mean by the UPDF -- I mean by the LRA, just like
14 children would be playing with toys and imagining that they have, you know,
15 Mercedes Benzes?

16 A. [15:07:28] Your Honour, I would not reduce it into that because the LRA was
17 a vicious fighting group that inflicted harm that goes beyond mere mimicry. Indeed,
18 they were generals in their own right, as far as they were concerned. But we do not
19 recognise their ranks because their, their ranks are not known under Ugandan law.

20 Q. [15:08:09] Mr Witness, in the Hansard that we raised -- I mean we pointed to
21 Court this morning, there is a statement by our minister, our then Minister of State for
22 Defence, that at a certain point the LRA had a strength of just 1,000 armed men
23 against a force of 40,000 UPDF at that time. I am sure the international
24 community -- I mean this Court would want to appreciate how a force of 1,000 would
25 evade the attention of a 40,000-strong army to safeguard the lives of IDP camps they

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1 themselves had established.

2 PRESIDING JUDGE SCHMITT: [15:09:38] I think this -- at least the witness has
3 perceived this more as a statement than as a question, I would say. Because he does
4 not answer and he is nodding. So you would have to put it in the form of a question
5 more.

6 THE WITNESS: [15:09:58] Thank you, Mr President.

7 MR AYENA ODONGO: [15:10:01] Your Honour, you are helping him so much
8 (Overlapping speakers)

9 PRESIDING JUDGE SCHMITT: [15:10:06] No, no, I am -- no, it is simply that I want
10 that the proceedings continue.

11 MR AYENA ODONGO: [15:10:11] But of course (Overlapping speakers)

12 PRESIDING JUDGE SCHMITT: [15:10:12] And when -- you know, when you are
13 talking and the witness remains silent, there must be a reason for that, and I assume
14 that the reason would be that he did not perceive it as a question, and I think that was
15 correct.

16 MR AYENA ODONGO: [15:10:27] Mr President --

17 PRESIDING JUDGE SCHMITT: [15:10:28] And of course, of course, we know that
18 we have a very intelligent person at the video link, with all the repercussions. And
19 try to put it in -- more into a question form and then he will answer, I think.

20 MR AYENA ODONGO: [15:10:44] Mr President, in fact I was not criticising your
21 intervention. It's very -- it makes me better in terms of putting the correct question
22 to my learned brother there, so that he refocuses on how best he can assist this Court.

23 Q. [15:11:03] Now, in view of the fact that LRA was just 1,000 and UPDF was
24 a force of 40,000, in your opinion, can you in your opinion explain to Court why it
25 was still possible for the LRA to evade the UPDF and wreak the havoc of the

1 magnitude that has been reported to this Court?

2 A. [15:11:45] Your Honour, thank you. First of all, in my opinion, most of the
3 damage was done by the LRA killing unarmed civilians. That is the problem, if even
4 one person can cause a lot of damage. I was just looking at the news yesterday, in
5 Las Vegas, one person killing over 50 people and over 400 injured. A lone gunman.
6 So it is possible to cause a lot of damage as long as you are using automatic weapons.
7 And another problem was that this was an insurgency. It's not a convention of war.
8 These LRA would also abduct their people, turn them into slaves, run across the
9 country, run across the border to South Sudan, or at that time -- yes, South Sudan.
10 And it's, it's not difficult for an insurgency to cause a lot of problems for even
11 a government-standing army that is otherwise big.

12 Q. [15:13:19] Mr Witness, I know from evidence available that the UPDF spared no
13 effort, including the use of weapons of mass destruction, including helicopter
14 gunships. Can you tell Court how for more than 20 years it was not possible to
15 contain the LRA against the civilian population?

16 PRESIDING JUDGE SCHMITT: [15:14:01] You are asking -- I think you are asking
17 here really for an evaluation that the -- that is very, very problematic for the witness
18 to do. We can, we can try to let him answer but I would really -- from then, I would
19 ask you to move to another point, because he would not have been in the position to
20 organise all these -- all the military operations, and he might not have known all
21 about this. And we are talking about 20 or 30 years of a very, very complex,
22 obviously complex situation, complex conflict, if you will.

23 But, Mr Witness, if you have to say something to this question, you can answer it.

24 THE WITNESS: [15:14:55] Thank you, Mr President.

25 Just brief remarks is that, at least according to what I have read, there are so many

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1 insurgent groups that last long, whether popular or unpopular. I remember the
2 example of Angola, where they had an insurgency for so many years. And I there
3 are other continents. So insurgency is a problem. As to why it lasted that long,
4 there must be a lot of factors.

5 MR AYENA ODONGO: [15:15:49]

6 Q. [15:15:50] Thank you, Mr Witness.

7 In your paragraph 30, you say that you provided the ICC documents exculpatory of
8 the LRA. Now, can you tell Court, Mr Witness, whether any of these documents
9 were relevant to exculpating Dominic Ongwen or was there none exculpating him?

10 A. [15:16:34] Your Honours, I do not remember the details, but -- but I know that
11 even paragraph 30 itself mentions the type of documents I handed over that I thought
12 were exculpatory. That was for the LRA. Maybe Dominic was one of them, I don't
13 know.

14 Q. [15:17:02] Do you agree with me, Mr Witness, that there is a distinction between
15 LRA as an institution and the individuals, and in this case it was an individual who
16 was charged?

17 A. [15:17:27] Your Honours, the institution is made up of component parts and
18 one -- and the main component part of the LRA is their leadership and their members.

19 Q. [15:17:46] Now, Mr Witness, did you decipher from documents or from general
20 knowledge -- because sometimes you have been talking about generally, and
21 especially as, you know, an officer maybe of middle rank but in an extremely strategic
22 position, would you say you could decipher the control that was exercised by
23 Joseph Kony on LRA establishment?

24 A. [15:18:44] Your Honours, this would just be by way of reading through the radio
25 messages and through what the former LRA members would talk about. Otherwise,

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1 there is no other way I could tell the extent of his authority over his subordinates.

2 Q. [15:19:14] And, Mr Witness, talking about exculpatory documents, why didn't
3 you, for example, in your summary or in the document -- I mean, when you tendered
4 this to the ICC, at least indicate documents showing that at least up to August of 2003,
5 Dominic Ongwen was not a top LRA commander and therefore a key factor in the
6 conflict and holding notable command responsibility.

7 MR AYENA ODONGO: [15:19:50] And in this case, your Honours, I refer you to
8 Defence tab 54, UGO -- I mean UGA-OTP-0255-0943 at page 945.

9 PRESIDING JUDGE SCHMITT: [15:20:25] How did -- I ask the Prosecution, how did
10 the Prosecution receive this document, for example?

11 MR BLACK: [15:20:42] Your Honour, I understand that it is from the 5th division of
12 the UPDF. And we received it through this witness, but it derives from Achol-Pii.

13 PRESIDING JUDGE SCHMITT: [15:20:51] So the witness tendered this document, if
14 you will, if I follow the Prosecution, and so the assumption in your question why did
15 you not, I think, would not be -- he did, he did provide the Prosecution with this
16 document.

17 And it's always up to, first of all, the Prosecution when they charge and when they, of
18 course when they disclose it, when they fulfil their disclosure obligation with
19 the Defence. And then in the end it's up to the judges to assess in how far evidence
20 might be exculpatory or might be discriminatory.

21 MR AYENA ODONGO: [15:21:38] You have done it for me, my lord. And that also
22 goes for the document. I mean, on the same document there is also an indication
23 showing that Dominic Ongwen had had contact with the revered General Salim Saleh.
24 I mean, he wanted to escape. He had established contact.

25 MR BLACK: [15:22:12] Your Honour, I would just note that it doesn't say that on the

1 document. It references peace talks and Salim Saleh, but I don't see anywhere that it
2 says he wanted to escape.

3 PRESIDING JUDGE SCHMITT: [15:22:23] Yes, of course. But, you know, we have
4 the document, we can read, we have our eyes, so we would interpret it as it stands
5 here on the paper.

6 MR BLACK: [15:22:39] Thank you, your Honour, I appreciate that. My comment
7 was in case a question were to come out of this document that the witness would
8 understand what it contains or does not usually --

9 PRESIDING JUDGE SCHMITT: [15:22:50] No, I think there was no question put to
10 him. And I think we have talked about this issue yesterday already.

11 MR AYENA ODONGO: [15:22:58] And I can only add, your Honours, that this
12 document of course will be read and analysed, together with other pieces of evidence,
13 and even documents which are on record.

14 PRESIDING JUDGE SCHMITT: [15:23:11] And I'm absolutely sure that you will put
15 these pieces of evidence that you find relevant in that respect together for the judges
16 to consider.

17 MR AYENA ODONGO: [15:23:21] Much obliged.

18 Q. [15:23:38] Now, Mr Kanyogonya, as a military lawyer, I mean a lawyer for the
19 UPDF with multifarious responsibilities, how do you characterise the LRA soldiers
20 who surrendered to the UPDF? Were they defectors, prisoners of war, or both?

21 A. [15:24:15] Your Honour, the term prisoner of war, as I understand it, is in an
22 international armed conflict. And this one is a civil war so they are not prisoners of
23 war, those who returned, indeed, they were not even prisoners. So they were just
24 returnees coming back out of the bush and we welcomed them back and many of
25 them were amnestied.

1 Q. [15:24:52] Would that be the same thing with Colonel Kwoyelo?

2 A. [15:25:02] Colonel Kwoyelo is under trial. That means he is not amnestied.

3 People are categorised.

4 Q. [15:25:16] Mr Witness, I am talking about that intermediary period between his
5 capture and handing over to the police, what did the UPDF consider him to be?

6 A. [15:25:42] Your Honour, I don't want to go into speculation. I am not the one
7 who captured him, I don't know how he was regarded, but I think most likely was
8 regarded as a suspect.

9 Q. [15:26:02] From Sudan?

10 A. [15:26:07] I don't know.

11 Q. [15:26:20] Mr Witness, you are aware that some of these people were integrated
12 into the UPDF, or redeployed to fight the LRA despite their enduring traumatic
13 experiences of war for several years. Would this fit in with the description of what
14 you said?

15 A. [15:27:02] Your Honour, I seek clarification about what you mean, because I said
16 they were returnees, they were welcomed back, and indeed those who wanted were
17 encouraged to join the army for relieving, at least to get out of the temptation of
18 criminality.

19 Q. [15:28:09] Mr Witness, as legal adviser to UPDF on -- in many fora, including the
20 peace talks, did you provide guidance on legal issues that could arise from the
21 so-called LRA wives and children born out of those unions?

22 A. [15:28:53] Your Honour, I did not and I was not -- I was not -- never asked about
23 that by my superiors.

24 But also I would like Court to take note of the fact that I am not the only UPDF lawyer,
25 so ...

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1 Q. [15:29:36] Mr Witness, we are now coming to the end of our interaction, but I
2 want you to give your take on the so-called Control Altar. Did you get to know that
3 the high command of LRA was called the Control Altar?

4 A. [15:30:14] Your Honours, yes, I did.

5 Q. [15:30:20] Did you know where Dominic Ongwen fitted in the Control Altar?
6 Was he there, to begin with, at the time of the charged period?

7 A. [15:30:48] The way I under -- Your Honours, the way I understand the structure
8 of LRA is that the Control Altar was where their chairman had his command, it was
9 like a command post, and then he had his division, I think one division, an army
10 commander one division or so, and about four brigades. And Dominic Ongwen was
11 one of the brigade commanders.

12 Q. [15:31:43] Mr Witness, did you in the process of your work get to know whether,
13 apart from the 10 Commandments of God that Kony relied on, do you remember
14 whether he also issued from time to time orders and instructions to his commanders?

15 A. [15:32:29] Your Honours, I would seek clarification again on what kind of orders.
16 The orders are contained in his radio messages, yes, but I think I would be better
17 placed to answer if I knew what you, you mean.

18 PRESIDING JUDGE SCHMITT: [15:32:50] And allow me the remark, Mr Ayena, that
19 we had other witnesses who were perhaps closer to this question that you are asking
20 now, or would have -- would be better placed, so to speak, to answer these questions.
21 I really don't think that with this witness he was better placed to answer on other
22 issues, I would say, but.

23 MR AYENA ODONGO: [15:33:44] (Microphone not activated)

24 PRESIDING JUDGE SCHMITT: [15:33:45] Microphone, please.

25 MR AYENA ODONGO: [15:33:47]

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1 Q. [15:33:49] Timothy, you seem to suggest that you are aware that the brigade
2 commanders were members of the Control Altar. But in view of the fact that you
3 were not involved in operations, how did you come to this conclusion?

4 A. [15:34:11] Your Honours, first of all, I did not say that they were members of the
5 Control Altar. The way I took it is that Control Altar was like the unit of
6 Joseph Kony, maybe like a presidential guard, that's how I look at it if I recall my
7 literature, and he had about one division commander and about four or five brigade
8 commanders. And I get this information from reading. This material I gave, I gave
9 to the ICC.

10 PRESIDING JUDGE SCHMITT: [15:34:47] I think that clarifies it, I would say.

11 MR AYENA ODONGO: [15:34:50] Yes.

12 Q. [15:34:51] Now, did it come to your attention as to who in the fields Kony would
13 give his orders to? Did he follow a strict chain of command?

14 A. [15:35:19] Your Honour, as far as I recall from the way he wrote his messages, he
15 would order whoever he wanted to carry out an activity.

16 Q. [15:35:34] Thank you.

17 Your Honours, I think that's the end of my -- our cross-exam.

18 I want to thank you, Mr Kanyogonya. I still have a stake with you over a coffee
19 when I come back.

20 A. [15:35:51] Thank you, Counsel.

21 PRESIDING JUDGE SCHMITT: [15:35:54] Thank you, Mr Ayena.

22 And this concludes the testimony of the witness.

23 And also on behalf of the Chamber I would like to thank you, Mr Kanyogonya, that
24 you made yourself available to answer the questions of the parties and the

25 Presiding Judge and the Defence for two days. We wish you a safe trip back,

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- 1 which is, to your home, which might not be far away from the location of the
- 2 video link.
- 3 This concludes also the hearing for today. We continue tomorrow at 9.30 with P-81.
- 4 Yes.
- 5 THE WITNESS: [15:36:29] Thank you, Mr President. (Overlapping speakers)
- 6 (The witness is excused)
- 7 THE COURT USHER: [15:36:31] All rise.
- 8 (The hearing ends in open session at 3.36 p.m.)