

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
6 Judge Raul Pangalangan
7 Trial Hearing - Courtroom 3
8 Tuesday, 14 March 2017
9 (The hearing starts in open session at 9.32 a.m.)
10 THE COURT USHER: [9:32:16] All rise.
11 The International Criminal Court is now in session.
12 PRESIDING JUDGE SCHMITT: [9:32:37] Good morning, everyone.
13 Good morning, Mr Witness.
14 Could the court officer please call the case.
15 THE COURT OFFICER: [9:32:44] Good morning, Mr President.
16 This is the situation in the Republic of Uganda, in the case of The Prosecutor versus
17 Dominic Ongwen, case reference ICC-02/04-01/15.
18 And for the record, we are in open session.
19 PRESIDING JUDGE SCHMITT: [9:33:01] I ask for the appearances of the parties.
20 Mrs Hohler, please.
21 MS HOHLER: [9:33:06] Your Honours, for the Prosecution today Ben Gumpert,
22 Pubudu Sachithanandan, Yulia Nuzban, Hai Do Duc, Ramu Bittaye, Mari Pilvio,
23 Kamran Choudhry and my name is Beti Hohler.
24 PRESIDING JUDGE SCHMITT: [9:33:21] Legal Representatives of Victims.
25 MS MASSIDDA: [9:33:24] Good morning, Mr President, your Honours. For the

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1 Common Legal Representative team, Paolina Massidda with Jane Adong, Orchlon

2 Narantsetseg, Jacqueline Atim and Negosava Smiljanic.

3 PRESIDING JUDGE SCHMITT: [9:33:39] And Mr Cox.

4 MR COX: [9:33:41] Good morning, your Honour. For the victims, Francisco Cox

5 and James Mawira. Thank you.

6 PRESIDING JUDGE SCHMITT: [9:33:47] Thank you. And the Defence, Mr Ayena,

7 please.

8 MR AYENA ODONGO: [9:33:50] Good morning, Mr President and your Honours.

9 Today I have Chief Charles Taku, Abigail Bridgman, Tom Obhof assisting me. And

10 our client Mr Dominic Ongwen is in court. Thank you very much.

11 PRESIDING JUDGE SCHMITT: Thank you.

12 Mrs Hohler, you still have the floor.

13 MS HOHLER: [9:34:16] Thank you, your Honour.

14 WITNESS: UGA-OTP-P-0330 (On former oath)

15 (The witness speaks Acholi)

16 QUESTIONED BY MS HOHLER: (Continuing)

17 Q. [9:34:19] Good morning, Mr Witness. Mr Witness, yesterday you told us about

18 Opiyo and Openyo being killed because they were thought to be planning an escape.

19 Did you see anyone else killed because they were caught trying to escape while you

20 were in Odomi's group?

21 A. [9:34:50] Yes, I saw one of the boy who was killed, the others kept and returned.

22 He had tried to escape during the night and walked back to the position and he was

23 captured and killed.

24 Q. [9:35:13] Who ordered to kill this boy?

25 A. [9:35:26] The order was given by the 2IC to Odomi, Okello, because I was at the

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1 adaki, at his home.

2 Q. [9:35:39] How was this boy killed?

3 A. [9:35:48] His hands were tied and he was hit on the back of his head.

4 Q. [9:35:55] Did you see this happen with your own eyes, Mr Witness?

5 A. [9:36:04] Yes.

6 Q. [9:36:15] Do you remember any soldiers who killed the boy?

7 A. [9:36:20] It was one soldier called Oyo. Actually, there were three soldiers but
8 the other two, I now can't recall their names.

9 Q. [9:36:36] Did you see any girl being killed for trying to escape, Mr Witness?

10 A. [9:36:49] Yes, even girls were killed. I even saw some girls killed.

11 Q. [9:36:58] Can you tell us about that, Mr Witness, what occasions do you
12 remember the girls who were trying to escape were killed?

13 A. [9:37:16] I remember one girl called Adong, she tried to escape and she was
14 killed.

15 Q. [9:37:23] Who was Adong staying with?

16 A. [9:37:37] Adong, I don't remember the boss she was staying with.

17 Q. [9:37:46] Who ordered that she be killed?

18 A. [9:37:54] That one is in the instructions to all groups that that was the order
19 given to the soldiers and the commanders that follow Odomi so it was that -- it was
20 him who ordered that anybody who tries to escape and is captured again is killed.
21 So it's an instruction that is known to all the soldiers. And if you were a seasoned
22 soldier and you are present at that time you just have to shoot, there is no problem
23 about it.

24 Q. [9:38:32] Just so we're clear, Mr Witness. When you say "it was him who
25 ordered that" who do you mean?

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1 A. [9:38:50] That was Dominic.

2 Q. [9:38:51] Did you hear this order, such order or such instructions?

3 A. [9:39:00] Yes, because when we are at the position in the morning, we are all
4 lined up for parade, then he comes to address the group.

5 Q. [9:39:22] Mr Witness, if you go -- if we go back to this girl Adong, do you
6 remember who were the soldiers that killed her?

7 A. [9:39:38] Now I don't recall the soldiers that killed Adong because she had
8 remained behind. And most of us in the convoy, we had walked ahead and we had
9 moved ahead at that time.

10 Q. [9:40:04] Mr Witness, do you remember any girl that escaped from Okello's
11 home, that tried to escape from Okello's home but was caught and killed?

12 A. [9:40:24] I don't recall her name.

13 Q. [9:40:29] But do you remember any such event? I'm not asking about the name,
14 just if you remember such event.

15 A. [9:40:45] Yes, it happened.

16 Q. [9:40:48] Can you tell us about it, Mr Witness, please.

17 A. [9:41:00] She was killed because she had tried to escape.

18 Q. [9:41:09] Who ordered that she be killed?

19 A. [9:41:20] I don't recall the name of the person who ordered, but was amongst
20 one of the commanders that were there, the -- one of the commanders that was in
21 charge of the adaki.

22 Q. [9:41:36] Let's try to take this one step at a time, Mr Witness. When she was
23 caught, where was the girl taken, if you remember?

24 A. [9:41:54] That one I said I don't remember, because it happened when I was
25 really still young. I could not remember now.

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1 MS HOHLER: [9:42:07] Your Honours, may I apply to refresh the witness's memory
2 on this point?

3 PRESIDING JUDGE SCHMITT: [9:42:15] Yes.

4 MS HOHLER: [9:42:18] This is in the witness's statement with the parent
5 ERN 0256-0071. It's at page 0081, paragraph 59.

6 I propose, your Honours, to read the first sentence and the first part of the third
7 sentence, just so I am clear.

8 PRESIDING JUDGE SCHMITT: [9:42:57] Yes.

9 MS HOHLER: [9:42:59]

10 Q. [9:42:59] Mr Witness, I am again going to read a line, two lines from the
11 statement that you gave to the ICC investigators. Here is what it says:

12 "One of the girls who had been given to Okello to take care of escaped from his home
13 one night."

14 PRESIDING JUDGE SCHMITT: [9:43:20] May I interrupt, I would suggest we try the
15 first two sentences without -- not starting with the third and perhaps this triggers the
16 memory, this would be enough to trigger the memory.

17 MS HOHLER: [9:43:33] Very well, your Honour.

18 Q. [9:43:34] I will start again, Mr Witness:

19 "One of the girls who had been given to Okello to take care of escaped from his home
20 one night. This proved that Kony really did have spirit because she went round and
21 round and was caught."

22 Is this what you said, Mr Witness?

23 A. [9:44:02] Yes.

24 Q. [9:44:04] Would you say the same today?

25 A. [9:44:13] Yes, that is what happened.

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1 Q. [9:44:17] Does this help you remember to whom this girl -- I'm sorry,

2 Mr Witness, yes, go ahead.

3 A. [9:44:31] Yes, that I can now remember when you read it out that way.

4 Q. [9:44:39] Can you also remember to whom she was brought to after she was
5 caught? Where was she brought?

6 A. [9:44:56] She was taken to Okello.

7 Q. [9:45:02] And what did Okello do?

8 A. [9:45:13] He was the one who gave the orders that she should be killed.

9 Q. [9:45:23] Did you hear him say that?

10 A. [9:45:29] Yes.

11 Q. [9:45:33] How was the girl killed?

12 A. [9:45:43] She was tied and then killed.

13 Q. [9:45:51] Who killed her? If you can remember.

14 A. [9:46:06] I can't now remember who killed.

15 Q. [9:46:11] Did you see this girl being killed, Mr Witness?

16 A. [9:46:20] Yes, I saw when they were being killed.

17 Q. [9:46:29] You said, Mr Witness, "when they are being killed". Was there
18 anyone else killed at this particular time or just this girl?

19 A. [9:46:45] It was only this girl who was killed because she had tried to escape.

20 And the shea oil and the water that she was anointed with actually brought her back
21 to the position.

22 Q. [9:47:06] Did Okello report to anyone about the girl trying to escape and being
23 killed?

24 A. [9:47:24] He reports to Odomi.

25 Q. [9:47:29] But on this particular occasion regarding this particular girl, did Okello

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1 report to Odomi?

2 A. [9:47:46] I think by all means he will take that report because what happened at
3 his adaki he cannot just keep quiet over it without taking the message to his boss.

4 Q. [9:48:05] Did you hear him report to Odomi with your own ears, Mr Witness?

5 A. [9:48:18] I did not hear, but it's in the instructions. It is in the instructions and
6 that is how the LRA commanders operate, that when something happens at your
7 position, then you have to report it to your superior.

8 Q. [9:48:47] Thank you, Mr Witness. Mr Witness, are you familiar with the term
9 to prepare a place for someone within the Holy?

10 A. [9:49:11] Yes, I understand.

11 Q. [9:49:17] What does that term mean, Mr Witness?

12 A. [9:49:25] If they say you can prepare a place for someone, it means you have to
13 go and kill that person.

14 MS HOHLER: [9:49:35] Your Honours, I would request a private session now for
15 about 10 to 15 minutes.

16 PRESIDING JUDGE SCHMITT: [9:49:42] Yes, private session.

17 (Private session at 9.49 a.m.)

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5 (Open session at 10.07 a.m.)

6 THE COURT OFFICER: [10:07:57] We are back in open session, Mr President.

7 MS HOHLER: [10:08:03] And I will give just a little bit of a warning. I hope we can
8 stay in public session, but there might be a need to go, as you will see from my
9 questions.

10 PRESIDING JUDGE SCHMITT: [10:08:13] Well noted.

11 MS HOHLER: [10:08:18] Mr Witness, do you know anything about an event that
12 took place at Chulu's house in Lira Palwo?

13 A. [10:08:38] Chulu's home, yes, I have some knowledge on that, because we met
14 there, two groups.

15 Q. [10:08:53] Who were the two groups that met there?

16 A. [10:09:02] Those were Dominic Ongwen's group and, and Odhiambo's group.

17 Q. [10:09:19] Who was Chulu, Mr Witness? You said this was at Chulu's house or
18 home. Who was Chulu, if you remember?

19 A. [10:09:39] It's said Chulu was a commander apparently. I don't remember very
20 well.

21 Q. [10:10:07] Mr Witness, can you tell us what happened at Chulu's house in Lira
22 Palwo?

23 A. [10:10:19] We met at Chulu's home. We were two groups. My -- I was
24 in -- there was Ongwen's group and Odhiambo's group. Now, one soldier escaped
25 with a gun. Then Chulu took his children, is his child, and took the child to the

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1 government troops in Patongo.

2 Q. [10:11:19] And what happened next, Mr Witness?

3 A. [10:11:32] At Chulu's home, people were assembled and they started looking for
4 the, for the child and they realised that the person had taken the child to government
5 troops. People were selected from different homes and assembled together,
6 including children and women and old people. And they said, "We want to show
7 you something. If a rebel escapes with a gun and you keep the rebel amidst you, we
8 are going to show you what happens." Then they started cutting civilians, cutting
9 them into pieces and the body pieces were cooked in a pot and people ate the meat.

10 Q. [10:12:48] When you say, Mr Witness, "they started cutting civilians", who is
11 "they"?

12 A. [10:13:02] These were soldiers, because people assembled in big numbers. We
13 were in Dominic Ongwen's group. So a standby was selected to look for the child,
14 but the child was not found. Because this child had escaped from Odhiambo's
15 group.

16 Q. [10:13:33] And when you now explain these were the soldiers, do I understand
17 you correctly, these were the LRA soldiers?

18 A. [10:13:47] They were LRA soldiers. Because all the soldiers there were rebels
19 from Holy. And the child was taken to government troops.

20 Q. [10:14:14] Do you remember who gave the order for starting to cut the civilians
21 and so on?

22 A. [10:14:28] Yes, I do remember. It was the leader of Odhiambo's group. It was
23 Odhiambo himself. Because Odhiambo is, has a very bad heart and he was asking
24 why the child went with a gun. If the child wanted to escape, he should have
25 dropped the gun there and escaped alone.

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1 Q. [10:15:04] Did you see, Mr Witness, this with your own eyes, the cutting and
2 cooking of civilians?

3 A. [10:15:23] Yes, I saw with my own eyes. That is the most tragic death and
4 when I talk about it I feel pain in my heart.

5 Q. [10:15:38] We completely understand, Mr Witness. And I will only ask you one
6 or two more questions on this. The first of those is: What happened after the
7 civilians were cut and put in a pot and people ate the meat? What happened after?

8 A. [10:16:16] The mamba and buffalo APCs came and started shooting at us and we
9 started running and we split in different groups. Odhiambo's group went a different
10 way.

11 Q. [10:16:59] Just going back, Mr Witness, to the person's home where this
12 happened, to Chulu, was he a civilian or was he a member of the LRA?

13 A. [10:17:20] Chulu wasn't a member of the LRA. Chulu was a civilian.

14 Q. [10:17:30] Thank you, Mr Witness.

15 PRESIDING JUDGE SCHMITT: [10:17:33] Mr Witness, just one more question. I
16 understood that you saw that people ate the pieces; is that correct?

17 THE WITNESS: [10:17:54] (Interpretation) Yes, that is correct.

18 PRESIDING JUDGE SCHMITT: [10:17:57] Do you recall who ate the pieces?

19 THE WITNESS: [10:18:06] (Interpretation) These were other civilians who were not
20 killed who ate the pieces. So they were lined up, you come with your saucepan and
21 then you are given pieces of meat to eat. Other people were pushed in a hut and
22 they were burnt inside the hut. Up to now, there are no homes in that place, there
23 are just bones, people's bones.

24 PRESIDING JUDGE SCHMITT: [10:18:39] Ms Hohler.

25 MS HOHLER: [10:18:44]

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1 Q. [10:18:48] Mr Witness, I now want to ask you about your escape from the LRA.

2 Do you remember what location your group was at when you were able to escape?

3 A. [10:19:14] I escaped when we were coming from Teso after Tabuley was shot.

4 Because Tabuley was shot on the other side of the river and we were on the other side
5 of the river. So when Tabuley was shot at and then fighting followed from 8, from 8
6 to 6 p.m.

7 Then we started going back because it was said that Dominic had talked on radio and
8 said that Kony had ordered that we all go back. So we started walking to go back.

9 We, we crossed the road. We crossed the Pader road, the Pader Kitgum road. We
10 crossed by Latanya, we walked a little bit and we separated positions and then we
11 settled down.

12 They started to select a standby for collecting food from the villages, from the
13 civilians. Because at that time there were no civilians in the villages, they were all in
14 camps.

15 Q. [10:21:12] When you say, Mr Witness, "Kony had ordered that we all go back",
16 where did he order you to go? Where is "go back"? What does "go back" mean?
17 Back to where?

18 A. [10:21:35] He gave the order that he wants to see all his soldiers in Sudan. He,
19 he told our group, Sinia group, that Odomi should move with his soldiers and go to
20 Sudan. Because those soldiers are Acholi, they are brothers who are fighting.

21 Q. [10:22:11] How do you know Kony gave such order?

22 A. [10:22:22] I used to stay near Mr Odomi and I was his escort, I used to carry his
23 chair. So at times I would hear what he is saying on radio, but at times I wouldn't
24 hear what he was saying, because he had his way of sending his messages.

25 Q. [10:22:50] And this particular time, did you hear and understand what he was

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1 saying?

2 A. [10:23:05] I understood one thing, that brothers and brothers are the ones
3 fighting because the soldiers who shot Tabuley were Acholi, Teso and Lango soldiers
4 called the Arrow group.

5 Q. [10:23:37] Can you now describe, Mr Witness, to us exactly how you escaped,
6 how you managed to escape? In some detail, please.

7 A. [10:23:54] I escaped because positions were distributed, a standby was selected
8 and we were instructed to go and collect food. We went to the standby. Then I, I
9 escaped from there because I was made -- I was -- me and some -- another recruit
10 called Okello Teso were assigned to security.

11 Q. [10:24:36] And what did you do to get away from Okello Teso, to get away from
12 the group and people in it?

13 A. [10:24:55] I was taken with that person to the road and we were instructed to
14 watch what's happening on the road, and that if we see any soldier, then we should
15 just shoot at them so that people who were uprooting cassava and potatoes would
16 hear the noise of the gun and they would start running.

17 Okello Teso was up on a tree. And me, I was already a seasoned soldier because I
18 have already been to Sudan, but Okello Teso had not yet gone to Sudan. He was still
19 a recruit, but he was already given a gun with one magazine. So he was up on the
20 tree, me I was down. I walked. I told him, "You stay up there in the -- up there on
21 the tree and look at me as I walk along the road." So I walked. Then I came back
22 and asked him, "Did you see how I walked?" He said he didn't see how I walked.
23 And then he said "What about in front there, can I be seen?" But then he said, "But if
24 you turn the corner over there, you are no longer visible." And I said, "Okay, that's
25 fine." So we stayed.

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1 Q. [10:26:38] And what happened after you stayed for a while?

2 A. [10:26:51] After staying for a while I heard someone talking. Then I told my
3 colleague, "Let me see those people talking. There are some civilians talking there."
4 So I went and found two mothers who were uprooting groundnuts. So I asked them,
5 "Today you are working, what day is it? If another group found you, if someone
6 else who is bad hearted found you, don't you think you would be killed?" Because
7 today is Sunday and rebels, according to rebels and according to the rules of the
8 rebels, civilians should not work on Sundays, because if you do so, you may be
9 chopped up into pieces. And I asked the civilians about the area where I was.

10 Q. [10:28:01] And what did the civilians say about the area where you were?

11 A. [10:28:20] I would like to request the Court, I request that we go in a private
12 session because that area is my area, my home area.

13 PRESIDING JUDGE SCHMITT: [10:28:35] Then to private session of course, yes.

14 MS HOHLER: [10:28:37] Very good point, Mr Witness.

15 (Private session at 10.28 a.m.)

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7 (Open session at 10.46 a.m.)

8 THE COURT OFFICER: [10:46:21] We are back in open session, Mr President.

9 MS HOHLER: [10:46:25]

10 Q. [10:46:27] I will list some names, Mr Witness, and I would like you to tell me if
11 you have ever heard of those people and, if you have, who they were. Have you
12 heard while in the bush, Mr Witness, of someone called Okello Pokot?

13 A. [10:47:01] Yes, I, I knew Okello Pokot.

14 Q. [10:47:05] What group was he in?

15 A. [10:47:19] I don't know the group. But yes, I know him. He was head of one
16 of the group.

17 Q. [10:47:31] Do you know who was his commander?

18 A. [10:47:43] No, I don't.

19 Q. [10:47:50] Do you know someone called Kidega Pakpala?

20 A. [10:48:01] Kidega Pakpala was in our group.

21 Q. [10:48:07] Do you know what was his role?

22 A. [10:48:20] I don't know -- I didn't know his roles clearly. But he was among
23 those commanders who were given girls because they had taken long in the bush.
24 And also he was already disabled because I think he had injuries earlier and I think
25 he had taken long in the Holy.

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1 Q. [10:48:51] Do you know someone called Onen Kamdulu from the bush?

2 A. [10:49:03] Yes, I heard about Onen Kamdulu.

3 Q. [10:49:10] What group was he in?

4 A. [10:49:24] Onen Kamdulu was in the Trinkle group.

5 Q. [10:49:31] Did you hear of someone called Onen Kamdulu in Odomi's group?

6 A. [10:49:46] No, I didn't hear.

7 Q. [10:49:55] Someone called Joyce Anena, Mr Witness?

8 A. [10:50:00] I don't know.

9 MS HOHLER: [10:50:10] Your Honours, I would seek to refresh the witness's
10 memory on this particular name.

11 PRESIDING JUDGE SCHMITT: [10:50:16] Yes.

12 MS HOHLER: [10:50:21] This is at page 0256-0094 of the witness's statement. It is
13 paragraph 127, right at the end. Under the letter M, your Honours.

14 Q. [10:50:50] Mr Witness, I will again read to you a line from the statement you
15 gave to the ICC investigators. You were asked whether you know anything about
16 a number of people and when asked about Joyce Anena, this is what it says:
17 "She was a female soldier who carried a gun in Odomi's group." Is this what you
18 said, Mr Witness?

19 A. [10:51:23] Yes.

20 Q. [10:51:27] Would you say the same today?

21 A. [10:51:36] That's right.

22 MR TAKU: [10:51:39] May it please, your Honours.

23 We had -- we didn't deem it necessary to object about this manner of asking the
24 witness to confirm a statement, a recorded statement. The reason was very, very
25 obvious, because you are professional judges and when you are evaluating the

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1 evidence you will know whether that was evidence of the witness or not.

2 So could already have asked if it triggers the memory of the witness, and they will
3 never say that, but to -- for leading, in leading evidence to ask the witness to confirm
4 that it is your evidence today, get the witness just to confirm what is in the recorded
5 interview, your Honours. I do not know whether that is actually evidence in court
6 as such. You have directed my learned colleague many times to ask if it triggers the
7 memory to allow the witness to give the answers, which will be the answer that the
8 witness is giving in court now. But to ask time and again "is that your evidence
9 today" your Honours, I think is unfair.

10 PRESIDING JUDGE SCHMITT: [10:52:44] I think, Mrs Hohler, indeed we could
11 word it differently. I think there will not be in substance a big difference if you word
12 it differently. But Mr Taku has a point here, in my opinion, if we say -- especially
13 given also the personality of the witness concretely that we have in front of us, to ask
14 him to say is this your evidence today. Just ask him does this trigger any memory,
15 because otherwise it might be very suggestive. A witness, it depends of course on
16 the personality of the witness, a witness might be tempted to think "I have to say
17 what I said before." So there a little bit of a danger in it. Yes.

18 MS HOHLER: [10:53:28] I am grateful, your Honours.

19 Q. [10:53:37] Mr Witness, what about a person called Ben Acellam? Have you
20 heard of him?

21 A. [10:53:54] No, I don't know him.

22 PRESIDING JUDGE SCHMITT: [10:53:59] For example, just to give an example now.
23 You would not have to read out what he has said. So you could -- that was the
24 reason, idea that's coming to my mind when I see -- of course I have it in front of me.
25 You could ask him, for example, if you hear a place called, or an expression called

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1 Luterwanga, does this trigger anything. So this would be something which is much
2 less, if at all, suggestive.

3 MS HOHLER: [10:54:30] I will do so, your Honour.

4 Q. [10:54:33] Mr Witness, in relation to Ben Acellam, if I mention Luterwanga, does
5 that help your memory about Ben Acellam?

6 A. [10:54:55] He was in the Terwanga group.

7 Q. [10:55:08] What about someone called Okulu, Mr Witness?

8 A. [10:55:22] I don't know Okulu.

9 Q. [10:55:26] Someone called Oleda, Mr Witness?

10 A. [10:55:33] Oleda, Oleda, that's a very strange name.

11 Q. [10:55:39] Have you heard of a person by this name while in the bush?

12 A. [10:55:55] Okello Oleda, I heard about him, but I don't know the group he was
13 in.

14 Q. [10:56:08] Someone called Bosco Onencan?

15 A. [10:56:19] I don't know that name.

16 Q. [10:56:25] Okello Tango?

17 A. [10:56:33] Okello Tango or Okello Kalalang?

18 Q. [10:56:40] Okello Tango?

19 A. [10:56:49] Some writings are, are different. I thought it was Okello Kalalang.
20 I don't know that name.

21 Q. [10:56:59] Someone called David Oyenga?

22 A. [10:57:08] I don't know.

23 Q. [10:57:12] And you have mentioned, Mr Witness, someone called Tabuley,
24 Tabuley. Who was he?

25 A. [10:57:32] Tabuley was one of the commanders.

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1 Q. [10:57:50] What happened to him? Is he dead or alive?

2 A. [10:58:04] Tabuley is dead, he was shot, in -- from Teso.

3 Q. [10:58:14] When Tabuley was shot, were you in the bush at the time?

4 A. [10:58:28] Yes, I was in the bush. We were on the other side of the river and
5 Tabuley's group was on the other side, because when we were going to Teso, we were
6 in two groups.

7 Q. [10:58:41] And as a final thing for me today, Mr Witness, I want to show you
8 two documents.

9 And I will ask your Honour's indulgence for maybe going two minutes after the
10 coffee break time.

11 PRESIDING JUDGE SCHMITT: [10:58:56] That doesn't matter, you know this, we
12 don't want to be too formal in these matters.

13 MS HOHLER: [10:59:02] Thank you, your Honours.

14 Q. [10:59:09] Witness, I want you to look at the binder that is on your desk.
15 And if I can kindly ask the gentleman sitting next to you to maybe help you find the
16 document I would like you to look at.

17 This will be at tab 3.

18 For the court officer it is a confidential document not to be displayed to the public.

19 The ERN is 0269-0696.

20 Do you see this document, Mr Witness?

21 A. [11:00:28] Yes, I have seen.

22 Q. [11:00:33] Do you know what this document is?

23 A. [11:00:48] That, that was the date, the date I was born.

24 Q. [11:00:55] What date are you looking at, Mr Witness, on that document? Don't
25 tell me the date. Is that the date in the second line of the writings on this document?

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1 A. [11:01:21] I have seen.

2 Q. [11:01:23] And do you know what the document itself is?

3 A. [11:01:36] It's a birth certificate.

4 Q. [11:01:42] Whose birth certificate is it, Mr Witness?

5 A. [11:01:50] Mine.

6 MS HOHLER: [11:01:56] If we flip the page and we go to tab 4 in that binder, please,
7 there is another document there.

8 This is tab 4, the ERN is 0124-0358. It is a confidential document not to be displayed
9 to the public.

10 Q. [11:02:39] Are you there, Mr Witness? Do you see this document?

11 A. [11:02:47] Yes.

12 Q. [11:02:50] There is a picture in the top right corner, do you know who is in that
13 picture?

14 A. [11:03:05] That's my picture.

15 Q. [11:03:14] Thank you, Mr Witness.

16 And, your Honours, this concludes my questioning.

17 PRESIDING JUDGE SCHMITT: [11:03:20] Thank you very much, Mrs Hohler.

18 We are coming now to the questioning by the legal representatives. I would say to
19 have a meaningful coffee break. As I said, we do not want to take things too formal.

20 We meet again here at a quarter to 12.

21 THE COURT USHER: [11:03:42] All rise.

22 (Recess taken at 11.03 a.m.)

23 (Upon resuming in open session at 11.47 a.m.)

24 THE COURT USHER: [11:47:26] All rise.

25 PRESIDING JUDGE SCHMITT: [11:47:53] I wanted to give Mrs Massidda the floor,

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1 but since Mr Gumpert is standing I assume that you want to have a word?

2 MR GUMPERT: [11:48:03] If I may.

3 PRESIDING JUDGE SCHMITT: [11:48:05] Of course.

4 MR GUMPERT: [11:48:07] The issue of memory refreshing is bound to recur.

5 This will be a long trial, and many witnesses will be called and sometimes they won't
6 remember things.

7 Of course it's a matter which your Honours must decide on the best practice for and
8 how we most quickly and efficiently but fairly achieve a position whereby a witness
9 who may have been forgetful is able to be reminded of what they have said
10 previously and to give evidence in the light of that reminder.

11 Mrs Hohler was interrupted by my learned friend, Mr Taku, this morning and

12 Mr Taku was unhappy with the formulation that Mrs Hohler was adopting.

13 My understanding was that your Honour had given already very clear guidance on
14 this issue and I would seek to remind us all of what that guidance was. And I can
15 take us to the part of the transcript where your Honour gave that guidance.

16 PRESIDING JUDGE SCHMITT: [11:49:21] So it's -- I have of course not -- do not
17 know by heart every word that I have said, but I think what is fair to say is that there
18 are no abstract rules applying for every incident that might happen. I personally
19 think that it is the best if you -- the refreshing process functions, that you are going to
20 refer to former statements, everybody, you later on, you did it now, and it might be
21 the best to not simply read out but, for example, draw some information. For
22 example, what I did before the break was that I put one expression, something was
23 Luterwanga, or something, out of it and this triggered the memory.

24 This is -- in my opinion, if we try that this is preferable to do it like that because, as I
25 said, it might be on a case-by-case basis, and given the witness that we have in front

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1 of us, the witnesses may be different, it might be a little bit too suggestive just to read
2 it out and say, and this was what Mr Taku was saying last time and asking him, "Is
3 this your testimony also today?"

4 This was not a criticism, this was only on a case-by-case basis, an objection by
5 Mr Taku, and I had the impression that in that specific incident it was okay.

6 So what we would first have to do is that we, on a first step, establish that there is
7 a -- really a memory gap. Also this, you cannot say for each incident, this is not a
8 natural science what we are doing here, and Mrs Hohler has done it and I have, I
9 think I have nearly always allowed it, the refreshment process.

10 And then on a second step, how do we do the refreshing process, the execution, so to
11 speak, of it. And there it might also be possible to read out certain lines, but certainly
12 not whole passages, certainly not, for example, 10 or 20 sentences, so to speak, whole
13 paragraphs, and Mrs Hohler didn't do that. And I think the process has functioned
14 until today and I would really stick to my view that we have to decide this on a
15 case-by-case basis.

16 MR GUMPERT: [11:51:56] Well, your Honour, I don't dispute that a case-by-case
17 basis will plainly achieve the best justice, but there comes a point, or there will come a
18 point, when the kind of prompting which your Honour suggests is a sensible first
19 step does not achieve the desired end when there remains potentially significant
20 material in the statement which reasonable and prompting examination has not
21 elicited.

22 And your Honour previously gave guidance about how that final step should be
23 approached. And it helps the parties, well, it certainly helps this party, if we have
24 clear guidance. I don't say that your Honour is bound, but does your Honour still
25 consider what you said in transcript number --

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1 PRESIDING JUDGE SCHMITT: [11:52:49] Please, please, please be so kind and
2 read it out.

3 MR GUMPERT: [11:52:53] I will.

4 PRESIDING JUDGE SCHMITT: [11:52:54] I don't have -- you know, I don't
5 prepare these things.

6 MR GUMPERT: [11:52:57] Indeed, I gave you no chance to prepare because I've
7 leapt to my feet unprompted. But let me read what your Honour said. You
8 said -- it is at transcript T-39, it is the ET, so it is not the realtime, but the - whatever
9 ET stands for - it's at page 82 and it starts at line 20. You said:

10 "When we have refreshing exercises, it's of course we show the former statement, for
11 example, or the transcript, we had that already, to the witness, and then we can ask
12 the witness: Is this -- has this been your statement at the time? And what do you
13 say today? So these are the two steps. Do you have anything to change from that
14 on? This is what Mr Taku addressed. So this is perhaps how we can do it, the
15 refreshing exercise, so that it is really refreshing ... It was a general remark by me that
16 perhaps we can handle it in the future like that."

17 Now, it seemed to me that Mrs Hohler was doing pretty much word for word what
18 your Honour had directed to be done in the future.

19 PRESIDING JUDGE SCHMITT: [11:54:18] I don't fully agree, to be frank. I
20 think -- I don't have exactly the wording but I had the impression that she asked this
21 witness, "Is this your testimony also today?" and this was what prompted the
22 objection by Mr Taku. And I --

23 MR GUMPERT: [11:54:38] (Microphone not activated).

24 PRESIDING JUDGE SCHMITT: [11:54:43] Yes. What do you say today is -- I
25 would prefer it than we word it this way. I would prefer really to ask: Does this

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1 trigger your memory? Do you have anything to change to that?

2 But to simply say, "Do you say the same today?" I would -- then if you have

3 interpreted it this way, I would say we have to modify a little bit.

4 So I think you have a very -- very detailed and you're trying to really put this on the
5 spot, so to speak, but it was -- it has to be understood like that we are avoiding a, for
6 the particular witness, in the particular situation, a suggestive situation, as far as
7 possible.

8 And I think I have said it before the break, if I can recall it correctly, that given the
9 particular witness we have here, such a question might be understood by the witness
10 as if he deviates now, this might be something bad or not good or not advisable or
11 something like that. It was only about that what we did.

12 MR TAKU: [11:56:00] May it please, your Honours. I entirely agree with
13 your Honours and also to have the flexibility for the Bench to rule on a case-by-case
14 basis if a proper foundation is laid by which you could permit a party to get the
15 witness to refresh his memory.

16 Obviously it's an opportunity -- it is not an opportunity for a party to read an obvious,
17 very, very incriminating piece of evidence in the transcript, and then the witness will
18 say, "That is my evidence". Secondly, there should be some finality in the answers
19 given. If he said, "No", it is different from when, "I cannot remember."

20 And finally, your Honours, you have clearly established a protocol for the conduct of
21 these proceedings. You've made a ruling about this witness due to special
22 circumstances which are contained in the ruling you gave, and on this basis, in
23 granting that he refreshes his memory, you have that in mind.

24 We also have in mind, your Honours, that in that protocol, before witnesses come
25 here, they had opportunity again to read their statements. Their statements are

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1 given so they read their statements in order to refresh their memory about what they
2 told the investigators before coming here.

3 And, therefore, this is a further step, your Honours, in which, if the witness
4 demonstrates a need or has demonstrated in his answer that he has forgotten, and
5 your Honours see that the circumstances warrant a refreshing of memory, you will
6 order so. But in order to ask your Honours to predetermine a standard by which or
7 a threshold by which you allowed a party to read the transcripts and ask a witness to
8 confirm, your Honours, is not quite sound because we do not know whether the
9 witness is giving evidence here or is merely adopting what was in the witness
10 statements. That that was my concern, your Honour.

11 PRESIDING JUDGE SCHMITT: [11:58:05] And I said already that that was
12 justified, and you mentioned also that witnesses have the possibility to read their
13 former statements. And what I really want to, when we leave this courtroom today,
14 that I never think it's a good idea to have a formal procedure for all possible incidents,
15 for all possible witnesses. So if somebody of us professionals would sit here as a
16 witness, other procedures or modified procedures would be advisable, would be
17 possible, so to speak.

18 Another point that I want to make is that I would stick to the point that it would be
19 good, when it comes to refreshing, to perhaps first try to elicit the information that
20 might have been lost in the actual testimony by drawing out, as I did it before the
21 break, some certain expressions. Or you could say, for example, when I tell you
22 something about a place like that or when you tell your name like that, does that
23 trigger something?

24 When it comes this is the second possibility to go back to statements, to
25 contradictions, so witness now says B instead of A, so no gap, then of course it is

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1 much easier to go directly to the statement and read, but at that time I read it to you
2 you have said this and this. You see, again, the question if we have a gap or a
3 contradiction might also sometimes be questionable, but this is how it is. I state
4 again that this is not mathematics what we are doing, this is whatever, social science
5 or whatsoever you would word it.

6 I hope that this has clarified a little bit, Mr Gumpert?

7 What can you say now?

8 MR GUMPERT: [12:00:09] It has provided further guidance.

9 PRESIDING JUDGE SCHMITT: [12:00:12] Thank you for this cautious wording,
10 but I think if you're going back to it and perhaps rethink the different occasions that
11 occurred and when we discussed this, perhaps there might be more guidance even
12 than you think at the moment.

13 And Mrs Massidda has the floor now.

14 MS MASSIDDA: [12:00:34] Thank you very much, your Honour.

15 As a matter of organisation I will keep for the end of the questioning the questions to
16 be asked in private session.

17 PRESIDING JUDGE SCHMITT: [12:00:46] All questions?

18 MS MASSIDDA: [12:00:48] Yes, I have grouped the three questions I would like to
19 ask in private session for the end, so it will be the last session.

20 QUESTIONED BY MS MASSIDDA:

21 Q. [12:00:59] Good afternoon, I would say, Mr Witness. Are you okay?

22 A. [12:01:08] I am fine.

23 Q. [12:01:11] We know each other, so I'm not going to introduce myself to you. I
24 have a few questions for you today following the questioning by the Prosecution.

25 Mr Witness, you testified yesterday about the tasks assigned to women and girls in

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1 the Holy.

2 And this would be transcript 52, page 76, line 10 to 12, and page 79, lines 13 to 20.

3 Mr Witness, could girls and women refuse to do the tasks assigned to them in the
4 Holy?

5 A. [12:02:20] Any task assigned to someone has to be done. You cannot refuse.

6 Q. [12:02:31] And what would happen to them, to the women and girls if they
7 refuse to do the tasks assigned to them?

8 A. [12:02:55] The girls don't have any say, apart from respecting or doing what
9 the commanders request them to do.

10 Q. [12:03:14] And if you as a girl or a woman do not do what a commander asks
11 you to do, what would happen?

12 A. [12:03:33] You would have broken the rule, and for that you may be killed,
13 because what the commander says you have to do it. If you are told, for example,
14 "This is your husband, start cooking for him and start living with him" that is what
15 you will do, because you have to mind about your life.

16 Q. [12:04:04] Mr Witness, you also testified yesterday that sometimes you had to
17 bring girls to Odomi, to Mr Ongwen.

18 And this would be, for my colleague's, transcript 52, page 80, lines 24 and 25.

19 Are you able to estimate how frequently you had to perform this task, how frequently
20 you were requested by Mr Ongwen to bring women or girls to him?

21 A. [12:04:55] He would ask so once in a while and I would just wait for his orders
22 because I cannot disobey his orders. If he asks me to bring him such a girl, I go and
23 tell the girl to do so.

24 Q. [12:05:15] Mr Witness, I am aware that this question was already posed to you
25 yesterday --

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1 PRESIDING JUDGE SCHMITT: [12:05:21] I want to remind you not to be
2 repetitive. I would have to interfere if that was the case.

3 MS MASSIDDA: [12:05:28] Thank you, your Honour. I know that the question
4 was posed yesterday by the Prosecution but it was not answered, that's the reason
5 why I mention transcript 52, page 80, lines 24 and 25. In that lines clearly the witness
6 was not answering the question, that is the reason why I am trying to elicit the
7 information from him, if I can.

8 PRESIDING JUDGE SCHMITT: [12:05:49] I have not stopped you already, so
9 please continue, but be prepared, so to speak.

10 MS MASSIDDA:

11 Q. [12:06:02] Mr Witness, I am simply interested in an estimation, if you can. If
12 you cannot it is also fine. Would you be able to tell us if you had to bring girls to
13 Odomi, let's say frequently, rarely? You say "once in a while". What does it mean
14 for you "once in a while"?

15 A. [12:06:33] That means if he tells me to take a girl, for example, today, it will
16 take about three more days before again he tells me to bring another girl and I would
17 do so. And then after three or four more days he would again request me to bring a
18 girl.

19 PRESIDING JUDGE SCHMITT: [12:06:55] Continue.

20 MS MASSIDDA: [12:07:00]

21 Q. [12:07:00] You also testified this morning about your escape. Don't mention
22 any location, okay. Before you actually managed to escape from the Holy, did you
23 try other times to escape?

24 A. [12:07:27] I didn't try to escape before that because my grandmother at the
25 time, when I was still very young, when the rebels used to pass through our home

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1 and when they would find me still not of age the way they would have wanted, my
2 mother used to tell me that "If you are one day abducted by the rebels don't try to
3 escape from them. First, take your time and get used to them until they develop
4 trust for you, then when you -- after that you may escape."

5 Q. [12:08:19] And in your opinion, Mr Witness, why your mother told you not try
6 to escape from the Holy?

7 A. [12:08:33] She said if I escape I would be killed if I was caught. And then she
8 told me not to escape from an area which I don't know very well. That's why I came
9 and escaped near home.

10 Q. [12:08:59] The day that you managed to escape, were you able to see anyone
11 from your family that same day?

12 A. [12:09:22] I saw my uncle, and my mother also came to the barracks. She
13 came and greeted me and said, "Thank you for coming back, my child. I thought
14 you were dead already."

15 Q. [12:09:47] Mr Witness, how was your first reaction in seeing your mother
16 again?

17 A. [12:10:04] When I saw my mother I was so happy and I fell on her.

18 Q. [12:10:34] When you were with the Holy, as you call it, Mr Witness, did you
19 suffer any injury?

20 A. [12:10:50] Yes, I was injured. When we were shot at in an ambush, I was shot
21 on my leg, and also the gunship -- a splinter from the gunship also hit my arm.

22 Q. [12:11:16] Are you able to tell us it was your left or right leg and your left or
23 right arm?

24 A. [12:11:35] It was my left arm and it was my right leg.

25 Q. [12:11:47] How were you treated for your injuries?

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1 A. [12:12:02] They used warm water with soap for cleaning my wound and they
2 would also put some shea butter. And this was done till the wounds got cured.

3 Q. [12:12:16] And do you know for how many time you had these injuries?

4 A. [12:12:32] I had two injuries and also I used to carry the tin of PK. And even
5 right now I have some -- still some chest problems. Because sometimes when I
6 cough I cough out blood because I carried the PK tin for a long time.

7 Q. [12:13:09] Mr Witness, when you were injured and let's say your injury was
8 still fresh, did you have to still perform your tasks or you could rest?

9 A. [12:13:32] There was no rest. The only thing is that you will not be taken to
10 the standby or to battle, but you will remain in the group and if there was movement
11 you would have to walk, and if you had luggage to be carried you had to carry the
12 luggage.

13 Q. [12:14:04] When you managed to escape, did you then receive any medical
14 treatment for your injuries?

15 A. [12:14:21] I didn't get any medical treatment.

16 Q. [12:14:30] Did you ever get any medical treatment for your injuries up to
17 today?

18 A. [12:14:50] For the injuries incurred I didn't get any treatment, I did not take
19 any medicine, because as soon as I came back there was no one to help me, my
20 mother was too weak. And my mother was struggling to send me to hospital for
21 medical examination, but there was no money for that. As a result, I still have this
22 weakness.

23 Q. [12:15:24] Mr Witness, you have described to us a little bit the consequences,
24 the physical consequences of the injury until today. Do you have any other
25 consequences because of your time in captivity with the Holy?

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1 A. [12:15:56] I didn't understand that question well.

2 PRESIDING JUDGE SCHMITT: [12:15:58] Ms Massidda, may I?

3 In your daily life, Mr Witness, do you think about what has happened in the bush?

4 THE WITNESS: [12:16:22] (Interpretation) Yes, I do. And I also have
5 nightmares. (Redacted) There are

6 particular months which I have these problems and I cry in the night alone.

7 PRESIDING JUDGE SCHMITT: [12:16:44] Ms Massidda, please continue.

8 MS MASSIDDA: [12:16:47] Thank you very much, your Honour.

9 Q. [12:16:51] Mr Witness, you say that there is a particular month in which you
10 have these problems. Could you tell us which months or which period of the year
11 you particularly feel these kind of problems?

12 A. [12:17:13] It starts from the beginning of Easter and that's when I'm disturbed
13 by the spirits. A rotting corpse falls on me and starts strangling me in the neck.

14 And also I have other terrible nightmares. Sometimes I wake up out of -- because of
15 the nightmares and I fail to sleep again. And that's the reason why I do smoke,
16 because when such a thing happens I get up and start smoking.

17 Q. [12:17:59] You also testified this morning that after you escaped you went to
18 the Rachele Rehabilitation Centre. Do you remember how much time did you stay
19 there?

20 A. [12:18:19] I stayed at the Rachele centre for about three months, and then I was
21 sent back home.

22 Q. [12:18:33] When you say "back home" Mr Witness, you mean you were united
23 with your family?

24 A. [12:18:45] Yes, I was sent home to my mother. And I was given a form.

25 Because these problems used to disturb me while I was at the centre, so I was given a

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1 form and I was requested to go to some white persons in Kitgum, they give 50,000
2 shillings, some flour and beans. And many people assembled so as to exorcise the
3 demons out of you. That money is used for buying meat, beef, and also soft drinks,
4 and then people pray for you. So in my case they tried to do the same thing but in
5 vain.

6 Q. [12:19:48] Okay, is my understanding correct, Mr Witness, that your
7 community, the community where you were back was actually assembled so to try to
8 exorcise the demons out of you, as you put it? Is this correct? Is my understanding
9 correct?

10 A. [12:20:16] That is correct.

11 Q. [12:20:16] And how was your feeling in coming back to your family and to
12 your community? Did you have any fear?

13 A. [12:20:32] When I returned home I would feel lifeless and at any time I would
14 suddenly start crying. People would ask me why I stay lonely.

15 Q. [12:21:10] And today that you are back to your family and to your community,
16 which are your feeling?

17 A. [12:21:31] I didn't have an easy life because bad dreams would not end for me.
18 I used to have -- continue having nightmares. And all the time I would be thinking
19 about what happened in the bush.

20 Q. [12:21:53] Do you feel at ease in your community, Mr Witness?

21 A. [12:22:05] At home there are particular months when I am disturbed, but at
22 other times there's no problem, but as soon as the problems start I get a very difficult
23 life. So it is on and off. Sometimes when I'm already in bed with my wife and my
24 wife will ask me, "What's wrong with you? Are you getting mad?" She would ask
25 that because of my shouting because I'm talking alone as a madman.

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1 Q. [12:22:47] Thank you, Mr Witness. I think we have understood this, but my
2 question was: Which is the attitude of the community in which you live towards
3 you?

4 A. [12:23:14] There's nothing really good because where I live is not my real home,
5 it is actually my mother's home, and there I'm referred to as a nephew to the people of
6 that place. And my mother was chased away from that home, they asked why she
7 received me. They used to tell her to send me to my home, to my father's home.

8 Q. [12:23:53] Mr Witness, did you remember when your father died?

9 A. [12:24:04] My father died when I was young, I was just a baby. That's when
10 my father died. My father was an officer in the army.

11 Q. [12:24:20] That's fine, Mr Witness. Thank you. Just avoid providing
12 information more related to you and your family.

13 After the death of your father, who you considered to be your father in your family?

14 A. [12:24:53] I was -- I was born at my father's home because my father is from a
15 tribe in central Uganda. Then my mother took me to her home and there I lived with
16 my grandmother who took care of me until the time I was abducted. And she's now
17 deceased.

18 MS MASSIDDA: [12:25:23] Mr President, can we go in private session only for one
19 question, please?

20 PRESIDING JUDGE SCHMITT: [12:25:28] Yes. Private session.

21 (Private session at 12.25 p.m.)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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- 12 (Open session at 12.28 p.m.)
- 13 THE COURT OFFICER: [12:28:54] We are back in open session, Mr President.
- 14 MS MASSIDDA: [12:29:04] And for the completeness of record, Mr President,
- 15 since I mentioned the transcript of Friday, the quote is transcript 51, page 62, lines 18
- 16 until 20.
- 17 Q. [12:29:27] Mr Witness, are you the oldest brother in your family?
- 18 A. [12:29:40] Yes, I am the oldest son.
- 19 Q. [12:29:44] Is it then correct to say that you are the one taking care of the
- 20 family?
- 21 A. [12:29:56] Yes, I'm the one taking care of the other people at home.
- 22 Q. [12:30:00] How many people compose your family? How many people do
- 23 you have at home to take care of?
- 24 A. [12:30:12] I'm taking care of two of my brothers, my children, I have three
- 25 children, my wife, my mother, and a child to my mother's sister who is also deceased,

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1 and two other children were at home. They are actually young children.

2 Q. [12:30:49] And what is your job, what do you do today for a living?

3 A. [12:31:03] From the lake shores I do fishing.

4 Q. [12:31:17] Mr Witness, what would help you the most in your daily life, if you
5 have to think of something that could help you, what would you say?

6 A. [12:31:49] I think what can help me is really the future of my children. I want
7 to see that my children are okay and I believe that they will be the one that will help
8 me.

9 Q. [12:32:00] And what do you mean by "the future of my children"? What are
10 you expecting for the future of your children?

11 A. [12:32:20] They have to study and be able to know places.

12 Q. [12:32:32] My last question, Mr Witness.

13 And for your Honours, considering the answer the witness we will not need to go in
14 private session anymore.

15 Did you remember having completed an application form to participate in this trial as
16 victim?

17 A. [12:33:04] Yes, I do.

18 Q. [12:33:05] Did you complete that form alone?

19 A. [12:33:17] I filled the form alone.

20 Q. [12:33:26] Did you remember in which language the form was filled in?

21 A. [12:33:40] I filled the form in Acholi because I was speaking Acholi.

22 Q. [12:33:47] But were you the one actually writing down in the form?

23 A. [12:33:59] It wasn't me. The person who was writing were the whites who
24 came. I was only providing them my oral statement. And the a person who was
25 interpreting from Acholi into English was also there.

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1 Q. [12:34:23] So in which language did you speak with the person who was filling
2 in the form?

3 A. [12:34:37] I was speaking in Acholi and the person -- the person who works in
4 Kampala was speaking in English and she was interpreting what I was saying in
5 Acholi to the other, the white people who came.

6 MS MASSIDDA: [12:35:09] I ask for your indulgence for one minute, your Honour,
7 I need to consult something.

8 PRESIDING JUDGE SCHMITT: [12:35:18] Please do that.

9 MS MASSIDDA: [12:35:20] Thank you.

10 PRESIDING JUDGE SCHMITT: Perhaps in the meantime we can clarify, Mr Cox, if
11 you have any questions?

12 MR COX: [12:35:38] Your Honour, just a few, if I may.

13 PRESIDING JUDGE SCHMITT: [12:35:42] There is no overlap and no repetition.

14 MR COX: [12:35:46] NO. No, no, I've been (Overlapping speakers)

15 PRESIDING JUDGE SCHMITT: [12:35:48] Then yes. So we have to wait until
16 Ms Massidda is ready.

17 MR COX: [12:35:52] Yes.

18 MS MASSIDDA: [12:36:06] Thank you, Mr Witness, I have no further questions.
19 Thank you very much.

20 Thank you, your Honour.

21 MR TAKU: [12:36:12] Your Honour, before my colleague sits, what we have here
22 is -- is a statement, but if they have any form, any particular -- we do not -- if they
23 have any form which has not been disclosed they still can disclose that to us before
24 the end of the day in order to assist us, except what they're talking about is what we
25 have here in tab --

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1 MS MASSIDDA: [12:36:37] (Microphone not activated)

2 MR TAKU: [12:36:40] Tab 4. If that's all, then it's okay. But if there's some other
3 form --

4 PRESIDING JUDGE SCHMITT: [12:36:43] Mr Taku, so I think we all have to be on
5 the same page, so what are we talking about here?

6 MS MASSIDDA: [12:36:49] Yes, your Honour, my learned colleague is right, I am
7 referring to the application form which is on the Defence list. I think it's tab 4. I'm
8 quickly checking. Yes, tab 4 in the list of material provided by the Defence.

9 PRESIDING JUDGE SCHMITT: [12:37:13] So this has been solved, the problem,
10 and we can now give Mr Cox the floor for his few questions.

11 MR TAKU: [12:37:21] Thank you, My Lord.

12 MR COX: [12:37:23] Thank you, Mr President.

13 QUESTIONED BY MR COX:

14 Q. [12:37:27] Good afternoon, Mr Witness. My name is Francisco Cox, I am a
15 lawyer for victims as you and I will be asking you a few questions.

16 Mr Witness, you spoke about life before you were abducted. Could you please tell
17 the Court if you had friends and which were your most meaningful relationships
18 before abduction?

19 A. [12:38:20] At the time I was abducted, because I was abducted in a rural
20 village, I was staying with my grandmother at that time, who is now deceased. I
21 was still young though and I could not speak Acholi clearly, and the only language
22 that I would speak fairly well was Kiswahili because my father was an army officer.
23 So from my mother's place I was actually taken when I was still very young.

24 Q. [12:39:12] (Microphone not activated)

25 PRESIDING JUDGE SCHMITT: [12:39:13] Mr Cox, we don't hear the question.

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1 MR COX: [12:39:17] Sorry.

2 Q. [12:39:19] Do you remember approximately what age you were when you
3 were abducted?

4 A. [12:39:36] The time I was abducted I was 12 years old.

5 Q. [12:39:46] Mr Witness, you just told Ms Massidda that it was important for you
6 that your children studied. Were you able to study?

7 A. [12:40:09] That is why I said even though I have not studied, because my study
8 was interrupted, it is important that my child and my children becomes
9 knowledgeable just like other normal people. That is what -- that is what is
10 important to me because I did not get education, so even though I have not studied,
11 my children should be able to study so that they are knowledgeable, because I see
12 that when you have no education it is difficult for you to know what's going on.

13 Q. [12:40:57] You have told us about life in the Holy, but you have told us when
14 you -- when there was punishment or attacks, could you illustrate the Court on how
15 was a day in the bush when you were not attacking?

16 A. [12:41:30] Could you say the question again?

17 Q. [12:41:32] Sure. How was a normal day in the Holy? At what time did you
18 wake up? Did you have any school? Food wise. where did you sleep? That kind
19 of things. Thank you.

20 A. [12:42:03] From the bush there was no routine work that you would do and
21 there was no schooling. You have to wake up early because, as a soldier, especially a
22 rebel soldier you don't just stay, you have to be on standby. You take your beddings,
23 keep them well. And you actually don't sleep on normal beds, you have to just sleep
24 on grass and get some polythene bags or dirty tents and you just lay on the grass and
25 sleep. Sometimes you only have a jacket, or just one bed sheet that you use for

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1 covering yourself.

2 Q. [12:42:59] Thank you, Mr Witness.

3 About the food, were you fed and how many times were you fed in a day when you
4 were with the Holy?

5 A. [12:43:23] Sometimes you eat once a day. There are also days that you can
6 sleep hungry without food. Sometimes when you're already preparing food and you
7 have put food on fire, then shooting begins, so you have to carry the food and run
8 along with it, while carrying it on your head with the hot saucepan.

9 Q. [12:43:56] Thank you, Mr Witness.

10 Were your able to build friendship relationships inside the Holy?

11 A. [12:44:15] Inside the Holy it's -- it is not easy to get a very strong friendship or
12 relationship, but everybody would live in one group and there is only one plan and
13 you only wait for one order. So if you begin to have any relationship, then you will
14 be suspected to be planning to escape, and that might bring problems to you, so there
15 was no issue of friendship to -- in the LRA group.

16 Q. [12:44:54] Thank you, Mr Witness.

17 Mr Witness, you told the Court about how you escaped. My question is a bit
18 different, it is: Despite all the punishment that you saw against those who tried to
19 escape, why did you take that risk?

20 A. [12:45:33] I escaped because I felt that I was already within the areas that I
21 know, areas that I had lived in while I was still young, so I knew the area. So I told
22 myself that now that I've reached home, and I also heard about going back to Sudan, I
23 did not want that idea, so I just decided at once and I said, I told myself that
24 everybody will die in this world, so I just decided to -- to escape.

25 Q. [12:46:24] Thank you, Mr Witness.

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1 You said or you answered Ms Massidda about certain problems with your uncle.

2 How was the reception of the rest of the community when you came back to that
3 community?

4 A. [12:47:00] Where we live we are actually renting a house at the centre, so
5 everyone lives their own lives because each one knows how his or her home is. So as
6 long as there's food, there is no sickness in the home, that is the most important thing.

7 PRESIDING JUDGE SCHMITT: [12:47:32] May I ask a question.

8 Mr Witness, did your people welcome you back home?

9 THE WITNESS: [12:47:50] (Interpretation) Yes, the people in my home, the close
10 ones like my mother, are the ones that welcomed me.

11 PRESIDING JUDGE SCHMITT: [12:47:59] And the ones who were not so close in
12 the community?

13 THE WITNESS: [12:48:15] (Interpretation) They also welcomed me.

14 MR COX: [12:48:23]

15 Q. [12:48:24] Finally, Mr Witness, as a victim what do you expect of these
16 proceedings?

17 MR TAKU: [12:48:34] Your Honour, we object to this question about what he
18 expect about the proceedings. It calls for speculation. It is the Court that will
19 determine at the end of the day. Ms Massidda has asked a pertinent question about
20 what he expects, and he gave the answer. So to put the same question "What do you
21 expect of these proceedings" you Honour, I think it is unfair. It is not a fair question
22 to ask through a victim who is also a witness.

23 PRESIDING JUDGE SCHMITT: [12:49:00] What do you say?

24 MR COX: [12:49:03] Your Honour, I think the whole existence of us, for example,
25 is to bring to the Court the views and considerations of the victims. Okay. Who

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1 better suited to put the views and concerns of the victims than an actual victim that is
2 giving testimony before your Honours.

3 PRESIDING JUDGE SCHMITT: [12:49:24] Then perhaps let me rephrase it a little
4 bit differently so to also accommodate the concerns of Mr Taku. The question would
5 then be: What do you personally, for yourself, for your future life, expect from
6 what's going on here? Not the outcome of the trial proceedings as such, but for you
7 personally. For example, when it comes to reparations, these things, that I would
8 allow this question.

9 MR TAKU: [12:49:53] Yes, your Honours, I totally agree with the formulation you
10 have made. You remember at the status conference it said that we should not allow
11 the proceedings to become an opportunity for, with due respect, NGO activism to say
12 that they will give a wider view about what they expect from the proceedings fall in
13 that line. But if you personalise the question about the witness, what he expects as a
14 victim, in his own capacity as a victim before this Court, it is perfectly in order. But
15 to put that question: What do you expect about the proceeding, your Honours,
16 invites us into a territory which, which we are giving notice we would object
17 vehemently.

18 PRESIDING JUDGE SCHMITT: [12:50:41] So but that I think we let me answer the
19 question how I phrased it. I repeat it.

20 Mr Witness, for you personally, if you think at your future life what do you expect,
21 for example, when it comes to reparations from these proceedings? What do you
22 expect reparations from these proceedings?

23 THE WITNESS: [12:51:20] (Interpretation) I think if they can get for me
24 something which can help me to, like, start a business, that that is what my interest is,
25 so that I am able to lead a better life and it removes the worries that I would have.

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1 PRESIDING JUDGE SCHMITT: [12:51:36] I think, Mr Cox, this answers your
2 question.

3 MR COX: [12:51:40] Thank you, your Honour.

4 Q. [12:51:41] Thank you, Mr Witness. I have no further questions. Thank you.

5 PRESIDING JUDGE SCHMITT: [12:51:45] So this concludes the examination by
6 the Legal Representatives of Victims.

7 The question is, of course, Mr Ayena, and I assume the answer would be yes, that you
8 are prepared to start after the lunch break; is this correct?

9 MR AYENA ODONGO: [12:52:00] Absolutely correct, your Honour.

10 PRESIDING JUDGE SCHMITT: [12:52:02] Thank you very much.

11 MR AYENA ODONGO: [12:52:04] Yes.

12 PRESIDING JUDGE SCHMITT: [12:52:04] Then we have our lunch break
13 until 2.30.

14 THE COURT USHER: [12:52:13] All rise.

15 (Recess taken at 12.52 p.m.)

16 (Upon resuming in open session at 2.31 p.m.)

17 THE COURT USHER: [14:31:57] All rise.

18 PRESIDING JUDGE SCHMITT: [14:32:21] It's now time for the examination by the
19 Defence and I give Mr Ayena the word.

20 MR AYENA ODONGO: [14:32:32] Good afternoon, your Honours.

21 QUESTIONED BY MR AYENA ODONGO:

22 Q. [14:32:39] Good afternoon, Mr Witness.

23 Mr Witness, we have had several days and quite a number of questions were put to
24 you by the Prosecution and this morning the victims' counsels also put some

25 questions to you. That seems to suggest one thing, which is obvious to us, you are in

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1 a special category of witnesses. And we fully take cognisance of that, and therefore
2 a question I'm going to put to you is meant to be as friendly as we -- I can make it,
3 with the full assurance that your duty is to assist Court to come to the right
4 conclusion and make a proper assessment of what happened which unfortunately put
5 you in such a precarious condition.

6 Mr Witness, before I begin the question I am going to ask some very personal
7 questions.

8 And therefore, your Honours, I beg that we go to private session. With due
9 apologies to the gallery.

10 PRESIDING JUDGE SCHMITT: [14:34:27] (Microphone not activated)

11 MR AYENA ODONGO: [14:34:29] This is going to take about 15 minutes.

12 PRESIDING JUDGE SCHMITT: [14:34:31] So counsel informs me that it's going to
13 take about 15 minutes in private session. We go to private session.

14 (Private session at 2.34 p.m.)

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18 PRESIDING JUDGE SCHMITT: [14:54:15] Mr Taku.

19 MR TAKU: [14:54:16] May it please your Honours, I think my learned colleague
20 should be reminded that the role of a cross-examiner, a Defence cross-examiner, is
21 different from the Prosecution leading evidence into the record. It's completely
22 different.

23 And secondly, we understand that, there's some jurisprudence to that, that the
24 victims counsel are fairly independent participants in the case. When evidence is led
25 that goes directly to the evidence that was adduced by the Prosecution for the

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1 purpose of proving the time is one thing and the evidence that is led in order to have
2 concerns it would be a victim of participation.

3 I think we must draw the line here very, very clearly, your Honours. The witness is
4 entitled to say no, yes as the case may be. My colleague drew attention to
5 paragraph 18, my colleague has read other paragraphs and referred to other
6 transcripts. That's not the way the question relates, and this is cross-examination,
7 your Honours. And I think the rule of each participant in this trial, either victims,
8 Prosecution or the Defence, is completely different. When we're doing
9 cross-examination, our role is different, your Honours.

10 Of course your Honours have the ultimate power to direct the proceedings and to
11 direct counsel to reformulate a question as the case might be, but we must be able to
12 draw the line about how the victims participate in issues that do not relate directly to
13 their area of interests.

14 PRESIDING JUDGE SCHMITT: [14:55:57] Shortly, Mrs Massidda, but only shortly,
15 please.

16 MS MASSIDDA: [14:56:00] Yes, I'm sorry, your Honour, just a quick point. This
17 is a dual-status individual. I'm representing the interest of this client in these
18 proceedings not only as a dual status but also as a Rule 74, but still I think that as
19 Legal Representative of dual-status victims, I am authorised to intervene if I think
20 that the interest of my clients can be affected by the way of questioning of any party
21 or participant.

22 PRESIDING JUDGE SCHMITT: [14:56:26] I think the main problem here would be
23 that it is -- the witness has at the moment, understandably, problems to follow the
24 questioning and what has been asked.

25 So first of all, I would say we have to observe with the examination to be as short, as

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1 simple and as easy as possible so that the witness understands.

2 Secondly, it's absolutely clear that -- you know that I don't like the word

3 "cross-examination", but that it called examination by the non-calling party is

4 something different, so we have to be more indulgent than when the Prosecution

5 would, for example, for their own witness, as calling party, would question the

6 witness.

7 Thirdly, in principle, it is not excluded that Legal Representatives of Victims would

8 interfere, but we have also to be -- to make sure that the role of the Legal

9 Representatives is not one of a Prosecution bis. I would really like to point that out,

10 also for the future, also for future questioning.

11 There's a reason for that. I don't want to make it too broad, but there is a structural

12 reason for that. When we follow, and we do that in this courtroom largely, a

13 two-cases approach, that we have Prosecution presentation, presenting their case,

14 Defence presenting another case, then there the idea of the equality of arms comes

15 into place and of the fairness of the proceedings.

16 And when we say that we have not only one party on the one side but we have two or

17 three parties on the one side, there is this -- to word it this way, this balance might be

18 very delicate and it could tip. So it is also on a case-by-case basis the Chamber will

19 have to decide that, that it does not tip.

20 There was -- I did not interfere, Mrs Massidda, here, I thought this was okay here to

21 interfere, but I would not want to make it a rule in the courtroom that Legal

22 Representatives object all too often to questions by the Defence because then really we

23 would have -- even if you look at the right side, on the left side there be no balance at

24 all. We have to really look into that. And that I really beg for the understanding of

25 everybody in the courtroom that this is not, also not easy for the Judges to do.

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1 We have to look at the interests of the dual status witness, but also the interests of the
2 Defence to give them the opportunity to establish a meaningful Defence.

3 So this was relatively long speech. Mr Ayena, I think you have made a certain point.
4 We have seen paragraph 18, we have listened to what witness said. So I think it
5 would not make much sense to follow this anymore.

6 MR AYENA ODONGO: [14:59:48] Since you say so, your Honour, I shall oblige.
7 I think the point is made.

8 PRESIDING JUDGE SCHMITT: [14:59:56] And a final thing, which we have
9 repeated several times, indeed this makes it again clear that if we quote from
10 transcripts, we really -- or if we put transcript of what the witness has said in the
11 courtroom earlier, we should do it exactly so that we can follow.

12 But here was of course the small problem, so to speak, that first we talked about
13 transcript, then we talked about statement. I know that. But these things can
14 happen and there is no reason to in any form get excited. As you see, we are not in a
15 hurry. We take our time.

16 And then I would ask you to continue, Mr Ayena, of course combined with the
17 typical question, can we go back to open session?

18 MR AYENA ODONGO: Thank you very much for your protection, your Honour.

19 PRESIDING JUDGE SCHMITT: [15:01:08] We are in private session? Yes. Can
20 we go to open session would be the question?

21 MR AYENA ODONGO: [15:01:14] Open session.

22 PRESIDING JUDGE SCHMITT: [15:01:16] Then we go to open session. Of course
23 all of this could have been said also in open session.

24 (Open session at 3.01 p.m.)

25 MR AYENA ODONGO: [15:01:29] (Microphone not activated)

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- 1 PRESIDING JUDGE SCHMITT: [15:01:31] I wanted to call it the Hohler syndrome.
2 That would be too far going. Excuse me for that.
3 MR AYENA ODONGO: (Microphone not activated)
4 THE COURT OFFICER: [15:01:42] We are back in open session, Mr President.
5 PRESIDING JUDGE SCHMITT: [15:01:45] I apologise, Ms Hohler. But I think
6 you understand too that sometimes we have to relax in a courtroom too.
7 MR AYENA ODONGO: [15:01:55] I'm sure that was said in jest, your Honour.
8 Q. [15:02:02] Mr Witness, can you read and write?
9 A. [15:02:06] No, I can't read because I was abducted when I was in the second
10 year of primary school so I can't read and write.
11 Q. [15:02:27] But, Mr Witness, when the Prosecutor showed you a document, that
12 is tab 2 of the Prosecution binder, which is UGA-OTP-0269-0697, you confirmed to the
13 Prosecutor that the document contained your photo and your signature.
14 PRESIDING JUDGE SCHMITT: [15:02:53] I think we should open, if you could
15 please assist, that would be very kind of you, we should open this tab 2 and then
16 show it to the witness.
17 And I recall that Ms Hohler elicited the information and it would also be good, I think,
18 if we had exactly how you did that, that was step by step if I recall it correctly. But
19 you have to help me where it is.
20 MS HOHLER: [15:03:25] It's at tab 2 of the Prosecution binder. Is that what you're
21 asking me, your Honours.
22 PRESIDING JUDGE SCHMITT: [15:03:31] No, no.
23 MS HOHLER: [15:03:33] Oh the transcript.
24 PRESIDING JUDGE SCHMITT: [15:03:37] The transcript. No, no, we have this
25 already.

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1 MS HOHLER: [15:03:39] It will be in the Friday's transcript. I will look it up in a
2 second.

3 PRESIDING JUDGE SCHMITT: [15:03:43] You can perhaps help us, Mr Ayena.

4 MR AYENA ODONGO: [15:03:48] (Microphone not activated).

5 Transcript -- page 63 of Friday. Lines 21 to 25 and page 64. It's the realtime
6 transcript, your Honour.

7 Q. [15:04:38] Mr Witness, have you seen it?

8 A. [15:04:44] Yes, I have.

9 Q. [15:04:48] Is that your signature?

10 A. [15:04:59] Yes, it is my signature.

11 Q. [15:05:03] So you can at least write your signature?

12 A. [15:05:21] That is the only one which I know.

13 Q. [15:05:26] Mr Witness, you're a victim applicant in this case; is that correct?

14 A. [15:05:45] That's correct.

15 Q. [15:05:46] Do you remember meeting with the victims representatives, and if
16 so, how many times?

17 A. [15:06:13] I met them several times.

18 Q. [15:06:18] Can you estimate the number of times? Was it three times? Five
19 times? Ten times? Or a hundred times?

20 A. [15:06:37] I cannot remember how many times exactly, but several times.

21 What I remember is that I was called to Kampala several times.

22 Q. [15:06:50] You can't suggest whether it was three times, five times or less?
23 Was it more than five times?

24 A. [15:07:04] I no longer recall that. Because I was at the lakeside fishing and
25 while I was there I was called several times, and also when I was at home I was called

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1 too. That's why I cannot -- I cannot remember exactly how many times.

2 Q. [15:07:36] Okay. Thank you very much, Mr Witness. Did you give them a
3 statement?

4 A. [15:07:48] Yes, they wrote my statement.

5 Q. [15:07:53] Do you remember when you gave this statement?

6 A. [15:08:05] I don't remember.

7 Q. [15:08:13] Did you sign this statement or did you place your fingerprint on it?

8 A. [15:08:37] I used to sign.

9 Q. [15:08:41] I want to refer you to Defence binder tab 4, UGA-D26-0012-0102?

10 PRESIDING JUDGE SCHMITT: [15:09:16] I think we have to, we have again to
11 open it and would have to show him this I would say now.

12 MR AYENA ODONGO: [15:09:23] (Microphone not activated)

13 PRESIDING JUDGE SCHMITT: [15:09:25] This is -- excuse me, sir, that we now
14 give work to you, but it would be very kind if you could help us. Thank you very
15 much.

16 MR AYENA ODONGO: [15:09:47] (Microphone not activated) is confidential.

17 Q. [15:10:04] Mr Witness, can you come down under number 3. Are you there,
18 Mr Witness?

19 A. [15:10:28] Yes, I'm seeing it.

20 Q. [15:10:34] Do you have your signature there?

21 A. [15:10:43] Yes, I was requested to put my fingerprint, but also on other
22 occasions I was asked to sign and I signed.

23 Q. [15:10:56] So on this occasion you put your fingerprint?

24 A. [15:11:10] Yes, here I placed my fingerprint.

25 Q. [15:11:19] Do you remember any other occasion when you were asked to and

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1 you did put your fingerprint on a document?

2 A. [15:11:46] There were many forms on which I placed my fingerprints.

3 Q. [15:11:53] Mr Witness, can you tell the Honourable Court why on some
4 occasions you were putting your fingerprint and on some occasions, on other
5 occasions you were putting -- I mean you were signing?

6 A. [15:12:34] I do sign when I have been called to the office. When they are
7 refunding my transport money, then I am asked to sign, but for the forms, these forms
8 for the ICC, in these cases I used to place my fingerprint.

9 PRESIDING JUDGE SCHMITT: [15:13:07] Was there any reason for that that you,
10 when it comes to this victims form that you have in front of you, you put your
11 fingerprints? Do you recall that?

12 THE WITNESS: [15:13:24] (Interpretation) It was because I was supposed to tell
13 the truth before the Court. And also I was asked if the Court could summon me so
14 as to confirm -- so as to confirm whether I really went through problems.

15 MR AYENA ODONGO: [15:14:20]

16 Q. [15:14:20] Now, before you signed this statement or you put your thumbprint,
17 did the victims representative read the contents back to you?

18 PRESIDING JUDGE SCHMITT: [15:14:45] The question is absolutely not
19 objectionable in my opinion, so please continue, I don't allow now interruptions.

20 THE WITNESS: [15:15:01] (Interpretation) Can you please repeat the question?
21 I didn't understand.

22 MR AYENA ODONGO: [15:15:04]

23 Q. [15:15:04] Before you signed the statement or before you put your thumbprint
24 on the statement, did the victims representative read the contents of the document
25 you were going to sign or put your thumbprint on?

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1 A. [15:15:36] They read everything, I understood, and it is after that that I
2 appended my fingerprint.

3 Q. [15:15:45] So would I be right to say that you only signed or thumbprinted
4 after verifying the correctness of the statement?

5 A. [15:16:15] Yes, that is true.

6 Q. [15:16:16] Now, Mr Witness, from the time you signed or thumbprinted those
7 documents, were you ever given a chance to review any of them before coming here?

8 A. [15:16:54] Yes, it was read to me.

9 Q. [15:17:02] So in this -- in that case, Mr Witness, would I be right to say that
10 what you said in the victim application is correct and the truth?

11 A. [15:17:31] That's correct.

12 Q. [15:17:34] Now, Mr Witness, do you have a birth certificate?

13 A. [15:17:58] Yes, I have one.

14 MR AYENA ODONGO: [15:18:01] I want him to turn to the Prosecution binder,
15 tab 3.

16 PRESIDING JUDGE SCHMITT: [15:18:07] Yes. So the man at your side has now
17 additional tasks to fulfil, thank you very much.

18 MR AYENA ODONGO: [15:18:24] It is ERN UGA-OTP-0269-0696.

19 PRESIDING JUDGE SCHMITT: [15:19:04] This is the same document we have
20 already looked at.

21 MR AYENA ODONGO: [15:19:11] That is confidential, your Honour.

22 Q. [15:19:19] Are you there, Mr Witness?

23 A. [15:19:25] Yes, I'm seeing it.

24 Q. [15:19:28] Now, what is the name of your father on that document?

25 PRESIDING JUDGE SCHMITT: [15:19:40] Yes, I think we have to go to private

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- 1 session for that, that's true.
- 2 (Private session at 3.19 p.m.)
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17 (Redacted)

18 (Open session at 3.28 p.m.)

19 PRESIDING JUDGE SCHMITT: I think the --

20 MR AYENA ODONGO: [15:28:26] Your Honour, I think we may have to remain in
21 closed session because --

22 THE COURT OFFICER: [15:28:32] We're in private session, Mr President.

23 MR AYENA ODONGO: [15:28:35] -- there are names coming down and that could
24 be very definitive.

25 PRESIDING JUDGE SCHMITT: [15:28:42] So where are we now?

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1 MR AYENA ODONGO: [15:28:44] We go back to private session.

2 PRESIDING JUDGE SCHMITT: Public, or go back to private session? We have
3 some people in the gallery, I apologise a little bit for this back and forth but that can
4 happen. Since I see the students, I think, I see them nodding, so this means
5 understanding. Thank you very much.

6 (Private session at 3.29 p.m.)

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8 (Redacted)

9 (Redacted)

10 (Redacted)

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14 (Redacted)

15 (Redacted)

16 (Redacted)

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14 PRESIDING JUDGE SCHMITT: [15:42:45] This is of course again, I do not want to
15 intervene too much in the questioning, but these are things that, are conclusions put
16 into a question, and conclusions have to be drawn by the Bench here. And so I think
17 we should reduce these sort of questions that put to the witness what you wanted to
18 elicit, so to speak. This also applies of course for any other person who is
19 questioning.

20 We are, the Judges are aware of everything what is going on here and what is said
21 here. So once information is there on the table we first of all recognize it, what we
22 make out of it we don't know of course yet.

23 But this is just, you know, this is a little bit this day I'm in the explanation mood a
24 little bit, that's only to, to really, to also show you how and you understand a little bit
25 how this thinking is here. Yes.

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1 MR AYENA ODONGO: [15:43:57] Your Honour, maybe my professional
2 background may explain a bit of this. According to my professional background, if
3 there is this kind of misunderstanding you put it to him so that if he has something to
4 say about it, he has a chance to clarify.

5 PRESIDING JUDGE SCHMITT: [15:44:16] And I did not intervene, you see what I
6 mean? So this was absolutely correct at the moment. It was just a remark.
7 Because we have a long time together with each other and, since we are now
8 explaining, I have to add something to what I said before when it came to the
9 questioning of Legal Representatives and also of objections by Legal Representatives.
10 I referred to the balance in the courtroom. You know that I'm from a civil law
11 background where our system is completely different. There the system is that it's
12 only the Judges who are responsible to establish the truth so, so to speak, the
13 other -- we don't have parties, other participants are on the side a little bit. There we
14 don't have the problem that the Legal Representatives have all sorts of rights. But
15 this is different when you say the truth-finding process is in the hands of these two
16 parties, meaning the Prosecution and the Defence. There is -- this is what I meant
17 a structural difference.

18 I don't know if this is easy to understand, but it might be only understandable from
19 the respective professional background, but I think I've made -- I've at least tried to
20 make it sort of clear.

21 MR TAKU: [15:45:36] Your Honour, if I may contribute.

22 PRESIDING JUDGE SCHMITT: [15:45:39] (Microphone not activated) no
23 objection.

24 MR TAKU: [15:45:41] No, no, no objection. In fact, I just wanted to say, your
25 Honours, that one of the objectives, one of the view of cross-examination at times is

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1 that if a witness has testified and the Prosecution puts forward a theory of the case
2 and the Defence has another theory which is different, and the witness comes, that
3 theory, in addition to cross-examining, must put that theory through the particular
4 witness.

5 If you wait and doesn't do so, and waits the witness leaves, and subsequently in the
6 course of a defence he establishes a theory, the way to be consult is different.

7 So constantly when the witness comes we assess the theory put, if we have a theory
8 we try to, as much as possible, to suggest, no matter the answer that is given, it will be
9 known that that witness was challenged with that theory and, therefore, the fact
10 finders will have everything before, not to wait until some other person comes, they
11 will start leading evidence to say this was not true, it was not true, when we had the
12 opportunity of doing so when the witness was here.

13 That's how we are understanding. And that's some of the things we try to do, and
14 we try to look for a way. We agree that the conduct of the proceedings is in your
15 hands. And if you stop my line of questioning, we will respect. All the time, your
16 Honours, we will always respect and we will accept, but we will always try to suggest
17 and hear what the answer is.

18 PRESIDING JUDGE SCHMITT: [15:47:15] I think the Chamber has made clear,
19 and you know it from the other Chamber too, that even when -- if the professional
20 background might be different, we accept this two cases approach. And I have said
21 this before, this means that the other party, which is the Defence at the moment, has
22 to have the opportunity to put their theory on the table, that is clear. So we are fully
23 aware of that and I think we follow that approach.

24 What I wanted to express is when it came to the question of the role of the Legal
25 Representatives, that we have, really have to look into the balance of the -- or like you

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1 would word it I think in an Anglo-Saxon environment, the equality of arms, that this
2 is really, but, as always, when it comes to such expressions, equality of arms,
3 presenting theories, fairness, these are such open expressions, open to interpretation
4 in various ways. There are so -- a broad degree of discretion even that it has to be
5 adjusted, and I repeat myself, and to be adapted to certain situations in the
6 courtroom.

7 There cannot be, absolutely impossible, there cannot be fixed rules for every situation.
8 So now I think sometimes you need your time to make a little bit of an excursion into
9 some legal fields. And that was a quite a long interruption of your examination. I
10 don't hope that you feel too much inhibited insofar.

11 MR AYENA ODONGO: [15:49:03] Not in the least, your Honour.

12 On the other hand, I think I'm educated on the other, you know, side of the law.

13 And just to add to what my colleague has said, my background is that the duty of the
14 Defence counsel, or Defence for that matter, is actually to check the integrity of the
15 witness. And that is a by the way.

16 PRESIDING JUDGE SCHMITT: [15:49:34] Exactly. That is well understood.

17 MR AYENA ODONGO: [15:49:38] Yes.

18 MR GUMPERT: [15:49:39] The only regret I would express is that this very
19 interesting conversation hasn't taken place in the hearing of the students in the public
20 gallery.

21 PRESIDING JUDGE SCHMITT: [15:49:48] That is quite true, I think. I had
22 forgotten this.

23 MR GUMPERT: [15:49:54] (Microphone not activated)

24 PRESIDING JUDGE SCHMITT: [15:49:57] I don't think so, I don't think everybody
25 would be happy with that.

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9 (Open session at 3.54 p.m.)

10 MR AYENA ODONGO: [15:54:40]

11 Q. [15:54:42] Now, Mr Witness.

12 THE COURT OFFICER: [15:54:44] One moment, please. Thank you.

13 We are in open session, Mr President.

14 PRESIDING JUDGE SCHMITT: [15:54:50] I see Mrs Hohler a little bit satisfied

15 even, I would say. I would go so far to say that.

16 MR AYENA ODONGO: [15:54:55] (Microphone not activated) gravely succeeded
17 in influencing me.

18 Q. [15:55:03] Witness, can you tell Court how you came into contact with the
19 Office of the Prosecutor?

20 A. [15:55:16] Could you repeat the question again.

21 Q. [15:55:28] Can you tell Court how you came into contact with the Office of the
22 Prosecutor?

23 A. [15:55:48] It was one day they came up to our home, because (Redacted)

24 (Redacted) and they said they had been looking for me for some time

25 and they told me that I am being wanted to go to Kampala. They asked me

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1 (Redacted) and I said "Yes, I am the one."

2 MS MASSIDDA: [15:56:34] Your Honour, maybe we need to go in -- we are in
3 open session, your Honour.

4 PRESIDING JUDGE SCHMITT: [15:56:37] Then we go to private session.

5 (Private session at 3.56 p.m.)

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14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Open session at 3.58 p.m.)

23 MR AYENA ODONGO: [15:58:59]

24 Q. [15:59:00] So Mr Witness --

25 PRESIDING JUDGE SCHMITT: [15:59:01] You caught up with Ms Hohler, I would

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1 say.

2 THE COURT OFFICER: [15:59:04] We are back in open session, Mr President.

3 MR AYENA ODONGO: [15:59:07]

4 Q. [15:59:07] So, Mr Witness, I was asking whether, apart from giving
5 assistance -- giving you assistance to obtain your birth certificate they also gave you
6 some other forms of assistance?

7 A. [15:59:32] They told me to go and pick my certificate and then I went to
8 Mukono town, but I found there were so many people because it was close to the
9 election time and people were lining up to pick their cards. And there were many
10 people. So they helped to call that this -- that I should give the phone to the person
11 who is distributing the cards so that we can talk to that person, then they
12 communicated and then they picked my card and they gave me and I returned back
13 to them.

14 MR AYENA ODONGO: [16:00:25] Just a few questions because I want to stop at a
15 logical point.

16 PRESIDING JUDGE SCHMITT: [16:00:30] Okay.

17 MR AYENA ODONGO: [16:00:31] Yes.

18 PRESIDING JUDGE SCHMITT: [16:00:32] Perhaps if we could finish this in five
19 minutes or so.

20 MR AYENA ODONGO: [16:00:36] Less.

21 PRESIDING JUDGE SCHMITT: [16:00:37] Less, okay. Please then continue.

22 MR AYENA ODONGO: [16:00:39]

23 Q. [16:00:40] Now, Mr Witness, when you escaped from the LRA, did you want
24 to join the army, or the UPDF for that matter?

25 A. [16:00:59] Yes, I wanted to join. I actually even had joined but then my

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1 mother went and picked me and -- because when my mum -- when my mum knew
2 that I had joined the army again, because she was told that by somebody that they see
3 your son training with the army here, so my mother went and picked me and told the
4 army that I had just returned from the bush and I don't want him to go back to the
5 military. So my mother refused.

6 Q. [16:01:49] If you were given a chance -- or, rather, put differently, would you
7 wish to join the UPDF now that you're more mature?

8 A. [16:02:09] I don't have any interest of going back to the army anymore because
9 if I go then who will take care of my brother and my mother because I am the eldest
10 child?

11 Q. [16:02:39] Now, Mr Witness, finally you got in contact with the OTP. Did
12 they tell you the reason why they wanted you in particular, a statement from you in
13 particular?

14 A. [16:03:04] They told me that they were looking for me because they wanted me
15 myself, not any other person. They were looking for me who went all through,
16 through all these problems.

17 Q. [16:03:26] When you talk about you who went through all these problems, did
18 they mean you as a victim?

19 A. [16:03:40] Exactly.

20 Q. [16:03:50] So when you were coming -- when you were making your statement
21 to the OTP, were you told some special areas you had to emphasise in your
22 statement?

23 A. [16:04:20] Could you repeat the question again?

24 Q. [16:04:25] You went and made a statement to the OTP. My question is:

25 Were there some areas of your life as a victim they wanted you to emphasise in your

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1 statement?

2 A. [16:05:00] There I can't remember.

3 Q. [16:05:12] Did they tell you to talk a lot about Dominic Ongwen?

4 A. [16:05:27] They didn't tell me that, but it's me who got problems in his hands,
5 so that is why I was saying what I know. It doesn't mean that I was told to say a lot
6 about Dominic.

7 Q. [16:05:53] You also made a statement --

8 PRESIDING JUDGE SCHMITT: [16:05:59] This seems to last a little bit longer. I
9 know it's --

10 MR AYENA ODONGO: [16:06:04] Now the last.

11 PRESIDING JUDGE SCHMITT: [16:06:07] The last, okay.

12 MR AYENA ODONGO: [16:06:08] Yes.

13 Q. [16:06:09] You also made a statement to the victims section, did you?

14 A. [16:06:24] There now I can't remember.

15 Q. [16:06:32] Mr Witness, do you remember Mrs Massidda, the lady, your
16 lawyer?

17 A. [16:06:52] Yes, I do remember her.

18 Q. [16:06:57] Did you make a statement with her or somebody from her office or
19 working with her?

20 A. [16:07:08] There were many white people that were talking with me in
21 Kampala, but I don't know who is who.

22 Q. [16:07:29] But, Mr Witness, did they tell you that -- did they find out from you
23 whether or not -- I mean, whether or not you're a victim?

24 A. [16:07:49] I do not understand that question. Could you repeat?

25 PRESIDING JUDGE SCHMITT: [16:08:03] Do you want to ask it tomorrow

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1 perhaps, give it another try tomorrow morning.

2 MR AYENA ODONGO: Yeah.

3 PRESIDING JUDGE SCHMITT: I think that that's -- it might lead to other questions,
4 this is what I could envision perhaps.

5 MR AYENA ODONGO: [16:08:15] We can, yeah. Okay.

6 PRESIDING JUDGE SCHMITT: [16:08:17] So I think we should stop it for the
7 moment. This concludes the hearing for today and we meet each other again at 9.30
8 tomorrow morning.

9 THE COURT USHER: [16:08:27] All rise.

10 (The hearing ends in open session at 4.08 p.m.)

11 RECLASSIFICATION REPORT

12 Pursuant to the Trial Chamber' IX's instructions, ICC-02/04-01/15-497, dated 13 July
13 2016, the public reclassified and redacted version of this transcript is filed in the case.