

Trial Hearing
WITNESS: UGA-OTP-P-0138

(Open Session)

ICC-02/04-01/15

1 International Criminal Court
2 Trial Chamber IX
3 Situation: Republic of Uganda
4 In the case of The Prosecutor v. Dominic Ongwen - ICC-02/04-01/15
5 Presiding Judge Bertram Schmitt, Judge Péter Kovács and Judge Raul Pangalangan
6 Trial Hearing - Courtroom 3
7 Tuesday, 31 October 2017
8 (The hearing starts in open session at 9.34 a.m.)
9 THE COURT USHER: [9:34:01] All rise.
10 The International Criminal Court is now in session.
11 PRESIDING JUDGE SCHMITT: [9:34:21] Good morning, everyone.
12 Could the court officer please call the case.
13 THE COURT OFFICER: [9:34:31] Good morning, Mr President, your Honours.
14 The situation in the Republic of Uganda, in the case of The Prosecutor versus Dominic
15 Ongwen, case reference ICC-02/04-01/15.
16 And for the record, we're in open session.
17 PRESIDING JUDGE SCHMITT: [9:34:46] Thank you.
18 I ask for the appearances of the parties. Mrs Gilg first, please.
19 MS GILG: [9:34:51] Good morning, your Honours. For the Prosecution my name is
20 Colleen Gilg. I'm here with my colleagues Julian Elderfield, Benjamin Gumpert,
21 Shkelzen Zeneli, Colin Black, Pubudu Sachithanandan, Ramu Fatima Bittaye, Ayodele
22 Akenroye and Agnese Valenti.
23 PRESIDING JUDGE SCHMITT: [9:35:11] Thank you.
24 And for the Legal Representatives of the victims, Mr Cox first.
25 MR COX: [9:35:14] Good morning, your Honour. James Mawira and myself

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1 Francisco Cox.

2 PRESIDING JUDGE SCHMITT: [9:35:20] Thank you.

3 Mr Narantsetseg.

4 MR NARANTSETSEG: [9:35:21] Good morning, Mr President, your Honours.

5 Ms Caroline Walter and Orchlon Narantsetseg.

6 Thank you.

7 PRESIDING JUDGE SCHMITT: [9:35:28] Thank you.

8 And for the Defence Mr Ayena, please.

9 MR AYENA ODONGO: [9:35:31] Your Honours, this morning I'm assisted by

10 Tibor Bajnovic, Chief Taku, Ms Abigail Bridgman and Mr Tom Obhof. Our client

11 Dominic Ongwen is in court.

12 PRESIDING JUDGE SCHMITT: [9:35:48] Thank you.

13 And the Rule 74 counsel, please.

14 MS ELLIS: [9:35:51] Good morning, Mr President, your Honours. Diana Ellis

15 representing the interests of Mr Witness.

16 PRESIDING JUDGE SCHMITT: [9:36:01] Thank you very much.

17 And we continue with the examination by the Defence, and I see clear signs that

18 Mr Ayena is going to question this witness.

19 WITNESS: UGA-OTP-P-0138 (On former oath)

20 (The witness speaks Acholi)

21 QUESTIONED BY MR AYENA:

22 Q. [9:36:37] Good morning once again, Mr Witness.

23 A. [9:36:40] Thank you.

24 Q. [9:36:41] Mr Witness, I am sure we know each other, so it won't be difficult to

25 talk to one another.

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1 MR AYENA ODONGO: [9:36:58] Mr President, and your Honours, before we
2 commence this, can we go to a short time in private session?

3 PRESIDING JUDGE SCHMITT: [9:37:09] And short means really short or --

4 MR AYENA ODONGO: [9:37:13] Extremely short.

5 PRESIDING JUDGE SCHMITT: [9:37:15] Extremely short.

6 MR AYENA ODONGO: [9:37:17] Yes.

7 PRESIDING JUDGE SCHMITT: [9:37:18] Then we go to private session.

8 (Private session at 9.37 a.m.)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Open session at 9.39 a.m.)

8 THE COURT OFFICER: [9:39:51] We're back in open session, Mr President.

9 MR AYENA ODONGO: [9:40:03]

10 Q. [9:40:03] Now, Mr Witness, can you assist Court to approximately assess how
11 old you were at the time of your abduction?

12 A. [9:40:22] I was born in (Redacted). At the time I was abducted

13 I was about 13/14 years old. So if I explain that way, I hope it can be understood.

14 Q. [9:40:51] And have you maintained this throughout the questioned time you
15 had with -- with those you came into contact with after your escape?

16 A. [9:41:19] The years in which I was born remains the same, doesn't change, and
17 I remain with that age which I stated.

18 MS ELLIS: [9:41:28] Mr President, if I could just interrupt. Could we redact the date
19 of birth?

20 PRESIDING JUDGE SCHMITT: [9:41:37] Mrs Ellis, I think these things are going
21 relatively automatically, if need be. So you can also perhaps -- but you don't have
22 access to the -- yes, okay, I understand. So it is noted, so to speak. Thank you.

23 MS ELLIS: [9:41:52] I'm obliged. It's not apparent from the information I have.

24 PRESIDING JUDGE SCHMITT: [9:41:57] Yeah. But nevertheless, the date of birth
25 as such, I think, it does not reveal the identity of a person, but we won't discuss this in

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- 1 open session further.
- 2 MS ELLIS: [9:42:09] No.
- 3 PRESIDING JUDGE SCHMITT: [9:42:11] Please continue, Mr Ayena.
- 4 MR AYENA ODONGO: [9:42:15]
- 5 Q. [9:42:18] (Microphone not activated)
- 6 PRESIDING JUDGE SCHMITT: [9:42:21] Microphone, please.
- 7 MR AYENA ODONGO: [9:42:23] Your Honour, can we go to a short private
- 8 session again for one question?
- 9 PRESIDING JUDGE SCHMITT: [9:42:28] Yes, private session.
- 10 MR AYENA ODONGO: [9:42:34]
- 11 Q. [9:42:34] And Mr Witness, you told --
- 12 PRESIDING JUDGE SCHMITT: [9:42:36] Mr Ayena, we have to wait until we are
- 13 in private session.
- 14 (Private session at 9.42 a.m.)
- 15 (Redacted)
- 16 (Redacted)
- 17 (Redacted)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
- 24 (Redacted)
- 25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Open session at 9.44 a.m.)

7 THE COURT OFFICER: [9:44:16] We're back in open session, Mr President.

8 MR AYENA ODONGO: [9:44:23]

9 Q. [9:44:23] So, Mr Witness, before we came back to open session, the question
10 was whether before your abduction you had been -- I mean, you had heard anything
11 to do with the LRA, and if you had heard, who told you and what were you told
12 about the LRA?

13 A. [9:44:50] Information about the LRA wasn't very new. At the beginning of
14 my testimony I said we would go to sleep in the bush in -- as early as 1996. I knew
15 about the LRA because in 1995 they had killed people in Atiak and that was a place
16 very close to my home village. In 1996 they also killed many people in Pabbo and I
17 saw, I personally witnessed this. And some of my colleagues with whom I would go
18 to school together were also abducted, and in 1995 we took refuge to Karuma in
19 Masindi district and we returned in 1996 to my village. That is when I was
20 abducted.

21 So information about the LRA wasn't new because even an unborn child would
22 almost know something about the LRA.

23 Q. [9:46:13] Mr Witness, from that narrative it would appear LRA was a frightful
24 organisation. What in particular frightened the community about LRA?

25 A. [9:46:44] At around that time what I saw was mostly the scare caused by the

1 brutal killing of people; people are killed and they are lined up along the roads,
2 houses were being burnt, people were escaping. I was amongst those who were
3 actually fleeing because of the fear caused by the LRA through the brutal killings.

4 Q. [9:47:20] Among the things you had learnt about with the LRA, were there
5 some very special attributes such as spiritual, such as strength, such as brutality and
6 that kind of thing?

7 A. [9:47:52] There was nothing much new that I came to know about the LRA
8 apart from what they were doing, fighting with the government soldiers, killing the
9 civilians, burning houses. That is even some of the things that we were doing and
10 I was even seeing. There was not much new that I saw or knew about the LRA.

11 Q. [9:48:23] Mr Witness, yesterday you testified that when you were abducted,
12 you were inducted into LRA by the performance of certain rituals. Now, what were
13 you told these rituals were meant to do to you?

14 A. [9:49:03] The rituals are in line with the Acholi traditional practices. The
15 chiefs, how the chiefs do with it, it's something that has been happening from time
16 immemorial. I do not exactly can tell why they do that. But briefly, from what I
17 know, is that sometimes when you have moved in the bushes, you could have come
18 across evil spirits. For instance, you could have come across somebody who has
19 been killed in the bush and so you have to go through this ritual process when you
20 return home. And this is something that happens to all Acholi people according to
21 their culture.

22 Q. [9:49:57] Mr Witness, I think maybe I did not put it in -- I mean, I may not have
23 put the question quite correctly. What I mean is: When you were abducted by the
24 LRA, did they perform some rituals on you?

25 A. [9:50:27] When the LRA abducted me, there were rituals performed. First

1 I was anointed with the shea butter oil, using the sign of the cross on my chest, on my
2 back and also on my forehead. This, they say, is done to prevent me from escaping
3 because if I try to escape, then I will, I will not find my way back.

4 Some of the things that the LRA were doing is to go and submerge you in water.
5 They say this was holy water which was meant to win battles. They also used the
6 guns, they actually submerged the guns in water as a way of cleansing. This is what
7 I saw happen in the LRA.

8 Q. [9:51:34] So, in other words, you were put through some spiritual rituals?

9 A. [9:51:57] Well, I do not know whether the LRA do it for spiritual purposes, but
10 I found that practice already there. You cannot even ask why it is done. Because
11 the day that you arrive is also the same day that it is performed on you, so you cannot
12 actually ask why it is done.

13 Q. [9:52:19] By and by did you come to learn that LRA had what -- was deeply
14 involved in spiritual matters, especially the leader of the group, Joseph Kony? Did
15 you get to know that he was a strong believer in spiritualism?

16 A. [9:53:01] I came to later on learn that Kony was possessed by spirits because
17 some of the things that he would say actually come to be true and they indeed
18 happen. So, yes, it made me believe that some of his things were spiritual in nature.

19 Q. [9:53:40] (Microphone not activated)

20 PRESIDING JUDGE SCHMITT: [9:53:41] Microphone.

21 MR AYENA ODONGO: [9:53:42]

22 Q. [9:53:42] Mr Witness, you also testified that it was Thomas Kwoyelo's group
23 who abducted you. How did they treat you shortly after your abduction?

24 A. [9:53:57] When I was abducted I was given luggage to carry. Nothing else
25 was done to me apart from moving with me along. They tied my waist with rope

1 and connected us, connected the rope to other people, and we would move along in
2 line while carrying our luggage until when we reached the point when they were able
3 to untie us and we stationed at a particular point.

4 Q. [9:54:53] Now, Mr Witness, according to your testimony, you stayed with the
5 Kwoyelo group for five -- for four years. Did you ever at one point attempt to
6 escape? If you didn't, why didn't you try?

7 A. [9:55:27] At that time, first of all, I was young, I did not know the directions to
8 take. The areas in Kilak hills where Kwoyelo was was actually a jungle and very
9 mountainous. Secondly, why I did not try to escape was because some people who
10 tried to escape, I saw with my own eyes, they were recaptured and brought to us and
11 we were asked to kill them. And indeed all the new recruits were gathered to kill
12 that person. So if you mind about your life, you just will make a decision not to try
13 to escape.

14 Q. [9:56:18] And this killing happened without exception to anybody? That was
15 the only punishment for those who tried to escape?

16 A. [9:56:44] The killings happen on someone who tries to escape or who had
17 escaped and was re-apprehended. Because when you escape, they will send soldiers
18 to follow you up, and when they get you, they will bring you in front of the people
19 and they will kill you. So that usually happens on those who escape or try to escape
20 and they are actually recaptured again.

21 Q. [9:57:17] Mr Witness, you've said for those who escaped and actually went
22 back home, they would be followed -- they might be followed home. If they were
23 followed to their home and recaptured, what would happen to the people at their
24 home?

25 A. [9:57:54] Someone who was followed and found at their home or in their home

1 area, the order that is given is to kill people in that area, is to kill everyone in that area
2 when they are found, because the LRA say that such a person will have escaped with
3 their items such as guns. But even if -- even when the person escapes without the
4 LRA guns, still they say that person has to be followed. So this is the kind of order
5 that was usually given and I actually witnessed myself.

6 PRESIDING JUDGE SCHMITT: [9:58:41] When you say, Mr Witness, you
7 witnessed it yourself, can you give an example?

8 THE WITNESS: [9:58:58] (Interpretation) Could you say the question again?

9 PRESIDING JUDGE SCHMITT: [9:59:00] Mr Witness, you said you witnessed this
10 yourself. Can you give an example?

11 THE WITNESS: [9:59:19] (Interpretation) The killings that I talked about happened
12 several times. For example, there was one person who had escaped and went to a
13 place called Wianono, which is in Gulu district. It was an IDP camp called Pagak.
14 It did not take long after the escape because that person was a captain in the LRA.
15 So when he was followed up, people, several people were killed in that area in his
16 home village because he had escaped with the LRA gun.

17 Also in other places, like in Lango, several people were escaping and LRA soldiers
18 would be sent to follow up such persons and people in their home areas were killed.
19 This is what actually was happening.

20 PRESIDING JUDGE SCHMITT: [10:00:24] Thank you very much, Mr Witness.

21 Do you have an idea - I think it might be very difficult for you after such a long
22 time - but when these incidents happened, can you situate them, try to situate them
23 in time?

24 THE WITNESS: [10:00:40] (Interpretation) This could have happened around 2002
25 when it happened in Lira. I cannot recall the exact month and date. The one of

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1 Wianono happened when I was already home. That must have been -- that was in
2 the year 2004. Those are the killings that took place. In the second one a captain
3 had escaped.

4 PRESIDING JUDGE SCHMITT: [10:01:25] Thank you. That was quite specific.
5 Nobody expects that you know exact dates.

6 Mr Ayena, please continue.

7 MR AYENA ODONGO: [10:01:39]

8 Q. [10:01:41] Thank you very much for your elaboration.

9 But, Mr Witness, from your statement about that captain, sounds like the ferocity with
10 which somebody was followed depended on his seniority in the LRA; is that correct?
11 Am I correct to assume so? If you were a captain they followed you with more
12 ferocity. If you were a major, if you were a colonel, maybe they would spend more
13 energy to make sure that they get you; is that correct?

14 A. [10:02:20] Yes, that is correct. This is because the senior soldiers would leave
15 with more, with more weapons, and sometimes they also leave with many other
16 soldiers. Besides, they also said that it discourages the rest of those who are
17 remaining in the bush, because if a major or a captain escapes, it is not a good sign for
18 the foot soldiers who are remaining back in the LRA.

19 Q. [10:02:56] Mr Witness, this order to kill, did you ever get to know who
20 issued it?

21 A. [10:03:21] The order to kill in the LRA comes from the leader, Joseph Kony.
22 He has the right to change his leadership structure any time as he wishes. At that
23 time he had just changed the deputy and Otti was a deputy. Orders would come
24 from Kony to Otti, and Otti would send down the orders to the brigade and then the
25 brigade commanders would pass down the orders to the battalions and the battalion

1 commanders would pass down the orders to the lower units. That is how the orders
2 were executed in the LRA.

3 Q. [10:04:07] Mr Witness, can you tell this Court whether this was a case-by-case
4 order or it was a standing order, meaning that there was already an order given to
5 Kony passed down through Vincent Otti, down to the brigade commanders, down to
6 the battalion commanders that anybody who escapes must face death and you didn't
7 need to get the order or every time somebody -- I mean, from Kony every time
8 somebody escaped. Was it a standing order?

9 A. [10:04:59] The orders in -- concerning the killing of those who escaped was
10 already a standing order. When I went it was already there. It was never changed.
11 Even at the time of my escape I feared that if they found me they would kill me,
12 because they said if someone escapes it means he's no longer your friend, he's your
13 enemy. And I left, that standing order is still there.

14 Q. [10:05:41] Mr Witness, where did you get your courage to finally escape?
15 What was that special opportunity?

16 A. [10:06:21] When I gained the courage to escape, at that time I had been
17 entrusted and I was close to Otti Vincent who was the second in command of the LRA.
18 That meant that I was already trusted and they believed I would not escape.

19 Secondly, (Redacted). I was moving freely.

20 I was not under surveillance anymore. There was an attack by helicopter gunship
21 from Teso which dispersed people. Besides, I was already moving alone on my own
22 since I was already seen as a resilient LRA with some authority as well, and I took
23 advantage of that and escaped. That is what happened.

24 Q. [10:07:26] Now, Mr Witness, yesterday you called -- you told Court some of
25 the considerations you had to take into account about escape, and among them you

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1 talked about tribes, you talked about the difficulty - of course you've just talked about
2 it again now - the difficulty of terrain, having to climb mountains and so on and so
3 forth. Now, can you tell this Court the type of tribes, especially when you were in
4 the Sudan, the type of tribes that you were so afraid of?

5 A. [10:08:30] While in Sudan the ethnic groups that we were afraid of included all,
6 actually all the ethnic groups were not friendly because most of them were armed.
7 They include the Dinka, Bukit, there is also an ethnic community known as Lutugu,
8 which is also in Sudan, and then the Acholi Parajok, which is in Sudan. When these
9 ethnic communities find you they can kill you, because they have weapons, like the
10 Lutugu people are cannibals, they can actually eat you and that made us fear.

11 Q. [10:09:24] Can you tell this Court whether there was a special -- first of all, was
12 there any special name by which they referred to the LRA?

13 A. [10:09:54] The name with which the LRA are referred to is Holy, which means
14 Holy Spirit, but it's referred to as Holy shortly. But in Acholi other names are
15 Lakwena. Those are the names that I know.

16 Q. [10:10:19] Mr Witness, I'm talking about this, tribes of Sudan, was there any
17 special name they referred to LRA? The Sudanese, the Sudanic tribes.

18 A. [10:10:48] The Acholi Parajok and other ethnic communities referred to the
19 LRA as Otong tong.

20 PRESIDING JUDGE SCHMITT: [10:11:05] May I ask you, Mr Witness, excuse me
21 Mr Witness, I have a question in that respect: Otong tong, does that have a special
22 meaning, for somebody who does not understand the Acholi language?

23 THE WITNESS: [10:11:26] (Interpretation) The name Otong tong is derived from
24 someone or something that cuts people, can cut you with an -- cut the neck. It means
25 something bad. Something that kills.

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1 PRESIDING JUDGE SCHMITT: [10:11:47] I assume your nodding, Mr Ayena, this
2 signals that this is quite a correct definition.

3 MR AYENA ODONGO: [10:11:57] (Microphone not activated)

4 PRESIDING JUDGE SCHMITT: [10:11:59] Approval, yes. Please continue.

5 MR AYENA ODONGO: [10:12:01]

6 Q. [10:12:02] And the little thing that we forgot to determine from you,
7 Mr Witness, was your rank at the time you escaped. I don't know whether he's
8 comfortable in open session. What was your rank at the time you escaped?

9 A. [10:12:28] At the time of my escape I was a sergeant.

10 Q. [10:12:35] And according to your -- what you have told Court, it would be
11 easier for a sergeant to escape than a brigadier, for instance, to escape?

12 A. [10:12:53] Escaping from the LRA is not easy, but --

13 THE INTERPRETER: Interpreter repeats: Escaping from the LRA is easier for a
14 commander than the foot soldiers.

15 MR AYENA ODONGO: [10:13:21] Can the interpretation booth repeat that?

16 PRESIDING JUDGE SCHMITT: [10:13:29] Yes, there was a little bit a slip, so
17 perhaps --

18 MR AYENA ODONGO: Yes.

19 PRESIDING JUDGE SCHMITT: -- indeed, we can perhaps repeat it.

20 THE INTERPRETER: [10:13:32] Interpreter correction: Escaping is easier for a
21 commander than a foot soldier.

22 MR AYENA ODONGO: [10:13:41] I don't think that's what was said.

23 PRESIDING JUDGE SCHMITT: [10:13:45] Maybe don't make a problem out of it.
24 We simply ask the witness.

25 MR AYENA ODONGO: [10:13:49] Again.

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1 PRESIDING JUDGE SCHMITT: [10:13:50] Because we have him sitting here.

2 MR AYENA ODONGO: [10:13:53] Yes.

3 PRESIDING JUDGE SCHMITT: [10:13:54] Mr Witness, you recognise that there is
4 a little problem with the interpretation here.

5 Could you perhaps please answer the last question again. Meaning it was the
6 question about was it -- for whom was it easier to escape, for the foot soldier or the
7 captain, lieutenant, brigadier?

8 THE WITNESS: [10:14:19] (Interpretation) From a foot soldier up to the
9 commander, as long as you have a weapon it's easy for you to come back home.
10 Even Kony himself can leave any time and abandon his soldiers in the bush.

11 MR AYENA ODONGO: [10:15:07]

12 Q. [10:15:07] Mr Witness, I want you to remember that we are talking in relative
13 terms and you have just told Court a few minutes ago that if a captain escaped, there
14 was more danger for him to be followed with ferocious retribution. Now, in terms
15 of that, would you say taking a decision to escape was as easy for a foot soldier as it
16 was for a brigadier?

17 A. [10:15:50] It is easy for someone who has a -- lower ranks, he can escape any
18 time. But for a brigadier, he has to escape with some people. Like he has to move
19 with people like escorts, therefore, it could be difficult, he could have fears, like I said
20 earlier. But it can also be easier. Depends on what he thinks.

21 PRESIDING JUDGE SCHMITT: [10:16:35] I think we have now an answer. So
22 I think we can continue with -- go to another topic.

23 MR AYENA ODONGO: [10:16:50]

24 Q. [10:16:50] Now, Mr Witness, you talked about Kony's orders. Can you tell
25 this Court whether you ever heard that Kony's instructions were directly from God?

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1 A. [10:17:18] The orders that were given by Kony, it's not easy to know that
2 it -- whether it comes from God. I have no knowledge whether those orders come
3 from God, because he says he has spirits and sometimes when we -- sometimes when
4 we go to church, for example, we see bishops praying and giving summons, we do
5 not know if it is directly from God. That is how we follow the words of Kony, you
6 have to follow what he says.

7 Q. [10:17:58] Whenever Kony alleged that he was receiving instructions from
8 above, did you at any one point notice some form of configuration in Kony which
9 would indicate that he has been possessed by the spirits?

10 A. [10:18:40] What Kony does is that, first of all, he doesn't stay close to the
11 soldiers of the brigade. Many times he is isolated away and when, when he's giving
12 orders, he would send it through radio call. Many times you can stay up to three or
13 four years without seeing Kony himself. You would only hear his voice when he's
14 giving orders and you will execute the orders.

15 Q. [10:19:17] Mr Witness, did you ever get to know the names of some of the
16 spirits Kony alleged would possess him?

17 A. [10:19:41] I do not know of any other names, other than the Holy Spirit. I did
18 not learn the different names of the spirits that possess him, I only learnt of Holy
19 Spirit or Lakwena.

20 PRESIDING JUDGE SCHMITT: [10:19:58] I think in that respect witness was not
21 close enough to, unlike other witnesses we had in the recent past, I would say.

22 MR AYENA ODONGO: [10:20:07] (Microphone not activated) to him? Can I
23 suggest --

24 PRESIDING JUDGE SCHMITT: [10:20:12] Of course, but give it a short try.

25 MR AYENA ODONGO: [10:20:15] A short try.

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- 1 PRESIDING JUDGE SCHMITT: [10:20:17] A short try, yes.
- 2 MR AYENA ODONGO: [10:20:19]
- 3 Q. [10:20:19] Mr Witness, just in case it rings a bell and refreshes your memory,
- 4 did you ever hear about King Bruce?
- 5 A. [10:20:38] No, I did not.
- 6 Q. [10:20:41] How about Soli Yakobo?
- 7 A. [10:20:54] No, I did not.
- 8 Q. [10:20:55] How about Dr Salan?
- 9 A. [10:21:03] I have not heard of that also.
- 10 PRESIDING JUDGE SCHMITT: [10:21:06] I think we can move to another point.
- 11 MR AYENA ODONGO: [10:21:09] Okay.
- 12 PRESIDING JUDGE SCHMITT: [10:21:10] I think this, as I said, we had in the last
- 13 evidence block, we had a witness who had really detailed knowledge about that, but
- 14 this witness obviously not.
- 15 MR AYENA ODONGO: [10:21:21] Can we go to short private session?
- 16 PRESIDING JUDGE SCHMITT: [10:21:42] Yes. Private session.
- 17 (Private session at 10.21 a.m.)
- 18 (Redacted)
- 19 (Redacted)
- 20 (Redacted)
- 21 (Redacted)
- 22 (Redacted)
- 23 (Redacted)
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- 17 (Redacted)
- 18 (Open session at 10.25 a.m.)
- 19 THE COURT OFFICER: [10:25:18] We are back in open session, Mr President.
- 20 PRESIDING JUDGE SCHMITT: [10:25:29] And please repeat the question,
- 21 Mr Ayena.
- 22 MR AYENA ODONGO: [10:25:32]
- 23 Q. [10:25:33] Mr Witness, before we went back to open session, I was asking you
- 24 whether you remember how old you were when you finally escaped?
- 25 A. [10:25:50] When I finally escaped I was 19 years old.

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1 Q. [10:25:59] And according your testimony yesterday, by the time you escaped
2 you already did not believe that what LRA was doing was correct. Did this reinforce
3 your resolve to escape after becoming old and realising that what they were doing
4 was after all not correct?

5 A. [10:26:42] Yes, that gave me the courage to leave and I had already matured
6 up, I already knew the difference between good and evil.

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 MS GILG: [10:27:40] Your Honours, I don't know exactly where my learned friend is
12 planning to go, but it might be prudent to go into private session if we are exploring
13 certain details in relation to the escape.

14 PRESIDING JUDGE SCHMITT: [10:27:53] Yes. If we go further in that direction
15 I would suggest yes. But if not, please simply continue with another issue. But you
16 know better what you have in your mind, what you have on your paper.

17 MR AYENA ODONGO: [10:28:05] I think let's go to private session, just in case.
18 Thank you.

19 PRESIDING JUDGE SCHMITT: [10:28:10] Then we go to private session.

20 (Private session at 10.28 a.m.)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Open session at 10.31 a.m.)

23 THE COURT OFFICER: [10:31:40] We are back in open session, Mr President.

24 MR AYENA ODONGO: [10:31:43]

25 Q. [10:31:46] Mr Witness, do you know the Independence Day of Uganda? If so,

1 can you tell Court when Independence Day is in Uganda?

2 A. [10:32:17] Ugandans' Independence Day is celebrated annually on 9 October.

3 Q. [10:32:28] Is this the same thing called Uhuru Day?

4 A. [10:32:36] Yes.

5 Q. [10:32:43] Now, can you tell Court, Mr Witness, whether your escape from the
6 LRA was before or after Uhuru Day?

7 A. [10:33:11] My escape was after the Independence Day. That was
8 in November.

9 MR AYENA ODONGO: [10:33:30] Your Honours, I want to refer to tab 3,
10 Prosecution tab 3, UGA-OTP-0228-0538 at page 539, lines 22 to 23.

11 Q. [10:34:05] Mr Witness, there you said -- it goes up to 053 -- 0540.

12 From line 22, you said, "... when we left the bush", and line 24, "We were talking about
13 Independence Day ..."

14 Line 26, "... and you said Independence Day is on the 9 October." Line 29, "On

15 9 October 2003 ..." There was a question, "... were you still in the bush?" in line 31,

16 and you said, "... I was still in the bush but I had not yet joined the Government. But
17 I had already escaped."

18 So, Mr Witness, can you clarify this apparent disparity? You said you escaped after
19 Independence, but according to this, you escaped before, but you were still hanging
20 somewhere in the bush.

21 A. [10:35:42] According to what you have just read, I think the recording was not
22 correctly done. Most times I actually pledged to tell the truth and I will tell the truth,
23 but nothing but the truth. I escaped in November. We had the Independence Day
24 celebration while still in the bush together with Otti Vincent, and we started our
25 journey to Soroti after the Independence Day, and I actually escaped from Soroti.

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1 That is what I can clearly state.

2 Q. [10:36:46] Mr Witness, when we ask you these questions, it's not meant to
3 reproach you, but to, you know, ask you to help Court to clarify certain things which
4 are written. In fact, that's the reason why you are here. We don't have to go by
5 what has been written in your statement. So I thank you for that clarification.

6 Now, Mr Witness, can you tell Court how long after your escape from the LRA you
7 finally met with civilians who helped you to (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 MS GILG: [10:38:25] Excuse me, your Honours, again if there is going to be further
12 discussion on this topic, we should move into --

13 PRESIDING JUDGE SCHMITT: [10:38:31] I think we recognise that and, yes,
14 perhaps you can also give always a short hint via electronic means to the people here
15 in front, and of course I have also recognised it. So we -- but again, we should also
16 not be too over-cautious. I think sometimes we over-stretch it a little bit in the
17 courtroom.

18 Please continue, Mr Ayena. Everything is okay. Please continue.

19 MR AYENA ODONGO: [10:39:02] (Microphone not activated)

20 PRESIDING JUDGE SCHMITT: [10:39:03] I don't hear you at the moment because
21 the microphone is not activated.

22 MR AYENA ODONGO: [10:39:10] Do I continue as if she has not made any
23 observation, your Honour?

24 PRESIDING JUDGE SCHMITT: [10:39:16] (Microphone not activated) now I
25 commit this sin, so to speak.

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1 No, if you, Mr Ayena - and you know better than I what you are going to ask - if you
2 do not entertain information that might reveal the identity of the witness, please
3 continue simply.

4 MR AYENA ODONGO: [10:39:36] Mr President and your Honours, I think it
5 would be safest to go to private session for a short time.

6 PRESIDING JUDGE SCHMITT: [10:39:46] Private session.

7 MR AYENA ODONGO: [10:39:50]

8 Q. [10:39:50] So, Mr Witness --

9 PRESIDING JUDGE SCHMITT: [10:39:52] Yes, but the private session has to
10 be - that is perhaps a strange wording - has to be activated. Would that be the
11 right -- something like that, activated, yes?

12 (Private session at 10.40 a.m.)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

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- 14 (Redacted)
- 15 (Open session at 10.46 a.m.)
- 16 THE COURT OFFICER: [10:46:09] We're back in open session, Mr President.
- 17 MR AYENA ODONGO: [10:46:16]
- 18 Q. [10:46:19] While in the bush, Mr Witness, did you know somebody called
- 19 Tabuley?
- 20 A. [10:46:38] Yes, I knew Tabuley.
- 21 Q. [10:46:42] Did you escape after or before his death?
- 22 A. [10:46:55] At the time when I escaped Tabuley was still alive, but when now I
- 23 was back home I got report from some people who escaped after me that Tabuley had
- 24 died while still in the bush at a place called Kaberamaido. That's the information
- 25 that I got.

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1 Q. [10:47:28] So it is your statement that Tabuley died when you had already
2 reported back?

3 MR GUMPERT: [10:47:39] Your Honour, I must object to that statement
4 (Overlapping speakers)

5 PRESIDING JUDGE SCHMITT: [10:47:46] Yes, sustained.

6 MR GUMPERT: [10:47:47] It's absolutely not what the witness said.

7 PRESIDING JUDGE SCHMITT: [10:47:50] Sustained. Sustained. Sustained.

8 Yes. The witness has stated the opposite, I would say. I can read from lines 11 -- 10:

9 "At the time when I escaped Tabuley was still alive, but now when I was back home I
10 got report from some people who escaped after me that Tabuley had died while still
11 in the bush at a place called Kaberamaido. That's the information I got."

12 So it's a little bit, so we have to bit correct with citations.

13 MR AYENA ODONGO: [10:48:16] Yeah, yeah. Pardon my failure to hear that.

14 Mr Gumpert was absolutely correct.

15 Q. [10:48:26] How long after your escape did you hear about Tabuley's death?

16 Was it immediately upon reporting back or after some time?

17 A. [10:48:53] Tabuley's death, I got the information from some of the children
18 who returned and got us at the GUSCO centre. That was around -- that was around
19 2004 when we were still at the GUSCO centre.

20 PRESIDING JUDGE SCHMITT: [10:49:21] Perhaps I may ask a short question
21 in that respect.

22 MR AYENA ODONGO: [10:49:25] Yes.

23 PRESIDING JUDGE SCHMITT: [10:49:26] Mr Witness, we have here in the
24 interpretation a line that I have already repeated, but I wanted to ask you, perhaps,
25 how one part of it has to be understood. It reads that "when I escaped Tabuley was

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1 still alive, but now when I was back home I got report from some people who escaped
2 after me that Tabuley had died".

3 And now I refer to the following portion "while still in the bush". Who was still in
4 the bush at the time? Was it -- because Tabuley must have been in the bush, I would
5 assume, but perhaps you can clarify that, or perhaps there is nothing to clarify, it
6 simply means he was in the bush and that's it.

7 THE WITNESS: [10:50:22] (Interpretation) At the time when I was escaping I said I
8 left, Tabuley was still in the bush. Tabuley was still in the bush. But I was already
9 out. I was already back home at the time when he died.

10 PRESIDING JUDGE SCHMITT: [10:50:51] Thank you.
11 Mr Ayena.

12 MR AYENA ODONGO: [10:50:54] Yes.

13 Q. [10:50:55] Now, at what point in time did you go to Sudan, do you remember
14 the year when you went -- or, you were taken to Sudan?

15 A. [10:51:23] In 2002, that's when we went to Sudan, around between January and
16 March. Then in 2003 we again returned to Sudan in August. We frequently went
17 to Sudan to, for instance, go and collect ammunitions. But the last time we went
18 back to Sudan was around August.

19 Q. [10:52:03] Now, when you went to Sudan was it a decision taken by the LRA
20 or the LRA was being pursued?

21 A. [10:52:30] Most times people go to Sudan to collect weapons. When the team
22 in Uganda ran out of weapons, we go to collect them from Sudan and return back to
23 Uganda. That is what mostly took us to Sudan. Sometimes you spend about a
24 week and then return.

25 Q. [10:53:00] During your journey to Sudan, that mass exodus, did you it provide

1 an easier escape opportunity or at all?

2 A. [10:53:19] Escape in the LRA is not an easy thing. Some tribes were unhappy
3 of what the LRA were doing, so it was not possible to escape. That is why my
4 escape in Soroti happened, because of the fear that I heard from other tribes of what
5 the LRA were doing. So some tribes are not friendly and so you would fear to
6 escape in the areas where they are because you -- the civilians might kill you because
7 of what the LRA were doing to them.

8 PRESIDING JUDGE SCHMITT: [10:54:33] So perhaps we can take it from there
9 that it might have been even more difficult from Sudan to escape.

10 MR AYENA ODONGO: [10:54:40] Yes, yes.

11 PRESIDING JUDGE SCHMITT: [10:54:41] I would assume.

12 MR AYENA ODONGO: [10:54:43] Yeah.

13 Q. [10:54:44] Now, Mr Witness, while in Sudan you mentioned that you stayed
14 under the command of Lieutenant Colonel Pukot. Can you tell Court which group of
15 the LRA Pokot was?

16 A. [10:55:16] I was not under the command or leadership of Pukot, but Pukot was
17 in Sinia brigade and he was in charge of the first battalion. That battalion which was
18 under him, we were all under him, but our -- in our operations we were not doing
19 jointly. We were doing separate operations. Kwoyelo was also in Sinia but had a
20 different department. You could be in Kitgum or you could be in Sudan, but you
21 would still know that you are under a certain brigade. You could even spend up to
22 two years without reaching where your exact brigade is. So it was not that every
23 time every group was, all the groups were staying together, but you would know
24 which group was in which location.

25 Q. [10:56:44] Now, when you were in Sudan were you with Dominic Ongwen?

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1 A. [10:56:59] No.

2 Q. [10:57:02] Now, in Sudan, can you tell Court your responsibilities when you
3 were in Sudan?

4 A. [10:57:11] When I went to Sudan my roles were to (Redacted)

5 (Redacted)

6 (Redacted)

7 These were my roles while I was still in the Sudan. Basically, to (Redacted)

8 (Redacted)

9 (Redacted)

10 Q. [10:58:09] Do you mean to tell Court that by the time you went to Sudan you
11 were already assigned to Vincent Otti?

12 A. [10:58:31] Yes.

13 Q. [10:58:32] Do you remember the places where you settled in Sudan?

14 A. [10:58:43] While in Sudan we settled at Jebelen. We went to place called
15 Torbika (phon) up on the mountain where LRA weapons were kept.

16 Q. [10:59:04] (Microphone not activated)

17 PRESIDING JUDGE SCHMITT: [10:59:06] Microphone, please.

18 MR AYENA ODONGO: [10:59:08]

19 Q. [10:59:08] Did you undergo any training while in the Sudan?

20 A. [10:59:27] There were no specific trainings while in Sudan, because when I
21 went to Sudan I was already a seasoned soldier. And the four years that I was with
22 Kwoyelo we had already completed all the other trainings, because these were
23 a similar training that were done in the Sudan. So there was no any other training
24 that I got from Sudan.

25 PRESIDING JUDGE SCHMITT: [10:59:54] Mr Ayena, may I suggest to have the

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1 break now.

2 MR AYENA ODONGO: [10:59:58] Yes. You know, you are sitting directly
3 opposite the clock.

4 PRESIDING JUDGE SCHMITT: [11:00:03] I would not say my attention is mostly
5 fixed on this, but of course every once in a while it pops before my eyes.

6 So we have then the break.

7 MR AYENA ODONGO: [11:00:14] Yes, Mr President.

8 THE COURT USHER: [11:00:18] All rise.

9 (Recess taken at 11.00 a.m.)

10 (Upon resuming in open session at 11.31 a.m.)

11 THE COURT USHER: [11:31:55] All rise.

12 PRESIDING JUDGE SCHMITT: [11:32:12] Mr Ayena, please.

13 MR AYENA ODONGO: [11:32:27]

14 Q. [11:32:35] Mr Witness, I hope you had a good coffee and a good rest. We are
15 going to talk about Kony in Sudan and his orders. Now, Mr Witness, in one of your
16 testimonies to the Prosecution you stated that Kony stayed alone in Sudan while
17 everybody else returned to Uganda. Can you help Court to understand this by
18 explaining in detail -- I mean, giving an outline how this happened. Whether, I
19 mean, when you talk about Kony remaining alone, he remained actually alone or you
20 mean to say that he remained there with the Control Altar establishment?

21 A. [11:33:56] Kony is a commander who most times remains in Sudan. He is not
22 very regular in Uganda. When I say that Kony remained in Sudan, it doesn't mean
23 he was alone there. He had a unit that was in charge of his security. He had
24 soldiers that he would work with and would protect him as his security detail,
25 together with his wives. They all remained in Sudan. And it does not actually

1 mean that he is having a particular location that he stays in Sudan. He would be on
2 the move. He could stay in one place for two or three days and sometimes he would
3 come up to Uganda and would stay for about a week, but he would not be stationed
4 in one place. He would also be on the move, just like the rest of the LRA were on the
5 move. He would remain with Control Altar. Control Altar is the general
6 headquarters and it brings together the senior commanders like Vincent Otti and
7 Raska Lukwiya. That is what would happen.

8 Q. [11:35:30] Now, Mr Witness, during your stay in the bush with the LRA did
9 you ever see Kony participate in operations personally?

10 A. [11:35:50] I did not see Kony even once going for operation. No, I did not see.

11 Q. [11:36:05] Now, Mr Witness, we were talking about the spiritual aspect of the
12 LRA. Was it the case that when a commander was in the bush, had been sent on an
13 operation, he knew that the spirit of Kony was hovering over his head and, for that
14 matter, Kony knew what was happening at the battlefield?

15 A. [11:37:02] In regard to the roles of Kony and other commanders who go to the
16 battlefield, first, the commanders who go to the -- for operations or to battlefields
17 would report to Kony. They would first of all report about their planned operation
18 and, if Kony gives a nod and says that all will be well, you would definitely carry out
19 your operation and all will be well. Like I said earlier, all this is done through radio
20 call. Most of the operations that are conducted Kony is informed about it. I am not
21 aware whether his spirits always goes with the commanders who go for operations.

22 Q. [11:38:03] My interest, Mr Witness, is to establish -- is to find out whether, in
23 view of the fact that it was a known fact to everybody in the LRA that Kony was a
24 spirit medium, therefore he was aware of what was happening even when he was not
25 there. Was this the case in the minds of most of the people in the LRA? Did they

1 know that Kony was aware or had the capacity to know what was happening in every
2 situation?

3 A. [11:39:04] As junior LRA soldiers, especially those of us who were abducted,
4 together with the commanders, follow what Kony says. We believe that he had a
5 spirit. What I can say is that all the commanders in the LRA believe in Kony's spirit,
6 even if they don't see him.

7 Q. [11:39:33] In that case, Mr Witness, would you agree with me that every
8 commander who went to the battlefield knew that, although he was in charge of the
9 soldiers, as a matter of fact the spirit of Kony was also there watching what he was
10 doing? This was somehow the belief. Was it the case that somehow you felt that,
11 well, I am the commander but, you know, this man called Kony normally sends his
12 spirit also to be around?

13 A. [11:40:30] All the LRA commanders think like that, they believe so. Before
14 leaving for an operation they would make the sign of the cross on the path that you
15 will follow. And there is a group that is tasked with performing such ceremonies,
16 someone from Control Altar would use water, some special water and shea butter oil
17 and would sprinkle the water on those going for operation. That is why, for us, we
18 believe that it worked. Yes, it happens.

19 Q. [11:41:20] And, Mr Witness, talking about the Control Altar and people from,
20 especially the Trinkle brigade, was it always the case that around every senior
21 commander there were intelligence people who reported directly about the
22 happenings around these commanders directly to Kony?

23 A. [11:42:06] In the LRA there are various departments in the different brigades.
24 We have intelligence of the brigade and then in the battalion there is also intelligence
25 and there is also intelligence in the coy. There is a senior intelligence who is in the

1 Control Altar who is in charge of all the brigades and would talk directly with Kony.
2 But information trickles down from the intelligence in coy, up to the time it reaches
3 the Control Altar. That is how the LRA works.

4 Q. [11:43:02] Did you ever get to know about somebody called Ocan Labongo?
5 (Microphone not activated) called Ocan Labongo?

6 A. [11:43:28] Yes, I know Ocan Labongo.

7 Q. [11:43:34] Did you know that he had a special relationship with Joseph Kony?
8 In terms of work, not necessarily blood relationship.

9 A. [11:44:02] I do not know much because Kony does not show that he is close to
10 someone. Because at my rank and position I was too junior and I could not establish
11 that.

12 Q. [11:44:32] Were there situations where commanders of the same rank were put
13 in the same position, for instance, brigade commanders were -- there were two people
14 put as brigade commanders in the same brigade?

15 A. [11:45:00] No. Even if the ranks are the same, the way the LRA works is that,
16 if I am a brigade commander, if I became a brigade commander earlier than you, it
17 means I am senior to you. It's the same as a first born and a second born.

18 Q. [11:45:27] Thank you very much. Now, Kony was so far away in Sudan,
19 quite often he was left in the Sudan and many of these commanders were sent back to
20 Uganda. Can you tell Court, according to your understanding, why even when they
21 were away from the grips of Kony they still refrained from escaping, they did not
22 seize the opportunity to escape from the LRA?

23 A. [11:46:22] When you are in the LRA you are convinced that you are fighting to
24 overthrow the government and you would be courageous to go for battles. In
25 addition to the different operations, you may not have any plans to escape or you

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1 may not want to leave because you believe that the government will perhaps be
2 overthrown because Kony would say that if he overthrows the government, when
3 they find you they would kill you if you were not with them. So the senior
4 commanders of the LRA believed that they would overthrow the government.

5 Q. [11:47:17] Would I be right to say that the belief that you might in the long run
6 have a share in the big game of government was also a disincentive to escape?

7 A. [11:47:50] It can prevent people from escaping.

8 Q. [11:47:58] Because you knew after all you were going to overthrow
9 government and, who knows, I may be, may be the chief of staff one time. And,
10 Mr Witness, could that reinforce your statement that when it became clearer and
11 clearer that the effort of LRA was an effort in futility, it gave you impetus to escape?

12 A. [11:48:53] Yes, that is true.

13 Q. [11:49:05] Mr Witness, there was a time when there was this arrangement for a
14 negotiated settlement between the LRA and the government of Uganda. For those of
15 you who were outside, did you believe that if this settlement had been positively
16 worked out it might give some -- I mean the members of the LRA an opportunity to
17 take a share in government?

18 A. [11:50:03] Could you please repeat the question.

19 PRESIDING JUDGE SCHMITT: [11:50:05] I think perhaps we should give the
20 witness an opportunity also to locate it in time a little bit. We are now I think, as I
21 understand your question, in a time after he had escaped from the bush.

22 MR AYENA ODONGO: [11:50:16] Yes.

23 PRESIDING JUDGE SCHMITT: [11:50:17] And later perhaps we try to elaborate it
24 like that and I think then the witness. And I think he, since he has been for many
25 years in the bush, he might really say something about it.

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1 MR AYENA ODONGO: [11:50:28] Yes. Yes. I'm guided, your Honour.

2 Q. [11:50:33] Mr Witness, you escaped in November 2003, but there was a
3 peace -- an attempt to negotiate a settlement between the government of Uganda
4 between 2006 and 2008. When you heard this did you believe that this peace
5 settlement might result in an opportunity for people of the LRA to also share in the
6 government of Uganda?

7 A. [11:51:28] Yes.

8 Q. [11:51:34] In that case, Mr Witness, if you were still in the bush, would you still
9 have been inclined to escape knowing that time was about to arrive for the long
10 hoped for dream to materialise?

11 MR GUMPERT: [11:52:01] Your Honour, I object to this question.

12 PRESIDING JUDGE SCHMITT: [11:52:04] Yeah, yeah, but nevertheless indeed it's
13 quite hypothetical, in many ways hypothetical. Perhaps you can rephrase it a little
14 bit because the witness has been in the position.

15 MR AYENA ODONGO: [11:52:17] Yes.

16 PRESIDING JUDGE SCHMITT: [11:52:18] And yeah, I think I'm inclined to let it
17 pass, simply, the question and the witness might answer it. It might not be of
18 enormous probative value, because it is indeed a little bit hypothetical, but it's not at
19 all out of the blue, so to speak, because he has been in the bush and has perhaps had
20 his thoughts about it.

21 MR AYENA ODONGO: [11:52:44] Can I put it differently?

22 PRESIDING JUDGE SCHMITT: [11:52:47] Yes, perhaps you try it a little bit
23 differently, yes.

24 MR AYENA ODONGO: [11:52:51]

25 Q. [11:52:52] Mr Witness, did it ever cross your mind that you wished you were

1 still in the bush? You might also, you know, have had an opportunity to have a
2 share in the government that might, I mean, result from the negotiated settlement?

3 A. [11:53:32] The negotiations that I was hearing about while I was in the bush,
4 I was interested more in coming back home and find that there is peace at home.
5 That was my interest, to find peace back at home. Nothing is better than having
6 peace in this world.

7 PRESIDING JUDGE SCHMITT: [11:54:00] I think we leave it at that at this point,
8 I would say.

9 MR AYENA ODONGO: [11:54:04] Okay.

10 Q. [11:54:08] Can you tell Court, Mr Witness, whether it was an option in the
11 bush for anybody to disobey Kony's order?

12 A. [11:54:47] In regards to Kony's orders it is not easy to disobey once he has
13 given it.

14 Q. [11:55:05] What was the likely punishment for disobeying Kony's order?

15 A. [11:55:20] According to the way the LRA operates you could be punished by
16 demoting you and then you become a junior soldier. Other punishments can also be
17 death. And sometimes they would make you walk barefooted for a week or for a
18 month. Those are the punishments that I saw.

19 Q. [11:56:00] Was being jailed one of the punishments?

20 A. [11:56:17] I did not see any jailhouse for Kony. Many times the punishments
21 which are given are the ones that I mentioned, but it also includes caning. I did not
22 see any cell or jailhouse that Kony had.

23 Q. [11:56:44] Is it possible to be put in an open prison where your movements are
24 restricted? You are not necessarily in the formal jailhouse, but you know that you
25 are a prisoner and there are certain things you may not do.

1 A. [11:57:18] Yes, that happens. Because when you are demoted and you are
2 made prisoner, you have no shoes because you failed to follow an order, that is what
3 happens for some time, and then they would later on reinstate your belongings and
4 they also reinstate your ranks when you have been punished already.

5 Q. [11:57:49] Was it possible for a senior commander, for instance a brigade
6 commander, to be removed from his position and put directly under the Control Altar
7 by way of prison, imprisonment?

8 A. [11:58:19] Yes, that happens. When you disobey an order they can appoint
9 any commander to replace you and you will be under -- you will be serving a
10 punishment as the other person leads and then you would be reinstated back. Yes,
11 that happens.

12 Q. [11:58:49] Mr Witness, do you know whether at one -- any one point Dominic
13 Ongwen found himself in this kind of situation?

14 A. [11:59:10] No. I was not aware of any of this.

15 Q. [11:59:20] Maybe I will remind you about something akin to that later, but we
16 can still proceed.

17 Mr Witness, in one of your interviews with the Prosecution investigators, and this is
18 recorded at tab 13, UGA-OTP-0228-6472 at 6480, lines 169 to 275, and then again on
19 page 6481, lines 284 to 313, you stated that Major Lapeko and Charles Lukwiya were
20 punished because they failed to carry out an order.

21 Could you be so kind as to explain to Court what you meant by this. What had they
22 done and what punishment was given to them and what order did they fail to carry
23 out?

24 A. [12:01:04] These people were taken to Otti. They were taken under Otti's
25 command to go and attack an armoured vehicle known as Mamba in Kitgum Matidi,

1 but they did not do what they were told to do. Charles Lukwiya at the time was
2 operating an SPG-9 gun, but that day they did not attack and shoot at the armoured
3 vehicle. They were punished the way I stated earlier, they were also caned, and they
4 were made to walk barefooted for what they failed to do, what they were asked to do
5 was not executed as was planned.

6 Q. [12:02:20] Above those ranks did you also witness in the LRA senior members
7 being punished by Kony, people higher than that rank, maybe at the rank of brigade
8 commanders and things?

9 A. [12:02:51] I did not see that physically, but most times Kony gives orders
10 through the radio call. It's not easy to live with Kony for you to be able to see or
11 experience the orders that he issues, but most of his orders are sent via the radio call
12 to the commanders. The brigade commanders have authority over the brigade and
13 has control over these commanding officers downwards and the lower ranks. So the
14 brigade is in charge of those other lower-ranking positions.

15 It's not all the time that orders come from Kony, but even the brigade commanders
16 have certain powers. For instance, if they want to go and attack or even go for any
17 looting operation, so the commanders have to know when they go for an operation
18 that there is going to be fighting or there's going to be looting camp, also there will be
19 burning of houses in the camp. So that is how they operate.

20 Q. [12:04:14] Now, Mr Witness, these operations which were undertaken by the
21 brigade commanders or even the battalion commanders, were they just intuitive or
22 was it out of a standing order? Kony maybe has already given an order that you,
23 battalion commanders, you, brigade commanders, when the food stock is depleted,
24 you must go and attack and get food, or if you find the barracks are vulnerable, you
25 may attack and get weapons. You do not have to wait for an order from me

1 anymore. Was it out of a standing order or it was their own decision?

2 A. [12:05:40] In the LRA there is a standing order that for you to be able to fight
3 you need to have food. Secondly, you have a gun and when you have a gun and
4 you meet your enemy you do not have to ask Kony for authority to engage with the
5 enemy. So it is just automatic that you have to respond and defend yourself. And
6 when there is no food, you have to plan to go and collect food. And this food in
7 northern Uganda were mostly in the IDP camps. When you meet your enemy, that
8 does not require you to receive orders from Kony, you just have to respond. So the
9 order was already there and you just have to work with it, even when you don't
10 receive any orders from Kony at that time.

11 Q. [12:06:49] And after the operations initiated by them, did they report to Kony
12 after the operation?

13 A. [12:07:11] Yes, reports are given via the radio call just like I explained earlier in
14 my statement. In my statement I said radio calls are used mostly at 11, at 1 p.m. and
15 at 4 p.m., that is the time when all brigade commanders are on air to provide feedback
16 or report on the area that they are located in and the results of the operation that they
17 conducted. So they report on the incidents, the number of injuries or the number of
18 deaths that they faced, or whatever they collected from the attacks.

19 Q. [12:08:09] (Redacted)

20 (Redacted). Did you ever

21 get to know that Kony at one point ordered the arrest of Dominic Ongwen? Ordered
22 Otti to arrest Dominic Ongwen?

23 A. [12:08:50] When, when that order was given, then I think it was given when
24 I had already left the bush. Because I also heard that Dominic Ongwen was already
25 out of the bush, but by the time when I left the bush Dominic Ongwen was still a

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1 major and we were moving with them in the bushes in Kitgum.

2 But now I am told he is a brigadier, but I did not -- I was not informed or I did not get
3 any information of how that happened. Because I have to tell the truth, because I
4 made a pledge to tell the truth. Even in the traditional, in Acholi traditional you
5 have to tell the truth, especially when you take an oath of telling the truth.

6 Q. [12:09:52] Otherwise you might be struck by lightning if you lie on oath.

7 PRESIDING JUDGE SCHMITT: [12:10:02] Is this the case or this is not --

8 MR AYENA ODONGO: [12:10:06] It is the case.

9 PRESIDING JUDGE SCHMITT: [12:10:08] It is. Okay. So this is, the case is of
10 course a little bit too, too strictly put. There might be beliefs that could indicate this.

11 MR AYENA ODONGO: [12:10:18] Can I ask him?

12 PRESIDING JUDGE SCHMITT: [12:10:19] Why not? Why not? But I just
13 wanted to know if it was simply a --

14 MR AYENA ODONGO: [12:10:25] Mr Witness.

15 PRESIDING JUDGE SCHMITT: [12:10:27] -- remark or more.

16 MR AYENA ODONGO: [12:10:29]

17 Q. [12:10:29] Mr Witness, the Court would want to know why the Acholi, and
18 even the Langi, are very strict about oath, when you take an oath you must abide by it.
19 What would happen if you tell a lie on oath?

20 A. [12:10:48] That is in Acholi tradition. When I was born I found it existing
21 already, the Acholi or the Langi people believe in that. In respect to, for instance, if
22 you steal something or you do something and you are actually refuting that it's not
23 true, and yet there are all allegations and indications on you that you are the ones that
24 did it, so you will be asked to take an oath. If you're a male you will say that three
25 times, that if indeed I did this thing, then this and that should happen to me. So

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1 most times the Acholi and Langi people want the truth to be spoken.

2 PRESIDING JUDGE SCHMITT: [12:11:50] Thank you very much. That is quite an
3 interesting cultural aspect. Thank you.

4 Please continue, Mr Ayena.

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

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9 PRESIDING JUDGE SCHMITT: [12:14:33] I think we better go to private session.

10 I think this -- because people might -- yeah, I don't want to specify it. We go to
11 private session, then I explain it.

12 MR AYENA ODONGO: I think that is better.

13 (Private session at 12.14 p.m.)

14 (Redacted)

15 (Redacted)

16 (Redacted)

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- 25 (Open session at 12.31 p.m.)

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1 THE COURT OFFICER: [12:31:01] We are back in open session, Mr President.

2 MR AYENA ODONGO: [12:31:11]

3 Q. [12:31:17] Mr Witness, did you while you were in the bush ever get to know
4 that Dominic Ongwen was at any one time in the sickbay after being injured?

5 A. [12:31:41] Yes, I got to know.

6 Q. [12:31:46] Do you remember approximately when this happened?

7 A. [12:32:01] I cannot recall the exact period that it happened, but I think it could
8 be -- I first saw him in, in the year 2000 when I first saw Dominic Ongwen from Tegot
9 Kilak, and that was my first time of seeing him. And then the other injuries that he
10 could have got are later on. I'm not sure I remember. Because in the LRA you can
11 get injured any time. I think I, I saw him at that time, but in the LRA you can get
12 injured anytime and anywhere.

13 Q. [12:33:04] Now, can you tell Court what -- I mean, whether a commander who
14 was injured and was in the sickbay was still in active command, still held active
15 command responsibility?

16 PRESIDING JUDGE SCHMITT: [12:33:34] Let me put it this way, command, not
17 command responsibility.

18 MR AYENA ODONGO: [12:33:41] Yes.

19 PRESIDING JUDGE SCHMITT: [12:33:42] This is a legal term, so we should not
20 use the legal terms in a question.

21 MR AYENA ODONGO: [12:33:47] Yes.

22 Q. [12:33:48] Was he still effectively in command of his soldiers or his brigade, if
23 he was a brigade commander, or a battalion commander, for that matter?

24 A. [12:34:12] I earlier said that a brigade commander can be substituted when
25 someone is injured, and therefore work will go on. A brigadier or someone

1 who -- someone who can replace him will always be there. The office cannot be held
2 by only one person.

3 Q. [12:34:46] And if that commander was injured and he was in the sickbay,
4 would he still retain all the communication equipments that he ordinarily held when
5 in active command?

6 A. [12:35:19] A brigade is like a front-lined group and they always go to battle all
7 the time. The commander of such a brigade would be carried, would be carried and
8 taken to where he should be treated from, like a sickbay. If a sickbay was, say, in
9 Tegot Kilak where Kwoyelo had a radio call, his role was to control and manage the
10 sick people. When the commander is injured, that commander would go to a
11 sickbay and the radio would remain within the brigade. But if there are many radios
12 in the same brigade, then the brigade commander who gets injured will go with
13 another -- with one of the radio calls, but he will not be able to give or issue orders.
14 He would be there as a sick person and would only resume giving orders or giving
15 instructions when he's out of the sickbay. The person who replaced him will be
16 working.

17 Q. [12:36:37] Thank you. We had earlier on talked about this gentleman called
18 Lukwiya Charles and the other lieutenant colonel who were arrested and punished
19 for failing to attack a Mamba. When were they finally released, under what
20 circumstances were they released?

21 A. [12:37:27] When they were punished and they had finished their punishment
22 they were later on released. First they were caned and then later on they were freed
23 and started living normally among the other soldiers, which means that if there was
24 an operation, they would also go for operation, normally.

25 Q. [12:38:00] Now, Mr Witness, was it the case that being sent to the front line

1 was also one of the punishments that could be given to a commander.

2 A. [12:38:27] Yes, that punishment existed. You could be taken to a battlefield.

3 For instance, when they sent these people to Kitgum Matidi to go and shoot down the
4 armoured vehicle, they would select another location for you to go and attack. That
5 can also be in form of a punishment because you failed to execute an order which was
6 given to you earlier.

7 Q. [12:39:02] Now let's talk about -- just a small follow-up question on Vincent
8 Otti and Kony. What would you say was their relationship? Did he, for instance,
9 fear him or did they relate as equals?

10 A. [12:39:45] It is obvious that Kony is senior and that Otti Vincent feared him.
11 It is Kony who appointed Otti to be his second in command as someone who
12 deputises him in the LRA. It is not only in the case of Otti. If you follow the history
13 of the LRA, there were several changes which were made in the command structure.
14 Otti replaced someone called Matata when Matata was sick. Otti Vincent was
15 therefore appointed immediately, replacing Colonel Matata as a deputy LRA
16 commander.

17 In the LRA you can also be removed any time. Even me, I could have been
18 appointed as a junior person to be second in command.

19 Q. [12:40:55] Now, in this case when you were transferred -- your Honours, can
20 we go to a short private session again?

21 PRESIDING JUDGE SCHMITT: [12:41:09] Short private session then, yeah.

22 (Private session at 12.41 p.m.)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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24 (Open session at 12.55 p.m.)

25 THE COURT OFFICER: [12:55:19] We're back in open session, Mr President.

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1 MR AYENA ODONGO: [12:55:28]

2 Q. [12:55:29] Just, Mr Witness, just before we came back to open session, I was
3 asking you whether you were aware that on the other side of Kony there were also
4 signallers who communicated on behalf of Kony rather than Kony communicating
5 directly?

6 A. [12:55:59] Yes, they were there. Even with Kony, he had people who would
7 speak on his behalf. When he's in Uganda, the signallers would be the one to speak.
8 But the name of Kony would be the one which would be used, like Four Seven,
9 Two Victor as a code name. It would not be Kony himself but the signaller would
10 use the code name which is used by Kony.

11 Q. [12:56:35] So in that case, Mr Witness, would I be right to say that it was
12 possible that the order to Vincent Otti from Kony to arrest Dominic Ongwen (Redacted)
13 (Redacted)

14 A. [12:57:14] I had no knowledge about the arrest of Dominic Ongwen by the
15 time I was in the bush and even up to when I was leaving the bush. But when an
16 order comes, even if it comes through a different person or a signaller, it is usually the
17 same as from Kony because Kony would be sitting close to the signaller, giving him
18 directives on what to say and would just use the voice of the signaller.

19 Q. [12:57:53] (Redacted)
20 (Redacted)

21 A. [12:58:17] It is possible because I never learnt of it.

22 MR AYENA ODONGO: [12:58:24] Mr President, I think this is a logical point.

23 PRESIDING JUDGE SCHMITT: [12:58:28] I think I don't have to remind you that
24 you have committed yourself, so to speak, yesterday to finish in the afternoon session.

25 MR AYENA ODONGO: [12:58:38] Maybe even earlier than I committed myself to.

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1 PRESIDING JUDGE SCHMITT: [12:58:43] Yes, very good. I think that is an
2 expression that you like to use. It's music to my ears now.

3 We have now the lunch break until 2.30.

4 THE COURT USHER: [12:58:56] All rise.

5 (Recess taken at 12.58 p.m.)

6 (Upon resuming in open session at 2.37 p.m.)

7 THE COURT USHER: [14:37:29] All rise.

8 PRESIDING JUDGE SCHMITT: [14:37:50] Please continue, Mr Ayena.

9 MR AYENA ODONGO: [14:37:52] Yes. I was alive to that, that's why I didn't take
10 your order to sit down, your Honour.

11 Q. [14:38:06] Good afternoon, Mr Witness. I hope you had a restful lunchtime and
12 a nice lunch.

13 Your Honours, and Mr Witness, I would now like to play for the witness an original
14 intercept not enhanced, an original communication which captures a communication
15 between the LRA members from around 20 April 2003. Yes.

16 And this intercept communication is referred to in tab 30 of the Defence binder as
17 UGA-OTP-0241-0313. This is audio file track 2.

18 And, Mr Witness, I want you to pay very particular attention to what you are going to
19 listen to, and I would prefer that maybe you take notes so that at an appropriate time
20 you may answer some questions that I will be putting to you about them.

21 MS GILG: [14:39:50] Your Honours --

22 PRESIDING JUDGE SCHMITT: [14:39:50] I think it is tab 31. And Mrs Gilg, please.

23 MS GILG: [14:40:42] We just want to verify that the witness is not actually looking at
24 the transcript of the audio at this point.

25 PRESIDING JUDGE SCHMITT: [14:40:03] I think it is not displayed on the evidence

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1 channel and the madam beside the witness will make sure that he does not have
2 a look on tab 31, which is the correct tab.

3 Yes. So I think we can play it, and I think we exercise it the same way like we did
4 when the Prosecution played these two audio recordings to the witness, I would
5 suggest. And perhaps, for the information of the Bench, we are talking here about
6 an audio recording that was provided by the Office of the Prosecutor, if I understand
7 it correctly.

8 MR AYENA ODONGO: [14:41:06] Yes.

9 MS GILG: [14:41:10] Yes, your Honour, the audio was provided. Tab 31 was not
10 provided by the Prosecution.

11 (Playing of the audio excerpt)

12 MR AYENA ODONGO: [14:42:00]

13 Q. [14:42:01] Mr Witness, did you pick every word in the communication? Or do
14 you want it repeated?

15 A. [14:42:26] I request that the audio be replayed because I -- my first time of
16 hearing to it.

17 PRESIDING JUDGE SCHMITT: [14:42:35] Yes, and I think we are not in the position
18 here that, for example, it was when you are during investigations, it can be played
19 10 times, for example. But I think a second time would really serve the purpose and
20 then we look into what the witness really has understood and we ask him.

21 MR AYENA ODONGO: [14:42:59] Yes. Much obliged.

22 PRESIDING JUDGE SCHMITT: [14:43:00] Mrs Gilg is rising again.

23 MS GILG: [14:43:03] Your Honour, yes. Excuse me, your Honour, just for the
24 record, it would be advisable to have the timestamp that is being played since it
25 doesn't appear to be the entire --

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1 PRESIDING JUDGE SCHMITT: [14:43:11] Indeed. Indeed, that is absolutely true,
2 so that we can also follow a little bit better. Perhaps you tell us, or your colleague
3 can tell us, where we are at the audio recording.

4 MR AYENA ODONGO: [14:43:24] This is minute 6.58 to 7.22.

5 PRESIDING JUDGE SCHMITT: [14:43:38] And perhaps also for our information, we
6 have here numbers here on the side so that we can follow, the Bench, because we
7 don't have the timestamps here in the transcript.

8 MR AYENA ODONGO: [14:43:54] (Microphone not activated)

9 PRESIDING JUDGE SCHMITT: [14:43:56] I didn't get it, unfortunately.

10 MR AYENA ODONGO: [14:43:58] 7581.

11 PRESIDING JUDGE SCHMITT: [14:44:04] Thank you very much. I think that
12 will do.

13 (Playing of the audio excerpt)

14 MR AYENA ODONGO: [14:45:00]

15 Q. [14:45:01] Mr Witness, do you recognise who is speaking and speaking to who?

16 A. [14:45:22] The person who mentioned the word "kafi", that "I had prepared
17 some kafis to go to someplace", that was Otti Vincent. The person who responded
18 I cannot recognise. In the LRA, "kafi" means the foot soldiers. That is what I know
19 in terms of signal language. So they had prepared some foot soldiers, that is how I
20 understood.

21 Q. [14:46:14] Did you recognise the voice of Joseph Kony?

22 A. [14:46:30] In the -- in this recording it's -- it was unclear. It was unclear to me
23 because I do not know that person.

24 Q. [14:46:48] I think we shall play for you again the last bit of the communication.

25 PRESIDING JUDGE SCHMITT: [14:46:55] Okay, then last time, yes. I allow it for

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1 a third time but then --

2 MR AYENA ODONGO: [14:47:01] With your permission.

3 PRESIDING JUDGE SCHMITT: [14:47:02] Yes, because it's short.

4 MR AYENA ODONGO: [14:47:05] Yes. It is so short that you might be tempted to
5 allow me to play it maybe five more times.

6 PRESIDING JUDGE SCHMITT: [14:47:13] I think I am not inclined to allow it five
7 more times, but let's give it a try for the third time.

8 MR AYENA ODONGO: [14:47:20] Yes.

9 (Playing of the audio excerpt)

10 MR AYENA ODONGO: [14:47:49]

11 Q. [14:47:51] Is that better, Witness?

12 A. [14:47:55] Yeah, this was clear. I heard it. This is not Kony's voice.

13 Q. [14:48:05] Who was that person talking first?

14 A. [14:48:19] That was Otti Vincent.

15 Q. [14:48:28] Did you hear that word "muko"? Somebody was saying something
16 to do with "muduku", he would not be having a gun in his hand and that kind of
17 thing. Did you hear that? Or maybe I put it differently. What was the person to
18 whom Otti Vincent was talking, talking about, what was he saying in respect to that
19 word "muko"?

20 A. [14:49:19] The word "muko" in the signal language, when I refer it to what Otti
21 is talking about in reference to kafi, the young kafi, I guess is talking about weapons
22 like B-10 or SPG-9. The SPG-9 gun is bigger than the B-10 gun that -- he had sent it
23 with that person or those person that he is saying that should go with them. The
24 person who responded "muko", I cannot recognise him. But the word "muko" was
25 mentioned, yes.

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1 Q. [14:50:24] (Microphone not activated)

2 PRESIDING JUDGE SCHMITT: [14:50:25] Microphone, please.

3 MR AYENA ODONGO: [14:50:26] Oh, sorry.

4 Q. [14:50:29] Mr Witness, I want you to go to tab 31, UGA-D26-0026-0001 at
5 page 0005.

6 PRESIDING JUDGE SCHMITT: [14:50:56] Mrs Gilg is rising, or standing already,
7 not rising.

8 MS GILG: [14:51:00] Your Honours, with respect to tab 31, we do not object to the
9 use of the item, but we do have observations to make in respect of how it is used.

10 And I have two points to make, your Honours.

11 The first is related to the timing of disclosure. The Prosecution received this
12 transcript at the very last minute, a little after 8 a.m. this morning, rather than before
13 the witness commenced testifying. Of course, we do understand that extenuating
14 circumstances can happen from time to time, so in this instance we do not seek or
15 request to prevent the Defence from using the transcript.

16 Nevertheless, this late disclosure has prevented the Prosecution from having
17 sufficient time to properly evaluate the accuracy of the transcript against the audio, an
18 opportunity that the Defence has been afforded in the reverse scenario. Since
19 receiving the transcript this morning, we have been able to conduct a limited review
20 of it, and in so doing we have identified a number of issues, including likely
21 mistranscriptions of numbers, including numbers that appear to relate to call signs, as
22 well as the exclusion of words that are clearly audible on the audio, even to
23 a layperson, like non-Acholi speakers as ourselves.

24 This leads me to my second point, which relates to the approach to be adopted with
25 the witness. We submit that special care should be taken here in the interest of

1 fairness to the witness, and we know, of course, that your Honours are always
2 vigilant in this respect. And what we propose is that the same approach is adopted
3 as the Prosecution adopted at the interview stage, and this is the first time, I believe,
4 that the Defence has used a transcript with a witness that had not previously been
5 annotated by the witness.

6 And I make these submissions, I note, in an abundance of caution because perhaps
7 my learned friends intended to proceed in the way that we propose. But in the
8 interest of clarifying the matter before we proceed further, what we propose is that
9 before the witness is asked to confirm or discuss any particular passages of the
10 transcript, that he is afforded the opportunity to listen to the audio of that short
11 passage, if he so requires, and thereafter have the opportunity to make any
12 corrections to that passage that he sees fit, before being asked to verify the accuracy of
13 the portion, before he is asked to make comments about particular words or a
14 particular meaning or a particular content.

15 And, yes, maybe our proposed approach may not be the most expeditious approach,
16 but we submit that it is the fairest one to the witness and in the interest of having the
17 most reliable record.

18 PRESIDING JUDGE SCHMITT: [14:53:55] Mr Obhof.

19 MR OBHOF: [14:53:57] Your Honour, thank you.

20 In reference to the ability to go through the transcript, we maintain the Prosecution
21 has had these audiotapes for quite a few years now and not to mention at
22 UGA-OTP-0274-2886 the Prosecution actually did a scan of this audio track, track 2.
23 And the notes that they put down are "This track has poor audio quality". So instead
24 of writing a summary of what they heard, they merely said it has poor audio quality,
25 which if they could not hear this a year or two ago or whenever they did this scan, we

1 received this in December 2016, I wonder why they can automatically hear it now,
2 your Honour.

3 PRESIDING JUDGE SCHMITT: [14:54:49] I think we don't have a problem to having
4 this transcript used. But, first of all, I would like to understand how it, how this
5 transcript was produced because it looks completely different to what we had until
6 now. Perhaps you can clarify that, Mr Obhof.

7 MR OBHOF: [14:55:07] Yes. We had these audio tracks spliced and emailed to me
8 via or ICC EPN email address while I was in Gulu, Uganda. I gave it to one of our
9 resource persons who speaks fluent Acholi and fluent English, I believe his recent test
10 scores from June I believe are C2 English, and he listened to it. He ended up doing it
11 yesterday because he accidentally transcribed track 1 instead of track 2 and he did it
12 last night.

13 PRESIDING JUDGE SCHMITT: [14:55:39] But then of course -- so first of all, and
14 you do not object to that, that the transcript is, in principle -- or the audio is used, in
15 principle, not the transcript. With the transcript I have also a problem because this is
16 very new and it would have to be verified if the translation is correct. So that is why
17 I have a little bit of problem with that.

18 So a solution would be the approach that you have suggested, Mrs Gilg, but
19 nevertheless, this would cost a lot of time I would say. We would have to give the
20 witness simply the time to listen it, to listen to it in silence and even then we would
21 not have a, a translation that we would or we could say that it is completely reliable.
22 So I see -- you know, if we start such a process and we would have to go to more than
23 one -- dozens of audios, we would have to exercise here something that would cost us
24 days and days. So I am a little bit, I have a little bit of problem with that, frankly
25 speaking, Mr Obhof, to come with a translation that has not been verified.

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1 MR OBHOF: [14:56:51] Your Honour.

2 PRESIDING JUDGE SCHMITT: [14:56:52] So we could, we could of course also
3 proceed now and then it's up to the assessment of the Chamber what we make out of
4 it, but of course we have, I think, all followed here when the witness talked about it
5 the translation that is given here and, yeah, it immediately comes to your mind that
6 there might be differences.

7 MR OBHOF: [14:57:12] We also had the logbook, your Honour, where it discusses
8 this conversation as well, of which those are literal translations and interpretations of
9 persons who are not certified by the ICC.

10 PRESIDING JUDGE SCHMITT: [14:57:27] So let me ask you, Mr Ayena or Mr Obhof,
11 or the whole Defence team, how many passages would you want to put to the witness,
12 or is this the only one?

13 MR AYENA ODONGO: [14:57:40] (Microphone not activated)

14 PRESIDING JUDGE SCHMITT: Microphone.

15 MR AYENA ODONGO: This is about the only one. But when it comes to the
16 logbook which is relevant to this, we have about one, two, three, four passages which
17 relate to more or less the same thing.

18 PRESIDING JUDGE SCHMITT: But nevertheless these are not audios, the logbook.

19 MR AYENA ODONGO: Yes.

20 PRESIDING JUDGE SCHMITT: So that is different then.

21 MR AYENA ODONGO: [14:58:07] Well, in relation to the, to the audio, I think the
22 passages we are talking about is just from paragraph 76 to paragraph 83 of the
23 transcript.

24 PRESIDING JUDGE SCHMITT: [14:58:35] And I understand this is the only passage
25 and the only transcript of an audio that you want to use.

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1 MR AYENA ODONGO: [14:58:41] Yes, your Honour.

2 PRESIDING JUDGE SCHMITT: [14:58:42] Yes. How long would your examination
3 last in the ordinary course of events?

4 MR AYENA ODONGO: [14:58:52] Not more than -- at most 20 minutes.

5 PRESIDING JUDGE SCHMITT: [14:58:58] So then technically would it be possible to
6 give the witness the opportunity to listen to this passage and make -- and follow
7 exactly what Mrs Gilg suggested.

8 MR AYENA ODONGO: [14:59:10] I think that would be fair.

9 PRESIDING JUDGE SCHMITT: [14:59:12] So and I think, you know, we are always
10 into expeditiousness, but if the fairness of the proceedings prevails, then I would
11 simply suggest that we abate for today and continue tomorrow at 9.30 with
12 the examination of this witness.

13 We give in the meantime the witness the opportunity to listen to it and to annotate it.
14 This would have to be served by the Registry. However, I think this -- I simply
15 understand that it is possible. And, by the way, this would give you the opportunity
16 perhaps to verify the translation and, if need be, exercise a redirect.

17 MR GUMPERT: [14:59:54] Yes. Your Honour, can I make this observation: In
18 the ordinary course of events if deadlines are complied with and the like, and I will
19 say no more about that, we will get the transcript, we will have a chance to look at it,
20 we can raise informally any issues about translation or transcription so that by the
21 time we come into the courtroom there will be a document where there isn't any
22 inter partes dispute. The problem which has arisen here is that this document, not
23 the recording, but this document, this particular, comes at the last minute and that
24 that's where the source of the problems is here I respectfully submit.

25 PRESIDING JUDGE SCHMITT: [15:00:30] Yes. And that is absolutely correct what

1 you are saying and what Mrs Gilg also has said. But nevertheless, I think we have
2 been, the parties and participants have at some points in time of these proceedings
3 been indulgent with each other and I think we should do it the same way here. And,
4 as I said, Mr Gumpert, I think the problem can be solved simply when you have half
5 a day more time to verify that. And of course, as I said, we, we -- the
6 expeditiousness is okay, but I think this is an exceptional case and I really understand
7 it to be exceptional, exceptional case where we have to take our time.

8 And I understand that the Registry is able and can give the witness the opportunity to
9 listen to it. And, yeah, I simply take it as a given.

10 So we abate the proceedings for today. Follow what I have said -- Mr Obhof, but
11 shortly, please.

12 MR OBHOF: Yes, shortly. We would just ask that the Registry do any translation
13 issues, or translation issues and not the Office of the Prosecutor because we have
14 noticed some issues with their translations that have gone to Mr Ongwen, but you we
15 do correct them.

16 PRESIDING JUDGE SCHMITT: [15:01:47] And I think also we have interpreters, we
17 have a language section, I think it should be manageable. And it should also be
18 possible for the Prosecution I think to, to really have an interpreter looking through
19 the material. Yeah? Do you think this is possible?

20 MR GUMPERT: [15:02:06] Yes. I agree with Mr Obhof, the parties have to make
21 their own decisions about accuracy. Meanwhile, the witness is being served by the
22 office -- by the Registry to get their view. And it may be that tomorrow we'll say,
23 well, we don't agree with the Defence - I hope this won't happen - about the
24 translation of this word and we don't agree with the Registry either. How your
25 Honours will resolve that I don't know.

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- 1 PRESIDING JUDGE SCHMITT: [15:02:31] No, but that is -- no, the Judges have also
- 2 to do some things so in the end they would have to, they would have to, they would
- 3 have to assess it in the end. And I would also say, really, since this is something new,
- 4 nobody would object to having you a redirect if need be tomorrow.
- 5 So we abate the proceedings. Continue tomorrow 9.30.
- 6 THE COURT USHER: [15:02:56] All rise.
- 7 (The hearing ends in open session at 3.02 p.m.)