

Trial Hearing
UGA-OTP-P-0403

(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 Thursday, 19 January 2017

8 (The hearing starts in open session at 9.31 a.m.)

9 THE COURT USHER: [9:31:53] All rise.

10 The International Criminal Court is now in session.

11 PRESIDING JUDGE SCHMITT: [9:32:05] Good morning, everyone. Good morning,

12 Mr Witness.

13 WITNESS: UGA-OTP-P-0403 (On former oath)

14 THE WITNESS: [9:32:13] Good morning, your Honour.

15 PRESIDING JUDGE SCHMITT: [9:32:14] A short announcement before we call the

16 case, we will start with P-16 on Monday, not tomorrow. We could perhaps have

17 started tomorrow afternoon, but the Chamber finds it logistically and finds it better

18 than to have a start and have a full day with three sessions from Monday on. So this

19 is an information for the parties and participants.

20 Would the court officer please call the case then.

21 THE COURT OFFICER: [9:32:41] The situation in the Republic of Uganda, in the

22 case of the Prosecutor versus Dominic Ongwen, case reference ICC-02/04-01/15.

23 PRESIDING JUDGE SCHMITT: [9:32:59] And for the presence I would ask as every

24 day the parties to introduce themselves.

25 MR ELDERFIELD: [9:33:03] Your Honour, Julien Elderfield. Beside me, Colleen

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1 Gilg and Ben Gumpert, Colin Black, Pubudu Sachithanandan, Ramu Bittaye and
2 Xinwei Liu.

3 PRESIDING JUDGE SCHMITT: [9:33:17] Mrs Massidda.

4 MS MASSIDDA: [9:33:19] Good morning, Mr President, your Honours. I am
5 Paolina Massidda. With me in courtroom Mr Orchlon Narantsetseg, Ms Caroline
6 Walter and Ms Jacqueline Atim. And I'm also pleased to inform the Chamber that
7 we have solved some issues in the field so Ms Jane Adong, field counsel, is also able
8 to follow the proceedings from the field.

9 Thank you.

10 PRESIDING JUDGE SCHMITT: [9:33:41] Thank you very much.

11 And Mr Manoba, Mr Cox.

12 MR MANOBA: [9:33:45] Good morning, your Honours. Joseph Manoba. My
13 colleague Francisco Cox, Ms Megan Hirst, our legal assistant; and Mr James Mawira,
14 case manager.

15 PRESIDING JUDGE SCHMITT: [9:33:57] Thank you very much, Mr Manoba.

16 And then for the Defence, please, Mr Odongo.

17 MR ODONGO: [9:34:02] Good morning, Mr President and your Honours. This
18 morning I'm accompanied by Charles Taku Achaleke, Mr Obhof Thomas, Roy Titus
19 Ayena, James -- I mean Gatarama, and our client, Mr Dominic Ongwen. I'm Krispus
20 Ayena Odongo.

21 Thank you.

22 PRESIDING JUDGE SCHMITT: [9:34:34] Thank you, Mr Odongo.

23 And as you know, it is now the turn of the Defence to examine the witness, and
24 whoever wants from the Defence has the floor.

25 MR TAKU: [9:34:45] May it please your Honours. I think we did indicate that we

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1 will raise a preliminary issue, I mean an issue before the Court this morning. It's
2 very, very urgent. We'll be very brief. And Mr Tom Obhof would raise the issue
3 with the Court, your Honour. It's very, very urgent because it involves other
4 departments of the Court who are working on the process now.

5 PRESIDING JUDGE SCHMITT: [9:35:12] I was not informed about that, but I trust
6 you. I know you, Mr Taku, when you say it's urgent. Then Mr Obhof has the floor
7 of course.

8 MR OBHOF: [9:35:22] Your Honour, we would like to go into a brief private session
9 for this.

10 PRESIDING JUDGE SCHMITT: [9:35:26] We go into private session.
11 (Private session at 9.35 a.m.)

12 THE COURT OFFICER: [9:35:32] We're in private session.

13 MR OBHOF: [9:35:40] If it pleases your Honour.

14 On Tuesday we sent an email to the Prosecution and to the Chamber about the
15 upcoming plans for the visit of Ms *Dilis Abang. We wanted to re-enforce that Ms
16 *Dilis Abang is not a witness.

17 Decided by the facts and circumstances of this case, the jurisdiction of this case ends
18 on 31 December 2005.

19 Another fact and circumstance of this case which was decided by the Pre-Trial
20 Chamber was that in April of 2005 the facts and circumstances state that P-227 was
21 abducted, who also stated that Ms *Dilis Abang was abducted her. Ms *Dilis
22 Abang is adamant that she was abducted in January. So if she was abducted by, if
23 227 was abducted in April 2005, meaning that her abduction would have taken place
24 in 2006 past the jurisdiction of this case.

25 Furthermore, Ms *Dilis Abang has also stated that she does not wish to testify for

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1 either party and that she wishes to remain alone. And that's all the Defence would
2 like to say, your Honours.

3 PRESIDING JUDGE SCHMITT: [9:36:56] And for the Prosecution, do you want to
4 respond to that?

5 MR GUMPERT: [9:37:06] Your Honours, this relates, I believe, to a request for a visit
6 at the, at the detention facility and is really extremely tangential to the business of the
7 Court of today.

8 The Prosecution made a written reply yesterday, which I think is comprehensive.

9 The Prosecution brought various matters to the attention of the Court and is satisfied
10 that the Court, the Chamber, I should say, will deal with the matter justly in the light
11 of those matters. So the answer, I'm sorry it's taken me a little time to gather my
12 thoughts, the answer to your Honour's question is no, we have said our piece.

13 PRESIDING JUDGE SCHMITT: [9:37:56] Thank you very much, Mr Gumpert.

14 I also would say that these are matters -- also for the future of these
15 proceedings -- that should be dealt with, of course primarily between the parties and
16 if no solution can be found, you can address the Court. But in these matters that
17 have not directly to do with what is going on here in the courtroom, we would
18 appreciate it as a Chamber if we would do that in written procedure and then we can
19 decide on it. You know, the Chamber does not really know the background about it,
20 so we cannot substantially really discuss this here.

21 So we will, if there is a request by you and if there is an answer by the Prosecution,
22 and then we will decide upon that.

23 So I'm just informed then, we would have to read of course that an email decision can
24 shortly be rendered. But as I said for the future, such matters that do not directly
25 pertain to the taking of the evidence, so to speak, here in the courtroom, we perhaps

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1 also addresses all parties and participants should be generally not addressed during
2 the oral hearing. Although you know that this Chamber is very much in Chamber of
3 the principle of orality, but this relates to the matters that have to do with the
4 listening to witnesses, examination, questioning, procedural matters that pertain with
5 these evidence takings.

6 Thank you for the moment. And this might do and you will receive a decision in
7 short, on short notice and then I would give Mr Taku, I think, the floor for the
8 questioning of the witness.

9 MR TAKU: [9:39:44] Thank you very much, your Honours.

10 PRESIDING JUDGE SCHMITT: [9:39:52] Thank you for being reminded for that, we
11 are still in private session. But I think we can go to open session.

12 MR TAKU: [9:39:58] Thank you, your Honour.

13 PRESIDING JUDGE SCHMITT: [9:39:59] So we do that first and then you can start.
14 Thank you for reminding me.

15 (Open session at 9.40 a.m.)

16 THE COURT OFFICER: [9:40:08] We're in open session, your Honour.

17 MR TAKU: [9:40:23] With your permission, your Honours, I can proceed. Your
18 Honours, we will be using primarily the folder that the Prosecutor used yesterday.

19 QUESTIONED BY MR TAKU:

20 Q. [9:40:41] Good morning, Witness.

21 A. [9:40:44] Good morning.

22 Q. [9:40:45] I think before coming to testify we met during the familiarisation
23 process?

24 A. [9:40:55] Yes, we did.

25 Q. [9:40:58] I will put in some questions to you, obviously not many questions.

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1 They will be direct questions. Obviously I will also expect short and direct answers,
2 if possible.

3 Now, Witness, at paragraph 3 of your statement, UGA-OTP-0272-0446, at page 446 in
4 tab 2 of the Prosecution folder. Do you have it before you, sir?

5 A. [9:41:46] Yes, I do.

6 Q. You stated that the Ugandan government intercepted and attempted to decode
7 LRA radio communications in order to inform UPDF combat operations against the
8 LRA, correct?

9 A. [9:42:08] That is correct.

10 Q. [9:42:09] And this would include in particular the interceptions of, apart from
11 the interceptions of these communications, the decoding of TONFAS, the
12 interpretation of proverbs, some in Acholi, some in Swahili, the directional findings
13 and human intelligence that were used?

14 A. [9:42:41] Sorry, directional finding, yes. Human intelligence did not form part
15 of the intercept operations.

16 Q. [9:42:48] Okay. In other words, directional findings, yes. With the exception
17 of human intelligence. These were used by the Ugandan Defence services in the
18 collection and evaluation of intelligence for this objective. By that objective I mean
19 to inform UPDF combat operations against the LRA.

20 Would I be correct to say that, sir?

21 A. [9:43:14] Yes. This was one of the ways to inform the UPDF combat operations
22 against the LRA. Human intelligence and other sorts of intelligence were used
23 outside of the intercept operations as well to the best of my knowledge. But in
24 relation to the intercepts, as I mentioned, human intelligence was not part of it,
25 however, this was one of the ways to inform higher level decision making in terms of

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1 combat operations against the LRA.

2 Q. [9:43:42] All right. But directional finding was part of it?

3 A. [9:43:50] Direction finding was part of it, yes.

4 Q. [9:43:52] Do you agree with me, sir, in other words, let me put it this way, at
5 paragraph 74 of this report, page 0470 of your statement, you stated that the CID
6 interceptors intercepted and recorded notes of what was said in a clear language over
7 the radio. Would that be correct, sir?

8 A. [9:44:24] Yes.

9 Q. [9:44:24] Among these services specified, the CID were a service that were
10 primary, the primary responsibility for criminal investigations?

11 A. [9:44:40] To the best of my knowledge, yes.

12 Q. [9:44:45] And therefore, part of the process, part of the aims, part of your duty
13 was to conduct, from these intercepts, to conduct further criminal investigations into
14 the activities of the LRA; would that be correct, sir?

15 A. [9:45:05] I don't know. I think that would be a question for the operatives of
16 the CID.

17 Q. [9:45:09] Thank you, sir.

18 So for a credible evaluation of the material or the information that was at your
19 disposal, you needed to look, as you did, at the intercepts, all the processes, including
20 the direction finding; is that correct, sir?

21 A. [9:45:45] Yes. I did, I did look into the direction-finding operation. I shortly
22 accounted for it. However, I can did not go into much detail with regards to it.

23 Q. [9:46:01] Witness, at paragraph 43, page 0459 you stated that the UPDF did not
24 intercept the LRA satellite phones, mobile phones and walkie-talkie communications;
25 is that correct, sir?

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1 A. [9:46:27] It is correct that I did state that. And my statement comes, is based on
2 statements of the various UPDF witnesses.

3 Q. [9:46:34] Did you find any records among the documents in Ringtail that you
4 reviewed explaining why these communications were not intercepted?

5 A. [9:47:06] I vaguely recall one of the UPDF witnesses mentioning that at the time
6 they did not have the technical capacity to do so. And I want to emphasise I vaguely
7 recall that.

8 In addition to that, if I may add, I believe one of the witnesses also talked about in
9 relation to the walkie-talkies, because they are short range radios, somebody would
10 need to be in close proximity to the person sending the signal in order to receive it.

11 Q. [9:47:44] Witness, yesterday in your testimony you testified that although they
12 were instructed to work independently, the interceptors did discuss their works on a
13 daily basis. And this refers to your statement also, also is reflected at paragraph 44,
14 page 0460. Do you recall that, sir?

15 A. [9:48:25] Yes, I do.

16 Q. [9:48:28] Did you find any records or information in the Ringtail explaining why
17 they violated laid down procedure in this regard?

18 A. [9:48:45] Sorry, can you repeat the question, please?

19 Q. [9:48:47] Did you find any records or information in the Ringtail explaining why
20 they violated laid down procedure in this regard?

21 A. [9:49:02] No, I did not. I recall some of the witnesses mentioning that they
22 were talking about things other than LRA communications as well. But in relation to
23 LRA communications, it was regarding the code breaking and the individuals on air,
24 from what I recall. But as to why specifically, I do not recall coming across any
25 account of that.

1 Q. [9:49:35] Witness, in the course of your analysis, did you come across reports
2 indicating that the government interception officials proceeded to voice identification
3 of various intercepts, audio intercepts shortly after the interceptions were collected in
4 order to inform the military operations?

5 A. [9:50:13] So my understanding is that they performed voice identification in
6 realtime as they were listening to the LRA intercepts. So the voice identification was
7 based either on their recognition of the individual talking according to their pet traits
8 or mannerisms or according to their call sign, or both.

9 Q. [9:50:38] And those are reflected on these reports?

10 A. [9:50:42] Yes. If not in the body of the reports to the degree that I just described
11 it, most certainly in the footnotes of the report of the relevant paragraphs.

12 Q. [9:50:54] Were you provided an acoustics report of voice analysis, or the voices
13 in original versions or in the hand versions of the audios of intercepted LRA radio
14 communications?

15 A. [9:51:20] That varied from one witness to another. I was not involved myself in
16 those interviews. So based on the witness statement itself, and the audio intercept
17 transcript that was attached as an annex to the statements of the various witnesses
18 performing voice identification, in the statement of the witnesses themselves, the ERN
19 of the audio files was indicated. And the ERN, based on the Excel spreadsheet that
20 we reviewed yesterday, would indicate whether it was an original audio file or the
21 enhanced version that was played to the witness.

22 Q. [9:51:58] Therefore my question is, apart from that material that you saw, that
23 you have just described, were you further provided with an acoustics report, if any
24 was conducted, of voice analysis, produced by a voice analyst? Were you provided
25 with that?

1 A. [9:52:21] No. My understanding is that the individuals, the witnesses that were
2 performing voice identification did not themselves perform any technical acoustics
3 analysis.

4 However, the OTP and the company that I mentioned yesterday for the purposes of
5 enhancing particular audio files did perform or did produce a record of the acoustics
6 analysis, a technical record of the enhancements that they performed. However, that
7 was too technical for me to be able to pull any value out of them.

8 Q. [9:53:04] And were you provided any reports by a voice analyst? Either a voice
9 analyst from, voice analyst of those audios.

10 A. [9:53:26] Sorry, do you mind rewording the question?

11 Q. [9:53:30] Were you provided any reports issued by a voice analyst?

12 A. [9:53:35] The individuals performing the voice identification did not produce a
13 report in and of itself. As I mentioned, they did describe the various words that they
14 managed to recognize that did not appear in the original transcript that may have
15 appeared as unintelligible in the original transcript. So they did account for that in
16 their statement, as well as the annotated transcript itself was attached as an annex to
17 the statement of those individuals.

18 Q. [9:54:08] Now let us get out of the context of the audios and let's focus a bit on
19 Mr Ongwen. Did you see in the Ringtail or were you provided any information
20 indicating that a voice analysis of Mr Ongwen was conducted when he came into the
21 custody of the ICC?

22 A. [9:54:43] I'm not sure what you mean by "when it came into the custody of the
23 ICC." But the voice analysis was done by particular witnesses, individuals in the
24 manner that I just described.

25 Q. [9:54:59] What about Mr Ongwen when he surrendered and was brought here to

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1 the Court?

2 A. [9:55:03] Oh, on him individually?

3 Q. [9:55:05] Yes. Have you seen it?

4 A. [9:55:06] I am not aware of that.

5 Q. [9:55:10] Now, in your statement, your report at paragraph 47, page 0460, you
6 wrote that according to P-0029 the process of recording of the message on audiotapes
7 and summarising them into logbooks was only developed in 2002 or 2003, that prior
8 to that they did not see the importance of recording voices. The final record
9 explained why the process of recording did not exist before 2002.

10 A. [9:56:31] Other than that they did not see the importance of it, I cannot recall
11 anything else.

12 Q. [9:56:41] At paragraph 62, page 0465, you wrote that "the ISO never received
13 any financial assistance from the ICC," that is the Office of the Prosecutor, "for the
14 interception operation in Gulu." Can you recall?

15 A. [9:57:09] Yes, it is written in the last sentence of paragraph 62.

16 Q. [9:57:13] At paragraph 74, page 0470, are you at that page?

17 A. [9:57:30] Yes, I am. Thank you.

18 Q. [9:57:33] You stated that, citing a particular witness, "that the ICC never
19 contributed to the CID's LRA radio communication interception operation,
20 'financially or otherwise.'" Do you also recall that?

21 A. [9:57:51] Yes, I do. That is the last sentence of paragraph 64.

22 Q. [9:57:57] Did you find any records establishing that the UPDF received any
23 formal assistance from the Prosecutor in their enforcement of the listening and
24 recording of LRA messages?

25 A. [9:58:20] Yes. I believe in one of the footnotes basically one of the witnesses

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1 mentions, I believe it was P-0003, mentions that he received from the ICC, so from the
2 OTP, a tape recorder and some pens in order to be able to continue audio recording
3 the messages and conducting his work.

4 And as I mentioned I believe in one of the footnotes, I also reference the receipt, that is
5 located in Ringtail with an ERN number, for the, for the purchase of a tape recorder
6 and pens.

7 Q. [9:58:57] That would be in what year, sir?

8 A. [9:59:01] 2005 from what I recall. But let me just quickly go back and see here.
9 Footnote 170 of my report, that is page 0459, references the statement of P-03 as well
10 as, what's it called, ERN number dated 31 June 2006.

11 Q. [9:59:36] Did you find any records, suggestion that this assistance extended to
12 developing a protocol on intercepting, recording and decoding intercepted LRA
13 communications?

14 A. [9:59:55] Well, according to the witness statements that I've reviewed, this
15 protocol, this process of intercepting and recording LRA radio communications was
16 pre-established in 2002-2003, as we mentioned previously. So the provision of a tape
17 recorder in mid-2006, I don't see the correlation with that having any effect on the
18 pre-established, pre-established processes internal to the UPDF.

19 Q. [10:00:29] Did you obtain a copy of this protocol?

20 A. [10:00:31] Nothing external to the witness statements.

21 So just the protocols were explained through the various witness statements.

22 Q. [10:00:42] Now, was there a uniform protocol that was available to all the
23 services involved in interception and the decoding, or each service developed its own
24 protocol?

25 A. [10:01:04] I believe each service developed its own protocol in the sense that the

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1 UPDF -- I do not believe that the UPDF and the ISO started audio recording LRA
2 intercepts at the same time. I cannot recall which organisation started audio
3 recording them first, but to me that is an indication of different standard operating
4 procedures, different protocols.

5 In addition to that, between the ISO and the UPDF, during the charged period they
6 intercepted -- their processes were basically the same at the Gulu location.

7 Outside of that, the various UPDF intercept operations in other locations did not
8 audio record LRA intercepts. Some of them were destroying their rough notes.

9 Others were passing on their longhand logbooks back to Gulu and Kampala, which to
10 me indicates different processes for each and every one of those UPDF intercept
11 operations outside of Gulu.

12 And the CID, the way that the CID witnesses accounted for their intercept operation,
13 that one strikes me as in many ways different from the UPDF and ISO ones, in the
14 sense that they did not audio record anything. They did not attempt to break the
15 TONFAS codes and merely accounted for what they managed to understand in clear
16 language.

17 Q. [10:02:45] Was any of these protocols process, was it reduced into writing, a
18 document, that if one officer came on board he would pick that document and look at
19 that document and follow the direction of the protocol, or they would explain to your
20 Honour, they would explain orally in the witness statements?

21 A. [10:03:10] I do not know. That would be the short answer. However, many of
22 the intercept witnesses did say that they were trained on the job. So I believe only a
23 number of them, a small number of them, possibly two if I recall correctly, specified
24 that they received formal interception training, signals training prior to being
25 involved in the LRA intercept operations. And even those individuals, as well as the

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1 ones who did not receive any such training in the past, learnt their tasks on the job,
2 learnt on the job.

3 Q. [10:03:47] In your report, please turn to your report at paragraph 47, page 0461,
4 are you there, sir?

5 A. [10:04:05] I am. Thank you.

6 Q. [10:04:06] You stated there that "The Gulu operatives made their notes in
7 English, although the LRA conversations were in Acholi."

8 A. [10:04:18] Yes.

9 Q. [10:04:19] Do you remember that?

10 A. [10:04:20] I do.

11 Q. [10:04:23] Did you find in Ringtail any records or information establishing that
12 the transcription on the intercepted LRA communications from the original Acholi in
13 which the communications occurred, and this includes the Acholi proverbs, the
14 Swahili, in which Kony sometimes communicated, did you find that they were done
15 and certified by linguists to ensure that the context of some messages intercepted
16 were neither distorted or diluted during the translation and transcription process?

17 A. [10:05:09] In the materials that I reviewed, there was no indication whatsoever
18 that professional linguists were hired to perform these tasks. However, it is
19 apparent from the statements that they did involve people who spoke Lwo, if
20 not -- and who were familiar with the Acholi language to perform the interception
21 because they were familiar with the language, its many nuances, and they were
22 deemed to be familiar with it to a sufficient degree in order to be able to effectively
23 perform their duties.

24 Q. [10:05:48] Did you in your review discover or find any indication that these
25 individuals were involved, that their names and their qualifications were recorded in

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1 these notes that were later on sent either to the fourth division or to Kampala for the
2 purposes of informing the war operations, these individuals who participated in the
3 transcriptions?

4 A. [10:06:17] The witnesses that were interviewed for the purposes of the LRA
5 radio communication intercepts did provide a biography at the beginning of their
6 witness statements. And in those biographies, they would outline what professional
7 training they have covered, they have received.

8 Q. [10:06:37] Now, my question relates to the linguists, the question about the
9 linguists, the individuals that you said was obvious, or perhaps you received some
10 information I do not know, I can't remember, who were involved, whom these
11 officials doing the interception brought on board to assist them in trying to either
12 transcribe or translate from Acholi to English for the purposes of their reports?

13 A. [10:07:14] I have not come across any indications whatsoever of professional
14 linguists being hired in order to help the UPDF or the ISO or the CID to perform any
15 translations from Acholi into English.

16 Q. [10:07:30] Witness, your statement at paragraph 60, page 0464, are you there,
17 sir?

18 A. [10:07:44] I am. Thank you.

19 Q. [10:07:46] You wrote that a direction finding team, you wrote about a direction
20 finding team who focused on determining the location of LRA commanders
21 transmitting over LRA radio system.

22 Did you find any records explaining how the directional finding was conducted and
23 what results were reached?

24 A. [10:08:20] Yes, I did. I believe that is explained to great detail actually in the
25 witness statement of P-337, and that individual was in charge of the direction-finding

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1 operation out of Gulu and describes the process through which the UPDF conducted
2 its direction finding.

3 Q. [10:08:47] Again in your report, sir, at paragraph 99, page 0476, are you there,
4 sir?

5 A. [10:09:03] I am, thank you.

6 Q. [10:09:04] You mentioned witnesses who were involved in direction-finding
7 missions and indicated that P-0029, based in Kampala, was a supervisor of UPDF's
8 LRA radio interceptions and direction-findings operations. Can you remember, sir?

9 A. [10:09:28] I can, yes.

10 Q. [10:09:30] In the course of your analysis, sir, do you find records, any records
11 detailing the procedures -- I withdraw that question, sir. You've answered. I'm
12 sorry.

13 A. [10:09:50] No problem.

14 Q. [10:09:55] Now, again, the next question was answered, I won't bother you on
15 that again.

16 Witness, in your statement at paragraph 89, page 0473, you wrote, quote -- are you
17 there, sir?

18 A. [10:10:20] I am. Thank you.

19 Q. [10:10:22] Quote, "The OTP is in possession of a number of UPDF intelligence
20 reports which were produced at Kampala headquarters of the Chief of Military
21 Intelligence, a branch of the UPDF. The INTREPs contain the date and time of an
22 LRA radio communication, the location of various LRA commanders (in northings
23 and eastings) provided by UPDF direction finding team."

24 Is that correct, sir?

25 A. [10:11:06] Yes. We covered that yesterday in one of the tabs about the

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1 INTREPs.

2 Q. [10:11:14] During your testimony yesterday, sir, you discussed with the
3 Prosecutor the following intelligence reports. In order not to waste precious time let
4 me just list all of them together. At tab 7, that is UGA-OTP-0025-0423. Have you
5 seen that, sir?

6 A. [10:11:54] Yes.

7 Q. [10:11:54] At tab 25, UGA-OTP-0017-0150. Are you there, sir?

8 A. [10:12:21] I am. Thank you.

9 Q. [10:12:22] Now, when you are there, have a close look because I'll ask you
10 questions that follow after I've read.

11 At tab 34, sir, UGA-OTP-0017-0268. Are you there, sir?

12 A. [10:12:52] I am.

13 Q. [10:12:53] And at tab 40, UGA-OTP-0017-0353. Thank you, sir.

14 Now, Witness, when you read the heading that's the title of these various reports you
15 find that they were compiled based on direction finding teams' results; is that correct?

16 A. [10:13:30] That was one of the sources, yes.

17 Q. [10:13:32] Indeed, you find direction finding, direction finding, you find them
18 establishing the information detailed by you in paragraph 89, page 0473 of your
19 statement. You made that -- you stated that?

20 A. [10:13:57] Yes.

21 Q. [10:14:00] Now, with permission from the Court, sir, can you read out
22 paragraph 89.

23 PRESIDING JUDGE SCHMITT: [10:14:13] I think you have read it out already,
24 paragraph 89.

25 MR TAKU: [10:14:18] Okay. Thank you, your Honour.

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1 PRESIDING JUDGE SCHMITT: [10:14:19] So I think we don't have to repeat that
2 exercise. So perhaps you put the question immediately to the witness.

3 MR TAKU: [10:14:26] Thank you, your Honours.

4 Q. [10:14:29] Flowing from your paragraph 3 of your report we should talk about a
5 report, "The Ugandan government intercepted and attempted to decode LRA radio
6 communications in order to inform UPDF operations." I've read that before.

7 Were these intelligence reports which are classified secret the result of information
8 collected from various Ugandan intelligence services by way of intercepts in order to
9 help the government to take appropriate measures on how to fight the war against
10 LRA, correct?

11 A. [10:15:22] From the witness statements that I have reviewed, yes, the witnesses
12 did specify that the intelligence reports were based on direction finding information,
13 LRA radio intercept communication, and human intelligence and from what we've
14 seen yesterday, various field reports and reconnaissance as well.

15 Q. [10:15:44] Now, let us go to your reports themselves. Go to tab 7, sir,

16 UGA-OTP-0025-0423. Are you there, sir?

17 A. [10:16:06] I am. Thank you.

18 Q. [10:16:07] Now, look at it critically, sir, and tell the Court if among the area
19 commanders involved found on that report you find the name of Dominic Ongwen?

20 A. [10:16:25] Okay. Please give me a moment.

21 I do not, no.

22 Q. [10:17:13] Now, look at the first page of that report. That's page 0423, number
23 4. There is a name Labong. Can you see that name, sir?

24 A. [10:17:30] I can.

25 Q. [10:17:31] Did you find any report or information in Ringtail in the course of

1 your analysis relating to who this individual was in the LRA and the common
2 positions he held during the charged period?

3 A. [10:17:46] I did not focus my research on Mr Labong. I have come across the
4 name on different occasions in the UPDF -- or sorry, in the intercept logbooks in
5 general as well as in situations like this one, it shows up in the INTREPs. But I did
6 not focus my research on Mr Labong. I can comment on it to the extent that
7 considering that he did feature in the various logbooks, he did have a radio and he
8 did communicate on the radio from time to time.

9 Q. [10:18:21] Now go to tab 25, sir. You look at number 9. Are you there, sir?

10 A. [10:18:46] I am. I see it.

11 Q. [10:18:47] Look at number 9 page 0150. You find again the name of Mr Labong,
12 correct, sir?

13 A. [10:18:55] That is correct.

14 Q. [10:18:55] You find him again at page 0151 of this document among the names
15 of the persons on air, that's the last line, you find his name again.

16 A. [10:19:12] Yes.

17 Q. [10:19:16] Now go to page 0153 and 0154. You find his name again?

18 A. [10:19:22] Yes.

19 Q. [10:19:34] Did you see the name of Mr Dominic Ongwen on that?

20 A. [10:19:38] Yes, I do. On page 0154, two rows above the highlighted bit in the
21 middle of the page where it says 1830 hours, it says Dominic, he's being reported as
22 being on air during that radio communication.

23 Q. [10:19:59] Now, look at tab 34. Have you found it, sir?

24 A. [10:20:22] Yes.

25 Q. [10:20:23] That is UGA-OTP-0017-0268. Did you see the name of Mr Ongwen,

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1 sir?

2 A. [10:20:36] On the front page, the page you just quoted, I do not, no.

3 Q. [10:20:41] Okay. Witness, in your statement at paragraph 8, page 0448, under
4 the heading "Operational Reporting," have you found it, sir?

5 A. [10:21:05] Yes.

6 Q. [10:21:09] You wrote, sir, it was very often difficult to know what was exactly
7 happening and who was doing what.

8 Do you see that, sir?

9 A. [10:21:27] Yes. That is the last sentence of paragraph 8.

10 Q. [10:21:37] Now, in your statement, sir, you wrote at paragraph 12, page 0450,
11 and I'll quote, sir -- are you there, sir?

12 A. [10:21:55] Yes, I am. Thank you.

13 Q. [10:21:57] You wrote: "Ugandan government personnel intercepting LRA radio
14 communications normally attributed communications to a particular commander
15 rather than to the signaller that may have been speaking on the commander's behalf."
16 On the basis of what did you make that statement, sir?

17 A. [10:22:26] On the basis of the various witness statements. I said that yesterday
18 as well. I can also add to that that the LRA signallers themselves did not have any
19 call signs because they spoke on behalf of their commander. So they used their
20 commander's call sign. Other than the instance of *Labalpiny who was often
21 attributed as speaking on his own behalf even as a signaller of Joseph Kony.

22 So because the signallers did not have their own call signs, the call sign was attributed
23 to the commander rather -- and the commander was identified as speaking on the
24 radio rather than the signaller.

25 Q. [10:23:05] Now, did you come across the information that was provided to you

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1 any information explaining that Sinia brigade had two brigade commanders, one of
2 them Mr Ongwen, another was Mr Labong. Did you find that information in
3 Ringtail or --

4 A. [10:23:33] Not in relation to the intercepts witnesses that I reviewed.

5 Q. [10:23:41] Witness, in your statement at paragraph 19, page 0451, do you have it
6 before you, sir?

7 A. [10:23:58] I do.

8 Q. [10:23:59] You stated that, and I'll quote, "It remains unknown how often the
9 LRA changed their transmission frequency. The LRA is known to have used same
10 frequencies for months at a time during the July 2002 to December 2005 period,
11 although they would often change between the frequencies on which they
12 communicated."

13 Does that reflect accurately what you wrote, sir?

14 A. [10:24:36] Yes, I believe that's a direct quote of paragraph 19.

15 Q. [10:24:39] Did you find information establishing the LRA TONFAS were seized
16 by UPDF at Lakati sometime in 2005 and it led to Joseph Kony changing the system?

17 A. [10:25:12] I do not recall the specific location, Lakati.

18 Q. [10:25:16] Yes, from Lakati, please, Lakati is a person, not a location.

19 A. [10:25:20] Okay. So I, again, I do not recall the name Lakati, but I do recall the
20 witnesses in their statements specifying that at times the LRA TONFAS were
21 confiscated, at which point it showed to the various ISO and UPDF interceptors to
22 what degree they successfully managed to break that particular TONFAS code book.
23 I believe P-0003 in one of his earlier statements mentions the TONFAS code book
24 Harambe, and he talks about it in this specific context.

25 Q. [10:25:57] In paragraph 34, page 0456, do you have it, sir?

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1 A. [10:26:16] Yes, thank you.

2 Q. [10:26:17] You stated that Kony ordered the TONFAS books to be changed. In
3 paragraph 37, page 0457, you wrote that Kony ordered that the call signs to be also
4 changed. Is that correct? Paragraph 37.

5 A. [10:26:46] Yes, that is according to Witness P-0019 regarding the call signs.

6 Q. [10:26:53] Yes. Kony was the one making these decisions.

7 A. [10:26:58] According to P-0019. According to P-0016, just one sentence above
8 that, P-0016 states that the various commanders were asked to pick their own call
9 signs. So basically I pointed both, both observations out without drawing any
10 conclusion as to who might be right.

11 Q. [10:27:21] Did you find a record as to who they asked to pick their own call
12 signs?

13 A. [10:27:27] No, I did not, no.

14 Q. [10:27:33] And do you find the record to indicate in that Joseph Kony asked that
15 there should be a change of frequencies?

16 A. [10:27:54] Yes, to the degree that I described it in the paragraph that I believe we
17 just discussed.

18 Q. [10:28:02] Paragraph 7, yes, sir.

19 A. [10:28:04] Sorry, paragraph 7?

20 Q. [10:28:06] Yes.

21 A. [10:28:18] Okay. I believe I also mentioned it in the section directly related to
22 the frequent. Okay, section 317, starting on page 0451. So in paragraph 21, if I may
23 read out the first sentence of paragraph 21, it says, "Kony, Otti or the Director of
24 Signals decided what frequency was to be used and if it was necessary to switch
25 frequencies."

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1 And, again, that is based on the statements of P-16. And P-19 says, speaks to that
2 effect as well.

3 Q. [10:29:00] Did you find any record or review any record indicating why Joseph
4 Kony made these decisions, most of these decisions was him, mostly him making
5 these decisions?

6 A. [10:29:15] He was in general terms described as the chairman of the LRA and the
7 one -- the person in charge of the LRA and deciding most things. I'm not quoting
8 any one witness specifically, but a number of them stated words to that effect.

9 Q. [10:29:33] In paragraph 41, sir, page 0458, are you there, sir? You stated that
10 Joseph Kony, Otti and Sam Kollo had satellite phones to communicate with the
11 outside world. But there is no record that Dominic Ongwen had any, correct?

12 A. [10:30:07] I recall that, yes.

13 Q. [10:30:11] Witness, at paragraph 42, page 0459, are you there, sir?

14 A. [10:30:21] I am. Thank you.

15 Q. [10:30:23] You stated that "... walkie-talkies or Motorola radios were used by
16 LRA." Based on the evidence of P-0019, "... Kony decided which commanders would
17 get walkie-talkies." You indicated that there was no evidence to suggest that
18 Ongwen possessed a walkie-talkie. But another witness, P-0016, stated that "... even
19 lower-ranking officers possessed walkie-talkies." That's what you wrote?

20 A. [10:31:04] Yes.

21 Q. [10:31:07] Did you come across any information to suggest why there were
22 officers who would be favoured giving walkie-talkies over senior officers in some
23 cases?

24 A. [10:31:23] I did not understand it, I did not interpret P-16's statement in such a
25 way. The way I understood P-16's statement is that even lower-ranking officers of

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1 the LRA had walkie-talkies, suggesting not only the higher-level officers and
2 commanders, but even the lower-ranking ones, so suggesting, let's call it, a wide
3 dispersion of walkie-talkies within the LRA.

4 Q. [10:31:56] At paragraph 21, sir, page 0452, are you there, sir?

5 A. [10:32:10] Yes, I am. Thank you.

6 Q. [10:32:11] You also stated that "Kony, Otti or the Director of Signals decided
7 what frequency was to be used and it was necessary to switch frequencies," correct,
8 sir?

9 A. [10:32:26] Yes.

10 Q. [10:32:27] Then at paragraph 11, page 0449, you wrote that "It was common
11 practice in the LRA for the signallers to change their commanders and ..." quote "be
12 assigned for a particular mission" end of quote, even when the signallers were not
13 permanently assigned to the commander at the time.

14 Do you remember saying that in your testimony and your report?

15 A. [10:32:54] Yes. That is paragraph 11.

16 Q. [10:32:56] Did you review any records pointing out or indicating who deployed
17 signallers to the field or to particular commanders or to particular operations during
18 the charged period?

19 A. [10:33:18] I did not come across any information indicating who specifically
20 would deploy signallers. My understanding is that, well, signallers belong to one
21 commander or another. Whether one commander would request signallers from
22 another commander to be sent to him or whether the commander that the signaller
23 belongs to would voluntarily send his signallers to go conduct operations under
24 another commander, that, I'm not aware of. I was not able to find any conclusive
25 information in that regard.

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1 MR TAKU: [10:34:06] Your Honour, there is one question that I would like to take in
2 private session because it may reveal the identity.

3 PRESIDING JUDGE SCHMITT: [10:34:12] Then we go for this question into private
4 session.

5 MR TAKU: [10:34:14] Very briefly, yes.

6 (Private session at 10.34 a.m.)

7 THE COURT OFFICER: [10:34:24] Your Honour, we're in private session.

8 MR TAKU: [10:34:26] Thank you, your Honour.

9 Q. [10:34:29] Sir, in paragraphs 23, 24 and 40, pages 0453 and 0458, you stated the
10 LRA were provided radios and mobile phones by collaborators.

11 A. [10:34:54] Yes.

12 Q. [10:34:54] Do you remember that, sir?

13 A. [10:34:56] Yes, according to some witnesses.

14 Q. [10:34:57] Did you find any records relating to the alleged collaborators? Who
15 were they?

16 A. [10:35:06] No, I did not. I believe in all of the documents that I reviewed there
17 was not a single instance of any collaborators being named by name or by position or
18 by location from where they are.

19 MR TAKU: [10:35:24] Your Honours, we can go back again.

20 PRESIDING JUDGE SCHMITT: [10:35:26] We go into open session again.

21 (Open session at 10.35 a.m.)

22 THE COURT OFFICER: [10:35:34] We're in open session.

23 MR TAKU: [10:35:48] May I proceed, your Honour?

24 PRESIDING JUDGE SCHMITT: [10:35:50] Yes.

25 MR TAKU: [10:35:51] Thank you so much, your Honour.

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1 Q. [10:35:53] In paragraph 40, sir, that's page 0458, in particular, you stated that
2 there was the standing order forbidding the use of mobile phones, however, you
3 stated that although there was no record of Dominic Ongwen using a mobile phone,
4 there was evidence that he was found with a mobile phone, and Kony initially
5 instructed him to bury it and also instructed him to give it to Vincent Otti.

6 Can you find that, sir?

7 A. [10:36:30] Yes. That is paragraph 40 of my report.

8 Q. [10:36:33] Did you find any other information that you know of in the records
9 relating to how Dominic Ongwen obtained this mobile phone?

10 A. [10:36:48] No, I did not. The only mention of Mr Ongwen being in possession
11 of a mobile phone I found in the logbooks. And I quoted the relevant pages here.
12 And within that context, if I remember correctly, he stated that he did come into
13 possession of a mobile phone, upon which, at which point Kony advised him initially
14 to bury it and then subsequently to pass it on to Vincent Otti. But other than that, I
15 do not recall the logbooks mentioning anything as to how he obtained the phone.

16 Q. [10:37:23] Just to jog your memory, if you may remember, did you find any
17 records suggesting that one General Salim Saleh, the brother for Museveni, had
18 provided this, a mobile phone to Mr Ongwen to help him prepare to escape, to leave,
19 escape, and was promptly discovered and reported to Kony. Did you find any such
20 records?

21 A. [10:38:07] I recall coming across the name of Salim Saleh. But I don't think I
22 came across it in this particular context, because this does not seem familiar to me.
23 If I may ask you what time periods did this allegedly occur in? Was it between July
24 2002 and December 2005?

25 Q. [10:38:29] Of course, during the charged period. That was April 2003.

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1 A. [10:38:34] Okay. I haven't come across this in the logbooks or in any of the
2 witness statements.

3 Q. [10:38:39] Yes. I ask the question because they discovered Kony aborted that
4 and there were other consequences which it might not be appropriate to put the
5 questions to you. When the time comes we'll develop that line of examination
6 further.

7 A. [10:38:59] As I said, I did not come across that in the logbooks.

8 Q. [10:39:02] Yes. Of course I think this question, Witness, you've answered the
9 next question, but maybe I'm asking just for the purpose of introducing a whole line
10 of questioning.

11 At paragraph 5, page 0047 in your statement, you asserted that, quote, "Joseph Kony
12 played a central role in LRA radio communications as 'the Chairman of ...' the "...
13 LRA."

14 You've answered that. There is no need for us to get back to that.

15 But at paragraph 6, pages 0047-0044, you stated that, and I quote, "Radio
16 communications was used by the highest levels of the LRA leadership to issue orders
17 and instructions to their subordinate commanders to perform general administration
18 such as prescribing disciplinary measures or ... promotions for particular individuals.
19 The same radio means were used by brigade commanders in the field to report the
20 outcome of their combat operations to their superiors and to coordinate meetings and
21 logistic support." End of quote.

22 Did you find any records in the Ringtail of evidence that was used suggesting that the
23 LRA commanders violated the standing orders given by Joseph Kony?

24 A. [10:40:42] The only thing that I can recall right now is the last sentence of
25 paragraph 8, which we already covered a little while ago, and that would be P-0019,

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1 suggesting that not everything that was reported was actually done. So it is difficult
2 to know what exactly was happening and who was doing what.

3 Q. [10:41:06] Now, my question relates to this communications that I talk about,
4 that Kony was giving instruction by radio, listening to the radio. So if you received
5 any information from this series of communications we've talked about starting today
6 and yesterday, if you received any information that his instructions or orders were
7 violated, did you find any information in that context?

8 A. [10:41:38] I recall not in relation to the four charged attacks or the additional
9 four dates that I accounted for in my report. I recall Joseph Kony stating that he
10 believes one commander, I cannot recall which one, that he believes that commander
11 was not, was not following his instructions in terms of coming to the location that
12 Joseph Kony wanted him to come to.

13 Similarly, as I did mention in my report, Joseph Kony also thought or perceived that
14 Mr Ongwen himself did not participate much on the radio as much as he would have
15 liked him to, and he should be more active on the radio or more present on the radio.

16 MR TAKU: [10:42:31] Your Honours, I will offer the witness. And thank you so
17 much.

18 Thank you, Witness.

19 THE WITNESS: [10:42:38] Thank you very much.

20 MR OBHOF: Your Honours --

21 PRESIDING JUDGE SCHMITT: [10:42:40] I assume that there are no further
22 requests for questioning.

23 Mr Obhof is now rising.

24 MR OBHOF: [10:42:51] I just wanted to make one correction.

25 PRESIDING JUDGE SCHMITT: Yes, okay.

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1 MR OBHOF: Two corrections for the record. Sorry, your Honour.

2 PRESIDING JUDGE SCHMITT: [10:42:55] Of course, of course, please.

3 MR OBHOF: [10:42:56] In the realtime transcript, page 10, line 1, the proper citation
4 should be 0460, not 0469.

5 And just in the last citation from paragraph 6, it is pages 0447 to 0448. Chief Taku
6 didn't finish the last number.

7 PRESIDING JUDGE SCHMITT: [10:43:14] Thank you very much for that. It's of
8 course very important that the record reflects really truly what has happened in the
9 courtroom.

10 This concludes the testimony of you, Mr Witness. We thank you of course very
11 much for having been available these two days.

12 THE WITNESS: [10:43:31] Thank you, your Honours.

13 (The witness is excused)

14 PRESIDING JUDGE SCHMITT: [10:43:32] This concludes also the hearing today.

15 This is the downside or the disadvantage if you are so quick, we can only continue, as
16 I said, on Monday. Yes, the proceedings are abated until Monday, 9.30.

17 THE COURT USHER: [10:43:48] All rise.

18 (The hearing ends in open session at 10.43 a.m.)

19 RECLASSIFICATION REPORT

20 Pursuant to the Trial Chamber'IX's instructions, ICC-02/04-01/15-497, dated 13 July
21 2016, the transcript is reclassified public and is filed in the case.