

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 Cano
6 Pangalangan
7 Trial Hearing - Courtroom 3
8 Monday, 25 November 2019
9 (The hearing starts in open session at 2.00 p.m.)
10 THE COURT USHER: [14:00:53] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE SCHMITT: [14:01:07] Good afternoon, everyone.
14 Could the court officer please call the case.
15 THE COURT OFFICER: [14:01:15] Good afternoon, Mr President, your Honours.
16 The situation in the Republic of Uganda, in the case of The Prosecutor versus Dominic
17 Ongwen, case reference ICC-02/04-01/15.
18 And for the record, we are in open session.
19 PRESIDING JUDGE SCHMITT: [14:01:33] Thank you.
20 The appearances of the parties. For the Prosecution, Mr Gumpert.
21 MR GUMPERT: [14:01:38] Good afternoon, your Honours. I think as matters are
22 drawing to a conclusion we have nearly a full house on the Prosecution side. There
23 is myself, Colleen --
24 PRESIDING JUDGE SCHMITT: [14:01:51] As long as you have everything under
25 your firm grip name-wise, it is okay.

1 MR GUMPERT: [14:01:55] Colleen Gilg, Colin Black, Pubudu Sachithanandan, Beti
2 Hohler, Yulia Nuzban, Hai Do Duc, Jasmina Suljanovic, Grace Goh, Shkelzen Zeneli,
3 Adesola Adeboyejo, Nikila Kaushik and Kamran Choudhry. Have I got it right?

4 PRESIDING JUDGE SCHMITT: [14:02:17] I'm not so sure, frankly speaking.

5 MR GUMPERT: [14:02:20] Ms Adeboyejo will be here in just a couple of minutes.

6 PRESIDING JUDGE SCHMITT: [14:02:25] Yes, indeed, indeed.

7 MR GUMPERT: [14:02:26] I sent her on a voyage two minutes to the hour, which
8 was my fault.

9 PRESIDING JUDGE SCHMITT: [14:02:29] Okay, okay. Because I didn't see her.

10 MR GUMPERT: [14:02:30] She will be here shortly.

11 PRESIDING JUDGE SCHMITT: [14:02:32] There are some indicia that she is not in
12 the room.

13 Now for the representatives of the victims.

14 MS MASSIDDA: [14:02:38] Good afternoon, Mr President, your Honours.

15 Paolina Massidda, for the Common Legal Representatives team. With me today,
16 Orchlon Narantsetseg and Caroline Walter.

17 PRESIDING JUDGE SCHMITT: [14:02:46] Thank you.

18 And for the second team, please.

19 MR COX: [14:02:50] Good afternoon, your Honour. With me, Mr James Mawira
20 and myself Francisco Cox.

21 PRESIDING JUDGE SCHMITT: [14:02:56] Thank you, Mr Cox.

22 And of course for the Defence, Mr Obhof.

23 MR OBHOF: [14:03:00] Thank you very much, your Honour. Today we have Beth
24 Lyons, Michael Rowse, Eniko Sandor, Krispus Charles Ayena Odongo, myself
25 Thomas Obhof, Chief Charles Achaleke Taku, Roy Titus Ayena, Gordon Kifudde, and

1 Mr Ongwen is in court.

2 PRESIDING JUDGE SCHMITT: [14:03:15] And also for the record, we have the
3 expert of the Defence, Professor Ovuga, a very warm welcome again to you.
4 And as the expert witness for the Prosecution, Professor Weierstall, also from the
5 Bench here, a warm welcome this afternoon.

6 WITNESS: UGA-P-0447

7 (The witness speaks English)

8 THE WITNESS: [14:03:34] Thanks. And good afternoon, your Honours, and good
9 afternoon to all the parties represented in the court.

10 PRESIDING JUDGE SCHMITT: [14:03:39] Of course this is the next witness, rebuttal
11 witness, so to speak, P-447.

12 And as every witness, you know this already, Professor Weierstall, you have to take
13 the solemn undertaking. Would you please read this out aloud

14 THE WITNESS: [14:03:55] Okay. I solemnly declare that I will speak the truth, the
15 whole truth and nothing but the truth.

16 PRESIDING JUDGE SCHMITT: [14:03:58] Thank you very much. Then we can
17 start with your testimony. I give Mr Gumpert the floor.

18 Ms Lyons, you wanted to address the Chamber shortly? Okay, please, you have the
19 floor.

20 Excuse me, Mr Gumpert.

21 MS LYONS: [14:04:12] Thank you. I wanted to make a legal argument objecting to
22 the rebuttal report in its form to be admitted into evidence. And I could wait until
23 we get to 68(3) or I could do it now, your Honour. I'm happy to do it -- you tell me
24 when.

25 PRESIDING JUDGE SCHMITT: [14:04:31] You can do it now.

1 MS LYONS: [14:04:33] Okay, thank you.

2 We have reviewed the almost 30-page, single-spaced report very carefully and it's our

3 position that the scope of the report -- number one, goes against previous rulings by

4 this Chamber in respect to the parameters of rebuttal evidence; and similarly does not

5 meet the standards that have been set out, the three standards of ex improviso,

6 admissibility and undermining the rights of the accused, whether it does or not,

7 they've been set out by Trial Chambers in Lubanga and Ntaganda.

8 Now these whole -- this whole procedure was initiated by, I believe it was filing 1596

9 by the Prosecutor where they specifically referred to new material being two new

10 diagnoses in the report, symptoms of OCD, and secondly, the dissociative amnesia.

11 Now accepting for the moment that characterisation as new diagnoses, the report of

12 Mr -- I'm sorry, Professor Weierstall goes far beyond that and in fact repeats much of

13 the testimony of other experts in respect to the diagnoses.

14 And referring back to your ruling orally on page 83 and 84, transcript 251, this was

15 1122 on Friday in the afternoon, I raise the issue of paragraph 16 of 1623 in the scope

16 that there was a decision that the rebuttal evidence only concerned points and facts

17 previously not addressed by Prosecution expert witnesses. And your response, lines

18 1 and 2 and 3 on page 84 is: "No, [...] that's clear. We will adhere to that."

19 So using that ruling as additional guidance, I would point out, for example, that

20 multiple -- the dissociative disorders are dealt with in transcript 169, which was

21 Professor Weierstall's transcript, pages -- on page 21, then we have it on page 22. Then

22 we have this testimony about MDD, another of the conclusions, which is, let's see,

23 transcript T-169, page 20. There is reference to MDD in respect to Professor De Jong's

24 report, but the same subject matter, where Professor Weierstall addresses it at 169,

25 page 54,

1 Then we have the transcripts on -- from Professor Weierstall, particularly, T-169, on
2 PTSD. And there are a few others that we would be happy to include. But the
3 point about being that the conclusions in respect to these analysis by Professor
4 Weierstall in respect to these conclusions, which were part of actually the first report
5 and second report of Professor Ovuga and Dr Akena have already a beginning and
6 it's repetitive.

7 Secondly, the title of the report perhaps -- well, appears to me to be not a title
8 in -- consistent with the ruling, it's "Second Psychiatric Report". This is covering
9 material which has already been covered either by Professor Weierstall or by others.

10 Now I also want to bring this up in terms of the issue of malingering. And I will
11 note, so that the links are clear, that the first expert report from us, the Doctor and
12 Professor made conclusions of severe depressive illness, PTSD, dissociative disorder.
13 This has been around for quite a while, which is the reason that Professor Weierstall
14 and other OTP witnesses commented on it, I would assume. So that part isn't new in
15 the second report.

16 And then I would say, although I believe in the decision, your Honour, you made it
17 clear, either in one of the decisions, that the testimony will not be repetitive, Professor
18 Weierstall repeats the testimony of OTP Witness Dr Mezey on the issue of
19 malingering and faking it. And it's this -- Mezey, she talks about it, she's an OTP
20 witness, she talked about malingering and faking it. Malingering at T-162, pages 18,
21 38 and 39; faking it, specifically at T-162, 18 to 23 and 38. And then we have T-163,
22 again Dr Mezey, malingering, on pages 53 and 60; faking it, on pages 45 and 61 of
23 transcript T-163. So that a large part of what I'm holding as the rebuttal evidence in
24 fact repeats this, and we can go through this page by page -- and I'll spare you that.
25 The conclusion is that admission of the report in its form without a limited scope to

1 the new diagnosis and non-repetitive material of Prosecution expert witnesses
2 impermissibly gives the -- gives the Prosecution, as we say from where I come from,
3 two bites of the apple. They had their chance, they dealt with a number of these
4 issues through Dr Mezey, some through Dr Abbo, and some through Professor
5 Weierstall first time around.
6 They cannot get a second chance because in our view it violates the fair trial rights of
7 the defendant. So that in essence is why, as a document, we will object to the
8 document being admitted or -- I get confused, admitted or -- and/or submitted. Both.
9 Admitted, submitted, presented in evidence, we -- as part of the record, because it
10 does not meet the criteria for rebuttal evidence and is simply repetitive and a
11 second -- in some cases, a third time around chance to the Prosecution to make its case
12 and present its views through its witnesses on the areas, the mental health areas I've
13 identified.

14 PRESIDING JUDGE SCHMITT: [14:12:12] Thank you, Ms Lyons.

15 I assume that the Prosecution would want to respond to that?

16 MR GUMPERT: [14:12:16] I'll try and do so very briefly. Professor Weierstall has
17 taken, I submit, exquisite care in this report to make it plain which parts of the second
18 expert report -- second Defence expert report and which parts of the testimony they
19 gave last week that he is commenting on. That was his first opportunity to do that
20 and I do not accept any of the criticisms of his approach to his work which have just
21 been made.

22 But I do have a submission as to how the Chamber can move forward. I would
23 submit that, when I come to ask the Professor whether he objects to the Chamber
24 using his report under the provisions of Rule 68(3), and assuming that he answers he
25 does not, it would be odd if he gave any other answer, that your Honours can say that

1 you accept it under that provision provisionally and the Defence can - I hope I'm not
2 trespassing on judicial matters here - have an opportunity in a written filing.
3 Far more sensible, I would respectfully submit, than trying to do it by way of oral
4 submissions now, whereby they make a line-by-line analysis of what they say is
5 impermissible. We can respond, and you, the Chamber, can then decide which parts,
6 if any, of that report are indeed improper, make a public ruling as to which parts you
7 exclude from any future consideration, and justice will have been done.

8 PRESIDING JUDGE SCHMITT: [14:14:08] So that is -- that's quite interesting. I
9 think this is an issue where I would suggest that the Chamber would have to go to the
10 deliberation room. We don't do that very often. It will not take us long; so don't go
11 too far away, let me put this way.

12 (Recess taken at 2.14 p.m.)

13 (Upon resuming in open session at 2.53 p.m.)

14 THE COURT USHER: [14:54:17] All rise.

15 Please be seated.

16 PRESIDING JUDGE SCHMITT: [14:54:29] The Chamber issues an oral decision on
17 the objections of the Defence on the report presented by the rebuttal expert, Professor
18 Weierstall.

19 The Chamber said in paragraph 16 of decision 1623 that, and I quote, "The rebuttal
20 evidence appears to be necessary in light of the content of the second report and
21 expected expert testimonies." Quote end.

22 What was clearly meant by this is that any issues touched upon in the second Defence
23 expert report and the live testimony of Defence experts 41 and 42 could have been
24 part of a report prepared by Professor Weierstall. This is clearly the case with the
25 report of Professor Weierstall who discusses the testimonies of D-41 and D-42 and

1 makes references to the second report and the supplementary report which is in line
2 with the decision 1623 and consistent with bona fide character of rebuttal evidence.
3 This also becomes evident from the title of Professor Weierstall's second report, an
4 issue addressed by the Defence, I quote, "Expert opinion on the second psychiatric
5 report and its related testimonies."

6 Further, with regard to the fair trial rights of the accused, the Chamber again affirms
7 the Defence's right to call a rejoinder witness expert. During this testimony, the
8 Defence will have the right to fully address the entire content of the second report of
9 Professor Weierstall.

10 For these reasons, the Chamber rejects the objections of the Defence.

11 Mr Gumpert, you have the floor.

12 MS LYONS: [14:56:33] Can I just for the record preserve our objection to the oral
13 decision of the Chamber.

14 PRESIDING JUDGE SCHMITT: [14:56:40] Mr Gumpert, you have the floor.

15 MR GUMPERT: [14:56:43] I had noticed, it's nearly an hour ago now, that just as Ms
16 Lyons was rising, Professor Weierstall's hand was going up as well; so there may be
17 something else to be said before I ask him my first question.

18 PRESIDING JUDGE SCHMITT: [14:56:55] Frankly speaking, I would now -- of
19 course, it might be something very important, but --

20 THE WITNESS: [14:57:01] No, your Honours, it won't take long. I just wanted to
21 maybe for the record, I wanted to say that last year I married my wonderful wife, and
22 now I have -- my full name is Weierstall-Pust. So maybe it's important that you
23 know. It's spelled P-U-S-T, for the record. This is my full name. I wasn't sure if it
24 was important, but in case.

25 PRESIDING JUDGE SCHMITT: [14:57:21] You are right, of course. This is your

1 name, but for the sake of expeditiousness -- no, no, Professor Weierstall-Pust or
2 simply "Professor" from now on for everyone. We have noted it, but you are right,
3 of course, perfectly right.

4 Mr Gumpert, you have the floor.

5 QUESTIONED BY MR GUMPERT:

6 Q. [14:57:48] Professor, the first thing I should deal with is the report about which
7 their Honours have just made a ruling. I think there is a slim binder on the table in
8 front of you.

9 A. [14:58:00] Mm-hmm.

10 Q. [14:58:01] Could you look at the document which is at tab 1. For record it's
11 UGA-OTP-0287-0072. Is that your expert opinion on the second psychiatric report
12 and its related testimonies?

13 A. [14:58:23] Yes, I can -- I confirm this.

14 Q. [14:58:25] Thank you. Do you have any objection to the Judges using that
15 report as part of the evidence in their case when they make their decision about this
16 case?

17 A. [14:58:38] No.

18 Q. [14:58:41] In rather short form --

19 PRESIDING JUDGE SCHMITT: [14:58:44] But I think this fulfils the conditions of
20 Rule 68(3).

21 You can continue.

22 MR GUMPERT: [14:58:50] Thank you.

23 Q. [14:58:53] Professor, you have emphasised at the bottom of page 5 and the top of
24 page 6 of that report the need for a forensic mental health evaluation, not just to rely
25 upon the statements of the person being evaluated, but upon multiple sources of

1 information.

2 A. [14:59:25] Mm-hmm.

3 Q. [14:59:26] Can you help the Court with your estimation of the potential value of
4 the following sources: First, psychometric testing?

5 A. [14:59:43] Yes, I can. Psychometric testing is absolutely essential also in the
6 present case because we know that malingering can be a fundamental issue and there
7 are some psychometric measures available that could have been used in this case as
8 well and it is recommended by current generally accepted or internationally accepted
9 guidelines that it's mandatory to rely on multiple sources, including psychometric
10 tools.

11 Q. [15:00:24] Pressing you further, before we go to the next potential source, are
12 there records available to clinicians or forensic experts - such as yourself - which
13 would enable the results of tests which might have been performed on Mr Ongwen to
14 be compared with -- sort of graduated against scales of other people to whom the
15 same tests have been applied?

16 A. [15:00:57] It is sometimes difficult to compare individual result to a population
17 in the case that we don't have norms already in this population, but at least we can
18 make reference from the psychometric results we get to other cases. And I would
19 like to give you an example.

20 There is, for example, the SCID, which is spelt S-C-I-D-, hyphen D, hyphen R, and this
21 is a clinician-administered interview which contains 200 items and it's particularly
22 meant to assess dissociation in individuals affected from dissociative disorder. And
23 this tool, for example, especially covers a section on differential diagnosis to exclude,
24 for example, dissociations in relation to substance-use disorder or includes
25 a paragraph on malingering, for example.

1 So -- and also it is emphasised as part of this tool that this tool, for example, should
2 help the forensic psychiatrist to do a proper assessment of an individual claiming to
3 suffer from dissociative identity disorder, for example, so it exactly matches these
4 recommendations that should have been fulfilled in the present case as well.

5 And there are other instruments also available, especially dealing with dissociative
6 disorders, that is considered or take into account the potential of malingering or
7 faking bad or seeking for attention. And these are all psychometric tools that are
8 available.

9 And also I would like to add that there are other tools available, such as, the MMPI or
10 the SIRS, and these instruments are not particularly meant to assess, for example,
11 malingering in individuals with DID, but there are publications that in
12 particularly -- that in particular use these measures in patients suffering from the
13 same disorder that is raised here. And there are some publications that also deal
14 with the peculiarities when you want to apply these measures in DID cases, for
15 example.

16 Q. [15:03:42] We heard from both Defence experts a degree of skepticism about the
17 usefulness of the accounts given in sworn testimony by witnesses in that case.

18 Would you consider that such accounts would be another potential source? So I'm
19 moving on from the psychometric testing now to another perhaps category of
20 information. Would you consider that those testimonies such as in the table which
21 you are aware of --

22 A. [15:04:37] Mm-hmm.

23 Q. [15:04:38] -- would be a source which should be consulted in a thorough
24 evaluation of Mr Ongwen's mental health at the time of the charged crimes?

25 A. [15:04:51] When we follow the guidelines and recommendations on how to do

1 a proper forensic assessment, it would have been their duty to rely also on these
2 sources, even if they don't agree with the content that has been provided in these
3 resources.

4 So even if they would say they disagree with one of the testimonies or the content of
5 the testimonies that were given on oath also here in court, they would have maybe
6 used this information, but at least they would have been required to discuss potential
7 conflicts between the different sources of information.

8 Q. [15:05:36] And the third category perhaps of other material that I want to ask
9 you about is this: Records said to contain Mr Ongwen's own words at the time of
10 the alleged crimes. Now, you will bear in mind the caveat which we have
11 consistently entered. That it's not accepted that these are necessarily his words, but
12 he is aware, the Defence is aware that's the Prosecution case. Is that a potential
13 source of other material which would enable a thorough evaluation to take place?

14 A. [15:06:19] Yes, this is another valuable source of information. And, for example,
15 when we consider that -- or even let's say it the other way around. Assume that we
16 only had access to the person or the subjective information given by Mr Ongwen and
17 we wouldn't have had any other source of information, then at least we could
18 have -- or what the Defence experts could have been done is -- could have been doing
19 is to compare his individual symptoms that he reported to other cases that are well
20 documented in the scientific literature. For example, also some studies that have
21 been conducted - and I also cite one of these publications in my expert
22 opinion -- where it could have been demonstrated in scientific experiments, for
23 example, that the clinical picture that is portrayed by individuals that were instructed
24 to fake DID compared to patients really suffering from DID, that, for example, the
25 symptom -- symptomology or the clinical picture that was observed in the case of

1 Dominic Ongwen rather matches the picture that is portrayed by those who fake DID
2 and -- rather, and doesn't match the clinical picture of those who are really affected by
3 DID.

4 And in the case that they are -- I mean, we have also to acknowledge that it's quite
5 difficult to really detect dissociative disorders in individuals. So usually it takes
6 seven to 12 years - there are publications on that - until a patient suffering from
7 a dissociative disorder receives adequate treatment. And usually they also have
8 undergone various misdiagnoses and wrong treatment approaches, so -- but because
9 of this issue that it's quite difficult to detect DID, there are, for example, experts'
10 forums available where you could present your case and discuss with other experts
11 what they think about it, and so you can seek help or support from other
12 experiences -- experienced experts that might help you in your case.

13 So even if we only have one source, there would have been many, many other
14 possibilities for the Defence experts to do -- deal with the material and to verify or
15 fortify the hypothesis they came up with.

16 Q. [15:09:14] Just one follow-up arising from the last matter which you raised. Is
17 that something which even very experienced forensic practitioners would do? To
18 sort of put it out there and potentially invite other people to give an opinion?

19 A. [15:09:38] Of course you definitely have to consider that -- or you have to stick
20 to the confidentiality, of course, but you would seek help from other experts. Me, for
21 example, when I started to do also more research on this, on this particular case and I
22 thought, "Okay, what can we get out of the files we have?" I didn't tell anyone about
23 the case specifically, so it's not a matter of keeping the personal information secret.
24 But I had some general issues where I thought: Okay, maybe I would need the help
25 of one of my colleagues too, who is a well-known and famous expert in the field of

1 dissociative identity disorder, and I ask her two or three general questions if she can
2 help me to solve the questions I had.

3 And she also gave me advice and said: Okay, maybe you also can find more
4 resources here, scientifically validated resources. You find more literature there, for
5 example, and I think it's quite common and if you feel not secure with the things
6 you're saying, you're -- I would say you're obliged to consult other experts.

7 Q. [15:10:58] Where Mr Ongwen has given apparently conflicting accounts of his
8 state of mind at the relevant time in his various interviews with the Defence experts,
9 what importance would you or do you think should a forensic expert attach to these
10 differences?

11 MS LYONS: [15:11:34] Your Honour, the latter part of the question, what
12 importance should you give or not give, I've no problem with. I do have a problem
13 and object to the characterisation of the Prosecution without any citations that
14 conflicting -- conflicting information was given by Mr Ongwen. Now, Mr Gumpert
15 and the team, it's fair to -- they can -- it's fair game to sum up on this. It's not fair to
16 the witness to present your view of it, give us no citations for it when the same
17 question, the basic question can be asked more generally. I've no problems with that
18 basic question but I do have problems with a question that includes in it the
19 mischaracterisation or a characterisation without saying where it is.

20 I don't want to have to at this moment fight is it conflicting or not, but you can, you
21 can rephrase -- the OTP can rephrase the question in a way that we can get an answer
22 from Professor Weierstall, but not this way.

23 PRESIDING JUDGE SCHMITT: [15:12:44] Professor Weierstall-Pust --

24 MS LYONS: [15:12:48] Sorry, Professor Weierstall-Pust.

25 PRESIDING JUDGE SCHMITT: [15:12:50] But this is always difficult. If you're

1 accustomed to a name it takes a while, but we will learn this.

2 Professor Weierstall-Pust could, for example, be asked if he has in his report, his new
3 report, determined conflation or conflicting, conflicting things being said by the
4 accused. And then you continue with your second question, with the question that
5 you have. And if he says yes, what you make out of this.

6 Oh, the objection by Ms Lyons is partly sustained.

7 MR GUMPERT: [15:13:30]

8 Q. [15:13:31] Professor, I probably don't need to say anything else, you heard the
9 suggestion of the Presiding Judge. Can you assist us with any matters which you
10 raised of concern in that respect in your report? And, if you can, can you help us
11 with what you think should have been the significance to experts who were presented
12 with that kind of conflicting material?

13 A. [15:14:01] I think there is a vast amount of conflicting material in the second
14 psychiatric report, and I gave some examples. I couldn't place all the examples in
15 the report, otherwise we would have had maybe 60 or 70 pages of report. But there
16 were many conflicting materials and -- conflicting things that occurred, also occurred
17 during the hearings last week. And these, in my opinion, are when the con- ...
18 What I have also tried to make clear in my report is that the conflicting material that
19 occurred wasn't adequately discussed.

20 So contradictions would've had to be discussed adequately and in detail, and also it
21 would have been necessary to go into each of the conflicting informations and discuss
22 every conflicting material in detail, even this would have meant that second
23 psychiatric report by Dr Akena and Professor Ovuga contained 500 pages in the end.
24 If this would have been necessary, then they -- it would have been their duty to do it.
25 And especially, for example, one very striking example is that, we know it from the

1 scientific literature and I put a quote into my report to show that it's -- show to you
2 that it's not only my subjective opinion but this is an expert opinion that also others
3 share with me, that there is a very important distinction between pathological and
4 non-pathological dissociative states. And one key factor is that pathological
5 dissociations occur involuntarily and that you cannot voluntarily control your
6 dissociation, you cannot control when your nightmares occur, you cannot control
7 when you space out, you cannot control when a different part of the personality takes
8 over.

9 So -- and as I assume that, especially as I read it from the report, from the second
10 psychiatric report, is that Dr Akena and Professor Ovuga primarily focus on the
11 dissociative disorders and it would have been particularly important to discuss
12 the -- these -- the issue of voluntary and involuntary control of dissociations because
13 this is absolutely essential to come in the end to a legal conclusion.

14 Q. [15:16:56] In the light of the second part of that answer, I'm going to move to
15 follow that up. I'd intended to deal with it later.

16 Professor Ovuga suggested on Friday that the reason why the people living in
17 Mr Ongwen's household during the charged period and the subordinate officers
18 under his command may not have noticed the expression of the Dominic B
19 personality - the angry violent personality, sometimes as often as two or three times
20 a week, according to Mr Ongwen's account - was because Dominic A was able to
21 suppress Dominic B on those occasions.

22 PRESIDING JUDGE SCHMITT: [15:17:49] Do you have the exact reference?

23 MR GUMPERT: [15:17:51] T-251, page 37, lines 11 to 18. I could quote it, but I have
24 tried to arrive at a fair summary.

25 PRESIDING JUDGE SCHMITT: [15:18:02] If there is no objection from the Defence, I

1 think we can let --

2 MS LYONS: [15:18:06] (Microphone not activated)

3 PRESIDING JUDGE SCHMITT: Please with microphone, yes?

4 MS LYONS: Sorry. The Defence is locating it and I'll tell you in a second.

5 PRESIDING JUDGE SCHMITT: [15:18:15] Please tell us in a second and then we can
6 proceed.

7 Let me suggest in the meantime, simply quote, quote it, Mr Gumpert, please, please.

8 I think that's the easiest way. Yes.

9 MS LYONS: Better for us.

10 PRESIDING JUDGE SCHMITT: In the meantime, while you are looking for it, we
11 had this also last week, it's sometimes difficult to summarise and some real content
12 might get lost or it might be influenced by the summarizer - I don't know if this is the
13 right English word - the person who is summarising. So it -- this is the reason why
14 we have a transcript and can quote word by word.

15 MS LYONS: [15:19:04] And also if they could -- I'm sorry, if you could please tell us
16 if it's -- we're dealing with real-time and then we got some edited transcripts
17 (Overlapping speakers)

18 PRESIDING JUDGE SCHMITT: [15:19:09] Yes, yes, yes, yes. I think Mr Gumpert
19 knows that.

20 MS LYONS: Okay.

21 MR GUMPERT: [15:19:15]

22 Q. [15:19:16] (Microphone not activated) There's a certain sensitivity about the later
23 part of this transcript which I shall avoid here.

24 My question was to Professor Ovuga:

25 "So let's just try and understand the mechanism. Dominic's with his soldiers and the

1 women he regards as his wives. The other abduction, the Dominic B, the nasty,
2 vicious, angry, violent one, comes upon him, but Dominic A is able, by coping, to
3 disguise to the outside world Dominic's B true personality and to pretend to be still
4 Dominic A. Is that what's happening?"

5 My question.

6 The Professor's answer: "Yes."

7 PRESIDING JUDGE SCHMITT: [15:20:09] And we don't continue from there.

8 MR GUMPERT: Indeed.

9 PRESIDING JUDGE SCHMITT: [15:20:10] We know that.

10 Professor Weierstall-Pust.

11 THE WITNESS: [15:20:15] Thanks. Yes, your Honour, thank you very much that
12 you also acknowledged the "Pust". I'm very grateful for this, but --

13 PRESIDING JUDGE SCHMITT: [15:20:27] But, no, this is out of respect and of
14 course. But, as I said, if we forget it sometimes it's --

15 THE WITNESS: That's fine.

16 PRESIDING JUDGE SCHMITT: -- simply that when you are used to -- but, of
17 course, in one or two hours or tomorrow it will be already an automatism.

18 THE WITNESS: [15:20:45] Thank you, your Honours.

19 I have this question still in mind that you asked Professor Ovuga last week and I was
20 quite confused by the responses given by Dr Akena and Professor Ovuga last week,
21 because both of them claimed that lay people wouldn't recognise symptoms of mental
22 disorders, which is absolutely contradictory to what you find in the scientific
23 literature and what is said in textbooks when you want to train students how they
24 will be able one day to realise -- or to recognise or specifically label symptoms of
25 disorders.

1 And it also contradicts the recommendation to use this material, so use the
2 observations made by people in the surrounding -- in the environment, in a close
3 environment of patients or people accused as part of a forensic case. So the opposite
4 is true. And when we focus on this quote or this understanding, what does it mean?
5 In dissociative identity disorder we have the sudden interruption or the sudden
6 disruption of consciousness. People are not able to control when they shift from one
7 part of the personality to another part of the personality.
8 So if we assume that the hypothesized Dominic A would be able to control the
9 hypothesized Dominic B, then this already is something that speaks against
10 a pathological dissociative disorder because it means I can voluntarily control things.
11 And this is exactly the difference between pathological and non-pathological
12 dissociation.
13 And we can go also one step further I think. Assume that I would become a very
14 vicious killer when I'm drinking alcohol, and I know this in a state when I'm not
15 intoxicated, then it would also be my responsibility not to drink alcohol anymore if I
16 want to prevent these behavioural impulses inside of me to occur.
17 So assume that -- if we're assuming that this is the truth, that really Dominic A had
18 control on the Dominic B, and we would assume that Dominic A was interested in
19 getting rid of Dominic B, and if we also consider what has been said last week that
20 maybe becoming Dominic B was part of a possession, then what I -- being possessed,
21 then what -- sorry, then what I would have expected that somewhere in the material
22 we find the source that gives us the hint that Mr Ongwen was seeking for some kind
23 of healing to get rid of this possession because then I would assume that he had felt
24 this responsibility to make everything which is in his potential to prevent Dominic B
25 to occur. This is one thing.

1 And the last thing I have to say regarding this quote you were just making is the
2 question how would -- if this is the truth, how would it really look like in the daily
3 routine of Mr Ongwen? So my -- the fantasy I have is that this would mean that the
4 nice Dominic A wakes up in the morning, has breakfast maybe with his family, is
5 under control of the things that are happening because he doesn't want to be furious
6 in front of his family and his children. And then suddenly, he -- he has the control to
7 decide to have no longer the control that Mr -- than that the Dominic B is taking over,
8 maybe at 10 so that they can start and discuss an attack. And then after discussing
9 everything that has to deal with the attack, maybe two or three hours with the
10 comrades, then suddenly there is a shift back to Dominic A, so that maybe during the
11 lunchtime, he is still -- he's again the nice Dominic A.

12 And of course there could have been such a coincidence, but it's highly unlikely. I
13 mean, it can happen that you're -- I don't know, swimming in the ocean and you get
14 bitten by a shark and hit by lightning and get a heart attack at the same time, but I
15 think it's very, very, very unlikely that this would occur. And I don't think that this
16 could have really been the case over a period of three and a half months that
17 when -- three and a half years that whenever attacks were planned, in case that they
18 were planned, and in cases where Mr Ongwen was allegedly going to -- to a battle,
19 then exactly in this moment there was this shift from Dominic A to Dominic B, an
20 involuntary shift. This is highly unlikely, and I don't think that -- I don't know who
21 would believe that this can really happen.

22 Q. [15:26:59] I want to broaden out a little now from dissociative identity disorder
23 to -- well, certainly including PTSD and major depressive disorder. Can you assist
24 the Court with your opinion as to the likelihood of a person being able to mask their
25 symptoms of these diseases over a period of three and a half years from the people

1 who are in the same household, perhaps in the same bed or in the same military units,
2 what one might call frequent companions. Can you help the Court with that?

3 A. [15:27:50] On the one hand, there's one thing we have to clarify, and I also
4 mentioned it in my report, that masked depression doesn't mean that you suffer from
5 depression but you don't know -- don't show any sign of an impairment. Masked
6 depression rather is defined - and this is something you can find in the literature and
7 this is not my subjective opinion - is defined as -- or describes the clinical picture
8 when a patient suffers from somatic complaints but I, as a treating psychologist or
9 psychiatrist, assume that a depressive disorder is the real reason why these -- this
10 individual or this patient suffers from somatic complaints and that we should deal
11 with depression and not with the somatic complaints.

12 So it's a technical term that comes from psychosomatics and the description that has
13 been given in court here is -- does not need the definitions that are described in the
14 scientific literature. So this is the first point.

15 And if we come back to the question you had. I remember last week you presented
16 the diagnostic criteria on the screen here in front of us and we were going through
17 some of the symptoms step by step, and what you would find in individuals that
18 suffer from, for example, PTSD or MDD, what you observe in these patients is that
19 they all show impairments in their psychosocial functioning and these impairments
20 are clearly recognisable by others. Of course an individual, a non- -- a layperson
21 would not be in a position to say, okay, this symptom is, I don't know, delusion or it's
22 hallucination. A layperson wouldn't be in a position to differentiate this and
23 correctly label the symptom with a -- with a valid psychiatric term. But at least
24 every layperson would be able to realise that -- the differences in the different
25 symptom profiles.

1 So imagine someone is suffering from nightmares, what does it mean? You can look
2 it up in the CAPS, we had it last week already, spelled C-A-P-S. There it is, for
3 example, described. A nightmare for -- people suffering from nightmares, for
4 example, wake up during the night, many of them scream because of the bad
5 memories, they wake up, they are sweating, or trembling, and it might take them, for
6 example, an hour or maybe two hours to get to bed again. Maybe they feel afraid in
7 the dark and maybe they want their spouse, for example, to turn on the light. And
8 this is clearly recognisable to others. Yeah?

9 And we could go there step by step through every symptom and I can give you
10 numerous examples how these symptoms can also be observed by the family
11 environment, for example, or the domestic -- or people in a domestic environment.
12 And this is also very important point because we rely on these sources of information
13 also in forensic psychology. For example, I have also put inside this document that
14 it's quite easy to fake PTSD. 90 per cent of the people that are instructed to fake
15 PTSD are able to fake PTSD. So that is the reason why we rely on the other sources
16 and ask other people if they have recognised something. And also you have to keep
17 in mind it is very, very stressful if you try to fake good and try to mask symptoms.
18 And you cannot --

19 Q. [15:32:03] I apologise. To fake good did you say? So the opposite of
20 malingering?

21 PRESIDING JUDGE SCHMITT: [15:32:12] Yes, I also understood that we are now
22 switching a little bit topics.

23 THE WITNESS: [15:32:16] I'm sorry.

24 PRESIDING JUDGE SCHMITT: [15:32:17] But if you wanted -- if you think it is
25 necessary for your answer to the question of Mr Gumpert to also refer to this, it's okay,

1 but I also sensed here that this might be something different.

2 THE WITNESS: [15:32:28] Yes, it is different. Sorry.

3 MR GUMPERT:

4 Q. [15:32:29] But since it occurs to you as part of a natural train of thought, and
5 since you are the expert, then I'm going to invite you to continue. I just wanted to
6 make sure that I had understood that you are now dealing with faking good rather
7 than faking bad.

8 PRESIDING JUDGE SCHMITT: [15:32:50] I think we continue now with your
9 questioning.

10 And, Ms Lyons, we can sustain, so to speak.

11 MS LYONS: [15:32:55] I'm not on faking good and faking bad, okay? I just want to
12 say that a few -- whatever it was, a few moments ago, you -- the answer was given, "I
13 as a treating -- as a treating psychologist or psychiatrist". I wanted to -- it may be
14 clear to the Court, so it's clear on the record, that Professor Weierstall-Pust, okay,
15 Professor Weierstall-Pust is here, his competency is as a psychologist, not, as I
16 understand, as a psychiatrist. And I would -- just wanted to raise that clarification
17 so it's -- we're accurate as to what the competency is of the expert.

18 PRESIDING JUDGE SCHMITT: [15:33:39] But, Ms Lyons, the CV of all the experts is
19 clear, so we know all that. So that would -- let me say it this way, that would not
20 have been necessary.

21 Of course, Mr Gumpert, Professor Weierstall could continue, but I had the impression
22 that it is something different and perhaps addressed separately. But I might be
23 wrong.

24 You are the expert, Professor Weierstall-Pust. If you deem it necessary, please
25 continue, but -- yes.

1 THE WITNESS: [15:34:11] I mean, just assume that that's a point I wanted to
2 make -- I might wanted to make. Assume that I was suffering from PTSD and I
3 would have to suppress all the symptoms I'm bothered with every day, then it
4 wouldn't be possible for me to sit in front of you and talk about my expert opinion
5 because I would be rather concerned with trying to hide these symptoms and it
6 wouldn't be possible for you -- for me to follow the conversation, it wouldn't be
7 possible for me to give proper answers to your questions.
8 And so you see, even if someone tries to hide symptoms, it's -- it requires so many
9 resources that it is not possible at all to follow normal, or whatever, to
10 follow -- or -- or to plan things. I mean, this is important for the present case, yeah?
11 And to communicate with others in a regular way or a way -- or in a normal way. So
12 even this is something you would recognise.

13 PRESIDING JUDGE SCHMITT: [15:35:23] But then, let me put it this way, you
14 would say faking good is not possible? Faking bad is possible?

15 THE WITNESS: [15:35:37] I think faking in general is possible. You can -- you
16 can -- when you want to fake things, you can try to fake things. But on the one hand,
17 we have tools to uncover faking. This is the one hand -- the one point. And it
18 requires resources. And you have to be aware that you -- or you need to -- when you
19 want to fake good or you want to fake bad, one or the other way around, it's very
20 stressful to maintain this picture you want to portray to others every day, the whole
21 day and most of the day.

22 And there are -- and if you are trying to fake, it's so, so difficult that people will
23 realise inconsistencies and they will report it. And that's the reason why I also think
24 it's important to rely on the notes that have been taken -- on the clinical expert
25 opinions that have been made by the DC experts because they had regular contact.

1 If they had realised any severe mental disorder, for example, they would have maybe
2 mentioned it, or probably mentioned it.

3 PRESIDING JUDGE SCHMITT: [15:36:52] Please.

4 MR GUMPERT: [15:36:52] Just for clarification, when you say "DC", meaning
5 detention centre?

6 A. [15:36:59] Mm-hmm.

7 Q. [15:37:00] Thank you. Professor, in the light of your last answer I want to take
8 you through some of the material I put to Dr Akena and Professor Ovuga when I
9 asked them questions.

10 And, your Honours, I shall confine myself to the material from Defence witnesses,
11 that is to say witnesses upon whom this witness had no opportunity to comment
12 when he last gave evidence.

13 PRESIDING JUDGE SCHMITT: [15:37:24] The Chamber appreciates that, yes.

14 MR GUMPERT: [15:37:27]

15 Q. [15:37:29] Professor, the second tab -- second and last tab in the document in
16 front of you is the same table which was referred to during my questioning of the
17 Defence experts. Your Honours, it now has an ERN, it didn't then; although it's the
18 same document, so I shall read it if I may?

19 PRESIDING JUDGE SCHMITT: [15:37:56] Of course.

20 MR GUMPERT: [15:37:57] UGA-OTP-0287-0063.

21 Q. [15:38:05] Extract number 1 is from Defence Witness D-0026, a junior officer in
22 another unit, not the same unit, but he knew Dominic Ongwen during the charged
23 period.

24 Now I think you've had the opportunity to read through these, so you are familiar.

25 A. [15:38:32] Mm-hmm.

1 Q. [15:38:32] In fact, I am not even, for fear of controversy, going to try to
2 characterise these extracts. I'm going to simply say, rather dumbly perhaps, what
3 you think of that? Are there any parts which you would draw to the Chamber's
4 attention as being potentially significant?

5 A. [15:38:56] So just -- I just want to repeat what you want from me, that I -- to
6 make sure that I understood you correctly.

7 PRESIDING JUDGE SCHMITT: [15:39:04] May I shortly?

8 THE WITNESS: [15:39:06] Yes, please.

9 PRESIDING JUDGE SCHMITT: [15:39:08] I think all the -- this question and perhaps
10 following questions --

11 THE WITNESS: [15:39:11] Mm-hmm.

12 PRESIDING JUDGE SCHMITT: [15:39:12] -- are under the assumption that you have
13 read these excerpts.

14 And more generally speaking, Mr Gumpert, I understand it, wants to know if
15 anything in these excerpts strikes you as to be commented upon?

16 THE WITNESS: [15:39:31] I know this table and I also know the quotes that are in
17 this document. And --

18 PRESIDING JUDGE SCHMITT: [15:39:38] Yes, and then the question --

19 THE WITNESS: [15:39:39] Okay. The problem is that I could -- there are maybe 50
20 or a hundred examples I could give and I just -- for example, if we go to --

21 MR GUMPERT: [15:39:47] Forgive me for interrupting, I do apologise and
22 absolutely no discourtesy is meant. I'm going to take you one by one --

23 THE WITNESS: Okay.

24 MR GUMPERT: -- through the ones which are Defence experts. And could
25 you - this may seem rather random - just pick the part of the material contained in the

1 box which you think is perhaps the most significant, which may help the Judges in
2 the decisions and the determinations they have to make.

3 PRESIDING JUDGE SCHMITT: [15:40:15] And Mr Gumpert leads you, as I would
4 understand it, to the different Defence testimony excerpts.

5 THE WITNESS: Mm-hmm. Okay. So if we, for example, focus on Defence expert
6 0026, line 1.

7 MR GUMPERT:

8 Q. [15:40:30] Defence witness.

9 A. [15:40:33] Witness. Sorry.

10 Q. [15:40:34] Yes, so we'll just call it "extract". We'll go by numbers, I suggest.

11 This is extract number 1, D-0026. Yes, please.

12 A. [15:40:42] Exactly. So the person who was -- who loved to joke is not the one
13 that matches a depressed individual. Or at least, I mean, we also have to consider
14 that if this witness describes Mr Ongwen with this description, then this must have
15 been significant to him, otherwise he wouldn't have mentioned it. So I would expect
16 a person who loves to joke -- and this is not, this does not match with the picture of
17 a depressed or especially severely depressed individual.

18 He was a carefree person doesn't match too.

19 He had the time to come and sit down with others, yeah, and enact with them, joke
20 with them a lot of times. This doesn't match. When you, for example, listen to
21 close friends or relatives from, people suffering from DID, they would report other
22 things. They would report that, for example, they were sitting with them and
23 suddenly things changed and they had the impression as if a very different person
24 was sitting in front of them. So they were having a nice conversation and, suddenly,
25 the other individual became angry, for example, because the other part of the

1 personality appeared on the screen.

2 So this would make them become confused and they would report it to you that they
3 can't -- of course, they can't explain it with the correct psychiatric terms, but they
4 would have recognised it. And one problem we have is that people, for
5 example -- or individuals, for example, suffering from DID is that they become
6 ashamed. They become ashamed of their symptoms. They fear that others could
7 think that they are insane because they also can't explain their symptoms, so they
8 would also expect that others think that they are insane. And this usually leads
9 to -- leads to, of course, that they try to stay away from others. They try to hide
10 themselves. Yeah?

11 Or, for example, this sometimes causes difficulties with others because they don't
12 understand what's going on and they might argue with the patient and they come
13 into conflicts, even there are no conflicts. So these would have -- if, for example, I
14 would -- if Mr Ongwen suffered from a dissociative identity disorder, for example,
15 we would have expected that others would have realised these rapid and controllable
16 changes from one type of the personality to the other. And these disruptions are
17 clearly visible to others, for example.

18 Q. [15:43:35] So if we move on to extract 2, D-0027.

19 A. [15:43:46] Yes. You see, this is exactly the problem people with severe mental
20 disorders usually have. That they lose contact to their social environment because of
21 the symptoms they display. So the person that is loved by others and the person
22 that has no problems with interacting with other people in the close environment, this
23 is not the one who would -- this is not the clinical picture we would expect to see in
24 someone who really suffers from several mental disorders like -- the disorder like the
25 one that are mentioned in the psychiatric report.

1 Q. [15:44:32] Moving to extract 3, which is from D-0056, can I invite your attention
2 particularly to the portion over the page. Can you see the answer at 11:10:15?

3 A. [15:44:53] Yes, I can.

4 Q. [15:44:55] This is a rather longer section and this appears to deal with his
5 employment, perhaps his work relations, work abilities rather than social ones.

6 Having reminded yourself of what this witness, who is somebody who was under his
7 command in Mr Ongwen's battalion and spent time with him during the charged
8 period, what would you say about this description of his soldierly abilities from this
9 witness?

10 A. [15:45:32] What I -- what I conclude from this quote is that Mr Ongwen had the
11 cognitive abilities in such situations to discuss with other people very important
12 tactical things. And if you want to do it, this means you have to stay focused, you
13 have to be concentrated, you have to consider different outcomes that might occur
14 when you behave in one way or the other way, and the -- this is quite high cognitive
15 demand.

16 And assume that you are coping with your dissociations, for example, or with the
17 nightmares, or with your bad memories, or if you try to cope to mask your bad mood,
18 then all these things that are described here wouldn't, wouldn't be possible.

19 Q. [15:46:40] Turning to extract 4 --

20 A. [15:46:43] Mm-hmm.

21 Q. [15:46:43] -- which is from D-75, that's a witness who was under Mr Ongwen's
22 command for 10 years and one of his subordinate commanders during the charged
23 period. Again, can I direct you to just one portion? Of course you're free to
24 comment as you wish, but down at the bottom of extract 4 on that page, can you see
25 the question and answer at 10 -- beginning at 10:47:34 which appears to - and it goes

1 over the page - to deal with Mr Ongwen's disciplinary procedures within his unit.

2 Just remind yourself of that testimony.

3 Is that something which is of significance when using this source of material to assess
4 the likelihood of his capacities being destroyed or otherwise?

5 A. [15:47:45] I think to me this quote implies that Mr Ongwen was able to do quite
6 some sophisticated reasoning. And this, in my perspective, is a contradiction to an
7 impaired capacity to -- also to -- yes, to -- or to impaired, sorry, to an impaired
8 capacity to think of the consequences of my -- of behaviour.

9 Q. [15:48:30] Thank you. Moving on to extract 5, much briefer. D-0118 was
10 abducted as a young girl and assigned to Mr Ongwen's brigade and later spent some
11 time with him in the sickbay during the charged period. She describes him, really
12 very briefly in three lines. Do you have any remarks in respect of that description?

13 A. [15:49:02] Well, the remarks I have to make is that what is described also at this
14 point contradicts the clinical picture or the observations that can be made in a person
15 suffering from a severe mental disorder.

16 And I want to add that this is not only my subjective interpretation, but this
17 contradicts the numerous examples that you can find in the scientific literature on
18 these different disorders; so what is described there on -- of how relatives, how
19 friends, how comrades describe people suffering from such a disorder, this was
20 completely different to what we find here.

21 And this is a point I want to make clear. So this is not my subjective point and I
22 would say, "Okay, I have a different opinion and Professor Ovuga and Akena have
23 this opinion", but what I want to say is this exactly contradicts the state of the art or
24 this is -- this contradicts the information that is generally used to inform other experts.

25 PRESIDING JUDGE SCHMITT: [15:50:15] These are three lines. There are a couple

1 of affirmations, so to speak, in it. Do you refer to something special here or would
2 you want to be more concrete?

3 THE WITNESS: [15:50:28] For example, when you have experienced severe
4 traumatic things in the interaction with other people, you would really -- you would
5 rather expect that someone who is severely traumatised, who has experienced bad
6 things in the interaction with other individuals, that he rather tries to avoid being in
7 open and free contact with others. The way -- how this is described here rather
8 portrays Mr Ongwen as a very talkative and communicative and a person with
9 adequate social skills. This is my interpretation as I read this, these two to three lines.
10 And this is not what we would expect to see in these -- in the patients I talked before.

11 MR GUMPERT: [15:51:28]

12 Q. [15:51:28] Thank you. Extract 6 from Witness D-0013.

13 This is a witness whom Mr Ongwen regards as his wife and she testified that she
14 shared that view of their relationship; she lived in his household in that capacity
15 during the charged period.

16 And again, you can see a fairly brief answer which she gave about his characteristics.
17 Would you regard those as being of significance in considering this as part of the
18 material when you are required to make an assessment, an evaluation of a person's
19 mental health at a particular period in time?

20 A. [15:52:32] I think that the other quotes we were referring to before fit better than
21 this one because I think this leaves more room to interpretations.

22 Still what I would expect, when I read this quote, is that on the picture I have in mind
23 is that it is -- that Mr Ongwen, if he behaved like this, was able to care about others,
24 to -- and not being bothered by his own symptoms and trying to cope with his own
25 symptoms, but having the capacity to also take care of others. And this is sometimes

1 a sign that is really -- or it's a problem that people suffering from severe disorders
2 have.

3 For example, we know that depressed mothers, for example, depressed mothers have
4 sometimes quite significant difficulties when they try to raise their kids because they
5 are rather concerned with their own symptoms of depression. They are not -- they
6 are not able to give the love to the children they would like to give to them.

7 And we know, for example, when it comes to the transmission from one generation to
8 the other in depressed individuals, for example, that this is one big issue that occurs
9 in patients with major depressive disorder, for example, that they have problems to
10 raise their kids adequately because of being bothered with their symptoms.

11 Or assume you have someone with PTSD who's waking up every night screaming,
12 not being able to fall asleep again. So does this person have the capacity to take care
13 of others? No. They would rather be bothered by their own symptoms and try to,
14 try to hold things together.

15 Q. [15:54:38] Thank you. Can we move now -- skip over a whole chunk of
16 Prosecution witnesses, and move to extract 13, which is --

17 PRESIDING JUDGE SCHMITT: [15:54:48] Defence witnesses.

18 MR GUMPERT:

19 Q. [15:54:50] Sorry, to Defence witnesses, extract 13, D-0032, extract 13.

20 A. [15:55:05] Mm-hmm.

21 Q. [15:55:06] Again, this appears to be more related perhaps to his occupational
22 capacities rather than social ones --

23 A. [15:55:15] Mm-hmm.

24 Q. [15:55:16] What would you consider to be significant in this report of his
25 occupational capacities if you were making an evaluation of a person for the purposes

1 of a forensic mental health report?

2 A. [15:55:35] So what I can read here is -- I don't know, was it confirmed that he

3 was a skilled fighter? I don't know. At least it was confirmed that this person

4 heard that Mr Ongwen could -- would be able to take good care of his soldiers.

5 One problem we have, for example, and I think I also mentioned it last time when I

6 was here, that in the military forces it is one big issue that soldiers suffering from

7 PTSD are not able to properly do their job. So when you have traumatised soldiers,

8 you wouldn't send them to the front line. And the military forces doing their -- they

9 are making significant efforts to train soldiers to overcome fear, to overcome

10 symptoms of their anxiety and especially to overcome mental health issues such as

11 PTSD. So you wouldn't send a soldier suffering from PTSD to the battlefield because

12 you would expect him to make mistakes. You would expect him not to be able to

13 follow the rules, and of course then you would also not expect such a person to

14 take good -- of other soldiers. So you would not -- not even give him a leading

15 position in an armed force.

16 So you would do the opposite. And we know it from the reports, for example, when

17 you send soldiers that haven't been to the front line before, you send them the first

18 time to battle, many of them return and they show -- maybe it's too private to say

19 what they experienced there, but many of them come back shivering. Many of them

20 report that they, for example, even peed their pants just because they were so afraid

21 being there. And if you were a commander and you would show these signs, you

22 wouldn't be in a position to be a good soldier caring about others. You just need the

23 opposite skills. And that's why, for example, these days you use, for example, also

24 virtual reality so that you can already prepare your soldiers and give them an

25 impression how it will look like during the battle and that they get relief in order to

1 get rid of their anxiety.

2 Q. [15:58:01] Extract 14 is from Witness D-0100. This was an LRA commander in
3 another unit who knew Mr Ongwen between 1998 and 2005. He speaks about
4 Mr Ongwen's behaviour.

5 (Microphone not activated)

6 A. [15:58:30] Mm-hmm. Here it is said that Mr Ongwen liked to play. It is said
7 he really, really liked playing more than anything else. And one core symptom of
8 depression, for example, is a marked loss of interest in activities a person usually used
9 to enjoy. And, for example, enjoying to play is something we would say, okay, what
10 type of play did he enjoy? But -- but at least I would expect that this is
11 a contradiction to the sign of the depressive disorder that someone lost an interest in
12 things he usually liked to enjoy.

13 And of course, I mean, I think we should not make -- one thing we have to keep in
14 mind that these are also -- some you mentioned or you labelled it last week building
15 blocks. These are some building blocks and we have to put them together, that in
16 the end we can get a holistic picture of what has really happened and how
17 Mr Ongwen was.

18 And if you only have a look at one quote, then there is much space for interpretation.
19 But if you have a look at the different quotes and you try to combine these different
20 quotes into one holistic picture and then you combine it also with the self-report, and
21 then you combine it maybe in the end also with psychometric test, then in the end
22 you can come to the conclusion and say, "With this and that probability, I would
23 assume that he suffered from this disorder."

24 And I think the quotes that we have gone through so far are all portraying a coherent
25 picture, and this coherent picture contradicts the -- the clinical picture I would expect

1 on a severely -- for example, depressed or traumatised individual.

2 Q. [16:00:27] I think I can probably take the last two together, 15 is D-0019, 16 is
3 D-0049. They are both brief extracts, much along the lines of what you have just said.
4 Is that -- no, I shan't lead you. Briefly, is there anything new which you would want
5 to say arising out of those two extracts?

6 A. [16:01:01] I think it fits to the quotes that we already -- yeah, that we have
7 already mentioned here. And to me, it sounds as if they had a good time, but not
8 a severe mental disorder.

9 PRESIDING JUDGE SCHMITT: [16:01:24] Mr Gumpert, shortly, I would like to
10 enquire for planning purposes, how long your examination would last, if you have
11 already an idea. I think you will have.

12 MR GUMPERT: [16:01:37] To try to give you a more intelligent answer, a better
13 answer, would you allow me to consult my colleagues just for a moment?

14 PRESIDING JUDGE SCHMITT: [16:01:53] Of course I would.

15 MR GUMPERT: [16:01:55] Thank you.

16 PRESIDING JUDGE SCHMITT: [16:02:09] Of course I dare not ask Ms Lyons yet,
17 but if Ms Lyons would want to voluntarily relay some sort of information already, we
18 would of course not say no in receiving it.

19 MS LYONS: [16:02:24] I -- I won't pass that. Okay, my position is that we will take
20 no more than a full day of cross-examination. It may be less. It depends again on
21 obviously what happens and hearing the rest because Ms Lyons can't decide in the
22 abstract without hearing the testimony.

23 PRESIDING JUDGE SCHMITT: [16:02:52] And I made all sorts of caveats when I
24 asked you and, of course, if you can't say something until the Prosecution has
25 concluded.

1 In the meantime, you have talked with your colleagues?

2 MR GUMPERT: [16:03:04] I have. I think really I've just got one last question and
3 then we can be done for today.

4 PRESIDING JUDGE SCHMITT: [16:03:10] Okay. Then we do this and then Ms
5 Lyons you would have the whole day tomorrow.
6 Please.

7 MR GUMPERT: [16:03:18]

8 Q. [16:03:20] Professor, you spoke earlier about two particular psychometric tests.
9 I may have the acronyms or the jumble of letters wrong. One was SCID and the
10 other was MMPI?

11 A. [16:03:35] Mm-hmm. Exactly.

12 Q. [16:03:37] I've got it more or less right, have I?

13 A. [16:03:42] Mm-hmm.

14 Q. [16:03:43] Yes. There was mention earlier of, forgive these crude terms, faking
15 bad and faking good, which I understand to mean when you are not mentally ill,
16 pretending to have the symptoms of it, that's faking bad; and when you are mentally
17 ill, trying to cover up the symptoms of it, faking good. Can you help the Judges with
18 how those two tests or others, if there are, may address those two phenomena?

19 A. [16:04:19] Okay, for example, when we refer to the MMPI, it includes two scales.
20 So the instrument itself has more than 300 items and two scales focus on faking good
21 and faking bad. The scale that's -- that focuses on the faking good aspect, it's usually
22 called the L scale. The L stands for lie, the lie scale, and it contains 15 items with
23 contradictory statements, for example, and we want to assess from the individual
24 how they respond to these questions. And then in the end, we can come to
25 a conclusion and say, "Okay, this rather matches to a person that is dissimulating".

1 And, for example, in the F scale, it is -- it includes I think 50 items, and in the one half
2 of the -- of this MMPI, the first 25 items are presented and in the second part, the
3 other 25 items are presented and you combine it.

4 In the F score, the F doesn't have any meaning. It's sometimes called an infrequency
5 scale, but the F has no meaning at all. But in these 50 items this is -- this also assesses,
6 for example, they -- they ask for symptoms that would never occur, for example.

7 Then we see if these patients, for example, would also respond to these items.

8 And in a similar way it's done in the SCID as well. So in -- the SCID provides you
9 with the opportunity to differentiate, for example, between dissociative symptoms
10 that are a consequence of substance-use disorder and, say, "Okay, maybe this is
11 rather -- the dissociation is a consequence of intoxication", for example, and there are
12 these -- these items available.

13 And, one -- sorry, one last point is of course and we had it -- it was discussed last
14 week as well that also the test results you get in the end should be interpreted with
15 caution. And I think that is absolutely important because especially in individuals
16 with PTSD, for example, or individuals with dissociative disorder we find increased
17 or higher number -- we find usually higher scores on the F scale, even they do not
18 malingering, and that's something we have to keep in mind. So we get too many false
19 positives or correct positives -- no, too many false -- sorry. I'm confused, sorry.

20 You get too many false positives say, so you would say: This person's faking
21 symptoms, but it's actually not faking symptoms because some of the symptoms of
22 PTSD, for example, or dissociative disorder interfere with the F scale questions.

23 So you have to be aware that you will expect generally higher scores on the F -- at the
24 F scale in individuals that do not malingering, but actually have a dissociative disorder.

25 But there are publications that especially deals with these issues and these

1 peculiarities that you have to keep in mind when you apply these measures in the
2 different cohorts.

3 And, for example, also in the SCID-D-R, which is the revised -- the revised version of
4 the SCID that particularly deals with dissociations, it also makes statements on things
5 that have to be considered when you apply the SCID-D-R in the forensic context. So
6 there's also literature available that needs to be considered. I can't make reference to
7 all the scientific work that has been done in that field, but generally this is how it
8 works.

9 MR GUMPERT: [16:08:27] Thank you, your Honours.

10 Thank you very much, Professor.

11 PRESIDING JUDGE SCHMITT: [16:08:30] Thank you.

12 THE WITNESS: [16:08:31] Thank you.

13 PRESIDING JUDGE SCHMITT: [16:08:32] Thank you.

14 This concludes the hearing for today. We resume tomorrow at 9.30 and continue
15 with the examination of Professor Weierstall-Pust by the Defence.

16 And you tell the Chamber also tomorrow what -- about a potential rejoinder, I would
17 say, yes?

18 MS LYONS: [16:08:53] I can tell you now that we --

19 PRESIDING JUDGE SCHMITT: [16:08:55] Yes?

20 MS LYONS: [16:08:56] -- that we will present rejoinder evidence.

21 PRESIDING JUDGE SCHMITT: [16:08:58] Yes.

22 MS LYONS: [16:08:59] That's all -- that's the only information I have now.

23 PRESIDING JUDGE SCHMITT: [16:09:03] Yes. I had assumed that but of course
24 since I had also asked Mr Gumpert, I --

25 MS LYONS: [16:09:06] Sure.

- 1 PRESIDING JUDGE SCHMITT: [16:09:06] (Overlapping speakers) I had to ask.
- 2 MS LYONS: [16:09:09] Do you want us to send you a little note or something as
- 3 well?
- 4 PRESIDING JUDGE SCHMITT: [16:09:12] I think that's not necessary.
- 5 MS LYONS: [16:09:13] Okay, okay --
- 6 PRESIDING JUDGE SCHMITT: [16:09:13] You said it orally and when we -- for
- 7 example now, when we reconvene on Thursday and you would not be there, it would
- 8 be strange - you see what I mean - for rejoinder evidence.
- 9 So we meet tomorrow then at 9.30.
- 10 THE COURT USHER: [16:09:31] All rise.
- 11 (The hearing ends in open session at 4.09 p.m.)