International Criminal Court

Trial Chamber IX

Situation: Republic of Uganda

In the case of The Prosecutor v. Dominic Ongwen - ICC-02/04-01/15

Presiding Judge Bertram Schmitt, Judge Péter Kovács and

Judge Raul Cano Pangalangan

Trial Hearing - Courtroom 3

Monday, 26 March 2018

(The hearing starts in open session at 9.32 a.m.)

THE COURT USHER: [9:32:07] All rise.

The International Criminal Court is now in session.

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

Could the court officer please call the case.

THE COURT OFFICER: [9:32:36] Thank you, Mr President.

The situation in the Republic of Uganda, in the case of The Prosecutor versus Dominic Ongwen, case reference ICC-02/04-01/15.

And we are in open session.

PRESIDING JUDGE SCHMITT: [9:32:49] Thank you.

And Mrs Gilg for the Prosecution, the presence of the Prosecution.

MS GILG: [9:32:54] Good morning, your Honours, Colleen Gilg for the Prosecution.

Today I am here with Colin Black, Benjamin Gumpert, Pubudu Sachithanandan, Paul Bradfield, Agnese Valenti, Yulia Nuzban, Jasmina Suljanovic, Ramu Fatima Bittaye, Adesola Adeboyejo, Beti Hohler and Hai Do Duc.

PRESIDING JUDGE SCHMITT: [9:33:17] Thank you.

Mrs Hirst for the Legal Representatives of the Victims.

MS HIRST: [9:33:20] Good morning, Mr President, your Honours. Megan Hirst with James Mawira.

PRESIDING JUDGE SCHMITT: [9:33:25] And Mr Narantsetseg.

MS MASSIDDA: [9:33:28] Good morning, your Honour.

PRESIDING JUDGE SCHMITT: [9:33:30] Mrs Massidda --

MS MASSIDDA: [9:33:31] I'm hidden here somewhere.

PRESIDING JUDGE SCHMITT: [9:33:34] -- you were hidden, I would really dare say and I would not say that you were invisible, but I really did not recognise you immediately.

MS MASSIDDA: [9:33:42] Thank you very much, your Honour. Good morning. Appearing for the Common Legal Representative team today Orchlon Narantsetseg, indeed, Caroline Walter, Innocent Mpoko, Laura Mahecha and myself, Paolina Massidda.

PRESIDING JUDGE SCHMITT: [9:33:58] Thank you. But an indicator would have been that Mr Narantsetseg had not reacted at all. So this would have been clear then for me.

For the Defence, I think Mrs Bridgman.

MS BRIDGMAN: [9:34:08] Good morning, Mr President and your Honours, Abigail Bridgman for the Defence with lead counsel, Krispus Ayena Odongo, Mike Rowse -- Michael Rowse and our client, Mr Dominic Ongwen, is in court today.

PRESIDING JUDGE SCHMITT: [9:34:24] and Mr Taku also.

MS BRIDGMAN: [9:34:27] And -- yes, co-counsel, Chief Charles Achaleke Taku.

PRESIDING JUDGE SCHMITT: [9:34:30] Thank you very much. And the Prosecution is now calling Ms Abbo as its next witness.

First of all, Ms Abbo, good morning.

WITNESS: UGA-OTP-P-0445

(The witness speaks English)

THE WITNESS: [9:34:39] Good morning.

PRESIDING JUDGE SCHMITT: [9:34:41] I would like to welcome you to this courtroom on behalf of the Chamber. As you are well aware you are testifying before the International Criminal Court.

THE WITNESS: [9:34:45] Thank you.

PRESIDING JUDGE SCHMITT: [9:34:45] And there should be a card in front of you with the solemn undertaking to tell the truth. Would you please be so kind to make this undertaking by reading the card out aloud.

THE WITNESS: [9:34:59] I solemnly declare that I'll speak the truth, the whole truth and nothing but the truth.

PRESIDING JUDGE SCHMITT: [9:35:04] Thank you very much. We have a few practical matters to discuss before we start with your testimony. You know that everything here in the courtroom is written down and interpreted and to allow for the interpretation, we should all speak at a relatively slow pace.

THE WITNESS: [9:35:20] Okay.

PRESIDING JUDGE SCHMITT: [9:35:21] Not so quick as I do at the moment, I think. I should also be slower so that the interpreters can follow. And, of course, please only speak when the person that has asked you a question has finished but that is self-explanatory I would say.

THE WITNESS: [9:35:37] Okay, thank you.

PRESIDING JUDGE SCHMITT: [9:35:38] If you have any questions yourself, please raise your hand and we will notice that and give you the floor.

THE WITNESS: [9:35:43] Okay.

PRESIDING JUDGE SCHMITT: [9:35:44] I think that's enough for the preliminary matters. Mrs Gilg has the floor for the Prosecution.

QUESTIONED BY MS GILG:

Q. [9:35:47] Good morning, Madam Witness.

A. [9:35:49] Good morning.

Q. [9:35:50] We've met before.

A. [9:35:51] Yes.

Q. [9:35:51] I will be asking you questions today on behalf of the Prosecution.

A. [9:35:54] Okay.

Q. [9:35:55] If anything is not clear, let me know, and I'll ask it in a different way.

A. [9:35:59] Okay.

Q. [9:36:01] What is your full name?

A. [9:36:03] Catherine Abbo Adito.

Q. [9:36:07] And what is your nationality?

A. [9:36:09] I'm Ugandan.

Q. [9:36:12] Thank you. Before we go any further, I want to give you a general overview of how we will proceed today. We will cover six general topics; first, your professional qualifications; second, some procedural matters regarding your report.

A. [9:36:29] Okay.

Q. [9:36:30] Third, clarification of certain aspects of your report.

A. [9:36:34] Okay.

Q. [9:36:34] And fourth, your comments on the evidentiary chart of witness testimony extracts that the Prosecution sent to you; fifth, your comments on certain points raised by the other two Prosecution mental health experts. And finally, I will ask you some questions about your ultimate conclusions.

Let's start now with the first topic.

A. [9:37:01] Okay.

Q. [9:37:01] I note for the Chamber that the witness's CV is near the end of tab 1, 0280-0732 at 0769.

PRESIDING JUDGE SCHMITT: [9:37:12] And of course we have taken notice of it. You can keep this one short, I would say.

MS GILG: [9:37:18] Noted, your Honour.

Q. [9:37:20] Madam Witness, what is your occupation?

A. [9:37:23] I am a senior lecturer at Makerere University and I am also a certified child and adolescent psychiatrist, so I see patients, as well as teach and do some research.

Q. [9:37:36] Thank you. Your university, where is that located?

A. [9:37:40] It's located in Kampala, the central part of Uganda.

Q. [9:37:46] You mentioned child and adolescent psychiatry?

A. [9:37:51] Yes.

Q. [9:37:51] This might sound obvious to you, but what is that?

A. [9:37:54] Child and adolescent psychiatry is a discipline, part of a general psychiatry that deals with assessment, diagnosis, management and prevention of mental health problems in children and adolescents and their families.

Q. [9:38:18] And when you speak of children and adolescents, which age range are we talking about?

A. [9:38:25] We are talking about any person below 18 years, so from 0 to 18.

Q. [9:38:36] And I can see from the first page of your CV that you hold postgraduate degrees in the field of psychiatry?

A. [9:38:45] Yes.

Q. [9:38:45] And also in child and adolescent psychiatry?

A. [9:38:48] Yes.

Q. [9:38:49] Where did you study to receive those degrees?

A. [9:38:52] I studied a Master of Medicine in psychiatry from Makerere University from 2000 to 2003, and then I studied a Master of Philosophy in child and adolescent psychiatry from the University of Cape Town, but I also did a fellowship of College of Medicine of South Africa which certified me as a child and adolescent psychiatrist.

Q. [9:39:27] Thank you. I also see from your CV that you hold a PhD?

A. [9:39:31] Yes, please.

Q. [9:39:32] In relation to which area of study is your PhD?

A. [9:39:36] My PhD was in the area of transcultural psychiatry. This is an area that deals with issues of culture and mental health and mental illness.

Q. [9:39:52] And what was the topic of your PhD thesis.

A. [9:39:55] My PhD thesis looked at how traditional healers managed and the profile of the kind of mental health problems that go to them and the outcome.

Q. [9:40:10] Now, page 1 of your CV also mentions that your main area of research has been mental illness and culture. Which culture or cultures have you focussed on in your research?

A. [9:40:23] I mainly focussed on cultures in Uganda, specifically in eastern Uganda; however, in the whole course of training I, I generally look at different cultures and throughout. For example, in, in -- I rotated in McGill University in Canada transcultural -- that offers transcultural course that looks at cultures across. So generally it's cultures across, but the PhD thesis was cultures of eastern Uganda, yeah.

Q. [9:41:06] And thinking about your research in general, apart from communities

in eastern Uganda, where else have you worked with patients or research subjects in Uganda?

A. [9:41:21] I have worked with some colleagues from University of -- from Gulu university in northern Uganda, and I actually am a visiting lecturer there so sometimes I go and lecture there. I lecture transcultural psychiatry to, to medical -- masters of medical anthropology students. And I lecture general psychiatry to undergraduate students in that same university. And part of this lecture, part of the course is to go to the communities and, and do some community work as well. And, yeah, and I have also carried out research with, with some faculties from university, Gulu university.

Q. [9:42:09] Now, you mention that you've carried out some research. I see that you have authored an article, or jointly authored an article, on the concept of cen and orongo in Acholi culture as it relates to post-traumatic stress disorder.

A. [9:42:26] Yes.

Q. [9:42:26] Please tell us a little bit about the research that resulted in that article?

A. [9:42:30] There is such -- this was basically a review article, but part of what formed that article was a research that was done by Professor Ovuga, yeah, and, yes, and he invited me to author the paper with him because of my experience in other areas of culture. Yeah.

Q. [9:43:02] And looking on, I see you have published articles or jointly published articles related to the area of neuropsychiatry; is that right?

A. [9:43:14] Neuropsychiatry?

Q. [09:43:15] Yes.

A. [09:43:16] Yes, yes.

Q. [9:43:17] What is that?

A. [9:43:19] Neuropsychiatry is the area of psychiatry that deals with issues arise from the brain, yeah. These days there is not much difference between the, the general psychiatry problems and, and the neuropsychiatry because the current understanding is that all problems arise from the brain. However, if we must put a distinction, neuropsychiatry are those disorders that arise from what used to be called organic psychiatry. You have HIV and then it affects the brain, that would fall under neuropsychiatry. You have epilepsy perhaps and it causes behavioural problems, it would fall under neuropsychiatry. Yeah.

Q. [9:44:17] Thank you. And how does neuropsychiatry relate, if at all, to another field that seems or possibly may seem related, neurology?

A. [9:44:30] Again, there is a thin line between neurology and psychiatry. Previously they used to be practised separately, but at the moment they are now coming together because of the realisation that even mental health or psychiatric problems are neurological problems, so to say, because they all arise from the brain. Yeah.

Q. [9:44:59] And I also see in your CV that you headed the forensic unit in the Ugandan National Mental Referral Hospital for approximately three years?

A. [9:45:10] Yes.

Q. [9:45:10] Please tell us a little bit about the work you did in that role?

A. [9:45:14] As the head of the forensic units of the National Mental Referral Hospital Butabika, and that was between 2003 and 2006, I assessed the patients, made a diagnosis, made a management plan, managed them. But some of the patients were patients that needed court reports, not all of them, and sometimes these court reports would be requested by the court, or sometimes police. And so part of my role was to, to write up those reports and send to the courts, to whoever has asked for

the reports.

Q. [9:46:03] Thank you. Let's move on now to our next topic.

A. [9:46:06] Okay.

Q. [9:46:06] Please could you look for tab 1 in the set of binders you have next to you.

And the ERN again for this is 0280-0732. Do you have it there?

A. 0732, yes, please.

Q. Do you recognise this document?

A. [9:46:29] Yes, I do recognise this document.

Q. [9:46:31] What is it?

A. [9:46:32] It's a report that I wrote.

THE INTERPRETER: [9:46:38] Message from the interpretation booth: Could the three-second golden rule be observed to allow for interpretation.

PRESIDING JUDGE SCHMITT: [9:46:46] So I am not -- not I am reproached, I am only told that you and perhaps also Mrs Abbo should observe the three-second rule. So just to allow for the interpretation, wait three seconds until you start speaking again.

THE WITNESS: Okay.

MS GILG: [9:47:08]

Q. Yes, Madam Witness --

PRESIDING JUDGE SCHMITT: [9:47:10] And the reason is, we had this the last time, to explain this that the structure of the languages is so different. So English is, I said it the last time, I already said it, is a relatively quick language, short language which does not need so much, so much time and space and room than, for example, German or obviously Acholi, if you translate into Acholi. So we need a little bit more time for

the interpretation. Thank you.

MS GILG: [9:47:43]

Q. [9:47:43] Madam Witness, please turn to page 25 your report, which has the ERN ending in 0756.

A. [9:48:12] Yes.

Q. [9:48:12] Whose signature do you see at the bottom of the page?

A. [9:48:15] It's my signature.

Q. [9:48:18] And do you confirm today that the contents of this report are true to the best of your knowledge and belief?

A. [9:48:26] I do confirm that.

Q. [9:48:29] Now, please stay in tab 1 for a moment and I'm going to refer to the bottom right-hand side. The number there which we refer to as an evidence registration number, the ERN page number, I think you've already seen that. After your signature that we just looked at, if we flip through the pages together we will find first the letter of instruction you received in this case, starting on page 0757.

A. [9:49:05] Yes.

Q. [9:49:05] And then next starting on page 0762, annex A to that letter of instruction, which lists the materials that were sent to you initially.

A. [9:49:21] Yes.

Q. [9:49:21] And next, starting on page 0767, a list of additional materials which were sent to you.

A. [9:49:30] Yes.

Q. [9:49:31] And finally starting at page 0769, your CV, which continues until the end of the tab.

A. [9:49:42] Yes.

Q. [9:49:44] Do you recognise those documents?

A. [9:49:47] Yes, I do recognise the documents.

Q. [9:49:51] Have I described them correctly?

A. [9:49:54] Yes, you have.

Q. [9:49:57] Madam Witness, the Rules of Procedure and Evidence of this Court allow for a report such as yours to be accepted into evidence in written form, if you do not object. Do you object to submission of your report in this way?

A. [9:50:17] No.

PRESIDING JUDGE SCHMITT: [9:50:20] This fulfils the requirements of Rule 68.

MS GILG: [9:50:24] Thank you, your Honour.

Q. [9:50:29] Now, Madam Witness, we just looked at the list of materials you were provided by the Prosecution for review.

A. [9:50:34] Yes.

Q. [9:50:35] Now those items are in tabs 4 through 44 of the binder --

A. [9:50:40] Okay.

Q. [9:50:40] -- and are available in case you want to refer to them.

A. [9:50:44] Okay.

Q. [9:50:45] Please turn now to tab 45 of the binder. And when you get there just take a quick look through the pages.

Now, are the items in tab 45 additional materials that you sourced yourself and cited in your report?

A. [9:51:50] Yes.

Q. [9:51:50] How did you select these materials?

A. [9:51:54] My guiding principle selecting the materials arose from the fact that as I was reading through the materials that I was given and I had a question in mind, for

example, if I had a -- I had a question of the chronology of events of how things unfolded and so I searched and got the first, the first one. I also had a question in my mind about criminal capacity for Uganda and which was -- I didn't find them through the materials that I was given so I searched that and found. So what guided me was the materials -- the answering or understanding, giving me a framework to, to what I was tasked to do. And so if I didn't find that within what I was given, then I would look for it. Yeah.

Q. [9:53:00] Thank you for that explanation.

A. [9:53:05] Okay.

Q. [9:53:05] Madam Witness, you were not able yourself to conduct a mental state examination of Mr Ongwen; is that right?

A. [9:53:16] It's right.

Q. [9:53:18] Why not?

A. [9:53:21] Well, I and my other two colleagues who were tasked to do this work requested that we are given a chance to interview Mr Ongwen, and when we put our requests, we were -- after a few days we were told that it was not possible because he had, he had declined to our request.

Q. [9:53:48] How did that affect your ability to assess his mental state?

A. [9:53:57] I, I come from the school of thought that I need to be able to examine the person to have a full understanding of the diagnosis particularly and, and so -- especially the current mental state, and so I couldn't write or discuss his current mental state because of that. However, the information that I had, the videos and all the other documents gave me enough background to, to describe his functioning particularly and the -- to make some inferences here and there about his mental state and his functioning in the past.

Q. [9:54:57] And are you confident in the analysis and conclusions contained in your report?

A. [9:55:05] I am confident.

PRESIDING JUDGE SCHMITT: [9:55:09] And, just a short remark, if you compare it with the psychiatric report of Ms Mezey, you see that Ms Abbo has strictly refrained from making any discussion on the current state of mind of Mr Ongwen. This is obvious if you read through the report. So it concurs with what you have said.

MS GILG: [9:55:32] Thank you, your Honour.

Q. [9:55:33] Now, Madam Witness, the Judges will have to decide on criminal responsibility in this case, including exclusion of criminal responsibility.

A. [9:55:43] Yeah.

Q. [9:55:43] It's not my job and it's not your job as an expert to decide on this. Now going back to the letter of instruction.

A. [9:55:51] Yes.

Q. [9:55:51] Let's just establish clearly what you understood as your role in this case.

A. [9:55:57] Okay.

Q. [9:55:57] Now, on page 3 of that letter, and this is ERN ending in 0758 -- or 0759, you were asked to provide an objective, independent assessment and provide all the information that a reasonable fact-finder would need to assess the Article 31(1)(a) issues in relation to Mr Ongwen's mental capacities from 2002 to 2005. Was that the approach you applied in your report?

A. [9:56:37] Please say that again.

Q. [9:56:40] I am asking just --

PRESIDING JUDGE SCHMITT: [9:56:42] It was a rhetoric question.

MS GILG: [9:56:44] Yeah.

PRESIDING JUDGE SCHMITT: [9:56:45] So to speak. I would be surprised if that -- you can continue, but I would be surprised if Ms Abbo would not have followed this letter of instruction.

Ms Abbo, if you look at this letter of instruction, I think you are on this page, 0759 at the bottom, it is.

THE WITNESS: [9:57:07] 0759.

PRESIDING JUDGE SCHMITT: [9:57:14] Yes.

THE WITNESS: [9:57:15] Yes, yes.

PRESIDING JUDGE SCHMITT: [9:57:17] And I think we are here, I assume, Ms Gilg under the chapter "Content and Form of the Report" and we are looking at the first two paragraphs. And the question would be, by Mrs Gilg, if you followed this instruction when giving your written report.

THE WITNESS: [9:57:53] I do believe that I followed this. However, maybe other people reading the report might have a different opinion, but I think personally I do believe that I followed this. Yeah.

PRESIDING JUDGE SCHMITT: [9:58:09] You know, that's a very wise answer because in the end the Chamber here has to assess if you followed that. But I think we can continue. It's okay.

MS GILG: [9:58:21]

Q. [9:58:21] Madam Witness, I am going to move to the third topic now. Let's go through your report and I have some follow-up questions --

A. Okay.

Q. -- on specific aspects. I'm going to first refer to section 5 of your report and this starts at your page 9, ERN 0740 to 0744.

Now here you discuss five types of development: Moral, cognitive, social, emotional and psychological. Why did you think it was important to include this kind of analysis?

A. [9:59:14] I thought that it was important to include this kind of analysis because of the finding through reviewing the documents, the indications that Mr Ongwen was abducted in the age range of 9 to 14, different documents give different age ranges and, and so I thought, well, this person is still in the developmental period, I really need to be sure that, that we are assessing him at the level of his development. Yeah.

Q. [10:00:02] And I think you started to answer my next question, but I wanted to understand, as you state in your report, Mr Ongwen during the charged period, was an adult.

A. Yeah.

Q. Somewhere between the ages of 23 and 32.

A. [10:00:19] Mm-hmm.

Q. [10:00:21] Can you elaborate on why you chose the adolescent level of development as your baseline, not the adult level?

A. [10:00:32] Yes. As I indicated in my report first, that time of -- that was stated that he had -- he was abducted, that's one. The second thing is that the document, some of the documents that I reviewed had indications that he had child-like behaviours. Third, some of the descriptions of the depressive symptoms by, particularly by Professor Ovuga and Dr Akena, indicated some symptoms that we find in adolescents. So these are some of the reasons really why I thought I needed to go back to the developmental period. Yeah.

Q. [10:01:20] Now, in your report you reached conclusions about Mr Ongwen's level of development.

A. [10:01:27] Yes.

Q. [10:01:28] I want to ask you about the time period you are referring to there. Let's look at page 10 of your report as an example and this ERN 0741. Here you conclude --

A. [10:01:47] 0741. Yes, please.

Q. [10:01:50] You conclude that in relation to moral development Mr Ongwen had reached the highest level, the post-conventional level. When you say he had reached this level, what time period are you referring to?

A. [10:02:08] I am referring to the period of -- the adult period, yes.

Q. [10:02:21] And when you think of adult period do you think of that as covering the time period of this case as well?

A. [10:02:27] Yes.

Q. [10:02:28] Let's talk about cognitive development. As you note in your report, Mr Ongwen scored fairly low on IQ test.

A. [10:02:39] Yeah.

Q. [10:02:40] Let's just look at that test or the description of that test. Please open to tab 44 and -- I will give you a moment to --

A. [10:03:00] Okay, 44? Yeah.

Q. [10:03:04] If you look near the end of this tab, go to the page ending in 0151.

A. [10:03:14] 015 --

Q. [10:03:17] One. That's UGA-D26-0015-0151.

A. [10:03:43] Yes.

Q. [10:03:44] Okay. Looking near the bottom of the page we see that the psychologist who administered the IQ test expressed doubts about its reliability and suggested that the results may have been influenced by Mr Ongwen's sleeping

problems or non-school background. Do you share her view or do you have other thoughts on this?

A. [10:04:14] I do share her view, especially about the reasons why he could have scored low. My understanding of tests that are carried out to measure intellectual ability have variability, yeah, and they are factors that must be considered, yeah.

Q. [10:04:44] And just on that point, what would you say about the reliability of intelligence tests in relation to a person of Mr Ongwen's background and upbringing?

A. [10:04:59] I have no experience about this particular test. But my general understanding is that the intellectual ability tests are tests that are developed in the west which has a different culture, different way of doing things, and Mr Ongwen, having even been abducted at a young age, I am not sure he had education, any education during the time he was in the bush. So all these are factors that, you know, that affect the reliability of the tests, yeah.

Q. [10:05:38] And you yourself concluded that Mr Ongwen impresses as having above average intelligence. Why?

A. [10:05:51] From, from the reports that have been written, from the way he reasons, from the way he makes references even about culture, I think this gives me an impression that he is, you know, he is thoughtful and, and, and he is able to understand beyond really average. If he -- had he gotten opportunity to study, I think he would have done very well.

Q. [10:06:36] Let's look now at your page 9, ERN ending in 0735. I'm back to your report now.

PRESIDING JUDGE SCHMITT: [10:06:50] As you see, Ms Abbo, here in the courtroom you really have to work, you have to put all this together and have to find all these tabs and everything. But take your time.

THE WITNESS: [10:07:02] Okay. So 0739?

MS GILG: [10:07:05] It's your page 9 and ERN 0735.

A. [10:07:14] Okay.

Q. [10:07:15] Here you conclude that Mr Ongwen seems to have had an early childhood favourable environment that instilled the appropriate behavioural norms and encouraged development of empathy and consideration of others and secure attachment. What is meant by the term "secure attachment"?

A. [10:07:39] Secure attachment, let me start by explaining what attachment is, then I will come to the secure attachment. Attachment is an instinctual brain system that evolves in, in individuals, in children, in order for them to survive. And so what happens is that the caregiver acts as a secure base where the child then explores the environment. And when the child becomes distressed, the caregiver also becomes a safe place where the child can go back and be -- the stress is buffered and then they go back to explore.

They exhibit proximity with the secure base, which is the caregiver, and then any attempt to separate them is met with protest, so they protest any separation issues. It develops between the ages of about 6 months to 14 months, that's where we see children exhibit anxiety around strangers. It's a normal development and it's very important in terms of development of the child and future relationship development. Yeah.

So when we say it's secure, that means that it's -- the caregiver has been very sensitive to the child's needs and not only sensitive but also responsive appropriately and so this then allows the child to explore without any anxiety and to use the caregiver as an anchor and this then is, is reflected in adult behaviour, in resilience, the resilience we exhibit and, yeah. Yeah.

Q. [10:09:57] You just referred to the term resilience which you also use in your report. What does resilience mean in this context?

A. [10:10:06] In this context resilience simply means that an individual is able to bounce back when they face hardships, when they face -- when they are distressed for some reason. The body system is able to go back and they are able to carry on with life without any problems.

Q. [10:10:32] What is the significance of resilience for assessing someone's response to psychological trauma?

A. [10:10:46] Resilient individuals exhibit factors that would protect them against the effects, the severe, especially the severe effects of trauma. And there is, there is a neurobiological explanation to that. There are many factors that contribute to an individual's resilience. However, the current thinking is that individuals who exhibit resilience might at the same time when they release the, the noradrenaline that helps them to adapt, they also release some other neurotransmitters that help them to calm down and that neurotransmitter is called neuropeptide Y and some people are genetically predisposed to releasing the neuropeptide Y that helps them.

Some individuals may have the ability to self-regulate. They may have the ability to understand that I am now stressed, let me employ behaviours that is going to help me calm down. Unless I talk to Mr Ongwen, I can't be sure that he was self-regulating like that.

The other factor that contributes strongly to resilience in traumatic environment is the social relationships that individual has with other people around. And so these social relationships, the positive social relationships act as a buffer against the effect of the psychological or the traumatic events.

In the case of Mr Ongwen, it is likely that he had -- their point is that he had very

good relationships with people around him, but particularly it's likely that he got involved in, in early marriage as well and so that relationship, there is a lot in literature to point that -- to the fact that people in positive rewarding relationships are more resilient, they have most positive mental health. So that could be the most -- one of the likely explanations for him to be resilient. Yeah.

Q. [10:13:46] And going back to secure attachment, how, if at all, does that impact on an individual's resilience?

A. [10:14:03] So, when an individual has secure attachment, this is reflected in their ability to engage in positive rewarding relationships, and again this is seen throughout the documents how Mr Ongwen interacts with his juniors. His wives describe him as a very nice man, caring, loving. And so this, you can't give love if you didn't have it. So this shows that he really had secure attachment, which was being reflected in his interaction with the environment around him. And in turn this then helps him to buffer the stress, the trauma that he could have been going through.

Q. [10:15:08] Thank you. I want to look now at section 4.4 of your report, which covers the topic of motivation. This starts at page 7.

A. [10:15:22] Okay.

Q. [10:15:23] ERN 0738. Why did you consider it important in this context to consider the question of motivation?

A. [10:15:38] I considered this because if we are going to assess whether an individual who is said to have mental illness has -- that the mental illness affected his understanding of the alleged crime, or interfered with his behaviours, we need to find out the motivating factors behind the behaviours.

There is no behaviour that has no motivation behind it. So if the motivating factor is mental illness, then probably it interfered with his understanding of the crime. And,

if not, then it could be the other way around. Yeah.

Q. [10:16:43] Your conclusion in this section, and this is on the next page, your page 8, ERN 0739, is that Mr Ongwen was likely motivated by his existential situation rather than his symptoms of mental illness. Which factors or pieces of information were important for you in reaching this conclusion?

A. [10:17:14] The first one is that Mr Ongwen was in a traumatic environment. I think we all agree that the environment was traumatic. And when an individual is in a traumatic environment right from the age of say 9, they tend to be hypervigilant, they tend to want to use -- I mean to mainly use the lower parts of the brain, which is for survival. And so that disadvantage of having been abducted at that young age, there is a possibility that he could have been -- well, the alleged crimes could have been committed because he was basically surviving, initially. And, and so that could have been either done consciously or subconsciously. But also the fact that he rose through the ranks, he was promoted, from the documents I read, I was promoted up very rapidly, and this could indicate that he was being rewarded.

Naturally we will tend to continue doing those things that reward us, that is natural. So it is likely that because of the rewards that he was getting, he may have been motivated, you know, to continue doing whatever he was doing so that he gets more rewards, but also the more promotion he got, perhaps the more authority he had, perhaps the more better life he had, perhaps the more shielded he could have been from, from more traumatic environments, and therefore, that could have allowed him to dampen the brainstem and use the higher parts of his brain, the planning part, the thinking part.

So for those reasons I thought this was really existential situation rather than terms of mental illness.

Q. [10:20:17] Thank you. That's very clear. I want to ask you now about page 11 and 12 of your report. Here you refer to the theory of street gang socialisation and this starts at ERN 0741.

Please tell us about the theory of street gang socialisation and how it was developed.

A. [10:20:50] The theory of street gang socialisation is attributed to a researcher called Vigil who described the socialisation in the gangs as -- the socialisation that happened in the gangs that -- and compared it to the socialisation that happens in the ordinary society. What, what is it that keeps gangs together and what is it that keeps the ordinary society together? And there were similarities, although the contexts were different, and that is why she called it socialisation. Yeah.

Q. [10:21:41] Now, at 5.3.4 of your report, this is ERN 0744, you conclude that, quote: "Just like street gang socialisation, there was bush socialisation for Mr Ongwen that could have helped him to cope."

How might bush socialisation have helped Mr Ongwen to cope?

A. [10:22:12] From the readings, again, there were structures that I came across, yeah. There was a leader and they had rules, yeah, and which rules were followed, do not drink, read the Bible. And, and so these are some of -- these are the same things that ordinary community also use to cope. We have rules that are guiding the society, they have -- we have some coping mechanisms. And, and there are also people within this bush society and so relationships naturally develop and they have families. Mr Ongwen had wives that he related very well with, from the readings I had, and had children that he seems that he did not only father the children but he also parented them, because there are stories of how he sat around with them, talked with them, maybe even played with them. You know, really indicating that he fathered. So this really made me conclude that the socialisation in the bush is part of

what helped Mr Ongwen to cope with the stresses around. Just like street gang people also cope with the stress around. Yeah.

Q. [10:23:59] Thank you. Let's look at page 11, this is ERN 0742. Here you discuss the role of spirituality and conventional activities like church in the socialisation process.

A. [10:24:19] Yes.

Q. [10:24:19] You touched on this just a moment ago, but what effect do religious beliefs typically play in an individual's social development?

A. [10:24:39] Religious beliefs are of different kinds, but I think generally they have similar guiding principles. They -- first of all, it brings people together. Yeah. We pray together, we read the Bible together, encourages bonding. I may not know the specifics of, of their belief, but most of the time the belief is usually not against the individuals of the same group. It's mostly supportive of the same individuals. And so this really helped him to cope. But also, when people believe positively in anything, especially when they believe that there is something greater than themselves, they, they usually turn to that something when under stress for comfort. And I think this has an effect of helping them to control themselves and reduce on the stress as well. Yeah.

Q. [10:26:19] Let's look now at the next page, your page 12, ERN 0743. Here you state that Mr Ongwen seemed to be coping fairly well up until his arrest by Kony in 2012 and then you noted signs of decompensation and then another point of decompensation when he was handed over to the ICC.

First, can you explain what this term "decompensation" means?

A. [10:26:57] The term "decompensation" simply means that someone could have been functioning fairly well. It's usually a term that is used by psychiatrists and

psychologists to describe those patients with chronic mental illnesses who could have been like stable and functioning well, but then something happens, a stressor comes in and then they drop in terms of their functionings, the distress, they feel distress, you know, and many other things that happen.

So that, is that is in the sense I used the term "decompensation".

Q. [10:27:50] And from your review of the evidence did you see any signs of decompensation before 2012?

A. [10:28:01] Before 2012 I couldn't put a finger on any signs. It could have been there, but I couldn't really, from the documents I had and from my own research, I couldn't, I couldn't really.

Q. [10:28:22] Let's now discuss the three disorders at issue.

A. [10:28:28] Okay.

Q. [10:28:28] Let's look first at page 14 of your report, ERN ending in 0745. Here you note that you have not examined Mr Ongwen yourself, and will write your report from the point of view that he suffers from the three disorders documented in the professional reports of the Defence experts and the court-appointed expert. Do I understand you correctly that you have taken as a starting point the diagnosis made by others, but you yourself do not make any independent diagnosis?

A. [10:29:09] You do understand me very well.

Q. [10:29:13] And thinking now about the time period in question, would the diagnosis of a mental disorder in the year 2017 necessarily mean that a person was suffering from a mental disorder in 2002 to 2005?

A. [10:29:34] It wouldn't necessarily mean that. If the individual who would like to say that it means that, they have to go back in time in 2002 to 2005 and take their psychiatric evaluation back then and go through the whole psychiatric evaluation,

yeah, to say that this person, these same disorders we are seeing now was there then when this person is, you know, was there between 2002 and 2005. It has to be -- we usually do it when we do past psychiatric history and it's usually reported in that section of psychiatric history. We describe the symptoms the person presented with. We describe how they presented. We describe any medications, whether they got better or not, whether their symptoms were fluctuating or not. And then from there we can have an idea that this person suffered the same disorder that we are seeing now currently. Yeah.

Q. [10:31:02] Moving on now, you've referred today to the concept of neurobiology, and this is something that you also refer to in your report. What is neurobiology?

A. [10:31:20] Neurobiology is, is the study of the brain, its functioning, and what happens when things go wrong. But particularly at the level of the neurons, yeah, what happens, what is happening at the neurons, the cells, the neurotransmitters, the disorders that arise that help us explain the symptoms that we see that arise from the brain. Yeah.

Q. [10:32:08] Is it possible to conduct a neurobiological examination of a patient?

A. [10:32:17] I think that if we talk about 20 years ago it would have been difficult. But in the 1990s it's -- the 1990s, it's called the decade of the brain, and that was the time when a lot of studies were done using neuroimaging to understand what exactly goes on when we talk about, for example, the psychiatric symptoms.

So I think to some extent there is some neuroimaging that can be done to suggest or to add on to what the clinician is seeing. I will give an example: If we are talking about severe post-traumatic stress disorder, this does not happen only at the level of functioning, but there are studies that have shown that there is some structural derangement that happens. For example, the part of the brain that is called the

amygdala, which is referred to as the fear part, the part that -- it's an adaptive part. Someone who has severe post-traumatic stress disorder, it is described as a part that will lighten up under neuroimaging. When you have severe PTSD for so long, most likely you have been hyperaroused for so long, most likely your -- parts of the upper brain that dampens the amygdala is not -- has not been functioning for a long time. It might not light up, it might not take up, for example, oxygen. It might not -- it might even shrink. It might look like it's, you know, in the neuroimaging. The hippocampus, which is very sensitive, it's the seat of memory, it's very sensitive to stress, to cortisol. Actually, some literature says that it shrinks, so perhaps it might be smaller if someone has suffered severe PTSD for a long time. So there are some indications here and there.

The other one that is talked about is looking for metabolites of noradrenaline. Noradrenaline is the hormone that is released when we are under stress, and so someone who has been under stress for a long time, it is more in the, in the cerebrospinal fluid, the fluid that bathes the brain, so when you tap that fluid you could find that those metabolites are raised. And all these are indications that someone, you know, is under a lot of -- I mean is suffering from PTSD. It adds on. It might not be diagnostic because maybe other, other conditions might raise that, but might suggest that, you know -- or, add on to the suspicion or the diagnosis.

Q. [10:35:51] That's very interesting. You talked now about some theories and how neuroimaging has started to be used in the last -- fairly recently, in the last maybe 20 years. I am going to use layperson's terms now, but feel free to introduce more scientific concepts. Generally speaking, at this point in time how well do psychiatrists understand what happens in the brain of people suffering from mental disorders?

A. [10:36:29] How well do we understand what happens in the brain?

PRESIDING JUDGE SCHMITT: [10:36:35] A very, very complex question, and very broad, broadly worded. But I think Ms Abbo will provide us with a relatively succinct answer, I would assume, and will not lecture.

MS GILG: [10:36:56]

Q. [10:36:56] And maybe I can just narrow my question slightly. Is this something that is well understood scientifically, or is it something that's a topic of considerable research at this time?

A. [10:37:09] I think that studying the brain is a complex, is a complex thing and it is still being studied. However, a lot more is known now compared to say, you know, 20 years ago before, before the neuroimaging era.

Some disorders, yeah, some disorders are fairly known, but I think that with, with additional or continued research -- okay, let me just go back a bit. When DSM-4 was being revised to DSM-5, there was a lot of debate of whether or not to include some of the, the markers, diagnostic markers, the neuroimaging, but eventually that was left aside and said -- and I think it was decided let's continue to do more research. But the NIH decided to come up with another diagnostic instrument that is basically looking at what I am talking about, trying to find the biological markers to psychiatric problems. An example is looking at how culture changes the way the brain functions. Yeah.

I don't know that I have done justice to the question, but I think it's a subject of continued discussion.

PRESIDING JUDGE SCHMITT: [10:39:08] And the better you understand the biological roots that might have an influence on mental illnesses, the more objective your profession would be. Because when it comes to the assessment of human

behaviour there is always a lot of -- also of your personality as a psychiatric in your assessment. And as a scientist also that you are, you must have an interest to make this as objective as possible, and that would help you perhaps, that would be my understanding, if you understood better the medical and the biological implications that might lie behind it.

THE WITNESS: [10:39:55] Okay.

PRESIDING JUDGE SCHMITT: [10:39:55] A remark. That is not a question, it is just simply a remark by me.

THE WITNESS: [10:40:00] Thank you.

MS GILG: [10:40:01]

Q. [10:40:01] Let's talk now about dissociative disorders. I take it from your discussion that there is more than one type of dissociative disorder; is that right?

A. [10:40:12] Right.

Q. [10:40:13] Let's look at the ones you mention in page 14 of your report, one by one. What is dissociative identity disorder?

A. [10:40:25] Dissociative identity disorder is a disorder that used to be called multiple personality disorder. It's a disorder that presents with one individual switching personality. They have a different -- at one time they have this personality which is quite different, might have another name, another age, another liking or disliking, another -- and then at one time they have a totally different person. It's really a diagnosis of exclusion because at the end of the last -- the last criterion says that this disorder must -- all the other disorders must be ruled out before you make this diagnosis. Something like that. I have paraphrased. Yeah.

Q. [10:41:25] And when you say other disorders must be ruled out, other dissociative disorders or any other disorder?

A. [10:41:33] Any other disorder. It's -- I have seen dissociative identity disorder as part of other disorders, for example, in depression. Yeah. Manic patients can have symptoms of dissociative identity disorder. And even patients with schizophrenia can have symptoms of, but not a full dissociative identity disorder, as part of the other symptoms of disorders. So the other disorders must be ruled out. Yeah.

It could also have people who present with possession states, yeah, turn into another person and they speak in a different voice and they -- sometimes it's purely, it's purely a response to a stressful condition, but sometimes it happens with other disorders and that is why a full psychiatric examination must be carried out.

Q. [10:42:52] I am going to come back to dissociative identity disorder in a moment. But first, what is dissociative amnesia?

A. [10:42:59] Dissociative amnesia is a condition where an individual is cut off from the here and now and the major presenting problem is that they can't remember some event, or sometimes they can't remember even their -- their autobiography, they can't remember their age, they can't remember their name, they can't remember where they come from. They can't remember something that you wouldn't expect that someone would forget, but they would have those episodes of not remembering. Sometimes they would walk and reach a place and not remember how they got there. It used to be called dissociative fugue, but now it's called -- in DSM-5 it's dissociative amnesia.

Q. [10:43:57] What is depersonalisation/derealisation disorder?

A. [10:44:06] Depersonalisation is when an individual feels like they have changed, they are not the same, they are not themselves, and derealisation is when they feel that the world has changed, the world is not the same. Yeah.

Q. [10:44:27] And you note that Professor de Jong states that Mr Ongwen's

dissociative symptoms seem to fit best in the category of other specified dissociative disorder. What is that?

A. [10:44:41] Well, when we -- when we make that diagnosis of other specified, we, we need to have a reason why, is it because you have not had enough time to make sure that the -- the symptoms don't fit in any of the others that have been listed? Or is it because that you have had all the time but you cannot -- you still can't put a finger on what it is.

So we need to have an explanation to why it is other and -- and a plan to come back and do reassessment to make sure that it fits in the others.

Q. [10:45:30] And did you see such an explanation in Professor de Jong's report?

A. [10:45:36] To the best of my recall, no, I didn't see that.

Q. [10:45:46] Thinking now about this term dissociative symptoms, are such symptoms necessarily pathological or can healthy people experience them as well?

A. [10:46:02] Healthy people can experience dissociation. And even as we sit here I'm sure some of us have maybe dissociated a little bit and their minds have wandered and come back, you know. It's really not necessarily -- actually the biggest chunk of dissociation is, it's normal, it's a way of coping with boredom, a way of coping with the stresses we go -- we experience every now and then. Sometimes people get into their car and drive off and forget to, to turn off the road they know very well. But, yeah, so it's, it's, yeah. It's largely normal experience. It becomes a disorder when it is severe and when it impairs functioning, when it is frequent. That's when it becomes a disorder.

Q. [10:47:09] Well, I can't speak for the rest of the courtroom, but at least you and I have not been dissociative during this discussion?

A. [10:47:20] You can't be sure.

PRESIDING JUDGE SCHMITT: [10:47:22] You know, I think we all can be happy that you do not know everything.

MS GILG: [10:47:26] Let's come back now to the first disorder, dissociative disorder we discussed, dissociative identity disorder. Can we abbreviate this for our discussion as DID?

A. [10:47:39] Yes.

Q. [10:47:40] How common is DID?

A. [10:47:47] DID, in -- it's not, it's not a common disorder. It is not. It is not common. Most of the time, from what I see, is that it presents with -- the symptoms of DID may present with other disorders and then it -- then it is not DID, it's the other disorder. Yeah.

Q. [10:48:15] Let's look now at page 14 of your report, ERN ending in 0745. There you state that experts in the field of dissociative disorder agree that particularly for dissociative identity disorder it develops only as a result of severe and chronic childhood trauma that began before the age of 8 years or younger.

Why does DID only result from this type of trauma?

A. [10:48:52] It's because we are talking about personality, and personality formation really becomes very early and by about 6/7 years, you know, we are pretty -- we can pretty describe an individual in terms of personality. And personality, really we get our personality from what we are born with in terms of temperament, plus the experiences in the environment that we get, and that then forms our personality. And so if the experience is going to be a traumatic experience, this is going to be formed, it is going to contribute to our personality formation in that -- during that time. Yeah.

Q. [10:50:00] Thank you. You have anticipated my next question. I want to ask

you now about DID as it relates to violence or otherwise antisocial behaviour. Is there anything about DID that automatically prevents an individual from understanding the nature or unlawfulness of their actions or controlling their conduct?

A. [10:50:27] None that I know about.

Q. [10:50:34] And now let's talk about dissociative states in general.

A. [10:50:38] Okay.

Q. [10:50:43] Please look at page 15 of your report, ERN 0746. Here you refer to a number of statements that go against the conclusion that Mr Ongwen was in a dissociative state during the time he committed the alleged crimes?

A. [10:51:04] Yes.

Q. [10:51:04] Some of these include "He fought well against soldiers, he was a very good shooter, I would lay an ambush and we always win". Why do you think these particular statements are inconsistent with someone being in a dissociative state?

A. [10:51:21] For example, the first one, "He fought well against soldiers," this was a statement that was quoted as if coming from him. Also, "He was a very good shooter," it was also a statement that was quoted as if coming from him. "When I aim, I do not miss, always on target, even when shooting a bird". All these were statements that were claimed to have come from him.

Now, when an individual is dissociating, they are cut off from the now, they are cut off from the now. And so to be able to, to shoot very well you have to be able to be, in reality, you have to be able to use your upper faculties of the brain, you have to be able to plan, you have to be able to see that this is the target, and so it is really inconsistent with someone being in a dissociative state. Yeah.

Q. [10:52:52] My next question is related. At the conclusion paragraph of this

section you talk about it being unlikely that an individual could hold a coherent conversation about an event that happened during a dissociative state. Why is it unlikely?

A. [10:53:16] Because to hold a coherent conversation, again, you have to be in the here and now. You have to be able to follow through with the other person, this -- the other person speaks, you wait to hear what they are saying, you also speak and they wait to hear what they are saying and respond in a coherent manner. You respond to the question or, you know, the conversation then flows. Again, it's incompatible with being in a dissociative state, even if a mild dissociative state. Sometimes I have students who *dissociate in an exam and you can tell. It's a mild dissociation, they are under stress, you can tell that they are dissociating when they frequently -- they give you some kind of automatic response and they are not thinking through the questions, they are not thinking through the answers, and you know you are dissociating. So for the severer forms it would even be much harder.

Q. [10:54:33] Do I understand you correctly, from what you just said, that it's often apparent to others when someone is experiencing a dissociative state?

A. [10:54:45] Especially the severe forms, it would be apparent. Yeah, it would. Even a layperson would be able to tell that this person is not in touch what is happening. Yeah.

Q. [10:55:02] How likely is it that a person would be in a dissociative state for months or even years on end?

A. [10:55:11] Unlikely.

Q. [10:55:15] Let's talk now about PTSD.

PRESIDING JUDGE SCHMITT: [10:55:20] Ms Gilg.

MS GILG: [10:55:23] Yes.

PRESIDING JUDGE SCHMITT: Would this perhaps be a good point in time, so to speak, to have the break? Because I already thought that you would now turn to PTSD, but since this is a new topic I suggest that we have the break until 11.30.

THE COURT USHER: [10:55:37] All rise.

(Recess taken at 10.55 a.m.)

(Upon resuming in open session at 11.36 a.m.)

THE COURT USHER: [11:36:23] All rise.

PRESIDING JUDGE SCHMITT: [11:36:33] Mrs Gilg, you have still the floor.

MS GILG: [11:36:44] Thank you, your Honour. One matter of housekeeping, I neglected to mention the ERN of tab 45. It's a range, 0279-0039 to 0279-0107.

PRESIDING JUDGE SCHMITT: [11:37:03] *Perhaps since we have not started yet, do you know already how long your questioning might last?

MS GILG: [11:37:11] It depends a bit on how we go with the chart, but I think we should be able to finish this session or a little bit into the third session.

PRESIDING JUDGE SCHMITT: [11:37:20] I've assumed that.

Mrs Bridgman, would you be fine with starting tomorrow and then assure us that you would finish in three sessions or not? This would mean that we would have to start this afternoon with your examination.

MS BRIDGMAN: [11:37:36] Mr President, I would -- if Ms Gilg finishes in this session, I would suggest that we start this afternoon and we can finish earlier, maybe half an hour earlier to give a little bit of -- in breaks and I have a belief that lead counsel might have quite a substantial number of follow-up questions.

PRESIDING JUDGE SCHMITT: [11:38:02] I understand. Then we do it this way. Mrs Gilg.

MS GILG: [11:38:06]

Q. [11:38:07] Madam Witness, we are going to talk about PTSD now. Please look at page 18 of your report, this is ERN 0749. There you state that the symptom of PTSD that is most likely to meet the ICC law regarding grounds for excluding criminal responsibility is dissociative flashbacks.

A. [11:38:35] Yes.

Q. [11:38:35] What are dissociative flashbacks?

A. [11:38:40] Dissociative flashbacks describes when an individual who was suffered or who is said to be suffering from PTSD, one of the symptoms is re-experiencing all the trauma that has caused the PTSD in terms of dating back in time as if the -- as if they are experiencing the trauma afresh but in their mind this time. And so then they dissociate from now and go back in time and that's why it's dissociative flashbacks. Yeah.

Q. [11:39:35] How long do these flashbacks typically last?

A. [11:39:42] These flashbacks typically last about minutes to hours because the brain must then come back, otherwise it will not survive. So it's typical that it might not -- it doesn't last a long time, yeah.

Q. [11:40:10] And are dissociative flashbacks different than the dissociation involved in dissociative disorder which we just discussed or is it roughly the same thing? Please tell us about that.

A. [11:40:27] The main issue in the two is the being cut off from now. However, the difference is the one that occurs within the PTSD involves a specific scenario of the traumatic event. The other one, there is no specific scenario, yeah.

Q. [11:40:57] And why do you think this symptom is the most likely to affect someone's mental capacities to understand the nature and lawfulness of their conduct or to control their conduct?

A. [11:41:12] Because it cuts you off. You can't use your frontal lobe status, you know. You go back to the use of the -- the less developed -- the brainstem, and so you can't use your upper part of the brain, you can't plan, you can't think, you can't decide, you can't -- and all these are functions of the upper part of the brain, so it gets cut off, yeah.

Q. [11:41:42] And you just touched on this, would planned premeditated action be consistent with a dissociative state?

A. [11:41:50] No, it wouldn't.

Q. [11:41:54] Let's move on to major depressive disorder. In which circumstances do you consider that disorder to be a trigger for violence?

A. [11:42:09] In the severer forms, especially when it involves psychotic symptom, where an individual who has depression is so depressed and they feel so hopeless and so worthless, together with guilt, really to the delusional proportion, guilt about many problems of the world, guilt about what they could have done previously, you know, really which is not proportional to -- yeah. And so then they go ahead and say, "This world is not -- I can't live in the world any more, but I also have people I love. I cannot leave them to suffer in this world" so then they may go ahead to want to kill those people. In their mind they are saving them from the bad world. And usually the plan is that they kill them and then they kill themselves. So that is the typical circumstance under which violence can be exhibited.

Q. [11:43:49] How common is it for a clinically depressed individual to direct violence at strangers rather than loved ones?

A. [11:44:01] Most of the time it's loved ones, the people they love, the people they have connections with. If they direct it to strangers, I think it's a rare case. It's, it's usually the loved ones, the ones they do not want to leave in the world to suffer.

Q. [11:44:25] Please look now at page 22 of your report, ERN 0753. I want to clarify one thing about section 7.6. You start this section saying, quote: "It could be argued that Mr Ongwen, having lived in condition of constant severe trauma, may not have developed impulse control and therefore could have been more prone to emotionally driven behaviour." Then at the end of the section, you state that "there is no evidence that the alleged crimes he committed were impulsively executed or crimes of passion."

What I want to understand is this: When you say "it could be argued" at the beginning of the section, are you expressing your own assessment or is that a mere hypothesis that you raise and then ultimately reject on the basis of the available evidence?

A. [11:45:39] I think it is I'm hypothesising, it's a hypothesis, yes.

Q. [11:45:47] And is that an approach you apply elsewhere in your report where you raise a possibility of something that might have occurred and then you assess that possibility on the basis of the evidence?

A. [11:46:03] Yeah, I think so. I might have to look at my report again, but, I think so. I think I could have done it somewhere else, yeah.

PRESIDING JUDGE SCHMITT: [11:46:15] If you want to know this, Mrs Gilg, you would have to specifically point at where the expert might have taken this approach.

MS GILG: [11:46:26] That's okay, I'll move on.

Q. [11:46:28] Let's turn now to page 24 of your report, 0755 is the ERN. Here you state that Mr Ongwen as a child and adolescent was vulnerable and lacked control over his immediate environment. When *you refer to him as a child and adolescent, what time period or ages are you referring to?

A. [11:47:03] A child is that individual below ten years, according to World Health

Organisation, and adolescence up to 17 years. And according to Ugandan law, you're an adult at the age of 18, yeah.

Q. [11:47:39] Let's move now to the chart of testimony extracts. Please turn to tab 4 of the binder. The ERN is UGA-OTP-0283-1386. There's a document there entitled, "Material Drawn from the Courtroom Proceedings: For Consideration and Possible Commentary by the Prosecution's Mental Health Experts." Do you recall receiving an email in January of this year from the Prosecution containing this attachment?

A. [11:48:22] Yes.

Q. [11:48:25] Now, the email asked you and the other two Prosecution experts to review the extracts in the chart and to come to Court prepared to comment on any which you consider may illustrate or alternatively cast doubt on a point or conclusion in your report or that may assist the Judges in determining how to interpret particular types of evidence in light of the provisions of Article 31(1)(a) of the Rome Statute.

A. Okay.

Q. [11:49:04] Have you reviewed the chart?

A. [11:49:06] I have.

Q. [11:49:07] Are there any particular extracts that you would like to comment on?

A. [11:49:14] The one I had reviewed I had highlighted. The chart that I had, I reviewed I had highlighted, so it would be easier for me if I maybe carried that. But I could make general comments.

Q. [11:49:52] Do you have the highlighted copy here with you?

A. [11:49:56] In the hotel.

Q. [11:49:57] In the hotel?

A. [11:49:57] Yes.

MS GILG: [11:50:00] One idea, your Honour, would be to take an early lunch break and allow her to retrieve the highlighted copy.

PRESIDING JUDGE SCHMITT: [11:50:20] Very good idea, I think, because we should not let Ms Abbo think everything through anew so to speak. You have already thought about it and you have highlighted it in a manner like I also do it and I fully understand that. So we make an early break, I would suggest. And how long would it take you? Can you say this? How long would it take you to go to the hotel and retrieve this working document?

THE WITNESS: [11:50:54] As long as it takes to drive there, I go pick it and come out, and as long as it takes to drive back.

PRESIDING JUDGE SCHMITT: [11:51:01] Then perhaps 2 o'clock. I would suggest 2 o'clock. And we also pick up what Mrs Bridgman said.

I understand you that you perhaps would like to start in the afternoon for about an hour and then a little bit earlier so that we -- that you can also prepare yourself and Mr Ayena can prepare for tomorrow. I understand that.

MS BRIDGMAN: [11:51:22] That is correct, Mr President.

PRESIDING JUDGE SCHMITT: [11:51:24] So let's -- if we need to in the afternoon, if we need two hours, for example, because you would need an hour, that's not a problem here in this courtroom.

So we have now a lunch break until 2 o'clock and then we are open in the afternoon.

THE COURT USHER: [11:51:42] All rise.

(Recess taken at 11.51 a.m.)

(Upon resuming in open session at 2.06 p.m.)

THE COURT USHER: [14:06:34] All rise.

PRESIDING JUDGE SCHMITT: [14:06:46] So good afternoon.

Ms Abbo, do you have your analogue material with you?

THE WITNESS: [14:06:59] Yes.

PRESIDING JUDGE SCHMITT: [14:07:00] Okay. Thank you very much.

Ms Gilg, please continue.

MS GILG: [14:07:03]

Q. Good afternoon.

A. Good afternoon.

Q. I hope you were able to enjoy a bit of a lunch break as well as your time in transit.

Now perhaps you could take us through your comments that you've noted in your own version of the chart, if you're comfortable with that.

A. [14:07:21] Okay. Thank you. I will make comment basically on two aspects. The first aspect would be on social and occupational functioning and really it will, everything would be based on this transcript that I have. And the second comment would be -- so the first one would be comment that support the fact that Mr Ongwen could have been functioning at an -- at a, maybe a superior level and also I will point out those that is against that stand. So when I looked through the -- that transcript, I came across statements from -- from the witnesses that point to the fact that Mr Ongwen could have been functioning well during the times that they were with him. The first one is on page 3, number 3 which says that he was a people's person, that is, for social functioning.

In the aspect of social interaction with -- with peers, with friends and with his family, so here it is with -- with his peers, even when he had not been promoted yet at his low rank. So this witness is talking about him in a very positive manner and he says that he would talk to people and stay amongst them. He hid together with people, he

would share laughters and jokes. He was a person who cared about people. And then he goes ahead to talk about him as a commander and still he has very good remarks about him and -- but at the end he talks about also his occupational functioning, because he says he was tough on the rules and he always wanted things to be done according to schedule. And then he gives an example that going to collect food, he would come up with tough orders to go and collect food, but even then he still remained a friendly person to them.

So there are many such passages that support the notion that Mr Ongwen was functioning fairly well, including statements from the person who I think could have been one of his wives who gives very positive comments, and it looked like she was talking on behalf of the other wives because she says -- I'm just looking for that passage, she says that "He was good to us. He cared about us. He loved us." And he rarely beat them up.

PRESIDING JUDGE SCHMITT: [14:11:24] That's I think 13 you mean --

THE WITNESS: [14:11:28] Thirteen, yes. Okay. Thank you. Yeah, 13.

So that also speaks to the fact that he was -- with family issues he was really functioning well, something that would be a challenge to most men when they have more than one wife, but here he seems to have done well in -- in keeping the relationships going.

Then I used this -- the information on this transcript to try and be objective by rating the information I got here. There is a scale called Global Assessment of Functioning, it's a scale that was in the multiaxial diagnosis in DSM-4, and it was the last -- it was axis 5. So we have -- in DSM-4 there was a multiaxial diagnosis where you have axis 1, axis 1 is generally about psychiatric diagnosis; axis 2 was about personality disorder; axis 3 you would put organic condition, for example, if someone had HIV,

you would record it on axis 3; and axis 4 you would record psychosocial stressors, if there are any psychosocial stressors; and the last axis is about rating the functioning. So that scale is called Global Assessment of Functioning.

That scale ranges from 0 to 100 and, generally, any person who would be rated below 50, that person would need a psychiatric admission, and any person who would be rated below 20 would have very severe mental illness and hardly any function -- any social or occupational functioning and they would also have actively suicidal thoughts, or maybe they could have even attempted.

And yeah, so this scale can be used to rate current functioning and past functioning, and that's why I used it.

So when I use the information to rate Mr Ongwen using this scale, he seems to fall around 81 to 90, where it says that someone really is functioning well. Mild distress, daily distresses here and there, maybe you are in a jam, you feel a little bit disturbed, and something that any person would go through and no symptoms of mental illness, so I would put him around there.

The understanding is that no human being functions at 100 because we live in a world full of stress, you might wake up today feeling okay, during the day something stresses you. So maybe -- maybe in heaven, that's where you could find some people who are functioning at -- you know, where there is no stress. So that is using the scale.

However, there were some -- two aspects that I found that is against this, and that is on page -- page 4, Witness P-009, number 5, where he says that -- I think he was saying Mr Ongwen said that his education had been interrupted, there is nothing else that he wants. He kept on saying that his education has been interrupted and there's nothing else that he wants.

This indicated to me that he was expressing bitterness, some kind of bitterness, maybe some kind of revenge. But it could also be -- be interpreted as someone who has lost hope, someone who is hopeless, and perhaps maybe having some suicidal feelings, but I can't put my finger on that.

The other aspect is on page -- it is on page 12 based -- I don't see this -- okay, the source is on the other side, number 12, page -- Witness P-0226, where this witness is describing -- describing a scenario where Mr Ongwen ordered punishment of a girl or a woman. And this is on the negative side, in that with all the good attributes that had been described before, and then you have a scenario where he's instructing his escorts to punish someone because they had refused to have sex with him. Whether this indicates lack of empathy, would have to assess it for Mr Ongwen himself, but definitely this indicates anger, some antisocial -- antisocial behaviour, really. But not -- it didn't sound to me that it is a bizarre behaviour, or, you know, or indicating mental illness, and it's -- it's not positive.

Just to add that on to the positive side on Mr Ongwen, this document also indicates that he's a very good negotiator and good at reading, or maybe trying to understand other people's minds or thinking, and I think that gives him -- gives him that ability to be able to negotiate. I think on a number of occasions, I think -- I'm trying to look for at least one where he exhibited good negotiating skills. Yes, on page -- starting from page 7, the bottom line:

"Commanders who would question that Kony has directed, that it should not be done, could be targeted. Dominic was also among such commanders. I believe that he was saved by God. When I returned home, I was sure that he would die in the bush because he likes to always intervene in what he believes is a bad order."

Then he goes ahead to talk about some commanders:

"... if you do something and Kony gives a directive that so-and-so should be killed, if he does not hear it from Kony again [he] would die. But other commanders such as Dominic, Otti, these two commanders, even if Kony gives an order, they first meditate upon it and then they would first also ask him again and get more information."

There was another indication of good negotiating skills where what was talked about there was when he had a command and he said he was feeling weak and he said that that should be within -- amongst them, it shouldn't move away, it shouldn't go out of -- so he rearranged or he worked out what was workable for him and made sure that that did not get out of that, and he did it in such a way that it was acceptable to the rest of the group. I think that is a very good negotiating skill there.

PRESIDING JUDGE SCHMITT: [14:22:08] Could you tell us where you are referring to at the moment?

THE WITNESS: [14:22:13] Okay, sorry. I think it is on page -- it was page -- page 4. Six, number 6. Towards the last -- there's a quote there where it says:

"We have been given orders to go and perform this operation, but I am weak and I request that this is a matter between us. No one should go and abduct people from Opit. But you will go and attack the army. [And] if you defeat them, then you return."

PRESIDING JUDGE SCHMITT: [14:23:14] Thank you.

THE WITNESS: [14:23:15] Yes.

MS GILG: [14:23:17] Can I just ask one follow-up question there?

A. [14:23:20] Yes.

Q. [14:23:20] Would that kind of description be consistent with someone who was suffering from a dissociative state or severe mental illness at the time?

A. [14:23:29] No. Yeah. And in addition to that, there are also indications

of -- that support moral development. I will just look for that. Moral development. Page 7, towards the upper part where it says, "It was a rather long discussion between the two, but I suspect that they were talking about us who had been arrested. I suspect that Kony and Odhiambo wanted us killed, but Dominic did not want us to be killed. He said there is no problem and he told us to leave and go to the security of Kony."

And so this -- this kind of thinking of -- he seems to have had, you know, he had developed to such a level of forming his own values which might have been not so much in line perhaps with the values of Kony himself, but he used this in a way that it was advantageous to other people, but also to him in that perhaps some of the alleged killings that he did could have been, you know, because -- because of his values and because that -- because of the fact that he had to survive and had to please Kony.

Q. [14:25:42] Can I just ask you a follow-up question there. Does this example in your opinion shed any light on the question of whether Mr Ongwen had control over his environment at the time or some degree of control?

A. [14:25:57] This -- this particular one, this particular one?

Q. [14:26:02] This particular example where --

A. [14:26:05] Yes, I think he had some degree of control of, of the environment and the fact that Kony usually listened to him because what, what is shown here is that there are instances where Kony would have wanted to kill someone and then he intervenes and they don't kill them, I think that would show that he had some control, yeah.

Q. [14:26:45] Please go on.

A. [14:26:48] And lastly I would like to say something about thinking about

thinking. Thinking about thinking is the individual being able to think about what, or at least to have an idea of what the other person would be thinking about and that we call mentalisation, that helps in terms of understanding the intentions of the other person. It's really a higher functioning, what we call metacognition. And I think what comes through is that Mr Ongwen developed to that level.

An example is on the first page, that is the first example, number 1 says, "Mr Witness" -- he's asked a question, and then, "Mr Witness, I asked you if at any time you mentioned to Ongwen that you didn't want to go there ... and you said, 'I think he also knows that I was not happy that I was going there.' My question to you is: How did Ongwen know that you were not happy to go there?"

And then the conversation goes on, but the witness says somewhere that "... he knew that was our home and therefore he knew that I was not happy to go for the attack there because no soldier would be happy to go to his home to go and attack."

So even when it is not overtly -- when the other individual did not overtly mention that he didn't want to go, Mr Ongwen had, you know, he had read beyond just -- and he knew, and that is a skill that is developed, you know, with time and with some kind of practice. But also it is a skill that comes through with good early childhood foundation, which Mr Ongwen had.

I'm just looking for another example of thinking about thinking. I think that's -- I think, yes. Okay, the last -- my last comment is on the last -- on the page 19, page 19. I think being, being a commander, he -- this document also comes through as Mr Ongwen exhibiting, you know, authority, power, and that comes through on number 19, page 18 where this witness made his assessment and he said, after he talked about what he was talking about above, the last -- near the last paragraph, he says: "What happened is I assessed his laugh as a sarcastic laugh because he

accompanied his laugh with the following words. He assured me was a brigade commander and as such defection or giving up would be the least thing on his mind as he was in charge of his troops and therefore my proposal was out of question."

Okay, "out of the question."

Okay, then the -- that same witness towards the end he requests Mr Ongwen to release the children that were with him, but Mr Ongwen then refused, according to this. But this could be interpreted as -- because he says, he says that, "You call these kids children, but I call them my soldiers. So we are talking about my soldiers. We are not talking about the children you are talking about."

So this could be interpreted as his concept, Mr Ongwen's concept of a child which could have been carried on from -- from his own experience of having been abducted as a child and he became a soldier then and so his *concept of a child is a soldier and not a child because that is what he experienced as himself. Yeah.

He also comes through as vengeful or seeking revenge and that is exhibited -- I mean it's shown on at least two occasions. The first one is on page 15, the first paragraph which says, "Then when he now disbursed people to go to their different positions, in the evening he called people again and said that we are going to work on civilians of Awere so that they know that even us, we have guns that can shoot." And "The instruction was 'When you reach there, do not leave anything. Anything that is living, don't leave alive because the people there do not want us.'"

And he seems to come out so strong when it is anything that appears to be like, like revenge as if he's harbouring some deep-seated bitterness.

I had another paragraph, another one for revenge. Another one is on page 22. I think this was -- this was a scenario that happened in Court here where there was a reaction from him and it seems to have been not a response, but some automatic

reaction that most likely he had not given thought to it and so he might have been using his brainstem at this time, but when he starts explain, he says at the bottom: "And it would be a matter of big shame if it is heard or known that I had decided to kill myself. So I think there are people ... somebody, for example, who has killed my person or somebody who causes injury to me, I think I should not sit with him in the same court."

Thank you.

Q. [14:37:37] Thank you. That was very helpful and very comprehensive. I just have a few follow-ups.

A. [14:37:46] Okay.

Q. [14:37:46] My apologies to the Presiding Judge.

PRESIDING JUDGE SCHMITT: [14:37:49] I have not said anything that would stop you, but I'm simply listening and looking forward to what you have to ask.

MS GILG: [14:38:02] Thank you.

Q. Now this question of vengeance or revenge that you just mentioned, I want to ask you about that, and this might relate to the question of motivation that you discussed in your report. But when you talk about that factor, how does that relate to mental illness or whether there was a mental illness present at the time or affecting on someone's behaviour?

A. [14:38:26] Revenge or vindictiveness is taken as one of the symptoms of mental illness that usually starts in childhood, and that is oppositional defiance disorder, where children -- it can also occur in adults, but usually see them in children who present with vindictiveness, they want to pay back anything that someone has done to them, they want to pay back. But they are also very oppositional. They do not take authority, they do not comply with authority. But they also have mood issues,

they are usually irritable, very irritable. And so when I looked through this and I saw this, I wondered could he have had opposition or defiant disorder.

Now, this is a disorder that sometimes could progress to become conduct disorder, yeah, which is the more -- a severer form where children violate the rights of others, the rights of animals, they steal, they -- but they also remain oppositional, yeah. And there's also -- there's evidence that some of these children who have conduct disorder may progress to have antisocial personality disorder and so -- and so that is how I was looking at this particular revenge.

However, when we look at the other mental illnesses and, and behaviour, revenge is something that is -- you think about, yeah, you might -- you plan, it's not, it's not impulsive, you plan, you think about, and then you feel, after you have carried it out, you feel some bit of satisfaction, relief after that.

Q. [14:41:13] Let's look back now at example 11, this is at page 11. This is the example where it's being described that a girl is hidden under Mr Ongwen's bed because Mr Ongwen wants to keep her for himself and away from Kony, who also wants her. Does this particular example shed any light on the question of control over one's environment that you've discussed in your report?

A. [14:41:51] At this -- I'm just thinking about it -- some kind of timeline when this could have happened, because that will give me an idea. Because if it was earlier on, maybe, or before promotions when he was still at a low rank, maybe when he had just been abducted, at that point in time he may not have much control over the environment. But it appears like later on, in looking at that timeline after the promotions and the fact that there are instances where he would -- he would perhaps carry out -- carry out activities without orders, it looks like at that particular point in time he could have had some control, perhaps. But what I would not want to do is

to completely divorce this timeline from the beginning. I want to look at it as it's a continuous thing and just assess perhaps what level of control he had at what point and not answer a yes or no question.

Q. [14:43:54] And just if you assume for the moment that this is taken from a time where Mr Ongwen is in his mid-twenties, let's say, and is already a commander, what would you say about this example then?

A. [14:44:13] Mid-twenties and he is already a commander, looking at the context and having read through that -- there are times when he would take even years or months without being where the leader was, and so that meant that he had, he had control at that time. Yes, I would say that he had -- he had -- he had control.

Q. [14:44:50] And looking now at the next example, number 12, which is also on page 12, you spoke about this one before and you were noting that it could be a sign of anger or even antisocial behaviour. I just wanted to direct you to this end portion and see what you make of that part, and here the witness is saying: "Well, they beat me and when he" -- Mr Ongwen -- "thought it was enough, he asked them to stop and then they stopped."

What would you say about that particular aspect of the extract?

A. [14:45:37] He asked them to stop and then they stopped when he thought it was enough, so -- well, I'm just -- I want to look at this from the point of view of maybe a parent disciplining -- I'm not saying this is discipline, but I want to use that to try and understand what could have been going on in his mind. But he alone can tell us what was going on in his mind at that particular time, we can only try to guess. So this was punishment resulting from the fact that this girl had refused to have sex with him. It's not unusual that people would turn to violence when they perceive denial or the actual denial of sex. I think I've lost track. Can we go back to the question,

sorry.

Q. [14:47:11] I think you have mostly answered the question. Just I wanted to know what your thoughts were about that particular aspect, if it reflected on impulse control or any other sort of relevant factor.

A. [14:47:27] Okay. I really don't see it as something which is grossly unusual. I think that sometimes people can resort, if you deny them, you know, if they are denied sex they can -- they can resort to violence, yes.

Q. [14:47:46] Thank you. I think we will move on now to the next topic. This is the second to last topic. I want to ask you to comment on a few points made by the other Prosecution mental health experts. You might agree or disagree, we just want to get the benefit of your particular perspective.

A. [14:48:06] Okay.

Q. [14:48:09] Let's look first at the materials relating to Dr Mezey. Please turn to tab 2 of the binder where you will find her report. The ERN 2080-0786.

A. [14:48:26] Yes.

Q. [14:48:31] Can you turn now to page 12?

A. [14:48:34] Page 12.

Q. [14:48:35] And look at paragraph 46. This is ERN page 0797.

A. [14:48:51] Page 12? Yes.

Q. [14:48:54] Do you see it?

A. [14:48:54] Yes.

Q. [14:48:54] Here Dr Mezey is opposing the view that Mr Ongwen -- excuse me, opposing the view that beliefs that Mr Ongwen developed when he was a member of the LRA, such as those relating to spirits, could be described in psychiatric terms as part of a delusional system. Would you degree that cultural or religious beliefs that

are widely accepted within a group cannot be considered delusional, or do you have other comments on that?

A. [14:49:27] I have other comments. I think that before we say that a belief system, whether within religion or cultural, whether it's delusional or not, we really have to assess around it, because we have had instances where -- an example in Uganda, there was a church that burnt down many people because they, they strongly believed, which really thought it was delusional, sharing delusions, and so we cannot just say that because many people share this, therefore it is not a delusion. We have to really assess and check it and make sure it's firm, make sure it's bizarre, make sure it's, you know. And so I think that everything has to go through fine assessment because it is, you know, concluded that it is a delusion or not.

Q. [14:50:35] That makes good sense. Let me give you a specific example and see what you think about that one. This concept of cen that you have written about is --

A. [14:50:48] Yes.

Q. [14:50:48] -- is that first -- let me ask you if, to your understanding, that concept is, belief in cen is common in Acholi culture?

A. [14:50:59] It is common.

Q. [14:51:01] And would belief in the concept of cen indicate the presence of a mental illness?

A. [14:51:11] It has to be assessed, and a full assessment has to be done before we can say that it is -- I mean, and we also cannot just hang on the belief alone. This individual who is presenting this belief, a full psychiatric evaluation has to be -- has to be done in order -- in order to say that this cen is -- this belief is part of this mental illness or not. But we cannot just say the belief is mental illness or it's not a mental illness.

Q. [14:51:50] Thank you. I want to ask your view now on something Professor Mezey said during *her testimony last week in court. And the citation is from the edited version of T-163 -- actually, I believe it's the real-time version, because I don't think we have an edited version yet. This is at page 117 to page 118, line 19 to line 7. I'm just going to read it out to you.

A. [14:52:16] Which page is it again?

Q. [14:52:18] Sorry, you don't have it there in your binder --

A. [14:52:20] Okay.

Q. [14:52:21] -- it just happened last week. So here Defence counsel is reading a paragraph from Dr Mezey's report --

A. [14:52:29] Okay.

Q. [14:52:29] -- which is this:

"I do not consider that Mr Ongwen is especially vulnerable. Whilst I note that Mr Ongwen has self-harmed on one occasion in custody, and has also gone on hunger strike, these appear to have represented impulsive and/or rational acts of protest against his current incarceration, rather than indicating severe underlying psychopathology, or serious suicide attempts."

And then the question put to her was:

"Doctor, isn't there a contradiction between acts that are impulsive and acts that are *rational?"

And she answers: "No. Impulsivity is a trait that many people have. It may be that they act recklessly, they act without thinking through the consequences, clearly, but that doesn't mean necessarily that they are irrational."

Would you agree with this statement that human beings often act impulsively and even recklessly without being mentally ill, or would you have other comments to add

about that?

A. [14:53:43] I have other comments. This is how I understand impulsivity. Impulsivity is when someone acts without thinking. And we use our forebrain, frontal lobe to think, and so it's, it's -- I wouldn't say that human beings are impulsive. Impulsivity is -- those who are impulsive have issues, yeah, especially if it is significant impulsivity. Impulsivity is part of a symptom of borderline personality disorder, some other disorders, but I clearly know that borderline, people who are borderline, who have borderline personality disorder are usually very impulsive and that is because borderline personality disorder develops right from childhood. A child is not able to -- because of perhaps trauma, they are not able to -- they are not able to engage their frontal lobe, they are not able to learn that, you know, you can, you can send or think about information, think about your acts, think about the consequences, think about -- and so I really would beg to disagree unless, unless an individual has had, has had issues in their upbringing, you know, abuse, neglect, many things and then they are not able to, you know, to engage their frontal lobe in their behaviours, in their actions and think about the consequences.

Q. [14:56:11] And just so I understand you clearly, are you saying that anyone who acts impulsively has a mental disorder or are you saying it's a factor that you might consider in assessing that?

A. [14:56:25] No, not that anyone who has impulsivity has a mental disorder. It might just mean that this, this person just needs to learn how to engage their frontal lobe. Yeah, yeah.

Q. [14:56:43] And that can be a process that needs to be developed in people that don't have a mental disorder as well?

A. [14:56:50] Yes, yes, yes.

Q. [14:56:52] Let's turn now to tab 3 of the binder, there you will find the expert report of Dr Weierstall. The ERN 0280-0674.

A. [14:57:06] Yes.

Q. [14:57:07] I have four points to cover with you here.

A. [14:57:09] Yes.

Q. [14:57:10] Let's turn first to page 14, this is ERN 0687.

A. [14:57:20] 0687.

Q. [14:57:23] Yes. The page 14 is at the top right-hand side.

A. [14:57:29] Yes.

Q. [14:57:31] Okay. If you look at the fourth bullet point, Professor Weierstall starts by saying that "There is no contradiction between being a victim and a perpetrator." And then he goes on to discuss the theory of learned helplessness that Professor de Jong had referred to in his report. And he takes the position that this theory, the way that it's applied is inapt because it neglects that in other examples, and I'm just going to quote what he says here, "Mr Ongwen has proven to be in charge and in control and everything but helpless." And also "neglects to differentiate between Mr Ongwen as a child that was forced by others to behave in a certain way and Mr Ongwen as an adult man who seems to be able to decide how to behave." What would *you say about this comment?

A. [14:58:31] I think that I would fall in between the comments in that, yes, Mr Ongwen as a child was forced to do certain things and then as an adult, but again, he was able to, to have some control. But again, I wouldn't want to categorise in that way. I would like to look at it on a timeline and not divorce Mr Ongwen from his childhood because Mr Ongwen did not fall from space as an adult. He -- he grew up to adulthood from his childhood, so it becomes a little bit difficult for me to just say,

Mr Ongwen as an adult and Mr Ongwen as a child because it's a continuous thing. Yes.

PRESIDING JUDGE SCHMITT: [14:59:48] I think Ms Abbo has explained this this morning, exactly what she means by that and what this continuum might mean, and she already also has explained in how far the childhood and the adolescence might have had an impact later on when he was an adult. I think we have heard this already.

THE WITNESS: [15:00:10] Okay. Thank you.

MS GILG: [15:00:12]

Q. Let's look at page 19, 0692. Now here Professor Weierstall is commenting on the research cited by the Defence experts in relation to neurological impact of psychological trauma and he states that the research refers to group data but cannot be used for individual diagnostics because there is no available neurological data from Mr Ongwen and also because you would need data from different points in time which he refers to as longitudinal reference data and that data isn't present here. Do you agree with this position?

A. [15:00:59] Sorry, I think I dissociated. Can you repeat?

Q. I think maybe what I will ask you to do is just look at page 19 and read over this passage where he's referring to what I said just read out. So if you look at the first bullet point it starts with "The neurological impact".

A. [15:01:26] The neurological impact, yes. Okay. Let me just read it.

PRESIDING JUDGE SCHMITT: [15:01:31] And thank you very much for this very interesting and instructive example for dissociative appearances, so to speak.

THE WITNESS: [15:01:42] Yes. Sorry. The question again.

MS GILG:

Q. [15:02:22] The question was about, basically I was paraphrasing what he was saying, but in essence he's saying you can't use or you have to with caution, you can't use neurological data for individual diagnostics unless you have a particular set of factors satisfied which aren't present here, and I wanted to hear your views on that.

A. [15:02:45] No comment.

Q. [15:03:06] That's fine. Okay, *I'm going to slash one of my four points so we'll just go now to the last point here.

Let's go back to page 6 of the report, and this is ERN 0679. And if you look in the middle of the page, this what I'm going to refer to. Here Professor Weierstall is talking about that being exposed to trauma is not sufficient for the diagnosis of a trauma-related disorder and that even when you look at studies of people who have gone through traumatic experiences in war zones, the majority don't develop trauma related disorders, either because they are not affected by the trauma or because they are not damaged by it in a clinical sense. Do you agree with that statement?

A. [15:04:04] Yes.

Q. [15:04:12] I have now come to my last topic. I want to ask you about the ultimate conclusions in your report.

A. [15:04:19] Okay.

Q. [15:04:20] So you might just go back now to Tab 1. And let's look at page 25 of your report. Here towards the end you refer to the three disorders at issue and state that, quote: "There is no evidence from materials provided that these illnesses are directly linked to the crimes he allegedly committed." Now you've had a chance to review additional material since that report was written. Do you still -- is that still your opinion today?

A. [15:04:57] Yes.

Q. [15:04:59] And let's look now at page 24 of your report, page before, 0755. Here you say that there are some important mitigating factors that you believe should be drawn to the attention of the Judges, and these include being abducted during a developmental age.

A. [15:05:19] Yes.

Q. [15:05:20] And continuing to develop in the bush.

A. [15:05:22] Yes.

Q. [15:05:23] And being in an unfavourable environment.

A. [15:05:26] Mm-hmm.

Q. [15:05:27] And being under the control of Kony.

A. [15:05:28] Mm-hmm.

Q. [15:05:29] Why do you feel that the Judges should take these factors into consideration in assessing Mr Ongwen's responsibility -- criminal responsibility, excuse me?

A. [15:05:44] I think that these factors should be taken into consideration because, one, Mr Ongwen from the very beginning of -- whatever led him to get to the bush, he totally had no control over it. And even when he reached the bush, there is still some -- there is -- in that timeline I would place it maybe 50 to 70 per cent time that he could not have been in -- you know, could not have any control and then he is removed from his normal environment and put in this favourable -- I mean unfavourable environment that is considered toxic for development and so that he had no control. Like any other child developing, they have no control of where they develop from.

However, there are indicators that Mr Ongwen beat all the odds, just like some children who might be growing up in very adverse situations, but they still thrive.

So for some -- a number of factors, Mr Ongwen still pulled out, out of this and he's here. He would have died. And so I think the Judges - it can be thrashed again - but I think that this has to be taken into consideration, whatever decision, whatever end point that comes that many things led to his resilience and I wonder whether this resilience should be the thing that should be punished or is just my -- I'm just wondering, but that's why I think that this -- these conditions should be taken into consideration, yeah.

PRESIDING JUDGE SCHMITT: [15:08:45] I think we have understood what is meant. Might not be strictly speaking a legal concept, but nevertheless, I think we understand you.

THE WITNESS: [15:08:55] Okay. Thank you.

MS GILG:

Q. [15:08:58] Just a couple of questions on that: Thinking about the factors that you were outlining, these difficult conditions, would you agree that those factors would also apply to the other hundreds or thousands of boys and girls who were abducted by the LRA, some of whom the Chamber has heard from?

A. [15:09:22] Not all of them, perhaps. The issue of Mr Ongwen rising through the ranks most likely improved his environment somehow. I am not sure about the other people who were abducted, how they went through there, because I have not -- I don't know about them. But if they did not and they remained at the low rank, perhaps that could have impacted negatively -- more negatively on them than Mr Ongwen, who could have improved his environment by rising and being promoted and becoming commander, being in control, yeah.

Q. [15:10:22] And just looking at this from a different angle. Was there anything in the material you reviewed to suggest that Mr Ongwen was more vulnerable or

more profoundly affected than other child soldiers in the LRA?

A. [15:10:38] No.

Q. [15:10:41] Now in this same paragraph 24, right before you mention these mitigating factors, you comment on the Article 31(1)(a) factors that the Judges will have to consider. I'm going to take you through those factors now one by one?

A. [15:11:00] What page?

Q. [15:11:01] We're on page 24 of this same area where you can see about --

A. [15:11:04] Yes. Yes.

Q. [15:11:06] And the conclusion -- your statement that I'm referring to starts with, "According to the Rome Statute".

A. [15:11:13] Mm.

Q. [15:11:14] So I'm going to take you through the factors and I just -- I want to be very clear about the time frame I'm asking about, which is 2002 to 2005?

A. [15:11:24] Okay.

Q. [15:11:24] The time when Mr Ongwen was in his twenties or early thirties and had become first a battalion commander and then a brigade commander in the LRA. Regarding that time frame, have you seen evidence sufficient to establish in your expert opinion that a mental disease or defect had destroyed Mr Ongwen's capacity to appreciate the nature of his conduct?

A. [15:11:48] No.

Q. [15:11:49] And have you seen anything sufficient to establish that a mental disease or defect had destroyed his capacity to appreciate the unlawfulness of his conduct?

A. [15:12:03] No.

Q. [15:12:03] And have you seen evidence sufficient to establish that a mental

disease or defect had destroyed his capacity to control his conduct?

A. [15:12:10] No.

Q. [15:12:13] Thank you.

Now I want to turn your attention to the last sentence of your report and see if you can help us understand what you are getting at there. This is on page 25.

A. [15:12:25] Yes.

Q. [15:12:28] ERN 0756. I will just read it out:

"What is however clear is the unfavourable" --

THE INTERPRETER: [15:12:36] Message from the interpretation booth:

Could - through, your Honour - could the speaker be requested to slow down.

PRESIDING JUDGE SCHMITT: [15:12:43] Mrs Gilg, you have to slow down a little bit. We are now talking about legal requirements, and because of that - we know it, you know it - because of that you have accelerated obviously your speech a little bit. Please try to slow down.

MS GILG: [15:12:59] Yes, I'm racing to the end. I will try to control my own conduct.

Q. [15:13:06] What you say here is this:

"What is however clear is the unfavourable environment over which he had no control as an abducted child growing into an adult negated his capacity to refrain from doing wrong because he was not presented with an alternative way of life in the bush, despite knowing that what he was doing was wrong."

Is that a reference back to your statement on the previous page, which we looked at a few minutes ago, where you stated that Mr Ongwen as a child, an adolescent, lacked control over his immediate environment?

A. [15:13:54] Yes.

Q. [15:13:54] Yes?

A. [15:13:54] Yes.

Q. I understand you correctly, then. No further questions. Thank you very much, Madam Witness.

A. Thank you.

PRESIDING JUDGE SCHMITT: [15:14:06] Thank you, Ms Gilg.

Any questions by the legal representatives?

MS MASSIDDA: [15:14:13] No, your Honour. Thank you very much.

MS HIRST: [15:14:17] Also no questions from me, Mr President.

PRESIDING JUDGE SCHMITT: [15:14:19] No questions.

Now it would be time for the Defence, for Ms Bridgman. We have quarter past 3.

Any thoughts by you in that respect?

MS BRIDGMAN: [15:14:32] Your Honours, may I have just a moment to confer with my colleagues?

PRESIDING JUDGE SCHMITT: [15:14:39] Of course, of course.

MS BRIDGMAN: [15:14:40] Thank you.

(Counsel confer)

MS BRIDGMAN: [15:15:23] Mr President, if it's okay with the Chamber, I would be happy to start with some preliminary matters and then we can close down for the day.

PRESIDING JUDGE SCHMITT: [15:15:30] That is fine with us, I think. So please start.

MS BRIDGMAN: [15:15:36] Thank you.

PRESIDING JUDGE SCHMITT: [15:15:38] And simply tell us when you think it's time we should go into the break until tomorrow.

QUESTIONED BY MS BRIDGMAN:

Q. [15:16:11] Good afternoon, Dr Abbo.

A. [15:16:14] Good afternoon to you.

Q. [15:16:17] Like I said to the Chamber, I just would like to go through some very preliminary matters to help me understand, and then we can take a break.

A. [15:16:24] Okay. Okay.

Q. [15:16:27] Is there a difference between a mental disease and a mental defect?

A. [15:16:36] A difference between a mental disease and a mental defect? This is my understanding, that a defect could be interpreted as something developmental, defect, something that happened from the developmental age, yeah, and limits one's understanding, perhaps intellectual disability. While mental disease would be understood as an ailment, an illness that is not -- it is not necessarily -- it doesn't happen during developmental period but it could happen -- it happens any time in the life cycle and it could be during the developmental period but also in adulthood.

PRESIDING JUDGE SCHMITT: [15:18:09] May I shortly comment. I don't think that it is really possible to draw a fine line and to differentiate completely between these two concepts, I would say. We have also --

THE WITNESS: [15:18:22] okay. Okay.

PRESIDING JUDGE SCHMITT: [15:18:22] -- read a little bit about it, and it's -- I think the drafters wanted to encompass everything that might have to do and might destroy these capacities that we went through in Article 31(a).

You could also see a defect as something perhaps persistent, a disease, something that is acquired. But it's difficult to differentiate that, I would say.

What is meant is all, all sorts of mental -- severe mental problems that destroy the person's capacity, and so forth. I think that is meant by the drafters to encompass

everything.

And we would not, perhaps, say this is a disease, this is a defect. It might be, at least in some instances, difficult. Just a comment.

MR AYENA-ODONGO: [15:19:16] (Microphone not activated) Mr President and your Honours, the provision of Article 31 is very clear. It would appear to me like it is talking about mental illness or defect at the time. So it makes a difference. There is a -- I think the framers of the statute were very clear that there is either a mental illness or a defect.

PRESIDING JUDGE SCHMITT: [15:19:54] No, no, I (Microphone not activated) Excuse me. I'm fine with that, of course.

What I wanted to express was simply that in -- there might be instances where it is difficult to really say are we now speaking about a mental disease, are we speaking about a mental defect? I think you could sense a little bit in the answer of our expert that there might be mental problems that a person has that are not so easy to classify. That was only what I wanted to say, not more, not less. But I agree with you in principle.

Please, Mrs Bridgman.

MS BRIDGMAN: [15:20:46]

Q. [15:20:48] And, Dr Abbo, I'm just as confused, so that's why I was very keen to know if there is a difference and --

A. [15:20:56] Okay.

Q. [15:20:57] -- so that's all, whether the disorders that you have discussed with the Prosecution fall within a disease or a defect. That's why I was asking that question. Now you talked about delusions, whether shared or individual.

A. [15:21:20] Yes.

Q. [15:21:21] In mental health where would you categorise those?

A. [15:21:26] The shared delusions?

Q. [15:21:28] Delusions generally.

A. [15:21:29] They are psychotic symptoms. It's a -- a delusion is a psychotic symptom, together with hallucinations, and disorganised behaviour. And psychosis simply means that someone is cut off from reality, they are hearing voices, they have these beliefs that, that is not in their cultural or religious norms. And mostly it's not useful delusions, yeah. Not useful beliefs, yeah.

Q. [15:22:23] In the Prosecution letter of instructions you were given the provisions of Article 31 of the Rome Statute.

A. [15:22:32] Yes.

Q. [15:22:33] But you took time to look at the minimum age from different jurisdictions.

A. [15:22:39] Yes.

Q. [15:22:40] Why?

A. [15:22:43] It's -- because, in my mind, if I was going to base my conclusions on this article I needed to be sure that the person I'm assessing has capacity. And that's why I took time to do that.

Q. [15:23:21] You mentioned it in your report, and I also looked at that document you provided, and it appears that there's a wide range from about 7 years to 16 years of age?

A. [15:23:37] Yes.

Q. [15:23:39] Have you done research to understand why there is such a wide gap between the different jurisdictions?

A. [15:23:48] Well, I -- not specific research, but what -- what I think is that different

countries have different ways of doing things and because it's different countries. But my understanding is that developmentally a brain at 7 years is different from a brain at 12 years, is different from a brain at 16 years. But different countries have different ways of doing, of crafting their laws, so I don't know why.

Q. [15:24:47] Now, even among practitioners yourselves, is there an agreement on when the brain is developed enough for criminal culpability?

A. [15:25:06] I don't know whether there is an agreement, but I can talk from the perspective of brain development, yes, and generally both moral development, social development, what is going on, cognitive development, I think that if you take the perspective of moral development, moral concepts begin to develop at the age of about 2, 3, a child knows no, no. A 2-year-old, even before you open your mouth they are saying "no, no, no". They know good, they know bad. So by the age of 7, morally they have -- they have the basics, yeah. So perhaps those countries that take the cutoff of 7 used moral development. But when we talk about cognitive development, in adolescence there is a lot of reorganisation that is taking place in the brain and what is happening is that the brain develops from bottom up. So you find the brainstem down here that harbours survival centres develops earlier, faster, and then the midbrain and the upper brain.

And as I mentioned earlier, the upper brain that develops last is what we use for planning, for decision-making, for thinking, for everything, the upper part of the brain. And that brain doesn't completely develop until the age of about, between 20 to 24, complete. This is average. Others might develop faster and others may be about lower.

Now, around adolescence, the majority, when you draw the normal curve, the majority should be at complete development around 16 to 18 and that's why perhaps

Uganda takes 18 as an adult age. Other countries take lower.

And so the other aspect regarding the development is that when the lower part of the brain has developed, then the middle part, which is the emotional part, develops faster than the upper part. So the upper part is supposed to be the brakes, while the lower part is the gas. So imagine you are having gas without the brakes and so you find adolescence risk-taking behaviours, and they do things without decision, they do -- this is generally talking. So if you asked me from the developmental point of view, perhaps people who take the age at 16 could have taken that into account, the cognitive development of the brain.

PRESIDING JUDGE SCHMITT: [15:28:39] This is, as you already correctly mentioned, also a matter of different jurisdictions and it's related of course to the concept of criminal responsibility, and also if we would relate it here to our Article 31. We don't have the problem, so to speak, here, but in domestic environments, it's always a question is the young person, to put it generally, able to appreciate the unlawfulness or that it's not correct what I'm doing, and can he or she be held responsible for the conduct. And different jurisdictions answer that in a different manner.

THE WITNESS: In a different manner.

PRESIDING JUDGE SCHMITT: As you correctly mentioned from 7 to 16. And let's not forget that sometimes it's also simply also political decision.

THE WITNESS: [15:29:30] Yeah.

PRESIDING JUDGE SCHMITT: [15:29:31] What people think from what age on, young people persons should be held responsible, criminally responsible or not.

MS BRIDGMAN: [15:29:46] Thank you, your Honour.

Q. [15:29:48] So from what you have said, would I be correct to summarise, at least

in my understanding, that the brain is a developing organ at least until the early 20s or something like that?

A. [15:30:06] In some people it takes up to about early 20s, yes.

Q. [15:30:10] Now would you agree with me that this has impacted on how jurisdictions from all over the world have handled children who come into conflict with the law, for instance, by offering diversion instead of taking them through formal justice systems?

A. [15:30:30] Yes.

Q. [15:30:33] Now apart from looking at the different ages of criminal responsibility, did you also take some time to look at the different legal definitions. No, let me -- not legal definitions, but legal standards of how a mental illness may impact one's criminal responsibility?

A. [15:31:05] Legal standards? No.

Q. [15:31:09] Okay.

A. [15:31:11] I didn't.

PRESIDING JUDGE SCHMITT: [15:31:13] Yes, that is also not -- excuse me, Ms Abbo. But you would agree with me that's not her core competence, I would say, the legal standards in different countries.

MS BRIDGMAN: [15:31:26] That is indeed true. That's why I asked because she did the same for the minimum age, but she didn't and that's all --

PRESIDING JUDGE SCHMITT: [15:31:33] But the minimum age is something very easy to verify, you see what I mean? But when it comes to legal standards it would be helpful if you have a background of a jurist, for example, of a lawyer, of a counsel, or a judge even. And perhaps to fill the gap when I said a couple of minutes ago that we don't have the problem here, I meant from our statute it is clear that we have

or could have only people of a certain age responsible and not adolescent people.

MS BRIDGMAN: [15:32:43]

Q. In your letter of instruction from the Prosecution, you were asked to collaborate where appropriate with your college of experts, your colleagues. What did you understand this to mean?

A. [15:32:59] Collaborate, work, you are not doing this work alone, you are working along with others. That's what I understood.

Q. [15:33:17] Now you had telephone, perhaps email conversation with your colleagues, correct?

A. [15:33:24] Yes.

Q. [15:33:25] How often did this happen?

A. [15:33:29] The email contacts were -- were quite many, that can be verified. But the telephone contact was once.

Q. [15:33:47] Now along the same lines, I noticed that in the letter of instructions it says the Prosecution said that they were instructing a college of experts, each with their own particular expertise, cultural reference points and areas of specialty.

A. [15:34:11] Yes.

Q. [15:34:12] What did you understand your own specialty to be in that college?

A. [15:34:18] As a child and adolescent psychiatrist and as a transcultural psychiatrist.

Q. [15:34:44] Were these two areas of particular interest to your colleagues as far as you remember? Did you discuss your work with them perhaps to help them give them more context to their own findings?

A. [15:35:01] Well, when we had that telephone contact, we, we discussed the different approaches that we were going to take and yeah, I think we mainly,

different -- we talked about different approaches and drew the timeline and we decided that we would -- we would not share the documents among ourselves until after a later time.

Q. [15:36:01] I noticed that you were also expected to read the drafts of your colleagues' reports. Did you do that before they were finalised?

A. [15:36:12] Before they were finalised?

Q. [15:36:15] I'm sorry. Before finalising your own report, did you read the drafts of your colleagues' reports?

A. [15:36:26] I didn't, and here is the reason why. The letter of instruction came before we had -- we all had letters of instruction before we had our telephone conversation and so the -- what we agreed on was that we first draft the reports and then, and then, you know, it was shared later. It was shared later, after drafting. Yeah. And the reason was that we each wanted to be as objective as possible.

PRESIDING JUDGE SCHMITT: [15:37:15] So do I understand it correctly that you have not synchronised, so to speak, your different expertises?

THE WITNESS: [15:37:25] Not the three of us, no.

MS BRIDGMAN: [15:37:37]

Q. I just hope that I understood you well. So you drafted your reports and then shared them amongst yourselves?

A. [15:37:46] No. We drafted the reports and we -- personally I saw -- I got the reports of the others after we had submitted.

MS BRIDGMAN: [15:38:11] Your Honours, this would be a good place to stop for the day and we can start tomorrow.

PRESIDING JUDGE SCHMITT: [15:38:16] As I already said, I agree with you. So we have now a break until tomorrow morning at 9.30. And I take it that you and

Mr Ayena might finish, or will finish tomorrow?

MS BRIDGMAN: [15:38:30] That's my goal.

PRESIDING JUDGE SCHMITT: [15:38:33] Let's be more ambitious. Let's say a little bit more than a goal, it's something I would not say that we expect, but we are looking forward to, so to speak.

Until tomorrow 9.30.

THE COURT USHER: [15:38:47] All rise.

(The hearing ends in open session at 3.38 p.m.)

CORRECTIONS REPORT

The corrections (not related to interpretation) marked with an asterisk (*) in the transcript are implemented as follows:

Page 33 line 10:

“dissociative”

is corrected to page 33 line 10:

“dissociate”

Page 34 line 11:

“Paragraphs”

is corrected to page 34 line 11:

“Perhaps”

Page 37 line 23:

“up”

is corrected to page 37 line 23:

“you”

Page 47 line 12:

“consent”

is corrected to page 47 line 12:

"concept"

Page 53 line 2:

"his"

is corrected to page 53 line 20:

"her"

Page 53 line 20:

"rationale"

is corrected to page 53 line 20:

"rational"

Page 55 line 19:

"you about"

is corrected to page 55 line 19:

"you say about"

Page 57 line 6:

"I'm slash"

is corrected to page 57 line 6:

"I'm going to slash"