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

Tuesday, 26 November 2019

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

THE COURT USHER: [9:31:18] All rise.

The International Criminal Court is now in session.

Please be seated.

PRESIDING JUDGE SCHMITT: [9:31:34] Good morning, everyone.

Could the court officer please call the case.

THE COURT OFFICER: [9:31:48] Good morning, Mr President, your Honours.

The situation in the Republic of Uganda, in the case of The Prosecutor versus

Dominic Ongwen, case reference ICC-02/04-01/15.

And for the record, we are in open session.

PRESIDING JUDGE SCHMITT: [9:32:02] Thank you.

I ask for the appearances of the parties, Prosecution first.

MR GUMPERT: [9:32:07] Good morning, your Honours.

Ben Gumpert for the Prosecution. With me today, Colleen Gilg, Colin Black,

Pubudu Sachithanandan, Beti Hohler, Yulia Nuzban, Adesola Adeboyejo,

Kamran Choudhry, Grace Goh, Hai Do Duc, and Nikila Kaushik.

PRESIDING JUDGE SCHMITT: [9:32:27] Yes. Thank you.

And for the representatives of the victims, Mr Narantsetseg first.

MR NARANTSETSEG: [9:32:28] Good morning, Mr President, your Honours. For the Common Legal Representative, Orchlon Narantsetseg and Caroline Walter. Thank you.

PRESIDING JUDGE SCHMITT: [9:32:35] Thank you.

And Mr Cox.

MR COX: [9:32:38] Good morning. With me, Mr James Mawira and myself.

PRESIDING JUDGE SCHMITT: [9:32:43] Thank you.

And Mr Obhof for the Defence.

MR OBHOF: [9:32:45] Thank you very much, your Honour.

Today we have Beth Lyons, Michael Rowse, Krispus Charles Ayena Odongo, Chief Charles Achaleke Taku, Gordon Kifudde, and myself Thomas Obhof, along with Dominic Ongwen who is in court.

PRESIDING JUDGE SCHMITT: [9:32:59] Thank you.

And we also give a warm welcome to Professor Ovuga again this morning, and of course to our witness expert, Professor Weierstall-Pust.

We continue with his examination by the Defence now.

Ms Lyons.

MS LYONS: [9:33:16] Thank you, your Honour. Let me just -- may I just put two really small bits of information on the record, if I may, which is Professor Ovuga just informed me that he is not feeling very well. He hasn't been, he's seen doctors. He spoke -- I just, I just talked to him -- he spoke to VWU and they've informed him that he may be able to get some medical attention tomorrow. He will try to sit through the first session, but he may not.

The second thing is that I expect a brief rejoinder report, a short rejoinder report. I'm

seeking your permission that I can communicate with Professor Ovuga to find out when it's coming so that we can send it to the other side. It's just a procedural matter.

PRESIDING JUDGE SCHMITT: [9:34:04] Absolutely, that's perfectly clear.

MS LYONS: [9:34:05] Okay.

PRESIDING JUDGE SCHMITT: [9:34:08] And, Professor Ovuga, we wish you very well and hope that you feel better during the day and tomorrow, and hopefully on Thursday then.

MR OVUGA: (Microphone not activated) Your Honour, I will try and sit in, especially Thursday, Friday. I am used to working while being unwell.

PRESIDING JUDGE SCHMITT: [9:34:41] I'm absolutely sure of that and we count on you, so to speak.

Ms Lyons, please continue.

MS LYONS: (Microphone not activated) has to go on. All right.

WITNESS: UGA-P-0447 (On former oath)

(The witness speaks English)

QUESTIONED BY MS LYONS:

Q. [9:34:58] Good morning, Professor Weierstall-Pust?

A. [9:35:01] Good morning, Ms Lyons.

Q. [9:35:04] The rest of the day it's "Professor", it's easier for me. Okay. First I just want to ask you some questions about -- general questions about the report and how you got here, essentially.

Could you tell us when you first had access to the second report, which was submitted I believe in June 2018?

A. [9:35:28] I would have to look it up in my email inbox folder to give you a

precise answer, but I would guess maybe by the end of 2018.

Q. [9:35:41] So it's fair to say then that you didn't just review it and critique it in the last week; is that correct?

A. [9:35:48] It's correct. I had the time to look at the things that were written in the report and look things up, and then also compare it to the things that were said in the past week.

Q. [9:35:59] Now the second report, this may seem obvious, but the second report, psychiatric report was drafted by two psychiatrists, correct?

A. [9:36:12] Correct.

Q. [9:36:13] And you are a psychologist, correct?

A. [9:36:16] Correct.

Q. [9:36:17] Now, based on information on the record -- (Overlapping speakers)

THE INTERPRETER: Interpretation message: Could the counsel please slow down a bit.

MS LYONS: -- a component of experts on the (Overlapping speakers)

THE INTERPRETER: Your Honour, could counsel slow down a bit.

MS LYONS: -- the OTP team which as -- sorry?

THE WITNESS: [9:36:34] I didn't get anything because the interpreter was saying something. I'm sorry.

MS LYONS: Sorry.

PRESIDING JUDGE SCHMITT: [9:36:40] I assume, simply, that someone is too quick.

MS LYONS: [9:36:44] Oh, no.

PRESIDING JUDGE SCHMITT: [9:36:46] Oh, yes.

MS LYONS: [9:36:51] Oh, yes. Oh, no. All right, slow down. Okay, let's try

again. And I haven't had that much caffeine today. Okay. Where did we leave off?

Q. [9:37:02] I asked the question that the report was written by two psychiatrists, correct? Okay. And you, Professor, are a psychologist, correct?

A. [9:37:14] That's correct, yes.

Q. [9:37:15] Okay. And there were three OTP experts on the issue of mental health, correct?

A. [9:37:27] As far as I see it, yes.

Q. [9:37:29] Okay. There was you and there was Dr Mezey, a psychiatrist?

A. [9:37:35] And Dr Abbo.

Q. [9:37:36] And Dr Abbo.

A. [9:37:39] Exactly.

Q. [9:37:39] Now, isn't it true that your training, experience, your -- what you can and cannot do as a psychologist is different than what a psychiatrist can do?

A. [9:37:57] Last week we always had these yes and no answers. I would like to give you a yes and no answer, if I may.

So we are different -- so I'm not only a psychologist but, you see, I'm a state licensed psychotherapist, which means by law I'm -- have the permission officially to diagnosis and treat mental disorders. And in this respect there is no difference between me and a psychiatrist, and that's the matter of this report as well. There's a difference of course, I'm not allowed to give you medicine, that's true, but otherwise there is no difference, no.

Q. [9:38:37] When you say by law, to which law are you referring, Professor?

A. [9:38:41] To the German *Psychotherapeutengesetz*, which means that in Germany you need *approbation*, approbation, I don't know if that's the proper English word.

So this is what you need to treat and diagnose people in Germany and either you're a medical doctor or you are licensed psychotherapist so then you have the option to do it.

Q. [9:39:08] Is it fair to conclude, although I clearly have just now information about your system, is it fair to conclude that the medical physical aspects of psychiatry, the medical examination, the medications, even, eve maybe the medical diagnosis is within the realm of the psychiatrist and not the psychologist?

A. [9:39:35] The medical diagnosis except the mental disorders. I mean, so I'm not allowed to say, okay, this person, for example, suffers from diarrhoea. I don't know. I have no proper -- I don't know the diagnosis to the other ones yeah? But I can -- I can't say it's diarrhoea A or diarrhoea B, that's not -- I am not allowed to do this. But when it comes to mental disorders there's no difference between the permission I have.

Q. [9:40:03] But would it be fair to conclude, based on your answers, that your core competency is in psychology?

A. [9:40:18] I -- I remember that -- no, let me say it the other way around. I guess the point you are trying to make and that's my interpretation, maybe I am wrong, that I don't have the qualification to say something about mental disorders. I would disagree with you that I'm not qualified to diagnose mental disorders.

Q. [9:40:39] My role is not to get into an argument about that. I just wanted to understand the core competency as you saw it, and we will argue later.

But let me ask you this: Did you find it unusual that where there were two psychiatrists on the team that you the psychologist was chosen to give, or asked, requested to, chosen to give the rebuttal evidence in this case on a report by two Defence psychiatrists?

A. [9:41:16] No, I don't think so. Because in this case we are dealing with the diagnosis of mental disorders and there is no reason why it would be better to have a psychiatrist on board or a psychologist, so when we are working -- or psychotherapists. So assume we were -- it's the same when you work in a clinic, it's not that the two professions battle with each who is the more professional one, it's rather that we work together. And I think in this case there is no reason why a psychotherapist shouldn't do this work.

Q. [9:41:45] Now, did you take it upon yourself to make an enquiry of the OTP, which asked you to give this expert evidence, as to whether they can consulted Dr Mezey or Dr Abbo, the psychiatrist who previously gave evidence for the Prosecution?

A. [9:42:05] What do you mean with an "enquiry"?

Q. [9:42:07] Did you ask? I'm sorry. Did you ask?

A. [09:42:08] Okay. Sorry.

Q. [09:42:09] Did you ask -- I don't know who your contact is, but did you ask the OTP, the Office of the Prosecutor --

A. [9:42:14] Yes.

Q. [9:42:14] -- if they had asked Dr Mezey or Dr Abbo to give --

A. [9:42:20] So the second, the second report now, so --

Q. [9:42:23] To give, to give rebuttal evidence, yes?

A. [9:42:25] On the second psychiatric report. Okay. No.

Q. [9:42:31] Okay.

A. [9:42:32] Well, no, I think -- let me -- I was asking them -- sorry, it's been some time, it was in 2018. I think I was asking them also if we have the opportunity to work in a team together or not.

Q. [9:42:44] And the answer was?

A. [9:42:48] No, that they would choose me to -- this time to do this.

Q. [9:42:54] Okay, you -- so you alone had the task, you're the psychologist?

A. [9:42:58] I had the task, yes.

Q. [9:42:59] Now let me ask you, based on your -- I don't have your CV at this moment in front of me, but based, based on your experience, how often have you been in a position in court as a psychologist criticising the work of psychiatrists?

A. [9:43:23] Criticising, criticising, maybe two or three times.

Q. [9:43:29] Over what period of time two or three times?

A. [9:43:33] You see, I'm still quite young, maybe in the past -- so the first time I was appearing in court was when I was 27, I think, and now it's nine years.

Q. [9:43:48] So is it fair to say that over the last nine years on two or three occasions you criticised reports of psychiatrists?

A. [9:43:58] You see, I'm -- usually what I'm doing, I'm also a reviewer in different professional journals, so what I usually do is have a look at the work my colleagues are doing and give my expert opinion on this. But not in court, you're right.

Q. [9:44:20] Okay. Thank you for that information. But yes, I'm asking about Court, I'm not --

A. [9:44:23] Okay.

Q. [9:44:25] -- asking about peer review, academic journals.

I've been warned to slow down. Thank you. Okay.

Now could you give the Court information about your experience in working with and diagnosing and treating child soldiers, particularly in Africa?

A. [9:45:05] I think in the last ten years I haven't done other things than just working in the field of psychotraumatology and aggression, and since that time I'm

not concerned with anything else but trying to properly diagnose disorders and disentangle disorders from normal states of behaviour in various combatant sample, which LRA soldiers, former LRA soldiers, which include military forces, armed forces. We've worked in Burundi, we've worked in Rwanda, we've worked in Uganda, we've worked in South Africa, we've worked in Colombia. I just recently published with my colleagues from Nigeria. Currently I'm involved in a project where we work with Syrian refugees in Lebanon, so -- and as part of this work I'm not only concerned with how to disentangle different psychopathological phenomena, but also we are trying to develop treatments based on the current state of the art. And I'm also working, I'm seeing patients on a regular basis.

Q. [9:46:27] Okay. Now let me break that down a little bit so I understand it. Who is the "we"? I'm interested -- okay, I'm interested particularly in you, but you answered as a we, a collective we.

A. [9:46:40] Yes.

Q. [9:46:40] So tell me who the "we" is?

A. [9:46:42] Well the "we" are teams. We have -- I started my work in combatant samples while I was postdoc in -- at the University of Konstanz. And I was the one who developed, together with my colleague Thomas Elbert, the concept of appetitive aggression. And we were, so to speak, the core team in the beginning and then we -- there were more PhD students coming, there were more postdocs coming. Then there were different teams. So, for example, we means, in the case now where we are working within the Lebanon, there we have a team with Doctors Sans Frontières - how do you say - Without Borders, Doctors Without Borders.

Q. Doctors without Borders --

A. [09:47:38] And we've -- and -- or, for example, when we worked in the different,

in the different African countries we always collaborated with the local universities to acknowledge cultural, cultural issues as well.

Q. [9:47:51] Okay.

A. [9:47:51] So this means a variety of different teams but me always being part of this.

Q. [9:47:58] Okay. Now let me hone in on -- let me focus in on your role and your particular experience.

A. [9:48:02] Mm-hmm.

Q. [9:48:02] Not the experience of Professor or Dr Elbert or others on the team. I'm interested in you.

A. [9:48:12] Yeah.

Q. [9:48:12] What I want to know is, have you had field experience -- wait a minute, before you shake your head. Have you had field experience diagnosing child soldiers, particularly ex-LRA in Uganda? I'm not talking about research. I'm not talking about an academic environment. Have you had field experience?

A. [9:48:38] Yes.

Q. [9:48:38] Talking to?

A. [9:48:39] Yes.

Q. [9:48:40] And how many ex-LRA child soldiers have you talked to in Uganda?

A. [9:48:47] It's difficult to say. I would have to look it up in our records.

Q. [9:48:55] Approximately? More than five, more than 10?

A. [9:49:02] 20, 30.

Q. [9:49:03] Okay.

A. [9:49:03] And also -- and also (Overlapping speakers)

THE INTERPRETER: [9:49:03] Mr President, could the counsel --

PRESIDING JUDGE SCHMITT: [9:49:04] Yes --

THE INTERPRETER: [9:49:04] -- wait for the interpretation to go.

PRESIDING JUDGE SCHMITT: [9:49:09] Yes, please, for both. It's clear Ms Lyons has an idea what she wants to ask, you want to ask too quickly --

THE WITNESS: [9:49:12] Sorry.

PRESIDING JUDGE SCHMITT: [9:49:13] -- but we have to wait until the next person speaks.

MS LYONS: [9:49:21] Thank you. You're right. Thank you, sorry, your Honour. Okay.

THE WITNESS: [9:49:24] And of course supervising my other students that also did assessments.

MS LYONS: [9:49:34]

Q. [9:49:35] Okay. Now, you mentioned -- I was going to say Avocats Sans Frontières, but it's Doctors -- Médecins Sans Frontières -- Doctors Without Borders, okay. Doctors Without Borders. Now have you worked in Uganda with ex-LRA child soldiers for other organisations?

A. [9:50:10] No.

Q. [9:50:10] Okay. Now, I would ask you to turn -- I'll read it, but you can see where it is. It's tab 8, the Ethical Principles of the German Psychological Society, and I'm looking at page UGA-D26-0015-1522. It is section C.III., the first line, which reads:

"Psychological research depends on the participation of people as experimental subjects."

Now, in respect to Mr Ongwen, you have not interacted with him personally as the principle lays out in this section, have you?

A. [9:51:18] I haven't worked with Doctor -- with Mr Ongwen, no. I just have written a report on a report.

Q. [9:51:26] Okay. Fair enough. Now, would it be fair to say that your own conclusions as a psychologist in terms of Mr Ongwen particularly are compromised by the fact that you did not meet with him and interact with him as a psychologist?

A. [9:51:53] I think I've also mentioned it last time, that maybe I would have come to different conclusions if I had the chance to interview Mr Ongwen by myself.

Q. [9:52:05] Okay. Now, you just mentioned a few minutes ago the issue of culture and I believe it's also addressed in both the DSM-5 section on cultural issues as well as in either the ethical principles of the German psychological association or elsewhere. I'll find it in a minute, but the question is this: Could you tell us what steps, if any, you took, for example, to deal with ex-child soldiers, what steps did you take to educate yourself about the culture or cultures from which these ex-LRA child soldiers came?

A. [9:52:56] Yes. You see, the work we were doing in Uganda with the LRA soldiers and I think the publication -- I don't know, it was maybe released in 2011, this was part -- also we had received support from vivo international. Vivo is a non-governmental organisation and I'm also a member of vivo and they have a permanent branch in Gulu and Professor Ovuga also knows them; they have also worked together already. So they are permanently working there also in collaboration with the universities in Uganda, and we also have received support and I'm still working together with some colleagues from Uganda from Makerere University. And of course I'm sure Mr -- Professor Ovuga is better in explaining cultural issues of the Acholi culture. You might have recognised I'm not Acholi, but of course what we do is we try to familiarise ourselves by relying on the support of

our local teams, the local people around and, for example, the measures we applied. We also assessed PTSD, for example, in these samples and we already -- we could rely already on translations of the respective measures that were performed by vivo and Ugandan professionals so that we were aware that the measures we would rely on also validly assessed the phenomena we want to assess.

So this means that we also receive -- usually, how it works is that we seek help from our local experts to get an idea if we assessed the symptoms we want to assess in a culturally appropriate way.

Q. [9:55:12] Now, is it fair for me to conclude from the answer -- your answer that you consulted with on the ground Ugandan psychiatrists and psychologists? That's a yes or no question?

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

Q. [9:55:27] Okay. Now --

A. [9:55:28] But also -- we have also Konstanz. Our experts from Konstanz who live in Gulu or lived in Gulu since many years already. So it's a -- it's a mix out of different health professionals and -- from Uganda and from Germany.

Q. [9:55:44] Now, if I can ask you to maybe step out of your own role at the moment.

A. [9:55:52] Mm-hmm.

Q. [9:55:53] Could you give us an objective assessment of comparing a person with -- who's interviewed 20 or 30 ex-LRA with the collective experience, you've see the résumés of Professor Ovuga and Dr Akena. Just an honest assessment. This is not a judgmental question.

A. [9:56:17] Mm.

Q. [9:56:18] It's a question. If you could step out honestly and say what you think.

A. [9:56:31] I think qualified work doesn't solely depend on the years you spend doing this work. What I would do is, I would compare the work that has been done by someone who did it the 21st or 31st time and compare the work to the work of the -- those people who have worked in this culture maybe for decades and then I would do it in the same way as I did it in my report. I would compare it to general principles and see whom of the two do their work more in accordance with common guidelines and who are -- whose work is in this way more evidence based, more founded and I -- you see, the problem is I don't -- I don't want to make a -- I don't want to get in this role to do -- to -- in this personal -- on this personal level.

You see, I -- I appreciate the work that has been done by Professor Ovuga and Dr Akena. I respect them as honourable colleagues and I would -- do not say that they're not qualified to do this work and I also would not say that I'm not qualified to do this work.

For me, I would -- the only point I'm making is that we have a report here and we have guidelines and we have standardized criteria and these standardized criteria are not made by Professor Ovuga and they're not made by Professor Weierstall-Pust, but they are common accepted guidelines that have been made by professionals and these were discussed on an international basis.

And so therefore it's not important if Professor Ovuga or Dr Akena are Acholi and it's not important that I'm a mzungu, but I think it's rather important that we compare the work that has been done to general principles and then we can come to a conclusion. And I think based on this conclusion, I would say that this particular report -- and not Professor Ovuga, not Akena as an individual per se, but I think that this report is not matching the quality criteria that we would expect from a forensic -- from a proper forensic report.

Q. [9:59:03] I will get to that conclusion a little bit later. Let me finish up this section first.

Now, just one quick question about you said you consulted Ugandan experts. You know people on the ground, professionals on the ground --

A. [9:59:15] Mm-hmm.

Q. [9:59:16] -- professionals on the ground. If I may -- you didn't say professionals, I put those words in your mouth, if I may.

Can you just give us the names of some of those people?

A. [9:59:32] It's (Overlapping speakers)

Q. [9:59:32] If your remember.

A. [9:59:33] It's -- it's a really, it's a real -- it's a long time, I can't remember the names (Overlapping speakers)

Q. [9:59:34] Okay. Fair enough.

A. [9:59:35] I met so many people, but I don't know that -- I'm also not sure if my colleague now, I'm working with, Herbert Ainamani at the moment, he's from Makerere University, I'm not sure if -- so we're about to submit a research proposal soon, I'm not sure if I also might name -- name these people here because they might fear suppressions maybe, I don't know but ...

Q. [10:00:10] All right, I'll take that as he can't answer. That's fine, I can move on. That's fine. Okay. If I may -- now in a situation where you were not able to interview the person about whom Mr Ongwen, about whom the report was -- was -- was made and about -- in which report you also critiqued --

A. [10:00:36] Mm-hmm.

Q. [10:00:37] -- you didn't make a disclaimer about your inability to interview him, did you, in the report? "I didn't see it." That's why I'm asking you. Did you

(Overlapping speakers)

A. [10:00:47] No, I (Overlapping speakers)

Q. [10:00:48] -- make a disclaimer is the question?

A. [10:00:54] No, I didn't make a disclaimer because it was also not my task to do -- to come to conclusion on -- conclusions on the mental health status of Mr Ongwen, but it was rather as I have -- would've -- as I have understood it to give my professional opinion on the methodology and the conclusions in the report of Professor Ovuga and Dr Akena, it's like it's made -- it's a -- it's a huge difference I think.

Q. [10:01:20] Okay. But given the fact that the professional guidelines both for forensic psychology from the German psychological association, you know, in general, emphasise the importance of interacting with, having personal contact with, observation of the person who is the subject matter of the report --

A. [10:01:45] Mm-hmm.

Q. [10:01:46] -- okay? You didn't find it necessary to say that in spite of that -- "my inability to do that, I am writing this report." You didn't find it necessary to even acknowledge that in your report?

A. [10:02:02] No (Overlapping speakers)

MR GUMPERT: [10:02:02] Your Honours, just before the Professor answers, if it's being suggested that there is some text which required or suggested that Professor Weierstall-Pust should have acted other than he did, I think it would be useful for my learned friend to specify so that the Professor can see what it is he's being confronted with.

PRESIDING JUDGE SCHMITT: [10:02:27] Ms Lyons.

MS LYONS: [10:02:28] Yes. One moment.

Q. [10:02:33] At this moment I will refer you back to the text, that psychological research depends on the participation of people as experimental subjects. And let me -- one moment, your Honour. I cannot at this moment find the disclaimer, the language. I'll withdraw that question.

But I am looking at tab 7 now, under "Responsibilities ... integrity: Forensic practitioners strive for accuracy, honesty, and truthfulness in the science, teaching, and practice ..."

This is at UGA-D26-0015-1502 and it's -- I am suggesting that disclaimer that says I couldn't -- I couldn't see -- I couldn't meet with the client and this affects what I am writing is part of this general principle, that's all. Would you agree or not?

A. [10:03:55] No, I wouldn't agree. Because I think it's clear to everyone in the courtroom here that I -- that we didn't had the possibility to -- me and also my colleagues Mezey and Abbo, that we asked for permission to do an assessment with Mr Ongwen. Everyone knows that this was refused. And I never ever pretended that I had a chance to do an assessment with Mr Ongwen. And I also mentioned in my first report where I was -- where I had the different task. I already mentioned there that I didn't have the chance to speak to Mr Ongwen in person.

And, you see, this time it wasn't -- it was not my task to say this and this is the mental health or this is the disorder I would diagnose in the case of Mr Ongwen. This was not my task. My task was, or what I did was I was writing a report on a report, comparing the report to what you find in the scientific literature and the professional literature on forensic assessments. And then I was highlighting all the contradictions that appeared, all the shortcomings that appeared. And, of course, yesterday I was asked by the Office of the Prosecutor what personal opinion I have and I would -- I still could say, depending on the material I have, I think it is highly

unlikely that the diagnoses that were outlined in the report are not supported. But this is my -- this conclusion is not based of course on my assessment, on my personal assessment of Mr Ongwen. And you would see -- you also can see it from my report, if I would have done an assessment of Mr Ongwen, this would have looked completely different to the one we can find here.

Q. [10:06:03] Thank you.

Now, better late than never, I found the language I was looking for, which is at tab 6, it's UGA-D26-0015-1495. I'm looking at section C, which says:

"When psychologists conduct a record review or provide consultation or supervision and an individual examination is not warranted or necessary for the opinion, psychologists explain this and the sources of information on which they based their conclusions or recommendations."

PRESIDING JUDGE SCHMITT: [10:06:46] Can you help us again a little bit where we are exactly. I have the page but --

MS LYONS: [10:06:51] I'm sorry.

PRESIDING JUDGE SCHMITT: [10:06:52] -- on this page, please.

MS LYONS: [10:06:53] On this page it's on the left-hand column, it's (c). It's right above "Use of Assessments", 9.02. The ERN number is -- I can't read this.

PRESIDING JUDGE SCHMITT: [10:07:13] UGA-D26-0015 --

MS LYONS: [10:07:16] 1481.

PRESIDING JUDGE SCHMITT: [10:07:19] 1481 at 1495.

MS LYONS: [10:07:21] Thank you. Sorry, I read it wrong. We're at page 1495.

THE WITNESS: [10:07:27] Okay, so what's your question?

MS LYONS: [10:07:29]

Q. [10:07:30] The question is, looking at (c)?

A. [10:07:32] Yes.

Q. [10:07:34] Isn't is true that this provision from the American -- it's from the American Psychological Association, that suggests that an explanation or disclaimer that you could not interview Mr Ongwen would have been appropriate to satisfy this criterion?

A. [10:07:58] You see, it is said, "When psychologists conduct a record review ..."

Q. [10:08:02] Mm-hmm.

A. [10:08:02] I didn't do a record review, right? Did I? I think no.

Q. [10:08:06] I don't know. You tell me.

A. [10:08:08] No. No, you see --

Q. [10:08:09] I'm not answering the questions.

A. [10:08:11] No, sorry for that. No, but you see, I didn't do a record review to come to a conclusion on Mr Ongwen's mental health status and I also did not supervise Mr -- Dr Akena and Professor Ovuga. What I did is I -- no, what I did is I compared this report to the common state of the art, how it should have been done, and I, of course, outlined all the resources that I have used. And you find it also on my first page where I clearly state that I had access to the files that are listed there. Yes.

Q. [10:08:55] Okay. Let me move on here.

Now, after you read the second report by Professor Ovuga and Dr Akena, you didn't ask for more information from the OTP, did you?

A. [10:09:10] What --

Q. [10:09:10] For example, transcripts related to issues in the second report, or videos of court sessions, any collateral information that would have supported the conclusions, did you ask for that?

A. [10:09:29] You mean if there were, for example, video recordings of how Mr -- Dr Akena or Professor Ovuga did an interview with Mr Ongwen?

Q. [10:09:41] No. Let me be clear. I'm not asking for that. Those don't exist.

A. [10:09:46] That's what --

Q. [10:09:47] What I'm saying is that you read the second report in 20 -- at the end of 2018 --

A. [10:10:01] Mm-hmm.

Q. [10:10:02] beginning -- whatever, 2018. You were not able to interview. You were making a critique of this report which included, for purposes now, conclusions about the mental status of Mr Ongwen, correct?

A. [10:10:20] Yes.

Q. [10:10:21] Now, it also included in that report sometimes statements were -- information obtained -- withdrawn. Sometimes information obtained from Mr Ongwen was recorded in that report, correct?

A. [10:10:39] Yes.

Q. [10:10:40] Okay. My question is did you ask the OTP for any collateral information so you could assess the information you were presented with in the second report?

A. [10:11:02] No. And I can tell you why I didn't ask for further information. Because, like you said, it was clear to me that there were no video recordings of how Professor Ovuga or Dr Akena do the assessment of Mr Ongwen, yeah? And also this was confirmed last week, I think Professor Ovuga said, "Oh, it would have been nice if you had watched the videos."

But I think that's my -- I think you're -- at the moment you're confusing the task and the role I was taking. Because my role was not to say this symptom is described in

the report by Professor Ovuga and I have personally interacted with Mr Ongwen and now that's why he -- this disorder is not true, but I suggested the other disorder. The point I am making is it's impossible based on -- I think the point I am making is based on the information presented in this report and based on the way how it is written and how it is presented, it is absolutely not justified to come to a conclusion based -- come to a conclusion on the mental health status based on this report. You see, I'm writing a report on the report. And I think you're confusing it. It's not that I want to come up with -- and I also tried to make it clear in the first paragraph I was writing. I think it was line 3 or 4 in the first paragraph of my report that I say I do not provide a second mental health assessment of Mr Ongwen. And I think the past 15 or 20 minutes always try to push me in this direction, but this is not the role I was taking. And I never -- and I also particularly refused this role.

So that's why I don't think it's -- that's why I think it's irrelevant to ask for further material.

Q. [10:13:12] I'm --

PRESIDING JUDGE SCHMITT: [10:13:13] But the question is answered.

MS LYONS: [10:13:15] Okay. Thank you.

Q. [10:13:19] Now, the last one or two questions in this area are: Did you view any open source material about Mr Ongwen from the internet, from whatever other open sources which you had access to?

A. [10:13:37] Yes. When I was first -- when I was asked the first time if I could -- I would serve in this case as an expert witness and then I -- then the name of Mr Ongwen was revealed to me, yes, I tried to find some, some general information on the internet. I Googled Mr Ongwen. But it's four of -- four years ago now, three years ago now, and I can't exactly tell you the search results I got. I'm sorry.

Q. [10:14:16] However, let me just ask you, since you read the report, reviewed it in the last year or two, did you seek any open source material?

A. [10:14:27] Afterwards?

Q. [10:14:28] Yes.

A. [10:14:29] Yeah, I mean there were -- I'm still interested in this case, so I saw -- I read some newspaper articles I think that were from Ugandan media, for example. And I was also interested to see how I look. There was one picture of me and I was interested to see how I look in the newspaper. That's my personal interest. Sorry.

Q. [10:14:57] All right. Now, moving on. One second.

Moving on and I would withhold --

PRESIDING JUDGE SCHMITT: [10:15:10] Ms Lyons, on an exceptional basis we have five minutes break now. And then you can continue.

MS LYONS: [10:15:19] Thank you.

THE COURT USHER: [10:15:20] All rise.

(Recess taken at 10.15 a.m.)

(Upon resuming in open session at 10.21 a.m.)

THE COURT USHER: [10:21:15] All rise.

Please be seated.

PRESIDING JUDGE SCHMITT: [10:21:29] Ms Lyons, you have of course still the floor.

MS LYONS: [10:21:36]

Q. [10:21:37] Before I move on, there were -- I took advantage of the break, my colleagues, I have one or two follow-up questions on the last section.

The first, you said that you were not -- you know, you're not obviously Acholi, you're not, you're not an expert in Acholi culture. The question is this: Would that have

assisted you in making a critique of the second report, which is clearly about an ex-LRA child soldier from the Acholi culture?

A. [10:22:19] I think when I was informed about the composition of the team of OCT experts -- OTC (sic) experts, sorry, I was grateful that there was Dr Abbo on board because in a personal, if we would have -- it would have -- if it -- sorry, if it would have been possible to personally interact with Mr Ongwen, this would have been necessary, of course --

But, you see, for example, when we talk about possession form dissociative identity disorder which is part of the DID -- the DSM, I'm sorry, then I don't have to be from the Acholi culture to see if the diagnosis revealed in the report matched the diagnostic criteria of DSM because I'm qualified. I'm sufficiently qualified to see if colleagues stick to the general principles that we should stick to as experts.

Q. [10:23:26] Okay. Now, if I were to suggest to you - I have information, but let me make a suggestion - that yes, Dr Abbo was from Uganda, she's not Acholi, she in fact is Japadola, J-A-P-A-D-O-L-A, does that -- would that make a difference in your answer?

A. [10:23:54] No, it wouldn't make a difference in my answer because, you see, even, even my neighbour who has the same age than I have who is also -- who was also born in the same region in Germany and we live in the same place since four years now and we are still so different from each other that even if we shared a cultural background, there are still too many differences that need to be acknowledged when you want to do a proper mental health assessment. So this means it is important to have someone from the respective country who shares at least some cultural norms, but it doesn't has to be exactly someone from the same culture to understand if there are obvious criteria met or not.

Q. [10:24:47] Factual -- well, just a quick factual question. You didn't consult with Dr Abbo, did you, in terms -- for this report?

A. [10:24:55] No.

Q. [10:24:56] Thank you.

PRESIDING JUDGE SCHMITT: [10:24:57] I think the question behind that, you may correct me, would be how general these general principles are. To put it very basic, so to speak.

THE WITNESS: [10:25:08] Yeah. I think as far as I correctly remember what Dr Akena also said last week, he said we stick to the DSM to explain to our patients the backgrounds of their disorders. I can't -- I would have to look it up where it is in the binder, I can't exactly tell you the reference. And he said also they sometimes give advice -- I hope I quote him correctly, that they also advised their patients to rely on the professional advice and not only on the recommendations made by traditional healers, for example.

So -- and also what they did is they -- in the whole report they focus on the general principles of DSM. So I think that they also agree on the general usability of DSM, but also of course DSM warns us as professionals that we have to acknowledge the cultural phenomena or have to understand symptoms in the cultural context.

But I think the shortcomings in the report as -- and on a very fundamental basis that it's -- that the question of culture doesn't even matter because the very fundamental basics are not met -- are not addressed yet. And I think that's the problem.

And also, for example, when we come to deviations, it's -- in the DSM it's specifically outlined that when you also want to, for example, diagnose the possession form DID, then you would also have to make a reference to -- between the behaviour or the experience your patient has to the cultural norm. So still, there is no -- it -- you have

to understand symptoms in reference to the cultural norm, but to diagnose a disorder you still have to justify why there is a deviation.

This means in the present report it would have been fundamental information to describe, for example, possession or the Acholi culture and say if we want to diagnose a disorder, then the symptoms reported or the experience reported by Mr Ongwen would have had also to deviate from the cultural norm. And this is -- and this is a fundamental issue that has to be considered when you want to --

MS LYONS:

Q. [10:27:47] Okay.

A. [10:27:48] -- diagnose disorders. So It's about deviance.

Q. Okay.

PRESIDING JUDGE SCHMITT: [10:27:52] Thank you.

MS LYONS: [10:27:53] Thank you.

PRESIDING JUDGE SCHMITT: Long answer.

MS LYONS: [10:27:53] Long answer. And I know that I'm -- no.

PRESIDING JUDGE SCHMITT: [10:27:56] But Ms Lyons --

MS LYONS: Let me just also --

PRESIDING JUDGE SCHMITT: -- please proceed.

MS LYONS: [10:27:59] Yes.

Q. [10:28:01] There was one other point that was -- we found on the real-time transcript. It's on -- I want to clarify this before I can move on a little bit. You said -- it's on page 18 of the real-time transcript and it's on lines 13 to 16. And I just -- is this what you said or not? This is a yes or no answer, hopefully.

A. [10:28:28] You mean the real-time from today?

Q. Yeah, from today. I just want to clarify --

PRESIDING JUDGE SCHMITT: [10:28:31] And we resume -- (Overlapping speakers).

THE WITNESS: [10:28:34] Yes, probably if it's there, I said it.

MS LYONS: [10:28:36]

Q. [10:28:37] Okay. Because you said --

A. I think so.

Q. [10:28:38] -- "I was asked by the Office of the Prosecutor yesterday what personal opinion I have and I still could say, depending on the material I have, I think it's highly unlikely that diagnoses that were outlined in the report are not supported." Do you stand by that, Professor?

A. [10:29:03] Yes, I think there's sufficient amount of material available that gives me the -- or that makes me come to the conclusion, yes. But, and this is also something I said when I was in court last time, that still there is a chance that some of the diagnoses apply to the case of Mr Ongwen, but this requires a proper mental health assessment. And probably if I would have done it, I could have maybe come to other conclusions. It's about probabilities.

MR GUMPERT: [10:29:38] Your Honours, the exact sentence which Ms Lyons has brought to the witness's attention contains a double negative. I'm conscious that the witness is giving evidence very fluently in a language which is not his first language. I'm anxious that there should be no misunderstanding simply on the basis of the complexity of the language used.

PRESIDING JUDGE SCHMITT: [10:30:05] So let me have a look what --

MS LYONS: [10:30:07] That's why I'm asking the question.

PRESIDING JUDGE SCHMITT: [10:30:13] I think you have read it again to Mr Weierstall, what he, what he means. What problem do you have, Mr Gumpert,

with the quotation?

Now I understand. It also came to -- no, no, let me. I have it now. And actually it also came to my attention the first time if it was really meant what he said. "I think it's highly" -- I only read out the last part, Professor Weierstall-Pust, "I think it's highly unlikely that the diagnoses that were outlined in the report are not supported."

THE WITNESS: [10:31:09] Mm-hmm. That's what I -- so -- or maybe I can put it in other words. There are (Overlapping speakers)

PRESIDING JUDGE SCHMITT: [10:31:14] That means it highly --

THE WITNESS: [10:31:17] There are diagnoses outlined in the report by Professor Ovuga and Dr Akena, they suggest mental disorders. That's correct, okay? And my conclusion is that based on the evidence they provide in their report, I don't think that these diagnoses or the reasoning they report support the conclusions they come to. And --

PRESIDING JUDGE SCHMITT: [10:31:44] But the problem, Professor Weierstall-Pust --

THE WITNESS: [10:31:47] Okay, sorry.

PRESIDING JUDGE SCHMITT: [10:31:48] -- I think was here, and I'm also not a native speaker, but it could be read that it means, if you switch the double negative, it's highly likely that the diagnoses are supported. If you say it's highly unlikely that they are not supported, this is something like it's highly likely that they are supported. And that was the question that we try to figure out what you wanted to say by it. Is this correct, Mr Gumpert?

MR GUMPERT: [10:32:17] I think having now put it in positive terms, the position is clear. What he said at the time, it seemed to me, was unclear and in fact goes

contrary to almost everything else that he has said. That is no doubt why Ms Lyons raised it in the first place.

PRESIDING JUDGE SCHMITT: [10:32:38] Absolutely. She came upon it. This is sometimes the advantage or disadvantage if you have breaks.

MS LYONS: [10:32:45] Give a break and all right. Now -- and I would say my colleague Michael Rowse found it because I'm not reading the transcript. All right.

PRESIDING JUDGE SCHMITT: [10:32:55] It's nice that you give -- it's nice that you give him the credit.

MS LYONS: [10:32:56] We give credit to people where it's due. Okay.

PRESIDING JUDGE SCHMITT: [10:33:00] But we are now --

MS LYONS: All right.

PRESIDING JUDGE SCHMITT: [10:33:00] What was the last answer now by --

MS LYONS: Where were we?

PRESIDING JUDGE SCHMITT: -- Professor Weierstall-Pust?

Have you understood the language problem that we all had here? Highly unlikely not supported means likely that the findings are supported.

THE WITNESS: [10:33:13] Yes, I understood it. And I'm very grateful that you are taking good care of me and --

PRESIDING JUDGE SCHMITT: [10:33:21] (Microphone not activated) was this meant or not meant?

THE WITNESS: [10:33:25] What I meant is that I don't think that the report -- or the evidence presented in the reports -- in the report supports the diagnosis outlined in this report.

PRESIDING JUDGE SCHMITT: [10:33:38] Then please proceed, Ms Lyons.

MS LYONS: [10:33:40] Okay. Thank you.

Q. [10:33:42] Now, on page 27 of your report, and it's -- I don't have the ERN -- I don't know if it's -- the ERN number yet for this, but it's page 27, you reach three conclusions. I only want to deal with a piece of the first one. I will read it to you.

This is the conclusion -- one of the conclusions, the first conclusion about the report by Dr Akena and Professor Ovuga. It says that the report is, quote, "insufficient, or unfounded, or inconsistent, or contradictory, or sloppy in almost every aspect and does not fulfil the minimal quality criteria of a professional forensic report according to the current state-of-the-art."

PRESIDING JUDGE SCHMITT: [10:34:45] Shortly, Ms Lyons, I think Mr Gumpert has now an ERN number.

MS LYONS: [10:34:49] Okay. Good.

MR GUMPERT: [10:34:51] UGA-OTP-0287-0072 at 0098.

PRESIDING JUDGE SCHMITT: [10:34:59] Thank you.

MS LYONS: [10:35:00] Thank you.

PRESIDING JUDGE SCHMITT: [10:35:03] Ms Lyons.

MS LYONS: [10:35:04] Okay.

Q. [10:35:05] Now at that moment I don't -- I'm not -- I will ask you soon, but I'm not asking you about everything in that conclusion. I'm asking you about the use of the word "sloppy". Is this an adjective, whether it's in English or in any language, that is respectfully used towards a colleague's report?

MR GUMPERT: [10:35:30] The Professor is not here to answer questions about whether he's respectful. He's here to answer questions about (Overlapping speakers)

PRESIDING JUDGE SCHMITT: [10:35:39] No, but -- no, no, but I (Overlapping

speakers)

MS LYONS: [10:35:39] Well, I will say --

PRESIDING JUDGE SCHMITT: [10:35:39] I disagree here. I think it can be asked if you would normally put such wording into an expert report. I think I would agree with Ms Lyons, that if we word it this way, Professor Weierstall-Pust can answer.

THE WITNESS: [10:35:57] I think there's room for interpretation and to say is it appropriate or not, you see, I'm here -- I can see my role to do the best work I can respecting the different parties that are presented here, respecting the International Criminal Court, respecting the Court, respecting you the Judges, and also respecting the victims and respecting Mr Ongwen.

And I think that I have an obligation to do a professional job, and I think the work that has been done in this report does not adequately address -- or adequately reflect a professional, professional -- no, this is the wrong word. I would have expected something completely different and I think I would -- I still would use the word "sloppy" because I think that this report and the way it has been done doesn't sometimes respect the way -- the things -- or the professional duties that should have been taken.

MS LYONS: [10:37:14] Okay. To assuage - is that a word, assuage, I think - the Prosecution, there is a section in the general principles of the German Psychological Society. It's section B, General Principles, "Psychologists are expected to treat their professional colleagues with respect and shall not exercise biased criticism of their professional [report]." That's the context of the respect issue. Okay.

PRESIDING JUDGE SCHMITT: [10:37:47] Professor Weierstall-Pust has answered the --

MS LYONS: [10:37:52] Yes, he's answered, but I just --

PRESIDING JUDGE SCHMITT: [10:37:53] And we let the question pass. He has answered (Overlapping speakers)

MS LYONS: [10:37:57] Thank you.

Q. [10:37:58] Now, is it fair to conclude that your general conclusions on the report were based -- or your general critique was a critique of the conclusions of the diagnoses of the report?

A. [10:38:10] My critique refers to the diagnosis but also the methodological assessment and scientific basis of the report.

Q. [10:38:20] Okay. Thank you. Now, I understand that it's three parts. However, would it be fair to conclude that Professor de Jong's report, which on the issue of diagnoses reached almost the -- if not almost the same ones as Professor Akena and Ovuga in regard to major depressive disorder, PTSD and dissociative disorder - he was the Court-appointed expert in this case - that his report was also sloppy?

A. [10:38:59] I have already commented also, gave a comment on the report of Professor de Jong last time, I think, I was here and also as part of my -- no, but you haven't been here, of course --

Q. I have --

A. [10:39:14] -- but in my first report. So I have already mentioned there that it doesn't mean -- it doesn't meet relevant points that usually should have been addressed.

Q. [10:39:27] But, however, the question was, and I've read the reports, all of them --

A. [10:39:32] Yes.

Q. [10:39:32] -- is would you describe it as sloppy? That's the question.

A. [10:39:44] No, I would -- I wouldn't describe it as sloppy because I think in -- I also would say that the report doesn't fulfil the -- doesn't meet fundamental requirements.

Q. [10:39:55] Whose report now?

A. [10:39:57] Also Professor de Jong. I think both reports are not sufficient to give an -- to give an -- to give clear evidence on what has happened in the charged period, because we are still dealing with the charged period. And none of the reports really assessed the mental health status precisely in the alleged -- or in the -- in the charged period. None of the reports has specifically focussed on the alleged crimes. So this information which is absolutely relevant in this case doesn't appear anywhere, so this means they are both insufficient, in my opinion. But compared with the -- in comparison between the two reports and in comparison to what fundamental shortcomings and contradictions that can be found in the report of Professors -- Professor Ovuga and Dr Akena, I think it's rather outstanding.

Q. [10:40:55] All right. So would it be fair for me to sum up that that adjective, which was a series, that adjective of sloppy applies to Professor Akena's -- Professor Ovuga and Dr Akena's report in your position, but that particular adjective does not apply to Professor de Jong's report? That's what you're saying?

A. [10:41:20] No. That's what I'm saying, yeah.

Q. [10:41:21] Okay. Fair enough.

PRESIDING JUDGE SCHMITT: [10:41:22] I think we can move on now from this language issue.

MS LYONS: [10:41:25] Okay.

Q. [10:41:26] Now -- one moment.

I would like to now go into your report and also I want some clarification of just a few items from yesterday from your transcript. That will be the next section I'm going to deal with, all right?

And then I will deal more detail in the subsequent session with your report and with other -- the DC, the detention centre reports that are, that are in the binder. Okay.

Now, let me start with the transcript and I am using the real-time transcript 252.

On page 12 of the transcript at line 11 you say:

"It is sometimes difficult to compare individual results to a population in the case that we don't have norms ... in this population, but at least can make reference to the psychometric results". I'm reading it, it doesn't make a lot of sense because I'm reading real-time, but the issue is the norms and point of reference. What are the norms and points of reference for, for example, a situation of mental health -- mental illness in ex-LRA soldiers, ex-LRA child soldiers in Uganda? What are you talking about here?

A. [10:43:41] Yeah, so usually when you have a psychometric instrument, many of them have standardized norms. So which means that if I have a patient and he is maybe male and he is 50 years old and maybe he's divorced, then I would compare his test results to other individuals that are also about 50, also male and that have also been divorced, okay? So that I can make a reference between -- I can compare the individual test result of my patient to its statistical mean.

And what this means in this case is of course it would be great if we could provide norms -- or statistical norms for child soldiers from the LRA on all the different psychometric measures we have. Of course this is not possible, but at least there is, for example, scientific literature that at least gives you an idea of how many cases, how large the -- no, how high the prevalence rate, for example, of some mental

disorders in this particular population is, and then you can at least try to compare it to these populations. But this means that you also would have to address these shortcomings or the problems you have by, when you try to apply standardized measures in the particular population, then you would also have to outline these difficulties in your report.

Q. [10:45:38] Now, please take a look at tab 1, PTSD.

A. [10:45:48] Which one, sorry?

Q. [10:45:50] I'm sorry, tab 1 of the binder.

A. [10:45:52] Okay.

Q. [10:45:53] The first page is UGA-OTP-0287-0040.

A. [10:46:00] Mm-hmm.

Q. [10:46:00] And we're looking at page 0045, or for those who, like myself, read the numbers, page 276.

A. [10:46:09] Mm-hmm.

Q. [10:46:09] And it talks about prevalence. Now, in that section the statistics initially are geared towards the US, correct?

A. [10:46:27] Correct.

Q. [10:46:28] Okay. And then if I'm correct, the countries of Europe, Asia, Africa, and Latin America are dealt with as a group, as a single entity, correct?

A. [10:46:44] It's at the end of the paragraph, yes.

Q. [10:46:48] Yeah.

A. [10:46:49] Mm-hmm.

Q. [10:46:49] All right. Now the same DSM talks about dealing with culturally -- I don't have the right words. Let me find it.

PRESIDING JUDGE SCHMITT: [10:46:59] I think we should be correct here. I

understand it, the prevalence, "Lower estimates are seen" and then different regions are grouped together, as I understand it, with regard to percentages.

MS LYONS: [10:47:13] Correct.

PRESIDING JUDGE SCHMITT: [10:47:14] They are not assessed, but they are simply dealing with percentages. And it's not that -- Professor Weierstall-Pust, I understand that you're referring to the first two sentences, not to the last.

MS LYONS: [10:47:26] Okay. Thank you, your Honour. That's correct.

Q. [10:47:28] Let me ask you this: Is there something in this section as a comparative norm that deals specifically with the prevalence of PTSD, if not in Uganda, on the African continent?

A. [10:47:44] No. In this particular paragraph you don't find any estimates.

Q. [10:47:48] Okay. Now, on page 278, which is the UGA ending 0047, it's the same article, it talks about "culture-related diagnostic issues".

A. [10:48:06] Mm-hmm.

Q. [10:48:09] Now, isn't it true that the culture-related diagnostic issues that are outlined here in this section are not in fact applied to the prevalence conclusions a couple of pages before?

A. [10:48:31] I can't tell you what the authors of DSM did.

Q. [10:48:35] Fair enough.

PRESIDING JUDGE SCHMITT: [10:48:37] That's not easy for the expert.

Do you see it for the first time, this article?

THE WITNESS: [10:48:45] No. I (Overlapping speakers).

MS LYONS: [10:48:45] No. He uses it.

THE WITNESS: [10:48:48] No, I don't see it for the first time. I usually use it, but --

PRESIDING JUDGE SCHMITT: [10:48:50] But nevertheless, yes, if you can answer,

but I have the impression that the prevalence and the culture-related diagnostic issues deal with completely different things.

THE WITNESS: [10:49:00] Different -- that's the point.

PRESIDING JUDGE SCHMITT: That is only my impression, but --

MS LYONS: [10:49:01] If the expert would like --

PRESIDING JUDGE SCHMITT: -- I can't elaborate on that.

MS LYONS: -- I can -- I can raise the question after -- I mean, I'm not asking for a break now, but I'm just saying I can revisit it after the break if he wants more time, I have no problem with that, to read.

PRESIDING JUDGE SCHMITT: [10:49:11] But the question would be prevalence is something -- again, I'm not a native speaker, but isn't prevalence something about figures, percentages, probabilities, likelihood, if you will? And the diagnostic issues are something different. It's about --

THE WITNESS: That's the point.

PRESIDING JUDGE SCHMITT: -- diagnosis, but --

MS LYONS: That's the --

PRESIDING JUDGE SCHMITT: I'm speculating here.

MS LYONS: [10:49:32] That's the -- that's the question.

Q. [10:49:37] Isn't it true, Doctor, that there is a link between culturally related diagnostic issues and prevalence? How you look and measure prevalence, is there a link between that and your cultural awareness or knowledge about the situation you're trying to make conclusions about?

A. [10:50:00] So your Honours, you were right when you were describing the -- what prevalence means. When we assess prevalence, we try to -- we have a huge population and then we try to find a number of diagnoses in this population,

and then we can make an estimate and say in this population maybe 10 per cent are affected by PTSD.

But of course this means that I have the diagnostic criteria and still the diagnostic criteria has to be applied, which means the person, no matter which culture he comes from, has to fulfil the diagnostic criteria, and this means if I ask for nightmares as part of PTSD, then I would also have to understand in the cultural context how are nightmares described. And maybe someone from -- an LRA soldier would probably use different words to describe nightmares than I would use. But still, we would have to identify the nightmare, and if we don't identify the symptom in the individual, then we wouldn't also link it to a diagnosis. Of course it's related, but it doesn't mean that that culture supersedes the diagnostic criteria of a statistical menu.

Q. [10:51:40] Thank you. Now --

PRESIDING JUDGE SCHMITT: [10:51:42] But shortly, I think what is here at the end of this paragraph, again on 0047, I would like to read it and perhaps let you comment shortly on. "Comprehensive evaluation of the local expressions of PTSD should include assessment of cultural concepts of distress."

THE WITNESS: [10:52:08] This is something I was also -- the point I was trying to make earlier, which means of course there are some special culture issues, and Professor Ovuga has explained some of them in court already last week. So if we assume that everyone experiences a possession sometimes, then it's still within the cultural norm and you wouldn't diagnose a mental disorder just because someone suffers from possessions, but these possessions would also have to differ from the cultural norm.

And this has to be -- this has to be made clear. And this would have also been, in my opinion, the duty of Professor Ovuga and Dr Akena to describe what is the cultural

norm. And if there were possessions, for example, are they deviant in a way that they fulfil the criteria of the mental disorder, or are they just within the cultural norm?

You see, for example, I mean Christmas is coming closer and if I now put a Christmas tree into my -- into my -- into my living room, it's fine. But if I would -- and everyone would accept it. I think it might appear to others that it's strange to put a tree inside your living room, but for us it's fine, for me from a Christian culture, it's fine. But if I, for example, would dress up like Jesus and sleep in the hay, for example, then people would also say, "Mmm, he's also Christian, but now it's becoming weird." It's no longer part of the cultural norm. And it's the same here. So when you are possessed and you believe in the *cen* spirit, for example, or you believe in *orongo* and you would say, okay, this is disturbing for me, but it's also disturbing for all other people in the same culture, then it doesn't meet the criterion of a mental disorder. Then it's just within the cultural norm. And this has to be clearly differentiated, otherwise the disorder concept doesn't make sense. And if you still figure out, okay, the symptoms or the rapport in this person differ from the cultural norm, then I can also try to make a diagnosis, and then based on the number of diagnoses, I can estimate the prevalence again. That's how it's related.

PRESIDING JUDGE SCHMITT: [10:54:37] Ms Lyons.

MS LYONS: [10:54:38] Thank you.

Q. [10:54:39] Now, on page, page 38 of the real-time transcript, and I will read it, it's lines 20, 21, 22, 23, you were talking about the issue of PTSD in military forces and I'll try to, try to read it out from the transcript I have.

You say, "I also mentioned it last time when I was here, that in the military forces it is one big issue that soldiers suffering from PTSD are not able to properly do their job."

And then you continue. And you give an example on page 39 at the top saying, "So you wouldn't send a soldier suffering from PTSD to the battlefield because you would expect him to make mistakes, you would expect him not to be able to follow the rules" and you continue on that.

Now, my question is this: You made this conclusion based on what? What evidence or what military forces were you looking at?

A. [10:56:05] So I particularly have worked with the Burundian army, for example, and we have received support from the German military when we -- well, we were discussing also issues with them. But I refer to the literature that especially deals -- or the scientific -- scientific literature that specifically deals, for example, with these virtual reality things to prepare soldiers in order to overcome the issues of PTSD.

Q. Okay.

A. [10:56:41] You see, this is quite, quite common that there are -- there are publications available to the public that reveal some of the strategies that are used to prepare soldiers to go into battle and to overcome their fears they have, and the problem is some -- a lot of this literature is not available in public because the military forces don't reveal their strategies, and that's the reason why there are -- there are only a few papers available.

Q. [10:57:16] Fair enough. Okay.

Now, you made a conclusion here, Professor, that being able to function, if I may use the word "function" or do your job was not consistent with PTSD generally?

A. [10:57:38] Mm-hmm.

Q. [10:57:39] You agree? Okay. Now, is it fair --

A. [10:57:49] Sorry.

Q. [10:57:50] Now let me finish and then you'll have your chance, if I may. Is it fair to conclude then that the comparison base, Burundi, Germany, papers not accessible to people on virtual reality, all of this information was in fact not based on the reality of the LRA as a force, which is not a conventional military force, and the situation of abducted child soldiers who had to deal with the rules and regulations strictly from Joseph Kony?

A. [10:58:43] One thing I wanted to add is that I don't want to say that it's not possible to function at all, but I mean the high level of functioning is not possible in the way it was described in the report, as I read it from the material that is available to me.

But coming to your -- to your question. When you compare different combatant samples, and we have also worked with -- not only with the Burundian military, for example, we have worked with child -- township gangs in South Africa, we have literature on former combatants from the DRC, we have informations or material from former Rwanda genocide perpetrators, and you see, whenever you work with these different populations, you find that it's possible in all these populations to assess the symptoms of PTSD.

There's no issue why you shouldn't assess the symptoms of PTSD, because PTSD is related to fear and fear is -- fear is quite -- the way how people experience fear or the bodily reactions in relation to fear are quite comparable between different individuals. So this means when you are frightened or I am frightened or someone else in the room is frightened, the things -- the bodily experience, for example, or the way how we feel in this moment are quite comparable. And this means of course there are differences, individuals differences between the different populations, absolutely, even between different individuals within the LRA. I think it would not be a valid

statement to say that all soldiers within the LRA were the same and they all felt the same and they all behaved the same and you can talk about them as one group without making individual distinctions, yeah.

So this is also important and this is also the point I was making in my report because Professor Ovuga and Dr Akena was talking about Africa a lot. There is not one Africa. There are also different African countries and there are different individuals within Africa, yeah?

So and -- but at least in different populations you find -- and then we come back to how common are the disorders. You find the same disorders in the various populations because the fundamental principles behind disorders are the same across -- or similar at least, sufficiently comparable across the different populations.

Q. [11:01:27] So based on your last answer -- I have one concluding question, is that okay?

PRESIDING JUDGE SCHMITT: [11:01:35] No, no, of course. If it is the flow of your (Overlapping speakers).

MS LYONS: [11:01:37] It's the flow (Overlapping speakers).

PRESIDING JUDGE SCHMITT: [11:01:39] No, no, I'm fine.

MS LYONS: Then I'll stop flowing. Okay.

PRESIDING JUDGE SCHMITT: No, no, no. It's absolutely okay.

MS LYONS: [11:01:42] All right. All right. Thank you.

Q. [11:01:44] Is it fair to conclude then that in fact a level of functionality can be consistent with PTSD? That's a yes or no question.

A. [11:01:56] Yes. Some functioning is possible.

Q. [11:01:59] Thank you.

PRESIDING JUDGE SCHMITT: [11:02:00] That was indeed necessary to clarify that.

We have now the break until 11.30.

THE COURT USHER: [11:02:08] All rise.

(Recess taken at 11.02 a.m.)

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

THE COURT USHER: [11:31:35] All rise.

Please be seated.

PRESIDING JUDGE SCHMITT: [11:31:55] Ms Lyons, you still have the floor.

MS LYONS: [11:32:02]

Q. [11:32:05] Now, there's been testimony in this courtroom, Professor, about transcultural or cultural psychiatry and I have just one or two questions to ask you about this.

I know that you deal with it in your report, I've read that.

But my question is this: I think you were here when Professor -- yeah, you were here, I'm sorry. A short memory. You were sitting there when Professor Akena testified about the term "termites", which was used in one of the detention centre reports, and he testified in transcript 249 at page 51 that termites is -- means white ants. It's something that you eat. And I can't pronounce it, but I assume it's Acholi or Luo, it is *ngwen*, N-G-W-E-N. And I think you have binders with the transcript T-249 if you want to look at it there yourself, on page 51.

Now, this was interpreted at the time as a joke and Professor -- Dr Akena -- by the detention centre. Dr Akena challenged this and says it wasn't a joke, termites has a specific meaning, you know, that Mr Ongwen understands.

And I would like you to say whether you agree with that analysis of this particular example. With the analysis of Dr Akena?

A. [11:34:05] Well, I have no idea how termites is interpreted in the Acholi culture.

Q. [11:34:13] Fair enough. But let me just say, if you -- give you as a hypothetical. If termites in fact is -- that term is interpreted as Dr Akena testified, white ants, and as something that you add to food --

A. [11:34:32] Mm-hmm.

Q. [11:34:32] -- what would be your response?

A. [11:34:36] I don't even understand the point.

PRESIDING JUDGE SCHMITT: [11:34:43] Perhaps we should simply read out what is in this report you are referring to.

This is on tab 2, UGA-D26-0015-0098. And it reads here:

"When I ask" - and it's a report by a psychiatrist -

"When I ask whether the things he wants cannot be added to the shopping list, he looks at me with a laugh and asks what chance I give him of getting termites put on the shopping list!"

MS LYONS: [11:35:22] Thank you, your Honour.

THE WITNESS: [11:35:23] And where do I find it in the binder? You said it's tab 2.

MS LYONS: [11:35:27] (Microphone not activated).

THE WITNESS: [11:35:28] The orange (Overlapping speakers)

PRESIDING JUDGE SCHMITT: [11:35:29] Tab --

THE WITNESS: [11:35:29] -- one, right?

PRESIDING JUDGE SCHMITT: [11:35:29] Tab (Overlapping speakers) no, no, the black one.

MS LYONS: [11:35:31] 0098.

PRESIDING JUDGE SCHMITT: [11:35:32] But given the huge number of binders that we have now, to say "the black one" is not very specific.

THE WITNESS: [11:35:40] The orange -- the orange tab, I meant.

MS LYONS: [11:35:41] I don't -- I don't --

THE WITNESS: [11:35:41] So it's the second? It's the second, it's T-249, correct?

PRESIDING JUDGE SCHMITT: [11:35:48] No, no, no. It's -- you're on the wrong page here. It's (Overlapping speakers)

MS LYONS: [11:35:50] It's (Overlapping speakers)

PRESIDING JUDGE SCHMITT: [11:35:50] It's binder, which is, at least for the Judges, labelled "for Defence exam".

THE WITNESS: [11:35:59] Okay.

PRESIDING JUDGE SCHMITT: [11:36:00] And there we have binder 2.

THE WITNESS: [11:36:07] Mm-hmm.

PRESIDING JUDGE SCHMITT: [11:36:08] And there we have a report by a psychiatrist, and I have read from the first paragraph of this report.

MR GUMPERT: [11:36:18] I don't believe the Professor has it, your Honour. But I have got a paper copy in front of me, shall I give it to him?

MR OBHOF: [11:36:26](Microphone not activated)

MS LYONS: [11:36:27] Please.

THE WITNESS: [11:36:29] Here it is, I think. This is what you mean? Okay, "Patient sensitive"-- now I found it.

PRESIDING JUDGE SCHMITT: [11:36:38] Yes, okay. If you have, from your perspective, any interpretation for that that might be useful, you can provide us with -- provide us with this interpretation.

(Pause in proceedings)

THE WITNESS: [11:37:18] Now I have it on the screen as well, thanks.

My interpretation, my interpretation would be that I think Mr Ongwen is making a joke in this term, because I would understand it in a way that why would he like to

have termites, and I think it's --

PRESIDING JUDGE SCHMITT: [11:37:45] Why not? If -- I think we really give, perhaps, too much weight to that.

I'm not sure, but I have heard that termites in certain places of the world are an important part of the nutrition.

MS LYONS: [11:38:02] We had testimony on it, you know, that's --

PRESIDING JUDGE SCHMITT: [11:38:04] Yes, yes, yes, but I think this is simply also something that we would not even need testimony. It could be, simply be brought out by open sources that everybody could Google for example.

And then here we have -- and perhaps someone might think that it is, at least in the western countries, normally not part of the nutrition, and might be difficult to put it on the menu of the detention centre, I don't know. Perhaps, we should -- I think we should relatively quickly move to another point here.

MS LYONS: [11:38:41] I will, but just let me say, if I may, reading the testimony, it's all in the record, that the term means white ants. And we'll move on. Okay, I'll move on.

Q. [11:38:52] Now, in the transcript, and I will, I will summarise it, but feel free to look, I think it was the cross of Dr Akena in 248, at page 47. Dr Akena explains that the, the patients he sees -- he's talking about mental health literacy, essentially.

A. [11:39:32] Mm-hmm.

Q. [11:39:32] That people cannot always describe symptoms of depression by themselves. They, they don't say "I'm feeling blue. I'm feeling depressed." They may say something else, all right, to express the symptoms.

A. [11:39:50] Mm-hmm.

Q. [11:39:51] Now, would it be fair to conclude that how a person communicates

his, his or her symptoms is a significant factor in making -- in (a), assessing the person, and (b), in making a diagnosis?

A. [11:40:12] Yes, it is fair to say that. And Dr Akena also said that it's very important to probe, which means to probe the symptom means you have to make sure that you as a clinician correctly identified the symptom. And if you're not sure, this means you have to rephrase or ask specific questions so to get more clarity if your patient meets the symptom, even in his respective culture.

Q. [11:40:47] And would you agree with him on that point?

A. [11:40:50] I agree that culture affects the way how, how symptoms are expressed and how -- which words are used to describe the symptoms I have. Of course.

Q. [11:41:03] Okay. Thank you.

A. [11:41:12] But I never doubted this.

Q. [11:41:16] Okay. Thank you.

Now during -- you were here during the -- obviously, during the cross-examination of Dr Akena by Mr Gumpert.

A. [11:41:45] Mm-hmm.

Q. [11:41:45] And I think it was on --

A. [11:41:49] Last Tuesday.

Q. [11:41:50] Thank you. Tuesday, that would be the 19th. And this is the cross-examination transcript, for those who want to check the transcripts, is T-249. And, again, if you look at pages 64 and 65, Mr Gumpert has presented a section of a phone conversation between the -- Mr Ongwen and one of the women to whom he relates.

Take a look at pages 64 and 65.

A. [11:42:40] Mm-hmm.

Q. [11:42:41] And he focused on remarks made in the -- in the phone conversation at UGA-OTP-0286-2551, lines 701, up to page ending in 2553. I think it ended at 737. And Mr Gumpert in his questions, if I may, so you don't have to read -- you can read it all, but let me see if I can --

A. [11:43:21] Mm-hmm.

Q. [11:43:22] -- go to the heart of it. Mr Gumpert focused in on remarks particularly of the -- Mr Ongwen's talking about his children, playing football, possibly, you know, his future. But basically the question which was asked on page 65 says:

"Do these remarks strike you as a man who feels sad, empty and hopeless most of the time on most days?"

A. [11:43:53] Mm-hmm.

Q. [11:43:54] Or someone -- a few lines down, lines 13, page 62:

"Do these remarks strike you as somebody who feels worthless or inappropriately guilty, Doctor?"

Now, this was an excerpt from a phone conversation.

A. [11:44:18] I remember.

Q. [11:44:18] Okay, you remember, good.

A. [11:44:19] Mm-hmm.

Q. [11:44:20] We didn't hear the whole phone conversation. Now, yesterday you, as I recall, at the end of the day, you used the term "holistic" --

A. [11:44:28] Mm-hmm.

Q. [11:44:29] -- in terms of how to deal with quotes?

A. [11:44:31] Mm-hmm.

Q. [11:44:32] All right. Now, there's -- there's a piece of the phone -- there's a piece

of the phone conversation that's missing, and I would like to highlight this, and my question for you is, would this affect your assessment of this? Okay.

That phone conversation at UGA-OTP-0286-2549 on page 23, I'm looking at lines 621 to 636 and I will quote just a little bit of it that seems relevant -- it's relevant to my question. Okay. Mr Ongwen is -- says:

"... I have endured the most suffering ... I have ... suffered more than the many prophets who suffered on this earth. If I were to start narrating my life story up to this point in time ... the way I am right now, I feel as if I am still in the bush because at [this] moment, I am ... very unhappy."

If you had been presented with "very unhappy" and then later in the conversation with Mr Ongwen talking about football or what happened, what his life will be like after, talking about his children, what would be your conclusions of this, if you had a whole picture of that conversation?

A. [11:46:06] What I think as an expert who's -- who has the task to write a report on the mental health status, I think it would be important to consider all the different quotes I can have access to and also consider this. And I would also have to ask myself, okay, what does it say about the potential mental health status, could it be a sign for a major depressive disorder, for example? Could it be associated as -- with the D criterion of PTSD, maybe. Yeah. So I would have to take it into account, but then at least I would have to discuss the different sources and also the different contradictions that arise out of the resources I have.

And then I would have to link it to the charged period, which is still the relevant case, because it's not a contradiction in term that the -- that someone suffers from the experiences he met in a way and says, okay, it affects me and sometimes I get sad, but it doesn't mean that this person also fulfils the diagnostic criteria of a disorder. And

it also doesn't mean that -- also when I was here last time I said it could have been possible, for example, that Mr Ongwen suffered from intrusions and suffered nightmares.

But the striking point is that you have to link this to the alleged crimes and to the charged period. And if, for example, Mr Ongwen suffered from intrusions and nightmares in the period between different attacks, then we could probably say, yes, he suffered from signs of PTSD, or maybe even there were periods where he fulfilled the diagnostic criteria of, let's say, depressive disorder. But at the time of the alleged crimes this wasn't relevant because it happened in the meantime. And there are you said -- Mr Akena called it pathoplastic, I remember this -- there are these fluctuations and you have to acknowledge these fluctuations.

So this means, on the one hand I have, as a professional expert, I have to search for evidence that speaks for the hypothesis I have, maybe, or that is provided by you as a Defence team. Maybe, say, okay, probably he suffered from a mental illness, now let's challenge that and now let's focus on the material that speaks for it and also the material that speaks against it.

And if you're doing this, then it's perfectly fine.

Q. [11:49:17] Now (Microphone not activated)

PRESIDING JUDGE SCHMITT: [11:49:18] Microphone, please.

MS LYONS:

Q. [11:49:22] Would it be fair to include, based on your answer, that it is preferable to give information that produces a complete picture in order to reach some conclusion. from your professional perspective?

A. [11:49:40] Absolutely. So assume that, for example, 10 people are saying Mr Ongwen was a happy person.

Q. [11:49:45] Mm-hmm.

A. [11:49:46] And one person is saying the exact opposite. Then what I, as a professional expert, would have to try to find explanations why there is this difference occurring. And it could be, for example, that this one person is right and that the other 10 people are portraying a picture to make him appear in a good light, but that they are not true. So it means even if there is one, one, one evidence speaking against this function, the proper functioning, I would have to acknowledge it, absolutely.

Q. [11:50:26] Okay. But in terms of actually looking at the one or the 10, I'm not right now dealing with numbers, but your example, one -- nine people say one thing, two people say something else. Wouldn't it be preferable or more professional or more scientific to look at the total context? Not, for example, to pull out one line, one symptom, one point: He looks happy, he looks sad. I mean, one little piece rather than present the whole so the person making the assessment, he or she can have a complete picture?

A. [11:51:11] I think -- I don't think that also when I quoted some of the other witnesses that have testified in court that I only picked one single line ignoring the whole context. Because, for example, I also had access to the various -- or to at least some of the, the transcripts from the witnesses here and I think it was quite evident that the -- also the way how Mr Ongwen was portrayed in these testimonies, that they somehow resembled each other. And even if someone would say, okay, sometimes he suffered, of course, it's normal. I also sometimes suffer. But what is the general impression I get?

And of course you must not just take one single line and say this is the evidence I base my decisions on. This wouldn't be -- this wouldn't be professional approach, not at

all.

Q. [11:52:14] All right. But -- and actually, in fairness to you, you were presented with a chart. You didn't make the chart, I assume, all right, to comment on.

Now -- okay. Let me -- hold on one moment.

Now, let me move on, because it's a little bit in line with this. Let me move on to a few questions about the, the -- one question about the DSM and also about the DC reports. Okay. Now, you were present in the courtroom when the Prosecution took a number of the DSM-5 diagnoses and put, put symptoms 1 -- they weren't 1, 2, 3, 1A, 1B, 1C?

A. [11:53:38] (Overlapping speakers) Mm-hmm.

Q. [11:53:38] Okay. Now, as I recall, there was no discussion about other categories that are found, for example, under tab 1 which talk about diagnostic features, associated features, risk and prognostic factors, culture, gender, suicide risks, differential diagnoses, co-morbidity, okay?

A. [11:54:08] Okay.

Q. [11:54:09] Now, did you see or do you perceive that that approach to talking about, for example, PTSD, which is the section we have in section 1 here, that that -- there is something lacking or something amiss that could lead to a wrong conclusion about symptoms if the other factors advised by the DSM are not considered in the same conversation?

A. [11:54:42] I hope I got your question right, but I think the one thing that is really missing is evidence presented by the, by your Defence experts, because I think it was fair to present the diagnostic criteria on the screen and I think they had the chance in this moment to discuss in which way these symptoms are valid in the respective culture.

And, in my -- to me, it seems that the only thing that is missing is their evidence, but -- although I think there was -- it was a fair chance for them to present it.

Q. [11:55:30] All right. Thank you for that, your opinion on that.

Now take a look at -- we have dealt with tab number 2, which was the issue of termites and white ants and food issues.

But I want -- I want to call your attention to one point on 0099. It's the back, the back part of it there.

A. [11:56:00] Mm-hmm. Mm-hmm.

Q. [11:56:03] Now this report was from 12, October 12, 2016 --

PRESIDING JUDGE SCHMITT: [11:56:12] No.

MS LYONS: No, it wasn't. Okay.

PRESIDING JUDGE SCHMITT: [11:56:15] No, August 2015.

MS LYONS: [11:56:17] Oh, thank you. Yes.

PRESIDING JUDGE SCHMITT: [11:56:27] I would say, but -- believe me, but --

MS LYONS: [11:56:32] Thank you. I -- okay, I. All right. Okay. August 2015.

Q. And the report, I just want -- I'm going -- I'm just raising a question. There was a question raised at the planning about PTSS or PTSD.

A. [11:56:52] Mm-hmm. Mm-hmm.

Q. [11:56:54] All right. My question to you is: Doesn't this raising of the question corroborate the very first report of our doctors concluding that there was severe PTSD, and Dr de Jong, the reports written in late 2016, I think Dr de Jong early 2017?

A. [11:57:26] On the one hand I think we have to, we have to say this, that even the assessment of the current mental health status in 2015 is irrelevant for the charged period. It's completely irrelevant, it doesn't have any importance for this, unless we

could demonstrate that PTSD still continued.

But I think the problem is I can't -- I don't know the exact reasoning the detention centre expert made.

But I think if one of my clients reports that he, for example, sometimes doesn't feel good and I know that he has been in the battlefield, I think it's quite reasonable to make an assessment and see if this person suffers from symptoms of PTSD. This is not an evidence for PTSD, but it means that maybe it's just a relevant diagnostic question, and so it absolutely makes sense to follow this question, but it also means that I can come to the conclusion in the end that it's not appropriate to make this diagnosis.

Q. [11:58:39] Now, thank you. Take a look at tab number 5 and -- all right, I need help on the dates.

On tab number 5 it's --

PRESIDING JUDGE SCHMITT: [11:58:48] This is from June 2015.

MS LYONS: [11:58:52] Okay. Thank you.

PRESIDING JUDGE SCHMITT: [11:58:53] The stamps are later sometimes, so that's the reason why you sometimes -- why you could sometimes have the impression that it is later. But it's from June 2015.

MS LYONS: [11:59:02] Okay. All right. From June 2015. Thank you.

Q. [11:59:08] Now, it would appear that this was one of the initial clinical notes by the psychiatrist at the detention centre when he met Mr Ongwen. Mr Ongwen, I believe, surrendered a few --

A. Mm-hmm.

Q. -- a few months prior. Okay.

Now my question to you is: Looking at this report which ends in 0135 at tab 5, if

you were the person interviewing Mr Ongwen, is it fair to say you would have assessed a number of issues or you would have noted issues that were important in the assessment of Mr Ongwen in your report?

A. [12:00:05] So if I were a mental health professional?

Q. [12:00:08] Well, you are a mental health -- well, you're a psychologist, mental health professional. But if you were, if you were the psychiatrist who -- at the detention centre interviewing Mr Ongwen?

A. [12:00:23] I mean, in this when -- if I were a psychologist and still qualified to talk about mental disorders --

Q. Mm-hmm.

A. -- and I would have had the chance to interview Mr Ongwen for the first time and I would be aware that I am, as the detention centre mental health professional, am responsible for his well-being. And if I would in this respect take the role of a treating mental health expert, then, of course, I would have focused on main, main mental health issues and I would have screened for the various disorders, especially including suicidality, which I would have been obliged to assess the first time we meet.

MS LYONS: [12:01:09] Okay.

PRESIDING JUDGE SCHMITT: [12:01:10] You see, it is a little bit too abstract in the moment, I think. What are you referring to on this page, because if we look down, "Impression: Intelligent man. Good storyteller. A charismatic person who can tell a story convincingly." I don't know if you are referring to that --

MS LYONS: Yes.

PRESIDING JUDGE SCHMITT: -- or if you are referring to other passages. "He is searching for the meaning of the suffering in his life. Cheerful nevertheless." So

what -- (Overlapping speakers)

MS LYONS: Thank you for your assistance. I'm --

PRESIDING JUDGE SCHMITT: [12:01:38] Because it's now, also from the transcript later, when we don't know what we are talking about here at the moment.

MS LYONS: Okay. Okay.

Q. [12:01:43] I am now, once I got -- I asked the question, I am looking at the impression, the part, the section that Judge Schmitt just read.

A. Mm-hmm.

Q. [12:01:52] Now, wouldn't it be fair to conclude that if you suspected malingering or faking by Mr Ongwen, you would have noted that under the general impression?

A. [12:02:17] This is -- I can't -- to be honest, I can't answer this question. Because the first time I would have met with him I wouldn't have focused on malingering first.

I would have, first of all, asked for different symptoms and if I had the impression that he was suffering I would have noted this. And if I had the impression, for example, that suicidality is an issue, I would have written it down. If I had the impression that he suffers from intrusions and he cannot concentrate and he cannot follow the normal flow of the conversation, I would have probably noticed it. If I would have recognised that he suffers a lot from his experience, I would have noticed it. If I would have experience -- the impression that he, I don't know, is taking drugs and he smells like alcohol, and I can smell alcohol, I would have maybe noted that he comes intoxicated.

PRESIDING JUDGE SCHMITT: [12:03:23] So --

MS LYONS: [12:03:23] Okay. I want to focus on a phrase here, which is --

PRESIDING JUDGE SCHMITT: [12:03:27] Yes, you may, but keep in mind that we

should relatively, in a relatively short time, come back to the charged period.

MS LYONS: [12:03:36] Okay.

PRESIDING JUDGE SCHMITT: [12:03:36] Yes. I let it pass for the moment, but not forever so to speak. Yes.

MS LYONS:

Q. [12:03:46] The phrase -- the phrase that I am focusing on, "a person who can tell a story convincingly".

Now, if you thought that you were being - I don't know the verb - that the person was trying to get over on you, that the person was trying to fake it, would you not have put a note there saying "person can tell a story convincingly but he may be malingering"?

A. [12:04:17] Why would -- I don't know why a person is telling me stories, why I should link this to malingering.

PRESIDING JUDGE SCHMITT: [12:04:25] We are not, we are not very sure what this is, this remark "story convincingly" is referring to.

MS LYONS: Mm-hmm.

PRESIDING JUDGE SCHMITT: [12:04:35] It -- I think from the content it's difficult to assess if we are talking at all about any mental condition, so to speak, or if we are simply, if the psychiatrist simply wanted to note that -- the manner in which Mr Ongwen speaks. It's hard to assess here.

THE WITNESS: [12:04:58] And we also don't know the content of the story. I mean if he was talking about his family life, then why wouldn't it be a good story?

PRESIDING JUDGE SCHMITT: [12:05:07] One content is provided for, one example in the next sentence.

MS LYONS: [12:05:10] Okay.

Q. [12:05:11] But isn't that the point that you're making, Professor, exactly Dr Akena's point, that the purpose of clinical notes must be considered when interpreting the clinical notes?

A. [12:05:29] I think Dr Akena, the way how I think Dr Akena evaluated the clinical notes is different. I think, in my perspective, Dr Akena doesn't -- didn't appreciate the -- that -- or didn't acknowledge that the people from the -- that have written these reports are also mental health professionals.

Q. [12:05:58] We are going to get there in a second, but I don't want to cut you off. I have one more question on this and then we will -- I will definitely get into this point of your position on that.

Okay, take a look at the note ending -- let's see, sorry -- ending 0106. Now this note is from September 2015, approximately six months after Dominic surrendered? When did he surrender? What month? Oh, nine months.

A. [12:06:39] Sorry, where I do find this?

PRESIDING JUDGE SCHMITT: [12:06:40] This is tab 4.

MS LYONS:

Q. [12:06:42] Tab 4, okay.

A. [12:06:44] Mm-hmm.

Q. [12:06:46] Okay. Now --

PRESIDING JUDGE SCHMITT: [12:06:50] And if you want to refer to the psychiatric examination, please read it out so that we have it on the record.

MS LYONS: [12:06:57] Sure, sure, sure. Thank you.

PRESIDING JUDGE SCHMITT: [12:06:59] And perhaps you can start from "A friendly man" because the other information I think is not so important. That's on page 0107.

MS LYONS: [12:07:14] 01 -- actually, your Honour, if I may --

PRESIDING JUDGE SCHMITT: [12:07:18] Yes, first you can start with 0106, of course.

MS LYONS: [12:07:21] Right, right, right, right.

Q. [12:07:26] There are, the doctor notes, symptoms of PTSS on 0106, the first one is noise of bombs and crossfire.

And then, then he continues, I am not going to read all the details of this here in public session. He then talks about the issue of how Mr Ongwen copes. All right. I don't -- this is still a -- in my view, a confidential report, but anyhow. Then he assesses Mr Ongwen.

My question to you is: Isn't it true that the -- asking about and the identification of PTSS syndromes supports the diagnosis of PTSD which occurred in the same time period, it was in fact a few months later, in December, in the first report from the Defence experts?

A. [12:08:32] It makes a difference whether you report some symptoms or whether you make a diagnosis according to a statistical menu. And this is -- it's not the case that all the symptoms are discussed, it's just, as I would read it, as there are some indications that speak maybe for such a disorder, but it's not, not a proper diagnostic assessment that is reported here.

PRESIDING JUDGE SCHMITT: [12:09:05] Perhaps what comes close to diagnosis is the conclusion on 0107.

MS LYONS: [12:09:12] (Microphone not activated)

PRESIDING JUDGE SCHMITT: [12:09:12] If you read this at the end.

MS LYONS:

Q. [12:09:16](Microphone not activated) PTSS, which means PTSD symptoms, with

the exception of the criterion of avoidance; patient has good perception and coping strategies reasonably good.

A. [12:09:32] Yes.

Q. [12:09:32] Do you agree that that's a conclusion, diagnosis?

A. [12:09:34] That's a conclusion because it says "conclusion", definitely. But PTSS symptoms must not be confused with PTSD disorder -- as a disorder, and it also has nothing to do with the charged period. So I also -- I never had any doubts that also, for -- that Mr Ongwen maybe today suffers from some of the experiences. This doesn't mean that he has -- he fulfils the criteria for diagnosis, but at least I think -- and that's why I think it's very, very important that Mr Ongwen receives proper treatment and proper care. And someone who is taking care of his mental health and his physical health status, I think this is absolutely important. And if he suffers from some of the symptoms he must receive -- and it's clinically significant, we don't know -- from this quote we cannot tell if it's clinically significant, yeah. I also sometimes have a bad mood, so it doesn't mean that it fulfil the diagnostic criterion of MDD diagnosis, but in case there is clinically significant suffering we definitely have to take care of him, absolutely.

PRESIDING JUDGE SCHMITT: [12:10:47] Ms Lyons, I said I think some five minutes ago that we should not focus on the recent years, but on the period 2002 until 2005.

MS LYONS: [12:11:01] I will ask a question --

PRESIDING JUDGE SCHMITT: [12:11:03] I have seen of course that there is one more tab, but which would not, I assume, bring something completely new. That would be tab 3, we have not -- because it also says there some symptoms of PTSS, but without further specification.

MS LYONS: [12:11:18] Your Honour, may I have a minute, just there is one more question which I think may bring it into the charged period. I want to discuss with my colleague.

PRESIDING JUDGE SCHMITT: [12:11:26] Okay. Fine, fine.

(Counsel confer)

MS LYONS: [12:12:56] Thank you, your Honour, okay.

Q. [12:12:58] Let me move -- those were my questions on the DC notes and let me move on directly to, more directly to the report and issues concerning that, which deals with the issues of the charged period.

Now, looking at your second psychiatric report and its related testimonies, okay.

Now I'm going to ask you also to pull out transcript 248 because I am going to ask some questions pretty soon about that.

But let me first ask: On page 4 you talk about an insanity defence. This is in section 2.1.

A. [12:14:27] Mm-hmm.

Q. [12:14:27] Now, did you find the, quote, "insanity defence" in the second psychiatric report?

A. [12:14:36] No. I am, I am aware that this is a term that is rather used in the US, maybe.

Q. [12:14:42] It's true that in the US the term is used, but the doctor -- the Defence has not used that term, for the record, to be clear. Professor Ovuga and Dr Akena did not use that term either. Okay.

So I was, I was -- sorry.

So to that extent isn't it true that the, the quotations you have in 2.1 are not applicable? You are talking about an insanity defence in a different system. You're talking

now -- and you make some references to criminal liability during 2002 to 2005, but isn't it true, Professor, that it's not an applicable standard or applicable concept to the defences here which are very specific, mental health defence, disease or defect and is -- which results in lack of control or inability to appreciate right and wrong?

A. [12:15:57] I think the wording is different. And if I would have referred to the German law we would, we would be speaking about paragraph, application of paragraph 20 or 21, maybe. So of course the wording is different between the different systems, but it doesn't mean that the general principles differ.

And I think of course you can say there is the -- if this is the point you want to make, to say, there is Uganda and there is the rest of the world and the things that are done outside the Ugandan context do not apply to Uganda. This is okay, you can make this point, but I think it's not one against the other. But I think we have to acknowledge what are principles that are used the forensic assessments and that are shared in the scientific community and among experts and what is the cultural application. And it's not one side against the other, but it's what can we learn from each other. And this is also the way how I understand cultural or transcultural psychiatry, or also the way how I understood also Dr Akena, who said, okay, refer, we refer to the principles of good scientific practice, we refer to the common, to common consensus, for example, by using the DSM.

But then we have to find a way how we apply these principles to the, to the cultural context. And this means that fundamental principles also of reasoning and logic and insanity, or the definition of how I defined insanity, for example --

Q. [12:17:43] Okay.

A. [12:17:44] -- has to be -- there has to be a link made. Sorry, now I was confused. You have to make -- you have to outline your reasoning that you have used in your

report and this is not what's been done.

Q. [12:18:00] But isn't it true in the report that did not use insanity, where that's not found in the doctors', in the Defence experts' report, but isn't it true that you are not an expert here on the insanity defence, correct?

A. [12:18:19] I'm, I'm not -- not -- I am here as someone who knows the international literature and who can confirm that the guidelines, for example, the AAPL guidelines, do not significantly differ from the, from the guidelines and literature you find in other countries and other cultures.

Q. [12:18:48] All right, let me move on.

Now, on page, on the same page, page 4, the same section, 2.1.1, you made a reference to something Dr Akena said, and I want you to compare what you wrote, and I will read it out loud, to what in fact is in the transcript.

On page -- you write that -- the quote from Dr Akena here is: "They ask us for an assessment of this person (defendant)" which

MR GUMPERT: [12:19:34] Where, please?

MS LYONS: [12:19:35] Okay, 2.1.1.

PRESIDING JUDGE SCHMITT: [12:19:38] And it's transcript 248, at least as it is referred to in the report.

MS LYONS: [12:19:43] Right. Right.

PRESIDING JUDGE SCHMITT: [12:19:43] Pages 33, 34.

MS LYONS: [12:19:47] Thirty-four. But however, the correct reference is page --

PRESIDING JUDGE SCHMITT: Once you contradict it, yes (Overlapping speakers)

MS LYONS: [12:19:50] -- is page 28, yes. So you won't find it at 2 -- whatever, you won't find it at 33, 34, but you will see it at page 28. Okay.

Q. [12:20:14] So you've written, and you put the word "defendant" which you

didn't use, but you've written:

"they ask us for an assessment of this person" -- and this is your word "(defendant)" -- "to be able to provide information regarding the status of their mental health before, during and maybe after the act of -- the act for which they are suspected or they have been brought to you."

A. [12:20:35] Mm-hmm.

Q. [12:20:36] Now, isn't it true that the implication of your quote here is that he is making a reference to -- to the client, to Mr -- to Mr Ongwen?

A. [12:20:53] I am making a reference to the client.

Q. [12:20:57] Okay. Fine. Now take a look at --

A. [12:21:01] But, no, no, no, I don't make a reference to the client, but the defendant in general. So Dr Akena was speaking about his -- so, his work as a professional and he said, okay, what happens during his work as a professional, and he said people would come and then ask to do this assessment and focus on the alleged crime and the mental health status before, during and maybe after.

PRESIDING JUDGE SCHMITT: [12:21:26] Perhaps can be now -- I think this takes too long, too much time here. Can you contradict it, you obviously want to say what is in the transcript --

MS LYONS: [12:21:37] Right.

PRESIDING JUDGE SCHMITT: [12:21:38] -- exactly. And now put it to the witness.

MS LYONS: [12:21:40] Okay.

PRESIDING JUDGE SCHMITT: [12:21:40] And then we can move forward.

MS LYONS: [12:21:42] Sure, to the next one. Okay.

PRESIDING JUDGE SCHMITT: [12:21:45] Because we are now nearly 10 minutes

now in this reading out of a couple of lines.

MS LYONS: [12:21:49] Okay, all right.

Q. [12:21:51] Now, Dr Akena answers "Yes" at page 28:

"Yes, we've been involved in [the] assessment of a number of people who may have been suspected or are suspected of having committed a crime and labouring under the burden of a mental illness."

Isn't it more accurate to assess this as Dr Akena is talking about not Mr Ongwen particularly but his other patients, based on this transcript reference?

A. [12:22:20] Yes, and in the same paragraph at line 15 he continues: So they refer them to the hospital and they ask us to make the assessment and then, when we are doing the assessment - now this is my interpretation - they say "to provide information regarding the status of their mental health before, during and maybe after the act ..."

So this means that he is well aware of how you should do a proper assessment of the alleged crimes.

Q. [12:22:53] Fine. Thank you.

Okay, now moving on. The same page at 2.2, the implication here is that Dr Akena -- again, at T-248 you give us page 77, but I would submit from our checking the references page (Overlapping speakers)

MR GUMPERT: [12:23:17] Your Honours, I am going to interrupt. It's plain what's happened here. The Professor was referring to the real-time transcript --

MS LYONS: He wasn't --

MR GUMPERT: -- which I am checking and he's right.

MS LYONS: [12:23:25] Okay.

MR GUMPERT: [12:23:26] And Ms Lyons is now referring to the perfected, the ET

version.

MS LYONS: Okay. Thank you.

MR GUMPERT: This really isn't helping and it's eating time.

PRESIDING JUDGE SCHMITT: Yes --

MS LYONS: [12:23:37] Okay. Well, I am referring to -- I am using the edited transcripts. Okay, I can skip --

PRESIDING JUDGE SCHMITT: Yes, but then you --

MS LYONS: I'll skip the page.

PRESIDING JUDGE SCHMITT: [12:23:45] Yes. Then you would -- then we cannot point out any differences between the lines, I would say (Overlapping speakers)

MS LYONS: [12:23:50](Overlapping speakers) is not my concern.

PRESIDING JUDGE SCHMITT: [12:23:52] (Overlapping speakers) this unnecessary --

MS LYONS: Yeah. All right.

PRESIDING JUDGE SCHMITT: -- it consumes time. But still, if you want to talk about the content, of course --

MS LYONS: [12:23:58] Thank you. Okay.

PRESIDING JUDGE SCHMITT: [12:24:00] -- there might be a different content. That's of course absolutely permissible.

MS LYONS:

Q. [12:24:05] Now, okay, I want to talk about -- I withdraw the comments on the lines.

Let us say -- you're arguing, you say Dr Akena states:

"... you don't want to put the client in a situation where they are boxed into a little corner ... they must provide information."

Now I would ask you to compare this to what Dr Akena actually states and ask you if it's the same thing. He states --

A. [12:24:36] Which page? Sorry for interpreting.

Q. [12:24:39] He states at page 65 of the transcripts which we have given the Professor, he states:

"You don't get much information" -- it's at line 18 to 21 -- sorry, yes, line 18 to 21:

"You don't get much information if you stick to that period when you are assessing for a mental illness. You don't get much information."

Do you agree with that?

A. [12:25:08] Sorry, come again. Let me check.

"Two is that sometimes you really don't want to cue the client, you don't want to -- you don't want to put the client in a situation ..."

Q. [12:25:29] He is talking about boxed in and putting the client --

PRESIDING JUDGE SCHMITT: [12:25:31] So is this quotation correct or not? I'm a little bit now, I have difficulties to follow --

THE WITNESS: Yes.

PRESIDING JUDGE SCHMITT: -- what the point is?

THE WITNESS: [12:25:38] So DA states, I think it's rather appropriate -- I mean, I took it from the real-time transcript, and there he said "you don't want", then I make the brackets, "to put the client in a situation where they are boxed into a little corner and they must provide information."

And that's why he, as I understand him, comes up with other techniques, but I think is the complete, you have to do the complete opposite of what Dr Akena is saying here; you would have to challenge your client, as a forensic, forensic mental health expert that's interested in the things that happened during the alleged crimes. And

it's not about maybe fearing that you don't get information, you have to specifically ask for the question.

What he would have had to do is he would have had to ask, you are -- you know that, for example, you are obliged -- no, you're accused of committing these and these crimes, what did you do? Did it happen? What happen -- and if you can't remember, what is the last thing that you remember?

MS LYONS:

Q. [12:26:42] But we don't know for a fact, we weren't there, there are no videos, that in fact that did not happen, correct?

A. [12:26:52] That, that's not true, because Dr Akena said that, as far as I understand it, Dr Akena said that they didn't ask specifically for the alleged crimes where -- and he was the one who has most of the time interacted with Mr Ongwen, that's also I think what is quite clear, and Professor Ovuga who was more or less the, as I understood, the supervising instructor who did not speak to Mr Ongwen, he said, no, no, we talked to Mr Ongwen about the specific alleged crimes.

And this is something you find in the transcript T-251. I can't tell you exactly which page numbers, but this is exactly what Professor Ovuga said during the cross-examination on Friday last week.

Q. Now --

A. [12:27:41] So there's a contradiction between your two experts as well, so we -- from Dr Akena we would have to conclude that they didn't do it and they failed to do a proper assessment. But what we know from Professor Ovuga, he said we did it but we didn't see it -- we didn't think it was necessary to put it in the report. But both is not adequate practice.

Q. [12:28:07] Now looking also on this page you say Dr Akena claims that, quote,

"mental illnesses don't go away by themselves."

A. [12:28:21] Mm-hmm.

Q. [12:28:22] Okay?

A. [12:28:23] Yes.

Q. [12:28:23] Now I would like you to look -- how do you -- I would like you to look at the full statement of Dr Akena at T-248, and it's the transcript we gave you in the binder, which is the edited transcript, at page 73.

A. [12:28:39] Mm-hmm.

Q. [12:28:42] And tell me, reading the whole thing, do you agree with that?

A. [12:28:50] Which (Overlapping speakers)

Q. [12:28:51] Just read out what he says, lines 1 to 3?

A. [12:28:54] One to 3.

Q. [12:28:54] "Without treatment".

A. [12:28:56] "Without treatment, that's what I usually tell my clients, mental illnesses don't go away by themselves. Without an intervention it is very unlikely that something would leave you by itself."

Q. [12:29:08] Do you agree with that?

A. [12:29:09] No, that's completely not true, because the scientific literature shows the same. Of course, there is some spontaneous recovery and, if you inform your clients that your illness won't go away without the treatment, that's not true.

Q. [12:29:23] Now spontaneous recovery is your word, right?

A. [12:29:26] No, that's --

Q. [12:29:27] Where --

A. [12:29:27] That's a scientifically accepted technical term

Q. [12:29:34] By whom? Can you --

A. [12:29:33] You can use it in the PubMed, for example, in all the scientific databases, and when you, when you try to search for spontaneous recovery, for example, you find this.

Q. [12:29:45] Okay. But Dr Akena was not advocating spontaneous recovery for serious mental health illnesses was he?

A. [12:29:50] He says that he tells his client that mental illnesses don't go away by themselves. And mental illnesses includes all -- he doesn't specify which mental illness, but this statement he is making is not correct.

Q. [12:30:08] But I'm trying, I'm trying to understand, I don't want to belabour this, but trying to understand what is it that isn't correct. Here you just read out to us transcript from page 73.

A. [12:30:21] Yes.

Q. [12:30:21] It says, you are sick, you don't get treatment, things generally just don't happen, they don't just disappear. I'm sick, I have PTSD, I don't do anything about it, high probability I'll have PTSD tomorrow or five years from now or 10 years from now, perhaps.

So what is the problem here?

A. [12:30:46] What you --

Q. [12:30:48] What's your, what's your, what's your difference (Overlapping speakers) --

A. Okay.

Q. -- let me ask you that?

A. [12:30:50] Okay, the difference is that, the way you rephrased it -- the way how you said it is you said, if I may quote you, you said "I have PTSD ... do anything about it, high probability". And you are right, with a high probability the PTSD won't go

away. But this means a spontaneous recovery, we have about maybe, let's say, 5 or 10 per cent, so if I can -- I can tell my clients that when they don't go into hospital or don't seek treatment, probably it won't go away, but there is a chance, depending on the statistical -- on the scientific literature that we have, that will be a recovery, that without treatment they will get well again.

And what he says, mental illnesses don't go away by themselves. He doesn't say mental illnesses have a high probability that remain, that they remain and only a -- there's only a small chance that they go away. But he says, ultimately, mental illnesses don't go away, and that's not true.

Q. [12:31:55] So your criticism is that he didn't add the caveat of the --

PRESIDING JUDGE SCHMITT: [12:32:01] Yes, exactly.

MS LYONS: [12:32:03] Of the 1 per -- whatever, the (Overlapping speakers)

PRESIDING JUDGE SCHMITT: [12:32:07] However --

MS LYONS: -- small, whatever percentage, small percentage of spont -- okay.

THE WITNESS: [12:32:14] But this is important, that makes the difference.

MS LYONS: Okay.

Q. [12:32:18] Now let me just ask you, you've dealt, in your own practice as a psychologist, you've dealt with clients, correct?

A. [12:32:25] Correct.

Q. [12:32:26] Have you ever encountered a client whose, you know, problems, psychological problems did not go away without intervention, without treatment?

A. [12:32:38] Now I have a triple negative in this sentence, let me just read it --

Q. I'm sorry. Triple, okay.

PRESIDING JUDGE SCHMITT: [12:32:43] A double negative means yes and triple would be no, no then (Overlapping speakers)

THE WITNESS: [12:32:48] Maybe you can ask the question again so that it's easier for me to follow.

MS LYONS: [12:32:53]

Q. [12:32:53] Yes, let me just ask it -- okay.

PRESIDING JUDGE SCHMITT: [12:32:56] And please try always to word it in the positive. I think there --

MS LYONS: [12:32:59] All right.

PRESIDING JUDGE SCHMITT: [12:33:00] I think there is research that many people in this world have a problem understanding negations and too many negations (Overlapping speakers)

MS LYONS: [12:33:08] No, I do too. I agree. I accept the, I accept the criticism of my form. Okay.

Q. [12:33:17] You have told us that you have treated -- you have treated clients with severe illness, correct?

A. [12:33:24] Mm-hmm. Correct.

Q. [12:33:25] And would you agree that in your treatment of clients with severe mental illness, you have never or you have not -- well, in your treatment of clients in severe mental illness, a client who presents him or herself in order to get better, must have some kind of treatment, some kind of other form of medical intervention, would you agree with that statement?

Is that positive enough?

A. [12:34:04] I recommend to my patients when they suffer from a severe mental illness that they receive a proper treatment. But I also tell them that I can't, because I'm obliged to reveal to him the different possibilities that exist, I have to tell to them that even if they undergo such a treatment, that this doesn't mean that they will be,

they will get better in the end.

And also it doesn't mean that without the treatment they also would not maybe improve. It's just I'm -- when I'm talking with them I inform them about probabilities and I say maybe I am the right person, and maybe in between you realise that I'm -- that it doesn't match and maybe you need a different treatment. So it's not about yes or no but it's about probabilities and proper informed consent.

PRESIDING JUDGE SCHMITT: [12:35:01] We should move now to another point.

MS LYONS: [12:35:04] All right.

Q. [12:35:05] Now, take a look at, please, at page 5 in your report. I am dealing with section 2.2.1.

A. [12:35:29] Mm-hmm.

Q. [12:35:35] And you say that contrary to the scientific state of the art and the wealth of available professional literature, Dr Akena stated that fundamental things expert witnesses have to consider are, quote, "not written in a lot of books". And the reference you use is in T-248, page -- I am going to use the transcript, the regular transcript we have, the edited one, page 41, lines 1 to 13.

PRESIDING JUDGE SCHMITT: [12:36:12] And we are talking about point 2.2.2.

MS LYONS: [12:36:17] 2.2 --

THE WITNESS: [12:36:21] Thanks.

MS LYONS: [12:36:22] Thank you. Sleep deprivation. Okay. All right.

Q. [12:36:31] Now take a look and read, read out what Dr Akena says, in fact. Is he not -- what is his full answer on this?

A. [12:36:42] His full -- at least when we, when we refer to the quote starting at line 1:

"So establishing rapport is actually quite important, but also observation of the client.

And these are things that are not written in a lot of books. You must look at the client, you must tell the mood, you must ..."

Q. [12:37:04] And he talks about was the client sweating or wriggling or whatever, okay. So observation as well as -- he is making a point.

Now isn't it true that in your practice as a psychologist, someone comes in, it's important to look at how that person presents? Exactly what Dr Akena is saying here, is a person nervous, is a person pacing, is a person sweating.

A. [12:37:34] Of course, this is one of the building blocks that you take into account when, in the end, you come to a -- to this holistic picture I mentioned. The problem I have, and that's why I am citing this here and making reference to the transcript, is that the way I think -- or, yeah, I have the impression, it's my interpretation, so establishing a rapport is actually quite important, but observations are important too, and this is not -- these are the various things that they did as health professionals but that are not written in books. And it's -- this is the mystification of the, of the role of a forensic expert.

Every, every thing -- so the problem is whenever -- my impression is whenever Professor Ovuga and Dr Akena were asked to specify things and to be precise, and to outline their way of reasoning, they were not able to give proper answers except saying this is something you can sense, whatever sense may mean. Or they didn't use the word sense, but that's my word. You can sense things, you can feel things but it's not possible to describe them.

But that's the opposite is true. It's a very -- forensic sciences are very objective, there are guidelines and you -- everything you can discover in the interaction with your client, you should be able to verbalise it, you should be able to put it in a report and you should be able to make it obvious to all the others so that other mental health

experts are able to get an idea what you have done.

And if you are not able to do it, then you are failing your task. And it's not that these things are not written in a lot of books, it's not, it's not magic what you are doing, it's written in the books how you should deal with your clients, absolutely.

Q. [12:39:39] So, in fact, you are saying that any, any of the observations -- one second, let me -- where is it?

So what you are saying then is that some of the, the procedures, methodology that Professor Ovuga and Dr Akena spoke about, including during a patient interview, the therapeutic alliance, forming, forming trust, as a basis from which to elicit responses as well as observe, that it's not written in books or they don't count because they are not in books? I don't understand.

A. [12:40:38] No, then there's a misunderstanding between the two of us.

Q. [12:40:44] Yes.

A. [12:40:45] So --

Q. [12:40:46] Yeah.

A. [12:40:47] So if someone is the treating psychiatrist or a treating psychotherapist, then of course there is a wealth of literature available how this person can engage in this therapeutic alliance and what this person can do to make a good report. Yeah. This is absolutely, that's -- that's not the point I am making.

But if I appear in the role as a forensic expert that should help the Judges to come to a conclusion in the end, then my task is it to describe also my clinical impression to the Judges in the way that they can understand in which way my impressions support the diagnosis I am diagnosing maybe, or my impression of the client, or if I sense any contradictions I have to explain it.

And the point I am making is that whenever Dr Akena and Professor Ovuga were

asked to be precise and say what methods have you used, and the methods you are using, is it in a -- is there any basis for the methods you have used? Their answer is, well, there is this culture issue and there is this interaction issue, and this is very subjective and you have to trust us because no one else can understand it unless you have been present during the examination.

And this is not true. If I had made these impressions, and this is really scientifically based and this is in line with the theory of good practice, I would be able to reveal it. And so the statement is not written in books, everything that is necessary here is written in books.

Q. [12:42:46] No, this can -- we can move to a disagreement about what is in the books, how to use the books, what they say, is it being applied, but let me just try to put it in a different way.

Am I to understand what you are saying is that a psychiatrist, or someone in your field of psychology, that no one ever thinks outside the box or outside the book?

A. [12:43:19] Yes, sometimes I think outside the book, but then I have to label it as my very subjective impression. And then I also have to be cautious and say, okay, this is my very subjective impression, me with my own subjective conflict of interest, this is my interpretation. But at least, if I want to be objective and provide a profound expert opinion, then I should differentiate between facts and opinions and interpretations. And that's why you usually come up with a data section where you outline all the facts you have that you can rely on and then this is followed by the interpretation.

And the problem is that it is impossible for me, as an -- as a second expert who did not interact with Mr Ongwen, to get sufficient information about how I can evaluate the subjective impressions Professor Ovuga and Dr Akena had. Because they are

contradictory, they are saying, to give an example -- I don't know who it was, I think -- but I think it was Dr Akena saying that the people that are brought to the hospital, to his ward, they don't report major suffering, some of them are very functional. Even if you ask them they would say I don't have a symptom, and also if you ask others they would say -- even if his students would come to his ward they ask him, "What's wrong with these people?" And he would respond, "Well, obviously they don't show, show any sign of a disorder, but I diagnosed them with a severe mental disorder."

So I think this, for me as an expert, doesn't make sense and I want to challenge them and say: Okay, please explain to me why you come to the conclusion that someone suffers from a mental disorder even if you don't find any sign of a mental disorder. And unless you are able to provide this reasoning I can't take it serious, that this is a real scientific evidence.

MS LYONS: [12:45:36] I would ask the Court - in respect to the last answer, the Professor gave an answer - to check the transcripts. I don't have it exactly here, but I do not recall the same recollection of the explanations --

PRESIDING JUDGE SCHMITT: [12:45:50] Perhaps we can use this -- it's a little bit early for having a break, but perhaps I can use this short interruption, so to speak, to ask you if you have already an idea how long the examination will last.

MS LYONS: [12:46:06] Sure. I probably -- I will finish after lunch, quickly.

PRESIDING JUDGE SCHMITT: [12:46:11] So then I would suggest that we have -- then you have time to check the transcript, I would suggest.

MS LYONS: [12:46:18] Mm-hmm.

PRESIDING JUDGE SCHMITT: And we have perhaps a little bit shorter lunch until 2 o'clock, I suggest. I think that would be fine, you have time for lunch and you

have time to check it.

Is this okay?

MS LYONS: [12:46:31] Sure. Thanks.

PRESIDING JUDGE SCHMITT: [12:46:33] Then a lunch break until 2 o'clock.

THE COURT USHER: [12:46:38] All rise.

(Recess taken at 12.46 p.m.)

(Upon resuming in open session at 2.01 p.m.)

THE COURT USHER: [14:01:12] All rise.

Please be seated.

PRESIDING JUDGE SCHMITT: [14:01:26] Ms Lyons, you still have the floor, and you might have figured out the passages of the transcript.

MS LYONS: [14:01:39] Yes, but again, not I, but others found. Okay. Yes.

Q. [14:01:45] We were talking before lunch, you were describing testimony of Dr Akena and saying that he had said when the students come into the psychiatric ward, "Well, obviously they don't show any sign of a disorder, but I diagnosed him with a severe mental disorder" and I challenged the -- that being as an accurate representation of the passage.

So I would like to call your attention and the Court's attention to transcript T-249, on page 89, starting at line 21 and ending on page 90 at line 22. And I would like, in fairness, to give the Professor a chance to look at that and ask if he still maintains the same position or is this different than at -- what he recollected.

A. [14:02:52] No, this is not the quote I meant.

Q. [14:02:54] Oh.

A. [14:03:02] I -- I said it's my interpretation, but I remember when you were asking Dr Akena if a layperson is able to identify signs of mental diseases, then he was

responding and then this -- while he was responding he said, as far as I remember, that also sometimes it's hard for his students to identify these signs. This is -- I'm referring to this and therefore it should be in the transcript T-248, but I also -- it's somewhere in my notes, but I didn't bring them today. I'm sorry.

Q. [14:03:46] Okay. All right. If we find it, I will -- I will go back to that point in looking at T-248 because we were looking at T-249.

MS GILG: [14:04:02] Your Honour, I have a reference, if it could be of assistance.

PRESIDING JUDGE SCHMITT: Yes, please.

MS LYONS: Oh, great.

MS GILG: [14:04:05] So it's in the same transcript that Ms Lyons was referencing and it's page 90, lines 8 to 18.

MS LYONS: [14:04:12] That's 249?

MS GILG: [14:04:14] Yes, 249, yes.

MS LYONS: [14:04:16] Page 90.

THE WITNESS: [14:04:19] Oh, yes, this is what I meant. I'm sorry. I gave you the wrong reference. I'm sorry.

MS LYONS: [14:04:23] Thank you.

Q. [14:04:26] "When we sit down [we] look for these kinds of information, we find a troubled" student -- sorry, troubled -- let's try again, troubled students -- "troubled person". All right. I'm now trying to read 91, the exact same things that medical students go through the world over. The exact same things bystanders go through the world over, that loved ones go through and we are telling them the "... person is still unwell. Give us more time."

Then I would ask you the same question. Is this, in the transcript, this point, is this -- does this -- does what you said earlier accurately represent the testimony of

Dr Akena, pages 90 to 91?

A. [14:05:18] I'm grateful that we have it here now. It is said line 8 on page 90: "Medical students are actually shocked when they come the first day."

And I mean when they come, as soon as I understand the first day, they are at the ward of maybe Dr Akena, but they come to psychiatry the first time.

"They tell us 'Doctor, why is this patient here? This patient speaks sense when they come here. The patient said they don't have a mental illness.' They all don't say that -- they all say they don't have a mental illness. They say exactly that. They ask us, 'Why is this gentleman here?' The patient comes and says, you know, 'I'm a businessman from town, I own all these buildings, I have all this money, I have a degree from Oxford, I'm married to six wives, I'm doing all sorts of things.' We tell the student, go" back -- "We tell the student, go take a history from the patient and come and tell us. The students always come to us and say, 'I don't see why this patient is here.' Then we sit down and we elicit psychiatric symptoms in a manner that the students cannot. And they are shocked."

That's exactly the point I was referring to because when a student comes to the hospital and to a psychiatric ward and they would realise that something is wrong, of course they wouldn't -- even they may -- it's the first time they are there and they have not much experience, that I would not expect that they label the symptoms correct. That's not the point I'm making. But the point I'm making is quite clearly that they would recognise something. Even if I would take you or someone else with me to the clinic, you would recognise that something is wrong and you wouldn't be surprised and say why don't they show these kind of symptoms I would have expected to see on a psychiatric ward.

Q. [14:07:23] However, I understand that's your position, but to be fair to the

transcript, Dr Akena is saying, and I quote lines 15 to 16, "The students always come back to us and say 'I don't see why this patient is [there].' Then we sit down and we", meaning the professional psychiatrists "elicit psychiatric symptoms in a manner that the students cannot."

So what I'm suggesting, isn't it true that that's a little bit different. That, in fact, what he's saying is that a student may take a look around and say, gee, people are doing X, Y and Z, which is what he said in his testimony, doesn't look like there's a problem here, may ask somebody and the person says, I'm fine, I don't know what I'm doing here. And what he's saying is that the trained professional psychiatrist will be able to see or elicit what a first-year medical student fresh out of, you know, fresh out of school starting medical school cannot.

And then he continues, lines 19 to 22, just could you read those, please.

A. [14:08:38] Mm-hmm. "If we look at text and observations from laypeople to come to the conclusion of whether somebody has a mental illness or not and how well somebody is functioning in a certain context or not, we may mislead ourselves. Not all the time, but sometimes."

Q. [14:08:53] Okay. Okay. So would you conclude then that your -- now that you've seen the transcripts that what you earlier said may not be a totally accurate recollection? I'm not dealing with your memory, I'm just saying it may not have been an accurate recollection of the transcript.

A. [14:09:34] Just let me see this. No, I didn't -- I didn't even mention it in my report. I was asking myself why would these students be shocked and what is wrong if a student tells me that he doesn't recognise severe suffering and severe affected individuals. Why is this patient here? They -- they all say they don't have a mental illness.

MS LYONS: [14:10:08] I would -- I'm not going to -- look, I don't want to get into a colloquy with the witness. I'm raising that question --

PRESIDING JUDGE SCHMITT: [14:10:16] To have also suggested that.

MS LYONS: [14:10:18] All right. I would like to move on. All right. Another place, another time, but not now. Okay.

Q. [14:10:21] I want to raise one other point from your report, which is on -- your report, okay, your critique of the second report and testimonies on page 10 at the very top. And what you say is, I'm reading the first three lines.

"Another example of [Professor Ovuga and Dr Akena] not considering available collateral information is that [Dr Akena] ignored the inferences of the trained Detention Centre experts, degrading their clinical ratings as sloppy clinical notes".

And then you give a reference in the transcript 249.

What I'm interested in is, where in T-249 -- and we are at pages -- if you are using the edited transcript, it's -- take a look at pages 12 and 13. Where does he degrade the clinical ratings as sloppy clinical notes? Can you show us?

A. [14:11:56] Yeah, give me a second.

Q. Sure. No, no, take your time.

A. [14:11:58] He's not using the word "sloppy", that's true, but --

Q. [14:12:01] One at a time. What about degrading? Then we'll get to sloppy.

A. [14:12:07] Where is it? No, we were -- there was -- they were discussing the clinical notes and as -- I don't find it here, but I -- it's in the transcript, I mean, I've taken it from there, but it was discussed. And Mr Gumpert I think asked Dr Akena, as far as I can recollect it correctly, why they -- or how he -- how he rates the -- or what he thinks about notes that were taken by the DC experts. And this is -- where is it, here?

Q. [14:12:55] Let me see if it -- I know we have a problem -- but the edited, let me try with the edited transcript, which you should have in front of you, T-249, page 12, starting at line 15. Halfway down. It's at -- the timing of it is 10 -- okay, 10 minutes, 1 second, 26, whatever they are, milliseconds, whatever they are.

PRESIDING JUDGE SCHMITT: [14:13:36] Professor Weierstall-Pust, if you are there, if you have found it, perhaps you can tell us from which lines you -- which lines you referred to when you qualified it as sloppy and degrading.

THE WITNESS: [14:13:52] I don't know if this -- so on the one hand you see, "You know clinical notes are written differently from notes that are written for other purposes, like this one, for example." I think this is just one. I should see if I can find the reference, the other reference I'm making.

But why -- you see, it's not just a simple clinical note. Where is this -- why is it just a simple note that is written for other purposes? I mean, they are -- what they have -- what they are doing, I mean, they are observing the DC experts, they are observing Mr Ongwen on a regular basis, and they are qualified as professionals. So these are not just clinical notes, but these are, these are professional expert opinions that have to be considered like this.

MS LYONS:

Q. [14:14:59] Okay. But what I'm asking you, sir, is --

A. [14:15:02] Yes.

Q. [14:15:03] -- let's put aside clinical notes and their value of clinical notes, I'm asking you, you wrote a report, you submitted it to this Court, correct?

A. [14:15:13] Correct.

Q. [14:15:14] And you worked on it, you know, it didn't -- you didn't -- you know, you spent time on this and you worked on it, it's -- okay. And you made an -- well,

an allegation, I'm a lawyer, I talk about allegations. But you basically made an allegation that our experts - I'm looking here, nobody's here -- Professor Ovuga and Dr Akena, all right, the experts, whatever -- wherever they are -- okay, degraded the clinical ratings as sloppy clinical notes. Now if this were true and it could be supported, it becomes -- it's a serious issue. I'm dealing with it because your characterisation of it is serious, it has potential consequences, if it in fact is true. And I'm positing to you that it is not found, that was not done in the, the section that you cite or any place.

MR GUMPERT: [14:16:17] Your Honours, before the Professor answers, may I submit that in fairness to him, because he's riffling through a document which he's never seen before, we use a resource which is available to all of us. The RT transcripts are in front of me, right now --

PRESIDING JUDGE SCHMITT: [14:16:37] I would have expected that if you found -- or I expect, if you find the correct passages, that you help us. I even contemplated shortly to ask you, but I think that is indeed a problem that the pages do not -- in the real-time transcript do not correspond to those of the edited transcript and this is indeed difficult for Professor Weierstall. But of course the question is perfectly fine, it's all right that you have put it, but also indeed, in fairness to the expert, so if you have -- if you could help Professor Weierstall with the real-time transcript --

MR GUMPERT: [14:17:19] I can.

PRESIDING JUDGE SCHMITT: [14:17:21] Please read, please read it.

MR GUMPERT: [14:17:22] Read what is in the real-time transcript, which is in front of me?

PRESIDING JUDGE SCHMITT: [14:17:28] Yes. And especially because

Professor Weierstall-Pust has of course referred to the real-time transcript and we have it here, it should be page 13 -- or 62, 63.

MR GUMPERT: [14:17:42] I have 62 and 63 in front of me.

PRESIDING JUDGE SCHMITT: [14:17:46] Please proceed.

MR GUMPERT: [14:17:47] Line 19 of page 62, it reads thus:

I've said this but let me say it again, clinical notes are written for clinical purposes. When somebody says stable, when somebody says no mental health conditions, what do they mean? What do they mean stable? Do they mean that the mental illnesses have gone away? Do they mean the patients or the client is able to function well? Do they mean everything is okay? Do they mean that the symptoms have reduced? When a mental health care practitioner says no mental health conditions, does it mean in the current, in the past? Because we talked about diagnosis of mental illnesses yesterday, we said you make a diagnosis on the concerned and the past. I'm cautious in interpreting clinical notes in these kind of settings because the purposes for which they are written, they are not written for forensic purposes, they are written for purposes of providing care.

That appears to be the portion.

PRESIDING JUDGE SCHMITT: [14:18:51] And so that everyone, even at a later stage of the proceedings can still follow, this seems to correspond now to the edited transcript page 57 so that we --

THE WITNESS: [14:19:03] And it starts line 9 (Overlapping speakers)

PRESIDING JUDGE SCHMITT: [14:19:05] Now, but still the question is, the question is there, so you can answer to it.

THE WITNESS: [14:19:10] Mm-hmm.

MS LYONS: [14:19:11] (Microphone not activated)

Q. The question is, does the characterization of sloppy clinical notes, which you attribute to Dr Akena, is that supported in either of the transcripts that we have available?

A. [14:19:27] Okay, if a mental health professional --

Q. [14:19:31] Sloppy, right. Sorry.

A. [14:19:32] No, I didn't -- there is not the word "sloppy" in sight, but if a mental health professional who is seeing a client on a regular basis and he is trained, and he says "stable mental health condition", then I can rely on this stable -- on this -- this note he's making. And this is not just some simple clinical note, but this is exactly one of these sources that has to be used in a forensic assessment.

And you see, the way -- what Professor Ovuga -- this is from who? This is Dr Akena speaking, right? Yeah. So what Dr Akena is trying, as I would interpret it, he sees that he missed or maybe he realises that he missed to include these variable resources in his report, and instead of acknowledging the wealth of the information given by mental health expert, now it is questioned what stable means. I think it's -- this is a bit -- this is a bit offending, in my perspective, to ask this question and to challenge this in a way when you don't have any real, yeah, argument why you would doubt the quality of the observations and the conclusions an expert makes.

Q. [14:21:11] Two quick questions on this. But would you agree with me that if you look at the real-time transcript which Mr Gumpert wrote and also our transcript that there is no testimony from I believe it was Dr Akena criticising clinical notes as sloppy, yes or no?

A. [14:21:36] No, it's not criticised as sloppy, but it's not taken as serious in my perspective.

PRESIDING JUDGE SCHMITT: [14:21:40] I think we can simply, can simply

conclude that the expert -- Professor Weierstall-Pust, that you have simply qualified it and interpreted from what has been read by Mr Gumpert as was now the real-time transcript, and you characterised it like that, but that the expert of the Defence did not use these words.

MS LYONS:

Q. [14:22:06] Along those lines, if you were to -- if you were rewriting your report today, for example, would you reconsider using the word "degrading", which has a negative connotation --

A. [14:22:18] Yes, I think it's very negative.

Q. [14:22:21] Very negative, very negative connotation, which is not --

A. [14:22:24] I think --

Q. Does that reflect your opinion?

A. [14:22:26] My opinion is, I think if I were a detention centre expert and I would read the transcript of T-249 and I would see that this is on -- this is how my, my valuable opinion and my professional expert opinion was evaluated in court, I would feel offended.

Q. [14:22:58] Isn't it true -- we discussed some of, selectively admittedly, but we discussed a few of the DC notes that had been put into evidence by the Prosecution, and isn't it true that you identified areas, particularly in terms of PTSD, where there were symptoms or a suggestion of, if not a diagnosis, it pointed towards a mental health problem that was consistent with Dr Akena and Professor Ovuga's conclusions and in fact some of yours maybe?

A. [14:23:35] No, as I said earlier, I mean, as I -- when I had looked at DC expert notes, it doesn't appear to me that they had the intention to -- in this moment to write down that they have diagnosed PTSD according to a diagnostic criteria. It's also me

who is referring to the clinical notes of the DC experts in my first report. Because I think if someone who is in direct contact with Mr Ongwen and he's a health professional, and Mr Akena said a layperson cannot detect signs of mental disorder - and I disagree with this - but now there is -- now there is a real expert and still he doubts the notes, the notes of the expert and doesn't discuss the contradictions between one expert and he -- and him as an expert, then I think this is for me, I would still call it maybe -- you're an English native, if you say degrading is too strong, but I still think it requires, in my perspective, a negative connotation.

Q. [14:24:51] But would you accept, though, that experts in a particular field, in any field, can disagree?

A. [14:25:00] Sure. Everyone can disagree.

Q. [14:25:02] And that that disagreement may be expressed in differing conclusion particular to the field?

A. [14:25:12] Even I am criticising the work that has been done in the second psychiatric report, but what I'm trying to do is I try to provide many, many arguments and citations from the scientific literature to say, okay, the conclusion and the evaluation in the end is based on this and this fact, facts. And you cannot just simply say these are some notes that were taken and we can't take them serious and we cannot -- and then it's not worth maybe to consider that in our report. They are essential for their report.

Q. [14:25:47] But just on that last point and then I'm going to move on, but isn't it true that if you, as an expert, you got some clinical notes, right, and they didn't fit into or they weren't part of or weren't in agreement with the conclusions that you as a psychological expert, you get from another psychologist, right, now isn't it true that that does not mean that you are thinking the notes are just -- I don't want to use the

word here -- but that the notes are, that the notes are meaningless, are useless, do not represent the legitimate work of another psychologist, it may not be you, but somebody else in the field?

A. [14:26:37] I think that also the DC experts have the obligation to do a proper assessment of the mental health status of Mr Ongwen. And in case there is suicidality, I think they are also obliged to deal with suicidality, and I am quite sure that they are professionals and they are doing a great job. And of course we could disagree, but then I would have to go to these experts and say, what do you mean? And not just say, okay, I don't -- if they say, stable, what does it mean? Maybe it's just worthless, it's just some clinical notes. No, it's not some clinical notes. It's an expert opinion and we should treat it like this and also acknowledge that there is a contradiction between different experts occurring, and this should have been outlined and discussed in the second report.

Q. [14:27:33] Now, isn't it true, though, that both in the reports and in the testimonies that both Professor Ovuga and Dr Akena acknowledged they had made efforts to approach the DC, they had received some reports and they in fact had considered the materials that they had received, which included detention centre expert reports? Didn't you hear that in the testimony?

A. [14:28:01] Well, they were saying a lot in their testimonies, but you can't find anything of the -- or many things you can't find them in the second psychiatric report. And you cannot say we did it but it's not in the report. If you did it, you should also write it down in your report. If you considered this evidence in your report, then you should also have to note that you considered this. But they didn't.

Q. Okay.

A. [14:28:25] They said we did not -- I also quote it and better -- you better find it in

my evaluation, but what they also say is we didn't had -- this is my interpretation, but it's said in the report a bit different, but what they are saying is that they didn't have access to collateral information, which is simply not true. There is a wealth of very significant and important and even professional collateral information. And they acknowledged that this was there, but they write a completely different thing in their report. And assuming that, and unless you find it in their second psychiatric report, it's not there.

I mean, if I want to, to treat it as evidence and I -- and then I want to discuss the factual basis, then they would have had to reveal this in their report, otherwise they can pretend many, many things that they probably have done. Unless I can't find it in their report, it's not there.

Q. [14:29:24] Essentially you are making a similar argument. Unless all of the -- are you saying that unless, for example, you diagnose X but you don't rule out absolutely everything else, that undercuts or undermines your diagnosis? It's the same construct intellectually you are doing right now; am I correct?

A. [14:29:51] Of course you cannot always rule absolutely -- you rule out -- you cannot always rule out absolutely everything. But there is a significant -- there is significant material and there are significant sources and I should use them.

It is also true that I cannot, I don't know, rule out all the potential possible 357 medical issues that could also cause my -- my symptoms. But in the DSM and in the scientific literature you find guidelines that say, okay, when you are dealing with this disorder, for example, such as PTSD or DID, then you also have to focus on, for example, borderline personality disorder, substance abuse, psychosis. And this has not been done.

What Dr Akena and Professor Ovuga testified in court is that they considered

psychosis, they considered this, they considered that, but you can't -- you can find nothing of this in the report. And so I can pretend a lot what I have done, but as a mental health expert and as a professional, I would be -- it would have been my duty to discuss all this differential diagnosis in my report and not just saying I did it and please trust me but maybe I just also now come up with it because I think now it's important.

Q. [14:31:24] But in terms of your reports for this case, you didn't in fact do that in either of your reports, did you?

A. [14:31:33] What?

Q. [14:31:33] You didn't discuss the whole litany of other alternatives in your reports?

A. [14:31:42] Alternatives to what?

Q. [14:31:43] Alternatives to diagnoses or -- or proposed diagnoses from other experts, you didn't --

A. [14:31:51] (Overlapping speakers)

Q. [14:31:52] -- in either of your reports, did you?

A. [14:31:52] I do, I do. When you have a look at my report, I'm -- also when I'm dealing with the -- with the diagnoses that are report -- or that are highlighted in the second psychiatric report by Ovuga and Akena, I provide all the most significant differential diagnoses. Everywhere, of course I can't discuss them all in detail, why, why it doesn't make sense. It was not my task to do -- to discuss all potential differential diagnoses, but I mentioned the most important ones.

And as you can see, these are the -- what I put in the report are the recommendations that you find in the scientific literature and are the recommendations that you find in the DSM as an official document. And when you compare it to the second

psychiatric report, you see that Ovuga and Akena do not explicitly deal with these disorders in their report. And so I would have to consider that as if they haven't done it.

Q. [14:32:56] Okay. I have two more areas I'm going to move on to right now. Yesterday I -- yesterday? Yesterday you were given a chart, for the record, UGA-OTP-0287-0063, from -- by the Prosecution. It was a chart of both Defence and --

A. [14:33:24] I remember, yes.

Q. [14:33:26] -- Prosecution witnesses. And you were asked -- oh, I have it. You were asked to comment on this, okay?

A. [14:33:32] Mm-hmm.

Q. [14:33:33] Now I just want to ask you a couple of questions. You made some comments about number 3, D-0056. Now this person obviously testified in this courtroom because there was testimony, right? That's obvious. But my question to you is, were you provided with the full transcript of D-0056 by the Prosecution or simply just what is, you know, on the chart?

A. [14:34:12] Just those things that are on the chart.

Q. [14:34:14] Just the chart?

A. [14:34:15] The chart.

Q. [14:34:16] Okay. Now did you ask for the full transcript or would you have asked if you had known you were going to be asked about this person's comments?

A. [14:34:25] I didn't ask for the full transcript because this transcript is -- I would have, I would have asked for this transcript if my task would have been to provide another expert opinion on the mental health status of Mr Ongwen, but it was irrelevant for me considering my task to write a report on the report.

Q. [14:34:52] But earlier I believe this morning you present -- these are not your words, okay, but you presented the view that the more complete information enables someone in your position as an expert to provide some kind of conclusion or some kinds of observations. So isn't it true then that the fact you only got a number of lines, that that handicapped you from making a full assessment in terms of the issues of D-56?

A. [14:35:28] No, that's not a problem at all because you have to see, if we were sitting together to discuss the mental health status of Mr Ongwen, what we are actually not doing and we are also not referring to the charged period and we are not referring to the alleged crimes, we are doing everything but the things that are especially important here, then it would of course be necessary to have the whole transcript available.

But to me, the only thing that's important here is to say, okay, there are contradictions, and there are contradictions between the report and transcripts that demonstrate the testimony -- or the transcripts of witness testimonies that were given here in court. And the only thing that is relevant for me is that there are contradictions and that these contradictions are not discussed. I don't want to come to the conclusion in the end if Mr Ongwen currently suffers from a PTSD diagnosis. This is not at all important for me.

PRESIDING JUDGE SCHMITT: [14:36:33] But what we are referring here is to witness testimony by a Defence witness speaking about the charged period, yes?

THE WITNESS: [14:36:42] Yeah.

PRESIDING JUDGE SCHMITT: [14:36:43] So as I already indicated before the break, Ms Lyons, and she abided, so to speak, concentrates now on the alleged charged period.

THE WITNESS: [14:36:54] Yes.

PRESIDING JUDGE SCHMITT: [14:36:55] So we are not -- really, I would also really want to stress now that we should focus on the time 2002 until 2005 and when Ms Lyons is going through these excerpts from witnesses, then we do that.

Please continue, Ms Lyons.

MS LYONS: [14:37:17]

Q. [14:37:17] (Microphone not activated) I'm trying to point out the -- I point out number -- let's see, it's D-0019. Let's see, that was -- D-0019 is ...

A. [14:37:34] 15.

Q. [14:37:35] 15, okay. Thank you. I need all the help I can get here. Okay. All right.

Now, these were questions about Mr Ongwen's personality. Were you given information based on the transcript -- and I will give the reference for those who want to check. T-236, page 31, lines 6 to 7, that was D-0019's transcript.

Were you provided with information by the Prosecution that the last time this person saw Mr Ongwen, according to his testimony, was outside the charged period but his words were in 2000. Were you provided with that information?

A. [14:38:23] No, I wasn't provided with -- with this information, but still if this was a perception of Mr Ongwen by one of his close fellows and/or comrades, then this clearly speaks against the notion of, for example, Dr Akena who said in the period from -- I don't know, 1996 up until today, he constant -- constantly suffered from a severe mental disorder. I mean, they are making -- they are making statements on the whole period -- the alleged period between 2002 and 2005. And I think it's somewhere in the document. I'm also referring to it in my report that they're saying from 1996 onwards.

And so there are clear breaks. And if there are clear breaks, this clearly speaks against the idea to give -- to make a diagnosis for the period of very -- several years. And this doesn't make sense and this would have had to be acknowledged by your experts. And it's therefore, it's not relevant if the -- if this witness, for example, has also said other things, but at least there's one significant contradiction. And for me, it's just my -- my point is just that I want to make clear that there are so many contradictions and not to come in the end to the conclusion that it was this or that probability Mr Ongwen suffered from this or from that disorder. But at least there are so many significant contradictions that speak against the conclusions that are drawn in this report.

Q. [14:40:03] But assuming you want to make a conclusion about -- which we do, but not "we do". The Judges have to -- all right, I had a Freudian slip. No --

PRESIDING JUDGE SCHMITT: [14:40:10] You can all draw sorts of conclusions by yourself.

MS LYONS: [14:40:11] Okay. Let's start again. "Myself", okay. I'll start again.

Q. [14:40:13] The Judges will make a conclusion about the charged period 2002 to 2005.

A. [14:40:15] Mm-hmm.

Q. [14:40:15] Isn't it true, Professor, that you're playing a little hard and fast with dates. I just provided some information. For the purpose of the question, let's assume it's accurate from the transcript.

Now doesn't this affect what a person says about his observations of Mr Ongwen? It's a pre-charged period. I'm giving you information from the transcript that says the witness last saw him in 2000, that's two years before the charged period starts. So there's no (Overlapping speakers)

A. [14:40:54] Yes. Absolutely, and therefore I perfectly agree and therefore it is wrong to come up with a statement that from 1996 onwards, he suffered from this and this and that. This is not a valid conclusion as you already noted. I perfectly agree with you.

It's not specifically dealing with the charged period, but that's the point I'm -- I'm making. We are talking -- so there are many -- there are various interpretations on what has probably happened to Mr Ongwen in the charged period, but there's -- that in the report, there's not a single alleged crime described in detail. There is not a -- I can't find any clear reference to the charged period, except some general conclusion that -- conclusions that refer to many, many years, including also the period before 2002 and 2005. Because you say, for example, there are some statements like, "Due to the abduction, he suffered from PTSD" (Overlapping speakers)

THE INTERPRETER: [14:41:55] Mr President (Overlapping speakers)

THE WITNESS: [14:41:55] Oh, I'm too fast, I'm sorry.

THE INTERPRETER: [14:41:56] (Overlapping speakers) could the witness slow down a bit for the Acholi interpretation.

THE WITNESS: [14:42:01] I apologise.

PRESIDING JUDGE SCHMITT: [14:42:02] You have to slow down a little bit.

THE WITNESS: [14:42:05] Yes, I apologise, I'm sorry. So you see, of course it's not part of the charged period, but that's exactly the point I'm making. Why -- how can you make conclusions on many, many, years, even from 1996 onward up until today, and this is how I understood Dr Akena when he gave his testimonies here in court last week, I think this is not -- not valid and exactly what you're saying, this speaks against it.

MS LYONS: [14:42:45]

Q. [14:42:45] Well, I prefer to characterise what -- I don't -- I'm not going to get into a colloquy about what I'm saying. I'm specifically referring to D-0019 and that's what I - only I'm referring to here on the evidence.

PRESIDING JUDGE SCHMITT: [14:42:54] But, yes, that was clear and (Overlapping speakers)

MS LYONS: [14:42:54] All right.

PRESIDING JUDGE SCHMITT: [14:42:55] -- we also have an answer. You can move on.

MS LYONS: [14:42:58] Okay. All right. One moment.

Q. [14:43:04] Let me move on to my last area which has to do with the DSM. Okay. All right.

PRESIDING JUDGE SCHMITT: [14:43:47] You know there will come a time here where we -- of course, with a twinkle in my eye, when we all sort of become some sort of expert I would say because ...

But please proceed.

MS LYONS: [14:44:06] Okay. One moment. All right.

Q. [14:44:07] I would -- there will come a time where it's all digitalised and I don't have to drag the D -- okay, the DSM around. All right.

Now I know you know it by heart or the other people do. I'm going to - with the permission of the Court - just read a few sections because we didn't Xerox at the beginning. I'm -- I'm in the section of the "Use of the Manual".

Do you agree with the DSMs --

MR GUMPERT: [14:44:37] Page?

MS LYONS: [14:44:42] I'm sorry. Page 19. Oh, you have it digitally? The same colour. Okay.

PRESIDING JUDGE SCHMITT: [14:44:46] That seems to be -- but with all politeness and since it also applies to me and my fellow colleagues, this might be also an age issue, if it is electronically or if we stand around with (Overlapping speakers)

MS LYONS: [14:44:55] Yes.

PRESIDING JUDGE SCHMITT: [14:44:55] (Overlapping speakers) books and working with --

MS LYONS: [14:44:56] Okay.

PRESIDING JUDGE SCHMITT: [14:44:56] -- paper.

MS LYONS: [14:45:05]

Q. [14:45:06] So now here we are. Okay. Now let me try to get through this here. Okay. On the first -- on page 19, under "Use of Manual", do you agree that the purpose -- it states its purpose:

"[...] to assist trained clinicians in the diagnosis of their patients' mental disorders ..."

Do you agree with that?

A. [14:45:23] Yes.

Q. [14:45:24] Now, do you also agree in the second paragraph where it says:

[...] it is not sufficient to simply check off the symptoms in the diagnostic criteria to make a mental disorder diagnosis."

Do you agree with that.

A. [14:45:42] Maybe this is also -- I don't know the -- the context around this sentence.

Q. [14:45:46] Okay, I'll read the two, so you'll have no context -- hopefully no context issues.

This is the section on Approach to Clinical Case Formulation. "The case formulation for any given patient must involve a careful clinical history and concise summary of

the social, psychological, and biological factors that may have contributed to developing a given mental disorder. Hence, it is not sufficient to simply check off the symptoms in the diagnostic criteria to make a mental disorder diagnosis."

A. [14:46:23] Yeah, what you see now it also gives -- gets a different connotation because of course you have to involve the clinical history. There's also the psychological and biological factors because in sum, when you consider the different levels, then you're in the position to adequately rate the symptoms; otherwise, it's not just checking symptom from one -- one after the other. But you have to -- and I am repeating myself, but you have to check if the symptoms are fulfilled and diagnoses are only valid if the -- if a sufficient number, according to the diagnostic criteria, is fulfilled so to then also label or give it the label of a certain psychiatric disorder. Of course, it's not just simple, simple -- simply checking it but it's also, as Dr Akena said, probing that I adequately assessed the symptoms.

Q. [14:47:26] Okay, thank you. Now for the record, I should mention I'm reading from the DSM-5, American Psychiatric Association, Fifth Edition, purple cover. Okay, now, the DSM says under its Diagnostic Criteria and Descriptors, on page 21, that:

"Diagnostic criteria are offered as guidelines for making diagnoses, and their use should be informed by clinical judgment."

Do you agree with this position?

A. [14:48:11] Yes. If it's said there, then I agree with it, yeah.

Q. [14:48:14] Okay. Thank you. And lastly, I want to point out something, ask you about -- it's on the section in Dissociative -- Dissociative Disorders, which starts in 291. And let me read the section and I just want your reaction to this.

"Dissociative identity disorder" --

Starting at the bottom of page 291 --

"is characterized by [...] the presence of two or more distinct personality states or an experience of possession and b) recurrent episodes of amnesia. The fragmentation of identity may vary with culture (e.g., possession-form presentations) and circumstance. Thus," --

And this is the part I want to focus on --

"Thus, individuals may experience discontinuities in identity and memory that may not be immediately evident to others or are obscured by attempts to hide dysfunction."

And then it continues.

Do you agree with that analysis? That they may not be immediately evident to others or may be obscured by attempts to hide dysfunction in a person? That's generally speaking.

A. [14:49:46] Yeah, especially dissociative identity disorder is difficult to identify and there's a very nice publication, I think it was released in 2015, and it also contradicts maybe the implication -- your implications because it was demonstrated that when you present a case or a hypothetic case to health professionals - and, in this case, all the criteria of the dissociative identity disorder are clearly revealed - that only 64 per cent of all professionals are able to correctly identify this disorder and that this -- the correct diagnosis is independent of the -- of the clinical experience, the degree, and also their -- their rank or their rank in the medical hierarchy. Because you were asking me before whom I would trust, one who has seen 20 or 30 LRA soldiers or the one who's working in this field for 25 years or 50 years. And you see, the science exactly proves that it's not the years you spend in the psychiatry -- or that you're working in the field to correctly identify it. And I can send you the references

if you don't believe me.

And so you see, it's very difficult to identify it, but there's a wealth of literature also dealing with this, what you mentioned, the possession form dissociative identity disorder and there's also a clear c) criterion defined in the DSM. And when you have a look at the scientific references that all deal with possession form dissociative identity disorder, they all highlight that these disruptions in identity - and that's what I said yesterday - they occur involuntary. They occur un- -- they are uncontrollable. They cause marked and observable distress resulting in differences in the abilities to -- to continue their daily life, and that these marked disruptions often cause troubles in social interactions with the family, with the children, with my comrade, so this again is contradictory to the clinical picture that I find in the witness testimonies. And, you see, of course I agree that this is difficult to identify it. And I agree with you also that cultural factors have to be taken into account, absolutely true, but there is this necessary C criterion which emphasises the marked distress, the uncontrollable nature, the involuntary nature and the disturbances.

And I can show you lots of literature that specifically deals with this case because we have also, also considered these types of other disorders in our own work.

Q. [14:52:49] Thank you.

MS LYONS: May I have a moment to consult with my team?

PRESIDING JUDGE SCHMITT: [14:52:54] Of course. Of course, yes.

MS LYONS: [14:53:01] Thank you.

(Counsel confer)

MS LYONS: [14:53:03](Microphone not activated) I am finished.

PRESIDING JUDGE SCHMITT: [14:53:11] Okay. Thank you, Ms Lyons. But not, not yet, because we have to enquire the way forward.

MS LYONS: Yes.

PRESIDING JUDGE SCHMITT: [14:53:15] I take it from what you said this morning that the Defence will apply for a rejoinder?

MS LYONS: [14:53:24] Yes.

PRESIDING JUDGE SCHMITT: [14:53:25] And there will -- I also take it from what you said that there will be a report, yes? And the question would be when will this report, what you think, be informally transmitted to the parties and participants?

MS LYONS: [14:53:39] The answer, your Honour, is I honestly don't know. I understand the deadline is Thursday at 12, it was in one of the earlier decisions. We will make best efforts to do it as soon as we get it. And I will -- you know, and I will make enquiries with the people doing it --

PRESIDING JUDGE SCHMITT: No, I think, I think we --

MS LYONS: It's the best we can do.

PRESIDING JUDGE SCHMITT: [14:54:03] Yes. No, that's okay, and we are quick readers.

No, but we indicated that before and this was the deadline.

But, as you said, please try to provide us all with this report as earlier as possible. And of course, at best, earlier than 12 o'clock on Thursday. Yes?

Then I would like to thank Professor Weierstall-Pust for his expertise. Thank you for coming to the Court, helping us establish the truth. We wish you a safe trip back home.

THE WITNESS: [14:54:37] Thank you very much.

And I would also like to thank all the people from the ICC that -- supporting me with coming here and going back again, because there are so many people doing great work and I just want to acknowledge this. And thanks to all parties, I enjoyed the

discussion with you today, and I wish you all the best. Thank you very much.

PRESIDING JUDGE SCHMITT: [14:54:58] Thank you.

(The witness is excused)

PRESIDING JUDGE SCHMITT: [14:54:58] That concludes the hearing for today.

We resume on Thursday, 2 o'clock, with Professor Ovuga. And also our best wishes from the Bench here for Professor Ovuga.

THE COURT USHER: [14:55:11] All rise.

(The hearing ends in open session at 2.55 p.m.)