

Trial Hearing
WITNESS: UGA-D26-P-0042

(Open Session)

ICC-02/04-01/15

1 International Criminal Court
2 Trial Chamber IX
3 Situation: Republic of Uganda
4 In the case of The Prosecutor v. Dominic Ongwen - ICC-02/04-01/15
5 Presiding Judge Bertram Schmitt, Judge Péter Kovács and
6 Judge Raul Cano Pangalangan
7 Trial Hearing - Courtroom 3
8 Friday, 22 November 2019
9 (The hearing starts in open session at 9.33 a.m.)
10 THE COURT USHER: [9:33:42] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE SCHMITT: [9:34:08] Good morning, everyone.
14 Could the court officer please call the case.
15 THE COURT OFFICER: [9:34:17] Good morning, Mr President, your Honours.
16 The situation in the Republic of Uganda, in the case of The Prosecutor versus Dominic
17 Ongwen, case reference ICC-02/04-01/15.
18 And for the record, we are in open session.
19 PRESIDING JUDGE SCHMITT: [9:34:32] Thank you.
20 I ask for the appearances of the parties. Mr Gumpert for the Prosecution first.
21 MR GUMPERT: [9:34:38] (Microphone not activated)
22 PRESIDING JUDGE SCHMITT: [9:34:38] With microphone, please.
23 MR GUMPERT: [9:34:41] Let's start as we mean to go on.
24 Ben Gumpert for the Prosecution, with me Colleen Gilg, Colin Black, Yulia Nuzban,
25 Pubudu Sachithanandan, Kamran Choudhry, Jasmina Suljanovic, Grace Goh,

1 Nikila Kaushik, Hai Do Duc and Adesola Adeboyejo.
2 PRESIDING JUDGE SCHMITT: [9:34:59] Thank you.
3 And for the representatives of the victims, first Ms Massidda.
4 MS MASSIDDA: [9:35:03] Good morning, Mr President, your Honours.
5 Paolina Massidda for the Common Legal Representatives, with me today Orchlou
6 Narantsetseg, Caroline Walter and Ana Peña.
7 PRESIDING JUDGE SCHMITT: [9:35:13] Thank you.
8 And Ms Sehmi.
9 MS SEHMI: [9:35:15] Good morning, Mr President, your Honours. On behalf of
10 the Legal Representatives for Victims I am Anushka Sehmi with James Mawira.
11 PRESIDING JUDGE SCHMITT: [9:35:26] Thank you.
12 And for the Defence Mr Obhof in charge.
13 MR OBHOFF: [09:35:29] Good morning, your Honour, and thank you.
14 Today we have Beth Lyons, Tibor Bajnovic, Eniko Sandor, Krispus Charles Ayena
15 Odongo, Michael Rowse, Chief Charles Achaleke Taku, Roy Titus Ayena,
16 Gordon Kifudde, myself Thomas Obhof, and Dominic Ongwen is in court.
17 PRESIDING JUDGE SCHMITT: [9:35:44] Thank you.
18 And we also note for the record that we have the experts, Dr Akena and Professor
19 Weierstall in the courtroom, and a very warm welcome again to our witness expert,
20 Professor Ovuga.
21 It is now turn of the Prosecution questioning of the witness.
22 Mr Gumpert, you have the floor.
23 PRESIDING JUDGE SCHMITT: [9:36:11] Yes, Mr Ovuga?
24 WITNESS: UGA-D26-P-0042 (On former oath)
25 (The witness speaks English)

1 THE WITNESS: [9:36:17] Mr President, your Honours, I'm sorry for interrupting
2 the Prosecution.

3 When I reflected on a piece of information I provided yesterday, there was one where
4 I reversed the order of information in regards to multi-axial diagnoses, axis V. So I
5 would like to make a correction for the record.

6 Multi-axial diagnosis axis V refers to an evaluation how well an individual affected
7 with mental illness is able to function, despite the severity of their symptoms.

8 It is made up out of a group of several aspects of functioning in life, in domestic life,
9 general social life, occupation, and also the expression of symptoms. It is rated from
10 zero at what point the individual is totally incapacitated, up to a hundred per cent, at
11 which point the individual functions very, very well.

12 I reversed it -- I knew what, what the facts were, but unfortunately what came out
13 was the reverse. Sorry for that.

14 PRESIDING JUDGE SCHMITT: [9:38:16] No problem. Thank you for the
15 clarification.

16 Mr Gumpert, you may start now.

17 QUESTIONED BY MR GUMPERT:

18 Q. [9:38:34] Professor, yesterday you told us this, it's at page 47, line 2 of
19 the transcript for those who want to check. You said:

20 "You see, we have a primary difficulty here. The primary difficulty is that we do not
21 have corroborative sources of information, but if we had those sources, then, yes, one
22 [could] say dissociative disorders or experiences would have a significant impact on
23 his moral ability to decide to tell right from wrong."

24 Now, for a forensic psychiatrist, corroborating, to use your word, the account given
25 by the accused person is important, isn't it?

1 A. [9:39:34] Yes.

2 Q. [9:39:34] One of the ways in which such a person's account of their symptoms
3 can be corroborated is by accounts from people who were close to them at the time of
4 the alleged crime; that's right, isn't it?

5 A. [9:39:54] Correct.

6 Q. [9:39:54] And that's why you and Dr Akena conducted in-depth interviews, as
7 you characterise them, between April and September of 2016 with four people who
8 had been contemporaries of Mr Ongwen in the LRA; that's right, isn't it?

9 A. [9:40:19] Correct.

10 Q. [9:40:19] And, Professor, I think today you have been given a bundle of
11 documents which looks a bit like this in soft covers. Do you have it at hand?

12 A. [9:40:32] I have. But as I requested the Defence yesterday, I would rather not
13 have my attention and concentration distracted by having to keep looking back and
14 forth. So if you don't mind, you can draw my attention by reading it as you have
15 done. Thank you for accepting the request.

16 Q. [9:41:04] I can certainly do that, Professor.

17 For those of us who may want to look at it, the written summary of what those four
18 persons said is in the Prosecution's binder at tab 9.

19 It's fair to say, isn't it, Professor, that nothing that any of those four persons said
20 corroborated Mr Ongwen's accounts to you of him operating as two distinct
21 personalities, one kindly and one vicious?

22 A. [9:41:42] That is -- that is correct. But, remember, we interviewed them before
23 we had contact with Mr Ongwen. It might have been different if the reverse was
24 done.

25 Q. [9:42:02] Well, I want to challenge you there, Professor. Dr Akena first saw

1 Mr Ongwen, if I have it right, in February of 2016.

2 A. [9:42:15] Correct.

3 Q. [9:42:17] These interviews were conducted between April and September 2016.

4 A. [9:42:23] Correct.

5 Q. [9:42:24] So, although you yourself may not have seen Mr Ongwen, Dr Akena
6 had done so, had already reported, and had discussed the content of that report with
7 you. That's correct, isn't it?

8 A. [9:42:41] Correct. And the challenge is?

9 Q. [9:42:49] Well, you were wrong. By the time these interviews were conducted,
10 you, or at least Dr Akena had already seen Mr Ongwen. That's the challenge. I
11 thought you'd accepted it.

12 A. [9:43:04] Let me clarify it. When Dr Akena saw or was seeing Mr Ongwen,
13 you are right, I was in constant or regular contact with him on Skype conversations,
14 and I specifically requested him to look for symptoms of dissociation, symptoms of
15 OCD, and symptoms, of course, as everybody would have expected, of PTSD.

16 At that point, nothing much that I would say would also support our findings in the
17 first -- first report and second report came through. But I had to let the report stay as
18 it was.

19 So, since the probes that Dr Akena used with Mr Ongwen didn't yield any
20 improvement, when we saw those four people, one of who of course was seen by
21 Dr Akena alone -- we saw three people or four, I don't remember, but one of them
22 was seen by Dr Akena alone. We did look for evidence of OCD, PTSD, dissociation,
23 epilepsy, psychosis, all of the -- or, most of the conditions that were asked about by
24 the Prosecution experts. And those witnesses couldn't tell us any.

25 Q. [9:45:42] Professor, we're getting a little muddled here, aren't we?

1 The Prosecution experts hadn't reported at this time when you were first seeing the
2 patient, your client, had they?

3 A. [9:45:57] They had not, but I was just thinking ahead.

4 Q. [9:46:02] If I may, I'm going to try and deal with things in the order in which
5 they occurred.

6 A. [9:46:15] Okay.

7 Q. [9:46:16] In fact, in that report which Dr Akena produced and which you
8 approved, it's Defence binder tab 6, you needn't go there of course, Professor, there
9 was no diagnosis of dissociative disorder, was there?

10 A. [9:46:46] No.

11 Q. [9:46:46] It's fair to say, isn't it, that Mr Ongwen's accounts of his dissociating
12 have become more and more florid the longer you have been talking to him?

13 A. [9:47:01] That is correct.

14 Q. [9:47:04] And so the need for the corroborating material which you spoke of
15 yesterday becomes more acute when one has an inconsistent account from the client,
16 yes?

17 A. [9:47:33] I'm not sure I get you.

18 Q. [9:47:36] Well, if a patient tells you, "Doctor, I have been feeling sick and dizzy
19 for the last two weeks," and you prescribe some medicine or suggest rest or some
20 other treatment, and then the patient regularly comes back saying, "I still feel sick and
21 dizzy, Doctor," you have got a consistent account.

22 But if the patient comes and tells you, "I am still having problems but now I feel
23 a pain in my feet and I have got a ringing in my ears," and then on a third occasion
24 still other symptoms, to get some kind of corroboration for what the patient is
25 reporting becomes important, doesn't it, to get some kind of objective take on what

1 the patient's problems are?

2 A. [9:48:44] Yes, corroborative evidence becomes acutely important. But I
3 disagree with you in saying that what Mr Ongwen gave us would subsequent -- or on
4 subsequent occasions were inconsistent. They were not inconsistent. They were
5 what would be seen with any patient who has built trust in the interviewer. And
6 also of course using the interview, interviewing skills and methods available that the
7 patient has been able to -- has been unable to recall and remember significant other
8 symptoms that he or she suffers from.

9 Q. [9:49:53] Let me explain to you what I mean by inconsistent. I'm reading from
10 tab 6, last four digits 1 -- sorry, 0155 in the top third of the page.

11 Dickens Akena reported:

12 "[...] no amnesia of the events that happened while in the LRA ranks."

13 That's inconsistent with what he tells you now, isn't it?

14 A. [9:50:23] Still it is not inconsistent, because loss of am -- sorry, memory for
15 events of a trauma and particularly repeated severe trauma is a well-known problem.
16 Individuals affected have difficulty recalling significant elements of their experiences
17 following trauma. And to enable them to remember, one needs time with them. So
18 his failing to elicit memory loss on the first occasion is not inconsistent.

19 Q. [9:51:14] He'd forgotten he'd forgotten, is that it?

20 A. [9:51:18] Who has forgotten?

21 Q. [9:51:20] Mr Ongwen?

22 A. [9:51:26] We are talking about Mr Ongwen, yes, but I am telling you and the
23 eminent judges that forgetfulness for the experiences of trauma and especially aspects
24 of those trauma is a commonplace phenomenon.

25 Q. [9:51:54] Yes, and one --

1 MS LYONS: [9:51:58] Just quickly. I just want to say, when the -- we are looking
2 and moving from tab to tab, Professor Ovuga has indicated that he's not doing that.
3 I think that the Prosecution should say what the source is of whatever he is referring
4 to, in fairness to Mr -- Professor Ovuga.

5 PRESIDING JUDGE SCHMITT: [9:52:20] I think in the abstract you are right, but
6 concretely Mr Gumpert has done it, I think, so --

7 MS LYONS: [9:52:30] (Microphone not activated)

8 PRESIDING JUDGE SCHMITT: [9:52:32] Yes, no, and of course --

9 MS LYONS: [9:52:33] I'm sorry --

10 PRESIDING JUDGE SCHMITT: [9:52:25] One after the other, please.

11 And Mr Ovuga is absolutely -- I find it okay that he does not want to flip back and
12 forth, but Mr Gumpert has already indicated -- you read it out to him what you want
13 and you tell us where your reference is and then we proceed in this manner until the
14 end of the day, so to speak.

15 Please, Mr Gumpert.

16 MR GUMPERT: [9:52:53] Somewhat resentfully I might remark that's what I've been
17 doing, but ...

18 PRESIDING JUDGE SCHMITT: [9:53:00] But you have heard me (Overlapping
19 speakers)

20 MR GUMPERT: [9:53:02] I have. I have (Overlapping speakers)

21 PRESIDING JUDGE SCHMITT: [9:53:02] In the abstract of course it's okay, but
22 it's -- of course the witness has to know where you are and where you want to go with
23 him, that's clear, but you are doing that.

24 Please proceed in this way.

25 MR GUMPERT: [9:53:12]

1 Q. [9:53:12] Professor, I think we're at odds about the meaning of inconsistency. I
2 know, because I have read your reports and I know that you are an eminent
3 psychiatrist, that it is a feature of people who have been in Mr Ongwen's position that
4 they have memory loss. I understand that.

5 The inconsistency is this: When he first met Dr Akena he told the doctor that he
6 didn't have any memory loss. Now he's telling you a different story. His account is
7 inconsistent, isn't it? It is internally inconsistent with itself.

8 A. [9:53:53] From legal point of view I get you. But from subjective clinical point
9 of view, as far as Mr Ongwen is concerned, there is no inconsistency and we helped
10 him to get out of the position of inability to recall to the ability to recall.

11 And I told you and the house yesterday, that there was a moment I think in the
12 second interview of our visit, or our visit, he reported to us that our questionings
13 helped him to recall many of the things he had forgotten. So I don't see where the
14 inconsistency is. We helped him from inability to remember to the ability to
15 remember.

16 PRESIDING JUDGE SCHMITT: [9:55:00] I think you can proceed, Mr Gumpert.
17 Move on, not proceed of course.

18 MR GUMPERT: [9:55:09] I understand. I'm done with the
19 difficulty -- (Overlapping speakers)

20 THE WITNESS: [9:55:11] With the inconsistency --

21 MR GUMPERT:

22 Q. [9:55:11] Well, I may come back to inconsistencies, but arguing about what
23 inconsistency means, I am done with that.

24 So, Dr Akena told us on Tuesday, T-249, page 40, line 8, that you and he realised that
25 you needed to carry out a more thorough reviewing of potentially corroborating

- 1 material than just the four persons you'd first spoken to, yes?
- 2 A. [9:55:38] Correct.
- 3 Q. [9:55:38] He said:
- 4 "We asked the Defence team to allow us to interview the people who lived with the
5 client. We asked for a lot of information. We get some. We don't get others."
6 Now that information never came to you, did it? The only people you ever had the
7 opportunity to get to know what they had to say about what it was like living with
8 Dominic Ongwen were those four people you first spoke to.
- 9 A. [9:56:10] Correct.
- 10 Q. [9:56:11] And your conclusions and your reports might have been substantially
11 different had you had other corroborating or discrepant material?
- 12 A. [9:56:24] Correct.
- 13 THE INTERPRETER: [9:56:25] Your Honour, could the counsel and the witness
14 allow for the space between the questioning.
- 15 MR GUMPERT: [9:56:30]
- 16 Q. (Overlapping speakers) people living around mentally ill people yesterday;
17 page 86, line 20.
- 18 A. [9:56:41] Sorry, can you repeat that, there was interference from the interpreters.
- 19 Q. [9:56:42] Yes.
- 20 THE INTERPRETER: [9:56:45] Message from interpretation: Your Honour, could
21 counsel and the witness --
- 22 MR GUMPERT:
- 23 Q. (Overlapping speakers)
- 24 A. [9:56:52] I'm hearing something else.
- 25 Q. [9:56:56] You're getting a background noise?

1 A. Yes.

2 Q. We'll just pause and see if that will be fixed.

3 PRESIDING JUDGE SCHMITT: [9:57:05] Obviously, there is an issue with the
4 interpretation that, perhaps, it's not Mr Ovuga, it's you that might be a little bit too
5 quick again. Yes.

6 MR GUMPERT: [9:57:14] Sorry.

7 PRESIDING JUDGE SCHMITT: [9:57:14] I'm only referring this to you. I did not
8 have the impression now, but -- and it is definitely not the expert here, as he has
9 already indicated at the start of his testimony.

10 MR GUMPERT: [9:57:29]

11 Q. [9:57:30] Professor, can I ask you to look at the box which the microphone is
12 attached to. Can you see a number on it?

13 A. [9:57:40] I see several numbers.

14 Q. [9:57:41] No. All right. This is too complicated.

15 PRESIDING JUDGE SCHMITT: [9:57:49] I think we simply proceed now and I don't
16 really see here an issue with the interpretation. I have not -- I think we had evidence
17 here was much quicker in succession, so -- but try to restrain yourself a little bit and
18 then we proceed from there.

19 MR GUMPERT: [9:58:12]

20 Q. [9:58:13] Can you hear me well now, Professor?

21 A. [9:58:16] Yes.

22 Q. [9:58:17] You told us a story yesterday about how when LRA fighters, I think
23 probably patients of yours who had returned from the bush felt an urge to go and
24 commit violence, kill, I think you said?

25 A. Mm-hmm.

1 Q. [9:58:36] But before that happened, the people around them would notice that
2 the person, I think you used words that a person was behaving strangely and their
3 friends or their companions would tactfully tell them to take a nap and that way the
4 problem didn't come to fruition, yes?

5 A. [9:58:58] Correct.

6 Q. [9:58:58] And Dr Akena told us that people around Mr Ongwen, when he was
7 suffering the effects of his mental illness would have noticed that something
8 was -- his word was something was amiss. You'd agree with that, wouldn't you?

9 A. [9:59:14] I heard him say so. Yes.

10 Q. [9:59:16] My question is whether you would agree with his suggestion that the
11 people around Mr Ongwen, when he was exhibiting the signs of the mental illnesses
12 which you have diagnosed, would notice that something was amiss?

13 A. [9:59:32] I do not agree hundred per cent. It is a yes and a no answer. Can I
14 explain?

15 PRESIDING JUDGE SCHMITT: [9:59:45] Of course, you have the time to explain
16 that.

17 THE WITNESS: [9:59:48] I would agree with what you have just read, but I would
18 also not agree with what you have just read, because the people with whom
19 Mr Ongwen lived in the bush, lived under the same hostile circumstances as
20 Mr Ongwen in this case.

21 The reports of people being tactfully told to go and rest were people who had
22 returned home. They were in their villages, and they lived with relatives, wives,
23 brothers, cousins, sisters, and these were the ones to whom the behaviour exhibited
24 by those people who gave me the accounts in therapy sessions would see as strange.
25 And the remedy, as lay people understood, was that somebody appears to be tired,

1 somebody seems to be troubled, that somebody should move away from distractions
2 and go and rest.

3 So that is why I say it is a yes and no answer.

4 Q. [10:01:30] But they had noticed that they were, to use your word, troubled?

5 A. [10:01:36] Yes, at home.

6 Q. [10:01:41] It would be fair to say, wouldn't it, from the long conversations which
7 you and Professor -- Doctor Akena had had with Mr Ongwen that he had made
8 a home in the LRA, he had his own household --

9 A. [10:02:03] Okay, okay.

10 Q. [10:02:04] -- didn't he? He had a number of women whom he regarded as his
11 wives. He had his children around him. He had long-term colleagues around him.
12 You know all that, don't you, Professor?

13 A. [10:02:16] I do. Let me clarify as follows:

14 Once again let me say the people who lived with him in the bush lived under
15 unnatural circumstances. Nevertheless, during one of our interviews, Mr Ongwen
16 did tell us two things that I can say. One, that his well-known bravery in the
17 battlefield or on the battlefield was more than just being a good soldier. He was told,
18 he says, him being a good soldier, brave soldier was more than just being a good
19 soldier, there was something wrong in the conduct of being a good, brave soldier.

20 Another occasion was, or another example is when he told us that whenever he
21 appeared to be isolating himself, people would know that there was something
22 wrong with him and they did communicate to him that they thought there was
23 something wrong with him.

24 We may not have written it in the report, but there were so many things that we got
25 which we couldn't put in the report.

- 1 Q. [10:04:37] I'll leave that. This is all coming from Mr Ongwen, isn't it?
- 2 A. [10:04:46] Yes, yes.
- 3 Q. [10:04:47] All of it?
- 4 A. [10:04:48] Yes.
- 5 Q. [10:04:49] I want to tackle that question of this subjective account.
- 6 A. [10:04:54] Mm-hmm.
- 7 Q. [10:04:54] You've told us that the increasing detail, floridity of Mr Ongwen's
8 description of his mental state over his encounters with you is perfectly consistent
9 with him gaining trust and being able to talk to you. And you're looking at it, I
10 suggest, from the point of view of a treating psychiatrist. And you are ignoring the
11 equal possibility, although you know it has been raised in these proceedings, that in
12 fact Mr Ongwen is not ill, that he is, to use Professor Mezey's word, faking bad,
13 malingering, that he considers that a mental health defence, if I can use that word,
14 may be a way of escaping criminal liability and that he is changing his story to you in
15 order to provide you with the material you need to make the necessary diagnosis.
16 You are aware there is that issue in this case, aren't you?
- 17 A. [10:06:26] I am aware, and I did talk about it yesterday, Dr Akena talked about it
18 the other day. Let me clarify it as follows: To simply -- for a witness to come and
19 sit and accuse someone of faking without having had contact with that person was
20 not fair. And for that position to keep coming repeatedly is also not fair.
21 It is not fun for an individual to feel sad, to feel there, there is someone else similar to
22 him who is controlling his behaviour. It is not fun -- by fun meaning an enjoyable
23 experience -- for somebody to see his brain split in two or to see the world split in two,
24 the world on the left referring to bad things, the world on the right referring to good
25 heavenly things; that those sets of experiences are not fun for people to go through

1 with or to live with.

2 We are able to sit here, we are able to stand in this room and make those allegations
3 because we ourselves have not experienced the same experiences Mr Ongwen has
4 gone through.

5 I always tell my students, if someone says they have never known happiness, it is that
6 person who has not known happiness. And once we ourselves also have the chance,
7 unfortunate chance of getting through that experience, then we will see the unfairness
8 in which we have ridiculed their experiences.

9 Q. [10:09:18] No one in this court is ridiculing the experiences of a person who
10 suffers from mental health, Professor. Be very clear about that, please.

11 You are describing the position from point of view of the therapeutic alliance which
12 you have made with Mr Ongwen, aren't you? You are proceeding from the basis
13 that he is mentally ill as opposed to taking a forensic evidence-based approach to
14 discovering what the explanation for what he has told you is. You have ab initio
15 from the start discounted the possibility of any malingering because you as his
16 treating physician are the patient's ally. That's where we stand, isn't it, Professor?

17 A. [10:10:18] I'm not sure where the evidence is that makes you say that. Let me
18 explain what Dr Akena did explain two days ago or three days ago.

19 Interviewing has three purposes or there are three types of interviewing:

20 One is diagnostic interviewing and in diagnostic interviewing one looks for signs and
21 symptoms of whatever problem the individual has and differentials that go with
22 whatever that person goes through.

23 The second is, as you refer to, therapeutic interviewing, whereby as the physician
24 interviews an individual who has come for help one uses strategies, therapeutic
25 strategies to help the individual cope with their symptoms.

1 And the third one is what you repeatedly claim that we didn't do, and that is forensic
2 evaluation, in which case the interviewer explores the circumstances, the
3 surroundings, the events that surround a particular offence.

4 And it is not fair to keep saying that we didn't do that.

5 I wish there were video recordings of our interactions and they were shown to this
6 Court to show whether you are right or whether you are not right, to show whether
7 I am right or I am not right.

8 Q. [10:12:48] We may have a misunderstanding again, Professor. My suggestion
9 to you is that there are means of corroborating, means of taking a forensic approach
10 other than speaking to the client. For instance, ascertaining whether his words at the
11 time of the crimes he is accused of are available to be heard. Do you know whether
12 we can hear, whether you could have heard sound recordings of Mr Ongwen
13 speaking at the time the crimes were being committed? Have you ascertained that?

14 A. [10:13:35] I have never -- I have never been given any transcripts. I have not
15 been given any videos, except two. One which was a very short clip showing him in,
16 in the UN peacekeeping compound, on the UN peacekeeping compound. The other
17 was I think in the UPDF compound.

18 But other than that, I would have difficulties in saying, and especially if it is sound
19 recordings, I would have difficulty in saying this belongs to Mr Ongwen, this belongs
20 to Dr Akena, this belongs to Professor X. I am not an expert there.

21 Q. [10:14:46] Professor, nobody is asking you to be an expert. You are not just
22 a passive observer here. You have agency, indeed, duties as a forensic expert, don't
23 you? Did you ask for any of this material?

24 A. [10:15:10] Dr Akena told us, and I have no intention of disputing what he said,
25 that we made several attempts right from the time he came in February 26, he came

1 on his own. And I asked him several times and he gave me responses several times
2 during that visit. I wanted him to contact the treating physicians. I wanted him to
3 contact or be helped to contact other agencies in this facility, meaning this facility and
4 its detention centre. He was told in no uncertain terms on one occasion that "You are
5 a Defence witness. I am not going to give you material that belongs to the
6 Prosecution." And if you get -- if you were Dr Akena and you got that sort of
7 response, what else would you have done?

8 Q. [10:16:47] Well, it's not much good asking me questions, Professor. It works
9 the other way around.

10 I want to come back to this. You are an eminent professor of international standing,
11 studied at the Karolinska, a self-confident and assertive person who could have said,
12 if you had been following the proceedings, "I want access to the transcripts, the
13 translations, the sound recordings of Mr Ongwen speaking at the time of the accused
14 crimes." But you didn't do it. Was that because you feared what the result might
15 be?

16 A. [10:17:35] Despite the response we got from the treating physician, we still went
17 ahead and asked for material. And somewhere in the course of the middle of our
18 second visit, that was when a batch of clinical notes were brought, they were written
19 in Dutch, so an interpreter was asked to come and sit with us and interpret to us.
20 And Dr Akena referred to that in his testimony on methodology. We did try our
21 best, but other than a few symptoms pointing to PTSD, depression, anxiety, and, on
22 one occasion, a mention about possible dissociation where --

23 Q. [10:18:59] Professor, I know it's discourteous to interrupt you, but I'm asking
24 about something completely different.

25 PRESIDING JUDGE SCHMITT: [10:19:05] Yes, but let me do that. Normally we

1 don't interrupt the witness. I think there is a little bit of a misunderstanding.

2 I have understood, Mr Gumpert, that he does not talk about potential information
3 that could have been obtained from the detention centre. Perhaps you could again
4 clarify what you, what you are heading at so that we all and especially the witness,
5 knows what is expected from him in his answer.

6 At least I have understood you this way, that you are not referring to the information
7 that could have been obtained from the treating psychiatrist or psychologist in the
8 detention centre, or at least not going to focus on that.

9 MR GUMPERT: [10:19:53] I am going to read the latter part of the question I asked.

10 Q. [10:19:59] You could have said "I want access to the transcripts, the translations,
11 the sound recordings of Mr Ongwen speaking at the time of the accused crimes."
12 You had the power and the agency, perhaps even the duty, as a forensic expert, to
13 gather that important evidence, but you didn't do it. Is that because you feared that
14 the content of that material might contradict what would be in the best interests of
15 your patient?

16 A. [10:20:46] We didn't fear. And to my best understanding, our having come
17 three times to this facility was impartial, as far as we were concerned, although we
18 were assigned to work with the Defence. Our interest was to support the
19 Trial Chamber and the two parties involved without favouritism. So we didn't fear.

20 PRESIDING JUDGE SCHMITT: [10:21:40] Please move on, Mr Gumpert. I suggest,
21 at least.

22 MR GUMPERT: [10:21:52] Yes.

23 PRESIDING JUDGE SCHMITT: [10:21:52] You have asked several times the
24 question and I think we have an answer here. Please move on.

25 MR GUMPERT: [10:22:05]

1 Q. [10:22:05] Although you consider it to be unfair, you are aware that the issue,
2 one of the issues the Judges have to decide is whether Mr Ongwen is indeed mentally
3 ill and, more than that, whether those mental illnesses, if they exist, have certain
4 consequences; or, on the other hand, whether he may be exaggerating. You are
5 aware, even though you think it's unfair, that's an issue in the trial, aren't you?

6 A. [10:22:35] You are right.

7 Q. [10:22:36] As you have noted in your answer a moment ago, only one side, only
8 you and Dr Akena have actually been allowed access to Mr Ongwen. You know that,
9 don't you? He has refused to see the Prosecution doctors. You know that, don't
10 you, Professor?

11 A. [10:23:00] I don't know that.

12 Q. [10:23:03] It comes as news to you --

13 A. [10:23:05] Yes.

14 Q. [10:23:08] -- that your patient has refused to be examined?

15 A. [10:23:14] Yes, yes.

16 Q. [10:23:15] Very well. In light of the fact that there is an issue about this, this
17 faking or not faking, you could have taken steps, couldn't you? You could have
18 used diagnostic tools, psychometric tools to establish a greater or lesser likelihood of
19 malingering.

20 A. [10:23:50] We could, but only yesterday I said we had limited time and we
21 needed to collect lots of other information and we didn't think it was economically
22 wise to waste time using a scale.

23 Q. [10:24:21] Professor, we heard from your colleague that between the two of you
24 you had between 15 and 18 sessions with Mr Ongwen lasting between two and three
25 hours each. I make that somewhere between 30 and 56 hours of face contact time.

1 Didn't you think, don't you think now, objectively, that a small portion of that time
2 might have been properly used to gain an objective insight into this issue of
3 malingering?

4 A. [10:25:10] Those 56 or so hours were divided between four separate visits and
5 each visit had its own purpose as far as we structured our data collection exercise.
6 So with each visit aimed at a particular purpose, still what I said remains valid. But
7 if, if the Prosecution insists, we have no problem in, in using a set of psychometric
8 tests, and maybe that might be useful to him and to this Court later, maybe.

9 PRESIDING JUDGE SCHMITT: [10:26:31] Ms Lyons, I think you want to speak.

10 MS LYONS: [10:26:33] Yes. I just -- I just wanted to speak on the, on the math issue.
11 I recall from Dr Akena's testimony he talked about 15 to 18 hours, so I am not sure
12 where the 56 came from.

13 PRESIDING JUDGE SCHMITT: [10:26:47] No, no. It's -- I think I recall it was
14 sessions, and of course --

15 MS LYONS: [10:26:52] Okay.

16 PRESIDING JUDGE SCHMITT: [10:26:53] -- it's not important if it was in the end 30
17 or 35 hours or 50 hours, I think the expert has answered that already. We don't have
18 to dwell into that anymore.

19 You may proceed, Mr Gumpert.

20 MR GUMPERT: [10:27:11]

21 Q. [10:27:11] It would have been good for you too, wouldn't it, Professor, because
22 just like the Prosecution experts, you think that Mr Ongwen is not an accurate
23 reporter of his symptoms? You think he is faking good, don't you?

24 A. [10:27:27] He is not faking good. He wasn't faking good, he was telling us and
25 he did tell us his real experiences from the perspective of the three methodologies or

1 types of interviews that I outlined.

2 Q. [10:27:51] Well, let me remind you, Professor, you at -- this is Defence tab 7,
3 page 10, last four digits 0013, you record that he presented as a cheerful and
4 humorous individual who was emotionally tough, resilient and was able to withstand
5 challenges and life's adversities.

6 But you go on to say: "In our opinion, this outward presentation that Mr Ongwen
7 exhibited is deceptive and it covers up the intense internal emotional turmoil he
8 experiences daily."

9 Those are your words --

10 A. [10:28:43] Yes.

11 Q. [10:28:44] -- Professor.

12 A. [10:28:45] Yes.

13 Q. [10:28:46] So what I put to you a moment ago is right, isn't it? Your analysis,
14 for what it's worth, is that he is faking good. He is pretending to feel better than he
15 does. The use of a scale, a psychometric tool such as the one you have just accepted
16 could be useful would have helped to detect that as well, wouldn't it?

17 MS LYONS: [10:29:09] Objection. The witness speaks for himself. He has
18 explained his position and --

19 PRESIDING JUDGE SCHMITT: [10:29:15] No, no (Overlapping speakers).

20 MS LYONS: [10:29:17] -- and to characterise it is misrepresenting it.

21 PRESIDING JUDGE SCHMITT: [10:29:20] No, no, no. The witness can speak for
22 himself.

23 THE WITNESS: [10:29:23] Your Honour --

24 PRESIDING JUDGE SCHMITT: [10:29:24] And we have, we have a witness who is, I
25 think - really we have experienced this the last two days - is able to answer the

1 questions himself and speak for himself, and Mr Gumpert has read a part of the first
2 report I think to the witness. And I'm absolutely sure that he is able to answer the
3 question himself.

4 Mr Ovuga, please.

5 THE WITNESS: [10:29:48] Thank you, your Honours.

6 If I need help from the Defence, I will put my hand up.

7 PRESIDING JUDGE SCHMITT: [10:30:03] Actually, I think you have detected that
8 this was, let me put it this way, the content or the underlining thinking of my
9 intervention with Ms Lyons. Let me put it this way: You are strong enough to
10 answer yourself.

11 THE WITNESS: [10:30:22] Yes, Mr Gumpert, let me respond to your challenge this
12 way. I'm sorry I, I always take a long, a long roundabout way in answering.

13 In our mind -- let me backtrack. During my first visit to see him with Dr Akena, I
14 personally observed Mr Ongwen's mood change from day one to day four, and
15 finally day five. Days four and five were moments in which his mood was way
16 down, subdued. I wouldn't say depressed, but subdued.

17 On day one he was, as you read, cheerful, exuberant, active, lively. Dressed in
18 a necktie, I think blue shirt, navy blue trousers, very cheerful. Day two he was -- he
19 had changed shirt and necktie, but he was still active, cheerful. Day three, not so
20 much, and on that day he did not wear a necktie, if I remember well.

21 So what I am trying to describe here is, and what came to our mind was, does this
22 suspect have bipolar illness. Bipolar illness means a severe mental illness
23 characterised on one hand with extreme happiness and elation, on the other extreme,
24 extreme sadness, unhappiness, loss of hope and feeling of helplessness. Could he be
25 having this?

1 We looked for evidence of bipolar disorder and we couldn't find. And when we
2 couldn't find evidence of bipolar illness was when, in psychoanalytic terms,
3 psychodynamic terms, that was when we said, and given a narrative of how the
4 young children were trained to respond to loss, we said: Well, this apparent
5 happiness doesn't seem to be happiness. It is a manifestation of how he was trained
6 to cope with loss, to cope with suffering, to cope with adversity.
7 So that is the background to our writing what you have just read.
8 It does not in any way point to Mr Ongwen faking good.

9 Q. [10:34:33] I must challenge you there. Why did you use words like
10 "deceptive"?

11 A. [10:34:41] Deceptive was used -- I thought I explained. Deceptive was used to
12 let the -- it was used to refer to an individual's, in this case Mr Ongwen's apparent
13 happiness which was actually not happiness. Him being happy was deceptively
14 false.

15 Q. [10:35:24] I asked Dr Akena on Tuesday, if you were to use a psychometric test
16 such as the one you just offered to, which one would you use?

17 A. [10:35:52] One would be clinical. But clinical interviewing here would also
18 mean and it would entail, to use your words, requesting the people in the detention
19 centre to observe him and make daily reports about his behaviour. That would be
20 the standard clinical method of assessing for possibility of deception.
21 But sometime in last year a group of authors tested, tested the use of a tool that they
22 developed or modified to test for faking. Unfortunately, that test is computer based.
23 I am not sure that -- maybe that will be done by the people at the detention centre,
24 because I, I would assume -- and mark the word I would assume -- that we would not
25 be allowed to use equipment that we are not privy to use.

- 1 PRESIDING JUDGE SCHMITT: [10:37:39] Mr Gumpert, I don't go so far to say
2 please move on. But you can consider to move on, I think.
- 3 MR GUMPERT: [10:37:45] And I'm going to.
- 4 Q. [10:37:47] I want to come to something much more concrete now, Professor.
5 We spoke earlier about medicine being evidence-based, you build up the picture from
6 building blocks and you arrive at a diagnosis, correct?
- 7 A. [10:38:09] Mm-hmm.
- 8 Q. [10:38:09] I want to look at the building blocks of the three diseases, dissociative
9 identity disorder, major depressive disorder and post-traumatic stress disorder, and
10 look at them in the light of the material which you never got a chance to see, the
11 material which is at page -- sorry, tab, I should say, 13 of the Defence bundle.
12 I'm afraid to say that I am going to have to ask you to do what I know you don't want
13 to do, and that is to look for a moment at this document. Thereafter I will read out to
14 you the details, but I want you to see the document.
- 15 A. [10:39:04] Say it again.
- 16 Q. [10:39:06] It's in - yes, that's it - tab 13. So there are yellow dividers.
- 17 A. [10:39:11] Yes, 13?
- 18 Q. [10:39:13] Thirteen, indeed.
- 19 A. [10:39:14] Yes. These are transcripts? Sorry, I can't see them well.
- 20 Q. [10:39:24] Well, you need to be able to, Professor.
- 21 PRESIDING JUDGE SCHMITT: [10:39:27] You said I think Defence. It's
22 Prosecution, it's the Prosecution binder.
- 23 MR GUMPERT: [10:39:31] Sorry. He is in the right one.
- 24 PRESIDING JUDGE SCHMITT: [10:39:33] No problem, no problem.
25 But I think, Mr Ovuga, you have the right bundle, so to speak. But please give it

1 a try, if you can read it. It's relatively -- it's not so small, the type, I think you might
2 be able to do that.

3 THE WITNESS: [10:39:49] Unfortunately these are not reading glasses, that is why I
4 said I cannot --

5 PRESIDING JUDGE SCHMITT: [10:39:57] Then we help each other in that way, that,
6 Mr Gumpert, you read out to him what you want to refer to.

7 MR GUMPERT:

8 Q. [10:40:03] I will do that anyhow, but Professor, the -- I'm sorry, that sounded
9 discourteous, I apologise.

10 You have had that document since Friday, haven't you, last Friday?

11 A. [10:40:20] If you are referring to this as the transcripts --

12 Q. [10:40:23] I'm not. I'm just talking about that document, it's a document
13 the Prosecution created and provided a week ago so that you would have time to look
14 carefully at it. Have you done so?

15 A. [10:40:37] I have seen it for the first time on the desk today, this particular
16 folder.

17 Q. [10:40:47] Forgive me, Professor, that's not the question. Were you provided
18 last Friday with a document which contained extracts from what 16 witnesses -- not,
19 not all of that --

20 A. [10:41:01] Mm-hmm.

21 Q. [10:41:02] Not that.

22 A. [10:41:02] Yes.

23 Q. [10:41:04] A document which contained extracts from what 16 witnesses,
24 Defence and Prosecution, have said in the course of this trial on oath --

25 A. [10:41:09] Yes.

1 Q. [10:41:12] -- when they have given their evidence?

2 A. [10:41:17] Yes, that one, that is what I was going to say, that that is what I looked
3 at. But not as it appears in this.

4 PRESIDING JUDGE SCHMITT: [10:41:25] I think we can shorten this. I assume,
5 and perhaps either Mr Gumpert or Mr Ovuga are contradicting me, that simply this
6 bundle is sort of materialisation of the material Mr Ovuga has been looking into, or
7 not?

8 MR GUMPERT: [10:41:43] Just this one tab is not a materialisation, is exactly what
9 he had last Friday.

10 PRESIDING JUDGE SCHMITT: [10:41:50] I meant exactly what you meant. It's
11 simply, this is a bundle and obviously has had it in another form, if you will,
12 electronic or whatsoever.

13 So, he has said that he has read it. It's not, it's not important if he has read it in this
14 bundle. It's important that he has read the content and the document as such. And
15 from that we proceed and you read out to him. And since he has read it, this also
16 facilitates your questioning, of course, because it will trigger memory in the witness.

17 MR GUMPERT: [10:42:23] Yes.

18 May we have the control of the floor so that we can display the diagnostic criteria of
19 dissociative identity disorder on the screen?

20 PRESIDING JUDGE SCHMITT: [10:42:45] What we have done also when you
21 questioned Dr Akena, yes, of course.

22 MR GUMPERT: [10:42:49] Thank you. For those who want to read it in full from
23 the original, the DSM diagnostic criteria are copied at Prosecution tab 11 in the same
24 bundle. But what is not yesterday appearing on the screen --

25 PRESIDING JUDGE SCHMITT: [10:43:11] But I think it will soon. Yes, it's already

1 there. Okay.

2 Please wait just a second so that we have also the service for the witness, that he
3 also -- he knows it of course by heart, but nevertheless, sometimes it's also good if you
4 have this additional information.

5 MR GUMPERT: [10:43:37]

6 Q. [10:43:38] Professor, I want to look at the building blocks of dissociative identity
7 disorder. And just so you are aware, I will not be dealing with the criteria of this
8 disease which are common to all three.

9 So if we look at A, "Disruption of identity characterised by two or more distinct
10 personality states, which may be described in some cultures as an experience of
11 possession."

12 Now, you concluded that in Mr Ongwen's case, and I quote you from your second
13 report at 0971, "These personalities were obvious ... to his colleagues who interpreted
14 his behaviour as being possessed by the spirit."

15 That was what Mr Ongwen told you, wasn't it?

16 Can you take us to any specific account from any of the people who knew

17 Mr Ongwen in the bush talking about him having two distinct personalities or about
18 him being possessed or is it all from Mr Ongwen's mouth, as far as you're concerned?

19 A. [10:44:59] Well, we had no opportunity to talk to any of his colleagues other
20 than the four, so what we wrote there was based on his accounts.

21 PRESIDING JUDGE SCHMITT: [10:45:17] We had, we had this several times. I
22 think it's clear what kind of material the expert witness has considered for the report,
23 together with Mr Akena.

24 MR GUMPERT:

25 Q. [10:45:26] I'm looking at extract 2, that's an extract from the testimony of

1 Witness D-0027, so this is a Defence witness. He was abducted as a boy at about the
2 same time as Mr Ongwen. He knew him both before and after he became one of the
3 bigger commanders in the LRA. He recalled that Mr Ongwen did not change. He
4 actually mentioned that unchanging character twice.

5 If I go to the next extract, extract 3, again a witness called by the Defence, D-56, this
6 witness was under Mr Ongwen's command in the Oka battalion. He knew him well,
7 he thought that Mr Ongwen was a normal person and he never observed any change
8 in his personality.

9 Now, what those two witnesses testified about doesn't sound like a description of
10 a man who is dissociating three times a week with his body being taken over by
11 a completely different personality, does it?

12 A. [10:46:45] You and I and everybody else in this room is aware that there is no
13 mention of any specific time during which those two witnesses interacted with
14 Mr Ongwen.

15 Q. [10:47:11] That's wrong, Professor. They have both given a clear account of
16 when they were interacting with him and it included periods during the charged
17 period.

18 A. [10:47:22] The problem though is, multiple identity disorder, or any form of
19 dissociation, does not occur all the time every day.

20 You might wish to know or note that particularly during periods when Mr Ongwen
21 either was asked to go to the battlefield or he was under stress that was when he
22 would dissociate. Not all the time.

23 PRESIDING JUDGE SCHMITT: [10:48:19] Mr Gumpert, please wait a come of
24 seconds with your next question. I am only relaying the information that I get from
25 the interpreters. It's a little bit different than normally because I have not the

1 impression that it is so speedy, but the situation is as it is and we have to cope with it
2 today.

3 MR GUMPERT: [10:48:39]

4 Q. [10:48:41] Let's look at some Prosecution witnesses. They too were with him at
5 the relevant times.

6 Extract 9, P-142, one of his senior subordinates, he told the Judges: "I did not notice
7 anything ... strange."

8 P-205, also one of Mr Ongwen's subordinate officers at the relevant time, described
9 Mr Ongwen as nice, straightforward, caring, helpful.

10 These are the people who were fighting with him. These are the people who
11 were -- these are the people who were in combat situations with him. These were his
12 fellow fighters.

13 I will come to what his wives said in a moment, the women he regarded as his wives.
14 They would notice if he was dissociating, if he was becoming a completely different
15 person three times a week, wouldn't they, when they're going into battle?

16 A. [10:50:01] You will recall yesterday me recounting what -- although we seem to
17 be disregarding what he says, you will remember me recounting what he said, that
18 him being - it was probably this morning - him being brave, a good fighter, was more
19 than just being a good fighter, a good soldier. Meaning there was something in
20 general that his subordinates and colleagues noticed about him compared to other
21 fellow fighters.

22 Let us remember also that these witnesses, both Defence and Prosecution, were lay
23 people, who under circumstances of combat or domestic life would not notice what
24 was wrong with their colleague; lay people. Even amongst doctors, those who have
25 not had the opportunity and privilege to train in mental health would not readily

1 recognise that someone is dissociating.

2 So let us interpret, I request that we interpret these passages read to me with caution.

3 Q. [10:52:22] Professor, the reason I asked you about the building blocks is because
4 you need to be an expert to make a diagnosis. But to notice, to use Dr Akena's
5 words, that something is amiss or that something is wrong, in the example that you
6 gave of the returned fighter, you don't need to be an expert, do you? The reason
7 why mental illness is so debilitating is because it impacts on ordinary life and it is
8 noticed, its terrible effects are noticed by the ordinary people who live around you.
9 That's right, isn't it?

10 A. [10:53:08] It is right, Mr Gumpert. But that becomes obvious when, as
11 Dr Akena says, someone suffers from a psychotic disorder, and he listed to us the
12 three well-known psychotic disorders that together form what is referred to as severe
13 mental illness.
14 Any other form of mental illness, including this one we are talking about, nobody
15 would, nobody who is even a medical doctor, general medical doctor would not
16 recognise just on the face.

17 Q. [10:54:03] Doctor, I have to challenge you there. If you have two distinct
18 personalities, one of which is nice, kind, reasonable, fair, the other of which is vicious,
19 violent and angry, and you are alternating between those personalities, as
20 Mr Ongwen told you he was as often as three times a week, ordinary people, even
21 lawyers, people who work in other fields, not doctors, are going to notice, aren't they?
22 It's only commonsense.

23 A. [10:54:40] It is not commonsense. And commonsense does not apply to
24 everybody.

25 I maintain that people who do not suffer from severe mental illness cope with their

1 disability, to the extent that those around them will not notice that there is something
2 wrong. In most cases they will not notice.

3 Q. [10:55:21] So let's just try and understand the mechanism. Dominic's with his
4 soldiers and the women he regards as his wives. The other Dominic, the Dominic B,
5 the nasty, vicious, angry, violent one, comes upon him, but Dominic A is able, by
6 coping, to disguise to the outside world Dominic B's true personality and to pretend
7 still to be Dominic A. Is that what's happening?

8 A. [10:55:53] Yes.

9 Q. [10:55:56] Professor, I suggest that that is --

10 A. [10:55:59] Not correct.

11 Q. [10:56:00] -- a nonsense.

12 PRESIDING JUDGE SCHMITT: [10:56:02] I think on that, I think it would be a good
13 opportunity now to have really a break, I would say. Until 11.30, we have a coffee
14 break. I think we should stop these nonsense things.

15 THE COURT USHER: [10:56:19] All rise.

16 (Recess taken at 10.56 a.m.)

17 (Upon resuming in open session at 11.32 a.m.)

18 THE COURT USHER: [11:32:16] All rise.

19 Please be seated.

20 PRESIDING JUDGE SCHMITT: [11:32:27] First of all, let there be light.

21 Let me --

22 MS LYONS: Okay.

23 PRESIDING JUDGE SCHMITT: [11:32:34] Please listen to me, Ms Lyons, and I think
24 you will stop then, you will not have to say anything.

25 Before we continue I would like to make a short remark.

1 It might have been what we might have gone under in the general atmosphere of
2 departure before the break. If we have a different opinion in this courtroom, we say
3 "I have a different opinion. I disagree. I dispute." But we don't say it's nonsense
4 what the other person says. I just wanted to clarify that.

5 And I think we should give the witness expert the opportunity, perhaps. Please,
6 please don't talk about what is nonsense or not nonsense, you have heard what I have
7 said. But I think it might be -- I don't know, but it might well be that you want to
8 add something to what you said to make it more clear. I assume it, but perhaps I'm
9 wrong.

10 MS LYONS: [11:33:52] May I be heard briefly, because I think the Defence -- two
11 brief comments, your Honour. I listened to what you said. I want to say, share
12 with the Court and the parties and participants really two or three very brief
13 comments.

14 I'm reacting now because I honestly was in shock. Usually, as you know, I jump up,
15 right? Okay, but I was in shock because I didn't expect -- I didn't expect the use of
16 the word "nonsense" to describe what had happened.

17 And from the Defence point of view, I'm obligated to put on the record that we
18 consider the characterisation by Mr Gumpert as disrespectful and patronising.

19 I also want to say that the client has a view of this. The events that Professor Ovuga
20 was talking about were the client. He feels abused by this, he feels disrespected.

21 He can't speak now, but I'm speaking for him that the severity of and the existence of
22 mental health illness in the client, you can challenge it, you can dispute it, but you
23 can't do it in a way that negates his -- the experiences. And it's disrespectful in
24 general to an attitude towards mental illness. It's a problem.

25 And I think that this Court is not about that. You have made it clear from your

1 position.

2 PRESIDING JUDGE SCHMITT: [11:35:14] Yes, so --

3 MS LYONS: [11:35:15] That's why I think I wanted to put that on the record that we
4 have to conduct ourselves -- or the Prosecution has to conduct itself differently, not
5 just for the witness's sake, but also for the client's sake. He is a human being, sitting
6 there listening to, you know, Dominic A and Dominic B and everything, and it's
7 difficult.

8 So I really feel that the Prosecution, from our point of view, was simply out of line to
9 make this characterisation and my team has asked me to put this on the record.

10 Thank you.

11 PRESIDING JUDGE SCHMITT: [11:35:44] Thank you, Ms Lyons.

12 But I think and I thought and I still think that the issue is solved with my remarks that
13 I made before you made yours, I think.

14 And also let's not forget, don't be too harsh. What we are dealing with are serious
15 matters and there is always tension in the courtroom and everybody here, except the
16 Judges, have their interests, you have your client, the Prosecution has its interests,
17 and it's absolutely normal that sometimes you get a little bit carried away. So we
18 should, I think, now finish this. I think it's done. And Mr Gumpert may simply
19 proceed. And it's not that we recognise this as something that should last, I think it's
20 now solved and over and we proceed normally.

21 Please, Mr Gumpert, continue.

22 First the witness, I have forgotten that I gave the witness the floor. If you want, of
23 course, if you want to clarify things or simply explain a little bit more, you have the
24 time that you need.

25 THE WITNESS: [11:36:57] Your Honours, your remarks and the remarks of the

1 Defence seem to have put me in an awkward position, because what both of you have
2 said was what I was going to say. I have travelled for seven hours in the air, one
3 hour plus from the airport to here to provide support to all parties, as I said earlier.
4 I have come as a witness. I have come not as a suspect on trial. I have come with
5 full respect to everybody, but particularly the Judges, and therefore, to characterise
6 my views as nonsense is not fair. Let me use the word "not fair".
7 We should discuss, as your Honour has said, we should discuss as adults. Adults
8 have different views and adults have to learn to respect each other's views and
9 discuss as adults, and that is what I am requesting. I'm willing to cooperate, but I
10 am not willing to have my answers rubbished as nonsense.

11 PRESIDING JUDGE SCHMITT: [11:38:49] I think, I think that's understandable, and
12 you have heard especially what I have said. And as I said, I think we can proceed
13 from here.

14 And let me put it this way, the Judges have a lot of experience in the courtroom, this
15 simply happens sometimes. But it's -- then it has to be addressed and then when it
16 has been addressed adequately, respectfully, then the issue is solved and over.

17 And with this, we continue with the examination by Mr Gumpert.

18 MR GUMPERT: [11:39:22] Let me say that I apologise. I was out of order. If I was
19 seeking excuses, I would blame hypoglycaemia, but I've fixed that with a sugary
20 coffee.

21 Q. [11:39:38] Professor, one last point in respect of criterion A, which is on the
22 screen in front of you. You have had the opportunity to look at extracts 6, 7 and 8 in
23 the document. Now these are three of the women whom Mr Ongwen regarded as
24 his wives, these are the women who were sharing his bed during the charged period,
25 these are people very close to him whom you would expect to notice if he was

1 exhibiting two different personalities, aren't they?

2 A. [11:40:26] One would have expected them to have noticed something amiss, but
3 as I have repeatedly explained, it is difficult for someone who is dissociating to
4 exhibit signs and symptoms of or features of dissociation all the time, most of the time.
5 As laypeople, these women would normally not have noticed it, or if they noticed it,
6 they probably explained it, as you said earlier on, and it is on the screen, as an
7 experience of possession or as an effect of -- the aftereffects of battle activities, so they
8 would regard this as normal.

9 Q. [11:41:40] But, Professor, you're speculating there, aren't you? In fact, there is
10 no such evidence, nobody thought that he was possessed; that's right, isn't it?

11 A. [11:41:55] One would have to have an answer as to why they did not notice, and
12 speculations are explanatory models to understanding events around us.
13 Speculation is not abnormal.

14 PRESIDING JUDGE SCHMITT: [11:42:24] So obviously there is a little problem with
15 the English transcript, but since the witness speaks English, everybody else in the
16 courtroom speaks English, and obviously the translation functions so that the accused
17 can follow, we simply continue and it may be corrected in the process.

18 I won't make a break here to fix this. Simply because there is a little bit of unrest
19 here, it might be noticed, and I don't like that, if it is noticed.

20 Please, Mr Gumpert.

21 MR GUMPERT:

22 Q. [11:42:58] I want to move briefly to B.

23 Now, as we've seen, when you first -- or, when Dr Akena first met Mr Ongwen,
24 Dr Akena was satisfied that both his short-term and his long-term memory were --

25 A. [11:43:20] Yes, proceed. I am following you.

- 1 Q. [11:43:23] It's I who's distracted, Professor.
- 2 PRESIDING JUDGE SCHMITT: [11:43:26] If we have now any discussions about
3 this, so what's the problem, Professor Weierstall?
- 4 MR WEIERSTALL: [11:43:36] I'm sorry to interrupt. It's just that I thought that also
5 my task would be to report, or to give my comments on Monday, on Tuesday next
6 week, and the problem is that the real-time transcript is not working and it's very
7 hard to take any notes while listening to Professor Ovuga. And I don't want to quote
8 him in the wrong way, and that's the only issue I have. That's why I was
9 (Overlapping speakers)
- 10 PRESIDING JUDGE SCHMITT: [11:44:02] I understand.
- 11 Of course this is what I am always saying, because, for example, in Germany, we
12 don't have a transcript at all. And we have a discussion now that it might be helpful,
13 because indeed, as you say, if you have to take notes and at the same time listen,
14 you are distracted. That's clear.
- 15 But isn't it -- I assume that this will be fixed in the course of this morning and then it
16 is not lost, you can be provided with lost parts of the transcript by the Prosecution.
17 Or can't you?
- 18 MR GUMPERT: [11:44:31] No, I think I can reassure Professor Weierstall that, in our
19 past experience when this has happened, not very often, there comes a time when
20 suddenly you get five page -- the missing five pages. So although it may not be
21 instant, it's not lost forever.
- 22 PRESIDING JUDGE SCHMITT: [11:44:48] So you -- it -- the pages of the transcript
23 are not lost and therefore you are not lost, let me put it this way.
- 24 And -- but that's interesting, because it's actually what you don't mind, but I'm
25 thinking aloud now, it's exactly what we are talking in Germany at the moment, yeah.

1 MR GUMPERT: [11:44:04] We too in England. Currently in England it is the
2 judge's job to make the court record.

3 PRESIDING JUDGE SCHMITT: [11:45:10] That's the same in Germany, and it's
4 much disputed. And I have now the privilege to work here in this environment
5 where I don't have to make notes. And I really appreciate it a lot that we have these
6 transcripts, because I, I have the comparison with the other system and how
7 distracted I have been when I had to take notes, which of course in themselves are
8 very subjective and perhaps not, not objective, not correct, and at the same time listen
9 to what an expert or a witness said.

10 But this is a little bit distracting, but why not sometimes talk about matters that are
11 not perhaps at the centre of the discussion that we have here normally in this
12 courtroom.

13 Mr Gumpert, please proceed.

14 MR GUMPERT: [11:45:54] Thank you.

15 Q. Professor, perhaps it's a point I've laboured too much. His first presentation to
16 you was good memory, no amnesia. The only contraindication is his developing
17 story to you of what's going on inside his head. There is no objective corroboration
18 of that at all, is there?

19 A. I have also laboured a lot to say I agree with you. We sought to have
20 interviews with more people back home, but those persons were not availed to us to
21 interact with. The only people, as both of us have said, that we were able to
22 interview were the four, one of who was interviewed by my colleague.

23 Q. [11:47:10] And indeed those four I think were universal in describing him to you
24 as a good administrator?

25 A. [11:47:17] Yes.

1 Q. [11:46:19] People who are good administrators tend not to have faultily
2 memories, would you agree?

3 A. [11:47:25] These faulty memories were for personal events and all traumatic
4 events that are considered by the two diagnostic systems as not being comparable to
5 ordinary forgetfulness.

6 There is bio -- neurobiological basis for it. So they don't just forget, but the structural
7 biochemical and physiological changes that trauma imposed on their brains are the
8 ones responsible for their forgetfulness, which is more than ordinary forgetting.

9 So I accept that initially this was not possible for him to recall anything about himself,
10 but with subsequent interviews and interactions with him, he was able to tell us
11 things that he could remember in succession, up to the point when we last saw him.
12 So it is not inconsistent.

13 Q. [11:48:52] Well, we have been there on the definition of inconsistency. My
14 suggestion is: Being a good administrator is inconsistent with having recurrent gaps
15 in recall of every day events.

16 I'll move on to major depressive disorder.

17 PRESIDING JUDGE SCHMITT: [11:49:10] This will be also put up on evidence
18 screen 2?

19 MR GUMPERT: [11:49:12] Yes, if that's useful.

20 PRESIDING JUDGE SCHMITT: [11:49:15] of course, of course, it's -- although, in the
21 meantime, even the Judges might, might know the definition, but it's of course good if
22 we have it here on the screen.

23 MR GUMPERT: [11:49:25] And I emphasise the -- I should say now, Prosecution
24 tab 10 for the photocopy of the *ipsissima verba*.

25 PRESIDING JUDGE SCHMITT: [11:49:33] Yes, thank you.

1 MR GUMPERT:

2 Q. [11:49:38] I want to take the first two of those together.

3 A person who is suffering from major depressive disorder is or has a depressed mood
4 most of the day, nearly every day, and is exhibiting markedly diminished interest or
5 pleasure in all, or almost all, activities most of the day, nearly every day.

6 Yes?

7 A. [11:50:10] Yes, according to the two diagnostic systems.

8 Q. [11:50:15] And you would agree -- sorry, that was probably too fast.

9 And you would agree that that's a -- that that's a diagnostic system arrived at by
10 consensus --

11 A. [11:50:22] Yes.

12 Q. [11:50:25] -- internationally?

13 A. [11:50:26] Yes.

14 Q. [11:50:28] And it's a view which you share?

15 A. [11:50:27] Yes.

16 Q. [11:50:30] This is a diagnostic system you yourself and your colleague have used
17 in formulating your report?

18 A. [11:50:35] Yes.

19 Q. [11:50:40] I want to take the examples of some of the sworn evidence of
20 Mr Ongwen's contemporaries:

21 Extract 1, this is a Defence witness, D-26. He's a junior officer in another unit, he
22 knew Mr Ongwen but he wasn't serving under him, so one may think he's a little
23 more distant than some of the other people that I have spoken about.

24 But he repeatedly said that having known Mr Ongwen from youth up, even when he
25 became a commander, Mr Ongwen, he liked to joke and make fun with his juniors.

1 And if I take extract 4, that's D-75 --

2 PRESIDING JUDGE SCHMITT: [11:51:33] Perhaps it would -- of course, we would
3 find it anyway, but if you say where in the transcripts it is, it's easier then, then we
4 have it in this transcript and it's easier to follow, if this is possible. If it is, perhaps
5 Ms Gilg can help you here. So it makes the transcript in, for example, when I read it
6 later, easier for me also to find things.

7 MR GUMPERT: [11:51:55] Yes.

8 Q. So, T-225, page 5, for what I'm about to say.

9 D-75 served under Mr Ongwen for 10 years and he contrasted Mr Ongwen with other
10 commanders whom he characterised as brutal. Mr Ongwen was not that. And
11 again, he said Mr Ongwen liked to play with junior soldiers and children, his
12 characteristic was that he liked to joke around.

13 And then one more, extract number 5, another Defence witness in fact, D-118. She
14 was abducted as a young girl and assigned to the Sinia brigade, that's Mr Ongwen's
15 brigade. Later, during the charged period she was in a sickbay together with
16 Mr Ongwen when he was injured. The transcript reference T-216, page 31, she
17 remembers him as a kind and loving person who talked to everyone.

18 Now, that's a variety of people who knew him reasonably well or sometimes
19 extremely well and in different ways. They aren't describing a person who is
20 showing a depressed mood most of the day nearly every day, who -- or, who's got
21 markedly diminished pleasure in life, are they?

22 A. [11:53:44] Can I now respond?

23 Q. [11:53:47] That's why I pause, Professor. Yes, please do.

24 A. [11:53:52] My colleague on Tuesday told us about masked depression. Masked
25 depression is a kind of depression which may be major, it may be minor, which is not

1 exhibited with A1, A2 features and it does not ordinarily lead to dysfunction.
2 So an individual who is able to - in quotes - mask his or her inner feelings will appear
3 normal, he or she will function normally, and so there should be no surprise that his
4 associates could not tell that there was something amiss.
5 But something else to add is that these various people were describing Mr Ongwen
6 during the charged period when Mr Ongwen was one of the senior officers. Maybe
7 not at the top but he was one of the senior, and as a senior person he was obligated
8 to and he was expected to perform his duties to the best of his ability and to the
9 expectations of the system.
10 So again, there should be no surprise that people close to or in his -- under his control
11 could not tell the difference between what is normal and what is not normal.
12 I am not saying this because I am a Defence witness, I am saying this for the
13 consumption of everybody in this international courtroom. Let me make it clear that
14 I have no interest in saying things that will not be on benefit -- of benefit to the
15 Prosecution or to victims. In fact, Ongwen himself is a victim. From being a child,
16 up to when he reached the time of 2002 up to now, given the history, given his
17 life-long experiences, he was forced into his situation against his will. He is a victim.
18 Q. [11:57:52] The kind of depression which you have just described, masked
19 depression, means that a person is able to function, you told us.
20 A. [11:58:04] Mm-hmm.
21 Q. [11:58:07] So with such a condition there would be no possibility of the
22 destruction of a person's capacity to understand what they were doing, for example?
23 A. [11:58:21] In his case yes, I answer -- sorry, the answer is yes, except when he
24 dissociates. After he has dissociated and he's during that period of dissociation, then
25 he will not be able to understand. But otherwise, under normal circumstances, he

1 understands.

2 Q. [11:58:46] But, Professor, I thought before the break you had told us that when
3 he was dissociating the kind part of his personality was able to control the unkind
4 part of his personality. That is what you said, isn't it?

5 A. [11:59:09] When dissociation -- okay, let me put it this way in clarification.
6 The severity of dissociation may vary from moment to moment. When the
7 dissociation is mild and he is able to -- one person is able to control the other person,
8 then that individual will be able to function and understand. But when the
9 dissociation has become worse, severe, then the other, in his case the rude, violent,
10 hostile person, takes over and the normal Mr A would not understand.

11 Q. [12:00:03] And at that point the people around him would be noticing, which
12 they didn't?

13 A. [12:00:07] They are lay people.

14 Q. [12:00:09] Well, even lay people can tell the difference between somebody who's
15 kind, generous, affectionate and somebody who is rude, violent and aggressive, can't
16 they, Professor?

17 A. [12:00:23] At the beginning of this session I recall saying that his fellow fighters
18 reported to him, and this is what he reported to us, that his being brave, courageous,
19 good fighter was more than just being a good soldier, which means they were able to
20 tell the difference. It is unfortunate that people that you have quoted were not able
21 to provide this information during their testimonies.

22 Q. [12:01:17] Well, they had every opportunity to provide all of their recollections,
23 Professor.

24 A. [12:01:25] Yes, yes.

25 Q. [12:01:25] Let me address what you have just said. Mr Ongwen has told you

1 that other people noticed that his bravery, his qualities as a soldier had
2 an extraordinary, an over brave aspect to them.

3 A. [12:01:42] Mm.

4 Q. [12:01:43] Let me remind you of something which is to be read in the document
5 which you received last Friday.

6 I'm looking at extract number 3.

7 I'm hoping Mrs Gilg will be able to -- yes, I'm grateful.

8 So we are in transcript T-228 at page 48 and, later, transcript T-229 at pages 33 and 34.

9 PRESIDING JUDGE SCHMITT: [12:02:29] Please proceed.

10 MR GUMPERT: [12:02:31]

11 Q. [12:02:31] This is D-56, one of the witnesses called by the Defence. He was in
12 the same battalion as Mr Ongwen for about six months in 2002 and he spoke at some
13 length about Mr Ongwen's qualities as a soldier and as a commander. He said that if
14 Mr Ongwen knew that something was going to bring problems for his soldiers he
15 would not engage in it, and that's why his soldiers loved him.

16 And he went on, he wouldn't just engage in something without being sure. And he
17 said, if there's an order from a senior, he, Mr Ongwen, would sit down with his
18 officers and they would assess. And if they feel that this order is not practicable or
19 feasible, Mr Ongwen would object to complying with it.

20 A. [12:03:39] I remember reading that, yes. Yes.

21 Q. [12:03:43] Yes. Now, that's not madcap bravery, is it? That is measured,
22 considered, highly skilled command whereby somebody who's given a tactical
23 objective discusses it with his subordinates and, if it's not feasible, has the courage to
24 tell the higher-ups that it can't be done.

25 A. [12:04:07] You are right. But - if I may say but - in my own assessment of the

1 various descriptions that you have read and which I accept I read, what you are really
2 doing is shooting the Prosecution in the foot because the Defence can argue that this
3 man who is on trial, apart from being a victim, he is not a vicious, evil-minded,
4 ill-mannered individual.

5 PRESIDING JUDGE SCHMITT: [12:05:07] Mr Witness, but that is something
6 different. I think where Mr Gumpert wanted to have your answer, on the backdrop
7 of your expertise. The Defence will argue, will argue in a certain way, I'm sure.

8 THE WITNESS: [12:05:25] Yes, I am sorry. I am sorry. But I did offer the answer
9 yes, but I said --

10 PRESIDING JUDGE SCHMITT: [12:05:33] And I have understood.

11 THE WITNESS: Yes.

12 PRESIDING JUDGE SCHMITT: But it was again a comment by me. Mr Gumpert.

13 MR GUMPERT: [12:05:36]

14 Q. [12:05:39] Let's look at A3; "Significant weight loss when not dieting or weight
15 gain".

16 Now, you've observed that Mr Ongwen has put on a certain amount of weight in
17 detention?

18 A. [12:05:54] Yes.

19 Q. [12:05:55] There is no evidence at all of any weight variation during the charged
20 period, is there, that you're aware of?

21 A. [12:06:03] Mr President, I cannot give a comparative answer to that question,
22 because during the charged period I had no interaction with Mr Ongwen. I even
23 didn't know how he looked like, so I don't think I can fairly make a comparative
24 description about his weight.

25 PRESIDING JUDGE SCHMITT: [12:06:39] I think you can move on, Mr Gumpert.

1 MR GUMPERT: [12:06:41] Yes.

2 Q. [12:06:42] I'm going to take criteria 4, 5 and 6 together:

3 Insomnia or hyperinsomnia, so sleeping too little or sleeping too much, nearly every
4 day. Psychomotor agitation or retardation nearly every day. Fatigue or loss of
5 energy nearly every day.

6 Now this Court has heard testimony from seven of the women whom Mr Ongwen
7 regarded as his wives, testimony from three of them is summarised in the table which
8 you have seen. You would expect the people living in Mr Ongwen's household,
9 sleeping in his bed to notice if he was exhibiting these characteristics, wouldn't you?

10 A. [12:07:30] I would, but I would explain it in a manner which I did previously.

11 Q. [12:07:47] I want to look at criterion A7, "Feelings of worthlessness or excessive
12 or inappropriate guilt".

13 And here, your Honours, I'm going to be looking at tabs 21 and 22 in the
14 Prosecution's binder.

15 Professor, it's okay, I will read to you and summarise. And if Ms Lyons thinks I'm
16 not doing a fair job, she will stand up and tell me.

17 A. Thank you.

18 MS LYONS: [12:08:19] I just want to say something about tabs 21 and 22, now that
19 we have gotten to them, if I may.

20 First of all, I understand that, just in terms of form, tab 21 as well as tab 22 are
21 representations from a tape where Mr Ongwen's voice is alleged, if I'm correct. And
22 the Defence takes the position that Mr Ongwen is pleading not guilty and there has
23 been no finding of this Court as to whether it is in fact his voice.

24 Now it's premature to have that finding, but in fairness to the expert, these should not
25 be presented as this is Mr Ongwen's voice.

1 PRESIDING JUDGE SCHMITT: [12:09:23] Ms Lyons, you can be sure that I would
2 have addressed it if Mr Gumpert would not have made it clear what it is about. So
3 this has still to be found out, what's going on here, but as a supposition, so to speak,
4 he can put it to the witness and make clear that it's alleged, alleged that Mr Ongwen
5 has said this. Yes?

6 Mr Gumpert. And by the way, 22, I would really also appreciate if you read it
7 because the copies are not so brilliant that we have here.

8 MR GUMPERT: [12:09:55] Yes. And I'm sorry for that.

9 Q. [12:10:00] Now, tab 21, this is a transcript and the English translation of a man
10 whom two prosecution witnesses have identified as Mr Ongwen - that's in dispute, as
11 you have heard - speaking on the radio shortly after an attack by the LRA at Koch
12 Ongako in February 2004. So it's in the middle of the charged period. And I'm
13 going to read some of the things which the man whom it is alleged was Mr Ongwen
14 said:

15 "... some people were competing with me somehow then I went and showed them the
16 greatness of God. ... then I beat them and chased them away, I scattered and even
17 burnt all their defence. ... I chased all of them, I burnt all the defence. ... Here are the
18 things that were got."

19 And he then begins to list various weapons which it's being alleged have been seized,
20 have been looted, have been taken in the course of the fighting.

21 So that's what can be heard on the sound recording in February of 2004.

22 Now if that is Mr Ongwen speaking, and it will be for the Judges to decide that, but if
23 it is, that's not a man who is suffering from an excess of worthlessness or guilt, is it?

24 A. [12:11:50] Earlier I had indicated my doubts about the authenticity of audio
25 recordings. But that aside, you see, this criterion or criteria you have read out, they

1 are qualified by most of the time, almost every day, usually for the past two weeks.
2 There is another type of depression which is not there all the time, it is recurring. It
3 recurs from time to time.
4 And in addition to what I have said that some forms of depression may be masked, it
5 would still not be inconsistent that if the audio recording were due to that -- were
6 those of Mr Ongwen, I would still not be surprised that he would have had time to
7 say it, although he was probably suffering feelings of guilt or inappropriate -- sorry,
8 excessive guilt or worthlessness. But I'm not sure. I cannot give a firm position on
9 this because, as I said, I was not there during that alleged time. If I was there and I
10 was given the opportunity to examine him, I would have probably uncovered feelings
11 of excessive or inappropriate guilt, feelings of worthlessness during that charged
12 period. So I'm sorry, here I'm being made to speculate, because, as I said, I had no
13 contact with him.

14 Q. [12:14:44] Professor, I don't ask you to speculate. I ask you to comment on the
15 sworn evidence or the technical evidence which this Court has received.

16 One more example. Two, in fact. These are messages which were intercepted by
17 the Ugandan internal security organisation in September of 2004 and --

18 PRESIDING JUDGE SCHMITT: [12:15:11] Ms Lyons, you can --

19 MS LYONS: [12:15:12] This is the same objection.

20 PRESIDING JUDGE SCHMITT: [12:15:13] Same procedure like the last time. Mr --

21 MS LYONS: [12:15:16] Same objection.

22 PRESIDING JUDGE SCHMITT: [12:15:20] Yes, same objection and (Overlapping
23 speakers)

24 MS LYONS: [12:15:17] The 22, and I can (Overlapping speakers)

25 PRESIDING JUDGE SCHMITT: It is sustained in anticipation, but only halfly

1 because I assume that Mr Gumpert will solve the problem by simply telling and
2 putting into perspective what we are talking about here and that it is disputed and so
3 on and so forth, same thing.

4 MS LYONS: [12:15:42] Thank you, your Honour.

5 MR GUMPERT: [12:15:43]

6 Q. [12:15:44] Professor, very briefly, the Ugandan security services were
7 monitoring LRA radio messages. You probably know that already.

8 A. [12:15:54] Mm.

9 Q. [12:15:55] And we have heard from a number of the operatives who were
10 conducting that monitoring operation, and they were keeping logbooks of the
11 messages which they intercepted, and their evidence was that they had become
12 familiar with the voices of the LRA commanders through the course of their work
13 over months and years.

14 And in the course of their duties - and this is disputed, the accuracy of their
15 identification, by the Defence - they intercepted a radio message from a man whose
16 voice they believe, they identified as Dominic Ongwen's voice. Let me give you two
17 examples, as I say, September 2004, within the charged period.

18 "Meanwhile Dominic told Okulu that his soldiers these days have a lot of morale.
19 He said very soon Okulu will hear his name on Radio Mega FM concerning his
20 deeds."

21 And then just six days later:

22 "Dominic said UPDF and civilians always keep singing that LRA should all come out
23 of the bush if they don't want to get finished. He said all those are rubbish. He said
24 as they keep saying that he will organise more atrocities. He said he does not want
25 to hear such foolish talks at all."

1 If this is Mr Ongwen speaking, he is displaying the opposite, is he not, of what is
2 characteristic of a depressed person with feelings of worthlessness or inappropriate
3 guilt? He is boasting about his activities. That's the opposite of how you would
4 expect such a person to behave, isn't it?

5 A. [12:18:03] Let us remember that I talked about our suspicion that Mr Ongwen
6 could have been suffering or might have been suffering from bipolar illness. But
7 there was no evidence of bipolar illness when we examined him in 2016 and 2018.
8 However, the possibility that he has bipolar traits, not a disorder, but traits, those --
9 here, what I mean is that an individual has features consistent with being hyper,
10 high-performing individual, high morale, very tactful, very happy at one time, and
11 then at another time, he would be the opposite.
12 The problem with bipolar traits, it used to be called cyclothymic personality, is that
13 usually it is the happier side of the individual that is evident most of the time, and it
14 is possible and plausible that Mr Ongwen has had features of cyclothymic or bipolar
15 traits. So I would not be surprised if that was his voice and that was what he said he
16 was doing and was planning to do, I would not be surprised.

17 Q. [12:20:22] (Microphone not activated)

18 MS LYONS: [12:20:24] A quick point on the last. I just want the record to reflect
19 that the characterisation that this reflected the person as boasting was
20 a characterisation from the Prosecution. That is not in any of the originals.

21 PRESIDING JUDGE SCHMITT: [12:20:40] Ms Lyons, please, you can really be sure
22 and certain that the Judges can distinguish between what is written down and
23 recorded and disputed in that case, on the one hand, and on the other hand, some
24 wording and formulation by the Prosecution in that case. So I think that it's not
25 necessary to remind, that of course we have recognised that this was the wording of

1 Mr Gumpert.

2 Please continue, Mr Gumpert.

3 MR GUMPERT: [12:21:09]

4 Q. [12:21:11] I want to consider criterion A8, "Diminished ability to think or
5 concentrate, or indecisiveness, nearly every day".

6 I want to invite attention to extract 9, this is P-142, transcript 73, page 16: He was
7 tough on the rules. He always wanted things done according to the schedule.

8 Extract 13, D-32: He was a skilled military commander who really knew how to look
9 after his troops. That's at T-201, page 5.

10 You yourself, relying upon what the four witnesses you did manage to speak to,
11 characterise their descriptions of him as diligent, fearless, but kind, likeable and being
12 a good administrator. Now those characteristics can't coincide with a person who
13 nearly every day is having difficulties thinking or making decisions, can it?

14 A. [12:22:41] You are right, but I have a worry. The worry is whether Mr Ongwen
15 indeed did not have features of bipolar disorder -- sorry, traits. I'm also worried as
16 to whether these witnesses were talking about Mr Ongwen during the charged
17 period.

18 So otherwise I agree with you, with your views, but as I said earlier, I think we need
19 to interpret those transcripts with caution.

20 PRESIDING JUDGE SCHMITT: [12:23:41] And this will be done by the Judges.

21 Also we will also have the task later on to put this in a time frame that might fit or not
22 fit.

23 Mr Gumpert, please proceed.

24 MR GUMPERT: [12:23:56]

25 Q. [12:23:56] Lastly I come to criterion 9, "Recurrent thoughts of death, recurrent

1 suicidal ideation".

2 Mr Ongwen has told you a great deal of his suicidal feelings, both in the bush

3 (Redacted). One of the four individuals you spoke to said that on one occasion

4 while he was still a sergeant, Mr Ongwen had told her that he wanted to kill himself,

5 and that on a second occasion, around 2009, she had heard the same thing indirectly.

6 But, Professor, you had the opportunity to study the extracts which the Prosecution

7 has provided to you and the extracts or the summaries of the material from the other

8 three persons you spoke to. If a person is so depressed that they are making serious

9 attempts to kill themselves, you would expect the people he sleeps with, the people

10 who live in his household and the fighters he is commanding to notice, wouldn't you?

11 Particularly perhaps the latter, they are the people whose lives depend upon him in

12 combat.

13 A. [12:25:04] We are lucky that at least one confidante learnt about Mr Ongwen's

14 suicidal or self-harm feelings directly from him. We are also lucky that one other

15 person indirectly got to know about it. So I would not -- I would not dismiss the

16 recurrent suicidal ideations that he told us because at least two people got to know

17 about it, even before we did.

18 Q. [12:25:59] It's just one actually, one person making two reports, Professor.

19 PRESIDING JUDGE SCHMITT: [12:26:05] But I think, Mr Gumpert, the witness has

20 answered, and we have the evidence on the record and we have the reports, and we

21 know what he's referring to. You can continue.

22 MR GUMPERT: [12:26:15]

23 Q. [12:26:18] Last of the three illnesses which I have spoken of, post-traumatic

24 stress disorder.

25 And for those who want the DSM criteria repeated verbatim, that's at tab 12 of the

1 Prosecution binder. But again we will use the screen.

2 Now, Professor, I accept that Mr Ongwen accepts criterion A. I accept that he has
3 had exposure to actual or threatened death, serious injury, or possibly even sexual
4 violence. I want to go straight to B, the presence after the traumatic events of
5 various features. And I'm going to take the first three together, recurrent
6 involuntary and intrusive memories, recurrent distressing dreams, dissociative
7 reactions in which the individual feels or acts as if the traumatic events were
8 recurring.

9 Again, if this was happening to him on a regular and serious basis, you would expect
10 the people around him to notice, wouldn't you, the people who live in his household,
11 the people who sleep in his bed?

12 A. [12:27:34] I would expect they would notice. But as I explained before, they
13 would regard what they notice as the consequences of his involvement in -- in the
14 bush or bush activities. They would interpret this as spirit possession, signs of spirit
15 possession, and they would expect that if only rituals could be conducted,
16 Mr Ongwen would be normal. But otherwise, I cannot say that they did not notice.

17 Q. [12:28:31] Professor, you would expect them to say things like rituals need to be
18 performed?

19 A. [12:28:38] Yes, yes.

20 Q. [12:28:39] When they didn't say that, when either I or the Defence or sometimes
21 even the Judges asked witnesses, "What was Mr Ongwen like?" when none of them
22 said, "Oh, he was the kind of person who was so disturbed I thought rituals needed to
23 be carried out", that's an important piece of evidence, isn't it, for your forensic
24 consideration?

25 A. [12:29:03] I can assure you that Mr Ongwen himself reported his wish for rituals

1 to be performed if he was given the chance to go back home. You might dispute this
2 because it is subjective, but I can assure you that in the course of our discussions
3 Mr Ongwen did tell us about this.

4 Q. [12:29:45] I want to ask you about B4 and B5 together, "Intense or prolonged
5 psychological distress at exposure to internal or external cues" and "marked
6 physiological reactions to internal or external cues".

7 Again, the people who lived around him and the people who served as soldiers under
8 him are going to notice these things, aren't they, Professor?

9 A. [12:30:14] They would, but my explanation on earlier occasions still holds.

10 Q. [12:30:25] Forgive me, I have forgotten what it was. What is the explanation
11 for this feature of the disease which you have described not being observed by the
12 people closest to him?

13 A. [12:30:41] Signs of psychological distress would be things like self-isolation from
14 others, keeping quiet, avoidance of reminders, avoidance of places that remind the
15 individual of, of the traumatic events they went through.

16 And marked physiological reactions including sweating, fearful appearance, tremors
17 or visible tremulousness, being unable to rest or be at ease, which can be seen. Even
18 when somebody's seated down they would not be seated as comfortable as, for
19 example, I am seated. They would not when they are standing, not stand at ease as
20 you are standing. They will be restless on their feet.

21 And again, as -- as a commanding officer, someone who is to give example of courage
22 to his soldiers, someone who is expected to give examples of hope to his family
23 members, despite these signs of psychological distress and physiological reactions,
24 that individual would mask them and perform so that those around him would not
25 notice.

1 PRESIDING JUDGE SCHMITT: [12:33:14] Please move on, Mr Gumpert.

2 MR GUMPERT: [12:33:17] Yes, thank you.

3 Q. [12:33:19] Can we move on to C. We are dealing here with persistent
4 avoidance, avoidance of or efforts to avoid distressing memories and thoughts related
5 to the traumatic events or avoidance of external reminders.

6 There's a contradiction here, isn't there, Professor? You suggest that Mr Ongwen
7 was compulsively attracted to battle and fighting and danger, so his own report of his
8 symptoms run flatly contrary to this notion of avoidance, don't they?

9 A. [12:34:11] Yes, you are right, you are perfectly right and that is why we on our
10 last visit, during our last visit, we explored for possibility of obsessive-compulsive
11 disorder, which unfortunately we failed to reach at diagnosable level.

12 You also heard me, was it yesterday, suggesting to Professor Weierstall that he and
13 his group should explore the possibility that OCD and appetitive aggression might be
14 related.

15 So while you are -- you are completely right, it still does not negate the possibility that
16 he was -- he was attracted to battle. And in fact, one of his witnesses -- sorry, one of
17 his associates that we interviewed said he liked to fight, he was a good soldier. He
18 himself reported to us that his friends told him he had a spirit of fighting. Let us
19 here now remember that it is laypeople who are describing his behaviour in terms of
20 spirit influence, spirit of fighting. But otherwise, I fully agree with you.

21 Q. [12:36:36] We can move on to the second to last, I'm pleased to say, diagnostic
22 criterion: Negative alterations in cognitions and mood. And there are various
23 ways in which that might be -- yes, sorry, the slide was discrepant for
24 a moment -- various ways in which that may typically be exhibited: Inability to
25 remember an important aspect of traumatic events.

1 And I think we dealt with this earlier, didn't we, Professor?

2 A. [12:37:17] Yes.

3 Q. [12:37:18] That there's no contemporary corroboration for amnesia in the bush,
4 and indeed his own first account is flatly contrary. You agree with that, don't you,
5 that that's how it is?

6 A. [12:37:30] Mm-hmm.

7 Q. [12:37:31] "Persistent and exaggerated negative beliefs or expectations".

8 Again, Professor, you'd accept, wouldn't you, that the evidence -- you've made
9 a number of comments about how it might be interpreted, but at face value there's no
10 persistent exaggerated negative beliefs about a man who is transmitting radio
11 messages in the terms that we heard earlier?

12 MS LYONS: [12:37:57] Objection. Allegedly. I mean we -- I want the record to be
13 clear.

14 PRESIDING JUDGE SCHMITT: [12:38:02] Yes. Yes. Yeah.

15 MS LYONS: [12:38:03] I'm sure that Mr Gumpert understands what I'm saying and,
16 please, just to make the record clear and make it fair to the witness so I don't have to
17 keep jumping up.

18 PRESIDING JUDGE SCHMITT: [12:38:13] So, yes, yes this -- I think two things:
19 First of all, you are right insofar that it is alleged. But we had this before and I think
20 this was 10 or 15 minutes ago, so it's relatively clear to everyone, and it is especially
21 clear to the Judges who are sitting here, which are, in this regard I think, the
22 important ones.

23 And we have a very intelligent expert here and, to him, it's also clear that he
24 supposed to answer under the assumption that Mr Ongwen has said that but it might
25 not be true and it might have to be -- will have to be figured out somehow and is

1 disputed. I think this is clear.

2 So you can continue now.

3 MR GUMPERT: [12:38:56]

4 Q. [12:38:57] D3, "Persistent, distorted cognitions about the cause or consequences
5 of the traumatic event(s)".

6 Somebody who has got the wrong idea about what has caused something to happen,
7 particularly a military commander, is not going to be good at their job, are they?

8 A. [12:39:19] Put the question differently.

9 Q. [12:39:21] Yes, if I have -- if I think that the reason that I have arrived in this
10 courtroom - a traumatic event, I can tell you - is because a spaceship has landed on
11 the roof and little green men have deposited me here on the floor of the courtroom,
12 I'm probably not going to be very effective in the work that I'm doing. Would you
13 agree, Doctor -- Professor?

14 A. [12:39:49] In the first place, if -- let me replace you with me. If I held that belief,
15 based on experience on the, on the roof of the top floor, most likely that sort of
16 severity would force me to demonstrate it in my distorted behaviour. And of course
17 my boss, the spirit in this case we are talking -- we know who we are talking about,
18 would not even consider twice making me a commander or a leader of a group.

19 PRESIDING JUDGE SCHMITT: And --

20 THE WITNESS: Are we talking the same -- different words but the same thing?

21 MR GUMPERT: [12:40:49] I think we couldn't be more in agreement, Professor.

22 PRESIDING JUDGE SCHMITT: [12:40:54] And, by the way, we might also not be
23 sure how adequate the analogy is. This could also be disputed.

24 Please continue.

25 MR GUMPERT: [12:41:04]

1 Q. [12:41:04] I'm going to take D4: Persistent negative or emotional -- negative
2 emotional state; D5, markedly diminished interest in significant activities; D6, feeling
3 of detachment; D7, inability to experience positive emotions together, because we
4 have already looked at these as features of depressive disorder, major depressive
5 disorder, haven't we, Professor?

6 A. [12:41:29] Yes. You see, the problem is PTSD and major depressive disorder
7 co-exist, sometimes co-exist. Sometimes PTSD may be a consequence of depression
8 or vice versa. So it is not unusual for the different criteria that you have listed,
9 which are in front of me also, to be present in both of them.

10 And that is why Dr Akena laboured on Tuesday to explain that sometimes there may
11 be a need to tell which one came first and which one followed, and, if there is a third
12 one, why that third condition is the third one on the list.

13 In my exemplification I also said, sometimes, when two or three conditions co-exist,
14 yes, you put the one which developed first as the primary diagnosis and then you put
15 the others either as secondary diagnosis, or you still describe the first diagnosis and
16 say "with features of" and "with features of".

17 So this is the issue of why different disorders may have common symptoms and signs
18 and how we try and differentiate them.

19 PRESIDING JUDGE SCHMITT: [12:43:32] And, Mr Gumpert, you have already
20 addressed them in this other context.

21 MR GUMPERT: [12:43:37] I just want to draw one example of testimony given here
22 to your attention, in the context of this cluster of diagnostic criteria that we're looking
23 at.

24 It's extract number 12, and that is from T-64, page 87; this is P-264. He was
25 a member of the Sinia brigade and Ongwen, Mr Ongwen was his brigade

1 commander.

2 He said if Mr Ongwen was chosen to lead an operation, he always encouraged his
3 soldiers. Even a soldier who was frightened would be able to participate.

4 Now, in the context of this cluster of negative emotions, diminished interests, feelings
5 of detachment and estrangement, this emotional intelligence, rapport with frightened
6 subordinate soldiers is something which is exactly the opposite of what one would
7 expect of a person who is exhibiting these characteristics, isn't it?

8 A. [12:44:54] You are right. But let us remember that we don't always suffer from
9 disorders all the time. We may have them chronic -- chronically present, but they
10 may not be so severe as to impair our functionality.

11 Q. [12:45:23] And lastly, E, "Marked alterations in arousal and reactivity associated
12 with the traumatic event(s)". And a number of typical behaviours.

13 We've covered the first, haven't we? Irritable behaviour, angry outbursts. You're
14 aware that the -- I think I can say the vast preponderance of the evidence is the
15 opposite, that he was a jolly and cheerful man.

16 MS LYONS: [12:46:00] I heard -- I heard -- I heard preponderance of the evidence.
17 This is a -- this is a legal conclusion, it doesn't belong in a question.

18 PRESIDING JUDGE SCHMITT: [12:46:05] It's not a legal conclusion, it's a --

19 MS LYONS: What is --

20 PRESIDING JUDGE SCHMITT: -- an assessment of the evidence by Mr Gumpert, if
21 you will.

22 MS LYONS: All right.

23 PRESIDING JUDGE SCHMITT: [12:46:12] Put your question to him and --

24 MR GUMPERT: [12:46:14]

25 Q. [12:46:14] You've read the extracts. By and large -- indeed, actually, uniformly

1 they say he was jolly and gentle, don't they?

2 A. [12:46:24] Mm-hmm.

3 Q. [12:46:26] Reckless and self-destructive behaviour, E2. Again, those remarks
4 made by witnesses who were his subordinates about what a careful commander he
5 was, how he would refuse impossible or impractical orders, that's the opposite of
6 reckless or self-destructive behaviour, isn't it?

7 A. [12:46:48] We addressed the issue of recklessness and self-destructive behaviour
8 in our report.

9 And yesterday, also, I talked about his, what we would call reckless and
10 self-destructive behaviour when he told us that he would often run towards the
11 enemy, expecting that they would shoot to kill him. So that reckless or
12 self -- self-destructive behaviour is or was present.

13 Q. [12:47:36] But, Professor, you understand what we're looking at here is whether
14 there is corroborative evidence for the long and detailed accounts which he gave you.

15 A. [12:47:48] We --

16 Q. [12:47:48] What we're looking at here, what I am asking you to help the Court
17 with, is not what Mr Ongwen told you, it's whether the other evidence to which you
18 were denied access but which since last Friday you've been able to access supports
19 what he said or not. And it doesn't, does it?

20 A. [12:48:10] It does not. But as I explained before, lay people will not ordinarily
21 be able to see what the professional sees and what the professional has written for us
22 to see now on the screen.

23 PRESIDING JUDGE SCHMITT: [12:48:29] Please move on, Mr Gumpert.

24 MR GUMPERT: [12:48:31] Yes.

25 Q. [12:48:32] I can deal with 3 and 4, hypervigilance and exaggerated startle

1 response, together.

2 You record how now, or at least while he's in prison, Mr Ongwen was startled by the
3 fireworks in The Hague, thinking they were gunfire. But there's no evidence of any
4 similar behaviour while he was with the LRA during the charged period, from what
5 you have now been able to see, is there?

6 A. [12:49:04] If we consider his premonitions of an imminent attack on him and his
7 troops, and his response to that premonition, then -- but you might again challenge
8 and say there is no corroborative evidence, but these startled responses were there in
9 the bush.

10 Q. [12:49:44] Well, Professor, that's what he told you, isn't it?

11 A. [12:49:47] Yes.

12 Q. [12:49:48] Yes. Let's deal with the last two and then I am done with this
13 recitation of diagnostic criteria, which may be welcome to some in the Court.

14 Problems with concentration, sleep disturbance. In fact, we have looked at them
15 under another heading, haven't we, both of them, under depressive disorder? And
16 you noted that there is sometimes an overlap of symptoms between different
17 disorders, but you would agree with me, now having had the chance to look at the
18 evidence given in this courtroom, that apart from his account to you there is no
19 objective support for any such symptoms?

20 A. [12:50:30] Mr Gumpert, I would agree with the Prosecution, but I would beg to
21 repeat what I repeated yesterday -- sorry, what I said yesterday, or this morning, that
22 the -- we have an obligation as medical interviewers to accept and report to those who
23 need the report what somebody has said, because what they have said is determined
24 by their internal experiences, internal experiences that you and I cannot see and then
25 we have to hear. Sometimes we have to see. But unless somebody else sees along

1 with us, it becomes a problem which I say it should not be. Because the person
2 knows best how they feel, we do not know.

3 Q. [12:51:54] Professor, approximately how many domestic trials have you given
4 evidence in as an expert psychiatrist -- a forensic psychiatrist?

5 A. [12:52:08] Unfortunately, my field is adult psychiatry. In all the three countries,
6 Uganda, Kenya and South Africa, where I practiced, unfortunately there are no
7 organised child forensic psychiatry units.

8 I had opportunity as a forensic psychiatrist in Kenya, when I was asked to examine
9 and report on the mental state of an adolescent who killed his brother during an
10 epileptic fugue state. Fugue state here refers to - it will now be under
11 dissociative - an epileptic dissociative state during an episode of seizures. And he
12 killed his brother with a machete in the morning --

13 PRESIDING JUDGE SCHMITT: [12:53:42] Mr Witness, this is another case, so it is
14 not --

15 THE WITNESS: [12:53:43] Yes, I --

16 PRESIDING JUDGE SCHMITT: [12:53:44] -- it's not up to us and it's not -- it's only
17 important to know that you have acted as a forensic psychiatrist, I think that was the
18 question by Mr Gumpert.

19 MR GUMPERT: [12:53:59]

20 Q. [12:53:59] I may have given the wrong impression, particularly in regard to my
21 earlier discourtesy and I apologise. I'm not challenging the fact that you've done lots
22 of work in the courtroom, but that's right, isn't it? Dozens of trials, yes?

23 A. [12:54:08] Yes.

24 Q. [12:54:09] Yes, all right. Now in those trials, let's take -- for example, the case
25 you were just talking about, although we don't need the details. Acting as a mental

1 health expert, you would ask the person concerned, the accused, the defendant, what
2 they remember of the charged crimes. What they were thinking and feeling when
3 those crimes occurred, wouldn't you? Or whether they denied being present
4 altogether. You would want to get a clear picture of what the accused person was
5 saying about each of the crimes they were accused of, yes?

6 A. [12:54:53] What you have described is exactly what I did in this case, which I
7 talked about. And for your interest and in the interests of the Defence and the panel
8 of Judges, I also did a neuropsychological examination, that is, what we call
9 electroencephalography, that is, a tracing of the brain's electrical activity. I did --

10 Q. [12:55:35] You gave Mr Ongwen an EEG?

11 A. [12:55:39] Yeah -- no, not him. We are talking about -- I thought we are talking
12 about the example you --

13 PRESIDING JUDGE SCHMITT: [12:55:45] No, no, Mr Ovuga, we don't need the
14 specificities of another case --

15 THE WITNESS: [12:55:47] Okay.

16 PRESIDING JUDGE SCHMITT: -- the matters are I think quite clear.

17 THE WITNESS: [12:55:52] Okay.

18 PRESIDING JUDGE SCHMITT: [12:55:59] Yes. Given the time, do you
19 have already an idea how --

20 MR GUMPERT: [12:56:04] Definitely going to finish this afternoon. No question of
21 needing extra time --

22 PRESIDING JUDGE SCHMITT: [12:56:07] Okay. Good.

23 MR GUMPERT: [12:56:08] -- or so --

24 PRESIDING JUDGE SCHMITT: [12:56:09] And from the -- isn't it a good idea to
25 have now the break until 2.30? You just --

- 1 MR GUMPERT: [12:56:14] I was hoping --
- 2 PRESIDING JUDGE SCHMITT: [12:56:15] -- one question?
- 3 MR GUMPERT: [12:56:15] -- to take this --
- 4 PRESIDING JUDGE SCHMITT: [12:56:16] -- of course, please.
- 5 MR GUMPERT: [12:56:16] -- a bit further.
- 6 PRESIDING JUDGE SCHMITT: [12:56:17] Yes, okay. Then please tell me, but soon
- 7 we will have the break.
- 8 MR GUMPERT: [12:56:20]
- 9 Q. [12:56:20] So you've described your domestic practice in various countries, in
- 10 fact, it's important to understand what the client or what the accused person says
- 11 about the individual crimes that he or she is accused of --
- 12 A. [12:56:36] Mm-hmm.
- 13 Q. [12:56:37] -- "I wasn't there; I might have been there, I can't remember; I was
- 14 there, but I was defending myself; I was there but I was under duress; yes, I did it and
- 15 I'm guilty." A spectrum of possibilities and you need to find out what the client's
- 16 saying, yes?
- 17 A. [12:56:55] That is exactly what we did, yes.
- 18 Q. [12:56:58] Mm-hmm?
- 19 A. [12:56:59] And the client describes what I described earlier, I think it was
- 20 yesterday, using the concept of distress -- sorry, duress, using the concept of altered
- 21 consciousness, using the concept of major depression and PTSD.
- 22 What he says, if you are interested in what he said concerning his role is that, yes, he
- 23 did stay in the bush from the ages of between eight and nine up to when he
- 24 surrendered. During that time, he faced a lot of challenges, but he was forced to go
- 25 to battle; although that being forced did not come through using the transcripts you

1 have read. He participated in battle, but he also described having saved the lives of
2 many of his soldiers.

3 Q. [12:58:25] Professor, none of those things are the crimes he is charged with. Let
4 me give you an example of crimes that he is charged with. It's charges 50 to 57. He
5 is charged with --

6 PRESIDING JUDGE SCHMITT: [12:58:38] Ms Lyons?

7 MS LYONS: [12:58:39] I hope that Mr Gumpert is not going towards -- I don't know
8 the answer, but I hope that he's not moving towards admissions being entered into
9 this courtroom where the client is presumed innocent through this witness.
10 I don't know where he's going, but I cautiously raise this --

11 PRESIDING JUDGE SCHMITT: [12:59:00] I think he simply wants to know if the
12 expert has discussed, so to speak, the charges with the accused, I think.

13 Is it so simple or am I too simplistic?

14 MR GUMPERT: [12:59:15] No. No, there is no simplicity or simplisiticity, your
15 Honours (Overlapping speakers)

16 PRESIDING JUDGE SCHMITT: [12:59:16] No, no, and we answer this at 2.30, if the
17 witness wants to answer it.

18 We will break now.

19 THE COURT USHER: [12:59:26] All rise.

20 (Recess taken at 12.59 p.m.)

21 (Upon resuming in open session at 2.32 p.m.)

22 THE COURT USHER: [14:32:18] All rise.

23 Please be seated.

24 PRESIDING JUDGE SCHMITT: [14:32:37] Mr Gumpert, please proceed.

25 MR GUMPERT: [14:32:44]

1 Q. [14:32:56] Professor, just before the lunch break I was asking you about some
2 specific crimes with which Mr Ongwen is charged. I mentioned charges 50 to 57 by
3 way of example, really. Those are charges of rape, torture, forced marriage, sexual
4 enslavement and enslavement. And the victims are clearly set out in the Document
5 Containing the Charges as being seven individuals who have given testimony on
6 oath.

7 Now, I am not asking you to tell the Court anything that Mr Ongwen told you. The
8 question is quite different. Have you ever asked him about his state of mind and his
9 state of health at the time when he is alleged to have committed those crimes in
10 respect of those women?

11 A. [14:34:18] I am not sure if the alleged crimes were specifically linked to him with
12 the evidence you have, or it is a matter of asking me for my opinion as to
13 whether -- opinion and fact as to whether I asked him.

14 Q. [14:35:02] I don't think it's either of those things, Professor. Let me -- you're
15 familiar with the Document Containing the Charges against Mr Ongwen, yes?
16 Let me read to you in respect of just one of those individuals. This is a witness who
17 goes with the pseudonym P-227.

18 This is what the Document Containing the Charges says, she testified she had been
19 abducted by LRA fighters under Dominic Ongwen's command in approximately
20 April 2005. She was then placed in Dominic Ongwen's household where she
21 remained until her escape in December 2010, closely guarded and under the threat of
22 being brutally beaten if she had attempted to escape. Soon after her abduction she
23 became Dominic Ongwen's so-called wife. Throughout her stay in Dominic
24 Ongwen's household she was repeatedly forced to have sex with him and forced to
25 perform domestic duties.

1 So it couldn't be very much more specific, I would suggest, and my question is, using
2 those charges and that person as an example, have you ever asked him about his state
3 of health, his state of mind when those alleged crimes took place?

4 A. [14:36:41] The answer is yes. And if I may go on to make an explanation, the
5 explanation goes as follows:

6 Having enquired into his state of mind during the charged period and in relation to
7 the charges of sexual enslavement, let me use that word, to cover all the allegations, the
8 question was whether those charges -- what they meant to him.

9 His answer was, and it is in the reports, his answer was, if you have two women, one
10 of them is given to you as a wife and the other you selected by yourself, you went
11 through a process of courtship and engagement, it is the latter that you truly regard
12 as your wife. The other is not.

13 We didn't offer any explanation or supposition regarding his answer, what we did
14 was simply to report it as it was given to us.

15 But, yes, the answer to mental state, we enquired into his mental state for almost each
16 of those years that he was in captivity.

17 Q. [14:38:55] Was it not important in your duty to help the Judges to provide
18 details in your report about your assessment of his state of mind at the time of each
19 alleged crime?

20 A. [14:39:17] The problem and the challenge, if you were in my position, were that
21 here we would be referring to recall memory. And the facts of the recall memory, as
22 you have repeatedly challenged, would have been without corroboration. Because
23 even if I said yes, the suspect was mentally ill, then the next question is: how would
24 a mentally ill person engage with a woman either given to him or him forcing the
25 woman on himself, and so on, so one question after another would follow.

1 The other was -- for your information, I am not accusing the group I was working
2 with or supporting.

3 The brief given to us was not sexual offences. The brief was given to us for
4 nonsexual offences. But otherwise we did delve in that area. So if your view is that
5 we didn't provide detailed information, you are right, but I have explained the
6 circumstances.

7 PRESIDING JUDGE SCHMITT: [14:41:16] I think you can move on, Mr Gumpert.

8 MR GUMPERT: [14:41:19]

9 Q. [14:41:22] Professor, in a document which was intended as a set of guidelines for
10 forensic psychiatrists, which you published back in October 1991, you said this --

11 PRESIDING JUDGE SCHMITT: [14:41:43] May we have the reference?

12 MR GUMPERT: [14:41:46] Yes, indeed.

13 PRESIDING JUDGE SCHMITT: [14:41:47] I think it must be in some of the binders.

14 MR GUMPERT: [14:41:50] Defence tab 15.

15 PRESIDING JUDGE SCHMITT: [14:41:53] Thank you.

16 MR GUMPERT: [14:41:56] Binder 2. It's at page 825, the last digits of the ERN are
17 1416.

18 MS LYONS: [14:42:27] Your Honours, a technical point. This item, I'm informed, it
19 was in the binder but it's not on the list of the evidence that was noticed to us by the
20 Prosecution.

21 PRESIDING JUDGE SCHMITT: [14:42:40] We had the same -- first, first question,
22 Mr Gumpert. Is this correct? I can't now verify.

23 MR GUMPERT: [14:42:50] Your Honour, yes.

24 PRESIDING JUDGE SCHMITT: [14:42:51] Yet, yet we had a similar occurrence --

25 MR GUMPERT: Yes.

1 PRESIDING JUDGE SCHMITT: -- one of these days. Please allow me not to recall
2 directly if it was Monday or Tuesday, but it's East Africa Medical Journal. So for the
3 sake of coherence here and consistence in the decisions of the Chamber, this is a
4 document that is publicly available and it seems to have been written by, yes, by
5 Mr Ovuga. And we had the same, I think, with Mr Akena. It's exactly the same
6 circumstance and the ruling is the same. It might be put to the witness on this
7 exceptional basis.

8 MS LYONS: [14:43:31] I have just been informed, because how quickly I forget, this
9 was an item last week, was one of the three items we tried to put on the list of
10 evidence, the Prosecution opposed it. So I'm looking for some consistency here. I
11 mean, obviously, they have changed their mind, but we had wanted to have this on
12 the list of evidence and they said no. And it was -- the decision was -- there was a
13 negative decision from the Bench on this particular item.

14 PRESIDING JUDGE SCHMITT: [14:44:14] (Microphone not activated) We have
15 indeed rejected it in ruling 1661.

16 MR GUMPERT: [14:44:21] Despite which the Defence put it into the binder for
17 potential use in questioning the witness.

18 MS LYONS: [14:44:30] That's not correct. It was in the Defence -- as I explained,
19 there were two binders. Binder 2 specifically included all of the bibliography from
20 the doctors, all these articles I couldn't understand about epigenetics. And
21 everything was in there, the whole bunch of them, 30 of them. I don't know, 25
22 or 30.

23 The article by Professor Ovuga was one of those and, for completeness -- and it was
24 really for the convenience of our witnesses.

25 Now, I used two separate articles, we put them on our list of evidence, it was not this

1 particular article.

2 PRESIDING JUDGE SCHMITT: [14:45:07] So I have to, I have to say -- you might be
3 indulgent with me that I do not recall what we ruled upon already on thousands of
4 items, but indeed we have rejected it and so the objection is sustained, Ms Lyons,
5 because we have rejected it already. We don't reverse this. You can ask another
6 question.

7 You can draw any proposition out of it but not read it out and not use it.

8 MR GUMPERT: [14:45:43]

9 Q. [14:45:44] Your view is that it's important for forensic psychiatrists to establish
10 the presence of or lack of a relationship between the offence and an established
11 diagnosis or psychiatric symptomology at the time of the particular crime, isn't it?

12 A. [14:46:11] Your Honour, I think the Prosecution is circumventing the sustenance
13 of the objection that you have just made.

14 MR GUMPERT: [14:46:24] (Microphone not activated) this objection. I would say
15 I'm doing exactly what you directed me to.

16 PRESIDING JUDGE SCHMITT: [14:46:30] No, no, Mr Witness, it's -- it's not up to
17 you, so to speak, to decide on objections.

18 You can always, you know, you can take this article as reference or simply formulate
19 a question which draws out some ideas of it in the abstract. So nobody, nobody can
20 complain against this and I thought that Mr Gumpert has made that.

21 If you have read it, read it out literally, which I can't now assess, the witness would
22 even be right, I would say. But you can perhaps rephrase it in a manner that does
23 not exactly draw on the wording of the article. Otherwise, the meaning of the ruling
24 would be circumvented.

25 MR GUMPERT: [14:47:15]

1 Q. [14:47:17] You think it's important for forensic psychiatrists to be able to
2 establish, or otherwise, a link between any illness and the particular crime at that time
3 that crime is committed. You think that's important, don't you?

4 A. [14:47:38] It is.

5 Q. [14:47:39] But, as I understand it, you are ignoring -- forgive me, I withdraw that
6 word. You are not abiding by that precept in this case. You are looking at his
7 symptomology, at best, over a 30-month period, aren't you?

8 A. [14:48:06] I have already explained to you that the brief given to us, that is,
9 Dr Akena and myself, that we should not concern ourselves with sexual offences.
10 But as far as the other crimes are concerned, we made it explicit, both in the report
11 and also through responses to questions in this courtroom, that some of the crimes,
12 particularly in the battlefield, might have been during periods of mental instability.
13 So it is not entirely correct that we did not use the standard, clinical standard that I
14 published.

15 Q. [14:49:41] Let's consider the crime of rape, despite the injunction which you
16 were given in preparing your report.

17 Rape is not going to be an event which is provoked by a premonition of combat by
18 the smell of gunpowder, is it?

19 A. [14:50:03] No.

20 Q. [14:50:06] So the --

21 A. [14:50:10] But --

22 Q. [14:50:12] I'm sorry, do go ahead.

23 A. [14:50:14] But the urge to sexually assault another person, whether a man or a
24 woman, might be the result of some form of mental derangement, such as personality
25 disorder.

1 Q. [14:50:38] It's also your opinion, as I understand it, that where there is a clear-cut
2 motive, that is something which will predispose against the likelihood of a crime
3 being committed as a result of mental disturbance, yes?

4 A. [14:51:00] You are right.

5 Q. [14:51:05] And rape generally has a clear motive, doesn't it, to gain gratification
6 by enforcing a person's power, usually a man's power, on another person by means of
7 penetrative sexual violence, yes?

8 A. [14:51:24] Yes. But I have already said that certain forms of mental disorder
9 may predispose -- let us not stick to males, it may predispose people of both sexes to
10 sexually assaulting other individuals in order for them to experience what I would
11 refer to as perverted gratification.

12 Q. [14:52:18] But as a result of your instructions, you're not able to help the Court
13 with whether that would apply to the sexual crimes which Mr Ongwen is alleged to
14 have committed, correct?

15 A. [14:52:34] That is -- that is correct.

16 Q. [14:52:35] Let's turn to some of the examples of the crimes to which you were
17 directed. Again, I am not asking you for any answers which Mr Ongwen may have
18 given you. I'm asking you whether you asked the question. Did you ask him what
19 his state of mind, what his state of health was around the time of the attack on Odek?

20 A. [14:53:15] First, he had to say yes, he participated. And if the answer was no,
21 and I don't remember exactly from -- in which part of the report it is, if he said -- if he
22 told us he didn't participate, he didn't remember participating in the attack on Odek
23 camp, then it became superfluous to go on to assess his mental state in order to
24 establish a link between that mental state and the attack.

25 He gave us specific examples in the DRC, in parts of northern Uganda, but I don't

1 remember hearing Odek. In Garamba. And in those -- in those instances, we, in
2 detail inquired into - of course basing our findings on the recall memory in him - we
3 inquired in -- those -- into the mental state of the accused.

4 Q. [14:54:49] I didn't quite understand the first part of your answer. You said:
5 "[...] I don't remember exactly from ..." [the] "part of the report it is ..."
6 Are you referring to one of your own reports?

7 A. [14:55:02] Yes, yes. Especially the second report.

8 Q. [14:55:06] Professor, to go through that line by line now would be tedious and
9 unnecessary.

10 PRESIDING JUDGE SCHMITT: [14:55:15] Because it is part of the testimony.

11 MR GUMPERT: [14:55:18] Indeed.

12 PRESIDING JUDGE SCHMITT: [14:55:19] I know I repeat myself, but sometimes it's
13 necessary.

14 MR GUMPERT: [14:55:26]

15 Q. [14:55:26] I don't believe the word Odek camp -- just Odek appears in the report.
16 Can I be clear, you specifically asked him about his participation or memory of an
17 attack on that camp, is that what you are saying?

18 A. [14:55:45] That is what I'm saying. What he, he told us was he did not and that
19 is why it may not appear or it might not have appeared in our second report.

20 Q. [14:56:07] But as you've just pointed out, he is capable of recalling particular
21 attacks. You gave examples in your report at tab 8, the page is 0956 for future
22 reference, of his description of his participation in combat in 1999 in Sudan and
23 around 2003 in the charged period at Ongako, yes?

24 A. [14:56:37] Mm-hmm.

25 Q. [14:56:42] Professor, would you agree with the proposition, as a guide to

1 forensic psychiatrists, that two of the features of a crime which make it unlikely to
2 have been committed by a person whose capacity to understand what he's doing has
3 been destroyed by mental illness, two features which make that unlikely are careful
4 planning and a detailed recall?

5 A. [14:57:13] Mm-hmm, you are right.

6 Q. [14:57:16] And you know, I imagine, that the case against Mr Ongwen in respect
7 of a number of the crimes with which he is charged is not that he committed them
8 with his own hands, but that he planned and organised attacks on civilian camps
9 carried out by soldiers under his command. You understand that that's the nature of
10 the case against him?

11 A. [14:57:42] If that is the nature, yes, I agree with you.

12 Q. [14:57:49] So in terms of what is alleged against Mr Ongwen, we have a rather
13 different situation from the one about which Mr Ongwen told you. These crimes
14 were not committed in circumstances where combat came upon him suddenly, where
15 he received an early premonition. The crimes from which he seeks to be excused
16 from criminal liability by virtue of his mental health wouldn't have needed
17 premonition. What's alleged is that they occurred at times and places of his
18 choosing.

19 A. [14:58:29] Let me repeat what I said in the second session. The presence of a
20 mental disorder does not necessarily negate the ability of someone to execute
21 activities or functions that are given to him or her.

22 Out of -- you are referring me to two of the criteria which seem to point to him being
23 criminally responsible which, as a witness, I'm not allowed to make any comment.

24 Those -- those two criteria are just two out of six. If I remember very well on that list,
25 there are six criteria and in my proposition, if I said any three out of the six,

1 particularly including a link between a mental state and an activity or an offence are
2 positive, then the individual may not be considered responsible and culpable.

3 I'm -- I'm sorry, I'm using my words carefully because I'm not allowed to pronounce
4 myself.

5 PRESIDING JUDGE SCHMITT: [15:00:29] You fear the intervention by the Presiding
6 Judge here I think, because as I have already explained that of course the legal
7 conclusions have to be drawn, if any, by the Chamber.

8 Please proceed, Mr Gumpert. Or move on or whatsoever.

9 MR GUMPERT: [15:00:46] Let's -- sorry too fast.

10 Q. [15:00:50] Let's concentrate on that aspect of a detailed recall.

11 A. [15:00:54] Mm-hmm.

12 Q. [15:00:56] Something which you believe militates against rather than for the
13 involvement of mental illness.

14 Are you aware that there are sound recordings of the voice of a man stated by a
15 number of witnesses to be Mr Ongwen reporting after the attacks on Odek camp and
16 Lukodi camp. Are you aware of that fact?

17 A. [15:01:28] Your Honour, the Prosecution asked that question before and I
18 disputed it by saying I'm not quite certain that the identity of the person alleged to
19 have been the suspect was indeed the one, of the suspect. So on the basis of that,
20 I cannot give -- or I cannot pronounce myself.

21 PRESIDING JUDGE SCHMITT: [15:02:07] Please move on, Mr Gumpert.

22 MR GUMPERT: [15:02:10] Your Honour, I would wish to enable this witness to
23 become aware of that evidence. Of course, he cannot say who is speaking, that will
24 be for the Court to decide. But he should be able to say - I respectfully
25 submit - whether hearing what that person recalls or purports to recall of an attack

1 out of which a large number of charged crimes arise --

2 PRESIDING JUDGE SCHMITT: [15:02:36] You can ask him like you did before, but

3 we could of course go on -- I would not say forever, but for a long time with these

4 exercises. This time, yes, you can put it to him and put it in the abstract, if a

5 person -- what he would say about this.

6 MR GUMPERT: [15:02:52]

7 Q. [15:02:53] Let us imagine, Professor, that a person accused of planning and

8 organising an attack on an IDP camp at a place called Odek was reporting back to his

9 boss in these terms shortly thereafter.

10 And your Honour, this is at tab 17, and the last three digits of the ERN are 0336.

11 That hypothetical person is reported to have said this:

12 "I am just back from beating some place."

13 And another hypothetical person says:

14 "Where did you beat?"

15 "Odek" replies the first person. [...] The Centre and, even the barracks, and whatever

16 else."

17 And the person to whom he's reporting says:

18 "You also cleaned the backside of my mother right?"

19 And the person making the report says:

20 "Completely."

21 And a little later:

22 "Everything including the barracks was burnt down."

23 Now, that is the kind of detailed recall in this hypothetical case which on your -- in

24 your opinion would militate against the involvement of mental illness in the

25 commission of those acts, isn't it?

1 A. [15:04:39] Let me repeat my response. The presence of a mental disorder does
2 not necessarily militate against careful planning, against involvement, knowingly by
3 any hypothetical person. This because, as I explained earlier, is that a person of a
4 senior position, a person with high ranks, whether he or she is disturbed by
5 mental -- emotional and mental symptoms, which are regarded severe by a mental
6 health professional, that person would still continue to function in spite of his or her
7 distress and disability, mental disability.

8 So back to your question about the hypothetical person. Those recordings you have
9 read, I have heard about them, but I've not had the opportunity to read them.

10 Q. [15:06:36] Because you didn't ask for them or you asked for them and you
11 weren't given them?

12 A. [15:06:42] I wasn't given.

13 Q. [15:06:50] I want to refer you to just one more hypothetical statement.

14 PRESIDING JUDGE SCHMITT: [15:07:05](Microphone not activated) One more.

15 MR GUMPERT: [15:07:06] One more, promise it will be just one more.

16 Q. [15:07:11] This is the transcript, it's at tab 20, your Honour. The last four
17 digits 0381.

18 This is the translation -- transcript and translation of a conversation over the radio
19 between two persons who are discussing the recent defection -- I'm sorry, I have the
20 wrong tab. I apologise. It's tab 19 and the last four digits are 6947.

21 Let me start again, Professor. I apologise.

22 This is the transcript and translation of a radio conversation between two persons.

23 Hypothetically, we are going to say they are a person who is the commander of a unit
24 which has just committed an attack on a place called Lukodi, and his superior officer.

25 That's the hypothetical situation. And they are discussing the defection of a man

1 who is alleged to have been a senior officer on the ground at that attack.
2 And the person who is being reported to says:
3 "... today he crosses over like he is who. ... Yet he is the one who killed, the person
4 who threw people in the fire was also him. I personally was looking for him. He is
5 bad mouthing our government ... I [will] find him, I will arrest him and imprison
6 him ... because ..." something which couldn't be heard "... does not allow for you to kill
7 young children."

8 PRESIDING JUDGE SCHMITT: [15:09:23] Is this the person, hypothetically,
9 allegedly, which Mr Ovuga has to (Overlapping speakers)

10 MR GUMPERT: [15:09:31] No. I am about to utter the words.

11 PRESIDING JUDGE SCHMITT: [15:09:34] Okay. So this was not clear to --

12 MS LYONS: [15:09:36] No, no, no, but I just want to -- in this hypothetical, I think it
13 should be read to the witness, Mr Gumpert skipped the second line and -- with
14 the -- and he skipped the section, in parentheses, "[inaudible word]". I just think it
15 gives a full flavor as to what, what there is in this, in this section.

16 PRESIDING JUDGE SCHMITT: [15:10:00] I don't think that this is really a very
17 relevant issue, but you have mentioned it now, there was one inaudible word.

18 But you can proceed, Mr Gumpert. I think now you're coming to the person who
19 you -- where you want to ask the witness (Overlapping speakers)

20 MR GUMPERT: [15:10:18] The hypothetical --

21 PRESIDING JUDGE SCHMITT: [15:10:20] The hypothetical (Overlapping speakers)

22 MR GUMPERT: (Overlapping speakers)

23 PRESIDING JUDGE SCHMITT: (Overlapping speakers) Yes, yes, please. Please go
24 on.

25 MR GUMPERT: [15:10:23]

1 Q. [15:10:23] So this is what the person who it may be is suffering from a mental
2 illness said in response, and you need to know what it was in response to so I'm going
3 to go back one: "... [something] does not allow for you to kill young children."

4 And that person, the patient, the hypothetical patient, said:

5 "Uh, all of them. These people are the biggest wrong doers."

6 Now at that time the person who is making that utterance plainly has not had his
7 capacity to understand the unlawfulness of his actions or other people's actions
8 destroyed, has he?

9 A. [15:11:15] You are, you are reminding me to bring in the aspect of duress again.
10 You are surprised.

11 PRESIDING JUDGE SCHMITT: [15:11:40] No, it's not up to anyone to be surprised.
12 Simply complete your answer. You have the time, like you had the whole day.

13 THE WITNESS: [15:11:54] This hypothetical person was also acting under the
14 instructions of someone else more senior, more omnipotent than him or herself. So
15 whether he or she had the full capacity to say no, the rules of the bush require that the
16 answer "no" would not be entertained.

17 PRESIDING JUDGE SCHMITT: [15:12:40] I think you can move on, Mr Gumpert.
18 You don't want to, I see. I suggest that you move on.

19 MR GUMPERT: [15:12:46] I shall follow your guidance, your Honour. And indeed
20 I'm coming to my last section.

21 PRESIDING JUDGE SCHMITT: [15:12:55] Section means?

22 MR GUMPERT: [15:12:58] It means --

23 THE WITNESS: [15:13:01] End of the section?

24 PRESIDING JUDGE SCHMITT: [15:13:03] No, no, no, no. He is -- no. Please, now
25 you understand me, I don't mean a disrespect. He is threatening a section, so, you

- 1 know, he is announcing a section.
- 2 What does this mean in terms of time?
- 3 MR GUMPERT: [15:13:16] I can't vouch for the answers, but the questions are 18 in
4 number.
- 5 PRESIDING JUDGE SCHMITT: [15:13:23] That's quite a lot.
- 6 And I have already heard that Ms Lyons wants to have a redirect. How long will
7 that take?
- 8 MS LYONS: [15:13:31] I would say up to 30 minutes.
- 9 PRESIDING JUDGE SCHMITT: [15:13:40] (Microphone not activated) So --
- 10 MS LYONS: [15:13:42] Depends on how this goes for the next 18 questions.
- 11 PRESIDING JUDGE SCHMITT: [15:13:47] So let's simply continue for the moment.
- 12 We could perhaps continue until half past 4, but I would not -- say not longer. Yes.
- 13 And then we will have to discuss how we continue. We can perhaps -- I think now
14 that we have a sort of a break, we can do it now perhaps so everybody -- the question:
15 Can you already say if you want to call, definitely, P-447 as rebuttal witness?
- 16 MR GUMPERT: [15:14:17] I regret to say that I can't.
- 17 PRESIDING JUDGE SCHMITT: [15:14:22] You can't?
- 18 MR GUMPERT: [15:14:23] No. At the conclusion of this testimony I will have the
19 opportunity, which I haven't had for the last few days, to speak to Professor
20 Weierstall.
- 21 PRESIDING JUDGE SCHMITT: [15:14:35] Okay. Okay. So then I have to readjust
22 myself. Good that I addressed it now then.
- 23 MR GUMPERT: [15:14:40] I think it's likely.
- 24 PRESIDING JUDGE SCHMITT: [15:14:42] Okay, okay.
- 25 So then Chamber, we have here as always -- I nearly say a consent we would not

1 necessarily need a written report in case you would call rebuttal witness. We are
2 great supporters of orality and immediacy.
3 The same would apply in case there would be a rejoinder by, potentially - I'm going
4 to ask that now - Mr Ovuga. So to give, to give you a perspective.
5 We would of course expect to get to know this as early as possible.
6 In case there is a rebuttal, we would like to start at 9.30 on Monday with Professor
7 Weierstall. Any objection? No?
8 MS LYONS: [15:15:37] No objection.
9 PRESIDING JUDGE SCHMITT: [15:15:38] I'm surprised.
10 MS LYONS: [15:15:39] Well, not yet. Well, let me finish.
11 I'm not objecting to what you said, but I want to -- it presupposes certain things. I
12 have laboured over the decisions in terms of communication and the scheduling. All
13 right. I'm trying my best here. If there were a report, obviously the Defence -- the
14 initial deadline was 12 noon. And we need time to discuss it; we're permitted to do
15 that. And also Professor Ovuga, we wanted to know, would like to -- if he wants to
16 consult by phone with Professor -- Dr Akena, could he do that. Those are the -- we
17 have practical questions.
18 PRESIDING JUDGE SCHMITT: [15:16:17] Absolutely, I fully understand that.
19 Because of that I'm addressing it now.
20 And so then take it, Mr Gumpert, that we, that from the Chamber's perspective we
21 don't need anything written. We need, if you want a rebuttal, you want to call a
22 rebuttal witness, we will have the testimony in the courtroom and also the
23 questioning in the courtroom.
24 MR GUMPERT: [15:16:42] Can I say one thing? Of course --
25 PRESIDING JUDGE SCHMITT: Of course.

1 MR GUMPERT: -- your Honours will decide.

2 It was my intention - and I had discussed this possibility with Professor Weierstall,
3 who can of course speak for himself if what I'm saying is wrong - to anticipate to
4 disregard the last possible moment. And to provide the report, which we had
5 anticipated would be a written report, in the course of Saturday, by lunchtime, we
6 had hoped.

7 PRESIDING JUDGE SCHMITT: [15:17:11] I know. I know.

8 But of course this would have repercussions for the planning of next week, insofar
9 Ms Lyons is perfectly right. If there was a report -- I would -- will not -- the
10 Chamber would not simply prohibit, so to speak, that you provide us with a report,
11 but in case there would be a report, we can of course not start on Monday, 9.30.

12 Yeah, that's perfectly clear.

13 MR GUMPERT: [15:17:36] That is why I had thought that if we provided it on the
14 middle of -- we're going to have to work the weekend, the teams, that is clear.

15 PRESIDING JUDGE SCHMITT: [15:17:45] Yes, but that, that sometimes happens.

16 MR GUMPERT: That's reasonable enough.

17 PRESIDING JUDGE SCHMITT: [15:17:47] Also sometimes that is -- you don't -- I
18 don't -- we get that in your -- with your (Overlapping speakers)

19 MR GUMPERT: (Overlapping speakers)

20 PRESIDING JUDGE SCHMITT: So then in that case, if you want to, you tell us. So
21 we have to think alternatively:

22 If you would provide us with a report -- if you would not provide us with a report,
23 9.30 on Monday. Yeah? That that seems to be clear.

24 If there was a report, then we can only start Monday afternoon at 2 o'clock, so
25 everybody has enough time to look into it. Yeah?

1 MS LYONS: [15:18:23] Now, on the issue of reports, and Chief Taku makes an
2 excellent point, do we -- can we get some idea from the Bench what they expect in
3 terms of length?

4 And I want to also raise the question of -- so we're all clear on the parameters of the
5 report, which I understood to encompass the two, according to the Prosecution in, I'm
6 using quotes, but the, quote, the diagnosis of dissociative amnesia and symptoms of
7 OCD. Those what I -- is what I understand from your previous rulings to be the
8 focus of the report, whether they are new or not, and a chance to respond.

9 PRESIDING JUDGE SCHMITT: [15:19:04] So I think this reinforces my impression
10 that I think we would all be better off if we had simply oral testimony here, frankly
11 speaking. Because if we're now talking about parameters and then we can -- my
12 colleagues are nodding. So I would simply, I would simply say we, we have a -- we
13 take our time for an oral immediate testimony in the courtroom.

14 And Professor Weierstall, as well as Professor Ovuga, are capable, are outstanding
15 expect, they are capable to provide us on the spot with oral testimony.

16 It's also now -- and I would also assume that Professor Weierstall, I don't know if he
17 would be happy, but it would perhaps relieve you from a burden if you wouldn't
18 have to write anything, yes?

19 Please, please, Professor Weierstall.

20 MR WEIERSTALL: [15:20:02] Sorry, first of all I want to apologise that I didn't rise
21 last time when I was saying something in court. It wasn't meant as an offence. I
22 just wasn't --

23 PRESIDING JUDGE SCHMITT: [15:20:08] Sometimes in Germany people don't rise,
24 so don't be (Overlapping speakers)

25 MR WEIERSTALL: [15:20:13] (Overlapping speakers) I wasn't sure. I'm sorry. I

1 apologise.

2 PRESIDING JUDGE SCHMITT: [15:20:15] No, no, no, that's not a problem, of
3 course.

4 MR WEIERSTALL: [15:20:15] So the point I would like to make is that there are so
5 many points that need consideration, because I even do not want to present my
6 opinion in court right now. But I think, in my perspective, this requires a report
7 because we have to, in my opinion, refer to a number of scientific references in order
8 to provide a professional and profounded opinion in Court. Otherwise I think it's
9 another subjective discussion and I think it's not sufficient to make my point clear.
10 That's my -- I would rather say it's absolutely mandatory to provide a written report.

11 PRESIDING JUDGE SCHMITT: [15:21:00] And the parameters, Mr Gumpert?

12 MR GUMPERT: [15:21:04] It will all be material which arises from the report which
13 was served upon us after Professor Weierstall and his colleagues (Overlapping
14 speakers)

15 PRESIDING JUDGE SCHMITT: [15:21:15] Okay, I think that that's fair. That's fair,
16 I think.

17 MS LYONS: [15:21:19] The --

18 PRESIDING JUDGE SCHMITT: [15:21:22] It's about -- Ms Lyons, it's about the
19 report, the report that has been provided after the testimony of Professor Weierstall
20 and the other experts of the Prosecution.

21 MS LYONS: [15:21:35] Right. But let me just refer -- my colleagues are faster at this
22 than I am at the moment, but let me refer you to 1623, we're at paragraph 16. That
23 was a decision on requests related to the testimony where it said the Chamber
24 anticipates this evidence, the rebuttal evidence, will concern only points and facts
25 previously not addressed by the Prosecution expert witness.

1 And I also should say for the record (Overlapping speakers)

2 PRESIDING JUDGE SCHMITT: [15:22:04] No, that -- that's clear. We will adhere to
3 that.

4 MS LYONS: [15:22:07] Okay. And also for the record that - I'm not trying to
5 re-litigate it but want to make it very clear - that it's still the position of the Defence
6 that for proper notice in terms of a rebuttal case, in this situation rebuttal evidence
7 from the Prosecution, there is a necessity for a written motion that goes through the
8 criteria, some of which you have addressed in your decision. But for proper notice,
9 so that we can fully understand and inform our client, we need to have a proper
10 motion. We're here, we're doing it now because we've been ordered. No problem.
11 But I want to register that objection again, which we've litigated and we lost, but ...

12 PRESIDING JUDGE SCHMITT: [15:22:49] But never -- now I'm addressing Professor
13 Weierstall. Okay, then let it be like you said. But we don't want then to have to
14 read 50 or 100 pages, yes?

15 MR WEIERSTALL: [15:23:01] No, I also understand to make it as short and precise
16 as possible. And I was also instructed only focusing on the new points that
17 arise -- that arose during the hearings on the second report (Overlapping speakers)

18 PRESIDING JUDGE SCHMITT: [15:23:17] Good. Okay. Then now I'm
19 announcing how the planning for next week will -- under these auspices, so to speak,
20 will be.

21 There will be a report then. We can only of course reconvene then on Monday
22 afternoon and start with the testimony of Professor Weierstall. We expect this
23 testimony to end on Tuesday.

24 We will then ask - when Professor Weierstall has ended - if the Defence wants a
25 rejoinder and who the rejoinder witness would be. We understand from your initial

- 1 planning that it would perhaps be Professor Ovuga, yeah? Is this correct?
- 2 MS LYONS: [15:24:02] I'm checking the transcript here. I understand it's real-time
3 line 16, 17:
4 "I understand to make it as short" as ...
5 "I was also" - I think this is Professor Weierstall - "I was also instructed only focusing
6 on the new points that arise during the hearings."
7 So I think the distinction has to -- well, I mean it's your decision, but I think it's
8 unclear from this whether it can be on anything that was heard in the last week; or in
9 fact, based on the decision, it is anything that the two -- particularly, the two new
10 diagnoses (Overlapping speakers).
- 11 PRESIDING JUDGE SCHMITT: [15:24:43] You have also a little bit to trust the
12 Judges, that we know how far we extend the evidence here. And like always you
13 can't regulate everything in the abstract here and there will be borderline questions
14 and we are all here in the courtroom and can discuss this when it comes to fruition.
15 As I said, and I asked you so that we have an expectation, so you would have to be
16 clear then if you want to make a rejoinder. And again, we would not find it
17 necessary that in case it would be Professor Ovuga that he provides us with a report.
18 If so, then we would start Thursday afternoon at 2 o'clock with Professor Ovuga. So
19 it's a similar thing. Yes?
- 20 MS LYONS: [15:25:38] (Microphone not activated) We would like for
21 Professor Ovuga with permission of the Court if he chooses to consult with Dr Akena,
22 who cannot be present due to his other obligations, that he be permitted to do so, if,
23 assuming there's a rejoinder.
- 24 PRESIDING JUDGE SCHMITT: [15:25:58] Yes --
- 25 MS LYONS: [15:25:58] Okay --

1 PRESIDING JUDGE SCHMITT: [15:25:59] Just -- no, no, that is allowed, so to speak.
2 There is no problem there.

3 MS LYONS: [15:26:01] Okay. And for me, I assume -- I haven't done a rebuttal case
4 recently but based on the principles of fairness in the Court, I assume I will have the
5 right to cross the witness and that is separate from the rejoinder?

6 PRESIDING JUDGE SCHMITT: [15:26:17] I think that is my understanding, yes.

7 MS LYONS: [15:26:19] Good.

8 PRESIDING JUDGE SCHMITT: [15:26:20] Yes. You know, it's out of fairness, of
9 course it's going back and forth now, but this is I think the nature of rebuttal and
10 rejoinder. Yes?
11 So I think it makes sense to repeat it so that everyone is clear; although it's on the
12 record already.
13 Report, hopefully, on Saturday, already will be available.
14 We then start Monday afternoon at 2 o'clock for a two-hour session. And we have
15 Tuesday, the whole day also for Professor Weierstall with potential extended hours.
16 But we will have to finish the examination of Professor Weierstall, yes?
17 Meaning the rebuttal questioning by Mr Gumpert, I would assume, and your
18 additional questions, Ms Lyons.
19 Then you would tell us on Tuesday, Ms Lyons, or anyone from the Defence, if you
20 want the rejoinder. If there will be a report. And if there is a report, we reconvene
21 on Thursday afternoon at 2 o'clock and in the similar vein like with Professor
22 Weierstall, with extended hours, if need be, finish on Friday.

23 MS LYONS: [15:27:41] Just one last housekeeping issue, your Honour. We would
24 ask that assuming that we get the report -- or the report is ready on Saturday and
25 both -- both the doctor and professor are still here, they are both here on those days,

1 that VWU be asked by the Court to bring them as soon as possible a copy of the -- a
2 printed copy of the report and/or an electronic copy.

3 PRESIDING JUDGE SCHMITT: [15:28:11] I think that is understood.

4 MS LYONS: [15:28:11] All right.

5 PRESIDING JUDGE SCHMITT: [15:28:12] That makes the most sense I think.

6 Because of -- because everybody has -- we are now trying at least to expedite the
7 proceedings a little bit, but it's a little bit back and forth, but I think it's a balanced
8 solution that we have here. Yes, but of course the Registry will be asked -- VWU to
9 provide Dr Akena and Professor Ovuga as soon as possible with a printed version
10 and an electronic version.

11 Any further questions in that regard? No.

12 MS LYONS: [15:28:49] One last thing. Another important issue, I have not
13 discussed with - obviously because I haven't talked to him - Professor Ovuga what he
14 has brought with him in terms of equipment or where he can work. I can say
15 for now -- I mean, where he can work, I don't have an answer to that. I think that
16 problem needs to be solved with and/or resolved by VWU so that if he chooses to
17 make a report, he is given a space to do that in working -- whatever he needs to do
18 technically.

19 PRESIDING JUDGE SCHMITT: [15:29:23] I agree with you, but you understand that
20 I will not be in charge to execute that.

21 MS LYONS: [15:29:30] The Registry.

22 PRESIDING JUDGE SCHMITT: [15:29:31] Yes, yes. But I have enough people here
23 sitting in the front, they have noticed it and I think it will be relayed to the Registry.
24 So for the audience, sometimes you have these housekeeping matters and you can
25 also do this in private session, but it might perhaps be a little bit boring to hear that,

1 but you have to organise things during a court case, as you can see.

2 So we have interrupted Mr Gumpert -- or not really interrupted. We have simply
3 used a natural gap in your testimony so to speak, so you might continue. And we
4 would really appreciate it if we, under these circumstances, if we could finish the
5 testimony of Mr Ovuga for now.

6 MR GUMPERT: [15:30:22]

7 Q. [15:30:23] Professor, you told us that when you were first asked to act in this
8 case you declined. And aside from the language issue, which I think I've understood,
9 you were concerned about the emotional effect of your own family history. If I recall
10 correctly, a female relative sadly murdered and a cousin of yours abducted by the
11 LRA.

12 A. [15:30:41] Yes.

13 Q. [15:30:42] It would be fair to say, wouldn't it, that the emotion in this situation
14 works two ways: In addition to that aversion which you felt affected you, there is
15 also a pull of sympathy towards Dominic Ongwen who was himself abducted. That
16 could have been your child or grandchild?

17 A. [15:31:11] Mm-hmm.

18 Q. [15:31:12] You referred I think in remarks you made before you actually came to
19 the witness box about the Hippocratic Oath which is sworn by Ugandan physicians.
20 I won't be impertinent enough to refer you to the text, but for those who are not so
21 familiar with it as you will be, it's at tab 2 of the Prosecution bundle,
22 UGA-OTP-0287-0019.

23 Your duty to the patient in the Hippocratic oath requires you to apply for the benefit
24 of the sick all measures which are required, doesn't it?

25 A. [15:32:03] Yes.

1 Q. [15:32:04] And also to have regard for your patients' family and economic
2 stability?

3 A. [15:32:14] Yes.

4 Q. [15:32:15] Now, as I understand it, the barest conditions you believe him now to
5 be suffering from would best be treated by therapy that would enable him to resume
6 life amongst his family in a domestic environment in Uganda and enable him to be
7 rehabilitated in society, am I correct?

8 A. [15:32:37] You are correct.

9 Q. [15:32:39] You understand that as a forensic expert as opposed to a treating
10 psychiatrist if you had come to the conclusion that at the time of the alleged offences
11 Mr Ongwen was not suffering from mental illness or his capacities were not
12 destroyed at the time of the crimes, your duty would require you to say so?

13 A. [15:33:04] You are right, but I have pronounced myself in that regard saying
14 certain actions that he participated in, particularly on the battlefield, might have been
15 due to dissociation, depression, suicidal feelings and the complications of PTSD. So
16 I'm not quite sure if, at the end of the day, I would say that those states did not
17 significantly impact on his mental capability.

18 Q. [15:33:58] But Professor, those are the conclusions which you have come to?

19 A. [15:34:01] Yes.

20 Q. [15:34:02] You couldn't know that they would be the conclusions at the time
21 when you started acting both as his treating physician and as a forensic expert with a
22 duty to the Court, could you?

23 A. [15:34:15] I didn't anticipate what I would find, you are right. I didn't
24 anticipate.

25 Q. [15:34:25] You'll recall that I referred your colleague, Dr Akena, to the ethics

1 guidelines for the practice of forensic psychiatry from the American Academy of
2 Psychiatry and Law. I want to quote from that document. It's tab 1. The last four
3 digits, 0015. And it's at page -- forgive me. Yes, it's at page 0017. I'm sorry. It's
4 at the foot of that page, it's also page number 3.

5 The authors of those guidelines say this:

6 "The forensic evaluation and the credibility of the practitioner may also be
7 undermined by conflicts inherent in the differing clinical and forensic roles. Treating
8 psychiatrists should therefore generally avoid acting as an expert witness for their
9 patients or performing evaluations of their patients for legal purposes."

10 You have done what is advised against in those guidelines, haven't you?

11 A. [15:35:56] As far as I understand, what I was supposed to do, I do not think I
12 acted against that guideline. What we tried to do was to get corroborative
13 information which we were denied access to. So we limited ourselves to simply
14 assessing the mental state of Mr Ongwen during the charged period.

15 In addition what we did was to repeatedly make recommendations. Making
16 recommendations is not the same thing as participating in the care of somebody. We
17 made recommendations through the Defence and then those recommendations
18 followed their natural process.

19 If those recommendations were implemented, well and good. If they were not, then
20 we -- we leave it at that because we were not acting as treating physicians. You will
21 see in their note -- in his note, clinical notes, that none of us had our signature put on
22 his clinical notes. None of us. The only time we saw the clinical notes was when
23 Mr Ongwen requested the clinical psychologist to come and meet with us. His
24 argument was that he was not being well understood so he wanted to be helped so
25 that he could be well understood by his treating team of physicians and

1 psychologists.

2 So I do not -- I do not agree that I acted against that specific guideline.

3 Q. [15:38:47] Dr Akena spoke of the therapeutic alliance which, as I understand it,
4 both he and you had formed with Mr Ongwen. That is a reasonable description of
5 the nature of your relationship, is it, therapeutic meaning healing, yes?

6 A. [15:39:10] This morning I talked about three types of interviewing: Diagnostic,
7 forensic evaluation, and interviewing for the purpose of achieving some relief. That
8 type of interviewing takes place all the time between us with friends, with family,
9 with our superiors at work. It takes place all the time. So while the word
10 "therapeutic alliance" was used, it was used for lack of an appropriate synonym
11 possibly.

12 MR GUMPERT: [15:40:10] Your Honours, I have concluded my questioning.

13 PRESIDING JUDGE SCHMITT: [15:40:14] Thank you very much.

14 Ms Lyons.

15 MS LYONS: [15:40:18] Thank you.

16 QUESTIONED BY MS LYONS:

17 Q. [15:40:30] There's been -- there have been many questions to you,
18 Professor Ovuga, about corroboration and the question I want to ask is in addition to
19 the four people you interviewed or you collectively interviewed between you and
20 Dr Akena, did your work with ex-LRA soldiers, particularly child soldiers or any
21 information you had from your family or from your communities or any information
22 that you had about Mr Ongwen's life in the LRA, how the rules and regulations
23 operated, how spiritualism operated in that hostile environment, did any of this serve
24 as corroboration for your conclusions in your reports?

25 A. [15:41:36] That is a long question. Yes, I think earlier today I did provide an

1 answer to that question which was put differently by Prosecution. I provided
2 examples even yesterday -- was it yesterday or -- I don't remember. I think it was
3 yesterday. Of how a man helplessly watched how his brother was killed and buried.
4 Child -- former child soldiers describing to me in clinical practice what they were
5 forced to do with each other, particularly, targeting those who did not follow the
6 rules.

7 So the evaluation of Mr Ongwen was conducted against the backdrop of other
8 sources of information which could, yes, serve as collaborative evidence.

9 Q. [15:43:26] Thank you. My next -- my next question is there was evidence in
10 this trial from a witness who testified in public Mr Kakanyero, transcript 193, that the
11 parents of Mr Ongwen were killed -- that he was -- they were -- they were both killed.
12 You refer in I think your first report to his parents being killed by the LRA.

13 My question to you is this: What impact, if any, from your perspective did this have
14 on Mr Ongwen and his mental state?

15 A. [15:44:25] The impact of course is of profound loss. Let me indulge, using the
16 word of your Honour, Mr President, indulge in giving a long answer.

17 Mr Ongwen himself described how his father -- sorry, that he was informed that his
18 father was killed. He wasn't quite sure whether his mother was killed, to us, but that
19 she too was dead. And he said now -- before I go to the now. During his struggles
20 with his boss, his boss on one occasion gave the order for him to be killed. And his
21 sister, cousin sister, being a wife to his boss, intervened - and it is in the report - that
22 "Our parents are dead. There is no elder in our home. Ongwen is the person I'm
23 looking forward to as the heir in my home. If you also kill him, then I will no
24 alternative but to leave you and remember when I leave you, I will depart with a
25 large section of the LRA." And that intervention then made Mr Kony to rescind his

1 decision for the young man to be killed.

2 However, when the disobedience continued, for example, besides him refusing to kill

3 the negotiators, peace negotiators, somewhere in the thick of the Congo there was a

4 village, fishing village and he was ordered to go and eliminate that village. He

5 refused. And when the order came back to his boss, the boss was furious. He said,

6 okay, now I know that Ongwen is the number one in the LRA. And so he put

7 Mr Ongwen under his close supervision, personal supervision. Wherever he moved,

8 he moved with Mr Ongwen. And then finally he gave the order for Mr Ongwen to

9 be arrested with the intent to have him killed.

10 Needless to say is after that arrest, as corroborative evidence for transcripts which the

11 Prosecution read, those who were put in charge of keeping him in prison later came

12 and released him. He said, "No, I'm not going. I'm tired. I was waiting for this

13 chance. I want to be killed." They said "No. Please leave. Find your way out of

14 here." And that was how he eventually escaped.

15 So, in summary, the death of his parents led to a series of other personal losses and

16 they affected him and they impacted heavily on his life.

17 PRESIDING JUDGE SCHMITT: [15:49:20] Ms Lyons, I did not stop you, but it could

18 have been disputed if this was a question that arose from the cross-examination, but --

19 MS LYONS: [15:49:34] Thank you, I heed your -- I heed your warning.

20 PRESIDING JUDGE SCHMITT: [15:49:39] Exactly. Let me put it this way, this

21 remark was made with regard to the close future.

22 MS LYONS: [15:49:45] Okay.

23 Q. [15:49:47] Now, during cross-examination you were -- we had a chart of witness

24 testimonies and the Prosecution read you a number of lines from different witnesses

25 who testified, some Prosecution, some Defence, and then asked you -- asked you

- 1 to -- presented a proposition, asked you to comment.
- 2 My question is about the methodology, which is: Can a layperson, based on one or
3 two conclusions, for example, in the testimony that you saw, that you were read and
4 that we saw, is that a sufficient basis to make a mental health diagnosis or to refute a
5 mental health diagnosis?
- 6 PRESIDING JUDGE SCHMITT: [15:50:47] I have the impression that this has been
7 asked and answered already.
- 8 MS LYONS: [15:50:51] Okay. May I ask the witness --
- 9 PRESIDING JUDGE SCHMITT: [15:50:55] Mr Ovuga might know it better, but I
10 think -- okay, you may -- but please shortly. I have the impression that we have
11 addressed this already.
- 12 THE WITNESS: [15:51:05] Yes, your Honour, it was asked repeated by the
13 Prosecution and I kept saying that a layperson cannot make informed opinion on the
14 mental state of someone that they live with because it requires the -- that recognition
15 requires prior full training, prior full training in how to recognize, in how to relate, in
16 how to assess and therefore come to a conclusion.
- 17 PRESIDING JUDGE SCHMITT: [15:51:51] So I'm relieved that I was right. It has
18 been asked and has been answered already.
- 19 MS LYONS: [15:51:57] (Microphone not activated)
- 20 PRESIDING JUDGE SCHMITT: [15:51:59] With microphone, yes.
- 21 MS LYONS: [15:52:01] I have two more questions, but I need to consult.
- 22 PRESIDING JUDGE SCHMITT: [15:52:06] Yes, please do that.
- 23 MS LYONS: [15:52:08] Thanks.
- 24 (Counsel confers)
- 25 MS LYONS: [15:53:27] Thank you, your Honour.

1 Q. [15:53:29] Now, Mr Gumpert brought up the question of Dominic and wives
2 and you gave a response of information he had given to you. Now, first of all, are
3 you aware of the rules and regulations that Kony made, that he decided in regard to
4 the issues of wives in the LRA?

5 A. [15:54:04] Yes. And to a large extent those religion -- sorry, those regulations, if
6 you carefully analyse them, you will find that they are in line with what the Acholi
7 culture functioned like in relation to that field. There are sections of the paper on
8 *cen* and *orong* --

9 MR GUMPERT: [15:54:48] Your Honours, this is not psychiatry. This is cultural
10 comment, with respect (Overlapping speakers).

11 PRESIDING JUDGE SCHMITT: [15:54:54] yes, yes but --

12 MR GUMPERT: [15:54:54] (Overlapping speakers)

13 PRESIDING JUDGE SCHMITT: [15:54:54] Yes, yes, yes, but the question was if you
14 are -- so you are aware of it, I think.

15 THE WITNESS: [15:55:01] Yes, I was. But let me respond to the Prosecution this
16 way: Culture and psychiatry cannot be separated during this modern practice.

17 There is what we call cultural psychiatry, for example, which refers to the practice of
18 psychiatry taking into consideration sociocultural and economic aspects of people's
19 lives, both as individuals and as communities. So it is not out of line for me to have
20 said it.

21 But, yes, I have -- the answer is yes.

22 MS LYONS: [15:55:54]

23 Q. [15:55:55] Within the rules and regulations of the LRA, did you perceive as a
24 psychiatrist whether a person, Mr Ongwen and others similar to -- in his position, had
25 any choice about the rules and regulations concerning wives, for example?

- 1 PRESIDING JUDGE SCHMITT: [15:56:22] No, but that -- this is, you can't -- indeed
2 we had a lot of evidence, we have asked witnesses that. I think that is not
3 (Overlapping speakers)
- 4 MS LYONS: [15:56:31] All right.
- 5 PRESIDING JUDGE SCHMITT: [15:56:33] That is not a question to the psychiatrist.
- 6 MS LYONS: [15:56:36] (Microphone not activated)
- 7 PRESIDING JUDGE SCHMITT: [15:56:38] You would have to rephrase it or you
8 have to withdraw the question.
- 9 (Counsel confers)
- 10 MS LYONS:
- 11 Q. [15:56:48] Let me ask you this --
- 12 PRESIDING JUDGE SCHMITT: [15:56:50] And also let me really, we have been
13 together for a long time here and we have heard a lot of evidence on these, as you put
14 it, rules and regulations and what it might have been entailed to abide with or not to
15 abide with, who has made them. I think that is not the question why we have this
16 eminent psychiatrist here in the courtroom.
- 17 MS LYONS: [15:57:12] You're correct, your Honour, and I apologise. But I would
18 ask him, if I may, what impact the rules and regulations had on the mental health of
19 our client, particularly during the charged period, if he hasn't answered that already.
- 20 PRESIDING JUDGE SCHMITT: [15:57:32] If this is possible to answer but this
21 (Overlapping speakers).
- 22 MS LYONS: [15:57:35] I don't know. If he can.
- 23 PRESIDING JUDGE SCHMITT: [15:57:37] This is, this is up to Professor Ovuga to
24 answer that.
- 25 THE WITNESS: [15:57:45] The charged period is a few years after his abduction.

1 By that time, he had been indoctrinated sufficiently in order to abide by the
2 regulations and rules, so it didn't matter to him whether he should or he should not
3 abide. So the mental state -- what these rules had on his mental state were, can I say,
4 in the form of detachment, an "I don't care" attitude, "I don't care" feeling and it was
5 the practice, it was the norm within the system of the LRA in the bush. So as far as
6 the distribution of women or young girls to become wives is concerned, I think the
7 impact on his mental state was that of detachment and an attitude of "I don't care",
8 nothing matters.

9 MS LYONS: [15:59:20] Thank you.

10 So, your Honours, we now finish the redirect.

11 PRESIDING JUDGE SCHMITT: [15:59:29] Thank you very much.

12 And a special thank you to Professor Ovuga. These have been really two stressful
13 days, long days, also for us, but I know -- I can imagine, I don't know, I can imagine
14 that on the witness stand it is quite tough to sit for so many hours and answer
15 questions.

16 I wish everyone a nice weekend. We expect the report as soon as possible, let's
17 assume on Saturday. Then we have something to do during the weekend. And we
18 reconvene on Monday at 2 o'clock, as I have already indicated.

19 THE COURT USHER: [16:00:06] All rise.

20 (The hearing ends in open session at 4.00 p.m.)