

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 Thursday, 28 November 2019  
9 (The hearing starts in open session at 2.04 p.m.)  
10 THE COURT USHER: [14:04:31] All rise.  
11 The International Criminal Court is now in session.  
12 Please be seated.  
13 PRESIDING JUDGE SCHMITT: [14:05:00] Good afternoon.  
14 Could the court officer please call the case.  
15 THE COURT OFFICER: [14:05:05] Good afternoon, Mr President and your Honours.  
16 The situation in the Republic of Uganda, in the case of The Prosecutor versus Dominic  
17 Ongwen, case reference ICC-02/04-01/15.  
18 And for the record, we are in open session.  
19 PRESIDING JUDGE SCHMITT: [14:05:22] Thank you.  
20 I ask for the appearances of the parties, Mr Gumpert for the Prosecution first please.  
21 MR GUMPERT: [14:05:29] May it please, your Honours.  
22 Ben Gumpert, with me \*today Colleen Gilg, Colin Black, Pubudu Sachithanandan,  
23 Beti Hohler, Hai Do Duc, Yulia Nuzban, Grace Goh, Nikila Kaushik, Shkelzen Zeneli  
24 and Sanyu Ndagire.  
25 PRESIDING JUDGE SCHMITT: [14:05:44] Thank you.

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1 And the representatives of the victims. Ms Massidda first.

2 MS MASSIDDA: [14:05:47] Good afternoon, Mr President, your Honours.

3 For the common legal representative team, Orchlon Narantsetseg, Caroline Walter,

4 and I am Paolina Massidda.

5 PRESIDING JUDGE SCHMITT: [14:05:55] Thank you.

6 And Mr Cox.

7 MR COX: [14:05:57] Good afternoon, your Honour.

8 With me, Mr James Mawira, and myself Francisco Cox.

9 PRESIDING JUDGE SCHMITT: [14:06:03] thank you.

10 And for the Defence, Mr Obhof.

11 MR OBHOF: [14:06:04] Good afternoon, your Honour, and happy Thanksgiving to

12 everyone.

13 Today we have Beth Lyons, Tibor Bajnovic, Krispus Charles Ayena Odongo,

14 Veronica Stachurski, Michael Rowse, Roy Titus Ayena, Monia Ingabire,

15 Gordon Kifudde, myself Thomas Obhof, and Dominic Ongwen is in court.

16 PRESIDING JUDGE SCHMITT: [14:06:27] Thank you.

17 And also a warm welcome to our expert witness today again.

18 Professor Ovuga, I hope you are feeling fine.

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20 (The witness speaks English)

21 THE WITNESS: [14:06:39] I will try, your Honour.

22 PRESIDING JUDGE SCHMITT: [14:06:40] We know that you will try. Everything

23 is okay.

24 So we give the floor -- I would have assumed, since Professor Ovuga has not been

25 released finally, that the oath would still apply. But nevertheless since it is a new

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1 round, so to speak, why not?

2 Professor Ovuga, if you could please provide us again with the solemn undertaking.

3 THE WITNESS: [14:07:12] I solemnly declare that I will speak the truth, the whole  
4 truth and nothing but the truth.

5 PRESIDING JUDGE SCHMITT: [14:07:18] Thank you. So you have said it twice.

6 And, for example, in Germany it would not have been necessary, because once  
7 the witness is finally released, only then -- and would then be called back, that then it  
8 would be different. But nevertheless, it doesn't matter. Twice might be nice.

9 I give the floor to the Defence for the examination, and this is Ms Lyons.

10 MS LYONS: [14:07:42] Good afternoon.

11 QUESTIONED BY MS LYONS:

12 Q. [14:07:46] Good afternoon, Professor Ovuga.

13 I would like to start first with the procedures regarding the rebuttal report.

14 PRESIDING JUDGE SCHMITT: [14:07:58] Of course.

15 MS LYONS: [14:07:59] Okay. And then once we have done that I'll explain to  
16 everybody what my -- a little generally about how we are going to move. Okay.  
17 I am going to try -- all right.

18 Q. [14:08:09] Professor Ovuga, you submitted with Dr Akena a rejoinder rebuttal  
19 report and it is at tab number 1 in the binder in front of you.

20 And for the purposes of the record, it is at UGA-02 -- start again, was doing well.

21 UGA-D26-0015-1574 is the first page.

22 A. [14:08:55] Sorry, I didn't --

23 Q. [14:08:56] Is it tab 2 --

24 A. [14:08:57] Page number, the document, but there are supposed to be eight pages.

25 PRESIDING JUDGE SCHMITT: [14:09:02] Yes, indeed, and --

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1 MS LYONS: [14:09:03] I think there are on back -- they are back -- there are -- they're  
2 a two-sided copy. That's what you have, should have.

3 PRESIDING JUDGE SCHMITT: [14:09:14] But not in the binder. In the binder --

4 THE WITNESS: In the binder it is (Overlapping speakers)

5 PRESIDING JUDGE SCHMITT: [14:09:17](Overlapping speakers) but that that is of  
6 course not decisive here.

7 THE WITNESS: [14:09:21] Yes, I submitted this, yes.

8 MS LYONS: Okay.

9 Q. [14:09:25] So --

10 A. [14:09:26] But from, from there on, as I requested last week, I would prefer that  
11 you, if there is a quote, you read, I listen, because with my disability it will be  
12 difficult.

13 PRESIDING JUDGE SCHMITT: [14:09:42] That is no problem at all.

14 MS LYONS: [14:09:44] Absolutely.

15 PRESIDING JUDGE SCHMITT: [14:09:45] But at the moment it is simply the  
16 procedure to introduce this report, so to speak, via Rule 68(3) into the proceedings.  
17 Ms Lyons, please continue.

18 MS LYONS: [14:09:55] Sure, this is just ...

19 Q. [14:09:57] Now, you recognise this document, correct, Doctor?

20 A. [14:10:00] Yes.

21 Q. [14:10:02] May I ask a lead -- okay.

22 Now, on the cover page you and Dr Akena are listed as its authors; is that correct?

23 A. [14:10:08] Correct.

24 Q. [14:10:09] Okay. Now, the report was drafted in the last number of days, last  
25 few days. I need to ask you, is there anything you want to change or amend in the

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1 report?

2 A. [14:10:34] Not that I can think of, except to amplify sections that you might ask  
3 about.

4 Q. [14:10:40] Okay. I will, I will, I will address that when we get into -- soon, in  
5 a moment. But thank you. Okay.

6 And do you have any objections to this report being placed into evidence?

7 A. [14:10:54] I don't.

8 PRESIDING JUDGE SCHMITT: [14:10:54] Thank you.

9 This fulfils the procedural preconditions for the application of Rule 68(3) with regard  
10 to this report.

11 You may proceed.

12 MS LYONS: [14:11:03] Thank you.

13 And although I am clearly not a witness, when I was reviewing the report last night I  
14 found one typographical error. May I just deal with it? It's a procedural --

15 PRESIDING JUDGE SCHMITT: If the typo --

16 MS LYONS: [14:11:15] For a page number, that's all.

17 PRESIDING JUDGE SCHMITT: [14:11:16] Yes, but if this has nothing to do with  
18 substance or if this does not distort the meaning, I think it is not necessary.

19 MS LYONS: [14:11:22] Okay. It's just it refers to a page in the DSM where the  
20 section he is talking about isn't going to be found because there was just a typo on  
21 that.

22 PRESIDING JUDGE SCHMITT: [14:11:32] Then you can place it on the record.

23 MS LYONS: [14:11:34] Thank you so much. Okay.

24 On page UGA-D25-0015-1576 there is a reference in Professor Ovuga's and  
25 Dr Akena's response to differential diagnosis of malingering and is actually, it's

1 written on page 267, the correct page is 297. It was a typographical error.

2 PRESIDING JUDGE SCHMITT: [14:12:00] Fine, please proceed.

3 MS LYONS: [14:12:03] Okay.

4 Q. [14:12:03] Now, what I wanted to do is first ask you some focused questions on  
5 the charged period between 2002 and 2005, because much of this, there was testimony  
6 about this in the last day or two.

7 Secondly, I will move on and ask you to give us a narrative about what you think is  
8 important or what is most -- what you want to emphasise in the report that you  
9 drafted with, with Dr Akena. Okay.

10 Now, after you have made your presentation, however, you want to do it, then I have,  
11 of course, prepared specific questions. If they were not covered in your presentation,  
12 I will then go to them. If they were covered, I am not going to repeat it.

13 And lastly, we will ask you some questions about -- and I'll read it out, about a chart  
14 that was used of witness testimony by the Prosecution which is in the binder, which  
15 was used I believe yesterday maybe, and, and also a very short chart that we made.  
16 That will be the last.

17 So that's how I intend to proceed.

18 So, can you tell us -- I'm starting with the charged period 2002 to 2005 right now.

19 In the second report which was discussed in the last few days by

20 Professor Weierstall-Pust, and the report that was written in 2018, you identified  
21 a number of diagnoses that were pertinent to the client based on your observations.

22 PRESIDING JUDGE SCHMITT: [14:14:17] I think it would be best to focus  
23 specifically on this rejoinder rebuttal report.

24 MS LYONS: [14:14:25] You want to start there, okay.

25 PRESIDING JUDGE SCHMITT: [14:14:27] No, I think, I think this makes the most

1 sense to, otherwise it would be repetition. You know, we would not -- I will not stop  
2 you easily here, but I think since Professor Ovuga has took it upon him to produce on  
3 very short notice this rebuttal rejoinder report, I think we should really focus on that.

4 MS LYONS: [14:14:53] (Overlapping speakers)

5 PRESIDING JUDGE SCHMITT: [14:14:55] Because it, because it's - and it's clearly  
6 also with regard to the wording - a response to the rebuttal evidence, so insofar it  
7 makes the most sense to simply focus on that.

8 MS LYONS: [14:15:07] Okay. Okay. All right. Your Honour, I was simply  
9 trying to internalise what had been said yesterday. Your suggestion makes sense  
10 and we will start with that. Then I will go into the questions I may have.

11 PRESIDING JUDGE SCHMITT: [14:15:20] It might well be that we can skip other  
12 things.

13 MS LYONS: [14:15:24] Okay. All right.

14 Q. [14:15:26] Then I would ask you to look at the report that you produced with  
15 Dr Akena.

16 A. [14:15:33] Your Honour, can it come back on the screen? Somebody had put it  
17 on the screen.

18 PRESIDING JUDGE SCHMITT: [14:15:39] The report, I didn't know that. \*If this is  
19 the case, why not?

20 And as Professor Ovuga already has requested, Ms Lyons, if you want to discuss  
21 certain things from this report, please read it out to Professor Ovuga that he clearly  
22 knows what we are talking about. And since he has produced the report, triggering  
23 will be enough, I would assume.

24 MS LYONS: [14:16:12]

25 Q. [14:16:12] I would ask you, if -- before I go into my questions, if you want to tell

1 us the main, the main ideas, the main response that you were trying to convey to the  
2 rebuttal report of the OTP expert Professor Weierstall-Pust.

3 A. [14:16:38] Thank you, your Honours. That helps me to, to provide verbal  
4 response.

5 As far as the written report is concerned, as -- and as a clarification, we are -- by "we" I  
6 mean Dr Akena and I, have not particularly been happy with the, the report produced  
7 by the rebuttal witness.

8 Some of the reasons why I say we were not happy appeared in the transcript that I  
9 was studying before I came.

10 One, the rebuttal witness told this international court that he reviews manuscripts for  
11 professional journals. As a reviewer, the witness ought to have known the rules  
12 governing reviews of other people's work. I say this because I am myself a reviewer.  
13 Currently I am editing a book. It is clearly prescribed by various journals, at least  
14 medical journals, that the reviewer does not use degrading terminologies,  
15 doesn't -- does not criticise adversely, but offers suggestions for improvement,  
16 guidelines for improvement.

17 This is not what the rebuttal witness did. He interpreted what he thought he read  
18 based on his own -- I don't know how to put it. But why I said we were not happy  
19 was that, contrary to what journals tell us as reviewers, the rebuttal witness  
20 characterised us as deviant - it is somewhere in the transcript - characterised our work  
21 as sloppy, and even characterised the notes of the treating psychiatrist as sloppy, and  
22 he puts this into the mouth of Dr Akena.

23 I wish he was here and he would have heard it first from the horse's mouth that we  
24 were not happy.

25 So that is one.



1 Then he criticises us on the diagnosis of epilepsy. Epilepsy is defined as a brain  
2 electrical disorder which has abrupt onset and it also equally ends abruptly. But  
3 there are at least two major types of epilepsy, there is the major, there is the partial.  
4 And the partial is also divided into two, partial simple and partial complex.  
5 The partial simple is characterised by sketchy memory of events just before a seizure  
6 and also throughout the course of the seizure, followed by patchy memory of events  
7 for the whole period.  
8 Partial complex is characterised by the seizure beginning at a local area in the brain,  
9 spreading, and then involving the other side of the brain, that leads then the  
10 individual falling down unconscious. So in partial complex the individual has  
11 complete loss of memory for the period from the time when he or she has fallen down,  
12 to the time he or she has woken up.  
13 Of interest, partial simple, let us assume the epilepsy begins on this side of my head,  
14 and it spreads. Activation of this part of the head which is the brain underlying this  
15 area is called the parietal, a focus in that area might make the individual feel as if he  
16 or she is either walking on a mattress or cotton wool or flying high up above the  
17 clouds. In the temporal lobe an individual may experience bad nauseating smell, or  
18 a strange taste in the mouth, or abdominal discomfort, or the individual might  
19 experience visions or voices that other people do not experience. All of these are  
20 symptoms we looked for and they were not there.  
21 So I could not understand why we were being rapped for not having considered EEG  
22 or MRI. From clinical experience of many years, we can tell a person's mental state  
23 due to epilepsy on the spot, kind of spot diagnosis. MRI, I said last week, was not  
24 contraindicate -- was not indicated. I don't want to fall in the same trap as he was.  
25 It was not indicated. Because the young man there has no neurologic deficit, apart

1 from his limping due to one of the limbs being short, shorter than the other.  
2 And of course the kinds of clinical \*picture I described can fit in, as he says, in  
3 dissociative states, it can fit into psychotic illness, it can even fit in bipolar disorder.  
4 I will give you an example and then I will allow the Defence lawyer to continue with  
5 her questioning.  
6 I hope you don't mind, Mr President --  
7 PRESIDING JUDGE SCHMITT: [14:25:44] No, I would have interrupted you, but I  
8 think the question of epilepsy was not at the centre but -- of our discussion, but it  
9 indeed appeared on the report of Professor Weierstall-Pust and you have responded  
10 to it, and you have to have the opportunity to respond here too.  
11 THE WITNESS: [14:26:06] Okay.  
12 PRESIDING JUDGE SCHMITT: [14:26:07] So please continue, but then indeed -- no,  
13 I don't want to interrupt you. And then we can continue with the questioning by  
14 Ms Lyons, which is reminded, of course, that the report as such is now part of the  
15 evidence of the witness already.  
16 So please continue, Professor Ovuga.  
17 THE WITNESS: [14:26:26] Yes, thank you very much, Mr President.  
18 Somewhere around May a school in central Uganda referred some adolescent to me  
19 and the adolescent came with his father. The father had transferred this student  
20 from one school to another right from first year, up to the level of senior 4, because he  
21 was being expelled for difficult behaviour. So it came to a point when the young  
22 man told himself, from this time on I must make sure I do not oppose the school  
23 authority, but within the week the young man found himself face to face with the  
24 administration and he was being slapped left and right across the face. And he said,  
25 now, I -- this is what I told myself I will not be in \*opposition to the authority, what

1 have I done now? What have I done this time?

2 And what he had done, the authority of the school accused him of setting a dormitory

3 on fire, of trying to escape through the ceiling, and it is a high wall that he, he was

4 alleged to have climbed without any aid, and he had no memory for this.

5 And based on that history I sent him for EEG, and the result came, partial complex

6 temporal lobe epilepsy.

7 So we have these problems and we know when to ask for this investigation or that

8 investigation or refer to who. So we did what we could do.

9 And, finally -- I am not -- by saying this I am not undermining the capability of

10 your Honours and the people on this side or people on that side in understanding this,

11 I am just saying it for emphasis. Our report was not written for a scientific

12 conference. It was written for purposes of people understanding the complex

13 clinical picture that we observed. It wasn't meant to be a scientific presentation.

14 We have done scientific presentations and we know which audience needs what kind

15 of material. And this is what we did.

16 So if we are being criticised for being sloppy because we didn't write a scientific

17 journal material, I think that is unfair. Thank you.

18 PRESIDING JUDGE SCHMITT: [14:30:21] Thank you.

19 Ms Lyons, please continue.

20 MS LYONS: [14:30:26]

21 Q. [14:30:26] Thank you very much, Professor.

22 I just want to deal briefly with the first two points and then I will go through other

23 points in the report, the questions that I have.

24 If I may sum it up, essentially, you were criticised, you and Dr Akena, for not doing

25 your due diligence.

1 Now this is not a new criticism, Professor Weierstall's and Dr Mezey's report also  
2 criticised your methodology, and in transcript, edited transcript 252, pages 7 to 12  
3 roughly for those who want to look at it, Professor Weierstall makes the same  
4 criticisms of methodology again. He discusses no psychometric testing, no SCIDs,  
5 no CIDS, SIRS. You didn't appreciate the testimony and the usefulness of it, of the  
6 charts you were shown. You did not -- you did not seek other information or other  
7 opinions, and et cetera. And he talks about this in his expert report on pages 5 to 6  
8 and you, actually, in your report make some criticisms of that.

9 And what I want to know is, before we get into the specifics about -- the specific  
10 criticisms, what is your perspective generally on, briefly but generally, on the use of  
11 tests, whether it's an EKG, or whether it's psychometric testing, or whether it's this  
12 SCID, which I don't know what that is, but I assume it' is a test. But what is  
13 your -- what is your use, what is your perspective on testing in making diagnoses,  
14 and specifically in terms of this client, this patient --

15 PRESIDING JUDGE SCHMITT: [14:32:39] These are two questions.

16 MS LYONS: Okay.

17 PRESIDING JUDGE SCHMITT: These are two questions.

18 MS LYONS: [14:32:42] I'm stopping.

19 PRESIDING JUDGE SCHMITT: [14:32:43] First, and I think this can be made short,  
20 shortly by Professor Ovuga. Generally, what is your attitude towards these tests?  
21 And then you may answer the second question, which is of course more important  
22 here, what is your opinion, expert opinion with regard to Mr Ongwen here in this  
23 case? Please.

24 THE WITNESS: [14:33:10] Psychometric tests are useful. But as I said on Thursday  
25 or Friday, and as Dr Akena also said, we have to have a utility -- economy of scale so

1 as to decide whether it is useful under a particular circumstance or not they are useful.  
2 But our not having used it, I hope does not invalidate our observations.  
3 Let me explain it this way. I trained as an undergraduate, qualifying in '76, and then  
4 master's programme in '81. At that time in Uganda we did not have the luxury of  
5 clinical tests -- sorry, rating scales. We were trained to use all of our five senses, plus  
6 the sixth one, which is intuition, to make judgment, clinical judgment of clinical  
7 information that we meticulously were trained to elicit.  
8 So I believe in the utility of clinical methodology, with or without rating scales. But  
9 as I said, as far as I am concerned, we didn't think the use of rating scales was highly  
10 indicative in this case because we were interacting with the source of information,  
11 observing him for two hours, three hours, whenever we went to the, to the detention  
12 centre. We made observations, swings in mood, changes in behaviour, and so on.  
13 And we were being criticised and being asked whether a mood of happiness, being  
14 jolly, and so on, was consistent with diagnosis of depression.  
15 The rebuttal witness, as a psychologist, should have known that there are a set of  
16 what we call psychological defence mechanisms, one of which which applies to what  
17 we are being told is not consistent with the diagnosis of depression, that is, being jolly,  
18 being happy, socialising well is and it arises from children -- children's experiences in  
19 the bush. You were -- they were trained, so to speak, to engage in reaction formation.  
20 Reaction formation is a psychological phenomenon that enables an individual to  
21 respond to a situation in the opposite direction. For example, if I didn't like  
22 Mr Gumpert and his team, I don't think he minds, because after I, I completed my  
23 testimony --  
24 PRESIDING JUDGE SCHMITT: [14:37:53] You did say "if".  
25 THE WITNESS: [14:37:56] Yes, if. We had a short chat after my encounter with him

1 on Friday, so we are friends.

2 So supposing I didn't like him and his team, that would arouse a lot of anxiety, fear,  
3 feelings of insecurity in me. And to fight off these negative feelings, I then  
4 unknowingly in my mind switches my attitude and response to him to that of liking,  
5 being friendly, socialising and so on.

6 So reaction formation helped the child soldiers to cope with their feelings of grief, loss,  
7 sadness, and so on, and the rebuttal witness should have known this and it shouldn't  
8 have been difficult for him to understand.

9 PRESIDING JUDGE SCHMITT: [14:39:06] Ms Lyons.

10 MS LYONS: [14:39:07] Thank you.

11 Q. [14:39:09] Now along similar lines, at the same transcript, it's -- it is real-time,  
12 T-252 -- I'm sorry, edited transcript, 252, page 12, the psychologist  
13 Professor Weierstall-Pust said that those who fake dissociative identity disorders  
14 have symptomology which matches the symptomology of Mr Ongwen.  
15 Do you have any thoughts on this?

16 A. [14:39:52] Although I also criticise him, I do agree with his, his statement that  
17 some people can indeed fake.

18 But as I said, Mr Ongwen, I don't think - we keep saying this in his hearing and I hope  
19 he doesn't end up faking - I don't think Mr Ongwen has any desire to fake illness.

20 He wants to be well, like any of us in this room. He doesn't like seeing his double.

21 And here we were told we should have had corroboration from other people.

22 You see, with dissociative states, the interruption of cognitive functioning can be

23 described very well by the affected person, but also sometimes by those around the

24 person. But we have a fundamental problem here which we are not willing to accept,

25 the fundamental problem is we have people who are not literate, mentally literate.

1 They cannot appreciate that this behaviour is not normal in the most part. The  
2 influence of Mr Kony on even professors was such that they could not detect what  
3 would be abnormal to be abnormal. They would rather interrupt it as something  
4 which is a normal phenomenon under the influence of the spirit.

5 I talked about shared delusions I think on -- I don't remember when, Thursday or  
6 Friday. I talked about it.

7 So other people in the company of an affected person not being able to detect or  
8 recognise does not militate against the diagnosis of a dissociative disorder. It does  
9 not.

10 Q. [14:42:54] Now, you -- before I follow up on this, you just said something about  
11 a person who is not mentally --

12 A. [14:43:06] Literate.

13 Q. [14:43:07] -- literate, right, would be unable to detect a -- these are my words, not  
14 your words, but my understanding, would be able to detect that somebody has  
15 a mental illness. Is that what you're saying?

16 A. [14:43:30] Yes and no. Let me put it this way: In our part of the world we, we  
17 somatise. What that means is we convert psychological distress into physical  
18 symptoms. And we also spiritualise, that is, we explain our psychological distress in  
19 terms of the effects of spirits, ancestral spirits, the wrong we have done. And the  
20 evils that our ancestors themselves did, we explain this, our distress, as punishment  
21 for events that other people in our lineage, if it wasn't us, performed or committed.  
22 So we have -- we are more likely to have people who are not mentally literate, by  
23 mentally literate meaning they do not understanding the phenomenology of mental  
24 illness, they will explain it in the ways I have done.

25 Q. [14:45:06] Now, in the DSM, and I'll read it out, but for those who are looking at

1 the binder, it's at tab, tab 6 under Dissociative Disorders, and it's page, the numeric  
2 page is 297, the ERN page is UGA-OTP-0287-0038.

3 And there's a section called Differential Diagnoses, the last one listed is called  
4 factitious, factitious disorder and malingering. And what it says here, that, quote,  
5 "individuals who feign" -- one second -- okay.

6 "Individuals who feign dissociative identity disorder tend to be relatively  
7 undisturbed by or may even seem to enjoy 'having' the disorder. In contrast,  
8 individuals with genuine dissociative identity disorder tend to be ashamed of and  
9 overwhelmed by their symptoms and to underreport their symptoms or deny their  
10 condition."

11 Now, does this -- how do you understand this? Can you explain it to us. And does  
12 this apply -- how does it apply, if it applies, to Mr Ongwen?

13 A. [14:46:49] I don't know if it is 10 minutes ago, or five, I did say that Mr Ongwen  
14 does not enjoy being distressed. You saw me nodding my head as you read the  
15 section on DID.

16 As we kept probing for more features, Mr Ongwen said, "I don't know what you  
17 people are looking for, but I also want to be like you. I don't like Mr B, Dominic B  
18 ruling my life."

19 That shows that the individual we are talking about did not feel comfortable being in  
20 the company of another personality who claimed to be him.

21 One time this person apparently found Mr Ongwen reading the Bible and he told him,  
22 "I am you, stop reading the Bible." And he found this disturbing.

23 Last week I also mentioned something about factitious disorder. The factitious  
24 disorder problem is the direct opposite of genuine dissociative disorder. A person  
25 who likes being ill goes a long way in causing an episode of illness of his or her



1 understanding. They will have read the relevant literature, they are usually people  
2 of professional parents -- I mean, parents have a professional background, parents  
3 have little time for them, and so, to gain the attention of either the parents or those in  
4 their social environment, they go a long way to inflicting pain. They may cause  
5 abscesses in their bodies, they may pump needles after needles, that is, sewing  
6 needles, into their thigh muscles, the deltoid muscles, the muscles of the behind.  
7 And you take an X-ray, you will be amazed to see the number of needles in their  
8 bodies. And they don't seem to be very disturbed with it. They only come to the  
9 medical, for medical attention either because relatives force them to or they find the  
10 abscess or needles in their bodies too painful to bear and then they come. Even then  
11 they will not tell you the exact cause of what is afflicting them and it is up to you, as  
12 the clinician, to decipher what it -- what the problem is.  
13 So that is the difference between the person with factitious disorder and the person  
14 who has dissociative disorder.

15 PRESIDING JUDGE SCHMITT: [14:51:09] Okay. I think we can move on,  
16 Ms Lyons.

17 MS LYONS: [14:51:12] Yes.

18 Q. [14:51:13] Just a few more questions in this area of malingering, because it was a  
19 subject that was revisited again by the testimony Monday -- direct, cross, it's -- okay,  
20 it's an important point.

21 Now, I believe I used, but first was used by the Prosecution, there it was a note from  
22 the detention centre, from the psychiatrist, it was dated from 2015.

23 I have the number of it for the record. It was the DC note UGA-D26-0015-0135 and  
24 at the very bottom there were impressions given by the psychiatrist. The last thing  
25 he wrote in respect to Mr Ongwen was, quote:

1 "He is searching for the meaning of the suffering in his life." End quote.

2 Now, in the context of malingering, for example, or anything else relevant to his  
3 mental health, how do you interpret this note from the psychiatrist?

4 A. [14:52:30] Can you read it again?

5 Q. [14:52:32] Sure. It said -- and he is saying --

6 A. [14:52:34] Just the last part.

7 Q. [14:52:37] Yes. "He is searching for the meaning of the suffering in his life."

8 A. [14:52:49] One interpretation is what I had said earlier on, and that is  
9 questioning as to why he is going through the kind of distress, daily experiences,  
10 daily memories of his bush life. So he is trying to connect his experiences to his  
11 psychological distress at that time when the psychiatrist saw him.

12 The other is, if we can go back to culture, the meaning of his distress might be as I had  
13 explained earlier on, that he himself has done things terribly wrong. The things that  
14 he has done are they the ones responsible for his current experiences? Were any of  
15 his ancestors responsible for some abominable act or crime, and is that why he is  
16 being punished for what his ancestors did?

17 So if he was a highly educated person he would also have had another interpretation,  
18 and the interpretation could run as follows: That he is experiencing symptoms of  
19 depression, or psychosis, because some malicious enemies somewhere in the US are  
20 manipulating his feelings, they have inserted chips, electronic chips, or they are  
21 watching him from the planet Mars with, with very powerful telescopes and  
22 manipulating this telescope to cause the experiences in him.

23 So the explanations can be many, and that is what the psychiatrist I think was  
24 referring to.

25 Q. [14:55:52] And maybe for now one last question on the malingering or faking it,

1 which is a big subject. Can you link your position that Mr Ongwen -- you came to  
2 the conclusion with Dr Akena that Mr Ongwen was not faking it or malingering and  
3 you have given the reasons for that. Can you link it back to the charged period in  
4 any way? Is there any connection in your analysis to the charged period? How do  
5 you know he wasn't malingering when he talked to you about what he felt or thought  
6 or observed, or whatever? You know, when he talked to you about that period 2002  
7 to 2005. What convinced you?

8 A. [14:56:52] What convinced me and hopefully Dr Akena, I think it convinced him  
9 also since he appended his signature. What convinced us was the fact that the first  
10 episode of dissociation, followed by amnesia, occurred during instruction to him and  
11 his team to go and carry out an assignment.

12 Mr Ongwen found himself in avoidance, avoidance or attraction, avoidance or, or  
13 attraction, attraction conflict. These are psychological terminologies and concepts.  
14 You are put in two situations, one of them is distasteful, the other is attractive, but the  
15 distasteful and attractive cannot go together. Or you are put in a situation in which  
16 you don't like any options available. Or you are put in a situation where you have  
17 options, all of which or both of which you like. But the reality is that you cannot act  
18 on, on the two positives at the same time. So the psychological mechanism that  
19 helps someone to cope with a conflict like that is to find a way out, and this is -- one of  
20 the ways is dissociation. And the way he described it was such that it was followed  
21 by a period of not knowing what happened outside the planning room, the  
22 instruction room. He didn't know what, what else followed after.

23 And whenever he -- there were other episodes during the charged period whereby he  
24 would, at the end of a mission, he would ask his friends is the battle over, what  
25 happened? So the fact that he was asking other people to confirm during that period

1 is what made us accept his descriptions.

2 MS LYONS: [15:00:14] Thank you.

3 Q. [15:00:15] Now, I want to -- I still have some questions on dissociative identity  
4 disorder and it is -- I know that it's related to a number of the topics we have talked  
5 about.

6 But Professor Weierstall-Pust when he testified here, it's edited transcript page 16, he  
7 made a distinction, and I'll say what he said and ask you to explain it, he made  
8 a distinction between pathological and non-pathological dissociative states and said  
9 a key factor is involuntariness plays a role in one of those.

10 Can you explain what the words mean, how does involuntariness work, and is this  
11 a distinction that has any meaning or relevance to dealing with Mr Ongwen.

12 You are criticised at page 19 of his report for not making this distinction. But first  
13 explain the distinction, I don't fully understand it.

14 PRESIDING JUDGE SCHMITT: [15:01:31] Shortly, there is an issue with the  
15 microphone --

16 MS LYONS: Oh no.

17 PRESIDING JUDGE SCHMITT: -- at least it does not get very well through to the  
18 judges. It's not your fault, it's on, so I don't know what the reason might be.

19 MS LYONS: [15:01:40] I know, because I am looking at him.

20 PRESIDING JUDGE SCHMITT: But if everything, let me have a look, is on the  
21 transcript then I am fine.

22 MS LYONS: [15:01:49] These are compound questions. My, my, my transcript  
23 doesn't even work, so I am reading over here.

24 PRESIDING JUDGE SCHMITT: [15:01:55] Indeed your questions are quite complex,  
25 but Professor Ovuga --

- 1 MS LYONS: [15:01:58] Compound, not --
- 2 PRESIDING JUDGE SCHMITT: [15:02:00] I said complex, not compound.
- 3 So, Professor Ovuga.
- 4 MS LYONS: [15:02:03] Okay.
- 5 THE WITNESS: [15:02:08] Involuntary means the occurrence or experience of
- 6 a phenomenon, in this case dissociation, is without the, the wilful, the wilful - what is
- 7 the word? - the individual is not wilfully exhibiting the signs and symptoms of an
- 8 involuntary dissociative state. That is what involuntary means.
- 9 The experience or exhibition of a pathological phenomenon is not in the control of, in
- 10 this case, Mr Ongwen. Whereas the voluntary - is that the correct word I am? - yeah.
- 11 The voluntary one is where an individual can induce the experience of dissociation,
- 12 for example, in the form of a trance state or possession state, with help of either
- 13 a medication or a herbal preparation, or under hypnosis.
- 14 But, again, under hypnosis, that would not typically be voluntary, it is somebody else
- 15 who is suggesting it in the individual. But the use of drugs, herbs, that is the one
- 16 which I would refer to as voluntary, because certain drugs can cause an individual to
- 17 go into a trance state.
- 18 You see, his distinctions are not that simple, because, say in me, at my age, if I am
- 19 dehydrated, if I am hungry - I have been hungry for the last three days, no water, no
- 20 food - my mind can go crazy and I can begin to act as if I am possessed, I can act as if
- 21 I am in a trance state. But as soon as my physiological problems are solved, then I
- 22 regain my normal senses and functioning.
- 23 So it is not that simple, it is not quite easy to simply put them in two categories,
- 24 pathological, non-pathological.
- 25 Q. [15:05:41] Now, you mentioned being in a possessed state and the, the

1 diagnostic manual refers to this under dissociative identity disorder. And you  
2 probably know it, but I will read it out for the record and ask you to explain it also to  
3 us and if it is applicable.

4 PRESIDING JUDGE SCHMITT: [15:06:07] Yes, with -- not explain, in the  
5 abstract -- (Overlapping speakers)

6 MS LYONS: [15:06:11] No, no, if it's applicable.

7 PRESIDING JUDGE SCHMITT: [15:06:14] Always, always, for Professor Ovuga, of  
8 course, always with regard to Mr Ongwen, that's clear.

9 MS LYONS: [15:06:18] All right.

10 Q. [15:06:18] Now, it's at tab 6, the ERN number for dissociative disorders section  
11 of the DSM at page 291 is UGA-OTP-0287-0032, and I'm reading from page 293 and  
12 it's UGA-OTP-0287-0034.

13 And it's -- I would like to read -- let me read the -- let me read just the end of the  
14 paragraph, and if you need more I'll read the beginning. I'm sure you know this, but  
15 in any case.

16 I'm reading from the last two lines on 0034 and into 0035.

17 There's an explanation \*of possession-form identities in dissociative identity disorder,  
18 but the last section is:

19 "However, the majority of possession states around the world are normal, usually  
20 part of spiritual practice, and do not meet criteria for dissociative identity disorder.

21 The identities that arise during possession-form dissociative identity disorder present  
22 recurrently, are unwanted and involuntary, [and they] cause clinically significant  
23 distress or impairment," -- which is criterion C for dissociative disorder on  
24 page 292 -- "and are not a normal part of a broadly accepted cultural or religious  
25 practice", which is criterion D under dissociative identity disorder on page 292.

1 So how -- does this at all apply to Mr Ongwen in terms of dissociative identity  
2 disorder or any -- the evidence you have heard from Professor Weierstall about  
3 possession?

4 A. [15:08:49] Possession as a normal phenomenon that does not meet criteria for  
5 dissociative identity disorder, as I had explained earlier, may be induced and is  
6 caused by the physiological effects of chemicals. Or in cultural ritual practices,  
7 particularly, in trying to resolve a type of distress that is happening in the home.  
8 In this case, Mr Ongwen was never placed in the context of either acting as a medium  
9 for spirits that would have controlled him to go into a trance state or a possession  
10 state. He did not use drugs, chemicals, or alcohol.

11 So as far as he is concerned, we do not agree that his distress was due to a normal  
12 possession state or trance state as a result of chemical physiological changes or as a  
13 result of participating in ritual activities in the bush.

14 Q. [15:10:48] Thank you. Now, there was a lot -- there's been a lot of discussion in  
15 the courtroom about Dominic A and Dominic B.

16 In your estimation, particularly during the charged period, was Dominic A able to  
17 control B, or B able to control A? Or how -- was the issue of -- how did control  
18 manifest this? I just don't understand with two personalities what happens.

19 A. [15:11:28] What he explained to us, during the charged period, runs as follows:  
20 In the battlefield, Dominic B would appear and he would be following Dominic A  
21 from behind. And in his words, Dominic B is always behind me and pushing me,  
22 going forward always, no retreating.

23 So the control was more from Dominic B on Dominic A, not the other way around.

24 Q. [15:12:20] Now, what convinced you - and I presume Dr Akena, but just  
25 speaking for yourself - what convinced you and Dominic A and Dominic B in fact

1 were existing, co-existing in one physical body of Mr Ongwen during the charged  
2 period of 2002 to 2005?

3 A. [15:12:52] I would say the answer is in the definition. Dissociation refers to the  
4 explicit interruption of the mental state of an individual, and the individual is aware  
5 of this interruption and the appearance of alters. Mr Ongwen was fully, at the time  
6 that the episodes of dissociative identity disorder occurred, he would become aware.  
7 He would be aware that this is what is happening; Dominic B is always pushing me in  
8 the battlefield.

9 And as a, as a form of corroboration, although this might still not be accepted, he  
10 said -- sorry, one, one witness that we interviewed before coming to see him for the  
11 first time said he was a brave soldier, but his being brave was more than just being  
12 brave, there was something abnormal with him, although this man and possibly other  
13 colleagues within the LRA could not definitely for sure say what this abnormal thing  
14 about him was.

15 Yes.

16 Q. [15:14:48] I'm sorry, are you finished -- I didn't mean to interrupt?

17 PRESIDING JUDGE SCHMITT: [15:14:55] Please proceed, Ms Lyons.

18 MS LYONS: [15:14:57] I was going to jump in here. Okay.

19 Q. [15:15:00] Now, I have a couple of questions on what you have just said. First  
20 of all, does -- you mentioned, you mentioned information you have that A and B  
21 appear on the battlefield. Are there any -- are there any other times or places where  
22 A and B appear, based on the information you have?

23 MR GUMPERT: [15:15:23] Your Honours, out of which part of the rebuttal evidence  
24 does this question, I almost pick it at random, arise?

25 PRESIDING JUDGE SCHMITT: [15:15:32] Ms Lyons.



1 MS LYONS: [15:15:33] Yes, he -- I will get to that point, but let me just say, at the  
2 edited transcript at page 16, lines 19 to 17 -- no, sorry, page 16 to 17, he talked about,  
3 Professor Weierstall made an argument that those who lived with or were under the  
4 command of or worked with could recognise symptoms. He went through  
5 a whole --

6 PRESIDING JUDGE SCHMITT: [15:16:01] But why not then refer simply to that and  
7 ask Professor Ovuga what he makes out of this.

8 MS LYONS: [15:16:10] Well, well I will get there. I just want to -- the point was that  
9 I was, I want to -- I wanted to clarify based on his answer he is talking about, he is  
10 talking -- but it's up to you, your Honour. He is talking about A and B in the  
11 battlefield and I am simply asking is there -- I didn't think of it before until I listened  
12 to him, but is there another -- do you have information that A and B appeared  
13 anyplace else besides the battlefield, that's all. It's a follow-up.

14 PRESIDING JUDGE SCHMITT: [15:16:45] If Professor Ovuga can answer this  
15 quickly, why not?

16 MS LYONS: [15:16:50] (Overlapping speakers)

17 PRESIDING JUDGE SCHMITT: [15:16:50] It takes more time to discuss this back  
18 and forth than let him answer shortly on that.

19 THE WITNESS: [15:16:57] Given the nature of dissociative states, we are not aware  
20 that outside of battlefield operations he experienced dissociation that was clinically  
21 significantly distressing to him, no.

22 PRESIDING JUDGE SCHMITT: [15:17:18] That was indeed a quick answer.

23 MS LYONS: [15:17:21](Microphone not activated)

24 PRESIDING JUDGE SCHMITT: [15:17:25] Yes.

25 MS LYONS: [15:17:40]

1 Q. [15:17:40] Now, on Monday in transcript 252, page, page 16, Mr Gumpert asked  
2 a question, I would like you - and I will ask a question now on that - Mr Gumpert  
3 asked Professor Weierstall if Dominic, if Dominic A was able to suppress Dominic B.  
4 And he had before talked about how occasions where there was an angry violent  
5 Dominic, sometimes two or three times a week, according to your account. But the  
6 bottom-line question he asked, line 20 at 20, 21, is could Dominic A suppress Dominic  
7 B. I am asking -- now I am asking you that question.

8 PRESIDING JUDGE SCHMITT: [15:18:32] Now we have another expert in the  
9 courtroom -- (Overlapping speakers)

10 MS LYONS: Right. Okay.

11 PRESIDING JUDGE SCHMITT: We can make this shorter in my opinion.

12 THE WITNESS: The answer (Overlapping speakers)

13 PRESIDING JUDGE SCHMITT: [15:18:41] It takes a lot of time.

14 So simply the question is: If these, if we have these two personalities, which one can  
15 control which one? And, in that specific case, can A control B?

16 THE WITNESS: [15:18:56] The answer from our interactions is that A could not  
17 control B. It is, as I said earlier on, the other way around, B controlling A.

18 PRESIDING JUDGE SCHMITT: [15:19:13] And Professor Ovuga has said this a  
19 couple of minutes ago.

20 MS LYONS: [15:19:17] Thank you, Professor Ovuga and Judge Schmitt.

21 Q. [15:19:35] Even if a person living with Mr Ongwen or working with him could  
22 see him acting violently one day and then the next day playing with children, acting  
23 in a nonviolent manner, would the person - and I'm talking about a child soldier,  
24 ex- -- an LRA person, would that person be able to, to see that, seeing him one way  
25 and then in a different way, is a sign of mental illness?

1 A. [15:20:17] That is a tough one, because I have repeatedly said, given our level of  
2 literacy we may not be able to tell. But the violent, angry, harsh person Dominic  
3 B - let us say Dominic B - would always appear on the battlefield. Or -- no, let me  
4 not put the "or" because that would fall outside the charged period.  
5 So it was always happening in, in the battlefield, and there the violence, the anger, the  
6 frustration would all be seen as matching the situation in the battlefield. So I don't  
7 think people would expect that Mr Ongwen was acting abnormally, it was the  
8 situation of the battlefield.

9 Q. [15:21:30] Thank you. In your report at page ending 1577, you make a critique  
10 of one of the conclusions of Professor Weierstall-Pust, and for him, for  
11 Professor Weierstall-Pust, it's at page 8. It's on the subject we are talking about. He  
12 says there on page 8:

13 "The treatment gap and mental health illiteracy referenced by Dr Akena and  
14 Professor Ovuga," and he gives an example of a transcript in 249, "do not support the  
15 notion that ordinary people would not notice mental health symptoms. Many of the  
16 relative symptoms are objectively observable and in fact frequently noticed by family  
17 members and friends of persons suffering from mental health disorders."

18 And you respond --

19 PRESIDING JUDGE SCHMITT: [15:22:27] Ms Lyons, we don't have to read  
20 everything out.

21 MS LYONS: [15:22:30] Okay.

22 PRESIDING JUDGE SCHMITT: [15:22:31] And especially we don't have to read out  
23 to Professor Ovuga the report that he has produced yesterday or the day before  
24 yesterday.

25 MS LYONS: [15:22:39] (Overlapping speakers)

1 PRESIDING JUDGE SCHMITT: [15:22:40] Simply a question, please.

2 MS LYONS: [15:22:42]

3 Q. [15:22:43] The question is: In your response to Professor Weierstall-Pust you  
4 use a term "disease of thoughts". What are you talking about? What does that  
5 mean?

6 A. [15:23:00] Let me step backward a bit.

7 What the rebuttal witness is referring to as easily recognisable in my system, Uganda,  
8 that is, throughout Uganda, is what meets criteria for the diagnosis of psychosis,  
9 schizophrenia, severe bipolar disorder, psychotic depression.

10 Those are the ones that everybody will recognise. But when you are dealing with,  
11 even if it is major depressive disorder but without features of psychosis, then the  
12 person affected, as I said earlier on, will either somatise or spiritualise their  
13 experiences. And of course everybody else will go along with that explanatory  
14 model.

15 So, disease of thought refers to the repeated answers that research subjects gave to  
16 Dr Okello and her colleagues. People were telling her and her team that the vignette  
17 you are showing us does not meet a condition that requires intervention by modern  
18 medicine.

19 Our problems in this area are that we are worried, we are worrying a lot, we are  
20 thinking a lot, we are brooding a lot over our troubles, so the collection of symptoms  
21 is simply a disease of thought or thinking. That is what -- the long answer to the  
22 question.

23 Q. [15:25:20] And the Dr Okello you are talking about is, also on that, you refer to  
24 her work, Elialilia?

25 A. [15:25:28] Elialilia.

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1 Q. [15:25:32] All right. Thank you.  
2 One moment.  
3 (Counsel confer)  
4 MS LYONS: [15:26:08](Microphone not activated)  
5 PRESIDING JUDGE SCHMITT: [15:26:11] Yes, of course.  
6 (Counsel confer)  
7 THE WITNESS: [15:26:28] Your Honour, can I take a short break?  
8 PRESIDING JUDGE SCHMITT: [15:26:30] Of course. That's a good idea. So we  
9 have five minutes break, yes.  
10 THE WITNESS: [15:26:35] Thank you.  
11 THE COURT USHER: [15:26:36] All rise.  
12 (Recess taken at 3.26 p.m.)  
13 (Upon resuming in open session at 3.33 p.m.)  
14 THE COURT USHER: [15:33:15] All rise.  
15 Please be seated.  
16 PRESIDING JUDGE SCHMITT: [15:33:31] Ms Lyons, you may proceed.  
17 MS LYONS: [15:33:33] Thank you.  
18 Q. [15:33:34] Now still on Dominic A and Dominic B.  
19 There was a report of an incident in the detention centre, without going into details,  
20 where Mr Ongwen acted violently.  
21 Is this related to A and B, is it different --  
22 PRESIDING JUDGE SCHMITT: [15:33:59] Mr Gumpert.  
23 MR GUMPERT: [15:34:00] It's not arising out of --  
24 PRESIDING JUDGE SCHMITT: [15:34:02] Yes, but I think we are -- I tend to be more  
25 indulgent here with the Defence.

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1 But we -- what I would really, would ask everyone here not to go into details with  
2 regard to that. But simply the question would be: Would such an incident be an  
3 issue that you would say fits to what you said elsewhere about these personalities?

4 THE WITNESS: [15:34:33] Yes, your Honour.

5 PRESIDING JUDGE SCHMITT: [15:34:36] Okay.

6 Ms Lyons.

7 MS LYONS: [15:34:40] Okay.

8 Q. [15:34:45] Now, there's also been testimony here about two incidents, without  
9 going into detail, that occurred in the courtroom.

10 PRESIDING JUDGE SCHMITT: [15:34:55] But, Ms Lyons, don't understand that I  
11 said "indulgent" in a way that we now completely dissociate ourselves from the  
12 report that Mr Ovuga has produced. Allow me to say this in late afternoon.

13 MS LYONS: [15:35:14] I am not -- it was a simple question as to whether these  
14 incidents are related to A and B. And if you want to over -- to (Overlapping  
15 speakers)

16 PRESIDING JUDGE SCHMITT: [15:35:23] No, no, no, no --

17 MS LYONS: [15:35:25] I'll withdraw it. I'm happy to withdraw it.

18 PRESIDING JUDGE SCHMITT: No, no, I'm --

19 MS LYONS: That's my question. So you should -- accept your ruling.

20 PRESIDING JUDGE SCHMITT: [15:35:31] The same thing.

21 You have heard of these, would you make -- what assessment would you make with  
22 regard to that? Shortly. Of these incidents in the courtroom.

23 THE WITNESS: [15:35:42] Oh, this one in the courtroom was atypical dissociative  
24 disorder A and B. But, yeah, A and B, and it was B that was yelling at my colleague,  
25 the witness that time.

1 PRESIDING JUDGE SCHMITT: [15:36:07] Thank you. Ms Lyons.

2 Now please, back to the report.

3 MS LYONS: [15:36:15]

4 Q. [15:36:15] Now, going back to the report, I'm on page ending in 1574 and I have  
5 a question about, it's for those who are looking at the report, the paper copy, about  
6 halfway down, it says it is stated in the report that Mr Ongwen "suffers from multiple  
7 psychiatric conditions, all of which arose from his abduction and traumatic  
8 experiences."

9 And then you respond, one line. I'll read it, because I want you to clarify. The  
10 response of Professor Ovuga and Dr Akena is:

11 "We would like to clarify ... we indicated that the conditions arose after he had been  
12 abducted (not from his abduction)."

13 What are you saying there? What is the distinction here? Could you clarify, please.

14 A. [15:37:25] From refers to the incident of the abduction itself and thereafter  
15 nothing else influenced the development of those mental disorders. But after  
16 abduction refers to his experience or the development of mental symptoms which  
17 eventually went into becoming mental disorders arising from the traumatic  
18 experiences that he went through, Mr Ongwen went through after he had been  
19 abducted and he was now in captivity.

20 PRESIDING JUDGE SCHMITT: [15:38:16] Okay.

21 MS LYONS: [15:38:16] Okay.

22 PRESIDING JUDGE SCHMITT: [15:38:17] Thank you for the clarification.

23 MS LYONS: [15:38:19]

24 Q. [15:38:19] So that the -- so that the, the experiences in captivity in the LRA --

25 A. [15:38:29] Mm-hmm.

1 Q. [15:38:30] -- indicate a longevity, so to speak?

2 A. [15:38:36] Yes, your Honour.

3 Q. [15:38:37] You talk a little bit about -- the end of that first page, beginning of the  
4 second page.

5 For the record, UGA --

6 PRESIDING JUDGE SCHMITT: [15:39:09] Only, only -- we have it.

7 MS LYONS: Thank you.

8 PRESIDING JUDGE SCHMITT: Only the last four digits is enough now.

9 MS LYONS: [15:39:12] Thank you, much appreciated. Okay.

10 Q. It's ending in 1574 and 1575, at the end of that paragraph you say:

11 "We ... take exception to the assertion by the Rebuttal Witness that the discussion of  
12 moral development within the Acholi culture is 'unfounded'."

13 Do you want to say more about that?

14 A. [15:39:44] You see, in the Acholi culture, just as in my culture, Madi, children  
15 undergo both formal and non-formal training. Formal training these days involves  
16 being taught moral principles in school, but informal takes place on daily basis in the  
17 course of the interaction of the child with one or both parents and/or uncles, sisters,  
18 aunties, each of them makes a contribution to the moral development of the child as  
19 the child grows.

20 So -- and this happens not in the culture of the rebuttal witness, we are talking here  
21 about the development of morality or principles of moral behaviour within  
22 a specified culture. And if he does not understand it, instead of saying it is wrong, is  
23 also in itself wrong. This development from interactions at home, as well as in  
24 school, is real.

25 And unfortunately, in the case of Mr Ongwen, the first part of moral development



1 before he was abducted was washed off. As I said last week, either Thursday or  
2 Friday, the handbook of morality written before his abduction was shredded, it was  
3 destroyed, and a new book or handbook was written. Although I would say  
4 Mr Ongwen is - can I say is a special person? – because although what he attained  
5 before abduction was being destroyed, he still had remnants that he could build on  
6 while in captivity.

7 I said previously last week that this was because his father was a catechist, a very  
8 strong catechist, and the father also had community life in his -- in his practice, he was  
9 a volunteer community health worker in his village. So the combination of  
10 a volunteering spirit, spiritual spirit, and of course with the contribution of his  
11 relatives to the development on Mr Ongwen all added together and Mr Ongwen, to  
12 some degree, retained some remnants of what he learned.

13 And I think that might explain also why he later summarised the LRA as killers,  
14 a killer group. He didn't want to be associated with them, but he had no choice.  
15 He had to wait until when he got his chance to oppose his supreme commander.  
16 And for the attention of the Court, the fate that he was risking was the same fate that  
17 his predecessors faced when they tried to tell their supreme commander that they  
18 should stop this rebellion, it was not taking them anywhere. And he didn't want to  
19 have any, any of that, he didn't want to hear any of that, and whoever his deputy was,  
20 and who dared to challenge him, was summarily executed. So it was going to  
21 happen to him also, because of these remnants of morality that he had in him.

22 Q. [15:45:23] Thank you. (Microphone not activated)

23 PRESIDING JUDGE SCHMITT: [15:45:32] Microphone.

24 MS LYONS: [15:45:34]

25 Q. [15:45:34] I just want to go back very briefly, because it's in the same area,

1 same -- page 5, again. You've been criticised over and over again for not utilising  
2 state of the current art. You've been criticised many day different ways on many  
3 different occasions in the reports, in the testimonies.

4 So that we can put this to rest, is there anything else you want to add about state of  
5 the art and practice, especially in this case dealing with this particular person and  
6 dealing with your mandate to describe what mental illnesses, if any, were, were  
7 operating during the charged period?

8 A. [15:46:33] I don't see why a clinical psychologist should say detailed clinical  
9 history taking, detailed mental status assessment, making diagnosis with reasons  
10 would not qualify to be state of the art, especially when it is done by medically  
11 trained psychiatrists.

12 I had said at the beginning, or somewhere soon after -- sometime after the beginning  
13 of this session of today, that we, we in Uganda or in East Africa are well grounded in  
14 history taking, physical examination, mental status assessment. And we go for  
15 investigations, using technology which didn't exist at my time, when we are still  
16 unsure as to what the problem might be.

17 So I don't see what is non art of the art in a -- in a psychiatrist taking history, doing  
18 examination, both physical and mental, and then arriving at a conclusion.

19 Q. [15:48:20] Now, just stepping backwards. A few moments ago, you had said,  
20 going back if I may to the issue of the Acholi culture and Mr Ongwen's development,  
21 you had said that this does not happen in the culture of the rebuttal witness.

22 A. [15:48:41] Mm-hmm.

23 Q. [15:48:42] Okay. Now let's accept that for the moment and say -- my question  
24 is: How -- does this affect how an expert would view the material if he or she did  
25 not understand how this development worked in the Acholi culture?

1 A. [15:49:07] If I were in his position I would seek clarification. Particularly if, if  
2 the manuscript or report was given to me for review and make comments, then I  
3 would seek clarification for the attention of whoever authorised me to make the  
4 commentaries.

5 It is not usual that we understand everything on, on this planet. And for me, I seek  
6 clarification where I do not understand something and I put that as part of my  
7 comments.

8 Q. [15:50:16] And is this, the task of seeking clarification in terms of issues of  
9 culture, is this part of what is suggested in the DSM?

10 A. [15:50:31] In clinical practice, yes, we have to -- we are being advised to learn  
11 something that we can learn about the culture of a community that we go to work in  
12 or even to conduct research in. So seeking clarification from participants is part of  
13 the, of the game.

14 Q. [15:51:06] Now, if a person fails to do this, what are the possible negative effects  
15 in her or his assessments or conclusions? Hypothetically speaking.

16 PRESIDING JUDGE SCHMITT: [15:51:25] But \*hypothetically speaking, why --

17 MS LYONS: [15:51:28] Well, I will withdraw hypothetically speaking. Sorry, I'm  
18 just trying to be more --

19 THE WITNESS: [15:51:36] Can you put the question again?

20 MS LYONS: [15:51:38]

21 Q. Assuming that Professor Weierstall and -- Weierstall-Pust did not seek the  
22 clarifications, what are the effects on his conclusions and assessments?

23 A. [15:51:58] The effects would lead to wrong assumptions, they would lead to  
24 biased assumptions or responses and they -- of course, that would also hurt his, his  
25 professional reputation for being harsh with colleagues. As I said, editors are very

1 strict that reviewers treat their colleagues with respect.

2 And here trying to understand, putting the same criticism in the form of response,  
3 seeking response, would, would in fact be the best. He says if it were him he would  
4 do things differently. Where it comes to reviewing, I would also do it differently by  
5 being respectful to, to whoever I am dealing with.

6 Q. [15:53:18] In your initial -- thank you. In your initial presentation you talked  
7 about the criticisms of you as sloppy, deviant, that you were accused of saying that  
8 the notes of the DC were sloppy, that was put into the mouth of Dr Akena.

9 And in the expert's report he says on page 10, he says here is another example of  
10 Professor Ovuga and Dr Akena not considering collateral information and ignoring  
11 "inferences of trained detention centre experts, degrading their clinical ratings as  
12 \*sloppy clinical notes".

13 I know you started to mention this, but my question to you about this is: Did you  
14 see any consistency between your findings and findings which you had, some of the  
15 information from the clinical notes?

16 A. [15:54:32] We had two opportunities to see some, not all, some of the clinical  
17 notes.

18 First time was when Mr Ongwen arranged that we meet at least the clinical  
19 psychologist because he felt he was not being understood. So the purpose of our  
20 meeting was to let Mr Ongwen express himself to the clinical psychologist in our  
21 presence, and then we discussed, with his participation, the way forward. The  
22 clinical psychologist and the two of us, with his participation, we discussed the way  
23 forward. And I think that helped.

24 The second time, the second time we, we saw the clinical notes, this time more  
25 detailed, was when the Defence team organised with the detention centre team to

1 have the clinical notes translated to us in -- from Dutch to English and we spent close  
2 to more than half a day in one of the rooms on that side, I think. So those are the two  
3 types -- times when we, we had opportunity.

4 What I remember Dr Akena say was that the clinical notes were not in chronological  
5 order. I don't remember him saying they were -- is it sloppy? I don't.

6 And then this business of our being characterised as deviant --

7 MR GUMPERT: [15:56:55] Your Honour, can we - this is getting a bit much - can we  
8 just have the transcript reference for the deviance in this case. I am not absolutely  
9 convinced it's there.

10 PRESIDING JUDGE SCHMITT: [15:57:04] No, and I think, I think we don't want to  
11 spend more time on words, and we have discussed this, that words like "sloppy" are  
12 not adequate, we have discussed this. We should simply leave that now.

13 And since we have -- are short of 4 o'clock, I would like to ask you how long your  
14 examination, what your estimation would be?

15 MS LYONS: [15:57:29] I need probably -- I will finish much before lunch tomorrow.  
16 I want to reorganise a little bit, based on what Professor Ovuga said.

17 And I would also say, just for the record, that the term used was actually -- just to be  
18 clear, the term used is actually, "degrading", that was -- (Overlapping speakers)

19 PRESIDING JUDGE SCHMITT: [15:57:50] Yeah, but please let us not discuss -- let us  
20 discuss the substance please, here.

21 Mr Gumpert, of course, the typical question to you: Do you have already an  
22 estimate, because this would influence our further planning, for tomorrow and  
23 perhaps even for today?

24 MR GUMPERT: [15:58:08] Your Honour, I think we could and should finish today.  
25 And at the moment I would be super brief, perhaps nonexistent.

1 PRESIDING JUDGE SCHMITT: [15:58:18] Okay. But since Ms Lyons has indicated  
2 that she will not finish today --

3 MR GUMPERT: [15:58:22] Well, respectfully, your Honour, she has had her chance.  
4 A great deal of the questioning has not arisen out of the material and, in my respectful  
5 submission, we are not going anywhere.

6 PRESIDING JUDGE SCHMITT: [15:58:34] Yes, but this is up to the Judges to decide  
7 that, and since these issues that we are discussing are interconnected, let me put it this  
8 way, it is not often easy to draw an exact scientific, so to speak, or legal line between  
9 what is still rejoinder or goes beyond that.

10 But indeed, Ms Lyons, when you contemplate for your questioning tomorrow, please  
11 focus on the report. We were indulgent today, but this is out of fairness here, done  
12 to the Defence, as you recognise, obviously. But please, we would really ask you to  
13 really focus on that tomorrow.

14 MS LYONS: [15:59:24] Your Honour, I would -- I will and I abide, but I just, in  
15 my -- I would like to make one comment in my own defence, if I may, because --

16 PRESIDING JUDGE SCHMITT: [15:59:32] You don't have to defend yourself, not at  
17 all.

18 MS LYONS: [15:59:35] Well, because the -- we are dealing with a -- okay, but I am  
19 just saying, the rejoinder rebuttal is to the second psychiatric -- the second  
20 psychiatric report and the evidence of the testimonies. I argued about parameters,  
21 your Honour.

22 PRESIDING JUDGE SCHMITT: [15:59:48] No, this is exact -- this is exactly what I  
23 wanted to express, that the rebuttal evidence was agreed upon because there was this  
24 new report, but Prosecution witnesses could not testify upon.

25 So from there, of course, this is the starting point and then we have the rejoinder and

1 it might -- it is really, I understand that, it is really not always easy to draw here, as I  
2 said, an exact line between what might be permissible or not. And because of that,  
3 as I said, out of fairness, I would simply suggest that, in doubt, the questions are  
4 allowed, simply like that.

5 So we have now 4 o'clock. You keep in mind what we said now, and we conclude  
6 the hearing for today, we continue tomorrow at 9.30.

7 Thank you, Professor Ovuga. We see each other again tomorrow morning.

8 THE COURT USHER: [16:00:49] All rise.

9 (The hearing ends in open session at 4.00 p.m.)

#### 10 CORRECTIONS REPORT

11 The following corrections, marked with an asterisk and included in the audio-visual  
12 recording of the hearing, are brought into the transcript.

13 Page 1 line 22

14 "told" Is corrected to "today"

15 Page 7 line 18

16 "Is" Is corrected to "If"

17 Page 10 line 2

18 "fits" Is corrected to "picture"

19 Page 10 line 25

20 "a position" Is corrected to "opposition"

21 Page 22 line 17

22 "of" is added

23 Page 35 line 16

24 "hypothetical" Is corrected to "hypothetically"

25 Page 36 line 12

Trial Hearing  
WITNESS: UGA-D26-P-0042

(Open Session)

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1 “sloppily” Is corrected to “sloppy”