

Trial Hearing

(Open Session)

ICC-02/04-01/15

WITNESS: UGA-OTP-P-0003

- 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 1
- 8 Friday, 3 March 2017
- 9 (The hearing starts in open session at 9.32 a.m.)
- 10 THE COURT USHER: [9:32:17] All rise.
- 11 The International Criminal Court is now in session.
- 12 PRESIDING JUDGE SCHMITT: [9:32:41] Good morning, everyone.
- 13 Good morning, Mr Witness.
- 14 Please, court officer, call the case.
- 15 THE COURT OFFICER: [9:32:49] Thank you, Mr President.
- 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 We are in open session.
- 19 PRESIDING JUDGE SCHMITT: [9:33:01] Thank you.
- 20 I ask for the appearances of the parties.
- 21 Mr Elderfield.
- 22 MR ELDERFIELD: [9:33:06] Good morning, your Honours. Julian Elderfield,
- 23 Pubudu Sachithanandan, Ben Gumpert, Adesola Adeboyejo and Ramu Fatima
- 24 Bittaye.
- 25 PRESIDING JUDGE SCHMITT: [9:33:16] Thank you.

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1 Legal Representatives of Victims.

2 MS ADONG: [9:33:19] Good morning, your Honours. Jane Adong, with me is

3 Mr Orchlón Narantsetseg and Jacqueline Atim. Thank you.

4 MS HIRST: [9:33:31] Good morning, your Honours. Megan Hirst, and with me is

5 James Mawira.

6 PRESIDING JUDGE SCHMITT: [9:33:37] Thank you very much.

7 And for the Defence, please.

8 MR AYENA ODONGO: [9:33:39] Good morning, your Honours. Krispus Ayena

9 Odongo, Charles Taku, Rowse Michael and Abigail Bridgman. Our client,

10 Dominic Ongwen, is in court.

11 PRESIDING JUDGE SCHMITT: [9:33:56] Thank you. Mr Ayena, you still have the

12 floor. It's your turn of questioning.

13 WITNESS: DRC-OTP-P-0003 (On former oath)

14 (The witness speaks Acholi)

15 (The witness gives evidence via video link)

16 QUESTIONED BY MR AYENA ODONGO: (Continuing) [9:34:04]

17 Q. [9:34:05] Good morning, Mr Witness.

18 A. [9:34:14] Before I respond I would request that I say something at the beginning.

19 PRESIDING JUDGE SCHMITT: [9:34:20] Mr Witness, you are allowed to say

20 something shortly, but please make no declarations. You can say a couple of words,

21 you are allowed to do that. Please speak. But if it would get too long, I would have

22 to interrupt you because you understand that we have at some point in time to finish

23 your examination and we are expecting this today so today will also be, with all

24 probability, the last day in this courtroom for you. So please speak now.

25 THE WITNESS: [9:34:53] Thank you very much, your Honours. First of all,

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1 yesterday my witness should -- my statement should have completed yesterday, but
2 with the arrogance from the Defence all this has continued to today. I want to thank
3 you for your presidency of this court session. I have a question that would go to
4 the Prosecution and also the Defence.

5 My question is: I should have been in the courtroom itself, but of the incidents
6 yesterday I am now seated in a different place. I wanted that I should sit in the
7 courtroom so that I could see you face to face and see everybody else, but this has not
8 happened. And even now, as I am seated here, the way we conducted session
9 yesterday, I changed several rooms and I was so disorganised, and even some of the
10 questions that I was asked after the confusion in the courtroom I, I was not very
11 organised and was not able to respond very clearly to some of the questions because
12 I was disorganised.

13 Your Honours, I would request that -- I remember that Mr Ayena was asking me
14 several questions in the past, for instance, was saying: "Witness, do you remember
15 this document? Did you sign it?" And I said: "Yes, I remember this document
16 and I even signed."

17 So I would like to understand from the Prosecution which documents are being used?
18 How many documents are being used in the Court? Are they using the document
19 that the ICC gave me to sign?

20 PRESIDING JUDGE SCHMITT: [9:36:43] Okay. Mr Witness, thank you very much
21 for that. I have to stop -- I have (overlapping speakers) you here, Mr Witness. We
22 have understood your point and we are now asking the Prosecution and the Defence,
23 there is a sort of a request in it, in brackets, that the examination continues with the
24 witness present in the courtroom again. What do you say to that?

25 MR ELDERFIELD: [9:37:02] Your Honour, the Prosecution is happy for the witness

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1 to be brought back into the courtroom if he would like to do so.

2 THE WITNESS: (Overlapping speakers)

3 PRESIDING JUDGE SCHMITT: [9:37:08] Please, Mr Witness, please don't interrupt.

4 Now the Prosecutor is speaking.

5 MR ELDERFIELD: [9:37:14] Your Honour, the Prosecution is happy for the witness

6 to be brought back into the courtroom if he would like to do so.

7 PRESIDING JUDGE SCHMITT: [9:37:20] Mr Ayena?

8 MR AYENA ODONGO: [9:37:23] Your Honours, we have absolutely no reason why

9 we should object to him coming back to the courtroom.

10 PRESIDING JUDGE SCHMITT: [9:37:30] Yes. Then we, I think we will need

11 a couple of minutes to bring him back here, so we retire not to deliberations but to the

12 deliberation room.

13 MR AYENA ODONGO: [9:37:44] Can I consult with my client, please?

14 PRESIDING JUDGE SCHMITT: [9:37:46] It's not up to -- you know, this is now then

15 a decision by the Court and we trust that everything is okay with your client.

16 And, Mr Ongwen, I remind you -- Mr Ongwen. Mr Ongwen, I remind you of what I

17 have said yesterday, and I trust and I understand that you have understood what I

18 have told you yesterday. Is this correct? Please rise.

19 MR ONGWEN: [9:38:20] (Interpretation) Thank you. Me now, I am here before the

20 Court, I am here not as a human being. I thought I would not even return to

21 the Court today, but I, I realised that there is no problem between me and you and

22 other people. But there is something, or there is a case between me and the people

23 who brought this case. And it would be a matter of big shame if it is heard or

24 known that I have decided to kill myself. So I think there are people who, somebody,

25 for example, who has killed my person or somebody who causes injury to me, I think

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1 I should not sit with him in the same court. So, for example --

2 PRESIDING JUDGE SCHMITT: [9:39:24] No. I mean, Mr Ongwen, Mr Ongwen,
3 please, please no long speech. I want to know from you if you remember what I told
4 you yesterday, that in this courtroom we have to show respect to each other and that
5 we follow the rules. Do you understand that? And are you willing to do that?
6 This is my question to you and this requires only a yes answer or a no answer. So
7 please tell the Court what you want --

8 MR ONGWEN: (Overlapping speakers)

9 PRESIDING JUDGE SCHMITT: What you want (Overlapping speakers).

10 MR ONGWEN: (Interpretation) I think for me I am not very comfortable now,
11 but -- to share a place with somebody who has killed my person. I already suffered
12 enough.

13 PRESIDING JUDGE SCHMITT: [9:40:18] So I think we go back to deliberation and
14 we will tell you what we are going to do. I think there needs to be a deliberation
15 between the Judges outside of this room.

16 THE COURT USHER: [9:40:34] All rise.

17 (Recess taken at 9.40 a.m.)

18 (Upon resuming in open session at 9.44 a.m.)

19 PRESIDING JUDGE SCHMITT: [9:44:28] We got now the information that
20 Mr Witness prefers to stay in the separate room and we appreciate this and this
21 means that we continue as we had envisioned it before we started the day today.
22 So Mr Ayena, you have the floor. Please continue the questioning. I think this is
23 the best solution under the circumstances.

24 MR AYENA ODONGO: [9:45:02] I thank you your Honours. Your Honour, I
25 appreciate the burden, the extraordinary burden you have to bear, but we are about

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1 to end.

2 Q. [9:45:28] Mr Witness, the other day and yesterday we talked about how you
3 intercepted communication, about unfoiled indeed the Abim attack. Can you tell
4 Court roughly how far Abim is from Gulu?

5 A. [9:45:58] I did not study geography, I do not have the equipments for measuring
6 kilometres or mileage. Thank you.

7 PRESIDING JUDGE SCHMITT: [9:46:14] Mr Witness, do you have an estimate?
8 Sometimes of course nobody expects from you that you know exactly how many
9 kilometres away from Gulu this place is, but since you live there in this region, you
10 have perhaps an idea, so to speak, only an estimate. If you don't have, please tell us.
11 But if you have, perhaps you could say it's roughly 50 kilometres or 100 away or
12 whatsoever.

13 THE WITNESS: [9:46:49] Thank you, your Honours. The distance from Gulu to
14 Abim, I can describe that when you leave Gulu you enter into Pader, then from Pader
15 district you go to Agago district, then from Agago you go to Abim district. That is
16 how best I can describe. This place is to the east, eastern Acholi. I haven't been
17 there myself. I think this is what I can say in response to Abim. Thank you.

18 PRESIDING JUDGE SCHMITT: Mr Ayena.

19 MR AYENA ODONGO: [9:47:40]

20 Q. [9:47:41] Mr Witness, is Abim further than Pajule?

21 A. [9:47:57] You know very well. You are a person who knows Abim, you know
22 Pajule, you know all these distances. You should help those who don't know that
23 place to understand because you know the whole of Acholi, the whole of Alango. I
24 said Pajule, Pajule is in Pader district.

25 Your Honours, I want people to understand this. I said Abim, you -- when

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1 you from Gulu, you go into Pader district after crossing Achwa river.

2 PRESIDING JUDGE SCHMITT: [9:48:35] Mr Witness, Mr Witness, shortly. It's

3 not -- nobody expects from you a geographical elaboration on the region. And if you

4 don't know, just say, "I don't know it, I can't say anything about it." Just say it. It's

5 possible, yes, why not? But of course we judges do not know it.

6 THE WITNESS: [9:48:57] (Interpretation) Thank you.

7 Know that I am insisting, I want to describe so that people understand. I said from

8 Gulu you go to Pader. Pajule that counsel Ayena is asking is in Pader district.

9 Pajule is in Pader district. And from Pader district you will have left Pader right

10 behind you. As a soldier I know I was in Pajule because I was doing operation in

11 that area.

12 So that's what I can respond to. So he is just asking deliberate question because he

13 knows very well that Abim is ahead of Pajule, and as you go to Abim you will have

14 left Pajule right behind you.

15 PRESIDING JUDGE SCHMITT: [9:49:49] Please continue, Mr Ayena. This will be

16 until we finish a recurrent theme that there will be some remarks that -- I could step

17 in constantly, but you understand perhaps also the situation.

18 MR AYENA ODONGO: [9:50:06] It's very frustrating because, your Honours, you

19 know, to be -- for me to be frightened away from asking certain questions because of

20 the conduct of the witness, I think it is unacceptable.

21 PRESIDING JUDGE SCHMITT: [9:50:24] The judges are fully aware of what is going

22 on here, I can tell you.

23 MR AYENA ODONGO: [9:50:30]

24 Q. [9:50:30] Mr Witness, therefore would I be right to say that Odek, Abok and

25 Lukodi are nearer to Gulu than Abim is to Gulu?

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1 A. [9:50:53] I want Court to understand clearly, Odek is in Gulu. Odek is
2 a sub-county which is in Amuru county, which is in Gulu district. The difference
3 between Abim, Pajule and other places, Abim is in another district. Pajule is in
4 another district. I think I really want Court to understand this clearly. Thank you.

5 Q. [9:51:41] After that answer, Mr Witness, can you tell Court how and why you
6 failed to intercept LRA communication in order to foil attacks on Pajule, Odek, Abok
7 and Lukodi, which in terms of distance were just under your nose, so to speak?

8 A. [9:52:07] I would like to ask you, are you using a document that was verified by
9 ICC or you are using a document that you brought yourself?

10 PRESIDING JUDGE SCHMITT: [9:52:19] No. Mr Witness, I repeat it again, you are
11 not here to ask questions, you are here to answer questions. The question is clear.
12 You can answer to it and you have to answer to it. This is one of your duties here in
13 the courtroom, that you answer the questions. And the more forthcoming you are in
14 doing, the quicker this procedure comes to an end, which I would assume is also in
15 your interest. So please answer the question.

16 THE WITNESS: [9:52:52] (Interpretation) Please say the question again.

17 MR AYENA ODONGO: [9:52:58]

18 Q. [9:52:59] How and why did you fail to intercept LRA communication regarding
19 attack on Odek, Pajule, Abok and Lukodi?

20 PRESIDING JUDGE SCHMITT: [9:53:17] Perhaps a clarification, we are talking
21 about the time before this attack?

22 MR AYENA ODONGO: Before, before that

23 PRESIDING JUDGE SCHMITT: Yes. Mr Witness, we are talking about the time
24 before these attacks occurred. Did you have any information about that before?

25 THE WITNESS: [9:53:39] (Interpretation) Thank you, your Honours. I want to put

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1 this clearly before the Court, that there were several LRA attacks, so at the time that
2 ICC came to me, they selected the places or the incidents that they were interested in.
3 They picked only those tapes that they were interested in, and that is what I gave
4 them. So it therefore means what I provided ICC is what is before the Court. I
5 hope this is clear.

6 PRESIDING JUDGE SCHMITT: [9:54:22] Thank you.

7 Please, Mr Ayena.

8 MR AYENA ODONGO: [9:54:28]

9 Q. [9:54:30] Mr Witness, would I be wrong to assume that there could have been
10 either a failure on the part of the person who was intercepting or there was a technical
11 failure on the machines meant for intercepting communications before the attacks in
12 these places?

13 A. [9:55:11] I will repeat this again before the Court. I really don't want to be
14 responding to the same question over and over again. I gave documents to the ICC
15 in relations to what they chose to use. There are many documents, there are many
16 tapes, but I gave those that ICC were interested in. I did not tell them to use this
17 document or use this tape.

18 There were several documents that maybe ICC picked, but they have not used it. So
19 you cannot force me to say something on which I am not aware. There were several
20 other recordings, but I gave them what they were interested in. So what is here is
21 what was brought by ICC. I did not tell ICC not to record anything.

22 So please let me not be responding to the same question over and over again. I gave
23 documents that were in relation to what they were interested. So you cannot force
24 me to say why I did not record intercept on Abok, on Pajule. So you have to ask
25 them why they were not able to record the other incidents.

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1 Q. [9:56:27] Thank you, Mr Witness. We move to some other area. In your
2 logbooks you sometimes indicate that an individual is in a location. Could you
3 explain to Court how you were able to locate these individuals?

4 A. [9:56:46] I would probably request we go to a private session.

5 PRESIDING JUDGE SCHMITT: [9:56:50] Yes, that makes sense. We go to private
6 session.

7 (Private session at 9.57 a.m.)

8 THE COURT OFFICER: [9:57:07] We are in private session, Mr President.

9 PRESIDING JUDGE SCHMITT: [9:57:10] Please answer the question, Mr Witness.

10 THE WITNESS: [9:57:15] (Interpretation) Say the question again.

11 MR AYENA ODONGO: [9:57:20]

12 Q. [9:57:21] I started with a statement and I said in your logbooks you sometimes
13 indicate that an individual is in a location. You were able to tell that so and so was
14 in a location. Then the question is: Could you explain to Court how you were able
15 to locate that -- I mean where these individuals were?

16 A. [9:57:48] Thank you. I am going to respond to this question calmly and
17 technically. This takes me back to the issue of jargon, which I wanted to explain the
18 other day, but you refused, because you knew I was going to. So if possible, let me
19 be allowed to talk about jargons so that I can be able to explain the answers.

20 The second issue is that we were, we were in a team called the CMI team. So CMI
21 was doing technical intelligence in Gulu. If you could look at that paper numbered 1
22 to 12, if we could go back to that paper so that it can help me to respond to the
23 question, there was paper that was numbered 1, 2, 3 up to 10 or 12 so that I can make
24 reference to it.

25 MR AYENA ODONGO: [9:59:03] Your Honours, it is tab 1, tab 1, Prosecution tab 1.

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1 Court officer, can you help him to go to tab 1.

2 PRESIDING JUDGE SCHMITT: [9:59:34] Do you have it in front of you, Mr Witness,
3 now?

4 THE WITNESS: [9:59:40] (Interpretation) Yes, I now have it. Thank you very much,
5 your Honours.

6 In my first response I said there are two ways we can be able to tell the location from
7 which the LRA is transmitting. The first one, we use jargons. And I would request
8 Court to give me time to explain what jargons are, because the other time Mr Ayena
9 asked me that he would like to understand the difference between call signs, jargon
10 and proverbs, so I explained two things already, but the first one, we get through the
11 jargons.

12 Then secondly, I know you all have this document in front of you. Look at number 8.
13 So if you look at number 8, then you go to number 11. Is everybody seeing this?

14 PRESIDING JUDGE SCHMITT: Yes, I think so.

15 THE WITNESS: (Interpretation) Then from number 11 you go to number 12. This
16 indicates that in our group there were two sections. I explained this earlier, that in
17 our office we have people who deal with direction finding. I said this over and over
18 here in court. This is one way that the locations of the transmission is determined.
19 So it therefore means, even though I was working in the intercept section, there is
20 a section on direction finding. And this direction finding, our overall boss was
21 number 8, and at that time he was a lieutenant. But now because of his hard work,
22 he is now a major. So this is a promotion that he got as a result of his hard work.
23 So therefore, in response to Mr Ayena's question on how we can determine the
24 location LRA is transmitting from are these two ways, the first one jargon and then
25 direction finding.

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1 But I would request the Court to give me time to also explain a little bit about the
2 jargon. Thank you.

3 PRESIDING JUDGE SCHMITT: [10:02:22] Do you think we need that, Mr Ayena, or
4 was the answer sufficient for you?

5 MR AYENA ODONGO: [10:02:27] Sufficient for me, because he is talking about
6 direction findings. That's all I wanted to know.

7 PRESIDING JUDGE SCHMITT: [10:02:32] Thank you, Mr Ayena. Please continue.

8 MR AYENA ODONGO: [10:02:37]

9 Q. [10:02:37] Mr Witness, according to what you have just told Court, it would
10 appear you were using direction findings for purposes of locating individuals. So I
11 want you -- I want to ask you whether you can tell Court the purpose of direction
12 finding in relation to intelligence report filed by you and others. Did you include, I
13 mean when you were making your reports, did you include aspects of
14 direction -- was your report influenced by direction findings, information got from
15 direction findings?

16 A. [10:03:33] Thank you so much. I have to be very clear. I said clearly here that
17 we have two sections within the CMI. I belong -- well, if you see the paper which is
18 in front of us, there is number three and number four. There is also number five and
19 number seven. I actually trained these people and I also said that these people were
20 working elsewhere. That means that the direction finding is a different section from
21 the section of intercept. We have two sections. We have the DF section and we
22 have the intercept section which I headed. So even if I was heading the intercepts
23 section, that didn't stop the other boss to be our boss. Within the army there could
24 be one commander, but there may be different platoons or companies, but that
25 doesn't stop having a commanding officer who is the overall head. Thank you.

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1 Q. [10:05:23] Mr Witness, could you please explain to Court how the direction, or
2 DF, for that matter, operators, how the operators of direction findings assisted you in
3 decoding TONFAS?

4 A. [10:05:49] These people don't know TONFAS. They don't know TONFAS.
5 Why don't you allow me to show you the jargon?

6 I am asking the Court: Why is Ayena not allowing me to show the issue of jargon?
7 He knows that I will get him there. Why doesn't he want me to talk about jargon?
8 Tell us clearly. Why are you arguing? Why don't you allow me to explain the issue
9 of jargon so that the Court may clearly understand? Thank you.

10 PRESIDING JUDGE SCHMITT: [10:06:25] No, but the question was different,
11 because of that, Mr Witness. The question was a different one. The question was:
12 If I can explain how you -- how the operators of direction findings assisted you in
13 decoding. You could say, for example, "I did not need assistance because I, I was the
14 one, I was the expert," so to speak. You could say that. That's the only information
15 that we need at the moment. And again there is nothing.

16 THE WITNESS: (Overlapping speakers)

17 PRESIDING JUDGE SCHMITT: [10:06:55] No. I am now speaking.

18 Really I have to say this and I have to now make a remark to the Prosecution, this is
19 a Prosecution witness, and really I am a Judge since 1991 and I have rarely
20 encountered something like that, I do not really -- if at all.

21 So, Mr Witness, you could -- you can simply answer. There is nothing negative in
22 this question, nothing, no reproach, nothing in it that wants to attack you.

23 As I said, the sooner and the quicker you answer to that, with a more forthcoming
24 attitude and not a negative attitude towards counsel, the quicker the whole
25 proceeding is finished for everybody and for you.

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1 So the question was simply: Was there assistance, did you have assistance from
2 direction finding in doing that? Or, for example, you could say, "Yeah, I did have"
3 or "I did not have because I was the only one who was capable to do that." That is
4 the information that is asked. So please answer the question.

5 THE WITNESS: [10:08:03] (Interpretation) These people belonged to a different
6 section. That means they did not help me. If they did so, you would have seen so.
7 Your Honour, I would like to request that I show the difference between intercept and
8 the direction finding.

9 Yesterday Mr Ayena tried to show some document and that document was showing
10 the roles of the direction finding section and also which showed what I do myself.
11 So I would have wished that the Court understands clearly the difference between
12 direction finding and intercepts. Because Ayena had the document yesterday and
13 I am sure he can pull out that document. There was a document entitled "Field
14 Report" so that will allow me to help you. Thank you.

15 MR AYENA ODONGO: [10:09:13] Your Honours, I know what I want and I am not
16 going to pick what I don't want. So he should answer --

17 PRESIDING JUDGE SCHMITT: [10:09:24] That is absolutely your right, of course.

18 MR AYENA ODONGO: [10:09:27] Yes. Because he says they never assisted him,
19 but I want to refer him to tab -- can you open, court officer, if you may, refer to tab 26,
20 ERN --

21 PRESIDING JUDGE SCHMITT: Which binder? Defence?

22 MR AYENA ODONGO: Defence binder. UGA-OTP-0246-0061-R01, paragraph 55.

23 MR GUMPert: [10:10:25] Your Honour, I'm sorry to interrupt, but better to do it
24 now before any questions are asked so that the Court can adjudicate on this matter.
25 The document to which my learned friend refers is a witness statement of another

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1 witness. There is no indication that this witness has ever seen it before. Indeed it
2 would be quite improper if he had. I quite understand that there may be factual
3 propositions contained within that statement that my learned friend wants to put to
4 this witness to seek his agreement, disagreement or comment. But showing him the
5 witness statement, asking him about the making of a witness statement, getting him
6 to comment on statements of other witnesses I respectfully submit is unhelpful to the
7 Court, time-consuming and improper. Witnesses shouldn't comment on each other.
8 They should, if they can, comment on the facts.

9 PRESIDING JUDGE SCHMITT: [10:11:38] I think it would be easy, Mr Ayena, to
10 extract the factual proposition that you want to put to the witness. I think that
11 is -- otherwise we have -- I envision the next discussion with the witness. So I would
12 say just extract the factual proposition that you want to know from him. Put all, like
13 I think you would say in this, if you are in an Anglo-Saxon environment put it to the
14 witness, "I put it to you" and then you read out something and extract the factual
15 proposition. That serves the same purpose, I think.

16 MR AYENA ODONGO: [10:12:18] Yes.

17 Q. [10:12:18] Mr Witness, I put it to you that UPDF interceptors would talk to the
18 UPDF direction finding team about locations to help break LRA codes referred to as
19 direction -- I mean in the direction findings.

20 Mr Witness?

21 A. [10:12:56] I didn't know you were asking me -- did you just make a statement or
22 was it a question? Can you please repeat? Thank you.

23 Q. [10:13:04] I put it to you, Mr Witness, that sometimes the UPDF interceptors
24 would talk to UPDF direction finding team about locations to help them break LRA
25 codes. Is that correct?

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1 A. [10:13:36] I said clearly that there are two sections. There is the intercept
2 section and the DF section. People who are in the DF section are different. I work
3 in the intercept section. What relationship exists between DF and intercept? The
4 way the DF team writes its report is different from the way the intercept section
5 writes its report. That's why I was saying you go back to the documents of
6 yesterday entitled "Field Reports" so I may explain and everybody understands
7 properly to show the difference between DF and intercepts. Thank you.

8 Q. [10:14:26] All I wanted was for you to say that I am right in saying so or I'm
9 wrong. And in this case I would assume that you think I'm wrong.

10 A. [10:14:55] You know, I wouldn't want you to make me talk according to your
11 interests. I request the Court not to allow Mr Ayena to make me talk according to
12 his interests. Let me talk on the basis of my knowledge. If you make me talk
13 according to your interest, it means that you want to satisfy your interests. But me, I
14 would prefer to answer questions on the basis of my knowledge. I told you that the
15 DF write figures --

16 PRESIDING JUDGE SCHMITT: [10:15:27] Now again, I have to interrupt again and
17 I'm really -- there might come a time when really we have to think about -- although
18 we are coming close to an end perhaps. I hope so. Okay, you are nodding.
19 Otherwise I would really, frankly speaking, be at some point where there is a point of
20 no return for the Presiding Judge here.

21 So there was a question and the question could be answered: "Yes, it is correct what
22 you are saying, Counsel," or "It's not correct." It has nothing to do with interest.
23 You can say what you want, what you think is correct. That is the -- he left you the
24 two possibilities and you can -- of course we are absolutely aware of that from the
25 start of your testimony that you can only talk about things that you have knowledge

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1 of, with your expertise. This is the only thing that is requested from you. And if
2 you don't know, you say you don't know. Again and again, it's really not about that
3 there is something improper or somebody wants to push you into something. You
4 can answer no or you can answer yes. All the possibilities are there on the table for
5 you.

6 THE WITNESS: [10:17:03] (Interpretation) I seen Ayena looking this side, that side.
7 Perhaps he is waiting for what I have to say. Perhaps the Judge is still talking.
8 I cannot say -- I cannot understand because at one moment I was trying to talk and
9 then the Judge told me that he was still talking and the mood was a bit different. So
10 I would like to know whether Mr Ayena would like to ask more questions after the
11 intervention of the Judge. I don't know.

12 Thank you.

13 PRESIDING JUDGE SCHMITT: [10:17:38] Is that so, Mr Ayena?

14 MR AYENA ODONGO: [10:17:43] Your Honours, my question was -- you know, I
15 made a statement to him that we are -- I have information that UPDF interceptors -- of
16 course he has already said there were two sections, the direction finding section and
17 then the interception section, which he headed. And I was saying that I have
18 information, we have information that the UPDF interceptors would talk to UPDF
19 direction findings, to the direction finding team about locations to help them break
20 codes, LRA codes. And I was asking him is this right or wrong. And you reiterated
21 this question that the choice is, is it right or wrong? It does not need any
22 extrapolations.

23 Q. Mr Witness, it is your turn.

24 A. [10:19:08] Thank you. Your Honour, I will request that you accept me to say
25 something so that people can understand.

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1 At the beginning I said we have stations. Even Ayena himself said that time that
2 there are others who were in Achol-Pii, others in Soroti, he said it himself, others in
3 different places. He said this himself.
4 Perhaps there were other stations who heard that kind of thing, because it was not
5 only me who was monitoring the LRA. There were many other stations who were
6 monitoring LRA. So it is possible that in other stations -- because he had asked me:
7 Do you know that there are many stations who monitor the LRA?
8 I said I don't know. So I have to answer questions according to my interests.
9 Some people may be sharing information in the field from Soroti, from Achol-Pii and
10 so on, because he did explain all this clearly and everybody understood. So what
11 I can say is that in my station that never happened. Perhaps it used to happen in
12 other stations. Thank you.

13 PRESIDING JUDGE SCHMITT: [10:20:37] Now, Mr Witness, that was exactly an
14 answer to the question of counsel, and no problems with that.

15 So please continue, Mr Ayena.

16 MR AYENA ODONGO: [10:20:46]

17 Q. [10:20:46] Mr Witness, you are on record, you are on record as having told Court
18 that you never talked to ISO or ESO staff who were sharing the same compound with
19 you about work-related matters; is that correct?

20 MR ELDERFIELD: [10:21:12] Perhaps a citation, your Honour.

21 PRESIDING JUDGE SCHMITT: [10:21:15] Yes, I also have it in my ear that the
22 citation is correct, but it is indeed better if we have it exactly.

23 MR AYENA ODONGO: Yes.

24 PRESIDING JUDGE SCHMITT: Could we go for that into open session?

25 MR AYENA ODONGO: [10:21:32] (Microphone not activated)

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1 PRESIDING JUDGE SCHMITT: [10:21:33] Yes, then we go back to open session.

2 (Open session at 10.21 a.m.)

3 THE COURT OFFICER: [10:21:46] We are in open session.

4 MR AYENA ODONGO: [10:22:02] Your Honours, that's going to take a while, but

5 I think we could jump and continue.

6 Q. Let's talk about call signs, Mr Witness. Mr Witness, can you remind the Court
7 about the call sign by which Dominic Ongwen was called?

8 A. [10:22:42] I said there are more than 200 call signs, more than 200 call signs. I
9 tried to say this yesterday. These people can change their call signs, and I gave an
10 explanation to that. The LRA changes call signs from time to time. And Dominic
11 has used call signs, more than 200 call signs, so how can one remember all those 200
12 call signs? Because each TONFAS comes with its call signs.

13 Now, if there are 200 of them or 300, that will be difficult to remember, because the
14 LRA has -- may come up with several TONFASs. There are Tem Wek Ibong, which
15 they changed and they said clearly that these people had the following call signs. I
16 gave an example of Ocan Bunia, who had a call sign called 9 Whiskey. And when
17 Kony gave orders that nicknames be used, each person would now select his or her
18 nickname.

19 Q. [10:24:02] Excuse me. Excuse me, Mr Witness. Can we talk about the call sign
20 of Dominic Ongwen between 2002 and 2005?

21 A. [10:24:17] I don't remember any of those call signs right now, because
22 you cannot remember 200 call signs. Thank you.

23 PRESIDING JUDGE SCHMITT: [10:24:26] That is also information, isn't it?

24 MR AYENA ODONGO: [10:24:29] Yes. He says he doesn't remember.

25 Q. [10:24:40] Could you tell Court if you know some -- well, he doesn't remember.

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1 Now, Mr Witness, before you came to this court, had you met and interacted with
2 Dominic Ongwen personally, face to face?

3 A. [10:25:22] Dominic was in the LRA, and the LRA, they operate in the bush. Me,
4 I belong to the government army, I live in the barracks. I don't have time to meet
5 rebels. You could even see their hair was not like my hair, a government official.

6 Q. [10:25:41] So you had never met Dominic Ongwen before you came to court
7 here?

8 A. [10:26:00] Are you asking me if I met him or if I knew him? Please be specific
9 in your questions.

10 PRESIDING JUDGE SCHMITT: [10:26:10] I think we are talking here about
11 a personal encounter.

12 MR AYENA ODONGO: [10:26:14] Yes.

13 PRESIDING JUDGE SCHMITT: [10:26:15] And I would interpret your answer to the
14 last question as a no; is that correct? Just a no?

15 THE WITNESS: [10:26:26] (Interpretation) What I can say is that Dominic was
16 a rebel, and me, I was a government soldier. So I don't know Dominic.

17 MR AYENA ODONGO: [10:26:42]

18 Q. [10:26:42] And you did not know his call signs? You told Court that you did
19 not know his call sign. Then how could you identify or recognise the voice of
20 somebody you never met or interacted with and you did not know his call sign?

21 A. [10:27:11] Please be straightforward. Don't be confusing. You asked me if I
22 remember his call signs. I told you that Dominic Ongwen had many call signs.
23 Please stop confusing. I told you that Dominic Ongwen used many call signs which
24 I cannot recall. But if I have to check in the books, that wouldn't be difficult. What
25 you are asking is a bit different. Thank you.

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1 Q. [10:27:50] Mr Witness, I remember that yesterday you told Court that the voice
2 of Labalpiny and that of Joseph Kony were very alike; is that correct?

3 A. [10:28:14] Let the recording be played so that you hear, because if you say "Hello,
4 hello" on the phone without saying a sentence, can you know that this is Ayena or
5 so-and-so? For example, if someone says "Hello, hello" on phone, can you know if
6 someone doesn't say any sentence?

7 Q. [10:28:45] Well, if somebody said "Come here," I would know that he is a white
8 man. But if he said "Come here," I would know perhaps he is a black man.

9 PRESIDING JUDGE SCHMITT: [10:29:05] This was not a question. Or was it?

10 MR AYENA ODONGO: [10:29:08] Well, I am putting it to him.

11 PRESIDING JUDGE SCHMITT: [10:29:13] I am sure -- really I have now to say the
12 witness has surely not recognised that this was a question. Yes, so the question
13 would be perhaps -- may I take over?

14 MR AYENA ODONGO: [10:29:30] Yes.

15 PRESIDING JUDGE SCHMITT: [10:29:31] So when you hear a person speak a longer
16 sequence, are there also voices that are very difficult to distinguish between each
17 other, or are they for you easily to be identified when they speak, as I said, not only
18 a short remark like "hello" or "come here"?

19 THE WITNESS: [10:30:17] (Interpretation) Should I speak? It looks as if Mr Ayena
20 is preparing the file. I wonder whether he wants to ask other questions.

21 PRESIDING JUDGE SCHMITT: [10:30:28] No, no. This was a question by me.

22 But I, obviously with the translation, you know, a question can also be that at the end
23 the voice is a little bit rising, so I wanted to answer you that. And the question
24 shortly repeated is: When you have longer sections of a person speaking, are there
25 also voices that are difficult to distinguish between each other, or can you say because

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- 1 you have done this for years, then I have no problem with saying who is speaking?
- 2 THE WITNESS: [10:31:03] (Interpretation) I would like to see the judge, because
- 3 sometimes when the judge is speaking I cannot see his image on video. I can only
- 4 see Mr Ayena's image. So sometimes it is difficult for me to know that the judge is
- 5 talking.
- 6 If the judge is talking, please show me the image of the judge, because the camera is
- 7 focusing on Mr Ayena and yet it is the judge who is talking; and I risk, therefore,
- 8 interfering with the judge's talk. Because I was -- I have been told that I am not
- 9 respectful, so I am really fearful, and I need to be assisted.
- 10 PRESIDING JUDGE SCHMITT: [10:31:47] I don't know if it is possible to show
- 11 every speaker who is speaking. But of course I understand that I am translated, and
- 12 so I assume that you do not recognise my voice because of that. So -- or perhaps,
- 13 yes.
- 14 So indeed the last question that has been put to you was put by me, by the
- 15 Presiding Judge, and it would be nice if you could answer it.
- 16 THE WITNESS: [10:32:18] (Interpretation) Your Honour, can you please repeat,
- 17 repeat the question. Thank you.
- 18 PRESIDING JUDGE SCHMITT: [10:32:29] That's no problem.
- 19 You said that it is difficult or it might be difficult to distinguish voices when you only
- 20 hear a short remark like "hello" or "come here" or "come here," and I wanted to ask
- 21 you if in your opinion, with your experience, is there a difference when you have
- 22 longer portions that you can hear, or could it be that there are also voices that are
- 23 even when you hear a sentence, a whole sentence, that it might be difficult for you to
- 24 distinguish between each other? That was the question.
- 25 THE WITNESS: [10:33:13] (Interpretation) Thank you so much, your Honour.

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1 What I meant by the speeches that is not very long, for example, one sentence is
2 different from someone who says "hello" and someone who says "You come here and
3 see me. I would like to meet you." There is a difference. If I say, "Come and we
4 meet," it's different from someone who say, "hello," even if a white person says "hello"
5 or an Acholi says "hello" or a Nigerian says "hello," you cannot distinguish. But if
6 someone says "hello," he says "hello" and not "godo" (phon). Thank you.

7 PRESIDING JUDGE SCHMITT: [10:33:56] Mr Ayena, please continue.

8 MR AYENA ODONGO: [10:34:03] Your Honours, I don't know where I am. Did
9 he answer that question? Because I want to find out whether it was possible that he
10 could distinguish, you know, different voices or it was the case that certain voices
11 were similar to one another.

12 PRESIDING JUDGE SCHMITT: [10:34:27] That was exactly what I also had asked.

13 MR AYENA ODONGO: Yes.

14 PRESIDING JUDGE SCHMITT: Perhaps with a different wording.

15 MR AYENA ODONGO: [10:34:31] Yeah.

16 PRESIDING JUDGE SCHMITT: [10:34:32] And he has repeated now three times
17 and --

18 MR AYENA ODONGO: And he seems --

19 PRESIDING JUDGE SCHMITT: -- sometimes I tend to say in the courtroom we
20 don't get what we expect or what we want.

21 Microphone, please.

22 MR AYENA ODONGO: [10:35:06]

23 Q. [10:35:08] I want to refer to your statement that was signed on the 4th -- on
24 7 April 2005, which is found at UGA-132-2006.

25 A. [10:35:51] I am not clearly getting what you are saying. Maybe you need to

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1 make it clear.

2 PRESIDING JUDGE SCHMITT: [10:35:58] Counsel is still looking for the tab and
3 then it will put to you correctly.

4 MR AYENA ODONGO: [10:37:07] Your Honours, he stated it in the transcript. Of
5 course I know that --

6 PRESIDING JUDGE SCHMITT: [10:37:12] Then please refer to the transcript.

7 MR AYENA ODONGO: [10:37:14] The transcript was on page 45.

8 THE WITNESS: [10:37:25] (No interpretation)

9 MR AYENA ODONGO: [10:37:31] Transcript of 28.

10 PRESIDING JUDGE SCHMITT: [10:37:34] Just a moment of patience, please,
11 Mr Witness. It will soon be shown.

12 MR AYENA ODONGO: [10:37:53]

13 Q. [10:37:53] That is where you stated, "Because" --

14 PRESIDING JUDGE SCHMITT: [10:37:58] List exactly which page and on which
15 line.

16 MR AYENA ODONGO: [10:38:01] It is on Page 45.

17 PRESIDING JUDGE SCHMITT: [10:38:02] And line?

18 MR AYENA ODONGO: [10:38:03] Lines 2 to 6.

19 PRESIDING JUDGE SCHMITT: [10:38:07] Thank you. So please put it on the
20 screen.

21 MR AYENA ODONGO: [10:38:12] That is a draft transcript. And I quote:

22 "... because as I stated earlier, they sometimes switch when they are having
23 conversations, because Dominic, Dominic's voice and Kony's -- Kony's voice sounds
24 like Labalpiny's voice so sometimes it's very difficult to differentiate between the two
25 voices if they do not speak for a long time."

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1 PRESIDING JUDGE SCHMITT: [10:38:50] This is what you said on 28 February, just
2 to inform you, Mr Witness. And now comes the question of Mr Ayena.

3 Could we perhaps agree that this is a sort of an answer that the witness has already
4 given during his examination to your question?

5 MR AYENA ODONGO: Yes.

6 PRESIDING JUDGE SCHMITT: To be able to continue.

7 MR AYENA ODONGO: [10:40:00] Yes.

8 PRESIDING JUDGE SCHMITT: [10:40:01] Because as I have said before, the reason
9 why we have a transcript is to really preserve exactly what has been said, to have an
10 exact record of the evidence. And so we would not have to ask him again, "Is this
11 your statement?" or what often is done in these courtrooms, because otherwise it
12 would not make sense. Otherwise on cross-examination, for example, either
13 Prosecution or Defence, whoever the witness was called from, would have to go
14 through all the transcripts again and ask him again 200 pages or 300 pages, "Is this
15 your statement?" So it is not necessary. This is the statement and this is an answer
16 to a certain question and it applies also the answer to the question you have put to
17 him.

18 MR AYENA ODONGO: [10:40:57] Thank you very much, your Honour. Your
19 Honours, I want to refer the witness to the particular intercept related to Lukodi.

20 PRESIDING JUDGE SCHMITT: [10:41:14] This means we play it again or --

21 MR AYENA ODONGO: [10:41:16] Yes.

22 PRESIDING JUDGE SCHMITT: [10:41:17] -- or parts it? Please tell us --

23 MR AYENA ODONGO: Yes, parts of it.

24 PRESIDING JUDGE SCHMITT: -- exactly which parts, please, and the exact
25 number.

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1 Mr Witness, as you already said yesterday, you wanted to be played, have played
2 again an intercept and this, we will do that now, and you are then asked to comment
3 on it.

4 MR AYENA ODONGO: [10:41:44] It is at -- what was played here before by
5 the Prosecution.

6 PRESIDING JUDGE SCHMITT: [10:42:00] So perhaps the Prosecution can help in
7 that respect. Let me put it this way: A little bit, you are a little bit indebted also
8 to the Chamber now after the last two day I have to say.

9 MR AYENA ODONGO: Actually --

10 PRESIDING JUDGE SCHMITT: So, please, to accelerate things, it would be nice if
11 you could step in and say exactly what we are talking about.

12 MR AYENA ODONGO: [10:42:25] But, your Honours, I've got the citation.

13 PRESIDING JUDGE SCHMITT: [10:42:28] Okay, okay. Then the citation.

14 MR AYENA ODONGO: [10:42:30] It is UGA-OTP-0239-0123, track 02,
15 23.36 to 23.41. And we are going to play it.

16 THE COURT OFFICER: [10:43:09] Confidential or public, please.

17 MR AYENA ODONGO: [10:43:11] Confidential.

18 PRESIDING JUDGE SCHMITT: [10:43:12] No, I think we have heard it last time in
19 open session.

20 MR AYENA ODONGO: [10:43:16] Yeah, it was in open session.

21 PRESIDING JUDGE SCHMITT: [10:43:18] In open session so there is no need
22 to do it --

23 MR AYENA ODONGO: [10:43:21] To go --

24 PRESIDING JUDGE SCHMITT: [10:43:21] -- to do it differently now.

25 (Playing of the audio excerpt)

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1 MR AYENA ODONGO: [10:43:39] Can you play again? I want you to play it many
2 times so that --

3 Q. We are going to repeat it so that you answer my questions.

4 (Playing of the audio excerpt)

5 MR AYENA ODONGO: [10:44:07] Yes.

6 Q. [10:44:08] Mr Witness, there seems to be two people talking here. Can you
7 identify to Court the voices of those two people?

8 A. [10:44:29] Court, I want my rights to be protected. These voices were very clear.
9 I said earlier that if somebody speaks only one word, let the tape play on so
10 that -- because the tape is long, let the tape play on and I can listen properly.

11 PRESIDING JUDGE SCHMITT: [10:44:51] I think it is at least fair to say we play
12 a little longer portion. I, frankly speaking, I do not know if there are -- I don't have
13 the transcript now in front of me, I do not know at all who might be speaking there,
14 but I think it's fair to give him the opportunity to have a little longer portion so that he
15 can hear it and then he can comment, but he can comment then on the first portion
16 you have played now. But please not minutes and minutes. So perhaps
17 a suggestion, perhaps a minute or something like that.

18 MR AYENA ODONGO: [10:45:37] Your Honours, with due respect, we have been
19 talking about voice identification and the witness said if it is a simple word like
20 "hello" it might be difficult, but if it is a sentence or sentences it would be easy to
21 identify the voices. Now there are two people having a conversation and as far as
22 I am concerned these are the only relevant portions I am interested in. Can he
23 identify those voices?

24 PRESIDING JUDGE SCHMITT: [10:46:17] Mr Elderfield.

25 MR ELDERFIELD: [10:46:19] Your Honour, we did this process on the first day of

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1 the witness's testimony in detail. The transcript itself is at tab 16 of the Prosecution's
2 binder. The witness identified the voices in his summary and had -- and confirmed
3 the transcript that he had annotated previously. So the voices in fact have been
4 identified. I don't think it's fair to take a small excerpt that the witness has said he
5 can't comment on without broader context and demand an answer.

6 MR TAKU: [10:46:51] May it please your Honours, the exercise that my colleague
7 conducted was one in which the witness was also interpreting. Apart from
8 identification, he was also interpreting within that context there's anything he could
9 say, but we want to find out whether this excerpt which is so material to the Defence,
10 whether he identified the voices only within this context only. If in the context of the
11 previous answer that he gave he cannot, he can only be able to identify if he hears
12 others, he should say so, but for this particular context has he identified any voices?
13 Because his own exercise was also intended for him to interpret the evidence and you
14 objected and you said that he had allowed to interpret the evidence.

15 PRESIDING JUDGE SCHMITT: [10:47:46] I think it's convincing what Mr Ayena
16 and Mr Taku are saying. He has heard this portion and he has commented on it, so
17 please continue. So we, indeed, we have to put it together then if he has plan played
18 the whole, the whole excerpt and has been commenting on that and we have to put
19 this together. So it's okay what you are saying.

20 MR AYENA ODONGO: [10:48:13] Yes. Your Honours, this is a portion that the
21 witness annotated. And therefore the reason why we are saying that he might have
22 had some difficulty in identifying the voices is that we found that what has been said
23 here seems to differ from what he has actually interpreted. That is why we are
24 interested to know whether he can identify these voices and what are actually said.
25 Yes.

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- 1 PRESIDING JUDGE SCHMITT: [10:48:53] It is okay. So I would say we don't hear,
2 we don't play further portions.
- 3 MR AYENA ODONGO: [10:49:01] Much obliged.
- 4 PRESIDING JUDGE SCHMITT: [10:49:07] And I think he has given an answer
5 already.
- 6 MR AYENA ODONGO: [10:49:10] No, he hasn't.
- 7 PRESIDING JUDGE SCHMITT: [10:49:11] Hasn't he?
- 8 MR AYENA ODONGO: [10:49:14] No.
- 9 PRESIDING JUDGE SCHMITT: No?
- 10 MR AYENA ODONGO: He hasn't.
- 11 PRESIDING JUDGE SCHMITT: [10:49:15] Not yet?
- 12 So, Mr Witness, could you identify who is speaking from this short portion? We
13 know we have already played this one to you, so we don't have to repeat it. But only
14 from this short portion, can you tell who is speaking? Not more, not less. And
15 again, no reproach in it, no reprimand, nothing negative. It's just can you do it from
16 this short portion or not?
- 17 THE WITNESS: [10:49:47] (Interpretation) Thank you, your Honour.
- 18 Your Honour, if there was a problem maybe that we were using a battery to play this
19 tape, then yeah, we could accept. But what is the problem of not playing it? If we
20 don't play it, what is the problem? Whose time is it going to consume? Because if
21 they want just a small section and then want me to comment on, then I cannot, I
22 cannot answer anything about it.
- 23 If it is played full, I can easily interpret and actually identify, but not just a small
24 portion. I made very clearly statements, and then they're only picking small sections
25 with some errors which I cannot be able to comment on unless it is played in full.

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1 I am not speaking to solve the interest of this to counsels, but for the interest of the
2 Court. Thank you.

3 PRESIDING JUDGE SCHMITT: [10:50:49] But this is an answer. We continue with
4 that now. He cannot comment on it. And whatever we make out of it we don't
5 know already, we do not know yet.

6 May I ask you, because we are nearing the 11 o'clock, and you know there are some
7 custom, some habit at 11 o'clock happening, do you have an estimate how long your
8 questioning will last?

9 MR AYENA ODONGO: [10:51:33] Happy news, your Honours. I have no more
10 questions for this witness. We end here.

11 PRESIDING JUDGE SCHMITT: [10:51:39] Okay.

12 Thank you very much. This concludes the testimony of the witness. We continue
13 with 205 on Monday, not today. So I think it might be well deserved to have a nice
14 weekend, which I wish everybody here in the courtroom. And as I said, the
15 indulgence I think nearly of everybody was very much strained.

16 And I see a happy witness there. No, but okay, we always have to look at the bright
17 side of things. So this will be two days to be remembered, so to speak.

18 So this concludes today's hearing.

19 MR AYENA ODONGO: [10:52:26] Your Honour, is the witness discharged, your
20 Honours?

21 THE COURT OFFICER: All rise.

22 MR TAKU: Is the witness -- you have to discharge the witness first, your Honour.

23 PRESIDING JUDGE SCHMITT: [10:52:31] Of course, I have said the testimony of the
24 witness is concluded.

25 MR TAKU: Thank you, your Honours.

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1 PRESIDING JUDGE SCHMITT: And that's it for this witness.

2 MR AYENA ODONGO: [10:52:36] Thank you your Honours.

3 THE COURT USHER: [10:52:42] All rise.

4 (The hearing ends in open session at 10.52 a.m.)

5 RECLASSIFICATION REPORT

6 Pursuant to the Trial Chamber' IX's instructions, ICC-02/04-01/15-497, dated 13 July

7 2016, the transcript is reclassified public and is filed in the case