

Trial Hearing

(Open Session)

ICC-02/04-01/15

WITNESS: UGA-OTP-P-0142

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 Tuesday, 9 May 2017

9 (The hearing starts in open session at 9.30 a.m.)

10 THE COURT USHER: [9:30:19] All rise.

11 The International Criminal Court is now in session.

12 PRESIDING JUDGE SCHMITT: [9:30:46] Good morning. Good morning, everyone.

13 Could the court officer please call the case.

14 THE COURT OFFICER: [9:30:53] Thank you, Mr President.

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

16 Ongwen, case reference ICC-02/04-01/15. We are in open session.

17 PRESIDING JUDGE SCHMITT: [9:31:05] Thank you very much. And as always I

18 ask for the appearances of the parties. Ms Adesola Adeboyejo.

19 MS ADEBOYEJO: [9:31:14] Yes, your Honour. Good morning.

20 Adesola Adeboyejo for the Prosecution with Mr Benjamin Gumpert,

21 Pubudu Sachithanandan, Colin Black, Yulia Nuzban, Shahriar Yeasin Khan, Yya

22 Aragon and Sanyu Ndagire.

23 PRESIDING JUDGE SCHMITT: [9:31:35] Thank you very much. And the Legal

24 Representatives of the Victims, Mr Manoba first.

25 MR MANOBA: [9:31:39] Good morning, your Honours. Joseph Manoba, James

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1 Mawira and Ms Megan Hirst.

2 MR NARANTSETSEG: [9:31:44] Good morning, your Honours. Orchlon

3 Narantsetseg for the common legal representative. Thank you.

4 PRESIDING JUDGE SCHMITT: [9:31:49] And for the Defence, Mr Obhof.

5 MR OBHOF: [9:31:52] Good morning, your Honours. Today we have Counsel

6 Ayena, Ms Abigail Bridgman, Chief Charles Achaleke Taku, Roy Titus Ayena, our

7 client Mr Dominic Ongwen, and myself, Thomas Obhof.

8 PRESIDING JUDGE SCHMITT: [9:32:04] And Rule 74 counsel, please.

9 MR VON BÓNÉ: [9:32:06] Good morning, your Honour. My name is Julius

10 von Bóné, I am the counsel for the witness. Thank you very much.

11 PRESIDING JUDGE SCHMITT: [9:32:14] Thank you very much. And we continue

12 with the examination by the Defence.

13 Mr Obhof has the floor.

14 MR OBHOF: [9:32:19] Thank you very much, your Honour.

15 WITNESS: UGA-OTP-P-0142 (On former oath)

16 (The witness speaks Acholi)

17 QUESTIONED BY MR OBHOF: (Continuing)

18 Q. Good morning, Mr Witness. I hope you slept well last night.

19 A. [9:32:27] Yes, I slept well, though I have minor pain here and there, but I can still  
20 go ahead and testify.

21 Q. [9:32:37] We will try to make today in court as painless as possible for you.

22 Now, Mr Witness, did you not tell Madam Prosecutor last week that you informed

23 Mr Ongwen after the attack on Lukodi that no one was killed during the attack?

24 A. [9:33:06] Well, I do not report to him. Instead I report to my senior who is the

25 BIO.

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1 MS ADEBOYEJO: [9:33:15] Your Honour, I apologise to have to get up. I just  
2 wondered if my learned friend could make reference to where in the last -- the  
3 transcript he is referring to.

4 PRESIDING JUDGE SCHMITT: [9:33:28] Yes, that's correct. Of course, Mr Obhof,  
5 please --

6 MR OBHOF: We're grabbing it but the --

7 PRESIDING JUDGE SCHMITT: -- present us with the --

8 (Overlapping speakers)

9 MR OBHOF: [9:33:33] He did say no.

10 PRESIDING JUDGE SCHMITT: [9:33:34] Yes. I have something in mind, of course,  
11 but as we have the practice here in the courtroom that we try to be as specific as  
12 possible.

13 And in the meantime perhaps I can reiterate what I said before several times. When  
14 we have a transcript where a certain statement of a witness is entailed, then we can  
15 really proceed as if this was the statement of the witness, we don't have to repeat it.

16 We don't have to say, "Did you say that because he or she said that?"

17 And since they are still in the process of searching, the Defence, I think I can also  
18 assure you that what witnesses say in this courtroom is not lost with the Bench.

19 MR OBHOF: [9:34:55] I do apologise, your Honour, I will correct it slightly.

20 PRESIDING JUDGE SCHMITT: [9:35:00] Please continue, Mr Obhof.

21 MR OBHOF: [9:35:04] And it did say that you said, sorry, "You went and informed  
22 your commanding officer that nobody was killed, that you did not see anybody die,  
23 and your commanding officer" -- correct? That is from page 26 of the real time  
24 transcripts.

25 PRESIDING JUDGE SCHMITT: [9:35:17] Mr Obhof, just shortly, really, I don't want

1 to cut anything but you say "correct," he said it. He repeated, even repeated it today,  
2 as I understand correctly, so just proceed. He has said it and this is his statement.

3 MR OBHOF: [9:35:34]

4 Q. [9:35:34] Mr Witness, are you aware of Oyenga allegedly telling Mr Ongwen  
5 after the attack on Lukodi that no one was killed there?

6 A. [9:35:51] Oyenga was not the commander who went as the overall, it was  
7 instead Ocaka, and I know it was Ocaka who reported but I don't know where exactly  
8 he reported because our offices are different.

9 Q. [9:36:06] Thank you, Mr Witness.

10 MR OBHOF: Your Honours, could we please go into a private session, very briefly  
11 for one to two questions?

12 PRESIDING JUDGE SCHMITT: [9:36:14] Private session.

13 (Private session at 9.36 a.m.) \*(Reclassified partially in public)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

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Q. [9:45:45] Now, Mr Witness, at the time you left the bush, was Buk Abudema senior to Dominic Ongwen?

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 THE WITNESS: [9:46:16] (Interpretation) Well, well, at the time I, I came out of the  
6 bush, Buk was more senior to Dominic.

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Open session at 9.47 a.m.)

15 THE COURT OFFICER: [9:47:15] We are back in open session, Mr President.

16 MR OBHOF: [9:47:20]

17 Q. [9:47:20] Now, Mr Witness, you called Mr Ongwen your brother last week. In  
18 light of that, would you still consider Mr Ongwen your friend?

19 A. [9:47:43] Well, in the clan, I would call him a brother.

20 Q. [9:47:54] But would you still consider him or call him your friend if you met him  
21 today?

22 A. [9:48:09] If I met him, well, he is still my boss, he is also my friend, and he's my  
23 brother as well.

24 Q. [9:48:24] Do you think Mr Ongwen is a bad person?

25 A. [9:48:40] Well, I cannot -- I could not really -- I am not in a position to say he is

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1 a good or a bad person.

2 PRESIDING JUDGE SCHMITT: [9:48:48] I think we leave it at that.

3 MR OBHOF: [9:48:56] Your Honour, I will need private session for two more  
4 questions, please.

5 PRESIDING JUDGE SCHMITT: [9:49:00] Then back to private session.

6 (Private session at 9.49 a.m.)

7 (Redacted)

8 (Redacted)

9 (Redacted)

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11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

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17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Open session at 9.50 a.m.)

22 THE COURT OFFICER: [9:50:28] We are in open session.

23 MR OBHOF: [9:50:33]

24 Q. [9:50:34] Mr Witness, who is Kenneth Banya?

25 A. [9:50:44] Kenneth Banya was a senior person in the LRA, but I am not very clear

1 about his actual position in the LRA.

2 Q. [9:50:59] He was more senior than Mr Ongwen; isn't that correct?

3 A. [9:51:08] That's correct, he was more senior than Ongwen.

4 Q. [9:51:13] He has benefited from the amnesty law in Uganda; is that correct?

5 A. [9:51:26] I am not aware of that. I am not sure whether he has been granted  
6 amnesty or not, but he is in Uganda.

7 Q. [9:51:37] Mr Witness, who is Sam Kolo?

8 A. [9:51:45] Sam Kolo was also a senior person who was together with Kony. He  
9 is also in Uganda.

10 Q. [9:51:57] Was he more senior than Mr Ongwen when you left the bush?

11 A. [9:52:07] Yes, Sam Kolo was more senior than Ongwen.

12 Q. [9:52:14] Are both those persons, Kenneth Banya and Sam Kolo, are they free to  
13 move around Uganda or are they in prison, to the best of your knowledge?

14 A. [9:52:31] Those two individuals are, the way I see, are free, they are not under  
15 incarceration, they are free to move around and do anything. What I know is they  
16 are not in prison.

17 Q. [9:52:47] Mr Witness, who is Onen Kamdule (phon)?

18 A. [9:53:01] Onen Kamdule is also called as Onen Kamdulu, he was a commander  
19 in the LRA.

20 Q. [9:53:12] He was more senior than Mr Ongwen when you left the bush; isn't that  
21 correct?

22 A. [9:53:25] At some point he was more senior than Ongwen, but I am not sure  
23 after Dominic was promoted whether they came to the same rank as lieutenant  
24 colonel, but initially he was at a higher rank. But as of now, I am not sure whether  
25 with Dominic's promotion they were either at the same level or he was more senior

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1 than Dominic.

2 Q. [9:53:58] Do you know if Onen Kamdulu was prosecuted for his conduct within  
3 the LRA?

4 A. [9:54:15] I am not aware of any such.

5 Q. [9:54:20] Are you aware if he is a free man?

6 A. [9:54:35] Other than the things that he was accused of that we heard of on over  
7 the radio, I am not sure there was any other thing that he was put under arrest for,  
8 but even up to now I don't know whether he is still in prison.

9 Q. [9:54:53] When you say you heard on the radio, are these actions that he  
10 committed after leaving the bush, or while in the bush?

11 A. [9:55:09] Actions that he committed when he was back at home, when he was no  
12 longer in the bush.

13 Q. [9:55:18] Mr Witness, who is Michael Odongo Acellam?

14 A. [9:55:32] Odongo Acellam was the ADC of Kony. Right now he is back at  
15 home.

16 Q. [9:55:43] And he also is living free, correct?

17 A. [9:55:52] Yes, he is free.

18 Q. [9:55:54] And to the best of your knowledge, he was not prosecuted for anything  
19 he did within the bush?

20 A. [9:56:07] I am not aware of any accusations levied against him.

21 Q. [9:56:19] And as the ADC to Joseph Kony, he would also be more senior than  
22 Mr Dominic Ongwen when you left the bush; is that correct?

23 A. [9:56:30] At the time I left the bush, he was more senior.

24 Q. [9:56:53] Finally, Mr Witness, do you know anybody other than Thomas  
25 Kwoyelo that has returned from the bush that has been prosecuted for their actions in

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1 the bush?

2 A. [9:57:15] Thomas Kwoyelo did not surrender on his own. He was  
3 apprehended and brought back home. I know him very well.

4 Q. [9:57:26] But besides him, do you know of anybody else who faced trial or  
5 prosecution for their actions while in the bush?

6 A. [9:57:48] I don't know.

7 MR OBHOF: [9:57:54] Counsel Ayena will now ask a few questions, your Honour.

8 PRESIDING JUDGE SCHMITT: [9:57:58] Please, Mr Ayena, you have the floor.

9 MR AYENA ODONGO: [9:58:05] Thank you very much, Mr President and your  
10 Honours.

11 QUESTIONED BY MR AYENA ODONGO:

12 Q. [9:58:13] Mr Witness, you have been very comprehensive and very useful to  
13 Court, but it is only on account of that that I thought I might ask you a few questions  
14 so that you may help Court to wrap up some of the wonderful job you have done.  
15 There are two or three areas I am going to concentrate on.

16 Mr Witness, at the opening of the pretrial there was a very popular statement that  
17 was made.

18 MR GUMPert: [9:59:00] Your Honour, I am sorry to interrupt. This kind of  
19 peroration, telling the witness how marvellous he is and recounting what happened  
20 at the pretrial, this is not appropriate. If my learned friend has extra questions to  
21 those which Mr Obhof has put, then that is appropriate, but I object to this kind of  
22 speech making.

23 PRESIDING JUDGE SCHMITT: [9:59:19] I think you are a little bit too severe,  
24 Mr Gumpert.

25 MR AYENA ODONGO: [9:59:25] I thought so.

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1 PRESIDING JUDGE SCHMITT: [9:59:26] I think you are simply initiating, you are  
2 introducing, so to speak, your question and we will soon listen to a question that you  
3 put to the witness, I assume.

4 MR AYENA ODONGO: [9:59:37] I am most indebted to you. I thought it is the  
5 case that we are not simpletons in this Court and -- well, I leave it at that.

6 Q. [9:59:50] Mr Witness, like I was saying, it was stated in this court that the child  
7 soldiers in the bush were run through such horrendous experiences, they were made  
8 to kill and they so got steeped in blood that they hardly felt they had any place in  
9 their villages to turn to. Now, Mr Witness, having stayed in the bush for  
10 a considerable period of time after having been abducted as a child, can you explain  
11 to this Honourable Court your experiences as a child and why it took you so long to  
12 escape?

13 A. [10:01:02] Your question is really long, and if I am to explain everything, it will  
14 take us a lot of time. Let me try to be brief. First thing, children, to instill fear, to do  
15 things to instill fear in them was happening. It also happened to me. Because I was  
16 close to my supervisor and I would --

17 THE INTERPRETER: [10:01:40] Interpreter correction: I did not participate in it  
18 because my boss did not allow me to do that.

19 THE WITNESS: [10:01:48] (Interpretation) But it happened to other people, that is to  
20 instill fear in other people so that they do not escape. They get someone who is  
21 newly captured and they beat him to pulp or until he, he or she dies. I saw that with  
22 my own eyes and I wasn't told this by anyone else.

23 At that point there was a leader called Ola (phon). I don't know where he comes from.  
24 Those are the things that I witnessed myself.

25 MR AYENA ODONGO: [10:02:32]

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1 Q. [10:02:33] So, Mr Witness, would you therefore confirm the statement that you  
2 know because of the experiences, it was an awful thought that you may try to -- I  
3 mean to escape from the bush, first of all, what might happen to you and, secondly,  
4 because you had no home to return to anyway?

5 A. [10:03:10] Yes, I confirm that.

6 PRESIDING JUDGE SCHMITT: [10:03:12] And he has talked about that yesterday,  
7 I think, too. And, yeah, I think we have, we have this statement we have already by  
8 the witness.

9 MR AYENA ODONGO: [10:03:22] Much obliged.

10 Q. [10:03:27] Mr Witness, there still remains some grey area about Labongo. Is it  
11 the case that in the LRA there were times when there would be joint command  
12 responsibilities between two people? For instance, in the same brigade there might  
13 be two people given to be in charge of that brigade.

14 A. [10:04:16] What I know is that one person would be a second in command and  
15 then the other one would be the charge. Yes, it would happen. They would be  
16 together, but one person would be superior to the other. Take for instance Sinia  
17 brigade, if it meets with Stockree brigade, what I know is that Sinia is more senior to  
18 Stockree so if the two commanders meet, the Sinia brigade commander is more senior  
19 than the commander of Stockree, even if they have separate authorities, but the Sinia  
20 brigade commander would be more senior.

21 Q. [10:05:11] When somebody was in charge of a brigade and  
22 somebody -- something happened in that brigade and somebody else takes credit for  
23 it, would it surprise you? Was it an unusual occurrence in the LRA?

24 A. [10:05:54] Like I gave the example, when you meet, Sinia and Stockree, for  
25 instance, meet and there is an operation, at the time that the two brigades are together,

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1 after the operation not every commander will send a report to Kony, but the most  
2 senior person would send the report. For this case the commander of Sinia would  
3 report that we converge with this and this group and we, we fought with this group.  
4 They would send a report about how many guns were recovered and they report  
5 about everything. That's what would happen.

6 Q. [10:06:41] Thank you very much, Mr Witness. Was it possible for somebody  
7 who has not been in charge of an operation to report to Joseph Kony that he was the  
8 one who was in charge of an attack?

9 A. [10:07:07] That wouldn't be correct because it is not him who conducted the  
10 operation and he cannot give a report about the operation when somebody else  
11 conducted the operation.

12 Q. [10:07:25] This man called Ocan Labongo, can you describe in your own  
13 experience and you way you viewed him, would you describe to Court the kind of  
14 relationship he had with Joseph Kony. Was he a confidante of Joseph Kony?

15 A. [10:08:04] What I know about Ocan Labongo, when I was abducted he was  
16 already in the bush. It's difficult for me to know the relationship between  
17 Ocan Labongo and Kony. I cannot say it.

18 Q. [10:08:27] And when you talked about him, Mr Witness, you used the word he  
19 was "kibelebele", meaning was erratic in real terms, in English, somebody difficult to  
20 control. If he was with a commander, was it easy to control his conduct?

21 A. [10:09:09] For someone who does not accept to be ruled he wouldn't -- if he was  
22 the leader he would have no problem, but if he is having someone commanding him  
23 he definitely has to obey.

24 Q. [10:09:30] I will now come to your relationship, personal relationship with  
25 Dominic Ongwen, but I want you, Mr Witness, to try to give an exposure of your

1 appreciation of who Dominic Ongwen was vis-à-vis other commanders in the bush  
2 and I put these questions to you: When he was in the bush what kind of character  
3 was Dominic Ongwen, according to you and according to the perception of the  
4 soldiers under him?

5 A. [10:10:36] Thank you for the question. When I joined the bush, the LRA, when  
6 I was abducted and I was amongst them, first Dominic Ongwen wasn't a bad person.  
7 He was a people's person. I would talk to people and stay amongst people, hid  
8 together with people. You would share laughters and jokes. He was a person who  
9 cared about people. But that was when he was still having a lower rank. When he,  
10 when he was promoted and he started climbing through the ranks there were changes.  
11 You know, when you, you are promoted and you leave the ranks of a private you also  
12 change the way you behave, you need to start behave like a commander. Like for  
13 me, I would not go close to him, he was already a commander. I cannot go and  
14 familiar him all the time. A commander is having a different responsibility than an  
15 ordinary gap -- an ordinary soldier. There was a gap now between him and the  
16 ordinary soldiers, but he was still good to his soldiers. I did not notice anything  
17 which was strange. But when he was in operation room he was tough. He was  
18 tough because by nature of being a commander he thought easy to control the  
19 soldiers. He was tough on the rules and he always wanted things done according to  
20 the schedule. For example, going to collect food he would come up with tough  
21 orders to go and collect food. That, according to me, is how a leader is changed  
22 because of the responsibilities that he has. That's what I know about Dominic.

23 Q. [10:12:55] Thank you very much, Mr Witness.

24 Now, there is a dichotomy of operation in the operation -- in the -- there was  
25 a dichotomy of operation in the LRA. There was, you know, operation against

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1 civilians, sometimes, and then there were sometimes operations against the UPDF.

2 And it depended, from what we have learned, it depended on the instruction or the

3 orders that were given by the commanders. How would you describe Ongwen as

4 a commander against civilians and against the UPDF? How was he?

5 A. [10:14:04] Dominic is, is a fighter. He was a brave fighter and his plans hardly

6 failed. Dominic never hated civilians. That's what I know. And there was no plan,

7 no attack which was aimed at civilians, unless within the barracks and there are

8 civilians mixed up with the soldiers. You know, when you already -- when you fire

9 your gun you don't know whom it will hit. But before you aim your gun you -- at

10 least you know that you are aiming at, at an enemy. But what I know is that there

11 was no special attack aimed at civilians.

12 Q. [10:15:02] Last but perhaps not least, we have heard in this courtroom that there

13 appeared to be jolts and jars between Dominic Ongwen and Joseph Kony, that he had

14 problems from time to time with Joseph Kony and quite often he found himself in jail.

15 Can you describe to Court the kind of relationship that Dominic Ongwen had with

16 Joseph Kony and maybe even Vincent Otti when he was still alive?

17 A. [10:16:05] It is not easy to describe the relationship between those people. But

18 Dominic and Kony had no problem, at least at the time when I was there. They had

19 a good relationship. Even Vincent Otti loved Dominic a lot. He was among the

20 commanders loved by Kony. There was no day that I saw Dominic apprehended

21 or -- and sent to jail. I did not see.

22 MR AYENA ODONGO: [10:16:42] I think that's about it, my lord, and your

23 Honours.

24 Thank you very much, Mr Witness.

25 PRESIDING JUDGE SCHMITT: [10:16:50] Thank you very much, Mr Ayena.

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1 Thank you very much, Mr Witness, for having made yourself available to the Court as  
2 a witness. We also thank you for your assistance in the past days and wish you a  
3 safe trip back. This concludes your hearing and your testimony.

4 (The witness is excused)

5 PRESIDING JUDGE SCHMITT: [10:21:00] This concludes also the hearing for today,  
6 and for this block. We resume on 29 May, 9.30 with witness 314, is this correct?

7 With witness 314. Okay.

8 THE COURT USHER: [10:17:26] All rise.

9 (The hearing ends in open session at 10.17 a.m.)

#### 10 RECLASSIFICATION REPORT

11 Pursuant to the Trial Chamber' IX's instructions, ICC-02/04-01/15-497, dated 13 July  
12 2016, the public reclassified and lesser redacted version of this transcript is filed in the  
13 case.