

Trial Hearing
WITNESS: UGA-D26-P-0133

(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 February 2019
9 (The hearing starts in open session at 9.32 a.m.)
10 THE COURT USHER: [9:32:03] All rise.
11 The International Criminal Court is now in session.
12 PRESIDING JUDGE SCHMITT: [9:32:26] Good morning, everyone.
13 Could the court officer please call the case.
14 THE COURT OFFICER: [9:32:34] Good morning, Mr President, your Honours.
15 The situation in the Republic of Uganda, in the case of The Prosecutor versus
16 Dominic Ongwen, case reference ICC-02/04-01/15.
17 For the record, we are in open session.
18 PRESIDING JUDGE SCHMITT: [9:32:46] Thank you.
19 I ask for the appearances of the parties, which is no surprise for anyone.
20 MS HOHLER: [9:32:52] Indeed, your Honour --
21 PRESIDING JUDGE SCHMITT: [9:32:53] Ms Hohler, please.
22 MS HOHLER: [9:32:53] -- and I am going to try to do this without turning back.
23 I am training my memory.
24 PRESIDING JUDGE SCHMITT: [9:32:56] We will control that, yes.
25 MS HOHLER: [9:32:59] Yes, I'm sure you will.

1 For the Prosecution today, Benjamin Gumpert, Colin Black, Sanyu Ndagire, Colleen
2 Gilg, Pubudu Sachithanandan, Adesola Adeboyejo, Jasmina Suljanovic,
3 Laura de Leeuw and Natasha Barigye. Did I do it?

4 PRESIDING JUDGE SCHMITT: [9:33:17] Yes, indeed --

5 MS HOHLER: [9:33:17] And myself, Beti Hohler.

6 PRESIDING JUDGE SCHMITT: [9:33:18] -- indeed. Indeed. Not unimportant, I
7 would say.

8 Ms Massidda, please.

9 MS MASSIDDA: [9:33:22] Good morning, Mr President, your Honours. For the
10 Common Legal Representative team, Caroline Walter, Orchlon Narantsetseg and
11 myself, Paolina Massidda.

12 PRESIDING JUDGE SCHMITT: [9:33:34] Thank you.

13 And Mr Manoba.

14 MR MANOBA: [9:33:37] Good morning, Mr President. James Mawira and myself,
15 Joseph Manoba.

16 PRESIDING JUDGE SCHMITT: [9:33:42] And finally for the Defence --

17 MR KIFUDDE: [9:33:44] Good morning, Mr President --

18 PRESIDING JUDGE SCHMITT: [9:33:44] -- Mr Kifudde.

19 MR KIFUDDE: [9:33:44] -- and your Honours. For the Defence we have myself,
20 Gordon Kifudde, assistant to counsel; we have counsel Krispus Ayena Odongo; we
21 have co-counsel Chief Taku Achaleke Charles; we have co-counsel Beth Lyons; we
22 have our case manager, Tibor Bajnovic; we have our legal consultant, Eniko Sandor;
23 and we have our intern, Hagop Mouradian; plus our client Dominic Ongwen is in
24 court.

25 PRESIDING JUDGE SCHMITT: [9:34:12] Thank you, Mr Kifudde.

1 And before we continue with the testimony of the witness, and you could already
2 guess it from the fact that he is not in the courtroom, we have to issue a short oral
3 decision or I should better word it, an oral decision containing of two parts.
4 Yesterday the Prosecution informed the Chamber and the parties via email that it
5 added two documents to its list of items it intends to use during the testimony of the
6 current witness, which is D-133. Also yesterday the Defence responded via email
7 objecting to the addition.
8 The Defence is right when arguing that this addition is not in conformity with
9 decision 497, paragraph 20. However, the Chamber notes that one of the items is
10 mentioned in D-133's report and therefore closely related to his testimony.
11 The other item is already submitted into evidence and linked to a topic on which
12 D-133 has already testified; that is the subject of abduction in the LRA.
13 Accordingly, the Chamber does not consider that undue prejudice is caused by
14 allowing the Prosecution to use both items during the questioning of D-133. Of
15 course, the Defence will have the opportunity as always to question the witness last.
16 Second part of this oral decision. The Chamber also notes that the Prosecution
17 objects to the Defence's email request from yesterday for D-133 to have a passively
18 monitored visit with Mr Ongwen after his testimony.
19 It is noted that there is no objection to having a post-testimony courtesy visit, only
20 a disagreement as to how this visit should be monitored. The Chamber sees no risk
21 of a passively monitored visit with D-133, an expert witness who was never in the
22 LRA, affecting the interest justifying Mr Ongwen's contact restrictions.
23 The Prosecution's objection is therefore overruled. D-133 may have a passively
24 monitored courtesy visit with the accused, subject to the ordinary procedure at the
25 court's detention centre and approval by the Registry.

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1 So this concludes the short decision by the Chamber, and I give now the floor to
2 Ms Lyons.

3 MS LYONS: [9:36:43] Thank you, your Honour. I appreciate your decisions, but for
4 the record I would like to register an objection to the first decision.

5 We are obviously in full agreement that there is no conformity with the -- with the
6 process outlined in paragraph 2497, which is unequivocal. But just based on that,
7 the issue is process and principle. Our position is there are principles here, the
8 purpose of which were to provide notice to the opposing party. We have a five-day
9 rule, there's a one-day rule. So the issue is notice, and on that basis we would object
10 to your --

11 PRESIDING JUDGE SCHMITT: [9:37:30] (Overlapping speakers).

12 MS LYONS: [9:37:30] -- ruling. And second, the other point I want to say, is in
13 footnote 5, the Dolan article -- book. The Prosecution had notice of this since the day it
14 received the report; it's in footnote 5. So there is no reason that it should come at
15 such short notice to us. I am not talking about the content of it, and does witness
16 know or do we know or have we read it. I am talking about the process issue.
17 They had notice; it is not new.

18 And lastly, it appears that based on the end of the email that was sent, that
19 the Prosecution even recognises that it is late and this is not an exigent circumstance.
20 So it seems to me that the rules should be maintained and the items should still be
21 excluded and that's the reason that we object on the record to your ruling of the first
22 part. Thank you.

23 PRESIDING JUDGE SCHMITT: [9:38:33] Yes, this is -- of course I think we have
24 already pronounced our assessment of the issue, which mainly relies upon the
25 question if there could be any prejudice given, given the content of the two items that

1 the Prosecution wants to use for their questioning, and we have done this and we
2 have taken notice of your objection and the witness can now be brought in.

3 (The witness enters the courtroom)

4 PRESIDING JUDGE SCHMITT: [9:40:05] Good morning, Mr Awich. Welcome
5 again in the courtroom on behalf of the Chamber. I hope you had a nice relaxing
6 day. It was wonderful weather, so perhaps you had a good time yesterday when
7 there was no hearing and we welcome you again in the courtroom.

8 WITNESS: UGA-D26-P-0133 (On former oath)

9 (The witness speaks English)

10 THE WITNESS: [9:40:26] Thank you, your Honour.

11 PRESIDING JUDGE SCHMITT: [9:40:27] Ms Lyons, you can continue with the
12 examination.

13 MS LYONS: [9:40:32] Thank you, your Honour. I am making best efforts to be
14 self-reliant today with the microphone. We will see how far it goes. All right. I
15 will hopefully so that --

16 PRESIDING JUDGE SCHMITT: [9:40:42] But this does not dispose Mr Bajnovic of
17 his obligations.

18 MS LYONS: [9:40:47] We got it, we got it. I'm just using, as they say, the North
19 Korean principle of Juche, self-reliance, okay, that's what I'm following here. Okay.

20 QUESTIONED BY MS LYONS: (Continuing)

21 Q. [9:41:02] Good morning and hope you had a restful day. And I will hopefully
22 finish up in the first session. I say this to you because you are working very hard
23 and to the judge and the rest of us because we are all working here. Okay.

24 Now, yesterday you -- not yesterday, Tuesday, you talked about your election to the
25 committee on the convention of the rights of children under article 43 and you very

1 briefly mentioned that the role of that committee was compliance.

2 Could you say in a little bit more detail what the work entailed and what you did?

3 A. [9:41:50] Yes, what the work entails is that we look at the commitments of
4 ratifying states and we check if the ratifying state is undertaking their obligations
5 thereto. Because states are expected to respect and not only to respect, but to ensure
6 that there is respect. In other words, it is not enough for Sweden, for example, to say
7 that "We are respecting and protecting children from being involved in armed
8 conflict", but Sweden should go ahead and ensure that other countries like Uganda is
9 also respecting. And they do this through many forums, international bodies like
10 UN where they are a member. They do it through bilateral relationships with
11 member states, like between Sweden and Uganda. They do it through other
12 multilateral bodies like Save the Children or UNICEF. But the sum of it all is that
13 they have respected and they are seeing that other states are respecting.

14 In practical terms, the whole world should save me, Awich, from being a child soldier.

15 So we do this by examining states' activities provision by provision, article by article.

16 We give them reporting guidelines and from that reporting guidelines we check each
17 state's activity, if it is in compliance or it is not, and we give what we call a concluding
18 recommendation of the committee.

19 In other words, this is a UN document that is telling the states, first appreciating the
20 good work they have done in the compliance, and showing them the areas that they
21 need to do more.

22 So briefly, this is how we do it.

23 Q. [9:45:52] Thank you. Now not everyone in this room has read the convention
24 on -- maybe they have, but I am not assuming that everyone has read the convention
25 on the rights of children or the optional protocol in regard to the use of children in

1 armed struggle. Maybe you could summarise, with a list, just a few of the rights and
2 obligations of state parties. What is it, specifically, that is being ensured by, by
3 a country and by others watching that country, by the world?

4 PRESIDING JUDGE SCHMITT: [9:46:38] But please keep it short and I explain the
5 reason. You said not everybody might know it in the room. I am not sure in that
6 respect, especially when we refer to this room here. And, of course, the addressees
7 of everything what is said here are the judges and they know this human rights law
8 body.

9 MS LYONS: [9:47:01] I recognise that, your Honour. But for the purposes of the
10 record --

11 PRESIDING JUDGE SCHMITT: [9:47:05] But the record, you know, the record is
12 also nothing in the abstract. The underlying law is always, you don't have to put
13 this on the record, the law is there, so to speak. It is, for example, in here. And the
14 human rights law that the witness expert can talk about is in other bodies, which is
15 not incorporated here but via Article 21(3) has anyway to be recognised by this
16 Chamber. So this is clear to us and we know that.

17 But, Mr Witness, I simply wanted to flag you and I know from Tuesday already that
18 you understand immediately what I am heading at and that you simply perhaps
19 wrap it up a little bit.

20 THE WITNESS: [9:47:55] Yes. I -- my answer to that is that the compliance that we
21 are talking about or that we talk about in relationship to children and armed conflict
22 is that we want to see, or we, as mandated to see, how states are protecting children.
23 For example, in specific terms to article 38, which is about children and armed conflict
24 and goes inside to humanitarian law. But the point here is that states are supposed
25 to ensure that, one, in armed conflict situation, children are entitled to education.

1 States should do that. And this includes religious education and other education in
2 consonance with the guidance of the parents or the people that authorise under the
3 law. For example a grandmother, if a child is with a grandmother.
4 The other thing that we see or that the committee ensures compliance is that states
5 should ensure that no child below 14 is recruited into the armed forces or by any
6 armed group.
7 And as I said, here is talking of states, not only the state where the war is. In other
8 words, here we always say that the parties that are obligated to ensure that this child
9 is not in armed conflict starts with the whole world because good enough this
10 convention is ratified universally, it has universal ratification, so the whole world has
11 the duty to make sure a child is not involved.
12 The other party is the host country, and that is why we dialogue at length with the
13 reporting state before us, what have they done to ensure that a child is not there.
14 The other one is what we call customary stakeholders, the traditions, because it is
15 recognised that long-standing traditions has dos and do nots in respect to war in as
16 far as women and children are concerned. So customs, in relation to the war is what
17 in committee we call it the second pillar of protection, the first pillar of protection
18 being those established by treaties. So these people will always ensure that they
19 should make sure that it is their obligation that no child is involved in armed conflict.
20 The other thing that we ensure is evacuation, that every child should be evacuated
21 from any theatre or any scene of armed conflicts. And again, the obligations are on
22 all the other parties that I mentioned, that a child is evacuated from armed conflict.
23 The other thing is that we also ensure that children who, by any accident were
24 involved in hostilities, whether they be war prisoners or not thereafter, should not be
25 held responsible for acts that were committed when they were children.

1 I have tried to say this in practical terms, because, your Honour, I am trying to avoid
2 citing the law, lest I would be seen --

3 PRESIDING JUDGE SCHMITT: [9:53:03] I think we have understood your point.

4 THE WITNESS: [9:53:07] Yes.

5 PRESIDING JUDGE SCHMITT: [9:53:07] And you have also heard on Tuesday my
6 initial remarks. I think we leave it at that.

7 MS LYONS: [9:53:13] Thank you.

8 Q. [9:53:19] I want to ask you, if you know, what did Uganda do between the
9 period 1989 when it ratified the convention through 2005, for example, this period, to
10 implement its state obligations as a party first to the convention and then later in I
11 think 2000/2002 to the optional protocols? Could you talk a little bit about this if you
12 have some information, please.

13 A. [9:54:02] Yes. After ratification, Uganda went ahead to check if the Child Act
14 was in consonance, so there was that legal move, so that was the first step.

15 The other step that was tried is to see that children recovered or children involved in
16 armed conflict were rehabilitated. And I think it's around that bracket that our first
17 lot of children who were involved in the war were handled.

18 But it also continued, as I said, that the unfortunate history of our country is that war
19 after the other. Also it came up to the new set of children, so it continued with the
20 practicalities of receiving those who were recovered and trying to handle them in
21 compliance with that convention. And as I said before, it is where there was this
22 MOU to hand them over to civil authority and not to keep them in the army.

23 I must add, though, that while I tried to look at what Uganda did, I cannot, as a child
24 rights activist, I cannot afford to miss out what it did not do, because it keeps paining
25 me is that because while Uganda tried to do this, including its reporting later to -- the

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1 periodic reporting that it did to UN in Geneva when I was already on the committee,
2 it's that the war of the Lord's Resistance Army, children were not protected enough as
3 demanded. Not enough prevention was given for their not being involved and not
4 enough protection was given for them being removed.

5 So if I was to give a balanced account, I would start by noticing the good that was
6 done, but I can also not forget to mention the not good that was not done. And I
7 think this is what put a lot of children in that situation, and you just can't say it is their
8 bad luck. Under the obligation, as I said, the world and Uganda should have done
9 something.

10 Q. [9:57:31] One moment.

11 Now what I would like to do is call your attention to tab number 9, which is a part of
12 the speech by the former UN Under-Secretary-General and Special Representative for
13 Children in Armed Struggle, *Dr Olara Otunnu, accepting the Sydney Peace Prize. It
14 is at tab 9, and there are two parts to it. You don't have to read it. I will point you
15 to the quotation I am interested in and then ask you a question.

16 In the first part of the speech at tab 9, and it is for the record ERN ending 2776,

17 *Dr Otunnu states, quote: "For over 10 years --"

18 PRESIDING JUDGE SCHMITT: [9:58:50] Perhaps you, because there is so much on
19 these papers, the type is very small, you guide us a little bit where you are.

20 MS LYONS: [9:58:58] Yes, absolutely, absolutely.

21 PRESIDING JUDGE SCHMITT: [9:58:59] Because there is a lot on this page.

22 MS LYONS: [9:59:03] Yes, yes, yes. Thank you, thank you. My error.

23 Q. We have in paragraph page ending 276, it is the eighth paragraph, yes, the
24 eighth paragraph down.

25 PRESIDING JUDGE SCHMITT: [9:59:21] Starting with?

- 1 MS LYONS: [9:59:22] Starting with "For over 10 years".
- 2 PRESIDING JUDGE SCHMITT: [9:59:26] Okay, then I have counted correctly.
- 3 Please proceed.
- 4 MS LYONS: [9:59:31] Okay. And I did too, which that's good.
- 5 Q. [9:59:34] Now, okay, are you already with this, Mr Awich? Okay.
- 6 "For over 10 years, a population of almost two million people have been herded like
- 7 animals into concentration camps, some 200 ... in all (although the camps are
- 8 predominantly concentrated in Acholi - 95% of the Acholi are in the camps, Lango
- 9 and Teso are also gravely affected) in abominable living conditions, defined by
- 10 staggering levels of squalor, disease and death, humiliation and despair, appalling
- 11 sanitation and hygiene, massive overcrowding and malnutrition."
- 12 And then he goes on to give statistics about the dire infant mortality rates, maternal
- 13 child care, et cetera.
- 14 My question to you is, do the conditions, accepting the conditions as he describes
- 15 them for the purposes of this report, do these conditions comport with your
- 16 understanding of what the provisions are that need to be implemented and ensured
- 17 under the convention or optional protocol?
- 18 PRESIDING JUDGE SCHMITT: [10:01:05] Ms Hohler.
- 19 MS HOHLER: [10:01:07] Your Honours, these documents refer to the conditions in
- 20 the IDP camps. I for one fail to see the relevance of this for the issues at trial here,
- 21 and in particular taking into consideration the expertise of Mr Awich.
- 22 Moreover, what I believe the learned counsel is asking is about the responsibility of
- 23 Uganda. So that is, first of all, a matter of law; and second of all, we are not here to
- 24 discuss the State responsibility, so to say. Those would be my objection.
- 25 PRESIDING JUDGE SCHMITT: [10:01:49] I think we can alleviate the thing. I

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1 would partly agree with you. But we have with Mr Awich, we have a person here
2 who is an expert on child rights.

3 And Ms Lyons now, if Mr Awich can comment on what this meant for the lives of
4 children in these camps, I would allow it, and then we move to another point. Yes.

5 MS LYONS: [10:02:17] Your Honour, listening to Ms Hohler and to you, let me read
6 the section on infant mortality, because that talks about children.

7 PRESIDING JUDGE SCHMITT: [10:02:27] Okay.

8 MS LYONS: [10:02:28] That's okay?

9 PRESIDING JUDGE SCHMITT: [10:02:29] I am fine, I am fine with that.

10 MS LYONS: [10:02:31] I am guided.

11 PRESIDING JUDGE SCHMITT: [10:02:31] And Mr Awich always follows what we
12 are talking about.

13 MS LYONS: [10:02:35] Absolutely.

14 PRESIDING JUDGE SCHMITT: And we will pick it up and he then can comment on
15 certain conditions that are mentioned here. Of course not, not -- if he is of a different
16 opinion, if the situation in his opinion has been different, he will state that, and if it
17 was like that, he can comment on the results, the effects of that on infants and on
18 children. So please.

19 MS LYONS: [10:03:00]

20 Q. [10:03:00] Now looking at the same page ending in 2776, the 11th paragraph, he
21 has described, as I read, conditions in the camps.

22 PRESIDING JUDGE SCHMITT: [10:03:11] That's okay, yes.

23 MS LYONS: [10:03:13]

24 Q. And here then he says, "These camps are the worst infant mortality rate
25 anywhere in the world today." And then he goes into the infant mortality rate in

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1 northern Uganda, and the situation is worse for children under five.

2 So my question is whether this description -- or your comment on this description, if
3 you have a comment.

4 A. [10:03:45] Your Honour, my comment on this description is that one
5 indisputable fact is that there were camps. And camps were initiative of the
6 government. It's government who initiated camps for security reasons that they
7 brought forward. But the details of the statistics, as according to *Olara Otunnu, I am
8 seeing it for the first time.

9 But what I can say is that the conditions in the camps were hard and more hard for
10 the children. And in my expertise experience is that there is the principle of
11 non-derogation that under all conditions in conflict, no derogation should be done to
12 avoid the protection of children.

13 So it wouldn't even have been an excuse that there is war or there is camp and there is
14 no food, but we -- they still -- we should have still said, look, under whatever
15 conditions, there is never a derogation to the rights of the child.

16 But these statistics as I see them, and bearing in mind that the established fact is that
17 there were camps, even if there was still exaggeration or less of it in this data, my
18 comment is that it is true the children's conditions were bad. And I am saying that
19 even if the population condition were bad, it does not give anybody a right to
20 derogate from ensuring, as I said the word "ensurance", from ensuring that children's
21 right are protected. So this is my comment about this.

22 PRESIDING JUDGE SCHMITT: [10:06:10] Thank you, Mr Awich.

23 I think you can move on, Ms Lyons.

24 MS LYONS: [10:06:13] Yes, I am going to move on to the next point. Thank you.

25 Q. [10:06:18] Now, Mr Awich, I call your attention to the report, it is a UN report

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1 on the rights of the child at tab 6. And I want to focus on one paragraph here and
2 give you an opportunity to read it. It's at paragraph 45, the ERN number for the
3 record of this page, which is page 13 on the UN report is UGA.00132.435. And this
4 a paragraph that describes the home guards under the UPDF and the recruitment
5 of underage children into these groups. This report, so it is upfront, was written
6 in 2001.

7 So please look at that paragraph 45 and then I will ask my question when you have
8 had a chance to read it.

9 PRESIDING JUDGE SCHMITT: [10:08:31] I think, Ms Lyons, you are interested
10 specifically in one information here in paragraph 45, and I think you can simply pick
11 this out and ask the --

12 MS LYONS: [10:08:42] Yes, I have one simple question which you may or may not
13 be able to answer, okay.

14 Q. [10:08:49] This report, as I mentioned, was from 2001. My question to you is:
15 Do you have any information about UPDF recruitment of children to fight in the
16 home guards or in other local defence units in the period of 2002 to 2005? That is my
17 question, if you know?

18 A. [10:09:18] I don't have any information.

19 Q. [10:09:21] Thank you. (Microphone not activated) Now moving on, I would
20 like to call your attention to tab 4. Tab 4 is a statement in your binder, it is
21 UGA -- sorry, UGA-OTP-0261-03 -- 038 -- 0380, and it is a document from the Acholi
22 Religious Leaders' Peace Initiative, ARLPI.

23 Now, I am looking at the first paragraph on page 381: "To put it in a nutshell" --
24 it starts:

25 "To put it in a nutshell, all their potential future in life, as normal children in other

1 parts of the world, has been ruined and lost completely. No doubt, these were the
2 circumstances under which Dominic Ongwen, like, all other formerly abducted
3 unfortunate children of Northern Uganda, were forcefully subjected to and
4 conditioned to becoming a killing machine in the hands of the LRA, as an
5 organization."

6 Do you have any comment on this?

7 A. [10:11:14] Yes, I have a comment on this, that this statement, I agree with it.

8 And in my day-to-day interface with the communities and other stakeholders as -- as
9 a child rights or particularly children involved in armed conflict practitioner, I have
10 always wondered whether there is a difference between me, Awich, a child soldier,
11 my rights being violated by being a child soldier, and me, Awich, passing the age 18
12 and I am used to violate the rights of others.

13 Whether there is no difference between me being used to victimise others and
14 actually me victimising others when I am already an adult. This is why here it
15 is -- the statement is going to say becoming a killing machine. In other words, I am
16 not -- even if I have passed the age of 18 in that bondage I have grown up in as a child
17 soldier, I am still being used to victimise others. Not me now saying, "Okay, because
18 I was a child, I was victimised and now that I am 19, I victimise others." No. I am
19 still being used to victimise others.

20 So I agree with this, this statement, especially when it says "conditioned to become
21 a killing machine". And that has been my concern again and again in my interface
22 with all stakeholders, that do I choose when I am still in bondage to victimise others?
23 Do it consciously because I was victimised by being a child soldier or I'm even being
24 victimised by being used to victimise others?

25 PRESIDING JUDGE SCHMITT: [10:13:38] I think we had this point. This was

1 a little bit -- in the detail, it was a little bit different but we have already entertained,
2 so to speak, this issue on Tuesday.

3 MS LYONS: [10:13:55] Thank you, your Honour. One moment.

4 Q. [10:14:11] Now, this document is a plea that a child soldier, in this case
5 Mr Ongwen, he returned to Uganda to undergo a process of, excuse the
6 pronunciation, *mato oput*, which involves truth telling and reconciliation. You spoke
7 a little bit about different prophecies to resolve the situation of child soldiers with the
8 community on Tuesday.

9 Do you have anything more you want to say about the different prophecies and your
10 views?

11 A. [10:14:57] Not pretty much to add, just to clarify that, even at the international
12 ensurance of protection of children, I already said earlier that the first pillar is as
13 established by treaties, but the second pillar is also customs. And I know for a fact
14 that in Acholi, there has been initiative to do that, and the people were willing to have
15 it. Actually, you could say it is what was more bottom-top than top-bottom. It was
16 a demand by the people; it was not an imposition.

17 So I think this approach would help, especially knowing the very many numbers of
18 children who were involved, that litigation would be a normal way of doing things,
19 but I think this one would be more acceptable, the people would know it, since it is
20 from them anyway. So that's my comment about that.

21 Q. [10:16:33] Thank you. Now let me ask you a hypothetical. If a state party,
22 state party X, made a decision to prosecute a child soldier, what would your comment
23 on this be or how would you approach this resolution?

24 A. [10:17:00] If a state party made a resolution to prosecute a child soldier, I believe
25 we are using this word interchangeably with former child soldier --

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- 1 MS LYONS: [10:17:17] Yes, yes, absolutely.
- 2 MR GUMPERT: [10:17:18] Well, I object if we are, because then the witness is being
3 asked to comment directly on the propriety of this and (Overlapping speakers)
- 4 PRESIDING JUDGE SCHMITT: [10:17:26] Yes, I --
- 5 MR GUMPERT: [10:17:26] -- other such processes.
- 6 PRESIDING JUDGE SCHMITT: [10:17:26] -- I -- exactly, that is sustained. I said it
7 in the beginning that we'd -- we will not allow, as a Chamber, comments on the
8 appropriateness or justification of these proceedings here, also not via the back door,
9 so to speak.
- 10 MS LYONS: [10:17:42] May I just say one thing for the record. I heard you,
11 your Honour, and my understanding was that as an expert, the calling party is
12 permitted to ask hypotheticals. So I phrased my question not in terms of this Court,
13 but particularly in terms of States Parties where in fact there were practices in various
14 states, but I will abide by your ruling, your Honour.
- 15 PRESIDING JUDGE SCHMITT: [10:18:08] Yes, please, please abide by this ruling.
- 16 MS LYONS: [10:18:15] Okay. All right.
- 17 Q. [10:18:15] Now I am going to move on to another area. Please take a look, if
18 you still have your transcript sheet, it's at number 11, it is the transcript sheet
19 number 11 on page 14 -- the transcript chart, sorry.
- 20 PRESIDING JUDGE SCHMITT: [10:19:13] I don't have here any, any bold passages.
- 21 MS LYONS: [10:19:20] No.
- 22 PRESIDING JUDGE SCHMITT: [10:19:20] So you have to guide us again.
- 23 MS LYONS: [10:19:24] Thank you, your Honour. I will just -- it's very --
- 24 MR GUMPERT: [10:19:25] Your Honour, I am sorry, I object again. This is my
25 opening statement. No?

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1 MS LYONS: [10:19:31] (Microphone not activated) not yours. It is not yours,
2 sorry.

3 PRESIDING JUDGE SCHMITT: [10:19:35] Okay.

4 MR GUMPERT: [10:19:36] This is the Prosecution's opening statement, as I
5 understand it. It says OTP opening statement. If it isn't, then Ms Lyons has
6 misinformed us in the past, but I am going to proceed on the basis that she hasn't. It
7 is not appropriate, I would submit, to invite witnesses to comment on the legal
8 submissions made in the course of these proceedings; that's not proper evidence.

9 PRESIDING JUDGE SCHMITT: [10:20:03] If you intend to do that, I again would
10 sustain this objection.

11 MS LYONS: [10:20:07] Your Honour, I would like to be heard as a calling party and
12 then I will comply with your ruling.

13 First of all, Ms Lyons does not mislead the Chamber. It is the OTP opening
14 statements and it is not attributed to -- the OTP based on case law from other
15 tribunals is one unit. I understand that comes from ICTR, but the bottom line is
16 I didn't specify who gave this. In fact, this was a part of the statement given by the
17 Chief Prosecutor Bensouda.

18 What I wanted to do, it is a public document, it is on the internet. I want to highlight
19 two brief sentences in it and ask the witness if he has any comment. That's all I want
20 to do with it. It is not a legal submission as we know that the submissions made by
21 counsel in the opening statement, it is not evidence, they are not legal submissions in
22 the strict sense of the word. So I feel that we can't throw these terms around loosely;
23 it is not a legal conclusion.

24 PRESIDING JUDGE SCHMITT: [10:21:18] We shorten this, I do it, I do it. It's
25 not -- I think it's not a huge problem.

1 Mr Awich, please listen, what would you say if somebody told you, "Okay, we know
2 there has been victimisation in the past, but this is not an excuse for actual
3 victimisation in the present?"

4 THE WITNESS: [10:21:42] What I would say is, "Yes, you are right, to the effect that
5 victimisation in the past does not justify victimisation now." But the person would
6 be wrong to the effect that am I victimising now? While I agree that victimisation in
7 the past does not justify now, but am I victimising now or I'm being used to victimise?
8 Is it me victimising? Or I am just a tool of victimisation. So I would disagree to that
9 extent.

10 PRESIDING JUDGE SCHMITT: [10:22:26] And to make it clear, I said what would
11 you say if somebody said, not I did say it. I was the messenger of some hypothetical
12 opinion of somebody.

13 THE WITNESS: [10:22:38] My Lord, I understand (Overlapping speakers)

14 PRESIDING JUDGE SCHMITT: [10:22:41] You've understood it --

15 THE WITNESS: [10:22:41] Yeah, I've understood it, and --

16 PRESIDING JUDGE SCHMITT: [10:22:42] -- of course, I immediately recognise --

17 THE WITNESS: [10:22:43] -- your Honour --

18 PRESIDING JUDGE SCHMITT: [10:22:43] -- that you understand it --

19 THE WITNESS: [10:22:44] Yes, your Honour --

20 PRESIDING JUDGE SCHMITT: [10:22:44] -- immediately --

21 THE WITNESS: [10:22:44] -- yes.

22 PRESIDING JUDGE SCHMITT: [10:22:44] -- yes.

23 Please continue, Ms Lyons.

24 MS LYONS: [10:22:48] Thank you, your Honour.

25 Q. [10:22:54] Now, moving on the similar topic, could you answer the question:

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1 Can a child soldier be both a victim and a perpetrator?

2 MR GUMPERT: [10:23:06] Objection; it's a legal conclusion. This Court is deciding
3 whether Mr Ongwen is a culpable perpetrator. The witness's opinion on it is neither
4 here nor there.

5 MS LYONS: [10:23:17] May I be heard?

6 PRESIDING JUDGE SCHMITT: [10:23:19] Yes, please.

7 MS LYONS: [10:23:20] Yes. I strongly object to the assertions of the Prosecution.
8 The issue of perpetrator, clearly there is a context in which perpetrator is used as
9 a legal term, but I would point out in fact there are -- there's an article on the list of
10 documents of -- from the, from the OTP that deals with victims as complex
11 perpetrators.

12 Now I could object we can't use the article because it has a legal conclusion, it is an
13 academic article. The point is perpetrators is used in the world beyond this
14 courtroom. We are not asking for a legal conclusion about whether a person is
15 a perpetrator. We are not asking. That's a conclusion of law. It would be
16 a conclusion of law if I asked is this particular perpetrator innocent or guilty. That
17 should be ruled out. I can't ask that.

18 PRESIDING JUDGE SCHMITT: [10:24:22] It is a very -- really you try to make here
19 a very refined distinction. Since anyway the Chamber has to decide on these matters,
20 if Mr Awich refrains completely from any legal comments and, if I understood you
21 correctly, answers in a sort of criminological, sociological way, then be it so.

22 Mr Ayena, I think I have ruled upon it.

23 MR AYENA ODONGO: Pardon?

24 PRESIDING JUDGE SCHMITT: [10:24:54] I think I have ruled on it.

25 MR AYENA ODONGO: [10:24:56] You have ruled already. I thought I would

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1 make a brief submission, and the brief submission is that as far as I understand where
2 Ms Lyons is coming from, this is a witness, an expert witness on child soldiers, and
3 the question she is putting to her is a factual question.

4 PRESIDING JUDGE SCHMITT: [10:25:23] You can stop here.

5 MR AYENA ODONGO: Yes.

6 PRESIDING JUDGE SCHMITT: I think exactly criminology and sociology are not
7 exact sciences. They are sciences, so to speak, that are based on empirical factual
8 considerations and facts, and he might, he might comment on it on this basis, but of
9 course -- and he understands it, but not say anything about responsibility. And
10 that's the ruling.

11 So please, Mr Awich, you can answer.

12 MR AYENA ODONGO: [10:25:53] Much obliged, my Lord.

13 THE WITNESS: [10:25:56] Can you put the question again, please.

14 MS LYONS: [10:25:59]

15 Q. [10:26:00] Certainly. The question is, Mr Awich, can a child soldier be both
16 a victim and a perpetrator?

17 A. [10:26:08] No.

18 Q. [10:26:23] Do you want to explain anything or --

19 PRESIDING JUDGE SCHMITT: [10:26:24] No, he has answered.

20 MS LYONS: [10:26:24] That's fine. Okay, fine. Got it.

21 PRESIDING JUDGE SCHMITT: [10:26:25] I think he has answered, yes.

22 MS LYONS: [10:26:28] Okay.

23 Q. [10:26:29] Now, moving ahead. We are getting towards the end. Now, based
24 on the discussion a few minutes ago, I will rephrase this question.

25 An unnamed person made a statement on the -- I don't know what to do. Okay.

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1 A statement was made by a person on the International Day Against the Use of Child
2 Soldiers in February 2018. Let me read you the statement, very short, and --
3 PRESIDING JUDGE SCHMITT: [10:27:05] Well, what are we talking about here?
4 Then we can follow.
5 MS LYONS: [10:27:09] We're talking about -- I'm just worried about the questions
6 now. Okay.
7 Q. [10:27:14] On February 12, 2018, Chief Prosecutor Bensouda made a statement
8 on the International Day Against the Use of the Child Soldiers. What she stated --
9 MR GUMPERT: [10:27:26] Sorry, can we have a reference?
10 MS LYONS: [10:27:31] I don't -- it's not in the materials. It's a public document.
11 MR GUMPERT: [10:27:34] So it's a new piece of material which you want to use
12 without giving notice?
13 MS LYONS: [10:27:39] It's not a new piece of material. You can ask anyone, we can
14 Google it. If you give me two minutes, I will give you my paper copy.
15 PRESIDING JUDGE SCHMITT: [10:27:46] Please, please, please, please. Of course
16 it's clear that Mr Gumpert had to say that after the exchange this morning, and I think
17 that was perfectly clear.
18 We are together in this courtroom since two years now, and I know that you would
19 not cite something wrongly. And I think nobody will complain if this is really an
20 official speech by a renowned person. Then please pull out a short portion of it and
21 put it to the witness and he might comment on it. So I agree that you can do it and
22 we don't make a big discussion out of it which loses unnecessary time here in the
23 courtroom. Yes.
24 MS LYONS: [10:28:42] Thank you, your Honour.
25 Q. [10:28:43] The statement that was made was, quote:

1 "A childhood that is free from violence is not a privilege; it is the natural state of
2 things. It is a right that must be protected."

3 I have two questions, I will ask them together so you can answer, if you wish.

4 In the context of your experience, do you have any comments? And secondly, in the
5 context of your experience and expertise, who is responsible for the protecting?

6 A. [10:29:31] Yes, most of these issues are quite interrelated. I think I have said it
7 before, but I will say it much more clearly in reference to the question, is that yes, the
8 child has those rights, and I had even commented that there is no derogation to it, it
9 must be protected at all times, even when there is war situation.

10 Now, the protectors of the child is, one, the entire world, the entire world should
11 protect a child.

12 Two, the country where the child lives, the government or the state party has an
13 obligation to do that.

14 Three, in case of armed conflict, even the warring parties who are non-state actors
15 have the obligation to ensure that a child is protected. And, as I said, the customary
16 persons, they have the obligation to ensure that a child is protected.

17 So these rights of the child I say exist, and it must be protected at all times without
18 any derogation under whatever circumstances. And the parties who hold the
19 obligation are the ones I have listed.

20 PRESIDING JUDGE SCHMITT: [10:31:04] Thank you very much.

21 And since I have a very quick team, this was on the website of the ICC at some point
22 in time. It must have been February 2018. And this also shows now to Defence and
23 Prosecution that sometimes we have to be a little bit, the parties especially, indulgent
24 with each other. So when we present some new documents which really are known
25 or can be looked after quickly, I think we should not be too mean with each other, to

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1 word it this way.

2 So, Ms Lyons, you can continue, but I understand that you are coming to the end.

3 MS LYONS: [10:31:46] Correct, I have one or two more questions, your Honour.

4 PRESIDING JUDGE SCHMITT: [10:31:48] Yes, please proceed.

5 MS LYONS: [10:31:50] Okay.

6 Q. [10:31:50] Now, I want to focus on a notion at the end of your report on page 9.

7 And I want to precede my question by saying you can answer it generally, we are not

8 talking about specific people, I am interested in the concept.

9 So I am leaving out a little bit when I read it. I am leaving out a little bit of the

10 reference.

11 PRESIDING JUDGE SCHMITT: [10:32:30] But these are difficult waters here.

12 MS LYONS: [10:32:34] Yes, but let me try and I will -- let me try first.

13 PRESIDING JUDGE SCHMITT: [10:32:37] So --

14 MS LYONS: [10:32:38] And then I will --

15 PRESIDING JUDGE SCHMITT: [10:32:39] If you carefully try, then I think we can

16 proceed.

17 MS LYONS: [10:32:43] Okay.

18 Q. [10:32:46] I have -- I have spent time trying to navigate, let me see how

19 successful or not I am. Okay, all right.

20 This is the very end of your paper on page 9, ERN 1030, and I am going to --

21 MR GUMPERT: [10:33:02] Your Honour, I'm very sorry. I know that your Honour

22 is keen to promote a spirit of harmony and good will to all men in the courtroom.

23 MS LYONS: [10:33:12] And women.

24 PRESIDING JUDGE SCHMITT: [10:33:12] And women.

25 MS LYONS: [10:33:13] Women.

1 MR GUMPERT: [10:33:15] I use the commonly used Christmas greeting, I apologise
2 for its archaic nature, and of course I speak both to men and to women, indeed, to all
3 genders. Now I would seek to make the point.
4 This is precisely the material which your Honour has, I submit, already ruled on.
5 Ms Lyons wants now to read it into the record, to which she has referred so often.
6 That is inappropriate. This material is not appropriate either in question or in
7 answer form. The witness was asked to do something, which he shouldn't have
8 been asked to do, and he shouldn't now have an opportunity to have it put on the
9 record in any form.

10 PRESIDING JUDGE SCHMITT: [10:33:56] There are different notions to that. In
11 principle, I would agree with you. I have, of course, prepared for this testimony.
12 And this last paragraph on page 9 was of course one of those which I see and
13 the Chamber sees, we have discussed that as a chamber also, see as critical.
14 And I would indeed not see it appropriate to put it, so to speak, on the record. But
15 even if it is on the record, of course, in the end, it is up to the Chamber what we do
16 with it.
17 But nevertheless, nevertheless, I said this at the start and I said this today: No
18 comment on the appropriateness of these proceedings. No teaching of the Chamber
19 of the law by witnesses. These two things are paramount.
20 There is one, though, one thing, rehabilitation, but we have talked about that before,
21 where you could ask in the abstract something. But nevertheless I would really
22 simply also out of the notion of coherence, when I say something I don't want that, as
23 I said before, via the back door it is tried to be introduced. Yes.

24 MS LYONS: [10:35:09] Your Honour, let me ask the question, because I looked at the
25 rulings that you made yesterday, no interpretation, no legal conclusions and no

1 teaching of the judges, you know, the judges, this is not teaching -- sorry. The judges
2 are learned judges and professional judges.

3 I looked at that and I've dwelt on this. So if I may, if it is out of order, let me know.

4 The way I would say, I wanted to quote part of the last sentence.

5 Q. Now, the last sentence says in your report, "After more than two decades of
6 abuse, Uganda and the international community should have worked towards
7 rehabilitating former child soldiers instead of --"

8 PRESIDING JUDGE SCHMITT: [10:35:58] Point, point.

9 MS LYONS: Okay.

10 PRESIDING JUDGE SCHMITT: That's it.

11 MS LYONS: [10:36:00] I'm sorry?

12 PRESIDING JUDGE SCHMITT: [10:36:00] That's it, because the rest, the rest is
13 exactly what I and what the Chamber has now --

14 MS LYONS: [10:36:06] All right, all right.

15 PRESIDING JUDGE SCHMITT: [10:36:07] -- several times said. Yes.

16 MS LYONS: [10:36:11]

17 Q. [10:36:11] The question then is, although you have talked about rehabilitation,
18 do you have anything additional to say about rehabilitation or how the former child
19 soldiers have been dealt with?

20 A. [10:36:36] The rehabilitation in Uganda, broadly speaking, as I said earlier, was
21 taken in line of the subsequent wars and the subsequent children in each category.
22 So my rehabilitation was the first lot and coming out of another war, but the
23 rehabilitation under the LRA came in the form of the recovered children being
24 handed over to civilian authorities, and the rehabilitation has been ongoing, both
25 institutionally by NGOs and at family levels for those who did not go to institutions.

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1 So I think that it would be good if in an ideal situation all the children who were
2 victims in the LRA war were rehabilitated.

3 PRESIDING JUDGE SCHMITT: [10:37:54] I think that is an answer.

4 MS LYONS: [10:37:57] Thank you, Mr Awich.

5 Q. [10:38:01] And now I will proceed to my last question. You have talked in this
6 Chamber, you have talked, you have testified before the judges for a day plus. It's
7 public. But I want to ask you finally, what is the message based on your life and also
8 your achievements to other former child soldiers?

9 A. [10:38:36] My achievement?

10 PRESIDING JUDGE SCHMITT: [10:38:38] And if you have -- this is sort of to ask
11 you if you want to give a final word on a message that you want to deliver. But of
12 course you understand we don't want a long speech there, of course.

13 MS LYONS: [10:38:56] Yes.

14 THE WITNESS: [10:38:57] Yes, your Honour, I don't want to give a long speech.
15 My comment is that, one, it's unfortunate that children ever get involved in armed
16 conflict.

17 Two, is that children should never be used to fight adult wars. And three, is that the
18 world should try not just to look at me, Awich, a child soldier, where I cannot be
19 helped, I cannot be pulled out of a conflict situation and the world should wait for me
20 when I have been forced into growing there and then I -- it is the time that the world
21 can learn on me to prosecute me.

22 If it could help pick me out it would have been much better to pick me when I am
23 already 18 and above. I wish they could pick -- in my case we were lucky we
24 captured state power, but who knew, if we had not, possibly I would have grown
25 there.

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1 So if I could be saved before, when I am a child, it is much better to the world to learn
2 on me after being -- passing that age of childhood.

3 Finally, is that my contribution, I have tried to do it in my simple way through the
4 committee, as I said, interfaced so much with the Child Soldier International, for
5 example. We even tried through the committee to draft commitments from warring
6 parties not to, to use children, to non-state actors. At home, I have tried through
7 NGOs, through state institutions.

8 So in my simple way I think I have tried to help alleviate the situation, children,
9 whoever get involved in armed conflict.

10 Q. [10:41:34] Thank you, Mr Awich.

11 MS LYONS: The direct examination of Mr Awich is now finished, your Honour.

12 PRESIDING JUDGE SCHMITT: [10:41:43] Thank you very much.

13 And I think this is a good time to have a break now. I would suggest until a quarter
14 past 11, and we meet then.

15 Thank you for the moment.

16 THE COURT USHER: [10:41:57] All rise.

17 (Recess taken at 10.41 a.m.)

18 (Upon resuming in open session at 11.22 a.m.)

19 THE COURT USHER: [11:22:31] All rise.

20 PRESIDING JUDGE SCHMITT: [11:22:51] Ms Hohler rightly assumes that she has
21 the floor.

22 A short comment, since we always want to know where quotations, everything comes
23 from, Mr Gumpert, as I have been informed in the meantime, Luke 2:14.

24 Ms Hohler, you have the floor.

25 MS HOHLER: [11:23:17] Thank you, your Honours.

1 QUESTIONED BY MS HOHLER:

2 Q. [11:23:19] Mr Awich, we have met. As you know, I will be asking you a few
3 questions on behalf of the Prosecution today.

4 Now, Mr Awich, in your testimony, in particular on Tuesday, you spoke quite a lot
5 about the mindset of child soldiers and psychological consequences that you've
6 observed in former child soldiers. Just so we're clear, you're not a psychologist,
7 are you?

8 A. [11:23:45] I'm not.

9 Q. [11:23:45] And you're not a psychiatrist, correct?

10 A. [11:23:49] I'm not.

11 Q. [11:23:50] Then, Mr Awich, you were a member of the United Nations children's
12 rights committee from 2005 to 2012, as you've told us. And you stood for election
13 again in 2012 for another four years, but you were not re-elected; is that right?

14 A. [11:24:10] Yes.

15 Q. [11:24:11] Now, when you were first elected in 2005, I believe that was in the
16 beginning of 2005, if my research is correct, in February 2005; is that right?

17 A. [11:24:23] I think December. Normally, is it? I don't remember, but it's
18 normally wintertime I remember. I don't know what it is.

19 Q. [11:24:30] When you say December, do you mean December --

20 THE INTERPRETER: [11:24:31] Your Honour, request from interpretation: Could
21 counsel wait a little bit.

22 PRESIDING JUDGE SCHMITT: [11:24:33] Yes. Yes, indeed --

23 MS HOHLER: Yes, apologies.

24 PRESIDING JUDGE SCHMITT: -- we have -- we have now a, really an animated
25 exchange, which is from some point of view perhaps much more interesting than if

1 we follow one after the other, but the interpreters cannot follow then.

2 MS HOHLER: [11:24:50] Understood. And I apologise to the interpreters.

3 Q. [11:24:53] When you say December, Mr Awich, do you think it was
4 December 2004 then?

5 A. [11:25:02] No. It could -- well, these are facts can be found out, but it could
6 be -- because the election period was changed. I think that time it was around
7 January, February, but the subsequent election was in December. So I don't
8 remember exactly, but these are facts can be found out.

9 Q. [11:25:23] Yes, it's not that important.

10 Mr Awich, what was your job before you were elected to the UN committee.

11 A. [11:25:34] By then I was a lawyer with the National Resistance Army -- I mean
12 National Resistance Movement, NRM secretariat.

13 Q. [11:25:46] And that would mean you were working in Kampala?

14 A. [11:25:49] Yes.

15 Q. [11:25:49] You told us Tuesday that you were deployed with the UPDF fifth
16 division for some time. Now we didn't hear when exactly that was. Can you tell us
17 when, what year, what years you were attached to the fifth division?

18 A. [11:26:07] I was attached to fifth division in 1992, and that was again the -- yeah,
19 that was 1992.

20 Q. [11:26:17] And it was just for that year, 1992?

21 A. [11:26:20] Yes, for some time of that year.

22 Q. [11:26:23] And you told us that you were in charge of children who were
23 returning from the LRA at that time, so in 1992 we now know, correct?

24 A. [11:26:34] Mm-hmm.

25 Q. [11:26:35] And you would talk to children during those 72 hours before they

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- 1 were handed over to -- by the UPDF to the NGOs; is that correct?
- 2 A. [11:26:46] Correct.
- 3 PRESIDING JUDGE SCHMITT: [11:26:48] Still, Ms Hohler, a little bit slower. Your
4 speaking mode --
- 5 MS HOHLER: [11:26:57] I'm too excited.
- 6 PRESIDING JUDGE SCHMITT: [11:27:00] Your speaking mode -- no, it's a matter of
7 temperament and personality, but nevertheless --
- 8 MS HOHLER: It is.
- 9 PRESIDING JUDGE SCHMITT: -- we have to try to abide to these rules.
- 10 MS HOHLER: [11:27:07] Well noted, your Honour.
- 11 Q. [11:27:08] So your testimony about the LRA and experiences of the child soldiers,
12 as we've heard, is primarily based on those conversations from 1992; is that correct?
- 13 A. [11:27:18] No. More. More than that.
- 14 Q. [11:27:25] This would be your work with the ANPPCAN and other civil society
15 groups; is that correct?
- 16 A. [11:27:33] Mm-hmm.
- 17 Q. [11:27:34] Now going back to those conversations that nonetheless did inform
18 your views on the LRA, your testimony, did you keep any records of those
19 conversations in 1992?
- 20 A. [11:27:47] Records on conversations in recorded form? I don't.
- 21 Q. [11:27:56] So you don't have any notes, or anything of the like, from that period?
- 22 A. [11:28:00] Written notes, yes.
- 23 Q. [11:28:03] And did you consult those notes before you -- before you wrote your
24 report and before you came to testify to the Court?
- 25 A. [11:28:14] No. Because it is really interwoven in my experience, so I don't need

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1 to consult the notes in specific terms. In any case, the notes is about the names,
2 where you are from, whether you are sick or not. The other conversation is ongoing.

3 Q. [11:28:35] So you relied strictly on your memory, would that be a fair estimate?

4 A. [11:28:40] For the conversations, yes.

5 Q. [11:28:43] Now one more thing in relation to your testimony on Tuesday,
6 Mr Awich. After you met and spoke to these children within the 72 hours or less of
7 their return from the LRA, you did not then systematically follow up with those same
8 children to see how they are doing, how they are adjusting; is that correct?

9 A. [11:29:09] No, we would visit. Because there was a loose team of actors which
10 would meet very often. So there was -- all the child rights actors would meet, so I
11 would visit them.

12 Q. [11:29:23] And this would be soon after 1992, when they came out?

13 A. [11:29:27] I mean even a day or a week after they were given, we kept in touch
14 following.

15 PRESIDING JUDGE SCHMITT: [11:29:33] May I shortly.

16 MS HOHLER: [11:29:34] Of course.

17 PRESIDING JUDGE SCHMITT: [11:29:36] Mr Awich, in these cases when you
18 followed, for how long did you do that? Let's say, did you do it a couple of weeks
19 after, a couple of -- you understand my question? Or did you even look after the
20 person that you met, for example, in 1992 a couple of years later?

21 THE WITNESS: [11:29:55] Yes, we would follow to the receiving institutions, that I
22 have said that we formed a loose coalition of child rights actors who would follow
23 them, and over time -- but of course at some point you lose contact.

24 PRESIDING JUDGE SCHMITT: [11:30:14] I understand.

25 MS HOHLER: [11:30:16]

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1 Q. [11:30:17] Now I'm looking at your CV, Mr Awich, and also how you presented
2 yourself on Tuesday, and even today I think you mentioned you are first and
3 foremost an activist. Would the most accurate description of your work and your
4 expertise be that you are a child rights advocate?

5 A. [11:30:43] Yes, but just to add that, with special emphasis on children in armed
6 conflict.

7 Q. [11:30:53] Yes. So you do not claim, Mr Awich, that you are an expert in the
8 LRA, do you?

9 A. [11:31:02] LRA per se?

10 Q. [11:31:04] Correct.

11 A. [11:31:05] No. But I know LRA. No. I mean, the word "expert" maybe
12 would -- I don't know the scope, but ...

13 PRESIDING JUDGE SCHMITT: [11:31:15] But that is indeed, what would an LRA
14 expert be and look like?

15 MS HOHLER: [11:31:20] I will refrain from the latter part of the comment.

16 Q. [11:31:26] But, Mr Awich, you have never done any scientific research into LRA
17 or the like; is that correct?

18 A. [11:31:35] Apart from the interface with children, I have not done an academic
19 research on LRA, no.

20 Q. [11:31:43] Yes. And you were never a member of the LRA, correct?

21 A. [11:31:47] No.

22 Q. [11:31:49] Now talking about children returning from the LRA, you testified on
23 Tuesday -- and for the Court and the parties this is Tuesday's transcript 203, page 96,
24 lines 11, 12, and then again 20, 21.

25 So I will read two lines from the transcript of Tuesday, your answer. You testified, I

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1 quote:

2 "... there are not known cases where children escaped on voluntary."

3 And also:

4 "... the known process of them getting out is by recovery from the military ..."

5 Are you aware, Mr Awich, that in fact thousands of children did escape from the
6 LRA?

7 A. [11:32:52] No.

8 MS LYONS: [11:32:52] May I ask just a technical question?

9 I have -- I'm holding the edited transcript and I heard -- I'm sorry, I heard you say
10 page 96. I don't know which transcript you're referring to because --

11 PRESIDING JUDGE SCHMITT: [11:33:06] Ninety-seven?

12 MS HOHLER: [11:33:07] I apologise. I was referring to the real-time transcript.

13 MS LYONS: Okay. Which I don't have. Okay.

14 PRESIDING JUDGE SCHMITT: [11:33:14] Okay. No, no. But I think that
15 we -- even some --

16 MS HOHLER: [11:33:15] I'm happy to give my copy to counsel if that's
17 (Overlapping speakers)

18 PRESIDING JUDGE SCHMITT: [11:33:21] -- sometimes even the memory of a judge
19 is so good I exactly recall the quotation, and I recall that it is correct. But we have
20 now established, I think, where it is. And if not, we will do so exactly, and we have
21 it on the record of Tuesday.

22 So the question is on the table. Please, Mr Awich, the question was -- perhaps you
23 can repeat it because we had this, this exchange now.

24 MS HOHLER: [11:33:46] I think it was actually already answered.

25 THE WITNESS: [11:33:49] Can you say it again.

1 PRESIDING JUDGE SCHMITT: [11:33:50] Yes. I think this makes sense here to
2 repeat the question, please.

3 MS HOHLER: [11:33:54] Yes.

4 PRESIDING JUDGE SCHMITT: [11:33:55] And not quote, quote again because the
5 quotation --

6 MS HOHLER: Yes, just the question.

7 PRESIDING JUDGE SCHMITT: -- the witness knows obviously what he has said.
8 Simply the question.

9 MS HOHLER:

10 Q. [11:33:59] My question was, Mr Awich, whether you were aware that in fact
11 thousands of children did escape from the LRA.

12 A. [11:34:07] I'm not aware. As I said, the known cases of recovery of children,
13 children ever getting out of the grip of LRA is in combat situation where LRA get in
14 touch with the UPDF and, in the process, children are left actually by LRA.

15 So even the one that is said to have escaped is actually, when conflict has occurred, an
16 LRA has run away.

17 But I'm not aware about a normal bush situation of LRA where children plan when
18 the commanders are sleeping and they escape. No, not to my knowledge.

19 Q. [11:34:56] Now, on Tuesday, Mr Awich, Ms Lyons discussed with you an article
20 by Dr Schauer, and in that article which you have read, it was given to you by the
21 Defence before you wrote your report, there are multiple references to a Professor
22 Christopher Blattman and his research in northern Uganda. Are you familiar with
23 Professor Blattman?

24 A. [11:35:25] I haven't met him, but I know I've had -- I have come in touch with his
25 works.

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1 Q. [11:35:31] And have you heard, Mr Awich, of Professor Tim Allen of the London
2 School of Economics?

3 A. [11:35:38] Yes. I --

4 Q. [11:35:38] You probably know his work.

5 A. [11:35:40] Mm-hmm.

6 Q. [11:35:41] Now, you may know he was actually the first witness to be called in
7 this trial. And Professor Allen edited a book called "The Lord's Resistance Army" in
8 2010, and that book included some comprehensive research into the LRA done by
9 Professor Blattman and Dr Jeannie Annan in 2005-2006 while the conflict in northern
10 Uganda was still ongoing, and they conducted a representative survey about
11 abduction in the LRA. Now that survey was called "Survey of War Affected Youth".
12 Are you familiar with that survey?

13 A. [11:36:26] No.

14 Q. [11:36:28] If you could, Mr Awich, turn to a binder, it would be a red binder
15 next to you. Correct. If you could go to tab 5.

16 And the same of course for the Court.

17 This is a document UGA-OTP-0272-0002 and this chapter, the pages we'll be looking
18 at, start with UGA-OTP-0272-0146.

19 Now, Mr Awich, I would like you to turn the page to the one that ends in numerical
20 0150. It's a table. This is just to give you a little bit of a background, it's an article
21 describing that survey.

22 I'll give you a few moments to familiarise yourself with that table, but then I would
23 like you to turn to the next page, to the second half of the table where the ERN ends
24 with the last four digits 0151, and I would ask you to concentrate on the very end of
25 the table where it says "Return".

1 So this survey in 2005-2006 of a representative -- a representative survey, showed that
2 out of 462 abducted males aged 14 to 30 at the time of the survey, 80 per cent, as you
3 can see, had escaped the LRA, whereas 15 per cent were released and 5 per cent were
4 rescued, which I imagine would correspond to what you call captured.

5 Now, having seen this, would you now accept that in fact abductees did escape,
6 children abductees did escape the LRA?

7 MS LYONS: [11:39:01] Objection, your Honour, to the question before the
8 witness -- before you rule.

9 PRESIDING JUDGE SCHMITT: [11:39:07] Yes. And why?

10 MS LYONS: [11:39:07] I'm objecting because, first of all, the section from Professor, I
11 assume Blattman and Professor Annan, was just given to the witness less than
12 60 minutes ago by the Prosecution. The witness has already testified that he himself
13 did not conduct academic scientific research on this and he presented earlier the basis
14 of his knowledge. He is now being asked to very quickly look at this and make a
15 comment on someone else's academic work. We're not here to discuss, I don't think,
16 the reliability or not of this document.

17 I think that Ms Hohler can ask a question on the issue, but it seems to me prejudicial
18 to the witness to ask and to make comments on this. Because then I will have to go
19 back and find out what is the basis -- I don't know what the basis of all this is. I have
20 this article, and I haven't gone through all of the footnotes carefully. I think it's
21 unfair and prejudicial. If it's a question about escape, it can be rephrased, but I think
22 the form of using this in a situation where we don't have a person who has been
23 explicitly presenting expertise based on academic scientific research but in fact based
24 on his experience and knowledge, I think it is prejudicial. That's my position.
25 That's why I object.

1 PRESIDING JUDGE SCHMITT: [11:40:47] Ms Hohler.

2 MS HOHLER: [11:40:48] Your Honour, I was not asking the witness to comment on
3 the research. I was asking the witness to comment, if you will, that is probably not
4 the best word, on what he has told this Court on Tuesday in light of being presented
5 with some research to the opposite.

6 (Trial Chamber confers)

7 PRESIDING JUDGE SCHMITT: [11:41:12] I think the objection is overruled. The
8 witness may answer.

9 Of course, Mr Awich, we are, to put it into perspective, we are aware of the fact that
10 you did not conduct this research and you cannot comment on it. And of course also
11 this -- when we say we overrule this, it's not a statement to the validity of such a
12 research. It's simply that you take this result as it stands here without saying if it's
13 right or wrong, if this changes your mind or if you could -- or whatever you would
14 like to say on that, and perhaps you have an idea on that. So I think we understand
15 each other, so you may answer the question.

16 THE WITNESS: [11:41:57] Yes, your Honour. I can answer the question. The
17 question is good. You see, when you're in LRA speak and in the local language in
18 Luo, if you talk to somebody, and with due respect to the professor, to escape in Luo
19 or in Acholi would actually not mean to -- to escape I think in the English context.
20 For example, *laor*, that is in Luo, but what if you ask this person, this child, "You
21 escaped. How did you escape?" The child will still go back to the story, "You see,
22 when the army ambushed us, we were here. And after the ambush when they shot,
23 we escaped."

24 Now if I was to do a critique of that research after this professor had done it, I would
25 point that out to the professor that, "Actually your term, your concept of escape is

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1 inadequate because all this escape they're saying is not an initiated willful move by
2 the children when LRA is sleeping and they escaped."

3 If you go to the root of whatever one clear story of escape, every child has a story of
4 how he escaped and all of them are connected to a conflict, to an attack or they were
5 attacked and that is how they escaped. So I don't agree with this data.

6 PRESIDING JUDGE SCHMITT: [11:43:52] See, so there was an informed answer, so
7 to speak, and we can -- I think it's now answered. You can move to another point.

8 MS HOHLER: [11:43:56] Yes, your Honour.

9 Q. [11:43:57] Now, Mr Awich, you also testified that it was impossible or virtually
10 impossible to escape from the LRA because of spiritual beliefs, fear, surveillance,
11 control. Now you are familiar with Chris Dolan based at Makerere University,
12 aren't you?

13 A. [11:44:23] I've heard of his work.

14 Q. [11:44:24] And you know his book called, "Social Torture: The case of Northern
15 Uganda, 1986-2006"? It's this book, I actually have a copy here.

16 A. [11:44:35] I haven't read it.

17 Q. [11:44:37] You haven't read it, but you cite to this book, Mr Awich, in your
18 report on page 1026, in footnote 5, in support of your statement about who were
19 controllers and technicians. Maybe we can look at that, that footnote.

20 A. [11:45:00] Yeah.

21 Q. [11:45:01] Do you remember citing to it?

22 A. [11:45:03] Yes.

23 Q. [11:45:04] Oh, so you do remember citing to it?

24 A. [11:45:06] Yes. I cited it because I'd found it in another reference that I was
25 reading, but I did not read the entire book.

1 Q. [11:45:14] I understand. So on one of the pages that you cite to, page 80,
2 Chris Dolan talks about some of his findings. And I would invite the Court and you,
3 Mr Awich, if we would turn to tab 5. This document unfortunately does not have an
4 ERN stamp yet, but it is tab 6.

5 PRESIDING JUDGE SCHMITT: [11:45:40] Yes, exactly. It could not be tab 5.

6 MS HOHLER: [11:45:43]

7 Q. [11:45:44] Sorry. Tab 6. It is a book, as I have said, "Social Torture: The case
8 of Northern Uganda" published in 2009 by Chris Dolan and on page 80 of that book,
9 there's an excerpt in your binder, it's tab 6, Mr Awich. The print is a little small but
10 you will see page 80 in the top left corner.

11 Now, again these are the exact pages that you reference in your footnote in your
12 report, and I would bring everyone's attention to the third paragraph from the bottom
13 up on that page, on page 80, and I will read it. So this part is about control and
14 surveillance, and the author writes:

15 "Notwithstanding these structures and mechanisms of control, however, the fact that
16 93.6 per cent of recorded child abductees managed to escape within two years of
17 capture, indicates that internal surveillance was less than successful (or that other
18 LRA members were turning a blind eye more often than the choice of testimonies
19 published by child agencies would have us believe)."

20 Now, having seen that, would you accept that escape from the LRA was not
21 impossible?

22 A. [11:47:44] It was not possible and I still get back to the definition of escape.

23 Q. [11:47:58] Very well, Mr Awich.

24 We'll move to the next point. I've touched upon this briefly, so in preparation for
25 your report, the Defence provided you with several materials; is that correct?

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- 1 Ms Schauer's article that you discussed with Ms Lyons on Tuesday was one of them.
- 2 A. [11:48:24] Which article?
- 3 Q. [11:48:27] So my -- I'll go back. My first question is, the Defence provided you
4 with a number of materials to assist you in writing your report; is that correct?
- 5 A. [11:48:40] Most material I got it myself.
- 6 Q. [11:48:44] That does not answer my question. The Defence provided you with
7 some of the material; is that correct?
- 8 A. [11:48:53] Which material? I don't remember any material.
- 9 Q. [11:48:56] Would you mind turning to tab 3 of this binder.
- 10 A. [11:48:58] Mm-hmm.
- 11 Q. [11:48:59] And you will see it's an email, but there in the middle is a table listing
12 a number of documents?
- 13 MS LYONS: [11:49:22] Your Honour, I think maybe the question can be asked a
14 little bit --
- 15 PRESIDING JUDGE SCHMITT: [11:49:29] No, no. We are now in the process of
16 establishing that, so --
- 17 MS LYONS: [11:49:31] All right.
- 18 PRESIDING JUDGE SCHMITT: [11:49:31] -- so I think if the witness looks at this
19 document, tab 3, and it's not a huge document and he would grasp it quickly, what it
20 contains, you can continue. And it seems -- and why not read it for the public here,
21 and it's an email from 12 February 2019, 18:34, and it reads:
22 "In accordance with paragraph 12 of decision" -- it follows the number of the
23 decision -- "the Defence provides the Prosecution and LRVs with the following items:"
24 That does, of course, not say that the witness has gotten the items.
- 25 MS HOHLER: [11:50:22] No, and that is why I'm asking the question.

1 PRESIDING JUDGE SCHMITT: [11:50:24] Okay, then please proceed.

2 MS HOHLER: [11:50:25] And just to give some context, if we read this out, your

3 Honours, for the public, this was in response to a decision for disclosure of material

4 that was provided by the Defence to the witness which was litigated.

5 Q. [11:50:39] So, Mr Witness, if you look at that list and those documents listed

6 there, are these the documents that the Defence provided you with, as they say in this

7 email?

8 A. [11:51:12] I don't remember.

9 Q. [11:51:13] You don't remember, Mr Awich?

10 PRESIDING JUDGE SCHMITT: [11:51:17] Let me perhaps try it.

11 The document does not say that the witness has got these documents. The question,

12 the question would be: Have you gotten anything by the Defence, be it articles, be it

13 any other documents before you came to this courtroom?

14 So perhaps we can near ourselves, this question by step by step.

15 MS HOHLER: [11:51:50] And perhaps if I may, your Honour, I can --

16 PRESIDING JUDGE SCHMITT: [11:51:53] Which would not be a problem at all, it

17 would be absolutely normal --

18 MS HOHLER: [11:51:56] Correct.

19 PRESIDING JUDGE SCHMITT: [11:51:56] -- for an expert to get any document.

20 But simply, I don't know where you're heading at, but we simply want to inquire,

21 Mr Awich, if you have had any documents provided with by the Defence?

22 THE WITNESS: [11:52:07] The documents that I had were actually, if I remember

23 well, some of them which are here. Like terms of reference, like I think the charges,

24 like mainly these are the documents I -- I remember. But I can't recall all these. But

25 there are documents that I got, including TOR and other things.

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- 1 PRESIDING JUDGE SCHMITT: [11:52:35] Please proceed, Ms Hohler.
- 2 MS HOHLER: [11:52:39]
- 3 Q. [11:52:39] And those documents that you were provided with, did you -- did
4 you read them, did you study them before writing your report?
- 5 A. [11:52:51] I looked at the ones that I thought where I saw mandatory, but in the
6 writing of the document itself, I used really the research material that I cited therein.
- 7 Q. [11:53:11] Thank you, Mr Awich. And my final question would be, you have
8 never met Dominic Ongwen, correct?
- 9 A. [11:53:18] No.
- 10 Q. [11:53:20] Thank you.
- 11 MS HOHLER: That will conclude the examination for the Prosecution, your
12 Honours.
- 13 PRESIDING JUDGE SCHMITT: [11:53:24] Thank you very much. And I
14 understand that Ms Massidda wants to question the witness.
15 Please --
- 16 MS MASSIDDA: [11:53:32] Thank you, your Honour.
- 17 PRESIDING JUDGE SCHMITT: [11:53:32] -- Ms Massidda, you have the floor.
- 18 MS MASSIDDA: [11:53:33] Thank you, Mr President. I don't have any question
19 after the questioning by the Prosecution. Thank you very much.
- 20 PRESIDING JUDGE SCHMITT: [11:53:39] Okay. Then the next question would be
21 Mr Manoba. Any questions?
- 22 MR MANOBA: [11:53:43] No questions, your Honours.
- 23 PRESIDING JUDGE SCHMITT: [11:53:45] No questions.
24 I don't assume that anything has arisen?
- 25 MS LYONS: [11:53:50] For the record, the Defence will conduct no redirect,

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1 your Honour.

2 PRESIDING JUDGE SCHMITT: [11:53:55] Yes, okay. It's always interesting when
3 it is said in this courtroom "for the record." You know, if nothing is on the record, you
4 could also conclude something from it; for example, that you did not have any
5 questions.

6 MS LYONS: [11:54:10] (Microphone not activated) ... common law straitjacket I
7 come from. I'm used to doing this. The common law straitjacket has trained me to
8 do this.

9 PRESIDING JUDGE SCHMITT: [11:54:20] It was not a reproach at all; it was just a
10 comment. Sometimes I tend to do things like that.

11 So now, for the record, this concludes your testimony, Mr Awich. On behalf of the
12 Chamber, I would like to thank you that you have been coming to this courtroom to
13 this foreign land and have testified here for two, nearly two full days and we wish
14 you a safe trip back home.

15 (The witness is excused)

16 PRESIDING JUDGE SCHMITT: [11:54:49] This concludes also the hearing for today,
17 and we resume, as we have said, because we can only have the next witness on
18 Monday, Monday, 9.30. Witness 140 -- 141, 141. And also for the record, if this
19 would be wrong it wouldn't matter because, okay -- 131. Getting complicated, even
20 more complicated. 131.

21 So until Monday, 9.30.

22 THE COURT USHER: [11:55:30] All rise.

23 (The hearing ends in open session at 11.55 a.m.)

24 CORRECTIONS REPORT

25 The corrections (not related to interpretation) marked with an asterisk (*) in the

- 1 transcript are implemented as follows:
- 2 Page 10 line 13:
- 3 “Dr Oularo Otuno”
- 4 is corrected to page 10 line 13:
- 5 “Dr Olara Otunnu”
- 6 Page 10 line 17:
- 7 “Dr Otuno”
- 8 is corrected to page 10 line 17:
- 9 “Dr Otunnu”
- 10 Page 13 line 7:
- 11 “Oularo Otuno”
- 12 is corrected to page 13 line 7:
- 13 “Olara Otunnu”