

Witness: Catherine Adamsbaum (Resumed) (Open Session)
Evidentiary Matters

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1 International Criminal Court
2 Trial Chamber I
3 Situation in the Democratic Republic of Congo - ICC-01/04-01/06
4 Case against Thomas Lubanga Dyilo
5 Hearing - Open Session
6 Wednesday, 13 May 2009
7 The hearing starts at 9.07 a.m.
8 COURT USHER: All rise. The International Criminal Court is now
9 in session. Please be seated.
10 PRESIDING JUDGE FULFORD: Good morning. Welcome back,
11 Mr. Lubanga. We're glad to see that you're restored to health, and I'm
12 sure Maitre Mabille has communicated what we said at the end of the day
13 yesterday to you, but may I repeat that we are extremely grateful for the
14 helpful attitude that you adopted yesterday which enabled us not to lose
15 a very important day given the difficulties of these two witnesses. So
16 our thanks to you, sir.
17 Witness, please.
18 (The witness takes the stand)
19 WITNESS: CATHERINE ADAMSBAUM (Resumed)
20 (Witness answered through interpreter)
21 PRESIDING JUDGE FULFORD: Morning, Professor.
22 THE WITNESS (interpretation): Good morning, your Honour.
23 PRESIDING JUDGE FULFORD: Mr. Sachdeva.
24 MR. SACHDEVA: Yes, Mr. President, thank you.
25 PRESIDING JUDGE FULFORD: Certainly.

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1 MR. SACHDEVA: Good morning --

2 PRESIDING JUDGE FULFORD: Professor?

3 THE WITNESS (interpretation): Your Honour, concerning the
4 documents that were submitted to me yesterday by the Defence counsels.
5 I should like to ask your leave to contribute a very recent article that
6 I wrote concerning the assessment of bone age that was referred to
7 yesterday. It's part of my curriculum vitae. I'd like to read out a
8 short excerpt of it if you give me permission. I think that this might
9 enlighten the Court.

10 PRESIDING JUDGE FULFORD: Professor, thank you. Thank you very
11 much for that. You most certainly can introduce any further materials
12 that you believe will help us on the issues that we're considering. I
13 just want to reflect with Mr. Sachdeva as to how best this is done,
14 because the Defence and the Prosecution probably need a moment to reflect
15 on what is to be introduced.

16 Have you a copy with you, Professor, of the article or the
17 extract that you wish to introduce?

18 THE WITNESS (interpretation): Yes, I do, of course, your Honour.
19 I have it with me in the waiting-room.

20 PRESIDING JUDGE FULFORD: Right. I think what we're going to
21 need to do is to retrieve the article, to have it copied so that it can
22 be distributed to the parties and the participants so that they can have
23 a brief opportunity to look at it, and then we will invite you to bring
24 to our attention the particular extract that you wish to rely on.

25 Now, I think this needs to be done with a little bit of care so

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1 there's no unfairness. Just give me a moment.

2 (Trial Chamber and Court Officer confer)

3 PRESIDING JUDGE FULFORD: Professor, what we're going to do is
4 we're going to adjourn just for five minutes. I'm going to ask you to go
5 upstairs to the waiting-room with the usher, identify the document that
6 you're referring to. After we've recommenced, I'm going to ask him to
7 have that photocopied and distributed, and we'll then continue with
8 additional questions, and once that document's been circulated, then of
9 course you can introduce the additional element.

10 Good. Could the usher, therefore, please take the professor
11 upstairs to collect the document and then to come straight back
12 downstairs again.

13 THE WITNESS (interpretation): Thank you, your Honour.

14 (The witness stands down)

15 PRESIDING JUDGE FULFORD: I'm going to ask everyone to remain in
16 court, but we will rise just for a moment until the professor has
17 returned. Once you've seen the materials, if you need additional time,
18 of course any applications can be made. It's premature to deal with that
19 now until you've seen what the professor is producing.

20 Good. We'll rise just for a moment.

21 COURT OFFICER: All rise.

22 Recess taken at 9.14 a.m.

23 On resuming at 9.24 a.m.

24 COURT OFFICER: All rise.

25 (The witness takes the stand)

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1 PRESIDING JUDGE FULFORD: Thank you very much, Professor. We'll
2 come back to -- well, I say we'll come back to the extract in a moment.
3 I can see that it's an extremely short article.

4 Mr. Sachdeva, would you have any objections to the professor
5 reading out at this point in time the particular matter that she wants to
6 bring to our attention?

7 MR. SACHDEVA: No, Mr. President.

8 PRESIDING JUDGE FULFORD: Thank you. Mr. Desalliers, of course
9 we'll give you time if you need it, but do you object to the professor
10 introducing the relevant extract now so that you can understand what she
11 particularly has in mind?

12 MR. DESALLIERS (interpretation): No objection, your Honour.

13 PRESIDING JUDGE FULFORD: Thank you very much.

14 Professor, then, could you take us to the relevant part, please.

15 THE INTERPRETER: The witness is not speaking into the
16 microphone. The microphone is not on.

17 PRESIDING JUDGE FULFORD: Could you help, please.

18 THE WITNESS (interpretation): Thank you, your Honour. This is
19 not an article. It's a very recent editorial. It was published last
20 year by myself and the Marseille group that I mentioned yesterday,
21 because the Marseille group has worked extensively on bone age in Maghreb
22 population in particular. I should like to read the title and the
23 conclusion. The title is "Bone Age Determination for Forensic Purposes,
24 What Should Be Done?" And the conclusion, I'm going to read it out. I'd
25 like to specify that this editorial was written after a medical expert

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1 report on bone age carried out in France on a young foreigner, and there
2 was a very emotional reaction by the population, the fact that his age
3 was determined to be that of an adult, and therefore the person was
4 expelled from the French territory, and hence there was a spate of
5 articles published in France.

6 The conclusion reads:

7 "Although it is imperfect, the Greulich and Pyle method is currently the
8 reference method to assess bone age regardless of the geographical origin
9 of the population. When there is a request for assessment of bone age
10 for forensic purposes, our duty is to implement the guide-lines of the
11 national advisory committee of ethics and to give a result that mentions
12 individual variability of not less than one year either side. It seems
13 important to broadcast this information widely to judicial institutions."

14 PRESIDING JUDGE FULFORD: Just slow down slightly, Professor,
15 because what you're saying is being interpreted.

16 Does that conclude the quotation?

17 THE WITNESS (interpretation): Yes, it does. This concludes the
18 editorial. I'm not going to read all of it. In the article itself
19 you can find information that we discussed yesterday, and you'll find a
20 bibliography of recent books and articles which to some extent go along
21 the same line as what I explained yesterday. But I wanted to make sure
22 that the Court was informed of the positions adopted in France, because I
23 think that we are dealing with the serious ethical issues and I didn't
24 want to have any ambiguity on the positions, especially my own position.

25 PRESIDING JUDGE FULFORD: Thank you very much indeed, Professor.

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1 Yes, Mr. Sachdeva.

2 MR. SACHDEVA: Thank you, Mr. President. Before I commence, am I
3 to imagine that this document will be given an evidence number? Can it
4 be tendered into evidence?

5 PRESIDING JUDGE FULFORD: I think we'll wait to hear what the
6 attitude of Mr. Desalliers is before we make a final determination of
7 that, Mr. Sachdeva, but you are entitled to ask any questions you wish
8 about it, and obviously if you need a moment or two to read through it
9 and discuss it with your team, you're of course more than free to ask.

10 MR. SACHDEVA: Thank you, Mr. President.

11 Further Questioned by Mr. Sachdeva:

12 Q. Good morning, Professor.

13 A. Good morning.

14 Q. Professor, within Paris how large is the pool of persons or
15 experts such as yourself in the field of paediatric radiology?

16 A. In Paris, if you refer to experts to the Paris Court of Appeal,
17 there are very few of us, two or three at maximum. Now, if you're
18 referring to scientific expertise, medical scientific expertise
19 concerning paediatrics radiology, I think that there are about ten of us
20 approximately.

21 Q. And among the experts at the Court of Appeal and the ten others
22 that you've told us about, do you know of all of them, some of them, or
23 none of them?

24 A. I think that I know all of them. I could also add that on the
25 French national territory the number of paediatric radiologists is less

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1 than 200, around 150. The number of -- this includes younger
2 paediatric radiologists as well as older ones.

3 Q. And the same question with respect to those persons that
4 specialise in the assessment of age through bone imaging.

5 A. The persons specialised in bone-age assessment are paediatric
6 radiologists, forensic doctors possibly, and another speciality which is
7 paediatric endocrinology. These doctors deal with the delayed growth in
8 children, so they know how to screen bone age.

9 I'd like to make another point to answer your question concerning
10 my knowledge of paediatric radiologists. I currently know all of them
11 because I am the chair of the French society for paediatrics
12 imaging.

13 Q. Thank you. I'd like to take you to a document that the Defence
14 showed you yesterday.

15 MR. SACHDEVA: I wonder if the binder could be provided to the
16 professor. I'd be grateful for that.

17 Q. Professor, if I could ask you to turn to tab 11.

18 COURT OFFICER: I'm sorry. Could I have the ERN of these
19 documents?

20 MR. SACHDEVA: Certainly. Sorry. It's DRC-D-01-0003-1362. I
21 believe it has an evidence number.

22 Q. Professor, if you could turn to page 27 of the document, and you
23 should find at the top the title "Détermination médico-légale de l'âge
24 d'un adolescent."

25 You'll see under the title it says, "Intervention du Dr. Odile

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1 Diamant-Berger." Do you see that?

2 A. Yes, I do see that.

3 Q. And at the footer at the bottom you'll see that his title is
4 referred to, and I want to ask you, firstly, is the Cour de Cassation, is
5 that in Paris?

6 A. I'm sorry, I seem to have a problem with the translation. I
7 don't hear it anymore. I'm sorry, I'm going to ask you to repeat your
8 question, because I had my headphones on and therefore I didn't even hear
9 it in English.

10 Q. Certainly. The -- I was just referring to the description of
11 Dr. Odile Diamant-Berger at the bottom of the page, and you'll see it's
12 next to the two asterisks, and my question is: La Cour de Cassation, is
13 that in Paris?

14 A. No. The Cour de Cassation is for the whole of France, has
15 jurisdiction over the whole of France. It's what you called yesterday
16 the Supreme Court.

17 Q. Thank you for that clarification. Now, given what you've said to
18 us about the pool of paediatric radiologists in -- in Paris and indeed in
19 France, to your knowledge is Dr. Diamant-Berger a paediatric radiologist?

20 A. No. I do not know Mrs. Diamant-Berger. However, I believe she
21 is a forensic practitioner who was in charge of a forensic department. I
22 think you could maybe ask Dr. Rey-Salmon, who is a paediatrician and a
23 forensic doctor, but as far as I know, Mrs. Diamant-Berger is not a
24 paediatric radiographer.

25 Q. Thank you. If I could now take you -- well, yesterday the

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1 Defence put to you a quote from another article, and I'm going to read
2 that quote to you:

3 "In practice, the various radiological criteria used on a patient
4 are never compared to a reference population belonging to the same ethnic
5 group because these atlases do not exist for a foreign population found
6 on the national territory. As a consequence, these data are poor
7 scientifically speaking, especially between 15 and 18 years of age.
8 Evaluation methods do not take into account differences in growth and
9 bone maturation related to the ethnic origin as well as deficiencies,
10 nutritional deficiencies that these individuals often suffer. The
11 assessment therefore can only be transposed with a certain
12 imprecision factor."

13 Do you remember being read that quotation yesterday?

14 A. I can't remember. I'm no longer certain. I was extremely
15 focussed. I can't remember whether it was this one I read or not.

16 Q. Well, that's fine, but let me ask you this: If children have
17 suffered from malnutrition or food deficiencies, how does one detect that
18 in bone imaging?

19 A. Well, it could be detected by observing a demineralisation, i.e.,
20 an abnormality of the bone structure. I would like to add that the
21 present -- the presence of such demineralisation is a sign of a severe
22 malnutrition, and depending on the quality of the X-rays, I am not
23 certain we could have noticed this demineralisation.

24 I do believe that at the beginning of the article you have just
25 quoted, the article states that biological methods do not refer in

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1 general to the ethnic, geographic, or social and economic origin. And
2 indeed, I do believe that this is the ethical issue of medical sciences
3 in general. Today we're talking about bone age, but whatever the test
4 used, there is always a problem with standards. Standards are not always
5 well adapted to ethnic and social and economic origins. We're not going
6 to enter into this debate. It would be -- it would take us too long, but
7 it is a problem that is inherent to the medical life and medical
8 diagnosis.

9 Q. In the reports that you have produced for the -- on the subjects
10 that you examined, I'm correct in identifying that for each one of them
11 you have indicated that there are no abnormalities relating to the
12 diaphyseal and metaphyseal modelling or mineralisation; is that right,
13 Professor?

14 A. Indeed. There was nothing that would lead us to believe that
15 there was any peculiar bone pathology.

16 Q. The Defence asked you questions about the quality of the
17 radiographs. Do you remember those questions?

18 A. Yes, absolutely.

19 Q. If -- and you told us that for the purposes of your conclusions
20 in your examination the radiographs were of sufficient quality for you to
21 make reliable conclusions; is that right?

22 A. Yes, I do believe that the X-rays allowed us to reach the
23 conclusions that we reached given the technical problems we mentioned
24 yesterday.

25 Q. For those X-rays where we saw residual lines of cartilage, would

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1 the possession of a higher quality radiograph -- well, what effect would
2 the possession of a higher quality radiograph have on those lines of
3 cartilage that you have viewed?

4 A. Had we had a better quality X-ray, we could have maybe seen better the
5 cartilage lines. Therefore, we may have given an age that was lower to the
6 one we have given. Maybe. However, we did not describe any cartilage line
7 that was not uncertain or not actually present, and that's
8 absolutely certain.

9 Q. And my last question. If I could ask you to turn to tab 13.

10 COURT OFFICER: Once again, sorry, I need the ERN number, and for
11 the record, the document just shown will bear the number MFI-D-00117.

12 MR. SACHDEVA: The ERN number is DRC-D-01-0003-1396.

13 Q. Professor, do you have the article in front of you, in tab 13?
14 And at the top you'll see it is written there the "Académie Nationale de
15 Médecine." Do you know that academy?

16 A. Yes, of course. The -- it's the National Academy of Medicine in
17 Paris composed of practitioners of different specialist medicine
18 branches. They are medical academics and they decide on ethical issues.

19 Q. If I could take you to the middle of the page and you'll see in
20 the section number 1: "Fiabilité des examens médicaux visant à
21 déterminer l'âge." You see that there?

22 A. Yes, indeed. I have found it.

23 Q. And because my French is poor, could I ask you, please, to read
24 that first paragraph, and once you've read it, my question is going to
25 be: Do you agree with that statement?

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1 A. Do you want me to read the whole paragraph until "l'âge osseu
2 at the end? Fine.

3 Q. "De la population."

4 A. Well, it will be shorter then.

5 "The reading of bone age from an X-ray of the wrist and the left
6 hand compared to the Greulich and Pyle atlas remains the most reliable
7 and simplest method. It is the method used universally without any
8 known difficulties. In particular, no racial differences was -- were
9 demonstrated to date. In the USA, for example, there is no separate
10 atlas for the various racial members of the population."

11 Q. And to your knowledge and in your professional experience, do you
12 agree with that statement?

13 A. Yes, of course.

14 MR. SACHDEVA: Mr. President, that concludes the re-examination.

15 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Sachdeva.

16 Mr. Desalliers, any further matters?

17 MR. DESALLIERS (interpretation): Just one question, your Honour.

18 Further Questioned by Mr. Desalliers:

19 Q. (Interpretation) Good morning. I have just one question to ask
20 you regarding the documents you -- the document you have given us this
21 morning. I would like to refer to the third paragraph of the document.
22 I'm going to wait until you have of it in front of you. It's on the left
23 column, third paragraph.

24 A. Yes.

25 Q. I'm going to read the paragraph:

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1 "The estimation of bone age is not an exact science. The determination of
2 the degree of maturation of the bone defines 'the bone age.' This
3 represents only one element of the development of a child or an
4 adolescent that needs to be integrated in a complete clinical context."

5 When in this paragraph you talk about the need to integrate this
6 in a complete or comprehensive clinical context, could you please give us
7 some detail and explain what you mean here.

8 A. It is necessary to have a clinical examination of the child to
9 see that he is well-fed, that he has a normal development from a puberty
10 point of view, et cetera. And radiologists usually work with the data
11 they have from the clinical examination, and it is preferable
12 to have the data from a clinical examination.

13 Q. In the present case, if I understood well, neither you nor your
14 colleague have carried out clinical examination of the subjects; is that
15 correct?

16 A. This is correct.

17 MR. DESALLIERS (interpretation): Your Honour, I have no further
18 question, and I would like to state that the Defence has no objection to
19 this document being put in the file and given an MFI number.

20 PRESIDING JUDGE FULFORD: Thank you for the questions. Thank you for the
21 indication, Mr. Desalliers.

22 THE INTERPRETER: EVD number, sorry.

23 PRESIDING JUDGE FULFORD: Could it then please be given an EVD number.

24 COURT OFFICER: The document will bear the number EVD-OTP-00446.

25 PRESIDING JUDGE FULFORD: Thank you. You're on your feet,

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1 Mr. Sachdeva.

2 MR. SACHDEVA: Yes the Prosecution would like to tender the last
3 document that I asked a question on in tab 13 of the Defence binder.

4 PRESIDING JUDGE FULFORD: Not you wish to tender it, you would
5 like it to be included in the corpus of evidence that we're to consider;
6 is that right?

7 MR. SACHDEVA: Yes, Mr. President.

8 PRESIDING JUDGE FULFORD: Yes. Any objection to that,
9 Mr. Desalliers?

10 MR. DESALLIERS (interpretation): Your Honour, on principle, no,
11 but I would like to draw the Chamber's attention to one element, i.e.,
12 this document was not used by the Defence during its cross-examination
13 yesterday. Out of courtesy, and this is how we have proceeded since the
14 beginning, we communicate the documents that we might use during an
15 examination so that nobody is taken by surprise. However, the Defence
16 really wonders whether this allows the OTP to use this document if the
17 Defence has decided not to use the document during its examination. And
18 I would like to say that the reason for which we have not objected to my
19 colleague using this document is because the Defence wishes to use this
20 document for the next expert, but I would like to draw the Chamber's
21 attention to this issue.

22 PRESIDING JUDGE FULFORD: Thank you very much,
23 Mr. Desalliers.

24 We're pressed for time today, Mr. Sachdeva, and we're not going
25 to get embroiled in a fine argument on admissibility at this point in

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1 time. You may -- the document has been revealed. If you wish to use it
2 for the purposes of questioning, you are fully entitled to do so. Its
3 precise evidential status will be determined later, but you should deploy
4 these parts of it which you wish to use during the course of the evidence
5 of these witnesses, because you should not work on the basis that there's
6 a necessary guarantee that it will independently form part of the corpus
7 of the materials that we're going to consider. We're going to resolve
8 that later, but thank you for raising the issue.

9 Professor, we are extremely grateful to you for your having come
10 to give evidence at this court. We are keenly aware of your very busy
11 schedule, particularly given the important work that you undertake, and
12 we wish to express our thanks for your having come to share your
13 professional expertise in this area with us to help us in our task.
14 Thank you very much.

15 THE WITNESS (interpretation): Thank you, your Honour.

16 PRESIDING JUDGE FULFORD: Good. Mr. Usher, could you help the
17 witness, please, return to the witness waiting-room and bring the next
18 witness down to court, please.

19 (The witness withdrew)

20 (The witness entered court)

21 PRESIDING JUDGE FULFORD: Usher, could you help the witness with
22 the headphones, please. Headphones.

23 Good morning, madam. Can you hear me?

24 THE WITNESS (interpretation): I do hear you.

25 PRESIDING JUDGE FULFORD: Thank you very much. A rather tedious

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1 request from me, I'm afraid. Because everything is being recorded
2 contemporaneously by stenographers, and because there has to be French to
3 English and English to French interpretation, it means that we need to
4 proceed at a slightly slower pace than normal conversation. So could I
5 ask you to bear in mind that when speaking not to go too fast and, if
6 possible, to build in a gap between somebody asking you a question and
7 you giving the answer, particularly when you're speaking with
8 Mr. Desalliers for the Defence, who will be asking you questions in
9 French. There is going to be an inevitable temptation to answer his
10 questions immediately as he's finished the question. The problem with
11 that is that it imposes a real burden on the interpreters. So I'm afraid
12 it's slightly artificial, but I'd be grateful if you could assist us in
13 that regard.

14 There's a card in front of you, and can I ask you to read out
15 loud the words on that card which constitute your solemn undertaking to
16 this court.

17 THE WITNESS (interpretation): I solemnly swear that I shall tell
18 the truth, only the truth, and nothing but the truth.

19 WITNESS: CAROLINE REY-SALMON

20 (Witness answered through interpreter)

21 PRESIDING JUDGE FULFORD: Thank you very much.

22 Yes, Ms. Bensouda.

23 MS. BENSOUDA: Thank you, Mr. President.

24 Questioned by Ms. Bensouda:

25 Q. Good morning, Doctor.

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1 A. Good morning.

2 Q. We met yesterday very early, 7.00, but for the purposes of the
3 record, I'm Fatou Bensouda, Deputy Prosecutor, Office of the Prosecution.
4 We thank you for coming.

5 Doctor, I'm going to ask you first and foremost to introduce
6 yourself. Give your name to the Court, please.

7 A. I am Dr. Caroline Rey-Salmon. I'm a paediatrician and forensic
8 doctor. I'm an expert to the Court of Appeal and to the Superior Court
9 of Appeal, and I'm the head of the Forensic Emergency Department
10 of Hôtel Dieu hospital in Paris and Hôpital
11 Trousseau in Paris.

12 Q. Thank you. Witness, I'm going to -- Doctor, I'm going to refer
13 to your CV, which, if you look at the binder that is next to you, I will
14 be referring to different tabs, but for the moment I'll just draw your
15 attention to tab 4 of the binder.

16 MS. BENSOUDA: Mr. President, I would refer to the same binder
17 that was used for the previous witness.

18 PRESIDING JUDGE FULFORD: Very helpful. Thank you very much,
19 Ms. Bensouda.

20 COURT OFFICER: Sorry, may I ask you the ERN number of the
21 documents?

22 MS. BENSOUDA: Certainly. It's DRC-OTP-0181-0409.

23 COURT OFFICER: The document will bear the number of evidence
24 EVD-OTP-0447.

25 MS. BENSOUDA: Mr. President, if the witness could be assisted to

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1 refer to the particular tab in the binder.

2 PRESIDING JUDGE FULFORD: And so it's tab 4. Is the binder
3 there, Usher? Well, can we make sure that the witness has got tab 4 of
4 the relevant binder, please.

5 Right. We now also have a technical problem in that there is no
6 audio being transmitted in French. I'm going to continue talking for a
7 moment to see whether anything is now coming through. It is now being
8 received. Good.

9 Right. Ms. Bensouda, the witness has tab 4, which I think is her
10 curriculum vitae.

11 MS. BENSOUDA: Thank you, Mr. President.

12 PRESIDING JUDGE FULFORD: Good.

13 MS. BENSOUDA:

14 Q. Doctor, I'm going to refer to particular areas in -- in the
15 document, which is your CV. Are you at the correct tab?

16 A. Yes, madam.

17 Q. Kindly just go through briefly through the document and please
18 confirm whether it is a true reflection of your professional and
19 educational background.

20 A. Yes, it's correct, madam.

21 Q. Professor, you have -- Doctor, you have indicated that you've
22 worked -- or you're working currently at the Hospital Trousseau, as well
23 as l'Hôpital Hotel Dieu; is that correct?

24 A. I am the medical head of both of those services -- or divisions.

25 Q. Prior to your assuming this responsibility, it is correct, is it

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1 not, that Professor or Dr. Germain Berger is your predecessor at
2 l'Hopital Hotel Dieu?

3 A. No. It is Dr. Diamant-Berger who opened that division at the
4 Hotel Dieu Hospital and who was the head of it until 2002. After that
5 came Professor Garnier and Professor Fournier, and I'm the head of this
6 division since March of 2007.

7 Q. That is -- that is fine, Doctor. Maybe just to say that
8 Dr. Germain Berger has worked in the same capacity as yourself
9 previously?

10 A. Exactly.

11 Q. Doctor, you started telling us that you were a specialist in both
12 paediatric and forensic medicine. That is correct?

13 A. That is correct, madam.

14 Q. Apart from your -- your professional career, I have seen in your
15 CV that you have also made several publications.

16 A. Yes, that is correct.

17 Q. Doctor, I want to specifically refer you to where you say in your
18 CV that you have been an expert for the Paris Court of Appeal, accredited
19 by the Cour de Cassation, the Supreme Court, I believe. Is that correct?

20 A. That is correct, madam.

21 Q. What field of expertise have you been providing for the
22 French Court of Appeal?

23 A. I am registered on the list of physicians specialised in
24 paediatrics, particularly in charge of forensic problems on patients
25 who are minors. Mistreatment of children, sexual abuse on minors, bone

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1 expertise, age determination. Those are my main fields of expertise.

2 Q. Thank you, Doctor. With regards to age determination, does it
3 relate specifically to dental age determination or a combination of other
4 areas as well such as bone?

5 A. I'm not sure whether I understood the question correctly. Age
6 assessment is a combination of a certain number of criteria which are
7 clinical and radiological. There are no biological criteria used for age
8 assessment. So there's an evaluation of puberty and a general
9 examination in order to find out whether the subject does not have any
10 morphological anomalies which could cause a delay in his development.
11 There is a dental examination, a bone-age examination, within most cases
12 a frontal X-ray of the left hand and wrist. And lastly, when the dental
13 examination does not show that all teeth are in the mouth, then a
14 panoramic dental examination is needed to assess dental maturation.

15 Q. Thank you, Doctor. I'm going to refer you to DRC-OTP-0210-0031.

16 PRESIDING JUDGE FULFORD: Is this in the binder, Ms. Bensouda?

17 MS. BENSOUDA: Unfortunately, it's not in the binder,
18 Mr. President. It was provided to the Office of the Prosecutor yesterday
19 by the witness, and the Defence has been given a copy and it has been
20 registered. I have some copies for the Bench as well.

21 PRESIDING JUDGE FULFORD: Thank you, Ms. Bensouda.

22 Usher, could those be distributed, please.

23 Have you received this --

24 MS. MASSIDDA: No, your Honour.

25 PRESIDING JUDGE FULFORD: -- Ms. Massidda?

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1 MS. MASSIDDA: Yes, I have received now. Thank you.

2 PRESIDING JUDGE FULFORD: Ms. Bensouda, particularly given we've
3 recently delivered some pretty clear views on this, can we remember not
4 to leave out the participating victims, please.

5 MS. BENSOUDA: Yes, Mr. President.

6 PRESIDING JUDGE FULFORD: All right. I think we've now only got
7 two. We'll share. Don't worry. Don't worry. Thank you. One for
8 Judge Odio Benito. Thank you very much. Good.

9 Has the witness got a copy of this? Yes. Lovely. Thank you.

10 Yes, Ms. Bensouda.

11 MS. BENSOUDA:

12 Q. Doctor, what document do you have in your hand currently?

13 A. I have a document which was drafted by the team of the Hotel Dieu
14 hospital of the forensic emergency division and this is the
15 result of a clinical observation in age assessment. This is a document
16 we use, but that document, we keep it for ourselves. It's not what we
17 hand out in answer to requests by judicial authorities. This is the
18 result of our own observations. And you can see that this document takes
19 into account a general examination, a puberty examination, a dental
20 examination, and a bone examination by X-ray, on the basis of which we
21 draw up a summary in order to assess the chronological age of the
22 subject.

23 Q. Doctor, for our purposes this morning, what is the importance of
24 this document to better explain your processes or methodology that you
25 use in determining age?

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1 A. It is an important document, because it lists the different
2 criteria which are going to be used not only during the puberty
3 examination but also during the dental examination and bone examination,
4 and this is a document that one can refer to when there are any
5 challenges to our conclusions.

6 MS. BENSOUDA: Mr. President, may I ask that the document be
7 given an EVD number. The Defence has indicated they will not be
8 objecting.

9 MR. DESALLIERS (interpretation): That is correct, your Honour.

10 PRESIDING JUDGE FULFORD: Thank you, Mr. Desalliers. EVD number, please.

11 COURT OFFICER: The document will bear the number EVD-OTP-0448.

12 PRESIDING JUDGE FULFORD: Thank you. Yes, Ms. Bensouda.

13 MS. BENSOUDA: Thank you.

14 Q. Doctor, we will come back to the document later, but for the
15 moment I just want to draw your attention to the fact that
16 Professor Adamsbaum has indicated before the Chamber that you work
17 closely together, and particularly with reference to the reports that
18 have already been tendered before this Court during her testimony. Can
19 you just tell the Court how you work with Professor Adamsbaum.

20 A. Yes, madam. The assessment of the age of a subject is an
21 assessment which is supposed to be multi-disciplinary. This is also a
22 recommendation by the national consultative committee on ethics in 2005,
23 and referring in particular to the age estimation of a subject. I'm not
24 a radiologist, and Mrs. Adamsbaum is not a clinician, so we are used to
25 working together on these particular matters.

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1 Q. Doctor, it is also my understanding that with respect to all the
2 bone-age determination that are done in Paris, it's in fact carried out
3 in a department that you head. Is that correct?

4 A. Yes, but I would like to add a precision, which is that X-rays of
5 the wrist and of the hand, as you can see at the bottom of the document,
6 an ossification of the iliac bone which we use in younger subjects, these
7 interpretations are carried out by radiologists who give us an answer.

8 Q. And can you give us just approximately how many of these are
9 carried out, let's say in a year?

10 A. In 2008, we carried out 800 to 850 examinations at the Hôtel Dieu
11 hospital, and 160 to 170 at the Trousseau Hospital where we don't see the
12 same type of patients. I would like to add that during this year, in
13 2009, there have been strong migratory movements and that we are probably
14 going to go way beyond those figures in 2009 since at the Trousseau
15 Hospital, at the end of April, we have gone over the figures for 2008.
16 We are already above 200. At the Trousseau Hospital, we see isolated
17 minors who are on the French territory without any ID or
18 without any person referring them to us, whereas at the Hôtel Dieu
19 hospital, we generally see in our emergency division young people who are
20 in police custody and generally do not have any documentation to attest
21 of -- to attest their age.

22 PRESIDING JUDGE FULFORD: Ms. Bensouda, this is very interesting.
23 I am concerned about time. There is a very limited window for this
24 witness. I'm sure that there is going to be no attack on her credentials
25 and her expertise and her ability to opine on this subject, and unless

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1 that emerges, which I think is unlikely during Mr. Desalliers'
2 questioning, I think we really need to turn to the issues that are of
3 real relevance to us rather than these general background matters.

4 MS. BENSOUDA: Very well, Mr. President. I'll move on.

5 Q. Doctor, you have been retained by the Office of the Prosecutor
6 for an expert opinion in this case.

7 A. Yes, madam.

8 Q. And just to -- for the records to tell us what was the specific
9 request that was made by the Office of the Prosecutor for your expert
10 opinion to be given.

11 A. It was for the determine -- determination of chronological age of
12 subjects we did not examine, to give a window of possible age as is
13 recommended by the National Consultative Committee on Ethics.

14 Q. And you have been able to come to an opinion jointly -- with
15 working jointly with Professor Adamsbaum?

16 A. Yes, madam.

17 Q. Doctor, I'm going to go directly to the reports that you have
18 prepared together with Professor Adamsbaum, and for that purpose I will
19 refer you to tab 5 of the binder that you have in front of you.

20 COURT OFFICER: Once again I will need the ERN number.

21 MS. BENSOUDA: In fact, this report has already been given an
22 EVD number, which is EVD-OTP --

23 COURT OFFICER: To find the document I need an ERN number.

24 MS. BENSOUDA: Very well. It's DRC-OTP-0180-0828.

25 PRESIDING JUDGE FULFORD: Yes. Please proceed, Ms. Bensouda.

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1 MS. BENSOUDA:

2 Q. Witness -- Doctor, you've been able to come to an opinion with
3 respect to this particular individual, 0007, have you?

4 PRESIDING JUDGE FULFORD: Ms. Bensouda, we know the doctor has
5 arrived at an opinion. It's set out in the report. Can we go to the
6 opinion, please, rather than asking the witness whether or not she's
7 managed to arrive at one.

8 MS. BENSOUDA: I will do so, Mr. President.

9 Q. Doctor, I will refer you to paragraph 3 of the report where you
10 estimate the dental age of Witness 007 to be 18 years.

11 A. Yes.

12 MS. BENSOUDA: Mr. President, I don't know whether I need to go
13 through all the different individual cases, because I will be referring
14 to the same paragraph and the conclusion that the doctor has arrived at.
15 Do I need to do that, or to save time do I just go on?

16 PRESIDING JUDGE FULFORD: Ms. Bensouda, if there are paragraphs
17 which are identical in each report, then you clearly don't need to go to
18 those in each one. Where there are specific findings for specific
19 witnesses, then you are going to have to take the doctor at least to
20 those differences, but to the extent that there are common passages
21 between the reports, once you've identified it one time you needn't
22 repeat the question thereafter.

23 MS. BENSOUDA: Very well, Mr. President. For the purposes of the
24 records, therefore, I will be referring to DRC-OTP-0180-0835 in respect
25 of Witness 0008; DRC-OTP-0180-0849 in respect of Witness 0010;

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1 DRC-OTP-180-0856 in respect to Witness 0011; DRC-OTP-0180-0863 in respect
2 to Witness 0157; DRC-OTP-0182-0444 in respect of Witness 298. And in all
3 those reports, I'm referring to paragraph -- the second paragraph of
4 page 3 of the report.

5 PRESIDING JUDGE FULFORD: That's very helpful, Ms. Bensouda.
6 Yes, looking at them, these are individual specific paragraphs, so you
7 will need to take the witness to each of them, yes.

8 MS. BENSOUDA: Thank you, Mr. President.

9 Q. Doctor, I'm -- I will refer -- I'm referring you to tab 5 of the
10 binder that you have in your -- in front of you, and I'm specifically
11 referring you to page 3, the second paragraph of that binder.

12 A. Yes, madam, yes. I see that.

13 Q. You have concluded that the witness -- Witness 0007, his dental
14 age estimation is over 18 years.

15 A. That's correct.

16 Q. Doctor, can you explain what methodology you have used in
17 arriving at that conclusion?

18 A. I need to make several preliminary remarks. First of all, I
19 didn't see the X-rays which are generally necessary in order to make an
20 -- or dental age determination because I had no panoramic X-ray. I only
21 had X-rays of the mandible in profile, which are more difficult to
22 interpret. But since it was not possible to have any other X-rays, we
23 used those. Secondly, I was not able to examine the mouth of the
24 subjects. And I would just like to explain the method used for dental
25 age assessment.

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1 Dental maturation -- well, I'll be relatively brief in my
2 explanation - starts with the setting or the appearing of dental germ,
3 then the mineralisation of the dental crown. Thirdly, the dental
4 eruption as it is called. That is when the teeth start growing out of
5 the gum, and fourthly, the total edification of dental roots.

6 In children, dental age assessment is relatively reliable since
7 the different morphological stages in dental maturation are brief and
8 hence precise. We also have a good measurement at the age of 12 when the
9 second molar or also called tooth 12 because it generally starts emerging
10 between the ages of 12 and 13 years, and in which the edification of the
11 roots is complete at around the age of 15.

12 Beyond the age of 15, the only tooth which can give an indication
13 is the third molar, which we also call wisdom teeth or wisdom tooth, and
14 this tooth can mature at different ages, but generally speaking, we could
15 say that the crowns are mineralised at the age of 15 and that maturing
16 generally happens first in the lower jaw before it matures in the upper
17 jaw, and that in girls these teeth mature earlier than in boys.

18 So at the age of 15 the crown is mineralised, and in order to
19 carry out my age assessment, I looked to see whether the crown was
20 mineralised; and in addition whether the roots were already fully grown;
21 and thirdly, whether the eruption had occurred in line with the adjacent
22 second molar.

23 This is the method I used, but I must say that the X-rays we were
24 given were of relatively bad quality and that if I had only used those
25 X-rays without the bone-age X-ray, I wouldn't have submitted a report.

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1 This means that the dental age examination in these subjects is a
2 supplementary method to bone age assessment, and it was mostly to see
3 whether there was concordance or if I was in agreement with the estimates
4 carried out by my colleague.

5 PRESIDING JUDGE FULFORD: Ms. Bensouda, I think we ought to -
6 forgive me for interrupting - conclude any general remarks, any sort of
7 general introductory remarks of this kind, and then I must fulfil my
8 obligations to the stenographers and interpreters by having a break, but
9 do complete this sequence if you wish.

10 MS. BENSOUDA:

11 Q. Doctor, I will later on in the examination ask you for
12 limitations that you have in conducting your examination of the X-rays,
13 but for the moment I would just want us to stick with the individual
14 cases, and then towards the end we will try to deal with the general
15 observations and -- and limitations that you faced.

16 I'm going to refer you --

17 PRESIDING JUDGE FULFORD: I think we'll take a break then. If
18 you're going to move to the specific cases, Ms. Bensouda, I think we'll
19 have a break at this stage. I wanted to ensure that you'd dealt with the
20 general observations that the doctor wished to give.

21 Doctor, we're going to take a break now for half an hour. So the
22 usher will now take you back to the witness waiting-room, and we'll look
23 forward to seeing you again at 5 past 11.00.

24 Usher, if you could help the witness, please.

25 THE WITNESS (interpretation): I thank you, too, your Honour.

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1 PRESIDING JUDGE FULFORD: Thank you.

2 (The witness stands down)

3 PRESIDING JUDGE FULFORD: Ms. Samson, we received an e-mail last
4 night in relation to the familiarisation package for -- I think it is
5 Witness 14. There are eight documents in issue. Because this was handed
6 to us shortly before coming into court, I haven't managed to retrieve all
7 the relevant documents. Would it be onerous for me to ask you to prepare
8 three packages of the eight documents in question so that we can look at
9 them?

10 MS. SAMSON: Yes, we can do that, your Honour.

11 PRESIDING JUDGE FULFORD: I'm very grateful. Thank you.

12 Five past 11.00.

13 COURT OFFICER: All rise.

14 Recess taken at 10.36 a.m.

15 On resuming at 11.06 a.m.

16 COURT USHER: All rise. Please be seated.

17 PRESIDING JUDGE FULFORD: Witness, please.

18 (The witness takes the stand)

19 PRESIDING JUDGE FULFORD: Yes, Ms. Bensouda.

20 MS. BENSOUDA: Thank you, Mr. President. Mr. President, before
21 moving into the individual cases, I have provided the Bench and parties
22 and the legal representatives with these two documents just to assist --

23 PRESIDING JUDGE FULFORD: Good. Thank you. Thank you very much.

24 MS. BENSOUDA: Thank you.

25 Q. Doctor, I'm first of all going to ask you to refer to these two

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1 documents. First to -- and to confirm whether it's a true reflection of
2 what the teeth will look like on the jaw. And if you have anything to
3 add as well.

4 A. I do not have anything to add, madam. This is indeed what one
5 sees.

6 Q. Thank you, Doctor. Just for clarity, if you would need to use
7 the -- the documents, you can -- you can do so.

8 MS. BENSOUDA: Mr. President, unfortunately they have not been
9 registered, but I -- I guess it can be given an EVD number.

10 PRESIDING JUDGE FULFORD: Yes. Unless the Court Officer tells me
11 there's a difficulty with this, these documents can be provided with an
12 EVD number, please.

13 COURT OFFICER: The document will bear the number EVD-OTP-00449.

14 PRESIDING JUDGE FULFORD: Good.

15 MS. BENSOUDA: Thank you.

16 Q. Doctor, may I ask you to please now move to tab 5 of the binder.

17 MS. BENSOUDA: In fact, Mr. President, I'm sorry. It's tab 6,
18 the X-ray. It bears ERN number DRC-OTP-0191-209.

19 Q. Doctor, did you make use of this particular X-ray in coming to
20 the conclusion on this individual's age, 0007?

21 A. Yes, but the X-ray, the radiograph I had wasn't on paper, but it
22 was a slightly better quality radiograph compared with this one.

23 Q. Doctor, I have the same copy in my hand. I'm -- I don't know
24 whether you would want to look at this quality. Perhaps it's better than
25 the one you have. It is the same document. We have the original.

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1 MS. BENSOUDA: Mr. President, may I please ask that the document,
2 the X-ray of the teeth of 007, not be broadcast but be given an EVD
3 number.

4 PRESIDING JUDGE FULFORD: Certainly. And then shall we move to
5 the conclusions. Can the Court Officer please give this an EVD number.

6 COURT OFFICER: The evidence will bear the number EVD-OTP-00450.

7 PRESIDING JUDGE FULFORD: Thank you. This is not to be broadcast
8 publicly. Right. And I think we want to go to the doctor's findings
9 now, don't we, Ms. Bensouda, please.

10 MS. BENSOUDA:

11 Q. You concluded with respect to this particular X-ray on this
12 individual that the dental age you estimate to be over 18. I just want
13 you to explain how you came to that conclusion.

14 A. Unfortunately I cannot review the X-ray without the proper
15 device, negatoscope, therefore I can rely on what I have written down
16 here. There's no other way.

17 PRESIDING JUDGE FULFORD: Please take it from your conclusions.

18 THE WITNESS (interpretation): Well, the -- I'm looking at the
19 lower third molar, which is the first one to develop, to mature, and
20 clearly on this X-rays one sees that the development of root is well
21 advanced. Mineralisation of the crown is complete. However, one can't
22 see the distal end of roots very clearly due to the poor quality of the
23 image. One sees an upper third molar where the roots are not fully
24 developed yet. On the basis of what we could see on the bone scan we
25 were able to conclude that the dental age is that of an adult, or above

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1 18 years of age.

2 PRESIDING JUDGE FULFORD: Thank you very much.

3 Mr. Desalliers, can I ask you a question at this stage? What is
4 clearly going to unfold as we go through the individual witnesses and the
5 individual reports is that the doctor is going to be asked to look at the
6 photocopy of the X-ray. She's then going to be asked to look at the
7 original, and because she's not able to conduct or re-conduct the test
8 performed originally, she will then, perfectly appropriately, read out
9 the conclusions from her report.

10 Just thinking aloud, it seems to me that that is a fairly
11 laborious process with a certain result, and I'm not sure, given the
12 limitations on time, whether it is really going to assist us at all.

13 Would you be prepared, for the purposes of Ms. Bensouda's
14 examination-in-chief, for us to incorporate into the court record the
15 X-rays in their original form, the photocopies in the binder, and the
16 paragraphs which appear in each report under the heading "Radiograph
17 Analysis," for that to be incorporated into the evidence that we're to
18 consider in this case so that we don't have to spend what will be quite a
19 long time individually putting the inevitable into evidence?

20 Now, I'm going to have to discuss this with my two colleagues in
21 a moment, but I'd like to know whether, in any event, you would object to
22 that procedure or whether you would consent to it, and do take a moment
23 with Maitre Mabille and Mr. Biju-Duval if you wish to.

24 (Defence counsel confer)

25 MR. DESALLIERS (interpretation): Your Honour, the Defence has no

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1 problem, on the contrary, to proceeding this way. The only request we'd
2 like to make on the part of the Defence team as last -- as yesterday, we
3 could put everything in the -- in the file, the X-rays, the photocopies
4 of X-ray, but the Defence would like to have a few additional minutes to
5 briefly look at the original copies, those that will be put in the file,
6 but as to the way you want to proceed, we don't have any objection.

7 (The Trial Chamber confers)

8 PRESIDING JUDGE FULFORD: Ms. Bensouda, our proposal is, given
9 the stance of the Defence, is that there should be automatically
10 incorporated into the record the photocopies of each of the X-rays and
11 the originals, which at some convenient time I'll ask you to identify,
12 and that for the purposes of your examination-in-chief paragraph 3,
13 headed "Radiograph Analysis," is incorporated as part of this witness's
14 evidence. Now, will that assist you in the task which you were proposing
15 to undertake?

16 MS. BENSOUDA: Mr. President, that will assist me a great deal
17 and shorten my -- the evidence-in-chief quite a bit.

18 PRESIDING JUDGE FULFORD: Good. Then we shall proceed in that
19 way. Thank you for that indication.

20 Could I ask one member of your team to make a note, please, of
21 the ERN numbers of the reports. I think you may already, in fact, have
22 given those orally. If you have, then that needn't be repeated, but
23 could somebody make a note, please, to be handed to the Court Officer of
24 the ERN numbers of the original X-rays and the photocopies in the file.

25 MS. BENSOUDA: Very well, Mr. President. That can be done.

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1 PRESIDING JUDGE FULFORD: Thank you very much. And then in due
2 course I'll ask the Court Officer formally to give EVD numbers for each
3 of those documents.

4 So we work, therefore, on the basis, Ms. Bensouda, that you've
5 asked all of those questions for each of the relevant witnesses. Having
6 done so, where do we move to next?

7 MS. BENSOUDA: Mr. President, I'll just ask some general
8 questions. I will not be long.

9 PRESIDING JUDGE FULFORD: Most certainly. This is not a
10 complaint as to length, Ms. Bensouda. It's really just to assist you
11 given that we're under restrictions of time.

12 MS. BENSOUDA: Thank you, Mr. President. It's appreciated.

13 Q. Doctor, in -- in your reports coming to your conclusions or
14 findings in the last part of your report before your signature and that
15 of Professor Catherine Adamsbaum, you indicate -- and maybe we can just
16 refer to one the reports, probably going to tab 4 -- or 5 of the report,
17 and this will be applicable to all. If you may just go to tab 5.

18 In the second paragraph of your findings, conclusions, you say
19 that in view of the bone age and dental age evaluations for subject 007,
20 in this case his legal age is estimated at greater than 18 years as of
21 the date of the radiographs were taken, and you indicate a date of
22 5th December 2007. If you can just explain how you knew that this was
23 the date the X-rays or radiographs were taken.

24 A. I must say I need to go back in time. I think I relied -- maybe
25 this is not the date at which the X-rays were taken, but I think that

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1 what I've used here is what was put on the sealed package, the date that
2 was mentioned there. I think, because I see the date here in the
3 description of the sealed package. So maybe the X-ray was taken sometime
4 before that. I don't know.

5 Q. And was it the case that all of the radiographs or X-rays you
6 received had a date on them supposing to be the dates that the X-rays
7 were taken?

8 A. I'm sorry, madam, but I can't remember precisely whether there
9 was a date on the X-rays. I think that I wrote the report, so I think
10 that I always put what's mentioned on the sealed package before I opened
11 the envelope. And I also wrote down in the report any mention that might
12 appear on the radiographs. I remember there were numbers there which I
13 think -- but I'm speaking under the judge's supervision. I think that
14 those numbers did not always match other numbers on the sealed packet,
15 but I'm sorry, I can't remember very clearly whether there was a date on
16 the X-ray films. On the one you've given I can't see any here, but I'm
17 not sure.

18 Q. That's all right. Doctor, can you -- I know that you've started
19 explaining about certain limitations that you had regarding the -- the
20 X-rays or the data that you were provided with. Can you just explain
21 what those limitations are and whether it in any way would affect your
22 conclusions?

23 A. I think there are different types of limitations. Some
24 limitations have to do with the method. Some limitation have a technical
25 nature, and there are ethical limitations. These are the three types I

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1 can see.

2 As to the method, one of the limitations there - I'm referring to
3 the case here - is there's been no clinical examination. There's been no
4 intra-oral examination, which might have enabled us to do without an
5 X-ray of the profile view of the -- of the mandible, of the lower jaw.
6 This is the first thing.

7 As to the second type of limitation concerning the method, I
8 didn't have the dental panoramic view which is the standard X-ray we need
9 in order to be able to assess dental age. And the profile views of the
10 mandibles we had available were of a rather poor quality overall.

11 Third point, this is an estimation. I said that above 15, especially
12 between 15 and 20 years it's difficult to assess the age, as all we have
13 to rely on is the morphology of the third molars at the dental level in
14 order to make an assessment of the chronological age of the subject.

15 From the technical point of view, we've used the information on the X-
16 rays, and we correlated this with the bone age. Taken in isolation, I
17 don't think we would have been in a position to state a result.

18 As to ethical limitations, I am a practitioner, a doctor. I'm
19 not a judge. And the recommendations which are given to us are that we
20 should, where there is an element of doubt, if a patient, a subject
21 states that he is a minor, we should

22 consider that he is indeed a minor, and this is a concept which is useful
23 to protect the rights of minors. In general, this is the approach we use.

24 So these are the limitations of the method.

25 Q. So it is your statement, Doctor, that in terms of accuracy,

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1 your -- on the final conclusion of the age of the person cannot be drawn
2 without one or the other, like the bone age or the dental age?

3 A. The age estimation is a compilation. So indeed the reference
4 examination is the bone age examination. I don't know exactly what
5 Mrs. Adamsbaum has told you, but bone age is the benchmark, the reference
6 examination, and the dental age is an additional examination due to
7 individual variability of subjects.

8 Q. If I may just ask you this, Doctor: Can a reliable conclusion be
9 drawn with only the records for teeth, data for teeth? Can a reliable
10 conclusion be drawn without the bone, for example?

11 A. Well, it depends on the age of the subject. Obviously the
12 younger the subject then the more reliable the estimation will be. That
13 is what I said earlier on. For a subject with a complete maturation and
14 excellent quality X-rays, we could also determine that the subject is an
15 adult, but between the age of 15 and 20 it's quite difficult.

16 Q. What about with just the bone X-rays? Can a reliable conclusion
17 be drawn, for example, without the dental data?

18 A. Well, again you have this estimation bracket. I assume that
19 Mrs. Adamsbaum has told you about it, but certainly the bone age must be
20 certainly more reliable, because the atlas allows us to have rather more
21 precise maturation stages than for the dental examination, but with a
22 margin of error, obviously.

23 Q. And in light of the limitations that you have described to the
24 Court, which you have provided, what will you say is your final
25 conclusion on the issue of dental age determinations of the individuals

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1 that are referred to in your report?

2 A. At the risk of repeating myself, Mrs. Bensouda, and I apologise
3 for this, the dental examination is a complementary examination to bone
4 age assessment in the cases that interest us, with the
5 limitations I have described.

6 MS. BENSOUDA: Mr. President, if I may just --

7 PRESIDING JUDGE FULFORD: Yes, of course, Ms. Bensouda, certainly.

8 (Prosecution counsel confer)

9 MS. BENSOUDA:

10 Q. Doctor, whether -- as you have indicated to the Court, one of
11 your limitations was the low quality of the radiographs. Would this low
12 quality lead you to make an overestimation of the age of the individuals
13 mentioned in the report?

14 A. I cannot possibly know whether it was an overestimation, because
15 in order to find that out I would need to have good quality films in
16 order to compare them, and therefore I cannot answer your question,
17 Mrs. Bensouda.

18 MS. BENSOUDA: Mr. President, no further questions.

19 Thank you, Doctor.

20 PRESIDING JUDGE FULFORD: Thank you, Ms. Bensouda.

21 Mr. Mulamba.

22 MR. MULAMBA (interpretation): Thank you, Your Honour.

23 Questioned by Mr. Mulamba:

24 Q. (Interpretation) Doctor, I think we have met yesterday for a few
25 minutes. Let me introduce myself. My name is Jean Mulamba. I'm a

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1 lawyer, and I represent victims, and more specifically, Witness 0298.

2 Doctor, my first question will focus on the second X-ray of the
3 teeth of Witness 0298.

4 MR. MULAMBA (interpretation): If the President would allow the
5 usher to hand this X-ray to the witness. It bears number
6 DRC-OTP-0191-0218.

7 PRESIDING JUDGE FULFORD: Yes, certainly.

8 MR. MULAMBA (interpretation):

9 Q. Subject to the assessment difficulties that you have described
10 earlier on -- so we are at tab -- tab 26.

11 So I was saying, subject to the potential assessment difficulties that you
12 have described earlier on, could you explain to us what you mean by
13 mineralisation, which is a word you have used a lot, of the crown and how
14 this is translated on the film itself, on the X-ray itself.

15 A. Yes, sir. I'm going to try and answer. The mineralisation of the
16 crown is the tooth bud that has been in existence for quite a long time and
17 that captures the calcium, and this leads to a white area on the tooth. So
18 this white area is the crown. However, the roots might not be visible. That
19 is the first stage after the creation of the bud and the mineralisation of
20 the crown. So it is a white, rather oval shape on the crown on the third
21 molar. And the same applies to all teeth, to all the teeth.

22 Q. Well, Doctor, does the scientific community recommend to
23 complement the assessment made with the method of Greulich and Pyle by a
24 another examination, such as a dental examination?

25 A. The scientific community recommends a multi-disciplinary

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1 assessment, taking into account a number of factors including the dental
2 and the bone assessment.

3 Q. In case of Witness 0298, which are the specific factors that could have
4 an influence on the bone development in the case that you have assessed?

5 A. I have not understood your question, I'm sorry.

6 Q. I was saying in the case of Witness 0298, whose X-rays you have
7 examined, are there any specific factors that could have an influence on
8 the bone development for this witness, 0298?

9 PRESIDING JUDGE FULFORD: Mr. Mulamba, forgive me interrupting.
10 Given that this witness has focussed on the -- the dental aspects of the
11 age assessment for this witness, I'm not sure whether it's appropriate to
12 be asking her about bone development. It was, to put it shortly, bones
13 yesterday, teeth today.

14 MR. MULAMBA (interpretation): Thank you, Your Honour.

15 PRESIDING JUDGE FULFORD: Yes, please continue.

16 MR. MULAMBA (interpretation):

17 Q. Doctor, I would like to know in this precise case if any
18 excessive physical exercise in conjunction with food deficiencies or
19 nutritional deficiencies can have an influence on the
20 age determination.

21 A. These nutritional aspects, social and economic aspects and
22 physical exercise were determined as capable of influencing the
23 assessment of age.

24 However, it is difficult to assess this influence, because I would like
25 to remind you that for bone age determination we use the Greulich and

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1 Pyle atlas that dates back to 50 years ago. The population has changed
2 considerably since then, and we do not have any available tables for the
3 subjects for which we carried out this study. So this is a limitation
4 factor indeed.

5 In other words, we are referring to tables or comparing with
6 tables that do not take into account intensive physical exercise that you
7 have just mentioned or social and economic factors - Greulich and Pyle
8 was carried out on middle -- middle class -- on the middle-class
9 population in the United States - or nutritional factors. We use it because
10 we know that the rhythm is the same whatever the subject. The maturation
11 is going to develop according to the same sequences and the same way, be
12 it for the bone or for the tooth, but we do not have any reference
13 applicable to this specific population.

14 Q. If I understand you well, for Africa, and more specifically
15 Central Africa, are there any studies regarding this that you can use
16 as a reference to be able to estimate nonetheless?

17 A. I do not have any bibliographical reference regarding studies for
18 the central part of Africa. We have such studies for Europe, for the
19 north of Africa, and more specifically Morocco, but I do not know of any
20 particular study for this particular area. I do not know of any study
21 regarding Central Africa.

22 Q. Doctor, could we then conclude that the dental assessment is a
23 complementary assessment to the bone assessment?

24 A. This examination helps the estimation. If there are great
25 discrepancies between both examinations, then we cannot reach any

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1 conclusions regarding the age of the subject, because we know that things
2 happen in parallel between the bone age and the dental age according to
3 pre-established sequences. If there are major discrepancies, in that
4 case we cannot give a result. However, this is an important element for
5 the assessment, because if we only have the bone age, a bone age for a
6 minor and then a dental age for a person over 18, then there
7 is a discrepancy and we cannot reach any conclusion. We could, in that
8 case, decide that a number of pathological processes have -- have come
9 into play for that particular subject, but in our examinations of the
10 subjects we have studied, we did not detect such discrepancies.

11 PRESIDING JUDGE FULFORD: Thank you very much, Mr. Mulamba.

12 Ms. Pellet.

13 MS. PELLET (interpretation): Thank you, Your Honour.

14 Questioned by Ms. Pellet:

15 Q. (Interpretation) Good morning, Doctor. We have also met
16 yesterday. I represent four of the witnesses on whom you wrote a report.
17 For information, I represent subjects 007, 008, 0010, and 0011.

18 I have a question from a layperson. This morning on a number of
19 occasions you have talked about the chronological age assessment. Could
20 you please explain what the chronological age is?

21 A. Good morning, madam. On a number of occasions I have mentioned
22 the chronological age which can also be called legal age, i.e., the age
23 that corresponds to the date of birth of the subject as compared to the
24 biological age that depends on our estimations.

25 Q. Fine. So in other words, the title of your report, which is the

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1 estimation of the chronological age, is not accurate because you are
2 actually assessing the biological age by your study of X-rays?

3 A. No. I'm sorry, but we do give a biological age and we estimate a
4 chronological age based on the biological age.

5 Q. Fine. So the chronological age that is determined is the legal age?

6 A. Yes, absolutely.

7 Q. Fine. Thank you. Earlier on you said that for ethical reasons
8 you would lean on the side of stating someone as being a minor. I would
9 like to know if in the missions ordered by Dr. Baccard you have applied
10 this particular guideline regarding -- when you had doubts?

11 A. In the mission assigned to us by Mr. Baccard, we did not have any
12 element other than the X-rays. We did not know the legal age or the
13 age alleged by the subjects, and we had no further assessment elements
14 such as the clinical examination or puberty examination. We had only the
15 X-rays that were given to us.

16 Q. So can I conclude that you did not have to apply this guideline
17 regarding the situation of doubt? When in doubt, assess the subject as
18 being a minor.

19 A. Not exactly. We gave an estimation as a range, a bracket, that
20 seemed to be the most relevant given what we knew about the bone age and
21 the dental age. However, we were not confronted with a situation where
22 we concluded that the subject had a chronological age assessed at being
23 between 17 and 19, which is something that occurs quite regularly in our
24 clinical work.

25 In such cases, we are not able to assess whether the person is a

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1 minor or over 18, and in this case it is for the Judge to take a
2 decision based on our expert's report. Medical assessment is not an
3 exact science, especially in this field. Therefore, we give a technical
4 opinion, and it is for the law, for the judicial bodies to take the
5 responsibilities and take the decisions based on our assessments.

6 Q. Thank you, Doctor. My last question is about individual
7 variability as applied to your part of the report, i.e., the dental
8 examination and the X-rays of the left mandible, because you have
9 explained that you did not have a panoramic X-ray. Is that correct?

10 A. This is correct. Variability is about the same as for bone age. There
11 is an individual variability, and in fact we apply statistical data given by
12 our tables, and we also have such tables for dental data, such as Greulich
13 and Pyle or the Fortier table, and I have written a paper with Professor
14 Fortier regarding age assessment. So we do have tables, but the same \
15 comments apply regarding individual variation. We apply collective
16 statistics to one individual.

17 Q. Thank you very much. My last question: Is this individual
18 variability more important -- in the framework of your report, is that
19 individual variability greater if you have just an X-ray of the mandible,
20 a lateral X-ray, or a panoramic X-ray?

21 A. The variability is greater when we only have a lateral X-ray of the
22 mandible, compared with a panoramic X-ray where all the teeth are separate
23 from each other, because the panoramic X-ray is a view -- a semi- circular
24 view where the teeth are actually photographed one after the other, so we
25 see all the teeth individually. So we can see the contour with

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1 more accuracy.

2 Q. Thank you, Doctor. And this is my last question. Thank you.

3 PRESIDING JUDGE FULFORD: Mr. Desalliers, if you want a moment to
4 discuss matters with Maitre Mabilie, do.

5 MR. DESALLIERS (interpretation): Thank you, your Honour. I just
6 wanted to reiterate the request I formulated regarding the X-rays. This
7 is going to be very brief.

8 PRESIDING JUDGE FULFORD: You're right. We'll rise so that you
9 can have as long as you need to have a look at those, and I think it
10 would probably be best if you see them before you commence your
11 questioning rather than having to do it during it, Mr. Desalliers, but
12 you're more than entitled to do that.

13 We'll work on the basis that it will be roughly the same length
14 of time as yesterday, five minutes or thereabouts. Could you just send a
15 message out as and when you're ready for us to sit again. Thank you.

16 Doctor, Mr. Desalliers just wants to have a look at the original
17 X-ray sheets that he hasn't had an opportunity to study before. I'm
18 afraid it's going to mean a small interruption in your evidence. If you
19 could go with the usher now, I'm sure we'll be ready to proceed again in
20 about five to ten minutes' time.

21 THE WITNESS (interpretation): Thank you, your Honour.

22 (The witness stands down)

23 PRESIDING JUDGE FULFORD: We'll sit again when
24 Mr. Desalliers sends a message.

25 COURT OFFICER: All rise.

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1 Recess taken at 11.58 a.m.

2 On resuming at 12.11 p.m.

3 COURT USHER: All rise. Please be seated.

4 PRESIDING JUDGE FULFORD: Witness, please.

5 (The witness takes the stand)

6 PRESIDING JUDGE FULFORD: Thank you for your patience, Doctor.

7 Yes, Mr. Desalliers.

8 Questioned by Mr. Desalliers:

9 Q. (Interpretation) Good morning, madam.

10 A. Good morning, sir.

11 Q. My name is Marc Desalliers. I'm a lawyer, and I'm going to ask
12 you a few questions to follow up on the answers you gave to the Judges of
13 the Chamber, for the defence of Mr. Thomas Lubanga.

14 First of all, I would like to ask you to be given a document on
15 which I will have a question to ask you a bit later. But we -- before we
16 move on to the document, I would like to specify one thing very clearly.

17 Have I understood correctly the fact that despite that the report
18 is jointly signed by you and your colleague, which states your joint
19 conclusions, that the tasks undertaken were separate, that you only
20 looked at dental age determination and Dr. Adamsbaum only looked at bone
21 age determination. Have I understood correctly?

22 A. Yes, but I can say that I also looked at the X-rays of bone
23 age determination and that I am used to looking at those type
24 of X-rays. So I can't conceal that fact.

25 Q. But that your conclusions, your professional conclusions in the

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1 report only bear on the dental age assessment?

2 A. Exactly, sir.

3 Q. Now, I would like you, please, to turn to document which bears
4 the number MFI-D-00118.

5 MR. DESALLIERS (interpretation): And I'm going to give you the ERN number,
6 which is DRC-D-01-0003-1389. And for the Judges of the Chamber and the
7 Prosecution, it can be found under tab 12 of yesterday's binder.

8 Q. So, madam, would you kindly turn to page number 2, and I will
9 quote the last paragraph on this page, and here I quote, and I'm starting
10 with the second sentence:

11 "Not only are dental development and the appearing of puberty
12 signs very heterogeneous according to the subjects, but major
13 modifications regarding the age of their appearance and linked to
14 different environmental factors make it more and more difficult to make an
15 individual interpretation and to determine a true chronological age ."

15 Now, my first question is -- excuse me. Excuse me. I would like, first of
16 all, to know what your opinion is on this particular sentence.

17 A. I agree with this statement, sir.

18 Q. This statement refers to the heterogeneous feature of different
19 subjects. Is it true to say that for some subjects, even
20 adults, the third molar, which
21 is the tooth that you based your age determination on, in some adults
22 this tooth does not appear or hardly appears or there might be great
23 variations in the time of its appearance even in adults?

24 A. This is the tooth that has the greatest degree of variability.
25 It can be missing - that's called agenesis. I think there's even one

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1 particular case in this court case in which I did not see a third molar.
2 So I was wondering if this wasn't a case of agenesis. It can
3 be missing. It can have been pulled out. So it is right to say that
4 there's a great degree of variability in this tooth,
5 and it is true to say that from the age of 15 until 20, it is very
6 tricky to try and determine a subject's age based only on his teeth.

7 Q. Thank you very much, madam.

8 MR. DESALLIERS (interpretation): I have no further questions,
9 your Honour.

10 PRESIDING JUDGE FULFORD: Very concise, Mr. Desalliers.
11 Thank you.

12 Anything further, Ms. Bensouda?

13 MS. BENSOUDA: No, Mr. President. No further questions.

14 PRESIDING JUDGE FULFORD: Thank you very much.

15 Madam, we are very grateful to you for having come to this court
16 to share with us your conclusions on these potentially important issues
17 and for giving us the benefit of your valuable expert opinion. We are
18 acutely conscious of the fact that you are an extremely busy professional
19 and that you have had to take time out of your schedule to come and assist
20 this court, and you therefore leave with our unqualified thanks for the
21 help that you have given. Thank you very much. If you'd now please go
22 with the usher, you're now entirely free to leave.

23 THE WITNESS (interpretation): I would like to thank the Bench
24 for giving me an opportunity to come.

25 (The witness withdrew)

1 PRESIDING JUDGE FULFORD: Ms. Samson, thank you for the documents
2 which are of considerable assistance to the Bench in relation to the
3 proposed or indeed the ongoing familiarisation process for Witness 14.

4 In the e-mail which was sent last night, immediately prior to the
5 individual reference numbers being given for the documents the following
6 sentence is to be found:

7 "The documents concerned were commented upon by the witness in
8 his statement."

9 And a little later, when providing part of the reasons relied on
10 by the Prosecution for its application that the witness should be shown
11 these documents, we read the following:

12 "At this stage, the Prosecution is of the view that the witness
13 should be provided with the pool of disclosed documents that were
14 referred to in his statement for the purpose of familiarisation."

15 Am I right, Ms. Samson, in understanding that, in fact, if one
16 undertakes an analysis of what the witness said about each of these eight
17 documents, it is, and his comment was when he was providing his witness
18 statement that he had never seen any one of these documents before?

19 MS. SAMSON: Yes, Mr. President, that is correct. In some cases
20 the witness, however, was able to indicate that he had heard the content
21 of the document read out on the radio, for instance. In at least another
22 case he indicated that he had seen a similar document in a different
23 context. So there are -- the basic premises is correct. There are some
24 nuances, however, in respect to his responses on each of the documents.

25 PRESIDING JUDGE FULFORD: Right. But in relation to looking at

1 these documents, they are all documents which the witness has indicated
2 he has never seen before.

3 MS. SAMSON: I can confirm that, your Honour.

4 PRESIDING JUDGE FULFORD: Thank you very much. Thank you.

5 (The Trial Chamber confers)

6 PRESIDING JUDGE FULFORD: Is there anything you'd wish to say on
7 the issue, Ms. Samson?

8 MS. SAMSON: I think that the e-mail covers the main lines of the
9 Prosecution's submission on the point.

10 PRESIDING JUDGE FULFORD: Thank you very much. We needn't
11 trouble you on this, Maitre Mabille.

12 An issue has arisen as to whether or not Witness 14, as part of
13 the witness familiarisation process, should be shown eight documents. It
14 needs to be observed that these eight documents form part of a larger
15 group of written materials that the witness has been asked to consider as
16 part of the process of preparing for his evidence.

17 The Defence object to the Prosecution's suggestion that the
18 witness should be provided with copies of these eight documents prior to
19 coming into court to give evidence.

20 The document numbers are 0091-0016, 0113-0055, 0014-0204,
21 0091-0844, 0014-0471, 0017-0033, 0171-0926, 0109-0122.

22 On an analysis of what the witness said in his statement about
23 each of these documents is that he had never seen any of them before,
24 although as Ms. Samson has correctly reminded us this morning, the
25 witness on a few occasions indicated that he had, for instance, heard

1 things before about the document or the documents in question.

2 We have, on an earlier occasion, given a detailed written ruling
3 on the witness familiarisation process in which we have sought to ensure
4 that that does not become a process of witness proofing. The principle
5 objective of the familiarisation process is to enable the witness to
6 refresh his or her memory from documents that have been seen on an
7 earlier occasion and which will, by that process, enhance and contribute
8 to the evidence which the witness is to give in court.

9 In our judgement, there is little or no value in this witness
10 being shown documentation that he or she has never seen before. To the
11 extent that the Prosecution in court seek to question the witness about
12 things that he has heard of before, we can at an appropriate stage deal
13 with the issue as to whether reference should be made to individual
14 documents from this group of eight. However, for the purposes of witness
15 familiarisation, none of these documents are to be shown to Witness 14.

16 Ms. Bensouda, partly because of the device which the Judges
17 suggested in relation to the last witness we have obviously concluded
18 this evidence far quicker than had been anticipated. We are conscious
19 that today is the day when there is to be a memorial service for
20 Judge Saiga, and partly out of a mark of respect for her, given that the
21 next witness is not scheduled to commence or recommence his evidence
22 until tomorrow, we are not going to ask for frantic efforts to be made
23 now to try to fill up the rest of today.

24 Are there any other matters that you would wish to raise with us
25 before we rise?

1 MS. BENSOUDA: Mr. President, Mr. Sachdeva will --

2 PRESIDING JUDGE FULFORD: Yes, certainly. Mr. Sachdeva.

3 MR. SACHDEVA: Thank you, Mr. President. It's just to inquire
4 whether on the issue of a document that I showed Professor Adamsbaum that
5 was on the Defence list but was not shown to her in cross-examination, I
6 wonder whether now is an appropriate time to possibly respond to my
7 friend's submissions and continue to advocate for the admission of that
8 document into evidence.

9 PRESIDING JUDGE FULFORD: Thank you.

10 We'll come to that in a moment.

11 Apart from that, Maitre Mabilille, is there anything else that you
12 would wish to raise at this stage? No.

13 Mr. Desalliers, do you want to deal with the Prosecution's
14 request to have admitted into evidence a document that you had included
15 by way of courtesy in your bundle now, or would you like to have an
16 opportunity to reflect on the matter and to discuss it with
17 Maitre Mabilille?

18 MR. DESALLIERS (interpretation): Well, your Honour, I think I
19 can make my observations now. The reason why the Defence objects to that
20 way of proceeding is that the document has been shown within the
21 framework of re-examination. If the Defence understood correctly, the
22 purpose is to ask additional questions on questions that were asked by
23 the Defence. If Defence doesn't ask -- does not submit the document,
24 doesn't ask any question on documents, re-interrogation is not an
25 opportunity given to the Prosecutor's office to ask a fresh question on a

1 new topic. It is to ask questions which flow from the questions asked or
2 raised by the Defence. So this was my first point.

3 My second point is that if the Prosecutor could rely on documents
4 submitted to it and that the Defence decides not to rely on those, well,
5 certainly the Defence is going to wonder about the consequences of
6 disclosure to the Prosecution.

7 In this particular case, and I'm fully aware of it, this is only
8 a document that's an article. It is not a crucial piece of evidence, but
9 still it is a document, piece of material that the Defence at this stage,
10 at the stage where the question was raised, had decided not to use. So,
11 yes, indeed, Defence objects to the document being used as evidence.

12 I submit that, in any case, the question is moot because the
13 Prosecution has used extracts that seem to be relevant. So probably
14 as far as this particular document is concerned, the question is moot.
15 But still, I wanted to make these observations for the future, because
16 the Defence will object to having the Prosecution use documents that
17 Defence has decided not to use during the examination, cross or
18 re-examination.

19 PRESIDING JUDGE FULFORD: Yes, Mr. Sachdeva.

20 MR. SACHDEVA: Thank you, Mr. President. In fact, it's exactly
21 the reason why I showed the document to the professor. The Defence did
22 indeed raise the subject matter of my question, that is, were there to be
23 any problems in using the Greulich and Pyle method for populations of
24 different ethnicities, and the Defence raised that issue in
25 cross-examination, and therefore the purpose of my putting the document

1 to the witness was to counter that presumption by the Defence firstly.

2 Secondly, with respect to the disclosure, as I understand it,
3 that document is an official open-source document which was referenced in
4 the expert reports and in the curriculum vitae of the professor that has
5 indeed been disclosed to the Defence in sufficient time, sufficient
6 advance notice, and therefore I submit that there is no issue with
7 respect to surprise or disclosure for this document.

8 I agree that I did raise a particular aspect of that document and
9 put it to the witness. Nevertheless, the context, namely that it
10 emanates from the Académie Nationale de France, is, in our submission,
11 critical to the subsequent answer the professor gave. And for those
12 reasons, the Prosecution would push for the document to be tendered into
13 evidence.

14 Thank you, Mr. President.

15 PRESIDING JUDGE FULFORD: Very clear, Mr. Sachdeva. Thank you.

16 Ms. Massidda, Mr. Mulamba, anything from the victims?

17 MS. MASSIDDA: Thank you, your Honour. I have two brief matters.
18 The first one relates a filing that it was notified on Monday, the
19 11 of May, the document number is 1866, relates to transmissions of
20 information contained in the Registry's report in accordance with
21 Trial Chamber I oral decision of 8th of May. These are information that
22 the VPRS has transmitted to the Prosecutor and the Defence and pertains
23 to new information received in relation to victims represented by some of
24 the legal representatives at trial.

25 The problem with this filing is that the annexes to the filing

1 are ex parte to the Defence and the Prosecutor. Now, the annexes are
2 documents emanating by the clients of the legal representatives. I would
3 therefore like to request the Chamber to order the notification of the
4 annexes also to the legal representative concerned. For the clients
5 represented by the OPCV, I'm referring to Annexes 2, 3, 4, and 5, which
6 were quoted at page 3 of the filing, paragraph 2. This is one matter.

7 I would like also to draw the attention of the Chamber on another
8 matter.

9 PRESIDING JUDGE FULFORD: Let me interrupt on the previous one,
10 Ms. Massidda. Have you raised this with the VPRS as to whether or not
11 you have been deliberately excluded, whether this was conscious, or
12 whether you were excluded as an oversight?

13 MS. MASSIDDA: Thank you very much for your question, your
14 Honour, because this is exactly the issue, and I will explain in a moment
15 in my second observation. Thank you.

16 I would like to draw the attention of the Chamber on an issue
17 which is ongoing since, I would say, at least two years, and the issue is
18 the following: The legal representatives are, of course, notified of the
19 standard application forms and the supplementary informations pertaining
20 to their clients in an unredacted form. When these same documents are
21 sent to the Defence and to the Prosecution for the purposes of Rule 89(1)
22 of the Rules of Procedure and Evidence, in order to allow them to provide
23 observations, these same documents are normally redacted by order of the
24 Chamber. These documents redacted are not notified to the legal
25 representative concerned.

1 This causes an issue, your Honour, because if the Defence, as
2 already happened during this trial, requests to receive the standard
3 application forms and the attached information without redactions, the
4 legal representative concerned is not in a position to give any
5 observation of the matter because simply we do not know the redaction.
6 This already occurred in this trial when Maitre Mabilille request the lift
7 of the redactions.

8 It's also another issue in practice, because if one of the legal
9 representative request to lift anonymity, as it already happened again
10 during the trial, there is no way for the legal representative concerned
11 to verify which kind of information could be not anymore redacted and
12 which kind of information will need to remain redacted.

13 Therefore, I would like to request that the redacted form of the
14 standard application forms and the supplementary informations be also
15 normally always be notified to the legal representative concerned.

16 Thank you.

17 PRESIDING JUDGE FULFORD: Before I turn to Mr. Mulamba, does
18 anybody wish to make any observations on Ms. Massidda's application? No,
19 Ms. Bensouda?

20 MS. BENSOUDA: No, Mr. President.

21 PRESIDING JUDGE FULFORD: Thank you. Maitre Mabilille? No. All
22 right.

23 Mr. Mulamba, anything you want to raise or not? Good. Thank
24 you. And I imagine from Ms. Bapita's silence the same applies.

25 Thank you all for those submissions. The principal points raised

1 by Mr. Sachdeva and Ms. Massidda are, in fact, not entirely
2 straightforward and will benefit from some mature reflection. We will,
3 in the very near future, give our decision in relation to both of them.

4 In relation to Witness 55, does my memory play me tricks,
5 Ms. Samson -- I forget who is dealing with it. Is it you, Mr. Sachdeva?
6 It is. Does my memory play me tricks, Mr. Sachdeva, or has an issue
7 arisen in relation to documents for that witness, or am I confusing
8 witnesses?

9 MR. SACHDEVA: Mr. President, the Defence have sent the
10 Prosecution a list of documents they indeed object to. I have had
11 discussions with the Defence and at this stage we are going to deal with
12 them as it arises during the examination.

13 There is a connection between the documents that were the subject
14 of the bar table motion and the possibility of showing Witness 55 some of
15 those materials to possibly authenticate or validate the materials. That
16 possibly could be another situation with respect to documents,
17 outstanding situation with respect to the documents for this witness.

18 PRESIDING JUDGE FULFORD: As I recall it, Mr. Sachdeva, we've
19 given you an indication, without giving reasons, that the bar table
20 documents for Witness 55 can be introduced, but again, please tell me if
21 my -- if I mis-recollect what I think is an indication we've given.

22 MR. SACHDEVA: Mr. President, that perhaps is the case. Of
23 course the bar table motion did not restrict itself to placing those
24 documents in front of Witness 55. It was a general application for the
25 admission of materials.

1 There are, in our submission, some documents that could possibly
2 be commented upon by this witness.

3 PRESIDING JUDGE FULFORD: What would be undesirable is if
4 Witness 55's evidence is punctuated by serial admissibility objections.
5 What I'm going to ask, please, this afternoon, Mr. Sachdeva, is a list
6 from you sent by e-mail that reveals those documents in relation to which
7 there may be an issue. So, as it were, the fruits of your discussions
8 with the Defence. So highlighting those in relation to which there may
9 be a disagreement as to whether or not they should be shown. And for
10 each of those documents, could you highlight whether or not they are "a
11 bar table document." And if there are any separate bar table documents
12 for Witness 55, could you also set those out regardless of whether or not
13 they are -- that they happen to be the subject of disagreement on the
14 part of the Defence? Is that a reasonable request, Mr. Sachdeva?

15 MR. SACHDEVA: It is, Mr. President, and some of that has already
16 been undertaken. I would just qualify. It -- it may depend upon how the
17 examination proceeds as to whether other documents may be shown to the
18 witness, but I'll try and be as encompassing as possible.

19 PRESIDING JUDGE FULFORD: Yes. Please be -- I mean, without
20 going to absurd limits, could you be reasonably comprehensive,
21 Mr. Sachdeva, because as I say, it would be unfortunate if we were
22 constantly having to interrupt the flow of his evidence to deal with
23 disputes as to admissibility. So it would be useful to have advance
24 warning as to where the fault-lines exist in relation to this proposed
25 documentation.

1 MR. SACHDEVA: Certainly, Mr. President.

2 PRESIDING JUDGE FULFORD: Yes. Thank you very much.

3 Ms. Samson, a mild observation. Just a note for the future,
4 really. It would have been useful in relation to the eight documents,
5 given we were being asked to deal with this at very short notice, to have
6 been informed not only that the witness had commented on the document but
7 in each instance the comment had been, "I've never seen it before." I am
8 sure that you can see, following the discussion that we've had, that that
9 was potentially a relevant ingredient for any decision that we were going
10 to have to make on the issue, but I put it mildly.

11 MS. SAMSON: I'm guided. Thank you.

12 PRESIDING JUDGE FULFORD: Thank you very much.

13 We will therefore recommence the evidence of Witness 55 tomorrow
14 morning at the usual time of half past 9.00. Thank you all very much for
15 your assistance.

16 COURT USHER: All rise.

17 The hearing ends at 12.47 p.m.

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CORRECTION REPORT

1 Pursuant to Decision ICC-01/04-01/06-1974-CONF, this transcript has
2 been revised and corrected.
3 Due to a large amount of corrections to be brought to the transcript,
4 these have been implemented directly into the transcript.