

Trial Hearing
WITNESS: DRC-OTP-P-0938

(Open Session)

ICC-01/04-02/06

1 International Criminal Court
2 Trial Chamber VI
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and Judge Chang-ho Chung
6 Trial Hearing - Courtroom 3
7 Friday, 1 July 2016
8 (The hearing starts in open session at 9.32 a.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: Good morning, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: The Court is sitting in the case of the Prosecutor versus
15 Bosco Ntaganda. Thank you.
16 PRESIDING JUDGE FREMR: Thank you. Now appearances, please, starting with
17 Prosecution.
18 MS LUPING: Good morning, Mr President. Good morning, your Honours. It's
19 the same appearances as yesterday, except with the absence of Ms Julieta Solano.
20 PRESIDING JUDGE FREMR: Thank you, Ms Luping.
21 Defence.
22 MR GOSNELL: Good morning, your Honours. Appearances are the same as
23 yesterday afternoon, with the addition of Margaux Portier. Thank you, your
24 Honours.
25 PRESIDING JUDGE FREMR: Thank you.

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1 Now Legal Representative of Victims, please.

2 MR ABDOU: Good morning, Mr President. Good morning, your Honours. For
3 the former child solders, the same as yesterday.

4 MS GRABOWSKI: Good morning, Mr President. Good morning, your Honours.
5 Anne Grabowski for the victims of the attacks today.

6 PRESIDING JUDGE FREMR: Thank you, Mr Abdou. Thank you, Ms Grabowski.

7 Once more, good morning, Dr Lewis. Welcome again in our courtroom. We will
8 today continue with your examination. First, still by Prosecution. Prosecution still,
9 in accordance with our recent decision, still at its disposal 30 minutes.

10 So, Ms Luping, you may start.

11 MS LUPING: Thank you, Mr President.

12 WITNESS: DRC-OTP-P-0938 (On former oath)

13 QUESTIONED BY MS LUPING: (Continuing)

14 Q. And good morning, Ms Lewis.

15 A. Good morning.

16 Q. Ms Lewis, I'm just going to first ask you questions on the topic again of delayed
17 reporting of rape and I'm going to refer to the reports that you prepared in relation to
18 three Prosecution witnesses who reported rape. As we're in public session I'm not
19 referring to them by code or name at this stage. And you concluded that the reasons
20 given by the three witnesses for delay in reporting of their rapes is consistent with the
21 experience of raped women worldwide and the findings of international research.

22 For the sake of the record I'm referring here to your conclusions, first at the report
23 2059-0058, at pages 0062 and 0064. That's at tab 3.

24 The next report at 069, pages 0072 to 0037 and 0075, which is at tab 4.

25 And finally, the report 0080 at pages 0083 to 0085. And that's at tab 5.

1 Now, my first question is this: Have you, in your experience, ever come across other
2 cases of delayed reporting of rape?

3 A. Yes, delayed reporting of rape is very common and I have certainly, in my
4 experience, met many people who either decide never to report or who delay
5 reporting for significant periods of time.

6 Q. And again, in your experience, what have been the various reasons given by
7 other victims of rape for delay in reporting?

8 A. Perhaps the most prevalent reason is that victims of rape are really afraid, or
9 terrified even, that people in their communities will discover what has happened to
10 them. They are afraid that they will be ostracised or stigmatised. And that is the
11 case not just, for example, in my experience in places like Rwanda, but also in my
12 experience in Ireland and, indeed, in the former Yugoslavia.

13 Q. And for my next question if you think anything is identifying we can go into
14 private session. But are the reasons that you have come across, in your experience,
15 consistent with those given by the three prosecution witnesses that you examined?

16 A. Yes. With all the three Prosecution witnesses, when I ask them why they
17 hadn't reported sexual violence in 2005 when they originally met investigators from
18 the Court, they all said that they were too ashamed to do so. They went on to be
19 elaborate. For example, in one of the situations the woman was living in a village
20 where a rape victim had been identified and she described how that woman was
21 mocked constantly as she went about her daily life.

22 In another situation the woman was married -- is married and described her fear of
23 stigmatisation in the community, but even more importantly, her belief that her
24 husband would leave her if he knew that she had been raped.

25 And in the third case the woman described more generally her fear of how her

1 community would respond if they knew she was one of "those women," which is how
2 she described the rape to me.

3 Q. And I will ask shortly to go into private session to ask you about the three
4 individuals specifically in turn. But before I do, could you just briefly explain what
5 is psychotherapy?

6 A. Psychotherapy is a form of psychological treatment, so-called talking therapy
7 where the -- a person who has suffered perhaps a trauma, but perhaps any adversity
8 in life; relationship difficulty, depression, anxiety, and they will work with the
9 psychotherapist to attempt to understand what it is that has happened to them, the
10 impact that has had on their lives and the type of things they need to do to help them
11 recover from whatever that experience has been.

12 Q. And just for laypersons like ourselves to better understand, what type of mental
13 health professionals conduct psychotherapy?

14 A. Psychotherapists such as myself who would have generally something like
15 a psychology degree, a social work degree, something of that nature, with
16 post-graduate training in psychotherapy. Also a clinical psychologist might offer
17 psychotherapy and some psychiatrists would also.

18 Q. And again just for a better understanding. Now, if we are to look at your
19 reports, for example, even the very first one, tab 2, I'm not going to ask that it be
20 shown to you. I am simply going to refer to tab 2, the very title where you refer to
21 the "clinical assessment".

22 A. Mm-hmm.

23 Q. And this reference, the term "Clinical Assessment" is made in relation to all four
24 assessments that you conducted. Could you explain, as a psychotherapist, can you
25 explain what's the difference between a clinical assessment of the nature that you

1 conducted with the four Prosecution witnesses, and therapy? What's the difference?

2 A. Yes, the difference is very clear. If I was conducting psychotherapy with these
3 women, for example, I would expect to meet them on a regular basis, normally
4 a weekly basis for one hour. And it is very likely if I was working with somebody,
5 for example, somebody who had experienced sexual violence, that I would expect to
6 work with them for a period somewhere between 18 months and three years,
7 depending on the circumstances.

8 When I undertake assessments I would generally meet the person for somewhere
9 between an hour and two hours and all that would interest me in that situation is that
10 I would be assessing if the impact that the person is describing, if the symptoms and
11 effects the person is describing match or are commensurate with the experience they
12 allege has happened to them.

13 Q. So just to put this in simple terms to understand that this is really a difference
14 between a diagnosis and treatment, so that the assessment is the diagnosis and
15 anything more than that would be treatment?

16 A. Yes. So, for example, routinely in my work in Dublin I would meet people for
17 assessments, which would be to explore the impact, the particular experience it had
18 had on their lives, the symptoms they were displaying, and then make
19 a recommendation for treatment. The treatment is quite a different -- would be quite
20 different, a different phase, and my role in offering psychotherapy is quite different
21 from my role when I'm making an assessment.

22 MS LUPING: Mr President, with your leave I would seek leave to go into private
23 session.

24 PRESIDING JUDGE FREMR: All right.

25 Court officer, please move into private session now.

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- 1 (Private session at 9.42 a.m.)
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- 4 (Redacted)
- 5 (Redacted)
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8 (Open session at 9.59 a.m.)

9 THE COURT OFFICER: We are in open session, your Honour.

10 PRESIDING JUDGE FREMR: Thank you.

11 Ms Luping, please proceed.

12 MS LUPING: Thank you, Mr President.

13 Q. Now, I'm referring again to the very first report you prepared. You have an
14 identical curriculum vitae in all the reports. So if I get you to turn to tab 2. That's
15 ERN, for the record, ERN DRC-OTP-2059-0049 and I'm referring to page 0050. Now
16 there, this is a reference to your current role as the executive director for One in Four
17 where you state that:

18 "In addition to psychotherapeutic assessment and treatment we also support victims
19 to engage with the criminal justice process from initial contact with the police to
20 accompaniment during the criminal trial." End of quote.

21 Now, in your experience of assisting rape victims who testify, what can be the
22 different range of responses or demeanour of individual rape victims whilst they're
23 testifying?

24 A. Well, first of all I should say only about 15 per cent of the people who come to
25 our services decide to make a report, because of the challenges that are there. And

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1 typically when we -- when a rape victim makes a report to the police, there is a very
2 long journey before they arrive in the criminal court. First of all, the investigation
3 must take place, then the Director of Public Prosecution must decide if there is
4 sufficient evidence to proceed to trial, so in about half the cases it never goes beyond
5 that point. And then once the person gets to trial, victims generally say that that the
6 adversarial nature of the trial in the Irish jurisdiction is such that the court process,
7 the court procedures, the cross-examination and so on, is so traumatising that many
8 of them wish they had never begun the process in the first place. But that's why it is
9 so important they would have support through that process.

10 Q. And just to, sorry, just to repeat my question because maybe it wasn't very clear.
11 But once you have an individual rape victim who is testifying, she is in court, she's
12 testifying, in your experience what can be the different ways in which that witness
13 may appear in terms of her demeanour? How may she respond when she's literally
14 in the witness box and she's testifying? How can she react, potentially? What can
15 be the different ranges or different ways in which that witness might appear to a third
16 party?

17 MR GOSNELL: Objection, Mr President.

18 PRESIDING JUDGE FREMR: On what ground?

19 MR GOSNELL: I think now we are entering into the realm of providing your
20 Honours with a checklist to assess credibility of a witness. And I think that enters
21 into the territory that your Honours have indicated you don't wish to hear evidence
22 on.

23 PRESIDING JUDGE FREMR: I would say that the final decision is on the Chamber
24 and it's our sphere, but I don't see anything wrong to hear also opinion of a
25 psychologist on that.

1 So please proceed.

2 MS LUPING: Thank you, Mr President.

3 Q. Do I need to repeat my question, Ms Lewis, or was that clear?

4 A. No, I think I understand the question. I mean, typically victims of rape will
5 respond in a very -- in a very particular way.

6 When somebody is describing a general crime they will usually be very clear,
7 articulate, they will have embarrassment about what happened to them, they won't be
8 taking any responsibility for what happened them.

9 Typically with rape victims there will be huge shame, huge embarrassment and I
10 would expect their demeanour to vary between somebody who becomes very
11 distressed, cries, hyperventilates, somebody who finds it very difficult to look the
12 person who is questioning them in the eye, typically keeping their head down, very
13 often face flushed. And sometimes, because of the nature of the court itself and the
14 fear of the court, victims would become quite inarticulate, tongue-tied, won't be
15 able -- would find it very difficult to recount what has happened.

16 I mean, I think it's really important that we understand what it is like to describe such
17 an intimate traumatic experience.

18 If I were, for example, for example I have worked with many people from
19 Northern Ireland who were involved in bombings and very, very traumatic incidents,
20 they can generally talk openly and clearly about what happened to them.

21 When I'm speaking to a rape victim I would generally expect that person to find it
22 difficult to articulate what had happened. And if we look at the three witnesses I
23 met, this is exactly what I found; distress, one woman covered her face with her shawl,
24 another woman wasn't able to look me in the eye, which was quite different from
25 when they were describing what had happened generally in the incidents in Ituri.

1 Q. And in your --

2 PRESIDING JUDGE FREMR: Ms Luping, just a reminder, your time allotted to you
3 is over. So you just may put the last question, so take it into account.

4 MS LUPING: Understood, Mr President, I just have one follow-up question in
5 relation to this recent response.

6 Q. In your experience, though, can there also be other ways of reacting, can there
7 be some victims who appear to be able to articulate very clearly what happened to
8 them?

9 A. Yes. Sorry, yes. I mean, some victims will become quite detached from what
10 has happened to them, they will be very cut off emotionally and they will be
11 describing the event as if they were reading out something from a newspaper. And,
12 you know, that does happen certainly in court.

13 MS LUPING: With your permission, Mr President, I just want to clarify. I would
14 simply ask why is that?

15 PRESIDING JUDGE FREMR: All right.

16 MS LUPING: Thank you.

17 Q. And why is that?

18 A. Usually it means the victim has detached, cut off from her or his feelings, has
19 just become very calm, very rational and is not allowing themselves to feel the impact
20 of the rape. And that's not untypical.

21 Q. Thank you, Ms Lewis, I have no further questions.

22 MS LUPING: Thank you, Mr President, your Honours.

23 PRESIDING JUDGE FREMR: So now we can move to cross-examination conducted,
24 it will be conducted by Defence.

25 Just reminder again, Mr Gosling -- Gosnell. It is the actor, Gosling, so I guess I didn't

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1 offend you. So you have been allotted three hours, I think you know it well. So
2 please, you may start.

3 MR GOSNELL: Thank you, Mr President. I'll assume it's not based upon
4 a resemblance issue.

5 QUESTIONED BY MR GOSNELL:

6 Q. Good morning, Ms Lewis.

7 A. Good morning, Counsel.

8 Q. My name is Christopher Gosnell, I will be asking you some questions today.
9 And if any of my questions are not clear or if you're not, don't believe that you're not
10 capable of answering them because they fall beyond your expertise, then of course
11 please ask me to follow up or let me know.

12 A. Thank you.

13 Q. Now, you were engaged, or at least there was a letter requesting your
14 engagement written to you on 7 October 2013. And prior to that date I would like to
15 know whether you had sent to the Prosecution a copy of your curriculum vitae?

16 A. Yes, I was asked by the Prosecution, I'm afraid I can't remember exactly when,
17 perhaps sometime during the summer of 2013, to submit a copy of my curriculum
18 vitae.

19 Q. And that engagement letter of October 2013 refers to you as Dr Maeve Lewis.
20 Are you a doctor?

21 A. No, I am not. And, I mean, I had made that clear from the beginning and I also
22 clarified that when the letter arrived.

23 Q. And just to assist with some questions I'll have on this topic, could we have
24 DRC-OTP-2059-0049. This should of course not be for broadcast and I'll not be
25 asking you questions about the witness. For starters, I'm just going to ask you about

1 your CV which is included in this report. So if we could please turn to 0051.

2 May I ask, have you published any papers or articles in any peer-reviewed academic
3 journals in the field of psychology or psychotherapy?

4 A. No.

5 Q. Have you ever testified as an expert in any judicial proceedings before?

6 A. No.

7 Q. And the highest academic degree you have received from an academic
8 institution, from a university, from an accredited university, the highest academic
9 degree that you have received, am I correct, is a bachelor's degree?

10 A. No, that's not correct. I have a higher diploma and I also have an advance
11 certificate. They would both be post-graduate qualifications.

12 Q. From what institution is the, let's take first the higher diploma?

13 A. That is from Trinity College Dublin.

14 Q. And in what subject area?

15 A. That was in education.

16 Q. And I see on your CV that you have a diploma in counselling and
17 psychotherapy?

18 A. That's correct.

19 Q. That's from an organisation called the Dublin Counselling & Therapy Centre,
20 correct?

21 A. That is correct.

22 Q. And that's a diploma that takes one year to obtain?

23 A. No, that's a diploma that takes four years to obtain normally.

24 Q. And is that full-time?

25 A. No, not four years full-time, no.

1 Q. Did any of the instructors at that institution, to your knowledge, have a PhD or
2 an MD?

3 A. Certainly one of the tutors had a PhD and a number of the tutors would have
4 had master's qualifications. I should add, that course is accredited by the Irish
5 Council for Psychotherapy and the European Association for Psychotherapy.

6 Q. And you received that diploma, unless I'm mistaken, in 1995, correct?

7 A. That's correct.

8 Q. And that institution, that organisation, the Dublin Counselling & Therapy
9 Centre had been created, founded in 1990; is that correct?

10 A. That is correct. Actually, I'm not sure that is correct, I think it might have yes,
11 but around that time.

12 Q. Could we have tab 93 please, which is DRC-D18-0001-1740. I'm afraid that
13 one's not in your binder, Madam Witness, but it will come up on the screen in front of
14 you, I hope.

15 A. Thank you.

16 Q. This is the website for the institution from which you received your diploma in
17 counselling and psychotherapy; correct?

18 A. That is correct.

19 MR GOSNELL: And could we please turn to page 1745.

20 THE COURT OFFICER: I'm sorry, is this document confidential?

21 MR GOSNELL: No.

22 Q. Now, I won't go down the list of instructors that are there at the institution now
23 in any detail. But can I ask you this general question: Would I be correct in
24 understanding that the focus of the training provided at this institution is providing
25 clinical therapy to patients?

1 A. Yes, that is correct.

2 Q. The primary purpose is not to assess reliability or credibility of witness accounts,
3 correct?

4 A. Well, I mean any therapeutic training will include training on assessing patients
5 for psychotherapy, so assessment would be absolutely part of the training.

6 Q. I'm just looking at the transcript to see the end of your answer because I'm
7 afraid I didn't have the audio of your answer. Would you mind repeating your
8 answer, please?

9 A. Yes, any psychotherapy training has to include training in assessing patients for
10 treatment so, yes, assessment is certainly part of the training there.

11 Q. Assessment to determine the credibility and truth of what they are telling you?

12 A. No, assessing their therapeutic needs.

13 Q. And would you agree that, from your experience, being an affective clinical
14 therapist involves establishing a bond of empathy with the patient?

15 A. Yes. In my role as a psychotherapist I would expect to develop empathy with
16 the patient if the therapy is to be successful.

17 Q. And leaving aside appearing in court as a witness, have you ever previously
18 been engaged, prior to this case, by any prosecution entity or any police entity to
19 provide an assessment of whether psychological harm is consistent with particular
20 allegations they might be making?

21 A. Yes. I would have the experience of preparing victim impact statements in
22 relation to -- to clients following a conviction for rape or sexual violence.

23 Q. So it's your view that when you prepare a victim impact statement you are
24 assessing the veracity and reliability of assertions they are making in relation to their
25 psychological state?

1 A. I would believe that I'm assessing the reliability of their psychological state.
2 But in the Irish jurisdiction such reports would only be requested following
3 a conviction.

4 Q. And the purpose of a victim impact statement is to assess, as it currently exists,
5 a person's psychological state; is that fair to say?

6 A. That is correct.

7 Q. Do you know what statement analysis is?

8 A. No, I don't.

9 Q. Do you know what false memories are?

10 A. Yes, I am familiar with the concept.

11 Q. Have you studied academic literature about false memories?

12 A. I've read widely on the subject.

13 Q. And has that had any impact on how you conduct your interviews with
14 your -- the people who you are interviewing?

15 A. Do you mean in the witnesses I met in, in the DRC or generally?

16 Q. Let's start in general.

17 A. In general, if I am working with somebody in the Irish jurisdiction, for example,
18 with many of my current clients they are adults who have been sexually abused in
19 childhood, we are -- I am obliged, as a professional, to notify statutory child
20 protection services once an allegation has been made against somebody. Therefore,
21 it is very important that I am -- have formed the opinion that the allegation that
22 is -- has been made is -- is well-founded and is, is credible, consistent with the way in
23 which the person is presenting. So that would be a very regular part of my work.

24 Q. Let me be more specific. How does your knowledge of literature on false
25 memories affect, or how has it changed, if at all, the techniques that you use during an

1 interview?

2 A. The literature on false memory is evolving and, in particular, the progress that
3 has been made in the field of neuropsychology is growing. So with the works of
4 people like Professor van der Kolk we're beginning to understand the nature of
5 traumatic memory, how it is laid down in the brain, how it is laid down in quite
6 a different way from normal memory. And, therefore, we're beginning to
7 understand more clearly why, for example, people might develop amnesia for
8 a particularly traumatic event and, you know, how that may evolve and be
9 re-triggered.

10 As a clinician, I always am aware that I need to be very careful not in any way to lead
11 a victim, to suggest anything to the victim, and to determine solely on the basis of
12 what they are telling me what my assessment might be.

13 Q. Do you take any notes during your interviews, typically? And we will come
14 on to the four interviews in particular, but let me just ask you about your general
15 practice. Do you take notes of individuals whom you are interviewing?

16 A. When I am making, doing an assessment, yes, I do.

17 Q. And how detailed are those notes, typically?

18 A. Typically they are quite detailed and will include some verbatim utterances of
19 the, the person I'm interviewing. And also obviously all the biographical
20 information, details of the account of what they're telling me and then details of the
21 symptoms they are describing.

22 Q. Do you keep a record of your own questions typically in those notes?

23 A. Yes, I do.

24 Q. Verbatim?

25 A. Yes. I mean, generally I will follow a set order of questions.

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1 Q. Do you audio record your interviews?

2 A. No, I don't.

3 Q. Even in cases of individuals who are already connected or have some
4 association with the criminal justice system?

5 A. No, I don't.

6 Q. Even when you know those individuals might later appear as witnesses?

7 A. No, I don't.

8 Q. Now, yesterday at page 93, line 5 --

9 A. I'm sorry, I --

10 Q. And you, Madam Witness, you don't have that.

11 A. Okay.

12 Q. And I'm going to be making this reference a number of times during my
13 questioning and it's for the Judges and for my colleagues on the Prosecution side. So
14 you can just ignore when I say something like "page 93, line 5".

15 A. Okay.

16 Q. But you were describing -- this was at the very end of yesterday's testimony and
17 you were describing the scope of your expertise. And if I understood correctly you
18 were drawing a distinction between what you described as psychological
19 consequences. And that was the exact term you used, "psychological consequences,"
20 versus "mental" or "cognitive consequences". And those were the two words that
21 were used by the Prosecution.

22 Can you explain your understanding of the distinction between a psychological
23 consequence, on the one hand, and a mental or cognitive consequence on the other?

24 A. Well my understanding of --

25 PRESIDING JUDGE FREMR: Hold on. Hold on, please, Madam Witness.

1 Ms Luping.

2 MS LUPING: Mr President, I would object to this question. It was exactly the same
3 question I put to the witness when she very clearly stated it was outside her scope of
4 expertise. I don't think it's fair to the witness to ask her to really repeat the same
5 prosecution question when she's already actually provided a very clear indication as
6 to what is and is not within the scope of her expertise.

7 PRESIDING JUDGE FREMR: Mr Gosnell.

8 MR GOSNELL: Mr President, I asked the question because, when I read the
9 question and the answer, I personally did not understand and I would like to know
10 what the witness's understanding of the question was and also the content of her
11 answer. It's perfectly reasonable and appropriate.

12 PRESIDING JUDGE FREMR: Okay, then let's clarify.

13 THE WITNESS: Sorry, that's for me.

14 My understanding of the question, we were speaking about a witness who had a head
15 injury, and my understanding of the question was is there a difference between the
16 impact of a head injury, physical injury and psychological consequences. And I
17 think I stated that while I believe there was a difference, and I perhaps should add
18 that were I to meet a patient who -- where I was taking their medical history and
19 realised they had a head injury, I would immediately refer them to a neurologist for
20 an assessment. But I'm afraid I don't have the expertise to describe the neurological
21 issues. That's how I understood the question.

22 MR GOSNELL:

23 Q. Thank you for that clarification.

24 So just so I am, just so that we're clear, do I understand that when the word
25 "cognitive" was used, what you really had in mind was "neurological"?

1 A. That's how I understood the question, yes.

2 Q. Thank you. Now, am I right that you have not previously, prior to this
3 engagement had any experience interviewing Congolese individuals in
4 a psychotherapy or psychological setting?

5 A. That is correct.

6 Q. And you told us about your interactions with individuals in Rwanda. Is it
7 correct that your contact with patients in Rwanda was in fact very limited?

8 A. No, I had extensive interviews with patients in Rwanda. I think what I said
9 yesterday was I was not involved in providing counselling or psychotherapy to them,
10 that would have been inappropriate, and my role there was training counsellors and
11 psychotherapists. But I certainly interviewed, I don't know, perhaps up to
12 a hundred victims, both of general trauma and sexual violence in Rwanda.

13 MR GOSNELL: May we have DRC-D18-0001-1651, Defence tab 87.

14 Madam Witness, do you recognize this document as being an article of some sort that
15 you wrote?

16 A. Yes, I do.

17 Q. And do you recall the year in which you wrote this article?

18 A. I would imagine it was sometime in, I don't know, 1995, '96.

19 Q. Well it says there on the front page, "since 1995." Possible it was even later
20 than that?

21 A. No, my first visit to Rwanda was in 1995, so, and, I mean, I remained engaged
22 with the project in Rwanda up until 2003 or so. So it's sometime, sometime after that.
23 I'm afraid I don't recollect the exact date.

24 Q. Could it have been 1998? Because I see down at the bottom of the page, in the
25 web address, it says "1998"? Could that be correct?

1 A. That is eminently possible.

2 Q. Could we please turn to ERN page 1654.

3 Just in the middle of the page there, I believe you're referring to a colleague and you
4 say:

5 "Rosemary and I have had very little direct contact with clients. Our role has been
6 that of trainers and supervisors."

7 A. Yes. As I said, we were not providing counselling to, to; the clients of the
8 project. But we certainly would have had contact in the sense of interviews. And
9 in 1995 when I went to undertake the initial assessment I would have met numerous
10 people who described their experiences to me.

11 Q. And the four witnesses in this case whom you met, you communicated with
12 through the intermediation of an interpreter; is that correct?

13 A. That is correct.

14 Q. Could we turn back one page on this document, please.

15 In the middle of the page you write:

16 "We also grapple at a basic level with language; most training sessions have to be
17 delivered through an interpreter. How does one relate to somebody to whom one
18 cannot speak?"

19 Would you say that in fact this phenomenon that you've described here in respect of
20 your communication with trainers would be as strong or even stronger in respect of
21 a psychotherapy assessment or a psychological assessment of a person?

22 A. Well, that actually is a rhetorical question and, again, I haven't read this article
23 for years. But if I recollect, I went on to describe how possible it was to form an
24 empathic relationship despite the language difficulties. So I mean, in my role in
25 meeting the women in DRC, I was not there as a psychotherapist, I was not there as

1 an investigator, I was there to make an assessment. And while of course I wanted to
2 make the witnesses as comfortable as possible, in a two-hour meeting the, there is
3 obviously a limit to the type of relationship one can develop with somebody.

4 Q. Indeed, later in this article you do say that you overcame these difficulties. But
5 you describe that as, and we can go to page 1655 of this document, you say that this
6 has evolved gradually over time and has required a huge personal commitment. So
7 would you in fact agree that it did indeed take you some period of time to establish
8 that vital element of rapport, even with the trainers whom you were interacting with
9 for the purposes of psychotherapy training?

10 A. Well, first of all, about half those trainees were in fact genocide survivors
11 themselves. But that article was written about my very first experience of working
12 in Africa. During those years I learned so much and began to understand, perhaps,
13 the different cultural issues that pertained in Rwanda, later on in Sierra Leone, and
14 later on among the Burundian refugees in Tanzania. So I think my ability to engage
15 with people from a very different culture developed and grew over, over many years
16 and that those particular difficulties might not be there. Again, as I said, I believe in
17 the interviews I conducted in the DRC my role was to put the women at ease to the
18 extent that it was possible in a very anxious situation for them, and I believe that there
19 was no difficulty in my engagement with them to that extent. And remember,
20 present at those interviews were also psychosocial associates from the court with
21 whom the witnesses would have been familiar and that indeed would have helped to
22 reduce the anxiety.

23 Q. We'll be coming back to those interviews in due course. But for the moment
24 let's turn to the page previous to the one that's now showing.

25 And I'm interested in the very last paragraph, it's going to be coming up on the screen

1 in front of you, Madam Witness.

2 A. Yes.

3 Q. And it says:

4 "A major difficulty has been emotional styles. Rwandans are traditionally a stoic
5 people, and public displays of emotion are frowned on. This has broken down
6 somewhat in the wake of the genocide but it is often very difficult to read from
7 a person's face, posture or body language what they are really feeling." Would you
8 stand by that statement?

9 A. I believe that is true generally in terms of Rwandan culture. I believe that
10 certainly the councillors we trained would have reported back and continued to
11 report that in private context, for example, in a counselling room, those patterns
12 would break down but that there is a very strong, strong cultural belief that one must
13 be stoic. I would also say though in Rwanda, following the genocide, that did
14 break down. And I was actually present on one occasion at a remembrance of the
15 genocide, when people, the entire -- there was a stadium of people, people became
16 desperately upset, there was mass, mass experiences of weeping, of anger and so on.
17 So I think following a cataclysmic event such as the genocide it seems that those
18 normal traditional patterns of public composure will break down.

19 Q. And if I understand what underlies this passage correctly, I believe that you're
20 expressing a note of caution that when a person comes from one culture to another
21 culture one must be cautious in drawing inferences about certain mannerisms that
22 might be interpreted in a different way in one's own culture. Is that a fair statement
23 of what underlies what you said here?

24 A. Yes, I believe one must obviously be cautious in any cross-cultural engagement
25 at whatever level.

1 But I suppose what I have learned in the years since and, you know, remember this
2 article was written almost 20 years ago now. What I have learned since is that after
3 extreme adverse events people tend to respond in the same way. And, for example,
4 the demeanour I encountered with the witnesses I met would appear to me to be
5 responses that one might find anywhere in the world if somebody had had such
6 a traumatic episode.

7 Q. Do you think it would be appropriate to infer, and I am not for one moment
8 suggesting that you do this, so this is not about your reports, but do you think it
9 would be appropriate to infer that a Rwandese person was lying to you because they
10 failed to make eye contact with you?

11 A. I would think quite the opposite. In my experience of interviewing Rwandan
12 women in particular, but also men, but for especially the women who had
13 experienced sexual violence it would, was quite common that they would not make
14 eye contact. I also learned that in Rwanda it is inappropriate for a woman, for
15 example, to look a man in the eye. So there are all those cultural cues there would be
16 there.

17 Q. And is what you have said also true to your experience, or is it in conformity
18 with your experience that that same mannerism might apply to men being
19 interviewed by a woman?

20 A. I can only speak from my Rwandan experience. That actually was not the case
21 because it was based on a notion of a power dynamic between men and women that
22 women shouldn't look men directly in the eye, it was unseemly, whereas men did not
23 have that, there was no block on a man looking a woman in the eye.

24 Q. Would you infer that a man was lying if they didn't look a woman in the eye,
25 a Rwandese man?

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1 A. No. No, I would make no such inference.

2 Q. What if they had a hunched-over body posture while they were talking to you?

3 A. Who are we talking about now?

4 Q. Let's take the example of a man, and not necessarily somebody who has been
5 a rape victim, but just a man who you might be interviewing for whatever purpose?

6 A. Yes, I'm afraid I, I can't think of any inference I would draw particularly from
7 that without the sort of cues that would be there given in a context.

8 Q. How long was your interview with each of the four witnesses, as an -- perhaps
9 you can express it as an average, that would be suitable?

10 A. Yes. They were an average of two hours.

11 Q. And am I right that the basis for assessing the existence of psychological harms
12 or psychological consequences was their own accounts of their symptoms?

13 A. Yes, that is correct.

14 MR GOSNELL: Now could we go please to Prosecution tab 2.

15 May I tender, before we leave this document, may I tender this article that was
16 written by Ms Lewis?

17 PRESIDING JUDGE FREMR: Prosecution, any objection?

18 MS LUPING: No objection to specific excerpts being entered. Well, actually I
19 should clarify my position on this. I would just simply seek to clarify my learned
20 colleague's position as to what the purpose of this document is, whether it's
21 admission for the truth of its content, for impeachment purposes. Because at this
22 stage the witness has been put specific passages that have already been entered into
23 the record, she has not disagreed with any of the passages so there has been no
24 impeachment, so it was just seeking clarity on that.

25 PRESIDING JUDGE FREMR: Mr Gosnell.

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1 MR GOSNELL: We would not seek to rely on any passage that I will not read or use
2 during the course of this cross-examination. So if it's your Honour's preference not
3 to admit then I would be in your Honour's hands on that. But with the previous
4 witness we did admit statements that were written by him.

5 PRESIDING JUDGE FREMR: And the purpose of the admission should be what?

6 MR GOSNELL: It will depend on the questions and answers, but I would not go
7 beyond the questions and answers in relation to any particular passage. In other
8 words, just to clarify that, Mr President, for example, what the witness has just
9 explained, we believe that can be relied on for the truth of its content. But she's also
10 explained it orally in her testimony, so this is merely a record of what she was
11 responding to.

12 PRESIDING JUDGE FREMR: Ms Luping.

13 MS LUPING: Yes, now that I have clarity as to what the position is of the Defence, I
14 would just note for the sake of consistency, in fact with Witness P-933, when it was
15 a document written by the witness and he annexed these various documents, they
16 were indeed admitted as a whole. However, where there were additional documents,
17 including documents that he'd written, and the relevant passages had already been
18 entered into the record, they were not simply admitted just solely on that basis. So
19 it's just a question of clarifying the relevance. And now that the explanation has
20 been given, then we don't believe that this should be simply entered, admitted as an
21 entire document for that reason.

22 PRESIDING JUDGE FREMR: Give us a second. We will deliberate silently.

23 (Trial Chamber confers)

24 PRESIDING JUDGE FREMR: So after brief silent deliberation our ruling is that
25 objection is sustained. And we would like to remain consistent with this, our

1 previous approach. Madam Witness has been thoroughly, thoroughly examined on
2 all relevant aspects of that article so we don't see any need to admit this article into
3 evidence.

4 Mr Gosnell, please proceed.

5 MR GOSNELL: Thank you, Mr President.

6 Could we have Prosecution tab 2, which is DRC-OTP-2509-0049. Obviously not for
7 broadcast.

8 Q. And this should be in your binder, Ms Lewis, at tab 2.

9 A. Yes, thank you.

10 Q. And if we could turn to page 2, you write at the very top of the page, "I was
11 commissioned by the International Criminal Court to undertake the following
12 mission."

13 And I would just like to focus on steps 2 and steps 3, if I may, where you say:

14 "To assess whether the witness appears to have suffered any psychological harm or
15 consequences, and if so, to describe what type of psychological harm or consequences
16 and to the extent possible, the date of the onset of that psychological harm or
17 consequences."

18 And then number 3:

19 "To assess whether any psychological harm or consequences suffered are consistent or
20 not with the accounts of harm or consequences provided by the witness in his witness
21 statement, from incidents he alleges were perpetrated against him."

22 Now, this is a passage that appears in each of your four reports as well.

23 A. Yes.

24 Q. Do I understand that this was in fact what you tried to do, you tried to fulfil
25 steps 2 and 3?

1 A. Yes, that was my understanding of my role in the DRC.

2 Q. And since you relied on self-reporting of symptoms, would you agree that this
3 methodology boils down to comparing the witness's historical description of events
4 and assessing whether it is coherent with the contemporary description of their
5 psychological harm to you?

6 A. Yes. I mean the witnesses described briefly, not in as much detail as in their
7 original reports to the court, what they believed had happened to them and then
8 described their current psychological state and the various symptoms and harms that
9 they believed they were suffering. I saw my role as to assess if the symptoms they
10 were describing were consistent with the events that they described or not.

11 Q. So you were describing the consistency of one description with the consistency
12 of another description by the witness, correct?

13 A. Not entirely. I was assessing whether the witnesses had experienced
14 psychological harm and attempting to -- not attempting, I was making a, an
15 assessment as to what that harm was. I was not making any judgment as to the
16 veracity of the account they were making, I was simply making an assessment that if
17 these events had happened were the consequences they were describing consistent
18 with those events.

19 Q. Well, with that clarification, is it fair to say that you were assessing a description
20 of historical events, the consistency of those events, that description with the
21 consistency of the description of trauma?

22 A. No, not exactly. I was assessing the existence of traumatic sequelae, the
23 various types of harm that I describe in my reports. And I was, had also heard,
24 obviously read all the court reports and I had heard their account of what had
25 happened to them. I was simply making an assessment as to whether the harm they

1 described would be consistent with these alleged events. I was not in any way
2 making a judgment as to the veracity of their account of the events that had taken
3 place.

4 Q. And since you didn't have time to engage in an extensive analysis of the
5 witnesses' emotional or psychological state and condition, you did have to rely on
6 their, as you just told us, their own accounts of those symptoms, correct?

7 A. Yes. Now, doing that type of assessment, a post-traumatic stress assessment
8 would routinely be done in an hour, an hour and a half. You know, certainly in
9 America, in Western Europe. And that type of assessment would rely on
10 self-reporting using something as I did, like the post-traumatic stress symptom
11 checklist, and that was what I was asked to do.

12 Q. No reproach to you, Madam Witness, thank you for that explanation.
13 Let's just turn to Prosecution tab 5, please, to see a slightly fuller example. This is
14 DRC-OTP-2059-0080. Not for broadcast. And we're not going to go into any details
15 for the moment.

16 A. Mm-hmm.

17 Q. But let's just be a little bit careful and be mindful that we shouldn't mention any
18 details that could in any way shed light on the identity of this witness?

19 A. Yes, I understand.

20 Q. And if we could turn, please, to page 0085. And I believe that this reflects what
21 you've just described to us as your methodology but I want to check.

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 PRESIDING JUDGE FREMR: Ms Luping.

3 MS LUPING: Mr President, simply that the witness code has now been read out in
4 public session. If we could have that please redacted. We have sought to, or I did
5 in examination-in-chief sought to avoid references to codes because that may be
6 identifying to, indeed, to family members. So if we could avoid the references to
7 codes. If my learned colleague could simply -- if he is wishing to refer to the specific
8 witness or witnesses, if this could be done otherwise in private session.

9 PRESIDING JUDGE FREMR: I think we -- I asked both parties to follow this caveat.
10 So now we have to redact this part of, it's in fact page 40, 41, line 3 of English
11 transcript.

12 So, Mr Gosnell, could we remain in open or what do you think, or should we rather --

13 MR GOSNELL: I will just skip over the pseudonym. And I do apologise, I didn't
14 understand that as long as no details, but I'll just make sure that I just say "the
15 witness".

16 PRESIDING JUDGE FREMR: But I think we set out those rules at the beginning, so
17 please, all of us, let's observe them.

18 MR GOSNELL: Yes, Mr President.

19 Q. So let me just read it again and this time I'll do it the right way. It says:

20 "While having to rely on her subjective narrative and report of symptoms to form an
21 opinion, I find the witness's account of both the events and the psychological
22 consequences to be completely coherent and credible."

23 So again, does this confirm or reflect the methodology that you described?

24 A. Yes, it certainly reflects the methodology I describe. And the use of the word
25 "credible" is perhaps unfortunate when what I really mean by that is that the

1 psychological consequences are completely consistent with the story, the account she
2 gave to me. It is not in any way intended to make a judgment as to its veracity.

3 Q. And you didn't rely on any other information. You didn't have any
4 information beyond the statement and the description by the witness herself to draw
5 this assertion or draw this conclusion about consistency; is that correct?

6 A. The documents that were supplied to me by the Court and my interview with
7 the witness was what I was relying on, yes.

8 Q. Let's move to -- back to Prosecution tab 2.

9 Just to be clear, that's the same method you applied in all four reports; is that correct?

10 A. That is correct.

11 Q. And this is DRC-OTP-2059-0052, not for -- excuse me -- 0049. This is not for
12 broadcast. That's page 4 on the document.

13 And, Ms Lewis, you did address this a little bit during your direct examination. But
14 here you say the witness, whom we will not use the pseudonym, "does not appear to
15 have suffered serious psychological consequences." And then on the next page, if
16 we could turn over to the next page, it says that the witness "has not suffered serious
17 psychological consequences and does not exhibit symptoms or signs of post-traumatic
18 stress disorder."

19 Do you remember having written all that?

20 A. Yes, I do.

21 Q. And yesterday you were asked a clarification by the Prosecution in respect of
22 this. And the question to you was whether or not this individual had suffered, and
23 I'm quoting here, "any psychological consequences, even if not serious." And then
24 you said, and I quote:

25 "Yes, in the sense that he has suffered a persistent sense of the loss, at the loss of his

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1 occupation. However, the man, in my view, was well integrated into his family --"

2 PRESIDING JUDGE FREMR: Ms Luping, you think it's --

3 MS LUPING: No. I'm sorry to interrupt. I cannot recall the precise further

4 passage that follows in this transcript. This was elicited in private session. I'm not

5 sure of the details that will emerge. It is just out of abundance of caution, I don't

6 mean to interrupt my learned colleague, but.

7 PRESIDING JUDGE FREMR: To be safe, we will move into private session.

8 Court officer, please let's move into private.

9 (Private session at 10.55 a.m.)

10 (Redacted)

11 (Redacted)

12 (Redacted)

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5 (Upon resuming in open session at 11.35 a.m.)

6 THE COURT USHER: All rise.

7 Please be seated.

8 PRESIDING JUDGE FREMR: Before we continue with cross-examination of our
9 witness, I would like just to make an enquiry for the purpose of further planning.

10 Mr Gosnell, you still have at your disposal slightly more than two hours. Do you
11 think you will need all that time or not? It's just a question.

12 MR GOSNELL: Mr President, I would really like to finish before lunch and I am
13 really going to try and do that. But I can't give any guarantees, Mr President.

14 PRESIDING JUDGE FREMR: Because the idea is that I also probably will put two or
15 three questions.

16 Ms Luping, do you envisage any request for extensive redirect?

17 MS LUPING: At this stage I have no questions, in fact, Mr President, your Honours.
18 At this stage.

19 PRESIDING JUDGE FREMR: Just inform me about the possibility that if we would
20 have a chance to complete all testimony in two hours, then the Chamber would rather
21 take now one two-hour session, than adjourn and to reconvene for, I don't know, 30,
22 20 minutes in the afternoon. So just do please have in mind this possibility. But it
23 doesn't mean we are forcing you to finish, either.

24 Anyway, now you have the floor, Mr Gosnell.

25 MR GOSNELL: Thank you, Mr President. I think we need private session for

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- 1 a while now.
- 2 PRESIDING JUDGE FREMR: All right.
- 3 Court officer, let's move into private session.
- 4 (Private session at 11.37 a.m.)
- 5 (Redacted)
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8 (Open session at 12.21 p.m.)

9 THE COURT OFFICER: We are in open session, your Honour.

10 And just a question for Counsel Gosnell: The number you mentioned does not

11 corresponded to what we have on the list of documents you provided us with, tab 9.

12 MR GOSNELL: This is the Hanly book, and the number that I have, and I do believe
13 it's correct, I may not have read it correctly, but it's DRC-OTP-2093-0356.

14 PRESIDING JUDGE FREMR: So you may proceed, Mr Gosnell.

15 MR GOSNELL: Thank you, Mr President. And could we please turn to ERN
16 page 0450, which is page 156 of the document itself.

17 Q. And, Ms Lewis, this was not a page that was shown to you by the Prosecution.

18 I don't know if it helps for me to say that it's ERN page 0450.

19 By the way, Ms Lewis, do you have this in the binder in front of you?

20 A. Yes, I think I do. Yes, I do.

21 Q. It might make it easier for you just to read off the page along with me.

22 A. I'm sorry, could you tell me the page number again?

23 Q. Yes, it is page 156 to 157 of the book itself.

24 A. Yes, I have it here.

25 Q. Under a title "Delayed Reporting" it says the following.

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1 A. Mm-hmm.

2 Q. "This section describes the timing of the report to the police and outlines the
3 reasons respondents gave for not reporting straight away. Table 4.16 shows that the
4 majority of individuals that did report contacted the police within 24 hours.
5 Twenty-two (33.3 per cent) reported the offence within one hour, while a further 22
6 notified the Gardaí", which --

7 A. That's the Irish police force.

8 Q. Yes, Irish police, "within 24 hours of the assault occurring. Eighteen per cent
9 waited a month or more before reporting. The longest delay was 18 months after the
10 assault." We can see here that all of the respondents had reported, or the members of
11 the study had reported the rape within 18 months, correct?

12 A. Yes, that's correct.

13 Q. It's fair to say even that rates of reporting or timing of reporting will depend on
14 a wide variety of factors; is that right?

15 A. Yes, that's correct. And I mean, this study concerned women who had decided
16 to make a report in the first place. It doesn't -- really, many are in -- it passing
17 addresses women who didn't report at all.

18 PRESIDING JUDGE FREMR: Ms Luping.

19 MS LUPING: Mr President, just if I could ask my learned colleague to just refer
20 again to the ERN. The page that is being shown to the witness and to us at the
21 moment does not have any of these details. Unless I'm missing something. But I
22 cannot see it. If he could just refer to the page.

23 MR GOSNELL: Well, it's certainly page 156 and 157 of the document with the ERN
24 number DRC-OTP-2094-0360. And the page number that I have, the ERN page
25 number.

1 MS LUPING: Yes, the ERN page number I believe you referred to 0453. We have
2 at present and before us 0450.

3 MR GOSNELL: Yes, it should have been 0450. I thank my friend for -- excuse me,
4 my colleague from the Prosecution for pointing that out.

5 Yes, there it is, thank you. I don't plan to ask any more questions about this,
6 Mr President. I don't know if your Honours want a moment to have this on the
7 screen in front of you.

8 PRESIDING JUDGE FREMR: We do, yes.

9 Okay, so let's proceed.

10 MR GOSNELL: Thank you, Mr President.

11 Could we now move, please, to DRC-OTP-2093-0226.

12 Q. This is tab 6 in your binder, Ms Lewis.

13 This is the Oxfam International and Harvard Humanitarian Initiative report that you
14 discussed a little bit during your direct examination. If we could please turn to ERN
15 page 0265. This is page 35 of the document and there's a paragraph here that I
16 would like to seek your comment on. And it reads as follows:

17 "Because we cannot identify the military group for two thirds of the sexual assaults,
18 we simply do not have enough data to draw conclusions about the relative roles of
19 each of the military groups in perpetrating violence. Second, the ability of a sexual
20 violence survivor to accurately identify her perpetrator as belonging to a specific
21 military group is questionable. Women are often attacked at night in locations that
22 are either dimly lit or without electricity altogether. Thus, many women are not able
23 to clearly see the uniforms, insignia or other identifying characteristics that would
24 allow them to confidently say that the perpetrator belonged to a particular armed
25 group. Coupling this poor visibility with the fear and terror that must be

1 experienced during a sexual assault and with the fear that must be experienced when
2 your loved ones are in danger, we understand how easily identification errors might
3 occur. Additionally, some women identified their perpetrators by the language the
4 perpetrators spoke during the assault. Sometimes these were languages that the
5 women did not speak or understand themselves. This too, is questionable as
6 a means of identifying the perpetrator since the women may not have correctly
7 identified the language and because speaking a particular language or dialect does
8 not indicate a military allegiance."

9 Now this is all in the context of South Kivu, Madam Witness?

10 A. Yes.

11 Q. And I won't ask you to comment on every detail in this passage, because that
12 would be beyond the scope of your expertise. But what I am interested in knowing
13 is whether the existence of PTSD can interfere with a person's ability to recall, let's
14 start with that, to recall events that they may have suffered or gone through?

15 A. Yes. At the moment of trauma people can be very shocked and confused and
16 the traumatic event can make it difficult for people to recall clearly. I was surprised
17 in the case of the four witnesses I spoke to that they did seem to have a very clear
18 recollection of what had happened.

19 In terms of identifying who -- in relation to sexual violence, one woman had known
20 the person she alleges raped her before the events had happened, so she identified
21 him. In the case of another woman she stated clearly she was not able to identify the
22 person who perpetrated the assault. And in the case of the third woman, she was
23 able to name one person but not, not two others.

24 So it was not something I discussed in great, in any detail with the witnesses because,
25 as you will appreciate, I was not there as an investigator and was more interested in

1 their personal experience of what had happened rather than in attempting to, you
2 know, to garnish evidence.

3 Q. Relative to what experience of yours or expectations of yours do you say you
4 were surprised?

5 A. No, perhaps surprised is too strong a word. But it was marked that the
6 four -- three witnesses, the three women were able to give very coherent accounts of
7 what had happened to them. This is not unusual with people who have been
8 through, who have been through a traumatic event. But we can expect at times some
9 people will be confused and unsure and unable to give a detailed response after
10 a traumatic event. It is not unusual that these women would have had clear
11 memories, but -- very clear memories, but it was quite marked that each one of them
12 was able to give a very clear account of what had occurred to them.

13 Q. So a person suffering from PTSD could equally give a convoluted and confused
14 account or a clear account. Is that --

15 A. Not necessarily.

16 Q. Is that fair to say?

17 A. No, not necessarily a convoluted account, rather, an account where they can't
18 remember bits of the story, bits of the detail. That would not be unusual.

19 Q. Well, I didn't mean to put words in your mouth. What I essentially meant to
20 ask you was whether PTSD could have either consequence, namely, that it could lead
21 to a much less specific description or a more specific description. Is that fair to say?

22 A. I think that depends very much on the person who has experienced the trauma.

23 Q. It would not be inconsistent with a person with PTSD to have either type of
24 description; is that correct?

25 A. It would not be inconsistent. No, it would not.

1 Q. And would it be correct to say that the existence or the absence of PTSD would
2 do nothing to enhance the credibility or reliability of information of this level of
3 specificity that we see in this passage? Is that fair to say?

4 A. Obviously, at the moment the traumatic event occurs the person does not have
5 a PTSD. PTSD arises and can only be diagnosed if the symptoms persist for at least
6 a month after the event. So, I mean, a lot depends on the context of which the
7 trauma is happening, the personal characteristics of the victim, the, the nature of the
8 events that happen, the level of horror and fear that are there. But it is not at all
9 unusual that people will have very, very clear memories of a traumatic event.

10 Q. The existence of PTSD makes it neither more nor less likely that specific details
11 such as those mentioned in this passage are reliably reported; is that correct?

12 A. That is correct.

13 MR GOSNELL: Thank you.

14 Mr President, I have no more questions.

15 PRESIDING JUDGE FREMR: Very well. Ms Luping, any request for re-direct?

16 MS LUPING: Yes, I will have a couple of questions, but my first question will need
17 to be in private session, please, with your leave.

18 PRESIDING JUDGE FREMR: And how much time you would like to use for this?

19 MS LUPING: I think I need approximately 15 minutes.

20 PRESIDING JUDGE FREMR: Two hours ago you said you will need no time.

21 Okay, 15 minutes, but please sharp.

22 And now let's move into private session.

23 (Private session at 12.35 p.m.)

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24 (Open session at 12.55 p.m.)

25 THE COURT OFFICER: We're in open session, your Honour.

1 PRESIDING JUDGE FREMR: Thank you, court officer.

2 Madam Witness, I also have for you three questions, or three issues I would like just
3 briefly to clarify.

4 First one, you had been intensively questioned on reasons why victims of rape used
5 to report that with delay.

6 What, according your experience, used to be an impulse or reason for those victims to
7 break their silence and report their rape? As far as I remember, you had mentioned
8 a case when victim reported that because she was forced to seek medical attention.

9 And my question is: Are you aware of any other reasons or impulses that led
10 witnesses of rape to change their attitude and report rape they suffered?

11 THE WITNESS: Yes, Mr President. If I just refer to conflict, in post-conflict
12 situations. In my experience, for example, in the former Yugoslavia and in Rwanda,
13 the medical reasons I've mentioned were one reason why women were forced to come
14 forward. Another factor though was the, the establishment of, if not necessarily
15 peace, at least a calmer environment in the country. We know from research
16 worldwide that victims of conflict, for example, often don't begin to deal with the
17 effects of post-traumatic stress until they have feel safe, until they've established
18 a place to live, until they are reasonably sure that there won't be further attacks, or so
19 on.

20 So for a lot of the women in Rwanda it was in the years after the events of '94 so it
21 wasn't, in many cases, until '97, '98, '99, 2000 that women were coming forward
22 seeking psychological help.

23 I think too, for example, in the case of Rwanda the very fact that there was
24 psychological help available was an encouragement to the women to come forward.

25 And my understanding of the events in DRC in the time frame involved, I'm not sure

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1 where those women could have reported to. They had contact with court officials in
2 2005 and then not till years later. They were then in different living situation and
3 I don't know what precipitates them to make those disclosures.

4 Another factor is the gender of the person who is doing the interview. And there is
5 a lot of research worldwide that shows that female rape victims and male victims are
6 much more likely to disclose episodes of sexual violence to a female investigator,
7 police officer, psychotherapist, whatever. So I have no idea what the, who the
8 gender, or of which gender were the original investigators in 2005, but hypothetically
9 that could also be a factor.

10 So they would generally be. I'm not sure if that answers your question. Yes.

11 PRESIDING JUDGE FREMR: And I appreciate that you narrowed the area to
12 post-conflict reaction of victim, because it was just area of my interest. So thank you
13 for that.

14 Second issue, do you think that the person of -- the perpetrator, his identity could
15 play any role in decision of the victim to report that? And I will illustrate it on
16 practical example, is the alleged perpetrator was member of enemy, in an enemy tribe
17 that was in war with the tribe of the victim. I guess you can, you could face these
18 kind of cases during your contact with victims from Rwandan genocide. So do you
19 think that this fact could also, had some impact on role, whether the victim reports
20 the rape or not?

21 THE WITNESS: If -- I am not sure if I understand that somebody might maliciously
22 report somebody because they were a member of an enemy tribe. Is that your
23 question?

24 PRESIDING JUDGE FREMR: Simply, no, whether you see any different. We could
25 also see such cases during the World War II when women have been, have been

1 raped by soldiers from the opposite, opposite army. So whether this factor that it
2 was not in fact perpetrated from the same nation, same tribe, but on the contrary
3 a perpetrator represent enemy tribe. But it could have any role. If not I am not,
4 I don't want to push you to any conclusion if, according to you, it doesn't may play
5 any role.

6 THE WITNESS: I mean, there is a lot of research that shows that when women are
7 raped by an intimate partner or a member of their own family they often find it more
8 difficult to report because of the consequences. And that, in my experience, it is
9 often easier to report a stranger rape because that fits more closely into the stereotype
10 of how rapes happen rather than the truth of how rapes happen.

11 Certainly in Rwanda the fact that the women had been raped by somebody from
12 a different tribe, a different ethnic group I don't think was a huge factor. What
13 actually prevented disclosures was the shame, same stigma and shame that remained
14 attached to the fact of being raped. And in Rwanda one of the big precipitating
15 factors were medical needs and then later on the provision of confidential counselling
16 services for the victim. There would have been very few women in Rwanda who
17 would have attempted through the judicial system to get justice for what had
18 happened to them.

19 PRESIDING JUDGE FREMR: And last question, have you ever met case when some
20 woman pretended that she was raped or she had been raped and also, in the frame of
21 that, she tried to pretend symptoms of post-traumatic syndrome?

22 THE WITNESS: Well, first of all, false reporting of rape the research would show
23 worldwide is actually very low. I certainly in my practice have met women who
24 were intending or had made reports to the police where I doubted very much the
25 veracity of their accounts, partly because how they were presenting. It is very

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1 difficult to an experienced clinician such as myself to simulate the effects of rape.
2 But I would add, except in one case that I can remember, in all those cases the women
3 really were suffering from quite serious mental health difficulties. In one case the
4 woman had a diagnosis of bipolar disorder and it was arising from the mental health
5 difficulties that the false complaint came, rather than a malicious intent to -- one
6 woman, for example, had made a report and she then claimed that every police officer
7 in the police station had raped her. So clearly, you know. But even with less
8 dramatic claims than that, I have only encountered in my, in my practice one case of
9 malicious, a malicious allegation of rape. And it very quickly unravelled because it
10 is very difficult to consistently simulate the impact, the psychological of rape when
11 you're dealing with experienced clinicians.

12 PRESIDING JUDGE FREMR: Thank you very much, Madam Witness.

13 Do my colleagues have any question for the witness? Okay, so it means that it
14 concludes your testimony. So, Ms Lewis, I would like to thank you very much that
15 you testify and that you share your expertise with us. It was, I have to openly say,
16 very interesting to me and I believe it would also assist us in our deliberation in this
17 case. So thank you very much.

18 THE WITNESS: Thank you, Mr President. It's been an honour.

19 PRESIDING JUDGE FREMR: Now, please, court officer, you may guide Madam
20 Witness out of the courtroom.

21 (The witness is excused)

22 PRESIDING JUDGE FREMR: So before we adjourn, are there any further requests
23 for the floor? Prosecution?

24 MS LUPING: Nothing from us, Mr President.

25 PRESIDING JUDGE FREMR: Defence?

1 MR GOSNELL: Yes, Mr President. This is an oral application. Probably you're
2 going to tell me that it should be in writing, but there is a time issue.

3 PRESIDING JUDGE FREMR: It's very likely, but try.

4 MR GOSNELL: There is a time issue. And it also is relevant to a witness that we
5 just heard, not the last witness but the witness before. I won't mention the
6 pseudonym of the intermediary in question, but there was an intermediary who was
7 discussed frequently in respect of not the last witness, but the penultimate witness.
8 This intermediary is relevant to upcoming witnesses, in fact the next witness.
9 Your Honours experienced, saw and heard how the absence of knowledge of the
10 identity of that person made it difficult to get to the bottom of what was going on,
11 I would suggest, and interfered with the Defence's ability to cross-examine the
12 witness.

13 I won't go into more detail at this point. You probably would want any more detail
14 to be in writing. But if your Honours, having experienced that cross-examination
15 feel that, you can see why there is a need for the identity, then of course we would
16 like that to be done as soon as possible. I don't know what the Prosecution's position
17 is. Whether perhaps they might have changed their position after having heard the
18 cross-examination, but in any event that is our application at the moment.

19 PRESIDING JUDGE FREMR: Ms Luping, any reaction?

20 MS LUPING: Mr President, your Honours, the Prosecution's position remains the
21 same, simply because the security risks or issues that we are concerned with remain
22 the same. If the Defence would like to make an application, our suggestion is that it
23 be done in writing, we'd be happy to respond in writing. One of our -- our response
24 will need to be on an ex parte basis in terms of detailing the various risk and threat
25 issues that I alluded to during the prior witness's testimony.

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- 1 PRESIDING JUDGE FREMR: All right. Obviously in such a case we encourage
- 2 you to, first of all, to continue in a way of writing applications and with the
- 3 knowledge that it's urgent issue. So even the Chamber then will I think adjust the
- 4 further proceedings to the fact.
- 5 That is for the moment, otherwise I have to announce that we will adjourn now and
- 6 according our schedule we are going to continue on Wednesday, 6 July with the next
- 7 witness at 9.30.
- 8 Now court is adjourned.
- 9 THE COURT USHER: All rise.
- 10 (The hearing ends in open session at 1.07 p.m.)