

Trial Hearing
WITNESS: DRC-OTP-P-0935

(Open Session)

ICC-01/04-02/06

1 International Criminal Court
2 Trial Chamber VI - Courtroom 3
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
7 Friday, 16 September 2016
8 (The hearing starts in open session at 9.32 a.m.)
9 THE COURT USHER: [9:32:10] All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: [9:32:31] Good morning, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: [9:32:43] Thank you, Mr President. The situation in the
15 Democratic Republic of the Congo in the case of the Prosecutor versus Bosco
16 Ntaganda, case reference ICC-01/04-02/06.
17 And for the record, we are in open session.
18 PRESIDING JUDGE FREMR: [9:32:58] Thank you, court officer.
19 Appearances, please.
20 MS SAMSON: [9:33:01] Good morning Mr President, your Honours. For the
21 Prosecution today are Ms Marion Rabanit, associate trial lawyer; Mr Rens van der
22 Werf, assistant trial lawyer; Ms Selam Yirgou, case manager; myself, Nicole Samson,
23 senior trial lawyer.
24 PRESIDING JUDGE FREMR: [9:33:17] Thank you, Ms Samson.
25 Defence, please.

1 MR GOSNELL: [9:33:20] Good morning, Mr President. Good morning, your
2 Honours. Christopher Gosnell appearing on behalf of Mr Ntaganda, who is not
3 present in court this morning, assisted and accompanied by Marilyn Yahya Haage,
4 Margaux Portier and Maria-Kim Vasconi. Thank you, Mr President.

5 PRESIDING JUDGE FREMR: [9:33:40] Thank you, Mr Gosnell.
6 Legal Representatives of Victims.

7 MS PELLET: [9:33:46] (Interpretation) Thank you, Mr President. Former child
8 soldiers are represented by Mohamed Abdou and myself, Sarah Pellet, counsel at the
9 OPCV.

10 MR SUPRUN: [9:33:59] (Interpretation) Good morning, Mr President. Good
11 morning, your Honours. Victims of the attacks are represented by the OPCV, Anne
12 Grabowski, myself, Dmytro Suprun, counsel.

13 PRESIDING JUDGE FREMR: [9:34:13] Thank you, Ms Pellet. Thank you,
14 Mr Suprun.

15 Ms Pellet, the problem with your computer still remains?

16 MS PELLET: [9:34:23] (Interpretation) Yes, Mr President. I will do that at the
17 break.

18 PRESIDING JUDGE FREMR: [9:34:30] Thank you.

19 One last before we start or before we continue with testimony of our expert witness,
20 one thing as concerns Mr Ntaganda, I realised the situation on his part remains the
21 same, which means he's not fit enough to undergo transport to the Court, but he's fit
22 enough to follow our proceedings from the video room in the detention facility, but
23 he's not wishing unless there will be force used, and in for that case, Mr Ntaganda
24 claimed that he then wouldn't take his headphones, which means that even position
25 of the Chamber remains the same. Under those conditions we will continue without

1 Mr Ntaganda.

2 And now, Dr Martrille, good morning.

3 Mr Gosnell.

4 MR GOSNELL: [9:35:41] Mr President, thank you very much for those indications.

5 May I just inform the Chamber that I'm not in possession of an updated medical
6 report of any kind from this morning. So I just wanted to put that on the record.

7 And I also wanted to inform your Honour that Mr Bourgon is meeting with the
8 Director of Court Services, as I understand at the moment, and I understand there
9 may be developments shortly. But I just wanted to let your Honours know that.

10 Thank you very much.

11 PRESIDING JUDGE FREMR: [9:36:13] Thank you, Mr Gosnell. And I would like to
12 repeat one thing, that we urgently need written consent of Mr Ntaganda which would
13 allow us to get acquainted ourselves with the psychiatrist's report. Mr Bourgon
14 indicated that it should be the case. So I would like just to convey this message,
15 because I guess today will be the ideal chance to get this written consent. So we
16 encourage Defence, Mr Bourgon, to get it.

17 Ms Samson.

18 MS SAMSON: [9:36:53] Thank you, Mr President. Two points. For the
19 Prosecution side, we wonder whether there is any update as to a medical examination,
20 a fresh one, whether that's being conducted today or tomorrow or what the time
21 frame is for such an evaluation; and secondly, we reiterate the request made earlier
22 for access to a copy of the medical reports that come to light, should the Chamber
23 approve that request. Thank you.

24 PRESIDING JUDGE FREMR: [9:37:26] My understanding is that, as I am informed,
25 that this medical examination is repeated every morning, but what we still don't have

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1 at our possession is this detailed report from the psychiatrist.

2 Now, Dr Martrille, again, good morning. Welcome back. Even I'm sure that you
3 are aware of that, but it's my legal duty to remind you that you are still under oath,
4 and now we will continue with your cross-examination, which will be conducted by
5 Defence concretely by Mr Gosnell.

6 Mr Gosnell, you have the floor.

7 Oh, Ms Samson.

8 MS SAMSON: [9:38:17] Yes, I believe I still have 37 minutes left in my
9 examination-in-chief. I'm almost done.

10 PRESIDING JUDGE FREMR: [9:38:26] Ms Samson, I'm sorry for that. It was my
11 error. So sorry, you still have 37 minutes. Please, you go ahead.

12 MS SAMSON: [9:38:32] Many thanks, Mr President.

13 DRC-OTP-P-0935 (On former oath)

14 (The witness speaks French)

15 QUESTIONED BY MS SAMSON: (Continuing)

16 Q. [9:38:35] Good morning, Dr Martrille.

17 A. [9:38:38] Good morning.

18 Q. [9:38:38] Dr Martrille, the pace with which you were answering your questions
19 yesterday was very good, very natural. But what I would ask today is that you slow
20 down a little bit more. It's a bit artificial, I know, but because the language you are
21 using is very technical, I want to be certain that the interpreters have time to fully
22 interpret what you're saying.

23 A. [9:39:10] Very well.

24 Q. [9:39:12] And yesterday, Doctor, you used a term "comminuted," which I think
25 in French is "comminutive." And I wonder if you could explain what that term

1 means.

2 A. [9:39:30] Yes. We talk of comminutive fractures when there are several bone
3 fragments involved. We have a situation where the bone is broken into several
4 pieces, and that's called a comminutive fracture. That is where there is a linear
5 fracture, you have a linear fracture. But when we have several pieces of broken
6 bones, that is referred to as a comminutive fracture.

7 Q. [9:40:11] Thank you for that explanation.

8 What I intend to do this morning is to continue examining the remaining cases,
9 corpses that you looked at in the course of your mission. We stopped yesterday with
10 the case of KOB1-F2-B3. So I'll start there today. I have -- have you been given
11 your binder of materials? Then I would ask you, please, to turn to tab 1 --

12 A. [9:40:44] Yes.

13 Q. [9:40:46] -- which is a copy of your report. At page 18 through to 21 you've
14 set out your observations and conclusions with respect to this corpse. And our
15 registration number, it's numbers 0691 to 0694. Could you let the Chamber know,
16 please, what conclusions you reached as to the age and gender or sex of this corpse?

17 A. [9:41:21] Here we are looking at someone who was between 25 and 35 years old,
18 most likely a man, and who was about 1 metre 60, more or less of 4 centimetres, and
19 of African ancestry compatibility.

20 Q. [9:41:55] Did you reach an opinion as to the cause and manner of death for this
21 individual?

22 A. [9:42:00] Now, when it comes to the cause of death, it would appear, except in
23 case of previous injuries that did not affect the bones, it's a trauma to the skull
24 following a blunt -- a violent blunt trauma occurring in the parietal temporal left part,
25 that is on the left part of the cranium. Clearly then, this was a blunt trauma case

1 arising most probably -- rather, being most probably the cause of death.

2 Now, when it comes to the manner of death, mindful of the scale of the injury and the
3 violent shock or trauma, the most probable manner of death is homicide, which I
4 must say is compatible with homicide.

5 Q. [9:43:21] And I will ask you to explain your conclusions or the basis for those
6 conclusions by way of a photograph again today.

7 So, court officer, I would ask that you display document photograph
8 DRC-OTP-2067-0431. It's a public document.

9 Can you see the image on your screen?

10 A. [9:44:33] Yes.

11 Q. [9:44:36] If you could explain what the image can tell you about the cause of
12 death, using the annotation pen, please.

13 A. [9:44:48] Yes, indeed. Here you can clearly see a comminuted fracture, as I
14 explained a short while ago, on the left side of the cranium. Now, with this pen I
15 will point out the point of impact.

16 SECURITY ANNOUNCEMENT: Ladies and gentlemen, fire, emergency, and we
17 need to evacuate immediately. We have a fire emergency and all staff, your
18 Honours, we need to evacuate immediately.

19 PRESIDING JUDGE FREMR: [9:45:58] So we adjourn and please calmly -- we
20 adjourn and please calmly leave out of the courtroom and the building. It's a fire
21 drill.

22 (Recess taken at 9.46 a.m.)

23 (Upon resuming in open session at 11.18 a.m.)

24 THE COURT USHER: [11:18:24] All rise.

25 Please be seated.

1 PRESIDING JUDGE FREMR: [11:18:47] Good morning again. First of all, I'm very
2 glad that I see all of you back in order, because I can imagine that it was really a tough
3 experience, and especially for Mr Witness.

4 Mr Witness, even if I am not -- have nothing to do with organisation of this fire
5 exercise, fire alarm, my apology goes to you, because we realised you remained
6 abandoned on the parking lot, so sorry for that.

7 And I'm also sorry that we, I don't know who was behind that we are sitting on the
8 6th floor, because normally we sit at least on the 4th floor, especially those like me
9 who even climbed back upstairs really, really enjoyed. So I hope that the worst
10 moment of the day is behind us and we can continue.

11 Which means, Ms Samson, you have the floor.

12 MS SAMSON: [11:19:48] Thank you, Mr President.

13 Q. [11:19:49] At the time of the break, at the time that we broke, Dr Martrille, you
14 were about to explain your conclusions with the help of the image for corpse F2-B3.
15 Court officer, could you please display the image again. It's DRC-OTP-2067-0431.

16 A. [11:20:27] Very well. I'm going to point out the fractures so we can understand
17 what the impact was. Here we can see some linear fractures here and there as well.
18 So the point of impact is here at the centre. And you can see some fractures, some
19 concentric fractures as well at this level, here and here as well.

20 This clearly points to the zone of impact for a trauma, a blunt force trauma with linear
21 and concentric fractures, as well as fragmentation of some of the bones.

22 Q. [11:21:25] Thank you for the explanation.

23 I'm going to move on now to the next corpse, which is KOB1-F2-B4. And I will ask
24 the court officer to display image DRC-OTP-2067-0479. And apologies, your Honour,
25 I forgot that we ought to admit, with your leave, this annotated photograph into

1 evidence.

2 PRESIDING JUDGE FREMR: [11:21:57] Mr Gosnell, any objection?

3 MR GOSNELL: [11:21:59] No, Mr President.

4 PRESIDING JUDGE FREMR: [11:22:01] So this annotated photograph is admitted
5 into evidence as a further Prosecution exhibit.

6 Ms Samson, please proceed.

7 MS SAMSON: [11:22:12] Thank you.

8 Q. [11:22:13] And while we're waiting for the next image to upload, Dr Martrille,
9 your conclusions for corpse F2-B4 can be found at pages 22 to 24 of your report,
10 0695-0699.

11 A. [11:22:43] Yes.

12 Q. [11:22:44] And what conclusions did you and Dr Delabarde reach with regard to
13 the sex and age of this corpse?

14 A. [11:22:56] The individual was likely male of 40 to 55 years old.

15 Q. [11:23:18] Did you reach an opinion as to the cause and manner of death of this
16 individual?

17 A. [11:23:25] Yes. We noticed that this person had received a serious and violent
18 blow to the head by blunt force trauma, to the parietal left temporal area of the
19 cranium. And subject to, as has been the case always to any preexisting causes of
20 death which may not have had an impact on the bones, the most likely cause of death
21 in this case is trauma to the cranium arising from at least one blow.

22 When it comes to the manner of death and mindful of the seriousness of the injury,
23 the manner of death would be consistent with a homicide.

24 Q. [11:24:29] And the image or photograph that you see on your screen, which
25 indicates that it's of corpse F2-B4, could you please annotate it as you have with the

1 other images, explaining your conclusions?

2 A. [11:24:45] Yes. We can see here, right here and here, as well as here, a number
3 of radiating fractures. And even though the last one is at a higher level, the point of
4 impact generally speaking is here, where the circle is drawn.

5 We can also observe a number of radiating fractures which point to a blunt force
6 trauma. And you can see right here, where I am indicating by way of an arrow, a
7 deformation resulting from an impossibility to reconstruct the fragments. And this
8 refers quite typically to a high-intensity trauma, blunt force trauma.

9 Q. [11:26:12] Thank you. And at page 25 of your report in relation to this corpse
10 F2-B4, under manner of death, heading that starts with a "G," you've indicated that
11 the most plausible manner of death is homicide. And just now you've stated that the
12 manner of death is compatible with homicide. And I wonder if there is a difference
13 between those two interpretations of the manner of death?

14 A. [11:26:43] Well, yes, indeed, in my report it says most plausible, which is a
15 standard slightly higher than with compatibility. Now, when we say "plausible"
16 however, it is not formal, it is plausible, whereas compatibility simply refers to
17 consistency. But plausibility is not a formal assertion as such.

18 Q. [11:27:22] And so for this particular corpse, is your interpretation and opinion
19 that the most plausible cause of death is homicide or that it's merely compatible with
20 homicide?

21 A. [11:27:45] One can say that it's the most plausible cause, mindful of the nature of
22 the injury, subject always to the fact that there were no preexisting injuries that may
23 have had impact on the bones, since we're dealing here with skeletons. There might
24 be a primary cause here, but there might as well be other causes that need to be
25 examined from that angle as well.

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1 Q. [11:28:22] Turning now to corpse F3-B1, that corpse is addressed in your report,
2 pages 27 to 31: That's ERN 0700 to 0704. And court officer, if I could ask you to
3 display on the screen image at DRC-OTP-2067-0540. It's a public document.

4 THE COURT OFFICER: [11:29:01] Would you like us to save the annotated version
5 of the photograph?

6 MS SAMSON: [11:29:06] Yes, thank you. I do keep forgetting that.

7 PRESIDING JUDGE FREMR: [11:29:18] Mr Gosnell, any objection against tendering,
8 admitting this annotated photo.

9 MR GOSNELL: [11:29:23] No, Mr President. Thank you.

10 PRESIDING JUDGE FREMR: [11:29:25] So this annotated photograph is admitted
11 into evidence as a further Prosecution exhibit.

12 Ms Solano -- Ms Solano? Ms Samson, please proceed.

13 MS SAMSON: [11:29:38]

14 Q. While we're waiting for the image to appear on the screen, Dr Martrille, were
15 you and Dr Delabarde able it reach conclusions as to the sex and age of this corpse
16 F3-B1.

17 A. [11:29:52] Yes. This is a subject who is rather to be masculine with an age
18 between 20 and 30 years.

19 Q. [11:30:15] And using the image in front of you to the extent you need to explain
20 your answer, were you able to reach conclusions as to the cause and manner of death
21 for this individual?

22 A. [11:30:31] So for this subject we also highlighted a blunt force skull trauma
23 incident, a violent one, which was in the region which is slightly right behind the
24 skull. And you have to understand on the photograph that the skull is turned
25 towards the left. The skull is on its left part. So if you want it behind the subject,

1 you would have to rotate that in order to see the skull on the right side.

2 So once again you can see a large amount of fractures and you can also see lots of
3 fragments that are missing here. But even if you can see certain radiating and
4 concentric fractures, there is a less precise point of impact. The overall area is
5 occipital on the right, paramedian right, in the right area, right side. So the most
6 probable cause of death, other than other causes of death which haven't been noted
7 on the bones, is a blunt force trauma following a violent blow to the skull.

8 And with regards to the mode of death, taking into account the importance of the
9 injuries and the different possibilities, the most plausible, and that's what I said in the
10 previous case, is homicide, subject to the reservations of the state of the body and
11 what we can interpret therefrom.

12 Q. [11:32:39] And would it -- could you please show us with the annotations how
13 these injuries allowed you to reach that conclusion?

14 A. [11:33:04] Well, what you can see here, you can see radiating
15 fractures -- concentric, please excuse me, concentric fractures. And as I said
16 previously it's -- there are pieces missing, so you probably have a radial fracture here.
17 And whatever the case, the skull is multi-fragmented, the comminutive way with
18 plastic deformations that can be seen here, and also there is a delamination. What
19 that means is that the skull can lose a certain size in terms of the skull, and that is also
20 a sign of a blunt force trauma. So here I'm not designating the precise point of
21 impact but more or less the point of impact.

22 If I had to give an area, that would be approximately in this black zone here, knowing
23 that obviously when one interprets such fractures you have the skull in your hand
24 and you move the skull in all different areas. And this is a fixed photo, which makes
25 it possible to give a few explanations but which isn't as interesting as if you actually

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1 have the bones here with us to enable us to explain them. But generally we're certain
2 that this is a blunt force trauma and the zone of impact is in this area which has been
3 encircled with the black line.

4 Q. [11:34:48] I'm going to ask you now to move to the next corpse in the same
5 grave, so that's KOB1-F3-B2 which is -- apologies, your Honour, I neglected again to
6 seek to admit the annotated version of the last photograph.

7 PRESIDING JUDGE FREMR: [11:35:12] Mr Gosnell, should I ask you every time, or
8 if you will remain silent, may I take it as a sign of your approval?

9 MR GOSNELL: [11:35:19] You may, Mr President. Thank you.

10 PRESIDING JUDGE FREMR: [11:35:21] Thank you.

11 So this annotated photograph is also admitted into evidence as a further Prosecution
12 exhibit.

13 Ms Samson, please proceed.

14 MS SAMSON: [11:35:33] Thank you.

15 Q. [11:35:34] So, Dr Martrille, if I could ask you please to turn to page 38 to 42 in
16 your report which are registration number 0711 to 0715.

17 And at the same time, court officer, could I ask that you display publicly the image at
18 DRC-OTP-2067-0612.

19 Dr Martrille, were you and Dr Delabarde able to reach conclusions as to the sex and
20 age of this corpse?

21 A. [11:36:52] Concerning the age, this was a young age, between 14 and 19 years
22 old; could be of masculine sex, but taking into account the young age of this
23 individual, it wasn't possible to be precise with regards to the estimation of the sex.
24 So it could be masculine.

25 Q. [11:37:25] Did you reach a conclusion as to the cause and manner of death for

1 this individual?

2 A. [11:37:33] Yes. So we highlighted here again a violent skull blunt trauma again
3 and what caused this death was that, unless there were other injuries which didn't
4 mark the bones, taking into account the significance of the skull injuries, the most
5 plausible mode of death is homicide.

6 Q. [11:38:20] Can you please illustrate using the photograph how you reached
7 those conclusions?

8 A. [11:38:34] Indeed. What you can see in the parietal left area back, you can see
9 radial fractures which I am drawing in red, radiating fractures. Now, the
10 convergence of these radiating fractures shows the point of impact. And in green
11 you can see concentric fractures. So that is a first impact.
12 And furthermore, you have other areas of fracture which are with the radial fracture,
13 with concentric fractures which are just in front of the previous trauma, and you can
14 see that these concentric fractures here where I put the cross stop when it comes to the
15 preexisting fracture. So that indicates that there perhaps were two blows, one in the
16 first zone that I indicated and the second a bit in front.
17 However, with regards to the subject, it could be one sole blow. So at least there is
18 one sole blow and possibly two of them. If I put the black arrow here, you can see
19 plastic deformation with a possibility to put the bones together, but a very good
20 witness of trauma blow -- of blunt force trauma.

21 MS SAMSON: [11:40:26] Mr President, may I please have this annotated photo
22 admitted.

23 PRESIDING JUDGE FREMR: [11:40:31] I don't see any sign of objections from the
24 Defence part, so this annotated photograph is admitted into evidence as a further
25 Prosecution exhibit.

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1 Ms Samson, please proceed.

2 MS SAMSON: [11:40:47] Thank you.

3 Q. [11:40:48] I have two more corpses to show you, Dr Martrille. The next is
4 corpse KOB1-F5-B1. Your conclusions as to this corpse are at pages 32 to 37 of your
5 report. The ERN or registration number is 0705 to 0710.

6 Court officer, could I ask you to display photograph DRC-OTP-2067-0844. It's a
7 public document.

8 Dr Martrille, while we're waiting for the image to appear, can you please advise,
9 inform the Chamber whether you and Dr Delabarde reached any conclusions as to the
10 age and sex of the individual identified as F5-B1?

11 A. [11:42:39] Indeed, this was a subject aged between 30 and 40 years old who
12 rather appeared to be masculine.

13 Q. [11:43:00] Did you reach any conclusions as to the cause and manner of death of
14 this individual?

15 A. [11:43:11] In this case, this is more complex, and it's difficult, more difficult than
16 the others. There were blunt skull injuries and we have found that there was several
17 different types of injuries in this case. It's not the picture that's on the screen because
18 we normally start to describe from the head towards the feet, and here we've got a rib.
19 So I'll come back to that afterwards.

20 But with regards to the skull, there were interesting characteristics. On the right side
21 of the skull there was a carbonised burn area. And within this burnt area would be
22 perhaps to see -- interesting to see the photo.

23 MS SAMSON: [11:44:15] Yes, indeed. I was about to suggest that. I'll include a
24 different photograph at this time and come back to this one in a moment.

25 Court officer, could you kindly display image DRC-OTP-2067-0848. It's a public

1 document.

2 THE WITNESS: [11:45:01] (Interpretation) That could be one of the first photos.

3 So you can see clearly the black colouring on the right posterior part of this skull. So
4 here this is carbonisation and it's interesting to see a fracture which I am going to
5 show with the marker, a rounded fracture. And as you can see, unlike the fractures
6 that we had in the previous cases, there are no radiating fractures from the point of
7 junction. That corresponds with a point of impact.

8 And furthermore you can see fractures which go from this bone element behind, you
9 can't see it, but it's important to see that these fractures, I've already drawn one at the
10 top, they all stop at the area where the head is burnt.

11 So the most likely hypothesis, we discussed this with the anthropologist, but to my
12 sense the most likely scenario is this area, a fracture is not due to a blunt force skull
13 injury, and it's quite classic, this is due to the effects of the fire and carbonisation
14 instead.

15 It's important to say that because there weren't major skull traumatism. You can
16 have minor skull traumas which don't leave any traces on the bones but could indeed
17 cause death, internal haemorrhage, while the zones aren't impacted themselves.

18 But in this case, beyond these skull injuries which haven't left any trace, the bone
19 lesions aren't due to blunt force trauma as in the previous cases. That's the first
20 important thing that's important to say with regard to the skull. I don't know if it's
21 useful to show me other photos. I think that's quite explicit here.

22 MS SAMSON:

23 Q. [11:47:22] In relation to the skull area, I was not intending to show you another
24 photograph, but perhaps you could explain to the Court where your analysis went
25 next after you had taken a look at the skull and discounted the fractures that were on

1 the skull.

2 A. [11:47:41] So you want to say for the other parts of the skeleton, is that what you
3 mean?

4 Q. [11:47:56] Indeed, yes. I would like you to explain to the Court what
5 conclusions you reached with regard to the manner and cause of death for this
6 individual and the basis upon which you came to those conclusions.

7 A. [11:48:13] So we found perimortem fractures at the humerus, the right humerus
8 and the left humerus. And where it concerns the right humerus, there were also the
9 carbonisation effects which had led to fractures also due to the thermic effect, so
10 without any impact on the cause of death.

11 Now, there were perimortem fractures as well and you couldn't make a difference
12 between a blunt instrument or a ballistic impact. That was with regard to the right
13 humerus.

14 With regards to the left humerus, there was also a perimortem fracture and there are
15 two fractures that were fragmented, but you couldn't say in a more precise way
16 whether these fractures were blunt force, due to a blunt blow or due to a ballistic
17 injury.

18 At the humerus, left humerus there was a little metal fragment, a small metal
19 fragment which possibly could have come from a firearm projectile. But without
20 being able to be certain thereof, a ballistics expert would have to report on that. But
21 a metal fragment which was found in an area of trauma where a trauma had occurred
22 which was either blunt or ballistic.

23 There were also several fractures in the vertebrae, from C5 to T5, the thoracic
24 vertebrae, and T11 to T12, so between the lower part of the neck and the middle of the
25 thorax. And so these vertebrae were fractured, but multi-fractured in a

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1 multi-fragmentary way, and there too either this could be from a blunt trauma or a
2 ballistic trauma.

3 So we concluded that you couldn't really know that or decide on that, even if it was a
4 bit more complicated to explain the trauma, the blunt trauma, other than you could
5 possibly see some type of injuries, some type of road accidents. But it could be a
6 blunt force or ballistic trauma. We couldn't really say that for definite, even if blunt
7 force injury was less easy to explain.

8 Now, you could also have fractures with regards to the ribs. These are comminutive
9 fractures in different places which could be on the left and a blunt force, or ballistic
10 possibly, but we also noted with regard to rib 7, in the internal part thereof in the
11 thorax, there was a fracture which was particular. I don't know if we can show it on
12 the screen again to be able to show it so I can explain it.

13 Q. [11:52:19] Certainly. And would you like to see the photograph of one of the
14 ribs, the image that we had earlier on the screen?

15 A. [11:52:31] Exactly.

16 MS SAMSON: [11:52:33] Court officer, could you please display image
17 DRC-OTP-2067-0844 again. It's a public document.

18 PRESIDING JUDGE FREMR: [11:52:43] Ms Samson, your time expired. How much
19 time you would like to get to finish?

20 MS SAMSON: [11:52:50] Mr President, I believe I could finish in 10 minutes, with
21 your leave.

22 PRESIDING JUDGE FREMR: [11:53:00] I know you have been interrupted by this
23 fire alarm, but you are still more than in such a case 15 minutes behind the schedule.
24 So I will give you 5 minutes.

25 MS SAMSON: [11:53:12] Thank you, Mr President.

1 And court officer, would you kindly display this image on the screen.

2 Q. [11:53:22] Dr Martrille, is this helpful to you?

3 A. [11:53:30] Yes, indeed. So I'd like to explain. So what you see here is a bone
4 defect which is rounded, which I've marked in red. And with the green colour you
5 can see radiating fractures.

6 So here we're talking about a rib, and the injury doesn't react in the same way as it
7 would in the skull. So the fact that you have this defect which is rounded in the
8 middle of the rib and radiating fractures therefrom, this makes one think of a ballistic
9 trauma, possibly with an object that could have gone through the hole, which is
10 marked in red.

11 Now, when we draw this, it seems quite clear. But now the way the bones react,
12 they can vary in the way they react. So I cannot confirm that this is a ballistic injury.
13 But it certainly has the characteristics of a ballistic injury.

14 Q. [11:54:43] And what is your conclusion as to the manner of death for this
15 individual?

16 A. [11:54:47] So to go very quickly, there were fractures with the vertebrae at the
17 same level as the ribs. There were a group of injuries which could be of a blunt or
18 ballistic nature.

19 Now, taking into account different elements with regards to the ribs and the way in
20 which the fractures were located in the vertebrae and the ribs, then we could probably
21 think that the cause was a thoracic injury, there again subject to reservations with
22 regards to other injuries that did not mark. So thoracic injury compatible with a
23 ballistic trauma, I say it's compatible with that.

24 So taking into account that we have less certitude than the other cases, less certainty,
25 the mode of death is compatible with homicide. We're a bit less precise than in the

1 other cases.

2 MS SAMSON: [11:56:08] Thank you.

3 Mr President, may I please have admission of the two annotated photographs,
4 2067-0848 and 2067-0844?

5 PRESIDING JUDGE FREMR: [11:56:21] Since I don't see any sign of objection for the
6 Defence part, those two annotated pictures specified by Ms Samson are admitted into
7 evidence as a further Prosecution exhibit.

8 Ms Samson, please proceed.

9 MS SAMSON: [11:56:40] Thank you, Mr President.

10 Q. [11:56:41] Dr Martrille, in the 2 minutes I have left, I would like to have you take
11 a look at your conclusions in relation to corpse TCH1-F1-B1. That's at pages 43 to 46
12 of your report. And as I understand your report, conclusions at page 46, you and
13 Dr Delabarde have concluded that this is a female corpse of approximately 40 to 50
14 years of age; is that right?

15 A. [11:57:16] Yes, indeed.

16 Q. [11:57:24] And in this particular case there was no noticeable trauma to the
17 bones, to the skeleton itself; is that right?

18 A. [11:57:38] Indeed, no trauma. So we didn't want to conclude the mode of death
19 or cause on the base of visible trauma on the skeleton.

20 Q. [11:57:56] If this woman's throat had been slit, would you have found traces of
21 that injury on the skeletal remains?

22 A. [11:58:06] Everything's possible. Everything's possible. If an individual slices
23 or cuts a person's throat, then the cut, you cut through the soft tissue, so the skin is cut,
24 but it doesn't leave anything on the bones. But you can also find cases where the
25 blade goes further and then it goes through the cervical vertebrae or neck bones.

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1 But there was no trace there of trauma, so if there are elements that might -- one think
2 of somebody's throat being cut, it's plausible that only the soft tissue was cut in that
3 case.

4 MS SAMSON: [11:59:01] Thank you, Dr Martrille.

5 And thank you to your Honours for the extra time.

6 PRESIDING JUDGE FREMR: [11:59:06] Thank you, Ms Samson.

7 In the meantime before we start with cross-examination, one announcement
8 concerning organisation. Since Mr Gosnell indicated that he will need
9 approximately 20 minutes, so then we, after short break, about 50 minutes, we would
10 like to continue with the next witness. So you can just make your colleagues ready.
11 And we would like to sit because we lost some time because of this fire alarm, we'd
12 like to sit until quarter past 1, just to shorten the lunch-break and then continue as
13 normally from 2.30 to 4.30.

14 So now we move to Defence. Mr Gosnell, you may start your cross-examination of
15 the witness, please.

16 MR GOSNELL: [12:00:02] Thank you very much, Mr President. I might need a
17 little more than 20 minutes but --

18 PRESIDING JUDGE FREMR: [12:00:07] No problem. Hypothetically, in fact, you
19 are entitled to the same time like Prosecution. So don't feel any pressure from our
20 part.

21 MR GOSNELL: [12:00:16] Thank you very much, Mr President.

22 QUESTIONED BY MR GOSNELL:

23 Q. [12:00:18] Good afternoon now, Dr Martrille. I represent Mr Ntaganda. My
24 name is Christopher Gosnell, and I'll be asking you just a few questions today.
25 If my questions don't seem to come through clearly or if I've used wrong terminology,

1 please ask for a clarification and I'll do my best.

2 And I'd like to start by picking up on the question that we ended on from the

3 Prosecution and ask you this: What is sharp force trauma?

4 A. [12:00:56] This is the kind of trauma that results from using an object which can
5 cut, such as a knife, a sword, as the case may be. That cutting tool or weapon can be
6 used by a perpetrator to inflict injury, a cutting injury of soft tissue as the case may be,
7 or if the wound, the injury, is deeper, it might even affect the wound, the bones.

8 Now when a weapon such as a knife is used, it might be used for cutting in the cases
9 of slitting or slaughtering, and it can be used in a forward-backward movement in a
10 way that it's sort of stabbing rather than cutting. That is the first aspect of an answer
11 that I can provide to your question.

12 Q. [12:02:23] So it is possible for sharp force trauma to be visible on skeletonised
13 bone remains, correct?

14 A. [12:02:37] Yes, indeed, it's possible if the neck was -- or if the knock was applied
15 with sufficient force, it would get to the bones. But if you look at the level of the
16 neck, but it could also be with regard to different pieces of the body that it's -- if it's
17 sufficiently thick, then in most cases -- every case is obviously unique and different,
18 but from experience, it's quite rare to have a situation where you have traces on the
19 bones when the neck is cut. If you have a movement which is more stabbing, then of
20 course the blade will go deeper and in that case, yes, you will have traces on the
21 bones. But obviously you might not have any traces when the same blade did go
22 deep. That's also possible.

23 Q. [12:03:43] You've just mentioned stabbing. Do I understand it correctly then
24 from your description that there is a greater likelihood of observing sharp force
25 trauma from stabbing than from a case of a slashing motion?

1 A. [12:04:04] If you speak about bones, yes, of course. If you speak about the case
2 of soft tissue, you will have traces in one just as the other one. But indeed if, in the
3 case of skeletons, if the blade has left traces, which isn't frequent, but if it does, then it
4 is indeed more in a stabbing motion than in a cutting motion, though you also have
5 traces, particularly when people's throats are slit at -- in their neck as well.

6 Q. [12:04:44] And given the condition of the sets of remains that you examined,
7 was there anything in the post-mortem deterioration of the bones that would have
8 made it harder for you to see whether there was any sharp force trauma on the bones?

9 A. [12:05:11] Yes. The post-mortem trauma due on the one hand to degradation
10 of the bones in the earth, but also to the techniques of exhumation, they do necessarily
11 damage the bones and they make it more difficult to interpret them. So where it
12 concerns the fractures which are due to exhumation in an accidental way, those can
13 be noted because the bones are white and they are visible.
14 Now, if there is degradation that occurs in the ground, well, you can have certain
15 injuries or -- which are no longer present, but with regards to the skeletal elements
16 that we were able to see there weren't traces of cuts, at least on the case that I had
17 myself to deal with.

18 Q. [12:06:21] I'm not sure that my question was well formed, and let me put it a
19 different way. The extent of the post-mortem deterioration of the bones was not so
20 bad that if there had been sharp force trauma that had reached the bones that you
21 wouldn't have seen indications of that during your examination; am I correct?

22 A. [12:06:48] Where it concerns the bones, they were quite well conserved. And
23 indeed, if there had been a cutting trauma, then necessarily that would have been
24 seen.

25 Q. [12:07:09] And am I correct that you found no indications of force -- of sharp

1 force trauma on any of the remains that you examined from the Kobu or Tchudja
2 sites?

3 A. [12:07:30] Yes, that's correct. We found no injury of a cutting nature on the
4 bones that we gave our expert report on.

5 Q. [12:07:39] And if you had information indicating that the remains had been
6 stabbed repeatedly by weapons such as bayonets, would it surprise you not to find
7 any sharp force trauma on the skeletal remains?

8 A. [12:08:08] It's difficult to answer. We know that cutting trauma can leave no
9 trace on the bones. So as the cause of death you can say it's by cutting, slicing,
10 stabbing instrument without any trace. That is compatible. But after that, indeed, if
11 I am told that there were multiple stabs with a bayonet, that's larger than a knife
12 already, so if there were multiple cuts with a bayonet on the whole body, in the skull
13 for example, well, that would be very surprising indeed because a bayonet is a
14 weapon which is sufficiently heavy which often leaves significant injuries. And if
15 the witness says there were numerous injuries with such a bayonet, indeed, you
16 should -- should find traces of it on the bones. But if it's a knife cut or several knife
17 cuts, then that is totally possible. But afterwards these are hypotheses. You have to
18 be prudent in such hypotheses.

19 Q. [12:09:40] Doctor, you've just mentioned the skull, so I just want to clarify am I
20 correct that you can discern sharp force trauma injuries also on rib bones, pelvic
21 bones, arms, bones in the arms, bones in the legs?

22 A. [12:10:07] Yes, there are different -- significant differences. We've got blunt
23 force injuries, ballistic injuries and sharp force injuries as well.

24 Now, there's a continuum between the injuries. So if we take for example an injury
25 with a knife, then in the bone it's going to be very clear, it's going to leave a precise V

1 shape cut.

2 Now, if you have a bladed weapon such as a large axe, certainly you will have a
3 cutting aspect, but also due to its weight there is also blunt force as well, you can have
4 certain sharp areas which disappear due to the blunt force in their impact. So things
5 aren't so clear, but in an habitual way, in -- if you have sharp force injuries you have
6 particular characteristics that you don't have on any of the skeletons that we
7 reviewed.

8 Q. [12:11:23] What about the strike of a machete on a limb, would you expect to see
9 any sharp force trauma on the bones in the area where there was such a strike?

10 A. [12:11:38] Normally there, too, we would look at the impact where you'd see
11 quite a clear sharp force trauma impact, even if there are fractures which are added
12 due to the force, blunt force, very likely you will have seen specific traces of the
13 cutting object in the bones.

14 And despite everything, I would say that a machete for example, that can be used
15 with its cutting edge and why not, it might appear to be less probable, but you can
16 also use the handle to hit and then you have a weapon which can also give a blunt
17 force injury. But normally a machete is made to carry out cutting injuries, and we
18 would have seen fractures F5-B1, we eliminated the hypothesis with a humerus,
19 either ballistic or blunt force, we did not find traces which would make one think of a
20 sharp force trauma, absolutely no sign of such a trauma.

21 Q. [12:13:11] Nor on any of the other bodies that you examined from Kobu or
22 Tchudja, correct?

23 A. [12:13:25] Indeed. On none of the bodies were we able to find sharp force
24 trauma traces.

25 Q. [12:13:36] Doctor, yesterday at page 92 of the transcript, you said the following,

1 and I'll quote. You don't have this in front of you, doctor, so I will read it. It's from
2 what you said yesterday:

3 "We did see that the bodies were in anatomical connection, all the bones were in the
4 same connection with each other, which indicated that the bodies had been buried
5 before they composed. If the bodies had decomposed first outside and then they
6 were buried, you would have had or could have had, if they had an advanced state of
7 decomposition or if they were skeletons, they wouldn't have been with such a precise
8 anatomical position."

9 Now, can I first just seek your clarification in respect of a correction. I believe that
10 what you said, which is not accurately recorded in the transcript, is that this was an
11 indication that the bodies had been buried before they decomposed; is that correct?

12 A. [12:15:01] Yes. What I said is that they were buried before they had
13 decomposed to the state of skeletons. But a body that remains several days or weeks
14 outside will have sufficient soft tissue to allow for the anatomical connections.

15 What I wanted to say here is that if the body had been left outside for sufficient time,
16 it's difficult to say how much, to become a skeleton, then you would have been -- you
17 wouldn't have been able to bury them with that anatomical connection. What you
18 can say certainly is they were not buried when they were in a skeletal state.

19 They -- when they were buried, it appears that they were buried in a primary state of
20 decomposition.

21 Q. [12:16:02] And you say that you saw that the bodies were in anatomical
22 connection. Can you explain to us a little bit more what that means? What does
23 anatomical connection mean?

24 A. [12:16:16] It means that the bones are in the same pattern, the same structure as
25 the bones in a living body. And the joints are the same. That is what is referred to

1 as anatomic connection. And it is always important to look at that anatomic
2 connection to know whether it is primary or secondary burial. And secondary
3 means that the body decomposed at a certain extent before burial.

4 MR GOSNELL: [12:17:07] May we have DRC-OTP-2081-0674.

5 Q. This is your report, doctor, coming up on the screen. If you could turn please
6 to the -- actually the last page that you were looking at with the Prosecution, page 46
7 which is ERN 0719.

8 You are describing your conclusions in respect of TCH1-F1-B1. And in French what
9 you say, and I'll just read those words:

10 (Interpretation) "Does not show any perimortem trauma traces and so the course or
11 manner of death cannot be determined."

12 (Speaks English) I'm correct from your testimony earlier today that you stand by
13 this statement in your report; is that correct?

14 A. [12:18:12] Absolutely. The cause and manner of death cannot be determined
15 given the absence of visible trauma scars or traces on the bones.

16 Q. [12:18:37] And if this person had been decapitated perimortem or something
17 close to decapitated perimortem, would you have been able to observe signs of that
18 on these remains?

19 A. [12:18:51] Yes, if that person had been decapitated, of course the object that
20 would have been used to decapitate the victim would have necessarily left traces.
21 Now, when you say decapitate, I think it means the injuries as sufficiently serious.
22 And when you say almost decapitated, it means the head is almost totally cut off from
23 the body. So there would be bone injuries and those would have been visible. But
24 if the throat is simply slit, it may not be visible on the skeleton.

25 Q. [12:20:06] Did any of the remains that you examined from the Kobu or Tchudja

1 sites show signs of anything resembling decapitation?

2 A. [12:20:24] No. We did not see any signs that would have pointed at
3 decapitation. That is on all the bodies that we examined, no trace at all.

4 Q. [12:20:49] And I have asked you this question in respect of TCH1-F1-B1, but
5 now I will ask you this question in respect of the other remains. If that had occurred,
6 were the remains in such a condition that you would have expected to find
7 indications of that on the other bodies as well?

8 A. [12:21:14] Yes, of course. If there had been a decapitation, we would have
9 necessarily found trauma indications. Let me give you an absurd example, because
10 in medicine there are always exceptional cases. If you suppose that the neck is
11 dissected and there is a separation of the vertebra, one can imagine that there are no
12 traces, whereas the head is separated from the body, so unless the neck is dissected, in
13 fact, if there is decapitation, a violent decapitation, there would be traces of that.

14 Q. [12:22:23] Thank you. May we have DRC-OTP-2072-0284, tab 18. This is in
15 tab 18 of your binder, doctor. It is the grave form for KOB1-F5, body 1. You have
16 spent some time discussing this particular set of remains and I won't revisit those
17 questions and answers, but I do have a question about something related to the
18 document that should be coming up on the screen.

19 We see a notation B2 from this grave. And our information is that B2, and I'm asking
20 to see whether you recall this, B2 turned out to be the remains of a monkey.

21 A. [12:23:48] Yes, indeed. I'm not the one who did that examination. It was the
22 others in the field. The work here makes the difference between human remains and
23 other remains. I did not note that in my report because I was not the one who did
24 the examination, but there was a discussion by the others, and they concluded that it
25 was a monkey.

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1 Q. [12:24:23] And you recall, do you, these remains being brought into the morgue?

2 A. [12:24:30] Yes, absolutely. But personally I did not carry out any examination
3 of the remains of B2.

4 Q. [12:24:48] Was there any discussion or any information as to how these remains
5 ended up in the grave with the body that you did conduct the forensic examination
6 of?

7 A. [12:25:04] No. I really do not have any information about that. I cannot give
8 you an answer.

9 MR GOSNELL: [12:25:21] I'm done with this document, Mr President.

10 Q. Doctor, yesterday you testified at line 20 of page 98 that, quote, "Of course, it
11 was not possible to establish a specific or even an approximate date in this regard
12 relating to the time of death."

13 And you were providing an explanation about what you had said about the use of the
14 word compatible, compatible, with the remains having been post-mortem for 11
15 years.

16 Can you give us a range of the maximum and minimum period post-mortem of the
17 remains that you examined?

18 A. [12:26:18] It is actually very difficult, not to say impossible. In fact, if the body
19 is left in the open air for several days in Africa, it will decompose very rapidly, even if
20 there is anatomical connection, and a few elements of the skeleton would be seen in a
21 few days or one week.

22 So it depends on the time that the body remains in the open air. And I do not have
23 that information.

24 Now, if the body is buried immediately, then you have the nature of the soil,
25 atmospheric conditions which have a great impact. And what is understandable is

1 that no real tests have ever been done in all geographical areas of the world to
2 conclude that the skeletons would appear in this particular country after 2 or 3 years.
3 So this is something that is practically impossible to say.
4 So it would not take a few days or a few weeks. But beyond several months it would
5 be difficult. That is the minimum limit.
6 But the maximum limit, well, it is not possible because you even have prehistoric
7 bodies that are well preserved. So in the domains of forensic medicine and
8 anthropological studies, it is difficult to determine the precise time of post-mortem.
9 There are techniques that have been developed for insects for example, but this was
10 not done in this particular context.

11 Q. [12:28:44] Was the condition of the sets of remains that you examined
12 inconsistent with having been post-mortem for 20 years?

13 A. [12:28:55] No, no, no. It is not at all inconsistent, not at all.

14 Q. [12:29:12] And from the point of view of your expertise, are you able to say
15 whether the separate graves at Kobu from which the remains were taken that you
16 examined, are you able to say whether those graves were dug at the same time or at
17 different times?

18 A. [12:29:35] From a strictly forensic medical point of view, it is not possible to see
19 whether all the graves were dug at the same time or at different times. The two
20 possibilities are compatible with the elements in our possession.

21 PRESIDING JUDGE FREMR: [12:30:05] Ms Samson.

22 MS SAMSON: [12:30:07] Yes, your Honour, I just wanted to note the limits of this
23 witness's expertise. He's not qualified as an anthropological expert but rather as a
24 forensic pathology expert.

25 PRESIDING JUDGE FREMR: [12:30:19] Mr Witness, could you comment this, Ms

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1 Samson's comment?

2 THE WITNESS: [12:30:39] (Interpretation) Yes, indeed, the expertise of an
3 anthropologist are very important in the post-mortem time. So that is why I gave a
4 general opinion, so I gave the opinion of a forensic doctor.

5 PRESIDING JUDGE FREMR: [12:31:10] Thank you.

6 Mr Gosnell.

7 MR GOSNELL: [12:31:13] Yes, Mr President. And that's why I asked him from the
8 point of view of his expertise and also the reason why I specified that it would be
9 based on his examination of the remains. So just to clarify, that's how I framed the
10 question.

11 Dr Martrille, thank you very much for your answers. I have no further questions for
12 you.

13 Mr President, I have concluded my cross-examination.

14 PRESIDING JUDGE FREMR: [12:31:31] Ms Samson, any need for redirect?

15 MS SAMSON: [12:31:34] No, your Honour.

16 PRESIDING JUDGE FREMR: [12:31:36] All right. So in such a case, Dr Martrille,
17 allow me to thank you very much that you shared your expertise with us, because I
18 believe that your testimony and your reports will heavily assist us in our deliberation.
19 And once more, thank you very much. And I appreciate your indulgence as
20 concerned the way how you've been treated during this fire alarm. So thank you
21 very much and we wish you safe journey home.

22 So now, court officer, please guide Dr Martrille out of the courtroom.

23 And now --

24 THE WITNESS: [12:32:21] (Interpretation) Thank you, Mr President.

25 (The witness is excused)

1 PRESIDING JUDGE FREMR: [12:32:31] And I have to change my previous
2 announcement. So in effect it was something like false alarm to your colleagues,
3 because I was informed that because of some technical requirements that are
4 necessary before starting with testimony of protected witness, so the break which I
5 intended lasting 5, 10 minutes is not sufficient. We should break at least for 30
6 minutes. So for that reason I don't see reasonable to break for 30 minutes. We will
7 take our ordinary -- not ordinary lunch break, because I would like to shorten this
8 ordinary lunch break a bit in order to at least partially compensate time loss we
9 suffered during this fire drill.

10 So we will break now and we will resume after 75 minutes, which means at 2.15, if
11 I'm not wrong, yeah, 2.15. And then we will continue by two sessions 75 minutes
12 each with 30 minutes break.

13 So, yes, now I'm -- so we will continue to 2.15 -- sorry, sorry, 1.45 -- or 1.50, sorry, 1.50
14 and then we will continue by two sessions each 75 minutes long.

15 So thank you and we will resume 1.50.

16 THE COURT OFFICER: [12:34:35] All rise.

17 (Recess taken at 12.34 p.m.)

18 (Upon resuming in open session at 1.54 p.m.)

19 THE COURT USHER: [13:54:32] All rise.

20 Please be seated.

21 PRESIDING JUDGE FREMR: [13:54:48] Good afternoon, everybody.

22 I see several changes in composition of the parties, that is why I would like for new
23 appearances.

24 Prosecution.

25 MR IVERSON: [13:55:00] Good afternoon, your Honours. Appearing today for the

1 Prosecution are Claudine Umurungi, assistant legal officer; Nicole Samson, senior trial
2 lawyer; Selam Yirgou, case manager; and myself, Eric Iverson, trial lawyer.

3 PRESIDING JUDGE FREMR: [13:55:17] Thank you, Mr Iverson.
4 Defence.

5 MR BOURGON: [13:55:24] (Interpretation) Good afternoon, Mr President,
6 your Honours, and to everyone in the courtroom. On this side of the courtroom is Jules
7 Guillaumé, Maître Isabelle Martineau, and myself, Stéphane Bourgon. Thank you,
8 your Honour.

9 PRESIDING JUDGE FREMR: [13:55:51] Thank you, Mr Bourgon.
10 As concerns legal representatives, I see no changes. Am I right? Fine.
11 So before we invite our further witness into the courtroom, we were informed that
12 Defence, or Mr Bourgon, would like to address the Chamber. So, Mr Bourgon, you have
13 the floor.

14 MR BOURGON: Thank you, Mr President. It will be shorter than expected. We just
15 managed to resolve the issue I wanted to entertain the Chamber about. It was a request
16 for disclosure and I believe that we have an agreement. I would like to keep it still under
17 consideration, but we have an agreement so it will not -- no longer need to make that
18 request. However, I'd like to confirm that we are still sitting pursuant to the Trial
19 Chamber's order and contrary to the instructions received by Mr Ntaganda. Thank you,
20 Mr President.

21 PRESIDING JUDGE FREMR: [13:56:42] So, first of all, I appreciate this way of
22 communication between parties.

23 And the second issue, Mr Bourgon, I understood you had met Mr Ntaganda. As we said
24 yesterday, we are waiting for this written consent from Mr Ntaganda to get acquainted
25 with psychiatrist's report.

1 MR BOURGON: [13:57:13] Thank you, Mr President. I did meet with Mr Ntaganda
2 yesterday, I did have a consent form with me, but the language is not appropriate, it has
3 to be changed, so I will meet with him again tonight.
4 I have also been informed that the form that I put in on Monday after meeting with him is
5 also not appropriate, that more specific details must be put into the consent form in order
6 to meet the requirements of the Dutch medical society or something of the sort.
7 So, but there is no change. Mr Ntaganda will sign the form as soon as possible. I was
8 informed this morning that we received a report last week by mistake. I'm still trying to
9 figure out what happened. I'm informed that we received a report that was drafted for
10 another patient, so I'm just still trying to figure out exactly the situation.
11 However, Mr President, I'll take this opportunity to inform the Chamber that we are
12 actively working with the Registry. Mr Ntaganda was informed yesterday of what is
13 going on. We are going in the right direction. Now we have a document actually that
14 has been drafted, that is now being discussed within the Registry circles. So we are
15 progressing.
16 The only issue is at some point in time I hope to be able to, for one, meet with
17 Mr Ntaganda over the weekend, and also someone from the Registry wants to meet with
18 Mr Ntaganda over the weekend. I hope this can take place so that we don't have any
19 disruption in the trial schedule on Monday. Thank you, Mr President.

20 PRESIDING JUDGE FREMR: [13:58:58] Thank you, Mr Bourgon.

21 And just again I believe we can -- I can say we are on the same page because we also -- the
22 Chamber is also very well aware of the urgency of some steps that should be taken and to
23 know the content of this report would allow us to make those steps.
24 Now we can move to the testimony, so court officer please bring Mr Witness into
25 courtroom.

1 In fact, there is two minor issues I would like to mention before the witness is -- so please,
2 please hold on. It's my fault. Please, wait a minute. It will be just two minutes. I have
3 to make one, two steps -- no, no, no. Please, please. It was my fault. I forgot that I
4 have to start with some issues in the absence of the witness.

5 So first the Chamber recalls its oral decision on 9 September 2016 granting in-court
6 protective measures for Witness P-105 in the form of face and voice distortion and the use
7 of pseudonym. I note that these some protective measures were -- the same protective
8 measures were recommended by the VWU on 13 September.

9 On 15 September, the Chamber also received the VWU's revised vulnerability assessment
10 for this witness. The Chamber orders accordingly, pursuant to Rule 88(1) that familiar
11 support assistant to be present next to the witness for the first session of his testimony or
12 for however long as may be required; and, two, that breaks shall be taken during
13 testimony if and when required.

14 And second, any objections to use of material with this witness will be, as usually,
15 addressed if and when they arise throughout the course of the examination-in-chief.

16 And third, in terms of timing, the examination-in-chief for this witness is to be completed
17 within four and a half hours, Mr Iverson, and the Defence will have equal time.

18 So now we can turn to the scheduled testimony. So, court officer, sorry for my error,
19 please bring our witness now.

20 MR IVERSON: [14:02:13] Mr President.

21 PRESIDING JUDGE FREMR: [14:02:13] Yes, Mr Iverson.

22 MR IVERSON: [14:02:15] I just wanted to confirm the schedule with your Honours this
23 afternoon. I understand that we will go till 3, take a break until 3.30, and then resume
24 after 3.30 until quarter to 5.

25 PRESIDING JUDGE FREMR: [14:02:27] Frankly saying, we wanted to -- yes, we

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1 wanted to -- that each, it's a bit complicated, each session should take at least 75 minutes,
2 so this session should finish -- court officer, can you help me, 3.35, three-five, yes, but it's
3 not about one minute, then we would like to take a 30 minutes break and have another 75
4 minutes session. You know, we shouldn't be absolutely punctual, but it was the main
5 main plan. Two sessions 75 minutes each.

6 (The witness enters the courtroom)

7 PRESIDING JUDGE FREMR: [14:03:29] Mr Witness, good afternoon. Can you hear
8 me?

9 WITNESS: DRC-OTP-P-0105

10 (The witness speaks Swahili)

11 THE WITNESS: [14:03:39] (Interpretation) Yes, I can hear you.

12 PRESIDING JUDGE FREMR: [14:03:44] Very good.

13 Mr Witness, on behalf of this Chamber, I would like to welcome you to the courtroom.
14 You are called to testify in the case against Mr Bosco Ntaganda and you will be soon
15 asked questions both by the Judges and lawyers in this courtroom. In this connection, I
16 would like to guide you as follows:
17 Please, listen carefully to those questions and if you do not understand, feel free to ask for
18 the question to be repeated. We want you to tell the truth and tell us what you saw,
19 heard or sensed yourself. If you didn't see or hear it yourself but you found out some
20 other way, then you should explain how.

21 Please testify just on that which you remember. Don't guess. Don't make things up.

22 There is nothing wrong in saying "I don't know" or "I don't remember."

23 Do you understand all this, Mr Witness?

24 THE WITNESS: [14:05:02] (Interpretation) Yes, I understand you very well.

25 PRESIDING JUDGE FREMR: [14:05:11] Mr Witness, protective measures are put in

1 place to ensure that your identity is not revealed to the public. It in practice means that
2 the public cannot see your face and that your voice is being disguised so that the public
3 cannot recognize it. We will refer you only as "Mr Witness" and ensure that your name
4 and any other information that risks revealing who you are is not broadcast to the public.
5 Therefore, whenever you need to describe anything that might reveal your identity we
6 will do so in private session so that no one outside the courtroom can hear your answer.
7 Do you understand, Mr Witness?

8 THE WITNESS: [14:06:10] (Interpretation) Yes, I understand.

9 PRESIDING JUDGE FREMR: [14:06:13] Mr Witness, you will find -- or now you will
10 get a piece of paper with the solemn undertaking, so please now make your solemn
11 undertaking to tell the truth by reading out the declaration you have in your hands.

12 THE WITNESS: [14:06:56] (Interpretation) I solemnly declare that I will speak the
13 truth, the whole truth and nothing but the truth.

14 PRESIDING JUDGE FREMR: [14:07:12] Very well, Mr Witness.

15 So it means you are now under oath, so you also need to be aware that it is an offence
16 within the jurisdiction of this Court to give false testimony. Do you understand that?

17 THE WITNESS: [14:07:38] (Interpretation) Yes, I understand.

18 PRESIDING JUDGE FREMR: [14:07:41] Fine. And I will conclude my guidance
19 giving you a few practical matters you should have in mind when testifying.

20 It's important to speak into the microphone, to speak clearly and to speak at a slow pace to
21 allow the interpreters to translate everything. You should only start speaking when the
22 person asking you the question has finished. When a question is asked, please do not
23 respond immediately, but rather count in your head to three and only then give your
24 answer. This pause is necessary and is essential for us to properly interpret what you are
25 saying.

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1 If you have any questions during your testimony or if you feel that you need a break, do
2 not hesitate to let us know by raising your hand. We will then give you the opportunity
3 to speak. Mr Witness, have you understood all that?

4 THE WITNESS: [14:09:06] (Interpretation) Yes, I understand.

5 PRESIDING JUDGE FREMR: [14:09:08] Very well. It means we can start your
6 testimony.

7 So, Mr Iverson, you have the floor.

8 MR IVERSON: [14:09:23] Thank you very much, Mr President.

9 QUESTIONED BY MR IVERSON:

10 Q. [14:09:26] Good afternoon, sir. How are you?

11 A. [14:09:38] I am fine.

12 Q. [14:09:41] Good. My name is Eric Iverson, and although we've met before, I
13 wanted to introduce myself again. I work for the Office of the Prosecutor and I'll be
14 asking you questions this afternoon.

15 Just so you know, I'm going to be asking questions for the next hour or so, and then we'll
16 take a short break and then I'll continue for another about hour and 15 minutes. I
17 probably won't complete my questioning of you today, so we'll come back after the
18 weekend, on Monday, and I'll complete my questioning. I just say that so you kind of
19 understand what the -- what's on the agenda for this afternoon. Do you understand?

20 A. [14:10:32] Yes, I have understood you well.

21 Q. [14:10:41] And I understand that you may be a bit nervous or you're in a new
22 environment, so I want to go slowly, make sure that you understand my questions. And
23 please to the best of your ability give full answers to the Chamber. Can you do that, sir?

24 A. [14:11:09] Yes, I understand.

25 Q. [14:11:14] All right. Thank you.

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1 MR IVERSON: [14:11:15] Mr President, for the first part of the questioning I'd request
2 that we go into private session, please.

3 PRESIDING JUDGE FREMR: [14:11:21] Certainly.

4 Court officer, let's move into private session.

5 (Private session at 2.11 p.m.)

6 (Redacted)

7 (Redacted)

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13 (Redacted)

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5 (Open session at 3.06 p.m.)

6 THE COURT OFFICER: [15:06:43] We are in open session, Mr President.

7 PRESIDING JUDGE FREMR: [15:06:50] Thank you.

8 So we will have to break now for 30 minutes as usually, and we will then resume 3.35.

9 THE COURT OFFICER: [15:07:04] All rise.

10 (Recess taken at 3.07 p.m.)

11 (Upon resuming in open session at 3.38 p.m.)

12 THE COURT USHER: [15:38:04] All rise.

13 Please be seated.

14 PRESIDING JUDGE FREMR: [15:38:25] So let's continue with direct examination of our
15 witness conducted by Prosecution, by Mr Iverson.

16 Mr Iverson, I'm aware of the fact that sometimes my guidance about timing are a bit
17 confusing, so this session roughly should finish 4.50, 10 to 5. You have the floor.

18 MR IVERSON: [15:38:51] Certainly, Mr President. I will keep that in mind.

19 I would like to ask that we stay in open session for the time being. I think I can ask these
20 questions and they can be answered in open session.

21 Q. [15:39:04] But, sir, Mr Witness, I just want you to understand that we're in open
22 session now, so when you answer the questions please make sure that you don't refer to
23 yourself or your identity. If you feel the need to do so just let the Presiding Judge know
24 and we can go into private session; do you understand that, sir?

25 A. [15:39:32] Yes.

1 Q. [15:39:35] All right. So I'd like to ask you about the 18 February 2003. You had
2 mentioned previously that you abandoned the village because a large number of UPC
3 troops had arrived on that day, and that's today's transcript, page 63, lines 4 to 11.

4 What I'd like to ask you to do is if you could describe to the Chamber how that event
5 unfolded, how it came to be that the inhabitants of that village left and the UPC entered
6 the village?

7 A. [15:40:37] Thank you. As I told you before, on 18 February 2003, it is on that day
8 that a large number of UPC troops arrived. There was a small fight on 17 February. On
9 that day the UPC soldiers had come in on the -- one of the roads, but there were not many
10 of them in number, but the Lendu combatants were able to ward them off and they
11 retreated on 17 February.

12 Now, the next day, in the morning, it was a Tuesday, 18 February, we were in our village,
13 and around 8 a.m. -- around 8 a.m. we heard gunshots from the Ngongo area, and as I
14 have just said, on 17 February there was a small combat that had taken place, but then it
15 was followed by a large number of UPC troops coming in from different roads from
16 Nyangarai, from Konda, from Mwanga, from Centrale. They came in huge numbers.
17 Now, those who came from Centrale got to Lipri, while some came from Ngongo and the
18 ones from Nyangarai went to Ngaru (phon) and they all ended up assembling in Lipri
19 coming from those various roads or access.

20 It is on that day that very many UPC troops arrived and the Lendu combatants were not
21 able to fight them off. The UPC troops arrived at the Ngongo entrance, and it is then that
22 we realised that Lendu combatants were fleeing and retreating, and yet more and more
23 UPC soldiers were arriving and there was increasing gunfire, and so they understood that
24 they had been outnumbered, that is why the Lendu combatants retreated.

25 We were able to see them in Lipri and Ngongo, there were huge numbers of UPC troops.

1 It is then that the combatants decided that rather than stay in the village we must leave
2 and allow the UPC troops to take over and do whatever they wanted to do, and that is
3 how the Lendu combatants fled and joined the civilian population, which also vacated the
4 area, abandoning all property and goods and only taking children with them.

5 And we who were the youth at the time, we also abandoned our village, handing it over
6 to the UPC on 18 February 2003. All civilian inhabitants of Lipri and surrounding areas
7 left and sought refuge in the bush.

8 The UPC soldiers then occupied Lipri and the other villages, and they started to loot food
9 items, property and various other items from the surrounding villages. Yes, this is what
10 happened. That is what happened on 18 February.

11 Q. [15:45:48] You mentioned in your answer that there were shots fired or of gunfire.
12 Are you aware whether there were any people killed or injured from that gunfire?

13 A. [15:46:12] On that day, are you talking about the 18th, 18th February?

14 Q. [15:46:23] Yes, I'm referring to 18 February. I'm referring to the answer that you
15 just gave about the events of 18 February. In your answer you mentioned gunshots and
16 shots fired. So my question is: Are you aware whether people were killed or wounded
17 from those gunshots?

18 A. [15:47:00] We are talking about 18 February. According to the combatants what
19 they said is that there was a combatant known as Likpa who had died in the Lipri area.
20 There was also a woman of Bira ethnicity who had died. On that day there was no
21 mention of anyone else who may have died. Other persons died between 18 February
22 and 25 February. It is within that time frame that in Mastaki, for example, Mastaki being
23 a village, some people were killed there, including three girls who had been abducted
24 while at a farm, they had gone to look for food at the farm and while there they were
25 abducted by the troops.

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1 Another gentleman known as Marcellin was also burnt to death in his house still during
2 that period. Then there were two other women who used to live in Nyarara who were
3 also abducted in their farm. They were not killed, but they were taken away to the camp
4 in Lipri. Those are some of the incidents that we became aware of as having happened
5 between 18 February and the following days.

6 There is a man whose name was Marcellin who went to fetch some crops in his farm and
7 ran into UPC troops and was killed.

8 Then there was also a mentally ill individual who was killed as well during that period.

9 Q. [15:50:16] All right. For my next question if you need to request to move into
10 private session please do so, but I'd like to know on 18 February, during these events that
11 you describe, where were you?

12 A. [15:50:50] On 18 February, I have just told you that on that day we were in Lipri, in
13 our house, in our area. When the UPC troops arrived in huge numbers in Lipri, the
14 Lendu combatants fled because they had been outnumbered and they were not able to
15 fight the UPC troops. That is how we left Lipri and fled to the hills, like Djuba and
16 others. This was on 18 February.

17 Even the civilians of Tsedo (phon) also left their village. I was part of that group of
18 civilians who had abandoned their villages and fled.

19 MR IVERSON: [15:52:02] Just to be clear in the transcript it says 28 February on two
20 occasions. The questions and the answers discussed 18 February, not 28 February.

21 Mr President, I would request now that we move into private session, please.

22 PRESIDING JUDGE FREMR: [15:52:25] All right.

23 Court officer, let's move into private session.

24 (Private session at 3.52 p.m.)

25 (Redacted).

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- 13 (Open session at 4.54 p.m.)
- 14 THE COURT OFFICER: [16:54:05] We're in open session, Mr President.
- 15 PRESIDING JUDGE FREMR: [16:54:07] Thank you very much, court officer.
- 16 Mr Bourgon, it concerns mainly you. Before we break today, the Chamber notes that on
- 17 15 September the Defence filed an ex parte disclosure request with the filing number 1509,
- 18 and confidential redacted version of this filing was notified today, but noting your oral
- 19 submission at the beginning of this afternoon session we would like to know if you could
- 20 clarify the scope of the inter parte discussion that we understand has taken place, and in
- 21 particular it impacts the request, whether you insist on this request or whether it's
- 22 withdrawn?
- 23 MR BOURGON: [16:55:00] Mr President, the request I was about to do at the
- 24 beginning of this session is unrelated to the motion that -- to the request that was filed
- 25 today. It relates to an investigation note relating specifically to this witness. We

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1 managed to reach an understanding with the Prosecution and I said at the beginning that
2 I wanted to keep it under consideration. We are now reviewing whether we will pursue
3 the matter further with the Prosecution. To be fully transparent I think we will, but I
4 have to consult first with the members of my team to see if I will make that request, but it
5 is unrelated to our motion that we -- to the request that we filed today.

6 PRESIDING JUDGE FREMR: [16:55:46] All right. So that is -- we have to shorten
7 anyway at the moment the deadline for the submissions and any responses to Tuesday, 20
8 September 2016. And if practicable, a courtesy copy should be provided at the earliest
9 opportunity.

10 So thank you for this clarification.

11 And the last issue, we will continue tomorrow -- or on Monday, 9.30 in this courtroom.

12 According my information, Mr Iverson so far exhausted 1 hour 56 minutes and I believe
13 that all my interventions and all those technical problems have been subtracted, so you
14 still have more -- 2 and a half hours roughly.

15 And one caveat for both, for Prosecution and Defence, even the Chamber is very well
16 aware that to examine this witness it is not an easy task, you were also, if I may say,
17 warned by the VWU's assessment, and I would like to highlight that even if it is not an
18 easy task, I don't expect that we will extend the time you were given. So I would highly
19 recommend to thoroughly consider the way how this witness should be asked properly
20 to -- not to give him the chance to go beyond question put to him, try to narrow as
21 possible most specifically those questions, and if he's going beyond, I would
22 recommend - I know that it is a sensitive issue, not to bother witness - but even to cut him,
23 because as I said, you both are professionals. So even it is not an easy task, it would be
24 your goal to make this examination efficient. So don't rely even in the light of those
25 problems that we will give you some additional time.

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- 1 That's it for the moment.
- 2 Mr Bourgon.
- 3 MR BOURGON: [16:58:01] Very quickly, Mr President. Although the -- I just
- 4 mentioned that there is no link between our request today and what we were discussing
- 5 at the beginning, the information sought in that request, of course, is information related
- 6 to the cross-examination of this witness.
- 7 And, of course, should I get the information later and should that information reveal
- 8 something that I could have done in cross-examination, then I will add another request if
- 9 that should be the case. Thank you.
- 10 PRESIDING JUDGE FREMR: [16:58:32] Point taken.
- 11 So we adjourn and we will resume on Monday, 9.30.
- 12 THE COURT USHER: [16:58:40] All rise.
- 13 (The hearing ends in open session at 4.58 p.m.)