

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
6 Judge Chang-ho Chung
7 Trial Hearing - Courtroom 3
8 Thursday, 29 September 2016
9 (The hearing start in open session at 9.34 a.m.)
10 THE COURT USHER: [9:34:27] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: [9:35:11] Good morning, everybody.
14 Court officer, please call the case.
15 THE COURT OFFICER: [9:35:15] Thank you, Mr President.
16 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
17 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
18 For the record, we are in open session.
19 PRESIDING JUDGE FREMR: [9:35:33] Thank you, court officer.
20 Now appearances, please, in habitual order.
21 MR IVERSON: [9:35:40] Good morning, your Honours. Appearing today for the
22 Prosecution are Claudine Umurungi, assistant legal officer; Selam Yirgou, case manager;
23 Nicole Samson, senior trial lawyer; and myself, Eric Iverson, trial lawyer.
24 PRESIDING JUDGE FREMR: [9:35:55] Defence, please.
25 MR GOSNELL: [9:35:58] Good morning, Mr President, your Honours. For

1 Mr Ntaganda today, Maria-Kim Vasconi, Isabelle Martineau, Christopher Gosnell, and
2 Marlène Yahya Haage, who will be conducting the cross-examination of this witness.

3 Thank you, Mr President.

4 PRESIDING JUDGE FREMR: [9:36:16] And slight inquiry, the reason why you change
5 your position is to make you more comfortable with all those materials, or are there any
6 technical issues? No?

7 MR GOSNELL: [9:36:28] No technical reason, just being close at hand with Ms Yahya.

8 PRESIDING JUDGE FREMR: [9:36:35] Fine.

9 And now Legal Representatives of Victims.

10 MS PELLET: [9:36:39] (Interpretation) Thank you, your Honour. The former child
11 soldiers are represented by Mohamed Abdou and by myself, Sarah Pellet, counsel with
12 the Office of Public Counsel for Victims.

13 MR SUPRUN: [9:36:49] (Interpretation) Good morning, your Honour, your Honours.
14 The victims of the attacks are represented by the Office of Public Counsel for Victims,
15 Anne Grabowski, associate counsel, and myself, Dmytro Suprun, counsel.

16 PRESIDING JUDGE FREMR: [9:37:03] Thank you, Ms Pellet. Thank you, Mr Suprun.
17 And now we can proceed immediately with this scheduled testimony. Our witness
18 today, Professor Gromb-Monnoyeur, who is already with us in the courtroom, will testify
19 without protective measures and can therefore be referred to by name.

20 So Professor Gromb-Monnoyeur, on behalf of the Chamber, I would like to welcome you.

21 And the Chamber has taken note of the Defence notice of objections to the admission of
22 some documents and it will address any objections to material if and when they arise.

23 Madam Professor, good morning again. It is my duty to inform you that this Chamber
24 has been established to try the case of the Prosecutor against Mr Ntaganda and you are
25 called today by the Prosecution to testify as an expert. And first I would like to provide a

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1 brief guidance in relation to the following proceedings.

2 We want you to tell the truth and we want you to only testify within the sphere of your
3 expertise. You are before us as an expert in the field of forensic medicine. However, if
4 you do not know an answer or you do not feel that it falls within your area of professional
5 expertise, please indicate so. Is it clear?

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7 (The witness speaks French)

8 THE WITNESS: [9:38:55] (Interpretation) yes, your Honour.

9 PRESIDING JUDGE FREMR: [9:38:57] Good.

10 Now, can you please read the solemn undertaking to tell the truth, which I guess now will
11 be provided to you.

12 THE WITNESS: [9:39:15] (Interpretation) I solemnly declare that I will tell the truth,
13 the whole truth and nothing but the truth.

14 PRESIDING JUDGE FREMR: [9:39:21] Thank you, Professor Gromb-Monnoyeur.

15 And it means that you are now under oath, and I am obliged to note that it is an offence
16 within the jurisdiction of this Court to give false testimony, which I guess is clear to you.

17 Finally, a few practical matters you should have in mind when giving your testimony. I
18 understand that you will be testifying in French today, but everything we all say here is
19 written down and also translated into English and it is, therefore, important to speak
20 clearly and to speak at a slow pace and, what is even more important and what sometimes
21 creates problems to witnesses, to allow for the interpretation, everyone has to wait a few
22 seconds before starting to speak. So that is why I would like to ask you, please do not
23 respond immediately when the question is put, please wait at least three seconds and only
24 then please give your answer.

25 And if you have any questions yourself, please indicate so by raising your hand and we

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1 will then give you the opportunity to speak. Have you understood all this?

2 THE WITNESS: [9:40:53] (Interpretation) Yes, I've understood.

3 PRESIDING JUDGE FREMR: [9:40:55] Very well.

4 Now, court officer, could we please turn quickly into private session.

5 (Private session at 9.41 a.m.)

6 (Redacted)

7 (Redacted)

8 (Redacted)

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1 (Open session at 9.43 a.m.)

2 THE COURT OFFICER: [9:43:26] We are back in open session, Mr President.

3 PRESIDING JUDGE FREMR: [9:44:04] Thank you very much.

4 Before I give floor to the Prosecution, I would like to highlight that we, the Chamber,
5 realised on yesterday's assurances from both parties that they will conduct their
6 examination in a most efficient way, that is why they hopefully will not need all time
7 allotted to them.

8 I also, before I guess Mr Iverson starts, would like to also highlight that, if I look at the
9 Defence preliminary indication, they are not objecting to the expertise of our expert
10 witness and so on, so I guess it should also facilitate your role.

11 Now, Mr Iverson, you have the floor.

12 MR IVERSON: [9:44:55] Thank you very much, Mr President. And as far as -- I
13 believe we're -- yes, we're in open session now, but as far as private session goes, I'll take
14 your instructions under advisement; if we talk about any identifying features, I'll ask to
15 move into private session.

16 QUESTIONED BY MR IVERSON:

17 Q. [9:45:18] Good morning, Professor. We've met before but I'll introduce myself
18 again. My name's Eric Iverson and I'm a trial lawyer with the Office of the Prosecutor.
19 This morning we have two and a half hours allotted to my examination-in-chief, as the
20 Presiding Judge just said. I'll try to keep it shorter, roughly two hours or so. So I think,
21 with a little bit of effort on my part and on your part, we can probably keep it a little bit
22 shorter.

23 Firstly, I'd just like to ask you to state your full name for the record.

24 A. [9:45:59] Sophie Gromb-Monnoyeur.

25 Q. [9:46:02] And also could I ask you for your date and place of birth?

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1 A. [9:46:12] 14 April 1960, in Bordeaux, in France.

2 Q. [9:46:20] All right. Thank you. Just a moment while I get situated here.

3 So the basic outline of my questioning, I'll first ask you a number of questions about your
4 CV and your background, your expertise, and then I'd like to ask you some questions
5 about the instructions you receive from the Office of the Prosecutor and the reports that
6 you developed, and then I'd like to tender those reports into evidence, and there may be a
7 few follow-up questions, and then questions may be asked by the Defence or the Judges.

8 MR IVERSON: So what I'd like to do now is ask for leave from the Chamber to provide
9 Professor Gromb-Monnoyeur with the materials, so the reports and the underlying
10 materials. I think it will be easier if we can have questioning done with the reports in
11 front of her.

12 PRESIDING JUDGE FREMR: [9:47:28] All right.

13 Court officer, could you please assist.

14 MR IVERSON: [9:47:48] Yes, I kindly ask the court officer to assist. Thank you.

15 Q. [9:48:10] And I'm sure this has happened, I want to double-check that the Defence
16 has been provided with a copy of these same materials.

17 MS YAHYA: [9:48:18] We have, thank you.

18 MR IVERSON: [9:48:23] All right.

19 Q. [9:48:25] So if I could ask you -- I know that your CV is attached to the reports, so if
20 I could ask you to turn to tab 2, and the first document there is DRC-OTP-2059-0231, and
21 that's our number in our evidence registration system.

22 And if I could ask you to turn to your CV in that document, and that is on page 12 of the
23 document, the last four of the ERN is 0242. And just look up at me when you're there,
24 please.

25 All right. So first I'd just like to ask you what's the -- if you could explain to the Chamber

1 the highest levels of education that you've attained.

2 A. [9:49:32] Well, in law, well, in the French rules, the highest level is the
3 authorisation to carry out research, the accreditation to carry out research, which is
4 obtained after a PhD and a doctorate within a university, and that makes it possible to
5 carry out the competition as a lecturer in universities and to be a professor in a university.
6 It enables you to carry out direct research.

7 Q. [9:50:11] And where -- in what institution did you receive your PhD?

8 A. [9:50:22] So I've three doctorates. My doctorate in medicine, I took that in
9 Bordeaux. My doctorate in private law and criminal science and in biological science as
10 well, I have those two as well.

11 Q. [9:50:54] And with those educational degrees, could I actually -- could I have you
12 explain to the Chamber in your own words what field of expertise that qualifies you in, or
13 what fields of expertise, those degrees?

14 A. [9:51:14] So, well, I mentioned my doctorates because of the question what my
15 highest level of diplomas were, but in terms of specialisation, my specialisation is in
16 forensics, on the one hand, for victims who are alive, living victims of attacks of all kinds
17 of aggression, physical aggression, sexual aggression, accidents, medical responsibility;
18 victims who are deceased, so autopsies, forensic autopsies.

19 Q. [9:52:08] And we discussed this during witness preparation just so I could
20 understand how to express the field of expertise in English, but would it be correct to say
21 that you're an expert in forensic medicine with a specialty in clinical examination?

22 A. [9:52:35] Yes, that's exactly right. I carry out the acts on deceased persons but also
23 on living people as well, and that I've been doing for over 20 years. So my expertise has
24 grown on living victims. So, as I state, victims of aggression, of accidents. Furthermore,
25 in this field, I created a centre at the University Hospital of Bordeaux which is specialised

1 in treating victims, men, women and children.

2 Q. [9:53:20] And then also on your CV I can see, and I'm going to say it in French here,
3 just to warn the interpreters, you have -- you've written here that you're an (Interpretation)
4 Associate professor of the national school of magistracy. (Speaks English) Could I ask
5 you to tell the Chamber what that means and what are your duties at this school?

6 A. [9:53:55] So in order to become a magistrate in France, whether it's for judges or for
7 prosecutors, there's a competition, which is known to be extremely difficult, which gives
8 access to a national school, so all magistrates go through that school, and it is through that
9 that I became an associate professor. And I think perhaps for longer than I put on my
10 CV. I think it was my last contract that I mentioned here.

11 So I teach forensic medicine to the magistracy, both at an anatomical level, so autopsies, et
12 cetera, but also when it comes to a clinical examination because that's my particular area
13 of expertise. I, therefore, teach them with regards to sexual aggression, supporting
14 victims of aggression, reparation of bodily damage. Those are the main courses that I
15 give. I also treat in my surface -- I teach these magistrates who come as interns as well.

16 Q. [9:55:19] And how many years of experience do you have in the field of forensic
17 medicine?

18 A. [9:55:31] Well, I obtained my diploma in 1990 and I became an expert with
19 Bordeaux since 1991; the Cour de cassation since 2004, an expert there. So, since 1990, I
20 exercise in forensic medicine.

21 Q. [9:55:58] And have you been in the past qualified as an expert to provide testimony
22 in court?

23 A. [9:56:13] Yes, very often, because as I indicated, being an expert with the courts,
24 the Cour de cassation, that gives me competence in the entire national territory, so I very
25 often go to support my reports before all courts, whether directly or in a video conference,

1 which is becoming more regular nowadays. In France, it is part of the work of an expert,
2 which includes testifying before the courts.

3 Q. [9:57:02] And would you be able to estimate how many times you have testified as
4 an expert in French courts?

5 A. [9:57:21] Well, for a long time. Hundreds, I think; maybe even more. I don't
6 even count it any more.

7 Q. [9:57:32] And then on the -- the next page of your CV, I notice, and again I'll read
8 in French, that you have obtained (Interpretation) Knight of the National Order of the
9 Legion of Honour. (Speaks English) Could you explain to the Chamber what this
10 designation is, or this honour?

11 A. [9:58:06] Well, a knighthood, this is a merit which is a decoration which is
12 similar -- well, it distinguishes between military and the civilians. Obviously, I can't
13 have a military honour because I'm a civilian. It's for people who provided to the nation,
14 who have distinguished themselves in particular circumstances or who have honoured
15 France abroad.

16 Q. [9:58:39] And is that related to your expertise in this field of forensic medicine?

17 A. [9:58:55] Well, my first decoration, the Order of Merit, this is something I had after
18 a catastrophe, a massive catastrophe, where there were a huge amount of victims who had
19 to be identified. They were of foreign nationality. It was a traffic accident where lots of
20 vehicles were involved. And I carried out and led the forensic operation to find the
21 causes of death, to identify the people, but also to provide the bodies, back to -- the bodies
22 to the family and also to look after the families who were suffering; and also responsible
23 for the information. That was the first decoration that I had.

24 The second, I must admit I can't really remember exactly because they don't say that
25 you're decorated for such-and-such a region. The first, I was really able to identify why;

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1 the second, I'm not sure.

2 Q. [10:00:12] And in your capacity as an expert in forensic medicine, could you
3 characterise how often you're asked to determine the cause of an injury on a living person
4 or determine whether or not the injury may be consistent with an account?

5 A. [10:00:48] Well, I carry out five to ten expertises per week on individuals who have
6 been victims of aggression or who have been in an accident.

7 Q. [10:01:08] Thank you.

8 MR IVERSON: [10:01:09] Mr President, and your Honours, I would like to ask now
9 that the Chamber formally recognize Professor Gromb-Monnoyeur as an expert in
10 forensic medicine and clinical examination.

11 PRESIDING JUDGE FREMR: [10:01:22] Defence, any objection?

12 MS YAHYA: [10:01:25] No objection.

13 PRESIDING JUDGE FREMR: [10:01:27] Thank you, Ms Yahya. So this request is
14 granted.

15 MR IVERSON: [10:01:36]

16 Q. [10:01:36] So you were asked by the Office of the Prosecutor to provide an expert
17 opinion, and I would ask that you turn to tab 1 in the binder provided to you. And in
18 front of you, you will see a letter of instruction. Do you recognize this letter of
19 instruction?

20 A. [10:01:59] Yes, I recognize it.

21 Q. [10:02:04] And you -- were you asked to provide a -- or, to clinically examine
22 victim/witnesses in this case by the Office of the Prosecutor?

23 A. [10:02:25] The letter that described the mission, in coordination with a psychologist,
24 asked me to examine the witnesses, at least asked me to respond to a number of questions,
25 and I did endeavour to do that when I was able to do so.

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1 MR IVERSON: [10:02:53] Mr President and your Honours, at this time I would like to
2 submit this document. The Prosecution -- I'm not submitting it necessarily to prove any
3 element of any offence or anything like that, just as background so that the Chamber
4 understands and that the record is clear what the Office of the Prosecutor asked
5 Professor Gromb-Monnoyeur to do in this instance, and just so it's clear. And it is
6 DRC-OTP-2059-0054.

7 PRESIDING JUDGE FREMR: [10:03:24] All right.

8 MR IVERSON: Excuse me, I understand that it's already been admitted with the
9 testimony of Dr Lewis.

10 PRESIDING JUDGE FREMR: [10:03:40] Yes, it is also my understanding.

11 MR IVERSON: [10:03:42] So I withdraw my submission.

12 Q. [10:03:59] And before you came here today, did you have an opportunity to review
13 the four reports that you drafted and submitted to the Office of the Prosecutor?

14 A. [10:04:14] Yes, I did re-read them.

15 Q. [10:04:18] And did you have any corrections or editions or anything that you
16 needed to change to those reports, or are they complete?

17 A. [10:04:37] They seem to be complete and in keeping with the conclusions that I
18 drew.

19 Q. [10:04:45] And having reviewed your CV and also just now reviewing it, and I
20 understand that you provided the CV in 2013, is it up-to-date and also true and accurate,
21 or is there anything that you need to update or add that the Chamber should know?

22 A. [10:05:11] For the most part, the only thing that may have changed is my most
23 recent publications, there are more of them, the recent publications, but otherwise as
24 regards my functions, head of the service, in particular, at the University Hospital in
25 Bordeaux, I'm head of the department. I don't think I have anything else to add to that.

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1 Q. [10:05:36] Very well. Thank you. And the four reports, can you attest that they
2 are true and accurate to the best of your knowledge and belief?

3 A. [10:05:52] Yes, I can attest to their truth and exactitude.

4 Q. [10:06:00] And will you be available for questioning by the Defence in this case?

5 A. [10:06:12] Yes, I will.

6 PRESIDING JUDGE FREMR: [10:06:12] And the Chamber as well.

7 MR IVERSON: [10:06:16]

8 Q. [10:06:16] And the Chamber as well?

9 MR IVERSON: [10:06:18] Thank you, Mr President. I appreciate that.

10 Q. [10:06:20] And would you have any objection if the Chamber were to admit those
11 reports for their consideration in this case?

12 A. [10:06:34] No, I have no objection.

13 MR IVERSON: [10:06:37] All right. At this time I would like to submit those four
14 reports and then, assuming they will be admitted, I would then like to go through with
15 individual questions about the process and methodology that

16 Professor Gromb-Monnoyeur used in the clinical examination of the victim/witnesses.

17 So, just for the record, those four reports are DRC-OTP-2059-0231; DRC-OTP-2059-0131;
18 DRC-OTP-2059-0146; and DRC-OTP-2059-0161.

19 PRESIDING JUDGE FREMR: [10:07:32] Thank you.

20 Ms Yahya, or Mr Gosnell?

21 MS YAHYA: [10:07:36] There's no objection to the reports being admitted to 68(b).

22 PRESIDING JUDGE FREMR: [10:07:42] All right. So those reports specified by
23 Mr Iverson are admitted into evidence as further Prosecution exhibits.

24 MR IVERSON: [10:08:02]

25 Q. [10:08:03] So now I'd like to get into a bit of the substance of the actual reports.

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1 For the moment I'd ask to stay in open session, but I'm mindful that there may be a need
2 to go into private session to discuss if there are any identifying features either in the
3 question or answer.

4 So if I could ask you to turn to tab 2 again, to the first report listed in this binder, and that
5 is DRC-OTP-2059-0231.

6 Could I first just ask you to explain the circumstances and how you -- how you initiated
7 the clinical examination in this instance with this individual.

8 A. [10:09:08] First of all, as I indicated in my report, I read a report, a document
9 drafted by Dr Baccard, and I mean a report based on documents. I believe this colleague
10 was not able to examine the victim, but rather drafted a report on the basis of photographs
11 and documents. That's what I mean by a documentary report and not a clinical
12 examination.

13 The photographs that he commented on were also shown to me. I also listened to the
14 depositions of the victims and I was able, myself, to examine the individuals, the ones I
15 mentioned in the report, and I examined them myself, having first questioned them
16 briefly on the alleged facts, because that's not my task, but also I questioned them on their
17 complaints, their -- the types of suffering, and then I examined them clinically.

18 Q. [10:10:55] All right. Could I ask you to turn to page 6 of this report, the last four
19 of the ERN is 0236.

20 So you left off in the last question with -- you said you examined them clinically. Could I
21 ask you also, so that the Chamber has an understanding of what is meant by "clinical
22 examination," could I ask you to just walk the Chamber through what steps you took to
23 clinically examine this individual in this report?

24 A. [10:11:39] Given the circumstances of the examination, I didn't have the
25 appropriate medical equipment, so I drew conclusions on the basis of my senses; in other

1 words, what I could see, what I could feel, and how I could evaluate the various aspects.
2 In fact, I described the patients in exactly that way, in other words, what I could see upon
3 inspecting them. I inspected the victims and the -- their injuries. I palpated the victim
4 to see if there were any bone injuries, and then I asked the individual to carry out a
5 number of movements in order to see how they were able to function or whether there
6 were any functional disorders.
7 I also took photographs.

8 Q. [10:12:54] And I'd like to take a look at those photographs but, first, you mentioned
9 that you lacked appropriate medical equipment, so I do want to ask you about that. If
10 you could explain to the Chamber what limitations you had during the clinical
11 examination. And we'll leave it right there for now and then I'll probably have a few
12 follow-up questions about that.

13 A. [10:13:28] As regards this particular victim, she told me what her size was, which
14 seemed to be fairly accurate, but that's not very precise. She also indicated her weight,
15 which also seemed to correspond to what I could see myself. So for this particular victim,
16 regarding her injuries and potential sequelae, I wouldn't have done anything differently
17 had I been in my medical office. I didn't have any X-rays, and that would have been
18 extremely useful and interesting in order to better understand the nature of the injuries.
19 It might have been useful to have scans, which also would have enabled me to have a
20 more precise understanding of the injuries, but as regards the observations and the
21 functional limitations, I was not uncomfortable, if you will, with the examination I was
22 able to carry out.

23 Q. [10:14:43] And these limitations that you listed, did they impact your confidence in
24 the conclusions that you were able to make in these cases?

25 A. [10:15:07] No, in fact, I might have been able to be more precise as regards the bone

1 injuries that I evaluated by the physical examination, but of course that's not all that easy.
2 In order to evaluate bone injuries, it's more precise to carry out complementary tests like
3 X-rays or scans, but I was not at all uncomfortable as regards my conclusions. I would
4 have stated exactly the same thing. I'd have done it exactly the same way had I
5 examined the patient in my office as regards the physical injuries.

6 MR IVERSON: [10:15:50] Mr President, I would like to ask that we go into private
7 session just before we look at the photographs because the injuries are quite identifying in
8 this case.

9 PRESIDING JUDGE FREMR: [10:16:01] Fully understandable. I think it is in
10 accordance with our guidance, so let's move into private session.

11 (Private session at 10.16 a.m.)

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5 (Open session at 10.30 a.m.)

6 THE COURT OFFICER: [10:30:16] We are in open session, Mr President.

7 PRESIDING JUDGE FREMR: [10:30:25] And for the interest of public, please,

8 Mr Iverson, please repeat the question again.

9 MR IVERSON: [10:30:31] I will do so. I'll try to be a little bit more fluent with the
10 question this time since as I have a second chance at it.

11 Q. [10:30:40] As a more general matter, with regard to female genitals, how would
12 you characterise the healing, how quickly that injuries -- I think I've failed in actually
13 becoming more fluent. Let me just repeat the question from the transcript here.
14 How would you characterise or how would you describe the healing in time in which an
15 injury might be observable by a forensic specialist?

16 A. [10:31:34] When looking at a case of defloration, namely where the hymen was
17 intact before the act, the defloration can disappear within 10 to 15 days entirely. And for
18 such injury to heal it takes 10 to 15 days, although the defloration remains.
19 But there is no exact science in establishing these time frames, 10, 15, maximum 15 days in
20 much the same manner as scarring on ordinary tissue, which usually takes some time.
21 And beyond the scarring it is no longer possible to assign a date to how much time it took.
22 If we're talking about normal defloration, I have had the opportunity in other
23 circumstances to examine clinically victims of sexual aggression with other types of injury,
24 I have examined cases where it takes a longer time for them to heal and sequelae remain
25 in place for a much longer time. But we are dealing here with cases of sexual aggression

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1 and violence, including using a number of objects, for example.

2 Q. [10:33:05] And in your experience, could you explain to the Chamber the occasions
3 which you were able to observe injury in sexual assault victims who complained of sexual
4 assault only years after the alleged event? Did you -- have you observed cases like that?

5 A. [10:33:45] Our centre --

6 PRESIDING JUDGE FREMR: [10:33:45] Hold on, hold on, Madam Witness.

7 Ms Yahya.

8 MS YAHYA: [10:33:50] Sorry. We would object to this because it's outside of the
9 scope of her expertise.

10 PRESIDING JUDGE FREMR: [10:33:57] I would agree because really we have
11 Professor Gromb-Monnoyeur as an expert witness and this question asks for her
12 experience or testimony as a lay witness, which I think it's --

13 MR IVERSON: [10:34:12] Well, maybe --

14 PRESIDING JUDGE FREMR: [10:34:13] -- beyond the scope.

15 MR IVERSON: [10:34:15] Maybe it wasn't clear what I was asking. I'm asking if she
16 was able -- if she's able to observe, or cases in which she was able to observe injury on
17 sexual assaults that happened long ago to get an indication of what types of objects or
18 sexual assaults could cause such injuries or what types of cases she has observed.

19 PRESIDING JUDGE FREMR: [10:34:42] So in fact you rephrased your question now.
20 Defence, any objection to newly phrased question?

21 MS YAHYA: [10:34:56] Sorry, Mr President. I think it's best if my colleague poses the
22 question again so that we can see exactly how it's formulated.

23 PRESIDING JUDGE FREMR: [10:35:08] But I guess it was clear that it was now
24 extended a bit.

25 MR IVERSON: [10:35:13] I'll do my best to rephrase, Mr President.

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1 PRESIDING JUDGE FREMR: [10:35:15] All right. But still I don't see any reason why
2 such newly -- the newly created question should be prohibited.

3 MR IVERSON: [10:35:26]

4 Q. [10:35:26] So really what I'm asking just in your expertise, I'm not asking you to
5 step outside of your expertise, but in the past have you had cases where you were able to
6 observe injuries to sexual assault victims that were old, that happened perhaps even years
7 before you were able to observe the injury?

8 A. [10:36:02] I have examined thousands of victims of sexual assault and it is very rare
9 to find any traces several years after the event.

10 Q. [10:36:20] And I also wanted to ask, before we move on to the next report, if there's
11 anything else of significance that's not necessarily -- that you believe requires further
12 explanation so that the Chamber is fully apprised of this particular clinical examination?

13 A. [10:36:57] Are you talking about examining the victim as an entire person, or are
14 you referring specifically to genital examinations?

15 Q. [10:37:09] No. Now I'm just referring to the entire clinical examination, not
16 necessary limited to sexual assault allegations, but anything else remarkable or anything
17 that requires additional explanation about the report about your clinical examination.

18 A. [10:37:41] No. I think I have covered most of my conclusions and observations.

19 Q. [10:37:48] All right.

20 Could I ask you to turn to tab 3, please, and that's the next report, and that is at
21 DRC-OTP-2059-0131.

22 Now, of course, every case is different, and rather than generally explaining things
23 that -- rather than repeating yourself and explaining what happens in a clinical
24 examination, can I ask you just to limit yourself to explaining what happened in this
25 particular clinical examination and what were you -- what were your findings in this

1 examination?

2 A. [10:38:46] So I am not going to talk about the general methodology any more
3 because it was the same; I looked at previous documentation as well as the victim's
4 statements.

5 Well, I listened to her complaints about pain and functional discomfort. I also examined
6 the victim clinically, inspection, palpation, functional examination, during which I asked
7 the victim to walk, sometimes on her toes, on her heels, to walk on one foot, to also stoop,
8 if possible. I looked at the victim's muscles and also conducted a neurological
9 examination. I also took photographs of the victim.

10 Q. [10:40:03] And because I intend to ask about the -- her observations of the physical
11 injury, I would ask to go briefly into private session, Mr President.

12 PRESIDING JUDGE FREMR: [10:40:15] Do you think, Mr Iverson, that it is really so
13 specific that it could lead to identification?

14 MR IVERSON: [10:40:21] No, but I -- I don't think it is that specific, but I'm trying to
15 abide by your instructions at the beginning of this morning as best I can. I don't believe
16 that it is particularly identifiable because it's a relatively common injury, but I can't say
17 that with a hundred percent certainty either.

18 PRESIDING JUDGE FREMR: [10:40:45] All right. Let's move into private session.

19 (Private session at 10.40 a.m.)

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- 19 (Open session at 10.59 a.m.)
- 20 THE COURT OFFICER: [10:59:48] We are in open session, Mr President.
- 21 PRESIDING JUDGE FREMR: [11:00:04] Thank you, court officer.
- 22 So we take our regular break now for 30 minutes which means we will resume at half past
- 23 11.
- 24 THE COURT USHER: [11:00:15] All rise.
- 25 (Recess taken at 11.00 a.m.)

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1 (Upon resuming in open session at 11.33 a.m.)

2 THE COURT USHER: [11:33:44] All rise.

3 Please be seated.

4 PRESIDING JUDGE FREMR: [11:34:11] We will continue with examination-in-chief of
5 our expert witness, which is conducted by Prosecution, by Mr Iverson.

6 Mr Iverson, you have the floor.

7 MR IVERSON: [11:34:22] Thank you, Mr President. And before we return to tab 4,
8 which is where we left off before the break, I would first like to, for the Chamber, submit
9 the three forensic reports by Dr Baccard. And I'll provide the ERN number:

10 DRC-OTP-0096-0002, DRC-OTP-0104-0158 and DRC-OTP-0104-0199.

11 Now, I realise that the potential probative value of these reports is potentially is less
12 because they're based on a photographic examination and not a physical examination, but
13 I would invite the Chamber before making a final decision to take a look at those three
14 reports because I do believe that they will be helpful and complement
15 Professor Gromb-Monnoyeur's reports.

16 As you look at them, you'll see that they're nothing less than completely objective and
17 professional, and they provide -- as I said, they complement the reports already provided.
18 And also with an understanding that the professor has already testified that they were of
19 less, or of limited value to her reports, but nevertheless, I want to submit them and ask
20 that the Chamber review them and determine what -- the Prosecution thinks they would
21 be helpful and so we would ask that you would look at them before making a final
22 determination.

23 PRESIDING JUDGE FREMR: [11:36:18] Defence.

24 MS YAHYA: [11:36:19] The Defence objects to the admission of these reports because
25 what is relevant here is how the witness interpreted and may have used those reports and

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1 not the opinions and reports of the -- of Mr Baccard, who is not being called as an expert
2 here and who is an internal member of the Office of the Prosecution. Nor he can be
3 called as a member -- as an expert because he is a member of the Office of the Prosecution
4 and therefore his opinions and results may not be impartial. And for that I would cite
5 reference ICTY decision Prosecution versus Dordevic, decision on Defence notice under
6 Rule 94 bis of 5 March 2009, paragraph 20 where Philip Coo was not considered an expert
7 because he was a member of the Prosecution. Thank you.

8 PRESIDING JUDGE FREMR: [11:37:13] Mr Iverson, any reaction?

9 MR IVERSON: [11:37:16] Well, I would react to the allegation that someone cannot be
10 objective simply because they're a member of the Prosecution.

11 Dr Baccard is a fully capable and recognized forensic pathologist and, as I already stated,
12 once looking at the reports you can quickly discern that they're nothing less than
13 completely objective. So I would definitely take issue with that that categorically no one
14 from the Prosecution could be objective. But I would stand by my initial submissions
15 that -- I'll leave it to the Chamber to decide, but in the Prosecution's submission these
16 would be helpful.

17 PRESIDING JUDGE FREMR: [11:37:54] Mr Iverson, I have to say that we have already
18 preliminary deliberated on that because we expected that such a request would be
19 brought and our decision is that we sustain the objection and we will not, at this moment,
20 admit those reports, but I would like to highlight one thing, through this witness, because
21 I think the comments of Professor Gromb-Monnoyeur was that those reports were not
22 very useful and also there were some differences in conclusions made by this expert
23 witness and the other one. So that is why we don't see proper to admit those reports
24 through this witness. But still we will give you the chance to submit those reports
25 through Rule 68(2)(b), and then we will also take into consideration all those facts you

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1 now mentioned orally.

2 So now proceed.

3 MR IVERSON: [11:39:09] Very well. Thank you, Mr President.

4 And I would ask that we return to tab 4 and return to private session briefly.

5 PRESIDING JUDGE FREMR: [11:39:18] Court officer, let's move into private session.

6 (Private session at 11.39 a.m.)

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10 (Open session at 11.46 a.m.)

11 THE COURT OFFICER: [11:46:31] We are in open session, Mr President.

12 PRESIDING JUDGE FREMR: [11:46:44] Thank you, court officer.

13 Mr Iverson, please proceed.

14 Q. [11:46:58] All right. Again, could I have you -- to the extent that it was different
15 than the rest of the clinical examinations that you've already described, can I have you
16 explain to the Chamber this particular clinical examination and the details from this
17 examination?

18 A. [11:47:23] In the case of this victim I took that person's complaints at a subjective
19 level. She indicated to me pain, to have pain, polyform -- of a polyform nature, joints,
20 joint pain, headaches and I would say symptoms that are not characteristic of certain
21 illnesses but which would go along with the hypothesis of endemic malaria,
22 probable -- probably, but I was not objectively not able to find out. I did carry out a
23 general examination of this victim at a neurological level. And at a digestive level, cardio
24 and lung examination as well, but not a genital examination because she did not wish to
25 have that done. I didn't note sequelae or after-effects from violence at an objective level.

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1 Q. [11:48:47] And then for this particular victim and the examination, could I have
2 you just briefly explain to the Chamber your conclusions and, you partially answered it,
3 but the reasons you came to those conclusions?

4 A. [11:49:17] My conclusion was that I couldn't confirm nor disprove the complaint of
5 the victim, namely a complaint concerning sexual aggression. She didn't indicate that
6 she'd been subjected to physical violence. I didn't see sequelae at a strictly physical,
7 sematic and functional level, I therefore couldn't bring any probative element in support
8 of her complaint.

9 Q. [11:50:02] So for three out of the four victims that you examined your conclusion
10 was that the injuries or the observations you made that the physical injuries were
11 consistent with their accounts; is that right?

12 A. [11:50:33] Indeed. For the three other victims I was able to highlight concordant
13 evidence which went along with their statement apart from an arm injury, there was
14 somebody who didn't have particular characteristics in that, so I didn't know the origin of
15 that. As far as all the rest is concerned, I did positively conclude that from what I had
16 seen it went along with the statements of the victims.

17 Q. [11:51:15] All right. Thank you very much, professor. Those are all the
18 questions that I have for you.

19 MR IVERSON: [11:51:20] Thank you, your Honours and Mr President.

20 PRESIDING JUDGE FREMR: [11:51:24] Thank you very much, Mr Iverson. And I
21 also thank you that you have been efficient indeed in your examination.

22 Now, who will be -- yes, I also got update on timing, so Mr Iverson used 1 hour 24
23 minutes.

24 Who will be cross-examining the witness, Defence?

25 MS YAHYA: [11:51:47] I will be, your Honour, and for management of time purposes I

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1 can tell you that it will probably be less than 30 minutes.

2 PRESIDING JUDGE FREMR: [11:51:56] Did I hear properly? Can you repeat it, less
3 than 30?

4 MS YAHYA: [11:52:02] That's correct.

5 PRESIDING JUDGE FREMR: [11:52:03] I really appreciate it because I believe it's, you
6 know, that we would -- it's I think comment to both parties that we would push you to
7 shorten your examination at any price, but I think you should also defer witnesses that
8 really, especially now when we use 68(3), when it's really possible to make examination in
9 a relatively much shorter time compared to witnesses where it's really, on the other hand,
10 necessary to go into details and to make extensive examination. So if there is such an
11 efficient approach, the Chamber highly appreciate.

12 Now, Ms Yahya, you have the floor.

13 QUESTIONED BY MS YAHYA:

14 Q. [11:53:12] Good morning, Doctor.

15 A. [11:53:13] Good morning.

16 Q. [11:53:13] So my name is Marlène Yahya Haage and I'll be asking you a few
17 questions on behalf of Mr Ntaganda. If any of my questions are not clear, please do not
18 hesitate and I will try to clarify my questions for you. Do you understand?

19 A. [11:53:27] Yes.

20 Q. [11:53:27] And I think this morning has gone rather well, but just as a reminder, for
21 the sake of interpretation, to pause so that the interpreters can catch up, and I say that for
22 you and myself as well.

23 If we could start by bringing up, please, DRC-OTP-2059-0054, which is Prosecution tab 1.
24 Sorry, these documents are not for broadcast publicly.

25 PRESIDING JUDGE FREMR: [11:54:09] And apology from my part, how should I

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1 properly call you, because I saw that I in effect decided to disarticulate your name, so I
2 should call you Ms Yahya, or Ms Haage?

3 MS YAHYA: [11:54:28] Ms Yahya is okay. Thank you.

4 PRESIDING JUDGE FREMR: [11:54:29] Thank you.

5 MS YAHYA: [11:54:35]

6 Q. If we can turn to page 0055, which is the second page, I think there is paragraph 3(b)
7 at the very end. You were asked and I read, at the very end, "In particular an aspect of
8 any relevant physical injuries allegedly sustained by the four witnesses, we ask you to
9 describe..." and the first bullet point is "...the injuries allegedly suffered from the events
10 occurring in Ituri in February 2003."

11 This is correct?

12 A. [11:55:30] Yes, that's correct.

13 Q. [11:55:31] And then the letter of intent continues, and I won't read it all, to describe
14 some of the questions that you were asked to analyse?

15 A. [11:55:47] That's correct.

16 Q. [11:56:01] You spoke this morning earlier about having received documentation on
17 these witnesses' statements and the reports of Mr Baccard, correct?

18 A. [11:56:16] Yes.

19 Q. [11:56:22] Is it common practice in your field to receive such documentation before
20 examining the individual?

21 A. [11:56:33] Yes. Yeah, it is common practice, indeed.

22 Q. [11:56:40] And you explained this morning that you first looked at the
23 documentation and then spoke with the witnesses and then did a medical examination?

24 A. [11:56:56] Indeed, I read the documents before meeting the victims.

25 Q. [11:57:02] Wouldn't it have been better to ask you to examine the victims and your

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1 general potentials of the injuries rather than ask you to specifically confirm or infirm an
2 already established hypothesis?

3 A. [11:57:23] In the case in point, I wasn't asked to confirm or infirm a previous report,
4 it was just there were elements in the dossier, and as I said, I usually read
5 expert -- previous expert reports. I don't know if the term I've used in French is the one
6 that's appropriate for this document, but I usually do intervene as an expert at second or
7 third X-level and, therefore, I read the essential information, the description more than the
8 conclusion. The proof of it is that in one case I haven't concluded the same thing.

9 Q. [11:58:12] Thank you.

10 MS YAHYA: If we could please have tab -- Prosecution tab 2, the first report, which is
11 DRC-OTP-2059-0231. This document is not to be broadcast publicly. If we could go to
12 page 5 of the document, which is 0235, please.

13 Q. [11:59:25] Here you describe your methodology, and you also mentioned it this
14 morning, by looking at the reports of Mr Baccard. Did you consult with him on these
15 reports?

16 A. [11:59:42] No, absolutely not.

17 Q. [11:59:46] Thank you.

18 And if we look at the bottom of the page, is it correct that you met with this individual on
19 15 October 2013?

20 A. [12:00:07] Well, if I wrote it, it should be correct, yes, indeed.

21 Q. [12:00:13] Thank you.

22 And remaining on the same page, at the beginning I believe, it is at the fourth paragraph,
23 I won't read it out loud because we're not in private session, but it says, "Madame et née
24 le..." and there is a date of birth. Do you see that?

25 A. [12:00:41] Yes, I can see that.

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1 Q. [12:00:42] Did you ask her her date of birth?

2 A. [12:00:53] I don't really remember, but if I wrote it down, I must have asked her.

3 Q. [12:01:01] Thank you.

4 Can we go to page 0240, which is page 10 of your report.

5 My first question, Doctor, and this is in general for all of your reports and also what you
6 said this morning, you used the term "compatible" in your reports. Can you explain to us
7 what that term is?

8 A. [12:02:21] Indeed, I have used the term "compatibility" because I wasn't there 10
9 years before in order to make the initial observations right after the injuries and, therefore,
10 I was basing my conclusions on the patients' complaints and what I could objectively see.

11 Q. [12:02:52] In level of precision with the level -- with the term "compatible," how
12 precise are you when you say "compatible"?

13 A. [12:03:16] I'm afraid I'm not sure I understand your question. "Compatible" or
14 "consistent," if you will, is a positive term, it's more qualitative than quantitative. It's
15 either compatible or not compatible.

16 Q. [12:03:43] Let me put it another way: What other mechanisms are compatible, for
17 example, with this, and I'm referring here to the scar on the left arm?

18 A. [12:04:06] Well, for example, the injury on the left arm could be the result of
19 various types of wounds, could have various origins and, therefore, I couldn't compare it,
20 I couldn't indicate which weapon, for example, was the cause or what particular process
21 because I can't -- I have no way of comparing that with what I can actually observe on the
22 individual.

23 Q. [12:04:47] Thank you.

24 And in this part, and I will read out your exact quotation in French, for the interpreters:

25 (Interpretation) "The injury of the left arm is compatible with the patient's statements but

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1 in no way a sign of a particular pathology. Pathognomonic is the medical term."

2 Can you explain this medical term, please?

3 A. [12:05:25] As I have indicated, when you're examining the sequelae, which was my
4 case because I was examining the individual many years after the facts, there are certain
5 sequelae or certain scars which lead one to conclude that a particular damaging process
6 was the source of that injury, whereas others do not have any particular characteristic.

7 This term "pathognomonic" means that it is not a scar that I can identify as being a
8 characteristic of a particular type of weapon, a particular type of damaging instrument.

9 And I stated that contrary to the other aspects which were much clearer from that point of
10 view.

11 Q. [12:06:24] Thank you. Can you provide us with a time period for this particular
12 scar? If it's something that's not possible, it's okay.

13 A. [12:06:48] No, it's not possible. If you mean a period, can I date the event, no, it's
14 not possible.

15 Q. [12:06:57] Can you give a range of possible dates or years?

16 A. [12:07:09] No, it's not possible.

17 Q. [12:07:13] Would it be compatible, this particular scar, with an injury suffered
18 in 2001?

19 A. [12:07:31] You mean the injury on the arm? Yes, because we can't give a precise
20 date.

21 Q. [12:07:42] Thank you.

22 If we could go to page -- back to page 5, 2059-0235. I'm sorry, Mr President, I think it
23 may be better to go to private session for this question.

24 PRESIDING JUDGE FREMR: [12:08:17] Certainly, Ms Yahya.

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

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- 11 (Open session at 12.12 p.m.)
- 12 THE COURT OFFICER: [12:12:26] We are back in open session, Mr President.
- 13 PRESIDING JUDGE FREMR: [12:12:37] Thank you, court officer.
- 14 Ms Yahya, please proceed.
- 15 MS YAHYA: [12:12:42] Thank you, Mr President.
- 16 Can we please have DRC-OTP-2059-0131, tab 3. Not to be broadcasted publicly. Thank
- 17 you. And if we could go to page 5, which is 0135, please.
- 18 Q. [12:13:41] Doctor, at the bottom of this page, am I correct to say that you examined
- 19 this individual on 13 October 2013?
- 20 A. [12:13:58] Yes, that's what I wrote.
- 21 Q. [12:14:02] And I understand from your testimony this morning that you did not
- 22 have access to take any X-rays; correct?
- 23 A. [12:14:18] That's correct.
- 24 Q. [12:14:22] If you had been in your office, as you described this morning, would you
- 25 have -- and you had access to such equipment, would you have conducted X-rays?

1 A. [12:14:47] It is not ordinary that I prescribe X-rays, however, it's fairly usual that
2 injured individuals come in with their medical file and their X-rays. In this case, as I said,
3 during the neuro-psychological examinations, in this case, an X-ray would have enabled
4 me to have a better understanding of the sequelae and better evaluate them in terms of
5 bone damage, arthrose, et cetera -- osteoarthritis in particular. In light of the conclusions
6 that I came to, it wouldn't have changed anything in my view.

7 Q. [12:15:46] Thank you.

8 And on page 0139 you mention that this individual had previous treatments -- had
9 indicated to have previous treatment, local treatments; is that correct?

10 A. [12:16:40] Yes, local treatment, and I believe she also received antibiotic injections.

11 Q. [12:16:48] Did you say whether, after this initial local treatment, she received any
12 further local treatment some years later?

13 A. [12:17:16] I don't believe so.

14 Q. [12:17:18] Okay. I know you have already answered this with the previous
15 question, but again, in the case of this particular scar, is it possible to determine a date?

16 A. [12:17:47] This is an old scar, however, there was a detail, if I may call it that, at the
17 very centre of the scar. I'm looking for the passage. I think there was a slightly scabby
18 zone which made me think that it might have been recently healed. I'm looking for the
19 reference. Maybe I'm confusing with a different case.

20 I've found it. The internal malleolar, I state -- let me just remind you that this is a bony
21 area that was considerably deformed and there was a scab, a superficial scab in this area.
22 And this lesion that I called an excoriation, a scab, would be present and, in fact, the
23 victim told me that it was a small hole where there had been discharge for quite a long
24 time, without her being able to be any more precise, and that's why I wrote it down in this
25 manner.

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1 Q. [12:19:43] If I understand correctly, for this particular part you would say that that
2 is a recent scar?

3 A. [12:20:00] Well, the large ankle scar is old and contemporary to the bone callus, but
4 on a more superficial level there is a -- an exposed area where there was this small scab. I
5 have no way of knowing the origin of it. I referred to it as an excoriation which could be
6 the result of a shock. This is quite frequent when you have a bone the way it is here,
7 close to the surface, and the victim stated that she had discharge at that level. But it was
8 only this scabby area that was recent, the remainder of the wound was old.

9 Q. [12:20:57] Thank you.
10 If we could turn to page 0140, which is page 10 of the report. Sorry, Doctor, just on what
11 we were discussing just a moment ago, when you say "ancienne," what range, if any, can
12 you say you mean by "ancienne, cicatrice ancienne"? It's not before you. Going back to
13 what you said.

14 A. [12:21:57] Well, an old scar by definition cannot be dated, it's an old scar.
15 Depending on the size of the scarred area, it could be a few weeks, a few months. It's
16 totally impossible to date it. In this particular case, it was a very large scarred area.

17 PRESIDING JUDGE FREMR: [12:22:25] But, sorry, Ms Yahya, I would like to put one
18 additional question: And as concerns those four reports, and you now clearly said that
19 it's not possible even to make some exact dating of previous injury, but allegedly all those
20 four victims have been -- had been injured roughly between 2002, 2003. Have you found
21 anything that would obviously put in doubt this presumption that those injuries have
22 been caused in those dates?

23 THE WITNESS: [12:23:23] (Interpretation) No, your Honour. All of the conclusions
24 are perfectly compatible, perfectly consistent with this 10-year period, aside from this
25 small scab I referred to.

1 PRESIDING JUDGE FREMR: [12:23:37] Thank you very much.

2 Ms Yahya, please proceed.

3 MS YAHYA: [12:23:42] Thank you.

4 Q. [12:23:42] Would the scarring be consistent with an injury from 1998?

5 A. [12:24:02] Are you referring to the ankle injury?

6 Q. [12:24:05] Yes. For that one in general, and in general I'll ask the following sort of
7 (inaudible) questions.

8 A. [12:24:19] That scar and the sequelae to the ankle, given the same modus operandi,
9 that is more than two years, it is perfectly possible, but because you cannot date one year,
10 two years, three years, but the modus operandi would have been exactly the same.

11 Q. [12:24:45] Thank you. And I think you still have it on your screen. Doctor,
12 could you please explain what you mean by -- what a date of stabilisation, and in French,
13 "date de consolidation"?

14 A. [12:25:12] In forensic terms we refer to stabilisation when the patient no longer
15 needs any care to improve his or her state. However, you may also always provide care
16 to avoid or slow down the patient's deterioration or the wound deterioration of the state
17 of the patient.

18 In this particular case, I don't know exactly what happened after I saw the patient, but it
19 was totally forecastable that there would be a deterioration of the patient's condition, and
20 that's why I stated that an intervention was necessary. However, we could not improve
21 the sequelae.

22 Q. [12:26:06] Thank you, and I will just read the sentence here in French:

23 (Interpretation) "It can be estimated that the stabilisation dates back one year after the
24 events; in other words, in 2004."

25 How did you determine the date February 2004?

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1 A. [12:26:41] In fact, this is based on the hypothesis that the injury occurred in
2 February of 2003. So the only assumption I'm making is that the stabilisation occurred
3 one year later after the facts.

4 Q. [12:27:00] Thank you.

5 Did you conduct a blood test for this particular individual?

6 A. [12:27:13] No, absolutely not.

7 Q. [12:27:15] Thank you.

8 MS YAHYA: [12:27:17] I'm done with this document.

9 If we could please have DRC-OTP-2059-0146. It's at Prosecution tab 4, and it's also not to
10 be broadcasted publicly. If we could go to page 0150, which is page 5 of the report.

11 Q. [12:28:21] Once again at the bottom of the page, can you please confirm that you
12 met with this individual on 13 October 2013?

13 A. [12:28:32] Yes, I can confirm that.

14 Q. [12:28:46] If we go to page 0155, which is page 10, and I will read at the bottom of
15 the page in French:

16 (Interpretation) "To date, X is stabilised, his injuries are stabilised and one can date the
17 stabilisation to two years after the facts, in other words, February 2005."

18 (Speaks English) My question is the same as before: How did you conclude the date
19 February 2005?

20 A. [12:29:55] Well, I would give you the same answer as I gave you a moment ago,
21 given the date of the events that the patient indicated, but I was assuming that it took in
22 this case two years for the injuries to be stabilised.

23 Q. [12:30:17] And this date assumez was provided to you by the individual?

24 A. [12:30:49] I don't believe so. I didn't note it in the various statements made by the
25 patient.

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1 Q. [12:30:59] Would this date February 2003 have been provided to you in your letter
2 of instruction?

3 A. [12:31:35] Indeed, the date is indicated in the letter containing the instructions.

4 Q. [12:31:41] Thank you.

5 A. [12:31:46] And it's also mentioned in the statements, the depositions.

6 Q. [12:31:55] By this you mean in the statements of the other individuals?

7 A. [12:32:08] There was an interview with this victim, perhaps a hearing.

8 Q. [12:32:28] If I were to tell you that this individual did not specify or was not able to
9 recall the month, does that refresh your memory as to where you may have gotten the
10 date February, the month February?

11 A. [12:32:56] I can't be any more precise than what I have just said.

12 Q. [12:32:58] I understand. Thank you.

13 MS YAHYA: [12:33:00] I'm done with this document.

14 If we could please pull up DRC-OTP-2059-0161, Prosecution tab 5. Not to be
15 broadcasted. If we could go to page 0165, which is page 5 of the report.

16 Q. [12:33:48] Doctor, can you confirm the date where you examined this individual as
17 12 October 2013?

18 A. [12:34:02] Yes, I can confirm that.

19 Q. [12:34:03] Thank you.

20 Did you conduct a blood test for this individual?

21 A. [12:34:22] No.

22 Q. [12:34:26] Did the individual express any concerns for HIV?

23 A. [12:34:43] She did not mention that to me, otherwise, I would have taken it down.

24 Q. [12:34:47] Thank you.

25 If we can go to page 0167, which is page 7 of your report.

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1 In your conclusions, you conclude that this individual suffered from what is commonly
2 known as malaria; am I correct?

3 A. [12:35:32] Yes, that is correct.

4 Q. [12:35:34] How did you arrive to this conclusion?

5 A. [12:35:42] By deduction, from the pains she suffered and the fact that she
6 mentioned having taken some quinine whenever she experienced such pain or crisis.

7 Q. [12:35:59] So this conclusion is based on what she told you?

8 A. [12:36:08] Correct.

9 Q. [12:36:11] Thank you very much.

10 MS YAHYA: [12:36:13] I have no further questions.

11 PRESIDING JUDGE FREMR: [12:36:18] Thank you very much, Ms Yahya, from, at
12 least from my own perspective, it was a very good premiere.

13 Now, Mr Iverson, any need for re-direct?

14 MR IVERSON: [12:36:31] No, Mr President.

15 PRESIDING JUDGE FREMR: [12:36:34] In such a case, Professor Gromb-Monnoyeur, I
16 would like to thank you on behalf of the Chamber. Your examination was a bit shorter
17 than we expected, but I believe it was because your reports were so clear and precise that
18 they simply did not require any further examination in that, so thank you very much.
19 We appreciate that you came and shared your expertise with us. And I believe that your
20 testimony will assist us in our deliberations and in our effort to find the truth. So thank
21 you very much.

22 And now, court usher, please assist Madam Witness to leave the courtroom.

23 (The witness is excused)

24 PRESIDING JUDGE FREMR: [12:37:45] So even yesterday we have been a bit behind
25 our schedule, now we are slightly in advance, but I got some information that as concerns

1 our upcoming witness, at least as we scheduled our order, there are some problems.

2 Well, is Prosecution at the moment capable to provide us with some details?

3 MS SAMSON: [12:38:17] I don't have very many details at this moment, Mr President,
4 but we were advised this morning by the victims and witnesses section that there is
5 indeed an issue related to the start time of P-668's testimony, apparently coming from the
6 witness, so it's not an issue of technically arranging the video link. And we are trying to
7 contact the witness to confirm the information we have received. To date, we have not
8 been able to do that but we continue to try.

9 In the meantime, however, we have made arrangements to start with the next witness,
10 which is Witness P-30, tomorrow so that we will not have a significant gap as a result of
11 the potential change in the order of appearance for Witness P-668. I've communicated
12 that to the Defence.

13 Given, however, that we are finalising witness preparation for Witness P-30 this afternoon
14 and that there will be a meeting between the Defence and the witness also this afternoon.
15 And to give the Defence some, as I understand it, necessary time to make this adjustment,
16 we propose to start with the examination of P-30 at 2.30 tomorrow instead of at 9.30
17 tomorrow. This would also allow the witness the minimum break period between the
18 end of his familiarization and preparation and before the start of his testimony.

19 If that's acceptable to the Chamber, that means that we would have the
20 examination-in-chief of Witness P-30 concluded tomorrow, with cross-examination to
21 start on Monday. Thereafter we're making arrangements for the following witnesses to
22 be moved up as well and we are not aware at present of any difficulty in that regard.
23 Once we know more where we stand with Witness P-668, we will know whether that
24 witness can be scheduled this block at a later period or not, but we are also making
25 arrangements to have the back-up witness, P-792, brought for testimony in the event that

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1 Witness P-668 will not testify this block.

2 That is the update that I have at the moment, your Honour, but I will certainly update the
3 Chamber, the parties and participants concretely as soon as I have more information.

4 PRESIDING JUDGE FREMR: [12:40:53] Thank you, Ms Samson.

5 One additional question from my part. You said that if we start 2.30 tomorrow with the
6 next witness you would be able to finish examination-in-chief that day, but I think you
7 have been allotted three hours, so wouldn't it be then rather better to start at -- sorry, two
8 hours? Okay, then, it's fine.

9 MS SAMSON: [12:41:25] Yes.

10 PRESIDING JUDGE FREMR: [12:41:26] I was wrong in my counting. So that would
11 be fine. Okay, so 2.30 and two hours for examination-in-chief.

12 MS SAMSON: [12:41:32] Yes, assuming that tomorrow afternoon we have a two-hour
13 session in the afternoon from 2.30 to 4.30, we have been allotted two hours to complete the
14 examination-in-chief of Witness P-30.

15 PRESIDING JUDGE FREMR: [12:41:44] Very well.

16 Defence, your position.

17 MR GOSNELL: [12:41:46] Mr President, I have been able to consult with Mr Bourgon
18 about these matters and I can say that we would not object to proceeding with the
19 examination-in-chief tomorrow. We would, however, request that it commence
20 somewhat earlier than the afternoon, the reason for that is that there would be no
21 opportunity for consultations with Mr Ntaganda prior to the commencement of the
22 cross-examination unless the direct examination finishes earlier in the day than 4.30. So
23 the request would be to start somewhat earlier, preferably at the regular start time
24 tomorrow, but perhaps it could be a little bit later and still allow for adequate time for
25 consultation. So that would be the first position in terms of whether or not the direct

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1 could go forward.

2 The second point is that my understanding is that the protocol on the practices to be used
3 to familiarise witnesses for giving testimony would -- there would need to be a
4 dispensation issued by the Trial Chamber which I'm sure the Chamber would be willing
5 to do, but we just would like to make sure that all the Ts are crossed and the Is are dotted,
6 especially considering that the Defence is going to be meeting this witness at 4 o'clock
7 today if all goes well.

8 And then the other two points in respect of modalities of this would be that the Defence
9 would not be in a position to provide objections to the list of documents until tomorrow
10 morning and then the further request would be that the witness preparation log really be
11 circulated as soon as possible because if it's received at 9 o'clock tonight and if it's lengthy,
12 then that will certainly put the Defence in a very difficult position.

13 So those would be the requests.

14 And I would add one more, which is if we could have a time today by which we would
15 know one way or the other whether we are going with either 668 or with P-30, then we
16 would be very grateful for that and we would appreciate instructions from the Chamber
17 in that regard. Thank you, Mr President.

18 PRESIDING JUDGE FREMR: [12:44:10] Thank you, Mr Gosnell, for this open-minded
19 approach. I believe that even Chamber, the same with Prosecution, are ready to take all
20 necessary measures that would allow us to continue tomorrow.

21 As to the 24 hours' gap, assumed that between preparation and the testimony, under
22 current circumstances the Chamber obviously would be in favour to shorten this gap if
23 there are no strong objections from parties or participants.

24 As concerns other conditions, Ms Samson, do you think that you could meet requirements
25 expressed by Mr Gosnell?

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1 MS SAMSON: [12:45:06] I'm looking at the requests that the Defence has made,
2 your Honour, and we do recognize that it's a last-minute change outside of our control
3 and out of the control of the parties, so we will do our best to accommodate the Defence
4 request.

5 The 24-hour gap of course is meant for the well-being of the witness. We understand that
6 the process of familiarisation will be finished at about 6 or 6.30 this evening, so the
7 Chamber in consultation with the victims and witnesses section can determine whether
8 that's an appropriate time, but we certainly have no objection to starting whenever the
9 Victims and Witnesses Unit and the Chamber deem that appropriate.

10 For the witness preparation log note we certainly will provide that as soon as we can.

11 The meeting will be concluded this afternoon, but I don't suppose we can finish getting
12 that log edited and ready to go, you know, before 5 is when we can start it, I think,
13 because of the Defence meeting with the witness, which we will also attend, but as soon as
14 that's ready, we will certainly send it through to the Defence.

15 And in terms of starting tomorrow we're ready to start at 9.30 if that's an appropriate time.

16 I'm not aware of restrictions on meeting with Mr Ntaganda in the evenings, it hasn't been
17 an issue before, but again, we're ready to proceed at 9.30 if that's the most convenient to
18 the Chamber. I assume, however, that the Defence requests that we thereafter break and
19 so we would not have afternoon sessions because I understood from the Defence that they
20 would not be ready to cross-examine immediately following. So if we could have the
21 morning session and start at 11, that might assist the Prosecution, who's also dealing with
22 a last-minute change here, but again we leave that in the hands of the Chamber.

23 And from our prospective in terms of when we ultimately determine that 668 won't go
24 ahead, I think it's best to plan that we will proceed with P-30 right now and then
25 hopefully we can do 668 early next week or whenever that may be possible, but I think in

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1 the interests of planning it's better for us to go with a contingency as of this moment.

2 Thank you.

3 PRESIDING JUDGE FREMR: [12:47:30] Again, thank you very much for Prosecution's
4 also very cooperative approach.

5 Also I do agree with Ms Samson that at this moment everything appears to be in a way
6 that we should focus really on the -- not on the next witness but on the second one. I'm
7 not sure about the numbers.

8 So even if at the moment we can't give you a clear decision on that, I think we all should
9 try to make our best to -- for sure to start tomorrow, either in the afternoon, even maybe
10 better at 11 o'clock, but we will now have to wait for the further information from VWU.

11 And during this afternoon I hope everything will be clarified and we will be able to
12 provide you with clear order about the timing for tomorrow.

13 And as concerns the video-link witness, one general remark. I also read previous
14 testimony or prior recorded testimony of this witness, and it brings me back to our
15 general guidance that -- and I also assume that there are some reservation from the
16 witness to testify, so please consider whether really it's necessary to try to change view of
17 such a witness, which in my view is not unique and who, in my view, potentially could
18 give testimony which will be in many aspects repetitive to testimonies we have already
19 heard. So please take it in consideration, this process of -- I am not even aware of all
20 details, but in this process for changing the mind of the witness, whether it's really worth
21 of doing that.

22 So now we have to adjourn and I believe that we will be able to provide you with further
23 information concerning tomorrow's programme in the afternoon.

24 THE COURT USHER: [12:49:46] All rise.

25 (The hearing ends in open session at 12.49 p.m.)