

Trial Hearing
WITNESS: DRC-OTP-P-937

(Open Session)

ICC-01/04-02/06

1 International Criminal Court
2 Trial Chamber VI
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and Judge Chang-ho Chung
6 Trial Hearing - Courtroom 2
7 Friday, 9 September 2016
8 (The hearing starts in open session at 9.33 a.m.)
9 THE COURT USHER: [9:33:49] All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: [9:34:11] Good morning, everybody.
13 Good morning, Mr Witness.
14 Now, court officer, please call the case.
15 THE COURT OFFICER: [9:34:32] 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 We're in open session.
19 PRESIDING JUDGE FREMR: [9:34:45] Thank you, court officer.
20 Appearances, please.
21 MS LUPING: [9:34:48] Good morning, Mr President. Good morning your
22 Honours. Just to confirm it's the same appearance as yesterday, and to just note for
23 the record that Ms Judith Boekstal has rejoined the Prosecution team this morning.
24 PRESIDING JUDGE FREMR: [9:35:06] Defence please.
25 MR GOSNELL: [9:35:07] Good morning, Mr President. For Mr Ntaganda this

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1 morning, who is not present in the courtroom, it's myself, Christopher Gosnell,
2 co-counsel; assisted by Marlène Yahya Haage, Margaux Portier and Maria-Kim
3 Vasconi. Thank you.

4 PRESIDING JUDGE FREMR: [9:35:24] Mr Gosnell, as concerns Mr Ntaganda's
5 absence, is there any perspective that you or your colleague will update Chamber?

6 MR GOSNELL: [9:35:35] I have no further specific information this morning for
7 you, Mr President. I would, at the conclusion of the appearances, like to just make
8 one brief comment on the conditions under which we're proceeding this morning, if
9 that's possible.

10 PRESIDING JUDGE FREMR: [9:35:51] All right.

11 Now Legal Representatives of Victims, please.

12 MS PELLET: [9:35:56] (Interpretation) Thank you, Mr President. Former child
13 soldiers are represented by Mohamed Abdou and myself Sarah Pellet, counsel at the
14 OPCV.

15 MR SUPRUN: [9:36:12] (Interpretation) Good morning, Mr President, your
16 Honours. The victims of attacks are represented by the OPCV by Anne Grabowski
17 and myself Dmytro Suprun, counsel.

18 PRESIDING JUDGE FREMR: [9:36:25] Thank you, Ms Pellet. Thank you,
19 Mr Suprun.

20 Doctor Hansen, we will continue with your examination and it's my duty to remind
21 you that you are still under oath, which means - and I guess you are aware of
22 that - that you have speak the truth and nothing but the truth.

23 WITNESS: DRC-OTP-P-0937 (On former oath)

24 THE WITNESS: [9:36:44] I will.

25 PRESIDING JUDGE FREMR: [9:36:46] And now, Ms Luping, according to my

1 information -- no. Mr Gosnell.

2 MR GOSNELL: [9:36:47] I'm sorry, Mr President. I just needed to say one thing
3 before we begin, if I may. And that is that my understanding is that we're
4 proceeding under the same regime as yesterday, namely, that your Honours are
5 informed that we do not have a mandate directly from Mr Ntaganda to be present
6 and proceed on his behalf and that you are ordering us to proceed on his behalf and
7 that we are proceeding on that basis. I want to put that on the record, Mr President,
8 because it may be important just to ensure that I'm discharging my ethical obligations.

9 PRESIDING JUDGE FREMR: [9:37:24] Good point, Mr Gosnell. I can just confirm
10 the situation is exactly as you described it.

11 Any reaction on that, Ms Luping?

12 MS LUPING: [9:37:32] Not at that stage, Mr President.

13 PRESIDING JUDGE FREMR: [9:37:36] Fine, Ms Luping, according to my
14 information you still have 1 hour 55 minutes. So in light of that I would propose to
15 prolong a bit this first session and encourage you to finish your examination in two
16 hours in maximum. At the same time, I would like to encourage you also to think
17 whether really all those, because there are numerous documents you are intending to
18 tender, whether all of them are necessary because, in my view, the most relevant are
19 those six, if I'm not wrong, reports, and please reconsider whether all those associated
20 documents really have to be -- have to be tendered. But it's up to you. You have
21 one hour and 55 minutes.

22 MS LUPING: [9:38:22] Understand, Mr President. Just to clarify, there are, in
23 addition to 13 pathology reports, seven anthropology reports that need to be admitted
24 through this witness. As for the associated materials, we can come to a view
25 depending on the comments of the witness in relation to the anthropologist's field

1 forms that were completed. Those are the forms completed by Dr Blau. But I can
2 confirm in relation to the -- at least in relation to the autopsy materials, that we will
3 likely need to seek to admit those additional materials.

4 PRESIDING JUDGE FREMR: [9:38:55] As concerns Dr Blau's reports, I would like
5 to remind you of the Chamber's approach to Mr Sapin's reports. It's very likely that
6 we would like to be consistent in our decision, so take it into account as well.

7 MS LUPING: [9:39:11] Understood, Mr President. I think that we will be able to
8 distinguish that, however, very easily.

9 QUESTIONED BY MS LUPING: (Continuing) [9:39:19]

10 Q. [9:39:21] Good morning, Dr Uhlin-Hansen.

11 A. [9:39:24] Good morning.

12 Q. [9:39:25] Now, yesterday afternoon we were discussing the standard forms, if
13 you like, the autopsy protocol forms, at tab 4.29. You can have that open in front of
14 you but could I also ask you to take out from tab 1.2 the pathology report that you
15 completed in relation to one of the Kobu corpses, and if you could have that
16 pathology report in front of you first. I will be returning to the autopsy protocol
17 form that you were explaining yesterday afternoon, but before you continue with that
18 explanation, I wondered if you could -- you were explaining yesterday a little bit
19 about the methodology that you used, and I wondered if you could please start this
20 morning describing for the Judges a little bit more in a summarised form what your
21 precise tasks were for the missions in Kobu and Bunia. What was your job, what
22 was your function?

23 A. [9:40:28] For the first corpses in Kobu, we witnessed the exhumation from the
24 graves, but after a couple of days we had more than enough to do in the morgue, so
25 then we couldn't watch the excavation of the bones anymore.

1 So when the bodies were brought to the morgue, it was wrapped in paper bags. The
2 paper bags were marked with the content and the auto ID number, and we unloaded
3 the bags which were continue -- contained different bones, and we cleaned the bones
4 and, after cleaning, we laid all the bones on a wooden table in an anatomical position.
5 And then, together with the anthropologist, I examined all of the bones which are
6 present.

7 If the paper bags also contained artefacts or clothes, I examined the clothes and the
8 artefacts. Usually, the clothes had to be washed and dried and then examined again.
9 So when I looked at the bones, I mainly looked for post-mortem damage and different
10 kinds of injuries, and it was not always obvious what was post-mortem damage and
11 what was injuries happened perimortem or ante-mortem because there was, in most
12 of the cases, there was a lot of changes due to erosion of the bones.

13 We -- or I also looked for signs who could tell something about the sex of the body, I
14 looked at the signs which could tell something about the age of the person, and also
15 often measured the length of the femur, which is used to calculate stature of the body.
16 In several cases, the skull was fragmented and an anthropologist glued, glued
17 together all the fragments of the skull. This process usually could take some hours.
18 And then, after the skull was reconstructed, it was more easily to see if there was
19 signs of perimortem injuries and also to look for post-mortem damage of the bones.
20 So at the end of each body I tried to state as conclusion about the cause of death.

21 Q. [9:44:42] And you've mentioned the role of the anthropologist. As I
22 understand it, you've clarified the work that you did together with the anthropologist.
23 Could you just clarify what the role was of the anthropologists working with you, just
24 so that it's clear how you divided up the tasks.

25 A. [9:45:08] So the anthropologists are experts in bones, they know every bone of

1 the body very good so they can easily put the bones together in an anatomical
2 position. They are also trained to look for damaged happened post-mortem and to
3 differentiate between post-mortem damage and perimortem and ante-mortem
4 injuries. So although I am also -- have some basic knowledge about these things,
5 their expertise is much better than mine in these cases or in these matters.

6 Q. [9:46:02] And you explained also previously when -- in relation to your
7 background, your background in particular with the DVI, that you also undertake
8 some of the work ordinarily done by anthropologists. You explained they are also
9 experts in assessing age, stature and gender; is that correct?

10 A. [9:46:30] Yes, that's correct.

11 Q. [9:46:31] And do they do any other assessment in relation to the corpses that
12 you worked on together with -- with them in Kobu and in Bunia?

13 A. [9:46:40] So together in each case we discuss what is supposed to be
14 post-mortem damage, what is supposed to be perimortem or ante-mortem injuries,
15 but as a pathologist I'm the one who make the conclusion for the cause of death.

16 Q. [9:47:02] And you stated that, as the pathologist, you make conclusion on
17 cause of death. If you turn to your report at tab 1.2 as an example, the section at the
18 very end, I notice you have sections on manner of death and circumstances of death
19 as well. Does that fall within your mandate as well and expertise as the pathologist?

20 A. [9:47:25] Yes.

21 Q. [9:47:30] Now, you said that you discussed the various conclusions with the
22 anthropologists. Did you discuss their various conclusions that they also included in
23 their own reports?

24 A. [9:47:43] I don't -- I didn't look at their reports, so I didn't see what Dr Blau
25 was writing in her report. But we discussed all the time, so I suppose she wrote

1 what she has been discussing with me.

2 Q. [9:48:07] And I will come to the field notes that Dr Blau was writing, but I'm
3 really talking about the anthropology reports that you annexed to your pathology
4 reports. Now, I assume you read the anthropology reports.

5 A. [9:48:22] That's correct.

6 Q. [9:48:23] And when you annexed the anthropology reports to your own
7 pathology reports, in what way did you rely on the anthropologists' conclusions?

8 A. [9:48:38] I relied on their conclusions concerning sex, age and stature very
9 much because Dr Blau's expertise in this matter is better than mine. I also relied on
10 her evaluation about what was post-mortem damaged -- damage and perimortem,
11 ante-mortem injuries, but in that case I also did -- I trusted my own conclusions
12 perhaps more.

13 Q. [9:49:36] And when you say you trusted also your own conclusions in relation
14 to perimortem and post-mortem damage, could you explain?

15 A. [9:49:48] There were some cases that Dr Blau concluded that the -- some
16 fractures were due to post-mortem damage whereas I was -- thought these fractures
17 could also have happened perimortem, but that the perimortem fractures had been
18 enlarged during the post-mortem period.

19 Q. [9:50:27] And you've also explained that the anthropologists assess age, for
20 example, stature, gender, and in your report you also refer to their estimation in terms
21 of ancestry. Were you able to verify the various conclusions made by the
22 anthropologists, based on your own experience?

23 A. [9:50:48] Yes, I always -- but I didn't find any signs that indicated that her were
24 wrong in her conclusions concerning these four matters like age, sex ancestry and
25 stature.

1 Q. [9:51:11] And what's the basis for you, just so we're clear, what's the basis for
2 you to check the conclusions of the anthropologists, that's both Dr Blau and
3 Dr Congram?

4 A. [9:51:23] I had to check in different kind of tables, textbooks, about teeth
5 eruption, et cetera, so I couldn't find any -- I didn't disagree in any of these matters.

6 Q. [9:51:42] Your process of verifying their conclusions, was this also based on
7 your actual experience?

8 A. [9:51:50] Yes.

9 Q. [9:52:04] Now, I just want to also now turn to the photographers. Now, in
10 your report, for example, that's the one at tab 1.2, you describe also working with
11 forensic photographers. Could I clarify who gave the instructions to the
12 photographers as to what images they should take in terms of, in particular, potential
13 perimortem, post-mortem injuries that were found? Who gave the instructions to
14 the photographers?

15 A. [9:52:42] The instructions were given both by me and by Dr Blau.

16 Q. [9:52:47] And I just want to, again, just referring to your pathology report at
17 tab 1.2, there is a reference there to collaboration between two teams working, for
18 example, in Kobu-Wadza. You had Dr Blau and yourself as one and Dr Martrille
19 and Dr Delabarde as the other. You described collaboration between the two teams.
20 Could you explain in what way your two teams collaborated with one another?

21 A. [9:53:18] So we, both, both teams worked in the same morgue, which was a
22 fairly small room. And the room was furnished with two wooden tables. The
23 tables were used for the bodies, so me and Dr Blau had just one table and Dr Martrille
24 and Dr Delabarde had another table, but these tables were very close together. And
25 I think almost every case we looked at each other bodies and discussed the -- our

1 findings with each other. So that's how we usually work, and in the beginning we
2 didn't know if we were going to write separate reports or if we were going to write
3 the reports together. So I think both in France and Norway we usually write -- we
4 are two forensic pathologist, we write the reports together. So it was a little bit
5 different for us to write separate reports.

6 Q. [9:54:49] Thank you for that clarification. And before we return, as I said, to
7 your autopsy protocol forms, I just want to refer to, it's tab 9.3. It's a dental chart in
8 relation to one of the corpses actually in Sayo. And I wanted to read a passage from
9 it, it's at --

10 A. [9:55:11] Excuse me, was it tab --

11 Q. [9:55:13] 9.3. It's corpse Sayo 1-F1-B1. And on the dental chart, I'm just
12 going to read out a passage from that and then I'll ask you the question, in quotation
13 marks:

14 "According to the developmental stage of the permanent teeth and some
15 root resorption of the deciduous canine, the person is probably between 9 and
16 12 years." End of quote.

17 Now my question is this: So do I understand from that that you were also making
18 assessments of age, including on the basis of teeth, you were making your own
19 conclusions as well?

20 A. [9:55:53] Yes. But I am not an expert in, in evaluating teeth, so this is -- I had
21 to trust very much the anthropologists in this case. Because in Norway we always
22 have forensic dentist together with us when we are doing such kind of work.

23 Q. [9:56:18] Understood. And you've just confirmed before that you read all 13
24 anthropologists' reports. Is that correct? That's both of Dr Blau and Dr Congram?

25 A. [9:56:29] That's correct.

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1 Q. [9:56:30] And to the best of your knowledge, are their conclusions true and
2 accurate?

3 A. [9:56:36] Yes.

4 PRESIDING JUDGE FREMR: [9:56:47] Mr Gosnell.

5 MR GOSNELL: [9:56:48] Well, actually, what I'm going to say is probably
6 premature. So I apologise for the interruption.

7 PRESIDING JUDGE FREMR: [9:56:56] No problem.

8 MS LUPING: [9:56:57]

9 Q. [9:56:58] And, Dr Uhlin-Hansen, if we could just now return to the autopsy
10 protocol that we were discussing yesterday. That's at tab number 4.29. And this
11 related to the corpse KOB1-F4-B2.

12 Actually, as we will be spending a little bit of time with this, could I ask the court
13 officer, please, to bring this up. This is DRC-OTP-2063-5858. And I'll clarify that
14 I believe that this can be shown publicly. I don't think there's anything in there that
15 will cause an issue in terms of confidentiality.

16 THE COURT OFFICER: [9:57:58] Ms Luping, the metadata in eCourt states that
17 the document is confidential. So could you please clarify.

18 MS LUPING: [9:58:06] All right. If that's the case, then wiser heads rule. So
19 perhaps we'll just leave it as confidential then.

20 Q. [9:58:25] Whilst we're waiting for the document to be called up, Doctor, as you
21 do have it, and all the parties and the Judges as well have the document in front of us,
22 you explained some more detail about the types of information you included in these
23 autopsy forms and you also -- we completed your explanation in terms of the autopsy
24 protocol itself. If we turn to, it's page 5861, with the post-mortem dental chart.
25 Could you clarify the type of information you recorded then in the dental charts that

1 you wrote?

2 A. [9:59:08] So basically, I recorded which teeth were present and which were
3 missing post-mortem and which were missing ante-mortem. I also can see from this,
4 I could see if there were crevice in the teeth and if there has been some dental work in
5 the teeth.

6 Q. [9:59:50] And moving to the next document, it's entitled "Complete Skeleton."
7 Could you explain the types of information that you would ordinarily record in that
8 type of form?

9 A. [10:00:03] When I used this figure I marked where there was fractures. And
10 if there were, I usually also marked if there was missing bones, but I knew that the
11 anthropologist made a much more detailed description of these missing bones, so I
12 didn't mark everything. But I usually marked where there were fractures and where
13 there was post-mortem damaged, but I didn't do it so elaborate as the anthropologist
14 because I knew that the anthropologist were doing this very, very carefully.

15 Q. [10:01:01] And turning to the next form, the "Skull-Six Views," could you again
16 clarify the type of information that you would record there?

17 A. [10:01:12] Again, I just made a very rough marking where the fractures were in
18 the skull. So in this case there was a fracture of the mandible on the -- a little bit left
19 to the centre and there was a fracture at the base of the skull. So then in figure 5864,
20 this figure is -- showed the base of the skull from inside, whereas in figure 588 -- 63,
21 it's seeing the base of the skull from the downside and up.

22 Q. [10:02:10] Now, when you say, I think you're referring to 5864, you're referring
23 to the endocranium?

24 A. [10:02:17] Yeah.

25 Q. [10:02:18] Is that correct?

1 A. [10:02:21] Right.

2 Q. [10:02:21] And what is the difference? Like what kind of detail do you get,
3 would you include in your information that you note for the endocranium forms that
4 you completed?

5 A. [10:02:30] So we can, when we cut the top of the skull, we can see the cranium
6 from the inside and we can then more easily see the fracture lines.

7 Q. [10:02:47] And at the second image of the endocranium there's a reference to a
8 hinge fracture. Could you explain what that is?

9 A. [10:02:58] Hinge fracture is a fracture of the base of the skull which goes from
10 one side to the other, a transversal fracture.

11 Q. [10:03:12] And what, if anything, could that tell you about cause of death?

12 A. [10:03:18] So a hinge fracture we see regularly in persons who had been -- had
13 a blunt trauma to this side of the head. And a hinge fracture is usually followed by
14 an immediate death. But hinge fracture may also occur due to post-mortem damage.

15 Q. [10:03:46] Thank you.

16 I just would ask that the court officer, if you could move to the next page, because
17 that's where there's a reference to the hinge fracture. But I will be actually moving
18 from this document shortly in any event.

19 And to clarify, Dr Uhlin-Hansen, these various autopsy forms that we've been
20 discussing, did you complete these for the 13 human remains that you examined?

21 A. [10:04:11] Yes.

22 Q. [10:04:13] And who wrote these forms?

23 A. [10:04:16] I did it myself.

24 Q. [10:04:18] And in what way did you use these forms for your final pathology
25 reports, if at all?

1 A. [10:04:25] So I used them as a base, together with the anthropologist report,
2 and I compared what I have found, what anthropologist reported, and compared
3 them and then wrote my own report.

4 Q. [10:04:50] And when did you complete these autopsy forms? Were they
5 when you were in the field examining the corpses or later on?

6 A. [10:04:58] It was in the morgue.

7 Q. [10:05:02] And is it correct you submitted them to the Prosecution at the same
8 time as you submitted your final pathology reports?

9 A. [10:05:11] Yes, I think maybe I submitted them to the Prosecutor when I left
10 Bunia. And then I think I got them a copy later.

11 Q. [10:05:33] Thank you for clarifying that. And I just will, at the very end when
12 I seek to admit your various documents, which I'll be really doing at the very end, I
13 will be referring to all of these various autopsy forms by tab number. But I won't do
14 that now.

15 Now instead, Dr Uhlin-Hansen, what I'm going to do is I'm going to turn to the
16 various conclusions now in the 13 pathology reports. And before we get into detail
17 in my various questions or clarifications I had for you, I wanted to ask you, do you
18 have any corrections or clarifications that you wish to make in relation to any of your
19 13 pathology reports?

20 A. [10:06:22] So I think in general my conclusions is fairly conservative, meaning
21 that I don't want to speculate too much. In a couple of cases, I think it's case 4 and 5,
22 I have concluded that the cause of death is undetermined. I still think that is correct,
23 but I think today I will -- would probably have said more clearly that the -- both, both
24 these cases had fractures at the base of the skull. And my, as I stated in my report,
25 these fractures may have happened post-mortem. But I think maybe I should have

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1 clarified better in my reports that these fractures also could have happened
2 perimortem and that they may have enlarged during the post-mortem period.

3 Q. [10:07:46] And you've referred to corpse 4 and 5. Just for the record, are you
4 referring to the number according to the list of documents?

5 A. [10:07:54] Yes.

6 Q. [10:07:55] So for the record I'm just going to note that corpse 4 is corpse
7 KOB1-F4-B2 and corpse KOB-F4-B3. Is that correct, doctor? I'd suggest that you
8 turn to the list of documents in front of you.

9 A. [10:08:21] Yeah, but I can't remember -- I have to look at the --

10 Q. [10:08:24] Understood, take your time.

11 A. [10:08:45] Yes, it's case KOB1-F4-B3 and KOB1-F4-B2.

12 MS LUPING: [10:09:06] Thank you. And I would just ask that the court officer
13 bring up for us all to see, even though we do have it, it's at tab 1.38, it's
14 DRC-OTP-2067-0333, and this can be shown publicly, even if it has confidential as the
15 status in the system.

16 Q. While the court officer is calling that photograph up, and you can look at it at
17 tab 1.38, Doctor, in your binder.

18 A. Mm-hm.

19 Q. I wanted to start looking at the -- some examples of various conclusions that
20 you made as to cause of death of blunt force trauma. And I refer to it's three of your
21 Kobu-Wadza reports, you described signs of perimortem injuries and stated they
22 were consistent with blunt force trauma to the head. And just for the record, I'm
23 going to note the three corpses: That's KOB1-F2-B1, KOB1-F2-B2 and KOB1-F4-B1,
24 and these conclusions can be found in pathology reports at tab 1.2, at page 0143, as
25 the first example. And I'd like to read just first your conclusion on cause of death

1 and then I'll be asking you questions and asking if you could explain those
2 conclusions, using the photograph.

3 You stated that "The appearance and directions of these fracture lines clearly suggest
4 that they arose perimortem and are consistent with blunt force trauma to this part of
5 the head." End of quote.

6 Now, Doctor, we have the photograph in front of us now. Could you please explain
7 what you mean by the appearance and direction of the fracture lines, first just to
8 explain how, in your expert opinion, you concluded that the injuries arose
9 perimortem. If you could first focus on explaining how the injuries arose
10 perimortem. I'll then be turning to your conclusions on the nature of those injuries.

11 A. [10:11:38] So there's a lot of small fragments in a relatively small area of the
12 skull. That alone doesn't indicate that these are -- happened perimortem, but the
13 direction of the fracture lines very much indicate that these fractures must have
14 happened perimortem. And the direction is radiating from a point of impact and
15 they're also concentric fractures which are more around a point of impact which is in
16 the right back side of the head.

17 Q. [10:12:46] And why is it that this would suggest to you that the -- again, that,
18 you know, it clearly suggests to you that the injuries arose perimortem, say as
19 opposed to post-mortem?

20 A. [10:13:02] Now, again, it's from the direction of the fracture lines, post-mortem
21 damage, you wouldn't expect it to be in that directions, and also the colour of the
22 fractures. If it had happened post-mortem, the colour of the fractures would have
23 been a little bit different, but that may be a little bit difficult to judge because they
24 have been in the soil so long. But to differentiate between post-mortem and
25 perimortem fractures, the colour of the fracture lines are also an important thing to

1 look for.

2 Q. [10:14:08] And again remaining with the three Kobu examples of where you
3 found that the appearance and direction of fractures lines are consistent with blunt
4 force trauma, could you now explain why it is that you're able to conclude in your
5 expert opinion that those injuries are consistent with blunt force trauma?

6 A. [10:14:33] So this is a very typical example of a blunt force trauma, how the
7 fracture lines are, so it's almost a textbook example. Another type of injury which
8 could make such an -- such injuries is a gunshot wound. Gunshot to the head may
9 cause similar fracture lines like this. But shape of the fracture lines is different in
10 blunt force trauma and in gunshot injuries due to gunshot, and that's call the
11 bevelling of the fracture lines. In gunshot there will be an external bevelling because
12 the pieces of bone are pressed out of the cranium, whereas in the blunt force trauma
13 the bevelling is called internal because the fragments are pressed inward inside the
14 cranium.

15 Q. [10:16:01] Just so we understand, and perhaps I'll ask that the Court officer
16 now bring up, it's item 17 in the list of documents. It doesn't have an ERN assigned
17 to it but it should have been sent to you by our case manager. So that it can be just
18 shown up on the screen.

19 This is a document that you provided, Dr Uhlin-Hansen, during the witness
20 preparation; is that correct?

21 A. [10:16:33] I have not seen the document that --

22 Q. [10:16:34] If you look inside or also look in your binder.

23 A. [10:16:37] Okay.

24 Q. [10:16:37] It's the second binder. It's the very last item because it's the one
25 that you provided to us, and everybody has it also in their own binders, item 17.

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1 Could you use that diagram that you provided us, at least during witness preparation,
2 to explain this concept of bevelling?

3 A. [10:17:00] I don't think I have this document in my binder, but --

4 MS LUPING: [10:17:09] If I could please ask the Court usher to provide it to the
5 witness.

6 PRESIDING JUDGE FREMR: [10:17:14] Court usher, please assist.

7 MS LUPING: [10:17:36]

8 Q. In fact at the same time, Dr Uhlin-Hansen, you'll receive both documents that
9 you gave to us; one was relating to your explanation of bevelling and the other one
10 will be related to the following questions I have, it's inside of the cranium.

11 A. [10:18:06] First I have to explain that in Norway I'm used to -- in some cases, I
12 include references to the literature. In most cases I don't because I explain it when I
13 come to court. So I should perhaps have included some literature references in my
14 report, but I didn't. But as you said, I brought this article and showed it to you
15 previously which -- and this article explains this bevelling of the fractures and how it
16 can be used to differentiate between gunshot wounds and blunt force wounds or
17 injuries due to blunt force trauma.

18 And on page 1279 of this article, figure 10 --

19 Q. [10:19:47] I just note it is a different page reference, it's not the one up on the
20 exhibit screen at the moment. It's not the correct image that you're seeing.

21 The first article, it's page 1279 of the article that should be at the beginning of the
22 last -- you're showing the last page, court officer, and if you scroll a few pages up, you
23 should have the article and it is page 1279.

24 You also have it in your binders. So not to waste any further time, page 1279, you've
25 referred to figure 10. Could you just use that diagram then, figure 10, and explain

1 what you mean by this concept of external and internal bevelling?

2 A. [10:20:38] Yes, we can see at the top there is a drawing of an ex -- showing an
3 external bevelling, so the fracture line is -- from the impact, it's at the exterior of the
4 skull. The fracture, fracture line is longitude to the left compared to the inside of the
5 skull, where it's closer to the point of impact. And that's how you can see it
6 in -- when the head is hit by a gunshot because a gunshot will cause a sort of
7 explosion inside the skull so that fragments of the skull is pressed outward, whereas
8 in -- in a blunt force trauma happen, the skull is pressed inward and then the fracture
9 line will be at the inside of the skull, it will be longer from the point of impact than at
10 the exterior of the skull.

11 So we call, in that case, we call it internal bevelling, whereas in the injury caused,
12 gunshot injury, we call it an external bevelling.

13 But this is the classical example, and in real life it's not always so easily to see, and
14 especially when the body has been in the ground for many years, post-mortem
15 erosion can make this difficult to see.

16 Q. [10:22:40] And just returning first to your various conclusions in relation to
17 blunt force trauma and the, well, now five corpses that you mentioned in relation to
18 Kobu, the three I mentioned and the two additional corpses, the corpses 4 and 5 that
19 you clarified your conclusions in relation to. Your explanation as to how you could
20 tell whether it was perimortem injury and how you could tell it was blunt force
21 trauma, this description explanation you provided, is it the same reasoning in relation
22 these other corpses then?

23 A. [10:23:17] Yes, that's correct.

24 Q. [10:23:20] We talked about hinge fractures earlier on, and I'd like you now to
25 turn to tab 4.31. This is the anthropologist's notes, and it relates to corpse

1 KOB1-F4-B2. That's tab 4.31. I'm going to refer you to page 138, and I'd like to read
2 a passage from it. So that's 4.31. I'll read a passage from page 138, and I quote:
3 "Pathologist sectioned skull and there was internal hinging of base around n. mastoid
4 area suggesting perimortem fracture occurred." End of quote.

5 Now, my first question is this, Dr Uhlin-Hansen, these notes made by the
6 anthropologist, this is under "Trauma Analysis," where she writes just in "perimortem
7 fracture," did she ever discuss these conclusions with you in relation to this corpse?
8 Did you discuss this together?

9 A. [10:24:58] Yes. I remember we discussed this case because her opinion,
10 Dr Blau's opinion was that this fracture had happened as a post-mortem damage.
11 But as a pathologist I regularly see these kind of fractures after blunt force trauma to
12 the head, and so in my opinion this could very well be a perimortem damage or
13 perimortem injury which maybe have enlarged during the post-mortem period.

14 Q. [10:25:42] Well, I'm referring to -- these are Dr Blau's notes that I'm quoting
15 from where she has written "There was internal hinging of base around the n. mastoid
16 used, suggesting perimortem fracture occurred."

17 Just to clarify this, could you explain why would hinging of the base suggest a
18 perimortem fracture?

19 A. [10:26:08] Could you please repeat?

20 Q. [10:26:09] Why is it that hinging of the base of the skull around the mastoid,
21 why is it that that would suggest perimortem fracture? What does this mean?

22 A. [10:26:19] So it doesn't itself include that this is a perimortem fracture, because
23 it can also happen post-mortem if there's a pressure to the side of the skull in the
24 grave.

25 But since this is a type of fracture we very often see as a perimortem injury in, at a

1 daily basis in persons who have had blunt force trauma to the side of the head, I think
2 this type of fracture may very well have happened perimortem.

3 And in my view, I can see that this was -- was -- happened post-mortem.

4 But so when I remember this case very well and I think I didn't see what she had
5 written in her note, but I was -- she -- I think she was first thought this must have
6 been a post-mortem damage, whereas I was very reluctant to that conclusion.

7 Q. [10:27:43] And if I refer to tab 4.1, which is your pathology report relating to
8 the same corpse, I'm going to refer to your reference to the fact, your conclusion that
9 the, and I quote, "fracture of the left ulna could represent a self-defence injury."
10 That's as page 0239 of that pathology report.

11 Could you explain what you mean by the "fracture of the left ulna could represent a
12 self-defence injury"?

13 A. [10:28:13] So the left -- was it the left ulna? So the ulna is the bone, there's
14 two bones in the lower arm, and the ulna is the one at this side (indicating).

15 Q. [10:28:28] I'm just noting for the record, because this is all going to be on a
16 transcript later on, that you are indicating the bone between your wrist and your
17 elbow; is that correct, Doctor?

18 A. [10:28:40] That's correct, and it's on the side of the small finger.
19 So fractures to this bone is typically seen when a victim is holding trying to defend
20 her or himself, holding the arms in front of them, and when they are hit by a blunt
21 object. But of course it can also happen in another way. But it's typical for
22 self-defence injuries that they are on this side of the arm.

23 Q. [10:29:26] Now, again remaining with these examples of your conclusions of
24 blunt force trauma, I'm now going to turn to your conclusions as to manner of death.
25 And I'd refer you to your as an example your report at tab 1.2, and this relates to

1 KOB1-F2-B1. And I'm just going to read a passage of your conclusion at page 0145.
2 "However, based on the post-mortem examination, I find homicide to be a plausible
3 manner of death. The manner of death may also be accident. But a conclusion of
4 homicide is supported by the fact that several of the bodies exhumed from the graves
5 in Kobu during this mission had similar perimortem skull fractures." End of quote.

6 Now Dr Uhlin-Hansen, my first question in relation to this conclusion is this: You
7 referred to support for your conclusion of homicide on the basis that there was
8 several bodies exhumed at the graves with similar perimortem skull fractures. But
9 as a hypothesis, if there had not been other bodies exhumed, could a finding of
10 potential homicide still be found on the basis of the perimortem skull fractures and
11 your conclusion that they were consistent with a finding of blunt force trauma?

12 A. [10:31:08] So when I'm making conclusions about manner of death, I usually
13 have access to all kinds of information, and that is actually necessary in most cases to
14 be -- make a conclusion about manner.

15 In this case I didn't know anything about the circumstances for this death, but I think
16 this kind of an injury may have happened if the person had fallen from a four-level
17 high building. It may have happened in a car crash. But not this -- the place of the
18 impact and also the fairly small point of impact very much indicate that this fractures
19 has happened by blunt force trauma by -- made by a blow with a smaller object.

20 It's not very consistent with a fall against a flat surface or it's not usually what we see
21 in car crash accidents, because then usually there's more damage in the front of the
22 head. But I can't exclude that these fractures had happened in another way, but it is
23 fairly consistent with a blow with a blunt object.

24 Q. [10:33:07] Now, you have clarified for the Chamber your views in relation to
25 two additional corpses now, and that's KOB1-F4-B2 and KOB1-F4B3. These are

1 corpses 4 and 5?

2 A. [10:33:23] Mm-hmm.

3 Q. [10:33:24] And your pathology reports in relation to them are found at tabs 4.1
4 and 5.1.

5 Now, in fact, in your written report, as an example in your report at 4.1 at page 0239,
6 you concluded, sorry, first in terms of cause of death, you concluded that the fractures
7 could be due to a perimortem blunt force trauma to the head.

8 Now, you didn't make any conclusion in relation to manner of death. You stated
9 what the various possibilities obviously could be: natural, homicide, suicide, accident
10 or undetermined. Bearing in mind of the clarifications you've made as to the
11 potential cause of death in relation to blunt force trauma, what are your conclusions
12 as to the likelihood or not of homicide, if you are able to make any such conclusion?

13 A. [10:34:28] This was I think at --

14 Q. [10:34:33] It's 4.1.

15 A. [10:34:35] Yeah, I know. I just have to look at the pictures to be -- I don't
16 remember all these cases. I have to look at the pictures as well.

17 Q. [10:34:47] No. That's understood. Take your time please.

18 A. [10:34:52] But this was the one with the fracture at the base of the skull, and
19 there's no other fractures of the skull I think. And in that case it's more difficult to
20 say that this is due to a blow with a blunt object. This could -- a fracture at the base
21 of the skull could easily be followed by a fall from a high building, a car crash
22 accident, falling from a motorbike, et cetera.

23 Q. [10:35:24] You've indicated in your clarifications that it could also be due to
24 blunt force trauma as I understood is what you were stating earlier?

25 A. [10:35:33] Yeah, so a blunt force trauma includes all the situation I just

1 explained, a car crash injury, fall from a building, et cetera, all these are blunt force
2 trauma.

3 Q. [10:35:52] And can you make any assessment as to or the likelihood of
4 homicide at all? Is this something that you can exclude as a possibility or can you
5 make any assessment at all?

6 A. [10:36:04] If I just look at this case alone, I cannot say that this could as well as
7 or easily been due to an accident. So then I think it's up to the Court to decide if it's
8 relevant that other of these bodies had signs of blunt force trauma to the head.
9 For me, if I just look at this case, the manner of death could be an accident as well as a
10 homicide or even a suicide. But I think the Court has to decide the relevance of the
11 injuries to the other bodies.

12 Q. [10:36:55] Thank you for that clarification.
13 Still remaining with this same corpse, I would refer to your conclusion, this is still at
14 tab 4.1 and page 0239, under the heading Circumstancing of Death, you've stated, "It
15 is noteworthy that a man with similar or identical trousers is seen on photograph
16 DRC-OTP-0072-0473," close quotation.

17 Could you explain what you meant by this?

18 A. [10:37:30] Yes. We were provided with a photograph taken, I don't know
19 where it was taken or by whom, but this was photographs showing dead persons
20 laying on the ground. And in one of these photographs I could see a person with
21 trousers which were identical with the trousers on this body.

22 And we were provided with these photographs early in the process, so
23 when -- immediately when I looked at this person and saw these trousers, I
24 recognized that I have seen these trousers before on the photograph.

25 Q. [10:38:21] And if I could refer you please to tab 4.14 and this is a photograph of

1 trousers that you indicated in your report were trousers found on the corpse

2 KOB1-F4-B2. Do you have the image in front of you?

3 A. [10:38:45] Yes.

4 Q. [10:38:46] Can you confirm it, are these the trousers to which you were
5 referring just now?

6 A. [10:38:51] That's correct.

7 Q. [10:38:53] Now, well, you've explained the difference between a gunshot
8 wound and a blunt force trauma injury. And you -- we use -- you use the image of
9 bevelling, both external and internal bevelling, to explain that.

10 If we could turn to the example of corpse KOB1-F6-B1, if you could turn to tab 7.1 to
11 your pathology report. And this is where, and I'm going to quote to you, where you
12 have conclusions for this corpse that you found cause of death in relation to both
13 gunshot injuries and blunt force trauma. And I quote, at page 0316, under the
14 heading "Cause of death":

15 "The cause of death is therefore most likely gunshot injuries of the neck. The
16 fractures of the left patella and left femur are consistent with perimortem blunt force
17 trauma. A blow with a blunt object against the left knee may have caused the
18 fractures of both the patella and the femur." End of quote.

19 Now, later on -- sorry, previously, when you described the perimortem injuries at
20 page 0315 you describe:

21 "The margins of the defect had a 'punched-out' appearance at the medial surface of
22 the mandible. The appearance of the defect is consistent with injury caused by a
23 gunshot."

24 THE INTERPRETER: [10:40:26] Mr President, could counsel be advised to slow
25 down when reading out an excerpt. Thank you from the interpreters.

Trial Hearing
WITNESS: DRC-OTP-P-937

(Open Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: [10:40:32] Ms Luping, there is a kind message from
2 the interpreters: Please slow down a bit. Thank you.

3 MS LUPING: [10:40:39] My apologies to the interpreters. I'll just repeat the quote
4 from page 0315:

5 "The margins of the defect had a 'punched-out' appearance at the medial surface of
6 the mandible. The appearance of the defect is consistent with injury caused by
7 gunshot."

8 And then in your conclusion as to manner of death you state:

9 "...I find homicide to be a plausible manner of death."

10 Now, I'm going to ask that you turn to some photographs, Dr Uhlin-Hansen, starting
11 first with the photograph at tab 7.25.

12 If perhaps the court officer could have this one image first brought up. I'll be asking
13 for tab 7.25 to 7.27. The first ERN is DRC-OTP-2069-0851 -- sorry 0854 -- sorry 0852.

14 That is the photograph at tab 7.25.

15 Q. [10:42:19] Now, Doctor, could you explain or clarify, using these photographs
16 as an -- as an aid, explain to the Judges how you came to your conclusions as to
17 gunshot injury?

18 A. [10:42:36] This is a very typical injury caused by a gunshot because of the
19 inside of the mandible seen in this picture there's a more or less round hole which is
20 like as a rod punched out in the bone. And this is typically where the bullet has
21 passed into the bone. And if you can look at the picture from the outside of the
22 mandible, I think that's in the --

23 Q. [10:43:33] So is that the --

24 A. -- seven --

25 Q. -- next, 7.26?

1 A. [10:43:36] Mmm-hmm.

2 Q. [10:43:38] So, court officer, if you could please bring up the next photo, so
3 that's 2069-0854.

4 A. [10:44:13] It's not the -- the one on the screen is just a close-up of the other
5 picture.

6 Q. [10:44:17] Right. So you want 7.27 then. So that is 2069-0856.

7 A. [10:44:50] So this picture shows the outside of the mandible, so at the other
8 side of the bone as the previous picture.

9 And here we can see that the size of the injury have a larger diameter than the
10 other -- than the previous picture. And that -- this is -- very clearly indicate the
11 direction of the bullet which has come from the inside and out from the -- so the
12 direction must have been from right to left. And this is a very typical injury made by
13 a gunshot. It could be a textbook illustration.

14 Q. [10:45:45] And I'd like to now turn to another example of -- still remaining
15 with examples of gunshot wounds.

16 A. [10:45:56] Yeah, and it's said in my report, I perhaps don't need to tell it, but
17 the direction of the -- of this gunshot must have been through the neck, so it probably
18 in front of the spine, but injuring blood vessels, nerves, et cetera, at -- in the -- in the
19 neck which would probably have caused an immediate death. So we can tell that
20 from the -- this injury in the -- in the mandible -- mandible, how the gunshot has
21 been -- the direction of the gunshot.

22 Q. [10:46:49] Now, you talked about the direction of the gunshot. Is it possible
23 to estimate distances at which gunshots are fired at an individual?

24 A. [10:47:01] The distance is very difficult to tell when there are no soft tissue left.
25 So usually to estimate the distance of a shot, you have to look at the skin and to look

1 for gunshot residues at the skin. So a very close range shot, less than 1 metre
2 probably. It depends on the weapon and the ammunition which is used, there is no
3 gunshot residues on the skin if the distance is more than 45 to 50 centimetres, but it
4 may be up to 1 metre, but longer than that, it's not possible to determine the range of
5 a gunshot. And if it only had the bones, it's almost impossible.

6 Q. [10:48:06] Now, I'm going to turn to another example of a gunshot wound,
7 well, a conclusion of gunshot wound that you reached, and I turn to the corpse, that's
8 SAI1-F1-B2, and that is tab 10.1, we'll find your pathology report. And at page 0484
9 at your conclusions, first on cause of death where you state "The defects and fractures
10 found in the mandible and in the skull are highly consistent with injuries from a
11 gunshot with entrance in the mandible and exit through the back of the head." "The
12 cause of death is therefore most probably head injury due to gunshot. Another
13 gunshot has most possibly hit the left elbow." End of quote.

14 As for manner of death, and I quote: "Although accident cannot be ruled out,
15 homicide is probably more likely."

16 Now, my first question is this, doctor: Just so that we understand, when you
17 describe cause and manner of death, as a pathologist, do you usually explain your
18 conclusions in this language of probability and likelihood?

19 A. [10:49:40] Yes. I'm like almost all other forensic pathologists I know, we
20 explain ourselves in -- we are definitive in our conclusions because even though the
21 signs we can tell quite sure that they has been a gunshot, we can't tell if the person
22 had died from a heart attack or a poisoning just before and then shot afterwards. So
23 I can't tell, although I can be confident that there is a -- I can be confident that there
24 has been a gunshot. The person could have died from another cause first and then
25 shot afterwards. So I'm never completely conclusive.

1 Q. [10:50:47] Now, if I could get you to please turn to tab 10.18, and it may be also,
2 if it could be shown by the court officer, that's 2069-2316, the ERN. That's at 10.18.

3 Just using first this image, Doctor, could you explain a little bit more about your
4 conclusions in relation to the gunshot wound conclusion that you drew?

5 A. [10:51:31] So this picture shows part of the mandible. It's the rear right part
6 and we can see this mandible is fractured in many small pieces, and in this piece
7 there's very sharp fracture lines and this must have been due to a high velocity impact
8 and it's very consistent with a gunshot injury.

9 Q. [10:52:24] Right. Now I would ask that you turn to tab 12.1, and this relates
10 to a different corpse. This is SAI1-F1-B4. And at "Cause of death" at page 0514, I'm
11 just going to read a part of that conclusion:

12 "The defect and fracture lines in the left ulna are highly consistent with injury caused
13 by a gunshot. Also the defects in the skull may be due to peri mortem injury, like a
14 gunshot injury."

15 And then if we turn to your autopsy protocol, which is at tab 12.26 at page 0597, I just
16 want to read a passage from there. That's tab 12.26, the autopsy protocol that you
17 completed, and I quote:

18 "Left part of skull is fractured in more than 40 fragments, may be post mortem
19 damage, but peri mortem injury is also possible (more plausible). Fractures of thick
20 bones at base of skull and the back of the head indicate high velocity impact (like
21 gunshot)."

22 End of quote.

23 Now when we turn to the manner of death, the -- there is no conclusion that you had
24 drawn as to manner of death. And I have a similar question to the question I asked
25 before, which is: What assessment, if any, can you make as to the possibility of

1 homicide?

2 A. [10:54:34] So if I look at the skull, only the skull, this could also be due to
3 suicide, gunshot by suicide. But there's signs the ulna, I think this is the case where
4 there was the signs of a gunshot through the left ulna. And that indicate that this is
5 not a gunshot -- a suicide. It could have been an accident, but it -- when there's
6 injury of the ulna, it may indicate that the person hold the arms up in front like this,
7 and it's a sort of self-defence, or, wound. And it may be the same, bullet was, hit
8 arm and then the head, or if it's two different bullets, I don't know. And in this case I
9 can't be hundred per cent sure that this is due to a gunshot, but it's very well
10 consistent with an injury made by a gunshot wound.

11 Q. [10:56:21] And now I would like to turn to, it's another potential gunshot
12 wound conclusion that you drew. And that's in relation -- it's another Sayo corpse.
13 That's at tab 9.2, 9.2. It's your pathology report again. It's related to corpse
14 SAI1-F1-B1. And first at page 443 where you conclude:
15 "The petrous bone and the mandible are robust bones and the absence is therefore
16 probably not due to post-mortem degradation. The lack of teeth and mandible could
17 be due to canine scavengers. But the absence of the petrous bone is probably less
18 likely due to scavengers since this part of the skull bone is far less exposed a gunshot
19 to the head could have caused the described damage of the skull."

20 Now, my first question relates to the petrous bone, and for this response, Doctor, you
21 might be able to use the aid that you provided to us during witness preparation. It's
22 item 17, it's the very last image. It's the image of the cranium. And it's in the item
23 17, it's the last document in everybody's bundles. Could you explain to the Judges
24 what is the petrous bone and why is it that you conclude there could have been a
25 gunshot to the head of this corpse?

1 A. [10:58:06] So the petrous bone is, in this image is called os temporale. It's on
2 the right side of the large -- foramen magnum, the large hole in the base of the head.
3 So the petrous bone contains the inner ear and that's a very -- or fairly robust bone.
4 And it's less likely that has been -- that it has disappeared due to scavengers
5 like -- *dogs or wolves. They usually first eat part of the face and the neck and not
6 that part of the head.

7 So, the question why is this due to a gunshot, a gunshot. I just have to remind
8 myself about what's the findings here. It's mainly, I think it's the -- all the fragments,
9 the skull was so highly fragmented, it's hard to find an explanation for this. If the
10 skull hasn't been damaged by -- before it was in the grave, so if -- it's hard to believe
11 that this fragmentation has happened post-mortem in the grave. And all these small
12 fragments indicate a high velocity injury, or are due to a high velocity impact, one or
13 two blows with a blunt object to the head, I wouldn't, I wouldn't expect it to be so
14 many small fractures, but of course several blows with a blunt object could have
15 made such an injury.

16 Q. [11:01:12] And turning now to another Sayo corpse where you similarly
17 concluded a potential gunshot injury was the cause of death. And I ask that you
18 turn to tab 14.1. And that corpse, for the record, is SAI2-F1-B1.
19 Now, first looking at your conclusions as to cause of death at page 0560, and I quote:
20 "The defects in the skull indicate that there has been a gunshot injury of the head and
21 the cause of death may therefore be head injury due to gunshot. The defect in the
22 right femur could possibly also be consistent with a gunshot injury. However,
23 because of post-mortem damage it is not possible to be definitive about the cause of
24 the defects of the skull and the right femur. Several of the holes in the clothes are
25 consistent with defects due to a sharp object or gunshot. Any bloodstains may have

1 disappeared during the post-mortem period."

2 And then at page 0559, and I quote:

3 "In the right femur there was a horizontal defect at the anterior part of the bone. The
4 margins of the defect showed signs of post-mortem erosion. As explained in the
5 anthropology report, the defect can hardly be caused by post-mortem damage.
6 Although no ballistic fragments were seen on x-ray photos of the bone, the defect may
7 be consistent with a gunshot injury which has been eroded post-mortem. On the other
8 hand, a gunshot would probably have caused fragmentation of the distal end of the
9 femur." End of quote.

10 Now, my first question is this: Doctor, why is it that you concluded that the defects
11 that you examined could have been consistent with gunshot injury?

12 A. [11:03:36] You mean the skull or the femur.

13 Q. [11:03:39] Well starting first with the skull and then we'll move to the femur?

14 A. [11:03:45] Well, there was a missing part of the frontal bone, as well as the
15 occipital bone in the back of the head. So it's difficult to explain how this part of the
16 skull could be missing if it's not been hit by a gunshot. So in my opinion, most likely
17 a gunshot through the frontal bone or the, in the -- in the face or in the frontal bone in
18 the direction through the back of the head, but it's not a very clear case. But missing
19 a part of the skull, these two, both in the front and in the back, as well as some
20 fracture lines to both sides of the skull, I think this is most consistent with a gunshot
21 wound, or due to a gunshot injury.

22 PRESIDING JUDGE FREMR: [11:05:25] Ms Luping, so you will not be surprised,
23 just I got information that two minutes ago you have exhausted two hours, so you
24 still have 20 -- 28 minutes.

25 MS LUPING: [11:05:36] Thank you. And as I understood it, Mr President, we'll

1 be continuing; is that right? We're not breaking at that point? Was that your
2 request?

3 PRESIDING JUDGE FREMR: [11:05:43] No, because originally we should finish at
4 11 o'clock, so that is why I would like to finish your examination, which means that
5 we should finish 11.30, 11.35. But that was just my caveat just to allow you to
6 organise your examination in a way to finish all relevant steps you would like to
7 make.

8 MS LUPING: [11:06:06] Understood, Mr President. Thank you.

9 Q. [11:06:08] Now moving to a different category of types of corpses, Doctor.
10 Now for two of the Kobu corpses, that's KOB1-F4-B3; Tche, so that's TCH1-F1-B2; and
11 two of the Sayo corpses, that's SAI1-F1-B5 and SAI1-F1-B3. Now, for those four
12 corpses you concluded that there were no apparent or definitive signs of perimortem
13 injuries.

14 Now my question is this, and I'm just -- this is a hypothesis for you: Is it possible
15 that where you have an individual with no apparent or definitive signs of perimortem
16 injuries, it's possible that they may still have died from such injuries nevertheless?

17 A. [11:07:02] Yes. So different kinds of both blunt force trauma, for instance, to
18 the head may be followed by -- by death without any injuries to the skull. Gunshot
19 injuries or -- leading to death may have happened without any signs in the bones. A
20 bullet may pass through the body without hitting the bones.

21 And also of course sharp injuries by, for instance, a knife or a machete may cut large
22 blood vessels without hitting the bones.

23 Q. [11:08:01] And focussing now on corpse SAI-F1-B3, in your pathology report
24 at tab 11.1, similarly you concluded that there were no definite -- sorry, definite signs
25 rather, of perimortem injury. But referring to your autopsy protocol at tab 11.15, at

1 page 0592, "No definite cause of death but the skeleton was badly preserved.
2 Cervical vertebrae were absent and a traumatic cause of death, for example, gunshot
3 injuries, is possible." End of quote.

4 Could you please explain a bit further why is it that -- sorry, first of all, what
5 vertebrae was absent, like what part of the body was absent and why is it that that
6 could indicate potential gunshot injury for this corpse?

7 A. [11:08:56] So the cervical vertebrae are the vertebrae of the neck and, as I
8 remember, that was the only vertebrae which were not present. So a gunshot
9 through the neck may have fragmented these vertebrae so that post-mortem
10 eruption went faster and then can explain that they disappeared faster than the other
11 vertebrae. But this is speculative, so I can't tell it like this. It may be some other
12 explanation as well.

13 Q. [11:09:41] Thank you. And the final corpse, that's SAI-1-F1-B5, at tab 13.1 is
14 your pathology report but I'd like you to turn to 13.10, which is the grave form, and I
15 want to read a passage from the grave form and ask you a question about it. It says,
16 "Small subadult apparently being carried on the back of DRC-B4 wrapped in fabric
17 underneath B4."

18 My question is this, doctor: This grave form, is this the form that you referred to in
19 your pathology report at tab 13.1?

20 A. [11:10:26] Yes.

21 Q. [11:10:29] And now I'm going -- moving away from your examination of
22 corpses, I'd just like to briefly ask you a couple of questions about your analysis of
23 clothing and artefacts. You stated at tab 1.2, for example, that the clothes were
24 carefully inspected for any tears and defects and if any such was found, signs of
25 bloodstains and gunshot residues were looked for."

1 And similarly, as I read out previously in relation to one of the Sayo corpses, in your
2 pathology report at tab 14.1, you stated, and I quote: "Several holes in the clothes are
3 consistent with defects due to a sharp object or gunshot. Any bloodstains may have
4 disappeared during the post-mortem period." End of the quote.

5 My first question is this, doctor: Can you explain what method did you use to look
6 for both bloodstains and gunshot residues?

7 A. [11:11:30] Just by visual inspection, so I didn't use any chemicals.

8 Q. [11:11:39] And when you stated that the blood stains may have disappeared
9 during the post-mortem period in relation to the fourteenth corpse, how can blood
10 stains disappear during the post-mortem period? Could you explain a little bit more
11 about that?

12 A. [11:11:56] Blood is organic material and organic material will be degraded
13 when it's in the circumstances or environments that contains water, so blood will
14 disappear in that environment.

15 Q. [11:12:26] And I'd like you to turn to tab 15.1, and it's an autopsy protocol
16 where you list a number of artefacts, including clothing, and it relates to KOB1-F5.
17 Could you explain where these clothing or artefacts were found?

18 A. [11:12:55] I'm fairly sure that these were found in a latrine.

19 Q. [11:13:03] And can you recall if there was any corpse found in the same
20 latrine?

21 A. [11:13:10] I think -- I didn't inspect this latrine myself, but my impression was
22 that there was a -- both a small, probably a monkey, found and also an adult body in
23 the same latrine. I think that was in the same latrine.

24 Q. [11:13:38] And can I clarify for the record, is this corpse of the adult
25 KOB1-F6-B1?

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1 A. [11:13:46] I suppose so.

2 Q. [11:13:47] I'm going to turn you to your pathology report for this corpse. It's
3 at tab 7.1.

4 A. [11:14:20] Yes, that's correct.

5 Q. [11:14:22] I'd now like you to turn to the various images from tabs 15.2 to 15.7.
6 They all have written underneath them "KOB1-F5." Can you confirm, are these the
7 artefacts that you examined that are listed in this autopsy protocol?

8 A. [11:14:43] Yes, that's correct.

9 MS LUPING: [11:14:46] So now, Mr President, your Honours, I would now like to
10 list out the various documents that I wish to admit through this witness.

11 PRESIDING JUDGE FREMR: [11:15:00] I think it's high time for that.

12 MS LUPING: [11:15:04] It's all right, I like to leave the best for the last.

13 Q. So we have discussed, first of all, the anthropology reports, Doctor, and I want
14 to just first refer to the seven anthropology reports that were written by Dr Blau in
15 relation to the seven corpses of human remains that you have stated that you
16 examined together in Kobu-Wadza. I refer to the anthropology reports at tab 1.8, 2.3,
17 3.3, 4.3, 5.3, 7.3 and 8.3.

18 Now, can you clarify again whether you are familiar with the contents of these
19 anthropology reports?

20 A. [11:15:57] Yes, that's correct.

21 Q. [11:16:00] And did you rely upon them in any way for the purposes of writing
22 your own pathology reports?

23 A. [11:16:06] Yes, I did.

24 Q. [11:16:09] And to the best of your knowledge, are the contents of the
25 anthropology reports true and correct to the best of your knowledge?

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1 A. [11:16:18] They are true.

2 Q. [11:16:21] And I now refer to your pathology reports. I have already --

3 PRESIDING JUDGE FREMR: [11:16:28] Sorry, Ms Luping, I'm afraid that it will be
4 necessary to separate those two decisions.

5 MS LUPING: Okay.

6 PRESIDING JUDGE FREMR: So you are tendering those anthropology reports.

7 Mr Gosnell, what is Defence position?

8 MR GOSNELL: [11:16:47] There's no objection to admission of the anthropology
9 reports that -- in which this witness was also involved in examining, and we've
10 already stated that position to the Prosecution.

11 PRESIDING JUDGE FREMR: [11:17:03] All right then because, frankly saying, we
12 would maybe prefer to tender those reports through 68(2)(b) -- but if there is an
13 agreement among parties, no problem. So those documents specified by Ms Luping
14 are admitted into evidence as further Prosecution exhibits. You may proceed,
15 Ms Luping.

16 MS LUPING: [11:17:30] Thank you, Mr President. And thank you to Defence
17 counsel.

18 Q. [11:17:35] Now, we referred already to the tab numbers of your various
19 pathology reports yesterday. I'm just now going to refer to the tab numbers of the
20 various autopsy forms that you stated that you relied upon for the purposes of
21 writing your pathology reports. That's tab 1.3, 1.41 to 1.44, 2.2, 2.26 to 2.28, 3.2, 3.19,
22 4.2, 4.29, 5.2, 5.22, 7.2, 7.36, 8.2, 8.11, 9.3, 9.11 to 9.13, 10.2, 10.28 to 10.29, 11.2, 11.15 to
23 11.16, 12.2, 12.26 to 12.27, 13.2, 13.8 to 13.9, 14.2, 14.35 to 14.36. You have already
24 stated for the record that you completed the forms and that you relied upon them for
25 your pathology reports. Doctor, to the best of your knowledge, are the contents of

1 both your 13 pathology reports and the various autopsy forms that you completed in
2 relation to those 13 human remains, are they a true and accurate reflection of your
3 views impartially stated as an expert?

4 A. [11:19:43] That's correct.

5 Q. [11:19:46] And, Doctor, do you consent to the admission of these various
6 reports and documents into evidence?

7 A. [11:19:54] Yes.

8 Q. [11:19:54] And do you consent to being questioned by the parties, participants
9 and Chamber in relation to any of these documents?

10 A. [11:20:02] Yes.

11 MS LUPING: [11:20:07] Now, Mr President, I note that the Defence has stated in its
12 filing, that's 826 at paragraph 48 and at 1032, paragraph 1C, stated previously that it
13 accepted this witness's reports as being expert reports, did not challenge their
14 relevance and didn't take a position as regards their probative value. We note that
15 they have also not objected, at least as they haven't informed us that they object to
16 the admission of these documents, I ask that the 13 pathology reports, all the autopsy
17 forms, the letters of instruction and the cover letters to which I referred yesterday as
18 well - yes, sorry - be admitted into evidence.

19 PRESIDING JUDGE FREMR: [11:20:52] Mr Gosnell, could you confirm that you
20 insist on your previous position to the admission of those documents?

21 MR GOSNELL: [11:21:01] We are -- we've already expressed our agreement with
22 the procedure being followed and we won't object to the admission of any of these
23 documents. I will interpose just one caveat and that was that the list went rather
24 quickly. I tried to follow. So I can say there's no objection, but only subject to if I go
25 back and see that one of these documents isn't actually what I think it might be, that

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1 we will raise the issue then, but barring that, there's no objection and I see no reason
2 not to admit them now.

3 PRESIDING JUDGE FREMR: [11:21:33] Very well. To be open I also had some
4 problem because the list was very extensive and it appeared to be some delay, so I
5 hope that the Prosecution team just double-check that the numbers are really
6 corresponding to the paper material. So, anyway, those documents are admitted
7 into evidence, in accordance with Rule 68(3), into evidence as a further Prosecution
8 exhibit.

9 MS LUPING: [11:22:01] And thank you, Mr President. We have just simply one
10 last category of documents and these are the anthropologist's field forms, the forms of
11 Dr Blau, and the reason why the Prosecution would seek to have these admitted is on
12 the basis that the witness has -- there has been some questioning already in relation to
13 some of the findings of the anthropologists in the field forms, for example, in relation
14 to the hinge fracture that I referred to the witness. I would propose I ask a few initial
15 questions on this basis.

16 Q. [11:22:37] Dr Uhlin-Hansen, were you present when Dr Blau completed the
17 various forms that she filled out in the field?

18 A. [11:22:45] Yes. I think she filled in the forms both in the autopsy room, but
19 I think she also did it in the evening when we came back to Bunia, and so I didn't
20 stand watching her when she filled it out, but I was present.

21 Q. [11:23:06] Understood. But did you ever discuss the conclusions and the
22 information that she was filling out in her field notes?

23 A. [11:23:14] As I previously stated, we discussed during the work in the autopsy
24 room, but we didn't discuss it -- and we discussed it also when we came back in the
25 evening, but I didn't discuss it when she wrote her reports.

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1 Q. [11:23:37] And you have previously been shown these various forms, and I'm
2 going to refer to the following tabs and I'll have a number of questions relating to that,
3 tabs 1.46, 2.31, 2.32, 3.21, 4.31, 5.24, 7.38 and 8.13.

4 Now, turning as an example to the document at tab 2.31, this is amongst the related
5 materials in a separate bundle that was provided to you during witness preparation.
6 Could you confirm that the name on these forms is Soren Blau, the anthropologist
7 with whom that you were working with in relation to seven human remains
8 examined in Kobu?

9 A. [11:24:33] Yes, I can confirm that.

10 Q. [11:24:36] And do these various forms to which I have referred relate to the
11 seven human remains that you examined together with Dr Blau?

12 A. [11:24:48] That's correct.

13 Q. [11:24:51] And you have already stated that you relied upon the information in
14 Dr Blau's anthropology reports for the purposes of your own pathology report. The
15 information that is reflected in this, was this also relevant to those bodies that you
16 stated your various conclusions for in your various pathology reports?

17 A. [11:25:20] Yes, that's correct.

18 Q. [11:25:21] And having had an opportunity to review these documents, to the
19 best of your knowledge, are the contents of them true and accurate?

20 A. [11:25:32] Yes, as far as I can see, they are true.

21 MS LUPING: [11:25:37] Mr President, your Honours, at this point the Prosecution
22 would seek to have forms also admitted as evidence.

23 PRESIDING JUDGE FREMR: [11:25:45] Defence?

24 MR GOSNELL: [11:25:46] Subject to the previous caveat, there's no objection,
25 Mr President.

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1 PRESIDING JUDGE FREMR: [11:25:51] Very well. So those documents are also
2 according Rule 68(3) admitted into evidence as a further Prosecution exhibit.

3 MS LUPING: [11:26:04] Thank you, Mr President. Thank you, your Honours.
4 And thank you, Dr Uhlin-Hansen. I have no further questions for you at this point.

5 PRESIDING JUDGE FREMR: [11:26:14] Fine. Now before we break, for the sake
6 of planning, Mr Gosnell, you, Defence you have been granted four hours initially for
7 your cross-examination. If you and don't take it, please don't get it wrong, don't take
8 it as any pressure from my part, if you insist on those four hours, which is your right,
9 it would mean that we will, our hearing or testimony of the witness will spill over to,
10 not Monday, but even to Tuesday.

11 So it's my question, because the Chamber is very well aware of your ability, capability
12 to make cross-examination efficient and focused, do you think that you could make it
13 maybe in a bit shorter time? Then we would adjust our planning for the rest of the
14 day to that.

15 MR GOSNELL: [11:27:08] Mr President, I think there's a good chance I can come in
16 at well under four hours. Perhaps I can make a suggestion that might assist in
17 streamlining my cross-examination. If I were to have a little bit more time to prepare,
18 for example, if we could even take the lunch break now, and then I could start after
19 the lunch, and then we would set aside two sessions of normal length, I think there
20 would be a very good chance, a very, very good chance that I could finish well before
21 the end of the day, Mr President.

22 PRESIDING JUDGE FREMR: [11:27:44] Prosecution, any objection? I don't this so.

23 MS LUPING: [11:27:49] No objection, Mr President.

24 PRESIDING JUDGE FREMR: [11:27:52] Are my colleagues fine with this proposal?
25 All right. So we will break now because we are already too -- any problem with the

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1 Registry?

2 (Pause in proceedings)

3 PRESIDING JUDGE FREMR: [11:28:34] So now I got just confirmation from the
4 Registry that our plan is feasible, so we will break now and we will then sit from
5 1 o'clock to 2.30, and the last session ideally would be from 3 o'clock to 4.30.

6 So now we break.

7 THE COURT USHER: [11:28:55] All rise.

8 (Recess taken at 11.28 a.m.)

9 (Upon resuming in open session at 1.04 p.m.)

10 THE COURT USHER: [13:04:15] All rise.

11 Please be seated.

12 PRESIDING JUDGE FREMR: [13:04:31] Good afternoon, everybody. We will
13 now continue with cross-examination of our expert witness, Mr Hansen. And this
14 Chamber is going to last 90 minutes.

15 Mr Gosnell, you have the floor.

16 MR GOSNELL: [13:04:53] Thank you, Mr President.

17 QUESTIONED BY MR GOSNELL:

18 Q. [13:04:56] Good morning, Dr Hansen.

19 May I refer to you as Dr Hansen or is it better to refer to you as Dr Uhlin-Hansen?

20 A. [13:05:06] It doesn't matter.

21 Q. [13:05:08] Thank you very much for that.

22 I'll be asking you some questions today, probably only for today. If any of my
23 questions are not clear or if I don't use the right terminology, then please do feel free
24 to correct or ask for clarification.

25 A. [13:05:25] Thank you.

1 Q. [13:05:26] If I understand correctly from reviewing your reports, you
2 conducted the pathology, forensic pathology examinations of 7 out of the 14 sets of
3 remains from the Kobu site; is that correct?

4 A. [13:05:43] I think that's correct.

5 Q. [13:05:46] And one of the two sets of remains from the Tchudja site?

6 A. [13:05:52] That's correct.

7 Q. [13:05:55] And for each of those cases the forensic anthropology report was
8 written by Dr Blau?

9 A. [13:06:05] That's correct.

10 Q. [13:06:09] And you did the forensic pathology reports for all of the remains
11 that were obtained from Sayo and in each of those cases, am I right, it was
12 Dr Congram who did the forensic anthropology reports?

13 A. [13:06:27] That's correct.

14 Q. [13:06:32] And the forensic pathology reports and examinations that you did
15 not perform were performed by Dr Laurent Martrille in Kobu, correct?

16 A. [13:06:45] Correct.

17 Q. [13:06:48] And in each of those cases the forensic anthropology report was
18 done by Dr Delabarde?

19 A. [13:06:58] That's correct.

20 Q. [13:07:02] And you may have said this earlier, but I just want to make sure it's
21 clear, did you personally examine each of the sets of remains that were looked at by
22 Dr Blau?

23 A. [13:07:15] Yes, that's correct.

24 Q. [13:07:19] And you've said earlier that to some extent you even discussed with
25 him while the examinations were ongoing what you were observing on the remains?

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1 A. [13:07:31] Yes, all the four us discussed all cases from the Kobu and Tchudja.

2 Q. [13:07:46] Would it be fair to say at least that you inspected more carefully
3 those sets of remains that you were personally responsible for preparing the forensic
4 pathology reports for?

5 A. [13:07:58] Yes, that's correct.

6 Q. [13:08:00] And would it be fair to say that the reason that you feel comfortable
7 commenting as you have already today on Dr Blau's reports are really all of these
8 factors that we've just mentioned, namely that you reviewed, you looked at the
9 remains that he looked at, you discussed with him what you were seeing, and you
10 were in effect taking notes together while you were doing these examinations?

11 A. [13:08:29] Yes. And just to clarify, Dr Blau is a female.

12 Q. [13:08:37] Well, thank you, thank you for that correction. I think of forensic
13 pathology and forensic archaeology as a male-dominated profession, but maybe that
14 is subject to revision.

15 And if you had not personally examined those bodies, how would that alter your
16 view about your capacity to comment on Dr Blau's or any forensic archaeologist's
17 report of an examination of remains?

18 A. [13:09:11] I think it's much more easy to differentiate between perimortem
19 injuries and post-mortem damage if you see the bones yourself. Although it was all
20 these signs were also documented by photographs, I think it's easy to, when you see it
21 there, it's easier to differentiate between these things than just look at pictures.

22 PRESIDING JUDGE FREMR: [13:09:41] Sorry, may I just put one additional
23 question. Mr Witness, did you consult Dr Blau if you -- each other if you faced some
24 problem or did you just work separately?

25 THE WITNESS: [13:09:56] No. We worked together and we discussed her

1 findings all the time.

2 PRESIDING JUDGE FREMR: [13:10:05] Thank you.

3 Sorry, Mr Gosnell. Please proceed.

4 MR GOSNELL: [13:10:09]

5 Q. [13:10:10] So Dr Hansen, you've just said it's easier to differentiate between
6 these things than just to look at pictures. So would I be correct in understanding that
7 there might be subtleties of observation in terms of the remains that could be relevant
8 to reaching a conclusion that a person would only be able to have awareness of if they
9 physically looked at the remains?

10 A. [13:10:39] Yes, I think if you have the bones in your hands and can look very
11 carefully, that's better than just look at the pictures. But I think a pathologist or an
12 anthropologist who are provided with these pictures would come to the same
13 conclusions I suppose. But I think it's more easy to do it when you look at the bones
14 yourself.

15 Q. [13:11:19] I mean, could we at least say this, in respect of difficult cases it
16 would be important to that direct observation?

17 A. [13:11:27] I think so.

18 Q. [13:11:35] Today during your testimony at page 10, line 2, you said the
19 following, and I'll quote because you don't have it in front of you, you said, and this is
20 in respect of the Kobu examinations: "So we, both teams, worked in the same
21 morgue, which was fairly small room, and the room was furnished with two wooden
22 tables. The tables were used for the bodies. So me and Dr Blau had used one table
23 and Dr Martrille and Dr Delabarde had another table. But the tables were very close
24 together. And in I believe almost every case we looked at each bodies and discussed
25 the other findings with each other."

1 While this process was ongoing, and you haven't mentioned Dr Congram, where was
2 Dr Congram while you were engaging in these examinations of the bodies in the
3 morgue?

4 A. [13:12:39] So the three other anthropologists, there were five anthropologists
5 together, and the three other were occupied with the exhumation of the bodies most
6 of the time, but they now and then came into the autopsy room, into the morgue.

7 Q. [13:13:05] Can you remember which bodies or remains Dr Congram
8 personally looked at?

9 A. [13:13:15] In Kobu, I don't remember exactly which remains he looked at. But
10 all the three other anthropologists came into the morgue almost every day at the end
11 of the day and usually we only examined one body or each team examined one body
12 a day.

13 Q. [13:13:47] None of those three archaeologists to whom you've referred were
14 closely examining the remains that the team in the morgue was examining; is that fair
15 to say?

16 A. [13:14:00] Yeah, I think that's correct.

17 Q. [13:14:04] I'd just like to understand something about the timing of the
18 preparation of your reports if I may. Am I correct that you prepared all of your
19 forensic pathology reports in October 2014?

20 A. [13:14:21] I think that's correct because we had to -- to prepare the pathology
21 reports, we had to wait for the anthropology reports.

22 Q. [13:14:34] So do I understand you waited for the anthropology report to come
23 in and then on the basis of that report and all the other information and the notes and
24 the photographs that you had, it was on the basis of all that material that you
25 proceeded to prepare your own forensic pathology reports?

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1 A. [13:14:54] Yes, that's correct.

2 Q. [13:14:56] And Dr Blau, if I understand correctly, lives in Australia. Did you
3 consult with Dr Blau while she was preparing her forensic anthropology report?

4 A. [13:15:11] No, I had not had any contact with Dr Blau since we left Congo.

5 Q. [13:15:20] So it's fair to say then that Dr Blau's opinions were expressed
6 independently of your opinions, but that your opinions were expressed with the
7 benefit and relying at least in part upon her opinions?

8 A. [13:15:38] Yes, in a way that's correct. But she had my opinions during the
9 discussions when we were in Bunia.

10 Q. [13:15:52] Well, perhaps now it would be useful to look at a specific example if
11 we may.

12 Could we have tab 5.1, which is DRC-OTP-2075-0265, and I'd like to spend a little bit
13 of time with this body and one of the other sets of remains from Kobu upon which
14 you've been asked many questions by the Prosecution today and also during your
15 preparation session.

16 Do you have that report?

17 A. [13:16:48] Yes.

18 Q. [13:16:50] Now, if we could just turn to page 4 of 6, which is ERN page 0268.

19 A. [13:17:04] Could you repeat which document 5.1.

20 Q. [13:17:10] We're looking at the forensic pathology report for Kobu-1-F4-B3?

21 A. [13:17:17] Yes.

22 Q. [13:17:18] And that would be tab 5.1?

23 A. [13:17:21] Mm-hmm.

24 Q. [13:17:22] And if we could start by looking at page 4 of that document.

25 A. [13:17:25] Mm-hmm.

1 Q. [13:17:28] And you have a section here entitled "Signs of Post-Mortem
2 Damages." And it reads: "The skeleton was poorly preserved and some small hand
3 and foot bones were missing. Many of the bones had post-mortem damages and
4 some had signs of termite activity. In the skull there were fractures at the base and
5 in the frontal bone. All these fractures are consistent with post-mortem damage.
6 There was also a post-mortem fracture on the right side of the mandible."

7 Then there is a section that says "Signs of Perimortem Injuries." Quote: "There
8 were no apparent signs of perimortem injuries."

9 And then if we turn to page 5 it says: Next to "cause of death," quote: "The skeletal
10 remains showed no apparent signs of perimortem injuries. Based on the
11 post-mortem examination, the cause of death can therefore not be determined."

12 Do you stand by that conclusion?

13 A. [13:19:10] Yes, I do. But if I may also say that although there's no apparent
14 sign of perimortem injuries, the fracture at the base of the skull could have happened
15 perimortem, but since because of post-mortem damage it was impossible to say if it
16 was first a perimortem fracture and then post-mortem damage afterwards. But as I
17 said previously today, these kind of fractures often occur during blunt force trauma to
18 the side of the head.

19 Q. [13:20:12] And in some of your answers to the earlier questions during the
20 Prosecution questioning, you described that forensic pathologists do not express
21 themselves in the certainties and I understand that. And this is an opportunity for
22 me to ask you some questions about how you qualify and quantify degrees of
23 certainty.

24 So perhaps I can just start by looking at this example right here and ask you, when
25 you say that it could have happened perimortem, are you in a position to express any

1 degree of likelihood in respect of that?

2 A. [13:21:02] In this case I would say I couldn't exclude the possibility that it
3 happened perimortem, so as low grade of certainty.

4 Q. [13:21:22] Are you able to put a number on it or is that simply beyond -- or is
5 that simply beyond your ability to do? And that's perfectly fine, but I just want to
6 know if that's possible?

7 A. [13:21:34] No, I don't think that's possible.

8 Q. [13:21:41] Based on the archaeological or at least the state of the remains and
9 applying your expertise to the best of expertise or to the best of your ability, no
10 indications that these injuries were caused perimortem?

11 A. [13:22:04] Could you repeat it?

12 Q. [13:22:05] Yes. I'm asking whether applying your expertise it's fair to say and
13 correct to say that there are no indications that the injuries were perimortem?

14 A. [13:22:16] Yes, except that these kind of fractures often happen due to blunt
15 force trauma, and also if there is a fracture perimortem, it's more easily for the skull to
16 obtain perimortem damage afterwards, whereas an intact skull will generally be
17 better preserved than a skull where there is perimortem injuries.

18 Q. [13:22:59] And is it fair to say that when you just said now that it could be that
19 if the injuries were perimortem, then it would have been by way of a blunt force
20 trauma?

21 A. [13:23:10] Yes.

22 Q. [13:23:10] Am I correct in understanding that that's based on the preliminary
23 or the initial finding that indeed there was a perimortem injury?

24 A. [13:23:23] Yes, that's correct. So there was no sign of other type of trauma to
25 this -- to this skull and -- at least no sign of gunshot injury or sharp force injury.

1 Q. [13:23:45] And when you said that this kind of fracture often happens due to
2 blunt force trauma, and that's on the previous, you just said this now --

3 A. [13:23:56] Mm-hmm.

4 Q. [13:23:57] -- that's based on your practice as a forensic pathologist which --

5 A. Mm-hmm.

6 Q. -- am I correct, primarily involves individuals who are recently deceased?

7 A. [13:24:10] That's correct. So a -- persons who die as a result of car accidents,
8 motor vehicle -- or other motor vehicle accidents. Falls regularly have these kind of
9 fractures at the base of the skull.

10 Q. [13:24:27] And am I correct that in respect of older remains that have been
11 buried for many years, those are the cases where the forensic anthropologist, in your
12 view, would have a greater specialty or a greater level of expertise in analysing the
13 bones?

14 A. [13:24:47] Yes, they have a better expertise to judge if, or discriminate between,
15 based on the fracture itself, if it was a perimortem or a post-mortem injury or damage.
16 But I have a better expertise as a forensic pathologist to tell what kind of trauma it
17 may have caused this kind of injuries or damage.

18 Q. [13:25:26] And that kind of trauma depends upon a preliminary finding that
19 the injury was perimortem, correct?

20 A. [13:25:35] Yes, that's correct.

21 MR GOSNELL: [13:25:39] May we have the document at tab 5.3, which is
22 DRC-OTP-2073-0060. Just for the record I'll say that there is another ERN number,
23 DRC-OTP-2075-0282.

24 Q. [13:26:19] Dr Hansen, this appears to be Dr Blau's forensic anthropology
25 report in respect of KOB1-F4-B3. So the set of remains that we were just discussing.

1 And if we could please turn to page 6 of the document, there's a section entitled
2 "Skeletal/Dental Trauma". Quote:
3 "There was no apparent evidence of perimortem trauma throughout the skeleton."
4 Then there is a list of injuries that appear to have been ante-mortem. And then if we
5 turn to page 9, please, we see a summary of Dr Blau's conclusions:
6 "The individual was an adult female", et cetera.
7 "The individual had:
8 No apparent evidence of perimortem skeletal trauma; ante-mortem trauma to the left
9 shoulder, right arm, right and left chest, and mid-spine, and ante-mortem tooth loss."
10 Would I be correct in thinking that you don't disagree in any way with these
11 conclusions expressed in this report?
12 A. [13:28:02] Yes, that's correct. And that's, I think the -- it -- what I have written
13 in my report reflects this.
14 Q. [13:28:26] Could we please now turn to tab 4.3. And this is ERN number
15 DRC-OTP-2073-0047, and there's another ERN number DRC-OTP-2075-0252.
16 And you've discussed this set of remains somewhat already today during the
17 Prosecution's questions. But I'd like to start with Dr Blau's report and then ask you
18 some questions on the basis of this report.
19 Under the section on page 2 entitled "Preservation", quote: "The case consisted of a
20 relatively complete and well preserved human skeleton. The skull was complete but
21 slightly warped. Many of the skeletal elements showed evidence of post-mortem
22 damage. Remnants of the ossified thyroid and cricoid cartilage were present. The
23 mandible and maxilla were complete and all teeth were present in situ."
24 And then if we turn, please, to page 6 of the document. There is a long passage but I
25 do think it's important, Dr Hansen, so I'm going to take the time to read it so we all

1 have it in front of us. And under the heading "Skull" it says as follows: "There was
2 a fracture to the left mastoid that terminated at asterion (that is, the fracture did not
3 cross the suture) and a fracture of the left zygoma."

4 A little bit further down it says:

5 "The inferior aspect of the cranium showed evidence of warping: The maxilla had
6 shifted slightly to the right; the left temporal region had warped away from the
7 temporomandibular joint. There was also a fracture through the right
8 temporomandibular joint. An inspection of the internal aspect of the cranium
9 (following removal of the top of the skull by the forensic pathologist) showed an
10 internal fracture of the left petrous portion of the mastoid and stella turcica."

11 Can I just stop and ask you whether you were the one who was the forensic
12 pathologist who removed the top of the skull?

13 A. [13:31:44] Yes, that's correct. But I had the assistant with my fellow forensic
14 pathologist, because one had to hold the saw and one had to hold the skull, so we did
15 it together.

16 Q. [13:32:03] And then it goes on:

17 "Given that in the grave the individual was lying with their head placed on the left
18 side, it is possible that warping had occurred as a result of pressure from soil, which
19 in turn resulted in the defect observed on the internal aspect of the cranium. It is
20 however, possible that a pre-existing (that is, perimortem) fracture/s existed which,
21 after burial, resulted in the warping. It is not possible to make a definitive
22 conclusion.

23 "There was no other evidence of trauma to the skull. The linear fracture on the left
24 side of the mandibular body was post-mortem."

25 Now, this passage seems, am I right, Dr Hansen, to express two options as

1 possibilities; is that correct?

2 A. [13:33:13] Yes.

3 Q. [13:33:16] And what does it mean in terms of likelihood when, and here I'll ask
4 you about a forensic anthropologist, when they express two options as possibilities?
5 What in your mind does that mean in terms of likelihood of the two options?

6 A. [13:33:37] So in this case, compared to the previous one we discussed, this
7 is -- was -- this skull was less damaged by post-mortem eruption or -- yeah, so it was
8 more intact and skull bones were fairly robust. So in this case, in my opinion, it's
9 more likely that the fracture happened perimortem than post-mortem. But I will in
10 no way exclude that it happened post-mortem.

11 Q. (Microphone not activated)

12 THE INTERPRETER: [13:34:27] Microphone, please.

13 PRESIDING JUDGE FREMR: [13:34:32] Mr Gosnell.

14 MR GOSNELL: [13:34:34]

15 Q. [13:34:34] Let me put it a different way. Can you provide any levels of
16 certitude or levels of certainty when you use these words, such as saying it was more
17 probable than in the previous case, that you cannot exclude that it was perimortem,
18 you cannot exclude that it was post-mortem, can you give us any sense as to how
19 likely, or can you not do that?

20 A. [13:35:00] No, I don't think it's right to do that, but in my opinion it's more
21 likely that it happened perimortem than post-mortem, but I'll not give any more
22 detailed.

23 Q. [13:35:17] This level of certainty would be different, am I correct, than the level
24 of certainty you were describing earlier when you were answering questions from the
25 Prosecution about the body in which you found an apparent bullet injury?

1 A. Mm-hmm.

2 Q. And you expressed to the Chamber the caveat that it's always possible that
3 someone may, for example, have had a heart attack immediately prior to the injury.
4 And therefore, in that situation, you could not say with certainty that the cause of
5 death was gunshot. This is an entirely different order of certainty/uncertainty; is
6 that correct?

7 A. [13:35:59] That's correct.

8 Q. [13:36:10] Could we turn please to page 10, and this is -- these are
9 Dr Blau's -- this is Dr Blau's summary. Quote:
10 "The human skeletal remains were relatively complete and well preserved but had
11 some evidence of post-mortem damage.
12 The individual had evidence of:
13 Ante-mortem trauma to the lower back;
14 A carious lesion and a peg-shaped right maxillary incisor, and, Skeletal defects on the
15 left and inferior aspects of the head, left arm and left torso (rib) however it was not
16 possible to be definitive about the timing of these defects."
17 Would I correct, Doctor, in understanding that you don't disagree with these
18 observations and conclusions?

19 A. [13:37:16] Well, that's correct.

20 Q. [13:37:32] And earlier today you were asked some questions about these
21 remains in respect of the possible instrumentality of the injuries that are visible on the
22 remains. And here's what you said at page 10, and I quote -- excuse me, at page 27,
23 and I quote: "This was the one, the fracture of the base of the skull, and there's no
24 other fractures of the skull, and in that case it's more likely" -- excuse me -- "in that
25 case it's more difficult to say that this is due to a blow with a blunt object. This -- a

1 fracture at the base of the skull could easily be followed by a fall from a high building,
2 a car crash accident, falling from a motorbike, et cetera."

3 Now, can I just be sure, and we discussed this in respect of the previous body as well,
4 those observations about the instrumentality, that is predicated on a previous finding
5 that the injury was perimortem; is that correct?

6 A. [13:38:46] That's correct.

7 Q. [13:38:49] And without being able to put an exact figure on the level of
8 certainty or uncertainty, can we at least say that you have reasonable doubt as to
9 whether or not the injury was perimortem or post-mortem?

10 A. [13:39:05] That's correct.

11 PRESIDING JUDGE FREMR: [13:39:08] Sorry, Ms Luping, you have the floor.

12 MS LUPING: [13:39:10] Just raising a concern, Mr President, your Honours, as to
13 whether it's appropriate really for this witness to be asked about reasonable doubt. I
14 mean, he can speak in terms as a forensic pathologist about degrees of certainty and
15 likelihood and probability, but to put to him a criminal standard I don't believe is
16 appropriate. It's obviously only for your Honours to make that form of assessment.

17 PRESIDING JUDGE FREMR: [13:39:33] Yes, I tend to agree.

18 And, Mr Gosnell, I'm sure that you are aware of that, that if there are two possibilities
19 which are both realistic, it's in accordance with principle in dubio pro reo our duty to
20 take the more advantageous for your client.

21 MR GOSNELL: [13:39:53] Yes, I understand that, Mr President. I wasn't
22 suggesting that he should express an opinion according to the legal standard. I was
23 just trying to move us to a bit more certainty. But I do take the point by my
24 colleague from the Prosecution.

25 Q. [13:40:16] Taking these remains in particular and this case in particular, would

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1 it be fair to say at least that this is a difficult case to assess?

2 A. [13:40:26] Yes, that's correct.

3 Q. [13:40:32] And what would be your view of the capacity of a forensic
4 anthropologist who had not directly examined the remains to express an opinion
5 about the correctness of the observations and conclusions of Dr Blau?

6 A. [13:41:04] I think another anthropologist would just look at the photos, would
7 I don't think -- yeah, I think it would come, probably come to the same conclusion as
8 Dr Blau.

9 PRESIDING JUDGE FREMR: [13:41:22] Sorry to interrupt. I would like just to
10 correct or add to the transcript, page 67, line 1, the core of my comment was in
11 accordance with principle in dubio pro reo.

12 Mr Gosnell, please proceed.

13 MR GOSNELL: [13:41:49] Thank you very much, Mr President.

14 Q. [13:41:51] Dr Hansen, I'd now like to move to some of the Sayo remains if I
15 may. And if we could start by looking at tab 9.4 of your binder. The ERN is
16 2074-0174, as always that's a DRC-OTP-document. And this was one of the forensic
17 anthropology reports that was prepared by Dr Congram. I'll say that number again
18 for the record. It's DRC-OTP- -- yes, there it is.

19 Do you have a copy of that, Dr Hansen?

20 A. [13:43:06] Yes.

21 Q. [13:43:06] Could we please turn to page 4, that's 0177. And there's a section
22 entitled "Trauma." And it reads as follows: "The absence of robust portions of the
23 skull, particularly the right petrous portion and the mandibular body, as well as most
24 teeth, is highly unusual. Nevertheless, the high fragmentation of the cranium and
25 fairly degraded state of remains preclude a confident assessment of perimortem

1 trauma to the skull. No perimortem trauma is evident in the postcranial remains."

2 Now in respect of this set of remains, earlier today this is what you said, and I'd like

3 to remind you of what you said, quote: "So there was a missing part of the frontal

4 bone as well as an occipital bone in the back of the head, so it's difficult to explain

5 how this part of the skull could be missing if he's not been hit by a gunshot. So in

6 my opinion most likely a gunshot through the frontal bone" -- excuse me, I'm going to

7 have to correct myself because I'm now reading an opinion in respect of a different

8 body. So I'm not going to -- that's a different -- excuse me, that's my confusion.

9 But, Doctor, the question here is in a sense related to the quote that I was going to put

10 to you, which is the following: Is it possible that there can be a high level of

11 fragmentation which is due to post-mortem damage of the cranium? I should be

12 clear.

13 A. [13:45:26] So an intact cranium will usually not degrade into small fragments

14 only due to post-mortem damage. So I don't remember exactly if it was in the same

15 grade, but there was examples of cranium from different bodies which were where

16 the bone were intact. So it's very strange that some of the craniums in the same

17 grave were fragmented into small pieces if there was not perimortem damage or

18 injury, excuse me.

19 Q. [13:46:17] I see. So am I correct then it's the localised nature of the

20 fragmentation that would indicate a gunshot injury?

21 A. [13:46:27] Yes, this fragmentation into small pieces, I can't exclude that it will

22 happen only due to post-mortem damage, but I find it very unlikely.

23 Q. [13:46:42] And I hate to come back to this particular question, and I can

24 already predict the answer, but are you in a position, having just said it's unlikely, can

25 you give us any sense, can you quantify in any way how likely versus unlikely?

1 A. [13:46:58] I will not give a percentage of likelihood, but I find it very unlikely
2 that it had happened only due to post-mortem damage.

3 Q. [13:47:07] And now let's come back to the case of this particular remains, set of
4 remains. And under "Observations" Dr Congram says, and I quote: "The remains
5 show significant post-mortem degradation including exfoliation of the cortical bone,
6 root etching and erosion of bone ends. There is termite damage throughout, though
7 it is more severe at the innominates," et cetera. "The absence of the right forearm and
8 hand might be evidence of animal scavenging. The damage to the facial bones could
9 support this -- as canid or candid scavengers are known to target extremities ...
10 including the mandible and the ventral cavity. However, the poor preservation of
11 less robust bones ... make this determination uncertain."

12 And then finally he sets out his conclusions and says, "The remains ... are of a 7 to 11
13 year old child of indeterminate sex ... although there is damage broadly consistent
14 with both perimortem trauma and post-mortem animal scavenging, significant
15 post-mortem damage to the skeleton preclude confident anthropological
16 determinations of these."

17 Do you disagree with Dr Congram's conclusions here?

18 A. [13:48:58] No.

19 Q. [13:49:06] And if we turn to your report in respect of this set of remains, which
20 is at tab 9.2, DRC-OTP-2075-0440.

21 Now here under "Cause of death" on page 4, this is how you characterise the
22 possibilities or probabilities in respect of the conclusions you can draw in terms of
23 cause of death: "A gunshot to the head combined with animal scavenging and
24 post-mortem degradation could explain the described damage of the skull.

25 However, since there were no definitive signs of perimortem injuries, I am not able to

1 determine the cause of death."

2 Can I at least ask this in respect of the standard that you're applying to this conclusion,
3 are you saying that you cannot say that it is more probable than not that the death
4 was caused by perimortem injuries?

5 A. [13:50:59] Yes, I think it's more probably than not, but it's more the indirect
6 signs. So I have no -- like in some of these cases you have the typical point of impact
7 when we can reconstruct a skull, then it's much more easy to be confident. But in this
8 case where there is just small pieces of bones, it's, in other words, you can't
9 reconstruct a skull, then it's I can't be definite or make a definite conclusion.

10 Q. [13:51:48] Perhaps I can clarify my question, because it was posed in not the
11 clearest manner. Are you saying then that you consider it more probable that these
12 injuries were perimortem?

13 A. [13:52:00] Yes, it's more probably it's perimortem.

14 Q. [13:52:04] But without being able to exclude the not-far-fetched possibility that
15 the injuries or that the damage that you were seeing was post-mortem?

16 A. [13:52:18] Yes, I can't exclude it was post-mortem, but I think that's more
17 unlikely.

18 PRESIDING JUDGE FREMR: [13:52:30] Your mic, Mr Gosnell.

19 MR GOSNELL: [13:52:33] May we have tab 11.3, please. And this is another set
20 of remains from Sayo. And this is Dr Congram's forensic anthropology report. The
21 DRC -- excuse me, the ERN number is DRC-OTP-2074-0189 with a duplicate ERN
22 number 2075-0496.

23 Q. [13:53:31] And if we could turn, please, to page 4, under "Trauma" it says, "No
24 clear perimortem injuries were observed." The complete or nearly complete absence
25 of the third through seventh cervical vertebrae is suspicious. Nevertheless, the

1 absence of these bones cannot be confidently (anthropologically) attributed to
2 perimortem injury to the exclusion of postmortem activity.

3 "The remains show significant post-mortem erosion, particularly at the ends of bones.
4 There is also pronounced damage from termites, particularly among the vertebrae
5 bodies and along the left coronal suture of the skull. The midshaft of the humerus
6 has been broken transversely postmortem and there is a postmortem break of the left
7 mandibular ramus.

8 "Conclusions: The remains designated SAI1-F1-B3 are of a male who was 60 or more
9 years at death ... There is a fair amount of post-mortem damage to the skeleton and
10 portions of some of the larger bones have been degraded post-mortem or are absent.
11 There are no clear signs of postmortem injury."

12 Do you have any reason to have any disagreement with these opinions as expressed
13 by Dr Congram?

14 A. [13:55:53] No, except the last line you quoted, it's no signs of "perimortem," not
15 "post-mortem" injury.

16 Q. [13:56:01] Thank you very much for that correction, doctor. And does the fact
17 that there appears to be a high level of post-mortem damage to this body, this set of
18 remains which is found in a grave with four other sets of remains, is that relevant in
19 any way to your sense or your attribution to whether the other bodies' injuries are
20 post-mortem or perimortem?

21 A. [13:56:50] No. I notice that in the same grave there was different level of
22 post-mortem damage to different bodies, but I don't know how to evaluate that.

23 Q. [13:57:12] Well, do you, for example, consider it relevant to your assessment in
24 respect of the other bodies in weighing whether or not the injuries that you are
25 viewing are post-mortem or perimortem? When you read a description such as this

1 in respect of one of the bodies, did you take this information into account in making
2 that analysis?

3 A. [13:57:40] Not much, because I -- when I wrote the report, I wrote, or more or
4 less looked only at one case at each time.

5 Q. [13:58:04] And is that standard and appropriate procedure for a forensic
6 pathologist?

7 A. [13:58:13] So, as stated in some of my conclusions, I said that it's -- some of the
8 bodies had similar signs of perimortem injuries and that may be relevant for the case,
9 but I think as a pathologist, I am not -- in a way I'm able, but I think it's up to the
10 Court to decide if it's relevant or not. But I also have my opinion if it's relevant,
11 but -- so I expressed my opinion, but I think it's up to the Court to see if this is
12 relevant because I don't know anything about the circumstances.

13 Q. [13:59:08] Yes, and, Doctor, you've just put your finger on the reason why I
14 asked the question, because it appears in respect of perhaps some of the graves in
15 Kobu, you may have considered that the fact that you had made a determination of
16 perimortem injuries for some bodies was relevant to your assessment of whether
17 there were perimortem injuries on other bodies, so now I'm looking at it from the
18 other direction. Does the indication of post-mortem injuries in respect of the Sayo
19 bodies, or should it, inform your analysis as to whether the other bodies' injuries are
20 also post-mortem?

21 A. [13:59:47] Yes, but I think the pattern of -- of fragmentation in some of the
22 bodies are very unlikely to have happened just to post-mortem damage.

23 Q. [14:00:09] And are you thinking about the case that we were discussing earlier
24 with the isolated area of fragmentation?

25 A. [14:00:15] Yes, whereas some of these bodies had highly fragmentation of a

1 large part of the skull.

2 Q. [14:00:29] Well, let's look at one of those cases, and one of those cases was
3 actually in a different burial feature and that's SAI2-F1-B1. So if you turn please,
4 Doctor, to tab 14.1. This is DRC-OTP-2075-0556. And this is your forensic
5 pathology report. And if we could turn, please, to page 5. "The defects in the
6 skull -- under "Cause of death," doctor:

7 "The defects in the skull indicate that there has been a gunshot injury of the head and
8 the cause of death may therefore be head injury due to gunshot. The defect in the
9 right femur could possible also be consistent with a gunshot injury. However,
10 because of post mortem damage it is not possible to be definitive about the cause of
11 the defects of the skull and the right femur."

12 Let me just stop there and we'll deal separately with the clothing. And then during
13 your testimony earlier today you said the following, and now I do have the right
14 quotation, and what you say here is: "There was a missing part of the frontal bone as
15 well as at occipital bone in the back of the head so it's difficult to explain how this part
16 of the skull could be missing if it's not been hit by a gunshot. So in my opinion, most
17 likely a gunshot through the frontal bone or in the face or in the frontal bone in the
18 direction through the back of the head, but it's not a very clear case, but missing part
19 of the skull in these two, both in the front and in the back, as well as some fracture
20 lines to both sides of the skull, I think is most consistent with a gunshot wound due to
21 a gunshot injury."

22 Now, I don't say that there's any inconsistency between your report and what you've
23 said earlier, but can I come back to my question which is, in this particular case, what
24 degree of certainty can you express about your conclusions?

25 A. [14:03:48] So both frontal bone and occipital bone is fairly robust bones so it's

1 very difficult to understand how these two bones could disappear due to
2 post-mortem damage. So scavenging animals could have attacked the head, but
3 usually scavenging animals attack facial bones, neck, and usually not the back of the
4 head, so that's more unlikely. So I think -- and it -- and other type of injury like blunt
5 force trauma, the bones shouldn't have disappeared. I think a gunshot to the head
6 can -- dependent on what kind of weapon, what kind of ammunition, but it is more
7 likely that they can make more damage to skull than a blunt force trauma, but I think
8 it's very unlikely that these detects are due to only post-mortem damage.

9 Q. [14:05:35] Well, let's hypothesise the unlikely case. What would cause such
10 damage in the unlikely event that it was post-mortem?

11 A. [14:05:50] For me it's difficult to see that this could happen only --

12 MS LUPING: [14:05:55] Sorry.

13 PRESIDING JUDGE FREMR: [14:05:59] Ms Luping.

14 MS LUPING: [14:06:00] Mr President, your Honours, I have no problems with the
15 hypothesis as such being provided but in this instance I think the question appears to
16 be rather ambiguous and it's just calling for a very speculative response.

17 PRESIDING JUDGE FREMR: [14:06:22] Mr Gosnell.

18 MR GOSNELL: [14:06:23] I can make it more specific, Mr President.

19 PRESIDING JUDGE FREMR: [14:06:26] I would appreciate. Thanks.

20 MR GOSNELL: [14:06:27] Could we have tab 14.3, DRC-OTP-2074-0208. This is
21 Dr Congram's anthropological report, doctor.

22 A. [14:06:50] Mm-hmm.

23 Q. [14:06:55] And here's what Dr Congram says at page 6 of the document under
24 his conclusions:

25 "The remains ... are of a male who was between 50 and 80 years old at death."

1 "There are possible perimortem," "possible perimortem projectile injuries to the skull
2 and distal right femur, although significant post-mortem damage and loss of bone
3 obfuscates more definitive determination. Although less likely, postmortem causes
4 of the damage to skull and femur cannot be completely excluded by me. There is
5 damage to the pelvis that is consistent with canid or large felid scavenging."

6 If I can characterise this conclusion, it doesn't disagree in any marked way from your
7 opinion, but it does seem to express a little bit more latitude for the possibility that the
8 injuries were indeed post-mortem. Does this in any way assist you or alter your
9 view of the situation?

10 A. [14:08:38] I don't -- in my opinion, it's not -- it reflects my view, it said that it
11 cannot completely be excluded, and I think that's correct.

12 Q. [14:08:56] Yes, and he also says that the -- that there are possible perimortem
13 projectile injuries to the skull?

14 A. Yes. So there is obvious post-mortem damage, but for me it's unlikely that it's
15 only post-mortal damage. So, in my opinion, there has been perimortem injuries to
16 the skull, which has been enlarged post-mortem.

17 Q. [14:09:34] Can we please go back to your report, which is 14.1, that's again
18 2075-0556. And if we could turn, please, to 0560. And I'd like to ask you about the
19 clothing. And you say here, quote:

20 "Several of the holes in the clothes are consistent with defects due to a sharp object or
21 gunshot. Any bloodstains may have disappeared during the post-mortem period.
22 In conclusion, because of severe post-mortem damage, I am not able to determine the
23 cause of death with certainty."

24 I'm not going to come back to the question about the threshold of certainty, but I do
25 want to ask you about the clothing.

1 What else, in your view, could have caused the tears to the clothing? If you had
2 anything in mind.

3 A. [14:11:15] I think perhaps if the body was lifted, the dead body was lifted, or
4 when even the body was -- somebody took in the clothes, it may have made such, but
5 this was more small holes, as I can remember. So if somebody has -- a person has
6 taken in the clothes and used force on the clothes I think the holes would perhaps
7 have a different appearance. But the person could also, when alive, coming into
8 contact with a nail or something in -- a sharp object in a wall, for instance, it could
9 perhaps make such holes.

10 Q. In any event --

11 A. And also I don't think these holes were in the tor -- breast part of the body
12 I think. And I couldn't see any signs on the skeleton of this part of the bones which
13 had apparent gunshot injuries. Of course a bullet can pass through the chest
14 without hitting bones, so, yeah.

15 Q. [14:12:58] So if I can just clarify your last observation, I understand you to say
16 that of course the bullet can pass between the torso bones, but am I correct that you
17 did not find any indications of gunshot injuries on any of the torso bones?

18 A. [14:13:18] That's correct.

19 Q. [14:13:21] Could we turn please to tab 4.1. This is DRC-OTP-2075-0235.

20 And we're continuing with clothes, Dr Hansen, and on page 5 of your report, which is
21 at ERN page 0239, you refer to an item of clothing:

22 "A pair of black (or dark blue) long trousers with turn-ups, probably made of cotton."
23 Et cetera.

24 In respect of the other bodies that you examined at Kobu, did you make any -- and
25 excuse me, I should just move you also down at the bottom of the page there where

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1 you say:

2 "It is noteworthy that a man with similar, or identical, trousers is seen on photo
3 DRC-OTP-0072-0473."

4 And you were asked some questions about this by the Prosecution earlier today,
5 I think, if not yesterday. And my question is: In respect of any of the other bodies
6 that you examined in Kobu, did you make any other -- did you find that there were
7 any other items of clothing that you could match to photographs that had been
8 provided to you?

9 A. [14:15:32] No.

10 Q. [14:15:38] This was the only one?

11 A. [14:15:39] Yes, this was the only one. And also these -- and also the other
12 bodies didn't have clothes which were so specific like this, so this was -- because of
13 this elastic waist with this Flexolax print, it was so specific it was easy to recognize
14 them in the photo. But most of the other -- no of the other bodies had such specific
15 clothes.

16 Q. [14:16:34] You were not able to read the word "Flexolax" on the photograph
17 that had been provided to you of the massacre, were you?

18 A. [14:16:47] I think I was -- I think we had some glasses, we could see the details.
19 I think you could read it, but I'm not sure.

20 Q. [14:17:07] Could we have DRC-OTP-0072-0473, please. Well let's zoom that
21 up as much as we can, please. If we can go in any closer, that might be helpful.
22 Well it does appear to look similar, Doctor, but can you read the word "Flexolax" on
23 that elastic?

24 A. [14:18:30] No, I can't -- I don't think I can see the letters clearly.

25 Q. [14:18:38] Was this the photograph that you were looking at? I don't mean to

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1 say the exact photograph, but was this the photograph that you were looking at? Or
2 was there a special blown-up version that you were looking at?

3 A. [14:18:54] No, I think this was the photo we were looking at.

4 Q. [14:18:57] Perhaps we can even try and zoom in closer. I don't know if that's
5 possible.

6 THE COURT OFFICER: [14:19:07] Which part of the photograph would you like to
7 be shown, exactly?

8 MR GOSNELL: [14:19:12] Yes, on the torso there, if we can just zoom right in as
9 close as possible.

10 THE WITNESS: [14:19:25] No, I can't see the single letters. So I can't read
11 "Flexolax".

12 MR GOSNELL: [14:19:37] I'm done with that document. Thank you, Mr President.

13 Q. [14:19:44] And Doctor, how many of the bodies examined by Dr Martrille were
14 found wearing clothing that was similar to any of the photographs that you were
15 provided of the massacre?

16 A. [14:19:58] I think none.

17 Q. [14:20:07] And I just want to ask you a few questions now about the manner in
18 which the clothing was documented during your exhumations at Kobu.

19 So could we please have DRC-OTP-2063-5681. That's Defence tab 22.1, so it will
20 have to be displayed for the doctor on screen.

21 Q. [14:21:11] Now this is a grave form for KOB1-F2, body 1. And under the
22 description "Clothing" it reads:

23 "Cut trousers green with belt (black) green underwear."

24 Now would you understand that notation to mean, in the absence of a contrary
25 indication, that the trousers are being worn over top of the green underwear?

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1 PRESIDING JUDGE FREMR: [14:21:54] Sorry, Mr Witness, please hold on.

2 Ms Luping.

3 MS LUPING: [14:21:57] Mr President, your Honours, I don't want to presume
4 what my colleague's line of questioning is. But I just wanted to clarify whether he
5 did indeed intend to move to a different corpse, because this grave form does not
6 relate to the some corpse that he has been questioning this witness about. He's been
7 questioning the witness about KOB1-F4-B2. And this is a different corpse, it's
8 KOB1-F2-B4.

9 MR GOSNELL: [14:22:27] Yes, I do believe I misspoke about the body number;
10 instead of body 1 it is body 4. In either event it's a different body.

11 PRESIDING JUDGE FREMR: [14:22:33] Too many bodies.

12 MR GOSNELL: [14:22:36] But either, in either case, clearly we're discussing a
13 different body than the one we were just discussing.

14 Q. [14:22:39] So if there is any confusion about that, Doctor, this is an entirely
15 different body.

16 A. [14:22:47] I understand.

17 Q. [14:22:47] And so the question is simply whether would you understand this
18 notation to mean that the underwear is worn underneath the clothing or the cut
19 trousers?

20 A. [14:22:59] Yes, I understand like it's trousers and under there was underwear.
21 In some of these cases it was not very clear to me if the clothes were around the bones
22 or besides the bones. Sometimes I had to ask the anthropologist who had exhumed
23 the body how the clothes were found. But I don't remember this particular case.

24 MR GOSNELL: [14:23:35] Could we have DRC-OTP-2069-1134, please.

25 Q. [14:24:14] And here we see from the plaque that appears to be inside the grave

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1 itself that this is an image of KOB-1-F2, and then it says B1, B2, B3, B4. Do you see
2 that?

3 A. [14:24:32] Yes.

4 Q. [14:24:38] Do you agree with me that there we see the outline of a belt and
5 what appears to be some cutoff trousers and that no underwear is visible?

6 A. [14:25:03] Yes, I think so.

7 Q. [14:25:06] Now I just have one last set of questions, Doctor, and I'm now done
8 with this document, and that concerns the exhumations at Sayo. Were you
9 physically present during the excavation or exhumation of bodies from the graves in
10 Sayo at any time?

11 A. [14:25:30] No. That had happened before my arrival.

12 Q. [14:25:37] Thank you very much, Doctor. I have no further questions for you.
13 Mr President, thank you very much for the break, the early lunch.

14 PRESIDING JUDGE FREMR: [14:25:49] I'm still not sure you completed your
15 cross-examination?

16 MR GOSNELL: [14:25:53] I have indeed, Mr President.

17 PRESIDING JUDGE FREMR: [14:25:56] Well done.

18 Now, Ms Luping, any need for redirect?

19 MS LUPING: [14:26:02] No, Mr President, your Honours. I have no further
20 questions for the witness.

21 PRESIDING JUDGE FREMR: [14:26:07] All right then.

22 So, Dr Hansen, it means that it concludes your testimony. Maybe just one question
23 from my part. I will enjoy the fact that Mr Gosnell was so efficient and finished at
24 this time.

25 Am I right saying that you in any grave, you haven't found any bullet?

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1 THE WITNESS: [14:26:40] Yes, that's correct.

2 PRESIDING JUDGE FREMR: [14:26:42] And do you have any explanation for the
3 fact that in spite of the fact that you in several times, you concluded that those
4 remains bear signs of a bullet wound, a shot wound, that the bullet was not found?

5 THE WITNESS: [14:27:14] Yes, we didn't find any bullets or fragments of bullets.

6 PRESIDING JUDGE FREMR: [14:27:20] But, you know, I am in fact a layman, so
7 I can imagine that if someone is shot by a bullet, sometimes bullet could just go
8 through, but sometimes bullet could remain in the body.

9 THE WITNESS: [14:27:32] Yes.

10 PRESIDING JUDGE FREMR: [14:27:34] Such a body including the bullet is put to
11 the grave, so I would as a layman expect that maybe you can then find this bullet in
12 the grave, but it was not case. So my question is whether you have some possible
13 explanation, it will be still a bit hypothetical, but whether it is common in your
14 practice that simply bullet is not found in the grave.

15 THE WITNESS: [14:28:01] Yes. So it depends on the weapon and the type of
16 ammunition. So a rifle will usually if it's -- especially if it's a full jacket bullet go
17 through the body and not be found in the body. But some bullets are different and
18 will fragment when it hit the body and then will be more or less disseminated into
19 small pieces and these small pieces may also be difficult to find. And there's also a
20 chance that the bullet disintegrated into just some few fragments which is more easily
21 found. But very often the bullet is not found if it's shot by a rifle.

22 PRESIDING JUDGE FREMR: [14:29:00] That was very helpful qualifications.
23 Thank you very much, Dr Hansen.

24 Do my colleagues have questions to our expert? Not.

25 So in such a case I can really thank you very much, Dr Hansen, that you came and

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1 that you shared your expertise with us. I really firmly believe that your testimony
2 will assist us in our deliberation. So thank you very much.

3 And now I would like to ask court officer to guide Mr Witness out of the courtroom.

4 (The witness is excused)

5 PRESIDING JUDGE FREMR: [14:29:49] And I have one probably not very pleasant
6 news for you. Now we will break, but we will then continue just probably for
7 30 minutes because there are some urgent oral decisions that have to be made before
8 Tuesday. So that is why we will resume at 3 o'clock, and my estimation is that it will
9 not take more than 20, 30 minutes.

10 Now we leave and resume at 3 o'clock.

11 THE COURT OFFICER: [14:30:24] All rise.

12 (Recess taken at 2.30 p.m.)

13 (Upon resuming in open session at 3.15 p.m.)

14 THE COURT USHER: [15:15:31] All rise.

15 Please be seated.

16 PRESIDING JUDGE FREMR: [15:15:54] Good afternoon again, and sorry for some
17 delay because the Chamber had to deliberate on three oral decisions, which now are
18 going to be delivered.

19 The first one is oral ruling on Prosecution's Rule 68(3) request for Witness P-14.

20 The Chamber will now deliver its oral ruling on Prosecution request number 1479
21 seeking the admission of Witness P-14's prior recorded testimony under Rule 68(3).

22 The Defence responded in filing number 1484 opposing certain aspects of the request.

23 The Chamber authorised the Prosecution reply which was filed yesterday with filing
24 number 1496.

25 Having considered the materials and submissions received, the Chamber is of the

1 view that use of Rule 68(3) is, in principle, appropriate for this witness. As per its
2 practice, a formal decision on admission will be rendered when the witness appears
3 before the Chamber and if the requirements of Rule 68(3) are satisfied.

4 Already at this stage the Chamber deems it appropriate to address the points of
5 disagreement between the parties concerning: first, whether and how certain material
6 is to be tendered into evidence; and second, the allocation of time for in-court
7 testimony.

8 First, with regard to the witness testimony in the Lubanga case, the Chamber notes
9 that the Prosecution sought certain procedural exchanges contained in the relevant
10 transcripts to be excluded from admission, while the Defence requested that these
11 excerpts remain part of the materials when admitted.

12 In order to preserve the readability of the exhibits and to ensure that all the relevant
13 information appears on the record, the Chamber will consider Witness P-14's
14 Lubanga testimony for admission under Rule 68 without striking from the record the
15 procedural exchanges. Naturally, once admitted, the Chamber will only have regard
16 to the parts containing the witness's evidence.

17 Turning to the Defence to the admission of video DRC-OTP-0159-0441 and related
18 observations by P-14, the Chamber notes that this item was admitted by Trial
19 Chamber I in the Lubanga proceedings noting that "it had no evidential significance"
20 other than the witness had identified certain locations.

21 In light of this, of the Defence reservation, and noting the Prosecution's submission
22 that it will seek to use this video and elicit further evidence during its Supplementary
23 Examination, notably to identify individuals depicted in this video, the Chamber
24 defers its ruling on admission of the video as well as the related parts of the witness's
25 Lubanga testimony until after the Prosecution's Supplementary Examination.

1 The relevant excerpts from the Lubanga transcripts are DRC-OTP-2054-0816: from
2 page 864, line 13 to page 866, line 3; and from page 871, line 17 to page 874, line 15.
3 Concerning the admission of the other two items associated with the witness's prior
4 in-court testimony, the Chamber notes that this part of the request is unopposed. It
5 further observes that there are sketches drawn by the witness, which were discussed
6 and explained during his Lubanga testimony and appear necessary to understand the
7 witness's testimony.

8 The Chamber will therefore consider these two items for admission pursuant to Rule
9 68(3), together with P-14's prior in-court testimony.

10 An additional point of disagreement concerns the 17 paragraphs of the witness
11 statements sought to be admitted under Rule 68(3) together with seven items.

12 Subject to the witness satisfactorily authenticating in court and fulfilment of the
13 requirements of Rule 68(3), the Chamber considers the admission of the these
14 passages of the witness statement as prior recorded testimony that may be considered
15 for admission under Rule 68(3), together with the seven items discussed therein.

16 The Chamber recalls that the Defence will be given an opportunity to cross-examine
17 the witness, and accordingly finds that admission would not cause undue prejudice to
18 the accused.

19 Lastly, the Chamber finds it appropriate to authorise a Supplementary Examination
20 for a maximum of two hours, as requested by the Prosecution. As for the Defence
21 cross-examination, the Chamber notes the voluminous material, as well as the nature
22 of the evidence, sought to be admitted under Rule 68(3) by the Prosecution. Finally,
23 the Chamber considers that Rule 68(3) procedures necessarily constitute exceptions to
24 its general principle that cross-examination shall not last longer than
25 examination-in-chief. Whereas the initial time estimate for the examination-in-chief

1 without the use of Rule 68(3), as provided by the Prosecution at the start of trial, may
2 be of guidance, the Chamber will consider on case-by-case basis how much time it
3 considers appropriate to grant for cross-examination. In light of the foregoing, the
4 Chamber authorizes 8 hours cross-examination.

5 The parties are further directed to file public redacted versions of filings number 1479
6 and 1484 by 30 September 2016.

7 Now, I will move to second oral decision, which is Protective Measures Decision for
8 Witness P-100, P-105 and P-127.

9 On 17 August 2016, the Prosecution filed a request seeking in-court protective
10 measures for six witnesses who will appear during the sixth evidentiary block,
11 pursuant to Rule 87 of the Rules, in the form of face and voice distortion and the use
12 of a pseudonym during testimony, which was filing number 1475.

13 The Chamber will address the requests in respect of three of these witnesses at this
14 time, namely, P-100, P-127 and P-105. The Chamber has conducted an individual
15 assessment in respect of each of these three witnesses. In respect of all three of these
16 witnesses, the Prosecution submits that the protective measures requested are
17 necessary on the basis of objectively justifiable risks to the security and well-being of
18 the witnesses and their families.

19 Having been granted an extension of deadline by way of email on 26 August 2016, the
20 Defence filed its response on 2 September 2016. This is filing number 1487. In
21 respect of each of the three witnesses, the Defence opposes the request. Emphasising
22 the right of the accused to a public hearing, and it submits, amongst other things, that
23 the Prosecution's submissions: (i) are general and unsubstantiated; and (ii) do not
24 establish an objectively justifiable risk in respect of each witness.

25 The Legal Representatives of Victims of the attacks also filed a response on

1 2 September 2016, that is filing number 1486, in which he supported the Prosecution's
2 request in respect of Witness P-100, who is a dual status witness.

3 On 7 September 2016, the Chamber received by way of email the VWU's assessment
4 in respect of Witness P-100, in which it was recommended that the protective
5 measures requested be granted.

6 In assessing whether there exists an objectively justifiable risk, the Chamber recalls
7 that there are reported instances where other witnesses, including crime based
8 witnesses, were allegedly threatened as a result of their involvement with the Court.

9 In that regard, as the Chamber has previously held, the general security situation in a
10 region may be a relevant consideration in respect of specific witnesses. In this
11 instance, it's noted that all three of the witnesses and their families currently reside in
12 areas where former UPC militia members and supporters of the accused are present
13 or continue to have influence. P-105 and P-127, in particular, reside in remote areas,
14 which may heighten the risk to their security. Notably, none of the three witnesses
15 are currently in the ICCPP protection programme.

16 In addition, with regard to P-100, the Chamber has had particular regard to the
17 VWU's assessment that public testimony might trigger retaliation, and that protective
18 measures are necessary to mitigate the risk that he and his family will be exposed to.

19 In respect of both P-127 and P-105, the Chamber has also had regard to their
20 respective profiles and positions within the community. While noting the Defence
21 position that a public figure is not automatically at high risk of reprisals, the Chamber
22 considers that in an unstable situation where the potential for harm has been found to
23 exist, the profile of certain witnesses may, in fact, place them at greater risk. This is
24 due to factors such as the greater number of people who may recognize them, the
25 relative ease by which they could be subsequently located and the potential that, due

1 to their role, they could be viewed as representing a particular community.
2 In light of the above, the Chamber is satisfied that there exists an objectively
3 justifiable risk with respect to the security and well-being of each of the three
4 witnesses and their families, warranting the protection of their identity from the
5 public. The Chamber further finds that the in-court protective measures sought do
6 not unduly infringe upon the rights of the accused, given that the accused and the
7 Defence will be able to see the witnesses give evidence at trial and hear their voices
8 without distortion. Accordingly, and pursuant to Rule 87 of the Rules, the Chamber
9 grants the measures of use of pseudonym for the purposes of the trial and voice and
10 face distortion during testimony for each of the witnesses, which means Witness
11 P-100, P-127 and P-105.
12 Finally, the Chamber instructs the parties and the Legal Representative to file public
13 redacted versions of filings number 1475, 1486 and 1487 by 26 September 2016.
14 This concludes this Chamber ruling.
15 And the last ruling I will deliver is that one.
16 Yesterday the Chamber, by majority, decided to continue the proceedings in the
17 absence of the accused. Noting that such a course of action should be exceptional,
18 the Chamber unanimously finds it appropriate to now provide further directions.
19 The Chamber notes that it has continued to remain apprised of the situations through
20 the Registry.
21 At this point in time, the Chamber does not see a legitimate basis for the continuing
22 absence of the accused from the courtroom. It is therefore indicated that
23 Mr Ntaganda is expected to be present in court on Tuesday morning, as he is obliged
24 to be under the Court's statutory framework. It is noted in this regard that
25 Mr Ntaganda has now had further time both to consult with counsel and to reflect

1 more carefully upon the discrete scope of the Chamber's decision on restrictions. If
2 necessary, the Chamber will instruct the Registry to have Mr Ntaganda brought to the
3 courtroom.

4 Should, however, Mr Ntaganda consider he is not in a position to attend on Tuesday
5 morning, the Defence is to make a substantiated request for him to be excused on
6 legitimate grounds supported by relevant present documentary medical evidence
7 supporting such absence, prior to the start of the hearing. At that point the Chamber
8 will consider whether alternative arrangements may be necessary.

9 However, the Chamber also now finds it appropriate to warn Mr Ntaganda that in the
10 absence of a substantiated request to be excused on legitimate grounds, the Chamber
11 will be forced to consider any continuing refusal to attend the courtroom or to
12 provide a mandate to counsel as an attempt to disrupt the proceedings or as a
13 deliberate refusal to comply with the orders of the Chamber. Such conduct may
14 result in sanction.

15 Noting Mr Ntaganda's consistently cooperative and commendable behaviour in the
16 courtroom during the proceedings prior to this, the Chamber hopes that such a course
17 of action will not be necessary.

18 And the Chamber directs Defence counsel to convey this ruling to Mr Ntaganda.

19 So it concludes delivery of those three oral rulings.

20 Is there any request from the parties or participants for the floor? Ms Luping.

21 MS LUPING: [15:33:40] Yes, Mr President, your Honours, on a very minor
22 procedural matter. It's just in relation to the previous witness's testimony, just to
23 simply indicate that there has been an email sent by the Prosecution to the Chamber
24 and to the parties and to the court officer with the list of documents for this witness to
25 try to aid the process. We have highlighted the documents that we sought to tender

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1 and indicating the transcript references at which the tab numbers were referred to,
2 then there's the ERNs to make the process easier.
3 I just wanted to note that there appear to be a couple of errors in the realtime
4 transcript from today. At pages 43 and 44 there was a reference to tab number 1.2,
5 which should be to 1.8, and a reference to tab number 18.3, which should actually be
6 8.3. And we would just ask that the correct tab numbers be used for the purposes of
7 admission on two of Dr Blau's anthropology reports. That was it, your Honour.
8 PRESIDING JUDGE FREMR: [15:34:43] Thank you for that, Ms Luping. And I
9 only hope that now your correction has been correctly transcribed.
10 Mr Gosnell, no request for the floor? Okay.
11 So then we can adjourn. Be careful we don't come on Monday. We will see each
12 other on Tuesday 9.30. Have a nice weekend.
13 THE COURT USHER: [15:35:14] All rise.
14 (The hearing ends in open session at 3.35 p.m.)
15 CORRECTIONS REPORT
16 The Court Management Section has made the following corrections in the transcript:
17 *Page 30, line 5:
18 "dogs or wolves usually" is corrected to "dogs or wolves. They usually"