

Trial Hearing
WITNESS: DRC-OTP-P-0420

(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 Tuesday, 6 September 2016
8 (The hearing starts in open session at 9.35 a.m.)
9 THE COURT USHER: [9:35:07] All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: [9:35:31] Good morning to everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: [9:35:39] Good morning, your Honour. The Court is
15 sitting in the case of The Prosecutor versus Mr Bosco Ntaganda.
16 PRESIDING JUDGE FREMR: [9:35:47] Thank you, court officer.
17 Now appearances as usual.
18 MR IVERSON: [9:35:52] Good morning, your Honours. Appearing today for the
19 Prosecution are Rens van der Werf, assistant trial lawyer; Nicole Samson, senior trial
20 lawyer; Selam Yirgou, case manager; and myself, Eric Iverson, trial lawyer.
21 PRESIDING JUDGE FREMR: [9:36:09] Thank you, Mr Iverson.
22 Defence, please.
23 MR GOSNELL: [9:36:12] Good morning, Mr President, your Honours.
24 Christopher Gosnell representing Mr Ntaganda this morning, who is present, assisted
25 by Marlène Yahya Haage and Maria-Kim Vasconi. Thank you.

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1 PRESIDING JUDGE FREMR: [9:36:26] Thank you, Mr Gosnell.

2 And Legal Representatives of Victims, please.

3 MS PELLET: [9:36:32] (Interpretation) Thank you, your Honour. The former
4 child soldiers are represented by Mohamed Abdou and myself, Sarah Pellet, counsel
5 with the Office of Public Counsel for Victims.

6 MR SUPRUN: [9:36:49] (Interpretation) Good morning, your Honour, your
7 Honours. The victims of the attacks are represented by the Office of Public Counsel
8 for Victims, Marine Corhay, intern; Anne Grabowski, associate lawyer; and myself,
9 Dmytro Suprun, counsel.

10 PRESIDING JUDGE FREMR: [9:37:04] Thank you, Ms Pellet. Thank you,
11 Mr Suprun. And good morning, Mr Congram. We will continue today with the
12 rest of your testimony, and it's my duty to remind you that you are still under oath,
13 that you have to speak the truth and nothing but the truth.
14 Before we continue, I would like to address one procedural issue. It's my
15 understanding that the notes of Mr Witness that had been requested by Defence now
16 are being scanned. So I was told that it should take probably one hour before they
17 will be at your disposal. So my proposal would be, Mr Gosnell, it mainly concerns
18 you, that we should -- we could continue with your cross-examination, then you will
19 break and you will be given a chance to study and then we will continue with the rest,
20 depending on your study of those notes. Is it okay with you?

21 MR GOSNELL: [9:38:15] That's a very effective and efficient solution. Thank you,
22 Mr President.

23 PRESIDING JUDGE FREMR: [9:38:20] Thank you for your flexibility, and now you
24 have the floor and you may proceed with cross-examination.

25 MR GOSNELL: [9:38:27] Thank you, Mr President.

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1 WITNESS: DRC-OTP-P-0420 (On former oath)

2 QUESTIONED BY MR GOSNELL: (Continuing) [9:38:30]

3 Q. Good morning, Dr Congram. May we start with, please, with

4 DRC-OTP-2058-0217, Defence tab 97. And, doctor, these are your notes which we

5 discussed yesterday and in fact referred to yesterday from your initial site visit to

6 Kobu in September 2013. You don't have it in front of you, but it will be on the

7 screen. And there it is.

8 Dr Congram, the information that I have is that you provided these notes to the Office

9 of the Prosecutor on or about 4 October 2013. Does that accord with your

10 recollection?

11 A. [9:39:26] I don't recall the specific date that I submitted those notes.

12 Q. [9:39:32] Leaving aside specific date, do you recall that it was approximately

13 two to three weeks after you had completed your mission?

14 A. [9:39:41] That seems reasonable. I don't remember.

15 Q. [9:39:46] You do remember that you did provide a copy of these notes, don't

16 you?

17 A. [9:39:53] I'm not certain about the notes for the preliminary investigation

18 which was conducted in September. I know certainly that when I wrote my

19 investigative reports for the fuller investigations in September of -- or, rather, January

20 and April of 2014, those, yes. I don't recall about the notes from the preliminary

21 investigation.

22 Q. [9:40:21] I see. And so just so that we're clear, when you refer to your

23 January and your April reports and that you're certain that you provided notes in

24 relation to that, you're referring to your site visit to Sayo in April of 2014 and then

25 your second visit to Kobu, when you were there -- Wadza for approximately 15 days,

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1 correct?

2 A. [9:40:43] I believe that's correct. I could confirm that by searching through
3 this binder because I believe they are among the material here in this binder.

4 Q. [9:40:55] Well, actually these notes are not within the binder.

5 A. [9:40:59] Okay.

6 Q. [9:41:00] But in any event, I take your answer as that you don't remember
7 whether you -- you can't say with certainty whether you provided these first set of
8 notes in September 2013 or October?

9 A. [9:41:18] That's correct.

10 Q. [9:41:18] Now, in respect of the Sayo notes that you say you are certain you
11 provided, to whom did you provide them, can you recall?

12 A. [9:41:27] Specifically, no. But I would not have submitted them to anyone
13 other than the Office of the Prosecutor. And I would normally do that at the time of
14 the submission of my report because I'm making reference to those notes as I write
15 the report. You'll recall from yesterday that the report wasn't submitted until several
16 months after the investigation because we were waiting for photographs to be given
17 evidence reference numbers. So I would have retained my notes until that time.

18 Q. [9:42:00] Let's pull up the notes from the Sayo visit, and I'll also be asking you
19 some questions about the Sayo visit later in my questions. And that is
20 DRC-OTP-2067-1133, Defence tab 98. And again, doctor, that will be on the screen in
21 front of you.

22 A. [9:42:24] Okay.

23 Q. [9:42:46] Do you recognize these as your notes from your site visit to Sayo?

24 A. Yes, I do.

25 Q. [9:42:52] The information I have, notwithstanding what you just said in your

1 second last answer, is that these notes were provided to the Office of the Prosecutor at
2 the end of April, so that would have been approximately three weeks after the notes
3 appear to be dated on the first page. Does that refresh your recollection as to when
4 you may have provided these notes?

5 A. [9:43:14] I think we need to distinguish between when I made the notes and
6 the dates in these notes referred to when they were made versus when I submitted the
7 notes or a copy of the notes. So the dates that you see on the page here, for example,
8 refer to the date that I made those notes.

9 Q. [9:43:33] Yes, doctor, that's well understood. What I'm telling you is I have
10 information that this document was received by the Office of the Prosecutor at the
11 end of April 2014 and, to be precise, on 29 April 2014. And so what I'm asking you is
12 not about the date on the page but whether that refreshes your recollection that it was
13 about three weeks after you took these notes that you provided them to the Office of
14 the Prosecutor.

15 A. [9:44:03] Yes, I understand your question now. So the information that you
16 have on when the notes were submitted I believe must be correct. It's possible that
17 I had made the body of my report, I had written it in that time between the
18 investigation and the submission of my notes and I simply left space in the report for
19 reception and interpretation of the photographs to use to complete the writing of my
20 report.

21 Q. [9:44:38] And am I correct that you would have, or you did, retain the original
22 book in which these notes were kept and that you photocopied them for the purpose
23 of providing them to the Office of the Prosecutor?

24 A. [9:44:54] Yes, that's correct. I submitted a photocopy and I retained the
25 originals.

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1 Q. [9:45:00] Can you remember having actually done that?

2 A. [9:45:05] I believe so, yes. I believe it was -- I'm uncertain about whether I
3 copied the notes at the field office in Bunia or whether I copied the notes back in my
4 office in Canada upon return. I'm not certain which of those is true.

5 Q. [9:45:25] In any event, you are --

6 PRESIDING JUDGE FREMR: [9:45:27] I'm sorry, Mr Gosnell, I just got message
7 from the interpreters. They would like to ask you to keep pauses, please. Thank
8 you.

9 MR GOSNELL: [9:45:35]

10 Q. In any event, it's one or the other, is that correct, either they were copied in the
11 Bunia field office or they were copied back in Toronto?

12 A. [9:45:46] I believe that is correct.

13 Q. [9:45:49] And can you recall to whom you provided those photocopies within
14 the Office of the Prosecutor?

15 A. [9:46:03] I -- within the Office of the Prosecutor, I'm not certain. I believe it
16 was Nicole Samson.

17 Q. [9:46:14] Now, I want to come to the notes that you prepared in respect of your
18 15-day visit to Kobu, kept in a form similar to what we see on the screen in front of us.
19 And yesterday what you said was that, quote, "I possess the original notes but I do
20 believe I provided a copy of those notes to the Office of the Prosecutor."

21 Now, first of all, am I correct that you -- that means that you took a photocopy of
22 those notes from your notebook?

23 A. [9:47:02] Yes, I believe that's correct.

24 Q. [9:47:08] And can you remember anything about the circumstances of
25 providing those notes to the Office of the Prosecutor? Do you recall when,

1 approximately, and can you remember to whom? And can you remember anything
2 else at all about the circumstances?

3 A. [9:47:29] I should make a clarification. It's possible that in fact I did not
4 submit -- I don't recall whether I submitted a photocopy -- no, I'm sorry. I was
5 thinking perhaps I scanned them. Because I submitted a printed copy of my report,
6 I think it's much more likely - in fact, I'm quite certain - that I would have submitted a
7 hard copy of the notes as well. It's possible that I submitted a scanned copy but I
8 don't believe that's true. To be clear, I don't know how I would have done that
9 securely, so I think it's unlikely. I'm just trying to consider other possibilities.
10 I don't know how I would transmit the scan securely so I don't believe I did that.
11 I believe I submitted a hard copy, a photocopy, of my original notes.

12 Q. [9:48:24] And yesterday at page 94, line 21 of your testimony, you said, and I
13 quote: "It's most likely I submitted those original notes at the same time as when I
14 submitted the report."

15 And I take into account the answer you just gave. Do you remember anything about
16 how you transmitted your report to the Office of the Prosecutor?

17 A. [9:48:53] I'm not sure if there are two questions there, but I will say that that
18 statement that you just quoted from page 94, line 21 of the transcript, that's mistaken.
19 I misspoke there. I did not submit the original notes. I submitted a copy of the
20 original notes.

21 Q. [9:49:12] Yes, that's understood, Dr Congram. So the question is not really
22 about whether it's the originals or the copies because we're sure that it's the copies,
23 you've clarified that. The question is about trying to refresh your memory as to the
24 circumstances in which you believe you submitted a copy of those notes. And
25 yesterday you said it was most likely that you submitted those notes at the same time

1 as you submitted the report. So what I'm asking you is does the fact -- does that
2 answer, the fact that you supplied the notes at the same time as the report, refresh
3 your memory in any way about the circumstances of providing those notes?

4 A. [9:49:56] I can't be certain. I believe I would have submitted them. There
5 are two possibilities. One is that I submitted them with the report, but I could also
6 consider that perhaps I didn't submit them with the report and there was a
7 subsequent request for a copy of my original notes. I'm not certain which of those is
8 true. But those are, according to my recollection, the two most likely scenarios.

9 Q. [9:50:24] Do you remember to whom you provided the notes?

10 A. [9:50:31] It would have been -- I can say with confidence that it would have
11 been someone within the Office of the Prosecutor. To whom specifically they were
12 addressed, I don't recall. I would have asked for -- I would have communicated
13 with someone in the Office of the Prosecutor to ask them to whom they should be
14 addressed. I would not have sent them, I don't believe, without the name of
15 someone specific on them. I would have sought out instruction to whom those notes
16 should be sent.

17 Q. [9:51:02] All right. Thank you, Dr Congram.

18 Now I'd like to look at your report in respect of Sayo. That's DRC-OTP-2074-0148,
19 Prosecution tab 3. And that's in your binder, doctor. And the very first line of the
20 report reads, "In early December 2013, I was asked by Dr Eric Baccard to direct some
21 forensic archaeological exhumations and anthropological analyses in the DRC." Am
22 I correct that you knew that you were being tasked with conducting a forensic
23 exhumation in relation to an active criminal investigation and prosecution?

24 A. [9:52:05] Yes. Knowing that the request was coming from the Prosecutor's
25 office, I presumed it was part of a criminal -- for the International Criminal Court, I

1 presumed it was part of a criminal investigation.

2 Q. [9:52:20] And am I right that you were tasked to be the director of the forensic
3 exhumations on site?

4 A. [9:52:33] Yes.

5 Q. [9:52:34] And what measures at the director of forensic investigations on site
6 do you think need to be undertaken to ensure the integrity of the process of the
7 exhumations?

8 A. [9:52:47] Well, that's not a simple question because there are various stages in
9 the investigation. So I would say that my role referred to the direction of technical
10 efforts to search for evidence and recover possible evidence, and in the instance of
11 skeletal remains, to analyse those remains. Obviously, I'm not in charge of the, for
12 example, chain of custody throughout the entire process because I wouldn't be
13 travelling to the Court. So there are some aspects of that that would be beyond my
14 responsibility.

15 Q. [9:53:30] Was security at the site within your responsibility?

16 A. [9:53:37] Again, that would have been a shared responsibility, but it was
17 certainly not my primary responsibility. I shared it, so in that sense, for example, at
18 the end of each day when we were leaving the site, we would cover the graves to help
19 protect them from rain. I did confirm with Court security and the investigators that
20 there would be police around the site, things like that. Obviously, I'm not in charge
21 of coordinating and arranging for the police to protect the site, but on the technical
22 level with respect to the evidence that I was specifically examining, I shared
23 responsibility in being mindful that the integrity of the evidence was guarded,
24 protected.

25 Q. [9:54:25] Does it accord with best forensic exhumation practices for bystanders

1 to be present while exhumations are occurring?

2 A. [9:54:41] It's very common for them to be present. It's, I would say, more
3 common than not but we need to distinguish about the role and the distance and the
4 nature of the context. So by that I mean it's very common, certainly with the US
5 Department of Defence lab and the Argentine forensic anthropology team. The
6 International Committee of the Red Cross is somewhat different because they have a
7 humanitarian responsibility, so their job is to encourage governments to do the work.
8 So it's not just the Red Cross present on site, it's also local government representatives
9 and those they designate to do the work. So it's standard to have local participation
10 to a degree on a technical level. And as I mentioned previously, for example, we
11 would take measures or did take measures. You saw in some of the panoramas
12 there was yellow tape around some of the areas. We put up tarpaulins around the
13 area of KOB2. So there were measures taken to limit the presence and participation
14 of local residents, but in some instances they were directly participating, and that's
15 standard. That's normal.

16 Q. [9:55:58] Was the purpose of the yellow tape to keep people back beyond -- not
17 the people who were assisting in identifying the location of a grave but other
18 bystanders, people who were not directly interacting with you, was the purpose of
19 the yellow tape to keep them back beyond a certain perimeter away from the
20 exhumation?

21 A. [9:56:19] That's the purpose, but I would say that it's clearly not a perfect
22 measure and for that reason we would have police around that perimeter areas, as
23 well as the tape. Nothing prevents a person from crossing that tape. If no one
24 happens to be at that particular point and I'm -- I think it's reasonable to conclude that
25 someone may have passed across that tape at some time but, in general, that's the idea

1 to discourage people from crossing into the area, yes.

2 Q. [9:56:49] And why do you want to discourage them from passing into the
3 area?

4 A. [9:56:53] Well, for the multiple reasons. One, it allows us to have freedom of
5 movement, do our work without interruption, unnecessary interruption. It helps
6 with the -- kind of preserve the integrity of the scene. So if there are, for example,
7 many people freely walking across the graves that we're excavating, that could be
8 problematic. One could suggest, well, perhaps they've deposited evidence or
9 interfered with the evidence in some way. By putting up those barriers and taking
10 some of those measures, you limit that potential interruption, and of course it relates
11 to perception as well. People around that area will see that and naturally, generally,
12 stay out.

13 Q. [9:57:41] And do you also agree that it would be important in respect of
14 potential witnesses to the events that they not see, for example, the content of the
15 graves such that their memories potentially become contaminated as to the things that
16 they saw at the time of the events?

17 A. [9:58:02] It's an interesting question because I could see two different sides of
18 that. I could see -- when we think of memory, I think as I've demonstrated, it's not
19 perfect - I may be mistaken - and I'm certain the same could be said of any witness.
20 So, again, you could be saying what is your understanding of what is here. If, for
21 example -- let me give you an example, perhaps clearer.

22 One woman provided information that her husband was buried in a particular area.
23 So we searched that area and didn't find a grave. She returned then. So she saw
24 where we had dug, and one could argue that that influenced her subsequent
25 interpretation of where the grave may have been. You could go both ways. You

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1 could say, well, it's biasing her judgment or you say it's helping refresh or clarify her
2 judgment because at that point she will realise, oh no, I was mistaken in the first
3 instance. But I'm not an expert in their interpretation so them being allowed to see
4 the work that's being done, I would say it could affect in a positive or negative way
5 their recollection.

6 Q. [9:59:23] And what you've just said about potentially being reminded about
7 the correct location of a grave would not be assisted, would it, by looking into the
8 contents of a grave?

9 PRESIDING JUDGE FREMR: [9:59:40] Please hold on, Mr Witness. Mr Iverson.

10 MR IVERSON: [9:59:43] I just want to object to that question because it obviously
11 does not fall into the expertise of this expert witness. He's asking him to opine about
12 how witnesses might remember something.

13 PRESIDING JUDGE FREMR: [10:00:01] Mr Gosnell.

14 MR GOSNELL: [10:00:02] What I'm -- I think what I'm driving at is clear,
15 Mr President. It's about proper practices during a forensic exhumation, and the
16 witness has just attempted to provide a justification for permitting certain people to
17 be present and viewing an exhumation, and all I'm attempting to do is to ask or draw
18 a distinction for the witness to comment on between seeing the location of an
19 exhumation and the contents of the grave.

20 PRESIDING JUDGE FREMR: [10:00:31] All right. Objection is overruled. Please
21 proceed.

22 THE WITNESS: [10:00:40] Sorry, could you repeat the question, please, refresh my
23 memory?

24 MR GOSNELL: [10:00:44]

25 Q. [10:00:45] I'll try. It's really simply this: What you've just said is one of the

1 good impacts of a person who is a witness viewing the grave, being that they would
2 then have their memory refreshed, potentially, as to the proper location of the grave,
3 that doesn't require them to witness the contents or to see the contents of the grave
4 itself being exhumed, does it? It has nothing to do with it, does it?

5 A. [10:01:14] Your question makes reference to several things, and I'll make a
6 correction. In your question, you referred to one of my earlier responses talking
7 about the good impacts. I believe I referred to both the potential positive and
8 negative impacts of that type of -- of allowing witnesses to see those things. So just
9 to clarify, I've covered both sides of that. And you're asking about refreshing one's
10 memory about the location. Okay, I would say them seeing the location, we must
11 consider the scale. How close is close enough? I can't answer that. And then you
12 make reference to specifically -- specifically to things within the grave. In general,
13 yes, I would agree that that is -- seeing the contents of the grave is not going to refresh
14 their memory of the location of the grave unless, for example, hypothetically speaking,
15 that witness is someone who conducted burials and they recall incidents or relevant
16 pertinent facts related to the burial, so, for example, what clothes a person was
17 wearing of a body that they buried. And so, by seeing what's in the grave, they
18 might say, no, the body I buried wasn't wearing that type of clothing, therefore they
19 would reason logically that this can't be the grave that I excavated, this can't be the
20 body I excavated. So information within the grave may be relevant to their
21 understanding of the event of the burial and the location of the grave.

22 Q. [10:03:01] A little bit further down on the page in your report you say that, and
23 I won't mention any names, but you say that the team also included a psychosocial
24 worker, an interpreter, and "several local workers" unquote. Now, would I be
25 correct in understanding, and we talked about it yesterday, did you engage locals to

1 assist in the digging process and is that what this is a reference to?

2 A. [10:03:31] Yes, that's what this is a reference to. And the reason I use a
3 qualitative adjective by saying "several" is because, as I explained yesterday, the
4 number of locals assisting the preliminary excavation changed according to the
5 number of graves we were working on, according to our needs for assistance, how
6 many graves we were working on at a time or in how many locations.

7 Q. [10:04:01] Do you remember approximately how many workers you had
8 assisting you at Sayo?

9 A. [10:04:08] Specifically, no. And again that would -- I don't believe it would be
10 more than a dozen, but again, it depends on the day because we were there for two
11 days and the first day we were focused on SAI1, the first burial. And it wasn't until
12 perhaps later in that day, in fact, I believe it was later in that day, that we started at a
13 second site. So as Miguel Nieva, the one colleague, continued at the first grave, he
14 would have had local workers present by him and we would have
15 contracted - I believe we did contract or someone did, someone in charge of logistics
16 from the Court - more workers to assist with the search for the second burial. So in
17 that instance, at that point in time, we would have had more local workers. As I say,
18 I don't believe it was more than a dozen, or 12.

19 Q. [10:05:12] The bottom of this paragraph it says, "A team of national police from
20 the DRC provided 24 hour site security throughout the investigation." Then, if we go
21 to page 3, which is ERN page 0150, "The OTP team commuted each day with police
22 escort." Then we go to page 6, which is ERN page 0153, "All sites that were actively
23 being investigated were protected by the police nationale du Congo 24 hours a day
24 throughout the investigation." Approximately how many police were assisting in
25 providing security at the locations in Sayo, if you can recall? An estimate is perfectly

1 acceptable.

2 A. [10:06:06] Yes, I can only give you an estimate and I should clarify, because
3 you make reference to several points in the report, there were some police who
4 remained on the site throughout the day and night, I understand. I wasn't -- this is
5 my understanding. This is what I was told and this is what I believe to be true, but
6 because I was not on the sites overnight, I can't assert that that is certainly true, but I
7 do know that as we left each day, we would have some police escort us back to the
8 field office and some police would remain on site. I observed that. And as we
9 travelled to the sites each day, upon arrival I also observed that while we were being
10 accompanied by some members of the police, there were also other members present
11 at the site upon our arrival.

12 Now, as to the number, if I recall correctly, we would have had one police -- in terms
13 of the team that was commuting, we would have had one vehicle in front that would
14 have had two or three people in the front of the vehicle, and in the bed of a truck, or
15 I don't recall if it was a small SUV or an SUV, a sport utility vehicle - it may have
16 changed - there were other police in the back of that vehicle. So perhaps anywhere
17 from five to ten, as an estimate, in the first vehicle.

18 There were also police who travelled at the end of the convoy, for those of us who
19 were commuting. How many were in that vehicle, I'm not certain. Perhaps
20 between two and five is my estimate, perhaps six. In terms of the number of police
21 who were on site, well, during the day, of course, it's the numbers of those who were
22 in the convoy in addition to those who remained on site during the day. My
23 estimate would be at least four, but I base that simply on those that I believe I
24 observed upon arrival and departure. So I wasn't covering the whole area and
25 wasn't consciously conducting a count. So that's an estimate.

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1 MR GOSNELL: [10:08:19] May we have DRC-OTP-2072 -- excuse me. Could we
2 please have DRC-OTP-2072-0003. This is a video. If I could ask for the Defence to
3 have control of playing the video.

4 PRESIDING JUDGE FREMR: [10:09:00] Court officer, please assist.

5 MR GOSNELL: [10:09:22] For the record, this is at time 21.10 of the video, and if
6 we could just start playing the video, please.

7 (Viewing of the video excerpt)

8 MR GOSNELL: [10:09:50] Let's just stop here for a moment, please.

9 Q. [10:09:56] Can you recognize anyone in this video excerpt that we've just
10 viewed?

11 A. [10:10:01] Yes, I recognize myself in the white T-shirt and my colleague Miguel
12 Nieva from the Argentine forensic anthropology team in the orange or yellow
13 short-sleeved shirt to the right of the video. The third person in the video, I don't
14 specifically recognize.

15 Q. [10:10:20] And is this at SAI1 or SAI2?

16 A. [10:10:27] I'm not certain.

17 Q. [10:10:32] It is one or the other, correct?

18 A. [10:10:36] It appears to be so, but I can't be certain.

19 Q. [10:10:39] Fine.

20 MR GOSNELL: [10:10:42] Let's continue.

21 (Viewing of the video excerpt)

22 MR GOSNELL: [10:11:44] Let's stop here, please.

23 Q. [10:11:48] Now, is that person in the blue shirt assisting you with the
24 exhumation? I don't mean specifically with exhuming the remains, I mean in
25 general in the process of the exhumation at this location.

1 A. [10:12:03] I don't specifically remember who each of the local workers that
2 were contracted to assist were, so I can't say whether or not that was one of those who
3 were contracted or not. I don't know.

4 Q. [10:12:17] Who had responsibility for contracting the local workers, was it you,
5 or was it someone else?

6 A. [10:12:23] It was someone else. I would make a request and that was
7 anticipated by the team, I'm sure, that we would need help, and someone else would
8 arrange for those workers to be contracted. It was not me.

9 Q. [10:12:38] Do you know whether any record was kept as to the identity of the
10 local workers at the excavation sites?

11 A. [10:12:51] I don't know.

12 MR GOSNELL: [10:12:55] Let's proceed with the video, please.

13 (Viewing of the video excerpt)

14 MR GOSNELL: [10:14:14] Now let's just stop it here for a moment, please.

15 Q. [10:14:19] This gentleman appears, from what we've just been watching, to
16 have been adjusting the spades, putting them in the ground, cleaning them off. Now
17 he appears to be looking in towards the tent. Would you agree with me that you
18 weren't allowing just random spectators to come and do things like that? Would
19 you infer from the actions that we've seen that this person was indeed one of the local
20 workers who was assisting you?

21 A. [10:14:49] As I mentioned in a previous question, I'm uncertain as to who that
22 person is, if he was a local worker or, as you say, a random -- I forget -- that was the
23 adjective you used; I don't remember the noun. So, because I'm uncertain of their
24 identity, I can't say whether -- forgive me, I'm not quite recalling exactly the question,
25 but their presence there doesn't strike me as unusual, doesn't seem to me unusual.

1 It's not abnormal, but the specific identity of that person is not clear to me.

2 Q. [10:15:24] Are his actions as you've seen them on the screen in front of you
3 more consistent with being a bystander or more consistent with having been one of
4 your workers?

5 A. [10:15:37] I would say they're more consistent with being one of the workers.

6 MR GOSNELL: [10:15:49] May we continue, please.

7 (Viewing of the video excerpt)

8 MR GOSNELL: [10:16:15] Let's just stop here, please.

9 Q. [10:16:20] And this question isn't really so much related to what we're seeing
10 on the screen but just a general question. Would you say it accords with best
11 forensic exhumation practices for a close family member of an alleged victim who is
12 being exhumed to be a member of the excavation team?

13 A. [10:16:44] That's an interesting question. And it depends on the
14 circumstances. The response depends on the circumstances. And the reason I say
15 that is because we have multiple things we're considering. We know that families of
16 victims can provide useful information so it may be useful to have them there.
17 I think to have them present is generally a humane gesture, if they want to be there.
18 Is it best practice, I don't think -- let me say it this way: In the standard operating
19 procedures with the United States Department of Defense laboratory that does these
20 sorts of recoveries, there is nothing that comments on whether it is good or bad that
21 family members be present but, in practice, they are commonly present. So I would
22 say it doesn't deviate from practice as performed from best international practice, but
23 in no document that I'm aware of is it specifically stated whether family members
24 should or should not be there.

25 Q. [10:17:59] Do you treat -- you've now referred to a Department of Defense

1 document. Do you have any training in the criminal exhumation context?

2 A. [10:18:10] Yes, I have a lot, so in multiple contexts. Let me go through those
3 one by one. So in the domestic context, I've worked with the police and prosecutor
4 authorities in several countries, including Costa Rica and Canada, and with -- under
5 different systems so with a coroner or medical examiner or police.

6 In other contexts such as investigations of international criminal law, I've worked
7 with the United Nations Tribunal for the Former Yugoslavia, among others, and more
8 specifically with relation to the Department of Defense laboratory, because they're
9 accredited by a criminal laboratory accreditation body, one of the requirements of all
10 of the people who work in that laboratory is to annually audit our standard operating
11 procedures. So, every year, every employee of the laboratory is tasked with revising
12 a section of our standard operating procedures and we also have external audits,
13 whereby veterans of the Federal Bureau of Investigations, for example, come in and
14 interview us and check our records to ensure that we're conforming with those
15 standard operating procedures. So not only have I participated in editing these
16 protocols, but I've been well trained and have conformed to their operation or abiding
17 by them.

18 Q. [10:19:42] In Canada, would it be standard operating procedure to have a
19 relative of a victim who is being exhumed participate in the exhumation?

20 A. [10:19:55] Also a good question, and it's important to state that in Canada
21 there's no federal legislation covering procedures in this instance. So death
22 investigation is conducted either by a coroner or a medical examiner. They are
23 assisted by the police, perhaps identification units, depending again on the
24 jurisdiction, municipal police or the federal, Royal Canadian Mounted Police. So the
25 manner of investigating differs according to jurisdiction, but I can say that in my

1 work for the British Columbia Coroners Service, there have been instances certainly of
2 family members present on site, and let's remember, let me clarify, when we're doing
3 death investigation, it's not necessarily homicide investigation. So I've conducted
4 exhumations where people appeared to have died because of a fire, but we don't
5 know whether or not there was criminal action as a part of that, and in those instances,
6 certainly there were family members present.

7 In other instances we've exhumed bodies for which there was no putative
8 identification. So if we don't know who the victim is, we can't possibly know who
9 the family is, but in those instances there were no civilians in the immediate area of
10 the exhumation or personnel who were not part of the police or coroners service
11 participating in the exhumations.

12 Q. [10:21:31] Well, being present is one thing. But actually being part of the
13 team that is assisting in the exhumation is another. So I come back to my question.

14 In any jurisdiction in Canada, would it be appropriate for --

15 PRESIDING JUDGE FREMR: [10:21:45] Well, Mr Gosnell, I will not permit this
16 question. The legislation in Canada is not relevant for our case. What is relevant is
17 the situation in Ituri on the place of exhumations, but not in Canada.

18 MR GOSNELL: [10:22:02]

19 Q. [10:22:03] So, to summarise your position, it would not be improper, in your
20 view, to have a family member participating in an exhumation of a relative? Is that
21 your position or is that not your position?

22 A. [10:22:19] When you say "participating," it's a question of how they're
23 participating. Are they participating by perhaps -- I would say it's not uncommon
24 and, in most instances, I don't think it's appropriate for potential family members
25 because many of these identifications are presumptive, they're not positive, so we

1 can't say for certain. Certainly, in this context, I can't say for certain who those
2 bodies were of, I don't know what their identification was. So I can't say who their
3 family members were. But I would say it's not uncommon for them to participate to
4 a degree, which is to say perhaps in removal of the surface vegetation in the initial
5 excavation. In some places, for example, in Guatemala, where recently the evidence
6 from forensic exhumations conducted by non-governmental organisations has gone
7 through trial, it's not uncommon for family members to be present at the gravesite
8 and, for example, to participate in indigenous rituals related to the dead. In that
9 context, which in some sense is more relevant to this than perhaps a forensic
10 exhumation in Canada, that happens. Now, in this context, that sort of active
11 participation in the grave did not happen.

12 Q. [10:23:48] You say that there might be doubt as to the nature of the
13 relationship between the person who is assisting, and now I'm going to use the word
14 "assisting", in the exhumation and the person who is in the grave, but you spoke
15 yesterday that there were -- about people who provided you information, saying that
16 a certain grave contains their relatives. So my question is, do you recall whether
17 anyone who said that a grave contains their relatives actively assisted in the
18 exhumation at Sayo?

19 A. [10:24:20] I don't recall.

20 MR GOSNELL: [10:24:26] Now I'm afraid we're going to need a closed session for
21 a moment, Mr President.

22 PRESIDING JUDGE FREMR: [10:24:32] All right.

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

24 (Private session at 10.25 a.m.)

25 (Redacted)

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24 (Open session at 10.29 a.m.)

25 THE COURT OFFICER: [10:29:56] We're in open session, your Honour.

1 PRESIDING JUDGE FREMR: [10:29:58] Thank you, court officer.

2 Mr Gosnell, please proceed.

3 MR GOSNELL: [10:30:02] May we continue watching the video, please.

4 (Viewing of the video excerpt)

5 MR GOSNELL: [10:31:44] And perhaps we can now skip forward to 27.30. This is
6 good. Yes, please.

7 (Viewing of the video excerpt)

8 MR GOSNELL: [10:33:03] We can stop here, please.

9 Q. [10:33:08] Dr Congram, do these images correspond with your recollection of
10 the presence of individuals observing exhumations at Sayo?

11 A. [10:33:24] I don't recall specifically, but it doesn't surprise me.

12 Q. [10:33:30] Do we agree that these individuals appear to be observing rather
13 intently what you're doing inside the tent?

14 A. [10:33:38] Yes, I agree.

15 Q. [10:33:41] And you said that you don't recall specifically but it doesn't surprise
16 you. Would that comment be equally true for exhumations at Kobu as well as at
17 Sayo?

18 A. [10:34:05] I don't have specific recollection, but I would say that I believe it
19 would be distinct somewhat from KOB1 and KOB2, and the reason for that,
20 particularly KOB1, is because * the site was very close to the road, whereas Sayo was
21 relatively far to the road. So we might not reasonably prohibit pedestrian traffic up
22 and down that road, but again, as I've mentioned previously, this is not uncommon
23 and it -- I don't think it's inappropriate.

24 Q. [10:34:45] So you can't exclude that there were groups of observers, as we see
25 here, similarly watching your exhumation of the features at Kobu 1?

1 A. [10:34:58] There were certainly people observing, of that I'm certain. Were
2 they observing as closely and in such a number? I don't believe so. I can't be
3 certain, but I don't believe so.

4 MR GOSNELL: [10:35:14] Mr President, I tender this portion of this video.

5 PRESIDING JUDGE FREMR: [10:35:18] Prosecution, any objection?

6 MR IVERSON: [10:35:21] No objection.

7 PRESIDING JUDGE FREMR: [10:35:24] All right. So, Mr Gosnell, you said this
8 portion. You mean the last one or all those portions presented to us?

9 MR GOSNELL: [10:35:38] Well, to keep it simple, and I played almost the entire
10 excerpt from 21.10 to 28.20, so I would suggest that that entire excerpt could be
11 admitted.

12 PRESIDING JUDGE FREMR: [10:35:52] All right, it helps. So this excerpt of
13 video now specified by Mr Gosnell is admitted into evidence as a further Defence
14 exhibit.

15 You may proceed, Mr Gosnell.

16 MR GOSNELL: [10:36:07] Thank you, Mr President.

17 May we have DRC-OTP-2074-0148, which is tab 3 of your binder, doctor, and for
18 anyone else in the courtroom who may have their binders, and it's page 10, which is
19 ERN page 0157.

20 Q. And you were shown this image yesterday, doctor, of figure 8, being
21 SAI2-F1-B1, and there's a notation in respect of a pass key by the left leg. Do you
22 have any recollection as to how long the image that we see here in this photograph
23 would have existed; in other words, how long was it before you collected up the
24 various items in the grave and put them in bags?

25 A. [10:37:10] I don't know specifically, but I do know that from the discovery of

1 those remains to their exhumation, that occurred all within the space of a working
2 day. So the discovery of that key and its removal from the grave likely would have
3 happened in a matter of hours, perhaps two or -- perhaps two or three, I would say,
4 but I don't think it would be more than that.

5 Q. [10:37:38] And this is SAI2. Can you recall whether there were bystanders
6 similar to the images that we've just viewed in the video around SAI2 during the
7 exhumation?

8 A. [10:37:57] I do recall there being some. As I mentioned in a previous question,
9 there was a woman who alleged that this was the body of her father. She was
10 present. And again, because this grave was adjacent to a road, a road, a packed dirt
11 road, I'm certain there was pedestrian traffic along that road, so there would have
12 been people nearby, yes, absolutely.

13 Q. [10:38:27] Were there people not assisting in the investigation, not assisting in
14 the excavations, who were, to your recollection, close enough to this location to have
15 seen the key?

16 A. [10:38:45] To have seen the key? I suppose so. I suspect so. I believe so.
17 I'll say it that way. I think that's a reasonable statement, yes.

18 Q. [10:39:03] And I know that this is a question you may not be able to answer
19 because it may be difficult to recall, but if you were to give an estimate as to how
20 many people would have been in a position to see the key, can you do that? Or has
21 it been too long, you weren't paying attention? But just as a general idea, can you
22 give us a sense?

23 A. [10:39:29] It would be difficult for me to estimate and I don't believe I could do
24 so reliably, but with respect to your statement about attention, my primary focus is on
25 the recovery of the remains, and as you noticed from the video you just showed,

1 generally, that's what I'm looking at as I work. So I'm not counting how many
2 people happen to be in the area watching me work while I'm working. So I can't
3 give a reliable estimate.

4 Q. [10:40:01] That's entirely understandable and there's really no difficulty with
5 that. If we did have a witness in this case who came and said that he had seen the
6 key at the time of the exhumation, you would have no reason, based on your
7 observations and recollection, to think that that was untrue, would you?

8 A. [10:40:31] That would not surprise me, no.

9 Q. [10:40:36] And would the same be true for items of clothing found either in
10 this grave or other graves at Sayo?

11 A. [10:40:49] I believe it's reasonable for people who were observing to have
12 made observations about the clothing on the bodies in the graves, yes.

13 MR GOSNELL: [10:41:05] May we have DRC-OTP-2074-0557, please.

14 Q. This is Prosecution tab 86 so it should be in your binder, doctor. And this is
15 the anthropological examination report by Dr Delabarde. The date is not on the
16 front page, but for the record it's 30 September 2014. If we could turn please to page
17 0631, which is page 75 of the document, there are a set of conclusions in respect of
18 TCH1-F1-B1 and, doctor, you did comment on this report so would I be correct in
19 saying that you're in some position to comment upon the observations and
20 conclusions that are set out in this report?

21 A. [10:42:27] That's correct.

22 Q. [10:42:35] At the very, very bottom it reads, and I'll speak in French:

23 (Interpretation) "No injuries perimortem were mentioned during the examination"

24 (Speaks English) "TCH1-F1-B1."

25 And then there's a description in more detail of other aspects of the skeleton. If a

1 person had been decapitated such that their -- and this is a gruesome description, but
2 I'm afraid in order to be accurate I have to put it this way. If a person was
3 decapitated in such a way that their head was only attached to the remainder of their
4 body by skin, would you expect to discover any indications of that on the skeleton?
5 And I should specify in the circumstances of these remains which, of course, you're
6 familiar with.

7 A. [10:43:50] In general, yes, I would expect to see lesions in the bone, but I
8 should add that those lesions -- well, several things. One, those lesions might be
9 obscured by post-mortem damage. We discussed that yesterday. So degradation
10 of the remains might obscure that damage. As well, it would -- if a person were
11 decapitated, I would expect to see those lesions on particular bones, depending on
12 where they were decapitated, and of course it would be required that those bones be
13 present. I'm not sure if the skeleton was complete in this case and I don't recall the
14 condition of the remains. So, in general, if the skeleton is complete and in excellent
15 condition, then yes, I would expect to see indications, a sharp force trauma as a result
16 of a decapitation, if the mechanism were a blade, a machete or something like that.

17 Q. [10:45:02] Well, let's just turn back then to page 0263, which is page 67. Now,
18 does that image or any of the text surrounding assist in reminding you that the
19 skeleton was relatively complete?

20 A. [10:45:28] Yes, it appears to be quite complete, and particularly of relevance, I
21 see what I believe is the first cervical vertebrae, so that's the upper most vertebrae
22 which articulates with the skull, and that's the region where if someone were
23 decapitated I would expect to see a lesion like that. But, of course, it could impact a
24 different bone but that would -- I would expect that it might impact that bone in
25 particular, and it does appear that the remains are quite complete, yes.

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1 Q. [10:46:07] And Dr Delabarde makes no -- gives no indication of any such
2 injury, correct?

3 A. [10:46:17] As you mentioned a couple of questions ago, yes. She concludes
4 that she observed no perimortem injury during her examination.

5 MR GOSNELL: [10:46:30] Thank you very much, Dr Congram, and that completes
6 my cross-examination, Mr President. Thank you.

7 PRESIDING JUDGE FREMR: [10:46:39] All right. Since there is still a real
8 possibility that you will add something after studying those notes, we will break now
9 for 30 minutes as usual. Ideally, it would be ideal if you in both parties could be
10 ready with this study within those 30 minutes. If not, we can add some time, but in
11 maximum I guess we can extend this break for one hour. So let us now -- if those
12 30 minutes will not be enough, please contact our team and we can supplement some
13 time, but one hour as a total time of the break in maximum. So now we break and
14 we are supposed to resume at 11.20.

15 THE COURT USHER: [10:47:35] All rise.

16 (Recess taken at 10.47 a.m.)

17 (Upon resuming in open session at 11.47 a.m.)

18 THE COURT USHER: [11:47:14] All rise.

19 Please be seated.

20 PRESIDING JUDGE FREMR: [11:47:48] So we -- mister -- maybe I will just -- okay,
21 I will give you the floor immediately.

22 We made a break in order to allow both parties to get acquainted with the additional
23 exhibit.

24 Now, Mr Iverson, you want to say something? Please, you have the floor.

25 MR IVERSON: [11:48:17] Thank you, Mr President. We just had a slight

1 recomposition. Assistant trial lawyer Rens van der Werf is now absent from the
2 courtroom and now assistant trial lawyer Kristy Sim is present.

3 PRESIDING JUDGE FREMR: [11:48:30] Thank you for this specification.

4 So my first question goes to Mr Gosnell: Mr Gosnell, have you had enough time to
5 get acquainted with those notes?

6 MR GOSNELL: Thank you, Mr President. To be quite honest I haven't had enough
7 time. It's 56 pages of notes that are similar to the two sets of notes that
8 your Honours have seen. It is somewhat technical and somewhat detailed. I would
9 appreciate having a little bit more time to prepare because I have already -- based on
10 what I have been able to review, I would ask additional questions to the witness.

11 PRESIDING JUDGE FREMR: All right. How much time do you think you will
12 need?

13 MR GOSNELL: [11:49:23] Realistically if I could have 45 minutes to an hour that
14 would permit me to familiarise myself with the document.

15 PRESIDING JUDGE FREMR: [11:49:34] All right. And I know that it is not easy
16 to estimate, but could you at this moment estimate how much time then you will need
17 to put additional questions?

18 MR GOSNELL: [11:49:49] I would expect that would be short, Mr President,
19 because I have one line of inquiry that actually relates to questions I asked previously,
20 but I would like to take him to, if I can, each example in the notes. So that's why I
21 need to conduct this review. But I only expect the questions would last 10 to 15
22 minutes at the utmost.

23 PRESIDING JUDGE FREMR: [11:50:10] All right. So let's break and
24 let's -- Mr Iverson.

25 MR IVERSON: [11:50:15] Just to let your Honours know I don't have extensive

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1 re-direct examination, but I do have one or two questions.

2 PRESIDING JUDGE FREMR: [11:50:24] Good to know.

3 So let's break and let's resume half past 12, which will give Mr Gosnell 40 minutes and
4 hopefully it will be enough.

5 So now we break and we will continue half past 12.

6 THE COURT USHER: [11:50:55] All rise.

7 (Recess taken at 11.50 a.m.)

8 (Upon resuming in open at 12.32 p.m.)

9 THE COURT USHER: [12:32:09] All rise.

10 Please be seated.

11 PRESIDING JUDGE FREMR: [12:32:50] Good afternoon, everybody. So we made
12 a break in order to allow Defence, specifically Mr Gosnell, to get acquainted with
13 some additional exhibit.

14 Mr Gosnell, are you ready to continue? Very well. So please you have the floor.

15 MR GOSNELL: [12:33:12] Thank you very much, Mr President. And I appreciate
16 the Court's indulgence with the additional time.

17 May I request that we display the document that has been provided to us, and I
18 understand that can be done by permitting the Defence's computer to project onto the
19 court screen. And that's on evidence 2. I'm not sure if the witness has that in front
20 of him.

21 THE WITNESS: [12:33:56] Thank you.

22 MR GOSNELL: [12:34:00] And if we could turn to page 3, which is the -- page 3 of
23 the document, not page 3 of the pagination.

24 PRESIDING JUDGE FREMR: [12:34:18] Mr Iverson.

25 MR IVERSON: [12:34:21] I appreciate that Defence counsel is going to use this

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1 document. I would ask that for the record it is marked for identification so when it's
2 referred to in the record we have some number to go back to, a reference point.

3 PRESIDING JUDGE FREMR: [12:34:38] Good point.

4 So court officer, we have to mark for identification this exhibit, all right? So I got
5 sign of agreement.

6 So now you may proceed.

7 MR GOSNELL: [12:34:56] Thank you, Mr President.

8 Q. [12:34:59] And, doctor, we see here what appears to be something like a title
9 page and your name is on it and address.

10 And then if we could turn please to the next page of text on the document and at the
11 bottom there's a notation that says "P1 of 55" and what appears to be the first page of
12 text.

13 Do you recognize this to be the set of notes that you took during your extended
14 mission to Kobu in January 2014?

15 A. [12:35:34] Yes.

16 Q. [12:35:38] The same notes that we were discussing earlier in the testimony; is
17 that correct?

18 A. [12:35:43] That's correct.

19 Q. [12:35:46] And have you had a chance to review these notes recently?

20 A. [12:35:56] I have reviewed them within the past two weeks, yes.

21 Q. [12:36:00] And as a general matter, and I'm going to take you to a few specific
22 passages, but as a general matter, is the content of the notebook an accurate reflection
23 of the information that you received at the time? Let's start with that.

24 A. [12:36:18] Generally, yes.

25 Q. [12:36:20] And generally is it also an accurate reflection of the actions that you

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1 took at the time, as best you can recall?

2 A. [12:36:28] Yes.

3 Q. [12:36:32] Now, if we could turn please to page 3 of 55 according to the
4 pagination at the bottom. And, doctor, we're just going to look at a few excerpts
5 here.

6 A. [12:36:46] Mmm-hmm.

7 Q. [12:36:48] And there are some excerpts that are interrelated, so I will go
8 through some excerpts and then I will ask you some questions about the interrelated
9 excerpts to save time.

10 And on this page we see a notation that says, "1403: Witness showing us sites
11 related to his family members, i.e., their burial places. He found bodies with many
12 other bodies amongst banana plants. Man's children carried relatives to by church s
13 of road and buried in hole approximately 50 centimetres deep. Tree about 4 metres
14 away, says it was there at the time."

15 And then if we just turn the page to page 4 of 55. "Man's children and others
16 conducted the burial."

17 "The witness," and we won't mention the name, but it's mentioned there on the page,
18 "was present for burial. The witness says both were buried in same grave and no
19 other double burials around. It is illegal."

20 And then just below that there's a notation that says, "Other woman," and I won't
21 mention her name "is on site and helped with burial and is very confident of location,
22 confirms."

23 MR GOSNELL: Now, perhaps we should go into closed session for the question and
24 answer, Mr President, or private session.

25 PRESIDING JUDGE FREMR: [12:38:34] You are right.

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- 1 Court officer, let's move into private session.
- 2 (Private session at 12.38 p.m.)
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Trial Hearing
WITNESS: DRC-OTP-P-0420

(Private Session)

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Trial Hearing
WITNESS: DRC-OTP-P-0420

(Private Session)

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Trial Hearing
WITNESS: DRC-OTP-P-0420

(Private Session)

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Trial Hearing
WITNESS: DRC-OTP-P-0420

(Private Session)

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Trial Hearing
WITNESS: DRC-OTP-P-0420

(Private Session)

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Trial Hearing
WITNESS: DRC-OTP-P-0420

(Private Session)

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Trial Hearing
WITNESS: DRC-OTP-P-0420

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Trial Hearing
WITNESS: DRC-OTP-P-0420

(Private Session)

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Trial Hearing
WITNESS: DRC-OTP-P-0420

(Private Session)

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Trial Hearing
WITNESS: DRC-OTP-P-0420

(Private Session)

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23 (Open session at 1.08 p.m.)

24 THE COURT OFFICER: [13:08:55] We are in open session, your Honour.

25 PRESIDING JUDGE FREMR: [13:09:09] Thank you.

Trial Hearing
WITNESS: DRC-OTP-P-0420

(Open Session)

ICC-01/04-02/06

- 1 Please proceed, Mr Iverson.
- 2 MR IVERSON: [13:09:15]
- 3 Q. [13:09:16] And do you today remain confident in the findings and conclusions
4 found in your reports?
- 5 A. [13:09:24] Yes, I'm confident in the conclusions.
- 6 Q. [13:09:27] Thank you. Those are all my questions.
- 7 MR IVERSON: [13:09:30] Thank you, your Honours.
- 8 PRESIDING JUDGE FREMR: [13:09:32] Mr Gosnell, any re-examination?
- 9 MR GOSNELL: [13:09:36] No, Mr President.
- 10 PRESIDING JUDGE FREMR: [13:09:38] Very well.
- 11 So just one question at the end from my part: Doctor, please, did anybody ask you, I
12 mean anybody probably from Prosecution, to try to find the human remains belonged
13 to Hutu or Lendu?
- 14 THE WITNESS: [13:10:05] No. And within my area of expertise there's no way of
15 knowing the ethnicity of a person by -- well, within my area of expertise there's no
16 scientific way of establishing someone's ethnicity by examining their skeleton.
- 17 PRESIDING JUDGE FREMR: [13:10:22] Thank you.
- 18 Do my colleagues have any additional questions? If it's not the case, so Dr Congram,
19 I would like on behalf of the Chamber thank you very much for coming and for
20 testifying before this Court. We were very grateful that you shared your expertise
21 with us. And I'm sure that your report and your testimony will assist us in our effort
22 to find the truth in this case.
- 23 Thank you very much and we wish you a safe journey home. Thank you.
- 24 Now please guide Mr Witness out of the courtroom.
- 25 (The witness is excused)

1 PRESIDING JUDGE FREMR: [13:11:05] And the last point I would like to clarify
2 before the break concerns the upcoming witness. There is just a preliminary issue, it
3 concerns Defence objection to the use and admission of 12 documents named "crime
4 evidence," and I'm referring to items 35 to 46 on the Prosecution's list of items
5 concerning Witness 945, which is Mr Kal, and it seems to me that these items were not
6 disclosed or neither included on the Prosecution's list of evidence. And I further
7 have to note that the Chamber does not have access to these items via eCourt.

8 So, Mr Iverson, could you just give us any explanation at this moment, or --

9 MR IVERSON: [13:12:11] What you stated is correct, Mr President, they have not
10 been formally disclosed. I had a brief conversation with Defence counsel earlier
11 during a break. What these documents are are photographs of, if I could just hold
12 one up, photographs that were included in the evidence package provided to the
13 forensic DNA examiner, which is why the evidence registration number was included
14 in his report. They're not in any way, at least in our view, material to anything other
15 than an attempt to be as complete as possible. When displaying his report obviously
16 we want to refer to any exhibit that he listed in his report. I'm not sure if the Defence
17 maintain their objection, but in discussing it with my colleague, I think that it was
18 relatively uncontroversial.

19 PRESIDING JUDGE FREMR: [13:13:10] Mr Gosnell, could you express your
20 position on this issue.

21 MR GOSNELL: Mr President, in the interests of moving proceedings along, we'll
22 not stand on ceremony in respect of the objection we've made, we'll withdraw that
23 objection and allow this to come in. However, I think this may be an appropriate
24 occasion to say that we have received very late disclosure of a lot of information, and
25 particularly in respect of the witness we just heard. We received two investigation

1 notes concerning the extended mission by the witness to Kobu just yesterday. We
2 received the notes, the two notebooks that the witness had disclosed to the
3 Prosecution a long time ago, we received those a week and a half ago. And then you
4 saw that we received these notes that were prepared from the third mission today.
5 Now, it's possible the Prosecution didn't already have those notes, but I find it
6 inconceivable that an expert who's being called by the Prosecution would not be
7 asked to provide notes that the Prosecution surely must have known existed and that
8 the Prosecution must have known was the basis for his report that they were
9 tendering.

10 So we won't stand on objection in respect of these documents. And at this time
11 there's no remedy requested in relation to the witness who's just left the courtroom,
12 but I think it's important to raise these issues, even when we're not bringing a formal
13 motion or seeking a formal remedy because we should have got this disclosure far in
14 advance of when we got it. Thank you, Mr President.

15 PRESIDING JUDGE FREMR: [13:14:58] Thank you. Point taken. Mr Iverson,
16 any position to the recent criticism?

17 MR IVERSON: [13:15:06] Well, I'm not sure -- I can't speak to the facts as Defence
18 counsel has stated them. I'm not in a position to say whether that's correct or
19 incorrect. I would have to go back to our records.

20 With regard to the notes that we just viewed moments ago, those were never in our
21 possession, and I take issue with the insinuation that they possibly were after I
22 definitively stated they were not. As soon as I got them this morning I had a very
23 collegial discussion with Defence counsel, so I find it actually surprising that he
24 addresses the issue in the way that he did just now. And I let him know that we
25 would of course scan the notes as quickly as possible, get the notes to him to facilitate

1 his preparation and his examination. So with that particular issue, I really don't
2 think that it's fair to impute some type of responsibility on the Prosecution.

3 PRESIDING JUDGE FREMR: [13:16:06] All right. Just to conclude this issue, it
4 was not just about these notes, it was also about other points. And if this statement
5 is correct, which seems to me at the moment, even if I am not 100 percent sure that it
6 appears to be correct, it should be avoided next time.

7 Now we break and since we finish 15 minutes later, we will start 15 minutes later,
8 which means that we will resume at quarter to 3.

9 THE COURT USHER: [13:16:42] All rise.

10 (Recess taken at 1.16 p.m.)

11 (Upon resuming in open session at 2.48 p.m.)

12 THE COURT USHER: [14:48:34] All rise.

13 Please be seated.

14 PRESIDING JUDGE FREMR: [14:48:57] Good afternoon, everybody.

15 Since I see some changes in appearances, if I am not wrong, I think on your left side,
16 so I would like to ask you for update, if any.

17 Mr Iverson.

18 MR IVERSON: [14:49:14] For the Prosecution all persons present in the last session
19 are once again present.

20 PRESIDING JUDGE FREMR: [14:49:22] (Microphone not activated) Okay, it's fine.

21 THE INTERPRETER: [14:49:27] Microphone, please.

22 PRESIDING JUDGE FREMR: [14:49:28] Okay, I was wrong.

23 The same with Defence.

24 Okay, then we can continue. And we will continue with examination of our further
25 witness.

Trial Hearing
WITNESS: DRC-OTP-P-0945

(Open Session)

ICC-01/04-02/06

1 Dr Kal, welcome. I would like to start with saying that this Chamber has been
2 established to try the case of the Prosecutor against Mr Bosco Ntaganda and you are
3 called by the Prosecution to testify as an expert to assist us in our search for the truth.
4 And before we start with your testimony I would like to provide some brief guidance
5 in relation to the proceeding.

6 By the way, can you hear me well?

7 WITNESS: DRC-OTP-P-0945

8 THE WITNESS: [14:50:24] Yes.

9 PRESIDING JUDGE FREMR: [14:50:26] Fine. So first thing we want you to tell
10 the truth and we want you to only testify within the sphere of your expertise.
11 You are before us as an expert of DNA identification and will be testifying in relation
12 to the report you submitted to the Prosecution.

13 In case you do not know an answer or you do not feel that this answer falls within
14 your area of professional expertise, please indicate so. Is it clear?

15 THE WITNESS: [14:51:03] Yes.

16 PRESIDING JUDGE FREMR: [14:51:04] Very well.

17 Now please could you please read the solemn undertaking to tell the truth, which I
18 guess should be in front of you.

19 THE WITNESS: [14:51:15] I solemnly declare that I will speak the truth, the whole
20 truth and nothing but the truth.

21 PRESIDING JUDGE FREMR: [14:51:21] Thank you.

22 Dr Kal, it means that now you are under oath and, therefore, I am obliged to note that
23 it's an offence within the jurisdiction of this Court to give false testimony. Do you
24 understand that?

25 THE WITNESS: [14:51:40] Yes.

Trial Hearing
WITNESS: DRC-OTP-P-0945

(Open Session)

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1 PRESIDING JUDGE FREMR: [14:51:41] Very good.

2 Now few final practical matters you should have in mind when giving your
3 testimony:

4 I understand that you will be testifying in English today; am I right?

5 THE WITNESS: [14:51:57] Yes.

6 PRESIDING JUDGE FREMR: [14:51:58] And most likely will be also questioned in
7 English, but everything we say is written down and simultaneously translated into
8 French. It is, therefore, important to speak clearly and to speak at a slow pace. And
9 what is also very important and what also sometimes creates problems to our
10 witnesses, it's also necessary to keep pauses between questions and answers, at least 3
11 seconds, in order to allow smooth interpretation. It's a bit unnatural, but please have
12 it in mind, 3 seconds at least between question and your answer.

13 If you have, Dr Kal, any questions yourself, please indicate so by raising your hand
14 and we will then give you an opportunity to speak.

15 Have you understood all this?

16 THE WITNESS: [14:52:57] Yes.

17 PRESIDING JUDGE FREMR: [14:52:58] Very well.

18 So now we can proceed with your testimony. And the Prosecution will be asking
19 you questions first.

20 Who will represent -- again you? Okay. So it will be Mr Iverson. Mr Iverson, you
21 have the floor.

22 MR IVERSON: [14:53:16] Thank you very much, Mr President.

23 QUESTIONED BY MR IVERSON:

24 Q. [14:53:18] Good afternoon, Dr Kal. How are you this afternoon?

25 A. [14:53:22] I'm fine, thank you.

Trial Hearing
WITNESS: DRC-OTP-P-0945

(Open Session)

ICC-01/04-02/06

1 Q. [14:53:27] So we already met last week during witness preparation and also
2 this week in order to pass the information that the Defence wanted to meet with you,
3 but my name is Eric Iverson and I'm a trial lawyer with the Office of the Prosecutor.
4 Just to highlight something the Presiding Judge said, since we'll both be speaking
5 English, just try to keep that very unnatural pause in between question and answer
6 and then we'll stay out of trouble with the interpreters. They'll make sure that we
7 keep a nice even, slow pace.

8 One thing I'd like to do first is just address something with the Chamber.

9 MR IVERSON: [14:54:12] And, your Honours, that is that I understand from
10 Defence counsel that they did meet with Dr Kal and made an audio recording of the
11 meeting. I also understand it's a very short meeting, around 8 minutes. We have
12 not received the audio recording. Because I don't know the contents of the audio
13 recording, I can't say whether I would incorporate that at all into my questions, but I
14 just want to note it for the Chamber. In case after I am able to review the recording, I
15 would like the opportunity to ask questions if necessary. I think it's probably
16 unlikely that I'll request to ask questions based on the recording, but I want to just let
17 the Chamber be aware and then also ask for leave right now before -- before we
18 go -- before we end the examination that I be allowed to even re-open questioning if
19 necessary.

20 PRESIDING JUDGE FREMR: [14:55:15] So if I understood well, after the end of
21 your in fact initial part of your examination, which I guess will be at the end of this
22 afternoon's session, I guess you will be provided with this audio, and if you will find
23 some reasons to continue, you will be allowed to continue tomorrow morning; it's
24 fine with you?

25 MR IVERSON: [14:55:39] Yes. Thank you, Mr President.

Trial Hearing
WITNESS: DRC-OTP-P-0945

(Open Session)

ICC-01/04-02/06

1 PRESIDING JUDGE FREMR: [14:55:42] Mr Gosnell, your position?

2 MR GOSNELL: [14:55:44] That's fine, Mr President. We're in the process of
3 putting the audio onto a CD and preparing it for disclosure.

4 PRESIDING JUDGE FREMR: [14:55:52] Very well.

5 So now please proceed.

6 MR IVERSON: [14:55:58] All right.

7 Q. [14:56:11] Could I please have you state your full name for the record.

8 A. [14:56:17] My name is Arnoud Jan Kal.

9 Q. [14:56:24] And your date of birth is 11 November 1967; is that right?

10 A. [14:56:29] That is correct.

11 Q. [14:56:30] And your place of birth is Vlaardingen here in The Netherlands; is
12 that right?

13 A. [14:56:39] That's correct.

14 Q. [14:56:39] All right. And what I'd like to do now as well is we've prepared a
15 packet of information for you. It contains your curriculum vitae, it contains your
16 expert report and it contains ancillary documents that are referred to in your report.

17 MR IVERSON: I would ask the Chamber's leave, with the Chamber's leave that we
18 provide that to Dr Kal at this point.

19 PRESIDING JUDGE FREMR: [14:57:04] All right.

20 MR IVERSON: [14:57:25]

21 Q. [14:57:26] So just to orient you, Dr Kal, to the contents of the bundle of
22 information we provided to you just now, at the first page you'll see a table of
23 contents and under tab 1 you'll find your CV and under tab 2 your expert report, and
24 then after that a number of ancillary documents.

25 For my purposes I'll only be referring to tabs 1 and 2, your CV and your report. To

1 the extent you may feel that it would be necessary, you're welcome to refer to
2 anything else in the packet, but I just wanted to let you know that right now and then
3 to orient everyone and the Chamber in the room for what is in the bundle that's been
4 provided.

5 So could I ask you please to turn to your CV under tab 1. All right. And in the
6 second paragraph of your CV you state that you're employed as a forensic expert in
7 biological traces, DNA analysis and kinship analysis.

8 Could I ask you to explain to the Chamber what that means to be a forensic expert in
9 biological traces, DNA analysis and kinship analysis?

10 A. [14:58:53] I am a forensic expert in these three disciplines and it means that in
11 my -- in my work I coordinate investigations that involve biological material,
12 biological traces mainly from human origin on which we perform DNA analysis, we
13 make DNA profiles and we compare DNA profiles in order to establish if a trace
14 profile can originate from a certain source, so if a bloodstain is from a certain
15 individual, for instance. And in addition we use DNA profiles for kinship analysis
16 to establish if people can be related in a biological fashion.

17 Q. [14:59:45] And you're currently employed at the Netherlands Forensic Institute;
18 is that right?

19 A. [14:59:53] That is correct.

20 Q. [14:59:54] And for how long have you been employed at the Netherlands
21 Forensic Institute?

22 A. [15:00:01] I've been employed at the Netherlands Forensic Institute for 15
23 years.

24 MR IVERSON: [15:00:11] And just for the record, the curriculum vitae is
25 DRC-OTP-2088-0448.

1 Q. Could I ask you to turn to the second page of the CV labelled page B and the
2 last four for the ERN is 0449.

3 Under the first part, the top of the page I see that you've listed that you're a reporting
4 officer for biological traces in DNA and then also a reporting officer for DNA kinship
5 analysis. Could you explain to the Chamber what it means to be a reporting officer?

6 A. [15:01:04] A reporting officer at the Netherlands Forensic Institute is a
7 coordinator of forensic investigations and also a reporter on these investigations. So
8 a reporting officer is not necessarily a person who does the work in the laboratory
9 itself, for instance, the DNA analysis, but has a coordinating role, collects all the
10 results from the different teams that are involved in this work and then reports in a
11 report to the -- to the court.

12 Q. [15:01:38] Are you as a reporting officer also -- in addition to coordinating, are
13 you qualified to conduct DNA analysis yourself as well?

14 A. [15:01:50] No, I am not qualified to conduct DNA analysis myself.

15 Q. [15:01:57] And can you describe then how that process works, who is qualified
16 to conduct the DNA analysis and then your role in coordinating that?

17 A. [15:02:11] The department in which I worked is organised in different teams
18 with qualified personnel that specialise in different tasks. So, for instance, we have a
19 DNA laboratory with DNA analysts that specialise in generating the DNA profiles.
20 Another team is responsible for trace recovery, so this team investigates, for instance,
21 clothing or weapons or any object that could contain biological traces. And one of
22 the other teams is the team of the coordinators and the reporting officers who interact
23 with the -- with the prosecution and with the police and with the courts to establish
24 which questions need to be answered, and they then translate those questions into
25 tasks for the different teams and collect the results and bring them together in a report

1 for the prosecutor, the police and the court.

2 Q. [15:03:17] And are you able to say or to estimate approximately how many
3 criminal cases have you coordinated and reported on while at the NFI?

4 A. [15:03:33] I have been coordinating and reporting in about 2,000 cases.

5 Q. [15:03:38] And have you ever testified in court as an expert in the past?

6 A. [15:03:48] Yes, I have testified in court for about 20 times.

7 Q. [15:03:59] And in your testimony, was there a process whereby you were
8 qualified as an expert or recognized as an expert in your field by the court?

9 A. [15:04:12] Yes, I am recognized as an expert in my field.

10 Q. [15:04:22] Now, this CV you provided to us in 2015. I'd like to give you the
11 opportunity to orally update any additions you may have to the CV for the benefit of
12 the Chamber.

13 A. [15:04:40] The update consists of a number of conferences that I attended in
14 the last year and membership of a working group in forensic genetics for INTERPOL
15 concerning the disaster victim identification work.

16 Q. [15:05:07] And with those additions, is the curriculum vitae accurate, does it
17 accurately reflect your professional experience?

18 A. [15:05:20] Yes, it does.

19 Q. [15:05:26] And do you have any objection to it being admitted into evidence
20 for the Court to consider as evidence?

21 A. [15:05:39] I have no objection to that.

22 Q. [15:05:41] And will you be available for questioning by the Court and
23 cross-examination by Defence?

24 A. [15:05:54] Yes, I will be available.

25 MR IVERSON: [15:06:00] So at this time, your Honours, I would like to submit the

1 curriculum vitae. It is DRC-OTP-2088-0448. And at the same time I would move to
2 have the Court recognize Dr Kal as an expert, as a forensic expert in biological traces,
3 DNA analysis and kinship analysis.

4 PRESIDING JUDGE FREMR: [15:06:23] Mr Gosnell, any objection?

5 MR GOSNELL: [15:06:28] No objection to the admission of the report pursuant to
6 Rule 68(3). As we've done with previous experts, may I suggest that we defer a final
7 ruling on expertise until after the cross-examination?

8 PRESIDING JUDGE FREMR: [15:06:45] Mr Iverson.

9 MR IVERSON: [15:06:49] This is the first time I've ever heard of any deferred
10 ruling on qualification as an expert, so I'm not aware of what Defence counsel's
11 referring to. In my experience I know it's commonplace to have the expert
12 recognized as an expert before delving into the substance of his or her testimony.
13 I've never seen it done any other way. I've seen this Court in other cases qualify
14 experts before having to testify, but I've never heard of qualifying an expert after
15 they've testified.

16 PRESIDING JUDGE FREMR: [15:07:25] Yeah, it's true that because we deferred
17 our decision, but not as concerns the expertise of the witness, but as concerns the
18 concrete report. So request is granted as concerns the expertise of the current
19 witness. And the CV document specified by Mr Iverson is admitted into evidence as
20 a further Prosecution exhibit.

21 And you may proceed, Mr Iverson.

22 MR IVERSON: [15:07:59] All right.

23 Q. [15:08:00] So keeping with the curriculum vitae, down at the bottom of the first
24 page, of page A, it says that Dr Kal's current work at the NFI focuses on lineage
25 markers, DNA-kinship analysis, disaster victim identification and familial searching.

1 Could you explain to the Chamber what is meant by lineage markers?

2 A. [15:08:32] Lineage markers are specific types of DNA that transmit from one
3 generation to the other in a more or less unchanged fashion. So on the -- on the side
4 of the males we have the white chromosome, which is a chromosome that only males
5 possess and females do not. This is transmitted from father to son in an unchanged
6 fashion, so by using Y chromosome of DNA, we can make deductions of the male
7 lineage, so the male -- male persons in the pedigree, and we can base conclusions
8 about relatedness for a part on those bichromosomal DNA markers.

9 There is also another lineage marker which is called mitochondrial DNA.

10 Mitochondrial DNA, DNA that is present in both in male and in female cells, but the
11 mitochondrial DNA is only transmitted from the mother to her children. So with
12 mitochondrial DNA, you can also follow -- and it's transmitted in a way that it doesn't
13 change. So also with use of mitochondrial DNA, we can look into certain lineages in
14 a pedigree and make conclusions about relatedness.

15 Q. [15:10:03] And then, just so we're clear, could you also tell the Chamber what
16 is meant by biological traces? When you make reference to the term biological traces,
17 what can that mean, or what does that mean, rather?

18 A. [15:10:24] In DNA investigations we make a distinction between trace material,
19 material that is left by a person, for instance, on a crime scene. You can think of a
20 blood spot or skin cells on an object that are left by a person in a crime scene. So that
21 is trace, but these are biological traces.

22 On the other hand, we speak about reference material, biological reference material,
23 and with that word we mean a material that is taken from a known person, so from
24 the person itself. Mostly from living individuals we use buccal swabs. We can take
25 a buccal swab from a known person and establish his identity in many ways, but we

1 also refer to reference material as material from unknown individuals, deceased
2 individuals that we do not know the identity from, but we take the DNA from the
3 body or the human remains itself. So it's not a trace left at a certain place and the
4 person has moved on, it is -- a reference sample has been taken from an individual,
5 known or unknown, living or deceased.

6 Q. [15:11:48] And so I was going to ask about this a little bit further on but since
7 you mentioned reference samples, do you make a distinction between -- is that a term
8 of art, reference sample versus trace sample? Or how would you describe that?

9 A. Well, again, reference samples are taken from persons where you have the
10 person or the remains sort of in front of you, whereas biological traces are taken
11 from -- from places where the person is no longer there, so a trace that has been left by
12 a person.

13 Q. [15:12:33] All right. Thank you for that clarification.

14 And what I'd ask you to do now is turn to tab 2 of the bundle, and we're looking at
15 DRC-OTP-2084-0002, which is your report entitled "DNA identifications (DRC6
16 investigation) from The Netherlands Forensic Institute." So what I'd like to do with
17 this report is, there's some expert field specific jargon in there, I'm going to ask you
18 questions about the meaning of that. What I would ask is that you describe it in lay
19 terms so that we're able to understand the science behind it and exactly what is
20 meant, so that when we read the report, we're better able to understand the report.
21 And then -- so I'll do that with the report, and then I have a number of supplemental
22 questions that are aimed at trying to clarify certain things in the report and why
23 certain steps were taken, just so that that's understood. Once that's done, then I
24 intend to submit the report into evidence and there may be a few follow-up questions,
25 but that will be the extent of my examination.

1 So if I could ask you just to turn to page 2 of your report and that is the last four
2 of -- the ERN is 0003.

3 And under "samples," you write "Reference samples from 22 unidentified persons.
4 Reference samples from 11 relatives of 10 missing persons (in 4 pedigrees)."

5 Can you explain to the Chamber what -- what you're representing here or what you're
6 describing with the -- with your reference to the reference samples from the various
7 persons?

8 A. [15:14:45] We received reference samples from 22 unidentified persons and
9 these samples consist of pieces of bone, femur bone mainly, and teeth. These are
10 samples that in general are the best to -- to use for making a DNA profile.

11 We also received samples from 11 relatives, those were buccal swabs taken from
12 known individuals, and these 11 relatives are -- they are from families, where 10
13 individuals are missing. These 11 relatives are in four pedigrees, so some of those
14 relatives are related to one another, and the 10 missing persons are the same four
15 pedigrees.

16 Q. [15:15:53] All right. And if you look at page 3 under table 1, it states, "Details
17 of the teeth and/or femur samples that were received from the remains from 22
18 unidentified persons."

19 And we see a list of numbers in this table, and what do those numbers identify?

20 A. [15:16:24] The numbers in table 1 identify the samples that we received. The
21 first column is the item identification number that has been assigned to these samples
22 by the NFI, by the Netherlands Forensic Institute, and they consist of a unique
23 barcode, but also of an RFID chip to be able to track and trace the sample in our
24 computer system and in our laboratory.

25 The next three columns consist of identification numbers that were assigned by the

1 ICC, and the purpose of these identification numbers is to be able to discriminate
2 between the samples, to give them a unique number so that there's a clear chain of
3 custody for those samples and traceability of the samples in the laboratory.

4 Q. [15:17:31] And you mentioned an RFID chip. Can you explain how -- what is
5 the RFID chip and how is it used with the samples?

6 A. [15:17:44] An RFID chip is in the -- in the barcode sticker that goes on to
7 the - on to the sample, not on the sample itself but on the package, and the RFID chip
8 submits a signal to certain gates in our laboratory so that we know when the sample
9 goes from one compartment to the other that it is electronically detected and logged
10 into our system. So it's a -- it's a method for track and trace of your sample.

11 Q. [15:18:19] So within the lab, are you -- do you know exactly where a given
12 sample may be based on the RFID chip?

13 A. [15:18:29] That is correct.

14 Q. [15:18:37] All right. And if you could turn now to page 4 and to page 5, and
15 that is 0005, 0006. I did not have any particular questions on these two pages, but if
16 there's anything of note, you can -- you can refer back to it, if necessary, or if there's
17 anything you need to let the Chamber know about these two pages, you can do that,
18 but I'd like to move on now to the text of your report, which would be page 6; 0007 is
19 the ERN.

20 All right, so I'd like to just start at the beginning. How did you, Dr Kal, become
21 involved in the process of generating DNA profiles in this -- in this case?

22 A. [15:19:46] The International Criminal Court has contacted the Netherlands
23 Forensic Institute with the question if we were able to conduct certain investigations.
24 This contact initially is established between forensic coordinator at the ICC with a
25 forensic adviser at the Netherlands Forensic Institute. They can discuss the

1 questions that are -- that need to be addressed and the experts that need to be
2 involved to be able to answer those questions. And from that point my department
3 got involved because my department performs the DNA investigations and is able to
4 do kinship analysis based on the DNA profiles.

5 Q. [15:20:38] And can I have you also explain the process of receiving the
6 materials, the biological traces, and then what is done with the biological traces once
7 received?

8 A. [15:20:57] There are various ways in which biological traces or reference
9 samples can be delivered to the NFI. Usually in situations as we have in this case,
10 the items are handed over in person, so by the forensic coordinators of the ICC
11 handed over in person to the forensic adviser at the NFI, and that also involves
12 signing off the forms that established the chain of custody for those samples.

13 Q. [15:21:35] And so, once received, what will -- what happened with the
14 biological traces, with those samples?

15 A. [15:21:47] Once received, the samples will be stored in a -- a storage that is
16 good to maintain integrity of the samples, and after that the samples will be used for
17 the investigation. So at a certain point the DNA analysis will start and the samples
18 will be taken out of storage and transferred to the laboratory where the initial steps
19 will take place. Any material that is left from after the investigations will be
20 returned to our storage and will be stored until further notice.

21 Q. [15:22:28] And if you could just explain what type of storage ensures the
22 integrity of the samples, of the biological material.

23 A. [15:22:43] For -- for keeping the DNA intact, it is important to have storage
24 conditions optimal. And in this case we were provided with bone samples and tooth
25 samples and the appropriate way of storing them is in a dry storage at room

1 temperature, that will maintain the integrity of the DNA for these kinds of samples.

2 For other kinds of samples other types of storage might be necessary.

3 Q. [15:23:19] And could you explain to the Chamber as well what would
4 extremities in temperature, what cause or what would happen to DNA if it's kept in
5 storage that's too hot or too cold?

6 A. [15:23:37] DNA is a biological molecule which is sensitive to attack
7 from -- from chemicals, from radiation like UV, from sunlight and to bacterial
8 influences, so the best way of storing DNA or a DNA sample is to store it dry because
9 bacteria can only function in humid conditions, and to store it at a low temperature,
10 preventing chemical reactions from occurring. So a low temperature is preferred
11 above a high temperature and dry is preferred above wet conditions.

12 Q. [15:24:22] And can you explain to the Chamber if biological material, and in
13 this case femur bone and a tooth, are kept in a humid and hot environment, what
14 happens to the DNA over time?

15 A. When bone and teeth samples are in humid conditions at high temperature, this
16 will not be favourable for the DNA, it will degrade, it will degrade faster than it
17 would degrade if the bones were stored at low temperatures and in a dry condition.
18 So over time the DNA will degrade, which means that the DNA molecules will
19 become smaller, they will be cut into smaller -- smaller pieces by chemicals or by
20 bacteria and also the -- the chemical composition can change because of those
21 influences.

22 Q. [15:25:27] So just even to draw that out further, if I could ask just a
23 hypothetical question about if you're able to find biological trace material perhaps
24 ancient human remains in a cool and dry location, would that increase or decrease the
25 chance of being able to create or generate a DNA profile from that biological material?

1 A. [15:25:56] When the biological material is stored in a -- in a cool and a dry
2 location, it can be possible after many hundreds of years to still obtain a DNA profile
3 because the rate of DNA degradation has not gone so far that it is impossible to get a
4 DNA profile, but it very much depends on the storage conditions until what time
5 back in time we can make DNA profiles.

6 Q. [15:26:36] And what effect does being in humid and hot subsoil conditions
7 might that have on the ability to be able to generate a DNA profile from biological
8 material?

9 A. [15:26:54] The hot and the humid conditions will cause a more rapid
10 degradation of the DNA and might -- and will decrease the chance of obtaining a
11 DNA profile that can be used for further interpretation.

12 Q. [15:27:15] All right. So getting back to your report under section 3 "Methods"
13 I note that it states, "The Netherlands Forensic Institute is accredited by the Dutch
14 Accreditation Council according to ISO/IEC 17025 standards."
15 Can you explain to the Chamber what that means that the NFI is accredited by those
16 standards?

17 A. [15:27:47] It is in our legislation that forensic laboratory should be accredited
18 according to standards as specified in my report and accreditation is done by the
19 Dutch Accreditation Council. This involves a quality system. For instance, it
20 means that for our work we have standard operating procedures which are -- which
21 are fixed and which are logged that, for instance, personnel is qualified, that there is
22 track and trace for your samples, that if errors are observed that there will be
23 correction of those errors and measures to prevent those errors from happening again.
24 So it's basically a whole package of quality assurance measures that need to be in
25 place before a laboratory can be accredited.

1 Q. [15:28:47] And did you follow all of those standards in this -- in this case with
2 these -- with these remains, with the biological material?

3 A. [15:29:01] Yes, we followed those standards.

4 Q. [15:29:06] And I'd like to move to the next section on DNA extraction and
5 quantification.

6 So in the first paragraph it states that the "Teeth from 22 unidentified persons were
7 pulverised."

8 And I'd ask that you explain to the Chamber the process of pulverisation and why it
9 is done as part of the process?

10 A. [15:29:37] The first step in the investigation is to extract the DNA from the
11 biological material. And teeth and bone are the hardest materials in the human body
12 and the DNA is inside the bone structure, so to be able to extract the DNA from the
13 bone we need to -- to pulverise the bone as a first step. And this pulverisation is
14 done in a -- in a tube where the bone sample is put into, where also a metal fragment
15 is put into, and the tube with the metal fragment and the bone is put into a milling
16 machine, which is a machine that will cause a magnetic field, the -- the metal part
17 inside the tube to go back -- back and forth, thereby pulverising the bone against the
18 ends of the -- of the tube.

19 This whole process is done in very cold conditions, in liquid nitrogen. The liquid
20 nitrogen has two purposes. The first purpose is to make the bone very, very cold
21 and thereby very brittle so that it's easier to pulverise and also to avoid the generation
22 of too much heat because the pulverisation process itself will generate heat. So it's
23 also a cooling -- cooling mechanism.

24 After the bone is pulverised the tube can be -- can come back to room temperature
25 where the bone powder can be removed from the tube and proceed to the -- to the

1 next step.

2 Q. [15:31:29] All right. And I notice it states in the second paragraph that, "In
3 case initially no or no usable DNA-profile was obtained from a tooth sample, the
4 corresponding bone fragment (femur) of the unidentified person was pulverised for
5 DNA-extraction as well."

6 And then you list the case -- the case samples. This was the case for all samples
7 except for four case samples which you list.

8 Can you explain why that is that the two samples did not -- you were not able to
9 obtain DNA profiles from some of the tooth samples?

10 A. [15:32:21] There can be various reasons for not obtaining the DNA profile from
11 a tooth. There are differences between the teeth that are within the 22 unidentified
12 persons, so there might be smaller teeth or larger teeth; there might be teeth
13 with -- with damage, so that's the -- the DNA is damaged from -- by an external
14 source; and also the DNA might be more or less conserved in certain parts of the -- of
15 the human remains. So if it's -- one part is exposed more to sunlight, humidity or
16 temperature than another part, that will generate differences between the chance of
17 obtaining a DNA profile from one tooth compared to the other. So altogether we
18 were successful initially for only four of the tooth and therefore we proceeded to
19 doing the femur bones for the ones that we did not get a DNA profile.

20 Q. [15:33:30] And how -- how large of a sample of the femur bone do you need in
21 order to pulverise it and then generate a DNA profile from that?

22 A. [15:33:46] In general we use between 1 and 3 grams of bone for an extraction.

23 Q. [15:33:54] So the very next, the third paragraph, getting to the extraction
24 portion, which you mentioned, "The concentrations of total human and male DNA in
25 all of the extracts were quantified using a duplex Real-Time PCR assay." I'm not

1 entirely sure even how to formulate the question correctly, but -- because I'm not
2 entirely sure what that is, but if I could first have you just explain to the Chamber
3 what that means and why it may be significant.

4 A. [15:34:58] After the bones and teeth have been pulverised, we move to the next
5 phase, which is extraction of the DNA from the bone powder. And in this process
6 we add chemicals to the bone powder to dissolve the calcium, which is most of the
7 substance in bone, and we add chemicals to remove any -- any proteins from
8 the -- from the sample.

9 After adding those chemicals, we can now see that the DNA is free in solution, so it's
10 not in the solid bone material any more, it's free in solution, but also the calcium
11 molecules and the parts -- the bits and pieces of the proteins are also in this solution.
12 So with another molecular biology tool we can now make this a pure extract of DNA,
13 so we can remove all the calcium, remove all the protein bits and pieces, and what is
14 left at the end is a clear solution with the DNA.

15 For making a DNA profile we need a certain amount of DNA and therefore a critical
16 step in the process is to quantify the extract to see how much DNA actually is present,
17 if there is any DNA, if there's sufficient DNA or if it's maybe too much and the extract
18 should be diluted.

19 The determination of the amount of DNA is done with another molecular biology
20 tool, it's mentioned here as the duplex Real-Time PCR assay. It's -- it would be a
21 very technical story to tell in court, but it's a well-known molecular biology tool to
22 very accurately and very sensitively quantify the amount of DNA that was retrieved
23 from the bone samples.

24 And the duplex -- the word "duplex" in the assay means that we basically measure
25 two parameters in the extract, we measure the total DNA and in addition we measure

1 the male-specific DNA. And those two parameters then give us an impression about
2 how much DNA is there and if it's male or female.

3 Q. [15:37:24] Correct me if I'm wrong, but your last answer also clarified, at least
4 in my mind, the last paragraph which discusses DNA isolation and DNA profiling,
5 you discussed the quantification, but maybe why is it important for you to ensure that
6 there are more than minute amounts of DNA, that there's a sufficient amount of DNA?
7 What's the purpose for that?

8 A. [15:38:05] To be able to generate a DNA profile, we need a certain minimum
9 amount of DNA for the reactions to be successful. And the amount of DNA extract
10 that we can put in such a reaction is limiting, so therefore if the DNA concentration in
11 the extracts are very low, we have more molecular biology tools to increase that
12 concentration. That is mentioned in the last paragraph of page 6, with ethanol
13 precipitation we can reduce basically the volume where the DNA is in and we
14 increase the concentration so we will be more successful in the next step.

15 Another way to be able to generate DNA profiles from minute amounts of DNA is to
16 apply techniques that increase the sensitivity of detection and that can be done, for
17 instance, by doing the amplification step for a number of extra cycles to -- that way to
18 amplify the DNA a bit more and to increase the sensitivity of detection. So when the
19 amounts of DNA in a sample are limiting, we have a number of possibilities to
20 increase the sensitivity to be able to generate a DNA profile.

21 Q. [15:39:38] And I note that you weren't able to generate DNA profiles for all of
22 the materials provided. Why is that?

23 A. [15:39:53] The fact that we have not been successful for all samples can have
24 different explanations. The most likely explanation is that the DNA has been
25 degraded over time so much that we are not able to extract sufficient amounts to do

1 the further analysis.

2 Q. [15:40:12] And for the DNA profiles that you were able to create, were there
3 any of those that produced only a minute amount of DNA for which you had to
4 conduct the further isolation or -- I'm not sure if I'm asking the question correctly, but
5 if there were DNA profiles that you generated where there were minute amounts of
6 DNA that were detected?

7 A. [15:40:41] For most of the samples, the DNA amounts that we retrieved were
8 minute, very, very low in concentration, and we had to apply these additional
9 techniques to increase sensitivity to be able to get the DNA profiles.

10 Q. [15:40:58] And would that affect the reliability of the conclusions in any way,
11 the fact that there were minute amounts of DNA detected in some of the samples?

12 A. [15:41:12] No, the effects of the low concentrations and the minute amounts of
13 DNA do not affect the conclusions. The only thing is that it takes more time and
14 effort to generate those profiles, but still the conclusions we can make from these
15 profiles are -- are good, are reliable.

16 Q. [15:41:40] All right. So I'd like to move to the next section on DNA profiling,
17 3.2, on page 0008.

18 It states, "The DNA extracts were analysed with the next generation multiplex (NGM)
19 PCR amplification system."

20 I'll stop right there and just ask you, could you explain that to the Chamber, what part
21 in the process is this step?

22 A. [15:42:18] After the extraction and the quantification, the next step will be to
23 generate the DNA profile by first amplifying certain stretches of DNA in the sample.
24 We use amplification systems from different companies. The one we used here is
25 specified in my report, the NGM amplification system, and that system will look at 15

1 locations on the DNA which are highly informative for identity. So these locations
2 in the DNA are different from one person to the other.

3 The amplification system involves amplification, so these 15 stretches of DNA are
4 amplified, they are copied in the test tube, and during the copying process also colour
5 labels are attached to those 15 locations so that in the next step of detection we can
6 detect the stretches of DNA and -- and base our conclusions then on the DNA that is
7 observed after this amplification and detection.

8 Q. [15:43:37] All right. And I -- one of my main objectives is just to make sure
9 that everything -- all the expert field specific jargon is explained in your testimony so
10 that there is an understanding about what the -- what these things mean. So the next
11 sentence, "The AmpFISTR NGM PCR amplification kit is a short tandem repeat (STR)
12 multiplex assay that amplifies 15 polymorphic STR loci and the gender determination
13 locus amelogenin."

14 So I think that you partially answered this already but could you explain that to the
15 Chamber as well.

16 A. [15:44:33] So the NGM PCR amplification kit is a kit that looks into 15 loci on
17 the DNA, 15 locations on the DNA, and it does that in a multiplex fashion, and
18 multiplex indicates that this 15 locations are inspected all at the same time in a single
19 test tube, and it -- a short tandem repeat indicates that for the locations that we are
20 looking at are locations that consist of repeated sequences, sequences -- the sequences
21 are the building blocks of the DNA. And the number of repeats that are present on a
22 certain location are informative of -- of identity.

23 We also determine the gender using one of the locations that are provided in the
24 amplification system and, therefore, we use the amelogenin locus, which will give
25 different signals on female DNA and on male DNA.

1 Q. [15:45:57] And in the next paragraph you state, "A number of DNA extracts
2 were analysed additionally with the MiniFiler PCR amplification system."

3 Then you again refer to "The AmpFISTR MiniFiler PCR amplification kit is an assay
4 optimised for genotyping degraded and/or inhibited DNA samples."

5 So could you explain how this tool was used in this case for the DNA samples?

6 A. [15:46:36] For a DNA investigation that involves a kinship analysis, we prefer
7 to have the 15 locations typed -- that are typed in the NGM amplification system, but
8 for some samples that was not successful completely so we did not type 15 locations,
9 but we typed less. And then, as an additional tool, we can use the MiniFiler system,
10 that contains less locations that are inspected, but it is in a way complementary to the
11 next generation multiplex system. So we can combine the results from the two
12 analyses to get a more complete DNA profile. And one of the advantages of the
13 MiniFiler system is that it also works very well with degraded samples and samples
14 that are inhibited, for instance, by chemicals from soil or other chemicals. So, for a
15 number of extracts we got additional information by using the extra analysis with the
16 MiniFiler system.

17 Q. All right. And then section 3.3, DNA identification, and in the second
18 paragraph you state:

19 "The Bonaparte Disaster Victim Identification (DVI) software tool was used to
20 compare the ante-mortem DNA profiling data from the missing persons with the
21 DNA profiles from the post-mortem reference samples from unidentified persons."

22 Could you explain what you used and how you used it, what it was and what the
23 purpose was for -- for having done this?

24 A. [15:48:40] When we do a kinship analysis, we compare DNA profiles to
25 investigate possible biological relationships between the donors of those DNA

1 profiles. This involves comparison of the DNA profiles and statistical calculations to
2 calculate an evidential value, if there is possible relatedness. For a comparison of
3 two samples, these calculations can be done by hand, but it is a lot of work and the
4 work increases when more DNA profiles are involved and more complex pedigrees
5 are involved. So to be able to do those calculations on a larger scale, we developed
6 the Bonaparte software tool, which is a tool that can do your kinship calculations by
7 computer, and one of the good features of this software tool is that it can combine all
8 the information in a pedigree, so multiple individuals in a pedigree can use the
9 information to calculate the evidential value, which is not doable any more if you
10 want to do the calculations by hand.

11 But what the -- the software tool does is it -- it generates the pedigree, so you can
12 generate the pedigrees in the software that involve information of the biological
13 relations that are -- are known, that are established, and it involves the DNA profiles
14 from the -- from the relatives of the missing individuals. And also it has in the
15 pedigree the positions of the missing individuals.

16 On the other side, there are the DNA profiles from the unidentified individuals.
17 What the software does, it takes a DNA profile from an unidentified individual and
18 looks in which pedigree and in which position in the pedigree the DNA profile fits
19 with the highest evidential value, and once it fits in a certain position, it will calculate
20 the evidential value, and thereby this software tool is very well usable for doing a
21 kinship analysis that involves multiple families and multiple DNA profiles from
22 unidentified individuals.

23 Q. [15:51:20] Just -- and just to clarify, and you can correct me if I'm wrong about
24 this, but essentially it's saying you compared the living putative relative DNA, so the
25 people who were thought to be relatives' DNA, with the DNA of the identified

1 persons, using their femur and/or tooth; is that right?

2 A. [15:51:50] That is correct.

3 Q. [15:51:50] Okay. The -- and then the next sentence: "The Dutch

4 allele frequency data were used for the evaluation of the evidential strength of the
5 familial DNA matches between ante-mortem and post-mortem DNA profiles."

6 First, could I have you explain what is meant by the Dutch allele frequency data?

7 A. [15:52:27] In order to be able to perform a statistical evaluation, it is necessary
8 to know how rare a DNA marker is in a certain population, and we refer to this as
9 allele frequencies, so the frequency in which the allele, the DNA marker, is present in
10 the population. For the Dutch situation, we have a data set of over 2,000 Dutch
11 individuals that were typed for the same amplification systems as described by above,
12 the NGM and the MiniFilers and some additional, so we know for these 2,000
13 individuals of the Dutch population what allele frequency is, you know, there -- so we
14 have an idea of the frequency of those alleles in the Dutch population.

15 When we do our calculations by default we use this data set to do the calculations. It
16 is possible to also use other populations and their allele frequency data to do the
17 calculations, and there will be differences in the -- in the outcome, but if a large
18 number of locations on the DNA are used, the -- in the end the differences will not be
19 of influence on a conclusion as it is in the case that we are talking about today. So
20 there will be differences if you use other populations, but first you will need to know
21 which population is relevant for the investigation, and of course the data should be
22 available.

23 If we look at the differences that we can expect from the Dutch population to other
24 populations, the difference are there, but they will not influence the final conclusion
25 as formulated in this case.

1 Q. [15:54:34] And what is the validity of using the Dutch allele frequency data
2 with a non-Dutch population such as a population from the Democratic Republic of
3 Congo or sub-Saharan Africa?

4 A. The allele frequencies in the Dutch population will be slightly different from the
5 allele frequencies of other populations like African populations. These differences in
6 allele frequencies are -- will have an effect on the final likelihood ratio that is -- that is
7 reported.

8 The order of magnitude, however, of those differences in this case will not be so high
9 that it will influence the final conclusion, so the -- the conclusion, the likelihood ratios
10 that are larger than one thousand million will still -- is still valid because the actual
11 number is a number that I cannot even pronounce. So even if the use of other allele
12 frequencies will result in a likelihood ratio that is 1,000-fold lower, it will still not
13 influence the final conclusion. And this is about the number that can be expected in
14 certain situations when you use different allele frequencies, so the difference is a
15 difference of about 10, 100th or 1,000th in the final likelihood ratio.

16 Q. [15:56:23] And we'll get to the likelihood ratio shortly so I may ask to clarify
17 that then after you've explained the likelihood ratios in the conclusion.

18 And you make reference to the evidential strength of familial DNA matches.

19 What -- when you refer to the term "evidential strength," what does that -- what does
20 that mean in your field of expertise?

21 A. [15:56:53] The evidential strength is -- is the -- the strength of the observations
22 that we have done during our investigation. So it's another word of -- way of saying
23 how well our results, how well our data fits with certain hypotheses. So evidential
24 strength is based on the science and it has no -- it is not meant to express any opinion
25 about the evidence in -- in a court case, so it's not the legal term, it's a scientific term.

1 Q. [15:57:34] All right. Thank you for that clarification.

2 I'd like now to go to section 4, "Results," where you report the results of the report.

3 You state that "The DNA profiling of the human remains was successful for 10 of the
4 22 unidentified persons (9 males and 1 female)."

5 Is there anything in particular that -- or any particular reason why the success rate
6 seemed to be more male heavy than female, or is that just the odds, or what would
7 explain that?

8 A. [15:58:27] Because I don't have any background information about where the
9 human remains come from, I cannot answer this question. I have no information to
10 comment on that.

11 Q. [15:58:42] All right. If I could ask you to turn the page to page 8, the last four
12 of the ERN is 0009, and just look at table 3, "Results of the DNA profiling of the teeth
13 and bone fragments (femur) of the unidentified persons."

14 So in bold you list under "DNA profile that is suitable for Bonaparte search obtained,"
15 yes. Is that how you've identified those remains for which you were able to generate
16 DNA profiles?

17 A. [15:59:32] The third column in table 3 indicates if we were able to obtain the
18 DNA profile that could be used for comparison of other profiles with the Bonaparte
19 software tool. So when "no" is indicated, we were not successful in generating a
20 profile at all or a profile which -- that only a very limited information not sufficient for
21 any further analysis, or "yes" a profile that had sufficient information to continue to
22 the Bonaparte software.

23 Q. [16:00:07] All right. So then moving to section 5, "DNA identification results."
24 I'm going to be very careful in this section not to use any family names in order to
25 avoid going into private session, and I would ask that you do the same. And the

1 way I'll do that is simply by reading and omitting the family name.

2 So you report in the result section that:

3 "Two familial DNA matches were identified:

4 The DNA profiling results of the human remains SAI1-F1-B3" with the femur and
5 then you refer to the NFI item ID "show a familial match with the" given "family;
6 given the family tree, the DNA typing results are more than one thousand million
7 times more likely if the human remains SAI1-F1-B3 originated from" a given
8 family -- or given person, rather, "than if these human remains originated from an
9 unrelated random male."

10 In common parlance people speak of, well, that's a match, that's their DNA match.

11 Why is it that forensic DNA examiners, specialists such as yourself express a
12 likelihood ratio in a conclusion rather than saying -- using the term "match" or
13 something to that effect?

14 A. [16:01:57] The term "match" is a term that we generally use when we compare
15 trace DNA profiles to profiles of known individuals and we are looking for a full -- a
16 full match, so complete -- completely the same DNA profile. That is when we speak
17 of a match.

18 When we do kinship analysis there's no real full matches, so the DNA profiles are not
19 100 percent the same, but they are -- they have characteristics in common.

20 So what we do speak of is a familial DNA match to indicate that a DNA profile fits in
21 the family pedigree. As a scientist we will never say that we are 100 percent sure so
22 that we have a full match or 100 percent sure result because we as scientists never
23 have the information to do so.

24 For instance, if a family involves identical twins and we are not aware of this, then we
25 can make the wrong conclusion by saying we have 100 percent positively identified

1 this and this person because it could also have been his twin brother.

2 Also we cannot formally exclude that there is another person on earth with the same
3 DNA profile which would give the same evidential value as we have calculated for
4 the specific persons that are mentioned in the report. So that's why as a scientist we
5 prefer to give our results in a likelihood ratio which is informative of the evidential
6 strength.

7 Q. [16:03:44] And is more than one thousand million times, is that a common
8 likelihood ratio, or are you able to rate that among other likelihood ratios you've seen
9 in your experience as a forensic DNA examiner?

10 A. [16:04:10] The likelihood ratio is a number that is based on the -- on the
11 observations that were done during an investigation. So because of that, a likelihood
12 ratio can also change when you do additional investigations. So if you would be
13 typing more markers on the DNA, your likelihood ratio will increase if there's a real
14 biological relationship and will decrease if this is not the case.

15 The likelihood ratio depends on that -- on a few things. It depends on the pedigree
16 that is in place, so the type of familial relation that is being investigated; it depends on
17 the DNA profile itself, how many places on the DNA have given results that can be
18 used; and it depends on the allele frequencies, on the rarity of the DNA markers that
19 have been looked into.

20 So that makes it very difficult or impossible to say that there is -- something has a
21 typical likelihood ratio for a given situation.

22 What can be said is that we do not report numbers above one thousand million
23 because this is already a figure that is very hard to understand, so the actual number
24 for both conclusions in my report are much higher than the one thousand million that
25 is expressed here. So this is sort of the upper limits of the wording we use in our

1 reports.

2 Q. [16:05:58] And I understand that as a scientist you don't deal in certainties.

3 Just to try to translate this into common language, would it be fair to say that it would
4 be very unlikely that there would be anyone else with that same DNA profile that you
5 identified as being more likely to be a familial match to the given person there, named
6 there?

7 A. [16:06:33] It would be very unlikely for an unrelated individual to have the
8 same profile as any other individual. And the term "unrelated" is crucial in here
9 because it -- these numbers are different for related individuals versus unrelated
10 individuals. The evidential strength that is expressed in my conclusions is high, is
11 over one thousand million for -- for the results that we obtained during the DNA
12 profiling.

13 Q. [16:07:31] At the last part of the identification results you list that "The other 8
14 DNA profiles of human remains could not be matched to any of the biological
15 relatives of missing persons. This means that there is no evidence for a biological
16 relationship (parent-child or sibling) between the unidentified persons and any of the
17 11 relatives."

18 What could be the possible explanations for not finding a match just within the
19 science? Is there any scientific explanation other than -- I understand that they -- the
20 explanation would be that they would be unrelated according to your conclusion, but
21 what within the science would explain that if anything?

22 A. [16:08:27] The fact that we were not able to find familial matches with the
23 other eight DNA profiles of the human remains means that these eight individuals are
24 not part of the pedigrees that we have been provided. And I don't have any further
25 explanation for that, so I have no idea where these eight DNA profiles then originate

1 from. I have no information.

2 Q. [16:09:21] All right. And can you say, just to give the Chamber an idea of
3 how long this work takes, if you were given a buccal swab to generate a DNA profile,
4 how much time does it take to go through the DNA -- generating a DNA profile for
5 something that is -- I use a buccal swab because you said that that's -- can be relatively
6 straightforward because you may have enough DNA or biological material to
7 generate the profile, but how long would that typically take?

8 A. [16:10:03] To generate a DNA profile of a buccal swab, so fresh material with
9 high amounts of DNA, that will -- can be done within a day, even within a few hours
10 if necessary, but that is because it is -- it is the ideal circumstances, so fresh DNA and
11 large quantities which can be processed very fast with robotics instead of the -- the
12 manual work that needs to be done on samples that were used in the identification
13 case that I've reported on.

14 Q. [16:10:38] And then how long did this -- did your research take during this
15 DNA analysis to generate the profiles and to analyse them, or to draw the conclusions
16 and to be able to compare the DNA?

17 A. [16:11:03] So an investigation involving human remains from 22 individuals
18 with samples that are of lesser quality than a buccal swab, including the kinship
19 analysis, takes a lot more time than the one day I just mentioned for the -- for making
20 a DNA profile from a buccal swab, that is because the DNA extraction process and
21 the profiling process involve many manual steps instead of robotics, many steps that
22 also take more time, so one of the steps to dissolve all the calcium is a step that will be
23 overnight, so it will not be done on the same day, but also the decision-making when
24 you have intermediate results, like after obtaining the DNA quantification results you
25 have to make decisions on the strategy to proceed with a sample, if it's a sample

1 containing minute amounts of DNA.

2 So for every new analysis that you do you need to involve those manual steps, you
3 need to involve the decision-making and wait for the results of the next step. And it
4 can involve, for one sample, many steps, one after the other, which make the process
5 more lengthy than a standard buccal swab.

6 Q. [16:12:31] And on page 10 of your report at section 6, the last four of the ERN
7 is 0011, it's the very last page of the report, you list possibilities for additional research.
8 So what possibilities for additional research did you identify in this case?

9 A. [16:12:57] Possibilities to attempt to get a DNA profile for the samples that
10 were not successful so far involve additional DNA extractions, so for instance using
11 more grams of bone to start the procedure, but it also involves the molecular biology
12 tools like extra cycles during your amplification or increase in your detection to be
13 able to get better results.

14 So for sure for some of the samples these techniques have not all been applied and
15 can be applied and that might lead us to a few more additional samples that will yield
16 a DNA profile.

17 But after discussing our results with the ICC, it was decided that we should work on
18 not all of the samples, so the KOB samples were not used for further analysis. But it
19 still can be done if ICC requests this.

20 Q. [16:14:08] And during the course of your research, did you encounter any
21 irregularities or any particular challenges that you would like to note for the Chamber
22 now?

23 A. [16:14:26] We did not encounter any irregularities, but the investigation was
24 challenging because of the challenging samples with the minute amounts of DNA.

25 Q. [16:14:42] And were you -- did you feel that you were missing any information

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1 that was crucial for the conclusions that you made in your report?

2 A. [16:14:56] No, we were provided with information about the pedigrees and the
3 relationships that needed to be investigated and the samples, and this was sufficient
4 to conduct the investigation, so no further information was required.

5 Q. [16:15:18] So I would like to submit your report into evidence now. First, I'd
6 like to ask do you have any objection to the admission of your report in evidence?

7 A. [16:15:30] I have no objection.

8 Q. [16:15:34] Thank you.

9 MR IVERSON: [16:15:35] So at this point, your Honours, I would like to submit the
10 expert report which is DRC-OTP-2084-0002.

11 PRESIDING JUDGE FREMR: [16:15:48] Mr Gosnell.

12 MR GOSNELL: [16:15:50] No objection to its admission under 68(3), Mr President.

13 PRESIDING JUDGE FREMR: [16:15:54] Yes, but before we decide, I have one issue,
14 which is associated with this document.

15 And, in fact, the Chamber is missing something because the report refers to family
16 trees which, in our view, is in fact important associated document. Even to be frank,
17 to our surprise, those family trees have been disclosed, even I think, in 2015, they
18 were on your list of potential evidence, but were not put on the list for this witness, so
19 I would like, it is just an order from the -- or, a direction from the Chamber if you
20 could just slightly use those two family -- those two documents which are -- I think, I
21 guess, you have it DRC-OTP-2069-2165 and DRC-OTP-2070-0040 and to ask or
22 elaborate on this a bit with witness, who create those family trees, who provided
23 them to Dr Kal and what role those family trees played in Dr Kal's conclusions. Am
24 I clear enough? I know this is a little bit surprising.

25 MR IVERSON: [16:17:36] It is a bit surprising, Mr President. I'll do my best to --

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1 PRESIDING JUDGE FREMR: [16:17:40] I think it's just easy just to use those two
2 family trees. I guess we will then have to move into private session because
3 probably we will deal a bit with some names, but just to have clear picture of the
4 situation to explain to us the origin of those family trees and the role that those family
5 trees played in creation of our witness' conclusions.

6 MR IVERSON: [16:18:09] Absolutely. Could I just have a few moments to
7 organise myself --

8 PRESIDING JUDGE FREMR: [16:18:15] Yes, for sure. For sure.

9 MR IVERSON: [16:18:16] -- and then I'll do that, Mr President.

10 (Counsel confers)

11 MR GOSNELL: [16:18:23] Mr President, just while this interval is taking place --

12 PRESIDING JUDGE FREMR: Yes.

13 MR GOSNELL: -- I believe there may be also two other family trees of relevance, so
14 I'm not sure if you wanted all four, or just the two?

15 PRESIDING JUDGE FREMR: [16:18:34] In fact, I had in mind those who have been
16 referred to in the report. If they were four, then it should be better to -- but maybe
17 it's not so important what is concretely in single family tree but, first of all, the origin,
18 who prepared those family trees, who provided those trees to Dr Kal and what role or
19 how the -- how he worked with those family trees. I think just to elaborate on the
20 method of creation and use of those documents.

21 MR IVERSON: [16:19:21] Mr President, I'm not sure that this witness will be able
22 to speak to that, but I can certainly show them and ask for comment. So that's what
23 I'll do right now.

24 PRESIDING JUDGE FREMR: [16:19:32] Fine with us.

25 MR IVERSON: [16:19:34] All right. And this will require the assistance of the

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1 court officer, please. So if I could have you please display DRC-OTP- --

2 PRESIDING JUDGE FREMR: [16:19:44] And sorry, before we display it I guess we
3 will have to move into private session.

4 MR IVERSON: [16:19:49] Yes.

5 PRESIDING JUDGE FREMR: [16:19:50] So court officer, first of all, let's move into
6 private session.

7 (Private session at 4.19 p.m.)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

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15 (Redacted)

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- 17 (Open session at 4.27 p.m.)
- 18 THE COURT OFFICER: [16:27:52] We're in open session, your Honour.
- 19 PRESIDING JUDGE FREMR: [16:28:09] Thank you.
- 20 And for the sake of organisation, Mr Gosnell, your team of Defence indicated that you
- 21 expect you will need roughly two hours for cross-examination.
- 22 MR GOSNELL: [16:28:22] I can revise that now to under 30 minutes, Mr President,
- 23 and I can also inform the Chamber that the CD apparently is being brought down to
- 24 the courtroom and will be available for disclosure at 4.30.
- 25 PRESIDING JUDGE FREMR: [16:28:34] Very well.

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- 1 So now we adjourn and we will resume tomorrow, 9.30.
- 2 THE COURT USHER: [16:28:42] All rise.
- 3 (The hearing ends in open session at 4.28 p.m.)