

Trial Hearing
WITNESS: DRC-OTP-P-850

(Open Session)

ICC-01/04-02/06

1 International Criminal Court
2 Trial Chamber VI
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and Judge Chang-ho Chung
6 Trial Hearing - Courtroom 3
7 Thursday, 30 June 2016
8 (The hearing starts in open session at 9.37 a.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: Good morning, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: Good morning, Mr President.
15 The Court is sitting in the case of The Prosecutor versus Mr Bosco Ntaganda.
16 PRESIDING JUDGE FREMR: Thank you, court officer.
17 Now appearances in habitual order, please, starting with Prosecution.
18 MR IVERSON: Good morning, your Honours. Appearing today for the
19 Prosecution are Kristy Sim, assistant trial lawyer; Dianne Luping, trial lawyer; James
20 Pace, assistant trial lawyer; Selam Yirgou, case manager; and myself, Eric Iverson,
21 trial lawyer.
22 PRESIDING JUDGE FREMR: Thank you, Mr Iverson.
23 Defence, please.
24 MR ST-MICHEL: (Interpretation) Good morning, your Honour, your Honours.
25 Representing Bosco Ntaganda, who is present with us this morning,

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1 Erik Cookson-Montin, Sandrine De Sena, Chloé Grandon, Stéphane Bourgon and
2 myself, William St-Michel. Thank you, your Honour.

3 PRESIDING JUDGE FREMR: Thank you, Mr St-Michel.

4 And Legal Representatives of Victims, please.

5 MR ABDOU: Good morning, Mr President. Good morning, your Honours. The
6 former child soldiers are today represented by myself, Mohamed Abdou, associate
7 legal officer with the OPCV.

8 MS GRABOWSKI: Good morning, Mr President, your Honours. The victims of the
9 attacks are today represented by Alyssa Currier, intern, and myself, Anne Grabowski,
10 associate legal officer with the Office of Public Counsel for Victims. Thank you.

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

12 Mr Witness, good morning. Are you feeling okay today?

13 WITNESS: DRC-OTP-P-0850 (On former oath)

14 (The witness speaks Swahili)

15 THE WITNESS: (Interpretation) Good morning. I feel well.

16 PRESIDING JUDGE FREMR: Good to hear that.

17 Mr Witness, we will continue with your testimony. It seems it will not take too long.

18 So I'm just reminding you that you are still under oath, which means that you have to
19 speak truth and nothing but the truth. And I am also reminding you as yesterday
20 that in order to get good translation and to have precise transcript, please do not
21 respond immediately after the question is put to you, but please wait for a while, at
22 least for 3 seconds, and only then please give your response.

23 Do you understand all that?

24 THE WITNESS: (Interpretation) I understand very well, your Honour.

25 PRESIDING JUDGE FREMR: Very good, Mr Witness.

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1 Now, Mr St-Michel, according to my measuring you still have plenty of time, at least
2 I think the rest of this session. But you indicated that you suppose you will finish a
3 bit earlier, which we would highly appreciate. Anyway, you have the floor.

4 MR ST-MICHEL: This will be probably the case, Mr President.

5 QUESTIONED BY MR ST-MICHEL: (Continuing) (Interpretation)

6 Q. Good morning, Witness.

7 A. Good morning.

8 Q. I've still got two more subjects which I'd like to cover with you this morning in
9 the framework of my cross-examination. But before that I'd like to go back briefly to
10 certain answers that you gave yesterday in order to shed some light on them. So I'd
11 like to ask a question to ensure that your testimony is well reflected in the record of
12 this hearing. It will be very short. I've only got four questions by way of
13 clarification.

14 So I'll start firstly with the APC. Yesterday I asked you a question about the APC.

15 Do you remember that?

16 A. Yes, I remember.

17 Q. I asked you if you knew the APC. You stated, and here I'm going to quote you,
18 that's page 85 of the transcript yesterday, lines 25 to 28, and here I quote: "APC was
19 before all of these issues. These were army soldiers. I don't know if they were the
20 K/ML troops. The APC was before the war between the Hema and the Lendu."

21 Witness, do you remember this?

22 A. I didn't say that. What I said was the following: I don't know if the APC
23 were troops of whom, they belonged to the government or other. But I did hear
24 people speak about the APC, but I didn't have a lot of information about them.

25 Q. If I go back to the answer just for clarification, so for you the APC was

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1 something that existed before the UPC attacks on Mongbwalu in 2002; is that correct?

2 A. I heard the name of the APC, but I did not know if it was an organisation that
3 belonged to whom, but I did hear people talk about the APC. As for myself, I've got
4 a lot of information about the UPC, but where it concerns the APC, I don't know if
5 they were government troops or whether they were something else. I don't have a
6 lot of information about that. I can't give you a lot more details about the APC. I
7 don't have a lot of reliable information that I can give you, but I did hear people speak
8 about the APC. I can't tell you which organisation it was. I wouldn't want to
9 commit myself to that.

10 Q. Still on the subject of the APC I asked you the following question, and here I
11 quote, and this is on page 88 of yesterday's transcript, lines 6 and 7:

12 "Is it your testimony today that there weren't members of the APC in Mongbwalu in
13 2002?"

14 And you answered the following in lines 9 to 13: "I know it was Lendu who were
15 there. If there were APC soldiers, perhaps, but I don't know exactly what role they
16 played there, but I know that it was the Lendu who controlled Mongbwalu."

17 Do you remember this answer, Witness?

18 A. Yes, it was the Lendu who controlled this area of Mongbwalu.

19 Q. Now I'd like to get the following clarification for the purposes of the record and
20 your testimony: When you say that you observed the first attack from a hill, there
21 were just UPC soldiers and Lendu fighters and nobody else; is that correct?

22 A. Yes.

23 Q. I'm now going on to second clarification, which I wished to obtain from you.
24 Yesterday I asked you a question about paragraph 13 of your statement. For the
25 purposes -- or in order to refresh your memory, I will reread that sentence,

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1 DRC-OTP-2067-1825 and it's on page 1827.

2 First phrase is as follows:

3 (Speaks English) "November or December 2002, the UPC came to Mongbwalu to
4 chase the Lendu away.

5 (Interpretation) Do you remember we discussed this sentence, Witness?

6 A. Yes. Lendu combatants.

7 Q. That's exactly the clarification that I wanted to obtain from you, Witness.

8 When you speak about Lendu, you are speaking about Lendu combatants, are you
9 not?

10 A. Yes, that's right.

11 Q. The third point, Witness, that I want to go back to is the number of UPC soldiers
12 who were present in Kilo between December 2002 and March 2003. Do you
13 remember we talked about that yesterday?

14 A. I remember.

15 Q. Yesterday I put it to you that there were several hundred UPC soldiers present
16 in Kilo. Do you remember?

17 A. I didn't say that.

18 Q. Witness, no, I'm referring to what I put to you. You answered that in your
19 opinion there weren't more than 30 in Kilo and here I'm referring to page 110 of the
20 transcript, lines 13 to 15.

21 Now, I'd like to clarify your answer, Witness, with regards to the time frame. The
22 number of 30 in your consideration, does that correspond with the number of soldiers
23 who entered Kilo in 2002, December 2002?

24 A. I don't have any clarifications or precisions with regard to the number of
25 soldiers. I just gave an estimate. I spoke about 30, but I don't have any exact

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1 numbers. It's a military issue. I couldn't know exactly how many of them there
2 were. I know that there were about 30 of them. That's what I noted.

3 Q. Around 30 of them when they arrived in Kilo; is that what it is in your opinion?

4 A. What I just said, I can't give you an exact number of the soldiers that entered
5 Kilo. I gave an estimation, it could be 20, it could be 30 because (Redacted)
6 (Redacted), but I do not have an exact number. I didn't have the opportunity to
7 count them. I didn't count the troops that were there. Please excuse me.

8 Q. I therefore understand from your testimony when the UPC left Kilo to go and
9 fight the Ugandans in Bunia in March 2003 it was more or less 20 soldiers who went
10 to fight in Bunia; is that correct?

11 A. That's not the case. I can't give you the exact number of troops who went to
12 Bunia, but I tell you that those who went to Kilo, that wasn't more than 10. I don't
13 know how many troops went, but those who stayed with us there, there weren't more
14 than 10 of them. It wasn't a very high number. I don't know how many troops
15 went to Bunia. There weren't many -- there weren't as many who stayed. That's
16 what I said yesterday.

17 MR ST-MICHEL: Mr President, for my next questions, I would like to move into
18 private session, please.

19 PRESIDING JUDGE FREMR: Certainly.

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

21 (Private session at 9.52 a.m.) *(Reclassified partially in public)

22 THE COURT OFFICER: We're in private session, your Honour.

23 PRESIDING JUDGE FREMR: Thank you, court officer.

24 Mr St-Michel, please proceed.

25 MR ST-MICHEL: (Interpretation) Thank you very much, your Honour.

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1 Q. Witness, we are now in private session. This means that what you say stays
2 within this courtroom.

3 I'm now going on to my last question for clarification with regards to questions you
4 answered yesterday in your answers thereto. (Redacted)
5 spoke about the participants from Kilo when it came to digging the trenches. Do
6 you remember that?

7 A. We were the ones who dug these trenches.

8 Q. You said the following, and here I quote page 101 of the transcript, 15 to 19,
9 French version:

10 "When they arrived, they gave a megaphone to (Redacted). (Redacted) called upon the
11 population to return to the village. And the same day we returned. The next day
12 they asked us to start digging the trenches."

13 Witness, I would just like to clarify with you, it was (Redacted) who said to the inhabitants
14 of Kilo to come and dig the trenches, was it not?

15 A. It wasn't (Redacted). It was the soldiers who gave that order. They asked -- or told
16 the population to dig these trenches. We were the ones who dug the trenches. It
17 was just members of the population. But it wasn't he who gave the order. It was
18 the soldiers who gave that order to dig the trenches in order to assure *their
19 protection. There were young people. There were adults. They were the persons
20 who dug the trenches. It wasn't (Redacted).

21 Q. Witness, I'm now going to take you to this part of your statement.

22 For the Prosecutor, *paragraph 39, page 1830 of the document DRC-OTP-2067-1825.

23 I'm going to read from the second line. That will be interpreted for you into Swahili.

24 (Speaks English) "They had (Redacted) call people to do this work using the loud speaker
25 again. He was saying 'come and help to do the work.'"

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1 (Interpretation) My question is as follows: Witness, I'm also going to remind you
2 of what you stated to the Prosecutor during your meeting on Monday with the
3 Prosecutor, and here I'm going to quote DRC-OTP-2094-0159 on page 0161.

4 And here I quote: (Speaks English) "The next day the UPC said they should help
5 build military trenches all around the village so they could hide in case there was an
6 attack."

7 (Interpretation) So, Witness, I'm going to repeat my question: Was it (Redacted) who
8 said to the inhabitants "come and dig trenches" with his megaphone?

9 A. It was not (Redacted). I told you (Redacted) was like an interpreter. People asked him to
10 call upon the population such that the population would come back to the village.
11 But (Redacted) didn't give the order to dig trenches. (Redacted) just launched the appeal for the
12 population to come back to the village. But where it concerns digging trenches, we
13 were the ones who dug them. We thought it was normal to help with regards to
14 digging the trenches. As we were gold diggers, it was easy for us to dig. We dug
15 these trenches around the villages -- not around all the villages, but just around the
16 area where the soldiers were.

17 Q. Witness, I just want to confirm your statement when you state that (Redacted) used
18 the megaphone and he said "come and help with the work," do you confirm that?

19 A. No. I didn't say that. (Redacted) called upon the population to come back to the
20 village, but he didn't ask the population to work. (Redacted) was given a megaphone to
21 call upon the population to return to the village because the soldiers couldn't all stay
22 in the village. (Redacted) asked people to come back to the village. But where it concerns
23 digging trenches, it was the soldiers who gave the order, not (Redacted), for these trenches
24 to be dug.

25 Q. So, Witness, those were the clarification questions that I wanted to put to you.

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1 But now we are in private session, as I mentioned to you, what's said in this
2 courtroom remains in this courtroom. Before going into the two last subjects that
3 I would like to cover with you, I would like to ask you a few questions concerning
4 your security situation.

5 Now, we've received an investigator's note from the OTP recently which points to a
6 meeting you are said to have with the investigators in the month of (Redacted). Do
7 you remember this meeting that you had?

8 A. There were several meetings with the investigators. I don't know the date, but
9 we met together several times in (Redacted). I can't give you the exact date.

10 Q. Several occasions you said. So how many times would you say you met with
11 the Office of the Prosecutor?

12 A. Well, the first time, the first meeting, you can see it in the statement, that's the
13 time I gave the statement. Now, the second meeting I was -- where it was explained
14 to me what you're going to do, but it was during the first meeting that I gave this
15 statement, the statement that you have and the sketch that I drew. That was the first
16 meeting. But as regards other meetings, twice, three times, it was just to prepare
17 coming here in order to give testimony. They said you will leave -- and they've been
18 saying that since (Redacted), it was a question of being patient. The statement that you're
19 reading there, that's something I gave to them in (Redacted).

20 PRESIDING JUDGE FREMR: Mr Iverson?

21 MR IVERSON: Mr President, I would just ask for the reference, the ERN number of
22 the investigator's note that counsel is referring to so that we can follow along.

23 PRESIDING JUDGE FREMR: Mr St-Michel.

24 MR ST-MICHEL: (Interpretation) For the information of my colleague, I discussed
25 the content of this note and for the transcript I'll refer to the ERN number.

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1 Q. Witness, I just mentioned the content of this meeting which you had with the
2 investigators in (Redacted). Here I'm referring to number DRC-OTP-2093-0024.
3 Now, apparently you said, here I'm going to quote you in English and you confirm
4 whether you said this or not to the OTP:

5 (Speaks English) (Redacted)

6 (Redacted)

7 (Redacted)

8 (Interpretation) Do you remember having indicated that to the investigators of the
9 Office of the Prosecutor?

10 A. (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 Q. (Redacted)

20 (Redacted)

21 A. (Redacted)

22 (Redacted)

23 (Redacted)

24 Q. And you can confirm, Witness, that there was no change since (Redacted); that's
25 correct, is it not?

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1 A. (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 Q. Very well, Mr Witness. Now, let me tackle the last two subjects I wanted to
10 deal with with you which you also address in your statement. I'm talking about two
11 events which allegedly happened in December 2002 at the very beginning of the
12 presence of the UPC in Kilo. Do you follow me?

13 A. Yes, I'm with you.

14 Q. Let me start at paragraph 47 of your statement, page 1832 of your statement,
15 where you talk about the death of a Nyali man who had a mental problem. Let me
16 read an excerpt of that paragraph.

17 (Speaks English) "However, there was one Nyali man who was killed, maybe in the
18 first or second week of the UPC occupation. The Nyali man was not normal; he had
19 mental problems."

20 (Interpretation) Did you provide this information to the investigators, Mr Witness?

21 A. Yes.

22 Q. First of all, I would like you to confirm that you did not see that man being
23 killed with your own eyes; is that correct?

24 A. When they killed him I was not present, but he was indeed killed by them in the
25 city centre in Kilo. He died. I attended his burial. He was a Nyali man and he

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1 was the (Redacted)
2 (Redacted) that's what happened to
3 him. He was working with a lady in a restaurant and he -- his task was to go fetch
4 water. Now, he would bring water back to that woman at the restaurant, but it
5 happened that this woman did not pay him for his services on time.

6 Q. You confirm that you didn't see this happen, did you?

7 A. He died.

8 Q. Just to clarify your testimony, can you clarify that he testified -- that he -- in
9 your testimony you said that he was the (Redacted)
10 (Redacted)?

11 A. Yes, that is correct. (Redacted)

12 Q. Now, in relation to that event, Mr Witness, you do not know the day on which
13 the event happened, you cannot situate it within a time frame of one or two weeks; is
14 that correct?

15 A. No, I do not know the exact day of the incident. I no longer remember it.

16 Q. This is an event which people talked about in Kilo; is it not so?

17 A. That is true. That is very true. This is something that happened and
18 everything I am telling you here is the truth. These are things that I experienced
19 myself. These are not things I went to gather here and there. I am telling you about
20 what I saw and about what I experienced.

21 Q. If I understand your statement properly, Mr Witness, it is Commander David
22 who killed the mentally Nyali man; is that correct?

23 A. Yes, that is correct.

24 Q. Do you know the full names of Commander David?

25 A. No. Everybody called him David, Commander David. People said that he is

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1 the one who killed him.

2 Q. If I suggested the name David Pigwa to you, would that jog your memory?

3 A. Well, you know, I don't know whether his name was David Pigwa. All I know
4 is that it is David who killed him, Commander David.

5 Q. (Redacted)

6 A. (Redacted)

7 (Redacted)

8 Q. (Redacted)

9 A. (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 Q. Mr Witness, I have information from other sources, (Redacted), to

17 the effect that the person who killed the Nyali man was Commander Américain. Is
18 that plausible according to you, Mr Witness?

19 A. Yes, it is possible. But you see, when it comes to knowing the names of
20 commanders, I do not have any mastery of that. But going by what I heard, it was
21 being said that it was Commander David who killed him in the city centre of Kilo.
22 I don't know. I know that I attended his burial, and when it comes to the other
23 details, I cannot be more specific. What I know is that he is dead, he was shot dead,
24 he was shot into the -- his head was shot at and he died immediately and then we
25 buried him.

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1 Q. If I understand your testimony, Mr Witness, the death of the Nyali man was a
2 well-known event in Kilo and was being talked about by people all over the town at
3 the time; is that correct, in 2002?

4 A. That young man died. He was shot dead. He was mentally ill, but he was
5 killed by a bullet in the city centre in Kilo. He was killed by UPC soldiers. Whether
6 it be David or someone else, I cannot be more specific than that. But what people
7 were saying at the time, what all the people were saying at the time was that it was
8 David who had killed him.

9 Q. Last question on this point, Mr Witness. You have referred to Commander
10 David and in your statement you said that Commander David was the local
11 commander of the UPC in Kilo. And I am referring still to paragraph 47 of your
12 statement. I put it to you, Mr Witness, that Commander David was not the local
13 commander of the UPC. Would you agree with me?

14 A. Well, I have told you what I know. I do not know whether there was another
15 commander. And I'm really sorry for that. I do not know the ranks of the
16 commanders. I do not know how to identify commanders and recognize them by
17 their name and so on and so forth. So I'm really sorry when it comes to the names of
18 soldiers. All I know is that someone died and that the person was killed by UPC
19 soldiers. It was a UPC soldier who killed him. That is what I know.

20 Q. Mr Witness, let us look at the second event now that you allude to in your
21 statement from paragraphs 40 to 43. Let me read out paragraph 40 to jog your
22 memory.

23 (Speaks English) "The UPC would patrol. One day they found a Lendu man called
24 (Redacted), two other young Lendu men and a Lendu woman. (Redacted)
25 (Redacted)

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1 (Redacted)."

2 (Interpretation) Now, Witness, I want to first of all talk about the correction you
3 made yesterday and I'm looking at page 71 of the transcript of yesterday from lines 15
4 to 17. Let me quote from that transcript:

5 "When I met the investigators for the first time, I mentioned (Redacted). But
6 when I went back to Kilo, (Redacted)
7 (Redacted)."

8 My question is as follows: Why do you think -- why did you think that (Redacted)
9 (Redacted)?

10 A. I mentioned the name (Redacted) without (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 Q. So in (Redacted) when you met the investigators of the OTP, you were not familiar
15 with (Redacted); is that correct?

16 A. Yes. I thought that the (Redacted).

17 Q. (Redacted); is

18 that not the case?

19 A. Yes, (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 Q. (Redacted)

25 A. (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 Q. How long after meeting the investigators did you (Redacted)? And I'm
5 asking for an approximation of the time.

6 A. (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 Q. So I understand that it was shortly after you met the investigators that you (Redacted)
13 (Redacted) is that correct?

14 A. (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 Q. I take it then that you must have called the investigators to tell them that you
21 had been mistaken as to (Redacted)?

22 A. No. You see, when I was with the investigators, (Redacted),

23 which (Redacted) they took with them. And we did not have any further

24 conversation thereafter. We had had our interview for a two-day period more or

25 less and then (Redacted). It is only the other day when I had this discussion

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1 with them that I pointed out to them that the (Redacted).

2 Q. When you met the investigators in (Redacted), as we said a short while ago, you
3 didn't deem it necessary at the time to point out to the investigators that (Redacted)
4 (Redacted); is that correct?

5 A. Please repeat your question.

6 Q. You remember meeting the investigators of the OTP in (Redacted), as we
7 discussed a short while ago; is that correct? At that meeting with the investigators of
8 the OTP you did not tell them that (Redacted) should actually have been
9 (Redacted); isn't it so?

10 A. I gave them (Redacted) when I got -- when I arrived here the other day,
11 here when I was given the opportunity to make the corrections to the statement.
12 That is when I did it. But we didn't talk about that at any other time. It is here
13 when the statement was being read back to me that I asked for (Redacted) to
14 be replaced by (Redacted).

15 Q. Mr Witness, beyond the name of the person in question, there is an aspect of
16 your testimony that I have trouble understanding. Yesterday you asserted under
17 oath that you had been an eyewitness, that you had seen with your own eyes three
18 persons being killed, (Redacted). And I'm referring here to page
19 70 of the transcript of yesterday, *line 25, and page 71, line 4.

20 "While we were digging the trenches soldiers came from Batata with two young men
21 and a woman. They executed them on the spot. I was an eyewitness to that. And
22 I and others who were present saw them executing those two persons and the woman.
23 (Redacted) And before I had mentioned the name
24 (Redacted), but after I met with the investigators I clarified the point."

25 Now, later on at page 105 to lines 21 to 25, you said the following:

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1 "I was a personal eyewitness to this along with those who were digging the trenches
2 with us. We were witnesses of the first execution (Redacted)
3 (Redacted)"

4 Now, Mr Witness, you also stated last Monday when you met the people of the OTP
5 the following, and I'm quoting from *DRC-OTP-2094-015 (inaudible) at page 0161.

6 (Speaks English) "The witness responded that the execution (Redacted)
7 was something that he saw himself."

8 (Interpretation) Witness, do you remember all these answers?

9 A. (Redacted) woman were killed in the open
10 while we were digging the trenches. They came from Batata. They tried them and
11 they were executed. And I saw that with my eyes. They used a hammer and it was
12 not -- no bullet was fired. We saw that. And that is what I can say. I'm not afraid
13 to tell you about this. And it is not false. This is something that happened right
14 before me and I saw it with my own eyes.

15 Q. Yet in your statement you have said that you did not see those people being
16 killed. You said that there were four of them and not three of them.

17 Now, let me read the excerpt of your statement to you, and that's at paragraph 43 at
18 page 1831 of document DRC-OTP-2067-1825.

19 (Speaks English) "I saw these four Lendu being brought past the trenches by maybe
20 three or four UPC soldiers. They were still tied up. They were taken past us in the
21 trenches and down the hill, out of view. Soon after, I heard them screaming 'I'm
22 dying, I'm dying.' I could hear the sound of blows. Then I heard nothing more. I
23 did not see the soldiers or anyone else coming back. I did not see these people being
24 killed and I'm not sure exactly where they are buried. However, I think they must
25 have been buried close by, just after being killed.

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1 (Interpretation) Mr Witness, what is the truth; did you see or did you not see the
2 incidents? The people who were killed, were there four in number or three?

3 A. It's between three and four. But when it comes to where we were digging the
4 trenches, they were buried in a location that is not too far away from the trenches.

5 One cannot say that it was in the village or outside the village. You see, when
6 people are executed, even if they are a bit far away, one can still see what is

7 happening and people can be curious to see what was happening. When these

8 people were executed I was there and I saw what was happening. I saw how they

9 were executed. It is not a lie. It is true. (Redacted)

10 (Redacted) They were not shot.

11 Q. Mr Witness, I understand that you are correcting your statement (Speaks

12 English) "I did not see these people being killed"?

13 A. I did not see them coming back, I did not see them return. They died. They

14 had passed before us, in front of us, some 10 metres in front of us to the place where

15 they were executed. Everyone heard what was happening. Everyone saw what

16 was happening, but maybe those who were further away did not see what was

17 happening, but those of us who were there saw them (Redacted)

18 (Redacted). And everyone knew that those who had come from Batata are

19 dead.

20 Q. Mr Witness, isn't it true that the event you are describing is something that was

21 narrated to you rather than something that you saw with your own eyes?

22 A. No. No one told me this. I heard someone saying "I'm dying, I am dying."

23 I was nearby. How could it be that I didn't hear it? He was being killed and I

24 heard his voice. I didn't hear the story from someone else. When he said -- when

25 he was shouting "I am dead," I heard it. I heard the hammer strike. I looked up

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1 and I saw what was happening. We were there and then we saw the soldiers going
2 away and then people left. I heard what was happening and I saw what was
3 happening and I was there till the soldiers left. And those people, they never
4 returned. To this very day we've never seen them again. (Redacted)
5 (Redacted) I was digging the trenches. I was there. It was not even
6 50 metres away from what was happening. It was right there, close to our village.

7 MR ST-MICHEL: Mr President, I have no further questions for the witness.

8 PRESIDING JUDGE FREMR: Thank you very much, Mr St-Michel. And I also
9 thank you for making your cross-examination in streamlined and focused way and
10 also saving some court time.

11 Now, Mr Iverson, any need for redirect?

12 MR IVERSON: No, Mr President. No redirect. Thank you.

13 PRESIDING JUDGE FREMR: All right. I have just one question for Mr Witness.

14 Mr Witness, if my notes are correct, you said that when the attack on Mongbwalu
15 started you fled (Redacted), if my notes are okay, and then you
16 observed everything from (Redacted). Am I correct?

17 THE WITNESS: (Interpretation) Ndiyo.

18 PRESIDING JUDGE FREMR: You saw something, you heard something, but my
19 question is simple: We can even compare it with the map, but according your
20 estimation, how far you were from those events you observed?

21 THE WITNESS: (Interpretation) (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 PRESIDING JUDGE FREMR: Mr Witness, I would like to simply --

2 THE WITNESS: (Interpretation) (Redacted) not too far away.

3 PRESIDING JUDGE FREMR: Yes, you are saying not far away. It is just the core of
4 my question. Could you estimate the distance between you and those events? Just
5 this distance, your estimation.

6 THE WITNESS: (Interpretation) Approximately a kilometre and a half. It could
7 be a kilometre, a kilometre and a half --

8 PRESIDING JUDGE FREMR: Very well.

9 THE WITNESS: (Interpretation) -- to the Mongbwalu city.

10 PRESIDING JUDGE FREMR: You also said that you also heard some crying and
11 that you even understood what those people were yelling. Do you insist on that,
12 that you from that distance you even understood what they were yelling?

13 THE WITNESS: (Interpretation) Yes. Shika na mukono, that was the operation
14 which was conducted when they were driving out the UPC. That happened at the
15 bottom of the hill in the city of Mongbwalu and when they were advancing towards
16 Sayo. When they were driven back, they were driving them back, the Lendu
17 combatants said "shika na mukono." You could hear them. You could follow or
18 you could hear the Lendu commander. They were fighting and they were screaming
19 "shika na mukono." Even those who were far away, (Redacted), we could
20 follow and hear what was being said. When there were shots that intensified, it was
21 at that point that we returned, but otherwise we could hear everything that was
22 happening.

23 PRESIDING JUDGE FREMR: Thank you very much, Witness.

24 It concludes your testimony. So I would like to thank you that you underwent such
25 a long journey, that you patiently responded to all questions put to you, and I

1 strongly believe that your testimony will assist us in our effort to find the truth in this
2 case. So thank you very much, Mr Witness, and now we wish you safe journey
3 home.

4 Now, court officer, please assist Mr Witness and guide --

5 THE WITNESS: (Interpretation) Thank you.

6 PRESIDING JUDGE FREMR: -- him out of the courtroom.

7 THE WITNESS: (Interpretation) Thank you.

8 (The witness is excused)

9 PRESIDING JUDGE FREMR: Now, court officer, let's move into open session.

10 (Open session at 10.38 a.m.)

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

12 PRESIDING JUDGE FREMR: Thank you.

13 Now we should continue with the next witness, but we will need some short break
14 just to make preparation for that. It seems that five minutes should be enough for
15 that, and then we will continue at least with the introductory part of the testimony.
16 So now we break -- Mr Bourgon.

17 MR BOURGON: Good morning, Mr President. Just a quick thing, we need to
18 change the people here, so if we can have at least 10 minutes so that we can call the
19 people who come from the office to start the next witness.

20 And I also take this opportunity, Mr President, to have some clarification regarding
21 the upcoming schedule. We had a schedule given by the Prosecution, but they kind
22 of changed their position. So we'd like to know for the next days what is up on the
23 schedule because I'm not sure if they -- if Monday we have a witness or if we don't
24 have a witness because it's very likely that we will complete 938, I believe, by
25 tomorrow. So I'd like to know what the Prosecution now what they are looking for

1 because when they sent us over the weekend is not being adhered to. Thank you,
2 Mr President.

3 PRESIDING JUDGE FREMR: Mr Bourgon, my understanding was that, at least from
4 the Chamber's point of view, the goal is to conclude this upcoming testimony by
5 tomorrow and then probably to have no sitting on Monday. Tuesday is a holiday.
6 So if I am informed well, the idea was to then continue on Wednesday with the
7 second witness.

8 Mr Iverson, what is your update?

9 MR IVERSON: I guess I'm not aware of the schedule changes that Defence counsel
10 is talking about. My understanding is I think the same as your understanding,
11 Mr President.

12 PRESIDING JUDGE FREMR: So is it now clear?

13 MR BOURGON: It is clear, but there was a change and what my colleague is saying
14 on the other side is incorrect. We did get a schedule. They told us that they would
15 begin 938 tomorrow and finish 938 on Monday. There was a change and I just
16 wanted to know, now that we finish 938 on Friday, whether they wanted to continue
17 with the witness on Monday because we would be prepared to sit with the witness on
18 Monday to save some court time.

19 So it's just that we are getting emails and these emails are not information that
20 apparently we can rely on, but we fully understand now the schedule, Mr President.
21 Thank you.

22 PRESIDING JUDGE FREMR: Ms Luping, any comment from your part?

23 MS LUPING: Yes, Mr President. Just simply to clarify. Indeed there has been an
24 email exchange, as the Chamber is also aware and the parties are all aware. The
25 understanding was indeed that Witness 938 would start on Friday. I don't

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1 particularly appreciate comments that our email exchanges cannot be relied upon. I
2 think that was an unnecessary comment.

3 I understand the Chamber was on the basis that this current witness, 850, has finished
4 sooner than anticipated, that 938 -- the question was whether 938 could be brought on
5 earlier. The Prosecution was simply indicating that it was ready to go or it was
6 ready to start sooner if the Chamber so desired. There's been no change as such
7 from the Prosecution's side, Mr President, your Honours.

8 As far as we're aware, based on the scheduling and the hours indicated by the
9 Chamber, Witness 938, if she does start today, we anticipate that if all goes well we
10 should be completed by Friday. So indeed, according to the schedule as you've
11 indicated, we should be able to start with the witness that follows that on the
12 Wednesday.

13 PRESIDING JUDGE FREMR: Yes, I can just confirm.

14 And normally, Mr Bourgon, you are complaining that you have not enough time for
15 preparation; now you are complaining that we are giving you more time for
16 preparation. No, no. I don't to --

17 MR BOURGON: We're not complaining about time. We're complaining about
18 getting information from the other side that we cannot rely upon. And I say that
19 openly and frankly. This is not the information we had. We were not supposed
20 to -- maybe finish this witness today and have no court sitting today and we're
21 supposed to start the next witness tomorrow. Yesterday we simply asked for that
22 and the Prosecution went back on its word and they said, "No, we want to begin on
23 Thursday" --

24 PRESIDING JUDGE FREMR: Mr Bourgon --

25 MR BOURGON: And we will be ready to begin --

1 PRESIDING JUDGE FREMR: -- I would like to finish --

2 MR BOURGON: -- Mr President. Thank you.

3 PRESIDING JUDGE FREMR: -- this litigation. We all have to be flexible. You
4 know that we are daily facing some problems, some changes. It's up to all of us to
5 remain flexible.

6 Now break for preparation. After then we will at least start with introductory part
7 of the next witness's testimony.

8 THE COURT USHER: All rise.

9 (Recess taken at 10.43 a.m.)

10 (Upon resuming in open session at 10.57 a.m.)

11 THE COURT USHER: All rise.

12 Please be seated.

13 PRESIDING JUDGE FREMR: So welcome back. We will now start or very soon we
14 will start with the testimony of Witness P-938.

15 And for the record, I see there are some changes in appearances, so I am asking for
16 update.

17 First Prosecution.

18 MS LUPING: Good morning again, Mr President, your Honours. The individuals
19 who have left the courtroom from the Prosecution's side are Mr Eric Iverson and
20 Ms Kristy Sim. Myself and James Pace and Ms Selam Yirgou are still in the
21 courtroom.

22 PRESIDING JUDGE FREMR: Thank you, Ms Luping.

23 Now Defence, please.

24 MR GOSNELL: The composition for the Defence now continues with

25 Maître Bourgon, but otherwise it is Christopher Gosnell, Marlène Yahya Haage and

1 Elisa Binon. Thank you, Mr President.

2 PRESIDING JUDGE FREMR: And for the record, I also note presence of Legal
3 Representatives, Mr Abdou and Ms Grabowski.

4 Before the witness can be called, I would like to address few procedural matters.

5 First, the witness will testify without protective measures and may therefore be
6 referred to by name.

7 Second, the Chamber notes that according to its email of 29 June, the Defence objects
8 to certain documents the Prosecution may seek to use with or to tender through this
9 witness. These objections will be addressed if and when they arise throughout the
10 course of the examination-in-chief.

11 Third, in terms of timing and modalities, the Chamber recalls that in its email of
12 17 June it indicated that the Prosecution in circumstances where the witness reports
13 are being tendered for admission should complete its examination-in-chief within two
14 hours.

15 The Defence was instructed to complete its cross-examination within three hours.

16 In its list of documents they may be used with or tendered through the witness, the
17 Prosecution indicates that it will seek the admission into evidence of, amongst other
18 items, four reports prepared by the witness. These are items 2 to 5 in the
19 Prosecution's updated list of documents.

20 Despite the absence of a request before it, as with previous expert witnesses
21 appearing before the Chamber, the Chamber considers that for these four items I have
22 mentioned, it will follow the procedure for admission under Rule 68(3) of the Rules
23 should the requirements of that provision be met.

24 On this basis the Chamber directs the parties to complete their examination of the
25 witness within the aforementioned time frame. Further, the Chamber recalls its

1 decision contained in filing number 1159 in which it indicated that Dr Lewis may be
2 called as an expert witness but that her testimony should not encompass opinions on
3 credibility beyond the scope of whether, based on her experience, the witness'
4 symptoms and responses are consistent with those of other persons who have
5 experienced similar events.

6 The Chamber also emphasises that it will disregard any conclusions contained in the
7 witness report that relate to her opinion of the credibility of the witnesses.

8 Then as the fourth matter, the Chamber understands that there is no request by the
9 Legal Representatives to question this witness. Am I correct? I see nodding.

10 Okay.

11 And finally, the Chamber recalls that, yes, we will sit now just for this introductory
12 part, then we will break and we will anyway finish by half past 2, so ideally -- half
13 past 1, sorry for that, half past 1. And ideally we would like to finish
14 examination-in-chief of this expert witness.

15 So now we can turn to the scheduled testimony.

16 Court officer, please have the witness brought in the courtroom. Ms Luping, please.

17 MS LUPING: Mr President, just whilst the witness is being brought in, to avoid any
18 wasting of time, I just wanted to note the Prosecution's position that whilst obviously
19 in accordance with the Chamber's decision we will abide by the necessary procedural
20 requirements for seeking admission of the reports pursuant to Rule 68(3), I will ask
21 the witness for her consent for the admission of the relevant documents obviously,
22 but we would just simply note simply for the record that in the Prosecution's
23 submission that another alternative and appropriate basis is also Article 69(3) and (4),
24 which is the reason why no formal request under 68(3) was made. That will be also
25 the reason why I will simply just note for the record also this alternative basis every

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1 time I seek admission of the documents.

2 PRESIDING JUDGE FREMR: Very well. Just my response is that this Chamber,
3 maybe it's not typical for the previous jurisprudence of this Court, but we would like
4 to support or promote this way of admission in similar cases. But anyway, I have
5 full understanding for your explanation.

6 MS LUPING: Understood. And thank you, Mr President.

7 (The witness enters the courtroom)

8 PRESIDING JUDGE FREMR: Good morning, Dr Lewis. Can you hear me?

9 WITNESS: DRC-OTP-P-0938

10 THE WITNESS: Yes, I can.

11 PRESIDING JUDGE FREMR: So I would like to welcome you. This Chamber has
12 been established to try the case of the Prosecutor against Bosco Ntaganda and you are
13 called today by the Prosecution to testify as an expert to assist us in our search for the
14 truth.

15 Before you start with your testimony, I would like to provide you with some brief
16 guidance. You will soon be asked questions both by the Judges and counsels in the
17 courtroom. So please listen carefully to those questions. If the question is not fully
18 clear, feel free to ask for it to be repeated or rephrased.

19 I also would like to emphasise that we want you to tell the truth and only testify
20 within the sphere of your expertise as an expert in the field of psychotherapy.

21 Do you understand that?

22 THE WITNESS: Yes. Thank you, Mr President.

23 PRESIDING JUDGE FREMR: Now can you please read the solemn undertaking
24 which is now in your hands, undertaking to tell the truth, please.

25 THE WITNESS: I solemnly declare that I will speak the truth, the whole truth and

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1 nothing but the truth.

2 PRESIDING JUDGE FREMR: Thank you. Madam Witness, so now you are under
3 oath and I am obliged to note that it's an offence within the jurisdiction of this Court
4 to give false testimony. I guess it's clear to you.

5 THE WITNESS: Yes. Thank you.

6 PRESIDING JUDGE FREMR: And now a few practical matters you should have in
7 mind when giving your testimony.

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

9 THE WITNESS: Yes.

10 PRESIDING JUDGE FREMR: But anyway, everything what you will say will be also
11 written down and translated into French, so it's therefore important to speak clearly
12 and to speak at a slow pace, even maybe slower than me now.

13 And one important thing that sometimes cause difficulties, because of this need to
14 translate to French, please do not respond on questions put to you immediately. It's
15 a little bit the nature, but please wait at least for 3 seconds and only then give your
16 response because it will facilitate to have precise translation and transcript.

17 THE WITNESS: Yes.

18 PRESIDING JUDGE FREMR: Fine. In case you have any questions yourself or if
19 you would like to take a break, just let us know and we will give you an opportunity
20 to do that.

21 So have you understood all this?

22 THE WITNESS: Yes. Thank you, Mr President.

23 PRESIDING JUDGE FREMR: Very good. So we can now proceed with your
24 testimony and we will start with your examination-in-chief conducted by
25 Prosecution.

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1 Ms Luping, you have the floor.

2 MS LUPING: Thank you, Mr President, your Honours. With your leave, the
3 Prosecution would ask that the expert be provided with the four reports that she
4 wrote. She had asked for that during witness preparation. We did indicate to her
5 that we would make this request prior to her testimony rather than allowing her to
6 walk into the courtroom with her own reports. We see that there is no reason why
7 she should not have her reports. It's not a memory exercise and it may simply just
8 speed up the process if there are no objections from my learned colleague.

9 PRESIDING JUDGE FREMR: Defence, any objection to that?

10 MR GOSNELL: None, Mr President.

11 PRESIDING JUDGE FREMR: Just maybe for the next cases, I also find this way
12 much more efficient. So also Chamber have no problem with that.

13 MS LUPING: I would also note obviously that these are not annotated in any way.
14 These are clean copies of her reports.

15 Thank you, court usher.

16 PRESIDING JUDGE FREMR: And before we start, I forgot one thing, and sorry for
17 that, Ms Luping. I have to add something, but I have to make it in private session.

18 (Private session at 11.09 a.m.)

19 THE COURT OFFICER: We're in private session, your Honour.

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Open session at 11.11 a.m.)

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

9 PRESIDING JUDGE FREMR: Thank you, court officer.

10 Ms Luping, please.

11 MS LUPING: Thank you, Mr President.

12 QUESTIONED BY MS LUPING:

13 Q. And good morning, Ms Lewis.

14 A. Good morning.

15 Q. Ms Lewis, we've met before. My name again is Dianne Luping and I'll be
16 asking you questions today on behalf of the Office of the Prosecutor. And just one
17 reminder, Ms Lewis, is that as we are able to speak to one another in English that both
18 you and I will need to remember to speak as slowly as we can.

19 A. Okay.

20 Q. So could you state your full name, please, for the record.

21 A. My name is Maeve Lewis.

22 Q. And when were you born?

23 A. I was born in 1958 in Ireland.

24 Q. Just a reminder of the 3-second rule between questions and answers.

25 A. Sorry.

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1 Q. And where were you born?

2 A. I was in born in Galway, Ireland.

3 Q. And were you retained by the Office of the Prosecutor to provide an expert
4 opinion in this case?

5 A. Yes. I was asked in 2013 to visit the DRC to provide an expert witness
6 assessment in this case.

7 Q. And without first stating what that opinion is at this stage, have you reached an
8 opinion as to whether Prosecution witnesses - there are four of them, I won't state
9 them now in public session - appear to have suffered from psychological harm or
10 consequences and if so, whether that harm or consequence -- any of the harm or
11 consequences is consistent or not with the events that they have reported?

12 A. Yes. I formed the opinion that in all the cases of all four witnesses the harm
13 they described to me was consistent with the events they alleged to have happened in
14 2003.

15 Q. And I will be dealing with that opinion shortly, but first I would like to turn to
16 your qualifications to testify as an expert.

17 MS LUPING: Mr President, your Honours, the Defence has stated that it does not
18 challenge Ms Lewis's qualifications as an expert in light of her curriculum vitae. I
19 refer to filing ICC-01/04-02/06-1032, that's a redacted filing, paragraph 52. With your
20 leave, Mr President and your Honours, in the interests of time, may I lead Ms Lewis
21 on those aspects relevant to her qualifications as an expert?

22 PRESIDING JUDGE FREMR: Defence, I guess no objections to that?

23 MR GOSNELL: There is no objection to that, but just to clarify that even though
24 there is no formal objection to the recognition of the witness as an expert, there
25 nevertheless will be questions posed on that subject so that your Honours can come to

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1 an assessment of the weight that should be attached to that expertise.

2 PRESIDING JUDGE FREMR: Well-noted.

3 Ms Luping, please proceed.

4 MS LUPING: Thank you.

5 Q. Now, Ms Lewis, are you a psychotherapist registered with the Irish Association
6 for Humanistic and Integrative Psychotherapy and the Irish Council for
7 Psychotherapy?

8 A. Yes, that's correct.

9 Q. And you're also a clinical supervisor registered with the Irish Association for
10 Humanistic Integrative Psychotherapy; is that correct?

11 A. Yes, that's correct.

12 Q. And you hold a bachelor of arts in European studies from the University of
13 Limerick obtained in 1979?

14 A. Yes, that's correct.

15 Q. You have a higher diploma in education from Trinity College Dublin obtained
16 in 1982?

17 A. Yes, that's correct.

18 Q. You have a bachelor of arts honours in psychology from University College
19 Dublin obtained in 1994?

20 A. Yes, that is correct.

21 Q. You have a diploma in counselling and psychotherapy from the Dublin
22 Counselling and Psychotherapy Centre obtained in 1994?

23 A. Yes, that is correct.

24 Q. You have an advanced certificate in group analytic psychotherapy from the
25 School of Psychotherapy at St Vincent's University Hospital obtained in 2009?

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1 PRESIDING JUDGE FREMR: Ms Luping, especially if you are asking questions and
2 the content is a lot of facts, please slow down a bit. It would really facilitate because
3 otherwise it's a really tough job for the interpreters.

4 And again also, Madam Witness, please don't forget about this pause between the
5 question and your response.

6 Thank you both.

7 MS LUPING: Understood, Mr President. And I apologise to the interpreters.

8 I'll just repeat my last question.

9 Q. You have an advanced certificate in group analytic psychotherapy from the
10 School of Psychotherapy at St Vincent's University Hospital and that was obtained in
11 2009; is that correct?

12 A. Yes, that's correct.

13 Q. Ms Lewis, you've worked with adult victims of rape and child sex abuse since
14 1985; is that correct?

15 A. Yes, that is correct.

16 Q. And, in particular, you've occupied a number of positions which I shall now list
17 and ask you to confirm. Between 1985 and 1989 you were a volunteer rape
18 counsellor at the Dublin Rape Crisis Centre?

19 A. Yes, that is correct.

20 Q. Between 1989 and 1992 you were an education officer at the Dublin Rape Crisis
21 Centre?

22 A. Yes, that is correct.

23 Q. Between 1992 and 1995 you were the head of training at the Dublin Rape Crisis
24 Centre and the coordinator of the trauma counsellor training programme for the
25 former Yugoslavia as operated by the Dublin Rape Crisis Centre and the Irish

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1 Department for Foreign Affairs?

2 A. Yes, that is correct.

3 Q. And in your role as coordinator of the training programme in Croatia and
4 Bosnia you designed and managed a trauma counsellor training programme in
5 response to the war in former Yugoslavia; is that correct?

6 A. Yes, that is correct.

7 Q. In your role as head of training at the Dublin Rape Crisis Centre you managed a
8 team of education officers in training regarding sexual violence to mental health
9 professionals; is that correct?

10 A. Yes, that is correct.

11 Q. Could you briefly explain to the Judges what the role entailed, what that
12 involved?

13 A. The head of training role?

14 Q. That's correct. In terms of the training programme that was provided in
15 Croatia and Bosnia.

16 A. When the war in the former Yugoslavia broke out, there were many reports in
17 media about the numbers of women and men who had been subjected to sexual
18 violence, so the Department of Foreign Affairs and the Dublin Rape Crisis Centre
19 decided that we would make a response by providing specialist training in rape crisis
20 counselling to psychologists, nurses, social workers, other professionals who were
21 living in the former Yugoslavia.

22 It became very clear very quickly that because many of the victims of sexual violence
23 were from a Muslim background, there was huge stigma attached to the fact of
24 having been raped; and therefore, we decided that the programme would be in a
25 general trauma counselling programme and therefore available to people who had

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1 suffered from the conflict itself, as well as those who had been raped.

2 I managed that programme for three years. It involved visiting Croatia and at a later

3 time parts of Bosnia to provide that training on the ground to local professionals.

4 That programme was of one-year duration, made up of six modules and developed

5 the skills of those professionals so that they could actually work with the needs of the

6 people who were presenting to their various services.

7 Q. And in that particular role did you have direct contact with the victims?

8 A. Yes, I did. Not in terms of counselling victims, but I certainly met the victims

9 who would have been participating in the various programmes that were being

10 facilitated by the people we trained.

11 Q. Now, between 1995 and 1999 you were the director of the New Day Counselling

12 Centre in Dublin; is that correct?

13 A. That is correct. Sorry, that is correct.

14 Q. And this involved leading a team of psychotherapists providing psychotherapy

15 services to deprived residents of inner city Dublin?

16 A. That is correct.

17 Q. In 1999 you were a technical adviser on sexual and gender based violence for

18 the Norwegian People's Aid in Tanzania, and this involved undertaking a needs

19 assessment for rape victims for a UNHCR funded project in a camp in Lukole refugee

20 camp in Tanzania; is that correct?

21 A. That is correct.

22 Q. Ms Lewis, could you clarify what the refugees were, from what country or

23 countries at Lukole refugee camp?

24 A. The refugees were predominantly from Burundi. It was a very large camp,

25 about 500,000 refugees, and many of the refugees had been there for a considerable

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1 period of time. There was also a small group of Rwandan Hutus in the camp.

2 Q. And in your role in undertaking a needs assessment for rape victims at the
3 camp, could you describe what this role entailed, what it involved?

4 A. Yes. I -- sorry. Yes, I was invited by Norwegian People's Aid to come to
5 Lukole because there had been numerous allegations of rape, both within the camp
6 and indeed outside the camp when the female refugees went outside to collect
7 firewood. So I was invited to do a needs assessment. This involved meeting some
8 of the victims of rape. It also involved meeting local community leaders within the
9 camp. It involved working with Norwegian People's Aid professional staff, who
10 were predominantly Tanzanian social workers. It also involved meetings with the
11 local Tanzania police officers and with officials from UNHCR.

12 Q. Now, between 1995 and 2003 you were the lead consultant for the trauma
13 counselling -- sorry, counsellor training programme at Trocaire - for the record, that's
14 spelt T-R-O-C-A-I-R-E - and the Irish Department of Foreign Affairs in Rwanda; is
15 that correct?

16 A. That is correct.

17 Q. And in that role this involved undertaking a needs assessment and designing
18 and delivering a sustainable trauma counsellor training programme in Rwanda; is
19 that right?

20 A. Yes, that is correct.

21 Q. And could you explain what your needs assessments involved, what your role
22 in Rwanda involved?

23 A. Trocaire is an Irish name, it's an Irish NGO who were working in Rwanda
24 following the genocide in 1994. They invited me initially to visit Rwanda for a
25 three-week period to meet with local people, with officials in the Rwandan

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1 government and with local professionals to identify the -- to some extent the incidents
2 of psychological trauma pertaining after the genocide, and following that needs
3 assessment I was invited to develop a trauma counsellor training programme for local
4 professionals such as nurses, social workers. There were very few trained
5 psychologists or indeed psychiatrists in Rwanda at that time.

6 Q. You said that in that time you also met with local people. Did you meet
7 directly with any of the victims?

8 A. Yes, I did. I met both with people who had experienced trauma as a result of
9 being in situations where they feared that they would be killed, who had watched
10 some of their relatives being killed, who had lost family members, and also with
11 women who had experienced sexual assault during the course of the genocide.

12 Q. Between 2000 and 2005 you were a psychological trauma consultant for the
13 Congregation of Christian Brothers in Sierra Leone. This involved facilitating a
14 number of psychological trauma workshops in Sierra Leone for local members of the
15 congregation who had survived the war there; is that correct?

16 A. Yes, that is correct.

17 Q. And in that role in terms of facilitating those trauma workshops for members of
18 the congregation, could you explain what your role was?

19 A. Yes, I was invited by the Catholic Congregation of Christian Brothers to come to
20 Sierra Leone. They have many members from Sierra Leone who had lived through
21 the events of the civil war there. Many had been in situations where their lives were
22 in danger. Many of them had also lost family members in the various atrocities that
23 had occurred during that civil war. So I was invited to come to Sierra Leone, and
24 over the course of those years I visited, spending a month at a time, with the group of
25 local Christian Brothers and working with them therapeutically both in group and in

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1 individual settings.

2 Q. And between 2000-2008 you were also a psychotherapist in private practice
3 which involved providing individual and group psychotherapy and training services
4 specialising in psychological trauma; is that correct?

5 A. Yes, that is correct.

6 Q. Now, between 2004 and 2008 you were the clinical director of, and I apologise
7 for my pronunciation, Faoiseamh; is that correct?

8 A. That is correct, yes.

9 Q. And as I understand it, this is now called Towards Healing, it's based in Dublin
10 and it provides a helpline and psychotherapy referral services for victims of the
11 Catholic clerical child sexual abuse; is that right?

12 A. Yes, that is correct.

13 Q. And since 2008 you've occupied the position of executive director of an
14 organisation called One In Four in Dublin, Ireland which, amongst other things,
15 provides psychotherapy and advocacy services to approximately 900 male and female
16 victims of sexual violence, as well as a sex offender treatment programme for about 25
17 sex offenders every year; is that right?

18 A. Yes, that is correct.

19 Q. I will be asking you a few additional follow-up questions, but I will do so after
20 admission of the reports.

21 Now, you provided identical copies of your curriculum vitae in the first two pages of
22 each of the four reports that you prepared for the Prosecution.

23 I'd like the court officer, please, to bring up the first report, and that's bearing the ERN

24 DRC-OTP-2059-0049. It's confidential, it cannot be broadcast publicly.

25 And for my learned colleague's information, this document is at tab 2 of the binder.

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1 If we could please turn to pages 0050 and then 0051 you do have the hard copy of the
2 report --

3 A. Yes.

4 Q. -- with you. You can also see it on your screen, and it's going to be displayed.

5 If the court officer could please turn to the section that's headed "Introduction of the
6 Expert."

7 Madam -- sorry, yes, madam Witness. I should say Ms Lewis. In the interests of
8 time, could I ask, actually, as you do have hard copies of these -- for the sake of the
9 parties and the Chamber, the two pages can be shown on the screen -- but if you
10 could please read those two pages and then I'm going to ask you if you can confirm
11 whether those two pages accurately reflect your educational and professional
12 experience to date.

13 A. Yes, thank you.

14 Yes, that accurately represents my experience and education to date.

15 MS LUPING: Mr President, your Honours, since Ms Lewis's curriculum vitae is
16 contained in the first two pages of each of the four reports, we would ask that the
17 totality of her -- which I will be addressing, the reports I'll be addressing with her, we
18 ask that the -- when we seek the reports that -- seek admission of the reports, that the
19 curriculum vitae also be admitted in totality at that time.

20 PRESIDING JUDGE FREMR: All right.

21 MS LUPING: And just noting that we would also request that Ms Lewis's private
22 contact information which is also contained in these reports as well as any
23 confidential information regarding the four witnesses that she assessed be redacted
24 prior to those reports being made public.

25 PRESIDING JUDGE FREMR: All right.

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1 MS LUPING: Mr President, we understand that the -- as I stated at the beginning,
2 that the Defence doesn't challenge Ms Lewis's status as a -- as an expert as such or
3 her qualifications, and we note at paragraph 30 of the Chamber's decision on the
4 Defence preliminary challenges to Prosecution's expert witnesses, which is decision
5 1159, and the Chamber stated, and I quote, "that it is satisfied in light of the
6 information contained in her curriculum vitae that the proposed expert is an expert in
7 the field of psychotherapy, in particular with regard to adult victims of rape and child
8 sexual abuse." End of quote.

9 On that basis, Mr President, your Honours, the Prosecution seeks, with your leave,
10 now to tender Ms Lewis as an expert witness and to qualify her as an expert.

11 PRESIDING JUDGE FREMR: Defence, any objection?

12 MR GOSNELL: Well, if I'm permitted to make an objection, I would make an
13 objection, Mr President, but I believe that horse may already be out of the barn door.

14 PRESIDING JUDGE FREMR: I think you are right.

15 MR GOSNELL: Thank you, Mr President.

16 PRESIDING JUDGE FREMR: Okay. So this request is granted.

17 And now, Ms Luping, I had just idea to break between this introductory part of the
18 testimony and the part that Madam Witness will testify to the content itself. Do you
19 still need to touch some issues concerning this introductory part?

20 MS LUPING: Yes, Mr President. I will just -- I need to simply seek admission of
21 the actual reports before I can seek to question her on them. I probably would need
22 about 15 minutes to do so.

23 PRESIDING JUDGE FREMR: Fifteen minutes. But I think it would be anyway
24 better to keep some system. So we will now break and we will continue 12.05 and
25 then we will anyway, as we already granted to the Defence, we will anyway finish by

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- 1 half past 1.
- 2 So now - yes, we are in open session - so now we break and we will resume 12.05.
- 3 THE COURT USHER: All rise.
- 4 (Recess taken at 11.34 a.m.)
- 5 (Upon resuming in open session at 12.07 p.m.)
- 6 THE COURT USHER: All rise.
- 7 Please be seated.
- 8 PRESIDING JUDGE FREMR: So we can continue with examination-in-chief of our
- 9 witness. But I see Mr Gosnell standing.
- 10 I guess you would like to inform me, which I appreciate, about changes in your team.
- 11 Please, Mr Gosnell, go ahead.
- 12 MR GOSNELL: Maître Bourgon has left the courtroom, Mr President.
- 13 PRESIDING JUDGE FREMR: We would probably noticed anyway in his case
- 14 because it can't be overruled.
- 15 Ms Luping, you have the floor.
- 16 MS LUPING: Thank you, Mr President, your Honours. But the absence of
- 17 Mr Bourgon is compensated by the presence of Ms Julieta Solano who has joined the
- 18 Prosecution team.
- 19 PRESIDING JUDGE FREMR: Thank you as well, Ms Luping.
- 20 MS LUPING: Thank you.
- 21 Q. Ms Lewis, I'm just going to now continue with my questioning. Did the
- 22 Prosecution send you a letter of instruction addressed to yourself and to Professor
- 23 Gromb Monnoyeur dated 7 October 2013 asking you to conduct a clinical examination
- 24 of four Prosecution witnesses?
- 25 A. Yes, that is correct.

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1 MS LUPING: I refer to document DRC-OTP-2059-0054. It's at tab 1 for my learned
2 colleagues' information.

3 I'd ask if the court officer could please have this document brought up so it can be
4 shown to the witness.

5 Mr President, also in the interests of time, if there's no objection from my learned
6 colleague, we might also be able to provide the witness with a trial binder so that she
7 can more quickly turn to these various documents at the tabs so we can speed this
8 process.

9 PRESIDING JUDGE FREMR: Mr Gosnell, any objection to that?

10 MR GOSNELL: No objection to that, Mr President. Just to say, though, that there
11 might be, as indicated, a couple of objections in respect of one or two documents that
12 might be shown.

13 PRESIDING JUDGE FREMR: All right.

14 MS LUPING: Understood.

15 Q. And I would ask that the witness only turn to the documents at the tabs as and
16 when I refer to them and not to look at any other documents at this stage because
17 indeed if my learned colleague is indicating objections to certain documents being
18 shown to you, we need to take you through this step by step.

19 A. I understand.

20 Q. All right. So there's a document in front of you on the screen, and also at tab 1
21 you're going to find a document there. Could you just confirm if this is the letter of
22 instruction that was given to you by the Office of the Prosecutor? It's two pages. If
23 you could have a look at the two pages.

24 A. Yes, this is the letter that was sent to me by the Prosecution.

25 MS LUPING: Mr President, your Honours, with your leave, the Prosecution would

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1 seek to have this document tendered as a Prosecution exhibit.

2 PRESIDING JUDGE FREMR: Defence, any objection?

3 MR GOSNELL: No objection, Mr President.

4 PRESIDING JUDGE FREMR: So this document is admitted into evidence as a
5 Prosecution exhibit.

6 Ms Luping, please proceed.

7 MS LUPING:

8 Q. If you could now turn to the document at tab 2.

9 And for the purposes of the parties and the Chamber it's -- could also perhaps be
10 brought up by the court officer. It bears the ERN DRC-OTP-2059-0049. It's a
11 document at tab 2.

12 Do you see this document, Madam Witness?

13 It's also -- it should be broadcast on a confidential basis, please, not public.

14 If you could look at the document. Can you confirm who wrote the report?

15 A. It was I who wrote this report.

16 Q. And to the best of your knowledge, are the contents of the report a true and
17 accurate reflection of your expert views impartially stated?

18 A. Yes, that is correct.

19 Q. And do you consent to the admission of this report into evidence?

20 A. Yes, I do.

21 MS LUPING: Mr President, with your leave we ask that this report,

22 DRC-OTP-2059-0049, be admitted into evidence.

23 PRESIDING JUDGE FREMR: But one additional condition is missing.

24 Madam Witness, do you also consent to be questioned on this document by Defence
25 and by the Chamber?

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1 THE WITNESS: Yes, Mr President, I do.

2 PRESIDING JUDGE FREMR: Okay.

3 Mr Gosnell.

4 MR GOSNELL: No objection to admission, Mr President.

5 PRESIDING JUDGE FREMR: So this document specified by Ms Luping is admitted
6 according 68(3) into evidence as a further Prosecution exhibit.

7 Ms Luping, please proceed.

8 MS LUPING: Thank you. I'd like the witness as well as the parties and the

9 Chamber to turn to a document at tab 3. If the court officer could show this. Again,

10 it should not be shown publicly, it's a confidential document. At tab 3, that's

11 DRC-OTP-2059-0058.

12 Q. Have you had a chance to look at this document?

13 A. Yes, I have.

14 Q. And can you confirm who wrote this report?

15 A. It was I who wrote this report.

16 Q. And to the best of your knowledge, are the contents of the report a true and
17 accurate reflection of your views impartially stated?

18 A. Yes, that is correct.

19 Q. Do you consent to the admission of this report into evidence?

20 A. Yes, I do.

21 Q. And do you consent to being questioned by myself and any other parties and
22 the Chamber in relation to this report?

23 A. Yes, I do.

24 MS LUPING: Mr President, I would ask that this report DRC-OTP-2059-0058 be
25 admitted into evidence as a further Prosecution exhibit.

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- 1 PRESIDING JUDGE FREMR: And, Madam Luping, why not to continue with 5 and
- 2 see because in fact the issues are absolutely the same, just to ask Madam Witness
- 3 whether she also could confirm --
- 4 MS LUPING: That is fine.
- 5 PRESIDING JUDGE FREMR: -- and you can take it together.
- 6 MS LUPING: It's not a problem, Mr President.
- 7 Q. Madam Witness, could you turn to the document at tab 4.
- 8 And for the record, again another confidential document, and it bears the ERN
- 9 DRC-OTP-2059-0069.
- 10 If you could look at this document.
- 11 A. Yes.
- 12 Q. Can you confirm who wrote the report?
- 13 A. I wrote the report.
- 14 Q. To the best of your knowledge, are the contents of this report a true and
- 15 accurate reflection of your views impartially stated?
- 16 A. Yes, they are.
- 17 Q. Do you consent to the admission of this report into evidence?
- 18 A. Yes, I do.
- 19 Q. And do you consent to being questioned by me, any other parties and the
- 20 Chamber in relation to the contents of the report?
- 21 A. Yes, I do.
- 22 Q. Now, the next report is at tab 5. It's another confidential document and it bears
- 23 the ERN DRC-OTP-2059-0080. If you could please look at this document.
- 24 A. Yes.
- 25 Q. And can you confirm who wrote the report?

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1 A. I wrote this report.

2 Q. And to the best of your knowledge, are the contents of this report a true and
3 accurate reflection of your views impartially stated?

4 A. Yes, they are.

5 Q. Do you consent to the admission of this report into evidence?

6 A. Yes, I do.

7 Q. Do you consent to responding to any questions that may be put by myself, any
8 other parties, participants or the Chamber in relation to this report?

9 A. Yes, I do.

10 MS LUPING: Mr President, your Honours, I would now ask that all of these reports
11 that have now been shown to the witness, who has confirmed that they are the
12 reports that she wrote and that she has consented to their admission, she's consented
13 to being questioned in relation to them, that they all be admitted now as Prosecution
14 exhibits.

15 PRESIDING JUDGE FREMR: Mr Gosnell, any objection?

16 MR GOSNELL: None, Mr President.

17 PRESIDING JUDGE FREMR: Very well. Then those three documents specified by
18 Ms Luping are admitted into evidence as further Prosecution exhibits.

19 And, Madam Witness, sorry, it was a little bit formalist exercise, but you know we
20 have to respect our law.

21 Now, Ms Luping, please proceed.

22 MS LUPING: Thank you.

23 Q. Now I will be referring to some documents that you've referred to in your
24 reports. And now this is -- I'm going to take you document by document because I'll
25 be seeking clarity as to my learned colleague's position in relation to them.

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1 The first document is a document at tab 6 and it bears the ERN DRC-OTP-2093-0226.

2 It's a report produced by the Harvard Humanitarian Initiative.

3 And I would just first just note that in your reports relating to three of the witnesses

4 you state in relation to the witness's fear in reporting their rapes for these three

5 witnesses, and I'm not referring to their witness codes in public, and I quote, I refer to

6 a passage from your report:

7 "The reality of this fear is supported by research on the experience of rape victims in

8 the Democratic Republic of the Congo." And you then cite to this report dated 2010.

9 And at the end of these three reports you include under your various references

10 Harvard Humanitarian Initiative, title of this report, "Now, The World Is Without Me:

11 An investigation of sexual violence in eastern Democratic Republic of Congo" 2010.

12 And again, simply for the record, I just refer to where these references appear in three

13 of your reports. The first is bearing the ERN 2059-0058, at pages 0062 and 0064; the

14 second report at 2059-0069 at pages 0073 and 0075; and the third report, 2059-0080 at

15 pages 0084 and 0086.

16 Now, I would like to ask some questions in relation to this report.

17 And I would ask that it be shown by the court officer, it's already being shown, and it

18 is there at your tab.

19 Now, I just want to ask you now you can see this report, is this the article or report to

20 which you cite in the three reports that you wrote?

21 A. Yes, it is.

22 Q. And can you explain why it is that you referred to this report of the Harvard

23 Humanitarian Initiative in your own reports, the three reports that you wrote?

24 A. Okay. Now this relates to sexual violence, so I'm not sure if this needs to be --

25 Q. I mean, it's -- I will be guided by the Chamber, I'll be guided by Mr President.

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1 I think because the answers are very general, I have not referred to any witness codes
2 so far in public session, I believe that this could be -- these views could be expressed
3 in public session.

4 PRESIDING JUDGE FREMR: Yes, I can confirm, yes.

5 THE WITNESS: Okay. This report was undertaken in South Kivu Province in the
6 Democratic Republic of the Congo. I cited this report because it substantiates my
7 own view that there is very often a delay in reporting allegations of rape and that one
8 of the major reasons that this is so is the shame and stigma that can be attached to
9 rape.

10 The witnesses I spoke to who alleged sexual violence all cited the fact that they were
11 afraid of being stigmatized in their communities and also were afraid that they would
12 be abandoned by their husband if they were to have spoken about the rape or
13 disclosed the rape. And this piece of research substantiates that view with about
14 I think one and a half thousand women in South Kivu Province who were attending
15 hospital and were disclosing rape as a result of injuries and so on they had received.

16 MS LUPING:

17 Q. And, Ms Lewis, this -- as you mentioned, this report details the experiences of
18 the victims in the south Kivus. In your view and in your experience, how relevant is
19 this account or study done in relation to women in a different geographic location in
20 the Democratic Republic of the Congo? Now, the individuals you met describe
21 events in Ituri, which is obviously in a different location. So just -- could you explain
22 how or why you consider this report that talks about experience of individuals in a
23 different part of the Democratic Republic of the Congo to be still relevant to your
24 reports?

25 A. The fear of shame and stigmatisation and the fear that relationships will be

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1 broken, that people will be ostracized by their families is actually a universal fear
2 when it comes to sexual violence in my experience. In some of the other reports that
3 are attached, that would be substantiated, for example, in Ireland, in the UK and in
4 New Zealand.

5 In my experience working, for example, in Rwanda, women who had experienced
6 sexual violence displayed exactly the same reluctance to report the sexual violence.

7 And likewise in my experience of working in the former Yugoslavia, women who had
8 been raped displayed an extreme reluctance and indeed their fears were borne out by
9 many of the responses that were there if they did disclose sexual violence.

10 I choose this particular report because, to the best of my knowledge, there has been no
11 academic investigation in relation to rape in Ituri, and south Kivus was the closest
12 piece of research that I could find which was addressing similar circumstances.

13 MS LUPING: Now, with your leave, Mr President, your Honours, we would seek to
14 have this report also admitted as a Prosecution exhibit. I will be asking additional
15 questions in relation to the report, but I would first seek to have it admitted.

16 PRESIDING JUDGE FREMR: And you would like to tender the whole report; am I
17 right?

18 MS LUPING: That's correct, Mr President. I think that it's easier for the purposes
19 of the Chamber's assessment to have the entire report. There is a particular section
20 in the report that deals with stigma and the issues of reporting, but just to understand
21 the context, I think it would be easier if the entire report is simply admitted.

22 PRESIDING JUDGE FREMR: Defence, your position?

23 MR GOSNELL: Well, the witness has just testified that this is a universal fear, so
24 evidently this particular report is not necessary to substantiate the assertion that
25 stigma is an issue in respect of reporting.

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1 It's a 56-page document going into all kinds of issues outside of the indictment period,
2 not essential for the opinion that is being expressed to your Honours, the expert -- the
3 scope of the expert opinion. You don't have the authors of this document in front of
4 you and there are numerous authors apparently. They rely on other sources that are
5 set out at length in footnotes at the end. None of them are before your Honours.
6 So the value of this document is extremely limited, and if my friend wishes to point to
7 specific portions to put in front of the witness, then perhaps that might be a way to
8 proceed, but certainly not admitting the entire 56-page document.

9 PRESIDING JUDGE FREMR: Ms Luping, any reaction?

10 MS LUPING: Mr President, your Honours, I appreciate that this does refer to a
11 different geographical location. I think it would be an artificial exercise and not
12 necessary in terms of timing either to start asking the witness to go through any
13 specific passages in the report. She's indicated the relevance because the report does
14 contain sections that deal with issues, for example, spousal abandonment, it does
15 cover issues relating to reporting -- difficulties in reporting, issues relating to stigma.
16 My concern with trying to compartmentalize the report is that it would not be as easy
17 to understand the context. And that's the only purpose for seeking to admit the
18 entirety.

19 It is, in our submission, only a 56-page document. It actually doesn't take very long
20 to read. I read it.

21 What is useful about it too is that even though it doesn't relate to Ituri, it is still within
22 the Democratic Republic of the Congo. It's still within the context of the conflict
23 within the country itself. They may relate to different armed groups. The witness
24 talks about the similarities in terms of the experiences of the victims that are dealt
25 with in the context of this research project that was conducted, quite an extensive

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1 research that was conducted in this area.

2 And so I leave it to the Chamber to decide as to what weight you would attribute to
3 the report, but even just to understand also the -- this witness's assessment, I believe it
4 is also relevant to assess her own conclusions in her reports. She herself has referred
5 to the report, so it's -- it's a document that she has commented upon and that she has
6 referred to and used in the context of her own assessments of the four Prosecution
7 witnesses that she met. And so for all those reasons -- I should say three out of the
8 four that she met.

9 For all these reasons, your Honours, I would say that it really would be an artificial
10 exercise just to have one or two pages.

11 PRESIDING JUDGE FREMR: Thank you, Ms Luping.

12 Give us a moment. We will silently deliberate.

13 (Trial Chamber confers)

14 PRESIDING JUDGE FREMR: So I can be brief. Our ruling is that you can freely
15 use this document with the witness, but the request to admit this document is not
16 granted. It's rejected. And I can be brief, we in fact sharing the view expressed by
17 Defence.

18 So, Ms Luping, please proceed.

19 MS LUPING: Thank you.

20 Q. In that context then I will turn to page 0260 of this document, that's page 30 of
21 the report, under the heading "Theme: Spousal Abandonment."

22 And I'm just going to refer to a specific section here. I'm going to read out the first
23 three sentences and then I'll ask for your views.

24 "Spousal abandonment as a result of the sexual violence was not infrequent. Loss of
25 one's husband was often very distressing to sexual violence survivors. Some women

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1 described hiding the sexual violence from family members because they feared
2 abandonment."

3 My first question is this: In your experience and in your expert opinion, is this or is
4 this not a common or uncommon consequence of sexual violence or rape amongst
5 victims?

6 A. Spousal abandonment of rape victims is perhaps less common in jurisdictions
7 such as Ireland or, you know, the UK, Western Europe, but in my experience in the
8 former Yugoslavia among the Muslim community there was a -- there were -- there
9 were several episodes where I was told that women had been abandoned because
10 they had been raped. And similarly in Rwanda women who had been raped were
11 abandoned by their husbands. It is not an uncommon phenomenon.

12 Q. Thank you. And I want to turn to a different page. It's page 32 of the report,
13 so that's *0260 in terms of the ERN. And it's a heading that says "Theme: Despair
14 Following Rape." I'm going to read out the first three sentences before asking you
15 my questions.

16 "In the narrative descriptions of sexual assault, some women described how the rape
17 had affected their emotional wellbeing. Sadness, misery, fear and shame were
18 among the emotions most commonly described by sexual violence survivors. For
19 some women, the will to live simply seemed to have been lost."

20 Now, again, based on your experience and your expert opinion, is this a common or
21 not common consequence of the experience of sexual violence experienced by
22 victims?

23 A. I think this is probably almost a universal experience following an episode of
24 sexual violence by victims. In particular, victims experience great fear and terror.
25 For many victims it is the fear that they will be re-victimised if the assailant is known

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1 to them or if the rape or the sexual assault has happened in a situation where there is
2 lawlessness or war, for example.

3 And the perhaps most pervasive experience for women who have been raped or
4 sexually assaulted is that of shame. It is absolutely the core experience of sexual
5 violence regardless of whether it happens in Western Europe or in Africa or in any
6 other part of the world. And that shame can pervade the woman's whole life and it
7 is compounded, of course, by social constructions of what is rape when the blame is
8 often ascribed to the woman who has been raped rather than to the assailant.

9 Q. Now, just looking at the opposite page where the theme is fear of sexually
10 transmitted infections or HIV/AIDS where it states that:
11 "A common concern among sexual violence survivors was the contraction of STIs and
12 HIV/AIDS and many women presented to hospital requesting HIV and STI testing.
13 For some women, continuation of their marriages was contingent on negative HIV
14 testing." End of quote.

15 Again, in your experience and based on your expert opinion, is this a common
16 reaction or view of victims of sexual violence?

17 A. When sexual violence takes place, there is always the fear that there will be a
18 sexually transmitted disease unless the assailant is well-known to the woman.
19 And, you know, we know from research that there can be quite a high level of
20 transmission of sexually transmitted diseases because of the physical violence that
21 may be involved in a rape with tearings and lacerations of the vagina and therefore
22 easier transmission of HIV.

23 It is not such a concern perhaps in countries with a low instance of HIV, but certainly
24 in Africa where there is a high instance of HIV in many countries it is of huge concern.
25 And in my experience in particular working in Rwanda very often women only

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1 presented to medical care facilities, for example, when they had a well-established
2 STD and were no longer able to hide the fact that they had been raped. And this was
3 not at all uncommon.

4 Q. All right. And just turning to page 40 of the report, that's ERN 0270, and I'm
5 looking at the heading "Medical Considerations" and in particular "Delays in
6 Presentation."

7 I'm just going to read out -- I'm not going to read the whole paragraph. I'm going to
8 read only certain parts of it, the first sentence and the very end.

9 "In this study, there were notable delays before women presented to medical attention
10 and these delays, which were similarly documented by Malteser International, have
11 important implications."

12 Now going to the very end, the last sentence of this paragraph:

13 "Successfully encouraging women to seek early post-sexual violence care will also
14 require that the stigma surrounding sexual violence be reduced and this will also
15 require education and awareness raising at the community level." End of quote.

16 Now again, Ms Lewis, in terms of your experience and in your expert opinion and
17 also in particular your experience in the region, including in Rwanda and in Sierra
18 Leone and in other war-torn areas such as Croatia and Bosnia, is this a common
19 phenomenon, as it were, in terms of delays and presenting for medical attention and
20 the issues relating to stigma?

21 A. Yes. In my experience it is, as I have already mentioned, in Rwanda very often
22 women only presented for medical care when they had severe symptoms of sexually
23 transmitted diseases and obviously also with the fear of HIV.

24 And again, when there is high levels of stigma in the community about sexual
25 violence, it is very common that women would hesitate to seek help, seek medical

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1 help, medical assistance because of fear of exposure, fears around confidentiality.
2 In Western Europe it would be less common that rape victims would perhaps delay in
3 getting care. In particular, they would be concerned about the possibility of
4 pregnancy and they would have access to post-coital contraception and also of course
5 fears of STDs, sexually transmitted infections. But very often, for example, in Ireland
6 women will present at a hospital as there is a specialised hospital in Dublin for that
7 type of care but still will not make a report to the Irish police.

8 Q. And now for my last question in relation to this report. I'm going to refer you
9 to page 6 of the report, it's going back a bit, ERN 0236, and a heading "Rape Epidemic
10 in DRC." And I'm going to refer you to only one sentence in that paragraph, what
11 I'm going to -- which I'm going to read out:

12 "Since rape is often underreported and many women do not seek medical care after
13 sexual violence, it is likely that these numbers underestimate the true incidents of
14 sexual assault."

15 Now same question really: In your -- in terms of your experience, including
16 specifically in the region and in the war-torn area of former Yugoslavia, plus in your
17 expert opinion, is this phenomenon a common phenomenon or not?

18 A. Underreporting of rape is actually a universal phenomenon. Even in
19 jurisdictions where there is a well-developed criminal justice system, it is estimated
20 that the reporting rates of rape are probably about 15 per cent.

21 In areas such as Rwanda where I have experience which is post-conflict where there is
22 quite a deal of chaos, where there might not be huge trust in the civil authorities, it is
23 very likely that the rate of reporting is even lower.

24 In my experience in the former Yugoslavia the rates of reporting were extremely low,
25 even where -- even in situations that I was familiar with, for example, where groups

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1 of women were raped communally, it was still very difficult for those groups of
2 women to acknowledge that a rape had occurred.

3 MS LUPING: Now, Mr President, just a question of -- seeking clarity from the
4 Chamber, would the Chamber be able to allow the admission at least of these specific
5 portions of the report that have been referred to now to this witness?

6 PRESIDING JUDGE FREMR: Give us a moment. I will consult my colleagues.

7 (Trial Chamber confers)

8 PRESIDING JUDGE FREMR: You know, Ms Luping, if you want to tender just, in
9 fact, those fact have been now orally confirmed by Madam Witness, so then we don't
10 see any reason why you would like to tender it in written form.

11 MS LUPING: Understood, Mr President. It was just simply for ease of reference.
12 I did read relevant passages, but the Prosecution is, you know, willing to obviously
13 abide by the Chamber's decision on this.

14 PRESIDING JUDGE FREMR: So we will not admit that.

15 MS LUPING: Understood.

16 Q. Madam Witness, could you please turn to tab 7.

17 And for the court officer's information, this is a public document, can be shown
18 publicly. It is ERN DRC-OTP-2093-0304.

19 Now can you see this document also in your -- you've got it in your bundle, in your
20 trial bundle, Ms Lewis.

21 A. Yes, I can.

22 Q. And this again is an article with the conclusions of a research that were -- was
23 referred to in three of your reports. Again, I'm not going to refer to the witness
24 codes, but in three of your reports you state in relation to these witnesses' fear in
25 reporting their rapes, and I quote that:

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1 "Research indicates that many rape victims delay reporting to law enforcement
2 agencies through shame, fear of disbelief and fear of the consequences." End of
3 quote.

4 You then cite to Jordan, 2001 and to Hanly et al, 2009. And at the end of your three
5 reports you include under your various references, Jordan J, heading, "Worlds apart?
6 Women, Rape and Police Reporting," British Journal of Criminology (2001) 41, pages
7 679 to 706; as well as to Hanly C, Healy D, Scriver, "Rape and Justice in Ireland" Liffey
8 Press, 2008.

9 Now, first -- and I'm referring now in terms of the three reports simply for the sake of
10 the record, ERN 2059-0058 at pages 0062 and 0064; ERN 2059-0069 at pages 0073 and
11 0075; and the third report, ERN 2059-0080 at pages 0083 and 0086.

12 So turning to the first article, this is the Jordan article, the one at tab 7, 2093-0304,
13 which is up on your screen. Do you recognize this article?

14 A. Yes, I do.

15 Q. And is this the article that you cited in your three reports?

16 A. Yes, it is.

17 Q. And can you explain why this article is relevant to your reports?

18 A. Well, in the case of the three witnesses you mentioned there was significant
19 delay in reporting to officers of the court here and I used this article and indeed
20 referred also to the Hanly book in relation to research that has been undertaken which
21 shows that delays in reporting is very, very common even in jurisdictions where there
22 is a well-established criminal justice system where there would be high levels of
23 confidence in the civil authorities and where there is easy access to make a report.

24 Q. And in terms of this article, were there any statistics given as to the level of
25 delays in reporting?

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1 A. Yes. I mean, this concerned -- this article concerned women who had made a
2 report, but it found that I think 38 per cent, just under 40 per cent of cases -- in under
3 40 per cent cases there was a delay in reporting, I think in everything from over a
4 month to up to 10 years.

5 Q. And can you explain what the reasons were for -- the various reasons for
6 delaying in reporting that were described?

7 A. Again, this article talk -- the women who were interviewed talk about fear of
8 disbelief. They talk about not wanting people to know what had happened to them.
9 Fear of the trial process itself. In a number of cases women were very shocked and
10 numbed by what had happened and only actually made a report when they disclosed
11 perhaps to a family member or something, somebody like that who encouraged them
12 to go forward. They were the type of reasons, the shame that was attached to having
13 been raped.

14 MS LUPING: Now, Mr President, your Honours, this is a -- essentially a 22-page
15 document, not including the -- you know, the two-page index that follows
16 subsequently. The witness has already described the widespread nature of the
17 phenomenon in terms of women who are not wanting to report immediately delays in
18 reporting. In our submission this is a relevant document. She's referred to this
19 report or research conducted in New Zealand and similar statistics that occurred in
20 Britain as well. And in our submissions it would be relevant for the Chamber's
21 assessment of this witness's conclusions in relation to these three Prosecution
22 witnesses.

23 So for these reasons, we would ask that this very short document be admitted into
24 evidence as a further Prosecution exhibit.

25 PRESIDING JUDGE FREMR: Defence, your position?

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1 MR GOSNELL: We object to that, Mr President. More or less for the same reasons
2 as stated before, but I'll just add this, and it concerns the last point made by the
3 Prosecution concerning relevance: What is actually relevant to the witness's
4 opinions is the witness's own understanding of that research which she's just
5 described orally. So that is properly what should be admitted, not a document, a
6 report written by other individuals that may be understood by them differently and
7 who are not before your Honours.

8 PRESIDING JUDGE FREMR: Ms Luping, any additional comments?

9 MS LUPING: Yes, Mr President, your Honours. I mean, this witness is an expert in
10 her own field. She has experience, considerable amount of experience dealing with
11 these types of victims, including individuals who have delayed in reporting. She has
12 simply by way of reference indicated a well-conducted,
13 well-researched -- well-researched research project into this phenomenon. She's
14 quite well placed to comment on the conclusions and the nature of this research that
15 was conducted. She's able to formulate and express her very own and separate
16 expert opinions in relation to this phenomenon. And the only basis or reason for
17 which the Prosecution would seek that this document be referred to or admitted is
18 simply because this witness has been commenting on this phenomenon and she
19 herself has referenced this report in her own reports.

20 PRESIDING JUDGE FREMR: Thank you.

21 Again we will briefly deliberate.

22 (Trial Chamber confers)

23 PRESIDING JUDGE FREMR: So the Chamber remains consistent in its decisions, so
24 we again are not granting this request. Again we can refer to our previous reasoning
25 that it's nothing to do with the credibility, but in our view this article is not directly

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1 relevant to our case. And what, in fact, was relevant in our view was covered by
2 your examination, Ms Luping.

3 And one message, I got now message from court officer that both of you please slow
4 down a bit, otherwise interpreters and court reporters face some problems to capture
5 everything. So please both slow down a bit.

6 Ms Luping, please proceed.

7 MS LUPING: Understood, Mr President. My apologies to the court reporters and
8 to the interpreters. I will certainly do my best to slow down. It's a -- it's a rare
9 luxury to be able to question a witness in English, so -- but I will try to be mindful.
10 I will have one further question then in relation to this article, this research that was
11 conducted in New Zealand.

12 Q. At page 7, if you could turn to page 7 of the report, Ms Lewis, under the
13 heading -- I'll read it out for you:

14 "How soon was the incident reported. Of the 50 incidents, well over half" that's
15 62 per cent "were reported to the police either immediately after the rape/sexual
16 assault or on the same day. There were delays in reporting the rape/sexual assault in
17 just under two-fifths of" the case -- "of cases (38 per cent). While half of these were
18 reported within a fortnight of the incident's occurrence, the remainder took
19 considerably longer to be brought to police attention, and in three cases, it took more
20 than ten years."

21 Now I just would like to read out also the final paragraph in the same page.

22 "Sometimes the reason given for delayed reporting seems to have been fear-based,
23 arising from the women's concern over how the offender, the police or family and
24 friends would respond. In one case, the offender's death threats against the woman
25 and her relatives kept her silent for 10 years."

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1 Now, Ms Lewis, in your expert opinion, in your experience in obviously various and
2 many different parts of the world, including the relevant region, is this a common
3 phenomenon such delays in reporting? And in some instances in this report in New
4 Zealand at least there was a 38 per cent statistic of notably longer period in delays.
5 Is this common or not common?

6 A. This is in my opinion extremely common regardless of where the rape takes
7 place or the jurisdiction. So even where there is, as I've said, well established and
8 well-trusted criminal justice processes, victims still find it very difficult to come
9 forward for some of the reasons stated just there.

10 In areas where there is conflict or post-conflict where there is little trust in the civil
11 authorities, where there is fear of stigmatisation, where there is perhaps fear of
12 reprisals, that again means that women are very, very reluctant to come forward and
13 talk about the fact that they were sexually assaulted.

14 MS LUPING: Mr President, I would now like to turn to the next document.

15 Q. It's at tab 9, Ms Lewis. It's -- and I'd like to refer -- this can be shown publicly.
16 It's a document bearing the ERN DRC-OTP-2093-0360.

17 And do you recognize this book?

18 A. Yes, I do.

19 Q. And is this the book that you cited in your three reports?

20 A. Yes, it is.

21 Q. And can you clarify what are the specific sections of the report that were
22 relevant? Because you referred to it.

23 A. Again, this concerns the question of delay. And I actually would need to find
24 the exact section on the book. This was a piece of research conducted in Ireland of
25 women who had made complaints to the Irish police force and again it found that a

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1 significant number of those who made a complaint had delayed in doing so. In the
2 case of the Hanly research it was in the region of 20 per cent delayed.

3 Q. And I'd like to refer you to specific pages. Pages 140 to 147. This is under the
4 heading "Reasons for Not Reporting" and then at page 156 to 157 the heading
5 "Delayed Reporting."

6 A. Mm-hmm.

7 Q. Are those the relevant sections of this book?

8 A. Yes, because they support -- support my view certainly and I think a view that
9 is accepted generally that rape is one of the most underreported crimes, but that
10 equally for those who do choose to come forward and make a complaint that there
11 often can be a delay.

12 Q. And, Ms Lewis, could you explain who conducted the study and any other
13 details relating to the study?

14 A. The study was conducted by Dr Conor Hanly, who is a professor in the law
15 department of the National University of Ireland at Galway, and his colleagues. It
16 was commissioned by the Rape Crisis Network of Ireland, which is a network of rape
17 crisis centres around the country. They interviewed a hundred women who had
18 made reports to the Irish police force between I think the years of 2002 and 2008 - I'm
19 not quite sure about those dates, but in the middle of the last decade - and then
20 published their findings.

21 Q. And you've referred to a statistic of approximately 20 per cent of delayed
22 reporting; is that correct?

23 A. Yes, that is correct.

24 Q. Could you explain exactly what were the results of the study?

25 A. In the case of delayed reporting they found that fear of how the police would

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1 have -- would have received the complaints, again fear of disbelief. Ireland is a
2 small country, many people live in rural communities, so there was again fear that the
3 rape would become public knowledge and that there was a lot of shame and stigma
4 attached to that. There was also perhaps fear of reprisals. They were the main
5 reasons given in that study.

6 And I should also add that this study was quite influential in influencing the Irish
7 police force to review and develop their investigative practices when engaging with
8 victims of sexual violence.

9 Q. I have some questions relating to the study and I'd like you to turn to page 140
10 of the book, that's at ERN 0445. It's under the heading "Reasons for Not Reporting"
11 and I'm just going to just quote that "Their reasons can be summarised under five
12 broad headings." So you've got "(a) psychological factors, (b) social considerations,
13 (c) criminal justice factors, (d) incident characteristics, and (e) other reasons."

14 And then on the same page it's also noted, and I quote:

15 "In most cases, more than one factor was involved and it's likely that multiple factors
16 are considered by victims" of sexual assault -- sorry, "by victims" rather "in making
17 their decisions." End of quote.

18 Now, Ms Lewis, could you briefly explain these factors that are set out here, these five
19 sort of key factors that are summarised?

20 A. Yes. I'm afraid I can't seem to find the page you were referring to.

21 Q. It's also up on your screen, so if you look right in front you.

22 A. Oh, yes. Okay.

23 Q. And maybe if it could be blown up a little. It's a little bit hard to read.

24 A. Oh, yes, I have it. I actually have it in my --

25 Q. Yeah. So, yeah, it's page 140, it's 0445.

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1 A. Okay. So --

2 Q. I was just talking about the five factors.

3 A. Sure.

4 Q. If you could just briefly explain those -- those factors.

5 A. So in the first instance there was the fear of the criminal justice system itself, the
6 fear of what would be involved in the criminal trial, and rape victims very commonly
7 describe the experience of giving evidence in a criminal trial as a very re-traumatising
8 experience in an adversarial system such as exists in Ireland.

9 And another fear is rape victims in Ireland would commonly talk about the fact that
10 rape trials are *widely reported and there is a high level of attrition so believe that
11 there is no point in making a report because it will not lead to a conviction.

12 The social factors I think I've talked about, fear that other people won't know, fear of
13 disbelief, fear that they will get a negative response from either the police force or
14 from family members and friends, fear that they will be blamed because of what
15 happened.

16 And then the incident characteristics that the victim was -- had used alcohol or a drug
17 at the time and again that this would lead to either the victim blaming herself or that
18 she would be blamed by other people.

19 A drug-assisted rape refers I think to -- not I think. It refers to where a drug such as
20 Rohypnol might have been administered and the victim probably had very little
21 recollection.

22 And where the victim and offender either are in a relationship or previously had been
23 in a relationship, most rape victims would see this as undermining the credibility
24 perhaps of saying that somebody with whom they had been in a consensual sexual
25 relationship had now assaulted them.

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1 And then in terms of the psychological factors, again, these would be well
2 documented, the embarrassment of coming forward, having to tell, having to recount
3 what had happened, their fear of what happened, and in the case of some victims
4 where they had blamed themselves. Again, this is very common with rape victims
5 endlessly ruminating on: Was it what I was wearing? Was it my behaviour? Did
6 I give him the wrong impression? And self-blaming in that way.

7 Q. Sorry, I'm just signalling you --

8 A. To slow down.

9 Q. -- to slow down. Not to -- not necessarily to stop but just to slow down.

10 A. Sorry. I apologise.

11 Q. That's all right. I am equally a culprit.

12 And in your experience and in your expert opinion, do victims of sexual assault also
13 outside of Ireland fail to report for the same or similar reasons?

14 A. Yes, I think that is the case. I think in societies where attitudes towards rape
15 victims change, where blame is not automatically attributed to the rape victim,
16 the -- we would expect that the incidents of reporting would rise, but certainly in
17 situations such as those described by the witnesses I met in a post -- or in a conflict
18 situation where there is no law and order, where it is expressed by the witnesses that
19 they would be ostracized by their communities if it became known that they had been
20 raped, then we might expect that there would be a huge delay in reporting.

21 Q. And again, in your experience and your expert opinion, could the various
22 reasons or factors for not reporting vary by any individual factors such as their
23 backgrounds, their age, their ethnic origin, for instance?

24 A. Well, I mean, it is likely that women who are less educated, who have poor
25 family support or social support, who come from ethnic minorities where there is a

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1 huge stigma attached to rape, it is much more likely that that would reduce the
2 likelihood of a woman actually making a report to an outside authority.

3 Q. My last question in relation to this book, at page 144, which is ERN 0447, and
4 I'm going to quote here. This is the bottom paragraph of page 144 and I quote:
5 "Others were concerned about the wider consequences of reporting. They did not
6 want people in their areas to know what had happened to them. They felt that the
7 benefits of reporting would not outweigh the costs of people finding out. This may
8 be a particular concern for people living in small or close-knit communities." End of
9 quote.

10 So can you explain based on your experience why this might be a particular concern
11 for people living in small or close-knit communities?

12 A. Well, in the Irish context, as I've mentioned, Ireland is still a very rural society.
13 Many people live in small farming communities where everybody knows everybody
14 else, and it is very likely that somebody who has been raped would not want their
15 neighbours to know that it has happened.

16 If we transfer that to the African context, in Rwanda, for example, because of again
17 people living in very close-knit mainly rural neighbours, women were terrified that
18 anybody would find out what has happened -- what happened to them because of the
19 stigma that was attached to the fact of being raped even when it had happened in a
20 conflict situation.

21 MS LUPING: Mr President, your Honours, I would note that the Prosecution is not
22 seeking to admit the whole of this book. There are just specific pages that relate to
23 reasons why individuals would not report and reasons for delayed reporting.
24 I think there are approximately eight pages that we would be seeking to have
25 admitted.

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1 We would just also -- I would just refer you also to the prior decision and approach in
2 relation to another expert, Dr Yuille, who came to testify, where articles that were
3 referred to him by him in his assessment or reports were, in fact, admitted simply
4 because he had referred to them. It's just for the purposes of an appropriate
5 assessment of the witness's opinions and assessment indicated in the reports.

6 For that reason, we would seek to have only those specific pages admitted, which are
7 pages 140 to 148, or ERN 0446 to 0449, and pages 156 to 157, which are contained in
8 ERN 0453.

9 PRESIDING JUDGE FREMR: Defence?

10 MR GOSNELL: Well, first of all, Mr President, I note that the portion being tendered
11 does not include the portion of the book that discusses methodology and that is rather
12 significant in terms of assessing whether or not this is going to have any independent
13 probative value.

14 But more to the point, Mr President, in respect of the portions of -- at least I recall
15 there were two documents from Dr Yuille that were tendered by the Prosecution and
16 those were not opposed by the Defence, the admission of those portions.

17 And then there were smaller excerpts, as I recall, if I recall correctly, that were then
18 ultimately admitted at the request of the Defence.

19 But I suggest that your Honours' decision in that case was guided by the fact that the
20 Prosecution had been permitted to admit their -- the two documents that were
21 referred to by Dr Yuille, the Defence had not objected, and then it was fair enough
22 that the Defence should have least some opportunity to have excerpts of footnoted
23 reports or reports that he referred to admitted.

24 Also I do believe that most of those reports, if I recall correctly, were actually
25 authorised by Dr Yuille himself, which does also create a different situation. I'm not

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1 saying that there might not have been exceptions, but that was certainly the case with
2 most of them.

3 So, Mr President, I suggest that we continue to follow the rule that you have laid out
4 in respect of this witness and that that's the appropriate way to proceed.

5 PRESIDING JUDGE FREMR: Ms Luping.

6 MS LUPING: Mr President, your Honours, simply just to follow up. One of the
7 reports or articles that was referred to by Dr Yuille in his report was not written by
8 him. It was simply part of his assessment, he had referenced it. And it was on that
9 basis that we sought admission.

10 Now in this instance the Defence is objecting to admission. In my submission there
11 isn't any really clear basis for the objection to admitting a document that's been
12 referenced by an expert in her report. I have no objection whatsoever to including
13 the admission of additional pages from this book which sets methodology if the
14 Defence considers that that would be helpful. In my submission I don't think it's
15 necessary as such because I think it really is only the specific extracts that are of
16 relevance and of use, but we would have no objection to including additional pages.

17 PRESIDING JUDGE FREMR: Again, Mr Gosnell.

18 MR GOSNELL: Well, I'm sorry to have to just make one or two further submissions
19 on this.

20 The report that was not authored by Dr Yuille was not objected to by the Defence, so
21 that's important for your Honours to be aware of.

22 The second thing is not so much that the methodology is vital or essential to be
23 admitted, it's that this is a slippery slope. If, in fact, you start admitting small
24 portions, then indeed there is a need to, in fact, admit wider and wider sections to
25 make sure that you have the full context and then all of a sudden your Honours have

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1 a long document admitted for the truth of its content on the record, and I would
2 suggest that's not appropriate in light of the fact that the witness has already
3 indicated her understanding of the document.

4 PRESIDING JUDGE FREMR: Give us a moment.

5 (Trial Chamber confers)

6 PRESIDING JUDGE FREMR: So again, I have to disappoint you, Ms Luping. The
7 Chamber will remain consistent and we don't see any difference compared to
8 previous two requests, so the request is rejected.

9 MS LUPING: Mr President, your Honours, I would just like to refer to another
10 document now. It's at tab 8. I'm going to only briefly refer to this and it has -- it
11 bears DRC-OTP-2093-0297.

12 Q. Now, Ms Lewis, you mentioned in your three reports and you state in relation
13 to the witness's fear in reporting their rapes that, and I quote:

14 "Research indicates that many rape victims delay reporting to law enforcement
15 agencies through shame, fear of disbelief and fear of consequences." End of quote.

16 You then note that, quote: "This was recognized by the United Kingdom Court of
17 Appeal in R and D (2008) EWCA Crim 2557 when it held that judges are entitled to
18 comment to a jury that a delay in a rape complaint" and a quote within your quote
19 "'may be because the trauma of rape can cause feelings of shame and guilt which
20 might inhibit a woman from making a complaint'" end of quote "and to direct juries"
21 quote "'a late complaint does not necessarily mean that it is a false complaint.'"

22 For the record, I would just simply like to refer to the three reports. It was at page
23 0062 of the report at 0058; page 0073 of the report at 0069; and pages 0083 to 0084 of
24 report 0080.

25 Now this -- this judgment, do you -- do you recognize this document, the judgment?

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1 A. Yes, I do.

2 Q. And is this the judgment to which you cite in the three reports?

3 A. Yes, it is.

4 MS LUPING: Mr President, your Honours, I'm not intending to ask any questions

5 about this judgment. I would just simply ask that -- really this is not a contentious

6 document. It's a judgment from the United Kingdom. It would simply serve

7 to -- I think really in the interests of time, to avoid having to ask me to ask questions

8 of the witness in relation to passages from the judgment, that this simply be admitted.

9 PRESIDING JUDGE FREMR: And could you absolutely briefly describe the

10 relevance.

11 MS LUPING: Certainly, Mr President, your Honours. The witness has already -- in

12 her reports she has quoted the passages from the judgment where it was indicated

13 that, for example, judges are entitled to comment to juries that it is -- that a delay in a

14 rape complaint may simply be because the trauma of rape can cause feelings of shame

15 and guilt and that may be why the person is not reporting it immediately and that a

16 late complaint does not necessarily mean that it's a false complaint. I mean, that's

17 the relevance, your Honours.

18 PRESIDING JUDGE FREMR: Mr Gosnell.

19 MR GOSNELL: We object to the admission of this document. The objection is on a

20 different ground than before. This is a case law. It's a judicial precedent. We

21 think the Prosecution can refer to this in its arguments if it wishes to, but if we start

22 admitting national case law, then there will be very large Bar table motion at the end

23 of the case and I don't think your Honours want that.

24 PRESIDING JUDGE FREMR: Ms Luping, any additional comment?

25 MS LUPING: Simply to say that the only reason why that this is again being sought

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1 to be admitted is because the witness herself has referred to it and it's just simply for
2 the sake of consistency.

3 I would observe that the Prosecution did object to various judgments that the Defence
4 sought to admit when Dr Yuille testified, passages, in one case one whole judgment
5 was admitted and in another instance it was passages of judgments was admitted.

6 This is a short document. I know that the Chamber did not agree to a 96-page
7 judgment being admitted. Again, it was because he had reference to it. He did
8 not -- he was not a witness in all of the judgments, all of the cases that were admitted
9 in that instance.

10 So for the sake of consistency, your Honours, I would ask that the same position be
11 taken as was taken for the prior expert witness.

12 PRESIDING JUDGE FREMR: I think we don't need any further submissions. Give
13 us a moment.

14 (Trial Chamber confers)

15 PRESIDING JUDGE FREMR: So again, this request is rejected. Absolutely briefly,
16 the fact you would like to tender this document in our view are already clear from the
17 other documents and also from your current examination, so we don't see any
18 relevance in admission of this document.

19 Ms Luping, please proceed.

20 MS LUPING: Understood, Mr President, your Honours.

21 Q. I'm moving to a different topic, and now I'm turning to the four reports in
22 question.

23 And looking at the -- first looking at the section on methodology, I'd ask you to turn
24 to the first report. This is at tab 2, ERN DRC-OTP-2059-0049. It's at page 0051 and
25 it's under the heading "Methodology".

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1 Just a reminder to the court officer and court usher, this is a confidential document
2 that cannot be displayed to the public.

3 Now under the heading "Methodology" we have "(a) Review of witness statements"
4 and then "(b) A semi-structured assessment interview of two hours duration
5 incorporating the Diagnostic and Statistical Manual - 5," that's DSM-5 "diagnostic
6 criteria for PTSD."

7 Now my first question is that other than witness statements, do you recall also being
8 given other documents to review?

9 A. No. The Prosecution sent me statements that had been made by each of the
10 witnesses concerned, statements that had been made in 2005 and then supplementary
11 statements that had been made in 2013.

12 Q. But in addition to that, do you recall being provided, for example, with
13 summaries of psychosocial prior assessments that had been conducted for each of
14 these witnesses?

15 A. I'm really very sorry. I don't recall -- yes -- no, I don't actually recall that
16 that -- that I received them. I'm sorry.

17 Q. Well, perhaps just to refresh your memory, Ms Lewis, when we met for witness
18 preparation you were provided with a binder, and in addition to witness statements
19 in the binder was what had been previously sent to you, including photographs,
20 including -- of injuries, including a summary of the -- a prior psychosocial
21 assessments that had been conducted with each of these witnesses. Does that refresh
22 your memory?

23 A. Yes, I did see those in the -- in the binder, but I'm sorry, you know, this
24 happened three years ago, so I just don't recollect reading them in Dublin or reading
25 the contents of them in Dublin. I'm sorry. Of course I recollect seeing the

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1 photographs that had been sent as well and the medical reports, yes.

2 Q. All right. Now, you've referred to a semi-structured assessment interview of
3 two hours duration was conducted. Could you explain what that -- what a
4 semi-structured assessment interview involves?

5 A. Yes. The American Psychiatric Association produced a Diagnostic and
6 Statistical Manual to make diagnosis of various mental health disorders. That
7 includes the diagnostic criteria for post-traumatic stress disorder. The current
8 version of the Diagnostic and Statistical Manual, DSM, is DSM-5, which was
9 published in 2013.

10 A semi-structured assessment interview is an interview where I met with the
11 witnesses for a period of two hours. During that time I had a questionnaire which
12 covered the PTSD symptom checklist, but the interview was semi-structured in the
13 sense that many of the questions were open rather than yes, no in the sense of the
14 witnesses were invited to tell me their story, what had happened to them and they
15 were also given time to elaborate on some of the symptoms that they were describing
16 to me.

17 Q. And remaining with this first report and turning now to page 0050, which also
18 again should not be broadcast publicly, and it indicates what the scope of the
19 assessment was that you were asked to do and that you were asked to assess if the
20 individuals appeared to have suffered any psychological harm or psychological
21 consequences and if so -- and to the extent possible, the date of the onset of that
22 psychological harm or consequences.

23 And moreover, to assess whether any psychological harm or consequences suffered
24 are consistent or not with the accounts of harm or consequences provided by the
25 witness in his witness statement from incidents he alleged were perpetrated against

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1 him in Ituri in February 2003.

2 Now this is a similar instruction that is repeated in all four reports, so I'm just going
3 to ask you, really it's a generic question relating to all four Prosecution witnesses that
4 you assessed on this basis. You were asked to therefore assess the psychological
5 harm or consequences. Is it therefore correct to state that the primary focus for the
6 assessment was that alleged psychological harm or consequence?

7 A. Yes. That was the primary focus of the -- of the interviews, but based on the
8 witness statements, based on the account given to me by the witnesses, I was also
9 assessing if the psychological harm they were describing was actually consistent with
10 or were the type of symptoms one might expect to arise after the type of events they
11 were describing to me.

12 Q. For each of these witnesses you spent approximately two hours assessing each
13 of them. For how long of that two-hour period would have been spent really
14 focussing on the psychological harm and consequences, asking them information
15 relating to that harm and the consequence?

16 A. The majority of the time would have been spent exploring the psychological
17 consequences. Having read the very detailed reports and very conscious of not
18 wishing to re-traumatise any witness in relation to their account of the events, I
19 simply asked them to describe briefly in their own words what they were alleging
20 had happened to them. And then focused mainly on the type of effects they were
21 telling me had -- they had suffered as a result of these events.

22 Q. And again, just to understand the methodology, after you spoke to them in
23 terms of the narrative description of what the incidents were about, did you ever read
24 back these accounts to them or not?

25 A. You mean when I met them?

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1 Q. Indeed. In terms of when you met them, you assessed them and did you read
2 back your notes to them about what they were describing to you about the incidents
3 as alleged?

4 A. No. I certainly didn't read the reports that I had read, the original reports,
5 neither did I read back to them the accounts they had given me on the day.

6 Q. All right. Now I'm going to move -- if there's time. Yes, I have five minutes.
7 I'm going to start with this report that you have currently before you.

8 A. Mm-hmm.

9 Q. (Redacted)
10 (Redacted)
11 (Redacted)

12 A. (Redacted)

13 Q (Redacted)
14 (Redacted)

15 A. (Redacted)

16 Q. (Redacted)
17 (Redacted)

18 MS LUPING: (Redacted).

19 PRESIDING JUDGE FREMR: Yes.

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

21 (Private session at 1.24 p.m.)

22 THE COURT OFFICER: We're in private session, your Honour.

23 PRESIDING JUDGE FREMR: (Redacted)

24 (Redacted)

25 (Redacted)

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1 Q. (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 A. (Redacted)

7 (Redacted)

8 (Redacted)

9 Q. (Redacted)

10 MS LUPING: (Redacted)

11 (Redacted)

12 (Redacted)

13 PRESIDING JUDGE FREMR: (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Open session at 1.31 p.m.)

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

19 PRESIDING JUDGE FREMR: Thank you, court officer.

20 So if my information is correct, the Prosecution still have at its disposal 18 minutes,

21 while Defence has 3 hours, but it means that we will continue tomorrow but we can

22 afford to continue in normal regime. So unless there will be some dramatic change

23 of circumstances, so we will start tomorrow 9.30.

24 Sorry, I see some question marks in your faces.

25 MS LUPING: Yes, Mr President, your Honours. I just wanted to observe that – or

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1 note, rather, that whilst, you know, we were encouraged to complete the examination
2 in two hours, and I've certainly been endeavouring to do so, I wanted to indicate now
3 that it might be that the Prosecution will be requesting approximately 15 additional
4 minutes, simply 15 more minutes.

5 PRESIDING JUDGE FREMR: So let's make it this way. You have 18 plus 15, you
6 have 30 minutes at your disposal.

7 And, Mr Gosnell, you also would like to -- no, no. Okay.

8 So again, still should allow us to sit in normal five-hour, five-hour system as we used
9 to do.

10 So tomorrow 9.30.

11 THE COURT USHER: All rise.

12 (The hearing ends in open session at 1.33 p.m.)

13 RECLASSIFICATION REPORT

14 Pursuant to the Trial Chamber VI's Order, ICC-01/04-02/06-1887, dated 4 May 2017,
15 the public reclassified and lesser redacted version of this transcript is filed in the case.