

1 International Criminal Court
2 Trial Chamber VI
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and Judge Chang-ho Chung
6 Trial Hearing - Courtroom 2
7 Thursday, 8 September 2016
8 (The hearing starts in open session at 9.33 a.m.)
9 THE COURT USHER: [9:33:27] All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: [9:33:45] Good morning, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: [9:34:04] Good morning. The Court is sitting in the case
15 of the Prosecutor versus Bosco Ntaganda.
16 PRESIDING JUDGE FREMR: [9:34:11] Thank you.
17 Now appearances, please, starting with Prosecution.
18 MS LUPING: [9:34:15] Good morning, Mr President. Good morning, your
19 Honours. Appearing on behalf of the Prosecution this morning are Ms Selam Yirgou,
20 case manager; Ms Judith Boekstal, intern; Kristy Sim, assistant trial lawyer; Ms Nicole
21 Samson, senior trial lawyer; and myself, Dianne Luping, trial lawyer.
22 PRESIDING JUDGE FREMR: [9:34:35] Thank you, Ms Luping. Defence, please.
23 MR BOURGON: [9:34:38] (Interpretation) Good morning, your Honour. Good
24 morning, your Honours, as well as everybody else present in the courtroom. Present
25 in the courtroom this morning: Maria-Kim Vasconi, Marlène Yahya Haage,

1 Christopher Gosnell, and myself, Stéphane Bourgon. Thank you, your Honour.

2 PRESIDING JUDGE FREMR: [9:34:59] Mr Bourgon, I can't see Mr Ntaganda so I
3 guess we will devote next time further time to this issue. We will finish appearances
4 and I will come back to you.

5 Now Legal Representatives of Victims, please.

6 MS PELLET: [9:35:16] (Interpretation) Thank you, your Honour. The former
7 child soldiers are represented by Mohamed Abdou and by myself, Sarah Pellet,
8 counsel with the Office of Public Counsel for Victims.

9 MR SUPRUN: [9:35:29] (Interpretation) Good morning, your Honour, your
10 Honours. Victims of the attacks are represented by the Office of Public Counsel for
11 Victims, Marine Corhay, intern; Anne Grabowski, associate lawyer; and myself,
12 Dmytro Suprun, counsel.

13 PRESIDING JUDGE FREMR: [9:35:46] Thank you, Ms Pellet. Thank you,
14 Mr Suprun.

15 Now, Mr Bourgon, could you kindly inform the Chamber about the reasons of the
16 absence of your client.

17 MR BOURGON: [9:36:00] Thank you, Mr President. As mentioned in the
18 electronic mail forwarded or addressed to the Trial Chamber this morning at 08.49,
19 this morning I received a phone call from Mr Ntaganda from the detention centre,
20 during which he informed me that he would not be attending the court session this
21 morning.

22 It was not possible for me to address the matter at length with him. What I can say
23 for the moment, without violating my code of professional conduct, is that
24 Mr Ntaganda's absence is related to a decision rendered by the Trial Chamber
25 yesterday, namely, decision 1494-Red3 dated 7 September 2016. This is the public

1 redacted version of the decision reviewing the restrictions placed on Mr Ntaganda's
2 contact.

3 Mr President, I'm not in a position to reveal the contents of my conversation with
4 Mr Ntaganda. It was a short conversation. However, what I can say for the
5 moment is that I do not have the mandate to represent Mr Ntaganda in his absence.
6 Accordingly, I ask the Trial Chamber for an adjournment, at least until tomorrow, for
7 the purpose of meeting with Mr Ntaganda at the detention centre, clarifying the
8 matter with him and getting further instructions. This is -- that's what I can say this
9 morning. Thank you, Mr President.

10 PRESIDING JUDGE FREMR: [9:37:56] Mr Bourgon, my preliminary reaction, first
11 of all, I don't understand why your conversation with so short and why you didn't try
12 to get all the information, especially information which is relevant from the view of
13 the ICC legal framework. I mean, I have in my mind conditions, possible conditions,
14 of proceedings without the accused because there are some conditions which might
15 be or might not be met.

16 And the second issue which is also not clear to me, why you should take a whole day
17 to make this issue clear.

18 MR BOURGON: [9:38:49] Thank you very much for your question, Mr President.

19 As I've mentioned a few moments ago, I am not in a position to reveal the contents of
20 my conversation with Mr Ntaganda. And although I use the term "short," we can
21 surely check the records of the detention centre to see how long the conversation was
22 and what I did try or not try to do during this conversation, Mr President.

23 I can assure you that as a professional counsel knowing what my code of professional
24 conduct tells me to do in a situation like this, I can tell you that I have fulfilled my
25 obligations as a professional counsel during the contents of this conversation.

1 And as much as I would like to say more, I'm not in a position to do so because those
2 are my instructions, Mr President. All I can say is that the matter is complicated.

3 PRESIDING JUDGE FREMR: [9:40:04] I believe you. And you also said that
4 Mr Ntaganda doesn't want to come this morning. So is there any perspective where
5 this situation could change? Or it's not clear at the moment?

6 MR BOURGON: [9:40:22] Again, Mr President, I'm not in a position to answer this
7 question. What I can say is that certainly time is required to address the matter and
8 then I certainly hope to get instructions to report back to the Chamber.

9 PRESIDING JUDGE FREMR: [9:40:39] But if we want to make some progress, the
10 first important issue is to know what is behind, what are the reasons, what
11 Mr Ntaganda would like to get, something like that. Otherwise, if this is not clear,
12 we can just wait until Mr Ntaganda makes it clear. You believe that if you -- because
13 I would expect that you will meet him as soon as possible and even to explain to him
14 what are the legal alternatives.

15 MR BOURGON: [9:41:17] Mr President, again without revealing the contents of
16 the conversation, I've already entered into these areas because it's my duty to do so.
17 I figure that if I can meet with Mr Ntaganda and further clarify the matter with
18 him -- the only thing I can say for now that I'm authorised to say is that it is related to
19 the Trial Chamber's decision rendered yesterday and it -- there is no, there is no -- it is
20 a public decision as to the fact that the restrictions imposed on Mr Ntaganda have
21 been maintained by the Trial Chamber and so the topic, I can say. More than that, I
22 need to get specific instructions from him.

23 PRESIDING JUDGE FREMR: [9:42:04] So at least we can at the moment conclude
24 that at least what we know, that the main reason is dissatisfaction of Mr Ntaganda
25 with our decision; am I right?

1 MR BOURGON: [9:42:17] I cannot use the word "dissatisfaction," Mr President.

2 All I can say, that it's related to the decision, or else going further than this would

3 not be appropriate for me as counsel assigned by the Court to represent

4 Mr Ntaganda.

5 PRESIDING JUDGE FREMR: [9:42:32] So we can at least exclude some medical

6 reasons?

7 MR BOURGON: [9:42:36] I have no information of any medical condition, physical

8 medical condition.

9 PRESIDING JUDGE FREMR: [9:42:43] All right.

10 Now, Ms Luping, what is Prosecution's position?

11 MS LUPING: [9:42:49] Thank you, Mr President, your Honours. Well, we

12 certainly are surprised by the position being taken by the accused and by the Defence

13 in relation to this matter. We are obviously all familiar with the provisions relating

14 to the presence of the accused.

15 Article 63(2) of the Statute makes it clear that the presence of the accused is required,

16 is expected, and it really should only be in exceptional circumstances and in a

17 case-by-case matter and certainly only for strictly for so long as necessary that the

18 accused should be absent from any such proceedings.

19 We also have appellant jurisprudence that makes it very clear too as to the way any

20 decision should be made in terms of the absence or otherwise of the accused person.

21 I refer your Honours to ICC-01/09-01/11-1066 at paragraph 62 of the Appeals

22 Chamber, where the Appeals Chamber also emphasised the exceptional

23 circumstances by which any accused person should say they should not be present

24 during the proceedings.

25 What we cannot understand too is why it was not possible for the accused to make it

1 clear to his counsel as to whether or not he is able to represent him in his absence.

2 The nature of the testimony that we're about to hear from an expert witness does not
3 necessarily -- requires necessarily the presence of the accused but certainly, from the
4 reasons at least indicated so far, there does not appear to the Prosecution to be any
5 reasonable reasons whatsoever provided for his failure to appear this morning.

6 Certainly any apparent dissatisfaction or otherwise with the decision rendered by this
7 Chamber in relation to conditions or restrictions of his contacts from the detention
8 centre is not a reasonable basis and does not constitute exceptional circumstances for
9 his failure basically to turn up.

10 And what we would not want, your Honours, is for a pattern to develop where the
11 accused is essentially holding this Chamber hostage simply as a result of a decision
12 that is not to his liking.

13 So on that basis, your Honours, the Prosecution would oppose the request for any
14 adjournment. We consider there should have been ample time to clarify the matters
15 with the accused and the accused should be able to appear as required and he should,
16 at the very least, be able to indicate the ability for his team, his lawyers, to represent
17 him currently in relation to the expert testimony of the next witness, Witness 937.

18 Thank you, your Honours.

19 PRESIDING JUDGE FREMR: [9:45:38] Thank you, Ms Luping. Before we leave to
20 deliberate, a last question to Mr Bourgon: Mr Bourgon, I am sure that you are very
21 well aware of the conditions stipulated by Statute and our Rules that in some cases
22 allow the absence of the accused if he asked the Chamber to be excused. Did you
23 have any conversation on that part of the law about conditions that would allow
24 Mr Ntaganda to be absent?

25 MR BOURGON: [9:46:21] Again, Mr President, I am not in a position to reveal the

1 contents of the conversation. What I can say is I did fulfil my duties towards my
2 client.

3 Mr President, I believe it is important that we are fully aware of - I'm speaking from a
4 legal perspective here - of Article 63 of the Statute, which says that the accused shall
5 be present. We also are fully aware that it is a right of Mr Ntaganda to be present at
6 his trial and that there are -- there are circumstances in which an accused can be
7 absent from the courtroom and yet be represented by counsel.

8 But in this case, contrary to what my colleague says this morning, my instructions is I
9 do not have the mandate to represent Mr Ntaganda in his absence. If the trial is to
10 continue, it will have to be pursuant to an order of the Chamber ordering me to, and
11 the team, to remain in the courtroom over and above the instructions I have received
12 from Mr Ntaganda. Thank you, Mr President.

13 PRESIDING JUDGE FREMR: [9:47:33] All right. Then the last remark for my part,
14 I fully respect that we can't ask you to reveal, because of your professional code of
15 conduct, all details of your conversation, but we can ask you to make inquiry and to
16 get information about facts that will allow us to make some decisions, so that is why
17 I'm asking you about some facts that have an impact on legal conditions that would
18 allow us to decide in any way whether we will excuse Mr Ntaganda, whether we will
19 adjourn or whether we will force him to be present.

20 So I think that this part of your conversation which should give us a clear picture
21 about the facts that are relevant for our decision should be revealed. But I
22 understood that you made it because you said everything which is relevant for the
23 moment for our decision; am I right?

24 MR BOURGON: [9:48:33] It is my respectful submission, Mr President, that I did.
25 The -- what I can add, certainly simply the fact that the -- it is when we look at the

1 decision rendered yesterday, the impact of that decision on Mr Ntaganda, both in
2 terms of himself, in terms of his -- his well-being, but also in terms of what is -- what
3 can be expected in the future from this trial, both issues are readily apparent from the
4 decision. And without saying that this is -- comes from him, I think that the Trial
5 Chamber should respectfully take this into consideration when making a decision on
6 my request for an adjournment this morning.

7 PRESIDING JUDGE FREMR: [9:49:33] And one additional question, and why
8 Mr Ntaganda didn't want to inform the Chamber in person? Because he didn't come.
9 In my view, he could easily express all his views and emotions directly to us. So
10 why he didn't do that?

11 MR BOURGON: [9:49:58] It's not something that I can reveal at this time,
12 Mr President. We can speculate many reasons why he would not do so. However,
13 Mr Ntaganda is, regardless of what assessment might be -- might exist of him, he is
14 very respectful of the court procedure and he always addresses the Court through his
15 counsel, and in this time this is what he is doing.

16 PRESIDING JUDGE FREMR: [9:50:35] All right. Before you leave, Ms Luping,
17 any additional submission?

18 MS LUPING: [9:50:39] Simply to reiterate to your Honours that we do not consider
19 that any reasonable grounds have been provided. We do not consider that a
20 dissatisfaction with the Chamber's decision constitutes exceptional circumstances,
21 and we would simply remind your Honours too of your option indeed of requiring
22 the accused to appear, as no reasonable basis has provided.

23 It is not simply an issue of a right that the accused has to appear and to be present at
24 his trial, it is a requirement in relation to the proceedings itself and the validity of the
25 proceedings itself that the accused be present.

1 And as Defence counsel has indicated himself, whilst the accused may have shown
2 respect for the procedures of this Chamber previously, this does not constitute
3 appropriate behaviour, and we would submit, your Honours, that it would be an
4 appropriate course of action for this Chamber to take. Thank you.

5 PRESIDING JUDGE FREMR: [9:51:37] All right. So we will now deliberate and I
6 guess we will need at least 30 minutes. So now it's 10 to 10, so for the moment
7 I believe we will be able to resume at 10.20.

8 THE COURT USHER: [9:51:56] All rise.

9 (Recess taken at 9.52 a.m.)

10 (Upon resuming in open session at 10.56 a.m.)

11 THE COURT USHER: [10:56:41] All rise.

12 Please be seated.

13 PRESIDING JUDGE FREMR: [10:57:02] It is apparent from the time we needed for
14 our deliberation we really deliberated thoroughly the issue before us and we are
15 making the following decision:

16 The Chamber notes that Article 63(1) and 67(1)(d) guaranteed the right of an accused
17 to be present at trial.

18 Where an accused voluntarily waives the right to be present, the Chamber may on a
19 case-by-case basis excuse the accused from presence having assured itself of certain
20 safeguards. The Chamber must also have regard to possible alternative measures
21 and other relevant factors such as the subject matter of the hearing in question.

22 Article 63(2) similarly provides for the continuation of proceedings in the absence of
23 an accused under certain circumstances.

24 In both scenarios the Chamber must be satisfied that the accused's rights are fully
25 ensured in his absence, in particular through representation of counsel.

1 The Chamber has noted the submissions from the Defence this morning, in particular
2 that Mr Ntaganda's refusal to appear in the courtroom is related to a decision
3 rendered by the Chamber yesterday and that Mr Ntaganda has not given Defence
4 counsel a mandate to represent him in his absence.

5 Noting that alternative possibilities should be considered prior to continuing
6 proceedings in the absence of an accused, the Chamber considers a short adjournment
7 appropriate. However, having considered all relevant circumstances, including the
8 factors mentioned above, the Chamber indicates that it intends to continue the
9 proceedings this afternoon, if necessary in Mr Ntaganda's absence.

10 The Chamber reiterates that in the absence of an excusal having been granted by the
11 Chamber, the accused is under an obligation to be present. Should it be necessary,
12 that is if Mr Ntaganda continues to refuse to provide Defence counsel with a
13 representational mandate, the Chamber intends to order Defence counsel to represent
14 Mr Ntaganda's interests during that hearing.

15 The Chamber directs Defence counsel to immediately convey this decision to the
16 accused and Defence counsel should confirm to the Chamber by way of email by
17 2 o'clock that he has conveyed these directions to the accused and also to confirm
18 whether or not Mr Ntaganda will be present for the afternoon session at 2.30.

19 It concludes our decision.

20 Any requests for the floor?

21 Let's start with Prosecution and I will give you floor then, Mr Bourgon.

22 MS LUPING: [11:00:57] Thank you. Mr President, your Honours, the Prosecution
23 has obviously noted this decision. Our only further submissions would just be to
24 refer your Honours to consider, in addition to the decision that you have now
25 rendered, the possibilities under Article 71 and Rules 170 and 171 to remind -- or to

1 warn the accused of the possibility of sanctions if he refuses to comply with the orders
2 of this Chamber. If he continues to refuse to appear, notwithstanding the absence of
3 an excusal from this Chamber in terms of his obligation to appear before it, this
4 would be an appropriate course of action in our submission.

5 And we would -- you're obviously very familiar with the jurisprudence in Ruto and
6 Sang and we would also remind you of the Appeals Chamber decision in Prosecutor
7 and Lubanga, that's decision 2582, paragraph 59, where the Chamber reiterated the
8 appropriateness under Article 71 to be used to ensure compliance with the orders of
9 the Chamber, not simply as a form of punishment but ensuring compliance, and that
10 a reminder that under -- and I quote, "... sanctions under Article 71 and Rule 171 are
11 the normal and proper means to bring about compliance in the face of refusals to
12 follow the orders of a Chamber."

13 And that in this instance we do consider it appropriate, your Honours, if a strong
14 message indeed is provided to the accused that this will not be seen as acceptable
15 conduct on the part of accused and that sanctions indeed could be appropriate and
16 may be warranted.

17 Fines have been used where accused persons have refused to comply in previous
18 cases. And Article 71 and Rule 171(4) makes it clear that fines can actually be
19 imposed on a daily basis and can be cumulative.

20 So that was the only further submissions that we wish to make, your Honours, at this
21 point was a suggestion that the Chamber could in addition give this warning already
22 to the accused even before the message is relayed by Defence counsel to his client.

23 Thank you.

24 PRESIDING JUDGE FREMR: [11:03:15] Thank you, Ms Luping.

25 Mr Bourgon.

1 MR BOURGON: [11:03:18] Thank you, Mr President. I will not address the
2 submissions of my colleague, which are in our respectful submission both untimely or
3 premature.

4 I will only say that we have secured an appointment to meet with Mr Ntaganda and I
5 will immediately convey and follow and abide with the Chamber's instructions.
6 Thank you, Mr President.

7 PRESIDING JUDGE FREMR: [11:03:44] Very well, Mr Bourgon, but at least you
8 can add to the message containing our decision also the fact that Prosecution made
9 submissions now made by Ms Luping because it's also something that could occur.
10 So I think it would be fair also to inform Mr Ntaganda about that.

11 So now we will break. We will wait for Mr Bourgon's message until 2 o'clock and
12 otherwise anyway we will continue and we will resume at 2.30 with conducting
13 testimony of our next witness.

14 THE COURT USHER: [11:04:36] All rise.

15 (Recess taken at 11.04 a.m.)

16 (Upon resuming in open session at 2.34 p.m.)

17 THE COURT USHER: [14:34:25] All rise.

18 Please be seated.

19 PRESIDING JUDGE FREMR: [14:34:47] Good afternoon, everybody.

20 We adjourned our tomorrow hearing -- sorry, our morning hearing because of the
21 absence of the accused and we ordered lead counsel of Defence, Mr Bourgon, to meet
22 with the accused and inform him about the preliminary position of the Chamber
23 about the legal consequences of his previous absence. And Mr Bourgon was ordered
24 to inform the Chamber about recent events and the accused's position.

25 So, Mr Bourgon, you have the floor.

1 MR BOURGON: [14:35:54] Thank you, Mr President. I'd like to begin by
2 updating the record concerning the composition of the Defence team members in the
3 courtroom this afternoon. Ms Margaux Portier has joined us on the Defence side.
4 Mr President, as mentioned in electronic correspondence addressed to the Trial
5 Chamber a short while ago, Mr Gosnell and I met with Mr Ntaganda at the ICC
6 detention centre this morning until shortly after 1 o'clock. As directed to do so, we
7 conveyed the decision. Of course, we went beyond the decision in terms of
8 explaining the situation to Mr Ntaganda, in accordance with our Code of Professional
9 Conduct.

10 PRESIDING JUDGE FREMR: [14:36:58] But Mr Bourgon, just --

11 MR BOURGON: [14:37:01] I'll go straight to the point.

12 PRESIDING JUDGE FREMR: [14:37:06] No, no, but whether it's possible to remain
13 in open session. Do you prefer to --

14 MR BOURGON: No, I can remain in --

15 PRESIDING JUDGE FREMR: I don't see a --

16 MR BOURGON: [14:37:11] I can remain in public session.

17 PRESIDING JUDGE FREMR: [14:37:13] Fine, so let's continue.

18 MR BOURGON: [14:37:15] Thank you, Mr President.

19 Further to our meeting, Mr Ntaganda has authorised me to say the following: The
20 decision issued by the Trial Chamber on 7 September 2016 was communicated to
21 Mr Ntaganda shortly after it was transmitted to the Defence in the afternoon of
22 7 September.

23 In the evening of 7 September Mr Ntaganda was further briefed on the contents of the
24 decision, albeit over the telephone, and that is last night.

25 As a result of the decision, Mr Ntaganda has stopped eating since yesterday afternoon

1 and Mr Ntaganda does not intend to resume eating normally in the near future.
2 Mr Ntaganda was visited by the doctor this morning and he was informed of the
3 consequences of what -- the position he was taking. He also refused to take his
4 medication which was prescribed to him, and he has also returned the telephone
5 which is close to his cell by which he normally communicates, so that now people
6 have to go and seek him if they want to get him on the phone. That includes myself.
7 The position of Mr Ntaganda at this time is that he is not in either a psychological or a
8 physical condition, or due to his psychological and physical condition at the present
9 time, he is not able to attend the proceedings. Consequently, he maintains his
10 position not to be present in the courtroom and he also maintains his position not to
11 authorise myself or any member of the Defence team to represent him in his absence.
12 I have discussed with Mr Ntaganda the Trial Chamber's suggestion that it might be a
13 good idea for him to address the Trial Chamber and to convey himself how he feels
14 and why his physical and psychological condition is such. Mr Ntaganda intends to
15 do so when -- at the beginning of next week, when the trial resumes on Tuesday
16 morning.
17 I have no other request or no other information to convey to the Chamber, other than
18 I will be meeting with the Registry this afternoon, hoping to have a psychologist meet
19 with Mr Ntaganda at the earliest possibility, hopefully, a psychologist who comes
20 from Africa.
21 I also note that -- no, I think that that's really what I intend to do in the near future, to
22 try and -- to try and protect the physical and psychological well-being of
23 Mr Ntaganda. If the Chamber has any questions, I'll be glad to answer as best as
24 I can, Mr President.

25 PRESIDING JUDGE FREMR: [14:41:17] Yes. Even it seems to be apparent but I

1 have one question: So what is the aim which is Mr Ntaganda following by this
2 behaviour? Would he like to make any condition for his return to the courtroom to
3 the Chamber, or what?

4 MR BOURGON: [14:41:42] For what I can say at this stage and, of course, I will be
5 meeting him regularly over the next few days, the only word that has been mentioned
6 by Mr Ntaganda that I feel I can reveal is the word "hope," and he has lost any hope
7 and now hope attached specifically to his situation before the Court, but mainly as a
8 result of that decision and it's not a matter of condition, it's a matter of regaining hope
9 in his own situation. So it's not -- it's not -- it's not an issue of "I want this or else I
10 come back." That's not the issue. The issue is you have a man who is in a very bad
11 psychological situation, and I think he needs to be seen by a psychologist and that's
12 what I will ask the Registry to do.

13 PRESIDING JUDGE FREMR: [14:43:04] It is my last question: So what is your
14 submission, what is your proposal how to proceed?

15 MR BOURGON: [14:43:11] Mr President, the issue was the Trial Chamber made it
16 clear this morning that you intend to proceed this afternoon and that, if need be, that
17 you were prepared to order the Defence to continue. We expect that if you do order
18 the Defence to continue, the Defence will continue. If you do not, we would suggest
19 to adjourn until Tuesday morning.

20 PRESIDING JUDGE FREMR: [14:43:40] All right. Thank you, Mr Bourgon.

21 Ms Luping, position of the Prosecution is what?

22 MS LUPING: [14:43:46] Thank you, Mr President your Honours. Just simply for
23 the record, I first would just like to note for the record that Ms Judith Boekstal is also
24 not with the Prosecution this afternoon.

25 The Prosecution's position is simple, your Honours. You have issued your decision

1 already, which is that we can proceed, and the Prosecution would oppose a request
2 for an adjournment.

3 We have heard the submissions now from my learned colleague as to the reasons why
4 the accused has indicated that he is not able to attend the session and to appear in
5 person. There is now some indication being provided which was not given this
6 morning that perhaps there may be medical reasons. We would require, obviously,
7 before being able to make any further submissions on that specific point, to see an
8 independent medical report as to that the accused's state of health. But, regardless,
9 your Honours, at the moment what we have is an indication too that the focus or the
10 basis, the trigger, for this reaction is an unhappiness with a decision that your
11 Honours issued in relation to the contacts from the detention centre. It arises from a
12 disagreement with the Court's order, the Court's decision.

13 We would just simply reiterate that and support the Chamber's decision that it has
14 already made that we can proceed. There's clearly jurisprudence in support of that
15 decision, including from the International Criminal Tribunal for Rwanda, for example,
16 Nahimana, and also with the Special Court of Sierra Leone with relation to the
17 accused person, I believe it's Gbao, G-B-A-O.

18 In this situation where an individual, the accused, has, as the Chamber has already
19 given him, has been given a warning that a failure to appear before the Chamber will
20 not be accepted, that he is still expected to appear, a subsequent refusal to appear
21 notwithstanding the clear instructions from the Chamber can be seen as a waiver, a
22 waiver of the, if you like, right to appear. He has counsel who is appearing for him,
23 competent counsel, who can continue to represent his interests.

24 So, in our submission, your Honours, we could continue to proceed this afternoon.

25 We can hear the following witness, and we can do so on the basis of your prior

1 decision and the jurisprudence already before the -- before the other international
2 tribunals.

3 As to the accused's continued position, if he continues to refuse to appear before this
4 Chamber, in our submission, your Honours, there are various options before you.

5 As indicated previously, there is clearly the option under Article 71, Rules 170 and
6 171, to sanction him for a failure to continually refuse to abide by your Court order.

7 Secondly, your Honours, we would ask that you consider another possibility, which
8 is the fact that you obviously, as the Chamber, have the power to compel the accused
9 to appear. He's not, in our submission, like say an ordinary witness. He's not a

10 witness appearing before this Chamber. He is the accused person. And in our

11 submission, as I stated before the break, Article 63(1) does not simply emphasise the

12 right of an accused person to appear before the Chamber, but in fact the obligation for
13 the accused person to appear. And in our submission, a continuous refusal to

14 appear before this Chamber would constitute, in essence, a form of misconduct and
15 also a violation of the terms of the arrest warrant.

16 He is still here before the Chamber pursuant to the terms of the arrest warrant. It

17 really is no different also to any other national system, in the sense that if you have an

18 accused person who is subject to an arrest warrant, it's not like, say, the case of The

19 Prosecutor and Ruto and Sang, where the individuals were subject to summons.

20 Here you have an individual subject to an arrest warrant. If you have an individual,

21 an accused, who refuses to appear, then the terms of the arrest warrant can simply be

22 complied with. He can, by use of reasonable and proportionate force, be required to

23 appear before this Chamber.

24 So that, in sum, it really is our submissions, your Honours. We consider no

25 adjournment should be allowed for. We should proceed. We have had no clear

1 indication of really any medical or exceptional reasons that would warrant any such
2 postponement, and certainly we would require any evidence of any such medical
3 condition before agreeing to any kind of postponement or adjournment on that basis,
4 and we believe that the Chamber should proceed as it initially indicated. Thank you,
5 your Honours.

6 PRESIDING JUDGE FREMR: [14:49:14] Thank you, Ms Luping.
7 Mr Bourgon.

8 MR BOURGON: [14:49:17] If I may respond to my colleague's submission very
9 briefly.

10 PRESIDING JUDGE FREMR: [14:49:22] Sorry, there is also Ms Pellet. Ms Pellet.

11 MS PELLET: [14:49:26] (Interpretation) Thank you, Mr President.

12 Just for the record, I would like it to be stated that the former child soldiers entirely
13 agree with the remarks of the OTP. We understand all the same, as human beings,
14 what Mr Bosco Ntaganda may be feeling and even though have trouble
15 understanding them. However, it is important to bear in mind the hope of the
16 victims. They have been hoping for a long time that this process will unfold
17 expeditiously, and adjourning does not help to achieve that goal and it's not therefore
18 advisable. It will indeed further compound this problem of hope that our clients
19 have in international justice. Thank you, Mr President.

20 PRESIDING JUDGE FREMR: [14:50:33] Thank you, Ms Pellet.

21 And now Mr Bourgon.

22 MR BOURGON: [14:50:37] Thank you, Mr President. I will now respond to the
23 submissions of the Legal Representatives for Victims. I just have a few issues in
24 response to my colleague from the Prosecution.

25 First on the issue of waiver, Mr Ntaganda was handed this morning the normal

1 waiver form when at times it happens that persons accused and in trial do not attend
2 the trial, and he refused to sign this form and he made a point of showing me the
3 blank form he was given this morning. This can be verified with the detention
4 centre. So there is no waiver. Mr Ntaganda does not want us to represent him in
5 the courtroom.

6 Second issue is, contrary to what my colleague just mentioned, I was under the
7 impression that the Chamber had not yet rendered a decision about continuing the
8 proceedings this afternoon. My understanding was the Chamber is minded to do so
9 and, of course, we expect a decision one way or another, but I did not take this
10 morning as a decision to resume proceedings.

11 The third issue is the issue of sanction. I think this is premature. I think we need to
12 go further into this important issue before we even address the issue of sanctions.

13 Finally, probably the most important point is the power to compel. We acknowledge
14 the Chamber's power to compel so, if you order, I think Mr Ntaganda can be brought
15 in the courtroom. He knows that. So there's no -- this is not a surprise. I would
16 argue, however, Mr President, respectfully, that it would be -- it would not be the best
17 course of action to compel him at this time, given what has been reported.

18 The Trial Chamber can get the opinion sought by the Prosecution from the detention
19 centre and especially that Mr Ntaganda has agreed, based on our conversation with
20 Mr Gosnell and I, to provide his views to the Chamber when trial resumes next week.

21 So we are entirely in the hands of the Chamber regarding this situation. We are
22 doing our best to -- so that the interests of justice is best served. Thank you,
23 Mr President.

24 PRESIDING JUDGE FREMR: [14:53:11] Two things. First, I would like to quote
25 from our morning decision. We said the Chamber indicates that it intends to

1 continue the proceedings this afternoon, and the second issue, you mentioned that
2 Mr Ntaganda is ready to appear before the Court on Tuesday morning. Why not
3 tomorrow morning?

4 MR BOURGON: [14:53:35] We have discussed this with Mr Ntaganda, and he says
5 he simply is unable to do so, unable to do so because of his state of mind today as we
6 speak.

7 It will take -- I will see him over the weekend. I will try to convince him to come
8 back on his decision to stop eating. I don't think this is a proper course of action. I
9 will counsel my client to the best of my ability so that, again, the best interests of
10 justice are served.

11 Right now, based -- what I get from Mr Ntaganda himself is that he's not able to come.
12 As for the -- as for communicating his views on Tuesday, it is important for me to be
13 fully transparent from the get-go. It is not sure that those views would be
14 communicated personally by Mr Ntaganda on Tuesday morning. This is, of course,
15 something that is being discussed. I cannot say that I will push him in one way or
16 another. What I can say is that of course the how is presently being discussed very
17 intensely. Thank you, Mr President.

18 PRESIDING JUDGE FREMR: [14:55:03] Thank you.

19 Any further requests for the floor, Ms Luping?

20 MS LUPING: [14:55:07] Just briefly, Mr President, your Honours. Two brief
21 points. The first is that in response to my learned colleague's point in relation to the
22 waiver, the jurisprudence to which I referred relates to a waiver even if there is no
23 obviously signed document. It's simply implicit from a continuous behaviour or
24 conduct.

25 Secondly, in our submission, if -- whilst it may be appropriate to continue today

1 without the accused's presence, in our submission, he should be required and indeed
2 compelled to come tomorrow. As far as sanctions are concerned by way of fine, for
3 us that is the default. Ultimately, he should be brought here and he should be able
4 to explain to the Chamber his views in person. Thank you, your Honours.

5 PRESIDING JUDGE FREMR: [14:55:54] Thank you, Ms Luping. So now we will
6 break to allow us to deliberate on the issue. So now we break and I can't hardly
7 estimate how much time we will need.

8 THE COURT USHER: [14:56:07] All rise.

9 (Recess taken at 2.56 p.m.)

10 (Upon resuming in open session at 3.45 p.m.)

11 THE COURT USHER: [15:45:27] All rise.

12 Please be seated.

13 PRESIDING JUDGE FREMR: [15:45:44] At the beginning, just to assure myself,
14 there are no changes in composition of the teams, Prosecution?

15 MS LUPING: [15:46:03] No, Mr President, your Honours.

16 PRESIDING JUDGE FREMR: [15:46:06] No.

17 Defence? No. Okay.

18 So we will start by delivering our decision. This morning the Chamber directed
19 Defence counsel to convey its decision regarding the continuation of the proceedings
20 to Mr Ntaganda.

21 We have received by way of email confirmation that this was done and also an
22 indication that Mr Ntaganda continues to refuse to attend the hearing today.

23 The Chamber has also received an update by email from the Registry and has taken
24 note of the most recent submissions, especially of Defence counsel providing further
25 information on the situation of the accused.

1 As to the applicable law, the Chamber refers to its ruling of this morning. The
2 Chamber notes that while the voluntary absence of an accused cannot be presumed, it
3 can be inferred. The present circumstances are such that the Chamber considers that
4 Mr Ntaganda, having been informed of the continuation of the proceedings today,
5 and while having been provided the opportunity to attend, has voluntarily waived
6 his right to do so.

7 Having permitted a short adjournment for the purposes of allowing Defence counsel
8 to further consult with the accused and, as noted in the ruling of this morning, having
9 considered all relevant circumstances, including the nature of the hearing, the
10 Chamber sees no reasonable alternative other than to now proceed with the testimony
11 of the next witness in Mr Ntaganda's absence.

12 Further, in the reported absence of a mandate from the accused, the interest of justice
13 require the Chamber to order Defence counsel to represent Mr Ntaganda's interest
14 during this hearing.

15 The Chamber considers that this measure will fully ensure Mr Ntaganda's rights
16 during his absence.

17 The Chamber notes that it takes seriously the reported situation of the accused and
18 will ensure that it remains apprised of his situation and with request report from the
19 Registry -- and will request a report from the Registry.

20 As a final note, the Chamber is confident that Defence counsel will have made every
21 effort to fully explain the Chamber's recent decision on restrictions to Mr Ntaganda.

22 The Chamber would, however, like to emphasise the discreet nature of that decision
23 and notes that it has no bearing all this time on the Chamber's consideration of the
24 substantive trial proceedings.

25 And Judge Fremr will add a separate dissenting opinion in due course. So it was a

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1 majority decision.

2 Now we can continue with our planned testimony, even with some delay. And
3 anyway, we would like to finish today, because of other commitments, as we planned
4 half past 4.

5 So now, court office, please -- and before that I will listen to Mr Bourgon.

6 MR BOURGON: [15:49:41] Thank you very much, Mr President. With your leave,
7 I will be leaving the courtroom as Mr Gosnell will represent Mr Ntaganda pursuant to
8 your order for the next witness.

9 PRESIDING JUDGE FREMR: [15:49:52] All right.

10 MR BOURGON: Thank you.

11 PRESIDING JUDGE FREMR: And now, court officer, please bring Mr Witness into
12 courtroom.

13 (The witness enters the courtroom)

14 PRESIDING JUDGE FREMR: [15:51:21] Dr Hansen, good afternoon.

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16 THE WITNESS: [15:51:28] Good afternoon.

17 PRESIDING JUDGE FREMR: [15:51:29] Dr Hansen, allow me, on behalf of this
18 Chamber, to welcome you. This Chamber has been established to try the case of the
19 Prosecutor against Mr Bosco Ntaganda and you are called today by the Prosecution to
20 testify.

21 First of all, sorry, we are sorry for some delay but it was caused by some
22 extraordinary reasons.

23 Before we start with your testimony, I would like to provide some brief guidance.

24 First of all, we want you to tell the truth and we want you to only testify within the
25 sphere of your expertise. You are before us as an expert on forensic pathology.

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1 And if you do not know an answer to questions put to you, or feel that it does not fall
2 within your area of professional expertise, please indicate so. Is it clear?

3 THE WITNESS: [15:52:31] That's clear.

4 PRESIDING JUDGE FREMR: [15:52:31] Very well.

5 Now, can you please read the solemn undertaking to tell the truth which is now given
6 to you.

7 THE WITNESS: I solemnly declare that I will speak the truth, the whole truth and
8 nothing but the truth.

9 PRESIDING JUDGE FREMR: [15:52:47] Thank you, Dr Hansen.

10 And I will continue. Now you are under oath and I am obliged to note that it's an
11 offence within the jurisdiction of this Court to give false testimony. Do you
12 understand that?

13 THE WITNESS: [15:53:04] I understand.

14 PRESIDING JUDGE FREMR: [15:53:05] Fine.

15 And now a few practical matters you should have in mind when giving your
16 testimony.

17 I understand that you will be testifying in English today, but everything we say here
18 is written down and simultaneously translated into French. It's therefore important
19 to speak clearly and to speak at a slow pace. And to allow for the precise
20 interpretation everyone here has to wait a few seconds before starting to speak, so
21 please wait always at least for three seconds before you answer questions put to you.

22 If you have any question yourself, please just raise your hand and we will give you an
23 opportunity to speak.

24 Have you understood all this?

25 THE WITNESS: [15:54:01] Yes, I understood.

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1 PRESIDING JUDGE FREMR: [15:54:03] Very good. So now we can proceed with
2 your testimony. And the Prosecution will be asking you first.

3 Ms Luping you have the floor.

4 MS LUPING: [15:54:11] Thank you, Mr President.

5 Your Honours, before I proceed with the testimony, I just wanted to ask a question
6 relating to procedure for this witness. The Prosecution did send a request to the
7 Trial Chamber that for this particular witness that we adopt a slightly different
8 process because of the number of documents that we would be seeking to admit
9 through him.

10 In particular, we proposed a, sort of, three-step process: First, that he be provided,
11 in fact, he has already been provided with trial -- hard copy trial binders and a list of
12 his documents so that -- to which he can then refer instead of having a
13 document-by-document referral by ERN that we be then seeking to ask the court
14 officer to call up on our screens.

15 Secondly, we would be proposing that the list of documents that the Prosecution has
16 submitted be marked for identification, that it be given an MFI at this stage, so that if
17 any documents are indeed admitted by way of the Chamber's decision, then we have
18 the list, the court officer can see the tab number with the corresponding ERN. It's
19 just a suggestion, your Honours, to speed up the process instead of having to read out
20 copious numbers with -- sorry, copious amounts of documents with the ERN for
21 every single one of those documents.

22 PRESIDING JUDGE FREMR: [15:55:34] Mr Gosnell, any problem for Defence to
23 follow this proposal?

24 MR GOSNELL: [15:55:40] No problem, Mr President.

25 PRESIDING JUDGE FREMR: [15:55:41] Very well. So your proposal it granted.

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1 MS LUPING: Thank you, Mr President. And I am thankful to my learned
2 colleague.

3 QUESTIONED BY MS LUPING:

4 Q. [15:55:51] Good afternoon, Dr Uhlin-Hansen.

5 A. [15:55:53] Good afternoon.

6 Q. [15:55:54] We've met once now and we've spoken twice. And I also pass on
7 our apologies that you have been delayed in your testimony. I will be asking
8 questions, as you know, on behalf of the Prosecution. As you know, my name is
9 Dianne Luping and I'm a trial lawyer with the Prosecution division.

10 So, look, my first question for is if you could state what is your full name?

11 A. [15:56:17] Lars Uhlin-Hansen.

12 Q. [15:56:20] And when were you born?

13 A. [15:56:24] 2 February 1956.

14 Q. [15:56:26] And where were you born?

15 A. [15:56:29] In Oslo, Norway.

16 Q. [15:56:31] And, Doctor, were you retained by the Prosecution to provide
17 an expert opinion --

18 PRESIDING JUDGE FREMR: [15:56:36] Sorry, Ms Luping, I see our court officer
19 on her feet. Court officer.

20 THE COURT OFFICER: [15:56:43] Yes, Ms Luping, could you please respect the
21 five-second rule. Thank you very much.

22 MS LUPING: [15:56:47] Yes, my apologies, court officer. Indeed. And I am
23 certainly not abiding by the Presiding Judge's instructions either.

24 Q. [15:56:56] Were you retained by the Office of the Prosecutor to provide an
25 expert opinion in this case?

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1 A. [15:57:04] Yes.

2 Q. [15:57:08] And is it correct that, on the instructions of the Office of the
3 Prosecution, you carried out autopsies on 13 human remains between 17 January and
4 4 February 2014 in Kobu and between 10 and 14 April 2014 in Bunia, both places in
5 the Democratic Republic of the Congo?

6 A. [15:57:33] That's correct.

7 Q. [15:57:34] And have you reached an opinion based on the questions asked by
8 the Prosecution, in particular as to the possible cause, manner and circumstances of
9 death of each of the 13 humans on which you carried out autopsies?

10 A. [15:57:52] Yes, as far as I could. So I've written a -- reports. And in -- not all
11 cases I could reach a certain or a conclusion, but I done as best as I could.

12 Q. [15:58:08] And I will be dealing with those opinions later on and shortly, but
13 first I'll turn to your qualifications to testify as an expert.

14 MS LUPING: [15:58:23] Now, Mr President, the Defence has stated that it does not
15 challenge Dr Uhlin-Hansen's qualifications as an expert in light of his curriculum
16 vitae. And I refer to filing -- it's 826, paragraph 49.

17 And so with your leave, Mr President, I ask that I be allowed to lead the witness in
18 relation to his background in the interests of saving time.

19 PRESIDING JUDGE FREMR: [15:58:47] Mr Gosnell, can you confirm.

20 MR GOSNELL: [15:58:49] I can confirm there is no objection to the leading
21 questions on this topic.

22 PRESIDING JUDGE FREMR: [15:58:54] All right. Then your request it granted.

23 MS LUPING: [15:58:56] Thank you, Mr President.

24 Q. [15:59:02] So, Doctor, first looking at your present positions, is it correct that
25 since 2004 you have been a professor of forensic pathology, at the faculty of health

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1 sciences, at the University of Tromsø, the Arctic University of Norway, or the UiT for
2 short?

3 A. [15:59:24] Yes, that's correct.

4 Q. [15:59:27] You're also currently the head of the department of forensic genetics
5 and the head of the tumour biology research group, both of which are the -- are with
6 the faculty of health sciences of the UiT; is that right?

7 A. [15:59:43] I'm still the head of the department of forensic genetics, but I'm not
8 anymore the head of the tumour biology research group. I was the head of the
9 group for many years but not since one year ago.

10 Q. [15:59:57] Thank you for that clarification.

11 And are you still a senior consultant pathologist of clinical pathology at the
12 University Hospital North Norway?

13 A. [16:00:07] That's correct.

14 Q. [16:00:07] And in terms of your previous positions held, from 1985 to 1987 you
15 were a research fellow of the department of experimental pathology of the UiT; is that
16 right?

17 A. [16:00:19] That's correct.

18 Q. [16:00:21] From 1987 to '96 you were an associate professor of the department
19 of biochemistry of the UiT?

20 A. [16:00:34] That's correct.

21 Q. [16:00:35] From '96 to 2001 you were a resident pathologist of the department
22 of pathology at the university hospital of Tromsø?

23 A. [16:00:40] Correct.

24 Q. [16:00:41] And from 2001 to 2003 you were a consultant pathologist of the
25 department of pathology at the university hospital of Tromsø?

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1 A. [16:00:52] That's correct.

2 MS LUPING: [16:00:55]

3 Q. Sorry, I'm just getting a message for both of us to slow down.

4 I'm just going to refer to your affiliated positions.

5 For 12 months, from '91 to '92, you were a visiting fellow at the bone research branch
6 of the National Institute of Dental Research, National Institute of Health, at Bethesda,
7 in the United States of America?

8 A. [16:01:30] Correct.

9 Q. [16:01:31] For 12 months, from 1997 to '98, you were a visiting scientist at the
10 Centre for Biologics, Evaluation and Research, at the US Food and Drug
11 Administration, also in Bethesda, in the USA?

12 A. [16:01:51] That's correct.

13 Q. [16:01:52] For three months in 2004 you were a visiting fellow at the Medical
14 Examiner Department in Miami, Florida, USA?

15 A. [16:02:04] That's correct.

16 Q. [16:02:04] For six months in 2011 you were a visiting professor at the Institute
17 of Forensic Medicine at the University of Copenhagen in Denmark?

18 A. [16:02:21] That's correct.

19 Q. [16:02:21] In terms of your qualifications, you hold an MD from the University
20 of Tromsø, Norway, which you obtained in 1982, as well as a Ph.D. from the
21 University of Tromsø, Norway, which you obtained in 1990?

22 A. [16:02:40] That's correct.

23 PRESIDING JUDGE FREMR: [16:02:46] You know, take into account, Ms Luping,
24 your questions are full of terms and numbers, so you should be a little bit slower.

25 MS LUPING: [16:02:56] Understood Mr President. I shall do my best to avoid my

1 natural speaking at a fast pace.

2 Q. [16:03:04] Now, just turning to your scientometric parameters, you have had
3 about 41 scientific publications that are in international peer-reviewed journals, and
4 you have also written two book chapters?

5 A. [16:03:26] Yes, I think the number of publications is somewhat higher now
6 since this was written two years ago.

7 Q. [16:03:35] So at this stage how many publications have you written in
8 internationally peer-reviewed journals?

9 A. [16:03:44] I think perhaps it's 44, but I'm not sure.

10 Q. [16:03:50] And it is stated on your curriculum vitae that you have a cumulative
11 impact factor of 164.59. Could you just briefly explain what this means, what is a
12 cumulative impact factor?

13 A. [16:04:10] Well, when you publish a paper in a scientific journal, different
14 scientific journals have different impact factor, and rel -- renovated scientific journals
15 have a very high impact factor, whereas low rated journals have a lower one. So the
16 cumulative impact factor is the, when you add impact factor each publication -- the
17 scientific journal, each paper you have published. So the higher cumulative impact
18 factor, the better.

19 Q. [16:04:58] And so roughly, on average, what is your impact factor for the
20 articles that you've written?

21 A. [16:05:03] So it's a little more than four, which is supposed to be more than
22 average.

23 Q. [16:05:13] Could you similarly explain because on your curriculum vitae it
24 states that you have a Hirsch index of 17. What does that mean, in lay person's
25 terms?

1 A. [16:05:23] Well, the Hirsch index reflects the scientific activity, the number of
2 publications as well as how many times each publication has been cited by other
3 scientist. So the Hirsch index is a sort of -- yeah, the higher the index is, the better.

4 Q. [16:05:49] And you just referred to citations. According to your curriculum
5 vitae, your number of independent citations is 811, and total citations is 884. Is that
6 still the case?

7 A. [16:06:03] Yes, I think it's higher now since this is written two years ago.

8 Q. [16:06:08] And do you know what it is now?

9 A. [16:06:11] No. I haven't checked.

10 Q. [16:06:13] Now, I'm just going to refer to your work experience as stated in
11 your curriculum vitae. It states that you perform autopsies on a daily basis and that
12 for the last 15 years - well, I guess it's 17 years now - have been regularly appointed
13 by the Norwegian Court as a forensic expert. Is that correct?

14 A. [16:06:33] That's correct.

15 Q. [16:06:37] And how regularly do you currently testify in the Norwegian courts
16 as a forensic expert?

17 A. [16:06:46] I suppose the last year it has been almost once a month.

18 Q. [16:06:57] And since 2006 you've been a member of the Norwegian Board of
19 Forensic Medicine. If you could please state what that is in Norwegian. I didn't
20 want to attempt to state that.

21 A. [16:07:12] Excuse me, could you repeat?

22 Q. [16:07:13] In your CV, it's written in Norwegian --

23 A. Yeah.

24 Q. -- what I understand in English means Board of Forensic Medicine. Could you
25 state for the record what is that committee that you belong to?

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1 A. Yeah. The Norwegian Board --

2 THE INTERPRETER: [16:07:25] Mr President, from the interpreters, this is going
3 way too fast for the interpreters to handle.

4 PRESIDING JUDGE FREMR: [16:07:31] I don't know if you had a chance, but there
5 is another, I would say well-founded, complaint from interpreters, so please slow
6 down.

7 THE WITNESS: [16:07:43] So the Norwegian Board of Forensic Medicine is a
8 committee which evaluates forensic reports made by other forensic pathologists and
9 clinical physicians who have performed a forensic investigation of a person or, yeah,
10 an alive or dead person.

11 So I think, in Norway, we are probably the only country in the world who had this
12 kind of a committee who -- sort of a quality control of other forensic experts. So this
13 Board of Forensic Medicine is elected by the most -- a few forensic pathologists in
14 Norway who are the -- responsible to have the quality control of the other forensic
15 experts.

16 MS LUPING:

17 Q. [16:09:06] And since 2004 you've been responsible for forensic pathology in
18 Northern Norway; is that correct?

19 A. [16:09:14] That's correct.

20 Q. [16:09:17] Since 2001, you have been a member of the Norwegian Disaster
21 Victim Identification Team and have participated in a number of operations with this
22 team, including an air crash in Spitsbergen in 1996, a tsunami disaster in Thailand in
23 2004, an attack in Norway, in Utøya, in 2011. You've referred to it in your CV as a
24 terror attack. You've similarly referred in your CV to a terror attack in Algeria in
25 2013. Just to clarify, in those various DVI operations, what was your precise role,

1 what did you do?

2 A. [16:10:13] So I performed autopsies, which is foundation for the -- to do the
3 identification of the victims, and I also stated the cause and manner of death.

4 Q. [16:10:30] So just to be clear, you acted as a forensic pathologist?

5 A. [16:10:34] That's correct, including also estimated age of the body, the sex of
6 the body and the stature of the body.

7 Q. [16:10:49] And did you work with forensic anthropologists as part of these
8 operations?

9 A. [16:10:58] So in Norway we don't have any forensic anthropologists so we
10 have to -- the forensic pathologists have to do that work themselves.

11 Q. [16:11:08] And when you say the forensic pathologists in Norway have to do
12 that work of an anthropologist, could you be clear as to which work you are
13 specifically referring to?

14 A. [16:11:23] Could you repeat?

15 Q. [16:11:23] You said that in Norway you don't have forensic anthropologists,
16 that you have to do that work. I'm simply asking you to explain what you mean by
17 "that work."

18 A. [16:11:34] So anthropologists are experts in looking at remains which have
19 been -- usually lack soft tissue, so they can investigate the bones and they can tell the
20 age of the deceased person based on the bones, the sex of the deceased person based
21 on the bones, as well as the stature.

22 Q. [16:12:15] And just to clarify, you're saying that in your work in Norway, that
23 is the type of work that you've been doing?

24 A. [16:12:21] Yes. And also the anthropologists are experts to see the difference
25 between post-mortem damage and perimortem and ante-mortem injuries.

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1 Q. [16:12:46] So can you clarify, again, from a lay person's perspective such as
2 myself, what is a forensic pathologist? What is the work of a forensic pathologist?

3 A. [16:13:00] So, as a forensic pathologist, I do autopsy, autopsies of deceased
4 persons, on the request of the police or the court. I also do -- I also do -- look at live
5 persons who has been either victims of violence or perpetrators of violence, to see
6 if -- document injuries and to tell how injuries has happened.

7 Q. [16:13:46] Now, Dr Uhlin-Hansen, you provided identical copies of your
8 curriculum vitae as an annex to your various pathology reports that you prepared. I
9 do refer to tab 1.6 of your first binder, and just simply because this is only one
10 document I'll refer to the ERN, 2075-0156.

11 Could you confirm whether this accurately reflects your educational and professional
12 experience to date, taking into account the corrections that you have just made
13 verbally?

14 A. [16:14:27] Yes, I think it still reflects what I'm doing today.

15 Q. [16:14:34] Is there any additional correction that you wish to make to your
16 curriculum vitae other than what you have currently stated?

17 A. [16:14:43] So in my written CV, it said that I was a member of the Norwegian
18 Board of Forensic Medicine since 2003, and the correct date or correct year is 2006.

19 MS LUPING: [16:14:59] Mr President, we ask that Dr Uhlin-Hansen's curriculum
20 vitae be admitted as evidence.

21 PRESIDING JUDGE FREMR: [16:15:09] Mr Gosnell, any objection to that?

22 MR GOSNELL: [16:15:13] No, Mr President.

23 PRESIDING JUDGE FREMR: [16:15:15] All right, then the CV of Dr Hansen is
24 admitted into evidence as a further Prosecution exhibit.

25 Ms Luping, you may proceed.

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1 MS LUPING: [16:15:24] Thank you, Mr President. Mr President, as stated, the
2 Defence has not challenged Dr Uhlin-Hansen's qualifications or his expertise. The
3 Prosecution now, with your leave, seeks to tender him as an expert witness and we
4 ask that we qualify him as such and question him now as an expert.

5 PRESIDING JUDGE FREMR: [16:15:45] I guess no objection, Mr Gosnell?

6 MR GOSNELL: [16:15:48] Nothing to change our position, Mr President, so there's
7 no objection.

8 PRESIDING JUDGE FREMR: [16:15:53] Very well. So the request is granted.

9 MS LUPING: [16:15:55] Thank you, Mr President.

10 Q. [16:15:58] Doctor, is it correct that the Prosecution sent you a first letter of
11 instruction addressed both to you and Dr Laurent Martrille dated the 22nd of 2014. I
12 refer to tab 1.4 in your binder. That's 2075-0148. And in this letter you were asked
13 to conduct post-mortem examinations, with the assistance of the appointed forensic
14 anthropologists, of any human remains of individuals allegedly killed in
15 February 2003 and identified in relevant individual or mass grave sites in
16 Kobu-Wadza, Tchudja and Sayo in the Democratic Republic of Congo. This first
17 letter, that's the one at tab 1.4, is dated 18 August 2014. Do you have the letter before
18 you?

19 A. [16:17:08] Yeah, this letter is dated 22 January.

20 PRESIDING JUDGE FREMR: [16:17:19] Yes, I think so.

21 MS LUPING: [16:17:22]

22 Q. [16:17:23] Yes.

23 A. [16:17:24] Yes, I think we got a letter dated --

24 Q. [16:17:27] Yes, apologies for -- for confusing matters. Indeed, sorry, the first
25 letter of instruction is indeed 22 January, that's the one at tab 1.4.

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1 A. Mmm-hmm.

2 Q. And did you also receive a letter of instruction dated 18 August 2014 and that's
3 at tab 1.5?

4 A. [16:17:46] That's correct. And I also received a letter of instruction which was
5 dated, I think, 17 January 2014 I think.

6 Q. [16:17:58] 22 January letter was the -- is a revised but almost identical version?

7 A. [16:18:04] Yeah, that's correct.

8 Q. [16:18:04] Yes.

9 And I refer to tab 1.1. Is it correct that if -- you can also use your --

10 PRESIDING JUDGE FREMR: [16:18:09] Sorry, Ms Luping.

11 MS LUPING: [16:18:12] Understood. Apologies to the interpreters.

12 PRESIDING JUDGE FREMR: [16:18:16] Ms Luping, are you aware that you have
13 been granted two and a half hour for your examination-in-chief? Are you aware of
14 that?

15 MS LUPING: [16:18:26] Yes, Mr President, which is why I'm -- I've --

16 PRESIDING JUDGE FREMR: Which is, I guess, very generous because in previous
17 examinations of experts your colleagues were given one and a half hours, so I think
18 there is no need to be in a hurry I would say.

19 MS LUPING: [16:18:39] Understood, Mr President.

20 PRESIDING JUDGE FREMR: [16:18:44] It's a lot of material I see, but anyway.

21 MS LUPING: [16:18:47] The point is taken. The point is taken.

22 Q. [16:18:50] So, Doctor, I also refer now to tab 1.1 and I also actually ask you
23 to -- if you look at the list that was provided perhaps this will help matters too. The
24 list of documents that was provided to you, Doctor, which you should have before
25 you, it's the index of all documents. Could you please first turn to the list.

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1 A. [16:19:10] Mmm-hmm.

2 Q. [16:19:10] Just as a matter of procedure, can I ask you to confirm that during
3 the session we had for witness preparation that you were provided with a copy of the
4 index of all your documents and you were also given an opportunity to ensure that
5 all the documents in those binders that you have in fact there with you correspond to
6 the tab numbers and the ERNs as indicated?

7 A. [16:19:37] That's correct.

8 Q. [16:19:39] Can I also ask you to confirm whether it's correct that you had an
9 opportunity to read those materials previously before you came to testify today?

10 A. [16:19:50] That's correct.

11 Q. [16:19:52] So thank you. So perhaps if you could just first focus on the list of
12 documents in front of you. I would note for your information it is identical to the
13 document you were provided in the witness preparation, except for two additional
14 items that have been added at the very end, one of which is the witness preparation
15 note, which details our discussions that we had yesterday afternoon and, secondly,
16 the two documents that you provided during the witness preparation. So other than
17 that, it is identical to the list that you were provided and asked to review.

18 So now if you could look at the list, I'm going to refer you to tab 1.1, and if you could
19 look at the list, is that indeed the cover letter under which you sent your pathology
20 reports and related autopsy forms regarding eight cases that you examined in Kobu?

21 A. [16:21:03] Yes.

22 Q. [16:21:06] Still remaining with that list, and I refer to tab 9.1 --

23 PRESIDING JUDGE FREMR: [16:21:24] Ms Luping, I guess we face some problem
24 with this document.

25 THE COURT OFFICER: [16:21:30] No, we're not, we just need the ERN number of

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1 all the documents you're going to use so that it's there, they will be in the record then.

2 MS LUPING: [16:21:36] Court officer, just to refer to the request I made at the

3 beginning, which was instead of referring to ERNs we would ask that the list of

4 documents for this witness be marked for identification so that subsequently if

5 documents were admitted you will have the ERN corresponding to the tab number.

6 And as I understand it, the Chamber agreed to that request.

7 PRESIDING JUDGE FREMR: [16:21:58] I can confirm.

8 MS LUPING: [16:22:01]

9 Q. [16:22:02] So, Doctor, referring to tab 9.1, is this the cover letter under which
10 you sent your Sayo related pathology reports and autopsy forms?

11 A. [16:22:15] Yes, that's correct.

12 Q. [16:22:20] Again remaining with this list of documents, Doctor, I first refer to
13 your 13 pathology reports regarding human remains. And I'm going to refer to the
14 tab numbers. If you could look at the list in front of you. So it's the document at
15 tab 1.2.

16 A. [16:22:45] Yes.

17 Q. [16:22:45] And then tab 2.1.

18 A. [16:22:56] Yes.

19 Q. [16:22:58] Tab 3.1.

20 A. [16:23:03] Yes.

21 Q. [16:23:05] Tab 4.1.

22 A. [16:23:10] Yes.

23 Q. [16:23:13] Tab 5.1.

24 A. [16:23:17] Yes.

25 Q. [16:23:20] Tab 7.1.

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- 1 A. [16:23:25] Yes.
- 2 Q. [16:23:27] Tab 8.1.
- 3 A. [16:23:32] Yes.
- 4 Q. [16:23:34] Tab 9.2.
- 5 A. [16:23:39] Yes.
- 6 Q. [16:23:41] Tab 10.1.
- 7 A. [16:23:44] Yes.
- 8 Q. [16:23:46] Tab 11.1.
- 9 A. [16:23:51] Yes.
- 10 Q. [16:23:53] Tab 12.1.
- 11 A. [16:23:57] Yes.
- 12 Q. [16:23:59] Tab 13.1.
- 13 A. [16:24:03] Yes.
- 14 Q. [16:24:05] And tab 14.1.
- 15 A. [16:24:09] Yes.
- 16 Q. [16:24:12] And are these all pathology reports?
- 17 A. [16:24:19] Yes, that's the pathology reports.
- 18 Q. [16:24:24] And can you confirm who wrote them?
- 19 A. [16:24:27] I wrote them myself.
- 20 Q. [16:24:32] And at tab 15.1 is it correct that this refers to an autopsy protocol
- 21 completed in relation to various artefacts labelled KOB1-F5?
- 22 A. [16:24:50] That's correct.
- 23 Q. [16:24:51] And who completed this autopsy protocol?
- 24 A. [16:24:55] I did it myself.
- 25 Q. [16:24:58] Now, just returning to the pathology reports that you wrote, and I

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1 read out the tab numbers that you confirmed that you wrote, could you explain what
2 materials or documents you used to prepare the pathology reports?

3 A. [16:25:14] So then I used my -- my notes from the autopsy, and I used the
4 report from the forensic anthropologist and I used pictures provided from the
5 autopsy. I also used dental -- I filled in a dental scheme under the autopsy and
6 I think I used that as well as -- as when I wrote the report.

7 Q. [16:25:56] Now, you've referred to various notes that you used for the
8 purposes of writing these pathology reports. Are you referring to various autopsy
9 forms that you completed in the field?

10 A. [16:26:08] Yes.

11 Q. [16:26:11] And could you just briefly explain what types of autopsy forms you
12 completed? You've mentioned the dental chart. Are there any other types of
13 autopsy forms?

14 A. [16:26:24] So during the autopsy I filled in different kind of -- what we found
15 during the autopsy and included -- I also made a conclusion concerning the cause of
16 death and manner of death during the autopsy.

17 Q. [16:26:58] Doctor Uhlin-Hansen, could I get you to turn to the document and if
18 I could ask the parties and the Chamber as well to turn to the document at tab
19 number 4.29. I just note for the record this is 2063-5858.
20 Do you have the document in front of you?

21 A. [16:27:31] Yes.

22 Q. [16:27:34] Could you just explain what these forms are?

23 A. [16:27:41] This is -- this is the forms we used during the autopsy on which we
24 made the -- the notes. And it's -- on the first page it's -- it contains four pages and
25 some figures in addition. And on the first page I noted if there was presence of

1 tissue or not, if there was some animal act -- signs of animal activity, if the remains
2 were complete or incomplete, skeletonised. I looked for identific -- identifying
3 features like old fractures, malformations, prosthesis, et cetera, and then I noted
4 length of the femur which were used to calculate the stature. I made the note
5 concerning the age other remnants, as well as the sex, mostly based on the opinion by
6 the forensic anthropologist. I then looked for traces of violence and as well as
7 possible damages.

8 Q. [16:29:44] And just to -- just to clarify, Doctor, you're referring now to the
9 autopsy protocol; is that correct?

10 A. [16:29:52] Yeah, that's correct, yeah.

11 Q. [16:29:57] And if we turn to the second page of the autopsy protocol, it's
12 ERN 5859, where there appears to be -- under the heading "Clothes", could you
13 explain what you recorded usually in relation to the autopsy protocol with the -- in
14 terms of artefacts?

15 A. [16:30:19] So if the anthropologist who did the excavations, if they found items
16 which were closely related to the remains or -- yeah, then I noted that and I noted all
17 clothes which were around the bones or closely attached to the bones.

18 So all these items were carefully looked at. And we -- if the -- yeah, most of the
19 clothes were soiled, dust on them, and we cleaned them and we also looked at them
20 after cleaning. And after cleaning we'd dry them and then looked at them again.

21 MS LUPING: [16:31:16] Mr President, I notice the time. It is 4.30. I propose -- I
22 will be asking more questions about these standard autopsy forms of the witness.
23 Perhaps this might be a moment to break because there are other forms to discuss.

24 PRESIDING JUDGE FREMR: [16:31:31] Yes, we have to.

25 So we will break now and we will continue tomorrow 9.30.

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1 For the moment, thank you very much, Dr Hansen. And again, it's my legal duty to
2 remind you that, in accordance with our legal framework, you must not discuss your
3 testimony in the meantime with anybody else. Do you understand that?

4 THE WITNESS: [16:32:00] I understand.

5 PRESIDING JUDGE FREMR: [16:32:00] Thank you very much. And see you
6 tomorrow at 9.30.

7 THE COURT USHER: All rise.

8 (The hearing ends in open session at 4.32 p.m.)