

1 International Criminal Court
2 Trial Chamber II - Courtroom 1
3 Presiding Judge Bruno Cotte, Judge Fatoumata Dembele Diarra, and
4 Judge Christine Van den Wyngaert
5 Situation in the Democratic Republic of Congo - ICC-01/04-01/07
6 In the case of the Prosecutor versus Germain Katanga and Mathieu
7 Ngudjolo Chui
8 Trial Hearing
9 Wednesday, 21 April 2010
10 The hearing starts at 9.04 a.m.
11 (Closed session)
12 (Expunged)
13 (Expunged)
14 (Expunged)
15 (Expunged)
16 (Expunged)
17 (Expunged)
18 (Expunged)
19 (Expunged)
20 (Open session at 9.05 a.m.)
21 COURT OFFICER: (Interpretation) We are in open session, your
22 Honour.
23 PRESIDING JUDGE COTTE: (Interpretation) Thank you.
24 Security officers, please lead in the two accused.
25 (The accused entered court)

Witness: Witness P-0287 (Resumed) (Open Session)
Questioned by Mr. Fofe (Continued)

Page 2

1 PRESIDING JUDGE COTTE: (Interpretation) The two accused persons
2 are with us in the courtroom.

3 Good morning, Madam Witness.

4 THE WITNESS: (Interpretation) Good morning, your Honour.

5 PRESIDING JUDGE COTTE: (Interpretation) So you can hear me very
6 well. Professor Fofe is going to continue with his cross-examination.

7 You can proceed, Professor Fofe.

8 MR. FOFE: (Interpretation) Thank you very much, Mr. President.
9 Good morning, your Honours.

10 WITNESS: WITNESS P-0287 (Resumed)

11 (Witness answered through interpreter)

12 Questioned by Mr. Fofe: (Continued)

13 Q. (Interpretation) Good morning, Witness.

14 A. Good morning, Counsel.

15 Q. Witness, we are going to continue from where we broke off
16 yesterday to try to better understand what happened to you when you took
17 refuge in the house belonging to the soldier in the UPC camp. To refresh
18 your memory I'm going to quote your answer to a question that was put to
19 you by the Prosecutor on Monday, 19th April 2010. I am referring here to
20 transcript number 129, page 24, lines 10 to 18. And I'm going to quote
21 to you slowly what you said. That will be followed by another excerpt to
22 enable you to refresh your memory about what you said in answer to the
23 Prosecutor's question. And so let me quote transcript 129, page 24,
24 lines 10 to 18.

25 "Q. You have told us that you were hiding under the bed. You

Witness: Witness P-0287 (Resumed) (Open Session)
Questioned by Mr. Fofe (Continued)

Page 3

1 and they ... and your two daughters. Can you explain to us how you were
2 found, how the attackers found you?"

3 And your answer, Witness, was as follows, and I quote:

4 "Yes, I can do that. While we were hiding there I did not know
5 at what time the soldiers and other civilians fled. And when I saw the
6 assailants I was under the bed. They entered into ... into the houses
7 and they were looking for the people who were there. One of the
8 assailants thrust his spear under the bed and hit one of the children,
9 and the child cried out. They started shooting ... shooting at us.
10 Those of us ... who were under the bed."

11 Still to refresh your memory about your testimony, I will quote
12 that same transcript, 129, page 28, lines 10 to 25, as well as page 29,
13 lines 1 to 10. I could go on, but I will stop on page 29, lines 1 to 10,
14 and I quote:

15 "Q. Witness, I do understand that it is difficult for you to
16 talk about the events that happened on that day. I can assure you that
17 I'm going to ask you only the questions that are strictly necessary for
18 the purposes of this trial. And so, if you are ready, I am going to
19 begin asking you questions. We are going to go slowly, one step at a
20 time. Are we agreed on that?"

21 And your answer:

22 "Very well.

23 "Q. You told us that at one point while you were hiding under
24 the bed with your two daughters the assailants entered into the house; is
25 that correct?"

Witness: Witness P-0287 (Resumed) (Open Session)
Questioned by Mr. Fofe (Continued)

Page 4

1 And your answer:

2 "That is correct.

3 "Q. You also told us that a spear had been thrown which hit one
4 of your two daughters; is that correct?"

5 And your answer:

6 "That is correct.

7 "Q. Can you tell us which of your two daughters was hit by the
8 spear and on what part of her body?

9 "A. The younger one. The spear hit her on her side between the
10 arm and her ribs. She was not very ... she was not seriously injured.

11 "Q. What was your reaction when your daughter was hit by that
12 spear?"

13 And your answer:

14 "At that time she cried out and the assailants called out to
15 other people to say, 'There are people who are hiding.' After that they
16 shot at us. We were still under the bed."

17 I will stop there, but I may go on because the questions and
18 answers continued. But for the time being let me stop there.

19 Madam Witness, you did therefore confirm that the attackers shot at you
20 while you were under the bed. This means that those assailants shot at
21 you from close range; isn't that correct?

22 A. Yes, they shot at us while we were still under the bed.

23 Q. Thank you very much, Witness. When did you realise that you were
24 injured, can you remember that?

25 A. Yes.

Witness: Witness P-0287 (Resumed) (Open Session)
Questioned by Mr. Fofe (Continued)

Page 5

1 Q. And when was that, when you realised that you were injured at the
2 knee?

3 A. I realised it when I was trying to escape and hide in the bush.

4 Q. That is correct, indeed. You realised that you were injured when
5 you led the assailants to the store before they started looting; is that
6 correct?

7 MR. GARCIA: (Interpretation) Mr. President.

8 PRESIDING JUDGE COTTE: (Interpretation) Mr. Prosecutor.

9 MR. GARCIA: (Interpretation) I object. I do understand that we
10 are in cross-examination, but we should not mislead the witness. The
11 question was when did the witness realise that she was injured and her
12 answer was when she was trying to escape and not when she was taking the
13 assailants to the store, which is what Mr. Fofe is telling us right now.

14 MR. FOFE: (Interpretation) No problem. I will rephrase.

15 PRESIDING JUDGE COTTE: (Interpretation) Very well. Mr. Fofe,
16 please proceed without trying to lead the witness too much towards the
17 direction that you wish her to take.

18 MR. FOFE: (Interpretation) Very well. Just a moment.

19 Q. Madam Witness, to clarify this point so that we should be able -- we
20 should be able to make progress systematically, I'm going to read out an
21 excerpt of your answer to a question put to you by the Prosecutor, and I
22 will quote transcript number 129, page 34, and I will begin with the
23 Prosecutor's question lines 9 to 10. And the question was as follows:

24 "If I understand you well, you took them not to a weapons cache
25 but to a store; is that correct?"

1 Incidentally I would like to point out to the Prosecutor that
2 this was something that we let slide because the witness had not talked
3 about a store. This was in answer to the Prosecutor's question, and I
4 will not quote the entire answer because it is quite long. I will quote
5 lines 21 to 24. That is on page 34. And it is the witness speaking.

6 "At that time ... afterwards I wanted to escape, but I could
7 not. I realised that I was injured in my leg. It was painful and I told
8 myself that it was probably there that I had been hit by the bullet, but
9 I did not yet know that I had been injured and that I had been hit by a
10 bullet ..."

11 Now, Madam Witness, it was at that time that you were with the
12 assailants in that store that you realised that you were injured; isn't
13 that so?

14 A. When I was in the store -- well, I said this: When I tried to
15 escape, it was at that time that I realised that I was injured.

16 Q. Thank you. Let us now come back to the time when you were under
17 the bed. When you came out from under the bed you were walking upright;
18 is that correct?

19 A. Yes.

20 Q. When you came out from under the bed, you did not realise that
21 your knee was bleeding; is that so?

22 A. No, I was not calm enough to realise that. I was trembling. I
23 did not notice anything because I was distressed.

24 Q. Let us now refer to the time that you led the assailants to the
25 store. You said that when the attackers heard that there were people in

Witness: Witness P-0287 (Resumed) (Open Session)
Questioned by Mr. Fofe (Continued)

Page 7

1 the house near the store, all of them went towards that house. You said
2 that in the same transcript, number 129, page 45, lines 6 and 7; and on
3 page 46, line 7.

4 Witness, can you tell us approximately at what time this
5 happened?

6 A. I do not know the time, but I was -- I know that it was before
7 noon.

8 Q. Where precisely did you escape to?

9 A. I fled into a bush.

10 Q. What is the approximate distance between the store to which you
11 led the assailants and that place in the bush where you hid?

12 A. The distance was not very far, but I cannot give you an
13 approximation. All I can say is that it was not very far.

14 Q. Was that distance longer or shorter than the distance between
15 your house and the UPC camp?

16 A. It was slightly longer than that distance.

17 Q. Madam Witness, would I be correct to say that to be able to
18 escape quickly from the attackers, you had to run?

19 A. Can you kindly repeat your question, please.

20 Q. Yes, Witness. You have described the incident and you said that
21 you took advantage of the time when the assailants went into the house
22 next to the store to look for the people who were there. You seized the
23 opportunity and to escape quickly from the attackers you must have run;
24 isn't that correct?

25 A. Yes, I ran. When they went to that house and while they were

Witness: Witness P-0287 (Resumed) (Open Session)
Questioned by Mr. Fofe (Continued)

Page 8

1 looting, I realised that I was all alone and I seized the opportunity to
2 run. But I wasn't able to run. It was at that time that I fell down and
3 I started crawling right to the place where I hid.

4 Q. Witness, in what state was the vegetation in that place where you
5 hid?

6 A. It was bush which was quite ordinary.

7 Q. Just to help you a little, and that place were there grasses,
8 scrub? What kind of vegetation was there, reeds?

9 A. Yes, there was grass. I didn't take so much notice as to see
10 whether there were grasses of -- long or short grass or long or short
11 reeds. All I know is it was safe to hide there.

12 Q. And how long approximately did you stay in that hiding-place?

13 A. I stayed there all night.

14 Q. Is it at that place where the assailants set fire to the bush?

15 A. Yes. They used to burn several places in the bush and they
16 burned that part too, but what I did say was then the rain came just
17 after that.

18 Q. Now, just an estimation, can you recall roughly at what time
19 throughout these events they set fire to the bush approximately?

20 A. I would say that it was about 3.00 p.m. or 4.00 p.m.

21 Q. And when approximately did the rain start falling?

22 A. The rain started falling just after they set fire to the bush.

23 Q. Thank you. I would like to go back to document DRC-OTP-1013-0205
24 where you made your statement before the Office of the Prosecutor
25 investigators. In paragraph 40 you stated the following, and I will

Witness: Witness P-0287 (Resumed) (Open Session)
Questioned by Mr. Fofe (Continued)

Page 9

1 quote you.

2 "I fell down and I felt a very strong pain in my leg because of
3 my wound. Greasy liquids were coming out of my knee."

4 What we are interested in here is the description of these
5 fluids. Is it possible for you to describe to us a little these fluids
6 coming out of your knee?

7 A. I would say the following. Firstly, there was blood coming out
8 of my knee, and then it was a thick liquid coming out.

9 Q. And after the flow of these fluids, could you all the same
10 continue walking in the bush?

11 A. Yes. Even though these fluids were coming out of my knee, I
12 forced myself to keep going.

13 Q. And you were able to keep walking upright until the fourth day,
14 and at the fourth day you arrived at Lengabo; is that correct?

15 A. Yes, that's correct.

16 Q. I would like to come back to transcript 129, page 61, lines 3 to
17 5. Witness, answering a question from the Prosecutor last Monday
18 concerning the results of the X-ray that was taken in the hospital in
19 Bunia, whose name we will not cite here but with which we are all
20 familiar, you answered the following and I quote:

21 "Yes, the results of the X-rays showed that there was a bullet in
22 the knee, and this bullet stayed -- had stayed in my body. We took the
23 X-rays to the doctor and he operated on me on the sixth day."

24 First of all, I would like to ask you one initial question for
25 clarification, Witness. Was there just one bullet or were there two

1 bullets in your knee?

2 A. According to the X-rays, there was just one bullet.

3 Q. Did they tell you from which type of weapon this bullet had come?

4 A. No.

5 Q. Was it a bullet from a weapon of war?

6 A. Yes.

7 Q. So we are to understand then that this bullet stayed in your knee
8 from Monday, the 24th of February, 2003, to Saturday, the 1st of March,
9 2003; is that correct?

10 A. Yes, that's correct.

11 Q. So we are also to understand then that this bullet you had
12 received while you were hiding under the bed when they were shooting at
13 you. Is that correct, Madam Witness?

14 A. Yes, that's correct.

15 Q. And this bullet shot at short range had not destroyed your knee;
16 is that correct?

17 A. I do not know if they were right close to me. I know that they
18 were outside, near the door, and the bullet had not smashed my knee but
19 it had penetrated the knee. And if you look carefully at the hospital
20 X-rays, you will see where the bullet was located.

21 Q. I would like to cite another extract of your answer. I'm still
22 referring to transcript 129, page 61, line 9 and line 10. Answering a
23 question yet again to the Prosecutor's questions - and he had asked you
24 in which state your knee was when you arrived at the hospital - you
25 replied the following, and I quote you:

Witness: Witness P-0287 (Resumed) (Open Session)
Questioned by Mr. Fofe (Continued)

Page 11

1 "My knee was very swollen and it was bleeding and a thick liquid
2 was coming out of it."

3 Madam Witness, are we to understand then that blood was coming
4 out of your knee from Monday, the 24th of February, to Saturday, the 1st
5 of March, 2003, the day on which you were operated?

6 MR. GARCIA: (Interpretation) Your Honour.

7 PRESIDING JUDGE COTTE: (Interpretation) Yes.

8 MR. GARCIA: (Interpretation) Just before the witness answers,
9 just so it is clear, the question or the suggestion that Professor Fofe
10 is making leads up to believe that the blood was coming out until
11 Saturday. But the arrival at the hospital was actually prior to that
12 Saturday. So I think this needs to be clarified for the witness because
13 this could lead to confusion.

14 PRESIDING JUDGE COTTE: (Interpretation) I think the Witness
15 understands the question, but I will nevertheless ask Professor Fofe to
16 reformulate the question.

17 MR. FOFE: (Interpretation) Yes, in that case I will check the
18 reference that I made, page 61, lines 9 and 10. Yes, I can see back at
19 line 6 to come back to the question. The question from the Prosecutor:

20 Q. "So that we can understand what condition your knee was in, can
21 you tell us what state your knee was in when you arrived at the hospital.
22 Excuse me, Madam, excuse me one moment, please. Can you please describe
23 it to us."

24 And there Witness had replied:

25 "My knee was swollen and there was blood coming out of it as well

Witness: Witness P-0287 (Resumed) (Open Session)
Questioned by Mr. Fofe (Continued)

Page 12

1 as a fluid, a thick fluid."

2 Our question, the question that we are asking the witness now is
3 the following: Could we then understand that the blood had been coming
4 out of your knee from Monday, the 24th of February, 2003, when the bullet
5 hit you, to Saturday, the 1st of March, 2003, when you were operated on?
6 Witness, could you please answer this question for us.

7 A. I was talking about blood initially at the time where there was a
8 thick fluid coming out of my knee.

9 Q. So if we make a link with one of the questions that Maitre Hooper
10 had asked yesterday, could we therefore understand that at that time when
11 you were having your operation you were actually pregnant; is that
12 correct?

13 A. No.

14 Q. I would refer, just to enable you to follow us, Witness, I would
15 refer to transcript 130 which was yesterday's hearing, 20th of April,
16 2010, page 43, lines 14 to 16. Answering a question put by Mr. Hooper
17 yesterday, you stated that you gave birth to your third child the 23rd of
18 August, 2003. 23rd of August, 2003. And if we count back from the 23rd
19 of August, 2003, to say the 23rd of February of 2003, this makes how many
20 months? This makes six months in total. We can understand, then, that
21 at the moment when you were a victim of this when you had your operation,
22 you were in fact pregnant; is that so?

23 A. No, I don't know.

24 Q. Thank you, Madam. And regarding this thick fluid coming out of
25 your knee, did the doctor or surgeon who operated on you explain to you

1 what this liquid was?

2 A. No.

3 Q. Did you see the bullet that was extracted from your knee? Did
4 you personally see it?

5 A. The bullet was given to my father. I was a patient at that point
6 in time, that is why it was given to my father. And he told me about the
7 bullet.

8 Q. Does your father still have the bullet today?

9 A. No, I don't know. I don't know why he would keep that bullet. I
10 don't know. But I guess that he no longer has it. At that time we were
11 running away, so I don't think he kept it.

12 Q. The investigators of the OTP met with you. Did they ask you any
13 questions about this bullet?

14 A. Yes.

15 Q. What did they ask you?

16 A. They asked me whether this bullet is still around. I said that I
17 didn't know. I asked my father if he still had it, and he said no. I
18 know that the bullet was taken out of my knee and was given to my father,
19 but I said that I didn't know if this bullet was still around. That was
20 my answer.

21 Q. The X-ray was given to you, was it not?

22 A. Yes.

23 Q. Did the OTP investigators or the Prosecutor ask you about it, ask
24 you any questions about these X-rays?

25 A. Yes.

Witness: Witness P-0287 (Resumed) (Private Session)
Questioned by Mr. Fofe (Continued)

Page 14

1 Q. Witness, did you submit these X-rays to the investigators of the
2 Prosecutor?

3 A. There were two X-rays. They got lost when we were escaping, and
4 the second one I -- one was lost when we were escaping and the second one
5 I gave to the Office of the Prosecutor.

6 Q. Thank you, Witness.

7 MR. FOFE: (Interpretation) With leave of the Presiding Judge,
8 we would ask the Court Officer to show the witness and all of the
9 participants here the confidential piece MFI-OTP-0097 and 0098.

10 Q. Witness, have you seen the two photos?

11 A. Yes.

12 Q. Can you please tell us or clarify to us or perhaps the Presiding
13 Judge, perhaps it would be prudent to ask for a few moments of closed
14 session just so that I can ask these questions about the photos.

15 PRESIDING JUDGE COTTE: (Interpretation) Yes, certainly.

16 Court Usher, can we go into closed session, please -- private
17 session.

18 (Private session at 9.56 a.m.)

19 (Expunged)

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Witness: Witness P-0287 (Resumed) (Private Session)
Questioned by Mr. Fofe (Continued)

Page 15

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Page 15 expunged. Private Session.

Witness: Witness P-0287 (Resumed) (Private Session)
Questioned by Mr. Fofe (Continued)

Page 16

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Page 16 expunged. Private Session.

Witness: Witness P-0287 (Resumed) (Private Session)
Questioned by Mr. Fofe (Continued)

Page 17

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Page 17 expunged. Private Session.

Witness: Witness P-0287 (Resumed) (Private Session)
Questioned by Mr. Fofe (Continued)

Page 18

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Page 18 expunged. Private Session.

Witness: Witness P-0287 (Resumed) (Private Session)
Questioned by Mr. Fofe (Continued)

Page 19

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Page 19 expunged. Private Session.

Witness: Witness P-0287 (Resumed) (Private Session)
Questioned by Mr. Fofe (Continued)

Page 20

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Page 20 expunged. Private Session.

Witness: Witness P-0287 (Resumed) (Private Session)
Questioned by Mr. Fofe (Continued)

Page 21

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13 (Open session at 10.14 a.m.)

14 COURT OFFICER: (Interpretation) Your Honour, we are in open
15 session.

16 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

17 Professor Fofe, please continue.

18 MR. FOFE: (Interpretation) Thank you, your Honour.

19 Q. Witness, when you met the investigators of the Prosecutor, you
20 stated the following in answer to one of the questions that was put to
21 you, one of the last questions which was put to you. And I shall read
22 paragraph 65 of the document DRC-OTP- -- document 66, rather - 0205.

23 This is your declaration. So 1013-0205. And here I quote you.

24 "I do not accept that my statement be transmitted to the
25 responsible -- the authorities responsible for implementing the laws of

Witness: Witness P-0287 (Resumed) (Open Session)
Questioned by Mr. Fofe (Continued)

Page 22

1 states who make the request so to do, including the Government of the
2 Democratic Republic of Congo," in paragraph 66 of your statement.

3 My question is as follows: Why do you refuse that your statement
4 be transmitted to the states who make the request so to do?

5 A. I refused that because I was afraid. I didn't know what would
6 happen with it, and that is the reason why I refused.

7 Q. Thank you very much, Witness. We would like to wish you a safe
8 return to your country.

9 MR. FOFE: (Interpretation) Your Honour, Bench, we have
10 finished with our cross-examination. Thank you.

11 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
12 Professor Fofe.

13 Before giving the floor to the Prosecutor for re-examination, the
14 Prosecutor (as interpreted) would like to go back a moment to the
15 question that Counsel Hooper asked yesterday, unless I am wrong.

16 Counsel Hooper, yesterday you expressed a wish that the witness
17 could provide a description of the person who contacted that person with
18 a view to meeting the office of the -- the investigators of the Office of
19 the Prosecutor. You remember that there was an objection from the Office
20 of the Prosecutor representative, but at the end of the hearing
21 Counsel MacDonald indicated that perhaps in the afternoon he would be
22 able to provide -- tell us what his intentions were. So I think that we
23 all received an e-mail from the Office of the Prosecutor yesterday
24 indicating that the Prosecution had no objection to the question that you
25 had formulated, and therefore which aimed to ask the witness to try and

Witness: Witness P-0287 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 23

1 give a physical description of the person who had contacted the witness.
2 It -- I think if I remember well you started -- the witness started with
3 a description of this person. But, Counsel Hooper, if you would like to
4 ask your question again you will remember that there was an objection on
5 the part of the Prosecutor, saying that you shouldn't try and obtain the
6 identity of that person because we are currently dealing with this issue
7 with the Chamber I. But you can ask again to try and give a physical
8 description of this person. So it is up to you to decide whether you
9 want to reformulate this question or not.

10 MR. HOOPER: Yes, thank you, Mr. President. I think in the
11 circumstances I will reformulate that question. I'm unclear, though,
12 whether in asking the witness to describe this person she will or will
13 not be describing intermediary 143. I'm just concerned -- she started to
14 give a description, you may recall yesterday, two elements of a
15 description anyway, and I just wonder whether the Prosecutor has
16 considered that that clearly isn't 143 and therefore opens the door to my
17 question. So whether that has been a rather cynical approach, I don't
18 know, but I'll ask the question.

19 Questioned by Mr. Hooper: (Continued)

20 Q. Madam Witness, good morning again. I'm going to ask you a
21 question.

22 MR. HOOPER: And, in fact, with the Court's leave could I ask one
23 further question of clarification with respect to something that perhaps
24 I could have asked yesterday or clarified yesterday but didn't. It's
25 occurred to me since then, that it's a matter which I'd like clarified.

Witness: Witness P-0287 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 24

1 So two questions with the Court's leave.

2 Q. Let me ask the second question first, as it were. I'll formulate
3 it, and if there is any intervention obviously I'll -- will consider the
4 matter. But my question is this: You may recall yesterday how you
5 described how you fled from -- you fled from your home to the camp, the
6 UPC camp, and that you then went into what you described as "a soldier's
7 house" and hid under -- eventually hid under the bed where you were
8 discovered by the attackers. Now, in respect of a soldier's house --

9 MR. MACDONALD: (Interpretation) Objection, your Honour --

10 MR. HOOPER: (Previous translation continues) ... this witness
11 for the Prosecution. We seem to be getting a --

12 MR. MACDONALD: (Interpretation) Excuse me.

13 PRESIDING JUDGE COTTE: (Interpretation) Yes, Prosecutor.

14 MR. MACDONALD: (Interpretation) The Prosecution objects, your
15 Honour. First of all I would like to go back to -- please excuse me with
16 regard to my colleague, Professor Fofe, we'd like to apologise. My
17 intervention was too lively and it was covered with regards to colour and
18 black and white, and you were totally right.

19 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Prosecutor.

20 Now, where it concerns the objection to the question of
21 Counsel Hooper, do go back to the question raised by Counsel Hooper.

22 MR. MACDONALD: (Interpretation) When we raised this objection
23 there was a concern that Counsel Hooper was taking advantage of it to go
24 back over questions that he didn't ask yesterday, having in mind
25 re-reading the transcript. The only question that you allow at that time

1 is with regard to the description of the person. We're not here to go
2 back over something which Counsel Hooper had forgotten. He can also make
3 this specific request, the Chamber can authorise that. Perhaps that can
4 be done after the re-examination of the Prosecution, but at this moment
5 we cannot start to have several opportunities to -- or several bats to
6 hit the ball with.

7 THE INTERPRETER: Judge Cotte has just made a billiard solution
8 as well to that part.

9 PRESIDING JUDGE COTTE: (Interpretation) So perhaps Counsel
10 Hooper can look at that. With the permission of the Chamber, he said, I
11 would ask two questions, and I'm going to start with the second one.
12 Now, the Chamber didn't know the formulation of the second question. It
13 started to listen to Counsel Hooper. It had the feeling that he was
14 going in a slightly offway, but perhaps he was going to come to a
15 physical description of somebody. This wasn't in the case yet.

16 So, Counsel Hooper, now, please, if you consider it necessary,
17 just ask the witness once again the question of the possible physical
18 description or anatomical description of the person said to have
19 contacted the witness. If you have another question, perhaps that should
20 have been asked when you have finally the floor after the re-examination
21 of the Prosecutor. So please now limit yourself if you so wish to the
22 question about the description that the witness could attempt to give
23 with regards to the person who contacted the witness with a view to
24 putting her in contact with the Prosecutor. You have now leave to
25 address the Court.

Witness: Witness P-0287 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 26

1 MR. HOOPER: Yes.

2 Q. Madam Witness, can you describe that person to us, please.

3 A. (No interpretation)

4 THE INTERPRETER: The interpreter repeats.

5 THE WITNESS: (Interpretation) This person wasn't a person who
6 was very slim, neither was that person very corpulent. This person
7 neither was fat and the person --

8 PRESIDING JUDGE COTTE: (Interpretation) Would you say that this
9 description is limited to these three -- to these characteristics?

10 THE WITNESS: (No interpretation)

11 THE INTERPRETER: The interpreter did not hear what the witness
12 said.

13 PRESIDING JUDGE COTTE: (Interpretation) Please state your
14 answer again so that everybody can get it.

15 THE WITNESS: (Interpretation) I said that I did not have
16 another description with regard -- any other description with regards to
17 this person, and you should be content with what I've already given.

18 PRESIDING JUDGE COTTE: (Interpretation) Counsel Hooper, please,
19 if you would like to go further in your question in the precise framework
20 that we have defined.

21 MR. HOOPER: Yes, thank you. I'm not clear that the answer was
22 interpreted.

23 Q. Madam Witness, I'm very sorry to trouble you with this. Can I
24 ask you to repeat your description because it may be that some elements
25 of it were missed in the interpretation. So can I ask you just to give

Witness: Witness P-0287 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 27

1 it to us again, please. Thank you.

2 A. Yes. What I said was that this person was not very large or very
3 slim. It wasn't a fat person or a person of significant corpulence. One
4 cannot say that this person was particularly dark -- was between dark and
5 light, but tending towards a lighter colour.

6 Q. Right. So not fat, not thin, not dark, not too light. I mean,
7 that's not going to help us pick someone out in a crowd, is it? I mean,
8 what about age? How old is this person? 20s? 30s?

9 A. It is possible that this person was over 20, but I don't know the
10 exact age of this person.

11 JUDGE DIARRA: (Interpretation) Your Honour, I have a problem to
12 understand Judge Hooper.

13 PRESIDING JUDGE COTTE: (No interpretation)

14 JUDGE DIARRA: (Interpretation) When the witness says that this
15 person isn't thin, the interpreter said that this person isn't "en bon
16 point" as we say in French. But as there is a translation problem
17 between the witness and myself this has to be detailed. When they say
18 that somebody isn't thin, that means that this person is fat.

19 MR. HOOPER: But the Witness went on to say not very fat. So not
20 very thin, not fat, not dark, not light, towards light, and sometime --
21 some age over 20. So we're left with a pretty general description.

22 Q. Do you know which ethnicity the person was, Madam Witness?

23 A. I don't know that person's ethnic origin, but I think that this
24 person had lived in Bogoro at a certain time.

25 Q. And is this person male or female?

Witness: Witness P-0287 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 28

1 A. It was a man.

2 Q. And reflecting on it perhaps over night, can you remember the
3 name?

4 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, I think we
5 agreed that we would not try to seek from the witness the identity of the
6 intermediary that contacted her to link her up with the investigators of
7 the Prosecutor. We are all aware that Trial Chamber I and Trial
8 Chamber II, that is, this Chamber, are facing the same difficulties. We
9 are awaiting the clarifications that should be given to us by the unit,
10 and we wish to resolve this issue as quickly as possible because we know
11 that it will affect the preparation of some of your cross-examinations.
12 But for the time being the witness is limited to a physical description
13 of the person, and we know now that it is a man. If you want to continue
14 with those types of exchanges, you can do it for a while but not for very
15 long. Do we agree?

16 MR. HOOPER: Yes, indeed. Sorry, I must -- I didn't make it
17 plain when I asked the witness: Do you remember the name? I invite the
18 witness only to answer yes or no; and if it's yes, then we can perhaps go
19 through the process of her writing it down. And I see you're nodding,
20 Mr. President.

21 Q. So can I just clarify that was the question. Overnight on
22 reflection --

23 PRESIDING JUDGE COTTE: (Interpretation) Mr. Hooper, accept my
24 memory does not serve as correctly, it seems to me that yesterday the
25 witness told us that she does not know the name of the intermediary, so

1 it is not indispensable to put the same question to her today.

2 MR. HOOPER: I thought it might be a memory difficulty, but all
3 right I take that matter no further. So those are all my questions
4 except for the one that I sought with your leave to raise at this stage
5 and which on this occasion Mr. MacDonald from the Prosecution intervened
6 to object to. Now, from time to time all counsel may omit to pursue a
7 particular point and invite the Court's leave to come and address it.
8 And in my submission if that's to be done at all, it would be best done
9 before the opposing side then begins to ask its questions rather than
10 afterwards. In this case, I'll tell your Honour exactly what the point
11 is, and it's simply this that the witness yesterday described going to
12 the camp and going "into a soldier's house." And my question and one
13 which my client here is interested to hear the answer is: Was this a
14 straw house or was it a more substantial house? That's the very simple
15 point that is to be addressed, and I'd be surprised if the Prosecution,
16 hearing what I've just said, would now sustain an objection to that
17 clarification.

18 So with your Honour's leave I'd either ask the question or invite
19 you, the Judge, if you feel it appropriate, to ask the question on my
20 behalf -- or on Mr. Katanga's behalf.

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Hooper.
22 So we have understood that that question is a simple one, and both for
23 you and for the Chamber it might make us better understand what the
24 witness heard, saw, and witnessed. We are not going to take the
25 responsibility to ask that question, but we ask you to rephrase it in a

Witness: Witness P-0287 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 30

1 very simple and concise manner. So you can put that question yourself to
2 the witness and -- before we move on to the Prosecutor for the
3 re-examination.

4 MR. HOOPER: Yes, thank you.

5 Q. So, Madam Witness, you've heard the discussion we've had and now
6 let me come to the question for you, please, if you can, to answer. You
7 described going to -- taking refuge in this soldier's house. Can you
8 describe in some way that house to us, how it was -- how it was built?
9 Was it made of brick, of mud, of straw, a combination? Can you help us,
10 please?

11 A. These were small houses that the soldiers built with straw and
12 with mud walls.

13 MR. HOOPER: Yes, thank you.

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
15 Madam Witness.

16 Thank you, Mr. Hooper.

17 Mr. Prosecutor, are you prepared to do your re-direct?

18 MR. GARCIA: (Interpretation) With your leave, Mr. President, we
19 will need about ten minutes to discuss, to consult, amongst ourselves
20 regarding the issue of the re-direct.

21 PRESIDING JUDGE COTTE: (Interpretation) Try to do that much
22 faster than ten minutes, and these ten minutes fall at a very bad time.
23 It is about 20 minutes to 11.00. So we can meet again at 10.47. We
24 suspend for ten minutes and meet again at 10.47.

25 MR. GARCIA: (Interpretation) Mr. President, regarding the other

1 two MFI documents, 97 and 98, we would like to ask an EVD reference to be
2 assigned to them.

3 PRESIDING JUDGE COTTE: (Interpretation) I wanted to come back
4 to this at the very end of the hearing based on the various observations.
5 So I would prefer to delay that issue until after your direct -- or
6 rather, after your re-direct and the final observations of the Defence
7 teams, but I will keep it in mind.

8 Mr. Prosecutor, and Mr. MacDonald, can Witness 418 appear this
9 morning or not? That is for the Mathieu Ngudjolo team to begin the
10 cross-examination?

11 MR. MACDONALD: (Interpretation) What I can tell the Chamber is
12 that we contacted the unit yesterday to be sure that the witness is
13 available this morning, but maybe the Court Officer can check with the
14 unit whether the witness is indeed ready. But I suppose he must be, but
15 we had asked him to be ready for the cross-examination today.

16 PRESIDING JUDGE COTTE: (Interpretation) Thank you. If I ask
17 the question, it is because except I am mistaken, Court Officer, when we
18 move from one witness to another we have to suspend for about 30 minutes.

19 (Trial Chamber and Court Officer confer)

20 PRESIDING JUDGE COTTE: (Interpretation) In that case we are
21 going to suspend now for half an hour and resume at 11.10 with your
22 re-examination and the final comments of the Defence teams. The
23 transition time between the two witnesses will be shorter than planned,
24 which means we can continue with the cross-examination of 418 immediately
25 after the end of the testimony of Witness 287. So we will break for 30

1 minutes.

2 We will therefore ask you, the security officers, to escort the
3 two accused persons outside, please.

4 (The accused withdrew)

5 PRESIDING JUDGE COTTE: (Interpretation) The accused persons,
6 please. We are going to meet again in half an hour.

7 Court Officer, please let us move into closed session to allow
8 the witness to leave the courtroom.

9 Madam Witness, we will meet again in half an hour, so you will
10 have half an hour's break.

11 THE WITNESS: (Interpretation) Very well.

12 (Closed session at 10.41 a.m.)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Open session at 10.42 a.m.)

22 COURT OFFICER: (Interpretation) Your Honour, we are in open
23 session.

24 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
25 Court Officer.

1 The hearing is suspended and we will resume at 11.15.

2 Recess taken at 10.42 a.m.

3 On resuming at 11.21 a.m.

4 (Closed session)

5 (Expunged)

6 (Expunged)

7 (Expunged)

8 (Expunged)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Open session at 11.22 a.m.)

14 COURT OFFICER: (Interpretation) Mr. President, we are in open
15 session.

16 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
17 Court Officer.

18 (The accused entered court)

19 PRESIDING JUDGE COTTE: (Interpretation) The accused persons are
20 now in the courtroom. We can resume our proceedings.

21 Madam Witness, we are almost at the end of your testimony. The
22 Prosecutor is going to do his re-examination. To the extent possible in
23 the future and while bearing in mind that the re-examination can be
24 directly linked to the cross-examinations, we will try not to suspend so
25 as to save time.

Witness: Witness P-0287 (Resumed) (Private Session)
Further questioned by Mr. Garcia

Page 34

1 MR. GARCIA: (Interpretation) I would like to seize this
2 opportunity, Mr. President, to thank the Chamber for granting us the time
3 to consult.

4 PRESIDING JUDGE COTTE: (Interpretation) Thank you. You can
5 proceed.

6 MR. GARCIA: (Interpretation) Considering the nature of the
7 questions that I would like to put to the witness, I would like to
8 request private session.

9 PRESIDING JUDGE COTTE: (Interpretation) Court Officer, let us
10 go to private session, and for the people in the public gallery we are
11 compelled to move into private session to -- for purposes of the security
12 of the witness.

13 (Private session at 11.24 a.m.)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 (Expunged)

21 (Expunged)

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24 (Expunged)

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Witness: Witness P-0287 (Resumed) (Private Session)
Further questioned by Mr. Garcia

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Witness: Witness P-0287 (Resumed) (Private Session)
Further questioned by Mr. Garcia

Page 36

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Witness: Witness P-0287 (Resumed) (Private Session)
Further questioned by Mr. Garcia

Page 37

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20 (Open session at 11.34 a.m.)

21 COURT OFFICER: (Interpretation) We are in open session, your
22 Honour.

23 PRESIDING JUDGE COTTE: (Interpretation) Counsel David Hooper,
24 for any final questions you have the floor.

25 MR. HOOPER: Yes, just I think one or two questions on that

Witness: Witness P-0287 (Resumed) (Private Session)
Further questioned by Mr. Hooper

Page 38

1 subject, of course.

2 Further questioned by Mr. Hooper:

3 Q. And is it right that as a result of these stories about your
4 husband's threats, et cetera, that you were as a result of those stories
5 relocated?

6 A. No. We had problems between us, but following these threats I
7 decided to leave him.

8 Q. But is it right that you were relocated to another part of the
9 Congo --

10 MR. GARCIA: (Interpretation) Objection.

11 PRESIDING JUDGE COTTE: (Interpretation) Would you like to go
12 into private session?

13 MR. GARCIA: (Interpretation) Yes.

14 PRESIDING JUDGE COTTE: (Interpretation) Let us go into private
15 session.

16 Just for the public, we are obliged to go into private session
17 because some elements might be stated by the witness that could lead to
18 her security being threatened, so we will go into private session.

19 (Private session at 11.36 a.m.)

20 (Expunged)

21 (Expunged)

22 (Expunged)

23 (Expunged)

24 (Expunged)

25 (Expunged)

Witness: Witness P-0287 (Resumed) (Private Session)
Further questioned by Mr. Hooper

Page 39

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22 (Open session at 11.38 a.m.)

23 COURT OFFICER: (Interpretation) Your Honour, we are now in open
24 session.

25 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

1 Court Officer.

2 Professor Fofe, you may make your closing remarks. You have the
3 floor, sir.

4 MR. FOFE: (Interpretation) Thank you very much, your Honour,
5 but we have no further questions for the witness. We would like to
6 reiterate our thanks to the witness for her contribution and the
7 clarifications in this case. Thank you very much, your Honour.

8 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
9 Professor Fofe.

10 Before leading out the witness 287, the Chamber must make a
11 decision about the two photographs which are currently listed as
12 MFI-OTP-0097 and MFI-OTP-0098. After the cross-examination this morning
13 led by Professor Fofe, a cross-examination in which he dedicated some
14 significant time to the anatomical aspect of the wound suffered by the
15 witness on the 24th of February, 2003, the Chamber considers that these
16 two photos are sincere on the whole and therefore will be attributed an
17 EVD as with the others. So we would ask the Court Officer to therefore
18 also give an EVD number to these two photographs which were under the
19 provisional number of MFI.

20 Therefore, Court Officer, could you please attribute an EVD
21 number to these two photographs which were discussed at length this
22 morning.

23 COURT OFFICER: (Interpretation) Yes, the MFI-OTP-0097
24 photograph will be given the reference EVD-OTP-00097, and the photograph
25 with MFI-OTP-0098 will be now -- from now on EVD-OTP-0098.

1 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
2 Court Officer.

3 Witness, Madam Witness, you have been here with us in this
4 Chamber since Monday morning. The Chamber would like to thank you for
5 your contribution that you have made. You had to re-live some very
6 difficult moments. You were forced - and we were very aware of this - to
7 help us better understand what you saw, what you heard, and what you
8 experienced. All of this was so that we could better understand what
9 happened on the 24th of February, 2003, in Bogoro. You answered the
10 Prosecution's questions and questions from the Legal Representative of
11 Victims and from the two counsel for the Defence. So we want to thank
12 you.

13 We also want to remind you, Witness, that you must not discuss
14 everything that you have said in this courtroom over these last three
15 days. The statements that you have made must remain confidential.
16 Please keep this to yourself.

17 Have you understood what I am saying?

18 THE WITNESS: (Interpretation) Yes, I understood you, Presiding
19 Judge.

20 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

21 Once again then, thank you for coming and thank you for your
22 contribution. I join the Defence in thanking you, wishing you bon
23 voyage, and for wishing you all the best in your new life.

24 I would like then for our Court Officers to put us into closed
25 session so that our witness may leave the room.

1 Usher -- sorry, Court Officer, please put us into closed session
2 so that the witness may leave the courtroom.

3 (The accused withdrew)

4 (Closed session at 11.43 a.m.)

5 (Expunged)

6 (Expunged)

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10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Open session at 11.43 a.m.)

16 COURT OFFICER: (Interpretation) We are now in open session.

17 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
18 Court Officer.

19 Security officers, please lead in the two accused, who may take
20 up their usual places. Mr. Ngudjolo may revert to his usual place, but
21 please make sure that the telephone screen -- the television screens are
22 placed in such a way that the discussions can be followed.

23 Now we shall bring in Witness 418 who has not requested any
24 particular security measures.

25 Mr. Prosecutor.

1 MR. MACDONALD: (Interpretation) We are going to change teams, so
2 our colleagues are going to come in. Madam Huck will be joining us.

3 PRESIDING JUDGE COTTE: (Interpretation) Thank you. Thank you
4 Madam Darques-Lane and Mr. Garcia, and to the third person whose name I
5 do not know.

6 For the people who are in the public gallery, you have just heard
7 from Witness 287, who is finished her testimony and currently coming into
8 the room - yes, please, Mr. Prosecutor take your place, Madam - we are
9 going to have Witness 418 come in who is a medical forensics expert. He
10 started his testimony a few days ago, and now we will have the
11 cross-examination from Mr. Ngudjolo's Defence team.

12 I don't know which of the two counsel will be taking the floor.
13 Is it Counsel Kilenda? Okay.

14 (The witness entered court)

15 PRESIDING JUDGE COTTE: (Interpretation) Good morning, Witness.

16 THE WITNESS: (Interpretation) Good morning, your Honour. Good
17 morning, your Honours.

18 PRESIDING JUDGE COTTE: (Interpretation) We'd like to give you
19 some explanations. You have come before the Chamber and before the
20 Easter weekend -- excuse me, where are the accused? The accused are not
21 here. I'm sorry, I did not hear from the security officer. I thought
22 maybe he didn't hear me. I asked him to lead them in. We will wait for
23 the accused to enter the room since it is their trial.

24 (The accused entered court)

25 PRESIDING JUDGE COTTE: (Interpretation) Mr. Mathieu Ngudjolo,

1 you may take your usual seat.

2 Is Mr. Ngudjolo's screen working? Yes? Please check, usher.

3 Thank you.

4 Apparently everything is working.

5 So, Witness, we'll just go into these explanations. Before the
6 Easter break you started your testimony. The Prosecution asked you the
7 questions that he needed for the examination-in-chief. I cannot remember
8 whether the representatives of victims took the floor, but in any case we
9 arrived at the point where will Germain Katanga's Defence team had
10 started their cross-examination with Mr. O'Shea. We don't know where
11 Mr. O'Shea is right now. He may be flying, but he was stuck outside of
12 the Netherlands and we're hoping Mr. Hooper will be able to tell us where
13 he is. So we are therefore bound to suspend the cross-examination of
14 Mr. O'Shea. As a result, it is the cross-examination of the Defence of
15 Mr. Ngudjolo which will take place, so as to save time. We hope that
16 this will not perturb your testimony.

17 I think it's important for you also to know, sir, that we have
18 been listening to Witness 287 as of this Monday, who was one of the
19 witnesses that you examined, which might lead some of the participants
20 here to discuss the wounds received by this witness on the 24th of
21 February, 2003. I just wanted to give you that context so you know where
22 we stand and so that you don't have the impression that you're arriving
23 here without any footholds.

24 So, Counsel Kilenda, you have the floor for your
25 cross-examination.

Witness: Eric Baccard (Resumed) (Open Session)
Questioned by Mr. Kilenda

Page 45

1 MR. KILENDA: (Interpretation) Thank you, your Honour. Good
2 morning, your Honours.

3 WITNESS: ERIC BACCARD (Resumed)
4 (Witness answered through interpreter)
5 Questioned by Mr. Kilenda:

6 Q. (Interpretation) Good morning, Witness.

7 A. Good morning.

8 Q. My name is Jean-Pierre Kilenda. I am the principal counsel for
9 Mr. Ngudjolo's team. We have been able to exchange I think on the 24th
10 of third some pleasantries before the Easter break. I want to address
11 you as a jurist to discuss your medical forensic evidence. So I am not a
12 forensic pathologist, I am no specialist. And I hope that you will
13 please continue to speak with language that we can all understand here in
14 the chamber, so that all of us have access to the most technical aspects
15 of the report that you'd submitted to us.

16 My job then is to ask you a certain number of questions to see
17 whether the report was -- that was established by you can assist the
18 Court in discovering the truth. Throughout this exercise I will try to
19 speak slowly, following the technical instructions of the courtroom as
20 concerns taking the floor, so as to facilitate the interpreters and court
21 reporters who are in the booths up above us.

22 Witness, when I read your CV I see that you are currently the
23 co-ordinating expert of medical activities in the forensic section of the
24 OTP; is that correct?

25 A. Yes, that's correct.

Witness: Eric Baccard (Resumed) (Open Session)
Questioned by Mr. Kilenda

Page 46

1 Q. Is it correct for me to think that you participate in the
2 investigations undertaken by the Prosecutor?

3 A. My role is to provide scientific support to the various
4 stakeholders undertaking the investigations, be they investigators or
5 analysts within the unit. They -- I also sometimes operate for other
6 stakeholders in the Court, such as the Registry or other stakeholders in
7 the Court.

8 Q. Thank you, Witness. So you are a key person for the OTP's
9 investigations under the jurisdiction of the ICC; is that right?

10 A. I don't know if I'm a key person. I pursue my functions, and
11 then it's up to the ICC or the OTP to judge whether my role is a key one
12 or otherwise.

13 Q. In your current role, do you have scientific independence?

14 A. Absolutely. I would say that I am the only person in my
15 discipline, not only within the OTP but also within the ICC. And indeed
16 the independence that I enjoy is complete.

17 Q. You are therefore not in a relationship of subordination
18 vis-a-vis the Prosecutor?

19 A. When I talk about independence, I mean scientific independence.
20 I am in a subordinate position obviously in the administrative sense; and
21 as concerns the reputation vis-a-vis the public of this institution. The
22 opinions that I give within my role are purely scientific. I am not
23 persuaded to create -- to come to conclusions in one sense or another.

24 Q. Thank you. Am I to understand then in your current capacity you
25 cannot be consulted by the Defence teams?

Witness: Eric Baccard (Resumed) (Open Session)
Questioned by Mr. Kilenda

Page 47

1 A. I can see no reason why they would not consult me, because when
2 Counsel O'Shea asked me this question the last time, which I had
3 initially misunderstood, I was able to mention that in my previous job as
4 a French expert, an expert in France, I was able to work both for the
5 justice system - and there I talk about magistrates or justice in the
6 appeals Court or the Cour de Cassation, the highest Court in France. But
7 I also work for defence counsel, insurance companies, or directly for
8 victims.

9 Q. Thank you, Witness. What difference would you establish between
10 a scientific assignment and a medical forensics assignment? Are these
11 synonymous?

12 A. Medical forensics is part of science. When I talk about a
13 scientific assignment, I understand this term to cover a broader range of
14 subjects than medical forensics. It can also refer, notably, to forensic
15 science or criminalistic forensics. And it also covers all of the
16 domains where science can assist the Courts in seeking the truth or
17 further evidence. My unit is also in charge of geographic systems, GIS,
18 satellite imagery, the taking of specialised photographs particularly
19 with the use of drones. So it is something that is much broader than the
20 mere field of medical forensics.

21 Q. Thank you, Witness. Before each medical examination, did you
22 take -- did you read the depositions of the witnesses?

23 A. Unfortunately this is one of the complaints that I would make. I
24 did not have the benefit of reading these background documents, which I
25 think in a normal expert role in France I would be able to do this. The

Witness: Eric Baccard (Resumed) (Open Session)
Questioned by Mr. Kilenda

Page 48

1 documents concerning the request for expertise normally enables us to
2 situate ourselves in the context of the case in question. In this case I
3 had very little access to the documents, and these are -- the ones that I
4 did read I listed in my report. In particular, I did not have access to
5 previous interviews or declarations or depositions from the victims. The
6 subjective data that appears in my report are attributed directly to the
7 victims. They are the victims themselves that gave me this information
8 during my consultation.

9 Q. You call this the anamnesis, the medical history?

10 A. Yes.

11 Q. Thank you, Witness. On the 30th of March, 2010, before the
12 Easter break, Mr. Witness, you said, and I'm talking about the transcript
13 126, page 13, lines 4 to 8, and I quote you, sir:

14 "Doctor, how many expert analyses have you completed in total
15 before national jurisdictions requested by Justice Cassations (phoen) in
16 the French system or Court judges or for international organs of the ICC,
17 such as the ICTY? Just to give us an approximate answer, sir."

18 In response you said and in the same script, I quote from 9 to
19 12, lines 9 to 12, you said:

20 "It is difficult to estimate. Counsel, I don't know if speaking
21 in the thousands would satisfy your answer. I don't know if you want me
22 to make a distinction between expertise surrounding living subjects or
23 post mortems, but the two figures put together I would say would go, yes,
24 into the thousands."

25 And the Prosecution continued:

Witness: Eric Baccard (Resumed) (Open Session)
Questioned by Mr. Kilenda

Page 49

1 "Thank you. That is very useful."

2 Same transcript, page 13, line 13:

3 "It was useful for the Prosecutor to know the exact figure with
4 regards to the expert reports that you'd already carried out within your
5 career, and it was also useful for the Defence of Mathieu Ngudjolo to
6 know the figure. Even approximately of how many counter expert reports
7 could have followed your expert reports. Could you evaluate that?"

8 A. Counter expert reports, do you mean the number of expert reports
9 that were challenged?

10 Q. Have you often been sometimes or rarely scientifically
11 contradicted by other experts?

12 A. I could say very rarely. To give you an element with regard to
13 this question -- more precise with regards to the estimation given to the
14 Office of the Prosecutor, when I exercised my profession in France
15 exclusively as a forensic specialist, the expert reports on surviving
16 victims and injured people carried out annually was around between 300
17 and 500 per year. The expert reports on deceased victims, autopsies I'm
18 talking about here, were -- which was also subject to the current events.
19 But I would say that was between a hundred -- 150, 200 per year, which
20 makes it possible to give you something more precise as an estimation
21 because afterwards you merely have to multiply by the number of years
22 which are on my curriculum vitae. I think it's 25. I don't have my CV
23 before me. Now, where it concerns the number of expert reports that were
24 challenged, it's difficult to say this for several reasons. We're not
25 necessarily informed by the magistrate that our expert report has been

Witness: Eric Baccard (Resumed) (Open Session)
Questioned by Mr. Kilenda

Page 50

1 subject to a challenge. And it's often indirectly that we learn about
2 this.

3 According to the information that I have had over these 25 or 26
4 years, it is a small number certainly that have been subject to a
5 challenge.

6 Q. Thank you, Witness. I would like to inform you that my
7 cross-examination is divided up into three different parts, three
8 different chapters to it. We are in open session. I don't want to
9 mention the names of people who you might have examined, but you will
10 understand when I mention the name "Witness 287," you'll know exactly who
11 I am talking about. We're in open session. We won't mention the names.

12 First of all, I would like to go into the forensic expert report
13 which you wrote for Witness 287. It would seem that from the medical
14 history with regards to Witness 287.22 relating to this person's
15 traumatic history, that this person was injured by a bullet. With
16 regards to the circumstances surrounding this injury, where it concerns
17 the circumstances with regards to this injury she, that is the witness,
18 says that she was hiding underneath a bed with her children. Her
19 attackers hit one of her children with a spear, and then there were
20 shots. Initially she did not notice that she had been hit and came out
21 from under the bed. Moving away accompanied by her attackers, she had
22 difficulties in walking. She felt the blood going -- running down her
23 right leg which bit by bit was getting colder. As -- so this traumatic
24 history as recounted, does this seem possible to you?

25 A. I would like to make a preliminary remark. Last time I did have

Witness: Eric Baccard (Resumed) (Open Session)
Questioned by Mr. Kilenda

Page 51

1 a copy of my expert report and here I have nothing. Could I take the
2 copy of it or I will certainly have to refer to this report. This is a
3 remark before referring to your question.

4 Q. We have no problem with that.

5 PRESIDING JUDGE COTTE: (Interpretation) Counsel Hooper, do you
6 have an advice on that regard? I think for the clearness of the answers
7 that we all want to receive, I think it would be preferable for the
8 witness to have his report.

9 MR. HOOPER: I wouldn't expect him to give evidence without it.

10 PRESIDING JUDGE COTTE: (Interpretation) Perfect. So agreement
11 on the part of the Defence teams.

12 Do you have your report next to you or does the Office of the
13 Prosecutor have to provide you with a copy?

14 THE WITNESS: (Interpretation) I have a copy of my report.

15 PRESIDING JUDGE COTTE: (Interpretation) Please take your
16 forensic report concerning Witness W-287 and go directly to page 5,
17 paragraph 9, which Counsel Kilenda has just read. If you would like that
18 this paragraph be read again, there was a time between the question being
19 asked you and having the document given that the counsel, namely,
20 Kilenda, wanted to know if the relation -- or the account that you gave
21 in paragraph 9, page 5 with regard to the remarks that the -- that the
22 witness had made seemed likely. Please take the time to do so.

23 THE WITNESS: (Interpretation) Yes, I do remember these three
24 expert reports, and it's easy to re-read them. I would like to remark
25 that each time that there is a medical history I used the conditional

Witness: Eric Baccard (Resumed) (Open Session)
Questioned by Mr. Kilenda

Page 52

1 form so I didn't take on my own count the statements of the person who
2 had been examined. Now, where it concerns the circumstances with the
3 injury which are very schematic, they're very general, I don't have --
4 find discordant elements to the narrative that was made of -- thereof
5 made by the victim.

6 MR. KILENDA: (Interpretation)

7 Q. Thank you, Witness. Were you able to know what type of weapon
8 would have been used to cause such injury?

9 A. I didn't in this report have medical documents in support of the
10 wounded. This is just with regards to the physical examination. I
11 discussed this and I gave my conclusions. No, absolutely not. We don't
12 have any information which makes it possible to determine, given the
13 statements of the wounded person, which would make it possible to
14 determine what type of weapon was used.

15 Q. Thank you, Witness. Are you able to tell the Court what
16 distance -- from what distance -- unfortunately you don't know what type
17 of weapon was used. Is it impossible for you to tell the Court what
18 distance the bullet came to be lodged into the body?

19 A. I think this has been discussed in my expert report where it
20 concerns the distance of the shot, I think that is in the three expert
21 reports. And obviously it's not possible at this stage to determine a
22 distance of a shot.

23 Q. (Microphone not activated)

24 THE INTERPRETER: Microphone, please.

25 MR. KILENDA: (Interpretation)

1 Q. From what distance can a bullet go through the body?

2 A. It's not possible to reply to that without having greater
3 precision in that regard. These precisions must bear in mind the type of
4 weapon that is used, also the type of projectile, in concluding the
5 weight of that projectile, but also the form of it, the amount of powder,
6 the existence of particular aspects with regards to the rifle which
7 will -- might break the initial speed, the distance you spoke about, the
8 target is going to be at, the existence -- the possible existence of
9 intermediary aspects. For example, if it has to go through a branch,
10 window, a car window, then there's also the anatomical region which it
11 goes through would be completely different. For example, if it's the
12 thigh, thorax, abdomen, and the nature as well of the anatomical area.
13 Some areas are complex, others are more simple.

14 So it could just be a part of the muscle and skin, where that
15 would be easier to go through; and there could also be another part where
16 the projectile is going to impact, and this is something's going to
17 break. There would be a transfer of synergic energy which is going to
18 slow down this projectile, and this projectile will also have a structure
19 and a form which is modified. And if there's a bullet which is a
20 reinforced bullet, for example, it will go a lot easier through than if
21 it has no casing, for example. For example, if the extremity is just in
22 lead, it doesn't have any covering which makes it harder; or where the
23 form has changed this is going to cause a mushrooming effect which is
24 going to increase the cutting, so it's going to break with regards to its
25 penetration into the muscle.

1 And there could also be destabilisation of the projectile. The
2 projectile is something, the stability of which is assured by rotation
3 units when -- which you have the barrel lining affects this. The
4 projectile could come out slightly inclined with regards to the angle,
5 and in the human body it's going to move. This is what we -- they say
6 "tumbling" in English. Then when it goes there the body it will cut a
7 greater surface because it's going to cut through it. So you see that
8 there are a massive amount of different factors that have to be taken
9 into account and that it's not possible to answer you directly in that
10 way.

11 A projectile, for example, could weigh -- if it doesn't -- if
12 it's not reinforced and it has a low amount of powder, then it can
13 penetrate a lot less than an AK-47 projectile can. So there are massive
14 amount of factors which are involved. It's very difficult to give you a
15 response which doesn't take into account all these different factors.
16 All this is linked to the interaction that there is between the
17 projectile and the living tissue.

18 I spoke also about the anatomical part which is considered to
19 have simple or complex character. This will influence the projectile's
20 direction, but there's also the physical nature of the anatomical area,
21 this physical -- there's the density, its elasticity as well, the skin,
22 for example, because we are talking about scars, this skin is an area
23 which is very elastic and it's hardly dense so it goes through very easy.
24 Bone, however, is an area which is very dense, it's hardly elastic, and
25 it has very significant resistance and generally it breaks and so you see

Witness: Eric Baccard (Resumed) (Open Session)
Questioned by Mr. Kilenda

Page 55

1 a fracture. So these are factors which have to be taken into account to
2 reply to your question in a complete way.

3 Q. Thank you very much, Witness. How can you distinguish a wound
4 caused by a weapon -- a gun rather than one which is caused by a cutting
5 instrument?

6 A. Counsel Kilenda, this is a very interesting question and I -- if
7 the Court would allow me to talk about this I would like to give a very
8 brief presentation, which could explain also the notes that have also
9 been made with regards to the other victims. I have, in order to answer
10 your question to explain to you what a scar is, the scarring process
11 which leads to the scar, and ultimately what the skin does because the
12 skin is something which is very important. This is an organ, for
13 example, this is an -- has considerable importance with regards to the
14 quantitative level, because this is one-third of the weight of the --
15 it's 2 square metres of body, so it's also very important with regard to
16 the qualitative and functional nature. Because the skin is a barrier
17 which protects you from outside aggression, but it also one which acts as
18 a filter which makes it possible to have filters with the environment,
19 and here I'm thinking about sweat, for example. So the skin is something
20 that's very important, but at the same time it's also something which is
21 complex. And I would also like to apologise in advance to the
22 interpreters, but I will have to use certain scientific terms in this
23 regard which I will try to explain in common language.

24 Now, it is important. Why is it important to speak to you about
25 the structure of skin? Because this is a complex structure. This is

1 something that occurs with scarring. This is something that we also find
2 in relation to scars. Now, the skin, in order to state it simply, it has
3 three different layers from outside. You have the surface going further
4 into depth in the skin. Now, outside you have the epidermis, this is
5 what makes it -- is what we see from the skin. This is the part which is
6 apparent. In the epidermis these are cells and
7 keratinocyte (as interpreted). I'm sorry for this medical term, but
8 there is no other term to use. There are cells which produce keratin,
9 which is a -- I think you've already heard people speak about that. Then
10 there is also the melanocyte which is also -- these are also cells which
11 produce melanin. You have heard people speak about that term. These are
12 the two groups of cells which are the most important in the epidermis,
13 and I will leave some of the different other cells which have a more
14 accessory function. So with regards to the most superficial area, this
15 is the epidermis. And then we go further into depth and we into what is
16 the junction of the epidermis, and here I am going to -- well, I'm going
17 to talk about the role in scarring, but here it's very minor, so go over
18 that.

19 We'll then go on to the last part which is the derm and the
20 hypoderm. And what is the derm and the hypoderm? Well, these are --
21 first of all, these are fibres, fibers which -- reticulin, and these are
22 cells, these cells you know them. Perhaps you have fibroblast,
23 adipocytes, these are the fatty cells, as well these are fixed to that
24 area. And then there are also all the different cells which come from
25 the blood (as interpreted) such as macrophages, histiocytes (phoen) et

1 cetera. And all of those are in a type of soup which we call a
2 fundamental substance.

3 Now, why is it important to speak to you about that? Well, it's
4 important because all these structures are going to be affected at the
5 time of the wound, and immediately afterwards they're going to be
6 injured. What happens? The reparation process starts, it starts to be
7 implemented, and this reparation is something which is done in a very
8 particular way. It goes from the depth to the surface. So basically
9 what we can say is that the scarring process takes place in three
10 different stages and each of these stages is important, and these
11 following stage cannot take place unless the first one does.

12 Now, the first stage is the detersion stage as we call it and
13 this is -- consists of eliminating the tissue, the damaged tissue, and
14 this elimination is done naturally by the organism through what the
15 enzymic splitting, that is to say the enzymes which are produced by
16 microbes which live in good intelligence with our body, what we call
17 saprophyte microbes. They secrete enzymes and these enzymes have the
18 property of making a distinction between the good and bad tissue. And so
19 we are going to eliminate the organism, everything that is an organism
20 that is dead and which cannot come back to having a certain degree of
21 life.

22 Now, once this stage of detersion is completed, then we have the
23 next stage, what we call the beaujo meaux (phoen). Now, this is what
24 happens at the derm and hypodermis stage. It's therefore deep. So you
25 have a process takes place, it's going to make up for the loss of

1 substance produced by the wound, whether it is from a fire-arm or from a
2 cutting motion. So this new tissue is produced thanks to new vessels --
3 new vessels, but also a migration of the cells which I spoke about
4 previously, and this is to say fibroblast. These were cells of the derm
5 and the hypoderm and mixing of collagen. You've also heard this term.
6 This used this term, this is used in esthetic medicine.

7 Now, when this process or when this growth has finished and it
8 comes to the epidermis level, you see we're going from the deeper level,
9 we're going up to the epidermis, then it's the third and last mechanism
10 which is then taking place and this is what the epidermisation of it,
11 this is perhaps difficult to interpret, I'm sorry for that, but I don't
12 have any other terms to use. Now, this is the making of a new epidermis,
13 a new tissue of external protection, and this is done from the wound
14 itself. So you have a stage which comes from the depth and now we've
15 come to the surrounding area of the wound which goes from the periphery
16 into the centre. And in the centre you have other cells that I spoke
17 about, keratinocytes, which are also going to be taken into account here.

18 And why have I allowed myself to make this digression, which
19 might be considered quite lengthy at a scientific level? It's with
20 regard to the final product. It's the loss of subjects -- the loss of
21 substances, it's compensated by a new tissue that is -- replaces it, the
22 scar, and it's this scar which comes and will occupy the space, the
23 volume, which was made free by this loss of substance. This is less --
24 is less hypoforming, is not as elastic, but it's good to be there, it
25 covers and it closes.

Witness: Eric Baccard (Resumed) (Open Session)
Questioned by Mr. Kilenda

Page 59

1 Now, why is that of interest to us? This is of interest to us.
2 You asked the question. How can you distinguish between a scar which is
3 caused by a cutting weapon or one which is caused by a projectile from a
4 fire-arm? And it's interesting because the second point to consider is
5 the wound, the wound itself, and here I think that your experts, the
6 experts that you have consulted yourself, will also be in agreement to
7 say that the wound does have a polymorphism, a diversity which is
8 infinite, and that we have no problem in general when we are familiar
9 with chromatology to base ourselves on the form, the character, the
10 dimensions, the colour, the depth, these aspects to make a difference
11 with the cause. Let's say that we're going -- also going to be visually
12 able to make a diagnostic of a wound by a cut. Often, we are able to
13 orient the Judge with regards to the type of bladed weapon that's used.
14 Is it a razor, is it a knife, et cetera. And also, with regards to
15 fire-arm wounds. And I think that there we are a lot more at ease to be
16 able to determine the distance of this shot, but also other types of
17 wound by a -- blunt instruments, by other mixed agents as well, which can
18 also have cutting and a blunt nature. So there's a large degree of
19 diversity with regards to the wounds and also a diversity with regards
20 to -- well, certainly in very -- a wide number of cases in terms of the
21 scars.

22 Am I the only person to think that? Not, I'm not. But it's not
23 only Dr. Baccard who thinks that scars are varied. There are numerous
24 authors who are of this opinion, and I also had the question of Counsel
25 O'Shea. The last time he was asking me for a reference work and I

Witness: Eric Baccard (Resumed) (Open Session)
Questioned by Mr. Kilenda

Page 60

1 mentioned -- I didn't say the good one the last time, the right one, I
2 was a bit surprised by the way in which the cross-examination was going
3 on, but I can tell you the names of two works of reference. The first
4 work of reference is "Forensic Pathology," and that is to say -- forensic
5 pathology, as I said, this is, if you like, the Bible of the profession
6 of forensic expert. This is written by two authors, one of whom is
7 British, Professor Bernard Knight, K-n-i-g-h-t, and this is a work which
8 is referred to as a general rule for everything related to forensic
9 issues and also with regards to autopsies and also with regards to expert
10 reports on injured people.

11 Now, what Professor Knight wrote, what did he write? Well, he
12 was particularly interested in scarring, not in the sense that it could
13 help to determine the origin of the weapon, but particularly because they
14 are a help for identification means. If you discover a body that you --
15 and it's not known the identity, a scar is very personal, this can help
16 with the identification of the person who has disappeared. And
17 Professor Knight wrote that where it concerns the traumatic scarring
18 other than surgical scarring, the forensic doctor could determine the
19 cause and this would help when it came to the identification of the
20 person.

21 Another part of this is that he took up an examination of the
22 victims of human rights violations, and particular torture victims, and
23 you can refer to this work and you will see that the chapter is devoted
24 to all the traumatic traces which are left by different types of agents
25 where it concerns scarring, bladed weapon scars, by whips, by fire-arms,

1 et cetera. And you will see in particular that as examples there is a
2 photograph of an African woman, a who had been hit by a fire-arm
3 projectile at the scarring stage. Now, a different reference very
4 quickly because I think that you also have little time, there is another
5 work from Professor Guharaj who is an Indian and who also wrote a work
6 which is a work -- a summary work which is called "Forensic Medicine" and
7 in which he affirms that the form of the scar is generally - and I do say
8 here generally - is generally that of the wound which caused it.

9 So I say this to tell you that numerous experts think that the
10 form of the wound is also going to influence the form of the scar, and it
11 is true that from the moment where one explains how we go from a wound to
12 a scar, that's to say that you have a space which is empty that's filled,
13 it's filled by a replacement tissue, and here you're able to think that
14 in numerous cases we find sufficient arguments in order to be able to
15 help the magistrate when it comes to determining the origin of the
16 injury.

17 I've also mentioned very quickly the injury caused by a bladed
18 weapon. We also come at the scarring level to determine if the blade had
19 one or two cutting edges and what the position that -- what position the
20 blade was in, and you're also able to do that years afterwards. So you
21 have to look, you have to see, you have to examine these scars in order
22 to make them speak.

23 You asked me the question about a scar from a bullet, how is this
24 different. In relation to other weapons, a bullet is a very different
25 piercing device. I said before that it is characterised by its mass or

1 weight and high speed and liberation of synergic energy. There is also
2 the interaction between the living tissue and the projectile, and this
3 defines what we refer to as the wound profile.

4 What is the wound profile of a projectile? I have to give you
5 certain explanations. This wound profile is constituted by the permanent
6 and the temporary cavities. The permanent cavity is a tunnelling of the
7 tissue which is linked to the destruction of the tissue. This is what
8 Dr. Ficker (phonetic), who is the father of wound ballistics, referred to as
9 the crushing effect. And next to that, next to that tunnelling, that is
10 quite easy to understand, there is something that is more difficult to
11 understand, which is what is referred to as the temporary cavity which is
12 more subtle, is made up of vibrations, and that surrounds the permanent
13 cavity and leads to the stretching phenomenon or stretching effect. So
14 this can be seen very well when gun-shots are fired. It is also seen
15 when those temporary cavities are examined, the fibres are destroyed, and
16 there are micro haemorrhages. This is different because it does not
17 exist with bladed weapons or other weapons. It can exist with fragments
18 from explosions, but that is a different story all together.

19 So I was telling you that to explain that contrary to what one
20 could think, and I heard Mr. O'Shea the other time say that there was
21 nothing specific about that. I agree with him that nothing is ever
22 specific in medicine, is never just black or white; it is usually grey.
23 But it has an orientation value and it makes it possible for a trained
24 practitioner who has examined and palpated the scar to be able to know what
25 is the in-depth connection, if it crossed or went through a muscle, how

Witness: Eric Baccard (Resumed) (Open Session)
Questioned by Mr. Kilenda

Page 63

1 that muscle was affected, because for scars that are linked to
2 projectiles they go much further, much deeper than the projectile would
3 suppose. So this is the difference that one has to bear in mind to
4 understand what is very special about a scar from a bullet.

5 I'm sorry because I was very lengthy, but it is important to
6 enlighten the Chamber about physiopathology of these type of scars.

7 Q. Thank you, Doctor. Thank you, Mr. Witness. You were not too
8 lengthy. This is indispensable for a full understanding of your reports,
9 and we learn every day in this courtroom. Thank you very much.

10 Mr. Witness, can you tell us the movement of a bullet that is
11 fired from a weapon of war?

12 A. Yes, counsel, if you believe that it is important for the
13 understanding of the case. And a weapon of war is a weapon whose barrel
14 has a lining that is used to stabilise the projectile, because there is a
15 likelihood of destabilisation of such a projectile. So these projectiles
16 rotate. I am afraid of becoming too technical. Because in addition to
17 that rotative movement there is -- there are other movements that are
18 referred to as precision or mutation movements. I do not know whether
19 this is really relevant for understanding the case, but the tip of the
20 projectile traces circles with vibrations in that context but which at
21 the same time moves around the axis. And this explains the specificities
22 of the projectiles at the time of impact. And it is for that reason that
23 we will never have a hundred per cent of shots with the projectiles
24 moving in the same way. We will have maybe 90 (as interpreted) per cent
25 of the cases with movement that is -- which is expected, but 5 per cent

Witness: Eric Baccard (Resumed) (Open Session)
Questioned by Mr. Kilenda

Page 64

1 of shots, that would be different because the projectiles have been
2 destabilised much more quickly.

3 I don't know whether you want me to speak specifically of
4 intermediary ballistics, which is air-borne ballistics, or maybe you want
5 me to talk about the terminal ballistics, that is the movement of the
6 projectile in the target.

7 Q. Thank you very well -- thank you very much, Mr. Witness. And
8 what is the appearance of the wound on the skin of a victim?

9 A. Everything depends on the type of a projectile. When you talk
10 about a bullet, I believe you are referring to a single bullet and not
11 fragments of an explosive device or lead fragments. If you look at
12 weapons such as hunting weapons, the lead fragments are shot from a
13 different types of -- type of weapon with a smooth barrel, and these
14 multiple projectiles are accompanied by other ammunition constituents.
15 It may be plastic, it may be -- which may themselves be fired from a
16 certain distance. And this, as I've said before, also depends on the
17 length of the barrel, and this will have an effect on the skin of the
18 victim. Shot from a short distance, this will be a bullet effect that is
19 at the point of entry. It will behave like a single bullet because there
20 will be a mushroomic -- mushrooming effect. And so you will have several
21 types of several entries.

22 Now, with regard to weapons of war, projectiles from weapons of
23 war, it first of all depends on the firing distance and also based on the
24 mass of the powder, the length of the barrel, the firing distance, and
25 the other mechanisms, including the extension to the barrel that serves

Witness: Eric Baccard (Resumed) (Open Session)
Questioned by Mr. Kilenda

Page 65

1 to shade light, that also affects the dynamics of the projectile. And at
2 a short distance you will also have powder deposits on the skin or soot.
3 This will create a sort of tattoo, a sort of burn marks on the skin,
4 whereas the spoke or soot itself will not create those tattoos. With
5 close-range firing, there is going to be burn marks; but for other types
6 of distances these burn marks will not be found on the skin. So for
7 close-range firing there will be specificities and the entry will be
8 totally destroyed because at the entry wound there is a gas combustion
9 that hits the superficial part of the skin and totally destroys it. So
10 this is very different.

11 There are other cases that are rather more specific, that is of
12 projectiles that have passed through an intermediary screen, such as a
13 branch, a door, the glass of a car, and the projectile will arrive
14 completely changed. So you can have a larger entry wound than expected.
15 Then you can have a re-entry wound. If a projectile is shot through the
16 arm, for example, it will enter the arm, go back out on the other side,
17 and then enter into your side. So that kind of wound would be different.
18 It is complicated to explain, and I'm simply talking about principles
19 that will make it possible to understand wound ballistics better.

20 Q. And how is the appearance of the exit wound on the human skin,
21 that is, from a weapon of war?

22 A. I will give you a general answer, and then I refer to specific
23 cases. I previously talked about the physical characteristics of the
24 skin, its low density and great elasticity. This will have an impact on
25 the exit of the projectile. And we can even talk about the cases where

Witness: Eric Baccard (Resumed) (Open Session)
Questioned by Mr. Kilenda

Page 66

1 there is no exit, where there is not sufficient velocity to enable the
2 projectile to go out. Since there is a lot of elasticity, such
3 projectiles may remain inside under the skin without having enough --
4 exerting enough force to tear the skin and go out. But usually a
5 projectile forces the skin to break and the fibres are pulled outwards,
6 creating an exit that can be reconstituted. There are of course
7 exceptions, so you cannot reconstitute an entry wound but the exit wound
8 can be reconstituted. It could be a split in the form of a crack, and
9 generally speaking such an exit wound can be reconstituted. There are
10 cases where this is not possible. For example, if you have a victim
11 leaning against a wall, and this movement of exit from the skin cannot
12 happen because of the pressure linked -- the pressure from the surface
13 against which the victim is leaning. In that case we have an exit wound
14 that looks a bit like an entry wound, but there are signs that make it
15 possible to distinguish between the entry wound and the pseudo entry
16 wound.

17 There are also cases in which the projectile coming out has
18 significant modifications in its shape. I'm talking, for example, about
19 bone fractures, and in this case you will not have a single projectile
20 but pieces of projectiles because there is a fragmentation inside the
21 body and this will lead to several exit wounds. In that case, it would
22 be able to see maybe typical exit wounds or a mushroom type of exit wound
23 which is broader. Those are the various cases that are possible.

24 MR. DUTERTRE: (Interpretation) Mr. President, I perfectly
25 understand the concern of Mr. Kilenda, who said that he was intervening

Witness: Eric Baccard (Resumed) (Open Session)
Questioned by Mr. Kilenda

Page 67

1 as a jurist, but as a lay person. And once again, the Defence can
2 perform its cross-examination the way they wish. But with an expert
3 witness, maybe we should have more focused questions rather than general
4 questions that are somewhat prompting Dr. Baccard to go about
5 reconstituting various aspects of wound ballistics. I am wondering
6 whether it is not possible for Mr. Kilenda to go directly to the heart of
7 the matter regarding the three expert reports that we have to discuss
8 today, so we may have a more direct and focused approach.

9 PRESIDING JUDGE COTTE: (Interpretation) Mr. Prosecutor, you are
10 both wrong and right. You are right because based on certain questions
11 being asked by Mr. Kilenda require answers that considerably reduce the
12 cross-examination time that he has. These are answers that have to be
13 put in a forensic context. On the other hand, the Court thinks that
14 Mr. Kilenda is guided in the questions that he's putting to the witness
15 right now by the answers given by Witness 287 this morning in response to
16 questions put to her by Professor Fofe regarding the nature of her wound,
17 the time that it was discovered, and the possibility of actually moving
18 about while wounded.

19 So you are correct, Dr. Baccard has been sandwiched because he
20 has to provide elaborate answers without being too long and Mr. Kilenda
21 is also aware that his time is passing. The only person who can benefit
22 here is Mr. Hooper because since Mr. O'Shea is not there it is
23 Mr. Ngudjolo's Defence time that is being reduced. But we are aware that
24 Mr. O'Shea will attentively read the transcript of this hearing and this
25 will probably allow him to save time for the Court.

Witness: Eric Baccard (Resumed) (Open Session)
Questioned by Mr. Kilenda

Page 68

1 So, Mr. Kilenda, it is up to you. You can respond to
2 Mr. Dutertre's concern, but we have understood that you wish to fully
3 understand. But you have to also put your questions in a way that the
4 witness can answer briefly.

5 MR. KILENDA: (Interpretation) Thank you, Mr. President.

6 I wanted to reassure you, Mr. Prosecutor, that our
7 cross-examination was designed on the basis of, as the Judge has
8 mentioned, the explanations given to us by a previous witness as well as
9 all the documents that we have in our possession. We are lucky to have
10 Dr. Baccard with us, and we should be allowed this opportunity to better
11 understand what happened to that witness.

12 Q. Mr. Witness, can you date this wound?

13 A. No, as it is mentioned in my report I cannot -- I do not wish to
14 come back to what has been previously written on the scarring process.
15 But you have to know that approximately two to three years after the
16 effect the scars no longer change or evolve. That is for certain people
17 it will be 12 to 18 months, and others much longer, and beyond such a
18 period is no longer possible to date the scars.

19 I'm sorry, Mr. President, but if I have to be complete I must add
20 that some scars continue to change after that period, particularly
21 pathological or keloid scars, that is in fact what defines them. But in
22 answer to Mr. Kilenda's question I would say no.

23 Q. Thank you very much, Mr. Witness. Very briefly, is it possible
24 for you to describe the anatomical physiology of the knee, that is when
25 it is normal?

1 A. Except you want me to be very long?

2 Q. Can't you try?

3 A. What do you mean by anatomical physiology, because those are two
4 different domains?

5 Q. How can you describe a knee that has not been hit by a bullet?

6 A. Generally speaking a knee is a joint which is a condyle femur
7 that is below the two bones of the leg, that is, the tibia and the
8 peroneus, and that is in front of the patella. And all that is covered
9 by cartilage that is the articulatory surface, and it is strengthened or
10 kept together by ligaments. You have lateral ligaments, central
11 ligaments, cruciate ligaments, condyle tissues, and you also have the
12 articulatory capsule. Then you have several muscles, the quadriceps, the
13 muscle of the thigh, then other muscles on the left and right, and this
14 is the anatomical aspect. There is the joint, and if you have to talk
15 briefly about orthopaedics, it is different from the hip because the
16 surface is held together by the ligaments, muscles, and the patella, and
17 the only movement that is possible is the flexion that is extending the
18 leg towards the thigh and then performing that movement in the opposite
19 direction.

20 I do not know whether I have answered your question.

21 (Defence counsel confer)

22 MR. KILENDA: (Interpretation)

23 Q. Thank you very much, Mr. Witness. Can you tell us what is the
24 fluid that makes it possible to articulate the joint?

25 A. The synovial liquid, synovial fluid.

Witness: Eric Baccard (Resumed) (Open Session)
Questioned by Mr. Kilenda

Page 70

1 Q. That is what we were able to understand from our reading, that is
2 the synovial fluid. Now, the witness in question told the investigators
3 of the OTP and the Court that there were viscous liquids coming out of
4 the wound. Are those the synovial fluids?

5 A. No. Synovial fluids are rather yellowish in colour and are not
6 greasy or fatty. There are certain viscous elastic aspects, so I would
7 think that the liquid coming out of a knee would have come from the
8 derma and the hypodermis -- from the dermis and the hypodermis,
9 particularly at the separation phase. I am still very cautious.

10 PRESIDING JUDGE COTTE: (Interpretation) Yes, doctor, I stand to
11 be corrected by Mr. Kilenda, but the witness used the term "viscous."
12 If -- you have to distinguish between viscous and greasy or fatty.

13 THE WITNESS: (Interpretation) I am very, very cautious when it
14 comes to adjectives used by victims or witnesses and the interpretation
15 that can be done at the scientific level, because between a pus that
16 comes out of a secondary infection, the synovial fluid can itself be
17 infected, and there are other liquids from the cyst which can be analysed
18 on the basis of the terms used by the witness. If I had been present
19 there on the spot and examined, I could have been able to say if this is
20 synovial fluid or this is pus or whatever, but in that case a viscous is
21 probably an impression that is different from the real thing. Is it
22 serum? Is it something else? I would be very cautious when it comes to
23 analysing that type of issue.

24 Q. So in this case you cannot tell us whether this was synovial
25 fluid?

Witness: Eric Baccard (Resumed) (Open Session)
Questioned by Mr. Kilenda

Page 71

1 A. No, that would be impossible, if I were to base myself on what I
2 just told you a short while ago. There is no sufficiently solid
3 scientific basis to carry out an analysis of the nature of that liquid.

4 Q. Is the synovial fluid viscous or greasy?

5 A. It is rare to be able to touch that fluid, the synovial fluid.
6 It is possible to touch a drop of it through a glove, but this is a
7 liquid that is denser than water. I have opened articulated joints
8 during autopsies. Maybe it could be viscous or not, it depends on what
9 you understand by viscous. In any case, you cannot carry out a diagnosis
10 of synovial liquid on that basis.

11 Q. Reading your biography, I realise that you're also a wound
12 ballistics expert; is that true?

13 A. Yes, that's true Counsel.

14 Q. Thank you, Witness. Is it possible for someone who has been shot
15 with a bullet to walk for six days with the bullet in their knee?

16 A. Here again I am obliged to answer you with rather a lengthy
17 answer. It all depends where the bullet is lodged and whether there is a
18 fracture or not. If it is in a soft tissue it is possible. For example,
19 we have seen cases where people had an activity that we could describe as
20 normal despite having been hit by projectiles. I could even mention
21 people who have been -- received a bullet wound in the head. So it's
22 difficult for me to say that --

23 MR. MACDONALD: (Interpretation) Objection. The Witness has
24 established the report. We had just mentioned six days. We'd heard
25 about the attack of the 24th of February, once in Lengabo she met with

Witness: Eric Baccard (Resumed) (Open Session)
Questioned by Mr. Kilenda

Page 72

1 people, and only at that point did we -- were we able to see that she
2 received medical attention. So that was four days of walking, not six.
3 I think that this would alter the answer that the witness would give us.
4 So I think we need to be very careful about these facts. Thank you.

5 PRESIDING JUDGE COTTE: (Interpretation) You're quite right, we
6 have to be careful. The witness had perfectly understood that behind
7 Mr. Kilenda's question there was the issue of Witness 287 and her
8 profile. But at the end of the examination, we were told that all of
9 these dates had to be very clear. According to what we heard on the 24th
10 of February, this victim was shot and from there we want to know whether
11 she would be able to walk for a period of four days with this bullet in
12 her knee. We want to know whether theoretically this is possible if
13 there is no fracture.

14 THE WITNESS: (Interpretation) Yes, it is possible, but
15 everything depends on the intra-articular lodging of the projectile or
16 bullet. If I may make a comment as concerns the testimony of the
17 traumatic wound in paragraph 9, she stated that she had difficulty
18 walking and that she felt that her wound was in the right leg and the leg
19 became colder and colder. I think that this is quite characteristic of a
20 projectile wound because we also know in wound ballistics that when there
21 is a shot fired against an anaesthetised animal, for example, shot fired
22 at a pig's thigh, the reaction after the penetration of the projectile is
23 slowed. We see what we call a vasomotor reaction; in other words, a
24 constriction or a closing in of the blood vessels, and this can be very
25 clearly seen on these test animals. We see that there is a delay, and

Witness: Eric Baccard (Resumed) (Open Session)
Questioned by Mr. Kilenda

Page 73

1 experts see this in war wounds with this kind of reaction as well. And
2 this explains why the leg feels colder. So as a doctor I would say this
3 to me seems to be an argument in favour of the sincerity of the testimony
4 given. It seems to coincide with my own references, my own experience in
5 the matter.

6 MR. KILENDA: (Interpretation)

7 Q. Thank you, Mr. Witness.

8 MR. KILENDA: (Interpretation) Your Honour, I would like to
9 thank the Prosecution for their observation and I would like to continue.

10 Q. The Witness in question had said that she was hiding under a bed
11 when she was struck by the bullet. If, therefore, she had been fired
12 upon from such a short distance, what would the bullet impact have been?

13 A. It is difficult to answer you, Counsel, because I do not have
14 enough information about the firing range. I only have some information
15 about -- I don't know whether there was something in between the firing
16 weapon and her, such as a mattress or a blanket, for example. I don't
17 have information about the type of weightings. So it's difficult for me
18 to tell you what the entry wound would have resembled without having been
19 able to examine the person in situ at the time.

20 Q. Thank you, Doctor. And the haemorrhaging that follows after a
21 wound of this nature, could that not lead to anaemia?

22 A. Here again it is difficult to give you an answer without knowing
23 exactly a priori the circumstances. There is no anatomical region --
24 reason, at least from examining the wound that I saw, to see whether the
25 blood loss would have been significant enough to have led to either

1 anaemia or a state of shock. It appears to me that the bleeding was
2 mostly within the tissues, the bleeding was venous or related to the
3 capillaries. But apart from that, if it hadn't have been like this the
4 witness would not have been able to come here to testify or let me
5 examine her. The place where the scar was located is closest to -- the
6 artery closest to the place where the wound was is on the other side of
7 the boney mass and was not affected by the trajectory of the projectile
8 in question.

9 PRESIDING JUDGE COTTE: (Interpretation) Counsel Kilenda, we
10 have less than ten minutes left because we started earlier, so we would
11 appreciate it if you could ask questions that would have a brief answer.

12 MR. KILENDA: (Interpretation) Thank you, Judge Cotte. I think
13 we may be able to stop here.

14 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
15 Counsel Kilenda. For schedule times, I would like to know, Witness, are
16 you available tomorrow morning?

17 THE WITNESS: (Interpretation) Yes, I will be available tomorrow
18 morning.

19 PRESIDING JUDGE COTTE: (Interpretation) In that case, the
20 cross-examination from Mr. Kilenda will continue tomorrow morning.

21 Mr. Hooper, do you think that Mr. O'Shea will be here tomorrow
22 morning? Have you heard any word about the flight that he may have been
23 able to have taken to come back?

24 (Expunged)

25 (Expunged)

1 (Expunged)

2 (Expunged)

3 (Expunged)

4 (Expunged)

5 PRESIDING JUDGE COTTE: (Interpretation) Yes, that's precisely
6 the problem.

7 Counsel Kilenda, do you have any idea?

8 MR. DUTERTRE: (Interpretation) I'm sorry, could we just avoid
9 names and family names.

10 PRESIDING JUDGE COTTE: (Interpretation) Yes, naturally we will
11 redact that.

12 JUDGE DIARRA: (Interpretation) I think I remember from earlier
13 debates that Mr. Hooper had committed to --

14 PRESIDING JUDGE COTTE: (Interpretation) Yes, it was Mr. O'Shea
15 who was definitely going to be out of the Netherlands until next week,
16 but it's possible that we could have Mr. O'Shea with us.

17 In any case, tomorrow morning Mr. Kilenda will continue.

18 Sir, do you have any idea how much time you need?

19 MR. KILENDA: (Interpretation) One hour.

20 PRESIDING JUDGE COTTE: (Interpretation) So if tomorrow
21 Mr. O'Shea has been able to come here, then we will continue. If not,
22 then we will -- we will continue with the cross-examination if the
23 witness is available next week. So we cannot make any prognostics now,
24 but as concerns 249, Prosecution, do you have any confirmation about
25 their arrival.

1 MR. MACDONALD: (Interpretation) The latest information that we
2 had, your Honour, was that the witness indeed was travel -- was to travel
3 on Sunday to arrive here the next day --

4 PRESIDING JUDGE COTTE: (Interpretation) This means that you
5 would need next week for the familiarisation process of the witness,
6 which means that we will need an update tomorrow, but it's more than
7 likely that we will not be able to interview that witness tomorrow. We
8 have three hearings -- we have three sessions coming up. In other words,
9 we will not be able to hold that next week. It's just for my own
10 scheduling that I want to know, but anyway we will have an update
11 tomorrow.

12 MR. MACDONALD: (Interpretation) Yes, indeed that is the
13 recommendation that the Prosecution would make to the Chamber, given the
14 security issues surrounding this witness and also the number of prior
15 interviews that need to be re-read, and particularly in consideration
16 that the witness requires assistance re-reading these documents, and the
17 fact that she is travelling accompanied and not alone, all of these
18 elements mean that next week indeed, is it possible -- it is impossible
19 because these are matters outside of our control.

20 PRESIDING JUDGE COTTE: (Interpretation) Yes, naturally.

21 Okay. So then just a few -- a little information about
22 Witness 287. Mr. Garcia used three hours 05 for his examination in
23 chief. The Defence of Germain Katanga with Mr. Hooper have used in
24 cross-examination 51 minutes, to which we need to add the final questions
25 of this morning. Professor Fofe has used one hour 40 of speaking time.

1 For the re-examination, Mr. Garcia from the Prosecution used ten minutes,
2 and Mr. Hooper for the closing remarks used three minutes. I just wanted
3 to give you this for your own information and for the organisation of
4 your own speaking time accounting.

5 We will therefore close the session for today. I thank the
6 witness. We apologise again for having broken up your testimony, but
7 these are because of force majeure.

8 Mr. Hooper, would you like it to be Mr. O'Shea who completes the
9 cross-examination? You don't feel that you could do the
10 cross-examination of Dr. Baccard yourself after Mr. Kilenda finishes? If
11 everything is ready with Mr. O'Shea, we would prefer that. Is that how
12 we are to understand that?

13 MR. HOOPER: I prefer that because it means I can use the time in
14 other ways than preparing something that he's prepared. I know he's
15 spent a lot of time, as I say, looking at the "Petit Larousse" to get
16 himself up to speed with medical terms, but I'll consider the matter, if
17 I may, today, and if I'm in a position to complete the cross-examination
18 tomorrow, appreciating the cause on this witness's time, I'll do so. So
19 there's a possibility I'll do that tomorrow, but can I leave my options
20 open. Thank you.

21 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
22 Counsel Hooper. Yes, your options will remain open and perhaps
23 Mr. O'Shea will have arrived in Schiphol in the meantime. We would hope
24 that and we know that you do, too.

25 Dr. Baccard, Witness, thank you very much. You may leave the

1 courtroom.

2 Usher, would you please accompany our expert out of the
3 courtroom.

4 (The witness stands down)

5 PRESIDING JUDGE COTTE: (Interpretation) The Court thanks
6 everybody who has taken part this morning, also the court reporters, the
7 interpreters, and the various technicians. We have had no technical
8 incidents this morning and we are very pleased to make this observation.

9 Here you go, Court Officer.

10 We will therefore resume tomorrow morning at 9.00 a.m. with the
11 continuation of the cross-examination of Witness 418 by Counsel Kilenda,
12 and for the moment then the session is suspended.

13 The hearing ends at 1.15 p.m.

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