

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
7 Mathieu Ngudjolo Chui
8 Trial hearing
9 Monday, 29 March 2010
10 The hearing starts at 2.09 p.m.
11 (Open session)
12 COURT USHER: All rise the International Criminal Court is now in
13 session.
14 PRESIDING JUDGE COTTE: (Interpretation) The court is in
15 session. Please be seated.
16 The accused are with us, and we are in open session. Before
17 having the witness 159 enter the courtroom, the Chamber would like to
18 give you some information.
19 At the end of last week, that is to say Friday, the 26th of
20 March, when we closed the hearing, the cross-examination of
21 Counsel Hooper lasted 5 hours and 53 minutes. This is just by way of
22 information. Another piece of information which came just before this
23 hearing stated that Witness 418, who should come immediately after 159,
24 can only testify today and tomorrow. He will not be available on
25 Wednesday. So this is just information which is necessary for everybody,

1 Furthermore, last week the Chamber issued an oral decision
2 concerning the intermediary 143 and the disclosure asked by the Defence
3 team of the disclosure of this identity. The Chamber last week,
4 therefore, reminded you that the Chamber, Trial Chamber I, did rule on
5 this disclosure of the identity of intermediary 143, and we indicated
6 that we took note of this decision and that we note that the Trial
7 Chamber I estimated or considered that it would see the extent to which
8 the protection measures should come under the authorisation that it had
9 granted, and you therefore had indicated with regards to our own decision
10 that that did depend to a great extent on the position that Trial Chamber
11 I would take. But we also indicated to you that it would be useful to
12 know what the impact of this situation would be with regards to the
13 coming of the witness called -- witnesses called from the 19th of April.

14 Our Bench does not know when the Trial Chamber I will rule. We
15 are going to separate at 3.30 on Thursday to come back on the 19th of
16 April, I think at 9.00, with Witness 287.

17 Now, if the Defence team, the fact that on this -- if we are
18 still not able to rule on the disclosure of intermediary 143 with any
19 effect, then they have to let us know. You have the possibility to let
20 us know this tomorrow, if you prefer at 9.00, to the extent that what the
21 Chamber wished has perhaps not been well understood.

22 The floor is now going to be given to the Prosecutor, who wanted
23 to address the Court with regards to the issue of photographs which
24 Counsel Hooper wanted to use during the cross-examination of the current
25 witness.

1 Before giving the Prosecutor leave to address the Court, I would
2 like to go back for a moment to the issue of the personal diary of
3 Witness 159. At the end of the morning on Friday -- or, rather, at the
4 start of the afternoon, we were all sent an e-mail by the Prosecutor
5 which indicated to us that he had noted that a page which was originally
6 at the front of one of the two entries in this personal diary was no
7 longer at the top of this diary but was inserted in the form of another
8 page within this diary and that part of this page was missing.
9 Prosecutor -- the Prosecutor had the complete part or the complete
10 version of this page.

11 You will have noted that the Chamber asked the Registry with
12 regards to the conditions under which this diary had -- or the -- what
13 had happened to the diary since it had come from the witness to The
14 Hague, and clarifications were given to the Chamber at the end of the
15 morning today which do not make it possible to resolve in a very clear
16 way the conditions under which this page could have been possibly cut or
17 separated.

18 One thing is certain, however, and that is that the Prosecutor --
19 when the Office of the Prosecutor did carry out its own -- or did make
20 its own photocopies on the 10th of March, the diary was in a complete
21 state, which indeed led you to provide your remarks to us. Another thing
22 seems to be certain, which is that when on the 23rd of March the two
23 Defence teams apparently -- first of all Counsel Kilenda and
24 Professor Fofe and Counsel Hooper and Madam Buisman were able to view
25 this diary within the unit, already part of the page was missing, and

1 this is what I have gleaned from a message which was sent this morning
2 from the team of Counsel Hooper.

3 It is true that in the meantime the witness was able to take
4 possession of his own diary, which is his property. Did he feel a need
5 to separate this page from the initial place and to take part of it off?
6 That's something we don't know. Counsel Hooper will be able to make an
7 estimation when he finishes the cross-examination, particularly with
8 regards to whichever points related to this diary. Counsel Hooper will
9 assess whether it is appropriate to ask the question. Perhaps
10 Counsel Hooper might not want to ask him with regards to this particular
11 page. The Chamber doesn't know this, but one thing is clear, and that is
12 that a request for an investigation which was entrusted to the Registry,
13 in particular to the VWU, makes it possible to call with a certain
14 solemnity everybody's attention to the need for everyone to be vigilant
15 when it comes to conserving documents which are useful for the hearings
16 and also for everybody to consult them with precaution to ensure that
17 everything that is done within the premises of the unit is done well, as
18 was the case with regards to the Defence team in the presence of a member
19 of the unit. And there is a useful reminder which has been carried out.

20 Prosecutor, you wanted to address the Court briefly, I think,
21 with regards to an issue on the production of photographs by the Defence
22 team of Germain Katanga if the Defence team still intends to produce
23 these photographs. You have the floor.

24 I just want to draw everybody's attention to the fact that it
25 could be desirable to start today the examination even if only the last

1 hour of 418 with a view we can finish with him tomorrow and be certain of
2 his for presence, because he won't be there on Wednesday and on Wednesday
3 we do, on the other hand, have a witness, a journalist/photographer who
4 also seems to have limited availabilities when it comes to presence in
5 The Hague.

6 Prosecutor.

7 MR. MACDONALD: (Interpretation) Thank you, your Honour. Before
8 going into the issue, the photographs, briefly taking into account that
9 we've been discussing the diary with regards to the -- or the agenda,
10 rather, with regards to the Easter break, I'd like to draw the attention
11 to a discussion that I had in the corridor with you, your Honour, and the
12 members of your team, namely if it was possible for there to be a
13 submissions of writings the 6th of April and that the deadline, the usual
14 deadline, would not count so that there'd be a real break for everybody.
15 It would certainly be worth it. That's my first question.

16 I know that there haven't been a formal decision by the Chamber
17 in that regard.

18 PRESIDING JUDGE COTTE: (Interpretation) I wanted to address
19 this question during our last meeting of the week, but because you're
20 already addressing the issue now, it's clear that during the week which
21 follows the Sunday of Easter, that is to say the 4th, 5th -- 4th to 9th
22 of April, I think, the Chamber will not set deadlines other than in the
23 case of urgencies. We do not intend to set deadlines on anyone, and by
24 way of reciprocity, it is, of course, the case that Office of the
25 Prosecutor, Legal Representatives of Victims, and the Defence teams

1 should be able to not to file too many submissions during this same week,
2 and then I think everybody would only see advantages to that if only to
3 be able to come back with a spirit of mind which is even more fresh than
4 it is at the moment.

5 So, Prosecutor, we certainly respond to your expectations and to
6 the extent where there are no urgencies, because also we don't know with
7 regards to the current affairs in our case that it might be -- but what
8 would be best is for everybody to be able to take a bit of distance over
9 the break. Is that clear? Thank you. Okay. I'll give you the floor
10 once again.

11 MR. MACDONALD: (Interpretation) Thank you. I would just like
12 to go back to the issue of the two photographs, and if you would allow
13 me, I think that it would be appropriate if we go into private session,
14 taking into account the fact that we're referring to a member of the
15 family of the witness.

16 PRESIDING JUDGE COTTE: (Interpretation) Okay. Court Officer,
17 can you take us into closed session, please -- private session, rather.

18 (Private session at 2.23 p.m.)

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4 (Open session at 5.00 p.m.)

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

6 PRESIDING JUDGE COTTE: (Interpretation) Thank you,

7 Court Officer.

8 Mr. Hooper, talking about a possible production of photographs,
9 and it was decided later on that those photographs would not be produced,
10 we together talked about the disclosure of written statements that you
11 received yesterday. We should all bear in mind that we are in the
12 process of the cross-examination by the Defence. So, Mr. Hooper, the
13 Chamber is going to now ask you to proceed with your cross-examination,
14 and then you will determine whether you intend to question Witness 159 on
15 the statement made by his father in the written document that you
16 received only yesterday.

17 A short while ago, during one of your submissions, you pointed
18 out that you were ready to do so, that is, to question Witness 159 on
19 statements made by his father. You let us -- you made us understand that
20 you are ready, and this would make it possible to avoid any objections
21 from the Prosecutor if in the future you have to call the father, who is
22 the author of that statement, as a witness.

23 In any case, the Chamber will not rule on the merits of any
24 possible objection which remains hypothetical. The obligation for
25 disclosure in light of Rule 78 of the Rules of Procedure and Evidence,

1 when you look at that the statement of the father of Witness 159, and the
2 Defence themselves do not know whether they are going to call this person
3 as a witness or not. So this statement, to the Chamber, does not
4 constitute a document within the meaning of Rule 78. So Mr. Hooper does
5 not have to comply with it.

6 If the author of that statement, that is the father of
7 Witness 159, were to be called in future by the Defence, then the Chamber
8 will determine at that time whether it is necessary to require disclosure
9 and under what conditions.

10 Now, regarding paragraph 108 of decision 1665 of the 1st of
11 December, 2009, it falls under a chapter entitled "Documentary Evidence,"
12 and the Chamber considers that a written statement such as the one under
13 discussion today cannot be considered as a document which has to be
14 disclosed three days in advance.

15 The Chamber recalls, as we did not beginning, that we are
16 actually in the stage of cross-examination led by the Defence. So,
17 Mr. Hooper, you can proceed with your cross-examination with the latitude
18 allowed you by the Chamber as soon as the witness comes into the
19 courtroom after we would have gone into closed session.

20 So, Court Officer, let us go into closed session, and the usher
21 will lead in the witness.

22 MR. HOOPER: Just before the witness comes in, can I - I hope
23 this is helpful to everybody - indicate my position. I'd indicated on
24 Friday when we rose and I was invited to give some indication of the time
25 that my cross-examination, which has already been long would continue,

1 and I'd hesitated 20 minutes. It may be a little longer than that, but I
2 hope not much longer, and I say that in this light: That in respect of
3 any statements I may have received in respect of this witness, I had
4 concluded all my questions. Today the Prosecution rather surprised me by
5 suggesting that I go deeper into any material I've got with the witness
6 than I certainly considered was appropriate. To that extent I need to be
7 the judge, as it were, of my -- my questions. I have a duty, I
8 recognise, to put my case, and on reflection over the last time that
9 we've had available and considering the questions I've put to this
10 witness previously, I am content in my own mind that I've put all the
11 matters that I should put to this witness. I have, therefore, no further
12 questions to put to this witness concerning the out-of-court statements
13 of other parties. So I hope that's an indication. So if I don't touch
14 on it, except very, perhaps, briefly, I hope no one will be too
15 surprised.

16 Thank you, Mr. President.

17 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Hooper.
18 This is a radical indication. So the Chamber has understood that you
19 have no further questions? You have come to the end of your
20 cross-examination?

21 MR. HOOPER: Not quite, I'm afraid. I'll disappoint you to that
22 extent. I have some other questions, but on this issue of any -- any
23 statement I may possess, I've asked my questions in the course of my
24 cross-examination. I don't propose to go over that ground again with
25 this witness. I put quite clearly to him questions concerning where he

1 was. Was he in Bunia? Was he in Bogoro? He's given us his answers.
2 I've asked him about any loss of life, other loss of life in his family.
3 He's given me -- he's given the Court his answers. Those are his
4 answers. If I need to refute those answers, I need to do so through
5 evidence.

6 Thank you.

7 PRESIDING JUDGE COTTE: (Interpretation) Thank you. So it is
8 just one little bit of the end of your cross-examination that is being
9 set aside, but you still have some questions, particularly on the diary.

10 MR. HOOPER: Yes, and some other issues. As I say, 20 minutes,
11 maybe half an hour, I hope, looking at the clock.

12 PRESIDING JUDGE COTTE: (Interpretation) Thank you, Mr. Hooper.
13 I'm sorry, Mr. Court Officer. I had prematurely much earlier asked you
14 to go into closed session, but now we can do that, after which the Court
15 Usher, please go and fetch the witness.

16 (Closed session at 5.09 p.m.)

17 (Expunged)

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22 (Expunged)

23 (Open session at 5.10 p.m.)

24 COURT OFFICER: (Interpretation) Mr. President, we are in open
25 session.

Witness: Witness P-0159 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 31

1 PRESIDING JUDGE COTTE: (Interpretation) Thank you.

2 Good afternoon, Mr. Witness.

3 THE WITNESS: (Interpretation) Good afternoon, Mr. President.

4 PRESIDING JUDGE COTTE: (Interpretation) You can hear me well I
5 see. We are going to resume, and you have not participated in our
6 hearing so far. You waited a long time, but we still have about 1 hour,
7 20 minutes of hearings to allow Mr. Hooper to conclude his
8 cross-examination.

9 Mr. Hooper, you can proceed.

10 MR. HOOPER: Thank you, Mr. President.

11 Questioned by Hooper (Continued)

12 Q. And good afternoon, to you, Witness.

13 A. Good afternoon, Mr. Hooper.

14 Q. You may recall telling us in your evidence about the two motor
15 vehicles that were in the camp. One had been burnt, and you told us, and
16 for reference this is T123, page 48 to 49 in the English, and you said
17 that:

18 "Katanga gave an order that the vehicle that had not been torched
19 be taken to Gety, so that the same vehicle was used to transport goods
20 that had been looted in Bogoro, and metal sheeting and other items, and
21 they were taken to Gety, and that was under the orders of Germain
22 Katanga."

23 Did you hear Germain Katanga give those orders, and, if so, when?

24 A. Thank you for your question. Let me give you the reasons that
25 prompts me to tell you that there were two vehicles at the camp and that

Witness: Witness P-0159 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 32

1 one of the vehicles was set on fire while the other transported property
2 to Gety.

3 Q. I'm sorry, Mr. Witness. I'm sorry. We know the story, and my
4 question is: Did you hear Germain Katanga give the orders, and, if so,
5 when was that and where were you?

6 A. What I can say is the following: The vehicle went towards Gety,
7 and the combatants who used that vehicle were under the orders of Germain
8 Katanga.

9 Q. Thank you. So it's a conclusion you've drawn rather than
10 something you heard. Would that be fair to say that?

11 A. What do you mean by "to hear," "hearing"? What do you mean by
12 that? I wanted to give you details, but you interrupted me. You
13 compelled me to summarise my answer.

14 PRESIDING JUDGE COTTE: (Interpretation) Mr. Witness, you should
15 not forget that you have been with us for quite some time already and
16 that you have already had to provide several details to us. So when the
17 person asking you questions insists on the fact that you have to go to
18 the heart of the matter, please just do so. We also -- we already have a
19 lot of information that you have given us, so try to answer in the same
20 concise way as the question that is put to you. Thank you in advance.

21 MR. HOOPER:

22 Q. And do you accept that you made no mention of that motor vehicle
23 or of any role in respect of it played by Germain Katanga when you made
24 your statement back in October of 2006? Do you accept that you make no
25 mention there of Germain Katanga and the motor vehicle?

Witness: Witness P-0159 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 33

1 A. I believe that I mentioned the name of Germain Katanga in my
2 statement if my memory serves me correctly. When I was asked who were
3 the people responsible for those events, I said it was Germain Katanga.
4 This means that Germain Katanga's name was in that statement.

5 Q. Well, we've been through this, and I can assure you the name of
6 Katanga at no time appears in your statement.

7 Let me ask a further question. You may remember last week you
8 were saying that it took you two days to go from Bogoro to Bunia, and I
9 asked you whether you'd said in your evidence at one point not two days,
10 but you'd mentioned a four-day journey, and I was asked to provide the
11 reference for that. So can I provide it now, because I found it over the
12 weekend. And the reference is at T121, page 61, line 25, and what you
13 said was this:

14 "I arrived in Bunia after the attack of the 25th of February.
15 After that attack on the 25th of February, that is when I left the place
16 where I was. The 25th, the 26th, the 27th, and it was on the 28th that I
17 arrived in Bunia."

18 And I don't need a comment. I'm just referring to that.

19 Also over the weekend we had the opportunity of having the tape
20 listened to, and indeed you did mention passing by Songolo on your way to
21 the Nyankunde road in order to get to -- to get to Bunia, and my question
22 is this: Why, with your local knowledge, did you take a route that was
23 bound to take you through Ngiti-held areas? Why did you take such a
24 dangerous route to go back to Bunia?

25 PRESIDING JUDGE COTTE: (Interpretation) Madam Prosecutor.

Witness: Witness P-0159 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 34

1 MS. LUPING: Mr. President, we have at present edited versions of
2 the transcripts. We do not have any version provided which corrects the
3 transcripts making reference to Songolo. This is the first time we're
4 having any notice of the tapes having been listened to and a correction
5 being made. This has not been notified to the Prosecution. And in
6 fairness to the witness and the Prosecution, if any such correction is
7 made, we should have that notice.

8 MR. HOOPER: Very well. Can I assist to the extent that we
9 will -- that the Registry, of course, can forward this to you and just
10 read from the e-mail that was sent to us in the English. I'm going to
11 sit down to read it. It reads as follows, and this is the correction,
12 final English:

13 "I took the road to Nyankunde because there is a road at that
14 goes via the village of Bira to Songolo, from Songoro," that's spelled
15 S-o-n-g-o-r-o, as opposed to "Songolo" which I think that word represents
16 which is S-o-n-g-o-l-o, so I'll read it again:

17 "I took the road to Nyankunde because there is a road that goes
18 via the village of Bira to Songolo, from Songoro to Nyankunde. However,
19 I did not arrive in Nyankunde, but I took this road."

20 Q. So my question is, Mr. Witness, why did you take what would seem
21 to be such a dangerous route through Ngiti territory?

22 A. You didn't understand me well. You didn't quite follow my
23 answers. And if your reference is consistent with what I said, then I
24 did not say that I went right to Songolo. What I said is as follows, and
25 please listen carefully, listen carefully. From Bogoro there is a road.

Witness: Witness P-0159 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 35

1 If you take that road, you going to arrive Nyankunde. Before arriving in
2 Nyankunde, you have to pass through Songolo -- Songoro. From Bogoro you
3 go to Songolo, but you -- I did not go to the localities that you have
4 mentioned. Of course, that's -- those localities were dangerous. The
5 entire region was dangerous, but I used bush paths. The village of the
6 Biras and the environs were dangerous. I am a Hema from the enemy ethnic
7 group. That is why I had to protect myself on my way. That is why I
8 spent two days travelling through the bush. I was walking while at the
9 same time trying to hide. That is why it took me two days to arrive
10 Bunia.

11 Q. All right. Thank you very much.

12 MR. HOOPER: Can we go into closed session, please, for my
13 remaining questions.

14 PRESIDING JUDGE COTTE: (Interpretation) Very well. We go into
15 closed session, Court Officer.

16 Just a second. Madam Prosecutor, please.

17 MS. LUPING: I just have a point to raise. Mr. Hooper made a
18 comment about the days that the witness stated it took for him to get to
19 Bunia, but he stated a comment without giving the witness an opportunity
20 to actually respond to this question, and I believe in fairness to the
21 witness he should be given that opportunity to clarify the timing from
22 Bogoro to Bunia.

23 MR. HOOPER: Yes, thank you. Well, I'll leave that to the
24 Prosecution to clarify. It's their witness, and I've merely clarified
25 what I've said is a clear representation on his part of the time it took,

Witness: Witness P-0159 (Resumed) (Private Session)
Questioned by Mr. Hooper (Continued)

Page 36

1 the journey, in his transcript.

2 MS. LUPING: With -- with due respect, Mr. President, it's quite
3 clear that Mr. Hooper has raised a different part of the testimony of the
4 witness to contradict his prior testimony on the point, and he should be
5 given an opportunity to clarify the situation and this would be an
6 opportune moment to do so.

7 PRESIDING JUDGE COTTE: (Interpretation) Madam Prosecutor, since
8 apparently Mr. Hooper does not wish to follow up on this point, and you
9 have the possibility in your redirect to clarify this issue that has been
10 dealt with in cross-examination, you might be able to ask the witness to
11 clarify this issue regarding the two days or four days, any other problem
12 relating to the time period, that is, when you go into your redirect.

13 So, Court Officer, please take us into private session for us to
14 continue with the cross-examination.

15 (Private session at 5.26 p.m.)

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Witness: Witness P-0159 (Resumed) (Private Session)
Questioned by Mr. Hooper (Continued)

Page 37

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Page 37 expunged. Private Session.

Witness: Witness P-0159 (Resumed) (Private Session)
Questioned by Mr. Hooper (Continued)

Page 38

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Page 38 expunged. Private Session.

Witness: Witness P-0159 (Resumed) (Private Session)
Questioned by Mr. Hooper (Continued)

Page 39

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Page 39 expunged. Private Session.

Witness: Witness P-0159 (Resumed) (Private Session)
Questioned by Mr. Hooper (Continued)

Page 40

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Page 40 expunged. Private Session.

Witness: Witness P-0159 (Resumed) (Private Session)
Questioned by Mr. Hooper (Continued)

Page 41

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Page 41 expunged. Private Session.

Witness: Witness P-0159 (Resumed) (Private Session)
Questioned by Mr. Hooper (Continued)

Page 42

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Page 42 expunged. Private Session.

Witness: Witness P-0159 (Resumed) (Private Session)
Questioned by Mr. Hooper (Continued)

Page 43

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Page 43 expunged. Private Session.

Witness: Witness P-0159 (Resumed) (Private Session)
Questioned by Mr. Hooper (Continued)

Page 44

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Page 44 expunged. Private Session.

Witness: Witness P-0159 (Resumed) (Private Session)
Questioned by Mr. Hooper (Continued)

Page 45

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Page 45 expunged. Private Session.

Witness: Witness P-0159 (Resumed) (Private Session)
Questioned by Mr. Hooper (Continued)

Page 46

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Page 46 expunged. Private Session.

Witness: Witness P-0159 (Resumed) (Private Session)
Questioned by Mr. Hooper (Continued)

Page 47

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Page 47 expunged. Private Session.

Witness: Witness P-0159 (Resumed) (Private Session)
Questioned by Mr. Hooper (Continued)

Page 48

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Page 48 expunged. Private Session.

Witness: Witness P-0159 (Resumed) (Private Session)
Questioned by Mr. Hooper (Continued)

Page 49

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Page 49 expunged. Private Session.

Witness: Witness P-0159 (Resumed) (Private Session)
Questioned by Mr. Hooper (Continued)

Page 50

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Page 50 expunged. Private Session.

Witness: Witness P-0159 (Resumed) (Private Session)
Questioned by Mr. Hooper (Continued)

Page 51

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Page 51 expunged. Private Session.

Witness: Witness P-0159 (Resumed) (Private Session)
Questioned by Mr. Hooper (Continued)

Page 52

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Page 52 expunged. Private Session.

Witness: Witness P-0159 (Resumed) (Private Session)
Questioned by Mr. Hooper (Continued)

Page 53

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Page 53 expunged. Private Session.

Witness: Witness P-0159 (Resumed) (Private Session)
Questioned by Mr. Hooper (Continued)

Page 54

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Page 54 expunged. Private Session.

Witness: Witness P-0159 (Resumed) (Private Session)
Questioned by Mr. Hooper (Continued)

Page 55

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Page 55 expunged. Private Session.

Witness: Witness P-0159 (Resumed) (Private Session)
Questioned by Mr. Hooper (Continued)

Page 56

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Page 56 expunged. Private Session.

Witness: Witness P-0159 (Resumed) (Private Session)
Questioned by Mr. Hooper (Continued)

Page 57

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Page 57 expunged. Private Session.

Witness: Witness P-0159 (Resumed) (Private Session)
Questioned by Mr. Hooper (Continued)

Page 58

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Page 58 expunged. Private Session.

Witness: Witness P-0159 (Resumed) (Closed Session)
Questioned by Mr. Hooper (Continued)

Page 59

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- 6 (Closed session at 6.31 p.m.)
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Witness: Witness P-0159 (Resumed) (Open Session)
Questioned by Mr. Hooper (Continued)

Page 60

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10 (Open session at 6.33 p.m.)
11 COURT OFFICER: (Interpretation) Open session.
12 PRESIDING JUDGE COTTE: (Interpretation) Thank you,
13 Court Officer.
14 Witness 418 will come tomorrow morning at 9.00.
15 Prosecutor, do you think its envisible (as interpreted) for him
16 to finish within four hours, if that can be envisaged? You don't know.
17 MR. MACDONALD: (Interpretation) Everything will depend on the
18 length of the cross-examination. The Defence teams will have to inform
19 us.
20 PRESIDING JUDGE COTTE: (Interpretation) It's difficult to give
21 a time without knowing the type of questions that will be asked.
22 MR. MACDONALD: (Interpretation) The issues are known, your
23 Honour.
24 PRESIDING JUDGE COTTE: (Interpretation) Yes, but, as you said,
25 he could be there on Wednesday. We are asking the question. Everybody

1 has noted that this Witness 418 is testifying on the injuries suffered by
2 three persons, (indiscernible) females, and on the -- you told us,
3 possibly, that there would be an examination with regards to certain
4 photographs.

5 MR. MACDONALD: (Interpretation) The visit in 2007 and 2009.

6 PRESIDING JUDGE COTTE: (Interpretation) So we are in agreement
7 that everything which is related to the decision with regards to the
8 Bogoro institute is not covered by the examination tomorrow?

9 MR. MACDONALD: (Interpretation) That is correct.

10 PRESIDING JUDGE COTTE: (Interpretation) So we're going to start
11 with the examination of 418 tomorrow, and if it's not finished, at the
12 worst, then he will come back in the month of April. That's the
13 prototype testimony which should be possible without too many
14 difficulties given that this person does work in The Hague; is that
15 correct?

16 MR. MACDONALD: (Interpretation) That is correct. We can do
17 that, but we just want to avoid splitting up the cross-examination and
18 that's the reason why we have one hour -- 1.15 in examination-in-chief,
19 and that's the reason why --

20 PRESIDING JUDGE COTTE: (Interpretation) But we're not -- if we
21 have 363 -- 373 on Thursday, but I think you're going to sit tomorrow for
22 the examination. The Defence team are going to say how they envisage
23 things to be at the moment. If they are unable to provide their
24 cross-examination, either of teams, then we will continue in the month of
25 April with this witness.

1 We are therefore going to suspend our hearing until tomorrow
2 morning. The hearing is now adjourned.

3 The hearing ends at 6.38 p.m.

4 CORRECTIONS REPORT

5 Some parts of the English transcript have been corrected.

6 Due to a large amount of corrections, these have been implemented directly
7 into the transcript. The locations of the corrections are indicated by
8 asterisk (*).

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