

1 International Criminal Court
2 Trial Chamber VI - Courtroom 1
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and
6 Judge Chang-ho Chung
7 Trial Hearing
8 Thursday, 21 January 2016
9 (The hearing starts in open session at 4.33 p.m.)
10 THE COURT USHER: All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE FREMR: Good afternoon.
14 Court officer, please call the case.
15 THE COURT OFFICER: Thank you, Mr President.
16 The situation in the Democratic Republic of the Congo, in the case of The Prosecutor
17 versus Bosco Ntaganda, case reference ICC-01/04-02/06.
18 We are in open session.
19 PRESIDING JUDGE FREMR: Thank you.
20 Appearances, please, starting with Prosecution.
21 MS SAMSON: Good afternoon, Mr President and your Honours. Appearing for the
22 Prosecution today are Ms Marion Rabanit, associate trial lawyer; Ms Claudine Umurungi,
23 legal assistant; Ms Selam Yirgou, case manager; and myself Nicole Samson, senior trial
24 lawyer.
25 PRESIDING JUDGE FREMR: Thank you.

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1 Defence, please.

2 MR BOURGON: (Interpretation) Good afternoon, your Honours. I'm having a
3 problem with the interpretation.

4 Representing Mr Bosco Ntaganda we have today Ms Berta Casas Rochel,
5 Ms Margaux Portier and myself, Stéphane Bourgon. I wish to point out that
6 Mr Ntaganda is present in the courtroom this afternoon. Thank you.

7 PRESIDING JUDGE FREMR: Thank you.

8 And Legal Representatives now.

9 MS PELLET: (Interpretation) Thank you, your Honour. The former child soldiers are
10 represented by myself, Sarah Pellet, and Mohamed Abdou, OPCV.

11 MR SUPRUN: (Interpretation) Good afternoon, your Honours. The victims of the
12 attacks are represented by the OPCV, namely by myself, Mr Suprun, and my colleague,
13 Ms Grabowski.

14 PRESIDING JUDGE FREMR: Thank you very much, both of you.

15 Before we continue with the testimony of the witness, I would like to move for a very
16 short time to -- into private session in order to ask Mr Bourgon to inform us about
17 current -- Mr Boutin's status. Mr Bourgon, please.

18 But before that, court officer, please let's move into private session.

19 (Private session at 4.36 p.m.)

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17 (Open session at 4.38 p.m.)
18 THE COURT OFFICER: We are in open session, Mr President.
19 PRESIDING JUDGE FREMR: Mr Witness, welcome back. I think we faced some
20 troubles with -- that forced us to postpone your testimony, but we will continue today.
21 So as usually, I would like to remind you that you are obliged to speak the truth and
22 nothing but the truth. You understand that?
23 WITNESS: DRC-OTP-P-0790 (On former oath)
24 (The witness speaks Swahili)
25 THE WITNESS: Ndiyo -- (Interpretation) Yes, I've understood.

- 1 PRESIDING JUDGE FREMR: Okay. Mr Bourgon, you may proceed with
2 cross-examination of this witness.
- 3 MR BOURGON: Thank you, Mr President.
- 4 QUESTIONED BY MR BOURGON: (Continuing)
- 5 Q. Good afternoon, Mr Witness.
- 6 A. Good afternoon.
- 7 Q. My name is Stéphane Bourgon. I was here the first day when you began your
8 testimony; however, I now have to take over from my colleague, as you well understand.
9 I apologise for the delay, and we will try to proceed as swiftly as we can with your
10 testimony.
- 11 I take it that you understand the situation?
- 12 A. Yes.
- 13 Q. I would like to begin, Mr Witness, by confirming or asking you whether you do
14 speak English?
- 15 A. No, I don't speak English. I speak Swahili. I don't even understand English.
- 16 Q. I will proceed with my cross-examination in English, so I apologise for that. The
17 reason I do this, even though I speak French, is simply to -- because for logistical purposes.
18 But, by all means, we have interpretation; and if there is any question that you do not
19 understand, I invite you to stop me immediately so that I can repeat my question. Do
20 you understand this, sir?
- 21 A. Yes.
- 22 Q. A number of questions have already been asked to you by my colleague, and I will
23 endeavour to avoid repeating any of these questions. There are, however, a couple of
24 areas I wish to get into, which were already at least -- where you had some introduction or
25 introductory question put to you. I would like to begin by confirming that in

1 January 2015 you met with the Prosecution for a period of five days; is that correct, sir?

2 A. Yes.

3 Q. And those meetings were attended by representatives from the Prosecution; is that
4 correct?

5 A. Yes.

6 Q. And there was also an interpreter present. You recall this, sir?

7 A. Yes.

8 Q. According to the information that I have in your statement which was
9 communicated to us, you met with the Prosecution representatives for five days - I said
10 that previously - but it was approximately three hours every day. Do you recall this, sir?

11 A. Yes, I remember.

12 Q. Now, when you -- I'd like you to explain how the interview proceeded with the
13 Prosecution, given that the statement that I have is in English. Can you recall simply
14 explaining how you proceeded during this interview?

15 A. Well, when I met with the representatives of the OTP, some of them spoke English,
16 and there was an interpreter, a Swahili interpreter, who provided interpretation into
17 Swahili, and I answered in Swahili. That is how we proceeded because, you see, I don't
18 speak English.

19 Q. Thank you, sir. So I take it that language was not an issue, that you were able to
20 express your -- the -- what -- the information in your possession without any difficulties; is
21 that correct?

22 A. Yes.

23 Q. And it's my understanding that at the beginning of these interviews, you were
24 informed by the Prosecution that at the end they would provide you with a copy of a
25 statement which you could read and make any corrections if anything did not match what

1 you believe was the truth. Is that so, sir?

2 A. Yes. That's what they said to me.

3 Q. Now, as I mentioned earlier, we were provided with a statement, which includes
4 some 34 pages. And it's my understanding that this statement was translated to you and
5 that you are familiar at the time with the contents of your statement; is that so?

6 A. Yes, I did receive that information. However, some parts of my statement contain
7 some differences between the kind of Swahili I spoke and the Swahili of my interpreter,
8 and I asked for those parts to be corrected.

9 Q. Now, what I have here in this statement is the following sentence -- and
10 Mr President, I quote here from the witness statement, which bears the number
11 DRC-OTP-2078-2373, and I quote from page 2405.
12 Witness it says here, "This Statement has been read over to me in the English and Swahili
13 languages and is true to the best of my knowledge and recollection."
14 The paragraph goes on, but I'd like to know if you are -- if this statement is accurate.

15 A. Yes, I see this document, but this particular document is in English.

16 Q. Were you ever provided with a copy of this document in Swahili?

17 A. No. This statement was written in English, but the statement was translated to me
18 into Swahili orally.

19 Q. It is my understanding, sir, that this statement was not drafted by yourself; is that
20 correct?

21 A. It was me.

22 Q. Did you -- who drafted the statement, you or the Prosecution representatives?

23 A. Yes. All that I was saying in response to the questions was recorded, and there was
24 translation into Swahili.

25 Q. And at the end of the process, you were satisfied with the result; is that correct?

1 A. Well, I wasn't satisfied because I was aware that given these problems that I had had,
2 I had to give a statement. I was asked questions about the events that had happened to
3 me, and it was my job to give explanations, even though it was a very painful thing for me
4 to do.

5 Q. My question, sir, is simply: What is included in the statement you agree with and
6 you stand by this today; is that correct?

7 A. Yes.

8 Q. One last question with this statement, sir: At the end of the statement, you were
9 informed also, meaning this is back in January of 2015, that this statement could be used
10 in legal proceedings before the International Criminal Court and that you could be called
11 to give evidence in public. And on 19 January you signed this statement; is that correct,
12 sir?

13 A. Yes, I signed the statement on that date.

14 Q. And you were aware that you could be called to testify publicly before the Court at
15 that time; is that correct?

16 A. I was asked whether I could come and give testimony before the Court about the
17 events that I had told them about, and I said I could, I said yes because these events -- well,
18 I was a witness to these events, the events that have affected me personally.

19 Q. Now, my question, sir, is the following: As of 19 January you were willing to come
20 and testify publicly before this Court; is that correct?

21 A. I was willing to come and give testimony before the Court because I had given a
22 statement about the events which I was familiar with and which had affected me
23 personally.

24 Q. Maybe my question is not clear, sir. You were willing to do so publicly; is that
25 correct? Because this is what the statement says here.

1 A. Yes, I was ready to do that, I was willing.

2 Q. Sir, I move on to your arrival in The Hague last week. And it's my understanding
3 that you met with the Prosecution on 13th and 14th January of last week. Do you recall
4 those two days of meeting, sir?

5 A. Yes, I remember.

6 Q. It's also my understanding, sir, that the purpose of these two days was explained to
7 you and that it was for you to review the material you had provided to the Prosecution to
8 ensure that it was accurate; is that correct?

9 A. Yes.

10 Q. And, in fact, you had an opportunity to review all the material that was presented to
11 you by the Prosecution with the assistance of an interpreter; is that correct?

12 A. Yes. An interpreter was there. The interpreter translated for me in my language.

13 Q. So it's my understanding, as you just said, that all of your material was translated to
14 you in Swahili and that you could understand what was read to you, or what was said to
15 you in Swahili; is that correct?

16 A. Yes.

17 Q. And I take it it is also correct that after reading the material you had the opportunity
18 to make a few corrections and a few clarifications to the material that was translated to
19 you; is that correct?

20 A. Yes. There were a few discrepancies in some passages, discrepancies between what
21 I had said and the actual reality, discrepancies in the way the information had been taken
22 down, and I asked for corrections to be made.

23 Q. So, sir, other than for these corrections or discrepancies, my understanding is that
24 you stand by the contents of the documents which were shown to you during those two
25 days?

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1 A. Yes. I agreed and, yes, that was my statement.

2 MR BOURGON: Mr President, for the record, I just wish to point out that I'm referring
3 to document number DRC-OTP-2090-0287 and that we will be returning to this document
4 later on during the remainder of my cross-examination.

5 Q. One issue I would like to cover with you, sir, is the following: Before you met with
6 the Prosecution for these interviews in January 2015, it is my understanding that you met
7 with Prosecution representatives on a number of occasions before that; is that correct?

8 A. Yes, before that date I had met them on a few occasions only.

9 Q. Can you assist us, sir, with how many occasions you met with Prosecution
10 representatives, for whatever reason, before January 2015?

11 A. Well, what I can say for now is that I do not remember how many times I met them.
12 It's difficult for me to remember. I met with the investigators of the OTP, yes, but I don't
13 remember how many times we met.

14 Q. If I say between 5 and 10 times, would that be reasonable?

15 A. I could provide an exact answer to that question if I were able to refer to the dates
16 indicating the meetings I had with them; however, unfortunately, I didn't take down the
17 number of times I met with them. It's difficult for me to remember.

18 Q. Well, let me assist you with a couple of these dates, sir. I have a note before me, it's
19 called an investigation note.

20 And the number for the record, Mr President, is DRC-OTP-2080-0590. And the title of
21 this document is "Investigation note."

22 Now, sir, according to this document that I have before me you had a first meeting with
23 the Prosecution on 3 September 2013. Do you recall this meeting, sir?

24 A. Yes, I do.

25 MR BOURGON: Mr President, it's being brought to my attention that we should maybe

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1 be going into private session for this part of the testimony.

2 PRESIDING JUDGE FREMR: Good point.

3 Court officer, let's move into private session.

4 (Private session at 5.04 p.m.)

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5 (Open session at 6.16 p.m.)

6 THE COURT OFFICER: We are in open session.

7 PRESIDING JUDGE FREMR: Thank you, court officer.

8 Mr Bourgon, you may proceed.

9 MR BOURGON: Thank you, Mr President.

10 Q. Sir, during your testimony to this point, both with the Prosecution and with certain
11 questions asked by my colleague, you can confirm that you referred to four attacks; is that
12 correct?

13 A. That is correct.

14 Q. And I understand from your testimony that, according to you, all four attacks were
15 conducted by the UPC, the first three with the Ugandans and the fourth one the UPC
16 alone; is that a fair summary of your testimony?

17 A. Yes. That was my testimony, in those exact terms.

18 Q. I'd like to refer to paragraph 51 of your testimony -- sorry, of your statement.

19 For the record, Mr President, I referred to the statement previously. It is

20 DRC-OTP-2078-20 -- 2373, and I quote from page 2381, at paragraph 51.

21 It states here, sir, that "UPC is a political party, but I do not know when they were created
22 and when the military wing was created."

23 Do you stand by this statement, sir?

24 A. Yes, that is true. I stand by my testimony because I do not know when the UPC
25 started, I do not know when the political party was born, and all of that is simply because

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1 I do not know and I did not have any -- I was not able to meet them.

2 Q. Are you familiar, sir, with the term FPLC?

3 A. I'm not familiar with that abbreviation.

4 Q. I suggest to you, sir, that the FPLC is the forces patriotiques pour la libération du
5 Congo and that this was the military wing of the UPC. Does that ring a bell, sir?

6 A. Yes.

7 Q. Is this something that you learned later or that you knew at the time?

8 A. Okay. Well, the name that you have mentioned, is it UPC? I became aware of
9 that name during the events. Now, as the events unfolded those people continued to
10 bear the name UPC, those soldiers.

11 Q. Sir, in your testimony as well as in your statement, you referred a number of times
12 to the FNE. Do you know what FNE stands for?

13 A. FNE, is that it, FNE, or FNI? E in French, I in English? Well, the FNI, it was
14 like -- it was like a group. It really wasn't a group. It was some kind of organisation. I
15 can say that the FNI was an organisation that brought together all Lendu people. I think
16 at the time the FNI was -- was not a military organisation as such, it was an organisation
17 which had taken on a name force negative, negative forces. I think it was the young
18 people who went out to provide help in times of conflict and that is how they took on the
19 name FNI. It wasn't really the name of a military organisation as such.

20 PRESIDING JUDGE FREMR: Ms Samson.

21 I'm sorry, you finished, Mr Witness? I'm sorry whether I -- if I interrupt you. Do you
22 want to finish your response?

23 THE WITNESS: (Interpretation) Yes. So what I was saying in relation to the name
24 FNI is that they should have asked me this question before and I would have told them
25 what FNI stands for, but they did not ask me what FNI stands for.

1 PRESIDING JUDGE FREMR: I saw Ms Samson rising. Please, Ms Samson.

2 MS SAMSON: Thank you, Mr President. It was just to correct that, to my recollection,
3 the witness did not mention FNI during his testimony as was put to him by counsel for
4 the Defence. I just wanted to make that correction.

5 PRESIDING JUDGE FREMR: Okay.

6 Mr Boutin, you may proceed. Mr Bourgon. Sorry, I said Boutin. Sorry.

7 MR BOURGON: Thank you, Mr President.

8 In all fairness to my colleague, I do not have any reference where FNI was used during the
9 testimony, however it was used in a number of occasions in his statement. And I refer to
10 page 2379 of the statement at paragraph 42.

11 Q. And the witness here said - and, sir, that's my question to you: "They" - meaning the
12 UPC - "fought against the FNI who were on the Lendu side."

13 And then you said, "I think FNI means Force Negative."

14 Sir, I suggest to you that the FNI is an official movement which was created in
15 November 2002. Would you agree with this statement or are you familiar with this
16 statement?

17 A. The FNI was not a party that was created. The FNI was a group of youth which
18 went out to help whenever war broke out in a village. So those young people went out
19 to help. It was not a military organisation, no.

20 Q. Would you then agree with the statement that the FNI included of course the Lendu
21 combatants?

22 A. Lendu combatants were there. And I can explain this to you, if possible. Yes,
23 there were Lendu combatants there who started fighting with arrows and spears and
24 machetes. And those people were referred to as the combatants.

25 Now, when it comes to FNI, the so-called Negative Forces, this was a group of young

1 people, or youth, who went to help out during the war. That is the name that was given
2 to these people. It was not a military organisation of soldiers or people who were doing
3 military work so to speak. No, it was not.

4 Q. So, sir, when you say at paragraph 42 of your statement that "Floribert Njabu was
5 the leader of" the "FNI", what did you mean if this is not an official group?

6 A. Okay, I can explain that. At that time in our area the chief was the person in charge
7 of the fate or condition of the population at large. His name was Floribert Njabu. He
8 was the chief at the time and he was in charge, not of the Centre as such, but of the entire
9 Lendu area; Walendu-Pitsi, Walendu-Djatsi, Walendu-Bindi and the entire Lendu region.
10 He was in charge of it. And in case the -- any problems arose, he would be informed
11 accordingly. That was Floribert Njabu's job.

12 Q. Sir, I --

13 PRESIDING JUDGE FREMR: Mr Bourgon. Mr Bourgon, I'm sorry, I have to interrupt
14 you because the time we have reserved for this session is over. So, sorry for that but we,
15 because it is 6.30, we have to finish.

16 Mr Witness, thank you very much. We finish for today. And you have been already
17 informed that under special circumstances we will have to keep you here till Monday.
18 And I firmly believe they will be able to finish your testimony by Monday, late afternoon.
19 So thank you for your understanding.
20 Again, I have to remind you during the weekend you must not discuss the content of your
21 testimony with anybody else.

22 So now the witness may be escorted out of the courtroom.

23 And I would like just to utilise the last two, three minutes for discussing our further
24 schedule.

25 Mr Bourgon, according to my information, the Defence so far exhausted four hours for

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1 cross-ex, so you still will have at your disposal two hours. Do you think you will need
2 the whole two hours?

3 MR BOURGON: Yes, Mr President, I will need the two hours.

4 PRESIDING JUDGE FREMR: Okay, it's fine. It's your right.

5 Even if -- a rather premature question to, Ms Samson. Do you think at this moment, Ms
6 Samson, that you will need some time for re-examination? If yes, what time you would
7 like to get?

8 MS SAMSON: Yes, your Honour. For the moment I have just several questions. And
9 I know that the remaining time is 30 minutes, including questions from the Judges, so I
10 will limit any re-examination to 10 minutes if that would be approved.

11 PRESIDING JUDGE FREMR: Excellent.

12 Our idea, and this is my last announcement, is, to be said, that we will finish this witness
13 and not to prolong his stay any more by Monday, that we would like to start quarter past
14 4. And we got confirmation that we will be able to sit since 7 o'clock. I know that it is
15 rather extraordinary, but extraordinary circumstances require extraordinary solutions.
16 So our plan is to sit from 4.15 till 7 o'clock on Monday to be sure that we will definitely
17 conclude this testimony.

18 I thank all of you for your flexibility, also thank you to interpreters, type recorders.

19 And see you on Monday.

20 THE COURT USHER: All rise.

21 (The hearing ends in open session at 6.31 p.m.)