

Trial Hearing
WITNESS: DRC-OTP-P-0815

(Open Session)

ICC-01/04-02/06

1 International Criminal Court
2 Trial Chamber VI - Courtroom 2
3 Situation: Democratic Republic of Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and Judge Chang-ho Chung
6 Trial Hearing
7 Tuesday, 5 April 2016
8 (The hearing starts in open session at 9.02 a.m.)
9 THE COURT USHER: All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 PRESIDING JUDGE FREMR: Good morning, everybody.
13 Court officer, please call the case.
14 THE COURT OFFICER: Thank you, Mr President. The situation in the Democratic
15 Republic of the Congo, in the case of The Prosecutor versus Bosco Ntaganda, case reference
16 ICC-01/04-02/06.
17 For the record, we are in open session.
18 PRESIDING JUDGE FREMR: Thank you.
19 Now appearances in usual order, please.
20 MS LUPING: Good morning, Mr President, your Honours. Appearing on behalf of the
21 Prosecution this morning are Nicole Samson, senior trial lawyer; Selam Yirgou, case manager;
22 Paola Sacchi, legal assistant; Michala Chadimova, intern; and myself, Dianne Luping, trial
23 lawyer.
24 PRESIDING JUDGE FREMR: Just small correction. I think it's Michala Chadimova, not
25 Radimova, but it's fine with me.

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1 MS LUPING: Thank you, Mr President.

2 PRESIDING JUDGE FREMR: Now Defence, please.

3 MR BOUTIN: Good morning, your Honours. Appearing for Mr Ntaganda this morning,
4 Mr Ntaganda is here with us, we have Ms Binon, who is intern; Margaux Portier,
5 (Interpretation) who is case manager; and myself, Luc Boutin, co-counsel.

6 PRESIDING JUDGE FREMR: Thank you, Mr Boutin.

7 Now Legal Representatives of Victims, please.

8 MS PELLET: (Interpretation) Thank you very much, your Honour. The former trial
9 soldiers are represented by Mohamed Abdou and by myself, Sarah Pellet, Office of the Public
10 Counsel for Victims.

11 MR SUPRUN: (Interpretation) Good morning, your Honour, your Honours. The victims
12 of the attacks are represented by myself, Dmytro Suprun, counsel in the Office of Public
13 Counsel for Victims.

14 PRESIDING JUDGE FREMR: Thank you, Ms Pellet. Thank you, Mr Suprun.

15 Mr Witness, good morning. Are you feeling well today?

16 WITNESS: DRC-OTP-P-0815 (On former oath)

17 (The witness speaks Swahili)

18 THE WITNESS: (No interpretation)

19 PRESIDING JUDGE FREMR: I haven't received translation, but I understood with my poor
20 knowledge of Swahili told me that the witness is okay.

21 Mr Witness, we will continue with your testimony today. As I said yesterday, you were
22 doing very well yesterday. So please proceed in the same way today. And it's my duty to
23 remind you that you are still under oath, which means that you have to tell the truth and
24 nothing but the truth. Do you understand?

25 THE WITNESS: (Interpretation) Yes, I understand. Thank you.

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1 PRESIDING JUDGE FREMR: Very well.

2 Ms Luping, you can finish examination-in-chief. According to my information, you still have
3 at your disposal 34 minutes. So please try to keep this timeline.

4 MS LUPING: Thank you, Mr President. If I could with your leave request that we go
5 immediately into private session as I will be continuing questions from yesterday
6 immediately from the same spot, place.

7 PRESIDING JUDGE FREMR: For sure.

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

9 (Private session at 9.06 a.m.)

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23 (Open session at 9.51 a.m.)

24 THE COURT OFFICER: We are in open session, Mr President.

25 PRESIDING JUDGE FREMR: And before I give the floor to Mr Boutin, just information for

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1 public, now we are in the regime of the open session, but because this witness is a protected
2 witness, there is a big likelihood that most of the time we will spend in private session.

3 Mr Boutin, you may proceed.

4 MR BOUTIN: Thank you, Mr President.

5 Q. Mr Witness, at many occasions during your testimony, you referred to the Hema groups
6 and you identified those Hema groups, if I understand it correctly, as the UPC. Are you
7 aware of the fact that there were indeed other Hema groups than the UPC during this conflict?
8 Are you?

9 A. There were the Lendu, who were fighting the Hema. We didn't know where the
10 conflict started and why.

11 Q. So you're not aware, if I understand your answer correctly, you're not aware that there
12 were other Hema groups fighting with the Lendus, as for example the APC? You're not
13 aware of that; is that correct?

14 PRESIDING JUDGE FREMR: Ms Luping.

15 MS LUPING: Mr President, my objection would simply be that my learned friend is
16 presenting information as if it were a fact and as if it is not contested before this Court.
17 Whether or not it is accurate to describe the APC as a Hema group, I don't believe it is an
18 uncontested issue before this Court, your Honours, so I would simply ask that Mr Boutin
19 rephrase his question. He is presenting this statement as if it were a fact.

20 PRESIDING JUDGE FREMR: Mr Boutin.

21 MR BOUTIN: I'm in cross-examination, Mr President. I think that the Defence obviously in
22 this -- at this juncture has the right to suggest to the witness things that in our view will come
23 out during the whole evidence.

24 PRESIDING JUDGE FREMR: All right. Please proceed.

25 MR BOUTIN:

1 Q. Mr Witness, do I have to repeat my question? Do you understand the question that I
2 just asked you?

3 A. I will tell you what I saw. What I don't know, I'll tell you that.

4 Q. Should I take from your answer that you are in no position to distinguish different
5 groups fighting against the Lendu during that conflict? Is that what I should understand
6 from your answer, Mr Witness?

7 A. You know, we called the Lendu FNI and the Hema were called APC. I didn't know
8 who was their leader, who was the leader of the Hema, who was the leader of the Lendu. I
9 didn't know.

10 Q. For the sake of clarification, the transcript here says that you answered, in your answer
11 you referred to a group called APC. Is that what you said, Mr Witness?

12 A. I don't know if I made a mistake. I didn't do studies. And it's just the way you're
13 putting your questions.

14 Q. So to make it -- try to make it easier for you, would you agree with me that you're in no
15 position to distinguish between different fighting groups, for example, the APC and the UPC
16 fighting against Lendus?

17 PRESIDING JUDGE FREMR: Ms Luping.

18 MS LUPING: Mr President, it's just simply the way the question is being phrased.

19 If you could wait, Mr Witness.

20 The way the question is being phrased. It's being phrased in a very argumentative
21 manner. To say to the witness "You're in no position to distinguish" and whether or
22 not the witness is educated or not, I think he can be accorded a degree of respect.

23 And I do object to the way the question is being put to him.

24 PRESIDING JUDGE FREMR: Mr Witness, could you kindly take off your headphones for a
25 while. If madam assistant could -- please, court officer, yes.

1 Mr Boutin, I think I personally see the issue slightly different, differently than Ms
2 Luping. I would like just to reiterate our decision concerning this witness, that you
3 know, his capability to respond is a bit limited. So I guess, you know, your
4 questions in my view are, I would say, a bit complex, too complex to this witness. So
5 I would really recommend maybe to shorten, shorten and to make those questions a
6 bit simpler, because otherwise -- I don't think that the witness is not willing to
7 respond, but really I'm just putting aside whether this question is argumentative or
8 not, but I would rather say that this is really too complex, too long, and requires
9 something what maybe this witness is not able to provide you with.

10 So please take it into account.

11 MR BOUTIN: I will, your Honour. I will certainly indulge in trying to make it easier as
12 possible, easiest possible for the witness. Obviously I take a different view from my
13 colleague as to the nature of my question. I think it was a very valid question. It might be
14 perceived as argumentative. It is not. I'm just trying to understand what the witness has to
15 say.

16 PRESIDING JUDGE FREMR: Mr Boutin, my position is that this question would be, you are
17 cross-examining the witness, so it's a bit leading, but it's fine because it's cross-examination.
18 But my only view is that, you know, it will be a good question for a different witness. So
19 please take it into account. And now we can proceed.

20 So please provide Mr Witness again with his headphones.

21 MR BOUTIN:

22 Q. Mr Witness, during this conflict back in the location where you used to live, did you
23 ever see Lendus fighting the APC, not the UPC, but the APC?

24 A. Yes. The Lendu were fighting the Hema, but I don't know whether the Hema were the
25 APC or the UPC. I don't recall, I really don't recall. What makes things easier for me is to

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1 say that the Hema were fighting the Lendu. As to saying whether they were APC or UPC, I
2 can't do that.

3 Q. Thank you for your clarification, Mr Witness.

4 MR BOUTIN: At this juncture, Mr President, I would like to suggest that we go into private.
5 My next line of questions might be revealing.

6 PRESIDING JUDGE FREMR: For sure.

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

8 (Private session at 10.02 a.m.)

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25 (Recess taken at 11.01 a.m.)

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1 (Upon resuming in open session at 11.31 a.m.)

2 THE COURT USHER: All rise.

3 Please be seated.

4 PRESIDING JUDGE FREMR: So we are going to continue with the testimony of our witness,
5 who is now cross-examined by the Defence.

6 Mr Boutin, depending on the character of your prospective questions, do you think
7 we can remain in open session or it's a need to move into private because of the
8 protection of the witness?

9 MR BOUTIN: Unfortunately we'll have to remain in private because of the information that
10 I will be seeking to obtain.

11 PRESIDING JUDGE FREMR: Okay. It's understandable.

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

13 (Private session at 11.32 a.m.)

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9 (Recess taken at 12.28 p.m.)

10 (Upon resuming in open session at 12.41 p.m.)

11 THE COURT USHER: All rise.

12 Please be seated.

13 PRESIDING JUDGE FREMR: So just for the information of public, we will continue

14 with -- or rather Defence will continue with cross-examination of this witness.

15 We have been in the regime of private session because this witness is a protected witness, and

16 he was given guarantee that the Court will not reveal his identity, which is part of his

17 protection. So now, depending on prospective questions, which Defence is intending to put

18 to the witness, Mr Boutin, is there a chance to return back to open or, indeed, in the interest of

19 protection of the witness, should we remain in private?

20 MR BOUTIN: Yes, we should remain in private. My questions pertains to names of

21 persons, details that might reveal the witness' identity. I expect to be quite short, basically

22 two or three questions and that will be -- close my cross-examination.

23 PRESIDING JUDGE FREMR: Very well. So let's move into private session now.

24 (Private session at 12.44 p.m.)

25 (Redacted)

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1 (Redacted)

2 (Open session at 1.18 p.m.)

3 THE COURT OFFICER: We are back in open session, Mr President.

4 PRESIDING JUDGE FREMR: Prosecution first, any reaction to this actual change of our
5 schedule?

6 MS LUPING: Yes, Mr President, your Honours, just to confirm that the witness is still in the
7 process of reviewing his quite considerable number of materials, and so in our submission we
8 should simply remain with the original schedule, that the next witness only be called and
9 heard on Monday.

10 PRESIDING JUDGE FREMR: Mr Boutin, Defence.

11 MR BOUTIN: Yes, this is the information that I've received from my colleague Bourgon, so
12 obviously, he will be prepared to start next Monday.

13 PRESIDING JUDGE FREMR: Yes. And two comments, final comments from my part.

14 First of all, I would like to highlight that today example how Mr Boutin conducted his
15 cross-examination in my view is good example of efficiency, because the fact that it's in my
16 view generally, regardless who is calling party and who is non-calling party, that it is really
17 not necessary that non-calling party should exhaust the same time that was used by calling
18 party, because I think it really depends on the importance of the testimony and even of the
19 outcome of examination-in-chief. So even the fact that non-calling party doesn't use whole
20 time allotted to it could indicate how much importance she found in outcome of the
21 examination-in-chief.

22 And the second comment is that from Monday, as we already indicated, we will be
23 sitting in a bit shorter schedule, but still we would like to keep sitting five hours a day,
24 because in our view it simply under current circumstances desirable. So it means
25 that we will sit from 9.30 to 11, then from 11.30 to 1, and the afternoon session will be

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- 1 a bit longer, it will start 2.30 and finish 4.30 if I'm not wrong.
- 2 Are there any other requests for the floor? I see it's not the case, so thank you very
- 3 much, and see you on Monday.
- 4 THE COURT USHER: All rise.
- 5 (The hearing ends in open session at 1.21 p.m.)