

Trial Hearing
WITNESS: (Redacted)

(Open Session)

ICC-01/04-02/06

1 International Criminal Court
2 Trial Chamber VI - Courtroom 2
3 Situation: Democratic Republic of the Congo
4 In the case of The Prosecutor v. Bosco Ntaganda - ICC-01/04-02/06
5 Presiding Judge Robert Fremr, Judge Kuniko Ozaki and Judge Chang-ho Chung
6 Trial Hearing
7 Wednesday, 21 October 2015
8 (The hearing starts in open session at 9.32 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, your Honour.
15 The Court is sitting in the case of The Prosecutor versus Bosco Ntaganda.
16 PRESIDING JUDGE FREMR: Thank you.
17 We start as usual with appearances.
18 Prosecution, please.
19 MS SAMSON: Good morning, Mr President, your Honours.
20 The Prosecution today is represented by Mr James Pace and Mr Rens van der Werf,
21 both assistant trial lawyers; Ms Selam Yirgou, case manager; and myself,
22 Nicole Samson, senior trial lawyer.
23 PRESIDING JUDGE FREMR: Thank you, Ms Samson.
24 Now Defence, please.
25 MR BOUTIN: Good morning, Mr President. Mr Ntaganda is here present with us

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1 this morning. Here present with the Defence -- for the Defence of Mr Ntaganda is

2 Dennie Michielsen, stagiaire; Margaux Portier, gestionnaire de dossier; Isabelle

3 Martineau, Maître Isabelle Martineau, assistante juridique; Chloé Grandon,

4 Maître Chloé Grandon, assistante; et moi même, Luc Boutin, conseil adjoint. Merci.

5 PRESIDING JUDGE FREMR: (Interpretation) Thank you, Mr Boutin.

6 Now Legal Representatives of Victims, please.

7 MS PELLET: (Interpretation) Thank you very much, your Honour, your Honours.

8 The former child soldiers are represented by myself, Sarah Pellet, counsel with OPCV.

9 Thank you.

10 MR SUPRUN: (Interpretation) Good morning, your Honour, your Honours.

11 Victims of the attacks are represented by myself, Dmytro Suprun, counsel at the

12 Office of Public Counsel for Victims.

13 PRESIDING JUDGE FREMR: Thank you both of you.

14 And now duty counsel, please.

15 MR VON BÓNÉ: (Interpretation) Good morning, your Honour. I am Counsel

16 von Bóné and I am legal adviser of the witness.

17 PRESIDING JUDGE FREMR: Thank you.

18 So today we are going to continue with testimony of our witness.

19 Mr Witness, it's my duty to remind you that you are still under oath, which means

20 that you have to speak the truth and nothing but the truth.

21 I would also like to reiterate that, you know, this Court is governed by principle of

22 fair trial -- fair trial, which also means that both parties should be treated equally, and

23 as regards you, it means that you should respond to questions put to you by the

24 Defence in the same style like questions put to you by the party who called you,

25 means by Prosecution.

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1 Before we start I would like -- and I know that I am repeating myself, but I would like
2 to say that Prosecution used almost, I guess almost 7 hours for examination-in-chief,
3 which means in principle that the cross-examination should be taken in the same time
4 in total.

5 So now, Mr Boutin, you have the floor.

6 MR BOUTIN: Thank you, Mr President. If you allow me to role aside my chair.

7 It's very uncomfortable with the space we have.

8 Mr President, if I may before starting my questions, I have prepared my
9 cross-examination on the -- based on the transcript, the French non-official transcript
10 which was available in a timely fashion, quicker than the English one. So I'll do my
11 best to refer the Chamber if there's an issue with the -- with the transcript or
12 statements or -- and so on. I'll do my best to correlate the French and the English
13 version -- official versions that has been issued at a later stage. I obviously do not
14 expect that it will occur, but if it does occur, my assistant will assist us.

15 PRESIDING JUDGE FREMR: Mr Boutin, just to say that we got the point and it's
16 fine with us.

17 MR BOUTIN: Thank you, Mr President.

18 WITNESS: (Redacted) (On former oath)

19 (The witness speaks French)

20 QUESTIONED BY MR BOUTIN: (Interpretation)

21 Q. Good morning, Witness. We are already -- we already met last week. My
22 name is Boutin, I'm a lawyer, counsel -- associate counsel for Mr Ntaganda, and I
23 have a series of questions to put to you. I would ask you to listen carefully to the
24 questions. If you have any questions with regard to what I'm saying, or my
25 questions, or if you do not understand, I would ask you to let me know and I will

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1 clarify it.

2 MR BOUTIN: Your Honour, in order to start I intend to cover the military training
3 of the witness and it may be necessary to go into private session at times during the
4 session.

5 PRESIDING JUDGE FREMR: So do you want to move to private session just now
6 or --

7 MR BOUTIN: Oui, Monsieur le Président.

8 PRESIDING JUDGE FREMR: -- during --

9 MR BOUTIN: (Interpretation) Your Honour, I'm going to try to cover these
10 matters right from the beginning. Obviously, depending on how we advance, it may
11 be that I have to come back into private session, but in order to start at least because
12 we're dealing with the training of the witness.

13 PRESIDING JUDGE FREMR: It's fully understandable to us and we appreciate that.

14 MR BOUTIN: We are in closed session now, or in private session?

15 PRESIDING JUDGE FREMR: At the moment we are in open session, so if you want
16 we can move immediately to private.

17 MR BOUTIN: Yeah, I would prefer to move immediately if possible.

18 PRESIDING JUDGE FREMR: Okay.

19 So, court officer, let's move to private session.

20 (Private session at 9.40 a.m.)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

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- 11 (Redacted)
- 12 (Open session at 10.27 a.m.)
- 13 THE COURT OFFICER: We are in open session, your Honour.
- 14 PRESIDING JUDGE FREMR: Thank you, court officer.
- 15 Mr Boutin, you may proceed.
- 16 MR BOUTIN: (Interpretation) Thank you, your Honour.
- 17 Q. Witness, on several occasions in your answers you referred to the use of various
- 18 means of communications such as Thuraya radios or phonies; is that correct?
- 19 A. Yes, that's correct.
- 20 Q. Did you receive a specific training as to the use of communications in your
- 21 officer training?
- 22 A. No.
- 23 Q. Therefore your knowledge is based on experience and practice; is that correct?
- 24 A. Yes, that's correct.
- 25 Q. You spoke about radios and you, in fact, mentioned small radios. I think

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1 they're usually referred to as Motorolas. Do you understand what I'm referring to?

2 A. Yes, these small radios -- in fact, Motorola is a brand, but there's a Kenwood and
3 there are other brands. The ones -- we had Motorolas, we had Kenwoods, we had
4 several brands and that's why I used the term "small radios" so that everyone would
5 understand.

6 Q. This leads me to the following question: The type of radio or a small radio
7 could be of different brands and different capacity; is that correct?

8 A. Yes, that's correct.

9 Q. Some of these radios have a very short range, very short range, and others have
10 a wider range; is that correct?

11 A. Yes, that's correct.

12 Q. As a military man, you know that this kind of radio doesn't function very well
13 in a mountainous terrain with hills and valleys, et cetera; is that correct?

14 A. Yes, that's correct.

15 Q. So basically these small radios are only useful over a relatively short distance,
16 for example, in a sector like Mongbwalu; is that correct?

17 A. Yes, that's correct.

18 Q. You also mentioned other types of means of communication. You referred to
19 phonies; is that correct?

20 A. Yes, that's true.

21 Q. If I understand correctly, Witness, the phonie is a more complex, a more
22 powerful radio that makes it possible to communicate over a longer distance; is that
23 correct?

24 A. Yes, that's correct, compared to the smaller radios.

25 Q. To compare with the smaller radios, where communication is open, in other

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1 words, and can be heard by anybody, the phonie makes it possible to communicate
2 over a wider distance, but also enables you to encrypt messages; is that correct?

3 A. Yes, that's correct.

4 Q. The phonie radios in military operations, in fact, come in two varieties, there's
5 the so-called manpack that can be carried into operations, and there are the base
6 stations which are positioned in strategic places; is that correct?

7 A. You're quite right.

8 Q. In the case of the operations in Mongbwalu when you were with the UPC, did
9 you know where the phonie base stations were?

10 A. Yes, I knew.

11 Q. There was one in Bunia; is that correct?

12 A. Yes, in Bunia. There wasn't one, there were several, several of them in Bunia.

13 Q. In Aru there was one as well?

14 A. Yes.

15 Q. Mongbwalu?

16 A. That is correct.

17 Q. And these radios are operated by signallers, people who are trained to use them;
18 is that correct?

19 A. Yes, we call them operators, radio operators.

20 THE INTERPRETER: Overlapping speakers.

21 MR BOUTIN: (Interpretation)

22 Q. Signallers, I think. Is that a term that you know, signaller?

23 A. I know the term radio operator.

24 Q. You mentioned -- in response to the question of my colleague you mentioned
25 the radio Thuraya, among others?

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- 1 A. Yes, I mentioned the Thuraya device.
- 2 Q. Which is a telephone, a satellite telephone; is that correct?
- 3 A. Yes.
- 4 (Redacted)
- 5 (Redacted)
- 6 (Redacted)
- 7 (Redacted)
- 8 (Redacted)
- 9 (Redacted)
- 10 (Redacted)
- 11 A. That is correct.
- 12 PRESIDING JUDGE FREMR: Ms Samson, please.
- 13 MS SAMSON: Yes, sorry to interrupt. Some of the topics here are topics that were
- 14 squarely addressed in private session. If we're going to be continuing with some of
- 15 the areas discussed, I believe we should move into private session.
- 16 PRESIDING JUDGE FREMR: Mr Boutin, any objection to that proposal?
- 17 MR BOUTIN: Yes, your Honour. I think my questions are general. They cover a
- 18 topic. I do not intend to get into the specific detail that I believe would identify the
- 19 witness. I will be careful and if I feel that I'm going overboard I will certainly be
- 20 willing to stop my examination and move into private session.
- 21 PRESIDING JUDGE FREMR: Yes, I shall -- Mr Boutin, so the objection is overruled.
- 22 Please proceed.
- 23 MR BOUTIN: (Interpretation)
- 24 Q. Within the framework of communications, Witness, if I understand well, there
- 25 is a logbook of communications for the phonie; is that correct?

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1 PRESIDING JUDGE FREMR: So I understood, Mr Witness, you could just nod that
2 you would prefer to move to private session for responding this question; am I right?

3 THE WITNESS: (Interpretation) That is correct, your Honour.

4 PRESIDING JUDGE FREMR: Okay, I promised we will respect the wish of
5 Mr Witness, to make him comfortable, so court officer, let's move into private session.

6 (Private session at 10.39 a.m.)

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- 1 (Redacted)
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- 4 (Closed session at 10.58 a.m.)
- 5 (Redacted)
- 6 (Redacted)
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- 8 (Redacted)
- 9 (Open session at 10.58 a.m.)
- 10 THE COURT OFFICER: We are in open session, your Honour.
- 11 PRESIDING JUDGE FREMR: Thank you, court officer.
- 12 We break now. We will convene again at 11.30.
- 13 And in the meantime, during the break, I ask the court officer to get in touch with
- 14 Defence and to prepare sufficient number of copies which could be provided to
- 15 parties, to legal representatives, and also to the interpreters and to the Chamber as
- 16 well.
- 17 So now the Court is adjourned.
- 18 THE COURT USHER: All rise.
- 19 (Recess taken at 10.59 a.m.)
- 20 (Upon resuming in open session at 11.39 a.m.)
- 21 THE COURT USHER: All rise.
- 22 Please be seated.
- 23 PRESIDING JUDGE FREMR: We will proceed with the testimony of our witness
- 24 and concretely with his cross-examination. We have a public -- numerous public in
- 25 the audience. Don't worry but, Mr Boutin, I would like to ask you -- I -- it's up to

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1 you, but I guess you would like to continue in private session; am I right?

2 MR BOUTIN: You're right, Mr President. I wish I could go public, but I don't think
3 that it is -- it is the right thing to do.

4 PRESIDING JUDGE FREMR: It's fully understandable. Just for the information of
5 the public, the reason why we have to move to the regime of private session is
6 protection of the witness, which in this case is very, very important.

7 And maybe for the information of the public, can you estimate how much time you
8 will need to stay in the regime of private session?

9 MR BOUTIN: Unfortunately, Mr President, I expect to be quite lengthy in private
10 because of the nature of the topic that I need to raise. Unfortunately, I will not take
11 any chance whatsoever.

12 PRESIDING JUDGE FREMR: It's preferred and in accordance with our Rules.

13 So at the moment, we have to move to -- into private session. Court officer, please
14 make it.

15 (Private session at 11.41 a.m.)

16 (Redacted)

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(Private Session)

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Trial Hearing
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(Closed Session)

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- 1 (Closed session at 1.03 p.m.)
- 2 (Redacted)
- 3 (Redacted)
- 4 (Redacted)
- 5 (Redacted)
- 6 (Open session at 1.04 p.m.)
- 7 THE COURT OFFICER: We are in open session, your Honour.
- 8 PRESIDING JUDGE FREMR: Thank you, court officer.
- 9 We now break for lunch and we will reconvene at half past 2.
- 10 THE COURT USHER: All rise.
- 11 (Recess taken at 1.04 p.m.)
- 12 (Upon resuming in open session at 2.34 p.m.)
- 13 THE COURT USHER: All rise.
- 14 Please be seated.
- 15 PRESIDING JUDGE FREMR: Good afternoon.
- 16 This afternoon Defence will -- is going to continue in cross-examination of our witness.
- 17 We will start in open session, but I have a usual question to the Defence, to Mr Boutin.
- 18 I guess you prefer to move to private; am I right?
- 19 MR BOUTIN: Thank you, Mr President. It's always difficult, obviously. As I said
- 20 before, my preference would be to start maybe in open session, but I expect that the
- 21 topic that I will cover at some point may require to move into private session again.
- 22 So in -- so I'm ready to start in open, but --
- 23 PRESIDING JUDGE FREMR: Okay. Then we will start in open and we all will be
- 24 on alert.
- 25 Okay. So you have the floor.

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(Private Session)

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1 MR BOUTIN: (Interpretation)

2 Q. Good afternoon, Mr Witness.

3 A. Thank you. Good afternoon to you, too.

4 Q. Yesterday, in the course of your testimony, or was it the day before yesterday,
5 you referred to an incident which took place in Nzebi at which you allegedly saw
6 Bosco Ntaganda kill or order the killing of two civilians. Do you remember that
7 testimony?

8 A. Yes, I do remember.

9 Q. You mentioned, if I did understand you properly, that those civilians had been
10 brought by the intelligence services; is that correct?

11 A. Yes, that is correct.

12 Q. When you talk about the intelligence services, can you be more specific and tell
13 the Court who from the intelligence services had brought those two civilians?

14 A. It was the intelligence troops who were under the command of Kasangaki. He
15 was the one -- or, rather, the one who was with those troops was Pigwa, not
16 Kasangaki. Kasangaki was their leader, the leader of the intelligence team that was
17 based in Mongbwalu.

18 Q. Now, regarding Pigwa --

19 Mr President, I'm sorry, I believe we may need to go into private session.

20 PRESIDING JUDGE FREMR: All right. Court Officer, let's move into private
21 session now.

22 (Private session at 2.38 p.m.)

23 (Redacted)

24 (Redacted)

25 (Redacted)

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- 12 (Closed session at 4.05 p.m.)
- 13 (Redacted)
- 14 (Redacted)
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- 16 (Redacted)
- 17 (Redacted)
- 18 (Open session at 4.06 p.m.)
- 19 THE COURT OFFICER: We're in open session, your Honour.
- 20 PRESIDING JUDGE FREMR: Thank you, court officer.
- 21 For the sake of planning, Mr Boutin, I would like to ask you for the planning of the
- 22 upcoming or next witness. I would like to ask you how far you get in your schedule
- 23 because according to your estimation you should be roughly approximately in the
- 24 half of your examination. So what is the real situation?
- 25 MR BOUTIN: Mr President, I expect -- I don't know exactly where I'm at in terms of

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(Open Session)

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1 timing, but I would expect that I would need probably another hour, maybe an hour
2 and a half. I do not expect to be much longer than that.

3 PRESIDING JUDGE FREMR: Thank you very much. That's good news.

4 Give me a second. I got a message probably on that. Yes.

5 Now I have been informed, Mr Boutin, that until so far you have exhausted three
6 hours and 59 minutes, so four hours, so roughly you should have at your disposal
7 more than three, three hours, so at least you still have at your disposal two morning
8 sessions. But if you would be briefer, I think we would appreciate.

9 MR BOUTIN: Mr President, obviously I will review my notes and my documents
10 tonight and I would certainly be prepared to address or to tell the Court how much
11 time I will need tomorrow morning, but at this point, I would be highly surprised that
12 I would need more than the first session.

13 PRESIDING JUDGE FREMR: Very well.

14 So thank you very much all of you and now court is adjourned and we will see you
15 tomorrow at 9.30.

16 THE COURT USHER: All rise.

17 (The hearing ends in open session at 4.08 p.m.)