

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-02/11-01/15
Date: 10 November 2016

TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera-Carbuccia
Judge Geoffrey Henderson

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR

v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ

Confidential

Prosecution's response to Gbagbo Defence « *Requête de la Défense en report de la venue du témoin P-0483* »

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Eric MacDonald

Counsel for Mr Laurent Gbagbo

Mr Emmanuel Altit

Ms Agathe Bahi Baroan

Counsel for Mr Charles Blé Goudé

Mr Geert-Jan Alexander Knoops

Mr Claver N'dry

Legal Representatives of the Victims

Ms Paolina Massidda

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. By their *Requête de la Défense en report de la venue du témoin P-0483*, dated 9 November 2016,¹ the Defence for Mr Gbagbo ("Gbagbo Defence") seeks (i) a translation from Liberian English into English, by a sworn translator ("*traducteur assermenté*"), of the statements of Witness P-0483 during his interviews conducted by the Prosecution on 17, 18 and 19 March 2015 ("interview transcripts"); (ii) a translation into French by a sworn translator of the English translation so obtained; and (iii) that the testimony of Witness P-0483 is put back to allow the Defence to prepare on the basis of the (new) French translation of Witness P-0483's interview transcripts.
2. The Request should be dismissed. First, it is made on the eve of the Witness's expected testimony, in circumstances where it could and should have been made many months ago (upon disclosure of the Witness's original interview transcripts², or the audiotapes,³ or the unrevised⁴ or revised⁵ French translations). Second, the Defence has had sufficient notice of this Witness's expected testimony – in the form of redacted audios of the interviews, the original interview transcripts, unrevised French translations, revised French translations, and also the investigator's Article 55.2 Witness Interview Notes⁶ – such as to be in a position to prepare its questioning of this Witness. Third, the Prosecution took all appropriate steps in the conduct of its interview of this Witness - and in transcribing the interview - in circumstances that were challenging. Fourth, the Prosecution took all appropriate steps in implementing a process, as described below, for preparation of the French translations of the interviews. There is no proper basis for wholesale review of these translations.

¹ ICC-02/11-01/15-747-Conf ("Request").

² The original interview transcripts were disclosed for both Defence teams in Pre-Trial INCRIM package 23, 20 August 2015.

³ The audiotapes were disclosed for both Defence teams in Pre-Trial INCRIM package 23, 20 August 2015.

⁴ The unrevised French translations were disclosed for both Defence teams in Pre-Trial INCRIM package 24, 30 September 2015.

⁵ The revised French translations were disclosed for both Defence teams in Pre-Trial INCRIM package 27, 13 January 2016.

⁶ The document was disclosed for both Defence teams in Pre-Trial INCRIM Package 21, 7 July 2015.

3. Finally, the Prosecution notes that upon forwarding the Defence request to the Prosecution's Language Services Unit ("LSU"), the trial team was informed of the existence in the unit's database of English translations of the interview transcripts which were prepared and used as working documents to prepare the French translations, previously disclosed. The English translations were sent to the Defence teams, Legal Representatives of the Victims ("LRV") and Trial Chamber as soon as their availability became known to the Prosecution trial team (9 November 2016), and will be formally disclosed, under rule 77 of the Rules of Procedure and Evidence ("Rules"), by Friday this week, at the latest.
4. The Prosecution accepts that in light of the language challenges these English translations could have been disclosed earlier. However, there has been no prejudice occasioned by their disclosure at this time. The Defence, in their preparation, relies upon the French translations,⁷ and these translations were made on the basis of the English translations. In addition, the Prosecution satisfied its obligations under rule 76 of the Rules, through disclosure of the French translations. Even so, and if considered necessary, a short delay – of a matter of 24 hours – to the start of Witness P-0483's testimony, could be granted to allow both the Prosecution and Defence teams time to read the newly available English translations.

Confidentiality

5. This filing is classified as confidential, pursuant to regulation 23*bis*(2) of the Regulations of the Court, in line with the Defence Request.

Submissions

Request made on the eve of the Witness's expected testimony

6. Witness P-0483 is due to begin his testimony on 14 November 2016. It must at least have been the expectation of the Gbagbo Defence that his testimony might

⁷ Request, para. 33.

start during the preceding evidence block (ending on 3 November). It is surprising, therefore, that a request has been filed so late in the day - meaning that the Witness will likely have returned to The Hague in preparation for his testimony, before a decision is rendered by the Trial Chamber. It is equally surprising that the Defence has apparently not yet commenced the investigations it anticipates are necessary in advance of questioning of this Witness.⁸ Witness P-0483 was notified as scheduled to testify in the Prosecution's second order of witnesses, on 3 June 2016.⁹

Notice

7. As for the question of notice of this Witness's expected testimony,¹⁰ the Prosecution has disclosed, on 7 July 2015, the investigator's Article 55.2 Witness Interview Notes.¹¹ The Prosecution also recalls that it disclosed the original audio recordings of the interview and the original interview transcripts on 20 August 2015.¹² On 30 September 2015, the unrevised French translations,¹³ and on 13 January 2016, the revised French translations were disclosed.¹⁴ The Defence has been in possession of the original questions and answers of the witness for almost 15 months. Therefore, there is no question but that the Defence is in a position to prepare its questioning of this Witness – and has been for many months.

⁸ Request, paras. 14-15.

⁹ See Annex to Prosecution's Next Order of Witnesses pursuant to paragraph 4 of the amended and supplemented Directions on the conduct of the proceedings, filed on 3 June 2016 (ICC-02/11-01/15-565-Conf-AnxA).

¹⁰ Request, paras. 12-13.

¹¹ The investigator's Article 55.2 Witness Interview Notes (CIV-OTP-0084-4446) were disclosed to both Defence teams in Pre-Trial INCRIM Package 21, 7 July 2015. This is a 30-page summary of the full interview with the witness.

¹² The redacted audios of the interviews were disclosed for both Defence teams in Pre-Trial INCRIM package 23, 20 August 2015.

¹³ The unrevised French translations were disclosed for both Defence teams in Pre-Trial INCRIM package 24, 30 September 2015.

¹⁴ The revised French translations were disclosed for both Defence teams in Pre-Trial INCRIM package 27, 13 January 2016.

Prosecution took all appropriate steps in conducting and transcribing the interview

Expertise of the interpreter¹⁵ and conduct of interview¹⁶

8. The Prosecution took all appropriate steps in the conduct of its interview of this Witness - and in transcribing the interview - in circumstances that were challenging. There were challenges, in the first instance, in setting up this interview, because the Witness lived in Liberia. It was not possible, in 2015, for the Prosecution to travel to Liberia, due to the Ebola outbreak. Thus, the interview was conducted in March 2015, close to the court-imposed deadline for completion of its disclosure, of 30 June 2015,¹⁷ in Sénégal.
9. As for paragraphs 17-20 of the Request, the Prosecution submits that an interpreter was made available for the interview of Witness P-0483 whose skills and experience were sufficient, given the logistical constraints applying (the impending court-imposed disclosure deadline, and difficulties in setting up the interview, and arranging interpretation). The interpreter was independently certified in the U.K. for Krio (Sierra Leone) and confirmed his proficiency in Liberian English, on account of one of his parents being Liberian.
10. It is right to say that the Prosecution stopped using the interpreter during the first day of the interview - with the agreement of the Witness - except to ask questions and clarify some responses.¹⁸ However, it should be noted that the Liberian English spoken by the Witness is very close to standard English. Indeed the syntax and sentence types used by the Witness are closer to standard English than to the varieties of creoles spoken across Anglophone West Africa. As a result, his speech is generally intelligible, although probably not to a degree that is acceptable in a courtroom setting.¹⁹ The difficulties in understanding this Witness are more due to the speed at which – rather than the language in which - he

¹⁵ Request, paras. 17-20.

¹⁶ Request, paras. 21-24.

¹⁷ ICC-02/11-01/15-58.

¹⁸ CIV-OTP-0085-0497, at p.0498, ln.15-p.0500, ln.88. See Request, paras. 10, 21. See also ICC-02/11-01/15-115-Conf, paras. 13-14.

¹⁹ Opinion of the Interpretation Unit when they conducted an analysis of the speech of the Witness in order to hire the proper court interpreters for his testimony.

speaks. It is therefore not the case that full, "triangular" interpretation was necessary, to conduct the interview properly.

11. As for paragraphs 21 to 24 of the Request, the Prosecution did not, in the conduct of the Witness's interview, renounce "*toute méthodologie sérieuse appliquée aux enquêtes*."²⁰ The process adopted by the Prosecution's investigators responded to the practical realities of the interview, and was appropriate, in all the circumstances. As is apparent from the 30-page Article 55.2 Witness Interview Notes that were disclosed,²¹ it is not the case that the investigators did not understand the detail of the Witness's responses.²²

Process of transcribing

12. As for paragraphs 25 to 28 of the Request, the Prosecution provided the original – Liberian English/English – transcripts because it considered, uniquely, and in the circumstances of this Witness interview, that it was preferable to transcribe phonetically the Liberian English spoken by the Witness, in order to ensure a faithful record of the original interview. The process of transcribing the original interview transcripts was appropriate and reasonable in all the circumstances. The standard English was transcribed internally by the Prosecution's LSU, and the Liberian English by the interpreter used during the interview.²³ The transcripts were then reviewed by the Prosecution.²⁴

Prosecution took all appropriate steps in preparing the French translations

13. As for paragraphs 29 to 33 of the Request, the Prosecution took all appropriate steps in the preparation of the French translations of the interview transcripts. There is no reason why the Defence teams cannot prepare their questioning of this Witness, on the basis of the available French translations.

²⁰ Request, para. 24.

²¹ CIV-OTP-0084-4446.

²² Request, paras. 22, 24. The Prosecution notes that any concerns regarding the conduct of the interview, or indeed the reliability of the translated or original transcripts may be addressed during questioning of the Witness.

²³ See ICC-02/11-01/15-115-Conf, para.15.

²⁴ See ICC-02/11-01/15-115-Conf, para.16.

14. First, the Prosecution's language and services unit outsourced the original interview transcripts to two external translators who translated the Liberian-English content to English. These English translations were prepared and used as working documents to prepare the French translations of the interview transcripts. As indicated above (para. 3), upon forwarding the Gbagbo Defence Request to the Prosecution's LSU on 9 November 2016, the Prosecution trial team was informed of the existence in the unit's database of these English translations, which have now (on 9 November 2016) been sent, by email, to the Trial Chamber, Defence and LRV, and which will be formally disclosed, under rule 77 of the Rules, by Friday this week, at the latest.
15. The Prosecution accepts that, because of the language challenges, earlier disclosure of these English translations might have been helpful. However, there has been no prejudice occasioned by their disclosure at this time because the French translations previously disclosed were made on the basis of these translations. It is the French translations upon which the Defence rely, in preparing their questioning of the Witness.²⁵ Further, and for the avoidance of any doubt, the Prosecution's disclosure obligations under rule 76 were met by the disclosure of French translations of the interviews.
16. The French translations were drafted externally (on the basis of the outsourced English translations), and then a final review conducted by the LSU. There is no need to delay the appearance of this Witness to await the provision of new French translations,²⁶ nor is there any proper basis asserted for wholesale review of these translations.²⁷ Out of 514 pages of French translation, the Gbagbo Defence relies upon two errors. The first, whilst significant (relates to a month – which should be December rather than September),²⁸ is not a sufficient basis for wholesale review of the French translations. The second, relates to a passage in the interview the meaning of which is not immediately clear. Indeed, an alternative

²⁵ Request, para. 33.

²⁶ Request, paras. 33, 36.

²⁷ Request, paras. 29-33.

²⁸ Request, para. 31.

translation was provided in the unrevised version of the French translation.²⁹ In any event, the meaning of the two lines cited in the Request becomes clear in the passage that then follows,³⁰ and the interpretation.³¹

Proposed delay to allow preparation on basis of English translations

17. If considered necessary, a short delay – of a matter of 24 hours – to the start of Witness P-0483's testimony, could be granted to allow both the Prosecution and Defence teams time to read the newly available English translations.

Availability in E-court

18. In addition, the Prosecution notes that the English translations will be disclosed in a Ringtail format, and thereafter could be made available in E-court, in the event that the Trial Chamber considers that this would be useful.

Conclusion

19. For the foregoing reasons, the Prosecution requests that the Chamber reject the Defence request. In the alternative, the Chamber could grant a short, 24 hour, delay of the commencement of the testimony of Witness P-0483.



Fatou Bensouda, Prosecutor

Dated this 10th day of November 2016

At The Hague, The Netherlands

²⁹ CIV-OTP-0089-0288, at p. 0311, lns. 198-199

³⁰ CIV-OTP-0088-0311, at p. 0334, lns. 811-813.

³¹ CIV-OTP-0088-0311, at p. 0334, ln. 815.