

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: **ICC-02/11-01/15**

Date: **30 August 2017**

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

Public

Public redacted version of "Prosecution's Submission in response to the Chamber's Decision on the Request for Leave to Appeal Two Oral Decisions of 3 May 2017", 23 June 2017, ICC-02/11-01/15-966-Conf

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

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I. Introduction

1. On 3 May, 2017, the Chamber denied the in-court request by the Defence for Mr Gbagbo to lift the redaction of the OTP interpreter's name that assisted in taking the statement of Witness P-0438 in 2014.¹
2. On 9 May 2017, Defence for Mr Gbagbo filed an Application ("Application")² seeking leave to appeal this oral decision.
3. On 15 June 2017, the Trial Chamber issued its Decision ("Decision")³ rejecting the Application and ordering the Prosecution to make submissions on the need to maintain the redactions to the interpreter's name in the prior statement of Witness P-0438.

II. Confidentiality

4. This filing is classified as "Confidential," pursuant to regulation 23*bis* of the Regulations of the Court, because a Confidential Decision⁴ of the Court ordered the Prosecution to submit this filing. Additionally, this classification is also justified because this filing discusses the current employment status and work performed by a freelance interpreter that the OTP hired for the Côte d'Ivoire situation.

III. Submissions

5. This particular interpreter began working for the OTP as a freelance employee in this investigation [REDACTED]. S/he has completed [REDACTED] assignments for the OTP in this investigation since that time, most recently on [REDACTED]. The OTP expects to continue using this interpreter in this capacity.

¹ ICC-02/11-01/15-T-150-CONF-ENG ET, p. 33, lines 13–25.

² ICC-02/11-01/15-908 ("Application").

³ ICC-02/11-01/15-960-Conf.

⁴ ICC-02/11-01/15-960-Conf.

6. The continued redaction of the name of the interpreter in the prior statement of P-0438 is justified for two main reasons. First, the OTP still uses his/her interpretation services for investigative and trial assistance matters in the Côte d'Ivoire situation, and redaction is therefore necessary to protect ongoing investigations under rule 81(2). Second, the OTP has legitimate security concerns associated with this interpreter who [REDACTED].

7. As to the first point, the Trial Chamber already determined in its Redaction Protocol⁵ that interpreters' names are a standard redaction based on the need to protect further and ongoing investigations under rule 81(2). Category A.3 redactions of that Protocol explicitly allow redaction of the identifying and contact information of interpreters who are not Prosecution staff members but who travel frequently to, or are based in, the field.⁶ The Chamber's legal justification for the redaction of this information is that:

“...disclosure of the information may put the persons and/or the ongoing investigation at risk. In view of the ongoing or future work in the field of those individuals, and the difficulty in finding suitable qualified interpreters... any interference with them would jeopardise investigations. The information in principle not relevant to the other party.”⁷

8. Recent jurisprudence from the Appeals Chamber highlights the overriding preference for full disclosure, and although it clarifies that the Defence has no burden to demonstrate the need for lifting redactions, it confirms that the Trial Chamber, with the assistance of the Prosecutor, should keep such matters under review with the ability to amend a decision if circumstances change.⁸

⁵ ICC-02/11-01/11-737-AnxA, p. 5, paras. 20-22.

⁶ ICC-02/11-01/11-737-AnxA, p. 5, paras. 20-22.

⁷ ICC-02/11-01/11-737-AnxA, p. 5, para. 20.

⁸ ICC-02/11-01/15-915-Conf OA9, at paras. 61-64 (citing Appeals Chamber, *Prosecutor v. Germain Katanga*, “Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled ‘First Decision on the Prosecution Request for Authorisation to Redact Witness Statements,’” 13 May 2008, ICC-01/04-01/07-475 (OA), paras. 54-56).

9. There have been no such changed circumstances in this case warranting a departure from the Trial Chamber's Redaction Protocol and its decision authorising the redaction of the name of this interpreter under rule 81(2). As stated above, this interpreter's freelance work in the situation in Côte d'Ivoire is ongoing, including an assignment for the OTP as recently as [REDACTED]. As such, there is no basis for departing from the redaction regime permitting the redaction of identifying and contact information of this interpreter. Indeed, these redactions are still needed pursuant to rule 81(2) to protect further and ongoing investigations.

10. Revealing to the Defence the identity is likely to impact on the Prosecution's ability to conduct its investigations and trial preparation, as it may unduly attract attention to the movement of Prosecution staff and by extension to witnesses and their security. In similar instances, the Pre-Trial Chamber justified redacting the name of interpreters currently working for the OTP in the field because of the objectively justifiable prejudice to the Prosecutor's ongoing investigations in Côte d'Ivoire, due to the reasonable belief that their presence could become easily traced and, as a consequence, result in interference with the investigation.⁹

11. The above redactions also ensure that the Prosecution can continue to use the limited number of translators that it currently has at its disposal, without any need to replace them. Such an outcome would have negative implications on the expeditious conduct of its investigations and trial preparation as well as on the resources required to conduct such work.

12. Furthermore, when the identities of interpreters are revealed in one case, it makes it significantly more difficult to maintain confidentiality in other investigations in the same situation. Thus absent some showing of a specific need or justification for the disclosure of the identity of an interpreter's name, the OTP seeks, as a matter of practice, to maintain its confidentiality. For these reasons pertaining

⁹ See, e.g. ICC-02/11-01/11-74-Conf-Exp at paras. 84-91 ("First Redaction Decision"); ICC-02/11-01/11-514 at paras. 22-25; ICC-02/11-01/11-556 at paras. 34-37.

both to the present case and to the overall practice of the OTP, the Court should maintain its standard redactions to the identity of the interpreter in question.

13. As to the second point, and as mentioned in court,¹⁰ the Prosecution has ongoing security concerns that justify maintaining the redaction of this interpreter's name.¹¹ Specifically, this interpreter is an [REDACTED].

14. Lastly, there is no prejudice to the Defence in not having the name of the interpreter. The Prosecution submits that the redactions sought pursuant to rule 81(2) would not result in unfairness to the Accused, since they do not relate to information that is relevant for the preparation of the case of the Defence. The Prosecution recalls the context for the Defence's initial request for this information during the examination of Witness P-0438: the Defence speculated as to the accuracy of this interpreter's 2014 translation in an objection to the Prosecution's use of P-0438's prior statement to confront P-0438 in court, and in the face of errors in the live interpretation of the proceedings by a different interpreter.¹² Indeed, the Prosecution agrees with the Court's assessment that the record does not demonstrate the identity of this interpreter is relevant to the preparation of the Defence.¹³ In short, the Defence request amounts to nothing more than a fishing expedition.

IV. Conclusion

15. For all the reasons above, in exercising its power to review exceptions to disclosure under rule 81, the Chamber should maintain the redactions of the name

¹⁰ ICC-02/11-01/15-T-150-CONF-ENG ET, p. 27, lines 11-13.

¹¹ ICC-02/11-01/15-794-Conf and Annexes.

¹² Compare ICC-02/11-01/15-T-150-CONF-ENG ET, p. 10, line 19 – p. 11, line 7 (Defence counsel commenting on errors in live Dioula interpretation during the proceeding); p. 27, line 14 – p. 28, line 10 (Prosecution commenting on errors in live Dioula interpretation during the proceeding); p. 28, line 13 – p. 29, line 11 (Legal Representatives commenting on errors in live Dioula interpretation during the proceeding) with p. 13, lines 8 - 13 (Defence counsel claiming, without evidence, that “we suspect that there may have been some difficulties in interpretation during the investigation as well” and alleging inherent dangers in confronting the witness with his prior statement).

¹³ ICC-02/11-01/15-T-150-CONF-ENG ET, p. 33, lines 13-23.

of the interpreter in the prior statement of P-0438.



Fatou Bensouda, Prosecutor

Dated this 30th day of August 2017

At The Hague, The Netherlands