

Trial Hearing
WITNESS: CIV-OTP-P-0513

(Open Session)

ICC-02/11-01/15

1 International Criminal Court
2 Trial Chamber I
3 Situation: Republic of Côte d'Ivoire
4 In the case of The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé
5 ICC-02/11-01/15
6 Presiding Judge Cuno Tarfusser, Judge Olga Herrera Carbuccion and
7 Judge Geoffrey Henderson
8 Trial Hearing - Courtroom 1
9 Wednesday, 23 November 2016
10 (The hearing starts in open session at 9.34 a.m.)
11 THE COURT USHER: [9:34:25] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE TARFUSSER: [9:34:41] Good morning. Good morning to
15 everybody. Today it was -- we risked to start late because a lot of people were stuck
16 in the traffic, but we managed to be here all in time.
17 We start today with Witness 513. And before starting, that's why I asked and not
18 having the witness in, I would advise, instruct all the parties that with this witness we
19 talk about one day, the day. We don't talk about the climate, the unstable climate
20 and things like that, all what is the circumstances. We talk about this day, okay? I
21 will not admit questions regarding -- questions which are outside of that day, of
22 course. This just to say this in advance so that we are clear about it.
23 This is a crime-based witness and she has to talk about that.
24 Now, and this is for the public -- yes, Maître Altit, not yet.
25 MR ALTIT: [9:36:32] (Interpretation) Yes, your Honour. Good morning, your

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1 Honours.

2 I beg your pardon for rising now to address the Court, but I do wish to give notice
3 that I will be filing an application with the Court, and perhaps we could deal with this
4 now or later.

5 PRESIDING JUDGE TARFUSSER: [9:37:00] Yes, we can deal this now. So we go
6 into closed session a little bit later.

7 MR ALTIT: [9:37:12] (Interpretation) Very well. Yes, this is a very rapid request.
8 The Defence did take note of the decision taken yesterday by the Bench accepting the
9 proposal from the Prosecution to change the line-up of witnesses, the schedule. And
10 my request is that the Chamber reconsider the line-up of witnesses. And I speak
11 specifically of Witness 350. This particular witness was, up until the time that the
12 Prosecution made a request on 12 November 2016, that particular witness had been
13 scheduled for the end of the following block of witnesses.
14 And this witness was to come early in 2017 in March I believe, the month of March
15 2017.

16 Now, the Defence is well aware of your decision regarding the conduct of
17 proceedings which calls for, and I quote, "parties must always be ready to continue
18 with presentation of their case, calling witnesses to the stand, even if a witness takes,
19 an earlier witness takes less time than expected."

20 So that is quite clear. And of course, we comply entirely with the instructions of the
21 Bench. But in this particular case, Witness 350 was scheduled for quite a bit later on,
22 a few months from now.

23 So what does that mean? Basically this means that of course we must prepare.

24 And this particular witness is quite important, and we do not have the human
25 resources to prepare for this witness. We are very busy with the preparations for all

1 the witnesses in the current block of witnesses, the current block of witnesses.
2 But Witness 350 particularly, given the context, namely, the hearings are longer in
3 duration because the Bench has decided to sit six hours a day, I believe. This is such
4 that we are extremely busy, and we do not have the necessary amount of time to do a
5 proper preparation, that is to say analyse the earlier statement given by the witness in
6 detail, cross-check with witness statements. All of this takes a great deal of time.
7 Now, we are ready for the witnesses included in the current block of witnesses. And
8 yesterday we did brainstorm and try to find some way to arrange matters. But very
9 frankly speaking, we are a small team. We do not have the resources of the
10 Prosecution, and I do not see how we can prepare for Witness 350 properly.
11 This current line-up will definitely have an impact on our examination of other
12 witnesses. So, simply put, it's a matter of time and resources, the amount of time
13 and the amount of resources that we must devote to a number of witnesses all at the
14 same time.
15 Just to give you an illustration of this problem, I would remind the Chamber that on
16 the Prosecution side, they had seven different counsel examining witnesses. I think
17 it's easier to organise one's work when one has a team of seven people to examine
18 witnesses. That's quite obvious, quite natural.
19 Your Honours, the issue here really is the fairness of the proceedings. If the
20 proceedings are to be fair, we need proper time to prepare. We need a minimum
21 amount of time in relation -- given the limited number of people belonging to our
22 team. We are of course quite willing to comply with instructions from the Chamber.
23 We do strive to adjust to last-minute changes as much as possible. We do all we can.
24 But, you see, the team here right before you spends a great deal of time, including
25 weekends, working on the case, and there is only so many hours in a day. We all

1 have our lives.

2 I apologise for putting the issue in these terms, but we have considered this problem
3 very carefully yesterday, and we really do have a serious problem with this particular
4 witness, 350. Thus, I am asking the Chamber if we could not hear Witness 350
5 during the next two weeks but, rather, schedule him for the first block of witnesses in
6 2017.

7 PRESIDING JUDGE TARFUSSER: [9:42:55] Thank you, Maître Altit.

8 The Defence for Mr Blé Goudé.

9 MR GBOUGNON: [9:43:02] (Interpretation) Your Honour, the Blé Goudé Defence
10 fully endorses the request made by the Gbagbo team. We will not rehearse the
11 arguments already brought forward. But I think you can see for yourselves that we
12 do not have the resources of the Prosecution. We just do not have the resources.
13 The allocation or, rather, the statements or documentation regarding a witness may
14 seem rather thin, but we have to consider all the surrounding circumstances, and I
15 believe that the Bench does need to take that into consideration. We do not want
16 things to go too fast, but when the proceedings speed up, we still need to be in a
17 position that we can ensure the fairness of the proceedings. I won't repeat what my
18 learned friend has already said, but we fully enforce the comments made by the
19 Gbagbo Defence team.

20 PRESIDING JUDGE TARFUSSER: [9:44:25] Legal representatives.

21 MS MASSIDDA: [9:44:27] Good morning, your Honour. A few remarks opposing
22 the request by the Defence.

23 The first one, I would like to recall that this Witness P-350 was scheduled at the
24 beginning to be heard immediately after P-483, the witness that has just finalized the
25 testimony.

1 It was already known to the Defence since 3 June 2016. I'm referring to document
2 565, annex A, in which the order of a witness was proposed by the Defence -- sorry,
3 by the Prosecution.

4 After the witness, as the Chamber knows, had a problem and therefore the
5 Prosecution was in a -- had an obligation to ask for a postponement of the testimony,
6 but still the Defence was already on notice of the fact that the witness had to testify.
7 Secondly, P-350 is supposed to be questioned by the Office of the Prosecutor for 3
8 hours. The witness is almost in the same position as the witness that we are going to
9 listen today. So she will testify on a very limited issue, on a limited subject, and
10 she's a crime-base witness.

11 So we oppose the Defence request essentially on two points, the first one that the
12 Defence was already on notice at least since 3 June 2016 and second, on the fact the
13 witness will testify on a very limited subject.

14 Thirdly, we'd like to recall our submission in relation to P-350 filed yesterday, which
15 explains the personal reasons justifying a change in the order of appearance of a
16 witness, which I will not of course mention in public session.

17 Thank you, your Honour.

18 PRESIDING JUDGE TARFUSSER: [9:46:36] Thank you to you.

19 The Office of the Prosecutor.

20 MR MACDONALD: [9:46:40] Thank you, Mr President, your Honours. Essentially
21 we concur in short with the position of the legal representative.

22 Now, if the -- essentially this witness will be testifying to a specific time period
23 spanning over three days, but then if the Chamber was to give the same instructions
24 as you just gave to the parties in relation to the current witness, 513, then first of all, I
25 don't think the testimony would necessarily take 3 hours.

1 Second, the preparation is more focused for the Defence and, therefore, the constraint
2 or the prejudice that the Defence is raising in their preparation would be minimised.
3 Now, if the Chamber was to entertain changing the position of that witness, which we
4 obviously I would say leave to your discretion, so maybe we have a middle position
5 different from the legal representatives on this topic, we would urge the Chamber to
6 not bring back this witness to the last position, but to maybe put her in the middle of
7 the AVL witnesses.

8 The reason why I'm saying that is it would not be a good idea to have this
9 witness -- for some reason, have her testify in February for the reasons stated in our
10 submissions as to the reason why we were changing her.

11 So in the truth-seeking mission of the Chamber, I think it would be advisable if there
12 is a change to, I'll use the expression place her or call the witness not at the end, but
13 maybe in the middle. Thank you.

14 PRESIDING JUDGE TARFUSSER: [9:48:56] Thank you. On this request, the
15 Chamber will issue a decision in due course, probably today some time, but for sure
16 during this week after consultations.

17 So now I have to -- we have to start with the next witness. This is a crime-based
18 witness and, therefore, the Chamber decided yesterday to listen to her in closed
19 session. A crime-based witness, it's very delicate, therefore I'm now speaking to the
20 public in the public gallery, sorry, but we have to go in closed session because of the
21 delicacy of the next witness. So sorry for this, but that's it.

22 Please, court officer. And we will stay in closed session for the whole day, so just to
23 advise you.

24 Please, court officer, can we go in closed session? Thank you.

25 (Closed session at 9.50 a.m.)

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- 15 (The hearing ends in closed session at 3.48 p.m.)