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

Date: 15 June 2017

TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera Carbuca
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 redacted

**Decision on the request for leave to appeal
two oral decisions of 3 May 2017**

To be notified, in accordance with regulation 31 of the Regulations of the Court, to:

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**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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Defence**

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Amicus Curiae

REGISTRY

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Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Trial Chamber I (“Chamber”) of the International Criminal Court, in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, having regard to Article 82(1)(d) of the Rome Statute, Rule 155 of the Rules of Procedure and Evidence, and Regulation 65 of the Regulations of the Court issues this decision on the request for leave to appeal two oral decisions of 3 May 2017, filed by the Defence of Laurent Gbagbo on 9 May 2017 (“Request”).¹

1. On 3 May 2017, the Chamber issued two oral decisions dealing with (i) the objection of the Defence to the Prosecutor being allowed to use the prior statement of Witness P-0438 during her questioning, and (ii) the Defence requests for the disclosure of the identity and qualifications of the interpreter acting during the taking of the prior statement, as well as the recording of said statement. These two oral decisions read as follows:

(i) On this opposition by the Defence for Mr Gbagbo and then followed also by Mr Knoop for the Defence for Mr Blé Goudé, the Chamber decided to reject the opposition, to allow the Prosecutor to confront the witness with his previous statement, but in the following way: First, for the record, the part which the Prosecutor wants to confront the witness with is read out for the record of the case in – is read for the record. Then, on the basis of the psychological assessment, this part read out should be broken down in small pieces and put simple questions to the witness following this part which he is confronted with, and this is also on the basis of the fact that in taking the statement, all the rules were followed. There was an interpreter. It was read back to the witness what he said, and he confirmed and signed the statement.² (“First Decision”)

(ii) The Chamber, on the request by the Defence teams to lift the redactions of the name of the interpreter who assisted the investigators of the OTP in the questioning of

¹ “Demande d’autorisation d’interjeter appel des deux décisions de la Chambre rendues oralement le 3 mai 2017, l’une rejetant la demande de la Défense visant à interdire au Procureur d’utiliser la déclaration antérieure de P-0438 lors de son interrogatoire, l’autre refusant à la Défense la levée de l’expurgation apposée par l’Accusation sur le nom de l’interprète ayant officié lors de la prise de la déclaration antérieure de P-0438”, ICC-02/11-01/15-908.

² ICC-02/11-01/15-T-150-CONF-ENG, p. 15, l. 4-14.

Witness P-0438 and to be given the qualification of the interpreter, so as audio recordings of the questioning, having heard the parties, decides as follows: According to the redaction protocol agreed by all parties under category A.3. related to translators and interpreters, inter alia, the names are redacted unless relevant for the preparation of the other party. In this case the Chamber finds that the Defence has not demonstrated the relevance of the requested information. Accordingly, the request for lifting the redactions of the identity of the interpreter and to provide his qualification is rejected. As to the audio recording of the interview, the Chamber was informed that it does not exist.³ (“Second Decision”)

2. In the Request, the Defence of Laurent Gbagbo seeks leave to appeal with respect to the following issues:

- (i) whether the Chamber erred in law in deciding that a witness can be confronted with his prior statement without any guarantee that this statement faithfully reflects what the witness said (“First Issue”);
- (ii) whether the Chamber erred in law in authorising the use of a “synthesis text” as the prior statement in the absence of any recordings or *verbatim* notes of the meeting (“Second Issue”); and
- (iii) whether the Chamber erred in law in not requiring the Prosecutor to justify the need to maintain the redaction, thereby reversing the burden of proof with regard to redactions (“Third Issue”).

3. The common legal representative of the participating victims responded on 15 May 2017, objecting to the Request.⁴ The Prosecutor responded on the same day, also objecting to the granting of leave to appeal, but submitting that with regard to the third issue, the Chamber should request further submissions from the parties and decide anew.⁵

³ ICC-02/11-01/15-T-150-CONF-ENG, p. 33, l. 13-25.

⁴ ICC-02/11-01/15-919.

⁵ ICC-02/11-01/15-920.

4. On 11 May 2017, the Appeals Chamber issued its judgment on the Defence appeal against another oral decision of the Chamber on redactions [REDACTED]

[REDACTED]

[REDACTED].⁶

5. The provision relevant for the resolution of the Request is Article 82(1)(d) of the Statute. In brief, an interlocutory appeal can be allowed in respect of an issue arising out of the impugned decision, meaning issues essential for the disposition of the matter. In addition, appeal can only be certified in respect of issues which would significantly affect either the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Chamber, immediate appellate resolution may materially advance the proceedings.

First Issue

6. In the First Issue, the Defence challenges in essence the First Decision to allow the Prosecutor to use the prior statement of Witness P-0483 during her questioning, arguing that there is no guarantee that the statement faithfully reflects what the witness said as there is no *verbatim* record of the statement taking and hence no possibility to verify whether what is reflected in the statement was in fact stated by the witness.⁷

⁶ ICC-02/11-01/15-915-Conf OA9, paras 1, 61-64.

⁷ Request, paras 12-24.

7. The Chamber considers that the Defence's submission, in the absence of any indication of wrongdoing or negligence, amounts to no more than speculation. The Chamber notes in this regard that the Prosecutor and her staff, including interpreters employed in the process of taking statements from witnesses, are subject to rules applicable to their profession and/or function.⁸ Accordingly, the Chamber finds that the First Issue does not arise out of the First Decision and does not qualify as appealable issue in the sense of Article 82(1)(d) of the Statute.

Second Issue

8. The Second Issue challenges the Chamber's Second Decision insofar as it noted that no audio recording of the statement taking exists, in this way, according to the Defence, allowing the use of a "synthesis text" as prior statement without possibility to verify conformity of the prior statement with any *verbatim* responses given by the witness during the interview.⁹
9. The Chamber is of the view that the Second Issue does not arise from the decision. As stated by the Chamber previously, the applicable rules for taking statements had been followed. In particular, the statement indicates that the witness signed the statement which had been read to him in French and translated into Dioula by a qualified interpreter.¹⁰ The submission of the Defence that the use of the prior statement should have been prohibited given that there is no way of verifying the conformity of the statement with any audio recordings of the statement taking process again amounts to nothing more than speculation about potential discrepancies of what the witness might have said during the taking of the statement, and what is reflected in

⁸ Regulations of the Office of the Prosecutor, ICC-BD/05-01-09, 23 April 2009; Code of Conduct of the Office of the Prosecutor, 5 September 2013.

⁹ *Ibid.*, paras 25-29.

¹⁰ CIV-OTP-0057-1570 at 1583-1584.

the statement signed by the witness. Therefore, the Chamber finds that the Second Issue does not arise from the decision and hence is not an appealable issue under Article 82(1)(d) of the Statute.

Third Issue

10. The Defence of Laurent Gbagbo challenges the approach of the Chamber to require the Defence to demonstrate the relevance of the requested information when considering lifting of redactions. The Chamber considers that this issue does indeed arise from the Second Decision.

11. However, the Chamber notes that shortly after the Request was filed, the Appeals Chamber issued a judgment on a similar matter [REDACTED]

[REDACTED]

[REDACTED].¹¹ The Chamber therefore considers that a new resolution by the Appeals Chamber of an issue very similar to one decided upon only recently would not materially advance the proceedings.

12. Instead, the Chamber, in the exercise of its power to review exceptions to disclosure under Rule 81 of the Rules at any time, finds it appropriate to engage in a further assessment of whether the redactions of the name of the interpreter in the prior statement of P-0438 continue to be justified. In this regard, the Chamber notes that the redaction protocol establishes a procedure for challenging redactions by the receiving party by way of written application, thereby creating an obligation for the disclosing party to justify the redaction in question.¹² In the case at hand, as the receiving party, the Defence of Laurent Gbagbo has, *de facto*, already presented its application for

¹¹ See para. 4 above.

¹² ICC-02/11-01/11-737-AnxA, para. 5.

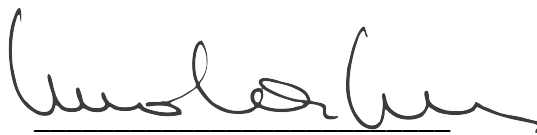
the lifting of the redaction in its oral submissions leading to the Second Decision and in the Request.¹³ Therefore, the Chamber finds that it is appropriate at this stage to receive submissions from the Prosecutor as to whether continued redactions of the name of the interpreter employed in the taking of the statement of Witness P-0438 are justified.

FOR THESE REASONS, THE CHAMBER HEREBY

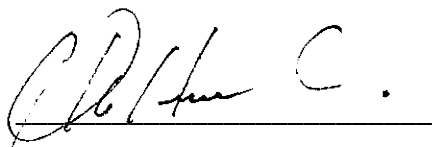
REJECTS the Request for leave to appeal;

ORDERS the Prosecutor to make submissions on the need to maintain the redactions to the name of the interpreter in the prior statement of Witness P-0438 by 23 June 2017.

Done in both English and French, the English version being authoritative.



Judge Cuno Tarfusser, Presiding Judge



Judge Olga Herrera Carbuccion



Judge Geoffrey Henderson

Dated this 15 June 2017

At The Hague, The Netherlands

¹³ ICC-02/11-01/15-T-150-CONF-ENG, pp. 24, 29-31.