

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: 26 March 2018

TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera Carbuccion
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

**Decision on the request for suspension of the time limit to respond to the
Prosecutor's Trial Brief submitted by the Defence for Mr Gbagbo**

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Fatou Bensouda
James Stewart
Eric MacDonald

Counsel for Laurent Gbagbo

Mr Emmanuel Altit
Ms Agathe Bahi Baroan

Counsel for Mr Charles Blé Goudé

Geert-Jan Alexander Knoops
Claver N'dry

Legal Representatives of Victims

Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**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

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber I of the International Criminal Court, in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, having regard to Articles 64(3)(a) and 67 of the Rome Statute (“Statute”) and Regulation 35(2) of the Regulations of the Court (“Regulations”), issues this decision on the “*Requête en suspension du délai alloué à la Défense pour répondre au « mid-trial brief » déposé par l’Accusation le 19 mars 2018 (ICC-02/11-01/15-1136) jusqu’à transmission de la traduction française de ce « mid-trial brief »*” submitted by the Defence for Mr Gbagbo (“Defence Request” or “Request”)¹.

1. On 9 February 2018, the Chamber issued the “Order on the further conduct of the proceedings” (“Order”), whereby it invited the Prosecutor to file a trial brief illustrating her case and detailing the evidence in support of the charges and decided that the defence teams would have a 30-day time limit to respond to the Prosecutor’s brief.² Following requests by both the Defence teams³ and the Prosecutor⁴, the original time limits for the filing of the brief and of the Defence’s submissions were respectively extended to 19 March and 20 April 2018⁵.
2. On 19 March 2018, the Prosecutor filed the “Prosecution’s Mid-Trial Brief submitted pursuant to Chamber’s Order on the further conduct of the proceedings (ICC-02/11-01/15-1124)”.⁶
3. On 22 March 2018, the Defence for Mr Gbagbo filed the Request, (i) submitting inter alia that, the “Mid-Trial Brief” (as the Prosecutor unilaterally decided to refer to the Trial Brief requested by the Chamber: hereinafter, “Trial Brief”) being “*un élément essentiel*”, the right of the accused to be informed of the nature and

¹ ICC-02/11-01/15-1137.

² ICC-02/11-01/15-1124.

³ Email from Defence Lead Counsels to the Chamber dated 23 February 2018 at 14:28 hours.

⁴ Emails from the Prosecutor to the Chamber dated 23 February 2018 at 16:52 hours and on 15 March 2018 at 9:44 hours.

⁵ Emails from the Chamber to Counsel dated 1 March 2018 at 10:30 hours and 16 March 2018 at 9:45 hours.

⁶ ICC-02/11-01/15-1136+ Conf-Anx.

content of the charges in a language he perfectly understands and speaks would require its translation into French before the Defence would be in a position to respond to it and, accordingly, (ii) requesting the Chamber to suspend the time limit for responding to the Trial Brief until notification of its translation into French to the Defence.

4. On 23 March 2018, following the Chamber's shortening of the time limit for responses to the Request,⁷ the Defence for Mr Blé Goudé indicated it would not file a response and would defer to the discretion of the Chamber⁸.
5. On 26 March 2018, the LRV⁹ and the Prosecutor¹⁰ filed their responses, both objecting to the Request. Whilst finding a full suspension of the time limit until notification of a French version of the Trial Brief neither required, nor necessary or justified, the Prosecutor further submits that, were the Chamber to find it "useful" for the Defence to be provided with a French version of the Mid-Trial Brief (albeit in draft form), she defers to the Chamber for the amount of additional time, if any, to be allowed to the Defence for the purposes of its submissions.

Determinations by the Chamber

6. The Chamber notes that the Defence Request is premised on two mischaracterisations: first, of the scope of the accused's right to receive translations of documents as a specific component of the right to be informed of the nature and content of the charges in a language that he or she fully understands and speaks pursuant to article 67(1)(a) and (f) of the Statute, as construed by the Chambers of the Court (including by this Chamber and by the Appeals Chamber); second, of the specific object and purpose both of the Mid-

⁷ Email from the Chamber dated 23 March 2018 at 10:49 hours.

⁸ Email from Lead Counsel for Mr Blé Goudé dated 23 March 2018 at 11:54 hours.

⁹ ICC-02/11-01/15-1139.

¹⁰ ICC-02/11-01/15-1140.

Trial Brief and of the subsequent submissions by the Defence, as set forth in the Chamber's Order.

7. On 16 September 2015, rejecting a similar request submitted by the Defence for Mr Gbagbo in respect of the pre-trial brief, the Chamber rejected the request stating *inter alia* that the statutory framework only required that the document containing the charges, the decision confirming the charges, the list of the evidence relied upon by the Prosecutor and the witnesses' statements be made available to the accused in a language he or she fully understands and speaks for him or her to be informed in detail of the nature and content of the charges within the meaning of Article 67(1)(a) of the Statute. The Chamber also clarified that neither the statutory framework, nor the case-law of the ECHR supported the contention that failing to provide the translation of a document of the type of the pre-trial brief would amount to infringing the right set forth in that provision; even less so when – as it was and still is the case in these proceedings - the accused can rely on counsel able to function effectively in both working languages of the Court and therefore able to address any doubt or concern that the accused may have.¹¹
8. As noted by the Appeals Chamber in respect of a request for translation submitted by Counsel for Mr Gbagbo at the pre-trial stage, “there is no general requirement that filings of parties and participants submitted in English be translated into French, or vice-versa, or that time limits begin to run from the notification of decisions or orders in both working languages of the Court”, and this “is also confirmed with respect to the language which a suspect fully understands or speaks by regulation 40(6) of the Regulations of the Court”.¹² Regulation 40(6) of the Regulations makes it the responsibility of counsel to

¹¹ ICC-02/11-01/15-224.

¹² ICC-02/11-01/11-489, para. 10.

inform the accused of documents other than decisions and orders for which an obligation of translation exists.

9. In light of these principles, the Chamber takes the view that the Trial Brief does not qualify as a document for which the translation into French as the language which the accused fully understands and speaks is mandated by the need to meet the requirements of fairness under article 67(1)(a) and (f) of the Statute. This flows not only from the Chamber's own definition of the Trial Brief as "an auxiliary tool to the benefit of both the Chamber and the parties and participants", but also from the detailed and specific instructions imparted to the Defence to subsequently "make written observations *on the continuation of the trial proceedings*" (emphasis added). The Chamber also clearly stated that the observations expected from the Defence teams are not meant "as specific, point-by-point response to the brief"; this is also made apparent by the Chamber's expectation that the Defence's responses would not exceed 50 pages, while as many as 300 pages were expected for the Trial Brief.
10. Furthermore, the Chamber notes that, even assuming that the availability of the French version of the Trial Brief were essential for the subsequent steps of the proceedings (which is not the case, for the reasons indicated above), Counsel's professional duty to "represent the client expeditiously with the purpose of avoiding unnecessary expense or delay in the conduct of the proceedings" pursuant to Article 24(5) of the Code of Professional Conduct would have required the Defence for Mr Gbagbo to highlight any need for a translation at a much earlier stage. No mention of this requirement is instead to be found either in the submissions dated 10 November 2017, where the Defence for Mr Gbagbo requested an updated version of the pre-trial brief,¹³ or in the initial request for (limited) extension of the time limit for the responses to the Trial Brief jointly

¹³ ICC-02/11-01/15-1041-Red, para. 46.

submitted on 23 February 2018 by the Defence for Mr Gbagbo and the Defence for Mr Blé Goudé¹⁴ (and granted by the Chamber) by email¹⁵. Previous developments in these proceedings contribute to exclude that the filing of the Trial Brief in English only might have come as a surprise to the Defence for Mr Gbagbo: in particular, the fact that the pre-trial brief was also originally filed in English only; the previous rejection of the request relating to its translation into French by the Chamber at that stage and the awareness that, except in the courtroom, English has been the working language of preference for the Prosecutor since the beginning of the case. All these elements, and the professional duty to act expeditiously, would have made it not only feasible for but also required by the Defence for Mr Gbagbo to raise the issue at the time of the issuance of the Order or, at the latest, in the context of the first request for extension of the time limit for responses.

11. The Chamber reemphasises its concern with the nature and timing of the Request, which the Chamber finds lacking merit and incomprehensible at this stage of the proceedings. These concerns are made more serious by the fact that, as indicated by the Registry, the Defence for Mr Gbagbo has requested the translation not only of the Trial Brief, but also of several of its annexes, some of which only contain list of references¹⁶, list of locations in Abidjan¹⁷ and/or short descriptions in English¹⁸. These proceedings have been ongoing (and the accused have been in custody) for several years and Lead Counsel for Mr Gbagbo has been on record as representing his defence since the very beginning; accordingly, it is difficult for the Chamber to accept - as an example - the position that, in the absence of a French translation of the Trial Brief, "*ni l'accusé,*

¹⁴ Email from Lead Counsel dated 23 February 2018 at 14:28 hours.

¹⁵ Email from the Presiding Judge dated 1 March 2018 at 10:30 hours.

¹⁶ Annexes C.2, C.4, C.10 to the Trial Brief.

¹⁷ Annex C.6 to the Trial Brief.

¹⁸ Annexes E.1, E.2, E.3, E.4, E.5 and D to the Trial Brief.

ni son équipe de défense ne pourraient en saisir tous les détails et par conséquent ne pourrait [sic] connaître, en détail la 'nature', la 'cause' et la 'teneur' des charges".

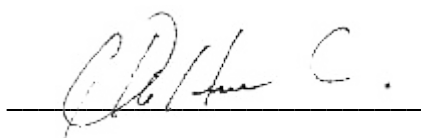
12. In light of the above, there is no need for the Chamber to address the Prosecutor's subordinate submission to the effect that, were the Chamber to find the translation of the Trial Brief "useful" for the Defence, a discretionary extension of the time limit for the Defence's response might be granted. The Defence for Mr Gbagbo has already approached the relevant section of the Registry with a request for a translation of the Trial Brief and of some of its annexes; the requested translations will be provided within the time frame allowed by that section's workload, on the basis of the level of urgency of any competing requests.

FOR THE FOREGOING REASONS, THE CHAMBER, HEREBY

REJECTS the Defence Request.



Judge Cuno Tarfusser, Presiding Judge



Judge Olga Herrera Carbuccion



Judge Geoffrey Henderson

Dated 26 March 2018

At The Hague, The Netherlands