

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: *English*

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

Date: 5 August 2015

TRIAL CHAMBER I

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Olga Herrera-Carbuccia
Judge Bertram Schmitt

SITUATION IN COTE D'IVOIRE

**IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO AND CHARLES BLE GOUDE***

Public

Request for the Translation of the Pre-Trial Brief to French under article 67(1) (a)

Source: Defence of Mr Charles Blé Goudé

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 the Defence of Mr Blé Goudé

Mr Geert-Jan Alexander Knoops

Mr Claver N'dry

Counsel for the Defence of Mr Gbagbo

Mr Emmanuel Altit

Ms Agathe Bahi Baroan

Legal Representatives of the Victims

Ms. Paolina Massidda

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

Ms. Paolina Massidda

Mr. Enrique Carnero Rojo

**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**

Other

Procedural History

1. On 7 May 2015 the Chamber ordered the Office of the Prosecutor (OTP) to file all auxiliary documents by the 16 July 2015 including the Pre-trial Brief.¹
2. On 16 July 2015 the OTP filed the Pre-trial Brief after having requested for the extension of page numbers.²
3. On 30 July 2015 the Defence of Mr Gbagbo filed a request for the postponement of the deadline for the response to the Pre-trial Brief and the postponement of the trial date to at least six months after the translation of the Pre-trial Brief (the Gbagbo Defence request).³

Introduction

4. The Defence observes that in the Gbagbo Defence request, the Defence for Mr Gbagbo requested for translation of the Pre-trial Brief to French and the Registry stated that the complete translation with the footnotes will be delivered in October.⁴ The Defence requests that this translation be implemented as soon as possible, sooner than October, and that the same be notified to the Blé Goudé as well.

Applicable law

5. An accused person has an internationally recognised fundamental, right to be informed of the charges against him in a language he perfectly understands and speaks.
6. Article 67 of the Rome Statute provides for the minimum guarantees to ensure impartiality and equality during the trial of an accused person one of which is the right to translation. Article 67 (1) (a) provides for the right to “be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks” (emphasis added). In the French version of the Rome Statute, the word “parfaitement” (perfectly) is used instead and this underlines the pertinent nature of this right and emphasizes the extent to which an accused person should be in a position to understand the language in question.

¹ ICC-02/11-01/15-58 para 26.

² ICC-02/11-01/15-148.

³ ICC-02/11-01/15-174

⁴ Ibid para 8.

7. In *Prosecutor v. Lubanga*, the Chamber interpreted Article 67 (1) and stressed that the accused has the fundamental “right to be informed in detail of the nature, cause and content of the charges against him.”⁵
8. This right is also endorsed by major international and regional human rights instruments including the article 14(3) of the International Covenant on Civil and Political Rights (ICCPR); article 6 (3) (a) of the European Convention on Human Rights (ECHR); as well as article 8 (2) (a) and (b) of the American Convention on Human Rights.
9. Furthermore, this right is provided for in the Statutes of the two United Nations *ad hoc* international tribunals⁶ and the article 16 of the Statute of the Special Court for Sierra Leone.

Submissions

I. The Pre-trial Brief falls within the ambit of article 67 (1) (a) of the Rome Statute

10. The current submission should be viewed within the context of the importance of the Pre-trial Brief as the decisive document that ultimately informs the accused of the nature, cause and content of the charges as envisioned in article 67 (1) (a). The Defence takes cognisance of the fact that in the above mentioned *Lubanga* decision, the Chamber made reference to the document containing the charges as is often provided by the OTP before the confirmation of charges hearing. Nevertheless, it can be argued that the Pre-trial Brief in question falls within the ambit of article 67 (1) since it, as the OTP acknowledges, it “provides a detailed overview of the Prosecution’s case...it presents, with some detail, the Prosecution’s case theory and its main themes.”⁷

11. Furthermore the Chamber itself outlines the importance of the Pre-trial Brief:

“The Chamber is of the view that such a document could facilitate the fair and expeditious conduct of the trial proceedings, as it is a summary of the evidence to be relied on by the Prosecution, based on the charges as confirmed by the Pre-Trial Chamber. In light of the joinder and the two Confirmation Decisions, such a document explaining the Prosecution's case theory with reference to the witnesses

⁵ ICC-01/04-01/06-268 pages 5-6.

⁶ Articles 20 and 21 of the International Criminal Tribunal for Yugoslavia and the International Criminal Tribunal for Rwanda Statutes respectively.

⁷ ICC-02/11-01/15-148 para 2.

the Prosecution intends to call and the evidence it intends to rely on at trial would be beneficial to the Defence in preparation for trial.”⁸

12. In this regard, the Defence concurs with the detailed arguments raised in the Gbagbo Defence request underlining the significance of the Pre-trial Brief as a document that informs the accused of the charges against him within the meaning of article 67 (1) (a).⁹ It seems superfluous to reiterate the same arguments in this filing. The Defence stresses, however, that the Pre-trial Brief is a vital document at this stage, especially -in light of the joinder of the two cases and the disclosure of a voluminous amount of evidence post confirmation. After all, the Pre-trial Brief is meant to adequately inform the accused, in a language he fully understands, of the OTP theory, its version of the alleged facts and the purported liability modes.

II. English is not a language Mr Blé Goudé perfectly understands within the meaning of article 67 (1)

13. Although Mr Blé Goudé has previously shown his ability to understand and speak the English language, the defence submits that it is not a language he fully understands and speaks for the purposes of article 67 (1) (a) of the Rome Statute. The Defence stresses that conversational English, which Blé Goudé admits to speaking and understanding, is considerably different from the technical legal terms and concepts that is ordinarily be used in a filing within the Court which legal concepts are included in the Pre-trial Brief.

14. This is further demonstrated by the fact that previous filings of the Defence did raise the issue of translation into French, requesting that all the important documents on the court record be translated to French for the benefit of the Mr Blé Goudé.¹⁰

15. At his initial appearance Mr Blé Goudé stated that he speaks English but emphasised that he prefers to speak French and that the French language was “better” for the purposes of the proceedings before the Court.¹¹

16. For the above reasons the Defence maintains that although Mr Blé Goudé understands English, he is not able to digest the technical-legal concepts and theories included in the Pre-

⁸ ICC-02/11-01/15-138, par. 4.

⁹ ICC-02/11-01/15-174 paras 40-47.

¹⁰ ICC-02/11-02/11-201 paras 45 and 46.


¹¹ CC-02/11-02/11-T-3-CONF-ENG ET pages 3 – 4.

trial Brief, as envisioned by of article 67 (1) (a). As these submissions show, the Pre-trial Brief qualifies as a document that falls within the ambit of the mentioned provision. Accordingly, it would constitute a breach of Mr Blé Goudé's fundamental right to fair trial if such a document would not be translated into French.

17. The Defence submits that a timely translation of the Pre-trial Brief will enable Mr Blé Goudé to meaningfully participate in the preparation of his defence in view of the trial scheduled to commence on 10 November 2015.

Relief Sought

18. For the foregoing reasons, the defence respectfully requests that:
- a) The translation of the Pre-trial Brief referred to in the Gbagbo Defence request be notified to the Blé Goudé Defence as well.
 - b) The Chamber order the Registry to complete the French translation of the Pre-trial brief as soon as possible, and in any event before October 2015. The Defence leaves it to the discretion of the Chamber to make a ruling as to whether the unavailability of the said translation until October 2015 shall have an impact on the proceedings.



Mr. Knoops, Lead Counsel and Mr. N'Dry, Co-Counsel

Respectfully submitted on the 5th day of August 2015

At The Hague, The Netherlands