

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **7 June 2018**

**TRIAL CHAMBER I**

**Before: Judge Cuno Tarfusser, Single Judge**

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE  
IN THE CASE OF  
*THE PROSECUTOR v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ***

**Public**

**Decision on Mr Gbagbo's Request for revised and corrected translation of  
the Trial Brief and related orders**

Decision 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 Laurent Gbagbo**

Mr Emmanuel Altit  
Ms Agathe Bahi Baroan

**Counsel for Mr Charles Blé Goudé**

Mr Geert-Jan Alexander Knoops  
Mr Claver N'dry

**Legal Representatives of Victims**

Ms 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**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

Mr Pieter Vanaverbeke

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Others**

**Judge Cuno Tarfusser**, acting as Single Judge on behalf of 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”), rule 15 of the Rules of Procedure and Evidence and regulation 40(6) of the Regulations of the Court, issues this decision on the “*Requête de la Défense aux fins d’obtenir du Service de traduction de la Cour une version corrigée et définitive de la traduction française du « Mid-Trial Brief » déposé par l’Accusation*” submitted by the Defence for Mr Gbagbo on 25 May 2018 (“Defence Request”).<sup>1</sup>

## **I. Procedural background**

1. On 19 March 2018, pursuant to the Chamber’s “Order on the further conduct of the proceedings” dated 9 February 2018 (“First Order on the Conduct of the Proceedings”),<sup>2</sup> the Prosecutor filed her “Mid-Trial Brief” (“Trial Brief”),<sup>3</sup> providing the narrative of her case with reference to the evidence submitted.
2. On 22 March 2018, the Defence for Mr Gbagbo filed its “*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 »*” (“Defence Request for Translation”).<sup>4</sup> submitting that, the Trial Brief being “*un élément essentiel*”, the right of the accused to be informed of the nature and 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.

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<sup>1</sup> ICC-02/11-01/15-1166 + confidential annex 1.

<sup>2</sup> ICC-02/11-01/15-1124.

<sup>3</sup> “Prosecution’s Mid-Trial Brief submitted pursuant to the Chamber’s Order on the further conduct of the proceedings (ICC-02/11-01/15-1124)”, 19 March 2018, ICC-02/11-01/15-1136.

<sup>4</sup> ICC-02/11-01/15-1137.

3. On 26 March 2018, the Chamber rejected the Defence Request for Translation.<sup>5</sup> The Chamber reiterated inter alia (i) that, pursuant to the statutory framework as well as its interpretation by the Appeals Chamber and well-established international human rights law, only the document containing the charges, the decision confirming the charges, the list of the evidence relied upon by the Prosecutor and the witnesses' statements should be made available to the accused in a language he or she fully understands and speaks; (ii) that failing to provide the translation of a document of the type of the Trial Brief would not amount to infringing the right set forth in article 67)1)(a), in particular when the accused can rely on counsel able to function effectively in both working languages of the Court. The Chamber also noted that the Trial Brief was meant "an auxiliary tool to the benefit of both the Chamber and the parties and participants" and that the Defence was not expected to submit "specific, point-by-point response to the brief" observations. The Chamber also noted that a translation of the Trial Brief should be provided within the time frame allowed by the Registry's Translation section's workload, "on the basis of the level of urgency of any competing requests".
4. On 13 April 2018, the Chamber rejected the Defence for Mr Gbagbo's Application for leave to appeal the Decision.<sup>6</sup>

## II. Determinations

5. The Chamber stands by the principles set forth in its 26 March 2018 Decision: the Trial Brief is not one of those documents which have to be made available to the accused in a language he perfectly understands and speaks. The Chamber is also informed that, following the 26 March 2018 Decision, the

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<sup>5</sup> ICC-02/11-01/15-1141.

<sup>6</sup> ICC-02/11-01/15-1150.

Defence for Mr Gbagbo has been provided by the Registry with draft translations of the various sections of the Trial Brief on a rolling basis. Exchanges between the Defence team for Mr Gbagbo and the Counsel Support Section, made available to the Chamber upon request,<sup>7</sup> confirm that Counsel for Mr Gbagbo and his team are perfectly equipped to appreciate the English version of the Trial Brief into its finest details. Accordingly, the Chamber is and remains persuaded that the lack of a revised French translation of the Trial Brief does not adversely impact the rights of the accused, including for the purposes of finalising the submissions requested by the Chamber in its “Second Order on the further conduct of the proceedings” dated 4 June 2018 (“Second Order”).<sup>8</sup>

6. By the same token, the Single Judge acknowledges the desirability of having an official Court’s translation into French of the Trial Brief included in the record, with a view to preserving its completeness and accuracy. This translation should be provided within such time frame as reasonably feasible for the relevant section of the Registry, in light of the current workload and the level of urgency of any competing requests, consistently with the usual practice of that section.
7. In the same vein, the Single Judge also notes the Prosecutor’s email to the Chamber, the parties and participants dated 21 May 2018, providing “information in relation to the Prosecution corrected version of its Trial Brief (Mid-trial Brief)”.<sup>9</sup> More specifically, the Prosecutor invited the Chamber to consider two additional items as submitted, highlighted an “incorrect

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<sup>7</sup> Registry’s email to the Chamber sent on 28 May 2018 at 11:38, in response to the Presiding Judge’s request sent at 10:58 hours on the same day.

<sup>8</sup> ICC-02/11-01/15-1174.

<sup>9</sup> Email sent by the Prosecutor to the Chamber, parties and participants on 21 May 2018 at 10:18 hours.

citation” and clarified that a certain item on which she did not intend to rely on was “inadvertently cited”; she also indicated that it was “not intended to file a further Corrected version of the Mid-Trial Brief to reflect this correction, at this stage”. In its response to this dated 29 May 2018, the Defence for Mr Gbagbo, also by email,<sup>10</sup> indicated that it would be necessary to make a final version of the Trial Brief available, which could be used by the Chamber, the parties and participants as reference.

8. The submission of the two additional items was recognised by the Chamber’s “Decision concerning the Prosecutor’s submission of documentary evidence on 28 April, 31 July, 15 and 22 December 2017, and 23 March and 21 May 2018”.<sup>11</sup> The Single Judge takes the view that the same reasons of completeness and accuracy of the record which make it desirable for a revised French translation of the trial brief to be prepared and included in the record make it likewise desirable that the Chamber, the parties and participants be able to rely on a final corrected version of the Trial Brief. The availability of a final corrected version would also be of assistance to the Registry for the purposes of the preparation of the revised French translation of the Trial Brief. In light of the forthcoming time limits for the Defence teams set by the Second Order, as well as the limited scope of the corrections highlighted by the Prosecutor, such final corrected version should be filed without delay.

**FOR THE FOREGOING REASONS, THE SINGLE JUDGE, HEREBY**

**GRANTS** the Defence Request;

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<sup>10</sup> Email sent by Counsel for Mr Gbagbo to the Chamber, parties and participants on 29 May 2018 at 12:44 hours.

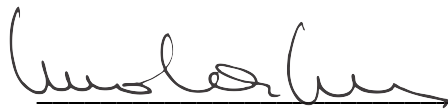
<sup>11</sup> ICC-02/11-01/15-1172, paragraph 21.

**ORDERS** the Registry to prepare and file, within the shortest feasible delay, a revised French translation of the Trial Brief;

**CLARIFIES** that the lack of a revised French version of the Trial Brief does not adversely impact the rights of the Defence, including for the purposes of the submissions to be filed in compliance with the Second Order on the further conduct of the proceedings;

**ORDERS** the Prosecutor to file, no later than Friday 15 June 2018, a final corrected version of the Trial Brief.

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

A handwritten signature in black ink, appearing to read 'Cuno Tarfusser', written over a horizontal line.

**Judge Cuno Tarfusser, Single Judge**

Dated 7 June 2018

At The Hague, The Netherlands