



Original: **French**

No.: ICC-02/11-01/15  
Date: **24 September 2020**

**THE APPEALS CHAMBER**

**Before:** Judge Chile Eboe-Osuji, Presiding Judge  
Judge Howard Morrison  
Judge Piotr Hofmański  
Judge Luz del Carmen Ibáñez Carranza  
Judge Solomy Balungi Bossa

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE**

**IN THE CASE OF  
*THE PROSECUTOR v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ***

**Public Document**

**Defence Response to the “Prosecution submissions on Mr Gbagbo’s  
‘Information à la Chambre d’Appel faisant suite à sa décision du 2 septembre 2020’  
and regarding corrigendum ICC-02/11-01/15-1314-Corr-Red”**

**Source:** Defence team for Laurent Gbagbo

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

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**Unrepresented Applicants for Participation/Reparations**

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**Counsel Support Section**

**Victims and Witnesses Section**

**Detention Section**

**Victims Participation and Reparations Section**

**Other**

## **I. Procedural history**

1. On 2 September 2020, the Appeals Chamber issued a “Decision on the Prosecutor’s request to set a time limit for any request by counsel for Mr Gbagbo for leave to supplement his response to the appeal brief”,<sup>1</sup> wherein it decided to

set a deadline for counsel for Mr Gbagbo to file any request for leave to supplement his Response. The request, if any, should be filed by 17 September 2020, and it should identify which arguments of his Response specifically need to be supplemented in light of the revised French translation, and explain why. Should counsel for Mr Gbagbo not intend to file any such request, it should inform the Chamber, the parties and the Victims accordingly at the earliest opportunity.<sup>2</sup>

2. On 17 September 2020, the Defence informed the Appeals Chamber that “the new wording in French of Judge Henderson’s Reasons does not warrant the filing by the Defence of a request to make submissions supplementary to its response to the Prosecutor’s appeal brief”.<sup>3</sup>

3. On 22 September 2020, the Prosecutor filed “Prosecution submissions on Mr Gbagbo’s ‘Information à la Chambre d’Appel faisant suite à sa décision du 2 septembre 2020’ and regarding corrigendum ICC-02/11-01/15-1314-Corr-Red”.<sup>4</sup>

## **II. Discussion**

4. The Prosecutor has called the document she filed on 22 September 2020 “submissions”. Upon analysis, the document is in fact a request wherein

the Prosecution respectfully requests the Appeals Chamber (i) to disregard the additional submissions on the appeal that Mr Gbagbo advances and (ii) to order Mr Gbagbo to address any deficiencies in the corrigendum filed to his response to the Prosecution’s appeal.<sup>5</sup>

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<sup>1</sup> ICC-02/11-01/15-1377.

<sup>2</sup> ICC-02/11-01/15-1377, para. 6.

<sup>3</sup> ICC-02/11-01/15-1378-tENG, para. 31.

<sup>4</sup> ICC-02/11-01/15-1381.

<sup>5</sup> ICC-02/11-01/15-1381, para. 10.

5. Regulation 34 of the Regulations of the Court vests in the Defence the right to respond to any request submitted by the Prosecution.

6. The Defence responds as follows.

1. The corrigendum

7. Having regard to the fact that there was a new French translation of Judge Henderson's Reasons, the Defence filed, on 17 September 2020, a corrigendum to the response to the Prosecutor's appeal brief it had filed on 6 March 2020.

8. In the corrigendum, the Defence simply substituted the previous wording from the draft translation with the new French wording of the quotations from Judge Henderson's Reasons. It made 67 such changes in the corrigendum, specifying for each of them in the explanatory note:

[TRANSLATION] The quotation taken from Judge Henderson's Reasons by the Defence at paragraph X of its response to the Prosecutor's appeal brief has been changed to take account of the new wording of the quotation as it appears in the final version of the French translation of Judge Henderson's Reasons. The previous wording used by the Defence in its response to the Prosecutor's appeal brief was taken from the draft French translation of Judge Henderson's Reasons.<sup>6</sup>

9. Given that in the first version of the Defence's response – based on the draft French translation of Judge Henderson's Reasons – the Defence specified in the footnote to each of its references to Judge Henderson's Reasons that the source was the "[TRANSLATION] draft French translation of ICC-02/11-01/15-1263-Conf-AnxB", it necessarily dispensed with the words "[TRANSLATION] draft French translation of" in the corrigendum, but kept the same filing number and the same paragraph number to which reference was made.

10. The Prosecution appears to be taking issue with the fact that the Defence dispensed with the words "[TRANSLATION] draft French translation of", when it states

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<sup>6</sup> See for example, ICC-02/11-01/15-1314-Corr-Anx1, para. 1.

the Prosecution understands that but for three discrete errors, Mr Gbagbo has otherwise sought to replace the references to the draft translation of Judge Henderson's reasons in the footnotes of his response brief with references to the revised final translation and to alter the text of some quotations. Yet, the list provided by Mr Gbagbo does not appear to be accurate or exhaustive.<sup>7</sup>

11. The only other changes made to the footnotes in the corrigendum pertain to two slips affecting two paragraph numbers, as stated clearly in the annex to the corrigendum.<sup>8</sup>

12. That being so, to claim as the Prosecutor does, that significant changes were made in the corrigendum is to stray far from reality. That fact is further apparent from the "examples" which she provides in her "submissions" (see footnote 9 to her submissions): the "examples" concern only the fact that the words "[TRANSLATION] draft French translation of" were dispensed with in the footnotes where reference is made to Judge Henderson's Reasons.

13. At footnote 8 to her submissions, the Prosecutor in any event makes clear that she is aware that all that was done in the corrigendum was to "replac[e] 'Traduction provisoire en français de ICC-02/11-01/15-1263-Conf-AnxB' with 'ICC-02/11-01/15-1263-Conf-AnxB-tFRA'".

14. That being the case, the criticism levelled at the Defence appears bizarre because it is, in truth, baseless; all the Defence did in the corrigendum was to act upon the new French version of Judge Henderson's Reasons.

15. So to suggest, as the Prosecutor does, that the Defence took advantage of the corrigendum to recast some arguments is both astonishing and deeply disappointing.

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<sup>7</sup> ICC-02/11-01/15-1381, para. 3.

<sup>8</sup> ICC-02/11-01/15-1314-Corr-Anx1, paras. 36 and 59.

2. The issue of the concordance of the final French version with the original English version of Judge Henderson's Reasons

16. In their wisdom, the Judges of the Appeals Chamber allowed the Defence to acquaint itself with the final French translation of Judge Henderson's Reasons, so that the Defence could avail itself, in the time prescribed, of the version of Judge Henderson's words that best reflects his thinking. This is because it is in the interests of justice that Laurent Gbagbo and his Defence be informed to the utmost so as to be in a position to discuss the Prosecution's arguments in the most enlightened fashion possible.

17. The availability of an accurate translation of Judge Henderson's Reasons is, as the Appeals Chamber has seen for itself, crucial as regards respect for the rights of the Defence; it is likewise crucial to all of the Parties, to the victims and to the Judges, since it is on the basis of the final French translation now available that any participation in French in the proceedings will take place; and lastly it is crucial to informing the French-speaking reader, who is entitled to be apprised of Judge Henderson's exact words.

18. It is therefore in the interests of justice that the most accurate possible French translation of Judge Henderson's Reasons be entered into the record of the case.

19. Yet it would appear that some errors or approximations might remain in the final French version when compared against the English original. The importance of that issue meant that it was the duty of the Defence to draw this point to the Chamber's attention, so as to inform the Judges. This raises the question as to whether the Prosecution would have preferred the Defence to say nothing and for a version which might contain errors or omissions to be entered into the record of the case. The criticism levelled at the Defence is hard to fathom since it is in the interests of all – the Prosecution included – but, above all, in the interests of justice, for the

most faithful possible French translation of Judge Henderson's Reasons to be made available.

20. Furthermore, to find fault with the Defence, as the Prosecution does, for not identifying all of the errors in the draft French translation when compared against the English original<sup>9</sup> makes little sense since: (1) the revisers performed that exercise; (2) as the Defence pointed out in its submissions of 17 September 2020, it was not for the Defence to do so;<sup>10</sup> and (3) at issue is the accuracy of the final translation, not that of the draft.

3. The brief remarks made by the Defence on the impact of the differences in wording between the draft translation and the final translation on the content of its arguments

21. As explained in its observations of 17 September 2020, the Defence paid close attention to the new wording of the references it had made to Judge Henderson's Reasons in its response to the Prosecutor's appeal brief. It thus concluded, having regard to the need to ensure the expeditiousness of the proceedings, that "the new wording in French of Judge Henderson's Reasons does not warrant the filing by the Defence of a request to make submissions supplementary to its response to the Prosecutor's appeal brief".<sup>11</sup>

22. The Defence wished to make clear to the Chamber how it had proceeded. To that end, it was necessary to explain that much of the wording in the final translation was more in keeping than the previous wording with the line of reasoning which the Defence had adopted in its response to the Prosecutor's appeal brief and lent support to its arguments. It was important for the Chamber to grasp that point so as to understand that, despite the considerable number of changes made by the revisers in

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<sup>9</sup> ICC-02/11-01/15-1381, para. 6.

<sup>10</sup> ICC-02/11-01/15-1378-tENG, para. 14.

<sup>11</sup> ICC-02/11-01/15-1378-tENG, para. 31.

the final translation of Judge Henderson's Reasons compared to the draft version, the Defence was not filing further submissions.

23. The Defence calls the attention of the Chamber to the following point: it had to compose its response to the Prosecutor's appeal brief on the basis of a draft translation which clearly was not quite satisfactory, given that it was reworked by the revisers to a considerable extent. The Defence observations of 17 September 2020 will have been the sole opportunity for the Defence to make reference before the Appeals Chamber to the final translation of Judge Henderson, and, even then, in the most succinct terms, since it used just three examples to explain why it would not be seeking to make further submissions. In the eyes of the Prosecutor, that was also excessive: the Defence should not have made any mention of the final translation at all and should not have explained to the Judges how it had proceeded – a position which the Defence finds astonishing.

24. More generally, the criticism which the Prosecutor levels at the Defence is not very clear, since, as she herself acknowledges, the Defence did not advance any new argument in its observations of 17 September 2020.<sup>12</sup>

#### **FOR THESE REASONS, MAY IT PLEASE THE APPEALS CHAMBER TO**

- **Deny** in every respect the Prosecutor's request, "Prosecution submissions on Mr Gbagbo's 'Information à la Chambre d'Appel faisant suite à sa décision du 2 septembre 2020' and regarding corrigendum ICC-02/11-01/15-1314-Corr-Red".

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[signed]

Emmanuel Altit

Lead Counsel for Laurent Gbagbo

<sup>12</sup> ICC-02/11-01/15-1381, para. 7.



Dated this 24 September 2020

At The Hague, Netherlands