

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-02/11-01/11 OA 5

Date: 22 August 2013

THE APPEALS CHAMBER

Before:

Judge Sanji Mmasenono Monageng, Presiding Judge

Judge Sang-Hyun Song

Judge Akua Kuenyehia

Judge Erkki Kourula

Judge Anita Ušacka

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF THE PROSECUTOR v. LAURENT KOUDOU GBAGBO

Public document

Decision

**on Mr Gbagbo's request for translation and an extension of time for the filing of
a response to the document in support of the appeal**



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

The Office of the Prosecutor
Ms Fatou Bensouda, Prosecutor
Mr Fabricio Guariglia

Counsel for Mr Laurent Koudou Gbagbo
Mr Emmanuel Altit
Ms Agathe Bahi Baroan

REGISTRY

Registrar
Mr Herman von Hebel



The Appeals Chamber of the International Criminal Court,

In the appeal of the Prosecutor against the “Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute” of 3 June 2013 (ICC-02/11-01/11-432),

Having before it the “Requête urgente de la défense portant sur la détermination de la date à partir de laquelle courent les délais fixés pour qu’elle puisse déposer une réponse à l’appel de la décision ‘adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute’ (ICC-02/11-01/11-432) déposé par le Procureur le 12 août 2013 (ICC-02/11-01/11-474)” of 15 August 2013 (ICC-02/11-01/11-480),

Renders unanimously the following

DECISION

1. Mr Gbagbo’s request for a translation of the document in support of the appeal is rejected.
2. The Registrar shall provide Mr Gbagbo with a translation into French of the “Decision on the Prosecutor’s and Defence requests for leave to appeal the decision adjourning the hearing on the confirmation of charges” (ICC-02/11-01/11-464) and the “Dissenting Opinion of Judge Fernández de Gurmendi” (ICC-02/11-01/11-464-Anx) by 13 September 2013.
3. The time limit for Mr Gbagbo to file his response to the Prosecutor’s document in support of the appeal is extended by one month until 16h00 on Friday, 20 September 2013.

REASONS

I. PROCEDURAL HISTORY

1. On 3 June 2013, Pre-Trial Chamber I (hereinafter: “Pre-Trial Chamber”), by majority, Judge Fernández de Gurmendi dissenting, issued the “Decision adjourning

the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute” (hereinafter: Impugned Decision”).¹

2. On 31 July 2013, the Pre-Trial Chamber, by majority, Judge Fernández de Gurmendi dissenting, granted in part the “Prosecution’s application for leave to appeal the ‘Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute’” (hereinafter: “Decision Granting Leave to Appeal”).²

3. On 12 August 2013, the Prosecutor, having been granted an extension of the page limit,³ filed the document in support of the appeal comprising 40 pages in English⁴ (hereinafter: “Document in Support of the Appeal”).

4. On 15 August 2013, Mr Gbagbo filed the “Requête urgente de la défense portant sur la détermination de la date à partir de laquelle courent les délais fixés pour qu’elle puisse déposer une réponse à l’appel de la décision ‘adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute’ (ICC-02/11-01/11-432) déposé par le Procureur le 12 août 2013 (ICC-02/11-01/11-474)”.⁵ Mr Gbagbo requests that the Appeals Chamber order that (i) the Document in Support of the Appeal, the Decision Granting Leave to Appeal and the dissenting opinion of Judge Fernández de Gurmendi of 31 July 2013 (hereinafter: “Dissenting Opinion”) be translated into French as soon as possible; and (ii) the 10 day time limit for the filing of Mr Gbagbo’s response to the Document in Support of the Appeal start to run from the notification to Mr Gbagbo of the French versions of the abovementioned documents. In the alternative, Mr Gbagbo requests an extension of the deadline for filing his response to the Document in Support of the Appeal by at least four weeks, which would allow him to have the abovementioned documents translated himself.

¹ ICC-02/11-01/11-432; “Corrigendum to Dissenting opinion of Judge Silvia Fernández de Gurmendi”, 6 June 2013, ICC-02/11-01/11-432-Anx-Corr.

² “Decision on the Prosecutor’s and Defence requests for leave to appeal the decision adjourning the hearing on the confirmation of charges”, ICC-02/11-01/11-464; “Dissenting opinion of Judge Silvia Fernández de Gurmendi”, ICC-02/11-01/11-464-Anx.

³ “Decision on the ‘Prosecution’s Request for an Extension of the Page Limit for the Prosecution’s Appeal against the ‘Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute’”, 7 August 2013, ICC-02/11-01/11-471 (OA5).

⁴ “Prosecution’s appeal against the ‘Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute’”, 12 August 2013, ICC-02/11-01/11-474 (OA5).

⁵ ICC-02/11-01/11-480 (hereinafter: “Request on Time Limits”).

5. Mr Gbagbo indicates that he only understands and speaks French.⁶ Mr Gbagbo argues that the right of the accused person to be notified of all procedural documents in a language that he or she fully understands and speaks is a generally recognised principle of law and references jurisprudence of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda in this regard.⁷ Mr Gbagbo submits that the Document in Support of the Appeal is an essential document and that, in this case, the length and complexity of the document filed, its level of detail, its analysis of subtle distinctions of different legal notions, reinterpretation of the Impugned Decision and justification of the work of the Prosecutor all demonstrate the considerable importance of the document for the Prosecutor.⁸ Mr Gbagbo submits that the issues, the complexity and diversity of the subjects addressed and the fact that the rights of the defence are at the heart of the issues raised by the Prosecutor means that a translation of the Document in Support of the Appeal must be given to the defence as soon as possible.⁹ Citing article 67 (1) (a) and (f) of the Statute, Mr Gbagbo argues that it is necessary for him to receive a French translation of the Document in Support of the Appeal as the Impugned Decision relates to the confirmation of charges and the appeal thereof opens a new debate on the nature, cause and content of the charges brought by the Prosecutor.¹⁰

6. Mr Gbagbo further indicates that the Decision Granting Leave to Appeal and the Dissenting Opinion have not been notified in French and that these documents are essential to the understanding of the appeal.¹¹ Mr Gbagbo refers to jurisprudence of the Court in support of his Request.¹² Mr Gbagbo argues that the Impugned Decision, the Decision Granting Leave to Appeal and the Dissenting Opinion should be regarded as one unit that impacts on the fundamental rights of the accused and is of such crucial importance that it should be translated into the language of the accused person.¹³ Mr Gbagbo emphasises that the right to be informed of the charges brought against him in a language that he fully understands applies also during appeals

⁶ Request on Time Limits, paras 72-73.

⁷ Request on Time Limits, paras 17-24, 62.

⁸ Request on Time Limits, paras 27, 68-70.

⁹ Request on Time Limits, para. 28.

¹⁰ Request on Time Limits, paras 47-52.

¹¹ Request on Time Limits, para. 29.

¹² Request on Time Limits, paras 35-45.

¹³ Request on Time Limits, para. 50.

proceedings.¹⁴ Mr Gbagbo underlines that a professional translation is necessary and that, pursuant to article 50 (2) of the Statute, rule 42 of the Rules of Procedure and Evidence and regulation 40 (3) of the Regulations of the Court, the Registrar is obliged to provide an official translation of all filings in a case into one of the working languages of the Court, French or English.¹⁵

7. On 16 August 2013, the Prosecutor filed her response to the Request, in which she submits that Mr Gbagbo's request in fact amounts to a request for additional time to respond to the Document in Support of the Appeal and that good cause has not been shown to justify the requested relief.¹⁶ The Prosecutor highlights examples of past occasions when Mr Gbagbo's defence team demonstrated that it is perfectly capable of understanding and responding to decisions by Chambers and submissions of the Prosecutor and Registrar that were filed in English.¹⁷ Finally, the Prosecutor submits that the Decision Granting Leave to Appeal and the Dissenting Opinion, issued on 31 July 2013, are not material for the purposes of Mr Gbagbo's response to the Document in Support of the Appeal.¹⁸

II. MERITS

8. Mr Gbagbo requests the Appeals Chamber to order that the Document in Support of the Appeal, the Decision Granting Leave to Appeal and the Dissenting Opinion be translated into French and to rule that the time limit for his response to the Document in Support of the Appeal only start to run when he receives such translations.

9. At the outset, the Appeals Chamber notes that all decisions and orders of the Court must be translated into the other working language of the Court, pursuant to regulation 40 (3) of the Regulations of the Court. Article 50 (2) of the Statute provides that English and French are the working languages of the Court. Regulation 39 (1) of the Regulations of the Court provides that all documents and materials filed with the Registry shall be in English or French. Therefore, the Prosecutor may choose to file her Document in Support of the Appeal in either English or French.

¹⁴ Request on Time Limits, paras 54-59.

¹⁵ Request on Time Limits, para. 67.

¹⁶ "Prosecution response to Defence request for translation and additional time", dated 16 August and registered 19 August 2013, ICC-02/11-01/11-484 (OAS) (hereinafter: "Response"), para. 17.

¹⁷ Response, paras 2, 10-15.

¹⁸ Response, para. 16.

10. However, 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. This is also confirmed with respect to the language which a suspect fully understands and speaks by the wording of regulation 40 (6) of the Regulations of the Court, which provides that “[t]he Registrar shall ensure translation into the language of the [suspect], if he or she does not fully understand or speak any of the working languages, of all decisions or orders in his or her case. Counsel shall be responsible for informing that person of the other documents in his or her case”.

11. The question arises, whether exceptionally, as argued by Mr Gbagbo, the right of the suspect guaranteed by Article 67 (1) (a) of the Statute to be informed promptly and in detail of the nature, cause and content of the charge in a language which he or she fully understands and speaks, and that included in article 67 (1) (f) of the Statute guaranteeing the right of the suspect to have, free of any cost, such translations as are “necessary to meet the requirements of fairness” requires, in this specific case, the Appeals Chamber to order that the requested translations be provided and the time limit adjusted accordingly. The Appeals Chamber underlines that “article 67 (1) (a) and (f) of the Statute relates to the language ability and knowledge of the suspect and/or accused, not of his/her [c]ounsel and/or defence team”.¹⁹

12. Therefore, in the case at hand, the Appeals Chamber must first determine whether the translations sought by Mr Gbagbo relate to documents which would serve to inform Mr Gbagbo of the nature, cause and content of the charges against him within the meaning of article 67 (1) (a) of the Statute or whether the translations are necessary to meet the requirements of fairness under article 67 (1) (f) of the Statute. The Appeals Chamber notes that the present appeal requires the resolution of complex issues of a primarily legal nature relating to the requirements necessary to establish the contextual elements of crimes against humanity.²⁰ Although the resolution of this appeal by the Appeals Chamber may ultimately have a bearing on the form of the charges against Mr Gbagbo, none of the documents of which translations have been requested may be considered to be documents which would serve to inform

¹⁹ *Prosecutor v. Callixte Mbarushimana*, “Decision on the ‘Requête urgente aux fins de reconsidération de la décision n° ICC-01/04-01/10 OA4, de protestation et de réserve’”, 23 March 2013, ICC-01/04-01/10-505 (OA4), para. 10.

²⁰ Document in Support of the Appeal.

Mr Gbagbo of the “nature, cause and content of the charge” against him within the meaning of article 67 (1) (a) of the Statute. Similarly, given the nature and context of the present appeal, the Appeals Chamber does not consider that the requested translations into the language that Mr Gbagbo fully understands and speaks “are necessary to meet the requirements of fairness” within the meaning of article 67 (1) (f) of the Statute.

13. The Appeals Chamber considers that Mr Gbagbo’s counsel must be in a position to explain to him the issues raised in the present appeal. In this regard, the Appeals Chamber notes the Prosecutor’s submission that Mr Gbagbo’s defence team has in the past demonstrated that it is perfectly capable of understanding and responding to decisions by Chambers and submissions of the Prosecutor and Registrar that were filed in English.²¹ The Appeals Chamber further notes the finding of the Single Judge of Pre-Trial Chamber I that “based on the previous course of proceedings in this case, [...] the unavailability at present of an official French translation of the Decision does not affect the ability of Mr Gbagbo's Defence to properly represent his interests”.²²

14. Accordingly, Mr Gbagbo’s request for the time limit for his response to the Document in Support of the Appeal to run from the date of notification of French translations of the Document in Support of the Appeal, the Decision Granting Leave to Appeal and the Dissenting Opinion is rejected.

15. The Appeals Chamber now turns to Mr Gbagbo’s alternative request that a one month extension of the deadline for filing his response to the Document in Support of the Appeal be granted in order to allow him to have the documents in question translated.²³ The question before the Appeals Chamber is whether Mr Gbagbo has established “good cause” pursuant to regulation 35 (2) of the Regulations of the Court justifying an extension of the ten-day limit for filing his response to the Document in Support of the Appeal.

²¹ Response, paras 2, 10-15.


²² Pre-Trial Chamber I, “Decision on the ‘Requête urgente de la défense portant sur la détermination de la date à partir de laquelle courent les délais fixés pour qu'elle puisse déposer une éventuelle demande d'autorisation d'interjeter appel de la décision “adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute” (ICC-02/11-01/11-432) et/ou pour qu'elle puisse déposer une éventuelle réponse à une éventuelle demande d'autorisation d'interjeter appel déposée par le Procureur””, 10 June 2013, ICC-02/11-01/11-434, para. 7.

²³ Request on Time Limits, p. 19.

16. Given the specific circumstances at hand, namely the length and complexity of the Document in Support of the Appeal; the potential importance of the Decision Granting Leave to Appeal and the Dissenting Opinion, in the instant case, to Mr Gbagbo's understanding of the issues under appeal; and the fact that, although French is the language that Mr Gbagbo fully understands and speaks, the Decision Granting Leave to Appeal, the Dissenting Opinion and the Document in Support of the Appeal are currently only available to him in English, the Appeals Chamber considers that good cause has been established for an extension of the time limit prescribed under regulation 65 (5) of the Regulations of the Court. Given that Mr Gbagbo shall be provided with a French translation of the Decision Granting Leave to Appeal and the Dissenting Opinion pursuant to regulation 40 (3) and (6) of the Regulations of the Court, in an effort to assist him in preparing his response to the Document in Support of the Appeal, the Appeals Chamber directs the Registrar to make available to Mr Gbagbo a translation of the Decision Granting Leave to Appeal together with the Dissenting Opinion by 13 September 2013. The Appeals Chamber further considers that Mr Gbagbo's request for a one month extension of the time limit for the filing of his response to the Document in Support of the Appeal is reasonable.

Accordingly, the time limit for Mr Gbagbo to file his response to the Prosecutor's Document in Support of the Appeal is extended by one month until 16h00 on Friday, 20 September 2013.

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


Judge Sanji Mmasenono Monageng
Presiding Judge

Dated this 22nd day of August 2013

At The Hague, The Netherlands