

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-02/11-01/15
Date: 21 October 2015

TRIAL CHAMBER I

Before: Judge Geoffrey Henderson, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Bertram Schmitt

**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 Gbagbo Defence request for leave to appeal the
'Decision on Defence requests relating to the Prosecution's Pre-Trial Brief'**

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

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber I ('Chamber') of the International Criminal Court ('Court'), in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, with regard to Article 82(1)(d) of the Rome Statute ('Statute'), issues the following 'Decision on the Gbagbo Defence request for leave to appeal the "Decision on Defence requests relating to the Prosecution's Pre-Trial Brief"'.

I. Procedural History

1. On 16 September 2015, the Chamber issued a 'Decision on Defence requests relating to the Prosecution's Pre-Trial Brief' ('Impugned Decision').¹
2. On 22 September 2015, the defence team for Mr Laurent Gbagbo ('Gbagbo Defence') filed a request ('Request') seeking leave to appeal the Impugned Decision.²
3. On 28 September 2015, the Office of the Prosecutor ('Prosecution') and the Legal Representative of Victims ('LRV') filed their responses to the Request, respectively.³

II. Submissions

4. In its Request, the Gbagbo Defence seeks leave to appeal three issues in relation to which it considers the Chamber to have erred.⁴ The first issue concerns whether the Chamber erred in determining that not making available to the accused the Pre-Trial Brief in a language he fully understands did not infringe the accused's right under Article 67(1)(a) of the Statute ('First Issue').⁵ Under this issue, the Gbagbo Defence raises three sub-issues. First, it alleges

¹ICC-02/11-01/15-224.

² *Demande d'autorisation d'interjeter appel de la 'Decision on Defence requests relating to the Prosecution's Pre-Trial Brief'* (ICC-02/11-01/15-224), ICC-02/11-01/15-233.

³ Prosecution's response to Laurent Gbagbo's '*Demande d'autorisation d'interjeter appel de la 'Decision on Defence requests relating to the Prosecution's Pre-Trial Brief'*' ('Prosecution Reponse'), ICC-02/11-01/15-249; Response to Mr Gbagbo's request for leave to appeal the 'Decision on Defence requests relating to the Prosecution's Pre-Trial Brief' ('LRV Response'), ICC-02/11-01/15-248.

⁴ Request, ICC-02/11-01/15-233.

⁵ Request, ICC-02/11-01/15-233, para. 28.

that the Chamber erred in finding that the ‘facts and circumstances described in the charges’ were all the charges that needed to be notified to the accused, since the Chamber did not take into consideration the notice given⁶ under Regulation 55 of the Regulations of the Court (‘Regulations’). Second, the Gbagbo Defence argues that the Chamber erred in determining that the ‘Decision on the confirmation of charges against Laurent Gbagbo’⁷ (‘Confirmation Decision’) itself constitutes adequate notice, arguing that the Confirmation Decision does not provide detailed notice of the charges.⁸ Third, the Gbagbo Defence submits that the Chamber erred in law in determining that notification of the charges can be effected through disclosure of evidence, which was done in French, arguing that it is the Pre-Trial Brief – which explains how the evidence will be applied to the Prosecution’s theory of the case – ‘*est le véritable acte d’accusation*’.⁹

5. Under the second issue, the Gbagbo Defence argues that the Chamber erred in finding that the Defence could effectively prepare from an unofficial French translation of the Pre-Trial Brief, and that in so deciding it has imposed an obligation on the Defence team to work in English (‘Second Issue’).¹⁰ Under this issue, the Gbagbo Defence avers that the Chamber erred in finding that the accused persons could be aided by their counsel and that it misapplied the jurisprudence of the European Court of Human Rights (‘ECHR’).¹¹ Finally, under the third issue, the Gbagbo Defence claims that the Chamber erred in not granting the Defence additional time to prepare for trial (‘Third Issue’).¹²

⁶ Request, ICC-02/11-01/15-233, paras 31-33; Decision giving notice pursuant to Regulation 55(2) of the Regulations of the Court, 19 August 2015, ICC-02/11-01/15-185.

⁷ Pre-Trial Chamber I, Decision on the confirmation of charges against Laurent Gbagbo, 12 June 2014, ICC-02/11-01/11-656-Red.

⁸ Request, ICC-02/11-01/15-233, paras 34-37.

⁹ Request, ICC-02/11-01/15-233, paras 38-40.

¹⁰ Prosecution’s Pre-Trial Brief, 16 July 2015, ICC-02/11-01/15-148 with annexes. A corrected version of Annexes 1 and 2 was filed on 28 July 2015, ICC-02/11-01/15-148-Anx1-Corr and ICC-02/11-01/15-148-Anx2-Corr, respectively.

¹¹ Request, ICC-02/11-01/15-233, paras 42-44.

¹² Request, ICC-02/11-01/15-233, paras 50-53.

6. In respect of the criteria under Article 82(1)(d) of the Statute, the Gbagbo Defence argues generally that the Chamber did not sufficiently take into account the needs of the Defence in rendering its decision and that the Chamber refused to consider how the rights of the accused were violated.¹³ As an additional argument, the Gbagbo Defence raises the concern that a systematic refusal of a Trial Chamber to allow a party to appeal issues that affect the fairness or fundamental rights of accused could itself constitute a violation of the accused's right to a fair trial.¹⁴

7. In response, the Prosecution asks the Chamber to dismiss the Request in its entirety, arguing that none of the issues presented constitute appealable issues or meet the criteria for leave to appeal under Article 82(1)(d) of the Statute.¹⁵ The Prosecution argues that the First Issue raised by the Gbagbo Defence constitutes 'mere disagreement' with the Trial Chamber's determination that the Pre-Trial Brief does not constitute a charging document within the meaning of Article 67(1)(a) of the Statute.¹⁶ In respect of the sub-issues, the Prosecution argues that the Gbagbo Defence's reference to the Trial Chamber's notification under Regulation 55(2) of the Regulations ('Notice Decision')¹⁷ is not an appealable issue in respect of the Impugned Decision, and in any event, misrepresents the Notice Decision.¹⁸ The Prosecution argues that the Second Issue misrepresents the Impugned Decision, as the Chamber found that a French translation would be indeed useful to the accused, but that, in any event, he was sufficiently informed of the charges by the Confirmation Decision and the Document Containing the Charges.¹⁹ In its view, the Third

¹³ Request, ICC-02/11-01/15-233, paras 54-60.

¹⁴ Request, ICC-02/11-01/15-233, para. 57.

¹⁵ Prosecution's Response, ICC-02/11-01/15-249, para. 1.

¹⁶ Prosecution's Response, ICC-02/11-01/15-249, para.3- 4.

¹⁷ Decision giving notice pursuant to Regulation 55(2) of the Regulations of the Court, 19 August 2015, ICC-02/11-01/15-185.

¹⁸ Prosecution's Response, ICC-02/11-01/15-249, para. 4.

¹⁹ Prosecution's Response, ICC-02/11-01/15-249, para. 5.

Issue is 'premised on an erroneous understanding of the timelines set by the Chamber'.²⁰

8. Similarly, the LRV asks the Chamber to reject the Request in its entirety.²¹

Under the First Issue, the LRV contends that the sub-issues related to notification of the charges do not arise from the Impugned Decision, arguing that the Gbagbo Defence is now attempting to appeal issues that should have been raised, if at all, when it received the Confirmation Decision and the 'Order setting the commencement date for trial' ('Order of 7 May 2015').²² Concerning the Second Issue, the LRV notes that the '[Impugned] Decision does not impose on the Defence the duty to work in English, but simply notices its capacity to do so'.²³ Further, the LRV states that the Third Issue is 'yet again a mere disagreement with the Decision', noting that the Gbagbo Defence simply has a different opinion from the Chamber on whether the commencement date for trial should have been postponed until six months after the official French translation of the Pre-Trial Brief was notified.²⁴ In respect of the criteria under Article 82(1)(d) of the Statute, the LRV observes that the Gbagbo Defence does not provide detailed arguments for each issue, and that granting leave to appeal on these issues would in fact delay the proceedings.²⁵

III. Analysis

9. The Chamber recalls the applicable law relating to Article 82(1)(d) of the Statute as set out in previous decisions.²⁶

²⁰ Prosecution's Response, ICC-02/11-01/15-249, para. 6.

²¹ LRV Response, ICC-02/11-01/15-248, paras 1-2.

²² LRV Response, ICC-02/11-01/15-248, para. 15; Order setting the commencement date for trial, 7 May 2015, ICC-02/11-01/15-58.

²³ LRV Response, ICC-02/11-01/15-248, para. 18.

²⁴ LRV Response, ICC-02/11-01/15-248, para. 20.

²⁵ LRV Response, ICC-02/11-01/15-248, paras 20-23.

²⁶ See Decision on request for leave to appeal the 'Decision on objections concerning access to confidential material on the case record', 10 July 2015, ICC-02/11-01/15-132, para. 3 and the decisions cited in footnote 5.

10. Under the First Issue, the Gbagbo Defence requests leave to appeal on the issue of whether the Chamber erred in determining that the Pre-Trial Brief need not be translated into French in order for the accused to receive adequate notice of the charges, raising the overarching issue of how²⁷ and in what manner²⁸ notice of the charges is provided to the accused through the statutory framework.²⁹ In relation to this issue, the Chamber notes that the Gbagbo Defence itself has not raised any formal legal challenges concerning whether the accused has received adequate notice of the charges.³⁰ For this reason, Chamber does not consider that it would materially advance the proceedings for the Appeals Chamber to render judgment on these issues.
11. Under the Second Issue, the Chamber notes that the Gbagbo Defence argues that the Chamber's ruling in the Impugned Decision effectively requires the Defence counsel to work in English, and that the Chamber erred in determining that providing a draft French translation of the Pre-Trial Brief to the accused was sufficient.³¹ The Gbagbo Defence's arguments on this point are no longer linked to Mr Gbagbo's rights pursuant to Article 67(1)(b) and (f) of the Statute to receive those translations which are necessary in the interests of fairness to allow him to actively participate in the development of his defence strategy.³² Its complaint lies in the incorrect assertion that the Defence team is entitled to work only in French, even though the working languages of the Court are English *and* French.³³ As such, the Second Issue does not arise

²⁷ Pre-Trial Chamber I, Decision on the confirmation of charges against Laurent Gbagbo, ICC-02/11-01/11-656-Red.

²⁸ Request, ICC-02/11-01/15-233, paras 38-40.

²⁹ Request, ICC-02/11-01/15-233, paras 28-40.

³⁰ See Transcript of the Status Conference of 4 November 2014, ICC-02/11-01/11-T-25-Red-ENG CT, page 54, lines 21-25, page 55 lines 1-2.

³¹ Request, ICC-02/11-01/15-233, paras 41-49.

³² *Requête en suspension des délais de réponse au mémoire préliminaire jusqu'à transmission de la traduction française du mémoire préliminaire déposé par le Procureur le 16 juillet 2015 (ICC-02-11-01/15-148-Conf-Anx2-Corr) et demande de report de la date de début du procès qui devra être fixée au moins 6 mois après la transmission de la traduction française de ce mémoire préliminaire*, ICC-02/11-01/15-174, paras 32-47, and para. 50.

³³ Article 50(2) of the Statute.

from the decision and is therefore not appealable pursuant to Article 82(1)(d) of the Statute.

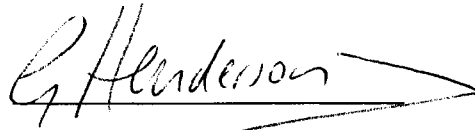
12. Under the Third Issue, the Gbagbo Defence argues that the Chamber erred in not granting it more time to prepare for trial, because a draft French version of the Pre-Trial brief was only notified to the Gbagbo Defence on 7 September 2015.³⁴ In its view, since the Chamber had invited the Prosecution to file a Pre-Trial Brief by 16 July 2015, receiving the draft French version only on 7 September 2015 therefore necessitates a delay in the commencement of trial. In the view of the Chamber, the Third Issue is based on the Gbagbo Defence's mere disagreement with the Chamber about whether the commencement of trial should be delayed on this basis. Thus, the issue is not appealable under Article 82(1)(d) of the Statute.

³⁴ Request, ICC-02/11-01/15-233, paras 50-52; see also

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the Request.

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



Judge Geoffrey Henderson, Presiding Judge



Judge Olga Herrera Carbuca



Judge Bertram Schmitt

Dated 21 October 2015

At The Hague, The Netherlands