

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: 13 April 2018

TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Geoffrey Henderson

**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 “*Demande d’autorisation d’interjeter appel de la ‘Decision on the request for suspension of the time limit to respond to the Prosecutor’s Trial Brief submitted by the Defence for Mr Gbagbo’ (ICC-02-11-01/15-1141)’*”

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Fatou Bensouda
James Stewart
Eric MacDonald

Counsel for Laurent Gbagbo

Mr Emmanuel Altit
Ms Agathe Bahi Baroan

Counsel for Mr Charles Blé Goudé

Geert-Jan Alexander Knoops
Claver N'dry

Legal Representatives of Victims

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 of the International Criminal Court, in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, having regard to Article 82(1)(d) of the Rome Statute; Rule 155 of the Rules of Procedure and Evidence and Regulation 65 of the Regulations of the Court, issues this decision on the “*Demande d’autorisation d’interjeter appel de la « Decision on the request for suspension of the time limit to respond to the Prosecutor’s Trial Brief submitted by the Defence for Mr Gbagbo » (ICC-02/11-01/15-1141)*”, filed by the Defence for Mr Gbagbo on 3 April 2018 (“Request”).¹

1. On 9 February 2018, the Chamber issued the “Order on the further conduct of the proceedings” (“Order”), whereby it invited the Prosecutor to file a trial brief illustrating her case and detailing the evidence in support of the charges and granted the defence teams the right to respond to the Prosecutor’s brief.² The time limit for the responses is currently set at 23 April 2018.
2. On 19 March 2018, the Prosecutor filed the “Prosecution’s Mid-Trial Brief submitted pursuant to Chamber’s Order on the further conduct of the proceedings (ICC-02/11-01/15-1124)” (“Trial Brief”).³
3. On 22 March 2018, the Defence for Mr Gbagbo requested the Chamber to suspend the time limit for responding to the Trial Brief until notification of its translation into French to the Defence (“Request for Suspension”).⁴
4. On 26 March 2018, the Chamber issued the “Decision on the request for suspension of the time limit to respond to the Prosecutor’s Trial Brief submitted by the Defence for Mr Gbagbo” (“Decision”), whereby (i) it determined that the Trial Brief does not qualify as a document for which the translation into French as the language which the accused fully understands and speaks is mandated by

¹ ICC-02/11-01/15-1144.

² ICC-02/11-01/15-1124.

³ ICC-02/11-01/15-1136 + Conf-Anx.

⁴ ICC-02/11-01/15-1137.

the need to meet the requirements of fairness under Article 67(1)(a) and (f) of the Statute and, accordingly, (ii) rejected the Request for Suspension.⁵

5. On 3 April 2018, the Defence for Mr Gbagbo filed its Request.
6. On 6 April 2018, the Prosecutor submitted her “Prosecution’s response to Mr Gbagbo’s applications for leave to appeal the decision concerning the suspension of the time limit to respond to the Prosecutor’s Trial Brief (ICC-02/11-01/15-1144)”, requesting the Chamber to dismiss the Request.⁶
7. The Defence for Mr Blé Goudé and the LRV did not file a response.
8. The provision applicable for the resolution of the Request is Article 82(1)(d) of the Statute. In brief, an interlocutory appeal can be allowed in respect of issues arising out the impugned decision, meaning issues essential for the disposition of the matter. In addition, appeal can only be certified in respect of issues which would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial, and for which, in the opinion of the Chamber, immediate appellate resolution may materially advance the proceedings.
9. The Defence of Mr. Laurent Gbagbo seeks leave to appeal in respect of the following two issues:
 - a. whether the Chamber erred in law in failing to appreciate the importance of the Trial Brief for the Defence, in particular in considering that it does not qualify as one of those documents which must be translated for the accused to be adequately informed of the charges pursuant to article 67 of the Statute (“First Issue”);

⁵ ICC-02/11-01/15-1141

⁶ ICC-02/11-01/15-1146.

- b. whether the Chamber erred in law in failing to address the request to make a French version of the Trial Brief available to the Defence team, in so doing forcing the team to work in a language other than its own (“Second Issue”).

First Issue

10. The Defence submits that, between the Order dated 9 February 2018 and the issuance of the Decision, the Chamber would have changed its position as to the importance of the Trial Brief and of its role in respect of the subsequent stages of the proceedings. In the view of the Defence, by rejecting the Defence Request for Suspension until its translation into French, the Chamber contradicted its own original view as to the importance of the Trial Brief, as well as its own previous jurisprudence, as adopted at the time of the filing of the Pre-trial brief.
11. The Chamber believes that the First Issue seriously mischaracterises both the Decision and the object and purpose of the Trial Brief. Neither in the Order nor in the Decision did the Chamber define the Trial Brief as an “extremely important” document, nor did it state that this document was necessary in order to remedy uncertainties as to the details of the charges. Rather, the Chamber clearly stated that, in its view, the brief would serve as an auxiliary document, as such suitable to assist the Chamber and the parties as to the subsequent stages of the proceedings (emphasis added). The merely auxiliary nature of the document was also made apparent by the fact that the Prosecutor was invited, rather than ordered, to submit it; while the Chamber appreciates the favourable response by the Prosecutor to this invitation, it appears obvious that no document crucial to the comprehension of the charges could ever be the subject of an invitation as opposed to an order. In doing this, the Chamber also confirmed its own previous approach on the matter, which has remained unchanged since its adoption at the time of the preparation of the trial and of the submission of the pre-trial brief: in its decision dated 16 September 2015, the Chamber stated that, while the pre-trial

brief would be beneficial to the preparation of the Defence and would likely facilitate the fair and expeditious conduct of the proceedings, it did not belong to those documents the translation of which would be required by the standards of fairness enshrined in Article 67 (“16 September 2015 Decision”).⁷

12. Pursuant to the Chamber’s instructions, the Trial Brief was and is meant to enshrine the Prosecutor’s understanding of the case at this stage, based on a collection and re-arrangement of evidentiary material. Mr Gbagbo and his Counsel have received the entirety of this material in French and have been familiar with it for a long time (months, if not years); accordingly, the Trial Brief does not contain any new elements of which the accused would have a need to be informed of within the meaning of Article 67 of the Statute. The Decision plainly and clearly reaffirmed the object and purpose of the Trial Brief and never contradicted the previous findings either as to its content or as to the reasons making it desirable for the Prosecutor to provide it.

13. Furthermore, nowhere is it stated in the Decision that the Defence should not receive a French translation of the Trial Brief, including by requesting assistance from the translation unit of the Court: to the contrary, the Decision explicitly stated that “the requested translations will be provided within the time frame allowed by that section’s workload, on the basis of the level of urgency of any competing requests”.⁸ The issue adjudicated upon by the Decision was whether a suspension of the deadline for responding to the Trial Brief until the provision of its translation into French would be warranted. Accordingly, no contradiction vis-à-vis the Chamber’s earlier decision on the translation into French of the pre-trial brief can be detected.

⁷ ICC-02/11-01/15-224.

⁸ Decision, para. 12.

14. Since the First Issue is based on a mischaracterisation of the Decision, it does not therefore qualify an appealable issue for the purposes of Article 82(1)(d) of the Statute.

Second Issue

15. The Defence maintains that the Decision, by denying the Defence team the availability of the Trial Brief in French for the purposes of its response to the Trial Brief, forces it to work in a language other than its preferred one.
16. The Chamber believes that also the Second Issue does not arise out of the Decision. First, the Decision did not deny the Defence the opportunity to receive a French version of the Trial Brief; it only stated that a suspension of the time limit for responding to it until such translation would be available was not warranted and specifically indicated that a translation should and would be provided in the timing allowed by the workload of the relevant section of the Registry. Second, the Second Issue consists partly of a mere disagreement with the Chamber's finding (namely, as to the feasibility for the Defence team to work on the basis of an English version of the Trial Brief, in light of its content and purpose) and partly of an issue already litigated at an earlier stage of these proceedings (namely, the fact that failing to order the translation into French of the Trial Brief would compromise the status of French as one of the two working languages of the Court).
17. The Defence for Mr Gbagbo reiterates here arguments already submitted in connection with its request for leave to appeal the Chamber's decision relating to the translation of the pre-trial brief. As noted by the Chamber in rejecting that

request,⁹ these arguments are not linked to Mr Gbagbo's rights 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;¹⁰ at that stage the Chamber had also already indicated that the assertion that the Defence would be entitled to work exclusively in French was incorrect. This position has been reaffirmed by the Decision, taking the view that this assertion is not in line with the statutory framework and counsel's professional duties.

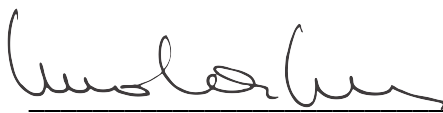
18. Accordingly, the Chamber finds that the Second Issue amounts to a mere disagreement by the Defence for Mr Gbagbo with the Chamber's assessment of Counsel's professional duties and does not affect the fairness of the proceedings; as such, it is not an appealable issue within the meaning of article 82(1)(d) of the Statute.

19. Finally, the Chamber notes that – as also revealed by the silence of the Request on this point - a resolution by the Appeals Chamber at this stage of either the First or the Second Issue would not materially advance the proceedings, also in light of the fact that work on the translation of the Trial Brief into French is already ongoing within the Registry. Accordingly, even assuming that any of these issues were considered as arising from the Decision or affecting the fair conduct of the proceedings within the meaning of article 82(1)(d), neither of them can be considered as appealable issues within the meaning of Article 82(1)(d) of the Statute and leave to appeal cannot be granted.

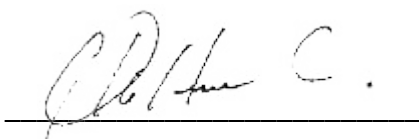
⁹ ICC-02/11-01/15-307.

¹⁰ ICC-02/11-01/15-307, para. 11.

**FOR THE FOREGOING REASONS, THE CHAMBER, HEREBY
REJECTS the Request.**



Judge Cuno Tarfusser, Presiding Judge



Judge Olga Herrera Carbuca



Judge Geoffrey Henderson

Dated 13 April 2018

At The Hague, The Netherlands