

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **26 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 the “*Demande d’autorisation d’interjeter appel de la ‘Decision on Mr Gbagbo’s Request for revised and corrected translation of the Trial Brief and related orders’ (ICC-02/11-01/15-1177)*”**

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**

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**Registrar**

Mr Herman von Hebel

**Counsel Support Section**

**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 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 Mr Gbagbo’s Request for revised and corrected translation of the Trial Brief and related orders’ (ICC-02/11-01/15-1177)*”, filed by the Defence for Mr Gbagbo on 13 June 2018 (“Request”).<sup>1</sup>

### **Procedural history and background**

1. On 9 February 2018, the Chamber issued the “Order on the further conduct of the proceedings” (“First 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.<sup>2</sup>
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”).<sup>3</sup>
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”).<sup>4</sup>
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” (“26 March 2018 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

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<sup>1</sup> ICC-02/11-01/15-1184.

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

<sup>3</sup> ICC-02/11-01/15-1136 + Conf-Anx.

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

speaks is mandated by 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.<sup>5</sup>

5. On 13 April 2018, the Chamber rejected Mr Gbagbo's request for leave to appeal<sup>6</sup> the 26 March 2018 Decision.<sup>7</sup>
6. On 25 May 2018, the Defence for Mr Gbagbo filed its "*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*" ("25 May 2018 Request").<sup>8</sup>
7. On 7 June 2018, the Single Judge issued the "Decision on Mr Gbagbo's Request for revised and corrected translation of the Trial Brief and related orders", whereby, granting the 25 May 2018 Request, (i) it ordered the Registry to prepare and file, within the shortest feasible delay, a revised French translation of the Trial Brief; and (ii) clarified that the lack of a revised French version of the Trial Brief did not adversely impact the rights of the Defence, including for the purposes of the submissions to be filed in compliance with the Second Order ("7 June 2018 Decision" or "Decision").<sup>9</sup>
8. On 13 June 2018, the Defence for Mr Gbagbo filed its Request.
9. On 14 June 2018, the Prosecutor submitted her "Prosecution's response to Mr Gbagbo's application for leave to appeal the decision concerning the translation

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

<sup>6</sup> "*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)*", dated 3 April 2018 (ICC-02/11-01/15-1144, "First Request for Leave to Appeal").

<sup>7</sup> ICC-02/11-01/15-1150.

<sup>8</sup> ICC-02/11-01/15-1166+ conf anx.

<sup>9</sup> ICC-02/11-01/15-1177.

of the Prosecutor's Trial Brief (ICC-02/11-01/15-1184)", requesting the Chamber to dismiss the Request.<sup>10</sup>

10. The Defence for Mr Blé Goudé and the LRV did not file a response.

### **Determinations**

11. 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.

12. The Defence of Mr. Laurent Gbagbo seeks leave to appeal in respect of the following two issues:

- a. whether the Single Judge erred in law in considering that 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 ("First Issue");
- b. whether the Single Judge 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 his own ("Second Issue").

13. The Single Judge notes that the Request represents the latest step in a series of initiatives by the Defence for Mr Gbagbo resulting from the issuance of the Chamber's First Order and the ensuing filing of the Trial Brief. All these initiatives are aimed at expressing dissatisfaction with the fact that the Trial Brief has been filed in English, as well as with the Chamber's view that the Trial Brief

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<sup>10</sup> ICC-02/11-01/15-1187.

does not qualify as one of those documents which must be made available to the accused in a language he perfectly understands and speaks for he or she to be adequately informed of the nature and content of the charges and hence his rights to a fair trial to be preserved.

14. Nowhere is this more apparent than in the fact that both the First and Second Issue mirror, in substance the First and *verbatim* the Second,<sup>11</sup> the First and the Second Issues underlying Mr Gbagbo's First Request for Leave to Appeal the 26 March 2018 Decision. Those issues had been respectively considered by the Chamber as resulting from a mischaracterisation of the 26 March 2018 Decision (the first issue of the First Request) and as amounting to a mere disagreement by the Defence with the Chamber's assessment of Counsel's professional duties (the second issue of the First Request); as such, the Chamber found that neither of them qualified as an appealable issue within the meaning of article 82(1)(d) of the Statute.
15. The very language used by the Defence for Mr Gbagbo makes it obvious that, as noted by the Prosecutor, the Request repeats arguments already submitted with the First Request. The Defence for Mr Gbagbo indeed acknowledges already having had the opportunity to explain<sup>12</sup> why, in its view, the Trial Brief is a document of such importance to require that it be available to the accused in his language. Furthermore, stating that "*par définition, s'il existe une demande d'autorisation de faire appel d'une décision, c'est que la Partie qui la formule et la Chambre ont des positions différentes sur l'application du droit ou sur les faits*", instead of highlighting how the issue at stake would meet the requirements of article 82(1)(d) of the Statute, it admits that the First Issue consists of a mere disagreement with the Chamber's position as to the nature and importance of

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<sup>11</sup> See the headings of Sections 1.1. and 1.2. of the First Request.

<sup>12</sup> Request, para. 19.

the Trial Brief for the purposes of the requirements of a fair trial; in seeking to make this an issue for interlocutory appeal, it disregards the well-established case law of the Appeals Chamber, clearly stating that a mere disagreement cannot constitute an appealable issue within the meaning and for the purposes of article 82(1)(d) of the Statute.

16. There is a manifest overlapping between the issues raised in the First and in the present Request, revealing that the latter is a mere attempt at reopening the debate not only on the merits of the issue adjudicated by the Chamber in the 26 March Decision, as reaffirmed and reiterated in the 7 June 2018 Decision, but also as to the existence of the requirements for an interlocutory appeal. This is also confirmed by the statement to the effect that, given the identity of the rationale underlying the 26 March and the 7 June 2018 Decisions, *“il paraît à la Défense qu’il s’agit d’une occasion de faire trancher par la Chambre d’appel”*<sup>13</sup> the issue whether the Trial Brief qualifies as a document the translation of which is essential for the accused to be adequately informed of the charges; the Defence for Mr Gbagbo makes this even clearer, when stating that the First Issue, aimed as it is at obtaining a principled decision from the Appeals Chamber, *“participe de la même logique”*<sup>14</sup> underlying the first issue of the First Request.

17. Similar considerations can be made in respect of the Second Issue, which amounts both to a disagreement and to a mischaracterisation of the Decision. It is a disagreement, to the extent that the Defence for Mr Gbagbo reiterates its challenge to the Chamber’s determination that the linguistic skills of Mr Gbagbo’s Defence team are such as to allow them to adequately discharge their professional duties arising in connection with the First and the Second Order, a determination which has been first made in the early stages of the proceedings.

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<sup>13</sup> Request, para. 21.

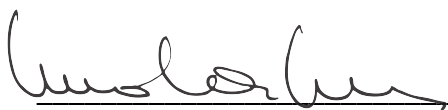
<sup>14</sup> Request, para. 26.

It is a mischaracterisation, because neither in the Decision, nor elsewhere in these proceedings has it ever been question of “forcing” the Defence for Mr Gbagbo to work in a language other than the one of their choosing. Furthermore, contrary to what stated by the Defence for Mr Gbagbo, the 7 June 2018 Decision did set out specific arguments grounding the Chamber’s appreciation as to the feasibility for the Defence to adequately discharge the duties arising in connection with the Trial Brief: apart from the overall experience of these proceedings, this appreciation was also supported by recent exchanges between the Defence team and the relevant services of the Registry in connection with the translation of the Trial Brief, univocally showing the team’s ability to grasp the nuances of that document in its finest details.

18. Accordingly, neither the First nor the Second Issue qualify as appealable issues within the meaning of article 82(1)(d) of the Statute and leave to appeal cannot be granted.

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

**REJECTS** the Request.

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

**Judge Cuno Tarfusser, Single Judge**

Dated 26 June 2018

At The Hague, The Netherlands