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PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Ekaterina Trendafilova
Christine Van den Wyngaert

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

THE PROSECUTOR V. CHARLES BLÉ GOUDÉ

Public Document

**Defence application for variation of the time limit for seeking leave
to appeal the Decision on the Confirmation of Charges**

Source: Defence for Charles Blé Goudé

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

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I. Introduction

1. Pursuant to Article 67(1) of the Rome Statute of the International Criminal Court (the “**Court**”) (the “**Statute**”) and Regulation 35(2) of the Regulations of the Court (the “**Regulations**”), the Defence for Charles Blé Goudé (the “**Suspect**”) (the “**Defence**”) hereby requests that Pre-Trial Chamber I find “good cause” to postpone the deadline for the Suspect to file a request for leave to appeal the Decision on the Confirmation of Charges of 11 December 2014 (the “**Decision**”)¹ until five days after the Decision has been notified to the Suspect in the French language.

II. Applicable Law

A. The Court’s applicable texts

2. Pursuant to Rule 155 of the Rules of Procedure and Evidence (the “**Rules**”), parties wishing to appeal a decision under Article 82(1)(d) must petition the Chamber to do so within five days of being notified of the relevant decision.

3. Articles 67(1)(a) and (f) of the Statute require that the Suspect be “informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks” and that he “have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings of or documents presented to the Court are not in a language which the accused fully understands and speaks”.

¹ ICC-02/11-02/11-186.

4. Pursuant to Regulation 35(2) of the Regulations of the Court, the Pre-Trial Chamber may extend or reduce a time limit if good cause is shown.

B. Case law regarding “good cause” to alter a time limit for translation purposes

5. Both Pre-Trial Chamber II in the *Bemba* cases² and this Chamber in the *Mbarushimana*,³ *Abu Garda*,⁴ and *Gbagbo*⁵ cases have determined that the five-day period to present an application for leave to appeal only runs as of the date that the a translation of a decision on the confirmation of charges has been notified.

6. The Appeals Chamber has made a similar finding in the *Mbarushimana* case regarding a response to leave of appeal a decision on the confirmation of charges pursuant to Regulation 65(5).⁶ The Appeals Chamber applied a three-part test in order to find “good cause” thereby extending the time limit for Mr. Mbarushimana to respond to the Prosecutor’s request. The three criteria were as follows:

- i. The Prosecutor’s document was “likely to be filed in English, and the fact that the Pre-Trial Chamber has considered that Mr Mbarushimana fully understands and speaks French”;

² ICC-01/05-01/08-424, p. 185 (“...the five-day period to present an application for leave to appeal set out in rule 155(1) shall start running for the Defence as of the date of notification of the French translation of this decision.”); also, ICC-01/05-01/13-756.

³ ICC-01/04-01/10-465-Red, p.150 (“...the five-day period to present an application for leave to appeal set out in rule 155(1) of the Rules shall start running for the Defence as of the date of notification of the French translation of this decision.”)

⁴ ICC-02/05-02/09-243-Red, p.98 (“...the five-day period for the parties to present an application for leave to appeal in accordance with rule 155(1) of the Rules shall start to run with effect from the date of notification of the Arabic translation of this Decision.”).

⁵ ICC-02/11-01/11-658 , para. 8 (“...good cause is shown to permit the Defence, and Mr Gbagbo, to receive an official French translation of the Decision before having to submit any application for leave to appeal, or to respond to any such application by the Prosecutor.”).

⁶ ICC-01/04-01/10-497 (OA 4).

- ii. “[g]iven the specific circumstances at hand, namely the particular nature, importance and possible impact of a decision on the confirmation of charges on a suspect”; and
- iii. “the fundamental importance of the document in support of the appeal to the merits of the appeal”.⁷

C. Case law regarding fully understanding and speaking a language

7. The Appeals Chamber has interpreted Article 67(1)’s requirement that the charges and Court documents and proceedings must be “in a language which the accused fully understands and speaks” as follows:

"The subject of understanding is exclusively the accused. Thus, the Chamber must give credence to the accused's claim that he or she cannot fully understand and speak the language of the Court. This is because it is the accused who can most aptly determine his or her own understanding and it should be assumed that he or she will only ask for a language he or she fully understands and speaks [...]

Given the addition of the word fully, and the drafting history, the standard must be high. Therefore, the language requested should be granted unless it is absolutely clear on the record that the person fully understands and speaks one of the working languages of the Court and is abusing his or her right under article 67 of the Statute. An accused fully understands and speaks a language when he or she is completely fluent in the language in ordinary, nontechnical conversation; it is not required that he or she has an understanding as if he or she were trained as a lawyer or judicial officer. If there is any doubt as to whether the person fully understands and speaks the language of the Court, the language being requested by the person should be accommodated. Ultimately, the Chamber in question is responsible for ensuring the fair trial of the accused. "⁸

8. This Chamber has previously adopted the Appeals Chamber’s holding in the *Mbarushimana* case, determining that “the Single Judge must give credence to Mr.

⁷ *Ibid.* at para. 6.

⁸ ICC-01/04-01/10-145, paras. 60-61.

Mbarushimana's claim that French is the language that he fully understands and speaks, unless it is absolutely clear that he fully understands and speaks English... and is abusing his right under article 67 of the Statute by requesting translation into French.”⁹

III. Submission

9. As rehearsed above, the Court’s founding texts require that the Suspect be informed of the charges against him and that all documents and proceedings occur in a language that he “fully understands and speaks”.

10. The Suspect respectfully submits that (A) he does not fully understand and speak English but, instead, must rely on a French translation in order to give effect to his defence and fair trial rights as enshrined by Article 67(1) and that therefore (B) “good cause” exists to order the Rule 155 deadline to run only as of notification of a French translation to the Suspect.

A. The Suspect does not “fully understand and speak” English

11. The Suspect does not fully understand and speak English in the sense of Article 67(1). The Suspect is not “completely fluent in the language in ordinary, nontechnical conversation”. Indeed, the Suspect clearly stated at his initial appearance before the Court that he “*préfère parler français*” despite confirming that he “can” speak English.¹⁰ Being “able” to speak a language is clearly not identical to fully understanding and speaking it, as extensively rehearsed by the Appeals Chamber.¹¹ It is public knowledge that Mr. Bemba

⁹ ICC-01/04-01/10-145, p.7.

¹⁰ ICC-02/11-02/11-T-3-Red-FRA, p.4, lines 3-7.

¹¹ ICC-01/04-01/07-522 (OA 3), para. 40 Article 67 (1) (a) prescribes the right to be informed "in a language which the accused fully understands and speaks", and paragraph 1 (f) prescribes the right to have “the assistance of a competent

“can” also speak English, although this fact did not affect Pre-Trial Chamber II’s finding of “good cause” to postpone the deadline of his request for leave to appeal the decision confirming the charges against him in case ICC-01/05-01/08.¹²

12. The Suspect recalls that the Document Containing the Charges of 22 August 2014 was submitted by the Prosecutor in the French language,¹³ which the Suspect does indeed fully understand and speak. His ability to parse the terms of this document and discuss its contents at length with the Defence in one of his native languages permitted him to exercise his defence rights pursuant to Article 67(1). All shorter filings, documents and communications relevant to the case that were conducted in English, either by Counsel, the Court, or the Prosecutor, were translated or paraphrased for him or fully explained to him by the Defence.

13. The Decision, however, has only been provided in English. The Suspect is unable to analyse and discuss **the legal technicalities** of this document in a language that he fully understands without first being provided with the translation of the document.

14. The Suspect has always chosen to speak to the Court and with the Defence in French. Even in the public interviews relied upon by the Prosecutor at the Confirmation of Charges hearings, the Suspect would habitually switch to French when addressed in English.

interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings or documents presented to the Court are not in a language which the accused fully understands and speaks”. The language in paragraph (1)(a) and (1) (f) is similar in that the phrase “fully understands and speaks” is repeated. On its face it is clear that this standard is not low. It is a language an accused must both fully understand and speak. ‘Fully’ is defined in the online Oxford English Dictionary as “[i]n a full manner or degree; to the full, without deficiency; completely, entirely, thoroughly, exactly, quite”. The French version of ‘fully’ in the Statute is “parfaitement”, which is defined in “Le Nouveau Petit Robert, Dictionnaire Alphabétique et Analogique de la Langue Française” as, *inter alia*, “[d] ‘une manière parfaite”, “[s]avoir parfaitement une langue” and “[a]bsolument, *complètement, entièrement*”, “être *parfaitement heureux*”. The Appeals Chamber does not consider it necessary to enter further into any possible differences between the two words. It suffices to state that the meaning of this provision based on these definitions provides that the standard that must be required under article 67 is very high.”)

¹² See generally ICC-01/05-01/08-T-3-ENG; ICC-01/05-01/08-424, p. 185.

¹³ ICC-02/11-02/11-124-Anx2.

15. A comparison with the Court's jurisprudence demonstrates the merits of such a finding. In the *Mbarushimana* case, the Prosecutor argued that Mr. Mbarushimana had given several interviews in English and shown his proficiency in this language on other occasions. The Appeals Chamber, nonetheless, determined that it was the suspect himself who could “most aptly determine his or her own understanding” of the given language and that Pre-Trial Chamber I had erred in not giving “credence” to his assertions that English was not a language that he fully understood and spoke.

16. Similarly, while the Suspect may have demonstrated proficiency on certain occasions with the English language, the Suspect is by no means comfortable in analysing a weighty technical document such as a document containing the charges or a decision on the confirmation of charges in English. French is the only language in which such a document can be rendered for his proper comprehension.

17. Likewise, in the *Katanga* case, Mr. Katanga stated at his first appearance that he does not “speak French fluently, and sometimes it is difficult for [him] to understand and how – difficult for me to express myself”.¹⁴ The Appeals Chamber went on to determine that “if there was any doubt as to whether the person fully understands and speaks the language” in question, “the language being requested by the person should be accommodated”.¹⁵ The Appeals Chamber applied this reasoning to Mr. Katanga’s situation, finding that his expression of discomfort with the French language, and his affirmation that he would require a Lingala translator in order to fully understand the relevant proceedings pursuant to Article 67(1), warranted a Lingala translator in the courtroom.

18. In the instant case, the Suspect has expressed his discomfort with the English language and is here reaffirming his inability to fully understand and speak English.

¹⁴ ICC-0 1-04-0 1 -07-T-5-Eng, p.3, lines 16-21.

¹⁵ ICC-01/04-01/07-522, para. 61 (OA 3).

19. The Suspect recognizes that Article 67(1) requires fluency in “ordinary, nontechnical conversation”, and the Suspect reaffirms that his understanding in English is far from that of a “trained...lawyer or judicial officer”. He is simply not “completely fluent in the language in ordinary, nontechnical conversation” and therefore requires a French translation of the Decision on the Confirmation of Charges.

B. “Good cause” is shown to alter the deadline for translation purposes

20. The Suspect respectfully petitions the Chamber to find that good cause exists to find that the five-day period to present an application for leave to appeal should run only as of the date that the a French translation of the decision has been notified to the Suspect.

21. As rehearsed above, Regulation 35(2) of the Regulations of the Court bestows upon the Pre-Trial Chamber the power to alter the 5-day time limit for filing a request for leave to appeal. Regulation 35 requires that the Chamber find “good cause”; the Appeals Chamber’s jurisprudence demonstrates that “good cause” exists when the Suspect has not been properly informed of a document or charge in a language that he fully understands and speaks pursuant to Article 67(1) of the Statute.

22. In so far as it is “ultimately...responsible for ensuring the fair trial of the accused,”¹⁶ the Pre-Trial Chamber is respectfully requested to ensure the Suspect’s fair trial rights and find “good cause” to alter the relevant deadlines. The Suspect asserts that the three criteria enumerated by the Appeals Chamber for a finding of good cause have been met in the instant case.

¹⁶ ICC-01/04-01/10-145, paras. 60-61.

23. The first criteria held by the Appeals Chamber is regarding whether the decision, proceeding or document at hand is in a language fully understood and spoken by the Suspect. As discussed above, the Suspect does not fully understand and speak English. Therefore he will only be able to properly exercise his defence rights once the document has been notified to him in French.

24. Secondly, the Decision is of a “particular nature, importance, and possible impact” as described in the Appeals Chamber (of another decision on the confirmation of the charges) that would lend itself to being translated in order to be fully understood and analysed by the Suspect. In the interest of efficiency and justice, the Suspect has refrained from requesting translation services or postponed deadlines as regards previous, more minor documents and decisions. The Decision, however, is a matter of life and liberty – and can by no means be taken lightly in terms of understanding and analysis.

25. Under the Rome Statute, this Court must provide to the Suspect “translations as are necessary to meet the requirements of fairness”.¹⁷ Before the Suspect can begin formulating his strategy, analysis, and drafting of a request for leave to appeal the Decision, he must first fully understand the document. Doing so would require his counsel to translate and explain the document to him in French. Requiring the Suspect to translate the Decision himself would manifestly breach this principle of fairness and the Statute itself.

26. The Appeal Chamber’s third criteria for a finding of “good cause” regards “the fundamental importance of the document in support of the appeal to the merits of the appeal”.¹⁸ As in the *Mbarushimana* case, the Suspect is hereby requesting a postponement

¹⁷ Article 67(1)(f).

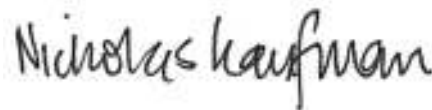
¹⁸ ICC-01/04-01/10-497 (OA 4), para. 6.

of the deadline to file his request for leave to appeal the Decision of the Confirmation of Charges. This third criterion is therefore fulfilled *ipso facto*.

27. Finally, the Suspect notes that this Pre-Trial Chamber granted a similar request submitted by the Defence for Mr. Laurent Gbagbo on an exceptional basis. The Suspect respectfully suggests that it would be inequitable to rule differently in the present instance.

IV. Relief Sought

28. Pursuant to Articles 67(1) and Regulation 35(2), the Suspect respectfully requests that the Chamber find that good cause exists to decide that the five-day period for the Suspect to present an application for leave to appeal in accordance with Rule 155(1) shall start to run from the date of notification of the French translation of the Decision.



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