

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 20 August 2015

TRIAL CHAMBER I

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

SITUATION IN CÔTE D'IVOIRE

**IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO AND CHARLES BLÉ GOUDÉ***

Public Document

**Consolidated response to the Defence's requests for translation of the
Prosecution's Pre-Trial Brief, for suspension of the deadline to respond to said
Brief and for postponement of the start of the trial
(ICC-02/11-01/15-174 and ICC-02/11-01/15-176)**

Source: Office of Public Counsel for Victims

Document 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 Mr Laurent Gbagbo

Mr Emmanuel Altit

Ms Agathe Bahi Baroan

Counsel for Mr Blé Goudé

Mr Geert-Jan Alexander Knoops

Mr Claver N'dry

Legal Representatives of the Victims

Ms Paolina Massidda

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

Mr Enrique Carnero Rojo

**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**

Other

I. PROCEDURAL BACKGROUND

1. On 16 May 2012, 17 January 2013 and 13 January 2014, the Prosecution filed the different versions of the Document Containing the Charges against Mr Gbagbo, all of them in the French (the “*Gbagbo DCC*”).¹

2. On 12 June 2014, Pre-Trial Chamber I, by majority, issued a decision confirming the charges against Mr Gbagbo under article 61(7)(a) of the Rome Statute and committed him for trial on four counts (the “*Gbagbo Confirmation Decision*”).² A French translation of the *Gbagbo Confirmation Decision* was made available on 18 July 2014.³

3. On 22 August 2014, the Prosecution filed the Document Containing the Charges against Mr Blé Goudé in French (the “*Blé Goudé DCC*”).⁴

4. On 4 November 2014, Trial Chamber I (the “Chamber”) held the first status conference in the *Gbagbo* case, during which the commencement date of the trial was, *inter alia*, discussed.⁵

5. On 17 November 2014, the Chamber set the commencement date for the trial in the *Gbagbo* case for 7 July 2015.⁶

¹ See the “*Soumission de l’Accusation du Document de notification des charges, de l’Inventaire des éléments de preuve à charge et des Tableaux des éléments constitutifs des crimes*”, No. ICC-02/11-01/11-124, 16 May 2012; the “*Soumission de l’Accusation du Document amendé de notification des charges, de l’Inventaire amendé des éléments de preuve à charge et des Tableaux amendés des éléments constitutifs des crimes*”, No. ICC-02/11-01/11-357, 17 January 2013; and the “*Prosecution’s Submission of Document amendé de notification des charges, l’Inventaire amendé des éléments de preuve à charge, and le Tableau amendé des éléments constitutifs des crimes, and Response to issues raised by Pre-Trial Chamber I*”, No. ICC-02/11-01/11-592, 13 January 2014 (the “*Gbagbo DCC*”).

² See the “*Decision on the confirmation of charges against Laurent Gbagbo*” (Pre-Trial Chamber I), No. ICC-02/11-01/11-656-Conf, 12 June 2014, paras. 266-278 (the “*Gbagbo Confirmation Decision*”).

³ See the “*Décision relative à la confirmation des charges portées contre Laurent Gbagbo*” (Pre-Trial Chamber I), No. ICC-02/11-01/11-656-Conf-tFRA, 18 July 2014, paras. 266-278.

⁴ See the “*Prosecution’s Submission of Document de notification des charges and l’Inventaire des éléments de preuve à charge*”, No. ICC-02/11-02/11-124, 22 August 2014 (the “*Blé Goudé DCC*”).

⁵ See the transcript of the status conference held on 4 November 2014, No. ICC-02/11-01/11-T-25-Red-ENG, 18 March 2015, p. 62, line 4 to p. 69, line 20.

6. On 11 December 2014, Pre-Trial Chamber I, by majority, issued a decision confirming the charges against Mr Blé Goudé under article 61(7)(a) of the Rome Statute and committed him for trial on four counts (the “*Blé Goudé Confirmation Decision*”).⁷ A French translation of the *Blé Goudé Confirmation Decision* was made available on 20 January 2015.⁸

7. On 26 January 2015, the Defence of Mr Blé Goudé requested the Chamber to order, *inter alia*, that all the filings and decisions relevant to the *Blé Goudé* case be translated and transmitted to Mr Blé Goudé in French (the “*Blé Goudé Translation Request*”).⁹

8. On 13 February 2015, the Chamber held a status conference in the *Blé Goudé* case, during which, *inter alia*, the commencement date of the trial was discussed.¹⁰ During the status conference, the Defence of Mr Blé Goudé elaborated on its Translation Request, clarifying that the latter concerned future rulings on substantive and procedural issues which directly affected the right of the Accused to appeal them.¹¹

9. On 11 March 2015, Trial Chamber I ordered the joinder of the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé* (the “Joinder

⁶ See the “Order setting the commencement date for the trial and the time limit for disclosure” (Trial Chamber I), No. ICC-02/11-01/11-723, 17 November 2014.

⁷ See the “Decision on the confirmation of charges against Charles Blé Goudé” (Pre-Trial Chamber I), No. ICC-02/11-02/11-186, 11 December 2014, paras. 182-194 (the “*Blé Goudé Confirmation Decision*”).

⁸ See the “Décision relative à la confirmation des charges portées contre Charles Blé Goudé” (Pre-Trial Chamber I), No. ICC-02/11-02/11-186-tFRA, 20 January 2015, paras. 182-194.

⁹ See the “Urgent Defence submissions on the need to have adequate time and facilities to prepare for Trial and extension of time to respond to joinder request”, No. ICC-02/11-02/11-201, 26 January 2015, paras. 46 and 47(c), (the “*Blé Goudé Translation Request*”).

¹⁰ See the transcript of the status conference held on 13 February 2015, No. ICC-02/11-02/11-T-9-Red-ENG, 18 March 2015, p. 62, line 14 to p. 67, line 4.

¹¹ *Idem*, p. 57, lines 18-21, and p. 58, lines 19-22.

Decision”),¹² deciding *inter alia* that “[t]he question of the time needed for adequate trial preparation on the part of the Defence teams is a matter of trial management to be determined by the Chamber at the appropriate time in the proceedings”,¹³ and vacating the date of the commencement of the trial in the *Gbagbo* case.¹⁴

10. On 17 March 2015, the Chamber ordered the *Gbagbo* Defence to make observations, if any, on the *Blé Goudé* Translation Request by 2 April 2015.¹⁵

11. On 2 April 2015, the Defence of Mr. Gbagbo filed the “*Observations de la Défense sur la nature des documents devant être traduits au bénéfice de l’accusé*” (the “*Gbagbo* Translation Observations”),¹⁶ arguing, *inter alia*, that all documents related to the content and nature of the charges or supporting the latter, all documents exchanged between the parties, all orders and decisions sufficiently important to have an impact on the proceedings, and all documents related to the exercise of the rights of Mr Gbagbo should be fully translated into the language of the latter.¹⁷

12. On 21 April 2015, the Chamber held a status conference in the *Gbagbo and Blé Goudé* case (the “Status Conference”),¹⁸ during which, *inter alia*, the commencement date of the trial¹⁹ and the filing by the Prosecution of a pre-trial brief and other “*auxiliary documents in relation to the charges*”²⁰ were discussed.

¹² See the “Decision on Prosecution requests to join the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé* and related matters” (Trial Chamber I), No. ICC-02/11-01/15-1, 11 March 2015 (the “Joinder Decision”).

¹³ *Idem*, para. 61.

¹⁴ *Ibid.*, para. 74.

¹⁵ See the “Order setting deadlines for submissions on certain pending matters” (Trial Chamber I, Single Judge), No. ICC-02/11-01/15-7, 17 March 2015, para. 10 and p. 8.

¹⁶ See the “*Observations de la Défense sur la nature des documents devant être traduits au bénéfice de l’accusé*”, No. ICC-02/11-01/15-21, 2 April 2015 (the “*Gbagbo* Translation Observations”).

¹⁷ *Idem*, paras. 41-43 and p. 17.

¹⁸ See the transcript of the status conference held on 21 April 2015, No. ICC-02/11-01/15-T-1-CONF-ENG ET, 22 April 2015 (the “Status Conference”).

¹⁹ *Idem*, p. 86, line 6 to p. 95, line 4 (open session).

²⁰ *Ibid.*, p. 57, line 14 to p. 63, line 1; p. 64, line 2 to p. 74, line 18; and p. 78, line 6 to p. 80, line 3 (open session).

13. During the Status Conference, the Chamber ruled on the *Blé Goudé* Translation Request and, taking into consideration the *Gbagbo* Translation Observations, stated that “pursuant to Regulation 40(3) of the Regulations, all English rulings of the Chamber will be translated into French as a matter of course. Defence teams are to consult with the Registry as to the timing of their translation requirements in this regard. They are only to seize the Chamber for translation of discrete rulings, or parts thereof, if following these consultations they still require translations to ensure the accused’s rights under Article 67(1)(f) of the Statute” (the “Translation Decision”).²¹

14. On 22 April 2015, the Chamber rejected the requests of Messrs Gbagbo and Blé Goudé for leave to appeal the Joinder Decision.²²

15. On 7 May 2015, the Chamber issued the “Order setting the commencement date for trial” (the “Trial Commencement Order”),²³ whereby it decided *inter alia* that “[t]he trial commencement date [is set] for 10 November 2015, in order to hear the opening statements of the parties and participants. Thereafter, the Prosecution will start its presentation of evidence in January 2016, at a date to be confirmed”,²⁴ and ruled that the Prosecution should file its pre-trial brief by 16 July 2015.²⁵

16. On 2 July 2015, the Chamber rejected the requests of Messrs Gbagbo and Blé Goudé for leave to appeal the Trial Commencement Order, finding *inter alia* that “any request for postponement the Defence may feel compelled to file will be dealt by the Chamber at the appropriate time”.²⁶

²¹ *Ibid.*, p. 37, lines 8-13 (open session).

²² See the “Decision on Defence requests for leave to appeal the ‘Decision on Prosecution requests to join the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé* and related matters’” (Trial Chamber I), No. ICC-02/11-01/15-42, 22 April 2015.

²³ See the “Order setting the commencement date for trial” (Trial Chamber I), No. ICC-02/11-01/15-58, 7 May 2015 (the “Trial Commencement Order”).

²⁴ *Idem*, para. 16.

²⁵ *Ibid.*, para. 26.

²⁶ See the “Decision on Defence requests for leave to appeal the ‘Order setting the commencement date for trial’” (Trial Chamber I), No. ICC-02/11-01/15-117, 2 July 2015, para. 24.

17. On 16 July 2015, the Prosecution filed its pre-trial brief in English (the “Pre-Trial Brief”).²⁷

18. On 31 July 2015, the Defence of Mr Gbagbo filed a request for the time limit to file its response to the Prosecution’s Pre-Trial Brief to start running upon notification of the French translation of said brief and for the trial to start at least six months after said notification (the “*Gbagbo Request*”).²⁸

19. On 5 August 2015, the Defence of Mr Blé Goudé filed a request for the notification of the French translation of the Prosecution’s Pre-Trial Brief and for the completion of said translation before October 2015 (the “*Blé Goudé Request*”).²⁹

20. On 17 August 2015, the Prosecution responded to the *Gbagbo Request* (the “Prosecution’s Response”).³⁰

21. Pursuant to Regulation 24(2) of the Regulations of the Court, the Principal Counsel of the Office of Public Counsel for Victims, acting as Legal Representative of the victims admitted to participate in the proceedings (the “Common Legal Representative”),³¹ provides her consolidated response to the *Gbagbo Request* and the *Blé Goudé Request* (the “Requests”).

²⁷ See the “Prosecution Pre-Trial Brief”, No. ICC-02/11-01/15-148, 16 July 2015 (the “Pre-Trial Brief”).

²⁸ See the “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”, No. ICC-02/11-01/15-174, 31 July 2015 (the “*Gbagbo Request*”).

²⁹ See the “Request for the Translation of the Pre-Trial Brief to French under article 67(1) (a)”, No. ICC-02/11-01/15-176, 6 August 2015 (dated 5 August 2015) (the “*Blé Goudé Request*”).

³⁰ See the “Prosecution’s response to the Gbagbo Defence requests of 31 July 2015 (ICC-02/11-01/15-174)”, No. ICC-02/11-01/15-181, 17 August 2015 (the “Prosecution’s Response”).

³¹ See the “Decision on victim participation” (Trial Chamber I), No. ICC-02/11-01/11-800, 6 March 2015, para. 61. See also the Joinder Decision, *supra* note 12, para. 74 and p. 33 (“all decisions and orders made in the Gbagbo and Blé Goudé cases shall continue to apply [...] in the joint case”).

II. RESPONSE OF THE COMMON LEGAL REPRESENTATIVE

22. The Common Legal Representative opposes the Requests because they are founded on the Defence's misunderstanding of the nature and purpose of the Prosecution's Pre-Trial Brief, and of the scope of the Accused persons' rights under articles 67(1)(a) and (f) of the Rome Statute. As a consequence, the Defence fails to show good cause to extend the time limit for its response to the Prosecution's Pre-Trial Brief under regulation 35(2) of the Regulations of the Court, and does not sufficiently support its request to postpone the start of the trial. Moreover, the Common Legal Representative submits that the Requests apparently arise from the Defence's lack of due diligence regarding the exercise of their statutory rights.

1. On the Defence's lack of due diligence

23. The Common Legal Representative submits that the Defence must have been aware that the Pre-Trial Brief could have been filed by the Prosecution in English. If the Defence had reasonably inquired with the Prosecution about the language of the Pre-Trial Brief before the latter was filed, it is likely that the ongoing litigation would have been avoided or, at least, minimised.

24. In this regard, the Common Legal Representative recalls that during the first status conference, in November last year, the Chamber observed that *"in order to promote the fairness and expeditiousness of the proceedings, the Chamber encourages inter partes communication. The parties are free to seize the Chamber of matters that cannot be agreed between them, but they should discuss and attempt in good faith to agree on a procedure before bringing any matter before the Chamber"*.³²

³² See the transcript of the status conference held on 4 November 2014, No. ICC-02/11-01/11-T-25-Red-ENG, 18 March 2015, p. 4, lines 9-12.

25. The Chamber also indicated that *“it is obvious that to achieve expeditiousness the Chamber needs the assistance of both sides, all sides, from the parties and the participants to the proceedings”*.³³

26. Against this background, the Common Legal Representative notes that the Defence may have addressed the Prosecution, the Registry and/or the Chamber earlier in order to have their preference for a French version of the Pre-Trial Brief satisfied.

27. The *Blé Goudé* Defence failed to mention the Pre-Trial Brief when clarifying the scope of its Translation Request, and the *Gbagbo* Defence did not make specific reference to the Pre-Trial Brief in its Translation Observations. As a matter of fact, the former limited itself to the future decisions of the Chamber,³⁴ whereas the latter made a general request for the translation of *“tous les documents relatifs aux motifs et à la nature des accusations, entendues au sens large”*.³⁵

28. Most importantly, neither the Defence of Mr Gbagbo nor that of Mr Blé Goudé expressed any concern regarding the Translation Decision issued by the Chamber on their respective submissions on 21 April 2015, although said decision did not grant all of their requests and an application for leave to appeal could have been filed under article 82(1)(d) of the Rome Statute.

29. In these circumstances, the Common Legal Representative contends that the Defence’s inaction with regards to the Translation Decision cannot be addressed now by bringing before the Chamber submissions identical to the ones already decided upon. In particular, the Common Legal Representative notes that the *Gbagbo* Request

³³ *Idem*, p. 6, lines 1-3.

³⁴ See *supra* notes 9 and 11.

³⁵ See the *Gbagbo* Translation Observations, *supra* note 16, para. 20.

is partly identical to the *Gbagbo* Translation Observations,³⁶ considered by the Chamber on 21 April 2015.³⁷

30. Moreover, in resubmitting its arguments, the *Gbagbo* Request ignores and/or misrepresents some of the Chamber's rulings. The *Gbagbo* Defence keeps on referring to the Accused as "President" and impliedly states that it is obliged to work in English.³⁸ In this regard, the Common Legal Representative recalls that the Chamber clarified a long time ago that the Defence should not use said title to refer to Mr Gbagbo,³⁹ and that although the working language of the Bench is English, the Chamber "*will of course receive filings in either of the working languages of the Court*".⁴⁰

2. On the requested French translation of the Pre-Trial Brief

a. Scope of the right to be informed of the nature, cause and content of the charges in the language of the Accused (article 67(1)(a) of the Rome Statute)

31. The Common Legal Representative opposes the apparent premise of the *Gbagbo* Request that the concept of "charge" used in article 67(1)(a) of the Rome Statute must be broader than the concept *stricto sensu* of "charge" confirmed by the Pre-Trial Chamber, *i.e.* the facts, the legal characterisation and the mode(s) of liability referred to in the decision confirming the charges.⁴¹

32. In support of its view, the Defence refers to the "*auxiliary documents*" mentioned by the Appeals Chamber in the *Lubanga* case and to the order by Trial Chamber V for the Prosecution to provide a pre-trial brief in order to ensure that the

³⁶ Cf. the *Gbagbo* Request, *supra* note 28, paras. 21-22, 23-24, 33-34 and 36-38, with the *Gbagbo* Translation Observations, *supra* note 16, paras. 8-9, 18-19, 20-21, and 14-16, respectively.

³⁷ See *supra* note 21.

³⁸ See the *Gbagbo* Request, *supra* note 28, paras. 39 and 63.

³⁹ See the transcript of the status conference held on 4 November 2014, No. ICC-02/11-01/11-T-25-Red-ENG, 18 March 2015, p. 6, lines 4-8.

⁴⁰ *Idem*, lines 9-12.

⁴¹ Cf. the *Gbagbo* Translation Observations, *supra* note 16, para. 7.

accused are informed of the charges against them and are not prejudiced in their preparation for trial.⁴²

33. However, as already stated by the Pre-Trial Chamber in the *Gbagbo* case, a “charge” is composed of the facts underlying the alleged crime as well as of their legal characterisation.⁴³ In this regard, there appears to be no doubt that the decision confirming the charges defines the parameters of the charges at trial.⁴⁴ Contrary to the Defence’s contentions,⁴⁵ the Pre-Trial Brief is not the decision confirming the charges or an update thereof.

34. The Pre-Trial Chamber already found in the *Gbagbo* case that “*the factual parameters of the case at trial are determined by the charges as presented by the Prosecutor, to the extent confirmed by the Pre-Trial Chamber*”.⁴⁶ The Chamber subsequently recalled the findings of the Appeals Chamber in order to conclude that the Confirmation Decisions “*define the parameters of the charges at trial*”.⁴⁷

35. On this basis, the Chamber clarified twice in the past that the final decision on the guilt or innocence of the Accused persons shall not exceed the facts and circumstances described in the charges confirmed by the Pre-Trial Chamber in the Confirmation Decisions,⁴⁸ and that the joinder of the cases did not result in any

⁴² See the *Gbagbo* Request, *supra* note 28, paras. 28-31.

⁴³ See the “Decision on the date of the confirmation of charges hearing and proceedings leading thereto” (Pre-Trial Chamber I), No. ICC-02/11-01/11-325, 17 December 2012, para. 25.

⁴⁴ See the “Public redacted Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction” (Appeals Chamber), No. ICC-01/04-01/06-3121-Red, 1 December 2014, para. 124.

⁴⁵ See the *Gbagbo* Request, *supra* note 28, paras. 11-13, 28-31, 42.

⁴⁶ See *supra* note 43, para. 27.

⁴⁷ See the Joinder Decision, *supra* note 12, para. 52, referring to the “Public redacted Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction” (Appeals Chamber), No. ICC-01/04-01/06-3121-Red, 1 December 2014, para. 124.

⁴⁸ See the Joinder Decision, *supra* note 12, paras. 57 and 59.

amendment of the charges.⁴⁹ More recently, the Chamber clarified that the Pre-Trial Brief is “*based on the charges as confirmed by the Pre-Trial Chamber*”.⁵⁰

36. As impliedly recognised by the *Gbagbo* Defence, the confirmed charges have been notified to them in French before the Pre-Trial Chamber,⁵¹ and after confirmation.⁵² Accordingly, the Accused persons have already been informed of the charges against them.⁵³ In fact, the Chamber stressed that “*regardless of whether the evidence to be relied on at trial by the Prosecution was used at the pre-trial stage, the facts and circumstances underlying the charges against the accused remain unchanged, as outlined in the two Confirmation Decisions*”.⁵⁴

37. Against this background, the Common Legal Representative submits that, contrary to the Defence’s submissions,⁵⁵ the Pre-Trial Brief is not compulsory nor necessary, but merely convenient. In fact, the Chamber refers to it as the “*invited document*”,⁵⁶ and the Appeals Chamber found that not even an amended Document Containing the Charges submitted to the Trial Chamber before the start of the trial is a document provided for in the Court’s legal instruments.⁵⁷

38. These interpretations can be easily understood if due account is taken of “[t]he fundamental principle of *iura novit curia*, which places the responsibility to interpret the applicable law on the Judges rather than the parties”.⁵⁸ In this regard, the Pre-Trial Chamber found in the *Gbagbo* case that the Prosecutor’s proposed interpretation of

⁴⁹ See the “Decision on Defence requests for leave to appeal the ‘Decision on Prosecution requests to join the cases of *The Prosecutor v. Laurent Gbagbo* and *The Prosecutor v. Charles Blé Goudé* and related matters’”, *supra* note 22, para. 16.

⁵⁰ See the Trial Commencement Order, *supra* note 23, para. 19.

⁵¹ See the *Gbagbo* Request, *supra* note 28, para. 49.

⁵² See the *Gbagbo* Request, *supra* note 28, para. 50. See also *supra* notes 3 and 8.

⁵³ See the *Gbagbo* Request, *supra* note 28, paras. 57 and 60.

⁵⁴ See the Trial Commencement Order, *supra* note 23, para. 18.

⁵⁵ See the *Gbagbo* Request, *supra* note 28, paras. 42, 45-46 and 53.

⁵⁶ See the Trial Commencement Order, *supra* note 23, para. 26.

⁵⁷ See the “Public redacted Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction” (Appeals Chamber), No. ICC-01/04-01/06-3121-Red, 1 December 2014, para. 131.

⁵⁸ See the “Decision on Defence requests related to the continuation of the confirmation proceedings” (Pre-Trial Chamber I), No. ICC-02/11-01/11-619, 14 February 2014, para. 14.

the applicable law for the purposes of the confirmation proceedings *may* be included in the Document Containing the Charges, but is not required.⁵⁹

39. In the circumstances of this case, the Pre-Trial Brief cannot be considered as an “auxiliary document” designed to provide the Defence with further information about the charges.⁶⁰ In fact, the charges can already be investigated by the Defence without the provision of a Pre-Trial Brief. The *Gbagbo* Request concedes this argument, albeit in a somehow contradictory manner.⁶¹

b. Scope of the right to have documents translated (article 67(1)(f) of the Rome Statute)

40. Following the Appeals Chamber’s approach⁶² and consistently with her submission *supra* according to which the translations sought in the Requests do not relate to documents which would serve to inform the Accused persons of the nature, cause and content of the charges against them within the meaning of article 67(1)(a) of the Rome Statute,⁶³ the Common Legal Representative opposes the Defence’s Request to have the Pre-Trial Brief and *all* other documents submitted in the proceedings translated into a language fully understood by the Accused persons.⁶⁴

⁵⁹ *Idem.*

⁶⁰ See the “Public redacted Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction” (Appeals Chamber), No. ICC-01/04-01/06-3121-Red, 1 December 2014, para. 128. See also, the “Decision on the Prosecution request for an extension of page limit for the Pre-Trial Brief” (Trial Chamber VI), No. ICC-01/04-02/06-500, 6 March 2015, para. 9.

⁶¹ See the *Gbagbo* Request, *supra* note 28, paras. 55-56 (“*il ne lui est pas possible d’enquêter avec efficacité*”) (emphasis added).

⁶² See the “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” (Appeals Chamber), No. ICC-02/11-01/11-489 OA5, 22 August 2013, para. 12.

⁶³ See *supra* paras. 33-37.

⁶⁴ See the *Gbagbo* Request, *supra* note 28, para. 22.

41. Contrary to the Defence's contentions,⁶⁵ neither "*tous les actes de la procédure*" nor "*tout élément utile*" must be translated into the language of the Accused pursuant to article 67(1)(f) of the Rome Statute.

42. As repeatedly stated by the Court, the right to translation only refers to "such documents that inform [the Accused] *in detail of the nature, cause and content of the charges brought against him*".⁶⁶ Pursuant to this approach, as already noted by the Common Legal Representative in the past,⁶⁷ the Court has consistently found that a suspect/accused should be provided with translations of the following documents: (i) the Prosecutor's application for a warrant of arrest and the Chamber's decision thereon; (ii) the Document Containing the Charges and the List of Evidence as well as any amendment thereto; and (iii) the statements of prosecution witnesses.⁶⁸

43. As conceded by the Defence of Mr Blé Goudé, this approach is consistent with the fact that the European Court of Human Rights does not grant an absolute right to the Accused to have his full case translated into his native language, but only the indictment and his own statements.⁶⁹

44. The decision by Pre-Trial Chamber II in the *Bemba et al.* case referred to in the *Gbagbo* Request is no exception to the approach mentioned above.⁷⁰ Indeed, in said decision, the Single Judge expressly found that "*the accused shall not be served with all*

⁶⁵ *Idem*, paras. 23, 25, 37

⁶⁶ See the "Decision on the Defence's Request Related to Language Issues in the Proceedings" (Pre-Trial Chamber III), No. ICC-01/05-01/08-307, 4 December 2008, para. 16 (emphasis added).

⁶⁷ See "Submissions in accordance with the "Order scheduling a status conference and setting a provisional agenda" issued on 23 January 2015", No. ICC-02/11-02/11-210, 9 February 2015, para. 35.

⁶⁸ See the "Decision on the Defence's Request Related to Language Issues in the Proceedings", *supra* note 66, para. 16. See also the "Decision on the Requests of the Defence of 3 and 4 July 2006" (Pre-Trial Chamber I, Single Judge), No. ICC-01/04-01/06-268, 4 August 2006, pp. 7-8; the "Decision on the Defence Request concerning time limits" (Pre-Trial Chamber I, Single Judge), No. ICC-01/04-01/07-304, 27 February 2008, p. 4; the "Decision on the Defence for Mathieu Ngudjolo Chui's Request concerning translation of documents" (Pre-Trial Chamber I, Single Judge), No. ICC-01/04-01/07-477, 15 May 2008, pp. 5-6; and the "Decision on the Defence for Mathieu Ngudjolo Chui's request for leave to appeal the Decision concerning translation of documents" (Pre-Trial Chamber I, Single Judge), No. ICC-01/04-01/07-538, 2 June 2008, p. 6.

⁶⁹ See the transcript of the status conference held on 13 February 2015, No. ICC-02/11-02/11-T-9-Red-ENG, p. 56, lines 20-24.

⁷⁰ See the *Gbagbo* Request, *supra* note 28, para. 51.

*documents in a language he fully understands or speaks but only with those documents which are essential for his proper preparation to face the charges presented by the Prosecutor and which form the basis of the determination by the Chamber of those charges”.*⁷¹

45. The Common Legal Representative submits that the Pre-Trial Brief is not “essential” for the preparation of the Defence, nor does it form “*the basis for the determination by the Chamber of [the confirmed] charges*”. Only the Confirmation Decisions and the evidence to be relied upon by the Prosecution to prove the confirmed charges must be translated for the Accused pursuant to article 67(1)(f) of the Rome Statute and rule 76(3) of the Rules of Procedure and Evidence. In this regard, contrary to the Defence’s contentions,⁷² the Pre-Trial Brief cannot be assimilated to evidence to be relied upon by the Prosecution. As determined by the Chamber, the Pre-Trial Brief is only an explanatory document, “*a summary of the evidence to be relied on by the Prosecution*”.⁷³

46. Consistent with the approach mentioned *supra*, a Pre-Trial Brief was not filed in the *Katanga* case⁷⁴ and the Prosecution’s summary of evidence filed in the *Bemba* case was in English.⁷⁵

47. Against this background, the Common Legal Representative submits that the Requests must be denied because the *Gbagbo* Confirmation Decision, the *Blé Goudé* Confirmation Decision and the prosecution evidence were already provided to the Accused persons in a language they fully understand and speak, namely French.⁷⁶

⁷¹ See the “Decision on the ‘Defence request for an order requiring the translation of evidence’” (Pre-Trial Chamber II, Single Judge), No. ICC-01/05-01/13-177, 11 February 2014, para. 6. See also *supra* note 66, para. 12.

⁷² See the *Gbagbo* Request, *supra* note 28, para. 55.

⁷³ See the Trial Commencement Order, *supra* note 23, para. 19.

⁷⁴ See the “Décision relative au dépôt d’un résumé des charges par le Procureur” (Trial Chamber II), No. ICC-01/04-01/07-1547, 22 November 2009.

⁷⁵

See the “Prosecution’s Submission of its Summary of Presentation of Evidence”, No. ICC-01/05-01/08-595, 4 November 2009 and the “Prosecution’s Submission of its Updated Summary of Presentation of Evidence”, No. ICC-01/05-01/08-669, 15 January 2010.

⁷⁶ See *supra* notes 3 and 8; and the Prosecution’s Response, *supra* note 30, para. 18.

48. Lastly, the Common Legal Representative contends that, contrary to the Defence's submissions,⁷⁷ the Pre-Trial Brief does not have to be translated into French because it is not meant "*d'une certaine manière, d'écrire l'histoire du pays*" for Ivoirians. In this regard, the Court found that "*the translation of a given document is a right for the accused only insofar as it can be held that, without the translation of that particular document in a language that he or she fully understands and speaks, the accused (who is, as clarified by the Appeals Chamber, the exclusive "subject of understanding") would not be able to understand the nature, cause and content of the charge and thus to adequately defend himself or herself, thereby prejudicing the fairness of the proceedings*".⁷⁸

3. On the requested extension of time and request for the postponement of the start date of the trial

49. The Common Legal Representative contends that the *Gbagbo* Defence has not shown good cause in the sense of regulation 35(2) of the Regulations of the Court which could justify an extension of time limit to respond to the Pre-Trial Brief, nor it has provided valid reasons to justify another postponement of the starting date of the trial.

50. From the arguments developed *supra* it is clear that the rights of the Accused are not jeopardised in the absence of the French translation of the Pre-Trial Brief and therefore the Defence cannot claim that the time limit for the filing of its response to said document should run from the notification of the French translation as it was the case for other documents in the present proceedings.⁷⁹

51. In this regard, the Common Legal Representative notes that, as already observed by the Appeals Chamber, the Defence team of Mr Gbagbo is composed of

⁷⁷ See the *Gbagbo* Request, *supra* note 28, para. 64.

⁷⁸ See the "Decision on the 'Defence request for an order requiring the translation of evidence'" (Pre-Trial Chamber II, Single Judge), No. ICC-01/05-01/13-177, 11 February 2014, para. 6.

⁷⁹ See the *Gbagbo* Request, *supra* note 28, para. 58.

members who fully understand English and has in the past demonstrated that it is perfectly capable of understanding and responding to submissions of the parties and participants filed in English.⁸⁰

52. Finally, the Common Legal Representative submits that because the French translation of the Pre-Trial Brief is not necessary to grant the Accused's rights to a fair trial and does not infringe on the possibility to prepare for trial, the Defence has not shown any valid reasons which could justify another postponement of the commencement date of the trial.

53. The Common Legal Representative notes the request that the trial starts six months after receipt by the Defence of the notification of the French translation of the Pre-Trial Brief. This request is manifestly unsound and unreasonable in light of the arguments developed *supra* and shows, once more, the attempts by Mr Gbagbo Defence to delay the proceedings.

54. In this regard, the Appeals Chamber already found that “[A]ny departure from the time limits set by the Rules or Regulations of the Court must not derail the proceedings from their ordained course, requiring that they be conducted and concluded within a reasonable time”.⁸¹

55. Moreover, the Chamber, in dismissing yet another request by the Gbagbo Defence to recalculate the trial commencement date, advanced in the context of the Prosecution's request for notice to be given of a possible re-characterisation pursuant to regulation 55(2) of the Regulations of the Court, recently found that “the facts and circumstances described in the charges remained unchanged and that the Prosecution intends

⁸⁰ See *supra*, note 66, para. 13.

⁸¹ See the “Reasons for the Decision on the Application for Extension of Time Limits Pursuant to Regulation 35 of the Regulations of the Court to Allow the Defence to Submit its Observations on the Prosecutor's Appeal regarding the Decision on Evidentiary Scope of the Confirmation Hearing and Preventative Relocation” (Appeals Chamber), No. ICC-01/04-01/07-653 OA7, 27 June 2008, par. 6; and the “Decision on the request for an extension of the time limit” (Appeals Chamber), No. ICC-01/05-01/08-827 OA3, 15 July 2010, par. 10

to rely on the same body of evidence".⁸² In said decision the Chamber ordered the Prosecution to file an amended Pre-Trial Brief, if need be. This approach confirms that said document is merely an explanatory document.

FOR THE FOREGOING REASONS, the Common Legal Representative respectfully requests the Trial Chamber to reject the Defence's Requests for translation of the Pre-Trial Brief, for suspension of the deadline to respond to said Brief and for postponement of the start date of the trial.

A handwritten signature in black ink, reading "Paolina Massidda". The signature is written in a cursive style with a horizontal line underneath the name.

Paolina Massidda
Principal Counsel

Dated this 20th day of August of 2015

At The Hague, The Netherlands

⁸² See the "Decision giving notice pursuant to Regulation 55(2) of the Regulations of the Court" (Trial Chamber I), No. ICC-02/11-01/15-185, 20 August 2015, para. 17.