

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-02/11-01/15
Date: 16 September 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 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 Mr 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*, having regard to Article 67(1) of the Rome Statute ('Statute'), Rules 121(3) and 134(2) of the Rules of Procedure and Evidence ('Rules') and Regulations 34 and 35 of the Regulations of the Court ('Regulations'), renders this 'Decision on the Defence requests relating to the Prosecution's Pre-Trial Brief'.

I. Background

1. On 7 May 2015, the Chamber invited the Prosecution to file a 'pre-trial brief' by 16 July 2015, which explains 'the Prosecution's case theory with reference to the witnesses the Prosecution intends to call and the evidence it intends to rely on at trial', noting that 'such a document could facilitate the fair and expeditious conduct of the trial proceedings'.¹
2. On 6 July 2015, the Prosecution filed a motion requesting an extension of page limit up to 300 pages for the Pre-Trial Brief.² The Chamber granted the extension on 10 July 2015.³
3. On 16 July 2015, the Prosecution filed a 250-page pre-trial brief ('Pre-Trial Brief').⁴
4. On 31 July 2015, the Defence team for Mr Laurent Gbagbo ('Gbagbo Defence') filed a consolidated request concerning the Pre-Trial Brief, asking: (i) for the response deadline to the Pre-Trial Brief to run from its translation into French;

¹ Order setting the commencement date for trial, ICC-02/11-01/15-58, para. 19.

² Prosecution's Request for an Extension of the Page Limit, ICC-02/11-01/15-120.

³ Decision on the Prosecution request for an extension of [the] page limit for the Pre-Trial Brief, ICC-02/11-01/15-131.

⁴ 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.

and (ii) to postpone the commencement date of trial to six months after the accused had been notified of the official French translation of the Pre-Trial Brief.⁵

5. On 5 August 2015, the Defence team for Mr Blé Goudé ('Blé Goudé Defence, and together with the Gbagbo Defence, 'Defence') joined the request of the Gbagbo Defence for a translation of the Pre-Trial Brief, but specified that it left to the discretion of the Chamber whether the timing of the notification of the official French translation should have an impact on the proceedings.⁶
6. On 14 August 2015, the Prosecution responded to the request by the Gbagbo Defence, asking that the Chamber dismiss the request for a postponement, but not the request for an extension of time for the Gbagbo Defence to file any response to the Pre-Trial Brief.⁷
7. On 21 August 2015, the Legal Representative for the Victims ('LRV') filed a consolidated response, asking that the Chamber reject the Defence requests in their entirety.⁸

II. Submissions

Defence Requests

8. In its request, the Gbagbo Defence emphasises that, *inter alia*, the Pre-Trial Brief is an essential road map of the Prosecution's case and that it provides the most updated information for the Defence on how the Prosecution intends to prove the

⁵ *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* ('Gbagbo Defence Request'), ICC-02/11-01/15-174.

⁶ Request for the Translation of the Pre-Trial Brief to French under article 67(1)(a) [of the Statute] ('Blé Goudé Defence Request', and together with Gbagbo Defence Request, 'Defence Requests'), ICC-02/11-01/15-176, para. 18.

⁷ Prosecution's response to the Gbagbo Defence requests of 31 July 2015 (ICC-02/11-01/15-174) ('Prosecution's Response'), ICC-02/11-01/15-181.

⁸ 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) ('LRV Response'), ICC-02/11-01/15-187.

charges against the accused.⁹ In their view, it is important to distinguish between the Pre-Trial Brief and the Pre-Trial Chamber's 'Decision on the confirmation of charges'¹⁰ ('Confirmation Decision'), because (i) the Prosecution does not use all of its evidence during the pre-trial phase; (ii) the Prosecution continued its investigations after the charges were confirmed; and (iii) it is the Prosecution who has the burden of proof, not the Pre-Trial Chamber.¹¹ The Defence therefore bases its request on Article 67(1)(a), (b) and (f) of the Statute, arguing that – as French is the only language that Mr Gbagbo speaks 'fully' – providing an official translation of the Pre-Trial Brief in French sufficiently in advance of trial is necessary in order to respect the rights of the accused and a fair trial.¹² The Defence also submits that, in line with the jurisprudence with European Court of Human Rights ('ECHR'), the accused is entitled to the translation of any 'relevant material' that informs him of the case against him.¹³ In addition, the Gbagbo Defence requests that the response deadline to the Pre-Trial Brief run from the notification of its official French translation, and a postponement of the start date of trial of six months after receipt of the same.¹⁴

9. The Blé Goudé Defence joins the request of the Gbagbo Defence to be notified of an official French translation of the Pre-Trial Brief, grounding its request in Article 67(1)(a) of the Statute, and submitting that English is not a language that Mr Blé Goudé speaks 'perfectly' or 'fully'.¹⁵ The Blé Goudé Defence considers that the Pre-Trial Brief is a document that 'falls within the ambit' of Article 67(1)(a) of

⁹ Gbagbo Defence Request, ICC-02/11-01/15-174, paras 9-12.

¹⁰ *The Prosecutor v. Laurent Gbagbo*, Pre-Trial Chamber I, Decision on the confirmation of charges against Laurent Gbagbo, 12 June 2014, ICC-02/11-01/11-656-Conf.

¹¹ Gbagbo Defence Request, ICC-02/11-01/15-174, para. 13 and 28-31.

¹² Gbagbo Defence Request, ICC-02/11-01/15-174, paras 39-42 and paras 47-48.

¹³ Gbagbo Defence Request, ICC-02/11-01/15-174, paras 20-25 and 37-38.

¹⁴ Gbagbo Defence Request, ICC-02/11-01/15-174.

¹⁵ Blé Goudé Defence Request, ICC-02/11-01/15-176, paras 13-17.

the Statute, and for these reasons, requests that a French translation is provided as soon as possible.¹⁶

Prosecution Response

10. In its response, the Prosecution argues that the accused persons are not entitled to a French translation of the Pre-Trial Brief under Article 67(1)(a) of the Statute, as this requirement has already been met by serving the accused with the 'charging documents' in French, and that the requirements of Article 67(1)(a) do not extend automatically to other documents related to the charges filed in the record of the case.¹⁷ The Prosecution also notes, as well, that any items of evidence originally produced in languages other than French were provided with French translations to the Defence teams.¹⁸ In the view of the Prosecution, the Pre-Trial Brief 'does not expand upon the nature, cause and content of the charges, as set out in the charging documents [but] provides notice of the Prosecution's case theory, in the form of an analysis of the evidence to be presented at trial'.¹⁹ In the Prosecution's view, 'it is the charging documents, and in particular the evidence itself, that provides [the accused] in the greatest level of detail with the nature, cause and content of [the] charges.'²⁰ Finally, in relation to the request to postpone the start of trial, the Prosecution asks that this is rejected, considering that the Defence received the Pre-Trial Brief on 16 July 2015 and that the evidence to be relied on has been disclosed on a rolling basis since February 2012. The Prosecution does not oppose a reasonable extension of time to respond to the Pre-Trial Brief, 'given the [P]re-[T]rial [B]rief's length and extent of sourcing'.²¹

¹⁶ Blé Goudé Request, ICC-02/11-01/15-176, para. 16.

¹⁷ Prosecution's Response, ICC-02/11-01/15-181, paras 12 and 18.

¹⁸ Prosecution's Response, ICC-02/11-01/15-181, paras 2, 12, 18

¹⁹ Prosecution's Response, ICC-02/11-01/15-181, para. 19.

²⁰ Prosecution's Response, ICC-02/11-01/15-181, para. 21.

²¹ Prosecution's Response, ICC-02/11-01/15-181, para. 25.

LRV Response

11. In its consolidated response to the Defence requests, the LRV asks the Chamber to reject both the Defence requests for translation and the request for postponement of the start date for trial. In the view of the LRV, the Requests are based on a 'misunderstanding of the nature and purpose of the Prosecution's Pre-Trial Brief', and of the scope of accused persons' rights under Article 67(1)(a) and (f) of the Statute. For these reasons, the LRV submits that the Defence has not shown good cause for postponing the start date of trial.

III. Analysis

12. The Defence are requesting that the Chamber determine that the Pre-Trial Brief, a document provided by the Prosecution at the invitation of the Chamber,²² must be officially translated into a language the accused persons fully understand in order for them to understand in detail the nature, cause and content of the charges, within the meaning of Article 67(1)(a) of the Statute. The Gbagbo Defence also requests that the Chamber find that the notification of an official French translation is necessary in the interests of fairness and to ensure adequate time and facilities for the preparation of the Defence, under Article 67(1)(b) and (f) of the Statute.

13. In the view of the Chamber, the Statute, Rules and Regulations provide a framework which ensures that an accused receives adequate notice of the nature, cause and content of the charges, within the meaning of Article 67(1)(a) of the Statute. This framework provides that the accused shall receive a document containing the charges on which the Prosecutor intends to bring the person to trial²³ and that the Pre-Trial Chamber shall deliver a decision on the confirmation

²² Order setting the commencement date for trial, 7 May 2015, ICC-02/11-01/15-58, para. 19.

²³ Article 61(3)(a) of the Statute, Rule 121(3) of the Rules, and Regulation 52 of the Regulations. *See also, The Prosecutor v. Laurent Gbagbo*, Pre-Trial Chamber I, *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*, 16 May 2012, ICC-02/11-01/11-124; and *The Prosecutor v. Laurent Gbagbo*, Pre-Trial Chamber I,

of charges, setting out those charges for which there is sufficient evidence to establish substantial grounds to believe the person committed the crimes charged.²⁴

14. The Chamber has previously stated that ‘the facts and circumstances described in the charges against either accused [...] have been *clearly established* by the Pre-Trial Chamber in the respective Confirmation Decisions’ (emphasis added).²⁵ The Chamber underlined 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.’²⁶ The Chamber recalls that the Appeals Chamber has stated that, based on the Court’s statutory framework and the respective roles of the Prosecutor and the Pre-Trial Chamber in the confirmation process, this confirmation decision sets the parameters for trial.²⁷ Accordingly, the Chamber’s decision under Article 74 of the Statute ‘shall not exceed the facts and circumstances described in the charges and any amendments to the charges’.

15. In addition, this legal framework requires that the Defence receive notice of the evidence the Prosecution intends to use prior to the confirmation hearing. It sets out that the accused shall receive the Prosecution’s list of evidence for 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, 17 January 2013, ICC-02/11-01/11-357 and ICC-02/11-01/11-592. *The Prosecutor v. Charles Blé Goudé*, Pre-Trial Chamber I, Prosecution’s Submission of Document de notification des charges and l’Inventaire des éléments de preuve à charge, 22 August 2014, ICC-02/11-02/11-124.

²⁴ *The Prosecutor v. Laurent Gbagbo*, Pre-Trial Chamber I, Decision on the confirmation of charges against Laurent Gbagbo, 12 June 2014, ICC-02/11-01/11-656-Conf, the French translation of the was notified on the same day as the English version at ICC-02/11-01/11-656-Conf-tFRA; *The Prosecutor v. Charles Blé Goudé*, Pre-Trial Chamber I, Decision of the confirmation of charges against Charles Blé Goudé, 11 December 2013, ICC-02/11-02/11-186, the French translation was notified on 20 January 2015 at ICC-02/11-02/11-186-tFRA.

²⁵ Order setting the commencement date for trial, 7 May 2015, ICC-02/11-01/15-58, para. 18.

²⁶ Order setting the commencement date for trial, 7 May 2015, ICC-02/11-01/15-58, para. 18.

²⁷ See *The Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, ICC-01/04-01/06-3121-Red (A5), para. 124.

confirmation proceedings,²⁸ pre-trial disclosure of prosecution witnesses²⁹ and provides for the inspection of all items which are material to the preparation of the defence.³⁰

16. Thereafter, this Chamber ordered the Prosecution to disclose, no later than 30 June 2015, (i) a complete list of witnesses and evidence to be relied on at trial, (ii) all of the material to be relied on at trial, and (iii) to provide for the inspection of any Article 67(2) and Rule 77 material in the Prosecution's possession, on a rolling basis, and no later than 30 June 2015.³¹ In this regard, the Chamber notes the Prosecution's submissions that (i) this above-mentioned material has been disclosed on a rolling basis since February 2012,³² (ii) disclosure in full, save for a few exceptions, was completed by 30 June 2015,³³ and that (iii) 'in conformity with rule 76(3) [of the Rules] any items of evidence in languages other than French were provided with French translations'.³⁴

17. In light of the above, the Chamber is not convinced that not receiving the Prosecution's Pre-Trial Brief in a language the accused persons fully understand infringes on the right of Mr Gbagbo and Mr Blé Goudé to be informed in detail of the nature, cause and content of the charges within the meaning of Article 67(1)(a) of the Statute.

18. The Chamber also observes that the jurisprudence from the ECHR cited by the Gbagbo Defence does not support its position that it is entitled to an official translation of any relevant material providing information concerning the

²⁸ Rule 121(3) of the Rules.

²⁹ Rule 76 of the Rules.

³⁰ Rule 77 of the Rules.

³¹ Order setting the commencement date for trial, 7 May 2015, ICC-02/11-01/15-58, paras 22 and 25.

³² Prosecution's request pursuant to regulation 35 seeking permission to disclose a document under rule 77, 27 July 2015, ICC-02/11-01/15-164, with confidential annex A were filed on 27th July 2015: ICC-02/11-01/15-164-Conf-AnxA.

³³ Decision on the Prosecution requests for a variation of the time limit for disclosure of certain documents, 18 August 2015, ICC-02/11-01/15-183-Conf.

³⁴ Prosecution Response, ICC-02/11-01/15-181, para. 18.

charges. The ECHR stated that while special attention does need to be paid to the charging document – i.e. the indictment³⁵ – Article (6)(3)(e) of the European Convention on Human Rights³⁶ ‘does not go so far as to require a written translation of all items of written evidence or official documents in the procedure’, but rather that the ‘the accused is entitled to have knowledge of the case against him and to defend himself, notably by being able to put before the court his version of the events’.³⁷

19. Nevertheless, the Chamber agrees that a Pre-Trial Brief is beneficial for the preparation of the Defence.³⁸ It was on that basis that the Chamber invited the Prosecution to file a pre-trial brief in the case record, noting that ‘such a document could facilitate the fair and expeditious conduct of the trial proceedings’ and that ‘in light of the joinder and the two Confirmation Decisions [a pre-trial brief] would be beneficial to the Defence in preparation for trial’.³⁹

20. The Chamber therefore considers that receiving a French version of the Pre-Trial Brief would indeed be useful, particularly in light of the fact that the Prosecution intends to call 137 witnesses to testify and has listed 4,790 items of evidence in the List of Evidence.⁴⁰ In this respect, it is to be noted that both Defence teams received -- from the Court Interpretation and Translation Section -- a non-official (draft) translation of the Pre-Trial brief as of 2 and 7 September 2015.⁴¹ In addition, the Chamber observes that the accused persons are aided in discussing, analysing and preparing their defence by their counsel, who are able to function effectively

³⁵ ECHR, Case of Kamasinski v. Austria, Case no. 9783/82, 19 December 1989, para. 79,

³⁶ Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No. 11 and No 14, adopted 4 November 1950 and entered into force 3 September 1953, Council of Europe.

³⁷ ECHR, Case of Kamasinski v. Austria, Case no. 9783/82, 19 December 1989, para. 79,

³⁸ Gbagbo Defence Request, ICC-02/11-01/15-174, paras 43-46.

³⁹ Order setting the commencement date for trial, 7 May 2015, ICC-02/11-01/15-58, para. 19.

⁴⁰ Prosecution’s submission of its List of Witnesses and List of Evidence, ICC-02/11-01/15-114. *See also*, Prosecution Notice of Withdrawal of Witness P-0439 from the List of Witnesses, 24 July 2015, ICC-02/11-01/15-160.

⁴¹ Email communications from an Administrative Assistant in the Counsel Support Section to the Trial Chamber I Communications Inbox on 7 September 2015 at 10:37 and 3 September 2015 at 17:29.

in both working languages of the Court should any questions concerning the Pre-Trial Brief arise.⁴² Finally, the Chamber notes that the ECHR cases cited by the Gbagbo Defence support this conclusion.⁴³

21. In light of the analysis above, the Chamber considers that receiving a draft translation of the Pre-Trial Brief in French, at this stage, is sufficient and meets the requirements of Article 67(1)(b) and (f) of the Statute. For these same reasons, the Chamber does not consider it necessary to modify the commencement date of trial subject to the notification of an *official* French translation of the Pre-Trial Brief.
22. Finally, in respect of the Gbagbo Defence's request for an extension of the time limit to respond to the Prosecutor's Pre-Trial Brief, the Chamber recalls that in inviting the Prosecutor to file a pre-trial brief by 16 July 2015, it did not envisage that a response to the Pre-Trial Brief would be warranted.⁴⁴ The Chamber further considers that any issues the Defence teams may seek to raise concerning the Prosecution's case may be introduced during the Defence's opportunity to make opening and closing statements and to present evidence during trial.⁴⁵

⁴² See also, *The Prosecutor v. Laurent Koudou Gbagbo*, Appeals Chamber, 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, 22 August 2013, ICC-02/11-01/11-489, para. 13: 'The Appeals Chamber considers that Mr Gbagbo's counsel must be in a position to explain to him the issues raised in the present appeal. In this regard, the Appeals Chamber notes the Prosecutor's submission that Mr Gbagbo's defence team has in the past demonstrated that it is perfectly capable of understanding and responding to decisions by Chambers and submissions of the Prosecutor and Registrar that were filed in English.'

⁴³ ECHR, Case of Kamasinski v. Austria, Case no. 9783/82, 19 December 1989, paras 77-79, 81, holding that the right to a fair trial had not been compromised by providing only oral explanations of the pre-trial documents in the language the accused understood, rather than written translations.

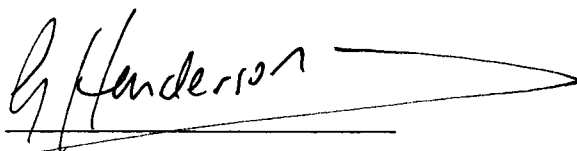
⁴⁴ Order setting the commencement date for trial, 7 May 2015, ICC-02/11-01/15-58, para. 26.

⁴⁵ Order setting the commencement date for trial, 7 May 2015, ICC-02/11-01/15-58; Directions on the conduct of proceedings, 3 September 2015, ICC-02/11-01/15-205, para. 12.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the Defence Requests.

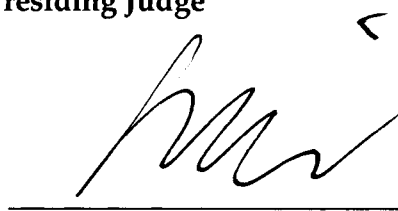
Done in both English and French, the English version being authoritative.

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Judge Geoffrey Henderson, Presiding Judge

A handwritten signature in black ink, appearing to read 'O. Herrera Carbuca', written over a horizontal line.

Judge Olga Herrera Carbuca

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

Judge Bertram Schmitt

Dated 16 September 2015

At The Hague, The Netherlands