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

**Prosecution's response to Laurent Gbagbo's «Demande d'autorisation d'interjeter appel de la 'Decision on Defence requests relating to the Prosecution's Pre-Trial Brief'» (ICC-02/11-01/15-224)**

**Source:** Office of the Prosecutor

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

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**Defence Support Section**

**Deputy Registrar**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## Introduction

1. The application for leave to appeal<sup>1</sup> the Trial Chamber's "Decision on Defence requests relating to the Prosecution's Pre-Trial Brief",<sup>2</sup> filed by the Defence of Laurent Gbagbo<sup>3</sup> should be rejected. None of the three alleged issues<sup>4</sup> or sub-issues raised in the Application are appealable, nor do they arise from the Decision. They also do not meet the criteria of article 82(1)(d) of the Rome Statute for leave to appeal.

## Submissions

*(i) The Issues do not constitute appealable issues arising from the Decision*

2. In the First Issue, Mr Gbagbo suggests that the Decision infringes upon his right to be informed in detail of the nature, cause and content of the charges absent a translation of the Pre-Trial Brief.<sup>5</sup> This constitutes a mere disagreement with the Trial Chamber's determination that the Pre-Trial Brief does not constitute a charging document providing notice of the facts and circumstances.<sup>6</sup> Indeed, the Decision adopts a principle firmly enshrined in the legal framework of the Court, specifically that adequate notice of the nature, cause, and content of the charges is provided by the Document Containing the Charges ("DCC") as established in the Confirmation Decision.<sup>7</sup> The Appeals Chamber has also endorsed this view in unequivocal terms:

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<sup>1</sup> ICC-02/11-01/15-233 ("Application").

<sup>2</sup> ICC-02/11-01/15-224 ("Decision").

<sup>3</sup> "Defence".

<sup>4</sup> "Issues".

<sup>5</sup> Application, paras. 28-40.

<sup>6</sup> Decision, paras. 13-14. *See also* ICC-01/04-168, para. 9 (an appealable issue is an "identifiable subject or topic requiring a decision for its resolution", and not a mere disagreement or conflicting opinion).

<sup>7</sup> Decision, para. 13.

“[T]here can be no doubt that the decision on the confirmation of the charges defines the parameters of the charges at trial.”<sup>8</sup>

3. As such, the Pre-Trial Brief, an auxiliary document, in no way constitutes a charging document and the language of its submission has no impact on the adequacy of the notice given to Mr Gbagbo. Accordingly, this issue merely disagrees with the Decision, and is therefore not appealable.
4. Additionally, within the First Issue, the Application presents a number of sub-issues none of which constitute appealable issues. Mr Gbagbo claims that, since the Trial Chamber gave notice under regulation 55(2) of the Regulations of the Court that article 28 of the Statute may be applied in this case<sup>9</sup> (*after* the issuance of the Confirmation Decision), the Confirmation Decision cannot constitute the charging document. Yet this sub-issue is not appealable for two reasons. First, it does not arise out of the Decision and constitutes an attempt to reopen a matter separately litigated.<sup>10</sup> Second, it misrepresents the regulation 55(2) Decision:<sup>11</sup> Mr Gbagbo’s assertion that “*le procès commencera sur la base d’une charge qui n’aura jamais été notifiée à l’Accusé*”<sup>12</sup> is contradicted by the fact that the purpose of that decision was to notify the Defence of article’s 28 application. Mr Gbagbo also claims that the Trial Chamber erred in considering that the notification of charges is effected through the Prosecution’s disclosure of evidence.<sup>13</sup> This sub-issue likewise misunderstands the Decision. The Decision simply noted that, in conformity with the legal framework, the Prosecution has disclosed the evidence it intends to rely on by the requisite pre-trial and trial phase deadlines and in conformity with the language requirement of rule 76(3) of the Rules of Procedure

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<sup>8</sup> Decision, para. 14 citing *The Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber, Judgment on the appeal of Mr. Thomas Dyilo against his conviction, 1 December 2014, ICC-01-04-01/06-3121-Red (A5), para. 124 (internal citations omitted).

<sup>9</sup> ICC-02/11-01/15-185 (“regulation 55 Decision”).

<sup>10</sup> ICC-02/11-01/15-212.

<sup>11</sup> ICC-02/11-01/15-185.

<sup>12</sup> Application, para. 33.

<sup>13</sup> Application, paras. 38-40.

and Evidence.<sup>14</sup> Since the alleged sub-issue misinterprets the Decision, no appealable issue arises from it.

5. Similarly, the Second Issue, whether the Trial Chamber erred in determining that the Defence can effectively work from a non-official translation of the Pre-Trial Brief,<sup>15</sup> does not correctly represent the Decision. The Decision simply rejected the Defence position that it is entitled to receive a French translation of any relevant material providing information concerning the charges.<sup>16</sup> The Chamber found that a French translation would be useful to the Accused, but that it was sufficiently informed of the charges by the Confirmation Decision and DCC.<sup>17</sup> As with the First Issue, the Defence disagreement with the Decision's determination that a Pre-Trial Brief, unlike a DCC, is not a charging document does not constitute an appealable issue.
6. The Third Issue argues that the Trial Chamber erred in rejecting the Defence request for a modification of the commencement date of trial subject to the notification of an official French translation of the Pre-Trial Brief.<sup>18</sup> The Defence contention is premised on an erroneous understanding of the timelines set by the Chamber. First, the Trial Chamber did not envisage a response to the Pre-Trial Brief.<sup>19</sup> Second, and contrary to the Defence contention,<sup>20</sup> the Chamber did not set the date of the commencement of trial on the basis that there must be a near four month time span between the filing of the Prosecution's Pre-Trial Brief and opening statements. The Chamber concluded that a delay was not warranted pending the full translation of the Pre-Trial Brief. This issue is not appealable.

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<sup>14</sup> Decision, para. 16. As noted by the Decision, the Prosecution has met this obligation save for a few requested exceptions.

<sup>15</sup> Application, paras. 41-49.

<sup>16</sup> Decision, para. 18.

<sup>17</sup> Decision, para.17.

<sup>18</sup> Application, paras, 50-53.

<sup>19</sup> Decision para. 22; ICC-02/11-01/15-58 (order setting the commencement date for trial), para. 26.

<sup>20</sup> Application, para. 52.

*(ii) The Issues do not meet the criteria for leave to appeal*

7. The Issues do not significantly affect the fair conduct of the proceedings. None of the three alleged issues impact on the fairness of the proceedings. Mr Gbagbo first received notice of the charges against him through the Confirmation Decision issued on 12 June 2014,<sup>21</sup> more than 15 months ago. He further received an official French translation of this decision a little over a month after its issuance,<sup>22</sup> and still well over a year ago. As such, no fairness issue arises, as Mr Gbagbo has been on notice of the charges against him in a language he fully understands and speaks in accordance with articles 67(1)(a), (b) and (f) of the Statute for over a year now.
8. The Issues also do not significantly affect the expeditious conduct of the proceedings. The Defence's argument that the Chamber's rejection of its request for additional time affects the expeditious conduct of the proceedings is circular.<sup>23</sup> Had the Trial Chamber given the Defence additional time, it would have delayed the proceedings.
9. For the same reasons that the Issues do not affect the fair conduct of the proceedings<sup>24</sup> they also do not affect the outcome of the trial. The exact date of the receipt of the translation of the Pre-Trial Brief, an auxiliary document, will not impact on the responsibility of the Accused.
10. Finally, immediate resolution of the Issues by the Appeals Chamber would not materially advance the proceedings. The First and Second Issues both revolve around the question of whether the Pre-Trial Brief constitutes a charging document. The Appeals Chamber has previously given an authoritative determination on this point.<sup>25</sup> As such, no resolution by the Appeals Chamber is required. The Third Issue is simply an issue of trial management best left to the discretion of the Trial Chamber.

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<sup>21</sup> ICC-02/11-01/11-656-Red.

<sup>22</sup> ICC-02/11-01/11-656-Red-tFRA.

<sup>23</sup> Application, para. 58

<sup>24</sup> See above para. 6.

<sup>25</sup> See above para. 2.

## Conclusion

11. For the reasons above, the Application should be dismissed.



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Fatou Bensouda, Prosecutor

Dated this 28<sup>th</sup> day of September 2015

At The Hague, The Netherlands