

**Cour
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**International
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Court**



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TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Geoffrey Henderson

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

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

Public

Response to the “Requête en suspension du délai alloué à la Défense pour répondre au « mid-trial brief » déposé par l’Accusation le 19 mars 2018 (ICC-02/11-01/15-1136) jusqu’à transmission de la traduction française de ce « mid-trial brief »” (ICC-02/11-01/15-1137)

Source: Office of Public Counsel for Victims

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

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I. Introduction

1. The Common Legal Representative of the victims admitted to participate in the proceedings (the “Legal Representative”)¹ submits that Mr Gbagbo’s request for suspension of the delay to respond to the Prosecution’s Mid-Trial Brief until notification of its translation into French (the “Request”)² should be rejected.

2. Indeed, the Mid-Trial Brief does not fall into the category of documents that should be translated pursuant to article 67(1)(a) of the Rome Statute (the “Statute”), and for which a translation is essential in order to meet the requirements of fairness enshrined in article 67(1)(f) of the Statute.

3. The Request is yet another attempt by the Defence to delay the proceedings; and granting the Request would seriously affect the expeditiousness of the proceedings and would run contrary to the victims’ personal interests to see the conclusion of the trial as soon as possible.

II. Background

4. On 9 February 2018, Trial Chamber I (the “Chamber”) issued the “Order on the further conduct of the proceedings” (the “Order”),³ inviting, *inter alia*, the Prosecution to file a trial brief illustrating its case and detailing the evidence in support of the charges (the “Mid-Trial Brief”), and ordering the Defence to respond to said brief indicating “(i) which aspects of the Prosecutor’s case they do not contest, (ii) which aspects they intend to challenge by way of presenting additional evidence; and (iii)

¹ See the “Decision on victim participation” (Trial Chamber I), No. ICC-02/11-01/11-800, 6 March 2015; and the “Decision on victims’ participation status” (Trial Chamber I), No. ICC-02/11-01/15-379, 7 January 2016, p. 23.

² See the “Requête en suspension du délai alloué à la Défense pour répondre au « mid-trial brief » déposé par l’Accusation le 19 mars 2018 (ICC-02/11-01/15-1136) jusqu’à transmission de la traduction française de ce « mid-trial brief »”, No. ICC-02/11-01/15-1137, 22 March 2018 (the “Request”).

³ See the “Order on the further conduct of the proceedings” (Trial Chamber I), No. ICC-02/11-01/15-1124, 9 February 2018 (the “Order”).

*whether they intend to submit evidence in relation to facts and circumstances that have hitherto not been the discussed during the trial”.*⁴

5. On 16 February 2018, the Legal Representative filed a submission on the views and concerns of victims in relation to the Order.⁵

6. On 19 March 2018, the Prosecution filed its Mid-Trial Brief.⁶

7. On 22 March 2018, the Defence for Mr Gbagbo filed the Request.⁷

8. On 23 March 2018, the Chamber by e-mail shortened the deadline and ordered that any response to the Request be provided by 26 March 2018 at 12 hours.⁸

9. In accordance with regulation 24(2) of the Regulations of the Court, the Legal Representative hereby files her response to the Request.

III. Submissions

10. The Legal Representative opposes the Request because it is founded on the Defence’s misunderstanding of the nature and purpose of the Mid-Trial Brief, and on the scope of Mr Gbagbo’s rights under article 67(1)(a) and (f) of the Statute.

11. Article 67(1)(a) and (f) of the Statute provides for the right of the Accused to be informed of the nature, cause and content of the charges brought against him/her in a language he/she fully understands and speaks, and to receive translations of essential documents that are necessary to meet the requirements of fairness.

⁴ *Idem*, paras. 10 and 14.

⁵ See the “Views and concerns of victims in relation to the “Order on the further conduct of the proceedings” (ICC-02/11-01/15-1124)”, No. ICC-02/11-01/15-1131, 16 February 2018.

⁶ See 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)”, No. ICC-02/11-01/15-1136, 19 March 2018 (the “Mid-Trial Brief”).

⁷ See the Request, *supra* note 2.

⁸ See the email from the Chamber of 23 March 2018 at 10:49.

12. In interpreting the requirements of article 67 of the Statute, the jurisprudence of this Court has indicated that the right to translation of material filed in the record of the case only refers to *“such documents that inform [the Accused] in detail of the nature, cause and content of the charges brought against him”*.⁹ Consistent with this approach, Chambers have repeatedly found that an accused should be provided with translations of the following documents: (i) the Prosecution’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’s witnesses.¹⁰

13. At the outset, the Legal Representative recalls that Mr Gbagbo received a French version of the Pre-Trial Chamber’s decision confirming the charges against him on 18 July 2014.¹¹ Mr Gbagbo also already received all the relevant documents in French to inform him of the nature, cause and content of the charges, including the Document Containing the Charges, the List of Witnesses to be called at trial, and the List of Evidence to be adduced at trial.¹² Thus, Mr Gbagbo’s rights pursuant to articles 67(1)(a) and (f) of the Statute were – and are still – fully respected.

⁹ 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

¹⁰ See *Ibidem*. 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-01/0401/07-538, 2 June 2008, p. 6.

¹¹ 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.

¹² 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, 14 August 2015, paras. 12, 18.

14. Of relevance to the present Request is the fact that Mr Gbagbo already requested the French translation of the Pre-Trial Brief in very similar terms and with nearly identical arguments.¹³ The Chamber, in its previous composition, rightly rejected said request by concluding that Mr Gbagbo's rights within the meaning of article 67(1)(a) of the Statute were not infringed by not receiving a French translation of said document.¹⁴

15. The same reasoning should apply in relation to the Mid-Trial Brief. Indeed, and contrary to the Defence's submissions,¹⁵ the Mid-Trial Brief is not a document which would serve to inform Mr Gbagbo of the nature, cause and content of the charges against him within the meaning of article 67(1)(a) or for which a translation is necessary to meet the requirements of fairness under article 67(1)(f) of the Statute. In fact, the Chamber clearly stated that this brief would rather serve as an "*auxiliary tool to the benefit of both the Chamber and the parties*".¹⁶

16. Furthermore, and as indicated by the Chamber,¹⁷ the Mid-Trial Brief contains a detailed narrative of the evidence presented by the Prosecution in light of the testimonies heard and the documentary evidence submitted at trial. Therefore, considering that Mr Gbagbo and his defence team were able to follow the presentation of evidence by the Prosecution in French and had access to the documentary evidence in French, the Accused is fully aware of the evidence relied upon in the Mid-Trial Brief, and it cannot be said that Mr Gbagbo would be prejudiced by not receiving the translation of the Mid-Trial Brief in French.

¹³ 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. A quick comparison between these two Defence's Requests shows that most of the Request was simply copied and pasted from the previous Defence's Request.

¹⁴ See the "Decision on Defence requests relating to the Prosecution's Pre-Trial Brief" (Trial Chamber I), No. ICC-02/11-01/15-224, 16 September 2015, paras. 13-17.

¹⁵ See the Request, *supra* note 2, paras. 52-57.

¹⁶ See the Order, *supra* note 3, para. 11 (emphasis added).

¹⁷ *Idem*, para. 10.

17. The Legal Representative also recalls the conclusion of the Chamber according to which Mr Gbagbo is *“aided in discussing, analysing and preparing their defence by their counsel, who are able to function effectively in both languages of the Court”*.¹⁸ Therefore, and contrary to the Defence’s arguments,¹⁹ Mr Gbagbo may be assisted by his legal team should any questions concerning the Mid-Trial Brief arise.²⁰

18. Finally, the Legal Representative submits that the Request is yet another attempt by the Defence to delay the proceedings. In this regard, accepting the Defence’s arguments and suspending the delay to respond to the Mid-Trial Brief until notification of its translation into French would seriously jeopardize the expeditiousness of the proceedings due to the substantial time that such translation would require. To this effect, the Legal Representative recalls her previous submissions in which she expressed her clients’ views and concerns about the delay in resuming the hearings which negatively impacts the victims’ personal interests to expeditiously hear the presentation of the evidence by the Defence and to see the conclusion of the trial.²¹

¹⁸ See the “Decision on Defence requests relating to the Prosecution’s Pre-Trial Brief” (Trial Chamber I), No. ICC-02/11-01/15-224, 16 September 2015, para. 20.

¹⁹ See the Request, *supra* note 2, paras. 25, 64.

²⁰ 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 OA 5, 22 August 2013, paras. 13.

²¹ See the Views and concerns of victims in relation to the “Order on the further conduct of the proceedings” (ICC-02/11-01/15-1124), *supra* note 5, paras. 10-15.

IV. Conclusion

19. For the foregoing reasons, The Legal Representative respectfully requests the Chamber to reject the Request.

A handwritten signature in black ink, appearing to read 'Paolina Massidda', with a horizontal line underneath the name.

Paolina Massidda
Principal Counsel

Dated this 26th day of March of 2018

At The Hague, The Netherlands