

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: 26 March 2018

TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera-Carbuccia
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

**Prosecution response to Gbagbo Defence request for suspension of the time
allowed to respond to the Mid-Trial Brief (ICC-02/11-01/15-1137)**

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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I. PROSECUTION RESPONSE

1. The Prosecution opposes the Gbagbo Defence Request,¹ on grounds that a complete suspension of the time allowed to the Defence to respond to the Prosecution's Mid-Trial Brief until notification of a French version of the Brief is neither required under the Statute, nor necessary or justified.

2. Mindful of the Chamber's previous "Decision on Defence requests relating to the Prosecution's Pre-Trial Brief",² the Prosecution first, submits that insofar as the Chamber considers that a French version of the Mid-Trial Brief would be useful, a draft translation is sufficient; second, opposes a full suspension of the time limit such that time only starts to run from the date of provision of a translation; and third, respectfully defers to the Chamber on the issue of what additional time, if any, should be allowed (in the event that a French version of the Mid-Trial Brief is considered useful) for the Defence to make their submissions.

II. SUBMISSIONS

1. A translation of the Mid-Trial Brief is not required under the Statute

3. First, consistent with this Court's jurisprudence - as elaborated below - the requested translation into French of the Mid-Trial Brief is not necessary either to satisfy the notification requirements under article 67(1)(a) of the Statute or to meet the requirements of fairness within the meaning of article 67(1)(f). The unavailability at present of an official French translation does not affect the ability of Mr Gbagbo's Defence to properly represent his interests and to make submissions as requested by the Trial Chamber in its 9 February 2018 Order.³

¹ 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.

² ICC-02/11-01/15-224 ("Prior Decision").

³ ICC-02/11-01/15-1124 ("9 February Order").

(a) *Article 67(1)(a)*

4. The requested translation into French of the Mid-Trial Brief is not necessary to satisfy the notification requirements under article 67(1)(a) of the Statute. By its 9 February 2018 Order,⁴ the Chamber invited the Prosecution to file an “auxiliary tool”⁵ in the form of a “trial brief”,⁶ and the Prosecution did so.⁷ The Mid-Trial Brief is not a charging document; it does not fall into the category of documents serving to notify the Accused of the “nature, cause and content of the charge” within the meaning of article 67(1)(a). Rather, it is an entirely *sui generis*, and unprecedented in the jurisprudence of the *ad hoc* international criminal tribunals, and this Court.

5. As confirmed recently by the Appeals Chamber in the *Bemba et al* case, the Confirmation Decision constitutes the “authoritative statement of the charges” for the trial.⁸ This document has been provided to Mr Gbagbo in French,⁹ as has the Confirmation Decision related to Mr Blé Goudé,¹⁰ the Document containing the charges,¹¹ and the amended Documents containing the charges.¹²

(b) *Article 67(1)(f)*

6. The requested translation into French of the Mid-Trial Brief is not necessary to meet the requirements of fairness within the meaning of article 67(1)(f) of the Statute. The right to translation under articles 67(1)(f) of the Statute does not cover any and all documents, or the entirety of such documents. Rather, it is limited to translation necessary to meet fairness, or to notify the charges (within the meaning of article

⁴ 9 February Order.

⁵ 9 February Order, para.11.

⁶ ICC-02/11-01/15-1124, p.8.

⁷ ICC-02/11-01/15-1136-Conf-Anx1 (“the Mid-Trial Brief”).

⁸ *Prosecution v. Bemba et al*, Judgement on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled “Judgement pursuant to Article 74 of the Statute”, ICC-01/05-01/13-2275-Conf, 8 March 2018, para.196.

⁹ ICC-02/11-01/11-656-Conf.

¹⁰ ICC-02/11-02/11-186.

¹¹ ICC-02/11-01/11-124.

¹² ICC-02/11-01/11-357 and ICC-02/11-01/11-592.

67(1)(a)). The unavailability at present of an official French translation of the Mid-Trial Brief does not affect the ability of Mr Gbagbo's Defence to properly represent his interests and to make submissions as requested by the Trial Chamber in its 9 February 2018 Order.

7. As the Appeals Chamber found in the *Gbagbo* case at pre-trial, there is no general requirement that filings of parties and participants submitted in English be translated into French, or vice versa, or that time limits begin to run from the notification of decisions or orders in both working languages of the Court. This is also confirmed with respect to the language which a suspect fully understands and speaks by the wording of regulation 40 (6) of the Regulations of the Court, which provides that "[t]he Registrar shall ensure translation into the language of the [suspect], if he or she does not fully understand or speak any of the working languages, of all decisions or orders in his or her case. Counsel shall be responsible for informing that person of the other documents in his or her case."¹³ The Appeals Chamber, in that Decision, rejected Mr Gbagbo's request for the time limit for his response to the Document in Support of the Appeal to run from the date of notification of French translations of the Document in Support of the Appeal, the Decision Granting Leave to Appeal and the Dissenting Opinion.¹⁴

2. The practice of this Chamber - a draft translation of the Mid-Trial Brief is sufficient

8. First, the Prosecution notes that the Chamber has ordered the Defence, once they have received "the updated trial brief," to indicate whether or not they wish to make any submission of a no case to answer motion, or, in any event, whether they intend to present any evidence; and, if they wish to present evidence to indicate (i)

¹³ *Prosecutor v. Gbagbo*, Decision on Request for Translation and Filing Extension, ICC-02/11-01/11-489 OA5, 22 August 2013, para.10.

¹⁴ *Prosecutor v. Gbagbo*, Decision on Request for Translation and Filing Extension, ICC-02/11-01/11-489 OA5, 22 August 2013, paras.13-14. See also Prior Decision, para.13.

which aspects of the Prosecution's case they do not contest, (ii) which aspects they intend to challenge by way of presenting additional evidence, and (iii) whether they intend to submit evidence in relation to facts and circumstances that have hitherto not been discussed during the trial – and, if so, to provide a brief outline of those alleged facts.¹⁵ These submissions are to be filed within 30 days after notification of the Mid-Trial Brief.¹⁶

9. Second, the Prosecution notes that this Chamber has previously found - within the context of a similar Defence request for the response deadline to the Pre-Trial Brief to run from its translation into French¹⁷ - both that receiving a French version of the Pre-Trial Brief - would be “useful,”¹⁸ and that a draft translation was “sufficient” to meet the requirements of article 67(1)(b) and (f) of the Statute.¹⁹ In that Decision, the Trial Chamber had also stated that it “did not envisage that a response to the Pre-Trial Brief would be warranted.”²⁰

10. Within that context, the Prosecution submits that insofar as the Chamber considers that a French version of the Mid-Trial Brief would be useful - even if not required under the Statute - a draft translation is sufficient.

11. Further, the Prosecution opposes a full suspension of the time limit such that time only starts to run from the date of provision of the translation. The Prosecution submits that there is no reason why the Defence cannot now begin work on its submissions as required under the 9 February 2018 Order. As noted in its Prior Decision, the Accused are “aided in discussing, analysing and preparing their

¹⁵ 9 February Order, para.14.

¹⁶ 9 February Order, para.14.

¹⁷ Prior Decision.

¹⁸ Prior Decision, para.20.

¹⁹ Prior Decision, para.21.

²⁰ Prior Decision, para.22.

defence by counsel, who are able to function effectively in both working languages of the Court”.²¹

12. Moreover, after two years of trial, involving the questioning of successive Prosecution witnesses, it is unimaginable that the Defence have not yet considered what aspects of the Prosecution’s case they do not contest, and which they challenge – and whether or not they intend to submit evidence in relation to facts and circumstances that have hitherto not been considered. It is similarly unimaginable that the Defence have not considered whether or not they wish to make any submission of a no case to answer motion.

13. In its 9 February 2018 Order, and in response to similar arguments of the Gbagbo Defence, the Chamber noted that:

“The Defence for Mr Gbagbo seems to rely on the assumption not only that all the Defence work on the case is yet to be done, notwithstanding the fact that these proceedings have been ongoing for several years (and that Lead Counsel for Mr Gbagbo has been in place since the very beginning), but also that the clock for this work has yet to start running. The Chamber finds this perspective grounded on a distorted conception of the relevant procedural framework, hardly reconcilable not only with the principle of the expeditiousness of the proceedings, but also with the overall notion of fairness of the trial.”²²

14. The Defence teams are quite capable of considering, in advance of receipt of a French translation (if considered useful or necessary) of the Mid-Trial Brief, the issues identified by the Chamber in its 9 February Order.

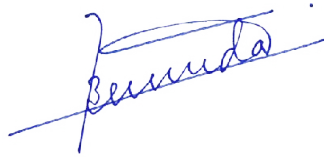
15. Finally, the Prosecution respectfully defers to the Chamber on the issue of what additional time should be allowed to the Defence to file their submissions – assuming that the Chamber is minded to make such an order.

²¹ Prior Decision, para.20.

²² 9 February 2018 Order, para.18.

III. CONCLUSION

16. For the foregoing reasons, the Prosecution opposes a full suspension of the time limit such that time only starts to run from the date of provision of a translation; and respectfully defers to the Chamber on the issue of what additional time, if any, should be granted (in the event that a French version of the Mid-Trial Brief is considered useful or necessary) for the Defence to make their submissions.



Fatou Bensouda, Prosecutor

Dated this 26th day of March 2018

At The Hague, The Netherlands