



Original: **English**

No.: **ICC-02/11-01/15**
Date: **21 October 2019**

THE APPEALS CHAMBER

Before: Judge Chile Eboe-Osuji, Presiding
Judge Howard Morrison
Judge Piotr Hofmański
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ

Public

Public Redacted version of "Prosecution omnibus response to the Gbagbo Defence's translation requests (ICC-02/11-01/15-1273 and ICC-02/11-01/15-1275)", 18 October 2019, ICC-02/11-01/15-1281-Conf

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

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I. Introduction

1. The Prosecution opposes the request of the Defence of Laurent Gbagbo (“Defence”) to suspend the deadline for its response to the Prosecution’s Document in Support of Appeal until translations are available, in the French language, of Judge Henderson’s Reasons, Judge Herrera Carbuccion’s Dissenting Opinion, the Prosecution’s Notice of Appeal and the Document in Support of Appeal (“First Request”).¹ The Defence’s request is not supported by the applicable law and the matter has been already adjudicated in past decisions. However, the Prosecution does not oppose a short postponement of the Defence’s deadline to file its responses to the Prosecutor’s appeal until the second week of January 2020.

2. The Prosecution takes no position on the Defence’s request to receive official translations into both working languages of the Court of the Prosecution’s Mid-Trial Brief, the Defence’s own No Case to Answer (“NCTA”) motion, the Prosecution’s NCTA Response, and the Defence’s proposed corrections to the transcripts of 12, 13 and 14 November 2018 (“Second Request”)² for the reason that the Prosecution does not possess all the necessary information. Although there is no general requirement for this material to be translated, the Defence has already received complete draft translations of most of these documents.³ The Trial Chamber has already ordered the Registry to file a translation of the revised version of the Mid-Trial Brief. As for the corrected versions of the transcripts, the Registry has already corrected these transcripts, and [REDACTED]. It is not necessary for the Prosecution to be involved in [REDACTED]. In any event, its resolution should not delay the appellate proceedings in this case.

¹ ICC-02/11-01/15-1273. *See also* ICC-02/11-01/15-1277-Red.

² ICC-02/11-01/15-1275-Conf.

³ From the Defence’s Request, it appears that the only document for which they do not have a draft translation is the English version of their own NCTA motion.

II. Submissions

A. The subject of the First Request has already been ruled upon

3. The Defence has raised the translation of case filings multiple times. On each occasion, the Trial Chamber or the Appeals Chamber seised with the matter explained to the Defence that while it may expect the translation of filings into French, such an expectation did not create a suspension of any deadlines unless the document serves to inform Mr Gbagbo of the nature, cause and content of the charges brought against him. The current request by the Defence seeks to revive a matter that has already been ruled upon, as will be shown by the brief chronology that follows. Furthermore, the Defence provides no legal basis for its request for a suspension of deadlines, other than generally referring to human rights law and jurisprudence.⁴

4. On 15 August 2013, the Defence filed a motion before the Appeals Chamber seeking a suspension of its deadline to respond to the Prosecution's appeal against Pre-Trial Chamber I's decision under article 61(7)(c). The Defence argued that its deadline to respond should only run from the time of the notification of the French versions of the impugned decision and the Prosecution's Document in Support of Appeal.⁵ On 22 August 2013, the Appeals Chamber denied the Defence's request. It held that "none of the documents of which translations have been requested may be considered to be documents which would serve to inform Mr Gbagbo of the 'nature, cause and content of the charge' against him within the meaning of article 67(1)(a) of the Statute".⁶ It noted that counsel for Mr Gbagbo was in a position to explain to his client the issues raised in the appeal, given the Defence team's demonstrated capacity to understand and respond to decisions by

⁴ First Request, paras.4-24.

⁵ ICC-02/11-01/11-432.

⁶ ICC-02/11-01/11-489, para.12.

Chambers and submissions of the Prosecutor and the Registrar.⁷ Importantly, the Appeals Chamber held that:

“[T]here 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”.⁸

5. The Appeals Chamber granted the alternative relief, namely a one month extension of time, given the length and complexity of the appeal, the potential importance of the impugned decision and the fact that all documents were filed in English. Although the Defence does not request a similar alternative relief in its First Request, the Prosecution would not object if the Defence were granted a similar short extension in this appeal.
6. The Defence made a similar request on 31 July 2015, seeking an extension of the deadline to respond to the Prosecution’s Pre-Trial Brief.⁹ The Trial Chamber noted that a response to the Pre-Trial Brief was not even envisaged,¹⁰ but nevertheless engaged with the merits of the issue. It held that, although the Pre-Trial Brief was beneficial for the preparation of the Defence,¹¹ it is the confirmation decision that sets out the parameters for trial.¹² The Trial Chamber was not convinced that the Accused’s rights were violated by not receiving the Pre-Trial Brief in a language the Accused fully understand.¹³ The Trial Chamber also noted that the Accused are aided in discussing, analysing and preparing their defence by their counsel,

⁷ ICC-02/11-01/11-489, para.13.

⁸ ICC-02/11-01/11-489, para.10.

⁹ ICC-02/11-01/15-174.

¹⁰ ICC-02/11-01/15-224, para.22.

¹¹ ICC-02/11-01/15-224, para.19.

¹² ICC-02/11-01/15-224, para.14.

¹³ ICC-02/11-01/15-224, para.17.

who are able to function effectively in both working languages of the Court.¹⁴ The Chamber also clarified that neither the statutory framework, nor the case-law of the European Court of Human Rights supported the contention that failing to provide the translation of a type of document such as a pre-trial brief would amount to infringing the Accused's rights in article 67(1)(a).¹⁵

7. The Defence made a further request to on 22 March 2018, seeking a suspension of the time limit to respond to the Prosecution's Mid-Trial Brief until after it had received the French translation of that brief.¹⁶ The Chamber denied this request on 26 March 2018 and reiterated the principles enunciated by the Appeals Chamber in 2013 and the Trial Chamber (in a different composition) in 2015. The Chamber questioned the timing of the request.¹⁷ It also noted that counsel for Mr Gbagbo had been representing his client since the very beginning of the case and for this reason, found it hard to accept that in the absence of a French translation, neither the Accused nor his Defence team could grasp the details and nature of the charges.¹⁸ Mr Gbagbo's motion seeking leave to appeal this decision was denied on 13 April 2018.¹⁹
8. The Defence filed another request on 25 May 2018, seeking the Trial Chamber to order the Registry to file a corrected translation of the revised Mid-Trial Brief.²⁰ In its decision of 7 June 2018, the Trial Chamber highlighted that having an official translation of the Mid-Trial Brief in French for the purposes of completeness and accuracy was desirable. However, while the Defence highlighted this "desirability", ²¹ it failed to mention that the Trial Chamber had already rejected

¹⁴ ICC-02/11-01/15-224, para.20.

¹⁵ ICC-02/11-01/15-224, para.18.

¹⁶ ICC-02/11-01/15-1138.

¹⁷ ICC-02/11-01/15-1141, para.11.

¹⁸ ICC-02/11-01/15-1141.

¹⁹ ICC-02/11-01/15-1150.

²⁰ ICC-02/11-01/15-1166.

²¹ ICC-02/11-01/15-1275-Conf, para.15.

its request to suspend deadlines to respond to the Mid-Trial Brief on 26 March 2018.²²

9. Another request by the Defence to postpone a hearing pending the translation of the Prosecution's NCTA Response was rejected by the Trial Chamber on 21 September 2018. The Chamber balanced the right to a fair trial with the expeditiousness of the proceedings to dismiss the request.²³
10. The history of this case demonstrates a pattern of repeated requests by the Defence seeking the suspension of deadlines pending the translation into French of documents that both the Trial and Appeal Chambers have regarded as documents which do not contain the details and the nature of the charges.
11. The First Request concerns documents which fall under the same category as those in the above-mentioned decisions. The NCTA decision, the Prosecution's Notice of Appeal and the Prosecution's Document in Support of Appeal are not documents containing information about the 'nature, cause and content' of the charges against him.
12. As the principle underlying this request has already been adjudicated, Mr Gbagbo's request for an extension of deadlines is unfounded. The Defence's First Request should therefore be rejected.

B. The Second Request is moot

13. In its Second Request, the Defence is seeking official translations of three filings—one of which is its own NCTA motion. In addition, the Defence expresses its dissatisfaction with the revision of over 600 corrections it claims to have identified

²² ICC-02/11-01/15-1141.

²³ ICC-02/11-01/15-1212.

for three transcripts of hearings,²⁴ none of which were referred to by the Trial Chamber in its 16 July 2019 Reasons.

14. The Second Request should not delay the appeals proceedings in this case. The Defence is already in the possession of a draft translation or a translation in corrected format of most of these documents.
15. Starting with the Prosecution's Mid-Trial Brief, the Trial Chamber already resolved its translation in a decision of 7 June 2018²⁵ ordering the Registry to prepare and file a revised French translation. [REDACTED], on 14 October 2019, the day before the Prosecution filed its Document in Support of Appeal, Mr Gbagbo has revived the issue. Setting aside questions of timing, the issue was already ruled upon by the Trial Chamber on 7 June 2018, and the matter now appears to be [REDACTED].²⁶ [REDACTED].
16. The Defence has also requested the final and official translation of its own NCTA motion. The Defence claims that it is crucial to obtain the English version of this document to better understand the reasoning (*raisonnement*) of the judges.²⁷ As this document would contain the Defence's arguments translated into English, this request is somewhat surprising since it is assumed that Defence counsel is already cognisant of his reasoning. However, given that the Prosecution is not privy to [REDACTED] the status and developments relating to the translation of this document, the Prosecution takes no position.
17. With regards to the Prosecution's NCTA Response, as reflected in the Second Request, the Defence presently has a complete draft version.²⁸ That a lengthy

²⁴ The three days of hearings relate to the Defence's oral reply to the Prosecution's response to the Defence NCTA motions.

²⁵ ICC-02/11-01/15-1177.

²⁶ [REDACTED].

²⁷ Second Request, para.41: "*Et il est crucial que nous disposions de la version anglaise de ce document pour pouvoir comprendre au mieux le raisonnement des juges dans le jugement à venir puisque c'est sur la base de ce raisonnement que les Parties échangeront leurs arguments en appel.*"

²⁸ Second Request, para.28.

document of this nature is already available in the language of the Accused, albeit in a draft format, should be sufficient to enable counsel to explain to his client the nature and substance of the Prosecution's position, as he is expected to.

18. Finally, the Defence submitted a considerable amount of alleged errors of interpretation to the Registry's Court Management Services (CMS) with respect to three days of hearings (12, 13 and 14 November 2019)²⁹ during which the Defence replied to the Prosecution's NCTA Response.³⁰ [REDACTED].³¹ The Defence does not explain, in the Second Request, where exactly it disagrees with the Registry. As such, the Prosecution does not take a position. Nevertheless, the impact on the appeals process is minimal, if not almost inexistent, given that none of these transcripts are referred to in the Majority's 16 July 2019 Reasons.³² Essentially, the Defence is insisting on the correction of material that has already been corrected, and which the Trial Chamber did not consider of such relevance as to be necessary to refer to in its Reasons.

III. Relief Sought

19. For the foregoing reasons, the Prosecution respectfully requests that the Appeals Chamber:

- (a) Deny the First Request but if it deems it appropriate, allow the Defence a maximum of one month extension to the Defence's deadline to respond to the Prosecution's Document in Support of Appeal (and allow the Defence of Mr Blé Goudé to do the same so that they are on the same schedule); and

²⁹ Transcripts related to these hearing days are ICC-02/11-01/15-T-224, are ICC-02/11-01/15-T-225 and are ICC-02/11-01/15-T-226.

³⁰ Second Request, para.31

³¹ Second Request, para.51.

³² There is one reference to transcript ICC-02/11-01/15-T-225 in Judge Tarfusser's opinion. Judge Herrera Carbuca's dissent contains three references to ICC-02/11-01/15-T-224, two references to ICC-02/11-01/15-T-225 and two references to ICC-02/11-01/15-T-226. It is not possible to assess whether any of these were the subject of a request for correction since the Prosecution was not copied on the emails between the Registry and the Defence regarding the requested corrections.

- (b) Take note of the Prosecution's above observations with respect to the Second Request.

A handwritten signature in blue ink, appearing to read 'Fatou Bensouda', is written over a horizontal line.

Fatou Bensouda, Prosecutor

Dated this 21th day of October 2019

At The Hague, The Netherlands