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No.: ICC-02/11-01/15
Date: **22 September 2020**

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

**Prosecution submissions on Mr Gbagbo's
"Information à la Chambre d'Appel faisant suite à sa décision du 2 septembre
2020" and regarding corrigendum ICC-02/11-01/15-1314-Corr-Red**

Source: Office of the Prosecutor

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INTRODUCTION

1. On 2 September 2020, the Appeals Chamber granted the Prosecution's request to set Mr Gbagbo a deadline by which to file any request for leave to supplement his response to the Prosecution's appeal, based on the revised French translation of Judge Henderson's reasons.¹ Accordingly, the Appeals Chamber instructed Mr Gbagbo to file any such request for leave by 17 September 2020, or alternatively, to inform the Chamber, the Parties and the Victims that he did not intend to seek leave to supplement his response at the earliest.²

2. On 17 September 2020, Mr Gbagbo informed the Appeals Chamber that following his review of the revised French translation of Judge Henderson's reasons, he did not intend to seek leave to supplement his response to the Prosecution's appeal.³ This notification brings an end to Mr Gbagbo's submissions in response to the Prosecution's appeal. Yet, Mr Gbagbo impermissibly uses the opportunity to advance additional substantive submissions on the appeal, unrelated to the availability of the revised French translation of Judge Henderson's reasons, and without seeking leave to do so.⁴ The Prosecution respectfully requests the Appeals Chamber to disregard them, as they circumvent the Chamber's earlier instructions disallowing further written submissions on this appeal.⁵

¹ ICC-02/11-01/15-1377 ("[Leave to Supplement Decision](#)"), para. 6. *See also* ICC-02/11-01/15-1368 ("[Prosecution Request](#)"), paras. 1-4. *See also* ICC-02/11-01/15-1289 ("[Time Extension Decision](#)"), para. 25; *see also* ICC-02/11-01/15-1359 ("[Hearing Rescheduling Decision](#)"), para. 20.

² [Leave to Supplement Decision](#), para. 6.

³ ICC-02/11-01/15-1378 ("[Mr Gbagbo's Observations](#)"), paras. 11, 20, 31.

⁴ [Mr Gbagbo's Observations](#), paras. 7-30.

⁵ ICC-02/11-01/15-T-240-ENG ET WT ("[Appeal Hearing Day 3](#)"), 65: 18-23 ("PRESIDING JUDGE EBOE-OSUJI: [...] Now we come to counsel for the Defence. We received a request from the Gbagbo counsel for written submissions. *We will not grant written submissions.* We expect you to use the round-up period you have now to address any matter you weren't able to deal with or get to during the course of the proceedings please proceed with your submissions."); [Leave to Supplement Decision](#), para. 6 ("[...] the Appeals Chamber considers it appropriate, *in order to avoid any unnecessary delays in the proceedings*, to set a deadline for counsel for Mr Gbagbo to file any request for leave to supplement his Response.") *emphases added.*

3. Further, the Prosecution notes that Mr Gbagbo has filed a corrigendum to his response on appeal.⁶ The Prosecution understands that but for three discrete errors,⁷ Mr Gbagbo has otherwise sought to replace the references to the draft translation of Judge Henderson’s reasons in the footnotes of his response brief with references to the revised final translation and to alter the text of some quotations.⁸ Yet, the list provided by Mr Gbagbo does not appear to be accurate or exhaustive.⁹ A party must identify precisely what changes are made to corrigenda filed. But Mr Gbagbo has failed to do so. To assist the Chamber, the Parties and the Victims, the Prosecution respectfully requests the Chamber to instruct Mr Gbagbo to provide an accurate list of the changes made to the corrigendum filed, or if more appropriate, to re-file an accurate version of the proposed corrigendum.

SUBMISSIONS

4. Mr Gbagbo has now confirmed that he does not intend to seek leave to supplement his response to the appeal. According to him, the revised French translation of Judge Henderson’s reasons does not justify such a request.¹⁰ Ordinarily, this should conclude Mr Gbagbo’s submissions on the substance of the appeal.

i. The Appeals Chamber should disregard submissions impermissibly made

5. Despite stating that he did not intend to seek leave to supplement his written submissions, Mr Gbagbo nonetheless advances several arguments to respond to the

⁶ ICC-02/11-01/15-1314-Conf-Corr and ICC-02/11-01/15-1314-Corr-Red (“[Corrigendum](#)”) and ICC-02/11-01/15-1314-Corr-Anx1 (“[Corrigendum Annex](#)”).

⁷ [Corrigendum Annex](#), paras. 36, 48, 59.

⁸ See e.g., [Corrigendum Annex](#), paras. 1-35, 37-47, 49-58, 60 (replacing “Traduction provisoire en français de ICC-02/11-01/15-1263-Conf-AnxB” with “ICC-02/11-01/15-1263-Conf-AnxB-tFRA”).

⁹ For example, compare ICC-02/11-01/15-1314-Conf and [ICC-02/11-01/15-1314-Red](#) (filed on 6 March 2020 and 13 March 2020) with [Corrigendum](#) (filed on 17 September 2020), with respect to paras. 4 (fn. 4), 22 (fn. 9), 87 (fn. 41), 138 (fns. 83-84), 195 (fns. 131-135), where the text of the citations appears to have been changed, but not identified in the [Corrigendum Annex](#). The Prosecution does not provide an exhaustive list.

¹⁰ [Mr Gbagbo’s Observations](#), paras. 20, 31.

Prosecution's appeal.¹¹ Mr Gbagbo fails to concretely show that these submissions relate to the recent availability of the revised French translation of Judge Henderson's reasons—the only basis upon which he was permitted to seek leave to make additional submissions on the substance of the appeal.¹² Moreover, as Mr Gbagbo himself states,¹³ he has not sought leave to make further submissions. Other than this limited opportunity given to Mr Gbagbo to supplement his response to the appeal (of which he does not avail), the Appeals Chamber has not allowed the Parties and Participants to make further submissions. Accordingly, these submissions should be disregarded.

6. *First*, in a transparent attempt to circumvent the Appeals Chamber's orders disallowing further written submissions,¹⁴ Mr Gbagbo argues that although he was not able to determine if the final French translation fully corresponded with the original English version, he has identified two aspects where this was not the case.¹⁵ Yet, assessing alleged discrepancies between the *English* and *French* versions of Judge Henderson's reasons did not fall within the scope of the review permitted by the Appeals Chamber in its Leave to Supplement Decision.¹⁶ That review was limited to whether the revised French translation required Mr Gbagbo to make any changes to his response to the appeal to the extent it was based on the provisional French translation¹⁷—and no more. Nor has Mr Gbagbo argued—much less, shown—that the two aspects that he now identifies (as relating to the revised translation) compose new information that was not previously recorded in the provisional translation that has been fully available to him since early 2020.¹⁸

¹¹ [Mr Gbagbo's Observations](#), paras. 12-17, 21-30.

¹² [Leave to Supplement Decision](#), para. 6.

¹³ [Mr Gbagbo's Observations](#), para. 31.

¹⁴ [Leave to Supplement Decision](#), para. 6; [Appeal Hearing Day 3](#), 65: 18-23.

¹⁵ [Mr Gbagbo's Observations](#), paras. 13-17 (claiming that the expression "a combination of circumstantial evidence" in para. 87 did not correspond to the translation "une ensemble de preuves indirectes", and interpreting the phrase "l'administration de la preuve" in para. 1888).

¹⁶ [Leave to Supplement Decision](#), para. 6.

¹⁷ See e.g., [Time Extension Decision](#), para. 25; see also [Hearing Rescheduling Decision](#), para. 20.

¹⁸ [Mr Gbagbo's Observations](#), paras. 13-17.

7. *Second*, in another impermissible attempt to argue the substance of this appeal, Mr Gbagbo claims that linguistic nuances in the revised French translation of Judge Henderson’s reasons further support his arguments on appeal.¹⁹ However, the arguments he now makes are not new.²⁰ They were always available to him to make during the written phase of the appeal proceedings and at the appeals hearing—and he did.²¹ Although Mr Gbagbo argues that these aspects are “more evident” in the revised French translation than in the earlier version,²² it is unclear why this may be the case. Mr Gbagbo fails to explain.

ii. Mr Gbagbo’s explanation for the corrigendum is inaccurate

8. Mr Gbagbo submits that he has identified 67 references to the provisional French translation that he relied upon in his response to the appeal, and that must now be changed in light of the revised version.²³ To this end, he seeks to identify what those changes are.²⁴ However, as noted above, the list that Mr Gbagbo provides appears to be incomplete.²⁵

9. As the Appeals Chamber has held previously, a corrigendum—whose purpose is to correct typographical errors—should provide “a list of the errors contained in the original and their specific location within that document, together with the corresponding corrections.”²⁶ A corrigendum may not be used to add to or to alter

¹⁹ [Mr Gbagbo’s Observations](#), paras. 21-30.

²⁰ [Mr Gbagbo’s Observations](#), paras. 22-24 (claiming on the basis of the text of paras. 87 and 1392 that the Majority Judges at trial gave the Prosecution the benefit of doubt), 25-26 (arguing on the basis of the text of para. 87 that the Majority Judges took the evidence as a whole in their evaluation) and 27-30 (arguing on the basis of the Prosecution appeal and the text of para. 411 that there was no link between Mr Gbagbo and the alleged incidents).

²¹ See e.g., [ICC-02/11-01/15-1314-Red](#) (filed on 13 March 2020), paras. 314-316 (on P-0239).

²² [Mr Gbagbo’s Observations](#), paras. 23, 25, 27, 28 and 30.

²³ [Mr Gbagbo’s Observations](#), paras. 9, 18.

²⁴ See [Corrigendum Annex](#).

²⁵ See above para. 3, fn. 9.

²⁶ ICC-01/05-01/08-631-Red OA2 (“[Bemba Conditional Release AD](#)”), para. 38; ICC-01/04-01/07-3424 OA14 (“[Katanga Detained Witnesses AD](#)”), para. 15.

the substance of the submissions made in the document.²⁷ Moreover, parties and participants are not permitted to effectively supplement their submissions through a corrigendum without leave of the Chamber.²⁸ Providing an accurate list of the changes made in a corrigendum fulfils two purposes: it allows the Chamber, parties and participants to easily follow the changes made and to verify that the substance of the original document was not altered. Since Mr Gbagbo's explanation to his corrigendum appears to be incomplete, it does not entirely assist. Accordingly, the Prosecution requests the Appeals Chamber to order Mr Gbagbo to file an accurate and complete explanation of his corrigendum or if appropriate, to order him to re-file the corrigendum to his response to the appeal.

CONCLUSION

10. For all the reasons above, the Prosecution respectfully requests the Appeals Chamber (i) to disregard the additional submissions on the appeal that Mr Gbagbo advances and (ii) to order Mr Gbagbo to address any deficiencies in the corrigendum filed to his response to the Prosecution's appeal.



Fatou Bensouda, Prosecutor

Dated this 22nd day of September 2020

At The Hague, The Netherlands

²⁷ [Bemba Conditional Release AD](#), para. 38; [Katanga Detained Witnesses AD](#), para. 15; ICC-01/04-01/10-514 OA4 ("[Mbarushimana Confirmation AD](#)"), para. 12 (noting that the corrigendum went beyond the correction of typographical errors, but accepting it as it did not alter the substance and other participants did not object to the document).

²⁸ [Bemba Conditional Release AD](#), para. 39; ICC-01/04-01/06-2953 OA21 ("[Lubanga Reparations Admissibility AD](#)"), para. 22.