

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/11
Date: 26 October 2012

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Single Judge

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
IN THE CASE OF
*THE PROSECUTOR V. LAURENT GBAGBO***

**Public
URGENT**

**Decision on two Defence requests in relation to the hearing scheduled for 30
October 2012**

Decision to be notified, in accordance with regulation 31 of the Regulations of the Court, to:

The Office of the Prosecutor

Fatou Bensouda

Counsel for the Defence

Emmanuel Altit

Agathe Bahi Baroan

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

Paolina Massidda

The Office of Public Counsel for the Defence

States Representatives

Amicus Curiae

REGISTRY

Registrar & Deputy Registrar

Silvana Arbia, Registrar

Didier Preira, Deputy Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Other

Judge Silvia Fernández de Gurmendi, Single Judge for Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”), responsible for carrying out the functions of the Chamber in relation to the situation in the Republic of Côte d’Ivoire and the cases emanating therefrom,¹ hereby issues this decision on two Defence requests in relation to the hearing scheduled for 30 October 2012.

1. On 23 November 2011, Pre-Trial Chamber III issued an arrest warrant for Laurent Gbagbo (“Mr Gbagbo”),² who was transferred to the Court on 30 November 2011. On 30 November 2011, Pre-Trial Chamber III issued the “Decision on the Prosecutor’s Application Pursuant to Article 58 for a warrant of arrest against Laurent Koudou Gbagbo”.³

2. On 5 December 2011, the first appearance of Mr Gbagbo before the Court took place.⁴

3. On 1 May 2012, the Defence submitted the “*Requête de la Défense demandant la mise en liberté provisoire du Président Gbagbo*”, wherein the Defence requested the Single Judge to order the interim release of Mr Gbagbo pursuant to article 60(2) of the Rome Statute (the “Statute”).⁵

4. On 13 July 2012, the Single Judge issued the “Decision on the ‘*Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo*’” (the “Decision on Interim Release”), in which the request for interim release advanced by the defence was rejected.⁶

¹ ICC-02/11-01/11-61.

² ICC-02/11-01/11-1.

³ ICC-02/11-01/11-9-US-Exp. A public redacted version is available (ICC-02/11-01/11-9-Red).

⁴ ICC-02/11-01/11-T-1-ENG.

⁵ ICC-02/11-01/11-105-Conf-Red-Corr, p. 39.

⁶ ICC-02/11-01/11-180-Red, p. 26.

5. On 23 July 2012, the Defence lodged an appeal against the Decision on Interim Release.⁷

6. On 19 October 2012, the Single Judge issued the "Order scheduling a hearing pursuant to rule 118(3) of the Rules of Procedure and Evidence" (the "Scheduling Order"), in which she decided to hold a hearing in open session on 30 October 2012, in the presence of the Prosecutor, the Defence of Mr Gbagbo and the Office of Public Counsel for victims ("OPCV") to receive observations on the continued detention or release of Mr Gbagbo.⁸

7. On 23 October 2012, the Appeals Chamber announced that its judgement on the Defence appeal against the Decision on Interim Release would be delivered on 26 October 2012.⁹

8. On 25 October 2012, the Defence filed the "*Requête de la défense du Président Gbagbo portant sur le déroulement de l'audience prévue le 30 octobre 2012 conformément à la Décision de la Chambre préliminaire du 19 octobre 2012 (ICC-02/11-01/11-270)*",¹⁰ in which the Defence requests the Single Judge to (i) order that the hearing on the continued detention or release of Mr Gbagbo be held in closed session; (ii) to exclude the OPCV from the hearing when documents or information to which it does not have access are discussed; and (iii) allow Mr Gbagbo to absent himself from the hearing.¹¹ In the alternative, the Defence requests that to the extent that confidential information is discussed, the hearing be held in closed session and without the presence of the OPCV.¹² In support of its requests, the Defence submits that in the course of the upcoming hearing it intends to refer to documents that are currently classified as "confidential" and to which the OPCV does not have access, and to other

⁷ ICC-02/11-01/11-193-Conf OA.

⁸ ICC-02/11-01/11-270, p. 5.

⁹ ICC-02/11-01/11-275, p. 3.

¹⁰ ICC-02/11-01/11-276.

¹¹ ICC-02/11-01/11-276, p. 9.

¹² ICC-02/11-01/11-276, p. 9.

sensitive information which should not be made public or available to the OPCV.¹³

9. Also on 25 October 2012, the Defence submitted the *“Requête de la Défense en report de l’audience fixée par la Chambre Préliminaire dans son ordonnance du 19 octobre 2012 (ICC-02/11-01/11-270) au 30 octobre 2012”*,¹⁴ in which the Defence requests the Single Judge to postpone the hearing to 6 November 2012.¹⁵ The Defence alleges that the judgement on its appeal against the Decision on Interim Release may alter the Chamber’s assessment of the relevant context and circumstances and contends that the sole working day between the delivery of the judgment on appeal and the hearing is insufficient for it to properly prepare its submissions for the hearing.¹⁶

10. On 26 October 2012, the Appeals Chamber issued the *“Judgment on the appeal of Mr Laurent Koudou Gbagbo against the decision of Pre-Trial Chamber I of 13 July 2012 entitled ‘Decision on the Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo’”*.¹⁷

11. The Single Judge notes articles 60(3), 67 and 68(3) of the Statute and rule 118(3) of the Rules of Procedure and Evidence.

12. Concerning the request to postpone the hearing, the Single Judge notes that the Appeals Chamber confirmed the Decision on Interim Release and did not alter the Chamber’s assessment of the conditions for detention under article 58(1)(b) of the Statute.

13. Furthermore, by virtue of article 60(3) of the Statute, the Defence will have the right to request review of the Chamber’s ruling at any time, if

¹³ ICC-02/11-01/11-276, paras 13-25.

¹⁴ ICC-02/11-01/11-277.

¹⁵ ICC-02/11-01/11-277, p. 8.

¹⁶ ICC-02/11-01/11-277, para. 24.

¹⁷ ICC-02/11-01/11-278-Red.

circumstances change. No detriment will therefore arise to the Defence if the hearing is held at its originally scheduled date, in order to enable the completion of the review of the Decision on Interim Release within the time limit contemplated by rule 118(2) of the Rules.

14. In light of these considerations, the Single Judge is of the view that sufficient time has been accorded to the Defence to prepare for the hearing on the periodic review of the ruling on the continued detention or release of Mr Gbagbo. Accordingly, the hearing shall be held as originally scheduled on 30 October 2012 at 14 30.

15. As concerns the request for adjustments to be made to the conduct of the hearing in light of the nature of the information to be discussed, the Single Judge acknowledges the sensitive character, *vis-à-vis* the public, of the material that the Defence intends to present and discuss at the hearing. In addition, the Single Judge notes that some of the documents and information referred to by the Defence have been withheld from the OPCV. However, noting in particular the fact that the grounds for Mr Gbagbo's detention are almost entirely public,¹⁸ the Single Judge does not consider it appropriate to hold the entirety of the hearing in closed session.

16. The Single Judge considers that, with a view to preserving to the greatest extent possible the publicity of the proceedings, the rights of the Defence and the rights of the participating victims, the conduct of the hearing may be adjusted. The Single Judge considers it appropriate to begin the hearing in public session and hear submissions from the Prosecutor, the OPCV and the Defence as envisaged in the Scheduling Order. The Single Judge expects the parties to present their submissions in public session to the extent possible. Subsequently, the hearing shall continue in closed session, in

¹⁸ See ICC-02/11-01/11-180-Red.

the presence of the Prosecutor and the Defence only, with a view to discussing information which cannot be made available to the public or to the participating victims.

17. Finally, as regards the request to allow Mr Gbagbo's to absent himself from the hearing, the Single Judge is of the view that his interests would be properly safeguarded by the presence of his counsel. In these circumstances, it is not necessary to compel Mr Gbagbo to attend.

FOR THESE REASONS, THE SINGLE JUDGE

REJECTS the Defence request for postponement of the hearing;

DECIDES that the hearing shall take place as specified in paragraph 16 above;

AUTHORIZES Mr Gbagbo to absent himself from the hearing.

Done in both English and French, the English version being authoritative.



Judge Silvia Fernández de Gurmendi

Single Judge

Dated this 26 October 2012

At The Hague, The Netherlands