

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/11
Date: 27 December 2013

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

**Decision on Defence request on the suspension of time limits during judicial
recess**

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

The Office of the Prosecutor

Fatou Bensouda, Prosecutor

James Stewart, Deputy Prosecutor

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

Herman von Hebel

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 Cote d'Ivoire and the cases emanating therefrom,¹ hereby issues the decision on the Defence’s “Requête urgente afin que soient suspendus les délais durant les vacances judiciaires” (the “Request”).²

1. On 17 December 2013, the Chamber issued its “Decision establishing a calendar for further proceedings” (the “Calendar Decision”)³ in which it set out a calendar for the proceedings concluding the pre-trial phase in this case. The Chamber, taking into consideration the Winter Judicial Recess, ordered the Prosecutor to file, *inter alia*, the Amended Document Containing the Charges on Monday, 13 January 2014 and the Defence to submit justified proposals for redactions, if any, by the same day.

2. On 20 December 2013, the Defence filed its Request, in which it asks the Chamber to suspend all deadlines during the Winter Judicial Recess period. The Defence invokes a number of arguments in support of this request. First, it is argued that the Staff Rules and Staff Regulations dealing with annual leave and home leave are also applicable to members of the Defence team, because these rules implement the fundamental human rights to rest and leisure as well as the right to family life.⁴ It is also argued that the Chamber is obliged to respect those fundamental human rights when setting the procedural calendar, in accordance with article 21 of the Rome Statute (the “Statute”).⁵ The Defence further claims that, because the preparation of the defence of Laurent Gbagbo (“Mr Gbagbo”) constitutes the principal

¹ Chambre préliminaire I, Décision portant désignation d’un juge unique”, 16 mars 2012, ICC-02/11-01/11-61.

² ICC-02/11-01/11-584 with one public and one confidential annex.

³ Pre-Trial Chamber I, ICC-02/11-01/11-576.

⁴ ICC-02/11-01/11-584, para. 14.

⁵ ICC-02/11-01/11-584, paras 31-33.

professional activity of the Defence team, in accordance with the system on legal aid, and because they are based in The Hague and work mainly in the premises of the Court, they should benefit from the same rights as other staff members of the Court.⁶ The Defence also refers to a number of international and national legal systems where deadlines are suspended during court recess and points out that some Trial Chambers of the Court have issued decisions to that effect.⁷ The Defence also points out that the Chamber has never suspended deadlines during past recess periods and has often issued decisions which triggered time limits during the relevant recess periods.⁸ The Defence adds to this that the Chamber has taken into consideration the recess period in favour of the Prosecutor, but has never done so in favour of the Defence.⁹ The Defence argues that this practice is not prejudicial for the Prosecutor because she disposes of ample resources,¹⁰ but does prejudice the Defence in a number of ways.¹¹ Accordingly, the Defence asks the Chamber to (a) apply the labour rules that are applicable to other staff at the Court, i.e. the United Nations Common System; (b) decide that minimum international standards apply to the Defence, and (c) suspend all procedural deadlines during the judicial recess.¹²

3. The Single Judge notes articles 21, 61, 67(1)(c) of the Statute and regulation 19*bis* of the Regulations of the Court (the “Regulations”). In particular, regulation 19*bis* (2) of the Regulations stipulates:

Unless otherwise determined by a Chamber, during the judicial recess hearings shall be limited to urgent issues and time limits shall not be suspended.

⁶ ICC-02/11-01/11-584, paras 19-20.

⁷ ICC-02/11-01/11-584, paras 24-30.

⁸ ICC-02/11-01/11-584, paras 34-41.

⁹ ICC-02/11-01/11-584, paras 56-58.

¹⁰ ICC-02/11-01/11-584, paras 42-49.

¹¹ ICC-02/11-01/11-584, paras 50-54.

¹² ICC-02/11-01/11-584, p. 19.

4. The Single Judge notes that the Request seems to result from the Defence's dissatisfaction with the Calendar Decision. The proper avenue for challenging this decision would have been to request leave to appeal it in accordance with article 82(1)(d) of the Statute. This procedural avenue was not chosen by the Defence.

5. Further, it is recalled that proceedings before the Court are governed, *inter alia*, by the principle of expeditiousness to which considerable importance must be accorded. This principle is encapsulated most prominently in article 67(1)(c) of the Statute of which the *suspect* shall benefit in the first place. This fundamental right thus confers a responsibility upon a chamber to organize the calendar of the proceedings accordingly. In this spirit, regulation 19bis (2) of the Regulations clearly instructs that time limits *shall not be suspended* during judicial recess, unless otherwise determined by a chamber. In its determination, a chamber is duty-bound to take into account the particular circumstances of the case which have a bearing on the matter, such as the stage of the proceedings and the length of proceedings in light of the right of the suspect "to be tried without undue delay" pursuant to article 67(1)(c) of the Statute.

6. In the present case, the Single Judge is mindful of the fact that the suspect was transferred to the Court on 30 November 2011 and that, consequently, pre-trial proceedings have been ongoing for more than two years. Considering in addition the prospective duration of the confirmation of charges proceedings, the Single Judge considers it inappropriate to suspend the time limits during the Winter Judicial Recess and thus to add to the prolongation of the pre-trial proceedings to the detriment of Mr Gbagbo's right "to be tried without undue delay". The Single Judge also does not believe that this ruling puts the Defence in a disadvantageous position *vis-à-vis* the Prosecutor. On the contrary, the new schedule set forth in the Calendar

Decision, which did take into account the judicial recess, benefits mainly other parties and participants since the Prosecutor is required to prepare the Amended Document Containing the Charges, amended list of evidence and the updated consolidated Element Based Chart until Monday, 13 January 2014, i.e. partly during the Winter Judicial Recess.

7. Finally, the Single Judge observes that the Request does not identify a single deadline which expires during the Winter Judicial Recess, apart from time limits for requesting leave to appeal in relation to a limited number of procedural decisions mentioned in the Request¹³, for which the Defence did not present any request in accordance with article 82(1)(d) of the Statute. However, the Single Judge observes that the five day time limit for requesting leave to appeal is defined in rule 155(1) of the Rules of Procedure and Evidence (the "Rules"). In this regard, the power of a chamber to modify a time limit is restricted to time limits prescribed in the Regulations or ordered by a chamber¹⁴ and does not extend to those time limits established in the Statute or Rules. Likewise, as the Regulations shall be read subject to the Statute and Rules¹⁵, regulation 19*bis* (2) of the Regulations cannot be read as allowing a chamber to suspend a time limit established in the Statute or Rules.

¹³ ICC-02/11-01/11-584, para. 41 (the decisions mentioned are ICC-02/11-01/11-576 and ICC-02/11-01/11-577).

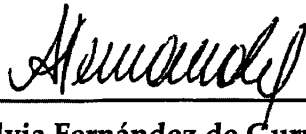
¹⁴ Regulation 35 of the Regulations.

¹⁵ Regulation 1(1) of the Regulations.

FOR THESE REASONS, THE SINGLE JUDGE HEREBY

REJECTS the Request.

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

A handwritten signature in black ink, appearing to read 'Silvia Fernández de Gurmendi', is written over a horizontal line.

Judge Silvia Fernández de Gurmendi

Single Judge

Dated this Friday, 27 December 2013

At The Hague, The Netherlands