

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 3 October 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 the “Requête de la défense en report de l’audience portant sur le quatrième réexamen des conditions de maintien en détention fixée par la Chambre Préliminaire au 9 octobre 2013 dans son ordonnance du 26 septembre 2013 (ICC-02/11-01/11-512)”

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 & Deputy Registrar

Herman von Hebel, 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 the following decision on the “*Requête de la défense en report de l’audience portant sur le quatrième réexamen des conditions de maintien en détention fixée par la Chambre Préliminaire au 9 octobre 2013 dans son ordonnance du 26 septembre 2013 (ICC-02/11-01/11-512)*” (the “Request”).²

1. On 11 July 2013, the Chamber issued the “Third decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) of the Rome Statute” (the “Decision of 11 July 2013”), deciding that Laurent Gbagbo (“Mr Gbagbo”) should remain in detention.³

2. On 19 July 2013, the Defence appealed the Decision of 11 July 2013.⁴ The appeal is currently pending before the Appeals Chamber.

3. On 26 September 2013, the Single Judge issued the “Order scheduling a hearing pursuant to rule 118(3) of the Rules of Procedure and Evidence” (the “Scheduling Order”), deciding that a hearing under rule 118(3) of the Rules of Procedure and Evidence (the “Rules”) would be held on Wednesday, 9 October 2013 before the full Chamber.⁵

4. On 30 September 2013, the Defence filed the Request, asking the Chamber to postpone the hearing to a date at least one week after the

¹ ICC-02/11-01/11-61.

² ICC-02/11-01/11-515.

³ ICC-02/11-01/11-454.

⁴ ICC-02/11-01/11-459-Conf. A public redacted version is also available, see ICC-02/11-01/11-459-Red.

⁵ ICC-02/11-01/11-512.

determination by the Appeals Chamber of the appeal of the Defence against the Decision of 11 July 2013, but no later than 11 November 2013.⁶

5. To this end, the Defence argues that its appeal against the Decision of 11 July 2013 raises important questions, and that the findings of the Appeals Chamber will necessarily have an impact on the Chamber's approach to determining whether the conditions for maintaining detention are present, and on the way the parties analyse and present this question.⁷

6. Further, the Defence argues that the Chamber cannot proceed to a review of the detention of Mr Gbagbo until the validity of the Decision of 11 July 2013 has been definitively settled. According to the Defence, the review logically depends on the determination of the appeal by the Appeals Chamber, which the parties are in no position to discern in advance. In addition, the Defence warns of the risk that the Chamber's decision would contradict that of the Appeals Chamber.⁸

7. On 2 October 2013, the Prosecutor filed the "Prosecution's Response to *'Requête de la defence en report de l'audience portant sur le quatrième réexamen des conditions de maintien en détention fixée par la Chambre Préliminaire au 9 octobre 2013 dans son ordonnance du 26 septembre 2013 (ICC-02/11-01/11-512)'*".⁹

8. The Prosecutor does not oppose a "brief adjournment" of the hearing. In the Prosecutor's interpretation of the Request, the Defence does not waive its right to an annual hearing under rule 118(3) of the Rules, and refrains from making submissions on the permissibility of such a waiver. The Prosecutor

⁶ Request, p. 8.

⁷ *Ibid.*, paras 13-14.

⁸ *Ibid.*, paras 16-23.

⁹ ICC-02/11-01/11-519.

submits that the hearing must, however, be held on 29 October 2013 at the latest, in order to comply with that rule.¹⁰

9. The Single Judge notes article 60(3) of the Rome Statute (the “Statute”), and rule 118(2) and (3) of the Rules.

10. The entire Request is predicated on the fact that the appeal by the Defence against the Decision of 11 July 2013 is currently pending. The Defence makes a series of arguments as to why it would be desirable for the next review of Mr Gbagbo’s detention to take place only after the previous review, *i.e.* the Decision of 11 July 2013, is definitely settled on appeal.

11. The Single Judge shares the view that it would be useful for the parties and participants, as well as for the Chamber, to conduct the review of Mr Gbagbo’s detention in cognizance of the Appeals Chamber’s determination of the appeal against the Decision of 11 July 2013. However, the Single Judge considers that the applicable law does not allow for suspension of the periodic review of detention.

12. In the present case, the next decision under article 60(3) of the Statute is due, pursuant to rule 118(2) of the Rules, within 120 days of the issuance of the Decision of 11 July 2013, *i.e.* by 11 November 2013. The Defence explicitly acknowledges that this time limit cannot be dispensed with.¹¹ As to the hearing, the Single Judge notes that in accordance with rule 118(3) of the Rules, it is also mandatory for the Chamber to hold such a hearing at least once a year, which in the present circumstances means no later than 29 October 2013. The date of the hearing has been established in accordance with this provision, taking into account the workload of the Court. As the date of the issuance of the judgment of the Appeals Chamber on the Defence appeal

¹⁰ *Ibid.*, paras 7-11

¹¹ Request, p. 8.

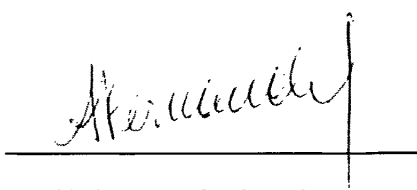
against the Decision of 11 July 2013 is unknown, the Single Judge considers that it would be of no tangible benefit to reschedule the hearing in the hope of a resolution of the appeal in the meantime.

13. However, should the Appeals Chamber rule on the appeal before 11 November 2013, the Chamber will determine, in light of the content of the Appeals Chamber's judgment, whether it is necessary and appropriate to accord the parties and participants an opportunity to make additional submissions.

FOR THESE REASONS, THE SINGLE JUDGE

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. A vertical line extends downwards from the end of the signature.

Judge Silvia Fernández de Gurmendi

Single Judge

Dated this Thursday, 3 October 2013

At The Hague, The Netherlands