



Original: English

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

Date: 2 October 2013

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Hans-Peter Kaul
Judge Christine van den Wyngaert

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

Public

Prosecution's Response to

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)

Source: Office of the Prosecutor

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

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Other

Introduction

1. On 26 September 2013, Pre-Trial Chamber I (“Chamber”) issued its Order scheduling a hearing under Rule 118(3) (“the Hearing”) to be held on 9 October 2013¹ (“the Order”).
2. On 30 September 2013, the Defence filed its *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).² (“Adjournment Request”). The Defence seeks the postponement of the Hearing to seven days after the issuance by the Appeals Chamber of its decision on the last decision concerning the pre-trial detention of Laurent Gbagbo. The Defence further submits that this Hearing should take place no later than 11 November 2013.³
3. The Prosecution is not opposed, in principle, to a brief adjournment of the Hearing.

Observations

4. On 11 July 2013, the Chamber issued its last decision on the pre-trial detention of Laurent Gbagbo and the Defence appealed the decision before the Appeal Chamber.⁴ The parties and participants have filed their appeals brief and the Appeal Chamber is now to rule on the merits of the appeal.⁵
5. On 26 September 2013, the Chamber scheduled a detention hearing, which is required to be held “at least once every year” pursuant to Rule 118(3). According to the Chamber’s schedule, the Rule 118(3) hearing will be held on 9 October 2013.⁶ As noted in the Order, the last hearing was held on 30 October

¹ ICC-02/11-01/11-512.

² ICC-02/11-01/11-515.

³ ICC-02/11-01/11-515, para. 26.

⁴ ICC-02/11-01/11-454 and ICC-02/11-01/11-459-Conf.

⁵ ICC-02/11-01/11-485-Conf, ICC-02/11-01/11-490-Conf and ICC-02/11-01/11-497-Conf.

⁶ ICC-02/11-01/11-512.

2012. Consequently, in order to comply with the letter of Rule 118(3), the next such hearing should be held on or before 29 October 2013.

6. On 30 September 2013, the Defence filed an Adjournment Request suggesting that it would be appropriate to delay the Hearing as long as possible because the Appeals Chamber's decision, when it is entered, is likely to be relevant to issues to be raised during the Hearing.⁷
7. By suggesting that the Hearing should be delayed indefinitely, pending the Appeals Chamber's decision and even if that decision is not delivered before 29 October 2013), the Defence appears to be implicitly waiving the yearly review that is provided in Rule 118(3). Notably, however, if the requirement of an review "at least once every year", as set out in Rule 118(3), is mandatory, it may be that it cannot be waived by the Defence.
8. However, the Defence also argues that such adjournment should not be postponed beyond 11 November 2013 in order to also follow the requirements of Rule 118(2), which states that "the Pre-Trial Chamber shall review its ruling on the release or detention of a person [...] at least every 120 days". The next review of the Chamber pursuant to Rule 118(2) must be held by 11 November 2013.⁸
9. Currently, it is unknown when the Appeal Chamber will render its decision on the Defence appeal. Additionally, the Defence clearly is not waiving the 120-day review of the pre-trial detention pursuant to Rule 118(2). It is thus impossible to assume that the Defence intentionally waives its right under Rule 118(3) to the one-year review hearing. Without addressing the issue whether the seemingly mandatory annual review can be waived, it appears that that review has *not* been waived.

⁷ ICC-02/11-01/11-512, para. 14 and 17.

⁸ The Prosecution observes that the Defence seems to attribute the time limit for the review under Rule 118(2) to the Hearing. As stated, the Hearing must be held on or before 29 October 2013; however the further review under 118(2) can be concluded a bit later. As noted in the Order, the "Third decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute" was issued on 11 July 2013. As such, pursuant to Rule 118(2) the "fourth" review will need to be completed within 120 days of 11 July 2013; that is to say by 11 November 2013 according to the Defence.

10. Consequently, the Prosecution does not object to the request for a delay in the Hearing, but suggests that it must be held before 29 October 2013 in order to comply with the mandatory time limit set out in Rule 118(3), regardless whether the Appeals Chamber decision is issued by then.

Conclusio

11. The Prosecution is not opposed to a brief adjournment of the Hearing, but observes that, whether or not the awaited decision of the Appeals Chamber is issued, the Hearing should be held by 29 October in light of the requirements of Rule 118(2) and (3).



Fatou Bensouda, Prosecutor

Dated this 2nd day of October 2013

At The Hague, The Netherlands