

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/11-01/11
Date: 29 October 2012

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 redacted version

**Prosecution Response to Defence Requests Relating to Detention Review Hearing
of 30 October 2012 (ICC-02/11-01/11-276 and ICC-02/11-01/11-277)**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Counsel for the Defence

Mr Emmanuel Altit

Ms Agathe Bahi Baroan

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. [REDACTED].
2. [REDACTED].
3. [REDACTED].¹
4. On 19 October 2012, the Single Judge of the Chamber issued a scheduling order, convening an open session hearing pursuant to Rule 118(3) on 30 October 2012, in the presence of the Prosecutor and the OPCV. The purpose of the hearing is to “receive observations on the issue of continued detention or release of Mr Gbagbo”.²
5. On 25 October 2012, the Defence filed the following two requests in relation to the scheduled hearing:
 - *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 (« First Request »),³ in which the Defence asks for a postponement of the hearing until 6 November 2012 ; and*
 - *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) (« Second Request »),⁴ in which the Defence asks : (a) that the hearing be held in closed session ; (b) not to permit the victims representatives to attend the hearing to the extent that the hearing relates to confidential information that is not accessible to the victims ; and (c) to permit Mr Gbagbo’s absence during the hearing.*
6. The Prosecution submits that the First Request should be rejected. As to the Second Request, the Prosecution submits that the Chamber should uphold the

¹ [REDACTED].

² ICC-02/11-01/11-270.

³ ICC-02/11-01/11-277.

⁴ ICC-02/11-01/11-276.

principle that court hearings should be held in public, but allow closed session to the extent that it is necessary to discuss confidential information.

7. The Prosecution submits this filing confidentially, [REDACTED]. [REDACTED], and it will file a public redacted version of this document.

The First Request

8. [REDACTED]. The Chamber [REDACTED] issued its decision and scheduled the hearing [REDACTED]. The Defence's First Request therefore effectively amounts to a request that the Chamber reconsider its prior ruling.
9. The Prosecution agrees in principle that Chambers have the discretion to reconsider their decisions. However, the circumstances justifying reconsideration should be exceptional and rare. In the Prosecution's view, this remedy is available only when the decision is manifestly unsound and its consequences are manifestly unsatisfactory,⁵ or when new or previously unavailable information requires that the Chamber reconsider its previous ruling. Neither of those circumstances is present here.
10. The Defence's submissions regarding the Appeals Chamber's judgement on the Pre-Trial Chamber's prior decision on detention ("Decision")⁶ do not meet the threshold for reconsideration. The Appeals Chamber upheld the Decision. Therefore, the appeals process, which is now concluded, has no impact on the review hearing. The findings, facts and circumstances that are the basis of the Decision have all been upheld and may be reviewed pursuant to Article 60(3).

⁵ Trial Chamber I accepted the possibility of reconsidering decisions in exceptional circumstances. See ICC-01/04-01/06-2705, paras.13-19. Other Chambers, like Pre-Trial Chamber II in the Uganda Situation, conclude that there is no express statutory authority to reconsider rulings (see, e.g., ICC-02/04-01/05-60, para.18). The Prosecution notes that the Appeals Chamber has affirmed the ability of this Court to exercise inherent judicial powers, as in its authority to issue a permanent stay of proceedings even though no article or rule allows it (ICC-01/04-01/06-772 OA4, paras.36-39).

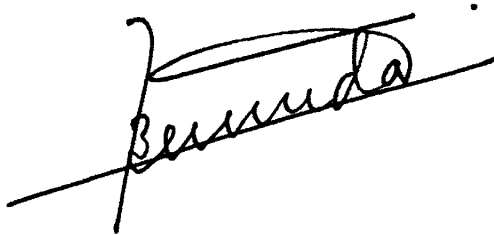
⁶ ICC-02/11-01/11-180-Red.

The Second Request

11. The Prosecution submits that the Chamber should uphold the principle that court proceedings be held in open session. However, the Prosecution acknowledges that during the upcoming hearing both the Defence and the Prosecution might wish to refer to information that is not in the public domain. Therefore, it would be consistent with the spirit of Regulation 23*bis*, paragraph 2, to order that those parts of the discussion be held in closed session.

Conclusion

For the above reasons, the Chamber should reject the Defence's First Request in its entirety and its Second Request to the extent that it requests that the entire session be closed.

A handwritten signature in black ink, appearing to read 'Bensouda', is written over a horizontal line.

Fatou Bensouda, Prosecutor

Dated this 29th day of October 2012

At The Hague, The Netherlands