



Original: English

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

Date: 25 May 2012

**PRE-TRIAL CHAMBER I**

**Before:** Judge Silvia Fernandez de Gurmendi, Presiding Judge  
Judge Hans-Peter Kaul  
Judge Christine Van den Wyngaert

**SITUATION IN LIBYA**

**IN THE CASE OF  
THE PROSECUTOR *v.*  
SAIF AL-ISLAM GADDAFI and ABDULLAH AL-SENUSSI**

**Public**

**Request related to the filing of observations by the *Amicus Curiae***

**Source:** Office of Public Counsel for Victims

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

**The Office of the Prosecutor**

Mr. Luis Moreno-Ocampo  
Ms. Fatou Bensouda

**Counsel for the Defence**

Mr. Xavier-Jean Keita, Principal Counsel  
Ms. Melinda Taylor, Counsel

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for Participation/Reparation**

**The Office of Public Counsel for Victims**

Ms. Paolina Massidda

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

**States Representative**

Professor Philippe Sands QC  
Professor Payam Akhavan  
Ms. Michelle Butler

**Amicus Curiae**

Lawyers for Justice in Libya  
Redress Trust

**REGISTRY**

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**Registrar & Deputy Registrar**

Ms. Silvana Arbia & Mr. Didier Preira

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Section**

**Other**

U.N. Security Council

## I. PROCEDURAL HISTORY

1. On 1 May 2012, the Government of Libya filed an Application pursuant to article 19 of the Rome Statute, wherein it requested the Chamber to: (i) postpone execution of the Surrender Request pursuant to article 95 of the Rome Statute and (ii) declare the case inadmissible and quash the Surrender Request (the “Application”).<sup>1</sup>

2. On 4 May 2012, the Chamber issued the “Decision on the Conduct of the Proceedings Following the ‘Application on behalf of the Government of Libya pursuant to Article 19 of the Statute’”, appointing, *inter alia*, for the purpose of the admissibility proceedings, Paolina Massidda from the Office of Public Counsel for Victims (the “OPCV” or the “Office”) as legal representative of victims who have already communicated with the Court in relation to the case.<sup>2</sup>

3. On 16 May 2012, Lawyers for Justice in Libya and Redress Trust (the “Applicants”) filed an Application to submit observations pursuant to rule 103 of the Rules of Procedure and Evidence (the “Rules”) in relation to the notions of “ability” and “willingness” enshrined in article 17 of the Rome Statute.<sup>3</sup>

4. On 18 May 2012, Pre-Trial Chamber I issued its decision authorising the Applicants to submit observations under rule 103 of the Rules by 8 June 2012 and

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<sup>1</sup> See the “Application on behalf of the Government of Libya pursuant to Article 19 of the Statute”, No. ICC-01/11-01/11-130-Red, 1 May 2012, paras. 107 and 108.

<sup>2</sup> See the “Decision on the Conduct of the Proceedings Following the ‘Application on behalf of the Government of Libya pursuant to Article 19 of the Statute’”, No. ICC-01/11-01/11-134, 4 May 2012, par. 13.

<sup>3</sup> See the “Application by Lawyers for Justice in Libya and the Redress Trust for leave to submit observations pursuant to rule 103 of the Rules of Procedure and Evidence”, No. ICC-01/11-01/11-148, 16 May 2012.

the Prosecutor, the OPCD and the Government of Libya to file their responses, if any, by 20 June 2012.<sup>4</sup>

5. The Principal Counsel of the OPCV hereby requests to be authorised to file a response to the observations submitted by the Applicants, if need be.

## II. SUBMISSIONS

6. As a matter of principle, the Principal Counsel contends that by virtue of the fact that the right of victims to submit observations on an admissibility challenge is directly enshrined in article 19(3) of the Rome Statute and rule 59 of the Rules of Procedure and Evidence, such right should not be limited to the filing of observations in relation to the admissibility challenge *per se* but should also encompass a possibility to present their views on any submission filed in relation to said admissibility challenge.

7. The Principal Counsel notes that Rule 103 of the Rules does not explicitly provides the possibility for victims to respond to observations filed by an *amicus curiae*, but it does not exclude said possibility and that said rule should be interpreted in light of the specific provisions of article 19(3) read in conjunction with article 68(3) of the Rome Statute.

8. The fact that Rule 103 of the Rules is not “exclusive” in addressing the issue related to whom might respond to an *amicus curiae* submission has been already recognized by the Pre-Trial Chamber in its decision dated 18 May 2012. Indeed, in said decision, it found appropriate for the Libyan Government to file a response

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<sup>4</sup> See the “Decision on the “Application by Lawyers for Justice in Libya and the Redress Trust for leave to submit observations pursuant to rule 103 of the Rules of Procedure and Evidence”, No. ICC-01/11-01/11-153, dated 18 May 2012 and notified on 21 May 2012.

*“considering that the Applicants wish to submit observations relevant for the Chamber’s determination on the outstanding Admissibility Challenge”<sup>5</sup>.*

9. It is the Principal Counsel’s contention that said interest should be also recognized to victims who participate in Article 19 proceedings. In this regard, the Principal Counsel would like to recall that victims have already been allowed to submit responses to *amicus curiae* submissions in the framework of ICC proceedings.<sup>6</sup>

10. Finally, the Principal Counsel notes that authorising victims to file observations on the *amicus curiae* submission is in conformity with their rights as enshrined in the Rome Statute and it is not prejudicial to the right of the Defence.

**FOR THE FOREGOING REASONS** the Principal Counsel of the OPCV, acting as legal representative of victims for the purpose of Article 19 proceedings, respectfully requests the Pre-Trial Chamber to allow her – should she deem it necessary for the protection of the interests of her clients – to submit observations on the *amicus curiae* to be filed on 8 June 2012 by the Applicants, within the same time-limit already established by the Chamber for the responses of the Prosecutor, the Defense and the Government of Libya.



**Paolina Massidda**  
**Principal Counsel**

Dated this 25<sup>th</sup> day of May 2012  
At The Hague, The Netherlands

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<sup>5</sup> *Idem*, page. 5.

<sup>6</sup> See the “Decision Inviting Observations from the Special Representative of the Secretary General of the United Nations for Children and Armed Conflict” (Trial Chamber I), No. ICC-01/04-01/06-1175, 18 February 2008, p. 9,