

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 4 June 2012

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández 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 Document

Decision on the "Request related to the filing of observations by the *Amicus Curiae*"

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

The Office of the Prosecutor

Luis Moreno-Ocampo

Fatou Bensouda

Counsel for the Defence

Xavier-Jean Keïta

Melinda Taylor

Legal Representatives of Victims

Legal Representatives of 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

Philippe Sands

Payam Akhavan

Michelle Butler

Amicus Curiae

Lawyers For Justice in Libya

Redress Trust

REGISTRY

Registrar

Silvana Arbia

Deputy Registrar

Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Pre-Trial Chamber I (“Chamber”) of the International Criminal Court issues the following decision on the “Request related to the filing of observations by the *Amicus Curiae*” (“Request”)¹, presented by the Office of Public Counsel for victims (“OPCV”).

1. On 1 May 2012, the Chamber received the “Application on behalf of the Government of Libya pursuant to Article 19 of the ICC Statute”, challenging the admissibility of the case against Saif Al-Islam Gaddafi (“Admissibility Challenge”).²

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’”, wherein it, *inter alia*: (i) appointed, for the purpose of proceedings following the Admissibility Challenge, Paolina Massidda from the OPCV as legal representative of victims who have already communicated with the Court in relation to the case; and (ii) invited the OPCV to submit observations to the Admissibility Challenge.³

3. On 18 May 2012, the Chamber, following a request to this effect,⁴ granted leave under rule 103 of the Rules of Procedure and Evidence (“Rules”) to Lawyers for Justice in Libya and the Redress Trust to submit observations, by 8 June 2012, on:

- i) [t]he current state of the judiciary in Libya and capacity building efforts undertaken since February 2011;
- ii) [t]he extent to which the present Libyan legal framework for the prosecution of the crimes contained in the Rome Statute complies with principles of accountability contained in the ICC Statute and other international treaties binding on Libya as well as principles of general international law;

¹ ICC-01/11-01/11-157.

² ICC-01/11-01/11-130-Conf and annexes. A public redacted version is also available (ICC-01/11-01/11-130-Red).

³ ICC-01/11-01/11-134.

⁴ ICC-01/11-01/11-148.

- iii) [t]he current security situation in Libya;
- iv) [t]he experiences of victims of crimes within the jurisdiction of the ICC in obtaining justice in Libya's domestic criminal jurisdictions and other fora, and the relationship between victims' rights and issues of admissibility under Article 17 of the Statute. This includes the capacity of the Libyan judiciary to afford justice to victims of serious international crimes (taking into account both tested capacity and plans for future prosecutions).⁵

In the same decision, the Chamber also set 20 June 2012 as the time limit for the responses to the *amicus curiae* observations from the Prosecutor, the OPCD and the Government of Libya.⁶

4. On 25 May 2012, the Chamber received the Request, in which the OPCV requests the Chamber "to allow [the Principal Counsel] – should she deem it necessary for the protection of the interests of her clients – to submit observations on the *amicus curiae* [observations] 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". In support of the request, the OPCV argues: (i) that the right of victims to submit observations on an admissibility challenge enshrined in article 19(3) of the Rome Statute and rule 59 of the Rules should also encompass a possibility to present their views on any submission filed in relation to the admissibility challenge; (ii) that rule 103 of the Rules does not exclude the possibility for victims to respond to *amicus curiae* observations and that victims have previously been authorised to submit responses to *amici curiae* observations in proceedings before the Court; and (iii) that "authorising victims to file observations on the *amicus curiae* submission is in conformity

⁵ ICC-01/11/01/11-153, para. 3 and p. 6.

⁶ *Ibid.*, p. 6

with their rights as enshrined in the Rome Statute and it is not prejudicial to the right of the Defence”.⁷

5. The Chamber notes rule 103 of the Rules, which gives it discretion to invite or grant leave for *amicus curiae* observations on any issue deemed appropriate. As concerns the involvement of parties, rule 103(2) of the Rules provides that the Prosecutor and the Defence *shall have* the opportunity to respond to any *amicus curiae* observations. However, while this provision establishes the minimum rights that the Chamber must accord to the Prosecutor and the Defence, it does not prevent as a matter of principle responses from other participants. Taking into account also the purpose of rule 103 of the Rules, the Chamber is of the view that it has the discretionary power to invite or grant leave to participants in proceedings before it to submit responses to *amicus curiae* observations whenever appropriate in the particular circumstances.

6. Having reviewed the Request, and considering the issues for which leave to submit *amicus curiae* observations has been granted to Lawyers for Justice in Libya and the Redress Trust, the Chamber is of the view that it is appropriate in the present circumstances to accord the OPCV the opportunity to submit a response to the *amicus curiae* observations. The Chamber further considers that it is appropriate to set 20 June 2012 as the time limit for the response.

⁷ Request, paras 6-10.

FOR THESE REASONS, THE CHAMBER

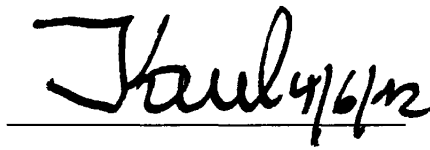
AUTHORISES the OPCV to file, no later than 20 June 2012, a response to the *amicus curiae* observations by Lawyers for Justice in Libya and the Redress Trust.

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

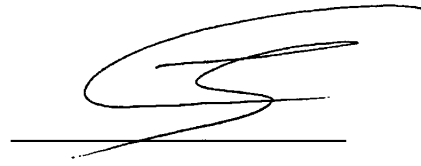


Judge Silvia Fernández de Gurmendi

Presiding Judge



Judge Hans-Peter Kaul



Judge Christine Van den Wyngaert

Dated this 4 June 2012

At The Hague, The Netherlands