



Original: English

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

Date: 9 August 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 “Libyan Government Request for Status Conference and
Extension of Time to file a Reply to the Responses to its Article 19
Admissibility Challenge”**

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

The Office of the Prosecutor
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

REGISTRY

Registrar
Silvana Arbia

Deputy Registrar
Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “ICC” or the “Court”) issues the following decision on the “Libyan Government Request for Status Conference and Extension of Time to file a Reply to the Responses to its Article 19 Admissibility Challenge” (the “Request”).¹

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 (the “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’”,³ wherein it, *inter alia*, invited the Prosecutor, the Office of Public Counsel for defence (the “OPCD”), the Security Council and the Office of Public Counsel for victims (the “OPCV”) to submit their responses to the Admissibility Challenge, no later than 4 June 2012.⁴ The time limit for the OPCD was subsequently extended, and eventually set for 24 July 2012.⁵

3. The responses to the Admissibility Challenge by the Prosecutor⁶ and the OPCV,⁷ and by the OPCD⁸ were filed on 4 June 2012 and 24 July 2012 respectively (the “Responses”).

¹ ICC-01/11-01/11-192.

² ICC-01/11-01/11-130-Red.

³ ICC-01/11-01/11-134.

⁴ *Ibid.*, p. 7.

⁵ ICC-01/11-01/11-187-Red.

⁶ ICC-01/11-01/11-167-Red.

⁷ ICC-01/11-01/11-166-Red-Corr.

⁸ ICC-01/11-01/11-190-Conf.

4. On 26 July 2012, the Chamber, following a request to this effect,⁹ authorised Libya to file a reply to the Responses and extended the deadline for the filing of Libya's reply to 13 August 2012 (the "Decision Authorising a Reply").¹⁰

5. On 30 July 2012, counsel for the Libyan Government filed the Request, wherein the Chamber is requested to convene "as a matter of urgency" a status conference to discuss certain procedural matters (the "Request for a Status Conference") and to "grant an extension of time until 18 days after the appointment of the new Libyan Ministry of Justice team to file its reply to the responses by the Prosecution, OPCV and OPCD to its article 19 admissibility challenge" (the "Request for an Extension of Time").¹¹

6. With respect to the Request for a Status Conference, counsel for the Libyan Government submits that at a status conference (i) the parties can receive a "report as to the progress of the ICC investigation into the conduct of OPCD counsel", (ii) a discussion can be held regarding "the propriety of the continuing appointment of the OPCD as counsel for Mr Gaddafi given the apparent breakdown in their relationship with the Libyan Government and his right to have defence counsel that can make an effective contribution to proceedings", (iii) an update as to the progress of the appointment of the Libyan Ministry of Justice team may be given, and (iv) a new timetable for proceedings may be set.¹²

⁹ ICC-01/11-01/11-150.

¹⁰ ICC-01/11-01/11-191.

¹¹ Libya's Request, paras 14-15.

¹² Libya's Request, paras 14-15.

7. On 1 August 2012, the Chamber shortened the time limit for the filing of responses by the Prosecution, OPCV and OPCD to the Request to 7 August 2012.¹³

8. On 1 August 2012, the Registrar filed observations on the Request, pursuant to regulation 24*bis* of the Regulations of the Court (the “Regulations”), informing the Chamber that, regarding the allegations against its staff members, the Court is currently not in a position to determine what steps could be appropriate in compliance with the ICC President’s statement of 22 June 2012, for the reasons therein developed.¹⁴

9. On 7 August 2012, the Prosecutor filed her response to the Request wherein she states that she does not oppose a reasonable extension of time for the Libyan Government to file its reply to the responses to the Admissibility Challenge and joins the Request for a Status Conference in order to address the identified procedural issues.¹⁵

10. On the same day, the OPCV filed its response to the Request, wherein it does not take any position on the Request for an Extension of Time and does not oppose the Request for a Status Conference.¹⁶

11. Also on 7 August 2012, the OPCD filed its response to the Request, requesting the Chamber to reject the Request for an Extension of Time and the Request for a Status Conference and to take relevant admissions as to the availability of the Libyan legal system or the unwillingness or inability of the Libyan authorities to carry out an investigation or prosecution against Mr

¹³ ICC-01/11-01/11-193.

¹⁴ ICC-01/11-01/11-194-Conf.

¹⁵ ICC-01/11-01/11-195.

¹⁶ ICC-01/11-01/11-196.

Gaddafi into consideration for the purposes of the decision on the Admissibility Challenge.¹⁷

12. On 9 August 2012, counsel for the Libyan Government filed an application for leave to reply and reply to (i) the OPCD's response to the Request and to (ii) the Registrar's Observations on the Request ("Request for leave to reply to the OPCD and Registrar's submissions"). Counsel for the Libyan Government further reiterates the need to grant the Request for a Status Conference and the Request for an Extension of Time.¹⁸

13. The Chamber notes article 19 of the Rome Statute, rule 58 of the Rules of Procedure and Evidence, regulations 24, 34 and 35 of the Regulations and articles 31, 33, 34, 37, 39-42 of the Code of Professional Conduct of Counsel (the "Code of Conduct").

14. With respect to the questions raised as to the continuing appointment of the OPCD counsel as counsel for Mr Gaddafi, the Chamber notes that no procedure as to the allegations against ICC staff members is currently under way at the Court for the reasons given by the Registry.¹⁹ The Chamber also notes that in light of the regime set out in Chapter 4 of the Code of Conduct, in particular articles 31, 33, 34, 37 and 39, the procedure related to investigations into the alleged misconduct by counsel does not fall within the competence of the Chamber.

15. In light of the foregoing, the Chamber is of the view that convening a status conference to discuss the continuing representation of Mr Gaddafi by counsel from the OPCD given the alleged breakdown in their relationship

¹⁷ ICC-01/11-01/11-197.

¹⁸ ICC-01/11-01/11-199.

¹⁹ ICC-01/11-01/11-194-Conf.

with the Libyan Government, or the “progress of the ICC investigation into the conduct of the OPCD counsel” would not be useful or appropriate.

16. With respect to the need to obtain an update as to the progress of the appointment of the Libyan Ministry of Justice team and the establishment of a new timetable for proceedings related to the Admissibility Challenge, the Chamber is of the view that these matters do not warrant convening a status conference as they may be expeditiously dealt with in writing.

17. With respect to the Request for an Extension of Time, the Chamber notes the submission of counsel for the Government of Libya that, on 7 July 2012, elections took place of the General National Congress which is scheduled to replace the National Transitional Council on 8 August 2012. Counsel for the Government of Libya submits that it will not be possible to obtain proper instructions or authority in relation to Libya’s reply to the Responses prior to the appointment of the new Minister of Justice, Attorney-General and Prosecutor-General, which is estimated to take place by 7 September 2012 or shortly thereafter.²⁰ They submit that they are thus unable to comply with the deadline set by the Chamber for the filing of such reply.

18. Taking into account the exceptional circumstances engendered by the transition to a newly elected government in Libya and the alleged inability of counsel to obtain instructions in the absence of a Minister for Justice, the Chamber considers it necessary to suspend the time limit set for the filing of Libya’s reply to the Responses.

19. However, the Chamber notes the fact that Mr Gaddafi has been detained for almost nine months and that the Admissibility Challenge was filed more than three months ago, on 1 May 2012. Furthermore, materials presented by

²⁰ Libya’s Request, para. 11.

the OPCD suggest that the Libyan authorities have recently announced their intention to commence the trial against Mr Gaddafi in Zintan in September 2012.²¹

20. In view of the foregoing and with the aim of preventing undue delays in the resolution of the Admissibility Challenge, the Chamber deems it necessary to receive a report as soon as possible as to the following:

- (i) the status of the appointment of the Minister of Justice, Attorney-General and Prosecutor-General in Libya and counsel's ability to take instructions from them;
- (ii) the status of domestic proceedings against Mr Gaddafi, including whether he has been appointed a lawyer for this purpose; and
- (iii) the conditions of detention of Mr Gaddafi.

21. Upon receipt of this report, the Chamber will determine whether to set a new date for a written reply or whether to receive such a reply together with other submissions from all parties and participants at a hearing to be convened to discuss all relevant issues related to the Admissibility Challenge.

22. Finally, the Chamber is of the view that in light of foregoing, it is not appropriate to grant Libya's Request for leave to reply to the OPCD and the Registrar's submissions.

FOR THESE REASONS, THE CHAMBER

DECIDES to suspend the time limit of 13 August 2012 set for Libya's reply to the Responses;

²¹ ICC-01/11-01/11-197, para. 32; ICC-01/11-01/11-197-Anx2.

REQUESTS counsel for the Government of Libya to file as soon as possible and no later than 7 September 2012, an update as to:

- (i) the status of the appointment of the Minister of Justice, Attorney-General and Prosecutor-General in Libya and counsel's ability to take instructions from them;
- (ii) the status of domestic proceedings against Mr Gaddafi, including whether he has been appointed a lawyer for this purpose; and
- (iii) the conditions of detention of Mr Gaddafi; and

REJECTS Libya's Request for a Status Conference;

REJECTS Libya's Request for leave to reply to the OPCD and the Registrar's submissions.

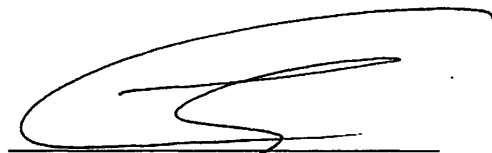
Done in both English and French, the English version being authoritative.



Judge Silvia Fernández de Gurmendi
Presiding Judge



Judge Hans-Peter Kaul



Judge Christine Van den Wyngaert

Dated this 9 August 2012

At The Hague, The Netherlands