

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 21 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 OPCD “Urgent Request Pursuant to Regulation 35 of the
Regulations of the Court”**

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 issues the following decision on the “Urgent Request Pursuant to Regulation 35 of the Regulations of the Court” (the “Request”), submitted by the Office of Public Counsel for the defence (the “OPCD”).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 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 (collectively, the “Responses”).

4. On 26 July 2012, the Chamber, following a request to this effect,⁹ authorised Libya to file a reply to the Responses and set the deadline for the filing of Libya’s reply to 13 August 2012.¹⁰

¹ ICC-01/11-01/11-201.

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.

5. On 30 July 2012, counsel for the Libyan Government requested the Chamber, *inter alia*, 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”.¹¹

6. On 9 August 2012, the Chamber decided to suspend the time limit of 13 August 2012 set for Libya’s reply to the Responses, and requested the Government of Libya to file as soon as possible, and no later than 7 September 2012, a report providing 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.¹² The Chamber further clarified that a determination on whether to set a new date for a written reply from Libya or whether to receive such a reply together with submissions from the other parties and participants at a specially convened hearing would be made only upon receipt of said report.¹³

7. On 14 August 2012, the Chamber received the Request,¹⁴ by which the OPCD seeks that the Chamber: (i) set the time limit for Libya’s reply at four days after the issuance of the Chamber’s decision on this request; or (ii) in the alternative, declare that article 95 of the Rome Statute (the “Statute”) is no longer in effect during the current suspension of the admissibility proceedings and order Libya to immediately surrender Mr Gaddafi to the Court.

⁹ ICC-01/11-01/11-150.

¹⁰ ICC-01/11-01/11-191.

¹¹ ICC-01/11-01/11-191, paras 14-15.

¹² ICC-01/11-01/-11-200, pp. 8-9.

¹³ ICC-01/11-01/-11-200, para. 21.

¹⁴ ICC-01/11-01/11-201.

8. On 21 August 2012, the OPCD filed, as an addendum to the Request, an article that appeared in *The Telegraph* on 18 August 2012, which, in the view of the OPCD, further demonstrates the ability of Libyan authorities to instruct Counsel for Libya on all relevant aspects concerning the reply to the Responses.¹⁵

9. The Chamber notes articles 19 and 95 of the Statute, rule 58 of the Rules of Procedure and Evidence and regulations 24, 34 and 35 of the Regulations of the Court (the “Regulations”).

10. With respect to the request to set a short time limit for Libya’s reply to the responses, the OPCD notes that the Chamber’s decision to suspend the time limit originally set was predicated upon the absence of a Minister of Justice,¹⁶ and submits, under regulation 35 of the Regulations, that “[t]here is good cause to vary the deadline”, since: (i) there is no factual or legal basis for Counsel for Libya being unable to take instructions from the current Minister of Justice or the Prosecutor-General; and (ii) the suspension of the deadline for filing a reply until after the appointment of the new Ministry of Justice team would be disproportionately deleterious to Mr Gaddafi’s rights.¹⁷

11. The Chamber notes that the points of fact and law presented by the OPCD in order to demonstrate that the Minister of Justice is currently not “absent”, and that there is no *de jure* or *de facto* impediment for Counsel for Libya to obtaining instructions from the Provisional Government, were already known to the Chamber at the time of the issuance of the decision of 9 August 2012. In this respect, a variation of the Chamber’s previous decision is not warranted.

¹⁵ ICC-01/11-01/11-202.

¹⁶ Request, para. 3.

¹⁷ *Ibid.*, para. 11.

12. In the view of the Chamber, the only changed circumstance referred to by the OPCD is the decision by the President of the National Public Conference to suspend its work until 23 August 2012, thus rendering it unlikely, according to the OPCD, that the assembly will be in a position to compose a government by 7 September 2012.¹⁸ Nevertheless, the Chamber does not consider this development such that it would affect, or warrant an alteration of, its previous decision. In that decision, in fact, the Chamber did not extend the time limit for Libya's reply until after the appointment of the Minister of Justice team. Rather, the Chamber postponed a decision in that respect until after receipt, no later than 7 September 2012, of an update on the appointment of the Minister of Justice team. As previously indicated, upon receipt of this report, the Chamber will determine whether to set a new time limit for a written reply, whether such reply is to be received orally during a status conference on the admissibility challenge, or whether, in such circumstances, a reply to the Responses is at all warranted. The time limit for this report ordered by the Chamber is not affected by any subsequent facts brought forward by the OPCD nor is the Chamber's intention to determine, immediately thereafter, the next stage of the admissibility proceedings.

13. In light of these considerations, the Chamber must reject also the second limb of the OPCD Request, which is to declare that article 95 of the Statute is no longer in effect during the current suspension of the admissibility proceedings. In fact, the Chamber considers that there is currently no suspension of the Admissibility Challenge, and that the latter is still "under consideration" within the meaning of article 95 of the Statute. The suspension of the time limit for Libya's reply to the Responses does not mean that consideration of the Admissibility Challenge is fundamentally impeded as a result of circumstances on the side of Libya. Conversely, as clarified above,

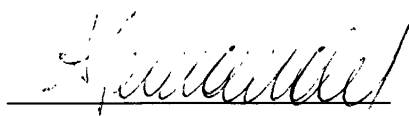
¹⁸ *Ibid.*, para. 5.

the Chamber retains control over the proceedings, and will determine an appropriate timetable immediately upon receipt of Libya's report.

FOR THESE REASONS, THE CHAMBER

REJECTS the Request.

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 21 August 2012

At The Hague, The Netherlands