

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/11-01/11
Date: 26 February 2013

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

Decision on the “Libyan Government’s Request for Leave to reply to Responses by OTP, OPCV and OPCD to Libyan Government’s further submissions on issues related to the admissibility of the case against Saif Al-Islam Gaddafi”

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

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Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

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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 “Court”) issues the present decision on the “Libyan Government’s Request for Leave to reply to Responses by OTP, OPCV and OPCD to Libyan Government’s further submissions on issues related to the admissibility of the case against Saif Al-Islam Gaddafi” (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 Mr Gaddafi (the “Admissibility Challenge”).²

2. On 7 December 2012, the Chamber issued the “Decision requesting further submissions on issues related to the admissibility of the case against Saif Al-Islam Gaddafi”, whereby it: (i) requested Libya to provide the evidence on which it intends to rely for the purposes of its Admissibility Challenge and its submissions on a number of issues identified in the decision, by 23 January 2013; and (ii) ordered the Prosecutor, the OPCD and the OPCV to provide their response to Libya’s further submissions, by 11 February 2013.³ The time limit for the OPCD and the OPCV was subsequently extended to 18 February 2013.⁴

3. On 23 January 2013, in compliance with the Chamber’s decision, Libya filed its further submissions (“Libya’s Submissions”), together with a number of annexes attached thereto.⁵

¹ ICC-01/11-01/11-283.

² ICC-01/11-01/11-130-Red.

³ ICC-01/11-01/11-239.

⁴ ICC-01/11-01/11-271-Conf-Exp. A public redacted version is also available.

⁵ ICC-01/11-01/11-258-Conf-Exp. A public redacted version is also available.

4. The responses to Libya's Submissions by the Prosecutor,⁶ and by the OPCD⁷ and the OPCV⁸ were filed on 11 February 2013 and 18 February 2013, respectively (collectively, the "Responses").

5. On 20 February 2013, Libya filed the Request, whereby, pursuant to regulation 24(5) of the Regulations of the Court (the "Regulations"), it requests the Chamber to grant it leave to reply to the Responses. Libya submits that "[e]ach of the parties [...] have raised arguments and issues in their Responses which are either not correct or which are raised for the first time and thus necessitates a reply from Libya in order to ensure that the Chamber has all the relevant information and submissions before it prior to issuing a decision on [the Admissibility Challenge]".⁹

6. More specifically, Libya states that examples of submissions to which a reply is warranted include submissions as to: (i) the application of procedural protections under Libyan law; (ii) the burden and standard of proof in admissibility proceedings; (iii) the alleged premature filing of the Admissibility Challenge; (iv) the practical application of the same conduct test to the Libyan charges in Mr Gaddafi's case; (v) the relevance of the role of victims in domestic proceedings when determining an admissibility challenge; (vi) the relationship between the Libyan judicial authorities and the authorities detaining Mr Gaddafi in Zintan; (vii) the protections available to witnesses during the trial phase of Libyan proceedings; (viii) the alleged lacunae in information or misleading submissions and evidence provided by

⁶ ICC-01/11-01/11-276. A public redacted version is also available.

⁷ ICC-01/11-01/11-281-Conf-Exp. A public redacted version is also available.

⁸ ICC-01/11-01/11-279.

⁹ Request, para. 4.

the Libyan Government on a plethora of admissibility related topics as recounted in the OPCD response.¹⁰

7. The OPCD and the OPCV filed their responses to the Request on 22 February 2013, both opposing to the Request.¹¹

8. The Chamber notes article 19 of the Rome Statute, rule 58 of the Rules of Procedure and Evidence and regulations 24 and 34 of the Regulations.

9. In particular, the Chamber notes that, pursuant to regulation 24(5) of the Regulations, “[p]articipants may only reply to a response with the leave of the Chamber” and that, if such leave is granted, the reply, according to regulation 34(c) of the Regulations, “shall be filed within ten days of notification [...] of the response”, unless otherwise ordered by the Chamber.

10. The Chamber agrees, as stated by another Chamber of the Court, that in relation to proceedings relating to the admissibility of a case, the Chamber “must ensure that proceedings are fair in the sense that, *inter alia*, the Government lodging the challenge enjoys the opportunity to respond to the parties and participants’ observations, but equally expeditious in order to avoid unnecessary delays of the entire proceedings”.¹²

11. In this regard, the Chamber observes, as previously held, that “the triggering force and main actor in [admissibility] proceedings is the entity challenging the admissibility of the case, in the present case Libya”.¹³ Accordingly, the Chamber deems it appropriate to authorise Libya to file a

¹⁰ Request, para. 5.

¹¹ ICC-01/11-01/11-285 and ICC-01/11-01/11-286, respectively.

¹² Pre-Trial Chamber II, The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang, “Decision under Regulation 24(5) of the Regulations of the Court on the Motion Submitted on Behalf of the Government of Kenya”, ICC-01/09-01/11-76, para. 15.

¹³ ICC-01/11-01/11-159, para. 9.

reply to the Responses. At the same time, the Chamber emphasises that the reply must be limited to the specific issues raised in the Responses.

12. In addition, Libya requests to be granted 18 days as the time limit for replying to the Responses, as this period of time is justified by the extensive and complex nature of the Responses and the need to translate portions thereof into Arabic in order to obtain instructions.¹⁴ However, the Chamber notes that almost the entirety of the topics identified by Libya in its Request as warranting a reply are either an integral part of the determination of the Admissibility Challenge, or are issues identified as relevant by the Chamber in its decision requesting further submissions on the admissibility of the case against Mr Gaddafi. The requested time limit appears, therefore, unnecessary for a reply limited to the arguments raised by the parties and participants in their Responses in relations to those issues. Furthermore, the Chamber notes the considerable amount of time that has elapsed since the filing of the Admissibility Challenge and the need, at the advanced stage of the current proceedings, to proceed to an expeditious resolution of the Admissibility Challenge.

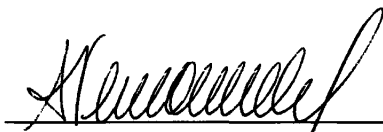
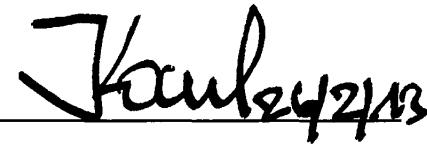
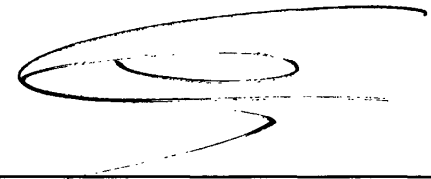
13. In these circumstances, the Chamber is of the view that, while it is fair to grant Libya the opportunity to reply to the Responses, the time limit requested by Libya is not justified and that setting the time limit at 4 March 2013 is sufficient for the limited scope of Libya's reply as hereby authorised.

¹⁴ Request, para. 7.

FOR THESE REASONS, THE CHAMBER

AUTHORISES Libya to file a reply to the Responses no later than 4 March 2013.

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 26 February 2013
At The Hague, The Netherlands