

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 24 April 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 Defence "Request for leave to Appeal the 'Decision
requesting further submissions on issues related to the admissibility of the
case against Saif Al-Islam Gaddafi'"**

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

The Office of the Prosecutor

Fatou Bensouda

James Stewart

Counsel for Saif Al-Islam Gaddafi

John R.W.D. Jones

Counsel for Abdullah Al-Senussi

Benedict Emmerson

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
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States Representatives

Philippe Sands

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Amicus Curiae

REGISTRY

Registrar

Herman Von Hebel

Victims and Witnesses Unit

Deputy Registrar

Didier Preira

Detention Section

**Victims Participation and Reparations
Section**

Others

Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”) issues the following decision on the Defence “Request for leave to Appeal the ‘Decision requesting further submissions on issues related to the admissibility of the case against Saif Al-Islam Gaddafi’” (the “Request”).¹

I. Procedural history

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 9 and 10 October 2012, the Chamber held a hearing on the admissibility of the case against Saif Al-Islam Gaddafi, in the presence of the representatives of Libya, the Prosecutor, the Defence and the OPCV (the “Admissibility Hearing”).

3. 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” (the “Decision”), in which the Chamber requested Libya to present by 23 January 2013 further submissions on a series of issues identified by the Chamber after the Admissibility Hearing, together with the appropriate evidence in their support.³

4. On 12 December 2012, the Defence filed the Request, in which it seeks leave to appeal the Decision, under article 82(1)(d) of the Rome Statute (the “Statute”), on the following issue: “whether the Chamber inappropriately exercised its discretion by requesting additional submissions on the

¹ ICC-01/11-01/11-243-Red and its public annex A.

² ICC-01/11-01/11-130-Red.

³ ICC-01/11-01/11-239, p. 23.

admissibility of the case, rather than issuing a decision on the merits of the admissibility challenge".⁴

5. On 17 December 2012, the Prosecutor,⁵ the Office of Public Counsel for Victims ("OPCV")⁶ and Libya⁷ filed their responses to the Request.

II. Submissions of the parties

A. *The Defence*

6. The Defence alleges that since there is no right to submit additional observations or evidence in the course of admissibility proceedings explicitly provided for in the Statute, the Rules of Procedure and Evidence (the "Rules") or the Regulations of the Court (the "Regulations"), the Decision constituted an exercise of the Chamber's discretionary powers under rule 58 of the Rules "to take appropriate measures for the proper conduct of the proceedings".⁸ The Defence submits that such exercise of discretion by the Chamber controverts the objectives of article 19(4) and (5) of the Statute.⁹

7. In the opinion of the Defence, "to the extent that the Decision fails to take into consideration the impact of the Chamber's exercise of discretion on the right of the defendant [...] the manner in which the Chamber resolved the Decision necessarily impact[s] on the fairness of the proceedings".¹⁰

8. The Defence submits that an immediate resolution of the issue by the Appeals Chamber "will advance the proceedings by [...] ruling on the question as to whether the Chamber should [...] issue a decision on the merits of the challenge to admissibility, or whether it is permissible for a State party

⁴ Request, para. 87.

⁵ ICC-01/11-01/11-244.

⁶ ICC-01/11-01/11-245.

⁷ ICC-01/11-01/11-246.

⁸ Request, para. 37.

⁹ *Ibid.*, para. 48.

¹⁰ *Ibid.*, para. 70.

to submit multiple challenges within the confines of one ‘admissibility challenge’”.¹¹

B. *The Prosecutor’s response*

9. The Prosecutor contends that the issue proposed by the Defence does not constitute an appealable issue within the meaning of article 82(1)(d) of the Statute, but is a mere disagreement with the Chamber’s exercise of its discretion to organize the admissibility proceedings in accordance with rule 58(2) of the Rules.¹²

10. Should the Chamber recognize that the issue proposed constitutes an appealable issue, the Prosecutor alleges that granting leave to appeal would not materially advance the proceedings, but would rather postpone them, thus prolonging the harm allegedly suffered by the suspect.¹³

C. *The OPCV response*

11. In the view of the OPCV, the issue identified by the Defence constitutes a mere disagreement with the Chamber’s determination. As such, it does not qualify as an appealable issue under article 82(1)(d) of the Statute.¹⁴

12. Furthermore, the OPCV contends that the Defence fails to demonstrate how the additional time limits accorded by the Chamber in the Decision “could have an identifiable and clear adverse impact on the rights of Mr Gaddafi”.¹⁵ Lastly, the OPCV argues that, at this stage, an interlocutory appeal would not materially advance the proceedings but “would cause undue delays, with little or no perceived benefits for Mr Gaddafi”.¹⁶

¹¹ *Ibid.*, para. 81.

¹² ICC-01/11-01/11-244, paras 11-12.

¹³ *Ibid.*, para. 16.

¹⁴ ICC-01/11-01/11-245, para. 2.

¹⁵ *Ibid.*, para. 7.

¹⁶ *Ibid.*, para. 8.

D. *Libya's response*

13. Libya argues that the Defence fails to identify an appealable issue arising out of the Decision, as it essentially complains about several rulings, including the Decision, issued by the Chamber in the course of the admissibility proceedings and concerning their organization.¹⁷

14. Libya submits that the arguments advanced by the Defence as to the impact of the Decision on the fair conduct of the proceedings "relate primarily to the substance of the appeal, which would be relevant only if leave were granted".¹⁸

15. Finally, Libya underlines that granting leave to appeal would further delay the proceedings before the Court rather than advancing them.¹⁹

III. Analysis and conclusions of the Chamber

16. The Chamber notes article 82(1)(d) of the Statute, rule 155 of the Rules and regulation 65 of the Regulations.

17. In particular, the Chamber recalls that article 82(1)(d) of the Statute sets out the following requirements to the granting of a request for leave to appeal:

(a) the decision involves an issue that would significantly affect (i) the fair and expeditious conduct of the proceedings, or (ii) the outcome of the trial; and

(b) in the opinion of the Pre-Trial Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.

18. With regard to the meaning of the term "issue" under article 82(1)(d) of the Statute, the Appeals Chamber has stated:

¹⁷ ICC-01/11-01/11-246, para. 6.

¹⁸ *Ibid.*, para. 14.

¹⁹ *Ibid.*, para. 17.

An issue is an identifiable subject or topic requiring a decision for its resolution, not merely a question over which there is disagreement or conflicting opinion. [...] An issue is constituted by a subject the resolution of which is essential for the determination of matters arising in the judicial cause under examination.²⁰

19. The Chamber recalls that the requirements envisaged in article 82(1)(d) of the Statute must be proved cumulatively and, thus, failure to establish one of them will result in rejecting a request for leave to appeal.

20. The Chamber finds that the issue identified by the Defence in its Request, which concerns the proper exercise of discretion by the Chamber under the legal framework of the Court, constitutes an issue arising out of the Decision, within the meaning of article 82(1)(d) of the Statute.

21. The Chamber, however, considers that the Defence failed to demonstrate how certifying the proposed issue for appeal may materially advance the proceedings, as required by article 82(1)(d) of the Statute. The Defence arguments are centred on the allegation that the Decision improperly protracts the admissibility proceedings in the present case. Considering the expected duration of proceedings on appeal, the Chamber is of the view that granting leave to appeal on the proposed issue, at this stage, would not materially advance the proceedings by ensuring their expeditiousness. Further, concerning the admissibility of the information included in the supplementary submissions requested in the Decision, the Chamber is equally of the view that granting leave to appeal at this juncture would not materially advance the proceedings, as this is a matter which can be raised, in appropriate circumstances, on a potential appeal against the decision on the Admissibility Challenge.

²⁰ Appeals Chamber, "Judgment on the Prosecutor's Application for Extraordinary Review of Pre-Trial Chamber I's 31 March 2006 Decision Denying Leave to Appeal", 13 July 2006, ICC-01/04-168, para. 9.

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 24 April 2013

At The Hague, The Netherlands