

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 15 May 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

**Decision on the OPCV “Request to access documents in relation to the
Challenge to the Jurisdiction of the Court by the Government of Libya”**

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

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 (“Court”) issues the following decision on the “Request to access documents in relation to the Challenge to the Jurisdiction of the Court by the Government of Libya” submitted by the Office of Public Counsel for victims (“OPCV”) (“OPCV Request”).¹

I. Procedural History

1. On 27 June 2011, the Chamber issued a warrant of arrest against, among others, Saif Al-Islam Gaddafi.²
2. On 1 May 2012, the Government of Libya filed, on a confidential basis, an application pursuant to article 19 of the Rome Statute (“Statute”), wherein it requests, *inter alia*, the Chamber to declare the case against Saif Al-Islam Gaddafi inadmissible (“Admissibility Challenge”).³ A public redacted version of the Admissibility Challenge was filed on the same date.⁴
3. 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’”, whereby the Chamber, *inter alia*: (i) appointed, for the purpose of 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; (ii) instructed the Registrar to provide the OPCV with information about victims who have communicated with the Court, as well as with any necessary assistance to contact the victim applicants as soon as possible; and (iii) instructed the

¹ ICC-01/11-01/11-138.

² Warrant of Arrest for Saif Al-Islam Gaddafi, 27 June 2011, ICC-01/11-01/11-3.

³ Application on behalf of the Government of Libya pursuant to Article 19 of the Statute, 1 May 2012, ICC-01/11-01/11-130-Conf and annexes attached thereto.

⁴ ICC-01/11-01/11-130-Red and annexes attached thereto.

Registrar to notify the public redacted version of the Admissibility Challenge, together with its public annexes, to the OPCV.⁵

4. On 8 May 2012, the OPCV Request was filed before the Chamber. The OPCV requests the Chamber to order the notification to the OPCV of: (i) the unredacted version of the Admissibility Challenge; (ii) three annexes, currently classified as confidential, to the Admissibility Challenge; and (iii) any other document filed as confidential in the record of the case which the Chamber might identify as relevant to the admissibility proceedings. The OPCV further requests to be systematically notified of any document submitted by the parties, participants, the Government of Libya and the Security Council related to the Admissibility Challenge and which might be classified as confidential, on the same basis as the other parties and participants in the admissibility proceedings.⁶

5. On 14 May 2012, the Libyan Government notified the Chamber that it does not object to the relief sought in the OPCV Request.⁷

II. Applicable Law and Findings of the Chamber

6. The Chamber notes article 19 of the Statute, rules 58 and 59 of the Rules of Procedure and Evidence (“Rules”), and regulation 23 *bis* of the Regulations (“Regulations”).

7. The Chamber notes that the Libyan Government has no objection to the OPCV being provided with the requested confidential documents as well as with any other document filed confidentially in the record of the case which the Chamber might identify as relevant to the Admissibility Challenge.

⁵ Decision on the Conduct of the Proceedings Following the “Application on behalf of the Government of Libya pursuant to Article 19 of the Statute”, 4 May 2012, ICC-01/11-01/11-134.

⁶ ICC-01/11-01/11-138, p. 7.

⁷ Libyan Government Response to OPCV Request to access documents in relation to the challenge to the jurisdiction of the Court by the Government of Libya, 14 May 2012, ICC-01/11-01/11-143.

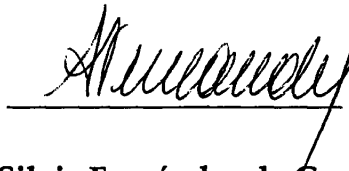
Accordingly, the Chamber deems it appropriate to grant the OPCV access to the confidential version of the Admissibility Challenge together with the annexes thereto.

8. Conversely, the Chamber considers that the question as to whether the OPCV should be notified of future documents related to the Admissibility Challenge classified as confidential must be determined on a case-by-case basis at the time that the documents are filed. Therefore, the Chamber requests the parties and participants to assess whether access to their future confidential filings in relation to the Admissibility Challenge may be given to the OPCV and, if so, to include the OPCV in the notification page of such filings. In this respect, the Chamber also notes that it has, pursuant to regulation 23 *bis* of the Regulations, the power to review *proprio motu* the level of confidentiality of any documents filed in the record of the case.


FOR THESE REASONS, THE CHAMBER

ORDERS the Registrar to notify to the OPCV documents ICC-01/11-01/11-130-Conf, ICC-01/11-01/11-130-Conf -AnxC, ICC-01/11-01/11-130-Conf -AnxD, ICC-01/11-01/11-130-Conf -AnxE, ICC-01/11-01/11-130-Conf -AnxF, ICC-01/11-01/11-130-Conf -AnxI.

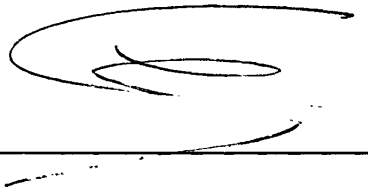
Done in both English and French, the English version being authoritative.



Judge Silvia Fernández de Gurmendi
Presiding Judge



Judge Hans-Peter Kaul



Judge Christine Van den Wyngaert

Dated this Tuesday, 15 May 2012

At The Hague, The Netherlands