

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 18 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 Document

Decision on the “Application by Lawyers for Justice in Libya and the Redress Trust for Leave to Submit Observations pursuant to Rule 103 of the Rules of Procedure and Evidence”

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

Lawyers For Justice in Libya

Redress Trust

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”) hereby issues this decision on the “Application by Lawyers for Justice in Libya and the Redress Trust for Leave to Submit Observations pursuant to Rule 103 of the Rules of Procedure and Evidence” (“Application”).¹

1. On 1 May 2012, the Government of Libya filed an application pursuant to article 19(2)(b) of the Rome Statute (“Statute”) challenging the admissibility of the case against Saif Al-Islam Gaddafi (“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 invited the Prosecutor, the Office of Public Counsel for Defence (“OPCD”), the Security Council and the Office of Public Counsel for Victims to submit any observations on the Admissibility Challenge, no later than 4 June 2012.⁴

3. On 16 May 2012, the Chamber received the Application, in which Lawyers for Justice in Libya and the Redress Trust (“Applicants”) seek leave to submit observations, pursuant to rule 103 of the Rules of Procedure and Evidence (“Rules”), in relation to the notions of “ability” and “willingness” enshrined in article 17 of the Statute. More specifically, should leave be granted by the Chamber, the Applicants propose to submit observations on:

i) [t]he current state of the judiciary in Libya and capacity building efforts undertaken since February 2011;

ii) [t]he extent to which the present Libyan legal framework for the prosecution of the crimes contained in the Rome Statute complies with principles of accountability contained in the ICC Statute and other

¹ ICC-01/11-01/11-148.

² ICC-01/11-01/11-130-Red and its annexes.

³ ICC-01/11-01/11-134.

⁴ *Ibid.*, p. 7.

international treaties binding on Libya as well as principles of general international law;

iii) [t]he current security situation in Libya;

iv) [t]he experiences of victims of crimes within the jurisdiction of the ICC in obtaining justice in Libya's domestic criminal jurisdictions and other fora, and the relationship between victims' rights and issues of admissibility under Article 17 of the Statute. This includes the capacity of the Libyan judiciary to afford justice to victims of serious international crimes (taking into account both tested capacity and plans for future prosecutions).⁵

4. The Chamber notes that the Applicants state that they "have been following and closely monitoring the institutional developments that have been taking place pursuant to the end of the revolution in Libya" as well as that they "have conducted training and are working closely with the legal community in Libya".⁶ Further, the Chamber further notes that the Applicants "do not purport to speak on behalf of specific victims, victim-applicants or potential applicants who seek to participate in proceedings nor to take a position as to the merits of the admissibility challenge".⁷

5. According to rule 103(1) of the Rules, the Chamber "may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate".

6. Upon review of the Application, the Chamber considers that the Applicants meet the requirements set out in rule 103(1) of the Rules and that it is indeed desirable, for the proper determination of the case before it, that leave to submit written observations on the proposed issues be granted.

⁵ Application, para. 27.

⁶ *Ibid.*, para. 26.

⁷ *Ibid.*, para. 28.

7. The Chamber also observes that, according to rule 103(2) of the Rules, the Prosecutor and the Defence shall have the opportunity to respond to the observations received under rule 103(1) of the Rules. Considering further that the Applicants wish to submit observations relevant for the Chamber's determination on the outstanding Admissibility Challenge, the Chamber finds it appropriate that the Government of Libya be authorised to respond to such observations as well.

8. Finally, the Chamber notes that according to rule 103(3) of the Rules, the Chamber shall determine what time limit shall apply to the filing of observations from *amicus curiae*. With a view to ensuring that a decision on the Admissibility Challenge is taken without undue delay, the Chamber considers it appropriate to set 8 June 2012 as time limit for the Applicants to submit the *amicus curiae* written observations, and 20 June 2012 as the time limit for the responses thereto, if any, from the Prosecutor, the OPCD and the Government of Libya.

FOR THESE REASONS, THE CHAMBER

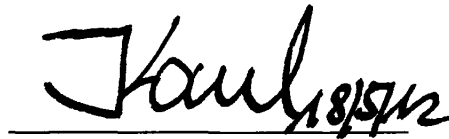
GRANTS the Applicants leave to submit observations on the issues identified at paragraph 3 of the present decision by 8 June 2012;

INVITES the Prosecutor, the OPCD and the Government of Libya to file their responses, if any, by 20 June 2012.

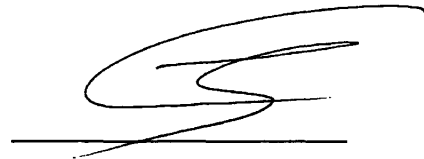
Done in both English and French, the English version being authoritative.



Judge Silvia Fernández de Gurmendi
Presiding Judge



Judge Hans-Peter Kaul



Judge Christine Van den Wyngaert

Dated this 18 May 2012

At The Hague, The Netherlands