

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 14 September 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

**Order convening a hearing on Libya's challenge 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

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 (the “Chamber”) of the International Criminal Court issues the following order convening a hearing on Libya’s challenge to the admissibility of the case against Saif Al-Islam Gaddafi.

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”).¹

2. On 2 May 2012, Libya filed the “Motion on Behalf of the Government of Libya Requesting an Oral Hearing in Respect of its Admissibility Challenge Pursuant to Article 19 of the Statute”.²

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’”,³ wherein it, *inter alia*, invited the Prosecutor, the Office of Public Counsel for defence (the “OPCD”), the Security Council and the Office of Public Counsel for victims (the “OPCV”) to submit written responses to the Admissibility Challenge and found that it would determine whether a hearing was necessary for the proper determination of the Admissibility Challenge following receipt of these written observations.⁴

4. The responses to the Admissibility Challenge by the Prosecutor⁵ and the OPCV,⁶ and by the OPCD⁷ were filed on 4 June 2012 and 24 July 2012 respectively (collectively, the “Responses”). Observations on the

¹ ICC-01/11-01/11-130-Red.

² ICC-01/11-01/11-132.

³ ICC-01/11-01/11-134.

⁴ *Ibid.*, pp 6-7.

⁵ ICC-01/11-01/11-167-Red.

⁶ ICC-01/11-01/11-166-Red-Corr.

⁷ ICC-01/11-01/11-190-Corr-Red.

Admissibility Challenge were also presented by Lawyers for Justice in Libya and the Redress Trust, pursuant to rule 103 of the Rules of Procedure and Evidence (“Rules”), on 8 June 2012.⁸

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

6. On 30 July 2012, counsel for Libya filed the “Libyan Government Request for Status Conference and Extension of Time to file a Reply to the Responses to its Article 19 Admissibility Challenge”, informing the Chamber that it would not be possible to receive instructions from the Libyan Government until after the appointment of the new Libyan Minister of Justice, Attorney-General and Prosecutor-General,¹¹ and requesting that the Chamber convene a status conference to discuss certain procedural matters related to the Admissibility Challenge and grant an extension of time for the filing of Libya’s reply to the Responses.¹²

7. On 9 August 2012, the Chamber suspended the time limit of 13 August 2012 set for Libya’s reply to the Responses, and requested counsel for 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, as well as counsel’s ability to obtain instructions from them; (ii) the status of domestic proceedings against Mr Gaddafi, including whether he had been appointed a lawyer for this purpose; and (iii) the conditions of detention of Mr Gaddafi.¹³

⁸ ICC-01/11-01/11-172.

⁹ ICC-01/11-01/11-150.

¹⁰ ICC-01/11-01/11-191.

¹¹ ICC-01/11-01/11-192, para. 13.

¹² ICC-01/11-01/11-192.

¹³ ICC-01/11-01/11-200, pp. 8-9.

The Chamber also clarified that a determination on the issue of 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.¹⁴

8. On 7 September 2012, counsel for Libya filed the “Libyan Government’s provisional report pursuant to the Chamber’s Decision of 9 August 2012 & Request for leave to file further report by 28 September 2012”,¹⁵ informing the Chamber that counsel expects that the appointments of the new Minister of Justice and the new Prosecutor-General will be final before 28 September 2012, but has not yet been able to obtain instructions on the other matters upon which the Chamber requested a report.¹⁶ Counsel for Libya, therefore, requests leave to file a further, more detailed report on the issues identified in the decision of 9 August 2012 by 28 September 2012.¹⁷

9. The Chamber notes article 19 of the Rome Statute (“Statute”), rules 58 and 59 of the Rules and regulation 24 of the Regulations.

10. A considerable period of time has been expended since the filing of the response of the OPCD on 24 July 2012 in an effort to allow counsel for Libya to obtain instructions and file a reply to the Responses. Throughout this time Saif Al-Islam Gaddafi has remained in detention in Libya and the Chamber is conscious of the need to resolve the issue of the admissibility of the case against him without further delay.

11. The Chamber takes note of the report submitted by Libya on 7 September 2012, as well as Libya’s availability to complement such report by 28 September 2012. In particular, the Chamber notes that counsel for Libya

¹⁴ ICC-01/11-01/11-200, para. 21.

¹⁵ ICC-01/11-01/11-205.

¹⁶ *Ibid.*, paras 12 and 17.

¹⁷ *Ibid.*, para. 22.

has advised that arrangements for the instruction of counsel on the new Government's policy concerning proceedings against Saif Al-Islam Gaddafi for crimes against humanity will be commenced immediately upon the appointment of the new Minister of Justice and Prosecutor-General, which is expected to be completed shortly after 20 September 2012.¹⁸

12. Under these circumstances, and in light of the information provided in the report, the Chamber does not consider it of assistance to receive any further report in writing from Libya on the issues identified in the 9 August 2012 Decision. At this stage, the Chamber considers it appropriate to convene a hearing where Libya will be given a further opportunity to provide its reply to the Responses orally together with submissions of the other parties and participants to the admissibility proceedings.

13. At the same hearing, Libya will also be given the opportunity to complement its previous submissions and evidence relevant to its Admissibility Challenge. In this respect, the Chamber notes that Libya previously indicated that it would be possible, within a few weeks of the filing of the Admissibility Challenge, to provide to the Chamber examples of the evidence that its investigation had produced and that would be relied upon in the accusation, trial and appeal phases of the trial.¹⁹ In the same vein, Libya anticipated that a number of further investigative steps were to be conducted immediately after the filing of the Admissibility Challenge,²⁰ and that, once these final steps were completed within a few weeks of the filing of the Challenge, the case would move further onto the accusation stage of proceedings.²¹ It is to be noted that no additional information has so far been provided to the Chamber, whether with respect to the anticipated examples of

¹⁸ ICC-01/11-01/11-205, para. 2.

¹⁹ Admissibility Challenge, para. 41.

²⁰ *Ibid.*, paras 46-48.

²¹ *Ibid.*, para. 49.

evidence collected or on the development, if any, of the proceedings against Saif Al-Islam Gaddafi.

14. At the hearing, the Prosecutor, the OPCD and the OPCV will also be given an opportunity to present further submissions and evidence relevant to the Admissibility Challenge. The Chamber will also make questions and seek any necessary clarifications from Libya, should the need arise. In this respect, in light of the issues to be discussed, the Chamber considers that the personal attendance of the Libyan Prosecutor-General at the hearing would be of assistance. The Chamber will also decide, at the hearing, on the need to allow final written submissions on the Admissibility Challenge.

15. In order to ensure the proper conduct of the hearing, the Chamber considers it necessary to set Wednesday, 3 October 2012, as the time-limit for the submission of any additional evidence upon which the participants intend to rely at the hearing.

FOR THESE REASONS, THE CHAMBER

DECIDES to convene a public hearing on Monday, 8 October 2012, from 14.30 to 19.00, and Tuesday, 9 October 2012, from 14.30 to 19.00, in the presence of representatives of Libya, the Prosecutor, the OPCD and the OPCV to discuss issues related to the Admissibility Challenge;

ORDERS the parties and participants to submit any additional evidence upon which they intend to rely at the hearing by Wednesday, 3 October 2012.

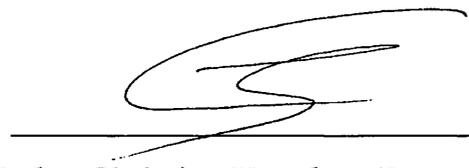
Done in both English and French, the English version being authoritative.



Judge Silvia Fernández de Gurmendi
Presiding Judge



Judge Hans-Peter Kaul



Judge Christine Van den Wyngaert

Dated this 14 September 2012

At The Hague, The Netherlands