

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 3 October 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**

URGENT

Public Document

Decision on the “Libyan Government Request, made in the interest of judicial efficacy, to either: (a) treat the hearing scheduled for 9-10 October 2012 as a status conference; or (b) reschedule the admissibility hearing for November 2012”

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

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 decision on the “Libyan Government Request, made in the interest of judicial efficacy, to either: (a) treat the hearing scheduled for 9-10 October 2012 as a status conference; or (b) reschedule the admissibility hearing for November 2012” (the “Request of Libya”).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 Saif Al-Islam Gaddafi (the “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, *inter alia*, invited the Prosecutor, the Office of Public Counsel for the 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

3. 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 Admissibility Challenge were also presented by Lawyers for Justice in Libya

¹ ICC-01/11-01/11-213.

² ICC-01/11-01/11-130-Red.

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.

and the Redress Trust, pursuant to rule 103 of the Rules of Procedure and Evidence (the “Rules”), on 8 June 2012.⁸

4. 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

5. 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

6. 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 The Chamber also clarified that a determination on the issue of whether to set

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.

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

7. 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

8. On 14 September 2012, the Chamber issued the “Order convening a hearing on Libya’s challenge to the admissibility of the case against Saif Al-Islam Gaddafi” (“Order Convening a Hearing”), in which it: (i) scheduled a hearing for Monday, 8 and Tuesday, 9 October 2012 in the presence of representatives of Libya, the Prosecutor, the OPCD and the OPCV to discuss issues related to the Admissibility Challenge; (ii) decided that at the hearing Libya will be invited to provide its reply to the Responses; (iii) decided that, at the hearing, Libya, the Prosecutor, the OPCD and the OPCV will be given the opportunity to complement their respective previous submissions and evidence relevant to the Admissibility Challenge; (iv) clarified that final written submissions after the hearing would be authorized only if necessary; and (v) established the date of Wednesday, 3 October 2012 as the final date for all parties and participants to file in the record of the case any evidence

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.

relevant to the Admissibility Challenge upon which the participants intend to rely at the hearing.¹⁸

9. On 25 September 2012, the Chamber informed the parties and participants that the hearing on the admissibility of the case will be held on Tuesday, 9 and Wednesday, 10 October 2012, from 9.30 to 16.00.

10. On 2 October 2012, the Request of Libya was filed before the Chamber.¹⁹ Libya requests the Chamber to (i) either “treat the hearing next week as a status conference (rather than as the substantive admissibility hearing) to give a general update on the case by the parties with a view to setting a timetable for the final stages of these admissibility proceedings in the near future”; or (ii) “reschedule the hearing for November by which stage it is expected that the new Minister of Justice and Prosecutor-General will have been appointed and in a position to have reviewed the relevant files, so that the Chamber might benefit fully from their presence at a substantive admissibility hearing”.²⁰

11. On 3 October 2012, the OPCD filed its response to the Request of Libya,²¹ by which it requests the Chamber to reject the Libya Request on the grounds, *inter alia*, that the current Minister of Justice and Prosecutor-General continue to have full authority to exercise their functions as well as of the irrelevance of the political affiliation of the Minister of Justice and the Prosecutor-General to the question as to the status of the proceedings against Saif Al-Islam Gaddafi.²²

¹⁸ ICC-01/11-01/11-207.

¹⁹ ICC-01/11-01/11-213.

²⁰ Request of Libya, para. 21.

²¹ ICC-01/11-01/11-215.

²² *Ibid.*, paras 9-10.

12. The Chamber notes articles 17 and 19 of the Rome Statute (the “Statute”) and rule 58 of the Rules.

13. The Chamber considers that the hearing scheduled for Tuesday, 9 and Wednesday, 10 October 2012 does not *per se* preclude any further steps in the admissibility proceedings. Indeed, the Chamber has already clarified in the Order Convening a Hearing that, should they be considered necessary, additional written submissions from the parties may be envisaged. In the same vein, it remains possible that a second hearing will be convened, should the Chamber determine that it is warranted. However, as already indicated,²³ the Chamber will only be in position to make this determination after receiving the oral submissions of the parties and participants at the hearing.

14. Accordingly, the Chamber does not consider it necessary to distinguish between a “substantive admissibility hearing” and a “status conference”, as suggested by Libya, since such distinction would not have any bearing *per se* on whether, and to what extent, the parties and participants should be subsequently granted an opportunity to provide further oral or written submissions on the admissibility of the case.

15. Finally, the Chamber acknowledges Libya’s submission with respect to the still ongoing “complex and delicate deliberations on forming a coalition government among different political parties”.²⁴ However, it also notes that Libya submitted that at the hearing it “will be represented by its focal point for the ICC Professor Ahmed El-Gehani, along with counsel, and will be in a position to deal, to the extent possible, with the matters raised in the Chamber’s Order” Convening a Hearing.²⁵ Therefore, in light of the above clarifications and considering that Libya also indicated to be available and

²³ Order Convening a Hearing, para. 14.

²⁴ Request of Libya, para. 11.

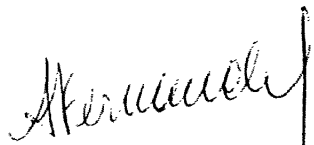
²⁵ *Ibid.*, para. 12.

prepared to proceed with the hearing notwithstanding the absence of the Prosecutor-General,²⁶ the Chamber does not find it necessary to further entertain the alternative request presented by Libya to postpone the hearing for November 2012.

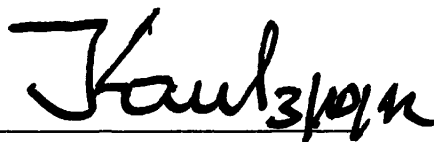
FOR THESE REASONS, THE CHAMBER

REJECTS the Request of Libya.

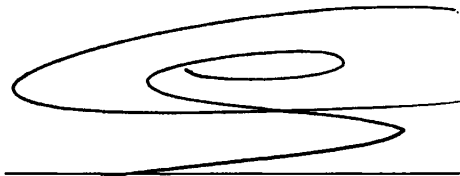
Done in both English and French, the English version being authoritative.



Judge Silvia Fernández de Gurmendi
Presiding Judge



Judge Hans-Peter Kaul



Judge Christine Van den Wyngaert

Dated this 3 October 2012

At The Hague, The Netherlands

²⁶ *Ibid.*