

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 28 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 OPCD request for variation of time limit

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 Office of Public Counsel for the defence (“OPCD”) request for variation of the time limit for the filing of its observations on Libya’s challenge to the admissibility of the case.

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 (“Mr Gaddafi”) (“Admissibility Challenge”).¹

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’”, wherein it, *inter alia*, invited the Prosecutor, the OPCD, the Security Council and the Office of Public Counsel for victims to submit observations on the Admissibility Challenge no later than 4 June 2012.²

3. On 21 May 2012, the OPCD filed the “Defence Request and Response to the ‘Libyan Government Application for leave to reply to any Response/s to article 19 admissibility challenge’”, wherein it, *inter alia*, requests that the Chamber “authorise the Defence to file its observations on admissibility after the deadline for the Prosecution, OPCV and Security Council” (“Request”).³ The OPCD argues that “the jurisprudence and the legislative regime of the ICC [support] the presumption that the Defence should always have the last word, particularly on issues which affect the fundamental rights of the defendant”.⁴

¹ ICC-01/11-01/11-130-Conf and annexes. A public redacted version is also available (ICC-01/11-01/11-130-Red).

² ICC-01/11-01/11-134.

³ ICC-01/11-01/11-154, para. 36.

⁴ ICC-01/11-01/11-154, paras 18-21.

4. The Chamber notes article 19 of the Rome Statute (“Statute”) and rule 58 of the Rules of Procedure and Evidence (“Rules”).

5. The Chamber notes that the OPCD does not contend that the requested extension of time is justified in light of specific, and newly revealed, factual circumstances; rather it argues that the deadline for its observations on the Admissibility Challenge must be amended on the ground that the OPCD should be allowed, as a matter of law, to submit its observations after other participants have done so, with a view to incorporating therein also a response to those other observations.

6. Pursuant to rule 58 of the Rules, the Chamber has the discretionary power to decide on the conduct of proceedings following an admissibility challenge. As held by the Appeals Chamber, save for the express stipulations of rule 58 of the Rules that the Prosecutor and the person concerned *shall* be given an opportunity to make written submissions, there are no limitations to the discretionary powers of the Chamber.⁵ In particular, rule 58 of the Rules does not impose any order in which the submissions of the various participants must be received and therefore does not support the Request.

7. The Chamber notes that the OPCD assertion of a “presumption that the Defence shall have the last word” is founded on provisions of the applicable law and on jurisprudence which pertain to trial and confirmation of charges proceedings. Without prejudice to the determination of the general validity of the principle advocated by the OPCD, the Chamber believes that the substantial difference in the nature of the respective proceedings prevents the automatic extension, by analogy, of any such principle to the present proceedings.

⁵ Appeals Chamber, “Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled ‘Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute’”, ICC-01/09-02/11-274, para. 87.

8. It is the view of the Chamber that the proceedings following an admissibility challenge under article 19 of the Statute, and governed primarily by rules 58 and 59 of the Rules, must be distinguished from proceedings in relation to the determination of the merits of the case against Mr Gaddafi.

9. The language of article 19(2) of the Statute and rule 58 of the Rules makes clear that in admissibility proceedings, the Prosecutor and the Defence are not the two parties to a dispute; rather the triggering force and the main actor in such proceedings is the entity challenging the admissibility of the case, in the present case Libya. The same transpires from the jurisprudence of the Appeals Chamber, which has held that “a State that challenges the admissibility of a case bears the burden of proof to show that the case is inadmissible”.⁶

10. In light of the above considerations, the Chamber concludes that a variation of the time limit for the observations by the OPCD on the Admissibility Challenge, in order for the OPCD to have the final word, is not warranted.

⁶ Appeals Chamber, “Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled ‘Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute’”, ICC-01/09-02/11-274, para. 61.

FOR THESE REASONS, THE CHAMBER

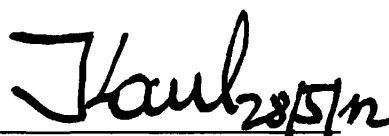
REJECTS the Request.

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

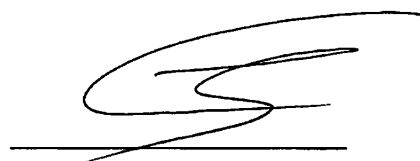


Judge Silvia Fernández de Gurmendi

Presiding Judge



Judge Hans-Peter Kaul



Judge Christine Van den Wyngaert

Dated this 28 May 2012

At The Hague, The Netherlands