

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 18 July 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 Redacted

**Decision on the OPCD "Request Pursuant to Regulation 23bis of the
Regulations"**

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 “Request Pursuant to Regulation 23bis of the Regulations” (the “Request”),¹ submitted by the Office of Public Counsel for the defence (the “OPCD”).

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” (the “Admissibility Challenge”), challenging the admissibility of the case against Saif Al-Islam Gaddafi (“Mr Gaddafi”).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 OPCD, the Security Council and the Office of Public Counsel for victims (the “OPCV”) to submit their responses to the Admissibility Challenge, no later than 4 June 2012.⁴ The time limit for the OPCD was subsequently extended and set for 11 July 2012.⁵

3. On 6 June 2012, following a decision by the Chamber to this effect,⁶ a delegation of four staff members of the Court, including Melinda Taylor, counsel for Mr Gaddafi from the OPCD, travelled to Libya in order to meet with Mr Gaddafi in Zintan. On 7 June 2012, as previously agreed with the national authorities of Libya, the delegation travelled to Zintan and met with Mr Gaddafi. From that day until 2 July 2012, the members of the delegation were kept in detention in Zintan. They returned to The Hague on 3 July 2012.

¹ ICC-01/11-01/11-186-Conf-Exp.

² ICC-01/11-01/11-130-Red.

³ ICC-01/11-01/11-134.

⁴ *Ibid.*, p. 7.

⁵ ICC-01/11-01/11-184.

⁶ ICC-01/11-01/11-129, p. 7.

4. On 11 July 2012, the OPCD filed its response to the Admissibility Challenge (the "Response").⁷ The Response has been filed by the OPCD as confidential *ex parte*, OPCD and Registry only.

5. On 13 July 2012, the Chamber received the Request, in which the OPCD seeks authorisation to keep confidential *vis-à-vis* the other parties to the admissibility proceedings or the public a number of submissions contained in the Response.

6. The Chamber notes articles 19 and 68(1) of the Rome Statute, rule 58 of the Rules of Procedure and Evidence, regulation 23*bis* of the Regulations of the Court.

7. The redactions sought by the OPCD fall within two main categories. The first category relates to information which the OPCD proposes temporarily not to communicate [REDACTED]

[REDACTED]⁸ With respect to this category of information, the OPCD states that the concerns could be addressed "by delaying the disclosure [REDACTED]

[REDACTED]⁹

8. The Chamber takes into account the present exceptional circumstances and the concerns raised by the OPCD [REDACTED]

[REDACTED]. In this respect, also considering that the requested delay is limited

⁷ ICC-01/11-01/11-185-Conf-Exp.

⁸ Request, para. 19.

⁹ Request, para. 22.

in time, the Chamber is of the view that the concerned submissions and information may be withheld [REDACTED] [REDACTED], and revealed by 24 July 2012.

9. In relation to the second category of information, the OPCD does not propose a delay in its disclosure but instead requests that it be kept permanently confidential or confidential *ex parte*. In the submission of the OPCD, this measure is necessary in order to [REDACTED] [REDACTED].

10. Having reviewed the Request, the Chamber is of the view that the extent of permanent redactions sought by the OPCD defeats the purpose of a response to an admissibility challenge. Indeed, it is the understanding of the Chamber that it may base its decision on the admissibility of the case exclusively on information which is accessible to the other parties to the admissibility proceedings. Accordingly, the OPCD may not rely on submissions and material which are not duly communicated to the other parties.

11. However, since the Chamber accepts that some information is made available to the parties on 24 July 2012,¹⁰ the Chamber considers it appropriate to allow the OPCD to address by the same date also this issue. The Chamber expects the OPCD to re-submit its response to the Admissibility Challenge, wherein the concerned arguments are either presented in a way for which no redaction would be necessary, or withdrawn.

12. The Chamber wishes to clarify that for the purposes of its decision on the admissibility of the case it will disregard the Response as filed, and will only

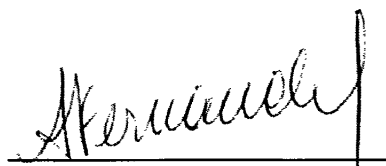
¹⁰ See above para. 8.

take into account the response as re-submitted by the OPCD pursuant to the present decision.

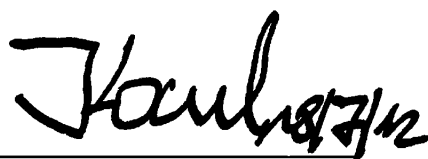
FOR THESE REASONS, THE CHAMBER

GRANTS the OPCD until 24 July 2012 to re-submit its response to the Admissibility Challenge in accordance with paragraphs 8 and 11 of the present decision.

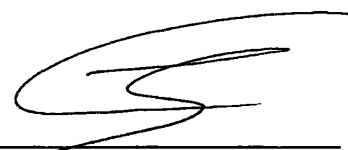
Done in both English and French, the English version being authoritative.



Judge Silvia Fernández de Gurmendi
Presiding Judge



Judge Hans-Peter Kaul



Judge Christine Van den Wyngaert

Dated this 18 July 2012

At The Hague, The Netherlands