

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 31 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

Public Redacted Version of the "Urgent Request for Extension of Time"

Source: Defence

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

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Ms. Fatou Bensouda, Deputy Prosecutor

Counsel for the Defence

Mr. Xavier-Jean Keïta, Principal Counsel
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Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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Victims**

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Amicus Curiae

REGISTRY

Registrar

Ms. Silvana Arbia, Registrar

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Victims and Witnesses Unit

Counsel Support Section

Detention Section

**Victims Participation and Reparations
Section**

Other

1. On 27 April 2012, the Honourable Pre-Trial Chamber issued its 'Decision on OPCD Requests', in which the Chamber found that it was "appropriate, pursuant to article 57(3)(b) of the Statute, and in light of the Appointment Decision, to request the Libyan authorities to enable the OPCD to visit with Mr Gaddafi on a privileged basis."¹
2. On 1 May 2012, the Libyan authorities filed their challenge to the admissibility of the case.²
3. On 4 May 2012, the Pre-Trial Chamber ordered the Prosecution, Defence and Office of Public Counsel for the Victims to submit their observations by 4 June 2012.³
4. On 18 May 2012, in light of the fact that the Libyan authorities had not confirmed the possibility and arrangements for such a visit, the Defence for Mr. Saif Al Islam Gaddafi requested the Pre-Trial Chamber to
 - I. report the non-compliance of the Libyan authorities to the Security Council;
 - II. stay the Chamber's consideration of the admissibility proceedings due to Libya's non-compliance with the implementation of fundamental rights of the Defence; and
 - III. draw adverse inferences concerning the implementation of Mr. Gaddafi's rights in detention and the willingness and ability of the Libyan authorities to genuinely investigate the case in accordance with internationally recognized standards of due process.⁴
5. On 30 May 2012, the Libyan authorities filed their response, in which they *inter alia*, indicated that

Based on current negotiations with the Zintan Brigade, it is the expectation of the Libyan Government that a visit for the OPCD and the Registrar with Mr Gaddafi can be arranged in the coming days. Indeed the Libyan ICC

¹ Decision on OPCD Requests, ICC-01/11-01/11-129, 27 April 2012.

² Application on behalf of the Government of Libya pursuant to Article 19 of the ICC Statute, ICC-01/11-01/11-130.

³ Decision on the Conduct of the Proceedings Following the "Application on behalf of the Government of Libya pursuant to Article 19 of the Statute", ICC-01/11-01/11-134

⁴ Public Redacted Version of the "Defence Request", ICC-01/11-01/11-152-Red

coordinator sent the OPCD and the Registrar an email to this effect today (30 May 2012) inviting them to make arrangements to travel to Libya for a visit as soon as possible. If, in the worst case scenario, there were to be further unforeseen delays in facilitating these imminent visits by the OPCD and the Registrar, the Libyan Government would have no objection to the deadline for the OPCD's response to the admissibility challenge being extended by the Pre-Trial Chamber.⁵

6. [REDACTED],⁶ [REDACTED].
7. At this point in time, in the absence of any concrete details, it cannot be definitively confirmed that the visit will occur. Indeed, by referring to the Government's limitations and the fact that Mr. Gaddafi is in the custody of the Zintan brigade,⁷ the Libyan authorities seem to be both foreshadowing and prospectively exculpating themselves from potential problems with the implementation of the visit.
8. The concerns raised in the Defence Request therefore remain valid.
9. Nonetheless, should the Pre-Trial Chamber either reject the Defence request to stay its consideration of the admissibility challenge, or defer its decision on this issue until after 4 June 2012, then it is imperative that the delay in implementing the visit does not prejudice Mr. Gaddafi's right to effectively participate in the admissibility proceedings.
10. Although Mr. Gaddafi provided the Defence with clear instructions concerning his overarching objective concerning his right to be tried before the ICC, Articles 14(2) of the Code of Professional Conduct for Counsel impose a positive obligation on the Defence to consult with the client concerning the means by which the objective should be pursued. In particular, it is essential that the Defence can consult with Mr. Gaddafi in relation to the main arguments, which will be raised in the Defence response, in order to ensure that such arguments do not prejudice his rights and strategy as concerns future proceedings either before the ICC or Libyan courts.
11. Mr. Gaddafi is also best placed to provide the Defence with key information, which is directly relevant to the question as to whether the criteria under Article 17 of the Statute are met.

⁵ Libyan Government Response to Defence Request, ICC-01/11-01/11-160 at para. 25.

⁶ [REDACTED].

⁷ ICC-01/11-01/11-160 at para. 24.

12. The right of the Defence to be heard in connection with the admissibility challenge will only be effective if the Defence can submit its observations after obtaining instructions from Mr. Gaddafi.
13. The Defence also envisages that after the visit occurs, it will need at least two working days after arrival back in The Hague to incorporate any modifications or suggestions from Mr. Gaddafi, and to conduct any discrete follow up inquiries or research that might be required.
14. Finally, the appropriate consequences of the fact that the Libyan authorities may not have not complied with their obligations to the Pre-Trial Chamber in good faith or in a timely manner is a separate issue, to the question as to whether the Defence should be granted an extension of time in order to effectively consult with its client.
15. Moreover, the eventual implementation of the visit does not in any way remedy the fact that Mr. Gaddafi has been deprived of the ability to consult with his lawyers in a timely manner, and his right to have issues concerning the forum of the case resolved in an expeditious manner. Nor does it eliminate any inferences which can be made concerning the willingness or ability of the Libyan authorities to conduct domestic proceedings in a manner, which is consistent with the requirements of Article 17 of the Statute.
16. Accordingly, the present request for an extension of time should be without prejudice to the relief, requested by the Defence on 18 May 2012.

Relief Requested

17. For the reasons set above, and without prejudice to the Defence requests of 18 May 2012, the Defence respectfully requests the Honourable Pre-Trial Chamber to delay the deadline for the Defence to respond to the admissibility challenge, until at least two working days after the Defence returns to The Hague upon the conclusion of a successful (privileged) visit with Mr. Gaddafi.



Xavier-Jean Keita, Counsel for Mr. Saif Al Islam Gaddafi

Dated this, 31th Day of May 2012

At The Hague, The Netherlands