

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-01/11**  
Date: **26 June 2012**

**PRE-TRIAL CHAMBER I**

**Before:** Judge Silvia Fernandez de Gurmendi, Presiding Judge  
Judge Hans-Peter Kaul  
Judge Christine Van den Wyngaert

**SITUATION IN LIBYA**

**Public Document**

**Prosecution response to Aisha Gaddafi's request for information relating to the status of the Prosecutor's investigations in the Libyan Situation**

**Source:** Office of the Prosecutor

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

**The Office of the Prosecutor**

**Counsel for the Defence**

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

Mr. Nicholas Kaufman

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel for the  
Defence**

**States' Representatives**

**Amicus Curiae**

## **REGISTRY**

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**Registrar**

Ms. Silvana Arbia

**Counsel Support Section**

**Deputy Registrar**

Mr. Didier Preira

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## Introduction

1. On 3 June 2012, Aisha Gaddafi (“Applicant”) filed a “request for information relating to the status of the Prosecutor’s investigations in the Libyan Situation” (“Application”), asking the Chamber to order the Prosecution to provide information as to the status of its investigation into the deaths of Muammer Gaddafi and Mutassim Gaddafi, the Applicant’s father and brother.
2. The Prosecution opposes this request. First, the Applicant is not a party to these proceedings and has no standing before the Court to make this request. Second, there is no provision in the Statute which authorises the relief sought by the Applicant. The Applicant’s request seeks to undermine the Prosecutor’s discretion to determine whether there exists a reasonable basis to proceed with an investigation.<sup>1</sup>

## Procedural History

3. On 27 December 2011, Aisha Gaddafi (“Applicant”) filed an application for victim status with the Victims Participation and Reparation Section (“VPRS”).<sup>2</sup>
4. On 24 January 2012, this Chamber issued its decision on victim’s participation in proceedings related to the Situation in Libya,<sup>3</sup> adopting the Victim Participation Framework established in the Situation in the Democratic Republic of Congo.<sup>4</sup>
5. On 21 February 2012, the Applicant requested the reclassification of a confidential document.<sup>5</sup> The request was dismissed *in limine* by this Chamber because she lacked standing to petition the Chamber for relief (“First Decision”).<sup>6</sup>

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<sup>1</sup> Article 15(3).

<sup>2</sup> ICC-01/11-19 para. 10.

<sup>3</sup> ICC-01/11-18.

<sup>4</sup> ICC-01/04-593.

6. On 1 June 2012, the Registry transmitted to the Chamber the Applicant's request for information relating to the Prosecutor's investigation of the murder of Mr. Muammar Mohammed Abu Minyar Gaddafi.<sup>7</sup>
7. On 4 June 2012, the Registry transmitted to the Chamber the Applicant's additional submissions in which she sought the public reclassification of her submission received on 1 June 2012 which had been transmitted by Registry as an *ex parte* filing.<sup>8</sup>

### Submissions

#### (I) The Applicant's lack of legal standing

8. The Applicant's claim that she has standing before this Court because she is a "communicating victim applicant in the Libyan situation and in the case against Saif Al-Islam Gaddafi" is unfounded.<sup>9</sup> Even accepting that she is a victim applicant,<sup>10</sup> the limited status claimed by the Applicant in her own submissions does not provide her the requisite standing to make the present request.
9. The Registry has, at most, recognized that the seven applicants (which presumably include the Applicant) are represented by OPCV for the purpose of the admissibility challenge.<sup>11</sup> In that regard, the OPCV already submitted its observations reflecting the views and concerns of all victim applicants who were

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<sup>5</sup> ICC-01/11-19.

<sup>6</sup> ICC-01/11-20.

<sup>7</sup> ICC-01/11-24-Conf-Exp. This document was made accessible to the Prosecution on 5 June 2012 when it was reclassified as public (ICC-01/11-24) and a public redacted version of its annex was filed (ICC-01/11-24-Anx 1-Red); ICC-01/11-25-Conf-Exp. This document was made accessible to the Prosecution on 5 June 2012 when it was reclassified as public (ICC-01/11-25) and a public redacted version of its annex was filed (ICC-01/11-25-Anx 1-Red).

<sup>8</sup> ICC-01/11-26-Conf-Exp. This document and its annex were made accessible to the Prosecution on 5 June 2012 when they were reclassified as public (ICC-01/11-26 and ICC-01/11-26-Anx 1).

<sup>9</sup> Application, para. 6.

<sup>10</sup> The Prosecution is not aware of the identities of victim applicants who were awarded participating status in the case or the situation; it has only received a list including the codes of seven applicants who have communicated with the Court in relation to the case. See ICC-01/11-01/11-161 and ICC-01/11-01/11-161-Anx1.

<sup>11</sup> ICC-01/11-01/11-161.

granted a participating status.<sup>12</sup> Contrary to the implication of the Applicant,<sup>13</sup> the Registry has not further recognized that the Applicant, as a victim applicant, is entitled to require that the Prosecution inform her of ongoing or contemplated investigations, separate from the admissibility proceedings, or that she has individual standing before the Court.

10. The ordinary rule is that participation of victims is confined to proceedings before the Court, and aims to afford victims an opportunity to voice their views and concerns on matters affecting their personal interests. As the Appeals Chamber has conclusively established, this status does not equate them to parties to the proceedings before a Chamber. Their participation is restricted to issues arising in proceedings before a Chamber, touching on their personal interests, and must be consistent with the rights of the accused and a fair and impartial trial.<sup>14</sup>
11. But, contrary to the suggestion by the Applicant,<sup>15</sup> the Pre-Trial Chamber has not further agreed that victim applicants have the standing to demand prosecutorial action or justification for non-action at the situational stage. And there is no provision in the Statute that authorizes a victim applicant to demand that the Prosecution update him or her on its investigation, or the Court to order the Prosecution to provide such an update.
12. Thus, the granting of victim applicant status does not confer on Applicant an entitlement to be informed about the investigation or to request relief from the Chamber by virtue of her purportedly recognized status as victim applicant. Nor does she have separate and individual standing to appear before the Court or make individual requests for information. As explained below, a victim does not have a right to be informed directly about an investigation or to require the

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<sup>12</sup> ICC-01/11-01/11-166-Red-Corr, Part III, paras 50-55.

<sup>13</sup> Application, para.6.

<sup>14</sup> ICC-01/04-556OA4 OA5 OA6, para. 55.

<sup>15</sup> Application, para. 6.

Prosecution to undertake particular investigative steps outside of ongoing judicial proceedings.<sup>16</sup>

**(II) The Court is not authorized to issue such an order, which also would be contrary to legitimate interests in preserving the confidentiality of an investigation**

13. None of the provisions the Applicant relies upon in the Statute or Regulations authorizes the Court to order the Prosecutor to disclose information concerning the status of an investigation to a third party.

14. Whatever participatory rights the Applicant may have, they can be exercised only within the context of judicial proceedings.<sup>17</sup> As emphasized by the Appeals Chamber, “the initial appraisal of a referral of a situation” is within “the exclusive province of the Prosecutor,”<sup>18</sup> and “an acknowledgment by the Pre-Trial Chamber of a right to victims to participate in the investigation would necessarily contravene the Statute by reading into it a power outside its ambit and remit.”<sup>19</sup> As held by the Appeals Chamber, victim participation must be related to the charges in the case.<sup>20</sup> Thus, though the Applicant states that she “wishes to know” what steps the Prosecution has taken to preserve evidence and notes that if evidence-taking occurs under Article 56 she may have a limited right to participate,<sup>21</sup> neither point permits the conclusion that she has a right to demand an update on investigative steps undertaken, contemplated, or rejected by the Prosecution.

15. Furthermore, the Prosecution submits that the Chamber does not have the power to require the Prosecution to apprise the Applicant of the status of its

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<sup>16</sup> See paragraphs 15-16 below.

<sup>17</sup> ICC-01/04-556, para.45.

<sup>18</sup> ICC-01/04-556, para.51.

<sup>19</sup> ICC-01/04-556, para.52.

<sup>20</sup> ICC-01/04-01/06OA9 OA 10.

<sup>21</sup> Application, para. 11.

investigation. Article 68(3), which the Applicant cites,<sup>22</sup> provides only that the Chamber shall permit the views and concerns of affected victims to be presented and considered at appropriate stages in the proceedings, but it does not require that the Chamber order the Prosecution to satisfy a victim's demand for particular information about its investigation. The Regulations she cites also are inapt.<sup>23</sup> Regulation 46(2), regarding the assignment of a situation to a Pre-Trial Chamber, does not authorize it to require, without cause, the Prosecution to provide specific information about its ongoing investigative activities. Regulation 48(1) empowers the Chamber to request additional information in order to rule on a party's request under Articles 53, 56, or 57. Nothing in these provisions authorizes the Chamber to order the Prosecutor to inform a third party of her decision, her reasons to proceed or the status of an investigation.

16. Finally, even if the Pre-Trial Chamber finds that a victim might be entitled to such access, the Prosecution submits that the provision of such access at this early stage in the proceedings would be premature, since such access is usually countenanced only in the context of proceedings relating to the confirmation of charges or trial. And where such access is otherwise considered justified, it can be limited if the relevant limitation is necessary to safeguard "*another competing interest protected by the Statute and the Rules*" - such as national security, the physical or psychological well-being of victims and witnesses, or the Prosecution's investigations.<sup>24</sup>

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<sup>22</sup> Application, para. 8.

<sup>23</sup> Application, para. 14.

<sup>24</sup> *Prosecutor v. Germain Katanga et al.*, Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case, [ICC-01/04-01/07-474](#), 13 May 2008, para. 147. See further *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on Limitations of Set of Procedural Rights for Non-Anonymous Victims, [ICC-01/04-01/07-537](#), 30 May 2008, pp 12-13; *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Public Redacted Version of the 'Decision on the 97 Applications for Participation at the Pre-Trial Stage of the Case', [ICC-01/04-01/07-579](#), 10 June 2008, p. 48.

17. The Prosecution submits that in the instant case, the need to prevent an unfavourable impact on any ongoing or possible future investigation qualifies as *“another competing interest protected by the Statute and the Rules”*. Hence, a prospective victim should not have access to confidential documents or information, if such exist, pertaining to the Prosecutor’s investigation under Article 15(1). Moreover, the Prosecution is obliged to ensure the confidentiality of its information, the protection of any person, and the preservation of evidence.<sup>25</sup> Requiring the Prosecution to inform interested victims of the ongoing status of its investigation not only intrudes on prosecutorial discretion,<sup>26</sup> but also might impede its ability to protect that investigation itself.

### Conclusion

18. The Applicant’s request should be dismissed. She has no standing to bring this Application before the Court and the Statute does not authorize the remedy she seeks. Additionally, requiring the Prosecutor to disclose the progress of an investigation would intrude on prosecutorial independence and discretion and also would potentially impede the investigation itself.



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Fatou Bensouda  
Prosecutor

Dated this 26<sup>th</sup> Day of June 2012

At The Hague, The Netherlands

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<sup>25</sup> Articles 54(3)(f) and see Article 54(1)(b).

<sup>26</sup> Article 53.