

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 4 April 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

**Decision Regarding the Second Request by the Government of Libya for
Postponement of the Surrender of Saif Al-Islam Gaddafi**

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

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

Xavier-Jean Keïta

Melinda Taylor

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 (the “Court”) issues the following decision on Libya’s “Notification and Request by the Government of Libya in response to ‘Decision on Libya’s Submissions Regarding the Arrest of Saif Al-Islam Gaddafi’”, filed on 22 March 2012,¹ and “Application on behalf of the Government of Libya for leave to reply to any Response/s to be filed on 30 March 2012 to the ‘Notification and Request by the Government of Libya in response to ‘Decision on Libya’s Submissions regarding the arrest of Saif Al-Islam Gaddafi’”, filed on 30 March 2012.²

I. Procedural History and Submissions

A. Procedural History

1. On 27 June 2011, the Chamber issued a warrant of arrest against, among others, Saif Al-Islam Gaddafi (“Mr Gaddafi”).³ On 5 July 2011, the Registrar notified the Libyan authorities of a request for cooperation asking for their assistance in arresting Mr Gaddafi and surrendering him to the Court (the “Surrender Request”).⁴

2. On 23 November 2011, a letter from the National Transitional Council was transmitted to the Chamber. The official English translation of this letter was formally put into the case record six days later.⁵ This letter confirmed the arrest of Mr Gaddafi on 19 November 2011 in Libya.

3. On 23 January 2012, the Libyan authorities sought, pursuant to article 94 of the Rome Statute (the “Statute”) postponement of the Surrender Request

¹ ICC-01/11-01/11-82-Conf.

² ICC-01/11-01/11-93-Conf.

³ Pre-Trial Chamber I, Warrant of Arrest for Saif Al-Islam Gaddafi, ICC-01/11-01/11-3.

⁴ ICC-01/11-01/11-5 and ICC-01/11-01/11-25-Conf.

⁵ ICC-01/11-01/11-34 with annex.

pending the completion of national proceedings in relation to other crimes against Mr Gaddafi (the “First Postponement Request”).⁶

4. On 7 March 2012, the Chamber issued the “Decision on Libya’s Submissions Regarding the Arrest of Saif Al-Islam Gaddafi” (the “7 March 2012 Decision”), dismissing the First Postponement Request and requesting that Libya make its decision to grant the Surrender Request and inform the Chamber accordingly within seven days of notification of the Arabic translation of the 7 March 2012 Decision.⁷

5. On 22 March 2012, Libya notified the Chamber of its intention to challenge the admissibility of the case concerning Mr Gaddafi pursuant to articles 19(2)(b), (5), and (6) of the Statute by 30 April 2012 and requested, pending a decision on this challenge, that the Pre-Trial Chamber suspend its execution of the Surrender Request in accordance with, *inter alia*, article 95 of the Statute and rule 58 of the Rules of Procedure and Evidence (the “Rules”) (the “Second Postponement Request”).⁸

6. After an order of the Chamber which shortened the time limit for responses to the Second Postponement Request,⁹ Libya requested leave to reply to any prospective responses that may be filed regarding their Second Postponement Request (the “Request to Reply”).¹⁰

7. The Office of Public Counsel for the Defence (the “OPCD”), having been previously authorised by the Chamber to represent the general interests

⁶ ICC-01/11-01/11-44 with confidential annex 1.

⁷ ICC-01/11-01/11-72-Conf.

⁸ ICC-01/11-01/11-82-Conf.

⁹ Pre-Trial Chamber I, Order on the filing of responses to the Notification and Request by the Government of Libya in Response to ‘Decision on Libya’s Submissions Regarding the Arrest of Saif Al-Islam Gaddafi, ICC-01/11-01/11-85-Conf.

¹⁰ ICC-01/11-01/11-93-Conf.

of Mr Gaddafi,¹¹ responded to the Second Postponement Request on 30 March 2012 (the “OPCD Response to the Second Postponement Request”)¹² and to the Request to Reply on 2 April 2012 (the “OPCD Response to the Request to Reply”).¹³

8. The Prosecutor did not respond to either the Second Postponement Request or the Request to Reply.

B. Submissions

9. The Chamber notes the confidential classification of the submissions made regarding the Second Postponement Request and the Request to Reply. The Chamber considers that the references made to these submissions in the present decision are required by the principle of publicity and judicial reasoning. In the opinion of the Chamber, these references are not inconsistent with the nature of the documents referred to and have been kept to a minimum.

10. Libya’s Second Postponement Request makes no substantive arguments as to why article 95 of the Statute or rule 58 of the Rules applies in the present circumstances.

11. As to the OPCD Response to the Second Postponement Request, the Chamber notes that regulation 36 of the Regulations of the Court (the “Regulations”) requires that pages of filings before the Court, including footnotes, may not exceed an average of 300 words per page. The Chamber also notes regulation 37 of the Regulations, which indicates that filings shall not exceed 20 pages, unless otherwise provided in the statutory instruments

¹¹ Pre-Trial Chamber I, Public Redacted Version of Decision Requesting Libya to file Observations Regarding the Arrest of Saif Al-Islam Gaddafi, ICC-01/11-01/11-39-Red, p. 6.

¹² ICC-01/11-01/11-94-Conf-Red with confidential annex.

¹³ ICC-01/11-01/11-98-Conf.

of the Court. When viewed in light of these Regulations, the OPCD Response to the Second Postponement Request is more than 2,000 words over the maximum number which are allowed for a response in these circumstances. The Chamber therefore finds the OPCD Response to the Second Postponement Request to be inadmissible and will not consider the arguments raised therein.

12. In its Request to Reply, Libya asks to be allowed to reply to any prospective responses made related to the Second Postponement Request by a deadline of four days from the notification of any such responses.¹⁴ Libya estimates that its reply would be connected to the (what were then anticipated, since filed) submissions of the OPCD on the proper interpretation of article 95 of the Statute.¹⁵

13. In the OPCD Response to the Request to Reply, the OPCD argues that the Request to Reply should be rejected due to “the lack of an objective basis for raising additional arguments at this point in time, the unfairness vis-à-vis the ability of the OPCD to have an effective right of response, and the impact it would have on the ability of the Chamber to dispose of this matter in an expeditious manner.”¹⁶

II. Applicable Law and Findings of the Chamber

14. The Chamber, in accordance with article 21 of the Statute, has considered articles 19(2), 89 and 95 of the Statute, rule 58 of the Rules and regulations 24(5), 36 and 37 of the Regulations.

¹⁴ Request to Reply, para. 2.

¹⁵ Request to Reply, para. 14.

¹⁶ OPCD Response to the Request to Reply, para. 2.

15. The Chamber recalls, in particular, article 95 of the Statute, which stipulates:

Where there is an admissibility challenge under consideration by the Court pursuant to article 18 or 19, the requested State may postpone the execution of a request under this Part pending a determination by the Court, unless the Court has specifically ordered that the Prosecutor may pursue the collection of such evidence pursuant to article 18 or 19.

16. As a preliminary matter, the Chamber wishes to address first Libya's Request to Reply. The Chamber notes that no admissible responses have been filed to the Second Postponement Request and, in any case, the Chamber considers that it does not need any further submissions on the proper interpretation of article 95 of the Statute at this time. Accordingly, Libya's Request to Reply must be rejected.

17. As to the legal bases Libya presents in support of its Second Postponement Request, the Chamber notes that rule 58 of the Rules only details some specific points of procedure which are involved when making an admissibility challenge under article 19 of the Statute. This rule makes no mention of postponing a request for cooperation and cannot therefore be used as a legal basis by the Government of Libya in support of its Second Postponement Request.

18. With regard to article 95 of the Statute, on which the Government of Libya further bases its Second Postponement Request, the Chamber recalls that this provision may be invoked only "*[w]here there is an admissibility challenge under consideration by the Court* pursuant to article 18 or 19" (emphasis added).¹⁷ Consequently, article 95 of the Statute only applies when there is an admissibility challenge under consideration. Though Libya has announced that an admissibility challenge is forthcoming, there is currently no such challenge before the Chamber. Therefore, the Chamber holds that

¹⁷ Article 95 of the Statute (emphasis added).

article 95 of the Statute cannot serve as a legal basis for Libya's Second Postponement Request. Consequently, the Second Postponement Request presented by the Government of Libya must be rejected. At this time, the Chamber does not consider it necessary to determine whether article 95 of the Statute applies to surrender requests.

19. The Chamber recalls Libya's obligation to surrender Mr Gaddafi to the Court as of the day the warrant of arrest against Mr Gaddafi was notified to the Libyan authorities.¹⁸ The Chamber further notes that, despite the Chamber's request in its 7 March 2012 Decision,¹⁹ the Government of Libya has not informed the Chamber hitherto of its decision to grant the Surrender Request. Absent any justification for postponing the execution of the Surrender Request, the Government of Libya must therefore: (i) make its decision to grant the Surrender Request; (ii) afford Mr Gaddafi the procedure described in article 59 of the Statute which necessarily follows from arresting a person pursuant to a surrender request; and (iii) start making arrangements in preparation for the surrender of Mr Gaddafi to the Court without further ado. The Chamber wishes to clarify for all possible purposes that any failure on the part of the Government of Libya to comply with its obligations to enforce the warrant of arrest against Mr Gaddafi may warrant that the Court make a finding to this effect.²⁰

¹⁸ See also Pre-Trial Chamber I, Decision on the Prosecutor's Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar GADDAFI, Saif Al-Islam GADDAFI and Abdullah AL-SENUSSI, ICC-01/11-01/11-1, p. 42.

¹⁹ Pre-Trial Chamber I, Decision on Libya's Submissions Regarding the Arrest of Saif Al-Islam Gaddafi, ICC-01/11-01/11-72-Conf, p. 8.

²⁰ Pre-Trial Chamber I, Decision informing the United Nations Security Council about the lack of cooperation by the Republic of the Sudan, ICC-02/05-01/07-57.

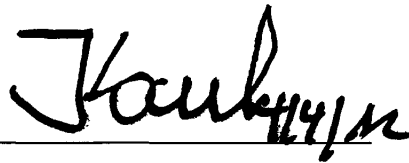
FOR THESE REASONS, THE CHAMBER HEREBY

- a) **rejects** the Second Postponement Request;
- b) **rejects** the Request to Reply;
- c) **reiterates its request** that Libya make its decision to grant the Surrender Request and proceed immediately with the surrender of Mr Gaddafi to the Court.

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 Wednesday, 4 April 2012

At The Hague, The Netherlands