

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 17 April 2013

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 on the "Request to Withdraw"

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Fatou Bensouda

James Stewart

Counsel for the Defence

John R.W.D. Jones

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**

Xavier-Jean Keïta

Melinda Taylor

States Representatives

Philippe Sands

Payam Akhavan

Amicus Curiae

REGISTRY

Registrar

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 present decision on the request from the Office of Public Counsel for the defence (the “OPCD”) for authorisation to withdraw from its representation of Saif Al-Islam Gaddafi (“Mr Gaddafi”).¹

I. Procedural history

1. On 3 March 2012, pursuant to a decision of the Chamber ordering a visit to Libya,² counsel from the OPCD visited Mr Gaddafi, in the course of which Mr Gaddafi signed a declaration [REDACTED] indicating that he was willing for the OPCD to represent him before the Court until a counsel is appointed.³

2. On 17 April 2012, the Chamber appointed Xavier-Jean Keïta and Melinda Taylor from the OPCD as counsel for Mr Gaddafi pursuant to regulation 76(2) of the Regulations of the Court (the “Regulations”) and reminded the OPCD to continue to assist Mr Gaddafi in acquiring counsel consistent with his wishes.⁴

3. On 1 May 2012, Libya filed a challenge to the admissibility of the case against Mr Gaddafi under article 19 of the Rome Statute (the “Statute”) (the “Admissibility Challenge”).⁵

4. On 4 March 2013, the OPCD requested the authorisation of the Chamber to (i) withdraw its counsels’ representation of Mr Gaddafi pursuant to regulation 78 of the Regulations, and (ii) recognise the appointment of John R.W.D. Jones as replacement defence counsel for Mr Gaddafi (the “Request”). The OPCD also

¹ Request to Withdraw, 4 March 2013, ICC-01/11-01/11-292-Conf-Exp.

² Pre-Trial Chamber I, Decision on the Registry-OPCD Visit to Libya, 3 February 2012, ICC-01/11-01/11-52 (reclassified as public on 4 April 2012).

³ Annex 1: Addendum to the Urgent Report Concerning the Visit to Libya, 5 March 2012, ICC-01/11-01/11-70-Conf-Exp-Anx1.

⁴ Pre-Trial Chamber I, Decision Appointing Counsel from the OPCD as Counsel for Saif Al-Islam Gaddafi, 17 April 2012, ICC-01/11-01/11-113.

⁵ Application on behalf of the Government of Libya pursuant to Article 19 of the ICC Statute, 1 May 2012, ICC-01/11-01/11-130-Red.

requested that the Chamber confirm Mr Gaddafi's entitlement to legal assistance under the legal aid scheme of the Court.⁶

5. On 12 March 2013, the Registrar filed observations on the Request (the "Registrar's Observations").⁷

6. On 14 March 2013, the OPCD filed a request for leave to reply in relation to three distinct aspects of the Registrar's Observations. In this request, the OPCD provided already the substance of its reply alleging that the Registrar's Observations contain inaccurate or potentially misleading statements of fact or procedure (the "Request for Leave to Reply").⁸

II. Submissions

A. Submissions of the OPCD

7. The OPCD submits that an imminent depletion in staffing will disrupt the continuity of Mr Gaddafi's representation and will significantly affect its ability to fulfil its mandate in a timely and effective manner. The OPCD suggests that replacement of counsel for Mr Gaddafi at this juncture would facilitate a smooth transition in representation and would ensure that new counsel has sufficient time to acquaint themselves with the case in advance of potential appellate proceedings.⁹

8. The OPCD informs the Chamber that [REDACTED].¹⁰

9. [REDACTED] ¹¹ In view of the particular circumstances of Mr Gaddafi's case, the OPCD requests that the Chamber confirm his entitlement to legal assistance

⁶ Request to Withdraw, 4 March 2013, ICC-01/11-01/11-292-Conf-Exp.

⁷ Observations on the Request to Withdraw, 12 March 2013, ICC-01/11-01/11-299-Conf-Exp.

⁸ Request for Leave to Reply to the "Observations on the Request to Withdraw", 14 March 2013, ICC-01/11-01/11-301-Conf-Exp.

⁹ Request, paras 1-11.

¹⁰ Request, Annex A.

¹¹ Request, Annex A.

under the legal aid scheme, which should include the necessary and reasonable costs associated with his defence before the Court.¹²

B. Submissions of the Registry

10. The Registrar submits that the [REDACTED] OPCD is still in a position to ensure adequate legal representation for Mr Gaddafi and is best placed to continue Mr Gaddafi's representation given his familiarity with and work on the case to date.¹³ The Registrar further highlights that the Request is not based on a legitimate ground for withdrawal under article 18 of the Code of Professional Conduct for counsel (the "CPCC").¹⁴

11. With respect to counsel from the OPCD's suggestion as to their replacement, the Registrar cautions against setting a precedent whereby counsel would be permitted to select his or her replacement, and stresses the principle that the request for representation will normally come from the client, which underlies article 11 of the CPCC, and regulations 75 and 76 of the Regulations. [REDACTED]¹⁵

12. Finally, the Registrar stresses that she has primary responsibility for managing the legal assistance scheme of the Court and that the provision of legal assistance is subject to the established procedures set out in the legal and policy framework of the legal aid scheme.

C. Submissions of OPCD in its Request for Leave to Reply

13. The OPCD questions the competence of the Registrar to dispute the professional judgment of the OPCD as to its effective ability to provide expeditious and efficient representation to Mr Gaddafi and highlights the impact of recent

¹² Request, paras 16-30.

¹³ Observations on the Request to Withdraw, 12 March 2013, ICC-01/11-01/11-299-Conf-Exp, paras 3-12.

¹⁴ *Ibid.*, para. 8.

¹⁵ *Ibid.*, paras 14-17.

developments with respect to the allocation of resources in connection with the case against Mr Gaddafi.¹⁶

14. The OPCD refutes the suggestion that it chose replacement counsel for Mr Gaddafi and raises issues with the Registrar's statement that [REDACTED], as well as a number of the Registrar's contentions with respect to Mr Gaddafi's potential entitlement to legal assistance.¹⁷

III. Analysis and conclusions of the Chamber

15. The Chamber notes article 67(1)(d) of the Statute, rules 20-22 of the Rules of Procedure and Evidence (the "Rules"), regulations 24(5), 74, 75, 76, and 83-85 of the Regulations and articles 8, 15(2), 17(2) and 18 of the CPCC.

16. As a preliminary matter, the Chamber wishes to address first the OPCD's Request for Leave to Reply. Mindful of regulation 24(5) of the Regulations, the Chamber has decided in this case to accept the reply of the OPCD.

17. The Chamber reiterates that the appointment of counsel from the OPCD as Mr Gaddafi's legal representatives was intended to be an *ad interim* appointment until regular counsel could otherwise be appointed in accordance with rule 21 of the Rules.¹⁸ In this regard, the Chamber previously indicated that it appeared necessary to explore, in consultation with the Registrar, the possible options with a view to securing the appointment of regular counsel by Mr Gaddafi.¹⁹

18. At this point in time, the Chamber considers that the practical impediments to the provision of timely and effective legal representation to Mr Gaddafi by counsel from the OPCD, as set out in the Request, make it necessary and appropriate to

¹⁶ Request for Leave to Reply, 14 March 2013, ICC-01/11-01/11-301-Conf-Exp, p. 4.

¹⁷ Request for Leave to Reply, 14 March 2013, ICC-01/11-01/11-301-Conf-Exp, pp. 5-8.

¹⁸ Pre-Trial Chamber I, Decision on the "Submissions of the Libyan Government with respect to the matters raised in a private session during the hearing on 9-10 October 2012", 21 November 2012, ICC-01/11-01/11-233-Red, para. 36.

¹⁹ *Ibid.*, para. 37.

accept the request for withdrawal and to appoint an alternative legal representative to Mr Gaddafi pursuant to regulation 76 of the Regulations.

19. The Chamber notes [REDACTED]. The Chamber further notes the complexities of the current circumstances and the fact that Mr Gaddafi previously [REDACTED]. Therefore, the Chamber is prepared to [REDACTED] in appointing a replacement legal representative for Mr Gaddafi.

20. Accordingly, the Chamber considers it to be in the interests of justice to appoint Mr John R.W.D. Jones to represent Mr Gaddafi pursuant to regulation 76(1) of the Regulations, as a provisional measure, until Mr Gaddafi exercises his right to freely choose counsel under article 67(1)(d) of the Statute, or until the definitive disposal of proceedings related to the Admissibility Challenge, at which point the question of Mr Gaddafi's legal representation will be revisited by the Chamber.

21. With respect to the question of Mr Gaddafi's entitlement to legal assistance paid by the Court, the Chamber notes that rule 20 of the Rules and regulation 83 of the Regulations vest responsibility for the elaboration and management of the legal assistance scheme of the Court in the Registrar. According to these provisions, the Registrar is responsible for reaching a determination as to a suspect's entitlement to legal aid and the scope of such assistance, in conformity with the provisions of the Statute, the Rules and the framework of the legal aid scheme, as endorsed by the Assembly of States Parties and established by the legal and policy texts of the Court.²⁰

²⁰ The Registrar identifies the principle documents outlining the Court's legal aid system as follows: "Report to the Assembly of States Parties on options for ensuring adequate defence counsel for accused persons" (ICC-ASP/3/16) dated 17 August 2004; "Report on the principles and criteria for the determination of indigence for the purposes of legal aid (pursuant to paragraph 116 of the Report of the Committee on Budget and Finance of 13 August 2004)" (ICC-ASP/6/INF.1) dated 31 May 2007; "Report on the operation of the Court's legal aid system and proposals for its amendment" (ICC-ASP/6/4) dated 31 May 2007; "Report to the Assembly of States Parties on options for ensuring adequate defence counsel for accused persons (ICC-ASP/3/16) Update to Annex 2: Payment details of the ICC legal aid scheme" (ICC-ASP/5ANF/1.) dated 31 October 2006, and "Interim report on different

22. Regulation 83(4) of the Regulations provides that the Chamber may review decisions of the Registrar on the scope of legal assistance paid by the Court, but there is no basis for the Chamber to “confirm an entitlement to legal assistance” in advance of a decision of the Registrar in this regard. Therefore, the Chamber will not entertain the request of counsel for the OPCD for confirmation of Mr Gaddafi’s entitlement to legal assistance under the legal aid scheme of the Court.

FOR THESE REASONS, THE CHAMBER

GRANTS the Request for Leave to Reply;

AUTHORISES the withdrawal of counsel from the OPCD from the representation of Mr Gaddafi; and

APPOINTS John R.W.D. Jones as counsel for Mr Gaddafi.

legal aid mechanisms before international criminal jurisdictions" (ICC-ASP/7/23), dated 31 October 2008; the decision of the Bureau on Legal Aid dated 22 March 2012 and the Supplementary Report on four aspects of legal aid scheme dated 17 August 2012.

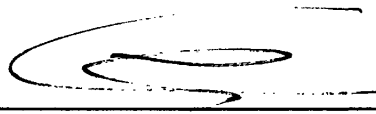
Done in both English and French, the English version being authoritative.



Judge Silvia Fernández de Gurmendi
Presiding Judge



Judge Hans-Peter Kaul



Judge Christine Van den Wyngaert

Dated this Wednesday, 17 April 2013

At The Hague, The Netherlands