



Original: English

No. ICC-01/11-01/11
Date: 5 September 2018

PRE-TRIAL CHAMBER I

Before: Judge Péter Kovács, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Reine Adélaïde Sophie Alapini-Gansou

SITUATION IN LIBYA

IN THE CASE OF

THE PROSECUTOR v. SAIF AL-ISLAM GADDAFI

Public

Decision on the “Application by Lawyers for Justice in Libya and the Redress Trust for leave to submit observations pursuant to Rule 103 of the Rules of Procedure and Evidence” and the “Defence Request for Leave to Respond to the Application”

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

The Office of the Prosecutor

Ms Fatou Bensouda, Prosecutor
Mr Julian Nicholls

Counsel for the Defence

Ms Dató Shyamala Alagendra
Mr Essa Faal
Mr Khaled Al Zaidy

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

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

States Representatives

Amicus Curiae

Lawyers for Justice in Libya
Redress Trust

REGISTRY

Registrar

Mr Peter Lewis

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Other

PRE-TRIAL CHAMBER I (the “Chamber”) of the International Criminal Court (the “Court”) issues this decision on the “Application by Lawyers for Justice in Libya and the Redress Trust for leave to submit observations pursuant to Rule 103 of the Rules of Procedure and Evidence”¹ (the “Application”) and the “Defence Request for Leave to Respond to the Application [...]” (the “Defence’s Request”).²

1. On 26 February 2011, the United Nations Security Council (the “Security Council”) referred the situation in Libya since 15 February 2011 to the Prosecutor of the Court by means of Resolution 1970 (2011).³

2. On 27 June 2011, Pre-Trial Chamber I issued a warrant of arrest (the “Warrant”) for Saif Al-Islam Gaddafi (“Mr Gaddafi”).⁴ On 4 July 2011, Pre-Trial Chamber I issued a request to Libya to arrest Mr Gaddafi and surrender him to the Court.⁵

3. On 23 November 2011, a letter from the National Transitional Council of Libya was transmitted to Pre-Trial Chamber I.⁶ This letter confirmed the arrest of Mr Gaddafi on 19 November 2011 in Libya.

4. On 31 May 2013, Pre-Trial Chamber I rejected Libya’s challenge to the admissibility of the case against Mr Gaddafi before the Court and determined that the case against him was admissible.⁷ On 21 May 2014, the Appeals Chamber upheld the decision of Pre-Trial Chamber I.⁸

5. On 6 June 2018, the Chamber received the “Admissibility Challenge by Dr. Saif Al-Islam Gaddafi pursuant to Articles 17(1)(c), 19 and 20(3) of the Rome

¹ ICC-01/11-01/11-647.

² ICC-01/11-01/11-648.

³ S/RES/1970 (2011), para. 4.

⁴ ICC-01/11-01/11-3.

⁵ ICC-01/11-01/11-5.

⁶ ICC-01/11-01/11-34. The official English translation of this letter was filed in the case record on 28 November 2011.

⁷ ICC-01/11-01/11-344-Conf and public redacted version ICC-01/11-01/11-344-Red.

⁸ ICC-01/11-01/11-547-Red OA 4.

Statute” (the “Admissibility Challenge”).⁹ Mr Gaddafi asserts that, on 28 July 2015, he was convicted by the Tripoli Criminal Court for substantially the same conduct as alleged in the proceedings before the Court.¹⁰ Mr Gaddafi further alleges that, on or around 12 April 2016, he was released from prison pursuant to Law 6 of 2015.¹¹ Thus, Mr Gaddafi submits that the case against him, for the crimes as mentioned in the Warrant, is inadmissible.¹²

6. On 14 June 2018, the Chamber issued the “Decision on the Conduct of the Proceedings following the ‘Admissibility Challenge by Dr. Saif Al-Islam Gaddafi pursuant to Articles 17(1)(c), 19 and 20(3) of the Rome Statute’”,¹³ in which, *inter alia*, it requested “the Prosecutor, the Security Council and victims who have communicated with the Court in relation to the present case, should they wish to do so, to submit written observations on the Admissibility Challenge no later than Friday, 28 September 2018, at 16.00 hours”.¹⁴

7. On 31 August 2018, the Chamber received the Application, in which the Lawyers for Justice in Libya (“LFJL”) and the Redress Trust (“Redress”) (collectively the “Applicants”) seek leave to submit joint observations pursuant to rule 103(1) of the Rules of Procedure and Evidence (the “Rules”).

⁹ ICC-01/11-01/11-640, with Confidential Annexes A, B, C, H and Public Annexes D, E, F and G. Document ICC-01/11-01/11-640-Conf and Annexes A, B and H were reclassified as public on 8 June 2018 pursuant to Pre-Trial Chamber I’s instructions.

¹⁰ Admissibility Challenge, para. 2.

¹¹ Admissibility Challenge, para. 26. According to Mr Gaddafi, the Government of Libya promulgated Law No. 6 in September 2015, which provides, *inter alia*, that all Libyans who committed offences during the period 15 February 2011 until the issuance of this law should be eligible for a general amnesty and that received sentences and their subsequent criminal impact should be dropped. See Admissibility Challenge, para. 25.

¹² Admissibility Challenge, para. 1.

¹³ Pre-Trial Chamber I, ICC-01/11-01/11-641.

¹⁴ Pre-Trial Chamber I, ICC-01/11-01/11-641, p. 6.

8. On 3 September 2018, the Chamber received the Defence's Request in which the Defence requests leave to file a "concise response opposing the Application".¹⁵

9. The Chamber notes article 21(1)(a) of the Rome Statute, rule 103(1) and (2) of the Rules and regulation 37(1) of the Regulations of the Court.

10. The Chamber notes in particular rule 103(1) of the Rules, according to which the Chamber may, at any stage of the proceedings, "if it considers it desirable for the proper determination of the case, [...] grant leave to a State, organization or person to submit [...] any observation on any issue that the Chamber deems appropriate".

11. The Chamber recalls that the Appeals Chamber has underlined that, when acting within the parameters of rule 103 of the Rules, the respective Chamber should take into consideration whether the proposed submission of observations may assist it "in the proper determination of the case".¹⁶

12. In the Application, LFJL and Redress, two non-governmental organizations, argue that they have "collective expertise and experience" which will enable them to provide "observations that will assist the Chamber in properly determining the issues raised" in the Admissibility Challenge.¹⁷ According to the Applicants, they have "closely monitored the institutional, legal and criminal justice developments that have taken place since the [2011] revolution in Libya, including the passing of transitional laws and their implementation".¹⁸

13. In view of such involvement, the Applicants suggest to submit *amicus curiae* observations on 3 main points, which may be summarized as follows: a) the Libyan appeals process together with the status of the domestic case against Mr Gaddafi in

¹⁵ ICC-01/11-01/11-648, para. 7.

¹⁶ Appeals Chamber, "Decision on 'Motion for Leave to File Proposed Amicus Curiae Submission of the International Criminal Bar Pursuant to Rule 103 of the Rules of Procedure and Evidence'", 22 April 2008, ICC-01/04-01/06-1289, para. 8.

¹⁷ ICC-01/11-01/11-647, para. 17.

¹⁸ ICC-01/11-01/11-647, para. 17.

terms of its finality; b) the nature of the Law No 6 of 2015 which provided Mr Gaddafi with an amnesty or pardon as the case may be and the different implications underling such Law; and c) the “wider application of any ruling by the Chamber in relation to amnesties and pardons for international crimes and gross violations of human rights”.¹⁹

14. The Chamber has carefully examined the Application. In particular, the Chamber has considered the relevant expertise of the Applicants, the main issues put forward by the Applicants in support of their position, and more importantly the relevance of those issues for the determination of the Admissibility Challenge *sub judice*. In this respect, the Chamber considers that the proposed observations would be desirable for the proper determination of the Admissibility Challenge *sub judice*, and accordingly, the Application should be granted.

15. Turning to the Defence’s Request, the Chamber recalls that according to rule 103(2) of the Rules, “[t]he Prosecutor and the defence shall have the opportunity to respond to the observations submitted under sub-rule 1”. This means that the Defence will have the right to respond, but *only after* the Applicants submit their observations pursuant to rule 103(1) of the Rules. It follows that the Defence’s Request must be rejected as premature.

FOR THESE REASONS, THE CHAMBER HEREBY

- a) **GRANTS** leave to the Applicants to submit written observations of maximum 40 pages, in accordance with paragraph 13 of the present decision and paragraphs 18 and 19 of the Application, no later than Friday, 28 September 2018, at 16.00hrs; and
- b) **REJECTS** the Defence’s Request as premature.

¹⁹ ICC-01/11-01/11-647, para. 18.

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



Judge Péter Kovács
Presiding Judge



Judge Marc Perrin de Brichambaut



Judge Reine Adélaïde Sophie
Alapini-Gansou

Dated this Wednesday, 5 September 2018

At The Hague, The Netherlands