



**Original: English**

**No. ICC-01/11-01/11 OA 8  
Date: 15 October 2019**

**THE APPEALS CHAMBER**

**Before:** Judge Chile Eboe-Osuji, Presiding Judge  
Judge Howard Morrison  
Judge Piotr Hofmański  
Judge Luz del Carmen Ibáñez Carranza  
Judge Solomy Balungi Bossa

**SITUATION IN LIBYA**

**IN THE CASE OF  
THE PROSECUTOR v. SAIF AL-ISLAM GADDAFI**

**Public**

**Decision on requests for leave to file observations pursuant to rule 103 of the  
Rules of Procedure and Evidence**

**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  
Ms Helen Brady

**Counsel for Mr Saif Al Islam Gaddafi**  
Mr Essa Faal  
Mr Aidan Ellis

**The Office of Public Counsel for Victims**  
Ms Paolina Massidda

**States Representatives**  
The State of Libya

**Others**  
United Nations Security Council

Lawyers for Justice in Libya

Redress Trust

Libyan Cities and Tribes Supreme Council

**REGISTRY**

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**Registrar**  
Mr Peter Lewis

The Appeals Chamber of the International Criminal Court,

In the appeal by Mr Saif Al-Islam Gaddafi against the decision of Pre-Trial Chamber I entitled ‘Decision on the “Admissibility Challenge by Dr. Saif Al-Islam Gaddafi pursuant to Articles 17(1)(c), 19 and 20(3) of the Rome Statute”’ of 5 April 2019 (ICC-01/11-01/11-662),

Noting the ‘Order scheduling a hearing before the Appeals Chamber and inviting participation in judicial proceedings’ of 24 September 2019 (ICC-01/11-01/11-672),

*Issues* the following

## DECISION

1. The Libyan Cities and Tribes Supreme Council, and Lawyers for Justice in Libya and Redress (jointly) are, pursuant to rule 103 of the Rules of Procedure and Evidence, invited to submit written observations of no more than 12 pages by 16h00 on Monday, 28 October 2019 on issues arising in the current appeal and to have legal representatives attend the hearing scheduled for 11 and 12 November 2019.
2. Mr Gaddafi, the Prosecutor, and the Office of Public Council for Victims may respond orally to the above-mentioned written observations at the aforementioned hearing.
3. Further directions will be issued on the conduct of the proceedings.

## REASONS

### I. PROCEDURAL HISTORY

1. On 5 April 2019, Pre-Trial Chamber I, by majority, issued the ‘Decision on the “Admissibility Challenge by Dr. Saif Al-Islam Gaddafi pursuant to Articles 17(1)(c), 19 and 20(3) of the Rome Statute”’<sup>1</sup> (‘Decision’), stating that Judge Perrin de Brichambaut ‘will file a minority opinion in due course’<sup>2</sup> (‘Minority Opinion’).
2. On 10 April 2019, Mr Saif Al-Islam Gaddafi (‘Mr Gaddafi’) submitted a notice of appeal against the Decision, in which he requested an extension of the deadline for filing his appeal brief.<sup>3</sup> On 18 April 2019, the Appeals Chamber granted such extension.<sup>4</sup>
3. On 8 May 2019, Judge Perrin de Brichambaut filed his Minority Opinion.<sup>5</sup>
4. On 20 May 2019, Mr Gaddafi filed his appeal brief.<sup>6</sup>
5. On 11 June 2019, the Prosecutor<sup>7</sup> and the Office of Public Counsel for Victims (‘OPCV’)<sup>8</sup> filed responses to Mr Gaddafi’s appeal brief.
6. On 24 September 2019, the Appeals Chamber issued an order scheduling a hearing on 11 and 12 November 2019, inviting the Security Council and the State of

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<sup>1</sup> [ICC-01/11-01/11-662](#).

<sup>2</sup> [Decision](#), p. 29.

<sup>3</sup> [ICC-01/11-01/11-663](#), pp. 11-19, 21. At paragraph 11, Mr Gaddafi requested the Appeals Chamber ‘to extend the time limit for filing the Defence appeal brief and order that the brief be filed within 31 days of the notification of the Decision (by 9 May 2019 at 4pm) if the Minority Opinion is notified on or prior to the 21-day deadline established under Regulation 64(2) of the Regulations for the submission of the appeal brief, and within ten (10) days of notification of the Minority Opinion if the Minority Opinion is notified after the noted 21-day deadline’ (footnote omitted).

<sup>4</sup> [‘Decision on Mr Saif Al-Islam Gaddafi’s “Application for extension of time to file the Appeal Brief”](#), 23 April 2019, ICC-01/11-01/11-668-Corr. The Appeals Chamber extended the time limit for the filing of the appeal brief as follows: to 16h00 on Thursday, 9 May 2019 if the Minority Opinion is notified by Tuesday, 30 April 2019 and to 16h00 on the tenth day after the notification of the Minority Opinion, if it is notified after Tuesday, 30 April 2019.

<sup>5</sup> [ICC-01/11-01/11-662-Anx](#).

<sup>6</sup> [‘Defence Appeal Brief in support of its appeal against Pre-Trial Chamber I’s “Decision on the “Admissibility Challenge by Dr. Saif Al-Islam Gaddafi pursuant to Articles 17\(1\)\(c\), 19 and 20\(3\) of the Rome Statute”’](#), ICC-01/11-01/11-669.

<sup>7</sup> [‘Prosecution Response to Mr Saif Al-Islam Gaddafi’s Appeal against the “Decision on the “Admissibility Challenge by Dr. Saif Al-Islam Gaddafi pursuant to Articles 17\(1\)\(c\), 19 and 20\(3\) of the Rome Statute”’ \(ICC-01/11-01/11-669\)’](#), ICC-01/11-01/11-671.

<sup>8</sup> [Response on Behalf of Victims to the Defence Appeal Brief on the Decision on the Admissibility of the Case](#), ICC-01/11-01/11-670.

Libya to attend the hearing, inviting written submissions from the Security Council and the State of Libya, and inviting requests for leave to submit observations pursuant to rule 103 of the Rules of Procedure and Evidence ('Rules').<sup>9</sup>

7. On 8 October 2019, in accordance with that order, the Appeals Chamber received two requests for leave to present observations pursuant to rule 103 of the Rules: one from the Libyan Cities and Tribes Supreme Council,<sup>10</sup> and the other from Lawyers for Justice in Libya and Redress (jointly).<sup>11</sup>

## II. MERITS

8. Rule 103 of the Rules provides, in relevant part, as follows:

1. At any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate.

2. The Prosecutor and the defence shall have the opportunity to respond to the observations submitted under sub-rule 1.

9. A decision of the Appeals Chamber pursuant to rule 103(1) of the Rules is discretionary and premised on whether it considers it 'desirable for the proper determination of the case' to grant leave to applicants to submit observations on the questions presented in the appeal.

10. As noted above, the Appeals Chamber is seized of two requests for leave to submit observations pursuant to rule 103 of the Rules.<sup>12</sup> Given the antecedents, and summary initial observations of those who have expressed interest, the Appeals Chamber invites the Libyan Cities and Tribes Supreme Council, and Lawyers for

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<sup>9</sup> ['Order scheduling a hearing before the Appeals Chamber and inviting participation in judicial proceedings'](#), ICC-01/11-01/11-672.

<sup>10</sup> ['Request of the Libyan Cities and Tribes Supreme Council under Rule 103 of the ICC Rules of Procedure and Evidence to present observations on the appeal filed by Dr. Seif Al Islam Gadafi'](#), ICC-01/11-01/11-673.


<sup>11</sup> ['Request for Leave to Submit \*amicus curiae\* observations by Lawyers for Justice in Libya and REDRESS pursuant to Rule 103 of the Rules of Procedure and Evidence'](#), ICC-01/11-01/11-674.

<sup>12</sup> *See supra* para. 7.

Justice in Libya and Redress (jointly) to submit written observations of no more than twelve pages on the questions presented in the appeal by 16h00 on Monday, 28 October 2019 and to have legal representatives attend the hearing scheduled for 11 and 12 November 2019.

11. The Appeals Chamber invites Mr Gaddafi, the Prosecutor, and the OPCV to respond orally to the above-mentioned written observations at the aforementioned hearing.

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

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**Judge Chile Eboe-Osuji**  
**Presiding Judge**

Dated this 15<sup>th</sup> day of October 2019

At The Hague, The Netherlands