

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

*Original: English*

*No.: ICC-*  
**Date: 30 August 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**

**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.**

**Source:** Lawyers for Justice in Libya  
Redress Trust

Document 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 James Steward, Deputy Prosecutor

**Counsel for the Defence**

Ms Shyamala Alagendra

Mr Aiden Ellis

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

Ms Paolina Massidda

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

Mr Xavier-Jean Keïta

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Peter Lewis

**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

Mr Philipp Ambach

**Other**

## I. INTRODUCTION

1. The Applicants, Lawyers for Justice in Libya (“LFJL”) and the Redress Trust (“Redress”) respectfully seek leave to submit joint observations pursuant to Rule 103(1) of the Rules of Procedure and Evidence (the Rules). These submissions have been prepared with a view to providing Pre-Trial Chamber I (“the Chamber”) with information which may assist it in its determination of the issue of admissibility raised in the challenge filed by Saif Al-Islam Gaddafi (“Mr Gaddafi”) on 5 June 2018.

## II. Procedural Background

2. On 26 February 2011, the United Nations Security Council (“the Security Council”) adopted Resolution 1970,<sup>1</sup> referring the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the Prosecutor.<sup>2</sup>
3. On 27 June 2011, the Chamber issued an arrest warrant for Mr Gaddafi.<sup>3</sup>
4. On 5 July 2011, the Registrar notified the Government of Libya (“Libya”) of a request for cooperation, and sought their assistance in arresting Mr Gaddafi and surrendering him to the Court (“the Surrender Request”).<sup>4</sup>
5. On 23 November 2011, a letter from the National Transitional Council of Libya was transmitted to the Chamber, confirming the arrest and detention of Mr Gaddafi on 19 November 2011 in Libya.<sup>5</sup>
6. On 1 May 2012, Libya filed an Article 19 Application requesting postponement of the execution of the Surrender Request and sought to have the case declared inadmissible pursuant to Article 17(1)(a) and quash the Surrender Request.<sup>6</sup>
7. On 31 May 2013, the Chamber rejected Libya’s challenge to the admissibility of the case against Mr Gaddafi and determined that the case against him was admissible.<sup>7</sup>
8. On 7 June 2013, Libya filed an appeal against the Chamber’s decision.<sup>8</sup> The Appeals Chamber upheld the decision of the Chamber on 21 May 2014.<sup>9</sup>

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<sup>1</sup> S/RES/1970 (2011).

<sup>2</sup> Ibid, para 4.

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

<sup>4</sup> ICC-01/11-01/11-5.

<sup>5</sup> ICC-01/11-01/11-34 with annex.

<sup>6</sup> ICC-01/11- 01/11-130-Conf.

<sup>7</sup> ICC-01/11-01/11-344-Conf.

9. On 5 June 2018, Mr Gaddafi filed an admissibility challenge pursuant to Articles 17(1), 19 and 20(3) of the Statute. Mr Gaddafi requested the Chamber to find the case inadmissible on the basis that:<sup>10</sup>
- (a) Mr Gaddafi has been tried by a Libyan court;
  - (b) The domestic proceedings were in respect to the same conduct as alleged in the case before the ICC;
  - (c) The domestic proceedings were not for the purpose of shielding Mr Gaddafi as per the meaning of Article 20(3)(a) of the Statute; and
  - (d) The domestic proceedings were not lacking in sufficient independence or impartiality, nor did they involve egregious due process violations to the extent that the proceedings were incapable of providing genuine justice, as within the meaning of Article 20(3)(b) of the Statute.
10. On 14 June 2018, the Chamber issued its ‘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 Statute”’ (“Decision on the Conduct of Proceedings”), in which it allowed the Prosecutor, the UN Security Council and victims who had already communicated with the Court in relation to this case until 28 September 2018 to submit written observations.

### III. The Applicants

11. LFJL is an independent Libyan and international non-governmental organisation. LFJL was established in response to the 17 February 2011 uprising by a network of Libyan international lawyers living in the diaspora. LFJL works to realise a vision of Libya which embodies the values and principles of human rights, the rule of law and a society committed to justice. Collectively, LFJL’s members have expertise in international human rights law, the law of armed conflict, international criminal law, refugee law and transitional justice. LFJL maintains a growing network of over 70 Libyan lawyers and activists, who work across Libya.

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<sup>8</sup> ICC-01/11-01/11-350.

<sup>9</sup> ICC- 01/11-01/11-547-Red.

<sup>10</sup> Admissibility Challenge, para. 34.

12. LFJL’s core values are independence and integrity. LFJL undertakes projects and advocates positions with independence from interference, which would otherwise prejudice its core values and credibility. As part of both its Transitional Justice and Accountability programmes, LFJL has documented and collected evidence of human rights and humanitarian law violations in Libya. LFJL has direct experience representing victims before international courts and mechanisms including the African Commission on Human and Peoples’ Rights, the United Nations Working Group on Arbitrary Detention and the United Nations Special Rapporteur on Torture. LFJL has previously been granted leave to intervene and has submitted observations before the International Criminal Court (the Court).<sup>11</sup>
13. Redress is an international non-governmental organisation registered in the United Kingdom and the Netherlands, and with special consultative status with the United Nations Economic and Social Council (ECOSOC). Its mandate is to seek justice and reparation for victims of torture and related international crimes. It has over 25 years’ expertise in advocating for the rights of victims to gain both access to the courts and redress for their suffering, in over 50 countries worldwide.
14. Redress has extensive experience in directly representing victims, as well as with interventions before national and international courts and tribunals, including at the international level, the United Nations Committee against Torture, the United Nations Human Rights Committee, the European Court of Human Rights, the Inter-American Commission and Court of Human Rights, the African Commission on Human and Peoples’ Rights, the Special Court for Sierra Leone, and the Extraordinary Chambers in the Courts of Cambodia. It has also been granted leave to intervene and has submitted observations in a number of proceedings before the Court.<sup>12</sup>

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<sup>11</sup> *Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, Lawyers for Justice in Libya and Redress Trust’s Observations pursuant to Rule 103 of the Rules of Procedure and Evidence, ICC-01/11-01/11- 172, 8 June 2012.

<sup>12</sup> *Prosecutor v. Ahmad Al Faqi Al Mahdi*, Queen’s University Belfast Human Rights Centre and the Redress Trusts observations pursuant to Article 75(3) of the Statute and Rules 103 of the Rules, ICC-01/12-01/150188, 2 December 2016; *Prosecutor v. Jean-Pierre Bemba Gombo*, Observations by the Redress Trust pursuant to Article 75(3) of the Statute and Rule 103 of the Rules, ICC-01/05-01/08-3448, 17 October 2016; *Prosecutor v. Germain Katanga*, Redress Trust observations pursuant to Article 75 of the Statute, ICC-01/04-01/07, 15 May 2015; *Prosecutor v Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, Lawyers for Justice in Libya and Redress Trust’s Observations pursuant to Rule 103 of the Rules of Procedure and Evidence, ICC-01/11-01/11- 172, 8 June 2012; *Prosecutor v Laurent Gbagbo*, Redress Trust Observations to Pre-Trial Chamber I of the International Criminal Court Pursuant to Rule 103 of the Rules of Procedure and Evidence, ICC 02/11-01/11-62, 16 March 2012; *Prosecutor v Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen*, Amicus Curiae submitted pursuant to the Pre-Trial Chamber II “Decision on application for leave to submit observations under Rule 103” dated 5 November 2008, ICC-02/04-01/05-353, 18 November 2009.

15. The Applicants have worked together closely since 2011. Together they have carried out training of Libyan lawyers, organisations, human rights activists and doctors on a range of transitional justice and accountability issues pertinent to the current context.

#### **IV. The Application**

16. Rule 103(1) of the Rules provides the Chamber with the authority to accept *amicus curiae* observations on any issue it deems appropriate. Pursuant to Rule 103(1) of the Rules, unsolicited applications may be submitted by States, organisations or individuals interested to participate in proceedings before the Court. It is at the Chamber's discretion to grant leave where it considers it "desirable for the proper determination of the case".<sup>13</sup> *Amicus curiae* submissions have been permitted where the observations will "enable the Chamber to be fully informed" in relation to the issues under consideration,<sup>14</sup> as well as where the novelty of the issues raised could benefit from such observations.<sup>15</sup>

17. The collective expertise and experience of the Applicants make them well placed to provide observations that will assist the Chamber in properly determining the issues raised. The Applicants have closely monitored the institutional, legal and criminal justice developments that have taken place since the revolution in Libya, including the passing of transitional laws and their implementation. The assistance that the proposed observations will provide to the Chamber will be both relevant and useful for its determination of the novel issues raised by Mr Gaddafi's application.

#### **V. Specific Issues the Applicants Seek to Address**

18. The Applicants seek to submit observations on:

- (a) The Libyan appeals process, including on the status of the domestic case against Mr Gaddafi. This includes submissions on the Libyan legal framework for the finality of cases where death sentences are handed down as it pertains to the definition of "tried" under Article 20 (1) of the Statute;

<sup>13</sup> *Prosecutor v. Lubanga*, "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, ICC-01/04-01/06 (OA11), 22 April 2008, para. 8.

<sup>14</sup> *Prosecutor v. Katanga*, Order authorising the submissions of observations, ICC-01/04-01/07, 7 March 2013, para. 12.

<sup>15</sup> *Prosecutor v. Ruto and Sang*, Decision on the "Requests for Leave to Submit Observations under Rule 103 of the Rules of Procedure and Evidence", ICC-01/09-01/11 (OA 5), 13 September 2013, para.10.

(b) The nature of Law No 6 of 2015 under which Mr Gaddafi was given amnesty, its application and procedural implementation by the competent domestic authorities in the case of Mr Gaddafi, as well as the broader implementation of Law No 6 of 2015;

(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. Submissions will:

(i) Present the Chamber with an informed analysis of amnesties and pardons as interpreted in international humanitarian law and international human rights law;

(ii) Provide an analysis of the legal practice of other international criminal tribunals pertaining to amnesties and pardons.

19. The Applicants stress that their proposed observations take no position as to the merits of the matters before the Chamber. If granted leave, the Applicants will confine their observations to the specific areas as set out above.

## **VI. Conclusion**

VII. For the aforementioned reasons, the Applicants respectfully request they be granted leave to submit written observations on these matters pursuant to Rule 103 of the Rules by 1 November 2018. The Applicants note that the Chamber, in its Decision on Conduct of Proceedings, requested observations by the Security Council, the Prosecutor and victims be submitted by 28 September 2018.<sup>16</sup> The Applicants are willing to submit observations by this date, if required by the Chamber.

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<sup>16</sup> Decision on Conduct of Proceedings, page 6.

ACCORDINGLY, we respectfully request that the Chamber grant leave to submit observations.



Elham Saudi  
Director, Lawyers for Justice in Libya



Rupert Skilbeck  
Director, Redress Trust

Dated this 30 August 2018  
At London, United Kingdom