



Original: English

No.: ICC-01/11-01/11
Date: 2 September 2018

PRE-TRIAL CHAMBER I

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

SITUATION IN LIBYA

IN THE CASE OF

THE PROSECUTOR V. SAIF AL-ISLAM GADDAFI

Public

Defence Request for Leave to Respond to 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”

Source: Defence for Dr. Saif Al-Islam Gadafi

Document to be notified in accordance with regulation 31 of the *Regulations of the*

Court to:

The Office of the Prosecutor

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Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States Representative

Amicus Curiae Applicants

Lawyers for Justice in Libya

Redress Trust

REGISTRY

Registrar

Mr. Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. The defence for Dr. Saif Al-Islam Gadafi (“Defence”) respectfully requests the Pre-Trial Chamber’s leave to file a response to 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” (“Application”),¹ registered in the record of the case on 31 August 2018. If leave is granted, the Defence will submit a response opposing the Application.

II. Applicable Law

2. Rule 103 of the Rules of Procedure and Evidence (“Amicus curiae and other forms of submission”) provides 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.*
 3. *A written observation submitted under sub-rule 1 shall be filed with the Registrar, who shall provide copies to the Prosecutor and the defence. The Chamber shall determine what time limits shall apply to the filing of such observations.*
3. The Appeals Chamber has determined that parties to proceedings are not entitled to submit a response to an application filed pursuant to Rule 103(1) and must seek the leave of the relevant Chamber to submit such a document.²

III. Submissions

4. The Defence requests leave to respond to the Application unless the Pre-Trial Chamber decides to reject the Application without further consideration.

¹ ICC-01/11-01/11-647.

² *Prosecutor v. Bashir*, Reasons for "Decision on the Application of 20 July 2009 for Participation under Rule 103 of the Rules of Procedure and Evidence and on the Application of 24 August 2009 for Leave to Reply", 9 November 2009, ICC-02/05-01/09-51 OA, para. 8; see also ICC-01/05-01/08-602 OA 2, para. 7.

5. In the Application, Lawyers for Justice in Libya and Redress Trust (“Applicants”) request leave to file observations on the following issues that the Applicants allude are relevant to the “Admissibility Challenge by Dr. Saif Al-Islam Gaddafi pursuant to Articles 17(1)(c), 19 and 20(3) of the Rome Statute” filed on 5 June 2018 (“Admissibility Challenge”):³

- (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;*
- (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.*⁴

6. The Applicants also request⁵ that they be granted until 1 November 2018 to submit their proposed observations although they are “willing” to file observations by the 28 September 2018 deadline set by the Pre-Trial Chamber for any observations on the Admissibility Challenge that might be filed by the

³ 5 June 2018, ICC-01/11-01/11-640.

⁴ Application, para. 18.

⁵ Application, para. VII.

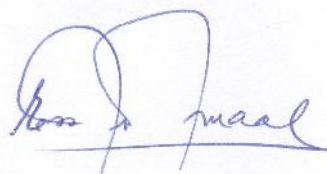
Security Council, Prosecutor, and victims who have previously communicated with the Court in relation to this case.⁶

7. If the Chamber grants leave to the Defence, the Defence will file a concise response opposing the Application and specifically focusing its submissions on the utility and propriety of the proposed observations, as well as the timing of the Application and potential observations.

Conclusion

8. For the reasons detailed above, the Defence respectfully requests leave to submit a response to 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*.

Respectfully submitted,



Essa M. Faal
Counsel for Dr. Saif Al-Islam Gadafi

on behalf of
Dato' Shyamala Alagendra
Lead Counsel for Dr. Saif Al-Islam Gadafi

Dated this 2nd Day of September 2018
At Banjul, The Gambia

⁶ Decision on the Conduct of the Proceedings following the “Admissibility Challenge by Dr. Saif Al-Islam Gadafi pursuant to Articles 17(1)(c), 19 and 20(3) of the Rome Statute”, 14 June 2018, ICC-01/11-01/11-641.