Cour
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Court

Original: ***English***

No.: ***ICC-01/11***
Date: **6 November 2026**

PRE-TRIAL CHAMBER I

Before: **Judge Iulia Antoanella Motoc, Presiding Judge**
Judge María del Socorro Flores Liera
Judge Reine Adélaïde Sophie Alapini-Gansou

SITUATION IN LIBYA

Public

Public Redacted Version of "Prosecution response to Mr Osama Njeem Elmasry/Almasri Njeem's 'Request for Leave to Reply to the Prosecutor's Response to the Defence Challenge and other related matters Pursuant to Regulations 24(5) and 34(c) and Rule 58 of the Court' ", 13 July 2026, ICC-01/11-235-Conf

Source: **Office of the Prosecutor**

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I. INTRODUCTION

1. Mr Njeem's request for leave to reply should be dismissed,[1] because it fails to identify any new issue in the Prosecution Response[2] that he could not reasonably have anticipated and mischaracterizes in part the Prosecution Response.

2. A reply does not provide an opportunity to repeat, strengthen or reformulate previous arguments, or to merely disagree with the other party.[3] As the party triggering the proceeding pursuant to articles 17(1)(a) and 19 of the Statute, Mr Njeem ought to have addressed "issues that go to the core of the admissibility challenge and are material to its just and proper resolution"[4] in its Challenge.[5] Instead, Mr Njeem is merely seeking an opportunity to address arguments he disagrees with.

II. CLASSIFICATION

3. This response is filed confidentially, consistent with regulation 23*bis*(2) of the Regulations of the Court. A public redacted version will be provided in due course.

III. SUBMISSIONS

A. Mr Njeem does not identify new issues or arguments that he could not reasonably have foreseen

4. Mr Njeem acknowledges that a reply must be confined to new issues that could not have been anticipated,[6] but fails to do so. He does not point to any new issue and, in any event, does not show why they could not have been foreseen.[7]

5. The Prosecution's submission that Mr Njeem failed to substantiate that a case is being investigated and prosecuted in Libya,[8] is not a new issue, as it simply and predictably addresses the core of Mr Njeem's admissibility challenge. As Mr Njeem recognises, "[t]he Prosecutor's submission bears directly on admissibly, since it speaks to the capacity and willingness of the

[1] ICC-01/11-234 ("Request").
[2] ICC-01/11-233-Red ("Prosecution Response").
[3] ICC-01/04-02/12-296-tENG, para. 7; ICC-01/14-01/18 A A2 A3, paras 24-25, 27. *See also* ICC-01/04-02/06 OA5.
[4] *Contra,* Request, para 10.
[5] ICC-01/11-228-AnxI ("Challenge").
[6] Request, para. 10.
[7] *See* ICC-01/14-01/18 A A2 A3, paras. 24-25, 28, 35; ICC-01/04-02/06 OA5.
[8] Request, para. 13

State of Libya to prosecute" him.[9] The Prosecution's submissions in this regard are not new and could have been foreseen.

6. Similarly, Mr Njeem's assertion that "this is the first occasion on which the Prosecution has advanced a submission as to what constitutes adequate and sufficient evidence of the Libyan criminal proceedings"[10] also fails to show any new issue that could not have been anticipated. Mr Njeem, who is challenging the admissibility of the ICC case, bears the burden to provide probative and concrete evidence of the existence of a sufficiently similar case under investigation or prosecution in Libya, in accordance with article 17(1)(a). Mr Njeem should have anticipated the Prosecution's argument that the material provided was not sufficient to discharge his burden.

7. Indeed, Mr Njeem seeks to reply to Prosecution submissions that concern the very legal test applied to determine whether any ICC case is admissible. This test is neither novel nor contentious. The Defence not only *could have* but *should have* anticipated that the Prosecution would address (i) the existence of a case under investigation or prosecution covering substantially the same conduct, (ii) its genuineness, and (iii) the sufficiency of the evidence provided in support. The Prosecution Response relies entirely on public and directly relevant caselaw to the pertinent issue raised by Mr Njeem, which he could have accessed and considered in his Challenge.

B. Mr Njeem mischaracterizes the Prosecution Response

8. Mr Njeem's submission that the Prosecution's arguments are internally inconsistent must also fail.[11] There are no internal inconsistencies in the Prosecution Response, and in any event, Mr Njeem does not explain how the alleged inconsistencies cannot be addressed by the Chamber in the exercise of its judicial duties. Mr Njeem's attempt to repeat and strengthen his arguments by addressing any alleged contradiction must fail.

9. *First,* the Prosecution sets out well-established case law relevant to admissibility challenges.[12] Mr Njeem's mere disagreement with the Prosecution Response does not render it internally contradictory.[13]

[9] Request, paras. 14-15.
[10] Request para. 17. *See* also paras. 15, 20.
[11] Request, para. 19.
[12] Prosecution Response, paras 50-51.
[13] *Contra,* Request, para. 19(a).

10. *Second,* Mr Njeem's reference to the Prosecution's submissions that there are only "the faint contours" of a case against him in Libya, and that any investigation or prosecution in Libya case must concern substantially the same conduct as that covered in the ICC case is also not contradictory. The Prosecution's submissions are accurate, well-placed, and properly implement the relevant legal requirements on the evidence before the Chamber.[14]

11. *Third,* the Prosecution's point that the reported case against Mr Njeem in Libya is confined to the mistreatment of eleven detainees and disregards the systematicity and scale of acts alleged against Mr Njeem before the ICC is apparent on the face of the three letters that Mr Njeem annexed to his Challenge.[15] Based on the evidence that Mr Njeem has proffered, this conclusion is appropriate and correct, rather than contradictory.[16]

12. *Fourth,* Mr Njeem misrepresents the Prosecution's submissions on recent reports of his conviction and imprisonment.[17] The Prosecution does not acknowledge the authenticity of the proceedings or that "those proceedings resulted in a conviction"[18]; rather, the Prosecution opted to put this reported information before the Chamber as part of its duty of candour.[19] To underscore the nature and value of the information on Mr Njeem's situation, the Prosecution refers consistently to "reports of", "alleged" or "purported" proceedings in Libya.

13. *Relatedly,* on Mr Njeem's baseless claims that the Prosecution mischaracterizes his current whereabouts and status,[20] it is worth recalling that Mr Njeem had the opportunity to provide any and all information on this matter to the Chamber when he submitted his Challenge.

14. *Finally*, in relation to Mr Njeem's complaint that he does not have access to *ex parte* annexes,[21] the Prosecution provided sufficient information on his status and whereabouts,[22] [REDACTED]. In any event, the Prosecution Response's main submission—that Mr Njeem has not discharged his burden of proof pursuant to article 17(1)(a)—is not centred on the *ex parte* annexes. Notably, the *ex parte* annexes are cited in only one paragraph of the Prosecution's lengthy response to the Challenge.

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[14] *Contra,* Request, para. 19(b).
[15] ICC-01/11-228-Anx VI; ICC-01/11-228-Anx V; ICC-01/11-228-Anx VII.
[16] *Contra,* Request. para. 19(c).
[17] *Contra,* Request. paras. 19(d), 22. *See* also Prosecution Response, paras 40 and 64.
[18] *Contra,* Request, para. 22.
[19] *Contra,* Request, para. 22.
[20] *Contra,* Request, paras. 23-24.
[21] Request, para. 24.
[22] Prosecution Response, para. 64.

15. In conclusion, Mr Njeem misrepresents the Prosecution submissions. In any event, by merely pointing to alleged contradictions and disagreements, Mr Njeem has not shown that the Prosecution raised new issues which he could not reasonably have anticipated.

C. It is not in the interest of justice to grant leave to reply and an oral hearing is not necessary

16. As the Prosecution sets out above, Mr Njeem has not identified new issues that he could not have anticipated. Neither has Mr Njeem provided compelling reasons for why it would be in the interests of justice to grant his Request. The Chamber has before it all the information that it requires to decide on the Challenge. A reply containing rehearsals and reformulations of earlier submissions, or disagreements with the Prosecution Response, such as the reply sought by Mr Njeem, will not further aid the proceedings. For the same reasons, while remaining at the Chamber's disposal for any hearing it may wish to schedule, the Prosecution does not see the benefit at this stage for oral submissions.

D. If the Request is granted, the timeline for the submission of the reply should be reasonable

17. If the Request is nevertheless granted, the Prosecution requests the Chamber to set a maximum 10 day-deadline for the reply following its decision. Mr Njeem was in full control of the timing of the Challenge and should have comprehensively addressed and prepared for the article 19 proceeding before he triggered it. Mr Njeem has not shown good cause for the issuing of a 30 day time-line, comparable to the length of time afforded parties filing appeal briefs which are ordinarily lengthier and broader than a reply confined to specific new issues. A 10-day timeline is reasonable and will allow for the timely resolution of Challenge.

IV. CONCLUSION

18. For all the reasons above, the Prosecution respectfully requests the Chamber to dismiss Mr Njeem’s Request.



Mame Mandiaye Niang
Acting Prosecutor

Dated this 6th day of November 2026

At The Hague, The Netherlands