



Original: English

No. ICC-01/11-01/11

Date: 14 June 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***

**URGENT  
Public**

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”

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 James Stewart, Deputy Prosecutor

**Counsel for the Defence**

Mr Karim Khan  
Ms 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**

**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**

**PRE-TRIAL CHAMBER I** (the “Chamber”) of the International Criminal Court (the “Court”) issues this 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” (the “Admissibility Challenge”).

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).<sup>1</sup>

2. On 27 June 2011, Pre-Trial Chamber I issued a warrant of arrest for Saif Al-Islam Gaddafi (“Mr Gaddafi”).<sup>2</sup> On 4 July 2011, Pre-Trial Chamber I issued a request to Libya to arrest Mr Gaddafi and surrender him to the Court.<sup>3</sup>

3. On 23 November 2011, a letter from the National Transitional Council of Libya was transmitted to Pre-Trial Chamber I.<sup>4</sup> 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.<sup>5</sup> On 21 May 2014, the Appeals Chamber upheld the decision of Pre-Trial Chamber I.<sup>6</sup>

5. On 6 June 2018, the Chamber received the Admissibility Challenge.<sup>7</sup> Mr Gaddafi asserts that, on 28 July 2015, he was convicted by the Tripoli Criminal

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<sup>1</sup> S/RES/1970 (2011), para. 4.

<sup>2</sup> ICC-01/11-01/11-3.

<sup>3</sup> ICC-01/11-01/11-5.

<sup>4</sup> ICC-01/11-01/11-34. The official English translation of this letter was filed in the case record on 28 November 2011.

<sup>5</sup> ICC-01/11-01/11-344-Conf and public redacted version ICC-01/11-01/11-344-Red.

<sup>6</sup> ICC-01/11-01/11-547-Red OA 4.

<sup>7</sup> 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.

Court for substantially the same conduct as alleged in the proceedings before the Court.<sup>8</sup> Mr Gaddafi further alleges that, on or around 12 April 2016, he was released from prison pursuant to Law 6 of 2015.<sup>9</sup> Thus, Mr Gaddafi submits that the case against him on charges of crimes falling within the jurisdiction of the Court is inadmissible.<sup>10</sup>

6. The Chamber notes articles 17, 19(2)(a), (3), 20(3) and 21(1)(a) of the Rome Statute (the “Statute”), rules 58(2), (3) and 59 of the Rules of Procedure and Evidence (the “Rules”) and regulations 80 and 81 of the Regulations of the Court (the “Regulations”).

7. Pre-Trial Chambers have previously held that, pursuant to rule 58 of the Rules, a Chamber that is seized of a challenge to the admissibility of a case has the discretionary power to decide on the procedure to be followed in accordance with the particular circumstances of each challenge.<sup>11</sup>

8. Nevertheless, the Chamber’s discretion is not without limitations. On the basis of rule 58(3) of the Rules, the Chamber shall allow the Prosecutor and suspects to submit written observations on a challenge to the admissibility of a case within a period of time to be determined by the Chamber. In view of the fact that the

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<sup>8</sup> Admissibility Challenge, para. 2.

<sup>9</sup> 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.

<sup>10</sup> Admissibility Challenge, para. 1.

<sup>11</sup> Pre-Trial Chamber II, *Prosecutor v Francis Kirimi Muthaura et al*, Decision on the Conduct of the Proceedings Following the Application of the Government of Kenya Pursuant to Article 19 of the Rome Statute, ICC-01/09-02/11-40, 4 April 2011, para. 8; Pre-Trial Chamber I, Decision on the Conduct of the Proceedings Following the “Application on behalf of the Government of Libya pursuant to Article 19 of the Statute”, ICC-01/11-01/11-134, 4 May 2012, para. 10; Pre-Trial Chamber I, Decision on the conduct of the proceedings following the “Application on behalf of the Government of Libya relating to Abdullah Al-Senussi pursuant to Article 19 of the ICC Statute”, ICC-01/11-01/11-325, 6 April 2013, para. 7.

Admissibility Challenge has been filed by Mr Gaddafi, the Chamber considers that the Prosecutor is authorised to submit written observations on this challenge.

9. Furthermore, the Chamber finds that the combined effect of article 19(3), second sentence, of the Statute and rule 59(1) and (3) of the Rules is that those who have referred a situation pursuant to article 13 of the Statute and victims who have already communicated with the Court in relation to a case or their legal representatives may also submit observations concerning a challenge to the admissibility of a case within a time limit the Chamber considers appropriate.<sup>12</sup> Thus, the Security Council and victims who have already communicated with the Court in relation to the present case or their legal representatives are also entitled to submit observations on the present Admissibility Challenge.

10. With a view to organizing an effective and expeditious procedure, the Chamber appoints Ms Paolina Massidda of the Office of Public Counsel for Victims (the "OPCV") under regulations 80 and 81 of the Regulations to represent the victims who have already communicated with the Court in relation to the present case for the purposes of the proceedings arising from the Admissibility Challenge.<sup>13</sup> The Chamber further orders the Registrar to provide the OPCV with information about victims who have already communicated with the Court in relation to the present case and any necessary assistance to contact such victims as soon as possible.

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<sup>12</sup> See also Pre-Trial Chamber II, *Prosecutor v Francis Kirimi Muthaura et al*, Decision on the Conduct of the Proceedings Following the Application of the Government of Kenya Pursuant to Article 19 of the Rome Statute, ICC-01/09-02/11-40, 4 April 2011, para. 12; Pre-Trial Chamber I, Decision on the Conduct of the Proceedings Following the "Application on behalf of the Government of Libya pursuant to Article 19 of the Statute", ICC-01/11-01/11-134, 4 May 2012, para. 12; Pre-Trial Chamber I, Decision on the conduct of the proceedings following the "Application on behalf of the Government of Libya relating to Abdullah Al-Senussi pursuant to Article 19 of the ICC Statute", ICC-01/11-01/11-325, 6 April 2013, para. 12.

<sup>13</sup> See also Pre-Trial Chamber I, Decision on the Conduct of the Proceedings Following the "Application on behalf of the Government of Libya pursuant to Article 19 of the Statute", ICC-01/11-01/11-134, 4 May 2012, para. 13.

11. Pursuant to rule 59(2) of the Rules, the Registrar shall provide the Security Council and the victims who have communicated with the Court in relation to the present case, in a manner consistent with the duty of the Court regarding the confidentiality of information, the protection of any person and the preservation of evidence, with a summary of the grounds on which the jurisdiction of the Court or the admissibility of the case has been challenged. In this regard, the Chamber considers that the transmission of the Admissibility Challenge and the public annexes thereto to the Security Council and the victims satisfies this requirement. Since the OPCV has already been notified of these documents, it is the Security Council which should receive said documentation.

**FOR THESE REASONS, THE CHAMBER HEREBY**

- a) **REQUESTS** the Prosecutor, the Security Council and victims who have already 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**;
- b) **APPOINTS** Ms Paolina Massidda from the OPCV as legal representative of victims who have already communicated with the Court in relation to the present case for the specific purpose of representing these victims in the proceedings arising from the Admissibility Challenge;
- c) **ORDERS** the Registrar to provide the OPCV with information about victims who have already communicated with the Court in relation to the present case and any necessary assistance to contact such victims as soon as possible; and
- d) **ORDERS** the Registrar to notify the present decision as well as document ICC-01/11-01/11-640, together with its public annexes, to the Security Council.

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



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**Judge Péter Kovács**  
**Presiding Judge**



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**Judge Marc Perrin de Brichambaut**



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**Judge Reine Adélaïde Sophie**  
**Alapini-Gansou**

Dated this Thursday, 14 June 2018

At The Hague, The Netherlands