

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-01/11 – 01/11 OA8**

Date: **8 October 2019**

**THE APPEALS CHAMBER**

**Before:**

**Judge Chile Eboe-Osuji, Presiding  
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**

**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**

**Source:**

**Lawyers for Justice in Libya and REDRESS**

**Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:****The Office of the Prosecutor**

Ms. Fatou Bensouda  
Ms. Helen Brady

**Counsel for the Defence**

Mr. Essa Faal  
Ms. Venkateswari Alegandra

**Legal Representatives of Victims****Legal Representatives of Applicants****Unrepresented Victims****Unrepresented Applicants for Participation/Reparation****The Office of Public Counsel for Victims**

Ms. Paolina Massidda

**The Office of Public Counsel for the Defence****States Representative****Amicus Curiae****State of Libya**

Lawyers for Justice in Libya  
REDRESS

**REGISTRY****Registrar**

Mr. Peter Lewis

**Counsel Support Section****Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations Section****Other**

Mr. Philipp Ambach

## I. INTRODUCTION

1. Lawyers for Justice in Libya ('LFJL') and REDRESS (collectively 'Applicants') request leave to submit joint *amicus curiae* observations before the Appeals Chamber pursuant to Rule 103 of the Rules of Procedure and Evidence ('Rules') and an 'Order scheduling a hearing before the Appeals Chamber and inviting participation in judicial proceedings.'<sup>1</sup> This request relates to issues that arise from the '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'' ('Defence Appeal Brief').<sup>2</sup>
2. The Applicants' observations would focus on presenting the Chamber with relevant information on substantive and procedural Libyan law, relevant to the Appeal Chamber's consideration of whether Mr. Saif Al-Islam Gaddafi 'has been tried by another court for conduct also proscribed under article 6, 7, 8 or 8bis' pursuant to Article 20(3) of the Rome Statute ('Statute'). The Applicants will also elaborate on Libyan 'Law No. 6 of 2015 on General Amnesty' and its relevance to Mr. Gaddafi and the exercise of jurisdiction by the International Criminal Court ('Court').
3. Pre-Trial Chamber I granted the Applicants leave to submit observations in the same case.<sup>3</sup> Observations provided to the Appeals Chamber will, where necessary, confirm and elaborate on the Applicants' previous *amicus curiae* observations.

## II. PROCEDURAL BACKGROUND

4. On 5 April 2019, Pre-Trial Chamber I issued its "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>4</sup> Judge de Brichambaut issued a separate and concurring opinion.<sup>5</sup>
5. On 10 May 2019, the Defence submitted the Defence Appeal Brief before the Chamber.<sup>6</sup>

---

<sup>1</sup> "Order scheduling a hearing before the Appeals Chamber and inviting participation in judicial proceedings", No. ICC-01/11-01/11 OA 8, 24 September 2019.

<sup>2</sup> "Defence 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"', No. ICC-01/11-01/11-663, 11 April 2019.

<sup>3</sup> LFJL and Redress Trust, "Observations by Lawyers for Justice in Libya and the Redress Trust pursuant to Rule 103 of the Rules of Procedure and Evidence", No. ICC-01/11-01/11-654, 28 September 2018.

<sup>4</sup> "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'", No. 01/11-01/11-662, 5 April 2019.

<sup>5</sup> "Separate concurring opinion by Judge Marc Perrin de Brichambaut", No. ICC-01/11- 01/11-662-Anx, 8 May 2019.

6. On 11 June 2019, both the Prosecution<sup>7</sup> and the Office for Public Counsel for Victims<sup>8</sup> filed their responses to the Defence Appeal Brief.

7. On 24 September 2019, the Appeals Chamber scheduled an appeal hearing in November and invited the State of Libya and the United Nations Security Council to provide observations.<sup>9</sup>

### III. SUBMISSIONS

#### **i. The Applicants' observations will assist the Appeals Chamber by providing information and analysis relevant to its determination of the core issues before it**

8. Rule 103(1) of the Rules provides the Chamber with the authority to grant leave to a State, organization, or person to submit *amicus curiae* observations at any stage of the proceedings, where it considers it 'desirable for the proper determination of the case.'<sup>10</sup> Observations may be desirable 'in light of the nature and complexity of the issues at stake,'<sup>11</sup> and where the novelty of the issues raised could benefit from them.<sup>12</sup>

9. The Applicants request leave to provide observations on issues that arise from the Defence's second ground of appeal. As part of its second ground of appeal, the Defence submits that Pre-Trial Chamber I erred in law in failing to take into account or give sufficient regard to the *de facto* application of Law No. 6; erred in law and/or fact in finding that Law No. 6 could not apply to the crimes for which Mr. Gaddafi was charged; erred in law in considering the validity of Law No. 6 in international law when determining whether his conviction was final;

---

<sup>6</sup> See Defence Appeal Brief.

<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'", No. ICC-01/11-01/11-669, 11 June 2019.

<sup>8</sup> "Response on Behalf of Victims to the Defence Appeal Brief on the Decision on the Admissibility of the Case", No. ICC-01/11-01/11, 11 June 2019.

<sup>9</sup> "Order scheduling a hearing before the Appeals Chamber and inviting participation in judicial proceedings", No. ICC-01/11-01/11 OA 8, 24 September 2019.

<sup>10</sup> Prosecutor v. Omar Hassan Ahmad Al-Bashir, "Decision on the requests for leave to file observations pursuant to rule 103 of the Rules of Procedure and Evidence, the request for leave to reply and further processes in the appeal," No. ICC-02/05-01/09 OA2, 21 May 2018, para 9; 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>11</sup> Pre-Trial Chamber II, 'Decision on the 'Request for Leave to File *Amicus Curiae* Submissions on behalf of Human Rights Organisations in Afghanistan' (ICC-02/17-35) and on the 'Request to appear before the Chamber pursuant to regulation 81(4)(b) of the Regulations of the Court' (ICC-02/17-39)", ICC-02/17, 12 June 2019.

<sup>12</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.

and erred in law in finding that Law No. 6 was incompatible with international law. The Defence argues that Pre-Trial Chamber I would have found the case against Mr. Gaddafi to be inadmissible had it not committed errors of law, fact, and procedure.

10. The Applicants seek to provide observations on the following issues:

- a. the finality of the conviction of Mr. Gaddafi by the Tripoli Criminal Court;
- b. the validity of examining Law No. 6 in respect of applicable international law;
- c. the compatibility of Law No. 6 with applicable international law and norms relating to amnesties and pardon;
- d. the consequence of the *de jure* or *de facto* application of Law No. 6 on the Court's exercise of jurisdiction over Mr. Gaddafi.

11. The above issues relate to the Defence's first ground of appeal in so far that it concerns Pre-Trial Chamber I's requirement that a conviction be final for *ne bis in idem* to be applicable.

12. The Applicants' observations on Libyan procedural and substantive law and how these have been interpreted and applied in Libya may assist the Appeals Chamber in determining whether or not Pre-Trial Chamber I correctly determined that the case against Mr. Gaddafi is admissible. As such, the issues identified go to the heart of the appeal brought by Mr. Gaddafi.

13. For example, the Applicants will provide information on the procedure for the Libyan Court of Cessation to validate convictions, and the relevance of the procedure to this case. Furthermore, it will submit information on the rules governing the timing and handling of appeals of convictions that have been reached following *in absentia* proceedings. The Applicants will also provide information and analysis relating to the *de facto* or *de jure* application of Law No. 6. This will include information on the scope of Law No. 6, the process in which the Law was adopted and its status under Libyan law, as well as relevant and applicable international law standards that are connected to these questions.

**ii. The Applicants are well-placed to submit observations to the Appeals Chamber on the issues arising from the Defence Appeal Brief**

14. LFJL and REDRESS are well-placed to submit observations to the Appeals Chamber on the issues identified above. The Applicants are independent organisations with a recognised expertise and a track record of providing impartial and relevant information to an array of international courts and tribunals, including the International Criminal Court.

15. The Applicants have been recognized as experts in the application of international criminal law and human rights law to the situation in Libya. LFJL works on and in Libya with a network of lawyers, activists and local communities. LFJL is able to access, assess, and analyse information that is relevant to the proper determination of the case before the Chamber.

16. LFJL has documented and collected evidence of human rights and humanitarian law violations in Libya and has represented the interests of victims before *inter alia* the African Commission on Human and Peoples' Rights. LFJL is an active participant in Libya's transition to a society which embodies the values and principles of human rights and the rule of law.

17. REDRESS is an international non-governmental organisation that has special consultative status with the United Nations Economic and Social Council. 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. REDRESS has extensive experience in directly representing victims before national, regional, and international courts and tribunals, as well as UN treaty bodies and special procedures. REDRESS has regularly been granted leave to intervene in cases before the Court, the African Commission on Human and Peoples' Rights, the European Court of Human Rights, the Special Court for Sierra Leone, and the Extraordinary Chambers in the Courts of Cambodia.

#### IV. RELIEF REQUESTED

18. For the reasons set out above, the Applicants respectfully request that the Appeals Chamber grants the Applicants' leave to submit *amicus curiae* observations on the four issues listed in paragraph 10 of this request. The Applicants would also be willing to participate in the hearing in order to further explain their arguments, if the Court would find it helpful.



Elham Saudi  
Director, Lawyers for Justice in Libya



Rupert Skilbeck  
Director, REDRESS

Dated this 8<sup>th</sup> day of October 2019  
At London, United Kingdom