



**Original: English**

**No. ICC-01/11-01/11 OA 8**

**Date: 1 November 2019**

**THE APPEALS CHAMBER**

**Before:**

**Judge Chile Eboe-Osuji, Presiding Judge  
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**

**Decision on the conduct of the hearing before the Appeals Chamber**

**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  
Ms Helen Brady

**Counsel for Mr Saif Al Islam Gaddafi**  
Mr Essa Faal  
Mr Aidan Ellis

**The Office of Public Counsel for Victims**  
Ms Paolina Massidda

**States Representatives**  
The State of Libya

**Others**  
United Nations Security Council  
Lawyers for Justice in Libya  
Redress Trust  
Libyan Cities and Tribes Supreme Council

**REGISTRY**

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**Registrar**  
Mr Peter Lewis

The Appeals Chamber of the International Criminal Court,

In the appeal by Mr Saif Al-Islam Gaddafi against the decision of Pre-Trial Chamber I entitled ‘Decision on the “Admissibility Challenge by Dr. Saif Al-Islam Gadafi pursuant to Articles 17(1)(c), 19 and 20(3) of the Rome Statute”’ of 5 April 2019 (ICC-01/11-01/11-662),

Noting the ‘Order scheduling a hearing before the Appeals Chamber and inviting participation in judicial proceedings’ of 24 September 2019 (ICC-01/11-01/11-672),

*Issues* the following

## DECISION

1. Over the two days scheduled for the hearing in this appeal – 11 and 12 November 2019 – the Appeals Chamber invites Mr Gaddafi, the Prosecutor, the Office of Public Counsel for Victims, the State of Libya, Lawyers for Justice in Libya and Redress, and the Libyan Cities and Tribes Supreme Council to make submissions guided by the questions outlined below, in addition to making submissions in relation to the appeal in general. The questions are intended to guide the parties and participants in their submissions and need not be answered individually. Mr Gaddafi, the Prosecutor and the Office of Public Counsel for Victims may also include, within the time allocated to them in the hearing, their responses to the written submissions received from the State of Libya and the *amici curiae* in this appeal.
2. A precise schedule for the hearing is provided below. This schedule will be amended should the Security Council indicate that it wishes to attend the hearing.

### **Questions to be addressed by the parties and participants**

- a) If the object and purpose of the Rome Statute is to close the impunity gap, how does the Court's complementarity regime serve to achieve this?
- b) In particular, how do the parties' and participants' respective interpretations of articles 17(1)(c) and 20(3) of the Statute accord with the object and purpose of the Rome Statute and the complementarity regime envisaged in the Rome Statute?
- c) To what extent should jurisprudence and human rights instruments relating to the *ne bis in idem* principle<sup>1</sup> inform the interpretation of article 17(1)(c) of the Statute? Can such sources be used to read a requirement of finality into article 17 of the Statute? Do such sources of law sufficiently take into account the Court's complementarity framework?
- d) Is it common ground that Mr Gaddafi's trial in Libya was held *in absentia*?
- e) Is a retrial automatic under Libyan law in the case of *in absentia* proceedings? Is it confirmed by the appropriate Libyan authorities that article 358 of the Libyan Code of Criminal Procedure requires a retrial once Mr Gaddafi appears or is arrested? Is a retrial a right to be asserted by the person tried *in absentia* or an obligation that must be carried out by the State regardless of whether the person tried *in absentia* asserts this right?
- f) How is article 358 of the Libyan Code of Criminal Procedure applicable to Mr Gaddafi given that he did not abscond, but rather was held in detention while his trial was on-going?
- g) Leaving aside the impact, if any, of Libyan Law No. 6 of 2015, in what circumstances, if any, would Mr Gaddafi's *in absentia* conviction become final in accordance with Libyan criminal law and procedure, for example as a result

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<sup>1</sup> See [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'](#), 5 April 2019, ICC-01/11-01/11-662, paras 37-47.

of a statute of limitations or, as indicated in the text of article 358 of the Libyan Code of Criminal Procedure, ‘the lapse of the penalty by prescription’<sup>2</sup>?

- h) In accordance with Libyan procedural law, where death penalty convictions are concerned, is it confirmed by the appropriate Libyan authorities that a review by the Court of Cassation is mandatory? Has such a review taken place? Leaving aside the issue of finality with respect to *in absentia* trials, would review by the Court of Cassation render the judgment against Mr Gaddafi by the Tripoli court final?
- i) In reviewing an admissibility challenge, is a Chamber’s scope of review limited to the terms of the provision(s) under which the specific challenge was brought or does it extend to a review of the admissibility of the case more generally under article 17 and in accordance with article 19(1) of the Statute?
- j) Are amnesties relevant to the admissibility of a case under article 17 of the Statute and, if so, under which limb of article 17(1) of the Statute?
- k) In particular, can an amnesty be taken into account under articles 17(1)(c) and 20(3) of the Statute? Could the amnesty be considered under article 20(3)(a) or (b) of the Statute? In this regard, for the purposes of article 20(3)(a) or (b) of the Statute, may developments outside the judicial proceedings – such as the passing of an amnesty law – be taken into account, also bearing in mind the overall purpose of the complementarity regime? How would article 20(3) of the Statute be applied to the facts of this case?
- l) Was Libyan Law No. 6 of 2015 validly issued? Could the circumstances of this case, in particular that an amnesty was allegedly passed after Mr Gaddafi’s initial trial but before a retrial, lead to a finding of inadmissibility under article 17(1)(a) or (b) of the Statute and should the Appeals Chamber address it under these limbs?

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<sup>2</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’” \(ICC-01/11-01/11-669\)](#), 11 June 2019, ICC-01/11-01/11-671, footnote 68, citing Article 358 of the Libyan Code of Criminal Procedure.

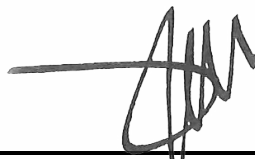
## **Hearing Schedule**

The following time will be allocated to the parties and participants, for a total of 9 hours, over the course of two hearing days:

- a. Mr Gaddafi (1.5 hours)
- b. The Prosecutor (1.5 hours)
- c. The Office of Public Counsel for Victims (45 minutes)
- d. The State of Libya (45 minutes)
- e. Lawyers for Justice in Libya, and Redress (30 minutes)
- f. Libyan Cities and Tribes Supreme Council (30 minutes)
- g. Further submissions of the Prosecutor, if any (45 minutes)
- h. Further submissions of Mr Gaddafi, if any (45 minutes)
- i. Remaining time (2 hours) for questions from the bench and rejoinders/replies, as appropriate.

Additional questions may be put to the parties and participants from the bench in respect of the issues outlined above or any other relevant issues.

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



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**Judge Chile Eboe-Osuji**  
**Presiding**

Dated this 1st day of November 2019

At The Hague, The Netherlands