



**Original: English**

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

**Date: 6 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 LYBIA**

**IN THE CASE OF  
THE PROSECUTOR v. SAIF AL-ISLAM GADDAFI**

**Public**

**Decision on urgent request for an order directing the Registrar to transmit  
certain confidential documents to the State of Libya**

**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**

**REGISTRY**

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**Registrar**  
Mr Peter Lewis

The Appeals Chamber of the International Criminal Court,

In the appeal of Mr Saif Al-Islam Gaddafi against the decision of Pre-Trial Chamber I entitled ‘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”’ of 5 April 2019 (ICC-01/11-01/11-662),

Having before it the confidential ‘Urgent request for an order directing the Registrar to transmit certain confidential documents to the State of Libya’ of 31 October 2019 (ICC-01/11-01/11-680-Conf) (‘Request’),<sup>1</sup>

Pursuant to regulation 23 *bis* of the Regulations of the Court,

*Issues* the following

## DECISION

The Appeals Chamber directs the Registry to transmit to the representatives of the State of Libya in the present appeal the four documents referenced in footnote 3 of this decision.

## REASONS

1. By order of 23 September 2019, the Appeals Chamber invited, among others, the State of Libya to submit observations and to attend the hearing scheduled for 11 and 12 November 2019.<sup>2</sup>
2. The Prosecutor has identified four confidential documents,<sup>3</sup> ‘which in the interests of completeness and fairness’ it considers should be made available to the

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<sup>1</sup> Request, paras 1, 8.

<sup>2</sup> See [Order Scheduling a hearing before the Appeals Chamber and inviting participation in judicial proceedings](#), ICC-01/11-01/11-672. The original deadline for filings observations for the Security Council and the State of Libya was 24 October 2019. The State of Libya was subsequently granted an extension of time until 7 November 2019 to file its written observations. See [Decision on the ‘Request for extension for submission of observations from the State of Libya in relation to the Appeals Chamber’s Order ICC-01/11-01/11-672’](#), 23 October 2019, ICC-01/11-01/11-677.

<sup>3</sup> Annex 1 to 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”’, 20 May 2019, ICC-01/11-01/11-669-Conf-Anx1 (‘Document 1’); Annex

State of Libya. The Prosecutor submits that the Defence has indicated that it has no objection to the four documents being transmitted to the State of Libya.<sup>4</sup>

3. Document 1 was submitted by Mr Gaddafi in the present appeal. As the content of the document originates from Libyan government agencies, and Mr Gaddafi has no objection to its transmission, the Appeals Chamber will order the Registry to provide the State of Libya with the confidential document.

4. Document 2 was submitted by the Prosecutor in the present appeal. As the confidential status of the document stems only from reference to another confidential document that has already been notified to the State of Libya,<sup>5</sup> the Appeals Chamber considers it appropriate to direct the Registry to transmit the document to the state concerned.

5. Document 3 is a submission made by Mr Gaddafi before the Pre-Trial Chamber. Redactions to this document were made on the basis of two confidential documents. One of the confidential documents has since been reclassified as public<sup>6</sup> and the other has already been notified to the State of Libya.<sup>7</sup> The Appeals Chamber therefore considers it appropriate to direct the Registry to transmit this document to the state concerned.

6. Document 4 is a submission by the Prosecutor made before the Pre-Trial Chamber. The redactions made to the document were necessary due to the confidential classification of: (i) communications between the Registry and the State

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B to the Prosecution Response to Mr Saif Al-Islam Gaddafi's Appeal against the '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"' (ICC-01/11-01/11-669), 31 October 2019, ICC-01/11-01/11-671-Conf-AnxB ('Document 2'); Corrigendum of Defence Consolidated Reply to Prosecution 'Response to "Admissibility Challenge by Dr. Saif Al-Islam Gadafi pursuant to Articles 17(1)(c), 19, and 20(3) of the Rome Statute"' and Response to "Observations by Lawyers for Justice in Libya and the Redress Trust pursuant to Rule 103 of the Rules of Procedure and Evidence"', 12 November 2018, ICC-01/11-01/11-660-Conf-Corr ('Document 3'); Prosecution response to 'Admissibility Challenge by Dr. Saif Al-Islam Gadafi pursuant to Articles 17(1)(c), 19 and 20(3) of the Rome Statute', 28 September 2018, ICC-01/11-01/11-653-Conf ('Document 4').

<sup>4</sup> Request, paras 1, 6.

<sup>5</sup> Annex C to the Admissibility Challenge by Dr. Saif Al-Islam Gadafi pursuant to Articles 17(1)(c), 19, and 20(3) of the Rome Statute, 6 June 2018, ICC-01/11-01/11-640-Conf-AnxC.

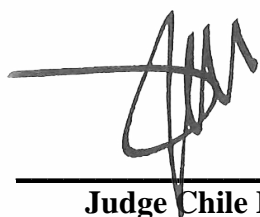
<sup>6</sup> Annex 4 to the Prosecution response to 'Admissibility Challenge by Dr. Saif Al-Islam Gadafi pursuant to Articles 17(1)(c), 19, and 20(3) of the Rome Statute', 5 November 2019, ICC-01/11-01/11-653-Anx4.

<sup>7</sup> Annex C to the Admissibility Challenge by Dr. Saif Al-Islam Gadafi pursuant to Articles 17(1)(c), 19, and 20(3) of the Rome Statute, 6 June 2018, ICC-01/11-01/11-640-Conf-AnxC.

of Libya, (ii) communications between the Office of the Prosecutor and the State of Libya, and (iii) an annex to Mr Gaddafi's admissibility challenge before the Pre-Trial Chamber.<sup>8</sup> The Appeals Chamber considers that, since the confidential information either originated from or has since been notified to the state concerned, it is appropriate to direct the Registry to transmit this document to the State of Libya.

7. The Appeals Chamber therefore finds that the four documents identified in footnote 3 of this decision may be transmitted to the representatives of the State of Libya in the present appeal. These documents, however, retain their confidential status and therefore their contents must continue to be accorded appropriate protection.

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



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

Dated this 6th day of November 2019

At The Hague, The Netherlands

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<sup>8</sup> Request, para. 4(d).