

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-01/11
Date: 14th July 2026

PRE-TRIAL CHAMBER I

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

SITUATION IN LIBYA

IN THE CASE OF THE PROSECUTOR v.OSAMA ELMASRY/ALMASRI NJEEM

Public Document

**Public Redacted Version of the Defence "Request for Leave to Reply to the
Prosecutor's Response to the Defence Challenge and Other Related Matters"
ICC-01/11-234**

Pursuant to Regulations 24(5) and 34(c) and Rule 58 of the Rules of the Court

Source: The Applicant, Mr. Osama Elmasry/ Almasri Njeem
Represented by Prof. Githu Muigai, SC

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

☒ The Office of the Prosecutor

☒ Counsel for the Defence

☐ Legal Representatives of the Victims
Specify the team(s) to be notified

☒ Legal Representatives of the
Applicants

☐ Unrepresented Victims

☐ Unrepresented Applicants
(Participation/Reparation)

☐ The Office of Public Counsel for
Victims

☐ The Office of Public Counsel for the
Defence

☒ States' Representatives

☐ Amicus Curiae

REGISTRY

Registrar

M. Zavala Giler, Osvaldo

☒ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and
Reparations Section

☐ Other

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PART ONE: PRELIMINARY

1. The Defence for Mr. Osama Elmasry/Al-Masri Njeem respectfully seeks leave of the Court, pursuant to regulations 24(5) and 34(c) of the Regulations of the Court (the "Regulations"), to file a reply to the Prosecution's Response to the Defence's challenge to the jurisdiction of the Court and the admissibility of the Case (the "Prosecution Response to the Defence Challenge").
2. The Application is marked Public as it refers to and cites portions of preceding public filings by the Prosecutor and the Defence.
3. On 2nd October 2024, the Prosecution filed its Application for a Warrant of Arrest against Mr. Njeem ("Arrest Warrant Application").
4. On 18th January 2025, Pre-Trial Chamber I ("the Chamber") issued the Warrant of Arrest ("Arrest Warrant") against Mr. Njeem on eight counts, as set out in the Arrest Warrant Application.
5. On 15th April 2026, the Defence for Mr. Njeem submitted by email an Application challenging the jurisdiction of the Court and the admissibility of the matter before the Court (the "Defence Challenge"). Upon the request of the Registry on behalf of the Chamber, the Defence resubmitted the Defence Application on 28th April 2026, together with a power of attorney for Mr. Njeem. The Defence Application was thereafter submitted to the Chamber on 30th April 2026.
6. On 13th May 2026, the Chamber issued an order setting time limits for observations following Osama Elmasry/Almasri Njeem's jurisdictional and admissibility challenge pursuant to articles 17 and 19 of the Statute ("Defence Challenge Procedural Order").
7. On 3rd July 2026, the Registry transmitted to the Defence the Prosecution Response to the Defence Challenge.

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8. As of the date of filing this Application, the Registry was yet to submit any response or observations filed by the Office for Public Counsel for Victims or the State of Libya Representatives to Mr. Njeem's Defence team. It is therefore presumed that no filing has been made by the Office for Public Counsel for Victims or the State of Libya Representatives in response to the Defence Challenge.
9. The Defence respectfully submits that, on a proper evaluation, the Prosecution Response fails to address the foundational premise of the Defence's jurisdictional challenge, namely the proper interpretation of United Nations Security Council Resolution 1970 ("the Resolution"). The Defence therefore does not seek leave to reply on the question of jurisdiction, and relies on the arguments developed in the Defence Challenge, which the Prosecution has left unanswered.

PART TWO : GROUNDS ON WHICH THE DEFENCE SEEKS LEAVE TO REPLY

10. The Defence confines this application for leave to reply to the new issues raised for the first time in the Prosecution Response which the Defence could not reasonably have anticipated, as set out below, consistent with the requirements of regulation 24(5) of the Regulations.
11. Leave to reply is necessary in the interests of justice because the intended reply addresses issues that go to the core of the admissibility challenge and are material to its just and proper resolution. In respect of all other aspects of the Defence Challenge not identified below, the Defence relies on the arguments already developed therein.
12. Moreover, the Prosecution Response to the Defence Challenge refers to and makes argument founded on [REDACTED]. For this reason alone, the full scope of the Prosecution's Response could not have been anticipated when the Defence Challenge was filed and it would serve the interest of justice and fairness for the Defence to be granted leave to reply to the Response.

a. On the issue of admissibility of the Case before the Chamber

13. In the Prosecution Response to the Defence Challenge, the Prosecutor—[REDACTED] Such a submission specifically impacts the Court's determination of sufficiency of the evidence available to it to arrive at a determination on the admissibility challenge noting the confidential and private nature of the investigations against Mr. Njeem by the Libyan authorities prior to Mr. Njeem's prosecution in Libya.
14. At paragraph 41, the Prosecutor indicates that [REDACTED]. Whereas the Defence has demonstrated that the acts of the Libyan State evince both the willingness and the ability to prosecute the alleged offences, the Prosecutor now

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seeks, without foundation, to diminish the probative value of the Libyan criminal justice system.

15. This is the first occasion on which the Prosecutor has sought to impugn the speed and efficacy of domestic judicial proceedings, and the Defence had no reasonable notice that such a submission would be advanced. The Prosecutor's submission bears directly on admissibility, since it speaks to the capacity and willingness of the State of Libya to prosecute Mr. Njeem. Should the Chamber consider that this submission has any merit, or that it may be relied upon in its deliberations, the interests of justice require that the Defence be afforded an opportunity to rebut it by way of reply, so that the Chamber has the benefit of the submissions of both parties on these new and complex issues.

b. On the issue of substantiation of the criminal proceedings in the State of Libya

16. On the issue of substantiation, the Prosecution's position is internally inconsistent. Having acknowledged [REDACTED].
17. This is the first occasion on which the Prosecution has advanced a submission [REDACTED]. While the Defence had notice of, and sufficiently addressed, the concrete steps being pursued by the State of Libya, and provided a concise account of the proceedings against Mr. Njeem to date, it had no opportunity to set out what further documentary evidence would be regarded as adequate and sufficient, beyond the public statements and excerpts of the Libyan proceedings already placed before the Chamber by the Defence. The question as to adequacy and sufficiency is a continuum question that subsists over the entirety of the proceedings as matters evolve in the State of Libya, new and additional information that may be germane to the Court's proceedings would arise and require contemporaneous reporting by the Defence.

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18. Should the Chamber be minded to accept the Prosecution's contention that [REDACTED], the interests of justice require that the Defence be afforded an opportunity to address the Chamber on the adequacy and sufficiency of the available material forming part of the public record of proceedings in the State of Libya.

c. On the issue of whether the material provided shows that the Libyan case and the ICC case cover substantially the same conduct

19. The Prosecutor's position:-

- a. At paragraphs [REDACTED].
- b. At paragraph [REDACTED].
- c. At paragraphs [REDACTED].
- d. At paragraph [REDACTED].

20. These submissions are marked by internal inconsistency as to the materiality of the evidence adduced, the sufficiency of the information available to the Prosecutor (as produced by the Defence), and the threshold of sufficiency required for an admissibility challenge. Each is advanced for the first time in the Prosecution Response to the Defence Challenge.

21. The submissions critically impact on the central issue of admissibility by speaking to the element of substantially material domestic proceedings vis-à-vis proceedings before the Court. The Defence had no opportunity to address the argument as it did not anticipate that the Prosecutor would advance self-contradictory arguments on materiality and similarity of the proceedings.

22. Should the Chamber entertain the Prosecution's argument [REDACTED], an inconsistency arises that no Defence could reasonably have foreseen. It is

therefore in the interests of justice that the Defence be afforded an opportunity to rebut these contentions by way of reply, so that the Chamber has the benefit of the submissions of both parties on these new issues.

d. Libya is under an obligation to surrender Mr. Njeem to the Court

23. The Prosecutor's position at paragraph [REDACTED].
24. As such, the Defence respectfully submits that it should be granted an opportunity to address the Prosecution's mischaracterization of the current status of Mr. Njeem, the current status of the Libyan proceedings and the anticipated proceedings in the State of Libya. The Defence reply would rectify and address the mischaracterization that arises from the Prosecution's innuendo, noting that the Defence has had no chance to review, examine or otherwise advance a position with respect to [REDACTED].
25. The Defence could not have reasonably foreseen nor anticipated the Prosecution mischaracterization of a matter of public record. If leave is granted, the Defence will seek to set out with clarity the current state of the Libyan proceedings, the status of Mr. Njeem and the applicable legal framework for the anticipated proceedings in the State of Libya.

PART THREE : OTHER MATTERS

a. Timelines for Defence to file their Reply if Leave is Granted

26. The Defence notes that under Regulation 34(c), the Chamber has discretion to specify such timelines as it may deem necessary for the reply to response to be filed.
27. The Defence respectfully invites the Court to take judicial notice of the current state of affairs in the State of Libya and Mr. Njeem's current detention by the competent legal authorities as relevant consideration in issuing a suitable timeline for the Defence to file their reply to the Prosecutor's Response to the Defence Challenge, if leave is granted.
28. Given the Defence may require to engage Mr. Njeem on some of the issues herein, the Defence invites the Court, if its minded to grant leave, to provide for a timeline for the Defence to reply to the response of not less than thirty (30) days from date of an order granting leave. Such timelines would afford the Defence the necessary timelines to engage Mr. Njeem and seek his concurrence on the proposed reply to the Prosecutor's Response to the Defence Challenge.

b. Oral Hearing of the Defence Challenge

29. The Defence notes that the Chamber has not yet indicated whether, at this stage, a hearing is required for the determination of the Defence Admissibility Challenge. The Defence further notes that the Chamber enjoys discretion under Rule 58 to determine the format of the proceedings.
30. The Defence respectfully invites the Chamber to consider exercising its discretion to convene a hearing after the Defence has filed its Reply, should leave be granted, given the particular importance, sensitivity and symbolic dimension of the present case for the affected population of the State of Libya.
31. The Defence maintains that the comity of nations and respect for national institutions calls for the Court's restraint from exercising jurisdiction over, and

admitting proceedings against, a Libyan national where the State of Libya has demonstrated both the ability and the capacity to prosecute that national for substantially the same conduct and on substantially the same charges.

32. In such circumstances, a hearing would afford the Court and the State of Libya an opportunity to take stock of, and to recognise, the efforts made towards the normalisation and effective governance of the State of Libya by its competent national authorities.
33. The current divergence between the Prosecutor and the Defence on matters of public record and notoriety with respect to the proceedings and outcome in the State of Libya further anchor the Defence request for an oral hearing as a critical step towards a full and frank public exchange to allow for accountability and transparency on the matter.

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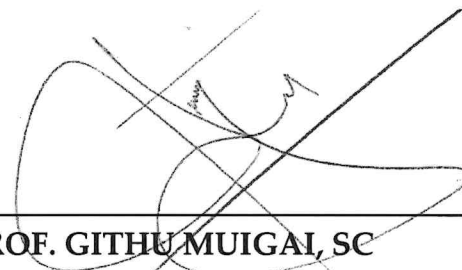
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PART FOUR: PRAYERS

FOR THE FOREGOING REASONS, THE DEFENCE PRAYS THAT THE CHAMBER:

1. **DOES GRANT LEAVE** to the Defence to reply to the Prosecution Response to the Defence Challenge on the issue of the admissibility of the instant proceedings, in respect of the specific matters identified above;
2. **DOES DISMISS *IN LIMINE*** the Prosecutor's submissions on jurisdiction advanced in response to the Defence Challenge;
3. **DOES ORDER** pursuant to Regulation 23*bis*(3) of the Regulations the reclassification as "Confidential" of [REDACTED].
4. **TO CONSIDER THE OTHER DEFENCE'S SUBMISSIONS** set out in Part Three from paragraph 26 to 33 above concerning the opportunity for an oral hearing.

Respectfully submitted



PROF. GITHU MUIGAI, SC
on behalf of
Mr. Osama Elmasry/ Almasri Njeem

Dated this 14th day of July 2026

At Nairobi, Kenya