

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original : **Anglais**

N° : **ICC-01/11-01/11**

Date : 16 May 2012

PRE TRIAL CHAMBER I

Before: Judge Silvia Fernandez de Gurmendi, Presiding Judge
Judge Hans-Peter Kaul
Judge Christine Van den Wyngaert

**SITUATION IN LIBYA
IN THE CASE OF
*THE PROSECUTOR v. SAIF AL-ISLAM GADDAFI and ABDULLAH AL-SENUSSI***

Public
**APPLICATION BY LAWYERS FOR JUSTICE IN LIBYA and the REDRESS TRUST
FOR LEAVE TO SUBMIT OBSERVATIONS PURSUANT TO RULE 103 OF THE
RULES OF PROCEDURE AND EVIDENCE**

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

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Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

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REGISTRY

Registrar

Ms. Silvana Arbia

Counsel Support Section

Deputy Registrar

Mr. Didier Preira

Detention Section

Victims and Witnesses Unit

**Victims Participation and Reparations
Section**

Other

1. Lawyers for Justice in Libya ("LFJL") and the Redress Trust ("REDRESS") seek leave of Pre-Trial Chamber I of the International Criminal Court to submit observations to assist the Chamber in its determination of the issue of admissibility, following the admissibility challenge to the ICC's jurisdiction in the Case of *The Prosecutor v. Saif al-Islam Gaddafi and Abdullah al-Senussi* which was filed by the Government of Libya to the Chamber on 1 May 2012.¹
2. This application for leave is made pursuant to rule 103 of the Rules of Procedure and Evidence.

I. Background

3. On 26 February 2011, the United Nations Security Council ("the Security Council") adopted Resolution 1970,² whereby the Security Council referred to the Prosecutor the situation in the Libyan Arab Jamahiriya since 15 February 2011.³
4. On 27 June 2011, the Chamber issued warrants of arrest against, *inter alia*, Saif Al-Islam Gaddafi ("Mr Gaddafi") and Abdullah Al-Senussi ("Mr Al-Senussi").⁴ On 5 July 2011, the Registrar notified the Libyan authorities of a request for cooperation asking for their assistance in arresting, *inter alia*, Mr Gaddafi and Mr Al-Senussi and surrendering them to the Court ("the Surrender Request").⁵

¹ *The Prosecutor v. Saif al-Islam Gaddafi and Abdullah al-Senussi*, Application on behalf of the Government of Libya pursuant to Article 19 of the ICC Statute, 1 May 2012, ICC – 02/11-01/11-130-Red.

² S/RES/1970 (2011).

³ S/RES/1970, paragraph 4.

⁴ Warrant of Arrest for Saif Al-Islam Gaddafi, ICC-01/11-01/11-3; Warrant of Arrest for Abdullah Al-Senussi, ICC-01/11-01/11-4.

⁵ ICC-01/11-01/11-5 and ICC-01/11-01/11-25-Conf.

5. On 23 November 2011, a letter from the National Transitional Council was transmitted to the Chamber. The official English translation of this letter was formally filed in the case record six days later.⁶ This letter confirmed the arrest of Mr Gaddafi on 19 November 2011 in Libya, where Mr Gaddafi has been detained since.
6. On 17 April 2012, the Chamber appointed counsel from the Office of Public Counsel for the defence ("OPCD") as Mr Gaddafi's counsel pursuant to regulation 76(2) of the Regulations of the Court ("the Regulations").⁷
7. On 1 May 2012, the Government of Libya ("Libya") filed an Article 19 Application, wherein it requests that the Chamber:
 - (i) postpone execution of the Surrender Request pursuant to article 95 of the Rome Statute ("Postponement Request"); and
 - (ii) declare the case inadmissible and quash the Surrender Request ("Admissibility Challenge").⁸

Libya's principal submission is to challenge the admissibility of the case against Mr Gaddafi only, arguing in the alternative that the Article 19 Application extends to both Mr Gaddafi and Mr Al-Senussi's cases.⁹

8. On 2 May 2012, Libya filed its "Motion on Behalf of the Government of Libya Requesting an Oral Hearing in Respect of its Admissibility Challenge Pursuant to

⁶ ICC-01/11-01/11-34 with annex.

⁷ ICC-01/11-01/11-113.

⁸ Article 19 Application, paragraphs 107-108.

⁹ Article 19 Application, paragraphs 73-74.

Article 19 of the Statute", requesting that the Chamber conduct an oral hearing on the Article 19 Application.¹⁰

9. On 4 May 2012, Pre Trial Chamber I issued its "Decision on the Conduct of the Proceedings Following the "Application on behalf of the Government of Libya pursuant to Article 19 of the Statute", in which it gives OPCD, the Security Council and OPCV until 4 June 2012 to submit observations on the Admissibility Challenge.¹¹

II. The Applicants

Lawyers for Justice in Libya (LFJL)

10. Lawyers for Justice in Libya (LFJL) was established in response to the 17 February 2011 Libyan uprising, by a network of Libyan international lawyers living in the Diaspora, with the aim of using their legal expertise to pursue avenues to promote human rights, the establishment of the rule of law and the facilitation of a smooth transition towards a democratic and inclusive Libya.
11. Collectively, LFJL's members have expertise in international human rights law, the law of armed conflict, international arbitration, transitional justice, corporate law, finance law, and oil and gas law.
12. LFJL also maintains a growing network of talented Libyan lawyers, currently in excess of 60 lawyers, working on the ground across all regions in Libya.

¹⁰ ICC-01/11-01/11-132.

¹¹ ICC-01/11-01/11-134

13. LFJL's core values are independence and integrity. They undertake projects and advocate positions with independence from interference, which would otherwise prejudice its core values and credibility.
14. LFJL's Transitional Justice, Impunity and Human Rights Programme addresses key issues of transitional justice, fighting impunity and the promotion of human rights. LFJL has trained over 30 Libyan lawyers, judges and activists on international human rights law, focussing, among other things, on documentation and fact finding, in collaboration with the Cairo Institute for Human Rights Studies, the ICC Prosecutor's Office and REDRESS.
15. LFJL's Constitution Building and Legal Reform Programme promotes a fair and inclusive constitution based on a fair and inclusive consultative process. It also promotes a transparent and participatory process for the drafting of all laws. LFJL has already successfully completed a high level workshop on constitution building and elections. The workshop brought together key stakeholders representing 16 regions in Libya, government officials, members of the drafting and electoral committees as well as key activists and legal professionals engaging in open discussions on issues arising out of the Constitutional Declaration as well as the draft election law. It has also engaged in significant advocacy for the revocation of recent laws impacting freedom of expression and granting an amnesty for crimes committed during the recent conflict.
16. LFJL's Governance and Rule of Law Programme promotes the principles of transparency and accountability in all branches of government. It calls for an end to the revolutionary legitimacy on which the NTC and government have thus far relied and advocates for legitimacy to be drawn from the rule of law. LFJL has worked to build the capacity of judges in Libya, including by facilitating the participation of

Libyan judges in a pan-Arab conference on the Arab Spring and Independence of the Judiciary.

REDRESS

17. REDRESS is an international nongovernmental organisation with a mandate to seek justice and reparation for victims of torture and related international crimes, and to encourage accountability of all those who perpetrate, aid or abet these acts. Its programme areas include casework, national implementation of the torture convention, post conflict justice and international standard setting. It has considerable expertise in advocating for the rights of victims to gain both access to the courts and redress for their suffering.

18. REDRESS takes up cases on behalf of individual survivors at the national and international level. It has extensive experience in interventions before national and international courts and tribunals, including at the international level, the United Nations Committee against Torture and Human Rights Committee, the European Court of Human Rights, the Inter-American Commission on Human Rights, the Special Court for Sierra Leone, and the Extraordinary Chambers in the Courts of Cambodia. It has also intervened, together with the Uganda Victims' Foundation, in proceedings in relation to admissibility in the Case *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen* before the International Criminal Court,¹² on *inter alia*, the tested capacity of the Ugandan Judiciary to afford justice to victims of serious international crimes.

¹² *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen*, Amicus curiae submitted pursuant to the Pre-Trial Chamber II "Decision on application for leave to submit observations under Rule 103" dated 5 November 2008, 18 November 2009, ICC-02/04-01/05-353, <http://www.icc-cpi.int/iccdocs/doc/doc589330.pdf>

19. REDRESS also actively undertakes law reform work in collaboration with local partners in a wide range of countries.¹³ REDRESS has worked in these countries to ensure that international standards relating to the prohibition of torture and reparation for survivors of torture and related international crimes are applied. Part of this work is focused on informing and influencing the development of laws and practices at the domestic level. Other aspects include advocating and building the capacity of national institutions, civil society and lawyers to ensure compliance with existing standards.

20. REDRESS has been working closely with LFJL since its inception in 2011. REDRESS together with LFJL has carried out training of Libyan lawyers and doctors on a range of transitional justice issues relevant to the current context.

21. REDRESS also assists victims and civil society groups who work with victims of conflict to enable their engagement with international justice mechanisms. Our collaboration with these groups is intended to facilitate and enable perspectives from the field to be taken into account by the International Criminal Court, and to encourage the effective participation of victims in proceedings.

III. The Application for Locus

22. Rule 103(1) of the Rules of Procedure and Evidence (“the Rules”) of the International Criminal Court (“ICC” or “the Court”) provides that:

“At any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization

¹³ See for instance: *Transitional Justice and Criminal Law Reform: Human Rights Perspectives for Sudan*, Edited by Lutz Oette, Nov 2011.

or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate."

23. Pursuant to rule 103 of the Rules, spontaneous applications can be submitted either by States, organizations or individuals interested to participate in the proceedings before the Court.
24. In deciding whether to grant leave to an applicant to submit observations as *amicus curiae*, according to rule 103 of the Rules, the Appeals Chamber has underlined that, when acting within the sphere of rule 103 of the Rules, the respective Chamber should take into consideration whether the proposed submission of observations may assist it "in the proper determination of the case".¹⁴
25. Other international courts and tribunals permit third party interventions, such as, the International Criminal Tribunal for the former Yugoslavia ("ICTY"),¹⁵ the International Criminal Tribunal for Rwanda ("ICTR")¹⁶ and the Special Court for Sierra Leone ("SCSL"),¹⁷ on similar bases as Rule 103(1). The ICTR and the SCSL in particular have received submissions from third parties where it was considered that there was a real reason to believe that those submissions would assist the court to reach the right decision.¹⁸ As indicated by the Appeals Chamber of the Special Court

¹⁴ See, 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 OA 11 of 22 April 2008.

¹⁵ Rule 74 of the Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia

¹⁶ Rule 74 of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda

¹⁷ Rule 74 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone

¹⁸ See for example *Prosecutor v Jean-Paul Akayesu* Case No. ICTR-96-4-T "Order Granting Leave for Amicus Curiae to Appear" 12 February 1998; *Prosecutor v Laurent Semanza* Case No, ICTR-97-20-T "Decision on the

of Sierra Leone in its decision granting REDRESS and others the opportunity to file an amicus curiae brief and to present oral submissions:

“The issue is whether it is desirable to receive such assistance, and ‘desirable’ does not mean ‘essential’ (which would be over-restrictive) nor does it have an over-permissive meaning such as ‘convenient’ or ‘interesting’. The discretion will be exercised in favour of an application where there is a real reason to believe that written submissions, or such submissions supplemented by oral argument, will help the Court to reach the right decision on the issue before it.”¹⁹

26. It is submitted that LFJL and REDRESS are well placed to provide information which may assist the Court in the proper determination of the issue of admissibility in the case. The proposed *amici* have been following and closely monitoring the institutional developments that have been taking place pursuant to the end of the revolution in Libya. In particular, both organisations have closely followed efforts of the NTC to reform the legislation in Libya and to set up mechanisms aimed at ensuring accountability for international crimes committed in Libya. LFJL and REDRESS have conducted training and are working closely with the legal community in Libya.

Kingdom of Belgium’s Application to File and Amicus Curiae Brief and on the Defence Application to Strike Out the Observations of the Kingdom of Belgium Concerning the Preliminary Response of the Defence” 9 February 200; *Prosecutor v Kallon* Case No. SCSL-2003-07 “Decision on Application by the Redress Trust, Lawyers Committee for Human Rights and the International Commission of Jurists for Leave to File Amicus Curiae brief and to Present Oral Submissions” 1 November 2003.

¹⁹ SCSL-2003-07 of 1 November 2003, *ibid.*, at para 5.

IV. Specific Issues the Applicants Seek to Address, and the Nature of the Observations the Applicants Propose to Submit

27. The Applicants seek to make observations relevant to issues of “ability” and “willingness” under Article 17 of the Statute, including:

- i) The current state of the judiciary in Libya and capacity building efforts undertaken since February 2011;
- ii) The extent to which the present Libyan legal framework for the prosecution of the crimes contained in the Rome Statute complies with principles of accountability contained in the ICC Statute and other international treaties binding on Libya as well as principles of general international law;
- iii) The current security situation in Libya;
- iv) The experiences of victims of crimes within the jurisdiction of the ICC in obtaining justice in Libya’s domestic criminal jurisdictions and other fora, and the relationship between victims’ rights and issues of admissibility under Article 17 of the Statute. This includes the capacity of the Libyan judiciary to afford justice to victims of serious international crimes (taking into account both tested capacity and plans for future prosecutions).

28. The Applicants wish to underscore that in their proposed observations, they do not purport to speak on behalf of specific victims, victim-applicants or potential applicants who seek to participate in proceedings nor to take a position as to the merits of the admissibility challenge. The Applicants also underscore that there may well be a variety of views amongst Libyan victims and other stakeholders about the best forum for accountability for recent alleged atrocity crimes in Libya. As there has thus far been only limited opportunity to canvass the views of such persons and

groups, the Applicants do not seek to put forward any summary of prevailing views, nor to provide any broad observations on the merits of such matters. If granted leave, the Applicants would confine their observations to the specific areas set out in Paragraph 27 above.

Conclusion

For the reasons set forth above, the Applicants respectfully request that they be granted leave to submit written observations on these matters pursuant to Rule 103 of the Rules of Procedure and Evidence, within a time period determined by the Court. Should the Chamber desire that additional briefing or oral arguments be submitted on these issues, the Applicants would be happy to play whatever role is requested.

For The Applicants



Carla Ferstman
REDRESS
Director



Elham Saudi
LFJL
Director

Dated this 16 May 2012
In London, United Kingdom