

Explanatory Note

Explanatory Note to 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”, ICC-01/11-01/11-660-Conf

1. Today, 9 November 2018, the Defence submitted the *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”*.
2. In the process of finalising this submission the Defence omitted certain language and quotations that the Defence intended to be included at paragraphs 21 and 22 of the filing.
3. For ease of identification of the corrections implemented, both the original and corrected versions of paragraphs 21 and 22 are provided below (bolded and underlined text intended in corrected version):

Paragraph 21 – Original:

Second, the Libyan Attorney General's Office ignores the clear requirement of Article 212 of the Amended Libyan Code of Criminal Procedure that mandates the issuance of a verdict *in presentia* for all defendants who appear before the court, even if the accused subsequently does not appear in later hearings without an acceptable excuse. As submitted by the Defence,⁴⁸ Dr. Gadafi's trial commenced *in presentia*, following the passage of Law No. 7 of 2014, which amended Article 243 of the Libyan Code of Criminal Procedure to permit an accused to appear by 'modern communication means' when the accused's safety is at stake. Dr. Gadafi appeared on four occasions by video-link before the Tripoli Court of Assize⁴⁹ pursuant to Amended Article 243, and several other accused likewise appeared by video-link during the case.⁵⁰ He was represented by counsel at relevant hearings when he could not appear by video-link.

Paragraph 21 – Corrected:

Second, the Libyan Attorney General's Office ignores the clear requirement of Article 212 of the Amended Libyan Code of Criminal Procedure that mandates the issuance of a verdict *in presentia* for all defendants who appear before the court, even if the accused subsequently does not appear in later hearings without an acceptable excuse. As submitted by the Defence,⁴⁸ Dr. Gadafi's trial commenced *in presentia*, following the passage of Law No. 7 of 2014, which amended Article 243 of the Libyan Code of Criminal Procedure to permit an accused to appear by 'modern communication means' when the accused's safety is at stake. **For security reasons, Dr. Gadafi appeared on four occasions by video-link before the Tripoli Court of Assize⁴⁹ pursuant to Amended Article 243. Similarly the eight accused held in Al-Jawiya Reform and Rehabilitation Institution in Misrata also appeared by video-link during the case "for security reasons".**⁵⁰ He was represented by counsel at relevant hearings when he could not appear by video-link.

Paragraph 22 – Original

Further, the Attorney General's Response ignores the fact that the Tripoli Court of Assize, at least in part, lays blame on Dr. Gadafi himself⁵¹ for having decided, when given the choice in the Al-Zawiyah Court of Appeal, Felonies Circuit, in Zintan in wholly different criminal proceedings, to remain in Zintan instead of being transferred to Tripoli to be tried in Case 630/2012. For the avoidance of doubt, it must be emphasised that Dr. Gadafi could not appear by video-link or in-person before the Tripoli Court of Assize, after the court session held on 22 June 2014, for reasons wholly outside his control – namely, the failure of the video-link equipment and the failure of the Judicial Police to bring Dr. Gadafi from the Zintan Correction and Rehabilitation Institute to the al-Hadhaba Correction and Rehabilitation Institute.⁵²

Paragraph 22 – Corrected

Further, the Attorney General's Response ignores the fact that the Tripoli Court of Assize, at least in part, lays blame on Dr. Gadafi himself⁵¹ for having decided, when given the choice in the Al-Zawiyah Court of Appeal, Felonies Circuit, in Zintan in wholly different criminal proceedings, to remain in Zintan instead of being transferred to Tripoli to be tried in Case 630/2012. For the avoidance of doubt, it must be emphasised that Dr. Gadafi could not appear by video-link or in-person before the Tripoli Court of Assize, after the court session held on 22 June 2014, for reasons wholly outside his control – namely, the failure of the video-link equipment. This fact is very clearly acknowledged in the Libyan Judgement itself at page 0302 in the following terms: *"The Public Prosecution submitted a technical report issued by the specialized company in charge of linking CCTV systems between the Court and the Reform and Rehabilitation Institutes in Misratah and Zintan, stating that CCTV systems were not linked because of technical difficulties resulting from the damages incurred by the transmitter stations and post offices."* Also, the Judicial Police had failed to bring Dr. Gadafi from the Zintan Correction and Rehabilitation Institute to the al-Hadhaba Correction and Rehabilitation Institute.⁵²

4. Lastly, the following additional citation was added at footnote 52 to paragraph 22: “Libyan Judgment (English translation) (Annex B to Admissibility Challenge), p. LBY-OTP-0062-0302”.