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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

**Libyan Government Request for Status Conference and Extension of Time to file a
Reply to the Responses to its Article 19 Admissibility Challenge**

Source: The Government of Libya, represented by:
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Ms Michelle Butler

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

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Unrepresented Victims

Unrepresented

(Participation/Reparation)

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Victims Participation and Reparations Section Other

A. INTRODUCTION

1. The Government of Libya respectfully requests the Pre-Trial Chamber to:
 - a. convene a Status Conference to clarify the status of the ICC investigation into the conduct of the OPCD in these proceedings and the consequences thereof on the rights of defence of Mr Saif Al-Islam Gaddafi and the ability of OPCD to continue taking instructions from Mr. Saif Gaddafi in regard to the admissibility proceedings, together with other important matters concerning the next stage of the article 19 admissibility challenge; and
 - b. in view of the 7 July 2012 election of a new Government in Libya, to grant an extension of time until 18 days after the appointment of the new Minister of Justice, Attorney-General and Prosecutor-General from whom counsel must take instructions in order to submit Libya's reply to the responses by the Prosecution, OPCV and OPCD to its article 19 admissibility challenge.
2. It is Libya's view that given the present circumstances, the Status Conference and time extension are imperative to ensure the proper continuation of the article 19 admissibility proceedings before the ICC and the sound administration of justice.

B. PROCEDURAL HISTORY

3. On 1 May 2012, the Government of Libya filed an Application pursuant to article 19 of the ICC Statute challenging the admissibility of the case against Saif Al-Islam Gaddafi.¹
4. On 4 May 2012 the Pre-Trial Chamber issued a Decision on the conduct of the

¹ ICC-01/11-01/11-130-Red.

proceedings relating to the article 19 application wherein it, *inter alia*, invited the Prosecutor, the Office of Public Counsel for Defence (the “OPCD”), the Security Council and the Office of Public Counsel for victims (the “OPCV”) to submit their responses to the Admissibility Challenge no later than 4 June 2012.² The time limit for the OPCD was subsequently extended and eventually set for 24 July 2012.³

5. On 18 May 2012 Libya filed an application in which it requested leave to reply to any response which may be filed by the Prosecutor, the OPCD, the Security Council and the OPCV.⁴ Libya requested the Chamber to set a deadline for such reply, if authorised, of 18 days following notification of the response(s) to counsel for Libya. This deadline of 18 days following notification was requested at a time when it was assumed that the OPCD would be filing their response to the admissibility challenge on 4 June 2012 (ie. well in advance of the 2012 Libyan elections and Ramadan fasting period).
6. On 4 June 2012 responses to the Admissibility Challenge were filed by the Prosecutor⁵ and the OPCV.⁶ On 24 July 2012 the OPCD filed its response to the Libyan Government’s admissibility challenge.⁷ Due to the confidential nature of this response, and the fact that counsel for Libya have not been granted access to the Court’s electronic filing system for confidential filings, this response was distributed manually to counsel for Libya. It was therefore only received by courier (and thus ‘notified’ to Libya for the purposes of the ICC Rules of Procedure and Evidence) on the afternoon of 26 July 2012.
7. On 26 July 2012 the Pre-Trial Chamber issued a decision in which it granted the Libyan Government’s request for a right of reply on the basis that “the

² ICC-01/11-01/11-134.

³ ICC-01/11-01/11-187-Red

⁴ ICC-01/11-01/11-150.

⁵ ICC-01/11-01/11-167-Red.

⁶ ICC-01/11-01/11-166-Red-Corr.

⁷ ICC-01/11-01/11-190-Conf.

triggering force and main actor in [admissibility] proceedings is the entity challenging the admissibility of the case, in the present case Libya".⁸ In setting a time limit for such a reply, the Chamber took account of the "extensive submissions contained in the Responses" deeming that a longer period than the one envisaged by Regulation 34(c) of the Regulations was warranted. Accordingly, the Pre-Trial Chamber granted Libya until 13 August 2012 to file a reply to the Responses.

C. RECENT DEVELOPMENTS IN THE ADMISSIBILITY PROCEEDINGS

8. On 7 June 2012, following a decision by the Pre-Trial Chamber, a delegation of four staff members of the Court, including Melinda Taylor (counsel for Mr Gaddafi from the OPCD), travelled to Zintan in order to meet with Mr Gaddafi. Notwithstanding the cooperation of Libya in facilitating the OPCD visit (which was granted despite earlier difficulties with the conduct of the OPCD during a previous visit) from that day until 2 July 2012 the delegation was detained in Zintan because of the alleged misconduct of OPCD counsel (which Libya considered to constitute a threat to national security and inconsistent with the performance of defence counsel's functions). Information about the Libyan Government's serious concerns and investigation of the OPCD's conduct was presented to the ICC President during the visit of the Attorney General of Libya to The Hague on 22 June 2012, following which the President stated that:

"The ICC deeply regrets any events that may have given rise to concerns on the part of the Libyan authorities. In carrying out its functions, the Court has no intention of doing anything that would undermine the national security of Libya."

⁸ ICC-01/11-01/11-191, paragraph 8.

When the ICC has completed its investigation, the Court will ensure that anyone found responsible for any misconduct will be subject to appropriate sanctions.”⁹

9. The ICC President subsequently confirmed on 2 July 2012¹⁰ that

“... the information reported by the Libyan authorities on the visit’s circumstances will be fully investigated in accordance with ICC procedures following the return, scheduled today, of the four staff members to The Hague.”

10. The four members of the ICC delegation (including counsel for the OPCD) returned to the Hague on 3 July 2012. Almost a month later, as of the filing of the present submission, counsel for Libya have not been provided with any indication as to the status, progress or results of the Court’s investigation of the alleged misconduct of counsel for the OPCD. In the intervening period, even though communications between the Libyan Government and the OPCD appear to have irretrievably broken down, the OPCD is continuing to act as appointed counsel in this case. This situation raises significant difficulties for the continuation of these proceedings, insofar as the role of the OPCD remains unresolved pending completion of the ICC investigation and casts into doubt the OPCD’s ability to properly and genuinely represent Mr Gaddafi’s views on the admissibility challenge.

D. RECENT DEVELOPMENTS IN LIBYA

11. On 7 July 2012, just seven months after the mass-atrocities and fall of the Gaddafi regime, Libya held its first democratic election since 1965. This historic election was supervised by the National Transitional Council (the “NTC”) which has acted as Libya’s governing authority since the fall of the

⁹ <http://www.icc-cpi.int/NR/exeres/2694C582-2981-4E2A-B636-9AC4EC7D873D.htm>

¹⁰ <http://www.icc-cpi.int/menus/icc/press%20and%20media/press%20releases/pr820>

Gaddafi regime in November 2011. The election selected a 200 member General National Congress (the “GNC”) to replace the NTC from 6 August 2012 as the legislative authority of Libya. The election has been hailed by independent observers as “free and fair”¹¹ despite challenging circumstances. US President Barack Obama described it as a “democratic milestone” which “underscores that the future of Libya is in the hands of the Libyan people”.¹² The GNC, which is scheduled to hold its first meeting on 8 August 2012, is charged with appointing a new Prime Minister and Cabinet (including a new Minister of Justice by 7 September). Either by that time, or shortly thereafter, a new Attorney-General and Prosecutor-General will also be appointed. Prior to the new Ministry of Justice team being appointed it will not be possible for counsel for Libya to obtain proper instructions or authority in relation to the responses. Accordingly, it is not possible for Libya to submit a reply (in conformity with their professional obligations) prior to the appointment of the new Libyan Ministry of Justice team.

12. In addition to the Libyan Government’s present transitional circumstances, the holy month of Ramadan has also recently commenced in the Islamic world. This period of fasting started on the evening of 19 July 2012 and will continue until the evening of 18 August 2012. During this period, hours of work in Libya are dramatically reduced due to the requirements of intense prayer and fasting which the Libyan people (including Libyan Government officials) adhere to.

13. Although efforts have already been made by counsel for Libya to obtain instructions on the Responses with the current NTC appointed officials, in view of the foregoing circumstances, it will not be possible to receive instructions from the Libyan Government until the appointment of the new

¹¹ <http://www.nytimes.com/2012/07/10/opinion/libya-election.html>

¹² <http://www.reuters.com/article/2012/07/08/us-libya-elections-obama-idUSBRE86700X20120708>

Minister of Justice, Attorney-General and Prosecutor-General, and after the end of Ramadan.

E. RELIEF SOUGHT BY THE LIBYAN GOVERNMENT

14. The Libyan Government respectfully submits the foregoing issues can most expeditiously be resolved by way of a status conference in which:

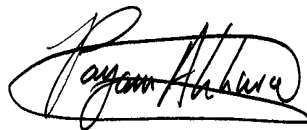
- a. the parties can receive a report as to the progress of the ICC investigation into the conduct of OPCD counsel;
- b. an informed and open discussion can be held regarding the propriety of the continuing appointment of the OPCD as counsel for Mr Gaddafi given the apparent breakdown in their relationship with the Libyan Government and his right to have defence counsel that can make an effective contribution to the proceedings;
- c. an update by the Libyan Government can be given as to the progress of the appointment of a new Ministry of Justice team and counsel's ability to take instructions from such a team;
- d. a new timetable for the proceedings, which takes into account the possible need for new and independent counsel for Mr Gaddafi to take instructions from him on the issue of admissibility, and which subsequently allows the Libyan Government to reply to any defence submissions made in the light of such instructions may be set.

F. CONCLUSION

15. For all of the reasons set out above, the Libyan Government respectfully requests the Pre-Trial Chamber to:

- a. convene as a matter of urgency a Status Conference to clarify the issues outlined above arising out of the admissibility proceedings; and
- b. grant it an extension of time until 18 days after the appointment of the new Libyan Ministry of Justice team to file its reply to the responses by the Prosecution, OPCV and OPCD to its article 19 admissibility challenge.

Respectfully submitted:



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Professor Payam Akhavan

Michelle Butler

Counsel on behalf of the Government of Libya

Dated this 30th day of July 2012

At London, United Kingdom