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No.: ICC-01/11-01/11

Date: 28 May 2014

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández 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, with Confidential Annex 1

**Libyan Application for extension of time related to the Pre-Trial Chamber I's
“Decision requesting Libya to provide submissions on the status of the
implementation of its outstanding duties to cooperate with the Court”**

Source: The Government of Libya, represented by:
Professor Ahmed El-Gehani
Professor Philippe Sands QC
Professor James Crawford SC
Professor Payam Akhavan
Wayne Jordash QC
Ms Michelle Butler

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

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Counsel for the Defence

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Counsel for Abdullah Al-Senussi:

Mr. Ben Emmerson QC

Mr. Rodney Dixon QC

Ms. Amal Alamuddin

Mr. Anthony Kelly

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
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REGISTRY

Registrar

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Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

INTRODUCTION

1. On 15 May 2014, Judge Silvia Fernández de Gurmendi, Single Judge responsible for carrying out the functions of Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”), issued a decision requesting Libya to provide submissions on the status of the implementation of its outstanding duties to cooperate with the Court (the “Request”)¹.
2. The Single Judge requested Libya to inform the Chamber, by Wednesday, 28 May 2014, as to the status of the implementation of: (i) its duty to immediately surrender Mr Gaddafi to the Court; (ii) its duty to return to the Defence of Mr Gaddafi the originals of the materials that were seized from the former Defence counsels for Mr Gaddafi by the Libyan authorities during her visit to Mr Gaddafi in Zintan, and destroy any copies thereof; and (iii) its duty to arrange a privileged legal visit to Mr. Al-Senussi by his Defence.

SUBMISSIONS

3. In terms of its duty to arrange a privileged legal visit to Mr Al-Senussi by his Defence, the Libyan Government attaches at **Annex 1** to this filing a signed Memorandum of Understanding between the Libyan Government and the Registry relating to the privileges and immunities of visiting court officials to Libya. The Libyan Minister of Justice, Salah Marghani, signed the Memorandum of Understanding in Tripoli on the 27th May 2014. It covers an array of agreements between the Registry and the Government and, *inter alia*, it confirms the Government's agreement that:
 - a. counsel for the defence enjoy privileges and immunities pursuant to section 22 of the UN Convention (section 5);
 - b. all communications between counsel and their client be covered by legal privilege and shall not be interfered with or monitored (section 5);
 - c. it shall issue visas allowing all persons listed under sections 3 to 8 of the

¹ *Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, “Decision requesting Libya provide submissions on the status of the implementation of its outstanding duties to cooperate with the Court”, 15 May 2014, ICC-01/11-01/11-545.

Memorandum of Understanding unimpeded entry into, exit from and movement within the territory of Libya (section 14).

4. In terms of the first two aspects of the Request (ie. the Government's duties to surrender Mr Gaddafi to the Court and to return certain materials to the Defence for Mr Gaddafi), the Libyan Government hereby requests a temporary postponement of its response such that it is required to provide submissions on these aspects within 8 weeks following the upcoming election.
5. This request is motivated by a desire to continue to co-operate with the Court, and to ensure that the submissions provided in the Government's response accurately reflect the progress made towards surrendering Mr. Gaddafi to the Court, and returning the above-mentioned seized materials (as well as destroying any copies thereof). It is submitted that the signing of the Memorandum of Understanding between the Libyan Government and the Court evinces very considerable progress in respect of arranging a privileged legal visit to Mr. Al-Senussi by his ICC legal team. This is further indicia of the Libyan Government's good faith and desire to co-operate with the Court.
6. The extension hereby requested in respect of submissions on the remaining two issues is necessary in order to provide a proper response on those issues, because of a combination of two key factors. First, during May 2014, there has been a surge in attacks against the Government, particularly in Tripoli and Benghazi, such that the UN Support Mission in Libya has recently expressed its concern over these "various acts of violence, including the assaults on official institutions".² These ongoing exigencies have prevented the Libyan authorities from providing up-to-date instructions on the salient issues. In view of these circumstances, the Government is, understandably, currently focusing its resources on restoring stability and order. Second, an election has been called for 25 June 2014. Indeed, the imminence of this election is one of the factors that

² UNSMIL Press Release, 19 May 2014, <http://unsmil.unmissions.org/Default.aspx?tabid=3543&ctl=Details&mid=6187&ItemID=1825656&language=en-US>.

is undermining the restoration of stability and order. In Libya's post-revolutionary climate, circumstances such as those that the Government currently faces are inevitable. It is respectfully submitted that the Government's capacity to deal with such circumstances must be appreciated and taken into account by the Court.

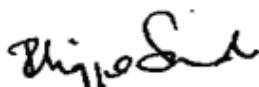
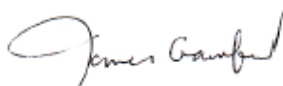
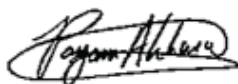
7. It is vital to note the context in which the upcoming democratic election in Libya will take place. This will be the second democratic election following the overthrow of an oppressive regime, and the country's emergence from a bloody civil war. The previous democratic election, in 2013, was the first in five decades, and was lauded by the international community.³ It is anticipated that the situation in Libya following the election will soon stabilize, allowing the Government to continue its work, including providing submissions as to the implementation of its duties to the Court. Following the election, the new Government (once formed) will be better placed to update the Court on these matters.
8. Therefore, Libya requests an extension of time of 12 weeks (ie. until 20 August 2014) so that it can properly respond to the first two aspects of the Request. It is expected that this proposed new timeframe of providing submissions within 8 weeks following the upcoming election will allow time for the formation of a successor Government following the elections and for the new office holders to provide instructions regarding its cooperation duties.
9. Alternatively, Libya requests an extension of time of such length as the Court considers appropriate bearing in mind the present situation in Libya and Libya's continued commitment to cooperate with the Court, as evidenced by its signing of the Memorandum of Understanding with the Registry.

³ http://www.zawya.com/story/Libya_to_announce_new_government-ZAWYA20120902060748/

CONCLUSION

10. For all the reasons outlined above, Libya respectfully presents its submissions in respect of the third aspect of the Request and requests an extension of time of 12 weeks to respond to the first two aspects of the Request. Libya reaffirms its continuing commitment to cooperate with the Court.

Respectfully submitted:



Professor Ahmed El-Ghani
 Professor Philippe Sands QC
 Professor James Crawford SC
 Professor Payam Akhavan
 Mr Wayne Jordash QC
 Ms Michelle Butler
*Libyan ICC Coordinator and
 Counsel on behalf of the Government of Libya*

Dated this 28th day of May 2014
 At London, United Kingdom