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PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Ekatarina Trendafilova
Judge Christine Van den Wyngaert

SITUATION IN LIBYA

**IN THE CASE OF
*THE PROSECUTOR v. SAIF AL-ISLAM GADDAFI***

Public

Response to “Libyan Government’s application for extension of time for the purposes of compliance with Pre-Trial Chamber I’s ‘Decision on matters related to Libya’s duties to cooperate with the Court’”

Source: Office of Public Counsel for Victims

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

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I. PROCEDURAL HISTORY

1. On 1st May 2014, the Prosecution filed the “Request for an Order to Libya”, wherein it requested the Chamber “to determine the status of Libya’s efforts to surrender Mr Gaddafi to the Court and to give assurances that its domestic proceedings will not impede its obligations to cooperate with the Court”.¹ The Prosecution invited the Chamber to order the Libyan Government to “[u]pdate the Chamber on its ability and efforts, if any, to surrender Mr Gaddafi to the Court and to do so, on a regular basis until the Surrender Request is implemented” and to “[p]rovide assurances that the outcome of its domestic proceedings will not hinder the implementation of the Request to surrender Mr Gaddafi to the Court”.²

2. On 15 May 2014, the Single Judge of Pre-Trial Chamber I (the “Single Judge” and the “Chamber”) issued the “Decision requesting Libya to provide submissions on the status of the implementation of its outstanding duties to cooperate with the Court”, requesting 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”.³

3. On 28 May 2014, Libya filed the “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”

¹ See the “Prosecution Request for an Order to Libya”, No. ICC-01/11-01/11-539, 1 May 2014, para. 1.

² *Idem*, para. 8.

³ See “Decision requesting Libya to provide submissions on the status of the implementation of its outstanding duties to cooperate with the Court” (Pre-Trial Chamber I, Single Judge), No. ICC-01/11-01/11-545, 15 May 2014, p. 7.

(the “First Request”), wherein it requested an extension of time of 12 weeks (*i.e.* until 20 August 2014) to respond to the first two aspects of the Decision.⁴

4. On 11 July 2014, the Single Judge granted the First Request.⁵

5. On 21 August 2014, therefore one day past the deadline, Libya filed the “[...] *Government’s application for extension of time for the purposes of compliance with Pre-Trial’s ‘Decision on matters related to Libya’s duties to cooperate with the Court’*” (the “Second Request”).⁶

6. The Principal Counsel hereby respectfully submits her response to the Second Request on behalf of victims who have communicated with the Court in relation to the case.

II. LEGAL SUBMISSIONS

7. In the main, the Principal Counsel notes that the Second Request should be dismissed *in limine* as it was filed after the expiration of the deadline with no justification.

8. In the alternative, if by extraordinary the Chamber considers the merits of the Second Request, the Principal Counsel further notes that the arguments developed in her “Response to ‘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

⁴ See the “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”, No. ICC-01/11-01/11-548, 28 May 2014 (the “First Request”).

⁵ See the “Decision on matters related to Libya’s duties to cooperate with the Court” (Pre-Trial Chamber I, Single Judge), No. ICC-01/11-01/11-563, 11 July 2014.

⁶ See the “Libyan Government’s application for extension of time for the purposes of compliance with Pre-Trial’s ‘Decision on matters related to Libya’s duties to cooperate with the Court’”, No. ICC-01/11-01/11-568-Corr, 21 August 2014 (dated 20 August 2014) (the “Second Request”).

Court''', which she reiterates in full since the arguments put forward by the Libyan Government are similar to the ones argued upon in the First Request, as recognised by the Libyan authorities themselves,⁸ are equally applicable to the present instance..

9. The Principal Counsel wishes to underline anew that the victims have been waiting for justice for more than two years now, while the Libyan Government has repeatedly attempted to obstruct the progress of the proceedings before the Court. The Chamber's request for Libya to submit observations was essentially triggered by the unwillingness to enforce the Chamber's orders and/or the lack of diligence on the part of the Government. The Government should not therefore benefit from this situation and should not be granted a further opportunity to delay the judicial process before this Court. Incidentally, the Principal Counsel notes that this lack of diligence is made blatant by the filing of the Second Request after the expiration of the 12-week deadline granted by the Single Judge. Considering the arguments put forward by Libya to avoid enforcing the Chamber's orders, victims already anticipate that should another extension be granted, Libya will file, on 29 October 2014 or after, yet a third request for extension.

10. Moreover, the Principal Counsel notes that Libya seems to acknowledge the fact that the extension granted in the 11 July 2014 Decision only concerns the duty to return originals of materials seized from the former Defence counsel for Mr Gaddafi and the copy thereof. Indeed, the Libyan authorities did not deem it necessary to appeal said decision with regard to the fact that the Single Judge rejected their request for extension of time to provide submissions on the status of implementation of their duty to surrender Mr Gaddafi to the Court and nowhere in

⁷ See the "Response to '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'", No. ICC-01/11-01/552, 5 June 2014.

⁸ See the "Libyan Government's application for extension of time for the purposes of compliance with Pre-Trial's 'Decision on matters related to Libya's duties to cooperate with the Court'", *supra* note 6, para. 7.

their Second Request explanations are provided with regard to their non-compliance thereof.

11. The Principal Counsel recalls that in her 11 July 2014 Decision, the Single Judge expressly specified that the duty of the Libyan authorities to surrender Mr Gaddafi to the Court *“has been outstanding since 31 May 2013 and Libya’s failure to comply with it does not appear contingent on the current situation in the Country”*.⁹ She also noted that:

“Together with numerous other opportunities given to Libya to address the matter throughout the relevant period, the Single Judge, by her decision of 15 May 2014, expressly requested Libya, in accordance with regulation 109 of the Regulations, to inform the Chamber of the steps taken in the implementation of this duty, prior to the Chamber’s determination on whether to make a finding of non-cooperation and refer the matter to the Security Council. The failure of Libya to provide any information on the matter, together with the passage of time, suggests that, no steps have been taken to proceed to the immediate surrender of Mr Gaddafi to the Court”.¹⁰

And therefore denied the request for extension of time *“to provide submissions on the status of implementation of its duty to surrender Mr Gaddafi to the Court and REMINDS Libya of its obligation to proceed to the surrender immediately”*.¹¹

12. Therefore, faced with Libya’s failure to meet deadlines and to surrender Mr Gaddafi, the Principal Counsel takes this opportunity to request that the Chamber finds that Libya has not complied with its obligation to cooperate with the Court and consequently find that the matter is to be referred to the Security Council. In this respect victims consider that the fact that Libya has consistently refused to make observations on its duty to surrender Mr Gaddafi since 31 May

⁹ See the “Decision on matters related to Libya’s duties to cooperate with the Court”, *supra* note 5, para. 11.

¹⁰ *Idem*, para. 12.

¹¹ *Ibid.*, p. 16 (we underline).

2013 shall not prevent the Chamber to exercise its functions and powers in accordance with article 87(7) of the Rome Statute.¹²

Respectfully submitted.

A handwritten signature in black ink, reading 'Paolina Massidda', with a horizontal line underneath the name.

Paolina Massidda
Principal Counsel

Dated this 22nd day of August 2014

At The Hague, The Netherlands

¹² In the sense, see Kreß (C.) and Prost (K.), "Article 87: Requests for cooperation: general provisions", in Triffterer (O.) (Ed.), *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article*, Second edition, Verlag C.H. Beck oHG, 2008, margin 34, p. 1529.