

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 25 April 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 and Redacted

**Response on behalf of the Government of Libya to the public and redacted
(1) Urgent Report concerning the visit to Libya; and
(2) Addendum to the Urgent Report concerning the visit to Libya**

Source: The Government of Libya, represented by:
Professor Philippe Sands QC
Professor Payam Akhavan
Ms Michelle Butler

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

The Office of the Prosecutor

Mr. Luis Moreno-Ocampo, Prosecutor
Ms. Fatou Bensouda, Deputy Prosecutor

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

Mr. Xavier-Jean Keita, Principal Counsel
Ms. Melinda Taylor, Counsel

States' Representatives

Professor Philippe Sands QC
Professor Payam Akhavan
Ms. Michelle Butler

Amicus Curiae

REGISTRY

Registrar

Ms. Silvana Arbia

Counsel Support Section

Deputy Registrar

Mr. Didier Daniel Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. Pursuant to regulations 24(3) and 34(b) of the Regulations of Court, the Government of Libya files its Public and Redacted Response to the: (1) Public and Redacted Urgent Report concerning the visit to Libya ("OPCD Report") filed on 4 April 2012; and (2) Public and Redacted Addendum to the Urgent Report concerning the visit to Libya ("OPCD Addendum Report") filed on 10 April 2012.

Submissions

2. The Libyan Government strongly refutes the baseless and false allegations that the OPCD has made in its Report¹ and Addendum Report.²
3. These claims – none of which the OPCD has attempted to verify with the Government of Libya and which appear to be intended to sensationalise – range from patently false to manifestly absurd allegations, including the assertion that Mr Saif Al-Islam Gaddafi is:
 - i. kept in poor conditions of detention;
 - ii. denied adequate food;
 - iii. denied medical and dental care;
 - iv. held *incommunicado*;
 - v. subject to physical attacks while in custody; and

¹ ICC-01/11-01/11-69-Red.

² ICC-01/11-01/11-70-Red2.

- vi. being investigated under Libyan law solely with respect to regulatory offences concerning the licensing of camels and insanitary conditions of fish farms.
4. The willingness of the OPCD to make such far-reaching allegations without a credible evidentiary basis or any attempt to hear the other side has unfairly and seriously prejudiced the Government of Libya in these proceedings. In effect, the OPCD is exploiting Libya's focus on the post-conflict transition by making unwarranted attacks that require strenuous rebuttal and therefore result in the waste of valuable time and resources. The Libyan Government is pursuing a full-scale investigation into the activities of Saif Al-Islam Gaddafi and Abdullah Al-Senussi during the 2011 revolution (as well as for events taking place prior to this). It hopes that it will not be required to devote further resources to counter the OPCD's campaign of smear and innuendo that risks prejudicing its right to a fair and balanced consideration of its admissibility challenge.
 5. Such conduct is not befitting of the OPCD. As an organ of the Court the OPCD is bound to apply the highest professional standards and not to bring these important proceedings into risk of disrepute. Indeed, the OPCD's making of false and unverified allegations against the Libyan Government is not consistent with counsel's duties to the Court under article 24 of the ICC Code of Professional Conduct for Counsel.³
 6. The Government of Libya does not intend to dignify each of the OPCD's baseless allegations with respect to the treatment of Mr Gaddafi with individualized argument. However, it is notable that the OPCD has completely disregarded the measures the Government has taken to protect

³ ICC Code of Professional Conduct for Counsel, Adopted at the 3rd plenary meeting on 2 December 2005, by consensus, ICC-ASP/4/Res.1.

Mr. Gaddafi from harm or death at the hands of vigilantes against the backdrop of the chaos that prevailed in the immediate aftermath of the Gaddafi regime's horrific mass-atrocities. The OPCD has also failed to acknowledge the efforts that the Libyan Government is making in progressively restoring law and order in Libya. At present, it is focused on negotiating the safe and orderly transfer of Mr. Gaddafi with local authorities from a secret location to a specially constructed prison facility in Tripoli that meets all applicable international standards. The Libyan Government also wishes to confirm, following the 17 April 2012 appointment of the OPCD as counsel for Mr Gaddafi before the ICC,⁴ that it will facilitate access to Mr Gaddafi by any other lawyer in the event that he communicates a preference for a different lawyer to the OPCD.

7. Notwithstanding the difficult circumstances in which the Libyan Government has found itself following the 2011 revolution, which the OPCD has chosen to ignore in seeking to unfairly portray the Government in a negative light, the following independent evidence – attached to this submission – seeks to address the falsity of the OPCD's claims:

- i. Annex A: Witness Statement of Professor Ahmed El-Gehani, the Libyan ICC Coordinator who is in charge of liaison between the Libyan Government and the ICC. This witness statement confirms, contrary to the OPCD's allegations, that Professor El-Gehani:

- a. is not the "architect" of the allegations against Mr Gaddafi and does not have pre-determined views as to Mr Gaddafi's criminal responsibility;
- b. did not override the answers of Libyan Government officials or state that he "did not like the questions of the OPCD" during

⁴ ICC-01/11-01/11-113.

the OPCD's March 2012 visit to Libya; and

- c. has consistently acted diligently and in good faith in trying to facilitate visits with Mr Gaddafi by the Registrar and the OPCD while seeking to ensure the safety and security of both Mr Gaddafi and the persons wishing to visit him.

The witness statement also establishes, contrary to the OPCD's assertions, that Mr Gaddafi:

- a. is not kept in a boarded up house or deprived of sunlight or fresh air;
- b. will be transferred to a detention facility in Tripoli which conforms to international standards as soon as security constraints permit such a transfer;
- c. is being treated well and fed properly;
- d. has had dental treatment and also weekly visits from a doctor;
- e. meets with the commander of the Zintan brigade daily in order to ensure that any issues which may arise during his detention are promptly addressed;
- f. is permitted to meet with family members who are not also suspected of criminal offences;
- g. has received copies of documents relating to his charges at the ICC;
- h. is being investigated in relation to both financial crimes (including corruption) and more serious crimes (including murder, rape and torture) taking place during the 2011

revolution;

- i. is not being prosecuted for breaches of camel licensing regulations or insanitary conditions of fish farms. In any event, such acts are not criminal *per se* under Libyan law;
 - j. has had the continuation of his detention reviewed by prosecutors and by three judges in accordance with the provisions of Libyan law; and
 - k. has declined the services of a lawyer in the past but will be required to have a lawyer (regardless of any contrary preferences) once the case moves from the investigation phase to the prosecution phase.
- ii. Annex B: Medical report of [REDACTED], a Consultant Orthopaedic Surgeon who made a follow up visit to Mr Gaddafi on 12 March 2012. This report confirms that Mr Gaddafi's hand, which had to be operated on early in his detention due to injuries sustained prior to capture, has "healed" and that he looks "well and comfortable". He now suffers only from "mild tenderness" and the movement of the joints in his hand "is improving with almost full range of flexion and extension".
- iii. Annex C: Medical report by [REDACTED], a dentist at [REDACTED], who treated Mr Gaddafi on 8 March 2012. This report confirms that Mr Gaddafi's teeth are generally in good condition apart from one tooth in which a filling has eroded. A follow up visit from the dentist has been arranged for the week commencing 30 April 2012.
- iv. Annex D: News article regarding a visit to Mr Saif Al-Islam Gaddafi from Human Rights Watch ("HRW") that took place on 18 December 2011. Although this article notes that Mr Gaddafi had not yet benefited

from a visit from a lawyer or from any family members at that time, these shortcomings are being rectified as outlined in the statement of Professor El-Gehani referred to above. This article states that HRW was granted a completely private visit with Mr Gaddafi during which he confirmed that he:

- a. was getting good food;
 - b. was receiving good medical care, including seeing a doctor every week;
 - c. had benefited from an operation on his thumb and two fingers of his right hand which had been injured in a NATO strike in mid October 2011 in the Zimzim Valley near Bani Walid at the beginning of his detention;
 - d. had no complaints about the physical conditions of his detention as “the treatment is okay”;
 - e. had no complaints about his personal treatment by his captors, including by those who apprehended him outside of Obari in southern Libya on 19 November 2011 and by those holding him in Zintan, confirming in particular that “there is no torture or anything like that”.
- v. Annex E: News article regarding visit to Mr Saif Al-Islam Gaddafi from the International Committee of the Red Cross (“ICRC”). This article confirms that the ICRC visited Mr Gaddafi in detention on 22 November 2011 in order to monitor the conditions in which he was held and the treatment he was receiving. Following the visit an ICRC spokesman stated that Mr Gaddafi was in “good health”. A follow up visit by the ICRC is currently being arranged in coordination with the

Libyan Government.

8. This evidence demonstrates that if the OPCD had considered verifying the facts instead of making baseless allegations against the Libyan Government, it would have arrived at the conclusion that despite the extreme circumstances prevailing at the time of his capture, Mr Gaddafi has been:

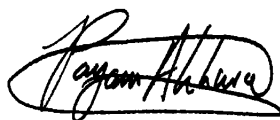
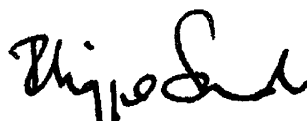
- i. kept in adequate conditions of detention (which will be improved even further upon his transfer to newly constructed prison facilities in Tripoli);
- ii. provided with sufficient and good quality food (the same food as that consumed by his prison guards);
- iii. given access to ICC lawyers and the option of retaining a domestic lawyer of his choosing;
- iv. able to receive visits from NGOs and family members;
- v. not subject to physical abuse during his detention;
- vi. provided with proper medical treatment (from a general practitioner who visits weekly as well as an orthopaedic surgeon to treat the injuries to his hand) and dental care; and
- vii. investigated under Libyan law with respect to crimes arising out of the same serious conduct as that set forth in the arrest warrant issued by the International Criminal Court.

Conclusion

9. In light of the substantial evidence referred to above and annexed to this Response, the Government of Libya respectfully requests the Pre-Trial

Chamber to invite the OPCD to:

- (a) withdraw its baseless, unverified, and false allegations in order to repair its serious prejudicial effect against the Government of Libya's article 19 admissibility challenge; and
- (b) to cease and desist from making further baseless, unverified, and false allegations (which are not in keeping with article 24 of the Code of Professional Conduct for Counsel) in order to prevent further serious prejudicial effect against the Government of Libya's article 19 admissibility challenge.



Professor Philippe Sands QC
Professor Payam Akhavan
Michelle Butler

Counsel on behalf of the Government of Libya

Dated this 25th day of April 2012

At London, United Kingdom