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Pénale
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**International
Criminal
Court**



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

Date: **7 August 2012**

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 Public Annexes 1, 2 and 3

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

Source: Defence

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

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INTRODUCTION

1. On 30 July 2012, the Libyan authorities requested the Pre-Trial Chamber to convene a Status Conference for the purpose of discussing the replacement of the Office of Public Counsel for the Defence as Counsel for Mr. Gaddafi, and in addition, a substantial delay for filing their reply due to the inability of Counsel for Libya to obtain instructions from the Libyan authorities (the Request).¹
2. This Request once again underscores the fact that the Libyan authorities are both unwilling and unable to pursue the case of Mr. Gaddafi in an independent, impartial, or expeditious manner.
3. In terms of the requested Status Conference, on the one hand, the assertion by the Libyan authorities that the OPCD is in some unspecified manner unable to “properly and genuinely represent Mr. Gaddafi’s views on the admissibility challenge”,² is a thinly veiled attempt to deprive the defendant of any voice in the current proceedings by requesting the replacement of the only Counsel who have been able to obtain direct instructions from the defendant on this matter.
4. On the other, the timing of certain actions by the Libyan authorities (for example, filing the Request after the Defence had submitted its Response to the admissibility challenge, which unequivocally indicated that Mr. Gaddafi wishes to be tried before the ICC) could create the appearance that they are trying to retaliate against the Defence for the positions taken in the proceedings. The reference in the Request to an alleged break down in communication between the Libyan authorities and the OPCD is either inaccurate insofar as the OPCD remains committed to maintaining full communications with all and any relevant Libyan authorities, or self-engineered by the Libyan authorities to create a specious ground for seeking the replacement of the OPCD.
5. With respect to the request for additional time due to the inability of Counsel for Libya to obtain instructions until firstly, a new Government is formed, and this Government has composed the ‘Ministry of Justice team’, and secondly, Ramadan has

¹ ‘Libyan Government Request for Status Conference and Extension of Time to file a Reply to the Responses to its Article 19 Admissibility Challenge’, ICC-01/11-01/11-192.

² At para. 10.

ended, the request is inconsistent with the dictates of the Libyan authorities concerning the standard working hours during Ramadan, and further demonstrates that due to political upheavals in Libya, the national judicial system is unavailable to carry out genuine proceedings concerning Mr. Gaddafi.

6. The suggestion that Counsel cannot obtain instructions concerning the domestic proceedings against Mr. Gaddafi prior to the appointment of specific political positions also evidences the existence of political influence over the domestic proceedings, and the inability or unwillingness of the Libyan authorities to prosecute Mr. Gaddafi in an independent, impartial, and expeditious manner.
7. Finally, the Libyan authorities completely contradict themselves by arguing that Counsel have been unable to obtain instructions from the Libyan Government concerning the case,³ whilst at the same time, asserting that the Libyan Government has instructed them to request a Status Conference to enable the Libyan Government to discuss the “propriety of the continuing appointment of the OPCD as counsel for Mr. Gaddafi”.⁴
8. The Defence for Mr. Saif Al-Islam Gaddafi therefore respectfully requests the Pre-Trial Chamber to dismiss the Request, and at the same time, to factor into consideration any relevant admissions in its decision on the admissibility of the case.

THE REQUEST FOR A STATUTS CONFERENCE SHOULD BE DISMISSED

9. The Libyan authorities have requested a Status Conference in order to
 - receive a report on the process of the ICC investigation into the conduct of Counsel;
 - discuss the “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”;
 - update the Chamber concerning the appointment of persons within the Ministry of Justice; and
 - discuss the future timetable for the proceedings.⁵

³ At para. 13.

⁴ At para 14.

⁵ At p. 8.

10. The Libyan authorities have sought to rely upon the statements of the ICC President in order to seize the Chamber of this request. Notably, the Presidential press releases, cited by the Libyan authorities, do not contain any references or findings that there has been any misconduct by Counsel for the OPCD: it cannot be extrapolated from a reference to the fact that “any misconduct will be investigated” that there has been even a preliminary finding on this issue, or that the assertions of the Libyan authorities had any probative value. Indeed, the terms of reference concerning the subject matter and object of the investigation into the information provided by the Libyan authorities are neutrally framed and could even potentially encompass an investigation into whether the actions of the Libyan authorities contravened Articles 70(1)(d) or (e) of the Statute (Offences against the Administration of Justice).
11. In this connection, Articles 5 and 24(5) of the Code of Professional Conduct for Counsel (which the Counsel for Libya are bound by) imposes duties of diligence and expedition on Counsel. Article 24(4) of the Code provides that “Counsel shall not submit any request or document with the sole aim of harming one or more of the participants in the proceedings”, and Article 24(2) stipulates that Counsel for Libya are personally responsible for the conduct and presentation of the Libyan authorities’ case before the ICC. Article 70(1)(e) of the Statute also provides that it is an offence against the administration of justice to retaliate against an official of the Court on account of duties performed by that or another official.
12. If the Counsel for Libya were of the view that the OPCD was unable to represent the interests of Mr. Gaddafi concerning the admissibility of the case in the manner required by the Code of Professional Conduct for Counsel, then they should have raised the matter as soon as the impediment became known to them (i.e. after the arrest of Counsel for Mr. Gaddafi).
13. The fact that they waited to do so until after the Defence filed its response to the admissibility challenge, and have failed to provide any logical explanation or elaboration to support their assertion that the OPCD is not in a position “to properly and genuinely represent Mr. Gaddafi’s views on the admissibility challenge”,⁶ could lead to an inference that the present Request might be perceived as simply one of a

⁶ Request at para. 10.

litany of threatened retaliatory actions,⁷ which appear to have been directed by the Libyan authorities against the OPCD due to their disagreement with the positions adopted by the OPCD in the present proceedings.

14. Although Counsel for Libya challenge the ability of the OPCD to “properly and genuinely represent Mr. Gaddafi’s views on the admissibility challenge”,⁸ the only factual basis for justifying the replacement of the OPCD as Counsel for Mr. Gaddafi is that “communications between the Libyan Government and the OPCD appear to have irretrievably broken down”.⁹ The OPCD refutes this statement.

15. As professionals, the OPCD completely endorses the principle that the fact that a party may vigorously disagree with the legal stance adopted by a participant should not in itself translate to a position or view-point towards the person who adopted that stance in the proceedings. The duty of legal professionals is to represent the rights of their clients and not their cause. The OPCD has and will continue to act in the client’s best interests, rather than the personal interests of Counsel. Notwithstanding that Counsel for Mr. Gaddafi was kept in detention for 26 days, during which time she was

- never permitted to speak to either a counsel or her consular representative on a private/non-monitored basis,
- only able to speak to her family for 5 minutes,
- confined in a make-shift jail surrounded by tanks, in which all three of the windows in the facility were eventually almost fully obscured, and
- never allowed outside,

the OPCD has and continues to ascribe to its duty to act fairly, in good faith, and courteously vis-à-vis any Libyan authorities, with which it has interacted, and with which it may interact in the future.

16. In the same way that a defendant cannot manufacture a break-down in communications with his or her Counsel in order to justify their replacement,¹⁰ it would also be highly inappropriate for the Libyan authorities to unilaterally engineer a break-down in communications, with the aim of justifying the replacement of

⁷ In this regard, it is also notable that after the Pre-Trial Chamber issued its decision ordering the Defence to file its response to admissibility on the 24 July 2012, the Libyan authorities postponed the hearing against the four ICC officials, which had been initially scheduled for 23 July 2012. The hearing has now been postponed until 27 August 2012. See also ICC-01/11-01/11-152-Conf, 18 May 2012, at para. 63; ICC-01/11-01/11-146-Conf-AnxA at para. 27.

⁸ Request at para. 10.

⁹ Request at para. 10.

¹⁰ Prosecutor v. Blagojevic, Public and Redacted Reasons for Decision on Appeal by Vidoje Blagojevic to Replace his Defense Team’, 7 November 2003, at para. 31.

Counsel, who have adopted stances, which contradict or oppose the litigation position of the Libyan authorities.

17. The OPCD are under no illusions that they are the best suited counsel, in general, to represent Mr. Gaddafi as concerns the substantive case, and will gladly relinquish their mandate to any Counsel, who has been freely designated by Mr. Gaddafi on an informed basis, in a non-coercive setting. Nonetheless, given that the OPCD are the only Counsel who have been able to obtain direct instructions from Mr. Gaddafi concerning the admissibility of the case, and have been specifically entrusted by Mr. Gaddafi with the task of informing the Honourable Pre-Trial Chamber of his explicit wish to be tried before the ICC, and his concerns regarding the possibility of a trial in Libya, the OPCD are the only Counsel who can attempt to effectively represent his interests as concerns the admissibility of the case.
18. As noted by the OPCD previously, “[o]ne of the most egregious consequences of incommunicado detention is that it prevents the Defendant from being able to voice his concerns and wishes in a transparent manner - to exist as a legal person.”¹¹ The replacement of the OPCD as his counsel at this stage of the proceedings would be the final nail in the coffin as concerns Mr. Gaddafi’s right to exist in proceedings directly concerning him, and to have his voice effectively heard by the Chamber through Counsel mandated by him to do so.
19. It would also be a gross violation of the independence of the Defence to allow one of the Court participants to dictate who should represent the defendant by unilaterally engineering a break down in communications. Such a situation could result in Counsel modifying their legal positions, in order to kowtow to particular participants in order to avoid possible retaliatory requests. This would be directly contrary to the requirement under Article 6(2)(a) of the Code of Conduct that Counsel shall not “permit his or her independence, integrity, or freedom to be compromised by external pressure”.
20. Indeed, the question as to whether Libya wishes to communicate with the OPCD is irrelevant to the OPCD’s duties to their client under the Code of Conduct, and does not constitute an impediment to representation under either Articles 12, 16, or 31 of the Code of Conduct. By citing this as a factor, which is in some way relevant to the ability of the OPCD to represent the best interests of Mr. Gaddafi, Counsel for Libya also directly contradict their later assertion that there are presently no members of the

¹¹ ICC-01/11-01/11-152-Red at para. 73.

Libyan Government, who have the authority to communicate in relation to the domestic proceedings against Mr. Gaddafi.¹²

21. The Presidential press statement cited by the Libyan authorities also makes clear that the information provided by the Libyan authorities “will be fully investigated in accordance with ICC procedures following the return”.¹³ Articles 34 *et sequiter* of the Code of Conduct delineate the procedures for investigating any allegations of misconduct concerning Counsel appearing before the ICC. There is no basis under these procedures for convoking the requested Status Conference, at the initiative of the Libyan authorities, particularly in the absence of any explanation or information that the continued representation of Mr. Gaddafi by the OPCD would seriously prejudice the interests of justice.
22. It would also be fundamentally unfair to convene such a Status Conference in the absence of the defendant, given that the subject matter concerns both Mr. Gaddafi’s right to legal representation, and his right to have had a privileged meeting with his Counsel.
23. Finally, on this point, the OPCD observes that by formally stating that “[o]n 7 June 2012, following a decision by the Pre-Trial Chamber, a delegation of four staff members of the Court [...] travelled to Zintan in order to meet with Mr. Gaddafi”, and that “from that day until 2 July 2012, the delegation was detained in Zintan,”¹⁴ Counsel for Libya have explicitly recognised that the entire ICC delegation was detained, and that contrary to the submissions of the Libyan authorities to the Security Council, three officials did not voluntarily choose to remain in jail, or voluntarily elect to remain incommunicado during this period.
24. Moreover, the assertion that “the delegation was detained in Zintan because of the alleged misconduct of the OPCD counsel”¹⁵ also constitutes a formal admission that there was absolutely no justification whatsoever for the detention of the three other ICC officials. Articles 99 and 100 of the Libyan Penal Code set out the principles of individual criminal responsibility, according to which a person can only be prosecuted as an actor or an accessory in connection with the person’s own contribution to the alleged offence.¹⁶ If the Libyan authorities are willing to blatantly disregard these

¹² Request at para. 11.

¹³ Request at para. 9.

¹⁴ At para 8.

¹⁵ Request at para. 8.

¹⁶ Article 99 *The Actor and His Penalty* The actor of the crime is

provisions by detaining three ICC officials solely by virtue of the fact that these officials work at the same institution as the OPCD, then the same authorities are clearly incapable of ascertaining Mr. Gaddafi's individual responsibility for his own actions, as opposed to those which they may seek to attribute to him solely by virtue of the happenstance of his name.

25. Although Counsel for Libya have recognised through their reliance on the press statement of the President that any investigation into the events should be conducted in accordance with ICC procedures, the Libyan authorities have, at the same time, maintained their intention to convene a hearing against all four ICC officials on 27 August 2012 in connection with criminal charges.
26. In terms of the latter aspect, in an interview which postdates the Request, one of the prosecutors assigned to the case of Mr. Gaddafi,¹⁷ who according to the admissibility challenge is required to perform his functions in a neutral manner,¹⁸ made the preposterous statement that the ICC delegation had 'confessed' to all the allegations, which now appear to include the relatively novel allegation of being part of a conspiracy to assassinate or poison Mr. Gaddafi with the use of a watch, which allegedly had a camera and GPS capabilities.¹⁹ The Defence is attaching a photograph of the make of the swatch watch, which the delegation allegedly confessed was a 'spy watch' with camera and GPS capabilities, in order to underscore the absurdity of such

1) any person who commits the crime alone or with another person.

2) any person who takes part in its commission, if it consists of a series of acts and he willfully carries out one of these acts.

[...]

Article 100 *Accessory* An accessory to a crime is:

1) any person who instigates the commission of the act of the crime should this act occur based on his instigation.

2) any person who knowingly gives the actor(s) a weapon, machines or anything of the sort that may be used to commit the crime or helps them in any other way in the preparatory, facilitating or completing acts of the crime.

3) any person who agrees with another to commit the crime which occurs pursuant to this agreement.

<https://www.unodc.org/tldb/showDocument.do?documentUId=8542>

¹⁷ "Milad Abdel Nabi, Libya's prosecutor-general in charge of the Saif al-Islam file". A. Shuaib and H. Al Shalchi ' ICC lawyer meeting Gaddafi son detained in Libya' *Reuters* 9 June 2012, <http://www.reuters.com/article/2012/06/09/us-libya-icc-idUSBRE8580FH20120609>.

¹⁸ ICC-01/11-01/11-130-Red at para. 58. During the interview, Mr. Milad states that " [f]rom the point of view of the Libyan people, Saif committed crimes that the Prosecution charged him with. He will get his punishment for these crimes, in accordance with the law and the full transparency standards". Annex 2, <http://www.alarabiya.net/programs/2012/08/05/230596.html>.

¹⁹ "The group's main preoccupation was the possibility of Saif Al-Islam's assassination or poisoning, because there was, in addition to the pen, a watch containing a camera and a GPS." Interview with Mr. Milad Abdul-Nabi Dekali, *Al Arabiya*, 5 August 2012, Annex 2, <http://www.alarabiya.net/programs/2012/08/05/230596.html>. In the interview, Mr. Milad refers to himself as the coordinator for the case.

claims.²⁰ Indeed, if the Libyan authorities had a real concern that the ICC delegation would be able to either liberate or poison Mr. Gaddafi with the aid of a swatch watch, then it would appear that they really do not have the capacity required by Article 17(3) of the Statute to secure the presence of the defendant on Libyan territory.

27. The inability of Libyan authorities to conduct independent and impartial criminal proceedings, based on evidence, is thus exemplified by firstly, the decision of the Libyan authorities to detain these three ICC officials notwithstanding the acknowledged absence of any legal justification for doing so, and secondly, the continued intention of the Libyan authorities to convene a hearing against these individuals on 27 August 2012 in connection with criminal charges, which Counsel for Libya have recognised have absolutely no foundation.
28. The Defence therefore respectfully requests the Honourable Pre-Trial Chamber to take into consideration these admissions by the Libyan authorities, when deciding upon the admissibility challenge.

THE REQUEST FOR AN EXTENSION OF TIME SHOULD BE DISMISSED

29. By requesting the Chamber to both replace the OPCD as Counsel, and grant an extension of time until 18 days after the appointment of the new Libyan Ministry of Justice team, the Libyan authorities are seeking to effectively stave off any decision on the admissibility of the case *sine die*; such a request is inconsistent with Counsel's duty under Articles 5 and 24(5) of the Code of Professional Conduct for Counsel to act expeditiously "with the purpose of avoiding unnecessary expense or delay in the conduct of the proceedings".
30. As acknowledged by Counsel for Libya, the Minister of Justice will not be appointed until at least, 7 September 2012.²¹ It is therefore unlikely that the new Ministry of Justice team will be selected until at least mid-September 2012, which would mean that if the requested delay was granted, the reply would not be due until at least mid-October 2012, that is, almost a year after Mr. Gaddafi's initial arrest date.
31. Neither the domestic proceedings nor the proceedings before the ICC can move forward in an effective manner until the admissibility challenge is resolved. Pursuant

²⁰ The watch was a present from the ICC interpreter's sister, who was able to identify the watch in the Swatch catalogue. Annex 3.

²¹ Request at para. 11. If a government is not formed within these 30 days, then it may take longer.

to the orders of the Prosecutor-General, Mr. Saif Al Islam Gaddafi has been held in incommunicado detention for almost 9 months. If anything more than four days is unacceptable under the standards explicitly ratified by Libya,²² then anything exceeding 9 months is a complete travesty as concerns his rights.

32. The defendant will also be unable to make any informed decision concerning his strategy for domestic proceedings until the admissibility proceedings before the ICC have been resolved: the strategy which may be adopted by a defendant who is facing the death penalty and who has no effective means to call his own witnesses, is not necessarily the same strategy as would be adopted if the case is prosecuted before the ICC. The Libyan authorities have recently announced that notwithstanding the absence of any effective opportunity for the defendant to participate in and prepare his defence, they intend to commence the trial against Mr. Gaddafi in September.²³ The requested delay will therefore inevitably impact on the ability of the defendant to effectively participate in and defend himself before Libyan courts. For this reason, the Defence – which has far fewer resources than the Libyan government – has sacrificed its holidays and recess in order to ensure that the present matter can be expeditiously resolved.
33. The request to effectively postpone the admissibility decision *sine die* is therefore fundamentally incompatible with Mr. Gaddafi's right, as a detained person, to have all relevant authorities act with due diligence to ensure his right to expeditious proceedings.²⁴ It therefore exemplifies the Libyan authorities' unwillingness or inability to move the case of Mr. Gaddafi forward in the manner required in the context of someone who has already been held in incommunicado provisional detention for almost 9 months.
34. The Request once again suggests that the sole purpose of the admissibility challenge was to stave off Libya's obligation to surrender Mr. Gaddafi, rather than to genuinely prosecute the ICC allegations. Since the Pre-Trial Chamber issued its decision concerning the postponement of the execution of the request to surrender Mr.

²² "Libya is a party to several international and regional human rights instruments which guarantee the right to a fair trial, including the International Covenant on Civil and Political Rights, the United Nations Convention against Torture, the International Convention on the Elimination of Racial Discrimination, the African Charter on Human and Peoples' Rights, the Arab Charter on Human Rights and resolutions such as the Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa adopted by the African Union in 2003. The Libyan Government is committed to meeting all the fair trial requirements set out in these instruments, including in particular Articles 9 and 10 of the ICCPR", ICC-01/11-01/11-130-Red at para. 58.

²³ Interview with Mr. Milad Abdul-Nabi Dekali, *Al Arabiya*, 5 August 2012, Annex 2, <http://www.alarabiya.net/programs/2012/08/05/230596.html>.

²⁴ Prosecutor v. Lubanga, Decision on the release of Thomas Lubanga Dyilo, ICC-01/04-01/06-1418, at para. 30.

Gaddafi,²⁵ the actions of the Libyan authorities (for example, refusing to release the Counsel of Mr. Gaddafi, which prevented the Defence from filing its response) have delayed the ability of the ICC to resolve the admissibility challenge. The delay presently requested by the Libyan authorities is directly contrary to the directive by the Pre-Trial Chamber that “it is expected that Libya will provide all required assistance in order to facilitate an expeditious determination of the Admissibility Challenge”.²⁶ Granting the requested delay would also run counter to the findings of Trial Chamber II that the statutory provisions concerning admissibility “are clearly aimed at avoiding challenges to admissibility needlessly hindering or delaying the proceedings”.²⁷

35. The Libyan authorities have also failed to adduce any cogent reasons for the requested delay. The particular reasons cited either have no impact on the ability of the Libyan authorities to formulate their reply, or are directly attributable to the actions of the Libyan authorities themselves.
36. The Pre-Trial Chamber has stipulated that the reply must be “limited to the arguments raised in the Responses.”²⁸ The matters raised in the Responses preceded the national elections, and fell within the purview of the current Prosecutor-General and Minister of Justice, who had, at the date of the Request, exactly the same authority to instruct counsel as they would have had prior to the election.
37. Paragraphs 14 and 15 of the Request directly attribute the relief sought to the Libyan Government.²⁹ If Counsel for Libya were aware that the authority of the current appointees could in any way be lessened or invalidated after the meeting of the General National Congress on 8 August 2012, but nonetheless chose to liaise with the relevant authorities for the purpose of receiving instructions concerning the Request rather than instructions concerning their reply to the respective responses to the Defence, OPCV, and Prosecution, then they must suffer the consequences of their own prioritisation choices.
38. Moreover, if, as averred by Counsel for Libya, key decisions concerning the domestic case against Mr. Gaddafi cannot be made until the new ‘Ministry of Justice team’ is appointed, then it is clear that the Libyan justice system is not currently available to

²⁵ Decision on the postponement of the execution of the request for surrender of Saif Al-Islam Gaddafi pursuant to article 95 of the Rome Statute, ICC-01/11-01/11-163, 1 June 2012.

²⁶ ICC-01/11-01/11-163 at para. 41.

²⁷ Prosecutor v. Katanga and Ngudjolo, Reasons for the Oral Decision on the Motion Challenging the Admissibility of the Case (Article 19 of the Statute) ICC-01/04-01/07-1213-tENG at para. 44.

²⁸ ICC-01/11-01/11-191 at para. 8.

²⁹ At para. 14, “The Libyan Government respectfully submits [...]”, and at para. 15, “the Libyan Government respectfully requests the Pre-Trial Chamber”.

carry out the proceedings, and the case is admissible before the ICC by virtue of Article 17(3) of the Statute.

39. The present political upheaval also cannot be considered to be a ‘temporary glitch’. Article 30 of the Draft Constitutional Charter for the Transitional Stage provides that a further election will be convened 180 days subsequent to the promulgation on the law on elections.³⁰ If the proceedings against Mr. Gaddafi are currently affected by the electoral change-over, then it stands to reason that his case would again be paralysed after these future elections.
40. Furthermore, in light of the fact that NTC law 26 prohibits anyone from standing for public office if they were favourable to the past regime or opposed in anyway to the 17 February revolution, the recognition by Counsel for Libya that both the decision making process concerning the domestic case of Mr. Gaddafi, and the composition of the Ministry of Justice team are directly linked to the political process underscores the submissions of the Defence that the Libyan authorities are unwilling or unable to prosecute the case in an impartial manner.³¹
41. It is also completely incorrect for Counsel for Libya to assert that during the period of Ramadan, “hours of work in Libya are dramatically reduced”.³² According to NTC decree no. 319, which is binding on all government offices and the judicial sector, the period of Ramadan should be “without prejudice to the work order of the bodies concerned by the decree”.³³ Actual weekly working hours are only decreased to 9am to 2pm (as compared to 8 am to 3pm) which leaves more than adequate time for Counsel to liaise with the relevant Libyan authorities on the matters raised in the respective responses. Notably, Counsel for Libya are not themselves suggesting that their ability to formulate the instructions of the government into a legal brief is in any way impacted by Ramadan.
42. The Libyan authorities have also had a substantial amount of time (over two and a half months) to formulate their reply to the submissions of the Prosecution and the OPCV. They are therefore in a much better position to formulate their consolidated reply than

³⁰ ICC-01/11-01/11-130-AnxG.

³¹ ICC-01/11-01/11-190 at para. 324.

³² At para. 12.

³³ Article 1 of Decree no. 319, Annex A.

they would have been if they had had only 18 days to review and respond to all three responses in mid-June, as *per* the terms of their own request.³⁴

43. The fact that the deadline is falling within the Ramadan period is also due to the fact that Counsel for Mr. Gaddafi was detained by Libyan Prosecutor-General for almost the entire month of June. In so doing, the Libyan authorities would have been clearly aware that the delay in releasing the Counsel for Mr. Gaddafi would have the consequence that their reply to any subsequent Defence filing would have to be submitted after the elections, and during the Ramadan period.
44. By asserting that they will be unable to obtain instructions until the end of Ramadan,³⁵ Counsel for Libya also contradict their argument that it is not possible for them to receive ‘proper instructions’ or ‘authority’ due to the composition of the new Government: if that is indeed the case, then any reduction in working hours until the end of Ramadan is entirely irrelevant to the ability of Counsel to obtain instructions.
45. Finally, as concerns the reference by Counsel to Libya to the fact that they did not receive the Defence response until 26 July 2012 because “counsel for Libya have not yet been granted access to the Court’s electronic filing system for confidential filings”,³⁶ it should be noted that only reason that Counsel for Libya do not have access to confidential filings by email is because they failed to officially notify the Counsel Support Section that they were acting as Counsel for Libya, and to request access to the remote email system.³⁷
46. Accordingly, in relation to all aspects cited as justification for the Request, the Libyan authorities cannot claim relief for any prejudice, which is due to their own actions or inaction, and strategic choices.

³⁴ “Given the need to maintain the expeditious nature of proceedings, the Libyan government submits that it would be appropriate to impose a deadline for this Reply of 18 days following notification of the Response/s to counsel for the Libyan Government”, ICC-01/11-01/11-150 at para. 9.

³⁵ Request at para. 13.

³⁶ Request at para. 6.

³⁷ Having participated in another case before the ICC, Counsel for Libya should be deemed to be aware of the role of the Counsel Support Section in making such logistical arrangements for external Counsel. Since the Chief of the Counsel Support Section was arrested, detained and interrogated by the Libyan authorities in relation to his role at the ICC and the role of the Counsel Support Section, he was also available to answer any questions that the Libyan authorities may have had concerning such ICC procedures.

RELIEF SOUGHT

47. For the reasons set out above, the Defence for Mr. Gaddafi respectfully requests the Honourable Pre-Trial Chamber to

- i. reject the Request for a Status Conference and an extension of time; and
- ii. take into consideration any admissions by Counsel for Libya, which may be relevant to the Pre-Trial Chamber's decision on Libya's admissibility challenge.



Xavier-Jean Keïta, Counsel for Mr. Saif Al Islam Gaddafi

Dated this, 7th Day of August 2012

At The Hague, The Netherlands