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

Date: **11 September 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 Annex 1 and 2

**Addendum to the “Request to Submit Observations Pursuant to Regulation 77(4)
of the Regulations of the Court”**

Source: The Office of Public Counsel for the Defence

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

The Office of the Prosecutor

Ms. Fatou Bensouda

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 Keïta, Principal Counsel

Ms. Melinda Taylor, Counsel

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms. Silvana Arbia, Registrar

Deputy Registrar

Mr. Didier Daniel Pereira, Deputy Registrar

Victims and Witnesses Unit

Counsel Support Section

Detention Section

Victims Participation and Reparations Section

Other

1. On 5 September 2012, it was announced that Mr. Abdullah Al-Senussi, who is the subject of an arrest warrant issued by the International Criminal Court (ICC), had been transferred from Mauritania to Tripoli.
2. Upon arrival of Mr. Al-Senussi in Tripoli, the Head of the Al-Jazeera Libya office,¹ reported that he overheard one of the guards with Mr. Al-Senussi bragging that he had hit Mr. Al-Senussi on the back of his neck,² which is an extremely demeaning act in Arab culture.
3. There are also videos showing Mr. Al-Senussi's head being shaved, whilst he is dressed in blue prison garb.³ In Libya, when a defendant is convicted, the defendant's head is shaved and the colour of their detention clothes changes from white to blue – it is not permissible to clothe them in blue or shave their head during the investigation phase, or prior to judgement.⁴ The public dissemination of such videos further demeans the defendant, and exacerbates public perceptions of his guilt.
4. On 6 September 2012, the Office of Public Counsel for the Defence (OPCD) requested the authorisation of the Pre-Trial Chamber to submit observations concerning the right of Mr. Al-Senussi to be brought promptly before a judge in accordance with Article 59 of the Rome Statute, and to be subsequently surrendered to the custody of the ICC (the Request).
5. The OPCD hereby submits an addendum to the Request, in order to bring to the attention of the Pre-Trial Chamber interviews conducted with Professor Ahmed El-Gehani, the Prime Minister, and the Deputy Prosecutor-General concerning the arrest

¹ According to Wikipedia, Abdul-Azeem Mohamed is the head of Al-Jazeera office in Libya.

http://ar.wikipedia.org/wiki/%D8%B9%D8%A8%D8%AF_%D8%A7%D9%84%D8%B9%D8%B8%D9%8A%D9%85_%D9%85%D8%AD%D9%85%D8%AF

He has been interviewed as head of Al-Jazeera office in Libya on several video links on Al-Jazeera Arabic:

http://www.youtube.com/watch?v=3r1VnRx_48I

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² Annex 1.

³ <http://www.youtube.com/watch?v=s3bfNog1upU>

<http://www.youtube.com/watch?v=DCNUTzw7eII&feature=related>.

⁴ Red is used for persons who have been given the death penalty, yellow equates to a life sentence, blue equates to a prison sentence, grey is used for persons who are subject to a detention order, and white is used for temporary detention (which is the status accorded to persons during the investigation stage).

Popular Committee's Decree No. 168, 2005, Statute implementing the Law on Reform and Rehabilitation institutes. Table 1 Male prisoner's costumes

<http://www.aladel.gov.ly/main/modules/sections/item.php?itemid=241>

It should be noted that during the June 2012 visit, Mr. Saif Al-Islam Gaddafi was also wearing blue prison overalls – which signifies that the authorities consider his guilt to be pre-judged.

of Mr. Al-Senussi, and the obligations of Libya vis-à-vis ICC concerning his specific case on this point. These interviews are attached in Annex 2.

6. This interview is directly relevant to the Request insofar as:
 - Professor El-Gehani appears to advance the position that the ICC has renounced its jurisdiction over the case of Mr. Al-Senussi;
 - The Deputy-Prosecutor-General provides certain information concerning the modalities of Mr. Al-Senussi's transfer, which suggests that the proper extradition procedures were not complied with, and that Mr. Al-Senussi is not aware of either the ICC or Libyan allegations against him, which underscores the importance of bringing Mr. Al-Senussi promptly before a judge; and
 - The Prime-Minister avers that any irregularities in the transfer of Mr. Al-Senussi (which may have breached his rights) are "not important" to him and did not "interest" him, and that he chose the members of the delegation (including the Finance Minister) for particular reasons, which were in line with the fact that the Prime Minister is a 'practical man'.
7. The statements of Professor El-Gehani are of particular import as it was recently confirmed by Counsel for Libya that Professor El-Gehani continues to act as the focal point for conveying the official position of the Libyan authorities on matters concerning the ICC.⁵
8. The OPCD therefore respectfully requests the Honourable Pre-Trial Chamber to accept the present addendum, pursuant to Regulation 77(4) of the Regulations of the Court.

⁵ Libyan Government's provisional report pursuant to the Chamber's Decision of 9 August 2012 & Request for leave to file further report by 28 September 2012, ICC-01/11-01/11-205, at paras. 3, 11, and 12.



Xavier-Jean Keïta, Principal Counsel of the OPCD

Dated this, 11th Day of September 2012

At The Hague, The Netherlands