



Original: English

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

Date: 15 January 2013

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 with 2 Public annexes

Observations by Libya in response to the OPCD Notification of 8 January 2013

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

Ms. Fatou Bensouda

Counsel for the Defence

Mr. Xavier-Jean Keita

Ms. Melinda Taylor

Legal Representatives of the Victims

Ms. Paolina Massidda

Ms. Sarah Pellet

Mr Mohamed Abdou

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

Ms. Melinda Taylor

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**

I. INTRODUCTION

1. On 10 January 2013 the Pre-Trial Chamber issued a Decision¹ in which it requested the Libyan Government to provide observations on the accuracy or otherwise of matters contained within a public redacted Notification filed by the Office of Public Counsel for the Defence (“the OPCD”) on 8 January 2013.²

II. LIBYA’S OBSERVATIONS ON THE NOTIFICATION

2. In its Notification,³ the OPCD drew the Pre-Trial Chamber’s attention to three press articles dated 1, 2 and 5 January respectively in which the Libyan Minister for Justice (Salah Marghani) and the spokesperson for the Prosecutor-General of Libya (Taha Bara) were reported as having announced that the trials of Saif Al-Islam Gaddafi and Abdullah Al-Senussi were scheduled to commence in February 2013. By way of example, according to the third press report,⁴ Justice Minister Marghani is reported as stating: “Saif Al-Islam Gaddafi, former Prime Minister Baghdadi al-Mahmoudi and Gaddafi’s former spy chief, Abdullah Al-Senussi will be put on trial as soon as questioning is completed within the next month, as expected”.
3. The Libyan Government can confirm that such press reports are not accurate, that the trials of Saif Al-Islam Gaddafi and Abdullah Al-Senussi will not commence in February 2013. The three articles are simply unfortunate examples of the widespread mis-reporting of information associated with this case due to mistranslation or misunderstanding. In such circumstances, media reports should not be relied upon without further efforts to confirm their veracity. The correct position continues to be that the transfer of Abdullah Al-Senussi resulted in delays in the progress of the trial proceedings against Saif Al-Islam Gaddafi from the investigatory to the accusatory phase, due to the need for further

¹ ICC-01/11-01/11-249.

² ICC-01/11-01/11-247.

³ Counsel for Libya have not been provided with the Confidential version of this Notification.

⁴ ICC-01/11-01/11-247-Annex B

investigations to assess new evidence. This was explained by the Libyan Government at the 9-10 October 2012 hearing and it continues to be the case today.

4. As clarified in the Libyan Government's 1 May 2012 Admissibility Challenge, under the Libyan Code of Criminal Procedure, the cases of Saif Al-Islam Gaddafi and Abdullah Al-Senussi cannot proceed to trial until both the investigation and the accusation phase of proceedings have been completed. In this regard, the Libyan Supreme Court has confirmed in its recent Decision of 23 December 2012 that it would be unconstitutional to by-pass this phase of the case through the application of People's Court procedures. The information that ought to have been reported in the press following recent announcements by the Prosecutor-General's spokesperson and the Minister of Justice is that the investigation is nearing its completion and that in the next month it is expected that the cases will be transferred to the Chambre d'Accusation for pre-trial proceedings. In this regard, the Libyan Government draws to the Pre-Trial Chamber's attention letters from the President of the Supreme Judicial Council Council (Annex A) and the Head of the Investigation Committee at the Attorney-General's Office (Annex B) confirming this state of affairs.
5. The inaccurate reporting of the statements of Minister Marghani and Mr. Bara is in some ways understandable because now that the investigation is approaching completion, the cases will be imminently transferred to a court for judicial oversight during the accusation phase. While the distinction between pre-trial proceedings and trial proceedings may not be apparent to the media, the distinction is plainly of critical importance for the admissibility proceedings before the ICC.

III. FURTHER INFORMATION RELATING TO ABDULLAH AL-SENUSSI

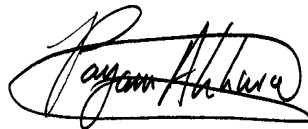
6. As counsel for the Libyan Government in the Saif Gaddafi proceedings are not

presently instructed in the Abdullah Al-Senussi proceedings, the further information requested by the Pre-Trial Chamber in its 10 December 2012 Order⁵ relating to the extradition, detention and health of Mr Al-Senussi has been provided to the Court in a separate report prepared by the Libyan Government's Focal Point to the ICC, Professor Ahmed El-Gehani.

IV. CONCLUSION

7. The Libyan Government trusts that these observations are of assistance to the Pre-Trial Chamber. Further information in relation to the Saif Al-Islam Gaddafi proceedings will be provided to the Court by Libya on 23 January 2013 in compliance with the Pre-Trial Chamber's 7 December 2012 request for further submissions.⁶

Respectfully submitted:


Professor Philippe Sands QC
 Professor Payam Akhavan
 Michelle Butler
 Counsel on behalf of the Government of Libya

Dated this 15th day of January 2013
 At London, United Kingdom

⁵ ICC-01/11-01/11-241.

⁶ ICC-01/11-01/11-239.