

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 24 April 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 and Redacted

Libyan Government's Response to OPCD Request to dismiss the "Notification by Libyan Government supplemental to its consolidated reply to the responses of the Prosecution, OPCD and OPCV to its further submissions on issues related to the admissibility of the case against Saif Al-Islam Gaddafi" *in limine*

Source: The Government of Libya, represented by:
Professor Ahmed El-Gehani
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

Counsel for Saif Al-Islam Gaddafi

Mr. John R.W.D. Jones QC

Counsel for Abdullah Al-Senussi:

Mr. Ben Emmerson QC

Mr. Rodney Dixon

Ms. Amal Alamuddin

Mr. Anthony Kelly

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms. Paolina Massidda

Ms. Sarah Pellet

Mr. Mohamed Abdou

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

**State's Representatives (in the case of Amicus Curiae
Saif Al-Islam Gaddafi)**

Professor Ahmed El-Ghani

Professor Philippe Sands QC

Professor Payam Akhavan

Ms. Michelle Butler

REGISTRY

Registrar

Mr. Herman von Hebel

Counsel Support Section

Deputy Registrar

Mr. Didier Daniel Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Government of Libya hereby responds to the OPCD's Request to dismiss the "Notification by Libyan Government supplemental to its consolidated reply to the responses of the Prosecution, OPCD and OPCV to its further submissions on issues related to the admissibility of the case against Saif Al-Islam Gaddafi" *in limine*" dated 3 April 2013 ("the Request").¹ It does so pursuant to Regulations 24(3) and 34(b).
2. As a preliminary issue, the Government of Libya disputes whether there is any legal basis for the OPCD's Request to dismiss the notification. The notification does not constitute a request or application that is capable of being dismissed but simply confirms, and provides details of, a factual development to which reference had been made throughout the admissibility proceedings (see below). The OPCD's submissions do not respond to the substance of the notification, namely the details of the new Prosecutor-General. This would, it is submitted, be the only permissible or meaningful content of submissions in the form of a *Response* to the Notification, which the OPCD *Request* does not purport to be. Rather, it is a *Request to Dismiss*, which, the Government asserts, is impermissible. Accordingly, the Government invites the Chamber to find that the Request is ill-founded and invalid.
3. Alternatively, if the Chamber decides that the Request is valid, the Government refutes the OPCD's assertions that the notification of the appointment of the new Prosecutor-General was an effort by the Government to reopen the admissibility proceedings or to delay them or an attempt to introduce fresh evidence. The Request by the OPCD is without merit and the Government invites the Chamber to refuse it.

¹ ICC-01/11-01/11-308.

II. SUBMISSIONS

4. On 27 March 2013, the Government of Libya filed a notification informing the Chamber and the participants in these proceedings of the formal appointment of the new Prosecutor-General.² The appointment of the Prosecutor-General was a development that had been anticipated, highlighted and discussed at numerous stages in the admissibility proceedings.³

5. [REDACTED]

6. [REDACTED]

7. [REDACTED]

8. [REDACTED]

9. [REDACTED]

10. The notification simply seeks to confirm, and provide the necessary details of, the anticipated appointment of the new Prosecutor-General as a matter of courtesy and to assist the Court and the participants in these proceedings. It does not constitute the tendering of "evidence and information in a piecemeal and dilatory manner", as asserted by the OPCD.⁴ On the contrary, it is an exercise of due diligence, confirming expeditiously an event that was anticipated by all parties to the proceedings. Accordingly, it is not an attempt to reopen any issue in the admissibility proceedings, nor is it an attempt to delay

² Notification by Libyan Government supplemental to its consolidated reply to the responses of the Prosecution, OPCD and OPCV to its further submissions on issues related to the admissibility of the case against Saif Al-Islam Gaddafi", 28 March 2013, ICC-01/11-01/11-288.

³ "Libyan Government's consolidated reply to the responses of the Prosecution, OPCD, and OPCV to its further submissions on issues related to the admissibility of the case against Saif Al-Islam Gaddafi" dated 04 March 2013; Transcript of Admissibility Hearing, 09 October 2012, ICC-01/11-01/11-T-2-CONF-ENG, pages 20, 44, 45, 54; Transcript of Admissibility Hearing, 10 October 2012, ICC-01/11-01/11-T-3-CONF-ENG, page 20 (discussion by the OPCD of possible appointment of a new Prosecutor-General).

⁴ The Request, para 5.

the proceedings in any way. Nor does it constitute an effort to “supplement [the] challenge or reformulate it to take into consideration new factual developments.”⁵

11. The OPCD further asserts that it “would be clearly unfair to allow the Government to introduce new factual developments, which potentially advance its challenge, without according the parties and participants with an opportunity to put these developments into context or to cite countervailing adverse developments.”⁶ The Government refutes that any such unfairness arises given that the notification does not “introduce new factual developments” but, rather, provides confirmation of an anticipated change that had been referred to numerous times. The identity of the new Prosecutor-General is clearly a matter that should be known by the Court to facilitate communication and cooperation between the participants in the proceedings.
12. Indeed, it was not anticipated that the filing would be any cause for contention or litigation, hence its description as a “notification”. The OPCD has misconstrued the filing and used it as a vehicle to make further substantive submissions, which now produce the outcome the OPCD warns against: delay and extenuation of the proceedings. To avoid such extenuation, the Government will not address each of the factual submissions made by the OPCD, save for clarifying particular matters in paragraphs 13 - 14 below.
13. The Government of Libya asserts that the OPCD has used its Request to dismiss the notification, which has no legal foundation or apparent purpose (beyond attempting to buttress its own position in the admissibility proceedings), as an opportunity to: (i) recycle old arguments; (ii) admonish unduly the actions of the Government; and (iii) reopen substantive issues in the admissibility proceedings. Paragraph 17 of the Request to dismiss is illustrative of the OPCD’s unfair and inaccurate admonishment of the Government, reiterating past claims

⁵ Ibid, para 9.

⁶ Ibid, para 10.

concerning the Government's non-compliance with orders, including the non-surrender of Mr. Al-Senussi and the failure to return Defence documents. With regard to the former, as a result of its admissibility challenge filed on 2 April 2013 (predating the OPCD Request), the Government's duty to surrender Mr. Al-Senussi is postponed pursuant to article 95 of the Statute. With regard to the latter, the status of the seized documents is a matter of dispute, and the ruling of the Pre-Trial Chamber is the subject of an application for leave to appeal.

14. Furthermore, the assertion by the OPCD at paragraph 19 that "the recent challenge to admissibility filed in connection with the Senussi case also does not constitute grounds to either delay or reopen the admissibility proceedings concerning Mr. Gaddafi" is baseless and inapposite. The Libyan Government, has not, either in the Notification or elsewhere, made any suggestion that the admissibility challenge filed in the case against Mr. Al-Senussi should provide any grounds for delaying the admissibility proceedings in the case against Mr. Gaddafi.

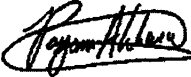
III. CONCLUSION

15. The Government of Libya invites the Chamber to refuse the relief sought by the OPCD, namely the dismissal of the Notification *in limine*, on the basis that the Request:

- a. has no proper basis; and/or
- b. is without merit.

Respectfully submitted:






Professor Ahmed El-Gehani
Professor Philippe Sands QC
Professor Payam Akhavan
Michelle Butler
*Libyan ICC Coordinator and
Counsel on behalf of the Government of Libya*

Dated this 24th day of April 2013
At London, United Kingdom