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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

Response to Gaddafi Defence “Urgent Notification”

Source: The Government of Libya, represented by:
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Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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INTRODUCTION

1. The Libyan Government hereby submits its Response to the “Urgent Notification”¹ (“Notification”) filed by the Gaddafi Defence on 29 August, requesting that the Pre-Trial Chamber issue an immediate finding of non-compliance.²

SUBMISSIONS

2. Mr. Gaddafi’s Notification is replete with allegations of the most serious order. It variously asserts that the submissions made on behalf of the Libyan Government are “disingenuous at best”;³ “improper”;⁴ “ambiguous”;⁵ “contradictory” and “misleading”.⁶ Similarly, it asserts that the Libyan Government has sought to make improper use of Article 97(7).⁷ Mr. Gaddafi goes on to contend, yet again, that Libya exhibits a “flagrant disregard of ICC orders”.⁸ The myriad of allegations clearly assert bad faith, and also appear to assert professional misconduct.
3. Given the gravity of these allegations, it is submitted that the Chamber should expect comprehensive and clear support. To the contrary, the Notification is based on a single fact – the progression of the domestic case to the Accusation Chamber (which was then expected to take place on 19 September 2013 and which did in fact take place on that date) – the representation of which is profoundly flawed and inaccurate. Both of the annexes submitted with the Notification concern this matter, and reference thereto is repeated throughout the Notification.

¹ ICC-01/11-01/11-424.

² Notification, para. 15.

³ Notification, para. 6.

⁴ Notification, para. 7.

⁵ Notification, para. 9.

⁶ Notification, para. 13.

⁷ Notification, para. 7.

⁸ Notification, para. 12.

4. Whilst seeking to characterise the conduct of the Libyan Government and its representations in the manner described above, Mr. Gaddafi also admits that he is, in reality, unsure of the arguments presented, stating that it is “unclear whether the Libyan authorities have taken any concrete steps in the proceedings, or whether these announcements are simply a publicity ploy”.⁹
5. The transfer of the case to the Accusation Chamber is no more than the stage of proceedings in which the prosecution team transfer the case file to the investigating judges (whose role in civil legal traditions is well-known) – a point already made by the Libyan Government in previous filings.¹⁰
6. Contrary to the unfounded assertions of Mr. Gaddafi, this procedural step is of key importance in both the making public of the evidence gathered so far, and in obtaining legal representation of accused persons, as Professor El-Gehani has made clear. It is, thus, clear evidence of “concrete steps in the proceedings”, and certainly not a mere “publicity ploy”.¹¹
7. It is especially unfortunate that in seeking to characterise the scant facts presented in the Notification, Mr. Gaddafi directly quotes Professor El-Gehani as confirming that Libya was “stopping the transfer of Saif [...] to The Hague”.¹² To be clear, these are the words of the interviewer, not of Professor El-Gehani. Not only does this intolerably misrepresent *even Mr. Gaddafi’s own annexes*, it also ignores the Libyan Government’s previous submissions on exactly this point.¹³
8. Not only does the Notification contain a myriad of unjustified allegations, it fails to address the Libyan Government’s known position on the issues raised. It is a

⁹ Notification, para. 4.

¹⁰ See ICC-01/11-01/11-438, paras. 10, 16.

¹¹ Whilst the Gaddafi Defence stops short – in the Notification – of making the assertion that the transfer to the Accusation Chamber was a trial, views which appear to have been expressed in the press suggest that this is the thrust of its submissions: “John Jones QC, called for this week’s trial to be cancelled” (<http://www.theguardian.com/world/2013/sep/17/libya-trial-gaddafi-senussi>).

¹² Notification, para. 5.

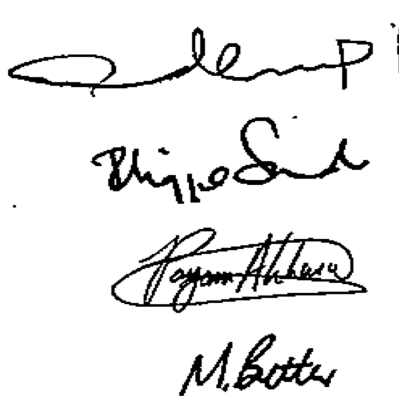
¹³ In particular, the complex dynamics of the relationship between Zintan and Tripoli in recent weeks: ICC-01/11-01/11-402, paras. 12, 13.

waste of the resources of both the Court, and of the Libyan Government, to address such submissions.

CONCLUSION

9. For the reasons outlined above, the Libyan Government respectfully requests that the Notification, and the request therein, be rejected.

Respectfully submitted:



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Dated this 20th day of September 2013

At London, United Kingdom