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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 Request for Ruling on Requests for Finding of Non-compliance”

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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. On 9 December 2013, the Gaddafi Defence filed its “Urgent Request for Ruling on Requests for Finding of Non-compliance”¹ (“Request”). On 13 December, the Gaddafi Defence filed an “Urgent Addendum” thereto² (“Addendum”) with a single annex: the “Opinions Adopted by the Working Group on Arbitrary Detention at its sixty-eight [*sic.*] session, 13-22 November 2013”,³ (“WG Opinions”) again requesting that the Pre-Trial Chamber issue a finding of non-compliance. The Libyan Government hereby submits its Response.

SUBMISSIONS

2. The Gaddafi Defence’s Request is based upon the assertions that the absence of finding of non-compliance (i) breaches Rule 123(3);⁴ (ii) presents a “risk” to Mr. Gaddafi and others;⁵ and (iii) amounts to a denial of the right to be heard in proceedings before the ICC, under Article 67(1) of the Statute.⁶

A. Rule 123(3)

3. Rule 123(3) states, in relevant part that

The Pre-Trial Chamber shall ensure [...] if the warrant of arrest has not been executed within a reasonable period of time after the issuance of the warrant, that all reasonable measures have been taken to locate and arrest the person.

4. Rule 123 is entitled “Measures to ensure the presence of the person concerned at the confirmation hearing”. This alone indicates that this provision is inapplicable in the situation in which the Gaddafi Defence seeks to invoke it. This irrelevance to the Gaddafi submissions is affirmed by its applicability to efforts “to locate and arrest the person”. Mr. Gaddafi has been located and

¹ ICC-01/11-01/11-489.

² ICC-01/11-01/11-491.

³ ICC-01/11-01/11-491-Anx A, UN doc. A/HRC/WGAD/2013/.

⁴ Request, para. 8.

⁵ Request, para. 4.

⁶ Request, para. 4.

arrested by the state. Moreover, measures “*to locate and arrest the person*” (emphasis added) patently do not include any associated finding of non-compliance.

5. Even if Rule 123(3) were applicable to the Defence Request, a finding of non-compliance would not reflect the circumstances of Mr. Gaddafi’s detention. The practical difficulties encountered in the transfer of Mr. Gaddafi from Zintan to Tripoli have not undermined the Libyan Government’s engagement with the Court or any other international obligation throughout the proceedings. On 19 November 2011, Mr. Gaddafi was captured near the town of Obar, apparently trying to flee to Niger.⁷ His capture was expeditiously communicated to the Chamber in a letter from the newly established Libyan authorities on 23 November 2011.⁸

6. On 2 March 2012, in the immediate aftermath of the Gaddafi regime, the UN Human Rights Council adopted the “Report of the International Commission of Inquiry on Libya”.⁹ This acknowledged the immense post-conflict challenges faced by Libya, but recognised the new Libyan Government’s commitment to restoring stability and improving the human rights situation, and the assistance that it provided to the Commission.¹⁰ The Report referred to positive developments in the legal protection of human rights through the Libyan Government’s “Law establishing the National Council for Civil Liberties and Human Rights”.¹¹ Such developments were also recognised in the Report of the

⁷ BBC News, “Gaddafi’s son Saif-al-Islam captured in Libya”, 19 November 2011, <http://www.bbc.co.uk/news/world-middle-east-15804299>

⁸ *Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, “Implementation of the ‘Decision to Add Document to Case Record’”, Registry, ICC-01/11-01/11-34-Anx, 29 November 2011, annex 1.

⁹ United Nations Human Rights Council, Report of the International Commission of Inquiry on Libya, UN Doc. A/HRC/19/68, 2 March 2012, (“UN Commission of Inquiry Report”).

¹⁰ UN Commission of Inquiry Report, pp. 5, 6, 20-22, 31 40, 115-17.

¹¹ UN Commission of Inquiry Report, page 20

Secretary-General on the United Nations Support Mission in Libya (“UNSMIL”), of 1 March 2012.¹²

7. On 22 March 2012, through its “Notification and Request”, the Libyan Government notified Pre-Trial Chamber I of its intention to challenge the admissibility of the case concerning Mr. Gaddafi pursuant to articles 19(2)(b), (5) and (6) of the Rome Statute by 30 April 2012. It also requested that, pending a decision on this challenge, the Chamber suspend its surrender request in relation to Mr. Gaddafi in accordance with, *inter alia*, Article 95 of the Statute and Rule 58 of the Rules of Procedure and Evidence.¹³ On 1 May 2012, the Libyan Government filed the “Application on behalf of the Government of Libya pursuant to Article 19 of the ICC Statute”¹⁴ (“Gaddafi Admissibility Challenge”). On 1 June 2012, the Chamber decided that Libya could postpone the execution of the request for surrender of Mr. Gaddafi pursuant to article 95 of the Statute.¹⁵
8. All of these proceedings took place in the immediate aftermath of the Gaddafi regime’s collapse, during the rule of the NTC and prior to post-conflict stabilization and democratic elections to establish a new Government. Nonetheless, during this time, Libya’s investigation progressed, and UNSMIL and the international community provided substantial assistance for post-conflict judicial capacity building.¹⁶

¹² UN Security Council, “Report of the Secretary-General on the United Nations Support Mission in Libya”, UN Doc. S/2012/129, 01 March 2012, paragraph 29.

¹³ *The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, “Notification and Request by the Government of Libya in response to “Decision on Libya’s Submissions Regarding the Arrest of Saif Al-Islam Gaddafi””, 22 March 2012, ICC-01/11-01/11-82-Conf.

¹⁴ See *Prosecutor v. Saif Al-Islam and Abdullah Al-Senussi*, Application on behalf of the Government of Libya pursuant to Article 19 of the ICC Statute, ICC-01/11-01/11, 1 May 2012 (“Gaddafi Admissibility Challenge”).

¹⁵ *The Prosecutor v. Saif Al-Islam and Abdullah Al-Senussi*, “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”, 01 June 2012, ICC-01/11-01/11-163.

¹⁶ In relation to capacity building, see, for example, Annexes 19-23 to the Libyan Government’s Further Submissions and Annexes 1-3 of Libya’s Consolidated Reply.

9. On 7 July 2012 Libya held its first democratic election since 1965. The Libyan High National Election Commission announced the results of the election on 17 July 2012, with the 'National Forces Alliance' taking 39 of the 80 seats.¹⁷ On 30 July 2012, counsel for the Libyan Government filed the "Libyan Government Request for Status Conference and Extension of Time to file a Reply to the Responses to its Article 19 Admissibility Challenge". In that filing, they informed the Chamber that, as a result of the election on 7 July 2012, it would not be possible to obtain further instructions on the case until the appointment by the recently elected GNC of the new Libyan Minister of Justice, Attorney-General and Prosecutor-General.¹⁸ The Libyan Government complied with the Chamber's request for updates as to the status of appointments to key posts in the new Libyan Government, counsel's ability to obtain instructions from them, and any domestic proceedings against Mr. Gaddafi, etc.¹⁹
10. During the admissibility hearing on 8th and 9th October 2012, Libya's representative submitted that, given Libya's transitional context, the Court should engage with Libya on a constructive and ongoing basis, receiving further reports and submissions "until such time as it has satisfied itself that Libya has had a reasonable opportunity to pursue a case - at which time the Chamber can then make a decision on admissibility".²⁰

¹⁷ Libya Herald, "National Congress Party Results", Tripoli 18 July 2012, accessible at <http://www.libyaherald.com/2012/07/18/party-results/>.

¹⁸ *The Prosecutor v. Saif Al-Islam and Abdullah Al-Senussi*, "Libyan Government Request for Status Conference and Extension of Time to file a Reply to the Responses to its Article 19 Admissibility Challenge", 30 July 2012, ICC-01/11-01/11-192.

¹⁹ *The Prosecutor v. Saif Al-Islam and Abdullah Al-Senussi*, "Decision on the "Libyan Government Request for Status Conference and Extension of Time to file a Reply to the Responses to its Article 19 Admissibility Challenge"", 09 August 2012, ICC-01/11-01/11-200; *The Prosecutor v. Saif Al-Islam and Abdullah Al-Senussi*, "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", 07 September 2012, ICC-01/11-01/11-205.

²⁰ Admissibility Decision, paragraph 32 citing Pre-Trial Chamber I, Transcript of Hearing, 9 October 2012, ICC-01/11-01/11-T-2-Red-ENG, p. 44, line 12 - p. 46, line 9.

11. The Libyan Government provided the Chamber with the information and evidence it requested concerning the admissibility challenge by 23 January 2013.²¹
12. Following the Pre-Trial Chamber's determination of the admissibility challenge on 31 May 2013, the Libyan Government has continued to engage with the Court throughout the appellate phase of the admissibility proceedings.

B. Alleged 'risk'

13. The arguments, in the Request and Addendum, concerning alleged risk to which Mr. Gaddafi and others are exposed, are without merit for the following reasons.
14. First, it is wholly misconceived to transplant the assessment of risk analysis applied by the Working Group into the context of an admissibility assessment by the ICC. The application of international human rights law is not and cannot be automatically relevant to the assessment by the Chamber of the issue of admissibility. As has been noted many times in these proceedings, the assessment of admissibility necessarily takes place in a transitional context, which is entirely different from the domestic scenario in which international human rights law is presumed to operate. Further, the very nature of a jurisdiction based upon complementarity, rather than primacy, must seek to enable domestic jurisdictions in transitional states – not disempower them through the attribution of unattainable or unrealistic standards.
15. Second, neither the assertions of the Gaddafi Defence, nor the WG Opinions, add anything to material already before the Chamber. The Chamber is required, of course, to conduct its own analysis of any argument presented to it, rather than to simply accept the interpretation of another adjudicative body. The WG's conclusions may be irrelevant to the Chamber's analysis of any issue. In this

²¹ "Libyan Government's further submissions on issues related to the admissibility of the case against Saif Al-Islam Gaddafi", 23 January 2013, ICC-01/11-01/11-258- Conf-Exp, with Annexes 1-23 ("Libya's Further Submissions").

regard, the Request cites to only the Working Group's broad conclusions. However, these conclusions are premised and depend upon the Working Group's analysis which is concerned with judicial control over arrest and detention;²² conditions of detention;²³ access to a lawyer;²⁴ and notice of the charges.²⁵

16. The WG Opinions also fail to refer to the most up to date information and submissions on the issues that it considers. The Libyan Government submits that the Chamber is already apprised of more contemporaneous and therefore more relevant and probative information. The Libyan Government's submissions to the Appeals Chamber provide the most recent information, even though they are unable to fully address the allegations of an unnamed source.

17. Third, at the time of its assessment of these issues, it was within the power of the Chamber to make a finding of non-compliance – an application or request is not necessary to identify such failures, if they exist. As this matter is now before the Appeals Chamber, it is entirely appropriate for the Pre-Trial Chamber to decline to address or adjudicate any further on these issues. It is irrelevant that the Appeals Chamber refused the Libyan Government's application for suspensive effect. Accordingly, given that final determination of admissibility of the Gaddafi case is pending before the Appeals Chamber, judicial economy, proportionality and efficacy dictates that the Request be rejected.

18. Fourth, the "risk" to which the Gaddafi Defence refers is entirely unsubstantiated. For the sake of clarity, the nature of the asserted risk must be of treatment that would impact negatively upon the admissibility assessment. However, the Request refers to a redacted footnote.²⁶ The Addendum purports

²² WG Opinions, paras. 5, 8, 42,

²³ WG Opinions, paras. 9, 10, 42.

²⁴ WG Opinions, paras. 11, 42.

²⁵ WG Opinions, paras. 13, 35, 42.

²⁶ Request, para. 4.

to expand upon this risk by reference only to the WG Opinions.²⁷ The WG Opinions are based upon an unidentified “source”.

19. These unsatisfactory features insulate the Gaddafi allegations from proper challenge by the Libyan Government, and from any real examination by the Chamber, no matter how flawed or lacking in merit they may be. In order to be even considered by Chambers of the ICC, the factual material *and* their sources must satisfy the applicable evidentiary standards with regard to their probative value and prejudicial effect. At a minimum, any assessment of their admissibility includes examining whether the submitted material has probative value; and is sufficiently relevant and probative to outweigh any prejudicial effect that may arise as a consequence of their admission. When a challenge has been made to the admissibility of a document, the burden rests on the party seeking admission to demonstrate its admissibility.²⁸ The Gaddafi Defence has clearly failed to meet or even meaningfully address this burden.

20. The question of whether the material has probative value is a fact-specific inquiry and may take into account innumerable factors, including any indicia of reliability, credibility, accuracy or voluntariness that inhere in the item of potential evidence. The inquiry must also take into account the extent to which the item lacks authenticity. The tendering party needs to satisfy the Chamber that the information is authentic and reliable through provision of sufficient information.²⁹ It is plain that the Chamber’s obligation to conduct its own assessment of the evidence means that little or no probative value may be attributed to any information where the identity of the “source” and/or other authenticating details are concealed.

²⁷ Addendum, paras. 3, 4.

²⁸ *Prosecutor v. Bemba*, “First decision on the prosecution and defence requests for the admission of evidence”, 15 December 2011, ICC-01/05-01/08-2012-Red, paragraph 13; “Decision on the Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute”, 6 September 2012, ICC-01/05-01/08-2299-Red.

²⁹ *Prosecutor v. Bemba*, “First decision on the prosecution and defence requests for the admission of evidence”, 15 December 2011, ICC-01/05-01/08-2012-Red, paras. 14-16; “Decision on the Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute”, 6 September 2012, ICC-01/05-01/08-2299-Red.

21. The associated question of whether the item's probative value (if any) outweighs the prejudicial effect of its admission as evidence must then be considered and rigorously assessed and may preclude the item's admission.³⁰ This will always be a fact-sensitive inquiry involving a consideration of factors such as whether an item's admission would unnecessarily delay proceedings because it is cumulative of other evidence. In circumstances where the Libyan Government is deprived of an opportunity to contest the underlying allegations, the prejudicial effect, must be dispositive.

C. Alleged denial of right to be heard

22. The Gaddafi Defence contends that the Chamber's purported failure to address its multiple requests violates Mr. Gaddafi's right to a fair trial. This cannot be accepted. As noted above, the Chamber was free to make a finding of non-compliance, if grounds existed to do so. The absence of meritorious grounds provides the basis for lack of action that is tantamount to a negative decision in the present circumstances.

23. The material provisions are Article 64(9) of the Statute and Regulation 45. The latter concisely states that

The Pre-Trial Chamber shall be responsible for any matter, request or information arising out of the situation assigned to it, save that, at the request of a Presiding Judge of a Pre-Trial Chamber, the President of the Pre-Trial Division may decide to assign a matter, request or information arising out of that situation to another Pre-Trial Chamber in the interests of the administration of justice.

24. Being "responsible" does not entail an obligation to address every request made no matter how unfounded. Even if not entirely unfounded, the Chamber is perfectly entitled to take a different view of the urgency of the matter, request or

³⁰ *Prosecutor v. Bemba*, "First decision on the prosecution and defence requests for the admission of evidence", 15 December 2011, ICC-01/05-01/08-2012-Red, paras. 14-16; "Decision on the Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute", 6 September 2012, ICC-01/05-01/08-2299-Red.

information than the filing party, and, rather than making a decision at that time, keep the issues under review, provided that no provision of the Rules or Statute, or any other legal obligation is breached (the Defence's arguments concerning Article 67(1) of the Statute are addressed below).

25. Article 64 sets out the functions and powers of a Trial Chamber, but is applicable, by analogy, to the Pre-Trial Chamber. Article 64(6) states, *inter alia*, as follows (emphasis added):

In performing its functions prior to trial or during the course of a trial, the Trial Chamber may, as necessary [inter alia]

(f) Rule on any other relevant matters.

26. In the same vein, Article 64(9) states, *inter alia*, that

The Trial Chamber shall have, inter alia, the power on application of a party or on its own motion to:

(a) Rule on the admissibility or relevance of evidence; and

(b) Take all necessary steps to maintain order in the course of a hearing.

27. The Libyan Government need not re-state, at this point, its Responses to the previous requests of the Gaddafi Defence. The Chamber is respectfully asked to bear in mind each argument set out therein. Without recounting each of them, it should be borne in mind that the Gaddafi Defence's previous filings are replete with allegations of the most serious nature.³¹ The myriad allegations appear to assert bad faith and professional misconduct, notwithstanding the absence of any adequate evidence to support such assertions. In the Request of 29 August 2013, for example, such assertions were based on a single fact – the progression of the domestic case to the Accusation Chamber that was due to take place on 19 September. Plainly, this was incapable of sustaining the Gaddafi Defence's

³¹ ICC-01/11-01/11-424, paras 6, 7, 9, 12, 13; It variously asserts that the submissions made on behalf of the Libyan Government are "disingenuous at best"; "improper"; "ambiguous"; "contradictory" and "misleading". Similarly, it asserts that the Libyan Government has sought to make improper use of Article 97(7). Mr. Gaddafi goes on to contend, yet again, that Libya exhibits a "flagrant disregard of ICC orders".

allegations and, in any event, contained a misrepresentation, namely that Professor El-Gehani had confirmed that Libya was “stopping the transfer of Saif [...] to The Hague”.³²

28. The Gaddafi Defence invokes a “right to be heard” by reference to Article 67(1) of the Statute, as well as to international and domestic jurisprudence.³³ Its submissions, however, conflate two distinct issues: first, that of the role of the accused, and the accused’s legal representatives, in a dispute concerning the forum for the criminal proceedings; and second, the rights of the accused in the criminal proceedings. Mr. Gaddafi refers to Article (67)(1) of the Statute, of which the material passages state as follows:

In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:

[...]

(b) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing in confidence;

[...]

(d) Subject to article 63, paragraph 2, to be present at the trial, to conduct the defence in person or through legal assistance of the accused's choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court in any case where the interests of justice so require, and without payment if the accused lacks sufficient means to pay for it;

29. The Libyan Government does not seek to argue for any diminution in the Gaddafi Defence’s full participation in the present admissibility proceedings. Rather, it seeks clarity as to the nature of Article 67(1), upon which the Gaddafi Defence relies in its Request, in alleging that the Chamber’s approach to its

³² ICC-01/11-01/11-424, para. 5 – this ignored the Libyan Government’s submissions on relevant matters – e.g., complex dynamics of the relationship between Zintan and Tripoli in recent weeks: ICC-01/11-01/11-402, paras. 12, 13.

³³ Request, para. 5.

previous Requests was unlawful. The right to representation, as a matter of due process, does not require the Pre-Trial Chamber to make, or to have made, a decision on the repetitious requests of the Gaddafi Defence. Indeed, there is no analogy between the due process rights of the accused in the determination – at trial – of his/her criminal guilt or innocence; and the participation of the Defence in admissibility proceedings.

30. In the language of the European Court of Human Rights, for example, the difference between the role of the defence in an admissibility challenge and in a criminal trial is that the latter entails “determination of the civil rights” of the accused – that is, the determination of criminal charges. This reflects the language of article 67(1), as cited above. The European Court is equally clear that the adjudication of whether a person will be transferred to another jurisdiction for the purposes of a criminal trial, as in extradition proceedings, *does not* involve determination of the civil rights of the accused.³⁴

31. In other words, the nature of a person’s due process rights in a particular situation is a corollary of the type of decision being made, rather than the name/title assigned to the party concerned, whether ‘Defence’ or ‘Accused’ or otherwise. The ‘right’ in issue in admissibility proceedings is that of the domestic jurisdiction to carry out criminal proceedings. The Libyan Government has previously made submissions as to the *nature* of the domestic

³⁴ *Mamatkulov and Askarov v. Turkey* (2005) 41 EHRR 494; *Salgado v. Spain*, Application No. 65964/01; *EGM v. Luxembourg*, Application No. 24015/94; *GK and BJF v. The Netherlands*, Application No. 12543/86; *Kirkwood v. UK* (1984) 37 DR 158; *H v. Spain* (1983) 37 DR 93; *X v. Belgium*, Application No. 7256/75. The only minor caveat in this regard is the situation in which a national of the country concerned is to be extradited, in which case the proceedings can affect a citizen’s right to enter and remain in the country of citizenship. This was the situation faced by the UK Supreme Court in *Lukazewski v. The District Court in Torun, Poland* [2012] UKSC 20. See, in particular, para. 31, per Lord Mance. Note extradition is not a direct comparison because extradition involves a relationship in which there is no overarching jurisdictional claim that is provided by a UN Security Council Resolution – it is matter of bilateral relations between states. In the presence of jurisdiction which is already part of the domestic legal order, in the sense that it is on the basis of a Security Council Resolution, even less is in issue in terms of determination of rights.

jurisdiction's right (indeed its obligation) to conduct criminal proceedings.³⁵ The function of the admissibility proceedings is to determine which jurisdiction takes priority as between the concurrent jurisdiction of the state of Libya and the ICC. At the core of these proceedings lies the delineation of the legal relationship between the state of Libya and the ICC as an international organisation.

32. This is reflected in the Pre-Trial Chamber's finding that Libya is the "triggering force and main actor in [admissibility] proceedings".³⁶ This determination was made in the context of deciding whether Libya should be permitted to file a reply to responses addressing admissibility issues, but it reflects the requirements of due process in admissibility proceedings as set out herein.

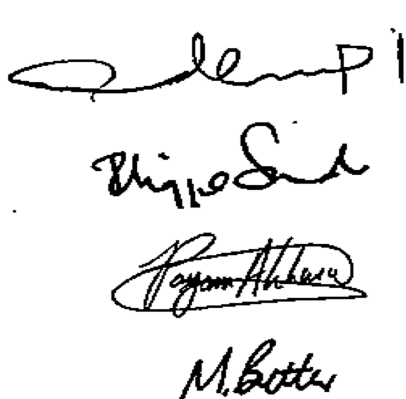
³⁵ See, for example, "The Libyan Government's further submissions in reply to the Prosecution and Gaddafi Responses to 'Document in Support of Libya's Appeal against the "Decision on the admissibility of the case against Saif Al-Islam Gaddafi"'. It is submitted that the effect of the ICC Statute is threefold: (i) to modify the sovereign right to conduct criminal proceedings such that, in relation to crimes which are within the ICC Statute, it is no longer absolute, but is contingent upon ability and willingness to conduct genuine proceedings; (ii) *to protect that right once modified*; (iii) and to create a jurisdiction in which will prosecute international crimes properly where this modified right will not be exercised. This is apparent from the ICC Statute itself (Article 17 specifically refers to preambular para. 10 and article 1 of the Statute, highlighting the significance of the principle of complementarity. In preambular para. 10, States parties: "[e]mphasiz[e] that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions". Article 1 further provides that the Court "shall be complementary to national criminal jurisdictions"). The complementarity principle has been described in ICC jurisprudence as "reinforc[ing] the principle of international law that it is the sovereign right of every State to exercise its criminal jurisdiction[...]" (*Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta & Mohammed Hussein Ali*, Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled "Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute", 20 September 2011, ICC-01/09-01/11 OA (Dissenting Opinion of Judge Anita Ušacka), para. 19.) See also *Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta & Mohammed Hussein Ali*, Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled "Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute", 30 August 2011, ICC-01/09-01/11 OA, para. 43. This is also apparent from the negotiating history of the Statute: See e.g. M. Cherif Bassiouni, *Legislative History of the International Criminal Court: An Article-by-Article Evolution of the Statute from 1994-1998* (Vol. 2, Ardsley, NY: Transnational Publishers, 2005), at 50-51.

³⁶ ICC-01/11-01/11-191, para. 8.

CONCLUSION

33. For the reasons outlined above, the Libyan Government respectfully requests that the Request be rejected.

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Dated this 2nd day of January 2014
 At London, United Kingdom