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

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PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Single Judge

SITUATION IN LIBYA

IN THE CASE OF

THE PROSECUTOR v.

SAIF AL-ISLAM GADDAFI and ABDULLAH AL-SENUSSI

Public

Response to “Libyan Application for extension of time related to the Pre-Trial Chamber I’s ‘Decision requesting Libya to provide submissions on the status of the implementation of its outstanding duties to cooperate with the Court’”

Source: Office of Public Counsel for Victims

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

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I. PROCEDURAL HISTORY

1. On 1st May 2014, the Prosecution filed the “Request for an Order to Libya”, wherein it requested the Chamber “to determine the status of Libya’s efforts to surrender Mr Gaddafi to the Court and to give assurances that its domestic proceedings will not impede its obligations to cooperate with the Court”.¹ The Prosecution invited the Chamber to order the Libyan Government to “[u]pdate the Chamber on its ability and efforts, if any, to surrender Mr Gaddafi to the Court and to do so, on a regular basis until the Surrender Request is implemented” and to “[p]rovide assurances that the outcome of its domestic proceedings will not hinder the implementation of the Request to surrender Mr Gaddafi to the Court”.²

2. On 15 May 2014, the Single Judge of Pre-Trial Chamber I (the “Single Judge” and the “Chamber”) issued the “Decision requesting Libya to provide submissions on the status of the implementation of its outstanding duties to cooperate with the Court” (the “Decision”), requesting Libya to “inform the Chamber, by Wednesday, 28 May 2014, as to the status of the implementation of: (i) its duty to immediately surrender Mr Gaddafi to the Court; (ii) its duty to return to the Defence of Mr Gaddafi the originals of the materials that were seized from the former Defence counsels for Mr Gaddafi by the Libyan authorities during her visit to Mr Gaddafi in Zintan, and destroy any copies thereof; and (iii) its duty to arrange a privileged legal visit to Mr. Al-Senussi by his Defence”.³

3. On 28 May 2014, Libya filed the “Application for extension of time related to the Pre-Trial Chamber I’s Decision requesting Libya to provide submissions on the status of the implementation of its outstanding duties to cooperate with the Court”

¹ See the “Prosecution Request for an Order to Libya”, No. ICC-01/11-01/11-539, 1 May 2014, para. 1.

² *Idem*, para. 8.

³ See “Decision requesting Libya to provide submissions on the status of the implementation of its outstanding duties to cooperate with the Court” (Pre-Trial Chamber I, Single Judge), No. ICC-01/11-01/11-545, 15 May 2014, p. 7.

(the “Request”), wherein it requested an extension of time of 12 weeks (*i.e.* until 20 August 2014) to respond to the first two aspects of the Decision.⁴

4. The Principal Counsel hereby respectfully submits her response to the Request on behalf of victims who have communicated with the Court in relation to the case.

II. LEGAL SUBMISSIONS

5. The Principal Counsel objects to the Government of Libya’s Request to extend, by 12 weeks, the time limit for the filing of submissions on the status of implementation of its outstanding duties to cooperate with the Court. The extension sought is excessively long and is not appropriate in the circumstances of this case. Moreover, the Government does not provide any legal basis for its Request.

6. Requests for variation of time limits should be considered in accordance with Regulation 35 of the Regulations of the Court. Under this provision, the party or participant seeking the extension has to show “good cause” in order for the Chamber to grant said request. The Appeals Chamber spelled out certain requirements for applications under Regulation 35(2) of the Regulations of the Court. As to the grounds for extension, it ruled “[s]uch reasons as may found a good cause are necessarily associated with a party’s duties and obligations in the judicial process. A cause is good, if founded upon reasons associated with a person’s capacity to conform to the applicable procedural rule or regulation or the directions of the Court. Incapability to do

⁴ See the “Libyan Application for extension of time related to the Pre-Trial Chamber I’s Decision requesting Libya to provide submissions on the status of the implementation of its outstanding duties to cooperate with the Court”, No. ICC-01/11-01/11-548, 28 May 2014 (the “Request”).

*so must be for sound reasons, such as would objectively provide justification for the inability of a party to comply with his/her”.*⁵

7. Accordingly, the extension of time is directly linked to the party’s ability to fulfil its duties under the Rome Statute. The Government is therefore required to show that the requested time frame is necessary for the implementation of the cooperation requests, and that it would not be possible to execute the requests within a shorter time period.

8. Instead of providing updates regarding the status of implementation of the cooperation requests, the Government chose to wait until the very last day for submission to request a lengthy postponement of 12 weeks. Nowhere in the Request is there any reference to problems that may have impeded or prevented Libya from complying with the Chamber’s previous orders. Impediments to implementation, if any, have been known to Libya since the date the relevant decisions/orders were officially notified to the Government, the latest being the decision of 27 September 2013 regarding the signing of an Memorandum of Understanding between the Court and the Libyan Government.⁶ The stance taken by the Libyan Government in relation to cooperation issues is therefore the result of a deliberate and carefully thought position. Thus, the Government cannot legitimately claim that an extension of time is justified on the basis that there is a need to be provided with “up-to-date instructions on the salient issues”.⁷ Indeed, Libya’s failure to comply with its outstanding obligations is largely attributed to the Government’s actions during the period preceding the May 2014’s events, which are now being advanced as a justification for an extension of time.⁸

⁵ See “Reasons for the ‘Decision of the Appeals Chamber on the request of counsel to Mr. Thomas Lubanga Dyilo for modification of the time limit pursuant to regulation 35 of the Regulations of the Court of 7 February 2007’ issued on 16 February 2007” (Appeals Chamber), No. ICC-01/04-01/06-834 OA 8, 21 February 2007, para. 7.

⁶ See “Decision concerning a privileged visit to Abdullah Al-Senussi by his Defence” (Pre-Trial Chamber I, Single Judge), No. ICC-01/11-01/11-456, 26 September 2013.

⁷ See the Request, *supra* note 4, para. 6.

⁸ *Idem*.

9. Furthermore, the Government's argument that the recent internal disturbances could justify a lengthy extension is without merit. The Request fails to identify a direct connection between the recent developments in Libya and the need for additional time to submit a response, let alone to justify the Government's failure to cooperate with the Court. It is unclear how the most recent security challenges could affect Libya's ability to return to the Defence of Mr Gaddafi the originals of the materials that were seized from the former counsel for Mr Gaddafi by the Libyan authorities during her visit to Mr Gaddafi in Zintan, and to destroy any copies thereof.⁹

10. Likewise, there is no apparent link between the Government's efforts to restore "stability and order" in Libya, the holding of new elections and the Government's capability to provide prompt and adequate submissions. In this regard, victims have relentlessly pointed out to the Chamber that security conditions have been – and remain – a major challenge facing every single successive government that came to power since the 2011 uprising.¹⁰ However, these challenges have not hindered Libya's ability to make submissions before this Court in a timely manner, and to submit numerous superfluous requests for further submissions or else.

11. Similarly, the holding of new elections does not justify the extension of the time limit.¹¹ Indeed, the nature, scope and content of Libya's obligations cannot be affected by a change of Government or by the potential results of any elections.

⁹ See "Decision on the 'Urgent Defence Request'" (Pre-Trial Chamber I, Single Judge), 1 March 2013, No. ICC-01/11-01/11-291.

¹⁰ See the "Observations on behalf of victims on the Government of Libya's Application pursuant to Article 19 of the Rome Statute", No. ICC-01/11-01/11-166-Red-Corr, 5 June 2012, paras. 30, 36-38 and the "OPCV's observations on Libyan Government's further submissions on issues related to the admissibility of the case against Saif Al-Islam Gaddafi", No. ICC-01/11-01/11-279, 18 February 2013, paras. 65-66. See also the "Observations on behalf of victims on the Application on behalf of the Government of Libya relating to Abdullah Al-Senussi pursuant to Article 19 of the ICC Statute", No. ICC-01/11-01/11-353-Red, 18 June 2013 (dated 17 June 2014), paras. 68-69 and 72-73.

¹¹ See the Request, *supra* note 4, paras. 7-8.

Libya's obligation to cooperate fully with the Court applies uniformly to current and future governments.

12. Moreover, the Principal Counsel notes the obvious inconsistency in the justifications put forward by the Government. Indeed, one day prior to the filing of the Request, the relevant Libyan authorities signed the Memorandum of Understanding relating to the privileges and immunities of visiting court officials to Libya.¹² Said Memorandum is described by the Government as a "*further indicia of the Libyan Government's good faith and desire to co-operate with the Court*".¹³ Notwithstanding this progress, the very same Libyan authorities, the following day, claimed that they were unable to provide information as to the status of the implementation of their outstanding obligations to cooperate with the Court.

13. The Principal Counsel therefore opposes Libya's request to extend by 12 weeks the deadline for submitting its report on the status of the implementation of the cooperation requests which would go against the requirements for expeditious and effective proceedings. Moreover, the Principal Counsel wishes to highlight that the victims have been waiting for justice for two years now, while the Libyan Government has repeatedly attempted to obstruct the progress of the proceedings before the Court. The Chamber's request for Libya to submit observations was essentially triggered by the unwillingness to enforce the Chamber's orders and/or the lack of diligence on the part of the Government. The Government should not therefore benefit from this situation and should not be granted a further opportunity to delay the judicial process before this Court.

¹² *Idem*, para. 3 and annex 1.

¹³ *Ibid.* para. 5.

FOR THE FOREGOING REASONS the Principal Counsel of the OPCV, acting as Legal Representative of the victims for the purpose of Article 19 proceedings, respectfully requests the Pre-Trial Chamber to reject Libya's request for an extension of time of 12 weeks.

A handwritten signature in black ink, reading "Paolina Massidda", with a horizontal line underneath the name.

Paolina Massidda
Principal Counsel

Dated this 5th day of June 2014

At The Hague, The Netherlands