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

Date: 19 February 2013

**PRE-TRIAL CHAMBER I**

**Before:** Judge Silvia Fernández 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**

**Prosecution's Notice of withdrawal regarding a reference in its "Prosecution's Response to 'Libyan Government's further submissions on issues related to the admissibility of the case against Saif Al-Islam Gaddafi'" (ICC-01/11-01/11-276-Red2)**

**Source:** Office of the Prosecutor

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

**The Office of the Prosecutor**

**Counsel for Saif Al-Islam Gaddafi**

Xavier-Jean Keita

Melinda Taylor

**Counsel for Abdullah Al-Senussi**

Benedict Emmerson

Rodney Dixon

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for Victims**

Paolina Massidda

Sarah Pellet

Mohamed Abdou

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

**States Representatives**

Philippe Sands

Payam Akhavan

Michelle Butler

**Amicus Curiae**

## **REGISTRY**

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### Notice of Withdrawal

1. The Prosecution respectfully notifies the Pre-Trial Chamber that it withdraws its reference to trials in absentia being permitted in Libya in its "Prosecution's Response to 'Libyan Government's further submissions on issues related to the admissibility of the case against Saif Al-Islam Gaddafi'".<sup>1</sup>
2. In paragraph 44, when it provided observations with respect to Libya's ability to investigate the case, the Prosecution submitted:

"44. Nonetheless, the investigation of the case against Saif Al-Islam has progressed *and the Libyan legislation does permit a trial in absentia*. Hence, and in light of the evidence submitted and notwithstanding the challenges faced by Libya as a post-conflict country, the Prosecution concludes that Libya appears, at this time and in light of the materials considered, able to conduct the proceedings. This assessment is subject to revision based on changed circumstances, including a failure by the State to progress genuine proceedings further, pursuant to Article 19(10)-(11)." (Emphasis added)

3. The Prosecution wishes to retract its reference to the possibility of conducting trials in absentia in Libya. Article 17(3) of the Statute indicates that "the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is *unable to obtain the accused* or the necessary evidence and testimony or otherwise unable to carry out proceedings".<sup>2</sup> Hence, Libya will not be able to conduct the proceedings within the terms of Article 17(3) if it cannot get custody of Saif Al-Islam as a result of "a total or substantial collapse or unavailability of its national judicial system" and the possibility of conducting a trial in absentia is not relevant for such determination.

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<sup>1</sup> ICC-01/11-01/11-276-Red2.

<sup>2</sup> Emphasis added.

4. The Prosecution submits that this rectification is necessary to avert any confusion and to assist the Chamber in its determination of the admissibility of the case.



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Fatou Bensouda,  
Prosecutor

Dated this 19<sup>th</sup> day of February 2013

At The Hague, The Netherlands