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PRE-TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Sylvia Steiner
Judge Sanji Mmasenono Monageng

SITUATION IN THE LIBYAN ARAB JAMAHIRIYA

PUBLIC REDACTED Version

**Prosecutor's Application Pursuant to Article 58 as to Muammar Mohammed Abu
Minyar GADDAFI, Saif Al-Islam GADDAFI and Abdullah AL-SENUSSI**

Source: Office of the Prosecutor

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A. INTRODUCTION

1. Pursuant to Article 58(1) of the Rome Statute, the Prosecution applies to Pre-Trial Chamber I for the issuance of arrest warrants against Muammar Mohammed Abu Minyar GADDAFI (“GADDAFI”), SAIF AL-ISLAM GADDAFI (“SAIF AL-ISLAM”) and Abdullah AL-SENUSSI (“AL-SENUSSI”) for their individual responsibility for the crimes against humanity of persecution based on political grounds and murder committed from 15 of February 2011 onwards by Libyan “Security Forces”, meaning all military, intelligence and police forces under GADDAFI’s authority, in Tripoli, Benghazi, Misrata and other localities of the Libyan territory.

2. The Prosecution submits that GADDAFI conceived and implemented, through persons of his inner circle such as his son SAIF AL-ISLAM and AL-SENUSSI, a plan to suppress any challenge to his absolute authority through killings and other acts of persecution executed by Libyan Security Forces. They implemented a State policy of widespread and systematic attacks against a civilian population, in particular demonstrators and alleged dissidents. The incidents described in this Application refer to crimes against humanity committed against civilians and do not include war crimes committed during the armed conflict that started at the end of February.

3. The Prosecution submits that on the basis of the available evidence, and without prejudice to other possible crimes within the jurisdiction of the Court that will be further investigated, there are reasonable grounds to believe that as of 15 February 2011, GADDAFI, SAIF AL-ISLAM and AL-SENUSSI committed the crimes against humanity of murder under Article 7(1)(a) and persecution under Article 7(1)(h) of the Statute. The Prosecution further submits that there are reasonable grounds to believe that GADDAFI is responsible for the commission of the crimes described in this Application through other persons as an indirect perpetrator, and

SAIF AL-ISLAM and AL-SENUSSI are responsible as indirect co-perpetrators, all in accordance with Article 25(3)(a).

B. CONCISE STATEMENT OF THE FACTS PURSUANT TO ARTICLE 58(2)(c) OF THE ROME STATUTE

The Prosecution submits that the evidence collected shows that the following facts are proved in accordance with the standard required by the Statute:

4. GADDAFI rules Libya. Since the 1969 coup d'état, Libya adopted a legal system that confers on GADDAFI absolute power and authority. There is no division of power or checks and balances within the system in Libya. The Decree of Revolutionary Legitimacy of 9 March 1990 expressly established that GADDAFI's instructions are binding and have the force of law even for the General People's Congress and the Executive (People's Committees). Additionally, in accordance with Libyan law, it is a crime to oppose GADDAFI's regime and challenge his authority. Finally, GADDAFI controls the judiciary.

5. GADDAFI relies on his inner circle, mainly members of his family, whom he has placed in strategic positions to implement a systematic policy of suppressing any challenge to his authority. In addition, he has divided all power and responsibilities beneath him (for example in the area of security and the military) to ensure that no single person or entity has the power to challenge his authority. Also, he tasks individuals and entities directly on important matters, and sometimes assigns to individuals responsibilities that are outside their core functions, in order to further guarantee dependence on his centralized authority.

6. Over the recent years GADDAFI has authorized his second eldest son SAIF AL-ISLAM to act as de facto prime minister and, of crucial importance, to control the finances. In his position of absolute authority, GADDAFI has control of vast financial resources derived, primarily, from oil revenues. GADDAFI makes no distinction between his personal assets and the resources of the country. In addition, GADDAFI's other sons occupy relevant positions within the regime: Khamis

commands the best military unit of the country, the 32nd Brigade, which came to be known as “The Khamis Brigade”; and Mutassim was named National Security Adviser. His eldest son Muhammad is in charge of the telecommunications, helping GADDAFI control the public debate and communication over the internet and the phone networks. AL-SENUSSI is GADDAFI’s brother-in-law and the head of the Military Intelligence. AL-SENUSSI is reported to be GADDAFI’s right-hand man and “executioner”.

7. GADDAFI transmits his orders orally either directly or through the Secretariat or Registry, also known as Information Bureau of the Leader; he does not want to leave any written trace of his actions and he closely follows up on the implementation of his orders.

8. Already in January 2011, GADDAFI began to prepare to counter Libyans who, inspired by the success of the democratic revolutions in the neighbouring countries, would begin to plan demonstrations against his regime. GADDAFI started organising the crackdown immediately: he appeared on television on 15 January 2011, a day after the then-president of Tunisia stepped down, to warn those who wanted to follow the model of the Tunisian uprising. GADDAFI also gathered tribal leaders, professionals and journalists and threatened them with reprisals should they join the protests. Nevertheless, Libyans organized protests for 17 February through internet social networks and other means.

9. During the days preceding the uprising, GADDAFI met regularly with AL-SENUSSI and SAIF AL-ISLAM to plan the repression of the protest: GADDAFI authorized the mobilisation of Security Forces, including members of the Revolutionary Committees, and the recruitment of mercenaries. He appointed his son Saadi as mayor of Benghazi to deal with the protests in mid-February 2011. Using GADDAFI’s control over the judiciary, prisoners charged with ordinary crimes were released to create chaos and participate in demonstrations in support of GADDAFI. As of 16 February 2011, one day before the escalation of the crimes against civilians, the State-owned telecommunication networks under the control of

Muhammad, GADDAFI's eldest son, sent SMS messages to all phones in the Libyan system containing threats against "anybody who tries to touch the four red lines," one of which requires absolute respect for GADDAFI's power.¹

10. SAIF AL-ISLAM took an active role in the recruitment of foreign mercenaries, who were placed under the command of various structures within the Security Forces, and the provision of resources for the Security Forces.

11. On 17 February, mass demonstrations commenced in Benghazi, Tripoli and other cities of Libya calling for the end of GADDAFI's regime. Thousands of demonstrators marched through the streets of the city center of Benghazi.

12. GADDAFI's plan expressly included the use of lethal force against demonstrators and alleged dissidents. In the early days of the demonstrations, GADDAFI transmitted orders through his Secretariat to "discipline" civilians, by killing them and destroying their property, who had openly rebelled against the regime. Further, AL-SENUSSI, upon GADDAFI's instructions, directed and coordinated the operation of the Security Forces in Benghazi and expressly ordered the shooting at civilians. Demonstrators were attacked by members of the Security Forces who opened machine gun fire on them in different areas of the city, such as the Juliyana bridge and Jamal Abdun Naser Street. Direct evidence of the plan to use extreme and lethal violence is corroborated by the scale, scope and duration of the attacks; the pattern of the attacks in various cities; the speeches and statements of GADDAFI, SAIF AL-ISLAM and AL-SENUSSI; the history of the regime's response to any political opposition within Libya; and the complete authority exercised by GADDAFI and his subordinates over all important security decisions.

13. These initial killings led to larger demonstrations throughout the country, growing demands by the people of Libya to end the dictatorship and, in response, a systematic and even more violent response from GADDAFI's Security Forces.

¹ SAIF AL-ISLAM presented in 2007 the so-called "four red lines" that became the dogma for all officers of the regime, namely the Islamic law, the "security and stability of Libya", its "territorial integrity" and GADDAFI himself.

14. On 18 February in Benghazi the Security Forces carried out further attacks against civilians: they shot with heavy weaponry at a funeral procession when it passed by the barracks of the Al-Fadail Bou Oumar brigade (or Katiba), and at unarmed civilians who demonstrated against the regime.

15. The same attacks were replicated throughout the country: for example in Misrata, Security Forces opened fire against a peaceful demonstration on 19 February and shot at a funeral procession on 20 February. In both incidents unarmed civilians were killed.

16. On 20 February, SAIF AL-ISLAM spoke on Libyan state television, refusing to recognize the Libyans' demands, blaming the unrest on "foreign agents" and threatening the country with a "civil war" "worse than Iraq and worse than in Yugoslavia" that would cause "thousands of deaths".

17. During that night, massive demonstrations against GADDAFI took place in different areas of Tripoli after the sunset prayers. GADDAFI's Security Forces opened fire as soon as they met groups of peaceful demonstrators that were walking towards the Green Square. Similar incidents were replicated throughout the day mainly in the areas of the Green Square and city center, Mojam'a Al-Mahakem Court compound and Al-Dribi. The protesters set on fire government buildings, including the General People's Congress, and at least one police station and one ministry.

18. On 22 February GADDAFI spoke on State television from his headquarters in Bab Al-Azizia, Tripoli. He refused to acknowledge any legitimacy of the demonstrators' demands and did not regret the crimes committed by his Security Forces. On the contrary, GADDAFI called the protesters "rats", "garbage" and "mercenaries" and threatened "to clean Libya inch by inch, house by house, small street by small street, individual by individual, corner by corner until the country is clean from all garbage and dirt".

19. On 23 February SAIF AL-ISLAM was interviewed by the Libyan TV; he further supported his father's regime and he acknowledged the killings, while stating that "those who had been killed are only hundreds".

20. On 25 February, Friday, one week after the beginning of the attacks and a day of prayer for the Muslim community, GADDAFI issued further instructions to attack civilians. He learned that demonstrations were scheduled that day after the prayers and instructed the deployment of Security Forces throughout the city. Snipers strategically placed awaited the crowds to leave the mosques. Multiple sources describe how civilians were shot at throughout the city when they were pouring from the mosques after the prayers. On this day alone GADDAFI's forces killed up to one-hundred civilians in Tripoli in the areas of Green Square, Souq al-Jomaa, Arada, Zawyet al dahmani, Tajoura and Fashloom, among others.

21. On the same day, in the evening of 25 February, GADDAFI gave a new speech in the Green Square of Tripoli, stating that "People are armed. People are armed. When it becomes necessary the arsenal will be opened to allow all Libyans to be armed, all tribes. Libya will become red flame". GADDAFI was speaking from the very same area in Tripoli where his forces had been shooting at protesters, just a few hours before. These words reaffirmed his commitment to use violence against the civilian demonstrators.

22. In an interview that evening, SAIF AL-ISLAM made clear that the GADDAFI regime had the will to fight to maintain its power: "Plan A is to live and die in Libya, Plan B is to live and die in Libya, Plan C is to live and die in Libya." The goal was to maintain the fear of the population.

23. In the following weeks, GADDAFI and his sons SAIF AL-ISLAM and Saadi gave a number of public speeches and media interviews reiterating their awareness of events, their command over the military and Security Forces, and their willingness to continue using violence against the protesters.

24. As of 15 February up until the day of the filing of this Application, Security Forces have carried out a systematic campaign of arrests and detentions of alleged dissidents. As a result, demonstrators, political activists, journalists and persons who shared information with the media, among others, have been systematically arrested. The whereabouts of many of them are unknown.

25. The Revolutionary Committees have prepared lists with names of these purported dissidents; Security Forces have subsequently arrested and sent some to prisons in Tripoli where they have been kept naked in small cells and tortured.

26. Security Forces have also monitored internet and telephone communications to identify and arrest perceived dissidents. Those detained were forced to appear on State television to say that they were terrorists and had been drugged to participate in the demonstrations. Victims' relatives were permitted to retrieve bodies of civilians killed in demonstrations only if they signed a paper stating that the victims were "rats" – the very same term used by GADDAFI in his speech of 22 February.

27. The arrests and detentions have been accompanied by cases of torture and/ or inhuman acts. Methods used to torture alleged dissidents have included tying electric wires around victims' genitals and shocking them with electricity and whipping victims with an electric wire after tying them upside down with a rope connected to a stick (a method of torture known as *Fallga*). These methods have both been used in the current events.

28. The total number of incidents and ensuing casualties remain undetermined due to the widespread cover-up carried out by the Security Forces for the purpose of hiding the evidence of past crimes and facilitating the commission of future ones. This cover-up has taken numerous forms: internet services and cell phone networks were disrupted to prevent communication between the demonstrators; military checkpoints and squads have confiscated cameras, memory cards, computers and internet devices to prevent any citizen from spreading images of the protests; access to hospitals, ambulance transport and blood transfusions have been forbidden to injured demonstrators; doctors were not allowed to document the number of dead and injured admitted to hospitals after the violent clashes began; and Security Forces have searched hospitals looking for wounded or killed demonstrators.

29. Cemeteries and burial sites have been destroyed and bodies dug up, loaded on trucks and taken away. On 30 April, GADDAFI gave a speech demanding that those who claim that the regime was killing its own people to show him the bodies or

autopsies or burial sites. Mosques that had been destroyed by Security Forces were levelled to the ground to erase any trace of violence.

30. The cover-up has also included dozens of attacks on the press since the start of the popular demonstrations with at least four casualties, 49 journalists detained and 11 assaulted. In addition there have been two attacks on news facilities. The regime has also repeatedly jammed the satellite signal of news agencies. Regarding the killed journalists, Ali Hassan Al-Jaber, an Al-Jazeera cameraman, was shot during an ambush near Benghazi on 12 March, and Mohammed Al-Nabbous, founder of the online opposition Libyan Al-Hurra TV, was also killed in Benghazi by sniper fire on 19 March.

31. On 24 February, SAIF AL-ISLAM justified the attacks against the foreign media: "this is a media battle. They misguided the Libyans with media and false information. The information that these stations and channels are broadcasting is a lie".

32. Most of the journalists arrested are currently under government custody or missing. Those released as a result of international pressure have reported torture and ill-treatment.

33. For example, on 7 March 2011, a three-man team of BBC journalists was detained in a military barrack in Tripoli. Members of this team were beaten with fists and rifles, hooded and subjected to mock executions by the Security Forces. The journalists were lined up against a wall and a member of the government forces put a sub-machine gun to each person's neck. During their detention, the BBC team saw evidence of torture against other Libyan detainees.

34. In addition, four journalists working for The New York Times were arrested on March 15 by GADDAFI's Security Forces and detained in Ajdabiya. After their story was reported, SAIF AL-ISLAM pledged to release them. They were eventually released on 21 March 2011 after being slapped and punched and threatened with death for six days in detention.

35. In sum, the evidence demonstrates that GADDAFI conceived a plan to quell the popular demonstrations of February 2011 by all means, including through the use of extreme and lethal violence. Pursuant to this plan, the Security Forces carried out a widespread and systematic policy of attacks against civilians perceived as dissidents with the purpose of maintaining GADDAFI's power. SAIF AL-ISLAM and AL-SENUSSI played key roles in the implementation of the plan. As a result, GADDAFI, SAIF AL-ISLAM and AL-SENUSSI are criminally responsible for the killings, arrests, detentions, disappearances and acts of ill-treatment against unarmed demonstrators and alleged dissidents committed by the Libyan Security Forces as of 15 February 2010.

C. IDENTIFICATION OF THE PERSONS AGAINST WHOM THE WARRANTS OF ARREST ARE SOUGHT PURSUANT TO ARTICLE 58(2)(A)

36. The Prosecution applies to Pre-Trial Chamber I for the issuance of warrants of arrest for three persons: Muammar Mohammed Abu Minyar GADDAFI, SAIF AL-ISLAM GADDAFI, and Abdullah AL-SENUSSI.²

1. Muammar Mohammed Abu Minyar GADDAFI

37. Muammar Mohammed Abu Minyar GADDAFI was born in 1942 near Sirte, Libya.³ He is a member of Qadhadfa tribe. He is married with several children and his principal residence is inside the innermost ring of the Al-Azizia Barracks in Tripoli, Libya.

38. GADDAFI reportedly attended primary school in Sirte, and secondary schools in Sebha and Misrata. Thereafter, he reportedly attended the University of Libya and

²See Annex 2, Photographs of the Suspects.

³Xinhua News Service, "Backgrounder: Profile of Libyan leader Muammar Gaddafi", March 20, 2011, LBY-OTP-0007-0062.

then entered the Benghazi military academy. After graduating in 1965, GADDAFI served in the Libyan army.⁴

39. On 1 September 1969, the then-Captain GADDAFI seized power in Libya by means of a military coup. He became chairman of the Revolutionary Command Council, the newly created supreme authority of the country, was promoted to the rank of Colonel and appointed Commander-in-Chief of the Armed Forces.⁵ On 2 March 1977, GADDAFI changed the name of the country to "The Socialist People's Libyan Arab Jamahiriya" ("Jamahiriya") and awarded himself the title of Leader of the Revolution.⁶

2. SAIF AL-ISLAM GADDAFI

40. SAIF AL-ISLAM GADDAFI was born on 25 June 1972, being the second son of GADDAFI. SAIF reportedly graduated in 1993 from Tripoli's al-Fateh University where he studied urban engineering,⁷ and in 2008 obtained a PhD from the London School of Economics.⁸

41. For seven years SAIF AL-ISLAM chaired the Gaddafi International Charity and Development Foundation ("GICDF") which he left in December 2010 when he became the foundation's honorary chairman.⁹ Although he does not hold an official position in Libya, he is acting as a de facto prime minister. He is considered GADDAFI's chosen successor.¹⁰

⁴ Ibid.

⁵ "Decision of the Revolutionary Command Council on Authorising the Chairman of the Council to Sign on its Behalf", cited as Annex 15 in Dr. Mohammed Yousef Al-Mgaryaf, *Libya: from Constitutional Legitimacy to Revolutionary Legitimacy*, Daar Al-Istiklal, first edition 2008, LBY-OTP-0004-0029 (English Translation: LBY-OTP-0007-0671); Dr. Mohammed Yousef Al-Mgaryaf, *Libya: from Constitutional Legitimacy to Revolutionary Legitimacy*, Daar Al-Istiklal, first edition 2008, LBY-OTP-0005-0072 at 0077 (English translation: LBY-OTP-0007-0879 at 0884).

⁶ Vandewalle, D., *A History of Modern Libya*, (Cambridge, 2006), LBY-OTP-0007-0263 at 0395.

⁷ Global Security, "Military", LBY-OTP-0005-1255.

⁸ BBC, "LSE investigates Gaddafi's son plagiarism claims", 1 March 2011, LBY-OTP-0007-0038.

⁹ GICDF, "Resolutions of the Board of Trustees", 23 December 2010, LBY-OTP-0005-1249.

¹⁰ REDACTED.

42. Although in 2008 he announced that he would retire from politics, SAIF AL-ISLAM has remained active and has played a key role in the Libyan political scene.¹¹ For instance, he took a leading role in resolving the Bulgarian nurses' affair in 2007, the hostage crises in the Sahara and the Philippines¹² and the payment of compensation in the Abo Sleem incident.¹³ In August 2009 he organized the return to Libya of Abdelbasset al-Maghrahi, the convicted Lockerbie bomber, released from Scotland on health grounds.¹⁴

43. Evidence shows that the purported "fall outs" with GADDAFI are staged to bolster SAIF AL-ISLAM's image as the modern successor of his father.¹⁵ In the midst of the popular revolts on 22 February 2011, GADDAFI confirmed his son's authority indicating that "the issues raised by Saif al-Islam, I will leave them to him".¹⁶

3. Abdullah AL-SENUSSI

44. Abdullah AL-SENUSSI was born in 1949. He is a prominent member of the Magharha tribe and a cousin of Major Jallud, former member of the Revolutionary Command Council. His marriage to the sister of GADDAFI's second wife linked the Magharha tribe to GADDAFI's (the Qadhafu).¹⁷

45. AL-SENUSSI currently holds the position of director of Military Intelligence, previously known as the Jamahiriya Security Organisation (JSO).¹⁸ He was

¹¹ Arab Reform Bulletin, "Al-Islam: the Whole (Libyan) World in His Hands?", 13 January 2010, LBY-OTP-0005-0246; Dalje.com, "Rice Meets Gaddafi Son, Asks About Dissident", 20 November 2008, LBY-OTP-0007-0044.

¹² Arab Reform Bulletin, "Al-Islam: the Whole (Libyan) World in His Hands?", 13 January 2010, LBY-OTP-0005-0246.

¹³ REDACTED.

¹⁴ Arab Reform Bulletin, "Al-Islam: the Whole (Libyan) World in His Hands?", 13 January 2010, LBY-OTP-0005-0246.

¹⁵ REDACTED.

¹⁶ Akhbarlive.com, Speech of Muammar AL-QADHAFI on state television from his place in Bab Al-Azizia: "This is my country and I have the priority to be here rather those rats", 22 February 2011, LBY-OTP-0001-0052 (Time, at 42:22-42:50) (English Transcript: LBY-OTP-0007-0788).

¹⁷ REDACTED; El-Kikhia, M.O., *Libya's Qaddafi-The Politics of Contradiction* (1997), LBY-OTP-0008-0125 at 0130.

¹⁸ REDACTED; Mattes, H. *Challenges to Security Sector Governance in the Middle East: the Libyan Case* (Geneva Center for the Democratic Control of the Armed Forces, 2004), LBY-OTP-0002-0376 at 0389; Vandewalle, D., *A History of Modern Libya*, (Cambridge, 2006), LBY-OTP-0007-0263 at 0440.

previously in charge of external security and is the personal adviser to GADDAFI on security services, policy and military matters.¹⁹

46. AL-SENUSSI has been described as GADDAFI's right-hand man and his executioner.²⁰ He was tasked to investigate the attempted coups against GADDAFI and people who were suspected of being against the regime.²¹ Upon GADDAFI's instructions, AL-SENUSSI has allegedly committed serious crimes, including the Abo Sleem massacre. In 1996, inmates of Abo Sleem prison succeeded in disarming the guards. GADDAFI sent AL-SENUSSI to deal with the matter. AL-SENUSSI allegedly assembled the detainees in the prison yard under the pretext of negotiating, but instead he ordered forces under his command to shoot at them, resulting in the death of over one-thousand detainees.²²

47. On 17 February 2006 civilians gathered to protest in front of the Italian consulate in Benghazi as a result of comments by an Italian minister about Prophet Mohammad. When the demonstrations turned into protests against GADDAFI's regime, 13 civilians were shot dead upon orders of AL-SENUSSI.²³

48. He was convicted in absentia in France for his alleged responsibility in the 1989 bombing of UTA flight 772.²⁴

49. Although some media sources have reported that he was dismissed from his position during the 2011 uprising,²⁵ the Prosecution evidence shows that he is still active as head of Military Intelligence.²⁶

¹⁹ REDACTED.

²⁰ El-Kikhia, M.O., *Libya's Qaddafi-The Politics of Contradiction* (1997), LBY-OTP-0008-0125 at 0130; REDACTED.

²¹ REDACTED.

²² REDACTED.

²³ REDACTED.

²⁴ Al Jazeera, "Inside Gaddafi's inner circle", 27 February 2011, LBY-OTP-0005-1135; REDACTED.

²⁵ BBC News, "Libya revolt as it happened: Tuesday", 2 March 2011, LBY-OTP-0005-1176.

²⁶ REDACTED; The Guardian, "Libyan fixer's visit to London may show Gaddafi's sons want a way out", 31 March 2011, LBY-OTP-0005-1293; The Libya Freedom, "Abdullah al Senoussi calling on his followers to quash the current rebellion in the East", LBY-OTP-0007-0726 (English Transcript of Excerpts: LBY-OTP-0008-0070)

D. CRIMES WITHIN THE JURISDICTION OF THE COURT WHICH MUAMMAR MOHAMMED ABU MINYAR GADDAFI, SAIF AL-ISLAM GADDAFI AND ABDULLAH AL-SENUSSI HAVE ALLEGEDLY COMMITTED PURSUANT TO ARTICLE 58(2)(B) OF THE ROME STATUTE

Count 1

Murder constituting a crime against humanity
(Article 7(1)(a) and Article 25(3)(a) of the Rome Statute)

From 15 February 2011 onwards, GADDAFI, as indirect perpetrator, and SAIF AL-ISLAM and AL-SENUSSI, as indirect co-perpetrators, committed crimes against humanity in the form of murder across Libya in, inter alia, Tripoli, Benghazi, and Misrata, through the Libyan State apparatus and Security Forces in violation of Articles 7(1)(a) and 25(3)(a) of the Rome Statute.

Count 2

Persecution
(Article 7(1)(h) and Article 25(3)(a) of the Rome Statute)

From 15 February 2011 onwards, GADDAFI, as indirect perpetrator, and SAIF AL-ISLAM and AL-SENUSSI, as indirect co-perpetrators, committed crimes against humanity in the form of persecution across Libya in, inter alia, Tripoli, Benghazi, Misrata and other Libyan localities through the Libyan State apparatus and Security Forces in violation of Articles 7(1)(h) and 25(3)(a) of the Rome Statute.²⁷

²⁷ The Prosecution submits that the incidents of murder under Count 1 (in Benghazi, Tripoli and Misrata) and the additional incidents of persecution described below in paras. **Error! Reference source not found.** to **Error! Reference source not found.** are the underlying material facts that amount to persecution on political grounds.

E. SUMMARY OF THE EVIDENCE AND OTHER INFORMATION ESTABLISHING REASONABLE GROUNDS TO BELIEVE THAT MUAMMAR MOHAMMED ABU MINYAR GADDAFI, SAIF AL-ISLAM GADDAFI AND ABDULLAH AL-SENUSSI COMMITTED CRIMES WITHIN THE JURISDICTION OF THE COURT PURSUANT TO ARTICLE 58(2)(d) OF THE ROME STATUTE

1. REDACTED

2. REDACTED

3. REDACTED

4. REDACTED

5. REDACTED

6. REDACTED

F. BACKGROUND TO INVESTIGATION/ LEGAL FRAMEWORK

1. Jurisdiction

50. The situation in Libya was referred to the Office of the Prosecutor by the United Nations Security Council, which decided, by Resolution 1970 (2011) and acting under Chapter VII of the Charter of the United Nations, to refer “the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the Prosecutor of the International Criminal Court”. The same resolution also decided that “the Libyan authorities shall cooperate fully with and provide any necessary assistance to the

Court and the Prosecutor pursuant to this resolution". Pursuant article 25 of the Charter of the United Nations, the resolution is binding on Libya which is a member of the UN Charter. Moreover, having been referred under Chapter VII of the UN Charter, the resolution enables the exercise of jurisdiction by the Court with respect to the situation pursuant to Article 13(b) of the Rome Statute.

2. Admissibility

51. The case against GADDAFI, SAIF AL-ISLAM and AL-SENUSSI is admissible. The information reviewed by the Prosecution indicates that there are no ongoing investigations or prosecutions by any State in relation to the conduct that forms the subject of the Prosecution's Application against the three suspects.²⁸ Moreover, on the basis of the evidence relied on in this Application, the case is of sufficient gravity to justify further action by the Court.

(i) The case has not been and is not being investigated or prosecuted by a State which has jurisdiction over it, in accordance with Article 17(1) (a) and (b) of the Rome Statute

52. In *Lubanga*, Pre-Trial Chamber I held that "it is a condition *sine qua non* for a case arising from the investigation of a situation to be inadmissible that national proceedings encompass both the person and the conduct which is the subject of the case before the Court."²⁹ No investigation or prosecution has been undertaken in any State in relation to the conduct which forms the subject of this Application.

53. The crimes identified in this Application were committed on the territory of Libya. According to the information reviewed by the Prosecution, no investigations or prosecutions have been or are being undertaken against GADDAFI, SAIF AL-ISLAM and AL-SENUSSI for the incidents described herein. Additionally, and in light of the characteristics of the Libyan legislation and judiciary, the Libyan judicial

²⁸*Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case, 25 September 2009, ICC-01/04-01/07-1497 OA 8, para.78.

²⁹*Prosecutor v. Lubanga*, Decision on the Prosecutor's Application for a Warrant of Arrest, ICC-01/04-01/06-8-Corr, 24 February 2006, paras.30-40.

system is not capable to independently and impartially investigate and prosecute crimes committed by GADDAFI and SAIF AL-ISLAM and AL-SENUSSI.

(ii) The case has not been tried before any national or international jurisdiction for conduct which is the subject of the Prosecution's Application, in accordance with Articles 17 (1)(c) and 20 (3) of the Rome Statute

54. According to information reviewed by the Prosecution, there has been no trial held before any competent national jurisdiction for the conduct that is the subject of this Application.

(iii) The case is of sufficient gravity to justify further action by the Court

55. In accordance with Regulation 29(2) of the Regulations of the Office of the Prosecutor, in assessing the gravity of the case, the Prosecution took into consideration the scale, nature, manner of commission and impact of the crimes. Based on all the facts and circumstances referred to in this Application, in particular Section E (5), the Prosecution submits that the case which is subject of the current Application is of sufficient gravity to justify further action by the Court.

3. Request for Confidentiality

56. Pursuant to Rule 23*bis*, the Prosecution requests that Section E and Annexes 6 and 7 (in part) be received by the Pre-Trial Chamber confidential ex parte and remain confidential ex parte for two reasons: (1) to protect ongoing investigations and (2) to protect victims and witnesses.

57. The Prosecution will simultaneously file a public redacted version.

4. REDACTED

G. STANDARD OF PROOF

58. Article 58(1) of the Rome Statute states that "... the Pre-Trial Chamber shall, on the application of the Prosecutor, issue a warrant of arrest of a person if [...] [t]here are reasonable grounds to believe that the person committed a crime within the jurisdiction of the Court."

59. The Appeals Chamber in *Prosecutor v. Omar Hassan Ahmad Al Bashir* ruled that the standard of "reasonable grounds to believe" under Article 58(1) is met where one of the reasonable conclusions available on materials provided by the Prosecution substantiates allegations concerning the responsibility of a person for a crime charged.³⁰ Hence, where the Prosecution relies on proof by inference, it is sufficient to show that one of the reasonable inferences to be drawn from the evidence submitted is that a person has committed a crime within the jurisdiction of the Court.

H. REQUEST FOR ARREST WARRANTS FOR GADDAFI, SAIF AL-ISLAM and AL-SENUSSI

60. Pursuant to Article 58 of the Rome Statute, the Pre-Trial Chamber shall issue a warrant of arrest if there are reasonable grounds to believe that a person has committed crimes within the jurisdiction of the Court and "(b) The arrest of the person appears necessary: (i) To ensure the person's appearance at trial; (ii) To ensure that the person does not obstruct or endanger the investigation or the court proceedings; or (iii) Where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances."

³⁰*Prosecutor v. Omar Hassan Ahmad Al Bashir*, Judgment on the appeal of the Prosecutor against the "Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir", 30 February 2010, ICC-02/05-01/09-73, paras.1, 30. The standard of "reasonable grounds to believe" is also applicable to an application for a summons to appear under Article 58(7).

61. While the Prosecution is only required to establish one of the three independent grounds for arrest under Article 58(1)(b)(i)-(iii), all three grounds compel the issuance of an arrest warrant in this case.

62. First, an arrest warrant is necessary to ensure GADDAFI's, SAIF AL-ISLAM's and AL-SENUSSI's appearance at trial. GADDAFI has challenged the legitimacy of the United Nations Security Council Resolution 1970 that confers jurisdiction on the Court in this case.³¹ In addition, the position of power held by the three suspects, their public pronouncements, and the gravity of the crimes alleged all suggest that they will not appear for trial unless compelled to do so by arrest.

63. Second, an arrest warrant is necessary to ensure that GADDAFI, SAIF AL-ISLAM and AL-SENUSSI do not obstruct or endanger the investigation or the Court proceedings. This Application presents numerous examples of the suspects' violence against persons who have challenged GADDAFI's regime. GADDAFI, together with SAIF AL-ISLAM and AL-SENUSSI, are also engaged in a large-scale operation to cover up and obstruct the investigation of the crimes committed by their subordinates. This cover-up operation includes destruction of evidence, removal of bodies from hospitals, and targeting of journalists.

64. Finally, arrest warrants are necessary to prevent GADDAFI, SAIF AL-ISLAM and AL-SENUSSI from continuing the commission of crimes within the jurisdiction of the Court. While the Prosecution has selected a few incidents that are representative of their crimes, the three suspects continue to engage in those crimes and related crimes which arise out of the same circumstances and postdate the incidents described in the Application. These crimes are ongoing and will only cease if an arrest warrant is issued.

³¹ RTV Pink (Serbian TV), 27 February 2011, LBY-OTP-0001-0090; Al-Arabiya.net, "GADDAFI promise to stay in Libya and condemns the international sanctions against his regime", 27 February 2011, LBY-OTP-0005-1409.

I. NOTIFICATIONS

65. The Office submits that, if this Application is granted and the Court proceeds to issue warrants of arrest, the Court should exclusively transmit a request for the arrest of the suspects to Libyan authorities.

66. This would conform with the requirements of Article 89(1) which provides “The Court may transmit a request for the arrest and surrender of a person, together with the material supporting the request outlined in article 91, to any State on the territory of which that person may be found and shall request the cooperation of that State in the arrest and surrender of such a person”. Addressing a request at this stage to other States on whose territory, according to the information available, the suspects are not physically present would appear superfluous and contrary to the express scheme foreseen in Part 9.

67. The submission to States of requests in the abstract, without concrete foundation, would run contrary to specific nature of the judicial assistance process as crafted under Part 9 of the Statute and as, for example, also practiced between States in matters of mutual legal assistance at the inter-State level. It is the experience of the Prosecution that sending requests to States that cannot be fulfilled, because of the absence of essential underlying facts enabling their execution, may occasion uncertainty in that State as to the purpose of the request, may lead the State to revert back to the requesting organ to ascertain whether it has any information that would support its conclusion that such a request is warranted, or may cause it to question the conformity of the request with statutory requirements or to reject the request.

J. RELIEF SOUGHT

68. For the reasons stated above, the Prosecution respectfully requests that Pre-Trial Chamber I:

- a. Find that there are reasonable grounds to believe that Muammar Mohammed Abu Minyar GADDAFI, SAIF AL-ISLAM GADDAFI and Abdullah AL-SENUSSI committed crimes within the jurisdiction of the International Criminal Court;
- b. Issue warrants to arrest for Muammar Mohammed Abu Minyar GADDAFI, SAIF AL-ISLAM GADDAFI and Abdullah AL-SENUSSI;
- c. Direct the Registry, in consultation and coordination with the Prosecution, to prepare and transmit an arrest warrant for Muammar Mohammed Abu Minyar GADDAFI, SAIF AL-ISLAM GADDAFI and Abdullah AL-SENUSSI to the Libyan authorities.



Luis Moreno-Ocampo
Prosecutor

Dated this 16 May 2011

At The Hague, the Netherlands