

STATEMENT OF THE DEFENCE FOR SAIF AL-ISLAM GADDAFI*

Good afternoon everyone. You have no idea how wonderful it is to be here today to speak to you all.

As you may know, myself and three other ICC colleagues – Helen Assaf, Alexander Khodakov and Esteban Peralta Losilla, were detained for 26 days in Zintan by the Libyan authorities from 7 June to 2 July 2012. On the first day of our detention, we were informed that all four of us were detained under the authority of the Libyan Prosecutor General.

On the second day, although we were initially informed that Mr. Khodakov and Mr. Losilla could leave, were subsequently notified that all four of us were arrested, and that our continued detention had been confirmed by the Chairperson of the National Transitional Council, Mr. Mustafa Abdul Jalil.

I would like to note that Captain Al-Ajami and the Zintan brigade – who were responsible for implementing our detention – treated us with respect and dignity, and were very attentive to our requirements.

Nonetheless, during these 26 days of detention, we were never provided with any order or decision concerning the legal basis for our arrest and detention, for the search and seizure of privileged and confidential ICC documents, or for the breach of Libya's promise to the ICC to implement a privileged visit with Mr. Saif Al Islam Gaddafi.

The Prosecutor –General initially indicated to us that we would not be entitled to have any communications with our family or our consular representatives. It appears that through diplomatic initiatives of the ICC and our consular representatives, we were eventually entitled to receive a monitored consular visit and one five minute telephone conversation with our families. As you can

* This Statement is made by the Defence Counsel for Saif Al-Islam Gaddafi, not in the capacity as a staff member of the International Criminal Court.

imagine, speaking to my two year old daughter under such circumstances was both an emotional lifeline and heartbreaking.

It is immensely difficult to be detained under such circumstances but I was incredibly lucky to have the emotional support and good humour of my fellow detained ICC staff – Helen, Esteban and Alexander. The fact that ICC President Song personally came to Zintan with his wonderful smile to secure and welcome our release also means a great deal to me.

As you may be aware, it has been announced that the ICC will conduct an investigation in relation to the allegations made by the Libyan authorities. I would like to note that on the very first day of our arrest, I explicitly informed the Libyan authorities that if they had any concerns regarding my conduct, that they had the right to file a complaint in accordance with the procedure set out in the ICC code of conduct for counsel but that I had full immunity from arrest, detention or any other investigative action taken against me and measure taken by the Libyans in that regard would be in violation of international law. I would like to unequivocally state that I believe that my actions were consistent with my legal obligations under the ICC Statute and Rules and Code of Professional Conduct for Counsel.

Irrespective of any issues concerning my own personal conduct, the rights of my client – Mr. Saif Al Islam Gaddafi – were irrevocably prejudiced during my visit to Zintan. Amongst other things, the Libyan authorities deliberately mislead the Defence concerning whether the visit with Mr. Gaddafi would be monitored, and seized documents which were covered by legal professional privilege and ICC protective orders. It is the position of the Defence that these recent events have completely underscored that it will be impossible for Mr. Gaddafi to be tried in an independent and impartial manner in Libyan courts.

The Defence intends to place these matters before the ICC Pre-Trial Chamber in the Defence response to Libya's request to try Mr. Gaddafi before Libyan courts to be filed by Wednesday 11 July. It is ultimately the responsibility of the Pre-Trial Chamber to decide this issue.

While we were in detention, we had very little idea of the ongoing processes concerning our release. It was therefore extremely overwhelming upon my release to discover the outpouring of international concern for our safety and welfare. I would therefore like to express my utmost appreciation and gratitude to all the staff and judges of the International Criminal Court who strived to

secure our release. Specifically, the ICC Staff council were truly amazing and I was very touched by all the ICC staff, judges, and defence who have inundated with us with such kind and supportive words on our return. I am also extremely grateful for the tireless efforts made to secure my release by the Australian Foreign Minister Senator Bob Carr and Australian Ambassador designate to Libya David Ritchie, as well as all those States and international organisations that worked closely with the ICC in this regard. Australian Ambassador Neil Mules and all his staff at the Australian Embassy in The Hague were also incredibly dedicated and supportive to my family,

I would like to express my gratitude to all the NGOs and bar associations who were extremely active in demonstrating their support for us and concern regarding our arrest and ongoing detention, and the implications this had for my client's right to an independent defence and fair trial.

I am incredibly blessed to have a wonderful family and friends – who rallied together to create a network of support for myself, and my husband and daughter. I am also very grateful to the Australian media for maintaining focus on my detention in Libya, notwithstanding the geographical distance between these two countries and the Australian public for its generous and heartfelt support for me and for my parents back in Brisbane.

Finally, I hope you can all understand that in light of what has happened, the Defence has serious concerns for its ongoing security. For this reason, I will not discuss specific details of the events or responding to media questions until the ICC has been able to conduct a proper risk assessment and I am in a better position to ascertain the implications for my client, who continues to be detained in Libya.

Thank you very much for coming here today

The Hague, 6 July 2012