

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/11-01/11
Date: 18 January 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

**Decision requesting Libya to provide observations concerning the Court's
request for arrest and surrender of Abdullah Al-Senussi**

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor
Fatou Bensouda

Counsel for Saif Al-Islam Gaddafi
Xavier-Jean Keïta
Melinda Taylor

Counsel for Abdullah Al-Senussi
Benedict Emmerson

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**
Paolina Massidda

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

States Representatives
Philippe Sands
Payam Akhavan
Michelle Butler

Amicus Curiae

REGISTRY

Registrar
Silvana Arbia

Deputy Registrar
Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”) issues the following decision requesting Libya to provide observations concerning the Court’s request for arrest and surrender of Abdullah Al-Senussi (“Mr Al-Senussi”).

1. On 26 February 2011, Resolution 1970 was adopted by the United Nations Security Council, referring the situation in Libya since 15 February 2011 to the Prosecutor of the Court and deciding that the Libyan authorities shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor.¹

2. On 27 June 2011, the Chamber issued the “Decision on the ‘Prosecutor’s Application Pursuant to Article 58 as to the Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi’”,² and warrants of arrest for, *inter alia*, Mr Al-Senussi.³

3. On 4 July 2011, the Registrar filed the “Request to the Libyan Arab Jamahiriya for the arrest and surrender of Muammar Mohammed Abu Minyar GADDAFI, Saif Al-Islam GADDAFI and Abdullah AL-SENUSSI”, requesting Libya to arrest and surrender to the Court, *inter alia*, Mr Al-Senussi (the “Surrender Request”).⁴

4. On 21 March 2012, the Registrar filed the “Report of the Registry regarding the arrest of Abdullah Al-Senussi”.⁵

5. On 17 September 2012, the Registrar filed the “Second Report of the Registry on the status of the execution of the request for arrest and surrender of Abdullah Al-Senussi”, informing the Chamber, *inter alia*, of the fact that,

¹ S/RES/1970 (2011).

² ICC-01/11-01/11-1.

³ ICC-01/11-01/11-4.

⁴ ICC-01/11-01/11-5.

⁵ ICC-01/11-01/11-80-Conf-Exp.

despite the absence of any official information from the Libyan authorities, it appeared that Mr Al-Senussi had arrived on Libyan territory on 5 September 2012.⁶

6. On 10 December 2012, the Chamber issued the “Corrigendum to the Order in relation to the request for arrest and surrender of Abdullah Al-Senussi”, whereby it: (i) instructed the Registrar to “reiterate to the Libyan authorities the request for arrest and surrender of Mr Al-Senussi and remind them of their obligation to comply with the request”; and (ii) requested the Libyan authorities to confirm the extradition of Mr Al-Senussi from Mauritania to Libya, and provide the name of the detention centre in which Mr Al-Senussi is being held, if any, as well as information about his state of health.⁷

7. On 15 January 2013, Libya informed the Chamber, *inter alia*, of the fact that the investigation into the national case against Mr Al-Senussi is approaching completion, and the case will accordingly be transferred in the next month to the Chamber of Accusation for pre-trial proceedings.⁸

8. On 16 January 2013, the Registrar filed in the record of the case the response received by the Libyan authorities pursuant to the order issued by the Chamber on 10 December 2012.⁹ In particular, the Libyan authorities confirmed that Mr Al-Senussi is at present in their custody and that judicial proceedings are currently ongoing at the domestic level.¹⁰ Libya also provided

⁶ ICC-01/11-01/11-208.

⁷ ICC-01/11-01/11-241-Corr.

⁸ ICC-01/11-01/11-251, paras 4 and 5.

⁹ ICC-01/11-01/11-252, and annexes attached thereto.

¹⁰ ICC-01/11-01/11-252-Anx3.

the requested information regarding the detention centre in which Mr Al-Senussi is being held and his state of health.¹¹

9. The Chamber notes articles 1, 13, 17, 19, 21, 86, 87, 89 and 95 of the Rome Statute (the “Statute”).

10. At the outset, and as previously held,¹² the Chamber recalls that, although Libya is not a State Party to the Statute, it is under an obligation to cooperate with the Court. The order to Libya to “cooperate fully” with the Court contained in the Security Council Resolution 1970 (2011) “means that the Statute, and especially its Part IX, is the legal framework within which Libya must comply with the Surrender Request” and that “Libyan authorities [...] are required to work within the cooperation framework provided by the Statute”.¹³ The legal framework of the Statute applies equally to situations referred by the Security Council, including with respect to the complementarity and cooperation regimes, as this is in line, *inter alia*, with articles 1, 13 and 21 of the Statute which mandate the applicability of the Statute regardless of how the exercise of jurisdiction is triggered in the particular situation.¹⁴

11. From the most recent information received from the Libyan authorities, the Chamber understands that Mr Al-Senussi is currently subject to national criminal proceedings. The Chamber wishes to point out that, should Libya be of the view that the existence of those domestic proceedings hinders Mr Al-Senussi’s surrender to the Court, it must proceed in accordance with the

¹¹ *Ibid.*

¹² See “Decision on Libya’s Submissions Regarding the Arrest of Saif Al-Islam Gaddafi”, ICC-01/11-01/11-72, paras 12 and 13; and “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”, ICC-01/11-01/11-163, paras 27 to 30.

¹³ ICC-01/11-01/11-72, para. 12.

¹⁴ ICC-001/11-01/11-163, paras 28 and 29.

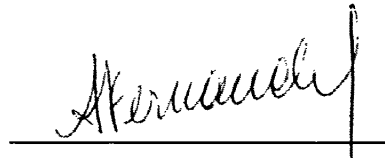
appropriate provisions and procedures under the legal framework of the Court.

12. The Chamber notes that, in the instant case, Libya has neither surrendered Mr Al-Senussi to the Court nor has it undertaken any of the proceedings prescribed under the Statute.

FOR THESE REASONS, THE CHAMBER

REQUESTS the Libyan authorities to provide observations, no later than 1 February 2013, on the way Libya intends to fulfil its obligations to cooperate with the Court in relation to the arrest and surrender of Mr Al-Senussi, and especially its duty to comply with the Surrender Request.

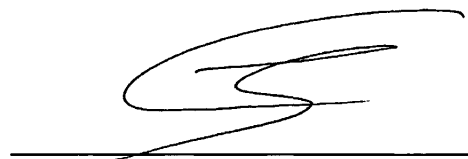
Done in both English and French, the English version being authoritative.



Judge Silvia Fernández de Gurmendi
Presiding Judge



Judge Hans-Peter Kaul



Judge Christine Van den Wyngaert

Dated this 18 January 2013

At The Hague, The Netherlands