



Original: **English**

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

Date: **23 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 Document

Urgent Application pursuant to Regulation 35

Source: Abdullah Al-Senussi, represented by Ben Emmerson QC and Rodney Dixon

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

The Office of the Prosecutor
Ms Fatou Bensouda, Prosecutor

Counsel for the Defence
Counsel for Abdullah Al-Senussi:
Ben Emmerson QC
Rodney Dixon

Legal Representatives of Victims

Legal Representatives of the Applicant

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

**The Office of Public Counsel for the
Defence**
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Mr Xavier-Jean Keïta, Principal Counsel
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States Representatives
Philippe Sands QC
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Amicus Curiae

REGISTRY

Registrar
Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. Counsel for Abdullah Al-Senussi submit this urgent application in order to request that the Pre-Trial Chamber reduce the time limit for Libya (i) to file its observations on the way in which it intends to comply with the Chamber's requests and orders as required by the Chamber's Decision of 18 January 2013¹ and (ii) to file its response to Mr. Al-Senussi's Application of 9 January 2013².
2. Pursuant to the Chamber's Decision of 18 January 2013, Libya has until 1 February 2013 to submit its observations. Libya also has until 31 January 2013 to respond to the Application of 9 January 2013³. Counsel request that Libya should, and need, only be given until Monday 27 January 2013 to file its observations and simultaneously to respond to Mr. Al-Senussi's Application.
3. The present application is filed pursuant to Regulation 35 of the Regulations of the Court.
4. Counsel for Mr. Al-Senussi make this application on account of information which has just recently come to the attention of Mr. Al-Senussi's family that indicates that the Libyan authorities plan to put Mr. Al-Senussi on trial before a military court before the end of January 2013 which will culminate in his summary execution. There is also reliable information that has been provided to his family that he has been tortured in custody.
5. Counsel therefore request that the Pre-Trial Chamber: (i) make an urgent decision on this application to reduce the time limit for Libya's observations and its response; and (ii) order the Libyan authorities to provide their observations in response to the Chamber's Decision of 18 January 2013 and to file their response to the Application of 9 January 2013 by Monday 27 January 2013 at the latest.

¹ Decision requesting Libya to provide observations concerning the Court's request for arrest and surrender of Abdullah Al-Senussi, ICC-01/11-01/11-254, 18 January 2013.

² Urgent Application on behalf of Abdullah Al-Senussi for Pre-Trial Chamber to order the Libyan Authorities to comply with their obligations and the orders of the ICC, ICC-01/11-01/11-248, 9 January 2013.

³ Pursuant to Regulations 24 and 34 of the Regulations of the Court, Libya has 21 days to respond to the Application of 9 January 2013 which was notified to Libya on 10 January 2013.

Applicable legal provisions

6. Regulation 35 of the Regulations of the Court provides in relevant part that:

1. Applications to extend or reduce any time limit as prescribed in these Regulations or as ordered by the Chamber shall be made in writing or orally to the Chamber seized of the matter setting out the grounds on which the variation is sought.

2. The Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard.

Submissions

7. Counsel for Mr. Al-Senussi submit that good cause is shown in the circumstances and that given the urgency of the situation and the ample time that Libya have been on notice of their obligations to comply with the Chamber's requests, there is no reason to provide Libya with an opportunity to respond to the present application pursuant to Regulation 35.
8. Counsel note the Pre-Trial Chamber's Decision of 18 January 2013 in which the Chamber requested 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."⁴ In its Decision, the Chamber pointed out that if any national proceeding "hinders Mr Al-Senussi's surrender to the Court, [Libya] must proceed in accordance with the appropriate provisions and procedures under the legal framework of the Court."⁵
9. Since this Decision, Mr. Al-Senussi's family have become aware of what they assess to be reliable information from a confidential source that the Libyan authorities intend to put Mr. Al-Senussi on trial before a military court before the end of January 2013

⁴ Decision requesting Libya to provide observations concerning the Court's request for arrest and surrender of Abdullah Al-Senussi, ICC-01/11-01/11-254, 18 January 2013, p. 6.

⁵ Decision requesting Libya to provide observations concerning the Court's request for arrest and surrender of Abdullah Al-Senussi, ICC-01/11-01/11-254, 18 January 2013, para. 11.

which will culminate in his execution. In light of this information, and taking it at its highest for the purposes of this urgent application, there is a danger that Mr. Al-Senussi will face a summary trial before a military court in Libya and be executed very soon. There is also reliable information that has been made available to Mr. Al-Senussi's family that he has been tortured in custody.

10. Libya stated in a filing on 15 January 2013 that "the trials of Saif Al-Islam Gaddafi and Abdullah Al-Senussi will not commence in February 2013"⁶, yet on 17 January 2013 the Prosecutor-General's office announced that Mr. Gaddafi had been brought before a Court in relation to charges of harming state security and insulting the new regime's flag.⁷
11. Counsel for Libya cannot have been properly instructed by their client about the plans to put Mr. Gaddafi on trial as announced by the Prosecutor-General's office on 17 January 2013 when Counsel for Libya submitted their filing on 15 January 2013 (as if they had known of the proceedings to commence on 17 January 2013 it would have amounted to serious professional misconduct to fail to inform the Chamber of these developments). Taken together with the fact that Counsel for Libya in Mr. Gaddafi's case have not been instructed to act for Libya in Mr. Al-Senussi's case, it is submitted that the submissions of Counsel for Libya in their filing of 15 January 2013 as to the commencement date of the trials cannot be taken as reliable.
12. In addition, Libya only supplied minimal information in its filing of 15 January 2013 in respect of Mr. Al-Senussi's case and made no submissions at all about his surrender to the ICC.⁸ Very limited information was provided about his health and well-being and no information was submitted about the conditions of his detention. When this filing is considered together with the fact that no reliance can be placed on the submissions made by Libya in its filing of 15 January 2013 (as noted above), there are strong grounds to infer that Libya intends to put Mr. Al-Senussi on trial very soon in

⁶ Observations by Libya in response to the OPCD Notification of 8 January 2013, ICC-01/11-01/11-251, 15 January 2013, para. 3.

⁷ Saif Al-Islam Gaddafi appears in Libyan court, RTINews, 17 January 2013 (<http://www.rte.ie/news/2013/0117/libya-gaddafi-trial.html>); Saif Gaddafi appears in court charged with trying to escape jail and insulting new Libyan regime's flag, Daily Mail, 17 January 2013 (<http://www.dailymail.co.uk/news/article-2264058/Saif-Gaddafi-appears-court-charged-trying-escape-jail-insulting-new-Libyan-regime-s-flag.html#ixzz2IKWjxQe2>). See also, Urgent Defence Request, ICC-01/11-01/11-255, 21 January 2013, Annex B.

⁸ Report of the Registry on the execution of the "Order in relation to the request for arrest and surrender of Abdullah Al-Senussi", ICC-01/11-01/11-252, 15 January 2013.

order to frustrate any decision by the ICC to refer the matter to the Security Council in sufficient time for the Security Council to take appropriate action before a national summary trial is concluded and Mr. Al-Senussi is executed. This is confirmed by the fact that Libya has given no indication at any stage that it will co-operate with the ICC in respect of Mr. Al-Senussi's case. Libya has not made an admissibility application in his case, or given any indication that it intends to do so. It is further confirmed by Libya's failure even to instruct counsel of record before the ICC in Mr. Al-Senussi's case.

13. The Chamber is thus urgently requested as a precautionary measure to require Libya to submit its observations to the Chamber and its response to the Application of 9 January 2013 in a shortened time-table by Monday 27 January 2013 at the latest.

14. A shortened deadline would not prejudice Libya in any way and is justified in the circumstances. Libya has been aware of its obligation to surrender Mr. Al-Senussi to the ICC for a considerable period of time since the Registry transmitted the request for arrest and surrender to Libya on 4 July 2011 and reminded the Libyan authorities that "the United Nations Security Council 'decide[d] that the Libyan authorities shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor.'" ⁹ Libya was again notified of its obligations in a note verbale transmitted by the Registry on 6 September 2012. ¹⁰ Most recently, the Libyan authorities were yet again reminded "of their obligation to comply with the request" in the Chamber's Decision of 10 December 2012. ¹¹ Libya has failed to comply with the Chamber's requests and orders to surrender Mr. Al-Senussi to the ICC and has provided no explanation for its non-compliance. Libya has had a substantial period of time to submit its observations on this matter.

15. Instead, as noted above, Libya has not submitted any admissibility challenge before the ICC for Mr. Al-Senussi's case and has not indicated that it intends to do so. It has not even assigned lawyers as counsel of record before the ICC for Mr. Al-Senussi's case.

⁹ 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, ICC-01/11-01/11-6, 4 July 2011, p. 3-5.

¹⁰ Second report of the Registry on the status of the execution of the request for arrest and surrender of Abdullah Al-Senussi, 17 September 2012, paras. 1, 3.

¹¹ Order in relation to the request for arrest and surrender of Abdullah Al-Senussi, ICC-01/11-01/11-241, 10 December 2012, para. 9.

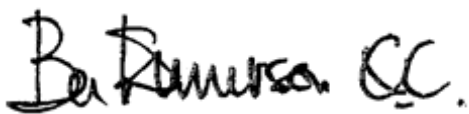
16. Further, any national proceedings before a military or other court on different charges to those before the ICC cannot be relied on as a basis to postpone or fail to comply with the ICC's surrender request for Mr. Al-Senussi. On 7 March 2012 the Chamber noted that even if a State was proceeding against the person concerned on different charges, Article 89(4) "requires the requested State to grant the [surrender] request and then consult with the Court."¹²

17. In these circumstances, Libya cannot complain that it has not been afforded sufficient time to clarify its position before the ICC in respect of Mr. Al-Senussi's case, and Counsel submits that a reduction in the time to submit its observations and its response is entirely justified.

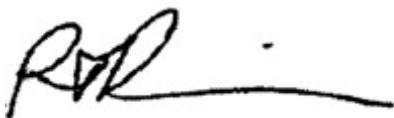
Conclusion

18. For these reasons, Counsel for Mr. Al-Senussi submit that there is good cause shown pursuant to Regulation 35 to reduce the time limit for the filing of Libya's observations and its response to the Application of 9 January 2013 by Monday 27 January 2013.

Counsel on behalf of Mr. Abdullah Al-Senussi,



Ben Emmerson QC



Rodney Dixon

Dated 23rd January 2013

London, United Kingdom

¹² Decision on Libya's Submissions Regarding the Arrest of Saif Al-Islam Gaddafi, ICC-01/11-01/11-72, 7 March 2012, para. 15.