



Original: **English**

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

Date: **5 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 Document

Application for leave to reply to the “Response of the Libyan Government to the ‘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’” of 1 February 2013

Source: Mr. 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**
Counsel for Saif Al-Islam Gaddafi:
Mr Xavier-Jean Keïta, Principal Counsel
Ms Melinda Taylor, Counsel

States Representatives
Professor Ahmed El-Ghani
Professor Philippe Sands QC
Professor Payam Akhavan
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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

Defence Application for Leave to Reply

1. Counsel for Mr. Abdullah Al-Senussi file this Application to request leave to reply to the “Response of the Libyan Government to the ‘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,’” filed on 1 February 2013.¹
2. The Application is filed pursuant to Regulation 24(5) of the Regulations of the Court which states that “Participants may only reply to a response with the leave of the Chamber.”²
3. Libya has raised numerous arguments and allegations in its Response (as set out below) which are incorrect and unfounded and which necessitate a reply from the Defence to ensure that the Chamber has all relevant submissions and evidence before it to determine the Defence’s Application of 9 January 2013. Many of these issues have been raised for the first time by Libya in its Response, which the Defence has not had an opportunity to address in its submissions. In respect of certain of them the Defence is able to submit fresh evidence in light of Libya’s Response for the Chamber’s consideration that directly undermines the submissions made by Libya in its Response. The Defence thus seeks leave to reply to these issues and to submit evidence that is relevant to them.
4. The issues raised in Libya’s Response which require a reply from the Defence, include the following:
 - a. Libya claims that the Defence’s Application is based on “inaccurate media reports” and is not properly substantiated.³
 - b. Libya asserts that a properly constituted admissibility challenge is presently before the Chamber.⁴

¹ Response of the Libyan Government to the “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-01/11-01/11-264, 1 February 2013 (“Libya’s Response of 1 February 2013”).

² Regulation of the Court, Reg 24(5). See *Prosecutor v. Lubanga*, Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled “Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo”, ICC-01/04-01/06-824, 13 February 2007, para. 68.

³ Libya’s Response of 1 February 2013, paras. 9, 18, 22, 23.

- c. Libya claims that Mr. Al-Senussi's surrender request can be postponed under Article 95 of the Statute.⁵
- d. Libya asserts that it should be given until 29 March 2013 to file a "supplemental" admissibility submission.⁶
- e. Libya states that "even if Libya's 1 May 2012 Application were not considered an admissibility challenge *stricto sensu* under Article 95, the order for surrender should be postponed nonetheless as an 'appropriate measure for the conduct of proceedings' within the purview of Rule 58(2)."⁷
- f. It is argued by Libya that Article 87(7) is the correct provision under which to consider the Defence's Application.⁸
- g. It is alleged by Libya that its payment of "250 million dinars" to Mauritania "was made by way of bilateral aid 'as a donation to the Mauritanian people.'"⁹ Libya asserts that there is no evidentiary basis for the Defence's Application.
- h. Libya acknowledges that Mauritania should be included in the proceedings by stating that "in the absence of submissions by Mauritania ... the Chamber cannot possibly make findings in respect of alleged violations by Mauritania of Security Council Resolution 1970."¹⁰
- i. Libya concedes that if it can be shown to be responsible for a violation of international law arising from the transfer Mr. Al-Senussi to Libya from Mauritania, then it would entail the return of Mr. Al-Senussi to Mauritania where it would then be for Mauritania to consider its international law obligations and decide afresh Mr. Al-Senussi's place of detention.¹¹

⁴ Libya's Response of 1 February 2013, paras. 25, 26, 29.

⁵ Libya's Response of 1 February 2013, para. 25.

⁶ Libya's Response of 1 February 2013, paras. 25, 26, 29.

⁷ Libya's Response of 1 February 2013, para. 26.

⁸ Libya's Response of 1 February 2013, paras. 10-15.

⁹ Libya's Response of 1 February 2013, para. 18.

¹⁰ Libya's Response of 1 February 2013, para. 16.

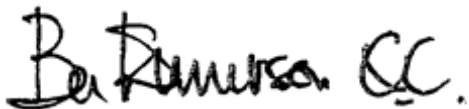
¹¹ Libya's Response of 1 February 2013, para. 19.

- j. Libya maintains that it has been actively cooperating in an “ongoing” way with the ICC and in particular it disputes the accuracy of the media report of 1 January 2013 that the Libyan Prosecutor-General’s office stated that Libya is not bound to comply with the ICC order to transfer Mr. Al-Senussi to the ICC.¹²
- k. Libya claims that it is actively considering terms of an ICC protocol devised by the Registrar to facilitate a secure and privileged visit to Mr. Al-Senussi by his Counsel.¹³

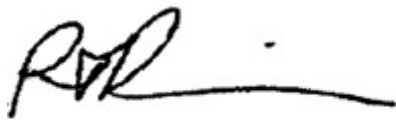
Conclusion

- 5. Counsel for Mr. Al-Senussi submit that the Defence should be permitted to reply to each of these arguments and allegations (many of which are new) and to submit evidence in relation to them as they are central and highly relevant to the determination of the Defence’s Application. The Defence thus requests leave to reply to Libya’s Response of 1 February 2013 pursuant to Regulation 24(5).

Counsel on behalf of Mr. Abdullah Al-Senussi,



Ben Emmerson QC



Rodney Dixon

Dated 5th February 2013
London, United Kingdom

¹² Libya’s Response of 1 February 2013, paras. 21-28.

¹³ Libya’s Response of 1 February 2013, para. 31.