

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 26 April 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 on the conduct of the proceedings following the “Application on behalf of the Government of Libya relating to Abdullah Al-Senussi pursuant to Article 19 of the ICC Statute”**

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

**The Office of the Prosecutor**

Fatou Bensouda  
James Stewart

**Counsel for Saif Al-Islam Gaddafi**

John R.W.D. Jones

**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**

Ahmed El-Gehani  
James Crawford  
Wayne Jordash  
Michelle Butler

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Herman von Hebel

**Deputy Registrar**

Didier Preira

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Others**

**Pre-Trial Chamber I** (“Chamber”) of the International Criminal Court (“Court”) issues the following decision on the conduct of the proceedings following the “Application on behalf of the Government of Libya relating to Abdullah Al-Senussi pursuant to Article 19 of the ICC Statute” (the “Admissibility Challenge”), challenging the admissibility of the case against Abdullah Al-Senussi (“Mr Al-Senussi”).<sup>1</sup>

1. On 26 February 2011, the United Nations Security Council (“Security Council”) adopted Resolution 1970,<sup>2</sup> whereby it referred to the Prosecutor of the Court the situation in Libya since 15 February 2011.<sup>3</sup>

2. On 27 June 2011, the Chamber issued warrants of arrest against, *inter alia*, Saif Al-Islam Gaddafi (“Mr Gaddafi”) and Abdullah Al-Senussi (“Mr Al-Senussi”).<sup>4</sup> On 5 July 2011, the Registrar notified the Libyan authorities of a request for cooperation asking for their assistance in arresting, *inter alia*, Mr Al-Senussi and surrendering them to the Court (“Surrender Request”).<sup>5</sup>

3. On 2 April 2013, Libya filed the Admissibility Challenge. Three different versions of this filing have been provided by Libya: (i) a confidential *ex parte* version, only available to the Prosecutor; (ii) a confidential redacted version available to the Defence of Mr Al-Senussi and the Office of Public Counsel for victims (the “OPCV”); and (iii) a public redacted version. In Libya’s submissions, the redactions *vis-à-vis* the Defence and the OPCV, which are limited to the identity and other identifying information of witnesses, are necessary, in particular, in order to “uphold witness safety and security such that the integrity of the investigation is not compromised”, and “do not affect

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<sup>1</sup> ICC-01/11-01/11-307-Conf-Exp. A confidential redacted version and a public redacted version are also available.

<sup>2</sup> S/RES/1970 (2011).

<sup>3</sup> S/RES/1970, paragraph 4.

<sup>4</sup> Warrant of Arrest for Saif Al-Islam Gaddafi, ICC-01/11-01/11-3; Warrant of Arrest for Abdullah Al-Senussi, ICC-01/11-01/11-4.

<sup>5</sup> ICC-01/11-01/11-5 and ICC-01/11-01/11-25-Conf.

the comprehensibility of the material so provided and will not impact upon the ability of the Defence or the OPCV to provide a meaningful response to [the] Admissibility Challenge”.<sup>6</sup>

4. On 24 April 2013, the Prosecutor filed her response to the Admissibility Challenge.<sup>7</sup>

5. On the same day, the Defence of Mr Al-Senussi filed the “Urgent Request on behalf of Abdullah Al-Senussi pursuant to Rule 58(2)”, whereby it requests the Chamber to: (i) urgently issue a decision on Libya’s challenge to the admissibility of the case against Mr Gaddafi; (ii) urgently issue an order for the conduct of proceedings following the Admissibility Challenge; (iii) grant the Defence request to submit written observations on the Admissibility Challenge 30 days following the issuance of the Chamber’s decision on the admissibility of the case against Mr Gaddafi; and (iv) schedule an oral hearing following the filing of the written submissions.<sup>8</sup>

6. The Chamber notes article 19 of the Rome Statute (“Statute”), rules 58 and 59 of the Rules of Procedure and Evidence (“Rules”), and regulation 80 of the Regulations of the Court (the “Regulations”).

7. At the outset, the Chamber observes that, by virtue of rule 58(2) of the Rules, it has discretionary power to decide on the procedure to be followed upon receipt of the Admissibility Challenge.

8. Despite this broad discretion, pursuant to rule 58(3) of the Rules, the Chamber shall allow the Prosecutor and “the person referred to in article 19, paragraph 2, who has been surrendered to the Court or who has appeared voluntarily or pursuant to a summons” to submit written observations to

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<sup>6</sup> Admissibility Challenge, para. 127.

<sup>7</sup> ICC-01/11-01/11-321-Conf, and confidential annexes attached thereto.

<sup>8</sup> ICC-01/11-01/11-320, para. 9.

challenges made pursuant to article 19(2) of the Statute. The Chamber notes in this respect that Mr Al-Senussi, although arrested in Libya, has so far not been surrendered to or appeared before the Court. However, consistent with its previously expressed position with respect to Mr Gaddafi,<sup>9</sup> the Chamber takes the view that Mr Al-Senussi's exercise of procedural rights in relation to the Admissibility Challenge cannot be made contingent on Libya's compliance with the Surrender Request. Accordingly, the Defence of Mr Al-Senussi shall be allowed to submit written observations.

9. Rule 58(3) of the Rules also specifies that the Chamber shall determine an appropriate time limit for the submission of any observations by the Prosecutor and the Defence of Mr Al-Senussi.

10. The Chamber takes note of the request of the Defence of Mr Al-Senussi to be granted 30 days after disposal of the challenge to the admissibility of the case against Mr Gaddafi for its written observations on the Admissibility Challenge.<sup>10</sup> However, while recognizing, as asserted by the Defence, "the very close relationship between [Mr Gaddafi's] case and Mr Al-Senussi's case",<sup>11</sup> the Chamber is of the view that the unfolding of the proceedings following the Admissibility Challenge cannot be made dependent upon procedural steps in, or conclusion of, proceedings that, although related, are distinct.

11. The Chamber also notes that the Prosecutor, on 24 April 2013, provided her response, pursuant to regulation 24 of the Regulations, to the Admissibility Challenge.<sup>12</sup> However, in the Chamber's view, this is without

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<sup>9</sup> "Decision on OPCD Requests", ICC-01/11-01/11-129; "Decision on the Conduct of the Proceedings Following the Application on behalf of the Government of Libya pursuant to Article 19 of the Statute", ICC-01/11-01/11-134.

<sup>10</sup> ICC-01/11-01/11-320, paras 5 and 9.

<sup>11</sup> *Ibid.*, para. 5.

<sup>12</sup> ICC-01/11-01/11-321-Conf.

prejudice for the Prosecutor to supplement her response, subject to the leave of the Chamber, within the time limit set in the present decision for the written observations of the other parties and participants to the admissibility proceedings.

12. The Chamber further notes that pursuant to article 19(3) of the Statute, read in conjunction with rule 59(1) and (3) of the Rules, the Security Council, as the entity that referred to the Prosecutor the situation in Libya, as well as victims who have already communicated with the Court in relation to this case or their legal representatives, may also submit observations within a time limit that the Chamber considers appropriate.

13. In order to conduct the proceedings following the Admissibility Challenge efficiently and expeditiously, the Chamber considers it appropriate to appoint, under regulation 80 of the Regulations, Paolina Massidda from the OPCV to represent, in the proceedings following the Admissibility Challenge, the victims who have communicated with the Court in relation to the case. Accordingly, the Registrar is hereby instructed to provide the OPCV with information about victims who have communicated with the Court, as well as with any necessary assistance to contact them as soon as possible.

14. Rule 59(2) of the Rules also mandates that the Registrar provide the Security Council and the victims, “in a manner consistent with the duty of the Court regarding the confidentiality of information, the protection of any person and the preservation of evidence, with a summary of the grounds on which [...] the admissibility of the case has been challenged”. The Chamber notes that the OPCV has already been provided with the confidential redacted version of the Admissibility Challenge filed by Libya. As far as the Security Council is concerned, the Chamber is of the view that the provision of rule 59(2) of the Statute will be satisfied if the Security Council is notified of the

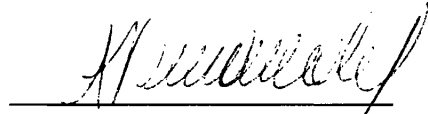
public redacted version of the Admissibility Challenge, together with its public annexes, currently available in the record of the case.

15. Finally, as regards the Defence request for an oral hearing following the filing of the written submissions, the Chamber notes that, in accordance with rule 58(2) of the Rules, the Chamber “may” hold a hearing and will determine this matter upon receipt of the written observations within the time limit set in present decision.

**FOR THESE REASONS, THE CHAMBER**

- a) **APPOINTS**, for the purposes of the proceedings following the Admissibility Challenge, Paolina Massidda from the OPCV as legal representative of victims who have already communicated with the Court in relation to the case;
- b) **INVITES** the Defence for Mr Al-Senussi, the OPCV and the Security Council to submit observations on the Admissibility Challenge, if any, no later than Friday, 14 June 2013;
- c) **INSTRUCTS** the Registrar to provide the OPCV with information about victims who have communicated with the Court, as well as with any necessary assistance to contact them as soon as possible;
- d) **ORDERS** the Registrar to notify document ICC-01/11-01/11-307-Red2, together with its public annexes, to the Security Council.

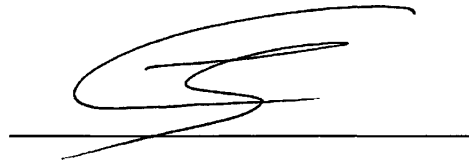
Done in both English and French, the English version being authoritative.



**Judge Silvia Fernández de Gurmendi**  
**Presiding Judge**



**Judge Hans-Peter Kaul**



**Judge Christine Van den Wyngaert**

Dated this Friday, 26 April 2013

At The Hague, The Netherlands