

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: 7 May 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

**Defence response to the “Libyan Government’s Request for leave to reply to the
Defence for Mr. Saif Al-Islam Gaddafi’s “Response to the “Application on
behalf of the Government of Libya relating to Abdullah Al-Senussi pursuant to
Article 19 of the ICC Statute”””**

Source: Defence for Mr. Saif Al-Islam Gaddafi

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

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**Victims Participation and
Reparations Section**

Other

1. On 1 April 2013, the Government of Libya filed a challenge to the admissibility of the case against Mr. Al-Senussi.¹
2. On 23 April 2013, the Defence for Mr. Saif Al-Islam Gaddafi filed its response (the Defence Response), in which the Defence expressed its understanding that the admissibility challenge against Mr. Gaddafi was entirely separate from that of Mr. Al-Senussi. The Defence therefore requested the Chamber to issue an immediate decision on the admissibility challenge concerning Mr. Gaddafi, and in so doing, to disregard any information or evidence which had been filed outside of the parameters of the challenge concerning Mr. Gaddafi.²
3. On 3 May 2013, the Government sought leave to reply to the Defence response to the Senussi admissibility challenge on the grounds that:

The Response raises issues concerning the admissibility challenges relating to both Mr. Al-Senussi and Mr. Gaddafi, which are either incorrect or are raised for the first time and thus necessitate a reply from Libya in order to ensure that the Chamber has all the relevant information and submissions before it in respect of both challenges.³

4. In particular, the Government cited the following aspects of the Defence Response, to which it wished to respond:
 - a. the allegation that the Government “contrived to benefit from additional time to mount its admissibility challenge against Mr Al-Senussi” and the suggestion that Libya now “seek[s] to rely upon the one filed latest in time in order to supplement its earlier challenge against Mr. Gaddafi”;
 - b. the relevance and status of the information and evidence served in the challenge concerning Mr. Al-Senussi, which was not included in the initial challenge concerning Mr. Gaddafi;
 - c. the current status of the domestic proceedings against Mr. Gaddafi; and
 - d. the legal representation of persons associated with the former regime.⁴

¹ ICC-01/11-01/11-307-Red2.

² ICC-01/11-01/11-313.

³ ICC-01/11-01/11-327 at para. 5.

⁴ ICC-01/11-01/11-327 at para. 6.

5. The Defence respectfully submits that the Government has failed to establish any justification for filing a reply in relation to the aforementioned issues.
6. The purpose of a reply is to assist the Chamber to render a determination on the issues at stake. ‘Good cause’ to file a reply does not exist in circumstances in which the participant does not oppose the relief requested by the responding party.
7. In this regard, it was the Libyan Government which in fact, initiated the proposal that the two admissibility challenges should be considered separately.⁵ The Government confirmed its adherence to their stance in its filing of 24 April 2013, in which the Government claimed that

the assertion by the OPCD at paragraph 19 that “the recent challenge to admissibility filed in connection with the Senussi case also does not constitute grounds to either delay or reopen the admissibility proceedings concerning Mr. Gaddafi” is baseless and inapposite. The Libyan Government, has not, either in the Notification or elsewhere, made any suggestion that the admissibility challenge filed in the case against Mr. Al-Senussi should provide any grounds for delaying the admissibility proceedings in the case against Mr. Gaddafi.⁶

8. This filing was submitted one day after the Defence Response, and as such, the Government had the benefit of considering the Defence submissions concerning the separate nature of two admissibility challenges in formulating the above position. The Government is therefore estopped from resiling from this position in connection with the Senussi challenge and related responses: if it was ‘baseless and inapposite’ for the OPCD to suggest that the Senussi challenge could constitute grounds for either reopening or delaying the resolution of the Gaddafi challenge, then it would also be ‘baseless and inapposite’ for the Libyan Government to now submit additional observations in any way opposing the Defence position that the Senussi challenge does not constitute grounds for either reopening or delaying the resolution of the Gaddafi challenge.
9. If, as is accepted by the Libyan Government in their 24 April 2013 filing, the two admissibility challenges must be considered and disposed of separately, then it would also be entirely irrelevant and unnecessary for the Chamber to

⁵ ICC-01/11-01/11-130 at paras. 68-73.

⁶ ICC-01/11-01/11-318-Red at para. 14.

receive further submissions in relation to issues, which uniquely address Mr. Gaddafi, such as the status of the domestic proceedings against Mr. Gaddafi.

10. Moreover, allowing the Government of Libya to file a reply in connection with issues related to the Gaddafi challenge, such as “the current status of the domestic proceedings against Mr. Gaddafi”, would defeat the very remedy which the Defence Response sought to achieve: namely, it would allow the Libyan Government to utilise the Senussi admissibility challenge to raise new facts and arguments concerning the Gaddafi admissibility challenge. The submission of such new observations in a reply would also denude the Gaddafi admissibility proceedings of their adversarial character by depriving the Defence of the opportunity to respond to such new information.
11. It is also completely incorrect that the Government has not been accorded an opportunity to address the issues concerning the manner in which the Government has formulated its admissibility challenge against Mr. Al-Senussi, or the legal representation of other Gaddafi officials, such as Mr. Al-Senussi.
12. The Defence expressly raised the potentially disingenuous nature of the Government’s claims concerning its inability to obtain custody over Mr. Al-Senussi due to his ill-health, and the Government’s failure to accord Gaddafi officials such as Mr. Al-Senussi with access to effective legal representation, in its oral submissions during the October admissibility hearing, and its February 2013 response to the further admissibility submissions. The Government was accorded a full opportunity to address these matters both in its January 2013 additional submissions, and March 2013 reply.
13. The specific matters referred to by the Gaddafi Defence in its Defence Response also merely replicated arguments and factual allegations, which had been previously raised by the Defence of Mr. Al-Senussi, in connection with their applications to report Libya to the Security Council.⁷ The Government of Libya had a full opportunity to respond to these applications. It would therefore be procedurally unfair to allow the Libyan Government to utilise its reply to the Defence Response as a vehicle for introducing additional submissions in relation to these applications.

⁷ ICC-01/11-01/11-304, and ICC-01/11-01/11-248.

Relief Sought

14. For the reasons set out above, the Defence for Mr. Saif Al-Islam Gaddafi respectfully requests the Honourable Pre-Trial Chamber to reject the “Libyan Government’s Request for leave to reply to the Defence for Mr. Saif Al-Islam Gaddafi’s “Response to the “Application on behalf of the Government of Libya relating to Abdullah Al-Senussi pursuant to Article 19 of the ICC Statute”””.



John R.W.D. Jones QC, Counsel for Mr. Saif Al-Islam Gaddafi

Dated this, 7th Day of May 2013

At The Hague, The Netherlands