



Original: English

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

Date: 15 May 2013

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernandez 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

With 1 confidential annex

Registry's Response to "Defence Request on behalf of Abdullah Al-Senussi for Access to All Confidential Filings, Decisions and Documents in Case ICC-01/11-01/11 prior to the Appointment of Counsel for Mr. Al-Senussi"

Source: The Registry

Document 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

Rodney Dixon

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Paolina Massida

Sarah Pellet

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

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States' Representatives

Professor Ahmed El-Gehani

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REGISTRY

Registrar

Herman von Hebel

Deputy Registrar

Didier Preira

Counsel Support Section

Esteban Peralta Losilla

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

THE REGISTRAR of the International Criminal Court (“the Court”)

NOTING the “Defence Request on behalf of Abdullah Al-Senussi for Access to All Confidential Filings, Decisions and Documents in Case ICC-01/11-01/11 prior to the Appointment of Counsel for Mr. Al-Senussi”¹, (“the Request”) dated 25 April 2013;

NOTING the “Libyan Government Reponse to ‘Defence Request on behalf of Abdullah Al-Senussi for Access to All Confidential Filings, Decisions and Documents in Case ICC-01/11-01/11 prior to the Appointment of Counsel for Mr. Al-Senussi’”², dated 3 May 2013;

NOTING the “Defence Response to the ‘Defence Request on behalf of Abdullah Al-Senussi for Access to All Confidential Filings, Decisions and Documents in Case ICC-01/11-01/11 prior to the Appointment of Counsel for Mr. Al-Senussi’”³ submitted by the Defence for Mr Saif Al-Islam Gaddafi on 10 May 2013;

NOTING the “Prosecution’s Response to the Request by the Defence for Abdullah Al-Senussi for Access to All Confidential Filings, Decisions and Documents in Case ICC-01/11-01/11 Prior to the Appointment of Counsel for Mr. Al-Senussi”⁴, dated 13 May 2013;

¹ ICC-01/11-01/11-322

² ICC-01/11-01/11-326

³ ICC-01/11-01/11-334

⁴ ICC-01/11-01/11-336

NOTING the “Response to ‘Defence Request on behalf of Abdullah Al-Senussi for Access to All Confidential Filings, Decisions and Documents in Case ICC-01/11-01/11 prior to the Appointment of Counsel for Mr. Al-Senussi’”⁵ submitted by the Office of Public Counsel for Victims on 13 May 2013;

NOTING regulations 23 *bis* and 24 *bis* of the Regulations of the Court;

CONSIDERING that in its Request the Counsel for Mr. Al-Senussi submitted that he “is entitled to have access to all filings in his case (unless filed *ex parte*), and should be in no different position to Counsel for Mr. Gaddafi, who has received all confidential filings in Mr. Gaddafi’s case as well as Mr. Al-Senussi’s case”;⁶

CONSIDERING that the Defence for Abdullah Al-Senussi requested access to all confidential filings, decisions and documents prior to 9 January 2013⁷;

CONSIDERING that on 6 May 2013, Pre-Trial Chamber I instructed the Registry by e-mail to provide observations regarding Mr. Al-Senussi’s request to have access to all confidential documents filed in the record of the case before 9 January 2013 by Monday, 13 May 2013;

CONSIDERING that upon request, the Chamber granted the Registry an extension until 15 May 2013, to file its observations;

INFORMS the Chamber as follows:

1. The Registry has no objections for the Defence of Mr Abdullah Al-Senussi to have access to the confidential documents submitted by the Registry prior to

⁵ ICC-01/11-01/11-337

⁶ ICC-01/11-01/11-322, para 10

⁷ Ibid, para. 16.

the appointment of Counsel for Mr Al-Senussi. Such access should not apply to confidential *ex parte* submissions of the Registry.

2. Nonetheless, the Registry does not oppose for the Defence of Mr. Al-Senussi to have access to confidential, *ex parte Defence only* or *OPCD only* filings unless the OPCD and the Defence of Saif Al-Islam Gaddafi have objections to this effect.
3. Regarding access to document ICC-01/11-01/11-80-Red, the Registry had requested the French authorities on 13 March 2013 to present their observations regarding the access of the Defence team for Abdullah Al-Senussi to this document in its non-redacted version.
4. On 15 May 2013, the Registry received a positive reply from the French authorities (in annex) and submits that the access to document ICC-01/11-01/11-80-Conf-Exp and its Annex 1 can be granted to the Defence for Al-Senussi. However, the public version ICC-01/11-01/11-80-Red should remain in its redacted version as it still contains sensitive information.
5. The Registry has no objections to grant access to the Defence of Abdullah Al-Senussi to document: ICC-01/11-01/11-236-Conf-Exp, which was registered as *confidential, ex parte, Registry only*, as the matter has since become public. However, annex 3 to the said filing ought to remain *ex parte* as it contains the names and contact details of Registry staff members.
6. The Registry files the annex to the present submission as *confidential* as it contains an official communication between the Registry and a State.

TRANSMITS in annex:

- A note verbale received from the French authorities on 15 May 2013.

RESPECTFULLY SUBMITTED.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end, positioned above a horizontal line.

Herman von Hebel
Registrar

Dated this Wednesday, the 15th of May 2013

At The Hague, The Netherlands