

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 16 July 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 Libya's request for leave to file a consolidated reply

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

The Office of the Prosecutor
 Fatou Bensouda, Prosecutor
 James Stewart, Deputy Prosecutor

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

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 “Libyan Government’s Request for leave to reply to the Prosecution’s Additional Submissions and the Defence and OPCV Response to ‘Application on behalf of the Government of Libya relating to Abdullah Al-Senussi pursuant to Article 19 of the ICC Statute’” (the “Renewed Request”).¹

1. On 2 April 2013, Libya filed 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”).²

2. On 24 April 2013, the Prosecutor filed her response to the Admissibility Challenge (the “Prosecutor’s Response”).³

3. On 26 April 2013, the Chamber issued the “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’”, whereby it invited the Defence, the Office of Public Counsel for victims (the “OPCV”) and the Security Council to provide observations by 14 June 2013, and it permitted the Prosecutor to supplement her response by the same date with the leave of the Chamber.⁴

4. On 6 May 2013, Libya filed the “Libyan Government’s Request for Leave to reply to the ‘Prosecution’s Response to ‘Application on behalf of the Government of Libya relating to Abdullah Al-Senussi pursuant to Article 19 of the ICC Statute’”, seeking leave to reply to the Prosecutor’s Response.⁵ In

¹ ICC-01/11-01/11-372.

² ICC-01/11-01/11-307-Red2.

³ ICC-01/11-01/11-321-Conf. A public redacted version is also available, see ICC-01/11-01/11-321-Red.

⁴ ICC-01/11-01/11-325.

⁵ Libya submits that “the Prosecution Response raises a number of legal and factual issues that are novel and/or require a reply to ensure the correct interpretation of the jurisprudence

addition, and in order to avoid duplication and enhance judicial economy,⁶ Libya requested leave to respond to the parties' and participants' observations on the Admissibility Challenge in a consolidated reply until 30 days after 14 June.⁷

5. On 11 June 2013, the Chamber granted the request of the Prosecutor⁸ for authorisation to submit additional observations on the Admissibility Challenge.⁹

6. On 14 June 2013, the Prosecutor submitted her additional observations;¹⁰ the same day, the Defence¹¹ and the OPCV¹² filed their observations on the Admissibility Challenge (collectively, the "Observations").

7. On 26 June 2013, Libya filed the Renewed Request in which it renewed its application for authorisation to file a consolidated reply with respect to the Prosecutor's Response and the Observations.¹³ Libya further requested that

with regard to the future of the current proceedings (including any implementation of ongoing monitoring) and the correct interpretation of Articles 17 and 19". In particular, Libya seeks to address: (i) its reliance upon European Court of Human Rights cases in relation to the burden of proof; (ii) the Prosecutor's arguments regarding the interpretation of the "same conduct" test; (iii) the Prosecutor's submission regarding the scope of the current domestic investigation and (iv) the Prosecutor's argument regarding Mr Al-Senussi's access to counsel, *see* ICC-01/11-01/11-331, paras 5 and 7-12.

⁶ *Ibid.*, para. 2.

⁷ ICC-01/11-01/11-331, para. 13.

⁸ ICC-01/11-01/11-349.

⁹ Pre-Trial Chamber I, Decision on the Prosecutor's request for leave to present additional observations on Libya's challenge to the admissibility of the case against Abdullah Al-Senussi, ICC-01/11-01/11-351.

¹⁰ ICC-01/11-01/11-355.

¹¹ ICC-01/11-01/11-356 with annexes.

¹² ICC-01/11-01/11-353-Conf. A public redacted version is also available, *see* ICC-01/11-01/11-353-Red.

¹³ ICC-01/11-01/11-372, para. 35. Libya seeks to reply to particular submissions in the Observations. With respect to the Defence response, Libya seeks to address the following issues: (i) relevance and probative value of evidence relied upon by Libya; (ii) inability; (iii) unwillingness; and (vi) positive complementarity. With respect to the OPCV response, Libya seeks to address: (i) the investigative steps undertaken by the Libyan Government; and (ii) the issues raised in respect of inability. As regards the Prosecutor's additional submissions, Libya seeks authorisation to reply to the following questions: (i) how obstacles to obtaining a

the deadline be extended until 14 August 2013, given the complexity of the issues raised in the Prosecutor's Response and the Observations.¹⁴

8. On 3 July 2013, the Defence filed a response to the Renewed Request,¹⁵ asking the Chamber to reject Libya's leave to reply on the ground that Libya failed to demonstrate that there are any particular issues which it had not already addressed in its Admissibility Application. The Defence further requests that, in the event that the Chamber grants leave to reply, the deadline be limited to 7 days. It is argued that the extension of time requested by Libya is not justified and it is submitted that, considering the Libyan Prosecutor's announcement in relation to the trial against Mr Al-Senussi,¹⁶ a delay could lead to a circumvention of the admissibility proceedings before the Chamber.

9. The Chamber notes article 19 of the Rome Statute, rule 58 of the Rules of Procedure and Evidence, and regulations 24 and 34 of the Regulations of the Court (the "Regulations").

10. Pursuant to regulation 24(5) of the Regulations, "[p]articipants may only reply to a response with the leave of the Chamber" and, if such leave is granted, the reply, according to regulation 34(c) of the Regulations, "shall be filed within ten days of notification [...] of the response".

11. Having reviewed the Prosecutor's Response and the Observations, and considering, as previously held by the Chamber, that "the triggering force and

lawyer for Mr. Al-Senussi might be overcome; and (ii) how the protective measures program would operate and whether protective measures would be available to witnesses for the defence. In addition, Libya requests to address matters of law and factual findings arising from the recent Chamber's "Decision on the admissibility of the case against Saif Al-Islam Gaddafi" (ICC-01/11-01/11-344-Red), and in particular the applicability of these findings to the present proceedings, *See* Renewed Request, paras 9-32.

¹⁴ ICC-01/11-01/11-372, paras 2 and 35.

¹⁵ ICC-01/11-01/11-376.

¹⁶ It is submitted that, on 17 June 2013, the Libyan Prosecutor in the national case against Mr Al-Senussi made a public announcement that the case will proceed to trial in the first half of August 2013.

main actor in [admissibility] proceedings is the entity challenging the admissibility of the case, in the present case Libya”,¹⁷ it is appropriate to authorise Libya to file a consolidated reply to the Prosecutor’s Response and the Observations. The Chamber emphasises that the reply shall be limited to the arguments raised in the Prosecutor’s Response and the Observations.

12. Taking into account the nature and the scope of the submissions made by the parties and the participants in these admissibility proceedings, the Chamber is of the view that a longer period than the one envisaged by regulation 34(c) of the Regulations is warranted. Thus, the Chamber considers it appropriate to grant Libya until 14 August 2013 to file the consolidated reply.

FOR THESE REASONS, THE CHAMBER

AUTHORISES Libya to file by no later than **Wednesday, 14 August 2013** a consolidated reply to the Prosecutor’s Response and the Observations.

¹⁷ Pre-Trial Chamber I, Decision on the OPCD request for variation of time limit, 28 May 2012, ICC-01/11-01/11-159, para. 9; *id.*, Decision on the “Libyan Government Application for leave to reply to any Response/s to article 19 admissibility challenge”, 26 July 2012, ICC-01/11-01/11-191, para. 8.

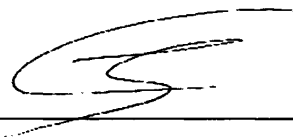
Done in both English and French, the English version being authoritative.



Judge Silvia Fernández de Gurmendi
Presiding Judge



Judge Hans-Peter Kaul



Judge Christine Van den Wyngaert

Dated this 16 July 2013

At The Hague, The Netherlands