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Date: **9 August 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 with Confidential *Ex Parte* Annex 1

**Defence Application on behalf of Mr. Abdullah Al-Senussi
to refer Libya to the Security Council
with Confidential *Ex Parte* (Chamber only) Annex 1**

Source: Mr. Abdullah Al-Senussi, represented by Ben Emmerson QC, Rodney Dixon, Amal Alamuddin, Anthony Kelly, and Prof. William Schabas

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

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Detention Section

Victims Participation and Reparations Section

Other

Introduction

1. The Defence for Mr. Abdullah Al-Senussi submits this application to request that the Chamber:
 - Find Libya in non-compliance with its Order of 6 February 2013 to arrange “a visit of the appointed counsel for Mr Al-Senussi to his client on a privileged basis as soon as practicable;”¹ and
 - Refer Libya to the United Nations’ Security Council so that appropriate action can be taken by the Security Council to enforce the ICC’s Order.
2. Mr. Al-Senussi has been detained in Libya for nearly 12 months without any access to a lawyer during the entire period of his detention. It has been over seven months since Counsel was appointed by the ICC to represent Mr. Al-Senussi, and over six months since the Chamber ordered Libya to arrange a privileged visit for Counsel.
3. To date, no legal visit has been organised by the Libyan authorities. Instead, Libya has impeded the implementation of the Chamber’s Order with continuous delays and by constantly raising new conditions and issues that have prevented the visit from taking place. A comprehensive chronology of all of the attempts that have been made by the Registry and the Defence to arrange a visit is attached hereto as Annex 1. It has been filed as a confidential, *ex parte* annex as it refers to confidential, *ex parte* filings from the Registry.² The Defence requests that to the extent that this chronology can be made public, the Chamber should order that it be reclassified accordingly.
4. The Defence submits that in light of this lengthy chronology of failed efforts to secure a visit, the Chamber should delay no further in finding that Libya has failed to comply with its Order.

¹ Decision on 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-01/11-01/11-269, 6 February 2013, para. 40.

² ICC-01/11-01/11-304-Conf-Exp-Anx2; ICC-01/11-01/11-304-Conf-Exp-Anx3; First Report of the Registry on the visit of the defence team of Abdullah Al-Senussi to Libya, ICC-01/11-011/-11-Conf-Exp, 6 March 2013; Second report of the Registry on the visit of the defence team to Libya, ICC-01/11-01/11-328, 3 May 2013, Confidential Ex parte Annexes 1-3.

5. This application is filed pursuant to Articles 87(5) and 87(7) of the Rome Statute³ and based on the ICC's jurisprudence which states that the Court has the "*inherent power to inform the Security Council*"⁴ of a non-State party's failure to cooperate with the Court on the basis that such non-cooperation in itself prevents "the Court from executing the task entrusted to it by the Security Council."⁵
6. The Defence submits that Libya's failure to arrange a visit for Defence Counsel clearly violates the Court's Order and prevents the Court from exercising its functions and powers effectively and expeditiously. Mr. Al-Senussi's basic right to legal representation before the ICC is being undermined by Libya's failure to implement the Court's Order. Defence Counsel is unable to consult with Mr. Al-Senussi while crucial proceedings concerning the admissibility of his case are taking place before the ICC. In defiance of the ICC's proceedings Libya has announced that it will commence Mr. Al-Senussi's trial in the first half of August⁶, and this while Mr. Al-

³ Rome Statute, Article 87(5) and 87(7).

Article 87(5) provides:

"(a) *The Court may invite any State not party to this Statute to provide assistance under this Part on the basis of an ad hoc arrangement, an agreement with such State or any other appropriate basis.*"

"(b) *Where a State not party to this Statute, which has entered into an ad hoc arrangement or an agreement with the Court, fails to cooperate with requests pursuant to any such arrangement or agreement, the Court may so inform the Assembly of States Parties or, where the Security Council referred the matter to the Court, the Security Council.*"

Article 87(7) provides:

"*Where a State Party fails to comply with a request to cooperate by the Court contrary to the provisions of this Statute, thereby preventing the Court from exercising its functions and powers under this Statute, the Court may make a finding to that effect and refer the matter to the Assembly of States Parties or, where the Security Council referred the matter to the Court, to the Security Council.*"

See, Renewed Application on behalf of Mr. Abdullah Al-Senussi to Refer Libya and Mauritania to the UN Security Council with Public Annex 1 and Confidential and Ex Parte (Registry only) Annexes 2 and 3, ICC-01/11-01/11-304, 19 March 2013, paras. 10-14.

See also, *Prosecutor v. Harun and Kushayb*, Decision informing the United Nations Security Council about the lack of cooperation by the Republic of the Sudan, ICC-02/05-01/07-57, 25 May 2010; *Prosecutor v. Bashir*, Decision Pursuant to Article 87(7) of the Rome Statute on the Failure by the Republic of Malawi to Comply with the Cooperation Requests Issued by the Court with Respect to the Arrest and Surrender of Omar Hassan Ahmad Al Bashir, ICC-02/05-01/09-139, 12 December 2011, para. 47; *Prosecutor v. Bashir*, Décision rendue en application de l'article 87-7 du Statut de Rome concernant le refus de la République du Tchad d'accéder aux demandes de coopération délivrées par la Cour concernant l'arrestation et la remise d'Omar Hassan Ahmad Al Bashir, ICC-02/05-01/09-140, 13 December 2011, para. 14.

⁴ Harun Kushayb Decision of 25 May 2010, p. 6 (emphasis added).

⁵ Harun Kushayb Decision of 25 May 2010, p. 6.

⁶ ICC-01/11-01/11-380-Anx1. See also, Kadhafi's son to stand trial in August: Libya prosecutor, AFP, 17 June 2013 (<http://www.google.com/hostednews/afp/article/ALeqM5hf0VWzFZ0xmEaVROYan6arfqRKYw?docId=CNG.804f72867c9bda4f148b64bf4c290b6e.461>); Gaddafi's son to stand trial in August, gulfnews.com, 17 June 2013 (<http://gulfnews.com/news/region/libya/gaddafi-s-son-to-stand-trial-in-august-1.1198551>); Gadhafi's son to stand trial in August, Libya prosecutor says, The Daily Star, 18 June 2013 (<http://www.dailystar.com.lb/News/Middle-East/2013/Jun-18/220703-gadhafis-son-to-stand-trial-in-august-libya-prosecutor-says.ashx#axzz2WgDly4I7>); Libya to try Seif al-Islam Gaddafi in August, Alarab Online, 17 June 2013 (<http://www.alarab.co.uk/english/display.asp?fname=%5C2013%5C06%5C06-17%5Czalsoz%5C923.htm&dismode=x&ts=6/17/2013%205:34:49%20PM>); Libya acquits Gaddafi aides in Lockerbie case, Oman Tribune

Senussi's lawyers have no access to him whatsoever. It is of particular concern that Libya has started imposing the death penalty against former officials of the Gaddafi regime amidst serious criticisms that many Gaddafi loyalists including detainees like Mr. Al-Senussi are being singled out for 'revenge' death sentences.⁷

7. The Defence therefore requests that the Chamber take immediate steps to find Libya in non-compliance with the Order to arrange a legal visit and to refer Libya to the Security Council so that action can be taken by the Security Council to enforce the ICC's Order pursuant to the Security Council's mandate that was entrusted to the ICC under Chapter VII of the UN Charter.

Libya has failed to comply with the ICC's Order

8. On 6 February 2013, following requests by the Defence for a privileged visit to Mr. Al-Senussi, the Pre-Trial Chamber ordered "the Libyan authorities to arrange, in consultation and in cooperation with the Registrar, a visit of the appointed counsel for Mr. Al-Senussi to his client on a privileged basis as soon as practicable."⁸
9. On 19 March 2013, the Defence filed its renewed application to refer Libya to the Security Council arguing, *inter alia*, that "it [had] been almost six weeks since the Chamber's Order of 6 February"⁹ and that Libya had "failed to comply with the Chamber's Order of 6 February 2013 to facilitate a privileged legal visit for the Defence to meet with Mr. Al-Senussi in Libya."¹⁰

(<http://www.omantribune.com/index.php?page=news&id=146566&heading=Other%20Top%20Stories>); Gaddafi's son to stand trial in August, BBC, 19 June 2013 (<http://www.bbc.co.uk/news/world-africa-22945159>); Gaddafi officials acquitted but stay behind bars, Times Live, 17 June 2013 (<http://www.timeslive.co.za/africa/2013/06/17/gaddafi-officials-acquitted-but-stay-behind-bars>).

⁷ Gaddafi minister sentenced to death, BBC, 31 July 2013 (<http://www.bbc.co.uk/news/world-africa-23524134>). See also, Libya: al-Gaddafi loyalists at risk of 'revenge' death sentences, Amnesty International, 2 August 2013 (<http://www.amnesty.org/en/news/libya-al-gaddafi-loyalists-risk-revenge-death-sentences-2013-08-02>).

⁸ Decision on 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-01/11-01/11-269, 6 February 2013, para. 40.

⁹ Renewed Application on behalf of Mr. Abdullah Al-Senussi to Refer Libya and Mauritania to the UN Security Council with Public Annex 1 and Confidential and Ex Parte (Registry only) Annexes 2 and 3, ICC-01/11-01/11-304, 19 March 2013, para. 3.

¹⁰ Renewed Application on behalf of Mr. Abdullah Al-Senussi to Refer Libya and Mauritania to the UN Security Council with Public Annex 1 and Confidential and Ex Parte (Registry only) Annexes 2 and 3, ICC-01/11-01/11-304, 19 March 2013, para. 35.

10. On 14 June 2013, the Chamber found it “unwarranted to resort at the moment to a finding of non-cooperation.”¹¹ However, the Chamber stated that “to date the privileged legal visit to Mr Al-Senussi is yet to take place” and “[s]hould the circumstances ultimately evolve into indicating that Libya will fail to cooperate with the Court in the arrangement of the privileged legal visit to Mr. Al-Senussi, the Chamber will determine what measures would be necessary to ensure compliance on the part of Libya with the Chamber’s order to that effect.”¹²
11. It has now been six months since the Chamber’s Order of 6 February 2013 to facilitate a privileged visit, and the Defence is no closer to being allowed to visit Mr. Al-Senussi.
12. Although Libya has stated that it is “keen to facilitate a privileged legal visit”¹³ and that it has “extended an invitation” to the Defence team to visit “at a time convenient for them,”¹⁴ the reality is that Libya has not taken the necessary steps to cooperate and to arrange a legal visit. Given all of the delays, the Defence submits that the Chamber should now find that Libya has failed to comply with its Order.
13. Libya has failed to finalise and agree the Memorandum of Understanding on Privileges and Immunities (MOU) which would permit Counsel to travel to Libya for a privileged visit as ordered by the Chamber. The Defence emphasises that Libya has been in possession of the draft MOU since March 2012 when it was provided with the draft by the Registry.¹⁵ Since then the Registry has been actively working to finalise the MOU but Libya has still not signed the agreement. Instead, Libya has raised several reasons to delay finalising the agreement as detailed in Annex 1.

¹¹ Decision on Libya’s postponement of the execution of the request for arrest and surrender of Abdullah Al-Senussi pursuant to article 95 of the Rome Statute and related Defence request to refer Libya to the UN Security Council, ICC-01/11-01/11-354, 14 June 2013, para. 45.

¹² Decision on Libya’s postponement of the execution of the request for arrest and surrender of Abdullah Al-Senussi pursuant to article 95 of the Rome Statute and related Defence request to refer Libya to the UN Security Council, ICC-01/11-01/11-354, 14 June 2013, para. 45.

¹³ Application on behalf of the Government of Libya relating to Abdullah Al-Senussi pursuant to Article 19 of the ICC Statute, ICC-01/11-01/11-307-Pub-Red, para. 179.

¹⁴ Response to “Application on behalf of Abdullah Al-Senussi for leave to reply to the “Response of the Libyan Government to the “Renewed Application on behalf of Mr. Abdullah Al-Senussi to Refer Libya and Mauritania to the UN Security Council with Public Annex 1 and Confidential and Ex Parte (Registry only) Annexes 2 and 3”” of 10 April 2013”, ICC-01/11-01/11-314, 23 April 2013, para. 6(ii).

¹⁵ ICC-01/11-01/11-304-Conf-Exp-Anx2, para. 10.

14. In particular, on 28 March 2013, Counsel for the Government of Libya informed the Chamber that a new Prosecutor-General was appointed on 20 March 2013 and that he “assumed his duties on 27 March 2013.”¹⁶ Libya assured the Court that the new Prosecutor General “is now in a position to pursue his responsibilities with the full mandate entrusted to him” and that the appointment “will have significant implications on further cooperation with the Court as well as the process of the case.”¹⁷ On 2 April 2013, Libya submitted to the Court that “[n]ow that the new Prosecutor-General, Mr Radwan, is in office, this issue [of the MOU] will be addressed as a matter of priority.”¹⁸

15. However, it has now been four months since the Prosecutor-General’s appointment and the MOU has still not been finalised and signed. Despite countless attempts by the Registry to get the Libyan authorities to respond to the draft MOU that was provided to them in March 2012, the first time Libya sent any comments to the Registry on the draft was 19 April 2013 - over one year later. The Registry replied to these comments on 18 June 2013, but has since then despite numerous requests had no response from Libya or any indication when a response will be received, let alone when the agreement could be finalised so that a legal visit could be arranged.

16. Libya has added more and more requirements and conditions for any visit to be permitted, including that:

- the Defence team be accompanied by a Libyan lawyer (not a member of the Defence team) during any visit to Mr. Al-Senussi, which would make it impossible to conduct a confidential and privileged consultation, as ordered by the Chamber¹⁹;

¹⁶ Notification by Libyan Government supplemental to its consolidated reply to the responses of the Prosecution, OPCD, and OPCV to its further submissions on issues related to the admissibility of the case against Saif Al-Islam Gaddafi, ICC-01/11-01/11-306, 28 March 2013, para. 3.

¹⁷ Notification by Libyan Government supplemental to its consolidated reply to the responses of the Prosecution, OPCD, and OPCV to its further submissions on issues related to the admissibility of the case against Saif Al-Islam Gaddafi, ICC-01/11-01/11-306, 28 March 2013, para. 4.

¹⁸ Admiss Challenge, para. 179.

¹⁹ First Report of the Registry on the visit of the defence team of Abdullah Al-Senussi to Libya, ICC-01/11-011/-11-Conf-Exp, 6 March 2013, para. 7.

- Defence Counsel be subject to Libyan domestic law during any visit, and hence not enjoy the immunities that would be provided for in the MOU²⁰;
- the Registry submit another note verbale to the Libyan authorities to request a legal visit²¹;
- proof of Counsel's power of attorney be submitted to the Libyan authorities²²; and
- as noted below, authorisation must be obtained from the Libyan immigration authorities for the Libyan consulates to accept and process the Defence team's visa applications.²³

17. These added requirements have only served to delay any arrangements and for certain conditions, make any visit impossible, such as the requirements that Defence Counsel be subject to local Libyan law and that a Libyan lawyer should be present during any visit. None of these requirements were mentioned by the Libyan authorities when potential dates for a visit were discussed with the Registry in March 2013 (as detailed in Annex 1). They have all arisen for the first time since then as a means of effectively blocking any visit.

18. Furthermore, the Libyan authorities have taken no steps to arrange visas for travel to Libya. As detailed in Annex 1, efforts by the Defence and Registry to obtain the necessary visas for travel to Libya have also been blocked by Libya. As reported to the Chamber on 19 March 2013, the Defence and the Registry were informed by Libya that the Registry's note verbales requesting Libya to cooperate with the ICC to issue visas were insufficient. Libya stated that the Libyan consulates in London, Paris and The Hague would only accept and process the visa applications once the Libyan immigration authorities had given instructions to facilitate such a request. A request

²⁰ Second report of the Registry on the visit of the defence team to Libya, ICC-01/11-01/11-328, 3 May 2013, para. 5.

²¹ First Report of the Registry on the visit of the defence team of Abdullah Al-Senussi to Libya, ICC-01/11-011/-11-Conf-Exp, 6 March 2013, para. 7.

²² First Report of the Registry on the visit of the defence team of Abdullah Al-Senussi to Libya, ICC-01/11-011/-11-Conf-Exp, 6 March 2013, para. 7; Second report of the Registry on the visit of the defence team to Libya, ICC-01/11-01/11-328, 3 May 2013, para. 5.

²³ ICC-01/11-01/11-304-Conf-Exp-Anx3; Second report of the Registry on the visit of the defence team to Libya, ICC-01/11-01/11-328, 3 May 2013, para. 2.

was submitted to the Libyan authorities in early March for the Libyan consulates to accept the Defence team's visa applications. However, to date, no response to this request has been received, and no approval has been given by the Libyan immigration authorities. As a result, the Defence is unable even to submit visa applications. It reveals the misleading character of Libya's statement of 19 April 2013 that the "Libyan Government invite[s] the defence team for Mr. Al -Senussi to visit Libya forthwith at any time convenient for them" but that they "will of course need to apply for the requisite visas for entry to Libya."²⁴ Libya has relied on this statement as 'proof' of its commitment to facilitate a visit in its previous submissions before the Chamber.²⁵

19. It should be noted that Libya has refused visas for the lawyers of the former Prime Minister, Baghdadi Al-Mahmoudi, who have been unable to travel to Libya to defend him or get access to his case file despite all of their requests and efforts.²⁶

20. As a result of Libya's failure to arrange these matters to facilitate a visit to Mr. Al-Senussi, it has been impossible to set any date for a visit and to make plans accordingly. The Defence had gone so far as making provisional flight bookings for travel to Libya in early March, before being informed by Libya that travel for these dates would no longer be possible.²⁷ Since then it has not been possible even to consider particular dates for any visit as the Libyan authorities have failed to agree the MOU, to provide the necessary authorisations for visas, and to put in place any of the arrangements required for a visit to take place. The Defence submits that the Chamber should therefore find that Libya has failed to co-operate with the ICC in that it has not organised any legal visit.

²⁴ Second report of the Registry on the visit of the defence team to Libya, ICC-01/11-01/11-328, 3 May 2013, para. 5.

²⁵ Response to "Application on behalf of Abdullah Al-Senussi for leave to reply to the "Response of the Libyan Government to the "Renewed Application on behalf of Mr. Abdullah Al-Senussi to Refer Libya and Mauritania to the UN Security Council with Public Annex 1 and Confidential and Ex Parte (Registry only) Annexes 2 and 3"" of 10 April 2013", ICC-01/11-01/11-314, 23 April 2013, para. 6(ii).

²⁶ Trial of Baghdadi Mahmudi raises fears of 'revenge' justice in Libya, middle east online, 6 August 2013 (<http://www.middle-east-online.com/english/?id=60599>).

²⁷ ICC-01/11-01/11-304-Conf-Exp-Anx2, paras. 13, 14 18.

Libya should be referred to the Security Council

21. The Defence submits that Libya's non-cooperation, as detailed above and in Annex 1, should be referred to the Security Council. Libya's failure to arrange a legal visit undermines Mr. Al-Senussi's fundamental right to effective legal representation as enshrined in Article 67(1)(d) and Article 55(2)(c) of the Statute. It must be taken into account that Mr. Al-Senussi has been without any legal representation and assistance since being detained in Libya in September 2012 while proceedings have been underway before the ICC. In this way Libya's non-compliance prevents the Court from exercising its functions and powers under the Statute as entrusted to it by the Security Council.²⁸

22. The Chamber has held that "the order to Libya to 'cooperate fully' with the Court contained in the Security Council Resolution 1970 (2011)"²⁹ means that the "Libyan authorities [...] are required to work within the cooperation framework provided by the Statute"³⁰ and "the entire legal framework of the Statute applies equally to situations referred by the Security Council."³¹ The Defence submits that Libya is thus obliged to ensure that Mr. Al-Senussi's rights under the Statute are given effect. Libya's failure to afford Mr. Al-Senussi his rights to legal representation and to consult with his Counsel can only be viewed as impeding the functions and powers of the Court to execute its mandate under the Security Council Resolution.³² Libya is obliged to cooperate fully with the Chamber's Orders and any hindrance in implementing these Orders prevents the Court from "conduct[ing] the proceedings efficiently and expeditiously."³³

23. During the entire period of Counsel's appointment and during all of the admissibility proceedings before the Court to date, Mr. Al-Senussi has had no access to his

²⁸ Harun Kushayb Decision of 25 May 2010, p. 6.

²⁹ Decision on 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-01/11-01/11-269, 6 February 2013, para. 21.

³⁰ Decision on 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-01/11-01/11-269, 6 February 2013, para. 21 citing ICC-01/11-01/11-72, para. 12.

³¹ Decision on 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-01/11-01/11-269, 6 February 2013, para. 21.

³² Harun Kushayb Decision of 25 May 2010, p. 6.

³³ 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, 4 May 2013, para. 13.

appointed Counsel, no ability to give instructions or be properly informed of the submissions made against him and no ability to benefit from the rights and protections that are provided for in the Statute.

24. The Defence submits that the need for an immediate visit has become even more critical in light of Libya's announcement on 17 June 2013 that Mr. Al-Senussi will be tried in Libya for "crimes that were committed against the Libyan people during the Revolution" ... "in the first half of August."³⁴ According to this announcement, Mr. Al-Senussi's trial for charges carrying the death penalty is due to commence in the next few days, and yet he has not been permitted even to meet with his lawyers.

25. It is of the utmost concern that a Libyan court has recently imposed the death sentence on a former minister of the Gaddafi regime facing similar charges as Mr. Al-Senussi.³⁵ A leading human rights organisation, Amnesty International, has just released a report indicating that former Gaddafi loyalists "are at increased risk of the death penalty" as justice turns into "revenge" and that "[s]erious concerns about access to fair trials in Libya remain due to the precarious security situation."³⁶ A recent Human Rights Watch report documenting political assassinations in Libya, also noted the "Government's failure to build a functioning judicial system" and that law enforcement "faced many obstacles due to the prevailing security situation, and lacked the means to summon witnesses without the use of force", stating that witnesses "are scared and often do not show up if they've been summoned."³⁷

³⁴ICC-01/11-01/11-380-Anx1

(<http://www.google.com/hostednews/afp/article/ALeqM5hf0VWzFZ0xmEaVROYan6arfqRKYw?docId=CNG.804f72867c9bda4f148b64bf4c290b6e.461>); Gaddafi's son to stand trial in August, *gulfnews.com*, 17 June 2013 (<http://gulfnews.com/news/region/libya/gaddafi-s-son-to-stand-trial-in-august-1.1198551>); Gadhafi's son to stand trial in August, Libya prosecutor says, *The Daily Star*, 18 June 2013 (<http://www.dailystar.com.lb/News/Middle-East/2013/Jun-18/220703-gadhafis-son-to-stand-trial-in-august-libya-prosecutor-says.ashx#axzz2WgDly4I7>); Libya to try Seif al-Islam Gaddafi in August, *Alarab Online*, 17 June 2013 (<http://www.alarab.co.uk/english/display.asp?fname=%5C2013%5C06%5C06-17%5Czalsoz%5C923.htm&dismode=x&ts=6/17/2013%205:34:49%20PM>); Libya acquits Gaddafi aides in Lockerbie case, *Oman Tribune* (<http://www.omantribune.com/index.php?page=news&id=146566&heading=Other%20Top%20Stories>); Gaddafi's son to stand trial in August, *BBC*, 19 June 2013 (<http://www.bbc.co.uk/news/world-africa-22945159>); Gaddafi officials acquitted but stay behind bars, *Times Live*, 17 June 2013 (<http://www.timeslive.co.za/africa/2013/06/17/gaddafi-officials-acquitted-but-stay-behind-bars>).

³⁵ Gaddafi minister sentenced to death, *BBC*, 31 July 2013 (<http://www.bbc.co.uk/news/world-africa-23524134>); Misrata court hands out death sentences, *Libya Herald*, 6 June 2013 (<http://www.libyaherald.com/2013/06/06/misrata-court-hands-out-death-sentences/>).

³⁶ Libya: al-Gaddafi loyalists at risk of 'revenge' death sentences, *Amnesty International*, 2 April 2013 (<http://www.amnesty.org/en/news/libya-al-gaddafi-loyalists-risk-revenge-death-sentences-2013-08-02>).

³⁷ Libya: Wave of Political Assassinations, *HRW*, 8 August 2013 (<http://www.hrw.org/news/2013/08/08/libya-wave-political-assassinations>).

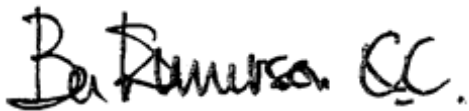
26. With proceedings in Libya due to commence against Mr. Al-Senussi in the coming days, the Defence submits that it is vital that the Pre-Trial Chamber take the measures “necessary to ensure compliance on the part of Libya with the Chamber’s order.”³⁸ It is clear that absent a finding of non-compliance by the Pre-Trial Chamber and a referral to the Security Council, there will be no compulsion for Libya to facilitate any legal visit and Libya will continue to maintain that it is ‘cooperating’ with the Court while taking no meaningful steps that would in fact permit a visit to take place.

Conclusion

27. For all of these reasons, the Defence for Mr. Al-Senussi respectfully requests that the Chamber find pursuant to Articles 87(5) and 87(7) of the Rome Statute and in accordance the Chamber’s “inherent power” that:

- Libya is in non-compliance with the Chamber’s Order of 6 February 2013 to arrange “a visit of the appointed counsel for Mr Al-Senussi to his client on a privileged basis as soon as practicable;”³⁹ and
- Libya should be referred to the United Nations’ Security Council for immediate action to be taken to enforce the ICC’s Order.

Counsel on behalf of Mr. Abdullah Al-Senussi,



Ben Emmerson QC

³⁸ Decision on Libya’s postponement of the execution of the request for arrest and surrender of Abdullah Al-Senussi pursuant to article 95 of the Rome Statute and related Defence request to refer Libya to the UN Security Council, ICC-01/11-01/11-354, 14 June 2013, para. 45.

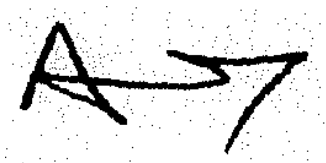
³⁹ Decision on the ‘Urgent Application on behalf of Abdullah Al-Senussi for Pre-Trial Chamber to order the Libyan Authorities to comply with their obligations and the orders of the ICC’, ICC-01/11-01/11-269, 6 February 2013, para. 40.

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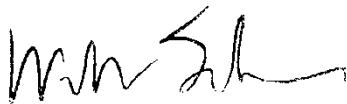
Rodney Dixon

A handwritten signature in black ink, clearly legible as 'Amal Alamuddin'.

Amal Alamuddin

A handwritten signature in black ink, consisting of a stylized 'A' followed by a horizontal line and a diagonal stroke.

Anthony Kelly

A handwritten signature in black ink, appearing to read 'Wm Schabas'.

Professor William Schabas

Dated 9th August 2013
London, United Kingdom