

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/11-01/11
Date: 19 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

**Decision on additional submissions in the proceedings related to Libya's
challenge to the admissibility of the case against Abdullah Al-Senussi**

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

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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**

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States Representatives

Ahmed El-Gehani

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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 additional submissions in the proceedings related to Libya’s challenge to the admissibility of the case against Abdullah Al-Senussi (“Mr Al-Senussi”).

1. On 27 June 2011, the Chamber issued a warrant of arrest against Abdullah Al-Senussi.¹
2. On 4 July 2011, the Registrar transmitted the “Request to the Libyan Arab Jamahiriya for the arrest and surrender of Muammar Mohammed Abu Minyar GADDAFI, Saif Al-Islam GADDAFI and Abdullah AL-SENUSSI”, requesting Libya to arrest and surrender to the Court, *inter alia*, Mr Al-Senussi (the “Surrender Request”).²
3. 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”).³
4. On 24 April 2013, the Prosecutor filed 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”.⁴
5. On 14 June 2013, the Prosecutor, with the Chamber’s authorisation,⁵ submitted additional observations on the Admissibility Challenge,⁶ and the

¹ Pre-Trial Chamber I, Warrant of Arrest for Abdullah Al-Senussi, 27 June 2011, ICC-01/11-01/11-4.

² ICC-01/11-01/11-5.

³ ICC-01/11-01/11-307-Conf-Exp and annexes. A public redacted version is also available, see ICC-01/11-01/11-307-Red2.

⁴ ICC-01/11-01/11-321-Conf.

⁵ 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.

⁶ ICC-01/11-01/11-355.

Defence of Mr Al-Senussi⁷ and the Office of Public Counsel for Victims⁸ filed their observations on the Admissibility Challenge.

6. On 14 June 2013, the Chamber issued the “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”,⁹ whereby it, *inter alia*, “decide[d] that Libya, pursuant to article 95 of the Statute, may postpone the execution of the Surrender Request pending determination of the Admissibility Challenge”.¹⁰

7. On 10 July 2013, the Defence of Mr Al-Senussi filed the “Defence Application on behalf of Mr. Abdullah Al-Senussi concerning Libya’s Announcement of Trial Date in August 2013” (the “Request”).¹¹

8. On 5 August 2013, Libya filed the “Libyan Government’s Response to ‘Defence Application on behalf of Mr. Abdullah Al-Senussi concerning Libya’s Announcement of Trial Date in August 2013’”.¹²

9. On 9 August 2013, the Defence filed the “Defence Application on behalf of Abdullah Al-Senussi for Leave to Reply to the ‘Libyan Government’s Response to ‘Defence Application on behalf of Mr. Abdullah Al-Senussi concerning Libya’s Announcement of Trial Date in August 2013’ and Defence Request for this Application and the Defence Application of 10 July 2013 to be decided on an urgent basis”.¹³

⁷ ICC-01/11-01/11-356.

⁸ ICC-01/11-01/11-353-Conf. A public redacted version is also available (ICC-01/11-01/11-353-Red).

⁹ ICC-01/11-01/11-354.

¹⁰ *Ibid.*, p. 20.

¹¹ ICC-01/11-01/11-380.

¹² ICC-01/11-01/11-395.

¹³ ICC-01/11-01/11-398.

10. On 14 August 2013, Libya, with the Chamber's leave,¹⁴ filed its consolidated reply to the responses to the Admissibility Challenge.¹⁵

11. On 16 August 2013, Libya filed the "Response to 'Defence Application on behalf of Abdullah Al-Senussi for Leave to Reply to the 'Libyan Government's Response to 'Defence Application on behalf of Mr. Abdullah Al-Senussi concerning Libya's Announcement of Trial Date in August 2013'" and Defence Request for this Application and the Defence Application of 10 July 2013 to be decided on an urgent basis".¹⁶

12. The Chamber notes article 19 of the Rome Statute (the "Statute"), rule 58 of the Rules of Procedure and Evidence (the "Rules") and regulations 24 and 35 of the Regulations of the Court.

13. The Defence of Mr Al-Senussi submits that, according to the announcement of the Libyan prosecutor's office, it appears that the domestic trial proceedings against Mr Al-Senussi are due to commence shortly.¹⁷ According to the Defence, this information "directly impinges on the present admissibility proceedings before the ICC".¹⁸ On this basis, the Defence submits that "[i]t is important for the present admissibility proceedings for Libya to inform the ICC of any timetable that has been set for the national proceedings and to explain the nature of the proceedings (trial or pre-trial) that are scheduled for the first half of August".¹⁹ The Defence, accordingly, requests the Chamber to order Libya to clarify these matters.²⁰ Libya does not oppose this request and seeks that the Chamber "[g]rant [it] 6 weeks from [5

¹⁴ Pre-Trial Chamber I, Decision on Libya's request for leave to file a consolidated reply, ICC-01/11-01/11-382.

¹⁵ ICC-01/11-01/11-403-Conf-Exp. Libya also filed a confidential redacted version (ICC-01/11-01/11-403-Conf-Red) and a public redacted version (ICC-01/11-01/11-403-Red2).

¹⁶ ICC-01/11-01/11-406.

¹⁷ ICC-01/11-01/11-380, para. 1.

¹⁸ *Ibid.*, para. 6.

¹⁹ *Ibid.*, para. 12.

²⁰ *Ibid.*, paras 13 and 24.

August 2013] to provide information clarifying the reported impending trial date of Mr. Al-Senussi".²¹

14. The Chamber agrees with the Defence that the provision of detailed information regarding any impending trial of Mr Al-Senussi is crucial for the disposal of the Admissibility Challenge. The request of the Defence of Mr Al-Senussi is therefore well-founded. Accordingly, Libya is requested to provide the Chamber with any relevant information in relation to the domestic proceedings against Mr Al-Senussi, including the timetable and nature of any such proceedings.

15. Further, the Defence requests authorisation to provide the Chamber with information and submissions about a number of recent developments in Libya. More specifically, the Defence submits that "[i]t is imperative that evidence of Libya conducting unduly expeditious trials of high-profile former Gaddafi officials in which the death penalty is now being imposed, is placed before the Chamber".²² Furthermore, the Defence asserts that "[t]he Chamber should also be informed of the findings about the inability of the Libyan judicial system to function in the face of regular threats to lawyers, judges and prosecutors, and the attacks on state institutions including prisons".²³ The Chamber notes that the Defence requests authorisation to provide these submissions as part of a reply to Libya's response to its original request. The Chamber does not consider that said further submissions are necessary to dispose of the Request. Nevertheless, the Chamber is of the view that the prospective submissions of the Defence of Mr Al-Senussi may be relevant in the context of the Chamber's disposal of the Admissibility Challenge. The Defence is therefore authorised to advance these submissions. In this regard,

²¹ ICC-01/11-01/11-395, para. 11(c).

²² ICC-01/11-01/11-398, para. 10.

²³ *Ibid.*, para. 12.

the Chamber observes that the Defence declares itself prepared to provide its submissions “immediately”.²⁴

16. The Chamber further observes that in its reply to the responses to the Admissibility Challenge, Libya requests additional time to complement its submissions. Libya submits that “in the last three months, the security situation has significantly deteriorated in Benghazi”²⁵ and “[a]s a direct consequence of the new and urgent priorities arising from the recent situation in Benghazi, the time available to the Libyan Prosecutor-General to devote to the provision of further instructions for the purposes of this Reply was necessarily limited”.²⁶ According to Libya, “it is likely that further information concerning the development of the domestic proceedings will become known in the coming weeks once the situation in Benghazi has settled down”.²⁷ Accordingly, “Libya requests a limited further opportunity to put in additional submissions by Monday 16th September 2013 in order to provide the Chamber with updated material in support of the issues contained in this Reply”.²⁸

17. The Chamber considers that the widely reported ongoing security situation in Libya, in particular within a post-conflict transitional context, may, in the circumstances of the present case, justify the granting of limited additional time to provide the Chamber with a full and detailed update on the nature, content and development of the alleged domestic proceedings against Mr Al-Senussi. Libya is therefore authorised to complement its reply to the responses to the Admissibility Challenge.

²⁴ *Ibid.*, para. 3.

²⁵ ICC-01/11-01/11-403-Red2, para. 3.

²⁶ *Ibid.*, para. 4.

²⁷ *Id.*

²⁸ *Id.*

18. In sum, the Chamber considers it is appropriate to: (i) authorise the Defence of Mr Al-Senussi to provide submissions on factual developments in Libya having a direct bearing on the disposal of the Admissibility Challenge; (ii) request Libya to provide the Chamber with any relevant information in relation to the domestic proceedings against Mr Al-Senussi, including the timetable of any such proceedings and the nature of said proceedings; (iii) authorise Libya to complement its reply to Responses to the Admissibility Challenge.

19. In addition, the Chamber deems it necessary to set time limits for the submissions by the Defence of Mr Al-Senussi and Libya. The Chamber notes the Defence request that the matter be examined with particular urgency because of the imminent commencement of trial proceedings against Mr Al-Senussi,²⁹ and the counter-submission of Libya that it “has made clear on many occasions that the trial of Mr. Al-Senussi cannot commence until an Accusation Chamber has approved the case” and, therefore, that “in circumstances where [Mr Al-Senussi’s] case has not yet been referred to an Accusation Chamber, there is plainly no need for urgency”.³⁰ The Chamber is thus of the view that the following time limits are appropriate: 26 August 2013 for the additional submissions of the Defence of Mr Al-Senussi, and 16 September 2013 for Libya’s consolidated additional submissions pursuant to the present decision. The Chamber clarifies that in the same filing, Libya may also reply to the Defence additional submissions.

20. Finally, the Chamber notes that the Defence of Mr Al-Senussi also requests the Chamber to order Libya to provide an undertaking confirming: a) “[t]hat Libya accepts that the Chamber’s Decision of 14 June 2013 concerning the postponement of the surrender order against Mr. Al-Senussi

²⁹ ICC-01/11-01/11-398, paras 3, 10 and 16.

³⁰ ICC-01/11-01/11-406, para. 8.

does not provide 'the green light for Libya to try Al-Senussi and keep him on its territories in order to try him', and that Libya will not make any further statements to this effect as the surrender order has only been temporarily postponed pending the outcome of the admissibility proceedings before the ICC"; and b) "[t]hat Libya accepts that the national proceedings against Mr. Al-Senussi are entirely dependent on the outcome of the admissibility proceedings before the ICC and that accordingly Libya undertakes (i) to surrender immediately Mr. Al-Senussi to the ICC in the event that his case is declared admissible before the ICC, irrespective of the stage reached in the national proceedings, and (ii) not to commence the trial of Mr. Al-Senussi in Libya until the admissibility proceedings are finally determined by the ICC".³¹

21. Libya observes that the Defence request is made pursuant to rule 58(2) of the Rules and article 93 of the Statute, and submits that "[h]owever, [the Defence] fails to substantiate how either of those provisions gives rise to any legal basis for the Court to order an undertaking from a Government, either affirming obligations to which it is already subject or making specific statements regarding the conduct of domestic criminal proceedings. This is because no such basis exists".³²

22. The Chamber is of the view that an undertaking of the kind requested by the Defence is unnecessary as it is not disputed that the postponement of the surrender request for Mr Al-Senussi is only temporary pending consideration of the Admissibility Challenge, that the warrant of arrest issued against Mr Al-Senussi remains valid and that the ultimate determination of the Admissibility Challenge rests with the Chamber.³³ Accordingly, Libya will be

³¹ ICC-01/11-01/11-380, para. 24.

³² ICC-01/11-01/11-395, para. 5.

³³ See Pre-Trial Chamber I, 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

under the duty to surrender Mr Al-Senussi to the Court, should the Admissibility Challenge fail. As far as the commencement or continuation of the national proceedings against Mr Al-Senussi is concerned, the Chamber recalls again that during the postponement of the surrender request “Libya must refrain from taking any action which could frustrate or hinder a prompt execution of the Surrender Request should the case be found admissible, and must take all the positive measures that are necessary to this effect”.³⁴ More specifically, the Chamber recalls its previous holding that “Libya must ensure that its ongoing criminal proceedings do not hinder or delay Mr Al-Senussi’s surrender to the Court should the case eventually be declared admissible”.³⁵

23. These obligations, recalled by the Chamber on several occasions, clearly arise from the relevant resolution of the Security Council and the Statute of the Court, and have not been objected to by Libya. The Defence request to order Libya to provide an undertaking of the kind specified by the Defence is therefore rejected.

FOR THESE REASONS, THE CHAMBER

AUTHORISES the Defence of Mr Al-Senussi to file further submissions relevant to the disposal of the Admissibility Challenge, as specified at paragraph 15 of this decision, by Monday, 26 August 2013;

REQUESTS Libya to provide any relevant information in relation to the domestic proceedings against Mr Al-Senussi, including the timetable and nature of any such proceedings, by Monday, 16 September 2013;

and related Defence request to refer Libya to the UN Security Council, ICC-01/11-01/11-354, para. 40.

³⁴ *Id.*

³⁵ *Ibid.*, para. 36.

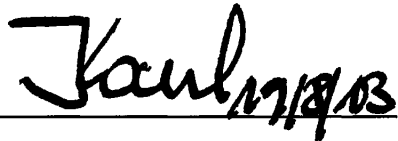
AUTHORISES Libya to complement its reply to the responses to the Admissibility Challenge, and to reply to the additional submissions of the Defence of Mr Al-Senussi, in the same filing due by Monday, 16 September 2013; and

REJECTS the request of the Defence of Mr Al-Senussi to order Libya to provide an undertaking in respect of its obligations to the Court.

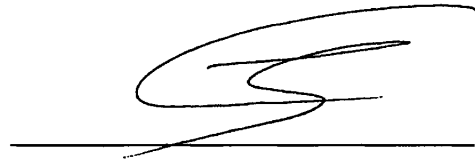
Done in both English and French, the English version being authoritative.



Judge Silvia Fernández de Gurmendi
Presiding Judge



Judge Hans-Peter Kaul



Judge Christine Van den Wyngaert

Dated this 19 August 2013

At The Hague, The Netherlands