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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

Filing on behalf of Mr. Abdullah Al-Senussi pursuant to “Decision on additional submissions in the proceedings related to Libya’s challenge to the admissibility of the case against Abdullah Al-Senussi” of 19 August 2013

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

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Introduction

1. The Defence for Mr. Abdullah Al-Senussi makes this filing pursuant to the Pre-Trial Chamber's "Decision on additional submissions in the proceedings related to Libya's challenge to the admissibility of the case against Abdullah Al-Senussi"¹ of 19 August 2013. By this Decision the Defence has been permitted "to file further submissions relevant to the disposal of the Admissibility Challenge"² including in respect of recent developments about "Libya conducting unduly expeditious trials of high-profile former Gaddafi officials" and "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."³
2. Accordingly, the Defence has set out below the information and submissions in relation to recent developments in Libya that are relevant to the admissibility proceedings. The Defence respectfully requests the Chamber to take these further materials and submissions into consideration in the admissibility proceedings. The Defence submits that they all lend further support to its submission that the Libyan judicial system is unable and unwilling to try Mr. Al-Senussi in Libya and that he should be immediately surrendered to the ICC for trial.

Submissions

3. Libya has submitted in its Reply of 14 August 2013 that the insecurity and lack of Governmental control in Libya "are only relevant to the complementarity assessment to the extent that they actually bear upon the domestic proceedings relating to Mr. Al-Senussi"⁴. Libya assert that "the Defence and the OPCV make generalised statements about the security situation and the purported influence of militia groups over the

¹ Decision on additional submissions in the proceedings related to Libya's challenge to the admissibility of the case against Abdullah Al-Senussi, ICC-01/11-01/11-409, 19 August 2013.

² Decision on additional submissions in the proceedings related to Libya's challenge to the admissibility of the case against Abdullah Al-Senussi, ICC-01/11-01/11-409, 19 August 2013. p. 10.

³ Decision on additional submissions in the proceedings related to Libya's challenge to the admissibility of the case against Abdullah Al-Senussi, ICC-01/11-01/11-409, 19 August 2013, para. 15.

⁴ Libyan Government's consolidated Reply to the Responses by the Prosecution, Defence and OPCV to the Libyan Government's Application relating to Abdullah Al-Senussi pursuant to Article 19 of the ICC Statute, ICC-01/11-01/11-403-Red2, 14 August 2013, para. 124.

Government without specific regard to how the purported lack of control has impacted in relevant respects upon the investigation of the case against Mr. Al-Senussi.”⁵

4. The Defence submits that all of the information concerning violence and the growing security problems in Libya, as set out in the Defence Response of 14 June 2013⁶ and below, directly impact on the ability of Libya’s judicial system to function properly and fairly in respect of Mr. Al-Senussi’s case. They all contribute to rendering Libya’s judicial system unable to investigate and prosecute genuinely any case against Mr. Al-Senussi in Libya. Much of the evidence does relate specifically to Mr. Al-Senussi including the materials concerning the Al-Hadba prison in which he is detained. The Defence submits that all of the evidence should be evaluated as demonstrating that the Chamber should reach the same conclusion as that in Mr. Saif Gaddafi’s case, who is co-accused with Mr. Al-Senussi - that Libya is unable to investigate and try Mr. Al-Senussi in Libya.
5. Moreover, Libya has not taken any steps to address the Chamber’s finding that the Libyan justice system is unavailable due to the lack of proper witness protection programs, the inability to implement such programs and being unable to obtain witnesses.⁷ For these same reasons, the Defence submits that the Chamber should find that Libya is unable to investigate and prosecute Mr. Al-Senussi and should accordingly declare his case to be admissible before the ICC.

Attacks on Judges, prosecutors, lawyers, the police, and prison officials

6. In the Defence Response of 14 June 2013, it was submitted that “[s]ecurity concerns in relation to judicial proceedings as a whole ... are very prominent”⁸ and that as a result of these “substantial legal and institutional impediments that currently exist in Libya, ... the national judicial system must be considered to be in a state of substantial

⁵ Libyan Government’s consolidated Reply to the Responses by the Prosecution, Defence and OPCV to the Libyan Government’s Application relating to Abdullah Al-Senussi pursuant to Article 19 of the ICC Statute, ICC-01/11-01/11-403-Red2, 14 August 2013, para. 123.

⁶ Defence Response on behalf of Mr. Abdullah Al-Senussi to “Application on behalf of the Government of Libya relating to Abdullah Al-Senussi pursuant to Article 19 of the ICC Statute”, ICC-01/11-01/11-356, 14 June 2013, paras. 157-162 (hereinafter “Defence Response of 14 June 2013”).

⁷ Decision on the admissibility of the case against Saif Al-Islam Gaddafi, ICC-01/11-01/11-344-Red, 31 May 2013, paras. 209-211. (See para. 8 below about calling witnesses).

⁸ Defence Response of 14 June 2013, para. 72.

collapse and/or currently unavailable for the purpose of the case against Mr. Al-Senussi.”⁹ Recent developments in Libya only further re-enforce this submission.

7. On 8 August 2013, Human Rights Watch released a report which documented recent assassinations of persons in police and security structures and the killing of judges in Libya. The report states that “What started as assassinations of members of the police, internal security apparatus, and military intelligence has been further aggravated by the killing of judges and a political activist.”¹⁰
8. The report concludes that Libya’s “failure to hold anyone accountable highlights the government’s failure to build a functioning justice system.”¹¹ The report notes that the Libyan law enforcement authorities accept their inability to investigate these assassinations and admit that they face “many obstacles due to the prevailing security situation” and lack “the means to summon witnesses without the use of force.”¹² The report indicates that the authorities’ inability to call witnesses is due to the fact that witnesses “are scared and often do not show up if they’ve been summoned.”¹³ All of these problems would arise in Mr. Al-Senussi’s case.
9. Further evidence of these same problems is contained in the reports of the assassination on 25 June 2013 of the head of Al-Ruiymi prison in Ain Zara.¹⁴ (Also see the section below on the lack of control over prisons.)
10. Amnesty International’s recent report of 2 August 2013 covers other incidents of threats to judges, prosecutors and those defending Gaddafi loyalists like Mr. Al-Senussi. It states that “[s]erious concerns about access to fair trials in Libya remain due to the precarious security situation.”¹⁵

⁹ Defence Response of 14 June 2013, para. 73.

¹⁰ Libya: Wave of Political Assassinations, HRW, 8 August 2013 (<http://www.hrw.org/news/2013/08/08/libya-wave-political-assassinations>).

¹¹ Libya: Wave of Political Assassinations, HRW, 8 August 2013 (<http://www.hrw.org/news/2013/08/08/libya-wave-political-assassinations>).

¹² Libya: Wave of Political Assassinations, HRW, 8 August 2013 (<http://www.hrw.org/news/2013/08/08/libya-wave-political-assassinations>).

¹³ Libya: Wave of Political Assassinations, HRW, 8 August 2013 (<http://www.hrw.org/news/2013/08/08/libya-wave-political-assassinations>).

¹⁴ Prison Chief murdered in Tripoli, Libya Herald, 25 June 2013 (<http://www.libyaherald.com/2013/06/25/prison-chief-killed-in-tripoli/>).

¹⁵ 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>).

11. The report notes that “[s]tate institutions, including courts, have been attacked. Lawyers, judges and prosecutors continue to be threatened regularly. In some cases, those representing individuals accused of being Gaddafi supporters have been abducted or subjected to physical harm.”¹⁶ The report concludes that “It is doubtful that Libya’s judicial system can be truly independent and impartial under such circumstances.”¹⁷
12. Several attacks on the Judicial Police have also undermined the judicial system. After an attack on the Judicial Police in Tripoli resulted in the escape of 18 prisoners on 1 August 2013, it was reported that the increased number of attacks on the Judicial Police has caused “growing discontent” and a “reluctan[ce] to accompany inmates to the public prosecution offices or courts for fear of being attacked.” Earlier attacks on the Judicial Police in Tripoli had been reported in April 2013.¹⁸ Judicial Department spokesman, Lieutenant Ahmed Abu-Karaa, stated that the Government had failed to deliver its promise of providing training, “surveillance cameras, armoured vehicles, light weapons and other equipment” to support the Judicial Police; noting that the Government had only made the promises of support “for the benefit of the TV camera.”¹⁹
13. On 23 August 2013 a senior criminal investigator, Col. Mostafa Oukeila, was killed by gunmen in Benghazi. This area is allegedly the focus of Libya’s investigation against Mr. Al-Senussi for crimes allegedly committed in Benghazi. It is reported that “Benghazi has been hit by a wave of targeted killings in recent days. Victims have included political activists, judges and members of security agencies.”²⁰
14. In addition, the Defence highlights statements made to the UN Security Council by the Deputy Permanent Representative of the Russian Federation to the United Nations concerning the unavailability of the Libya’s judicial system to try Mr. Al-Senussi. On 8 May 2013, it was noted that “violence in Libya unfortunately continues

¹⁶ 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>).

¹⁷ 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>).

¹⁸ Gunmen kill prisoner in jail transfer ambush, Libya Herald, 18 April 2013 (<http://www.libyaherald.com/2013/04/18/gunmen-kill-prisoner-in-jail-transfer-ambush/>).

¹⁹ Prisoners escape in Tripoli, Libyan Herald, 3 August 2013 (<http://www.libyaherald.com/2013/08/03/prisoners-escape-in-tripoli/>).

²⁰ Gunmen Kill Senior Criminal Investigator in Libya, ABCNews, 23 August 2013 (<http://abcnews.go.com/International/wireStory/gunmen-kill-senior-criminal-investigator-libya-20048235>).

in today's post-conflict situation against a backdrop of problems with the functioning of the State apparatus and the central Government's control over the country as a whole.”²¹ The Russian mission to the United Nations therefore stated that “In our view, the impact of the crisis in Libya is a serious obstacle to justice being effectively served. Reports from various sources, including civil society bodies, give cause for concern that there are gaping holes in the Libyan legal system. Some of those are a legacy from the past, while others are the direct consequence of recent events. We therefore highly doubt that, at this time, conditions in Libya are eminently conducive to conducting fair legal proceedings in line with international standards with respect to Saif Al-Islam Al-Qadhafi and Abdullah Al-Senussi.”²²

Imposition of the death penalty

15. As submitted in the Defence Response,²³ the Chamber has noted Libya's statement “that the availability of the death penalty does not mean that it will be applied.”²⁴

16. The Defence submits that recent developments demonstrate that Libya has in fact started to impose the death penalty against former senior officials of the Gaddafi regime. In response to these sentences, reports have warned that former Gaddafi officials, like Mr. Al-Senussi, are at an increased risk of receiving the death penalty in sham trials motivated by revenge.

17. On 31 July 2013, a Misrata Court sentenced the former Minister of Education, Ahmed Ibrahim, to death on charges similar to those alleged by Libya against Mr. Al-Senussi.²⁵ This followed the sentencing to death of three other accused.²⁶

18. In response to the death sentence being imposed on Ahmed Ibrahim, Amnesty International released a report on 2 August 2013 stating that former supporters of Muammar Gaddafi are “at increased risk of the death penalty ... in the coming

²¹ UN Security Council 6962nd Meeting, S/PV. 6962, 8 May 2013, New York, p. 5, 6.

²² UN Security Council 6962nd Meeting, S/PV. 6962, 8 May 2013, New York, p. 6.

²³ Defence Response of 14 June 2013, paras. 157-162.

²⁴ Decision on the admissibility of the case against Saif Al-Islam Gaddafi, ICC-01/11-01/11-344-Red, 31 May 2013, para. 196, Citing, Libyan Government's 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-01/11-01/11-293-Conf, 4 March 2013, para. 96.

²⁵ Gaddafi minister sentenced to death, BBC, 31 July 2013 (<http://www.bbc.co.uk/news/world-africa-23524134>).

²⁶ Misrata court hands out death sentences, Libya Herald, 6 June 2013 (<http://www.libyaherald.com/2013/06/06/misrata-court-hands-out-death-sentences/>).

months.”²⁷ The Report warned that death sentences could be imposed as “revenge” in Libyan courts.²⁸

Lack of legal representation

19. The Defence for Mr. Al-Senussi has put before the Chamber substantial evidence of Libya’s inability and / or unwillingness to allow Mr. Al-Senussi access to his lawyers.²⁹ Since being appointed in January 2011, Counsel for Mr. Al-Senussi have in effect been blocked by Libya from visiting Mr. Al-Senussi in Tripoli. As a result, he has never had the benefit of communicating with his counsel (or any other lawyer). As documented in Mr. Al-Senussi’s filings, there have been continued and excessive delays, without any proper justification, in Libya reaching any agreement on a memorandum of privileges and immunities for a confidential and privileged legal visit and on a date for such a visit. Furthermore, all requests and attempts by the Defence to obtain the necessary visas from the Libyan authorities for travel have come to nothing.

20. On 6 August 2013, it was reported that the French lawyers of the former Prime Minister, Baghdadi Al-Mahmoudi, have not been able to get visas to travel to Libya to defend Mr. Al-Mahmoudi nor to get access to Mr. Al-Mahmoudi’s case file, “despite every possible attempt to do so with the Libyan authorities.”³⁰

²⁷ 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>).

²⁸ 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>).

²⁹ 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. 5, 18, 35-40, 46, 51; 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-01/11-01/11-312, 19 April 2013, paras. 4-6; 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’, ICC-01/11-01/11-329, 3 May 2013, paras. 18-21; Defence Response on behalf of Mr. Abdullah Al-Senussi to ‘Application on behalf of the Government of Libya relating to Abdullah Al-Senussi pursuant to Article 19 of the ICC Statute’, ICC-01/11-01/11-356, 14 June 2013, paras. 120-130, 132; Defence Application on behalf of Mr. Abdullah Al-Senussi to refer Libya to the Security Council with Confidential *Ex Parte* (Chamber only) Annex 1; ICC-01/11-01/11-399, 9 August 2013; See also, ICC-01/11-01/11-399-Conf-Exp-Anx1, ICC-01/11-01/11-304-Conf-Exp-Anx2; and ICC-01/11-01/11-304-Conf-Exp-Anx3.

³⁰ 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>).

21. Noting the Pre-Trial Chamber's finding in relation to Mr. Gaddafi's case that Libya's "difficulties in securing a lawyer ... appear ... to be an impediment to the progress of proceedings against Mr Gaddafi,"³¹ the Defence submits that the same is true of Mr. Al-Senussi's case. He has had no access to a lawyer at any stage, which is clearly "an impediment to the proceedings" against Mr. Al-Senussi.

22. It should be taken into account that Libya has recently been referred to the African Union by the African Court on Human and Peoples' Rights for failing to implement provisional measures in respect of Mr. Gaddafi, including for not providing him with access to legal representation. Libya has not responded at all to the African Commission and the African Court in relation to the implementation of these measures to protect the basic human rights of a detainee under the African Charter on Human and Peoples' Rights.³² Precisely the same failure to guarantee access to a lawyer applies in Mr. Al-Senussi's case.

Lack of control of prisons

23. The Defence has already set out extensive evidence that demonstrates the lack of Government control over detention facilities in Libya, including the Al-Hadba prison where Mr. Al-Senussi is detained.³³ Libya's lack of control of detention facilities is further evidenced by several recent incidents of prison escapes. On 27 July 2013 about 1,200 prisoners escaped al-Kwafiya prison in Benghazi after there was a riot within the prison and residents of the city stormed the prison.³⁴ In Tripoli, 18

³¹ Decision on the admissibility of the case against Saif Al-Islam Gaddafi, ICC-01/11-01/11-344-Red, 31 May 2013, para. 214.

³² See, Observations on behalf of Mishana Hosseinioun pursuant to Rule 103, ICC-01/11-01/11-414, 22 August 2013; See also, Request for Provisional Measures Under Rule 98 of the Rules of Procedure of the African Commission on Human and Peoples' Rights, Letter from Honourable Commissioner Catherine Dupe Atoki, Chairperson of the African Commission on Human and Peoples' Rights to H.E. Mr. Mustafa Abdul Jalil, Chairman of the National Transitional Counsel, 18 April 2012 (ICC-01/11-01/11-414-Anx1); Letter from the African Commission, ACHPR/COMM/411/12/LBY/1015/12, 9 November 2012 (ICC-01/11-01/11-414-Anx2); Order for Provisional Measures, In the Matter of African Commission on Human and Peoples' Rights v. Libya, Application No. 002/2013, 15 March 2013 (ICC-01/11-01/11-414-Anx3); and Interim Report of the African Court on Human and Peoples' Rights notifying the Executive Council of Non-Compliance by a State, in accordance with Article 31 of the Protocol, 4 June 2013 (ICC-01/11-01/11-414-Anx4).

³³ See, Defence Response of 14 June 2013, paras. 74-85.

³⁴ More than 1,000 inmates escape from Libya jail, BBC, 27 May 2013 (<http://www.bbc.co.uk/news/world-africa-23479913>). See also, http://www.huffingtonpost.com/2013/07/27/libya-prison-escape_n_3664239.html; <http://www.aljazeera.com/news/africa/2013/08/201382163447568423.html>; http://www.nytimes.com/2013/07/28/world/africa/libyans-turn-on-islamists-and-liberals-after-killings.html?_r=0; <http://www.theguardian.com/world/2013/jul/28/1000-inmates-escape-libyan-prison>; <http://english.alarabiya.net/en/News/middle-east/2013/08/13/Libya-14-000-Qaddafi-era-prisoners-still-on-the-run-.html>; <http://en.alalam.ir/news/1504522>.

prisoners escaped on 1 August 2013 when armed men attacked a Judicial Police vehicle.³⁵

24. The International Crisis Group has reported that “incomplete control over even official prisons” has left “many of those detained at risk of abuse and torture.”³⁶ Amnesty International reported as recently as 2 August 2013 that torture and ill-treatment in detention continues to be a widespread problem within Libya’s prisons, indicating that the Libyan authorities have come no closer to assuming control of its prisons and addressing the problem of torture and mistreatment.

25. As noted above, the assassination of Wissam Ismail Smeida, head of Al-Ruiymi prison, provides evidence of the effect that the continuing violence and instability has on Libya’s ability to control its prisons.³⁷ Mr. Smeida was the head of the prison where Mr. Al-Senussi’s daughter, Anoud, has been detained and is still being held in prison. She should have already been released in accordance with the sentence imposed by the court, but remains in detention without any lawful basis – a further indication that the prisons operate outside of the law.

Lack of provision of health care for Mr. Al-Senussi in Al-Hadba prison

26. The Defence has previously expressed serious concerns about Libya’s ability and willingness to treat Mr. Al-Senussi’s health conditions in prison.³⁸ As the Defence has submitted, Mr. Al-Senussi suffers from severe medical conditions that require advanced treatment. Libya itself has acknowledged the severity of his poor health when it claimed that he was not transferred from Mauritania to Libya as a result of his liver condition.³⁹

³⁵ Prisoners escape in Tripoli, Libya Herald, 3 August 2013 (<http://www.libyaherald.com/2013/08/03/prisoners-escape-in-tripoli/>).

³⁶ International Crisis Group, Trial by Error: Justice in Post-Qadhafi Libya, 17 April 2013, p. 34.

³⁷ Prison Chief murdered in Tripoli, Libya Herald, 25 June 2013 (<http://www.libyaherald.com/2013/06/25/prison-chief-killed-in-tripoli/>).

³⁸ 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 46 (See, footnote 74); Defence Response on behalf of Mr. Abdullah Al-Senussi to ‘Application on behalf of the Government of Libya relating to Abdullah Al-Senussi pursuant to Article 19 of the ICC Statute’, ICC-01/11-01/11-356, 14 June 2013, para. 130, 139.

³⁹ Application on behalf of the Government of Libya pursuant to Article 19 of the ICC Statute, ICC-01/11-01/11-130-Red, 1 May 2012, para. 30. See also, 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 46 (See, footnote 74).

27. The Defence has recently been informed that Mr. Al-Senussi is suffering from diabetes in prison. His treatment has been limited to receiving insulin injections but it is reported that Mr. Al-Senussi has lost a substantial amount of weight which indicates that advanced treatment is urgently required.
28. The Defence emphasises that Libya has only provided the Chamber with one report pertaining to the health care of Mr. Al-Senussi in Al-Hadba prison.⁴⁰ The report only provides the results of a very basic medical in-take examination of Mr. Al-Senussi when he was transferred to Libya in September 2012. The report is obviously out of date and completely inadequate to determine whether Mr. Al-Senussi has ever been provided with any of the necessary advanced medical treatment for his serious conditions.
29. The well-being and health care of a detainee is the responsibility of the judicial system detaining the individual. Libya has not provided any evidence to show that Mr. Al-Senussi's medical conditions are being addressed, and the recent information received indicates that his health has deteriorated.

Trials against former Gaddafi officials

30. Recent developments in the domestic trials of other former Gaddafi officials continue to show Libya's judicial system is unable to try Mr. Al-Senussi. On 6 August 2013, lawyers for the former Prime Minister, Baghdadi Al-Mahmoudi, reported that his trial in Libya is being conducted in an unnecessarily "*expeditious*" manner.⁴¹ The Defence asks that this report that Mr. Al-Mahmoudi's trial is being conducted too quickly (in order to arrive at a verdict and sentence as rapidly as possible making it unfair) be taken into account in view of the Defence submissions that Libya could render the ICC proceedings meaningless by commencing and completing a national trial and imposing the death penalty "before the ICC has determined the admissibility of Mr. Al-Senussi's case."⁴²

⁴⁰ ICC-01/11-01/11-252-Conf-Anx3.

⁴¹ 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>).

⁴² 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, ICC-01/11-01/11-398, 9 August 2013, para. 10.

31. The Defence further submits that this evidence, along with Amnesty International's report that former Gaddafi supporters are at risk of facing trials motivated by revenge,⁴³ is relevant to showing that an independent and impartial national judicial system is unavailable to try Mr. Al-Senussi in Libya.

Deteriorating security situation

32. In the Defence Response of 14 June 2013, it was submitted that "the Chamber should also take into consideration that the security situation within Libya, and the lack of Government control, significantly affects the ability of the judicial authorities and organs to function effectively and thus has a direct impact on the national investigation and proceedings against Mr. Al-Senussi."⁴⁴ Recent developments demonstrate that the declining security situation in Libya continues directly to impact on the functioning of the judicial system.

33. The Defence Response of 14 June 2013 documented incidents of violent attacks on Government organs which undermined its authority.⁴⁵ Similar incidents have continued to occur. On 2 July 2013 several hundred heavily armed men surrounded and took control of the Interior Ministry. The group called for the resignation of the Interior Minister due to his reliance for security on the Supreme Security Committee militia group and demanded that the police and army should be in charge of security.⁴⁶

34. On 26 June 2013 clashes "involving small arms and heavy weapons" broke out for several days in Tripoli between militia and other armed groups, and resulting in the assassination of an army officer. The interim head of Libya's army, General Salem al-Konidi, stated that the army "tried to intervene, but our resources did not allow it ... The government refuses to equip the army."⁴⁷

⁴³ 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>).

⁴⁴ Defence Response of 14 June 2013, para. 94.

⁴⁵ Defence Response of 14 June 2013, para. 76. See also, Defence Response of 14 June 2013, Annex A, para. 3.

⁴⁶ Armed men attack Libya Interior Ministry, PressTV, 3 July 2013 (<http://www.presstv.ir/detail/2013/07/03/311994/libya-interior-ministry-attacked/>); Interior Ministry besieged by hundreds of armed men, Libya Herald, 2 July 2013 (<http://www.libyaherald.com/2013/07/02/interior-ministry-besieged-by-hundreds-of-armed-men/>).

⁴⁷ Clashes erupt in Tripoli, Bomb kills Libya army officer, The Daily Star, 27 June 2013 (<http://www.dailystar.com.lb/News/Middle-East/2013/Jun-26/221744-clashes-erupt-in-tripoli-bomb-kills-libya->

35. On 1 August 2013, Prime Minister Ali Zeidan announced the formation of a “mini” emergency Government amid increased violence in Libya.⁴⁸
36. On 3 August 2013, Awad al Barassi announced his resignation as deputy Prime Minister of Libya stating that the Government is “dysfunctional” and unable to end the continuing violence. Barassi’s stated that his resignation was due to “a security breakdown and assassinations linked to the cabinet’s policies” and that the Government has failed to win the trust of the people and has failed to provide state agencies with the resources needed to achieve development goals.⁴⁹
37. Libya’s Interior Minister, Mohammed Khalifa al-Sheikh, resigned on 18 August 2013 saying he lacked support of Prime Minister Ali Zeidan and complaining of interference by members of the General National Congress. Mr. al-Sheikh said the Government had failed to deal with the unrest, win the people’s trust, and provide state agencies with adequate resources.⁵⁰
38. It has been reported that Libya is currently bracing for armed conflict and the threat of a coup as armed rebels mobilise across the country. It is stated that the “Congress has basically collapsed” as main opposition parties and smaller ethnic parties have deserted Congress leaving only the representatives from the Brotherhood’s Justice and Construction party. The article also says: “The capital is tense, with nightly exchanges of gunfire. Diplomats, along with many ordinary Libyans, observe a self-imposed dusk-to-dawn curfew. The president of congress, Nuri Abu Sahmain, has summoned militias allied to the Brotherhood to the capital, deploying troops across the city to forestall what his commanders say is the threat of a coup.”⁵¹

army-officer.ashx#axzz2ct8XeXu3); Libya: armed groups clash in the capital, Tripoli, BBC, 26 June 2013 (<http://www.bbc.co.uk/news/world-africa-23069017>).

⁴⁸ Libyan premier announces emergency government, Asharq Al-Awsat, 1 August 2013 (<http://www.aawsat.net/2013/08/article55311977>).

⁴⁹ Libya’s deputy PM resign citing violence, Aljazeera, 4 August 2013 (<http://www.aljazeera.com/news/africa/2013/08/201384112631486261.html>).

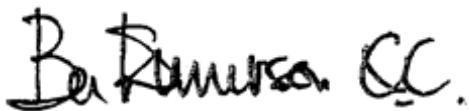
⁵⁰ Libya interior minister Mohammed al-Sheikh resigns, BBC, 18 August 2013 (<http://www.bbc.co.uk/news/world-africa-23750456>); Libyan interior minister resigns over ‘interference’, Arab News, 19 August 2013 (<http://www.arabnews.com/news/461737>); Interior minister of Libya resigns, news24, 18 August 2013 (<http://www.news24.com/Africa/News/Interior-minister-of-Libya-resigns-20130818>).

⁵¹ Libyans fear standoff between Muslim Brotherhood and opposition forces, The Guardian, 20 August 2013 (<http://www.theguardian.com/world/2013/aug/20/libya-rebels-muslim-brotherhood-blockade>); How militias took control of post-Gaddafi Libya, globalpost, 24 August 2013 (<http://www.globalpost.com/dispatches/globalpost-blogs/groundtruth/how-militias-took-control-post-gaddafi-libya>).

Conclusion

39. For all of the reasons set out in its Response of 14 June 2013, and taking account of the recent developments described in this filing, the Defence for Mr. Al-Senussi respectfully requests that the Pre-Trial Chamber reject Libya's admissibility application and order that Libya immediately surrender Mr. Al-Senussi to the ICC for trial.

Counsel on behalf of Mr. Abdullah Al-Senussi,



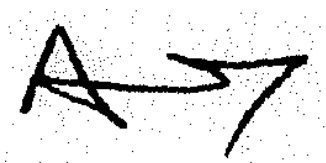
Ben Emmerson QC



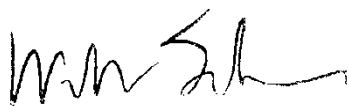
Rodney Dixon



Amal Alamuddin



Anthony Kelly



Professor William Schabas

Dated 26th August 2013

London, United Kingdom