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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

Addendum to “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,” and Urgent Application pursuant to Regulation 35

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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Introduction

1. The Defence for Mr. Abdullah Al-Senussi hereby submits this Addendum to its “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” filed on 26 August 2013¹. It is filed to request the Pre-Trial Chamber to receive information about a very serious new development which is relevant to the urgent disposal of the admissibility challenge – the kidnapping of Mr. Al-Senussi’s daughter, Ms. Anoud Al-Senussi, on 2 September 2013 as she was being released from serving her prison sentence in Libya. It also includes information regarding significant and relevant new statements made yesterday by Libya’s ICC Counsel and focal point, Prof. El-Ghani.
2. Ms. Anoud Al-Senussi’s abduction has been widely reported and confirmed by the Libyan authorities. It is clearly a matter of the gravest concern. It highlights the precarious situation Mr. Al-Senussi himself faces in Libya in which his security and well-being are in peril. It is yet further evidence of Libya’s complete inability to guarantee Mr. Al-Senussi’s safety and fundamental rights and to prosecute him in Libya in accordance with Libyan law and recognised international standards.
3. The Defence, therefore, simultaneously files an urgent Application pursuant to Regulation of 35 of the Regulations of the Court to request that the Chamber reduce the time limit for Libya to provide its final submissions on its admissibility application, and that the Chamber thereafter urgently rule on the application. The Defence submits that it is now more critical than ever that Libya’s admissibility challenge is determined as soon as possible, and as the Defence has requested, that Mr. Al-Senussi is transferred out of Libya to The Hague.
4. In its Decision of 19 August 2013,² the Chamber granted Libya until 16 September 2013 to “provide any relevant information in relation to the domestic proceedings

¹ 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, ICC-01/11-01/11-418, 26 August 2013 (hereinafter “Further Submissions of 26 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 (hereinafter “Decision of 19 August 2013”).

against Mr Al-Senussi, including the timetable and nature of any such proceedings”³ and 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.”⁴ For the reasons set out below, the Defence requests that the Chamber order Libya to file these submissions by Tuesday, 10 September 2013 at the latest.

5. Libya has been litigating admissibility before the Court for over 16 months, since May 2012. It has made over 70 filings concerning the admissibility proceedings, and participated in two days of oral hearings before the Pre-Trial Chamber.⁵ During this time, Libya has repeatedly requested additional time⁶, and in some instances taken it whether it was formally granted by the Chamber or not. And yet, as explained more fully below, the Chamber has evidence before it that Mr. Al-Senussi is in grave danger as former associates of the Gaddafi regime are being targeted for revenge attacks and are being held in prisons administered by anti-Gaddafi figures seeking revenge, and that, as Libya’s own Justice Minister has admitted, “unfortunately, the culture of torture has continued after the revolution” with “prisons that were spinning out of control”.⁷ The Chamber and Defence Counsel do not know the full extent of the

³ Decision of 19 August 2013, p. 10.

⁴ Decision of 19 August 2013, p. 11.

⁵ Transcript of Oral Hearing on admissibility, ICC-01/11-01/11-T-2-Red-ENG, 9 October 2012; and Transcript of Oral Hearing on admissibility, ICC-01/11-01/11-T-3-Red-ENG, 10 October 2012.

⁶ Libyan Government’s provisional report pursuant to the Chamber’s Decision of 9 August 2012 & Request for leave to file further report by 28 September 2012, ICC-01/11-01/11-205, 7 September 2013, para. 4; Libyan Government’s further submissions on issues related to the admissibility of the case against Saif Al-Islam Gaddafi, ICC-01/11-01/11-258-Red2, 23 January 2013, para. 35; Libyan Government’s Observations regarding the case of Abdullah Al-Senussi, ICC-01/11-01/11-260, 28 January 2013, para. 11.; Response of the Libyan Government to 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-01/11-01/11-264, 1 February 2013, paras. 25, 29.; Libyan Government’s filing of additional provisions from Libyan Criminal Code and Libyan Criminal Procedure Code referred to in its 23 January 2013 Submission which were not referred to in its 1 May 2012 Admissibility Challenge, ICC-01/11-01/11-273, 11 February 2013; Libyan Government’s consolidated reply to the responses of the Prosecution, OPCD and OPCV to its further submission on issues related to the admissibility of the case against Saif Al-Islam Gaddafi, ICC-01/11-01/11-293-Red, 4 March 2013, paras. 7, 11, 42, 125.; 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. 5.; Decoument in Support of the Government of Libya’s Appeal against the ‘Decision on the admissibility of the case against Saif Al-Islam Gaddafi’, ICC-01/11-01/11-370-Conf-Reg, 25 June 2013, paras. 193-199.; Libyan Government’s Request to file further submission clarifying matters raised in the Prosecution and Defence Responses to ‘Docment in Support of Libya’s Appeal against the ‘Decision on the admissibility of the case against Saif Al-Islam Gaddafi,’ ICC-01/11-01/11-389, 29 July 2013.; Confidential Libyan Government’s consolidated Reply to the Responses by the Prosecution, Defence and OPCV to the Libuyan Governemt’s Application relating to Abdullah Al-Senussi pursuant to Article 19 of the ICC Statute, ICC-01/11-01/11-403-Conf-Red, 14 August 2013, paras. 2-5.

⁷ In the new Libya, former prisoners guard their onetime captors, Washington Post, 4 March 2013 (http://www.washingtonpost.com/world/middle_east/in-the-new-libya-former-prisoners-guard-their-captors/2013/03/03/e2f7bf9c-7f47-11e2-b99e-6baf4ebe42df_story_1.html).

abuses or dangers facing Mr. Al-Senussi since he has been denied access to any Counsel for almost a year.

6. The danger that Mr. Al-Senussi faces is now clearly highlighted by his daughter's kidnapping in Tripoli while supposedly in the safe custody of Libyan law enforcement officials.
7. Under these circumstances the Defence submits that the Chamber should not countenance any further avoidable delay. It therefore files this emergency application to request that the Chamber reduce the time available to Libya to make final submissions on admissibility and that the Chamber issue a decision on admissibility as soon as possible thereafter. The Defence submits that there is no need for Libya to be given another extended period to file its final submissions. Indeed, the information that Libya is allegedly preparing regarding upcoming national proceedings has already been disclosed in public announcements and interviews.
8. The Defence submits that the only chance that Mr. Al-Senussi has to benefit from a secure, fair and genuine process, and to consult with his Counsel in a privileged and confidential setting is if he is transferred from Libya to The Hague immediately. The Defence, therefore, urgently requests that the Court expedite the admissibility proceedings.

Addendum to Defence Submissions of 26 August 2012

9. On 26 August 2013, the Defence filed additional submissions to the Pre-Trial Chamber "in relation to recent developments in Libya that are relevant to the admissibility proceedings" and which "lend further support to [the Defence's] 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."⁸ These further submissions were filed pursuant to the Pre-Trial Chamber's decision⁹ authorising the Defence to "to file further submissions relevant to the disposal of the Admissibility Challenge"¹⁰ including in respect of recent developments about "Libya conducting unduly expeditious trials of high-profile former Gaddafi officials" and "the

⁸ Further Submissions of 26 August 2013, para. 2.

⁹ Decision of 19 August 2013.

¹⁰ Decision of 19 August 2013, p. 10.

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.”¹¹

Ms. Al-Senussi’s kidnapping

10. The Defence requests that the Chamber accepts this Addendum to its submission of 26 August 2013 for consideration when determining the admissibility challenge. The information about Ms. Anoud Al-Senussi’s kidnapping, as set out below, was obviously not available to the Defence at the time of filing the submission on 26 August 2013. The Defence submits that it is directly relevant to confirming the unavailability of the Libyan justice system to investigate and try Mr. Al-Senussi’s case.

11. The details of the incident, as confirmed by Libya’s Minister of Justice, are as follows. Having completed her 10-month sentence at Al-Rayoumi prison in Tripoli, Ms. Al-Senussi – a 22-year old girl who had been detained for allegedly carrying a forged passport when entering Libya to visit her father – was due to be released. However her release was delayed several times “for reasons outside of [Libyan authorities’] control”.¹²

12. It was finally agreed that a Judicial Police convoy would transport Ms. Al-Senussi to her family at a Tripoli airport on 2 September. But that evening, just metres outside the Al-Rayoumi prison, the police convoy taking her out of prison was ambushed by a group of masked and heavily armed men in four vehicles. Ms. Al Senussi was taken by the armed men.¹³

¹¹ Decision of 19 August 2013, para. 15.

¹² Video of 2 September 2013 press conference by Justice Minister Marghani and Ministry of Justice representative, Mr. Wael Najm (http://m.youtube.com/watch?feature=youtu.be&v=uxb3NuoNdz0&desktop_uri=%2Fwatch%3Fv%3Duxb3NuoNdz0%26feature%3Dyoutu.be). See also, Libya: Latest abduction highlights ‘dysfunctional’ justice system, Amnesty International, 3 September 2013 (<http://www.amnesty.org/en/news/libya-latest-abduction-highlights-dysfunctional-justice-system-2013-09-03>).

¹³ Video of 2 September 2013 press conference by Justice Minister Marghani and Ministry of Justice representative, Mr. Wael Najm (http://m.youtube.com/watch?feature=youtu.be&v=uxb3NuoNdz0&desktop_uri=%2Fwatch%3Fv%3Duxb3NuoNdz0%26feature%3Dyoutu.be). See also, Daughter of Libya’s Ex-Spy Chief Abducted, AP, 2 September 2013 (http://hosted.ap.org/dynamic/stories/M/ML_LIBYA?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT); Abdullah Senussi’s freed daughter Anoud kidnapped outside prison gates, Libya Herald, 2 September 2013 (<http://www.libyaherald.com/2013/09/02/abdullah-senussis-freed-daughter-anoud-kidnapped-outside-prison-gates/>); Daughter of Libya’s former spy chief Senussi kidnapped, BBC, 2 September 2013

13. According to Amnesty International staff who have had contact with detainees as well as Libyan officials, Anoud's kidnapping followed a previously aborted release on 26 August after a riot erupted in the prison.¹⁴ As Amnesty points out, "scores of detainees have been abducted by armed militias. In some cases, they have been tortured and summarily killed. These abductions are usually carried out during transfers to courts or after release from prison – either as revenge for ordinary crimes or for acts allegedly committed on behalf of the former regime, or in some cases, for ransom. In some cases detainees have been abducted directly from prison".¹⁵

14. The Defence has consistently informed the Chamber of the grave risks that Mr. Al-Senussi faces while in detention in Libya. As previously submitted by the Defence, the inability of the Judicial Police to provide security and control in the prisons supports a finding that the Libyan judicial system is unable to investigate and try Mr. Al-Senussi.¹⁶ In the Defence's filing of 26 August 2013 the Defence submitted that "[s]everal attacks on the Judicial Police have ... undermined the judicial system" and "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."¹⁷ The Defence provided information on recent assassinations of persons in police and security structures and the killing of judges;¹⁸ specifically noting the assassination of Wissam Ismail Smeida, head of Al-Rayoumi prison where Anoud Al-Senussi was held, as "evidence of the effect that the continuing violence and instability has on Libya's ability to control its prisons."¹⁹ The information contained in this Addendum lends further support to these submissions, and is of course particularly relevant as it concerns Mr. Al-Senussi's daughter.

(<http://www.bbc.co.uk/news/world-africa-23938549>); Senussi's daughter kidnapped, Arab News, 3 September 2013 (<http://www.arabnews.com/news/463466>); Libya gunmen kidnap ex-spy chief's daughter, France 24, 3 September 2013 (http://www.france24.com/en/20130903-libya-gunmen-kidnap-ex-spy-chiefs-daughter?ns_campaign=editorial&ns_source=RSS_public&ns_mchannel=RSS&ns_fee=0&ns_linkname=20130903_libya_gunmen_kidnap_ex_spy_chiefs). See also, http://gaddafimedia.blogspot.co.uk/2013/09/blog-post_3838.html; <http://www.youtube.com/watch?v=YLZAti6Au6k>.

¹⁴ Libya: Latest abduction highlights 'dysfunctional' justice system, Amnesty International, 3 September 2013 (<http://www.amnesty.org/en/news/libya-latest-abduction-highlights-dysfunctional-justice-system-2013-09-03>).

¹⁵ Libya: Latest abduction highlights 'dysfunctional' justice system, Amnesty International, 3 September 2013 (<http://www.amnesty.org/en/news/libya-latest-abduction-highlights-dysfunctional-justice-system-2013-09-03>).

¹⁶ 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. 79-83 (hereinafter "Admissibility Response of 14 June 2013").

¹⁷ Prisoners escape in Tripoli, Libyan Herald, 3 August 2013 (<http://www.libyaherald.com/2013/08/03/prisonersescape-in-tripoli/>).

¹⁸ Further submissions of 26 August 2013, paras. 7, 8, 9, 25, 34, 36.

¹⁹ Further submissions of 26 August 2013, para. 25.

15. The Defence also previously submitted that it cannot be “established that Al-Hadba prison and Mr. Al-Senussi are under the effective control and authority of the Government ... [and] ... evidence shows that his continued detention is not secure and is in violation of applicable laws.”²⁰ Al-Hadba prison is run by the National Guard. This is led by Khalid Sharif “who was previously detained in Abu Salim prison” and “has expressed his desire for the National Guard to remain an independent body outside the control of the Ministry of Interior or Defence.”²¹ The Defence provided the Chamber with confidential evidence about persons being held within Al-Hadba prison which confirms that Al-Hadba is controlled by militia groups and that widespread abuse is committed against former Gaddafi officials.²² This evidence was supported by other evidence that “guards at the Al-Hadba prison consist of former prisoners under the Gaddafi regime”²³ and that Mr. Al-Senussi is their “biggest prize.”²⁴

16. The Defence further informed the Chamber that on 5 April 2013 there was an incident “in which protesters gathered outside Al-Hadba prison calling for the Government to execute Mr. Al-Senussi immediately and threatening that, if their demand was not met, they would storm the prison to execute him themselves.”²⁵

17. The Chamber should also take into account that on 3 September 2013 Human Rights Watch reported on a violent crackdown on prisoners which had occurred on 26 August 2013 at Al-Rayoumi prison in Tripoli (the prison where Anoud Al-Senussi was held) after the Supreme Security Committee militia was called in to address a confrontation between prisoners and the guards.²⁶ It is reported that prison authorities used “extensive and unnecessary violence to force an end to the two-day hunger strike by detainees” and that the crackdown left many prisoners with gunshot wounds and other serious injuries.²⁷ The Human Rights Watch report notes that Al-Rayoumi is used to detain “loyalists of the former government, members of Gaddafi’s security forces and

²⁰ Admissibility Response of 14 June 2013, para. 86.

²¹ Admissibility Response of 14 June 2013, para. 88.

²² ICC-01/11-01/11-356-AnxC-Conf-Exp.

²³ Admissibility Response of 14 June 2013, para. 89.

²⁴ Admissibility Response of 14 June 2013, para. 81.

²⁵ Admissibility Response of 14 June 2013, para. 92.

²⁶ Libya: Violent Response to Tripoli Prison Mutiny, Human Rights Watch, 3 September (<http://www.hrw.org/news/2013/09/03/libya-violent-response-tripoli-prison-mutiny>).

²⁷ Libya: Violent Response to Tripoli Prison Mutiny, Human Rights Watch, 3 September (<http://www.hrw.org/news/2013/09/03/libya-violent-response-tripoli-prison-mutiny>).

volunteers who fought alongside these forces,”²⁸ as is the Al-Hadba prison where Mr. Al-Senussi is held.

18. Ms. Al-Senussi’s kidnapping is a further grim confirmation of the inability of the Libyan judicial system to guarantee the security and rights of detainees in Libya and the direct threat that Mr. Al-Senussi and his family face. It highlights the very real dangers confronted by Mr. Al-Senussi not only inside the prison but also when he is to be transported by the Judicial Police to any court hearings, including the recently-announced hearing scheduled for 19 September (about which further submissions are made below).²⁹ He is more vulnerable than ever to being attacked or kidnapped as has now occurred with his daughter. As Amnesty has put it, “Anoud’s abduction casts a shadow on the Libyan authorities’ ability to ensure the safety of so many detainees held in relation to the 2011 armed conflict ... How can the Libyan authorities claim that they are able to deliver fair trials, and apply the law in the most prominent, politically sensitive cases, when they are manifestly unable to ensure the basic safety of detainees?... [T]his latest abduction and the ongoing lawlessness in the country if anything demonstrate the inability of the Libyan authorities to fairly try politically sensitive cases such as [that against] Abdallah al-Senussi and Saif al-Islam al-Gaddafi”.³⁰

Official Libyan statements regarding upcoming trial process

19. In addition to the news of Ms. Al-Senussi’s kidnapping, there have been new official statements made by Libyan officials which are relevant to the disposal of the admissibility challenge and the issues addressed by the Defence in its 26 August filing.³¹ The Defence brings these to the attention of the Chamber as they were made

²⁸ Libya: Violent Response to Tripoli Prison Mutiny, Human Rights Watch, 3 September (<http://www.hrw.org/news/2013/09/03/libya-violent-response-tripoli-prison-mutiny>).

²⁹ ICC-01/11-01/11-424-AnxB.

³⁰ Libya: Latest abduction highlights ‘dysfunctional’ justice system, Amnesty International, 3 September 2013 (<http://www.amnesty.org/en/news/libya-latest-abduction-highlights-dysfunctional-justice-system-2013-09-03>).

³¹ 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, ICC-01/11-01/11-418, 26 August 2013, paras. 1, 30, 31. See also, 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, paras. 8, 10, 13.

after the initial filing and directly impact on the key issues that are currently before the Chamber in these admissibility proceedings.

20. *First*, Mr. Al-Seddik al-Sur, a prosecutor assigned to Mr. Al-Senussi' case,³² stated during a press conference on 27 August 2013 that Mr. Al-Senussi had allegedly made confessions about the commission of crimes. As the Defence has previously submitted, while in detention in Libya "Mr. Al-Senussi has repeatedly requested legal representation"³³, telling Human Rights Watch that he has continually asked a judge "to let me see my family and I have asked for a lawyer."³⁴ However, Mr. Al-Senussi has had no access to a lawyer, in clear violation of Article 106 of the Libyan Criminal Procedure Code, the ICC's Statute and applicable international norms.³⁵ Yet it is now claimed that he has been interrogated to make apparent confessions about his involvement in the commission of crimes for which he can be sentenced to death.

21. *Second*, the Libyan ICC focal point, Prof. El-Gehani, now concedes that the lack of legal representation for Mr. Al-Senussi is a clear impediment to conducting any proceedings in Libya. This was stated in an interview given in the last 48 hours by Prof. El-Gehani that discussed Ms. Al-Senussi's kidnapping and Mr. Al-Senussi's case more generally. This interview was videotaped and is available online.³⁶ Prof. El-Gehani's statement is therefore available verbatim online and not subject to any misreporting or mistranslation.

22. In the interview he announces that Mr. Al-Senussi will be tried in Libya, as the Libyan authorities have previously done in total disregard of the jurisdiction of the ICC. In response to a question from a reporter about whether he believes that in light of the situation in Libya the "ICC has a strong chance of taking Saif Gaddafi and Senussi", Prof. El-Gehani simply states: "yes they are betting on this but for us this is a domestic

³² ICC-01/11-01/11-307-Conf-Anx5.

³³ Admissibility Response of 14 June 2013, para. 124.

³⁴ ICC: Libya's Bid to Try Gaddafi, Sanussi, HRW, 13 May 2013, Question 34 (<http://www.hrw.org/news/2013/05/13/qa-libya-and-international-criminal-court#40>).

³⁵ See, Libya's submissions about a suspect's right to a lawyer during the investigative phase under Article 106 of the Criminal Procedure Code. 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-Red2, 2 April 2013, para. 146.

³⁶ http://www.youtube.com/watch?feature=youtu.be&v=ti1BEX-DQGQ&desktop_uri=%2Fwatch%3Fv%3Dti1BEX-DQGQ%26feature%3Dyoutu.be&nomobile=1. (hereinafter "Prof. El-Gehani Statement").

issue and we will struggle for it and the case will proceed in Libya, on Libyan soil by Libyan judges”.³⁷

Prof. El-Gehani then goes on to state that:

“[the upcoming court proceedings on 19 September will require defence counsel and] today I called on Libyan lawyers to accept to undertake this work or else the trial will never take place. I mean if the Libyans - Libyan lawyers - do not accept this job and to work on it the court will not sit, the hearing will not be held, and if the hearing is not held and the court does not sit then in this case the ICC will say to us ‘you are not able to try [these people]’...³⁸ Libyan law is one of those laws which permits recourse to foreign lawyers easily, but without providing such a lawyer the session can’t be held in the first place”.³⁹

23. This statement shows clearly that – as the Chamber noted in Mr. Saif Gaddafi’s case – “significant practical impediments exist to securing any legal representation for [the suspect] in view of the security situation in Libya and the risk faced by lawyers who act for associates of the former regime”.⁴⁰ In its decision on admissibility in Mr. Gaddafi’s case, the Chamber found that “*attempts to secure legal representation for Mr Gaddafi have seemingly failed*” and that Libya’s purported reassurances “*fall short of substantiating whether and how the difficulties in securing a lawyer for the suspect may be overcome in the future*”.⁴¹ As a result the Chamber concluded that Libya was “unable” to conduct genuine proceedings in Libya under these circumstances. Exactly the same situation exists in Mr. Al-Senussi’s case, as Libya’s ICC focal point has now confirmed.

³⁷ Prof. El-Gehani Statement [at the end] (Unofficial translation).

³⁸ Prof. El-Gehani Statement [at 16:28] (Unofficial translation).

³⁹ Prof. El-Gehani Statement [at 34:20] (Unofficial translation).

⁴⁰ Decision on the admissibility of the case against Saif Al-Islam Gaddafi, ICC-01/11-01/11-344-Red, 31 May 2013, para. 174 which notes the submissions of the OPCD.

⁴¹ Decision on the admissibility of the case against Saif Al-Islam Gaddafi, ICC-01/11-01/11-344-Red, 31 May 2013, paras. 213-215.

Urgent Application pursuant to Regulation 35

24. In light of the above information, the Defence files this urgent Application pursuant to Regulation 35⁴² to request that the Pre-Trial Chamber reduce the time limit for Libya to file its final submissions on its admissibility application and issue its decision on admissibility as soon as possible. In its Decision of 19 August 2013, the Chamber granted Libya leave to file “any relevant information in relation to the domestic proceedings against Mr Al-Senussi, including the timetable and nature of any such proceedings”⁴³ and to reply to any further Defence submissions by 16 September 2013.⁴⁴
25. For the reasons explained more fully above, the Defence submits that Anoud Al-Senussi’s kidnapping highlights the serious level of insecurity in the prisons in Libya and that the Libyan authorities are unable to provide for the safety of detainees like Mr. Al-Senussi. The Defence submits that he must be transferred to The Hague with no further delay to guarantee that he is not a victim of the lawlessness that has engulfed the judicial system and which presents a specific threat to *him* given his profile, the prison in which he is being held, and the actions that are being taken against his family. The kidnapping of his daughter, when she was supposedly under the control of the Judicial Police, shows the perilous conditions he faces in prison and if he is to be transported out of prison to any court proceedings. In the Defence’s submission, there can be no doubt that his immediate transfer out of Libya to The Hague is required as a matter of extreme urgency and that Libya is clearly unable, and unwilling, to provide anything approaching a fair, secure and genuine judicial process for Mr. Al-Senussi.
26. The Defence submits that under these circumstances there is good cause shown for reducing the time period for Libya’s final submissions until 10 September 2013, and for issuing a decision on admissibility on an urgent basis.

⁴² Regulation 35 of the Regulations of the Court provides in relevant part that: (1) *Applications to extend or reduce any time limit as prescribed in these Regulations or as ordered by the Chamber shall be made in writing or orally to the Chamber seized of the matter setting out the grounds on which the variation is sought.* (2) *The Chamber may extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard.*

⁴³ 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 (hereinafter “Decision of 19 August 2013”).

⁴⁴ Decision of 19 August 2013, p. 11.

27. In addition, the Prosecutor-General's announcement on 27 August 2013 that Mr. Al-Senussi's case will be heard on 19 September, and the further details of the proceedings that were then provided by the Libyan authorities, show that Libya is in a position to provide this information about the domestic proceedings to the Chamber right away.⁴⁵ Prof. El-Ghani's videotaped interview also confirms details about the domestic proceedings including that Libya is unable to secure legal representation for Mr. Al-Senussi.

28. The Defence notes that in granting Libya until 16 September to file this information, the Chamber "consider[ed] 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."⁴⁶

29. In the Defence's submission, the granting of extended additional time for Libya to make its submissions for this reason is no longer justified. The fact that Libya is able to make announcements to the public on the details of the domestic proceedings shows that Libya is capable of immediately updating the Court. There is no reason for Libya to delay any longer in filing this information before the Court so that the Chamber can then rule on the admissibility application.

⁴⁵ See, ICC-01/11-01/11-424-AnxA, and ICC-01/11-01/11-424-AnxB.

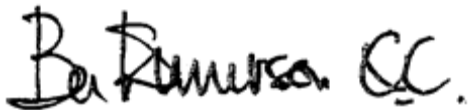
⁴⁶ Decision of 19 August 2013, para. 17.

Relief requested

30. For the reasons set out above, the Defence respectfully requests that the Chamber:

- Accept the Addendum to the Defence's submission of 26 August 2013 and take into consideration the new developments detailed above when determining the admissibility application in Mr. Al-Senussi's case;
- Reduce the time limit for Libya to provide the Chamber with its submissions in accordance with the Chamber's decision of 19 August 2013 and order Libya to file these submissions by Tuesday 10 September 2013 at the latest; and
- Decide the admissibility application as a matter of urgency by rejecting Libya's admissibility challenge and ordering the immediate surrender of Mr. Al-Senussi to the ICC.

Counsel on behalf of Mr. Abdullah Al-Senussi,



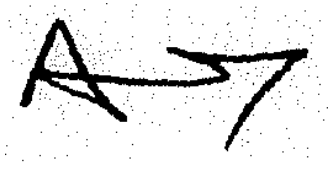
Ben Emmerson QC



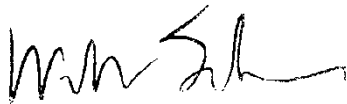
Rodney Dixon



Amal Alamuddin

A handwritten signature in black ink, appearing to be 'AK', on a dotted background.

Anthony Kelly

A handwritten signature in black ink, appearing to be 'W Schabas', on a dotted background.

Professor William Schabas

Dated 5th September 2013
London, United Kingdom