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

Date: 9 September 2013

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernandez 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

Response to Mr. Al-Senussi's "Urgent Application pursuant to Regulation 35"

Source: The Government of Libya, represented by:
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Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. INTRODUCTION

1. On 5 September 2013, the Defence for Mr. Abdullah Al-Senussi filed the “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”.¹ The Libyan Government hereby submits its Response to the “Urgent Application pursuant to Regulation 35” (“Application”), but reserves its right to respond, in due course, to the “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”.
2. Mr. Al-Senussi requests
 - a. A reduction in the time limit for the Libyan Government to provide the Chamber with its further submissions concerning the Al-Senussi Admissibility Challenge from 16 September to 10 September 2013; and
 - b. An urgent decision on the Libyan Government’s admissibility application.²

II. SUBMISSIONS

3. Regulation 35(2) provides the Chamber with discretionary authority to “extend or reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard”. Rule 101 requires the Chamber, in setting time limits, to “have regard to the need to facilitate fair and expeditious proceedings”, and requires parties to “endeavour to act as expeditiously as possible, within the time limit ordered by the Court”. Expeditiousness requires the parties to act with “due diligence”.³

¹ ICC-01/11-01/11-432.

² Application, paras. 3, 24, 30.

³ *Prosecutor v. Katanga and Ngudjolo*, Judgment on the Appeal of Mr Katanga Against the Decision of Trial

A. Mr. Al-Senussi's request for an urgent decision

4. The Libyan Government submits that, in the absence of a finding in favour of Mr. Al-Senussi in respect of his request for reduction in the time limit for the Libyan Government to file its further submissions, Mr. Al-Senussi's request for an urgent decision on the Admissibility Challenge must be dismissed *in limine*.
5. Mr. Al-Senussi's submissions are confused. On the one hand, the Defence appears at points to make a stand-alone request for an urgent decision on the Admissibility Challenge, suggesting that unless an immediate decision is forthcoming, egregious consequences will flow. On the other, the Defence appears to contradict this claimed urgency, requesting instead, that Libya "provide its final submissions on its admissibility application, and that the Chamber *thereafter* urgently rule on the application".⁴

B. Mr. Al-Senussi's request for variation of the deadline

6. Mr. Al-Senussi argues that his request for variation of the deadline is justified on the following assertions:
 - a. that there is a "serious level of insecurity in the prisons in Libya", such that "the Libyan authorities are unable to provide for the safety of detainees", and ultimately, that Libya is unable and unwilling to provide a genuine judicial process for Mr. Al-Senussi;⁵ and
 - b. that Libya is in a position to provide immediately the information that would be in its additional submissions (on the basis of unverified translations of an announcement by the Libyan Prosecutor-General on 27 August 2013 and a quote from an interview with Professor El-Ghani).⁶

Chamber II of 20 November 2009 Entitled "Decision on the Motion of the Defence for Germain Katanga for a Declaration on Unlawful Detention and Stay of Proceedings" 19 July 2010, ICC-01/04-01/07-2259, paras 43, 54.

⁴ Application, para. 3 (emphasis added).

⁵ Application, para. 25.

⁶ Application, para. 27, referring to ICC-01/11-01/11-424-AnxA, and ICC-01/11-01/11-424-AnxB.

7. The Chamber will be mindful, of course, that the Application seeks to persuade the Chamber to reverse its decision about a deadline in relation to which it has already carefully considered the specific facts, rather than the variation of a statutory deadline. As Mr. Al-Senussi recognises, his Application depends upon showing that the Chamber's Decision of 19 August is no longer justified.⁷ In order to be successful in this Application, Mr. Al-Senussi must also show, more generally, that there are sufficient reasons for the Chamber to exercise its discretion in this regard. The Application does neither.

8. It is absurd to suggest that material submitted by Mr. Al-Senussi could justify changing the deadline previously set by the Chamber. While the detention of Mr Al-Senussi's daughter by security forces upon her release after serving her 10 month prison sentence was regrettable, it is notable that the Government acted swiftly and decisively and Ms Al-Senussi was safely returned to family members within days.⁸ She reported that men took her for her own protection: "they took me to protect me, afraid that people from any other side might kidnap me", she said, adding that they had "treated me like their sister".⁹ At no time was Mr Al-Senussi - who is securely in custody in the Government controlled Al-Hadba prison facility - facing any risk to his security or well-being. Accordingly, there is no rational basis for bringing forward the deadline set down for additional submissions from Libya, especially when the Defence's latest filing raises new issues, each of which necessitates a full response from the Government.

9. Moreover, notwithstanding the fact that the material relied upon by the Defence is comprised of an unverified translation of comments in the context of a conversation with a reporter or an unspecified and unverified "announcement" by the Prosecutor General, the content of the annexes to the Application clearly does not address all of the specific legal issues raised by the Admissibility

⁷ Application, para. 29.

⁸ <http://www.bbc.co.uk/news/world-middle-east-24008607>

⁹ <http://www.libyaherald.com/2013/09/07/justice-minister-says-anoud-still-kidnapped/#ixzz2eOu8XQsa>

Challenge, and does not address any of them adequately.

10. The Libyan Government notes that according to the translation offered by the Al-Senussi Defence, the reference is to a hearing concerning the transfer of the case to the Accusation Chamber – a necessary procedural step, and one which does not entail the commencement of a trial. As Libya has pointed out in many of its previous filings, the trial of Mr. Al-Senussi cannot commence prior to a lawyer being appointed to represent him and prior to his charges being confirmed by an Accusation Chamber.¹⁰

11. Further, the translation demonstrates in any event the very antithesis of antagonism or unwillingness in relation to co-operation with the ICC. Professor El-Gehani is quoted as saying that “*for us this is a domestic issue and we will struggle for it and the case will proceed in Libya, on Libyan soil by Libyan judges*”.¹¹ Moreover, as the quote in paragraph 22 shows, Professor El-Gehani confirms that obtaining a lawyer for Mr. Al-Senussi is critical, not only for any domestic proceedings to commence, but also because he is concerned about the ICC and a finding of inability. Clearly, these utterances echo the Libyan Government’s view of the Admissibility Challenge, and – contrary to the Al-Senussi Defence’s assertions of an intention to disregard the ICC’s determination of the challenge – patently indicate an awareness of the importance of the ICC’s decision.

12. Altering the deadline for Libya’s additional submissions scheduled for 16 September to 10 September is, in any event, nonsensical. Confirmation of the provenance of the statements, and verification of the translation offered, would take most, if not all of the remaining time before the extant deadline of 16th September.

¹⁰ See for example: ICC-01/11-01/11-307, para 175.

¹¹ Application, para. 22, referring to Annex A.

13. It should also be noted that the Application would effect a major impact upon the Libyan Government's right to participate in the admissibility challenge, and in this regard, it is clearly "appropriate" for the purposes of Regulation 35 that it be given a proper opportunity to be heard.

C. Request for brief extension of deadline

14. The Libyan Government submits that the material advanced by Mr. Al-Senussi, contrary to justifying a shortening of the deadline for the Libyan Government's additional submissions, gives rise to a need for a brief *extension* of the deadline, of 10 days, until 26 September.
15. As regards Mr. Al-Senussi's assertion concerning insecurity in prisons in Libya, this is patently an aspect that concerns the substantive issue of admissibility. To the extent that it is relevant to the procedural matter concerning the variation of deadlines, it does not support granting Mr. Al-Senussi's request for reduction in the deadline. To the contrary, it militates in favour of allowing the Libyan Government additional time in order to take instructions in respect of factual arguments which have not been put before the Chamber to date, and which relate to a fluctuating situation in Libya.
16. Moreover, as noted above the imminent hearing on 19 September is not an aspect of the trial of Mr. Al-Senussi. It is, rather, a procedural hearing, following which the status of the domestic case will be clearer. The Chamber, would benefit, therefore, from an opportunity to receive submissions concerning the legal elements of the Admissibility Challenge which are based upon the facts as clarified by the hearing of 19 September. In any event, maintaining the present deadline of 16 September will necessitate the Government providing to the Chamber a further update following the upcoming hearing. The Libyan Government makes its request for a slightly extended, therefore, in the interests of judicial economy and to reduce the number of further submissions needing to

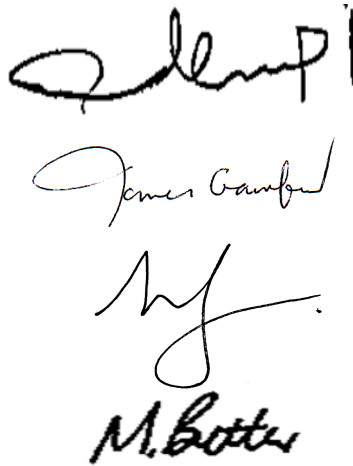
be lodged with the Court.

III. CONCLUSION

17. As set out above, the Libyan Government submits that the Application should be rejected.

18. Furthermore, for the reasons stated, pursuant to Regulation 35, the Libyan Government requests an extension of 10 days to the deadline for submission of its additional submissions in respect of its challenge to the admissibility of the case against Abdullah Al-Senussi.

Respectfully submitted:



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Dated this 9th day of September 2013

At London, United Kingdom