

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/11-01/11
Date: 11 September 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 varying the time limit for Libya's final submissions on the
admissibility of the case against Mr 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

Counsel for Saif Al-Islam Gaddafi

John R.W.D. Jones

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**

Paolina Massidda

**The Office of Public Counsel for the
Defence**

States Representatives

Ahmed El-Gehani

James Crawford

Wayne Jordash

Michelle Butler

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 present decision varying the time limit for Libya’s final submissions on the admissibility of the case against Abdullah Al-Senussi (“Mr Al-Senussi”).

1. 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”).¹

2. 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”.²

3. On 14 June 2013, the Prosecutor, with the Chamber’s authorisation,³ submitted additional observations on the Admissibility Challenge,⁴ and the Defence of Mr Al-Senussi⁵ and the Office of Public Counsel for Victims⁶ filed their observations on the Admissibility Challenge.

4. On 14 August 2013, Libya, with the Chamber’s leave,⁷ filed its consolidated reply to the responses to the Admissibility Challenge.⁸

5. On 19 August 2013, following requests advanced by the Defence⁹ and by Libya,¹⁰ the Chamber issued the “Decision on additional submissions in the

¹ 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.

² ICC-01/11-01/11-321-Conf.

³ 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.

⁴ ICC-01/11-01/11-355.

⁵ ICC-01/11-01/11-356.

⁶ ICC-01/11-01/11-353-Conf. A public redacted version is also available (ICC-01/11-01/11-353-Red).

⁷ Pre-Trial Chamber I, Decision on Libya’s request for leave to file a consolidated reply, ICC-01/11-01/11-382.

⁸ 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).

proceedings related to Libya's challenge to the admissibility of the case against Abdullah Al-Senussi" (the "Decision"),¹¹ whereby the Chamber, *inter alia*: (i) "authorise[d] the Defence of Mr Al-Senussi to file further submissions relevant to the disposal of the Admissibility Challenge, [...] by Monday, 26 August 2013"; (ii) "request[ed] 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 (iii) "authorise[d] 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".¹²

6. On 26 August 2013, the Defence filed its further submissions in accordance with the Decision.¹³

7. On 5 September 2013, the Defence filed an "Addendum" to its submissions of 26 August 2013,¹⁴ and simultaneously requested the Chamber to reduce the time limit for Libya's submissions (currently due by Monday, 16 September 2013) to Tuesday, 10 September 2013, on the grounds that Mr Al-Senussi's "immediate transfer out of Libya to The Hague is required as a matter of extreme urgency" given the "perilous conditions he faces in prison and if he is transported out of prison to any court proceedings".¹⁵ On this basis, the Defence also requests the Chamber to "issu[e] a decision on admissibility on an urgent basis".¹⁶

⁹ ICC-01/11-01/11-380

¹⁰ ICC-01/11-01/11-403-Red2, paras 3-4.

¹¹ ICC-01/11-01/11-409

¹² *Ibid.*, pp. 10 and 11.

¹³ ICC-01/11-01/11-418.

¹⁴ ICC-01/11-01/11-432, paras 1 to 23.

¹⁵ ICC-01/11-01/11-432, para. 25.

¹⁶ ICC-01/11-01/11-432, para. 26. See also para. 39.

8. On 9 September 2013, Libya filed a response to the Defence request for variation of time limit.¹⁷ According to Libya, this request must be rejected as the Defence does not show any concrete reason for the Chamber to exercise its discretion to reduce a time limit that the Chamber had set after having “already carefully considered the specific facts”.¹⁸ To the contrary, Libya argues that the time limit for its submissions should actually be extended considering, *inter alia*, that a hearing scheduled to take place on 19 September 2013 will provide further clarity on the status of the domestic case against Mr Al-Senussi.¹⁹ Accordingly, Libya requests an extension of the time limit of 10 days, until 26 September 2013.²⁰

9. The Chamber notes rule 58 of the Rules of Procedure and Evidence and regulation 35 of the Regulations of the Court (the “Regulations”).

10. The Chamber is not persuaded by the Defence arguments that “the level of insecurity in prisons in Libya” constitutes a good cause for reducing the time limit for Libya’s submissions, considering that the Defence request for variation of time limit is entirely predicated upon a hypothetical risk faced by Mr Al-Senussi which, allegedly, may only be prevented, or diminished, if the time limit for Libya’s submissions is reduced by a few days. No reason is given by the Defence on why this is the case, other than by referring to the fact that the alleged “kidnapping” of Anoud Al-Senussi “highlights the serious level of insecurity in the prisons of Libya and that the Libyan authorities are unable to provide for the safety of detainees like Mr. Al-Senussi”.²¹ The Chamber does not consider this argument sufficient to

¹⁷ ICC-01/11-01/11-438.

¹⁸ ICC-01/11-01/11-438, para. 7.

¹⁹ ICC-01/11-01/11-438, para. 16.

²⁰ ICC-01/11-01/11-438, paras 14 and 18.

²¹ ICC-01/11-01/11-432, para. 25.

warrant a variation of time limit in accordance with regulation 35 of the Regulations.

11. Conversely, the Chamber observes that the submissions currently required of Libya by Monday, 16 September 2013 primarily relate to the status of the domestic proceedings against Mr Al-Senussi, “including the timetable and nature of any such proceedings”,²² and that the hearing scheduled before the Libyan judicial authorities on 19 September 2013 appears to be a significant procedural step in the domestic proceedings against Mr Al-Senussi.²³ The Chamber cannot ignore the potential relevance of this hearing for its determination of the admissibility of the case against Mr Al-Senussi before the Court, and considers it unfavourable to the present proceedings to preclude the provision of information in this regard prior to its decision on the Admissibility Challenge, to the extent that this would not entail unreasonable prejudice to competing interests, such as the fair and expeditious conduct of the admissibility proceedings.²⁴ In particular, the Chamber is attentive to the real possibility that, as submitted by Libya,²⁵ maintaining the present time limit of 16 September 2013 would necessitate the provision of a further update to the Chamber following the upcoming hearing. For this reason, the Chamber is of the view that the requested short extension time is in fact in the interests of judicial economy, and is not prejudicial to the proper conduct of the admissibility proceedings. The extension of time limit is therefore granted.

²² Decision, p. 10. See also para. 14.

²³ See ICC-01/11-01/11-438, para. 16.

²⁴ The Chamber recalls in this regard that “a decision on the admissibility of the case must be based on the circumstances prevailing at the time of its issuance” (Pre-Trial Chamber I, Decision on the OPCD requests in relation to the hearing on the admissibility of the case, ICC-01/11-01/11-212, para. 9).

²⁵ ICC-01/11-01/11-438, para. 16.

12. The Chamber also observes that the Defence filed further submissions in relation to the admissibility of the case against Mr Al-Senussi after the expiration of time limit set out by the Chamber. The Chamber is however prepared to accept these submissions since the information given by the Defence refers to factual circumstances which have arisen after the expiration of time limit, and no prejudice is caused to Libya, which will be in a position to respond to such further submissions in its filing which, in accordance with the present decision, is due by Thursday, 26 September 2013.

13. Finally, the Chamber wishes to clarify that, unless otherwise decided, no further submissions by the parties and participants will be allowed after Libya's final submissions of 26 September 2013.

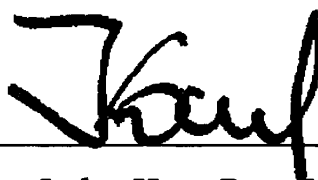
FOR THESE REASONS, THE CHAMBER

GRANTS Libya until Thursday, 26 September 2013 to: (i) provide any relevant information in relation to the domestic proceedings against Mr Al-Senussi, including the timetable and nature of any such proceedings; (ii) complement its reply to the responses to the Admissibility Challenge; and (iii) reply to the additional submissions made by the Defence of Mr Al-Senussi in filing ICC-01/11-01/11-418 of 26 August 2013 and in filing ICC-01/11-01/11-432 of 5 September 2013.

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 Wednesday, 11 September 2013

At The Hague, The Netherlands