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

Date: **24 April 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 Document

Urgent Request on behalf of Abdullah Al-Senussi pursuant to Rule 58(2)

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

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Mr. Anthony Kelly
Professor William Schabas

Counsel for Saif Gaddafi:
Mr. John Jones QC

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Legal Representatives of the Applicant

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

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Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. The Defence for Mr. Al-Senussi respectfully requests that the Pre-Trial Chamber urgently issue a decision on the conduct of proceedings, including a scheduling order for observations and responses of the parties, following the filing of the “Application on behalf of the Government of Libya relating to Abdullah Al-Senussi pursuant to Article 19 of the ICC Statute” (“Admissibility Application”) on 2 April 2013.¹
2. The Defence requests this decision in accordance with Rule 58(2) which provides that:

*“When a Chamber receives a request or application raising a challenge or question concerning its jurisdiction or the admissibility of a case in accordance with article 19, paragraph 2 or 3 ... it shall decide on the procedure to be followed and may take appropriate measures for the proper conduct of the proceedings.”*²

Submissions

3. The Defence for Mr. Al-Senussi respectfully requests that the Chamber urgently issues a decision on the conduct of the proceedings pursuant to Rule 58(2).
4. The Chamber has previously held that it “*shall* allow” written observations to be filed by relevant parties following an application challenging the admissibility of a case before the Court.³ However, in setting a schedule and determining other procedural modalities, the Chamber retains “broad discretion”⁴ to “organize the proceedings related to an admissibility challenge in [a] manner that best suits the circumstances of each particular case”.⁵ This includes the discretion to set a schedule “in accordance

¹ 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-Conf-Red, 2 April 2013 (hereinafter “Admissibility Application”).

² Rules of Procedure and Evidence, Rule 58(2). On the request of Defence Counsel, the legal officer of the Pre-Trial Chamber confirmed that any Defence submissions in response to the issue of postponement of the surrender request under Article 95 should be submitted by the Defence within the usual time for the filing of responses, namely 21 days, while a scheduling order would be issued under Rule 58 for the filing of responses to Libya’s admissibility application itself.

³ Decision on the Conduct of the Proceedings Following the “Application on behalf of the Government of Libya pursuant to Article 19 of the Statute”, ICC-01/11-01/11-134, 4 May 2012, para. 11 (emphasis in original) (hereinafter “Libya Decision of 4 May 2012”).

⁴ Libya Decision of 4 May 2012, para. 11.

⁵ Decision on the Conduct of the Proceedings Following the Application of the Government of Kenya Pursuant to Article 19 of the Rome Statute, ICC-01/09-01/11-31, 4 April 2011, para. 8 (hereinafter “Kenya Decision of 4 April 2011”); See also Libya Decision of 4 May 2012, para. 11.

with rule 58(3) of the Rules [to] allow the Prosecutor and the suspects to submit written observations on the Application within a time period determined by the Chamber”.⁶ It has been emphasised that the proceedings must be organised to “ensure the proper and expeditious conduct of the article 19 proceedings”⁷.

5. The Defence for Mr. Gaddafi filed an application on 23 April 2013 seeking that the Pre-Trial Chamber “issue an immediate decision on the [Libyan] Government’s challenge to the admissibility of the case concerning Mr. Gaddafi”.⁸ Given the very close relationship between this case and Mr. Al-Senussi’s case, which are joined cases, and the obvious relevance of the Chamber’s admissibility decision in Mr. Gaddafi’s case to the admissibility proceedings in Mr. Al-Senussi’s case, the Defence for Mr. Al-Senussi,
 - a. Reiterates the request made by Mr. Gaddafi’s counsel that the admissibility decision in his case be issued as soon as possible, and
 - b. Requests that the Chamber issue a scheduling order in Mr. Al-Senussi’s case allowing 30 days following the admissibility decision in Mr. Gaddafi’s case for written observations by the parties to be filed in relation to the Admissibility Application in Mr. Al-Senussi’s case.
6. The Defence notes that the Chamber has on previous occasions granted the Prosecution and Defence approximately four weeks from the date of its scheduling order to file observations on a pending admissibility challenge made by a State.⁹ This was done in respect of the admissibility challenge in Mr. Gaddafi’s case, and the Defence submits that the same time period would be appropriate in the present proceedings.
7. The Defence therefore requests that the Chamber set the deadline for the filing of the Defence’s observations on the Admissibility Application for 30 days after the filing of the Chamber’s admissibility decision in Mr. Gaddafi’s case. This would allow the

⁶ Kenya Decision of 4 April 2011, para. 12; See also Libya Decision of 4 May 2012, para. 11.

⁷ Kenya Decision of 4 April 2011, para. 12; Libya Decision of 4 May 2012, para. 13.

⁸ Response to the ‘Application on behalf of the Government of Libya relating to Abdullah Al-Senussi pursuant to Article 19 of the ICC Statute’, ICC-01/11-01/11-313, 23 April 2013, para. 21.

⁹ Kenya Decision of 4 April 2011, p. 7; Libya Decision of 4 May 2012, p. 7.

Defence sufficient time to prepare its observations in light of the findings of the Chamber in respect of the admissibility of Mr. Gaddafi's case.

8. The Defence also requests that an oral hearing is scheduled following the submission of the written pleadings, as occurred for the admissibility application in Mr. Gaddafi's case.¹⁰

Conclusion

9. For the reasons stated above, the Defence for Mr. Abdullah Al-Senussi respectfully requests that the Chamber:
 - a. Urgently issue a decision on the 1 May 2012 admissibility application made by Libya in Mr Saif Al-Islam Gaddafi's case;
 - b. Urgently issue an order for the conduct of proceedings for Libya's Admissibility Application in Mr Al-Senussi's case, including a Scheduling Order for written observations to be filed by the parties;
 - c. Grant the Defence's request to submit written observations on Libya's Admissibility Application 30 days following the issuance of the Chamber's admissibility decision relating to Mr. Gaddafi; and
 - d. Schedule an oral hearing following the filing of the written submissions.

Counsel on behalf of Mr. Abdullah Al-Senussi,



Ben Emmerson QC

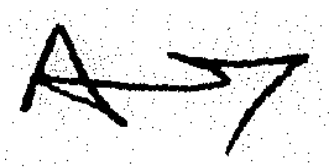
¹⁰ Order convening a hearing on Libya's challenge to the admissibility of the case against Saif Al-Islam Gaddafi, ICC-01/11-01/11-207, 14 September 2012.



Rodney Dixon



Amal Alamuddin



Anthony Kelly



Professor William Schabas

Dated 24th April 2013
London, United Kingdom