



Original: **English**

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

Date: **3 May 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

With 3 confidential annexes *Ex parte*, Defence Al-Senussi and Registry only

Second report of the Registry on the visit of the defence team to Libya

Source: The Registry

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

The Office of the Prosecutor

Ms. Fatou Bensouda

Mr. James Stewart

Counsel for the Defence

Mr. Benedict Emmerson

Mr. Rod Dixon

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Dr. Ahmed El Gehani

Amicus Curiae

REGISTRY

Registrar

Mr. Herman von Hebel

Deputy Registrar

Mr. Didier Preira

Counsel Support Section

Mr. Esteban Peralta Losilla

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

THE REGISTRAR of the International Criminal Court (“the Court”)

NOTING the “Decision on 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”¹ (the “ Decision”) dated 6 February 2013;

NOTING the “First report of the Registry on the visit of the defence team to Libya”² (the “First Report”) dated 6 March 2013;

NOTING the “Decision on the request of Abdullah Al-Senussi for leave to reply”³ dated 26 April 2013;

NOTING Regulations 23 *bis* and 24 *bis* of the Regulations of the Court;

CONSIDERING that the Chamber ordered the Registrar to provide a report on the status of the arrangements of the visit to Mr Al-Senussi by his Defence counsel by Friday, 3 May 2013;

INFORMS the Chamber as follows:

1. Further to the efforts undertaken as of January 2013, described in the First Report, the Registry continued its efforts to facilitate the privileged visit of the defence team of Mr. Senussi to Libya.
2. On 7 March 2013, the Registry was informed by the Embassy of Libya in Kingdom of the Netherlands that the request sent to the Embassy of Libya in the United Kingdom of Great Britain and Northern Ireland for the issuance of visas for the members of the defence team could not be processed as the immigration authorities in Libya had not given any instructions to facilitate

¹ ICC-01/11-01/11-269

² ICC-01/11-01/11-294-Conf-Exp

³ ICC-01/11-01/11-324

such request. No follow up was given to this request by the Libyan authorities (annex 1).

3. On 27 March 2013, the Registry inquired both about the visit of the defence team and the comments on the Memorandum of Understanding between the Court and Libya (the "MOU"). On 28 March 2013, the focal point for Libya clarified that the delay in the case was due to the deferred appointment of the new Prosecutor General. The willingness of the authorities of Libya to facilitate the said visit was reiterated but it was indicated that the MOU had to be approved by the Prosecutor General before it could subsequently be approved by the Government (annex 2). In parallel, the relevant services of the Registry continued to support the defence team's requests for the requisite visa applications.
4. On 2 April 2013, the Registry inquired anew about the possibility of arranging a visit to Libya for the defence team on the following week on the basis of an *ad hoc* agreement (annex 2).
5. On 19 April 2013, the Libyan authorities transmitted the MOU with a number of comments. On the same day, the Registry asked the focal point whether the visit of the defence team could then take place shortly. The Libyan authorities indicated that "the Libyan Government invite[s] the defense team for Mr. Al - Senussi to visit Libya forthwith at any time convenient for them. They will of course need to apply for the requisite visas for entry to Libya and, upon entry, they will be subject to Libya's domestic laws. They will also need to provide the Government with formal confirmation of their retention by Mr. Al Senussi or his family"(Annex 3). This requirement was already mentioned by the focal point as described in the First Report. The Registry understands that pursuant to Libyan domestic laws, a local lawyer will need to be appointed via the Libyan bar association for the defence team to be able to meet with Mr. Al-Senussi.

6. The Registry will instruct the defence team to present their passports at the Embassy of Libya in The Netherlands for the purposes of having the requisite visas issued. As it concerns the Libyan authorities' requirement that defence team members provide them with "formal confirmation of their retention by Mr. Al-Senussi or his family", the Registry notes that the record of the case already contains information in this regard, more specifically that pursuant to regulation 123 of the Regulations of the Registry, the Registry exceptionally and on a provisional basis acknowledged a power of attorney dated 16 November 2012, executed by Sara Abdullah Al. Senussi Amier and Fatma Mohamed Al. Hadad, the daughter and spouse of the suspect, Abdullah Al. Senussi, respectively, in favor of Mr. Ben Emmerson, Q.C. to act as counsel in "all proceedings before the International Criminal Court" concerning the abovementioned suspect implicated in proceedings before the Court (ICC-01/11-01/11).⁴
7. The Registry further notes that in addition to Mr. Emmerson, as Lead Counsel, the defence team of Mr. Senussi benefits from the legal services of three Associate Counsel. The appointment of Associate Counsel in proceedings before the Court is done by the Lead Counsel of record without the need of a power of attorney being obtained from the client. However, in order to be in keeping with the terms stipulated by the Libyan authorities as preconditions to facilitating the envisaged visit by the defence team, it would appear that those members of the defence who wish to accompany Lead Counsel to Libya for the purposes of the visit, must obtain documents attesting to their retention directly by Mr. Al-Senussi or his family, if they haven't already done so, and to furnish them to the attention of the relevant Libyan authorities.

⁴ ICC-01/11-01/11-253

8. On the outstanding finalization of the MOU, the Registry will be in position to send back the draft with its comments on the proposed amendments by the beginning of next week.
9. In addition to the e-mail correspondence mentioned above, the Registry has been in regular contacts with the focal point by phone in order to stress the urgency of the matter and obtain updates.
10. At this juncture, no fixed date was proposed by the Libyan authorities for a visit by the defence team of Mr. Al-Senussi. The proposal of the Registry to proceed with the visit on the basis of an *ad hoc* agreement on the privileges and immunities was not accepted by the Libyan authorities.
11. The Registry stresses the importance of the finalization of the MOU as a matter of priority in order to give practical effect to assurances given by the Libyan authorities that the defence team may visit Mr. Al-Senussi in Libya. The Registry looks forward to working with the focal point in Libya to bring this matter to a successful and speedy conclusion, enabling in turn, the defence team to travel to Libya without unnecessary delays. The Registry however advises that the envisaged visit of the defence team to Libya should not take place until such time that the necessary protections are in place to facilitate the visit, either on the basis of a MOU, or on the basis of an *ad hoc* agreement, if possible.
12. The present report is classified public in line with the "Decision on the request of Abdullah Al-Senussi for leave to reply" dated 26 April 2013. The annexes are classified confidential *ex parte* Defence and Registry only as it concerns official correspondences between the Court and Libya on the details of the travel of the defence team of Mr. Al-Senussi to Libya.

TRANSMITS in annexes, confidential *ex parte* Defence of Mr. Al-Senussi and Registry only:

- Exchange of e-mails dated 5 and 7 March 2013 between the Registry and the focal point (Annex 1);
- Exchange of e-mails dated 27 March and 2 April 2013 between the Registry and the focal point (Annex 2);
- Exchange of e-mails dated 19 April 2013 between the Registry and the focal point (Annex 3).



Herman von Hebel
Registrar

Dated this Friday, the 3rd of May 2013

At The Hague, The Netherlands