

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/11-01/11
Date: 23 January 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**

URGENT

Public

**Decision on the Defence for Abdullah Al-Senussi's "Urgent Application
pursuant to Regulation 35"**

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor
Fatou Bensouda

Counsel for Saif Al-Islam Gaddafi
Xavier-Jean Keïta
Melinda Taylor

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
Philippe Sands
Payam Akhavan
Michelle Butler

Amicus Curiae

REGISTRY

Registrar
Silvana Arbia

Deputy Registrar
Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”) issues the following decision on the “Urgent Application pursuant to Regulation 35” (the “Application”), submitted by the Defence for Abdullah Al-Senussi (“Mr Al-Senussi”).¹

1. On 26 February 2011, Resolution 1970 was adopted by the United Nations Security Council, referring the situation in Libya since 15 February 2011 to the Prosecutor of the Court and deciding that the Libyan authorities shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor.²

2. On 27 June 2011, the Chamber issued the “Decision on the ‘Prosecutor’s Application Pursuant to Article 58 as to the Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi’”,³ and warrants of arrest for, *inter alia*, Mr Al-Senussi.⁴

3. On 4 July 2011, the Registrar filed the “Request to the Libyan Arab Jamahiriya for the arrest and surrender of Muammar Mohammed Abu Minyar GADDAFI, Saif Al-Islam GADDAFI and Abdullah AL-SENUSSI”, requesting Libya to arrest and surrender to the Court, *inter alia*, Mr Al-Senussi (the “Surrender Request”).⁵

4. On 21 March 2012, the Registrar filed the “Report of the Registry regarding the arrest of Abdullah Al-Senussi”.⁶

5. On 17 September 2012, the Registrar filed the “Second Report of the Registry on the status of the execution of the request for arrest and surrender

¹ ICC-01/11-01/11-256.

² S/RES/1970 (2011).

³ ICC-01/11-01/11-1.

⁴ ICC-01/11-01/11-4.

⁵ ICC-01/11-01/11-5.

⁶ ICC-01/11-01/11-80-Conf-Exp.

of Abdullah Al-Senussi”, informing the Chamber, *inter alia*, of the fact that, despite the absence of any official information from the Libyan authorities, it appeared that Mr Al-Senussi had arrived on Libyan territory on 5 September 2012.⁷

6. On 10 December 2012, the Chamber issued the “Corrigendum to the Order in relation to the request for arrest and surrender of Abdullah Al-Senussi”, whereby it: (i) instructed the Registrar to “reiterate to the Libyan authorities the request for arrest and surrender of Mr Al-Senussi and remind them of their obligation to comply with the request”; and (ii) requested the Libyan authorities to confirm the extradition of Mr Al-Senussi from Mauritania to Libya, and provide the name of the detention centre in which Mr Al-Senussi is being held, if any, as well as information about his state of health.⁸

7. On 9 January 2013, the Defence for Mr Al-Senussi filed the “Urgent Application on behalf of Abdullah Al-Senussi for Pre-Trial Chamber to order the Libyan Authorities to comply with their obligations and orders of the ICC” (“Application of 9 January 2013”).⁹ As this filing was notified to Libya on 10 January 2013, Libya’s response, if any, is due on Friday, 1 February 2013.

8. On 16 January 2013, the Registrar filed in the record of the case the response received by the Libyan authorities pursuant to the order issued by the Chamber on 10 December 2012.¹⁰ In particular, the Libyan authorities confirmed that Mr Al-Senussi is at present in their custody and that judicial proceedings are currently ongoing at the domestic level.¹¹ Libya also provided

⁷ ICC-01/11-01/11-208.

⁸ ICC-01/11-01/11-241-Corr.

⁹ ICC-01/11-01/11-248.

¹⁰ ICC-01/11-01/11-252, and annexes attached thereto.

¹¹ ICC-01/11-01/11-252-Anx3.

the requested information regarding the detention centre in which Mr Al-Senussi is being held and his state of health.¹²

9. On 18 January 2013, the Chamber issued the “Decision requesting Libya to provide observations concerning the Court’s request for arrest and surrender of Abdullah Al-Senussi” (the “Decision of 18 January 2013”), whereby it requested the Libyan authorities to provide observations, no later than 1 February 2013, on the way Libya intends to fulfil its obligations to cooperate with the Court in relation to the arrest and surrender of Mr Al-Senussi, and especially its duty to comply with the Surrender Request.¹³

10. On 23 January 2013, the Defence for Mr Al-Senussi filed the Application, whereby it requests the Chamber to reduce the time limit for Libya to file: (i) its observations pursuant to the Decision of 18 January 2013; and (ii) its response to the Application of 9 January 2013.¹⁴ More specifically, the Defence submits that since the Decision of 18 January 2013, “Mr Al-Senussi’s family have become aware of what they assess to be reliable information from a confidential source that the Libyan authorities intend to put Mr Al-Senussi on trial before a military court before the end of January 2013 which will culminate in his execution”.¹⁵ It is in light of this information that the Defence for Mr Al-Senussi requests, as a precautionary measure, that the Chamber change the concerned time limits to 27 January 2013.

11. The Chamber notes regulation 35(2) of the Regulations of the Court (the “Regulations”), according to which “[t]he Chamber may [...] reduce a time limit if good cause is shown and, where appropriate, after having given the participants an opportunity to be heard”.

¹² *Ibid.*

¹³ ICC-01/11-01/11-254.

¹⁴ ICC-01/11-01/11-256.

¹⁵ *Ibid.*, para. 9.

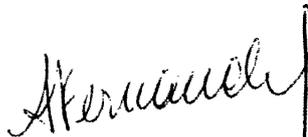
12. In light of the nature of the information provided by the Defence of Mr Al-Senussi, the Chamber is of the view that there is “good cause” within the meaning of regulation 35(2) of the Regulations to shorten the time limit for Libya’s provision of its observations pursuant to the Decision of 18 January 2013. Furthermore, the Chamber does not consider that the limited reduction of time limit would entail any prejudice to Libya, as the Decision of 18 January 2013 merely requests observations on the way Libya intends to comply with its duty to execute the Surrender Request, a duty of which it has been reminded by the Court on numerous occasions. This part of the Defence request is therefore granted.

13. As regards the reduction of time limit for Libya’s response to the Application of 9 January 2013, which is currently due on Friday 1 February 2013, the Chamber is not persuaded that the Defence has shown good cause within the meaning of regulation 35(2) of the Regulations. Indeed, the Chamber is of the view that the concerns expressed by the Defence in terms of the urgency to receive Libya’s clarifications as to its compliance with the Surrender Request are satisfactorily addressed by shortening the time limit for Libya’s observations pursuant to the Decision of 18 January 2013. Accordingly, it is not necessary to reduce the time limit for the response to the Application of 9 January 2013, and the Defence request is rejected in this part.

FOR THESE REASONS, THE CHAMBER

REQUESTS the Libyan authorities to provide observations, no later than Monday 28 January 2013, on the way Libya intends to fulfil its obligations to cooperate with the Court in relation to the arrest and surrender of Mr Al-Senussi, and especially its duty to comply with the Surrender Request.

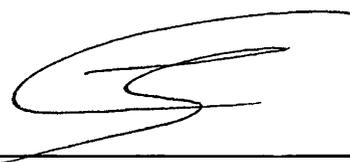
Done in both English and French, the English version being authoritative.



Judge Silvia Fernández de Gurmendi
Presiding Judge



Judge Hans-Peter Kaul



Judge Christine Van den Wyngaert

Dated this 23 January 2013

At The Hague, The Netherlands