

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 7 June 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**

**Prosecution's Request for Leave to Present Additional Observations to the  
"Application on behalf of the Government of Libya relating to Abdullah Al-  
Senussi pursuant to Article 19 of the ICC Statute"**

**Source:** Office of the Prosecutor

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

**The Office of the Prosecutor**

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## **REGISTRY**

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**Counsel Support Section**

**Deputy Registrar**

Didier Preira

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Other  
Section**

## **Background**

1. On 2 April 2013, Libya filed its "Application on behalf of the Government of Libya relating to Abdullah Al-Senussi pursuant to Article 19 of the ICC Statute", challenging the admissibility of the case against Mr Al-Senussi ("Senussi Admissibility Challenge").<sup>1</sup>
2. On 24 April 2013, the Prosecution filed its response to the Senussi Admissibility Challenge.<sup>2</sup>
3. On 26 April 2013, the Pre-Trial Chamber issued its decision on the conduct of the proceedings whereby it invited the Defence, OPCV and the Security Council to provide observations, and it permitted the Prosecution to supplement its response with the leave of the Chamber by 14 June 2012.<sup>3</sup>
4. On 31 May 2013, the Chamber rendered its decision on the admissibility of the case against Saif Al-Islam Gaddafi whereby it found the case admissible before the Court ("Saif Al-Islam Admissibility Decision").<sup>4</sup>

## **Application for Leave to File Additional Observations**

5. The Prosecution seeks leave from the Pre-Trial Chamber to file additional observations on the Senussi Admissibility Challenge in light of the recent Saif Al-Islam Admissibility Decision. In this decision, the Chamber provided further explanation with respect to the "case" and "conduct" that Libya is expected to investigate,<sup>5</sup> and it relied on certain factors to conclude that Libya is unable

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<sup>1</sup> ICC-01/11-01/11-307-Red.

<sup>2</sup> ICC-01/11-01/11-321-Red.

<sup>3</sup> ICC-01/11-01/11-325.

<sup>4</sup> ICC-01/11-01/11-344-Red.

<sup>5</sup> Saif Al-Islam Admissibility Decision, paras.77-83. See also para.133.

genuinely to carry out the investigation or prosecution of the case against Saif Al-Islam.<sup>6</sup>

6. If leave is granted, the Prosecution will address two issues: first, it will address the extent to which the interpretation of “case” and “conduct” that the Prosecution advanced in its Response is compatible with the Chamber’s interpretation of these concepts in the Saif Al-Islam Admissibility Decision; and second, the Prosecution will address Libya’s ability genuinely to carry out the investigation or prosecution of the case against Al-Senussi in light of the factors considered by the Pre-Trial Chamber in the above-mentioned decision.

### **Relief Sought**

7. Based on the foregoing, the Prosecution requests that the Chamber grant it leave to file additional observations to the Senussi Admissibility Challenge.




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Fatou Bensouda, Prosecutor

Dated this 7<sup>th</sup> Day of June 2013  
At The Hague, the Netherlands

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<sup>6</sup> Ibid., paras.204-215.