

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: 11 July 2014

**PRE-TRIAL CHAMBER I**

**Before: Judge Silvia Fernández de Gurmendi, Single Judge**

**SITUATION IN LIBYA**

**IN THE CASE OF *THE PROSECUTOR* v. *SAIF AL-ISLAM GADDAFI and  
ABDULLAH AL-SENUSSI***

**Public**

**Decision on matters related to Libya's duties to cooperate with the Court**

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

Philippe Sands

James Crawford

Payam Akhavan

Wayne Jordash

Michelle Butler

**Amicus Curiae**

Competent authorities of Libya

**REGISTRY**

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**Registrar**

Herman von Hebel

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Others**

**Judge Silvia Fernández de Gurmendi**, Single Judge responsible for carrying out the functions of Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”) in relation to the present case,<sup>1</sup> issues the present decision on matters related to Libya’s duties to cooperate with the Court.

1. On 26 February 2011, the United Nations Security Council adopted Resolution 1970, whereby it referred the situation in Libya since 15 February 2011 to the Prosecutor of the Court and decided that “the Libyan authorities shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor”.<sup>2</sup> Following the referral of the situation and upon request by the Prosecutor,<sup>3</sup> the Chamber, on 27 June 2011, issued a warrant of arrest against, *inter alia*, Saif Al-Islam Gaddafi<sup>4</sup> and Abdullah Al-Senussi.<sup>5</sup>

2. As repeatedly observed by the Chamber,<sup>6</sup> following the order contained in the Security Council Resolution 1970 requiring Libya to “cooperate fully” with the Court, Libya is under a duty to cooperate with the Court and to comply with requests for cooperation made by the Court.

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<sup>1</sup> “Decision designating a single judge”, 13 February 2014, ICC-01/11-01/11-511.

<sup>2</sup> S/RES/1970 (2011).

<sup>3</sup> ICC-01/11-4-Red.

<sup>4</sup> Pre-Trial Chamber I, “Warrant of Arrest for Saif Al-Islam Gaddafi”, ICC-01/11-01/11-3.

<sup>5</sup> Pre-Trial Chamber I, “Warrant of Arrest for Abdullah Al-Senussi”, ICC-01/11-01/11-4.

<sup>6</sup> See “Decision on Libya's Submissions Regarding the Arrest of Saif Al-Islam Gaddafi”, ICC-01/11-01/11-72, paras 12 and 13; “Decision on the postponement of the execution of the request for surrender of Saif Al-Islam Gaddafi pursuant to article 95 of the Rome Statute”, ICC-01/11-01/11-163, paras 27 to 30; and Pre-Trial Chamber I, “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”, 6 February 2013, ICC-01/11-01/11-269, para. 21; “Decision requesting Libya to provide submissions on the status of the implementation of its outstanding duties to cooperate with the Court”, 15 May 2014, ICC-01/11-01/11-545, para. 2.

## I. Issues following Libya's submissions of 28 May 2014 in relation to its outstanding duties to cooperate with the Court

3. On 15 May 2014, the Single Judge observed that Libya had failed to discharge, in particular, three obligations arising from three requests by the Court for cooperation with respect to the case against Saif Al-Islam Gaddafi and Abdullah Al-Senussi,<sup>7</sup> and noted that “[i]n case of non-compliance with obligations to cooperate the Court with respect to situations which have been referred to the Prosecutor by the Security Council, one of the tools available to the Court is to make a finding of non-cooperation by the State and refer the matter to the Security Council” and “prior to any such step being taken, regulation 109 of the Regulations of the Court mandates that ‘the Chamber shall hear from the requested State’”.<sup>8</sup> Accordingly, in order to determine the course of action in relation to Libya's non-compliance with its outstanding obligations to cooperate with the Court,<sup>9</sup> the Single Judge requested Libya:

[T]o inform the Chamber, by Wednesday, 28 May 2014, as to the status of the implementation of: (i) its duty to immediately surrender Mr Gaddafi to the Court; (ii) its duty to return to the Defence of Mr Gaddafi the originals of the materials that were seized from the former Defence counsel for Mr Gaddafi by the Libyan authorities during her visit to Mr Gaddafi in Zintan, and destroy any copies thereof; and (iii) its duty to arrange a privileged legal visit to Mr Al-Senussi by his Defence.<sup>10</sup>

4. On 28 May 2014, Libya provided its submissions (“Libya's Submissions”),<sup>11</sup> whereby it, *inter alia*, requested that, in relation to its duties to surrender Mr Gaddafi to the Court and to return to the Defence the privileged documents seized in Zintan, it be given “a temporary postponement of its response such that it is required to provide submissions

<sup>7</sup> “Decision requesting Libya to provide submissions on the status of the implementation of its outstanding duties to cooperate with the Court”, 15 May 2014, ICC-01/11-01/11-545, para. 2.

<sup>8</sup> *Ibid.*, para. 7.

<sup>9</sup> *Ibid.*, para. 8.

<sup>10</sup> *Ibid.*, p. 7.

<sup>11</sup> ICC-01/11-01/11-548.

on these aspects within 8 weeks following the upcoming election”,<sup>12</sup> *i.e.* until 20 August 2014, or, alternatively, “an extension of time of such length as the Court considers appropriate”.<sup>13</sup>

5. On 5 June 2014 the Prosecutor,<sup>14</sup> the legal representative of victims,<sup>15</sup> the Defence of Mr Gaddafi,<sup>16</sup> and the Defence of Mr Al-Senussi<sup>17</sup> filed their responses to Libya’s submissions (collectively, the “Responses”).

6. On 13 June 2014, Libya filed a request for leave to reply to the Responses,<sup>18</sup> and, with a view to “help[ing] ensure the expeditious conduct of the proceedings, bearing in mind that the nature of the Request under consideration is itself for an extension of a deadline”, simultaneously filed its proposed reply (“Libya’s Reply”), emphasising that the Chamber may, if it were to deny leave to file a reply, disregard those submissions.<sup>19</sup> In the Reply, Libya provides relevant clarifications on a number of factual aspects that were raised in the Responses, as well as updates on certain facts occurred after the filing of 28 May 2014. The Defence of Mr Gaddafi, on 24 June 2014,<sup>20</sup> and the Defence of Mr Al-Senussi, on 7 July 2014,<sup>21</sup> responded to this application for leave to reply by Libya, both requesting that the application be rejected. Simultaneously, both Defence teams provide certain submissions on the facts brought about in the Reply.

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<sup>12</sup> *Ibid.*, para. 4.

<sup>13</sup> *Ibid.*, para. 9.

<sup>14</sup> ICC-01/11-01/11-551.

<sup>15</sup> ICC-01/11-01/11-552.

<sup>16</sup> ICC-01/11-01/11-553.

<sup>17</sup> ICC-01/11-01/11-554-Conf.

<sup>18</sup> ICC-01/11-01/11-557-Conf-Exp (only available to the Defence of Mr Gaddafi). A redacted version has also been filed (ICC-01/11-01/11-557-Red).

<sup>19</sup> *Ibid.*, paras 8 and 10.

<sup>20</sup> ICC-01/11-01/11-560.

<sup>21</sup> ICC-01/11-01/11-562-Conf-Exp (only available to the Defence of Mr Al-Senussi). A redacted version has also been filed (ICC-01/11-01/11-562-Red).

7. In this regard, the Single Judge notes regulation 24(5) of the Regulations of the Court (the “Regulations”). Taking into account that Libya’s submissions of 28 May 2014 were filed upon request by the Single Judge, that some aspects raised by the Defence required clarifications by Libya, and that certain circumstances have evolved, the Single Judge considers that the submissions made by Libya in the Reply and by the Defence of Mr Gaddafi and the Defence of Mr Al-Senussi in their subsequent filings provide relevant information for the present determination. Therefore, the Single Judge has taken into account these submissions for the purpose of this decision.

8. As already observed, the Single Judge requested submissions on three outstanding obligations on the part of Libya to cooperate with the Court. It is appropriate to address them individually hereunder.

***A. Libya’s obligation to immediately surrender Saif Al-Islam Gaddafi to the Court***

9. The first outstanding obligation on which submissions were requested of Libya in the Decision was the obligation to immediately surrender Mr Gaddafi to the Court, which has been pending since 31 May 2013 when the Chamber issued its decision rejecting Libya’s challenge to the admissibility of the case before the Court.<sup>22</sup> In the meantime, Libya’s appeal against the decision – while bearing no suspensive effect<sup>23</sup> – has been dismissed by the Appeals Chamber and the Chamber’s decision on the admissibility of the case against Mr Gaddafi has therefore become final.<sup>24</sup>

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<sup>22</sup> ‘Decision on the admissibility of the case against Saif Al-Islam Gaddafi’, 31 May 2013, ICC-01/11-01/11-344-Red.

<sup>23</sup> Appeals Chamber, “Decision on the request for suspensive effect and related issues”, 18 July 2013, ICC-01/11-01/11-387.

<sup>24</sup> Appeals Chamber, “Judgment on the appeal of Libya against the decision of Pre-Trial Chamber I of 31 May 2013 entitled ‘Decision on the admissibility of the case against Saif Al-Islam Gaddafi’”, 21 May 2014, ICC-01/11-01/11-547-Red.

10. As recalled above, Libya requests that the time limit to present its submissions as to the status of implementation of this duty be extended until 20 August 2014, as “the Government is [...] currently focusing its resources on restoring stability and order” in the country, following “a surge in the attacks against the Government, particularly in Tripoli and Benghazi”<sup>25</sup> and “an election has been called for 25 June 2014”,<sup>26</sup> after which “[i]t is anticipated that the situation in Libya will soon stabilize [and] the new Government (once formed) will be better placed to update the Court on these matters”.<sup>27</sup>

11. The Single Judge takes note of these factual aspects raised by Libya and the claimed “practical” impact that they may have on Libya’s ability to provide the Court with submissions describing the status of implementation of the duty to surrender Mr Gaddafi to the Court.<sup>28</sup> Nonetheless, this duty has been outstanding since 31 May 2013 and Libya’s failure to comply with it does not appear contingent on the current situation in the country.

12. Together with numerous other opportunities given to Libya to address the matter throughout the relevant period, the Single Judge, by her decision of 15 May 2014, expressly requested Libya, in accordance with regulation 109 of the Regulations, to inform the Chamber of the steps taken in the implementation of this duty, prior to the Chamber’s determination on whether to make a finding of non-cooperation and refer the matter to the Security Council. The failure of Libya to provide any information on the matter, together with the passage of time, suggests that, no steps have been taken to proceed to the immediate surrender of Mr Gaddafi to the Court.

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<sup>25</sup> Libya’s Submissions, para. 6.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*, para. 7.

<sup>28</sup> Libya’s Reply, paras 8-9 and 16-17.

13. While the Single Judge acknowledges Libya's argument that the new government to be formed after the upcoming elections in Libya may be "better placed to update the Court on these matters",<sup>29</sup> this does not deny the obvious fact that Mr Gaddafi's surrender to the Court is yet to be effected by Libya and that the competent Libyan authorities failed to provide any submission in this regard despite having been given a further opportunity to do so and been informed that the Chamber was considering the possibility of making a finding of non-cooperation and refer the matter to the Security Council. In these circumstances, the Single Judge considers that the extension requested is not appropriate, that consultations under regulation 109(3) of the Regulations may be deemed to have been concluded and that the Chamber may decide at any time what further action is appropriate, including making a formal finding of non-cooperation and transmitting it to the Security Council. This is, however, without prejudice to the possibility for Libya to provide to the Chamber any additional information that it may consider relevant in relation to the implementation of the duty to surrender Mr Gaddafi as well as to developments in the political and security situation in the country.

***B. Libya's obligations concerning respect of the privileges and immunities of the Defence of Saif Al-Islam Gaddafi***

14. The second outstanding obligation that was referred to in the Decision was to return to the Defence of Mr Gaddafi the originals of the materials that were seized from the former counsel for Mr Gaddafi by the Libyan authorities during her visit to Mr Gaddafi in Zintan, and to destroy any copies thereof.<sup>30</sup>

15. Libya also requests an extension of time with respect to this obligation Accordingly, it requests to be authorised to inform the Chamber on 20 August

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<sup>29</sup> Libya's Submissions, para. 7.

<sup>30</sup> Pre-Trial Chamber I, "Decision on the 'Urgent Defence Request'", 1 March 2013, ICC-01/11-01/11-291. See also ICC-01/11-01/11-346 and annexes attached thereto



2014 on the steps taken in order to return the originals of the privileged documents to the Defence and destroy any copy.

16. It appears to the Single Judge that the letter of Libya's Attorney General to the Chief Prosecutor of Zintan confirming that the domestic criminal proceedings in Zintan, which are at least in part predicated on the Defence privileged documents, must be terminated<sup>31</sup> can be considered a relevant step towards the implementation of the duty to return the privileged documents to the Defence and destroy any copy thereof. The Single Judge also notes Libya's submissions that confirmation that the national proceedings against Mr Gaddafi arising out of the events in Zintan in summer 2012 will no longer be pursued is expected to take place "in an upcoming procedural hearing taking place in Tripoli in the main criminal proceedings relating to crimes committed during the 2011 revolution".<sup>32</sup>

17. In light of the above, the Single Judge considers that the requested extension of time is justified.

***C. Libya's obligation to organise a legal visit to Abdullah Al-Senussi by his Defence***

18. The third outstanding obligation is the obligation to arrange a legal visit to Mr Al-Senussi by his Defence, in compliance with two decisions of the Chamber, dated 6 February 2013<sup>33</sup> and 26 September 2013.<sup>34</sup>

19. As part of its Submissions, Libya filed a letter signed on 27 May 2014 by the Minister of Justice relating to the privileges and immunities of, *inter alia*,

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<sup>31</sup> Annex 2 to Libya's Reply (ICC-01/11-01/11-557-Anx2).

<sup>32</sup> Libya's Reply, para. 34.

<sup>33</sup> Pre-Trial Chamber I, "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", 6 February 2013, ICC-01/11-01/11-269.

<sup>34</sup> Pre-Trial Chamber I, "Decision concerning a privileged visit to Abdullah Al-Senussi by his Defence", 26 September 2013, ICC-01/11-01/11-456.

defence counsel visiting Libya. As confirmed by the Registrar, this letter signed by the competent Libyan authorities is the exact version of the text originally submitted and signed by the Registrar. The agreement emerging from the exchange of letters is therefore already in force. The Single Judge also notes that the agreement covers all elements referred to by the Chamber in its decision of 26 September 2013 as necessary to ensure the appropriate treatment and protection of the Defence teams during their stay on Libyan territory, in accordance with article 48(4) of the Statute.<sup>35</sup> Accordingly, the Chamber is not persuaded by the arguments of the Defence of Mr Al-Senussi to the effect that the letter is deficient in terms of the privileges and immunities covered therein.<sup>36</sup>

20. At the same time, the Single Judge recalls that, in accordance with the Chamber's relevant decisions, Libya and the Registrar are requested to make practical arrangements for the visit to Mr Al-Senussi by his Defence. Libya argues that further practical details would be made when a particular visit is in the process of being organised, "something which is now possible in view of the terms of the Exchange of Letters".<sup>37</sup> According to Libya, "the next step in facilitating such a visit is for the Al-Senussi defence team to apply through the normal official channels, that is through their local embassy, for a visit visa".<sup>38</sup> This is also confirmed by a letter dated 9 June 2014 from the Attorney General of Libya to the Registrar, attached to Libya's Reply.<sup>39</sup>

21. In light of this, the Defence of Mr Al-Senussi, in case it still intends to conduct a legal visit to Mr Al-Senussi in Libya, should approach the Registrar in order to proceed with the organisation of the visit on an agreed date and

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<sup>35</sup> Pre-Trial Chamber I, "Decision concerning a privileged visit to Abdullah Al-Senussi by his Defence", 26 September 2013, ICC-01/11-01/11-456, para. 16.

<sup>36</sup> ICC-01/11-01/11-554-Conf, para. 15.

<sup>37</sup> Libya's Reply, para. 33.

<sup>38</sup> Libya's Reply, para. 33(a).

<sup>39</sup> Annex 1 to Libya's Reply (ICC-01/11-01/11-557-Anx1).

coordinate the necessary practical arrangements for that purpose, including the request for visit visas.

22. The Single Judge notes the concerns expressed by the Defence of Mr Al-Senussi with respect to the current security situation in Libya and the political instability within the government,<sup>40</sup> as well as Libya's own reference to "security difficulties" in the country.<sup>41</sup> In light of this, the Single Judge is of the view that as a preliminary measure, the Registrar should perform a risk assessment on the situation in Libya and, on this basis, advise the Defence on whether a visit to Mr Al-Senussi can take place at this time or whether it should be postponed for reasons of security.

## **II. The request by the Defence of Abdullah Al-Senussi to order Libya to suspend the national trial proceedings against Mr Al-Senussi**

23. In a filing dated 8 May 2014, the Defence of Mr Al-Senussi requested the Chamber "to order Libya to suspend the trial proceedings pending the outcome of the [Court's] appellate proceedings".<sup>42</sup> According to the Defence of Mr Al-Senussi, this suspension is "the only means of ensuring that no actions are taken to frustrate or hinder compliance with Libya's obligations vis-à-vis the [Court]".<sup>43</sup> This request to order the suspension of the national trial proceedings against Mr Al-Senussi until the Appeals Chamber has issued its judgment on appeal, has been reiterated by the Defence of Mr Al-Senussi in its response to Libya's Submissions.<sup>44</sup>

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<sup>40</sup> ICC-01/11-01/11-554-Conf, paras 21 to 31; ICC-01/11-01/11-562-Conf-Exp, paras 19-20.

<sup>41</sup> Libya's Reply, para. 15. See also Libya's Submissions, paras 7-8.

<sup>42</sup> ICC-01/11-01/11-544, para. 22.

<sup>43</sup> *Ibid.*

<sup>44</sup> ICC-01/11-01/11-554-Conf, paras 10 and 35. See also, ICC-01/11-01/11-562-Conf-Exp, para. 28.

24. At the outset, the Chamber recalls that on 11 October 2013, the case against Mr Al-Senussi was declared inadmissible before the Court.<sup>45</sup> While it is true that the Chamber's decision is currently under review by the Appeals Chamber, unless and until such decision is reversed on appeal, the Chamber's determination of the inadmissibility of the case against Mr Al-Senussi stands. It is worth recalling in this regard that the Appeals Chamber rejected the request by the Defence of Mr Al-Senussi to grant suspensive effect to the appeal against the admissibility decision.<sup>46</sup>

25. On previous occasions, both this Chamber and the Appeals Chamber have rejected similar requests by the Defence of Mr Al-Senussi. In particular, this Chamber, prior to determining the inadmissibility of the case against Mr Al-Senussi, already found that the fact that domestic proceedings against Mr Al-Senussi had not been terminated pending the Court's determination "do[es] not, *per se*, amount to a violation of Libya's obligation to cooperate with the Court, insofar as Libya must ensure that its ongoing criminal proceedings do not hinder or delay Mr Al-Senussi's surrender to the Court should the case eventually be declared admissible".<sup>47</sup> On this basis, the Chamber subsequently rejected the request by the Defence of Mr Al-Senussi to order Libya to provide an undertaking not to commence the trial of Mr Al-Senussi in Libya until the admissibility proceedings are finally determined by the Court.<sup>48</sup> In the same vein, the Appeals Chamber rejected a request by the Defence of Mr Al-Senussi for an order not to try Mr Al-Senussi

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<sup>45</sup> "Decision on admissibility of the case against Abdullah Al-Senussi", ICC-01/11-01/11-466-Red.

<sup>46</sup> Appeals Chamber, "Decision on the request for suspensive effect and the request to file a consolidated reply", 22 November 2013, ICC-01/11-01/11-480.

<sup>47</sup> "Decision on Libya's postponement of the execution of the request for arrest and surrender of Abdullah Al-Senussi pursuant to article 95 of the Rome Statute and related Defence request to refer Libya to the UN Security Council", 14 June 2013, ICC-01/11-01/11-354, para. 36.

<sup>48</sup> "Decision on additional submissions in the proceedings related to Libya's challenge to the admissibility of the case against Abdullah Al-Senussi", 19 August 2013, ICC-01/11-01/11-409, paras 21 and 23.

in Libya pending disposal by the Appeals Chamber of the appeal against the Chamber's decision on the admissibility of the case.<sup>49</sup>

26. Both Chambers have therefore concluded that the commencement of trial proceedings against Mr Al-Senussi was not such that could result in frustrating his possible surrender to the Court in the hypothesis of an eventual declaration of admissibility of the case against Mr Al-Senussi.

27. The Chamber is not persuaded by the submission of the Defence of Mr Al-Senussi that these decisions by this Chamber and the Appeals Chamber should be reconsidered given that "circumstances have now changed in that the Libyan authorities have started the trial in order to conclude the trial proceedings".<sup>50</sup> As recalled above, this Chamber and the Appeals Chamber considered that there was no legal basis to order Libya to refrain from commencing the domestic *trial* proceedings against Mr Al-Senussi. The same must hold true also for *continuing* those trial proceedings once commenced. Indeed, taking also into account the circumstances of the ongoing national proceedings as explained by Libya,<sup>51</sup> the Single Judge is of the view that it cannot be assumed that their continuation may *per se* frustrate the surrender of Mr Al-Senussi should the decision on the admissibility of the case be reversed.

28. In light of the above, the request by the Defence of Mr Al-Senussi that Libya be ordered to suspend the domestic trial proceedings against Mr Al-Senussi until the final disposal by the Appeals Chamber of the appeals against the admissibility decision is not justified.

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<sup>49</sup> Appeals Chamber, "Decision on the request for suspensive effect and the request to file a consolidated reply", 22 November 2013, ICC-01/11-01/11-480, paras 5 and 16-19.

<sup>50</sup> ICC-01/11-01/11-544, para. 15.

<sup>51</sup> Libya's Reply, para. 28. See also ICC-01/11-01/11-542, para. 6.

### III. The Prosecutor's request for an order to Libya of 1 May 2014

29. On 1 May 2014, the Prosecutor requested the Chamber to order Libya to: (i) “[i]nform the Chamber as to whether trial proceedings are indeed being conducted against Messrs Gaddafi and Al-Senussi in Libya” (the “First Request”); (ii) “[p]rovide assurances that the outcome of its domestic proceedings will not hinder the implementation of the [r]equest to surrender Mr Gaddafi to the Court, nor hinder its potential obligation to surrender Mr Al-Senussi, should the Appeals Chamber reverse the inadmissibility decision against him” (the “Second Request”); and (iii) “[u]pdate the Chamber on its ability and efforts, if any, to surrender Mr Gaddafi to the Court and to do so, on a regular basis until the Surrender Request is implemented” (the “Third Request”).<sup>52</sup>

30. On 8 May 2014, Libya,<sup>53</sup> the Defence of Mr Gaddafi,<sup>54</sup> the Defence of Mr Al-Senussi<sup>55</sup> and the legal representative of victims<sup>56</sup> responded to this filing by the Prosecutor.

31. The Single Judge considers that the First and the Third Request are now moot, as Libya has subsequently explained that the trial against Mr Gaddafi and Mr Al-Senussi has not started yet, while only procedural pre-trial hearings are currently being held,<sup>57</sup> and the Single Judge on 15 May 2014 indeed requested submissions by Libya as to the steps taken to effect the surrender of Mr Gaddafi to the Court.<sup>58</sup> These two requests are therefore dismissed.

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<sup>52</sup> ICC-01/11-01/11-539, para. 8.

<sup>53</sup> ICC-01/11-01/11-542.

<sup>54</sup> ICC-01/11-01/11-543.

<sup>55</sup> ICC-01/11-01/11-544.

<sup>56</sup> ICC-01/11-01/11-541.

<sup>57</sup> ICC-01/11-01/11-542, paras 4, 5 and 12; Libya's Reply, paras 28 and 29.

<sup>58</sup> “Decision requesting Libya to provide submissions on the status of the implementation of its outstanding duties to cooperate with the Court”, 15 May 2014, ICC-01/11-01/11-545.

32. The Second Request must instead be addressed in the present decision. As recalled above, the Prosecutor seeks an order to Libya to “provide assurances” that the outcome of its domestic proceedings will not hinder Mr Gaddafi’s surrender to the Court or the potential obligation to also surrender Mr Al-Senussi should the Appeals Chamber reverse the inadmissibility decision against him.

33. This Chamber has already addressed a similar request by the Defence of Mr Al-Senussi to order Libya to provide an undertaking “to surrender immediately Mr Al-Senussi to the ICC in the event that his case is declared admissible before the ICC, irrespective of the stage reached in the national proceedings”.<sup>59</sup> The Chamber rejected this request as the undertaking requested by the Defence was unnecessary given that Libya’s obligation to surrender Mr Al-Senussi, in case of failure of its admissibility challenge, arise from the relevant resolution of the Security Council and the Statute of the Court, and not from any undertaking that Libya may be requested to provide.<sup>60</sup>

34. The same principle applied by the Chamber on that occasion is equally applicable to the Prosecutor’s request under consideration. As repeatedly observed, Libya has the duty to surrender Mr Gaddafi to the Court as well as to refrain from any action that could frustrate the potential surrender of Mr Al-Senussi to the Court in case the decision declaring his case inadmissible is reversed by the Appeals Chamber. Neither of these already existing obligations is negotiable and any “undertaking” in this regard on the part of Libya is therefore unwarranted.

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<sup>59</sup> ICC-01/11-01/11-380, para. 24.

<sup>60</sup> “Decision on additional submissions in the proceedings related to Libya’s challenge to the admissibility of the case against Abdullah Al-Senussi”, 19 August 2013, ICC-01/11-01/11-409, paras 22 and 23.

**FOR THESE REASONS, THE SINGLE JUDGE**

**GRANTS** Libya's application for leave to reply;

**REJECTS** Libya's request for extension of time to provide submissions on the status of implementation of its duty to surrender Mr Gaddafi to the Court and

**REMINDS** Libya of its obligation to proceed to the surrender immediately;

**GRANTS** Libya an extension of time until 20 August 2014 to provide submissions on the status of implementation of its duty to return to the Defence of Mr Gaddafi the originals of the materials that were seized from the former Defence counsel for Mr Gaddafi by the Libyan authorities during her visit to Mr Gaddafi in Zintan, and destroy any copies thereof;

**REJECTS** the request by the Defence of Mr Al-Senussi to order Libya to suspend the national trial proceedings against Mr Al-Senussi;

**REJECTS** the Prosecutor's request to order Libya to provide assurances in relation to its compliance with outstanding and potential duties to cooperate with the Court and **DISMISSES** the remainder of the Prosecutor's request dated 1 May 2014; and

**ORDERS** the Registrar to notify the present decision to the competent Libyan authorities, alongside Counsel representing Libya in the present proceedings.

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



**Judge Silvia Fernández de Gurmendi**  
**Single Judge**

Dated this 11 July 2014

At The Hague, The Netherlands