



Original: English

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

Date: 5 February 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

Libyan Government Response to Mr Al-Senussi's "Application for leave to reply to the "Response of the Libyan Government to the 'Urgent Application on behalf of Abdullah Al-Senussi for the Pre-Trial Chamber to order the Libyan Authorities to comply with their obligations and the orders of the ICC'"

Source: The Government of Libya, represented by:
Professor Ahmed El-Gehani
Professor Philippe Sands QC
Professor Payam Akhavan
Ms Michelle Butler

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

The Office of the Prosecutor

Ms. Fatou Bensouda

Counsel for the Defence

Counsel for Abdullah Al-Senussi:

Mr. Ben Emmerson QC

Mr. Rodney Dixon

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

The Office of Public Counsel for Victims

Ms. Paolina Massidda

Ms. Sarah Pellet

Mr. Mohamed Abdou

The Office of Public Counsel for the Defence

Counsel for Saif Al-Islam Gaddafi:

Mr. Xavier-Jean Keita

Ms. Melinda Taylor

State's Representatives

Professor Ahmed El-Gehani

Professor Philippe Sands QC

Professor Payam Akhavan

Ms. Michelle Butler

Amicus Curiae

REGISTRY

Registrar

Ms. Silvana Arbia

Counsel Support Section

Deputy Registrar

Mr. Didier Daniel Preira

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section Other

I. SUBMISSIONS

1. Counsel for Libya file this Response to Mr Al-Senussi's "Application to request leave to reply to the 'Response of the Libyan Government to 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 filed on 5 February 2013.
2. In general, in order to obtain authorization to file a reply, a party needs to demonstrate good cause² or that there was an issue that arose from the response which could not have been anticipated in their initial submission.³ Allowing the applicant the opportunity to reply does not always enhance the fairness of proceedings and indeed the opposite can be the case where an applicant has deliberately refrained from making a reasoned and evidenced argument on a foreseeable issue.⁴
3. The matters on which Mr Al-Senussi wishes to reply can be readily categorized into three separate topics:
 - a. Libya's assertion that Mr Al-Senussi's allegations of Libyan non-cooperation were not properly substantiated (sub-paragraphs 4(a), (g), (j) and (k) of the 5 February 2013 filing); and
 - b. Libya's request for postponement of the order for surrender and to supplement its admissibility challenge (sub-paragraphs 4(b), (c), (d) and (e), of the 5 February 2013 filing);
 - c. The scope of the Court's jurisdiction when ruling on the original application (sub-paragraphs 4(f), (h) and (i) of the 5 February 2013 filing).
4. Each of these topics was eminently foreseeable at the time of filing Mr Al-Senussi's application. Allowing a reply in such circumstances not only wastes the Court's time but would also serve to deprive Libya of its right to respond and to address any factual or legal inaccuracies contained in additional

¹ ICC-01/11-01/11-266.

² ICC-01/05-01/08-294.

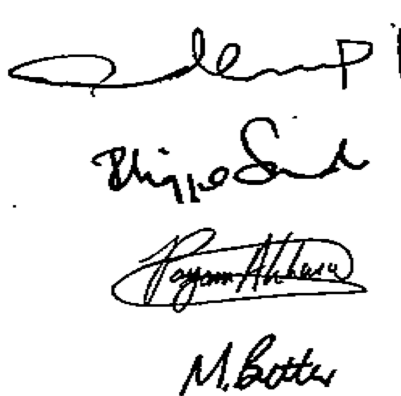
³ ICC-01/04-01/07-2792.

⁴ ICTY, Prosecutor v M. Nikolic (IT-02-60/1-A), Decision on Prosecution's Motion to Strike, 20 January 2005, para. 32.

submissions or fresh evidence filed by way of reply. Given the foreseeability of the issues now sought to be addressed, Mr Al-Senussi's application for leave to reply fails to demonstrate good cause as to why its additional submissions and fresh evidence on these topics was not included in its original application.

5. For the reasons set out above, the Libyan Government respectfully requests that the Pre-Trial Chamber reject the application for leave to reply.

Respectfully submitted:



Professor Ahmed El-Ghani
 Professor Philippe Sands QC
 Professor Payam Akhavan
 Ms Michelle Butler
*Libyan ICC Coordinator and
 Counsel on behalf of the Government of Libya*

Dated this 5th day of February 2013
 At London, United Kingdom