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

Date: 23 April 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

**Response to “Application on behalf of Abdullah Al-Senussi for leave to reply to the
“Response of the Libyan Government to the “Renewed Application on behalf of Mr.
Abdullah Al-Senussi to Refer Libya and Mauritania to the UN Security Council with Public
Annex 1 and Confidential and Ex Parte (Registry only) Annexes 2 and 3”” of 10 April
2013”**

**Source: The Government of Libya in the case of Abdullah Al-Senussi represented by:
Professor Ahmed El-Gehani
Professor James Crawford SC
Mr Wayne Jordash
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

Ms Amal Alamuddin

Mr Anthony Kelly

Legal Representatives of the Victims**Legal Representatives of the Applicants****Unrepresented Victims****Unrepresented
(Participation/Reparation)****Applicants****The Office of Public Counsel for Victims**

Ms Paolina Massidda

Ms Sarah Pellet

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**The Office of Public Counsel for the
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Amicus Curiae**State's Representatives (in the case of
Abdullah Al-Senussi)**

Professor Ahmed El-Ghani

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Mr Wayne Jordash

Ms Michelle Butler

REGISTRY**Registrar**

Mr Herman von Hebel

Counsel Support Section**Deputy Registrar**

Mr Didier Daniel Preira

Victims and Witnesses Unit**Detention Section****Victims Participation and Reparations
Section****Other**

I. INTRODUCTION

1. On 19 April 2013, the Defence filed its Application on behalf of Mr. Al-Senussi for leave to reply to the “Response of the Libyan Government to the “Renewed Application on behalf of Mr. Abdullah Al-Senussi to Refer Libya and Mauritania to the UN Security Council with Public Annex 1 and Confidential and Ex Parte (Registry only) Annexes 2 and 3”” of 10 April 2013 (“The Defence Application to Reply”).¹ The Libyan Government hereby opposes the Defence Application to Reply.

II. SUBMISSIONS

2. Regulation 34 (c) requires that:

Subject to leave being granted by a Chamber in accordance with regulation 24, sub-regulation 5, a reply shall be filed within ten days of notification in accordance with regulation 31 of the response. (emphasis added)

3. The Defence Application to Reply was made nine days after the Government’s Response² and, as such, was not made expeditiously. No explanation has been provided for this failure. Accordingly, it should be refused.
4. Further, the three reasons advanced in support of the Defence Application to Reply fall significantly short of a showing of good cause for it to be granted an opportunity to reply. Rather than seeking to reply to new and specific matters in the Response, the Defence Application simply seeks to bolster the substance of the Defence’s “Renewed Application on behalf of Mr. Abdullah Al-Senussi to Refer Libya and Mauritania to the UN Security Council with Public Annex 1 and Confidential and Ex Parte (Registry only) Annexes 2

¹ “Application on behalf of Al-Senussi for leave to reply to the “Response of the Libyan Government to the “Renewed Application on behalf of Mr. Abdullah Al-Senussi to Refer Libya and Mauritania to the UN Security Council with Public Annex 1 and Confidential and Ex Parte (Registry only) Annexes 2 and 3”” of 10 April 2013”, ICC-01/11-01/11-312, 19 April 2013 (hereinafter “Defence Application to Reply”).

² “Response of the Libyan Government to the “Renewed Application on behalf of Mr. Abdullah Al-Senussi to Refer Libya and Mauritania to the UN Security Council with Public Annex 1 and Confidential and Ex Parte (Registry only) Annexes 2 and 3”, ICC-01/11-01/11-310, 10 April 2013.

and 3” (“Renewed Application”).³ Specifically, it seeks to augment its arguments that “Libya’s intentions and actions are very clear”,⁴ and that there “can be no doubt that Libya has failed to cooperate and comply with the ICC’s requests”.⁵ In particular, the Defence Application to Reply seeks leave to augment its submissions by serving evidence concerning: (i) alleged (further) failures concerning making arrangements for a privileged legal visit;⁶ (ii) alleged human rights violations that has “become available since the filing of the Renewed Application”.⁷ As conceded by the Defence, the purpose of adducing such evidence is not to challenge new matters arising in the Government’s Response, but simply to “ensure that the Chamber has the most current information on Libya’s conduct of Mr. Al-Senussi’s case”.⁸

5. The third issue which the Defence seeks leave to address in its Reply relates to the Libyan Government’s invocation of its right pursuant to Article 95 of the Statute to postpone the surrender of Mr Al-Senussi in its Admissibility Challenge, as filed on 2 April 2013.⁹ It is submitted that this was an issue that was reasonably foreseeable at the time of the Renewed Application given that the decision by Chamber regarding the postponement of the request for the surrender in the Gaddafi proceedings.¹⁰ The underlying principle is equally applicable to the Al-Senussi case, namely that Part 9 of the Statute – and in particular Article 95 - applies to requests for surrender and, consequently, the filing of an admissibility challenge permits the postponement of the surrender of the accused. Thus, this was an issue that was reasonably foreseeable and could have been addressed by the Defence in its Renewed Application. Accordingly, no new issue arises for consideration or additional submissions and the application should be dismissed.
6. Alternatively, in the event that the Chamber grants the Defence Application to Reply, the Government invites the Chamber to request an up-to-date report from the Registry regarding Libya’s cooperation. The Registry will, *inter alia*, confirm that on 19 April

³ “Renewed Application on behalf of Mr. Abdullah Al-Senussi to Refer Libya and Mauritania to the UN Security Council with Public Annex 1 and Confidential and Ex Parte (Registry only) Annexes 2 and 3”, ICC-01/11-01/11-304, 19 March 2013.

⁴ Ibid, Para. 8.

⁵ Ibid, Para. 42.

⁶ Ibid, Para. 5.

⁷ Ibid, Para. 8.

⁸ Ibid, Para. 9.

⁹ “Application on behalf of the Government of Libya relating to Abdullah Al-Senussi pursuant to Article 19 of the ICC Statute”, ICC-01/11-01/11-307, 2 April 2013, Paras. 5 and 206.

¹⁰ “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, 1 June 2012, at Para 36.

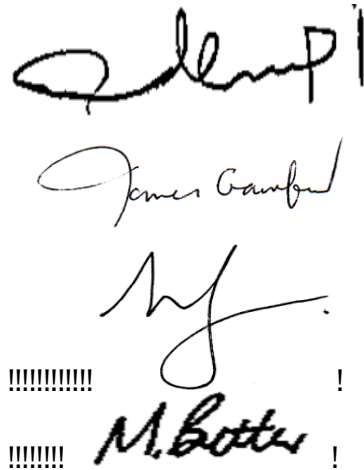
2013:

- (i) the draft memorandum of understanding on privileges and immunities (MOU) as between the Libyan Government and the ICC was generally accepted by the Government, subject to limited amendments to be agreed by the parties, and sent to the Registry for its consideration; and
- (ii) the Libyan Government extended an invitation through the Registry to the defence team retained by Mr Al-Senussi (or his family on his behalf) to visit him in Libya forthwith, at a time convenient for them.

III. CONCLUSION

- 7. For these reasons, the Government of Libya respectfully requests that the Chamber to refuse the Defence Application to Reply.

Respectfully submitted:



Professor Ahmed El-Gehani
 Professor James Crawford SC
 Mr Wayne Jordash
 Ms Michelle Butler
*Libyan ICC Coordinator and
 Counsel on behalf of the Government of Libya
 in the case of Abdullah Al-Senussi*

Dated this 23rd day of April 2013

At London, United Kingdom