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

Date: 3 May 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's Request for leave to reply to the Defence for Mr. Saif Al-Islam Gaddafi's "Response to the "Application on behalf of the Government of Libya relating to Abdullah Al-Senussi pursuant to Article 19 of the ICC Statute""

Source: The Government of Libya in the case of Mr Abdullah Al-Senussi represented by:
Professor James Crawford SC
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Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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**Victims Participation and Reparations Section
Other**

I. PRELIMINARIES

1. Libya files this request for leave to reply to the ‘Response to the “Application on behalf of the Government of Libya relating to Abdullah Al-Senussi pursuant to Article 19 of the ICC Statute”’, filed by the Defence for Mr. Saif Al-Islam Gaddafi on 23 April 2013.¹
2. Libya notes that pursuant to Regulation 24(5) of the Regulations of the Court “participants may only reply to a response with the leave of the Chamber”² and that, if such leave is granted, the reply, according to Regulation 34(c) of the Regulations “shall be filed within ten days of notification [...] of the response”.
3. In the Gaddafi proceedings, the Pre-Trial Chamber upheld the appropriateness of authorising Libya to file a reply to responses addressing admissibility issues, due to Libya’s status as the “triggering force and main actor in [admissibility] proceedings”.³ In sum, a Pre-Trial Chamber “must ensure that proceedings are fair in the sense that, *inter alia*, the Government lodging the challenge enjoys the opportunity to respond to the parties’ and participants’ observations”, provided the proceedings remain “equally expeditious in order to avoid unnecessary delays of the entire proceedings”.⁴
4. Libya also notes the recent decision of the Pre-Trial Chamber granting the Defence for Mr. Al-Senussi leave to reply, notwithstanding that the application for leave to reply was made 9 days after notification of the response and, further,

¹ ICC-01/11-01/11-313.

² *Prosecutor v Lubanga*, Judgment on the appeal of Mr Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled “Decision sur la demande de mise en liberte provisoire de Thomas Lubanga Dyilo”, ICC-01/04-01/06-824, 13 February 2007, para. 68.

³ ICC-01/11-01/11-191, para. 8.

⁴ *Prosecutor v Ruto et al*, “Decision under Regulation 24(5) of the Regulations of the Court on the Motion submitted on behalf of the Government of Kenya”, Pre-Trial Chamber II, 2 May 2011, ICC-01/09-01/11-76, para. 15.

that the Chamber granted the Defence 7 days from the date of leave being granted to file its Reply.⁵

II. SUBMISSIONS

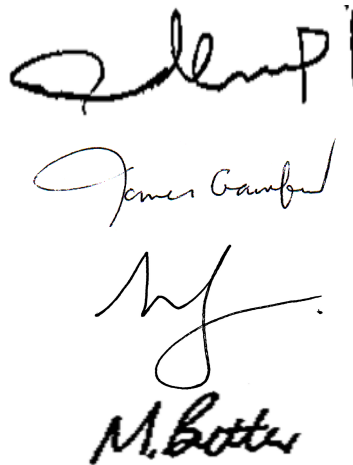
5. The Response raises issues concerning the admissibility challenges relating to both Mr. Al-Senussi and Mr. Gaddafi, which are either incorrect or are raised for the first time and thus necessitate a reply from Libya in order to ensure that the Chamber has all the relevant information and submissions before it in respect of both challenges. The need to correct inaccuracies or respond to new and distinct issues of law and fact raised in the participant submissions prior to a decision on the admissibility of the case constitutes good cause for the granting of leave to reply.⁶ In the event that leave is granted to reply, Libya would not use any reply to repeat arguments already made in its previous submissions but rather would confine its submissions to addressing only matters raised by the Response.
6. Examples of submissions to which a reply is warranted include new and distinct issues of law and fact relating to:
 - a. the allegation that the Government “contrived to benefit from additional time to mount its admissibility challenge against Mr Al-Senussi” and the suggestion that Libya now “seek[s] to rely upon the one filed latest in time in order to supplement its earlier challenge against Mr. Gaddafi”;
 - b. the relevance and status of the information and evidence served in the challenge concerning Mr. Al-Senussi, which was not included in the initial challenge concerning Mr. Gaddafi;
 - c. the current status of the domestic proceedings against Mr. Gaddafi; and
 - d. the legal representation of persons associated with the former regime.

⁵ “Decision on the request of Abdullah Al-Senussi for leave to reply”, 26 April 2013, ICC-01/11-01/11-324.

⁶ *Prosecutor v. Bemba*, Decision on the Defence’s Request for Leave to Reply on the Motion for Provisional Release dated 24 November 2008, 27 November 2008, ICC-01/05-01/08-294; *Prosecutor v. Mbarushimana* Decision on the Prosecution’s request for leave to reply to the “Defence Response to Prosecution’s Request for the Review of Potentially Privileged Material” 24 February 2011.

III. RELIEF SOUGHT

7. Libya therefore respectfully requests that the Pre-Trial Chamber:
 - a. Grant leave to Reply to the Response by the Defence for Mr. Saif Al-Islam Gaddafi pursuant to Regulation 24(5);
 - b. Set a reply deadline of 7 days following notification of leave being granted.



Professor Ahmed El-Ghani
 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 3rd day of May 2013
 At London, United Kingdom