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

Date: 9 September 2013

THE APPEALS CHAMBER

Before: Judge Anita Ušacka, Presiding Judge
Judge Akua Kuenyehia
Judge Sang-Hyun Song
Judge Erkki Kourula
Judge Sanji Mmasenono Monageng

SITUATION IN LIBYA

IN THE CASE OF

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

Public

**Renewed request to make further submissions responding to those of the
Prosecution and Defence**

**Source: The Government of Libya, represented by:
Professor Ahmed El-Gehani
Professor Phillipe 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 Saif Al-Islam Gaddafi:

Mr. John R.W.D Jones QC

Ms. Sarah Bafadhel

Counsel for Abdullah Al-Senussi:

Mr. Ben Emmerson QC

Mr. Rodney Dixon

Ms. Amal Alamuddin

Mr. Anthony Kelly

Professor William Schabas

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

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The Office of Public Counsel for the Defence

State's Representatives

Professor Ahmed El-Ghani

Professor Phillippe Sands QC

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Legal Representatives of Mishana Hosseinioun

Sir Geoffrey Nice QC

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REGISTRY

Registrar

Mr. Herman von Hebel

Counsel Support Section

Deputy Registrar

Mr. Didier Daniel Preira

Victims and Witnesses Unit

Detention Section

I. SUBMISSIONS

1. The Government of Libya respectfully reiterates its Request to make further submissions clarifying matters raised in the Prosecution and Defence Responses to “Document in support of Libya’s Appeal Against the Decision on the Admissibility of the Case against Saif Al-Islam Gaddafi” filed on 29 July 2013¹ prior to the Appeals Chamber rendering a decision on the appeal.
2. This request is made in light of the Appeals Chamber’s discretion under regulation 28 of the Regulations of the Court to order further submissions by parties or participants when it is “necessary for the proper disposal of the Appeal [...] bearing in mind the principle of equality of arms and the need for expeditious proceedings”.²
3. In these appellate proceedings to date, the Appeals Chamber has previously granted certain parties and other participants the right to make further observations on the materials filed by to date:
 - a. the Office of Public Counsel for Victims has been granted the opportunity to file observations on Libya’s document in support of the appeal and the Prosecution and Defence responses thereto;³
 - b. Libya, the Office of the Prosecutor and the Defence have been granted the opportunity to file further submissions by way of response to those by the Office of Public Counsel for Victims;⁴
 - c. Mishana Hosseinioun has been granted the opportunity to file observations in respect of Libya’s fourth ground of appeal;⁵
 - d. Libya, the Office of the Prosecutor, the Defence and the Office of Public Counsel for Victims have been granted the opportunity to file responses to the observations of Mishana Hosseinioun in respect of Libya’s fourth

¹ ICC-01/11-01/11-389.

² ICC-01/09-01/11-OA, para 9.

³ ICC-01/11-01/11-383, page 3.

⁴ ICC-01/11-01/11-383, page 3.

⁵ ICC-01/11-01/11-404, para 8.

ground of appeal.⁶

4. In exercising its discretion to order further submissions, the Appeals Chamber has previously ruled that further submissions will not be ordered where those submissions merely involve disagreement with arguments offered in the Responses by the parties and / or the development of arguments that are already before the Appeals Chamber.⁷
5. As set out in Libya's request to file further submissions, the Prosecution and Defence have raised arguments and issues in their Responses which are either not correct or which are raised for the first time and thus necessitate further submissions from Libya in order to ensure that the Appeals Chamber has all the relevant information and submissions before it prior to ruling on the Appeal. The need to correct inaccuracies or respond to new arguments in the submissions considered by the Appeals Chamber prior to making a decision on the appeal constitutes good cause for the exercise of the Chamber's discretion to permit further submissions by Libya.⁸
6. Granting the Government an opportunity to file limited further submissions dealing with matters raised in the responses filed by the Prosecution and Defence would ensure that the principle of equality of arms is upheld and would be consistent with the Chamber's approach (outlined in paragraph 3 above) in granting other participants the right to file further submissions in these appellate proceedings.
7. It will be recalled that, in the unusual context of an appeal against a decision on an admissibility challenge by a State, the exercise of the Appeals Chamber's discretion in this manner would ensure that the "proceedings are fair in the sense that, inter alia, the Government (the "triggering force and main actor in

⁶ ICC-01/11-01/11-404, para 10; ICC-01/11-01/11-415, para 10. Indeed, in this latter filing the Appeals Chamber determined "that it is appropriate ... that Libya, the Prosecutor and Mr Gaddafi should have the opportunity to respond to any observations that the OPCV may file" at para 11.

⁷ ICC-01/09-01/11 OA, para 10.

⁸ *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 November 2011.

[admissibility] proceedings⁹) lodging the challenge enjoys the opportunity to respond to the parties' and participants' observations".¹⁰ Indeed, as recognised by Pre-Trial Chamber II, an admissibility challenge is a matter of "delicacy [...] which goes to the heart of the States' sovereign rights".¹¹ By extension, an appeal arising from a decision of an admissibility challenge also goes to the heart of the sovereign rights of a State. In view of this, further submissions by Libya at this juncture would be commensurate with the equality of arms principle and the importance of the issue at stake. In relation to matters of such sensitivity, the appearance of fairness requires that the government of the state, whose sovereign rights may be so deeply affected, be provided with every reasonable opportunity to make its case known to the Chamber.

8. In the event that leave is granted to file further submissions, Libya would not use these submissions to merely disagree with arguments made by the Prosecution and Defence in their Responses nor to develop arguments which are already before the Appeals Chamber but rather would confine its submissions to addressing only matters raised by the Prosecution and Defence Responses which are either erroneous or in relation to which the Chamber is not apprised of the Government's arguments.
9. The Government recalls that in its Request to file further submissions lodged on 29 July 2013, it sought the Appeals Chamber to set a deadline of 13 August 2013 for the filing of those submissions. Now that that proposed deadline has passed, the Government respectfully requests that it be granted 14 days in which to file further submissions from the date upon which a decision is made granting the lodgement of such submissions.

⁹ ICC-01/11-01/11-191, para. 8; ICC-01/11-01/11-288, para 11.

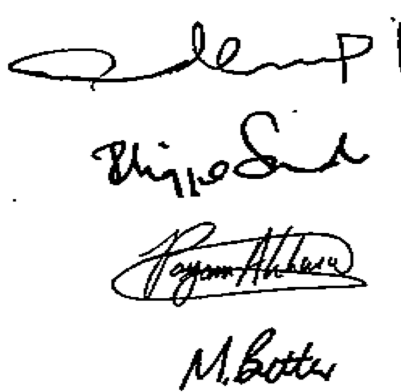
¹⁰ *Prosecutor v Ruto et al*, "Decision under Regulation 24(5) of the Regulations of the Court on the Motion submitted on behalf of the Government of Kenya", Pre-Trial Chamber II, 2 May 2011, ICC-01/09-01/11-76, para. 15.

¹¹ *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.

10. For the reasons stated above, the Government respectfully requests that the Chamber:

- a. grant its request to submit further submissions on the matters raised in the responses filed by the Prosecution and Defence prior to issuing a Decision on the Government's Appeal;
- b. grant the Government 14 days following the issuance of a Decision permitting such submissions for these submissions to be filed with the Court.

Respectfully submitted:



Professor Ahmed El-Gehani
 Professor Phillipe Sands QC
 Professor Payam Akhavan
 Ms Michelle Butler

*Libyan ICC Coordinator and
 Counsel on behalf of the Government of Libya*

Dated this 9th day of September 2013
 At London, United Kingdom