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

Date: 13 November 2013

THE APPEALS CHAMBER

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

**SITUATION IN LIBYA
IN THE CASE OF**

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

Public

**Response to the Al-Senussi Defence Request to file a consolidated reply to the
Libyan and Prosecution Responses to the Al-Senussi Request for Suspensive Effect**

Source: The Government of Libya, 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:

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REGISTRY

Registrar

Mr. Herman von Hebel

Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

I. INTRODUCTION

1. The Libyan Government hereby files its Response to the “Request on behalf of the Defence for Abdullah Al-Senussi to File a Consolidated Reply to Libya’s ‘Response to the Al-Senussi Defence’s ‘Request for Suspensive Effect’ and the Prosecution’s ‘Response to the Request of the Defence for Mr Abdullah Al-Senussi for Suspensive Effect’ (ICC-01/11-01/11-468-Red OA6)”, (“the Request”) which was filed on 7 November 2013.¹ The Defence seeks permission to file further submissions in respect of the issue of suspensive effect.
2. The Government hereby submits that the Chamber should reject the Request.

II. SUBMISSIONS

3. Regulation 24(5) of the Regulations of the Court states that, “participants may only reply to a response with the leave of the Chamber”.² Although replies are not part of the standard appeals procedure, the Appeals Chamber has discretion under Regulation 28 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”.³
4. Mr. Al-Senussi seeks leave to reply in order to introduce material purportedly relevant to the issue of suspensive effect that underpins a central element of his appeal.⁴ Mr. Al-Senussi’s Document in Support of Appeal was filed on 4 November. This was after the Libyan Government filed its “Response to the Request of the Defence for Abdullah Al-Senussi for Suspensive Effect” on 28

¹ ICC-01/011-01/11-468.

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 proviso ire de Thomas Lubanga Dyilo”, ICC-01/04-01/06-824, 13 February 2007, para. 68.

³ ICC-01/09-01/11 OA, para 9.

⁴ Request, paras. 8-14.

October 2013.⁵ If Mr. Al-Senussi is permitted to reply and rely upon the new material fairness would require further submissions from the Libyan Government to allow a Response to the new material. It may well be argued by the Defence that they need to reply to that Response.

5. Further, permitting further submissions in the manner envisaged by the Request would be repetitious and antithetical to the requirement for expeditious proceedings. *Submissions of precisely this kind* will be provided in the Libyan Government's Response to Mr. Al-Senussi's pending admissibility appeal: to be filed by 26th November 2013.
6. In sum, the Request attempts to use filings on the issue of suspensive effect as a means of litigating arguments that are central to the admissibility appeal, in advance of the Libyan Government's submissions on these issues being before the Chamber. Whilst the substance of the Defence's proposed submissions (followed by a response by the Libyan Government) is necessary in order for the Chamber to be apprised of the parties' arguments as to the substantive appeal concerning admissibility, such submissions are plainly not necessary for the proper disposal of the issue of suspensive relief.
7. 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 already before the Appeals Chamber.⁶
8. Each of the arguments outlined in the Request indicate mere disagreement with the submissions of the Libyan Government and the Prosecutor. The issues in respect of suspensive relief are plain: (i) whether the relief requested is indeed

⁵ ICC-01/011-01/11-4671.

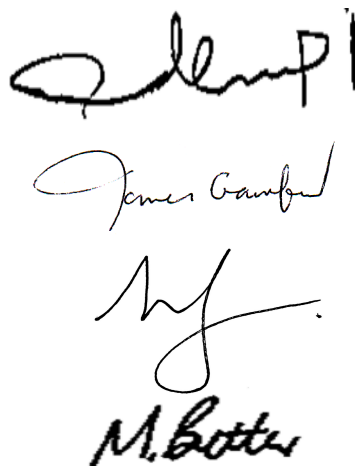
⁶ ICC-01/09-01/11 OA, para 10.

suspensive relief (i.e., whether it involves reversion to the *status quo*); and (ii) whether the party requesting suspensive effect has met its burden to satisfy the Appeals Chamber of “strong” or “compelling” reasons, to grant suspensive relief (that the appeal would otherwise become moot or some other irreversible situation would be created).⁷ The Appeals Chamber is already apprised of all parties’ submissions on both issues.

III. RELIEF REQUESTED

9. For foregoing reasons, the Libyan Government respectfully submits that the Appeals Chamber should reject the Defence’s Request.

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 13th day of November 2013
 At London, United Kingdom

⁷ ICC-01/09-02/11-401, para. 10; ICC-01/04-02/12-12, paras. 23-24.