



Original: English

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

Date: 27 January 2014

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, with 1 Confidential Annex

**Addendum to Libyan Government's Request for the Appeals Chamber to disregard
the new evidence submitted as part of the Al-Senussi Defence Response to the
OPCV's Observations on its Document in support of its Appeal**

Source: The Government of Libya, represented by:
Professor Ahmed El-Ghani
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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Mr. John R.W.D Jones QC

Ms. Sarah Bafadhel

Counsel for Abdullah Al-Senussi:

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Legal Representatives of the Applicants

Unrepresented Victims

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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 an addendum to its Request for the Appeals Chamber to disregard the new evidence submitted as part of the Al-Senussi Defence Response to the Observations of the OPCV on its Document in support of its appeal (“Defence Response to the OPCV”).¹ Whilst maintaining its position that the new evidence produced by the Defence should be rejected, the Government is anxious to negate any prejudice that may arise in the event of its admission into evidence. To that end, the Government hereby files a letter from the Attorney General’s office attaching an up-to-date medical report about Mr Al-Senussi.²

II. SUBMISSIONS

2. The Government relies upon its previous submissions relating to the unauthorised submission of evidence by the Defence. The Government emphasises, in particular, its submission that:

By adducing the evidence in this manner, the Defence has improperly circumvented the Court’s procedures and placed before the Appeals Chamber evidence of which the Libyan Government is not apprised (and therefore is improperly denied of the opportunity to refute), which is outside the scope of the appellate proceedings and which appears to be designed to be purely prejudicial to a fair adjudication on the merits of the appeal.

3. The Defence filed the new evidence *ex parte* and, accordingly, the Government is precluded from knowing and addressing the detail of the very serious allegations the Defence makes in its Response to the OPCV submissions. Rather, the Government is only privy to the summary of the allegations set out in a public appendix.
4. The Government now simply seeks to counter the prejudice that may arise from the submission of this evidence, which, notwithstanding any ruling the Appeals Chamber may make regarding the weight to be given to it (if any), is now in the consciousness of the Court and the general public. The Government therefore seeks

¹ ICC-01/11-01/11-502; ICC-01/11-01/11-500.

² Public Annex 1.

to redress any unfairness in the appellate proceedings themselves by providing the Appeals Chamber with the material at Annex 1.

5. The material comprises a letter from the Head of Investigations Section at the Office of the Attorney General, Mr Al-Sediik Ahmed El-Sor, attaching a medical report relating to Mr Al-Senussi, the contents of which are self-explanatory. Given that the medical report contains highly personal information relating to Mr Al-Senussi it is filed on a Confidential *inter partes* basis. For members of the public following these proceedings, the effect of the evidential materials at Annex 1 can be summed up in this extract from the letter of Mr El-Sor:

"... we pay regular and unscheduled visits to the rehabilitation institution in which the defendant is detained, and we have access to his health file as any other detainee. Through these recurrent visits, we discovered that the concerned person receives good health care, and that his health condition is normal, and the conditions of detention are good and in conformity with the controls stipulated in the law of rehabilitation and correction institutions, and its executive regulation. The detained person did not submit any complaint to the contrary."

6. Bearing in mind the proper scope of the appellate procedure, the Government does not seek to make any unauthorised submissions in relation to the documentation. As outlined above, it is submitted purely to counter any prejudice already occasioned by the Defence's attempts to place, without proper authorisation, highly inflammatory and false allegations contained in new evidentiary materials before the Appeals Chamber for consideration as part of its appeal.

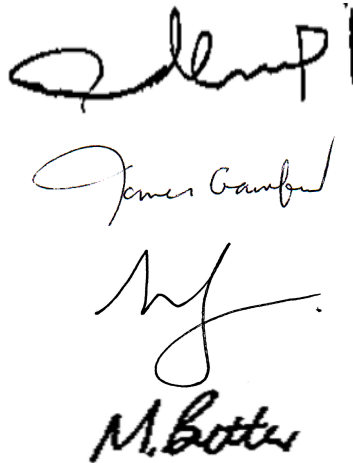
III. RELIEF REQUESTED

7. For the reasons set out above, the Libyan Government:

- (i) reiterates its previous submissions that the Appeals Chamber reject *in limine* the Defence legal submissions based on new evidence which are contained in the Defence Response to the OPCV; or

- (ii) in the event that the Defence legal submissions and materials are admitted, accept receipt of the documents contained within Annex 1 with a view to redressing the prejudice that arises from the unauthorised Defence filing of new evidence.

Respectfully submitted:



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 27th day of January 2014
At London, United Kingdom