



Original: English

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

Date: 01 April 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

Libyan Government's Response to Application on behalf of the Defence for Abdullah Al-Senussi for leave to reply to, or submit further submissions in light of, "Libyan Government's Response to the Al-Senussi Defence's 'Further Submissions on behalf of Abdullah Al-Senussi Pursuant to Regulation 28'" of 24 February 2014

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:

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

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

Mr. Mohamed Abdou

The Office of Public Counsel for the Defence

State's Representatives

Professor Ahmed El-Ghani

Professor James Crawford SC

Mr. Wayne Jordash

Ms. Michelle Butler

REGISTRY

Registrar

Mr. Herman von Hebel

Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

I. INTRODUCTION

1. On 11 March 2013, the Defence filed its Application on behalf of the Defence for Abdullah Al-Senussi for leave to reply to, or submit further submissions in light of, “Libyan Government’s Response to the Al-Senussi Defence’s ‘Further Submissions on behalf of Abdullah Al-Senussi Pursuant to Regulation 28’” of 24 February 2014 (“Defence Application to Reply”).¹ The Libyan Government hereby opposes the Defence Application to Reply and invites the Chamber to reject it.

II. LEGAL FRAMEWORK

2. As the Defence for Al-Senussi set out in its application, Regulation 24(5) of the Regulations of the Court provides 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

3. In addition, 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)

4. The Appeals Chamber has previously held that, “if a participant anticipates that the Appeals Chamber might not be in a position to dispose of [an application for leave to reply] prior to the expiration of the time limit for the filing of a reply,

¹ ICC-01/11-01/11-523-Red

² ICC-01/04-01/06-824, para. 68

³ ICC-01/09-01/11 OA, para. 9

the proper procedural avenue is to file, together with the application for leave to reply, an application for the extension of the time limit.”⁴

III. SUBMISSIONS

a. Defence Application to Reply not made expeditiously

5. The Defence Application to Reply to the Government’s Response was made some 14 days after notification of the Response and, as such, was not made expeditiously. No explicit explanation has been provided for this failure, nor can an explanation be deduced from the substance of the Defence Application to Reply. Furthermore, the Defence have failed to apply for an extension of the time limit. Accordingly, the Defence Application should be rejected.

b. Substance of Reply improperly included in the Defence Application to Reply

6. The Appeals Chamber’s has expressly disavowed the practice of filing a substantive reply prior to leave being granted and has warned that this practice may, in and of itself, give rise to the rejection of an application for leave.⁵ Despite this, the Defence Application to Reply clearly “is of such a character as to in fact constitute a substantive reply to issues”.⁶
7. The Application to Reply, which runs to 12 pages, consists primarily of arguments by the Defence regarding the reliability of the information provided by the Government regarding legal representation. The Defence uses the Application to Reply to reiterate previous assertions relating to the reliability or otherwise of information provided by the Government and, in doing so, sidesteps the proper authorisation process. Accordingly, the Government invites the Appeals Chamber to reject the Application to Reply as well as those

⁴ ICC-01/04-01/06-824, para. 68

⁵ ICC-01/04-01/06-824, para. 68

⁶ ICC-01/04-01/06-824, para. 68

arguments contained within the Application to Reply that are of such a character as to constitute a substantive reply to issues.

c. No good cause shown to warrant a reply

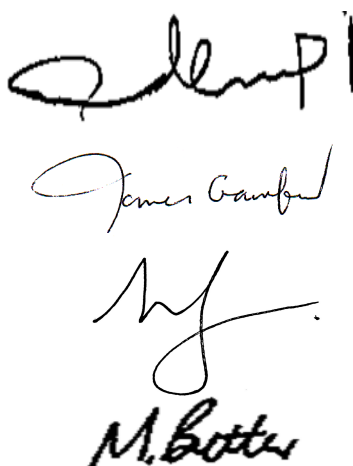
8. Furthermore, the reasons advanced in support of the Defence Application to Reply fall significantly short of a showing of good cause for it to be granted. Rather than seeking to put before the Court submissions that may be necessary for the proper disposal of the appeal, the Defence simply reiterates its general assertions regarding the question of legal representation and security and seeks to bolster its arguments regarding the reliability or otherwise of the Government's information. The Application to Reply amounts to little more than an attempt to encourage the Appeals Chamber to adopt a particular approach to the material before it. The Libyan Government notes that where the argument is simply that its Response misrepresents material to which it there are clear citations in the Response, it does not require a reply from the Al-Senussi Defence for the Chamber to check those citations. Given that the function of a reply is not to allow for the perpetuation and attempted strengthening of arguments that have previously been canvassed, the Defence has failed to advance, let alone show, that there are proper grounds upon which the Chamber should exercise its discretion to allow the Defence to file further submissions in reply. Therefore, the Government requests the Appeals Chamber to reject the Application to Reply.

IV. CONCLUSION

9. For the above reasons (either separately or cumulatively), the Government of Libya invites the Appeals Chamber to:
 - a. Reject the application; and

- b. Reject those arguments contained within the Application to Reply that are of such a character as to constitute a substantive reply to issues.

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 01 April 2014
At London, United Kingdom