

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **07 June 2013**

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández 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

Request for Finding of Non-Compliance

Source: Defence for Mr. Saif Al-Islam Gaddafi

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**

States' Representatives

Mr. Phillipe Sands QC

Mr. Payam Akhavan

Ms. Michelle Butler

REGISTRY

Amicus Curiae

Registrar

Mr. Herman von Hebel, Registrar

Deputy Registrar

Mr. Didier Daniel Preira, Deputy
Registrar

Victims and Witnesses Unit

Counsel Support Section

Detention Section

**Victims Participation and
Reparations Section**

Other

1. On 31 May 2013, the Pre-Trial Chamber issued its decision rejecting the admissibility challenge filed by the Government of Libya concerning Mr. Saif Al-Islam Gaddafi.
2. The Pre-Trial Chamber indicated in its June 2012 decision postponing Mr. Gaddafi's surrender to the International Criminal Court (ICC) that:

The arrest warrant remains valid in accordance with article 19(9) of the Statute, and accordingly Libya must ensure that all necessary measures are taken during the postponement in order to ensure the possibility of an immediate execution of the Surrender Request should the case be found admissible (emphasis added).¹

3. The Government of Libya did not seek leave to appeal in relation to this explicit condition, thereby accepting its obligation to comply with it.
4. In its decision rejecting the admissibility challenge, the Pre-Trial Chamber underscored the Government of Libya's obligation to surrender Mr. Gaddafi immediately to the ICC.² In so doing, the Chamber cited its decision of 4 April 2012, in which the Chamber had requested the Government to "proceed immediately with the surrender of Mr. Gaddafi to the Court",³ and cautioned that:

any failure on the part of the Government of Libya to comply with its obligations to enforce the warrant of arrest against Mr. Gaddafi may warrant that the Court make a finding to this effect.⁴

5. The Government of Libya has therefore been aware since June 2012 that a negative decision on its admissibility challenge would entail an immediate obligation to surrender Mr. Gaddafi to the ICC, and that any failure to do so could attract a finding of non-compliance. As recently observed by the

¹ ICC-01/11-01/11-163 at para. 40.

² ICC-01/11-01/11-344 at para. 219.

³ ICC-01/11-01/11-100 at p. 9.

⁴ ICC-01/11-01/11-100 at para. 19.

Defence,⁵ the Government is also aware that decisions of the ICC are binding unless and until reversed on appeal, or suspended.

6. Given that the Government was not just obliged to surrender Mr. Gaddafi, but to do so immediately, any failure to implement the decision immediately, or to obtain suspensive effect immediately, constitutes material non-compliance with the Chamber's decision.
7. The Government has nonetheless failed to take any steps to notify the ICC as to either its decision to surrender Mr. Gaddafi and the steps that it has taken to do so, or any difficulties it has faced in connection with implementing the decision. The Government has also failed to request suspensive effect of its obligation to surrender Mr. Gaddafi.
8. There is absolutely no reason why the Government, which is represented by several expert Counsel, was not in a position to take such steps in a diligent and timely manner. Rule 101(2) of the Rules of Procedure and Evidence imposes a stringent obligation on "all those participating in the proceedings to act as expeditiously as possible". For this reason, a failure to seek timely relief as concerns a party's ability to implement a decision can result in the dismissal *in limine* of a tardy application for relief.⁶
9. There is also no reason why States seeking to postpone an obligation to surrender a defendant to the ICC should be required to act with any less diligence than a party seeking to postpone the release of the defendant from the ICC. In this regard, the Defence observes that in the Mbarushimana case, the Prosecution filed an immediate notice of appeal and request for suspensive effect before the Appeals Chamber, rather than waiting for the expiration of its deadline for doing so.⁷

⁵ ICC-01/11-01/11-344, at para. 11.

⁶ ICC-01/09-01/11-493.

⁷ The Prosecution appeal and request for suspensive effect was filed on the next working day after the decision was issued. ICC-01/04-01/10-470.

Relief Sought

10. The Defence for Mr. Saif Al-Islam Gaddafi requests the Honourable Pre-Trial Chamber to make a finding of non-compliance in relation to the failure of the Government of Libya to immediately surrender Mr. Gaddafi to the ICC.



John R.W.D. Jones QC, Counsel for Mr. Saif Al-Islam Gaddafi

Dated this, 7th Day of June 2013

At London, United Kingdom