

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **18 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**

**Addendum to 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**

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Mr. Rodney Dixon

Ms. Amal Alamuddin

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**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
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**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. The Pre-Trial Chamber has ruled that the case against Mr. Saif Al-Islam Gaddafi is admissible before the International Criminal Court (the ICC).<sup>1</sup>
2. Although the Government of Libya has requested the Appeals Chamber to grant suspensive effect as concerns its obligation to surrender Mr. Gaddafi to the ICC,<sup>2</sup> the Government did not request the Appeals Chamber to suspend the Pre-Trial Chamber's finding that the case is admissible before the ICC.
3. Consequently, the ICC and only the ICC has jurisdiction to prosecute Mr. Gaddafi for conduct related to the ICC charges. Moreover, unless and until the Appeals Chamber grants the Government's request to suspend the Government's obligation to surrender Mr. Gaddafi immediately to the custody to the ICC, the Government remains under a binding obligation to execute this obligation.<sup>3</sup>
4. In what could only be construed as blatant disregard for these obligations, on 17 June 2013, an official representing the Prosecutor General's Office announced that the Libyan authorities will convene hearings against Mr. Gaddafi for crimes, which appear to be related to the ICC charges, in the first half of August 2013.<sup>4</sup> The official further confirmed that the authorities intended to prosecute Mr. Gaddafi jointly with Mr. Al-Senussi and others.
5. The announcements of these reports should be considered in light of repeated statements from various Libyan authorities that they intended to prosecute Mr. Gaddafi on Libyan soil,<sup>5</sup> and the failure of the Libyan Government to

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<sup>1</sup> ICC-01/11-01/11-344-Red.

<sup>2</sup> ICC-01/11-01/11-350 at para. 12.

<sup>3</sup> ICC-01/04-01/06-2582.

<sup>4</sup> Annex A, Press Conference of 17 June 2013 (video reference and translation). The statements of the spokesperson have been reported in multiple media outlets. See for example, 'Khadafi's son to stand trial in August: Libya prosecutor' Agence France Presse 17 June 2013 [www.france24.com/en/2013717-khadafis-son-stand-trial-august-libya-prosecutor](http://www.france24.com/en/2013717-khadafis-son-stand-trial-august-libya-prosecutor)

However, in order to avoid the possibility that the statements may have been 'misreported' or 'mistranslated', the Defence has relied upon the statements in the video of the Press Conference, as set out in Annex A.

<sup>5</sup> See for example, the following:

"The Libyan judicial system considers the jurisdiction of the ICC to be an exception. Libya is not a signatory to the Rome Statute that establishes the ICC's authority." [...] "We insist on trying Sayf-al-

consent, at any point of the proceedings, to transferring Mr. Gaddafi to the custody of the ICC, should their challenge be rejected.

6. The Defence for Mr. Saif Al-Islam Gaddafi therefore respectfully requests the Honourable Pre-Trial Chamber to:
  - i. take the above reports into consideration in its determination of the Defence Request for a Finding of Non-Compliance;<sup>6</sup> and
  - ii. issue its decision on an urgent basis.

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Islam in accordance with provisions that are well established in the Libyan law and cannot be overlooked. It is a matter of sovereignty." Abd-al-Qadir al-Minsaz (a member of the ruling National Transitional Council in charge of legal affairs) cited in Trial of Sayf-al-Islam in Libya is question of sovereignty - NTC official' , BBC Monitoring Middle East, 9 April 2012, <http://global.factiva.com.ezproxy.library.uq.edu.au/ha/default.aspx>

"Saif al-Islam "has to be tried in Libya where it is a well-known fact that he has committed more crimes against the Libyan people than he did to others" [...] "It's a priority to try him under the Libyan law by Libyan judges on Libyan soil." Mr Mohammed al-Hareizi (spokesman of the ruling National Transitional Council) cited in 'Gaddafi son to face Libyan trial', The Irish Examiner, 10 April 2012 <http://www.irishexaminer.com/breakingnews/world/gaddafi-son-to-face-libyan-trial-546827.html>

In August, the Prosecutor's spokesperson announced that the authorities intended to put Mr. Gaddafi on trial in a month: N. Meo, 'Libya: Saif Gaddafi to go on trial next month' [Telegraph](http://www.telegraph.co.uk/news/worldnews/africaandindianocean/9484459/Libya-Saif-Gaddafi-to-go-on-trial-next-month.html) 18 August 2012, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/9484459/Libya-Saif-Gaddafi-to-go-on-trial-next-month.html>

In a Press Conference on 1 January 2013, the Prosecution spokesperson, Taha Bara, announced the intention of the Libyan authorities to put Saif Al-Islam Gaddafi on trial by the end of the month, and further explained that since Libya was not a State Party to the ICC, it was not obliged to comply with surrender requests. Al-Masry Al-Youn, ' Libya: Gaddafi's son and Al-Senussi on trial in a month's time', 1 January 2013, ICC-01/11-01/11-247-AnxA. See also ICC-01/11-01/11-247-AnxB.

On 3 April 2013, the Foreign Minister for Libya stated that " Saif-Al-Islam will be tried in Libya, so will Abdullah Al-Senussi [...] there shall not be any surrender to any person." On 1 May 2013, the Prime Minister Ali Zeiden announced during a BBC interview that Mr. Gaddafi would be tried in Libya because "This is a sovereign trial, which is related to Libyan matters, Libyan people and Libyan sovereignty; they will be tried in Libya [...]". The translation of both of these interviews is set out in ICC-01/11-01/11-322-Anx1

<sup>6</sup>ICC-01/11-01/11-347.



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

Dated this, 18<sup>th</sup> Day of June 2013

At London, United Kingdom