

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **13 December 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
With Annex A**

**Urgent Addendum to “Urgent Request for Ruling on Requests 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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REGISTRY

Registrar

Mr. Herman von Hebel, Registrar

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and
Reparations Section**

Other

Appeals Chamber

1. On 9 December 2013, the Defence for Mr. Saif Al-Islam Gaddafi filed an “Urgent Request for Ruling on Requests for Finding of Non compliance”, in which the Defence requested the Honourable Pre-Trial Chamber to issue an immediate ruling on the requests for findings of non-compliance which had been submitted by the Defence.¹
2. On 13 December 2013, a recent opinion of the Working Group on Arbitrary Detention, which concerns Mr. Gaddafi, was brought to the attention of the Defence.²
3. Notably, the Working Group has made the following findings:

“43. The gravity of the violations, their nature in this case, and the Government’s inability to rectify the violations, has made impossible to guarantee Mr. Gaddafi’s right to fair trial in Libya. In this regard, the Working Group concurs with the view that “[w]here the breaches of the rights of the accused are such as to make it impossible for him/her to make his/her defence within the framework of his rights, no fair trial can take place ... Unfairness in the treatment of the suspect or the accused may rupture the process to an extent making it impossible to piece together the constituent elements of a fair trial.”

44. The Working Group considers that the non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights (“UDHR”) and the ICCPR in the case under consideration, namely article 10 of the UDHR and article 14 of the ICCPR, is of such gravity as to give the deprivation of liberty of Mr. Gaddafi an arbitrary character. “ (emphasis added)

¹ ICC-01/11-01/11-489-Red

² This opinion is attached as Annex A.

4. In its Disposition, the Working Group issued the following ruling:

“46. In the light of the preceding, the Working Group on Arbitrary Detention renders the following opinion: The deprivation of liberty of Mr. Gaddafi has been arbitrary, being in contravention of article 10 of the UDHR, and articles 9 and 14 of the ICCPR; it falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group.

47. Consequent to the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of Mr. Gaddafi and bring it into conformity with the standards and principles set forth in the UDHR and the ICCPR.

48. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to discontinue both the domestic proceedings against Mr. Gaddafi and his detention under those proceedings without prejudice to the Government’s obligations before the ICC in the proceedings originated from the investigation into the situation referred to the ICC by the UN Security Council. “

5. The Pre-Trial Chamber is obliged to exercise its discretion as to whether to issue a finding of non-compliance in a manner which both respects Mr. Gaddafi’s rights under the Statute, and is consistent with internationally recognised human rights.
6. The findings of the Working Group amply underscore the imperative of taking all necessary measures to ensure that Mr. Gaddafi is brought within the protection of the law before the ICC as soon as possible. It is simply untenable for the Chamber to desist any longer from ruling on Saif Gaddafi’s long-

outstanding motion, when he is being arbitrarily detained in the meantime and suffering irreversible breaches of his human rights.

Relief Sought

7. The Defence respectfully reiterates its request for the Pre-Trial Chamber to issue an immediate finding of non-compliance in relation to Libya's failure to surrender Mr. Gaddafi to the custody of the ICC.



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

Dated this, 13th Day of December 2013

At London, United Kingdom