

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 01 May 2014

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Single Judge

SITUATION IN LIBYA

**IN THE CASE OF
THE PROSECUTOR *v.*
SAIF AL-ISLAM GADDAFI and ABDULLAH AL-SENUSSI**

Public with Public Annexes A and B

Prosecution Request for an Order to Libya

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court to:*

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Submissions

1. In light of the recent reports indicating the commencement of trial in Libya against Messrs Saif Al-Islam Gaddafi (“Gaddafi”) and Abdullah Al-Senussi (“Al-Senussi”), among others, for their alleged role during the Libya’s 2011 uprising, the Prosecution seeks an order from the Chamber to determine the status of Libya’s efforts to surrender Mr Gaddafi to the Court and to give assurances that its domestic proceedings will not impede its obligations to cooperate with the Court.
2. The Prosecution notes with concern media reports on the decision of a Libyan court that the trial of Mr Gaddafi, a suspect before the Court, is currently being conducted via video-link from his place of detention in Zintan.¹ These reports indicate that the Libyan government intends to proceed with prosecuting Mr Gaddafi domestically, despite its clear continuing obligation to surrender him forthwith to the Court.²
3. Libya’s decision to prosecute Mr Gaddafi is troubling in light of Libya’s acknowledgement that it is bound to surrender him to the Court and the Appeals Chamber denial of Libya’s request for the appeal of this Chamber’s Admissibility Decision to have suspensive effect.³
4. Similarly, the Prosecution notes that Libya has begun trial proceedings against Mr Al-Senussi while the appeal of the admissibility decision is pending. In this respect, Libya should be reminded that its domestic proceedings against Mr Al-Senussi are subject to its obligations to cooperate with the Court and that it should

¹ See, e.g., the BBC report at <http://www.bbc.com/news/world-middle-east-27025942> (last visited on 30 April 2014), attached as Public Annex A. The report further provides that the court session on 14 April 2014 was adjourned until 27 April 2014 because not all defendants were present. See also, <http://www.theguardian.com/world/2014/apr/13/gaddafi-sons-war-crimes-trial-libya> (last visited on 30 April 2014), attached as Public Annex B.

² Appeals Chamber, Decision on the request for suspensive effect and related issues, 18 July 2013, ICC-01/11-01/11 OA 4 (“Appeals Decision on suspensive effect”), para. 27; Pre-Trial Chamber I, Decision on the admissibility of the case against Saif Al-Islam Gaddafi, 31 May 2013, ICC-01/11-01/11-344-Red (“Admissibility Decision”), para. 219.

³ Response to the Gaddafi Defence’s “Request for Finding of Non-Compliance and Referral to the United Nations Security Council”, 14 August 2013, ICC-01/11-01/11-402 (“Libyan Response to Non-Compliance Request”), para. 3; Appeals Decision on suspensive effect, paras. 23, 27.

refrain from any action that would frustrate the Court's ability to exercise jurisdiction, should the admissibility decision in Mr Al-Senussi's case be reversed on appeal.⁴

5. In view of its obligation to surrender Mr Gaddafi to the Court, Libya is bound to abstain from any initiative, measure or action which could result in frustrating the Court's legitimate expectations that he will be surrendered to the Court and that it will be possible for the case against him to resume before the Court.⁵

6. Throughout its pleadings in the admissibility proceedings in this case, Libya maintained that it is capable of obtaining custody of Mr Gaddafi. In challenging a contrary finding of the Pre-Trial Chamber in the Admissibility Decision, Libya argued that the Pre-Trial Chamber had incorrectly equated the fact that Mr Gaddafi has not been transferred to Tripoli with Libya's inability to obtain custody of him.⁶ Libya asserted that the Pre-Trial Chamber failed to recognise that "the Zintan Brigade is a Government-sanctioned local authority" and that it is able to exercise its authority over Mr Gaddafi alongside the local authority in Zintan.⁷

7. Despite this claimed authority and capability, Libya has failed to date to surrender Mr Gaddafi to the Court. This contradiction calls for clarification on the record.

⁴ In the *Al-Senussi* Admissibility Proceedings where the case was found inadmissible by the Pre-Trial Chamber, the Appeals Chamber recalled that Libya's obligation to cooperate with the Court arises from United Nations Security Council Resolution 1970 (2011) referring the situation to the Court and has to be performed in accordance with the principle of good faith, which pervades all obligations arising under international law, including those arising in connection with the United Nations Charter. The Appeals Chamber reminded Libya that: "throughout the duration of the proceedings relating to the Appeal, it is bound to abstain from any initiative, measure or action which could result in frustrating the Court's legitimate expectations that, should the Impugned Decision be reversed, it will be possible for the case against Mr Al-Senussi to actually resume before the Court". Appeals Chamber, Decision on the request for suspensive effect and the request to file a consolidated reply, 22 November 2013, ICC-01/11-01/11-480, paras. 18-19.

⁵ *Ibid.* *A fortiori*, these obligations should be sustained in Mr Gaddafi's proceedings where the case was found admissible and Libya is subject to a continuing obligation to surrender him to the Court.

⁶ Document in Support of the Government of Libya's Appeal against the "Decision on the admissibility of the case against Saif Al-Islam Gaddafi", 31 May 2013, ICC-01/11-01/11-370-Red3, para. 161.

⁷ *Ibid.*, paras. 157 – 161.

8. For the foregoing reasons, the Prosecution respectfully requests the Chamber to order Libya to:

- a) Inform the Chamber as to whether trial proceedings are indeed being conducted against Messrs Gaddafi and Al-Senussi in Libya;
- b) Provide assurances that the outcome of its domestic proceedings will not hinder the implementation of the Request to surrender Mr Gaddafi to the Court, nor hinder its potential obligation to surrender Mr Al-Senussi, should the Appeals Chamber reverse the inadmissibility decision against him; and
- c) Update the Chamber on its ability and efforts, if any, to surrender Mr Gaddafi to the Court and to do so, on a regular basis until the Surrender Request is implemented.



Fatou Bensouda, Prosecutor

Dated this 1st day of May 2014

At The Hague, The Netherlands