

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **18 June 2013**

THE APPEALS CHAMBER

Before: Judge Sang-Hyun Song
Judge Erkki Kourula
Judge Akua Kuenyehia
Judge Anita Ušacka
Judge Sanji Mmasenono Monageng

SITUATION IN LIBYA

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

Public
With Public Annex A
Request for Urgent Appeals Ruling

Source: Defence for Mr. Saif Al-Islam Gaddafi

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

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REGISTRY

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Mr. Didier Daniel Preira, Deputy Registrar

Counsel Support Section

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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).¹
2. Although the Government of Libya filed a notice of appeal pursuant to Article 82(1)(a) of the Statute, and requested the Appeals Chamber to grant suspensive effect as concerns its obligation to surrender Mr. Gaddafi to the ICC (the Request),² 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.³
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 2013.⁴ 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

¹ ICC-01/11-01/11-344-Red.

² ICC-01/11-01/11-350 at para. 12.

³ ICC-01/04-01/06-2582.

⁴ 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](http://www.france24.com/en/2013717-khadafis-son-stand-trial-august-libya-prosecutor) 17 June 2013 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.

Mr. Gaddafi on Libyan soil,⁵ and the failure of the Libyan Government to consent, at any point of the proceedings, to transferring Mr. Gaddafi to the custody of the ICC, should their challenge be rejected.

6. In light of the deadlines which apply to Article 82(1)(a) appeals, the Appeals Chamber will not be in a position to render its determination on the Government's appeal before the commencement of the announced trial hearings in Libya.
7. Since Mr. Gaddafi is currently unrepresented in connection with the domestic case, it is impossible to ascertain whether the strategy that his domestic

⁵ 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-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* 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

Defence would adopt would be compatible with his ICC strategy. However, as noted in earlier Defence filings, it can be deduced that:

“the strategy which may be adopted by a defendant who is facing the death penalty and who has no effective means to call his own witnesses, is not necessarily the same strategy as would be adopted if the case is prosecuted before the ICC under a more adversarial system. The procedure employed in Libya courts also differs vastly from that before ICC, as exemplified by the fact that it appears that under Libyan law, the Defence should disclose the identities of potential witnesses at the commencement of the trial. In contrast, at the ICC, the Defence is not required to decide whether to waive its right of silence and advance a positive Defence case until it has first heard the Prosecution case. It would be impossible for Mr. Gaddafi to actively participate in the Libyan proceedings whilst fully preserving his right of silence before the ICC.”⁶

8. The possible implementation of the death penalty in domestic proceedings would also create a grievous and irremediable consequence for Mr. Gaddafi, and completely undermine the ability of the Appeals Chamber to render a determination on the appeal.
9. In light of these circumstances, it would be in the interests of justice and the integrity of the appellate process for the Appeals Chamber to resolve the legality of Libya’s potential commencement of domestic proceedings and non-surrender of Mr. Gaddafi to the ICC by issuing an immediate decision on the Request.

⁶ ICC-01/11-01/11-243-Red at para. 76.

10. For the reasons set out in the Defence filing of 17 June 2013, the Government's Request is clearly unfounded and should be dismissed *in limine*.⁷ An immediate issuance of a decision on the Request would therefore be consistent with the Mbarushimana case, in which the Appeals Chamber rejected the appeal filed by the Prosecutor only one day after it was filed, due to the fact that it was inadmissible.⁸

Relief Sought

11. The Defence for Mr. Saif Al-Islam Gaddafi respectfully requests the Honourable Appeals Chamber to issue an immediate ruling on the Government of Libya's request for suspensive effect.



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

Dated this, 18th Day of June 2013

At London, United Kingdom

⁷ ICC-01/11-01/11-357.

⁸ ICC-01/04-01/10-476 and ICC-01/04-01/10-483.