

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/11-01/11
Date: 6 December 2011

PRE-TRIAL CHAMBER I

Before: Judge Sanji Mmasenono Monageng, Presiding Judge
Judge Sylvia Steiner
Judge Cuno Tarfusser

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

Public

**Public Redacted Version of Decision Requesting Libya to file Observations
Regarding the Arrest of Saif Al-Islam Gaddafi**

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

Mr Xavier-Jean Keïta, Principal Counsel
Ms Melinda Taylor, Counsel

States Representatives

Competent authorities of
Libya

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Mr Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Pre-Trial Chamber I of the International Criminal Court (“Chamber” and “Court” respectively), hereby renders the following decision:

Procedural History

1. Resolution 1970 was adopted by the United Nations Security Council (“UNSC”) on 26 February 2011,¹ whereby the UNSC referred the situation in Libya since 15 February 2011 to the Prosecutor of the Court² and decided that the Libyan authorities “shall cooperate fully with and provide any necessary assistance to the Court”.³
2. On 27 June 2011, the “Decision on the ‘Prosecutor’s Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar GADDAFI, Saif Al-Islam GADDAFI and Abdullah AL-SENUSSI” was issued by the Chamber (“Arrest Warrant Decision”),⁴ as well as the warrants of arrest corresponding to that decision.⁵ In the Arrest Warrant Decision, the Chamber decided that the Registry should prepare a request for cooperation asking for Libya’s assistance in arresting Saif Al-Islam Gaddafi, among others, and surrendering him to the Court.⁶ This task was completed by the Registry on 4 July 2011 (“Surrender Request”).⁷
3. Through the internal channels of the Office of the Prosecutor, the Chamber received, at 17:59 on 23 November 2011 by facsimile, a letter that was allegedly from the National Transitional Council.⁸ This letter confirms the arrest of Saif-Al Islam Gaddafi on 19 November 2011 and alleges, with reference to article 94 of the Statute, that the Surrender

¹ S/RES/1970 (2011).

² *Ibid.*, para. 4.

³ *Ibid.*, para. 5.

⁴ ICC-01/11-01/11-1.

⁵ ICC-01/11-01/11-2, ICC-01/11-01/11-3 and ICC-01/11-01/11-4.

⁶ ICC-01/11-01/11-1, p. 42.

⁷ “Request to the Libyan Arab Jamahiriya for the arrest and surrender of Muammar Mohammed Abu Minyar GADDAFI, Saif Al-Islam GADDAFI and Abdullah AL-SENUSSI”, ICC-01/11-01/11-5.

⁸ Registry, “Implementation of the ‘Decision to Add Document to Case Record’ (ICC-01/11-01/11-29-Conf-Exp)”, 29 November 2011, ICC-01/11-01/11-34-Conf-Exp, annex 1, p. 2.

Request will be discussed and that the Court will be officially informed when a decision is made (“Libya Letter”).⁹

4. The Prosecutor filed the “Prosecution’s Submissions on the Prosecutor’s recent trip to Libya” on 25 November 2011 (“Prosecutor’s Submission”),¹⁰ wherein the Prosecutor alleged that he has discussed the possibility of postponing the surrender of Saif Al-Islam Gaddafi pursuant to article 94 of the Statute with the Libyan authorities.¹¹ The Prosecutor also requested for a status conference to provide the Chamber with further details.¹²

5. The Office of Public Counsel for the Defence (“OPCD”) submitted a filing in response to the Prosecutor’s Submission on 28 November 2011, requesting that the Chamber, in the event that Saif Al-Islam Gaddafi has not appointed counsel, to authorise the OPCD to present observations concerning the general interests of the Defence in any proceedings convened by the Chamber in regard to the admissibility of the case and the status of Saif Al-Islam Gaddafi.¹³ The Prosecutor submitted a filing on 1 December 2011 opposing OPCD authorization to file a response to the Prosecutor’s Submission.¹⁴

6. On 30 November 2011, the Registry confidentially filed the “Observations of the Registrar pursuant to communication received on the 27 November 2011” (“Registry Observations”),¹⁵ wherein the Registrar: (i) indicates that a call had been received, allegedly from [REDACTED], asking that [REDACTED] be appointed to represent the interests of Saif Al-Islam Gaddafi,¹⁶ (ii) indicates that Saif Al-Islam Gaddafi is held incommunicado at this time¹⁷ and (iii) proposes to provisionally accept this irregular mandate in order to allow [REDACTED] to intervene in the

⁹ *Ibid.*

¹⁰ ICC-01/11-01/11-31.

¹¹ *Ibid.*, paras 8, 10.

¹² *Ibid.*, para. 16.

¹³ “OPCD Request for Authorisation to Present Observations in Proceedings Concerning Mr. Saif Gaddafi”, ICC-01/11-01/11-33, para. 33.

¹⁴ “Prosecution Response to the ‘OPCD Request for Authorisation to Present Observations in Proceedings Concerning Mr. Saif Gaddafi’”, ICC-01/11-01/11-36.

¹⁵ ICC-01/11-01/11-35-Conf-Exp.

¹⁶ *Ibid.*, para. 1.

¹⁷ *Ibid.*, para. 2.

proceedings pending verification of the accuracy of this mandate from Saif Al-Islam Gaddafi himself.¹⁸

7. The Chamber denied the Prosecutor's request for a status conference on 1 December 2011.¹⁹

Applicable Law and Discussion

8. The Chamber notes articles 17, 19, 86, 87, 89, 93, 94, 95 and 97 of the Rome Statute ("Statute"), rules 51 to 62, 113 and 117 of the Rules of Procedure and Evidence ("Rules") and regulations 23 *bis* (3), 24, 28, 34 and 77 of the Regulations of the Court ("Regulations").

9. The Chamber considers at this juncture that it requires further information from the Libyan authorities regarding the status of Saif-Al Islam Gaddafi and the issues raised in the Libya Letter.

10. The Chamber also considers that the Prosecutor and counsel representing the interests of the Defence should be entitled to file a response to Libya's submissions. The account given by the Registrar in the Registry Observations makes it impossible for the Chamber to determine if Saif Al-Islam Gaddafi actually wishes to appoint any specific counsel as his counsel. As such, the Chamber considers it best at this time, despite the Prosecutor's opposition, to authorise the OPCD to submit a response on behalf of the Defence to Libya's observations in accordance with regulation 77(4) of the Regulations.

11. Therefore, the Chamber seeks from Libyan authorities, on an urgent basis, information on the following issues: (i) whether Saif Al-Islam Gaddafi was arrested on account of the Court's warrant of arrest; (ii) whether the information received by the Chamber as to Saif Al-Islam Gaddafi being held incommunicado is true; (iii) when and where could the Registrar, or one of her representatives, meet Saif Al-Islam Gaddafi in order to seek his views on being assigned counsel from the Court for purposes of proceedings before this

¹⁸ *Ibid.*, para. 3.

¹⁹ "Decision Regarding the Prosecution's Request for a Status Conference", ICC-01/11-01/11-37.

Court, (iv) how, when and where could an expert be mandated by the Court to examine Saif Al-Islam Gaddafi in order to assess his physical and mental state and (v) whether and when the Libyan authorities intend to surrender Saif Al-Islam Gaddafi to the Court.

12. Finally, acting pursuant to regulation 23 *bis* (3), the Chamber considers at this juncture that it would be appropriate for the Registry Observations to be reclassified as confidential, *ex parte* Prosecution, OPCD and Registry only, and for the Libya Letter to be reclassified as public.

FOR THESE REASONS

AUTHORISES the Office of Public Counsel for the Defence to represent the interests of the Defence in all instances related to the proceedings against Saif Al-Islam Gaddafi in the present case until otherwise decided by this Chamber;

DECLINES to appoint counsel to represent the interests of Saif Al-Islam Gaddafi before the Chamber receives confirmation that a power of attorney was given to a specific counsel;

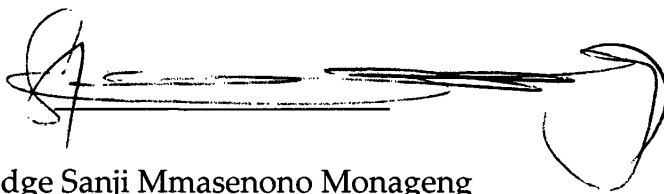
REQUESTS the Libyan authorities to file submissions on the topics specified in paragraph 11 of the present decision by Tuesday, 10 January 2012;

ORDERS the Registry to prepare a request for cooperation to be served on the competent Libyan authorities in accordance with paragraph 11 above;

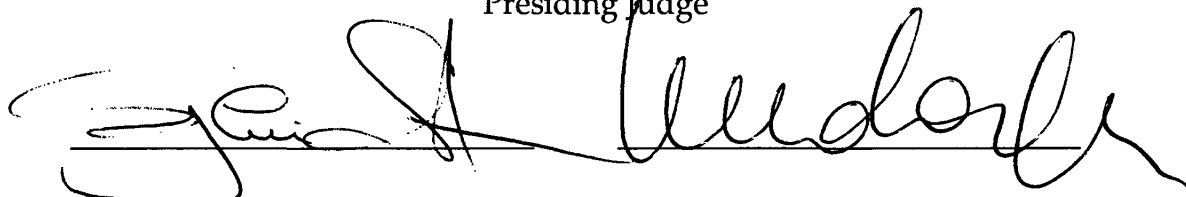
ORDERS for the Registry Observations to be reclassified as confidential, *ex parte* Prosecution, OPCD and Registry only; and

ORDERS for the Libya Letter to be reclassified as public.

Done in both English and French, the English version being authoritative.



Judge Sanji Mmasenono Monageng
Presiding Judge



Judge Sylvia Steiner

Judge Cuno Tarfusser

Dated this Tuesday, 6 December 2011

At The Hague, The Netherlands