

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-01/11-01/11
Date: 25 November 2011

PRE-TRIAL CHAMBER I

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

SITUATION IN THE LIBYAN ARAB JAMAHIRIYA

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

PUBLIC

Prosecution's Submissions on the Prosecutor's recent trip 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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Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
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Counsel Support Section

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Mr. Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Submissions

1. On 19 November 2011, representatives of the Libyan government (National Transitional Council or “NTC”) announced that Saif Al-Islam GADDAFI (“Saif Al-Islam”) had been arrested in Libya and was in Libyan custody.¹

2. The Libyan Minister of Justice also announced that the Libyan authorities would retain custody of Saif Al-Islam and that they wanted to pursue his prosecution for crimes committed during the recent uprising after 15 February 2011. Following this announcement, the Prosecutor contacted the Libyan Minister of Justice to confirm the arrest and ensure the proper coordination of the investigation and the timing of the eventual surrender of Saif Al-Islam. In response to this initial contact, the Libyan authorities invited the Prosecutor to visit Libya to further discuss the NTC’s position with respect to the pending proceedings against Saif Al Islam before this Court.

3. On Tuesday, 22 November 2011, the Prosecutor, the Deputy Prosecutor and other members of the Office of the Prosecutor met with the Libyan Minister of Justice, who invited the Prosecutor, to visit Saif Al-Islam in custody. Responding to the Prosecutor’s question, the Minister clarified that the detainee had not requested this meeting. The Prosecutor accordingly declined to meet with the detainee without a request from Saif Al-Islam and the presence of his lawyer. The Minister of Justice informed the Prosecutor that he had visited the detainee and further assured the Prosecutor that Saif Al-Islam was in good health and that the conditions of detention were appropriate. That same day, the ICRC visited Saif Al-Islam in prison and confirmed that he appeared to be in good health. In

¹ Reuters, “Libyans say detain Saif al-Islam Gaddafi”, 19 November 2011, <http://www.reuters.com/article/2011/11/19/us-libya-saif-capture-idUSTRE7AI0FC20111119> (see Annex A); BBC, “Libyan NTC confirms Gaddafi son's arrest”, 19 November 2011, <http://www.bbc.co.uk/news/world-africa-15804969> (Annex B); Al Jazeera “Saif al-Islam Gaddafi arrested in Libya”, 19 November 2011, <http://www.aljazeera.com/news/middleeast/2011/11/20111119111936535209.html> (Annex C).

addition, Saif-Al-Islam was interviewed by a TV channel for half an hour and expressed his satisfaction with his conditions. The Minister of Justice also stated that he could not confirm the capture of Abdullah Al-Senussi.

4. Later, the delegation of the Office met the Chairman of the NTC and the Prime Minister. The Libyan highest authorities expressed their gratitude for the International Criminal Court's intervention, highlighted its positive impact and explained that it was important for the Libyan people to hold a trial against Saif Al-Islam in Libya.
5. The Libyan authorities invoked the Rome Statute's provisions acknowledging the primacy of national jurisdictions and stated their commitment to conduct a fair trial. Secondly, the Libyan authorities informed the Prosecutor that there were other criminal cases pending against Saif Al-Islam which are separate and unrelated to the violent crimes committed during the uprising after February 2011.
6. The Libyan authorities suggested that the ICC might provide advice and might thereafter monitor the domestic proceedings.
7. The Prosecutor confirmed that the Rome Statute provides for the primacy of the national jurisdiction but that the Libyan authorities must challenge the admissibility of the case in order for the judges of the ICC to make a final decision. Furthermore, the Prosecutor clearly stated that if the Chamber accepts that the case is inadmissible because the case is being investigated or prosecuted by Libya, a State which has jurisdiction over it, it is not within the mandate of the Office of the Prosecutor to serve as adviser or to monitor a domestic trial.
8. The Prosecutor also explained that Article 94 of the Rome Statute addresses the possibility of sequencing trials if they relate to crimes that are different from those

crimes pending before this Court, and that the Libyan authorities might propose options to the Court in order to reach an agreement.

9. Finally, the Prosecutor proposed as a third possibility that the International Criminal Court might, subject to the judges' approval, conduct the trial against Saif Al-Islam in Libya. This process could start with the first appearance and subsequently with the confirmation of charges on Libyan territory. The Libyan authorities did not rule out that option, but also did not endorse or accept it at that meeting.
10. The following morning, on Wednesday, 23 November, the Prosecutor met once again with the Minister of Justice and other lawyers, including Dr. Salwa Fawzi El-Deghali, in charge of Legal Affairs and Women for the NTC. They discussed the Article 94 sequencing issues in more detail and the Minister asked for more information about the process to challenge the admissibility of a case before this Court as set out in Articles 17 and 19.
11. Taking into consideration that the mandate of the Minister of Justice was expiring the same day of the discussion, the Prosecutor requested a letter clarifying the Libyan position for the judges of this Court from the Chairman of the National Transitional Council, Mustafa Abdel Jalil.
12. Thereafter, the Minister of Justice and the Prosecutor held a joint press conference. The Minister stated that the Libyan authorities would conduct the trial in Libya but would coordinate with the ICC. The Prosecutor stated that he was in Libya to ensure coordination and that the final decision on the jurisdiction of the case will be adopted by the Judges of the International Criminal Court. Many questions were raised relating to the possibility of holding a fair trial in Libya and the possible role of the International Criminal Court to monitor such a trial. The

Prosecutor reiterated that the Judges would decide the question of admissibility of the pending case against Saif Al-Islam, that the Libyan authorities expressed their commitment to conduct a fair trial, and that if Libya were authorized to proceed with the trial, the OTP would not monitor the fairness of the domestic proceedings, as this is not the role of the Prosecutor.²

13. That same afternoon, the Prosecutor received a letter from the Chairman of the NTC addressed to the President of Pre-Trial Chamber I. The Prosecution faxed the letter and an *ad hoc* translation to the President of the Chamber³. The letter expresses the Libyan authorities' respect for the Court and for its obligations under the Security Council resolution; it confirms the arrest of Saif Al-Islam and its investigation of him including for crimes committed after 15 February; and it affirms its primary jurisdiction to prosecute the suspect, its willingness and ability to do so under Libyan law, and its intent to (a) postpone execution of the arrest warrant pending discussions with the Court and (b) work closely with the Prosecution and the Pre-Trial Chamber to facilitate this process.

14. The Prosecutor later met with the Libyan General Prosecutor, who is in charge of the cases against Saif Al-Islam. The General Prosecutor explained that there are five cases of embezzlement under investigation against Saif Al-Islam at an advanced investigative stage, and that they have also started investigating the crimes committed during the uprising, after 15 February 2011.

² CNN, "ICC backs down on Saif Gadhafi trial demand", 23 November 2011, http://edition.cnn.com/2011/11/23/world/africa/libya-icc/index.html?hpt=iaf_c2 (Annex D); <http://www.youtube.com/watch?v=DrCle086vHQ&feature=related> at 0:1:40- 05:00 (Annex E); <http://www.reuters.com/video/2011/11/23/libya-can-try-gaddafi-son-if-conditions?videoId=225651002&videoChannel=1> (Annex F)

³ See ICC-01-11-01/11-29-Conf-Exp-Anx

15. The General Prosecutor agreed to cooperate with the Office of the Prosecutor of the International Criminal Court.

16. The Prosecution requests a status conference to provide further details.



Luis Moreno-Ocampo,
Prosecutor

Dated this 25th Day of November 2011

At The Hague, the Netherlands