

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/11
Date: 8 September 2011

PRE-TRIAL CHAMBER I

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

SITUATION IN THE LIBYAN ARAB JAMAHIRIYA

Public Document

**Decision on the OPCD "Requête relative aux propos publics de Monsieur le
Procureur et au respect de la présomption d'innocence"**

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

States Representatives

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 (the “Chamber” and the “Court” respectively);

NOTING the “Application concerning public statements made by the Prosecutor and respect for the presumption of innocence principle”, originally submitted in French¹ by the Office of Public Counsel for the Defence (“OPCD”) on 25 May 2011 (“OPCD Application”);²

NOTING that the OPCD Application (i) makes reference to some statements made by the Prosecutor and other staff of the Office of the Prosecutor (“OTP”) in the context of the situation in Libya (“Situation”) (in particular, statements made by the Prosecutor on 16 May 2011 during the press conference following the application for warrants of arrest for Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi and appearing in the press release relating thereto³; statements made by the Prosecutor in an interview published in “*The National*” on 18 May 2011⁴; statements made by an OTP staff member in an interview with “*El Pais*” on 23 May 2011⁵); (ii) submits that such statements are “prejudicial to the rights of the Defence, in particular, the presumption of innocence” and “impair the integrity of the proceedings... by portraying as having been established issues which are for the Court to determine”; (iii) based on the OPCD statutory mandate to protect the rights of the defence during the initial stages of the investigation, requests the Chamber:

- (a) “to exercise its duty to ensure respect of the rights of the Defence, the proper administration of justice, and the integrity of the proceedings”;
- (b) “to direct the Prosecutor to issue a new press release stating that the three people in regard to whom he has applied for warrants of arrest in this

¹ ICC-01/11-5 and AnxA.

² ICC-01/11-5-tENG.

³ <http://www.icc-cpi.int/menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/reports%20and%20statements/statement%20icc%20prosecutor%20press%20conference%20on%20libya%2016%20may%202011?lan=en-GB>

⁴ <http://www.thenational.ae/news/worldwide/asia-pacific/q-a-with-luis-moreno-ocampo-chief-prosecutor-of-the-international-criminal-court>

⁵ http://www.elpais.com/articulo/internacional/Investigamos/nombres/arboreal/genealogico/represion/Libia/elpepiint/20110523elpepiint_4/Tes

situation are presumed innocent and that this will be a matter for the Chamber to determine”;

- (c) “to direct the Prosecutor to refrain from making public statements which contravene the principle of the presumption of innocence and the rights of the Defence of the persons in regard to whom he has applied for warrants of arrest or summonses to appear, suspects and accused persons before the Court”;
- (d) “to rule that the names of the persons who are the subject of an application for a warrant of arrest or summons to appear are not to be made public until the Pre-Trial Chamber considering the matter has granted the application”;
- (e) in the alternative to the request made in (b), “to make a public announcement as to the conduct of the proceedings before the Court and to state that everyone is presumed innocent until proved guilty”;

NOTING the “Prosecution’s response to OPCD’s ‘Requête relative aux propos publics de Monsieur le Procureur et au respect de la présomption d’innocence’” dated 16 June 2011, whereby the Prosecutor (i) submits that “the OPCD is neither a party nor an authorised participant at this current stage of the proceedings”; (ii) observes that neither did the OTP public statements infringe any provision of the Rome Statute or any order from the Chamber, nor the relief sought falls within the inherent authority of the Court; and (iii) requests that the OPCD Application be dismissed, either *in limine* or on the merits;⁶

NOTING the OPCD “Request for leave to reply to ‘Prosecution’s response to ‘OPCD’s requête relative aux propos publics de Monsieur le Procureur et au respect de la présomption d’innocence’” dated 17 June 2011⁷ (“OPCD Request to Reply”) and the “Prosecution’s motion to strike OPCD’s ‘Request for leave to reply to ‘Prosecution’s response to ‘OPCD’s requête relative aux propos publics de Monsieur le Procureur et au

⁶ ICC-01/11-7.

⁷ ICC-01/11-9.

respect de la présomption d'innocence "" dated 20 June 2011⁸ ("Prosecutor's Request to Strike the OPCD Request to Reply");

NOTING articles 21, 57, 66 and 67 of the Rome Statute ("Statute") and regulation 77 of the Regulations of the Court ("Regulations");

CONSIDERING that the issue of statements made by the Prosecutor has already been addressed by the Chamber⁹, also upon request of the OPCD¹⁰;

CONSIDERING that since the Prosecutor had the opportunity to respond to the merits of the OPCD Application, it is appropriate for the Chamber to decide on the merits of the OPCD Application, without prejudice to the issue as to whether the OPCD is or is not entitled to file unsolicited submissions;

CONSIDERING that, as already stated by the Chamber and consistently held by both the European Court of Human Rights and the European Commission of Human Rights, "allegations of prejudice to suspects on account of public statements suggesting their guilt before a conviction by a court ... are primarily of relevance to the issue of presumption of innocence"¹¹;

CONSIDERING that, as also already stated by the Chamber, it is therefore appropriate that the Prosecutor be mindful of the suspects' right to be presumed innocent until proven guilty when making public statements¹²;

CONSIDERING, by the same token, that public statements must be considered in their entirety when assessing their compliance with the principle set forth above;

CONSIDERING, as regards the statements made during the press conference held on 16 May 2011¹³, that the Prosecutor (i) said that his Office had "presented its evidence to the judges and [wa]s requesting the International Criminal Court to issue arrest warrants; (ii) repeatedly clarified that he had "presented evidence" showing that the relevant persons

⁸ ICC-01/11-10.

⁹ ICC-01/04-01/10-51.

¹⁰ ICC-02/05-01/09-112.

¹¹ ICC-01/04-01/10-51, paragraph 7.

¹² ICC-01/04-01/10-51, paragraph 17.

¹³ <http://www.icc-cpi.int/menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/reports%20and%20statements/statement/statement%20icc%20prosecutor%20press%20conference%20on%20libya%2016%20may%202011?lan=en-GB>

had committed crimes within the jurisdiction of the Court; (iii) expressly stated that, “based on the evidence collected”, the Prosecution had applied to Pre-Trial Chamber I for the issuance of three arrests warrants and that, accordingly, the case was “before the judges”;

CONSIDERING further that, also during the press conference held on 16 May 2011¹⁴, the Prosecutor listed various possible outcomes of an application under article 58 of the Statute by clarifying that the judges might “accept the request, reject it or ask for more evidence”;

CONSIDERING, as regards the interview that appeared in “*The National*” on 18 May 2011¹⁵, that the Prosecutor addressed issues of a general nature relating to the policies presiding over the selection of cases by his Office and did not make any statement concerning the guilt or innocence of any particular individual;

CONSIDERING, as regards the interview that appeared in “*El Pais*” on 23 May 2011¹⁶, that the OTP staff member clearly specified that the authority to decide whether the individuals targeted by the OTP application under article 58 of the Statute should be arrested and detained was vested in the “international judges”;

CONSIDERING that, in light of the relevant statements, both the Prosecutor and the OTP staff member appear to have been mindful of the need not to contradict the principle of the presumption of innocence and took care to state that it was for the Judges to decide on the OTP application under article 58, whilst at the same time providing information on decisions taken in accordance with the OTP mandate;

CONSIDERING that, accordingly, the Chamber does not take the view that any of those statements either “are prejudicial to the rights of the Defence, in particular, the

¹⁴ Ibidem.

¹⁵ <http://www.thenational.ae/news/worldwide/asia-pacific/q-a-with-luis-moreno-ocampo-chief-prosecutor-of-the-international-criminal-court>

¹⁶ http://www.elpais.com/articulo/internacional/Investigamos/nombres/arboreal/genealogico/represion/Libia/elpepiint/20110523elpepiint_4/Tes

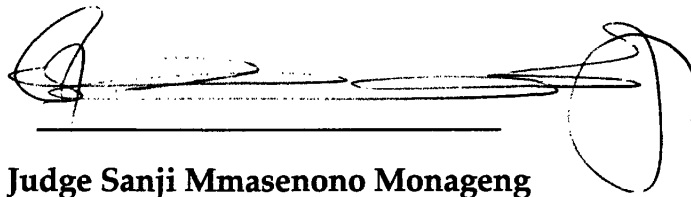
presumption of innocence” or “portray [...] as having been established issues which are for the Court to determine”¹⁷;

CONSIDERING, in light of the above, that there is no need for the Chamber to address the issues raised by the OPCD’s Request to Reply, nor the Prosecutor’s Request to Strike the OPCD’s Request to Reply;

FOR THESE REASONS

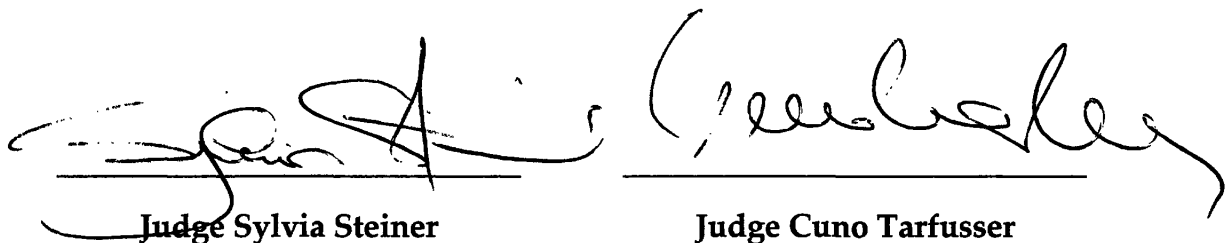
REJECTS the OPCD Application.

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



Judge Sanji Mmasenono Monageng

Presiding Judge



Judge Sylvia Steiner

Judge Cuno Tarfusser

Dated this Thursday 8 September 2011

At The Hague, The Netherlands

¹⁷ ICC-01/11-5-tENG, paragraph 3.