

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-01/11-01/11**  
Date: **1 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. MUAMMAR MOHAMMED ABU MINYAR GADDAFI,*  
*SAIF AL-ISLAM GADDAFI and ABDULLAH AL-SENUSSI*

**Confidential, Ex Parte, Prosecution and Registry only**

**Prosecution's Observations Regarding the "Report of the Registry on the execution  
of the requests for arrest and surrender"**

**Source:** Office of the Prosecutor

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

**The Office of the Prosecutor**

**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  
Defence**

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Ms. Silvana Arbia

**Counsel Support Section**

**Deputy Registrar**

Mr. Didier Preira

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## Observations

1. On 28 October 2011 the Registrar filed a report informing the Pre-Trial Chamber that the Prosecutor had indicated to the press that he was in contact with Saif Al-Islam Gaddafi ("Saif Al-Islam") through intermediaries.<sup>1</sup> On 31 October 2011 Pre-Trial Chamber I ordered the Prosecution to provide its observations regarding the Registrar's Report.<sup>2</sup>
2. Pursuant to Regulation 23bis(2) of the Regulations of the Court, the Prosecution files this document confidential, Ex Parte, Prosecution and Registry only, since it responds to the Registry Report with the same confidentiality level and discloses strategic and confidential information of the Office of the Prosecutor.
3. The Registrar expressed her concern that future similar contacts would take place and noted that she is in charge of the transmission of the requests for arrest and surrenders and the implementation of such requests, as well as ensuring that the suspect's rights are respected.<sup>3</sup> The Registrar further requested the Chamber to clarify the course of action to be taken and, in the event that the Chamber would find appropriate for the Registry to enter in contact with Saif Al-Islam, and to request the Prosecutor to transmit to the Registry all relevant information in his possession.<sup>4</sup> ("Registry's Report")
4. The Prosecution clarifies that it has not been in direct contact with Saif Al-Islam. The Prosecution has engaged in communication with someone who contacted the Prosecution and was purportedly acting on behalf of an intermediary of Saif Al-Islam regarding the possibility of his surrender to the Court. All those involved in this indirect communication were individuals, not States or persons acting on

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<sup>1</sup> ICC-01/11-01/11-19-Conf-Exp

<sup>2</sup> ICC-01/11-01/11-20-Conf-Exp,

<sup>3</sup> ICC-01/11-01/11-19-Conf-Exp, paras.2-4.

<sup>4</sup> Ibid., p.5.

behalf of any State. Further, the person who contacted the Prosecution is a private individual who has asked that his/her identity remain confidential. The Prosecution has respected this request.

5. The Prosecution orally conveyed all this information to the Registry, stressing that the preliminary contacts were with intermediaries whose reliability has yet to be confirmed. The Prosecution also undertook to keep Registry fully informed of developments regarding further contacts with the intermediaries as well as to liaise with Registry in the event of a surrender operation.
6. Meanwhile, unconfirmed media reports suggested that Saif Al-Islam was assisted by, or was seeking the assistance of, private military contractors or “mercenaries” to flee to a jurisdiction that is not a State Party or otherwise cooperating with the Court. In response to these open source reports, the Prosecutor made public statements in an effort to persuade those who may be assisting Saif Al-Islam to cease their efforts to help him avoid prosecution in this Court.
7. The Prosecution notes that under Article 54(1)(b) and (54)(3)(d), it is tasked with “the effective investigation and prosecution of crimes within the jurisdiction of the Court” and empowered to “enter into such arrangements or agreements, not inconsistent with this Statute, as may be necessary to facilitate the cooperation of a State, intergovernmental organization, or person”.<sup>5</sup> Accordingly, states parties funded the prosecutorial strategy dedicated to galvanize national efforts to arrest individuals indicted by the Court.<sup>6</sup> The Prosecution may carry out its activities to

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<sup>5</sup> ICC-01/04-01/06-2205 OA15 OA16, para.94; Article 54(1)(b), 54(3)(d).

<sup>6</sup> Approved Programme Budget for 2007 of the International Criminal Court, paras.53-56 and 87, available at: [http://moss.icc.int/DocumentCenter/InternalGovernanceandGuidelines/Office%20of%20the%20Controller/Approved%20budget%202007\\_FINAL%20-%20English.pdf](http://moss.icc.int/DocumentCenter/InternalGovernanceandGuidelines/Office%20of%20the%20Controller/Approved%20budget%202007_FINAL%20-%20English.pdf) and Approved Programme Budget for 2010 of the International Criminal Court, para. 150, available at: <http://moss.icc.int/registry/BFS/Budget/Approved%20Budget/Approved%20programme%20budget%20for%202010.doc>

promote compliance with the orders of the court without interfering with duties assigned to other organs of the Court.

8. The Prosecution has taken no steps that conflict or interfere with the Registrar's functions. The provisions cited by the Registrar give her the responsibility to transmit requests from the Court to States and to take steps to insure certain rights of the defence. In addition, when a suspect is arrested by a State, the Registrar facilitates the delivery of the suspect to the Court. The Prosecution notes that no provision or rule cited by the Registrar, or otherwise within the knowledge of the Prosecution, assigns to the Registrar a role in assisting in arranging the surrender of a suspect to the Court, let alone *sole* authority to conduct any such activities.
9. As noted above, no States or State representatives were involved in the communication with the Prosecution on Saif Al-Islam's behalf. Accordingly, the obligations and duties of the Registrar under the Statute have yet to be triggered. Should the Prosecution receive any information that would assist the Registrar in executing her tasks with respect to the implementation of the requests for surrender and arrest of Saif Al-Islam, the Prosecution will immediately inform the Registrar.
10. Finally, the Prosecution regrets that the misunderstanding between organs is unnecessarily taxing the time and resources of the Chamber. The Registrar's request for clarification and/or information need not have been made through a filing seeking Chamber intervention. As the administrative organ of the Court, the Registry clearly may communicate with the Prosecution directly. Indeed, it did so with respect to this very issue, in a conversation between a Prosecution Division Head and a representative of the Registry shortly before the Registrar filed her Report. Had, as now appears, the Prosecution's information conveyed in

that conversation been regarded as inadequate, the Registry could have made further inquiries.



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Luis Moreno-Ocampo,  
Prosecutor

Dated this 1<sup>st</sup> Day of November 2011

At The Hague, the Netherlands