

**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*

**Confidential, Ex Parte, Prosecution and Registry only
with Confidential, Ex Parte, Prosecution and Registry only Annex A**

**Prosecution Response to the "Report of the Registrar on the execution of the
request 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

Registrar

Ms. Silvana Arbia

Counsel Support Section

Deputy Registrar

Mr. Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. The Prosecution opposes the proposal by the Registrar that Registry personnel travel to Libya to discuss with Libyan authorities the request for arrest and surrender for Saif Al-Islam Gaddafi and to assist in their implementation thereof. In light of the current circumstances, and in particular the Libyan appointment of a liaison person and its letter to this Chamber, the Registrar's proposal will serve no purpose at this time.

Background

2. On 23 November 2011 the Chairperson of the Libyan government (National Transitional Council or "NTC") sent a letter to Pre-Trial Chamber I confirming that the Libyan authorities had arrested Saif Al-Islam Gaddafi ("Saif Al-Islam"). He informed the Court that the Libyan authorities were undertaking an investigation into crimes allegedly committed by Saif Al-Islam, including those committed since 15 February 2011.¹ He also confirmed the Libyan authorities' willingness and ability to prosecute Saif Al-Islam and its intent to postpone the execution of the arrest warrant under Article 94 pending discussions with the Court.
3. On 22 and 23 November the Prosecutor met with representatives of the NTC in Libya, including Dr. Ahmed Al-Saddik Al-Jahani. On 25 November 2011, the Prosecutor informed the Chamber of his meetings in Libya with representatives of the NTC.²
4. The NTC issued a notice appointing Dr. Ahmed Al-Saddik Al-Jahani to be its liaison person with the Court.³

¹ ICC-01/11-01/11-29-Conf-Exp-Anx.

² ICC-01/11-01/11-31

³ Annex A.

5. On 25 November, the Registrar informed the Chamber that “(1) On 24 November 2011, the Registry sent a Request for Assistance to the Embassy of Libya in The Hague requesting the Libyan authorities to provide a report on the execution of the request for arrest and surrender for urgent transmission to Pre-Trial Chamber I; (2) the Registry is planning to go to Tripoli to discuss the implementation of the request for arrest and surrender transmitted to the Libyan authorities and to assist them with its implementation within the framework of the Rome Statute; (3) the Registry is available to discuss with the Chamber the parameters of the discussions to be conducted with the Libyan authorities.”⁴
6. In the letter sent to the Pre-Trial Chamber on 23 November, the Libyan authorities specifically state that they do not intend to surrender Saif Al-Islam pending discussions with the Court in accordance with article 94. They are, moreover, holding him in custody for their own investigations, so any delay in the surrender will not enable him to avoid the jurisdiction of this Court.

Submissions

7. The Libyan authorities have indicated that they are not in a position to execute the surrender of Saif Al-Islam at this time. Given the Libyan authorities' clearly stated position, the proposed visit by Registry personnel to Libya to “discuss the implementation of the request for arrest and surrender” will serve no purpose at this point.
8. Furthermore, the Prosecution submits, this Chamber is now seized of this issue and it is within the sole competence of the Chamber to decide the next steps that must be undertaken.

⁴ ICC-01/11-01/11-30-Conf-Exp.

9. The Prosecutor suggests that, should the Chamber have any question on the application of Article 94, it could request further submissions from the Libyan authorities and, in particular, from Dr. Al-Jahani, the appointed liaison person.⁵



Luis Moreno-Ocampo,
Prosecutor

Dated this 25th Day of November 2011

At The Hague, the Netherlands

⁵ Pursuant to Regulation 23*bis*(2) of the Regulations of the Court, the Prosecution files this document confidential, Ex Parte, Prosecution and Registry only, since the Registrar's Report has the same level of confidentiality and the Prosecutor's response contains confidential information.