

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/11-01/11
Date: 2 February 2012

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, OPCD and Registry Only

**Prosecution Observations on Libya's Submissions Regarding the Arrest of Saif
Al-Islam Gaddafi**

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**

Mr Xavier-Jean Keita

Ms Melinda Taylor

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

Submissions¹

1. On 6 December 2011, this Chamber requested submissions from the Libyan authorities regarding Saif Al-Islam Gaddafi ("Saif Al-Islam"), including (i) whether he was arrested pursuant to the Court's warrant of arrest; (ii) whether he is being held incommunicado by the Libyan authorities; (iii) how to facilitate a meeting between the Registrar and Saif Al-Islam in order to seek his views on being assigned counsel from the Court for purposes of proceedings before this Court; (iv) how to arrange for an expert mandated by the Court to examine Saif Al-Islam to assess his physical and mental state; and (v) whether and when the Libyan authorities intend to surrender Saif Al-Islam to the Court.²

2. On 23 January 2012, the National Transitional Council (NTC), through its coordinator for the ICC, submitted a response,³ in which it informed the Chamber of the following: (i) Saif Al-Islam was not arrested pursuant to the arrest warrant issued by the Chamber. He was arrested by fighters from Zintan, where he is currently being held as a prisoner of war, and arrangements are being made to transfer him to Tripoli; (ii) Saif Al-Islam is not being held incommunicado. He has had access to family and human rights groups and NGOs. He is refusing a lawyer and "has also declared very firmly that he will not cooperate with any visitor from the ICC"; (iii) the NTC is willing to facilitate the Registrar's visit with Saif Al-Islam at a mutually agreeable date and place; and (iv) it is also willing to facilitate an expert's visit to Saif Al-Islam at a mutually convenient time.

¹ Pursuant to Regulation 23*bis*(2) of the Regulations of the Court, the Prosecution files this document confidential, Ex Parte, Prosecution, OPCD and Registry only, since it reveals information contained in the observations submitted by the Libyan authorities, currently classified as confidential.

² "Decision Requesting Libya to file Observations Regarding the Arrest of Saif Al-Islam Gaddafi", ICC-01/11-01/11-39-Conf-Exp and ICC-01/11-01/11-39-Red

³ ICC-01/11-01/11-44 and ICC-01/11-01/11-44-Conf-Anx1

3. The NTC also explained that local magistrates are investigating Saif Al-Islam for murder, mass murder, torture, rape, financial corruption and stealing large sums of money from public funds. The investigations are progressing but require additional time. The NTC has stated that immediate compliance with the request to surrender Saif Al-Islam to the ICC would interfere with its ongoing investigations and prosecution; therefore it sought postponement of surrender to enable it to complete this process.⁴ It noted its readiness to discuss the period of time required to complete its investigation and prosecution.

4. Finally, the NTC noted that it is considering whether to institute national proceedings against Saif Al-Islam for the conduct underlying this Court's pending charges. While the NTC does not currently contest admissibility and seeks only to postpone surrender, if a decision is made to pursue national prosecution for this conduct the NTC will challenge admissibility before the Court.

5. The Prosecution takes note that Saif Al-Islam is in custody in Zintan; that arrangements are underway for his transfer to the Libyan authorities in Tripoli and also that the Libyan authorities commit to discuss with the Court, the timing of its pending judicial processes against him. The Prosecution recalls in this regard that any postponement requested pursuant to Article 94 shall be "for a period of time agreed upon by the Court" and in any event "no longer than is necessary to complete the relevant investigation and prosecution".⁵

⁴ The filing submitted by the NTC seeks postponement under Article 94, which addresses in subsection (1) that if the "immediate execution of the request would interfere with" a domestic proceeding the requested State may postpone execution "for a period of time agreed upon with the Court". Article 89, which addresses "[r]equests for surrender of persons to the Court", also provides in subsection (4) that, if the suspect is being proceeded against or serving a sentence for another crime, after a State agrees to grant a surrender request it may consult with the Court on timing of compliance.

⁵ Article 94.

6. Because the NTC is not challenging the admissibility of the case before this Court, the Prosecution's investigations in relation to Saif Al-Islam remain ongoing.



Luis Moreno-Ocampo,
Prosecutor

Dated this 2nd Day of February 2012

At The Hague, The Netherlands