

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/11-01/11
Date: 3 February 2012

PRE-TRIAL CHAMBER I

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

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

Confidential, *ex parte* Prosecution, OPCD and Registry only

Decision on the Registry-OPCD Visit to Libya

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 Keita, Principal Counsel
Ms Melinda Taylor, Counsel

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 (“Chamber” and “Court” respectively) hereby renders the following decision:

NOTING the “Public Redacted Version of Decision Requesting Libya to file Observations Regarding the Arrest of Saif Al-Islam Gaddafi”, issued by the Chamber on 6 December 2011,¹ wherein the Chamber: (1) authorised the Office of Public Counsel for the Defence (“OPCD”) to represent the interests of the Defence in all instances related to the proceedings against Saif Al-Islam Gaddafi in the present case until otherwise decided² and (2) sought submissions from Libya on several issues, including whether the Registrar, or one of her representatives, could meet Saif Al-Islam Gaddafi in order to seek his views on being assigned counsel for purposes of proceedings before this Court;³

NOTING the confidential annex to the “Report of the Registrar on Libya's observations regarding the arrest of Saif Al-Islam Gaddafi”, filed on 23 January 2012 (“Libya Submissions”),⁴ wherein the National Transitional Council (“NTC”) indicated, *inter alia*, that they were willing to facilitate a visit between Saif Al-Islam Gaddafi and the Registrar (or one of her representatives);⁵

NOTING the “OPCD Observations on Libya’s Submissions Regarding the Arrest of Saif Al-Islam”, filed confidentially by the OPCD on 2 February 2012,⁶ wherein the OPCD, *inter alia*, requests the Chamber to order the Libyan authorities to: (i) advise Saif Al-Islam Gaddafi of the appointment of the OPCD and of his right to receive legal counsel from the OPCD, and (ii) to facilitate any privileged communications or visits between the OPCD and Mr Gaddafi, should Mr Gaddafi choose to avail himself of this option;⁷

¹ ICC-01/11-01/11-39-Red.

² *Ibid.*, p. 6.

³ *Ibid.*, para. 11.

⁴ ICC-01/11-01/11-44-Conf-Anx1.

⁵ *Ibid.*, p. 2.

⁶ ICC-01/11-01/11-51-Conf.

⁷ *Ibid.*, para. 31.

NOTING articles 55, 59, 64(2) and 67 of the Rome Statute, rules 20 and 117 of the Rules of Procedure and Evidence, regulation 77 of the Regulations of the Court and regulation 119(1) of the Regulations of the Registry;

CONSIDERING, under the present circumstances, that a personal visit from the Registry and the OPCD is the best mechanism to ensure that Saif Al-Islam Gaddafi is well informed about the current stage of the proceedings before the Court and of the appointment of the OPCD to represent his interests until he decides, should he wish to be represented in the Court's proceedings, to appoint counsel of his choosing;

CONSIDERING that this visit should be arranged as soon as possible and that measures should be taken to ensure a meaningful result from this visit between the suspect and Court personnel, namely that: (i) the visit should be designed so as to inform Saif Al-Islam Gaddafi about his case before the Court and his rights under the Statute, (ii) the visit should involve as small a number of traveling Court personnel as is necessary and should include representatives from both the Registry and the OPCD, (iii) there should be at least one Arabic speaker amongst the Court personnel traveling to Libya who is present at the visit, (iv) for at least a portion of the visit, the OPCD should be given an opportunity to speak with Saif Al-Islam Gaddafi in confidence, meaning that only OPCD counsel and a Court interpreter, if the latter is necessary, would be present with the suspect and that it should not be possible to hear what is said during the visit by anyone who is not present and (v) any other reasonable measure must be taken to ensure that all information of importance to the present proceedings is acquired during the visit;

FOR THESE REASONS

ORDERS the Registry to make arrangements with the Libyan authorities for a visit, as detailed in the present decision, between Court personnel and Saif Al-Islam Gaddafi;

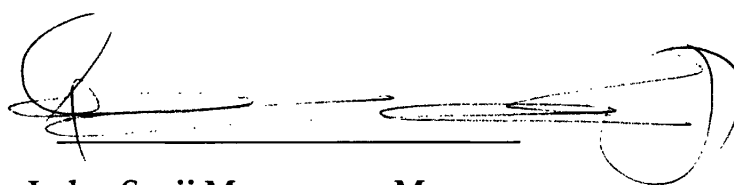
INSTRUCTS the representatives of the Registry and of the OPCD to make this visit as soon as the administrative arrangements are completed;

ORDERS the representatives of the Registry and of the OPCD to report back to the Chamber, to the extent possible and exempting privileged information, with a full account of the visit;

ORDERS the Registry to inform the Chamber on the status of the preparations for the visit on a weekly basis until the visit occurs; and

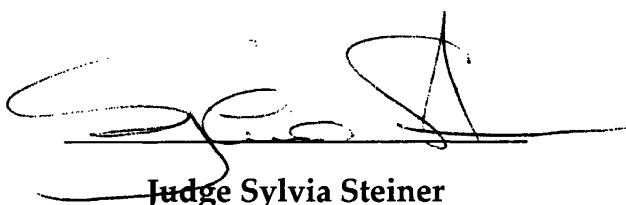
ORDERS that the Registry, OPCD and Prosecution keep all details relating to this visit strictly confidential until otherwise ordered by the Chamber.

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

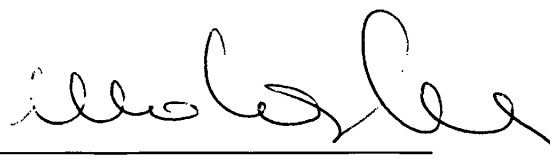


Judge Sanji Mmasenono Monageng

Presiding Judge



Judge Sylvia Steiner



Judge Cuno Tarfusser

Dated this Friday 3 February 2012

At The Hague, The Netherlands