

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/11-01/11

Date: 9 March 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**

URGENT

Confidential, *ex parte* Registry and OPCD only

Decision Regarding Medical Care for Saif Al-Islam Gaddafi

Decision 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 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, 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:

Procedural History and Submissions

1. Resolution 1970 was adopted by the United Nations Security Council (“UNSC”) on 26 February 2011,¹ whereby the UNSC referred the situation in Libya since 15 February 2011 to the Prosecutor of the Court² and decided that the Libyan authorities “shall cooperate fully with and provide any necessary assistance to the Court”.³

2. On 27 June 2011, the “Decision on the ‘Prosecutor's Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar GADDAFI, Saif Al-Islam GADDAFI and Abdullah AL-SENUSSI” was issued by the Chamber (“Arrest Warrant Decision”),⁴ as well as a warrant of arrest against, among others, Saif Al-Islam Gaddafi (“Mr Gaddafi”).⁵ In the Arrest Warrant Decision, the Chamber decided that the Registry should prepare a request for cooperation asking for Libya’s assistance in arresting Mr Gaddafi, among others, and surrendering him to the Court.⁶ This instruction was implemented by the Registry on 4 July 2011.⁷

3. A letter from the National Transitional Council (“NTC”) was transmitted to the Chamber on 23 November 2011, and the official English translation of this letter was formally put into the case record six days later.⁸ This letter confirmed the arrest of Mr Gaddafi on 19 November 2011 in Libya.⁹

¹ S/RES/1970 (2011).

² S/RES/1970 (2011), para. 4.

³ S/RES/1970 (2011), para. 5.

⁴ ICC-01/11-01/11-1.

⁵ ICC-01/11-01/11-3.

⁶ ICC-01/11-01/11-1, p. 42.

⁷ “Request to the Libyan Arab Jamahiriya for the arrest and surrender of Muammar Mohammed Abu Minyar GADDAFI, Saif Al-Islam GADDAFI and Abdullah AL-SENUSSI”, ICC-01/11-01/11-5.

⁸ Registry, “Implementation of the ‘Decision to Add Document to Case Record’ (ICC-01/11-01/11-29-Conf-Exp)”, 29 November 2011, ICC-01/11-01/11-34-Anx, public annex 1, p. 2.

⁹ ICC-01/11-01/11-34-Anx, p. 2.

4. On 6 December 2011, a decision was issued¹⁰ whereby 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 Mr Gaddafi in the present case until otherwise decided¹¹ and (2) sought submissions from Libya on, *inter alia*, "how, when and where could an expert be mandated by the Court to examine Saif Al-Islam Gaddafi in order to assess his physical and mental state".¹²

5. The Libyan authorities confidentially filed their response to the Chamber's inquiries on 23 January 2012.¹³ In response to the Chamber's inquiry about receiving an expert to assess Mr Gaddafi's physical and mental state, the Libyan authorities indicated that "[t]he NTC is willing to facilitate an expert's visit to Saif Al-Islam Gaddafi at [sic] mutually convenient date and place to be agreed upon".¹⁴

6. From 29 February 2012 to 4 March 2012, pursuant to a decision of the Chamber ordering a visit to Libya,¹⁵ a joint Registry-OPCD delegation visited Libya. A visit to Mr Gaddafi by part of this delegation took place on 3 March 2012. The OPCD filed reports regarding this visit on 2 March 2012¹⁶ and 5 March 2012.¹⁷ In the latter report, the OPCD informed the Chamber that Mr Gaddafi has very bad tooth pain and would like to have dental treatment.¹⁸ The OPCD thus requested for the Chamber, *inter alia*, to provide Mr Gaddafi with immediate dental care, and medical care as necessary.¹⁹

¹⁰ "Public Redacted Version of Decision Requesting Libya to file Observations Regarding the Arrest of Saif Al-Islam Gaddafi", ICC-01/11-01/11-39-Red.

¹¹ ICC-01/11-01/11-39-Red, p. 6.

¹² ICC-01/11-01/11-39-Red, para. 11.

¹³ Registry, "Report of the Registrar on Libya's observations regarding the arrest of Saif Al-Islam Gaddafi", ICC-01/11-01/11-44, confidential annex 1. Libya's submissions were originally due on 10 January 2012, but the Chamber granted an extension of the deadline after Libya requested additional time. See "Decision on the request of Libya for extension of time limit to submit observations regarding the arrest of Saif Al-Islam Gaddafi", 10 January 2012, ICC-01/11-01/11-42.

¹⁴ ICC-01/11-01/11-44, confidential annex 1, p. 2.

¹⁵ "Decision on the Registry-OPCD Visit to Libya", 3 February 2012, ICC-01/11-01/11-52-Conf-Exp.

¹⁶ OPCD, "Urgent Report Concerning the Visit to Libya", 2 March 2012, ICC-01/11-01/11-69-Conf-Exp.

¹⁷ OPCD, "Addendum to the Urgent Report Concerning the Visit to Libya", 5 March 2012, ICC-01/11-01/11-70-Conf-Exp ("5 March 2012 OPCD Submissions").

¹⁸ 5 March 2012 OPCD Submissions, para. 29.

¹⁹ 5 March 2012 OPCD Submissions, para. 62(iv)(c).

7. The Registry filed its report regarding the visit to Libya on 6 March 2012 ("Registry Visit Report").²⁰ The Registry Visit Report mentioned that, during their visit to Mr Gaddafi, he was missing a portion of his thumb and index finger on his right hand.²¹

Applicable Law and Discussion

8. The Chamber, in accordance with article 21 of the Statute, has considered articles 13(b), 58, 86, 87 and 93 of the Rome Statute ("Statute"), article 25 and Chapter VII of the United Nations Charter²² and Resolution 1970 adopted by the UNSC.²³

9. The Chamber notes that both the OPCD and the Registry have indicated that Mr Gaddafi is in need of some medical care after seeing him in Zintan on 3 March 2012.

10. Given the observations of the OPCD and Registry of Mr Gaddafi's current condition and the Libyan authorities' previous willingness to allow for a medical professional to examine Mr Gaddafi, the Chamber considers that medical care should be arranged for Mr Gaddafi. The Registry will need to organize, in consultation with the Libyan authorities, the visit of the appropriate medical experts.

11. All other outstanding OPCD requests for relief made in their recent submissions will be addressed by the Chamber in due course.

FOR THESE REASONS

ORDERS the Registry to immediately arrange with the Libyan authorities for one or more medical professionals to meet Saif Al-Islam Gaddafi in order to address the health concerns mentioned in paragraphs 6 and 7 of the present decision.

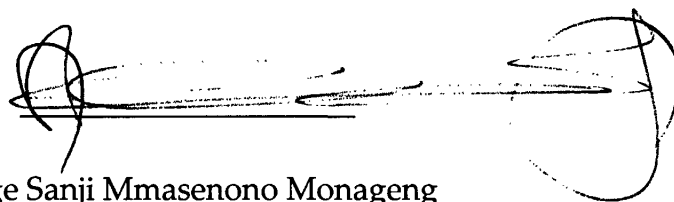
²⁰ Registry, "Report of the Registry on the Visit to Libya", 6 March 2012, ICC-01/11-01/11-71-Conf-Exp.

²¹ Registry Visit Report, para. 17.

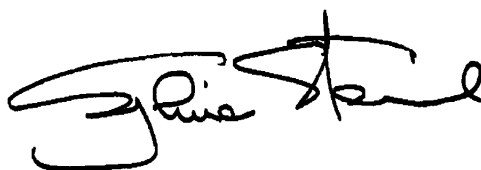
²² Charter of the United Nations, 26 June 1945, 1 United Nations Treaty Series XVI, last amended on 20 December 1971.

²³ S/RES/1970 (2011).

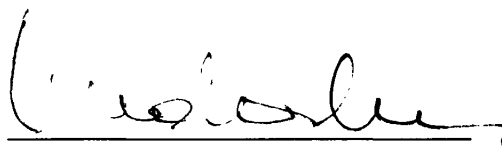
Done in both English and French, the English version being authoritative.



Judge Sanji Mmasenono Monageng
Presiding Judge



Judge Sylvia Steiner



Judge Cuno Tarfusser

Dated this Friday, 9 March 2012

At The Hague, The Netherlands