

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **11 April 2012**

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernandez de Gurmendi, Presiding Judge
Judge Hans-Peter Kaul
Judge Christine Van den Wyngaert

SITUATION IN LIBYA

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

Public Document

**Prosecution's Supplemental Submissions on the OPCD Request for
Disclosure**

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 Keïta, Principal Counsel
Ms Melinda Taylor, Counsel

States' Representatives

Counsel for the Appellant

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

1. On 19 March 2012, the Office of Public Counsel for the Defence (“OPCD”) filed its Request for Reclassification requesting that an order be issued to the parties to review the classification of their filings to determine whether public or publicly redacted versions may be filed.¹
2. On 22 March 2012, OPCD filed a request for disclosure of material on behalf of Saif Al-Islam Gaddafi (“Saif Al-Islam”) in order to respond to a future admissibility challenge.
3. On 26 March 2012, the Pre-trial Chamber requested *inter alia* the parties, Registrar and the Libyan authorities to identify which, if any, of their respective filings can be reclassified as public or publicly redacted.²
4. On 28 March 2012, the Prosecution responded to OPCD’s filing of 22 March 2012 (para. 2 above). In its response, the Prosecution acknowledged the Chamber’s appointment of OPCD to represent Saif Al-Islam’s interests unless otherwise decided by it, but it noted that it cannot disclose confidential material, absent a court order because it is unclear if OPCD’s mandate – both under the specific appointment order and in light of its limited authority under Regulation 77 of the Regulations of the Court - to represent the “general interests” of the defence includes the right to seek such disclosure on behalf of a charged suspect, and additionally if Saif Al-Islam agrees that OPCD represents him.³ The response also noted that the Prosecution can only address the merits of the disclosure request pending clarity on the authority of OPCD to request and receive the materials sought.⁴

¹ ICC-01/11-01/11-78-Conf-Exp (Prosecutor, Registry and OPCD only)

² ICC-01/11-01/11-86-Conf

³ ICC-01/11-01-87-Conf

⁴ ICC-01/11-01-88-Conf, para.8

5. On 5 April 2012, OPCD filed a publicly redacted version of their previously *ex parte* “Addendum to the Urgent Report Concerning the Visit to Libya”⁵ (“OPCD Addendum”). In this filing, OPCD stated that, “Mr. Gaddafi wanted to be represented by counsel and he “requested the OPCD to either select counsel or help him in this matter. Mr. Gaddafi is also willing for the OPCD to continue to represent him before the ICC, until a counsel is appointed.”⁶
6. The Prosecution reiterates that if, based on the OPCD Addendum, this Chamber agrees that OPCD has the current mandate to represent Saif Al-Islam sufficient to entitle it to make the disclosure request, thus resolving OTP’s threshold concern, the Prosecution will address the merits of the disclosure request.



Luis Moreno-Ocampo, Prosecutor

Dated this 11th Day of April 2012

At The Hague, the Netherlands

⁵ ICC-01/11-01/11-70-Red

⁶ ICC-01/11-01/11-70-Red, paras. 40-41; see also ICC-01/11-01/11-70-Red2