

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 23 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

**Prosecution's Response to the OPCD Application in Relation to Public Statements
of the Prosecutor**

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

1. The Office of Public Counsel for the Defence (“OPCD”) argues that the Prosecutor’s public statements have created the impression that issues before the International Criminal Court are predetermined.¹ It proposes that there is a public perception “that a deal has been done between the ICC and the Libyan authorities” affecting the appearance of the independence of the Prosecution. As a consequence OPCD requested the Chamber to deprecate – i.e., express disapproval of – those statements. It also requests that the Chamber ask to the Prosecutor to refrain from making any public pronouncements.

2. No provision in the Statute authorizes this filing or the remedy purportedly sought. If a party believes the Prosecution has overstepped its role, it has two statutory remedies – it can seek to disqualify the Prosecutor from the case or it can seek to remove him from the Office. The OPCD does not seek to disqualify the Prosecutor. Indeed, if that were its request, it would be obliged to present its arguments before the Appeals Chamber.² Nor is this a contention that the Prosecutor has committed serious misconduct or a serious breach of his duties. If that were the complaint, OPCD would be required to request the Assembly of States Parties to remove him.³

3. On the substance, the OPCD complaint is not related to any issue debated in the case. In the public statements that OPCD quotes, the Prosecutor expressly recognized that the Court, not the Prosecution and not Libya, will “make the final decision”. In one quote cited by OPCD, the Prosecutor said: “Libyans I’m sure they will accept [the surrender of Saif Al-Islam] or appeal or debate it, but they

¹ ICC-01/11-01/11-115 (hereafter “OPCD filing”).

² See Article 42(8)

³ See Article 46

will engage the court to have the court make the final decision.”⁴ There is nothing improper in these statements.

4. The Prosecution took note of the Government of Libya’s announcement that it will challenge the jurisdiction of the case on 30 April, and will comment on admissibility after a careful reading of that filing, and the judges will decide after ensuring a fair process to all the parties.
5. The remainder of the OPCD complaint is directed against media reports of statements that OPCD interprets as appearing to have been made by the Prosecution as well as by persons outside, unrelated to, and not answerable to the Prosecution. As a consequence, the OPCD filing does not address any issue currently debated before the Court. It should be dismissed summarily.
6. Finally, the Prosecution notes that this public OPCD filing, which purports to preserve the perception of fairness and impartiality of the ICC, in fact itself establishes and promotes, deliberately or not, a public belief “that a deal has been done between the ICC and the Libyan authorities”.
7. The OPCD has made a public filing spreading allegations that are not borne out by the facts. The Prosecution will seek a remedy from the Commissioner responsible for investigating complaints for misconduct of counsel under Article 33 of the Code of Professional Conduct for counsel. It could include an investigation of the OPCD’s counsel behavior in order to preserve the perception of fairness and impartiality.

⁴ OPCD Filing, para.15.

8. Accordingly, the Prosecution asks this Court to dismiss the OPCD application.



Luis Moreno-Ocampo,
Prosecutor

Dated this 23rd Day of April 2012

At The Hague, the Netherlands