

Cour
Pénale
Internationale



International
Criminal
Court

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

Date: 5 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

PUBLIC

Public Redacted Version of ICC-01/11-01/11-71-Conf-Exp
"Report of the Registry on the visit to Libya"

Source: Registry

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 Kéïta, Principal Counsel
Ms Melinda Taylor, Counsel

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Counsel Support Section

Esteban Peralta Losilla, Head, CSS

Deputy Registrar

Mr Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

The Registrar of the International Criminal Court (the "Court" or the "ICC");

NOTING the "Decision on the Registry-OPCD Visit to Libya"¹ dated 3 February 2012 (the "Decision");

NOTING the "Report of the Registry on the status of the preparation for the visit"² dated 13 February 2012;

NOTING the "Second Report of the Registry on the status of the preparation for the visit"³ dated 20 February 2012;

NOTING the "Third Report of the Registry on the status of the preparation for the visit"⁴ dated 28 February 2012;

NOTING Regulation 23 *bis* of the Regulations of the Court;

CONSIDERING that the Chamber ruled that a visit to Saif Al-Islam Gaddafi "should be arranged as soon as possible and that measures should be taken to ensure a meaningful result from the visit between the suspect and Court personnel, namely that (i) the visit should be designed 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 travelling Court personnel as is necessary and include representatives from both the Registry and the OPCD, (iii) there should be at least one Arabic speaker amongst the Court personnel travelling to Libya who is present during 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";⁵

CONSIDERING that the Chamber ordered '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';⁶

INFORMS the Chamber as follows:

¹ ICC-01/11-01/11-52-Conf-Exp.

² ICC-01/11-01/11-59-Conf-Exp.

³ ICC-01/11-01/11-63-Conf-Exp.

⁴ ICC-01/11-01/11-67-Conf-Exp.

⁵ ICC-01/11-01/11-52-Conf-Exp, p.4.

⁶ *Ibid*, p.5.

1. The representatives of the Registry and the OPCD visited Libya from 29 February to 4 March 2012.

Meeting with the Minister of Justice

2. On 29 February 2012, the Registrar met with the Minister of Justice and his delegation, the National Coordinator, and the representatives of the Chief Prosecutor.
3. The Registrar indicated that her priority was the implementation of the decision of the Chamber. The Minister confirmed that Saif Al-Islam Gaddafi was in custody in Zintan under the responsibility of the Chief Prosecutor and that a Committee had interviewed Saif Al-Islam Gaddafi on financial crimes and crimes against Libya committed before 17 February 2011. The Minister indicated that Saif Al-Islam Gaddafi would be transferred to Tripoli in a detention centre that is in compliance with international standards and that upon completion of the ongoing investigations, he will be tried in Libya according to Libyan law and international standards. The trial would be public, transparent and the suspect would benefit from all the safeguards provided in Libyan law. The Minister of Justice assured that the cooperation with the Court was being taken into consideration by the National Transitional Council (the "NTC") and had the full attention of the President. He reiterated the willingness of his government to cooperate with the Court and learn from the Court's experience. He also indicated that his government was considering the question of the ratification of the Rome Statute.
4. The Registrar expressed her appreciation for the assurances given regarding the cooperation with the Court. She indicated that two warrants of arrest were still pending and that Libya could submit intermediary reports to the Chamber to explain the steps it had undertaken in implementation thereof. She inquired about the notification of the arrest warrant to Saif Al-Islam Gaddafi. She also requested a visit of the detention centre where Saif Al-Islam Gaddafi would be transferred. She insisted that the visit to Zintan was to take place as planned pursuant to the Chamber's order.
5. From the Libyan side it was confirmed that the arrest warrant had been notified to Saif Al-Islam Gaddafi and that such visit would take place. In light of the Minister's statement that Saif Al-Islam Gaddafi would be tried in Libya, the Registry reminded the Minister that the authorities should submit a relevant request to the Chamber, the only authority that has the competence to decide on the issue of admissibility.

Visit to the Chairman of the Supreme Court

6. On 1 March the Registrar met the Chairman of the Supreme Court of Libya who also confirmed the preparedness of the Libyan authorities to cooperate with the ICC. He reiterated as well the intention of the Libyan authorities to try Saif Al-Islam Gaddafi in Libya, underlying that the Libyan penal legislation contained the elements of crime consistent with the Rome Statute and that the Libyan judicial system was capable of prosecuting Saif Al-Islam Gaddafi with full guarantees for his rights as accused. The Registrar provided the same explanation as to the Minister of Justice.

Visit of the prison of Tajoura

7. On 1 March, two representatives of the Registry, accompanied by representatives of the Ministry of Justice, visited the prison of Tajoura, located at approximately 22 km from Tripoli. The facilities, according to the information received by the Registry, would serve for the custody of Saif Al-Islam Gaddafi once transferred from Zintan to Tripoli.
8. As announced by the authorities, the construction of the prison facilities was not finished. Its completion is expected within two months. The following information was collected by the Registry during its visit of the prison:
 - 3 blocks of 195 cells in total surrounded by 2 rings of high wall. Each block consisting of 20 individual cells and 45 group cells. Each cell includes built-in cupboards, as well as a shower and a toilet separated by a door. There are dockets for TV and electronic devices. The cells were not furnished at the time of the visit. Group cells' dimensions are either 4x4m or 5x5m. Individual ones are 3.5x3.5m. The ceiling is at a reasonable height. It seems important to note that none of the cells visited had a window or a direct source of natural light.
 - Each block has 4 fresh air areas to be supervised from the top. No direct contact is to occur between the guards and the prisoners when the latter enjoy fresh air as they will be supervised from above the fresh air yard covered by iron fences.
 - In the centre of the prison building, there is a fourth block containing a gymnasium, 2 rooms which according to the Ministry of Justice representatives were intended for library and audiovisual space. 7 extra rooms were also intended to be used as medical facilities. The Registry representatives were shown 2 visitation areas for visits separated from the three blocks and consisting each of 2 small and 2 large rooms.

- Outside the first ring of wall, there are 6 apartments which according to the Libyan representatives are meant for private visits with kitchen, sanitary, and bedrooms.⁷ The Registry was told that private visits would be allowed for a maximum of 3 days.
 - The administrative building is supposed to provide visit rooms for lawyers. The Registry was told that such visits would take place within the sight but not the hearing of a guard with a glass separating the prisoner and the lawyer.
 - The Registry was informed that prisoners would be provided with one telephone card per week allowing them to call once a week free of charge. They might be able to call more depending on the availability of the phone lines (6 to 7 lines are to be provided). Non privileged communications will be monitored as opposed to communications with counsel.
 - As to who should be in charge of the prisoners, the Registry was told that a committee would be appointed to select a director for the prison. It was clarified that the security of the prison would be ensured by former rebels whereas within the prison police officers from the Ministry of Justice would be in charge of the custody of the prisoners. It was also indicated upon a request of clarification made by the Registry that these police officers would be trained custody officers.
 - It was not clear to the Registry whether specific detention rules were already in place. The regime to be applied to inmates seems to depend on judges' decision in each case.
9. From the inquiries of the Registry regarding the arrangements available to lawyers to meet their clients in the preparation of their case, it appeared that the prison facilities are meant to hold sentenced prisoners. Having asked about the regime that would be applied for Saif Al-Islam Gaddafi should he be transferred into these facilities, the Registry was told that a specific regime would be applied for him, by an adaptation of the detention regime⁸.

⁷ The location and structure of the said apartments, however, raise the question of whether they are indeed meant to serve or not for the purpose of family visits. The apartments are outside the first ring of walls and aligned at both sides of the building still being built which would serve as administration building, i.e. the facilities where the management of the prison will have its offices. It may be that those apartments are intended for the members of the administration of the prison and their family. Only another visit at a later stage when the prison is operational would give a clear idea of the purpose of these apartments.

⁸ It is worth mentioning that a transfer of the suspect in the prison of Tajoura raises the question of whether he would be there alone or whether other prisoners would be transferred there, whether he would be isolated from those prisoners or socialize with them. At this stage it is not possible to give an answer to these questions

Follow-up on the preparation of the visit to Zintan

10. Further to requests by the Registry on arrangements made or to be made for the visit to Zintan, early in the evening of the 1 March 2012, the focal point of the Libyan authorities, Dr. Ahmed El-Gehani, informed the Registry representatives that there were ongoing discussions to assess whether the visit to Zintan would take place as planned or be postponed to Saturday 3 March. He indicated that the day for the visit, a Friday, was a day-off in Libya and that no one goes to work on this day. As a consequence it would be difficult to carry out the visit. It is worth mentioning that the said date was initially proposed by the Libyan authorities themselves prior to the Registry arriving in Libya. The National Coordinator indicated that consultations were taking place with the Minister of Justice and the Minister of the Defence who was said to be from Zintan and in liaison with the local authorities. He said that the probability of carrying out the visit was very low though a definite response would be communicated to the Court's representatives later on or by the next day.
11. Later in the evening of the 1 March 2012, around 11 pm, the focal point received a last phone call after which he informed two representatives of the Court, one from the Registry and one from the OPCD, that the visit to Zintan would not take place despite the intervention of the President, Mr. Mustafa Abdel Djalil. The following issues and options were then communicated to the two Court's representatives present:
 - The city of Zintan is under the control of a militia with two factions, one being loyal to the NTC. Both factions do not have good relationships with each other and the suspect is under the custody of the faction that is not loyal to the NTC. Therefore, an ICC delegation conducting a visit accompanied with representatives of the NTC may not be well received.
 - The said faction has been detaining the suspect since November 2011 and has requested a month ago to receive salaries from the Libyan government; an issue which was brought up again as a condition prior to any visit by the representatives of the Court. The focal point indicated that the money for the payment of the salaries was now available and that it would take some time before the ICC delegation conducts the visit.
 - The focal point advised that the visit be postponed and that it takes place during the period of 12-21 March 2012 as by that time the request made by the militia would be satisfied.
 - The focal point indicated that the government would be pleased as a way to compensate the Court for the cancellation of the visit to Zintan to fund the next suggested trip of the ICC representatives.

12. The two ICC representatives expressed their frustration and disappointment and indicated that a report on the reasons for the cancellation of the visit to Zintan would be provided to the Chamber which might, if it decides so, report to the UN Security Council as the latter initially referred the situation to the Court. They also indicated that only the Chamber would make a decision further to the report as to whether another visit should be carried out or not.
13. In the morning of 2 March 2012, the Registrar met with the National Coordinator to convey her concerns regarding the cancellation of the visit. The Coordinator exposed once more the reasons for the postponement of the visit. The Registrar indicated that an extensive report would be filed before the Chamber and that the Libyan authorities should also do the same as soon as possible. The Coordinator indicated that such a report would be filed by the beginning of next week.
14. In the evening of 2 March 2012, the National Coordinator called a representative of the Registry to inform her that after numerous efforts, the visit to Mr. Gaddafi could take place the day after. The Coordinator, however, indicated to the Registrar that the visit could only take place with 7 persons in order for the visit to be as low profile as possible. He indicated that a member of the Libyan security should also participate. The Coordinator explained that there would be no flexibility regarding the said conditions. As the Registrar insisted on having a member of the Court security and Dr. El Gehani wished as well to be present in addition to the driver, only 2 persons from the Registry and the OPCD could meet with Mr. Gaddafi.

Visit to Zintan

15. The delegation left at 10 am on 3 March 2012 and arrived in a house located in Zintan around noon. The delegation was asked to wait in the house for a while. It was then asked to walk to a house located opposite where Saif Al-Islam Gaddafi was staying. All shutters were closed. The door was heavy and in metal. Several young guards dressed up with military clothes and armed with *Kalashnikovs* were present in the house. The members of the Registry and the OPCD waited for approximately 40 minutes as Dr. Gehani was talking to Mr. Gaddafi. Upon his return, the Coordinator indicated that Mr. Gaddafi wanted to talk to him about the Libyan procedures against him and about the possibility to have a lawyer. He mentioned that Mr. Gaddafi had requested to have an interview with him as a condition to speak to the Court. Dr. El Gehani added that he advised him to appoint a lawyer.

16. The delegation entered the room where Mr. Gaddafi was waiting at 1.40 pm. The Registry representative introduced herself and introduced the member of the OPCD as well as the interpreter. She explained that the delegation was there pursuant to a Court order to give him information and to transmit information regarding his status to the Chamber. She also explained that the Chamber had appointed a lawyer to represent him before the Court. The member of the OPCD introduced herself and explained that she would meet him afterwards without the presence of anyone. She explained that all discussions with her would be privileged.
17. Saif Al-Islam Gaddafi appeared smiling and willing to talk to the Court. It was difficult to assess whether he had lost a lot of weight as he was wearing large clothes. He appeared slimmer than on the picture annexed to his arrest warrant. He was missing part of his thumb and index at his right hand. He had no visible bruise on his face.
18. When requested to state his identity, date and place of birth for the record, he stated his full name (Saif Al-Islam Muammar Al-Gaddafi), indicated that he was born on 25 June 1972 in Tripoli.
19. The Registry representative asked to continue the meeting alone as another person from the Libyan authorities was present in the room. This person was the one who drove the delegation to Zintan. The person said that the law prevented the Registry to meet the suspect alone and that he had to stay. The member of the OPCD left the room. The member of the Registry asked the person present to state his identity for the record. He said that he was Mr. MILAD from the office of the Prosecutor and that Mr. Gaddafi could reply freely to all questions that would be put to him.
20. Mr. Gaddafi was explained that the interview could take place in Arabic if he so wished with the assistance of the interpreter. Mr. Gaddafi explained that he could speak English but that the interpreter could interpret anyway. The Registry also explained that notes of the interview would be taken in order to prepare a report for the Chamber.
21. When asked whether he was familiar with the Court and whether he knew that an arrest warrant was issued against him for crimes against humanity, Mr. Gaddafi replied that he was familiar and had heard about the arrest warrant. He however indicated that he was not served the arrest warrant.

22. The Registry representative explained the decision of the Chamber and said that she would provide information about the Court, the rights of a suspect and ask him questions about his conditions of detention. The Registry provided information on the jurisdiction of the Court and the resolution of the UN Security Council referring the situation of Libya to the Prosecutor. The Registry also mentioned that the suspect should discuss the specifics of his case with the counsel appointed to him by the Court.
23. The Representative explained that the Registry was a neutral organ to be differentiated from the Office of the Prosecutor that had the mandate to investigate and prosecute suspects. The representative indicated that the Registrar had specific responsibilities towards the defense. Among these responsibilities, the Registrar has to ensure that all suspects can benefit from the assistance of a lawyer. She also explained that these lawyers were to be qualified and have at least 10 years of relevant experience. She provided a list of lawyers available for the suspect' scrutiny and a form to designate a lawyer. Saif Al-Islam Gaddafi took the documents but questioned the possibility for him to give back the document to the Registry. The Registry said that he could give the document to the authorities for transmission to the Registry.
24. Mr. Gaddafi was very interested in knowing whether the lawyer would help him in Libya. The Registry indicated that the lawyer could help him in Libya but only in relation with the ICC proceedings. The Registry explained that the Libyan authorities had received a request to arrest him and to surrender him to the Court.
25. Mr. Gaddafi explained that he was being interviewed in Libya regarding his camels and fish farms. He asked whether the procedures would take long should he come to The Hague. He was told that the cases before the ICC were complex and that as a result could last for years. The representative added that he could be released by the Pre-Trial Chamber at an early stage if the Prosecutor did not have enough evidence against him. She also indicated that he could ask for interim release throughout the proceedings. Finally, she reiterated that he will be presumed innocent until the Chamber renders its verdict.
26. The Registry then informed him of his right to obtain legal aid should he be indigent. Saif Al-Islam Gaddafi stated that he had no money.
27. He declared '*I hope I can be tried here in my country whether they will execute me or not*'. He inquired about the detention centre in The Hague. The Registry

representative gave a brief description of the detention centre and replied to the questions put to her regarding the possibility to have fresh air, to see other people and regarding the food. Mr Gaddafi indicated that he would like to see the sun. When the Registry representative indicated that inmates could have access to an open air yard, he said that they were lucky to be able to see birds and trees.

28. At this point, the representative of the Libyan Prosecution left the room for 5 minutes. The Registry representative quickly asked the suspect how he was and whether he was mistreated. His attitude changed from relaxed to intense and without saying a word he waived the hand where two fingers were missing and pointed to a missing tooth in the upper front of his dentition. He then said that he was kept in total isolation, that he had not seen the sunlight in 20 days and he had nobody to speak to.
29. As the Libyan Prosecutor came back to the room, the Registry representative indicated she was going to read him his rights before the ICC. Mr. Gaddafi was very sceptical while he was read his rights. He asked whether these rights should apply to him immediately. He was told that these were basic rights respecting ICC standards. When asked about whether these rights were respected in Libya, he said *'what do you think?'*
30. The Registry then proceeded with the notification of the arrest warrant in both English and Arabic and of the relevant provisions of the Rome Statute in Arabic. Mr. Gaddafi signed the memorandum of notification but indicated to the Representative that he had left a message instead. The interpreter clarified that he had written *'victory comes from Allah'*.
31. At this juncture, his attitude changed again. He said that one had to separate reality from theory. He said that he will never go to The Hague. He said that he would read the documents provided to him out of boredom. He repeatedly said that Libya was a free country and pretended to inhale as if the smell of liberty surrounded him. He said that he was not afraid, knew what would happen and that the roadmap was clear. The Registry indicated that there was a real chance for him to go to The Hague and that it was not only a theoretical option. He then replied *'please take me'*.
32. The Registry had then only a small amount of time left out of the hour that had been granted. She asked the suspect for how long he had been staying in this place. Mr Gaddafi said approximately 20 days but said that it was difficult to assess as he could not see whether it was day or night. Asked whether he

had always stayed in this place, he said that he had been to a hotel before, then this place, then a hotel, 2 or 3 stars with a TV and then back to this place.

33. Asked about whether he had an opportunity to meet a lawyer, he said no. Asked about whether he had seen a Judge he said only the Attorney General or the Prosecutor regarding his camels and fishing farms. When asked who was in charge of his custody, he replied Dr. El-Gehani. When asked what happened to his fingers, he said that this was the result of the NATO bombing that also had killed 26 persons travelling with him. Asked whether the guards were aggressive with him, he said *"some are nice others are not nice all the time"*. Asked whether he could see his family, he said only in his dreams. He said that he received the visit of the Red Cross in November 2011 and of Human Rights Watch. When asked where he was sleeping, he pointed to a room in the back of the house. When asked whether there was a bed, he said that there are several definitions for a bed. When asked to describe the room, he said that it was not important.
34. He was finally asked to indicate whether he had observations for the Chamber. He said that he is *'very happy, extremely happy, so very happy'*.
35. Before the representative of the OPCD could get in, the representative of the Registry asked her to check whether he had a chance to see a doctor, take a shower and eat properly. The OPCD informed the Registry afterwards that Mr. Gaddafi had indicated that he was given food 3 times a day, could take a shower once a day, had minimum clothes and had not seen a doctor.
36. Subsequent to this interview, the Registry representative asked to visit the room where Mr. Gaddafi was staying. The request was denied by Dr. El Gehani.
37. Before leaving the house, the Registry had a chance to speak again with Mr. Gaddafi. The latter asked the Registry to ask Dr. El Gehani if he could keep the documents transmitted to him.
38. It is important to note that for the Registry representative, it was clear that Mr. Gaddafi was not able to reply to the questions in the presence of the Libyan Prosecution representative. During the entire interview, he kept playing with words and made a few jokes about his situation. The Registry felt that Mr. Gaddafi was playing a part for the benefit of the Prosecutor. For example, when told that he could give the form to designate a counsel to the Libyan authorities, his facial expression clearly showed that he did not think that it was a possibility. Also, when told that the Court had asked for his surrender, his reply *'please take me'* was given while smiling at the Prosecutor. He also asked the court's interpreter how he would say in English words he gave in


Arabic. The interpreter then said 'sphinx, the statute of silence'. It must be noted also that the Prosecution representative indicated that he could not speak English well, and that the Court's interpreter did not interpret part of the conversation. Accordingly, Mr. Gaddafi could make side comments such as 'what do you think?' when asked whether his rights were respected.

39. Mr. Gaddafi was not reluctant to speak to the ICC nor did he voice critics towards it. He was respectful to the representative of the Registry. He however did not think that he would be tried by the ICC. He was clearly happy to talk to someone and it was also difficult to get him to focus on the questions put to him. Should the Registry meet him again, it would be important that part of the meeting takes place without the presence of the Libyan authorities.

40. [REDACTED]

ANNEXES to the present report:

- The memorandum of notification presented to Saif Al-Islam Gaddafi (Annex 1).



Silvana Arbia, Registrar

Dated this 5 March 2012

At The Hague, The Netherlands