

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **17 April 2012**

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández 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
With Public Annex A

OPCD Application in Relation to Public Statements of the Prosecutor

Source: The Office of Public Counsel for the Defence

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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**Victims Participation and Reparations
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Other

Introduction

1. The Prosecutor has recently issued several statements, which create the impression that certain issues before the International Criminal Court (ICC) are predetermined, and which undermine the appearance of the independence of the Prosecution.
2. These statements have also prejudiced by the rights of the Defence by conveying an impression that firstly, the ICC has already found that the defendant engaged in certain behavior, secondly, that the question of the admissibility of the case is predetermined, and thirdly, that judicial orders, which are central to the rights and security of the defendant, can be 'debated' by national authorities rather than implemented.
3. The impact which these statements have had on the proceedings is exemplified by the fact that the Libyan authorities subsequently announced that they had no intention to transfer Mr. Saif Al Islam Gaddafi to the ICC, that Mr. Gaddafi had committed crimes, and that the ICC Prosecutor supported the position of the Libyan authorities.
4. There is also a public perception that a deal has been done between the ICC and the Libyan authorities, to the effect that the Libyan authorities have been given the green light to try Mr. Saif Al Islam Gaddafi in Libya.
5. In order to ensure that the appearance of the fairness and impartiality of ICC proceedings is preserved, the Office of Public Counsel for the Defence (OPCD) respectfully requests the Honourable Pre-Trial Chamber to deprecate any statements of the Prosecution, which create an impression that pending judicial matters are in any way predetermined or that judicial findings and orders can be 'debated', and secondly, to request the Prosecutor to refrain from making any public pronouncements, which impact on the impartiality of the Prosecution, the presumption of innocence, and the integrity of judicial orders and pronouncements.

6. In line with the fact that there appears to be a strong perception that the ICC Prosecutor has aligned himself to the interests of the Libyan authorities, it might also be appropriate for the ICC Prosecutor to consider recusing himself from the case pursuant to Article 42(7) of the Statute.

Procedural History

7. Mr. Saif Al Islam Gaddafi was arrested by the Libyan authorities on 19 November 2011.
8. On 22 November 2011, the Prosecutor conducted a mission to Libya. During this mission, he made the following statements to reporters in Tripoli:¹

Saif is captured, so we are here to ensure co-operation," he told reporters in Tripoli. "In May, we requested an arrest warrant because Libyans could not do justice in Libya. Now, as Libyans have decided to do justice, they could do justice and we'll help them to do it – that is the system.

"Our international criminal court acts when the national system cannot act. They [the Libyans] have decided to do it, and that is why we are here – to learn and to understand what they are doing and to co-operate."

Libya, which has promised a fair trial, still has the death penalty on its books. The most severe punishment the ICC can impose is life imprisonment.

"The law says the primacy is for the national system. If they prosecute the case here, we will discuss with them how to inform the judges and they can do it. But our judges have to be involved," Moreno-Ocampo added.

9. On Friday 25 November 2011, the Prosecutor updated the Honourable Pre-Trial Chamber in relation to his mission to Libya to coordinate the “arrest and ensure the proper coordination of the investigation and the timing of the eventual surrender of Saif Al-Islam”.²

¹ ‘Saif Al-Islam Could Be Tried in Libya’ Says ICC Prosecutor’, 22 November 2011,

¹<http://www.guardian.co.uk/world/2011/nov/22/saif-al-islam-gaddafi-trial-libya>

² Prosecution’s Submissions on the Prosecutor’s Recent Trip to Libya, ICC-01/11-01/11-31, at para. 2.

10. The Prosecutor informed the Pre-Trial Chamber that the Libyan authorities do not intend to transfer Mr. Gaddafi to the ICC at this point in time, but wish to investigate him for alleged embezzlement preceding the events of February 2011, and the events which form the subject matter of the proceedings before the ICC.
11. The Prosecutor has proposed to the Libyan authorities several courses of action, such as challenging admissibility before the ICC, or requesting the ICC to convene *in situ* hearings. The Prosecutor did not, however, propose or request that the Libyan authorities transfer Mr. Gaddafi to the custody of the ICC.
12. On 22 March 2012, the Libyan authorities notified the Pre-Trial Chamber of their intention to challenge admissibility, on the grounds that they were investigating Mr. Gaddafi for allegations of crimes against humanity falling under the scope of Article 7 of the Statute (the Notification).³ The Libyan authorities indicated that they intended to file such a challenge by 30 April 2012, and further requested the Pre-Trial Chamber to suspend the surrender request pursuant to Article 95 of the Statute.
13. The Prosecution did not respond to this Notification.
14. On 4 April 2012, the Pre-Trial Chamber rendered its ‘Decision Regarding the Second Request by the Government of Libya for Postponement of the Surrender of Saif Al-Islam Gaddafi’ (the Decision), in which the Chamber rejected the request for postponement on the grounds that, irrespective as to whether Article 95 extends to surrender requests, it cannot be invoked in connection with an admissibility challenge which had not yet been filed.⁴
15. On the same day, the ICC Prosecutor gave an interview to the Guardian, in which the Prosecutor stated that:⁵

³ ‘Notification and Request by the Government of Libya in Response to ‘Decision on Libya’s Submissions Regarding the Arrest of Saif Al-Islam Gaddafi’’, ICC-01/11-01/11-82-Conf.

⁴ ICC-01/11-01/11-100 at para. 18.

⁵ ‘Hand over Gaddafi son, international criminal court tells Libya’, Guardian 5 April 2012, <http://www.guardian.co.uk/world/2012/apr/05/gaddafi-son-international-criminal-court>

[T]he good thing here is one year ago Saif Gaddafi was threatening people ... now he's arrested and the court is discussing his destiny.

[...]

Libyans I'm sure they will accept it or appeal or debate it, but they will engage the court to have the court make the final decision. So that is showing how the world changes in 10 years.

16. On the same day, the Prosecution also appears to have informed reporters that ““According to the rules, Libya has the primacy to prosecute Saif, so if they present this to the International Criminal Court judges, probably they will get an approval”, he told reporters on Thursday.””⁶
17. These comments have been widely reports in the media, in particular, by Libyan news-agencies, who have cited the latter statement as demonstrating efforts by the ICC to “dampen the fall-out” from the Chamber’s decision, in order to take into consideration the “sensitivities” of Libya’s sovereign interests.⁷
18. The Libyan Coordinator for the ICC has also recently stated in Arabic news services that the “Prosecutor was totally in support of the Libyan judicial system and defends it and praises it. This trust stems from his visit to Tripoli on 23 November 2011, and what he was able to observe and witness in Libya”.⁸
19. A very recent report from the BBC also suggests that the Libyan authorities – wrongly – believe that they have been approval to try Mr. Gaddafi in Libya:⁹

Now the Libyan justice ministry says a deal is being finalised where Mr Gaddafi can be tried in Libya but with security and legal supervision by the international court.

⁶ J. Karadsheh ‘Hand Over Saif Gaddafi, Court Tells Libya’, CNN 5 April 2012, http://articles.cnn.com/2012-04-05/africa/world_africa_libya-saif-gadhafi_1_moammar-gadhafi-saif-al-islam-gadhafi-zintan?_s=PM:AFRICA

⁷ ‘Lawyers Demand Saif Al-Islam Be Handed to ICC’, Libya Herald, 7 April 2012, <http://www.libyaherald.com/lawyers-demand-saif-al-islam-be-handed-to-icc/>

⁸ Annex A – the relevant section is highlighted. It was interpreted by STIC for the OPCD.

⁹ ‘Gaddafi Son May Be Tried in Libya’, BBC 17 April 2012, <http://www.bbc.co.uk/news/world-africa-17739076>

The BBC's Jon Donnison, in the Libyan capital Tripoli, has been told by a western official with good knowledge of the case that a deal is close to being agreed.

But the official warned it could be months before any trial might begin.

The ICC's chief prosecutor Luis Moreno Ocampo is due to visit Libya this week.

20. It would also appear that the perception that Mr. Gaddafi's responsibility is predetermined has been subsequently mirrored in the statements of Libyan authorities.¹⁰

21. Finally, notwithstanding the fact that Libya has purportedly challenged admissibility, which in itself, precludes the Prosecution from conducting any investigations for the duration of the admissibility challenge pursuant to Article 19(7) of the Statute, it has been reported that the Prosecutor will travel to Tripoli in the very near future.¹¹

Submissions

22. The ICC Prosecutor is presumed to act in good faith, and the OPCD is not asserting that the ICC Prosecutor is in fact, acting under the instructions of the Libyan government, or that the Prosecutor is intentionally seeking to undermine the authority of judicial orders.

23. However, in light of the prominent position of the Prosecutor, and the fact that the Prosecution has not clearly set out its legal position in filings before the ICC in this case, the afore-mentioned statements have created an unfortunate appearance that the Prosecutor may lack the requisite independence and impartiality required

¹⁰ "Saif al-Islam "has to be tried in Libya where it is a well-known fact that he has committed more crimes against the Libyan people than he did to others" [...] "It's a priority to try him under the Libyan law by Libyan judges on Libyan soil." Mr Mohammed al-Hareizi (spokesman of the ruling National Transitional Council) cited in 'Gaddafi son to face Libyan trial', The Irish Examiner, 10 April 2012 <http://www.irishexaminer.com/breakingnews/world/gaddafi-son-to-face-libyan-trial-546827.html>

¹¹ Gaddafi Son May Be Tried in Libya', BBC 17 April 2012, <http://www.bbc.co.uk/news/world-africa-17739076>

by Article 42 of the Statute, or that ICC legal orders can be legitimately questioned by States, which are under a binding obligation to implement such orders.¹²

24. As the Prosecutor should be aware, when addressing societies, which have been riven by political and ethnic divides, and which are still in the midst of conflict, it is of the utmost importance to eschew any language, which could exacerbate desires for revenge and preconceived notions of guilt, or create an impression that the ICC favours one side to the conflict. The very purpose of the ICC is to ensure a fair and impartial forum for adjudicating criminal responsibility, in a manner which is divorced from media speculation and personal animosities.
25. Moreover, in light of the fact that the ICC does not have any mechanism for directly enforcing its orders and decisions, it is imperative that high officials of the ICC, such as the Prosecutor, do not engage in any activities or issue any statements, which could undermine the efficacy of Court orders.
26. Although the Prosecutor is not bound by any Code of Conduct, Article 42 of the Statute stipulates that the “the Office of the Prosecutor shall act independently as a separate organ of the Court.[...] A member of the Office shall not seek or act on instructions from any external source”. Article 42(5) further specifies that “Neither the prosecutor nor a Deputy Prosecutor shall engage in any activity which is likely to interfere with his or her prosecutorial functions or to affect confidence in his or her independence”. Finally, Article 42(7) specifies that “Neither the Prosecutor nor a Deputy Prosecutor shall participate in any matter in which their impartiality might reasonably be doubted on any ground”.
27. In sum, Article 42 imposes a strict requirement that the Prosecutor should adopt a consistent and impartial position to legal and factual issues, and should not be seen to change or vary his stance, depending on the wishes or views of particular States. As observed by “[e]ven activity which is *likely to affect confidence* in the

¹² The jurisprudence of the ICC Presidency indicates that in assessing issues of bias or lack of impartiality, the Court will take into consideration both the subjective and objective appearance of bias. Decision on the request of Judge Sanji Mmasenono Monageng of 25 February 2010 to be excused from reconsidering whether a warrant of arrest for the crime of genocide should be issued in the case of The Prosecutor v, Omar Hassan Ahmad Al Bashir, pursuant to article 41(1) of the Statute and rules 33 and 35 of the Rules of Procedure and Evidence, ICC-02/05-01/09-76-Anx2, 19 March 2010, at para. 4.

independence is prohibited. The perception of independence is recognized as being important.”¹³

28. In this regard, in the Bemba case, the Prosecution asserted that in order to be successful in a challenge to admissibility, the burden fell on the challenging party to adduce convincing evidence that the State in question had the capacity to genuinely investigate and prosecute the case.¹⁴ The Prosecution further advanced that the authorities of the Central African Republic should be considered to be unable to conduct a genuine investigation due to the fact that security considerations had prevented the investigating magistrate from being able to conduct interviews with witnesses in particular crime scenes.¹⁵ Although the Libyan authorities have cited security concerns on numerous occasions as a reason for the non-compliance with orders of the Chamber, the ICC Prosecutor has made no reference to the impact of such in his filings in the case.

29. Article 54(1)(c) of the Statute also requires the Prosecutor to “fully respect the rights of all persons arising under this Statute”. This obligation extends to Defence witnesses and the defendant, and presupposes that the Prosecution will not discriminate in any way vis-à-vis his position concerning Prosecution witnesses as compared to Defence witnesses.

30. In the Kenya situation, the Prosecution repeatedly emphasized that any cooperation or assistance provided from the ICC to national authorities was subject to the overriding requirement that the country has adequate security structures in place to guarantee that that witnesses would not be subject to threats or intimidation, but could freely testify in a safe environment.¹⁶

¹³ M. Bergsmo and F. Harhoff.. ‘Article 42, ‘in O. Triffterer (ed.) Commentary on the Rome Statute of the International Criminal Court (Hart Publishing 2008) at p. 977.

¹⁴ Prosecutor v. Bemba, Prosecution’s Response to Motion Challenging the Admissibility of the Case by the Defence for Jean-Pierre Bemba Gombo pursuant to Articles 17 and 19(2)(a) of the Rome Statute ICC-01/05-01/08-739, 29 March 2010 at para. 42.

¹⁵ Prosecutor v. Bemba, Prosecution’s Response to Motion Challenging the Admissibility of the Case by the Defence for Jean-Pierre Bemba Gombo pursuant to Articles 17 and 19(2)(a) of the Rome Statute ICC-01/05-01/08-739, 29 March 2010, at paras. 62 and 64.

¹⁶ Kenya situation, Prosecution’s Response to “Request for Assistance on behalf of the Government of the Republic of Kenya pursuant to Article 93(10), Article 96 and Rule 194”, ICC-01/09-80, 6 October 2011 at paras.8-10.

31. The Prosecutor also stridently declared that:

the Prosecution disagrees that the Court is obligated to assist the Government of Kenya in order to promote complementarity and the State's effort to establish that the ICC prosecutions are inadmissible. This Chamber has previously held that "the request for assistance has no linkage with the issue of admissibility"; "a determination on the inadmissibility of a case pursuant to article 17 of the Statute does not depend on granting or denying a request for assistance under article 93(10) of the Statute"; "a State may exercise its national jurisdiction by way of investigating or prosecuting, irrespective of and independent from any investigative activities of the Prosecutor"; "[t]hese domestic proceedings should be in principle carried out without the assistance of the Court"; and "national investigative activities are conducted independently from this Court and based on the national laws of the Republic of Kenya".¹⁷

32. Finally, the Prosecutor further postulated that no assistance should be provided to national authorities who are taking efforts to derail the possibility of convening proceedings before the ICC.¹⁸

33. In contradistinction to the above positions, in the present case, the Prosecutor has made no mention of issues concerning the security and safety of witnesses, notwithstanding the fact that there have been credible reports of torture, arbitrary detention, and mistreatment of persons allegedly associated with the Gaddafi regime, or persons wrongly believed to be mercenaries.¹⁹ The Prosecutor has explicitly refused to respond to a request by the OPCD to provide information as to what safeguards were in place to ensure that any cooperation provided from the Prosecution to the National Authorities did not adversely impact on the security and rights of potential defence witnesses, and the defendant.²⁰

34. Scheduling a mission to Tripoli, at a time when the Prosecution is statutorily precluded from conducting its own investigations, also creates the impression that the Prosecutor will be present in Tripoli to either assist the Libyan authorities with

¹⁷ Kenya situation, Prosecution's Response to "Request for Assistance on behalf of the Government of the Republic of Kenya pursuant to Article 93(10), Article 96 and Rule 194", ICC-01/09-80, 6 October 2011 at para. 24.

¹⁸ Kenya situation, Prosecution's Response to "Request for Assistance on behalf of the Government of the Republic of Kenya pursuant to Article 93(10), Article 96 and Rule 194", ICC-01/09-80, 6 October 2011.

¹⁹ See for example, Commission of Inquiry Report, A/HRC/19/68 2 March 2012 at para 41.

²⁰ Prosecution's Response to the OPCD Request for Disclosure, ICC-01/11-01/11-88-Red, 10 April 2012.

their investigations, or to assist with any legal arguments or strategy arising out of their planned admissibility challenge. Such a perception is plainly at odds with the aforementioned declaration in the Kenya cases that domestic investigations should, in principle be carried out without the assistance of the ICC, and that there should be a clear demarcation and independence between the activities of domestic authorities and those of the ICC.

35. Notwithstanding the fact that Libyan authorities have failed to serve the ICC arrest warrant on Mr. Gaddafi, bring him before a judge, or surrender him to the ICC for almost five months, the Prosecutor has not made any statements concerning this blatant non-compliance. The absence of any such statements, when viewed in connection with firstly, the Prosecutor's assertion that the Libyan authorities' could 'debate' the order of the Chamber, and secondly, the timing of the Prosecutor's mission to Libya, creates the – incorrect - perception that the Prosecutor condones this non-compliance. Indeed, if the Prosecutor were to visit Tripoli without decrying the failure of the Libyan authorities to surrender Mr. Gaddafi immediately to the ICC, his very presence in Tripoli and interaction with Libyan authorities would legitimise their position. Any implicit or explicit assistance in such circumstances would also be directly contrary to the prosecutorial position adopted in the Kenya situation that it would be highly inappropriate to assist a State, which is not complying with its obligations under the Rome Statute.
36. The adoption of inconsistent prosecutorial strategies directly conflicts with the obligation of the Prosecutor to act as an independent and impartial minister of justice. The ICTY has therefore underscored that the adoption of different prosecution policies in relation to the same facts was a “matter of concern”, which could give rise to inferences concerning the credibility of the position advanced by the Prosecutor, and “serious internal policy concerns for the Prosecutor”.²¹

²¹ Prosecutor v. Limaj et al., Case no IT-03-66-T, Decision on Joint Defence Motion on Prosecution's Late and Incomplete Disclosure, 7 June 2005, p. 25; Prosecutor v. Limaj et al., Case no IT-03-66-T, Trial Judgement, 30 November 2005 at para. 9.

37. The Prosecutor has juxtaposed the allegation that Mr. Gaddafi was threatening persons a year ago, with the fact that he has been arrested, and the Court “is discussing his destiny”, and describes this as a ‘good thing’.²² In so doing, the Prosecutor appears to be implicitly endorsing the fact that Mr. Gaddafi is being kept in incommunicado detention, and is the subject of an unsatisfied order to surrender to the ICC, as a ‘success for the ICC’. A further - incorrect - extrapolation could be that because, in the eyes of the Prosecutor, Mr. Gaddafi threatened persons, he deserves his current fate. Such a position is plainly at odds with the Prosecutor’s positive obligation to fully respect Mr. Gaddafi’s presumption of innocence, his rights under Article 55 of the Statute, which include the right not to be subject to arbitrary detention, the right to legal representation, and his right under Article 59 of the Statute to be brought before a judge to challenge the legality of his arrest.

38. The Prosecutor’s public statements have also created the impression that the result of admissibility proceedings before the ICC is a foregone conclusion. At this point in time, the Libyan authorities have not placed any concrete evidence concerning the existence of national proceedings against Mr. Gaddafi. However, by stating that if the Libyan authorities were to file such a challenge, they would ‘probably get approval’, the Prosecutor has created the appearance that he is aware of the contents of such an application, and that he is in a position to judge or predict its outcome.

39. As found by Trial Chamber I,

the public needs to be able to trust the published statements of those involved in the case, as reflecting, in a suitably balanced way, the evidence that has been heard and the decisions that have been made. It is important that in media statements there is a clear and accurate description as to whether issues that are reported have been decided or are still unresolved

[...]

In our judgment, respecting the Chamber, the judicial process and the other participants involves speaking publicly about the proceedings in a fair and accurate way, and avoiding any comment

²² Hand over Gaddafi son, international criminal court tells Libya’, *Guardian* 5 April 2012, <http://www.guardian.co.uk/world/2012/apr/05/gaddafi-son-international-criminal-court>

about issues that are for the Chamber to determine.²³

40. Giving a predication concerning the outcome of a pending application intrudes upon the role of the Chamber.²⁴ From the perspective of the Defence, it also creates the frustrating perception that the role and participation of the Defence is superfluous as the outcome of proceedings in this case have been predetermined in political corridors rather than on the basis of legal and evidential submissions, adjudicated by this Honourable Pre-Trial Chamber.

41. In terms of the role of the Pre-Trial Chamber vis-à-vis these matters, the jurisprudence of the ICC recognises that the Chamber can intervene to correct or deprecate any misstatements of fact or pronouncements, which impact on the rights of the defendant.²⁵

42. This is consistent with the jurisprudence of the European Court of Human Rights to the effect that “[i]f during a trial, statements are made or produced by the prosecutor, witnesses or experts from which bias on their part is evident, the court has to make a stand against those statements if it is to avoid the semblance of being biased as well. If the court does so, the accused can no longer complain of such bias on the part of the first-mentioned persons.”²⁶

43. In determining whether certain language may have violated the presumption of innocence, and the rights of the defendant, the Court should also taken into consideration not only the words themselves, but the particular context in which the words were issued.²⁷

²³ Prosecutor v. Lubanga, ‘Decision on the press interview with Ms Le Fraper du Hellen’, ICC-01/04-01/06-2433, 12 May 2010 at paras. 37 and 39.

²⁴ Prosecutor v. Lubanga, ‘Decision on the press interview with Ms Le Fraper du Hellen’, ICC-01/04-01/06-2433, 12 May 2010 at para. 49.

²⁵ See for example, Prosecutor v. Lubanga, ‘Decision on the press interview with Ms Le Fraper du Hellen’, ICC-01/04-01/06-2433, 12 May 2010; Kenya situation, Pre-Trial Chamber II, “Decision on the ‘Application for Leave to Participate in the Proceedings before the Pre-Trial Chamber relating to the Prosecutor’s Application under Article 58(7), ICC-01/09-42, para. 22.

²⁶ Report of 31 March 1963, Pfunders (Austria v Italy), Yearbook VI (1963), p.740(784); report of 15 March 1961, Neilsen, Yearbook IV (1961), p490 (568), cited in Van Dijk, P., van Hoof, F., van Rijn, A. & Zwaak, L. “Theory and Practice of the European Convention on Human Rights” (2006) (Intersentia Publishers, Belgium), 627

²⁷ *Daktaras v. Lithuania*, Judgement of 10 October 2000, Application no. 42095/98, at para. 43.

44. As the Prosecutor is aware, there has been a misperception dating from the arrest of Mr. Gaddafi that issues of admissibility can be determined by national authorities, or between national authorities and the ICC Prosecutor. The Honourable Pre-Trial Chamber took steps to correct this misperception through the issuance of a press-release,²⁸ but the Prosecutor was nonetheless on notice as to the importance of ensuring that erroneous beliefs concerning the admissibility proceedings were not propagated through his actions or statements.
45. In the present instance, the comments of the Prosecutor were not advanced within a legal filing, which could be properly litigated before the Chamber. They were issued independently of the proceedings, in connection with an issue, with respect to which the Prosecution had declined to submit any legal observations to the Chamber. This approach deprived the OPCD of the opportunity to respond to the veracity of these allegations within the framework of the legal proceedings before the ICC.
46. In the absence of a decision clarifying these legal positions or deprecating these remarks, the defendant will have no remedy as concerns his right to be presumed innocent, and to be tried by an impartial and independent Prosecutor. It is therefore necessary for the Pre-Trial Chamber in these circumstances to take positive steps to correct the appearance of predetermination as concerns admissibility proceedings or the guilt of the defendant, and to deprecate any remarks which have contravened the dignity and rights of Mr. Saif Al Islam Gaddafi, or unintentionally undermined the authority of court orders.
47. At this point in time, the OPCD is not submitting an application to the Appeals Chamber to disqualify the Prosecutor, as the current application is predicated on an objective rather than a subjective appearance of a lack of independence and impartiality. The Prosecutor is now aware of the concerns of the OPCD and the potential repercussions of his comments. Accordingly, should the future actions of the Prosecutor undermine the right of Mr. Saif Al Islam Gaddafi to be immediately

²⁸ 'Course of action before the ICC following the arrest of the suspect Saif Al Islam Gaddafi in Libya', ICC-CPI-20111123-PR746, 23 November 2011.

brought within the protection of the Rome Statute legal framework, and to be shielded by the aegis of the presumption of innocence, then there may be a sufficient basis for filing such an application.

Relief Sought

48. For the reasons set out above, the OPCD respectfully requests the Honourable Pre-Trial Chamber to:

- (i) deprecate any statements of the Prosecution, which create an impression that pending judicial matters concerning the admissibility of the case or the responsibility of Mr. Gaddafi are in any way predetermined or that judicial findings and orders can be ‘debated’; and
- (ii) request the Prosecutor to refrain from making any public pronouncements, which impact on the appearance of the independence and impartiality of the Prosecution, the presumption of innocence, and the integrity of judicial orders and pronouncements.



Xavier-Jean Keïta, Principal Counsel of the OPCD

Dated this, 17th Day of April 2012

At The Hague, The Netherlands