

Seif al-Islam Gaddafi and the Fight behind the Scene over His Fate

By Alexander Mezyaev

The legal proceedings against Seif al-Islam, the son of Muammar Gaddafi, have developed into an unusual situation, that has had no precedents in the International Criminal Court's (ICC) history. The matter is that the Court itself is exerting efforts to destroy the case so that the accused would never have to face it.

It has started from a strange leak of information that took place a few days ago from the International Criminal Court. And it happened through a formal source: the ICC's website. First the two documents¹ were posted for public view, but disappeared in a few hours without any explanation. They were related to the report of the ICC's delegation that had visited Seif al-Islam Gaddafi in Zintan. The questions change places while reading the text: it is becoming clear why they have been taken away from public view. But the question pops up, why have they been made public at all? There is ground to believe that some kind of clash between two opposing forces took place inside the Court. One of the forces had never made itself known before...

So, what did the ICC delegation find out while meeting Seif Gaddafi? The following is what the report prepared by the Registry says. The importance of the information and the way it has got to the Court justifies extensive citation.

The ICC delegation visited Seif Gaddafi in early March. At first the Libya's government indicated it couldn't take the delegation to Zintan because the city was under the control of two factions, only one them being loyal to the National Transitional Council. But at the last moment when the delegation was about to return to the Hague, the authorities said the visit would take place. The report goes further:

"All shutters were closed. The door was heavy and in metal. The members of the Registry and the OPCD waited for approximately 40 minutes. Seif al-Islam 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 the right hand. He had no visible bruise on his face".

"The Registry representative asked to continue the meeting alone as another person from the Libyan authorities was present in the room. This person said that the law prevented the Registry to meet the suspect alone and that he had to stay".

"The Registry representative explained that the delegation was there pursuant to the 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. 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."

"When asked whether he was familiar with the Court and whether he knew an arrest warrant was issued against him for crimes against humanity, Mr. Gaddafi replied that he was familiar and that he had heard about the arrest warrant. He however indicated he was not served the arrest warrant. Mr. Gaddafi explained that he was being interviewed in Libya regarding his camels and fish farms."

"He declared: "I hope I can be tried in my country whether they will execute me or not". He inquired about the detention centre in the Hague. The Registry representative gave him 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”.

“At this point, the representative of the Libyan Prosecution left the room for five 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 missing and pointed to a missing tooth in the upper front of his dentition. He then said that he was kept in total isolation, and that he had not seen the sunlight in 20 days and he had nobody to speak to.”

“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 skeptical 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. 2 When asked whether these rights were respected in Libya, he said: “ What do you think?” 3

The second report by the Office of Public Council for Defence contains by and large the same information, but one can't miss the significant differences existing between the two. Only the report of Office of Public Council for Defence mentions that Seif al-Islam wished to be transferred as soon as possible to the Hague or Tripoli to discontinue his detention under the present conditions (paragraph 33). Only this report says the Libyan authorities lied saying S. Gaddafi didn't want to see the ICC representatives (paragraph 34). Only this report says the Libyan authorities denied his request for a lawyer, saying “it's impossible” (paragraph 35). 4 The both reports had classified parts omitted in the public versions.

The differences between the two reports, the information they contained, their initial publication and sudden secrecy imposed – it all goes to show there are two opposing forces clashing inside the ICC. The first one is represented by the Registry and the Prosecutor's Office. The second – by the Gaddafi's Defence. But it's a very unusual defence. The matter is Gaddafi didn't have a lawyer since the arrest warrant was issued. But on April 17 the Court assigned him a temporary lawyer - Xavier Jean-Keïta, Principal Counsel, Office of Public Counsel for Defence. 5 It's him the second ICC force is associated with. On May 3 he delivered a major blow to the other side. He addressed the Appeals Chamber demanding the disqualification of the ICC's prosecutor Luis Moreno Ocampo.6 Indeed, the prosecutor displayed extreme lack of professionalism. No doubt he was trying to accomplish political missions but was doing it rudely, like a drill Sergeant giving an order.

Let's remember that it was Ocampo who “gathered evidence of fault” against Muammar and Seif Gaddafi in a few weeks without going to the place where the alleged crimes were committed. In other cases investigations lasted for years (7 years in the case of Cote d'Ivoire). Now the Ocampo's statements for the media fully coincide with the position of the Libyan authorities. Ocampo says the Libyan “insurrection” was a result of the crimes committed by the Gaddafi family. Thus he takes the side of criminals himself: no way he may not be aware that the report of the UN Inquiry Commission says the crimes have been committed by the both sides that is by those who is called “the Libyan government” today. Ocampo renders active support to it making statements expressing confidence in the ability of the authorities to try Seif Gaddafi. And that's after the warrant to hold the trial exactly in the Hague has been issued upon the request made by the ICC! **It means the Ocampo's activities prevent the execution of the arrest warrant issued by the court!** The situation is unique. An ICC's prosecutor has deliberately taken the side of the criminals. It's not the disqualification of Ocampo from the Seif Gaddafi's case, but rather the disqualification from the ICC prosecutor's position that we should be in consideration.

At the same time it's not just another prosecutor who has lost his mind. There are facts that say there are some forces inside the ICC acting with the help of Ocampo trying to wind up the Seif Gaddafi's case and prevent it from going to the Hague.

First, there is no real evidence of his guilt the same way there was no evidence produced in the case against his father (here one can recall the ICC's approach to the Muammar Gaddafi's suit, when

instead of demanding to investigate the murder of the person who had been brought charges against in the already open case, it was decided to “close it” 7). It’s a rather scandalous decision taken by the court that pretends to be “the most just in the world” that “sets the universal justice standards”.

Secondly, the ICC’s interest is to prevent Seif Gaddafi from getting an international tribune to give evidence against NATO and make public secret mechanisms of Libya’s destruction. Eight out of eighteen judges are citizens of NATO countries, that committed an act of aggression against Libya (besides two more judges from NATO member states “temporary hold their positions till concrete cases are closed”). Thus, **NATO controls half of the ICC judges**. In the chamber that is responsible for preliminary investigation of the Seif Gaddafi’s case, two out of three judges are citizens of NATO countries (Germany and Belgium). *And third at last*, the only defence left for Seif al-Islam in case his trial goes to the Court is the information revealing real identity of the new Libyan authorities and their crimes, that would inevitably lead to new arrest warrants by a court that is really independent. So, the fact of transferring the Seif Gaddafi’s trial to the ICC would be a blow against all countries without exclusion whose citizens hold top positions there. Is it really so, that nobody wants the trial to go to the ICC? No, not exactly.

Though the chief ICC prosecutor Xavier-Jean Keïta is French, he comes from Mali. The motivation of his strong actions lies on the surface, Mali is especially grateful to Muammar Gaddafi for the aid rendered by the Libyan leader in all spheres including deterring the Tuaregs, what at the very least made possible for the government to exercise control of the northern part of the country. **It was Mali that suffered most as a result of M. Gaddafi’s overthrow: practically half of its territory was cut off by the Tuaregs who became absolutely insolent receiving the most modern arms, including heavy weapons systems, from Libyan depots**. The coup d’état in Mali in March this year and an attempt to make a coup by the end of April – portend the destruction of southern part of the country and rivers of blood. The main contradictions between the putschists and “counterputschists” lie in strategy and tactics of getting back the lost land in the North. Everyone understands Mali is not able to return it now, so what makes difference is how many lives these or that new authorities are ready to sacrifice – dozens of thousand or hundreds of thousand. The domestic situation is more than dramatic. Under the circumstances the call of blood of the leading ICC lawyer played a significant role in unusual development of the Seif Gaddafi’s case proceedings. Still Keïta is French and he remains to be French. He didn’t start to act at once but only when the balance of political power inside France became finally clear.

It’s hard to say whose interests Keïta pursues trying to transfer the case to the Hague. It’s not excluded he is offered the role of a driving force of those who not only want to get rid of Sarkozy as the president of France (and weakening the globalist lobby staying behind him) but also his total destruction with the help of further revelations. Let’s not forget it is Seif al-Islam Gaddafi who possesses the most full information about financing the Sarkozy’s presidential campaign. Supposedly those who want at any price to get S. Gaddafi out of Libya and take him to the Hague to make public revelations stay behind Keïta.

The fact of making public the report of the ICC delegation in Libya should become a basis for investigation. It’s clear its publication (at least concerning the part of the talk of the ICC delegation with Gaddafi **alone**) prompts retaliation against S. Gaddafi. Just recently on May 1 the Libyan government sent an applicatio to the ICC demanding to recognize the S. Gaddafi’s case as inadmissible pursuant to the article 19 of the ICC Statute. One of the main arguments is “a lie presented by the Court’s Registry about Seif Gaddafi being mistreated” 8. **The report’s publication can be considered as an attempt to liquidate Seif Gaddafi. The Libyan authorities have prepared an alibi in advance. They constantly importunately repeat that they don’t control the tribes that Seif Gaddafi happened to be in the hands of**. Still, the rumors about lack of control over the Zintan local powers are exaggerated, at least concerning Seif al-Islam. It was no other but a prosecutor from Tripoli who was present al the time during the meeting between S. Gaddafi and the ICC delegation.

So, talking about the S. al-Islam's case in the ICC a new, unparalleled until now situation has shaped. Two forces have clashed. One is trying at any price to close the case of Gaddafi, the other opposes these activities. It's by and large clear what exactly one of them doesn't want to hear about. What the other wants to hear from the defendant will become clear only if Seif al-Islam faces the Hague trial. In any case the dream of Seif Gaddafi will hardly become true. The matter is he dreams about seeing the **Libyan** sun...

1. The ICC delegation sent to visit Seif al-Gaddafi included the teams of two bodies formally independent from each other - the Registry and the Office of Public Council for Defence. Correspondingly they have submitted two independent reports.
2. Isn't it an exhaustive reply? Still, it gives an idea of what goals are set by different forces inside the ICC.
3. At present one can see only secondary sources. The whole text of the quoted report by the ICC Registry is available: <http://opiniojuris.org/wp-content/uploads/RegistryReport.pdf>
4. The full text of the Office of Public Council for Defence: <http://opiniojuris.org/wp-content/uploads/OPCD-Report.pdf>
5. Prosecutor v. Saif al-Islam Gaddafi, [Pre-Trial Chamber] Decision Appointing Counsel from the OPCD as Counsel for Saif Al-Islam, 17 April 2012, // <http://www.icc-cpi.int/iccdocs/doc/doc1396574.pdf>
6. Prosecutor v. Saif al-Islam Gaddafi, [Defence] Request [to the Appeals Chamber] to Disqualify the Prosecutor from Participating in the Case Against Mr. Saif Al Islam Gaddafi, 3 May 2012, // <http://www.icc-cpi.int/iccdocs/doc/doc1407180.pdf>
7. Prosecutor v. Muammar Gaddafi, [Pre-Trial] Decision to Terminate the Case Against Muammar Mohammed Abu Minyar Gaddafi, 22 November 2011, // <http://www.icc-cpi.int/iccdocs/doc/doc1274559.pdf>
8. Prosecutor v. Saif al-Islam Gaddafi, Application on behalf of the Government of Libya pursuant to Article 19 of the ICC Statute, 1 May 2012, // <http://www.icc-cpi.int/iccdocs/doc/doc1405819.pdf>

12.05.2012, <http://www.strategic-culture.org/news/2012/05/12/seif-al-islam-gaddafi-and-the-fight-behind-the-scene-over-his-fate.html>