

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 15 August 2013

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 Redacted Version
With Annex A - Confidential, *ex parte*, only available to the Prosecution**

Prosecution's request for redactions pursuant to Rule 81(2)

Source: Office of the Prosecutor

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

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Introduction

1. On 2 August 2013, Pre-Trial Chamber I ("the Chamber") issued its "Decision on the "Defence request for an order of disclosure"¹ ("Decision") where it instructed the Prosecutor "to disclose to the Defence [of Mr. Saif Al-Islam Gaddafi] ("the Defence") [REDACTED] as soon as practicable, subject to the redactions under rule 81(2) and/or (4) for which she may apply to the Chamber".²
2. The Prosecution hereby files a request for redactions pursuant to Rule 81(2) to the content of [REDACTED].

Confidentiality

3. Pursuant to Regulation 23*bis* of the Regulations of the Court, the Prosecution files Annex A Confidential, *Ex Parte*, only available to the Prosecution, as knowledge by the Defence of the content of the Annex would defeat its purpose. Further, the Prosecution files this document as Confidential because it refers to information that has this same level of confidentiality.

Request for Redactions

4. The Prosecution seeks authorisation to redact from [REDACTED],³ (a) the identities of investigators mentioned in the transcripts; and (b) the location of the interview. The redactions are sought pursuant to Rule 81(2) to protect further and ongoing investigations. Revealing to the

¹ ICC-01/11-01/11-392- Conf-Corr. A public redacted version was also rendered.

² Decision, para.41.

³ [REDACTED]

Defence any of the above information is likely to impact on the Prosecution's ability to conduct its investigations, as it may unduly attract attention to the movement of Prosecution staff and by extension to (potential) witnesses and their security.

5. The above redactions also ensure that the Prosecution can continue to use during its investigations the limited number of investigators that it currently has at its disposal, without any need to replace them, which would have negative implications both on the expeditious conduct of its investigations, as well as on the resources required to conduct such investigations.
6. The Prosecution recalls that investigators within the OTP can work on different investigations at once and when they finish working on one investigation they are assigned to another. Consequently, because they regularly move from one new investigation to another, they repeatedly face potential security issues requiring that their identities be kept confidential. When the identities of investigators are revealed in one case, it makes it significantly more difficult to maintain confidentiality in subsequent cases. Thus, absent some showing of a specific need or justification for the disclosure of the identities of investigators, the OTP seeks, as a matter of practice, to maintain their confidentiality. For these reasons pertaining both to the present case and to the overall practice of the OTP, the identities of the investigators should be redacted from the documents in question.
7. The Prosecution submits that the redactions sought pursuant to Rule 81(2) would not result in unfairness to the Defence, since they do not relate to information that is relevant to the exercise of Defence rights at

this stage of the proceedings.⁴ The Prosecution will also periodically review these redactions to assess the need to maintain them in light of the progress of its investigation. Furthermore, the redactions sought under Rule 81(2) are consistent with decisions of this Chamber in other cases that authorised similar redactions in the past.⁵

8. The redactions to the location where Prosecution has conducted the interview with the witness are justified by the fact that at present there are limited places, where the OTP is able to meet with witnesses. Disclosure of a specific location where the OTP meets witnesses within a given country would jeopardise the investigating activities and prevent conducting future interviews in those locations. It could also lead to the witnesses interviewed in these locations being identified, thereby exposing them to objectively identifiable risks to their safety and security.
9. To assist the Chamber, the Prosecution attaches Annex A to this application, which contains a chart indicating the specific information sought to be redacted and the justification for the redactions sought. The Prosecution also attaches in the same annex [REDACTED] with highlights to the information for which redactions are being sought.⁶

⁴ Decision, para.41.

⁵ ICC-02/11-01/11-74-Red, ICC-02/11-01/11-106, ICC-02/11-01/11-176 and ICC-02/11-01/11-294.

⁶ [REDACTED].

Relief requested

10. For the foregoing, the Prosecution requests the Chamber to authorise the redactions requested in this application [REDACTED].



Fatou Bensouda
Prosecutor

Dated this 15th day of August 2013

At The Hague, The Netherlands