

**Original: English****No. ICC-01/11
Date: 4 October 2024****PRE-TRIAL CHAMBER I****Before:****Judge Iulia Antoanella Motoc, Presiding
Judge María del Socorro Flores Liera
Judge Reine Adélaïde Sophie Alapini-Gansou****SITUATION IN LIBYA**

**Public redacted version of
Under seal, *ex parte*, available only to the Prosecution,
with public Annexes 1 to 6**

Decision granting the Prosecution's application to unseal six warrants of arrest

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

The Office of the Prosecutor

Mr Karim A. A. Khan
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Ms Nicole Samson

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
for Participation/Reparations**

**The Office of Public Counsel
for Victims**

**The Office of Public Counsel
for the Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and
Reparations Section**

Other

PRE-TRIAL CHAMBER I (the ‘Chamber’) of the International Criminal Court (the ‘Court’) issues this decision granting the Prosecution’s application to unseal the warrants of arrest for Abdurahem Khalefa Abdurahem Elshgagi, Makhlouf Makhlouf Arhoumah Doumah, Nasser Muhammad Muftah Daou, Mohamed Mohamed Al Salheen Salmi, Abdelbari Ayyad Ramadan Al Shaqaqi and Fathi Faraj Mohamed Salim Al Zinkal.

I. Procedural history

1. On 6 April 2023, a majority of the Chamber, in a previous composition, issued warrants of arrest against Mr Abdurahem Al Kani, Mr Makhlouf Douma, Mr Nasser Al Lahsa, and Mr Mohamed Salheen with an ‘under seal, *ex parte*, Prosecution only’ classification (jointly, the ‘First Four Warrants of Arrest’),¹ with Judge Flores Liera dissenting.²

2. On 7 July 2023, after receiving observations by the Registry,³ the Chamber rejected a request by the Prosecution⁴ to unseal the First Four Warrants of Arrest and issue public redacted versions thereof on the basis that the risks of unsealing the First Four Warrants of Arrest clearly outweighed the alleged benefits (the ‘Decision on the First Unsealing Applications’).⁵

3. On 18 July 2023, a majority of the Chamber, in a previous composition, issued warrants of arrest against Mr Al Shaqaqi and Mr Al Zinkal with an ‘under seal, *ex parte*, Prosecution only’ classification (the ‘Fifth and Sixth Warrants of Arrest’; together with

¹ Warrant of Arrest for Abdurahem Khalefa Abdurahem Elshgagi (‘Abdurahem Al Kani’), ICC-01/11-93-US-Exp; Warrant of Arrest for Makhlouf Makhlouf Arhoumah Doumah (‘Makhlouf Douma’), ICC-01/11-94-US-Exp; Warrant of Arrest for Nasser Muhammad Muftah Daou (‘Nasser Al Lahsa’), ICC-01/11-95-US-Exp; and Warrant of Arrest for Mohamed Mohamed Al Salheen Salmi (‘Mohamed Salheen’), ICC-01/11-96-US-Exp.

² ICC-01/11-93-OPI-US-Exp; ICC-01/11-94-OPI-US-Exp; ICC-01/11-95-OPI-US-Exp; ICC-01/11-96-OPI-US-Exp.

³ Registry Report pursuant to the “Order concerning the Prosecution’s applications to unseal the warrants of arrest of four suspects and issue public redacted versions thereof” (ICC-01/11-109-US-Exp), ICC-01/11-111-US-Exp.

⁴ Prosecution’s Application to unseal the warrant of arrest for Abdurahem Khalefa Abdurahem Elshgagi (‘Abdurahem AL KANI’), 3 May 2023, ICC-01/11-101-US-Exp; Prosecution’s Application to unseal the warrant of arrest for Makhlouf Makhlouf Arhoumah Doumah (‘Makhlouf Douma’), 3 May 2023, ICC-01/11-102-US-Exp; Prosecution’s Application to unseal the warrant of arrest for Mohamed Mohamed Al Salheen Salmi (‘Mohamed Salheen’), 3 May 2023, ICC-01/11-103-US-Exp; Prosecution’s Application to unseal the warrant of arrest for Nasser Muhammad Muftah Daou (‘Nasser Al Lahsa’), 3 May 2023, ICC-01/11-104-US-Exp.

⁵ Decision rejecting the Prosecution’s applications to unseal four warrants of arrest, ICC-01/11-118-US-Exp, para. 9.

the First Four Warrants of Arrest, the ‘Warrants of Arrest’),⁶ with Judge Flores Liera dissenting.⁷

4. On 17 October 2023 and 28 May 2024 respectively, following requests by the Prosecution,⁸ the Chamber issued redacted versions of the Warrants of Arrest for the purpose of cooperation requests and provision to the suspects, once arrested.⁹

5. On 4 September 2024, the Prosecution, in consultation with the Victims and Witnesses Unit (the ‘VWU’), requested that the Chamber unseal the Warrants of Arrest and issue public redacted versions thereof (the ‘Request’).¹⁰

II. Determination

6. The Chamber recalls that, pursuant to article 68(1) of the Statute, it ‘shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses’ and that ‘[t]hese measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial’.

7. At the outset, the Chamber recalls that it previously rejected a similar request. In its Decision on the First Unsealing Applications, the Chamber considered the following factors: [REDACTED];¹¹ [REDACTED];¹² [REDACTED].¹³ In these combined circumstances, the Chamber found that the risk of unsealing the First Four Warrants of Arrest clearly outweighed the alleged benefits.¹⁴

8. The Chamber notes that the Request currently before it has been submitted by the Prosecution in consultation with the VWU.¹⁵ Different from the previous application,

⁶ Warrant of Arrest for Abdelbari Ayyad Ramadan Al Shaqqaqi (‘Al Shaqqaqi’), ICC-01/11-119-US-Exp; Warrant of Arrest for Fathi Faraj Mohamed Salim Al Zinkal (‘Al Zinkal’), ICC-01/11-120-US-Exp.

⁷ ICC-01/11-119-OPI-US-Exp; ICC-01/11-120-OPI-US-Exp (together with ICC-01/11-93-OPI-US-Exp; ICC-01/11-94-OPI-US-Exp; ICC-01/11-95-OPI-US-Exp; ICC-01/11-96-OPI-US-Exp, the ‘Dissenting Opinions’).

⁸ Prosecution’s request for limited redactions to six arrest warrants, 10 October 2023 (notified on 11 October 2023), ICC-01/11-122-US-Exp; Prosecution’s request for further redactions to Arrest Warrants, 5 April 2024, ICC-01/11-126-US-Exp.

⁹ Decision granting the Prosecution’s request for redactions to six arrest warrants, ICC-01/11-123-US-Exp; Decision on the Prosecution’s second request for further redactions to warrants of arrest, ICC-01/11-134-US-Exp.

¹⁰ Prosecution’s Application to unseal six warrants of arrest, ICC-01/11-138-US-Exp.

¹¹ REDACTED.

¹² REDACTED.

¹³ REDACTED.

¹⁴ Decision on the First Unsealing Applications, para. 10.

¹⁵ Request, paras 2, 32, 35, 41.

in the present case, the VWU supports the Prosecution's request. Notably, [REDACTED].¹⁶

9. In order to address the risks previously identified by the Chamber as a result of a possible unsealing of the warrants, the Prosecution, in consultation with the VWU, proposes the following mitigation [REDACTED];¹⁷ [REDACTED].¹⁸ [REDACTED].¹⁹

10. Having considered the Prosecution's and the VWU's risk assessment and mitigation [REDACTED], the Chamber is satisfied that unsealing the Warrants of Arrest would have limited impact [REDACTED].

11. As to the benefits of a possible unsealing, the Prosecution refers to (i) visibility being essential to maintain trust in the work of the Court and to secure continued cooperation in investigations and for eventual trials²⁰ and (ii) publicity representing the best chance for the possible arrest and surrender of the suspects.²¹ Considering the aforementioned circumstances, the Chamber finds that the risks of unsealing these Warrants of Arrest are, in the current conditions, outweighed by the potential benefits and accordingly grants the Prosecution's request.

12. The Prosecution further requests the issuance of public redacted versions of the Warrants of Arrest. On this point, the Chamber notes that the Prosecution suggests applying further redactions to those already granted for the purposes of cooperation and notification to the suspects. [REDACTED].²² The Chamber considers that the redactions proposed by the Prosecution are limited in scope [REDACTED]. While granting the Prosecution's request, the Chamber finds it appropriate to apply additional redactions, as reflected in the public redacted versions of the Warrants of Arrest annexed to this decision.

13. Considering that the Warrants of Arrest were issued by a different composition of this Chamber, the Chamber issues the public redacted versions thereof, and of the Dissenting Opinions, as separate annexes to the present filing.

¹⁶ Request, para. 41.

¹⁷ Request, paras 33-34.

¹⁸ Request, para. 35.

¹⁹ Request, paras 37-39.

²⁰ Request, paras 42-46.

²¹ Request, paras 47-48.

²² Request, para. 34.

FOR THESE REASONS, THE CHAMBER HEREBY

GRANTS the Request;

UNSEALS the Warrants of Arrest; and

ISSUES public redacted versions of the Warrants of Arrest.

Done in English. A French translation will follow. The English version remains authoritative.



**Judge Iulia Antoanella Motoc,
Presiding**



**Judge Reine Adélaïde Sophie Alapini-
Gansou**



Judge María del Socorro Flores Liera

Dated this Friday, 4 October 2024

At The Hague, The Netherlands