

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 26 March 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**

URGENT

**Confidential
with Confidential *Ex parte* Annexes**

Order in relation to Reclassification of Documents

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

The Office of the Prosecutor

Luis Moreno-Ocampo

Fatou Bensouda

Counsel for the Defence

Legal Representatives of Victims

**Legal Representatives of
Applicants**

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

Xavier-Jean Keïta

Melinda Taylor

States Representatives

Amicus Curiae

REGISTRY

Registrar

Silvana Arbia

Deputy Registrar

Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and
Reparations Section**

Others

Pre-Trial Chamber I ("Chamber") of the International Criminal Court ("Court") issues the following order on the "Urgent Request for Reclassification" (the "Request for Reclassification") submitted by the Office of Public Counsel for the defence ("OPCD").¹

1. On 6 December 2011, the Chamber issued the "Decision Requesting Libya to file Observations Regarding the Arrest of Saif Al-Islam Gaddafi".² In this decision, the Chamber (1) authorised the OPCD to represent the interests of the Defence in all instances related to the proceedings against Saif Al-Islam Gaddafi ("Mr Gaddafi") in the present case until otherwise decided;³ and (2) requested information from Libya on whether and when the Libyan authorities intended to surrender Mr Gaddafi to the Court.⁴
2. On 23 January 2012, the Libyan authorities filed their responses to the Chamber's queries on a confidential basis and sought postponement of Mr Gaddafi's surrender to the Court pending the completion of national proceedings in relation to other crimes against Mr Gaddafi ("Postponement Request").⁵
3. On 7 March 2012, the Chamber issued, on a confidential basis, the "Decision on Libya's Submissions Regarding the Arrest of Saif Al-Islam Gaddafi", ("Decision Rejecting the Postponement Request") dismissing the Postponement Request and requesting that Libya make its decision to

¹ Urgent Request for Reclassification, 19 March 2012, ICC-01/11-01/11-78-Conf-Exp (Prosecution, Registry and OPCD only).

² Decision Requesting Libya to file Observations Regarding the Arrest of Saif Al-Islam Gaddafi, 6 December 2011, ICC-01/11-01/11-39-Conf-Exp (Prosecution, Registry and OPCD only) and public redacted version ICC-01/11-01/11-39-Red.

³ *Ibid.*, page 6.

⁴ *Ibid.*, paragraph 11.

⁵ Report of the Registrar on Libya's observations regarding the arrest of Saif Al-Islam Gaddafi, 23 January 2012, ICC-01/11-01/11-44, with confidential annex 1.

grant the Surrender Request and to inform the Chamber accordingly within seven days of notification of the Arabic translation of the decision.⁶

4. On 19 March 2012, the OPCD filed its Request for Reclassification requesting that (i) the Decision rejecting the Postponement Request be reclassified as public, or a public redacted version thereof be issued; (ii) a review of related procedural decisions be conducted to determine whether they can be reclassified as public or public redacted versions issued; and (iii) an order be issued to the parties and the Registrar to review the classification of their filings to determine whether public or public redacted versions thereof may be filed.⁷

5. The Chamber notes Rule 15 of the Rules of Procedure and Evidence and Regulations 23 *bis*, 24 and 34 of the Regulations of the Court.

6. In its Request for Reclassification, the OPCD questions the necessity and appropriateness of "the continued confidential classification of filings concerning mainly legal and procedural issues".⁸ It submits that the justification for the classification of many of the confidential filings has expired and cites the public interest in ascertaining whether the National Transitional Council may lawfully maintain its detention of Mr Gaddafi rather than transferring him to the Court in favour of reclassification.

7. In view of its duty to ensure that proceedings are conducted in a fair manner, with due regard for the principle of publicity, the Chamber considers it necessary to conduct a review of the filings in the case to date with a view to rendering the proceedings public to the greatest extent possible.

⁶ Decision on Libya's Submissions Regarding the Arrest of Saif Al-Islam Gaddafi, 7 March 2012, ICC-01/11-01/11-72-Conf.

⁷ ICC-01/11-01/11-78-Conf-Exp (Prosecution, Registry and OPCD only).

⁸ *Ibid.*, paragraph 20.

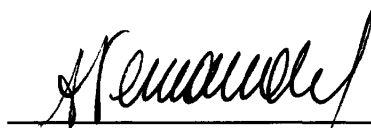
8. Therefore, the Chamber considers it appropriate to request the Libyan authorities, the Registrar, the Prosecutor and the OPCD (i) to identify which, if any, of their respective filings as set out in the annexes should retain redactions or a confidential or confidential *ex parte* classification, providing reasons as to the necessity of maintaining the relevant redactions or classification; and (ii) in relation to those filings which cannot be reclassified as public, to file proposals for redactions, providing reasons as to the necessity of the proposed redactions.

FOR THESE REASONS, THE CHAMBER HEREBY

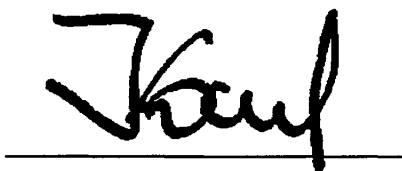
ORDERS the Prosecutor, the Registrar and the OPCD to file submissions as detailed in paragraph 8 above by 30 March 2012, and

ORDERS the Registrar to consult with the Libyan authorities to obtain their views on the issues set out in paragraph 8 above and to report to the Chamber on the outcome of her consultations with the Libyan authorities by 30 March 2012.

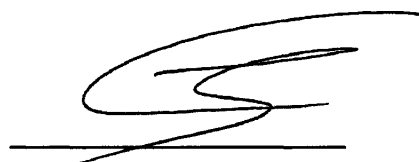
Done in both English and French, the English version being authoritative.



Judge Silvia Fernández de Gurmendi
Presiding Judge



Judge Hans-Peter Kaul



Judge Christine Van den Wyngaert

Dated this Monday, 26 March 2012

At The Hague, The Netherlands