

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 4 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 confidential *ex parte* annexes**

Decision on 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

Philippe Sands
Payam Akhavan
Michelle Butler

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 issues the following decision on the “Urgent Request for Reclassification” (the “Request for Reclassification”) submitted by the Office of Public Counsel for the defence (“OPCD”).¹

1. On 19 March 2012, the OPCD filed its Request for Reclassification requesting, *inter alia*, that 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.²

2. On 26 March 2012, the Chamber issued its “Order in relation to Reclassification of Documents”, wherein it requested the parties, the Registrar and the Libyan authorities to identify which, if any, of their respective filings as set out in the annexes thereto should retain redactions, or a confidential or confidential *ex parte* classification and to submit proposals for redactions in relation to those filings which cannot be reclassified as public.³

3. On 30 March 2012, the Government of Libya filed the “Libyan Observations on the Reclassification of Certain Documents”, submitting that it had no objections to the following filings being reclassified as public: ICC-01/11-01/11-82-Conf, ICC-01/11-01/11-83-Conf-Anx1, ICC-01/11-01/11-41-Conf-Exp-Anx2, ICC-01/11-01/11-44-Conf-Anx1, and ICC-01/11-01/11-22-Conf-Exp-Anx2, subject to appropriate redactions being applied to the latter two documents to protect the identities of persons named therein.⁴

¹ ICC-01/11-01/11-78-Conf-Exp (Prosecutor, Registry and OPCD only).

² ICC-01/11-01/11-78-Conf-Exp (Prosecutor, Registry and OPCD only).

³ ICC-01/11-01/11-86-Conf.

⁴ ICC-01/11-01/11-92-Conf.

4. On 30 March 2012, the Prosecutor filed the “Prosecution’s Submissions on the Order In Relation To Reclassification of Documents”, submitting that the following three submissions should retain their confidential *ex parte* classifications: ICC-01/11-01/11-50-Conf-Exp; ICC-01/11-01/11-32-Conf-Exp and ICC-01/11-01/11-21-Conf-Exp, but, proposing a redaction to ICC-01/11-01/11-32-Conf-Exp should the Chamber deem it appropriate to reclassify the filings as public.⁵

5. On 30 March 2012, the OPCD filed the “OPCD Observations on the “Order in relation to Reclassification of Documents”, submitting that ICC-01/11-01/11-78-Conf-Exp, ICC-01/11-01/11-69-Conf-Exp, and ICC-01/11-01/11-81-Conf and its annexes may be reclassified as public, and that ICC-01/11-01/11-70-Conf-Exp and ICC-01/11-01/11-79-Conf-Exp may be reclassified as public subject to appropriate redactions being applied.⁶

6. On 30 March 2012, the Registrar filed the “Registry’s Observations on Reclassification of Documents”, submitting that

(i) ICC-01/11-01/11-30-Conf-Exp, ICC-01/11-01/11-26-Conf, ICC-01/11-01/11-19-Conf-Exp, ICC-01/11-01/11-83-Conf, ICC-01/11-01/11-83-Conf-Corr, and ICC-01/11-01/11-83-Conf-Corr-Anx1 may be reclassified as public;

(ii) ICC-01/11-01/11-59-Conf-Exp, ICC-01/11-01/11-63-Conf-Exp, ICC-01/11-01/11-67-Conf-Exp, ICC-01/11-01/11-80-Conf-Exp, ICC-01/11-01/11-83-Conf-Anx1, ICC-01/11-01/11-83-Conf-Anx2 and ICC-01/11-01/11-83-Conf-Anx3 should maintain their current respective classifications;

⁵ ICC-01/11-01/11-95-Conf, together with annexes.

⁶ ICC-01/11-01/11-96-Conf-Exp (Registry and OPCD only).

- (iii) ICC-01/11-01/11-71-Conf-Exp may be reclassified as confidential subject to the redaction of certain information contained therein pertaining to the Defence; and
- (iv) ICC-01/11-01/11-35-Conf-Exp and ICC-01/11-01/11-41-Conf-Exp may be reclassified as public subject to the application of proposed redactions.⁷

7. The Chamber notes rule 15 of the Rules of Procedure and Evidence and regulation 23 *bis* of the Regulations of the Court.

8. The Government of Libya has no objection to its filings being reclassified as public subject to the redaction of reference to the identities of a number of individuals named in ICC-01/11-01/11-44-Conf-Anx1, and ICC-01/11-01/11-22-Conf-Exp-Anx2. As the Government of Libya has provided satisfactory factual and legal reasons for the proposed redactions, the Chamber is of the view that public redacted versions of ICC-01/11-01/11-44-Conf-Anx1 and ICC-01/11-01/11-22-Conf-Exp-Anx2 should be filed, following the application of the redactions set out in paragraph 5 of the “Libyan Observations on the Reclassification of Certain Documents”.

9. The reason advanced by the Prosecutor for maintaining the confidential *ex parte* classification of his filings and his request for redaction to ICC-01/11-01/11-32-Conf-Exp is no longer valid in view of the fact that the Government of Libya does not oppose the reclassification as public of its filings, or the publication of the information sought to be redacted. Accordingly, the Chamber considers that filings, ICC-01/11-01/11-50-Conf-Exp, ICC-01/11-01/11-32-Conf-Exp, and ICC-01/11-01/11-21-Conf-Exp may be reclassified as public.

⁷ ICC-01/11-01/11-97-Conf-Exp (Registry only).

10. The Chamber notes that the Prosecutor has not provided a legal or factual basis for the confidential classification of filing ICC-01/11-01/11-88-Conf and orders that a public redacted version thereof be filed in accordance with Annex 2 to the present decision, by Tuesday, 10 April 2012.

11. The Chamber considers that the OPCD has provided satisfactory factual and legal reasons for its proposed redactions to ICC-01/11-01/11-70-Conf-Exp and ICC-01/11-01/11-79-Conf-Exp. The Chamber notes that OPCD filings ICC-01/11-01/11-70-Conf-Exp, ICC-01/11-01/11-78-Conf-Exp, ICC-01/11-01/11-69-Conf-Exp and ICC-01/11-01/11-81-Conf-AnxA-D contain references to the identities of individuals which should also be redacted. Accordingly, the Chamber deems it necessary to order the OPCD to file public redacted versions of its filings as set out in Annex 1 to the present decision by Tuesday, 10 April 2012.

12. The Chamber is satisfied by the proposals for redactions advanced by the OPCD in relation to ICC-01/11-01/11-90-Conf-Exp,⁸ and orders the OPCD to file a public redacted version thereof in accordance with Annex 1 to the present decision, by Tuesday, 10 April 2012.

13. The OPCD has filed a confidential redacted version of filing ICC-01/11-01/11-94-Conf-Exp, indicating that it will be in a position to file a public redacted version of the filing when other decisions and filings are rendered public.⁹ The Chamber, therefore, orders the OPCD to file a public or public redacted version of filing ICC-01/11-01/11-94-Conf-Exp, providing reasons for any redactions thereto, if necessary, by Tuesday, 10 April 2012.

⁸ ICC-01/11-01/11-90-Conf-Exp, footnote 1.

⁹ ICC-01/11-01/11-94-Conf-Red, para. 16.

14. The Chamber considers that the Registrar has provided satisfactory factual and legal reasons for maintaining the confidential *ex parte* classification of filings ICC-01/11-01/11-80-Conf-Exp, ICC-01/11-01/11-67-Conf-Exp, ICC-01/11-01/11-63-Conf-Exp, and ICC-01/11-01/11-59-Conf-Exp, as well as for the proposed redactions to filing ICC-01/11-01/11-35-Conf-Exp.

15. On the other hand, the reasons provided by the Registrar for the proposed redactions to filing ICC-01/11-01/11-41-Conf-Exp are no longer valid in view of the fact that the Government of Libya has no objection to the relevant information being made public.¹⁰ Accordingly, the Chamber considers that ICC-01/11-01/11-41-Conf-Exp must, therefore, be reclassified as public.

16. The Chamber considers that the interests of the Defence will not be prejudiced by disclosure to the Prosecutor of the information contained in paragraphs 15-22 of filing ICC-01/11-01/11-71-Conf-Exp, redaction of which is sought by the Registrar. To an extent, this information is contained in the OPCD's filing ICC-01/11-01/11-70-Conf-Exp, which is reclassified as public pursuant to the present decision. The Chamber finds that there is a satisfactory factual and legal basis for the reclassification as confidential of filing ICC-01/11-01/11-71-Conf-Exp and deems it necessary to authorise redaction of paragraph 40 in order to preserve the confidentiality of the operational arrangements of the Registry. Accordingly, the Registrar is ordered to file a public redacted version of filing ICC-01/11-01/11-71-Conf-Exp, from which paragraph 40 has been redacted, by Tuesday, 10 April 2012.

¹⁰ The Chamber also notes the existence of a public redacted version of ICC-01/11-01/11-41-Conf-Exp (ICC-01/11-01/11-41-Red) which makes public the information sought to be redacted.

17. In view of its determinations above, the Chamber considers that the reasons for the classification of a number of other decisions and documents as confidential or confidential *ex parte* has ceased to exist and the following decisions and documents must be reclassified as public: ICC-01/11-01/11-20-Conf-Exp, ICC-01/11-01/11-27-Conf-Exp, ICC-01/11-01/11-29-Conf-Exp, ICC-01/11-01/11-34-Conf, ICC-01/11-01/11-38-Conf-Exp, ICC-01/11-01/11-43-Conf-Exp, ICC-01/11-01/11-52-Conf-Exp, ICC-01/11-01/11-72-Conf, ICC-01/11-01/11-75-Conf-Exp, ICC-01/11-01/11-85-Conf, ICC-01/11-01/11-86-Conf, ICC-01/11-01/11-87-Conf, ICC-01/11-01/11-93-Conf, ICC-01/11-01/11-95-Conf and ICC-01/11-01/11-98-Conf.

18. Finally, the Chamber underlines that, unless otherwise indicated, annexes to the filings listed in the operative part shall retain their current classifications.

FOR THESE REASONS, THE CHAMBER HEREBY**ORDERS** the Registrar to:

(i) reclassify as public the following documents and decisions:

ICC-01/11-01/11-19-Conf-Exp,
ICC-01/11-01/11-20-Conf-Exp,
ICC-01/11-01/11-21-Conf-Exp,
ICC-01/11-01/11-26-Conf-Exp,
ICC-01/11-01/11-27-Conf-Exp,
ICC-01/11-01/11-29-Conf-Exp,
ICC-01/11-01/11-30-Conf-Exp,
ICC-01/11-01/11-32-Conf-Exp,
ICC-01/11-01/11-34-Conf,
ICC-01/11-01/11-38-Conf-Exp,
ICC-01/11-01/11-41-Conf-Exp,
ICC-01/11-01/11-41-Conf-Exp-Anx2,
ICC-01/11-01/11-43-Conf-Exp,
ICC-01/11-01/11-50-Conf-Exp,
ICC-01/11-01/11-52-Conf-Exp,
ICC-01/11-01/11-72-Conf,
ICC-01/11-01/11-75-Conf-Exp,
ICC-01/11-01/11-81-Conf,
ICC-01/11-01/11-82-Conf,
ICC-01/11-01/11-83-Conf,
ICC-01/11-01/11-83-Conf-Corr,
ICC-01/11-01/11-83-Conf-Corr-Anx1,
ICC-01/11-01/11-83-Conf-Anx1,
ICC-01/11-01/11-85-Conf,
ICC-01/11-01/11-86-Conf,

ICC-01/11-01/11-87-Conf,
ICC-01/11-01/11-93-Conf,
ICC-01/11-01/11-95-Conf, and
ICC-01/11-01/11-98-Conf;

(ii) file a public redacted version of filing ICC-01/11-01/11-35-Conf-Exp, containing redactions as set out in ICC-01/11-01/11-97-Conf-Exp-Anx2 by **Tuesday, 10 April 2012;**

(iii) file a public redacted version of filing ICC-01/11-01/11-71-Conf-Exp from which paragraph 40 has been redacted by **Tuesday, 10 April 2012;**

ORDERS the OPCD to:

(i) file public redacted versions of the following documents containing the redactions set out in Annex 1 to the present decision by **Tuesday, 10 April 2012:**

ICC-01/11-01/11-69-Conf-Exp
ICC-01/11-01/11-70-Conf-Exp,
ICC-01/11-01/11-78-Conf-Exp,
ICC-01/11-01/11-79-Conf-Exp,
ICC-01/11-01/11-81-Conf (Annexes A-D), and
ICC-01/11-01/11-90-Conf-Exp;

(ii) file a public, or public redacted version of filing ICC-01/11-01/11-94-Conf-Exp, providing reasons for any redactions thereto, if necessary, by **Tuesday, 10 April 2012;**

ORDERS the Prosecutor to file a public redacted version of filing ICC-01/11-01/11-88-Conf containing the redactions set out in Annex 2 to the present decision by **Tuesday, 10 April 2012**; and

REQUESTS the Government of Libya to file public redacted versions of ICC-01/11-01/11-44-Conf-Anx1 and ICC-01/11-01/11-22-Conf-Exp-Anx2 containing the redactions set out in paragraph 5 of ICC-01/11-01/11-92-Conf by **Tuesday, 10 April 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 Wednesday, 4 April 2012

At The Hague, The Netherlands