

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/11-01/11
Date: 16 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

**Decision on the “Prosecution’s request for redactions pursuant to Rule
81(2)”**

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

The Office of the Prosecutor
Fatou Bensouda, Prosecutor

Counsel for Saif Al-Islam Gaddafi
John R.W.D. Jones

Counsel for Abdullah Al-Senussi
Ben Emmerson

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**

States Representatives

Amicus Curiae

REGISTRY

Registrar
Herman von Hebel

Deputy Registrar
Didier Preira

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Counsel Support Section

Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”) issues the following decision on the “Prosecution’s request for redactions pursuant to Rule 81(2)” (the “Application”).¹

1. On 2 August 2013, the Chamber, pursuant to a request of the Defence of Saif Al-Islam Gaddafi (“Mr Gaddafi”),² issued the “Decision on the ‘Defence request for an order of disclosure’”,³ whereby it, *inter alia*, ordered the Prosecutor to disclose to the Defence of Mr Gaddafi [REDACTED] [REDACTED] subject to the redactions under rule 81(2) and/or (4) of the Rules of Procedure and Evidence (the “Rules”) for which she may apply to the Chamber.⁴

2. On 14 August 2013, the Prosecutor filed the Application, whereby she requests the Chamber to authorise some redactions to the statements of [REDACTED] [REDACTED].⁵ More specifically, the Prosecutor seeks authorisation, pursuant to rule 81(2) of the Rules, to redact from the transcripts of interview of [REDACTED]: (i) the identities of the investigators mentioned in the transcripts; and (ii) the location of the interview. The Prosecutor attaches to her Application a chart indicating the specific information sought to be redacted as well as the interview transcripts of the witness, both in English and in Arabic, with highlights to the information that she seeks to redact.⁶

3. The Chamber notes articles 54(3)(f) and 57(3)(c) of the Rome Statute, and rule 81(2) of the Rules.

¹ ICC-01/11-01/11-401-Conf, and annex attached thereto.

² ICC-01/11-01/11-340-Conf.

³ Decision on the ‘Defence request for an order of disclosure’, ICC-01/11-01/11-392-Conf-Corr. A public redacted version is also available (ICC-01/11-01/11-392-Red-Corr).

⁴ *Ibid.*, p. 18 and para. 41.

⁵ ICC-01/11-01/11-401-Conf.

⁶ ICC-01/11-01/11-401-Conf-Exp-AnxA.

4. In particular, according to rule 81(2) of the Rules, the Chamber may authorise, upon request of the Prosecutor, non-disclosure of information which may prejudice ongoing or further investigation. For such authorisation to be granted, the Chamber must be satisfied that: (i) disclosure of the information concerned would give rise to an objectively identifiable risk to the protected interest at stake (in the present case, the Prosecutor's ongoing or further investigations); (ii) non-disclosure of such information is necessary to overcome or reduce the risk, including that this is the least intrusive measure necessary to avoid prejudice to the investigations of the Prosecutor; and (iii) the non-disclosure of the concerned information is proportionate, *i.e.* that it is not prejudicial to or inconsistent with the rights of the suspect and a fair and impartial trial, also taking into account the relevance of the concerned information to the Defence.⁷

5. As recalled above, the first category of information for which the Prosecutor requests non-disclosure is the one of the names of the investigators who conducted the interview of [REDACTED]. The Prosecutor submits that "[r]evealing any [such] 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".⁸ Furthermore, according to the Prosecutor, these redactions would also ensure that she "can continue to use during [her] investigations the limited number of investigators that [she] currently has at [her] disposal".⁹

6. The Chamber is persuaded by the Prosecutor's submission that, at this stage of the proceedings, the presence and the movements of the investigators

⁷ See Appeals Chamber, *The Prosecutor v. Germain Katanga*, Judgment on the appeal of Mr Germain Katanga against the decision of Pre-Trial Chamber I entitled "First Decision on the Prosecution Request for Authorisation to Redact Witness Statements", ICC-01/04-01/07-476, paras 59 to 63.

⁸ Application, para. 4.

⁹ *Ibid.*, para. 5.

of the Office of the Prosecutor involved in the field, should their identities be disclosed to the Defence, could be easily traced with potential prejudice to the Prosecutor's ongoing and further investigations. The Chamber is further of the view that, in the present circumstances, no other less intrusive measure than redactions of the investigators' name can be envisaged in order to overcome or reduce the risk to the Prosecutor's investigations. Finally, the Chamber is satisfied that the redactions sought by the Prosecutor are not prejudicial to the rights of Mr Gaddafi, since they relate to discrete and limited information of little value for the exercise of the Defence rights. Non-disclosure of the names of the investigators who conducted the interview of [REDACTED] is therefore authorised for both the English and the Arabic interview transcripts.

7. The second information for which the Prosecutor requests non-disclosure is the specific location where the interview of [REDACTED] was conducted. The Prosecutor asserts that there are limited places where her investigators are able to meet with witnesses and that disclosure of the specific location where the concerned interview was conducted "would jeopardise the investigative activities and prevent conducting future interviews in those locations" as well as "lead to the witnesses interviewed in these locations being identified, thereby exposing them to objectively identifiable risks to their safety and security".¹⁰

8. The Chamber considers that disclosure of the specific location used by the Prosecutor for conducting the interview with [REDACTED] may unduly attract attention to the movements of the Prosecutor's investigators and possibly expose witnesses to be interviewed at the same location, resulting in hindering the use of the same location for future interviews with ultimate prejudice to the Prosecutor's investigations. The Chamber is of the view that

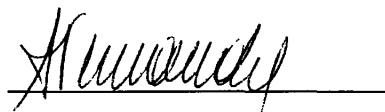
¹⁰ *Ibid.*, para. 8.

redaction of the concerned information is adequate to mitigate this risk to the Prosecutor's investigation and is limited to what is strictly necessary. The requested redaction is indeed limited to the specific location where the interview was conducted and does not concern the country or the city of the place of the interview. Moreover, the Chamber is satisfied that non-disclosure of this discrete non-substantial information is not prejudicial to Mr Gaddafi's rights. The redaction sought by the Prosecutor to the specific location of the interview of [REDACTED] is therefore authorised for both the English and the Arabic version of the interview transcripts.

FOR THESE REASONS, THE CHAMBER

AUTHORISES the Prosecutor to redact from the English and Arabic version of the statements of [REDACTED]: (i) the names of the investigators who conducted the interview of the witness; and (ii) the specific location where the interview was conducted.

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

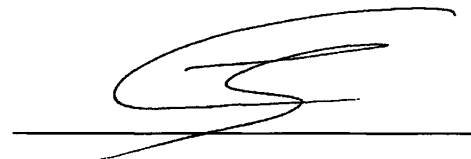


Judge Silvia Fernández de Gurmendi

Presiding Judge



Judge Hans-Peter Kaul



Judge Christine Van den Wyngaert

Dated this Friday, 16 August 2013

At The Hague, The Netherlands