

**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**



Original: **English**

No.: **ICC-01/11-01/11 OA 8**

Date: **31 October 2019**

**THE APPEALS CHAMBER**

**Before:** Judge Chile Eboe-Osuji, Presiding Judge  
Judge Howard Morrison  
Judge Piotr Hofmański  
Judge Luz del Carmen Ibáñez Carranza  
Judge Solomy Balungi Bossa

**SITUATION IN LIBYA  
IN THE CASE OF *THE PROSECUTOR v. SAIF AL-ISLAM GADDAFI***

**Confidential**

**Urgent request for an order directing the Registrar to transmit certain confidential documents to the State of Libya**

**Source:** Office of the Prosecutor

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

**The Office of the Prosecutor**

Ms Fatou Bensouda

Mr James Stewart

Ms Helen Brady

**Counsel for the Defence**

Mr Essa Faal

Ms Venkateswari Alagendra

Mr Aidan Ellis

Mr Khaled Al Zaidy (Libyan National Counsel)

**Legal Representatives of the Victims**

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

Ms Paolina Massidda

Ms Sarah Pellet

Ms Anne Grabowski

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

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Other**

**Victims Participation and Reparations  
Section**

Mr Philipp Ambach

## Introduction

1. The Appeals Chamber has scheduled a hearing from 11 to 12 November 2019 to hear submissions and observations in the appeal of Mr Saif Al-Islam Gaddafi.<sup>1</sup> It has invited the State of Libya to submit observations on issues arising from the above-mentioned appeal, and also to attend the above-mentioned hearing.<sup>2</sup> The Prosecution has identified four confidential documents in the Court's record of the proceedings under appeal that have not been notified to the State of Libya and which it considers, in the interests of completeness and fairness, should be made available to it. Accordingly, the Prosecution requests that the Appeals Chamber direct the Registrar to transmit these four documents, identified in paragraph 4 below, to the State of Libya. The Prosecution has consulted with the Defence, which has indicated that it has no objection to this request.

2. The Prosecution submits this request urgently given the proximity of the scheduled hearing and of the deadline for the State of Libya to submit its observations.<sup>3</sup>

## Level of Confidentiality

3. This request is filed confidentially pursuant to regulation 23*bis*(2) of the Regulations of the Court as it refers to the content of confidential documents.

## Submissions

4. The Prosecution has identified the following confidential documents in the Court's record of the proceedings under appeal, which it considers, in the interests of fairness and completeness, should be transmitted to the State of Libya:

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<sup>1</sup> [ICC-01/11-01/11-672](#) ("Scheduling Order"), para. 1.

<sup>2</sup> Scheduling Order, para. 2.

<sup>3</sup> The State of Libya was granted an extension of time until 16h00 on 7 November 2019 to file its written observations. See [ICC-01/11-01/11-677](#) ("Libya Extension Decision"), para. 1.

- a. Annex 1 to the Defence Appeal Brief in support of its appeal against Pre-Trial Chamber I's "Decision on the 'Admissibility Challenge by Dr. Saif Al-Islam Gaddafi pursuant to Articles 17(1)(c), 19 and 20(3) of the Rome Statute'".<sup>4</sup> This annex comprises documents that originate from Libyan government agencies, namely, the Civil Registry Authority and the Prosecutor General's Office.<sup>5</sup>
- b. Annex B to the Prosecution Response to Mr Saif Al-Islam Gaddafi's Appeal against the "Decision on the 'Admissibility Challenge by Dr. Saif Al-Islam Gaddafi pursuant to Articles 17(1)(c), 19 and 20(3) of the Rome Statute'" (ICC-01/11-01/11-669).<sup>6</sup> The redactions applied by the Prosecution to the public redacted version of this annex<sup>7</sup> were only necessary due to the confidential classification of a document that has already been notified to the competent authorities of Libya, namely, Annex C to the Admissibility Challenge.<sup>8</sup>
- c. Corrigendum of Defence Consolidated Reply to Prosecution "Response to 'Admissibility Challenge by Dr. Saif Al-Islam Gaddafi pursuant to Articles 17(1)(c), 19 and 20(3) of the Rome Statute'" and Response to "Observations by Lawyers for Justice in Libya and the Redress Trust pursuant to Rule 103 of the Rules of Procedure and Evidence".<sup>9</sup> The redactions made to this document were necessary due to the confidential classification of i) an annex containing a public statement made by the Prosecutor General's Office,<sup>10</sup> which the Prosecution has requested Pre-Trial Chamber I to

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<sup>4</sup> ICC-01/11-01/11-669-Conf-Anx1.

<sup>5</sup> Annex 1A is a letter from the Civil Registry Authority to the Prosecutor General's Office. Annex 1B is a Documents Delivery Record from the Prosecutor General's Office. Annexes 1C and 1D are documents issued by the Civil Registry Authority.

<sup>6</sup> ICC-01/11-01/11-671-Conf-AnxB.

<sup>7</sup> See [ICC-01/11-01/11-671-AnxB-Red](#), paras. 12, 13, 15 and fn. 2, 3, 22-27.

<sup>8</sup> ICC-01/11-01/11-640-Conf-AnxC ("Annex C to the Admissibility Challenge").

<sup>9</sup> ICC-01/11-01/11-660-Conf-Corr.

<sup>10</sup> See [ICC-01/11-01/11-660-Corr-Red2](#), para. 30; ICC-01/11-01/11-653-Conf-Anx4 ("11 June 2017 Statement of Prosecutor General's Office").

reclassify as public,<sup>11</sup> and ii) Annex C to the Admissibility Challenge, which, as noted above, has already been notified to the competent authorities of Libya.<sup>12</sup>

- d. Prosecution response to “Admissibility Challenge by Dr. Saif Al-Islam Gadafi pursuant to Articles 17(1)(c), 19 and 20(3) of the Rome Statute”.<sup>13</sup>

The redactions applied by the Prosecution to the public redacted version of this document were necessary due to the confidential classification of i) communications between the Registry and the State of Libya,<sup>14</sup> ii) information contained in a request for assistance sent to the State of Libya,<sup>15</sup> and iii) Annex C to the Admissibility Challenge, which, as noted above, has already been notified to the competent authorities of Libya.<sup>16</sup>

5. As detailed above, the Prosecution notes that these confidential documents either originated from the State of Libya, or the information contained therein has already been notified to it. Therefore, the Prosecution sees no reason why the State of Libya should not receive these documents in order to be fully apprised of the information relevant to the appeal proceedings.

6. Additionally, on 29 October 2019, the Prosecution wrote to the Defence to advise that it intended to file an application with the Appeals Chamber requesting that these four confidential documents be transmitted to the State of Libya, and asked whether the Defence had any objection to this request. The Prosecution is

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<sup>11</sup> On 12 October 2018, the Prosecution sent a request by email to Pre-Trial Chamber I asking that this document, among others, be re-classified as public. The Prosecution is following up on the implementation of this request.

<sup>12</sup> See [ICC-01/11-01/11-660-Corr-Red2](#), para. 61.

<sup>13</sup> ICC-01/11-01/11-653-Conf.

<sup>14</sup> See [ICC-01/11-01/11-653-Red](#), paras. 8, 69, 70, 72, 128 and fn. 4, 5, 15, 122-124, 126, 146, 208, 210. The redactions made to para. 16 of [ICC-01/11-01/11-634-Red](#) (“Decision on Al-Atiri Request”) result from the confidential classification of ICC-01/11-01/11-632-Conf-Anx4 (“Summary of discussions held with the Representative of Libya”) and ICC-01/11-01/11-632-Conf-Anx5 (“29 September 2011 Letter from Prosecutor General’s Office”).

<sup>15</sup> See [ICC-01/11-01/11-653-Red](#), fn. 46; [ICC-01/11-01/11-653-Anx7-Red](#) (“OTP Request for Assistance to the State of Libya”).

<sup>16</sup> See [ICC-01/11-01/11-653-Red](#), paras. 27-29, 35, 36, 42, 57, 58, 60-62, 64, 65, 148-150, 157 and fn. 48-52, 55, 58, 65, 68, 81, 103-105, 109-112, 114-116, 234-240.

grateful for the prompt response received from the Defence on 30 October 2019, indicating that it had no objection to such a request.

7. The Prosecution further notes that the Office of Public Counsel for Victims has been notified of these four confidential documents.

### **Conclusion**

8. For these reasons, the Prosecution urgently requests that the Appeals Chamber direct the Registrar to transmit the four confidential documents, identified at paragraph 4 above, to the State of Libya.



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**Fatou Bensouda**  
**Prosecutor**

Dated this 31<sup>st</sup> day of October 2019

At The Hague, The Netherlands