

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-02/17
Date: **29 April 2021**

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Presiding Judge
Judge Tomoko Akane
Judge Antoine Kesia-Mbe Mindua

SITUATION IN THE ISLAMIC REPUBLIC OF AFGHANISTAN

URGENT

**Confidential *EX PARTE* only available to Registry and Submitter Ms Nasiri
With one Confidential Annex *EX PARTE* only available to
Registry and Submitter Ms Nasiri**

**Registry Request for Further Redactions to Annex D to the Transmission of a
“Motion Seeking Remedies for Information and Effective Outreach” (ICC-02/17-
143-Conf-Exp-AnxD)**

Source: Registry

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

The Office of the Prosecutor

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Ms Spojmie Ahmady Nasiri, Lead
Counsel for Petitioners

Mr Nema Milaninia

I. Introduction

1. On 28 April 2021, Pre-Trial Chamber II instructed by way of an email to the Registry, *inter alia*, to “reclassify filing ICC-02/17-143-Conf-Exp and its annexes as public.”¹
2. The present submissions are made based on the understanding that Annex C will remain classified Conf-Exp and annex D is a version of Annex C with redactions as proposed by the Submitter.
3. In implementing the above instruction, the Registry has noted that Annex D contains information which ought to be redacted, before it is filed as public. The Registry therefore proposes below and in annex the reasons for the application of further redactions.

II. Classification

4. The present filing is classified confidential *ex parte* only available to the Registry and Submitter Ms Nasiri, because it contains sensitive information pertaining to Registry staff members. The annex follows the same level of classification because it contains the names of staff members that are proposed to be redacted, as well as details of a complaint against a Registry staff member, which is to be treated as confidential.

III. Submissions

5. Annex D contains identifying information related to Registry staff members. In particular, there is a reference to a complaint sent by the author of the annex to the Registrar, in relation to an identified Registry staff member.
6. This complaint sent by email to the Registrar is an ICC record, administrative in nature and classified as confidential as per the “ICC Information Protection

¹ Email from Pre-Trial Chamber II communications on 28 April 2021 at 18:15.

Policy", ICC/AI/2007/001 of 19 June 2007 ("ICC/AI/2007/001"). Therefore, any reference to this complaint and related information on the concerned staff member ought to be kept confidential.

7. In addition, with regard to identifying information of other Registry staff members, it is usual practice to redact staff members names for security reasons. The Registry notes that some of the names mentioned may refer to individuals as public figure. However, considering the contents of Annex D, the Registry would like to draw the Chamber's attention to the following jurisprudence from the International Labour Organisation Administrative Tribunal ("ILOAT"), which supports the Registry's request to redact the names of its staff members: "[I]nternational organisations are bound to refrain from any type of conduct that may harm the dignity or reputation of their staff members."² Furthermore, "[a]n organisation has a duty of care to ensure that material that injures the reputation or dignity of its staff members does not find its way into any of its authorised channels of communication."³ A statement is considered defamatory if "it injures a person's reputation or tarnishes his or her good name". However, "[a]s a general rule, a statement, even if defamatory in the sense indicated, will not result in liability in defamation if it was made in response to criticism by the person claiming to have been defamed or if it was made in the course of the discussion of a matter of legitimate interest to those to whom the statement was published and, in either case, the extent of the publication was reasonable in the circumstances."⁴ Last but not least, "a publication that reflects adversely on a person [...] infringes on his or her privacy."⁵

8. In the present circumstances, a staff member could claim that the publication of the Annex D without further redactions, and which then would be publicly

² ILOAT Judgment No. 2702, consideration 12.

³ ILOAT Judgment No. 3106, consideration 11.

⁴ ILOAT Judgment No. 3106, consideration 9.

⁵ ILOAT Judgment No. 2861, consideration 92.

available, constitutes a breach of the Court's duties "to refrain from any type of conduct that may harm the dignity or reputation of [its] staff members" and "to ensure that material that injures the reputation or dignity of its staff members does not find its way into any of its authorised channels of communication," as laid out in the aforementioned ILOAT judgments.⁶

9. In view of these duties, even if true that a confidential complaint was filed, rendering public any information causing injury to the staff remains problematic for the Court. In ILOAT Judgment No. 3613, for example, the defendant organisation was found liable for stating in a news release the fact that a staff member had been terminated for unsatisfactory performance. The fact that the statement was accurate did not justify the issuance of a publication that had the effect of causing injury to the staff member's reputation and dignity.⁷

10. For the reasons outlined above, the Registry requests that all identifying information and in particular the names of its staff members be redacted. In the same vein, the Registry would not oppose, for the same reasons, that the names of staff members of the Office of the Prosecutor ("OTP") be redacted as well.

⁶ ILOAT Judgment No. 2702, consideration 12 and ILOAT Judgment No. 3106, consideration 9, respectively.

⁷ ILOAT Judgment No. 3613, para. 49.

IV. Transmission

11. The Registry hereby submits Annex D with proposed redactions, including proposed redactions of Registry staff members' names as well as, subject to possible further consultations between the Chamber and OTP, OTP staff members' names.

p.p.



Marc Dubuisson, Director, Division of Judicial Services
on behalf of Peter Lewis, Registrar

Dated this 29 April 2021

At The Hague, the Netherlands