

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/11-01/11  
Date: 18 November 2011

**PRE-TRIAL CHAMBER I**

**Before:** Judge Sanji Mmasenono Monageng, Presiding Judge  
Judge Sylvia Steiner  
Judge Cuno Tarfusser

**SITUATION IN LIBYA**

**IN THE CASE OF THE PROSECUTOR v. MUAMMAR MOHAMMED ABU  
MINYAR GADDAFI, SAIF AL-ISLAM GADDAFI and ABDULLAH AL-SENUSSI**

**Confidential**

**Ex parte only available to the Office of the Prosecutor**

**Observations of the Registry on the classification of the transmission of  
Muammar Mohammed Abu Minyar Gaddafi's death certificate**

**Source: Registry**

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

**The Office of the Prosecutor**

Mr. Luis Moreno Ocampo

Ms. Fatou Bensouda

**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**

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**Registrar**

Mme Silvana Arbia

**Deputy Registrar**

Mr. Didier Preira

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

**The Registrar of the International Criminal Court ("the Court"):**

**NOTING** the "Transmission of Muammar Mohammed Abu Minyar Gaddafi's death Certificate" (the "Transmission") filed by the Registry on 9 November 2011;<sup>1</sup>

**NOTING** the "Order Requesting Observations Regarding the 'transmission of Muammar Mohammed Abu Minyar Gaddafi's death certificate'" dated 14 November 2011;<sup>2</sup>

**NOTING** Article 87 (1) (a) of the Rome Statute, Rule 176(2) of the Rules of Procedure and Evidence and Regulation 23 *bis* of the Regulations of the Court;

**CONSIDERING** that Pre Trial Chamber I ordered the Registry to "justify to the Chamber, in accordance with regulation 23 *bis* of the Regulations, why the Registry's Transmission should remain confidential"<sup>3</sup> by 16:00 on Wednesday, 16 November 2011.

**INFORMS** the Chamber as follows:

1. On 14 November 2011, the Registry requested the Libyan authorities to indicate whether they had objections for the death certificate to be reclassified as a public document.
2. As of 18 November 2011, the Registry has not received any reply from the Embassy of Lybia.

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<sup>1</sup> ICC-01/11-01/11-22-Conf-Exp

<sup>2</sup> ICC-01/11-01/11-23-Conf-Exp

<sup>3</sup> ICC-01/11-01/11-23-Conf-Exp P. 4

3. The Registry transmitted the death certificate of MUAMMAR MOHAMMED ABU MINYAR GADDAFI to provide the Chamber with an official document issued by the Libyan authorities which gives legal certainty concerning the death of MUAMMAR MOHAMMED ABU MINYAR GADDAFI.
4. The Registry does not oppose for the Transmission to be reclassified as a public document.
5. Regarding Annex 1 of the Transmission, the Registry would request that the classification remains confidential in order to protect the identity of the staff members of the Registry and of the Embassy mentioned thereof.
6. Regarding Annex 2 of the Transmission, the Registry points out that the death certificate contains details about the injuries that caused the death of MUAMMAR MOHAMMED ABU MINYAR GADDAFI and could therefore be considered as part of his medical record, which shall normally remain confidential.
7. The Registry would like to point out relevant case law and practices from other tribunals supporting the classification as confidential of a death certificate in order to protect the right to privacy of the relatives of the deceased person.<sup>4</sup>

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<sup>4</sup> "The Court has already had an opportunity, under Article 8 of the Convention, to reiterate that certain events in the life of a family must be given particularly careful protection. The death of a close relative and the ensuing mourning are a source of intense grief and must sometimes lead the authorities to take the necessary measures to ensure that the private and family lives of the persons concerned are respected" European Court of Human Rights CASE OF HACHETTE FILIPACCHI ASSOCIES v. FRANCE (Application no. 71111/01) 14 June 2007, Para. 46: "[f]amily members have a personal stake in honoring and mourning their dead and objecting to unwarranted public exploitation that, by intruding upon their own grief, tends to degenerate the rites and respect they seek to accord to the deceased person who was once their own." Nat'l Archives & Records Admin. v. Favish, 541 U.S. 157 (2004); "The immediate relatives of a decedent have a protectable privacy interest in the autopsy records of the decedent. That protectable privacy interest is grounded in maintaining the dignity of the

8. The Registry would like to respectfully request an extension of the deadline initially granted by the Chamber as it was not able to obtain a reply from the Libyan authorities by 16 November 2011.



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Didier Preira, Deputy Registrar  
on behalf of Silvana Arbia, Registrar

Dated this 18 November 2011

At The Hague, Kingdom of the Netherlands

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*deceased.*" Reid v. Pierce County, 961 P.2d333 (Wash. 1998); In the case of Slodoban Milosevic who died while being in custody of the ICTY, his medical reports were made public after his son manifested to the assigned counsel that he wished so. See ICTY case of the Prosecutor v. Slodoban Milošević, Decision on Assigned Counsel's Motion to Lift Confidentiality of Certain Pleadings and Medical Reports, 1 June 2006.