

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 19 April 2012

APPEALS CHAMBER

Before: Judge Anita Ušacka, Presiding Judge
Judge Sang-Hyun Song
Judge Akua Kuenyehia
Judge Erkki Kourula
Judge Sanji Mmasenono Monageng

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

Confidential and Ex Parte

Application on behalf of the Government of Libya to reclassify as confidential and ex parte its 'Application for leave to reply to the 'Response to the "Government of Libya's appeal against the Decision regarding the second request by the Government of Libya for postponement of the surrender of Saif Al-Islam Gaddafi"'

Source: The Government of Libya, represented by:
Professor Philippe Sands QC
Professor Payam Akhavan
Ms Michelle Butler

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
Professor Philippe Sands QC
Professor Payam Akhavan
Ms. Michelle Butler

Amicus Curiae

REGISTRY

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Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

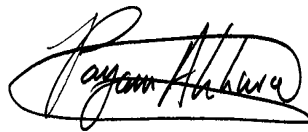
Other

Submissions

1. On 16 April 2012 the Libyan Government filed its Public 'Application on behalf of the Government of Libya for leave to reply to the 'Response to the "Government of Libya's appeal against the Decision regarding the second request by the Government of Libya for postponement of the surrender of Saif Al-Islam Gaddafi"' (ICC-01/11-01/11-112) ("the 16 April 2012 filing").
2. This document contained footnote 14 which states: "By way of example, the OPCD Response was sent by email from an officer of the OPCD to the New York Times at approximately 9:00pm CET on 11 April 2012 but was not notified by the Registrar as being filed until 10:18am CET on 12 April 2012."
3. After filing this document, counsel for the Libyan Government was informed that the title of the newspaper in question (ie. the New York Times) had been provided on a confidential basis and accordingly, should never have been included in a public filing. Its inclusion was the result of an error by counsel for the Libyan Government. Footnote 14 should accordingly have used the term "an international newspaper" rather than "the New York Times" in the 16 April 2012 filing.
4. In the circumstances, counsel for the Libyan Government is extremely grateful for the Court's swift actions on 17 April 2012 in temporarily removing the filing from the Court's website. On 18 April 2012 counsel was informed of the need to file a written submission explaining the reasons for their request to reclassify as confidential *ex parte* the 16 April 2012 filing and this submission is accordingly filed in compliance with that request. All three counsel are presently travelling (to different destinations) and unfortunately this message was not received until 3:30pm CET on 18 April 2012 (when counsel was without internet access and *en route* to a meeting in Tripoli). As such, this

submission has been filed as soon as possible following notification that such a submission was necessary.

5. It is counsel for Libya's submission (on the basis of real concerns expressed by the journalist in question at the New York Times) that although no names were mentioned in footnote 14 the mere title of the newspaper (when read in the context of the subject matter of this case) allows a reasonably informed person to draw conclusions as to the identity of the journalist which will have serious repercussions for their ongoing employment at the said newspaper.
6. In order to prevent such harm to this person (which was in no way intended by counsel for Libya and which is sincerely regretted), the Libyan Government submits this request to reclassify the 16 April 2012 filing as Confidential and Ex Parte and to order the parties who have received the filing in its public form to destroy any electronic hard or softcopy and not to use the information that they may have obtained from footnote 14 in any way.
7. In the event that this request is granted, Counsel would then immediately file a public and redacted version of the 16 April 2012 filing in which the words "the New York Times" which presently appear in footnote 14 are redacted.
8. Counsel for Libya is grateful for the Chamber's assistance in this matter.



Professor Philippe Sands QC
Professor Payam Akhavan
Michelle Butler

Counsel on behalf of the Government of Libya

Dated this 19th day of April 2012

At London, United Kingdom