

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No.: ICC-01/11-01/11
Date: 14 February 2012**

PRE-TRIAL CHAMBER I

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

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

Public Document

**Decision on the 'Application of Mishana Hosseinioun for Leave to Appeal
Against Decision on Application under Rule 103'**

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

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor

Counsel for the Defence

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**

Mr Xavier-Jean Keïta, Principal Counsel
Ms Melinda Taylor, Counsel

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

PRE-TRIAL CHAMBER I of the International Criminal Court (“Chamber” and “Court” respectively);

NOTING the “Public Redacted Version of Decision Requesting Libya to file Observations Regarding the Arrest of Saif Al-Islam Gaddafi”, issued by the Chamber on 6 December 2011,¹ wherein the Chamber, *inter alia*, authorised the Office of Public Counsel for the Defence (“OPCD”) to represent the interests of the Defence in all instances related to the proceedings against Saif Al-Islam Gaddafi in the present case until otherwise decided;²

NOTING the “Application on behalf of Mishana Hosseinioun for Leave to Submit *Amicus Curiae* Observations to the Chamber”, filed on 30 January 2012 by Ms. Hosseinioun,³ wherein she requested the Chamber’s permission to, *inter alia*, submit observations in respect of the detention and legal representation of Saif Al-Islam Gaddafi (“Saif Gaddafi”), submitting that she is in ‘a unique position to offer observations to the Chamber as she is a very close friend and confidant who is requesting to have access to Saif Gaddafi to assist in the appointment of legal counsel and to safeguard his rights.’;⁴

NOTING the “Decision on the Applications of Mishana Hosseinioun and Aisha Gaddafi to submit *Amicus Curiae* observations to the Chamber” (“the Decision”) issued on 2 February 2012,⁵ wherein the Chamber rejected the requests of both Ms. Hosseinioun and Ms Gaddafi to submit observations under rule 103 of the Rules of Procedure and Evidence (“the Rules”), with the Chamber holding that the requests were ‘misplaced and contrary to the intended purpose of the *amicus curiae* role in criminal proceedings before this court’;

¹ ICC-01/11-01/11-39-Red.

² *Ibid.*, p. 6.

³ ICC-01/11-01/11-46.

⁴ *Ibid.*, paras. 10-11.

⁵ ICC-01/11-01/11-49.

NOTING the “Application for Leave to Appeal Against Decision on Application Under rule 103” (the “Application for Leave to Appeal”), filed on 7 February 2012,⁶ wherein Ms. Hosseinioun seeks, pursuant to paragraph (d) of article 82(1) of the Rome Statute (“the Statute”), leave of the Chamber to appeal the Decision;

NOTING the “Prosecution’s Response to Mishana Hosseinioun’s ‘Application for Leave to Appeal’”, filed on 13 February 2012,⁷ wherein the Prosecution seeks the rejection of the application, submitting that Ms. Hosseinioun is not a ‘party to the proceedings’ and has not raised an ‘appealable issue’ within the terms of article 82(1)(d);⁸

NOTING articles 82(1)(d) and 82(2) of the Statute and rule 155 of the Rules;

CONSIDERING that article 82(1) of the Statute provides that “[e]ither party may appeal”, subject to the Chamber’s leave, a decision included in paragraph (d) of this article, and that Ms. Hosseinioun is not “a party” to the proceedings relating to the case of the *Prosecutor v Saif Al-Islam Gaddafi and Abdullah Al-Senussi*;⁹

⁶ ICC-/11-01/11-53. An addendum to the Application for Leave to Appeal was filed on 10 February 2012. See ICC-01/11-01/11-57.

⁷ ICC-01/11-01/11-58.

⁸ *Ibid.*, paras. 8, 13.

⁹ See *Prosecutor v Thomas Lubanga Dyilo*, Appeals Chamber, Decision on two requests for leave to appeal the “Decision on the request by DRC-DOI-WWWW-0019 for special protective measures relating to his asylum application”, 4 August 2011, ICC-01/04-01/06-2779, paras. 10-11.

CONSIDERING that, as a result, Ms. Hosseinioun has no procedural standing to request leave to appeal the Decision pursuant to article 82(1)(d) of the Statute and rule 155 of the Rules;¹⁰

CONSIDERING, that, notwithstanding Ms. Hosseinioun's lack of procedural standing to request leave to appeal the Decision, the "appealable issue" identified by her, namely Saif Al-Islam Gaddafi's right to legal representation and "to be heard on the venue of his trial",¹¹ in the view of the Chamber, does not in fact arise from the Decision,¹² which only dealt with the question of whether or not the receipt of observations from Ms. Hosseinioun under rule 103 would be desirable for the proper determination of the case;

¹⁰ See *Situation in Darfur, Sudan*, Pre-Trial Chamber I, Decision on the Application for Leave to Appeal the Decision on Application under Rule 103, 19 February 2009, ICC-02/05-192.

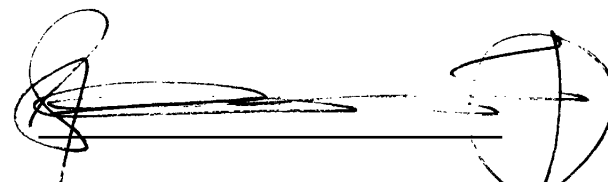
¹¹ Application for Leave to Appeal, paras 9, 20.

¹² See *Prosecutor v Francis Kirihi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, Pre-Trial Chamber II, Decision on the "Resubmitted Defence Request for Leave to Appeal the Redacted First Decision on the Prosecutor's Requests for Redactions and Related Requests", 4 August 2011, ICC-01/09-02/11-211, para. 17; *Prosecutor v Thomas Lubanga Dyilo*, Pre-Trial Chamber I, Decision on the Prosecution and Defence applications for leave to appeal the Decision on the confirmation of charges, 24 May 2007, ICC-01/04-01/06-915, para. 71.

FOR THESE REASONS,

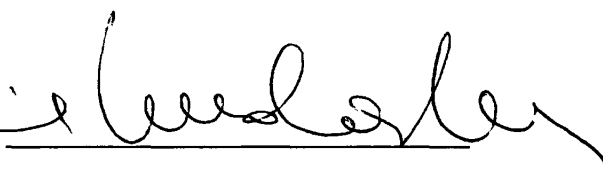
REJECTS the Application for Leave to Appeal *in limine*.

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



Judge Sanji Mmasenono Monageng

Presiding Judge



Judge Sylvia Steiner

Judge Cuno Tarfusser

Dated this Tuesday, 14 February 2012.

At The Hague, The Netherlands