

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **28 February 2012**

THE APPEALS CHAMBER

Before: Judge Sang-Hyun Song, Presiding Judge
Judge Akua Kuenyehia
Judge Erkki Kourula
Judge Anita Ušacka
Judge Daniel David Ntanda Nsereko

SITUATION IN THE LIBYAN ARAB JAMAHIRIYA

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

PUBLIC

OPCD Observations on the “Directions of the Appeals Chamber”

Source: The Office of Public Counsel for the Defence

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, Prosecutor
Ms. Fatou Bensouda, Deputy 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**

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

States' Representatives

Amicus Curiae

REGISTRY

Counsel for the Appellant

Mr. Geoffrey Nice QC
Mr. Rodney Dixon

Registrar

Ms. Silvana Arbia, Registrar

Deputy Registrar

Mr. Didier Daniel Pereira, Deputy
Registrar

Victims and Witnesses Unit

Counsel Support Section

Detention Section

**Victims Participation and Reparations
Section**

Other

1. On 30 January 2012, Ms. Mishana Hosseinioun (the Applicant) filed an application pursuant to Rule 103 to submit observations to the Pre-Trial Chamber concerning “the arrest, detention and right to legal representation of Saif Al-Islam Gaddafi”.¹
2. The Pre-Trial Chamber rejected this amicus brief on 2 February 2012 on the grounds that

the submissions of both the First and Second Amicus Applicants effectively seek the Chamber's permission to contact Saif Gaddafi and give him access to what they deem to be appropriate legal advice, and therefore do not seek to provide the Chamber with observations which may be 'desirable for the proper determination of the case', as required by rule 103.²

3. The Applicant filed an appeal of the decision, pursuant to article 82(1)(a) of the Rome Statute, which permits the parties to appeal, as of right, any decision with respect to jurisdiction or admissibility.³
4. On 23 February 2012, the Appeals Chamber ordered the Prosecution and the Office of Public Counsel for the Defence (OPCD) to submit any observations concerning the admissibility of the appeal filed by the Applicant.⁴

¹ Application on behalf of Mishana Hosseinioun for Leave to Submit Amicus Curiae Observations to the Chamber, ICC-01/11-01/11-46.

² Decision on the Applications of Mishana Hosseinioun and Aisha Gaddafi to submit Amicus Curiae observations to the Chamber, 2 February 2012, ICC-01/11-01/11-49.

³ Appeal Against Decision on Application Under Rule 103, 7 February 2012, ICC-01/11-01/11-54.

⁴ Directions of the Appeals Chamber, ICC-01/11-01/11-64.

5. The OPCD take no position on the issue of the admissibility of the Appeal. Nonetheless, any decision of the Appeals Chamber on either the admissibility or the merits of the appeal should be without prejudice to the right of the defendant to include this issue as a procedural error in a future appeal under article 81(1)(b), if the defendant is of the view that the Pre-Trial Chamber's decision to deny amicus status to the applicant materially affected any resultant decision on admissibility.⁵



Xavier-Jean Keïta, Principal Counsel of the OPCD

Dated this, 28th Day of February 2012

At The Hague, The Netherlands

⁵ Prosecutor v. Bemba, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 24 June 2010 entitled "Decision on the Admissibility and Abuse, 19 October 2010, ICC-01/05-01/08-962, at paras. 100-102.