



Original: English

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

Date: 20 August 2013

THE APPEALS CHAMBER

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

SITUATION IN LIBYA

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

Public

Request in relation to the observations to be filed by Ms Mishana Hosseinioun

Source: Office of Public Counsel for Victims

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

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Other

I. PROCEDURAL HISTORY

1. On 31 May 2013, Pre-Trial Chamber I issued its “Decision on the admissibility of the case against Saif Al-Islam Gaddafi” (the “Impugned Decision”), declaring the case against Mr Gaddafi admissible and rejecting Libya’s challenge to the admissibility of the case.¹

2. On 7 June 2013, the Government of Libya filed the “Appeal against Pre-Trial Chamber I’s ‘Decision on the admissibility of the case against Saif Al-Islam Gaddafi’”.²

3. On 25 June 2013, the Appellant filed the “Document in Support of the Government of Libya’s Appeal against the ‘Decision on the admissibility of the case against Saif Al-Islam Gaddafi’” (the “Document in support of the Appeal”).³

4. On 9 July 2013, Ms Mishana Hosseinioun filed the “Application on behalf of Mishana Hosseinioun for Leave to Submit Observations to the Appeals Chamber pursuant to Rule 103”, seeking leave to file observations on the appeal filed by Libya against the Impugned Decision on the matters raised in the fourth ground of appeal and related to the unavailability of the national justice system (the “Application”).⁴

5. On 16 July 2013, the Appeals Chamber issued an Order in relation to the filing of victims’ observations on the Document in support of the Appeal filed by

¹ See the “Decision on the admissibility of the case against Saif Al-Islam Gaddafi” (Pre-Trial Chamber I), No. ICC-01/11-01/11-344-Red, 31 May 2013 (the “Impugned Decision”).

² See the “Government of Libya’s Appeal against Pre-Trial Chamber I’s ‘Decision on the admissibility of the case against Saif Al-Islam Gaddafi’”, No. ICC-01/11-01/11-350 OA4.

³ See the “Document in Support of the Government of Libya’s Appeal against the ‘Decision on the admissibility of the case against Saif Al-Islam Gaddafi’”, No. ICC-01/11-01/11-370-Red2 OA4, 25 June 2013 (the “Document in support of the Appeal”).

⁴ See the “Application on behalf of Mishana Hosseinioun for Leave to Submit Observations to the Appeals Chamber pursuant to Rule 103”, No. ICC-01/11-01/11-379 OA4, 9 July 2013 (the “Application”).

the Libyan Government in which it instructed, *inter alia*, the OPCV to submit observations by 20 August 2013.⁵ In the same Order the Appeals Chamber granted Libya, the Prosecution and the Defence until 18 July 2013 to respond to Ms Hosseinioun's Application.

6. On the same day, the Prosecution filed the confidential version of its response to the Document in support of the Appeal.⁶ A public redacted version was then filed on 23 July 2013.⁷

7. On 18 July 2013, the Defence filed its response to the Document in support of the Appeal.⁸

8. On the same day, the Prosecution filed its response to the Application, opposing it.⁹

9. On 15 August 2013, the Appeals Chamber issued the "Decision on the "Application on behalf of Mishana Hosseinioun for Leave to Submit Observations to the Appeals Chamber pursuant to Rule 103", granting the request in relation to the fourth ground of appeal and instructing the Applicant to file her observations

⁵ See the "Order in relation to the filing of victims' observations and the request pursuant to rule 103 of the Rules of Procedure and Evidence" (Appeals Chamber), No. ICC-01/11-01/11-383 OA4, 16 July 2013.

⁶ See the "Prosecution Response to the "Document in Support of the Government of Libya's Appeal against the Decision on the admissibility of the case against Saif Al-Islam Gaddafi", No. ICC-01/11-01/11-384-Conf OA4, 16 July 2013.

⁷ See the "Prosecution Response to the "Document in Support of the Government of Libya's Appeal against the Decision on the admissibility of the case against Saif Al-Islam Gaddafi", No. ICC-01/11-01/11-384-Red OA4, 23 July 2013.

⁸ See the "Defense Response to the 'Document in Support of the Government of Libya's Appeal against the Decision on the admissibility of the case against Saif Al-Islam Gaddafi'", No. ICC-01/11-01/11-386-Conf OA4, 18 July 2013.

⁹ See the "Prosecution Response to 'Application on behalf of Mishana Hosseinioun for Leave to Submit Observations to the Appeals Chamber pursuant to Rule 103'", No. ICC-01/11-01/11-385 OA4, 18 July 2013.

by 22 August 2013, and authorizing Libya, the Prosecution and the Defence to respond to said observations by 29 August 2013.¹⁰

II. SUBMISSIONS

10. The Principal Counsel contends that by virtue of the fact that the right of victims to submit observations on an admissibility challenge is directly enshrined in article 19(3) of the Rome Statute and rule 59 of the Rules of Procedure and Evidence, such right should not be limited to the filing of observations in relation to the admissibility challenge *per se* and should also encompass the possibility to present their views on any submission filed in relation to said admissibility challenge.

11. The Principal Counsel notes that although rule 103 of the Rules of Procedure and Evidence does not explicitly provide the possibility for victims to respond to observations filed by an *amicus curiae*, it does however not exclude said possibility and the rule should be interpreted in light of the specific provisions of article 19(3) read in conjunction with article 68(3) of the Rome Statute.

12. The fact that rule 103 of the Rules of Procedure and Evidence is not “exclusive” in addressing the issue related to who might respond to an *amicus curiae* submission has been already recognized by Pre-Trial Chamber I in its decision dated 18 May 2012. Indeed, in said decision, the Chamber found appropriate for the Libyan Government to file a response, “*considering that the Applicants wish to submit observations relevant for the Chamber’s determination on the outstanding Admissibility Challenge*”¹¹.

¹⁰ See the “Decision on the “Application on behalf of Mishana Hosseinioun for Leave to Submit Observations to the Appeals Chamber pursuant to Rule 103” (Appeals Chamber), No. ICC-01/11-01/11-404 OA4, 15 August 2013.

¹¹ See the “Decision on the “Application by Lawyers for Justice in Libya and the Redress Trust for leave to submit observations pursuant to rule 103 of the Rules of Procedure and Evidence” (Pre-Trial Chamber I), No. ICC-01/11-01/11-153, dated 18 May 2012 and notified on 21 May 2012, page 5.

13. It is the Principal Counsel's contention that such interest should also be recognized to victims who participate in article 19 proceedings. In this regard, the Principal Counsel would like to recall that victims have already been allowed to submit responses to *amicus curiae* submissions in the framework of ICC proceedings.¹²

14. Moreover, addressing a request by the OPCV on the same matter as the one raised in this submission, Pre-Trial Chamber I considered that rule 103 "*gives it discretion to invite or grant leave for amicus curiae observations on any issue deemed appropriate. As concerns the involvement of parties, rule 103(2) of the Rules provides that the Prosecutor and the Defence shall have the opportunity to respond to any amicus curiae observations. However, while this provision establishes the minimum rights that the Chamber must accord to the Prosecutor and the Defence, it does not prevent as a matter of principle responses from other participants. Taking into account also the purpose of rule 103 of the Rules, the Chamber is of the view that it has the discretionary power to invite or grant leave to participants in proceedings before it to submit responses to amicus curiae observations whenever appropriate in the particular circumstances*".¹³ Consequently, Pre-Trial Chamber I considered appropriate to give the OPCV the opportunity to submit a response to the *amicus curiae* observations in the context of article 19 proceedings.¹⁴

15. Finally, the Principal Counsel notes that authorising victims to file observations on the *amicus curiae* submission is in conformity with their rights as enshrined in the Rome Statute and is not prejudicial to the rights of the Defence.

¹² See for instance the "Decision Inviting Observations from the Special Representative of the Secretary General of the United Nations for Children and Armed Conflict" (Trial Chamber I), No. ICC-01/04-01/06-1175, 18 February 2008, p. 9.

¹³ See the "Decision on the "Request related to the filing of observations by the *Amicus Curiae*" (Pre-Trial Chamber I), No. ICC-01/11-01/11-168, 4 June 2012, par. 5.

¹⁴ *Idem*, par. 6.

FOR THE FOREGOING REASONS the Principal Counsel of the OPCV, acting as legal representative of victims for the purpose of article 19 proceedings, respectfully requests the Appeals Chamber to allow her – should she deem it necessary for the protection of the interests of the victims she represents – to submit observations on the submissions to be filed on 22 August 2013 by Ms Mishana Hosseinioun, within the same time-limit already established by the Chamber for the responses of the Prosecutor, the Defence and the Government of Libya.

A handwritten signature in black ink, appearing to read 'Paolina Massidda', with a horizontal line underneath the name.

Paolina Massidda
Principal Counsel

Dated this 20th day of August 2013

At The Hague, The Netherlands