

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No. ICC-01/11-01/11 OA 4

Date: 23 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 document

**Decision on the OPCV's request to file observations on the observations of Ms
Mishana Hosseinioun**



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

The Office of the Prosecutor
Ms Fatou Bensouda, Prosecutor
Mr Fabricio Guariglia

Counsel for Saif Al-Islam Gaddafi
Mr John R.W.D. Jones
Ms Sarah Bafadhel

States Representatives
Mr Ahmed El-Ghani
Mr Philippe Sands

Counsel for Abdullah Al-Senussi
Mr Ben Emmerson
Mr Rodney Dixon

The Office of Public Counsel for Victims
Ms Paolina Massidda

Counsel for Mishana Hosseinioun
Mr Geoffrey Nice
Mr Rodney Dixon

REGISTRY

Registrar
Mr Herman von Hebel



The Appeals Chamber of the International Criminal Court,

In the appeal of Libya against the decision of Pre-Trial Chamber I entitled “Decision on the admissibility of the case against Saif Al-Islam Gaddafi” of 31 May 2013 (ICC-01/11-01/11-344-Red),

Having before it the “Request in relation to the observations to be filed by Ms Mishana Hosseinioun”, filed on 20 August 2013 and registered on 21 August 2013 (ICC-01/11-01/11-412),

Renders unanimously the following

DECISION

- (i) The victims who have communicated with the Court and are represented by Ms Massidda may submit observations in relation to the observations filed by Ms Mishana Hosseinioun by 16h00 on Thursday 29 August 2013. Any such filing shall not exceed 20 pages.
- (ii) Libya, the Prosecutor and Mr Gaddafi may respond to any observations filed by Ms Massidda pursuant to paragraph (i) above by 16h00 on Wednesday 4 September 2013. Any such responses shall not exceed 20 pages.

REASONS

I. BACKGROUND

1. On 7 June 2013, Libya filed “The Government of Libya’s Appeal against Pre-Trial Chamber I’s ‘*Decision on the admissibility of the case against Saif Al-Islam Gaddafi*’”¹ (hereinafter: “Appeal”).

2. On 9 July 2013, Ms Mishana Hosseinioun (hereinafter: “Ms Hosseinioun”) filed the “Application on behalf of Mishana Hosseinioun for Leave to Submit Observations

¹ ICC-01/11-01/11-350 (OA 4).

to the Appeals Chamber pursuant to Rule 103”² (hereinafter: “Application”) seeking leave to file observations, pursuant to rule 103 of the Rules of Procedure and Evidence, on the Appeal.

3. On 15 August 2013, the Appeals Chamber, in its “Decision on the ‘Application on behalf of Mishana Hosseinioun for Leave to Submit Observations to the Appeals Chamber pursuant to Rule 103’”³ (hereinafter: “Decision on the Application”), granted the Application. The Appeals Chamber permitted Ms Hosseinioun to file observations, as set out in the Application, in relation to the fourth ground of appeal, by 16h00 on 22 August 2013. The Appeals Chamber permitted Libya, the Prosecutor and Mr Gaddafi to respond to any such observations by 16h00 on 29 August 2013.

4. On 20 August 2013, Ms Paolina Massidda, head of the Office of Public Counsel for victims (hereinafter: “OPCV”), filed the “Request in relation to the observations to be filed by Ms Mishana Hosseinioun”⁴ (hereinafter: “Request”), in which the OPCV requests permission to submit observations, if it deems it necessary to do so, by 16h00 on 29 August 2013, in relation to any submissions filed by Ms Hosseinioun.⁵

5. The OPCV submits 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” and should include a possibility for victims “to present their views on any submission filed in relation to said admissibility challenge”.⁶ The OPCV accepts that rule 103 of the Rules of Procedure and Evidence does not expressly provide for victims to respond to observations filed thereunder but avers that it does not exclude such a response and should be interpreted in light of articles 19 (3) and 68 (3) of the Statute.⁷ By specific reference to two previous decisions of the Pre-Trial and Trial Chambers of the Court – including one decision rendered by Pre-Trial Chamber I in relation to the admissibility proceedings in the present case – the OPCV points out that victims have already been permitted to submit responses to observations filed pursuant to rule 103 of the Rules of Procedure

² ICC-01/11-01/11-379 (OA 4).

³ ICC-01/11-01/11-404 (OA 4).

⁴ ICC-01/11-01/11-412 (OA 4).

⁵ Request, p. 7.

⁶ Request, para. 10.

⁷ Request, para. 11.



and Evidence in proceedings before this Court.⁸ The OPCV contends that permitting the victims to make the observations requested conforms with their rights and does not prejudice the rights of the defence.⁹

6. On 22 August 2013, Ms Hosseinioun filed the “Observations on behalf of Mishana Hosseinioun pursuant to Rule 103”¹⁰ (hereinafter: “Ms Hosseinioun’s Observations”).

II. MERITS

7. Rule 103 of the Rules of Procedure and Evidence provides:

1. At any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate.

2. The Prosecutor and the defence shall have the opportunity to respond to the observations submitted under sub-rule 1.

3. A written observation submitted under sub-rule 1 shall be filed with the Registrar, who shall provide copies to the Prosecutor and the defence. The Chamber shall determine what time limits shall apply to the filing of such observations.

8. At issue is whether the victims participating in the present appeal pursuant to article 19 (3) of the Statute should be allowed to make observations on Ms Hosseinioun’s Observations.

9. The Appeals Chamber observes that rule 103 (2) of the Rules of Procedure and Evidence specifically provides for the Prosecutor and the defence to have the opportunity to respond to observations submitted pursuant to rule 103 (1). However, the Appeals Chamber does not consider that rule 103 (2) of the Rules of Procedure and Evidence excludes other participants from filing a response to observations filed under that provision. The Appeals Chamber finds that it is within its discretion to request observations or to grant permission to participants in the proceedings to submit observations in relation to any observations filed pursuant to rule 103 (1) of the Rules of Procedure and Evidence.

⁸ Request, paras 13-14.

⁹ Request, para. 15.

¹⁰ ICC-01/11-01/11-414 (OA 4) with four annexes thereto.

10. Having considered the Request, the Appeals Chamber determines that it is appropriate in the circumstances of the present case to permit the OPCV to submit observations, should the OPCV deem it appropriate to do so, in relation to Ms Hosseinioun's Observations in respect of the fourth ground of appeal.

11. The Appeals Chamber also determines that it is appropriate to permit the OPCV to file its observations within the time-frame that it has requested; and that Libya, the Prosecutor and Mr Gaddafi should have the opportunity to respond to any observations that the OPCV may file.

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



Judge Anita Ušacka
Presiding Judge

Dated this 23rd day of August 2013

At The Hague, The Netherlands