

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/11-01/11
Date: 29 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
Prosecution Response to “Observations on behalf of Mishana Hosseinioun
pursuant to Rule 103”**

Source: Office of the Prosecutor

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

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1. The Prosecution submits that the Observations filed by Ms. Hosseinioun do not assist the Appeals Chamber in determining the issues before it, in particular because they do not establish a link between the information provided by her and the question of the unavailability of Libya's national justice system.

Procedural Background

2. On 24 June 2013, the Government of Libya ("Appellant") filed its document in support of appeal ("Appeal")¹ against the "Decision on the admissibility of the case against Saif Al Islam Gaddafi" ("Decision").²
3. On 9 July 2013, Ms. Mishana Hosseinioun ("Applicant") sought leave from the Appeals Chamber to submit observations pursuant to Rule 103 on the Appeal ("Application").³ She requests to provide observations on matters raised under the fourth ground of appeal, namely, the unavailability of Libya's national justice system,⁴ and in particular, with respect to Gaddafi's lack of representation⁵ and Libya's lack of control over Zintan.⁶
4. On 18 July 2013, the Prosecution filed its response to the Application.⁷
5. On 15 August 2013, the Appeals Chamber granted leave to the Applicant to file observations, as set out in the Application, in relation to the fourth ground of appeal, by 22 August 2013, and permitted Libya, the

¹ ICC-01/11-01/11-370-Red2.

² ICC-01/11-01/11-344-Red.

³ ICC-01/11-01/11-379 OA4.

⁴ Application, paras. 2-3.

⁵ Application, para. 17.

⁶ Application, para. 20.

⁷ ICC-01/11-01/11-385 OA4.

Prosecutor, and Mr. Gaddafi to file their responses, if any, by 29 August 2013.

6. On 22 August 2013, the Applicant filed her substantive observations. (“Observations”).⁸

Submissions

7. The Applicant submits that she has lodged a complaint before the African Commission on Human and Peoples’ Rights (“the Commission”) and the African Court on Human and Peoples’ Rights (“the African Court”) in relation to the detention of Mr. Gaddafi in Libya. She asserts that her observations concerning these proceedings are relevant to demonstrating that Libya’s national justice system is unable to try Mr. Gaddafi in Libya and that the ICC should determine that his case is admissible before the ICC.⁹
8. The Prosecution submits that the submissions filed by the Applicant are not relevant to determine the issues raised by the Appellant under its fourth ground of appeal. The Applicant explains in detail the progress and outcome of the proceedings before the African Commission and the African Court.¹⁰ She alleges that Libya did not respond to, nor comply with the orders of the African Court.¹¹ However, nowhere in the Observations did the Applicant provide any information that relates to the availability or unavailability of Libya’s national justice system. To draw an inference to that question from the information provided by the Application would be speculative. In fact, many reasons could cause

⁸ ICC-01/11-01/11-414 OA4.

⁹ Application, paras. 2, 4 and 5.

¹⁰ Observations, paras 12-50.

¹¹ Observations, paras 24- 28 and 40-50.

Libya not to engage in the proceedings before the African Commission and the African Court.

Conclusion

9. For the foregoing reasons, the Prosecution submits that the Observations should be disregarded.



Fatou Bensouda,
Prosecutor

Dated this 29th day of August 2013

At The Hague, The Netherlands