



Original: English

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

Date: 13 April 2012

**PRE-TRIAL CHAMBER I**

**Before:** Judge Silvia Fernández de Gurmendi, Presiding Judge  
Judge Hans-Peter Kaul  
Judge Christine Van den Wyngaert

**SITUATION IN LIBYA**

**IN THE CASE OF**

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

**Public Document**

**Application on behalf of Mishana Hosseinioun for Leave to Submit Observations  
to the Pre-Trial Chamber**

**Source:** Mishana Hosseinioun, represented by Sir Geoffrey Nice QC and  
Rodney Dixon

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

**The Office of the Prosecutor**

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**Counsel for the Defence**

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**Legal Representatives of the Applicant**

**Unrepresented Victims**

**Unrepresented Applicants for  
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**Amicus Curiae**

**REGISTRY**

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**Registrar**

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**Defence Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## **A. Introduction**

1. The Applicant, Ms. Mishana Hosseinioun, hereby applies for leave to submit observations before the Pre-Trial Chamber pursuant to Rule 103 in light of the Pre-Trial Chamber's Decision Regarding the Second Request by the Government of Libya for Postponement of the Surrender of Saif Al-Islam Gaddafi of 4 April 2012<sup>1</sup> and the other Decisions, Orders and filings that have been made public since the Decision of 4 April 2012.
2. Your Applicant applies to make observations about Mr. Saif Gaddafi's right to be permitted to obtain legal representation of his choosing as a matter of the utmost urgency. Ms. Hosseinioun wishes in her observations to address the following matters and make the following requests to the Pre-Trial Chamber which are essential to the implementation of Mr. Gaddafi's rights and which are not being advanced by any of the parties to the proceedings in the determination of the present issues before Chamber:
  - (i) Whilst your Applicant is respectful of the steps undertaken and representations made by the OPCD, as the Chamber and the OPCD itself have recognised, the OPCD's mandate is to represent the general interests of Mr. Gaddafi on an interim basis until Mr. Gaddafi is able to choose his own counsel.<sup>2</sup> The OPCD cannot therefore act as a replacement for Mr. Gaddafi's own counsel. It is thus imperative to determine what steps need to be taken to ensure that Mr. Gaddafi can appoint his own counsel as soon as possible. It is the Applicant's submission that the OPCD cannot be the only means of contact that Mr. Gaddafi has for the purposes of appointing counsel.
  - (ii) Your Applicant wishes to request the Pre-Trial Chamber to order and facilitate her having access to Mr. Gaddafi as a very close friend as well as family members having access (in the event that they are able to travel to Libya).

<sup>1</sup> Decision Regarding the Second Request by the Government of Libya for Postponement of the Surrender of Saif Al-Islam Gaddafi, ICC-01-11-01-11-100, 4 April 2012.

<sup>2</sup> Public Redacted Version of Decision Requesting Libya to file Observations Regarding the Arrest of Saif Al-Islam Gaddafi, ICC-01/11-01/11-39-Red, 6 December 2011, para. 10, p. 6; Decision on the Registry-OPCD Visit to Libya, ICC-01/11-01/11-52-Conf-Exp, 3 February 2012, p. 4; OPCD Request for Authorisation to Present Observations in Proceedings Concerning Mr. Saif Gaddafi, ICC-01/11-01/11-33, 28 November 2012, Para. 24; OPCD Request for Authorisation to Present Observations in Proceedings Concerning Mr. Saif Gaddafi, ICC-01/11-01/11-33, 28 November 2012, Para. 26.

Your Applicant needs to submit these observations in order that steps can be taken to ensure that Mr. Gaddafi can consult with someone he knows very well and trusts to assist him to appoint lawyers of his choosing to represent him immediately in all proceedings before the ICC. The need is ever pressing in light of the steps taken on behalf of the Libyan Government to seek to appeal the Decision of 4 April 2012 and its stated intention to file an admissibility challenge shortly. Your Applicant is willing and able to travel to Libya immediately.

(iii) In its filings before the ICC the Libyan Government has committed itself to fair trial proceedings according to international standards,<sup>3</sup> and yet the Libyan authorities have blocked all of your Applicant's efforts to contact Mr. Gaddafi (as set out below). Moreover, they have publicly stated on many occasions that Mr. Gaddafi will be placed on trial in Libya very soon.<sup>4</sup> This heightens the urgency of family and friends having access to Mr. Gaddafi to assist him with appointing counsel.

(iv) Although the ICC filings indicate that the OPCD has met with Mr. Gaddafi on one occasion, it is not clear from the filings whether the OPCD advised Mr. Gaddafi of Ms. Hosseinioun's filings before the ICC regarding his right to legal representation or those filings of his family before the ICC. The OPCD

<sup>3</sup> Government of Libya's Appeal Against the "Decision Regarding the Second Request by the Government of Libya for Postponement of the Surrender of Saif Al-Islam Gaddafi", ICC-01/11-01/11-103, 10 April 2012, para. 3; Government of Libya's Application for Leave to Appeal the "Decision Regarding the Second Request by the Government of Libya for Postponement of the Surrender of Saif Al-Islam Gaddafi", ICC-01/11-01/11-102, 10 April 2012, para. 5.

<sup>4</sup> Libya's Saif Gaddafi could be tried within weeks, official says, CNN, 5 February 2012 (<http://edition.cnn.com/2012/02/05/world/africa/libya-gadhafi/>); Saif Gaddafi's trial could begin within weeks, says NTC, the Independent, 6 February 2012 (<http://www.independent.co.uk/news/world/africa/saif-gaddafis-trial-could-begin-within-weeks-says-ntc-6579559.html>); Col. Moammar Gadhafi's Libyan Legacy: Son Saif al-Islam's Trial to Begin in 'Few Weeks', Business and Law, 6 February 2012 (<http://www.ibtimes.co.uk/articles/293638/20120206/saif-gaddafi-court-trial-niger-muammar-libya.htm>); Seif al-Islam Could Go On Trial Within Weeks, Interior Minister Says, The Tripoli Post, 7 February 2012 (<http://tripolipost.com/articledetail.asp?c=1&i=7854>); Saif Gaddafi to be moved to Tripoli, then tried, Reuters, 12 February 2012 (<http://www.reuters.com/article/2012/02/12/us-libya-jalil-idUSTRE81B0G720120212>); NY protestors urge ICC to take custody of Saif al-Islam Gaddafi, PressTV, 7 February 2012 (<http://www.presstv.ir/detail/225370.html>); Rights Coalition Demand ICC Take Custody of Saif Gaddafi; fears for Safety, Black Star News, 2 February 2012 (<http://blackstarnews.com/news/122/ARTICLE/7941/2012-02-02.html>); Libya unveils courtroom ahead of Gaddafi son's trial, Gulf News, 10 April 2012 (<http://gulfnews.com/news/region/libya/libya-unveils-courtroom-ahead-of-gaddafi-son-s-trial-1.1006854>); Gaddafi son 'to face Libyan trial', MSN, 10 April 2012 (<http://news.uk.msn.com/world/gaddafi-son-to-face-libyan-trial>); Fighters want to try Gaddafi son: Libyan lawyer, Reuters, 11 April 2012 (<http://www.reuters.com/article/2012/04/11/us-libya-icc-idUSBRE83A1BL20120411>); Saif al-Islam to be moved to Tripoli: Report, Zeenews, 8 April 2012 ([http://zeenews.india.com/news/world/saif-al-islam-to-be-moved-to-tripoli-report\\_768899.html](http://zeenews.india.com/news/world/saif-al-islam-to-be-moved-to-tripoli-report_768899.html)).

should do so in order that Mr. Gaddafi can be informed that family and friends are seeking to assist him. Your Applicant requests that the OPCD should be directed to so inform Mr. Gaddafi in any future dealings with him.

3. All of these observations are relevant to the proper determination of issues that are presently before the Chamber, in particular the appointment of counsel for Mr. Gaddafi in the ICC proceedings, and the outstanding request by the OPCD to visit Mr. Gaddafi again. The Chamber has held that “a personal visit from the Registry and the OPCD is the best mechanism to ensure that Saif Al-Islam Gaddafi is well informed about the current stage of the proceedings before the Court and of the appointment of the OPCD to represent his interests until he decides, should he wish to be represented in the Court's proceedings, to appoint counsel of his choosing.”<sup>5</sup> The issues of the appointment of counsel and access to Mr. Gaddafi are clearly ones that are presently before the Chamber.
4. In addition, in its Decision of 4 April 2012 the Chamber instructed the Government of Libya to “afford Mr Gaddafi the procedure described in article 59 of the Statute” when making “its decision to grant the Surrender Request” and when “making arrangements in preparation for the surrender of Mr Gaddafi to the Court.”<sup>6</sup> These provisions can only be given full effect if Mr. Gaddafi is permitted to have access to family and friends to assist him in appointing counsel of his choosing.
5. For all of these reasons, the Applicant submits that she has satisfied the requirements of Rule 103 in that the Chamber could be assisted by her observations in determining issues before the Chamber, which no other party to the proceedings is presently raising before the Chamber.

#### **B. The Applicant and steps undertaken to contact Mr. Gaddafi**

6. The Applicant is Ms. Mishana Hosseinioun. Ms. Hosseinioun is a very close friend and confidant of Mr. Gaddafi.

<sup>5</sup> Decision on Registry –OPCD Visit to Libya, ICC-01/11-01/11-52-Conf-Exp, 3 February 2012, p. 4.

<sup>6</sup> Decision of 4 April 2012, para. 19.

7. The Applicant is a US-born, Iranian/American national who is a prominent human rights scholar, having served as a long-time Drafter and member of the Board of Directors of the “2048 Project: Humanity’s Agreement to Live Together”, a former Research Project of the University of California, Berkeley Law School. She also served as the Project’s Reporter for the Draft International Convention on Human Rights. She has Bachelor’s degrees in Rhetoric and Near Eastern Studies from the University of California, Berkeley, an MPhil in International Relations from the University of Oxford as a Clarendon Scholar, and is currently a Doctoral Candidate at the University of Oxford. Her dissertation is on the topic of the International Human Rights System and the Middle East. The Applicant has written a number of articles and has given interviews on human rights, in both English and Arabic<sup>7</sup>.
  
8. Ms. Hosseinioun has repeatedly requested the Libyan authorities to permit her to have contact with Mr. Gaddafi as a close friend. Both the African Charter of Human and Peoples’ Rights and the Principles and Guidelines on the Rights to a Fair Trial and Legal Assistance in Africa state that any person arrested or detained must be “provided with the necessary facilities to communicate ... with family and friends.”<sup>8</sup>
  
9. Your Applicant has made the following efforts over the past two months to contact Mr. Gaddafi:
  - The Applicant established contact with the Minister of Justice and Attorney General of Libya;
  - The Applicant has contacted the National Transitional Council (NTC) Office in Tripoli;

<sup>7</sup> See as examples: Foulath Hadid and Mishana Hosseinioun, ‘The middle east: the question of freedom’, 18 October 2010 (<http://www.opendemocracy.net/foulath-hadid-mishana-hosseinioun/middle-east-question-of-freedom>); Articles by Mishana Hosseinioun, openDemocracy (<http://www.opendemocracy.net/author/mishana-hosseinioun>); Abdul Gaffar Hussain and Mishana Hosseinioun, ‘Rise of the ‘Universal Arab Emirates’, 9 December 2008 (<http://gulfnnews.com/opinions/columnists/rise-of-the-universal-arab-emirates-1.148400>); Interview, Mishana Hosseinioun, young Human Rights Activist, March 2006 (<http://www.youtube.com/watch?v=zu8ikf10RDM>); Mishana Hosseinioun, ‘Prospects for a Regional Human Rights Regime in the Middle East’, London Debates 2011 ([http://events.sas.ac.uk/fileadmin/documents/postgraduate/London\\_Debates\\_2011\\_Papers/Hosseinioun\\_submission.pdf](http://events.sas.ac.uk/fileadmin/documents/postgraduate/London_Debates_2011_Papers/Hosseinioun_submission.pdf)); Mishana Hosseinioun, The Universal Dream: drafting the Universal Declaration of Human Rights (<http://www.youtube.com/watch?v=NkAI4EKS9NE>); Al Arabiya News Channel Interview with Mishana Hosseinioun, 10 March 2007 (<http://www.youtube.com/watch?v=fs5j571hatw&feature=related>).

<sup>8</sup> Principles and Guidelines on the Rights to a Fair trial and Legal Assistance in Africa, African Commission on Human and Peoples’ Rights, 26<sup>th</sup> Session, November 1999, sec. M(e).

- The Applicant has communicated with various Embassies including the US Embassy in Tripoli, the Libyan Embassy in Washington D.C., the British Embassy in Tripoli, the Libyan Embassy in London;
- The Applicant has communicated with several international organisations including Amnesty International, Human Rights Watch, International Red Cross and the UN Office of the High Commissioner for Human Rights<sup>9</sup>;
- On 30 March 2012, the Applicant filed a Communication before the African Commission asking that the Commission “(i) Direct Libya not to proceed further with any actions concerning the legal proceedings, investigation against or detention of Mr. Gaddafi that will cause irreparable damage to Mr. Gaddafi before this case is heard before the Commission. This specifically includes interrogation or legal proceedings without counsel of his choosing, as well as, the application of the death penalty following any proceedings; (ii) Find that the NTC is in violation of Mr Gaddafi’s rights under Articles 6 and 7 of the African Charter; (iii) Direct the NTC to allow Mr Gaddafi access to a lawyer immediately and without delay; and, (iv) Invite the Commission to submit Mr Gaddafi’s case to the African Court on Human and Peoples’ Rights.”<sup>10</sup>
- The Applicant has also written to the President of the Assembly of States Parties.<sup>11</sup>

10. The Applicant is not connected to either the current or former regime in Libya. She is not a member, or close to any members, of the Gaddafi family. It is unlikely that family members would be in a position to visit Saif Gaddafi in Libya as they have fled the country and will not wish, or be able, to return.<sup>12</sup>

<sup>9</sup> See generally, Application on behalf of Mishana Hosseinioun for Leave to Submit Amicus Curiae Observations to the Chamber, ICC-01/11-01/11-46-Anx1, 20 January 2012.

<sup>10</sup> Communication to Hon. Commissioner Dupe Atoki, Chairperson of the African Commission on Human and Peoples’ Rights and the Members of the African Commission Regarding the Detention of Saif Al-Islam Gaddafi by Mishana Hosseinioun, submitted to the African Commission on Human and Peoples’ Rights, 30 March 2012.

<sup>11</sup> Letter from Ms. Mishana Hosseinioun to the President of the Assembly of States Parties to the International Criminal Court, 26 March 2012.

<sup>12</sup> Mr. Gaddafi has informed the OPCD that he was told by the Libyan Attorney-General that “it would not be possible for him to receive any family visits.” Public Redacted Addendum to the Urgent Report Concerning the Visit to Libya, ICC-01/11-01/11-70-Red, 5 March 2012, para. 45.

11. The Applicant has no personal interest in the case, apart from her wish that Saif Gaddafi's rights are safeguarded without delay. Neither she nor her lawyers have a power of attorney from Mr. Gaddafi, and do not mean to speak on Mr. Gaddafi's behalf. Ms. Hosseinioun's efforts to guarantee Mr. Gaddafi's right to legal representation of his choosing are in no way intended to impose counsel on Mr. Gaddafi.
12. Ms. Hosseinioun is particularly concerned that the continued violation of Mr. Gaddafi's right to legal representation must be addressed. Her concerns are exacerbated by the alleged violations of Mr. Gaddafi's rights as detailed in the OPCD's filings,<sup>13</sup> the extensive reports of extrajudicial killings and torture of detainees in Libya, and the possibility that Mr. Gaddafi will face the death penalty in proceedings in Libya.<sup>14</sup>

### C. The applicable law

13. Rule 103(1) provides that "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."<sup>15</sup>
14. Under the ICC's jurisprudence a Chamber has a broad discretion under Rule 103 to grant leave to any party at *any* stage. In determining whether observations are desirable, a Pre-Trial Chamber has held that "the first and foremost factor for leave to be granted pursuant to rule 103 of the Rules is whether the relevant application relates to an issue that is actually before the competent Chamber."<sup>16</sup>

<sup>13</sup> Public Redacted Version Urgent Report Concerning the Visit to Libya, ICC-01/11-01/11-69-Red, 2 March 2012; Public Redacted Addendum to the Urgent Report Concerning the Visit to Libya, ICC-01/11-01/11-70-Red, 5 March 2012; Public Redacted Version of Urgent Request for Assistance in the Implementation of a Privileged Visit, ICC-01/11-01/11-79-Red, 19 March 2012; Public Redacted Version of Renewed Request for Privileged Visit, ICC-01/11-01/11-90-Red, 30 March 2012; Public Redacted Response to the "Notification and Request by the Government of Libya in response to "Decision on Libya's Submissions Regarding the Arrest of Saif Al-Islam Gaddafi", ICC-01/11-01/11-94-Red2, 30 March 2012.

<sup>14</sup> The Libyan authorities informed the Chamber on 22 March 2012 of the intention to file an admissibility challenge and it has been noted that Libyan authorities have commenced investigations for crimes falling under Article 7 of the Rome Statute. Decision of 4 April 2012, para. 5; Public Redacted Version of Renewed Request for Privileged Visit, ICC-01/11-01/11-90-Red, 30 March 2012, para. 7.

<sup>15</sup> Rules of Procedure and Evidence, Rule 103(1).

<sup>16</sup> Decision on Application under Rule 103, ICC-02/05, 4 February 2009, para. 8.



15. The Appeals Chamber has held that Rule 103 gives the Chamber a discretion to grant leave to submit observations if it “may assist the ... Chamber in the proper determination of the case.”<sup>17</sup> In a previous determination of a Rule 103 application, leave to submit observations was granted because the Chamber “considered it desirable” to hear “another view to that of the Prosecutor who was the only participant to have made submissions.”<sup>18</sup>

16. Trial Chamber I clarified that observations of an Applicant might assist “in its ‘proper determination’ of the issues” when the observations seek “to supply information and assistance of direct relevance on certain issues that otherwise will not be available to the Court.”<sup>19</sup>

#### **D. Reasons to grant leave to submit observations**

17. There are three reasons why the Applicant should be granted leave to make observations before the Chamber under Rule 103: (i) the OPCD cannot serve as a replacement for Mr. Gaddafi’s counsel of his own choosing and the OPCD cannot be the only avenue through which counsel should be considered and appointed; (ii) the Applicant should therefore be permitted to request the Chamber to order that she and/or his family are permitted to have contact with Mr. Gaddafi without delay; and, (iii) in any event, the OPCD should be directed to inform Mr. Gaddafi of all filings made by the Applicant and Mr. Gaddafi’s family, and of their efforts to make contact with him to discuss legal representation.

##### **(i) The right to counsel of own choosing**

18. The essential point is that the OPCD cannot represent Mr. Gaddafi as a replacement for counsel of his choosing, especially when he has not been able to appoint his own counsel with the assistance of those closest to him. Mr. Gaddafi should not be limited

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<sup>17</sup> *Prosecutor v. Lubanga*, Decision on Motion for Leave to File Proposed Amicus Curiae Submission of the International Criminal Bar Pursuant to Rule 103 of the Rules of Procedure and Evidence”, ICC-01/04-01/06-1289, 22 April 2008, para. 8. See also, Reasons for ‘Decision on the Application of 20 July 2009 for Participation under Rule 103 of the Rules of Procedure and Evidence and on the Application of 24 August 2009 for Leave to Reply, ICC-02/05-01/09 OA, 9 November 2009, para. 7.

<sup>18</sup> Reasons for ‘Decision on the Application of 20 July 2009 for Participation under Rule 103 of the Rules of Procedure and Evidence and on the Application of 24 August 2009 for Leave to Reply, ICC-02/05-01/09 OA, 9 November 2009, para. 9.

<sup>19</sup> *Prosecutor v. Lubanga*, Decision Inviting Observations from Special Representative of the Secretary General of the United Nations for Children and Armed Conflict, ICC-01/04-01/06-1175, 18 February 2008, para. 7.

to the OPCD's advice when having to consider legal representation. He must be afforded access to family and friends whom he knows and trusts to assist him.

19. The Applicant notes the submissions of the OPCD concerning Mr. Gaddafi's rights to legal representation.<sup>20</sup> However, as the OPCD has acknowledged, "the primary mandate of the OPCD is to support and assist external Defence teams, and not to usurp their role before the Court"<sup>21</sup>. In the present case the OPCD was appointed by the Chamber pursuant to Regulation 77(4)<sup>22</sup> which only gives the OPCD the general mandate of "representing and protecting the rights of the Defence during the initial stages of the investigation."<sup>23</sup>

20. Moreover, the Chamber has clearly recognised the need to maintain Mr. Gaddafi's right freely to choose counsel when appointing the OPCD to represent him "until otherwise decided by this Chamber" (given that no power of attorney for counsel had been received)<sup>24</sup> and in authorising a visit to Mr. Gaddafi in order to advise him "of the appointment of the OPCD to represent his interests *until he decides, should he wish to be represented in the Court's proceedings, to appoint counsel of his choosing*."<sup>25</sup>

21. The Government of Libya has now notified the Chamber of its appointment of counsel to represent Libya in the proceedings<sup>26</sup> and of its "intention to file its admissibility challenge" by 30 April 2012.<sup>27</sup> Proceedings in Mr. Gaddafi's case have plainly moved beyond "the initial stages of the investigation". It is thus imperative that the

<sup>20</sup> Public Redacted Version Urgent Report Concerning the Visit to Libya, ICC-01/11-01/11-69-Red, 2 March 2012; Public Redacted Addendum to the Urgent Report Concerning the Visit to Libya, ICC-01/11-01/11-70-Red, 5 March 2012; Public Redacted Version of Urgent Request for Assistance in the Implementation of a Privileged Visit, ICC-01/11-01/11-79-Red, 19 March 2012; Public Redacted Version of Renewed Request for Privileged Visit, ICC-01/11-01/11-90-Red, 30 March 2012; Public Redacted Response to the "Notification and Request by the Government of Libya in response to "Decision on Libya's Submissions Regarding the Arrest of Saif Al-Islam Gaddafi", ICC-01/11-01/11-94-Red2, 30 March 2012.

<sup>21</sup> OPCD Request for Authorisation to Present Observations in Proceedings Concerning Mr. Saif Gaddafi, ICC-01/11-01/11-33, 28 November 2012, Para. 24.

<sup>22</sup> Public Redacted Version of Decision Requesting Libya to file Observations Regarding the Arrest of Saif Al-Islam Gaddafi, ICC-01/11-01/11-39-Red, 6 December 2011, para. 10.

<sup>23</sup> Regulation of the Court, Reg. 77(4); See also, OPCD Request for Authorisation to Present Observations in Proceedings Concerning Mr. Saif Gaddafi, ICC-01/11-01/11-33, 28 November 2012, Para. 26.

<sup>24</sup> Public Redacted Version of Decision Requesting Libya to file Observations Regarding the Arrest of Saif Al-Islam Gaddafi, ICC-01/11-01/11-39-Red, 6 December 2012, p. 6.

<sup>25</sup> Decision on the Registry-OPCD Visit to Libya, ICC-01/11-01/11-52-Conf-Exp, 3 February 2012, p. 4.

<sup>26</sup> Corrigendum to "Report of the Registrar on the notification of Decision ICC-01/11-01/11-72-Conf," ICC-01/11-01/11-83-Conf-Con, 23 March 2012, para. 3.

<sup>27</sup> Notification and Request by the Government of Libya in response to "Decision on Libya's Submissions Regarding the Arrest of Saif Al-Islam Gaddafi", ICC-01/11-01/11-82-Conf, 22 March 2012, para. 3.

appointment of a legal representative of his choosing is viewed as an urgent priority to ensure Mr. Gaddafi can actively participate in his own defence.

22. The Applicant notes that it is reported that Mr. Gaddafi has expressed to an OPCD representative that he “does want legal representation, but he [is] not in a position to select counsel himself.”<sup>28</sup> Even though Mr. Gaddafi has signed a declaration for “the OPCD to either select counsel or help him in this matter”<sup>29</sup>, this declaration was made directly after expressing to the OPCD representative that “He does not know any lawyers, his family did not have any retained lawyers to his knowledge, and he does not have the ability to call lawyers to interview them or ascertain their availability.”<sup>30</sup> Most importantly, Mr. Gaddafi’s declaration notes his willingness for OPCD to continue to represent his interests before the ICC, but only “*until a counsel is appointed.*”<sup>31</sup>

#### **(ii) Request for access to Mr. Gaddafi**

23. Accordingly, the Applicant wishes to submit to the Chamber that it should authorise and facilitate a visit to Mr. Gaddafi or contact with him (even if by telephone) by the Applicant (or by his family if they are able to see him in Libya).

24. The Applicant would submit that she, as a very close friend, should be permitted to have contact with Mr. Gaddafi to discuss with him his situation and to assist him in obtaining legal representation. As the Chamber is aware, the Applicant has been making every attempt to communicate and assist Mr. Gaddafi without any success.

25. Your Applicant re-iterates that it would of course be for Mr. Gaddafi to choose his own counsel. This application is made solely to ensure that he has access to a very close friend (or family, if possible) to assist him at a time when he is most vulnerable.

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<sup>28</sup> Public Redacted Addendum to the Urgent Report Concerning the Visit to Libyam ICC-01/11-01/11-70-Red, 5 March 2012, para. 40.

<sup>29</sup> Public Redacted Addendum to the Urgent Report Concerning the Visit to Libyam ICC-01/11-01/11-70-Red, 5 March 2012, para. 41.

<sup>30</sup> Public Redacted Addendum to the Urgent Report Concerning the Visit to Libyam ICC-01/11-01/11-70-Red, 5 March 2012, para. 40.

<sup>31</sup> Public Redacted Addendum to the Urgent Report Concerning the Visit to Libyam ICC-01/11-01/11-70-Red, 5 March 2012, para. 41.

**(iii) OPCD must inform Mr. Gaddafi of the Applicant's filings and efforts to contact him**

26. The Applicant notes the OPCD's request for a second visit to meet with Mr. Gaddafi made on 19 March 2012 and renewed on 30 March 2012.<sup>32</sup> The Applicant is unaware if such a visit has been ordered confidentially. In the event that there is any further contact with Mr. Gaddafi by the OPCD, the Applicant would request that the Chamber direct the OPCD to inform Mr. Gaddafi of Ms. Hosseinioun's extensive efforts to contact him with regard to legal representation. There is no reason to prevent him knowing of these initiatives by his close friend, and by family members – on the contrary, it is his right to be informed.

27. Mr. Gaddafi has been held incommunicado in Libya for over 4 months with no ability to contact any family or friends. If any organ of the ICC is able to communicate with him, the Chamber should direct that Mr. Gaddafi is advised of all attempts by his family and friends to speak with him. He will otherwise have no idea that friends and family have been trying to reach him to assist him in relation to obtaining legal representation.

**E. Conclusion**

28. For these reasons the Applicant respectfully requests that she be granted leave to submit observations on the specific issues outlined above to the Pre-Trial Chamber under Rule 103.

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<sup>32</sup> Public Redacted Version of Urgent Request for Assistance in the Implementation of a Privileged Visit, ICC-01/11-01/11-79-Red, 19 March 2012; Public Redacted Version of Renewed Request for Privileged Visit, ICC-01/11-01/11-90-Red, 30 March 2012.



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Counsel on behalf of Mishana Hosseinioun

Dated 13 April 2012  
London, United Kingdom