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

Date: 18 July 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 “Application on behalf of Mishana Hosseinioun for
Leave to Submit Observations to the Appeals Chamber 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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Submissions

1. On 9 July 2013, Ms Mishana Hosseinioun ("the Applicant") sought leave from the Appeals Chamber to submit observations pursuant to Rule 103 on Libya's appeal against Pre-Trial Chamber I's Decision on the Admissibility of the case against Saif Al-Islam Gaddafi ("the Application").¹
2. The Applicant claims to be a personal friend of Gaddafi.² She requests to provide observations on matters raised under the fourth ground of appeal, namely, the unavailability of Libya's national justice system,³ and in particular, with respect to Gaddafi's lack of representation⁴ and Libya's lack of control over Zintan.⁵
3. The Applicant argues that she may assist the Appeals Chamber to show that the Pre-Trial Chamber's findings are not erroneous.⁶ She seeks to explain to the Court the provisional measures imposed on Libya by the African Commission on Human and People's Rights and the African Court, which have not been complied with by Libya.⁷ These measures include ensuring Gaddafi's immediate access to a lawyer⁸ and allowing family and friends to visit him.⁹ She further notes that she has not been granted access to Gaddafi, and had she been allowed to visit him, she would be able to report to the Court the results of her contacts.¹⁰

¹ ICC-01/11-01/11-379OA4.

² Application, para.4.

³ Application, paras.2-3.

⁴ Application, para.17.

⁵ Application, para.20.

⁶ Application, paras.18,19.

⁷ Application, paras.5-6.

⁸ Application, para.18.

⁹ Application, para.19. Note that the measures were imposed as a result of a communication presented by her. See para.5.

¹⁰ Application, para.20.

4. Notwithstanding the discretion of the Appeals Chamber in deciding on Rule 103 requests,¹¹ the Prosecution submits that the Application should be rejected.¹²
5. The Applicant effectively seeks to introduce additional information in the appeal proceedings, in particular, the provisional measures imposed on Libya by the African Commission and the African Court and Libya's subsequent non-compliance. However, Rule 103 observations should not be used as a vehicle for a third party to introduce additional evidence on the record of a case. Second, and as the Applicant herself notes, OPCD has already presented this information to the Pre-Trial Chamber, which means that the evidence in question is already on the record.¹³ Third, evidence on appeal can only be introduced in exceptional circumstances which have not been shown in the instant case.¹⁴
6. The Prosecution finally notes that the Applicant does not appear to have any expertise or concrete knowledge of Libya's current situation in order to assist the Appeals Chamber in the determination of the matters before it.¹⁵

¹¹ ICC-01/04-01/06-1289OA11, para.8; ICC-02/05-01/09-51OA, para.7.

¹² On 16 July 2013, the Appeals Chamber ordered that the Prosecution may respond to the Application. See ICC-01/11-01/11-383OA4.

¹³ Application, para.7 referring to ICC-01/11-01/11-190-Corr-Red and ICC-01/11-01/11-308.

¹⁴ ICC-01/05-01/08-962OA3, para.32. See the Prosecution's submissions on this matter in its response to Lubanga's appeal against the Article 74 Judgement : ICC-01/04-01/06-2969-Red A5, paras.37-46.

¹⁵ ICC-01/04-01/06-1289OA11, para.8 ; ICC-02/05-01/09-51OA, para.9.

Relief Sought

7. The Prosecution submits that the Application should be rejected, for the above reasons.



Fatou Bensouda,
Prosecutor

Dated this 18th day of July 2013

At The Hague, The Netherlands