

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/11-01/11
Date: 2 February 2012

PRE-TRIAL CHAMBER I

Before: Judge Sanji Mmasenono Monageng, Presiding Judge
Judge Sylvia Steiner
Judge Cuno Tarfusser

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

Public Document

**Decision on the Applications of Mishana Hosseinioun and Aisha Gaddafi to
submit *Amicus Curiae* observations to the Chamber**

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

Mr Xavier-Jean Keïta, Principal Counsel
Ms Melinda Taylor, Counsel

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

PRE-TRIAL CHAMBER I of the International Criminal Court (“Chamber” and “Court” respectively);

NOTING Resolution 1970, adopted by the United Nations Security Council (“UNSC”) on 26 February 2011,¹ whereby the UNSC referred the situation in Libya since 15 February 2011 to the Prosecutor of the Court;²

NOTING the “Decision on the ‘Prosecutor’s Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar GADDAFI, Saif Al-Islam GADDAFI and Abdullah AL-SENUSSI”, issued by the Chamber on 27 June 2011,³ and the warrants of arrest relevant to that decision;⁴

NOTING the “Public Redacted Version of Decision Requesting Libya to file Observations Regarding the Arrest of Saif Al-Islam Gaddafi”, issued by the Chamber on 6 December 2011,⁵ wherein the Chamber, *inter alia*, authorised the Office of Public Counsel for the Defence (“OPCD”) to represent the interests of the Defence in all instances related to the proceedings against Saif Al-Islam Gaddafi in the present case until otherwise decided;⁶

NOTING the confidential annex to the “Report of the Registrar on Libya’s observations regarding the arrest of Saif Al-Islam Gaddafi”, filed on 23 January 2012;⁷

¹ S/RES/1970 (2011).

² *Ibid.*, para. 4.

³ ICC-01/11-01/11-1.

⁴ ICC-01/11-01/11-2, ICC-01/11-01/11-3 and ICC-01/11-01/11-4.

⁵ ICC-01/11-01/11-39-Red.

⁶ *Ibid.*, p. 6.

⁷ ICC-01/11-01/11-44-Conf-Anxl.

NOTING the “Application on behalf of Mishana Hosseinioun for Leave to Submit *Amicus Curiae* Observations to the Chamber” (“First *Amicus* Application”), filed on 30 January 2012 by Ms. Hosseinioun,⁸ wherein she requested the Chamber’s permission to, *inter alia*, submit observations in respect of the detention and legal representation of Saif Al-Islam Gaddafi (“Saif Gaddafi”), submitting that she is in ‘a unique position to offer observations to the Chamber as she is a very close friend and confidant who is requesting to have access to Saif Gaddafi to assist in the appointment of legal counsel and to safeguard his rights.’;⁹

NOTING the “Application on behalf of Aisha Gaddafi for leave to submit *amicus curiae* observations concerning her brother – Saif al-Islam Gaddafi” (“Second *Amicus* Application”), filed on 31 January 2012,¹⁰ wherein the sister of Saif Gaddafi, Aisha Gaddafi, seeks permission to present ‘specific’, ‘essential’ and ‘concrete information’ which she believes will assist the Chamber in ‘determining whether the Libyan authorities truly desire to provide Saif al-Islam Gaddafi with effective legal representation or to afford him a fair trial.’;¹¹

NOTING rule 103 of the Rules of Procedure and Evidence (“the Rules”);

CONSIDERING that rule 103 of the Rules allows the Chamber to receive *amicus curiae* observations from either a State, organization or person that are ‘both desirable and appropriate for the proper determination of the case’;¹²

⁸ ICC-01/11-01/11-46.

⁹ First *Amicus* Application, paras. 10-11.

¹⁰ ICC-01/11-01/11-47.

¹¹ Second *Amicus* Application, paras. 5-7.

¹² Pre-Trial Chamber II, *Prosecutor v Jean-Pierre Bemba Gombo*, Decision on Request for Leave to Submit *Amicus Curiae* Observations Pursuant to Rule 103 of the Rules of Procedure and Evidence, ICC-01/05-01/08-451, 17 July 2009, para. 12; Trial Chamber II, *Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the Motion filed by the Queen’s University Belfast Human Rights Centre for Leave to submit an

CONSIDERING that the submissions of both the First and Second *Amicus* Applicants effectively seek the Chamber's permission to contact Saif Gaddafi and give him access to what they deem to be appropriate legal advice, and therefore do not seek to provide the Chamber with observations which may be 'desirable for the proper determination of the case', as required by rule 103;

CONSIDERING, therefore, that the reasoning advanced by the Applicants to justify their respective requests is misplaced and contrary to the intended purpose of the *amicus curiae* role in criminal proceedings before this Court;

FOR THESE REASONS,

REJECTS both the First and Second *Amicus* Applications.

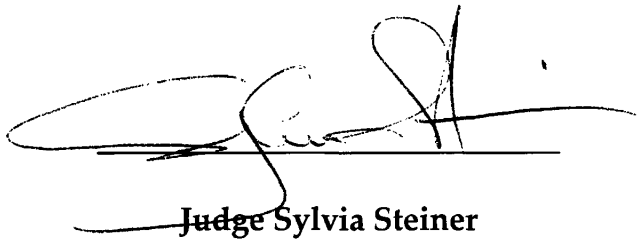
amicus curiae brief on the definition of crimes of sexual slavery, 7 April 2009, ICC-01/04-01/07-2823-tENG; Pre-Trial Chamber II, *Prosecutor v William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, Decision on the request for leave to submit Amicus Curiae observations pursuant to Rule 103 of the Rules of Procedure and Evidence, 13 June 2011, ICC-01/09-01/11-124, para. 8.

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

A handwritten signature in black ink, consisting of a large initial 'S' followed by a series of loops and a long horizontal stroke that ends in a large, circular flourish.

Judge Sanji Mmasenono Monageng

Presiding Judge

A handwritten signature in black ink, featuring a large, stylized initial 'S' followed by a horizontal line and a long, sweeping tail.

Judge Sylvia Steiner

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke.

Judge Cuno Tarfusser

Dated this Thursday, 2 February 2012

At The Hague, The Netherlands