



Original: **English**

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

Date: **31/01/2012**

PRE-TRIAL CHAMBER I

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

SITUATION IN LIBYA

**IN THE CASE OF
THE PROSECUTOR**

v. SAIF AL-ISLAM GADDAFI and ABDULLAH AL-SENUSSI

Public Document

**Application on behalf of Aisha Gaddafi for leave to submit *amicus curiae*
observations concerning her brother - Saif al-Islam Gaddafi**

Source: Aisha Gaddafi, represented by Nicholas Kaufman

Document 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 the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

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

Mr. Xavier-Jean Keïta
Ms. Melinda A. Taylor

States' Representatives

Amicus Curiae
Mr. Nicholas Kaufman

REGISTRY

Registrar

Ms. Silvana Arbia

Defence Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section** **Other**

1. Aisha Gaddafi wishes to protect¹ the interests of her brother - Saif al-Islam Gaddafi whose exact whereabouts are presently unknown to her and whose fate is currently the subject of confidential litigation between the Office of the Prosecutor ("OTP") and the Office of the Public Counsel for the Defence ("OPCD").

2. Given her present lack of legal standing, the only mechanism available to Aisha Gaddafi to submit information to the Pre-Trial Chamber is by way of an application for leave to intervene as *amicus curiae*. Aisha Gaddafi has noted a similar application filed on behalf of Mishana Housseinioun² and views it as a welcome call for public debate on the issue of Saif al-Islam Gaddafi's current grave predicament.

3. Rule 103(1) of the Rules of Procedure and Evidence states as follows:

"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".

4. Pre-Trial Chamber II has interpreted Rule 103(1) as follows:

"This Chamber has already stated that it will resort, at its discretion, to amicus curiae observations only on an exceptional basis, when it is of the view that such observations providing specific expertise are needed".³

5. Notwithstanding the application of Mishana Housseinioun, Aisha Gaddafi wishes to present concrete information which she believes will assist the Pre-Trial Chamber in determining the appropriate course of action it should take in light of the presumed contents of the confidential report submitted by the Libyan authorities⁴ in response to the *Decision Requesting Libya to file Observations Regarding the Arrest of Saif Al-Islam Gaddafi*.⁵

¹ Power of attorney was filed with the Senior Legal Officer of the Pre-Trial Chamber on 23 January 2011.

² ICC-01/11-01/11-46.

³ ICC-01/09-01/11-124 at para.7.

⁴ ICC-01/11-01/11-44.

⁵ ICC-01/11-01/11-39-RED.

6. Aisha Gaddafi submits that the information in her possession is "*specific*" and falls within the judicially determined parameters of Rule 103(1). This information, if submitted, will assist the Pre-Trial 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. Given the confidentiality requirements imposed on the recognized parties to the litigation, OPCD has appropriately declined to disclose to Aisha Gaddafi its strategy. While fully appreciating the role of OPCD, Aisha Gaddafi believes that the information in her possession is exclusive to her and cannot be presented by OPCD.

Relief Sought

7. In light of all the aforementioned, Aisha Gaddafi seeks leave "*on an exceptional basis*" to intervene as *amicus curiae* in order to supply essential and discrete information on the following matters:

- a) attempts that she has made to contact Saif al-Islam Gaddafi through the non-cooperative agency of the OTP and the willing agency of the International Committee of the Red Cross - all for the purpose, on her part, of enquiring as to his welfare and assigning him legal counsel;
- b) two telephone conversations⁶ in Arabic with the Deputy-Prosecutor of Libya – Mr. Abd al-Majid Sa'ad. From these telephone conversations, it may be inferred that the Libyan authorities who purport to be investigating and prosecuting Saif al-Islam Gaddafi refuse to deal with international legal counsel. These conversations have been documented by way of signed affidavit and will be filed confidentially.



Nicholas Kaufman

Counsel for Aisha Gaddafi

Jerusalem, Israel
Tuesday, January 31, 2012

⁶ 26 December 2011 and 30 December 2011.