

## **Trial Chamber I Requested to order Libya to hand over Ghaddafi to the ICC**

Cognizant of the volatile situation in Libya with the pronouncement of a local Court of Appeal On July 28, 2015, in Tripoli Libya to sentenced Mr. Saif al-Islam Gaddafi to death for his role during the Country's uprising in 2011, has attracted [international outrage](#) following this verdict. The Office of the Prosecutor (OTP) following this event has asked the Pre-Trial Chamber I of the International Criminal Court (ICC) to order Libya to refrain from executing the order of the court and to immediately surrender him to the ICC, and then to report his death sentence to the United Nations Security Council (UNSC).<sup>1</sup>

Libya proceeded to prosecute Mr. Gaddafi even though there is currently [a case against him before the ICC](#) on charges of murder and persecution as crimes against humanity.<sup>2</sup> Libya failed to surrender Gaddafi to the ICC and on October 24, 2013, Judge al-Zayed al-Oreibi of the Pre – Trial Chamber of the Tripoli Appeals Court charged four detainees with 33 co-accused from the former government before Libyan courts. [Human Rights Watch](#) said that: "The Libyan government should make greater efforts to ensure these detained former officials have adequate legal counsel and the opportunity to defend themselves fairly before a judge," said Nadim Houry deputy director at Human Right Watch for Middle East and North Africa. He proceed similarly that "the prosecution of these men will be no more credible than a kangaroo court if the authorities fail to provide these men with basic due process rights."<sup>3</sup> To corroborate this point, [Gaddafi's lead counsel at the ICC](#) have argued that the Libyan trial impeached his right of due process and the right to a lawyer and an opportunity to review the evidence against him.<sup>4</sup>

Regarding cooperation with the ICC, the UNSC has emphasized in paragraph 5 of its Resolution [1970 \(2011\)](#) which instruct Libya to cooperate with the Court.<sup>5</sup> However, because of Libya's failure to surrender Mr. Saif al-Islam Gaddafi to the ICC, the Pre-Trial Chamber I found that

<sup>1</sup> International Justice Monitor, <http://www.ijmonitor.org/2015/08/prosecution-asks-chamber-to-order-libya-to-surrender-gaddafi-to-the-icc/>, [Access date, 01 September 2015]

<sup>2</sup> *The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, Judgment on the appeal of Libya against the decision of Pre-Trial Chamber I of 31 May 2013 entitled "Decision on the admissibility of the case against Saif Al-Islam Gaddafi", ICC-01/11-01/11, [Access date, 01 September 2015].

<sup>3</sup> Human Right Watch, <http://www.hrw.org/news/2014/02/13/libya-gaddafi-son-ex-officials-held-without-due-process>, [Access date 01 September 2015].

<sup>4</sup> International Justice Monitor, <http://www.ijmonitor.org/2015/08/prosecution-asks-chamber-to-order-libya-to-surrender-gaddafi-to-the-icc/>, [Access date, 01 September 2015].

Libya is in non-compliance with the ICC Statute as engrained in Article 87(7) of the Rome Statute which instruct that:

"Where a State party fails to comply with a request to cooperate by the Court contrary to the provisions of this Statute, thereby preventing the Court from exercising its functions and powers under the Statute, the Court may make a finding to that effect and refer the matter to the Assembly of States Parties or, where the Security Council referred the matter to the Court, to the Security Council".

In this light of the provision mentioned above, the Pre-Trial Chamber referred the matter to the UNSC. It is also worth noting that the UNSC has equally [taken note of the Pre-Trial Chamber's non-cooperation decision](#) and has repeatedly emphasized the importance of cooperating with the ICC regarding the situation in Libya in its plethora Resolutions [2213 \(2015\)](#)<sup>6</sup>, [2174 \(2014\)](#)<sup>7</sup>, [2144 \(2014\)](#)<sup>8</sup>, [2095 \(2013\)](#)<sup>9</sup>, [2040 \(2012\)](#)<sup>10</sup>, [2016 \(2011\)](#), and [2009 \(2011\)](#). Cooperation as demonstrated in these resolutions includes the obligation by Libya to enforce Gaddafi's arrest warrant, the OTP contend that: "Libya must refrain from any action that would frustrate the Court's ability to exercise jurisdiction over Mr. Gaddafi, including, most glaringly, carrying out any death sentence rendered against him" the OTP further requested that the UNSC be informed of the death penalty sentence against Mr. Gaddafi. Concurring with this position, the prosecutor

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<sup>5</sup> The UNSC Resolution 1970 (2011) in Paragraph 5 provides that: "the Libyan authorities shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution and, while recognizing that States not party to the Rome Statute have no obligation under the Statute, urges all States and concerned regional and other international organizations to cooperate fully with the Court and the Prosecutor".

<sup>6</sup> In this Resolution, the UNSC in paragraphs 5 and 7: "Calls upon the Libyan government to promote and protect human rights, including those of women, children and people belonging to vulnerable groups, and to comply with its obligations under international law, and calls for those responsible for violations of international humanitarian law and violations and abuses of human rights to be held accountable", The Security Council further instruct that "the Libyan government to cooperate fully with and provide any necessary assistance to the International Criminal Court and the Prosecutor as required by resolution 1970 (2011)."

<sup>7</sup> The Security Council (SC) in paragraph 2 frown against the use of violence against civilians and civilian institutions and commands that those responsible to be held accountable.

<sup>8</sup> See paragraph 3 of the S/RES/2144 (2014), in line with note 5 supra.

<sup>9</sup> See paragraph 4 of this resolution in tandem with note 5 supra.

<sup>10</sup> The SC in paragraph 3 of S/RES/2040 (2012) emphasize that the Libyan government should: "promote and protect human rights, including those of women and people belonging to vulnerable groups, to comply with their obligations under international law, including international humanitarian law and human rights law, and calls for those responsible for serious violations of such law, including sexual violence, to be held accountable in accordance with international standards...".

argued that "this is not only the latest manifestation of Libya's failure to cooperate with the Court, but also one that will be irreversible should Mr. Gaddafi be executed".<sup>11</sup>

In summary, from the standpoint of the OTP of the ICC as explained above, it is clear that Libya is in violation of the Security Council Resolution 1970 (2011), and of course Article 87(7) of the ICC Statute, this amounts to non-observance of her international obligation as a member state of the international community.

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<sup>11</sup> International Justice Monitor, <http://www.ijmonitor.org/2015/08/prosecution-asks-chamber-to-order-libya-to-surrender-gaddafi-to-the-icc/>, [Access date, 26 September 2015].