

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/11-01/11  
Date: 28 October 2019

**THE APPEALS CHAMBER**

**Before:** Judge Chile Eboe-Osuji, Presiding Judge  
Judge Howard Morrison  
Judge Piotr Hofmański  
Judge Luz del Carmen Ibáñez Carranza  
Judge Solomy Balungi Bossa

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

**Public**

**Written Observations of the Libyan Cities and Tribes Supreme Council pursuant to Rule 103 and the Decision on requests for leave to file observations pursuant to Rule 103 of the Rules of Procedure and Evidence**

**Source:** Libyan Cities and Tribes Supreme Council

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

**The Office of the Prosecutor**

Ms. Fatou Bensouda, Prosecutor

Mr. James Stewart

Ms. Helen Brady

**Counsel for the Defence**

Mr. Essa Faal

Ms. Venkateswari Alagendra

Mr. Aidan Ellis

Mr. Khaled Al Zaidy

**Legal Representatives of the Victims**

Ms. Paolina Massidda

**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**

**States' Representatives**

**REGISTRY**

---

**Registrar**

Mr. Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

1. In the onset, we would like to extend our deepest thanks for availing us the opportunity to present our written observations concerning the decision delivered by the Honorable ICC Pre-Trial Chamber.
2. The current conflict in Libya, since it broke out in February 2011, has been – in essence – between the State of Libya and a number of dissidents who managed, with foreign assistance, to overthrow the State and tighten their grip on all joints of the State and since then went on inflicting exemplary maltreatment on their opponents, supporters of the former regime, who represent the collapsing State of Libya. They did so despite the warnings pronounced by the United Nations Security Council that urged all parties to comply with human rights conventions and international humanitarian law.<sup>1</sup>
3. In observation of the international conventions and international humanitarian law, particularly Article (6) Paragraph 5 of Protocol II Additional to Geneva Conventions of 12 August 1949 adopted in 1977<sup>2</sup> it is required that, "At the end of hostilities, the authorities in power shall endeavor to grant the broadest possible amnesty to persons who have participated in the armed conflict...".
4. The new leaders of the State of Libya, however, did not show the least regard to Security Council calls or to such mandatory legal rule, rather they deliberately vitiated them and endorsed the law of reprisal by passing laws that contradict those principles such as law 35 of 2012<sup>3</sup> that provided for amnesty of certain offences that was applied only to February Advocates to the exclusion of former regime supporters, and law 38 of 2012<sup>4</sup> that provided amnesty to February Advocates for any offences committed thereby during the incidents that broke out in February 2011. The immediate result has been worsened security condition, hundreds of thousands of Libyans were threatened of losing their lives and assets and the establishment of the State of Justice and Law was held over.
5. Another factor that contributed to holding over of the rise of the State of Libya, which also resulted from failure to declaring the General Amnesty Law, namely the failure of the mechanisms that managed the crisis, including the United Nations Mission in Libya, to use the legal instruments of post-conflict states, i.e. amnesty, conciliation and transitional justice, besides the special institutions that manage the transitional stage as stated by the principle of the "Responsibility to Protect" adopted by the United Nations 2005 Summit<sup>5</sup>. This principle outlines the features of reconstructing the State receiving intervention by creating special reconstruction institutions that require, inter alia, arms collecting committee and mini national government for the management of the crisis and getting ready for constructing post-transition institutions and State stability.
6. This slip towards the non-statehood situation that has been entrenched by the arbitrary applications of General National Conference and its government and the militias that controlled the joints of the State that was aggravated in 2014 when armed conflict broke out between Islamic Current and Moderate Current urged a host of Libyan tribal figures to launch an initiative to rescue the country from such a slip by creating a social body to fill the gap caused by the absence of real institutions of the State due to the conflict. Thus, the Libyan Cities and

<sup>1</sup> Security Council Resolution No. 2011/2016 dated 27/11/2016, Doc. No. S/RES/2016

<sup>2</sup> Geneva Conventions, ICRC website: <https://www.icrc.org/ara/resources/documents/misc/5ntce2.ht>

<sup>3</sup> Libyan Official Gazette, Issue No. 6 Dated 19/05/2012, Page 300

<sup>4</sup> Ibid. Page 3005

<sup>5</sup> Responsibility to Protect Report of the International Commission on Intervention and State Sovereignty. United Nations Doc, No. A/RES/59/314

Tribes Supreme Council, comprising a minimum of 2000 Libyan tribes covering the whole Libyan territory, was established.

7. The purpose for which the Council was established was to take Libya out of the crisis it has been undergoing through real and comprehensive conciliation based on all parties' abandonment of their claims against each other or postponing the consideration of those claims until the State shall have been reconstructed. This can be achieved by way of signing Social Charter and granting general amnesty for all detainees of the former regime supporters and others for all Libyans to be involved in the process of building their State<sup>6</sup>.
8. In implementation of that ambitious program, the Tribes Conference held a series of conferences in several Libyan cities and reached a large number of conciliations among conflicting tribes and cities. The second and important step in reaching conciliation among Libyans was the Conference's addressing the Libyan Parliament to issue a general amnesty law to cover all internal prisons' detainees and displaced people abroad for the acts committed thereby since February 15, 2011<sup>7</sup>. This law has effectively helped in the return of thousands of Libyans and benefitted a number of detainees.
9. The Parliament enactment of law 6 of 2015 was dictated by the current societal and security conditions that are detrimental to Libya, a matter that the Libyan Tribes Council and Parliament had understood. The enactment of that law came as a reaction of passing by the General National Conference of the above-mentioned laws that gave rise to discrimination among Libyans and breached the principle of justice and equality<sup>8</sup>.
10. The Parliament enactment of the above law is based on the explanatory note submitted by a group of representatives to the head of the house of Representatives requesting the enactment of this law to contribute to creating societal ambient environment conducive to reconciliation and accord. This note has been the first instrument issued in Libya after the collapse of the regime in 2011, which is in compliance with the rules of the international humanitarian law and the rules of transitional justice. Firstly, this instrument points out that "the detained supporters of the former regime are a party to an internal conflict who acted out of their personal conviction that what they did was not outlawed and they did not have criminal tendency"<sup>9</sup>. This accords with Article (6) Paragraph 5 of Protocol II Additional to Geneva Conventions of 12 August 1949 Adopted in 1977 that reads, "At the end of hostilities, the authorities in power shall endeavor to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained"<sup>10</sup>.
11. ICRC interpreted that Article as follows, "This Article is meant to encourage conflicting parties to end the armed conflict"<sup>11</sup>. The Pre-Trial Chamber while in quest for ending the conflict, should have applied that Article rather than resorting to expanding the interpretation of Article 21 that permits exploring other sources since the Statute has been silent as regards such a case (the effect of general amnesty on persecution of gross offences) which was presented to Rome

<sup>6</sup> Article 5 of the Institutional Statement of Libyan Tribes and Cities Conference held at Al Aziziyah on 25/05/2014

<sup>7</sup> The Parliament passed special amnesty for a number of officers and soldiers, and certain politicians in January 2015

<sup>8</sup> A larger number of national and international human rights organizations criticized those laws

<sup>9</sup> Document issued by Legal Committee of the Libyan Parliament, hereto attached, Doc. 1

<sup>10</sup> Geneva Conventions, ICRC website, <https://www.icrc.org/ara/resources/document/misc/5ntce2.ht>

<sup>11</sup> ICRC, Letter from Legal Division to the Prosecutor of the ICTY, 24 Nov. 1995

Preparatory Conference for the Establishment of ICC and rejected by the States Members<sup>12</sup>. Furthermore, the ICC judiciary was void of any precedence concerning the effect of general amnesty on those crimes. Since Libya is not a member to Rome Statue and did not ratify it, however, required to be subject to the Court as per Security Council referral, therefore, it is our position that the law applicable to the Libyan case is Geneva Conventions and their Additional Protocols, and all conventions on *jus in bello* to which Libya is a party rather than applying Rome Statue to the exception of characterizing offences and penalties.

12. We, the Council, well know and reiterate that it has been the intent of the Libyan legislator, the Parliament, behind the passing of this law was, from the very beginning, to apply Article 6, Paragraph 5 of the Additional Protocol II (1977) of Geneva Conventions of 1949 to its broadest scope for such general amnesty to cover all categories, both the supporters of the former regime and February Advocates.
13. The purpose of passing of this law was to prevent Tripoli Government from applying laws 35 and 38 of 2012 that provide for amnesty of revolutionists from prosecution and punishment for gross offences committed thereby during the incidents of February 2011 and thereafter and preventing others from benefitting from that law, thus undermining the equality of all Libyans.
14. This interpretation is based on the fact that Libyan Law adopts the principle of monism of national and international law and not the dualism thereof. This means that an international convention, upon being ratified by Libyan competent authorities, becomes a national law enforceable in Libya with no need for passing an enabling act for the enforcement thereof. This rule has been reiterated by the judgments pronounced by the Supreme Court of Libya in more than one occasion, last of which was its judgment delivered on 23/12/2013 that states that, "... international conventions to which the Libyan State is a party shall, upon completion of ratification process by the legislative power, have immediate effect and priority of application to national law with no need to amend contradicting national provisions"<sup>13</sup>. Based on the above, the General Amnesty Law shall apply in tandem with international conventions. Thus contradicting provisions with conventions on international humanitarian law applicable to this case should be addressed by way of legal methods that eventually ensures application of the convention. This law, from the one hand, conforms to Article 6 paragraph 5 of Additional Protocol II, however it may contradict Article 146-2 of Geneva Convention IV of 1949 that requires parties to, "... search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts".<sup>14</sup> However, we hold that that Article has been, in practice, qualified by Additional Protocol II that is subsequent to the convention of 1949 in implementation of the international law legal principle that all sources thereof are equal and graduation of its rules as emphasized by Article 103 of United Nations Charter, since a later statute repeals an earlier one, *lex posterior derogat priori*, and special words derogate from general ones, *specialia generalibus derogant*.
15. One of the reasons that urged the Parliament to enact this law and subsequently apply it to Saif Al-Islam was the delivery of unjust judgments against him and others supporters of the former regime that are disproportionate to the accusations levelled at them. We are fully confident of the integrity and independence of Libyan judiciary and do not have the least of doubt concerning the due process adopted in pronouncing the judgment in the case No. 630 of 2012, however, the Parliament and the Council do understand that trial has been in such an environment that was infested by militias practices in Tripoli that tend to afflict retaliation and revenge, particularly

<sup>12</sup> See the independent opinion of Judge Marc Perrin de Brichambuat on the Pre-Trial Chamber, Appeal, 8 May 2019, Doc. No. ICC-01/11-01-11/662-Anx 08-05-2019 4/61 NM PT

<sup>13</sup> Constitutional Appeal 1 of 57, Judiciary 2013

<sup>14</sup> Geneva Conventions, ICRC website <https://www.icrc.org/ara/resources/documents/misc/5ntce2.ht>

after the early years that followed the collapse of the regime. The testimonies presented by and confessions obtained from the accused could have been defective and affected by such congested environment. Consequently, the passing of this law was for the protection of justice not to the detriment thereof. Testifying to this was the abolition by the Parliament of most of the laws enacted by the National General Conference that were in departure from human rights norms and constitutional declaration, such as political exclusion law dated 05/05/2013<sup>15</sup> which excluded a significant and large bracket of Libyan population from exercising their respective functional rights in the Libyan State, and the law on seizing the assets of certain symbols of the former regime<sup>16</sup>.

16. This legal constitutional rectification has been the precursor for the enactment of the General Amnesty Law in order not to waste other rights of a significant and large bracket of Libyans, particularly in view of stubbornness of Tripoli militias which do not submit to the Parliament and incessant enacting by the dissolved General National Conference and its government of laws and decrees that contradict legitimacy. Therefore, the enactment and application of this law become a legal and societal necessity which underpins its legitimacy and valid application thereof to the persons addressed thereby.
17. Regarding the valid application of the law, which has been a matter of doubt, we would like to inform you that we, the Council, immediately upon this law has been passed, approached by Albayda Government to give effect to it and apply it without any discrimination to all political prisoners out of our conviction that that Government is not controlled by the militias as has been the case for the Government of Accord seated in Tripoli. The Accord Government established by Sokhairat Accord, despite the fact of being internationally recognized, is completely unable to enforce the resolutions and laws that appertain to national reconciliation. The criterion of government legitimacy is its effectivity and control over the situation on the ground not the fact of being recognized. "International recognition can never constitute an instituting element of a state or government, it is rather an element that reveals the existence thereof" as so expressed by international law jurisprudence. Testifying to the above is the Accord Government's inability to enforce court judgments and ministerial decrees that fall within its jurisdiction, for instance:
  - A) The judgement delivered by Tripoli Court of Appeal dated 05/04/2018 on acquittal of Al-Saadi Gaddafi of the charges leveled at him. This judgment is not executed so far.
  - B) The ministerial decision of justice No. 514 of 2019 dated 20/07/2019 on medical release of Dr. Al Baghdadi Al Mahmoudi (Head of The Libyan Government in the former regime) is not executed so far due to militias opposition.
  - C) Court decision of release for a group of Libyan soldiers from Al Rowemy prison dated 05/06/2016. Those soldiers were murdered by the militias despite the acquittal judgment (known as Al Rowemy prison massacre), the Accord Government was neither able to provide security for them nor enforce the judgment delivered in their favor.

Based on the above we can conclude that Al Bidaa Government is a legitimate one because it is effective and has control over a large area of the Libyan territory, 70% of the total area of Libya, including Zantan City in which Saif Al-Islam Gaddafi is detained. In addition to the above, the Libyan Parliament failed to give confidence to Accord Government during the period in which the General Amnesty Law was applied to Saif Al-Islam Gaddafi and others. Therefore, Al Baidaa Government is still endowed with exercising the Executive power in Libya as per the

<sup>15</sup> Law 13 of 2013 dated 08/05/2013, Official Gazette, issue 13.

Florence Gaub, researcher at European Union Security Studies institute described in her study titled "Law and Anarchy" the Libyan Political Exclusion Law as the most extremist example of cleansing laws worldwide. Explaining that description, she said that it does not differentiate between those who committed violations of human rights and others who had only administrative roles. Thus, this law contradicts all legal principles by inflicting collective punishment instead of addressing alleged crimes on case by case basis.

<sup>16</sup> Law 36 of 2012 on seizing the assets of certain symbols of the former regime, Official Gazette issue 36 dated 18/06/2012, page 617.

resolutions of the Parliament, thus the acts of this government are deemed valid from the perspective of law.

18. Based on the above, our endeavors to enforce the General Amnesty Law were for protection of justice not undermine it. We hold that the present stage Libya is undergoing is one of turmoil and transition that should be managed through reconciliatory justice not that of penalty. Such justice can be released by using tools that suit the conflict transitional stage which Libya is undergoing currently, on top of which comes general amnesty. Reconciliatory transitional justice should absorb social and legal concepts which, on the one hand, guarantee social security and accord and, on the other hand, guarantee the application of justice. For this justice to be achieved, we, the Council, came out with an initiative represented in the application of two essential principles that set the frame for General Amnesty Law, namely " **criminal reconciliation and /Equality**)

**" criminal reconciliation "**

19. The idea of amnesty for serious crimes related to human rights raises the issues of impunity, absence of deterrence from those serious crimes which constitute international crimes, and the violation of the victim's rights. In order to avoid the aforementioned issues, the Libyan Cities and Tribes Supreme Council formulates an initiative to mediate between the victims of alleged crimes and the accused perpetrators, with the assistance of the Libyan judiciary and the Libyan Parliament within the framework of the " criminal reconciliation ", while maintaining the process of social peace, i.e. maintaining the balance of justice and social peace. So, what is the content of this criminal reconciliation
20. " criminal reconciliation " used in a large number of national legal systems is, in general, a tool for the abatement of criminal action and avoidance of a criminal sentence in a matter of criminal offense and replace the judgment with a fine to be paid by the accused and determined by law by agreement between the accused and the victim. This shall be done with the knowledge of the Public Prosecution or any other authority as agreed between the parties. This " criminal reconciliation " may occur between the offender and the victim directly or indirectly through mediating third party, where it will be called criminal mediation. The Libyan legislator provided for the implementation of criminal reconciliation in Articles 110 and 111 of Libyan Penal Code No. 48 of 1956, as amended by Law No. 5 of 1999, and makes it a general rule that the criminal action shall abate in case of contravention.<sup>17</sup>
21. So, it is clear that the criminal reconciliation or the criminal mediation in Libyan Penal Code can only be applied to contraventions and misdemeanours and does not include felonies. Therefore, we cannot deliver restorative justice in these cases under Libyan Penal Code. However, according to Islamic Sharia, the Libyan Penal Code permits the application of general amnesties in major offences such as murder, bodily injury and wounds. Article (1) of the Libyan Law regarding Retaliation for Murder and Blood Money reads as follows,

"- Capital Punishment shall be imposed on any one who deliberately killed an inviolable person. In case of failure to retaliate for murder due to amnesty for those entitled to it or due to any other lawful reasons as required by Article (7) of this Law, the provisions of Penal Code shall apply.

- The offender may agree with the avengers of blood to waive their right of retaliation whether or not for consideration".<sup>18</sup>

<sup>17</sup> See the encyclopedia of Libyan criminal laws, house of justice and law, published on the website on 25/09/2009. See also [www.justice\\_lawhome.com](http://www.justice_lawhome.com). See also <http://www.e-lawyerassistance.com/legislation/Libya/penallawAr>.

<sup>18</sup> Law No. 18 of 2016 regarding amendment of some provisions of Law No. 6 of 1423 A.H. regarding Retaliation for Murder and Blood Money, Official Gazette, issue (4), fifth year, 04/2016, page 232.

22. The principle of amnesty for crimes is a general one which has been widely recognized by Islamic Sharia. On this basis, its rules are peremptory and binding. This obligation finds its basis in the religious belief of Libyan people. We must have recourse to amnesty to achieve what the Holy Qur'an urged us to do, which is binding on the parties: the defendant and the claimant, to restore peace throughout Libya through "criminal reconciliation". The Libyan Cities and Tribes Supreme Council will serve as mediator to achieve this "criminal reconciliation".

### **Principle of Equality or Right to a Equality**

23. The application of punishment in this case which is demanded by the International Criminal Court may deliver justice to certain persons who were injured by those alleged crimes, but will not achieve social peace and may lead to more serious crimes due to insecurity and collapse of State institutions. Consequently, the Court opts either to achieve justice through punishment, in which case security condition will worsen due to the quest for arresting the accused and surrendering him, which is torn between several authorities, or achieving justice in a way that is less detrimental to the society by resorting to applying the principle of remedy in this case.
24. The concept of remedy means that "Everyone will get what he deserves regardless of the exact text of the law". Article (38) of the Statute of the International Court of Justice reads as follows, "This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto". This Court has applied the rules of *ex aequo et bono* to a number of cases such as North Sea Continental Shelf Case between Germany and Denmark in 1969<sup>19</sup>, and Fisheries Jurisdiction Case between Iceland and United Kingdom<sup>20</sup> in 1973. In addition, the Libyan State has resorted to those rules more than once in its conflicts with other states, such as requesting the International Court of Justice to apply the principle of *ex aequo et bono* in the settlement of the conflict with Tunisia over the continental shelf in 1977<sup>21</sup>, and the conflict with Malta over the continental shelf in 1982<sup>22</sup>. In both cases, Libya requested the Court to order that the area of the continental shelf shall be (equally) divided regardless of its legal right guaranteed by the international conventions to which Libya is a party. The principle of remedy is not restricted to international conflicts, but it may be used to settle civil conflicts between individuals whether during international or domestic armed conflict or internal turmoil.
25. First and foremost, **the principle of right to a Equality in civil conflicts** means the right to defend the interests of individuals before independent and impartial body, with a view to obtaining recognition of the existence of violation, bringing this violation to an end if it is continuing and obtaining proper reparation. The right to remedy is also linked to the right to reparation in various ways. Accordingly, the independent assessment constitutes the first step towards obtaining reparation. The term "remedy" is sometimes understood to include reparation, as is the case with the resolutions of the Human Rights Committee of the United Nations. The Human Rights Committee considered that the right to an effective remedy should necessarily involve the right to reparation. The term "remedy" is used to refer to the procedural remedy, while the term "reparation" refers to the obligation to compensate, satisfy, reinstitute and rehabilitate.<sup>23</sup>

<sup>19</sup> N°69/1 TR 15 février 1969, Affaires du Plateau continental de la mer du Nord (République fédérale d'Allemagne/Danemark République fédérale d'Allemagne Pays-Bas.

<sup>20</sup> No 74/10' 25 Juillet 1974 Compétence en matière de pêcheries (République fédérale d'Allemagne c . Islande.

<sup>21</sup> Tunisia/ Libya, 1982, review of the International Court of Justice, Jugement of th Continent al Shelf (Tunisia/Libyan Arab jamahiriya).

<sup>22</sup> 1984 21 March General List No. 68 YEAR 1984 21 March 1984 CASE CONCERNING THE CONTINENTAL SHELF (LIBYAN ARAB JAMAHIRIYA/MALTA) APPLICATION BY ITALY FOR PERMISSION TO INTERVENE.

<sup>23</sup> (referred to as United Nations Principles on Reparation) at its sixty-one session in April 2005.



26. Therefore, it can be argued that remedy must lead to the rescission of the disputed decision. In case of a punishment, the penalty may be abolished before the execution. So, we can say that remedy has already ceased the violation the victim is suffering from.<sup>24</sup>
27. Among the various applications of this mechanism, the right to a remedy is guaranteed by the international law, which is the right to remedy by claiming financial compensation. Therefore, remedy is necessary to ensure fair and adequate compensation. International Human Rights Law does not only provide for the right to financial compensation, but also places responsibility on the states to ensure, in their national laws, the procedures for obtaining this compensation, as is the case with compensation for unlawful detention. Article (9) paragraph (5) of the International Covenant on Civil and Political Rights reads as follows, "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation". Based on Article (6) of International Covenant on Civil and Political Rights, the Committee on the Elimination of Racial Discrimination (CERD) recognized in the case of "B.G." vs Denmark that under the right to an effective remedy to combat racial discrimination, the claim for reparation shall be examined in each case. In the same context, Article (5) paragraph (5) of the European Convention on Human Rights ensures the right to a remedy in order to claim for reparation in case of unlawful arrest or detention and the right to an effective remedy under Article (13) of the Convention. The European Court also recognized that if the law ensures remedy in order to claim for compensation, this remedy constitutes civil right within the meaning of Article (6) of the European Convention on Human Rights, so that this procedure shall comply with the requirements of fair trial.
28. We note, in this context, that a number of those executed or sentenced for life in Libya in case No. 630/2012 have been amnestied and discharged, and the crimes, for which they are sentenced, have the same charges brought against Mr. Seif Al Islam Gadafi. The victims' rights weren't affected by this amnesty, and those victims didn't challenge this Law along with the nonexistence of any claims regarding the alleged victim's rights. Moreover, some cases of release resulted from reconciliations carried out by the social councils<sup>25</sup>.
29. The mechanism of remedy is more inclusive and flexible than the mechanism of "**criminal reconciliation**", as the mechanism of remedy can be implemented throughout all stages of case proceedings starting from investigation to sentence pronouncement. However, the mechanism of "**criminal reconciliation**" cannot be implemented unless the sentence is rendered and proves the charge leveled at the accused. Therefore, we hereby implore the honorable Court to merge those two mechanisms in order to materialize more guarantees for the parties.
30. The judicial system, whether national or international, shall reconsider the mechanisms of managing conflict in order to establish an efficient criminal policy which is apt to achieve justice based on humanitarian, social and security considerations.
31. We, as a social council, can initiate the process of social and humanitarian nature as a neutral body in Libya, additionally, we can lawfully control the issue through consultations with legal experts.
32. The combination of both principles, **criminal reconciliation** and **Equality**, incarnates the concept of restorative justice, bringing to accord the conflicting parties and consolation of Libyans affected by the state of war throughout the events that broke out in February 2011 and puts into effect the General Amnesty Law in order to achieve justice and remedy-based reconciliation that constitute the baseline of managing transitional or exceptional stages.
33. This is what we are seeking and aiming at through our keenness to enforce the General Amnesty Law to all brackets, taking into account along with reminding the Honorable Court of the

---

<sup>24</sup> Ibid.

<sup>25</sup> Under this scope, 1- Abu Zeid Dorda (executed), 2- Mohamed Aggag (executed), 3- Basher Hamidan (executed), 4- Oueidat Ghandour (executed), 5- Hosny Al Wahishi Al Sadiq (executed) had been released.

distinctive nature of the structure of Libyan society, along with legal rules to which this society is subject, which are of a consensual and reconciliatory societal content and not rigid inert rules which Libya is in dire need to be apply sooner than later. Therefore, the Pre-Trial Chamber's conclusion that General Amnesty Law contradicts human rights rules and its application will enhance impunity is a matter of exaggeration because the Chamber didn't take into account the nature of the Libyan society, the customary rules governing it and the nature of transitional stage which must be governed by flexible rules. It is to be noted that the Supreme Court in Libya had acquitted the supporters of the former regime who have been detained and accused, taking into account the nature of the conflict within scope of which they were charged, along with the nature of rules governing this stage, among whom those who received sterner sentences including the supporters of the former regime who have been tried in the matters of case No. 630/2012.<sup>26</sup>

34. Therefore, we see that the broadened interpretation of the Pre-Trial Chamber regarding the Libyan law governing the present case, along with its consideration that the rendered judgment doesn't meet the purpose contemplated in Article (20/3), is disregard on the part of the Court to the nature of the legal rules governing the present stage in Libya. The Ministry of Justice in Libya understood the nature of the stage and approached the legislative bodies to amend the provisions of law, along with issuing other laws that meet the judiciary needs to handle the files brought before it. This precisely applies to the initiative of Libyan parliament to issue the General Amnesty Law. Therefore, considering the judgment issued by Tripoli Criminal Court a non-final one due to being issued *in absentia*, contradicts, firstly, its position regarding Abdullah Al Senusi's case which was ruled inadmissible before it and remanded the case to the Libyan judiciary along with considering that the Libyan judiciary is able to rule on the trial, secondly, its broad interpretation of Article (20) of Rome Statute of International Criminal Court. The trial of Mr. Seif Al Islam Gadaffi meets the conditions stipulated in this Article. He has been tried before another court for a conduct which is prohibited according to Article (6), Article (7) or Article (8). Moreover, the trial was not to shield him against criminal liability (Article 3/A), and it satisfied the requirements of due process recognized by international law as per Article (3/B). Therefore, Mr. Seif Al Islam Gadaffi was subject to the same proceedings and authorities as Abdullah Al Senusi. The public prosecution interrogated Mr. Seif Al Islam Gadaffi is the same prosecution that interrogated Abdullah Al Senusi, and the court which sentenced Abdullah Al Senusi is the same court that sentenced Mr. Seif Al Islam Gadaffi within the same procedural and substantive legal frame to which the two were subject.
35. Additionally, the Court's statement that the case of Mr. Seif Al Islam Gadaffi was not adjudicated by a final judgment by the Court of Cassation is an unacceptable broad interpretation of the text, since the issuance of the General Amnesty Law along with another decision by the competent authorities that that law applies to Mr. Seif Al Islam Gadaffi shall suspend taking cognizance of the case and abate the claim and thus, Article (17/C) of Rome Statute of International Criminal Court shall apply thereto.
36. Every act of the judicial and legislative authorities in Libya verily responds to the procedural and substantive rules of Rome Statute of International Criminal Court and International Conventions that govern domestic and international conflicts, such acts fall within the ambit of establishing restorative justice that aims at achieving the international peace and security along with societal stability.


---

<sup>26</sup> In two recent judgments of the Supreme Court regarding the conflicts which resulted from the changes that took place in Libya as of February 2011, the Court acquitted persons alleged to have resisted the February revolution or impeded it. The Court decided that those who have taken up arms during the confrontations were in a legitimate position as they did so in accordance with the laws that are still effective. Criminal Appeal No. 31/01 Judicial year, 31/12/2017, (Soqour Abu Issa's case) <https://supremecourt.gov.ly/wp-content/uploads/2018/02/60-18hg.pdf>, additionally, the Court annulled an administrative decision on depriving someone from a job on grounds of accusation of being hostile to 17<sup>th</sup> of February revolution, Administrative Appeal No. 22/95 Judicial year, dated 18/11/2012.

### Summary

38. Based on the above, we conclude that the Pre-Trial Chamber decision on the dismissal of the appeal submitted by Mr. Seif Al Islam Gadafi regarding the inadmissibility of the case didn't take into account all relevant facts and circumstances of the case which is crucial for Libyan people. The difficult stage Libyan people is undergoing calls on all international organizations to support it to go out of such a long term suffocating crisis. We, as a social institution, implore the International Criminal Court, the guardian of international justice, to understand the present situation and to manage the case utilizing new mechanisms that commensurate with the social and security conditions of Libyan society and achieve real lasting justice to settle that dispute.
39. Mr. Seif Al Islam Gadafi won an overwhelming support from all Libyans. Libyan tribes spread all over Libya and affiliated to this Council entrusted him to lead a comprehensive reconciliation. We received so many calls calling on this Council to communicate their voice to Your Honor to refrain from tracing Mr. Seif Al Islam Gadafi and not to prosecute him before your Honorable Court along with leaving his file to Libyan affairs and Libyan people to handle as per the Libyan law and in accordance with the vital interests of the Libyan people.
40. The assembly of tribes is seeking through this motion to stop foreign interference in Libyan people's affairs, be it political, military, economic or legal, which was the essential reason for involving Libya in the present anarchy and fueling political and social conflicts in it.
41. The ruling on this case by dismissing the appeal submitted by Mr. Seif Al Islam Gadafi on the inadmissibility of the case will lead to the Court requiring him to appear before it, i.e. to be surrendered, a matter which will lead to renewed violation of Libyan sovereignty through international interference to arrest Mr. Seif Al Islam Gadafi for rejection of the Libyan State or out of its caution of surrendering him for fear of escalation, once again, of the conflict among groups and tribes. If this happens, God forbade, Libya will be heading for new war that would give rise to perpetration of crimes and infringements which are more serious than those leveled at Mr. Seif Al Islam Gadafi in the matters of the present case.
42. The settlement of this conflict through restorative justice based on the combination of **criminal reconciliation**, amnesty, rules of justice and **Equality** will achieve the objective of the court including suppression of committal international crimes, **Equality** for the victims of those crimes, preventing violators from evading of justice. This is because we, the Tribes Council, are a body to which Libyans resort to settle their conflicts, and, in our turn, make initiatives in order to end conflicts between entities and individuals within the community. We aspire at the honorable ICC to set a legal precedent by endorsing the General Amnesty Law passed by Libyan Parliament as a social legal tool for settling conflicts and adopt restorative justice as an alternative to punitive justice, along with holding valid the trial of Mr. Seif Al Islam Gadafi by admitting the appeal submitted thereby and reverse the Pre-Trial Chamber decision that ruled dismissal the appeal.

Submitted with utmost respect,

  
  
**Agili Al-Brini**  
**Head of the Libyan Cities and Tribes Supreme Council**

Dated this 28 October 2019

At Libya