

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **30 July 2015**

PRE-TRIAL CHAMBER I

Before: Judge Joyce Aluoch, Presiding Judge
Judge Cuno Tarfusser
Judge Péter Kovács

SITUATION IN LIBYA

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

Public

**Prosecution Request for an Order to Libya to
Refrain from Executing Saif Al-Islam Gaddafi,
Immediately Surrender Him to the Court, and
Report His Death Sentence to the United Nations Security Council**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Julian Nicholls

Counsel for Saif Al-Islam Gaddafi

Mr John R.W.D. Jones
Ms Sarah Bafadhel

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

Ms Paolina Massidda

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

States Representatives

Mr Ahmed El-Gehani
Mr Philippe Sands
Mr Payam Akhavan
Ms Michelle Butler

Amicus Curiae

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section Other**

Submissions

1. On 28 July 2015, the Tripoli Court of Appeal sentenced Mr Saif Al-Islam Gaddafi (“Mr Gaddafi”) to death along with several other co-accused for their roles during Libya’s 2011 uprising.¹
2. The Prosecution requests that the Pre-Trial Chamber I (“Chamber”) order Libya to refrain from carrying out Mr Gaddafi’s sentence, surrender him forthwith to the Court, and inform the United Nations Security Council of the death sentence handed down to Mr Gaddafi by the Tripoli Court of Appeal.
3. Mr Gaddafi should not even have been on trial in Libya because his case before the ICC was found admissible on 31 May 2013, as confirmed by the Appeals Chamber on 21 May 2014.² Libya has been reminded on multiple occasions to immediately surrender Mr Gaddafi to the Court as required by these decisions,³ but has failed to do so or provide reasons for its failure.
4. Due to Libya’s failure to surrender Mr Gaddafi to the Court, this Chamber has already found Libya in non-compliance with the Court pursuant to article 87(7) of the Rome Statute.⁴ This Chamber notified such finding to the Presidency under regulation 109(4) of the Regulations of the Court for the Presidency to transmit the non-compliance decision to the United Nations Security Council.⁵
5. Mr Gaddafi’s case remains admissible before the Court, with the Appeals Chamber having affirmed its admissibility.⁶ The Court’s warrant of arrest for Mr Gaddafi is outstanding, and Libya continues to be obligated to cooperate with the Court under United Nations Security Council Resolution 1970 (2011). This obligation

¹ See, among others, <http://www.bbc.com/news/world-africa-33688391>; <http://www.aljazeera.com/news/2015/07/gaddafi-son-saif-al-islam-libya-sentenced-death-150728084429303.html>; <http://www.nytimes.com/aponline/2015/07/28/world/middleeast/ap-ml-libya.html?hp&action=click&pgtype=Homepage&module=second-column-region®ion=top-news&WT.nav=top-news> (all visited on 29 July 2015).

² ICC-01/11-01/11-547-Red; ICC-01/11-01/11-344-Red.

³ ICC-01/11-01/11-387, para. 27; ICC-01/11-01/11-545, paras.2-3; ICC-01/11-01/11-563, paras.9, 12-13; ICC-01/11-01/11-577, paras.25-29, 34-35.

⁴ ICC-01/11-01/11-577; ICC-01/11-01/11-563, paras.11-13; and ICC-01/11-01/11-545, para.2.

⁵ ICC-01/11-01/11-577.

⁶ ICC-01/11-01/11-547-Red.

to cooperate includes the enforcement of the Court's warrant of arrest against Mr Gaddafi. Any domestic proceedings Libya has conducted against Mr Gaddafi are therefore subject to its obligations to cooperate with the Court. Libya must refrain from any action that would frustrate the Court's ability to exercise jurisdiction over Mr Gaddafi,⁷ including, most glaringly, carrying out any death sentence rendered against him.

6. The United Nations Security Council has previously been informed of Libya's non-compliance, and has in fact taken note of this Chamber's non-compliance decision and emphasised strongly the importance of the Libyan Government's full cooperation with the ICC and the Prosecutor, in its Resolution 2213 (2015). In addition, the United Nations Security Council has consistently reminded the Libyan Government of its obligation to fully cooperate with the Court and the Prosecutor as required by Resolution 1970 (2011).⁸ The United Nations Security Council should therefore be informed of the death sentence meted out by the Tripoli Court of Appeal to Mr Gaddafi, as 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.

⁷ ICC-01/11-01/11-269, para. 36.

⁸ See United Nations Security Council Resolutions 2213 (2015); 2174 (2014); 2144 (2014), operative para. 3; 2095 (2013), operative para. 4; 2040 (2012), 2016 (2011), and 2009 (2011).

7. For the foregoing reasons, the Prosecution requests the Chamber to order Libya to:

- a) Refrain from carrying out the death sentence handed down to Mr Gaddafi;
- b) Surrender Mr Gaddafi forthwith to the Court; and
- c) Inform the United Nations Security Council of the death sentence handed down to Mr Gaddafi by the Tripoli Court of Appeal.



Fatou Bensouda, Prosecutor

Dated this 30th day of July 2015
At The Hague, The Netherlands