

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/11-01/11 OA 8

Date: 8 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

**Request of the Libyan Cities and Tribes Supreme Council under Rule 103 of the
ICC Rules of Procedure and Evidence to present observations on the appeal filed
by Dr. Seif Al Islam Gadafi**

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. We, the Libyan Cities and Tribes Supreme Council, file the present request in accordance with Rule 103 of the International Criminal Court (ICC) Rules of Procedure and Evidence ("The Rules") imploring the honorable Appeals Chamber to grant us leave to clarify one of the issues arising from the Appeal of Dr. Seif Al Islam Gadafi (filing ICC-01/11-01/11-669), in particular the matter of the general amnesty endorsed by virtue of a law enacted by the only legislative power in Libya that received recognition by the international community, and from which Dr. Gadafi, the person concerned with the Appeal, benefitted.
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 maltreatment on their opponents, supporters of the former regime, who represent the collapsing State of Libya.
3. Importantly, international conventions and international humanitarian law, particularly Article (6) Paragraph 5 of Protocol II Additional to the Geneva Conventions of 12 August 1949 Adopted in 1977 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..." prosecution of those who committed war crimes and crimes against humanity shall be deferred until a state that satisfies all requirements of statehood shall have been established in order to guarantee fair trial for all parties.
4. The new leaders of the State of Libya, however, did not show the least regard to such mandatory law. Rather, they deliberately vitiated it and endorsed the law of reprisal and revenge beyond any legal standards. The immediate result has been worsened security conditions, with thousands threatened with loss of lives and assets, and the prevention of the establishment of a state based on justice and law.
5. Another factor that contributed to delaying the rise of the State of Libya was the failure of the mechanisms that managed the crisis, including the United Nations Mission in Libya, to address the needs of a post-conflict state, i.e. amnesty, conciliation and transitional justice, in addition to the special institutions that

manage transitional states, as stated by the principle of the “Responsibility to Protect” adopted by the United Nations 2005 Summit, that outlines the features of reconstructing the State receiving intervention, which should be subject to special institutions of reconstruction that require, *inter alia*, the creation of an arms collecting committee and mini-national government for the management of the crisis and preparing for building post-transition institutions and State stability.

6. This slip towards the non-statehood situation has been aggravated since 2014 when armed conflict broke out between the ‘Islamic Current’ and ‘Moderate Current’. This situation impelled 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 Tribes Supreme Council, comprising a minimum of 2,000 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 by way of signing a Social Charter and granting general amnesty for all detainees of the former regime and their supporters and others, and for all Libyans to be involved in the building of their State.
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 conciliation cases among conflicting tribes and cities.
9. The second and important step in reaching conciliation among Libyans was the Conference’s addressing the Libyan Parliament to urge it to issue a general amnesty law to cover all internal prisons’ detainees and displaced people abroad for any acts committed since 15 February 2011.
10. The Parliament’s 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.

11. The Parliament's enactment of Law 6 of 2015 is based on the explanatory note submitted by a group of representatives to the Speaker requesting the enactment of this law to contribute to creating a societal environment conducive for conciliation and accord. This note has been the first document issued in Libya after the collapse of the regime in 2011, which is in compliance with the rules of international humanitarian law and rules of transitional justice law. Firstly, this document 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 tendencies. 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." This note calls for compliance, once again, with the law, and a law that abides by those principles.
12. The Parliament member representing the city of Ghat stated that the law passed on 28 July 2015 is an important one that came as a result of an initiative launched by the Tribes Conference, which convinced a number of Parliament representatives and the legal committee to enact this law, which Parliament did.
13. All the above reiterates the existence of that law and entrenches its legitimacy and its role in realizing conciliation. Further testifying to the existence and legitimacy of this law is its application by Libyan Courts immediately after the enactment thereof. There is a judgment passed by Tobruk Court of Appeal abating the crime committed by one of the citizens due to applying the General Amnesty Law thereto. This court judgment dates back to 20 September 2015, i.e. immediately after the law has been passed.
14. Application of the General Amnesty Law by the Parliament's Interim Government contributed to returning of thousands of displaced Libyans and releasing of a number of detained supporters and high officials of the former

regime who all were involved in building the Libyan State, particularly in the Eastern region controlled by the army.

15. The General Amnesty Law enacted in response to our initiative aims at setting common grounds for conciliation and regaining of social peace and security.
16. The Libyan Tribes Council and Parliament have recognized that achieving justice sought by the Libyan Judiciary or the ICC cannot be attained by imposing punishments, rather by avoiding any and all things that lead to worsening security conditions and deterioration of social peace, which – in turn – may lead to more encroachments upon rights, and commission of graver crimes.
17. For instance, the current situation of Dr. Gadafi, who benefitted from the General Amnesty Law, in the context of the potentialities of the future of the Libyan State which is suffering from a tough security condition, is more justice-attaining than the Court's continuing to pursue him to be internationally prosecuted. The demand for surrendering him may worsen the conditions of the conflicting parties, give rise to a new war at home, and thwart the conciliation and social peace process efforts.
18. The ICC is urged to consider that the current situation is not an ordinary one. The status in Libya amounts to that of war coupled with undergoing of a transitional stage that is worthy of being managed by applying flexible interim rules that receive consensus and go beyond the normal formal ones.
19. Applying the General Amnesty Law is subject to those flexible rules that rest on international humanitarian law, human rights law and *jus in bello*.
20. Based on the above, we implore the Honorable Appeals Chamber to permit us to express our voice in this regard to submit full observations to shed light on Law 6 of 2015 and the role it plays in resolving many of the outstanding and impeding issues of peace and conciliation in Libya, in particular the case of Dr. Seif Al Islam Gadafi, who won an overwhelming support from Libyan tribes for his proposed program related to conciliation in Libya.

Submitted with utmost respect,

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

Dated this 8 October 2019

At Libya

