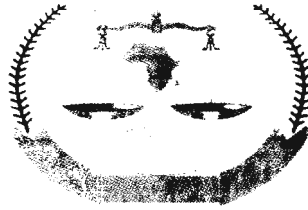


AFRICAN UNION
الاتحاد الأفريقي



UNION AFRICAINE
UNIÃO AFRICANA

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

IN THE MATTER OF
AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

V.
LIBYA

APPLICATION No. 002/2013

ORDER OF PROVISIONAL MEASURES (No. 2)

The Court composed of: Augustino S. L. RAMADHANI, President; Elsie N. THOMPSON, Vice President; Gérard NIYUNGEKO, Fatsah OUGUERGOUZ, Duncan TAMBALA, Sylvain ORE, El Hadji GUISSSE, Ben KIOKO, Rafâa BEN ACHOUR, Solomy B. BOSSA and Angelo V. MATUSSE – Judges; and Robert ENO – Registrar,

In the matter of:

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

v.

LIBYA

1. On 15 March, 2013, the Court issued an Order of Provisional Measures in the matter of Application 002/2013 – African Commission on Human and Peoples' Rights v. Libya, in which it requested Libya to:
 - i. Refrain from all judicial proceedings, investigations or detentions, that could cause irreparable damage to the Detainee, in violation of the Charter or any other international instrument to which Libya is a party;
 - ii. Allow the Detainee access to a lawyer of his own choosing;
 - iii. Allow the Detainee visits by family members;
 - iv. Refrain from taking any action that may affect the Detainee's physical and mental integrity as well as his health; and
 - v. Report to the Court within fifteen (15) days from the date of receipt of this Order, on the measures taken to implement this Order. (See order attached).
2. The Libyan government was served with the Order, through its Embassy in Addis Ababa, Ethiopia on 26 March, 2013.

3. In accordance with Rule 51(3), a copy of the Order was notified to the Executive Council and the Assembly of the African Union, through the Chairperson of the African Union Commission, by letter dated 18 March, 2013.
4. The response from Libya was expected on or before 10 April, 2013.
5. After the 15 days had elapsed and Libya had not informed the Court of the measures it had taken to implement the Order, the Court, on its own motion, decided on 12 April, 2013, to extend by another fourteen (14) days, the deadline required for Libya to react to the Order. The said letter of reminder was served on Libya through its Embassies in Addis Ababa, Ethiopia and Dar es Salaam, Tanzania, on 22 April, 2013 and 16 April, 2013, respectively. The response of Libya after this reminder was expected on or before 30 April, 2013, and Libya did still not respond.
6. Rule 51(4) of the Rules of Court provides that 'in the Annual Report submitted to the Assembly pursuant to Article 31 of the Protocol, the Court shall disclose the interim measures it ordered during the period under review. In the event of non-compliance with these measures by the State concerned, the Court shall make all such recommendations as it deems appropriate'.
7. Consequent to Libya's failure to comply with the Court Order, and in conformity with Rule 51(4) of its Rules, the Court brought the matter to the attention of the Assembly, through the Executive Council. To this end, the Court reported Libya's non-compliance with its Order to the 24th (January, 2014), 25th (June, 2014), 26th (January 2015) and 27th (June 2015) Ordinary Sessions of the Executive Council. In its decisions, the Executive Council urged Libya to cooperate with the Court and comply with the Order of the latter.
8. To date, the Libyan government has still not complied with the Order of the Court, and has failed to inform the Court of measures it has taken, is taking or is likely to take to comply with the said Order.
9. The Court is now concerned by recent reports that on 28 July 2015, the Tripoli Court of Assize tried and sentenced Mr. Saif Islam Gaddafi to death, in his absence, in spite of the Order. This verdict has been condemned by the United Nations Mission in Libya which expressed 'strong concern', that the verdict 'did not meet international standards of fair trial in a number of ways'. The trial has also been condemned by a number of international organizations, including the International Bar Association, Human Rights Watch, Amnesty International and the International Federation of Human Rights.
10. Given that an Order of Provisional Measures of the Court is binding like any judgment of the Court, the Court notes that an execution of the death sentence by the Libyan government would be a violation of its international

obligations under the Charter, the Protocol and other human rights instruments it has ratified.

11. The Court hereby reiterates the terms of its Order of 15 March 2013; and recalls Executive Council decisions Nos. EX.CL/Dec.806(XXIV); EX.CL/Dec.842(XXV); EX.CL/Dec.865 (XXVI); and EX.CL/Dec.888(XXVII), which urge Libya to comply with the Court Order of Provisional Measures of 15 March, 2015.

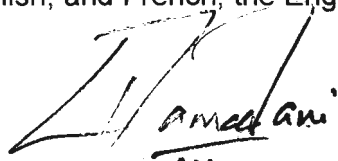
From the foregoing,

THE COURT unanimously:

- i. Orders Libya to take all necessary measures to preserve the life of Mr. Saif Islam Gaddafi and refrain from taking any action that may cause irreparable harm to the accused and jeopardize the case before the Court;
- ii. Orders Libya to ensure that the accused has a fair trial in accordance with internationally recognized fair trial standards, including the independence of the judiciary and impartial proceedings, as well as accessibility to the trial by the accused's lawyers, family and witnesses, if any;
- iii. Orders Libya to take urgent steps to arrest and prosecute those illegally holding Mr. Saif Islam Gaddafi; and
- iv. Orders Libya to report to the Court on the measures it has taken to comply with this Order within 15 days of receipt of the Order.

Done at Arusha, this tenth day of August in the year two thousand and fifteen, in Arabic, English, and French, the English being authoritative.

Signed:



Augustino S. L. RAMADHANI, President

for

Robert Eno, Registrar

