Promoting the ICC’s contribution to democratic and human rights reform in Libya

Background

Libya’s political evolution is multifaceted and remains trapped within a split and factional political framework that does not offer a vision or a path leading out of the transition. Libya’s challenges have been made most evident by the turbulent period of political volatility and violence between armed groups that has engulfed Libya since mid-May 2014 and led to a deteriorating human rights and humanitarian situation and to further polarisation of the political spectrum. Arbitrary detention, including cases where legal standards of detention are not met, where detainees are held outside the authority of the State and where ill-treatment, torture and death of people in custody remain a challenge to a fair, effective and transparent judicial system. Full respect for human rights and a holistic reform of the judicial system, based on international standards and principles, are crucial elements of Libya’s democratic transition. Libya’s political future and long-term stability will be defined by how transitional justice processes are implemented. The few seeds of transitional justice mechanisms already implanted in the Libyan legislative system have the potential to channel current tensions and frictions into inclusive and open processes, fostering a culture of dialogue, responsibility and accountability within Libyan political dynamics. The ICC represents a fundamental element of the transitional justice landscape in Libya and it is critical that Libyan authorities include it in their overall strategy to avoid the risk of creating a “two-track” process, with the ICC and the prosecution of senior former regime officials on one side and all the other elements of transitional justice on the other side.

Domestically, Law No. 29 on Transitional Justice can be a legal and political tool to foster justice and accountability that could ensure an inclusive and comprehensive transitional justice process in the country. The new Libyan Parliament, elected on 25 June 2014, will have to ensure that political and judicial reforms are elaborated and implemented and that international standards and norms will permeate the legal and judicial system. The new Libyan Parliament will also have to find practical, inclusive and democratic solutions to address the grievances of past and new victims of human rights violations and abuses and ensure that these crimes will not be-condoned or repeated.

Internationally, the ICC can have a role in supporting accountability for human rights violations and redress for victims as a political priority, in respect of both Libyan authorities and the international community. The ICC indictments issued while the conflict was ongoing were an important element in denying authority and legitimacy to the previous regime and offered hope that Libyans would one day receive justice and redress. With the end of the revolution and the new Libyan authorities proclaiming a new respect for human rights, including seeking to prosecute alleged perpetrators, the ICC can continue to play such important role, by acting as a catalyst for transformation of the Libyan judicial system as a whole, so judicial reforms can be grounded on international standards and principles.

No Peace Without Justice is an international non-profit organisation born of a campaign of the Transnational Radical Party and is constituent association of the Nonviolent Radical Party Transnational and Transparty, an NGO with General (Category I) Consultative Status at the United Nations ECOSOC.

Non c’è Pace Senza Giustizia è un’organizzazione internazionale senza scopo di lucro nata nel 1993 da una campagna del Partito Radicale Transnazionale ed è associazione costituente del Partito Radicale Nonviolento Transnazionale e Transpartito, ONG con Status Consultivo Generale di prima categoria presso l’ECOSOC delle Nazioni Unite.
For a number of reasons, including in particular misconceptions and misunderstandings about the Court, the ICC does not currently have a sufficiently meaningful impact on Libyan judicial processes or legal reform. The visit of the ICC Prosecutor to Tripoli in May 2012 seemed to be the beginning of a new interaction with the Libyan public, but it was overshadowed by the controversy related to Saif Al-Islam’s ICC public defender. For the ICC to make an effective contribution in Libya, it needs to engage the population so that they understand the ICC’s role, mandate and procedures. This way the ICC can become a catalyst for change, and help galvanise national and international support for accountability and fair trials, in line with the principle of “positive complementarity”, and the Rome ICC Statute can be used as a guide to internationally-accepted norms that can contribute to reform of the national legal and judicial frameworks.

**Activity**

The 3-day training, to be held during the last week of January 2015, will engage 15 Libyans lawyers and representatives of civil society and the media. These three target groups have been selected for their critical role in promoting judicial and legal reform to support accountability and redress for victims, in monitoring trials and in reaching out to the Libyan population, including victims and affected communities. As Libyan institutions remain weak, it is critical to reinforce the understanding of these target groups, which carry weight and respect within Libyan society, about how the ICC works and the potential role it can play in supporting and catalysing change at the national level. It is equally important that these target groups both have access to accurate and timely knowledge about the ICC and, as much as possible, carry consistent messages to their constituencies.

All these groups have had limited exposure to these topics and their level of knowledge and understanding must be strengthened, both on the ICC itself and on its role in supporting other transitional justice processes and Libya’s democratic reform. The training will therefore also seek to bolster participants’ resolve to support legal and judicial reform, conduct ICC-related activities and ensure a meaningful cooperation between relevant Libyan officials, civil society and the ICC. The topics to be discussed during the training will therefore include basic principles of the Rome Statute and the ICC; the current situation and the continued relevance of UNSCR 1970 (2011) as well as the cases before the ICC, including judicial and political implications for Libya; and an exchange of lessons learned and best practices on trial monitoring and the role of the ICC, the Rome Statute and civil society in supporting accountability efforts in transitional countries. Presenters include the ICC Spokesperson and Head of the Public Affairs Unit, an official from the Office of the Prosecutor, experts from Libya and Tunisia and NPWJ staff. The various sessions will alternate presentations and practical exercises, according to the program that NPWJ and the presenters will develop.

**Objective and goals**

The training has the overall goal to reinforce the knowledge of Libyan civil society actors on the mandate, rules and procedures of the ICC. It will enhance their expertise on the links between the ICC principle of complementarity and the Libyan judicial system, including on the current status of the Libyan cases before the Court and their interconnections with the ongoing national trials against top leaders of Muammar Gaddafi regime. Bringing together Libyan actors that can have an impact on the transitional justice process in the country, such as lawyers, the media and democracy activists, the training will contribute to the country’s democratic transition process. It will support a central
role for the ICC in Libya as part of a holistic and inclusive transitional justice process. This will be achieved through building participants’ capacity to maintain justice and accountability for past crimes at the forefront of the political discourse, to promote legal and judicial reforms based on the principles of fair trials according to international standards recognised in the Rome Statute and to promote cooperation with the ICC. The training also aims to strengthen the capacity of the target groups to organise ICC-related activities to engage effectively the population, particularly victims and affected communities, through communications and outreach activities. It will support the role of the ICC in being a catalyst for change in Libya through developing an understanding of its mandate, rules and procedures among Libyan civil society, and to facilitate the ICC contributing to the achievement of justice and redress for victims in Libya.

**Partners**

NPWJ is working with the Libyan Trial Monitoring Network, comprising the Tripoli Bar Association and other Libyan partners, to ensure that the discussion will closely follow the reality and the needs as identified by the beneficiaries. NPWJ will also seek the contribution of Tunisian organisations, including KADEM and the Transitional Justice Academy, to support the training and to contribute with expertise.