



FIFTEENTH REPORT OF THE PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT TO THE UNITED NATIONS SECURITY COUNCIL PURSUANT TO UNSCR 1970 (2011)

1. INTRODUCTION

1. On 26 February 2011, the United Nations Security Council (“Council”) unanimously adopted Resolution 1970 (2011), referring the situation in Libya since 15 February 2011 to the Prosecutor of the International Criminal Court (“ICC” or the “Court”). The Council invited the Prosecutor to address it every six months on actions taken pursuant to this resolution. This is the fifteenth report and update on the activities of the Office of the Prosecutor (“OTP” or “Office”) regarding the situation in Libya.

2. THE CASE AGAINST MAHMOUD MUSTAFA BUSAYF AL-WERFALLI

2. The warrant of arrest issued on 15 August 2017 against Mahmoud Mustafa Busayf Al-Werfalli (“Mr Al-Werfalli”), which relates to seven execution incidents in which 33 people were allegedly murdered, remains outstanding despite dedicated efforts by the Office, in coordination and consultation with other organs of the Court, to obtain his arrest and surrender.

3. In its November 2017 report to the Council, the Office noted that despite the official statement of the General Command of the Libyan National Army (“LNA”) that Mr Al-Werfalli had been arrested and was being investigated by a military prosecutor, information received by the Office indicated that Mr Al-Werfalli was at large, continued to act as a commander in the LNA’s Al-Saiqa Brigade, and may have been involved in further killings since the warrant of arrest was issued.

4. In this context, the Office called on Libya to take all measures within its power to comply immediately with its legal obligation to arrest and surrender Mr Al-Werfalli to the Court. The Office appealed to all States, including members of the Council, to assist Libya in this regard. Further, the Office called on the LNA to facilitate the transfer of Mr Al-Werfalli to the custody of the Libyan authorities and appealed to members of the Council to urge the LNA to do so. Despite these calls, Mr Al-Werfalli remained at large.

5. Since the last report, there is credible evidence that Mr Al-Werfalli has committed additional murders in Benghazi. On 24 and 25 January 2018, photographs and video footage emerged on social media appearing to show Mr Al-Werfalli carrying out an execution of ten persons in front of a cheering crowd on a street in front of Bi’at al-Radwan Mosque in Benghazi. This execution appears to have been in retribution for the detonation of two car bombs outside the same mosque on 23 January 2018.

6. The Prosecutor in her press statement of 26 January 2018 condemned these two cowardly bombings, which reportedly killed at least 34 people, including children, and wounded over 90 others. In her statement, the Prosecutor also underscored the importance of accountability in bringing to an end the appalling cycle of violence in Libya, and once again called on Libya to take all necessary steps possible to immediately arrest and surrender Mr Al-Werfalli to the ICC.
7. On 6 February 2018, video footage posted on a social media website showed Mr Al-Werfalli claiming that, on the instructions of the LNA General Command, he would surrender himself to the LNA's military police so that investigations relating to the ICC could be concluded. Mr Al-Werfalli was reportedly released after a one-day investigation, following violent protests. However, on 8 February 2018, the LNA's spokesperson stated that Mr Al-Werfalli was in custody. At the time of this report to the Council, it is not clear whether Mr Al-Werfalli is in custody. The Office is seeking to confirm Mr Al-Werfalli's custodial status.
8. A Red Notice was issued by INTERPOL in relation to Mr Al-Werfalli on 15 February 2018.
9. The Office appreciates the support received from the United Nations Support Mission in Libya ("UNSMIL") in connection with the Al-Werfalli case, including UNSMIL's call for Mr Al-Werfalli to be surrendered to the ICC. Several members of the Council also welcomed the issuance of the warrant of arrest following the Office's fourteenth report. The Office hopes that these expressions of support will translate into concrete action leading to the prompt arrest and surrender of Mr Al-Werfalli to the Court. The additional murders allegedly committed by Mr Al-Werfalli make clear the urgency of his arrest and surrender.
10. In this regard, the Office renews its call on General Khalifa Haftar, commander of the LNA and overall superior of Mr Al-Werfalli, to work with the Government of National Accord ("GNA") to facilitate Mr Al-Werfalli's immediate surrender to the ICC.
11. Irrespective of any purported domestic investigation, Libya currently remains under a legal obligation to immediately arrest and surrender Mr Al-Werfalli to the Court. The Council also has a responsibility to ensure that Libya meets its obligation to cooperate with the Court by arresting and surrendering Mr Al-Werfalli without further delay.

3. THE CASE AGAINST AL-TUHAMY MOHAMED KHALED

12. Al-Tuhamy Mohamed Khaled ("Mr Al-Tuhamy") remains at large despite the warrant for his arrest having been made public more than one year ago. The Office continues its efforts to secure his arrest and surrender to the Court. However, for these efforts to succeed, the Office must be able to depend on the cooperation of States.
13. The Office reminds all States Parties and Libya of their obligation to cooperate with the Court in line with Resolution 1970 (2011). Execution of the warrant of arrest requires the coordinated efforts and firm support of both States Parties and non-States Parties.

14. The Office again appeals to all States, and any other persons or entities in a position to assist, to provide any reliable information to the Court that could facilitate Mr Al-Tuhamy's arrest and surrender without further delay.

4. THE CASES AGAINST SAIF AL-ISLAM GADDAFI AND ABDULLAH AL-SENUSSI

15. The Council will recall that the Office has made significant efforts to secure the execution of the warrant of arrest against Saif Al-Islam Gaddafi ("Mr Gaddafi"). Regrettably, these efforts have not been fruitful. However, the Office will continue to explore all potential avenues and to engage with the GNA in relation to Mr Gaddafi's surrender to the Court.

16. The Office reiterates that the warrant of arrest issued against Mr Gaddafi remains outstanding and that Libya continues to be under an obligation to surrender Mr Gaddafi to the Court. Media reports since 2016 claimed that Mr Gaddafi had been released and was at large. Mr Gaddafi's current custodial status remains unclear.

17. The Office renews its call on the Libyan authorities to take all necessary steps to surrender Mr Gaddafi to the ICC without further delay, and trusts that the Council will continue to support this call. The Office again urges any States or relevant entities in a position to facilitate Mr Gaddafi's surrender to cooperate with the Libyan authorities in this regard. In addition, the Office continues to invite the submission of credible information pertaining to Mr Gaddafi's whereabouts.

18. As it concerns Abdullah Al-Senussi ("Mr Al-Senussi"), the Office remains of the view that, within the framework of articles 19(10) and 17(2)(c) of the Rome Statute, no new facts have arisen during the reporting period which negate the basis on which PTC I found Mr Al-Senussi's case inadmissible before the Court. The Office will continue to monitor the domestic case against Mr Al-Senussi, during the appeals phase of the proceedings.

5. ONGOING INVESTIGATION AND MONITORING OF CRIMES ALLEGEDLY COMMITTED IN LIBYA SINCE FEBRUARY 2011

19. Despite ongoing insecurity, a team from the Office was able to travel to Libya to conduct investigative activities in March 2018. This marks the Office's first mission to the country in over five years. The Office appreciates the substantial cooperation and invaluable assistance it received from UNSMIL and the Libyan Prosecutor-General's office in facilitation of this visit. The Office was also able to discuss mutual cooperation in a number of areas. Given the success of the mission, the Office hopes to be able to conduct further investigative activities on Libyan territory in the near future, and trusts that UNSMIL and the Libyan authorities will continue to extend their full cooperation to support this objective.

20. Investigations in relation to both existing and potential cases continue to progress and preparations are moving ahead for possible new applications for warrants of arrest. As is always the case, the making of any such applications will depend on an assessment of the evidence, jurisdiction and all other relevant considerations.

21. The Office remains deeply concerned by the precarious security situation in Libya due to the continued armed conflict between various factions across Libya, including in and around Tripoli, Benghazi, Sabha, and Derna, where an LNA-imposed siege continues in some areas of the city. In the period from January to February 2018, UNSMIL documented 248 civilian casualties, which represented a sharp increase from previous months. A substantial number of these casualties resulted from improvised explosive devices, gunfire, remnants of war and shelling.
22. The Office has received information about alleged grave crimes relating to the abduction and subsequent execution of members of the military, civil society, and political rivals or their family members. Notably, on 17 December 2017, the Mayor of Misrata, Mohamed Eshtewi, was reportedly abducted in the vicinity of Misrata airport by unidentified armed men. His body, bearing multiple gunshot wounds and a blow to the head, was later found in front of a local hospital.
23. The Derna Mujahideen Shura Council allegedly carried out three extra-judicial executions of members of the LNA in the aftermath of the execution allegedly carried out by Mr Al-Werfalli on 24 January 2018. In addition, UNSMIL, in its 12 February 2018 report to the Council, noted that in the days following this execution, more than 25 bodies, bearing gunshot wounds and with their hands tied, had been found in various locations in Benghazi.
24. The International Organization for Migration (“IOM”) reported that, as of February 2018, an estimated 165,478 persons remain internally displaced in Libya, with a reported 83% of the civilian displacement caused by a fear of conflict and the presence of armed groups. The Office notes, in particular, reports that the continued armed clashes in the city of Sabha in March 2018 led to the displacement of approximately 3,600 individuals. Specifically, in relation to the Misrata-Tawergha agreement of August 2016, the Office notes that the full implementation of the agreement to allow for the safe return of the Tawergha community has yet to be achieved.
25. On 10 April 2018, the Office of the United Nations High Commissioner for Human Rights, in cooperation with UNSMIL, issued its report on the main human rights concerns in the context of detention in Libya from 17 December 2015 to 1 January 2018 (“Report”). The Report expresses serious concerns over the widespread, prolonged, arbitrary and unlawful detention, and endemic human rights abuses suffered by thousands of detainees.
26. According to the Report, detention facilities are under different levels of control of State institutions and armed groups. The Report notes that in October 2017, the Judicial Police estimated that around 6,500 people were held in 26 prisons under their full or partial control. Statistics are not available for facilities nominally under the Ministries of Interior and Defence, nor for those run directly by armed groups.
27. The Report highlights that detainees are frequently held in detention conditions that fall far short of the international minimum standards for the treatment of prisoners. The Report further notes the absence of due process rights in a number of cases where individuals

detained by armed groups or under the nominal oversight of the State, are not informed of their rights or granted them. The Report emphasises that to date, no commanders or members of armed groups have been held accountable for human rights violations or abuses committed in detention centres since the 2011 armed conflict.

28. IOM reported that, as of February 2018, there were 704,142 migrants in Libya, approximately 10% of whom were minors. An estimated 4,443 migrants were reportedly being held in official detention centres. The Office remains concerned about reports that migrants are subjected to arbitrary detention, torture, rape and other forms of sexual violence, abduction for ransom, extortion, forced labour and unlawful killings. There are reports of slave auctions.
29. The Office notes that the climate of impunity prevails in Libya. Alleged crimes continue to be widely reported, including the summary execution of detained persons; abductions; arbitrary detentions; torture; and various crimes committed against migrants transiting through Libya. However, it is important to highlight that the Libyan Prosecutor-General's office is making efforts to combat this impunity, and reportedly has issued a significant number of arrest warrants for crimes related to migrants.

6. COOPERATION

30. In Resolution 2174 (2014), the Council reaffirmed the importance of the Government of Libya's cooperation with the Court and the Prosecutor. The Office's investigative efforts have benefitted from the cooperation and invaluable assistance it continues to receive from the Libyan Prosecutor-General's office, including through recent working meetings. The Office is also pleased to note that the Libyan Prosecutor-General's office has responded positively to a number of requests for assistance the Office has made in the past year. The Office continues to appreciate the cooperation it has received from various States, in particular Tunisia, the Netherlands, Italy and the United Kingdom, among others, as well as international organisations, such as INTERPOL.
31. In line with Strategic Goal 9 of the Office's Strategic Plan, dated 6 July 2015, the Office continues to actively engage with States and organisations to exchange information and assist national authorities carrying out investigations and prosecutions of crimes relating to Libya, with the aim of closing the impunity gap in relation to such crimes.
32. The Office continues to focus on facilitating the sharing of information between the OTP, national authorities and other organisations in relation to crimes against migrants, in pursuance of its Strategic Goal 9 and in the spirit of complementarity. This engagement allows for more collaborative efforts to gather and analyse information, and helps identify which of the relevant actors is in the best position to investigate or prosecute these alleged crimes against migrants.
33. In particular, the OTP has launched a series of initiatives, hosted meetings and contributed to the development and dissemination of profiles of high-priority individuals allegedly involved in trafficking of human beings and abuses against migrants. The Office has facilitated direct contacts between several States and the Libyan

Prosecutor-General's office and assisted some partners with their *in situ* activities and meetings, thereby contributing to the investigative efforts of the latter.

34. The Office continues to liaise with Libyan national institutions, interested European organisations, including Eurojust, Europol, the European Commission Directorate-General for Migration and Home Affairs, and the European Union Naval Force, as well as national judiciaries, to streamline the activities of European and other actors in the investigation and prosecution of crimes against migrants.
35. The Office again underscores its appreciation for the excellent assistance UNSMIL has provided in facilitating the OTP's recent mission to Libya and welcomes the recent meeting between the Prosecutor and the Special Representative of the Secretary-General and Head of UNSMIL, Mr Ghassan Salamé, held in the margins of the Munich Security Conference in February 2018. The Office reiterates the importance of such concrete support for the Office's operations and looks forward to continued collaboration with UNSMIL to further reinforce the momentum generated by the recent *in situ* investigative activity.
36. In the annual Report of the United Nations High Commissioner for Human Rights, dated 21 February 2018, the High Commissioner recommended that the international community "provide the International Criminal Court with the resources necessary to investigate, prosecute and try the alleged crimes under its jurisdiction that may have been perpetrated in Libya since 2011." Regrettably, the Council has yet to take any concrete steps to facilitate adequate United Nations financial funding for the Office's work in the Libya situation, as is envisaged under article 115(b) of the Rome Statute.

7. CONCLUSION

37. The Office is concerned that the current climate of impunity is stoking instability and insecurity in Libya, and reiterates its commitment to prioritising the Libya situation and allocating resources to its investigations. It calls on the Council and the international community to support its efforts to bring the perpetrators of grave violations to justice.
38. Mr Al-Werfalli is subject to an ICC warrant for his arrest and must be immediately arrested and surrendered to the Court. As a result of the failure to execute the arrest warrant, Mr Al-Werfalli remained at liberty and has allegedly committed an additional ten murders. Therefore, it is imperative that Mr Al-Werfalli be immediately surrendered to the Court to prevent the commission of further crimes and to ensure that he is prosecuted for the crimes alleged in the warrant of arrest.
39. The Office again stresses that commanders and other superiors may be held criminally responsible under the Rome Statute for crimes committed by their subordinates when the applicable legal requirements are met. The Office reminds commanders and other superiors in Libya that it will not hesitate to bring new applications for warrants of arrest against those most responsible for alleged Rome Statute crimes being committed in Libya.

40. The Office also reminds Libya of its outstanding legal obligation to surrender Mr Gaddafi, Mr Al-Tuhamy and Mr Al-Werfalli to the Court. It urges States Parties, non-States Parties and the Council to take all possible steps to effect the surrender of these suspects to the ICC. Cooperation with the ICC in this matter would send an important signal of the commitment of the international community to bringing justice to the victims of atrocities in Libya. The Office underscores that the prospects for establishing the rule of law in Libya remain low so long as perpetrators are able to commit grave crimes without accountability. | OTP