

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/11-01/13

Date: 18 April 2013

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Hans-Peter Kaul
Judge Christine Van den Wyngaert

**SITUATION IN LIBYA
IN THE CASE OF
THE PROSECUTOR *v.* AL-TUHAMY MOHAMED KHALED**

URGENT

Under Seal

***Ex Parte* Prosecutor Only**

**Warrant of Arrest for Al-Tuhamy Mohamed Khaled
with under seal and *ex parte* Annex**

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Fatou Bensouda

James Stewart

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Herman von Hebel

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Pre-Trial Chamber I (“the Chamber”) of the International Criminal Court hereby issues a warrant of arrest for Al-Tuhamy Mohamed Khaled (“Al-Tuhamy”).¹

1. On 26 February 2011, the United Nations Security Council, acting under Chapter VII of the Charter of the United Nations, unanimously adopted Resolution 1970, referring the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the Prosecutor of the Court, in accordance with article 13(b) of the Rome Statute (“Statute”) and urging all States and concerned regional and other international organizations to cooperate fully with the Court and the Prosecutor.²

2. On 27 March 2013, the Prosecutor filed the “Prosecutor’s Urgent Application Pursuant to Article 58 as to Al-Tuhamy Mohamed Khaled” (the “Application”), requesting the issuance of a warrant of arrest for Al-Tuhamy for his alleged criminal responsibility under articles 25(3)(a) or (d), or 28(b) of the Statute for the crimes against humanity of imprisonment, torture, persecution, and other inhumane acts committed in Libya from 15 February 2011 until 24 August 2011, in violation of articles 7(1)(e), (f), (h), and (k) of the Statute and the war crimes of torture, cruel treatment and outrages upon personal dignity committed in Libya from 24 February 2011 to 24 August 2011, in violation of articles 8(2)(c)(i) and 8(2)(c)(ii) of the Statute.

3. The Chamber notes articles 19 and 58 of the Statute.

4. The Chamber considers that, on the basis of the evidence submitted and without prejudice to its determination of any future challenge to the admissibility of the case under article 19(2)(a) and (b) of the Statute, the case against Al-Tuhamy falls within the jurisdiction of the Court and no ostensible

¹ Alternative romanised spellings of his name include Al-Touhami Khalid, Al-Tohamy Khaled, Tourhi Kalid, Touhami Khalid, Touhamy Khaled.

² S/RES/1970 (2011).

cause or self-evident factor impels the Chamber to exercise its discretionary power to determine the admissibility of the case against Al-Tuhamy at this stage.

5. The Chamber finds that the evidence establishes reasonable grounds to believe that between 15 February and 24 August 2011, in furtherance of a policy designed by the Libyan State to quash the political opposition to the Gaddafi regime by any means, including lethal force and by arresting, detaining, torturing and abusing perceived political opponents to the Gaddafi regime, an attack within the meaning of article 7(1) of the Statute was carried out by the Libyan military, intelligence and security agencies (the "Security Forces") against the civilian population, including by arresting, detaining and mistreating perceived opponents of the Gaddafi regime. In addition, the Chamber finds reasonable grounds to believe that the attack was widespread, given the number of victims and its geographical scope as well as systematic, given that the Security Forces acted in accordance to a pattern by regularly identifying, tracing, locating, arresting and mistreating perceived opponents of the Gaddafi regime.

6. The Chamber finds that the evidence also establishes reasonable grounds to believe that a non-international armed conflict between governmental forces and rebel forces existed from at least early March 2011 to 24 August 2011.

7. The Chamber finds reasonable grounds to believe that, between 15 February 2011 and 24 August 2011, members of the Internal Security Agency (the "ISA") and of other Security Forces arrested and detained persons perceived to be opponents of the Gaddafi regime, who were subjected to various forms of mistreatment, including severe beatings, electrocution, acts of sexual violence and rape, solitary confinement, deprivation of food and

water, inhumane conditions of detention, mock executions, threats of killing and rape in various locations throughout Libya including Zawiyah, Tripoli, Tajoura, Misratah, Sirte, Benghazi and Tawergha.

8. The Chamber finds reasonable grounds to believe that these acts constitute the crimes against humanity of imprisonment under article 7(1)(e) of the Statute, torture under article 7(1)(f) of the Statute, other inhumane acts under article 7(1)(k) of the Statute and persecution under article 7(1)(h) of the Statute from 15 February 2011 until 24 August 2011.

9. Further, the Chamber finds that there are reasonable grounds to believe that these acts were committed in the context of the above-mentioned widespread and systematic attack against the civilian population, within the meaning of article 7(1) of the Statute.

10. The Chamber moreover finds reasonable grounds to believe that the abovementioned acts committed by members of the ISA and of other Security Forces constitute the war crimes of torture under article 8(2)(c)(i) of the Statute, cruel treatment under article 8(2)(c)(i) of the Statute and outrages upon personal dignity under article 8(2)(c)(ii) of the Statute from at least early March 2011 to 24 August 2011 and that these acts were committed in the context of and were associated with an armed conflict not of an international character, within the meaning of article 8 of the Statute.

11. The Chamber finds that the evidence establishes reasonable grounds to believe that Al-Tuhamy was the head of the ISA from at least 15 February 2011 until 24 August 2011 and that, in his capacity, Al-Tuhamy had the authority to implement Gaddafi's orders to arrest, detain, conduct raids, conduct surveillance, investigate, monitor and torture political prisoners. The Chamber finds reasonable grounds to believe that Al-Tuhamy, in his capacity

as the head of the ISA, was in charge of all 33 ISA sub-agencies located on the Libyan territory and that the members of the ISA were his subordinates.

12. The Chamber further finds reasonable grounds to believe that in his capacity as the head of the ISA, Al-Tuhamy bears criminal responsibility for: (i) his participation or contribution to the commission of the crimes set out in this Warrant of Arrest from 15 February 2011 until 24 August 2011, within the meaning of article 25(3)(a) and (d) of the Statute; or (ii) as a superior, for the commission of the crimes set out in this Warrant of Arrest from 15 February 2011 until 24 August 2011 by his subordinates under his effective authority and control, within the meaning of article 28(b) of the Statute.

13. Finally, pursuant to article 58(1)(b)(i), the Chamber is satisfied that the arrest of Mr Al-Tuhamy appears necessary to ensure his appearance at trial, in light of the nature of Al-Tuhamy's former position as the head of an intelligence agency, the contacts, knowledge and resources available to him, including his alleged possession of at least 10 different passports, some issued under other identities.

FOR THESE REASONS, THE CHAMBER

HEREBY ISSUES a warrant of arrest against Al-Tuhamy Mohamed Khaled, a Libyan national, born in 1942 in the Janzour area of Libya, west of Tripoli, former Lieutenant General of the Libyan army and former head of the Libyan Internal Security Agency, for his alleged criminal responsibility pursuant to article 25(3)(a) and (d) and article 28(b) of the Statute for the crimes against humanity of imprisonment under article 7(1)(e) of the Statute; torture under article 7(1)(f) of the Statute; other inhumane acts under article 7(1)(k) of the

Statute and persecution under article 7(1)(h) of the Statute committed in the territory of Libya from 15 February 2011 to 24 August 2011; as well as for the war crimes of torture under article 8(2)(c)(i) of the Statute; cruel treatment under article 8(2)(c)(i) of the Statute and outrages upon personal dignity under article 8(2)(c)(ii) of the Statute committed in the territory of Libya from at least early March 2011 until 24 August 2011;

DECIDES that the warrant of arrest is to remain under seal, *ex parte* Prosecutor and Registry only, but that, in order to effect the arrest and surrender of Mr Al-Tuhamy to the seat of the Court, it may be communicated as necessary to third parties, including any state or international organisations. The Chamber will consider the reclassification of the warrant of arrest in due course, upon the arrest and surrender of Al-Tuhamy to the Court;

DECIDES that, as soon as practicable, the Registrar shall: (i) prepare a request for cooperation seeking the arrest and surrender of Al-Tuhamy Mohamed Khaled and containing the information and documents required by articles 89(1) and 91 of the Statute and by rule 187 of the Rules of Procedure and Evidence; and (ii) transmit, in consultation and coordination with the Prosecutor, the request to the competent authorities of Egypt in accordance with rule 176(2) of the Rules of Procedure and Evidence; and (iii) invite the Egyptian authorities in accordance with article 87(5) of the Statute and resolution 1970 of the United Nations Security Council to cooperate with the Court for the purpose of executing the request for arrest and surrender of Al-Tuhamy;

REQUESTS the Egyptian authorities, pursuant to article 87(3) of the Statute, to keep this request and any document accompanying this request

confidential, except to the extent that the disclosure is necessary for execution of the request.

DIRECTS the Registrar, pursuant to article 89(3) and 92 of the Statute, to prepare and transmit to any relevant state, in consultation and coordination with the Prosecutor, any request for transit and provisional arrest which may be necessary for the surrender of Al-Tuhamy Mohamed Khaled;

ORDERS the Prosecutor to transmit to the Registry, as far as her confidentiality obligations allow, and to the Chamber all information available to her that may be of assistance in the execution of the request for arrest and surrender as well as any information of relevance to assessing any risks to victims and witnesses associated with the transmission of the request for arrest and surrender;

URGES the Registry to make all possible efforts for the immediate implementation of this warrant of arrest.

Done in both English and French, the English version being authoritative.



Judge Silvia Fernández de Gurmendi
Presiding Judge



Judge Hans-Peter Kaul



Judge Christine Van den Wyngaert

Dated this 18 April 2013

At The Hague, The Netherlands