



## NINTH REPORT OF THE PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT TO THE UN SECURITY COUNCIL PURSUANT TO UNSCR 1970 (2011)

### 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”), and inviting the Prosecutor to address the Council every six months on actions taken pursuant to this resolution.
2. In its first report, presented to the Council on 4 May 2011, the Office of the Prosecutor (“Office”) announced that it would “submit its first application for an arrest warrant to Pre-Trial Chamber I in the next weeks” and that it would “focus on those most responsible for crimes against humanity in the territory of Libya since 15 February 2011.”
3. In its second report, on 2 November 2011, the Office reported that on 16 May 2011, it had requested warrants of arrest be issued against three individuals. According to the evidence, these individuals were most responsible for the attacks against unarmed civilians in Benghazi, Tripoli and elsewhere, during the month of February 2011. On 27 June 2011, the Judges of Pre-Trial Chamber I issued warrants of arrest for Muammar Gaddafi, Saif Al-Islam Gaddafi, and Abdullah Al-Senussi for alleged murders as a crime against humanity under article 7(1)(a) and persecution as a crime against humanity under article 7(1)(h) of the Rome Statute.
4. In its third report, on 16 May 2012, the Office noted Pre-Trial Chamber I’s termination of the case against Muammar Gaddafi on 22 November 2011 and the arrests of Saif Al-Islam Gaddafi in Libya on 19 November 2011 and of Abdullah Al-Senussi in Mauritania on 17 March 2012. The Office noted, as well, the 1 May 2012 admissibility challenge, brought by the Libyan government in the Saif Al-Islam Gaddafi case.
5. In its fourth report, on 7 November 2012, the Office provided updates on the admissibility process for Saif Al-Islam Gaddafi, on the extradition of Abdullah Al-Senussi to Libya, as well as on the ongoing investigations.
6. In its fifth report, on 8 May 2013 and its sixth report, on 14 November 2013, the Office provided updates on the admissibility process for Saif Al-Islam Gaddafi and Abdullah Al-Senussi, as well as on the ongoing investigations.

7. In its seventh report, on 13 May 2014, and its eighth report, on 11 November 2014, the Office provided updates on the Saif Al-Islam Gaddafi and Al-Senussi cases and on the status of cooperation with the Government of Libya.
8. This ninth report will address:
  1. Cooperation;
  2. The cases of Saif Al-Islam Gaddafi and Abdullah Al-Senussi, including the question of admissibility;
  3. The ongoing investigation; and
  4. The crimes allegedly committed by the different parties in Libya since 15 February 2011.

## **1. COOPERATION**

9. Paragraph 5 of United Nations Security Council Resolution (“UNSCR”) 1970 *“urges all States and concerned regional and other international organizations to cooperate fully with the Court and the Prosecutor.”* Insofar as States Parties to the Rome Statute are concerned, the Statute provides an existing framework of obligations in accordance with its Part IX.
10. The Office takes note of UNSCR 2174, adopted on 27 August 2014 and UNSCR 2213, adopted on 27 March 2015. Both UNSCR 2174 (2014) and UNSCR 2213 (2015) recall UNSCR 1970 (2011), referring the situation in Libya to the ICC, and both stressed the importance of the Libyan government’s full cooperation with the ICC and the Prosecutor. UNSCR 2174 (2014) deplores the increasing violence in Libya, expresses the Council’s deep concern at the impact of the increasing violence on Libya’s civilian population and institutions, and calls for accountability for those responsible for violations or abuses of human rights or violations of international humanitarian law, including for those involved in attacks targeting civilians.
11. The Office also takes note of the UN Human Rights Council’s draft resolution 28/30 of 25 March 2015, which “[c]alls upon the Government of Libya to increase efforts to end impunity, and takes note of its continued cooperation with the International Criminal Court to ensure that those responsible for violations of human rights and international humanitarian law, including attacks targeting civilians, are held accountable.”

### **1.1. The Government of Libya**

12. UNSCR 1970 *“[d]ecides that the Libyan authorities shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution,”* a finding reiterated by UNSCRs 2174 (2014) and 2213 (2015).
13. The Office appreciates the cooperation it continues to receive from the Libyan Prosecutor-General’s office, including through working meetings in November and

December 2014. These meetings have proved essential for further implementation of the Memorandum of Understanding (“MoU”) concluded in November 2013 on burden-sharing regarding the investigation and prosecution of former Gaddafi officials.

14. The valuable exchange of information between the Office and Libyan authorities has laid the groundwork for continued judicial cooperation. The Office wishes to underscore its appreciation for the commitment and professionalism displayed by the Libyan national investigators who continue to operate under difficult circumstances.

## **2. THE CASES AGAINST SAIF AL-ISLAM GADDAFI AND ABDULLAH AL-SENUSSI**

15. On 10 December 2014, Pre-Trial Chamber I issued a decision finding that Libya has failed to comply with the Chamber’s requests to surrender Saif Al-Islam Gaddafi to the Court, to return to his Defence the originals of the documents seized in Zintan by the Libyan authorities from the former Defence counsel for Saif Al-Islam Gaddafi, and to destroy any copies thereof. The Pre-Trial Chamber decided to refer the matter of Libya’s non-compliance to the Council in accordance with regulation 109(4) of the Regulations of the Court. The Office notes that the Council referred to this decision in UNSCR 2213 (2015). The Office continues to press Libyan authorities to comply and to consult with the Court in order to resolve any problems that may impede or prevent execution of the requests. This Council is encouraged to do the same.
16. In relation to the case of Abdullah Al-Senussi, the Office stated in its last report to the Council that no decision had been taken at the time to submit a request for review under article 19(10) of the Rome Statute, but that the Office had requested information on the national proceedings against Mr Al-Senussi from Libya and had taken steps to access data and analysis from independent trial monitoring sources. The Office has since obtained information from the United Nations Support Mission in Libya (“UNSMIL”) on the domestic proceedings, as well as from the Libyan Prosecutor-General’s office and from independent civil society members. Based on this information and on an internal analysis of available video recordings of selected trial sessions received from UNSMIL, the Office has concluded that it is not in possession of new facts that would fully satisfy it that the basis on which the case against Mr Al-Senussi had previously been found inadmissible before the ICC has been negated. This position is taken on the basis of information currently available to the Office and is subject to change should further reliable information surface in the future that may necessitate a reassessment of this finding. The Office will continue to monitor the situation in Libya and its impact upon the domestic proceedings against Mr Al-Senussi.

## **3. THE ONGOING INVESTIGATION**

17. The Office continues to monitor allegations of crimes committed by militias and armed groups in Libya. The Office is regularly approached by Libyan civil society as well as civil society representatives more generally who request that the Office actively investigate the crimes that are allegedly currently being committed in Libya.

Investigative activities in furtherance of the MoU are ongoing, although as the Prosecutor previously reported to the Council, the scope of these investigations is limited by the “combined effect of instability [in Libya] and lack of resources.”

#### **4. THE CRIMES ALLEGEDLY COMMITTED BY THE DIFFERENT PARTIES IN LIBYA SINCE 15 FEBRUARY 2011**

18. UNSCR 2213 (2015) calls for accountability for the use of violence against civilians and civilian institutions by the Islamic State of Iraq and the Levant (“ISIL”)/Da’esh or other actors on Libyan territory. The Office expresses deep concern about grave crimes allegedly committed by a number of actors in Libya, including by groups purportedly claiming allegiance to ISIL/Da’esh.
19. The Office considers that ICC jurisdiction over Libya granted by UNSCR 1970 (2011) *prima facie* extends to such crimes. The Council in Resolution 2214 (2015) deplored *“the terrorist acts being committed by ISIL, groups that pledged allegiance to ISIL, Ansar Al Charia, and all other individuals, groups, undertakings and [sic] associated with Al-Qaida operating in Libya, including the recently cowardly and heinous kidnapping and killing of a number of Egyptian citizens in Sirte and the killing of Libyan citizens in Al-Qoba.”*
20. The Office is equally concerned about reports of alleged executions by ISIL/Da’esh-affiliated groups in Libya, including the alleged execution of 21 mostly Egyptian nationals (the video of which was published online on 15 February 2015), and the alleged execution of dozens of Ethiopian and some Eritrean nationals (the video of which was published online on 19 April 2015). These executions may constitute crimes within the jurisdiction of the Court. ISIL/Da’esh or groups claiming ISIL/Da’esh affiliation have also allegedly claimed responsibility for a 20 February attack in al-Qoba that reportedly resulted in at least 40 dead and more injured. Similarly, ISIL/Da’esh or groups claiming ISIL/Da’esh affiliation have claimed responsibility for the attack on the Corinthia Hotel in Tripoli on 28 January 2015, which killed at least nine. Using Twitter and other social media, ISIL/Da’esh or groups proclaiming ISIL/Da’esh affiliation have claimed responsibility for a string of other incidents, including abductions and bombings.
21. Similarly, the Office continues to be concerned about alleged indiscriminate attacks in heavily populated areas by both Libya Dawn and Operation Dignity forces, resulting in civilian casualties, in particular in Benghazi, Tripoli, Warshefana, and in the Nafusa Mountains. Benghazi has reportedly experienced the worst violence, with the highest number of casualties. The violence in Benghazi has reportedly evolved from long-range fights characterised by air and artillery strikes into an urban, street-by-street battle. Such attacks include air strikes and rocket attacks, as well as possible terrorist acts. Most airstrikes have reportedly been carried out by Operation Dignity, with Libya Dawn forces allegedly carrying out at least one airstrike and reportedly engaging in suicide attacks in Operation Dignity-controlled areas. At least thirty-five car/suicide bombings are reported to have taken place since October 2014, most by as yet unidentified perpetrators.

22. The scale of civilian deaths is difficult to assess. Approximately 1,100 violent deaths have been recorded from November 2014 until April 2015. Combatants appear to constitute most of the casualties, with less than five percent reported as civilians, although these numbers and proportions are difficult to confirm, as sources recording violent deaths rarely distinguish between combatants and civilians.
23. Intense fighting has caused waves of displacement. According to public UN, Amnesty International and Internal Displacement Monitoring Centre documents as well as various media reports, by the end of December 2014, the number of those displaced reached 400,000, eight times the number from before the 2014 armed conflict. By comparison, at the start of 2014, 50,000 persons were still displaced from the 2011 conflict. During the reporting period, massive displacement occurred in early November 2014. About 100,000 people fled in the space of a few weeks. In Benghazi, where the fighting was the fiercest, at least 55,000 people fled from late-October to mid-November 2014. This figure includes already displaced Tawerghan internally displaced persons (“IDPs”), prosecutors, judges, activists, human rights defenders and journalists who opposed Islamist militias. More people fled from Derna but no figure could be confirmed. Some 5,600 Tawerghans have been redisplaced from five different camps in Benghazi since 2014. This includes 250 families who left al-Hallis camp because of shelling in late November 2014, and 2,500 Tawerghans who fled Benghazi in October 2014. These figures are estimates as constant movement of population and double-counting make it difficult to assess precise numbers. In the east of Libya where the Tawerghan community is estimated to number 18,000, many are still on the move. Some IDPs however have been able to return. About 40% of IDPs from Tripoli were able to return in October-November 2014. By December 2014, most of 10,000 Tawerghans, who fled Tripoli during the summer, were able to return to Tripoli, although they have not yet been able to return to Tawergha. During the UN-facilitated Geneva talks at the end of January 2015, the municipalities of Misrata and Tawergha agreed to address the conditions of detainees in Misrata and to facilitate the return of Tawerghans to their land.
24. Most, if not all, parties to the conflict have reportedly committed abductions, detention, torture and executions that could qualify as Rome Statute crimes. Human rights defenders, civil society activists, media professionals and public figures continue to be targeted.
25. Militias are holding both combatants and civilians in official prisons as well as in makeshift detention centres. In most cases, civilians are detained for days or weeks, but many people remain missing, and dead bodies are found every week. Many civilians are detained solely on the basis of their opinions, perceived political affiliations, and personal tribal, family, religious or national identity. Migrants, particularly those from sub-Saharan Africa, are also amongst the victims. The fate and location of about 150 detainees abducted from Boudhima military prison remain unknown. Benghazi Revolutionaries’ Shura Council, the coalition fighting Operation Dignity Forces in Benghazi, allegedly abducted these persons on 15 October 2014 as they were perceived to be Gaddafi loyalists. Many of these persons had been in

custody since the 2011 armed conflict. Attacks are often intended to prevent the release of members of the former regime and to thwart the arrest and prosecution of members of armed groups. As reported last time, the vast majority of conflict-related detainees – about 8,000 people – are still awaiting judicial process. Misrata authorities released 95 ex-Gaddafi combatants in early October 2014.

26. Patterns of torture and ill treatment are consistent with earlier patterns, and since the increase in violence in 2014, conditions in some detention facilities appear to have deteriorated, and detainees, including civilians, are at increased risk of abuse. Cases of torture have been reported in facilities under: a) the Ministry of Justice/Judicial Police, such as al-Jawiya Institution for Correction and Rehabilitation in Misrata; b) Operation Dignity, in al-Marj, al-Abyar, al-Rajma and Grenada prisons; and c) militia groups in al-Jazira and al-Janubi prisons and in Abu Salim and Mitiga detention centres in Tripoli.
27. Former and current security officers and state employees, former anti-Gaddafi combatants, activists, religious leaders, journalists and human rights activists, as well as supporters of both Operation Dignity and Libya Dawn, are all reportedly being targeted for execution
28. The Office reiterates its call to all parties involved in the conflict to refrain from targeting civilians or civilian objects, or committing any other crime that may fall within the ICC's jurisdiction, and to be vigilant and actively take all necessary measures to prevent the commission of such crimes.

## 5. CONCLUSION

29. The Office appreciates the continuing consultations the Libyan Prosecutor-General's office has undertaken with the Office and with the Court. The Office encourages the Libyan authorities to undertake immediate consultations with the Court on issues relating to non-cooperation, and to seek assistance from the international community as deemed appropriate, so as to meet their outstanding legal obligations.
30. The Office remains appreciative of the challenges facing the Government of Libya and expresses its willingness to work with the Government in its efforts to bring perpetrators to justice. The Office calls on key partners of the Government of Libya to provide whatever support they can to ensure that the Government restores security in Libya, including by further developing a contact group on justice issues through which material and legal support could be provided regularly to enhance Libya's efforts to bring justice to the victims. The Government of Libya has repeatedly expressed its commitment to bringing justice to victims, and has sought assistance in order to do so. That assistance should be forthcoming as soon as possible.
31. The Office continues to encourage the Government of Libya to share with the Council and with the international community its strategy to independently and impartially address mass crimes. This will demonstrate that justice remains a key priority,

underpinning efforts to ensure peace and stability in Libya, and that the victims will have the opportunity to seek redress through the courts.

32. The Office looks forward to continuing to work with the Government of Libya and UNSMIL to address impunity in Libya. | OTP