



TWENTIETH REPORT OF THE PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT TO THE UNITED NATIONS SECURITY COUNCIL PURSUANT TO RESOLUTION 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 twentieth report and update on the activities of the Office of the Prosecutor (“OTP” or “Office”) regarding the situation in Libya.

2. STATUS OF THE CURRENT CASES

Mahmoud Mustafa Busayf Al-Werfalli

2. On 15 August 2017 and 4 July 2018, the Court issued two warrants of arrest for Mr Mahmoud Mustafa Busayf Al-Werfalli (“Mr Al-Werfalli”). These remain unexecuted. The warrants relate to allegations that Mr Al-Werfalli executed and murdered 43 people in and around Benghazi during military operations known as “Operation Dignity”, led by General Khalifa Haftar (“General Haftar”), commander of the eastern-based militia known as the Libyan National Army (“LNA”).
3. Neither the civilian authorities in eastern Libya nor the LNA have facilitated the arrest or surrender of Mr Al-Werfalli to the Court, nor have they taken concrete steps to hold Mr Al-Werfalli accountable for these alleged crimes. As a result, Mr Al-Werfalli remains at large in the Benghazi area.
4. Pursuant to Resolution 1970 (2011), the Office urges all States to remind prominent commanders including Mr Aqila Saleh, Supreme Commander of the LNA and Mr Wanees Boukhmada, Commander of Al-Saiqa Brigade to take all the necessary steps to arrest and surrender Mr Al-Werfalli to the Court. The Office also emphasises the obligation imposed on military commanders under article 28 of the Rome Statute to prevent or repress the commission of crimes within the jurisdiction of the Court by forces under their effective control or submit them for investigation and prosecution.
5. In this regard, the Office notes that on 21 September 2020, the European Union (“EU”) imposed economic sanctions on Mr Al-Werfalli for alleged crimes committed in Libya.

Al-Tuhamy Mohamed Khaled

6. Mr Al-Tuhamy Mohamed Khaled (“Mr Al-Tuhamy”) remains subject to an arrest warrant that was issued on 18 April 2013. He is alleged to be responsible for serious crimes including the torture of individuals between 15 February and 24 August 2011.
7. Credible sources indicate that Mr Al-Tuhamy is still residing in Cairo, in the Arab Republic of Egypt (“Egypt”). Regrettably, Egypt has not taken any steps to arrest and surrender him to the Court.
8. The Office reiterates the statement made by Belgium following the Prosecutor’s nineteenth report to the Council, explicitly calling for Egypt and other States to “facilitate the immediate arrest of [...] suspects and to surrender them to the Court”. The Office continues to urge all relevant States, including Egypt, to ensure that fugitives wanted by the Court are not provided with a safe haven from which they can escape justice.

Saif Al-Islam Gaddafi

9. As previously reported to the Council, on 5 May 2020, the Appeals Chamber unanimously rejected an appeal brought by Mr Saif Al-Islam Gaddafi (“Mr Gaddafi”) against a decision issued by Pre-Trial Chamber I (“PTC I”) confirming the admissibility of the case against him before the Court.
10. Libya remains under an obligation to arrest and surrender Mr Gaddafi to the Court. The Office notes that efforts made by the Government of National Accord (“GNA”) to date have not succeeded in securing his arrest and surrender. The Office repeats its call to Mr Gaddafi to immediately surrender to the competent Libyan authorities so that he can be transferred to the Court.

3. ONGOING INVESTIGATION, MISSIONS AND MONITORING OF CRIMES ALLEGEDLY COMMITTED IN LIBYA SINCE FEBRUARY 2011

11. This Office welcomes the signing of a ceasefire agreement by the Libyan parties in Geneva on 23 October 2020 under the auspices of the United Nations. The Office hopes that this leads to peace, stability and accountability in Libya.

Missions

12. The Office was able to make significant progress in its investigations and conducted a number of missions in the field, including two important missions to Libya. These missions strengthened the mutual cooperation with relevant national authorities and stakeholders and enabled the Office to collect important evidence. The Office takes this opportunity to express its gratitude to the GNA authorities for their assistance and cooperation during these missions.

13. In its previous report on 5 May 2020, the Office informed the Council that credible information established that forces associated with the LNA carried out airstrikes that resulted in civilian casualties and damage to civilian infrastructure.
14. More recently, the Office received credible reports indicating that mines have been used in the south of Tripoli of a type and in quantities not previously seen in Libya. Many of these mines were placed and triggered in a way which poses a threat to civilians. Between the end of May and beginning of July 2020, a total of 49 people were reportedly killed in southern Tripoli with some 93 more being injured as a result of this use of mines.
15. The Office also received credible information indicating, that forces from Tarhunah affiliated with the LNA are alleged to have committed serious crimes including killings, abductions, enforced disappearances, pillaging and the destruction of property.
16. Authorities involved in the exhumation of the mass graves in Tarhunah and the South of Tripoli that were recently discovered, reported recently that in total over 100 bodies had been found. Many of the bodies had their hands tied and were blindfolded. The Office takes this opportunity to recognise the significant efforts made by the Libyan authorities in preserving evidence for future investigations.
17. The alleged crimes committed by LNA forces during their offensive on Tripoli repeats a pattern of violence that is consistent with previous attacks carried out since 2014. The Office, the United Nations Support Mission in Libya (“UNSMIL”), Human Rights Watch, Amnesty International and the United Nations Panel of Experts have previously reported that the LNA and forces associated with it have conducted indiscriminate airstrikes; abducted and tortured individuals in detention facilities; committed enforced disappearances; carried out extrajudicial killings; and pillaged civilian property in Benghazi, Derna, Ajdabiya, Marzuq and Sirte.

Violence against protestors

18. Over the reporting period, the Office received information in relation to militias both in the east and the west of the country targeting protestors that have participated in anti-corruption demonstrations in several cities throughout the country.
19. Reports indicated that on 23 August 2020, security forces used violence against protestors in Zawiyah and Tripoli and arbitrarily arrested and detained civilians. UNSMIL subsequently called for an investigation into the use of excessive force against protestors.
20. Reports also indicated that on 12 July 2020 protestors were arrested and four civilians were killed in the city of Hun.
21. Furthermore, there are public reports alleging that militias kidnapped and detained people who have voiced criticism against the LNA during protests or via social media.

These public reports were corroborated by information received by the Office during the course of its investigations.

22. In this regard, the Office takes this opportunity to once again call upon the civil and military authorities in eastern Libya to investigate the whereabouts of Ms Siham Sergewa, an elected member of the House of Representatives, who has been missing since being abducted from her home in Benghazi on 17 July 2019.

Detention facilities

23. The Office received additional information from credible sources relating to the use of official and unofficial detention facilities to arbitrarily detain individuals and subject them to inhumane conditions, torture and other serious crimes. Such information included references to Al-Kuweifiya and Gernada detention facilities in eastern Libya, controlled by the LNA and its associated forces as well as Mitiga Prison in Tripoli controlled by the Special Deterrence Force of the GNA.
24. The Office calls on the authorities in charge of these facilities to allow international observers and investigators to access them and to fully cooperate with them.

Displaced persons, pillaging and destruction

25. During the reporting period, the Office met with representatives from different parts of Libya and discussed complaints from internally displaced persons claiming that their property was destroyed or taken. The Office notes that it has been almost 10 years since civilians in Tawerga had their homes taken away from them.

Crimes against migrants

26. The Office continues to investigate and monitor allegations of crimes against refugees and migrants transiting through Libya. It also continues to invest in active cooperation with national authorities to support domestic cases against the networks allegedly responsible for these crimes.
27. The Office welcomes several recent developments that have taken place in this regard. This includes the sentencing of three individuals to 20 years imprisonment by the Court of Messina in Italy for crimes committed against migrants in Zawiyah.
28. The Office also notes the imposition of EU sanctions on Mr Mousa Adyab (also referred to as 'Moussa Diab') who the Panel of Experts mentions as being responsible for human trafficking, rape and the killing of refugees in Bani Walid.
29. Regrettably, the Office continues to receive credible information of migrants allegedly being kept in inhumane conditions and being tortured in warehouses and detention centres along smuggling routes. In particular, the Office notes with concern that despite economic sanctions being imposed on Mr Ahmad Oumar Al-Dabbashi (also referred to as 'Al Ammu') by the Council, there are reports indicating that he continues to be involved in human trafficking and crimes against migrants. This includes an allegation

that on 28 September 2020, armed men linked to him abducted around 350 migrants from their homes in Al Ajaylat, Sabratha. Some 60 migrants including approximately 24 children remain in captivity as of 9 October.

4. COOPERATION

30. As illustrated by the status of the current cases in the Libya situation, the failure to execute arrest warrants continues to be one of the Office's greatest challenges. The Office once again emphasises that its pursuit of justice cannot be achieved without support from the international community to ensure that wanted suspects are arrested, surrendered to the Court and tried as soon as possible.
31. Despite the challenges caused by the COVID-19 pandemic in the reporting period, the Office has secured cooperation from a number of States, which has enabled it to advance in its ongoing investigations.
32. The Office strengthened its working relationship with UNSMIL on matters of mutual concern and expresses its gratitude to the Acting Special Representative of the Secretary-General, Ms Stephanie Williams, and the mission for the support and assistance provided. The Office also welcomes Resolution 2542 (2020), extending the mandate of UNSMIL until 15 September 2021.
33. The Office further enhanced its existing network of cooperation partners. In particular, the Office reinforced its relationship with EUROPOL on matters of mutual interest relevant to its mandate.
34. The Office has also actively engaged with stakeholders who have submitted requests of assistance to the Office pursuant to article 93(10) of the Rome Statute. Such requests promote and facilitate the domestic investigation and prosecution of international crimes committed in Libya.

5. CONCLUSION

35. The Office remains committed to the pursuit of justice for Rome Statute crimes committed in Libya since the Court's jurisdiction commenced on 15 February 2011. For this reason, it calls on the international community to ensure that those wanted by the Court are surrendered so they can be tried. The arrest and surrender of Messrs Al-Werfalli, Al-Tuhamy and Gaddafi are crucial to demonstrate to the victims of grave crimes in Libya that the Council and the international community are committed to taking concrete action to end impunity and to ensure that those responsible for such crimes are brought to justice. It also calls on all parties in Libya to refrain from conduct that involves serious violations of international human rights and humanitarian law.¹ OTP