



**TWENTY-SECOND 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.
2. The twenty-second report on the activities of the Office of the Prosecutor (“OTP” or “Office”) in the Situation in Libya, covering the period of 18 May to 17 November 2021, is hereby submitted to the Council. It is the first report on the Situation in Libya since Prosecutor Karim A.A. Khan QC formally took office on 16 June 2021.
3. The Prosecutor has emphasized his stated position that, under his direction, the Office will extend particular prioritization to referrals by the Council to the ICC, and he is currently conducting a thorough review of the two situations referred to the Prosecutor to date. The results of this review in relation to the Situation in Libya, which will contain clear objectives, will be reflected in the Prosecutor’s twenty-third report to the Council.
4. During the reporting period, the Office continued its investigations further to the Council’s referral into acts that may amount to war crimes and crimes against humanity committed in Libya. Under the Rome Statute, the Office must investigate both incriminating and exonerating circumstances equally in order to establish the truth. The Office has been undertaking its investigations accordingly.
5. The Prosecutor intends to visit Libya in early 2022 to meet with the Libyan authorities and other relevant stakeholders in support of the Office’s

investigations and any national efforts to hold persons accountable for alleged war crimes and crimes against humanity.

6. The principle of complementarity is the foundation of the Rome Statute system, and it remains an important principle during the investigation stage and in the life of any situation over which the Office's jurisdiction is activated.
7. A lack of sustained and effective national investigations and prosecutions against persons allegedly responsible for atrocity crimes, in any situation, contributes to a climate of impunity. The Office reiterates its support for any sincere and meaningful effort undertaken by the Libyan authorities to enable genuine accountability in Libya for the victims of alleged atrocity crimes. Accountability and justice are indispensable to lasting peace in Libya.
8. The Office will continue to engage with victims and survivor groups in Libya as it advances its investigations and prosecutions with independence, objectivity and full fidelity to the goals and values of the Rome Statute.
9. The present report sets out the Office's core activities and the progress made during the reporting period, including in relation to cooperation and complementarity strategies to advance accountability for atrocity crimes in Libya.

2. VOLUNTARY RECUSAL CONCERNING THE CASE OF SAIF AL-ISLAM GADDAFI

10. It bears emphasising at the outset that the Prosecutor and the Office have taken the requisite legal and practical measures to protect the integrity of the proceedings from any risk or perception of a conflict of interest arising from the Prosecutor Khan's prior representation of Mr Saif Al-Islam Gaddafi, as defence counsel before the ICC.
11. Upon assuming office as ICC Prosecutor, Prosecutor Khan immediately and voluntarily recused himself pursuant to article 42(6) of the Rome Statute from all cases where a conflict of interest may be perceived to arise due to his prior participation in ICC proceedings as counsel, including in relation to the case of the suspect, Mr Saif al-Islam Gaddafi. A press release issued by the Office on 19 March 2021, addressed this matter and anticipated the recusal. As a consequence of his voluntary recusal, the Prosecutor has not had access to any non-public filings and non-public evidence submitted in the record of the Saif al-Islam Gaddafi case, and has not been involved in any discussions or decisions related to this specific case. The Prosecutor has delegated his functions to the Deputy Prosecutor for the purposes of this specific case.

3. JUDICIAL DEVELOPMENTS, STATUS OF THE INVESTIGATION AND ONGOING CRIMES

12. There were no major judicial developments during the reporting period. The Office's activities have rather focused on continued investigations into alleged crimes committed in Libya falling under the Court's jurisdiction since 2011. The ongoing instability in Libya precludes the Office from having regular access and conducting investigations on Libyan territory, and hampers the Office's ability to gather evidence through *in situ* investigations. Nevertheless, the Office has continued its efforts to investigate past and ongoing crimes falling within the Court's jurisdiction.
13. Despite challenges due to the security situation on the ground and travel and resource restrictions during the reporting period, the Office has managed to collect relevant documents and other materials, undertaken missions, interviewed witnesses, and attended meetings with domestic law enforcement agencies to coordinate investigations and prosecution activities.
14. Since the previous report, the Office has met with key stakeholders from States to non-governmental organisations representing victims, human rights defenders and lawyers working on accountability for gross human rights violations in Libya.
15. The Office has continued its efforts to verify the reported deaths of two suspects, namely Messrs Mahmoud Mustafa Busayf Al-Werfalli and Al-Tuhamy Mohamed Khaled.
16. Last month marked the first anniversary of the ceasefire signed on 23 October 2020. The Office recognizes efforts to develop an action plan aimed primarily at ensuring the withdrawal of mercenaries and foreign fighters from Libya. This important development would foster greater stability in Libya and thereby diminish the potential for violence that may lead to the commission of atrocity crimes. The Office encourages the ongoing efforts and actions devoted to this important matter.
17. The Office remains concerned, however, by the security situation in Libya as it continues to receive reports of continued violence that affects the safety of the civilian population and hampers restoration of the rule of law.

Incidents related to Tripoli and Tarhunah

18. The Office has received new, credible information about serious crimes that have allegedly been committed in Tarhunah and the south of Tripoli by

forces affiliated with Libyan Arab Armed Forces (“LAAF”) in 2019-2020. These alleged crimes reportedly include killings, abductions, enforced disappearances, pillaging, the indiscriminate use of mines and the destruction of property. During the reporting period, the Libyan authorities uncovered additional graves in Tarhunah.

Displaced persons from Benghazi and surroundings, pillage and property destruction

19. During the reporting period, the Office continued to review a large number of complaints from displaced persons from Benghazi and surrounding cities about alleged pillaging and destruction of their property. These include information about the way in which property – including houses, goods, companies and land – have been expropriated. The reports allege that certain armed groups and militia appear to profit from the seizure of public and private assets. These crimes may constitute crimes under the jurisdiction of the Court.

Detention facilities

20. The Office continues to receive and collect credible and substantial information about past and ongoing serious crimes allegedly committed in official and unofficial detention facilities in Libya, including unlawful detention, murder, torture, rape and other forms of sexual and gender-based crimes. These include alleged crimes occurring in Mitiga Prison controlled by the Special Deterrence Force and the Gernada, Al-Kuweifiya and Tarek Bin Zayed detention facilities controlled by the LAAF and its associated forces.
21. The Office is concerned about the scale of these crimes. In particular, the Office notes the conclusions of the Independent Fact-Finding Mission on Libya in its report published in October 2021, that there are reasonable grounds to believe that “the above prisons and many others located across the country constitute a core element of a systematic and widespread attack against anyone opposing the interests of those running the prisons...”.
22. The Office urges the Government of National Unity (“GNU”) to take concrete steps to put an end to the crimes committed in detention centres through fair and transparent investigations and prosecutions.

Crimes against migrants

23. The Office has taken note of a number of credible reports that migrants in Libya continue to be victims of crimes under the Rome Statute, and that the number of migrants has increased as compared to previous reporting periods. As reported by the International Organization for Migration (“IOM”), by 14

August 2021, 22,045 migrants and refugees have been intercepted and returned to Libya.

24. The Office continues to receive information reporting crimes and violence against migrants in Libya, including torture and sexual violence in detention facilities and other inhuman or degrading treatment, by smugglers and other perpetrators.
25. The Office has further reviewed the findings reported by the UN Secretary General to the Council in September 2021 on the situation of migrants in Libya, including reports that certain State officials affiliated with the Directorate for Combating Illegal Migration (“DCIM”) have allegedly committed serious human rights violations against migrants and refugees.
26. The Office is also aware of recent reports of raids against migrant settlements in Tripoli in the context of security operations by personnel of the Ministry of Interior that were characterised by excessive use of violence and a spike of arbitrary arrests and detention of migrants, including of women and children. The Office echoes calls by the Office of the High Commissioner for Human Rights (“OHCHR”) for the Libyan authorities to establish prompt, thorough, impartial and independent investigations into these events with a view to ensuring accountability for those responsible.
27. More generally, the Office calls upon the Libyan authorities and the international community to intensify collective efforts to address these crimes affecting migrants and refugees by tackling the issue at its source in Libya, and to reinforce cooperation between the actors involved in addressing these serious crimes.
28. The Office continues to support the investigations carried out by national authorities to hold accountable those responsible for the human trafficking, smuggling, detention and torture of migrants through Libya. In particular, the Office works in close cooperation with a Joint Team formed by Europol, Italy, the United Kingdom and The Netherlands aimed at accountability for violent crimes against migrants and refugees in Libya.
29. The Office hosted a coordination meeting at the Court’s premises in September 2021 for these partners to discuss further cooperation, to identify and address challenges in the investigation and cooperation, and to coordinate further opportunities to increase the impact of collective action in bringing justice for victims in Libya. This long-standing collaboration recently culminated in an arrest warrant issued by The Netherlands in October 2021 against a suspect in the context of national proceedings.

4. PEACE, STABILITY AND ACCOUNTABILITY IN LIBYA

30. The Office welcomes the important initiatives and efforts made by Libya, the United Nations Support Mission in Libya (“UNSMIL”) and the international community to bring peace and stability to the country, including the ongoing discussions on traditional reconciliation processes and transitional justice mechanisms.
31. The Libyan authorities have the primary responsibility to protect their population and to hold to account those responsible for serious crimes under the Court’s jurisdiction. It is critical that the Libyan authorities do all in their power to effectively address these crimes when they occur. Without the promise of accountability for serious violations of human rights and international humanitarian law through genuine investigations and prosecutions, efforts to build sustainable peace and security will remain elusive.
32. The Office stresses that granting amnesties and pardons for serious crimes such as murder constituting crimes against humanity is incompatible with internationally recognized human rights. The Office calls on the Libyan authorities to give due consideration to accountability and justice for the victims of atrocity crimes committed in Libya as an important component of achieving sustainable peace and stability in the country.
33. In Resolution 1970 (2011), the Council noted the widespread and systematic attacks taking place in the Situation in Libya against the civilian population that amount to crimes against humanity, and “[stressed] the need to hold to account those responsible for attacks, including by forces under their control, on civilians”. The Council has consistently recalled that all parties must comply with their obligations under international humanitarian law and international human rights law, as applicable, and emphasised that those responsible for violations of such legal norms must be held accountable.
34. The Office stresses that victims have a right to the establishment of the truth, access to justice, and reparations where appropriate. The process of holding perpetrators of grave violations and abuses accountable should therefore be a priority. Those responsible for crimes, such as the murders in Tarhunah, airstrikes on the Military College in Tripoli, forced displacement, pillage and crimes committed in detention must be held accountable.
35. Since the GNU took office in March 2021, and in accordance with the Roadmap for the Preparatory Phase of a Comprehensive Solution, it has prioritized “ending arbitrary arrest, forced disappearance, release of the prisoners of

opinion and of those who have been arbitrarily detained". The Office welcomes this commitment.

36. The Office recognises the challenges confronting Libya due to the volatile security situation on the ground, the divisions between governmental and security apparatuses in the west and east of the country, the precarious security situation in the south, and the continuous presence of criminal actors and armed groups in many parts the country. It is essential that the Libyan authorities remain committed and take concrete and tangible steps to ensure, through the national judicial system, that those who bear the greatest responsibility for serious crimes in Libya do not go unpunished.
37. The Office encourages the Libyan authorities, relevant partners, and the international community more broadly, to further intensify efforts to reinforce cooperation and partnership with the Office to achieve accountability for those responsible for Rome Statute crimes.

5. COOPERATION IN SUPPORT OF THE ACTIVITIES OF THE OFFICE

38. In Resolution 1970 (2011), the Council mandated the Libyan authorities to cooperate fully with and provide any necessary assistance to the Prosecutor and the Court. The Office has previously had meaningful engagement with the Government of National Accord at the highest levels and has benefited from longstanding cooperation with the Libyan authorities at the political, technical and operational level.
39. Building on this relationship, the Office continues efforts and initiatives aimed at strengthening cooperation with the Libyan authorities in a sustained manner to discuss and advance cooperation-related matters.
40. The Prosecutor intends to continue this constructive engagement with the GNU. Preliminary meetings with Libyan officials are being planned for the end of November 2021, and as noted above, the Prosecutor plans to travel to Libya in early 2022 to discuss the status of the Office's investigations and avenues for strengthening cooperation.
41. During the past six months, the Office continued to secure cooperation and mutual assistance from various States, through a number of Requests for Assistance to facilitate deployments of investigators in the field, to preserve and collect evidence and to conduct witness interviews.
42. The Office has further pursued engagement with a number of actors and institutions relevant to its activities in the Situation in Libya, including the UN

Independent Fact-Finding Mission on Libya, while continuing its productive cooperation with the United Nations Support Mission in Libya (“UNSMIL”), within their respective independent yet mutually reinforcing mandates. The Office welcomes the adoption of Resolution 2599 (2021) by the Council extending the mandate of UNSMIL until 31 January 2022.

43. Full cooperation and support from the Libyan authorities and the international community on timely arrests and surrender of suspects are critical to ensuring meaningful accountability in Libya.

Complementarity in support of national investigations and prosecutions

44. During the reporting period, the Office has intensified its efforts to reinforce international cooperation in general in line with the principle of complementarity. The Office proactively engaged with States and supported ongoing national proceedings pursuant to article 93(10) of the Rome Statute, which stipulates: “the Court may, upon request, cooperate and provide assistance to a State Party conducting an investigation into or trial in respect of conduct which constitutes a crime within the jurisdiction of the Court or which constitutes a serious crime under the national law of the requesting State”.
45. The Office has received and processed a number of Requests for Assistance from States, facilitated contacts, exchanged specialised knowledge, shared practical experiences and relevant evidentiary material with judicial and law enforcement authorities. These steps were undertaken to support national investigations and prosecutions of international and organised crime(s) committed in Libya. The Office recalls here the efforts mentioned in paragraphs 28-29 of this report.
46. In particular, the Office has pursued efforts to solidify its relationship with law enforcement entities from various States and Europol on matters of mutual interest relevant to its mandate, and to contribute, together with partners, to collective efforts aimed at addressing serious forms of criminality committed in Libya through a pragmatic approach within the framework of positive complementarity.

6. CONCLUSION

47. Under the Prosecutor’s leadership, the Office remains firmly committed to the investigation of Rome Statute crimes perpetrated in the context of the Libya Situation since 15 February 2011, to ensure those responsible are brought to justice, and continues to exert efforts, within its mandate and means, towards

this end. These efforts include working with the Libyan authorities and other partners to close the impunity gap for atrocity crimes in Libya. | от