

Situation in Libya

ICC-PIDS-CIS-LIB-02-003/22_Eng

The Prosecutor v. Al-Tuhamy Mohamed Khaled

Updated: September 2022

ICC-01/11-01/13

Al-Tuhamy Mohamed Khaled

Suspected of four crimes against humanity and three war crimes allegedly committed in Libya in 2011. Case closed due to passing of the suspect.

Date of birth: 1942

Place of birth : Janzour area of Libya, west of Tripoli

Nationality : Libyan

Title : Alleged former Lieutenant General of the Libyan army and former head of the Libyan Internal Security Agency (ISA).

Warrant of arrest : Issued on 18 April 2013 | Unsealed on 24 April 2017

Decision terminating the proceedings : 7 September 2022

Charges

Pre-Trial Chamber I considers that there are reasonable grounds to believe that, under article 25(3)(a) and (d) and article 28(b) of the Rome Statute, Al-Tuhamy Mohamed Khaled is criminally responsible for:

Four crimes against humanity allegedly committed in Libya, in the context of a widespread and systematic attack against the civilian population, from 15 February 2011 to 24 August:

- Imprisonment (article 7(l)(e))
- Torture (article 7(1)(f))
- Other inhumane acts (article 7(1)(k))
- Persecution (article 7(1)(h))

Three war crimes in the context of an armed conflict not of an international nature allegedly committed in Libya from at least early March 2011 until 24 August 2011:

- Torture (article 8(2)(c)(i))
- Cruel treatment (article 8(2)(c)(i))
- Outrages upon personal dignity (article 8(2)(c)(ii))

Alleged crimes (non-exhaustive list)

Pre-Trial Chamber I found that there are 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 Muammar Gaddafi regime by any means, a widespread and systematic 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.
- Between the same dates, members of the Internal Security Agency (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 in various locations throughout Libya, including Zawiya, Tripoli, Tajoura, Misratah, Sirte, Benghazi and Tawergha.
- A non-international armed conflict between governmental forces and rebel forces existed from at least early March 2011 to 24 August 2011.

- Mr Al-Tuhamy was the head of the ISA and that, in his capacity, Mr Al-Tuhamy had the authority to implement Gaddafi's orders to arrest, detain, conduct raids, conduct surveillance, investigate, monitor and torture political prisoners, and that he was in charge of all 33 ISA sub-agencies located on the Libyan territory and that the members of ISA were his subordinates.

MODES OF LIABILITY

The Chamber finds reasonable grounds to believe that Mr Al-Tuhamy bears criminal responsibility for:

- (i) his participation or contribution to the commission of the (article 25(3)(a) and (d)); and
- (ii) as a superior, for the commission of crimes by his subordinates under his effective authority and control (article 28(b)).

Key judicial developments

REFERRAL AND OPENING OF THE INVESTIGATION

On 26 February 2011, the United Nations Security Council decided unanimously (15 votes in favour) to refer the situation in Libya since 15 February 2011 to the ICC Prosecutor, stressing the need to hold accountable those responsible for attacks, including by forces under the control of those responsible, on civilians.

After conducting a preliminary examination of the situation, the ICC Prosecutor concluded, on 3 March 2011, that there is a reasonable basis to believe that crimes under the ICC's jurisdiction have been committed in Libya, since 15 February 2011, and decided to open an investigation in this situation.

WARRANT OF ARREST

The warrant was requested by the Prosecutor on 27 March 2013. The [Warrant of Arrest for Al-Tuhamy Mohamed Khaled](#) was issued under seal on 18 April 2013 and unsealed on 24 April 2017.

TERMINATION OF THE PROCEEDINGS

On 7 September 2022, Pre-trial Chamber I [terminated proceedings](#) against Mr Al-Tuhamy Mohamed Khaled. The Chamber made this decision following the Prosecution's [Notification of the Death of Al-Tuhamy and request to withdraw arrest warrant](#), dated 2 August 2022 and annexing a copy of a death certificate issued by the Libyan authorities and an official translation. In light of the Prosecution's submissions, the Chamber considered that the certificate sufficed to render the warrant of arrest without effect. Outstanding requests for arrest and surrender made to any States will accordingly be withdrawn.

Composition of Pre-Trial Chamber I

Judge Péter Kovács, Presiding Judge
Judge Reine Adelaide Sophie Alapini-Gansou
Judge Socorro Flores Liera

Representation of the Office of the Prosecutor

Nazhat Shameem Khan, Deputy Prosecutor
Nicole Samson Senior Trial Lawyer

Defence Counsel for Al-Tuhamy Mohamed Khaled

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Legal Representatives of the Victims

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