



EIGHTH 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) (UNSC 1970), 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 on the streets and in their houses 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) of the Rome Statute, 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, 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 sixth report, on 14 November 2013, the Office provided further updates on the admissibility process for Saif Al-Islam Gaddafi and Abdullah Al-Senussi, as well as the ongoing investigations.
8. In its seventh report, on 13 May 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.
9. This eighth report will address:
 - a. Cooperation;
 - b. The case of Saif Al-Islam Gaddafi and Abdullah Al-Senussi, including the question of admissibility;
 - c. The ongoing investigation; and
 - d. The crimes allegedly committed by the different parties in Libya since 15 February 2011.

1. COOPERATION

10. Paragraph 5 of 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. As noted below, UNSCR 2174 reiterates the importance of the Government of Libya’s cooperation with the ICC.
11. The Office takes note of UN Security Council resolution 2174, adopted on 27 August 2014, deploring the increasing violence in Libya, in particular around Tripoli and Benghazi, and expressing its deep concern at its impact on Libya’s civilian population and institutions. The Council recalls its decision in resolution 1970 (2011) to refer the situation to the ICC, reaffirms the importance of the Government of Libya’s cooperation with the ICC and the Office, as well as the importance of holding accountable those responsible for violations or abuses of human rights or violations of international humanitarian law, including those involved in attacks targeting civilians.

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.”*
13. Following the Office’s 29 January 2014 meeting with Libyan Prosecutor General Abdul Qader Radwan and his delegation in The Hague to discuss implementation of the memorandum of understanding concluded last year on burden-sharing regarding the investigations and prosecutions of former Gaddafi officials, the Prosecutor met with the Libyan Minister of Justice on 18 July 2014 in The Hague to discuss potential

investigations and prosecutions of alleged crimes committed by militias. In a 25 July 2014 public statement, the Prosecutor indicated she is deeply troubled by the escalating violence in the Libya situation, including reported attacks carried out against the civilian population and objects in Tripoli and Benghazi. The Prosecutor reiterated that the Office may continue to exercise its jurisdiction over any act of genocide, crime against humanity or war crime committed within the territory of Libya since 15 February 2011.

14. The Office reiterates its call to all parties involved in the conflict to refrain from targeting civilians or civilian objects, or committing any criminal act that may fall within the ICC's jurisdiction, and to be vigilant and take all necessary measures to prevent the commission of such crimes.
15. The Office is engaging with Libyan authorities to organize a technical meeting to follow up on the issue of burden sharing. As noted in the sixth report, the memorandum of understanding does not in any way affect the cases against Saif Al-Islam Gaddafi and Abdullah Al-Senussi.

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

16. The Office recalls that the Government of Libya has acted in compliance with the process set out in the Rome Statute in relation to the process for challenging the admissibility of the Saif Al-Islam Gaddafi and Abdullah Al-Senussi cases. Admissibility entails an assessment of the existence of relevant national proceedings and their genuineness, pursuant to articles 17(1)(a)-(c) of the Rome Statute. The Office reiterates that this is a judicial issue and is ultimately subject to determination by the Chambers of the Court.
17. In relation to the case against Saif Al-Islam Gaddafi, Libya continues to be under a legal obligation to surrender him to the Court based on the Pre-Trial Chamber's 31 May 2013 decision that the case is admissible. This ruling was subsequently confirmed in the 21 May 2014 Appeals Chamber decision. Libya is yet to discharge its obligations in this regard. The Office, therefore, reiterates its call on Libya to immediately surrender Saif Al-Islam Gaddafi to the Court.
18. On 11 July 2014, the Single Judge of Pre-Trial Chamber I found that Libya owes the Court cooperation in three key areas: (i) in the surrender of Saif Al-Islam Gaddafi to the Court; (ii) in the return to the Defence of Mr. Gaddafi, the originals of materials seized from the former Defence counsel during her visit to Mr. Gaddafi in Zintan and the destruction of any copies thereof; and (iii) the organization of a visit for the defence of Abdullah Al Senussi. The Single Judge rejected Libya's request for extension of time to provide submissions on the status of implementation of its duty to surrender Mr. Gaddafi to the Court, and reminded Libya of its obligation to proceed to his surrender immediately. The Single Judge granted Libya until 20 August to provide submissions on the status of implementation of its duty to return the defence materials seized.

19. On 21 August, Libya filed a request for an additional extension of ten weeks until 29 October to provide a fully informed response to the Court's request for information on the return to the Defence of Mr. Gaddafi of the originals of materials seized from the former Defence counsel during her visit to Mr. Gaddafi in Zintan and the destruction of any copies thereof. In this request, Libya's counsel in proceedings before the Court cited ongoing security difficulties in general, and specifically, the 2 August emergency meeting of the Libyan parliament and the 12 August approval of a constitutional amendment for the direct election of an interim president, as rendering it difficult at the present moment to obtain effective instructions from the Libyan government.
20. The Single Judge noted finally in her 11 July 2014 decision that consultations under regulation 109(3) of the Regulations of the Court may be deemed to have been concluded and that the Chamber may decide at any time what further action is appropriate, including making a formal finding of non-cooperation and transmitting it to the Council. This is, however, without prejudice to the possibility for Libya to provide to the Chamber any additional information that it may consider relevant to the implementation of the duty to surrender Mr. Gaddafi as well as to developments in the political and security situation in the country.
21. In relation to the Al-Senussi case, in light of the 7 August 2014 decision of the Single Judge, it should be recalled that as of 24 July 2014, the Appeals chamber dismissed the appeal brought by Mr. Al-Senussi and confirmed the admissibility decision, which has therefore become final. Namely, the Court has upheld Libya's request that the case against Mr. Al-Senussi be heard domestically. As a result of this and without prejudice to the Prosecutor's right to submit a request for review of the decision due to a change in circumstances, the proceedings against Mr. Al-Senussi before the ICC have been concluded. Although to date, the Prosecutor has made no decision to submit a request for review under article 19(10) of the Statute, in the light of the deteriorating security situation in the country, the Office has requested Libya to make information available on its national proceedings against Mr. Al-Senussi. The Office has also taken steps to ensure that independent trial monitoring occurs.
22. Regarding the outstanding visit of Al-Senussi's defence, the Single Judge took note of Libya's 27 May 2014 letter signed by the Minister of Justice, relating to the privileges and immunities of, *inter alia*, defense counsel visiting Libya. The agreement emerging from the exchange of letters is therefore already in force and covers all elements referred to by the Chamber in its decision of 26 September 2013 as necessary to ensure the appropriate treatment and protection of the defence teams during their stay in Libya, in accordance with article 48(4) of the Rome Statute. As for practical arrangements, the Single Judge called on the Registrar to perform a risk assessment on the situation in Libya and to advise the Defense on whether a visit is feasible. Since the 7 August decision of the Single Judge, concluding the proceedings against Al-Senussi, the request for cooperation from the Government of Libya in facilitating a visit of the defense has been cancelled.

3. THE ONGOING INVESTIGATION

23. In its seventh report to the Council, on 13 May 2014, the Office noted that it was proceeding with a second case (following the first case, addressing Saif Al-Islam Gaddafi, Abdullah Al-Senussi and Muammar Gaddafi) and was also collecting evidence against other possible suspects outside of Libya. The collection of evidence in this regard continues to be significantly slowed down by lack of resources.

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

24. The Office is currently monitoring three areas of alleged crimes: ongoing alleged unlawful imprisonment, torture and ill-treatment of conflict-related detainees; ongoing alleged forced displacement of around 30,000 Tawerghan civilians since August 2011; and alleged unlawful killings related to the conflict of 2011. In this regard, there is information which suggests that crimes that fall within the jurisdiction of the Court may have been committed. Security concerns and resource constraints have hampered the Office's ability to fully investigate these allegations. The Government of Libya as well as other States that may be able to exercise jurisdiction over such crimes should be encouraged to investigate these allegations.
25. Serious armed clashes continue to occur, with the emergence since May 2014 of two main armed coalitions: "Operation Dignity" forces, led by former General Haftar, against Islamist groups regarded as "terrorists", and "Operation Libya Dawn", a military coalition formed in Western Libya partially in response to "Operation Dignity." This division has led to the establishment of two parliaments and governments in Tobruk and Tripoli, the former a product of the June 2014 elections, the latter a product of "Operation Libya Dawn's" efforts to retain and revitalize the General National Congress as a counterpoint to the government in Tobruk. The UN recognizes the House of Representatives in Tobruk and its government as the legitimate authorities of Libya. However, the Ministry of Justice and other ministries and state institutions in Tripoli have reportedly fallen under the control of Operation Libya Dawn forces, although generally the judiciary has sought to preserve its impartiality towards either side.
26. Both sides in the conflict appear to have committed crimes, including indiscriminate shelling, attacks on civilian infrastructure, and abduction of civilians, torture and murder. UNSMIL published a report on 4 September 2014 alleging serious violations of international humanitarian and human rights law.
27. According to a survey conducted by the Ministry of Justice with UNSMIL's assistance, in March 2014 the Judicial Police were holding fewer than 7,000 detainees, including conflict-related ones. About 10% had been tried. Additional detainees have been held by the military justice system but figures are not available. A significant number of conflict-related detainees are held by armed groups over whom the Government has nominal but no effective authority. It is not currently known how many additional

persons were detained during and after the fighting since May 2014, but the number may be significant and includes many civilians. In September 2014, the UN Secretary-General reiterated that the “handover of all detainees to the effective control of the State is a prerequisite for the establishment of the rule of law in Libya.”

28. Although the implementation of Law 29/2013 on Transitional Justice required the authorities to charge or release all detainees “affiliated to the former regime” by 2 April 2014, the task remains outstanding. During the Eid al-Adha holiday in October, Zintan and Misrata exchanged a number of detainees and Misrata released a few dozen Tawerghans that had been held since 2011, but the number of releases remains minimal.
29. The security environment has slowed down the Government of Libya’s progress on conflict-related cases. Courts have not been functioning in Benghazi, Derna and Sirte, and during the fighting in Tripoli. Prosecutors, judges and lawyers defending perceived Gaddafi loyalists face intimidation, threats, and violence. As a result, some members of the judiciary have begun holding cases back. Reportedly, some perceived Gaddafi loyalists have faced unfair trials that resulted in the death penalty, although sentences remain to be implemented.
30. In the highly tense and polarized environment in Libya today, torture, deaths in custody, kidnappings and secret detentions by armed groups on all sides reportedly continue. Media workers, human rights defenders, and women have been particularly singled out for attacks. Despite the adoption of Law 10/2013 criminalising torture, ill-treatment and discrimination in April 2013, reportedly no militia member or state office has been brought to justice to face such charges.
31. In Benghazi, unidentified assailants allegedly killed at least 14 people in a series of assassinations between 18 and 20 September 2014 including active and former security forces, five civilians, one cleric and two activists. Armed assailants have been targeting former Gaddafi’s security forces, as well as current security forces and activists since the end of the 2011 revolution. Human Rights Watch estimates that over 250 were killed in Benghazi and Derna this year alone. No one usually claims responsibility and there have been no known arrests for such killings.
32. Finally, in relation to the previously referenced alleged mass displacement of Tawerghans in 2011, as a result of the armed clashes which started mid-May, Tawerghan families vacated IDP camps in Tripoli for fear of shelling and further harassment. In Tripoli, about 1,000 Tawerghan families evacuated three camps—al-Fallah, Airport road and Janzour Marine Academy camp by the end of August. In Benghazi, some 112 Tawerghan families, living in two different camps, have been re-displaced since May 2014. This means that most Tawerghans are now displaced a second time, with no prospect of their situation resolving.
33. On 30 August 2014, armed men from the Libya Shield Forces, a militia belonging to the Libya Dawn coalition, attacked al-Fallah camp in Tripoli. One person was reportedly killed and three injured during the raid. Militiamen seized 22 Tawerghans in the

Zawaiyah area as they fled. According to available information, seven of them have been released but most of the others are still being held in Jedayyem prison and elsewhere around Zawiyah.

34. The parliament in Tobruk discussed the return of IDPs including Tawerghan refugees in August and September 2014. An official document has reportedly been signed and stamped by the parliament and a draft decree is under discussion. Reportedly, Misratan representatives who were opposed to the return of the Tawerghans were not included in the discussions as they are in Tripoli, having boycotted the House of Representatives. The question remains, therefore, one of how the return strategy can be successfully implemented.
35. The situation of IDPs is now compounded by widespread displacement in the area of Warshafana, West of Tripoli, where forces of Libya Dawn recently carried out a large-scale military operation. The military operation resulted in additional arbitrary detentions and the destruction of private property. Clashes continue in Western Libya, and intense fighting continues in Benghazi.
36. The Office remains concerned that crimes within the jurisdiction of the ICC are being committed.

5. CONCLUSION

37. The Office appreciates the continuing consultations the Government of Libya has undertaken with the Office and with the Court, but emphasizes that as part of its cooperation with the Court, Libya must immediately surrender Saif Al-Islam Gaddafi to the custody of the ICC.
38. As before, the Office appreciates the challenges facing the Government of Libya and expresses its willingness to work with the Government in trying to address as many cases as possible. 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 the possibility of forming 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 help in order to do so. That help should be forthcoming as soon as possible.
39. As before, the Office continues to encourage the Libyan government to share with the Council and with the international community their comprehensive strategy to address mass crimes, regardless of who is the perpetrator and who is the victim. 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.

40. The Office believes that the international community's involvement remains essential to ending impunity in Libya and looks forward to working with the Government of Libya and the UN Support Mission in Libya to address future cases. | OTP