



TWENTY-FIRST 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 twenty-first report, and the final report of the incumbent Prosecutor, updating on the activities of the Office of the Prosecutor (“OTP” or “Office”) regarding the situation in Libya.

2. Since the Office’s last report to the Council on 10 November 2020, the Office has made significant progress in its investigative activities, but it continues to face serious challenges in securing the arrest and transfer of ICC fugitives to the Court. The Office welcomes the inauguration of a new interim Government of National Unity (“GNU”) under the auspices of the United Nations. The Office is optimistic that the GNU will do all in their power to address the violence and political turmoil that has engulfed the country, so as to secure peace and stability in Libya. The Office underlines that accountability and justice for atrocity crimes are critical to achieving these goals. The Office encourages the GNU, relevant stakeholders, and the international community more broadly, to further intensify the cooperation and partnership with the OTP towards achieving accountability for those responsible for Rome Statute crimes.

3. The Office takes this opportunity to express its gratitude to the previous government, the Government of National Accord (“GNA”), for their assistance and cooperation in its investigative efforts.

2. STATUS OF THE CURRENT CASES

4. Currently there are outstanding ICC arrest warrants against three individuals: Mahmoud Mustafa Busayf Al-Werfalli, Al-Tuhamy Mohamed Khaled, and Saif Al-Islam Gaddafi. There has been no progress in securing the execution of any of these warrants.

Mahmoud Mustafa Busayf Al-Werfalli

5. On 15 August 2017 and 4 July 2018, respectively, the Court issued warrants of arrest against Mr Mahmoud Mustafa Busayf Al-Werfalli. These two warrants allege that Mr Al-Werfalli, a Commander in the Al-Saiqa Brigade, directly committed and ordered the commission of the war crime of murder in relation to the killing of 43 people in the course of eight executions in Benghazi or surrounding areas, between 2016 and 2018. These executions are alleged to have occurred in connection with the Al-Saiqa Brigade’s participation in military operations codenamed “Operation Dignity”, led by General Khalifa Haftar, commander of the eastern-based militia formerly called the Libyan National Army (“LNA”) and now known as the Libyan Arab Armed Forces (“LAAF”).
6. It has been reported that Mr Al-Werfalli was killed by unknown assailants in Benghazi in an attack on his car on 24 March 2021. The ICC has asked, and continues to remind, the Libyan authorities to provide reliable and credible information to verify the reported death of Mr Al-Werfalli.

Al-Tuhamy Mohamed Khaled

7. Mr Al-Tuhamy Mohamed Khaled was the subject of an under-seal arrest warrant issued by the Court on 18 April 2013 for his alleged perpetration of serious crimes including

the torture of individuals, allegedly occurring between 15 February and 24 August 2011. The arrest warrant was reclassified as public by Pre-Trial Chamber I on 24 April 2017.

8. Mr Al-Tuhamy has remained a fugitive from justice since the issuance of the warrant for his arrest. According to public sources, Mr Al-Tuhamy is reported to have recently died in Cairo, the Arabic Republic of Egypt. The Office calls on the Libyan and Egyptian authorities to investigate and verify these reports.

Saif Al-Islam Gaddafi

9. Since the 5 May 2020 Appeals Chamber judgment, which unanimously rejected Mr Saif Al-Islam Gaddafi's appeal and confirmed the admissibility of his case before the Court, Mr Gaddafi has remained a wilful fugitive from justice.
10. Libya remains under the legal obligation to arrest and surrender Mr Gaddafi to the Court. The Office calls upon the GNU to take all necessary action to secure his arrest and surrender. The Office also repeats its call directly to Mr Gaddafi to immediately surrender himself to the competent Libyan authorities for his transfer to the Court for trial.

Arrest, surrender and accountability

11. The Office appreciates that since the ceasefire and inauguration of the new government, the reported crimes falling within the scope of the Rome Statute appears to have decreased. Nevertheless, they have not totally stopped and the Office is concerned that many serious crimes, victimising large groups within the civilian population, have gone unpunished.
12. The Office once more underlines that accountability for the many serious crimes that have been committed in Libya—that have been repeatedly referred to in these reports, as well as in the reports of the United Nations Support Mission in Libya (“UNSMIL”),

the United Nations Panel of Experts and many non-governmental organisations (“NGOs”)—is critical to achieving peace and stability in Libya.

13. The victims of torture and sexual and gender-based crimes in Mitiga Prison, Gernada, Al-Kuweifiya and many other detention centres under the responsibility of the Libyan *de jure* and *de facto* authorities all over Libya deserve justice. The victims of apparently indiscriminate warfare, through airstrikes, mines and other means, as well as the displaced people from Benghazi, Tawergha and many other areas of Libya also deserve justice. The victims who were detained and tortured during the events of 2011, and the families in Tarhuna whose loved-ones were abducted, killed or disappeared, all deserve that these alleged crimes are promptly and effectively investigated and that suspects are prosecuted in a fair and public trial.
14. The Office calls upon the Libyan authorities, the Council and the international community to take all necessary action to ensure the prompt execution of arrest warrants issued by the judges of the ICC. Persons who are suspected to have committed serious crimes including war crimes and crimes against humanity cannot be allowed to evade justice. This would also demonstrate to the numerous victims of atrocity crimes in various locations in Libya that the Libyan authorities, this Council and the international community empathises with their suffering and are committed to taking concrete action to enforce accountability. It will further signal an end to impunity, and ensure that those responsible for such heinous crimes are effectively brought to justice.
15. With the reported death of two of the suspects for whom public arrest warrants have been issued, the OTP notes that the unwillingness of those in power in eastern Libya to surrender Mr Al-Werfalli, or to genuinely investigate and prosecute him, has significantly contributed to a climate of impunity. The same lack of cooperation is evident with regard to the surrender of Mr Gaddafi and Mr Al-Tuhamy by the Libyan and Egyptian authorities, respectively.

16. The Office strongly encourages the new government to intensify cooperation with the OTP to ensure that war crimes, crimes against humanity and other serious crimes that have been committed in Libya are properly investigated and suspects prosecuted. The victims of these crimes and the people of Libya deserve justice.
17. While the alleged deaths of Messrs Al-Tuhamy and Al-Werfalli, if confirmed will not stop the ongoing investigation of the situation in Libya, it will be a tragic example of alleged perpetrators permanently unavailable for trial and accountability for the most serious crimes of concern to the international community. It will also demonstrate the critical need to strengthen our collective efforts to arrest and surrender the ICC fugitives and ensure that they face justice without delay.
18. The Office strongly urges this Council, States Parties to the Rome Statute, and other States and partners to take all necessary action to secure the arrest and surrender of all persons for whom ICC arrest warrants have been issued. Without the arrest of the suspects, justice will continue to evade the victims, and the efforts to build sustainable peace and security will remain at risk. As stated above, Mr Gaddafi should immediately surrender himself to the Libyan authorities so that he may be transferred to the Court for a fair and impartial trial. The Libyan and Egyptian authorities should also promptly investigate the alleged deaths of Mr. Al-Werfalli and Mr Al-Tuhamy.

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

Missions

19. Since the Twentieth Report to this Council, the Office has again made significant progress in its investigations into crimes committed in Libya since 2011. The Office has undertaken several missions, including to Libya, interviewed witnesses, and has received important documents and materials from individuals, NGOs, and representatives of victim organisations within and outside of Libya.

20. The Office notes that threats, violence and other attempts to cover up the crimes committed since 2011 reinforce the determination of many Libyans to contribute to accountability by cooperating with the ICC. They only go to underline the urgent need for the Council, the Libyan authorities, and indeed the Libyan people, to intensify all efforts to secure accountability by cooperating with and supporting the ICC.
21. During the Office's most recent mission to Libya, and in furtherance of previous meetings, the team working on the Libya situation had discussions with important partners, such as the Prosecutor General's Office, the Military Prosecutor, the Criminal Investigation Department, the Ministry of Defence and several forensic agencies. They discussed the status of national investigations, complementarity and cooperation issues.
22. The delegation from the Office also visited several crime scenes in the area of Tarhuna, including a site where over 100 dead bodies had been recovered from different graves that were discovered in the period since June 2020. The delegation met with the prosecutorial, investigative and forensic agencies involved in the investigation of these crimes, as well as with external partners on the related technical and judicial activities.
23. The delegation also met with survivors and family members of the young men that were injured and killed during the airstrike on the Al-Hadba Military College Tripoli on 4 January 2020, as well as with displaced persons from Benghazi and many victims of crimes committed in Tarhuna.
24. These missions have contributed to the Office's ongoing efforts to strengthen the mutual cooperation with relevant national authorities and stakeholders, and enabled it to increase opportunities for the preservation and collection of important evidence.

Investigations and ongoing crimes

25. The Office continues to receive information about ongoing crimes, ranging from disappearances and arbitrary detention to murder, torture and sexual and gender-based violence. These include, for example, the murder of human rights lawyer Hanaan al Baraasi in Benghazi on 10 November 2020 and the finding of the bodies of 11 persons with their hands tied behind their backs in Al Hawari area in Benghazi on 18 March 2021.
26. In the last six months, the Office continuously received and collected credible and substantial information and evidence on serious crimes allegedly committed in official and unofficial detention facilities in Libya. In particular, the Office received information on the Mitiga Prison controlled by the Special Deterrence Force and the Gernada and Al-Kuweifiya detention facilities controlled by the LAAF and its associated forces. These crimes, which include large-scale torture, sexual violence, inhumane treatment and arbitrary detention have been broadly reported for years but to date no one has been held accountable.
27. Furthermore, there are credible reports about the summary conviction and sentencing of civilians to long prison sentences and the death penalty by Military Courts in eastern Libya. These convictions were handed down in secret trials, without access to the guarantees of a fair trial. The Office has received documents and other materials supporting these reports. The fate of tens of female detainees at the Al-Kuweifya prison still remains unknown.
28. UNSMIL reports that more than 8,850 people are arbitrarily detained at 28 official prisons in Libya in Judicial Police custody with an estimated 60 to 70% in pre-trial detention. An additional 10,000 individuals are detained in other detention facilities run by militia and armed groups including about 480 women and 63 juveniles and children.

29. The Office urges the GNU to take serious and urgent steps to put an end to the crimes committed in detention centres and to investigate these serious allegations of arbitrary detention, torture, confiscation of property, rape and other forms of sexual violence, including in Mitiga Prison.
30. The silencing of vocal public critics as part of the acts of violence and ways to terrorize the civilian population as reported in the twentieth report, reached another low point with the assassination of human rights lawyer Hanaan Al Baraasi. The Office calls upon the authorities in eastern Libya to investigate and prosecute the persons responsible for this assassination.
31. In this regard, the Office takes this opportunity to condemn these crimes in the strongest possible terms and calls upon the civil and military authorities in Libya to investigate and prosecute the persons responsible. In particular the Office would like to call on the GNU, civil and military authorities in eastern Libya, to investigate the disappearance 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.

Foreign Fighters in Libya

32. The Office has received information about the activities of mercenaries and foreign fighters in Libya, and has taken note of the information in the reports of the Panel of Experts and UNSMIL in this regard. The Office fully supports the call from the new Libyan authorities, UNSMIL, and the Council for these armed groups and individuals to leave Libya without delay. The Office emphasises that crimes committed by mercenaries and foreign fighters on Libyan territory might fall under the jurisdiction of the ICC, no matter the nationality of the persons involved.
33. The Office calls upon all actors including Libyan nationals, mercenaries and all foreign fighters in Libya to immediately stop the ongoing violence in Benghazi, Tripoli and

elsewhere, and to refrain from involvement in any criminal activities that might lead to the commission of crimes within the jurisdiction of the ICC.

Displaced persons, pillaging and destruction

34. During the reporting period, the Office received substantial information about the illegal expropriation of property including houses, goods, companies and land, for example in Benghazi and Tarhuna. Reports also describe predatory dynamics and how certain militia and groups seem to profit from the seizure of public and private assets. These types of acts may well constitute crimes under the jurisdiction of the Court.

Crimes against migrants

35. Trafficking in persons has been documented as a direct or indirect result of the conflict in Libya. As mentioned in previous reports, in relation to crimes against migrants, the Office has concretely enhanced and developed cooperation, coordination and the exchange of information and expertise with national authorities and EUROPOL under the Offices' strategic goal 6. The recent reports about another shipwreck in the last week of April 2021 leading to the death of over 100 migrants and the reports that are still been received by the Office about the ongoing abuse and exploitation of migrants, underlines the need for ongoing commitment of all domestic authorities, partners and agencies in this cooperation.

4. COOPERATION

36. The Office notes that the GNU has been sworn in before the House of Representatives and has assumed office. Legislative elections are scheduled to take place in December 2021. The Office reiterates its appreciation to the GNA for its engagement and cooperation with the Office and the Court, and looks forward to engaging with the GNU to advance the investigations and the efforts to bring justice for victims in Libya.

37. The situation in Libya remains a priority for the Office in 2021. In line with this priority, the Office has continued to secure cooperation from a number of States and international and regional organisations as well as to extend and enhance its existing network of cooperation to achieve further progress in its ongoing investigations.
38. The Office having to depend on others for the arrest and surrender of suspects, the failure to execute arrest warrants continues to be one of the Office's greatest challenges. The Office again emphasises that its pursuit of justice cannot be achieved without full support from both the relevant Libyan authorities and the international community and calls on the Council to urge the relevant States to take all necessary measures to ensure that the wanted suspects are arrested, surrendered to the Court and tried as soon as possible.
39. The Office is pursuing its efforts to reinforce its relationship with EUROPOL on matters of mutual interest relevant to its mandate. The Office has also engaged with the Panel of Experts on Libya and the Independent Fact-Finding Mission on Libya with the aim of sharing knowledge and expertise.
40. The Office continues to strengthen its cooperation with UNSMIL. It notes the appointment of Mr Ján Kubiš as Special Envoy of the UN Secretary-General and Head of the UNSMIL, and again expresses its gratitude to Ms Stephanie Williams for her appreciated assistance during her service as Acting Special Representative of the Secretary-General and Head of UNSMIL as well as for the continued support and assistance provided by the mission. The Office is keen to maintain its productive working relationship with UNSMIL.
41. Where viable and appropriate, with a view to facilitating national investigations and prosecutions of international crimes committed in Libya, the Office has continued to engage with stakeholders who have submitted requests for assistance to the Office pursuant to Article 93(10) of the Rome Statute.

5. CONCLUSION

42. The Office remains committed to the pursuit of its investigations of Rome Statute crimes perpetrated in the Libya situation since 15 February 2011, to ensure that those responsible are brought to justice for the atrocity crimes against the victims, their family members and their communities. The Office calls on the Council, the Libyan authorities and indeed other States and the international community more broadly to intensify efforts to secure the arrest and surrender to the Court of all ICC suspects-at-large. Without these joint efforts justice will continue to evade the victims. | OTP