



FOURTH 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 unanimously adopted Resolution 1970 (2011), referring the situation in Libya since 15 February 2011 to the Prosecutor of the International Criminal Court, and inviting the Prosecutor to address the Security 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 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, the Office had requested arrest warrants 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 murders as a crime against humanity under article 7(1)(a) and persecution as a crime against humanity under article 7(1)(h).
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. This fourth report will address:
 - a. Cooperation;
 - b. The case of Saif Al-Islam Gaddafi, and Abdullah Al-Senussi, including admissibility;
 - c. The ongoing investigation; and
 - d. The crimes allegedly committed by the different parties in Libya since 15 February 2011.

1. COOPERATION

6. Paragraph 5 of UNSCR 1970 (2011) “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 Part IX of the Statute.
7. The Office continues to seek cooperation from States Parties and non-States Parties alike, as well as from the UN, Interpol, NGOs and other organizations. The Office has submitted more than 130 requests for assistance during the investigation thus far, many of which have yet to be fully executed. The Office encourages partners to cooperate as fully as possible without unnecessary preconditions or restrictions to ensure the effectiveness of the investigation.

1.1 The Government of Libya

8. Security Council Resolution 1970 “Decides that the Libyan authorities shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution.”
9. The Office remains in contact with Libyan authorities through the designated focal point. However, contact has been reduced during the Libyan political transition during the summer and early fall. In June 2012, four employees of the Court were arrested in Zintan and detained for 26 days. Matters arising out of the arrests are still under consideration by the ICC Registry and the Presidency. During the pendency of the Court employees' detention, however, the Office limited its own presence and activities in Libya. The Libyan General National Congress formally renewed by decree the mandate of its focal point to the ICC on 11 September; as of finalization of this report, the new cabinet has not yet been appointed. During the investigation, Libyan authorities have, in general, permitted the conduct of investigative activities in their territory, particularly, to collect evidence from voluntary sources. The Office continues to encourage the Libyan authorities to cooperate fully with the Court as a whole.

1.2 The UN (Commission of Inquiry)

10. Although the International Commission of Inquiry on Libya has completed its work, the Office maintains contact with the Office of the High Commissioner for Human Rights, which remains the depositary of the work of the Commission. As with other partners, the Office encourages the High Commissioner's Office to cooperate as fully as possible to ensure the effectiveness of the investigation.

1.3 NATO

11. The Office continues to communicate with NATO authorities to address concerns raised in the UN Commission of Inquiry's report regarding the possible incidental loss of life under Article 8(2)(b)(iv). The Office looks forward to NATO's cooperation in this regard.

2. THE CASE AGAINST MUAMMAR MOHAMMED ABU MINYAR GADDAFI (MUAMMAR GADDAFI), SAIF AL-ISLAM GADDAFI, AND ABDULLAH AL-SENUSSI

12. As the Office noted in its May 2012 report, the admissibility challenge in relation to the case against Saif Al-Islam Gaddafi has, pursuant to the requirements of article 19(7), resulted in the suspension of the Office's investigations into Saif Al-Islam Gaddafi's activities. The investigations into Abdallah Al-Senussi's activities are ongoing.
13. On 5 September, authorities in Mauritania, who had arrested Abdallah Al-Senussi on 17 March 2012, transferred him to Libyan authorities in Tripoli. He has remained in detention in Libya since then.

3. ADMISSIBILITY OF THE CASE AGAINST SAIF AL-ISLAM GADDAFI AND ABDULLAH AL-SENUSSI

14. As has been mentioned on previous occasions in relation to the Darfur and other situations, an admissibility analysis under the Statute is not an assessment of the relevant national judicial system as a whole. It is an assessment of whether the national authorities have investigated or prosecuted, or are investigating or prosecuting, the same cases as those selected by the Office, genuinely.
15. On 1 May 2012 the Government of Libya filed a challenge to the admissibility of the case against Saif Al-Islam Gaddafi. At the time, and as at the date of this Report, Saif Al-Islam Gaddafi was and remains in the custody of a militia group in Zintan, Libya. The Government of Libya has not yet filed a challenge to the admissibility of the case against Abdallah Al-Senussi, who continues to be held by the Libyan authorities in Tripoli.
16. Pre-Trial Chamber I issued a decision on 4 May 2012, calling on the Office of the Prosecutor, the Office of Public Counsel for Defence (OPCD, which was appointed to represent Gaddafi on an interim basis until regular counsel is appointed), the Security Council, and the Office of Public Counsel for Victims (OPCV), to submit written responses to the admissibility challenge. The responses from the Office of the Prosecutor and the OPCD were filed on 4 June 2012 and 24 July 2012, respectively. On 8 June 2012, Lawyers for Justice in Libya and the Redress Trust filed observations, pursuant to rule 103 of the Rules of Procedure and Evidence.
17. On 26 July 2012, the Pre-Trial Chamber I authorized Libya to file a reply to the responses, extending its deadline to 13 August 2012. On 30 July 2012 the Government of Libya sought an extension of this deadline. On 9 August 2012, the Pre-Trial Chamber suspended the time limit to permit Libya to file, no later than 7 September 2012, setting out the status of the appointment of the Minister of Justice, Attorney-General and Prosecutor-General in Libya, counsel's ability to obtain instructions from them, the status of domestic proceedings against Saif Al-Islam Gaddafi and the conditions of his detention.

18. On 7 September, Libya filed a provisional report and requested leave to file a further report by 28 September 2012. The Pre-Trial Chamber noted that the Libyan government expected the appointment of the new Minister of Justice and Prosecutor-General by 20 September 2012. Accordingly, the Pre-Trial Chamber decided to convene a hearing giving the government of Libya a further opportunity to provide its reply to the Responses orally. The other parties and participants to the admissibility proceedings were also to be given the opportunity to make oral submissions.
19. On 9 and 10 October, Pre-Trial Chamber I held a public hearing with representatives of the Office of the Prosecutor, the Government of Libya, the OPCD and OPCV on the admissibility challenge. The Government explained the nature and extent of its ongoing investigation. However it was unable, at the time, to provide to the Court with copies of evidence it has thus far collected, to support the oral representations made by its counsel. The matter is still under consideration by the Pre-Trial Chamber.
20. The Judges of the Pre-Trial Chamber will decide whether the case remains admissible before the ICC.

4. THE ONGOING INVESTIGATION

21. In its third report to the UN Security Council, on 16 May 2012, the Office noted that it was proceeding with a second case in relation to gender crimes and was also collecting evidence against other possible suspects outside of Libya. The Office took note of the UN Commission of Inquiry's report in which it found two primary patterns of rapes that targeted both men and women: one involving the rape of victims in their homes or elsewhere by numerous armed men, and the second involving the rapes of victims in detention as punishment or to extract information.
22. The Office is mindful of the seriousness and the sensitivity of the crime of rape in Libya for victims, their families and for Libyan society. The Office faces many challenges in the collection of evidence to prove the commission of sexual and gender crimes and determine those responsible. Notwithstanding, the Office continues to analyze information gathered to determine whether Rome Statute crimes occurred, and how, if such a case were to be pursued, the protection of victims and witnesses could be assured in line with the Office's responsibilities under the Rome Statute.
23. In its comprehensive report on the crimes allegedly committed by the different parties in Libya since February 2011, offered as part of its May 2012 report to the Security Council, the Office recognized the documentation, by the UN Commission of Inquiry, of thousands of alleged crimes committed by Gaddafi forces, as well as allegations of crimes committed by rebel or revolutionary forces. The Office is currently working to analyze these crime patterns in order to determine what direction a new case should potentially take.

24. As regards the allegations of crimes committed by rebel forces, the Office expressed particular concern about the situation in Tawergha, a town near Misrata. The Office has reviewed allegations that civilians there were subject to killings, looting, property destruction, and forced displacement by Misrata militias, and also that Misrata militias are preventing Tawergha civilians from returning to their homes. The Office noted that murder, torture and cruel treatment, and pillaging could constitute war crimes, and that acts of torture, if committed in the context of a widespread or systematic attack against a civilian population, could constitute crimes against humanity. The Office continues to collect information to determine whether a new case should address these allegations.
25. The Office continues to collect information relating to the killing of Muammar Gaddafi, as well as information relating to alleged executions of combatants following Gaddafi's capture and killing.

5. CONCLUSION

26. The Office recognizes that the Government of Libya is undergoing a fundamental transition which takes time, especially following 42 years of rule by the Gaddafi regime.
27. The Office commends the engagement of the Libyan government in the judicial process at the ICC, and encourages the government to do everything in its power to provide the information needed by the ICC's judges to properly assess its admissibility challenge under the Rome Statute.
28. The Office also encourages the Libyan government to formulate, make public, and implement, as much as possible, a comprehensive strategy to address the crimes. This will demonstrate that justice remains a key priority, underpinning efforts to ensure peace and stability in Libya, and that victims of all crimes will have the opportunity to seek resolution through the courts.
29. In the meantime, the Office continues its present investigation of Abdullah Al-Senussi, pending a possible admissibility challenge. Given the extensive crimes committed in Libya and the challenges facing the new Libyan government, the ICC's mandate is still essential to ending impunity in Libya. The Office plans to make a decision about a second case in the near future, and will consider additional cases after that, depending on the Government of Libya's progress in implementing its comprehensive strategy.