



SEVENTH 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) (UNSC 1970), referring the situation in Libya since 15 February 2011 to the Prosecutor of the International Criminal Court (ICC), 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) 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. This seventh 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

9. 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 Part IX of the Statute.
10. The Office appreciates the cooperation it continues to receive from both States Parties and non-States Parties in the Libya situation, and looks forward to continuing with a number of these key partnerships to seek and secure creative and proactive solutions to the security challenges facing the ongoing investigation and the strengthening of the rule of law in Libya.

1.1 The Government of Libya

11. 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.”*
12. On 29 January 2014, the Prosecutor and the Deputy Prosecutor met with Libyan Prosecutor General Abdul Qader Radwan and his delegation in The Hague, to discuss implementation of the memorandum of understanding concluded last year between the Office of the Prosecutor and the Government of Libya on burden-sharing in further

investigations and prosecutions, and arrest strategy. In that meeting, the Libyan representatives agreed to support the Office's continuing investigations, with the Office focusing in particular on suspects outside of Libya who the Office believes are responsible for serious crimes. The Office discussed priority suspects with the Libyan representatives and agreed to meet again as soon as possible to discuss practical details. The Office has discussed potential meeting dates with the Libyans since then and believes that the next meeting will take place immediately after its 13 May 2014 briefing to the Council. The Office will provide further details at its next briefing to the Security Council.

13. 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. The Office took the opportunity of the January meeting to call on the Libyan representatives of the Government's obligation to immediately surrender Saif Al-Islam Gaddafi to the Court, and does so again here.

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

14. The Office recalls that the Government of Libya has acted in compliance with the process set out in the Rome Statute in 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. This is a judicial issue and is ultimately subject to determination by the Chambers of the Court.
15. The Prosecution notes that Libya has an obligation to "*cooperate fully with and provide any necessary assistance to the Court and the Prosecutor*" pursuant to United Nations Resolution 1970. Thus, Libya should ensure that its domestic proceedings do not obstruct proceedings before the Court. In relation to the case against Abdullah Al-Senussi, this includes any eventual decision by the Appeals Chamber that may reverse the Pre-Trial Chamber's ruling and declare the case admissible before the ICC. In relation to the case against Saif Al-Islam Gaddafi, Libya continues to be under a pending obligation to surrender him to the Court based on the Pre-Trial Chamber's existing ruling rejecting Libya's admissibility challenge, notwithstanding its appeal against that decision. The Government of Libya should immediately surrender Saif Al-Islam Gaddafi to the Court or give reasons for its inability to do so. Following media reports indicating the commencement of trial in Libya against Saif Al-Islam Gaddafi, Libya should also give assurances that its domestic proceedings against Saif Al-Islam Gaddafi will not impede its obligation to surrender him.

16. As the Office noted in previous reports, the admissibility challenges suspended the Office's investigations into both Saif Al-Islam Gaddafi and Abdullah Al-Senussi. Both admissibility decisions—Saif Al-Islam's case having been found admissible and Abdullah Al-Senussi's having been found inadmissible—remain under appeal.

3. THE ONGOING INVESTIGATION

17. In its sixth report to the UN Security Council, on 14 November 2013, the Office noted that it was proceeding with a second case and was also collecting evidence against other possible suspects outside of Libya. The Office continues with its investigations in this regard, with a focus in particular on pro-Gaddafi officials outside of Libya who the Office believes are responsible for serious crimes and who may continue to pose a security threat to the newly established Government of Libya. This investigation faces serious security challenges in Libya, as do all investigations of crimes in Libya. The Office would also encourage the Government of Libya to conclude its negotiations with the Registry as soon as possible on the matter of recognizing the privileges and immunities of Court staff, which will facilitate coordinated efforts on the territory of Libya.

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

18. In its sixth report, the Office took note of a 1 October 2013 UN report, issued jointly by the UN Support Mission in Libya and the Office of the UN High Commissioner for Human Rights, urging an end to torture and deaths in custody in Libya, through transfer of detainees from the custody of armed brigades to effective State control. More recently, in Resolution 2144, adopted on 14 March 2014, the Security Council expressed its *“grave concern at the lack of judicial process for the conflict-related detainees, including children, many of whom continue to be held outside state authority, and at reports of human rights violations and abuses, including torture and sexual and gender-based violence, in detention centres.”*
19. At the time of the sixth report, the vast majority of the estimated 8,000 conflict-related detainees were being held without due process. The Office's best assessment is that this number has dropped to below 7,000 people who have not yet been transferred to State authority and whose detentions violate their basic human rights. The Government of Libya has acknowledged the seriousness of the problem and set a new deadline for charging or releasing all detainees of 2 March 2014, which is now past. Reportedly the Misrata Revolutionaries in coordination with the city's council also announced in

December 2013 that all soldiers and volunteers taken prisoner during the three-month siege of Misrata who had not been found to be involved in any crimes or who had served their sentences would be released. The Office calls on the Government of Libya to do whatever it can to process the remaining detainees as speedily as possible, and calls on local authorities, particularly in Misrata, to cooperate with the Libyan Government in this process.

20. Despite the adoption of Law 10/2013, criminalizing torture, ill-treatment and discrimination in April 2013, the Office is not aware of any militia member or state officer who has been brought to justice to face such charges. Mistreatment of detainees could constitute crimes against humanity under Article 7(1)(a), (e), (f), and (k), as well as war crimes under Article 8(2)(c)(i) and (ii) of the Rome Statute. The Office also remains concerned about allegations of crimes committed during the armed conflict by rebel forces in Tawergha, following the Gaddafi government siege of nearby Misrata. This siege was launched in part from Tawergha and which many Misratans perceive to have been actively supported by most Tawerghans. Around 30,000 Tawerghans remain displaced until today, living in more than 26 poorly resourced camps throughout Libya, where humanitarian conditions have reportedly deteriorated. The displacement of civilians from Tawergha in the period from August 2011 to April 2014 appears to meet the elements of deportation or forcible transfer of the civilian population as a crime against humanity under Article 7(1)(d) and as a war crime under Article 8(2)(e)(viii) of the Rome Statute.
21. In a 13 January 2014 report to the UN Human Rights Council, the UN High Commissioner for Human Rights noted that there is as yet no overall strategy to ensure the return of Tawerghan communities to their homes. The Government of Libya, together with the UN Support Mission in Libya, has planned for a national conference on internal displacement that has not yet taken place. On 22 March 2014, Prime Minister Abdullah Al-Thinni reportedly met with members of the exiled Tawergha Local Council to discuss the humanitarian situation and to find solutions to the ongoing displacement. The Office also notes recent reports of an initiative of the Executive Office of the province of Cyrenaica for the return of the Tawerghans, as well as reported communications opened between the Misrata Local Council's department for the Tawergha case and the Tawergha Local Council, after which meetings reportedly took place in February and March to search for solutions. While these initiatives are welcome and important, they have yet to produce any change for the people of Tawergha.

5. CONCLUSION

22. Libya must immediately comply with the Court's request and act on its clear obligation to surrender Saif Al-Islam Gaddafi to the Court.
23. 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, and to further discussion about how the Government's work with the Court and other transitional justice measures may be further buttressed.
24. As before, the Office continues to encourage the Libyan Government to share with the Security Council and with the international community their comprehensive strategy to address the 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 victims of all crimes will have the opportunity to seek redress through the courts.
25. The Office believes that the ICC'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.