



## SIXTH 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) (UNSCR 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), 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, 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, 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. This sixth report will address:
  - a. Cooperation;
  - b. The cases 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**

8. 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.
9. 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**

10. 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.”*
11. On 29 August, the Deputy Prosecutor met with Libyan Minister of Justice Salah Al Marghani, Prosecutor-General Abdul Qader Juma Radwan, and their delegation in The Hague, to discuss the conclusion of a memorandum of understanding between the Office of the Prosecutor and the Government of Libya on burden-sharing in further investigations and prosecutions. In the first week of November, the Prosecutor and the Libyan Prosecutor-General signed the memorandum and the Office met with the Libyan focal point to begin discussing practical aspects of its implementation.

12. The Office welcomes the memorandum of understanding as a positive commitment by the Government of Libya to providing justice to Libya's victims, and to cooperating with the ICC in the investigation and prosecution of additional cases against those most responsible for the most serious crimes under the Court's jurisdiction in Libya. The memorandum of understanding neither addresses nor affects the status of the cases against Saif Al-Islam Gaddafi and Abdullah Al-Senussi. As noted in its fourth and fifth reports, the Office continues with investigations, with a focus in particular on pro-Gaddafi officials outside of Libya, who the Office believes are responsible for serious crimes and whose current activities may continue to pose a security threat to civilians in Libya. The Office looks forward to working closely with Libyan partners in pursuit of these and other future cases.

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

13. 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.

14. As the Office noted in its May 2012 report, the admissibility challenge in relation to the case against Saif Al-Islam Gaddafi, pursuant to the requirements of Article 19(7) of the Rome Statute, resulted in the suspension of the Office's investigations into that case until a decision on the admissibility was rendered. As of 2 April 2013, the investigations into Abdullah Al-Senussi's case have likewise been suspended following the Government of Libya's submission of an admissibility challenge in respect of this case as well. Since his transfer from Mauritania to Libya on 5 September 2012, Abdullah Al-Senussi has remained in detention in Tripoli. Saif Al-Islam Gaddafi has remained in detention in Zintan.

15. On 31 May, the Pre-Trial Chamber issued its decision on the admissibility of the Saif Al-Islam Gaddafi case. It found the case admissible before the ICC, on the grounds that the Chamber has not been provided with enough evidence with a sufficient degree of specificity and probative value to demonstrate that the Libyan and the ICC investigations cover the same case, and further that Libya is unable genuinely to carry out the proceedings against Mr Gaddafi. The Chamber also recalled that its finding was predicated on facts as they existed at the time of the proceedings concerning the

admissibility challenge, and was therefore without prejudice to any subsequent challenge that may be brought before the Chamber, provided that the requirements of Article 19(4) of the Rome Statute have been met. The Chamber reiterated the obligation of the Government of Libya to surrender Mr Gaddafi to the Court.

16. On 7 June, the Government of Libya filed its notice of appeal against the Pre-Trial Chamber's decision and requested its suspensive effect. On 24 June, the Government of Libya filed its document in support of its appeal.
17. On 18 July, the Appeals Chamber rejected the Government of Libya's request for suspensive effect of the Pre-Trial Chamber's decision, and reiterated Libya's obligation to surrender Saif Al-Islam Gaddafi. The Office has stressed in its interactions with Libyan authorities that the compliance of Libya with the Court's decisions is of paramount importance. The Office therefore strongly encourages Libya to surrender Saif Al-Islam Gaddafi to the Court.
18. On 23 September, the Government of Libya filed, with leave of the Appeals Chamber, its further submissions on the appeal, noting that on 19 September the initial hearing had been held at the Libyan Accusation Chamber in the case against Saif Al-Islam Gaddafi, Abdullah Al-Senussi and 37 other co-accused. The Government noted that it would no longer be prevented from sharing the supporting evidence of the case against Saif Al-Islam Gaddafi with the ICC in accordance with their national legislation. The Government of Libya further sought additional time, until 2 December 2013, to translate the dossier. To date, the Appeals Chamber has not yet made a decision on this request.
19. On 11 October, the Pre-Trial Chamber issued its decision on the admissibility of the Abdullah Al-Senussi case, finding the case inadmissible before the ICC, concluding that the same case against Mr Al-Senussi that is before the Court is currently subject to domestic proceedings being conducted by the competent authorities of Libya—which has jurisdiction over the case—and that Libya is willing and able genuinely to carry out its proceedings in relation to the case against Mr Al-Senussi. The Chamber also noted that the Prosecutor may submit a request for review of the decision if she is fully satisfied that new facts have arisen which negate the basis on which the case has been found inadmissible.
20. On 17 October 2013, Mr Al-Senussi filed his notice of appeal against the Pre-Trial Chamber's decision and requested suspensive effect of the Pre-Trial Chamber's decision. Mr Al-Senussi has 21 days since the issuance of the decision to file his

document in support of appeal. The Office has not appealed the Pre-Trial Chamber's decision, and on 31 October 2013, opposed the request of Mr Al-Senussi for suspensive effect.

### **3. THE ONGOING INVESTIGATION**

21. In its fifth report to the UN Security Council, on 8 May 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. In accordance with the newly concluded memorandum of understanding, the Office will continue to pursue its investigations in close cooperation with Libyan authorities. These investigations are in line with the Office policy to bring to justice those most responsible for the most serious crimes under the Court's jurisdiction.

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

22. The Office takes note of a 1 October 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. The report states that violations continue despite the Government of Libya's efforts, and adds that prolonged detention and interrogation at the hands of armed brigades without experience or training in the handling of detainees or in the conduct of criminal investigations, as well as the lack of effective judicial oversight, creates an environment conducive to torture or other ill-treatment. The report does note that when detention facilities have been handed over to trained officers of the Judicial Police, there have been marked improvements in the condition and treatment of detainees, and that Libyan authorities are committed at the highest level to securing the handover of detainees to the State, to ending torture, and to ensuring the proper functioning of the criminal justice system. Still, the vast majority of the estimated 8,000 conflict-related detainees are being held without due process. The report records 27 cases of death in custody, where significant information suggests torture as the cause of death, since late 2011. The UN has emphasised that the prompt transfer of detainees to central authorities and processing of detainees for potential release is essential to make a clean break from the use of torture as a key tool of the Gaddafi regime, and to ensure full accountability for crimes

of the past and for ongoing abuses. The Office can only echo this sentiment. The Office calls on the Government of Libya to employ its April 2013 law criminalising torture, enforced disappearances and discrimination to help bring this practice to an end, and to provide regular reports on its progress.

23. The Office notes Article 28 of the new Transitional Justice Law, titled "Ending Detention", in which the Government of Libya commits that "*Ministers of Justice, Interior and Defence or their delegates, each in his own capacity, take the necessary measures to end detentions related to individuals affiliated to the former regime accused of crimes within 90 days of issuing this law,*" which would fall on 21 December 2013. The Office takes note of the Government of Libya's commitment to ensure that such individuals "*should be referred to the competent prosecutor without considering the detention void in case there is enough evidence that they committed acts legally considered as crimes, or released.*" This is reportedly not the first such deadline that has been set for the processing of detainees, but it is essential to create a process with an endpoint that respects the due process rights of all detainees. The Office strongly encourages the Government of Libya to do everything in its power to meet this deadline. The Office encourages the Government of Libya to work closely with the UN and the International Committee of the Red Cross in particular to help to independently confirm the screening and processing of detainees, releasing those against whom there is insufficient evidence or no serious allegations, and submitting the remainder to legal proceedings. The Office will continue to monitor the situation of detentions in Libya and will raise it as a matter of high priority with the Government.
24. The Office also remains concerned about allegations of crimes committed during the armed conflict by rebel forces in Tawergha, a town near Misrata, following the Gaddafi government siege of Misrata, which took place in part from Tawergha and which many Misratans perceive to have been actively supported by most Tawerghans. The Office has reviewed allegations that following the breaking of the siege of Misrata, militias from Misrata subjected Tawerghan civilians to killings, looting, property destruction, detention, and forced displacement, and also that Misrata militias are preventing Tawergha civilians from returning subsequently to their homes. Around 30,000 remain displaced until today.
25. The Office notes that Libya has taken steps towards setting up mechanisms that could address these issues. In particular, the Office welcomes the adoption of Libya's new Transitional Justice Law, which the UN has likewise welcomed on 22 September. The Office looks forward to learning more about the Fact Finding and Reconciliation

Commission to be set up in Tripoli, and to working with this Commission as well as with the Prosecutor-General's office and other relevant authorities in Libya. The Office believes that the Fact Finding and Reconciliation Commission may be able to develop and implement strategies to address allegations of crimes, such as those that took place both in Misrata and Tawergha during the 2011 armed conflict or those that reportedly took place in Bani Walid in 2012. The Office will monitor the work of the Fact Finding and Reconciliation Commission on the alleged crimes in Misrata and Tawergha and in Bani Walid, and is willing to meet with the Commission and with the civilian and militia leaders from these communities to assess the progress on these questions of interest to the Office.

26. The Office also welcomes reports of a new draft law that would make rape during armed conflict a war crime, for which those convicted could receive a life sentence and the victims could receive compensation from the State, although the Office strongly encourages Libyan authorities to ensure that the draft includes male as well as female victims. The Office of the Prosecutor stands ready to support national prosecutions of sexual crimes in any way it can.

## 5. CONCLUSION

27. 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 has expressed this willingness through its efforts to conclude a memorandum of understanding on burden-sharing. The Office also recognises the deteriorating security situation in Libya, marked by car bombings and assassinations of public and security officials. This ongoing situation and the challenges the Government faces in demobilizing and integrating the militias renders their work more difficult to carry forward. The Office calls on key partners of the Government of Libya to provide whatever support they can to ensure that the Government may restore security in Libya.
28. As before, the Office continues to encourage the Libyan Government to share with the Security Council and publicly their comprehensive strategy to address the crimes, regardless of who is the perpetrator and who is the victim. The information that has been shared publicly thus far on new legislative developments is welcome and such information-sharing should be expanded where possible, but a comprehensive view is still essential. 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.

29. The Office believes that the ICC's mandate is still 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.