



Libya: Letter to the ICC Prosecutor on Libyan Amnesty Laws ^[1]

May 25, 2012

Luis Moreno-Ocampo

Prosecutor

International Criminal Court

Dear Mr. Prosecutor:

We are writing in regard to your investigation of grave abuses committed in Libya to draw your attention to a matter of deep concern having to do with impunity for crimes there. We believe there are serious consequences for your mandate as authorized by United Nations Security Council resolution 1970.

On May 2, Libya's National Transitional Council (NTC) passed a new law that grants a blanket amnesty to those who committed crimes if their actions were aimed at "promoting or protecting the revolution" against Muammar Gaddafi. The new law, Law 38, On Some Procedures for the Transitional Period, says there shall be no penalty for "military, security, or civil actions dictated by the February 17 Revolution that were performed by revolutionaries with the goal of promoting or protecting the revolution." The same day, the NTC also passed Law 35, On Granting Amnesty for Some Crimes. While this law does exclude certain crimes from the amnesty it confers, including torture and rape, it fails to explicitly rule out other serious crimes, which might amount to war crimes or crimes against humanity, such as murder and forced displacement.

As you have noted in your third report to the Security Council, the UN Commission of Inquiry has documented grave violations committed by anti-Gaddafi forces during the armed conflict in Libya and in the period since. Indeed, the Commission concluded that anti-Gaddafi forces "committed serious violations, including war crimes and breaches of international human rights law," and that these breaches continue in a climate of impunity.

The UN report highlighted the plight of the people from Tawergha, perceived as Gaddafi supporters, who have been killed, arbitrarily arrested and tortured by anti-Gaddafi fighters

from Misrata. The report said that the widespread and systematic nature of these abuses indicates that crimes against humanity have been committed.

At Human Rights Watch, we have documented ongoing killings, torture, and forced displacement by militias in Libya. In an April 4, 2012 letter to the military and civilian leadership in Misrata, Human Rights Watch alerted the authorities to serious crimes being committed by some Misrata militias, including the mistreatment of detainees in their custody, and said the Misrata leadership could be held accountable for these crimes, also by the International Criminal Court (ICC). Both Misrata councils wrote back to Human Rights Watch, and we remain engaged with them on this issue.

As you know, we copied you on this letter and urged you to raise these concerns with the relevant national authorities in advance of your second mission to Libya in April 2012, including by discussing these issues directly with the leadership in Misrata if possible.

For these and other serious violations committed in Libya, accountability is required. However, the UN Commission of Inquiry expressed concern about the unequal implementation of the law and the failure to hold accountable anti-Gaddafi forces who had committed serious violations. Moreover, it explicitly urged Libya to “[e]nsure that any amnesty process conforms to Libya’s obligations under international law by holding accountable all perpetrators of serious crimes.”

During your briefing to the Security Council on May 16, 2012, multiple delegations similarly raised the importance of equal application of the law, underlining the need for independent and impartial investigations of *all* alleged crimes in Libya. One delegation underscored that no amnesty is possible for war crimes and crimes against humanity, which of course fall under the ICC's jurisdiction.

In your report to the Council, you noted that the Libyan government had committed to a comprehensive strategy to address all crimes and to end impunity in Libya, including by conducting investigations and prosecutions into the most serious crimes regardless of the perpetrator.

Unfortunately, the Libyan government has not been able to rein in the abuses committed by anti-Gaddafi militias, let alone hold those responsible to account as it has pledged. What is more, the adoption of Laws 35 and 38 appears to be a strong sign that the Libyan authorities are unwilling to probe crimes committed by all sides. Law 38, in particular, risks codifying a form of “victor’s justice” and seriously damaging the impartiality that is central to restoring confidence in the rule of law. With a law that openly seeks to shield one side of the political and military divide from justice, we believe it falls to you to take action.

In our advocacy, we have continued to point out that the ICC has ongoing jurisdiction over war crimes and crimes against humanity committed in Libya since February 15, 2011, taking into account, among other factors, whether the Libyan authorities are willing and able to prosecute those responsible for these crimes. We have also stressed that any grant of amnesty by the NTC has no legally-binding effect on other national or international courts, such as the ICC, that have jurisdiction over serious violations of international law.

We welcome your commitment to ensure accountability for serious crimes committed in Libya, and your office's stated plans to continue its evaluation of Libya's efforts in order to ensure that justice is done there. In this connection, we ask that the Office of the Prosecutor underscore concern about Libya's apparent unwillingness to address serious crimes committed by all sides, pointing out that the abuses may fall within the ICC's jurisdiction. We also call on the Office to examine the crimes currently exempted from prosecution by the laws recently passed in Libya, and if appropriate, investigate them.

We thank you in advance for your attention to this pressing matter, and are available to discuss these concerns further with you.

Sincerely,

Sarah Leah Whitson

Executive Director, Middle East and North Africa Division

Richard Dicker

Director, International Justice Program

Cc: Fatou Bensouda, Deputy Prosecutor

Phakiso Mochochoko, Head of the Jurisdiction, Complementarity, and Cooperation Division

Michel De Smedt, Acting Head of Investigations

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