



## **SECOND 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 stressing *“the need to hold to account those responsible for attacks, including by forces under their control, on civilians.”*
2. Paragraph 7 of the Resolution invites the Prosecutor to address the Security Council within two months of the adoption of this resolution and every six months thereafter on actions taken pursuant to this resolution. The Prosecutor first briefed the United Nations Security Council on 4 May 2011.
3. This second report provides a summary of the activities of the Office of the Prosecutor undertaken to implement Resolution 1970 (2011), including:
  - a. The request to issue arrest warrants for Muammar Mohammed Abu Minyar Gaddafi (Muammar Gaddafi), Saif Al-Islam Gaddafi, and Abdullah Al-Senussi.
  - b. Cooperation, and
  - c. The ongoing investigation.

### **1. THE REQUEST FOR ARREST WARRANTS FOR MUAMMAR MOHAMMED ABU MINYAR GADDAFI (MUAMMAR GADDAFI), SAIF AL-ISLAM GADDAFI, AND ABDULLAH AL-SENUSSI**

#### **1.1 Notice to the United Nations Security Council**

4. In its Resolution 1970, the Security Council rejected *“unequivocally the incitement to hostility and violence against the civilian population made from the highest level of the Libyan government,”* and considered *“that the widespread and systematic attacks currently taking place in the Libyan Arab Jamahiriya against the civilian population may amount to crimes against humanity.”*
5. During his first briefing, the Prosecutor informed the Council that in the following weeks the Office would *“request the Judges to issue arrest warrants against three individuals who appear to bear the greatest criminal responsibility for crimes against humanity committed on the territory of Libya since 15 February 2011.”*

6. The Office informed the Council that *“the evidence collected ha[d] confirmed the fears and concerns expressed in Resolution 1970.”*
7. The Prosecutor reiterated that *“In carrying out the mandate given by the Council under Resolution 1970, the Office must apply the norms established by the Rome Statute: it must establish the truth on crimes alleged to have been committed in Libya, through an independent and impartial investigation. This is what we are doing.”*
8. The Office fully appreciates the support received by the Council, as summarized by one Ambassador: *“support [for] the efforts by the International Criminal Court to carry out a fair and impartial investigation into the actions of all parties to the conflict in Libya and to bring to justice individuals involved in possible crimes against humanity and serious violations of international humanitarian law in Libya.”*

## **1.2 The Arrest Warrants requested**

9. On 16 May 2011, pursuant to Article 58(1) of the Rome Statute, the Prosecution applied to Pre-Trial Chamber I for the issuance of arrest warrants against Muammar Mohammed Abu Minyar GADDAFI, Saif Al-Islam GADDAFI and Abdullah Al-SENUSSI.
10. The Prosecution submitted that GADDAFI conceived and implemented, through members of his inner circle such as his son SAIF AL-ISLAM and AL-SENUSSI, a plan to suppress any challenge to his absolute authority through killings and other acts of persecution executed by Libyan Security Forces. They implemented a State policy of widespread and systematic attacks against a civilian population, in particular those considered demonstrators and alleged dissidents. They were attacked in the streets and in their homes.
11. The Prosecution submitted that the attacks were against unarmed civilians and *“Gaddafi’s plan expressly included the use of lethal force against demonstrators and alleged dissidents. In the early days of the demonstrations, Gaddafi transmitted orders through his Secretariat to “discipline” civilians, by killing them and destroying their property, who had openly rebelled against the regime. Further, Al-Senussi, upon Gaddafi’s instructions, directed and coordinated the operation of the Security Forces in Benghazi and expressly ordered the shooting at civilians. Demonstrators were attacked by members of the Security Forces who opened machine gun fire on them in different areas of the city, such as the Juliyana bridge and Jamal Abdun Naser Street. Direct evidence of the plan to use extreme and lethal violence is corroborated by the scale, scope and duration of the attacks; the pattern of the attacks in various cities; the speeches and statements of Gaddafi, Saif Al-Islam and Al-Senussi; the history of the regime’s response to any political opposition within Libya; and the complete authority exercised by Gaddafi and his subordinates over all important security decisions.”*

## **1.3 The Decision of the Judges**

12. On 27 June, Pre-Trial Chamber I issued three 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).

## 1.4 The Crimes

13. The Chamber found that *“on the basis of the materials presented by the Prosecutor, there were reasonable grounds to believe that the highest level of the State apparatus, through the legal system, the media monopoly and the Security Forces, designed a system which enables the monitoring, control and repression of any actual or perceived opposition to Muammar Gaddafi’s regime.”*
14. Further *“the Chamber is satisfied that there are reasonable grounds to believe that there was a State policy designed at the highest level of the State machinery aimed at deterring and quelling the February 2011 demonstrations by any means, including by the use of lethal force.”*
15. The Chamber was satisfied that *“there are reasonable grounds to believe that, in furtherance of the above-mentioned State policy, from 15 February 2011 until at least 28 February 2011, the Libyan Security Forces carried out throughout Libya, most notably in Benghazi, Misrata and Tripoli where more than 50% of the Libyan population resides, an attack against the civilian population taking part in demonstrations against Muammar Gaddafi’s regime or perceived to be dissidents. The Materials further show that the attack by the Security Forces followed a consistent modus operandi which inter alia entailed: (i) searching the homes of and detaining alleged dissidents; (ii) shooting with heavy lethal weapons at civilians who gathered in public places, and with aerial and sniper fire support; and (iii) ensuring that these events were subsequently covered up.”*
16. The Chamber further noted that *“although the exact number of casualties resulting from the attack cannot be known due to the aforementioned campaign to cover up the events, there are reasonable grounds to believe that, as of 15 February 2011 and within a period of less than two weeks in February 2011, (i) hundreds of civilians were killed by the Security Forces; (ii) hundreds of civilians were injured, primarily as a result of the shootings by the Security Forces and (iii) hundreds of civilians were arrested and imprisoned by the Security Forces.”*
17. Accordingly, the Chamber found that the crimes of murder and persecution on political grounds were committed in the context of an attack against a civilian population and in furtherance of a State policy that sought to quell and deter the demonstrations by all means, including through the use of lethal force.
18. The Chamber also found *“information which indicates that there was a campaign to cover up the alleged crimes through the following acts: (i) targeting journalists to prevent them from reporting events, and punishing them for having done so; (ii) repeatedly blocking satellite transmission of certain channels and disrupting internet and telecommunications services; (iii) confiscating laptops, camera, mobile phones SD and SIM cards from persons stopped at checkpoints; (iv) removing dead bodies by the Security Forces including from the hospitals and throwing of at least one body into a rubbish truck in Tripoli; (v) searching for wounded protesters in the Tripoli hospital; and (vi) levelling to the ground a Mosque which bore bullet holes as a result of an attack by the Security Forces in Al-Zawiyah; and (vii) removing evidence of mass graves in Al-Zawiyah.”*

## 1.5 The role of Muammar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi

19. The Chamber found that *“the evidence submitted by the Prosecutor provides reasonable grounds to believe that the scale of the concerted actions by Muammar Gaddafi and his son Saif Al-Islam Gaddafi leads to the inference that Muammar Gaddafi in coordination with his inner circle including Saif Al-Islam, conceived and orchestrated a plan to deter and quell, by all means, the civilian demonstrations against the regime.”*
20. The Chamber found *“reasonable grounds to believe that, at all times relevant to the Application, Muammar Gaddafi had absolute, ultimate and unquestioned control over the Libyan State apparatus of power.”* The Chamber was *“further satisfied that the Materials provide reasonable grounds to believe that the power structure created by Muammar Gaddafi enable[d] him to transmit orders directly to every level of Libya’s State apparatus staff, ensuring their immediate implementation”*. The Chamber noted that *“within the various units of the State apparatus, especially the Security Forces, there are only vertical lines of communication and command, all of which ultimately lead to Muammar Gaddafi.”*
21. According to the Chamber, Saif Al-Islam was Gaddafi’s unspoken successor and the most influential person within his inner circle. The Chamber found *“reasonable grounds to believe that Saif Al-Islam Gaddafi exercised control over crucial parts of the State apparatus and Security Forces, including finances and logistics and had the power of a de facto Prime Minister.”*
22. The Chamber cited Muammar Gaddafi’s condemnation of the Tunisian uprising on Libyan State television on 15 January 2011, and a series of subsequent speeches, in which *“Muammar Gaddafi and his son, Saif Al-Islam, who act[ed] as a de facto prime minister, stated their intention to suppress any kind of demonstrations against the regime.”* In addition, on 16 February 2011, the Chamber notes that the State-owned telecommunication networks sent threatening SMS messages to all phones in Libya warning anyone who tried to touch the four red lines, namely the Islamic law, the security and stability of Libya, its territorial integrity and Muammar Gaddafi himself.
23. The Chamber outlined *“Muammar Gaddafi’s [essential] contributions for the implementation of the plan as he, inter alia: (i) conceived and designed the plan and oversaw its implementation; (ii) issued orders to his closest direct subordinates in the Security Forces, among them Abdullah Al-Senussi, to mobilize troops in order to quell the popular demonstrations; (iii) issued orders and publicly incited the population to attack civilians perceived to be dissidents; (iv) authorised the release of a large number of prisoners in order to create a situation of chaos that would facilitate the intervention of Security Forces; (v) ensured that direct perpetrators were provided with the necessary resources for the implementation of the plan; (vi) ordered the widespread arrest of dissidents; (vii) conceived, designed and implemented the cover-up campaign aimed at concealing the commission of crimes by Security Forces; (viii) publicly addressed the population in order to threaten and scare demonstrators; and (ix) granted financial benefits in order to gain and mobilise popular support.”*
24. The Chamber found that *“Saif Al-Islam Qaddafi’s [essential] contributions amounted to, inter alia: (i) support of and contribution to the design of the plan; (ii) use of his powers and authority*

*to ensure the implementation of the plan; (iii) ordering the recruitment of mercenaries and the mobilization of militias and troops; (iv) ordering the imprisonment and elimination of political dissidents; (v) providing resources to Security Forces; (vi) publicly addressing the population in order to threaten and scare demonstrators and mobilise Muammar Gaddafi's supporters; and (vii) contributing to the cover-up campaign, notably by denying the commission of crimes by the Security Forces and shifting the responsibility to the demonstrators."*

25. The Chamber therefore concluded that there were *"reasonable grounds to believe that Muammar Gaddafi and Saif Al-Islam Gaddafi are both mutually responsible as principals to the crimes pursuant to article 25(3)(a) of the Statute, as indirect co-perpetrators of the crimes against humanity of murder and persecution."*
26. Regarding Abdullah Al-Senussi, the Chamber found that *"due to his family ties and long-lasting friendship with Muammar Gaddafi, Abdullah Al-Senussi occupied, at all times relevant to the Application, an important role within the Libyan hierarchy."* *"By virtue of his control over the Military Intelligence, Abdullah Al-Senussi, although subordinated to Gaddafi, is at the same time the highest authority of the armed forces, of which all members are subordinated to him"*. The Chamber further found that there are *"reasonable grounds to believe that from 15 February 2011 until at least 20 February 2011, Abdullah Al-Senussi, the national head of the Military Intelligence, one of the most powerful and efficient organs of repression of Muammar Gaddafi's regime and the state security organ in charge of monitoring the military camps and members of the armed forces, exercised control over the armed forces under his command that were deployed in the city of Benghazi in order to suppress civilian demonstrations."*
27. The Chamber was *"further satisfied that there are reasonable grounds to believe that Abdullah Al-Senussi, once instructed by Muammar Gaddafi to implement the plan of deterring and quelling civilian demonstrations against the regime in Benghazi, used his powers over the military forces, commanded the forces in Benghazi, and directly instructed the troops to attack civilians demonstrating in Benghazi including at the Juliyana Bridge on the 17 of February."*
28. For this reason, the Chamber found *"reasonable grounds to believe that Abdullah Al-Senussi...is responsible as principal to the crimes committed in Benghazi from 15 February 2011 until at least 20 February 2011 by the members of the armed forces under his control, under article 25(3)(a) of the Statute, as an indirect perpetrator."*

## **2. COOPERATION**

29. 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.
30. The cooperation received from States, regional and other international organizations in accordance with paragraph 5 of Resolution 1970 has been a critical component of the fast progress of the Libya investigation.

31. Cooperation poses a major challenge for the effective operation of the Office. As stated by a delegation in May, *“the situation in Libya presents an immediate test not only for the ICC as an indispensable tool in our collective conflict resolution efforts, but also for our collective determination to maintain international peace and security”* and *“It is difficult to see how the interests of justice can be served without the cooperation of the international community.”*
32. Overall, the Office continues to receive substantial cooperation from both States Parties and non-States Parties alike, as well as from the UN, Interpol, and other organizations. At the Office’s request, Interpol issued Red Notices for all three individuals in September 2011. The Office has submitted more than 57 requests for assistance during the investigation thus far, most of which have been fulfilled or are in the process of being fulfilled.
33. The Office emphasizes the importance of cooperation requests in relation to assets and proceeds of crimes. They are a key part of any investigation to establish criminal responsibility and will also allow in the longer term for reparations to victims in accordance with the Rome Statute.

## **2.1 The UN Commission of Inquiry**

34. The Office continues its useful liaison with the UN Commission of Inquiry in accordance with respective mandates. The Office has a specific mandate in accordance with article 54 of the Statute *“to establish the truth, extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under this Statute, and, in doing so, investigate incriminating and exonerating circumstances equally.”* It has the duty to carry its own investigation independently and to evaluate independently all information it receives from non-governmental, state or international bodies; in this context, it is appreciative of the information received from the Commission.
35. As noted by the Commission, it *“has been consulting with the Office of the Prosecutor of the International Criminal Court (ICC) whose office has been investigating alleged international crimes committed in Libya since 15 February 2011”* and *“In undertaking this liaison, the Commission and the ICC have been committed to respecting appropriate confidentiality and independence requirements of each body.”*
36. The Office looks forward to further work together with the Commission as the Office starts the next phase of its investigations, with a focus on ensuring effective coordination between the work of the Office, which is to collect evidence to be presented in Court, and that of the COI, and ensuring a minimum of overlap in work, particularly in light of the risk of overexposure of vulnerable witnesses and victims.

## **2.2 The African Commission for Human and People’s Rights**

37. In addition to the work of the UN Commission of Inquiry, and the investigations of the Office, the Office notes that the African Commission for Human and People's Rights in

March also responded to the serious crimes being committed in Libya with their application before the African Court for Human and People's Rights against the then Libyan authorities for "*serious and massive violations of human rights guaranteed under the African Charter on Human and Peoples' Rights*" relating to violent suppression of demonstrations, excessive use of force, and serious violations of the right to life. Later the same month, the Court ordered provisional measures against Libya, requiring that Libya "*immediately refrain from any action that would result in loss of life or violation of physical integrity of persons, which could be a breach of the provisions of the African Charter on Human and Peoples' Rights or of other international human rights instruments to which it is a party.*" The case continues.

### **2.3 The National Transitional Council**

38. The Office also appreciates its ongoing contact with the Libyan authorities and the National Transitional Council (NTC)'s pledge to cooperate with the Court. The Office has had substantial contact with the NTC authorities, including with NTC Chairman Mustafa Abdul Jalil and with Prime Minister Mahmoud Jibril and Justice Minister Al Allagi, the latter two who have both visited the Court and met with the Prosecutor. In these conversations, all concerned have reiterated their support for the ICC and their interest to work cooperatively together to ensure justice for Libya's victims.
39. The Office takes note of the efforts the NTC has made to preserve vital evidence and appreciates the undertakings the NTC has made in this regard. Efforts toward preservation of evidence are essential and the Office will continue to consult with the NTC and other relevant parties toward this end.
40. The Court's warrants stand, and require that Muammar GADDAFI, Saif Al-Islam GADDAFI, and Abdullah AL-SENUSSI should be arrested and surrendered to the ICC for prosecution. If the Libyan authorities were to decide to undertake the same cases—prosecuting the same individuals for the same crimes and the same underlying conduct, they will have to make an admissibility challenge in Court and it will be for the ICC's Judges to decide whether the Office's cases remain admissible. Additionally, the Court may, in a particular case and in accordance with the provisions of the Rome Statute and the Rules of Procedure and Evidence, decide to sit in Libya, if it considers that it would be in the interests of justice.
41. If the Libyan authorities decide to prosecute the same individuals for different crimes, committed for instance before February 2011, there would be the potential for sequencing prosecutions between the ICC and the national authorities, following consultations to establish the sequence that would lead to the most productive results and to ensure that justice prevails. Again, this will be a judicial process under the framework established by UNSC Resolution 1970.

### 3. THE ONGOING INVESTIGATION

#### 3.1 Next steps

42. The ongoing investigation is strengthening the base of evidence underpinning the three warrants, in preparation for the eventual trial. The Office continues to collect information and documentary, video, audio and other forms of evidence from a variety of credible and independent sources, aiming, as an Ambassador described in May, *“to leave no stone unturned in the search for further evidence to strengthen the cases against those who may have committed atrocities.”*
43. Above all, the Office is concerned with the protection of those most vulnerable, including women, children, immigrants or persons not corresponding to common conceptions of Libyan ethnicity, the detained, and injured, in line with the preventive mandate of the Court.
44. Toward this end, the Office is aware of allegations from the UNCOI’s September report that *“In recent weeks, reports have emerged of the mass arrest of black Africans who are suspected of being pro-Gaddafi mercenaries. It has been reported that large numbers of migrant workers from Chad, Mali, Niger, Nigeria and Sudan have allegedly been arbitrarily arrested by security forces of the NTC in Tripoli. There are also allegations that dark-skinned Libyans have also been arbitrarily arrested and detained. Detainees are reportedly being held in detention centres throughout the city including at the prisons at Ain Zara, Tajoura and the Mitiga Airbase, as well as temporary detention facilities including at the National Oil Institute, the Bab al-Bahr football club and local schools. Many migrant workers have fled their homes for fear of arrest and detention. There have also been reports of arbitrary detention and ill-treatment of black Africans in Az-Zawiya. While the prosecutor’s office in some localities have begun to assume control over these detainees, many have not been brought before a judge to review the legality of their detention.”*
45. In a 13 October report, Amnesty International reveals a pattern of beatings and ill-treatment of captured al-Gaddafi soldiers, suspected loyalists and alleged mercenaries in Western Libya. In some cases, Amnesty asserts, there is clear evidence of torture in order to extract confessions or as a punishment. Amnesty argues that *“There is a real risk that without firm and immediate action, some patterns of the past might be repeated. Arbitrary arrest and torture were a hallmark of Colonel al-Gaddafi’s rule. We understand that the transitional authorities are facing many challenges, but if they do not make a clear break with the past now, they will effectively be sending out a message that treating detainees like this is to be tolerated in the new Libya.”*
46. The Office notes that on 12 September, NTC Chairman Mustafa Abdul-Jalil called on rebel forces, *“No retribution, no taking matters into your own hands and no oppression. I hope that the revolution will not stumble because of any of these things. “*
47. The Office has approached the Libyan authorities on the issue of ensuring due process for those detained and understands that the NTC is working with the International



Organization for Migration to address this issue. The Office is checking all relevant information.

### **3.2 Investigations on gender crimes**

48. The Office is also investigating allegations of gender crimes. Cultural and forensic obstacles confront investigators both at the international and national level.

49. In a 5 September press release, Amnesty International notes *“One of the grimmest features of the armed conflict in Libya has been the spate of arbitrary arrests and enforced disappearances of thousands of suspected opponents of Colonel Mu’ammār al-Gaddafi. Some are still missing, while those who have been freed bring back tales of torture, rape and extrajudicial executions,”* and addresses two cases in particular of women who were detained and threatened with rape to force them to talk.

50. Human Rights Watch in a 19 September press release, stated that *“The full extent of sexual violence during the conflict remains unknown, due in part to the stigma surrounding rape in Libya and the dangers that survivors may face when they make crimes public. Human Rights Watch has documented nine cases of apparent gang rapes and sexual assault at the hands of Gaddafi forces, and one at the hands of unidentified perpetrators, committed between February and May 2011. The assaults were mainly in territory controlled by Gaddafi forces at the time. The cases documented by Human Rights Watch involve three men and seven women, ranging in age from 22 to 41 years old. All of the victims allege gang rape, with one case involving at least seven perpetrators. One survivor was unable to describe the perpetrators, but the other nine identified their tormenters as “soldiers,” “men in uniforms,” and “men in camo shirts.” Survivors described being abducted from their homes or arrested on the streets. They all described being raped and beaten. Some also told Human Rights Watch that they had been stabbed or had their hair pulled and cut off. Several people said perpetrators penetrated them with objects, including guns and a broomstick.”*

51. The UN Commission of Inquiry noted that it *“received, but was unable to verify, individual accounts of rape. It notes, however, that sufficient information was received to justify further investigation to ascertain the extent of sexual violence, including whether cases were linked to incitement by the command of either side. It is evident that reports of rape have had a major psychological and social impact and have spread fear among the population. Given the allegations that rape was committed as part of a policy to spread such fear, further investigation would be warranted.”*

52. Such allegations of rape and sexual crimes will be further investigated by the Office.

### **3.3 War crimes**

53. Allegations have been made against all parties to the conflict regarding the disproportionate use of force that could constitute a war crime in accordance with article 8(2)(b) of the Rome Statute. The Office will continue to examine these matters as well and welcomes submission of any information or evidence that would facilitate investigation of allegations of the disproportionate use of force by any party to the conflict. It is not yet determined whether the Office’s investigation into allegations of

war crimes will move forward in this or the coming period, depending on the funds available to the Office to conduct the Libya investigation.

### **3.4 NATO forces**

54. In its first report, the International Commission of Inquiry on the human rights situation in Libya indicated that while it had received reports stating that NATO military action involved indiscriminate attacks on civilians, it was not in a position to assess the veracity of the information received, and had *“not seen evidence to suggest that civilian areas have been intentionally targeted by NATO forces, nor that it has engaged in indiscriminate attacks on civilians.”*
55. Reporting to the UN Human Rights Council on 19 September, member of the Commission Philippe Kirsch noted the Commission had received three further communications from the Gaddafi regime alleging that civilians have been killed during NATO strikes on Tripoli, which it alleged amounted to an indiscriminate attack on civilians, and that the Commission would consider these during the next phase of its investigations.
56. NATO stated that its targeting procedures and use of weaponry have been carefully designed and applied so as to avoid civilian casualties and indicated it was prepared to cooperate fully with the Commission.
57. The Office has visited NATO Headquarters and will consider NATO’s answer to any allegations in the upcoming period of the investigation.
58. In the light of changed conditions on the ground, the Office is assessing the possibility of investigations on the ground. The NTC has committed to full cooperation in this regard. The Office will undertake all necessary precautions to ensure that adequate and appropriate protection for victims and witnesses in line with the Office’s statutory obligations is in place before commencing investigations on the ground.

## **4. CONCLUSION**

59. The Office’s immediate goal is to complete the investigation of Muammar GADDAFI, Saif Al-Islam GADDAFI, and Abdullah AL-SENUSSI in order to be trial-ready, in anticipation of their arrest. The Office is also progressing in the investigations on gender crimes and is examining information related to attacks on migrant workers. The Office is confident that the Council will continue to express its support for the efforts of the ICC as a judicial institution able to end the era of impunity in Libya and to contribute to the prevention of future crimes.
60. The Office believes that the arrest of Muammar GADDAFI, Saif Al-Islam GADDAFI, and Abdullah AL-SENUSSI is achievable with the appropriate coordination and exchange of information with all relevant States. States need to work together in support of the Libyan authorities to achieve such arrests. With united will and commitment, arrest will be only a matter of time.

61. The Office is considering whether further prosecutions are warranted and will keep the Security Council apprised of any decisions in this regard.