



Situation in Libya at the International Criminal Court

POSITION PAPER

The Office of the Prosecutor (OTP) at the International Criminal Court (ICC) has been investigating core international crimes committed [in Libya](#) since 2011, pursuant to jurisdiction granted by United Nations Security Council (UNSC) Resolution 1970 (2011). On 15 May 2025, the Prosecutor of the ICC delivered the 29th bi-annual [report](#) and [briefing](#) to the UNSC on the Situation in Libya.

Two key announcements in the briefing stood out. First, the Prosecutor announced that on 12 May 2025, the ICC received a formal declaration from Libya's Government of National Unity (GNU) under Article 12(3) of the Rome Statute, accepting the Court's jurisdiction over all alleged Rome Statute crimes committed on Libyan territory between 2011 and the end of 2027. Second, the Prosecutor reaffirmed his intention to conclude his Office's investigations in the Libya Situation by early 2026, despite the GNU's newly announced mandate and significant survivor and civil society concerns around this unduly tight "completion" timeline, including longstanding obstacles to effective cooperation and ongoing crimes in Libya.

These developments present both new possibilities and urgent challenges. While the European Center for Constitutional and Human Rights (ECCHR) and Refugees in Libya (RiL) welcome the renewed momentum and commendable recent investigative progress of the OTP's Unified Libya Team, we are deeply concerned about several issues. These include: the OTP's unrealistic timeline for completion of its investigative phase in the Libya Situation; the persistent accountability gap for crimes against migrants and refugees; the lack of investigation into EU and Member State officials for complicity in crimes, particularly concerning interceptions of migrants and refugees at sea and subsequent forced returns to arbitrary and inhumane detention in Libya; and ongoing challenges related to complementarity in Libya and relevant European jurisdictions.

This brief provides a closer analysis of these issues and concludes with key recommendations to the ICC's Office of the Prosecutor.

PUSHING FOR COMPLETION AS JURISDICTION EXPANDS

We welcome the GNU's acceptance of the exercise of the ICC's jurisdiction over alleged crimes committed on Libyan territory from 2011 until the end of 2027. Though falling short of becoming a State Party to the Rome Statute, the GNU's Article 12(3) declaration offers an important reaffirmation and clarification of the Court's mandate. ECCHR and RiL recognize this important step towards ending

impunity for international crimes committed in Libya. It confirms that post-2011 crimes are covered within the scope of the Court's jurisdiction. And it adds another layer of binding obligations on Libyan authorities to fully cooperate with the Court, including facilitating investigations and surrendering suspects, obligations which are already incumbent on Libya under the current UNSC referral. In this sense, it offers the possibility to strengthen investigative efforts in a context where justice has been stalled for too long.

Yet, the OTP's decision to reaffirm its intention to complete investigations in the Libya Situation by early 2026, despite only modest and unreliable cooperation from Libyan authorities, is both premature and troubling. This slight extension from the previous deadline of December 2025 does little to address the core concerns repeatedly raised by survivors and civil society. First, such a timeline is unrealistic given the track record of minimal cooperation from Libyan authorities, which the Prosecutor's most recent report to the UN Security Council continues to describe as "below expected levels." Second, the completion of the current investigation is irresponsible considering that crimes remain ongoing. The Prosecutor has previously acknowledged that progress depends on meaningful cooperation with national authorities. Yet both his oral briefing and the full report submitted to the Council underscore that this cooperation, particularly with Libya's Attorney General's office, remains largely symbolic and substantively lacking. By continuing to rush towards "completion" of its investigation, the OTP risks squandering the opportunity to usher in a "new chapter of action" in the Libya investigation.

Moreover, the declaration of jurisdiction is incomplete in and of itself. The declaration was made by the GNU in western Libya but has already been publicly rejected by the eastern-based House of Representatives' Committee on Justice and National Reconciliation. Meanwhile, armed clashes and growing public unrest in Tripoli reflect the broader instability and entrenched impunity that have defined Libya's post-2011 landscape. Given the ongoing political instability in Libya, reliance on the GNU's declaration alone to continue the Libya investigation may result in widening the accountability gap for international crimes committed in Libya.

The OTP must continue its current investigations into crimes in Libya at least through 2027. The Prosecutor's announcement that the current lines of investigation, including those against migrants and refugees, will be closed in early 2026 highlight a potential impunity gap towards ongoing crimes occurring on Libyan territory. Continuing violent confrontations in Tripoli and throughout Libya demonstrate the ever-changing situation in Libya and need for continuous

criminal investigations. Keeping good on its promise to usher in a new chapter of action and investigations, the OTP must take advantage of the GNU's historic acceptance of jurisdiction to ensure that the highest levels of perpetrators of international crimes in Libya are brought to justice.

ACCOUNTABILITY GAP FOR CRIMES AGAINST MIGRANTS AND REFUGEES

We are deeply concerned by the continued absence of accountability for crimes against migrants and refugees—the sole priority stream in which no public arrest warrants have been issued to date.

ECCHR and RiL commend the significant progress and continued resolve of the OTP's Unified Libya Team to investigate crimes in Libya across most of its four investigative priority areas, including pursuing new arrest warrants for individuals in relation to crimes in detention facilities across the country. Crimes against migrants and refugees have long been recognized by the ICC as one of the four priority investigative streams in the Libya Situation. Yet, despite years of mounting evidence provided by UN bodies, civil society organizations, and survivors themselves, not a single arrest warrant has been issued in this stream. While we recognize and appreciate the clarification provided in the Prosecutor's report that crimes in the Mitiga prison also included crimes against migrants, it is worth noting that the arrest warrant for Osama Elmasry Njeem contained no direct mention of migrants. Moreover, the OTP's existing cases fail to address crimes exclusively facing migrants and refugees in Libya, namely in facilities controlled by the Directorate for Combatting Illegal Migration (DCIM), informal detention sites and during interceptions at sea. Addressing this gap is essential to ensure that accountability extends to all survivors and groups affected by international crimes in Libya.

In his speech before the UNSC, the ICC Prosecutor described crimes in detention facilities in Libya as "a black box of suffering on the coast of the Mediterranean that nobody has wanted to open. A black box that contains the cries, the ongoing pain, as we speak, of some of the most vulnerable people in both the West and the East of the country." Political authorities and powerful private actors in both Libya and Europe have sought to maintain that black box around the suffering of vulnerable groups—both Libyan and non-Libyan—detained in the country's formal and informal detention centers. Yet, survivors, affected communities, civil society actors, investigative journalists and key international entities like the UN Panel of Experts and Independent

Fact-Finding Mission on Libya have long shed light on this darkness. These are not abstract or invisible crimes. It is well known and rigorously [documented](#) that migrants and refugees in Libya today continue to endure widespread and systematic abuses including arbitrary and severe deprivation of liberty, torture, sexual violence, enslavement, killings, and other inhumane acts. These acts are not incidental; they are the hallmarks of a system of violent commodification and exploitation in which Libyan security forces, militias, traffickers and European migration control actors all play a part.

It is the OTP's lack of visible action and demonstrated commitment to ending impunity for crimes against migrants and refugees in Libya that is increasingly indefensible. The absence of accountability sends a clear and dangerous message: that the racialized violence inflicted on Black and brown migrants can be deprioritized, framed only as “smuggling” rather than core international crimes, or overlooked entirely. This is not due to a gap in evidence, but rather a gap in political will to investigate and prosecute crimes against migrants and refugees.

The Court's recent progress in its other investigative streams has shown it is serious about accountability and justice in Libya. But whether this accountability will extend to justice for migrants and refugees is a crucial litmus test for the ICC's credibility. We urge the Court to recognize that violence against migrants in Libya is not collateral damage, but core to the system of abuse the ICC is mandated to investigate. In this context, the Court must actively build its own cases rather than rely solely on domestic jurisdictions to address these crimes through complementarity.

COMPLICITY OF EU AND MEMBER STATE OFFICIALS: AN INEXCUSABLE INVESTIGATIVE GAP

It is our continued position that the OTP must investigate the role of European actors as co-perpetrators of crimes committed against migrants and refugees in Libya. ECCHR's [2022 Article 15 Communication](#) to the ICC provides evidence of European involvement in illegal pushbacks that are both sustained by and result in crimes against humanity.

European authorities are co-perpetrators of, or otherwise complicit in, crimes against migrants and refugees occurring in Libya. Since 2016, EU agency and Member State officials and Libyan authorities have engaged in a common plan to intercept migrants and refugees fleeing via the Central Mediterranean route with the aim of containing them in Libya. This common plan is evidenced through official and unofficial agreements to provide material,

capacity-building and operational support to Libyan actors tasked with migration management, such as the so-called Libyan Coast Guard (scLCG). Financial and operational support, such as giving distress location information to the scLCG and even coordinating interceptions in specific incidents, has played a decisive role in facilitating the interceptions of migrants and refugees at sea and returning them to Libya. Both at sea and on land, migrants and refugees face a litany of crimes against humanity. This assessment has been confirmed by the UN's [Independent Fact-Finding Mission on Libya](#), which found that crimes against humanity against migrants and refugees were taking place in places of detention that received technical, logistical and monetary support from the EU and its Member States for the interception and return of migrants.

The ICC is the best-placed institution to conduct a thorough and complete investigation into the complex network of collaboration between European and Libyan actors and the resulting commission of grave crimes, including by high-level perpetrators. Only the ICC can properly address the structural dimension of these crimes beyond low-level perpetrators and hold accountable those at higher echelons, whose immunities may bar prosecution in European or Libyan domestic courts. The ICC is uniquely positioned to confront this critical dimension of injustice and it must do so without fear or favor. Survivors deserve and demand equal, not selective justice.

THE FAILURE OF COMPLEMENTARITY IN LIBYA AND EUROPE

Lastly, we are concerned with the OTP's continued insistence that it will rely on Libyan judicial authorities to prosecute international crimes as part of its complementarity strategy. So far, Libyan officials have shown neither the will nor the capacity to pursue accountability for serious international crimes, especially those implicating politically powerful or militia-aligned figures. On the contrary, various government officials and those affiliated with the government have been identified as perpetrators of these crimes. Moreover, ongoing political fragmentation, lack of judicial independence, and deep institutional dysfunction render genuine investigations or prosecutions implausible. In successive reports to the UNSC, the OTP has frequently highlighted concerns in cooperation with Libyan authorities.

This accountability gap is exemplified by [the case of Osama Elmasry Njeem](#). In January 2025, Mr. Njeem was arrested by Italian authorities on an ICC arrest warrant alleging that he perpetrated crimes against humanity and war

crimes. Yet, Italian authorities transferred Mr. Njeem back to Libya, where he was welcomed with open arms. Though the Libyan Attorney General [claims](#) to have been investigating crimes committed by Elmasry for almost a decade, his office has yet to arrest, prosecute, or sanction him. Instead, he has been allowed to continue serving in his position. This is a clear demonstration of Libya's inability to prosecute international crimes committed on its territory, or of a clear unwillingness that may amount to complicity in their perpetration. The OTP must ensure that cooperation with Libyan authorities in line with the principle of complementarity does not further impunity for international crimes committed in Libya. Italy's return of Mr. Njeem to Libya despite an active ICC arrest warrant also underscores our previous call for the OTP to investigate relevant European individuals for their role in the perpetration of international crimes in Libya.

There are further challenges in relying on national authorities throughout Europe to prosecute international crimes committed in Libya. Despite the Prosecutor's lauding of its constructive cooperation with domestic authorities in several states on complementarity efforts, no domestic cases have yet taken place on crimes against humanity or war crimes in Libya. With respect to crimes against migrants and refugees, national authorities in Europe continue to treat these crimes as issues of smuggling or trafficking, rather than recognizing them as components of a broader system of violence amounting to crimes against humanity or other international crimes. This translates into a lack of recognition of the harm inflicted on survivors.

We are further concerned by the lack of clarity regarding whether the OTP actually intends to build cases and seek arrest warrants itself related to its investigative stream on crimes against migrants and refugees or whether its approach will remain confined to cooperation with national authorities and the Joint Investigative Team in support of domestic cases in accordance with the principle of complementarity. As demonstrated above, an approach relying on complementarity alone cannot sufficiently address international crimes in Libya and the Mediterranean. Domestic authorities in Libya and Europe have, for different reasons, persistently failed to cooperate with the Court and adequately address past and ongoing crimes in Libya with the gravity they demand.

Given the shortcomings of relevant national authorities, the OTP must continue to seek arrest warrants and pursue prosecutions against individuals for international crimes in Libya. When cooperating with Libyan officials, the OTP must ensure that it is engaging in an effective implementation of its complementarity strategy. As it stands now, complementarity risks becoming a shield rather than a functional pathway to justice. If the OTP continues to invoke or

rely on domestic action where none is forthcoming, it risks reinforcing the very impunity it is mandated to challenge. We urge the OTP to take decisive steps where national systems cannot or will not act. In both Libya and in European jurisdictions implicated by policy and practice, justice cannot be outsourced. The Court must use its authority to pursue accountability wherever credible evidence leads and make clear that the Rome Statute applies equally, regardless of geography or political influence.

RECOMMENDATIONS

It is high time to address impunity for international crimes committed in Libya. While ECCHR and RiL commend the progress made by the Unified Libya Team, we are deeply concerned about the state of the investigation in the Libya Situation. With the GNU's historic acceptance of the Court's jurisdiction over all alleged Rome Statute crimes committed on Libyan territory between 2011 and the end of 2027, we urge the OTP to ensure that survivors' voices, experiences and demands guide its work. In this spirit, we offer the OTP the following recommendations:

1. Continue investigations past the estimated completion timeline of early 2026.
2. Investigate and seek arrest warrants for crimes against migrants and refugees at the ICC. This includes crimes committed within DCIM facilities, informal detention sites and those related to interceptions at sea.
3. Investigate EU and Member State officials for their role in crimes committed against migrants and refugees in Libya.
4. Ensure that collaboration with Libyan and European authorities results in an effective implementation of the Court's complementarity strategy.

EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS

FOR FURTHER BACKGROUND ON ECCHR'S WORK TO ADVANCE ACCOUNTABILITY FOR CRIMES AGAINST MIGRANTS AND REFUGEES IN LIBYA AND THE MEDITERRANEAN, INCLUDING OUR TWO ARTICLE 15 COMMUNICATIONS TO THE ICC AND THE REPORT NO WAY OUT, SEE: [ECCHR.EU/EN/TOPIC/LIBYA-AND-THE-MEDITERRANEAN](https://ecchr.eu/en/topic/libya-and-the-mediterranean)

REFUGEES IN LIBYA

FOR MORE ON RIL'S SURVIVOR-CENTERED JUSTICE WORK, SEE: [REFUGEESINLIBYA.ORG](https://refugeesinlibya.org)

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