

Annex IV: Response from the International Criminal Court's Office of the Prosecutor

Subject: RE: Letter from Human Rights Watch seeking response in advance of publishing report on the state of the judiciary in Libya/recommendations to the Office of the Prosecutor
Date: Monday, May 19, 2025 at 7:47:50 AM Eastern Daylight Time
From: [REDACTED]
To: [REDACTED]
CC: [REDACTED]

[ICC] RESTRICTED

Dear Liz,

I am writing on behalf of Deputy Prosecutor Khan, who has reviewed your email and attachment, and wishes to provide the following response.

Thank you for sharing your key research findings and recommendations on the state of the judiciary and challenges to judicial staff in Libya, and for seeking our views.

Let me first express my appreciation for the relentless work of Human Rights Watch ("HRW") and other civil society organizations in a challenging situation such as Libya. Our partnership has continued to strengthen even further through our proactive approach to engagement with civil society organizations and victims associations in our common goal towards international justice - highlighting your central role as a voice of the victims and the stakeholders in Libya.

On your important queries, the Office of the Prosecutor highlights the following:

First, as you know, the ICC is an international court that investigates and prosecutes those most responsible for crimes under its jurisdiction, pursuant to the principle of complementarity. In practice, this means that in terms of resources and jurisdiction the ICC will prosecute a smaller number of cases that reach a high threshold of gravity and seriousness with national jurisdictions to complement that with domestic prosecutions of international crimes of similar or lesser gravity. Yet, the ICC cannot prosecute all crimes in Libya nor in any situation, and thus cannot and does not want to replace domestic jurisdictions. The ICC Prosecutor has highlighted that completion is dependent on cooperation, giving the Libyan judicial system the chance to step up and end impunity for international crimes by strengthening their willingness and capacity to do so, including through international and domestic technical support. This is the sustainable solution for Libyan victims to which we all aspire. We are aware of the difficult situation facing the Libyan judiciary, in particular due to the presence of the militias, and the challenges of arrest and custody. We observed credible reports of influential suspects fleeing detention and prisons to thereafter resume their public and private life with impunity.

For the ICC, a meaningful cooperation includes execution of the ICC arrest warrants. The ICC

reiterates its call for the Libyan authorities to surrender to the ICC those persons against whom ICC arrest warrants have been issued.

Very recently, the government of Libya took a significant, positive step in cooperation, by lodging an article 12(3) declaration to accept the exercise of jurisdiction by the Court for crimes that have occurred in Libya between 2011 and 2027. The ICC Registrar accepted the declaration and the ICC Prosecutor welcomed it as request from Libya to extend the investigation to the end of 2027, with an explicit commitment to cooperate. This is a new voluntary commitment on behalf of Libya.

In practice, the cooperation of the Libyan authorities has varied from one official entity to another over time. The obstruction of the transfer of Mr NJEEM to the ICC showed that some Libyan authorities' cooperation remains unsatisfactory, while others demonstrate increased positive steps towards concrete forms of cooperation. The ICC remains ready to support the Libyan judiciary to exercise its role however possible. We encourage the Libyan judiciary to benefit from United Nations technical assistance – through the specialized agencies - to strengthen the ability of the judiciary to arrest the perpetrators of international crimes in Libya, including those who are subject to ICC arrest warrants. We call on the Attorney General to arrest Mr Ossama Njeem, along with others who are wanted by the ICC, and to surrender them to the ICC.

We remain ready to support the Libyan judiciary to strengthen its capacity. We await any request in that regard. This can be in support of or in coordination with relevant UN human rights and rule of law agencies.

We reiterate our appreciation for the work of HRW and other the civil society organizations who work in Libya. We recognize how challenging this task is in difficult times. We stand in partnership with the victims to end impunity and to ensure that justice is served in Libya.

Kind regards,

██████████, on behalf of DP Nazhat Shameem Khan