

Building a world community



Human rights violations in Libya and the International Criminal Court by Romnick Villanueva

The situation of migrants in Libya illustrates the tragic consequences that often result when migration flows encounter weak national governance and organized criminal activity. The UN and regional institutions have been unable to act effectively in addressing implications from forced migration and the prevalence of social and political instability. Is there a role for the International Criminal Court in addressing these problems?

The UN Security Council released a Presidential Statement in December 2017 that expressed grave concerns over the trafficking of migrants into a growing slave trade, and other human rights violations which are occurring in Libya. The statement urged state authorities to comply with international human rights law and international refugee law. A report by Human Rights Watch suggests that Libya has fallen into a state of calamity marked by the displacement of close to half a million people. Furthermore, according to the Chadian politician and diplomat Moussa Faki Mahamat, as of 2017 somewhere between 400,000 to 700,000 African migrants have been put at risk. Women and children are most at risk.

The crimes against humanity in Libya has been perpetuated by systemic government atrocities, such as human trafficking, repression of peaceful demonstrations, and the death of civilians. In addition, as identified by reports on global justice covered in December's 2017 ICC coalition publication La Haye, the Libyan militia have been accused of torturing captive African immigrants before they are sold as slaves. Trafficking in Libya has become so normalized that the 2017 chair of the African Union, the President of Guinea, stated that these crimes against humanity need some sort of expeditious intervention.

Referral to the International Court

On February 26, 2011 a resolution was adopted by the UN Security Council to address the worsening situation in Libya. The Security Council recognized the widespread and systematic attacks taking place against civilians as crimes against humanity and

referred the situation to the ICC. Although Libya is not a signatory of the Rome Statute, the ICC has the authority to assert its jurisdiction on the basis of a referral by the Security Council. That referral applies to the situation in Libya to the present day. Since 2011 the circumstances of African migrants in Libya have deteriorated. Weak national governance leads to continued inhumane living conditions where migrants are desperate and risk their lives transiting through Libya to Europe. Government militias and traffickers take advantage of the worsening situation, resulting in a growing number of crimes and inhumane acts against migrants.

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In an effort to mobilize greater political will, a joint summit between African leaders and the European Union was held in November 2017 in Abidjan, Cote D'Ivoire to discuss the worsening state of widespread forced migration and trafficking. They resolved that the ICC should take immediate action in Libya, and try criminal perpetrators for crimes against humanity.

However, these recommendations were not without complications and challenges.

As the ICC Prosecutor's report to the Security Council in May of 2017 observed, "At the outset, allow me to observe with profound regret that the overall security situation in Libya has deteriorated significantly since my last report to this Council in November of last year." In fact, the security situation in Libya had prevented the Prosecutor's team from carrying out investigations in Libya since 2012. During this period, the Prosecutor has also been critical of the failure of the Security Council to provide the ICC with adequate resources to carry out its work.

However, a more recent May 2018 report by the Prosecutor identified some progress. In March 2018 members of the Prosecutor's investigative team were able to travel to the country and carry out their work. Her subsequent report to the Council noted that "I'm pleased to report that on the strength of our resolve and commitment, we are steadily progressing in our investigations into not only crimes committed in 2011, but also more recent and ongoing crimes."

The Prosecutor's report went on to discuss instances where arrest warrants have been issued. These public warrants can be essential in circumstances where a deterrent effect may be achieved. However, "this desired deterrent effect can only go so far. Greater deterrence can only be assured through the arrest and surrender of suspects to the ICC so that they may answer the charges against them." So far, those for whom warrants have been issued have not been arrested.

Therefore, in substantiating the Court's mandate to fulfill and uphold its obligations, the commitment and cooperation among states, international organizations and national authorities are pivotal.

The contribution of the ICC in improving governance and the conditions of migrants in Libya can make a difference, but only as part of a wider and sustained effort by many other national and international stakeholders.