



21 May 2012 #128 ICC Weekly Update



Situation in Libya

On 26 February 2011, the United Nations Security Council decided unanimously to refer the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the ICC Prosecutor. On 3 March 2011, the ICC Prosecutor announced his decision to open an investigation in the situation in Libya, which was assigned by the Presidency to Pre-Trial Chamber I. On 27 June 2011, Pre-Trial Chamber I issued three warrants of arrest respectively for **Muammar Mohammed Abu Minyar Gaddafi**, **Saif Al-Islam Gaddafi** and **Abdullah Al-Senussi** for crimes against humanity (murder and persecution) allegedly committed across Libya from 15 until at least 28 February 2011, through the State apparatus and Security Forces. On 22 November 2011, Pre-Trial Chamber I formally terminated the case against Muammar Gaddafi due to his death. The remaining suspects are not in the custody of the Court.

Libya: ICC Prosecutor to Report to the United Nations Security Council

On Wednesday, 16 May 2012, in New York, International Criminal Court (ICC) Prosecutor Luis Moreno-Ocampo briefed the United Nations Security Council on the situation in Libya.

The Prosecutor updated the Council on the ongoing investigation into war crimes including allegations of rape; the case against Saif Al-Islam Gaddafi and Abdallah Al-Senussi; as well as future investigation.

This was the third report to the Council by the Prosecutor on Libya pursuant to Resolution 1970.

Source: Office of the Prosecutor

ICC Prosecutor Statement to the United Nations Security Council on the situation in the Libyan Arab Jamahiriya, pursuant to UNSCR 1970 (2011)

Mr. President,

1. I am honored to present my third briefing on the activities of the Office of the Prosecutor in furtherance of UN Security Council Resolution 1970.

2. In our first report we emphasized the importance of the Security Council's consensus in the adoption of Resolution 1970. We also announced that we would request arrest warrants in the following weeks. The Security Council's consensus has greatly enhanced the cooperation received and allowed us to present a first case in a few months.

3. In our second report, we explained that the arrest warrants issued by the Judges on 27 June unveiled the crimes committed against civilians in Tripoli and other areas under the control of Gaddafi. The Judges concluded that in order to stop the crimes and protect civilians it was necessary to arrest the three individuals identified as the most

responsible: Muammar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi. The Office informed that if the Libyan authorities decided to prosecute the same individuals for the same crimes under investigation by the International Criminal Court, they should submit an admissibility challenge and it would be for the ICC Judges to decide.

4. Today, I inform the Council that the Libyan authorities have arrested Saif Al-Islam Gaddafi and have presented such a challenge. The application was filed on 1 May and notes that *“On 8 January 2012, the Libyan Prosecutor-General commenced an investigation of serious crimes (including murder and rape) allegedly committed by Saif Al Islam Gaddafi during the 2011 revolution (including in the period between 15 February to 28 February 2011) and that “The Libyan Government is committed to attaining the highest international standards both for the conduct of its investigations and any eventual trials.”* Libyan authorities also said that Saif Al-Islam has been kept in adequate conditions of detention, provided with sufficient and good quality food, given access to ICC lawyers and the option of retaining a domestic lawyer of his choosing. Saif also received visits from the ICRC, NGOs and family members. He has been provided with proper medical and dental care, and not been subject to physical abuse.

5. Following the submission of the Libyan admissibility challenge, the Pre-Trial Chamber requested observations from different parties to the proceedings, as well as from the UN Security Council. Rule 59 of the ICC Rules of Procedure and Evidence provides that those who have referred a situation, in this case the Security Council, must be notified of the challenge, and may in response make representation on the jurisdictional challenges. The Registry has transmitted the notification through a Note Verbale to the UN Secretary General.

6. This is the first time in the short history of the International Criminal Court that a State is requesting jurisdiction to conduct a national investigation against the same individual and for the same incidents under investigation by the International Criminal Court. The challenge goes to the heart of the system of justice established in 1998 by the Rome Statute: national States have the primary obligation to conduct proceedings and the International Criminal Court’s intervention will be complementary. The Prosecution will present its observations, as requested by the Pre-Trial Chamber, on 4 June.

7. Let me be clear. There are no doubts on the legal principles. The Rome Statute is based on the primacy of national proceedings. As mentioned on numerous occasions in relation to Darfur and other situations, the Office will not evaluate the Libyan judicial system as a whole. The Office will check the factual situation in accordance with the Statute’s requirements that include the intervention of an independent and impartial judiciary. The Security Council may decide to present observations, but this is a judicial issue that will be decided by the Judges of the Pre-Trial Chamber.

Mr. President,

8. Abdullah Al-Senussi was also arrested on 17 March 2012 by Mauritanian authorities. He is subject of extradition requests from France and Libya, as well as a request for surrender from the ICC. Mauritania shall decide.

9. My Office continues to collect evidence in relation to a second case in Libya on gender crimes committed against both men and women. The UN Commission of Inquiry’s findings confirmed the commission of these crimes. My Office is mindful of the sensitivity surrounding rape in Libya, and has adopted a strategy to limit exposure of victims by focusing on obtaining evidence from doctors and soldiers. The investigation is progressing.

10. The report of the UN Commission of Inquiry issued on 2 March 2012 presents a comprehensive view of the crimes committed in Libya. There are thousands of allegations of crimes committed by Gaddafi forces and thousands of individuals allegedly involved in such crimes who are in detention, many of them still not under the jurisdiction of the national authorities and allegedly subjected to mistreatment or torture by rebel forces. There are allegations as well of crimes committed against civilians in Tawergha, and questions remain to be answered about the circumstances of the death of Muammar Gaddafi.

11. Additionally the UN Commission of Inquiry found that NATO did not deliberately target civilians in Libya. Of a total of 25,944 air sorties and 7,642 air-to-surface weapons employed, the Commission cited evidence with respect to five air strikes that reportedly produced civilian casualties.

12. The Office of the Prosecutor takes due note of the UN Commission of Inquiry findings. The Office has no jurisdiction to evaluate the proper scope of the NATO mandate in relation with UN Security Council Resolution 1973, but the Office requesting further information about these five incidents identified by the Commission of Inquiry.

13. The Government of Libya has committed to a comprehensive strategy to address all crimes and end impunity in Libya. While the Government faces challenges on many fronts, this comprehensive strategy must remain a priority if the Government is to show that impunity will no longer be tolerated. This strategy must address as a priority the transfer to the central authorities and the screening of thousands of detainees, the investigation of allegations of crimes by these detainees where warranted, to ensure justice for the victims, and the release of those against whom there is no basis for investigation. At the same time, all unofficial and unacknowledged detention centers should be dismantled and all possible steps should be taken to curb mistreatment or torture. The Government of Libya expressed its commitment to conduct targeted investigations and prosecutions to address the most serious crimes committed by all sides. The Government of Libya has adopted a Transitional Justice Law that created a Fact-Finding and a Reconciliation Commission that could contribute to strengthening the rule of law in the country.

14. My Office’s mandate is to investigate those who bear the greatest responsibility for the most serious crimes under the jurisdiction of the International Criminal Court while respecting genuine national proceedings. So, the Office will monitor Libya’s national proceedings closely. My Office is also gathering information about the activities outside Libya of high-level Gaddafi officials who were allegedly involved in Rome Statute crimes and who reportedly continue to seek to destabilize the situation of Libya.

Mr. President,

15. I would like to conclude by emphasizing again the importance of the adoption by consensus of Resolution 1970, which defined the need to do justice in Libya to ensure peace and security. Such consensus was also expressed during my previous briefings and in the recently adopted Resolution 2040, which states that the Council is *"Looking forward to a future for Libya based on national reconciliation, justice, respect for human rights and the rule of law, Recalling its decision to refer the situation in Libya to the Prosecutor of the International Criminal Court, and the importance of cooperation for ensuring that those responsible for violations of human rights and international humanitarian law, including attacks targeting civilians, are held accountable, [and] Stressing that national ownership and national responsibility are key to establishing sustainable peace and that it is the primary responsibility of national authorities to identify their priorities and strategies for post-conflict peace-building."*

16. This commitment to justice and the rule of law plays a crucial role in the current post-conflict situation. It provides a framework for the national authorities to act. Recently, during my 18 to 20 April visit to Tripoli and Misrata, members of the National Transitional Council and of the Libyan public expressed their appreciation for the decisive intervention of the UN Security Council and of the ICC. They started the rebellion, requesting justice for the crimes committed in Abu Salim prison on 29 June 1996, because they believed that under the Gaddafi regime, there would be no justice in Libya. The Council and the ICC's intervention contributed to changing this equation. Now they expressed the conviction that the new government would seize this historical moment and provide justice for all of Libya's victims.

17. My Office remains committed to working with the Government of Libya and with this Council to maintain this common effort and to ensure that justice for all of the victims of Libya is achieved.

Thank you.

Source: Office of the Prosecutor

Decisions taken between 14 - 18 May 2012

Gaddafi and Al-Senussi Case

Decision on the OPCV "Request to access documents in relation to the Challenge to the Jurisdiction of the Court by the Government of Libya"

Issued by the Pre-Trial Chamber I on 15 May 2012

Situation in the Democratic Republic of the Congo

In this situation, four cases have been brought before the relevant Chambers: *The Prosecutor v. Thomas Lubanga Dyilo*; *The Prosecutor v. Bosco Ntaganda*; *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*; and *The Prosecutor v. Callixte Mbarushimana*. Thomas Lubanga Dyilo, Germain Katanga and Mathieu Ngudjolo Chui are currently in the custody of the ICC. The suspect Bosco Ntaganda remains at large. The trial in the case *The Prosecutor v. Thomas Lubanga Dyilo* started on 26 January 2009. Trial Chamber I convicted Mr Lubanga Dyilo on 14 March 2012, and is scheduled to hear submissions for sentencing on 13 June 2012. The trial in the case of *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* started on 24 November 2009. Closing statements in the case began on 15 May 2012. On 16 December 2011, Pre-Trial Chamber I declined to confirm the charges in the case *The Prosecutor v. Callixte Mbarushimana*. Mr Mbarushimana was released on 23 December 2011. After being granted leave to appeal by Pre-Trial Chamber I, the ICC Prosecutor appealed the decision on 12 March 2012.

ICC Prosecutor Statement on new applications for warrants of arrest DRC situation

The Office of the Prosecutor has requested two new warrants of arrest in the DRC situation.

The first one relates to Bosco Ntaganda for the crimes committed as a top commander of Thomas Lubanga's militia, the UPC/FPLC. Taking into consideration the findings in the final "Lubanga Judgement" the Prosecution will request to add charges against Bosco Ntaganda for the following crimes:

1. crimes against humanity of murder, persecution based on ethnic grounds, and rape/sexual slavery, and
2. war crimes of intentional attacks against civilians, murder, rape / sexual slavery and pillaging.

These crimes were committed over a large geographical area within Ituri, Democratic Republic of the Congo (DRC) during the period September 2002 to September 2003. The attacks followed a consistent pattern: UPC/FPLC forces encircled the towns and villages of the Lendu and other non-Hema tribes, shelled them, and then ethnically cleansed the areas by killing and raping civilians, forcing their displacement to the surrounding forests and eventually looting their property.

The evidence was presented during the Lubanga trial and based on the Lubanga judgement the Prosecution is asking the Pre Trial Chamber to expand the charges against Bosco Ntaganda. This was the policy announced in 2006 and now implemented.

Since 2006, BOSCO NTAGANDA has been wanted by the Court for recruiting and using children under 15 to participate actively in hostilities. Thomas Lubanga was arrested and found guilty of these crimes but Bosco Ntaganda is still at large and continues committing crimes.

Impunity has a high price. When impunity prevails, populations on the ground are the victims. When impunity prevails, persons like Bosco Ntaganda are encouraged to continue committing crimes. They increase their power through violence. Bosco Ntaganda has used the time offered to him since the ICC arrest warrant was issued to move from Ituri to North Kivu, to expand his power on new territories, and to maintain a power base thanks to his crimes, and the violence of persons under his control. Now more than ever is the time to arrest him. His recent desertion from the FARDC has shown once again that he cannot be trusted; it is a renewed demonstration that power through violence only leads to more violence.

The Office also filed an arrest warrant application, against a leader of one of the most active militia in the Kivu provinces, Sylvestre Mudacumura, the Supreme Commander of the FDLR-FOCA. Together with Callixte Mbarushimana and with Ignace Murwanashyaka, currently on trial in Germany, Sylvestre Mudacumura is one of the main leaders of the FDLR, who launched a campaign of attacks against the civilian populations in the Kivus.

Who are the FDLR? The FDLR is an armed group created by people allegedly involved in the Rwanda genocide in 1994 who fled Rwanda and relocated to the Democratic Republic of the Congo ("DRC"). From their base in the DRC, the FDLR's two immediate predecessors created conditions that triggered the First and Second Congo Wars, during which millions of civilians were killed and displaced.

Sylvestre Mudacumura is charged with- 5 counts of crimes against humanity: murder, inhumane acts, rape, torture and persecution and 9 counts of war crimes: attack against a civilian population, murder or willful killing, mutilation, cruel treatment, rape, torture, destruction of property, pillaging and outrage upon personal dignity.

The alleged crimes were committed by the FDLR-FOCA between 20 January 2009 and 31 August 2010, in North and South Kivu Provinces.

For too long the populations of North Kivu have been surrounded by violence. They are the victims of crimes committed by different groups: in particular MUDACUMURA'S FDLR and the CNDP under the command of Bosco Ntaganda. Whichever way they turn, the civilian populations in the Kivus see violence, suffering and manipulation of their situation by armed groups. It is time for them to see justice.

The Kivu provinces are not a prize to be shared between the FDLR-FOCA, the CNDP or others. It is a place where people deserve to live in peace, where crimes should be punished and impunity should be fought.

The public request of the arrest warrant can contribute to demobilize those following NTAGANDA's and MUDACUMURA's orders. They can even arrest their leaders and demobilize.

Additionally, it is an opportunity for the DRC and Rwandan armies to refine their methods and transform war into an arrest operation. Open confrontations in the past have merely led to the killing of civilians.

For more background information on Sylvestre Mudacumura, please click on this [link](#).

Source: Office of the Prosecutor

Decisions taken between 14 - 18 May 2012

Katanga and Ngudjolo Chui Case

Decision on the Defence Application for Leave to Appeal the 'Décision relative à la requête de la Défense de Germain Katanga tendant à l'admission d'extraits du jugement prononcé dans l'affaire Lubanga'

Issued by Trial Chamber II on 14 May 2012

Situation in Kenya

On 31 March 2010, Pre-Trial Chamber II granted the Prosecutor's request to open an investigation *proprio motu* in the situation in Kenya, State Party since 2005. Following summonses to appear issued on 8 March 2011 in two separate cases, six Kenyan citizens voluntarily appeared before Pre-Trial Chamber II on 7 and 8 April 2011. The confirmation of charges hearings in the two cases took place from 1 to 9 September 2011, and 21 September to 5 October 2011, respectively. On 23 January 2012, the judges declined to confirm the charges against Henry Kiprono Kosgey and Mohammed Hussein Ali. Pre-Trial Chamber II confirmed the charges against William Samoei Ruto, Joshua Arap Sang, Francis Kirimi Muthaura and Uhuru Muigai Kenyatta and committed them to trial. On 29 March 2012, the ICC Presidency constituted Trial Chamber V and referred to it the two cases: *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang* and *The Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta*.

Decisions taken between 14 - 18 May 2012

Ruto and Sang Case

Order scheduling a status conference

Issued by Trial Chamber V on 14 May 2012

Muthaura and Kenyatta Case

Order scheduling a status conference

Issued by Trial Chamber V on 14 May 2012

Situation in Côte d'Ivoire

Côte d'Ivoire, which is not party to the Rome Statute, **had accepted the jurisdiction** of the ICC on 18 April 2003; more recently, and on both 14 December 2010 and 3 May 2011, the Presidency of Côte d'Ivoire **reconfirmed the country's acceptance** of this jurisdiction. On 3 October 2011, the Pre-Trial Chamber authorised the Prosecutor to open an investigation into the situation in Côte d'Ivoire since 28 November 2010. The hearing on the confirmation of charges in the case *The Prosecutor v. Laurent Gbagbo*, the only case currently heard before the Court in this situation, is scheduled to start on 18 June 2012.

Decisions taken between 14 - 18 May 2012

Gbagbo Case

Decision on the "Prosecution's request for extension of page limit for the Document Containing the Charges"

Issued by Pre-Trial Chamber I on 14 May 2012

Decision on the "Requête de la Défense du Président Gbagbo en vue d'une prorogation de délais pour la soumission d'informations relatives à la présentation de témoignages viva voce lors de l'audience de confirmation des charges"

Issued by Pre-Trial Chamber I on 15 May 2012

Relevant Links

Courtroom proceedings can be followed on the ICC website: www.icc-cpi.int

You can also consult the **hearing schedule**

Video summaries can be found on our **YouTube channel** | The ICC's activities can also be followed through **Twitter**

Events

Permanent Representative of the International Organisation of La Francophonie to the European Union visits the ICC

On 15 May 2012, H.E. Ambassadeur Pietro Sicuro, Permanent Representative of the International Organisation of La Francophonie (OIF) to the European Union, visited the ICC. The Ambassador met with the ICC President, Judge Sang-Hyun Song, and other high-ranking officials of the Court. The President thanked the Ambassador for OIF's strong support of the ICC, in particular the sponsoring of several regional conferences. Ambassador Sicuro and the President agreed to continue further developing the cooperative relationship between the Court and OIF.



H.E. Ambassador Pietro Sicuro, Permanent Representative of the International Organisation of La Francophonie to the European Union, with the ICC President, Judge Sang-Hyun Song, at the seat of the Court in The Hague © ICC-CPI

President of the Assembly visits Addis Ababa

Español | **عربي**

The President of the Assembly of States Parties ("the Assembly"), Ambassador Tiina Intelmann, visited Addis Ababa from 8 to 11 May 2012. President Intelmann met the Chairperson of the African Union Commission, H.E. Mr. Jean Ping, and the African Union Legal Counsel, Mr. Ben Kioko, with whom she emphasized the achievements of the International Criminal Court ("the Court") in its first ten years of existence and stressed the importance of strengthening the relationship and dialogue between the African Union and the Court, bearing in mind their common objective of fighting against impunity for heinous crimes.

In her meetings with Ambassadors of African States President Intelmann recalled the vital contribution of African States to international criminal law in general and in the establishment of the ICC in particular, noting that 33 of the 121 States Parties to the Rome Statute are African States, making the African Group the most represented regional group. The ratifications by Tunisia and Cape Verde in 2011 had evidenced the ever-growing support for the ICC among African States. President Intelmann highlighted the significant role that Africa plays within the ICC system. She also discussed key challenges of the Assembly, such as ensuring greater diplomatic and political support for the Court, cooperation, complementarity and victims reparations.

Ambassador Intelmann held a meeting with the Permanent Representative of l'Organisation internationale de la Francophonie to the African Union, H.E. Mr. Libère Bararunyeretse, to whom she expressed her gratitude for its support in organizing an ICC seminar at the technical level in Addis Ababa in July 2011 and its further support for the organization of a follow-up seminar later this year by the African Union and the Court.

During her visit, President Intelmann also met with other members of the diplomatic community to advance an active dialogue with States Parties and non-States Parties in order to raise awareness about the ICC. Additionally, Ambassador Intelmann called on States to organize events to commemorate the tenth anniversary of the entry into force of the Rome Statute.

Source: Assembly of States Parties

President of the Assembly visits Cairo

عربي

From 6 to 7 May 2012 the President of the Assembly of States Parties ("the Assembly"), Ambassador Tiina Intelmann, visited Cairo as part of her effort to promote an active dialogue with States Parties and non-States Parties to the Rome Statute alike.

In her meetings with H.E. Ambassador Abdel Aziz Seif el-Nasr, Assistant Foreign Minister for International Legal Affairs and Treaty Affairs of Egypt, as well as with H.E. Dr. Essam El-Erian, Chairman of the Foreign Relations Committee of the People's Assembly and H.E. Mr. Mohamed Anwar El-Sadat, Chairman of the Human Rights Committee, she highlighted the achievements of the International Criminal Court ("the Court") in its first ten years of operation.

President Intelmann also paid tribute to the important role played by Egypt in the negotiations leading to the Court's creation. Since Egypt signed the Rome Statute in 2000, the Court has firmly established itself as a valuable international justice mechanism. The President expressed her hope that Egypt would take the opportunity presented by the current transition to re-examine the benefits provided by being party to the Rome Statute and to consider its ratification.

During her lecture at Cairo University, entitled "10 years of the International Criminal Court and the fight against impunity," President Intelmann explored the possibilities and limitations of the Rome Statute, as well as the principle of complementarity as a fundamental pillar of the Rome Statute system.

Visiting the seat of the League of Arab States, the President also met with Dr. Radwan Ben Khadra, Legal Adviser to the Secretary-General of the League. She acknowledged the important role of the League in ensuring peace and prosperity in the region, and expressed her appreciation for the constructive attitude the League has taken towards the Court.

Additionally, President Intelmann met with members of the diplomatic corps and gave several interviews to the Egyptian press. The President welcomed that civil society is working together with parliamentary and government actors as well as with the Coalition for the International Criminal Court to explore deepening Egypt's relationship with the Court.

Lecture at Cairo University

Source: Assembly of States Parties



Calendar

MAY 2012

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
21	22	23	24	25	26	27
Closing Statements in the case against Germain Katanga and Mathieu Ngudjolo Chui				MONUSCO Special Representative of the Secretary General (SRSG), H.E. Mr Roger Meece to visit the ICC		
28	29	30	31			
		ICC President, Judge Sang-Hyun Song, to speak at the opening of the IBA Bar Leaders' Conference, The Hague (The Netherlands)				
	ICC to host NGO Roundtable					

JUNE 2012

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
				1	2	3
				Court to host ICC Trial Competition (Chinese and Russian)		
				ICC to host NGO Roundtable		
4	5	6	7	8	9	10
11	12	13	14	15	16	17
		Trial Chamber I to hear submissions for sentencing in the case against Thomas Lubanga Dyilo	President Song to participate in a high-level panel at the Fifth International Conference of the International Association For Court Administration (The Hague, The Netherlands)	Solemn Undertaking Ceremony for the newly elected ICC Prosecutor		

- From 18 June 2012: Confirmation of charges hearing in the case against Laurent Gbagbo
- 22 June: Court to host ICC Trial Competition (Spanish)

1. The ICC is grateful to the organizers for covering the costs of the Court's participation.

The calendar is subject to last-minute changes.