



7 November 2011 #102  
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. The three suspects remain at large.

### Prosecutor's statement to the United Nations Security Council on the situation in Libya, pursuant to UNSCR 1970 (2011)

New York  
2 November 2011

عربي

Mr President,

1. It is my honor to brief the UN Security Council on the activities of the Office of the Prosecutor of the International Criminal Court in the situation of Libya in furtherance of UN Security Council Resolution 1970.
2. In accordance with the Office's policy, we are focusing the investigation on those bearing the greatest responsibility for the most serious crimes. Let me stress that the Security Council's consensus on the need to ensure justice for the victims of crimes in Libya, as expressed through Resolution 1970, and reiterated two months later during my first briefing, has greatly enhanced the cooperation received by the Office and this has facilitated our investigations.
3. As I anticipated in my previous briefing, on 16 May the Office requested arrest warrants against three individuals who, according to the evidence, were most responsible for the attacks against unarmed civilians on the streets and in their houses in Benghazi, Tripoli and elsewhere during the month of February.
4. After a thorough evaluation of the evidence presented, on 27 June, the Judges of Pre-Trial Chamber I issued 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).
5. The Chamber concluded that there were "reasonable grounds to believe that Muammar Gaddafi and Saif Al-Islam 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. "The Chamber found that Abdallah Al-Senussi was also responsible as a direct perpetrator.
6. The Judges' decision unveiled the crimes committed against civilians in Tripoli and other areas under the control of Muammar Gaddafi. In order to retain power, Gaddafi ordered the persecution of those considered dissidents. The Judges concluded that in order to stop the crimes and protect civilians it was necessary to arrest Mr Gaddafi.

Mr President,

7. Allow me to update you on the current situation of the three indictees.

8. On 20 October, Muammar Gaddafi died. The Registry of the Court is following the formal procedures to obtain official documents from the Libyan government to certify the death. The Pre-Trial Chamber, after reviewing the documents, may decide to withdraw the warrant against Muammar Gaddafi and to end the case against him.

9. Concerning Saif Al-Islam Gaddafi and Abdullah Al-Senussi, the Office is galvanizing efforts to ensure that they face justice. We have received questions from individuals linked to Saif Al-Islam about the legal conditions attaching to his potential surrender to the Court: what would happen to him if he appeared before the Judges, could he be sent back to Libya, what would happen if he were to be convicted, what would happen if he were to be acquitted? We clarified that in accordance with article 107 of the Statute he may request the Judges not to order his return to Libya after his conviction or acquittal but that he be sent to a different country, provided that country has consented to receiving him. Judges can also decide if he may be extradited to another State. It is a positive sign that the Court is seen as a guarantor of the rights of the suspects.

10. On the other hand we are also receiving information that a group of mercenaries may be endeavoring to facilitate his escape from Libya. We are calling upon States to do all they can to disrupt any such operation. It is up to Saif Al-Islam Gaddafi and Abdullah Al Senussi to decide if they will surrender themselves, remain in hiding, or try to escape to another country. It is up to the UN Security Council and States to ensure that they face justice for the crimes for which they are charged.

Mr President:

11. We are grateful for the strong and essential cooperation received from the Libyan authorities, including a recent invitation to visit Libya. During the last weekend, the Office conducted a first assessment mission to Libya to prepare for the collection of further evidence on the territory where the alleged crimes took place. The Office coordinated with local authorities but also with local civil society. The Office also met with various local committees, mandated to investigate crimes committed by all parties in Libya.

Mr President:

12. The current focus of the Office investigations is twofold: firstly, it continues the collection of evidence against Saif Al-Islam Gaddafi and Abdullah Al-Senussi in preparation for their eventual trial. Secondly, the Office is continuing its investigations into gender crimes in Libya.

13. The Office will also continue to search out the personal assets of Saif Al-Islam Gaddafi and Abdallah Al-Senussi for the potential benefit of the victims, through reparations awarded by the Court. Since the opening of the situation, the Office has been in contact with the UN Sanctions Committee, which is assisted by a Panel of Experts and with Interpol to coordinate its investigative efforts in relation to the assets of the suspects. The Court has sent at the end of September requests for assistance to Libya, State Parties, and five UN Security Council non-State Parties to identify, trace, seize and freeze all the personal assets belonging to the suspects. The Office strongly encourages the Security Council and States to assist the Court in identifying and isolating these assets.

14. The Prosecution is mindful that in Libya, rape is considered to be one of the most serious crimes, affecting not just the victim, but also the family and the community, and can trigger retaliation and honor-based violence. Accordingly, the Prosecution has adopted a strategy which seeks to limit the exposure of victims. The Office is therefore organising its investigation by focusing on obtaining alternate evidence and identifying avenues of investigation which support charges without the need for multiple victim statements. In this respect, the Office has been in contact with sources reporting multiple victims of sexual violence, allegedly committed by Gaddafi security forces. While it is premature to draw conclusions on specific numbers, the information and evidence indicates at this stage that hundreds of rapes occurred during the conflict.

15. The investigation will benefit from a reporting system that has been set up by the NTC, through the Ministry of Women and Social Affairs, with the purpose of affording rape victims the opportunity to come forward.

16. The Prosecution has also interviewed a limited number of victims, who were kidnapped and raped in unknown secret detention centers.

17. The information and evidence thus far collected does not yet indicate who may be the most responsible for such gender crimes. The Prosecution has collected some evidence showing that commanders gave orders to commit rape in the Western Mountains area and is screening possible witnesses that indicated that Muammar Gaddafi, Al-Senussi and other high officials were discussing the use of rape to persecute those considered dissidents or rebels.

Mr President:

18. Let me conclude. There are allegations of crimes committed by NATO forces, allegations of crimes committed by NTC-related forces, including the alleged detention of civilians suspected to be mercenaries and the alleged killing of detained combatants, as well as allegations of additional crimes committed by pro-Gaddafi forces. These allegations will be examined impartially and independently by the Office.

19. The Office was informed that the new Libyan authorities are in the process of preparing a comprehensive strategy to address crimes, including the circumstances surrounding the death of Muammar Gaddafi. In accordance with the Rome Statute the International Criminal Court should not intervene if there are genuine national proceedings. Should the Libyan authorities decide to prosecute Saif al-Islam Gaddafi and Abdullah al Sanussi for the same crimes under investigation by the International Criminal Court, they should submit an admissibility challenge and it will be for the ICC Judges to decide.

20. The Office's analysis will benefit from the work of the UN Commission of Enquiry, which should present a report in March 2012. The Office is coordinating with the Commission Chairperson Philippe Kirsch.

21. The Office will be prepared to present a comprehensive report on the crimes allegedly committed by the different parties in Libya since 15 February 2011 and the existence of genuine national proceedings, during its third briefing to the UN Security Council in May 2012.

22. In summary, the Office will continue investigations into Saif Al-Islam Gaddafi and Abdallah Al-Senussi and into rapes and in May will evaluate the possibility for further investigations. I should clarify that the possibility to carry out all of these investigations will depend on the budget available to the Office. This is a matter currently under discussion and it will be decided during December 2011 in the upcoming session of the Assembly of States Parties.

Thank you.

### **Second Report of the Prosecutor of the International Criminal Court to the UN Security Council pursuant to UNSCR 1970 (2011)**

2 November 2011, [English](#), [Español](#), [Français](#), [Русский](#), [عربي](#), [中文](#)

### **Situation in the Republic of 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, six Kenyan citizens voluntarily appeared before Pre-Trial Chamber II on 7 and 8 April 2011. The confirmation of charges hearing in the case *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang* took place from 1 to 9 September 2011. The confirmation of charges hearing in the case *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali* took place from 21 September to 5 October 2011. The decisions on the confirmations of charges are pending.

#### **Decisions taken between 31 October - 4 November 2011**

#### **Ruto, Kosgey and Sang case**

##### **Decision on the "Prosecution's Urgent Submission Concerning Defence Public Disclosure of Confidential Witness Information"**

Issued Pre-Trial Chamber II on 2 November 2011

##### **Decision on the "Prosecution's Application to File Additional Authority"**

Issued Pre-Trial Chamber II on 4 November 2011

## Situation in Darfur, Sudan

There are four cases in the situation in Darfur, Sudan: *The Prosecutor v. Ahmad Muhammad Harun ("Ahmad Harun") and Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")*; *The Prosecutor v. Omar Hassan Ahmad Al Bashir*; *The Prosecutor v. Bahar Idriss Abu Garda*; and *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*. Four warrants of arrest have been issued by Pre-Trial Chamber I for Messrs Harun, Kushayb and Al Bashir. The three suspects remain at large. A summons to appear was issued for Mr Abu Garda who appeared voluntarily before the Chamber on 18 May 2009. After the hearing of confirmation of charges, on February 2010, Pre-Trial Chamber I declined to confirm the charges. Mr Abu Garda is not in the custody of the ICC. Two other summonses to appear were issued against Mr Banda and Mr Jerbo who appeared voluntarily on 17 June 2010; the confirmation of charges hearing took place on 8 December 2010. On 7 March 2011, Pre-Trial Chamber I unanimously decided to confirm the charges of war crimes brought by the ICC's Prosecutor against Mr Banda and Mr Jerbo, and committed them to trial. On 16 March 2011, the ICC Presidency constituted Trial Chamber IV and referred the case to it.

### Decisions taken between 31 October - 4 November 2011

#### Banda and Jerbo Case

##### Order on the application on behalf of victims a/1646/10 and a/1647/10 for leave to reply

Issued Trial Chamber IV on 31 October 2011

##### Decision on the Prosecution's Application for Leave to Appeal the "Reasons for the Order on translation of witness statements (ICC-02/0503/09-199) and additional instructions on translation"

Issued Trial Chamber IV on 1 November 2011

#### Relevant Links

**Courtroom proceedings** can be followed on the ICC website: [www.icc-cpi.int](http://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**

## Calendar

NOVEMBER 2011						
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
7 ICC to host visit by Judges and the Deputy Registrar of the African Court on Human and Peoples' Rights	8 ICC to host Welcoming Ceremony for the Philippines ICC to host its 21st Diplomatic Briefing	9	10	11	12	13
14 President Song to deliver the keynote speech at the opening of the Law, Justice and Development Week 2011, World Bank, Washington DC (USA)	15 ICC Registrar to call on lawyers in Milan (Italy)	16 Henry Bellingham MP, Parliamentary Under Secretary of State at the Foreign and Commonwealth Office (UK), to visit the ICC	17	18 The Registry to explain the Registry's role and activities to the legal community in Abidjan, Côte d'Ivoire	19	20
21	22	23	24	25	26	27
28	29	30				

The calendar is subject to last minute changes.

[www.icc-cpi.int](http://www.icc-cpi.int) | This is not an official document. It is intended for public information only.

International Criminal Court: Maanweg, 174; 2516 AB, The Hague, The Netherlands. Postal address: Po Box 19519; 2500 CM, The Hague, The Netherlands. Tel. + 31 (0)70 515 8515; Fax. +31 (0)70 515 8555. Youtube Channel: [www.youtube.com/IntlCriminalCourt](http://www.youtube.com/IntlCriminalCourt); Twitter account: [www.twitter.com/IntlCrimCourt](http://www.twitter.com/IntlCrimCourt)