

12 November 2012 #150  
**ICC Weekly Update**



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### 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 decided 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. ICC Pre-Trial Chamber I is expected to make a decision in due course regarding the Libyan government's challenge to the admissibility of the case against Saif Al-Islam Gaddafi filed on 1 May 2012.

### ICC Prosecutor Statement to the United Nations Security Council on the situation in Libya, pursuant to UNSCR 1970 (2011)

عربي

**FOURTH REPORT OF THE PROSECUTOR  
OF THE INTERNATIONAL CRIMINAL COURT  
TO THE UN SECURITY COUNCIL PURSUANT TO UNSCR 1970 (2011)**

English, Français, عربي

Mr President,

1. I am honoured to present the fourth briefing on the activities of the Office of the Prosecutor in furtherance of UN Security Council Resolution 1970. As this is my first opportunity to address the UN Security Council, allow me to express my gratitude for the Council's swift, unanimous action in referring the situation in Libya to the Office of the Prosecutor to ensure accountability for the most serious crimes. Last month's dialogue session, under the Guatemalan presidency on the relationship between the Council and the Court is yet another example of this Council's commitment to fostering understanding and enhancing relations between the two institutions. I stand ready to cooperatively work with the Council in our joint endeavours to promote international criminal justice and end impunity, in furtherance of our mutual quest for lasting peace.

Mr President,

2. The situation in Libya remains of serious concern to me and to my Office. You will recall that, following this Council's referral and after the Office investigated and presented its evidence to the Chamber, on 27 June 2011, the Judges issued three arrest warrants for Muammar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi. Libyan members of the National Transitional Council informed the Office in April that the warrants played a crucial role in delegitimizing Muammar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi, at a time when the opposition was struggling to draw attention to the commission of serious crimes in Libya. No investigations of these crimes could have been undertaken by the Gaddafi regime and ICC intervention was, at that time, the only way to establish justice for victims of the Gaddafi regime's crimes.

3. A lot has happened since the Council referred the situation to the ICC. Both Saif Al-Islam Gaddafi and Abdullah Al-Senussi have been arrested and are in detention. The Libyan authorities have challenged the admissibility of the case against Saif Al-Islam Gaddafi and have indicated their intent to also challenge the admissibility of the case against Abdullah Al-Senussi in the near future. On 9 and 10 October 2012, the Judges of Pre-Trial Chamber I convened a hearing to receive oral submissions on the Government of Libya's admissibility challenge in relation to the case against Saif Al-Islam Gaddafi. The Court heard from the Prosecution, Defence and Legal Representatives, as well as from the Libyan authorities, who asserted that they are investigating the same conduct as that investigated by my Office and now before the ICC.

4. The Pre-Trial Chamber will decide in due course on the merits of the admissibility challenge as to whether the case should be heard before the ICC or in Libya. My Office appreciates the commitment of the Libyan authorities to respect the judicial process and will continue to engage with them within the limits prescribed by the Statute.

5. It is worth recalling and emphasizing that the Rome Statute gives primary responsibility to national institutions to investigate and prosecute such crimes, with the ICC intervening only if they are inactive or otherwise unwilling or unable to do so genuinely. Nonetheless, as the Appeals Chamber has previously held, a State challenging admissibility must provide the Court "evidence of a sufficient degree of specificity and probative value that demonstrate that it is indeed investigating the case."

6. Pursuant to its stated policy, my Office promotes and encourages genuine national proceedings to combat impunity for the most serious crimes of international concern. We await rulings of the Court on Libya's challenge. Should the challenge ultimately succeed, my Office will monitor those proceedings and cooperate with Libya, to the extent my mandate allows, in order to ensure that they remain genuine. If, on the other hand, the Court rules that the case should be heard before the ICC, I will count on Libya's full support and cooperation to ensure that the ICC's proceedings are both successful and are seen to be successful by the Libyan public, the first and most important audience for any such proceedings at the ICC.

7. Let me also emphasize the ever present need for complementary and mutually supportive approaches to addressing accountability generally, involving the full range of transitional justice mechanisms. In this regard, I encourage international support and assistance to enhance Libya's capacity to deal with past crimes and to promote the rule of law.

8. I wish to thank the Government of Libya for its commitment to working with the ICC and for its active engagement with the judicial process. I encourage the government to redouble those efforts in the interests of justice. My Office appreciates the challenges inherent in the historic political transition underway in Libya. I believe that all can agree that justice must remain a key element of this transition. Looking beyond the cases currently before the Court, there remains much that my Office and the Government of Libya can do together to make justice a reality for Libya's victims. I call on the international community and in particular this Council — to intensify their efforts to assist the Government of Libya in any way they can to combat impunity and reinforce a culture of the rule of law. I believe that by working together, we can help address threats to Libya's security, both from within and outside, that have been created by past and ongoing criminality, and demonstrate to the Libyan people that the world is committed to assisting them in their efforts to secure justice and lasting peace.

9. My Office understands that the Government of Libya has committed to a comprehensive strategy to address all crimes and end impunity in Libya. I encourage the Government of Libya to make this strategy public, and to work with key partners to receive feedback on this strategy and to seek out the views and concerns of victims in Libya. Early finalization of this strategy will be yet another milestone on Libya's path to democracy and rule of law.

10. My Office takes note of Law 38, granting amnesty at the national level for "acts made necessary by the 17 February revolution," as well as Law 35, which purportedly ensures that any act found to be in contravention of international laws and human rights covenants will not be exempt. I encourage the new Libyan government, scheduled to be sworn in in the coming days, to ensure that there is no amnesty for international crimes and no impunity for crimes, regardless of who is the perpetrator and who is the victim.

Mr President,

11. My Office continues to collect evidence in relation to a possible second case in Libya. No decision has yet been taken as to the focus of that second case. We continue to collect information on allegations of rapes and sexual violence, which targeted both men and women; allegations against other members of the Gaddafi government for crimes committed during the events of 2011; and allegations of crimes committed by rebel or revolutionary forces, including against the residents of Tawergha, against individuals hors de combat and against detainees. I will take a decision on the direction of a possible second case in the near future. My Office also continues to assess the security situation in terms of its potential impact on the Office's ongoing investigations, and appreciates the Government of Libya's commitment to ensuring the Office's security while operating on the territory of Libya.

12. Given its limited resources and ever increasing workload, my Office can only do so much to help Libya move forward: the fate of the Libyan people is in their hands.

13. I look forward to continuing dialogue with the Libyan Government and other key partners to ensure transparency in this essential, ongoing legal process.

Thank you.

Source: Office of the Prosecutor

### Situation in the Central African Republic

The situation was referred to the Court by the Government of the Central African Republic in December 2004. The Prosecutor opened an investigation in May 2007. In the only case in this situation, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Pre-Trial Chamber II confirmed, on 15 June 2009, two charges of crimes against humanity and three charges of war crimes, and committed the accused to trial before Trial Chamber III. The trial started on 22 November 2010.

Decisions taken between 5 - 9 November 2012

#### Bemba Case

##### Decision on 799 applications by victims to participate in the proceedings

Issued by Trial Chamber III on 5 November 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*. The trials are scheduled to start, respectively, on 10 and 11 April 2013.

Decisions taken between 5 - 9 November 2012

#### Ruto and Sang Case

##### Decision on updated report on joint instruction of experts

Issued by Trial Chamber V on 7 November 2012

##### Decision on the supplementary protocol concerning the handling of confidential information concerning victims and contacts of a party with victims

Issued by Trial Chamber V on 9 November 2012

#### Muthaura and Kenyatta Case

##### Decision on the defence request to change the place of the proceedings

Issued by Trial Chamber V on 7 November 2012

##### Decision on the supplementary protocol concerning the handling of confidential information concerning victims and contacts of a party with victims

Issued by Trial Chamber V on 9 November 2012

#### 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**

## Events

### Ten years of the International Criminal Court

On Wednesday, 14 November 2012, an event will be held to commemorate the 10th anniversary of the International Criminal Court (ICC) in the Ridderzaal (The Knights Hall) in The Hague (Netherlands), in the presence of Her Majesty the Queen of the Netherlands.

On the invitation of the Minister of Foreign Affairs, the President of the Assembly of States Parties and the President of the ICC, a large number of dignitaries, legal and diplomatic representatives of States and international, regional and civil society organisations will attend the event.

The International Criminal Court, which is based in The Hague, was established in 2002 as the permanent court for trying individuals suspected of genocide, war crimes and crimes against humanity. Since then, 121 States from across the world have joined.

The Assembly of States Parties Session will convene from 14 to 22 November 2012 in The Hague.

On Tuesday, 13 November 2012, the Mayor of The Hague will host an event at the Municipality of The Hague which will include a performance by the *Nederlands Dans Theater* (Dutch Dance Company) commemorating victims of war crimes and crimes against humanity.

Calendar

[View the online ICC hearings calendar](#)

NOVEMBER 2012						
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
12	13	14	15	16	17	18
Eleventh session of the Assembly of States Parties, The Hague, The Netherlands						
		President of The Republic of Senegal H.E. Macky Sall to visit the ICC				
		ICC 10 <sup>th</sup> Anniversary Commemoration, <i>Ridderzaal</i> , The Hague, Netherlands				
19	20	21	22	23	24	25
Eleventh session of the Assembly of States Parties, The Hague, The Netherlands						
26	27	28	29	30		
DECEMBER 2012						
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
1	2	3	4	5	6	7

The calendar is subject to last-minute changes.