



Questions and Answers

Questions and Answers on the ICC proceedings in the Libya situation following the Prosecutor's request for three arrest warrants



Why was the ICC established?

In 1998, the States' delegations to the Rome Conference adopted the Rome Statute, founding international treaty of the International Criminal Court (ICC), to put an end to impunity for the perpetrators of the most serious crimes of concern to the international community as a whole, and thus to contribute to the prevention of such crimes.

The International Criminal Court is a permanent international court established to investigate, prosecute and try individuals accused of committing crimes of genocide, crimes against humanity and war crimes.

As of 1 January 2011, 114 countries are States Parties to the Rome Statute. Of these, 31 are from Africa, 15 from Asia, 18 from Eastern Europe, 25 from Latin America and the Caribbean and 25 from Western European and North America.

Is the ICC an office or agency of the United Nations?

No. The ICC is an independent body whose mission is to try individuals for crimes within its jurisdiction without the need for a special mandate from the United Nations (UN). Contrary to the other international tribunals, the ICC was not created by the United Nations, but by a treaty – the Rome Statute. On 4 October 2004, the ICC and the UN signed an agreement governing their institutional relationship

What happened after the United Nations Security Council referred the situation in Libya to the ICC?

On 26 February, the United Nations Security Council decided unanimously (15 votes in favour) to refer the situation in Libya since 15 February 2011 to the ICC Prosecutor, stressing the need to hold accountable those responsible for attacks, including by forces under the control of those responsible, on civilians.

After conducting a preliminary examination of the situation, the ICC Prosecutor concluded, on 3 March 2011, that there is a reasonable basis to believe that crimes under the ICC's jurisdiction have been committed in Libya, since 15 February 2011, and decided to open an investigation in this situation.

On 4 May 2011, the ICC Prosecutor announced that he will submit to Pre-Trial Chamber I a request to issue warrants of arrest against three individuals for crimes against humanity.

On 16 May 2011, the ICC Prosecutor submitted to Pre-Trial Chamber I a request to issue warrants of arrest for Muammar Abu Minyar Gaddafi, Saif Al Islam Gaddafi and the Head of the Intelligence Abdullah Al Sanousi for crimes against humanity (murder and persecution) allegedly committed in Libya since 15 February 2011.

This is the first case in the Libya situation. The Office of the Prosecutor will further investigate allegations of mass rapes, war crimes committed by different parties during the armed conflict that started at the end of February, and attacks against sub-Saharan Africans wrongly perceived to be mercenaries.

The investigations in the situation in Libya are ongoing.



Can the UN Security Council stop a case once the ICC starts its investigation?

The UN Security Council can, by a resolution adopted under Chapter VII, suspend an ICC investigation or prosecution for a period 12 months, renewable under the same conditions, pursuant to article 16 of the Rome Statute.

How are investigations conducted?

In the course of its investigation, due to unprecedented cooperation from different States and organisations (none of which are currently working in Libya), the Office of the Prosecutor has been able to collect extensive documentation and evidence in a short period of time, through 30 missions to 11 States, and through interviews with a large number of persons, including key insiders and eyewitnesses.

What will happen after the ICC Prosecutor submits to the Judges his request to issue three warrants of arrest?

The three ICC judges in Pre-Trial Chamber I will examine thoroughly the Prosecutor's request and the evidence submitted. The Rome Statute does not impose on the judges any deadline to decide on the request.

The judges can reject the Prosecutor's request or ask for additional information. They can deliver summonses to appear or warrants of arrest if they are convinced that there are reasonable grounds to believe that the concerned persons have committed the alleged crimes. Warrants of arrest are issued if it appears necessary to ensure that the concerned persons will actually appear at trial, that they will not obstruct or endanger the investigation or the Court's proceedings, or to prevent them from continuing to commit crimes.

What happens after a warrant of arrest is issued?

The ICC Registrar transmits requests for cooperation seeking the arrest and surrender of the suspect to the relevant State or to other States, depending on the decision of the judges in each case. Once the person is arrested and the Court is so informed, the Court ensures that the person receives a copy of the warrant of arrest in a language which he or she fully understands and speaks.

Within a reasonable time after the suspect's surrender or voluntary appearance before the Court, a Pre-Trial Chamber holds a hearing to confirm the charges. The confirmation hearing is held in the presence of the Prosecutor, the person being prosecuted, and his or her Counsel. At the hearing— which is not a trial nor a mini-trial — the Prosecutor must present to the judges sufficient evidence to satisfy them that there are substantial grounds to believe that the person has committed the crimes for which he or she is charged. The person may object to the charges, challenge the Prosecutor's evidence and also present evidence. If the charges are confirmed, the Pre-Trial Chamber commits the case for trial before a Trial Chamber, which will conduct the subsequent phase of the proceedings: the trial.

Who has to execute the warrants of arrest?

The responsibility to enforce warrants of arrest in all cases remains with States. In establishing the ICC, the States set up a system based on two pillars. The Court itself is the judicial pillar. The operational pillar belongs to States, including the enforcement of Court's orders. States Parties to the Rome Statute have a legal obligation to cooperate fully with the ICC. When a State Party fails to comply with a request to cooperate, the Court may make a finding to that effect and refer the matter for further action to the Assembly of States Parties.

When the Court's jurisdiction is triggered by the UN Security Council, such as in the situations of Darfur (Sudan) and Libya, all UN Member States, non parties to the Rome Statute, are urged, in accordance with the Security Council's resolutions, to cooperate fully with the ICC.

The ICC does not hold trials in the absence of the suspects. However, the crimes within the jurisdiction of the Court are the gravest crimes known to humanity and as provided for by article 29 of the Statute they shall not be subject to any statute of limitations. Warrants of arrest are lifetime orders and therefore individuals still at large will sooner or later face the Court.

There are allegations that the ICC is only targeting African countries. Is that true?

No. The International Criminal Court is an independent judicial institution that is not subject to political control. As an independent court, its decisions are based on legal criteria and rendered by impartial judges in accordance with the provisions of its founding treaty, the Rome Statute, and other legal texts governing the work of the Court.

The ICC is concerned with countries that have accepted the Court's jurisdiction and these are across all continents, including Africa. Three of the six situations currently under investigation were referred by African states themselves. Between 2003 and 2005, the Democratic Republic of the Congo, Uganda, and the Central African Republic referred situations in their own territory to the ICC. The situations in Darfur (Sudan) and in Libya were referred by the UN



Security Council by two resolutions under Chapter VII of the United Nations Charter, as provided for by article 13 of the Rome Statute.

African countries made great contributions to the establishment of the Court and influenced the decision to have an independent Office of the Prosecutor. At the Rome Conference itself, the most meaningful declarations about the Court were made by Africans. Without African support, the Rome Statute might never have been adopted. In fact, 43 African countries are currently signatories of the Rome Statute, of which 31 are States Parties to the Statute, making Africa the most heavily represented region in the Court's membership. The trust and support comes not only from the governments, but also from civil society organisations.

Lastly, situations in countries on four continents are under analysis by the Office of the Prosecutor: Afghanistan, Colombia, the Republic of Korea, Côte d'Ivoire, Georgia, Guinea, Honduras, Nigeria and Palestine.

