

1 International Criminal Court
2 Pre-Trial Chamber I - Courtroom I
3 Presiding Judge Sanji Mmasenono Monageng, Judge Sylvia Steiner
4 and Judge Cuno Tarfusser
5 Situation in the Libyan Arab Jamahiriya - ICC-01/11
6 Hearing
7 Monday, 27 June 2011
8 The hearing starts at 1.02 p.m.
9 (Open session)
10 COURT USHER: All rise. The International Criminal Court is now
11 in session. Please be seated.
12 PRESIDING JUDGE MONAGENG: Good afternoon. I would like the
13 Court Officer to call the situation.
14 COURT OFFICER: Thank you, Madam President. Situation in the
15 Libyan Arab Jamahiriya, case number ICC-01/11.
16 PRESIDING JUDGE MONAGENG: Thank you.
17 Pre-Trial Chamber I of the International Criminal Court is
18 composed of myself, Sanji Monageng, Presiding Judge. On my right,
19 Judge Sylvia Steiner, and on my left, Judge Cuno Tarfusser.
20 I would now like to welcome representatives of the Office of the
21 Prosecutor and invite Mr. Prosecutor to introduce his team.
22 MR. MORENO-OCAMPO: Thank you, your Honour. The Prosecutor
23 office is represented by Ms. Meritxell Regue and the Prosecutor himself,
24 Luis Moreno-Ocampo.
25 PRESIDING JUDGE MONAGENG: Thank you very much.

1 The Chamber has also authorised photographers to come in for a
2 photo-shoot. Please call the photographers.

3 Thank you.

4 The Chamber, noting Resolution 1970 unanimously adopted by the
5 United Nations Security Council on the 26th February 2011 and referring
6 the situation in the Libyan Arab Jamahiriya, or Libya, since
7 15 February 2011, to the Prosecutor of the Court, in accordance with
8 Article 13(b) of the Rome Statute, the Statute;

9 Noting the "Prosecutor's Application pursuant to Article 58 as to
10 Muammar Mohammed Abu Minyar Qadhafi, Saif Al-Islam Qadhafi and Abdullah
11 Al-Senussi" (hereinafter referred to as "Prosecutor's Application") filed
12 by the Prosecutor on 16 May 2011, and by which he requested the issuance
13 of a Warrant of Arrest for Mr. Muammar Qadhafi, Saif Al-Islam Qadhafi and
14 Abdullah Al-Senussi for their alleged criminal responsibility for the
15 commission of murder and persecution of civilians as crimes against
16 humanity from 15 February 2011 onwards throughout Libya in, *inter alia*,
17 Tripoli, Benghazi, and Misrata, through the Libyan State apparatus and
18 Security Forces, in violation of Article 7(1)(a) and (h) of the Statute
19 and as principals to these crimes in accordance with Article 25(3)(a) of
20 the Statute;

21 Having examined the information and evidence, or materials,
22 provided by the Prosecutor in his application in light of the standard
23 set out in Article 58 of the Statute to determine whether there are
24 reasonable grounds to believe that Muammar Qadhafi, Saif Al-Islam Qadhafi
25 and Abdullah Al-Senussi have committed the crimes alleged by the

1 Prosecutor, and that their arrest appears necessary;

2 Noting that the analysis of the materials submitted by the

3 Prosecutor will be set out in a decision to be issued later;

4 Noting Articles 7(1)(a) and (h), 19, 25(3)(a) and 58 of the

5 Statute;

6 Considering that on the basis of the materials provide by the

7 Prosecutor, the Chamber believes that the case against Muammar Qadhafi,

8 Saif Al-Islam Qadhafi and Abdullah Al-Senussi falls within the

9 jurisdiction of the Court and that there is no ostensible cause or

10 self-evident factor which impels it to exercise its discretion under

11 Article 19(1) of the Statute to determine at this stage the admissibility

12 of the case without prejudice to any challenge to the admissibility of

13 the case in accordance with Article 19(2) of the Statute;

14 Considering that the Chamber finds that there are reasonable

15 grounds to believe that, following the events in Tunisia and Egypt which

16 led to the departure of the respective presidents in the early months of

17 2011, a state policy was designed at the highest level of the

18 Libyan State machinery and aimed at deterring and quelling, by any means,

19 including by the use of lethal force, the demonstrations of civilians

20 against the regime of Muammar Mohammed Abu Minyar Qadhafi ("Qadhafi's

21 regime") which started in February 2011;

22 Considering that there are reasonable grounds to believe that in

23 furtherance of the above-mentioned State policy, from 15 February 2011

24 until at least 28 February 2011, the Security Forces, which encompass

25 units of the security and military systems, following a consistent

1 *modus operandi*, carried out through Libya an attack against the civilian
2 population taking part in demonstrations against Qadhafi's regime or
3 those perceived to be dissidents;

4 Considering that, although the exact number of casualties
5 resulting from the attack cannot be known due to a cover-up campaign
6 implemented in order to conceal the commission of crimes by the
7 Security Forces, there are reasonable grounds to believe that as of
8 15 February 2011 and within a period of less than two weeks in
9 February 2011, the Security Forces killed and injured as well as arrested
10 and imprisoned hundreds of civilians;

11 Considering therefore that there are reasonable grounds to
12 believe that a systematic and widespread attack, in furtherance of a
13 State policy, targeting the civilian population which was demonstrating
14 against Qadhafi's regime or those perceived to be dissidents to the
15 regime, occurred within the meaning of Article 7(1) of the Statute;

16 Considering in particular that there are reasonable grounds to
17 believe that throughout Libya and in particular in Tripoli, Misrata, and
18 Benghazi, as well as in cities near Benghazi such as Al-Bayda, Derna,
19 Tobruk, Ajdabiya, murders constituting crimes against humanity were
20 committed from 15 February 2011 until at least 25 February 2011 by
21 Security Forces as part of the attack against the civilian demonstrators
22 or alleged dissidents to Qadhafi's regime;

23 Considering also that there are reasonable grounds to believe
24 that, from 15 February 2011 until at least 28 February 2011, in various
25 localities of the Libyan territory and in particular in Benghazi,

1 Tripoli, Misrata and other neighbouring towns, inhuman acts that severely
2 deprived the civilian population of its fundamental rights were inflicted
3 on it by the Security Forces because of the civilians' political
4 opposition (whether actual or perceived) to Qadhafi's regime;

5 Considering that in relation to Muammar Qadhafi and in light of
6 the materials, there are reasonable grounds to believe that
7 Muammar Qadhafi, as the recognised and undisputed leader of Libya had, at
8 all times relevant to the Prosecutor's Application, absolute, ultimate
9 and unquestioned control over the Libyan State apparatus of power,
10 including the Security Forces;

11 Considering that in relation to Saif Al-Islam and in light of the
12 materials, there are also reasonable grounds to believe that, although
13 not having an official position, Saif Al-Islam is Muammar Qadhafi's
14 unspoken successor and the most influential person within his inner
15 circle and, as such, at all times relevant to the Prosecutor's
16 application, he exercised control over crucial parts of the State
17 apparatus, including finances and logistics and had the powers of a
18 *de facto* Prime Minister;

19 Considering that the materials supplied by the Prosecutor also
20 provide reasonable grounds to believe that the scale of the concerted
21 actions by Muammar Qadhafi and his son Saif Al-Islam Qadhafi leads to the
22 inference that Muammar Qadhafi, in co-ordination with his inner circle,
23 including Saif Al-Islam Qadhafi, conceived and orchestrated a plan to
24 deter and quell, by all means, the civilian demonstrations against the
25 regime;

1 Considering that there are reasonable grounds to believe that
2 Muammar Qadhafi and Saif Al-Islam contributed to the implementation of
3 the plan by respectively assuming tasks that led to the commission of the
4 foregoing crimes and that their contributions were essential for the
5 realisation of the plan since they had the power to frustrate the
6 commission of the crimes by not performing their tasks;

7 Considering that there are reasonable grounds to believe that
8 Muammar Qadhafi and Saif Al-Islam Qadhafi:

9 (i) intended to bring about the objective elements of the
10 foregoing crimes;

11 (ii) knew that their conduct was part of a widespread and
12 systematic attack against the civilian population pursuant to the State
13 policy, set up by them, of targeting civilians perceived to be political
14 dissidents;

15 (iii) were well aware of their senior leadership role within the
16 structure of the Libyan State apparatus and of their power to exercise
17 full control over their subordinates; and

18 (iv) were aware and accepted that implementing the plan would
19 result in the realisation of the objective elements of the crimes;

20 Considering accordingly, that there are reasonable grounds to
21 believe that Muammar Qadhafi and Saif Al-Islam Qadhafi are both
22 criminally responsible as indirect co-perpetrators, under
23 Article 25(3)(a) of the Statute, for the following crimes committed by
24 Security Forces under their control in various localities of the Libyan
25 territory, in particular in Benghazi, Misrata, Tripoli and other

1 neighbouring cities from 15 February 2011 until at least

2 28 February 2011:

3 (i) murder as a crime against humanity, within the meaning of

4 Article 7(1)(a) of the Statute; and

5 (ii) persecution as a crime against humanity, within the meaning

6 of Article 7(1)(h) of the Statute;

7 Considering that under Article 58(1) of the Statute, the arrest

8 of Muammar Qadhafi and Saif Al-Islam Qadhafi appears necessary at this

9 stage to (i) ensure their appearance before the Court; (ii) ensure that

10 they do not continue to use their power to obstruct or endanger the

11 investigation, in particular by orchestrating the cover-up of the crimes

12 committed by the Security Forces; and to (iii) prevent them from

13 continuing to use their power and control over the Libyan State apparatus

14 to continue the commission of crimes within the jurisdiction of the

15 Court;

16 Considering in relation to Abdullah Al-Senussi that, in Benghazi,

17 in particular, murders constituting crimes against humanity were

18 committed from 15 February 2011 until at least 20 February 2011 by

19 Security Forces under the command of Abdullah Al-Senussi, as part of the

20 attack against the civilian demonstrators or alleged dissidents to

21 Qadhafi's regime;

22 Considering also that there are reasonable grounds to believe

23 that from 15 February 2011 until at least 20 February 2011, in particular

24 in Benghazi, inhuman acts that severely deprived the civilian population

25 of its fundamental rights were inflicted on it by the Security Forces

1 under the command of Abdullah Al-Senussi, because of this civilian
2 population's political opposition (whether actual or perceived) to
3 Qadhafi's regime;

4 Considering that in light of the materials, there are reasonable
5 grounds to believe that from 15 February 2011 until at least
6 20 February 2011, Abdullah Al-Senussi exercised his role as the national
7 head of the Military Intelligence, one of the most powerful and efficient
8 organs of repression of Qadhafi's regime and the state security organ in
9 charge of monitoring the military camps and members of the Libyan
10 Armed Forces;

11 Considering that there are reasonable grounds to believe that,
12 once instructed by Muammar Qadhafi to implement the plan to deter and
13 quell civilian demonstrations against his regime in Benghazi,
14 Abdullah Al-Senussi used his powers over the military forces, commanded
15 the forces in Benghazi and directly instructed the troops to attack
16 civilians demonstrating in the city;

17 Considering further that there are reasonable grounds to believe
18 that Abdullah Al-Senussi (i) intended to bring about the objective
19 elements of the crimes committed by the armed forces under his control
20 from 15 February 2011 until at least 20 February 2011 in the city of
21 Benghazi; (ii) knew that his conduct was part of a widespread and
22 systematic attack against the civilian population pursuant to a State
23 policy of targeting civilians perceived to be political dissidents; and
24 (iii) was aware of his senior leadership role within the structure of the
25 military and of his power to exercise full control over his subordinates;

1 Considering accordingly that there are reasonable grounds to
2 believe that Abdullah Al-Senussi is criminally responsible as principal
3 to the following crimes committed in Benghazi from 15 February 2011 until
4 at least 20 February 2011 by the members of the armed forces under his
5 control, under Article 25(3)(a) of the Statute, as an indirect
6 perpetrator:

7 (i) murder as a crime against humanity, within the meaning of
8 Article 7(1)(a) of the Statute; and

9 (ii) persecution as a crime against humanity, within the meaning
10 of Article 7(1)(h) of the Statute;

11 Considering that there are reasonable grounds to believe that
12 Abdullah Al-Senussi is still the head of the Libyan Military Intelligence
13 and, accordingly, still in a position to instruct troops to both commit
14 crimes and destroy the evidence pursuant to the plan devised by
15 Muammar Qadhafi in co-ordination with his inner circle, including
16 Saif Al-Islam Qadhafi, the Chamber is satisfied that the arrest of
17 Abdullah Al-Senussi is necessary to (i) ensure his appearance before the
18 Court; (ii) ensure that he does not continue to obstruct and endanger the
19 Court's investigations; and (iii) prevent him from using his powers to
20 continue the commission of crimes within the jurisdiction of the Court;

21 For these reasons, the Chamber hereby issues:

22 (i) a Warrant of Arrest for Muammar Mohammed Abu Minyar Qadhafi,
23 born in 1942 near Sirte, Libya, Commander of the Libyan Armed Forces and
24 holding the title of Leader of the Revolution, and as such, acting as the
25 Libyan Head of State;

1 (ii) a Warrant of Arrest for Saif Al-Islam Qadhafi, born on
2 25 June 1972 in Tripoli, Libya, honorary chairman of the Qadhafi
3 International Charity and Development Foundation and acting as the Libyan
4 *de facto* Prime Minister;

5 (iii) a Warrant of Arrest for Abdullah Al-Senussi, born in 1949
6 in Sudan, Colonel in the Libyan Armed Forces and currently head of the
7 Military Intelligence, previously known as Jamahiriya Security
8 Organisation.

9 Before concluding the hearing, I would further note for the
10 public and for the sake of clarity, that the decision I have just read
11 out is not a finding on the guilt of any of the three individuals and
12 does not establish any fact beyond reasonable doubt, which is a standard
13 of proof to be applied by a Trial Chamber. Rather, it concerns the issue
14 of whether the requirements for the issuance of Warrants of Arrest have
15 been met in accordance with Article 58 of the Statute and only in light
16 of the allegations made by the Prosecutor in his application and in light
17 of the supporting materials thereon.

18 In relation to the execution of these Warrants of Arrest, the
19 Chamber has directed the Registrar to prepare and transmit, as soon as
20 practicable, a request for cooperation seeking their arrest.

21 Finally, I would note that the actual decision and the
22 Warrants of Arrest are authoritative, not the transcript of the present
23 hearing.

24 Before I conclude, I wish to thank Prosecutor, members of the
25 court and Chambers, the interpreters, and everybody who is in attendance.

1 This concludes today's hearing. The court is adjourned.

2 COURT USHER: All rise.

3 The hearing ends at 1.30 p.m.

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