

Situation in Libya

ICC-PIDS-CIS-LIB-01-013/18_Eng

The Prosecutor v. Saif Al-Islam Gaddafi

Updated: August 2018

ICC-01/11-01/11

Saif Al-Islam Gaddafi

Suspected of two counts of crimes against humanity committed across Libya from 15 until at least 28 February 2011. Not in ICC custody.



Date of birth: 25 June 1972

Place of birth: Tripoli, Libya

Nationality: Libyan

Title: Honorary chairman of the Gaddafi International Charity and Development Foundation and acting as the Libyan *de facto* Prime Minister

Warrant of Arrest: Issued on 27 June 2011

Charges

Pre-Trial Chamber I considers that there are reasonable grounds to believe that, under article 25(3)(a) of the Rome Statute, Saif Al-Islam Gaddafi is criminally responsible as indirect co-perpetrator for two counts of crimes against humanity:

- Murder, within the meaning of article 7(1)(a) of the Statute; and
- Persecution, within the meaning of article 7(1)(h) of the Statute.

Alleged crimes (non-exhaustive list)

Pre-Trial Chamber I found that there are reasonable grounds to believe that:

- Following the events in Tunisia and Egypt in the early months of 2011, a State policy was designed at the highest level of the Libyan State machinery and aimed at deterring and quelling, by any means, including by the use of lethal force, the demonstrations of civilians against the regime of Muammar Gaddafi which started in February 2011; and
- In furtherance of the above-mentioned State policy, from 15 February 2011 until at least 28 February 2011 the Libyan Security Forces, which encompass units of the security and military systems, carried out throughout Libya – and in particular in Tripoli, Misrata and Benghazi as well as in cities near Benghazi such as Al-Bayda, Derna, Tobruk and Ajdabiya – an attack against the civilian population taking part in demonstrations against Gaddafi's regime or those perceived to be dissidents, killing and injuring as well as arresting and imprisoning hundreds of civilians.

Pre-Trial Chamber I also found that there are reasonable grounds to believe that:

- Although not having an official position, Saif Al-Islam Gaddafi is Muammar Gaddafi's unspoken successor and the most influential person within his inner circle and, as such, he exercised control over crucial parts of the State apparatus, including finances and logistics and had the powers of a *de facto* Prime Minister;
- Muammar Gaddafi, in coordination with his inner circle, including Saif Al-Islam Gaddafi, conceived a plan to deter and quell, by all means, the civilian demonstrations against the regime, and that both of them made an essential contribution to implement that plan.

Key judicial developments

REFERRAL AND OPENING OF THE INVESTIGATION

On 26 February 2011, 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.

WARRANTS OF ARREST

On 16 May 2011, the Prosecutor requested the issuance of these three warrants against Muammar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi for their alleged criminal responsibility for the commission of murder and persecution as crimes against humanity from 15 February 2011 onwards throughout Libya in, *inter alia*, Tripoli, Benghazi, and Misrata, through the Libyan State apparatus and Security Forces. On 27 June 2011, Pre-Trial Chamber I granted the Prosecutor's request and issued three warrants of arrest for these three individuals. The arrest warrant against Muammar Mohammed Abu Minyar Gaddafi was withdrawn, on 22 November 2011, due to his death.

Proceedings against Abdullah Al-Senussi before the ICC came to an end on 24 July 2014 when the Appeals Chamber confirmed a decision of Pre-Trial Chamber I declaring the case inadmissible before the ICC.

ADMISSIBILITY CHALLENGE

On 1 May 2012, the Government of Libya challenged the admissibility of the case concerning Saif Al-Islam Gaddafi before Pre-Trial Chamber I. A Challenge to the admissibility of a case is based on the principle of complementarity which holds that the ICC does not replace national criminal justice systems; rather, it complements them. The ICC can investigate and, where warranted, prosecute and try individuals only if the State concerned does not, cannot or is unwilling genuinely to do so.

On 31 May 2013, the Pre-Trial Chamber I rejected the challenge to the admissibility of the case against Saif Al-Islam Gaddafi. The Judges acknowledged Libya's efforts to restore the rule of law. However, the Chamber concluded that Libya was unable genuinely to carry out the prosecution of Mr Gaddafi and found that the evidence submitted was not sufficient to consider that the domestic and the ICC investigations cover the same case. On 21 May 2014, the ICC Appeals Chamber confirmed this decision of Pre-Trial Chamber I.

On 6 June 2018, the Chamber received an Admissibility Challenge from Mr Gaddafi. The Prosecutor, the UN Security Council and victims who have already communicated with the Court in relation to the case, were invited to make written submissions on the Admissibility Challenge, if they wish to do so, no later than 28 September 2018. It will then be up to the judges to decide on this latest admissibility challenge.

On 2 April 2013, the Libyan authorities filed another challenge to the admissibility of the case with regard to Abdullah Al Senussi. On 11 October 2013, Pre-Trial Chamber I decided that the case against Abdullah Al-Senussi was inadmissible before the ICC as it was currently subject to domestic proceedings conducted by the Libyan competent authorities and that Libya is willing and able genuinely to carry out such investigation. On 24 July 2014, the Appeals Chamber unanimously confirmed Pre-Trial Chamber I's decision, declaring the case against Abdullah Al-Senussi inadmissible before the ICC. Proceedings against Abdullah Al-Senussi before the Court hence came to an end.

NON-COMPLIANCE FINDING

On 10 December 2014, Pre-Trial Chamber I issued a finding of non-compliance by the Government of Libya with respect to the non-execution of two requests for cooperation transmitted by the ICC, and decided to refer the matter to the Security Council of the United Nations.

The Chamber found that Libya has failed to comply with the requests by the Court: (i) to surrender Saif Al-Islam Gaddafi to the Court; and (ii) to return to the Defence of Saif Al-Islam Gaddafi the originals of the documents that were seized by the Libyan authorities from the former Defence counsel for Saif Al-Islam Gaddafi in June 2012 in Zintan, and to destroy any copies thereof.

The Chamber emphasized that its decision was only based on the objective failure to obtain cooperation. It was not intended to sanction or criticize Libya but solely to seek the assistance of the Security Council to eliminate the impediments to cooperation.

Composition of Pre-Trial Chamber I

Judge Péter Kovács, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Reine Adelaide Sophie Alapini-Gansou

Representation of the Office of the Prosecutor

Fatou Bensouda, Prosecutor
James Stewart, Deputy Prosecutor
Julian Nicholls, Senior Trial Lawyer

Defence Counsel for Saif Al-Islam Gaddafi

Shyamala Alagendra

Legal Representatives of the Victims

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