



# **Libya: The International Criminal Court's Decision on Arrest Warrants**

## **Questions and Answers**

**June 2011**

The International Criminal Court (ICC), by issuing an arrest warrant for Muammar Gaddafi, signaled that the law can reach even those long thought to be immune to accountability, Human Rights Watch said today. The ICC judges granted warrants on June 27, 2011, for Gaddafi, the Libyan leader, his son Seif al-Islam, and Libya's intelligence chief, Abdullah Sanussi. They are wanted on charges of crimes against humanity for their roles in attacks on civilians, including peaceful demonstrators, in Tripoli, Benghazi, Misrata, and other Libyan cities and towns. The ICC prosecutor had asked the judges of the court on May 16 to issue warrants for the three Libyan suspects.

### **1. How did the judges make the determination to issue arrest warrants?**

By issuing the arrest warrants, the ICC judges indicated that they were satisfied that there were "reasonable grounds to believe" that the individuals named in the prosecutor's May 16 request had committed a crime within the jurisdiction of the court.

A suspect who is arrested or surrenders to the court has an opportunity to object to the charges and to challenge the evidence in a "confirmation of charges" hearing. At that point, if the ICC judges decide that there is enough evidence to establish "substantial grounds to believe" – a higher threshold – that the person committed each of the crimes charged, the case can move forward to trial.

### **2. Isn't Muammar Gaddafi immune as a head of state?**

The Rome Statute, which established the ICC, applies to everyone regardless of their official role. Article 27 of the Rome Statute states explicitly that heads of state are not immune from prosecution.

The warrant for Muammar Gaddafi is not the first for a sitting head of state by an international court. In 1999, the International Criminal Tribunal for the Former Yugoslavia issued its first indictment

against Yugoslav President Slobodan Milosevic for war crimes and crimes against humanity committed in Kosovo. In 2003, the Special Court for Sierra Leone unsealed its indictment of Charles Taylor, then president of Liberia. Most recently, the ICC has issued two arrest warrants for President Omar al-Bashir of Sudan, on charges of genocide, crimes against humanity, and war crimes.

### **3. Now that arrest warrants have been issued, how are they to be carried out?**

Because the ICC has no police force of its own, it depends on national authorities to make arrests on its behalf. United Nations Security Council resolution 1970, that referred Libya to the ICC, requires the Libyan authorities to cooperate fully with the court. Libya, though not a party to the Rome treaty, is obligated because of the resolution to make arrests at the court's request. States parties to the ICC also have a legal obligation to cooperate with the court, and resolution 1970 urges states that are not parties to the Rome treaty to cooperate.

### **4. Can diplomats and others still have meetings with Gaddafi now that he is subject to an ICC arrest warrant?**

The issuance of an arrest warrant does not legally prevent diplomats from holding talks with the three suspects. Meeting with Gaddafi and the others will be a matter of individual government policy.

### **5. Won't the arrest warrant for Gaddafi just entrench him or those around him further?**

Gaddafi has made it clear that he intends to stay until the end. In February, his son Seif al-Islam was quoted on state television saying they would fight to the last man and last woman. It appears unlikely that an arrest warrant will alter Gaddafi's intentions one way or the other. On the other hand, there are those around Gaddafi who are now on notice that they could also be held responsible for crimes they order or commit, or for crimes they fail to prevent or punish. This could encourage them to take steps to stop crimes.

The record from other conflicts also shows that arrest warrants for senior leaders can actually strengthen peace efforts by stigmatizing those who stand in the way of conflict resolution. For example, the indictments of Radovan Karadzic, the Bosnian Serbs' wartime political leader, and Ratko Mladic, their military commander, by the International Criminal Tribunal for the former Yugoslavia are credited with keeping them sidelined during the Dayton peace talks, which led to the end of the Bosnian war.

### **6. What if Gaddafi offers to go in exchange for amnesty?**

Amnesty for grave abuses against civilians has no legal viability internationally. International law rejects impunity for serious crimes, such as genocide, war crimes, crimes against humanity and torture. International treaties, including the UN Convention against Torture, the Geneva Conventions, and the Rome Statute of the ICC, require parties to ensure alleged perpetrators of serious crimes are prosecuted.

### **7. Will the ICC prosecutor conduct other investigations?**

The prosecutor's current case focuses on those most responsible for crimes against humanity committed in Libya during the period before the armed conflict began. He has suggested that he may open a second investigation later, relating to the subsequent armed conflict. Human Rights Watch urges the ICC prosecutor to continue to investigate serious crimes that may have been committed by all parties in Libya, including rebel forces and NATO.

### **8. Why is the ICC prosecutor investigating crimes committed in Libya but not investigating crimes in Syria?**

The ICC has jurisdiction over war crimes, crimes against humanity, and genocide committed after July 1, 2002, only if at least one of the following threshold conditions is met:

The crimes occurred in the territory of a state that is a party to the Rome Statute;  
The person accused of the crimes is a citizen of a country that is a party to the Rome Statute;  
A state that is not a party to the Rome Statute accepts the ICC's authority for the crime in question by making a declaration and lodging it with the ICC registrar; or  
The UN Security Council refers the situation to the ICC prosecutor.

Syria is not a state party to the Rome Statute. For the ICC to begin an investigation, either the UN Security Council would have to refer the situation to the ICC prosecutor, as it did for Libya, or Syria would have to accept the court's jurisdiction.

Human Rights Watch has called on the Syrian government to take immediate steps to halt the excessive use of lethal force by security forces. It has also urged the UN Security Council to impose sanctions and press Syria for accountability and, if it does not respond adequately, to refer Syria to the International Criminal Court.