



# PMUNC 2014

## International Criminal Court

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Director:



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## Introduction

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### **The Founding of the International Criminal Court**

The International Criminal Court (ICC) is a relatively recent addition to the world's set of supranational institutions, with its founding treaty having entered into effect in 2002. The ICC serves as "the court of last resort for the prosecution of genocide, war crimes, and crimes against humanity."<sup>1</sup> The creation of the ICC marked the first time that a collection of sovereign states signaled their willingness to follow the rulings of a permanent international legal institution charged with the punishing criminal acts committed on

their soil or by their citizens.<sup>2</sup> Though the parties to the Rome Statute accepted the jurisdiction of the ICC, the purpose of the court is not to replace the national laws of its signatories: "The ICC can only intervene where a State is unable or unwilling genuinely to carry out the investigation and prosecute the perpetrators."<sup>3</sup> In this way, the ICC acts as a fail-safe mechanism to address the most serious crimes in the case that the States on their own refuse to act.

The desire to create an institution like the ICC has its basis in the aftermath of the Second World War, as the international community sought to address the atrocities committed in the

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<http://www.hrw.org/topic/international-justice/international-criminal-court>

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<sup>2</sup> <http://www.icc-cpi.int/iccdocs/PIDS/publications/UICCEng.pdf, 2>

<sup>3</sup> <http://www.icc-cpi.int/iccdocs/PIDS/publications/UICCEng.pdf, 2>.



first half of the twentieth century. The brutality of Nazi Germany shocked the Allies, who set one of their key post-war goal to be the redress and punishment of all those involved in the crime through an organized justice system.<sup>4</sup> U.S. Supreme Court Justice Robert M. Jackson, who served as the Chief US Representative at Nuremberg saw the tribunals as a crucial part of the post-war reconciliation with the level of brutality reached by the war and an important precedent for future standards of conduct for war: “We must never forget that the record on which we judge these defendants today is the record on which history will judge us tomorrow... We must summon such detachment and intellectual integrity to our task that this trial will commend itself to posterity as fulfilling humanity’s aspirations to do

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<sup>4</sup> <http://www.parl.gc.ca/content/lop/research/publications/prb0211-e.htm>

justice.”<sup>5</sup> Following the end of the war, the International Military Tribunal at Nuremberg and the International Military Tribunal for the Far East in Tokyo were established, with each of the key Allied nations appointing justices to try all those who ordered, implemented, and were involved in the campaigns of mass murder, diaspora, and ethnic cleansing.<sup>6</sup> These courts serve largely as the “moral legacy” which formed the basis for a future international criminal justice system, though their unclear rules of procedure, standards for evidence, and lack of international representation make them significantly different from today’s ICC. The momentum for the creation of the ICC reawakened after the end of the Cold War, and on July 17<sup>th</sup> 1998, the conference to establish the

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<sup>5</sup> <http://www.parl.gc.ca/content/lop/research/publications/prb0211-e.htm>

<sup>6</sup> <http://www.parl.gc.ca/content/lop/research/publications/prb0211-e.htm>

ICC in Rome adopted the Rome Statute.<sup>7</sup> The treaty went into effect on July 1<sup>st</sup> 2002, with 60 states ratifying.

The establishment of the ICC was the product of several ambitions of the international community. Many international legal experts hoped that the creation of an impartial international court would help end some brutal conflicts. Former Nuremberg prosecutor Benjamin B. Ferencz saw the reestablishment of justice as a necessary precondition to a lasting peace.<sup>8</sup> The creation of two recent ad hoc tribunals, those in the former Yugoslavia and in Rwanda, was motivated by the hope that guaranteeing the punishment of at least a portion of the war criminals would bring the end of violence more quickly and

prevent a resurgence of fighting.<sup>9</sup> The ICC was also intended partially to deter future war criminals, given the historical lack of punishment for those who committed the most brutal crimes, especially those holding high positions of power.<sup>10</sup>

### **Organizational Structure**

According to its charter, the Court has jurisdiction over international crimes only when they were committed by a national of or on the territory of one of its member states.<sup>11</sup> This requirement may be circumvented when a situation is referred to the ICC Prosecutor by the United Nations Security Council, as its resolutions are technically binding on all

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<sup>7</sup> <http://www.icc-cpi.int/iccdocs/PIDS/publications/UICCEng.pdf> 3.

<sup>8</sup> <http://legal.un.org/icc/general/overview.htm>

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<http://legal.un.org/icc/general/overview.htm>

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<http://legal.un.org/icc/general/overview.htm>

<sup>11</sup> [http://www.icc-cpi.int/en\\_menus/icc/about%20the%20court/icc%20at%20a%20glance/Pages/icc%20at%20a%20glance.aspx](http://www.icc-cpi.int/en_menus/icc/about%20the%20court/icc%20at%20a%20glance/Pages/icc%20at%20a%20glance.aspx)

UN members, or if a state declares its willingness to abide by the Court's ruling.<sup>12</sup>

The Office of the Prosecutor is one of the key organs of the ICC, with the head prosecutor elected by the Assembly of States party to the Rome Statute. The Office of the Prosecutor receives and examines referrals of crimes to the Court to determine whether or not there is a legal basis for future investigations or proceedings.<sup>13</sup> Its mandate creates three divisions within the Office: The Investigation Division, which is required to cover both incriminating and exonerating evidence; The Prosecution Division, which is principally responsible for litigation; and the Jurisdiction, Complementarity, and

Cooperation Division, which assesses the admissibility of evidence, coordinates with people outside the ICC on investigation, and handles the Court's external affairs.<sup>14</sup> In addition to responding to referrals of crimes, the Office of the Prosecutor may also launch its own investigations into potential crimes, which must then be confirmed by a panel of judges in the Pre-Trial Chamber of the Court.<sup>15</sup>

In order to judge crimes impartially, the Court also has a division charged with defending those indicted.<sup>16</sup> In order to ensure the due process rights of all defendants, the Rome Statute in article 67 states that the accused is "entitled to a public, impartial and fair hearing." To

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<sup>12</sup> [http://www.icc-cpi.int/en\\_menus/icc/about%20the%20court/icc%20at%20a%20glance/Pages/icc%20at%20a%20glance.aspx](http://www.icc-cpi.int/en_menus/icc/about%20the%20court/icc%20at%20a%20glance/Pages/icc%20at%20a%20glance.aspx)

<sup>13</sup> <http://www.icc-cpi.int/iccdocs/PIDS/publications/OTPEng.pdf>

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<sup>14</sup> <http://www.icc-cpi.int/iccdocs/PIDS/publications/OTPEng.pdf>

<sup>15</sup> <http://www.icc-cpi.int/iccdocs/PIDS/publications/OTPEng.pdf>

<sup>16</sup> <http://www.icc-cpi.int/iccdocs/PIDS/publications/DefenceEng.pdf>

that end he/she is guaranteed the following provisions:

- Trial without undue delay
- Defense by a lawyer of their choice, along with the ability to present evidence and call witnesses
- Legal assistance provided by the court if they lack the resources to appoint their own lawyer
- Information about the witnesses to be called by the prosecution, and the right to challenge the credibility of those witnesses
- The right against self incrimination and to remain silent, without silence being held equivalent to an admission of guilt or innocence.
- To have the Office of the Prosecutor disclose any evidence found during the investigation

which points to the innocence of the accused.<sup>17</sup>

The Court itself is made up of 18 judges from different member countries, each elected for nine year terms by the Assembly of States. The election of judges takes into account their individual competence in criminal law and human rights, as well as the “need to represent the world’s principal legal systems, a fair representation of men and women, and equitable geographical distribution.”<sup>18</sup> Judges are not allowed to participate in cases in which their impartiality may be in question.<sup>19</sup> The judges choose a President and two Vice-President from their ranks. They are organized into three divisions in order to

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<sup>17</sup> <http://www.icc-cpi.int/iccdocs/PIDS/publications/DefenceEng.pdf>

<sup>18</sup> <http://www.icc-cpi.int/iccdocs/PIDS/publications/JudgesENG.pdf>

<sup>19</sup> <http://www.icc-cpi.int/iccdocs/PIDS/publications/JudgesENG.pdf>

handle every step of the legal process: Pre-Trial, Trial, and Appeals. Each case is therefore heard by multiple judges at each stage of litigation.<sup>20</sup>

### **The ICC and International Law**

#### **The Court's Legal Position**

Unlike the International Court of Justice, an organ of the United Nations, the International Criminal Court's charter provides for universal jurisdiction. Whereas the ICJ has limited jurisdiction and allows UN members to voluntarily and conditionally accept its rulings, the ICC's universal jurisdiction means that it has jurisdiction everywhere since it can receive cases from non-member states through the UN Security

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<sup>20</sup> <http://www.icc-cpi.int/iccdocs/PIDS/publications/JudgesENG.pdf>

Council.<sup>21</sup> In order to exercise this jurisdiction and effectively implement the international legal principles enshrined in the Rome Statute, the ICC has extensive protocols for international cooperation and assistance between the Court and national authorities.<sup>22</sup>

#### **Relevant Legal Concepts:**

#### **Criminal Responsibility**

The legal principles used by the International Criminal Court are clearly delineated in the Rome Statute, and each delegate should take some time to familiarize him/herself with them. The key provisions will be explained in this section, though they can all be found in Section 3 of the Rome Statute.

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[http://www.americanbar.org/content/dam/aba/migrated/dispute/essay/intlcrimincourt\\_authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/dispute/essay/intlcrimincourt_authcheckdam.pdf), 3-4.

<sup>22</sup>

[http://www.americanbar.org/content/dam/aba/migrated/dispute/essay/intlcrimincourt\\_authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/dispute/essay/intlcrimincourt_authcheckdam.pdf), 9.



Article 24: Non-retroactivity rationes personae

This article can be seen as a parallel to the principle of U.S. Law that prevents ex-post-facto prosecution. The accused may not be held as criminally responsible for an act that occurred prior to the entry into force of the Rome Statute or one of its amendments. If the law is changed during the court's proceedings, the law more favorable to the accused shall apply.

Article 25: Individual criminal responsibility

An individual may be deemed criminally responsible for an act if they commit it alone or jointly with another person, "regardless of whether that other person is criminally responsible." As stated earlier, someone may also be responsible even if they did not directly

commit the crime, in the case that they ordered, solicited, or induced the crime or its attempt. Aiding, abetting, or assisting the crime also implies responsibility. Any contribution to the crime will result in responsibility if it was "made with the aim of furthering the criminal activity" and if it was "made in the knowledge of the intention of the group to commit the crime." In the case of a charge of genocide, any direct and public incitement of genocide makes the individual criminally responsible. It is important to note that the Rome Statute does provide for the possibility that someone withdrew support prior to the completion of the crime. Article 25(3)(f) states the following: "A person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that

person completely and voluntarily gave up the criminal purpose.”

Article 27: Irrelevance of official capacity and Article 28: Responsibility of commanders and other superiors

According to the Rome Statute, the ICC has the power to prosecute individuals even if they acted in their official capacity as a head of state, member of government, or elected representative. Military commanders or those acting as military commanders will be held criminally responsible for crimes that happen on their watch due to their effective order or due to their failure to properly control their forces.

Articles 26, 30, 31: When are individuals not criminally responsible?

Those who were under the age of 18 when the crime was committed are exempt from ICC prosecution. Article 30

requires that an individual commit the crime in question with both intent and knowledge. If this cannot be proven with sufficient evidence, the accused must be acquitted. They may also be excluded from criminal responsibility if “the person suffers from a mental disease or defect that destroys that person’s capacity to appreciate the unlawfulness or nature of his or her conduct, or the capacity to control his or her conduct to conform to the requirements of the law.”

This provision is somewhat equivalent to the idea of the “insanity defense” in the US legal system. Article 31 also provides for special circumstance in war where criminal responsibility may be excluded, where “the person acts reasonably to defend himself or herself or another person or, in the case of war crimes, property which is essential for the survival of the person or another person or property which is essential for

accomplishing a military mission, against imminent and unlawful use of force in a manner proportionate to the degree of danger to the person protected.” The key to this provision is the proportionality of the response to the “imminent” danger. However, the Rome Statute expressly states that labeling a military operation as “defensive” alone does not necessarily exclude criminal responsibility. Lastly, Article 31 excludes responsibility if the crime was caused “by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm...and the person acts necessarily and reasonably to avoid this threat.” Again proportionality is key in applying this provision as a successful defense.

### **Rules of Procedure**

For the duration of the conference, each delegate will be assigned to represent one of the 18 ICC judges. Throughout the course of the conference, each delegate will serve as the prosecution, defense, and judge on one of the three cases. The positions will rotate after the end of each case. The assignments of the roles for each case are listed below. The cases will be brought to trial in the following order:

1. *The Prosecutor v. Uhuru Muigai Kenyatta*
2. *The Prosecutor v. Abdel Raheem Muhammad Hussein*
3. *The Prosecutor v. Saif al-Islam Gaddafi and Abdullah al-Senussi*

Each case hearing will have the same structure, and the time limits outlined in the following procedure are up to the

chair's discretion in order to facilitate a more productive debate.

#### Trial Preparation (45 Minutes)

Each side will have time to gather and prepare for the trial. During this time, delegates should determine within their sides who will give opening statements, examine and cross-examine witnesses, and give closing statements. Delegates may draft opening and closing statements before the conference and combine these during trial preparation. Both sides must also present a written list of requested witnesses to the chair. Judges should use this period to review the case and determine what questions they will ask the prosecution and defense during Dialogue and Discussion.

Opening Statements (15 minutes each)

During opening statements, both sides should present the background information of the case and discuss how evidence will be used throughout their presentation of the case. The charges being brought should be discussed as well as each side's theory of the case.

#### Direct Examination and Cross Examination of Witnesses (Time limit at chair's discretion)

In direct examination, each side will question their own witnesses in order to bring information forward to the court. This will be followed by cross examination, in which the other side will question the same witnesses.

#### Dialogue and Discussion (Time limit at chair's discretion)

Following the examination of witnesses, judges will ask the Prosecution and Defense questions

pertinent to the facts and arguments of each side's case. Each judge is encouraged to ask at least three questions.

Closing Statements (30 minutes each)

Closing statements will be presented by both sides. The Prosecution will speak first, and may elect to only use half its time before the closing statement of the Defense. After the Defense presents its closing statement, the Prosecution may use the remainder of its time to put forward a rebuttal. The closing statements should review and

further analyze the evidence and arguments put forward throughout the trial, point out the relevant law, and argue for a judgment in the side's favor.

Deliberation

After closing statements the court will recess and the judges will deliberate on the case. This will happen in the form of a moderated debate in the absence of the Prosecution and Defense over which the chair shall preside. During this deliberation, the judges will produce a ruling and a statement describing the rationale behind it.



## The cases:

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### Case Assignments

#### **Sang-Hyun Song (Republic of Korea)**

Prosecution: *The Prosecutor v. Uhuru Muigai Kenyatta*

Defense: *The Prosecutor v. Abdel Raheem Muhammad Hussein*

Judge: *The Prosecutor v. Saif al-Islam Gaddafi and Abdullah al-Senussi*

#### **Sanji Mmasenono Monageng (Botswana)**

Prosecution: *The Prosecutor v. Uhuru Muigai Kenyatta*

Defense: *The Prosecutor v. Saif al-Islam Gaddafi and Abdullah al-Senussi*

Judge: *The Prosecutor v. Abdel Raheem Muhammad Hussein*

#### **Cuno Jakob Tarfusser (Italy)**

Prosecution: *The Prosecutor v. Uhuru Muigai Kenyatta*

Defense: *The Prosecutor v. Abdel Raheem Muhammad Hussein*

Judge: *The Prosecutor v. Saif al-Islam Gaddafi and Abdullah al-Senussi*

#### **Hans-Peter Kaul (Germany)**

Prosecution: *The Prosecutor v. Uhuru Muigai Kenyatta*

Defense: *The Prosecutor v. Saif al-Islam Gaddafi and Abdullah al-Senussi*

Judge: *The Prosecutor v. Abdel Raheem Muhammad Hussein*

#### **Akua Kuenyehia (Ghana)**

Prosecution: *The Prosecutor v. Uhuru Muigai Kenyatta*

Defense: *The Prosecutor v. Abdel Raheem Muhammad Hussein*

Judge: *The Prosecutor v. Saif al-Islam Gaddafi and Abdullah al-Senussi*

#### **Erkki Kourula (Finland)**

Prosecution: *The Prosecutor v. Abdel Raheem Muhammad Hussein*

Defense: *The Prosecutor v. Uhuru Muigai Kenyatta*

Judge: *The Prosecutor v. Saif al-Islam Gaddafi and Abdullah al-Senussi*

#### **Anita Usacka (Latvia)**

Prosecution: *The Prosecutor v. Saif al-Islam Gaddafi and Abdullah al-Senussi*

Defense: *The Prosecutor v. Uhuru Muigai Kenyatta*

Judge: *The Prosecutor v. Abdel Raheem Muhammad Hussein*

#### **Ekaterina Trendafilova (Bulgaria)**

Prosecution: *The Prosecutor v. Abdel Raheem Muhammad Hussein*

Defense: *The Prosecutor v. Uhuru Muigai Kenyatta*

Judge: *The Prosecutor v. Saif al-Islam Gaddafi and Abdullah al-Senussi*

#### **Joyce Aluoch (Kenya)**

Prosecution: *The Prosecutor v. Saif al-Islam Gaddafi and Abdullah al-Senussi*

Defense: *The Prosecutor v. Uhuru Muigai Kenyatta*

Judge: *The Prosecutor v. Abdel Raheem Muhammad Hussein*

**Christine Baroness Van Den Wyngaert (Belgium)**

Prosecution: *The Prosecutor v. Abdel Raheem Muhammad Hussein*

Defense: *The Prosecutor v. Uhuru Muigai Kenyatta*

Judge: *The Prosecutor v. Saif al-Islam Gaddafi and Abdullah al-Senussi*

**Silvia Alejandra Fernandez de Gurmendi (Argentina)**

Prosecution: *The Prosecutor v. Saif al-Islam Gaddafi and Abdullah al-Senussi*

Defense: *The Prosecutor v. Uhuru Muigai Kenyatta*

Judge: *The Prosecutor v. Abdel Raheem Muhammad Hussein*

**Kuniko Ozaki (Japan)**

Prosecution: *The Prosecutor v. Saif al-Islam Gaddafi and Abdullah al-Senussi*

Defense: *The Prosecutor v. Abdel Raheem Muhammad Hussein*

Judge: *The Prosecutor v. Uhuru Muigai Kenyatta*

**Miriam Defensor-Santiago (Philippines)**

Prosecution: *The Prosecutor v. Saif al-Islam Gaddafi and Abdullah al-Senussi*

Defense: *The Prosecutor v. Abdel Raheem Muhammad Hussein*

Judge: *The Prosecutor v. Uhuru Muigai Kenyatta*

**Howard Morrison (United Kingdom)**

Prosecution: *The Prosecutor v. Saif al-Islam Gaddafi and Abdullah al-Senussi*

Defense: *The Prosecutor v. Abdel Raheem Muhammad Hussein*

Judge: *The Prosecutor v. Uhuru Muigai Kenyatta*

**Olga Venecia del C. Herrera Carbuccia (Dominican Republic)**

Prosecution: *The Prosecutor v. Abdel Raheem Muhammad Hussein*

Defense: *The Prosecutor v. Saif al-Islam Gaddafi and Abdullah al-Senussi*

Judge: *The Prosecutor v. Uhuru Muigai Kenyatta*

**Robert Fremr (Czech Republic)**

Prosecution: *The Prosecutor v. Abdel Raheem Muhammad Hussein*

Defense: *The Prosecutor v. Saif al-Islam Gaddafi and Abdullah al-Senussi*

Judge: *The Prosecutor v. Uhuru Muigai Kenyatta*

**Chile Eboe-Osuji (Nigeria)**

Prosecution: *The Prosecutor v. Abdel Raheem Muhammad Hussein*

Defense: *The Prosecutor v. Saif al-Islam Gaddafi and Abdullah al-Senussi*

Judge: *The Prosecutor v. Uhuru Muigai Kenyatta*

## The Cases

### **The Prosecutor v. Uhuru Muigai Kenyatta**

The ICC has brought a case against President Uhuru Muigai Kenyatta of the Republic of Kenya under the Rome Statute as an indirect co-perpetrator of crimes against humanity including murder, deportation or forced transfer of populations, rape, persecution, and other inhumane acts.

Between January 24 and 28 2008, the Mungiki criminal organization carried out systematic attacks against the non-Kikuyi populations in Nakuru and Naivasha.<sup>23</sup> The Mungiki are a banned sect in Kenya that draws inspiration from the Mau Mau rebellion against

British colonial rule in the 1950s.<sup>24</sup> A majority of its membership comes from the Kikuyu ethnic group. The<sup>25</sup> group has an extremely violent history, which in 2007 pushed Security Minister John Michuki to crack down on the group's operations, which included abduction, torture, extortion, fraud, and robbery.<sup>26</sup> During the aftermath of the 2008 elections, the Mungiki were tied to revenge attacks against rival gangs who targeted Kikuyus.<sup>27</sup> The attacks resulted in "a large number of killings, displacement of thousands of people, rape, severe physical injuries, mental suffering and destruction of property."<sup>28</sup>

<sup>24</sup>

<http://news.bbc.co.uk/2/hi/africa/6685393.stm>

<sup>25</sup>

<http://news.bbc.co.uk/2/hi/africa/6685393.stm>

<sup>26</sup>

<http://news.bbc.co.uk/2/hi/africa/6685393.stm>

<sup>27</sup>

<http://news.bbc.co.uk/2/hi/africa/6685393.stm>

<sup>28</sup>

<http://www.icc-cpi.int/iccdocs/PIDS/publications/KenyattaEng.pdf>

<sup>23</sup> Kenyatta Case Brief

Kenyatta is accused of coordinating with the Mungiki criminal organization on attacks against the non-Kikuyu populations, which are perceived as supporting the Orange Democratic Movement. The attack was allegedly planned to help keep the Party of National Unity in power, and Uhuru Muigai Kenyatta supposedly provided institutional support and logistical assistance on behalf of PNU for the attack, making him liable under international law. In return for carrying out the attacks, the Mungiki were allegedly to receive relief from government repression and protection of their interests.<sup>29</sup>

On November 5<sup>th</sup>, 2009, the ICC Prosecutor notified the Court of his plans

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<sup>29</sup> <http://www.icc-cpi.int/iccdocs/PIDS/publications/KenyattaEng.pdf>

to request authorization for a full investigation of the situation in Kenya under Article 15(3) of the Rome Statute. On March 8<sup>th</sup>, 2011, the Pre-Trial Chamber issued summonses to Francis Kiriimi Muthaura, Uhuru Muigai Kenyatta, and Mohammed Hussein Ali to appear before the ICC. The Government of Kenya later filed an application to challenge the admissibility of the case before the ICC, but this motion was rejected by the Pre-Trial Chamber. The Pre-Trial Chamber also granted 233 individuals the status of victims in this case, authorizing them to participate in the trial.

### **The Prosecutor v. Abdel Raheem Muhammad Hussein**

In 2005, the UN Security Council referred the situation in Darfur to the prosecutor of the ICC in resolution 1593.

The resolution was prompted by a report issued by the International Commission of Inquiry on Darfur. The report stated that there was an estimated 1.65 million internally displaced persons and 200,000 refugees, along with wide-spread destruction of villages in Darfur as a result of systemic violations of international human rights and humanitarian law by the Government of Sudan and Janjaweed militia.<sup>30</sup> The commission's report identified a series of suspects in the international crimes, but explicitly stopped short of claiming that the Sudanese government was carrying out a genocidal policy and from assigning criminal guilt to the suspects.<sup>31</sup>

By a vote of 11 in favor and 4 abstentions, the UN Security Council

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<sup>30</sup>

[http://www.un.org/news/dh/sudan/com\\_inq\\_darfur.pdf](http://www.un.org/news/dh/sudan/com_inq_darfur.pdf), 3.

<sup>31</sup>

[http://www.un.org/news/dh/sudan/com\\_inq\\_darfur.pdf](http://www.un.org/news/dh/sudan/com_inq_darfur.pdf), 4.

decided that the Government of Sudan and all other parties involved in the conflict in Darfur must cooperate with the ICC and Office of the Prosecutor. The Security Council also decided that “nationals, current or former officials or personnel from a contributing state outside the Sudan which was not a party to the Rome Statute would be subject to the exclusive jurisdiction of that contributing State for all alleged acts or omissions arising out of or related to operations in the Sudan authorized by the Council or the African Union, unless such exclusive jurisdiction has been expressly waived by that contributing State.”<sup>32</sup>

The ICC has charged Abdel Raheem Muhammad Hussein with individual criminal responsibility in seven crimes

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<sup>32</sup>

<http://www.un.org/News/Press/docs/2005/sc8351.doc.htm>



against humanity and six war crimes. The crimes against humanity include persecution, murder, forcible transfer, rape, inhumane acts, imprisonment or severe deprivation of liberty, and torture.<sup>33</sup> The war crimes include murder, attacks against a civilian population, destruction of property, rape, pillaging, and outrage upon personal dignity.<sup>34</sup> He is currently the Minister of National Defense of Sudan, and formerly served as Minister of the Interior and special representative to Darfur. Among the many charged by the Court for the turmoil in Darfur, the Office of the Prosecutor holds that Abdel Raheem Muhammad Hussein is one of the most responsible defendants.<sup>35</sup> The prosecutor alleges that there was a “protracted armed conflict not of an international

character” in Darfur during which Sudanese armed forces attacked civilian populations as part of a counterinsurgency, and that in his position, Hussein helped formulate and implement the operation. Allegedly, a plan was formed at the top of the Sudanese government to attack the Sudanese Liberation Movement, Justice and Equality Movement, and other anti-government groups. A key component of this plan was to attack civilian populations with close ties to the rebel groups, mostly belonging to the Fur, Masalit, and Zaghawa groups.

The execution of his arrest warrant, issued in 2011 to ensure that he does not interfere with the investigation or obstruct justice, is pending.

### **The Prosecutor v. Saif al-Islam**

**Gaddafi and Abdullah al-Senussi**

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<sup>33</sup> <http://www.icc-cpi.int/iccdocs/PIDS/publications/HusseinEng.pdf>

<sup>34</sup> <http://www.icc-cpi.int/iccdocs/PIDS/publications/HusseinEng.pdf>

<sup>35</sup> <http://www.iccnw.org/?mod=darfur>

Following the turmoil during the overthrow of the Gaddafi regime in Libya, the ICC filed suit against Saif al-Islam Gaddafi, the de facto Prime Minister of Libya, and Abdullah al-Senussi, a colonel in the Libyan armed forces and head of Military Intelligence. They are allegedly criminally responsible as indirect co-perpetrators of two crimes against humanity, murder and persecution as defined under articles 7(1)(a) and 7(1)(h), respectively.<sup>36</sup>

In 2011, a state policy was constructed in which the Libyan military was to use any means necessary, including lethal force, to stop the civilian protests against Muammar Gaddafi. Pursuant to this policy, Libyan Security Forces attack civilian populations,

killings, arrest, or imprisoning hundreds of civilians in Tripoli, Misrata, Benghazi, and a number of smaller cities.

According to Pre-Trial Chamber I, there is reasonable evidence to show that Saif Al-Islam Gaddafi exercised control over the state apparatus due to his status as the Muammar Gaddafi's successor. Muammar Gaddafi was originally also a defendant in this suit, but the warrant for his arrest was withdrawn following his death.<sup>37</sup>

The government of Libya challenged the admissibility of the case in the ICC, arguing that the Court's jurisdiction could not replace domestic law, but on May 31<sup>st</sup>, 2013, Pre-Trial Chamber I rejecting the petition. The Court said that Libya "was genuinely unable to carry out the prosecution of Mr. Gaddafi and

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<sup>36</sup> <http://www.icc-cpi.int/iccdocs/PIDS/publications/GaddafiEng.pdf>

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<sup>37</sup> <http://www.icc-cpi.int/iccdocs/PIDS/publications/GaddafiEng.pdf>

found that the evidence submitted was not sufficient to consider that the domestic and the ICC investigations cover the same case.” However, the Pre-Trial Chamber did find that the case against Al-Senussi was inadmissible, leaving Mr. Gaddafi as the sole defendant on the case.<sup>38</sup>

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<sup>38</sup> <http://www.icc-cpi.int/iccdocs/PIDS/publications/GaddafiEng.pdf>

## Topic B:

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