

RESPONSE TO THE ICC ISSUANCE OF ARREST WARRANTS

THEMBA BENEDICT LANGA

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Statement

1. The Libyan Arab Jamahiriya never signed or ratified the international treaty establishing the International Criminal Court, therefore such international treaty and the International Criminal Court do not apply to the Libyan Arab Jamahiriya. It is clear that the ICC has no jurisdiction on the Libyan Arab Jamahiriya and that the immunity of the Head of State, provided by the international customary law, applies to Colonel Qadhafi.

2. The UN SC Resolution 1970 (2011) referred the situation in the Libyan Arab Jamahiriya to the Prosecutor of the International Criminal Court. The referral is invalid because it violates the Jurisdiction of the International Criminal Court in that the UN SC prescribes to the ICC who to prosecute and who not to prosecute when the Resolution prohibited the ICC from prosecuting *“nationals, current or former officials or personnel from a State outside the Libyan Arab Jamahiriya which is not party to the Rome Statute of the International Criminal Court shall be subject to the exclusive jurisdiction of that State for alleged acts or omissions arising out or related to operations in the Libyan Arab Jamahiriya established or authorized by the Council, unless such exclusive jurisdiction has been expressly waived by the State”*.

Therefore, the International Criminal Court’s jurisdiction, independence and impartiality have been compromised as it has been caused to discriminate against the State of Libya and its people. In so doing, the ICC has acted in a manner that is forbidden by its governing statute.

3. There is no doubt that in terms of the ICC Statute the UN SC has the power to refer a “situation” to the ICC, however, that does not entitle the UN SC to arrogate themselves powers that they fancy and to even undermine and violate the ICC Statute. In other words, by issuing the warrants of arrest the ICC has complacently misled the world about its penchant to take the law into its own hands as the ICC has no jurisdiction over Libya and the UN SC does not have the competency to grant the ICC ‘powers’ over Libya as the rule of customary international law states that the Rome Treaty cannot apply to States, such as Libya, that are not signatories thereto.

4. The ICC investigation was opened in a very short period of time compared to the other situations. In other situations, even much less complicated, the Prosecutor took much more time to decide if to open an investigation or not under at.53, ICC Statute:

- Afghanistan, under valuation since 2007;
- Georgia, since 2008;
- Guinea, since 2009;
- Colombia, since 2006;

Regarding the investigations already opened by the ICC Prosecutor,

- Congo, took 2 months
- Central Africa, 4 months
- Uganda, 6 months
- Darfur, 3 months

Regarding the situation in Libya, the Prosecutor took 3 days to decide to open an investigation (in such time he had to consider all the information he had, the jurisdiction, the admissibility and the interests of justice). In just 5 days the ICC Prosecutor already indicated the names of the persons under investigation.

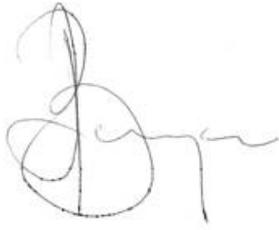
5. This is extraordinary given that the referral by the UN SC violates the ICC Statute. This goes to show that the ICC Prosecutor is absolutely not independent. The ICC did not show to be independent and impartial in this matter. For example, one of the judges of the Pre-Trial Chamber I, Mr. Cuno Tarfusser, recently made statements to the Italian media on the situation in Libya which indicated that the ICC is not impartial.

6. Now that the ICC has issued its illegitimate warrants, we expect NATO to stop their bombings and to also abandon its threat to kill Colonel Qadhafi and allow the ICC disputed process to take course. Failing which, it would mean that the ICC is not recognized and respected by NATO itself. Furthermore, NATO should immediately announce a ceasefire to guarantee the safety of the legitimate Libyan Leader, Colonel Qadhafi and other representatives and officials of the Libyan Arab Jamahiriya to exercise their right to defend themselves in a fair tribunal.

7. We have good reasons to believe that the case against our client is found on the desperation to have access to the rich oil resources and not any legal ground as NATO should account on the destruction of Libyan infrastructure, killing of innocent civilians, women and children as well as the deprivation of access to basic necessities, including baby food.

8. The merit of the facts alleged do not require long comments, they are the result of a campaign conducted through the media. A great deal of information that has been given to the media has already proven to be false. It is responsibility of the Libyan Arab Jamahiriya to use all legitimate means, as our clients used, to maintain and re-establish law and order in the Libyan Arab Jamahiriya and to defend the unity and the territorial integrity of the Libyan Arab Jamahiriya.

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