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Libya's defining moment: justice or revenge for Gaddafi era leaders?

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On 19 September Libya's Prosecutor General submitted a case against Saif al-Islam al-Gaddafi, former intelligence chief, Abdallah al-Senussi and other former pro-Gaddafi officials to the Indictment Chamber in Tripoli relating to allegations of crimes committed during the 2011 conflict and other offences.

The start of pre-trial proceedings paves the way for the two men, who are accused of crimes against humanity by the International Criminal Court (ICC), to be placed on trial in Libya. However, the move ignores the ICC's recent decision that al-Gaddafi must be prosecuted by the ICC, not national courts.

The ICC Pre-Trial Chamber rejected Libya's application to prosecute al-Gaddafi nationally in May, concluding that the country had failed to demonstrate it is genuinely able to investigate and prosecute him. The decision was based on the inability of the central authorities to obtain al-Gaddafi from the brigade that is holding him in Zintan and the difficulty to obtain evidence, in particular from witnesses who were tortured during detention by militias.

Although the ruling is being appealed, Libya still has an obligation to surrender him to the Court so that its proceedings can commence. Libya's application to prosecute Abdallah al-Senussi nationally is still under consideration by the ICC.

Back in 2011, the country's National Transitional Council hailed the decision of the United Nations Security Council to refer the situation to the ICC and pledged to cooperate with the Court. It is therefore hard to understand why the government now appears determined to ignore its obligations and push ahead with national trials.

While it may be understandable that the Libyan authorities want to proceed with domestic trials promptly, serious problems exist with the Libyan justice system, which up until 2011 had failed to function independently or impartially for decades. With the support of the international community, the authorities have started to rebuild it. But there is still a long way to go and Amnesty International fears that those being investigated cannot currently be guaranteed a fair trial.

In particular, progress is being undermined by the dire security situation and the lack of central government control over the whole country. The Libyan authorities openly admit that the security situation delays trials and investigations, and that release orders are often not implemented due to public pressure.

Al-Gaddafi is being detained by a militia in Zintan that is nominally linked to Ministry of Defence, but so far has resisted orders to hand him over to the central government in Tripoli. Amnesty International met with him last week but was not permitted to speak to him privately or visit his place of detention in order to fully assess whether his rights are being respected.

If the authorities proceed with unfair trials that result in the death penalty, there is a real danger that it would entrench a culture of revenge rather than the rule of law and will trample on any notion of embedding respect for human rights. Libya will be regarded internationally as a country that flouts its international obligations and is not committed to the rule of law.

Recent cases are a sign of what may be to come. On 31 July, Ahmad Ibrahim, a former Education Minister under Muammar al-Gaddafi was sentenced to death on charges of incitement to discord and undermining state security in a trial which raised a number of concerns. His lawyers were harassed and threatened. They were not allowed to visit their client in private in detention. The defense was also denied the right to examine and cross-examine witnesses - even though Ibrahim's sentence appears to be based entirely on witness statements.

But it is not too late for Libya to reconsider the path it is taking. The authorities can still cooperate fully with the ICC and demonstrate a commitment to international justice and trials which meet international standards. They must surrender Saif al-Islam al-Gaddafi to the ICC without further delay and comply fully with the ICC's future decision on Libya's application to prosecute Abdullah al-Senussi nationally.

If proceedings are moved to The Hague, the government can work with the ICC to ensure that the trials are accessible to the Libyan people, including through television, radio and other media. It can also assist the ICC in reaching out to victims so that they can participate in the proceedings through a legal representative in the courtroom.

While the two most high-profile cases are conducted at the ICC, the national authorities can focus on continuing its efforts to improve the security situation and strengthen the national justice system so that it can eventually deal with thousands of other human rights violations committed by all sides in recent decades and ensure the rights of suspects, victims and witnesses are protected. They should also put an end to arbitrary detention by militias, secure the transfer of all detainees to state custody, ensure the referral of all detainees to the prosecution, and work towards reactivating the courts.

This is a key moment in Libya's history. How it deals with the past will have an important impact on its future and the human rights of Libyan people. Justice must prevail over revenge.