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International Criminal Court staff detained in Libya must be released immediately

Amnesty International today reiterated its call on the Libyan authorities to release four International Criminal Court (ICC) staff who were detained on 7 June after visiting Saif al-Islam al-Gaddafi.

Saif al-Islam al-Gaddafi's appointed defence counsel Melinda Taylor, interpreter Helen Assaf and two senior Registry representatives, Esteban Peralta Losilla and Alexander Khodakov had been granted permission by the Libyan authorities to visit him. The purpose of the visit included informing him of current proceedings in the ICC's case and to take his instructions.

All four ICC staff members have important protections to ensure that they can perform their functions without hindrance. In particular, national authorities must not arrest them.

While Libya is not a state party to the Rome Statute, it is under the obligation to cooperate with the ICC in accordance with UN Security Council 1970 which referred the situation in Libya to the court. On 15 June, the UN Security Council expressed serious concern over the detention of the four ICC staff members, and called for their immediate release.

If the Libyan government has concerns about the conduct of ICC staff it should follow the appropriate procedures. In particular, the ICC's Code for Conduct for Counsel allows states to make complaints that will be considered by an independent commissioner.

Since Saif al-Islam al-Gaddafi's capture in November 2011, Libya has refused to surrender him to the ICC insisting that he be prosecuted nationally. According to the Office of Public Counsel for the Defence, he has been held in isolation in secret locations without effective access to a lawyer or facilities to communicate with his family. The ICC Pre-Trial Chamber is currently considering a formal challenge by the Libyan government against the ICC's case.

Reports indicate that the ICC staff were detained after Melinda Taylor's meeting with Saif al-Islam al-Gaddafi was monitored and she and her client were searched in violation of his right to communicate freely and in confidence with his lawyer. The authorities allege that they discovered a "coded message" from Mohammed Ismail, a former member of the al-Gaddafi government who is wanted by the Libyan authorities. They claim the message amounts to espionage or violations of Libya's national security.

The four staff members have been held in the mountain town of Zintan and are being detained on a 45 day detention order whilst the authorities carry out investigations.

Amnesty International considers their detention to be an attack against Saif al-Islam Gaddafi's rights and the ICC which is seeking to deliver justice to Libyan victims. The detention of the delegation risks intimidating anyone who is seeking to protect the defendant's rights to a fair trial.

A joint ICC and diplomatic delegation was permitted to visit the detainees on 12 June. Amnesty International calls on the Libyan authorities to ensure that their rights are respected, including allowing unrestricted consular access and ensuring that the ICC staff can communicate freely with their families and the ICC.

Background:

Thousands of suspected al-Gaddafi loyalists and soldiers continue to be detained in Libya. While some progress has been made in transferring prisons to the Ministry of Justice, armed militias continue to hold detainees outside the framework of the law in unofficial detention facilities, where they remain particularly vulnerable to torture or other ill-treatment.

The vast majority have not been officially charged with any crime and have no access to lawyers. Beatings are endemic in detention centres across Libya particularly upon arrest, in the first days of detention, and during interrogations. Many detainees told Amnesty International that they signed and/or thump-printed “confessions” under torture or duress. To the best knowledge of Amnesty International, no members of armed militias have been brought to justice for torturing, killing or otherwise abusing detainees, perpetuating a climate of impunity.

Amnesty International has repeatedly called on the National Transitional Council to address these serious human rights abuses by:

- Ending arbitrary detentions immediately, and ensure that arrests are only carried out by security forces authorized by law and that no one is deprived of their liberty except in accordance with procedures and on grounds prescribed by law. All laws in this regard should comply with Libya’s obligations under international law.
- Ensuring that all those detained are given an opportunity to challenge the lawfulness of their detention before a court or are released.
- Ordering the closure of all unofficial places of detention and place all detention facilities under the oversight of the General Prosecution and the Ministry of Justice, with provision for independent monitoring.
- Notifying detainees’ families of where they are detained and ensure that all those detained have access to families and lawyers,.
- Ensuring that prompt investigations are conducted into all alleged or suspected cases of torture and other ill-treatment, and deaths in custody. Investigations should be impartial and independent, and conducted by individuals with expertise in investigating such cases; if necessary, international assistance should be sought.
- Ensuring that “confessions” extracted under torture or duress are not used as evidence in trial proceedings

At the time, Libya’s referral to the ICC by the UN Security Council on 26 February 2011 was welcomed by those opposing the rule of Colonel Mu’ammar al-Gaddafi.