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Libya must surrender Saif al-Islam al-Gaddafi to International Criminal Court

The Libyan authorities should immediately hand Saif al-Islam al-Gaddafi and former intelligence chief Abdallah al-Senussi to the International Criminal Court (ICC) said Amnesty International.

The organization met both detainees last week ahead of the referral of their case to the Indictment Chamber in Tripoli on 19 September. Al-Gaddafi and al-Senussi are wanted by the ICC for crimes against humanity but the Libyan authorities are insisting that they stand trial in Libya.

Their case has been referred to the Indictment Chamber along with those of 36 others accused of crimes related to the armed conflict.

“The referral of these cases to the Indictment Chamber brings us one step closer to the start of national trial proceedings for Saif al-Islam al-Gaddafi, in violation of Libya’s legal obligation to surrender him to the ICC,” said Hassiba Hadj Sahraoui, Amnesty International’s Deputy Director for the Middle East and North Africa.

“It is understandable that the authorities may want to proceed promptly and try these individuals in Libya. But such trials today will not serve justice. Libya’s justice system is in desperate need of an overhaul. There are serious concerns about the authorities’ ability to ensure fair trials compounded by the precarious security situation in the country.

“Both men should be handed over to the ICC immediately. In the meantime, Libya should focus on improving the security situation and rebuilding the country’s justice system to establish fair and impartial Libyan courts which can ensure the rights of suspects, victims and witnesses.”

Amnesty International believes that handing al-Gaddafi and Abdallah al-Senussi over to the ICC will ensure accountability for crimes committed during the conflict. Fair trials are crucial during post-conflict situations to address impunity and secure justice for victims of human rights abuses and humanitarian law violations perpetrated during the conflict including indiscriminate shelling, summary executions, unlawful forcible displacement and torture and other ill-treatment.

Arbitrary detention, torture and other ill-treatment and enforced disappearances by militias, including those operating nominally under state oversight, continue to contribute to a climate of lawlessness in Libya that makes fair trials further elusive. Lawyers, judges and prosecutors continue to be threatened regularly by such groups but also, at times, by families of the victims and the general public. Amnesty International is aware of at least four cases of assassination of judges, in addition to some cases of abduction of lawyers and their intimidation.

“A failure to comply with the ICC sends a worrying signal about the Libyan authorities’ commitments to protecting and respecting human rights. Back in 2011, the National Transitional Council welcomed the

decision of the United Nations Security Council to refer the situation to the ICC Prosecutor and pledged to cooperate with the ICC”, said Hassiba Hadj Sahraoui.

There are approximately 8,000 detainees being held on conflict-related charges across Libya. The overwhelming majority has been awaiting trial for nearly two years; many without referrals to the prosecution or access to lawyers. Amnesty International is calling on the international community to help Libya rebuild its judiciary in order to ensure justice and fair trials for all across the country.

The group of detainees whose case is being referred to pre-trial proceedings on 19 September includes the former Prime Minister under al-Gaddafi, al-Baghdadi al-Mahmoudi as well as a number of former senior officials and officers in al-Gaddafi’s various security agencies.

Amnesty International has concerns about the state’s ability to respect the fundamental rights of detainees.

Although Amnesty International was granted permission to meet with Saif al-Islam al-Gaddafi in Zintan on 9 September, it was not able to interview him in private. Similarly, the organization was not allowed to visit the detention facility where Saif al-Islam al-Gaddafi is currently being held and can therefore not fully assess the conditions in which he is being detained.

The organization remains concerned that Saif al-Islam al-Gaddafi has been held in secret detention by an armed brigade in Zintan affiliated with the Ministry of Defence for nearly two years without access to a lawyer for the conflict-related charges he faces. Prolonged isolation can have potentially detrimental effects on the health or wellbeing of a detainee.

On 12 September Amnesty International was able to meet Abdallah al-Senussi in private, at al-Hadba al-Khadra Prison in Tripoli. Despite repeated requests, he has not had access to a lawyer since he was extradited to Libya from Mauritania a year ago. The organization found that Abdallah al-Senussi is not being granted the same rights as other detainees held at the prison, including access to legal counsel, contact with the outside world and other detainees, and regular family visits and phone calls.

Amnesty International has also met al-Baghdadi Al-Mahmoudi at the same prison. Al-Mahmoudi said he was treated well and was in contact with a lawyer, but the organization remains concerned that his trial and those of all the suspects in the case may result in the death penalty.

Background information:

The 38 detainees, including Saif al-Islam al-Gaddafi and Abdallah al-Senussi, whose case is referred to the Indictment Chamber on 19 September are accused of crimes committed during the 2011 conflict. Some of the charges include engaging in activities aiming at instigating civil war in the country and leading to the fragmentation of national unity, incitement to rape, abductions and the deprivation of liberty; the formation of armed groups; preventing others from exercising their political rights through violence and threats; perpetrating acts of arbitrary killings, looting and sabotage. Some of these charges carry the death penalty.

Upon review of the case, the Indictment Chamber has the power to dismiss it, order a new investigation or refer it to the appropriate court provided there is sufficient evidence. Under Libyan law, the Indictment Chamber is a pre-trial stage in the investigation process.

Saif al-Islam al-Gaddafi:

Saif al-Islam al-Gaddafi is charged with crimes against humanity of murder and persecution by the International Criminal Court, which issued an arrest warrant for him on 27 June 2011 following referral of the situation in Libya to the ICC by the UN Security Council in Resolution 1970 (2011). Saif al-Islam al-Gaddafi was captured in November 2011 by a Zintan brigade operating at the time under the Zintan Military Council. Despite calls from Amnesty International to surrender him to the ICC, the Libyan

authorities initially ignored the ICC's surrender request. In May 2012, the Libyan government filed an admissibility challenge at the ICC stating that Libya was able and willing to prosecute him nationally. Based on the challenge the ICC suspended the surrender request – in accordance with Article 95 of the Rome Statute - pending the outcome of the challenge.

In June 2012, an ICC delegation visiting him in Zintan, including his defence lawyer, were detained for three weeks on allegations of criminal offences committed during their meeting with him. In May, the ICC's Pre-Trial Chamber rejected the government's application to prosecute Saif al-Islam Gaddafi nationally, concluding that Libya had failed to demonstrate that it is genuinely able to investigate and prosecute him. It focused specifically on the inability of the central authorities to obtain him from the Zintan Brigade, the inability to obtain evidence, in particular from witnesses who have been tortured during detention by militias, and the failure to appoint legal counsel to defend him. The ICC has decided that Libya has an obligation to surrender him to the Court now, even while an appeal is pending.

Saif al-Islam al-Gaddafi remains held in a secret location in Zintan. The government maintains that he is held under the oversight of the Judicial Police and Libya's Prosecutor General, while a Zintan brigade affiliated with the Ministry of Defence was appointed for his security. Amnesty International met with the commander of the brigade in Zintan on 12 September prior to a meeting with Saif al-Islam al-Gaddafi, but was not allowed to visit his detention facility, and can therefore not confirm the presence of any Judicial Police officers. The government has been unable to secure Saif al-Islam al-Gaddafi's transfer into state custody in Tripoli, which it has been repeatedly requesting since January 2012. His transfer to Tripoli was requested most recently in June 2013.

Abdallah al-Senussi:

Abdallah al-Senussi is charged with crimes against humanity of murder and persecution by the International Criminal Court, which issued an arrest warrant for him on 27 June 2011 following referral of the situation in Libya to the ICC by the UN Security Council in Resolution 1970(2011). He was arrested in Mauritania in March 2012. Despite calls by Amnesty International for the Mauritanian government to surrender him to the ICC, he was extradited to Libya in September 2012. Following the extradition, AI urged the government to surrender him to the ICC, which it did not do. In April 2013, Libya also filed a challenge of admissibility relating to his case. In June 2013, the ICC Pre-Trial Chamber suspended the surrender request pending the decision on the challenge to admissibility. Libya's application to prosecute Abdullah al-Senussi nationally is still under consideration by the ICC. Abdullah al-Senussi is held in Hadba al-Khadra Prison in Tripoli. He has not had access to a lawyer since his transfer into custody in Libya. He was able to receive a visit from family members only twice since the beginning of his detention in Libya despite the fact that visits are authorized once a month. The prison administration acknowledged to Amnesty International that Abdullah al-Senussi's contact with the outside world is restricted for security reasons.

Libya has a legal obligation to cooperate with the ICC pursuant to UN Security Council Resolution 1970.

Al-Baghdadi al-Mahmoudi:

Amnesty International opposed al-Baghdadi al-Mahmoudi's extradition from Tunisia in 2012 on the grounds that he could face torture and other ill-treatment, unfair trial resulting in the death penalty and possibly extrajudicial execution. While al-Baghdadi al-Mahmoudi told Amnesty International during a visit to al-Hadba al-Khadra Prison in Tripoli on 12 September that he was treated well and was in contact with a lawyer, the organization remains concerned about whether he will have a fair trial and that he may be facing the death penalty.