AMNESTY INTERNATIONAL QUESTIONS AND ANSWERS

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Trial of former Libyan officials including Saif al-Islam al-Gaddafi and Abdallah al-Senussi

The trial of 37 former officials accused of crimes perpetrated during the 2011 uprising and subsequent armed conflict begun on 24 March 2014 and is expected to resume on 27 April with Saif al-Islam al-Gaddafi and six other defendants appearing via video-link.

Amnesty International believes that the weak state of the national justice system in Libya means that it is impossible to guarantee that former Libyan officials or any other al-Gaddafi loyalists accused of crimes in relation to the 2011 uprising and armed conflict, will receive a fair trial at this time. Amnesty International has specific concerns in the cases against Saif al-Islam al-Gaddafi and Abdallah al-Senussi, both charged with crimes against humanity by the International Criminal Court (ICC).

1. Who is on trial and what are the defendants accused of?

On 24 October 2013, 37 former officials and state employees including Saif al-Islam al-Gaddafi, former intelligence chief Abdallah al-Senussi, and former Prime Minister Baghdadi al-Mahmoudi were indicted for their involvement in the attempted suppression of the 2011 uprising and subsequent armed conflict.

They are charged with a string of offences, including engaging in acts of vandalism, looting and killing; instigating civil war; insulting the nation and its emblems; agreeing to form armed tribal groups and providing them with arms and logistical support; preparing plans to blow-up prisons holding opponents to al-Gaddafi; distributing drugs and psychotropic substances to members of al-Gaddafi brigades and "volunteers"; incitement to indiscriminate shelling of cities that rose up against al-Gaddafi; ordering the authorities to cut off water and electricity in cities that rose up against al-Gaddafi. Other charges relate to giving orders to shoot at demonstrators resulting in casualties; incitement to rape, abductions and the deprivation of liberty; preventing others from exercising their political rights; encouraging the entry and exit of irregular migrants in poorly equipped boats thus exposing them to death; recruiting and arming mercenaries. Charges also relate to embezzlement and squandering of public money.

Not all charges apply to all the defendants.

In addition to Saif al-Islam al-Gaddafi and Abdallah al-Senussi, defendants include several ministers who served under al-Gaddafi, including former Minister of Foreign Affairs Abdel Ati al-Obeidi, former security and intelligence officials, employees at the Ministry of Finance, former diplomats such as the former ambassador to the United Kingdom Mohamed Belqasem al-Zwai,

the former Commander of the Coastguard and Port Security, the former Director of the Manmade River and others.

2. Proceedings against Saif al-Islam al-Gaddafi and Abdallah al-Senussi are currently taking place before the International Criminal Court (ICC). How does the commencement of this national trial affect the ICC's cases?

The ICC has charged both Saif al-Islam al-Gaddafi and Abdallah al-Senussi with crimes against humanity. However, the Libyan government challenged the ICC's cases on the basis that it is willing and able to prosecute the cases genuinely before its national courts. To date, the ICC has rejected Libya's legal challenge in the case against Saif al-Islam al-Gaddafi recognizing that the Libyan government faces substantial difficulties in exercising fully its judicial powers across the entire territory. For a number of reasons, including the inability of the state to secure his transfer from militia to state custody and its inability to ensure his access to a lawyer, the Court considered the national legal system unable to ensure that he is prosecuted effectively, in accordance with the rights and protections of the Libyan national justice system. Libya is currently under a legal obligation to surrender him to the ICC.

Libya's application to prosecute Abdallah al-Senussi nationally was however granted by the ICC despite the fact that he does not have the assistance of a lawyer to represent him in Libya. Both decisions, in relation to Saif al-Islam al-Gaddafi and Abdallah al-Senussi are being appealed and decisions are pending before the ICC's Appeals Chamber.

Amnesty International deplores Libya's decision to proceed with the national cases against them, flouting its obligations to surrender Saif al-Islam al-Gaddafi to the ICC and prejudging the pending appeals in both cases. The ICC will ultimately decide whether the men can be prosecuted nationally or whether they must be surrendered to the Court.

Amnesty International considers that the ICC's cases should be allowed to proceed, while the Libyan authorities continue to rebuild the national justice system in order to, in future, investigate and prosecute crimes under international law committed by all sides during the conflict before Libyan courts.

2. The Libyan government asserts that it is capable of ensuring a fair trial for Saif al-Islam al-Gaddafi and Abdallah al-Senussi and other former officials. Is this enough?

Although Libya's stated commitment to hold fair trials is important, the government's assurances are not sufficient to address serious concerns that the security situation could undermine Libyan proceedings. In particular, threats against judges and lawyers, the continuing failure to respect their rights and other underlying problems with the national justice system. Amnesty International is also concerned about the adoption of some laws granting immunity from prosecution to "revolutionaries" for crimes committed during the conflict.

Despite some efforts, the Libyan authorities have been unable to end torture and other ill-treatment, which remain widespread in both state prisons and detention facilities controlled by militias. The Judicial Police, which collapsed during the 2011 armed conflict, needs significant training and capacity-building. For the most part, it relies upon former revolutionaries who were integrated into the institution without systematic vetting to weed out perpetrators of human

rights abuses.

3. What are Amnesty International's main concerns about the justice system in Libya?

Before the uprising that toppled Colonel Muammar al-Gaddafi in 2011, the national justice system in Libya had not functioned independently for decades. A parallel legal system functioned until 2005 to try individuals accused of "crimes against the state". Many were sentenced following grossly unfair trials. Gross human rights violations were committed in the 1980's and 1990's, including institutionalized torture and ill-treatment, enforced disappearances and extrajudicial executions. Rebuilding the Libyan justice system requires significant efforts and time. The United Nations Support Mission in Libya is providing important support to Libya to implement the rule of law. However, major challenges currently exist, exacerbated by the poor security situation, and until these have been rectified Amnesty International considers that it will not be possible for Libya to ensure fair trials for conflict related detainees, including these 37.

The precarious security situation in Libya continues to present a major obstacle to a functioning court system. Systems to protect judges, prosecutors, defence lawyers and witnesses are either non-existent or inadequate. Prosecutors and judges interviewed by Amnesty International in western Libya, where the majority of conflict-detainees are held, cited militias, the weakness of state institutions and a rise in criminality as a major threat to their work.

The authorities have not been able to disarm and demobilize heavily armed militias since they formed during the conflict. Nor have they been able to rebuild the national army and police. In the absence of law enforcement officials, lawlessness and criminality are rampant. In many areas of the country, the police are unable to implement arrest warrants out of fear of militias. Cases of arbitrary detention, abductions, enforced disappearance and assassinations continue to be reported. Militias have attacked and besieged state institutions on a number of occasions. State officials, including former Prime Minister Ali Zeidan, and foreign diplomats are among victims of recent abductions. In a situation where state officials are unable to protect themselves, it is unclear how they can protect witnesses, victims and the members of the judiciary.

Since the end of the 2011 armed conflict, at least eight judges have been assassinated by unknown assailants. Courts have been targeted with explosives in Derna, Benghazi and Sirte. The Minister of Justice acknowledged in a television show broadcast on 17 February 2014 that prosecutors in Benghazi are unable to conduct investigations as they are subjected to threats. While security challenges are more pronounced in the east of the country than in the west where the trial takes place, Amnesty International believes that poor security has an effect on the entire justice system rendering it dysfunctional. Attacks against judges in the east have had a chilling effect on all judges across the country. Those interviewed by Amnesty International said that all judges in Libya are targeted and that being a judge is "suicidal".

4. How is the security situation in Libya affecting the trial?

Amnesty International doubts that in such an environment judges can be truly independent and impartial and be seen as such. Judges in charge of examining cases during investigations told Amnesty International that they often feel compelled to extend preventative detention orders out of fear for their lives. They explained that they are unable to refer a case to trial for a lack of

evidence, but do not order a release out of fear of public opinion or a violent reaction of armed groups. Amnesty International has documented cases where detainees were abducted, re-arrested or shot at following their release.

Judges and prosecutors have told Amnesty International that they have been threatened in cases against al-Gaddafi loyalists by families of victims or militias that demand harsh punishments and oppose releases. Judges and prosecutors also appear to receive threats in cases involving ordinary criminal offences unrelated to the conflict.

Plans to screen the judiciary to ensure that those appointed are individuals of integrity and ability, with appropriate qualifications, have yet to be implemented. Judges involved in arbitrary detention, unfair trials and other serious human rights violations may remain in office.

5. Are lawyers able to defend their clients under the current situation?

Lawyers of some of the defendants in this case told Amnesty International that the current environment does not allow for a fair trial. Some refused to speak to the organization out of fear for their own safety. Others told Amnesty International that they refrain from visiting their clients in prison because of the intimidation they face from the guards. During the first hearing in the pre-trial stage, lawyers were threatened and attacked by an angry crowd of victims' families. One lawyer was physically assaulted and as a result some lawyers refrained to attend a subsequent hearing. Since then the authorities have provided a bus for the transportation of lawyers to prison on trial dates, while the road leading to the compound is cut off during that time.

Despite the introduction of these security measures, lawyers interviewed by Amnesty International in April 2014 told the organization that they continue to feel scared.

6. Can what is happening in Libya be described as victors' justice?

A culture of victors' justice has been instituted by the adoption of a number of laws since the end of the conflict aiming at protecting the "17 February Revolution". Law 38 of 2012 grants immunity from prosecution to "revolutionaries" for civilian, military or security acts committed with the aim of "protecting the 17 February Revolution", but fails to specify, which acts fall under this provision. The same law gives "legal weight" to interrogations conducted by militias, legitimizing their actions of seizing, detaining and interrogating detainees outside the framework of the law and disregarding evidence of the widespread pattern of torture or other ill-treatment during interrogations. Since then, a law criminalizing torture was adopted, in a positive move. However, the new legislation fails to clearly state that no evidence obtained under torture or other ill-treatment can be admissible in any proceedings.

Law 38 allows for impunity by preventing the investigation and prosecution of members of the anti-Gaddafi forces suspected of committing serious crimes, including crimes under international law. It also creates a culture in which the presumption of innocence and the right to equality before the law are threatened, by discriminating between perpetrators on the grounds of their affiliation. This is inconsistent with the obligation to administer justice impartially.

7. Are the defendants facing the death penalty?

Yes. All defendants were charged under articles of the Penal Code which prescribe the death penalty as maximum punishment. These include Articles 203 (on instigating civil war), 202 (on acts of vandalism, looting and killing) and 211 (on the formation of armed gangs to commit crimes).

There are no official statistics on the death penalty in Libya. Amnesty International is not aware of judicial executions since 2010, but at least 18 death sentences were handed down by civilian and military courts in 2013 in cases involving killings, and at least five in 2012. At least six death sentences were issued in 2013 against al-Gaddafi loyalists, including former Education Minister Ahmad Ibrahim, in proceedings that raised serious fair trial concerns; of those, four were sentenced *in absentia*. Ahmad Ibrahim, who was the first high-level official in Colonel al-Gaddafi's government to be sentenced to death, was denied private visits by his lawyer and was beaten when his lawyer attempted to visit him. The defence was allegedly forbidden to cross-examine witnesses. During the duration of the trial, Ahmad Ibrahim was held in a prison nominally under the Ministry of Justice, but in fact, controlled by a militia.

8. Why is Amnesty International concerned about the trial being held in al-Hadba prison?

The trial is held in a courtroom located at the compound of the al-Hadba Correction and Rehabilitation Institution in Tripoli, a high-security facility where the majority of high-profile detainees are being held. While the court falls under the authority of the Tripoli Court of Appeals, access to the compound is controlled by prison officials that appear to answer to the Ministry of Justice only nominally. Instead, in matters related to security, they appear to take orders from the Deputy Minister of Defence who is the prison's director. Amnesty International is concerned that holding a trial in a prison compound undermines the presumption of innocence, and creates an intimidating atmosphere, including for defence witnesses, which is not conducive to a fair trial. The holding of the trial in a prison compound may also hinder access by the defendants to their lawyers and may negatively impact on the principle of equality of arms, which means that the defence and the prosecutor should be given a reasonable possibility of putting forward their cases and neither side should be put at an unfair disadvantage.

Given the location of the court, there is a risk that prison guards, who are responsible for the security of the proceedings, will overhear the defendants' statements, exposing them to a risk of reprisals, and undermining their right to defence. Photos of the defendants and information about pre-trial proceedings at the Indictment Chamber were regularly disseminated on the Facebook page of the al-Hadba Correction and Rehabilitation Institution, further undermining the presumption of innocence. Some families of defendants told Amnesty International that they were stigmatised and harassed by the public following the release of the photos.

9. Are the defendants' rights to due process being respected? What are Amnesty International's specific concerns in the case against Saif al-Islam and Abdallah al-Senussi?

The right to a fair trial includes various elements, which should be examined one by one.

The right to adequate time and facilities to prepare a defence not upheld
Lawyers representing different defendants in the trial told Amnesty International that they did not have sufficient time to prepare the defence during the pre-trial proceedings and to review the evidence submitted by the prosecution, which consisted of some 4,000 pages of statements made by witnesses and defendants during 22 months of investigation in addition to approximately 40,000 documents.

In fact, some lawyers doubted that the judge himself had sufficient time to review the evidence prior to referring the case to trial. The case was referred to trial on 24 October 2013 at the third hearing of the Indictment Chamber, a little over a month after the pre-trial proceedings had started. The promptness of the referral may suggest that the judge was under public pressure.

Saif al-Islam al-Gaddafi did not attend any of the hearings of the Indictment Chamber in violation of his right to be present at his trial. Abdallah al-Senussi was present, but was not represented by a lawyer.

Lack of access to lawyers to prepare an effective defence
The right of detainees to access their lawyers and to be visited by them in custody is guaranteed both by international and Libyan law (Article 53 of Law No. 47 of 1975 on Prisons). In general, visits are authorized by the General Prosecution and by prison officials. However, lawyers interviewed by Amnesty International reported not visiting their clients regularly out of fear of reprisals from guards and other armed elements in the country.

Abdallah al-Senussi has not had access to a lawyer since he was detained in September 2012. This is because private lawyers are scared to represent him due to the role he is believed to have played in the killing of over 1,200 detainees held at the Abu Salim Prison in 1996. A separate investigation into the prison killings is taking place.

Absence of lawyers during interrogations
Amnesty International interviews have revealed that not all defendants were interrogated in the presence of their lawyer, a right guaranteed under Article 106 of the Code of Criminal Procedure. Amnesty International has evidence that Saif al-Islam al-Gaddafi, Abdallah al-Senussi, Mansour Daw, Mohamed Belqasem al-Zwai, Abdel Ati Obeidi, Radwan al-Hadi Hammali, a Colonel with the Military Intelligence, were all interrogated without the presence of a lawyer. Other defendants may also have been interrogated in the absence of lawyers. The presence of lawyers during interrogations is an element of fair trial and a safeguard against torture.

Contact with the outside world restricted
Maintaining regular contact with the outside world, including with lawyers, family, doctors and a judicial official, constitutes an important element of fair trial rights and provides vital protection against torture and other ill-treatment. Detainees held in al-Hadba Prison are authorized two phone calls and one family visit a month. They also have access to a doctor. In some cases, defendants have not been referred for medical examination despite requests from the defence. Lawyers are in principle allowed to visit in private upon authorization from the prosecution, but in practice, some refrain from visiting out of fear.

When Amnesty International met with **Abdallah al-Senussi** on 12 September 2013, he had only

been granted two family visits since he was extradited from Mauritania in September 2012. Since then, he was allowed to contact his family via videoconference in January 2014. Abdallah al-Senussi's family alleged that al-Hadba Prison officials refused to implement visit permits granted by the General Prosecution. Officials at al-Hadba Prison told Amnesty International that Abdallah al-Senussi's contact with the outside world was restricted for security reasons. Abdallah al-Senussi was held in solitary confinement at different periods of his detention in al-Hadba Prison.

Other defendants have been held in solitary confinement in al-Hadba Prison at different stages of the pre-trial phase for periods ranging between four and six weeks.

Saif al-Islam al-Gaddafi has been held in isolation in a secret location since his capture in November 2011. He has not had contact with members of his family either by telephone or through direct visits. The militia holding Saif al-Islam says that he is regularly seen by a doctor, which was also confirmed by the detainee, when Amnesty International visited him in September 2013. Visits to Saif al-Islam al-Gaddafi by organizations must be granted by both the General Prosecution and the brigade holding him. Currently, no independent organization visits Saif al-Islam al-Gaddafi regularly, and he can be held for months without contact with the outside world.

10. How are detention conditions affecting the defendants' fair trial rights? Does the court have authority over all the defendants?

Under international law, fair trial guarantees must be upheld from the moment an investigation is initiated against the accused. Where pre-trial detention is necessary, defendants must be held in conditions where they have access to confidential communications with their legal counsel, facilities to prepare a defence, and a regular review of whether their detention remains necessary.

The 37 defendants standing trial are held in four different detention facilities, with varying degrees of state oversight and militia involvement.

a) Is Saif al-Islam al-Gaddafi held lawfully by the Abu Baker al-Siddiq Brigade in Zintan?

No. Saif al-Islam has been held in a secret location in Zintan from the day he was captured by the Abu Baker al-Siddiq Brigade on 19 November 2011. He has remained under the authority of the brigade, which refuses to hand him over into government custody in Tripoli. He is held in an undisclosed facility in violation of Article 31 of the Code of Criminal Procedure, which states that no one can be held in "detention except in prisons designed for that purpose". Although the Libyan authorities assert that he is under the authority of the General Prosecution and have at times said that he is in the custody of the Judicial Police, Amnesty International did not see any judicial police officers during its visit in September 2013. The organization visited him in a trailer at the militia compound.

b) Where are the other defendants held?

Al-Hadba Correction and Rehabilitation Institution in Tripoli
Most of the defendants are held in the al-Hadba Correction and Rehabilitation Institution in

Tripoli, a prison under the nominal authority of the Ministry of Justice. Although the prison administration includes some trained Judicial Police officers, the facility is controlled by former members of anti-Gaddafi armed groups, some of whom had been unlawfully rendered to Libya by the USA and subsequently held in Abu Salim Prison. Equally, many prison guards are former members of militias who were integrated into the Judicial Police without systematic vetting and adequate training. Amnesty International's concerns are compounded by the fact that the current prison director holds also the position of Deputy Minister of Defence, which blurs the chain of command, a double hat justified by security reasons. While the organization acknowledges security concerns, the practical effect of such an arrangement is that the Judicial Police does not have full authority over the prison.

Visits to the prison by Libyan and international organizations are difficult to organize, and require permits from the General Prosecution, which are granted on a case-by-case basis only. Amnesty International has received a number of allegations of torture and ill-treatment against detainees held in al-Hadba prison, but has not been able to verify them independently.

Al-Jawiyya Correction and Rehabilitation Institution in Misratah
Four defendants are currently held in the al-Jawiyya College Correction and Rehabilitation Institution in Misratah. The prison was inaugurated on 14 August 2013 by the Ministry of Justice as part of a plan to improve conditions of conflict detainees held in Misratah since 2011. It is currently run by the Judicial Police and is open to visits by independent organizations with permits from the Ministry of Justice. Amnesty International visited the prison shortly after its inauguration on 2 September 2013, and was able to interview detainees in private. At the time, the prison director told the organization that he was facing difficulties in selecting trained officers and guards.

Sikkt Prison under Ministry of Defence in Misratah
According to the prosecution, two defendants are held in Sikkt Prison, which falls under the authority of the Military Police. Amnesty International received full access to the prison on 3 September 2013 and was able to conduct interviews with detainees in private.

11. On 14 April, the court authorized that six detainees held in Misratah and Saif al-Islam al-Gaddafi held in Zintan be tried via videolink. What is Amnesty International's position?

On 23 March, the General National Congress (GNC) adopted amendments to articles 241 and 243 of the Code of Criminal Procedure regulating the right to public hearings and the defendant's presence in court. Under the amendments, the court may use modern means of communication to connect the defendant to the courtroom whenever there is concern for his safety or fear that he may escape.

Amnesty International believes that the trial by video link will infringe all the seven defendants' rights to a fair trial, including their right to be present at their own trial. The impact on Saif al-Islam's case is of particular concern as he remains held in a secret location in Zintan by a militia that has repeatedly refused to hand him over to state custody in Tripoli. In certain circumstances, including under the ICC rules of procedure, parts of a trial may be conducted by video link. While this should be the exception, such provisions may be permissible for example for security reasons at the defendant's request, or where the accused has made it impossible to continue with a trial in his presence. However, where the accused is in unofficial custody and the

court cannot enforce its authority over him, as is the case with Saif al-Islam al-Gaddafi, presence by video link is merely providing an illusion of legality. Amnesty International believes that a hearing via video-link would not be indicative of Saif al-Islam al-Gaddafi's overall treatment in detention and during his transfer to and from the court. A trial under such circumstances could also impede his communication with his lawyer and affect his ability to prepare and present an effective defence.

12. Will Saadi al-Gaddafi and Abdallah Mansour stand trial together with the 37 defendants? Is Amnesty International concerned about their right to fair trial?

Saadi al-Gaddafi, one of Colonel Muammar al-Gaddafi's son, was extradited from Niger on 6 March in circumstances that have yet to be clarified by the Niger authorities. His extradition followed that of Abdallah Mansour, a former Intelligence official under al-Gaddafi, on 15 February 2014. Both are currently held under investigation in al-Hadba Correction and Rehabilitation Institution in Tripoli. Following their extradition, officials at the General Prosecution announced that both Abdallah Mansour and Saadi al-Gaddafi could be tried together with the other 37 defendants as soon as their investigation is over.

On 28 March, the Libyan authorities aired a video of Saadi al-Gaddafi in which he apologized to the Libyan people for disturbing the security and stability of Libya. The video was released in response to rumours circulated that he had been tortured. The video was apparently taken in al-Hadba al-Khadra Prison where Saadi al-Gaddafi is being held according to the Libyan authorities. In the video, Saadi al-Gaddafi denies any allegations of torture and says that he is treated well. However, Amnesty International is concerned that, at the time the video was aired, Saadi al-Gaddafi was being interrogated without access to a lawyer or family visits. On 14 March, Amnesty International sent a request to the General Prosecution to visit Saadi al-Gaddafi in al-Hadba Prison. The request was granted on 25 March. However two days later a prison official told the organization that security clearance was required from the Deputy Minister of Defence before the visit could take place. He then told Amnesty International that a visit in private would not be allowed until the end of the investigation, and that the organization would not be able to speak to Saadi al-Gaddafi about the details of his case or access to legal counsel. The prison official also said that Saadi al-Gaddafi would be allowed to communicate with his family via telephone. The date of the visit has yet to be set.

On 27 March, Abdallah Mansour was granted a visit with a member of his family via video conference. At the time, he had not had been granted access to a lawyer.

13. Why is Amnesty International holding Libya to such a high standard at a time when it is emerging from a civil conflict and decades of ruthless repression?

The right to a fair trial is universal and must be respected by all states, including when they are emerging from conflict and repression. In fact, fair trials are vital during such periods to address impunity without instituting victor's justice and revenge trials, also in order to establish the truth about human rights abuses (not merely achieve a conviction), to restore the rule of law, and to establish a strong commitment by the authorities to protect and respect the human rights of all people.

14. Why is Amnesty International seeking to protect Saif al-Islam Gaddafi and Abdallah al-

Senussi, who are accused of committing horrific crimes against the Libyan people?

Amnesty International works to ensure the protection of the rights of all human beings, even if they are accused of very serious offences. However, we do not seek to shield people accused of crimes under international law from justice. On the contrary, we insist that the serious charges against Saif al-Islam al-Gaddafi and Abdallah al-Senussi must be investigated and, if there is sufficient evidence, they should be prosecuted. However, any trial must be fair and should not result in the death penalty.

15. Why doesn't Amnesty International advocate for the rights of victims instead?

Amnesty International advocates strongly for the rights of all victims of crimes under international law to justice, truth and full reparation, and has been encouraging the Libyan authorities to adopt a transitional justice law that provides mechanisms for addressing a legacy of abuses. Unfair trials undermine these rights. In particular, a fair and impartial trial will ensure the rights of victims by seeking to establish the truth about the crimes, including what happened to them and their loved ones