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ICC decision to allow Abdallah al-Senussi to stand trial in Libya ‘deeply alarming’ amidst overwhelming security vacuum

Amnesty International deplores that in effect today's decision by the International Criminal Court (ICC), which allows the trial of Abdallah al-Senussi, Colonel Muammar al-Gaddafi's former intelligence chief, to proceed in Libya, sanctions the unfair domestic proceedings against him.

Amnesty International believes that the weak state of the judiciary means that it will not be possible for him to receive a fair trial in the country, and has several concerns about the violation of his due process rights. Further, the organization expressed its deep concerns that Abdallah al-Senussi risks being sentenced to death, a penalty that Amnesty International opposes in all circumstances.

The organization is dismayed that the decision was made in the context of a sharp decline in the country's security situation in recent weeks and the negative effect that this will have on any residual ability of Libya to protect Abdallah al-Senussi's right to a fair trial.

The ICC Appeals Chamber today upheld the conclusion of the court's Pre-Trial Chamber in October 2013 that Libya is willing and able to prosecute Abdallah al-Senussi for crimes against humanity committed during the 2011 uprising.

This comes at a time of major escalation in violence across the country and after human rights organizations documented serious fair trial violations in the ongoing domestic proceedings against al-Senussi and 36 others, including Saif al-Islam al-Gaddafi who is also wanted by the ICC.¹

The decision, which effectively gives the ICC's approval to the deeply flawed proceedings against Abdallah al-Senussi's is disturbing given the escalation of militia infighting and the near total collapse of the rule of law in parts of the country. Last week, Libya's Foreign Minister Mohamed Abdelaziz openly admitted that the central government was too weak to control the country's militias. He appealed to the UN Security Council for help to protect oil installations and warned of the dangers of Libya becoming a "failed state" ruled by militias.

Under Libyan law, Abdallah al-Senussi faces several charges that carry a death sentence. Amnesty International opposes the death penalty under all circumstances and considers it to be the ultimate cruel, inhuman and degrading punishment.

¹ <http://www.amnesty.org/en/library/asset/MDE19/003/2014/en/b34cc94a-f881-482b-a999-01bc61f9f8ca/mde190032014en.html>.

Amnesty International has serious concerns about the manner in which national proceedings, including at the investigation and pre-trial stage, against Abdallah al-Senussi have been conducted so far and doubts that he will receive a fair trial. He did not have access to a lawyer between September 2012, when he was detained, and June this year, despite repeated requests. On occasion he has been held in solitary confinement for prolonged periods of time. His contact with the outside world, including family, has been heavily restricted. The refusal by the Libyan government to ensure that his ICC counsel were guaranteed immunity within Libya meant that Abdallah al-Senussi was also prevented from having confidential visits with them.

Even before the outbreak of the latest fighting Amnesty International has had serious reservations about the ability of the Libyan authorities' to uphold fair trial standards. Libya has been unable to rein in militias that formed during the conflict, some of which have attacked state institutions, including courts, and have threatened lawyers, judges and prosecutors involved in politically sensitive cases. Provisions for the death penalty remain in a number of articles of the Penal Code and the authorities have not met a deadline requiring them to charge or release "all detainees affiliated to the former regime" by 2 April 2014, and thousands of individuals remain held without charge or trial.

Amnesty International's concerns are compounded by the security vacuum in the country. Since 13 July heavy clashes have erupted between rival militias in the capital, Tripoli, with continuous shelling and rocket attacks in the areas surrounding Tripoli International Airport. The fighting has caused substantial damage to the airport, including to a number of aircrafts, in addition to the destruction of homes, mosques, commercial entities and at least one medical institution. At least 47 people have been killed and more than 120 injured in the fighting. In Benghazi, clashes between Islamist militias and armed groups on one side and armed groups acting independently from the central government on the other have been ongoing since mid-May, while a spate of politically motivated assassinations, including of lawyers, activists and public and religious figures has continued.

The deterioration in security prompted the UN Support Mission in Libya (UNSMIL) – which had been conducting monitoring of trial proceedings against Abdallah al-Senussi and the other accused – to temporarily withdraw their staff from the country soon after the latest round of violence broke out. Some diplomatic missions have also temporarily closed. Amnesty International is concerned that the security situation may reduce the ability of independent monitors to observe the trial. Amnesty International believes the fairness of the trial of Abdallah al-Senussi and 36 other former officials will be further called into question if it cannot remain public and open to observers. So far, the Libyan authorities have faced difficulties in ensuring that it does.

On 11 May, a representative from UNSMIL was briefly detained on preposterous accusations of sorcery as he was attending a session. The incident prompted UNSMIL to briefly suspend its observation of the trial, which resumed after the

observer's personal effects were returned. In earlier sessions, representatives from non-governmental organizations, including an Amnesty International delegate, were denied access to the courtroom by officials at al-Hadba Prison despite assurances from the office of the prosecution that the session was public. Amnesty International believes that the presence of the public not only safeguards the rights of the accused, but also protects the public's right to monitor how justice is administered.

The security situation and the weak state of the national justice system in Libya mean 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 calls on the Libyan authorities to ensure that Abdallah al-Senussi, and all other defendants, have adequate access to a lawyer and adequate time and facilities to prepare a defence. His trial must not be allowed to continue unless the Libyan authorities are able to fully restore his rights and ensure he receives a fair trial without recourse to the death penalty.

Amnesty International also urges the Libyan authorities to conduct further reforms to re-build the national justice system with support from the international community. This includes ensuring that trials can be conducted with adequate security, including providing protection for judges, lawyers and witnesses, establishing a moratorium on executions as a first step towards abolishing the death penalty and opening proceedings to Libyan and international observers without hindrance.

Background

Abdallah al-Senussi is charged by the ICC with indirectly perpetrating crimes against humanity of murder and persecution during the uprising against the government of Colonel Mu'ammar al-Gaddafi in 2011.

In Libya he faces a string of charges related to his alleged incitement to or ordering of crimes committed during civil unrest, which started on 15 February 2011, and the ensuing armed conflict. Charges include but are not limited to indiscriminate shelling, opening fire at demonstrators and engaging in acts of vandalism, looting and killing. Some of the charges carry the death penalty under Libyan law.

Thirty-five former officials and state employees are accused alongside Abdallah al-Senussi and Saif al-Islam al-Gaddafi and also face the death penalty if convicted. Some of their lawyers report being unable to meet with their client, in part due to fear for their own lives or fully access the case files.

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