



# ‘LIBYA OF TOMORROW’

WHAT HOPE FOR HUMAN RIGHTS?

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Amnesty International Publications

First published in 2010 by  
Amnesty International Publications  
International Secretariat  
Peter Benenson House  
1 Easton Street  
London WC1X 0DW  
United Kingdom  
[www.amnesty.org](http://www.amnesty.org)

© Amnesty International Publications 2010

Index: MDE 19/007/2010  
Original language: English  
Printed by Amnesty International,  
International Secretariat, United Kingdom

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*Cover photo:* Families of victims of the Abu Salim Prison killings of 1996 continue to demand truth, justice and reparation. They have been holding regular protests in the city of Benghazi since late 2008.

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# GLOSSARY

- CAT: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- CEDAW: Convention on the Elimination of all Forms of Discrimination against Women
- *diya*: financial compensation for the family of the murder victim, or “blood money”
- GDF: Gaddafi International Charity and Development Foundation
- General People’s Congress: equivalent to the national parliament
- General Committee for Defence [Temporary]: equivalent to the Ministry of Defence
- General People’s Committee for Justice: equivalent to the Ministry of Justice
- General People’s Committee for Public Security: equivalent to the Ministry of Interior
- General People’s Committee for Foreign Liaison and International Cooperation: equivalent to Ministry of Foreign Affairs
- *Had* (plural *hudud*): a concept found in Shari’a (see below), meaning a divinely prescribed fixed offence and punishment
- ICCPR: International Covenant on Civil and Political Rights
- ICESCR: International Covenant on Economic, Social and Cultural Rights
- IOPCR: International Organization of Peace, Care and Relief
- ISA: Internal Security Agency
- LIFG: al-Jama’a al-Islamiya al-Muqatila, Libyan Islamic Fighting Group
- NFSL: National Front for the Salvation of Libya
- *qisas*: retribution for murder
- Shari’a: Islamic law
- UNHCR: United Nations High Commissioner for Refugees
- *zina*: sexual relations between a man and a woman outside a lawful marriage



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# INTRODUCTION

## “Libya today is not Libya of yesterday, and Libya of tomorrow, God willing, will be even better”

Saif al-Islam al-Gaddafi, son of the Libyan leader and head of the Gaddafi International Charity and Development Foundation, March 2010<sup>1</sup>

Libya today is no longer the pariah state it was not so long ago, when gross violations of human rights took place against the backdrop of UN, EU and US sanctions against the country, which was designated as a state sponsor of terrorism by the USA until 2006. There is no doubt that the climate of fear and repression that prevailed in Libya for more than three decades is subsiding gradually, and that some Libyans are now more willing to take risks – albeit modest and within limits – to speak out about issues that affect their everyday lives.

Libya has completed agreements with both the USA and EU member states, is negotiating an agreement with the EU and has addressed the UN General Assembly (in September 2009). Nonetheless, Libya's reintegration into the international community has not been accompanied by significant reforms or long-lasting improvements in the domestic human rights situation. The slow pace of domestic reform contrasts sharply with Libya's increased visibility on the international scene and prompts fears that members of the EU and the USA, rather than using the opportunity to encourage reforms, are turning a blind eye to the human rights situation in order to further their national interests, which include cooperation in counter-terrorism, the control of irregular migration, trade and other economic benefits.

The human rights situation in Libya remains dire. Officials responsible for gross human rights violations remain above the law and enjoy total impunity. On the other hand, thousands of individuals are completely outside the protection of the law and continue to suffer in silence and isolation, seeing little hope in the “Libya of tomorrow”, a slogan frequently repeated by Saif al-Islam al-Gaddafi. This report provides Amnesty International's assessment of the human rights situation in Libya. It calls on the authorities to implement recommendations grounded in international law and standards aimed at putting an end to human rights violations and ensuring that they never recur. Unless the Libyan authorities demonstrate real political will to reform laws, policies and practices and to address the legacy of gross human rights violations, there is little hope for the establishment and consolidation of a “Libya of tomorrow” based on respect for human rights and the rule of law.

Human rights violations continue to be widespread in Libya, particularly targeted at certain groups. These include individuals seen as critical of the authorities or the principles of the al-

Fateh Revolution which brought Colonel Mu'ammar al-Gaddafi to power over 40 years ago; individuals deemed to be a security threat; and individuals believed to be irregular migrants and other foreign nationals, particularly from Sub-Saharan Africa. Such individuals frequently find themselves outside the protection of the law and have little opportunity to seek justice or redress.

Repressive legislation outlawing any form of independent thought or group activity remains in force. Activities that amount to the peaceful exercise of freedom of expression and association continue to be criminalized and individuals who criticize the authorities or seek to organize anti-government protests have faced reprisals. The space for civil society and independent media remains limited, although the Libyan authorities have shown more tolerance in recent years to some dissenting voices as long as they do not cross certain "red lines", such as direct criticism of Colonel Mu'ammar al-Gaddafi or the ideological foundation of the current political system.

Human rights violations in Libya are facilitated by the absence of adequate legal safeguards, particularly in cases that are deemed to be political in nature. Even those limited safeguards that exist in Libyan legislation tend to be routinely flouted in such cases, particularly by members of the security forces such as the Internal Security Agency (ISA), an intelligence body. The ISA, which seems to operate beyond any judicial oversight and whose remit, mandate and structure remain opaque and unclear, has been implicated in gross human rights violations in the past and continues to be responsible for violations. No members of the ISA are known to have been held accountable for committing gross human rights violations including torture and extrajudicial executions.

The ISA controls two major prisons, Abu Salim and Ain Zara<sup>2</sup>, in addition to a number of unrecognized places of detention which are out of reach of any judicial authority. Members of the ISA arrest and detain individuals suspected of dissent or deemed to present a security threat. These detainees are held incommunicado for prolonged periods in conditions amounting to enforced disappearance in certain cases, exposing them to the risk of torture or other ill-treatment and breaching even the limited safeguards set out in Libya's Code of Criminal Procedure.

Given that many of those arrested and detained by the ISA are completely cut off from the outside world, there is little available information about their treatment during interrogation and detention. Those who are released or who receive family visits are frequently reluctant to report torture or ill-treatment for fear of reprisals. Despite this climate of fear, Amnesty International continues to receive reports that torture and other ill-treatment take place in Libya in a climate of virtually total impunity.

Detainees held by the ISA are sometimes charged with vaguely worded offences "against the state" and tried before the State Security Court. This court, created in 2007, uses procedures that do not satisfy international standards for fair trial and is reported, in some cases, to have sat within the confines of Tripoli's Abu Salim Prison. It is feared that the State Security Court is governed by the same laws and procedures as the former People's Court. Many political suspects received grossly unfair trials before the People's Court until its abolition in January 2005.

Hundreds of individuals have been detained arbitrarily in Libya in recent years. They have included people imprisoned solely for the peaceful exercise of their right to freedom of expression or association as well as individuals detained without charge or trial or after grossly unfair trials. Others remained in detention despite being cleared by the courts or after serving sentences imposed by the courts.

Contrary to the worldwide trend towards the abolition of the death penalty and Colonel Mu'ammar al-Gaddafi's public statements against capital punishment, the death penalty is prescribed for a wide range of offences, including activities that amount to the peaceful exercise of the right to freedom of expression and association. Libyan courts continue to hand down death sentences in trials that fall short of international standards, and executions continue to be carried out by firing squad. The death penalty appears to be imposed disproportionately on foreign nationals. They are particularly vulnerable given the failure of the Libyan authorities to provide them with translation services and immediate access to their consular representatives. Foreign nationals are also at a disadvantage in entering negotiations with families of murder victims over *dijya* (blood money), given that they often have limited financial means.

Other cruel, inhuman or degrading punishments remain in force such as flogging and amputation, which continue to be passed by courts for adultery and theft. The corporal punishment of flogging for adultery appears to be imposed disproportionately on women. The mere fact of being pregnant and unwed seems to be sufficient basis to convict women of adultery, raising additional concerns that women might be deterred from reporting rape for fear of prosecution.

Human rights violations take place against the backdrop of the Libyan authorities' failure to address the heavy legacy of its past human rights record. Routine abuses committed in the 1970s, 1980s and 1990s included arbitrary detention, enforced disappearance; torture or other ill-treatment; extrajudicial executions; and deaths in custody. Victims came from all social and political backgrounds, and the lives of thousands of survivors and families continue to be devastated by the failure of the authorities to acknowledge, let alone redress, the harm done. Instead of facing up to their past and providing an adequate remedy to victims of gross human rights violations, the Libyan authorities appear to be trying to silence victims by providing financial compensation without conducting any investigations or bringing any perpetrators to justice. This approach ignores the fact that when such violations go unpunished, they have a strong chance of recurring, in particular as individuals implicated in gross human rights violations in the past continue to hold official posts.

A case in point is the Libyan authorities' failure to adequately address the Abu Salim Prison killings of June 1996. Up to 1,200 detainees are believed to have been extrajudicially executed following a riot protesting at poor prison conditions. Rumours soon circulated that a large number of prisoners had been killed, but the first official acknowledgement of the killings came in 2004, when Colonel Mu'ammar al-Gaddafi told an Amnesty International delegation that disturbances had taken place. The authorities' promises of investigations have not born fruit to date, despite the latest announcement in September 2009 that a committee had been established to inquire into the incident. Nor have the authorities offered families of victims a public apology, adequate reparation or an indication that perpetrators will ever be held to account. Instead, they offered financial compensation on condition that

the families would agree not to pursue judicial redress. A number of the families, particularly in Benghazi, have been growing increasingly vocal. They have been encouraged by winning a court case ordering the authorities to reveal the whereabouts of their relatives and by public calls from Saif al-Islam al-Gaddafi for the killings to be addressed. While the authorities have tolerated the families' public protests to a certain extent, several of the most active have faced reprisals including arrests, harassment and physical assaults. To date, the authorities have not responded to the families' calls for truth, justice and adequate reparation.

The authorities have also failed to address a number of unresolved cases of enforced disappearance of Libyan dissidents at home and abroad. Victims include prominent members of the opposition who disappeared in Cairo, Egypt, in the 1990s, namely Jaballah Matar, 'Ezzat Youssef al-Maqrif and Mansour Kikhiya. Similarly, there have been no efforts to investigate the "physical liquidation" of political opponents in Libya and abroad, particularly during the 1980s.

Today, Libya faces the challenge of responding to an influx of refugees, asylum-seekers and migrants and to pressure from members of the EU to cut the numbers reaching Europe. In doing so, the Libyan authorities have failed to comply with their international obligations. Refugees, asylum-seekers and migrants, particularly from Sub-Saharan African countries, live in constant fear in Libya: fear of being arrested and held indefinitely in overcrowded detention centres; fear of being exploited, beaten and abused; and fear of being forcibly returned to an uncertain future where they may face persecution or torture. Foreign nationals whose rights have been violated have no possibility of seeking protection or remedy through the justice system. The much needed protection of refugees and asylum-seekers is further hampered by the authorities' resistance to ratifying the 1951 Convention relating to the Status of Refugees or its 1967 Protocol.

Amnesty International calls on the Libyan authorities to introduce and consolidate legal and institutional reforms and other measures necessary to address the grave human rights concerns outlined in this report. Libyan authorities must guarantee and respect the rights of Libyan nationals to express themselves freely and to associate with others to shape and contribute to developments in their country. Investigations into human rights violations must be conducted, perpetrators of human rights violations must be held to account and the victims must receive an adequate remedy. The Libyan security forces, in particular the ISA, must be held accountable for their actions. The Libyan authorities must also ensure that respect for human rights extends to everyone within their territory, including the most vulnerable. All should be equal before the law and none should be above the law, including members of the ISA, whose unrestrained powers must be kept in check. The most vulnerable, such as irregular migrants in search of a better life, must be protected against abuses. Only then will the "Libya of tomorrow" be a place where human rights can thrive.

Amnesty International calls on the Libyan authorities to implement all the recommendations set out in this report in order to secure long-lasting improvements to the human rights situation, in particular:

- ensure that members of the ISA no longer have the authority to exercise the functions of the judicial police; and that all detention facilities including Ain Zara and Abu Salim prisons

are brought under the control of the General People's Committee for Justice and overseen by the Department of Public Prosecutions;

- repeal all laws, including Law No. 71 of 1972 and relevant articles of the Penal Code and of the Decree of the Revolutionary Command Council on the Protection of the Revolution, which criminalize the peaceful exercise of the rights to freedom of expression and association. Ensure that the draft Penal Code, currently under review, is amended to bring provisions relating to the rights to freedom of expression and association in line with Libya's obligations under the International Covenant on Civil and Political Rights;
- conduct full, independent and impartial investigations into allegations of torture or other ill-treatment and ensure that all those responsible for torture and other human rights violations including members of the ISA are brought to justice, in proceedings meeting international standards for fair trial without recourse to the death penalty;
- conduct full, impartial and independent investigations into all cases of enforced disappearances, deaths in custody possibly as a result of torture and extrajudicial executions (including the Abu Salim Prison killings of June 1996), even when no official complaint has been made; make the results public; and bring those responsible to justice in proceedings meeting international standards for fair trial without recourse to the death penalty;
- establish a vetting system to ensure that those reasonably suspected of serious human rights violations do not remain, or are not placed in, positions where they could repeat such violations; such a screening mechanism should work alongside independent and impartial investigations to identify suspected perpetrators and judicial proceedings to bring them to justice;
- immediately establish an official moratorium on executions, in line with UN General Assembly resolutions 62/149 and 63/168, calling for a moratorium on the use of the death penalty with a view to abolishing the death penalty;
- immediately cease the application of corporal punishment, including flogging, and repeal legislation which allows for its application, including Law No. 70 of 1973; and
- ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and adopt asylum legislation consistent with international law and standards without further delay.

## ABOUT THIS REPORT

This report provides an assessment by Amnesty International of the human rights situation in Libya, focusing on flaws within the administration of justice; the application of the death penalty and corporal punishment; impunity for past human rights violations; and the situation of refugees, asylum-seekers and migrants.

The report, which covers developments up to mid-May 2010, is partially based on Amnesty International's findings during a week-long visit to Libya in May 2009, the first visit of its kind in five years. The visit followed lengthy negotiations with the relevant authorities, with Amnesty International seeking to visit cities in the south-east and east of the country as well

as Tripoli. In the event, the itinerary was limited to Tripoli and a short visit to Misratah. The visit was facilitated by the Gaddafi International Charity and Development Foundation (Gaddafi Development Foundation, GDF), which was instrumental in securing Amnesty International's access to a number of detention facilities. Amnesty International delegates met the Executive Director of the GDF, the President of its Human Rights Society and other staff and members of the GDF in the course of the visit.

Amnesty International delegates met a range of government officials including the Secretaries of the General People's Committee for Justice and the General People's Committee for Public Security; the head of the Internal Security Agency; the Chief Justice of the High Court; and the Director General of the Judicial Police; as well as top-ranking officials of the General People's Committee for Foreign Liaison and International Cooperation and officials of the Department of Public Prosecutions. In these meetings, Amnesty International delegates raised a number of individual cases of concern as well as patterns of human rights violations in Libya. Amnesty International called on the Libyan authorities to respect their international human rights obligations and to address past and ongoing violations. During the visit, the delegates gave the Libyan authorities a list of more than 200 individuals who were arrested after 1989 in Libya, and three Libyan dissidents who disappeared in Cairo in the 1990s. The delegates asked the officials to reveal the fate and whereabouts of the listed individuals, but to date, Amnesty International has received no response on any of the cases.

During the visit, Amnesty International welcomed the opportunity to visit Jdeida, Abu Salim and Ain Zara prisons as well as the Misratah Detention Centre. Delegates met the prison administration in these facilities, but in both Ain Zara and Abu Salim prisons, prison officials either refused to give their names or gave only first names.

Amnesty International was also given the opportunity to interview a number of detainees. Amnesty International particularly welcomed the manner in which its visit to Jdeida Prison was conducted, as delegates were able to consult the prison registries, select a sample of individuals to interview and collect testimonies from them in private. Regrettably, the same willingness to allow Amnesty International to conduct interviews in private was not demonstrated in other detention facilities. The visit to Misratah Detention Centre was cut short despite previous commitments by the GDF that the delegation would have a full day to conduct interviews with detainees. As a result, Amnesty International delegates had only 45 minutes to gather testimonies from detainees. Furthermore, prison guards and administration officials remained close to the delegates and interrupted the interviews on a number of occasions. In Abu Salim Prison, where Amnesty International interviewed five detainees in the courtyard, guards were also in earshot and interrupted interviews several times. Amnesty International delegates also interviewed one detainee held in Ain Zara Prison. The prison administration in Abu Salim refused to allow Amnesty International to interview five detainees and seven other detainees, including five transferred to Libya by the US authorities, declined to be interviewed by Amnesty International.

In addition to meetings with officials and visits to detention facilities, Amnesty International met professional associations such as the Tripoli Bar Association and the Press League in Tripoli. Amnesty International delegates also met other journalists including the then editor-in-chief of *Oea* newspaper. The organization's delegates were very impressed by the diverse

and candid opinions shared during these meetings, in particular by lawyers of the Tripoli Bar Association who raised their concerns about the administration of justice in Libya.

In the framework of its research into the situation of refugees, asylum-seekers and migrants, Amnesty International delegates met the-then Chief of Mission of the UNHCR and the head of the International Organization for Migration (IOM). Delegates visited a voluntary return centre run by the IOM. They also met diplomatic representatives from a number of countries to discuss issues of mutual concern.

There was little opportunity for Amnesty International delegates to meet victims, families or others outside the programme organized by the GDF. Not only was time short, but individuals who met Amnesty International delegates without official permission would be at risk of reprisals. Regrettably, Amnesty International delegates were prevented from boarding a flight to Benghazi where they planned to meet a number of families of victims of the Abu Salim Prison killings of June 1996.

This report also relies on correspondence with the Libyan authorities and the GDF about specific human rights concerns, and on Amnesty International's long-term monitoring of the human rights situation in Libya. The report includes information provided to Amnesty International by victims of human rights violations; their families and lawyers based in Libya and abroad; and by Libyan and other human rights organizations and other groups based abroad. Amnesty International is grateful for the willingness of victims, their families and others to share their experiences, expertise and concerns. We are particularly grateful for the assistance provided by the Geneva-based Al Karama for Human Rights and the Libyan Human Rights Solidarity.

In this report, only those names appearing in bold and in full (first name and surname) are the real names of victims or families. First names appearing alone signify that the names of the victims or the family members have been changed to protect their identity or upon their request.

The findings of this report were shared with the Libyan authorities on 15 April 2010. Amnesty International sent a comprehensive 107-page memorandum to Libyan authorities including the Leader of the Revolution and the General Secretaries for Justice; Public Security; Defence; and Foreign Liaison and International Cooperation; as well as the GDF. The organization invited the authorities to respond to the concerns and issues raised in the memorandum, and sent the relevant authorities specific questions on a number of issues. At time of writing, Amnesty International had received no response.

Amnesty International's assessment of the human rights situation in Libya as set out in this report is based on Libya's international obligations. These stem from treaties to which Libya is a party, including the International Covenant on Civil and Political Rights (ICCPR); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the African Charter on Human and Peoples' Rights; and the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa. Amnesty International's assessment is also informed by the observations of UN treaty bodies and other mechanisms, such as the UN Human Rights Committee.

The report opens with a background chapter that gives an outline of Libya's political system and provides a short summary of the key human rights violations of the past, in particular against individuals seen as a threat to the political system. The impact of this political system on restricting the space for civil society and key recent developments affecting the human rights climate are described, as is Libya's dramatic reintegration into the international arena. The background also includes a brief overview of the make-up of Libya's population.

Chapter 2 outlines human rights violations in the context of the administration of justice. This includes the criminalization of activities that amount to the peaceful exercise of the rights to freedom of expression and association; arbitrary arrests and detention; prolonged incommunicado detention; torture or other forms of ill-treatment; unfair trials; and the situation of individuals transferred by the US authorities in the context of counter-terrorism. Chapter 3 highlights the continued imposition of cruel, inhuman, or degrading punishments including the death penalty, floggings and amputations. Chapter 4 looks at the legacy of past human rights violations, in particular the failure of the Libyan authorities to address the Abu Salim Prison killings of June 1996 and the efforts by families of victims to reclaim their rights. Chapter 5 addresses the situation of refugees, asylum-seekers and migrants in Libya. It describes human rights abuses faced by refugees and migrants, including indefinite detention, torture or other ill-treatment and forcible returns.

Each Chapter closes with a series of recommendations which if implemented would contribute to putting an end to human rights violations and ensuring they do not recur.



# 1. BACKGROUND

## LIBYA'S POLITICAL SYSTEM

On 1 September 2009, celebrations marked the 40<sup>th</sup> anniversary of the al-Fateh Revolution which brought Colonel Mu'ammār al-Gaddafi to power in Libya. A military coup overthrew the monarchy, the 1951 constitution was abolished and the Revolutionary Command Council headed by Colonel Mu'ammār al-Gaddafi took power. The following years were characterized by the one-party system of the Arab Socialist Union, created in 1971. In 1972, Law No. 71 was adopted, prohibiting the establishment of political parties.<sup>3</sup>

In August 1973, Colonel Mu'ammār al-Gaddafi announced a "Popular Revolution", which envisaged the direct participation of Libyan people in the governance of their country through people's committees. In March 1977, the General People's Congress, Libya's equivalent of a parliament and in principle its highest decision-making body, proclaimed the establishment of "popular rule". According to this system, all Libyans over the age of 18 participate directly in decision-making processes through Basic People's Congresses at the local level. These decisions are channelled to the General People's Congress. Ministries were abolished and replaced by General People's Committees, tasked with implementing the decisions of the General People's Congress. In 1977, the country was renamed the Great Socialist People's Libyan Arab Jamahiriya.

Revolutionary Committees were established in 1977 to generate popular support for the ideology of Colonel Mu'ammār al-Gaddafi as laid out in the Green Book. The Green Book sets out the "Third Universal Theory", which presents an alternative to communism and representative democracy. This alternative establishes the "state of the masses" with national wealth distributed equally and political parties obsolete as citizens govern themselves directly without representation.<sup>4</sup> In practice, the role of the Revolutionary Committees, which apparently operated outside any judicial control, was to eliminate any opposition to the new system.<sup>5</sup>

Colonel Mu'ammār al-Gaddafi, who was appointed by the General People's Congress as its Secretary General, officially relinquished this position in March 1979 to devote himself to "revolutionary work". Since then, he has been officially referred to as the "Leader of the Revolution", and is not considered a head of state in the conventional sense, but rather as an influential advisor to the people.

## MASS HUMAN RIGHTS VIOLATIONS IN THE 1970S AND 1980S

The introduction of this new political system was accompanied by a crackdown on all political opponents including Marxists, Trotskyists and members of banned parties such as the Islamic Liberation Party, the Muslim Brotherhood and the pro-Iraqi wing of the Ba'th Party. The second part of the 1970s witnessed the resumption of the death penalty after more than 20 years of a de-facto moratorium. Among those executed were 22 army officers convicted of plotting a coup in August 1977. The early 1980s also marked the birth of an

officially endorsed policy of “physical liquidation” of “enemies of the revolution”: whether living in Libya or in exile.<sup>6</sup>

Following an armed attack on Colonel Mu'ammr al-Gaddafi's headquarters in Bab al-Aziziya barracks in Tripoli in May 1984, allegedly by the banned National Front for the Salvation of Libya (NFSL),<sup>7</sup> renewed calls for the “physical liquidation” of political opponents were made at all levels of the state. These calls were accompanied by mass arrests of suspected opponents of the political system and public executions of presumed “counter-revolutionary” elements. In addition, during the 1980s dozens of Libyan dissidents living abroad were extrajudicially executed, reportedly by agents acting on behalf of the Libyan state.



Libyan leader Mu'ammr al-Gaddafi giving a speech in Benghazi, February 2010 © AP/Abdel Magid Al Fergany

During the 1970s and 1980s, Amnesty International documented and campaigned against gross human rights violations by Libya. These included severe limitations on the rights to freedom of expression and association; arbitrary arrests and detentions of thousands of real or perceived opponents of the political system; incommunicado detention; torture or other forms of ill-treatment; grossly unfair trials including in front of exceptional and ad-hoc courts; unlawful killings and summary executions; and the imposition of the death penalty including for the peaceful exercise of the right to freedom of expression and association. During this period, the organization adopted hundreds of prisoners of conscience and campaigned for their release.<sup>8</sup>

## PERIOD OF REFORM IN 1988

Early 1988 heralded a number of positive developments in the field of human rights in Libya. In March, Colonel Mu'ammr al-Gaddafi released 400 political prisoners, including prisoners of conscience on whose behalf Amnesty International had campaigned.<sup>9</sup> In June, he commuted all outstanding death sentences. Colonel Mu'ammr al-Gaddafi publicly acknowledged that some individuals had been detained unjustly and that others had been executed “perhaps regrettably”. He also called for the consolidation of safeguards to ensure respect for human rights. His public calls for reform culminated in the adoption in 1988 of the Great Green Charter of Human Rights in the Era of the Masses and in 1991 of Law No. 20 on the Promotion of Freedom. The former set out the abolition of the death penalty as the ultimate goal of the Jamahiriya society, prohibited torture or ill-treatment of prisoners and guaranteed the right to fair trial. Law No. 20 of 1991 introduced limited guarantees of freedom of expression and association, and prohibited the *refoulement*<sup>10</sup> of political refugees and the ill-treatment of prisoners.

At the international level, in 1989 Libya ratified the first Optional Protocol of the International Covenant on Civil and Political Rights (ICCPR), allowing for individual petition, and the Convention against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment (CAT). Libyan authorities also allowed some international scrutiny of the

country's human rights record, including by giving access to an Amnesty International delegation in June 1988, which would be the last visit of its kind for 15 years.

Despite these important institutional developments, legislation criminalizing peaceful dissent was not repealed. Colonel Mu'ammār al-Gaddafi's promises to respect human rights were also not fulfilled as the end of the 1980s and the 1990s saw the recurrence of gross violations of human rights including mass arbitrary arrests and detention; enforced disappearances; torture or ill-treatment; deaths in custody as a result of extrajudicial executions or torture; and the imposition of the death penalty.<sup>11</sup> During this time, the country was closed to international scrutiny, including to international human rights organizations such as Amnesty International.<sup>12</sup> Repression escalated sharply in the late 1980s and the mid-1990s at a time of clashes between the authorities and armed groups.

## CLASHES WITH ARMED GROUPS

Mass arrests of suspected political opponents and members of banned groups resumed in January 1989 and continued until April 1990. These arrests took place against a backdrop of two demonstrations in Tripoli and a number of armed clashes between opponents of the authorities and armed groups on the one hand and members of the security forces and the Revolutionary Committees on the other.<sup>13</sup> According to the information available to Amnesty International, many of those arrested were not involved in any violent activities, but were held on account of their religious activities or on suspicion of opposing the political system. Many of those arrested during this period were held incommunicado for prolonged periods. Some were released in small groups in 2000, while others are believed to have died in the Abu Salim Prison killings in June 1996. Others were not released until much later. For example, Mohamed Hassan Abu Sadra was arrested in Derna in 1989, apparently for opposing the political system. He was only released in June 2009, despite the opinion of the UN Working Group on Arbitrary Detention that Libya had violated his rights to liberty and security of the person and his right to a fair trial.<sup>14</sup>

Another major wave of arrests occurred after mid-1995, at the time of armed clashes between the authorities and the al-Jama'a al-Islamiya al-Muqatila, the Libyan Islamic Fighting Group (LIFG). The LIFG emerged in the early 1990s, and its members reportedly included a number of Libyans who had fought Soviet forces in Afghanistan. The LIFG sought to overthrow the political system through armed struggle and targeted Libyan government interests. Most clashes between armed Islamist groups and the Libyan security forces took place in eastern parts of the country including Benghazi and Derna. The clashes, which left scores dead on both sides, are believed to have continued sporadically until the late 1990s.<sup>15</sup> According to Saif al-Islam al-Gaddafi, 165 members of the security forces died and 159 were injured in the clashes, and 177 suspected members of armed groups were killed. According to the information available to Amnesty International, during this period some suspected members of Islamist armed groups were killed in circumstances suggesting that they had been extrajudicially executed.<sup>16</sup> Saif al-Islam al-Gaddafi also stressed that there were civilian casualties, but provided no statistics.<sup>17</sup> According to the best knowledge of Amnesty International, the LIFG did not target civilians.<sup>18</sup>

Amnesty International unreservedly condemns deliberate attacks against civilians and indiscriminate attacks, which show a complete disregard for the right to life. While Amnesty

International recognizes the duty of governments to protect their citizens from acts of violence and to bring to justice those responsible, in doing so states must always be in full compliance with international human rights law.

The Libyan authorities' crackdown on Islamist groups was not limited to those using or propagating violence and the Libyan authorities seemed to make little distinction between armed Islamist groups and peaceful Islamist movements. In fact, the Libyan authorities have used the rhetoric of the threat of terror to suppress domestic dissent, including peaceful opposition, and to justify continuing violations. Movements such as al-Jama'a al-Islamiya al-Libiya, the Libyan Islamic Group, also known as al-Ikhwan al-Muslimin, the Muslim Brothers, which is not known to have used or advocated violence, were banned and faced a clampdown at the hands of the authorities. For example, more than 150 professionals and students were arrested in mid-1998 on suspicion of supporting or sympathizing with the Muslim Brothers.<sup>19</sup> Even though the Libyan authorities maintained initially that the Muslim Brothers engaged in "terrorist" activities, these men were never charged or convicted of violent acts – rather they were charged under Law No. 71 of 1972 banning political parties solely for the peaceful expression of their ideas and for meeting to discuss those ideas with others in secret.<sup>20</sup>

## RESTRICTED SPACE FOR CIVIL SOCIETY

Neither political parties nor independent human rights organizations have been allowed to establish themselves, since their existence would contradict the principles of the Libyan political system.

The main organization that has been active in the field of human rights in Libya is the Gaddafi International Charity and Development Foundation (Gaddafi Development Foundation, GDF), which includes a Human Rights Society. The GDF was established in 1998 and is presided over by Saif al-Islam al-Gaddafi, one of Colonel al-Gaddafi's sons. Saif al-Islam al-Gaddafi mentioned in a speech in Cairo in May 2010 that the GDF was registered in 2003 in Switzerland, due to difficulties in obtaining registration in Libya.<sup>21</sup> Since 2003, the GDF has raised concerns about human rights violations and has called for past violations to be addressed. It has also launched a campaign against torture, called for more freedom of expression and association, looked into allegations of torture within Libya and pursued several cases with the authorities. It has visited places of detention and has facilitated the release of hundreds of detainees, some of whom had been detained arbitrarily and were prisoners of conscience. In its latest Annual Report published in December 2009, the Human Rights Society strongly criticized the arbitrary detention of scores of individuals; the persistence of unexamined allegations of torture; the impunity enjoyed by Libyan security forces; and proceedings in front of special courts including the State Security Court that flout international standards for fair trial.<sup>22</sup> The GDF has also facilitated visits by a number of



Families of victims of Abu Salim Prison killings attend meetings with the Gaddafi Development Foundation, November 2009 © Libyan Human Rights Solidarity

international human rights organizations, including visits by Amnesty International in February 2004 and May 2009. The GDF acts as the monitoring body of the Memorandum of Understanding signed by the Libyan and the UK governments, according to which Libya gave diplomatic assurances that it would not torture individuals suspected of terrorism if they were returned to Libya by the UK authorities.<sup>23</sup>

Despite the relative freedom enjoyed by the GDF, the right to freedom of association remains severely curtailed. The government does not allow independent human rights NGOs to be established. A group of lawyers, journalists and writers tried to register a new NGO in 2008, the Centre for Democracy, to work towards "the dissemination of democratic values and human rights and the rule of law in Libya". Their efforts were fruitless. According to the chairperson of its founding committee, the authorities objected to 12 of those named as founders of the organization and Dhow Al Mansouri, one of the group's founders, was abducted and assaulted in June 2008 by three unidentified assailants who warned him against trying to establish the NGO.<sup>24</sup> Even NGOs of a charitable or humanitarian nature are tightly controlled by the authorities. Law No. 19 of 1369<sup>25</sup> on the Re-organization of Civil Associations gives the authorities extensive power over the establishment, activities and dissolution of any association, even of a non-political nature. Law No. 19 requires those wishing to establish an association to present a statute signed by at least 50 founding members to the secretariat of the General People's Congress, if it plans to work nationwide, or to the provincial People's Congress, if it proposes to restrict its activities to a particular province. The law does not set a time limit on the state to respond to applications, nor grant an association's members the right of appeal against a rejection of their application. In addition, the authorities have extensive powers to dissolve any association on several grounds including the "public interest" or if the association has committed a serious breach of "laws, public order or morals".

There has been a tangible, albeit modest, increase in freedom of expression in recent years. Nonetheless, public forms of expression, including within the Peoples' Congresses and most of the print and broadcast media, are tightly controlled by the authorities. Article 1 of Law No. 76 of 1972 on Publications allows freedom of expression, but only insofar as it falls "within the framework of the principles, values and objectives of society". Along with Law No. 120 of 1972 on the establishment of the General Press Authority and Law No. 75 of 1973 on merging some newspapers to the General Press Authority, Law No. 76 of 1972 imposes severe restrictions on the freedom of the press, effectively preventing the formation of independent newspapers.

The media landscape broadened significantly with the establishment of two privately owned newspapers in August 2007: *Oea* and *Cerene*. However, while they broach some issues deemed sensitive by the authorities, such as official corruption, they cannot be considered fully independent as they are closely affiliated with Saif al-Islam al-Gaddafi. On 21 January 2010, the two newspapers, which are owned by the al-Ghad corporation, announced that they would no longer be printed but only appear online. It was alleged that the General Press Authority refused to print them because the al-Ghad corporation had not paid its debts.

According to journalists who spoke to Amnesty International during its visit to Libya in May 2009, there is greater freedom of expression in Libya today, but some distinct "red lines" remain. These are primarily the sanctity of religion; territorial integrity; the Libyan cultural

heritage; and Colonel Mu'ammr al-Gaddafi. Not only do the Libyan authorities suppress any direct criticism of Colonel Mu'ammr al-Gaddafi inside Libya, they also try to limit critical articles appearing in other North African media. For example, in 2009, Libyan diplomatic representatives in Morocco filed defamation suits against three Moroccan newspapers which criticized the absence of democracy and human rights in Libya.

Information from Libya has also increased thanks to the work of local correspondents of websites based abroad, most notably *Libya Al Youm*, *Al Manara*, *Libya Al-Mostaqbal* and *Jeel Libya*. While the Libyan authorities have tolerated the work of these correspondents to a certain extent, they have at times harassed them. For instance, a defamation case started on 26 October 2009 against the journalist Mohamed Al-Sarit, who revealed sexual harassment against women in Benghazi in an article on *Jeel Libya*. Websites which carry material critical of the Libyan authorities or tackle sensitive issues are periodically blocked by the Libyan authorities. A number of websites were blocked for about three months in early 2010. Libyan journalists told Amnesty International that the presence of correspondents working for foreign agencies in Libya is significant. There are now about 15 in total according to the former editor-in-chief of *Oea*, Mahmoud Al-Bouseifi.

The state owns virtually all national broadcast media. "Good Evening Benghazi", a radio programme in Benghazi which addressed sensitive issues such as miscarriages of justice and corruption, was taken off the air in February 2010. The media workers on the programme were briefly arrested. They were reportedly released after intervention by Saif al-Islam al-Gaddafi, but have lost their jobs and are not allowed access to their offices inside the Benghazi radio station.<sup>26</sup> This was not the first time that "Good Evening Benghazi" was targeted by the authorities. The radio programme was also reported to have come close to suspension in November 2008 after a member of the public called in and criticized protests in support of Saif al-Islam al-Gaddafi after he announced that he was to retire from public life. The programme reportedly stayed on air because Saif al-Islam al-Gaddafi announced that he was not a "red line".<sup>27</sup> In another incident, lawyer 'Adnan el-'Urfi was arrested on 9 June 2009 after a "Good Evening Benghazi" broadcast in late May 2009 in which he reportedly said that the rule of law is not respected in Libya and recounted human rights violations endured by one of his clients. He was accused of insulting a public official, but was cleared of all charges by a court in Benghazi on 12 September 2009.

Libyan law allows public meetings to be held in accordance with the regulations. Article 1 of the Law on Public Assemblies and Demonstrations of 1956 stipulates: "Individuals have the right to meet peacefully. Policemen are not to attend their meetings and they do not need to notify the police about such gatherings."

However, public meetings and demonstrations are generally tolerated only when the participants



Families of victims of Abu Salim Prison killings protest in Benghazi. © Libyan Human Rights Solidarity

are supporting the government's positions.<sup>28</sup> The government has allowed public protests by families of victims of the Abu Salim Prison killings since late June 2008. However, several of those active in the protests face harassment and intimidation, including threatening phone calls, surveillance, restrictions on travel and even arrest. For example, five relatives of victims of the Abu Salim killings were arrested and detained incommunicado in March 2009 in connection with the protests and were held for several days before being released without charge or trial.<sup>29</sup>

## "RECONCILIATION" AND RELEASES OF PRISONERS



Releases of individuals suspected of involvement in terrorism-related activities from Abu Salim Prison in October, 2009. © AP Photo/Abdel Magid Al Fergany

In recent years, there have been a number of positive developments in the field of human rights. Since 2001 significant numbers of political prisoners have been released, many of whom had been detained arbitrarily. In 2001, nearly 300 prisoners, among them political prisoners, were released. In 2002, more than 60 political prisoners were released, including prisoners of conscience. In 2005, members of the Islamic Alliance Movement were released, some of whom had been held since 1998. The following year, 130 individuals were released including 85 members of the Muslim Brothers, many of them held since 1998.<sup>30</sup> In the past two years, the Libyan authorities have released at least 15 prisoners of conscience held for expressing views critical of the authorities or for seeking to organize public protests.

The Libyan authorities have also engaged in a dialogue with the members of the LIFG, initiated and facilitated by Saif al-Islam al-Gaddafi and the GDF. The dialogue lasted for several years and culminated in the LIFG publicly renouncing violence in late 2009. The imprisoned leadership of the group<sup>31</sup> completed a review of the ideology of the LIFG in September 2009 under the title *Recantation Document: Corrective Studies in Understanding Jihad, Accountability and Judgement of People*. The document opposes the use of violence and condemns shedding "other Muslims' blood". In the context of this dialogue, in March 2009, the GDF announced that 136 individuals had been released in the previous two years. A further 45 members of the LIFG and 43 members of other "jihadist" groups were released subsequently, according to the GDF in October 2009.

In March 2010 more than 200 individuals were released, some of them victims of arbitrary detention. According to Saif al-Islam al-Gaddafi, those released included 34 member of the LIFG, 100 individuals suspected of involvement in fighting in Iraq and 80 individuals suspected of terrorism-related activities who had been cleared by the courts but not freed. During a press conference to mark these releases and the success of the dialogue between the authorities and the LIFG, Saif al-Islam al-Gaddafi announced that 409 individuals suspected of terrorism-related activities remain imprisoned, of whom 232 were expected to be released in the near future.<sup>32</sup>

## OTHER RECENT DEVELOPMENTS

In addition to the relative expansion of media outlets, the ability of the GDF to raise human rights issues previously considered taboo and the releases of victims of arbitrary detention, there have been a number of other positive developments in Libya in recent years. These include institutional changes such as the separation of the General People's Committee for Justice and Public Security into two separate entities in March 2004. In January 2005, the authorities abolished the People's Court, which had tried many political prisoners and prisoners of conscience using grossly unfair procedures.

A significant sign of change in the political arena is that the Secretary of the General People's Committee for Justice publicly criticized the lack of respect for the rule of law by security officials during the 2010 session of the General People's Congress held in Sirte. He also acknowledged that hundreds of individuals were detained arbitrarily.<sup>33</sup> While these public expressions of the need for reform did not cross the "red lines" – they did not for example criticize the principles of the al-Fateh Revolution or its leader – they represented a break with the previous absence of any criticism from within the ruling elite.

Some political commentators on Libya have identified a struggle between reformist elements, exemplified by Saif al-Islam al-Gaddafi, and reactionary forces resisting change. Others, more cynical, believe that the struggle has been fabricated to gain popularity for Saif al-Islam al-Gaddafi at home and legitimacy abroad. Saif al-Islam al-Gaddafi's announcement that he was retiring from politics in August 2008 added to confusion about his role, particularly as the announcement was followed by public protests in his support and a few months later by a visit to the USA where he met the-then US Secretary of State, Condoleezza Rice. Announcements in Libyan media in October 2009 suggested that the People's Leadership Committees had appointed Saif al-Islam al-Gaddafi as their General Coordinator following a call from Colonel Mu'ammarr al-Gaddafi to give him an official role to enable him to pursue his reforms.<sup>34</sup> Nonetheless, to date, in his public appearances Saif al-Islam al-Gaddafi has



continued to act in his capacity as head of the GDF. In addition, a number of reforms endorsed by Saif al-Islam al-Gaddafi, such as the adoption of a constitution, have stalled. In May 2009, the-then Chief of the High Court told Amnesty International delegates that a committee which he headed had been established to study proposals to adopt a constitution – a step that has not born fruit to date. Saif al-Islam al-Gaddafi most recently repeated his public calls on the need for a constitution in May 2010, arguing that “it is impossible to govern a country without a constitution and without essential laws”.<sup>35</sup>

## LIBYA'S ETHNIC MAKE-UP

Libya has a population of about six million Libyan nationals, plus a large but unknown number of foreign nationals mostly from Sub-Saharan Africa and neighbouring North African countries.<sup>36</sup>

The Libyan authorities argued in their submission to the Committee on the Elimination of Racial Discrimination in 2003 that all Libyans are of a “common racial origin, all profess Islam and speak Arabic”. The state report added that: “The fact that all Libyan citizens share a common origin, religion and language has undoubtedly been a determining factor in the absence of racial discrimination in the country”.<sup>37</sup> Groups based abroad, such as the Libyan Working Group; the Tabu Front for the Salvation of Libya; and the World Amazigh Congress disagree with this assessment and argue that the Libyan Nationality Code is inherently discriminatory in defining citizenship as “Arab”.<sup>38</sup> Such groups also complain that the Amazigh language and culture is not recognized and that obstacles prevent the Amazigh community from preserving their language and culture. For example, Law No. 24 of 1369 prohibits the usage of languages other than Arabic in publications; official documents; public spaces; and private enterprises. Additionally, Article 3 of Law No. 24 prohibits the use of “non-Arab, non-Muslim names” as determined by the General People’s Committee. The law provides no opportunity for parents to appeal against the decision of the General People’s Committee.

In recent years, Amnesty International has documented a series of discriminatory practices and policies against members of the Tabu community in Kufra.<sup>39</sup> They have included being refused the renewal or extension of their identification documents, driving licences and passports. Some Tabu parents were not able to register the birth of their children and were denied birth certificates. Amnesty International has also received reports that a number of Tabu children have been banned from attending schools in Kufra and its surrounding areas since 2008 and that a number of Tabu families were forcibly evicted between November 2009 and early April 2010.<sup>40</sup>

There are no reliable official statistics shedding light on the ethnic composition of Libya’s population. The Committee on the Elimination of Racial Discrimination called on the Libyan authorities in 1973 and 2004 to provide information on the ethnic composition of the population, but the Libyan authorities are not known to have taken any steps to do this.<sup>41</sup>

## LIBYA IN THE INTERNATIONAL LANDSCAPE

In 2003, Libya began to emerge from its isolation from the international community that followed the bombing of Pan Am Flight 103 over Lockerbie in Scotland, UK, in 1988 and the bombing of UTA Flight 772 over Niger in 1989.<sup>42</sup> A major turning point occurred after the Libyan authorities announced that they were dismantling their programmes for weapons of mass destruction.

In 2004, in his first official trip to Europe for 15 years, Colonel Mu'ammarr al-Gaddafi visited the European Commission in Belgium and negotiations were concluded with France and Germany over two bombings: the UTA Flight 772 and the *La Belle* nightclub in Berlin in 1986. Later that year, the EU announced the lifting of its embargo on sales of weapons to Libya in the context of enhanced cooperation against irregular migration. In the following years, diplomatic relations between Libya and the Western countries were gradually normalized.



Individuals rescued at sea and returned by Italian coastguard to Tripoli, 7 May 2009. Between 6 May and 3 September 2009, over 1,000 individuals, including refugees and asylum-seekers, were sent back to Libya by the Italian authorities. © AP Photo/Abdel Magid al Fergany

In 2006, the USA took steps to restore diplomatic relations and later removed Libya from a list of state sponsors of terrorism. In the first visit by a US Secretary of State to Libya in over 50 years, Condoleezza Rice went to Libya in September 2008. A claims settlement agreement between the two states was adopted in August 2008 to compensate families of victims of the Lockerbie bombing, among others. Even before the restoration of full diplomatic relations, the USA and Libya collaborated in counter-terrorism efforts.<sup>43</sup>

Libya's diplomatic relations with Western countries continued to improve, as exemplified by the visit of Colonel Mu'ammur Gaddafi to France to meet President Nicolas Sarkozy in December 2007. His visit followed the releases of six foreign medics who had been detained in Libya since 1999. They had been convicted of knowingly infecting hundreds of Libyan children with HIV in 1998, and had their death sentences commuted to life imprisonment in July 2007. A week later, the six medics were transferred to Bulgaria under a prisoner exchange agreement between the two countries.<sup>44</sup>

In November 2008, negotiations started with the EU over a Framework Agreement covering issues such as economic co-operation and migration policy. The negotiations had not concluded at the time of writing. According to statements by EU representatives, the next round of negotiations was scheduled for June 2010 with the view of signing the agreement by the end of 2010.<sup>45</sup> Individual members of the EU have also sought Libya's cooperation in preventing migrants from reaching European shores from Africa. During the visit of Italian Prime Minister Silvio Berlusconi to Libya in August 2008, Libya signed a Treaty of Friendship, Partnership and Cooperation with Italy addressing a range of issues, including bilateral efforts to combat "illegal migration". This treaty was preceded by two technical agreements on joint patrolling of the seas.<sup>46</sup>



Poster of Libyan leader Mu'ammur al-Gaddafi in Tripoli © Amnesty International

From February 2009 to late January 2010, Colonel Mu'ammur al-Gaddafi held the position of Chairperson of the African Union. In September 2009, the Libyan Ali Abdussalam Treki became president of the UN General Assembly, which Colonel Mu'ammur al-Gaddafi addressed for the first time the same month in New York.

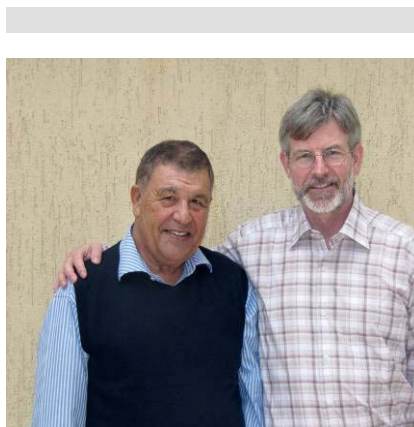
Libya's re-entry into the international arena has not been without controversy. The release on compassionate grounds in August 2009 of Abdelbaset Ali al-Megrahi, who was serving a life sentence for his alleged role in the Lockerbie bombing, led to protests from some victims, politicians and members of the general public in both the USA and the UK.

Diplomatic relations with Switzerland soured following the arrest of Hannibal al-Gaddafi, one of Colonel Mu'ammur al-Gaddafi's sons, and his wife on 15 July 2008 in Geneva. They were accused of abusing domestic staff. They were released on bail on 17 July 2008, the complaint against them was withdrawn and the Swiss authorities subsequently apologized for their arrest. In August 2009 the Swiss president, Hans-Rudolf Mertz, reached agreement with the Secretary of Libya's General People's Committee, Dr Al-Baghdadi Ali Al-Mahmoudi, paving the way to restore normal diplomatic ties. However, since then a stalemate has ensued.

Max Goeldi and Rachid Hamdani, two Swiss nationals who were in Libya at the time of Hannibal al-Gaddafi's arrest, were caught in the diplomatic dispute. They were arrested twice, first in July 2008 and then in September 2009. After the second arrest, they spent

more than 50 days in incommunicado detention. They faced two separate trials on charges of breaching immigration law and commercial regulations. While Rachid Hamdani was acquitted and allowed to leave Libya in February 2010, at the time of writing Max Goeldi was still serving a four-month sentence for breaching immigration law. Amnesty International adopted him as a prisoner of conscience because he was detained by virtue of his nationality following a politically-motivated conviction.<sup>47</sup>

The diplomatic fallout with Switzerland intensified in February 2010 when Colonel Mu'ammur al-Gaddafi publicly called on all Muslims to cut any ties with Switzerland and boycott its goods and when the Libyan authorities decided to withhold entry visas from all European citizens covered by the Schengen agreement – a move affecting 24 countries in addition to Switzerland. That move came following reports in the *Oea* newspaper that the Swiss government had banned 188 Libyan citizens, including Colonel Mu'ammur al-Gaddafi, from entering the country. Libya only lifted the ban after an EU statement issued during the Arab League Summit in Sirte on 27 March 2010 stated that the names of Libyans listed on the Schengen zone blacklist had been removed permanently and apologized for the inconvenience caused. This has been interpreted by some commentators as a reflection of the importance accorded to Libya's cooperation with members of the EU in trade, business, counter-terrorism efforts and the control of migration.



Rachid Hamdani and Max Goeldi © Private

## 2. FLAWS IN THE ADMINISTRATION OF JUSTICE

"They are *zanadiq* [heretics], Terrorists, almost all of them are part of al-Qa'ida... They partook in killings of police and civilians...even if courts sentenced them to five, 10, 15 years...that is one issue... But they cannot be released."

Colonel Mu'ammad al-Gaddafi, 28 January 2010, Sirte, Libya.

"There are no prisoners of conscience in Libya. There are terrorists... Terrorists do not have rights. These criminals cannot be considered prisoners of conscience."

Colonel Khaled al-Tuhami, Head of the Internal Security Agency, To an Amnesty International delegation on 18 May 2009.



Map of reform and rehabilitation institutions, which does not feature the notorious Abu Salim Prison. © Amnesty International

Hundreds of people are held arbitrarily in Libya. Some are detained without charge or trial, some after being convicted in grossly unfair trials. Others are held even though they have served their sentences or despite being cleared of all charges. In recent years, Amnesty International also documented cases of individuals detained because they exercised their right to freedom of expression and association, peacefully, and adopted them as prisoners of conscience.<sup>48</sup>

Such individuals are at the mercy of members of the security forces, who are not subject to independent oversight and who are not held accountable for human rights violations. Amnesty International has not been able to obtain any laws, decrees or procedures governing the security forces in Libya, in itself an indication of lack of transparency. Their remit, functioning and chain of command remain obscure. Of particular concern are the actions of the Internal Security Agency (ISA), an intelligence agency officially under the authority of the General People's Committee

for Public Security (equivalent to the Ministry of Interior). In practice members of the ISA appear to have unchecked powers to arrest, detain and interrogate individuals suspected of dissent or deemed to present a security threat. Members of the ISA hold such detainees incommunicado for prolonged periods in conditions that in some cases amount to enforced disappearance and that expose them to the risk of torture or other ill-treatment. Such detention is in breach of international law and even of the limited safeguards set out in Libya's Code of Criminal Procedure.

The ISA also controls Abu Salim Prison and Ain Zara Prison, infamous over the years for the arbitrary detention and abuse of thousands of people: individuals suspected of belonging to or supporting Islamist armed groups in Libya or abroad and those thought to be critical of the political system.

Despite the welcome abolition of the People's Court in January 2005, a parallel legal system to handle cases "against the state" continues to exist. Detainees charged with offences "against the state" can be tried before the State Security Court, created in 2007, whose procedures do not satisfy international standards for fair trial. The court is reported to have heard some cases within the confines of Abu Salim Prison, where up to 1,200 prisoners were killed in June 1996.<sup>49</sup>

Despite assertions that there are no prisoners of conscience in Libya and the use of counter-terrorism rhetoric to justify repression, Amnesty International has documented numerous cases of individuals who have been arbitrarily detained and otherwise harassed for peacefully expressing criticism of the political system or calling for reforms and democratization.

In recent years there have been some welcome developments. Hundreds of members of al-Jama'a al-Islamiya al-Muqatila (the Libyan Islamic Fighting Front, LIFG) and other groups, many of whom had been held arbitrarily for years, have been released. The releases were reportedly facilitated by the Gaddafi International Charity and Development Foundation (Gaddafi Development Foundation, GDF) headed by Saif al-Islam al-Gaddafi, son of the Libyan leader.<sup>50</sup> For several years, the GDF engaged in a dialogue with leaders of the LIFG, which contributed to the group publicly renouncing violence in 2009.<sup>51</sup> The latest releases took place in March 2010. According to Saif al-Islam al-Gaddafi, among those released were 80 individuals cleared by courts, 100 individuals accused of involvement in terrorism-related activities with armed groups in Iraq and 34 members of the LIFG, including several who had been returned from secret detention by the US authorities.<sup>52</sup> However, the Secretary of the General People's Committee for Justice (equivalent to the Minister of Justice), estimated that more than 300 individuals were arbitrarily detained by the ISA at the beginning of 2010. This means that more than 200 individuals were still detained arbitrarily according to official estimates after the release of 80 individuals cleared by courts in March 2010.<sup>53</sup> Real numbers are believed to be higher, given that this estimate does not include those detained after unfair trials or prisoners of conscience.

While at least 15 prisoners of conscience have been released in the past two years, others remained incarcerated in Libyan jails or died in the custody of the Libyan authorities. Furthermore, while the Secretary of the General People's Committee for Justice offered individuals who had suffered abuse at the hands of the security forces "national reconciliation" and the possibility of financial compensation, members of the ISA continue to

act with total impunity. No member of the ISA is known to have ever been charged or tried for committing human rights violations, including torture.<sup>54</sup> The Libyan authorities have an obligation under international law to provide victims of human rights violations with an effective remedy, which includes both justice and adequate reparation beyond financial compensation.<sup>55</sup>

The lives of hundreds of detainees and their families have been shattered by the Libyan authorities' crackdown on any perceived security threat or challenge to the political system. In recent years, Amnesty International has documented numerous human rights violations, including arbitrary arrest and detention; prolonged incommunicado detention in conditions amounting in some cases to enforced disappearance; torture or other ill-treatment; and unfair trials. Real changes to law, policy and practice are urgently needed in order to stop and prevent further violations.

## LEGAL FRAMEWORK FOR ARREST AND DETENTION

According to Article 13 of the Code of Criminal Procedure, all members of law enforcement agencies have the power to exercise the functions of the judicial police – they may arrest, detain and interrogate suspects. This includes members of the General People's Committee for Public Security, formally responsible for the ISA. Dr Abdul Rahman Abu Tuta, then Chief Justice of the High Court, confirmed to an Amnesty International delegation on 21 May 2009 that members of the ISA can exercise the powers of the judicial police.<sup>56</sup>

The Code of Criminal Procedure establishes the procedures that must be followed by law enforcement officers or others vested with similar powers. For instance, Article 26 sets the limit of 48 hours for law enforcement officers to refer suspects to the Department of Public Prosecutions. Individuals accused of certain offences, including those "against the state", can be remanded in custody for up to seven days before being transferred to the Department of Public Prosecutions. Article 26 further stipulates that the Department of Public Prosecutions must question the accused within 24 hours and then issue an order for release or detention.

The Code of Criminal Procedure includes some safeguards that apply to all suspects, including those accused of offences "against the state". These include the need for security officers to hold a warrant from the competent authority when arresting or detaining a suspect (Article 30); the requirement to detain suspects in "prisons designed for that purpose" (Article 31); and the right of detainees to challenge the legality of their detention (Article 33). In addition, Article 53 of Law No. 47 of 1975 on Prisons gives lawyers the right to visit their clients in custody. Law No. 20 of 1991 on the Promotion of Freedom also includes a number of principles intended to guarantee the protection of human rights in the administration of justice, including Article 14 which stipulates that: "No one can be deprived of his freedom, searched or questioned unless he has been charged with committing an act that is punishable by law, pursuant to an order issued by a competent court, and in accordance with the conditions and time limits specified by law". According to the same article: "Accused persons must be held in custody at a known location, which shall be disclosed to their relatives, for the shortest period of time required to conduct the investigation and secure evidence".

As a state party to the International Covenant on Civil and Political Rights (ICCPR), Libya is also under an obligation to prevent arbitrary arrest and detention; to respect the rights of

those arrested to be promptly informed of the charges against them; to bring them before the judicial authorities within a reasonable time; and to allow them to challenge the lawfulness of their detention (Article 9).

The rules governing “preventive” detention vary depending on whether a case is investigated by the Department of Public Prosecutions or an examining judge.<sup>57</sup> The Department of Public Prosecutions can exercise discretion in whether to refer cases to an examining judge, according to Article 187 Bis A of the Code of Criminal Procedure. It investigates offences “against the state” itself, including those prescribed in the First Chapter of the Second Book of the Penal Code.<sup>58</sup> The same article states that safeguards provided in the Code of Criminal Procedure, including the right not to be questioned without legal counsel unless caught in *flagrante delicto*, do not apply to such offences.

In cases of offences “against the state”, suspects can be held for 30 days without being brought to a court. The initial detention of the accused can reach 15 days from arrest or from the day the accused was handed to the Department of Public Prosecutions. After questioning the accused, the Department of Public Prosecutions can extend detention by another 15 days. Any further detention orders have to be approved by the courts upon request from the Department of Public Prosecutions. Such detention orders are valid for 45 days and can be extended as long as the investigation is ongoing. Before issuing these orders, the courts are supposed to listen to the arguments of the Department of Public Prosecutions and the accused. According to Article 187 Bis C, the president of the competent appeals court is to appoint a lawyer for individuals accused of crimes “against the state”. The article does not, however, clarify if the accused has a right to appoint a lawyer of his/her own choosing.

In cases based on offences “against the state” reviewed by the State Security Court rather than by regular criminal courts, detention is reportedly not subject to the procedures described above.<sup>59</sup> In such cases, suspects can be remanded in custody for up to seven days before being transferred to specialized prosecution authorities, who are obliged to interrogate the suspects within 14 days and issue an order for release or detention. The detention order is valid for 45 days, subject to extension by the prosecuting authorities for up to 90 days. Any further extensions, for 45-day periods, need to be approved by the competent court, until the end of the investigation.<sup>60</sup>

In its fourth periodic report submitted to the Human Rights Committee which reviewed the extent to which Libya upheld its obligations under the ICCPR in December 2006, the Libyan authorities failed to mention that procedures for detention of individuals suspected of offences “against the state” are not governed by the same safeguards as those for ordinary criminal offences. The report noted: “Since preventive detention is an issue of the utmost importance as far as human freedom is concerned, as it has the effect of restricting individual liberty and depriving an individual of the right to live his life as he wishes while in detention, under arrest or on remand, the Libyan legislature has established a specific time limit on preventive detention, which cannot be exceeded”.<sup>61</sup>

In 2007, in its Concluding Observations, the Human Rights Committee reiterated “its concern at reports about the excessive length of pre-trial detention. The Committee is also concerned by the persistent reports of substantial numbers of detainees being held *incommunicado*, especially in cases of concern to the state security bodies. The Committee is



furthermore concerned regarding reports about arbitrary arrests without judicial review and in violation of the provisions of the Covenant (arts. 9 and 14)". The Committee called on Libya to take steps to ensure that "remand in custody and pre-trial detention is not excessively long in law and in practice".<sup>62</sup>

## CRIMINALIZATION OF PEACEFUL ACTIVITIES

Repression of dissent remains the cornerstone of the Libyan political landscape. Despite an embryonic opening for critical voices in the past few years<sup>63</sup>, the rights to freedom of expression and association continue to be severely curtailed in Libyan law.

There are a number of limited guarantees of the right to freedom of expression in Libyan law. Article 13 of the Constitutional Declaration of 1969 states that: "freedom of opinion is guaranteed within the limits of public interest and the principles of the Revolution". The Great Green Charter of Human Rights of the Jamahiriyan Era, adopted in June 1988, refers to the right in Article 19: "It [Jamahiriyan society] guarantees each person the right of thought, creation and innovation".

Article 8 of Law No. 20 of 1991 on the Promotion of Freedom grants Libyan nationals the right to express "opinions and thoughts in the Peoples' Congresses and in the Jamahiriyan media", both of which are tightly controlled by the authorities. However, Article 8 goes on to confine this right if used in "violation of the people's authority or for personal motives. It is prohibited to secretly promote or spread thoughts or opinions or to force them upon others by means of allurements, coercion, terror or fraud". These vaguely worded restrictions effectively prevent any challenge from within the political system.

Challenging the system from outside official forums is also not tolerated. Libyan legislation prohibits the formation of any political parties and effectively prevents the establishment of independent civil society organizations. Any political group activity that opposes the principles of the al-Fateh Revolution, which brought Colonel Mu'ammar al-Gaddafi to power over 40 years ago, is criminalized. Even group activities that are not of a political nature are tightly controlled by the authorities. Law No. 19 of 1369 on the Re-organization of Civil Associations gives the authorities extensive power over the establishment, activities and dissolution of any association even of a charitable or social nature.

The Libyan Penal Code and other laws carry severe punishments, including the death penalty, for vaguely worded offences that do not meet the principle of legality for a criminal offence and include activities that amount to the peaceful exercise of the rights to freedom of expression and association.

## CRIMINALIZING FREEDOM OF EXPRESSION AND ASSOCIATION

**The legal provisions that criminalize the exercise of the rights to freedom of expression and freedom of association include:**

**Law No. 71 of 1972 on the Criminalization of Parties** bans any form of group activity based on a political ideology opposed to the principles of al-Fateh Revolution of 1 September 1969. Article 3 of Law No. 71 provides

for the death penalty for forming, joining or supporting groups prohibited by law.

**First Chapter of the Second Book of the Penal Code [Law No. 48 of 1956 which modifies a number of provisions of the Penal Code issued on 23 September 1956,]:**

**Article 206** provides the death penalty for those who call “for the establishment of any grouping, organization or association proscribed by law” or who belong to or support such an organization.

**Article 208** bans forming or joining an international association and states that “The punishment is imprisonment for whoever sets up, establishes, organizes or directs international non-political organizations, associations or bodies, or a branch thereof, without government authorization, or where such authorization is based on false or insufficient information”.

**Article 195** prescribes imprisonment for any individual who shows contempt to the Leader of the Revolution or any judicial authorities or armed forces or who publicly offends the Libyan people or the state’s flag or anthem.

**Article 178** prescribes life imprisonment for any Libyan who disseminates information abroad considered to “tarnish [the country’s] reputation or undermine confidence in it abroad”.

**Article 207** states that “The punishment is execution for whoever spreads within the country, by whatever means, theories or principles aiming to change the basic principles of the Constitution or the fundamental structures of the social system or to overthrow the state’s political, social or economic structures or destroy any of the fundamental structures of the social system using violence, terrorism or any other unlawful means”.

**Decree of the Revolutionary Command Council on the Protection of the Revolution:**

**Article 2** prescribes imprisonment for any individual who commits an enemy act against the system established by the al-Fateh Revolution of September 1969. Enemy acts include: promoting “propaganda” against the people’s revolutionary rule; spreading rumours about the political or economic system of the country, demonstrating or striking with the intention of hurting the people’s revolutionary system.

The continuing existence of such provisions, even those that seem to no longer be applied in practice, perpetuates a climate of fear in which dissent will not be tolerated and will be punished with the harshest of penalties.

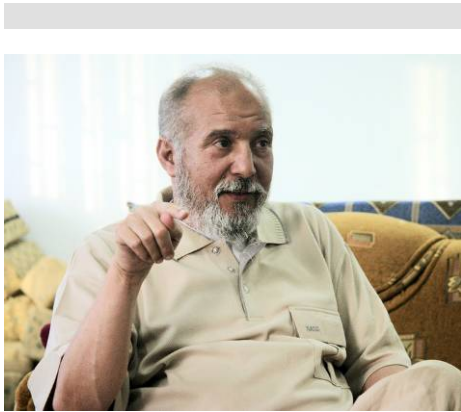
Several Libyan officials, including the Secretary of the General People’s Committee for Justice and the then Chief Justice of the High Court, told Amnesty International delegates during their visit to Libya in May 2009 that a new Penal Code was being drafted. They said that the new Penal Code would limit the scope of the death penalty, including by removing the death penalty as a punishment for non-violent offences “against the state”.<sup>64</sup> However, Amnesty International’s request for a copy of the latest draft of the Penal Code was not granted.

On numerous occasions, Amnesty International has urged the Libyan authorities to amend or repeal national legislation that breaches Libya’s obligations under the ICCPR to uphold freedom of expression and association. In 2007, the Human Rights Committee expressed its concerns that freedom of expression was severely limited in Libya in law and practice, that

Libyan law allowed for the imposition of the death penalty for group activities based on an ideology opposing the principles of the al-Fateh Revolution, and at the obstacles within Libyan law preventing the formation of independent associations. The Committee had already expressed similar concerns in 1998 and urged the Libyan authorities "to undertake a truly critical analysis" of restrictions on freedom of expression and association in Libyan law that are not in conformity with the ICCPR. To date, the Libyan authorities have failed to implement these recommendations.

## PRISONERS OF CONSCIENCE

Despite repeated statements by the Libyan authorities that there are no prisoners of conscience in Libya, in recent years Amnesty International has documented several cases of individuals detained solely for daring to criticize the political system or seeking to organize peaceful public protests. Such individuals have been convicted of vaguely worded offences such as "attempting to overthrow the political system" or "spreading false rumours about the Libyan regime".



Fathi el-Jahmi © Fred Abrahams/Human Rights Watch

The plight of prisoners of conscience in Libya came to light through the detention and tragic death of Libya's most prominent critic of the political system, **Fathi el-Jahmi**<sup>65</sup>, in May 2009. Amnesty International first adopted Fathi el-Jahmi as a prisoner of conscience in 2002, when he was detained for 17 months after calling for legal and political reform at a session of the Basic People's Congress on 19 October 2002.<sup>66</sup> On 10 March 2004 his case was heard before the People's Court of Appeal, whose proceedings grossly violated international fair trial standards, and he received a suspended sentence of one year's imprisonment. He was released on 12 March 2004. Some two weeks later, on 26 March

2004, he was rearrested after having repeated his calls for political reform in media interviews. In those media interviews, he crossed the most unbending line in Libya by directly criticizing the Libyan leader Colonel Mu'ammar al-Gaddafi.

There was no official information about Fathi el-Jahmi's whereabouts and legal status until 26 July 2006 when Amnesty International received a letter from the Libyan authorities in response to the organization's 2006 *Amnesty International Report* entry on Libya.<sup>67</sup> The authorities claimed that Fathi el-Jahmi had access to a lawyer and that he was being tried on charges of "exchanging information with employees of a foreign state causing harm to the interests of the country and providing them with information with the aim of their states attacking the Great Jamahiriya" and "scheming with a foreign state in peacetime". However, they did not disclose where he was being detained. According to a 2 February 2008 statement released by the GDF, in September 2006 a court had found Fathi El-Jahmi to be mentally unfit and consigned him to a psychiatric hospital. He remained there until July 2007, when he was moved to the Tripoli Medical Centre. Medical experts engaged by the independent human rights organization, Physicians for Human Rights (PHR), who had access

to Fathi el-Jahmi in March 2008, raised serious questions about the soundness of the medical reasons used to confine him. The medical examination found no indication that he was suffering from “delusional speech” or “thought disorder”, contrary to the reported finding of the court in 2006.

According to an independent medical examination in February 2005 by PHR and the International Federation of Health and Human Rights Organizations, Fathi el-Jahmi had been receiving only “sporadic and inadequate medical treatment”, despite suffering from “life threatening and difficult to control” conditions. The next independent examination, which was conducted by PHR on 13 March 2008, confirmed that Fathi el-Jahmi was suffering from heart disease, high blood pressure and diabetes, and determined that he was at risk of a heart attack and was in need of a cardiac catheterization and of a biopsy to determine whether he had prostate cancer.

Amnesty International grew increasingly concerned for Fathi el-Jahmi, in light of reports that his health was deteriorating. He was held mostly in solitary confinement, denied regular visits by his family and not guaranteed consistent medical care throughout his incarceration. Amnesty International repeatedly brought its concerns regarding Fathi el-Jahmi’s health to the attention of the Libyan authorities and urged that he be released immediately and unconditionally.

Instead, the Libyan authorities held him in Tripoli Medical Centre from July 2007 until he was transferred to Amman, Jordan in early May 2009 amid reports that his health had seriously deteriorated in the months preceding the transfer. In Jordan, he reportedly underwent gall-bladder surgery but did not regain consciousness and he died at the Arab Medical Centre in Amman. On 21 May 2009, his body was flown to Tripoli and then to Benghazi for burial.

The Amnesty International delegation visiting Libya in May 2009 repeatedly asked for information from the Libyan authorities and the GDF about the circumstances leading to the deterioration of Fathi el-Jahmi’s health and his transfer to Jordan, and about his legal status at the time of his transfer. However, the information the delegates were given was contradictory and incomplete. A response regarding Fathi el-Jahmi’s legal status came nearly a year later, in March 2010, in a letter from the Department of Public Prosecutions. The letter states that Fathi el-Jahmi was released on health grounds by Decision 44 of 2009 of the Medical Release Committee in accordance with Law No. 5 of 1373 on Reform and Rehabilitation Institutions on 5 May 2009, the day he was flown to Jordan. This response serves to confirm that despite assertions by the Libyan authorities that Fathi el-Jahmi was not confined to the Tripoli Medical Centre, he remained held in the custody of the Libyan authorities until he became comatose and was transferred to Jordan on 5 May 2009.

The letter from the Department of the Public Prosecutions also states that Fathi al-Jahmi was flown to Jordan based on the wishes of his family. However, his release on medical grounds and transfer to Jordan for treatment came too late, prompting fears that the Libyan authorities only decided to release Fathi el-Jahmi when his condition became terminal.

Following Fathi el-Jahmi’s untimely death, Amnesty International wrote to Libyan leader Colonel Mu’ammar al-Gaddafi expressing fears that Fathi el-Jahmi’s incarceration and

reportedly sporadic and inadequate health treatment were among the main factors leading to the deterioration of his health and, possibly, his death. The organization also called on the Libyan leader to ensure a full, independent and impartial investigation into the circumstances leading up to the deterioration of Fathi el-Jahmi's health and untimely death. Amnesty International requested that the results of the investigation are made available, at the very least, to the family of Fathi el-Jahmi, who should be provided with an effective remedy, including access to truth, justice and reparation for the harm suffered. In response, Amnesty International received a letter from the Department of the Public Prosecutions in March 2010 which stated that Fathi el-Jahmi died of natural causes on 25 May 2009 and that his body was flown to Tripoli on 26 May. These dates differ from publicly available information that Fathi el-Jahmi died earlier and that his body was flown to Tripoli on 21 May. Furthermore, the letter did not specify the exact cause of death, saying only that Fathi el-Jahmi suffered from "diabetes, high blood pressure, and heart disease". The letter categorically denied any wrongdoing by the Libyan authorities, arguing that during Fathi el-Jahmi's "stay" in the Tripoli Medical Centre he received adequate medical treatment and regular family visits and that "the period of his imprisonment" was legitimate because of the court case against him. Amnesty International's request to receive a copy of the autopsy report was not granted.

Fathi el-Jahmi's fate for daring to criticize the Libyan leader and call for democratization serves as a warning to all those wishing to peacefully urge reform.



Jamal el-Haji © Private

In another recent emblematic case of political repression, **Idriss Boufayed, Jamal el-Haji** and 12 others were arrested in February 2007 in connection with a planned peaceful protest to commemorate the killings of at least 12 people in Benghazi a year earlier.<sup>68</sup> They were all released by March 2009. Idriss Boufayed, who was diagnosed with cancer, was allowed to leave for medical treatment in Switzerland, where he had lived for over 15 years until his return to Libya in September 2006. Jamal el-Haji, who also has Danish citizenship, was reportedly denied permission to travel by the ISA after his release in March 2009. Undeterred by this restriction on his freedom of movement and his unlawful imprisonment for over two years for attempting to organize a peaceful protest, Jamal el-Haji criticized Libya's political system in an interview to BBC World around the 40<sup>th</sup> anniversary of the al-Fateh Revolution.

Jamal el-Haji, married and father of one, was rearrested on 9 December 2009 and accused of "contempt of judicial authorities" (Article 195 of the Penal Code) after complaining to the Secretary of the General People's Committee for Justice that he had been ill-treated during a two-year period of detention between February 2007 and March 2009 and that he was denied the right to travel after his release. In his complaint, reportedly sent in May 2009, Jamal el-Haji recounted the human rights violations he suffered while he was detained. He described his unlawful arrest by members of the Libyan security forces; the ill-treatment he endured in detention, including being held in insanitary conditions and being denied necessary medical treatment for asthma; the denial of his right to receive regular visits from

his family and to consult his lawyer; and breaches of his right to a fair trial. He also criticized shortcomings in the administration of justice as well as the Libyan authorities' failure to uphold their international human rights obligations. He requested the intervention of the Secretary of the General People's Committee for Justice to ensure that he and his family receive adequate reparation for the harm suffered.

Jamal el-Haji received a summons from the State Security Prosecution Office on 5 November 2009. He was questioned about his complaint and then released. No charges were brought against him or further action taken at that stage. However, on 8 December 2009, officials from the State Security Prosecution Office telephoned Jamal el-Haji at his home in Tripoli, summoning him to the Office at 9am the next day. He went there as instructed, and he was later transferred to Jdeida Prison in Tripoli, where he remained held until his acquittal by the State Security Court on 14 April 2010.

On 11 December 2009, *Libya al Youm*, an online news outlet based abroad but with correspondents in Libya, reproduced a memorandum from the Department of the Public Prosecutions in relation to Jamal el-Haji's detention. The memorandum claimed that Jamal el-Haji's complaints about his treatment in prison from 2007 to 2009 were ill-founded. The memorandum noted that an investigation into the complaint by the Department of Public Prosecutions included a visit to Ain Zara Prison in Tripoli, where Jamal el-Haji was detained, study of his medical records, and interviews with Ain Zara's prison director and a former inmate. The memorandum stated that the investigation had concluded that there was no evidence to support Jamal el-Haji's allegations. The move to prosecute Jamal el-Haji for complaining about his ill-treatment, instead of conducting a proper investigation into his complaint, sends a chilling message that those who complain about human rights violations might face reprisals.

In March 2010, the Libyan authorities released **Abdelnasser al-Rabassi**, who had been detained unlawfully for over seven years. Amnesty International delegates interviewed Abdelnasser al-Rabbassi on 19 May 2009 in Abu Salim Prison, where he was serving a 15-year prison term for undermining the prestige of the Leader of the Revolution, undermining state security and contacting a foreign agency. These charges related to an email he sent to the *Arab Times* newspaper, based in the USA, deemed critical of the Libyan leader. Abdelnasser al-Rabassi told Amnesty International delegates that Libyan law enforcement officials searched his house when they made the arrest in January 2003 and found some of his writings that dealt with corruption and freedom of expression in Libya. During the search, they uncovered his draft of a book under the title "*Chaos Chaos, Corruption Corruption: The suicide of thought in Libya among other values*". He was sentenced later in 2003 by the People's Court to 15 years' imprisonment. The Court used the email he sent to the *Arab Times* as evidence to convict him.

Following a submission by the Geneva-based organization Al-Karama for Human Rights, the UN Working Group on Arbitrary Detention found that the Libyan authorities had violated Abdelnasser al-Rabbassi's rights to freedom of expression and fair trial. In Opinion 27/2005, the Working Group argued: "It is the position of the Working Group that freedom of expression protects not only opinions and ideas that are favourably received or regarded as inoffensive, or as a matter of indifference, but also those that may offend actors in public life and politicians, including political leaders. The peaceful expression of one's opinion,

including through e-mail, if it is not carried out violently, and does not constitute incitement to national, racial or religious hatred or violence, is within the boundaries of freedom of expression".<sup>69</sup>

The call of the Working Group to the Libyan authorities to remedy the situation was heeded on 8 March 2010 when the Libyan authorities released Abdelnasser al-Rabbassi following an international campaign in his favour and the reported intervention of the GDF. Abdelnasser al-Rabbassi, who is expected to receive financial compensation from the General People's Committee for Justice, is entitled to adequate reparation for his unlawful seven-year detention.

On numerous occasions, Amnesty International called on the Libyan authorities to uphold their international obligations under the ICCPR by respecting freedom of expression, association and assembly in law and practice.<sup>70</sup>

## HUMAN RIGHTS VIOLATIONS IN PRACTICE – SAFEGUARDS ROUTINELY DISREGARDED

### PROLONGED INCOMMUNICADO DETENTION

Even the limited safeguards provided for in Libyan law are routinely flouted by members of the ISA from the moment of arrest, particularly in cases involving alleged offences "against the state". Most arrests are made without warrants. After arrest, individuals find themselves completely outside the protection of the law and cut off from the outside world for long periods. Some are held for prolonged periods without charge or trial. Those who are eventually charged and tried are brought to courts after long periods of incommunicado detention in the custody of the ISA, which renders them vulnerable to torture or other ill-treatment. They are frequently not aware of the charges brought against them before they are brought to court, where they see their court-appointed lawyers for the first time in flagrant violation of their right to an adequate defence.

Regular places of detention fall under the authority of the Directorate of Judicial Police, itself under the control of the General People's Committee for Justice. However, the ISA controls Abu Salim and Ain Zara prisons, as well as a number of unrecognized detention facilities.<sup>71</sup> Brigadier Belkacem Abdesalam Gargoum, Director General of the Judicial Police, confirmed that his institution, which is responsible for the oversight of reform and rehabilitation facilities, has no control over Abu Salim and Ain Zara prisons. He said "If they [ISA] have their prisons and their detention centres, that is their work. We [the judicial police] have nothing to do with it". Ain Zara and Abu Salim prisons are also apparently not visited by the Department of Public Prosecutions, even though Article 32 of the Code of Criminal Procedure gives representatives of the Department of Public Prosecutions the right to visit prisons to ensure that no individuals are detained unlawfully. They have the authority to study prison registries and listen to complaints from detainees. Amnesty International asked representatives of the Department of Public Prosecutions in Tripoli on 21 May 2009 whether they ever visited Abu Salim and Ain Zara prisons. The delegates were not given an affirmative answer but told that "nothing prevents" the Department of Public Prosecutions from doing so. During a meeting with the Bar Association in Tripoli, lawyers confirmed to Amnesty International that no member of the Department of Public Prosecutions visits these prisons

unless authorized by the security forces. When asked whether lawyers can visit clients in these prisons, one joked: "Yes, they [lawyers] can go in; but they can't go out". This situation leaves individuals in the custody of the ISA completely outside the protection of the law.

**Khalifa el-Shibli** was arrested and taken from his home in Benghazi on 17 July 2007 by men believed to be members of the ISA. Amnesty International delegates were able to interview Khalifa el-Shibli in May 2009, during his detention in Ain Zara Prison. He was released on 5 December 2009. For the entire two and a half years that he was detained, Khalifa el-Shibli, who is HIV positive, did not see his family. He did not see a lawyer either until his first hearing at the State Security Court on 19 November 2008. He never communicated with the court-appointed lawyer outside the court room, and had no idea of the exact charges facing him –



Entrance to Ain Zara Prison, Tripoli. © Amnesty International

although he knew that he was accused of belonging to an armed Islamist group, reportedly the Organization of al-Qai'da in the Islamic Maghreb. He was cleared of all charges by the Court on 5 August 2009 but was not released for another four months.

Khalifa el-Shibli's suffering did not end with his release. The Ain Zara Prison administration refused to return his identity card and medical records to him. In late January 2010, Khalifa el-Shibli sought the intervention of the Human Rights Society of the GDF to obtain his medical records and help him receive adequate medical treatment. However, at the time of writing, his medical records had not been returned to him and he did not have access to medically supervised anti-retroviral and related treatment. The withholding of his medical file and the confiscation of his identity card – needed to access medical services in Libya – impeded Khalifa el-Shibli's right to enjoy the highest attainable standard of physical and mental health as enshrined in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Libya is a state party. The lack of an identity card also causes Khalifa el-Shibli a number of other practical problems. He cannot obtain a driving licence to enable him to move freely. He also expressed his wish to marry, but would be unable to officially register a marriage in the absence of an identity card, undermining his right to a family life as enshrined in Article 23 of the ICCPR. Amnesty International wrote to the Libyan authorities calling on them to ensure that Khalifa el-Shibli receives all the medical treatment he needs and that he is granted an identity card. The organization received no response. Khalifa el-Shibli should receive adequate reparation for the time he spent in arbitrary detention.

**Umran el-Sweihdi**, another detainee who was held in Ain Zara Prison, did not see his family from his arrest on 27 May 2007 until his release in late March 2010. Umran el-Sweihdi was reportedly arrested in Misratah Street in Benghazi, inside the computer shop which he owned, allegedly by members of the ISA who did not present an arrest warrant. The shop was reportedly searched and many items were removed. In early February 2008, Amnesty



International wrote to the Libyan Secretary of the General People's Committee for Justice to inquire about the whereabouts and the legal status of Umran el-Sweihdi. The organization did not receive a response, but was able to confirm during its visit to Libya in May 2009 that Umran el-Sweihdi was detained in Ain Zara Prison. His parents were not officially informed by the Libyan authorities of the arrest and detention of their son and were not able to see him in detention. Umran el-Sweihdi was also cleared of all charges on 5 August 2009, possibly in the same case as Khalifa el-Shibli, but was not released until late March 2010 along with over 200 other detainees. Umran el-Sweihdi's parents also do not know the whereabouts of their other son, Issa el-Sweihdi, who went to Iraq in May 2005. He is believed to have been captured by American forces in Iraq in early 2006 and handed to the Libyan authorities. All Issa's parents want is a confirmation of whether he is detained in Libya and to be allowed to see him if that is the case.

#### TORTURE OR OTHER ILL-TREATMENT

Given that many of those arrested and detained by ISA are completely cut off from the outside world, there is little available detailed information about their treatment during interrogation and detention. Those who eventually re-establish links with the outside world, either once family visits are permitted or after release, are frequently reluctant to report torture or other ill-treatment, particularly to international organizations,<sup>72</sup> for fear of reprisals.

Despite this climate of fear, Amnesty International continues to receive reports that torture or other ill-treatment take place in Libya in a climate of virtually total impunity. Chapter 3 and Chapter 5 of this report document several cases of torture or other ill-treatment at the hands of Libyan law enforcement officials. Those carrying out the abuses include police officers and detention centre guards. The victims include prisoners under sentence of death, refugees, asylum-seekers and migrants.

In recent years, the most frequently reported methods have been: beatings; beatings on the soles of the feet (*falaqa*); the use of electric shocks; being suspended by the arms; and the deliberate denial of medical treatment.

The main purposes of torture seem to be the extraction of information or "confessions"; and/or punishment for committing offences "against the state".

Members of the ISA hold those suspected of criticizing the political system or deemed to pose a security threat in prolonged incommunicado detention in Ain Zara and Abu Salim prisons, as well as a number of unrecognized places of detention. This practice of prolonged incommunicado detention places detainees in an environment conducive to torture or other ill-treatment. In its Concluding Observations on Libya, the UN Committee against Torture expressed concern that, "Prolonged incommunicado detention, in spite of the legal provisions regulating it, still seems to create conditions that may lead to violation of the Convention [Convention against Torture]".<sup>73</sup>

The UN Human Rights Council recognized in Resolution 8/8 of June 2008 that: "Prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment". This is particularly relevant in Libya, where prolonged incommunicado detention can itself constitute torture or other ill-treatment in some cases.

Detainees who are deemed to pose a security threat or to be critical of the political system are held incommunicado for prolonged periods, seemingly to punish them for offences “against the state” or to extract information from them. The lack of contact with their families for months and sometimes years causes great distress and suffering to the detainees and their families. It is also feared that detainees are prevented from contacting their families in order to limit the information reaching the outside world about violations in detention. The absence of visits by the Department of Public Prosecutions or any other oversight mechanism signifies that detainees have no possibility to raise complaints about their treatment and are left entirely at the mercy of the ISA.

The Human Rights Committee found the Libyan authorities responsible for torturing or otherwise ill-treating Ibrahim Mohammed El Alwani by holding him incommunicado for 11 months – between his arrest in July 1995 and the Abu Salim Prison killings of 1996.<sup>74</sup> Amnesty International has documented cases where detainees deemed to pose a security threat were held incommunicado for longer periods, in some cases reaching up to seven years.

Members of the ISA detained Sudanese-born **Jalal al-Din 'Uthman Bashir** incommunicado for several years and reportedly tortured him. Jalal al-Din 'Uthman Bashir was arrested on 25 September 1995 from the street in Benghazi by individuals believed to have been members of the ISA, reportedly in connection with violent clashes in 1995 between armed Islamist groups and the Libyan security forces. His family had no news of his whereabouts until 1999 when he was able to let them know that he was in Abu Salim Prison. His family was reportedly permitted to visit him for the first time in 2002, seven years after his arrest, about once every two months. Visits were discontinued for about a year between mid-2007 and mid-2008 without any explanation, but allowed to resume subsequently. Amnesty International delegates interviewed Jalal al-Din Uthman Bashir during their visit to Libya in February 2004. He told Amnesty International delegates that he was beaten, subjected to electric shocks, and had freezing water poured on him, and was then forced to sit in front of an air conditioning unit in order to make him “confess”. He said that, as a result of the torture, he was transferred to hospital on 7 October 1995 where he stayed for nearly three weeks. In 2002, Jalal was reportedly diagnosed as having Hepatitis C, possibly as a result of the blood transfusion he had in the hospital. In February 2004, Jalal al-Din 'Uthman Bashir explained that he was brought before a prosecutor for the first time in August 2002 and that his trial before the People's Court began in mid-January 2003. He was sentenced on 13 October 2003 to life imprisonment in connection with his alleged support of the LIFG. He denied the accusations against him. His case was reviewed by a court in 2006, after the abolition of the People's Court in 2005, and he was sentenced to 10 years' imprisonment. He remains incarcerated despite the fact that he has already spent well over 10 years behind bars. Amnesty International delegates were not allowed to interview him during their visit to Abu Salim Prison in May 2009 despite repeated requests, although his family was allowed to visit him that month.

Members of the ISA are reported to have subjected **Abdelsalam el-Khweildy** to beatings and other ill-treatment during his incommunicado detention. Abdelsalam el-Khweildy, married with five children, from Benghazi, was first arrested in April 1998. He was held in incommunicado detention for nine months, during which he is reported to have been subjected to torture or other ill-treatment, at an unrecognized place of detention. He was

then transferred to Abu Salim Prison in Tripoli where he was detained until May 2003, when he was released without charge or trial. He was rearrested in October 2004, transferred to Abu Salim Prison and reportedly convicted by a special court in August 2006. He did not have access to a lawyer outside the courtroom. His family has not been able to access the court's ruling, but initially believed that he was sentenced to two years' imprisonment. After the court ruling, Abdelsalam el-Khweildy's family was not allowed to visit him until April 2008.

Abdelsalam el-Khweildy remains incarcerated in Abu Salim Prison. He receives visits from his family once every two months. It is feared that the whole family has been punished because some family members were suspected of involvement in terrorism-related activities, and because they helped Khaled el-Khweildy, Abdelsalam brother, escape from Libya in 1996. In April 1998, shortly after the killing of Abdelsalam el-Khweildy's brother Jumaa by unidentified assailants, individuals thought to be from the ISA came to the family home and arrested the father Omar el-Khweildy and all the male children, including minors. They were reportedly released with the exception of Abdelsalam el-Khweildy, who confessed that he was acting alone in helping his brother Khaled escape Libya. The family reportedly faced other harassment after Khaled's escape. On 1 September 1996, law enforcement officials in civilian and military dress entered and searched the family home in Ard al-Hirasa, Sliman Al Sharqi area of Benghazi. They did not make any arrests at the time but reportedly confiscated two family cars, money and jewellery. Shortly after the incident, the family complained to the Department of Public Prosecutions in Benghazi about the unlawful confiscation of their belongings, but was informed that members of the ISA denied taking such goods.

According to the Libyan Penal Code, torture is considered a crime. Article 435 stipulates that "Any public official who orders the torture of the accused or tortures them himself is punished by a prison term of three to 10 years". However, Libyan legislation does not define the crime of torture or make explicit that it is absolutely prohibited under all circumstances.

When Amnesty International asked Libyan officials for statistics or details of the number of Libyan law enforcement officials convicted of torturing or otherwise ill-treating detainees, it received no clear answer. During a meeting with representatives of the Department of Public Prosecutions in Tripoli on 21 May 2009, Mohamed El-Mukhtarash, acting Public Prosecutor, told Amnesty International that the Department of Public Prosecutions receives very few complaints from detainees regarding torture or ill-treatment. Brigadier Belkacem Abdesalam Gargoum, Director General of the Judicial Police, told Amnesty International delegates on 18 May 2009 that he was aware of very few cases of torture, but that some officers of the judicial police had received "administrative punishments" or had been dismissed. He explained that in principle, whenever torture allegations are received, an administrative inquiry is conducted and the case is referred to a disciplinary council or the Department of Public Prosecutions. On the other hand, the Human Rights Society within the GDF stated in its latest Annual Report that it had received numerous complaints of torture or other ill-treatment in detention in the course of 2009. The report noted a rise in reported cases of torture and stressed that torture is facilitated by the "immunities provided in some laws related to those working in some agencies" without providing further details.<sup>75</sup> Amnesty International suspects that this statement referred to members of security agencies whose functioning, operations and chain of command remain opaque and not publicly known.

Libya is a state party to the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). In spite of their international obligations, the Libyan authorities have failed to amend domestic legislation to define torture in line with international law and to explicitly introduce an absolute prohibition of torture. The Libyan authorities are also failing to uphold their obligations to investigate all allegations of torture or other ill-treatment; bring those responsible to justice in proceedings meeting international standards of fair trial; and provide victims with reparation. The Libyan authorities are also required to take concrete measures to prevent the occurrence of torture, including by granting oversight of prisons and other detention facilities to independent bodies. Instead, the Libyan authorities seem to be resisting international scrutiny and, despite repeated requests, have yet to extend an invitation to the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

#### PARALLEL JUDICIAL SYSTEM AND UNFAIR TRIALS

Amnesty International welcomed the abolition of the People's Court and the Popular Prosecution Office in January 2005. The organization had been calling for the overhauling of the People's Court – which had convicted many political suspects after grossly unfair trials in previous years and which lacked the minimum standards for fair trial.<sup>76</sup> Hopes that with its abolition, fair trial guarantees would be respected in political cases were quickly dashed with the consolidation of another court system functioning side by side with the ordinary criminal justice system.

Law No. 7 of 1373, which abolished the People's Court and the Popular Prosecution Office, opened the door for transferring their mandate and competencies to "competent or specialized courts and prosecutions" (Article 2). Since the abolition of the People's Court in January 2005, new legislation on special and specialized courts has been passed, consolidating a new parallel judicial system for political suspects.

One example is Decree No. 6 of 1374 on the Judicial System, issued by the General People's Congress (Libya's equivalent of a national parliament). The decree allows for the creation of specialized courts in Article 19: "By decision of the [Supreme] Council [of Judicial Bodies], based on a submission from its President, appeal courts, first instance courts and summary courts specialized in particular types of cases may be established. The decision shall stipulate their locations, their areas of jurisdiction and the types of cases in which they shall be specialized".<sup>77</sup>

Following Decree No. 6 of 1374, the Supreme Council for Judicial Bodies issued Decree No. 27 of 1375 on the Establishment of the State Security Court and Prosecution Office on 19 August 2007.

According to the decree, the State Security Court specializes in cases based on offences stipulated in the First Chapter of the Second Book of the Penal Code (offences against the state); offences falling within Law No. 71 of 1972 on the Criminalization of Parties; offences stipulated in the Decree of the Revolutionary Command Council on the Protection of the Revolution, issued on 11 December 1969, and connected offences. Offences under these provisions include activities that amount to the peaceful exercise of the rights to freedom of expression, assembly and association and carry heavy punishments, the severest of which is the death penalty. Amnesty International has documented cases where vaguely worded

offences have been used to silence or punish those deemed to oppose or to be critical of the political system.

There is very little publicly available information regarding the laws and procedures governing the State Security Court. It is feared that proceedings in front of the State Security Court are governed by the same laws and procedures as the former People's Court. Such fears were confirmed by the Human Rights Society within the GDF which in its 2009 Annual Report argued that the abolition of the People's Court was merely cosmetic. The Human Rights Society called on the relevant authorities to abolish the State Security Court and "the laws, rulings, and powers found in the law of the People's Court and the Popular Prosecution Office and to return to an ordinary judge [judicial system] which upholds real safeguards".<sup>78</sup> Even after the abolition of the People's Court, the Libyan authorities routinely flout their obligations under the ICCPR to guarantee fair trials. For instance, evidence extracted under torture continues to be used to convict individuals in politically sensitive cases.

Within the system of the People's Court, the Popular Prosecution Office had extensive powers, operating as both an examining judge and a prosecutor, as well as having the prerogatives of an arraignment chamber.<sup>79</sup> In practice this meant that the Popular Prosecution Office was the body conducting the investigation, as well as deciding on the length of pre-trial detention, contrary to international standards. The minimum guarantees of fair trial in proceedings in front of the People's Court were not respected, including the right to be tried within a reasonable time; the right to be informed of the charges; the right to adequate defence; the right to defence of one's own choosing; and the right of appeal in front of an independent higher tribunal.<sup>80</sup> In addition, "confessions" extracted under torture or duress were used as evidence to convict defendants. Amnesty International fears that the State Security Court and Prosecution Office have inherited and are perpetuating these policies and practices.

Libya is under the obligation to uphold fair trial guarantees in all trial proceedings, including those in front of special or specialized courts.<sup>81</sup> Amnesty International has documented a number of violations of the right to fair trial in cases against individuals deemed to be critical of the political system or deemed to pose a security threat since the abolition of the People's Court, including in cases before the State Security Court.

For instance, **Idriss Boufayed, Jamal el-Haji** and nine others were sentenced to heavy prison terms by the State Security Court in proceedings that fell short of international standards for fair trial. Another defendant was acquitted of all charges. Idriss Boufayed and 10 others received heavy prison sentences of up to 25 years for seeking to organize a peaceful protest in commemoration of the one-year anniversary of the killing of at least 12 people during a demonstration in Benghazi in February 2006. The men were arrested in February 2007 following the publication of a statement on the internet calling for public participation in the planned demonstration. At least two of the men reported that they were tortured during interrogations. On 10 June 2008, the 11 men were convicted by the State Security



Idriss Boufayed © NCLC

Court of vaguely worded offences such as “attempting to overthrow the political system”, “spreading false rumours about the Libyan regime” and “communicating with enemy powers”. The accused did not have the right to a lawyer of their own choosing, with the exception of Jamal el-Haji, who was able to appoint a private lawyer.<sup>82</sup> The accused did not have access to the lawyers appointed to represent them outside the courtroom, in breach of their rights to prepare and present a defence. They were released between October 2008 and March 2009. However, Jamal el-Haji was rearrested 10 months later for complaining about his treatment during detention, including the authorities’ refusal to allow him to see his lawyer while in detention.<sup>83</sup>

In another case involving offences “against the state”, the State Security Court reportedly sentenced father-of- six **Shukri Sahil** to death. He was not present at the trial. Shukri Sahil believes the conviction relates to his activities in assisting a number of political dissidents to flee Libya and his intention to establish a human rights organization in Libya. He told Amnesty International that he had been detained at Abu Salim Prison in Tripoli between May 2004 and February 2006, and that he was subjected to torture and other forms of ill-treatment while in custody. In March 2005, Shukri Sahil was charged with a number of offences including breaching Law 71 of 1972 on the Criminalization of Parties and other criminal offences under Law 971 of 1976 on the Criminalization of Smuggling (of goods) and Law 2 of 1979 on the Criminalization of Economic Infractions. Shukri Sahil was released on 28 February 2006 after the Criminal Section of the Court of Appeals of Tripoli cleared him of all charges on 2 January 2006. Following an appeal by the Department of Public Prosecutions, the High Court ordered a retrial on 19 June 2007. On 24 May 2008, the Public Prosecutor of the State Security Court ordered Shukri Sahil to attend a hearing on 17 June 2008 before the State Security Court. He was accused of seeking to establish an organization opposing the principles of the al-Fateh Revolution. Shukri Sahil fled Libya on 16 June 2008 without attending the hearing. He was informed by his relatives that he was found guilty and sentenced to death on 18 November 2008. His relatives were, however, unable to obtain a copy of the court decision. Amnesty International’s request that the Libyan authorities provide Shukri Sahil’s family with a copy of the court ruling went unanswered.

**Saleh Ahmed Boushaha** was sentenced to five years’ imprisonment in August 2009 in unfair proceedings believed to have taken place before the State Security Court. He has not seen his court-appointed lawyer outside the courtroom and reportedly did not know the exact charges against him before the trial. He was arrested in 2007 at his house in Benghazi. The individuals arresting him were wearing civilian clothes, but were armed. They did not present an arrest warrant and did not tell the family the reason for Saleh’s arrest or where they were taking him. He was reportedly first held in an unrecognized place of detention controlled by the ISA in Benghazi, before being transferred to Ain Zara Prison and then to Abu Salim Prison. His family was first allowed to visit him about a year after his arrest. The family had already suffered the loss of Miloud Ahmed Boushaha, Saleh’s brother, in the Abu Salim Prison killings in 1996.<sup>84</sup> Saleh remains detained in Abu Salim Prison, more than 600km away from his family in Benghazi.

In 2007, in its Concluding Observations in the framework of its review of Libya’s fourth periodic report, the Human Rights Committee noted that: “While acknowledging the abolition of the People’s Court in 2005, the Committee is concerned that the need for and the mandate of the new State Security Court, as well as the method of appointment and the

period of tenure of the judges of this court are unclear, as is the difference between the State security court and the former People's Court. The Committee regrets the reluctance of the State party so far to review the cases decided by the People's Court (art. 14)".<sup>85</sup>

It was reported that in the period between the abolition of the People's Court and the establishment of the State Security Court, individuals suspected of offences "against the state" were tried in special courts. For instance, **Khalid Bel'eid Abu Bakr el-Mahdawi**, forcibly returned to Libya by the Dutch authorities in February 2005, was sentenced by a special court on 19 March 2007 to life imprisonment for a number of offences including forgery; possession of arms; defaming Libya's reputation abroad; and belonging to an unauthorized political party. He was also reportedly accused of trying to go to Afghanistan. He denied all charges against him with the exception of forgery as he had travelled previously on false passports. He told an Amnesty International delegate interviewing him in Abu Salim Prison in May 2009 that he applied for asylum in Switzerland, but after growing frustrated with the slowness of the procedure, he attempted to travel to the UK via the Netherlands where he was arrested in March 2004. He said that his request for asylum was refused and he was eventually returned to Libya on 26 February 2005. Upon arrival, he was taken to Tajoura, controlled by the External Security Agency,<sup>86</sup> before being transferred to the ISA on 26 June 2006. He was detained in Ain Zara Prison. His court sessions began on 13 March 2007 but he did not see his court-appointed lawyer outside the courtroom. After his conviction, he was transferred to Abu Salim Prison. Khalid Bel'eid Abu Bakr el-Mahdawi was awaiting appeal at the time of Amnesty International's visit to Abu Salim Prison in May 2009. He had not been tortured in the custody of the Libyan security forces and said that in Abu Salim Prison he had access to enough food, drinkable water and fresh air.

## VICTIMS OF ARBITRARY DETENTION

On 28 January 2010, during the General People's Congress' Annual Assembly in Sirte, the Secretary of the General People's Committee for Justice, Mustafa Abdeljalil, announced that he was unable to fulfil his function as Secretary of the General People's Committee for Justice. His grievances related to the lack of respect shown to the rule of law. He complained that more than 300 individuals remained imprisoned without any legal basis. In response to Mustafa Abdeljalil's comments, Libyan leader Colonel Mu'amar al-Gaddafi said that the individuals to whom the Secretary for General People's Committee of Justice referred were "terrorists" and if released they would endanger the lives of Libyans. Colonel Mu'amar al-Gaddafi confirmed that they would not be released, even if the courts cleared them of all charges or if they had already served their sentences. The Libyan leader also criticized the fact that Mustafa Abdeljalil raised those concerns at that time, commenting that the General People's Congress was not the appropriate forum.<sup>87</sup>

This was not the first time that Mustafa Abdeljalil has raised such concerns. In an interview with *Oea* newspaper, a privately owned publication closely affiliated to Saif al-Islam al-Gaddafi, he said: "When the judiciary acquits, security agencies must respect those rulings. We have more than 500 defendants acquitted, who have not been released on security justifications".<sup>88</sup>

Such concerns were also raised by the Human Rights Society of the GDF, including in the organization's 2009 Annual Report. The report criticized the failure of security agencies to respect the rule of law and release those who had been cleared by the courts and those who

had served their sentences. The report went on to question "who directs the country, the General People's Committee (cabinet) or other agencies?" The report welcomed the release of Khalifa el-Shibli (see above) and urged the releases of all those detained after being cleared by the courts or after having served their sentences.<sup>89</sup> In March 2010, more than 200 individuals were released, including some believed to have been detained arbitrarily. According to Saif al-Islam al-Gaddafi, those released included 80 individuals who had been cleared by courts. However, hundreds more are believed to be detained in Libya despite having served their sentences or having been cleared of all charges.

**Mahmoud Mohamed Aboushima**, father of seven, is among those detained in Abu Salim Prison despite being cleared by the High Court on 17 July 2007 of charges of belonging to the LIFG. Mahmoud Mohamed Aboushima had been living in the UK from 1981 until he voluntarily returned to Libya on 10 July 2005. On 28 July 2005, he was reportedly arrested at his home in Tripoli and held at an unknown detention facility in Tripoli controlled by the ISA until his transfer to Ain Zara Prison in September 2005. On 18 March 2006, the special appeals court in Tripoli acquitted him of charges of belonging to an unauthorized group, the LIFG, in Case No. 411/255. The prosecution appealed against the ruling, but the High Court upheld the decision of the special appeals court. Nonetheless, Mahmoud Mohamed Aboushima remains imprisoned in Abu Salim Prison. Amnesty International's request to interview him on 19 May 2009 was rejected. An Abu Salim Prison official, who was introduced as the Director of the Prison but who refused to give Amnesty International his name, informed delegates that Mahmoud Mohamed Aboushima could not be interviewed because his case was under review by the High Court. This contradicted information given to Amnesty International that the High Court had ruled in his case in July 2007. Mahmoud Mohamed Aboushima suffers from asthma and Hepatitis B, and according to his brother, who is based in the UK, is not taking medicine. He receives family visits once every two months, and is reported to be in poor physical and psychological health due to his unlawful detention and prison conditions.

In addition to those detained without a legal basis, the UN Working Group on Arbitrary Detention considers those detained following unfair trials to be victims of arbitrary detention.<sup>90</sup> As seen above, scores of political prisoners have been sentenced to heavy prison terms in grossly unfair proceedings in front of the People's Court or other special courts. In international law, they must either be retried in proceedings respecting fair trial guarantees or released. Under certain conditions, where detainees have spent long periods of time detained without trial or following grossly unfair trials, they should be released.

One such victim of arbitrary detention who should be released is **Mahmud Hamed Matar**, who remains in the custody of the Libya authorities allegedly in Jdeida Prison, after his transfer from the Abu Salim Prison in late April 2010. He was detained for 12 years before being brought to trial. Mahmud Hamed Matar, brother of Jaballah Hamed Matar, an opposition political activist and a victim of enforced disappearance since 1990,<sup>91</sup> was sentenced to life imprisonment on 5 February 2002 by the Permanent Military Court. He was convicted of belonging to a secret and prohibited organization and smuggling explosives from abroad (Case No. 2001/1). He was one of nine accused who were convicted in the same trial in 2002; three other defendants were also sentenced to life imprisonment while the other five received prison terms ranging from 10 to 12 years. One other defendant was acquitted of all charges. The trial of these civilians in front of a military court did not meet the minimum



standards for fair trial. Mahmud Hamed Matar and his co-defendants were not allowed to communicate with their defence counsel except during the court hearings. Additionally, it was reported that statements obtained under torture or other duress were used as evidence by the court, which took no steps to investigate their allegations, in breach of Article 15 of the CAT. Mahmud Hamed Matar suffers from diabetes, high blood pressure, an advanced cataract and an inflamed prostate, but had not been granted access to a doctor for more than six months, despite his repeated requests. He was finally seen by a doctor in February 2010, but the medical check-up did not include an examination of his inflamed prostate despite fears that it may be cancerous and in need of urgent remedial treatment. In addition, he may lose his eyesight unless he has a cataract operation, though no such operation has been scheduled. Amnesty International raised its concerns regarding the arbitrary detention and health of Mahmud Hamed Matar with the GDF, but received no response.

In a welcome but long overdue move, in June 2009 the Libyan authorities released **Mohamed Hassan Abu Sadra**, a medical professional from Beyda, who had been incarcerated for over 20 years. He spent long periods held incommunicado in conditions amounting to an enforced disappearance, and was a witness to the 1996 Abu Salim Prison events.<sup>92</sup> The Geneva-based organization Al-Karama for Human Rights submitted a complaint to the UN Working Group on Arbitrary Detention regarding the violations suffered by Mohamed Hassan Abu Sadra, who was 33 at the time of his arrest. According to the submission, he was arrested in 1989 along with four of his brothers. His brothers were released from Abu Salim Prison after six years' detention without charge or trial. During this period, all were cut off from the outside world. Mohamed Hassan Abu Sadra was one of the prisoner representatives who negotiated with a security delegation on 28 June 1996 after a riot in Abu Salim Prison. Having survived the events of the next day, 29 June, during which an estimated 1,200 detainees were killed, he remained detained for six more years without trial. According to the Al-Karama submission, his life sentence imposed in 2004 by a special court was reduced on appeal to 10 years in 2005. Despite having been detained for over 15 years by that time, he remained in jail until 2009. On 7 February 2007, the UN Working Group on Arbitrary Detention (Opinion 16/2007) found that Mohamed Hassan Abu Sadra had been a victim of arbitrary detention and unfair trial (Articles 9 and 10 of the Universal Declaration of Human Rights and Articles 9 and 14 of the ICCPR). The Working Group recommended that the Libyan Government remedy this situation and release him. It remains unclear whether those responsible for his arbitrary detention, prolonged incommunicado detention, and ill-treatment have been held to account, and whether he obtained adequate reparation for the harm suffered. Amnesty International's request to interview Mohamed Hassan Abu Sadra during its visit to Abu Salim Prison on 19 May 2009 was rejected.

## DETAINEES PREVIOUSLY HELD BY THE USA IN THE CONTEXT OF COUNTER-TERRORISM

From being designated by the USA as a state sponsor of terrorism,<sup>93</sup> a designation rescinded in June 2006, Libya became a partner in what the USA called the "war on terror". In fact, there has been "counterterrorism cooperation and intelligence sharing since 2001" even before the normalization of diplomatic relations between the USA and Libya.<sup>94</sup> According to the entry on Libya in the 2007 *US Department of State Country Report on Terrorism*, the Libyan authorities have "continued to cooperate closely with the United States and the international community on counterterrorism efforts".<sup>95</sup>

In Libya, the rhetoric of the “war on terror” has been used by the state to justify its actions. Following the attacks of 11 September 2001 in the USA, the Libyan authorities started using the international context and the “war on terror” to justify the continuation of repressive policies against all political dissent and abuses against real or suspected members of armed Islamist groups.

In his annual address to the nation on 31 August 2002, Colonel Mu’ammar al-Gaddafi reportedly argued that, following prisoner releases in 2002, those who remained in Libyan prisons, with the exception of those sentenced for “ordinary crimes”, had links to al-Qa’eda or the Taleban. He said that the Libyan authorities would: “treat the heretics just like America is treating [the al-Qa’ida or Taleban detainees]... America said, these people do not have the right to defend themselves, it will neither provide them with lawyers nor respect their human rights”. Colonel Mu’ammar al-Gaddafi continued to use this rhetoric and to refer to the detention facility at Guantánamo Bay in Cuba to justify the arbitrary detention of hundreds of individuals deemed to be critical of the political system or viewed as a security threat.<sup>96</sup>

Since 2004, the USA has transferred a number of Libyan nationals suspected of terrorism-related activities to Libya, including Ali Mohamed Abdelaziz Al-Fakheri, known as Ibn Al Sheikh Al Libi.<sup>97</sup> His reported suicide in May 2009 highlighted the plight of detainees previously held by the US authorities in prolonged, unacknowledged detention at undisclosed sites who were transferred then to Libya. The *Oea* newspaper reported on 10 May 2009 that Ibn Al Sheikh Al Libi had committed suicide while held in Abu Salim Prison, where he had been detained since he was returned to Libya in early 2006. The newspaper mentioned that he had been sentenced to life imprisonment by the State Security Court after his return.<sup>98</sup> Amnesty International delegates who visited Libya days after the reported suicide were not permitted by the Libyan authorities to interview the Abu Salim Prison guards on duty at the time of his death or the forensic doctor who examined his body. Nor were they able to obtain a copy of the autopsy report, despite repeated requests. They were, however, told by representatives of the Department of Public Prosecutions on 21 May 2009 that an investigation had been opened and that *Al Shams*, an official Libyan newspaper, had reported that Ibn Al Sheikh Al Libi had committed suicide. The officials provided no details of the investigation.

During its visit to Abu Salim Prison on 19 May 2009, Amnesty International was able to confirm the detention at the time of six individuals transferred from secret US custody to Libya, namely: al-Mahdi Jawda, aka Ayoub al-Libi; Majid Abu Yasser, aka Adnan al-Libi; Abdelhakim Bilhadj Al-Kwaildi, aka Abdullah al Sadeq; Khalid al-Sharif, aka Abu Hazem; Sami Mustafa al-Saadi; an Hassan Raba’i, aka Mohamed Shara’ia. Two other Libyan nationals, transferred from Guantánamo Bay in December 2006 and September 2007 respectively, were also detained at Abu Salim Prison at the time of Amnesty International’s visit.

Abdelhakim Bilhadj Al-Kwaildi, aka Abdullah al Sadeq; Khalid al-Sharif aka Abu Hazem; and Sami Mustafa al-Saadi were released in March 2010 as part of a group of over 200 individuals freed in the framework of “reconciliation” between the state and individuals suspected of terrorism-related activities. To the best of Amnesty International’s knowledge,

before they were released Abdelhakim Bilhadj Al-Kwaildi was sentenced to death and Khalid al-Sharif aka Abu Hazem was facing trial proceedings for terrorism-related offences.

It was clear that Amnesty International's visit to Abu Salim Prison came at a sensitive time, as Al-Mahdi Jawda, aka Ayoub al-Libi; Majid Abu Yasser, aka Adnan al-Libi; Abdelhakim Bilhadj Al-Kwaildi, aka Abdullah al Sadeq; and Sami Mustafa al-Saadi, who were all believed to have been returned by the US authorities to Libya between 2004 and 2006, refused to talk to Amnesty International. In front of the guards who brought them to meet the organization's delegates, they all mentioned the absence of Amnesty International at the time that they were detained by the US authorities. Al-Mahdi Jawda, aka Ayoub al-Libi, Majid Abu Yasser aka Adnan al-Libi, Abdelhakim Bilhadj Al-Kwaildi, aka Abdullah al Sadeq, who refused to be interviewed by Amnesty International, had agreed to speak with Human Rights Watch when the organization visited Abu Salim Prison in April 2009, before the suicide of Ali Mohamed Abdelaziz Al-Fakheri, known as Ibn Al Sheikh Al Libi.

While agreeing to talk to Amnesty International, Mohamed Shu'iya, known as Hassan Ruba'i, refused to talk about his experiences since returning to Libya. On the other hand, in April 2009, he told Human Rights Watch that the State Security Court had sentenced him to life imprisonment for belonging to an illegal organization, the LIFG, on 16 June 2006. Abdelhakim Bilhadj Al-Kwaildi, aka Abdullah al Sadeq, was also convicted by the State Security Court and sentenced to death in August 2008, according to his interview with Human Rights Watch.<sup>99</sup>

**Khalid al-Sharif**, known as Abu Hazem, spent about five years detained in Libya before his release in March 2010. He agreed to talk to Amnesty International. He described his arrest by US and Pakistani forces in Peshawar on 3 April 2002 along with Mohamed Shu'iya, known as Hassan Ruba'i and his detention in various facilities in Afghanistan and Pakistan – in Peshawar, Islamabad, Kabul and Bagram. He recounted being tortured in a detention facility in Peshawar, where he spent a week, by Pakistani officials who beat him with a leather belt and stepped on his injured foot, while being questioned by an American man. He also said that he was tortured while detained in Kabul for about a year, including by having icy water poured on him and being punched in the stomach. He also described being attached to the ceiling and left suspended for days and being handcuffed to an iron bar in uncomfortable position for months – the handcuffs were only removed for 15 minutes during meals, either once or twice a day. He was not allowed to shower during the time spent attached to the iron bar. He said that in Kabul, he was interrogated and tortured by US officers. After about a year, he was transferred to Bagram in Afghanistan, where he spent another year before being taken to a US airbase and flown to Libya with Mahdi Jawda, aka Ayoub al-Libi in April 2005. He said that he did not know that he was being transferred to Libya until he reached the airport. Upon arrival in Libya, he was held by the External Security Agency in Tajoura, where he was questioned and admitted to belonging to the LIFG. In December 2007, he was transferred to Abu Salim Prison. In April 2008, he was taken for the first time to the Department of Public Prosecutions in another district of Tripoli and told the charges against him. These included belonging to a banned group, the LIFG, and knowledge about armed actions and failure to report them. His trial began a month later, and he was able to appoint a private lawyer. At the time of Amnesty International's visit, his trial was ongoing. The charges he was facing can lead to the death penalty in Libya. It was not clear if

he was facing trial before a regular criminal court or before the State Security Court or another special court.

Amnesty International managed to ascertain that Libyan nationals Abdesalam Safrani and Abu Sufian Ibrahim Ahmed Hamuda, returned from US custody at Guantánamo Bay in December 2006 and September 2007 respectively, were held at Abu Salim Prison during its fact-finding visit in May. However, it was not able to confirm their legal status as Abu Sufian Ibrahim Ahmed Hamuda refused to speak to Amnesty International delegates and Abdesalam Safrani mostly spoke about his experience prior to his transfer to Libya. In December 2007, the GDF announced that it had visited the two men, was monitoring their treatment and had even purchased a home for the family of one of them. However, neither the GDF nor the authorities have disclosed information regarding their legal status. As far as Amnesty International is aware, Abdesalam Safrani and Abu Sufian Ibrahim Ahmed Hamuda were not among those released in March 2010.

At least two, and possibly four, Libyan nationals continue to be held in Guantánamo Bay. On 22 January 2009, according to press reports, the GDF called on the US authorities to transfer Libyan nationals detained in Guantánamo to Libya following US President Barack Obama's executive order committing his administration to closing the Guantánamo detention facility.<sup>100</sup>

In light of the seriousness of the violations endured by individuals deemed to be a security threat by the Libyan authorities, Amnesty International opposes the forcible return of Libyan nationals suspected of terrorism-related activities to Libya where they might face prolonged incommunicado detention, torture or other ill-treatment and unfair trial.

## RECOMMENDATIONS

Amnesty International calls on the Libyan authorities to:

- release all prisoners of conscience immediately and unconditionally;
- repeal all laws, including Law No. 71 of 1972 and relevant articles of the Penal Code and of the Decree of the Revolutionary Command Council on the Protection of the Revolution, which criminalize activities that merely amount to the peaceful exercise of the rights to freedom of expression and association;
- repeal Articles 187 Bis A, B and C of the Code of Criminal Procedure to ensure that safeguards to protect detainees from prolonged pre-arraignment and pre-trial detention and incommunicado detention are respected in all cases, including those involving offences "against the state";
- amend relevant legislation, including Article 13 of the Code of Criminal Procedure, to ensure that members of the ISA no longer have the authority to exercise the functions of the judicial police;
- ensure that all detention facilities including Ain Zara and Abu Salim prisons are brought under the control of the General People's Committee for Justice and placed under the oversight of the Department of Public Prosecutions;

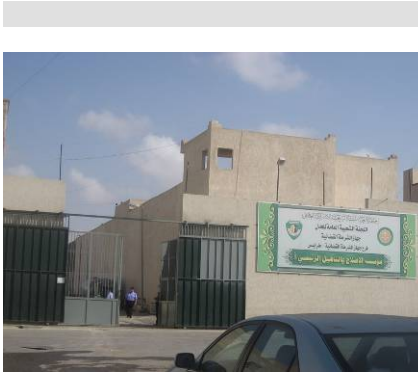
- end the practice of prolonged incommunicado detention; and ensure that detainees are given without delay, and regularly thereafter, access to their families and lawyers and doctors of their own choosing; ;
- ensure that all detainees are brought before an independent judicial authority without delay to review the lawfulness and necessity of their detention;
- immediately release all individuals detained without a legal basis, including those who have already served their sentences and those who have been cleared by the courts;
- ensure that all allegations of torture or other ill-treatment are promptly, thoroughly, independently and impartially investigated and that the full findings of such investigations are made public;
- amend the Penal Code to include a detailed definition of the crime of torture in line with the definition used by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. All forms of cruel, inhuman or degrading treatment or punishment should be prohibited;
- ensure that confessions or other evidence obtained under torture or duress are not admissible in legal proceedings;
- ensure that all those responsible for torture and other human rights violations, including members of the ISA, are brought to justice, in proceedings meeting international standards of fair trial;
- ensure that victims of torture and other human rights violations receive adequate reparation for the harm suffered;
- ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- ensure that all detainees have access to legal counsel of their choice, and that court-appointed lawyers are not imposed on detainees who have the financial means and desire to hire a private lawyer;
- ensure that both private lawyers and court-appointed lawyers are free from improper interference in the exercise of their professional duties, including by having sufficient access to their clients and their clients' files in order to prepare their defence;
- overhaul the system allowing for special courts and related institutions including the State Security Court and Prosecution Office, as their proceedings lack transparency and the most basic judicial guarantees and repeal the laws related to the People's Court, including Law No. 5 of 1988 which continue to be applied to the State Security Court;
- pending reforms of proceedings in front of the State Security Court to bring them in line with international standards, transfer all pending cases in front of the State Security Court to the ordinary criminal court system;

- retry all those sentenced in grossly unfair proceedings in front of the People's Court or any other special courts in proceedings that meet international standards for fair trial, or immediately release them;
- guarantee that the draft Penal Code, currently under review, is amended to ensure that the provisions relating to the rights to freedom of expression and association conform with Libya's obligations under the ICCPR;
- ensure that Libyan nationals can freely communicate on human rights matters both in the country and outside it without fear of reprisal, including prosecution;
- extend invitations to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on freedom of expression; and facilitate the visit of the UN Working Group on Arbitrary Detention.

Amnesty International calls on the US authorities and other governments to:

- not return any Libyan nationals, including from Guantánamo Bay, to Libya, where they would be at risk of incommunicado detention, torture or other ill-treatment and unfair trial.

## 3. CRUEL, INHUMAN AND DEGRADING PUNISHMENTS



Main reform and rehabilitation institution – Tripoli A © Amnesty International

The use of the death penalty and corporal punishment in Libya is of grave concern to Amnesty International. Not only do these punishments amount to human rights violations in and of themselves, but they appear to be imposed disproportionately on the most vulnerable in Libyan society: foreign nationals in the case of the death penalty and women in the case of flogging.

Amnesty International was able to document its concerns during a visit to Jdeida Prison in Tripoli on 17 May 2009. The visit included meetings with the prison administration, a tour of the clinic, of the library in the men's wards and of the women's wards. Amnesty International delegates were allowed to consult the prison registries of inmates, select a sample of individuals to interview and collect testimonies from them in private.

### THE DEATH PENALTY

The death penalty is retained in Libyan law for a large number of offences, including activities that amount to the peaceful exercise of the rights to freedom of expression and association. For instance, the death penalty can be imposed for forming, joining, financing or supporting groups based on a political ideology opposed to the principles of the al-Fateh Revolution, and for “encouraging that by whatever means” (Article 3 of Law No. 71 of 1972 on the Criminalization of Parties). A number of articles of the Penal Code also prescribe capital punishment for those who call “for the establishment of any grouping, organization or association proscribed by law” (Article 206), and for those who spread “theories or principles aiming to change the basic principles of the Constitution or the fundamental structures of the social system” (Article 207).<sup>101</sup>

While Libyan courts rarely prescribe the death penalty for these offences, Amnesty International is aware of at least one recent case in which the State Security Court is believed to have handed down the death penalty for a breach of Law No. 71 of 1972 on the Criminalization of Parties. Sahil Shukri was tried in his absence in 2008 and sentenced to death reportedly for seeking to establish a human rights organization.<sup>102</sup>

Courts continue to hand down death sentences, mostly for murder and drug-related offences. Executions continue to be carried out by firing-squad.

#### LACK OF INFORMATION ON THE DEATH PENALTY

There are no official statistics available on the number of individuals sentenced to death and executed in Libya. Amnesty International has repeatedly requested this information, in meetings with officials and in correspondence to Libyan authorities. However, there has been no response. Given the absence of independent human rights organizations in Libya and the unavailability of official information, reports of executions in Libya most often emanate from the countries of origin of executed foreign nationals.<sup>103</sup>

Both Brigadier Belkacem Abdesalam Gargoum, Director General of the Judicial Police, which oversees the administration of prisons and other reform and rehabilitation institutions, and Abdul Rahman Abu Tuta, former Chief Justice of the High Court,<sup>104</sup> told Amnesty International in May 2009 that seven or eight individuals are executed annually on average. Abdul Rahman Abu Tuta also told Amnesty International that tens of death sentences were imposed each year.

At the time of Amnesty International's visit to Libya in late May 2009, there were 506 individuals on death row according to Brigadier Belkacem Abdesalam Gargoum. Of these, 186 had had their death sentences confirmed on appeal by the High Court, while the remainder were waiting for appeal decisions. Brigadier Belkacem Abdesalam Gargoum noted that roughly half of those on death row in Libya were foreign nationals. This suggests that foreign nationals are disproportionately affected by the imposition and application of the penalty.

When Amnesty International visited Jdeida Prison in Tripoli on 17 May 2009, the Director of the Prison stated that there were 303 men on death row in the prison. Ward A in the men's division was reserved for individuals under sentence of death. Around 50 had had their sentences confirmed on appeal by the High Court, while the remainder were waiting for final sentencing by the High Court. The Director of the Prison added that around 40 per cent of those on death row in Jdeida Prison were foreign nationals, mostly from sub-Saharan countries such as Niger, Nigeria, Sudan, Chad and Somalia. He said that most death row prisoners had been convicted of murder and various drug-related offences. In the women's division of the Jdeida Prison, there were three women sentenced to death for murder at the time of Amnesty International's visit. All three were foreign nationals.

According to the Arab Center for the Independence of the Judiciary and the Legal Profession (ACIJLP), an Egyptian NGO which campaigns on behalf of Egyptian nationals on death row in Libya, there were seven Egyptians left on death row following an amnesty on the 40<sup>th</sup> anniversary of the al-Fateh Revolution on 1 September 2009.

It is unclear how many prisoners are currently on death row in Libya.

#### SEPTEMBER 2009 AMNESTY

On the 40<sup>th</sup> anniversary of the al-Fateh Revolution on 1 September 2009, Libyan media announced that all those sentenced to death in criminal cases before September 2009 had had their death sentences commuted to life imprisonment. Eight other individuals sentenced to death were pardoned and were to be released.<sup>105</sup> There are no available statistics on how many people benefited from the commutation of death sentences. According to reports, some individuals convicted before September 2009 remained on death row after the amnesty. The



announcement of the amnesty did not specify precise criteria for who would benefit. Most notably, it did not clarify whether the amnesty would apply only to those sentenced to death upon appeal by the High Court, or also to those whose death sentences had not yet been confirmed by the High Court.

In addition, the Supreme Council of Judicial Bodies<sup>106</sup> also granted amnesties to mark the 40<sup>th</sup> anniversary of the Revolution. A total of 1,273 prisoners were released, including foreign nationals, several of whom may have been under sentence of death.<sup>107</sup> According to the information available to Amnesty International, some nationals from countries such as Algeria, Egypt and Nigeria incarcerated in Libya were pardoned and repatriated to their countries of origin. A few weeks after the pardon, the Algerian Minister of Justice, Taib Belaiz, suggested that some Algerian nationals pardoned in the amnesty had been sentenced to death in Libya: "I believe this time he [Colonel Mu'ammar al-Gaddafi] has pardoned 33 prisoners. It is worth recalling that most of these prisoners were sentenced to death or for life in prison for committing very serious crimes such as drug trafficking. Despite all this he granted this pardon. In our view, this is a noble act and denotes good relations between the two countries".<sup>108</sup>



**The members of the Jamahiriyan society condemn the enforcement of capital punishment through loathsome methods, such as the electric chair, toxic gases or injections.**

The Great Green Charter of Human Rights of the Jamahiriyan Era

#### RESISTANCE TO ABOLITION OF THE DEATH PENALTY

Article 8 of the Great Green Charter of Human Rights of the Jamahiriyan Era states that "the goal of the Jamahiriyan society is to abolish capital punishment" and Libyan leader Colonel Mu'ammar al-Gaddafi and other senior Libyan officials have expressed their personal opposition to the death penalty on several occasions in recent years.<sup>109</sup> However, these statements of principle are not matched by the stance of the Libyan authorities on the issue at the international level. Libya voted against UN General Assembly resolutions 62/149 and 63/168 calling for a moratorium on the use of the death penalty in December 2007 and 2008. Following the votes, Libya signed explanatory notes (*Notes Verbales*) disassociating itself from the resolutions.<sup>110</sup>

Libyan officials, including the former Chief Justice of the High Court and the Director General of the Judicial Police, justify the retention of the death penalty by arguing that Libya, as well as the rest of the world, is experiencing an increase in violent crime. They nonetheless have stated that their aim is to reduce the number of offences punishable by death. Several Libyan officials, including the Secretary of the General People's Committee for Justice, told Amnesty International delegates in May 2009 that a new Penal Code was being drafted limiting the scope of the death penalty. The former Chief Justice of the High Court told Amnesty International that in the proposed Penal Code, capital punishment would only apply to those crimes punishable by death under Shari'a (Islamic law). Amnesty International asked for a copy of the current draft of the new Penal Code, but did not receive a copy. The latest version available to Amnesty International dates from February 2004 and contains 26 articles prescribing the death penalty. This version maintained the death penalty for a wide range of offences, including activities amounting to the peaceful exercise of the rights to freedom of expression and association. For instance, Article 173 of the draft prescribes the death

penalty for anyone who calls for the establishment of any association or party which is against the Revolution in purpose and means, or which aims to harm its public authorities, or anyone who establishes, joins, administers or funds such an association or party. According to Human Rights Watch, which received a later version of the draft in January 2009, capital punishment was retained for a number of offences in addition to those explicitly sanctioned in Shari'a (Islamic law) such as "attacks against foreign heads of state" and "purchasing of unfit or hazardous weapons".<sup>111</sup>

Under Article 6(2) of the ICCPR, to which Libya is a state party, "sentence of death may be imposed only for the most serious crimes". In its General Comment No. 6 on Article 6 of the ICCPR, the UN Human Rights Committee stated that "the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure". According to international standards, the death penalty for drug-related offences, as is still the case in Libya, fails to meet the condition of "most serious crime".<sup>112</sup>

In 2007, The Human Rights Committee has expressed concern that in Libya: "under current legislation the death penalty can be applied to offences which are vague and broadly defined and which cannot necessarily be characterized as the most serious crimes under article 6, paragraph 2, of the Covenant. The Committee also notes that the Libyan delegation did not provide sufficient details on the full range of offences punishable by death. The Committee notes the data provided by the State party regarding executions in the past six years, which were allegedly for murder and theft, without clarification of the numbers for each offence. The Committee also regrets the absence of information in respect to death sentences (arts. 6 and 15)".<sup>113</sup> The Committee recommended that the Libyan authorities "take urgent steps to reduce the number and to specify, also in the envisaged revision of the penal code, the types of crimes for which the death penalty can be imposed".<sup>114</sup>

In line with the worldwide trend towards the abolition of the death penalty, the UN General Assembly stated in resolution 32/61, adopted on 8 December 1977: "the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment". The African Commission of Human and Peoples' Rights has also called on state parties to observe a moratorium on the death penalty in a resolution passed in 2008.<sup>115</sup>

#### LACK OF EFFECTIVE SAFEGUARDS IN DEATH PENALTY CASES

Libyan law provides certain safeguards for the application of the death penalty. According to Article 81 of the Penal Code, offenders under the age of 18 cannot be sentenced to death. According to Article 436 of the Code of Criminal Procedure, pregnant women and new mothers cannot be executed until two months after they have given birth. All death sentences have to be reviewed by the High Court, which can overturn the ruling of the lower court and find in favour of the accused. When a death sentence is confirmed by the High Court, according to Article 131 of Law No. 51 of 1976 on the Organization of the Judiciary, as amended by Law No. 10 of 1425, it cannot be implemented without the consent of the Supreme Council of Judicial Bodies. However, this body has never withheld its consent to Amnesty International's knowledge, even though it has the mandate to grant full or partial amnesties (Article 5 of Decision No. 6 of 1374 on the Organization of the Judiciary). According to the official website of the General People's Committee of Justice, the Supreme

Council of Judicial Bodies continues to approve death sentences upheld by the High Court on a regular basis. The most recent cases of which Amnesty International is aware were approved by the Supreme Council of Judicial Bodies on 2 February 2010.

**Ashraf Mohamed Haiba**, a Libyan national from Bani Walid detained in Jdeida Prison since May 2003, said that he was not aware of any cases in which the Supreme Council of Judicial Bodies had refused to give its consent for the implementation of a death sentence. Ashraf Mohamed Haiba had given himself up to the police in Bani Walid on 21 September 2001 following the death of a man he had stabbed the night before during a fight. To his great shock, he was sentenced to death for murder by a Court of First Instance in Tarhuna on 18 April 2003. He had thought that he was not being accused of premeditated murder, rather "unlawful killing", which does not carry the death penalty. He appealed to the High Court, but it upheld the lower court's decision on 18 April 2004. Ashraf Mohamed Haiba considers that there has been a miscarriage of justice in his case as he acted in self-defence and did not commit premeditated murder. The Supreme Council of Judicial Bodies approved the implementation of his death sentence on 21 April 2007.

In addition to the safeguards for juvenile offenders, pregnant women and new mothers, the Libyan authorities argue that most death sentences for murder are not implemented because convicted individuals are pardoned by the next-of-kin of the murder victims. Law No. 6 of 1423 on rulings of *qisas* (retribution for murder) and *djya* (financial compensation or blood money), as amended by Law No. 7 of 1430, allows for the commutation of death sentences to life imprisonment for those convicted of murder, if the next-of-kin pardon the convicted individual/s and accept financial compensation. Article 3 Bis of Law No. 6 of 1423 stipulates that the amount of financial compensation is to be determined by the family of the murder victim. In practice, this means that negotiations can drag on for years, leaving individuals on death row uncertain about their future.

Amnesty International has also noted complaints by families of death-row prisoners about procedural difficulties in the implementation of Law No. 6 of 1423. According to the Law, the Department of Public Prosecutions is required to inform the court that imposed the death sentence once agreement is reached between the family of the death-row inmate and the family of the murder victim. However, this does not always happen.

The execution of Egyptian national Fadl Ismail Abou Hatita in July 2009 caused an outcry in Egypt as his family had reportedly reached a settlement with the family of the murder victim, but the Department of Public Prosecutions failed to inform the court. The prosecutor allegedly did not recognize the authenticity of the document that attested to the willingness of the murder victim's family to forgo their right to "retribution". The execution of Fadl Ismail Abou Hatita violated international standards relating to the moratorium on executions in cases where any recourse procedures are in process. For instance, Safeguard 8 of the Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty states: "Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence". Furthermore, in resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights urged all states that still maintain the death penalty "not to execute any person as long as any related legal procedure, at the international or at the national level, is pending".

In addition to Fadl Ismail Abou Hatita, two other Egyptians were reported to have been executed in Libya in 2009 before the September amnesty, namely: Haitham Abdel Qawi and Higazi Ahmed Zidan.

#### OBSTACLES TO SEEKING COMMUTATION OR PARDON

The Libyan authorities have commuted death sentences or granted pardons to some individuals on death row.<sup>116</sup> Furthermore, Decision No. 6 of 1374 on the Organization of the Judiciary empowers the Supreme Council of Judicial Bodies to grant amnesties, without setting any limitations on the type of sentence or offence. However, it is not clear how individuals sentenced to death could seek a pardon or commutation from the Libyan authorities. This lack of clarity is compounded by the fact that Law No. 1 of 1994 on general amnesties for some crimes excluded individuals sentenced to death by the High Court from general amnesties.

As a result of the lack of a clear route for seeking pardons or commutations, the death penalty is subject to the decision of the victim's family and therefore arbitrary. These concerns are shared by the Special Rapporteur on extrajudicial, summary or arbitrary executions, who stated: "where the private *diyah* pardon stands alone and when it relates to the death penalty, it is almost certain to lead to significant violations of the right to due process in situations where a pardon is not granted. To the extent that the procedure does not provide for a final judgement by a court of law, or for the right to seek pardon or commutation of the sentence from the State authorities, the requirements of international law will be violated. Where the *diyah* pardon is available it must be supplemented by a separate, public system for seeking an official pardon or commutation".<sup>117</sup>

#### DISCRIMINATORY PRACTICES

Amnesty International fears that the provisions on *qisas* and *diya* are discriminatory in practice, not only against those with limited financial means but also against foreign nationals who are less familiar with the system and whose families might not be able to negotiate on their behalf.

The principle of non-discrimination based on national origin is enshrined in numerous international treaties to which Libya is a state party, including the International Convention on the Elimination from all Forms of Racial Discrimination; the ICCPR (Articles 2 and 26); the International Covenant on Economic, Social and Cultural Rights (ICESCR, Article 2); and the African Charter on Human and Peoples' Rights (Articles 2 and 19).

In its General Comment 31, the Committee on the Elimination of Racial Discrimination set out standards to ensure the elimination of discrimination in the functioning and administration of the criminal justice system. It stipulated that: "States parties should also guarantee to all arrested persons, whatever the racial, national or ethnic group to which they belong, enjoyment of the fundamental rights of the defence enshrined in the relevant international human rights instruments (especially the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights), in particular the right not to be arbitrarily arrested or detained, the right to be informed of the reasons for their arrest, the right to the assistance of an interpreter, the right to the assistance of counsel, the right to be brought promptly before a judge or an authority empowered by the law to perform

judicial functions, the right to consular protection guaranteed by article 36 of the Vienna Convention on Consular Relations.”<sup>118</sup>

#### UNFAIR TRIALS

Death sentences continue to be handed down by Libyan courts in proceedings which routinely violate international standards for fair trial in contravention of Article 6 of the ICCPR, which sets out restrictions and safeguards on the use of the death penalty in countries which have not abolished it. Article 6(2) states that the sentence of death must not be imposed “contrary to the provisions of the present Covenant”, which include guarantees of fair trial in Article 14.

A case that has received a great deal of international attention is that of five Bulgarian nurses and a Palestinian doctor sentenced to death by firing-squad for a second time on 19 December 2006 after being convicted of knowingly infecting hundreds of Libyan children with HIV in a hospital in Benghazi in 1998.<sup>119</sup> In cases with less international coverage, concerns remain regarding violations to the right of fair trial, including the right to effective defence and the right not be convicted on the basis of statements made as a result of torture, other ill-treatment or duress.

In the case of foreign nationals, who do not speak Arabic, fair trial concerns are compounded. There have been violations of their right to the free assistance of an interpreter and their right to be informed promptly and in detail in a language which they understand of the nature and cause of charges against them, as guaranteed by Article 14 of the ICCPR. Furthermore, foreign nationals facing the death penalty should have the benefit of certain additional safeguards, including the right to consular assistance.<sup>120</sup> These additional safeguards are enshrined in Principle 16 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. This sets out the right of foreign nationals who are imprisoned or detained: “to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national or which is otherwise entitled to receive such communication in accordance with international law”.

**Juliana Okoro**, a Nigerian national, told an Amnesty International delegate in Jdeida Prison for women on 17 May 2009 that she was tortured for 18 days while in Bab Abu Gashir Police Station in Tripoli following her arrest in 2000. She said that she was suspended, that her hands were tied with a rope behind her knees, and that she was beaten. She said: “They kick you until they get you to do what they want”. She was arrested along with seven other people in relation to a murder in her neighbourhood. She said that one of the women arrested with her died in custody as a result of beatings. Juliana Okoro was sentenced to death in proceedings that failed to meet international standards of fair trial. She said that she was not assisted by an interpreter during any of the hearings in court, that she was only given a lawyer two or three years after her arrest, and that she was not given a chance to defend herself in court. Her death sentence was confirmed on appeal by the High Court in 2008.

Other safeguards in Libyan legislation to protect individuals in custody are also commonly violated. For instance, the Code of Criminal Procedures prescribes a maximum period for which individuals can be detained in police stations before being referred to the Department Public Prosecutions. However, this period is not respected in practice. With the exception of certain crimes against the state, according to Article 26 of the Code of Criminal Procedures:

“the officer [of the judicial police] must promptly hear the accused person’s statement and, if the accused person says nothing that proves his innocence, must refer him, within 48 hours, to the Department of Public Prosecutions which must question the accused within 24 hours and then issue an order for his detention or release”.<sup>121</sup>

Gaston, a national of Chad, was sentenced to death in 2006. He did not have a private lawyer and was not given a court-appointed lawyer. He was convicted about a year after being arrested with a Sudanese national. They were accused of murder and both allegedly “confessed” as a result of torture. Gaston said that he was detained for nearly three months before being taken to the public prosecutor.

Afaf, a woman on death row, was reported being beaten in custody by police in Sabha, where she was arrested, before being referred to the Department of Public Prosecutions. She said that she was held at the police station for 15 days during which period her hands were tied and she was beaten with batons all over the body and constantly asked: “Did you commit it (the murder)?”

**Haroun Mohamed Saleh Awwali** came to Libya from Niger in 2001 to find work. He was arrested on immigration charges in 2004 and transferred to Misratah Detention Centre, where a killing took place. After the incident he was transferred to another detention centre where he spent six months before being taken to the Department of Public Prosecutions, once he had agreed to thumb print a document he was not able to read. He alleged that conditions in the centre were very difficult and that he was beaten with an electric cable – propelling him eventually to agree to “confess”. He was not assisted by a translator during his trial, and did not understand the proceedings. He was sentenced to death in 2006, and appealed against the ruling. In May 2009, he was detained in Jdeida Prison awaiting the decision of the High Court. He maintains his innocence.

#### RECOMMENDATIONS ON THE DEATH PENALTY

Amnesty International opposes the death penalty in all cases without exception regardless of the nature of the crime, the characteristics of the offender, or the method used by the state to kill the individual. The organization considers the death penalty to be the ultimate cruel, inhuman and degrading punishment<sup>122</sup> and to violate the right to life, enshrined in the Universal Declaration of Human Rights, the ICCPR and in the African Charter on Human and Peoples’ Rights.

In the Libyan context, Amnesty International is particularly concerned that death sentences are imposed following proceedings that do not meet international standards for fair trial and that the application of the death penalty is discriminatory in practice, disproportionately affecting those with fewer financial means as well as foreign nationals.

Amnesty International calls on the Libyan authorities to:

- immediately establish an official moratorium on executions, in line with UN General Assembly resolutions 62/149 and 63/168, calling for a moratorium on the use of the death penalty with a view to abolishing the death penalty;
- commute without delay all death sentences;

- pending steps towards total abolition of the death penalty, ensure that in death penalty cases, the most rigorous internationally-recognized standards for fair trial are respected;
- ensure that foreign nationals enjoy their right to be notified of the reasons for their arrest and charges in a language they understand, the right to communicate with and receive visits from representatives of their governments enjoy consular protection and the right to a competent interpreter free of charge;
- review all Libyan laws and the draft Penal Code to ensure that the death penalty is restricted to the “most serious crimes”, as required by the ICCPR, with a view to its abolition; and
- ratify the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty.

## CORPORAL PUNISHMENT AND THE CRIMINALIZATION OF CONSENSUAL SEXUAL RELATIONS

Laws providing for corporal punishment remain in force. According to information available to Amnesty International, in recent years, courts have continued to sentence people to corporal punishment, including amputation of the right hand and flogging. Amnesty International unconditionally opposes the judicial punishment of flogging and any other corporal punishments which inflict pain, suffering or humiliation amounting to torture or other cruel, inhuman or degrading punishment.<sup>123</sup>

A number of laws passed since the 1970s have introduced corporal punishment. They include Law No. 70 of 1973 (on the Establishment of the *Had*<sup>124</sup> of *Zina* and the Amendment of several Articles of the Penal Code). This prescribes flogging as a punishment for those convicted of *zina* – defined in Libyan law as sexual relations between a man and a woman outside a lawful marriage. Article 2 prescribes a punishment of 100 lashes for *zina*, and allows this punishment to be replaced with imprisonment and flogging without specifying the number of lashes.

According to the law, corporal punishment is to apply to all adults (over 18), of sound mental capacity, who committed the “crime” willingly. Law No. 70 of 1973 requires a medical professional to examine those sentenced to flogging in order to determine the “danger” of implementation. The law, however, does not specify whether the punishment is set aside in cases where a doctor’s report concludes that implementation might lead to serious physical or other consequences. This is particularly concerning as Article 6 of Law No. 70 of 1973 stipulates that the *had* punishment for *zina* should not be amnestied, reduced or replaced with any another penalty. The punishment is to be administered in police stations in the presence of a member of the Department of Public Prosecutions and a specialized doctor. Law No. 70 of 1973 requires the flogging to be stopped and the remaining lashes to be administered at a later stage if there is a “danger” to the sentenced individual.

Other Libyan laws prescribing corporal punishments include: Law No. 52 of 1974 on *had al-qadhaf* – defamation – which provides for flogging. Law No. 13 of 1425 on theft and *haraba* (amended by Law No. 10 of 1369) – highway robbery or rebellion – states that a person convicted of theft is to be punished by having the right hand amputated. For the crime of

*haraba*, the death penalty is prescribed if there has been a killing, or cross amputation (right hand and left foot).

As a state party to the ICCPR and the Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment (CAT), Libya is under an obligation not to impose any such punishments.

In 1999, the Committee against Torture stated in relation to Libya that corporal punishment "should be abolished by law".<sup>125</sup> The Human Rights Committee reiterated this recommendation in the framework of its review of Libya's fourth periodic report in 2007. The Human Rights Committee stated that corporal punishments violate Article 7 of the ICCPR and called on the Libyan authorities to: "immediately stop the imposition of all corporal punishment and repeal the legislations for its imposition without delay as stipulated in the previous concluding observations of the Committee".<sup>126</sup>

#### DISCRIMINATORY PRACTICES

In addition to the penalties provided in Law No. 70 of 1973, Article 407 of the Libyan Penal Code sets five years as a maximum prison term for consensual sexual relations outside of marriage. Amnesty International opposes the criminalization of sexual relations between consenting adults. International law considers such criminalization to be unlawful interference with the right to privacy, as enshrined in Article 12 of the Universal Declaration of Human Rights and Article 17 of the ICCPR, which states "no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks".

Amnesty International fears that the criminalization of extramarital sexual relations and the imposition of corporal punishment for committing *zina* are discriminatory in practice as they appear to disproportionately affect women.

The Committee on the Elimination of Discrimination against Women has expressed concern regarding: "the maintenance of Law N.70 (1973) criminalizing extramarital sexual relations which may impact disproportionately on women".<sup>127</sup>

Libyan legislation recognizes the principles of equality and non-discrimination. For instance, Article 1 of Law No. 20 of 1991 on the Promotion of Freedom stipulates that: "Citizens in the Great Jamahiriya, male and female, are free and equal in rights". Article 21 of the Great Green Charter of Human Rights of the Jamahiriyan Era states: "The members of Jamahiriyan society, whether men or women, are equal in every human respect. The distinction of rights between men and women is a flagrant injustice that nothing whatsoever can justify".

This principle of non-discrimination against women is enshrined in numerous international treaties, to which Libya is a state party, including the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW); the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; the ICCPR (Articles 2, 3, 23 and 26); the ICESCR (Article 2) and the African Charter on Human and Peoples' Rights (Articles 2 and 19). Even though Libya withdrew its general reservation to CEDAW in 1995, it retains reservations to Article 2 (on the right to non-discrimination) as well as Article 16 (c)



and (d) (on non-discrimination in all matters relating to marriage and family relations), stating that the Convention must be implemented in accordance with Shari'a. These reservations contradict the object and purpose of the treaty.

Law No. 70 of 1973 sets out three ways in which the occurrence of *zina* can be established: a confession from the accused; the testimony of four witnesses; or any "scientific proof". In practice, this translates into disproportionate convictions of women as the mere fact of being unmarried and pregnant is considered sufficient "scientific proof" of the commission of *zina*.

Amnesty International is also concerned that fear of being reported to the police by clinic or hospital staff might prevent unmarried pregnant women from seeking medical assistance during pregnancy and childbirth. This would violate Libya's duty to ensure the right to the highest attainable standard of physical and mental health without discrimination, as enshrined in Article 12 of the ICESCR. Amnesty International also believes that rape victims might be discouraged from reporting the crime due to fear of being prosecuted for *zina* if they fail to demonstrate that sexual relations were not consensual.

Amnesty International's visit to Jdeida Prison on 17 May 2009 confirmed fears that the criminalization of *zina* and the resulting imposition of flogging disproportionately affect women. When Amnesty International delegates consulted the registry of male inmates in Jdeida Prison, they found no male detainees charged with or convicted of *zina*. On the other hand, among the 78 women serving sentences in Jdeida Prison, six had been convicted of *zina*. According to the prison registry, four of them were sentenced to between three and four years' imprisonment and two were sentenced to 100 lashes.<sup>128</sup> In addition, 32 women detained in Jdeida Prison were awaiting trial on charges of *zina*, about 25 per cent of the women in pre-trial detention in Jdeida Prison. Some of the women had been held in pre-trial detention on *zina* charges for more than eight months. Amnesty International considers that those detained for engaging in consensual sexual relations with an adult are prisoners of conscience, imprisoned for non-violent acts that relate to the legitimate exercise of their rights.

Mouna, a Moroccan national who had been working in Libya for several years, was arrested in December 2008 shortly after giving birth. The hospital administration at the Tripoli Medical Centre allegedly informed the police that she had given birth to a child outside marriage. She was arrested at the hospital and tried shortly after. Mouna was sentenced to 100 lashes, and was awaiting the imposition of the sentence at the time of Amnesty International's visit to Jdeida Prison on 17 May 2009. She said that she was waiting for a doctor to conduct a medical examination to ensure that she was physically fit enough to be flogged. Mouna told Amnesty International that she did not fear the sentence and wanted it to be carried out so that she could be released from prison and return to Morocco. She said that she was well-treated in Jdeida Prison, that her child stayed with her and that the prison administration provided for the basic needs of her child including clothes and diapers. She did not know whether the father of her child had been charged or tried.

Saida, a 19-year-old Libyan, turned herself in to the police at the beginning of March 2009, some two weeks after the birth of her child. After being questioned on her relationship with the father of her child, she was taken to the Department of Public Prosecutions in Tripoli and subsequently transferred to pre-trial detention, first in Ain Zara Prison and then in Jdeida

Prison. Saida was accused of *zina*, but no court date had been set at the time of the Amnesty International visit to Jdeida Prison. She said that she was well treated in Jdeida Prison, and that her daughter received medical treatment when she had an ear infection. She did not know the whereabouts of the father of her child.

#### RECOMMENDATIONS ON CORPORAL PUNISHMENT AND THE CRIMINALIZATION OF SEXUAL RELATIONS

Amnesty International calls on the Libyan authorities to:

- immediately cease the application of corporal punishment, including flogging, and repeal legislation which allows for its application, including Law No. 70 of 1973;
- decriminalize sexual relations between consenting adults by amending Article 407 of the Libyan Penal Code and repealing Law No. 70 of 1973;
- immediately and unconditionally release all those detained for engaging in consensual sexual relations with an adult; and
- lift all reservations to CEDAW that contradict the object and purpose of the treaty.

## 4. THE LEGACY OF IMPUNITY

**“They [the Libyan authorities] stole the happiness from the life of a whole family.”**

Mohamed Hamil Mouftah al-Farjani, whose three brothers died in custody: two in the Abu Salim Prison killings in 1996 and one in 1998, reportedly in an unrecognized detention centre run by the Internal Security Agency in Benghazi.

**“Oh Mother! What did my father do for me not to have ever seen him?”**

Poster held by a son of a victim of the Abu Salim Prison killings, during a protest on 18 July 2009 in Benghazi.

The legacy of human rights violations committed in the past continues to cast a shadow on Libya's human rights record. Violations include thousands of cases of arbitrary detention, torture or other ill-treatment, deaths in custody, enforced disappearances and extrajudicial executions. Victims ranged from political dissidents living in Libya or abroad to real or suspected members or supporters of armed Islamist groups. Repression of dissent marked the 1970s and early 1980s. After a brief period of progress in 1988, which included releases of political prisoners, the human rights situation in Libya deteriorated further. The repression peaked in the late 1980s and again in the mid-1990s at a time of clashes between the authorities and armed groups.<sup>129</sup>

The failure of the Libyan authorities to address the legacy of past human rights violations by providing victims and their families with truth, justice and adequate reparation undermines the prospect of building a society based on the respect of the rule of law and human rights. The fact that perpetrators of human rights violations enjoy total impunity and some continue to occupy official positions offers little hope that such violations will never be repeated and prevents victims and survivors from healing and rebuilding their lives. In a further attempt to encourage the Libyan authorities to address past human rights violations, during their fact-finding visit to Libya in May 2009 Amnesty International delegates formally requested in writing that the Secretaries of the General People's Committee for Justice and for Public Security clarify the fate and whereabouts of over 200 individuals who were arrested and disappeared after 1989 in Libya, and of three Libyan dissidents who disappeared in Cairo in the 1990s. To date, Amnesty International has received no response on any of the cases.

No single event symbolizes impunity for past human rights violations in Libya more than the killings of up to 1,200 prisoners in Abu Salim Prison in June 1996. The first official recognition of any disturbances came nearly eight years later, when Libyan leader Colonel Mu'ammarr al-Gaddafi acknowledged to an Amnesty International delegation in February 2004 that killings did take place. In April 2004, in a speech to members of the Supreme Council of Judicial Bodies and other senior members of the judiciary, he affirmed the right of

families to know what happened to their relatives during the incident. To this day, families are waiting for that promise to be met.

Gradually, the wall of silence around the killings has been broken. The families of victims, particularly in the city of Benghazi, have campaigned relentlessly, encouraged by the public calls of Saif al-Islam al-Gaddafi, Head of the GDF and son of the Libyan leader, for the human rights violations committed in Abu Salim Prison in June 1996 to be addressed. In response to the families' calls for truth and justice, the authorities offered them financial compensation. However, the authorities have offered no public apology or even official acknowledgement of responsibility. They have not revealed the truth about what happened, no one has been held accountable for crimes committed and there has been no adequate reparation. In September 2009, the authorities announced that a committee had been established to investigate the incident. No details of its mandate, methods of work or the outcome of its investigations have been made public.

### **KILLINGS IN ABU SALIM PRISON IN 1996**

Up to 1,200 prisoners are believed to have been killed in June 1996 in Abu Salim Prison,<sup>130</sup> located in the area of Abu Salim, a suburb of Tripoli.<sup>131</sup> Rumours were sparked in part because the families of some prisoners stopped receiving news from their relatives from June 1996 onwards. While reports circulated that a large number of prisoners had been killed, many families hoped that their relatives were alive and continued to take food and clothes to the prison up to the early 2000s, writing the name of their loved ones on packages and leaving them at the gate of the prison.

Immediately after the reports of killings emerged, Amnesty International issued an urgent appeal and wrote to Colonel Mu'ammarr al-Gaddafi calling for a prompt, thorough and impartial investigation and appealing for the findings of the investigation and the names of those killed to be made public.<sup>132</sup> Amnesty International did not receive a response until its delegation met Colonel Mu'ammarr al-Gaddafi in February 2004. Describing the incident as a tragedy, he said that prisoners attacked and killed a prison guard when he was handing out food to them in their cells. He said that after having stolen his keys, they opened all the other cells in the same block and attacked the guards, taking their weapons and killing some of them. Police from outside the prison intervened and there was an exchange of fire resulting in casualties, including deaths, on both sides. Those who were still alive were returned to their cells. Colonel Mu'ammarr al-Gaddafi went on to say that a number of prisoners managed to escape during these events and some even reached Afghanistan.

Another version which emerged based on the testimony of former prisoners is that a riot took place in Abu Salim Prison on 28 June 1996, apparently provoked by appalling prison conditions.<sup>133</sup> Two guards were allegedly taken hostage by several prisoners who managed to steal one of the guard's keys. He is reported to have died that night. The prisoners opened a number of cells but failed to escape from the prison as they were not able to open one of the gates. Security forces reportedly intervened at this stage, allegedly shooting randomly and killing several prisoners who managed to leave their cells.

Shortly afterwards, a delegation, headed by senior security official Abdallah Sanussi, reportedly came to the prison and urged the prisoners to return to their cells. According to this version of events, as there was no sign of order being restored, the same senior official

began to negotiate with a group of five prisoners including Mohamed Hassan Abu Sadra, one of the survivors released in June 2009. The prisoners' demands apparently included the hospitalization of scores of prisoners in bad health; adequate health care for all prisoners; prisoners to be allowed visits from their families; and fair trials. Prisoners allegedly received guarantees that some of their demands for better prison conditions would be met. The negotiations continued until late in the night, after which prisoners were returned to their cells. It was reported that during the night, some prisoners were moved between the civilian and military sections of the Abu Salim Prison, in what later become understood as a deliberate move to separate those who were to be extrajudicially executed from those to be spared.

Several prisoners have reported hearing an explosion followed by shootings which lasted some two hours the following morning. At the time, they did not know what was happening, but later heard from others that scores of prisoners had been killed. Estimates of the number killed reach up to 1,200. No official statistics are available on the number of people killed but according to a press release issued by the GDF in August 2009 there are at least 1,167 families of victims – some of whom lost more than one relative in the Abu Salim Prison killings.<sup>134</sup>

The killings in Abu Salim Prison amount to a gross violation of the right to life, enshrined in the Universal Declaration of Human Rights (Article 3) and the International Covenant on Civil and Political Rights (ICCPR (Article 6)), to which Libya is a state party.

In its General Comment No. 6, interpreting state parties' obligations under Article 6 of the ICCPR not to arbitrarily deprive anyone of his or her right to life, the Human Rights Committee noted that: "States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity".<sup>135</sup>

Amnesty International believes that those killed in Abu Salim Prison were victims of extrajudicial executions. The account of events by former prisoners suggests that a large proportion of the prisoners were not killed in clashes with law enforcement officials on 28 June but rather deliberately and unlawfully killed by Libyan security forces the day after as punishment for rioting.

The UN Principles on the Effective Prevention and Investigations of Extra-legal, Arbitrary and Summary Executions require states to criminalize extrajudicial executions and prohibit "orders from superior officers or public authorities or inciting other persons to carry out any such extra-legal, arbitrary or summary executions". However, in Libya the killing of opponents to the political system has been condoned at the highest level of the state. For instance, in his speech to the General People's Congress<sup>136</sup> at Sirte on 5 June 1996, weeks before the Abu Salim Prison killings, Colonel Mu'ammār al-Gaddafi warned those tempted to ignore decisions taken by the Congress. He stated that the People's Congress had coordinators everywhere in the country. He emphasized that a coordinator is "the one who would lead you to battle, because he is your leader in your region and would **execute** anyone who refused...he is in charge of everything and nobody can say no to him. Anyone who said no would be seen as collaborating with the enemy. **He [the coordinator] has the right to shoot him dead, often**

**without trial or with a summary trial lasting no more than a few minutes...**" [emphasis added].<sup>137</sup>

Article 6 of the UN Principles on the Effective Prevention and Investigations of Extra-legal, Arbitrary and Summary Executions calls on states to ensure that families of detainees have accurate information regarding their relatives' whereabouts, given that enforced disappearance facilitates the occurrence of other violations including extrajudicial executions. In fact, many, if not most, of those killed in Abu Salim Prison were also victims of enforced disappearance, cut off from the outside world since their arrest and placed outside the protection of the law.

In their fourth periodic report to the Human Rights Committee submitted in December 2006, the Libyan authorities denied the occurrence of extrajudicial executions: "with regard to the observation by the Human Rights Committee concerning the allegations of the perpetration of extrajudicial, arbitrary or summary executions...the Libyan Arab Jamahiriya is a State governed by the rule of law and where penalties cannot be imposed without reference to the law, i.e. outside the jurisdiction of the courts. The judiciary is the only authority with competence for delivering judgements of any kind. The right to life of citizens is protected by the law and the courts... In the Libyan Arab Jamahiriya, executions are not carried out outside of the judicial framework or without a verdict having been rendered by a competent court".<sup>138</sup>

The Human Rights Committee disagreed with these assertions and in 2007 found the Libyan authorities responsible for arbitrary arrest and detention, torture or other ill-treatment and enforced disappearance (Articles 7, 9, 10.1) in two separate cases submitted by relatives of victims of the Abu Salim Prison killings. In the case of *El Awani v. Libya* (Communication No. 1295/2004), the Human Rights Committee additionally ruled that Libya breached the right to life (Article 6) of Ibrahim Mohamed El Awani, who is believed to have been killed in Abu Salim Prison in June 1996. His family received a death certificate from the Libyan authorities in 2003, which did not indicate the cause of death. In both cases, the Human Rights Committee ordered the Libyan authorities to provide an effective remedy for the families of victims, themselves recognized as victims of torture or other ill-treatment by the Committee due to the anguish and distress caused by their relatives' disappearance.<sup>139</sup>

## WHO WAS KILLED IN ABU SALIM PRISON?

Most, if not all, of the prisoners killed in June 1996 were detained unlawfully in Abu Salim Prison. They had been arrested by members of security forces without an arrest warrant, held incommunicado for prolonged periods of times, denied access to lawyers and had little or no access to their families. Many had been detained without trial or after being convicted in grossly unfair trials. They had been completely cut off from the outside world since their arrest. In most cases, their families had had no information about their fate and whereabouts since their arrest. They were therefore victims of enforced disappearance as defined in Article 2 of the International Convention for the Protection of All Persons From Enforced Disappearance as: "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place

such a person outside the protection of the law". While the Convention is not yet in force, the definition is accepted as reflecting customary international law.

Many of those killed in Abu Salim Prison were detained after waves of arrests, particularly in 1989 and 1995, on suspicion of being members or sympathizers of Islamist armed group.<sup>140</sup>

In the period between December 1988 and April 1990, hundreds of alleged members or sympathizers of Islamist groups were arrested in various towns and cities, particularly in and around Ajdebia, Benghazi, Tripoli and Derna. Their arrests followed at least two demonstrations and several violent clashes between members of armed groups on the one hand and members of the security forces and the Revolutionary Committees on the other.<sup>141</sup> Most of those arrested were apparently not involved in any violent activities. They are believed to have been arrested because they were suspected of being active political opponents of the government or being members or supporters of Islamist groups.

Khaled lost two brothers in Abu Salim Prison in June 1996. However, he had not seen them since January 1989, when they were taken away by members of the ISA in Benghazi. They were both under 21. Mohamed was studying to become a teacher and Ali was a medical professional. Khaled does not know why they were targeted, but suspects that it was because both were very observant Muslims and regularly went to pray in the mosque. Khaled says that at the time, that was enough to cast suspicion on a person of belonging or sympathizing with unauthorized Islamist groups. After their disappearance, the family approached the authorities in both Benghazi and Tripoli, but could obtain no information about their whereabouts. The first official acknowledgement came in June 2009, when the family was given death certificates for the two brothers. The death certificates did not help to establish the truth about the fate of the two brothers as they did not provide the cause of death.

Hundreds of people were also arrested in 1995 after armed clashes between the Libyan security forces and armed Islamist groups, including the LIFG. Most of these clashes took place in the eastern part of the country, including Benghazi and Derna. They reportedly left dozens dead on both sides.

Ahmed was called in for questioning by the ISA in Beyda, in the north-east of Libya, in 1995. His family has not seen him since. His brother, Faraj, who was arrested several months later by the ISA, was transferred from Beyda to Benghazi and later to Abu Salim Prison in Tripoli. Faraj was questioned by members of the ISA in Abu Salim Prison about specific people and asked if he belonged to any Islamist groups. Faraj was released without charge or trial in 2000 and without being given any explanation for the reasons behind his arrest or release. While in Abu Salim Prison, he heard from other prisoners that his brother was also held there and that he was one of the victims of the killings. Faraj, the surviving brother, was held in a different section of the prison from where the killings took place.

## LIBYA'S INTERNATIONAL OBLIGATIONS TO INVESTIGATE THE ABU SALIM PRISON KILLINGS

The Human Rights Committee called on the Libyan authorities in 2007 to: “urgently investigate all forced disappearances and extrajudicial, summary, or arbitrary executions, prosecute and punish the perpetrators of such acts and grant effective reparation including appropriate compensation, to victims or their families. ... The State party [Libya] should ensure that the inquiry into the events in Abu Salim prison of 1996 is finalized as soon as possible and that the full report is made available”. The Committee had already recommended in 1998 that the Libyan authorities investigate all reported cases of extrajudicial, arbitrary or summary executions.

As a state party to the ICCPR, Libya is under the obligation to provide an effective remedy for victims of human rights violations (Article 2). In its General Comment 31, the Human Rights Committee specified that Article 2 imposes obligations on the state to establish appropriate mechanisms to address claims of human rights violations. The Committee clarified that it: “ attaches importance to States Parties' establishing appropriate judicial and administrative mechanisms for addressing claims of rights violations under domestic law. Administrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies. A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant.”

The Committee went on to say that “where the investigations ... reveal violations of certain Covenant rights, States Parties must ensure that those responsible are brought to justice and the failure to do so could in and of itself be a separate breach of the Covenant.” The Committee also stated that the Covenant requires that states parties to “make reparation to individuals whose Covenant rights have been violated. Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy, which is central to the efficacy of article 2, paragraph 3, is not discharged”.<sup>142</sup>

## FROM DENIAL TO PROMISES OF INVESTIGATION

Since Colonel Mu'ammar al-Gaddafi's acknowledgement of the Abu Salim Prison disturbances in early 2004, the Libyan authorities have periodically announced that investigations have been opened or are ongoing. For example, the authorities announced in April 2005 that a committee had been established to investigate the “incident” and in July 2006 confirmed that the investigation was ongoing. However, no information was made available regarding the details or outcome of the investigation. The latest announcement from the authorities came in September 2009 and stated that a seven-member “independent” committee had been created, headed by



Families of victims of the Abu Salim Prison killings protest in Benghazi ©Libyan Human Rights Solidarity



judge Mohamed al-Khadar, a member of the High Court and the former Public Prosecutor at the Military Court. However, no details were given regarding the committee's exact mandate and its scope, procedures or methods.

Shortly after his appointment by the General Committee for Defence [Temporary] (equivalent to the Ministry of Defence), Mohamed al-Khadar gave an interview on 17 September 2009 to the official newspaper *al-Shams* about the purpose and methods of the investigation into the Abu Salim Prison incident.<sup>143</sup> His responses gave rise to concerns about the comprehensiveness, impartiality and independence of the investigation. Of note is his assertion that up to 200 guards had been killed in Abu Salim Prison in June 1996, which does not correspond to information publicly available or to accounts by eyewitnesses. Families of victims and Libyan human rights and other organizations based abroad feared that Mohamed al-Khadar was reaching conclusions about vital questions such as the number of security officials killed at the start of the investigation. Their concerns are compounded by the fact that the exact mandate of the committee is unclear and by reports that the committee did not collect testimonies from families of victims.

In talking about his mandate, Mohamed al-Khadar said that he had the remit of a Public Prosecutor and a Public Prosecutor of the People's Military Court<sup>144</sup> – suggesting that he would have the authority to subpoena witnesses and would have powers of search and seizure.

According to Mohamed al-Khadar, the key aim of the investigation is to reach "reconciliation" by bringing together the "accused" and the victims, and the families of those who died from both sides. He emphasized that "we are not in a revenge stage, but in a stage of collecting evidence to reach the truth...I will say the truth no matter how bitter it might be...no matter what the results are". This statement gave rise to fears that the remit of the committee did not include identifying individual perpetrators and holding them accountable for human rights violations or other crimes. Mohamed al-Khadar went on to clarify that the Libyan leader, Colonel Mu'ammarr al-Gaddafi, wanted to know the truth and endorsed "this reconciliation".<sup>145</sup>

During the interview, Mohamed al-Khadar confirmed that investigations would begin after the *eid al fitr* holiday, which began on 26 November 2009 in Libya, and that a final report should be expected six months after the start of the committee's work. He said that at the time of the interview, the committee was preoccupied with collecting relevant documents and information to facilitate the investigation. He emphasized the need to recognize that there were victims – killed and injured – on both sides, not only prisoners. He confirmed that the testimonies of survivors from the prison administration would be gathered in the course of the investigation. He also claimed that he went to Benghazi a few days before the interview and had received a warm reception by the families of victims.<sup>146</sup> However, according to information available to Amnesty International, Mohamed al-Khadar did not meet families of victims in Benghazi in the course of the committee's investigation.

Yahya, who lost three brothers in Abu Salim, said that according to his best knowledge none of the families in Benghazi of those killed in Abu Salim Prison met Mohamed al-Khadar. He was aware that an investigation was ongoing, but had no information about its details. He demanded to know the full truth about what happened to his brothers and called for the

perpetrators to be brought to trial and adequate reparation. He said that the efforts made so far by the Libyan authorities were insufficient and did little to alleviate the family's suffering. He has received death certificates for his three brothers, one in 2005 and two in 2008. He said that the date of death varied in each certificate. Two of the certificates listed no cause of death, while one stated "liver failure". His brothers were arrested in the 1990s in Benghazi and subsequently transferred to Abu Salim Prison. While they were detained in Benghazi, the family could still visit them, but not after their transfer to Abu Salim Prison. Nonetheless, the family made the long journey to Abu Salim Prison at least once a year until 2002 to take food, clothes and other necessities for the three brothers. At the time, they did not know that they were leaving these items, which they bought and transported from Benghazi to Tripoli at great cost for a family of modest means, to the guards. Yahya wanted to know how his brothers were killed and why they were victimized. He called for answers from the authorities as to why families were not informed for so many years that their loved ones had died.

Since February 2010, families of victims of Abu Salim Prison, as they have become known, have been holding protests in Benghazi calling for the disclosure of more information on the investigation of the committee headed by Mohamed al-Khadar. Their demands are in line with Principle 16 of the UN Principles on the Effective Prevention and Investigations of Extra-legal, Arbitrary and Summary Executions, which states: "Families of the deceased and their legal representatives shall be informed of, and have access to any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence".

While Mohamed al-Khadar said in September 2009 that the investigation would start after *eid al fitr* in late November, the GDF had announced a month earlier on 10 August 2009 that Mohamed al-Khadar had been appointed. The statement said his appointment was in accordance with Article 13 of the Law No. 6 of 1982 on the High Court, which allows a particular task to be delegated to a member of the High Court provided that the nature of the task does not contradict the nature of the judge's work as a member of the High Court. The statement also claimed that Mohamed al-Khadar would call in eyewitnesses in the course of the investigation, that a preliminary report would be issued within three months and that the final report of the investigation would be issued within six months. In the statement, the GDF expressed its hopes that this investigation would shed light on the incident, facilitate social reconciliation, and enable the closure of this "file".<sup>147</sup>

The lack of transparency in the work on the committee, coupled with the divergent and at times contradictory available information, is of major concern. Families of victims and society at large have the right to be informed of the details of the investigation and its outcome, particularly after having waited for answers for nearly 14 years. Families have a right to know the whole truth about the fate of their relatives and the right to be informed of the steps taken to establish the truth. They are entitled to access the documents uncovered during the investigation.<sup>148</sup> Families also have the right to know the cause and circumstances of the death of their relative and the destination of their remains, as set out by Article 18 of the International Convention for the Protection of all Persons from Enforced or Involuntary Disappearances. While this convention is not in force and has not been ratified by Libya, this provision is accepted as reflecting customary international law.

**Nouri Ahmed Boushasha** told Amnesty International that learning the truth about what happened to his brother **Miloud Ahmed Boushasha** (born in 1966), who was arrested in March 1989 and who has not been seen since, is paramount to the family. A group of men in civilian clothes came to the family home in Benghazi and took Miloud Ahmed Boushasha away. They did not have an arrest warrant, and did not tell the family where Miloud Ahmed Boushasha was being taken, leaving his aging parents and nine brothers and sisters in disarray. Despite the dangers involved, the family spared no effort to try to locate Miloud Ahmed Boushasha. They asked local authorities and visited prisons in Benghazi searching for him. According to Nouri Ahmed Boushasha, his father passed away after Miloud Ahmed Boushasha's arrest. His health had deteriorated due to the psychological strain of not knowing what happened to his son. The family only found out in 1992, through other former prisoners in Abu Salim Prison, that Miloud Ahmed Boushasha was detained there. They then decided to travel to Tripoli to ask the Abu Salim Prison administration to confirm his whereabouts. At first, prison administrators refused to provide any information, but eventually acknowledged that Miloud Ahmed Boushasha was being held there. Miloud Ahmed Boushasha's family was not allowed to visit him, but regularly left food and clothing for him. The first official acknowledgement the family received from the authorities that Miloud Ahmed Boushasha had died was in June 2009, when they were summoned to the People's Leadership Office<sup>149</sup> in Benghazi. They were offered 200,000 Libyan dinars (about US\$ 158,000) as financial compensation, but they have refused to accept it until they are told the truth about why Miloud Ahmed Boushasha was arrested in the first place and why he was killed in 1996. The family also finds it difficult to accept "reconciliation" and financial compensation while they still have another relative incarcerated in Abu Salim Prison. Miloud Saleh Boushasha's brother, Saleh Ahmed Boushasha, was arrested in 2007 and sentenced to five years imprisonment in August 2009 for allegedly "planning to join the jihad in Iraq".<sup>150</sup> He was convicted in proceedings that did not meet international standards for fair trial. For example, he had no access to the court-appointed lawyer outside the courtroom. He was also held incommunicado for over a year and reportedly tortured. His family are demanding his release.

Huda lost two brothers in Abu Salim in June 1996. The two were arrested together in 1989, when one was 21 and the other 19. Huda has no idea why they were arrested. The men in military uniform who came into the family home to carry out the arrests had no warrants and did not give any information to the family. The family had no news about the two brothers until July 2009, when they received two death certificates. The certificates did not help explain the fate of their relatives as they listed no cause of death and had two different dates of death: one in June and the other in July 1996. Huda is demanding to know the truth about what happened to her brothers.

International human rights standards emphasize the right of victims to know the full truth about gross human rights violations, including information not only on the fate and whereabouts of missing or disappeared persons, but also on the causes leading to their victimization; the circumstances and reasons for the perpetration of crimes under international law; and the progress and results of investigations. The right to truth is closely related to other rights, such as the right to an effective remedy; the right to family life; the right to an effective investigation; and the right to obtain reparation, rights which the Libyan authorities have pledged to uphold under their international human rights obligations. The right to truth is a fundamental element of the inherent dignity of victims.

According to international standards,<sup>151</sup> the right to truth has an individual and a collective dimension. Victims of gross human rights violations and their families, as well as other members of society, have the right to know the truth about past human rights violations. Principle 4 of the Updated Set of Principles to Combat Impunity states: "Irrespective of any legal proceedings, victims and their families have the imprescriptible right to know the truth about the circumstances in which violations took place and, in the event of death or disappearance, the victim's fate".

The importance of the collective dimension of truth as an essential guarantee to ensure non-repetition of such gross human rights violations is further emphasized in Principle 2 of the Updated Set of Principles to Combat Impunity, which stipulates: "Every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systemic violations, to the perpetration of these crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations".

### **LIBYAN AUTHORITIES ADDRESS THE KILLINGS: ONE STEP FORWARD, TWO STEPS BACK**

As mentioned above, the Libyan authorities denied the Abu Salim Prison killings completely until 2004. The first official acknowledgement to families that a relative had died came when officials started to issue death certificates to families whose relatives had been imprisoned in Abu Salim Prison. While a few families reportedly received death certificates earlier, most families were issued death certificates after the second half of 2008. The authorities appear to have stepped up their efforts to issue death certificates between January and March 2009 to families in Libyan cities including Ajdebia, Beyda, Benghazi, Derna, Misratah and Tripoli.

The certificates received by families did not shed light on the circumstances of the death of the Abu Salim Prison victims. The certificates did not indicate the cause of death and merely said that the death occurred in Tripoli. According to the information obtained by Amnesty International, the dates of death listed on the certificates vary – some show that the death occurred before the Abu Salim Prison killings while others are dated July 1996 and even November 1996. To receive death certificates, families were mostly summoned to the offices of the ISA in their neighbourhood or to the People's Leadership's Office in their city. They were handed the certificates, told to sign, but given no additional details.

Amnesty International considers that many of those who died in Abu Salim Prison in June 1996 were victims of both enforced disappearances and extrajudicial executions. Enforced disappearance, in addition to being a gross violation of human rights, is closely linked to and facilitates other human rights violations, including torture or other ill-treatment and extrajudicial executions. Consistent with the reasoning of the UN Working Group on Enforced or Involuntary Disappearances, a person subjected to enforced disappearance who is subsequently executed extrajudicially is a victim of both violations, especially where the state refuses to acknowledge the act and to disclose the fate and whereabouts of the person concerned following the execution. Issuing death certificates that lack basic information concerning the place, date and cause of death cannot qualify as an acknowledgment of the violation, nor satisfy the victims' right to truth. That would require "information on the causes leading to their victimization and on the causes and conditions pertaining to" enforced disappearances and extrajudicial executions.<sup>152</sup>

Families of victims were also offered financial compensation for the loss of their relatives. The amount offered to the families of victims was first set at 120,000 Libyan dinars (about US\$ 95,000) for single men and 130,000 dinars (about US\$ 103,000) for married men, later increased to 200,000 dinars (about US\$ 158,000). Mohamed Tarnish, Head of the Human Right Society within the GDF, explained to an Amnesty International delegation on 16 May 2009 that a fixed amount was determined by the authorities due to the large number of cases of families whose relatives had died in custody. He also said that a committee had been created to propose ways to "reconcile" the state with victims' families, but confirmed that the committee looked only at financial aspects of providing a remedy to families. He said that some families accepted the financial compensation, while others continued to reject it either on principle or because they considered the amount insufficient in relation to the violation and the harm suffered. According to the GDF, 598 families had accepted compensation out of a total of 1,167 families by August 2009.<sup>153</sup>

**Ahmed Mas'oud Faraj Al-Kabaili**, who has been in the UK since 1981, told Amnesty International that he is still searching for the truth about what happened to his brother, **Amraja' Faraj Al-Kabaili**, who was arrested in Ajdebia in 1989. Amraja' Faraj Al-Kabaili, a father of five, was taken from his home and reportedly transferred to Tripoli on suspicion of belonging to or sympathizing with Islamist armed groups. His family has obtained no news about him despite requests for information from the authorities in Ajdebia and Tripoli. According to Ahmed Mas'oud Faraj Al-Kabaili, the family received a death certificate in 2004, which did not specify a cause of death, and has been pressured to accept financial compensation. Ahmed Mas'oud Faraj Al-Kabaili wrote several articles published by *Libya Watana* arguing that financial compensation is merely one aspect of reparation and that the family still has the right to know the truth.

Those who accepted the financial compensation had to agree not to seek judicial redress. This contravenes international human rights law and standards, which stipulate that the right to an effective remedy for victims of human rights violations includes establishing the truth, prosecuting alleged perpetrators and providing adequate reparation, of which financial compensation is merely one element. In June 2009, the General People's Secretary for Justice reportedly told the *Cerene* newspaper, a private paper closely affiliated to Saif al-Islam al-Gaddafi, that those who do not accept compensation can resort to the courts. While it is welcome news that judicial avenues are not closed to families of victims, according to international law and standards families are entitled to both financial compensation and judicial redress, among other remedies, and should not be compelled to choose between the two.

## **THE RIGHT TO A REMEDY: TRUTH, JUSTICE AND REPARATION**

**Under international law, states have an obligation<sup>154</sup> to respect, protect and fulfil human rights, including by providing victims with an effective remedy. This obligation includes three elements:**

Truth: establishing the facts about violations of human rights that occurred in the past;

Justice: investigating past violations and, if enough admissible evidence is gathered, prosecuting the suspected perpetrators;

Reparation: providing full and effective reparation to the victims and their families, in its five forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

Principle 7 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law states: "Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law: (a) Equal and effective access to justice; (b) Adequate, effective and prompt reparation for harm suffered; and (c) Access to relevant information concerning violations and reparation mechanisms".

International law and standards, in particular the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law<sup>155</sup> and the UN Human Rights Committee General Comment No. 31 set out the forms of reparation: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

The Libyan authorities seem to be treating financial compensation to families whose relatives were killed in Abu Salim Prison separately from investigations into the incident. This approach was confirmed by Mohamed al-Khadar. He said that: "There is a committee established to address financial aspects with families of victims on both sides. The committee has a trajectory that has no relation whatsoever with my work [criminal investigation] into the Abu Salim incident".<sup>156</sup> Such an approach is in breach of international standards on reparation for victims of human rights violations, which set out the gravity of the violation and the harm suffered as the essential criteria for determining the amount of financial compensation.<sup>157</sup> Therefore, the establishment of facts about the violations is essential in setting the amount of financial compensation.

## BREAKING THE WALL OF SILENCE

Saif al-Islam al-Gaddafi and the GDF, which he heads, played an instrumental role in ending the blackout on information regarding the Abu Salim Prison killings. In a speech on 24 July 2008, under the title "Libya: Truth for All", Saif al-Islam al-Gaddafi emphasized the importance of revealing the truth about the Abu Salim Prison "incident" of 1996, which he dubbed "the biggest incident and most tragic problem and incontestably very, very painful". He said: "Yet, the reality of this topic should be clarified, especially to the families of the people who died. You should be told how your children died. What happened on that day and that night exactly? ...You have to reveal the truth...reveal the lists, and reveal the investigation results...and if someone is responsible for the operation that led to overcrowding of the prison".<sup>158</sup> He added that while the "story" is known publicly, the public and families should be provided with more details and should know whose orders Libyan security forces were implementing.

In his speech, Saif al-Islam al-Gaddafi said that he had asked for an investigation three or four years earlier, but there were delays due to the sensitivity of the issue. He claimed that preliminary investigations had been completed and that the information would be referred to



Families of victims of the Abu Salim Prison killings protest in Benghazi © Libyan Human Rights Solidarity

the Department of Public Prosecutions and then to the courts. He promised that trials would be open to the public, but said that he could not provide additional details because the Secretary of the General People's Committee for Justice told him that from a legal standpoint as a human rights organization, the GDF could not reveal details, because such information might affect the judicial investigation.

In describing the incident, Saif al-Islam al-Gaddafi repeated the version of events as presented by the Libyan leader, Colonel Mu'ammarr al-Gaddafi. However, he said that in his personal opinion the Libyan authorities used excessive force. He also acknowledged that some of those detained and killed in Abu Salim Prison were innocent, while noting that others were part of "criminal groups", in reference to those belonging or suspected of belonging to armed groups.

Crucially, Saif al-Islam al-Gaddafi announced during the speech that talking about the Abu Salim Prison incident of 1996 was no longer taboo. This encouraged families of victims to continue their struggle for truth, justice and adequate reparations publicly.

Another significant breakthrough came a month earlier, in June 2008, when the North Benghazi Court of First Instance, civil division, ordered the Secretary of the General People's Committee (equivalent to the Prime Minister), the Secretary of the General People's Committee for Public Security and the General People's Committee for Justice to reveal and officially notify the families of the whereabouts and fate of 33 individuals believed to have died in the Abu Salim Prison killings in 1996 or elsewhere in custody (Case No. 5/2007). The Court also stated that the families should be notified of the reasons for their relatives' arrest.<sup>159</sup>

The court decision addressed the claim of a group of 30 families whose relatives had been arrested during different periods since 1989, and who have had no news regarding their fate since their arrest. The North Benghazi Court of First Instance noted that the situation in which the families found themselves constituted a breach of the Great Green Charter of Human Rights and Law No. 10 of 1991 on the Promotion of Freedom. This decision was particularly significant as on 24 June 2007, a year earlier, the same court had declared itself not competent to review this case. The court argued that the case should be reviewed by an administrative court because the arrests of the plaintiffs' relatives were conducted by the executive branch and therefore "administrative". The case was reopened after a court of appeal ruled in favour of the plaintiffs on 19 April 2008. They had challenged the decision of the North Benghazi Court of First Instance that it was not competent to hear the case.

Mohamed Hamil, one of the plaintiffs, asked the authorities to reveal the truth about what happened to **Khaled, Saleh and Sanoussi Hamil Mouftah al-Farjani**, three of his brothers who died in custody: two in Abu Salim Prison in 1996 and one in a detention centre in Benghazi. Sanoussi, aged 22 at the time, was arrested in February 1995 at the Libyan border with Egypt. Mohamed Hamil, now in the USA, said that he was travelling to Saudi Arabia to perform the *oumra* (pilgrimage) along with a cousin, **Gumaa Ghith Milad**. Both were arrested, but their families were not informed. They only found out that the two were held in Abu Salim Prison when a former inmate conveyed Sanoussi's messages to the family. Khaled was arrested a month after his brother Sanoussi. When members of the ISA came to look for him at the family home in April 1995, he was not there. Upon return he decided to hand himself

in. Mohamed, who accompanied him to the office of the ISA in the Al-Barka neighbourhood where they lived, said that Khaled packed his clothes and said his goodbyes as he felt that he wasn't coming back. Sadly, he was right. He was 26 at the time of his arrest. Saleh was arrested several years later on 19 April 1998 at the age of 23. His family has not seen him since, but heard rumours a few months after his arrest that he died as a result of torture. The family was not officially notified of the deaths of Sanoussi, Khaled and Saleh until March 2009 – when they were given death certificates by the Libyan authorities. No other details were provided, even though the North Benghazi Court of First Instance ordered the authorities to reveal the exact fate of the three.

This court victory by the families of victims did not translate into concrete gains, as the decision of the court to order the authorities to reveal the reasons for the arrest, fate and whereabouts of the 33 victims has not been implemented to date.

After the arrests of their relatives, distraught families spared no efforts to find them despite the climate of fear and repression. They went to the local authorities, visited various prisons and finally travelled to Abu Salim in Tripoli – all in vain. Having suffered in silence and isolation for over 10 years without any response from the authorities, families of victims of the Abu Salim killings, particularly in Benghazi, have become more vocal in demanding their rights. They have been particularly active since the second half of 2008 – perhaps encouraged by the court's recognition of the legitimacy of their demands and by the GDF's involvement. Significantly for Libya, where freedom of association and assembly is severely restricted in law and practice,<sup>160</sup> the families established an Organizing Committee of Families of Victims of Abu Salim in Benghazi and regularly hold protests demanding their rights.

Families of victims in Benghazi started coordinating activities against the backdrop of the court case described above. Their coordination became more formalized when the Secretary of the People's Leadership in Benghazi told families to select about five representatives to negotiate with the authorities. The Organizing Committee for Families of Victims of Abu Salim was created in early 2008, when several of its members met the Secretary of the People's Leadership. During that meeting, family members of victims explained their refusal to accept financial compensation without being granted other rights, most notably the right to truth. They also submitted a written request for the Organizing Committee to be allowed to register legally – a request which was not granted. They were not given official reasons for the rejection, but were allegedly told that the authorities in Benghazi had been instructed by "Tripoli" to refuse.

Despite this, families of victims of Abu Salim in Benghazi decided to continue their struggle. Mohamed Hamil, a founding member of the Organizing Committee, explained that families decided to meet in the courtyard of the People's Leadership building in order to prove that their activities and purpose were not "secret". Family members' protests, coordinated by the Organizing Committee, take place nearly every Saturday, usually outside the People's Leadership building. Families of victims in other cities such as Ajdebia also organized a number of protests calling on the Libyan authorities to reveal the truth about the fate of their relatives and to provide them with an adequate remedy.



In addition to meetings with local authorities in Benghazi, members of the Organizing Committee were invited to Tripoli in early 2009 to meet senior officials, including the Secretary of the General People's Committee for Justice and a senior security official, Abdallah al-Sanussi,<sup>161</sup> as well as members of the GDF. Mohamed Hamil participated in these meetings before moving to the USA in March 2009. He told Amnesty International that he felt that the purpose of these negotiations was to convey the message to families of victims of the Abu Salim Prison killings that financial compensation was the only offer on the table, and that they should accept the authorities' approach to "reconciliation".

Refusing this "reconciliation", families continued to air their grievances in public protests in Benghazi. Such protests are unprecedented in Libya, where public assembly is only tolerated when demonstrators gather in support of official policies. Despite the authorities' grudging tolerance of these protests, participants, particularly those active in the Organizing Committee, have been subject to harassment and intimidation. For example, **Faraj al-Sharani, Rabe' Ga'ouda, Fouad Ben Oumran, Hassan El-Madani and Fathi Tourbil** were arrested on 26 and 28 March 2009 by members of the ISA. All five are relatives of victims of the Abu Salim Prison killings and several were known to be active in the Organizing Committee of Families of Victims of Abu Salim. Members of the ISA also reportedly confiscated a number of items, including two computers and documents, from the homes of Fathi Tourbil and Mohamed Hamil, who was in Tripoli at the time. Libyan human rights NGOs and activists in exile, notably Libyan Human Rights Solidarity based in Geneva, publicized the news of the arrest internationally and Amnesty International wrote to the Secretary of the General People's Committee for Justice expressing concern.<sup>162</sup> All five were released on 30 March 2009 without charge or trial, reportedly at the intervention of Saif al-Islam al-Gaddafi. It was reported that during their incommunicado detention, members of the ISA attempted to pressure them into signing statements accepting financial compensation and the authorities' approach to "reconciliation" with the families.

In addition, a number of families of victims of the Abu Salim killings regularly receive anonymous calls threatening them with imprisonment or other reprisals if they do not accept financial compensation and continue to demand truth, justice and adequate reparation.

Notwithstanding these threats, some families of victims in Benghazi remained undeterred. In March 2009, the Organizing Committee published a list of the families' demands, which was reproduced on websites administered from abroad, including the UK-based *Libyan al-Mostakbal* (Libya Future).<sup>163</sup> Their demands were listed as: the establishment of truth; the remains of their deceased relatives to be returned or their burial places to be identified; the issuing of accurate death certificates clearly indicating the place, date and cause of death; an official public apology; the release of relatives of victims of Abu Salim Prison imprisoned arbitrarily to date; and accountability for the perpetrators. Their final demand was to receive adequate reparation including financial compensation acceptable to the families. These demands are legitimate and in line with the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

During a protest by the families, lawyer Fathi Tourbil, unwavering even after his arrest, argued that the families' demands were legitimate. In a video available on the internet, he said on 30 January 2010: "Our demands are human rights demands, not political demands."

We have no political ambitions... All we want is to live a secure life, a stable life, a life with some dignity... A person is abducted from his house, his work, the public street, and for years the mother, the wife, the children live in pain... Even telling them that [their relative] is alive or dead becomes problematic [for the Libyan authorities]... But let's open a new page [with the authorities], a page based on what is right, on justice, on truth, on the establishment of truth".<sup>164</sup>



Families of victims of the Abu Salim Prison killings protest in Benghazi. These families continue to call on the Libyan authorities to grant them their right to truth, justice and adequate reparation. © Libyan Human Rights Solidarity

According to the information available to Amnesty International, the number of people participating in such protests generally varies from under 50 to about 100. One of the largest protests was held on the 13<sup>th</sup> anniversary of the killings in June 2009, when a group of more than 200 women, men and children marched through Benghazi demanding that the authorities listen to their pleas. The protest was a strong expression of the families' rejection of the authorities' offers of "reconciliation" and financial compensation without truth and justice. Families held pictures of their relatives and chanted slogans including "Oh Gaddafi, where are our sons?" They carried posters expressing their grievances and conveying their demands, including: "13<sup>th</sup> Anniversary of Abu Salim. Why this silence?"; "1,330 dead in Gaza in 23 days: 1,200 dead in Abu Salim in hours"; "Where are the graves? Where are the remains?"; and "Trial of the real perpetrators is more important than money".<sup>165</sup>

In a press release issued on 24 November 2009, the Human Right Society of the GDF urged all the relevant authorities to address the 1996 incident at Abu Salim Prison.<sup>166</sup> Specifically, it called on the authorities to ensure that the ongoing investigation by the committee headed by Mohamed al-Khadar was fair and transparent and that it issued its report within the agreed timeframe. The Human Right Society also recommended a number of institutional reforms that would contribute to ensuring non-repetition, such as the abolition of the State Security Court and greater freedom of association. The Human Right Society reiterated these calls in its Annual Report issued on 10 December 2009, complementing them with calls for other measures such as informing all families whose relatives had died in custody in Abu Salim Prison or elsewhere of the fate of their relatives without any further delay and taking all the necessary steps to “remedy” wrongdoings.<sup>167</sup> The Annual Report also noted that a full report on the Abu Salim Prison “incident” based on the Human Right Society’s meetings with relatives of victims in Benghazi had been submitted to the GDF. Representatives of the Human Right Society held a series of meetings with families in Benghazi in November 2009. It was reported that more than 50 families participated and spoke candidly about violations they and their relatives had endured even before the killings and about their continuing suffering. Families spoke about the pain of losing all trace of their relatives and wondering for years whether they were dead or alive – only to be informed over a decade later that they had died, but without being given any explanation or apology. Families also spoke about the practical difficulties they faced over the years, including the financial strains of losing a breadwinner. Crucially, families expressed their determination to persist in demanding that the authorities uphold their rights to truth, justice and adequate reparation.



Families of victims of the Abu Salim Prison killings attend meeting organized by the GDF, November 2009  
© Libyan Human Rights Solidarity

Far from responding to the families’ legitimate demands, the Libyan authorities have sought to silence them and to limit the information available publicly about their struggle. Footage of these families holding protests, recounting violations suffered and listening to speeches by spokespersons is available on YouTube and a number of websites administered from abroad, including *Al Manara* and *Libya Al Mostakbal*. Unfortunately, these were not accessible to Libyans between January and end-March 2010, since the Libyan authorities blocked the websites.<sup>168</sup>

Two Amnesty International delegates were set to meet some of these families in Benghazi during the organization’s fact-finding visit to Libya, but were prevented by the Libyan authorities from boarding a flight to Benghazi on 21 May 2009. Furthermore, a number of victims’ families scheduled to attend a press conference held by Human Rights Watch in Tripoli on 12 December 2009 were prevented from leaving Benghazi.

## OTHER CASES OF ENFORCED DISAPPEARANCE

Families of victims of the Abu Salim Prison killings are not alone in their search for answers from the Libyan authorities about their disappeared relatives. The practice of arresting or abducting individuals suspected of being political opponents or members of unauthorized

groups, followed by a denial of their arrest and whereabouts, was widespread in Libya in past decades. To date, many families do not know whether their relatives are alive or dead despite endless attempts to find out.

One case that has received increasing attention in 2010 is that of **Jaballah Hamed Matar**. Jaballah Hamed Matar, a prominent member of the Libyan opposition group, the National Front for the Salvation of Libya (NFSL),<sup>169</sup> disappeared in Cairo, Egypt, in March 1990. Since then his whereabouts have remained unknown, although reports suggest that he was handed over to the Libyan authorities by their Egyptian counterparts. Correspondence smuggled out of Abu Salim Prison in 1992 and 1995 further confirmed that Jaballah Matar was in the custody of the Libyan authorities. In 1995, Jaballah Matar was reportedly seen by another prisoner in Abu Salim Prison. Amnesty International also received an audio taped message, said to be recorded in the early 1990s, in which Jaballah Hamed Matar confirmed that he was being held in a Libyan prison. According to reports, he was seen in Libyan custody as late as 2002.

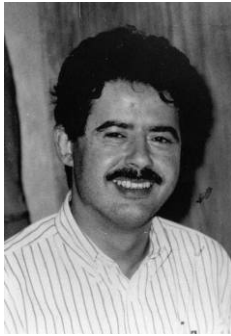


Jaballah Hamed Matar © Private

In 2001 Jaballah Hamed Matar's name appeared on an indictment of several people accused of belonging to a secret and prohibited organization and smuggling explosives from abroad (Case 2001/1). During the trial, the defence reportedly asked for Jaballah Hamed Matar to be brought to court, but this request yielded no result. In the verdict, pronounced by the Permanent Military Court on 5 February 2002, Mahmud Hamed Matar, a brother of Jaballah Hamed Matar, and three of his relatives were sentenced to life imprisonment. At the time of writing, all three are held in the custody of the Libyan authorities apparently at Jdeida Prison.<sup>170</sup>

After two decades of grief and anguish, Hisham Matar, Jaballah Matar's son and a prominent author based in the UK, signed an open letter calling on the UK authorities to ask their Libyan counterparts about the whereabouts and fate of Jaballah Matar and to place human rights at the centre of their relationship with Libya. The letter, published in *The Times* newspaper on 15 January 2010, was signed by 270 writers and received considerable media attention.<sup>171</sup> The British Foreign Secretary, David Miliband, responded by stating that: "the UK has raised a number of specific concerns and individual cases with Libya". He continued: "I fully sympathise with Hisham's situation. I can only imagine how it must feel not to know the fate of your father year after year...Hisham and his family need to know the truth now... This is one of a number of concerns we have about the human rights situation in Libya".<sup>172</sup> A few days later, Libya's human rights record was discussed in the UK House of Lords and a government representative confirmed that the UK authorities were continuing to raise human rights concerns with their Libyan counterparts.<sup>173</sup>

'**Ezzat Youssef al-Maqrif**, another prominent member of the NFSL, also disappeared in Cairo in March 1990. 'Ezzat Youssef al-Maqrif was an officer in the Libyan army until 1973 when he was accused of taking part in an attempt to overthrow the government. He was then arrested, detained for a year and released without charge or trial. He had been in Egypt since



Ezzat Youssef al-Maqrif ©  
Private

1984 along with his wife and three sons – the eldest, Youcif, was six years old and the youngest just six weeks old when 'Ezzat Youssef al-Maqrif was taken away from their home, reportedly by Egyptian security officials. Youcif al-Maqrif spoke passionately about his father's disappearance during a meeting organized by *Outreach Society* in London on 27 January 2010, telling the audience how deeply his family is still affected by 'Ezzat's disappearance. He said that not a day passes without him thinking about his father's disappearance and that the burden becomes heavier and not lighter with the passage of time. 'Ezzat Youssef al-Maqrif's family received hand-written letters written in the 1990s which confirmed that the Egyptian authorities had handed 'Ezzat Youssef al-Maqrif over to their Libyan counterparts and that he was in Abu Salim Prison. The family's requests for information from the Libyan authorities yielded no results.

Throughout the years, Amnesty International and its members wrote to both the Libyan and Egyptian authorities asking about the two men's whereabouts and fate. However, no details have been forthcoming. When an Amnesty International delegation raised the question of Libyan nationals believed to have been subjected to enforced disappearance abroad, the Secretary of the General People's Committee for Foreign Liaison and International Cooperation at the time, Abd al-Rahman Shalgam, said: "If we had detained them, we would have the courage to say that we had done it". He continued, "Why not investigate? We must reach the truth. Those who participated in these 'disappearances' are criminals". However, to date, no full, independent, and impartial investigations have taken place and the Libyan authorities have not acknowledged their involvement in the disappearances.

Another unresolved case of enforced disappearance which has attracted considerable international attention is that of **Imam Musa al-Sadr**, a prominent Iranian-born Shi'a cleric of Lebanese nationality. He disappeared, along with two companions, Sheikh Muhammad Ya'qub and 'Abbas Badr al-Din, during a visit to Libya in 1978. The Libyan authorities insist that they are not implicated in the clerics' disappearance, indicating that there was evidence showing that Imam Musa al-Sadr "departed Libya to travel to a European country".<sup>174</sup> In August 2008, a Lebanese investigative judge indicted and issued an arrest warrant for Libyan leader Colonel Mu'ammarr al-Gaddafi and six others accused of being responsible for the disappearance of the cleric.<sup>175</sup> The Lebanese government refrained from sending a high level delegation to the Arab League summit held in Sirte in late March 2010 after a number of Lebanese politicians called for a boycott of the summit because of Libya's alleged complicity in the disappearance of the cleric and his companions.

**Ahmad 'Abd al-Qadir al-Thulthi**, an engineer born in 1955 in Benghazi, disappeared in June 1996 while in custody of the Libyan authorities. His brother Ashraf 'Abd al-Qadir al-Thulthi, now in the USA, believes that he is still alive. Despite numerous inquiries to the Libyan authorities, he has been unable to obtain any information about his brother's fate and whereabouts. His hopes rose after Saif al-Islam al-Gaddafi's speech in July 2008 which emphasized the right of families of the disappeared to know the truth. After the speech, he wrote to the GDF and to Ali al-Rishi, Secretary for the Affairs of Foreigners and Expatriates in the General People's Committee for Foreign Liaison and International Cooperation, inquiring

about his brother's fate and whereabouts, but received no additional information. Ahmad 'Abd al-Qadir al-Thulthi's wife, son and mother remain in Tripoli and continue to be distraught about his enforced disappearance.

His wife last saw Ahmad 'Abd al-Qadir al-Thulthi on 10 June 1996 during a visit to Abu Salim Prison. Information has filtered out suggesting that until around 2001 he was still alive, alleviating the family's fears that he was killed in the Abu Salim Prison killings in 1996. Additionally, unlike many families of victims of Abu Salim Prison across Libya, Ahmad 'Abd al-Qadir al-Thulthi's family have not received a death certificate from the Libyan authorities during the past year.

Between 1981 and 1985, Ahmad 'Abd al-Qadir al-Thulthi had lived and studied in the UK. During his time abroad, he became politically active in the opposition and organized many peaceful demonstrations in the UK, including a demonstration before the Libyan People's Bureau in London in 1984, during which a British police officer, Yvonne Fletcher, was shot dead.

Ahmad 'Abd al-Qadir al-Thulthi had been in detention nearly continuously since 18 April 1986, except for a short period in July 1986. He returned home briefly before being arrested again on 26 July 1986. He was reportedly accused of sabotage and membership of an illegal political organization, but was acquitted by a criminal court in 1987 due to lack of evidence against him. However, he remained in detention. On 17 March 1990, Ahmad 'Abd al-Qadir al-Thulthi's family received a summons for him from the Popular Prosecution Office to appear before a criminal court in Tripoli. The court was apparently surprised to learn that Ahmad 'Abd al-Qadir al-Thulthi had not been released following his acquittal several years earlier.

In April 1988 Ahmad 'Abd al-Qadir al-Thulthi's family was allowed to visit him in Abu Salim Prison where he was then detained. In June 1988 Amnesty International delegates visiting Libya were also able to see him. Visits by the family then continued, with some interruptions, until June 1996.

In February 2002, six men including Ahmad 'Abd al-Qadir al-Thulthi<sup>176</sup> were reportedly sentenced to life imprisonment. Apparently, only two of the accused were present in the court room; they were Yousef Lahaywal and Najm al-Din al-Naquzi, who both later benefited from the wave of releases of political prisoners in September 2002.

In May 2009, an Amnesty International delegation asked the Libyan authorities and the GDF to reveal the fate and whereabouts of Ahmad 'Abd al-Qadir al-Thulthi, but received no response. The family's efforts to obtain the truth about what happened to Ahmad 'Abd al-Qadir al-Thulthi have also not yielded any results.

### **'PHYSICAL LIQUIDATION' OF POLITICAL OPPONENTS**

In 1980 the Libyan authorities introduced a deliberate policy of extrajudicial executions of political opponents, termed "stray dogs". The policy, known as "physical liquidation", seemed to have been endorsed at the highest levels, including by Colonel Mu'ammar al-Gaddafi himself. The Revolutionary Committees were empowered to implement this policy both at home and abroad.

During this period, dozens of Libyan dissidents inside and outside the country were killed in circumstances suggesting that they had been extrajudicially executed by members of the Libyan security forces or by agents acting on behalf of the Libyan authorities.<sup>177</sup> In some cases, Libyan officials made no secret of the fact that the assassinations were ordered from Libya and publicly welcomed them.<sup>178</sup>

The first known call for the "physical liquidation" of opponents was made in February 1980 when the Third Congress of the Libyan Revolutionary Committees issued a declaration calling among other things for the "physical liquidation" of enemies of the 1969 revolution, and of elements within Libya considered to be obstructing "revolutionary change" in political or economic ways. The declaration was published in the newspaper the *Mu'alliam*. The Revolutionary Committees announced: "Physical liquidation becomes the final stage in the revolutionary struggle... The liquidation of the elements that hinder the revolution from civilians...the bourgeoisie that are parasites on the power of the revolution and on the people's authority".

A few weeks after this declaration, **Amer Taher Deghayes**,<sup>179</sup> co-founder of the Ba'ath movement in Libya, was summoned for questioning at his home by a security official on 27 February 1980. As he had been questioned in December 1979 by the security forces and previously arrested on several occasions before and after the al-Fateh Revolution, he was not extremely alarmed by the verbal summons according to his son Taher, who was 14 at the time. However, several days later, Taher's uncle received a call telling him to pick up Amer Taher Deghayes' body from the Zawiya Hospital morgue in Tripoli. The authorities provided the family with a death certificate which indicated that Amer Taher Deghayes committed suicide by hanging, but did give the family an autopsy report or let Amer Taher Deghayes' wife or brother see the body. His family are convinced that he was "physically liquidated". Amer Taher Deghayes was a law graduate from Cairo University and left behind his wife and five children.<sup>180</sup>

The Libyan authorities' policy of "liquidating" political opponents extended to those living in exile. Following a failed attack on Colonel Mu'ammār al-Gaddafi's headquarters at Bab al-Azizya Barracks in Tripoli on 8 May 1984,<sup>181</sup> the People's Committees and Basic People's Congresses all over Libya were reported to have pledged their support to the Libyan leader and to have reportedly warned that "the hand of the revolution will reach them [stray dogs and traitors] wherever they are to fulfil the sentence of the people on them".

Between March 1980 and June 1987, Amnesty International recorded at least 37 attacks on members or presumed members of the banned Libyan opposition living abroad, resulting in the death of 25 individuals. Most of the victims were active members of the opposition to the Libyan authorities and others were known to be or suspected of being sympathetic to the opposition.

In the 1990s far fewer cases of possible extrajudicial executions were reported. In one case, **'Ali Mohammad Abu-Zeid** was killed in circumstances suggesting that he might have been "liquidated" on the orders of the Libyan authorities. 'Ali Mohammad Abu-Zeid, one of the founding members of the NFSL, was stabbed to death in his grocery shop in west London on 26 November 1995. The grocery shop was reportedly used as a base to issue and distribute leaflets opposing the Libyan regime. Police statements at the time did not rule out the

possibility that the murder of 'Ali Muhammad Abu-Zeid was politically motivated, and pointed to the fact that there were no signs of a forced entry to the shop, or evidence that anything had been stolen. In March 2010, his daughter Huda Abu-Zeid told Amnesty International that an investigation of the circumstances surrounding his murder has still not been concluded by the UK police.

'Ali Mohammad Abu-Zeid was arrested in 1973 for political reasons and spent about two years in prison in Libya. He left Libya in 1977 and went into exile in the UK. He was alleged to have been based in Tunis during the failed attack on Colonel Mu'ammarr al-Gaddafi's headquarters at Bab al-Azizya Barracks in Tripoli on 8 May 1984, for which the NFSL claimed responsibility. Eight people were summarily hanged in public in Libya following this attack, and some reports suggest that 'Ali Muhammad Abu-Zeid had been sentenced to death in absentia for his alleged role in the attack.<sup>182</sup>

Unless the Libyan authorities address gross human rights violations committed in the past; abuses will perpetuate in a prevailing climate of impunity. Political will is needed to break with the past of gross human rights violations, not by denying responsibility and silencing victims' families, but by conducting independent and impartial investigations, holding perpetrators to account and providing families of victims with adequate reparation. Under their international obligations, the Libyan authorities must provide an effective remedy for victims of human rights violations, including families of victims of enforced disappearance and extrajudicial executions (Article 2 of the ICCPR). Two elements of an effective remedy are establishing the truth through conducting full, independent and impartial investigations and using the evidence uncovered during those investigations to bring those responsible to justice. The final element of an effective remedy is granting families adequate reparation including, but not limited to, financial compensation for the human rights violation and the harm suffered.<sup>183</sup>

## RECOMMENDATIONS

Amnesty International calls on the Libyan authorities to:

- conduct full, impartial and independent investigations into all enforced disappearances, extrajudicial executions and deaths in custody possibly as a result of torture, even when no official complaint has been made; and to bring those responsible to trial in proceedings meeting international standards for fair trial without recourse to the death penalty;
- clarify and make public without delay the mandate of the Committee headed by Mohamed al-Khadar to investigate the 1996 Abu Salim Prison killings. Any investigations into the killings should be conducted by an independent judiciary or through the establishment of an appropriate mechanism with investigative powers to subpoena members of security forces and other officials, regardless of rank, and a mandate to identify both individual perpetrators and official bodies responsible for the violation. The authorities should ensure that all relevant stakeholders, including families of victims, are widely consulted in the establishment and work of such a mechanism. The authorities should also ensure that complainants including victims and families and other witnesses are protected from violence, threats or violence and any other form of intimidation;
- publish a list of those killed in the Abu Salim Prison in June 1996 and others who died



while in custody of the Libyan authorities as a result of torture or other abuses. Such a list should contain the names of those killed; the circumstances of their arrest and subsequent disappearance; the information gathered in each case; and the exact circumstances of their death;

- provide families of victims of the Abu Salim Prison killings with accurate death certificates stating the place, date and exact cause of death;
- inform families of victims of the Abu Salim Prison killings of the burial places of their relatives; and consult families on whether they want the remains of their relatives to be exhumed and identified through DNA testing. If exhumations are conducted, ensure that they are carried out in accordance with the UN Model Protocol for Disinterment and Analysis of Skeletal Remains;
- recognize state responsibility for gross human rights violations in the past and issue an official public apology by the Head of State, Colonel Mu'ammar al-Gaddafi, for victims of Abu Salim Prison killings and other victims;
- identify which individuals and state organs were responsible for the commission of gross violations in the past, including revealing the individuals or bodies who ordered the shootings on 29 June 1996 in Abu Salim Prison;
- establish a vetting system to ensure that those reasonably suspected of serious human rights violations do not remain, or are not placed in, positions where they could repeat such violations; such a screening mechanism should work alongside independent and impartial investigations to identify suspected perpetrators and judicial proceedings to bring them to justice;
- ensure that all victims of human rights violations, including those who accepted and received financial compensation, receive financial compensation and other forms of reparation which are appropriate and proportional to the gravity of the violation and the circumstances of their case;
- ensure that families of victims of Abu Salim are protected from any intimidation or harassment for demanding their rights or for holding public protests against government actions and allow the Organizing Committee of Families of Victims of Abu Salim to register;
- Sign and ratify the International Convention for the Protection of all Persons against Enforced Disappearance and the Rome Statute of the International Criminal Court and extend invitations to the Working Group on Enforced and Involuntary Disappearances and the Special Rapporteur on extrajudicial, summary or arbitrary executions.

Amnesty International calls on the Egyptian authorities to:

- Conduct full, impartial and independent investigations into the enforced disappearances of Libyan nationals in Egypt and make the results public. Any Egyptian officials or individuals, acting with the knowledge or the acquiescence of the authorities, responsible for or complicit in the enforced disappearance of Libyan nationals in Egypt should be brought to

justice in proceedings meeting international standards for fair trial without recourse to the death penalty.

## 5. RIGHTS OF REFUGEES, ASYLUM-SEEKERS AND MIGRANTS

“No place for us [Eritreans] in this world. We want to live in peace, work as normal person[s]... [We want to be] accepted as human beings, [we] want to live.”  
Eritrean detainee in Garabule Detention Centre, Libya, January 2010.

“There are 1.5 million foreigners in Libya... We don't know if they are political refugees, we know that they are here... Are we expected to give them Libyan citizenship?”  
Abdul Ati al-Obeidi, Secretary of European Affairs at the General People's Committee for Foreign Liaison and International Cooperation, Tripoli, Libya, May 2009.



Individuals rescued at sea are given bread by a Libyan official, Tripoli, Libya, March 2009 © Associated Press

The Libyan government is failing to respond adequately to the flow of refugees, asylum-seekers and migrants into its territory.<sup>184</sup> Most originate from sub-Saharan African countries, including Burkina Faso, Ethiopia, Eritrea, Ghana, Mali, Niger, Nigeria, Somalia and Sudan. Some are from neighbouring North African countries and some from as far away as south-east Asia. Some flee persecution or conflict; others come in search of better life opportunities either in Libya or in Europe, which they try to reach via Libya.

Hopes of a better life for refugees, asylum-seekers and irregular migrants are undermined once they arrive in Libya. They live in constant fear: fear of being arrested and held indefinitely in overcrowded detention centres; fear of being exploited, beaten and abused; and fear of being forcibly returned to an uncertain future where they may face persecution or torture. Those whose rights have been violated have no possibility of seeking protection or remedy through the justice system.

The Libyan authorities have the right to control the country's borders and set conditions for the entry and stay of foreign nationals. However, in doing so, they routinely breach their international human rights obligations.

Libyan authorities make little efforts to distinguish between individuals in need of international protection and other migrants, and they brush off concerns raised regarding the dire situation of some foreign nationals in Libya. Instead, they argue that Libya is caught between pressures from Europe to reduce the tide of migration and difficulties in controlling Libya's long and porous land borders.



Individuals rescued at sea arrive at Tripoli, Libya, March 2009 © Associated Press

During meetings at the General People's Committee for Foreign Liaison and International Cooperation (equivalent to the Ministry of Foreign Affairs) on 18 and 21 May 2009, Libyan officials told Amnesty International delegates of their frustration that Libya is expected to "guard" Europe from incomers and is blamed by members of the EU for the influx of migrants. At a news conference in Malta in January 2010, Mussa Kussa, General Secretary of the People's Committee of Foreign Liaison and International Cooperation, reiterated the complaint that the EU placed the burden of controlling irregular migration on Libya.<sup>185</sup> He was quoted in the Maltese media as warning EU member states: "There are six million Libyans and we have two million illegal immigrants, this problem is really on the shoulders of the Libyan people...We are working as guards to the EU, and Libya might not be able to continue doing this".<sup>186</sup> Mussa Kussa also criticized and denied reports that Libyan authorities violated the rights of those believed to be irregular migrants in Libya.

## THE ROLE OF EUROPEAN UNION MEMBER STATES

Members of the EU have been actively seeking the collaboration of Libya in controlling the flow of migrants to European shores – turning a blind eye to Libya's dire human rights record, the absence of a functioning asylum system in Libya, and persistent reports of the abuse and ill-treatment of refugees, asylum-seekers and migrants.

The Treaty of Friendship, Partnership and Co-operation signed in August 2008 between Italy and Libya includes provisions for bilateral efforts to combat "illegal migration", facilitated by the joint patrolling of the sea agreed upon in December 2007 in the "Protocol" and the "Additional Technical-Operational" Protocol.<sup>187</sup> As part of the agreements, Italy promised to compensate Libya for its occupation of the country between 1911 and 1943. The Treaty of Friendship, Partnership and Co-operation involves a US\$5bn package for construction projects, student grants and pensions for Libyan soldiers who served with Italian forces during the Second World War. In return, Libya agreed, among other things, to tighten control of its territorial waters and accept disembarkation on its soil of individuals intercepted at sea by Italian vessels. Italy was also reported to have undertaken to provide resources, including technology, to control migrant flows through the southern borders of Libya. In fact, Italy has provided Libya with six motor patrol boats since the Treaty entered into force.

In the framework of these agreements, from May 2009 onwards Italy started returning refugees, asylum-seekers and migrants intercepted in international waters to Libya. On 6 May 2009, distress calls were sent from three vessels with an estimated 230 third-country nationals on board. Italian coastguard vessels intervened but transported the individuals to Tripoli, without stopping in an Italian port and without checking whether any individuals on board were in need of international protection or basic humanitarian assistance. Further interceptions and returns occurred in the subsequent months: according to official information from the Italian Ambassador to Libya, between 6 May and 3 September 2009, over 1,000 individuals were returned to Libya.<sup>188</sup> They included nationals from Eritrea, Somalia and other sub-Saharan African countries. The Italian Minister of the Interior Roberto Maroni was reported to have called this action "an historic achievement after one year of bilateral negotiations with Libya".<sup>189</sup>

On 12 May 2009, a United Nations High Commissioner for Refugees (UNHCR) spokesperson, Ron Redmond, expressed serious concerns about these returns from Italy. He

stated that such returns undermine access to asylum for individuals potentially in need of international protection and risk violating the principle of non-*refoulement*, which prohibits the return of any person in any manner whatsoever to a situation where he or she would be at risk of torture or other serious human rights violations.

He said that: "UNHCR's concern is heightened by the fact that Libya is not a State party to the 1951 Convention relating to the status of refugees, and does not have a national asylum law or refugee protection system. There is, therefore, no assurance that persons in need of international protection may find effective protection in Libya".

These concerns over the failure of the Libyan authorities to provide an adequate environment for the protection for refugees and asylum-seekers were reiterated by the UN High Commissioner for Refugees, António Guterres, in October 2009.<sup>190</sup>

Despite these pleas by UNHCR and consistent reports of abuses suffered by refugees, asylum-seekers and migrants in Libya, the Italian authorities continue to intercept vessels at sea and send them back to other countries most notably Libya.<sup>191</sup> In January 2010, Italian Minister of the Interior Roberto Maroni stated that the number of migrants arriving to Italian shores was reduced by 74 per cent in 2009 compared to 2008, attributing the reduction to Italy's bilateral agreements with Libya.<sup>192</sup>

Italy is not alone in seeking Libya's cooperation to control the flow of migrants to European shores. Negotiations between Libya and the EU over a Framework Agreement started in November 2008 covering the control of migration, among other issues, including potential readmission agreements for third-country nationals who have transited through Libya on their way to Europe.

Members of the EU should not ignore human rights concerns in Libya because of their desire to reduce arrivals from Africa to Europe. Individuals in need of international protection face particular difficulties in Libya, which are spelt out below. Refugees, asylum-seekers and migrants also face common risks: arrests and indefinite detention; torture, ill-treatment and other abuses; and forcible return.

## INDIVIDUALS IN NEED OF INTERNATIONAL PROTECTION IN LIMBO

Libyan officials consistently deny the presence of any asylum-seekers or refugees in Libya. During Amnesty International's fact-finding visit to Libya in May 2009, officials from the General People's Committee for Foreign Liaison and International Cooperation said that there were no refugees or asylum-seekers in Libya, only economic migrants. The Director of the Misratah Detention Centre, some 200km from Tripoli, which at the time held more than 400 Eritrean and about 50 Somali nationals, stressed to Amnesty International delegates on 20 May 2009 that there were no refugees in Misratah because Libya had not ratified the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

At the highest level of the state, there is a belief that all foreign nationals in Libya are there solely for economic reasons. Colonel M'uammar Al-Gaddafi argued during his visit to Italy in June 2009 that African nationals who live in "deserts and forests" are motivated only by notions of wealth and a better life in Europe.<sup>193</sup>

Nonetheless, Libyan legislation recognizes the principle of international protection for refugees and the principle of non-*refoulement*. For instance, Article 11 of the Constitutional Declaration pronounced by the Revolutionary Command Council<sup>194</sup> on 11 December 1969 prohibits the return of “political refugees” and Article 21 of Law No. 20 of 1991 on the Promotion of Freedom states that: “The Great Jamahiriya is a refuge for oppressed people and those struggling for freedom and, therefore, refugees seeking protection may not be surrendered to any authority”.

However, there are no procedures in place for asylum-seekers to apply to be recognized as refugees by the Libyan authorities. The Libyan authorities established a committee to draft asylum legislation and sought technical and legal assistance from UNHCR in the end of 2007. Libyan officials confirmed to Amnesty International in May 2009 that asylum legislation was being prepared but they did not specify when the proposed draft would be presented to the General People’s Congress for adoption. Amnesty International’s request to receive a copy of the proposed draft was not answered.

Libya is a state party to the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (the OAU Refugee Convention), which stipulates that member states shall: “use their best endeavours consistent with their respective legislations to receive refugees and to secure the settlement of those refugees who, for well-founded reasons, are unable or unwilling to return to their country of origin or nationality”.

Libya is also under an obligation not to return any individuals to a country where they would be at risk of torture or other forms of ill-treatment or where their “life, physical integrity or liberty would be threatened”. These obligations are found in Article 2 of the OAU Refugee Convention as well as Article 7 of the International Covenant on Civil and Political Rights (ICCPR) and Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), treaties to which Libya is a state party.

Despite statements denying the presence of refugees or asylum-seekers in Libya and the lack of asylum legislation, the Libyan authorities acknowledge that they cannot deport certain individuals such as nationals of Eritrea and Somalia.

This tacit policy is welcome as no Somali nationals, including rejected asylum-seekers, should be forcibly returned to southern or central Somalia, or to any area of the country from where they do not originate, in light of the security and human rights situation in Somalia. While individual returns to northern Somalia (Somaliland) might be possible under certain conditions, in particular following individual assessments of risk, large scale involuntary returns to northern Somalia are discouraged. This policy is in line with the 2010 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Somalia. The option of returning individuals to a different part of Somalia (the internal flight alternative) is not currently applicable in Somalia.<sup>195</sup>

Similarly, Amnesty International opposes the forcible return of Eritreans to their country, where they are likely to be detained on arrival, with a risk of being tortured or otherwise ill-treated and held incommunicado indefinitely without charge or trial as punishment for “betraying” the country or fleeing military service. In 2009 UNHCR issued guidelines to all governments calling for careful assessments of asylum claims submitted by Eritreans and

opposing forced return to Eritrea of all Eritreans, including rejected Eritrean asylum-seekers, on the grounds of the record of serious human rights violations in Eritrea. These guidelines are still in force.<sup>196</sup>

The last documented and confirmed case of *refoulement* of Eritrean nationals from Libya was in July 2004, when the Libyan authorities forcibly returned some 110 Eritrean nationals. On arrival in Eritrea, they were reportedly arrested, detained incommunicado and tortured in secret military prisons. The following month, the Libyan authorities attempted to deport a further 75 Eritrean nationals, including six children. Claiming that they were afraid of the risks they might face on return, some of the passengers hijacked the plane taking them to Eritrea and forced it to land in Sudan. Sixty of the passengers sought and obtained refugee status from UNHCR in Sudan.

At the time (September 2004) UNHCR stated that: "The group [of 60 asylum-seekers interviewed by UNHCR] said that they had been detained without charges for a prolonged period of time in the Libyan town of Kufra, and had endured repeated physical abuse. They also said that, despite their request to see UNHCR, they had not been given access to any asylum procedure. Additionally, the group was never informed of the decision to deport them to Eritrea, were forced to board a special charter flight, and only found out after their plane took off that the destination was their country of origin".<sup>197</sup>

Libyan authorities again attempted to forcibly return Eritrean nationals to Eritrea in June 2008. On 21 June 2008, Libyan authorities took preparatory steps to forcibly return some 230 of the Eritrean detainees held in Misratah Detention Centre to Eritrea later that day, falsely informing them that they were to be flown to Italy for resettlement. Officials prepared "*laissez passer*" travel documents for 230 detainees in Misratah Detention Centre and instructed them to be prepared for medical examinations and transportation to the airport. Reports indicate that special-uniformed security officers cordoned off the detention centre. Fearing deportation, detainees managed to alert members of the international community and UNHCR intervened, preventing the deportation.<sup>198</sup>

The Libyan authorities continue to grant Eritrean embassy officials access to Eritrean asylum-seekers held in detention centres in Libya. According to information available to Amnesty International, from late December 2009 to mid-January 2010, Eritrean embassy officials visited a number of detention centres in Libya including Garubule, Misratah, Surman and Az-Zawiyia. In the context of these visits, Eritrean nationals were told by Libyan security officials to complete forms in Tigrinya language, spoken in Eritrea. The forms sought biographical data on the detainees, the date and port of their departure from Eritrea and the length of their stay in Libya. A question regarding detainee's desire to return to Eritrea caused particular fear among some detainees that the completion of these forms was aimed at facilitating their forcible return to Eritrea. UNHCR was able to access some of these detainees. It was assured by its Libyan counterparts that no Eritrean detainees would be involuntarily returned to their country of origin.

Eritrean embassy officials should not be granted access to Eritrean asylum-seekers. Under its non-*refoulement* obligations, Libya is required to ensure the safety of individuals seeking protection within its jurisdiction. This must include ensuring confidentiality for those seeking asylum and not exposing asylum-seekers or their families to actual or indirect risk. Following



these visits by embassy officials, Radio Erythrée Internationale, a radio station based in France, reported that 12 Eritrean nationals were forcibly returned in early February 2010. Amnesty International has not been able to confirm or refute these reports, given the difficulties of conducting on-the-ground research in Libya and Eritrea, but it reiterated its call to the Libyan authorities not to forcibly return any Eritrean nationals.

In light of these incidents, Amnesty International does not consider the Libyan authorities' tacit policy of refraining from returning Eritrean and Somali nationals to their home country to be a sufficient, effective safeguard for individuals in need of international protection. Concerns are heightened regarding possible incidents of *refoulement* by the occurrence of arbitrary or collective expulsions, the lack of information, particularly from remote areas of Libya, and the documented instances of attempts to deport Eritreans.<sup>199</sup>

Asylum-seekers and refugees in Libya live in constant fear of being deported, given the lack of asylum legislation and the arbitrary behaviour of the Libyan authorities towards individuals they deem to be irregular migrants.

While the Libyan authorities refrain from conducting mass deportations of Eritreans and Somalis, they fail to offer them any possibility of local integration. Instead hundreds of individuals in need of international protection are held in indefinite detention, despite efforts of the UNCHR to secure the release of Eritrean and Somali detainees.<sup>200</sup> As detailed below, even asylum-seekers and refugees from sub-Saharan Africa who are not detained and have documents from UNCHR confirming their status are at risk of being arrested at any moment. They live in extremely difficult conditions, face regular threats and attacks from Libyan nationals and have to cope without residence documents as the Libyan authorities do not provide these documents even to individuals registered with UNHCR.

UNHCR assists some of the neediest refugees in urban areas, giving them living allowances, housing, medical assistance and other support. Some charities, including Caritas, also help asylum-seekers, refugees and migrants within their limited capacity. However, given that there are some 12,000 asylum-seekers and refugees registered with UNHCR as of January 2010, most have to fend for themselves.

To find a durable solution, UNHCR is seeking to resettle refugees from Libya to third countries, particularly in Europe and the USA, but it has only been able to secure resettlement for a small proportion of those registered as refugees in Libya.<sup>201</sup>

Given that neither local integration nor voluntary repatriation are viable options for refugees in Libya in the short or medium term, resettlement to a third country is the only viable option for them. However, the number of individuals resettled from Libya remains low. For example, nine refugees were resettled in 2005;<sup>202</sup> none in 2006; 43 in 2007;<sup>203</sup> 159 in 2008,<sup>204</sup> and 67 in 2009.<sup>205</sup> This trend may be improving as in the past year the number of referrals for resettlement has increased.

Amnesty International calls on states with capacity in the international community to prioritize such refugees from Libya and to provide a durable solution to serve both as a protection tool and a tangible expression of responsibility sharing in line with their

obligations in international law.<sup>206</sup> It must be noted, however, that providing resettlement places cannot and must not be used as an alternative to allowing access to asylum-seekers wishing to enter their territory. For instance, recent “push-backs” or interceptions by Italy, which effectively translate to outsourcing refugee status determination, remain in violation of international law and cannot be offset by accepting resettlement cases referred subsequently.

## UNHCR IN LIBYA

Even though UNHCR has had a presence in Libya since 1991, it continues to operate without a formal memorandum of understanding with the Libyan authorities. This renders its operating environment largely unpredictable and impedes its ability to carry out its protection functions in a systematic way.

In the absence of asylum procedures in Libya, UNHCR conducts refugee status determination interviews and offers the only hope for asylum-seekers in Libya to present their claim for refugee status. As of 31 January 2010, there were 8,951 refugees and 3,689 asylum-seekers registered with UNHCR in Libya.<sup>207</sup>

UNHCR and its partners have been gradually gaining access to detention facilities in Libya designed to hold individuals believed to be irregular migrants. Its partnership since 2005 with the Libyan organization, the International Organization of Peace, Care and Relief (IOPCR), further formalized in 2008 through the signing of an agreement, has been instrumental in facilitating UNHCR's access to detention centres. At the time of writing, UNHCR and its partners had access to 15 detention centres in Libya.<sup>208</sup> On 15 October 2009, UNHCR announced that in May 2009 it had signed a partnership agreement with another Libyan organization, the Libyan National Youth Association. The Libyan National Youth Association is to focus on assisting urban refugee and asylum-seeker populations through the provision of vocational training, capacity building, health care and other services.<sup>209</sup>

UNHCR and its partners have also been involved in screening individuals pushed back to Libya from Italy. UNHCR declared that by October 2009, it had been able to screen 890 people and had registered 206 of them as refugees and secured their release from detention.<sup>210</sup> UNCHR also registered 80 individuals pushed back from Italy in November 2009, granting 40 of them refugee status. The remainder were awaiting their interviews for refugee status determination at the time of writing. UNHCR confirmed that a total of 685 individuals determined to be refugees or asylum-seekers were released from detention from 2008 to February 2010, including 450 Eritreans and 150 Somalis.

UNHCR's ability to secure access to all individuals potentially in need of international protection had been limited, given that it has no access to at least one known detention centre in Gatroun in the south of Libya. According to information available to Amnesty International, as recently as mid-2009, UNHCR only had access to three detention centres around Tripoli. It had to rely on the goodwill of the Libyan authorities to send individuals in need of international protection to detention centres accessible by UNHCR and its partners.

Maha Omar Othman, Director of Consular Affairs in the Secretariat of Expatriates and Migration of the General People's Committee for Foreign Liaison and International

Cooperation, told Amnesty International on 18 May 2009 that individuals held in remote centres in Libya who express fear of persecution if returned to their countries of origin are sent to Tripoli in order to allow UNHCR to interview them. However, given that the Libyan authorities make little effort to distinguish between asylum-seekers, refugees and migrants, it is unlikely that in practice this often take place.

A number of Eritrean and Somali nationals, possibly in need of international protection, previously held in Kufra, some 1,400km from Tripoli in south-eastern Libya, told Amnesty International that they had not been transferred to Tripoli by the Libyan authorities. Those who eventually reached Tripoli did so through smugglers and through bribing detention centre guards to secure their release. On the contrary, in previous years, some Eritreans and Somalis were sent from detention centres in Tripoli or other northern cities to detention centres in Kufra or near the border with Niger.

Discussions are underway to open two offices in the south and east of the country, namely in Sabha and Benghazi, staffed by UNHCR, IOPCR and other partners. This new step should assist in securing protection for potential refugees and asylum-seekers entering Libya from the east or the south. This is particularly important as most refugees, asylum-seekers and migrants enter Libya across its southern borders.

International standards require that UNHCR has access to all potential refugees and asylum-seekers. For example, such safeguards were elaborated in the 1999 UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum-seekers, which state that: "If detained, asylum-seekers should be entitled to the following minimum procedural guarantees...to contact and be contacted by the local UNHCR Office, available national refugee bodies or other agencies and an advocate".<sup>211</sup> In addition, the UN Working Group on Arbitrary Detention has specified that in relation to the detention of migrants: "The Office of the United Nations High Commissioner for Refugees (UNHCR), the International Committee of the Red Cross (ICRC) and, where appropriate, duly authorized non-governmental organizations must be allowed access to the places of custody". (Principle 10 of Deliberation Number 5 on the situation regarding immigrants and asylum-seekers).<sup>212</sup>

UNHCR's capacity to meet the needs of refugees and asylum-seekers in Libya is also constrained by staffing capacity issues. Amnesty International is aware of several cases of Eritrean detainees who were held for months, in one case up to 16 months, and had not been registered even though they had been visited by members of UNCHR or its partner organization, IOPCR. In its written responses to Amnesty International's questions regarding its operations in Libya, UNHCR stated that refugee status determination capacity was 128 per month and registration capacity was 300 a month on average. It mentioned plans to increase staff capacity in 2010.

## DETENTION OF THOSE BELIEVED TO BE IRREGULAR MIGRANTS

There are no reliable official statistics available on the number of individuals believed to be irregular migrants detained in Libya. According to the head of the Passports Investigations' Department under the General People's Committee for Public Security, there were fewer than 2,000 foreign nationals detained in Libya in November 2009.<sup>213</sup> He said that deportations were responsible for the welcome reduction in numbers. The exact numbers are difficult to

determine as they fluctuate constantly with fresh arrests and deportations and transfers from one detention centre to another. Nonetheless, thousands of individuals suspected of being irregular migrants, including some potentially in need of international protection, are believed to be held in detention facilities as well as regular prisons across Libya.

Illegally entering, staying in or leaving Libya is criminalized in Article 19 of Law No. 6 of 1987 regarding the Organization of the Entry, Stay and Exit of foreigners in Libya (amended by Law No. 2 of 1372). These offences are punishable by fines of up to 2,000 dinar (about US\$1,560) and/or "detention". Law No. 6 of 1987 does not specify the period of detention. According to Article 22 of the Libyan Penal Code, "detention" ranges from 24 hours to three years, except in special circumstances stipulated in the law. The head of the Department of Travel Documents (Passports), Nationality and Affairs of Foreigners of the General People's Committee for Public Security has the authority to refer cases to the Department of Public Prosecutions or reach a settlement with the accused within 10 days for a payment of 100 dinars (about US\$78). The Law also gives the General Secretary of Passports and Nationality the right to detain any individual against whom a deportation order has been issued pending deportation, without specifying the maximum period of detention. The Law provides no avenue to appeal against administrative detention or deportation orders issued by the General Secretary of Passports and Nationality.

Brigadier Belkacem Abdesalam Gargoum, Director General of the Judicial Police, claimed in a meeting with Amnesty International delegates on 17 May 2009 that irregular migration is treated like any other crime: people are arrested, tried and jailed. However, in practice, individuals suspected of being irregular migrants almost never face formal charges or trial for breaching Law No. 6 of 1987. Instead they find themselves arrested and placed in detention centres with no opportunity to challenge the lawfulness of their detention.

Hassan, a Somali man, left Mogadishu in May 2008 and came to Libya with a group of 12 other Somalis. They crossed the borders of Kenya, Uganda, Sudan and finally Libya. He paid a Libyan smuggler US\$500 to take him to Tripoli, where he was arrested in September 2008 by police officers. He was transferred to Zlitan Detention Centre, about 140km east of Tripoli, where he stayed for eight months, and then to Misratah Detention Centre. He was never charged or tried.

Ladan, a Somali woman, was arrested from her home in Tripoli along with other Somali women in a police raid around July 2009. She was never charged or tried, but immediately transferred to Az-Zawiya Detention Centre – a facility located about 40-50km west of Tripoli where women suspected of being irregular migrants are held.

In one case known to Amnesty International, an individual suspected of being an irregular migrant was convicted by a court under Law no. 6 of 1987, but the court's sentence was not respected by the Libyan authorities. Daniel, an Eritrean national, was arrested in 2005 when the Libyan navy intercepted a boat carrying him and 220 other passengers. The boat had left the Libyan coast near Zlitan about an hour and a half earlier. After an initial period of detention of about five days, legal proceedings started and he was convicted along with 15 others of entering Libya illegally and attempting to cross the sea illegally. They were each sentenced to two months imprisonment. Daniel was then transferred to Jdeida Prison in Tripoli, but he was not released when his prison term expired. A prison official told him that

he could not be released, but that he should be grateful for getting food. After a further six months in Jdeida Prison, he was transferred to Fellah Detention Centre in Tripoli (now inactive) along with about 65 other foreign nationals, where he stayed for two more months. He was then transferred to Kufra along with about 200 other Eritreans and a number of Sudanese. Daniel said that a Sudanese smuggler came to the centre and took him and about 20 other Eritrean nationals, allegedly after paying 10 dinars (about US\$8) for each detainee to the guards at the centre. Daniel then had to ask his family to wire money in order to pay the smuggler's fee to Tripoli. After this initial ordeal, he had been re-arrested several times and sent back to Kufra twice. Each time, he paid a fee in Kufra to be released and smuggled back to the north of Libya.

As illustrated in Daniel's case, detainees are frequently moved from one detention centre to another without explanation – some have been moved from detention centres in the north of Libya to Kufra allegedly in preparation for their deportation; others have been moved between detention centres in the north.

Eritrean national Haile, who said he fled military service in Eritrea, came to Libya in autumn 2008 and spent time in the detention centres of Ajdebia, about 100km south of Benghazi, Ganfouda, near Benghazi, and Garabule, about 40km from Tripoli. He was not given reasons for any of the transfers. He had never seen a representative from the Department of Public Prosecutions, and had never been charged or tried.



Libyan officials call detention facilities designed for suspected irregular migrants “care” centres. Maha Omar Othman, Director of Consular Affairs in the Secretariat of Expatriates and Migration, explained that in implementing Libya's policy of preventing irregular migrants from travelling further, the authorities felt it necessary to place them in temporary “care” centres in order to identify their country of origin and repatriate them as soon as possible. She explained that the reason behind prolonged detention was the difficulty in identifying irregular migrants' countries of



Misratah Detention Centre view from the inside © Gabriel del Grande [top]  
Mistratah Detention Centre, view from the outside © Amnesty International [bottom]

origin when they destroyed their travel documents. This approach creates a situation where individuals suspected of being irregular migrants are held in detention for months and sometimes years, particularly in the cases of Eritrean and Somali nationals, who cannot be sent back even according to the Libyan authorities.

International standards require that refugees, asylum-seekers and migrants are detained in only the most exceptional prescribed circumstances, and where the authorities can demonstrate in each individual case that detention is necessary and proportionate to the objective of preventing absconding, to verify identity or ensure compliance with a deportation order. In all cases known to Amnesty International, none of these conditions were met. Alternative non-custodial measures should be the preferred solution and should always be considered before resorting to detention. Libyan legislation which allows for indefinite detention is not in compliance with international standards that also prohibit prolonged or indefinite detention and require a presumption against detention established by law.<sup>214</sup>

#### DETENTION CENTRES

As far as Amnesty International is aware, detention centres designed for irregular migrants fall under the control of the General People's Committee for Public Security and not the General People's Committee for Justice, as is the case for regular prisons and detention facilities. According to information available to Amnesty International, none of the detention facilities known to hold migrants – such as Az-Zawiya, Ganfouda, Garabule, Gatroun, Misratah, Surman, Tweisha Zlitan and those in Kufra – are visited by the Department of Public Prosecutions as in the case of regular prisons. This was confirmed by the Director of the Misratah Detention Centre, who told Amnesty International on 20 May 2009 that the General People's Committee for Justice was not involved in the functioning of the centre.

In November 2009, during a conference on migration held in the city of Sabratah, the Head of the Passports Investigations' Department claimed that there were 12 detention facilities for irregular migrants in Libya,<sup>215</sup> while in its written responses to Amnesty International's questions, UNHCR stated that it visits 15 detention centres and is aware of a 16<sup>th</sup> centre to which it has no access. However, there are no reliable official statistics on the number of detention centres designed to hold individuals suspected of being irregular migrants in Libya. The exact number of such detention centres is difficult to establish as according to the information available to Amnesty International they tend to be set up and dismantled frequently.

Maha Omar Othman, Director of Consular Affairs in the Secretariat of Expatriates and Migration, told Amnesty International that measures are in place to ensure the physical integrity of irregular migrants, particularly as they expose themselves to dangerous situations, such as crossing the desert or the Mediterranean. The Director of Misratah told Amnesty International: "We might have differences [with the detainees], but they are human too. They want to have a better life".

Despite these expressions of goodwill, conditions in detention centres for individuals believed to be irregular migrants do not meet international standards, notably as set out in the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>216</sup> Centres are over-crowded and unhygienic and access to medical care is limited or non-existent. In some cases, detainees are denied regular access to the yard and

spend days or weeks trapped inside their cells. In other cases, supplies of food and drinking water are sporadic or severely limited.

In the framework of its fact-finding visit to Libya in May 2009, Amnesty International requested access to a number of cities including Tripoli, Misratah, Sabha, Az-Zawiya, Kufra and Benghazi to enable it to visit detention centres for suspected irregular migrants located in or around these cities. The organization was only granted access to Misratah Detention Centre, which is considered the "model" detention centre and which is believed to be the first centre to be monitored and visited by UNCHR and its partner organization, the IOPCR.

#### MISRATAH DETENTION CENTRE



Misratah Detention Centre © Gabriele Del Grande

Compared to other detention centres in Libya, Misratah is relatively open to external scrutiny. In addition to the UNHCR and its partner organization IOPCR, since 2007 Misratah has been visited by journalists, both Libyan and foreign, as well as priests who conduct religious services for the detainees.

Amnesty International welcomed the opportunity to visit Misratah Detention Centre on 20 May 2009. Delegates met its Director, Ali Abu Oud, received a tour of the premises including its clinic and interviewed a number of detainees. Unfortunately, Amnesty International was only granted 45 minutes to speak with individuals detained in Misratah, despite commitments from the Gaddafi International Charity and Development Foundation (GDF), which facilitated the organization's access to the detention centre. Although the visit to

Misratah had been scheduled to last until the evening of 20 May 2009, Amnesty International delegates were asked to leave at around 2pm.

In the Misratah Detention Centre, dormitories, a prayer room and a kitchen and dining room area are built around a yard. The doors of the dormitories remain open during the day, and detainees are free to move between dormitories, the yard, and the kitchen and prayer areas. One of the dormitories is reserved for women. All the dormitories were overcrowded – some had beds and in others there were mattresses placed on the floor in close proximity. There was a clear lack of shower and toilet facilities. The Director of Misratah pointed out a dormitory which was double the size of other dormitories but had no additional toilet facilities. There were a number of televisions in the dormitories, one of which appeared to be showing an Eritrean channel.

The Director of Misratah acknowledged that conditions were difficult, and that the centre was hosting between 600 and 700 detainees at the time even though its capacity was only 350. He admitted that toilet and shower facilities were inadequate and frequently broken. He suggested that detainees broke them themselves in anger.

The most frequent complaints of detainees in Misratah were: overcrowded and unhygienic conditions; poor water quality; the lack of diversity in the diet; and the lack of recreational activities.

Another serious concern expressed by detainees was the inadequacy of medical treatment. The Director of Misratah acknowledged that many of the detainees experienced health problems, particularly skin diseases. He said that he himself had caught a skin infection from the detainees and had to take time off work. He also acknowledged that tuberculosis was a problem. Some of the detainees complained to Amnesty International that while they did receive some medical treatment from the clinic, some of the medicines distributed seemed to be past their expiry date and all ailments were treated with the same type of tablets. They also complained that in more serious cases, the prison administration refused to transport detainees to the hospital until they became critically ill: "We are never taken to the hospital unless we are on the death bed. I have seen four people die here in two years".

At the time of Amnesty International's visit there were between 600 and 700 detainees. However, the Misratah detention centre is believed to have become less crowded since around 300 Eritreans were released<sup>217</sup> in October 2009, and a number of Somalis were also believed to have been released or transferred to other detention centres.

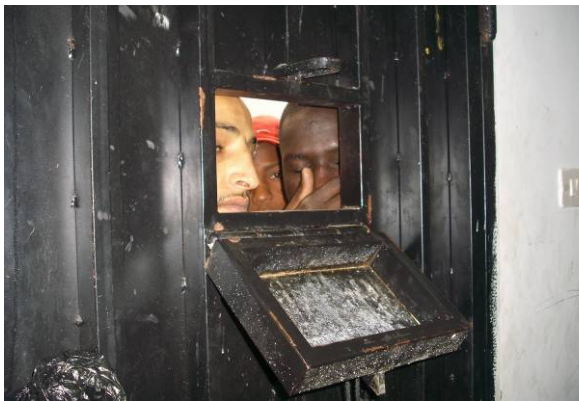
Despite concerns about conditions in Misratah Detention Centre, all migrants interviewed by Amnesty International who had spent time in other detention centres in Libya attest that conditions elsewhere are far worse.

Despite being held in Misratah for about 16 months, Petros, an Eritrean national, was afraid of leaving the detention centre. He feared that if released, he would run the risk of being re-arrested by the Libyan authorities and being sent to other detention centres where conditions are much worse. He said that some of those released in October 2009 had been re-arrested.



Another Eritrean national, Kibreab, who had been detained both in Zlitan and Misratah, said that the conditions in the two centres were barely comparable. In Zlitan, he was kept in a cell with over 60 other people and never allowed to go outside. On the other hand, he acknowledged that he received medical treatment in Misratah, and that he was transferred to the hospital and then released on health grounds.

Abdi, a Somali national, who had also been detained in both Misratah and Zlitan described the conditions in Misratah as being acceptable, while those in Zlitan were "very hard". He said that in Zlitan there was a shortage of food and blankets, and that fights sometimes broke out between detainees over access to the limited supplies. He said that the guards frequently insulted detainees, yelling at them: "you are dogs to us".



Zlitan Detention Centre © Gabriele Del Grande

## ABUSES IN DETENTION

In addition to being subjected to indefinite detention in difficult conditions, individuals believed to be irregular migrants face regular verbal abuse, beatings and other ill-treatment, in some cases amounting to torture, while held in the custody of the Libyan authorities. Such abuses contravene Libyan legislation and Libya's international obligations. Detainees have no possibility to complain about their treatment, and the Libyan authorities are not known to have conducted any investigations when Amnesty

International or other organizations have brought allegations of abuse to their attention.

The UN Human Rights Committee expressed concerns in 2007 regarding persistent allegations of "migrants, asylum-seekers and refugees...being exposed to torture and cruel, inhuman and degrading treatment upon arrest and particularly in detention centres" in the context of its review of Libya's fourth periodic report.

After being arrested in a police raid in Tripoli in 2006, Yonas, an Eritrean national, was taken to Djawazat Detention Facility, located near the Department of Travel Documents (Passports), Nationality, and Affairs of Foreigners in Tripoli. Not only did he have to share his cell with about 50 other foreign nationals and sleep on a piece of cardboard with only a sheet for cover, but Yonas also said that he was beaten by the guards. He said that one particularly brutal beating left him deaf in one ear.

Another Eritrean national, Seghen, was held in a detention centre in Ajdebia for about two months in 2008. He said that guards beat him and other detainees in the centre all the time for no particular reason and always called them "animals" in Arabic. The detainees were

never allowed to leave their cells and had to sleep on the floor on plastic sheets with barely room to move. After being transferred twice to other detention centres, he said that he was freed after bribing guards with money sent by his family.

Senait had been held in Az-Zawiya for several months, after being arrested following a failed attempt to board a boat destined for Italy. She reported that conditions in Az-Zawiya were overcrowded and unhygienic: about 50 women share two toilets, the only available water is salty, and detainees have no access to cleaning supplies or sanitary pads. Medical care is limited. It was reported that in February 2010, a woman gave birth inside the detention centre.

In addition to regular reports of verbal insults and beatings in detention centres across Libya, Amnesty International received two particularly worrying reports of collective abuse and beatings of detainees.

On 9 August 2009, a group of more than 100 detainees, mainly Somali, apparently tried to escape from the Ganfouda Detention Centre near Benghazi. According to the information available to Amnesty International, when guards at the detention centre sought to prevent the escape, they employed excessive force, using live ammunition, knives and sticks against the detainees. Apparently, within an hour of the escape attempt, the detention centre guards were reinforced by security forces from outside the Ganfouda Detention Centre and most of the detainees were reported to have been recaptured. Some reports suggest that a number of detainees who sought to escape were killed and that many others sustained injuries at the hands of the security forces. A number of law enforcement officials were also reported to have been injured.

During this incident, the Libyan security forces apparently failed to act in conformity with international standards. These require law enforcement officers not to use firearms, unless as a last resort when strictly unavoidable to protect life; to exercise restraint to minimize the risk of injury or death; and to act in proportion to the seriousness of the offence and the legitimate objective to be achieved.<sup>218</sup> The Libyan security forces also apparently breached the rights to life and to be protected from torture or other ill-treatment enshrined in the ICCPR and the CAT.

Libyan procedures for the conduct of security officials also provide safeguards against the excessive use of force. For instance, Decision No. 279 of 1423 of the General People's Committee for Public Security and Justice stipulates that the use of weapons must only be permitted as a last resort to prevent escapes. According to information available to Amnesty International, Libyan law enforcement officials did not warn escapees of their intention to use firearms or other weapons.

Following the escape attempt, most of the detainees, including some who had not participated in the escape attempt, were reported to have been assaulted by security forces within the detention centre to punish them and to deter them from any further such attempts. Further, it was reported that detention centre guards denied medical assistance to those who sustained injuries and required urgent medical treatment.

Before the incident, the Ganfouda Detention Centre held about 500 Somalis, among them approximately 50 women; about 70 Sudanese; more than 100 Eritreans; and 15 Nigerians as well as Chadian and Ugandan nationals. Subsequently, Eritreans nationals were transferred out of Ganfouda to a number of detention centres, including Az-Zawiya in the case of female detainees and Garabule in the case of male detainees. Somali nationals were reportedly transferred to a detention centre in the south of Libya near the border with Niger. Some accounts of the detention centre suggest that conditions there are extremely difficult. It is reported that the 245 Somalis transferred there from Ganfouda and other detention centres were held in three cells, that there was no medical care, and that guards regularly beat them.

The second series of incidents occurred in late December 2009 and early January 2010. At the time, Eritrean embassy officials had been visiting a number of detention centres where Eritrean nationals were held, including Az-Zawiya, Misratah, Garabule and Surman. In the context of these visits, Eritrean nationals were requested by Libyan security officials to complete forms in Tigrinya.<sup>219</sup> In some cases Libyan guards are said to have intimidated and coerced detainees to complete these forms, beating them until they complied. For example, Amnesty International has received reports that on several occasions in early January 2010, Eritrean detainees in Surman were beaten by Libyan security officials when they refused to complete the forms and to have their pictures taken.

Similarly, Eritrean nationals held in Garabule were reportedly beaten with sticks and electric wires by Libyan detention centre guards for refusing to complete the forms on 11 January 2010. Reports suggest that a number of detainees were handcuffed and beaten particularly severely in order to intimidate the others into completing the forms and having their pictures taken. As a result of the beatings, the majority of the approximately 170 Eritrean detainees held at the time in Garabule completed the forms and had their pictures taken under duress.

Even before this incident, conditions in Garabule gave rise to concern. Detainees complained that there were about 40 to 50 people in a small cell with only one toilet. While there was running water in the cells, it was reportedly frequently turned off either completely arbitrarily or as punishment for making too much noise, asking for medical care or banging on the cell door to get the attention of the guards. Detainees were rarely allowed to go outside into the yard, on average once a week depending on the goodwill of the guards. At the time of writing, there were about 170 Eritreans in the detention centre, 30 Somalis and a few other individuals from various countries in sub-Saharan Africa. All detainees in the centre were male and a few were believed to be unaccompanied minors. Detainees who had been there for about five months reported that they had never been examined by a medical professional or given any medication for skin diseases or other ailments. The only time they saw a doctor was when blood samples were taken from newly-arrived detainees, following which 21 detainees were reportedly placed in solitary confinement without being given any explanation or told whether they were suffering from any disease.

Eritrean officials also visited Az-Zawiya, where about 50 Eritrean women, two of them pregnant, and about 100 Somali women were being held at the time of writing. Guards in the detention facility reportedly brought all the Eritrean women together and beat them after they had refused to complete the forms. When a member of the UNHCR accompanied by two Libyan nationals, believed to be members of the IOPCR, came to the centre to verify the

reports of beatings, some detainees told Amnesty International that they too scared to complain for fear of reprisals.

Amnesty International wrote to Dr Al-Baghdadi Ali Al-Mahmoudi, Secretary of the General People's Committee, after the reports of the excessive use of force in Ganfouda in August 2009 and again after the reports of the abuse of detainees in Surman, Garabule and Az-Zawiya. Amnesty International urged him to ensure that full, independent and impartial investigations were conducted into the reports of assaults of detainees, to bring those responsible to justice and to protect detainees from further torture or other ill-treatment in compliance with Libya's international obligations. Amnesty International received no response.

Libyan legislation prohibits and criminalizes torture. Article 2 of the Great Green Charter of Human Rights of the Jamahiriyan Era states: "Jamahiriyan society prohibits any and all injuries, whether physical or moral, against the person of a prisoner. It condemns any and all speculations and experiments, whatever their nature, to which he might be subjected".

Furthermore, Article 17 of Law No. 20 of 1991 on the Promotion of Freedom states: "It is prohibited to inflict any form of corporal or psychological punishment on the accused, or to treat him with severity or degradation, or in any manner which is damaging to his dignity as a human being".

Article 435 of the Penal Code stipulates that: "Any public official who orders the torture of the accused or tortures them himself is punished by a prison term of three to 10 years". However, Libyan legislation does not define the crime of torture.

In addition, under its international obligations as a state party to the ICCPR and the CAT, Libya is obliged to protect detainees from torture or other ill-treatment, to initiate investigations into allegations of torture or other ill-treatment and bring those responsible to justice. Amnesty International is not aware of any public official being prosecuted for torturing or otherwise ill-treating foreign nationals in the custody of the Libyan authorities.<sup>220</sup>

## FOREIGN NATIONALS UNDER ATTACK

Most refugees, asylum-seekers and migrants, particularly those from sub-Saharan Africa, never feel secure in Libya. They risk being arrested and detained at any time, even if they have documents from the UNHCR confirming their status as refugees. Some members of Libyan security forces are alleged not to recognize UNHCR documents, at times confiscating them from their owners.

Sub-Saharan Africans also risk being attacked or robbed in the street by Libyans who act with impunity, well aware that foreign nationals believed to be irregular migrants would not dare complaining to the police. In those rare instances when foreign nationals have approached the police, investigations are not known to have taken place.

A volunteer at the International Organization for Migration (IOM) Voluntary Return Centre<sup>221</sup> in Tripoli described the difficulties facing individuals from sub-Saharan Africa living in Tripoli to an Amnesty International delegate on 19 May 2009. According to the volunteer, they are

constantly under threat from insults and violence on the streets of Tripoli as well as on public transport.

Seghen, an Eritrean national, complained of attacks and racism from Libyan nationals. He said that even the simplest task such as buying bread was dangerous as he was often confronted by groups of Libyans who stopped him on the way, threatened him and at times took his money and beat him. He said: "we [foreigners] are living in constant fear because every minute something terrible might happen to us in this country". He did not try to register with the UNHCR in Tripoli as he did not think that it would provide him with effective protection from abuse in Libya.

Abdallah, a Sudanese national, recounted witnessing a knife attack by Libyan adolescents on another Sudanese man. He accompanied the victim to a police station, but said that the police, instead of opening an investigation into the attack, beat them, put them both in detention for four days and threatened to send them to Kufra for deportation. He said that insecurity was the most pressing concern facing foreigners. According to his account, foreign nationals, himself included, are frequently stopped in the street by Libyans, particularly adolescents, who at best insult them and at worst beat and rob them. Abdallah said that he was registered with UNHCR and was accepted for resettlement three years earlier, but had given up hope of ever being resettled.

Irregular migrants are also extremely vulnerable to abuse and exploitation by smugglers. Smugglers know that irregular migrants are at their mercy and would never dare complain to the Libyan officials, who are unresponsive at best and complicit at worst.

Senait told Amnesty International that she was part of a group of over 100 individuals seeking to reach Europe by boat from Az-Zawiya. The smugglers kept them in a house for 11 days and collected about US\$1,500 from each. The day of the expected crossing, they were arrested by the Libyan police on the shore. Senait is convinced that the smugglers had informed the police of the time and place of the crossing.

Sub-Saharan Africans also complain of brutality by law enforcement agents. As seen in the case of Abdallah above, who was detained for reporting a crime, far from protecting them from abuse by Libyan citizens, Libyan officials sometimes participate in the abuse.

Adama, a national of Burkina Faso who had been in Tripoli since March 2007, said that threats, intimidation and insults by police were routine. He said that there were frequent police raids on neighbourhoods in Tripoli where foreign nationals are known to reside. He claimed that police once came to the house where he lived and destroyed his belongings. He also complained that he had been beaten on the head by police with batons.

As a state party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Migrant Workers' Convention), Libyan authorities are under an obligation to respect the fundamental rights of all migrant workers and their families, regardless of their legal status. This includes the obligation to protect them from torture or other ill-treatment (Article 10), from arbitrary interference with their right to privacy (Article 14) and from arbitrary deprivation of property (Article 15). Libyan authorities are also obliged to protect migrant workers and their families from: "violence, physical injury, threats

and intimidation, whether by public officials or by private individuals, groups or institutions".<sup>222</sup>

## FORCED RETURNS

In recent years, Libyan authorities have arrested and forcibly returned tens of thousands of foreign nationals without due process and without considering their potential international protection needs. Those suspected of having entered or stayed in the country irregularly are deported, at times collectively, without access to a lawyer or translation facilities, without an assessment of their individual cases and without the opportunity to appeal against the decision to deport them. Many are migrants, but Libyan authorities appear to make little attempt to differentiate between migrants, refugees and asylum-seekers.

No official statistics are available on the number of individuals deported from Libya and there are serious concerns remaining regarding the lack of transparency of the deportation procedures. Brigadier Belkacem Abdesalam Gargoum, Director General of the Judicial Police, told Amnesty International delegates on 17 May 2009 that more than 9,000 foreign nationals had been deported from 2002 to May 2009. The true numbers are likely to be much higher. In November 2006, on the occasion of a Euro-African conference on migration and development held in Tripoli, the Libyan authorities announced that they had significantly increased repatriations of migrants. They said they had deported 64,430 irregular migrants so far that year, compared to the figure of 47,991 for 2005.<sup>223</sup> In May 2009, Amnesty International asked officials from the General People's Committee for Foreign Liaison and International Cooperation to provide updated statistics on the numbers and nationalities of individuals deported from Libya, but received no response.

According to Libyan legislation, foreign nationals can be expelled following an administrative decision by the Department of Travel Documents (Passports), Nationality and Affairs of Foreigners if they entered the country without a permit; if their permit had expired and they did not leave voluntarily; and if their residence permit had been revoked for reasons allowed by the law. Law No. 6 of 1987 regulating the entry, stay and exit of foreigners in Libya does not provide any possibility to appeal against deportation orders. Foreign nationals can also be expelled following a judicial order; however, as confirmed by the Director of Misratah Detention Centre, a judicial order is never needed or sought in order to deport a person from Libya.

Libyan officials of the General People's Committee for Foreign Liaison and International Cooperation explained to Amnesty International their efforts and procedures to "control irregular migration". Libyan authorities place those suspected of being irregular migrants in temporary detention centres (officially called "care" centres), contact relevant embassy officials and then organize deportations via land or air borders in conjunction with officials from the detainees' countries of origin. Maha Omar Othman, Director of the Secretariat of Consular Affairs, told Amnesty International that deportations are conducted through cooperation between the General People's Committees for Justice, Public Security and Foreign Liaison and International Cooperation. On the other hand, the Director of Misratah Detention Centre explained that deportations were coordinated by the Passports Investigations' Department under the General People's Committee of Public Security, which is based in Tripoli but also has a branch in Benghazi. He said that most returns are organized

from the airport in Tripoli, while nationals from Niger, Nigeria and Ghana are sent to Sabha because there are direct flights from Sabha to their countries of origin.

As mentioned above, Libyan officials cite lack of cooperation from embassies of the detainees' countries of origin as the main reason for delays in deportation, and therefore prolonged detention of suspected irregular migrants. Brigadier Belkacem Abdesalam Gargoum, Director General of the Judicial Police, reiterated to Amnesty International delegates on 17 May 2009 that delays in the implementation of deportation decisions are explained by the failure of some embassies to visit detention centres to identify their nationals. This complaint was echoed by the Director of the Misratah Detention Centre. Brigadier Belkacem Abdesalam Gargoum also told Amnesty International that Libyans had learned how to identify nationality by examining the detainees' physical characteristics, particularly their noses.

Mamadou, a Malian national, was arrested after a rescue operation along with some 50 other Malian nationals and several Somali nationals in May 2009. They had set off from Misratah heading towards the Italian coast, but ran out of petrol and remained at sea without food or water for about eight days. After the rescue operation, he was immediately arrested and taken to Misratah Detention Centre. On 20 May 2009, the Director of Misratah Detention Centre complained to Amnesty International that Malian embassy officials took no interest in the Malians recently rescued at sea and had not come to the detention centre in order to arrange the repatriation of their nationals.

According to international standards, individuals subjected to deportation are entitled to procedural safeguards including the ability to challenge deportation decisions, and access to interpretation and legal services. They also have the right to appeal against the decision to deport them. These safeguards are neither enshrined in Libyan law nor respected in practice. In conducting arbitrary or collective expulsions, the Libyan authorities are in breach of their international obligations under Article 13 of the ICCPR,<sup>224</sup> Article 12 of the African Charter of Human and Peoples' Rights and Article 22 of the Migrant Workers' Convention in the case of migrant workers.

Furthermore, as explained above, Libya is obliged to respect the principle of *non-refoulement* and to identify, or permit UNHCR to identify, those in need of international protection.

## RECOMMENDATIONS

Amnesty International calls on the Libyan authorities to:

- ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and adopt asylum legislation consistent with international law and standards without further delay;
- sign a memorandum of understanding with UNHCR, and immediately grant it unrestricted access to all detention facilities where individuals potentially in need of international protection are held, including those in the south and east of Libya;
- not return, in any manner whatsoever, refugees, asylum-seekers and others in need of international protection to a country where they are at risk of persecution or other serious

human rights abuses. Immediately cease all arbitrary or collective expulsions;

- permit UNHCR to issue letters attesting to refugee status to individuals in detention and ensure respect for the letters whenever they are presented. Ensure that individuals without UNHCR documentation who express a need for international protection are not arrested, detained or deported, but provided with immediate and unimpeded access to UNHCR;
- ensure that recognized refugees are not detained for migration-related reasons;
- ensure that each decision to detain an asylum-seeker is implemented and regularly reviewed in accordance with the UNHCR Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and other appropriate international standards;
- guarantee that in each decision to detain an asylum-seeker or migrant, authorities demonstrate that detention is necessary and proportionate to the objective of preventing absconding, to verify identity or to ensure compliance with a deportation order. Guarantee the rights of refugees, asylum-seekers and migrants to legal counsel and interpretation services, and ensure that they have the right to challenge the lawfulness of their detention, including the right to appeal;
- amend provisions within Law 6 of 1987 to ensure that all individuals facing deportation have the right to challenge the expulsion order in proceedings meeting international procedural safeguards. Ensure that the law prescribes a maximum duration of detention and that when this period expires, detainees are automatically released;
- ensure that consular or embassy officials are not granted access to refugees or asylum-seekers in detention;
- conduct full, independent and impartial investigations into allegations of torture or other ill-treatment of refugees, asylum-seekers and migrants by Libyan law enforcement officers and bring those responsible to justice in accordance with international standards for fair trial;
- protect those suspected of being irregular migrants from violence; physical injury; threats; intimidation; and abuse, and bring those responsible to justice, whether they are state officials or private individuals;
- guarantee that refugees, asylum-seekers and migrants in detention are treated humanely and granted adequate access to medical treatment in accordance to the UN Basic Principles for the Treatment of Prisoners and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;

Amnesty International calls on UNHCR to:

- continue efforts to formalize UNHCR's presence in Libya and to gain access to additional detention centres where individuals potentially in need of international protection are held, including those in the south and east of Libya;



- increase efforts to ensure that refugees, asylum-seekers and other foreign nationals are protected from torture or other forms of ill-treatment while in the custody of the Libyan authorities;
- increase UNHCR's capacity to conduct refugee status determination interviews and to expedite the registration of refugees and asylum-seekers;
- increase UNHCR's capacity to provide resettlement referrals from Libya to third countries, in light of the lack of other viable durable solutions currently available and the protection needs of refugees in Libya;
- continue efforts to ensure any agreements between Libya and other countries are in line with international obligations to protect refugees, asylum-seekers and others in need of international protection

Amnesty International calls on EU member states to:

- ensure that any bilateral agreements with Libya in the area of migration and asylum, including the EU-Libya Framework Agreement currently being negotiated, are based on full respect for the rights of asylum-seekers, refugees and migrants. Ensure that adequate standards of protection are enshrined in all such agreements.

Amnesty International call on the Italian authorities to:

- cease the interception and return of third-country nationals to Libya and respect international obligations, including the duty not to send individuals to a country where they are at risk of persecution (the principle of non-*refoulement*) and the duty to provide access to a fair and satisfactory asylum procedure. These obligations apply to extra-territorial actions as well as within a state's territory and territorial waters;
- respect obligations under the law of the sea and international law to provide assistance to those found in distress at sea and arrange for their prompt disembarkation in a place of safety.

Amnesty International calls on the international community to:

- prioritize resettlement of refugees from Libya in light of the on-going protection needs of refugees in Libya, and the lack of other viable durable solutions at the present time.

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What hope for human rights?

## ENDNOTES

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<sup>1</sup> GDF, *Text of Speech by the Chairman of the Foundation and the Press Conference Marking the Release of 214 Members of Various Jihadist Groups*, 23 March 2010:

[http://www.gicdf.org/index.php?option=com\\_content&view=article&id=369:text-of-speech-by-the-chairman-of-the-foundation-and-the-press-conference-marking-the-release-of-214-members-of-various-jihadist-groups-today-is-indeed-a-very-important-day-here-in-libya-for-it-is-a-day-of-reconciliation-and-openness-and-reunification&catid=3:thenews&Itemid=55](http://www.gicdf.org/index.php?option=com_content&view=article&id=369:text-of-speech-by-the-chairman-of-the-foundation-and-the-press-conference-marking-the-release-of-214-members-of-various-jihadist-groups-today-is-indeed-a-very-important-day-here-in-libya-for-it-is-a-day-of-reconciliation-and-openness-and-reunification&catid=3:thenews&Itemid=55)

<sup>2</sup> The Open Prison of Ain Zara, which is a low-security prison under the oversight of the Directorate of the Judicial Police, is a different facility from the Ain Zara Prison, which falls under the control of the ISA.

<sup>3</sup> After the independence of Libya in 1951, political parties were banned in 1952 under the monarchy of King Idris al-Sanusi. See Chapter 2 for more information on Law No. 71 of 1972. The Arab Socialist Union was abolished in 1976.

<sup>4</sup> For more information see the General People's Committee, Short Summary about the Great Jamahiriya available at [http://www.gpc.gov.ly/html/about\\_libya.php#b5](http://www.gpc.gov.ly/html/about_libya.php#b5)

<sup>5</sup> For more information see, Amnesty International, *Libya: Summary of Amnesty International's Prisoner Concerns* (Index: MDE 19/005/1987), October 1987.

<sup>6</sup> For more information, see Amnesty International, *Violations in the Libyan Arab Jamahiriya* (Index: MDE 19/005/1984), November 1984.

<sup>7</sup> The NFSL, established in October 1981, is Libya's leading (banned) opposition party, whose stated aim is the establishment of a democratic regime in the country.

<sup>8</sup> For more information see Amnesty International, *Violations in the Libyan Arab Jamahiriya* (Index: MDE 19/005/1984), November 1984 and Amnesty International, *Libya: Summary of Amnesty International's Prisoner Concerns* (Index: MDE 19/005/1987), October 1987.

<sup>9</sup> Other prisoners of conscience did not benefit from the amnesty. See Amnesty International, *Libya: Amnesty International prisoner concerns in the light of recent legal reforms* (Index: MDE 19/02/91), June 1991.

<sup>10</sup> The principle of *non-refoulement* is the obligation not to return any individual, either directly or indirectly, to a country where they are at risk of persecution or torture. See Chapter 5 for more details.

<sup>11</sup> For further details, see Amnesty International, *Libya: Amnesty International's Concerns in the Light of Recent Legal Reforms* (Index: MDE 19/02/91); and *Libya: Gross human rights violations amid secrecy and isolation* (Index: MDE 19/08/97), June 1997.

<sup>12</sup> The first visit of this kind took place in October 2003 when the UK-based International Centre for Prison Studies conducted a visit focusing on prison conditions.

<sup>13</sup> In January 1989, two demonstrations took place in Tripoli. One was held at the Al-Fateh University

apparently by religious students and the other was allegedly in protest at the authorities' decision to concede a World Cup qualifying football match to Algeria. Around that time, there were also at least four armed clashes in Ajdebia and Benghazi between security forces and members of the Revolutionary Committees on the one hand and armed groups on the other. See Amnesty International, *Urgent Action, Libya: Arrest of Possible Prisoners of Conscience* (Index: MDE 19/002/1989), August 1989 and *Libya: Amnesty International's Concerns in the Light of Recent Legal Reforms*, (Index: MDE 19/02/91).

<sup>14</sup> See Chapter 2 for more details on Mohamed Hassan Abu Sadra's case and Chapter 4 for more details on the Abu Salim Prison killings of 1996.

<sup>15</sup> In the late 1990s, several of the surviving members of the LIFG were believed to have fled to various countries in Europe, Asia and the Gulf. The LIFG was designated as a Foreign Terrorist Organization in December 2004 by the US Department of State. The US Country Report on Terrorism of 2008 states that some members of the LIFG had links with the international terrorist movement and that some were believed to be part of the al-Qa'ida leadership. US forces captured a number of Libyan nationals suspected of belonging to the LIFG in Pakistan and transferred several of them to Libya after 2004. See Chapter 2 for more details. For more details of the LIFG, see US Department of State, *Country Reports on Terrorism 2008*, Chapter 6, 30 April 2009: <http://www.state.gov/s/ct/rls/crt/2008/122449.htm>

<sup>16</sup> See Amnesty International, *Libya: Gross human rights violations amid secrecy and isolation* (Index: MDE 19/08/97).

<sup>17</sup> GDF, *Text of Speech by the Chairman of the Foundation and the Press Conference Marking the Release of 214 Members of Various Jihadist Groups*, 23 March 2010: [http://www.gicdf.org/index.php?option=com\\_content&view=article&id=369:text-of-speech-by-the-chairman-of-the-foundation-and-the-press-conference-marking-the-release-of-214-members-of-various-jihadist-groups-today-is-indeed-a-very-important-day-here-in-libya-for-it-is-a-day-of-reconciliation-and-openness-and-reunification&catid=3:thenews&Itemid=55](http://www.gicdf.org/index.php?option=com_content&view=article&id=369:text-of-speech-by-the-chairman-of-the-foundation-and-the-press-conference-marking-the-release-of-214-members-of-various-jihadist-groups-today-is-indeed-a-very-important-day-here-in-libya-for-it-is-a-day-of-reconciliation-and-openness-and-reunification&catid=3:thenews&Itemid=55)

<sup>18</sup> See Amnesty International, *Libya: Gross human rights violations amid secrecy and isolation* (Index: MDE 19/08/97).

<sup>19</sup> In 2005, a committee established at the behest of Libyan leader Colonel Mu'ammr al-Gaddafi reportedly concluded that they had neither used nor advocated violence and should therefore be freed. They were detained incommunicado in some cases for up to two years, and some have reported being tortured or otherwise ill-treated.

<sup>20</sup> For more information see Amnesty International, *Libya: Time to Make Human Rights a Reality* (Index: MDE 19/002/2004), April 2004, and Amnesty International, *Amnesty International welcomes the releases of political prisoners*, (Index: MDE 19/002/2006), March 2006.

<sup>21</sup> See *Al-Youm Al-Sabe'*, "al-Gaddafi's son in a lecture at the American University: Libya most democratic country in the world despite absence of a constitution" [original in Arabic], 5 May 2010: <http://www.youm7.com/News.asp?NewsID=223465&SecID=12>

<sup>22</sup> See Human Rights Society, *The Human Right's Society's Annual Report*, 10 December 2009: [http://www.gicdf.org/index.php?option=com\\_content&view=article&id=174:the-human-rights-societys-annual-report&catid=3:thenews&Itemid=55](http://www.gicdf.org/index.php?option=com_content&view=article&id=174:the-human-rights-societys-annual-report&catid=3:thenews&Itemid=55)

<sup>23</sup> The Court of Appeal of England and Wales in the case of *AS & DD v. Secretary of State for the Home Department* [2008] EWCA Civ 289 of April 2008 upheld the decision of the court of first instance (the

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Special Immigration Appeals Commission), which allowed the appeals against deportation of two Libyan nationals. It decided that substantial grounds existed for believing that they would face a real risk of suffering torture or other ill-treatment treatment contrary to Article 3 of the European Convention on Human Rights if they were returned to Libya, notwithstanding the fact that they had been found to present a national security risk.

<sup>24</sup> See Amnesty International, "Libya", *Amnesty International Report 2009* (Index: POL 10/001/2009).

<sup>25</sup> Libyan laws are sometimes dated in accordance to the Georgian calendar; while in other instances they are dated in accordance with the official Libyan lunar calendar. The latter takes as its starting point the death of Prophet Muhammad.

<sup>26</sup> See Amnesty International, *Brief arrest of media workers reflects increase in attacks on freedom of expression in Libya* (Index MDE 19/001/2010), 17 February 2010: <http://www.amnesty.org/en/library/asset/MDE19/001/2010/en/4b3eaf57-d49b-4419-acb6-2ea8ccf0dcf9/mde190012010en.html>

<sup>27</sup> See Al Jazeera, *Saif al-Islam defends the right of a Libyan citizen to criticize him* [original in Arabic], 15 November 2008: <http://www.aljazeera.net/News/archive/archive?ArchiveId=1161467>

<sup>28</sup> See Chapter 2 for details on the case of Idriss Boufayed, Jamal el-Haji and 12 others arrested in February 2007 for attempting to organize a peaceful protest.

<sup>29</sup> See Chapter 4 for further details on protests by families of victims of the Abu Salim Prison killings of 1996.

<sup>30</sup> See *Amnesty International Report*, entries on Libya for 2002, 2003, 2006 and 2007.

<sup>31</sup> This includes Abdelhakim Bilhadj Al-Kwaildi, aka Abdullah al Sadeq; Khalid al-Sharif aka Abu Hazem; and Sami Mustafa al-Saadi. All three have been transferred to Libya by the US authorities from secret detention sites in Pakistan and Afghanistan since 2004.

<sup>32</sup> See Chapter 2 for more information. See GDF, *The Human Rights Association of the Gaddafi International Charity and Development Foundation issues a statement regarding dialogue with the Islamic Fighting Group*, 10 March 2009; and GDF, *Text of Speech by the Chairman of the Foundation and the Press Conference Marking the Release of 214 Members of Various Jihadist Groups*, 23 March 2010: [http://www.gicdf.org/index.php?option=com\\_content&view=article&id=369:text-of-speech-by-the-chairman-of-the-foundation-and-the-press-conference-marking-the-release-of-214-members-of-various-jihadist-groups-today-is-indeed-a-very-important-day-here-in-libya-for-it-is-a-day-of-reconciliation-and-openness-and-reunification&catid=3:thenews&Itemid=55](http://www.gicdf.org/index.php?option=com_content&view=article&id=369:text-of-speech-by-the-chairman-of-the-foundation-and-the-press-conference-marking-the-release-of-214-members-of-various-jihadist-groups-today-is-indeed-a-very-important-day-here-in-libya-for-it-is-a-day-of-reconciliation-and-openness-and-reunification&catid=3:thenews&Itemid=55)

<sup>33</sup> Video of comments to the General People's Congress by Mustafa Abdeljalil, Secretary of the General People's Committee for Justice, on 28 January 2010 posted on at *Al-Manara* website: <http://www.almanaralink.com/new/index.php?scid=1&nid=18272>

<sup>34</sup> *Oea*, *Saif al-Islam General Coordinator of People's Leadership*, 11 October 2009: <http://www.oelibya.com/front-page/local-news/7814-2009-10-11-00-28-53>

<sup>35</sup> See *Al-Youm Al-Sabe'*, *al-Gaddafi's son in a lecture at the American University: Libya most democratic country in the world despite absence of a constitution* [original in Arabic], 5 May 2010

<sup>36</sup> For more information on the situation of refugees, asylum-seekers and migrants in Libya see Chapter 5.

<sup>37</sup> See Libyan Arab Jamahiriya report to the Committee on the Elimination of All Forms of Racial Discrimination, (UN Doc: CERD/C/431/Add.5), June 2003.

<sup>38</sup> Article 1 of Law No. 18 of 1980 [Nationality Code] states that "Arab nationality is the nationality of citizens of Great Socialist People's Libyan Arab Jamahiriya".

<sup>39</sup> For more information see Amnesty International, Urgent Action, *Scores of Families Risk Homelessness Libya* (Index: MDE 19/004/2010), 31 March 2010.

<sup>40</sup> According to the information available to Amnesty International, following the organization's publication of an Urgent Action on demolitions in Kufra, a number of Libyan officials and a member of the GDF visited the city in April 2010. In the framework of their visit, families who had been living on the ruins of their homes were forcibly moved by members of security forces to other areas including Kariyat without being provided with alternative housing. On 14 April 2010, the General People's Committee for Foreign Liaison and International Cooperation issued a statement which categorically denied that any house demolitions and evictions had taken place and included an invitation to Amnesty International delegation to conduct a field visit to "uncover the truth". Amnesty International's letter to the Secretary of General People's Committee for Foreign Liaison and International Cooperation to arrange such a visit went unanswered.

<sup>41</sup> See *Concluding observations of the Committee on the Elimination of All Forms of Racial Discrimination* (UN Doc: CERD/C/64/CO/4/Rev.1), 14 March 2004.

<sup>42</sup> At the international level, relations between Libya and several European countries and the USA deteriorated during the mid-1980s. During a demonstration in 1984 in London organized by members of the Libyan opposition, a British police officer, Yvonne Fletcher, was shot dead, apparently from the offices of the Libyan People's Bureau. In 1986, three people were killed and some 250 wounded in the bombing of the La Belle nightclub in Berlin. The USA held Libya responsible, and launched bombing raids on Tripoli and Benghazi, hitting Colonel al-Gaddafi's residence among other places. Some 40 people died as a result. This was accompanied by an era of isolation from the international community following the bombings of Pan Am Flight 103 over Lockerbie in Scotland, UK, in 1988, in which 270 people were killed, and of UTA Flight 772 over Niger in 1989, which resulted in the deaths of 170 people. In January 1992 the UN Security Council adopted Resolution 748 which imposed an air and arms embargo on Libya. This was lifted in September 2003 following a period of suspension initiated in 1999 after the authorities handed over for trial two Libyan nationals suspected of carrying out the 1988 bombing of Pan Am flight 103 over Lockerbie. This trial resulted in the conviction of 'Abd al-Basit al-Megrahi in January 2001, and he was sentenced to life imprisonment; his co-defendant al-Amin Khalifa Fhimah was acquitted. This sentence was confirmed on appeal in March 2002. In 2003 the Libyan authorities accepted "responsibility for the actions of Libyan officials" for the attacks on the Pan Am and UTA flights.

<sup>43</sup> See Chapter 2 for more details.

<sup>44</sup> See Amnesty International, *Libya: Health professionals should be released*, 30 January 2007 (Index: MDE 19/002/2007) and Amnesty International, *Libya: Amnesty International welcomes the release of medics* (Index MDE 19/013/2007), 24 July 2007.

<sup>45</sup> Afrique en Ligne, *Union européenne-Libye: Vers un accord-cadre de coopération*, 9 May 2010: <http://www.afriquejet.com/afrique-du-nord/libye/union-europeenne-libye:-vers-un-accord-cadre-de-cooperation-2010050949061.html>

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<sup>46</sup> See Chapter 5 for more details.

<sup>47</sup> For more details see Amnesty International, *Libya: Guarantee rights of Swiss nationals caught-up in diplomatic dispute* (Index: MDE 19/007/2009), 15 December 2009 and Amnesty International, *Story: Swiss businessman held in Libya on politically motivated charges*, 23 February 2010.

<sup>48</sup> Such individuals are all victims of arbitrary detention as defined by the UN Working Group on Arbitrary Detention, which identified three categories of arbitrary detention: when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty, and the detention is not within the framework of national law (as when a person is kept in detention after the completion of his/her sentence or despite an amnesty law applicable to him/her) (Category 1); when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by Articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as states parties are concerned, by Articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (Category 2); and when the detention results from total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the states (Category 3).

<sup>49</sup> See Chapter 4 for details of the 1996 Abu Salim Prison killings.

<sup>50</sup> GDF, *The Human Rights Association within the Gaddafi International Charity and Development Foundation Issues Statement Regarding Dialogue with the Islamic Fighting Group*, 3 March 2009: [http://gdf.org.ly/index.php?lang=en&CAT\\_NO=2&Page=105&DATA\\_NO=491](http://gdf.org.ly/index.php?lang=en&CAT_NO=2&Page=105&DATA_NO=491) and GDF, *Statement on the occasion of the release of detainees*, 15 October 2009: [http://gdf.org.ly/index.php?lang=ar&CAT\\_NO=4&MAIN\\_CAT\\_NO=4&Page=105&DATA\\_NO=577](http://gdf.org.ly/index.php?lang=ar&CAT_NO=4&MAIN_CAT_NO=4&Page=105&DATA_NO=577)

<sup>51</sup> In March 2009, the GDF announced that 136 members of the LIFG had been released over the previous two years. Forty-five more members were released in October 2009, along with 43 others alleged to be members of "jihadist" groups. See GDF, *The Human Rights Association of the Gaddafi International Charity and Development Foundation issues a statement regarding dialogue with the Islamic Fighting Group*, 10 March 2009: [http://www.gicdf.org/ar/index.php?option=com\\_content&view=article&id=408:2010-02-18-17-27-18&catid=34:press-releases&Itemid=38](http://www.gicdf.org/ar/index.php?option=com_content&view=article&id=408:2010-02-18-17-27-18&catid=34:press-releases&Itemid=38) and GDF, *Text of Speech by the Chairman of the Foundation and the Press Conference Marking the Release of 214 Members of Various Jihadist Groups*, 23 March 2010.

<sup>52</sup> GDF, *Text of Speech by the Chairman of the Foundation and the Press Conference Marking the Release of 214 Members of Various Jihadist Groups*, 23 March 2010.

<sup>53</sup> Video of comments to the General People's Congress by Mustafa Abdeljalil, Secretary of the General People's Committee for Justice, on 28 January 2010 and Colonel Mu'ammār al-Gaddafi's reply posted on at *Al-Manara* website: <http://www.almanaralink.com/new/index.php?scid=1&nid=18272>

<sup>54</sup> General People's Committee for Justice, *Announcement*, 28 October, 2009: <http://www.aladel.gov.ly/main/modules/news/index.php?storytopic=1&start=25>

<sup>55</sup> See Box on remedy and reparation in Chapter 3.

<sup>56</sup> Abdul Rahman Abu Tuta was replaced by Abdel Salam al-Toumi in February 2010.

<sup>57</sup> According to Article 51 of the Code of Criminal Procedure, for crimes and misdemeanours the Department of Public Prosecutions can either ask the President of the Court to refer the case to an

examining judge or to investigate the case itself. For crimes, the accused has the right to ask for the case to be investigated by an examining judge with the final decision lying with the President of the Court. If cases other than those based on offences "against the state" are investigated by the Department of Public Prosecutions, an initial detention order by the Department of Public Prosecutions is valid for six days (Article 175); and can be extended to a total of 30 days by the competent judge (Article 176). Subsequently, extension orders have to be approved by the courts for a period not exceeding 90 days in total. The law allows the Department of Public Prosecutions to request additional extensions if required by the investigation, without setting the maximum permissible length of detention (Article 177). For cases investigated by examining judges, the initial detention is set at 15 days which can be extended by the judges for a total of 30 days (Article 122). Any additional extensions to detention have to be ordered by courts at the request of the examining judge or the Department of Public Prosecutions. Such orders are valid for 45 days, and can be renewed as long as the investigation is ongoing (Article 123). During preventive detention, suspects have the right to be informed of the charges against them on their first appearance before the examining judge (Article 105) and not to be questioned without legal counsel unless the suspect has been caught *in flagrante delicto* or unless there is a fear that evidence will be lost (Article 106).

<sup>58</sup> See Box above on offences handled by the State Security Court, including those in the First Chapter of the Second Book of the Penal Code.

<sup>59</sup> For additional information on proceedings in front of the State Security Court, see section on "Parallel judicial system and unfair trials" below.

<sup>60</sup> The provisions for preventive detention are set in articles 21 and 22 of Law No. 5 of 1988 regarding the establishment of the People's Court; which was abolished in 2005, but whose mandate and powers were seemingly transferred to the State Security Court. See section on "Parallel judicial system and unfair trials" below.

<sup>61</sup> Libyan Arab Jamahiriya, *Fourth Periodic Report* (UN Doc: CCPR/C/LBY/4), 5 December 2006 (date of original Arabic submission).

<sup>62</sup> See Human Rights Committee, *Concluding Observations of the Human Rights Committee: Libya*, (UN Doc: CCPR/C/LBY/CO/4/CRP.1), 30 October 2007.

<sup>63</sup> See Background for further information.

<sup>64</sup> See Chapter 3 on the Death Penalty for more information.

<sup>65</sup> Only those names appearing in bold and in full (first name and surname] are the real names of victims or families. First names appearing alone signify that the names of the victim or the family member has been changed to protect their identity or directly upon request.

<sup>66</sup> For additional information see, Amnesty International Urgent Action, *Libya: Incommunicado Detention Health Concern* (Index: MDE 10/015/2004), 17 September 2004; and Amnesty International Urgent Action, *Libya, Health Concern Fathi el-Jahmi* (Index MDE 19/001/2008), 28 January 2008: <http://www.amnesty.org/en/library/info/MDE19/001/2008/en>; and Amnesty International News Story, *Libyan activist died in hospital in Jordan*, 21 May 2009: <http://www.amnesty.org/en/news-and-updates/news/libyan-activist-dies-hospital-jordan-20090521>

<sup>67</sup> See Amnesty International, *Libya, Amnesty International Report 2006* (Index: POL 10/001/2006), 22 May 2006.



<sup>68</sup> See section on "Parallel judicial system and unfair trials" below for more details.

<sup>69</sup> Opinions adopted by the UN Working Group on Arbitrary Detention (UN doc: E/CN.4/2006/7/Add.1), 19 October 2005.

<sup>70</sup> See Chapter 1 for more information on the space for freedom of expression, assembly and association in Libya.

<sup>71</sup> See also Chapter 5 on detention centres designed to hold those believed to be irregular migrants.

<sup>72</sup> Article 178 of the Libyan Penal Code prescribes life imprisonment for any Libyan who disseminates information abroad considered to "tarnish [the country's] reputation or undermine confidence in it abroad." Also see case of Fathi el-Jahmi above.

<sup>73</sup> Committee against Torture, *Concluding Observations: Libyan Arab Jamahiriya* (UN Doc: A/54/44(SUPP)), 11 May 1999.

<sup>74</sup> For additional information on this case and on the Abu Salim Prison killings, see Chapter 4 on the legacy of impunity.

<sup>75</sup> Human Rights Society, *The Human Right's Society's Annual Report*, 10 December 2009: [http://www.gicdf.org/index.php?option=com\\_content&view=article&id=174:the-human-rights-societys-annual-report&catid=3:thenews&Itemid=55](http://www.gicdf.org/index.php?option=com_content&view=article&id=174:the-human-rights-societys-annual-report&catid=3:thenews&Itemid=55)

<sup>76</sup> See Amnesty International Report, *Libya: Time to Make Human Rights a Reality* (Index: MDE 19/002/2004), 26 April 2004.

<sup>77</sup> In addition to the Decree establishing the State Security Court, the Supreme Council for Judicial Bodies issued Decrees No. 29 and 42 of 1375 DP on the Establishment of Specialized Courts and Prosecution Offices in Tripoli on, respectively, 19 August 2007 and 26 August 2007. Decree No. 29 provided for the establishment of a Specialized Appeal Court in Tripoli and a Specialized Court of First Instance in Tripoli, to which, according to Article 3, the following six summary courts would report:

1. Court for Combating Drug Crimes
2. Court for Combating Economic Crimes
3. Court for Traffic
4. Court for Public Utilities
5. Court for Combating Agricultural Crimes
6. Court for Combating Illegal Migration

Decree No. 42 modifies Decree No. 29 by adding an extra article relating to the competence of certain courts in cases of traffic offences.

<sup>78</sup> Human Rights Society, *The Human Right's Society's Annual Report*, 10 December 2009.

<sup>79</sup> Article 19 of Law 5 of 1988.

<sup>80</sup> See Amnesty International Report, *Libya: Time to Make Human Rights a Reality* (Index: MDE 19/002/2004), 26 April 2004.

<sup>81</sup> The Human Rights Committee elaborated this obligation in its General Comment No. 32 (22) by

stating that "The provisions of article 14 apply to all courts and tribunals within the scope of that article whether ordinary or specialized, civilian or military."

<sup>82</sup> Ahmed Youssef al-Obaidi, al-Mahdi Saleh Hmeed, Faraj Saleh Hmeed, al-Sadeq Saleh Hmeed, Farid Mohammed al-Zwai, Alaa al-Drissi, Bashir Qasem al-Hares, Ali Saleh Hmeed and al-Sadiq Qeshoot were also convicted.

For further information see Amnesty International, Public Statement, *Libya: Trial Begins against Government Critics* (Index: MDE 19/009/2007), 2 July 2007:

<http://www.amnesty.org/en/library/info/MDE19/009/2007/en>; and Amnesty International, Public Statement, *Libya: Heavy Sentences against Prisoners of Conscience* (Index: MDE 19/006/2008), 11 June 2008: <http://www.amnesty.org/en/library/info/MDE19/006/2008/en>

<sup>83</sup> See section on prisoners of conscience above.

<sup>84</sup> See Chapter 4 on the legacy of impunity for additional details.

<sup>85</sup> See Human Rights Committee, *Concluding Observations of the Human Rights Committee*, (UN Doc: CCPR/C/LBY/CO/4/CRP.1), 30 October 2007.

<sup>86</sup> As with the ISA, the remit, procedures, and functioning of the External Security Agency are not publicly available. It is believed to deal with cases of Libyan nationals suspected of involvement in transnational armed groups or networks. For instance, Amnesty International documented several cases of individuals suspected of terrorism-related activities being placed in the custody of the External Security Agency once returned from abroad.

<sup>87</sup> Video of comments to the General People's Congress by Mustafa Abdeljalil, Secretary of the General People's Committee for Justice, on 28 January 2010 and Colonel Mu'ammarr al-Gaddafi's reply posted on at *Al-Manara* website: <http://www.almanaralink.com/new/index.php?scid=1&nid=18272>

Mustafa Abdeljalil continues to serve as Secretary of the General People's Committee for Justice.

<sup>88</sup> *Oea, Oea meets the Secretary of the General People's Committee for Justice Mustafa Mohamed Abdeljalil in a very frank interview*, 2 November 2009: <http://www.oealibya.com/front-page/local-news/9155-2009-11-02-22-02-43>

<sup>89</sup> Human Rights Society, *The Human Right's Society's Annual Report*, 10 December 2009.

<sup>90</sup> See Footnote 48 for the definition of arbitrary detention.

<sup>91</sup> See Chapter 4 on legacy of impunity.

<sup>92</sup> See Chapter 4 for more information on the 1996 Abu Salim Prison killings.

<sup>93</sup> According to the US Department of State website: "On May 15, 2006, the State Department announced its intention to rescind Libya's designation as a state sponsor of terrorism in recognition of the fact that Libya had met the statutory requirements for such a move: it had not provided any support for acts of international terrorism in the preceding six-month period, and had provided assurances that it would not do so in the future. On June 30, 2006, the U.S. rescinded Libya's designation as a state sponsor of terrorism".

<sup>94</sup> See CRS Report for Congress, *Libya: Background and U.S. Relations* (Order Code: RL33142), Updated September 17, 2008: <http://fpc.state.gov/documents/organization/110763.pdf>

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<sup>95</sup> See Country Reports on Terrorism 2007, Office of the Coordinator for Counterterrorism, US Department of State, April 2008: <http://www.state.gov/documents/organization/105904.pdf>

<sup>96</sup> Colonel Mu'ammār al-Gaddafi, General People's Congress, Sirte, 28 January 2010, response to Mustafa Abdeljalil posted on at *Al-Manara* website: <http://www.almanaralink.com/new/index.php?scid=1&nid=18272>

<sup>97</sup> Amnesty International and others, *USA: Off the record. US Responsibility for Enforced Disappearance in the 'War on Terror' "* (Index: AMR 51/93/2007), 7 June 2007: <http://www.amnesty.org/en/library/info/AMR51/093/2007>

<sup>98</sup> *Oea*, *Suicide*, 10 May 2009.

<sup>99</sup> Human Rights Watch, "IX. The State security Court: A New People's Court", *Truth and Justice Can't Wait*, 12 December 2009: <http://www.hrw.org/en/node/87096/section/10>

<sup>100</sup> Executive Order, 22 January 2009, available at <http://www.whitehouse.gov/the-press-office/closure-guantanamo-detention-facilities>

<sup>101</sup> The vaguely-worded offences in Article 206 and 207 of the Libyan Penal Code do not meet the principle of legality for criminal offences as set in Article 15 of the ICCPR.

<sup>102</sup> See Chapter 2 for more information on the case of Shukri Sahil and on Amnesty International's concerns that trials before the State Security Courts do not meet international standards for fair trial.

<sup>103</sup> Amnesty International is aware of at least four executions that took place in Libya in 2009: three Egyptians nationals and one Nigerian national.

<sup>104</sup> Abdul Rahman Abu Tuta was replaced by Abdel Salam al-Toumi in February 2010.

<sup>105</sup> *Oea*, "On the occasion of the anniversary of the great Fateh Revolution, and the start of its 41<sup>st</sup> year, and based on the rules of the Revolution", 31 August 2009: <http://www.oelibya.com/front-page/local-news/5787-2009-08-31-13-38-11>

*Oea* newspaper is one of the two private papers in Libya owned by al-Ghad Media Corporation, closely affiliated to Saif al-Islam al-Gaddafi. See Chapter 1 for more information.

<sup>106</sup> The Supreme Council of Judicial Bodies has nine members and is presided over by the Secretary of the General People's Committee for Justice. It is responsible for the functioning of the judicial authorities and oversees the tenure, promotion and terms of employment of judges and other members of the judiciary. The Supreme Council of Judicial Bodies has the authority to grant amnesties, and is required to give its consent for the implementation of death sentences. For more information, see Law No. 51 of 1976 on the Organization of the Judiciary and Decision No. 6 of 1374 on the Organization of the Judiciary.

<sup>107</sup> *Oea*, *The Supreme Council of Judicial Bodies issues a decision to amnesty 1273 prisoners in reform and rehabilitation institutions*, 31 August 2009,: <http://www.oelibya.com/front-page/local-news/5779-12-73>

<sup>108</sup> Djazia, Safta, « Aucune prison secrete n'existe en Algerie », *Liberté*, 19 September 2009: [http://www.algeria-watch.org/fr/article/just/aucune\\_prison\\_secrete.htm](http://www.algeria-watch.org/fr/article/just/aucune_prison_secrete.htm)

<sup>109</sup> See Amnesty International, *Libya: Time to Make Human Rights a Reality* (Index: MDE 19/002/2004), April 2004.

<sup>110</sup> See *Note Verbale* (UN Doc: A/62/658), 2 February 2008; and *Note Verbale* (UN Doc: A/63/716), 10 February 2009.

<sup>111</sup> Human Rights Watch, "Section X. The Death Penalty", *Truth and Justice Can't Wait*, 12 December 2009: <http://www.hrw.org/en/node/87096/section/11>

<sup>112</sup> See report of the UN Special Rapporteur on extrajudicial, summary, or arbitrary executions (UN Doc: A/HRC/4/20), 29 January 2007.

<sup>113</sup> The Human Rights Committee was considering Libya's Fourth Periodic Report. See Human Rights Committee, *Concluding Observations of the Human Rights Committee* (UN Doc: CPR/C/LBY/CO/4/CRP.1), 30 October 2007.

<sup>114</sup> See Human Rights Committee, *Concluding Observations of the Human Rights Committee* (UN Doc: CCPR/C/LBY/CO/4/CRP.1), 30 October 2007.

<sup>115</sup> Resolution No. ACHPR/Res.136(XXXIII).08, calling on State Parties to observe the moratorium on the death penalty adopted at the 44<sup>th</sup> Ordinary Session held in Abuja, Nigeria, 10-24 November 2008.

<sup>116</sup> See Amnesty International Press Release, *Libya: Death Sentences on Medics Commuted* (Index: MDE 19/011/2007), 17 July 2007.

<sup>117</sup> See report of the Special Rapporteur on extrajudicial, arbitrary or summary executions to the UN General Assembly (UN Doc: A/61/311), 5 September 2006, para61.

<sup>118</sup> See General Comment 31 of the Committee on the Elimination of Racial Discrimination (UN Doc: A/60/18, pp. 98-108), 2005

<sup>119</sup> For further details, see Amnesty International Public Statement, *Libya: Six foreign medics should be released* (Index: MDE 19/002/2007), 30 January 2007.

<sup>120</sup> The right to consular assistance for individuals facing the death penalty in countries other than their countries of origin was elaborated by the International Court of Justice in its 2001 decision in the case of *LaGrand (Germany v. the United States of America)*. The Court found that by not informing the two German nationals of their rights under Article 36, paragraph I(b) of the Vienna Convention on Consular Relations of 24 April 1963 of being able to communicate messages to their country's consular representatives, the USA breached its obligations to the Federal Republic of Germany and to the LaGrand brothers under the Convention. The Court also found that US authorities should review the conviction and the death sentence. For more information see International Court of Justice, *LaGrand Case. Germany v. the United States*, 27 June 2001: <http://www.icj-cij.org/docket/files/104/7736.pdf>

<sup>121</sup> According to the same article, law enforcement officers may hold individuals suspected of offences against the state, such as undermining state security, for a longer period of seven days before referring them to the Department of Public Prosecutions. For more information of procedures of arrest and detention, please refer to Chapter 2.

<sup>122</sup> On the development of international standards on the death penalty as a violation of the absolute prohibition on torture, see report of the Special Rapporteur on torture (UN Doc: A/HRC/10/44), 14 January 2009.

<sup>123</sup> In 2003 the UN Special Rapporteur on torture contested the notion that the administration of such punishments as stoning to death, flogging or amputation – acts which would be unquestionably unlawful in, say, the context of custodial interrogation – cannot be deemed lawful simply because the punishment

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has been authorized in a procedurally legitimate manner. See Appendix 15, "Corporal punishment: Observations of the Special Rapporteur on torture" in Amnesty International, *Combating torture – A manual for action* (Index: ACT 40/001/2003), 25 June 2003. For further information, also see report of the UN Special Rapporteur on torture, Manfred Novak, paras 35-37 on the evolution of the prohibition of corporal punishment in international law and standards (UN Doc: A/HRC/10/44), 14 January 2009; and his interim report presented at the 60<sup>th</sup> session of the UN General Assembly on 30 August 2005 (UN Doc: A/60/316).

<sup>124</sup> *Had* (plural *hudud*) is a concept found in Islamic Shari'a law meaning a divinely prescribed fixed offence and punishment.

<sup>125</sup> See Human Rights Committee, Concluding Observations of the Committee against Torture: Libyan Arab Jamahiriya (UN Doc: A/54/44), 11 May 1999.

<sup>126</sup> See Human Rights Committee, *Concluding Observations of the Human Rights Committee* (UN Doc: CCPR/C/LBY/CO/4/CRP.1), 30 October 2007.

<sup>127</sup> See Concluding observations of the Committee on the Elimination of Discrimination against Women in the framework of its consideration of Libya's second periodic report, and the combined third to fifth periodic report (UN Doc: CEDAW/C/LBY/CO/5), January 2009.

<sup>128</sup> It was unclear whether the four women serving prison terms had already been flogged or whether they were never sentenced to flogging.

<sup>129</sup> For more information see Amnesty International, *Libya: Gross human rights violations amid secrecy and isolation* (Index: MDE 19/08/97), 25 June 1997.

<sup>130</sup> Abu Salim Prison is located in a compound of the Military Police in the area of Abu Salim. The compound is composed of two sections: military and civilian.

<sup>131</sup> The Abu Salim prison killings in June 1996 came to be known as the "Abu Salim Prison Massacre" by families of victims and by Libyans human rights and opposition groups in exile.

<sup>132</sup> See Amnesty International, Urgent Action, *Libya: Political prisoners in Abu Salim Prison, Tripoli - Fear for safety / Deliberate killings / Medical neglect* (Index: MDE 19/05/96), July 1996.

<sup>133</sup> The appalling prison conditions which gave rise to the riot were acknowledged by Special Rapporteur on torture at the time, Sir Nigel S. Rodley. In his 1999 report, he noted his concerns regarding the death in custody of several political detainees in Abu Salim. He said "Their deaths were allegedly the result of torture and other forms of ill-treatment, as well as harsh prison conditions, including lack of adequate medical care, overcrowded prison cells, poor diet and poor hygiene. Injuries sustained during interrogation are also said not to receive adequate medical treatment". See Report of the Special Rapporteur on torture, Sir Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1998/38 (UN Doc: E/CN.4/1999/61).

<sup>134</sup> GDF, Press release, *The Foundation issues a statement on general cases and issues* [original in Arabic], 10 August 2009:  
[http://gdf.org.ly/index.php?lang=ar&CAT\\_NO=4&MAIN\\_CAT\\_NO=4&Page=105&DATA\\_NO=553](http://gdf.org.ly/index.php?lang=ar&CAT_NO=4&MAIN_CAT_NO=4&Page=105&DATA_NO=553)

<sup>135</sup> See Human Rights Committee, ICCPR General Comment No. 6: Article 6 (Right to Life), 30 April 1982, para.3.

<sup>136</sup> The General People's Congress is Libya's main policy-making body (the equivalent of a parliament).

See Chapter 1.

<sup>137</sup> Amnesty International has received a copy of an official communication between two senior security officials in Libya which, if accurate, further confirms that extrajudicial executions of government opponents have been carried out under direct orders from the authorities. The letter was sent on 25 May 1996 by the Director of the Sidi-Hussein Popular Security Centre (Benghazi) to the Director of Security of Benghazi region. It stated that "...at dawn on 25 May 1996...a 'stray dog' called al-Mislati was eliminated by the security forces and...another person called 'Abd 'Abd al-Salam al-Gharyani was arrested outside a school building and then eliminated. The security and revolutionary forces that eliminated him then paraded his body through the streets until 1.30pm and then returned the body to the same place [where he was killed]. A third 'stray dog' [known by his family name] al-Karami was also eliminated...". For more information on the policy of liquidation of political opponents, see Amnesty International, *Libya: Gross human rights violations amid secrecy and isolation* (Index: MDE 19/08/97), 25 June 1997.

<sup>138</sup> Libyan Arab Jamahiriya, *Fourth Periodic Report* (UN Doc: CCPR/C/LBY/4), submitted on 5 December 2006, para6.

<sup>139</sup> Human Rights Committee, *Decision: El Hassy v. Libya* (UN Doc: CCPR/C/91/D/1422/2005), October 24, 2007 and Human Rights Committee, *Decision: El Awani v. Libya*, (UN Doc: CCPR/C/90/D/1295/2004, July 11, 2007).

<sup>140</sup> For more information, see Amnesty International, *Libya: Amnesty International's prisoner concerns in the light of recent legal reforms* (Index: MDE 19/02/91) and Amnesty International, *Libya: Gross Human Rights violations amid secrecy and isolation* (Index: MDE 19/08/97), 25 June 1997.

<sup>141</sup> Revolutionary Committees operate in all Libyan cities to mobilize the people to support the ideas and policies of Colonel Mu'ammarr al-Gaddafi and the 1969 el-Fateh Revolution.

<sup>142</sup> See Human Rights Committee, General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant (UN Doc: CCPR/C/21/Rev.1/Add.13, paras8, 14, 15, 16, and 18), 26 May 2004.

<sup>143</sup> *Libya al Youm, Independent investigative judge on the events of Abu Salim: we have nothing to hide and any rights body can consult the trajectory of investigations* [original in Arabic], 17 September 2009.

<sup>144</sup> According to Article 11 of Law No.1 of 1429 on the Code of Criminal Procedure in People's Military Courts, the General Prosecution of People's Military Courts is to prosecute cases in front of the Military Court, which are under the supervision of the General People's Committee for Defence.

<sup>145</sup> *Libya al Youm, Independent investigative judge on the events of Abu Salim: we have nothing to hide and any rights body can consult the trajectory of investigations* [original in Arabic], 17 September 2009.

<sup>146</sup> *Libya al Youm, Independent investigative judge on the events of Abu Salim: we have nothing to hide and any rights body can consult the trajectory of investigations* [original in Arabic], 17 September 2009.

<sup>147</sup> GDF, Press release, *The Foundation issues a statement on general cases and issues* [original in Arabic], 10 August 2009, accessible at [http://gdf.org.ly/index.php?lang=ar&CAT\\_NO=4&MAIN\\_CAT\\_NO=4&Page=105&DATA\\_NO=553](http://gdf.org.ly/index.php?lang=ar&CAT_NO=4&MAIN_CAT_NO=4&Page=105&DATA_NO=553)

<sup>148</sup> See OHCHR, Implementation of General Assembly Resolution 60/251 of 15 March 2006 entitled "Human Rights Council" Right to the Truth, (UN Doc: A/HRC/5/7), 7 June 2007, para39.

<sup>149</sup> According to the information available to Amnesty International, the People's Leadership is composed of members of various tribes, members of the law enforcement bodies and others. People's Leaderships exist in all major cities of Libya, and a national People's Leadership also exists in Tripoli.

<sup>150</sup> See Chapter 2 for more details on the case of Saleh Boushaha.

<sup>151</sup> The right to truth is embedded in the Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law adopted and proclaimed by the General Assembly in Resolution 60/147 of 16 December 2005, the United Nations Commission on Human Rights, Resolution 2003/72 ("Impunity") of 25 April 2003, the United Nations Human Rights Council Resolution 9/11 ("Right to the Truth") of 24 September 2008, and the International Convention for the Protection of All Persons from Enforced Disappearance.

<sup>152</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para24.

<sup>153</sup> The Gaddafi Development Foundation, Press Release, *The Foundation issues a statement on general cases and issues* [original in Arabic] , 10 August 2009:  
[http://gdf.org.ly/index.php?lang=ar&CAT\\_NO=4&MAIN\\_CAT\\_NO=4&Page=105&DATA\\_NO=553](http://gdf.org.ly/index.php?lang=ar&CAT_NO=4&MAIN_CAT_NO=4&Page=105&DATA_NO=553)

<sup>154</sup> The right to an effective remedy for victims of human rights violations and serious violations of international humanitarian law is guaranteed in international law. It is enshrined in Article 2 (3) of the International Covenant on Civil and Political Rights (ICCPR) and further expanded in the Human Rights Committee General Comment No.31 on the "Nature of the General Legal Obligation imposed on States Parties to the Covenant", adopted on 29 March 2004 at its 2187<sup>th</sup> meeting. It is also recognized in Article 8 of the Universal Declaration of Human Rights; Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination; Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Article 39 of the Convention on the Rights of the Child; Article 3 of the 1907 Hague Convention concerning the Laws and Customs of War on Land; Article 91 of the Protocol I Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I); Article 75 of the Rome Statute of the International Criminal Court; Article 7 of the African Charter on Human and Peoples' Rights; and Article 23 of the Arab Charter on Human Rights.

<sup>155</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Basic Principles on the Right to a Remedy and Reparation), adopted and proclaimed by UN General Assembly Resolution 60/147 of 16 December 2005 (UN Doc: A/RES/60/147).

<sup>156</sup> *Libya al Youm, Independent investigative judge on the events of Abu Salim: we have nothing to hide and any rights body can consult the trajectory of investigations* [original in Arabic], 17 September 2009.

<sup>157</sup> According to Article 20 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation, compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

“(a) Physical or mental harm;

(b) Lost opportunities, including employment, education and social benefits;

(c) Material damages and loss of earnings, including loss of earning potential;

(d) Moral damage;

(e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.”

<sup>158</sup> Saif al-Islam al-Gaddafi, *Speech by Saif al-Islam Gaddafi Chairman of GICDF: Libya Truth For All*, Gaddafi Development Foundation, 26 July 2008:

[http://www.gicdf.org/index.php?option=com\\_content&view=article&id=339:speech-by-saif-al-islam-gaddafi-chairman-of-gicdf-qlibyaatruth-for-all&catid=47:speeches-and-words&Itemid=70](http://www.gicdf.org/index.php?option=com_content&view=article&id=339:speech-by-saif-al-islam-gaddafi-chairman-of-gicdf-qlibyaatruth-for-all&catid=47:speeches-and-words&Itemid=70)

<sup>159</sup> Text of the North Benghazi Court Ruling, reproduced on *Akhabar Libya* website on 18 July, accessible at [http://www.akhbar-libyaonline.com/index.php?option=com\\_content&task=view&id=19275&Itemid=1](http://www.akhbar-libyaonline.com/index.php?option=com_content&task=view&id=19275&Itemid=1)

<sup>160</sup> See Chapter 1 and Chapter 2 for more information on restrictions on freedom of expression, assembly and association.

<sup>161</sup> Abdallah al-Sanussi is reported to have been involved in negotiating with the Abu Salim prisoners on 28 June 1996.

<sup>162</sup> Human Rights Solidarity, Urgent Action, *More Arrests of Families of Victims of Abu Salim* (Index: UA-IHrs-09-0005), 30 March 2009.

<sup>163</sup> *Libya Al-Mostakbal* is accessible at <http://www.libya-al-mostakbal.org>

<sup>164</sup> Footage available at: [http://www.libya-al-mostakbal.org/Busleem/demo300110/fathi\\_terbal\\_300110.htm](http://www.libya-al-mostakbal.org/Busleem/demo300110/fathi_terbal_300110.htm)

<sup>165</sup> Footage available at: [http://www.libya-al-mostakbal.org/Busleem/demo290609\\_NEW/index.htm](http://www.libya-al-mostakbal.org/Busleem/demo290609_NEW/index.htm)

<sup>166</sup> Human Rights Society, *Statement by the Human Rights Society in Solidarity with the Abu Salim Victims' Families*, 24 November 2009:

[http://gdf.org.ly/index.php?lang=en&CAT\\_NO=4&MAIN\\_CAT\\_NO=4&Page=105&DATA\\_NO=591](http://gdf.org.ly/index.php?lang=en&CAT_NO=4&MAIN_CAT_NO=4&Page=105&DATA_NO=591)

<sup>167</sup> Human Rights Society, *The Human Right's Society's Annual Report*, 10 December 2009:

[http://gdf.org.ly/index.php?lang=ar&CAT\\_NO=2&DATA\\_NO=593&MAIN\\_CAT\\_NO=4&Page=105&lang=en](http://gdf.org.ly/index.php?lang=ar&CAT_NO=2&DATA_NO=593&MAIN_CAT_NO=4&Page=105&lang=en)

<sup>168</sup> See Chapter 1 for information of freedom of expression in Libya for more detail and see Amnesty International, Public Statement, *Libya: Brief arrest of media workers demonstrates increased intolerance*, 27 February 2010 (Index: MDE 19/001/2010).

<sup>169</sup> The NFSL, established in October 1981, is Libya's leading (banned) opposition party, whose stated aim is the establishment of a democratic regime in the country.

<sup>170</sup> See Chapter 2 for further details of Mahmud Hamed Matar's case and Amnesty International, *Libya: Time to Make Human Rights a Reality*, April 2004 (Index: MDE 19/002/2004).

<sup>171</sup> *The Times*, Open Letter, “ Ask Libya about Matar, Mr. Milliband”, 15 January 2010, accessible at <http://www.timesonline.co.uk/tol/comment/letters/article6988016.ece>

<sup>172</sup> Hirsh, Afua, *Ministers Press Libya over detentions*, *The Guardian*, 18 January 2010, accessible at



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<http://www.guardian.co.uk/politics/2010/jan/18/jaballa-matr-activist-release-lester>

<sup>173</sup> They Work for You.com, *Libya- Human Rights question*, 18 January 2008:  
<http://www.theyworkforyou.com/lords/?id=2010-01-18a.769.1>

<sup>174</sup> See Amnesty International, *Libya: Time to Make Human Rights a Reality*, April 2004 (Index: MDE 19/002/2004).

<sup>175</sup> AFP, "Lebanon arrest warrant for Kadhafi over missing imam", 27 August 2008.

<sup>176</sup> The five others were: Mustapha Bin Daga, 'Ali al-Zirqani and 'Ali Kanunu, who had been released in 1988; and Yousef Lahaywal and Najm al-Din al-Naquzi.

<sup>177</sup> For further information, see Amnesty International, *Libya: Gross human rights violations amid secrecy and isolation* (Index: MDE 19/08/97), June 1997.

<sup>178</sup> For more information see Amnesty International, *Libya: Gross human rights violations amid secrecy and isolation* (Index: MDE 19/08/97), June 1997.

<sup>179</sup> Father of Omar Deghayes, former detainee of the US authorities in Guantanamo Bay, Cuba.

<sup>180</sup> See Amnesty International, Urgent Action, *Libya: Amer Taher Deghayes* (Index: UA 31/80), 3 March 1980.

<sup>181</sup> See Amnesty International, *Libya: further information on political detention* (Index: MDE 19/003/1992), October 1992.

<sup>182</sup> See Amnesty International, *Libya: Gross human rights violations amid secrecy and isolation* (Index: MDE 19/08/97), June 1997.

<sup>183</sup> See Box on Remedy and Reparation for more information.

<sup>184</sup> The term refugee refers to a person who is outside his/her country of origin and who has a well-founded fear of persecution if returned to his/her country. The legal framework that applies to such people includes the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. It recognizes that refugees have special international protection needs due to the fact that they do not have the protection of their country of origin. An asylum-seeker is a person seeking protection as a refugee, but who has not been formally recognized as a refugee. A migrant is a person who moves to another country to live, and usually to work. An irregular migrant is someone who does not have legal permission to remain in a host country. For more details of definitions of these groups, please refer to Amnesty International, *Living in the Shadows: a primer on the human rights of migrants* (Index: POL 33/007/2006), August 2006.

<sup>185</sup> Ministry of Foreign Affairs – Malta, *The Malta-Libya Mixed Commission leads to various agreements*, 20 January 2010: <http://www.foreign.gov.mt/default.aspx?MDIS=21&NWID=813>

<sup>186</sup> Lindsay, David, *Libyan FM blast Europe, NGOs over migration- Gaddafi to visit Malta in March, the Malta Independent Online*: <http://www.independent.com.mt/news.asp?newsitemid=100438>

<sup>187</sup> In December 2007, Italy and Libya signed the "Protocol" and the "Additional Technical-Operational" Protocol. The full texts have not been made publicly available by the Italian authorities, but can be found in Italian at the blog "Fortress Europe": <http://fortresseurope.blogspot.com/2009/09/paleologo-inutile-appellarsi-allaccordo.html>. These two agreements provide for the joint patrolling of the seas and are referred to in the Treaty.

<sup>188</sup> Italian Parliamentary Committee of control on Schengen agreements, Hearing, 13 October 2009.

<sup>189</sup> For more information see Amnesty International, Public Statement *Italy/Malta: Obligation to safeguard lives and safety of migrants and asylum-seekers* (Index: EUR 30/007/2009), 7 May 2009.

<sup>190</sup> Reuters, "Don't send back refugees to Libya", 2 October 2009:  
<http://www.reuters.com/article/idUSL2289206>

<sup>191</sup> Such actions are in violation of Italy's obligations under international and regional human rights and refugee law, most notably the principle of *non-refoulement* or the obligation not to return any individual, either directly or indirectly, to a country where they are at risk of persecution. Included in this is the duty to ensure access to a full, fair and satisfactory asylum procedure to correctly identify those in need of international protection, something Italy failed to do. Even where Italy's actions occurred outside its territorial zones, they were still obliged to ensure respect for the principle of *non-refoulement*, and corresponding procedural obligations, as this principle can be engaged extra-territorially, including in international waters, in situations of power or effective control.

<sup>192</sup> AKI - Adnkronos international (Arabic Service), *Maroni: impressive decrease in number of migrant boats since the agreement with Libya*, 27 January 2010.

<sup>193</sup> Zulueta, Tana de, *Gaddafi strips off diplomatic fig leaf*, *The Guardian*, 11 June 2009:  
<http://www.guardian.co.uk/commentisfree/2009/jun/11/gaddafi-libya-italy>

<sup>194</sup> See Chapter 1 on the evolution of Libya's political system.

<sup>195</sup> According to UNHCR ". . . In light of the risks to safety and security, ongoing armed conflict and the shifting armed fronts and ongoing widespread human rights violations, it cannot be considered reasonable for any Somali, regardless of whether the individual originates from southern and central Somalia, Somaliland or Puntland, to relocate within or to southern and central Somalia... UNHCR considers that there is no available internal flight or relocation alternative in any part of southern and central Somalia." (UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Somalia, May 2010.) The Special Representative of the UN Secretary-General on the human rights of internally displaced persons warned in a January 2010 report: "During flight and in settlements, the internally displaced remain exposed to grave human rights abuses, in particular rape and domestic violence. Many of their rights and needs, including shelter, food, water, health care and education, remain unaddressed." In the report's conclusions and recommendations, Walter Kalin stated: "Under the current circumstances there are generally no sufficiently safe internal flight alternatives within southern and central Somalia, Puntland or Somaliland, in particular bearing in mind the depth of the humanitarian crisis, the worsening security situation, clan dynamics and the overall lack of protection, especially for women and children". For more information see Human Rights Council (UN Doc: A/HRC/13/21/Add.2), 2010. For UN Guidelines on Somalia, see UNHCR Position on the Return of Rejected Asylum-Seekers to Somalia, January 2004; UNHCR Advisory on the Return of Somali Nationals to Somalia, November 2005 and UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Somalia, May 2010.

<sup>196</sup> See UN High Commissioner for Refugees, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Eritrea*, April 2009:  
<http://www.unhcr.org/refworld/docid/49de06122.html>

<sup>197</sup> See Amnesty International, *Libya: Libyan Arab Jamahiriya Addendum to Briefing to the UN Human Rights Committee* (Index: MDE 19/015/2007), September 2007 and Amnesty International, *Public*

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*Statement, Libya: Amnesty International warns against the deportation of Eritreans* (Index: MDE 19/007/2008), 11 July 2008.

<sup>198</sup> See Amnesty International, *Public Statement, Libya: Amnesty International warns against the deportation of Eritreans*.

<sup>199</sup> For more information, see below, "Forced Returns".

<sup>200</sup> For more information, see below, "Detention".

<sup>201</sup> Refugees generally have three options, or durable solutions, available to them: local integration, voluntary repatriation and resettlement to a third country. However, in Libya at the present time local integration and voluntary repatriation are not viable options. The Libyan authorities do not provide an adequate or stable protection space for refugees and in the absence of any commitment to changing this situation, local integration is not possible. Voluntary repatriation sees a refugee deciding voluntarily to return to their home country to re-establish their life there. The option of voluntary repatriation stands as a durable solution only when conditions have changed in the country of origin so that a return can occur in a situation of safety (physical, legal and material) and dignity. In addition to ensuring the conditions of safety and dignity are met for voluntary repatriation to occur, the fundamental element of full and informed consent must be established. See UNHCR, *Resettlement Handbook*, for further information.

<sup>202</sup> Five to the Netherlands; three to Sweden and one to Italy.

<sup>203</sup> 40 to Italy; one Canada; one to Sweden; one to the Netherlands.

<sup>204</sup> 30 to Italy; 23 to Canada; 20 to the Netherlands; 38 to Sweden; 38 to Romania; five to Ireland; four to Switzerland; one to Norway.

<sup>205</sup> All to Italy.

<sup>206</sup> Under international refugee law, a collective responsibility to share the burden of a refugee crisis is held by all states in the wider international community. Such an obligation attaches directly to states party to the 1951 UN Convention relating to the Status of Refugees (Refugee Convention). As clearly stated in the convention's preamble, "the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation". This commitment has been reaffirmed by states in recent years following UNHCR's Global Consultation on International Protection. Specific acknowledgement and affirmation of responsibility sharing as a key component of international refugee protection and international co-operation emerged in the conclusions of the final document of this 18-month process: *the Agenda for Protection*.

<sup>207</sup> According to the information provided to Amnesty International by UNHCR in February 2010, there were: 3,787 Palestinian; 2,772 Iraqi; 919 Sudanese; 646 Somali; 564 Eritrean; 134 Liberian; 37 Ethiopian; and 92 other refugees in Libya. About 55 per cent of them were male. As for asylum-seekers, there were 1,616 Eritreans; 558 Sudanese; 537 Iraqis; 237 Chadians; 126 Ethiopians and 62 of other nationalities.

<sup>208</sup> The detention centres are Az-Zawiya; Garabule; Misratah; Surman/Sebrata; Zuwara; Kufra; Sebah; Ganfouda; Barak; Sirte; Benghazi/Gowasha; Tweisha; Ajdebia; Binwaleed; and Zlitan.

<sup>209</sup> UNHCR also works with five other national NGOs and two international organizations: Al-Wafaa Charity Association; World Islamic Call Society (WICS); Watasemo Association; GDF; the National

Committee for Youth Volunteers Work (NCYVW); and the National Society for Youth Care (NSYC), as well as the International Centre for Migration Policy Development (ICMPD) and the Italian Council for Refugees (CIR).

<sup>210</sup> UNHCR, News Stories, *UNHCR chief and Libyan partner discuss protection for refugees in mixed migration flows*, 15 October 2009: <http://www.unhcr.org/4ad73aa16.html>

<sup>211</sup> UNHCR, *UNHCR's Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*, 26 February 1999: <http://www.unhcr.org/refworld/docid/3c2b3f844.html>

<sup>212</sup> See, *Report of the UN Working Group on Arbitrary Detention*, E/CN.4/2000/4, Annex II, 2000. The Working Group on Arbitrary Detention may produce general comments known as "deliberations" which state the views of the Working Group on general issues pertaining to detention.

<sup>213</sup> AFP, *Less than 2,000 migrants held in Libya: Official*, 10 November 2009: <http://www.google.com/hostednews/afp/article/ALeqM5ibZ9oL3yfBXb-cwrReVYtPuf8z1g>

<sup>214</sup> The UN Working Group on Arbitrary Detention adopted Deliberation No. 5 concerning the situation of immigrants and asylum-seekers, which recommends that a maximum period of detention is established by law and that detention should not be prolonged or indefinite. See also UNHCR, *Revised Guidelines on Applicable Criteria and Standards relating to the detention of asylum-seekers* (February 1999) which state in para3: "detention should only be resorted to in cases of necessity. The detention of asylum-seekers who come "directly" in an irregular manner should, therefore, not be automatic, or unduly prolonged". Also see, *Report of the Working Group on Arbitrary Detention* (UN Doc: A/HRC/13/30), 18 January 2010, paras54-65 on the detention of immigrants in an irregular situation.

<sup>215</sup> *Al-Quds Al-Arabi*, "Under 2,000 migrants in Libyan detention centres", 11 November 2009 (Original in Arabic).

<sup>216</sup> See also, Amnesty International, *Migration-related Detention: A Research Guide on human rights standards relevant to the detention of migrants, asylum-seekers and refugees*, 2007 (Index: POL 33/005/2007) for further information on relevant standards.

<sup>217</sup> It is believed that many of them have been re-arrested in Tripoli, and are currently held in other detention centres in Libya.

<sup>218</sup> Such standards are enshrined in the UN Code of Conduct for Law Enforcement Officers; the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; and the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

<sup>219</sup> For more information on the forms "Individuals in need of international protection in limbo" above.

<sup>220</sup> For additional information on torture or other ill-treatment, see Chapter 2.

<sup>221</sup> Libya became a member of the IOM in 2003, and signed an agreement for its presence in Tripoli in 2004. The IOM has been operational in Libya since 2006, mostly involved in voluntary return and reintegration programmes as well as the development of labour migration management policies. At the Voluntary Return Centre, interviews are organized with potential candidates to explain the process of assisted return and medical checks are conducted to ensure that candidates do not have any contagious diseases and are able to travel on commercial flights.

<sup>222</sup> The term migrant worker is defined in the Convention as "a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national". The

definition is wide-ranging and would probably include most cases of migrants in Tripoli. See Section on Detention for Libya's obligations to protect individuals from torture or other ill-treatment. See Chapter 3 for Libya's obligations to ensure non-discrimination based on national origin.

<sup>223</sup> Amnesty International, *Libyan Arab Jamahiriya briefing to the UN Human Rights Committee* (Index: MDE 19/0082007), 2007.

<sup>224</sup> Although Article 13 of the ICCPR which sets out safeguards against arbitrary expulsion of foreign nationals refers specifically to foreigners lawfully in the territory of a state, the Human Rights Committee has stated that "its purpose is clearly to prevent arbitrary expulsions" (General Comment 15).



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## **'LIBYA OF TOMORROW'** **WHAT HOPE FOR HUMAN RIGHTS?**

In a few short years, Libya has transformed itself from a pariah state to an active member of the international community. Sanctions imposed by the UN, the European Union and the USA have been lifted and diplomatic relations restored. Unfortunately, the pace of reform at the domestic level has been slow, in sharp contrast with Libya's increased visibility on the international scene.

The Libyan authorities have not kept their promises to address the legacy of past human rights violations and to introduce safeguards to prevent them recurring. Serious human rights violations continue. Hundreds of individuals are detained arbitrarily. Thousands of families are still waiting for answers about relatives who have disappeared or who were killed by state agents. The death penalty continues to be imposed for a wide range of offences and women suspected of sexual relations outside marriage risk being sentenced to flogging. Thousands of migrants, asylum-seekers and refugees live in constant fear of being arrested and detained, beaten and abused and forcibly returned to an uncertain future.

Victims of human rights violations in Libya have little hope of judicial protection and redress, while those responsible for torture, unlawful killings and other violations enjoy total impunity.

This report calls on the Libyan authorities to build the "Libya of tomorrow" on a foundation of respect for human rights. This requires them to take steps to stop human rights violations and to end impunity

Amnesty International  
International Secretariat  
Peter Benenson House  
1 Easton Street  
London WC1X 0DW  
United Kingdom

[www.amnesty.org](http://www.amnesty.org)

Index: MDE 19/007/2010  
June 2010

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