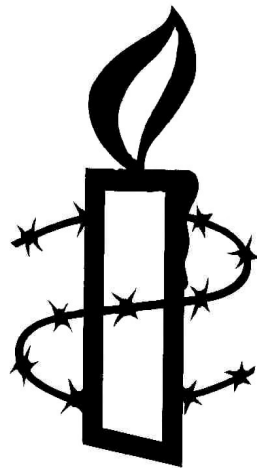

amnesty international

Libyan Arab Jamahiriya
Submission to the UN Universal
Periodic Review

Ninth session of the UPR Working Group of the Human
Rights Council

November-December 2010



Executive summary

In this submission, Amnesty International provides information under sections B, C and D as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*:¹

- v Under section B, Amnesty International raises concerns over the retention of the death penalty for a wide range of offences including activities amounting to the peaceful exercise of legitimate rights; the lack of safeguards against torture or other cruel, inhuman degrading treatment or punishment as well as the application of cruel, inhuman or degrading punishment such as flogging and amputation; the existence of legally sanctioned gender-based discrimination; the existence of a parallel legal system to try individuals accused of offences “against the state”; and the lack of legal and institutional protection for refugees and asylum-seekers.
- v Section C highlights Amnesty International's concerns about severe restrictions in practice to the rights of freedom of expression, association and assembly; human rights violations in the context of the administration of justice particularly in cases of individuals accused of offences “against the state”; the treatment of refugees, asylum-seekers and migrants; and impunity for past human rights violations including enforced disappearances and extrajudicial executions.
- v In section D, Amnesty International makes a number of recommendations for action by the government for each of the areas of concern raised.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

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B. Normative and institutional framework of the State

The death penalty

The death penalty is prescribed for a wide range of offences, including premeditated murder and drug-related offences, as well as 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 of 1 September 1969, which brought Mu'ammār al-Gaddafi to power, 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).

In 2004, the Libyan government announced amendments to the Penal Code. In its report to the Human Rights Committee in 2006, it confirmed its intention to reduce the scope of the applicability of the death penalty.² However, the version of the draft Penal Code that Amnesty International received from the Libyan authorities in February 2004 still contains 26 articles prescribing the death penalty.

Courts continue to hand down death sentences, mostly for murder and drug-related offences, frequently in proceedings not meeting international standards for fair trial. Executions continue to be carried out by firing squad.

Torture or other cruel, inhuman or degrading treatment or punishment

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 neither defines the crime of torture nor makes explicit that it is absolutely prohibited under all circumstances. Torture continues to take place in Libya in a climate of impunity [see Section C under administration of justice; refugees, asylum-seekers and migrants; and impunity for past human rights violations].

A number of laws passed since the 1970s have introduced corporal punishment, including Law No. 70 of 1973 (on the Establishment of the *Had of Zina* and the Amendment of several Articles of the Penal Code). It prescribes 100 lashes 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. 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)³ – highway robbery or rebellion – states that a

² Libyan Arab Jamahiriya, Fourth Periodic Report, CCPR/C/LBY/4, submitted in Arabic on 5 December 2006.

³ In some cases, Libyan laws are dated according to the official Libyan lunar calendar. The calendar takes as its starting point the death of the Prophet Muhammad

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).

According to information available to Amnesty International, in recent years, courts have continued to sentence people to corporal punishments including amputation of the right hand and flogging.

Gender-based discrimination

Provisions that discriminate against women remain in Libyan legislation, especially with regard to marriage, divorce and inheritance. For instance, polygamy is still permitted, under judicial supervision, although the practice is believed to be limited. Women have the same rights as men regarding the right to acquire, change or retain their nationality. However, Libyan women do not have the same rights as Libyan men to transfer their nationality to their foreign-born spouses or children.

As mentioned above, consensual sexual relations outside of wedlock are criminalized in Libya. This prohibition seems to apply to same-sex partners. Paragraph 4 of Article 407 of the Penal Code states that “Anyone who has sexual intercourse with another person with their consent shall be punished, as shall their partner, by up to five years’ imprisonment.” Also, Paragraph 4 of Article 408 states that “Anyone who commits an indecent act on another person with their consent shall be punished, as shall their partner, by imprisonment.”

Parallel legal system

Amnesty International welcomed the abolition in January 2005 of the People’s Court and the Popular Prosecution Office, before which many political suspects had received grossly unfair trials in previous years and which lacked the minimum standards for fair trial.

Law No. 7 of 1373, which abolished the People’s Court and the Popular Prosecution Office, opened the door for transferring their mandate to “competent or specialized courts and prosecutions” (Article 2). Decree No. 6 of 1374 on the Judicial System, issued by the General People’s Congress (Libya’s equivalent of a national parliament), allowed for the creation of specialized courts and the Supreme Council for Judicial Bodies subsequently issued Decree No. 27 of 1375 on the Establishment of the State Security Court and Prosecution Office on 19 August 2007.

According to Decree No. 27, the State Security Court specializes in cases involving 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. There is little information publicly available on the procedures governing the State Security Court, which is believed to have sat within the confines of the Abu Salim Prison in some instances. It is feared that proceedings in front of the State Security Court are governed by the same laws and procedures applicable to the former People’s Court (Law No. 5 of 1988 establishing the People’s Court). Within the system of the People’s Court, which it is feared the State Security Court and Prosecution Office have inherited, 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. The minimum guarantees of fair trial in proceeding 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 legal counsel of one’s own choosing; and the right of appeal in front of a higher tribunal. Furthermore, “confessions” extracted under torture or duress were used as evidence in proceedings in front of the People’s Court.

Refugees and asylum-seekers

Libya has not ratified the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. 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 UN refugee agency, the UNHCR, in the end of 2007. It remains unclear when the proposed draft would be presented to the General People's Congress for adoption

In the absence of asylum procedures, the UNHCR conducts refugee status determination in Libya. UNCHR, which has had a presence in Libya since 1991, operates without a formal memorandum of understanding, which renders its operating environment largely unpredictable and impedes its ability to carry out its protection functions in a systematic way. As of October 2009, the UNHCR has access to 15 detention centres across Libya; but its capacity to screen individuals in need of international protection, particularly in the east and south of the country, remains limited.

C. Promotion and protection of human rights on the ground

Freedom of expression, association and assembly

Severe restrictions on the rights to freedom of expression, association and assembly remain in law and practice. Such rights are criminalized in Libyan legislation, and peaceful critics of the Libyan political system have been convicted on vaguely worded charges such as "attempting to overthrow the political system" or "spreading false rumours about the Libyan regime". 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 and Law No. 75 of 1973, Law No. 76 of 1972 imposes severe restrictions on the freedom of the press, effectively preventing the formation of independent newspapers. The state also owns virtually all national broadcast media.

The media landscape broadened with the establishment of two privately owned newspapers in August 2007. 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, son of the Libyan leader. A radio programme in Benghazi which addressed subjects deemed sensitive was taken off the air in February 2010. The government also appears to sometimes block certain websites. For instance, for about three months in early 2010, a number of websites based abroad which carry material critical of the Libyan authorities or tackle sensitive issues such as Libya's human rights record, have been blocked and could only be accessed in Libya through proxy.

The right to freedom of association is also severely curtailed and the government does not allow for the establishment of independent human rights NGOs. The only national organization permitted to address human rights is the Human Rights Society of the Gaddafi International Charity and Development Foundation (GDF), headed by Saif al-Islam al-Gaddafi. An effort by a group of lawyers, journalists and writers 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", was nipped in the bud. 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 the establishment of the NGO.

Public assembly is generally only tolerated when the protestors are demonstrating in support of the government's positions. While the government has allowed public protests by victims of the Abu Salim Prison killings [see below] since late June 2008; several of those active in the protests face harassment and intimidation, including threatening phone calls, surveillance, restrictions on travel and even arrest. For instance, five relatives of victims of Abu Salim killings were arrested and detained incommunicado in March 2009 in connection with the protests, before being released without charge or trial several days later.

Journalists, writers and political activists who criticize the authorities or seek to organize meetings or demonstrations to protest against the government are at risk of arrest and detention, as well as other forms of intimidation or harassment. For instance, Jamal el-Haji who was arbitrarily detained for two years between February 2007 and March 2009 for seeking to organize a peaceful public protest, was rearrested in December 2009 and is facing trial on charges of insulting the judicial authorities for having complained about his treatment whilst in detention. One of Libya's most prominent critics, Fathi el-Jahmi, died in May 2009, after spending over six years in nearly continuous custody of the Libyan authorities. Fathi el-Jahmi's health deteriorated during his incarceration, when he was held mostly in solitary confinement, denied regular visits by his family and provided only with sporadic and inadequate medical treatment.

Administration of justice

In a welcome move, Mustafa Abdeljalil, the Secretary of the General People's Committee for Justice, publicly criticized the lack of respect shown to the rule of law in Libya by security agencies. In January 2010, he told the General People's Congress that there were over 300 individuals imprisoned without any legal basis. Several months earlier, he lamented to *Oea* newspaper that "We have more than 500 defendants acquitted, who have not been released on security justifications".

In the past two years, the Libyan authorities have taken some positive steps in releasing some victims of arbitrary detention. The releases of some 400 individuals, including members of the Libyan Islamic Fighting Group (LIFG) and other groups, many of whom were detained without a legal basis or after unfair trials, were facilitated by the involvement of the GDF.

Nonetheless, hundreds of individuals accused of offences "against the state" remain arbitrarily detained in Libya. They include individuals suspected of belonging to Islamist armed groups in Libya or abroad and those critical or deemed to be critical of the political system. Some are detained without charge or trial or after being convicted in proceedings that grossly violate international standards for fair trial. Others continue to be detained after finishing serving their sentence imposed by courts or despite being cleared of all charges. For instance, Mahmoud Mohamed Aboushima remains detained in Abu Salim Prison, despite being cleared of charges of belonging to the LIFG by the High Court on 17 July 2007.

These individuals are at the mercy of members of the security forces, who are not subjected to independent oversight and who are not held accountable for their actions. Of particular concern is that members 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), appear to have unchecked powers in practice to arrest, detain and interrogate individuals suspected of dissent against the political system or deemed to present a security threat. Members of ISA hold such detainees incommunicado for prolonged periods and deny them access to their families and lawyers, exposing them to the risk of torture or other ill-treatment, in breach of international law and even of the limited safeguards set out in Libya's Code of Criminal Procedure.

Individuals accused of offences "against the state" face trial in front of the State Security Court or other special courts. They are often not aware of the exact charges facing them before being brought to the courts, where they see their court-appointed lawyers for the first time in violation of their right to adequate defence. Evidence extracted under torture or duress has been used to convict such individuals in breach of Libya's obligation under the Convention against Torture.

Refugees, asylum-seekers and migrants

Libyan authorities continue to detain thousands of individuals believed to be irregular migrants, including refugees and asylum-seekers, in detention centres that are severely overcrowded, unhygienic and of poor standard. Detention centres designed to hold migrants are reported not to ever be visited by the Public

Prosecution, unlike reform and rehabilitation institutions in Libya which are under the control of the General People's Committee for Justice. Those suspected of being irregular migrants are detained for weeks, months or even years and have no opportunity to challenge the legality of their detention.

Individuals believed to be irregular migrants face regular verbal abuse, beatings and other ill-treatment, in some cases amounting to torture, while in the custody of the Libyan authorities. Despite persistent allegations of torture or other ill-treatment; the Libyan authorities are not known to have conducted investigations or to bring those responsible to justice.

In the past few years, the Libyan authorities have arrested and forcibly returned tens of thousands of foreign nationals without due process and without considering their 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 the Libyan authorities appear to make little attempt to differentiate between migrants, refugees and asylum-seekers.

Asylum-seekers and refugees in Libya live in constant fear of being deported. In 2004, the Libyan authorities deported two groups of Eritrean nationals. On arrival in Eritrea, the first group of 110 individuals were reportedly arrested, detained incommunicado and tortured in secret military prisons. Libyan authorities again attempted to forcibly return 230 Eritrean nationals to Eritrea in June 2008, but their attempt was thwarted by the intervention of the UNHCR. From late December 2009 to mid-January 2010, Libyan authorities provided access to Eritrean embassy officials to a number of detention centres in Libya where Eritrean nationals were held. In the context of these visits, Eritrean nationals were told by Libyan security officials to complete forms seeking biographical data on the detainees, prompting fears that the authorities were taking steps in preparation of their forcible return.

Impunity for past human rights violations

The legacy of grave human rights violations that took place particularly in the 1980s and 1990s continues to cast a shadow over Libya's human rights record. Such violations included arbitrary detention; torture or other ill-treatment; enforced disappearances; extrajudicial executions; and deaths in custody as a result of torture or other abuses.

The Libyan authorities have failed to adequately address the killings of up to 1,200 prisoners in June 1996 in Abu Salim Prison. Most killings took place the day after a riot took place sparked by appalling prison conditions and the denial of medical treatment and family visits. Official recognition that any disturbances took place came only eight years later, when Libyan leader Mu'ammar al-Gaddafi acknowledged to an Amnesty International delegation in February 2004 that killings did take place. To date, no full, independent, impartial investigation has been conducted into the events, and no perpetrators have been brought to justice. In September 2009, the authorities announced that a committee had been established to investigate the incident; but no public details on its mandate or the outcome of its investigation have been made available.

In 2008 and 2009, some 12 years after the incident, the Libyan authorities started informing a large number of families that their relatives had been killed in Abu Salim Prison, offering them financial compensation on condition that they renounce their rights to seek a judicial remedy. The Libyan government also provided family death certificates which failed to list the cause of death.

In a positive development, in June 2008, the North Benghazi Court of First Instance, Civil Division, ordered the Libyan authorities to reveal and officially notify the families of the whereabouts and fate of 33 individuals believed to have died in the Abu Salim Prison in 1996 or elsewhere in custody (Case number 5/2007). However, the court ruling has not been implemented to date.

A number of families of victims of the Abu Salim Prison killings in 1996, particularly in Benghazi, have refused to accept the government's approach of dealing with past violations and continue to demand the establishment of truth, accountability for perpetrators, and adequate reparation beyond financial compensation. In Benghazi, families hold near weekly protests to demand their rights. They continue to be pressured by the authorities to accept financial compensation and renounce their other rights.

The Libyan authorities have also failed to adequately investigate unresolved cases of enforced disappearances and physical liquidation of political dissidents in Libya and abroad believed to have been carried out by agents of the state in past decades.

D. Recommendations for action by the State under review

Death penalty

- ▼ To immediately establish a moratorium on executions and to review all laws and the draft Penal Code to ensure that the death penalty is restricted to the "most serious crimes", as required by the International Covenant on Civil and Political Rights, to which Libya is a state party, with a view to its abolition.

Torture or other cruel, inhuman degrading treatment or punishment

- ▼ To immediately cease the application of corporal punishment, including flogging and amputation, and to repeal legislation which allows for its application, including Law No. 70 of 1973, Law No. 52 of 1974 and Law No. 13 of 1425;
- ▼ To introduce in Libyan legislation an absolute prohibition of torture and a definition of torture in line with the Convention against Torture and other Cruel, Inhuman, Degrading Treatment or Punishment.

Gender-based discrimination

- ▼ To repeal all discriminatory legislation with regard to marriage, divorce, and inheritance and amend legislation to ensure that Libyan women have the same rights as Libyan men to pass their nationality to their foreign-born spouses or children;
- ▼ To decriminalize sexual relations between consenting adults by amending Article 407 and 408 of the Libyan Penal Code and repealing Law No. 70 of 1973.

Freedom of expression, association and assembly

- ▼ To repeal all laws, including Law 71 of 1972 and relevant articles of the Penal Code (including Articles 178, 195, 206 and 207) which criminalize activities which merely amount to the peaceful exercise of the rights to freedom of expression and association;
- ▼ To immediately and unconditionally release all those imprisoned solely for the peaceful exercise of their rights to freedom of expression, association and assembly; and to guarantee that those who criticize the Libyan political system or Libyan officials, or seek to hold peaceful anti-government protests or create independent associations, are protected from any form of harassment or intimidation.

The rights of refugees, asylum-seekers and migrants

- ▼ To ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, to adopt asylum legislation consistent with international law and standards without further delay, and to immediately sign a memorandum of understanding with the UNHCR;
- ▼ To 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 to bring those responsible to justice in accordance with international standards for fair trial;

- ▼ To not forcibly return 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 violations and immediately cease all arbitrary or collective expulsions.

Administration of justice

- ▼ To amend relevant legislation, including Article 13 of the Code of Criminal Procedure to ensure that members of security forces, including members of the Internal Security Agency, no longer have the authority to exercise the functions of the judicial police;
- ▼ To 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; 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; and pending reforms to 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 jurisdiction of the ordinary criminal court system;
- ▼ To 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; and to retry all those sentenced by the People's Court, the State Security Court and other special courts in proceedings that meet international standards for fair trial, or to release them;
- ▼ To investigate all allegations of torture or other ill-treatment and other violations committed by security forces, including enforced disappearances and extrajudicial executions, and to bring those responsible to justice in proceedings meeting international standards for fair trial;
- ▼ To end the practice of prolonged incommunicado detention and to ensure that detainees are granted prompt access to their families and lawyers and doctors of their own choice.

Impunity

- ▼ To publish a list of those killed in the 1996 Abu Salim Prison killings or who died in custody 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;
- ▼ To provide families of victims of the Abu Salim Prison killings with accurate death certificates stating the place, date and exact cause of death;
- ▼ To establish a vetting system to ensure that those reasonably suspected of crimes under international law or 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. It should comply with international law, in particular standards of fairness.

Appendix: Amnesty International documents for further reference⁴

- v *Libyan Arab Jamahiriya Briefing to the UN Human Rights Committee* (Index: MDE 19/008/2007), June 2007
- v *Libya: Amnesty International warns against the deportation of Eritreans* (Index MDE: 19/007/2008), 11 July 2008
- v *Libya: Amnesty International completes first fact-finding visit in over five years* (Index: MDE 19/003/2009), 29 May 2009
- v *Arrest of media workers reflects increase on attacks on freedom of expression in Libya* (Index: MDE 19/001/2010), 27 February 2010
- v *Libya: Prisoner of Conscience to stand trial for raising abuse* (Index: MDE 19/002/2010), 2 March 2010

⁴ All of these documents are available on Amnesty International's website: <http://www.amnesty.org/en/region/libya>