

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	141
Land:	Libyen
Kilde:	Human Rights Watch
Titel:	Country Report on Human Rights Practices for 2011 – Libya.
Udgivet:	18. juni 2012
Optaget på baggrundsmaterialet:	11. september 2012

Title	Libya: Candidates Should Address Torture, Illegal Detention
Publisher	Human Rights Watch
Country	Libya
Publication Date	18 June 2012
Cite as	Human Rights Watch, <i>Libya: Candidates Should Address Torture, Illegal Detention</i> , 18 June 2012, available at: http://www.unhcr.org/refworld/docid/4fe01e632.html [accessed 5 September 2012]
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Libya: Candidates Should Address Torture, Illegal Detention

The individual candidates and political entities competing in Libya's July 7, 2012 national election should explain how they plan to end the ongoing problem of torture and illegal detention, which continues to affect thousands of people.

At a minimum, the authorities should ensure that anyone detained in official custody has been brought before a judge and, if there is evidence, has been charged with a criminal offense, Human Rights Watch said. All detention outside the law and abuse in detention, including by militias, should be treated as a criminal act.

"Torture and illegal detention are an ongoing national crisis that Libya's future leaders need to address," said [Fred Abrahams](#), special advisor at Human Rights Watch. "Libyans deserve to know how the candidates for this landmark election will solve these serious problems and reform the justice system after decades of abuse."

The electoral campaign formally begins on June 18, with 2,501 individual candidates and 1,206 candidates from 142 political entities. The 200-member national assembly will enact legislation, appoint a provisional government, and name a body to draft a constitution before another election in 2013.

Human Rights Watch conducted extensive inquiries into [torture](#) and [detention conditions](#) during and after the 2011 conflict, which ended with the fall of Muammar Gaddafi. Researchers visited more than 35 detention facilities across [Libya](#) and interviewed hundreds of detainees, as well as Libyan government officials, military and civilian prosecutors, lawyers, and judges.

At least 7,000 people who were detained during or after the conflict are currently in detention, according to Libyan government officials and the United Nations. Roughly 4,000 of them are being held by various militias across the country in both formal and secret detention facilities. The rest are in facilities run by the government.

The judicial police told Human Rights Watch that, as of June 13, it had custody of 3,058 people, including Libyans and foreigners. From these people, 194 had been sentenced.

The interior ministry and military police are also holding detainees.

In April, Justice Minister Ali Hamiada Ashour told Human Rights Watch that he did not know the exact number of militia-held detainees, in part because militias were holding some people in secret prisons.

“The time for secret prisons should have passed with Gaddafi’s fall,” Abrahams said. “The Libyan government should know the name, age, and location of every person in detention, and should have brought charges.”

Most detainees are Gaddafi security force members, former Gaddafi government officials, suspected Gaddafi loyalists, suspected foreign mercenaries or [migrants from sub-Saharan Africa](#). Some have been detained for more than a year without being brought before a judge, as required by international law. Most have been denied access to lawyers, and in many cases, there appears to be no legal basis for their detention.

Some detainees held by the government and militias allegedly committed serious crimes before or during the conflict for which they should face justice, Human Rights Watch said. But many are apparently being held only because they fought with Gaddafi forces, or because of family, tribal, or political affiliations.

To have fought with Gaddafi forces as a Libyan or a foreign mercenary is in itself not a crime under Libyan or international law, Human Rights Watch said. Only those who violated the law by committing unlawful killings, torture, sexual violence, or other crimes can be prosecuted.

Some militia commanders told Human Rights Watch that they were refusing to transfer their detainees to the government because they did not trust the transitional authorities to deliver justice. Others are apparently using the detainees as bargaining chips for power, Human Rights Watch said.

A new law passed on May 2, Law 38, [On Some Procedures for the Transitional Period](#), says that the interior and defense ministries must refer all “supporters of the former regime” currently detained by militias, if there is sufficient evidence against them, to the competent judicial authorities by July 1, 2012. It is not clear what will happen if militias fail to hand over all their detainees by that date.

Torture in Detention

In militia-run detention facilities especially, torture and other ill-treatment are a major concern, Human Rights Watch said. Human Rights Watch documented a dozen cases of deaths in detention and heard credible reports of more.

For the vast majority of these cases, the government has apparently not opened an investigation. In one prominent case, the January 2012 torture and killing in detention of a former diplomat, [Omar Brebesh](#), the authorities arrested nine suspects, one of whom was then released. Their trial is expected to begin soon.

In government-run facilities that Human Rights Watch visited, the detainees seem to be treated better, even though most detainees had not been formally charged. Some families of detainees held in these facilities have alleged that their detained relatives were abused, including at Ayn Zara prison in Tripoli.

On May 1, the United Nations mission in Libya [called for an investigation](#) into the April 13 deaths of three detainees at the Zaroug detention facility in Misrata, which the UN said it believed had resulted from torture. The facility is controlled by the Supreme Security Committee, which is under the interior ministry.

Five days before the alleged deaths, Human Rights Watch had [written to the civilian and military leaders of Misrata](#) expressing concern about the abuse of detainees in Misrata and noting that the city’s officials could be held criminally responsible for torture and other rights violations by forces under their command. The [civilian](#) and [military](#) councils of Misrata wrote back saying they would not tolerate abuse.

Holding accountable those responsible for abuse is key to ending torture and ill-treatment in custody, Human Rights Watch said. But recent legislation passed by Libya's ruling National Transitional Council seems intended to shield militia members from justice.

The new Law 38 states that there shall be no penalty for "military, security, or civil actions dictated by the February 17 Revolution that were performed by revolutionaries with the goal of promoting or protecting the revolution." This law could be used to protect those responsible for torture and other serious violations of Libyan law, Human Rights Watch said.

Due Process Violations

Due process violations against detainees in Libya are the norm, Human Rights Watch said. Libyan government officials told Human Rights Watch that very few detainees have been formally charged and that very few of the cases have been reviewed by a judicial authority, which is required by Libyan and international human rights law.

The vast majority of detainees interviewed by Human Rights Watch did not know the charges against them and had not been able to contest the legal basis for their detention. Libya's police have been slow to refer cases to prosecutors. Libya's criminal courts have begun working in places, but few conflict-related cases have reached the courts. Only 194 people detained during or after the conflict have been sentenced, the judicial police said.

Libya will face many challenges in prosecuting people accused of crimes because evidence can be difficult to collect and many cases have been tainted by torture, Human Rights Watch said.

The power of local militias, which in most towns and cities are stronger than the army and police, has complicated the rebuilding of Libya's justice system. Unknown assailants apparently linked to militias have threatened police, prosecutors, and judges. As one prosecutor told Human Rights Watch about some politically motivated murders: "We have suspects for these killings, but we don't have the power to arrest them."

Improving security in courtrooms and prisons, and for judges, prosecutors, and lawyers, is an essential requirement for getting the justice system to function properly, Human Rights Watch said. The government will have to recruit and train more judicial and military police to help secure courtrooms and protect justice officials.

According to the judicial police, it currently has 3,000 officers. Three thousand more people are gradually being trained.

The newly elected national assembly, and the provisional government it appoints, should not continue to delay reforming the justice system, Human Rights Watch said. Human Rights Watch urged the provisional and future governments to develop a coordinated national strategy that will:

- Transfer all detainees from militias to the custody of competent state authorities;
- Treat humanely all detainees in accordance with international standards, and punish those in positions of authority who are responsible for torture or other ill-treatment or for detention outside the law;
- Expeditiously screen all detainees in government custody, ensure all are brought promptly before a judge, and release those for whom there is no evidence of having committed a crime; and
- Promptly charge those implicated in wrongdoing, and prosecute them in accordance with international due process guarantees, including providing immediate access to legal counsel.

Libya's leaders should also seek assistance from governments, the United Nations, and nongovernmental organizations to address transitional justice, Human Rights Watch said.

"The failure to build a functioning justice system has undermined Libya's transition and threatens to destabilize the country for many years," Abrahams said. "The candidates

running in these elections should make this urgent need a top priority and explain how they plan to ensure justice for all victims, no matter the person's family, tribe, or political view."

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