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# Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human rights Council resolution 5/1

## Libyan Arab Jamahiriya*

The present report is a summary of 9 stakeholders' submissions[1] to the universal periodic review. It follows the structure of the general guidelines adopted by the Human Rights Council. It does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights (OHCHR), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. Lack of information or focus on specific issues may be due to the absence of submissions by stakeholders regarding these particular issues. The full texts of all submissions received are available on the OHCHR website. The report has been prepared taking into consideration the four-year periodicity of the first cycle of the review.

* The present document was not edited before being sent to United Nations translation services.

# I. Background and framework

## Constitutional and legislative framework

1. Human Rights Solidarity (HRS)[2] reported that there was no written constitution in the Libyan Arab Jamahiriya. A temporary "*Constitutional Declaration*" was adopted by the Revolutionary Council on 11 December 1969. On 2 March 1977, the Declaration of the People's Authority launched a new political system whose ideals are stipulated in a series of three small booklets known as the Green Book. HRS added that the absence of a constitution facilitated the adoption of contradictory legislation and undermined protection against human rights violations. In the absence of a clear constitution, that defines the branches of government and regulates the relationship between them -i.e. separation of powers- security agencies operated with impunity.

# II. Promotion and protection of human rights on the ground

## Implementation of international human rights obligations

### 1. Equality and non-discrimination

2. Amnesty International (AI) reported that provisions that discriminate against women remained in Libyan legislation, especially with regard to marriage, divorce and inheritance. For instance, polygamy was still permitted, under judicial supervision, although the practice was believed to be limited. Women had the same entitlements as men regarding the right to acquire, change or retain their nationality. However, women did not have the same rights as men to transfer their nationality to their foreign-born spouses or children. Libyan law did not allow Libyan women married to non-Libyan men to pass on Libyan nationality to their children.[3] In this context Human Rights Watch (HRW) requested to amend the Libyan law to allow for Libyan women to pass on Libyan nationality to their children[4].

### 2. Right to life, liberty and security of the person

3. According to AI, the death penalty was prescribed for a wide range of crimes, 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, 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 prescribed 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). [5]

4. AI recommended 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 the Libyan Arab Jamahiriya is a state party, with a view to its abolition.[6]

5. AI recommended introducing in Libyan legislation an absolute prohibition of torture and a domestic definition of torture in line with the Convention against Torture and other Cruel, Inhuman, Degrading Treatment or Punishment.[7]

6. AI reported that a number of laws passed since the 1970s had 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. The Penal Code 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 laws prescribing corporal punishments, included Law No. 52 of 1974 on defamation which provides for flogging and the law on theft and *haraba* –highway robbery or rebellion– which provides 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).[8]

7. AI reported that, in recent years, courts had continued to sentence people to corporal punishment, including amputation of the right hand and flogging.[9] The Global Initiative to End All Corporal Punishment of Children (GIEACPC) informed that corporal punishment was lawful within the household. Provisions against violence and abuse in current legislation were not interpreted as prohibiting corporal punishment in childrearing.[10] Besides, GIEACPC reported that the Great Green Document on Human Rights (1988) "prohibits the infliction of physical or mental harm on the person of a prisoner" (Principle 2), but there is no explicit prohibition of corporal punishment as a disciplinary measure in penal institutions.[11]

8. AI recommended to immediately cease the application of corporal punishment, including flogging and amputation, and to repeal legislation which allowed for its application, including Law No. 70 of 1973, Law No. 52 of 1974.[12] Human Rights Watch made a similar recommendation regarding law 70.

9. AK reported that many foreign nationals were detained in Libyan prisons, some secretly for fifteen years without being able to appeal their detention before a judicial authority. According to AK, torture and abuse were not only practiced in police custody or detention centers belonging to the Internal and External Security Services but also in prisons.[13]

10. HRW[14] stated that the Libyan Arab Jamahiriya continued to arbitrarily detain women and girls in "social rehabilitation" facilities for suspected transgressions of moral codes, locking them up indefinitely without judicial review. Portrayed as "protective" homes for wayward women and girls or those whose families rejected them, these facilities are de facto prisons. Many women and girls detained in these facilities had committed no crime, or had already served a sentence. Some are there for no other reason than that they were raped, and are now ostracized for staining their family's "honour". HRW added that the Libyan Arab Jamahiriya's *zina* laws, which criminalized adultery and intercourse outside marriage, could lead to the detention of women and girls in social rehabilitation facilities. These laws codified in the penal code, discouraged rape victims from seeking justice by presenting them with the risk of facing prosecution themselves.[15] During a visit to the Libyan Arab Jamahiriya in 2005, HRW found widespread denial among Libyan officials that violence against women exists in the Libyan Arab Jamahiriya, and a lack of adequate laws and services that leaves women who are victims of violence without effective remedies and means of filing complaints[16].

11. HRW and HRS reported that in October 2009, a group of women who lived in a state-run care residence for women and girls organized a rare demonstration calling for an end to sexual harassment in the residence. On 29 October 2009, the General Prosecutor's Office opened an investigation into the claims and on 31 October charged the director of

the residence with sexual harassment. However, the prosecutor did not pursue the investigation or indict the director, releasing him subsequently.[17]

### 3. Administration of justice, including impunity and the rule of law

12. AI stated that there was little information publicly available on the procedures governing the State Security Court, believed to have convened within the confines of the Abu Salim Prison in some instances. AI feared that proceedings in front of this body are governed by the same laws and procedures applicable to the former People's Court (Law No. 5 of 1988)[18] abolished by the Libyan Parliament in 2005, according to Human Rights Solidarity (HRS).[19]

13. AI added that 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. 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. AI fears that the State Security Court and Prosecution Office have inherited the same prerogatives.[20]

14. Al Karama (AK) informed that Libyan authorities had failed to adequately address the killings of up to 1,200 prisoners in the Abu Salim Prison, in June 1996. Most killings occurred the day after a riot took place sparked by appalling prison conditions as well as the denial of medical treatment and family visits. Official recognition of the facts came only eight years later, when the Libyan leadership acknowledged in February 2004 that killings did take place.[21] HRW stated that the Libyan authorities had offered compensation of 200,000 dinars (US$162,000) to families who agree to relinquish all legal claims, but several hundred of the victims' families in Benghazi had refused to accept compensation on those terms and continue to call for disclosure of what occurred on the day of the killings and criminal accountability for those responsible. The families had faced harassment and intimidation by security officials to accept the compensation and cease demonstrating..[22] AI added that 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 individuals believed to have died in the Abu Salim Prison in 1996 or elsewhere in custody. The court ruling had not been implemented to date.[23]

15. HRW reported that on 6 September 2009, the acting Secretary of Defence established a seven-judge investigation panel to investigate the incident, headed by a former military tribunal judge, to conduct an investigation. The panel was due to submit its report after six months, but more than six months later there had been no announcement about it, and the families had continued to demonstrate in Benghazi.[24]

16. HRW recommended the Libyan Arab Jamahiriya to make public the conclusion of any investigation that may have taken place into the Abu Salim incident and to ensure that it is conducted by an independent and impartial judge and that the Internal Security Agency fully cooperates with the investigation.[25] HRW also recommended the Libyan Arab Jamahiriya to identify those responsible for the killings and prosecute them to the fullest extent of the law in fair proceedings; immediately cease pressuring or threatening families into accepting compensation and allow families of victims of the Abu Salim massacre to freely demonstrate and to express their opinions about the process without intimidation or harassment from security forces.[26]

### 4. Right to privacy, marriage and family life

17. Joint Submission 1 (JS1) recommended that the Libyan Arab Jamahiriya bring its legislation into conformity with its international human rights obligations by repealing all provisions which criminalised sexual activity between consenting adults outside marriage.[27]

18. AI noted that consensual sexual relations outside of wedlock were criminalized in the Libyan Arab Jamahiriya. Article 407(4) of the Penal Code stated 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." Article 408 (4) also stated that "Anyone who commits an indecent act on another person with their consent shall be punished, as shall their partner, by imprisonment."[28]

### 5. Freedom of religion or belief, expression, association and peaceful assembly and right to participate in public and political life

19. AI referred to the severe restrictions on the rights to freedom of expression, association and assembly that remained in law and practice. Such rights were criminalized in legislation, and peaceful critics of the Libyan political system had 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 People's Congresses and most of the print and broadcast media, were tightly controlled by the authorities. Article 1 of Law No. 76 of 1972 on Publications allowed freedom of expression, but only insofar as it fell "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 imposed severe restrictions on the freedom of the press, effectively preventing the formation of independent newspapers. The state also owned virtually all national broadcast media.[29]

20. According to HRW, Libyan legislation severely curtailed freedom of expression. Article 178 of the penal code carried penalties of up to life imprisonment for disseminating information considered to "tarnish [the country's] reputation or undermine confidence in it abroad." Negative comments about Libyan leadership were punished, and self-censorship was rife. For example, Jamal El Haji was arrested in December 2009 on charges of insulting public officials for having submitted a complaint to the minister of justice about human rights violations he claims to have experienced during his previous imprisonment.[30]

21. The International Human Rights Network of Academies and Scholarly Societies (IHRNASS) reported that Libyan authorities subjected Mr. Fathi el-Jahmi, one of the most prominent political dissidents, to intense harassment, held him in state custody for more than six and one half years for peacefully expressing his opinions, forcibly confined him in a psychiatric hospital without medical cause for over a year, and provided inadequate medical care until his death.[31]

22. Reporters Without Borders (RSF) highlighted the nationalization of *al-Libeyya* in June 2009, and another new TV station, *al-Wasat,* signaled the start of the regime's claw back, even if it was possible to read articles critical of this decision in the newspaper *Oea*. In January 2010, *Oea* and *Quryana* ceased publication after the General Press Authority banned them from printing on the pretext of non-payment of certain bills. These newspapers had continued to appear online. RSF urged the authorities to lift the General Press Authority's ban on the printing of the privately-owned newspapers *Oea* and *Quryana*, reverse the nationalization of the TV stations *al-Libeyya* and *al-Wasat*, and stop censoring the Internet.[32]

23. RSF stressed that, although independent news websites based abroad such as *Libya al-Youm*, *al-Manar*and *Jeel Libya* had long been accessible in the Libyan Arab Jamahiriya, and their correspondents allowed to work in the country, the authorities began censoring the

Internet in January 2010, and blocking YouTube since 24 January, following the posting of videos of demonstrations by the families of prisoners in the city of Benghazi, and of footage of members of the leadership family attending parties. Other independent and opposition websites were also blocked on 24 January 2010. A protest campaign has been launched on Facebook by Libyan citizens, journalists and human rights activists with the aim of getting the sites accessible again. The authorities had also recently set-up a new regulatory body (Niyaba As-Sihafa) responsible for monitoring journalists who do investigative reporting on corruption cases in the Libyan Arab Jamahiriya.[33]

24. RSF informed that four journalists working for *Radio Benghazi* programme Massaa al-Kheir Benghazi (Good Evening Benghazi) were arrested on 16 February 2010 and were held overnight. Their programme specialized in exposing local government and private sector corruption. It also focused on politically sensitive issues such as the Abu Salim prison massacre of June 1996. The station's director, who took the programme off the air, dismissed the four journalists and banned them from the station's premises.[34]

25. RSF recommended legislative reforms, including the 1972 press law. The reform of the criminal code that was drafted in 2009 contained provisions that violated the Libyan Arab Jamahiriya international obligations. It was vital that the international community be vigilant on this point and press the Libyan Arab Jamahiriya to adopt a criminal code that complies with the international treaties it has signed and ratified. RSF also called for light to be shed on the fate of Abdullah Ali al-Sanussi al-Darrat, a journalist who had been missing since 1973.[35]

### 6. Minorities and indigenous peoples

26. The Society for Threatened Peoples (STP) was concerned about the plight of ethnic minorities. Berber (Amazigh) and Toubou peoples had been suffering human rights violations. Some 10 percent of the Libyan population was estimated to be of Amazigh origin. Tens of thousands of Tuareg people migrated from Niger and Mali to the Libyan Arab Jamahiriya in search for jobs after the disastrous drought in the Sahel countries in the 70s. But the Libyan Government insisted on the Arab identity of the country and described claims of Amazigh identity as a colonial invention. Despite the fact that the Amazigh were the indigenous population of North Africa, on March 1, 2007, the Libyan leadership has publicly stated that no Berbers were living in North Africa. These remarks have caused an outcry among the Amazigh community in North Africa. STP reported that the President of the "World Amazigh Congress" wrote an Open Letter and protested against the denial of the existence of 30 million Amazigh in North Africa. Libyan Amazigh were facing ostracism, exclusion and broad discrimination, stated the letter.[36]

27. STP stressed that the Libyan Arab Jamahiriya's official policy towards minorities was extremely contradictory in recent years and had caused unease among Amazigh. For example, the government had convened the first Amazigh Congress in 2007 to discuss education and social integration of the Libyan Arab Jamahiriya's Berbers. In August 2009, the "Gaddafi International Foundation" invited leading representatives of the "World Amazigh Congress" for an exchange of information on the Berber's situation to the Libyan Arab Jamahiriya. Furthermore, STP welcomed visits of leading Libyan politicians to Amazigh towns. Many Berbers appreciated that the authorities recently allowed the display of Amazigh signs at government-sponsored events.

28. However, on December 24, 2008, during a public event, members of the official "Revolutionary Committees" and of state-sponsored youth organisations in the town of Yefren (Region Nefusa) massively criticized leading Libyan representatives of the Amazigh community for participating in international conferences of the "World Amazigh Congress". They were called separatists and traitors. Organizers of the event even encouraged the public to violently attack the houses of leading Amazigh. Any Berber

participating in meetings on Amazigh rights would face death, announced the youth organizations. An atmosphere of intimidation and threats against Amazigh persisted in the town.[37]

29. STP explained that Libyan authorities had been practising a deliberate policy of "forced Arabization". The 1969 Constitutional Declaration defined the Libyan Arab Jamahiriya as an Arab nation and had acknowledged Arabic as the country's only official language. Amazigh and other Berber languages had been dismissed and were barred from any use in public institutions. The "Declaration of the Establishment of the Authority of the People" of March 1977, had emphasized the Arab nature of the country which was named Libyan Arab Jamahiriya. The cultural and educational system insisted on the exclusive use of the Arabic language despite the Amazigh origin of many citizens.[38]

30. STP reported that the deliberate denial of the Amazigh language and culture constituted a massive threat to Berber identity and survival. Numerous Amazigh-speaking areas in the Libyan Arab Jamahiriya (Sukna, Ghat, Zwara, Ghadames, Jalu, Awbrai, Nefusa, Awjila) were maintaining their Amazigh characteristics and the population in these towns still used Berber languages as their mother tongue.[39]

31. STP informed that, on 18 November 2009, the Vice-President of the "World Amazigh Congress" was prohibited from entering the Libyan Arab Jamahiriya at Tripoli's airport. He had wanted to participate in the funeral of a respected Libyan member of the Federal Committee of the "World Amazigh Congress".[40]

32. STP recalled that massive discrimination of the Toubou minority had been reported from the south eastern part of the country. Some 4,000 Toubou people are living in the town of Kufra, an oasis city of 44,000 inhabitants some 2,000 kilometres from Tripoli. In the Libyan Arab Jamahiriya, they were treated as foreigners by the authorities. In December 2007, the Libyan Government withdrew citizenship from members of the Toubou group, stating that they were not Libyans but Chadians. Furthermore the local authorities issued decrees barring Toubou from access to education and health care services. The armed movement "Front for the Salvation of the Toubou Libyans" has opposed these measures and up to 33 people died in Kufra, during five days of fighting between the official security forces and the Toubou in November 2008.[41]

33. Despite public criticism, the government of the Libyan Arab Jamahiriya continues to expel Toubou people from their residential areas in Kufra according to STP. Since November 2009 dozens of families lost their homes due to forced destruction by bulldozers supervised by state security forces. Several dozens of Toubou were arrested because of their opposition against the forced evictions. They only were released after publicly confirming that they would not block any destruction of houses. People who refused to move from their houses were beaten by security officials. Some were notified by the authorities to leave the houses only minutes before bulldozers destroyed their homes. No alternative housing was proposed to the victims of the forced evictions. Furthermore, Libyan authorities refused to renew or extend passports to members of this minority. Several times parents were prevented from registering births of their children and denied birth certificates. According to STP, the Libyan Government is responsible for a deliberate policy of ethnic cleansing in Kufra which violates both Libyan and international law.[42]

### 7. Migrants, refugees and asylum-seekers

34. AI recommended the Libyan Arab Jamahiriya 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. There were indeed 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, at the end of 2007. It remained unclear when the proposed draft would be presented to the General People's Congress for adoption.[43] HRW held similar views.[44]

35. AI mentioned that in the absence of asylum procedures, UNHCR conducted refugee status determination in the Libyan Arab Jamahiriya. UNCHR, which has had a presence in the Libyan Arab Jamahiriya since 1991, operated without a formal memorandum of understanding, which rendered its operating environment largely unpredictable and impeded its ability to carry out its protection functions in a systematic way. As of October 2009, UNHCR had access to 15 detention centres across the Libyan Arab Jamahiriya but its capacity to screen individuals in need of international protection, particularly in the east and south of the country, remained limited. [45]

# III. Achievements, best practices, challenges and constraints

N/A

# IV. Key national priorities, initiatives and commitments

N/A

# V. Capacity-building and technical assistance

N/A

*Notes*

[1] The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: www.ohchr.org. (One asterisk denotes a non-governmental organization in consultative status with the Economic and Social Council.)

*Civil society*

AI - Amnesty International, London, UK*;
AK - Al Karama , Geneva, Switzerland ;
GIEACPC - Global Initiative to end all corporal punishment of children, London, UK;
HRS -Human Rights Solidarity, Geneva , Switzerland
HRW - Human Rights Watch, New York , USA*:
IHRNASS - INTERNATIONAL HUMAN RIGHTS NETWORK OF ACADEMIES AND SCHOLARLY SOCIETIES,WASHINGTON,USA*;
RSF - Reporters without Borders, Paris, France*;
STP -Society for the Threatened People ,Gottingen, Germany*;

JS1 International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), International Gay and Lesbian Human Rights Commission and ARC International, Geneva , Switzerland, Joint Submission

[2] HRS, page3
[3] AI, page 4
[4] HRW,page 6
[5] AI, page3
[6] AI, page 8
[7] AI, page 8
[8] AI, page 3

[9] AI pages 3-4.
[10] GIEACPC, page 2
[11] GIEACPC, page 2
[12] AI, page 8
[13] AK, page 5
[14] HRW, page 4
[15] HRW page 4
[16] HRW page 4
[17] HRW page 4, HRS, page 4
[18] AI, page 4
[19] HRS, page 2
[20] AI, page 4
[21] Al , page 5
[22] HRW, page 3
[23] AI, page 7
[24] HRW ,page 2
[25] HRW, page 5
[26] HRW, page 5
[27] JS 1, page 2
[28] AI, page 4
[29] AI, page 5
[30] HRW, page 1
[31] IHRNASS, page 1
[32] RSF, page 2
[33] RSF , page 2
[34] RSF, page 2
[35] RSF, page 3
[36] STP, pages 1 and 2
[37] STP, pages 1 and 2
[38] STP, page 1
[39] STP, page 1
[40] STP, page 2
[41] STP , page 2
[42] STP, page 2
[43] AI, Page 8
[44] HRW, page 6
[45] AI, page 5