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Libya

Time to make human rights a reality

April 2004

Summary

AI Index: MDE 19/002/2004

Libya is undergoing a period of change with the end of United Nations sanctions and the process of normalization of its relations with the United States of America and the European Union. However, the human rights situation in the country remains a matter of serious concern, as detailed in this report. Today, a pattern of human rights violations, witnessed over the past three decades, repeats itself, often under the new rhetoric of the "war against terror".

Laws criminalize the peaceful exercise of freedom of expression and association, leading to the imprisonment of prisoners of conscience. Real or suspected political opponents are held in prolonged incommunicado detention, without access to the outside world, by the Internal Security Agency. During this period, torture and ill-treatment is widely reported. Its primary function appears to be to extract "confessions".

Unfair trials, in particular before the People's Court which is known to try political cases, result in lengthy prison sentences or even the death penalty. Despite having set abolition of the death penalty as a goal for Libyan society, capital punishment remains prescribed, and used, for a large number of offences including the peaceful exercise of political activities. Forms of "collective punishment", including house demolition, deprivation of public services and arbitrary arrest and detention, are sanctioned and continue to take place.

Past policies and events constituting grave human rights violations continue to cast a shadow on Libya's human rights record. These have affected hundreds of victims and fundamentally altered the lives of their families. They include the policy of "physical liquidation" of political opponents of the 1980s; numerous deaths in custody without adequate explanation; the "disappearance" of political prisoners, especially since 1996; and the "disappearance" of Libyan nationals abroad and foreign nationals visiting Libya. Hundreds of families still do not know whether their relatives are alive or dead, or how they died. Many are too scared to ask about their relatives for fear of retaliation.

In recent years, the Libyan authorities have taken some positive steps to address the human rights situation. One example is the releases in 2001 and 2002 of nearly 300 prisoners, including prisoners of conscience detained since 1973. Another is the opening of the country to a degree of international scrutiny. It is in this context that the Libyan authorities authorized a visit by Amnesty International in February 2004.

Despite these measures, perpetrators of current human rights violations, as well as of those committed in the past, enjoy an almost total lack of accountability. Victims, on the other hand, suffer, often in silence. Many Libyans, residing inside and outside the country, fear to report human rights violations for fear of retaliation against themselves or their relatives. Others

wishing to undertake human rights work do so in the face of severely restrictive legislation, including the possibility of being sentenced to death.

During the Amnesty International visit of February 2004, the findings of which are reflected in this report, the Libyan authorities promised to seriously consider Amnesty International's recommendations. In a speech in April 2004, Colonel Mu'ammarr al-Gaddafi, Leader of the Revolution, called for Amnesty International's specific concerns in a number of areas to be addressed by the Libyan authorities.

Amnesty International welcomes Colonel al-Gaddafi's intervention in April and calls on Libyan authorities to undertake without delay institutional reforms and other measures necessary to address fully the grave human rights concerns outlined in this report. There is an urgent need for the truth to emerge in respect of events of the past and for new foundations to be laid for a future of justice.

Without prompt and concrete initiatives in this direction, human rights violations in Libya are likely to continue with their toll of human suffering. It is time to turn promises into action, and make human rights a reality.

This report summarizes a 66-page document, *Libya: Time to make human rights a reality* (AI Index: MDE 19/002/2004) issued by Amnesty International in April 2004. Anyone wishing further details or to take action on this issue should consult the full document. An extensive range of our materials on this and other subjects is available at <http://www.amnesty.org> and Amnesty International news releases can be received by email:

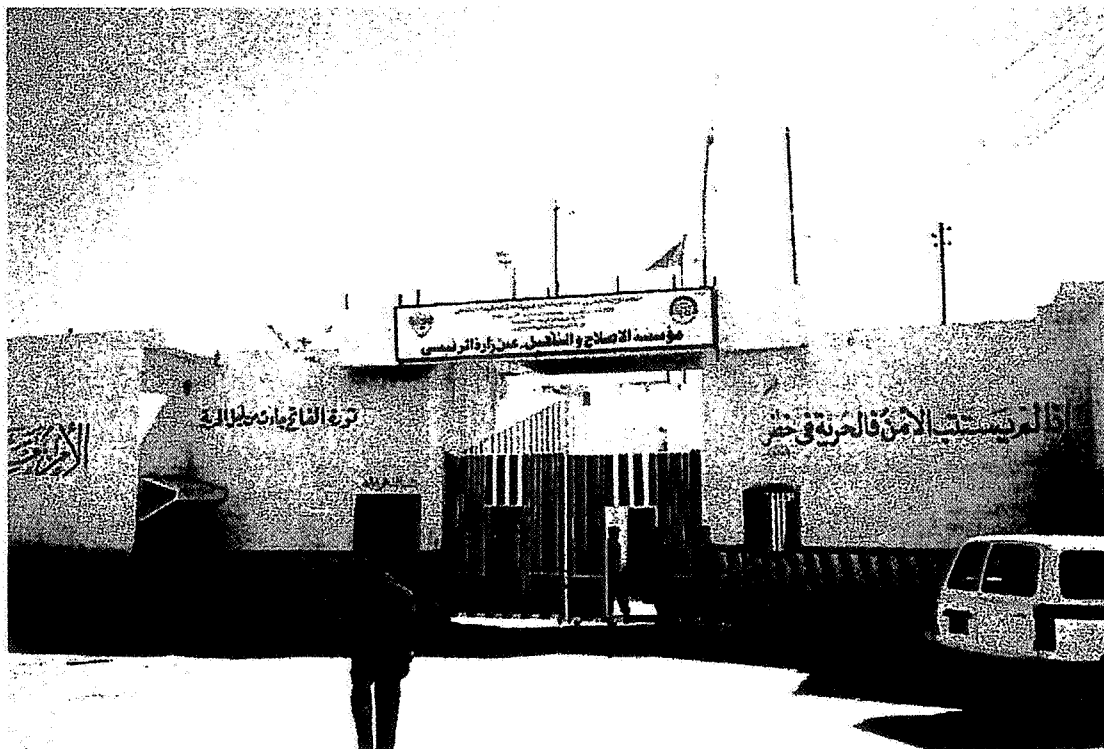
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amnesty international

Libya

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Entrance to 'Ayn Zara Prison, Tripoli. ©AI, February 2004

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"You are the only people who have come to really listen to my story. I am not a political person. I just wanted to live a normal life with my family," Ahmad 'Abd al-Salam al-'Alam al-Sharif, a fisherman and football supporter, accused of being a political opponent in the so-called "Ahli Benghazi" Football Club case, told an Amnesty International delegate. He is currently serving life imprisonment, along with two others, after a death sentence against the three men was commuted (for case details, see section below, entitled the application of the death penalty).

Introduction

This report is published after a four-member Amnesty International delegation visited the Libyan Arab Jamahiriya for two weeks in February 2004, following a 15-year absence from the country. During the visit, Amnesty International delegates had an unprecedented opportunity to meet political prisoners and were also able to hold meetings with the Libyan authorities, including with Colonel Mu'ammarr al-Gaddafi, Leader of the Revolution.

Amnesty International has welcomed positive steps taken by the Libyan authorities in recent years, including the long overdue decisions in 2001 and 2002 to release hundreds of political prisoners, including prisoners of conscience detained since 1973. It is also pleased about the opportunities it had to discuss human rights matters during the visit of February 2004, and welcomes the assurances it received from the Libyan authorities at all levels that they would seriously consider its recommendations. However, as outlined in this report, Amnesty International continues to have grave concerns about the human rights situation in Libya.

The report is based on a comprehensive memorandum focused on civil and political rights that Amnesty International submitted to the Libyan authorities at the beginning of the visit of February 2004. It also reflects the views of the Libyan authorities and other findings during that visit. Since the visit, Amnesty International has urged the Libyan authorities to respond fully to its concerns outlined in the memorandum.

At the time of this report going to print, Amnesty International learnt of a speech given by Colonel al-Gaddafi to the Supreme Council of Judicial Bodies and to other high-ranking members of the judiciary on 18 April 2004. In this speech, Colonel al-Gaddafi called for a number of legal and institutional reforms, and responded to a number of issues raised by Amnesty International and dealt with in this report. Specifically, Colonel al-Gaddafi urged the abolition of the People's Court, a special court known to try political cases, and the transfer of its jurisdiction to ordinary criminal courts. He called for a more stringent application of Libyan law, and for reducing the scope of the death penalty to the most serious crimes. Colonel al-Gaddafi

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also said that the authorities have no right to prevent lawyers and families visiting prisoners, and affirmed the right of families to know what happened to their relatives during incidents in Abu Salim Prison in 1996 during which large numbers of prisoners were reportedly killed. He also praised Amnesty International and other human rights groups for condemning the use of torture by governments and called on all countries to ratify international treaties that ban torture. Following Colonel al-Gaddafi's speech, the Libyan authorities indicated that they were reviewing legislation relating to the formation of associations, among other reforms.

Amnesty International welcomes Colonel al-Gaddafi's intervention addressing the organization's concerns in several areas. It hopes that it will give impetus to a comprehensive program of reform that will address fully the concerns outlined in this report.

Chapter 1 of the report gives background to the human rights situation in Libya. Chapter 2 focuses on current human rights violations faced by real or suspected political opponents, migrants, possible asylum-seekers and others. It identifies laws which severely restrict the right to freedom of expression and association; outlines a pattern of incommunicado detention by security forces, often accompanied by torture, and of unfair trials before special courts, in particular the People's Court, often leading to long-term prison sentences and the death penalty; and illustrates how, despite having set abolition of the death penalty as a goal for Libyan society, capital punishment remains prescribed, and continues to be carried out for a large number of offences including the peaceful exercise of political activities. A new rhetoric inspired by the "war on terror" has been used in recent years to justify the repetition of old practices at the expense of human rights.

In this context, Amnesty International was pleased to learn that the Libyan authorities are revising Libya's Penal Code, with a view to adopting a new code in June 2004. However, the new legal text, if adopted in the form existing in February 2004, will not redress the concerns outlined above. In particular, it still violates the rights to freedom of expression and association, and includes an extensive range of offences punishable by death.

Chapter 3 of the report examines past policies and events constituting grave human rights violations which continue to cast a shadow on Libya's human rights record, involving hundreds of victims and affecting the everyday lives of their families. It includes the policy of "physical liquidation" of political opponents of the 1980s; numerous deaths in custody without adequate explanation; the "disappearance" of political prisoners, especially since 1996; and the "disappearance" of Libyan

nationals abroad and foreign nationals visiting Libya. Hundreds of families still do not know whether their relatives are alive or dead, or how they died. Many are too scared to ask about their relatives for fear of retaliation.

Chapter 4 of the report includes Amnesty International's specific recommendations to the Libyan authorities. These recommendations are aimed at ensuring that Libya complies fully, in law and in practice, with its obligations under international human rights law, in particular the International Covenant on Civil and Political Rights (ICCPR) and the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture).

Amnesty International calls on the Libyan authorities to undertake without delay institutional reforms and other measures necessary to address the grave human rights concerns outlined in this report. There is an urgent need for the truth to emerge in respect of many events of the last three decades. Those responsible for violations must be held to account and the victims must receive full reparations. Libyan nationals in the country must feel confident that they can engage in human rights work without fear of reprisals.

Without prompt and concrete initiatives in this direction, human rights violations in Libya are likely to continue with their toll of human suffering. It is time to turn promises into action, and make human rights a reality.

1. Background

On 1 September 1969, following a military coup overthrowing the monarchy, Colonel al-Gaddafi came to power with a small group of army officers. The country was ruled by a Revolutionary Command Council with Colonel al-Gaddafi at its head. The following years were marked by the one-party system of the Arab Socialist Union, created in 1971. In 1972, Law 71 was adopted, which prohibited the formation of political parties¹.

In 1973 Colonel al-Gaddafi announced a "popular revolution", paving the way for a political system, known as "direct democracy", which continues to operate until today. In 1976 the Arab Socialist Union was abolished and replaced by the General People's Congress, the country's highest decision-making authority, which holds its ordinary sessions annually in Sirte. This gradually evolved towards the establishment in 1977 of the Jamahiriya system, a "state of the masses", whereby all citizens over

¹ After the independence of Libya in 1951, political parties were banned in 1952 under the monarchy of King Idris al-Sanusi.

the age of 18 are meant to contribute directly to decision-making processes in the country through their participation at a local level in Basic People's Congresses. Their decisions are eventually channelled through to the General People's Congress which makes decisions at a national level. Decisions are then implemented by General People's Committees, equivalent to Ministries.

In this system, Colonel al-Gaddafi, officially referred to as the "Leader of the Revolution", is not considered a head of state in the conventional sense but rather as an influential advisor to the people. Parallel to the Basic People's Congresses lie the Revolutionary Committees, whose function it is to mobilize the people to support the ideas and policies of Colonel al-Gaddafi. This system operates in a context in which the formation of political parties continues to be prohibited.

The 1970s and early 1980s were years marked by a policy of repression of those who expressed dissent at the policies of the Libyan authorities. Student demonstrations were violently put down and political opponents were arrested and imprisoned or "disappeared". In 1980 the Libyan authorities introduced a 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. The Revolutionary Committees were empowered to implement this policy both at home and abroad.

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, British woman police officer, Yvonne Fletcher, was shot, 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.

In 1988 there was a period which appeared to herald important human rights reforms. The authorities released hundreds of political prisoners in a wide-ranging amnesty. During an extraordinary session of the General People's Congress convened that year, the Great Green Charter of Human Rights of the Jamahiriyan Era was adopted. This document restricted the scope of applicability of the death penalty, setting its abolition as an aim; outlawed degrading punishment and ill-treatment of prisoners; and proclaimed the right to a fair trial. Amnesty International was invited to visit the country, where the organization held talks with officials; met several political prisoners; gathered data on human rights developments; and attended a special session

of the General People's Congress, held in June. Colonel al-Gaddafi, who had called on the General People's Congress to abolish the death penalty, intervened to seek the commutation of all death sentences in response to a request by Amnesty International. Following an undertaking in 1988, Libya became a state party to the first Optional Protocol of the International Covenant on Civil and Political Rights (ICCPR)² and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) in 1989.

After this brief period of positive developments in 1988, the human rights record in Libya deteriorated and the country was closed to international scrutiny, including to the independent human rights experts of the UN and international human rights organizations such as Amnesty International³. The subsequent years were characterized by widespread human rights violations, including mass arbitrary arrest and detention, "disappearances", torture and the death penalty⁴. Repression further escalated in the mid-1990s at a time of clashes between the authorities and armed political groups. Repeated requests by Amnesty International, over a number of years, to visit Libya in order to attend hearings of trials, particularly those heard before the People's Court, were met without response from the authorities. Amnesty International's only access to the country since its visit in 1988 took place in April 2001, when two delegates attended the 29th Ordinary Session of the African Commission on Human and Peoples' Rights in Tripoli. Inside the country, independent human rights organizations were not able to emerge and a climate of fear prevailed, preventing victims of human rights violations or their relatives from communicating with the outside world.

This was accompanied by an era of isolation from the international community following the bombings of Pan Am flight 103 over Lockerbie in Scotland 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 2003⁵ 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 to life imprisonment; his co-defendant al-Amin Khalifa Fhimah was acquitted. This sentence was confirmed on

² Libya became a State Party to the ICCPR in 1976.

³ 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.

⁴ For further details, see: *Libya: Amnesty International's Concerns in the Light of Recent Legal Reforms* (AI Index: MDE 19/02/91); and *Libya: Gross human rights violations amid secrecy and isolation* (AI Index: MDE 19/08/97).

⁵ UN Security Council Resolution 1506

AI Index: MDE 19/002/2004

appeal in March 2002. In 2003 the Libyan authorities accepted “responsibility for the actions of Libyan officials”⁶ for the attacks on the Pan Am and UTA flights and reached agreement over compensation to the families of victims of the bombing. Negotiations regarding compensation for victims of the *La Belle* nightclub bombing were underway at the time of writing.

On 19 December 2003 Libya announced the dismantling of its programs of weapons of mass destruction. Consequently, negotiations with the USA and the European Union rapidly intensified with a view to a full normalization of relations between the parties.

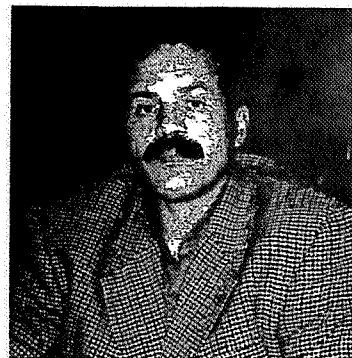
1.1 Human rights developments in recent years

In recent years the Libyan authorities have taken limited steps to address the human rights situation in their country, including the waves of releases of political prisoners beginning in 2001 and other initiatives illustrated below. In 2001 nearly 300 prisoners, among them political prisoners, were released. They included Libya’s longest-serving political prisoner, **Ahmad Zubayr Ahmad al-Sanussi**, who had been accused of involvement in an attempted coup d’état in 1970 and who spent 31 years in prison, many of those in solitary confinement. In 2002 over 60 prisoners were released, including prisoners of conscience **Muhammad ‘Ali al-Akrami**, **al-‘Ajili Muhammad ‘Abd al-Rahman al-Azhari**, **Muhammad ‘Ali al-Qajiji**, **Salih ‘Omar al-Qasbi** and **Muhammad al-Sadiq al-Tarhuni**. They had been imprisoned for almost three decades, following their arrest in 1973 for their peaceful involvement with the prohibited *Hizb al-Tahrir al-Islami*, Islamic Liberation Party.

To Amnesty International’s knowledge, however, legal proceedings leading to reparation have not been initiated for any former prisoners with a view to compensating them for the abuses they have suffered. In many cases, they are unable to continue to live as they had prior to their imprisonment. For example, their former employers refuse to receive them back at work, a practice which has reportedly been most severe and widespread in the field of education. While some professors and lecturers were able to resume their jobs as academics after their release, others were reportedly told that, given their political background and imprisonment, they would not be allowed to return to their posts. Moreover, such restrictive practices take place in a context in which the authorities have failed to take responsibility for these past abuses, which include prolonged arbitrary detention and torture or ill-treatment.

⁶ *ibid*

In 2003 the Libyan authorities apparently lifted travel restrictions which had been imposed on thousands of Libyan nationals, who were forbidden from leaving the country. Since then, many have had their passports restored to them. The Libyan authorities have also embarked upon a policy of actively encouraging Libyan nationals residing abroad to return to Libya with guarantees that they will not face persecution after return. However, in at least one case known to the organization, a Libyan national returned to Libya in May 2002, after assurances from Libyan officials abroad that he would return safely, only to be arrested at the airport. When Amnesty International delegates met **Mustapha Muhammad Krer** in February 2004, he had still not been charged or tried. He told them: *"I returned to Libya because I believed that it was changing for the better. I came here to see my family and because I love my country."*⁷



Mustapha Muhammad Krer, a Libyan national who returned to Libya in May 2002 after assurances from Libyan officials abroad that he could return safely. He was arrested at the airport and remains in detention. ©AI, February 2004

While it continues to be virtually impossible for independent human rights organizations to develop in Libya, there has been limited progress with regard to allowing work on human rights violations in the country. Since its establishment in December 1998, the Human Rights Society of the Gaddafi International Foundation for Charitable Associations, presided over by Saif al-Islam al-Gaddafi, one of Colonel al-Gaddafi's sons, has become increasingly active in the field of human rights. Since 2003 this organization has made strong calls for long-term human rights violations, including deaths in custody, to be addressed. It has also launched a campaign against torture in Libya and in the Middle East, researched scores of allegations of torture within Libya and in several cases pursued the matter with the authorities; and conducted visits to places of detention, making recommendations to improve their conditions⁸.

Libya has also played an important role in regional and international bodies relating to human rights. In 2003 Libya was elected as Chair of the 59th session of the UN Commission on Human Rights, during which the Bureau of the Commission introduced a number of measures to strengthen the functioning of its mechanisms. However, Libya did not use its term as Chair of the Commission to take concrete steps to demonstrate its commitment to the promotion and protection of human rights; for example, by extending a standing invitation to the independent human rights

⁷ For full details of the case, see section below, entitled *Unlawful detention*

⁸ More details of their activities can be found at <http://www.gaddaficharity.org>

experts of the UN to visit the country. In February 2004 Libya ratified the Protocol to the African Charter on Human and Peoples' Rights establishing the African Court on Human and Peoples' Rights.

Libya has a good record of ratification of international human rights treaties, including the ICCPR, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention against Torture. However, Libya has failed to act on the majority of the recommendations made by UN treaty bodies, which monitor the implementation by states of these treaties. In addition, Libya has not yet become a state party to important human rights instruments, including the Rome Statute of the International Criminal Court and the Optional Protocol to the Convention against Torture.

1.2 An Amnesty International visit to Libya after a 15-year absence

Amnesty International was granted access to Libya in February 2004, the first visit of its kind since 1988⁹. The organization had been requesting authorization to conduct research into its human rights concerns in the country for many years and finally received a positive response from the Libyan authorities in early February 2004. A two-week visit by Amnesty International delegates to Tripoli, Benghazi, Sirte and Bani Walid culminated in a meeting with Colonel al-Gaddafi on 29 February. Amnesty International delegates also held talks with Muhammad al-Misrati, then Secretary of the General People's Committee for Justice and Public Security¹⁰, on several occasions, and with 'Abd al-Rahman Shalgam, Secretary of the General People's Committee for Foreign Liaison and International Cooperation. They also met Karima al-Madani at the Secretariat for Women's Affairs of the General People's Congress.

⁹ The delegation was composed of Claudio Cordone, Senior Director, International Law and Organizations; Abdel Salam Sidahmed, Director of the Middle East and North Africa Program; and Sara Hamood and Jérôme Bellion-Jourdan, experts on Libya in the Middle East and North Africa Program. During the 1990s, despite the lack of access to the country, Amnesty International issued several reports and made specific recommendations to the Libyan authorities. Among them: *Libya: Amnesty International's prisoner concerns in the light of recent legal reforms* (AI Index: MDE 19/02/91, June 1991); and *Libya: Gross human rights violations amid secrecy and isolation* (AI Index: 19/08/97, June 1997).

¹⁰ After a government reshuffle, reported on 6 March 2004, the post of Secretary of the General People's Committee for Justice and Public Security, previously held by Muhammad al-Misrati, was replaced by the creation of two new posts, one in charge of Justice, held by 'Ali 'Umar Abu Bakr, and one in charge of Public Security, held by Nasser al-Mabruk. Muhammad al-Misrati was appointed Public Prosecutor, replacing 'Umar 'Ali Shalbak.

Upon their arrival, Amnesty International presented a detailed memorandum to the Libyan authorities, focusing on the need for legal reform and the ongoing gap between law and practice, with particular regard to arrest, detention and trial procedures. Issues and individual cases raised in this document provided a basis for discussion in lengthy meetings with the Libyan authorities. At all levels, Libyan officials showed a willingness to discuss issues of concern to the organization.

In their discussions with Amnesty International delegates, the Libyan authorities repeatedly promised to look seriously into the organization's concerns and recommendations. Colonel al-Gaddafi personally expressed his interest in and appreciation for Amnesty International's work. However, no concrete commitments were made with a view to beginning to resolve these issues.

Delegates held detailed discussions on a range of legal issues with 'Umar 'Ali Shalbak, the then Public Prosecutor, and other prosecutors, as well as with other members of the judiciary, in particular Supreme Court judges. At the time of writing, a draft Penal Code was under examination by a committee of legal experts assembled by the then Secretariat of the General People's Committee for Justice and Public Security. In February 2004 the then Secretary of the General People's Committee for Justice and Public Security, Muhammad al-Misrati, provided Amnesty International with a copy of the draft Penal Code for analysis and told Amnesty International delegates that the draft was scheduled to be discussed before the General People's Congress in June 2004 with a view to its adoption.

Delegates also met private lawyers and lawyers from the Popular Lawyers' Office¹¹, linked to the People's Court, an exceptional court known to try political cases, among other offences. They held meetings with the Director of the Prison Administration, Major Belqassem al-Gargum, and several prison directors, including Milad Daman, the Director of Abu Salim Prison, known for holding political prisoners. In addition, the visit provided an invaluable opportunity to meet representatives of charitable associations and those working in the field of human rights within the country.

Amnesty International was granted unprecedented access to prisoners of conscience and political prisoners, with whom delegates were able to conduct lengthy individual interviews and collect detailed testimonies. However, without explanation, some of those prisoners whom the organization had asked to see were not made available for interview. In most cases, delegates were able to interview prisoners at their place of detention. However, in several cases, prisoners were brought to the

¹¹ The Popular Lawyers' Office is comprised of state-appointed lawyers who provide legal aid services. They are linked to the system of the People's Court. For further details, see section below, entitled *Special courts and the independence of the judiciary*.

Public Relations Department of the Secretariat of the General People's Committee for Justice and Public Security. While some of those interviewed were able to speak with relative freedom, others clearly feared to do so.

There was limited opportunity to meet people outside prisons, either former victims of human rights violations or their relatives. Many of them were reluctant to relay their experiences, indicating a climate of fear which still prevails and in which full expression of human rights concerns is far from being a reality. Amnesty International sought and obtained assurances from the Libyan authorities that none of the people met during the visit would face reprisals.



Benghazi Court of Appeal. ©AI, February 2004

Delegates also attended a hearing before the Benghazi Criminal Court in the trial relating to 426 children infected with the HIV virus while in the care of al-Fateh Children's Hospital in Benghazi. Delegates met the defendants and their lawyers as well as families and children of the Association for Child Victims of AIDS in Benghazi and their lawyers. They told Amnesty International that this had been their first opportunity to have their story heard by the outside world. In addition, they interviewed officers currently being tried on charges of torture in relation to the same case.

Following their visit, Amnesty International published preliminary findings in a press release¹², and called on the authorities to take prompt action to demonstrate their commitment to human rights reform. Amnesty International delegates also invited the authorities to provide the organization with a response in writing to the concerns, issues and questions raised in the memorandum. At the time of writing, Amnesty International had not received a written response to the memorandum. Neither had the authorities undertaken any concrete measures to begin to implement the organization's recommendations. This report is based largely on the memorandum and the findings of the February 2004 visit.

¹² *Libya: Towards ensuring human rights protection - Initial findings of Amnesty International visit* (AI Index: MDE 19/005/2004, March 2004)

2. Continued human rights violations in law and practice

"It is normal in Libya to hear that your dad has died [in prison] because we have all seen it happen to a neighbour or a friend. It is only since I left Libya that I realize how bad the situation is."

These were the words said to Amnesty International by the son of a political prisoner living abroad, after he and his family, residing in Libya, were informed, years after the arrest, that his father had died in custody.

This section focuses on the need for changes in law, policy and practice in order to end the criminalization of activities merely amounting to the exercise of the rights to freedom of expression and association. Unless reformed, the legal system, including a draft Penal Code currently under review, is bound to perpetuate arbitrary political imprisonment and a climate of fear among Libyan nationals.

In addition to the extensive provision of the death penalty within Libyan legislation, a variety of other punishments provided by law are also a matter of great concern. They include forms of "collective punishment", including house demolition, as well as corporal punishment, including flogging and cross-amputation (amputation of the right hand and the left foot).

2.1 Criminalization of rights to freedom of expression and association

In recent years, the Libyan authorities have used the international context and the language of the "war on terror" to further justify the continuation of a repressive policy at home which severely curtails the right of Libyan citizens to freedom of expression and association. The "counter-terrorism" argument is clearly used as a new justification for an old practice, enshrined in Libyan law, of repression of all political dissent.

Legislation prohibits the formation of associations or political parties outside the existing political system. Critics of the current system, who wish to voice their political dissent through peaceful means outside the official structures, are heavily sanctioned and even face the death penalty. They are forced to operate in secret. Movements such as *al-Jama'a al-Islamiya al-Libiya*, the Libyan Islamic Group, also known as *al-Ikhwan al-Muslimin*, the Muslim Brothers, meet clandestinely in small groups, often in private houses. Members of the Muslim Brotherhood have told Amnesty International that these discussions include a variety of issues, such as reform of the system or the provision of informal support for families of political prisoners. Legislation further restricts freedom of association, making it almost impossible for independent human rights associations to emerge. Despite the risks, some Libyans, including lawyers, are calling for legal obstacles to be lifted to enable them to form independent human rights organizations.

If such activities are discovered by the security forces, those involved or suspected to be involved, are at risk of arrest, prolonged incommunicado detention often coupled with torture, followed by unfair trials and possibly the death penalty.

The “anti-terrorism” argument

In his annual address to the nation on 31 August 2002, Colonel al-Gaddafi reportedly argued that, following the 2002 releases of prisoners, those who remain in Libyan prisons, with the exception of those sentenced for “ordinary crimes”, have links to *al-Qa’ida* or the *Taleban* and as such 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*”.

At the end of December 2003, in an address to civil servants of the Secretariat of the General People’s Committee for Justice and Public Security, Colonel al-Gaddafi reportedly reiterated that Libya had no prisoners of conscience and that current prisoners were of two kinds only: either “ordinary criminals” or “heretics” (*zanadiq*). This position was again reiterated by the Libyan authorities in their discussions with Amnesty International in February 2004.

In recent years, the Libyan authorities have stated their commitment to fighting acts of “terrorism” and to cooperating with other states and inter-governmental organizations in this respect¹³. While Amnesty International recognizes the duty of governments to protect their citizens from acts of violence and to bring to justice those responsible, Amnesty International has stressed worldwide¹⁴ that all means taken in this respect, including investigations and trials, must always be in full compliance with international human rights standards¹⁵.

¹³ Reports of the Libyan Arab Jamahiriya to the UN Counter-Terrorism: S/2001/1323, 31 December 2001 and S/2002/1021, 13 September 2002

¹⁴ For example, see: *USA: The threat of a bad example - Undermining international standards as “war on terror” detentions continue* (AI Index: AMR 51/114/2003, August 2003); and *The backlash: human rights at risk throughout the world* (AI Index: ACT 30/027/2001, October 2001).

¹⁵ This includes ensuring respect for fundamental rights, such as the requirement that detainees be brought before a judicial authority without delay, as stipulated by Article 9(4) of the ICCPR and by Principle 11(1) of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles). People deprived of their liberty also have the right of prompt access to and assistance of a lawyer; the right to be informed immediately upon arrest of the reasons for their arrest and promptly informed of any charges brought against them; and the right to a fair trial. These rights are also contained in the ICCPR and the Body of Principles.

In its second report to the UN Counter-Terrorism Committee, the Libyan authorities announced that “[a] new draft Penal Code is being prepared and will include crimes qualified as terrorist acts”¹⁶. Based on an analysis of this draft Penal Code, Amnesty International is concerned that the definition of “terrorism”, according to Article 260 of the draft, may be abused in order to punish people for non-violent acts, including those related to freedom of expression and human rights work¹⁷. The broad definition provided could be subject to wide interpretation and abuse.

Several provisions contained in Article 260 do elaborate on violent acts or the threat of such acts which, according to the text, constitute “terrorist” activity. However, in several others, terms such as “terrorism” and “terrorist acts” are used without being further defined. For example, provision 4 relates to “*setting up an association or gang or society or organization which uses terrorism in achieving or implementing its aims or membership to it...*”. Provision 5 criminalizes “*approaching or communicating with an association or society or organization or group or gang, whose headquarters are abroad, or anyone working for their interests with a view to undertaking terrorist act/s in the country or against its interests, even if abroad*”. Amnesty International urges the Libyan authorities to ensure that all provisions relating to “terrorism” are well defined and exclude any form of peaceful exercise of rights protected under international law, such as the rights to freedom of expression and association.

Prisoners of conscience

Despite the authorities’ categorical denial of the existence of prisoners of conscience, the organization is aware of scores of individuals whom it considers to qualify as such¹⁸. They include professionals and students, who were arrested in and after June 1998 on suspicion of supporting or sympathizing with the banned Libyan Islamic

¹⁶ Report of the Libyan Arab Jamahiriya to the UN Counter-Terrorism, S/2002/1021, 13 September 2002.

¹⁷ Amnesty International has also raised concerns relating to the definition of terrorism in the Arab Convention for the Suppression of Terrorism, which Libya has ratified. For a detailed analysis of the Arab Convention for the Suppression of Terrorism, see: Amnesty International. *The Arab Convention for the Suppression of Terrorism: A serious threat to human rights* (AI Index: IOR 51/001/2002, January 2002).

¹⁸ Amnesty International calls for the immediate and unconditional release of prisoners of conscience – those detained for their political, religious or other conscientiously-held beliefs or because of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status – who have not used or advocated violence. The organization calls for political prisoners, who are accused or having used or advocated violence, to be tried for recognisably criminal offences in accordance with international standards for fair trial and without recourse to the death penalty, or be released.

Group¹⁹ - also known as the Muslim Brothers - which is not known to have used or advocated violence.



**Salem Abu Hanak, a
prisoner of conscience held
in Abu Salim Prison in
Tripoli. ©AI, February
2004**

On 16 February 2002 Salem Abu Hanak and Abdullah Ahmed 'Izzedin were sentenced to death before a People's Court in Tripoli following a grossly unfair trial²⁰ of 152 people on charges relating to affiliation to the Libyan Islamic Group. Salem Abu Hanak, born in 1957 and father of five, was the head of the Chemistry Department at the Faculty of Science at the University of Qar Younes in Benghazi. He was arrested on 5 June 1998. Abdullah Ahmed 'Izzedin, born in 1950 and father of four, was working as a lecturer at the Nuclear Engineering Faculty of al-Fateh University in Tripoli when he was arrested on 7 June 1998. Seventy-three of the defendants received sentences of life imprisonment, and 11 others received 10 years' imprisonment. A further 66 were reportedly acquitted.



The appeal trial before the People's Court of Appeal has been repeatedly adjourned, with hearings taking place approximately every three months and reportedly lasting just a few minutes. At the time of writing, the next hearing was reportedly scheduled to take place on 25 November 2004, when a verdict was expected.

**Abdullah Ahmed 'Izzedin, a prisoner of
conscience held in Abu Salim Prison in
Tripoli. ©AI, February 2004**

¹⁹ *Al-Jama'a al-Islamiya al-Libiya*, the Libyan Islamic Group, should not be confused with *al-Jama'a al-Islamiya al-Libiya al-Muqatila*, the Libyan Islamic Fighting Group. According to Amnesty International's information, the Libyan Islamic Group does not use or advocate the use of violence.

²⁰ Case 254/2000

In all meetings with the Libyan authorities in February 2004, Amnesty International delegates raised the question of freedom of expression and association. Colonel al-Gaddafi described the activities of the Muslim Brothers in the case above as being "terrorist work", "aiming at creating an Islamic state in Libya". He argued that "they tried to impose their opinions on others" and that they "confessed to using violence".

Other officials, including the Secretaries of the General People's Committees for Justice and Public Security and for Foreign Liaison and International Cooperation, tended not to differentiate between acts by individuals in a given case and a political grouping as a whole, nor between various political groupings. All those who carry out political activities, peaceful or otherwise, outside the official political structure were deemed by the authorities to be "heretics".

The Director of Abu Salim Prison, Milad Daman, said that those prisoners whom Amnesty International had requested to see were "terrorist" cases, including several prisoners sentenced in the Muslim Brothers case. He said that the Muslim Brothers had given birth to other Islamist groups, such as *al-Salafia al-Jihadia*, the Militant Traditionalist, and the Libyan Islamic Fighting Group. All these groups, according to the Director, agree on the use of violence as a means to achieve their aim of assuming power in Libya. He argued that some prisoners had spent time in Afghanistan and trained with *al-Qa'ida* and therefore were a danger not only to Libya but also to other countries. Speaking with particular reference to his prison, he reaffirmed Colonel al-Gaddafi's point that there were no political prisoners; rather, all those imprisoned were people who had used violence.

However, in the case of the Muslim Brothers, the men were not charged with any violent acts. This was confirmed to Amnesty International in February 2004 following interviews with several lawyers defending the accused, appointed by the state Popular Lawyers' Office, and with several of the defendants themselves. The men faced charges under Law 71 of 1972 banning political parties²¹ solely for the peaceful expression of their ideas and for meeting to discuss those ideas with others in secret. Abdullah Ahmed 'Izzedin told Amnesty International, "*I am not against the regime, nor do I have any political aims. I just wanted to work towards reforming society and to making it a better place*".

The Muslim Brothers are just one example of cases of prisoners of conscience and possible prisoners of conscience currently held in Libyan prisons. Others include members of the *Harakat al-Tajammu' al-Islami*, the Islamic Alliance Movement, who

²¹ For details, see section below, entitled *Legal provisions*
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were arrested in the summer of 1998, at the same time as the arrests of the Muslim Brothers.

One of those imprisoned was **Ramadan Mas'ud Shaglouf**, a father of two who worked as a chemical engineer for an oil company in Benghazi. He was arrested on 27 September 1998 by several armed men in civilian clothes who announced that they were officers of the Internal Security Agency.

After being detained by the Internal Security Agency for a month, the interrogation began. Ramadan Mas'ud Shaglouf told Amnesty International that he was occasionally beaten and threatened with further beatings if he did not "confess" to accusations of membership of the Islamic Alliance Movement. At the end of a month of interrogation, he said he was coerced into signing papers which he was not able to read.

Ramadan Mas'ud Shaglouf's trial before a People's Court finally began on 8 October 2002, more than four years after his arrest. On 26 January 2003 he was sentenced to life imprisonment under Law 71 of 1972 banning political parties. Several others tried in the same case were sentenced to between 10 years' and life imprisonment.



Ramadan Mas'ud Shaglouf, a prisoner of conscience held in Abu Salim Prison in Tripoli. ©AI, February 2004

Legal provisions

"All Libyans over the age of 18 can participate in the Basic People's Congresses and express their opinion freely. If others agree with them, their idea would be taken up, otherwise it would not. We are not like other countries in which there is one ruling party which may choose to imprison others from other parties. It is not possible to have a prisoner of conscience in this set-up,"
Colonel al-Gaddafi to Amnesty International in February 2004.

Libyan law provides certain guarantees to the rights to freedom of expression and association. According to Article 6 of the Great Green Charter of Human Rights of the Jamahiriyan Era, adopted in June 1988, *"the members of the Jamahiriyan society are free to form associations, trade unions and leagues in order to defend their*

professional interest". However, these rights are strictly qualified. For example, Article 8 of Law 20 on the Promotion of Freedom, adopted in 1991, states that *"Every citizen has the right to express his opinions and ideas and to publicise them at people's congresses and through jamahiri media. The citizen shall not be questioned in relation to the exercise of this right unless he uses it to undermine the authority of the people or for personal ends"*.

Within this system, all adults are allowed to express opinions and views in the Basic People's Congresses and in the local media, which provide the only vehicles for sanctioned debate. However, the system operates in a context in which the formation of political parties is prohibited and in which the media is fully controlled by the state²². Further, vaguely-worded restrictions - such as those contained in Article 8 of the Law on the Promotion of Freedom - are placed on the expression of opinions even within the official forums, leaving even those who challenge the system from within at risk of punishment. In at least one case known to Amnesty International, a Libyan citizen was sentenced to five years' imprisonment in 2002 for the peaceful expression of his views in a Basic People's Congress.

On 19 October 2002 **Fathi al-Jahmi**, a civil engineer born in 1941 and married with seven children, attended a session of the Basic People's Congress in al-Manshia, Bin Ashour, a suburb of Tripoli. At the Congress, he reportedly stated that reform within Libya would never take place in the absence of a constitution, pluralism and democracy. He reportedly went on to ask how issues within the country could genuinely be addressed while Libya is "ruled by criminals", naming one particular example. It appears that he was known for his outspoken views prior to this incident.

Apparently as a result of this statement, he was arrested by members of the Internal Security Agency while at the Basic People's Congress and detained for several months. According to Fathi al-Jahmi, he was tried twice under the same charges by the People's Court in two different districts within Tripoli. He reportedly received two separate sentences, one of five years' imprisonment and the other, suspended, of eight months' imprisonment. On 10 March 2004 his case was heard before the People's Court of Appeal and he received a suspended sentence of one year's imprisonment. He was finally released on 12 March 2004²³.

After his release, Fathi al-Jahmi gave several media interviews, including to the US-based Arabic channel *al-Hurrah* and to the Dubai-based Arabic channel *al-'Arabiya*, in which he continued to call for reform within Libya. Apparently as a

²² However, satellite television is widely viewed by Libyans and access to the Internet is available.

²³ Despite repeated requests by the Amnesty International delegation visiting Libya in February 2004 to meet Fathi al-Jahmi, he was not made available. He was reportedly transferred from Abu Salim Prison to 'Ayn Zara Prison, located in the outskirts of Tripoli, during the visit.

result, basic services, such as his telephone line, were reportedly suspended. On around 26 March 2004, he was reportedly beaten outside his house. Subsequently, relatives, friends and other interested parties appear to have lost contact with Fathi al-Jahmi, his wife, Fawzia, and eldest son, Muhammad. At the time of writing, family members had received no official confirmation as to their whereabouts.

The following laws, which severely restrict the rights to freedom of expression and association, have been used to repress those suspected of being opposed to or critical of the current political system.

- **Law 71 of 1972** 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 71 provides for the death penalty for forming, joining or supporting groups prohibited by law.
- **Article 206 of the Penal Code (Law 48 of 1956)** provides for the death penalty for those who call "*for the establishment of any grouping, organization or association proscribed by law*", and even for those who belong to or support such an organization.
- **Article 208**, which bans forming or joining an international association, 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 178** prescribes life imprisonment for the dissemination of information 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.*"

Amnesty International had hoped that the draft Penal Code, announced by the Libyan authorities in 2003, would provide for an improvement in the legislation. The aims set out in the draft include "*limiting capital punishment to serious criminals who cannot be rehabilitated...*". However, it goes on to define "serious criminals" as including those who have committed crimes against the integrity and security of society and dealing with foreign countries to harm the state. This phrasing, alongside vague terms - such as "spreading rumours", "insult", "harms the reputation of the

country” or “incitement” - could lead to the imposition of the death penalty for peaceful political opponents and government critics. Even those who merely participate in conferences or publish their writings peacefully expressing their views could be at risk of imprisonment.

The draft Penal Code contains specific provisions providing harsh punishments, including capital punishment, for undertaking peaceful social or political activities:

- **Article 152** imposes imprisonment on any Libyan national, who while abroad publishes news or rumours constituting lies or exaggeration or creates disturbances about the internal situation in Libya in a way that harms its reputation or shakes the confidence in it or carries out an activity that in any way harms the interests of the country.
- **Article 164** imposes imprisonment on anyone who seeks to undermine the reputation of the goals of the Revolution or defames its Leader, as well as anyone who insults public authorities or the Libyan people.
- **Article 167** imposes imprisonment on anyone who spreads rumours against the governing system or who demonstrates in protest against the governing system. Terms used in this section of the law include “spreading rumours” and “insult”.
- **Article 173** imposes the death penalty on 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.
- **Article 174** imposes imprisonment of no less than 10 years on anyone who promotes in the country, in any way, principles or theories that aim at changing the governing system.
- **Article 175** imposes imprisonment on anyone (except for the husband, children or grandchildren) with knowledge of the crimes in Articles 173-174.
- **Article 176** imposes imprisonment on anyone who establishes, organizes, or administers an international organization in Libya, without permission from the relevant authorities or with permission based on falsified information. It also imposes imprisonment on any Libyan national resident in Libya who joins or participates in any way, without prior permission, in any such organization.

For many years, Amnesty International has urged the Libyan authorities to comply with their obligation to ensure consistency between Libyan legislation and international human rights law. This includes the ICCPR, Article 19 of which states that, *“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of*

frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice"²⁴.

Furthermore, Article 6(2) of the ICCPR states that "*in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes*". This provision has been interpreted by several resolutions of the UN Commission on Human Rights, the latest of which is resolution 2003/67, which requires ensuring that the notion of "*most serious crimes does not go beyond intentional crimes with lethal or extremely grave consequences and that the death penalty is not imposed for non-violent acts such as ...non-violent religious practice and expression of conscience*".

The UN Human Rights Committee - the body of experts which monitors states parties' implementation of the ICCPR - expressed, in its Concluding Observations on Libya's periodic report on 6 November 1998, "*its deep concern about the numerous restrictions, in law and in practice, on the right to freedom of expression, and in particular on the right to express opposition to or criticism of the Government, of the established political, social and economic system and of the cultural values prevailing in the Libyan Arab Jamahiriya*."²⁵ The Committee urged the Libyan authorities "*to undertake a truly critical analysis*" of restrictions to articles guaranteeing the rights to freedom of expression and association within the ICCPR²⁶. The Libyan authorities have failed to implement those recommendations.

Obstacles to human rights work

Numerous charitable associations operate within Libya and Amnesty International met several of them²⁷ during its February 2004 visit, both on an individual level and at a broader meeting. Despite the existence of these charitable associations, human rights organizations or individuals wishing to carry out human rights work continue to be prevented from operating, with the exception of the Human Rights Society of the Gaddafi International Foundation for Charitable Associations. The Human Rights

²⁴ Article 19(2). Article 19(3) recalls that this article carries special duties and responsibilities, rendering it subject to certain restrictions, namely "(a) ...respect of the rights or reputation of others; (b) ... protection of national security or of public order...or of public health."

²⁵ Concluding observations of the Human Rights Committee: Libyan Arab Jamahiriya. CCPR/C/79/Add.101, Para.15

²⁶ In its Concluding observations on the Republic of Korea's Second Periodic Report (1 November 1999, CCPR/C/79/Add.114, para. 9), the UN Human Rights Committee stated that "[t]he Covenant does not permit restrictions on the expression of ideas, merely because they coincide with those held by an enemy entity or may be considered to create sympathy for that entity."

²⁷ These included the Libyan Red Crescent Society; Hana Philanthropic Association for Orphans; Watismo Charity Society; and the Islamic Call Association, among others.

Society, headed by Giuma Atiga, a lawyer and former political prisoner, has become a strong voice for human rights protection and promotion in the country. However, others wishing to carry out human rights work are forced to operate abroad.

During its visit to Libya in February 2004, Amnesty International learnt of the eagerness of a number of Libyan nationals to undertake human rights work in their country. Lawyers of the Tripoli Bar Association, who had recently established a Freedoms Committee, highlighted the legal and other constraints still faced by those seeking to operate in this field. One lawyer recounted his first short-lived attempt to create a 250-member human rights committee in 1977. In 1988 lawyers made a second attempt to establish an independent human rights body but this was soon co-opted by the authorities. In 1998 lawyers tried to form a human rights committee within the Bar Association. On this occasion, after issuing a report on the human rights situation in Libya, their activities were frozen. Recently, approximately 40 lawyers of the Tripoli Bar Association launched a Freedom's Committee. Among them, some expressed their interest in establishing an association independent from the Bar Association.

The fear of those wanting to work in this field is well-founded when faced with severely restrictive legislation. As mentioned above, Article 206 of the Penal Code imposes the death penalty on those who call for "*the establishment of any grouping, organization or association proscribed by law*", as well as for those who belong to or support such an organization. This provision has been maintained in Articles 141 and 145 of the new draft Penal Code, which imposes the death penalty on "*any person who communicates with a foreign country or works in its service for the purpose of enabling it to attack Libya*" or "*who transfers news to [the enemy] or leads him or incites others to join the enemy*". Furthermore, many Libyans, residing inside and outside the country, continue to be reluctant even to report human rights violations for fear of retaliation against themselves or their relatives.

This was a matter of concern for the UN Committee against Torture, the body of experts which monitors states parties' implementation of the Convention against Torture. It concluded that "*the wording of article 206 of the Penal Code could be an obstacle to the creation of independent human rights nongovernmental organizations*"²⁸. International standards, such as the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the Declaration on Human Rights Defenders), adopted by the UN General Assembly on 9

²⁸ Concluding Observations of the Committee against Torture: Libyan Arab Jamahiriya. 11/05/99, para.184

December 1998, also grants the right to work on human rights issues both individually or in association with others²⁹.

2.2 Arbitrary arrest and detention

In recent years, the authorities have routinely violated international standards as well as the existing legal safeguards in Libyan law regarding arrest, detention and trial³⁰. These violations have disrupted the lives of hundreds of real and suspected political opponents as well as those of migrants and possible asylum-seekers. Amnesty International has documented numerous cases which illustrate such violations, including detention after expiry of sentence; arbitrary detention of Libyans returning from abroad; and prolonged incommunicado detention, where detainees are at risk of torture and ill-treatment.

Unlawful detention

Detention after expiry of sentence

The practice of unlawful detention after completion of sentence seems to be widespread and in some cases can have serious, even fatal, consequences, due to poor prison conditions or inadequate care for prisoners.

In February 2004, Amnesty International delegates met seven Eritrean nationals (**Masfin Aman Adem, Mesghna Seium Tedla, Abiel Tekle Haile, Rezene Issak Yohannis, Zekerias Michael Belay, Yonas Neghasy Brhane and Michael Yemane Tekle**) who had reportedly deserted the Eritrean army at different times during 2002 and fled from Eritrea to Sudan and then to Libya. They were arrested on 11 August 2002 as they attempted to cross the Mediterranean, heading for Italy where they planned to seek asylum. They were subsequently convicted of illegal entry but not released after the expiry of their three-month sentences on 19 November 2002.

²⁹ Article 6 of the Declaration notably states:

"Everyone has the right, individually and in association with others: [...]"

(b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;

(c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters."

³⁰ Safeguards within the Criminal Procedure Code include: the necessity to produce an arrest warrant (Article 30); limiting the period of detention (Articles 26, 115, 122, 123, 124 and 175); the right of detainees to challenge the legality of the detention (Article 33); the right to be informed of the charges brought against them (Article 105); the right to legal counsel (Article 106); and prompt access to a judicial authority (Article 112). In addition, Article 53 of Law 47 of 1975 on prisons provides the right to lawyers to visit their clients in custody.

After being granted refugee status in March 2004, the UN High Commission for Refugees called on the Libyan authorities to release the seven men. At the time of writing, they remained in detention.

For some 18 months of arbitrary detention, the seven men lived in fear of being deported to Eritrea, where they would be at risk of serious human rights violations. They have been moved to several different prisons. In two separate instances, the men described being beaten with sticks; the first time prior to being transported in a lorry into which they were crammed with scores of others. The second time occurred while being transferred from Ghiryan Prison to three other prisons. **Michael Yemane Tekle** said that he was particularly badly injured on the second occasion and lost consciousness after being hit over the head with a truncheon. During a separate incident, **Rezene Issak Yohanns** was allegedly beaten by a guard with a wire while in Jdeida Prison in January 2004. The men told Amnesty International: *"we just want to get out of detention. We have seen here in prison what we never saw in our country."*



Masfin Aman Adem, Mesghna Seium Tedla, Abiel Tekle Haile, Rezene Issak Yohanns, Zekerias Michael Belay, Yonas Neghasy Brhane and Michael Yemane Tekle (from right to left), Eritrean nationals detained in Libya. ©AI, February 2004

Another Eritrean national, **Binyam Abraha**, who was in his early 30s and married with one daughter, died in custody on the night of 16-17 September 2003. He was detained in Ghiryan Prison with the seven Eritreans mentioned above. He had reportedly been detained in Libya since early 2002 on alcohol-related charges, for which he had been sentenced to three months' imprisonment. He apparently contracted tuberculosis as a result of poor prison conditions and was allegedly denied access to medical care despite requesting it repeatedly. Just before his death, **Masfin Aman Adem** and the other Eritrean detainees asked again for **Binyam Abraha** to be sent to hospital for treatment. Instead he was apparently held in solitary confinement in a dirty room between 5 and 16 September 2003, when he died.

Arbitrary detention of Libyans returning from abroad

The Libyans authorities have publicly announced that they encourage Libyans in exile to return to the country³¹, and that they would be able to resume a normal life upon return. Al-Sadeq Krimah, deputy head of the International Relations and Cooperation Department (also known as the External Security Agency, an intelligence apparatus), told Amnesty International in February 2004 that the External Security Agency had facilitated, in cooperation with the Gaddafi International Foundation for Charitable Associations, the return of Libyan nationals from countries such as Afghanistan, Pakistan and Yemen. Al-Sadeq Krimah assured delegates that scores of Libyan nationals had returned to Libya in recent years without being arrested or detained after their return.

Amnesty International delegates interviewed some of the returnees. They stated that they were usually not detained upon arrival, but were summoned for questioning by the External Security Agency. Although they have to some extent succeeded in resuming a normal life, they faced financial difficulties and continued to be under close surveillance, usually by officers of the Internal Security Agency. One of them said to Amnesty International that he had shaved his beard for fear of being arrested as part of the policy against those the authorities describe as “heretics”.

Amnesty International is concerned by the fate of others who have returned to Libya and have been subjected to arbitrary arrest and detention. It is particularly disturbing to note that some Libyan nationals were arbitrarily detained upon arrival despite assurances they had received that they would be safe and able to resume a normal life.

On 2 May 2002 **Mustapha Muhammad Krer**, a Libyan national with Canadian citizenship, travelled to Libya after an absence of some 15 years. He was arrested on arrival and has been detained ever since. He initially travelled to Malta, where he was reportedly assured by members of the Libyan security forces and officials from the Libyan People’s Bureau (the Libyan Embassy) in Malta that he would not be arrested on his return. Both his ticket and travel documentation were apparently provided by the Libyan People’s Bureau in Malta.

On arrival at Tripoli airport, he was reportedly detained for questioning, initially in the airport and later by members of the Internal Security Agency. He has been held in ‘Ayn Zara Prison for most of his detention. He first saw a lawyer on 15 March 2004, nearly two years after his arrest, when he appeared for the first time

³¹ See, for example, the statement issued on 10 August 2003 by the Secretariat of the General People’s Committee for Justice and Public Security.

before the People's Court. He is charged alongside scores of others in connection with his alleged affiliation to the Libyan Islamic Fighting Group³². He denies the accusations against him.

Mustapha Muhammad Krer had left Libya in 1989 after apparently being sought by the Libyan authorities and following the arrest of his brother, al-Mukhtar Muhammad Krer. He reportedly chose to return to Libya after his family was informed by the Libyan authorities in mid-April 2002 of the death in custody of al-Mukhtar Muhammad Krer.

At least three Libyan nationals were arrested and arbitrarily detained upon arrival after being returned from Sudan to Libya at the end of 2002. 'Abd al-Mun'im 'Abd al-Rahman, Muhammad 'Abd al-Hamid Rashid al-Jazawi and Isma'il 'Umar Jibril al-Lawati were arrested and detained in September 2002 in Sudan and fined for illegal residency there. They were then ordered to leave the country. When Amnesty International delegates met the three men in Abu Salim Prison in February 2004, they reported that Sudanese officials had promised them a safe return to Libya after they had apparently received guarantees from the Gaddafi International Foundation for Charitable Associations and the Libyan People's Bureau in Khartoum. On 17 October 2002 the three men and their families were sent to Libya. Upon arrival in Tripoli, they were immediately separated from their families, blindfolded, handcuffed and reportedly held by officers of the External Security Agency³³.

After a period of detention with the External Security Agency, the men were held by the Internal Security Agency before being transferred to prison. In the first quarter of 2003, they were presented before the Popular Prosecution Office for the first time. Since then, the three men have been brought before the People's Court in separate cases linked to their alleged political activities.

³² Case 120/98

³³ In February 2004, the deputy head of the External Security Agency assured Amnesty International delegates that this agency did not hold people and ran no place of detention.

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Muhammad 'Abd al-Hamid Rashid al-Jazawi, born on 4 June 1968 in Derna, was arrested on return from Sudan to Libya. He was a student and a goalkeeper in Derna's football team when he left Libya in 1991 for Pakistan and Afghanistan. He settled in Sudan in 1995 where he married a Sudanese woman and ran a small business. ©AI, February 2004



Isma'il 'Umar Jibril al-Lawati was arrested on return from Sudan to Libya. He was born on 8 January 1967, spent time in Afghanistan and Pakistan between 1991 and 1993, and then settled in Sudan. ©AI, February 2004

According to one of the three men, Isma'il 'Umar Jibril al-Lawati, he faces trial along with more than 50 others, from many different backgrounds. They are charged with remaining outside Libya without authorization and fighting against a friendly country. He told Amnesty International that since his arrest, he had been denied the right to any contact with his family. Muhammad 'Abd al-Hamid Rashid al-Jazawi reported that he was being tried alongside scores of others³⁴. He said that he had never met his court-appointed lawyer. 'Abd al-Mun'im 'Abd al-Rahman said that he was also being tried in connection with his alleged affiliation to the Libyan Islamic Fighting Group. He commented that he was not aware that he was being represented by a lawyer in court. A verdict was reportedly scheduled for late April 2004.

³⁴ Case 120/98

Amnesty International has also documented cases of Libyan nationals who were forcibly returned to Libya and whose fate has remained unknown for several years.

On 13 February 2000 a group of eight Libyans was forcibly returned from Jordan to Libya. They were arrested in Jordan at the end of December 1999 or beginning of 2000 on suspicion of being sympathizers with Islamist groups. There were reports that three of the eight Libyans were shot after their return to Libya. The allegations reported in the media³⁵ did not include details of the incident or provide the names of the victims. Amnesty International issued urgent appeals in March 2000³⁶ but received no response from the authorities. During their visit to Libya in February 2004, al-Sadeq Krimah, deputy head of the External Security Agency, assured the delegates that none of the Libyans returned in this case had been killed.

Amnesty International delegates also met 'Adel Salem Kamuka, one of the eight Libyans returned. He too said that, to his knowledge, there were no killings after their return. However, four years after the events, the authorities continue to fail to disclose information on the fate of the seven others returned in February 2000.

After his return on 13 February 2000, 'Adel Salem Kamuka told Amnesty International that he was blindfolded, handcuffed and taken for questioning at the headquarters of the External Security Agency in Tajoura, a suburb of Tripoli. According to his testimony, he was held in solitary confinement and handcuffed at night for 10 days. While being interrogated he was threatened with the use of an electric baton. At the beginning of March 2000, he was transferred to a wing of 'Ayn Zara Prison believed to be under the supervision of the Internal Security Agency, where his interrogation continued. There he witnessed that those who did not cooperate were beaten or otherwise ill-treated.



'Adel Salem Kamuka, one of eight Libyan nationals forcibly returned from Jordan to Libya and arrested on arrival. ©AI, February 2004

'Adel Salem Kamuka said that on 14 July 2000 he was brought before the People's Prosecutor, who interrogated him while he was blindfolded. He explained that he had left the Libyan Islamic Fighting Group but was nevertheless charged with

³⁵ The news was reported in al-Jazeera TV, Agence France Press and the British Broadcasting Corporation.

³⁶ Forcible return/fear of torture or ill-treatment of seven Libyans deported from Jordan (AI Index: MDE 19/01/00, EXTRA 21/00, 7 March 2000)

membership of the group under Law 71 of 1972. He was then transferred to Abu Salim Prison. At the beginning of 2003, he was brought to trial before the People's Court with some 170 others³⁷. Apparently, some of the defendants tried in this case were arrested as far back as 1992 while others were arrested in the mid and late 1990s. The verdict is expected to be pronounced in late April 2004.

Widespread practice of prolonged incommunicado detention

At the heart of a series of violations lies the widespread practice of prolonged incommunicado detention. For periods of weeks or months, and in some cases even years, detainees in Libya have been held without any contact with the outside world, including their families or legal counsel. In the majority of cases known to Amnesty International, detainees are held by the Internal Security Agency. During this initial period of detention, their families usually do not know where they are being held. It is during this period that they are at greatest risk of torture or ill-treatment.

The practice of prolonged incommunicado detention breaches Libyan law. Under domestic law, detainees can be held immediately after arrest for up to 48 hours at a police station. They must then be brought before a prosecutor, who can hold them for six days under investigation. Following that, detainees must be brought before a judicial authority at regular intervals of 30 days in order to renew their detention order³⁸. In practice, however, Amnesty International has documented numerous cases where detainees are held for lengthy periods of time without access to the outside world.

The main agency said to be responsible for the practice of prolonged incommunicado detention and of torture or ill-treatment is the Internal Security Agency. Since March 2004, the Internal Security Agency has fallen under the jurisdiction of the General People's Committee for Public Security, after the abolition of the General People's Committee for Justice and Public Security. The Internal Security Agency appears to have its own places of detention. During their visit to Libya in February 2004, Amnesty International delegates repeatedly requested a meeting with the Head of the Internal Security Agency but this did not take place.

³⁷ Case 120/98

³⁸ In 2003 the Criminal Procedure Code was amended by Law 3 of 1371 reducing the maximum number of days a person can be detained before they must appear before a prosecutor from 45 to 30.



Ahmed 'Ali 'Abd al-Hamid al-Khafifi was held for several years without access to the outside world. He was born on 26 November 1973 in Benghazi and was a student at Qar Younes University in Benghazi. ©AI, February 2004

Ahmed 'Ali 'Abd al-Hamid al-Khafifi was arrested on 14 June 1997 at his house in the early hours by officers of the Internal Security Agency. He told Amnesty International that he was taken for interrogation with his head covered and his hands cuffed. He also said that he was threatened into signing a document without reading it.

He was then held apparently without charge or trial in various prisons, including al-Hawari Prison near Benghazi, 'Ayn Zara Prison in Tripoli, and later back and forth between 'Ayn Zara and Abu Salim prisons. On 18 October 2001, more than four years after the arrest, his father was allowed to visit him in 'Ayn Zara Prison for the first time. On two occasions, in March and October 2002, he and his family were informed that he would be released, but when the family came to the prison to greet him, they discovered that he had not been released.

According to Ahmed 'Ali 'Abd al-Hamid al-Khafifi's testimony, it was only on 3 April 2003, nearly six years after his arrest, that he was brought before the Popular Prosecution Office, without the presence of a lawyer. He found out that the date of arrest in the court file had been falsified and the signature was not his. He was accused of supporting a prohibited organization.

On 21 October 2003 Ahmed 'Ali 'Abd al-Hamid al-Khafifi was sentenced to life imprisonment by the People's Court³⁹. According to his testimony, the only evidence brought against him was a confession extracted under torture from another accused in the case, who later retracted his confession. He said that on 18 February 2004 the appeal trial before the People's Court of Appeal opened in a courtroom set up in the buildings of the Police Academy in Tripoli. The hearing reportedly took place without the presence of Ahmed 'Ali 'Abd al-Hamid al-Khafifi or his lawyer. The next hearing is apparently scheduled for 12 May 2004.

³⁹ Case 104/2003

Amnesty International delegates repeatedly raised the urgent need to put an end to the practice of incommunicado detention in meetings with Libyan officials, including Colonel al-Gaddafi, during their visit in February 2004. In its Concluding Observations on Libya's periodic report, 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*"⁴⁰.

2.3 Torture

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*". This is confirmed in Article 341 of the draft Penal Code, which stipulates a maximum prison sentence of 10 years for those who order or carry out torture. Article 337 of the draft Penal Code imposes imprisonment on "*any public official who uses violence against any person while on duty in a way that is degrading and causes physical pain*".

However, Libyan legislation does not define the crime of torture. Amnesty International calls on the Libyan authorities to make explicit that torture is absolutely prohibited under all circumstances, including when committed by public officials off duty, and that it is "*punishable by appropriate penalties which take into account their grave nature*"⁴¹.

Amnesty International also calls on the Libyan authorities to ensure that Libyan law fully reflects the definition of torture included in Article 1 of the Convention against Torture, to which Libya is a state party: "*For the purposes of this Convention, the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.*"

⁴⁰ Concluding Observations of the Committee against Torture: Libyan Arab Jamahiriya. 11/05/99, para.182

⁴¹ Article 4(2) of the Convention against Torture

Use of torture to extract confessions

From the testimonies collected by Amnesty International, it appears that if a detainee "confesses" quickly, they are usually subjected to light beatings or other forms of ill-treatment. However, if a detainee refuses to "confess", torture is used in order to extract a "confession". The most frequently reported techniques are beatings with electric cables, beatings on the soles of the feet (*falaqa*), the use of electric shocks and being suspended from a height by the arms.

The Muslim Brothers' case

A total of 152 professionals and students were arrested in and after June 1998, on suspicion of supporting or sympathizing with the Muslim Brothers. After their arrests, the detainees were held incommunicado and their whereabouts remained unknown for more than two years. It was only at a hearing before the People's Court in Tripoli in April 2001 that the families were for the first time allowed a brief contact with the detainees, and that the men were given legal representation, mostly by popular lawyers appointed by the court.

During this period of incommunicado detention, some of the defendants alleged that they were tortured, including being beaten on the soles of the feet (*falaqa*), after their arrest by members of the Internal Security Agency. Defendants were also reportedly forced to sign confessions.

One of the defendants, **Salem Abu Hanak**, who was later sentenced to death in February 2002, told Amnesty International delegates that he was arrested on 5 June 1998 from his home in the early hours and taken to the headquarters of the Revolutionary Committees at al-Birka in Benghazi. That day he was questioned about his connection with the Muslim Brotherhood.

According to his testimony, during the questioning, electric shocks were applied to his arms and he was beaten with electric cables on his feet in order to make him confess. Later that day, his wife was brought to him and he was threatened that she would be raped. He said: "*once I saw my wife and realized what they might do to her, I said that I would tell them anything they wanted to know*". Once he had agreed to confess, the torture stopped.

According to a lawyer from the Popular Lawyer's Office, who was representing some of the accused in this case, at least some of the accused were referred for medical examinations in order to verify whether they had been tortured. She argued that those acquitted and subsequently released in this case were those whose torture had been confirmed. The referral of the men for medical examinations was not corroborated by any of the accused whom Amnesty International delegates interviewed during their 2004 visit. It remains the case that according to Amnesty

International's information, none of the suspected perpetrators of torture or ill-treatment have been brought to justice.

Foreign nationals in the so-called HIV trial

In a separate case, over five years after their arrest in January 1999, six Bulgarian health professionals (Kristiana Malinova Valcheva, Nasya Stojcheva Nenova, Valentina Manolova Siropulo, Valya Georgieva Cherveniyashka, Snezhanka Ivanova Dimitrova and Zdravko Marinov Georgiev) and one Palestinian doctor (Ashraf Ahmad Jum'a) are still on trial, alongside nine Libyan doctors. The foreign defendants are accused of deliberately infecting 426 children with the HIV virus⁴², while working in al-Fateh Children's Hospital in Benghazi. At the time of writing, a verdict was scheduled to be handed down on 6 May 2004.

While Amnesty International recognizes the pressing need to bring to justice anyone responsible for the tragic consequences for these children and their families, it is imperative that the rights of the accused are respected at all stages, from the moment of their arrest. It is only by means of a fair trial that follows due legal process that the truth will emerge about how these children became infected with the HIV virus and those responsible be held fully to account.



Defendants in the so-called HIV trial during a hearing at the Benghazi Court of Appeal on 16 February 2004. ©AI.

After their arrest, the seven foreign nationals were held for more than a year with only intermittent access to the outside world, namely to their relatives and lawyers and, in the case of the Bulgarian nationals, to representatives from their embassy. For the first nine months, representatives from the Bulgarian Embassy in Tripoli met the defendants three times before meetings with the Embassy became more regular from June 2000. They met defendants on 25 February 1999, 29 April 1999 and 30 October 1999. Not all of the defendants were present at the first two meetings. For example, Nasya Stojcheva Nenova and Valya Georgieva Cherveniyashka were not brought to the meeting on 25 February 1999, apparently because they exhibited scars of torture which they had undergone.

⁴² Prosecutors originally gave the number of infected children as 393, but at a trial session in September 2003, they increased the number to 426.

The seven foreign nationals were first brought before the Popular Prosecution Office on 16 May 1999, approximately four months after their arrest. They were subsequently taken to the Popular Prosecution Office every 30 to 45 days in order to have their detention order renewed. The first time they were granted access to a lawyer was in February 2000, after their trial had opened before the People's Court.

The very limited access to the outside world, in the form of the representatives of the Bulgarian Embassy for the Bulgarian nationals and of the Popular Prosecution Office for all the foreign defendants, did not safeguard the defendants against torture or ill-treatment. When the defendants were granted limited access to the outside world, they explained that they were too frightened to report their allegations of torture. The Bulgarian defendants told Amnesty International delegates that those torturing them instructed them not to mention their treatment to their diplomatic representatives. At the level of the prosecution, defendants said that they were taken to the Popular Prosecutor by some of those who had carried out the torture and were threatened with further torture if they did not "confess" in front of him. In the case of Ashraf Ahmed Jum'a, he was reportedly beaten on one occasion in the Popular Prosecution Office.

The foreign defendants told Amnesty International that they had been tortured in order to extract confessions, which they later retracted on the basis that they had been forcibly coerced. Methods of torture they reported included: extensive use of electric shocks; being suspended from a height by the arms; blindfolding and threats with being attacked by barking dogs; and beatings, including *falaqa* (beatings on the soles of the feet) and with electric cables. They said that they were tortured for approximately two months; sometimes on a daily basis. After that, the torture ceased to be used on them routinely. When Ashraf Ahmed Jum'a's parents saw him for the first time on 30 November 1999, 10 months after his arrest, they described their reaction to Amnesty International: "*We did not recognize our son because he looked so terrible. We stood there for 10 minutes just holding each other and crying.*"

All the foreign defendants deny the accusations against them. Valentina Manolova Siropulo told Amnesty International: "*I was denying the accusations against me [even after the torture had started] until they began with the electric shocks. I began to 'confess' in order to stop them using electric shocks. They would raise or lower the voltage according to what I said.*"

Their trial began before the People's Court. However, in February 2002 their case was transferred to the Criminal Prosecution Service, which forms part of the ordinary criminal justice system. In May 2002 the foreign nationals raised allegations of torture before the prosecutor. On the basis of these allegations, the prosecutor referred the defendants for a medical examination. In June 2002 a Libyan doctor, appointed by the prosecutor, examined the defendants and, in all cases except for

Zdravko Marinov Georgiev, found traces on their bodies which he argued resulted from “physical coercion” or “beatings” or both. This evidence was subsequently refuted in court by another Libyan doctor, called to give expert opinion, who argued that it would have been impossible to identify traces of torture after so much time had passed but did not examine the defendants himself.

On the basis of these allegations, eight members of the security forces and two others (a doctor and a translator) in their employ were charged in connection with the torture. They face trial alongside the foreign and Libyan health professionals before the same criminal court in Benghazi. Some of the officers alleged that they themselves had been tortured in order to confess that they inflicted torture on the defendants in the trial. At least one of them confessed to having tortured some of the defendants and named several of the others as having tortured them too. Another officer reportedly denied torturing them himself but said that he had witnessed others torturing them. During the February 2004 visit, Amnesty International delegates interviewed two of the police officers accused of having inflicted torture, who denied the allegations against them.

A context of impunity

In all cases known to Amnesty International, except for the so-called HIV trial, no investigations are known to have been carried out and suspected perpetrators have not been brought to justice in connection with alleged human rights violations, including torture or ill-treatment.

In addition to prohibiting torture and ill-treatment under any circumstances, Libya’s obligations under the ICCPR and the Convention against Torture include taking “*effective legislative, administrative, judicial or other measures to prevent acts of torture*” (Article 2(1) of the Convention against Torture); investigating thoroughly and impartially all complaints of torture or ill-treatment (Article 12 of the Convention against Torture; Article 2 of the ICCPR); prosecuting suspected perpetrators in accordance with international standards for fair trial and punishing those found guilty (Article 4(2) of the Convention against Torture); and compensating victims of torture or ill-treatment (Article 14 of the Convention against Torture).

Amnesty International calls on Libya to also take preventive measures. In this context, it urges Libya to ratify the Optional Protocol to the Convention against Torture (the Protocol), which allows independent international experts to conduct regular visits to places of detention within states parties, to assess the conditions of detention and the treatment of those detained and to make recommendations for improvements. The Protocol also requires states parties to set up national mechanisms

to conduct visits to places of detention and to cooperate with the international experts. The Protocol received overwhelming support at the UN General Assembly when it was adopted in December 2002, but Libya abstained in the vote.

Amnesty International recalls that the UN Committee against Torture recommended on 11 May 1999 that *'the law and the practices of [Libya] be brought in line with article 3 of the Convention'*⁴³. The Committee against Torture further recommended that Libya *'should send a clear message to all its law-enforcement personnel that torture is not permitted under any circumstances. In addition, those who committed the offence of torture should be subjected to a prompt and impartial investigation and rigorously prosecuted in accordance with the law'*⁴⁴.

Corporal punishment

Corporal punishments provided by law remain in force. Amnesty International has received information that corporal punishments, including the amputation of the right hand and the left foot, have been carried out in recent years.

According to Libyan media reports⁴⁵, four men convicted of robbery under Law 13 of 1425⁴⁶ (Case 10/2002) had their right hand and left leg amputated on 3 July 2002, after the punishment was endorsed by the Supreme Court. **Ahmad Muhammad Ahmad al-Sharif, Sayyid Muhammad Ahmad, Dahmu Muhammad Abu Bakr al-Sharif and Barkah Sidi Jira Barkah** had been accused by the Public Prosecution of seizing by force some vehicles, telecommunications sets, food supplies and a quantity of fuel belonging to a Chinese company for oil exploration. The amputation was carried out after the Supreme Court had ruled on 25 June 2002 that the sentences were endorsed.

A number of laws passed since the 1970s have introduced corporal punishment for various crimes. They include Law 70 of 1973 which provides flogging as a punishment for those convicted of the crime of *zina* - adultery or fornication - (Articles 3 and 4); Law 52 of 1974 on *had al-qadhaf* - defamation - which also provides for flogging (see Article 4). Law 13 of 1425 on theft and *haraba* - highway robbery or rebellion - states that the accused convicted of theft is to be punished by having his right hand amputated (Article 2); for the crime of *haraba*, the death penalty

⁴³ Conclusions and recommendations of the Committee against Torture: Libyan Arab Jamahiriya, 11 May 1999, para.11

⁴⁴ Conclusions and recommendations of the Committee against Torture: Libyan Arab Jamahiriya, 11 May 1999, para.13

⁴⁵ *Libya: Limbs of four people amputated*, BBC (Text of report by Libyan radio), 4 July 2002.

⁴⁶ In Libya, three different calendars are used: the Gregorian calendar; the *Hijra* calendar; and another beginning in the year of the death of the Prophet Muhammad.

is prescribed if there has been a killing, or cross amputation (right hand and left foot) (Article 5).

Amnesty International is further concerned that corporal punishments are provided in several articles of the draft Penal Code, which is currently being discussed.

- Article 317 imposes the punishment of 100 lashes on anyone convicted of adultery. In the case of incestuous adultery, the punishment is increased to life imprisonment and flogging.
- Article 318, relating to the crime of rape, states that the punishment is increased to execution by stoning in the case of incestuous rape.
- Article 345 imposes 80 lashes on anyone who falsely accuses another in any way of adultery.
- Article 350 imposes the punishment of amputation of the right hand for theft.
- Article 352 imposes the death penalty for armed robbery that results in death (regardless of whether or not theft occurred), and amputation of the right hand and left foot if the robbery resulted in theft but no death.

Amnesty International unconditionally opposes the judicial punishments of flogging and amputation, which inflict pain and suffering amounting to torture or cruel, inhuman or degrading punishment⁴⁷. As a state party to the Convention against Torture, Libya is obliged not to impose any such punishments. In its Concluding Observations in 1999, the Committee against Torture stated that corporal punishment “*should be abolished by law*”⁴⁸.

2.4 Special courts and the independence of the judiciary

The People's Court

The principle of the independence of the judiciary is enshrined in the 1991 Law on the Promotion of Freedom, which states that “*Judges are independent in their decisions and there is no authority above them [in their decision making] apart from the law*” (Article 31). According to Article 5 of Law 5 of 1988 establishing the People's Court, “*Members of the People's Court are independent and shall only be subject in their judgements to the law and their conscience*”.

⁴⁷ In 2003 the UN Special Rapporteur on torture argued that he cannot accept 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 - can be deemed lawful simply because the punishment has been authorized in a procedurally legitimate manner. See Appendix 15, *Corporal punishment: Observations of the Special Rapporteur on torture in combating torture - a manual for action* (AI Index: ACT 40/001/2003, June 2003).

⁴⁸ Concluding Observations of the Committee against Torture: Libyan Arab Jamahiriya. 11/05/99. A/54/44, para.189.

However, Amnesty International is concerned that the People's Court continues to operate and that the legal proceedings before it fail to comply with minimum standards for fair trial, as guaranteed by Article 14 of the ICCPR. Many lawyers in Libya have already been refusing to practise before the People's Court in protest at the lack of adequate procedural guarantees for a fair trial. In February 2004 Amnesty International delegates were informed that the People's Court system was under review before the Basic People's Congresses and that there were recommendations for it to be abolished. 'Abd al-Rahman Shalgam, Secretary of the General People's Committee for Foreign Liaison and International Cooperation, told Amnesty International that he personally agreed that the People's Court should be abolished. Moreover, while Colonel al-Gaddafi told Amnesty International that he thought the People's Court was a good idea in theory, he acknowledged that in reality it may not be. He expressed his willingness to review the system based on Amnesty International's analysis. Amnesty International supports calls within the country advocating the abolition of the People's Court.

In Libya, several judicial systems operate side by side. One is the ordinary criminal system, containing a prosecution service headed by the Public Prosecutor and criminal courts of first instance and appeal, presided over by a Supreme Court. Another relates to the People's Court⁴⁹. The current system of the People's Court, which has been in operation since the promulgation of Law 5 of 1988, contains its own prosecution service, the Popular Prosecution Office, in addition to courts of first instance and appeal. Within this second system, the Popular Prosecution Office has extensive powers, operating as both an examining magistrate and a prosecutor, as well as having the prerogatives of an arraignment chamber⁵⁰.

For over 15 years, the Libyan authorities have defended the system of the People's Court. In May 1988 the Libyan authorities wrote to Amnesty International, arguing that the People's Court was primarily established to promote human rights and enhance freedom. They also stated that the People's Court specializes in criminal offences, which include political and economic offences; complaints by citizens against the state, such as grievances relating to property confiscation and calls for compensation; and appeals against decisions taken by the Basic People's Congresses. In 1988 a new law was passed, redefining the role of the People's Court⁵¹.

⁴⁹ In February 2004, Amnesty International also raised the issue of other special courts with the Libyan authorities, namely the Permanent Revolutionary Court and the Military Court. However, Amnesty International did not obtain detailed information about their functioning.

⁵⁰ Article 19 of Law 5 of 1988.

⁵¹ Law 5 of 1988 establishing the People's Court

More recently, in a statement⁵² commenting on Amnesty International Report 2002, the General People's Committee for Justice and Public Security reiterated that the People's Court is an "independent body" which "maintains all legal safeguards with regard to levels of litigation and the rights of the defence"⁵³. In February 2004 Muhammad al-Misrati, then Secretary of the General People's Committee for Justice and Public Security, argued that the People's Court is a specialized and not an exceptional court as it primarily examines cases of "terrorism", torture, human rights and administrative corruption. He further argued that it is designed to expedite justice because its procedures do not suffer from the same prolonged delays that plague ordinary courts.

In February 2004, senior members of the judiciary briefed Amnesty International delegates on the composition and workings of the People's Court. According to them, the People's Court is primarily composed of legally-trained judges, although the statute does not specify that as a condition. They explained further that the court focuses on administrative and civil offences as well as criminal and political cases. It is bound by the Code of Criminal Procedure, which also applies in ordinary courts. They added that it provides for the right of defence, has a three-judge chamber at first instance and a five-judge chamber at appeal. Members of the judiciary also argued that the existence of exceptional courts should not deprive ordinary courts from their jurisdiction over the same range of offences.

A special court trying political cases

Amnesty International has brought to the attention of the Libyan authorities the cases of scores of people brought before this court for their real or alleged political activities, particularly under Law 71 of 1972 prohibiting party activities. Amnesty International has documented numerous cases in which the People's Court has handed down harsh sentences, including the death penalty and life imprisonment, primarily on the basis of confessions allegedly extracted under torture. In other cases, confessions of co-defendants that are neither corroborated by independent evidence nor by the admittance of the defendant in question have been used to secure a guilty verdict. The example of Ahmed 'Ali Abd al-Hamid al-Khafifi (page 30) is a case in point.

The cases brought before the People's Court have confirmed its role as a special court trying political cases. The UN Human Rights Committee has clarified

⁵² Sent to Amnesty International on 29 October 2002

⁵³ During their February 2004 visit, Amnesty International delegates repeatedly requested a meeting with the President of the People's Court, who presides over the whole system, including the Popular Prosecution, but were not granted such a meeting. In addition, delegates requested numerous court documents from the People's Court but these were not made available.

that while the ICCPR does not prohibit trials of civilians in special courts, "*the trying of civilians by such courts should be very exceptional and take place under conditions which genuinely afford the full guarantees stipulated in Article 14 [of the ICCPR]*"⁵⁴. Article 5 of the UN Basic Principles on the Independence of the Judiciary guarantees the right "*to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to ordinary courts or judicial tribunals.*"

Amnesty International believes that there is no justification for maintaining the special People's Court system, which has operated as an instrument of political repression. It should be abolished and its jurisdiction transferred to the ordinary judicial system.

Violations of the rights of the accused

In trials before the People's Court documented by Amnesty International, international standards for fair trial, such as Article 14 of the ICCPR, are flagrantly violated. The rights of the accused are routinely violated, even in instances where these rights are guaranteed in Libyan law. These include the rights of detainees to access to the outside world, the right to appoint a lawyer of their own choosing, the right to trial within a reasonable time, the right to a public hearing, the right to be tried without undue delay and the right to a full review before a higher tribunal.

Amnesty International is further concerned by the role of the Popular Prosecution Office and the role of the People's Court in overseeing its actions. Pre-trial procedures, including detention, are overseen by the Popular Prosecution Office, which falls outside the jurisdiction of the Public Prosecutor and do not appear to fall under any judicial supervision. In the cases documented by Amnesty International, the People's Court has not questioned the lawfulness of incommunicado detention. To Amnesty International's knowledge, the court has neither ordered investigations into allegations of torture nor questioned the lawfulness of a confession said to have been extracted under torture. Inadequate legal representation has made it almost impossible for defendants to challenge the lawfulness of their pre-trial detention or to seek remedies for procedural irregularities.

Amnesty International is concerned that, with the exception of death penalty cases, appeals procedures fall entirely within the People's Court system and outside the jurisdiction of the Supreme Court. Law 7 of 1426 amending Law 5 of 1988 restricted the right to appeal (Article 16). Prior to this amendment, defendants had the right to two stages of review, one before a People's Court of Appeal and a second

⁵⁴ General Comment 13 of the Human Rights Committee: Equality before the courts and the right to a fair and public hearing by an independent court established by law (Article 14), 13 April 1984.

before the Supreme Court. Currently, only death penalty cases are subject to a further stage of review before the Supreme Court. Such a measure sustains the status of the People's Court as a special court with its own prosecution and appellate services. In addition, it lacks accountability to a higher judicial authority at all stages from arrest, interrogation and pre-trial detention, which may last for several years, to the verdict.

Violations of the right to trial without undue delay

One of the fundamental standards for a fair trial is the right to be tried without undue delay. The UN Human Rights Committee, commenting on Article 14(3)(c) of the ICCPR, which guarantees everyone the right to be tried without undue delay, stated that: *"This guarantee relates not only to the time by which a trial should commence, but also the time by which it should end and judgement be rendered; all stages must take place 'without undue delay'. To make this right effective, a procedure must be available in order to ensure that the trial will proceed 'without undue delay', both in first instance and on appeal."*⁵⁵

In February 2004 Muhammad al-Misrati, then Secretary of the General People's Committee for Justice and Public Security, told Amnesty International that due to a backlog of cases more than 50 per cent of the prisoners in Libya are pre-trial detainees. The practice of prolonged pre-trial detention appears to be particularly widespread in political cases. There has been a long pattern in Libya of detaining political prisoners, in some cases for several years, without bringing them before a court of law. Until recently, political detainees were often held for many years without charge or trial.

The following cases illustrate the fate of detainees who have been denied the right to a trial without undue delay.

Detained for almost seven years without being presented before a judicial authority
Sudanese-born Jalal al-Din 'Uthman Bashir, born in 1969, was studying economics at Qar Younes University in Benghazi when he was summoned by the Internal Security Agency in connection with violent clashes in 1995 between armed Islamist groups and the authorities. He was arrested on 25 September 1995 and held initially by the Internal Security Agency. 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 the air conditioning in order to force him to "confess". He

⁵⁵ *ibid*

said that, as a result of the torture, he was transferred to hospital on 7 October 1995 where he stayed for nearly three weeks.

Jalal al-Din 'Uthman Bashir further 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 Libyan Islamic Fighting Group. He denies any connection with the accusations against him.

Detained more than four years without access to the judiciary

Ahmed Muhammad al-Taleb, a 39-year-old school inspector from Benghazi, was arrested in the early hours of 14 July 1998 when armed officers of the Internal Security Agency stormed his house without a warrant. He told Amnesty International that he was blindfolded, handcuffed and put in a car and taken to an unknown location pending investigation. He said that, during the investigation which lasted approximately 10 days, he was accused of belonging to the Islamic Alliance Movement and forced to divulge the names of people allegedly connected to this group. Ahmed Muhammad al-Taleb claimed that there was no evidence to substantiate the allegations made by the security forces and told Amnesty International delegates in February 2004: "*I personally don't know the Islamic Alliance Movement*".



Ahmed Muhammad al-Taleb, a prisoner of conscience held in Abu Salim Prison in Tripoli. ©AI, February 2004

After periods of detention in al-Hawari, al-'Uruba and 'Ayn Zara prisons, he was transferred on 5 December 1998 to Abu Salim Prison. For approximately two years his family did not know where he was. His mother, brother and sister visited him for the first time on 26 January 2002 after hearing only via 'unofficial' channels where he was held.

For more than four years, Ahmed Muhammad al-Taleb reportedly had no access to the judiciary, and was not even able to have legal counsel. He said that he was finally brought in mid-August 2002 before the Popular Prosecution Office where he discovered that dates in the file had been falsified: the file indicated that the arrest

and investigation took place in 2002 instead of 1998. When he protested, the Popular Prosecutor reportedly replied that he should not worry. Ahmed Muhammad al-Taleb said that, “*unfortunately, in Libya, people are not used to fair legal proceedings as there is no culture of the law nor of freedom*”.

According to Ahmed Muhammad al-Taleb, his trial began before the People’s Court in the Police Academy in Tripoli in October 2002⁵⁶. His family were reportedly not allowed in the courtroom and he was defended by a court-appointed lawyer. On 16 January 2003, in a hearing reportedly held *in camera*, he was sentenced to life imprisonment on charges of belonging to a prohibited organization under Law 71 of 1972. In the same case, others received sentences of between 10 years’ and life imprisonment. Following the first instance verdict, he lodged an appeal, which had not started by February 2004.

In recent years, in addition to the waves of releases of long-term political prisoners, the Libyan authorities have increasingly begun to put detainees on trial. The recent trials of alleged members of the Muslim Brothers, of the Islamic Alliance Movement, of the Libyan Islamic Fighting Group and others arrested years ago have been a welcome, though overdue, development. However, there have been further delays in the appeals process.

In the case of the 152 alleged members of the Muslim Brotherhood arrested in 1998, hearings in the appeal trial have been repeatedly adjourned following the first instance verdict in February 2002. After the appeal trial began before the People’s Court in the summer of 2002, hearings have taken place approximately every three months, and in many instances were reportedly adjourned without any discussion of the substance of the case.

Violations of the right to a lawyer of one’s own choosing

While the right to have a lawyer is guaranteed by Libyan law⁵⁷, detainees are not advised of their right to legal representation during the period of interrogation. This was confirmed to Amnesty International delegates during a meeting with the then Public Prosecutor in February 2004, who clearly stated that the presence of a lawyer during the period of investigation was not prevented but that he did not see this as fundamentally important.

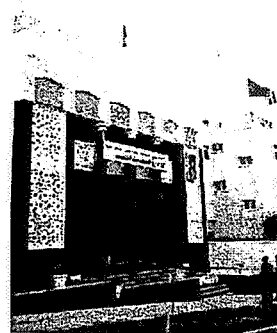
⁵⁶ Case 333/2002

⁵⁷ Article 106 of the Criminal Procedure Code.

In many cases heard before the People's Court, defendants have not been allowed to choose their own lawyer. According to Article 13⁵⁸ of Law 5 of 1988 establishing the People's Court, the Popular Lawyers' Office is the institution which provides legal services for those standing trial before the People's Court. Neither this article nor others within Law 5 of 1988 explicitly give defendants the right to choose their own lawyer outside the Popular Lawyers' Office.

One lawyer described to Amnesty International delegates the way in which he was prevented from defending his client before the People's Court in Tripoli. At the end of 2000, following racist attacks against sub-Saharan Africans in Libya, a number of Libyans and sub-Saharan Africans were tried in connection with the events. This lawyer was appointed to defend a young Libyan accused of attacking a group of sub-Saharan Africans. When the lawyer went to the Popular Prosecution Office to look at the case file, he was refused access to the file and later prevented from entering the courtroom.

Once in court the accused is automatically appointed a lawyer, even if he declines the offer. Lawyers are usually appointed during the first hearing of the trial. The court appoints lawyers from the state Popular Lawyers' Office which, as explained to Amnesty International by the Director of its Tripoli Branch and his staff of lawyers, provides legal aid to those in financial need. While Amnesty International welcomes the opportunity offered to defendants in financial need to use court-appointed lawyers before the People's Court, there are many instances where court-appointed lawyers are imposed on defendants seeking to use lawyers of their own choice.



Popular Lawyers' Office in Tripoli. ©AI, February 2004

Several of the lawyers whom Amnesty International delegates met in February 2004 explained that in the vast majority of cases there is no time given to adequately review the case since they only receive the case file in the first trial session. With regard to cases featuring large numbers of defendants, it is not uncommon for the accused not to know who his or her lawyer is, particularly since each lawyer often represents dozens of clients. All of the individuals interviewed by Amnesty International said that their court-appointed Popular Lawyers had never met or questioned them about the charges brought against them. In short, there is usually very little contact, if any, between the lawyer and his or her client.

⁵⁸ As amended in 1427. It appears that in the original law of 1988 defendants enjoyed higher levels of guarantees of the right to legal counsel: Article 13 stated that the court would only appoint a lawyer from the Popular Lawyers' Office if the accused had not already chosen someone for his defence.

As a result of the shortcomings of trials before the People's Court, defendants often have little faith in a fair outcome of their trial. As **Ramadan Mas'ud Shagloul**⁵⁹, sentenced by the People's Court to life imprisonment in January 2003 in connection with his peaceful activities relating to the Islamic Alliance Movement, told Amnesty International: "*There is no point in having a private lawyer [of my own choosing]. It is just a waste of money because the verdict is already decided in advance*"⁶⁰.

2.5 Application of the death penalty

No concrete steps toward the proclaimed objective of abolition

The abolition of the death penalty has been for the past 15 years a proclaimed objective of Libya. 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". In February 2004 Colonel al-Gaddafi confirmed to Amnesty International his continued opposition to the death penalty. He said that he had called for its abolition since first asking the General People's Congress to do so in 1988, but Libya's decision-making bodies did not heed his appeals. 'Abd al-Rahman Shalgam, Secretary of the General People's Committee for Foreign Liaison and International Cooperation, also stated to Amnesty International his personal opposition to the death penalty.

Amnesty International regrets that since 1988, no concrete steps seem to have been taken towards the abolition of the death penalty. The organization remains extremely concerned that capital punishment continues to be prescribed for a large number of offences, including for activities which merely amount to the peaceful exercise of the rights to freedom of expression and association, and that death sentences continue to be handed down and implemented. The authorities have clearly failed to reduce the scope of the death penalty to the "most serious crimes". Amnesty International is further concerned that the draft Penal Code contains 26 articles prescribing the death penalty. It maintains the death penalty for activities merely amounting to freedom of expression and association⁶¹ and for a wide range of crimes,

⁵⁹ For case details, see section entitled *Prisoners of conscience*

⁶⁰ Prisoners sentenced by the People's Court also reportedly suffer from different treatment, such as not being eligible for release on grounds of good behaviour after having completed three-quarters of their sentence; not being allowed to work while in prison; and not being allowed extended family visits.

⁶¹ For further details, see section above, entitled *Criminalization of rights to freedom of expression and association*

including *hudud*⁶² crimes which are all punishable by death, among other punishments.

Amnesty International also regrets that Libya did not support the resolution on "The question of the death penalty" at the 59th session of the UN Commission on Human Rights in 2003, which called for the abolition of capital punishment and a moratorium on executions. On the contrary, Libya not only voted against the resolution but also supported the statement of dissociation of the Organization of the Islamic Conference, read out by Saudi Arabia, outlining the reasons for opposition to the resolution.

Executions continue to be carried out

Libyan law provides certain safeguards for the application of the death penalty. All death sentences, including those imposed by the People's Court, have to be reviewed by the Supreme Court, which can overturn the ruling in favour of the accused. When a death sentence is confirmed by the Supreme Court, it cannot be implemented without the consent of the Supreme Council of Judicial Bodies⁶³. However, death sentences have been pronounced after proceedings which violated international standards for fair trial, particularly in cases before the People's Court.

Amnesty International has received information that several prisoners under sentence of death had their sentence commuted. However, prisoners met by Amnesty International testified about the trauma of being brought to the scene of execution and being informed at the last minute that the execution would not be carried out.

During their February 2004 visit, Amnesty International delegates met Libyan nationals Ahmed Muhammad Kheir Farag al-Zalawi, 'Abdel Salam 'Abdel Salam Jum'a al-Gamaty and Ahmed 'Abdel Salam al-'Alem al-Sherif. In a ruling issued on 30 October 2001⁶⁴, the Supreme Court in Tripoli confirmed death sentences against the three men⁶⁵. Following their arrest in 2000 along with several others, they were accused of having used the *Ahli Benghazi* Football Club as a cover to form a clandestine and illegal group based on political ideas opposing the principles of the al-Fateh Revolution⁶⁶. The men told Amnesty International that they had been tortured in order to make them "confess".

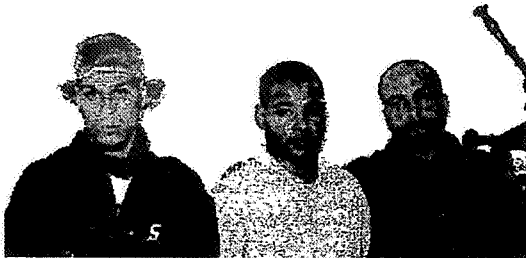
⁶² Specific penalties sanctioned by *shari'a*, Islamic law.

⁶³ Article 131 of Law 51 of 1976 on the organization of the judiciary, amended by Law 10 of 1425

⁶⁴ Case 48/1551

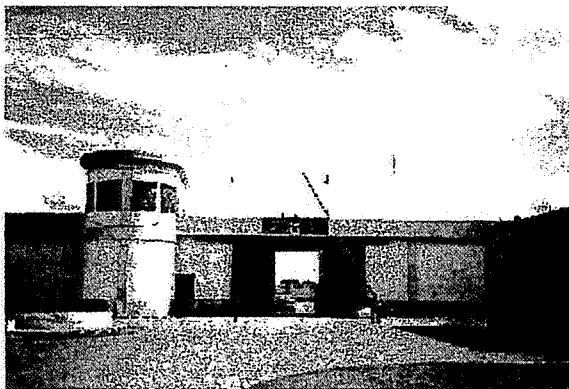
⁶⁵ Case 353/2000

⁶⁶ After these events took place, an article was added to the Penal Code by Law 15 of 2002 providing for punishment including the death penalty for taking part in riots or demonstrations during or after a sporting event (Article 198 bis of the Penal Code).



'Abdel Salam 'Abdel Salam Jum'a al-Gamaty, Ahmed Muhammad Kheir Farag al-Zalawi and Ahmed 'Abdel Salam al-'Alem al-Sherif (from left to right). Death sentences against the three men were apparently commuted but only after the men suffered the ordeal of being taken for execution. At the time of writing, they were serving life imprisonment in al-Kuweifiya Prison in Benghazi. ©AI, February 2004

carry out the execution. The prisoners understood that their death sentences had been commuted but had no further information regarding the exact procedure or when this happened. Ahmed Muhammad Kheir Farag al-Zalawi, 'Abdel Salam 'Abdel Salam Jum'a al-Gamaty and Ahmed 'Abdel Salam al-'Alem al-Sherif continued to serve a prison sentence in al-Kuweifiya prison in Benghazi.



Entrance to al-Kuweifiya Prison in Benghazi. ©AI, February 2004

In another case, a Nigerian national, Nathaniel Notibo, and three Ghanaian nationals, were convicted of murder on 21 January 2003 and sentenced to death. Their sentences were reportedly commuted, just days after their execution was due to have been implemented.

In line with the worldwide trend towards the abolition of the death penalty, it is imperative that Libya does not delay further in taking concrete measures to realize its long-standing aim to abolish the death penalty. The UN Commission on Human Rights calls on all states that still maintain the death penalty *"to establish a moratorium on executions, with a view to completely abolishing the death penalty"*⁶⁷. Amnesty International delegates called on Colonel al-Gaddafi in February 2004 to consider calling for a moratorium on death sentences, and he replied that it was a

⁶⁷ UN Commission on Human Rights Resolution 2003/67 adopted on 24 April 2003

good idea. However, no calls for a moratorium seem to have been made during the latest session of the General People's Congress, convened in March 2004, or since.

In the meantime, Amnesty International continues to receive unconfirmed reports that executions of people sentenced to death continue to be carried out. In the memorandum addressed to the authorities in February 2004, Amnesty International asked for detailed information on the number of death sentences passed and executions carried out in recent years, but received no response.

2.6 Collective punishment

International and regional human rights treaties, by which Libya is bound, stipulate that punishment for an offence may be imposed only on the offender and that the imposition of collective punishment is prohibited. However, Amnesty International is concerned that forms of "collective punishment" are sanctioned and continue to take place in Libya.

Provisions for collective punishment fall under what is known as the "Charter of Honour", a notion inspired by tribal customary law and institutionalized by the political system. Its application appears to fall outside the ordinary judicial system. UN treaty bodies have expressed deep concern regarding this law. In 1998 the UN Human Rights Committee expressed *"deep concern that the law enacted in 1997 known as the 'Charter of Honour', which authorizes collective punishment for those found guilty of collective crimes (including 'obstructing the people's authority...', 'damaging public and private institutions'), violates several articles of the Covenant, including articles 7, 9 and 16"*⁶⁸. In 2003 the UN Committee on the Rights of the Child stated that *"the Collective Punishment Law, which may affect children, violates fundamental human rights principles"*⁶⁹.

The transformation of a local tradition into a repressive political tool

Many Libyan tribes have, over decades, developed a "Charter of Honour", an unwritten customary law which regulates the behaviour of members of the tribe in many spheres of life, including at times of marriage and funerals, and is seen to act as a form of protection to the tribe as a whole.

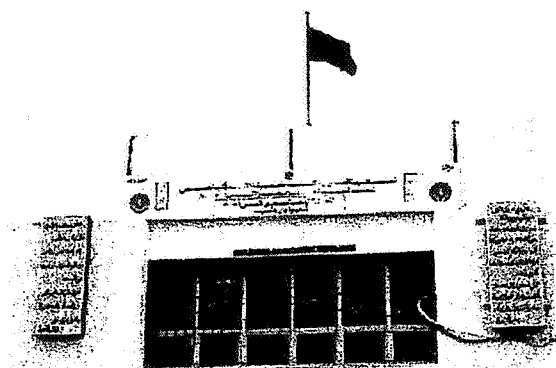
In March 1997, during its annual session, the General People's Congress passed a resolution, also known as a "Charter of Honour", which was subsequently accompanied by Resolution 8 of 1428 relating to its application. These texts, while

⁶⁸ Concluding observation of the Human Rights Committee: Libyan Arab Jamahiriya, CCPR/C/79/Add.101, 6 November 1998, para.12

⁶⁹ Concluding observation of the UN Committee on the Rights of the Child: Libyan Arab Jamahiriya, CRC/C/15/Add.209, 4 July 2003, para.45(c)

not as extensive as the tribal charters, do include provisions for what are termed "crimes", which are defined in very broad terms. Those deemed criminals are "[t]hose who carry out or encourage or give shelter to or defend any individual or group phenomenon or activity or behaviour, which can be described as treachery or heresy or corruption in any form...".

This "Charter of Honour" establishes the notion of collective responsibility for the actions of others at three main levels: the family; society; and at an official level. Further, the text of the Charter allows for the application of collective punishment to all members of a given group, whether small or large, believed to be linked to the "crime". As punishment, the Charter prescribes in broad terms deprivation of public services and publicly-funded projects. It appears that this can mean being deprived of the right to participate in the Basic People's Congress and of the right to benefit from public services, such as electricity, water and telephone, as well as access to food supplies, social benefits or basic administrative services.



Local branch of the People's Committee for Justice and Public Security in Bani Walid, where Amnesty International delegates met local officials. The right hand plaque gives a definition of "heresy" (*zandaqa*), signed in the name of the Leader of the Revolution. It says, "*hostile intelligence work prepared in the framework of a strategy against religion and the nation*". ©AI, February 2004

During a visit on 26 February 2004 by Amnesty International delegates to the small town of Bani Walid, south of Tripoli, a local clan leader and local officials described the operation of a system, parallel to the official judicial system, in which clan leaders decide the innocence or guilt of an accused and allocate punishment for those found guilty of crimes such as murder and theft, as well as for "moral crimes", namely committing treacherous acts against the state or society. Therefore, those accused can face two punishments, one from the authorities, if legal proceedings are instigated, and another from the tribe.

The local clan leader went on to define "treacherous acts" as criticism of the state or society outside of the Basic People's Congresses and appropriate tribal channels. In his opinion, any criticism expressed outside the official structures necessarily implies personal ambitions to acquire political power. The crime of

treachery is considered the most serious crime, resulting not only in the punishment of the individual who is alleged to have committed the act but also of his family. He told Amnesty International delegates that in such cases the appropriate punishment would be the expulsion of the immediate family from the area and removal of all traces of them, namely the demolition of their home.

While in Bani Walid, Amnesty International delegates met “offenders” and their relatives, who had been subjected to forms of collective punishment. Amnesty International was told that on 15 October 2002 six houses belonging to members of the **al-Jadik clan** were demolished in Bani Walid. Since 1993 members of the al-Jadik clan have reportedly been intermittently subjected to varying forms of punishment, including temporary suspension of basic services such as telephone and electricity, temporary eviction from their homes, not receiving a salary for prolonged periods, not being allowed to study or to work and being asked to leave the area.



A house in Bani Walid demolished as a result of the policy of collective punishment ©AI, February 2004

Major Khalil Salem Muhammad al-Jadik was reportedly among dozens of people, including army officers, who were arrested and held in prolonged incommunicado detention in unknown locations in connection with an attempted military coup, which took place in the city of Misrata in October 1993. Amnesty International met residents of Bani Walid who understood that they were being punished for Major Khalil Salem Muhammad al-Jadik’s alleged actions and his being cast as a “traitor”. In late 1999 Major Khalil Salem Muhammad al-Jadik’s house was apparently demolished⁷⁰.

⁷⁰ Major Khalil Salem Muhammad al-Jadik appeared, with three others, on Libyan television in early March 1994. While being interrogated at length on camera, they confessed to being American “spies” and to having been recruited as US intelligence agents by members of the National Front for the Salvation of Libya. It was alleged they had been tortured into making these confessions. Charges against them included spying, treason, “instigation of violence, use of armed forces channels to achieve political and social goals” and “cooperation with the enemy to harm the interests of the country”, all of which are punishable by death.

They were tried by a lower military court in 1995, which reportedly handed down sentences of up to life imprisonment on at least 12 people. However, the Libyan authorities were said to have ordered a retrial on the grounds that the initial sentences were too lenient. The men were retried by a military court at the end of December 1995 and 12 were sentenced to death.

These measures can also be accompanied by others which fall within the official state structure, including the practice of arbitrary arrest and detention of family members of "traitors". In this case, **Sawf al-Jadik**, brother of Major Khalil Salem Muhammad al-Jadik, was reportedly detained for almost five years without charge or trial between 16 August 1995 and 13 July 2000. He believes that this was also connected to the alleged activities of his brother.

On 10 September 2002 **'Abd al-Wahab Sawf al-Jadik** and **Hussein Sawf al-Jadik**, nephews of Major Khalil Salem Muhammad al-Jadik, were arrested at a petrol station in Bani Walid. While detained, they were allegedly beaten with thick cables and beaten on the soles of the feet (*falaqa*). They were apparently given a blank piece of paper and asked to write their "confessions", which they reportedly related to the case of their uncle, Major Khalil Salem Muhammad al-Jadik. **'Abd al-Wahab Sawf al-Jadik** was released on 13 September 2002 but Hussein Sawf al-Jadik was apparently found hanging in the toilet in their cell. No investigation into the causes of his death is known to have been carried out and no death certificate has been provided to the family.



'Abd al-Wahab Sawf al-Jadik (left)
and his father **Sawf al-Jadik**,
members of the al-Jadik clan
subjected to measures of collective
punishment. ©AI, February 2004

Amnesty International raised its concern about the treatment of members of the al-Jadik clan with the then Public Prosecutor, **'Umar 'Ali Shalbak**, who said that he was not aware of the case but agreed to look into the matter and to open an investigation if he deemed that a crime may have taken place. At the time of writing, no such investigation is known to have been opened.

On 2 January 1997 Libyan television stated that eight men - six senior army officers and two civilians - were executed after the Supreme Military Court upheld their death sentences. The court sentenced at least five men to prison terms and acquitted at least five others. The six army officers executed included Major Khalil Salem Muhammad al-Jadik. (For further details, please refer to: *Libya: Gross human rights violations amid secrecy and isolation* [AI Index: MDE 19/08/97]) Major Khalil Salem Muhammad al-Jadik's family was reportedly not directly informed of his execution.

"If you try to affect our traditions and our customary law, you will cause many deaths amongst our people, you should realize that." These were the words said to the Amnesty International delegates in Bani Walid by the local clan leader, as he explained the house demolition of another former resident, Abdullah Muhammad Mas'ud Zubeida⁷¹. While Amnesty International takes no position on tribal systems *per se*, it calls on the Libyan authorities to ensure that "Charters of Honour" are not used as a pretext to violate basic human rights.

3. The legacy of human rights violations

The legacy of human rights violations committed in the past continues to cast a long shadow on Libya's human rights record. They have taken place in a context of near-total lack of accountability over decades, which has perpetuated the suffering of victims and their relatives and continues to do so. The toll of this impunity has been the repetition of human rights violations and an undermining of the rule of law.

The Libyan authorities have not begun to address the gross human rights violations, to which hundreds of Libyan nationals have fallen victim in the past. These have included long-standing cases of political imprisonment and "disappearance". In addition, dozens of Libyan dissidents inside and outside the country have been killed over the past decades in circumstances suggesting that they were extrajudicially executed by members of the security forces or by agents working on behalf of the Libyan authorities⁷². This formed part of a deliberate policy, known as "physical liquidation", used against political opponents, which appears to have been endorsed at the highest levels, including by Colonel al-Gaddafi himself.

Impunity denies truth and justice and undermines confidence in the justice system. Lasting human rights protection will not be achieved without proper investigations leading to fair trials in which perpetrators of human rights violations are brought to justice. By such measures, the authorities would send a clear message that human rights violations will not be tolerated and that those who commit such crimes will be held accountable before a court of law. Victims have the right to see justice done, to have the truth about what happened to them acknowledged and to receive compensation and other forms of reparations.

⁷¹ In its report, entitled *Libya: Gross human rights violations amid secrecy and isolation* (AI Index: MDE 19/08/97, June 1997), Amnesty International raised the case of 'Abdallah Muhammad Mas'ud Zubeida, an alleged member of the banned *Hizb al-Tahrir al-Islami*, the Islamic Liberation Party, who "disappeared" after his reported arrest in 1982.

⁷² While not detailed in this report, such cases have been previously raised by Amnesty International. For further information, see *Libya: Gross human rights violations amid secrecy and isolation* (AI Index: MDE 19/08/97, June 1997).

3.1 Deaths in custody

Inadequate information to families about the death of detained relatives

Around the time of the releases of political prisoners in 2001 and 2002, the authorities started to inform the families of other detainees that their relatives had died in custody. Initially, the authorities apparently posted lists of those who died on the walls of the prisons, including Abu Salim Prison in Tripoli. Soon afterwards, in what seems to have been the application of a new policy, officers of local branches of the Internal Security Agency either visited the families individually or summoned them to their office.

It appears that the families were usually informed orally of the death in custody of their relatives and that, at least initially, death certificates were not issued. When the families inquired about the date of the death, they reportedly either received no response or were told that the detainee had died some years earlier. Usually, no information was disclosed regarding the circumstances or cause of death. In at least three cases known to Amnesty International, when a death certificate was subsequently issued to the family it apparently stated simply that the prisoner had died of natural causes, without further explanation or any evidence. In all cases reported to Amnesty International, the authorities have refused to return the detainee's body to the family. The failure of the authorities to systematically deliver death certificates, to disclose fully the details of how the detainees died and to return their bodies has forced families to mourn the deceased without having formal evidence of the death or the circumstances surrounding it.

In May 2002 two such families were informed of the death of their relatives: **Ibrahim Khalifa Muhammad al-'Alwani**, born in 1970 in al-Bayda; and **Mustapha 'Ali al-Jihani**, born in 1933 in Benghazi.

On 25 May 2002 members of the Internal Security Agency came to the house of **Ibrahim Khalifa Muhammad al-'Alwani** to inform his family that he had died in prison. When his brothers inquired about the cause of the death and asked for the body, they reportedly received no answer. **Ibrahim Khalifa Muhammad al-'Alwani** was arrested on 28 July 1995, along with one of his brothers, **Faraj Khalifa Muhammad al-'Alwani**, by several armed men dressed in civilian clothes, whose faces were covered with scarves. They were taken to a detention centre of the Internal Security Agency in al-Bayda. His brother was released three days later. **Ibrahim Khalifa Muhammad al-'Alwani** was transferred with eight others to an unknown location. After his transfer, there was no news about him whatsoever until the authorities informed the family nearly seven years later that he had died in custody. A

death certificate was subsequently delivered to the family, which apparently stated that Ibrahim Khalifa Muhammad al-'Alwani died in Tripoli Hospital in 2001 without specifying the cause of death.

Mustapha 'Ali al-Jihani, a father of seven, was taken from his house on 19 June 1995 by members of the Internal Security Agency. When his family inquired about him at the office of the Internal Security Agency, they were informed that he had been transferred to Tripoli approximately seven days after his arrest. They heard that he was detained in Abu Salim Prison but received no official confirmation regarding his whereabouts. Despite all their efforts, Mustapha 'Ali al-Jihani's family had no contact with him from the time of his arrest and on 9 May 2002 officers of the Internal Security Agency informed the family that he had died. When they asked for the body and for a death certificate, officers of the Internal Security Agency reportedly refused, saying simply that Mustapha 'Ali al-Jihani had been ill and had died several years before. The Internal Security Agency gave the family permission to hold the mourning. A death certificate was subsequently delivered to the family.

Amnesty International does not have a comprehensive list of detainees who have died in custody and whose families have been informed of their deaths. In February 2004 the Geneva-based organization, Human Rights Solidarity, issued a list of 96 such prisoners. The majority were prisoners who had been arrested in mass arrests in 1989 and 1995. It is believed that some prisoners may have died as a result of diseases, such as epidemics of tuberculosis. Poor prison conditions, which were at their worst in the mid-1990s, may have contributed to these deaths. However, it is also feared that scores of others may have died in suspicious circumstances.

1996 events in Abu Salim Prison

It has been widely alleged that prisoners were killed in large numbers in June 1996 in Abu Salim Prison, located in a compound of the Military Police in the area of Abu Salim, a suburb of Tripoli. One of the reasons fuelling these allegations is that some families of prisoners who had received news from, or had been allowed visits to, their relatives up to 1996 were barred from visiting them and received no information at all since June 1996.

In February 2004, Colonel al-Gaddafi spoke to Amnesty International delegates about the events in Abu Salim Prison in 1996. This was the first time that the organization had heard official recognition that any such events took place. Colonel al-Gaddafi described the events as a tragedy. He said that one of the prison guards was handing out food to prisoners in their cells. When the guard reached the first cell, the prisoners attacked and killed him and stole his keys. Using his keys, they then opened all the other cells in the same block and the prisoners began to attack 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 placed back in their cells. Colonel al-Gaddafi went on to say that a number of prisoners also managed to escape during these events and some even reached Afghanistan.

Another version heard by Amnesty International and based on the testimony of former prisoners is that, at the end of June 1996, a riot took place in Abu Salim Prison, apparently sparked off by appalling prison conditions. At least one guard was allegedly taken hostage by several prisoners who managed to steal his keys. 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, threatening to kill whoever attempted to approach the gate.

Shortly afterwards, a senior security official 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 four prisoners. Their demands apparently included that the scores of prisoners in bad health be hospitalized; that adequate health care be provided to all prisoners; that they be allowed visits by their families; and that prisoners be given the right to a fair trial. Prisoners allegedly received guarantees that the first demand would be met. The negotiation continued until late in the night, after which prisoners returned to their cells.

Several prisoners have reported having heard 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. Estimated figures of the numbers of those killed range from tens to hundreds.

Immediately after the events of June 1996, Amnesty International wrote to Colonel al-Gaddafi urging that a prompt, thorough and impartial investigation be set up to establish the circumstances in which the prisoners were killed, and that the findings of the investigation and the names of those killed be made public⁷³. Since then, Amnesty International has repeatedly called for such an investigation but these calls have yielded no results. 'Abd al-Rahman Shalgam, Secretary of the General People's Committee for Foreign Liaison and International Cooperation, told Amnesty International that he would provide the organization with information regarding these

⁷³ *Libya: Political prisoners in Abu Salim Prison, Tripoli - Fear for safety / Deliberate killings / Medical neglect* (Urgent Action 188/96, AI Index: MDE 19/05/96, July 1996).

events but to date none had been received beyond what Colonel al-Gaddafi told Amnesty International's delegates.

Amid a general climate of fear in Libya to speak about human rights violations, the events of 1996 in Abu Salim Prison are of particular sensitivity. Many of those who had the courage to talk about the issue with Amnesty International delegates in February 2004 did so with great anxiety.

Abu Salim Prison's unique status was confirmed to Amnesty International by several Libyan officials in February 2004. 'Umar 'Ali Shalbak, the then Public Prosecutor, explained that Abu Salim Prison was supervised by the Internal Security Agency and did not fall under his jurisdiction. Major Belqassem al-Gargum, Director of the Prison Administration, also explained that it does not fall under his jurisdiction.

Urgent need for investigations into all deaths in custody

As Colonel al-Gaddafi told Amnesty International delegates in February 2004, "*families have a right to know*". In order for the truth to emerge, there is a pressing need for thorough, independent and impartial investigations to be carried out into all deaths in custody which occurred in the past, including those which took place at the time of the 1996 events in Abu Salim Prison.

Article 48 of Law 47 of 1975 on prisons requires that families be informed immediately when the life of relatives in prison is in danger in order that they can visit them. In cases of the death of a prisoner, the family must be informed and the body returned to them on request. The failure of the authorities to investigate all cases of death in custody is also a clear breach of their obligations under international human rights standards.

Amnesty International's calls for investigations into deaths in custody have recently been echoed within Libya. For example, the Human Rights Society of the Gaddafi International Foundation for Charitable Associations called for investigations into cases of several prisoners who had died in custody in unclear circumstances⁷⁴. In recent years, several Libyan human rights organizations operating outside the country - including Human Rights Solidarity, the Libyan League for Human Rights and Libya Watch for Human Rights⁷⁵ - have made similar calls.

In a statement reported by the daily Arabic newspaper *al-Hayat* on 5 September 2003, the Secretariat of the General People's Committee for Justice and Public Security acknowledged "*the death of some detainees in police stations*" as

⁷⁴ For details, see their five-page report, entitled *Report on Human Rights in Libya* (17/07/2003)

⁷⁵ For further details, see their websites: <http://www.lhrs.ch> and <http://www.libya-watch.org>. The Libyan League for Human Rights does not have a website but can be contacted at allibyah@yahoo.com
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“limited and known cases which are investigated by the public prosecution”. However, it appears that the statement does not refer to the cases of people who died in prison and which have remained uninvestigated.

The Special Rapporteur on Torture raised seven cases of deaths in custody in Libya in a letter dated 3 September 1998, which remains without response. The cases raised by the Special Rapporteur on Torture include that of **Muhammad al-Furtiya**, who was aged in his early seventies, and who died at the end of 1994 or early 1995 in Abu Salim Prison. He was said to have been suffering from high blood pressure and diabetes and had reportedly not been receiving adequate medical care in the prison. He had been held without charge or trial since 1989⁷⁶.

3.2 Political prisoners who have “disappeared” in custody

According to Amnesty International’s information, the fate of dozens of political prisoners, some imprisoned since the 1980s, remains unknown. They have effectively “disappeared”. Human Rights Solidarity has published a list of 258 names of prisoners whose relatives have had no contact with them since their detention. In some cases, prisoners have been detained apparently without charge or trial for more than a decade. In other cases, even people who were acquitted by the court are believed to still be detained although their families have had no news for years.

Since his arrest in 1989, there has been no news of **Belqassem al-Furtiya**, an electrical engineer born in 1965 in Misrata. He was allegedly part of an unauthorized group calling peacefully for reform in society. In 1989, his family house was surrounded by members of the Internal Security Agency and Belqassem al-Furtiya, his father Muhammad and his brother Ismail were arrested. For the first few days, they were detained together in the office of the Internal Security Agency in Misrata. Shortly afterwards, Muhammad and Ismail were transferred to Tripoli and lost contact with Belqassem. Muhammad al-Furtiya died in Abu Salim Prison in 1994⁷⁷. Ismail al-Furtiya was released in 1995 without having been charged or tried.

There has been no news of Belqassem al-Furtiya since his arrest in 1989 despite repeated attempts by his family to approach the authorities or to get information from released prisoners. Like many other mothers in her situation, Belqassem al-Furtiya’s mother, aged in her sixties, who already lost her husband in

⁷⁶ See *Libya: Gross human rights violations amid secrecy and isolation* (AI Index: MDE 19/08/97, June 1997)

⁷⁷ For details, see section above, entitled *Urgent need for investigations into all deaths in custody*

prison, lives with the daily reality of not knowing whether she will ever see her son again or whether she should mourn for him.

Ahmad 'Abd al-Qadir al-Thulthi, an engineer, born on 30 June 1955 in Benghazi, was taken for questioning on 18 April 1986. He remained held under investigation until 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 a 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.

Between 1981 and 1985, he had lived and studied in the United Kingdom (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 British police officer, Yvonne Fletcher, was shot dead.

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 visit him. Visits by the family then continued, with some interruptions, until June 1996. On 10 June 1996 his wife visited Ahmad 'Abd al-Qadir al-Thulthi for the last time.

Information from former prisoners indicates that he was last seen in Abu Salim Prison in June 1996. Other information has filtered out suggesting that until some three years ago, he was still alive. However, requests for information by his family to the authorities have gone unanswered. When he was arrested, his wife was pregnant. His now 17-year-old son, his elderly mother and the rest of the family have had no news about his fate and whereabouts for nearly eight years.

In February 2002 six men, including Ahmad 'Abd al-Qadir al-Thulthi⁷⁸, 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,

⁷⁸ The five others were: Mustapha Bin Daga, 'Ali al-Zirqani and 'Ali Kanunu, who had been released in 1988; and Yousef Lahawyal and Najm al-Din al-Naquzi.

who both later benefited from the wave of releases of political prisoners in September 2002.

During the February 2004 visit by Amnesty International, the Director of Abu Salim Prison, Milad Daman, told delegates that Ahmad 'Abd al-Qadir al-Thulthi was "alive and well" and being held in Benghazi. Requests by delegates to visit him there were not granted.

3.3 Developments in other "disappearances"

"If we had detained them, we would have the courage to say that we had done it", 'Abd al-Rahman Shalgam, Secretary of the General People's Committee for Foreign Liaison and International Cooperation told Amnesty International in February 2004 with reference to Libyan nationals who had "disappeared" abroad. He continued, "Why not investigate? We must reach the truth. Those who participated in these 'disappearances' are criminals".

Over the years, Amnesty International has worked to seek the truth in the cases of "disappearances" within and outside of Libya⁷⁹. With regard to all the people named below, families and other concerned parties have also sought clarification from the authorities about their fate and whereabouts but have received no concrete information. They continue to try to obtain answers from the authorities on whether their relatives are held in secret detention, have died in custody or were killed. However, no thorough, independent and impartial investigations by the Libyan authorities are known to have taken place into any of these "disappearances" and nor have those responsible been held to account.

Mansur al-Kikhiya, a human rights activist and the Secretary General of the National Libyan Alliance, an opposition group based abroad, "disappeared" in Cairo, Egypt in 1993. He had worked in the Libyan government for a number of years and resigned from office in 1980 in protest at the execution of political opponents by the Libyan authorities that year. Before his "disappearance", Mansur al-Kikhiya was attending the general conference of the Arab Organization for Human Rights in Cairo and was last seen on the evening of 10 December 1993 at the *al-Safir* Hotel.

⁷⁹ For examples, see *Libya: Gross human rights violations amid secrecy and isolation* (AI Index: MDE 19/08/97) and *Libya: Time to break the 10-year silence on Mansour al-Kikhiya* (AI Index MDE 19/021/2003, December 2003).



Mansur al-Kikhiya, a prominent Libyan diplomat and human rights activist, “disappeared” in Cairo, Egypt in 1993. His fate and whereabouts remain unknown. ©private



Mansur al-Kikhiya's wife, Baha al-Kikhiya, and two children. ©private

Baha al-Kikhiya, Mansur al-Kikhiya's wife, told Amnesty International: *“As a woman and as a mother, I have had to live with the suffering of not knowing where my husband is and whether he is still alive. My children and I just want to know the truth, whatever that may be”.*

In 2002 the Libyan authorities wrote to Amnesty International, stating that they had “conducted a series of investigations to determine [Mansur al-Kikhiya's] whereabouts” but that “[his] disappearance remains a mystery”. The letter further proffered the theory that he may have been “forcibly abducted as part of a settlement of conflicts among competing groups or as part of tactics orchestrated by foreign intelligence services”⁸⁰. However, in February 2004, ‘Abd al-Rahman Shalgam, Secretary of the General People's Committee for Foreign Liaison and International Cooperation, was not able to offer any details about investigations into this “disappearance”.

Jaballah Hamed Matar and **‘Ezzat Youssef al-Maqrif**, two prominent members of the Libyan opposition group, the National Front for the Salvation of Libya (NFSL), “disappeared” in Cairo in March 1990. Their whereabouts since that

⁸⁰ Response of the Libyan Arab Jamahiriya to the 2002 Annual Report of Amnesty International – December 2002

time have remained unknown, although unconfirmed reports have suggested that they were both handed over to the Libyan authorities.

Amnesty International has received information that at least until 1995 **Jaballah Hamed Matar** was detained in Libya. In 1995 he was reportedly seen by another prisoner in Abu Salim Prison in Tripoli. Amnesty International also received an audio taped message, said to be recorded in the early 1990s, in which Jaballah Matar confirmed that he was being held in a Libyan prison.

In 2001 Jaballah Hamed Matar's name reportedly 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, was sentenced to life imprisonment. At the time of writing, Mahmud Hamed Matar was said to be held in Abu Salim Prison. Amnesty International requested to meet him in February 2004 but he was not made available for interview.



Jaballah Hamed Matar and 'Ezzat Youssef al-Maqrif, two prominent members of the Libyan opposition group, the National Front for the Salvation of Libya (NFSL), "disappeared" in Cairo in March 1990. Their whereabouts since that time have remained unknown, although unconfirmed reports have suggested that they were both handed over to the Libyan authorities. ©private

Imam Musa al-Sadr, a prominent Iranian-born Shi'a cleric of Lebanese nationality, "disappeared", along with two others, **Sheikh Muhammad Ya'qub** and **'Abbas Badr al-Din**, during a visit to Libya in 1978. In 2002 the Libyan authorities wrote to Amnesty International, saying that there was evidence showing that Imam Musa al-Sadr "departed Libya to travel to a European country" and expressing readiness "to cooperate in finding the truth about his disappearance"⁸¹. The case of Imam Musa al-Sadr was also mentioned by Colonel al-Gaddafi in his annual address to the nation on 1 September 2002. According to media reports, Colonel al-Gaddafi

⁸¹ *Response of the Libyan Arab Jamahiriya to the 2002 Annual Report of Amnesty International – December 2002*

said Imam Musa al-Sadr had “disappeared” in Libya” and that it was imperative that a solution be found to clarify his fate.

Amnesty International suggested in February 2004 that the Libyan authorities consider forming joint investigation commissions with the countries where these people allegedly “disappeared” or to which they were nationals. Such commissions, which should be chaired by independent and impartial experts, would ensure that all the available information is shared and that further investigative steps are taken to clarify the fate of those individuals.

Amnesty International recalls that “disappearances” are a continuing crime. In other words, the violation continues as long as the fate and whereabouts of the victims have not been established. The UN Declaration on the Protection of All Persons from Enforced Disappearances, adopted by the UN General Assembly in 1992, states in Article 17, “*Acts constituting enforced disappearances shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified*”.⁸²

4. Conclusion and recommendations

The human rights situation in Libya remains a matter of grave concern to Amnesty International. Laws, institutions and practices violating human rights continue to operate and the truth about past events remains undisclosed. Perpetrators enjoy impunity and victims suffer, often in silence. With few but important exceptions, Libyans remain afraid to engage in human rights activities in the country.

Despite positive developments in recent years and expressions of readiness to engage seriously with the human rights situation in Libya, the Libyan authorities have yet to undertake structural reforms and take other measures to redress violations. In this context, the legal system continues to produce new generations of prisoners of conscience and political prisoners likely to spend decades behind bars. Making sure that there is full accountability for the perpetrators and justice for the victims is also necessary to prevent the repetition of the human rights violations witnessed over the last three decades.

Amnesty International recommends that the Libyan authorities take, as a matter of urgency, the following steps:

⁸² The continuing nature of “disappearances” is also explicitly mentioned in the draft International Convention on the Protection of All Persons from Forced Disappearance, Article 5 of which states: “*This offence is continuous and permanent as long as the fate and whereabouts of the disappeared person have not been determined with certainty.*”

Ensuring the rights to freedom of expression and association

- Release all prisoners of conscience immediately and unconditionally;
- Repeal all laws, including Law 71 of 1972 and relevant articles of the Penal Code, which criminalize activities which merely amount to the peaceful exercise of the rights to freedom of expression and association;
- Ensure 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; and
- Ensure that, in law and in practice, "collective punishment" is prohibited, and never imposed to punish families of opponents or suspected opponents to the political system, or for any other reason.

Protecting human rights activism

- Ensure that all Libyan citizens can engage freely in human rights work, including by forming independent human rights associations, without legal or practical obstructions;
- Allow Libyan nationals to freely communicate on human rights matters both in the country and outside it without fear of reprisal; and
- Fully implement the provisions of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the Declaration on Human Rights Defenders).

Ending the practice of incommunicado detention

- Ensure that all detainees are brought before an independent judicial authority without delay to review the lawfulness and necessity of their detention;
- Give prompt and regular access to relatives, lawyers and doctors of the detainees' own choosing; and
- Send a clear message to the security forces, especially the Internal Security Agency, that incommunicado detention will not be tolerated and abuses will be punished.

Ending torture

- Amend the Penal Code to include a detailed definition of the crime of torture that fully reflects the definition of the Convention against Torture. All forms of cruel, inhuman or degrading treatment or punishment should be prohibited;

- Ensure that all allegations of torture and ill-treatment are promptly, thoroughly, independently and impartially investigated and that the full findings of such investigations are made public;
- Ensure that confessions or other evidence obtained under torture are not admissible in a court of law;
- Ensure that all those responsible for torture and other human rights violations are brought to justice, as stipulated by Article 435 of the Libyan Penal Code;
- Stop implementing corporal punishments, including the amputation of a hand and foot as well as flogging;
- Repeal all provisions prescribing corporal punishment, including those contained in Law 70 of 1973, Law 52 of 1974 and Law 13 of 1425;
- Review the draft Penal Code, which is currently being discussed, to ensure that all forms of corporal punishment are abolished; and
- Ratify the Optional Protocol to the Convention against Torture.

Guaranteeing the right to a fair trial

- 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 in order to prepare their defence;
- Ensure that members of the judiciary are free from external intervention or influence, not only in law but also in practice;
- Abolish the People's Court and related institutions, including the Popular Prosecution Office, and transfer all pending cases to the jurisdiction of the ordinary criminal court system; and
- Review all cases of prisoners who were tried by the People's Court. They should be retried before ordinary courts, in full compliance with international standards for fair trial, if they are not to be released.

Taking steps toward the abolition of the death penalty

- Announce a moratorium on executions, in line with the call by the UN Commission on Human Rights to all states that still maintain the death penalty "to establish a moratorium on executions, with a view to completely abolishing the death penalty";
- 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 early abolition; and

- Ratify the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty.

Ensuring truth, accountability and reparations for human rights violations

- Carry out thorough, independent and impartial investigations into all cases of extrajudicial executions, including those resulting from the policy of “physical liquidation”;
- Ensure that the families of all those who died in custody over the years receive detailed information regarding the circumstances of the deaths of their relatives;
- Ensure that a thorough, independent and impartial investigation into the killings in Abu Salim Prison in June 1996 is carried out, that the findings are made public and that the families are informed of the fate of their relatives involved in those events;
- Transfer jurisdiction of Abu Salim Prison to the ordinary prison system;
- Fully clarify the fate of all other prisoners still unaccounted for;
- Make immediately public the information available regarding all those who “disappeared” inside or outside Libya, including the Libyan nationals abducted in Cairo in 1990 and 1993, and hold independent, impartial and thorough investigations into these cases;
- Consider establishing joint mechanisms of inquiry with states relevant to these cases, in order to facilitate the establishment of the truth about what happened to those who “disappeared”;
- Ensure that no arbitrary measures are imposed on former prisoners after their release;
- Ensure that all those responsible for human rights violations are held to account, including through prosecutions where crimes were committed, regardless of the rank or status of the perpetrators; and
- Establish an independent and impartial body to ensure that all those who have been victims of human rights violations, including torture, arbitrary detention or imprisonment after unfair trials receive full reparations, including rehabilitation and compensation.

Ratifying human rights treaties and cooperating with UN mechanisms

- Ratify further international human rights treaties, including the 1951 Convention relating to the Status of Refugees and its 1967 Protocol and the Rome Statute of the International Criminal Court;
- Extend a standing invitation to all the UN Commission on Human Rights' special procedures and implement their recommendations;
- Submit periodic reports to the UN treaty monitoring bodies on time and in accordance with reporting guidelines; and
- Implement the recommendations of the treaty monitoring bodies following consideration of periodic reports and communications, in particular those made by the Committee against Torture and the Human Rights Committee.