
Human Rights Solidarity

Libya

Submission to the UN Universal Periodic Review

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Executive summary:

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

- Under section B, Human Rights Solidarity (LHRS) highlights positive developments in recent years and expresses concerns about ongoing concerns regarding the legal and institutional framework which facilitates the perpetration of human rights violations.
- In Section C, LHRS expresses its concerns about a continuing pattern of serious human rights violations, including arbitrary arrest and detention, enforced disappearances, extrajudicial executions, and the treatment of refugees, asylum-seekers and migrants, including the excessive use of force.
- In section D, LHRS makes a number of recommendations for action by the government to address the areas of concern.

B. Normative and institutional framework of the state

Positive developments

In recent years, Libya gradually opened up to the international community. In 2003, it was elected chair of the former UN Commission for Human Rights. This was preceded in 2001 and 2002, by the release of hundreds of political prisoners including prisoners of conscience. International human rights organisations were granted access. Amnesty International, in February 2004, and Human Rights Watch in 2005, met with government officials and other stakeholders and were given unprecedented access to detention facilities. Both organizations were able to revisit the country in 2009, but faced restrictions. In particular, Amnesty International delegates were prevented from travelling to Benghazi, to meet with relatives of victims of enforced disappearance.

In early 2004, the Libyan authorities, after 8 years of silence, admitted to killings of detainees at the Abu Saleem prison complex on 28 and 29 June 1996. In February 2004, Colonel al-Gaddafi spoke to Amnesty International delegates about the events in Abu Salim Prison in 1996; he described the events as a tragedy and stated the "right of the families [of the victims] to know". On 18th April 2004, in a televised speech in a meeting of the Supreme Council of Judicial Bodies, Colonel al-Gaddafi 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.

In February 2005, in a welcome move, the People's General Congress (PGC), the Libyan parliament, issued a law to abolish the People's Court, a special court, which tried political cases in grossly unfair proceedings.

The activities of Seif al-Islam al-Gaddafi, the second eldest son of the Libyan leader, through his foundation, the al-Gaddafi Foundation for Development and Charitable Organizations, has had a positive impact in the field of human rights. For instance, the foundation played an important role in the release of hundreds of political prisoners and prisoners of conscience. Seif al-Islam al-Gaddafi initiated a dialogue with the Libyan Islamic Fighting Group (LIFG) resulting in its renunciation of violence in 2009 and the releases from prison of over 200

political prisoners, many believed to be members of LIFG including 3 leaders of the group who participated in dialogue, in March 2010. He has also sponsored the establishment of several online news sites, two printed newspapers and a TV station. These platforms permitted and encouraged more freedom of expression than in the past and addressed topics considered “taboo” by the official media. He has publicly called for a constitution, and has established a committee to prepare a draft. He has also urged for a revision of Law 19/2001 to allow for more independence for civil society.

Legislative and institutional developments with serious impact on human rights safeguards

Absence of a constitution

There is no written constitution in Libya. On 1st September 1969, a group of army officers led by Colonel Muammar Abu Minyar al-Gaddafi assumed power after a military coup. The constitution of 1951 was suspended and a temporary "*Constitutional Declaration*" was adopted by the Revolutionary Council on 11th December 1969, but a formal constitution was never adopted.

On 2nd March 1977, the Declaration of the People’s Authority, launched a new political system; based on the ideals of Colonel al-Gaddafi as stipulated in a series of three small booklets known as the Green Book. The Declaration of the People’s Authority, though it cited the "*Constitutional Declaration*" of 11th December 1969, it did not declare them annulled.

The absence of a constitution facilitates the adoption of contradictory legislation, and undermines protection against human rights violations. In the absence of a clear constitution, that defines the branches of government and regulates the relationship between them, i.e. separation of power, security agencies operate with impunity.

Special courts

The Supreme Council of the Judicial Bodies, which governs the judicial system in Libya and is headed by the minister of Justice, established a special court: the State Security Court in 2007 (decision no. 27/2007). Its mandate is similar to that of the abolished People's Court, and it has tried individuals accused of offences against the state including those charged with offences under Law 71/1972 "*Prohibition of Partisan Activism*" and the decision of 1969 by the Command Council of the Revolution "*Protection of the Revolution*". The new court has its own prosecution and most of its hearings are held in secrecy either within the compounds of the Police Academy or the Abu Saleem Prison Complex in Tripoli. Its proceedings do not fulfill international standards for fair trial, such as the right to a lawyer of one’s own choosing, lawyers are not given access to their clients, no privilege of lawyer-client privacy. The staff of the abolished People's Court was transferred to setup this new court.

Access to education and discrimination against women

The ministry of Education issued a directive, at the start of the 2007/2008 academic year, to all local education authorities not to admit non-Libyan nationals, including children of Libyan mothers married to expatriates, in publicly funded schools. This directive is in breach of paragraph 1 of article 28 of the Convention on the Rights of the Child and paragraph 2 of article 9 of the International Convention for the Elimination of all forms of Discrimination

against Women. Children of Libyan women, married to none-Libyan nationals, do not have the right to Libyan citizenship.

Mistreatment of women at Special Institutions

On 21st October 2009, a group of young women demonstrated outside the offices of the Social Security Agency in Benghazi, protesting sexual harassment and demanding action by the authorities. A local journalist who covered the incident in a series of interviews was arrested and the young women were put under pressure to recant their complaints against the head of the Social Welfare House in Benghazi, where they reside. Despite the seriousness of the allegations, no official investigation was launched nor was any one held to account for these alleged offences. In addition, no measures were taken to reform the so-called "Centers of Rehabilitation and Reform of Women"; which seems to be detention centers for women with social problems. Scores of abuses were reported by Human Rights Watch, which visited these detention centers in its fact finding mission of 2005.

Restrictions on the media

The authorities closed [nationalized?] the privately owned "*al-Libiyah*" TV channel, on 25th April 2009 and stopped the printing of two privately owned newspapers, *Quryna* and *Oea*, in 21st January 2010. In February 2010, the authorities pulled popular prime time evening radio program, "Good Evening Benghazi" off air seemingly in retaliation for its treatment of issues deemed sensitive. Six media workers involved in the program were dismissed and continue to be banned from entering their offices.

Legal Framework

Laws restricting freedom of expression and association

Law 71 of 1972, also known as the *Criminalization of Parties Law* came into force on 3rd July 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 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."

The Revolutionary Council Decision of 11 December 1969, known as the "Decision to protect the Revolution", article 2 provides for imprisonment of any one involved in hostile action against the revolution, and defines "demonstrating, strike actions intended in opposition to the regime" and "disseminating rumors and news about the political or economical situation" as hostile actions.

These 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. They are being applied by the State Security Court.

The Human Rights Committee, in its concluding remarks on Libya's fourth periodic report expressed its concerns regarding the establishment of the State Security Court.

Charter of Honour (Collective Punishment)

On 9th March 1997, the People's General Congress introduced the "Covenant of Honor" which provides for collective punishment against relatives of persons who committed certain crimes, "which can be described as treachery or heresy or corruption in any form...". In practice, sanctions may include the deprivation of a whole group of people, however large or small, of essential public services such water, electricity, gas, telephone lines, food supplies. Relatives of such "criminals" can also be banned from participating in local councils and receiving state benefits. .

The UN Human Rights Committee, in 1998, stressed its deep concerns that the law violated several provisions of the ICCPR. The Committee recommended that the application of this law be immediately suspended and that steps are taken to repeal it. Since, no steps have been made by the Libyan authorities to respond to this recommendation. On the contrary, scores of families still suffer from the application of this law. The most affected town is Bani Waleed, South East of Tripoli. In October 1993, a group of officers and civil servants, mostly from this town, were arrested on allegations of involvement in a failed military coup. Their families had their houses demolished and were told to leave. The family graves were dug out and bodies were exhumed and taken away. Children were barred from schooling.

Law 19/2001 Stifling Civil Society

Law 19 of 2001 on the Re-Organization of Civil Associations gives the authorities sweeping powers to control civil society associations, in relation to their establishment, activities and dissolution. . Article 34 of gives authorities the power to merge a number of societies. Together with its regulatory code, Law 73/2002, it effectively prevents the establishment of independent associations.

This law stipulates that applications for the establishment of associations must be submitted to the competent authority, and must include a minimum of 50 members. While it does not specify a deadline for the authorities to respond, the regulatory code states that if applicants do not receive a reply within 2 months, then the application is deemed rejected.

C. Promotion and protection of human rights on the ground

Arbitrary detentions and secret detention centres

The Internal Security Agency (ISA) controls a number of detention centres throughout the country including the prison complex of Abu Saleem, composed of two prisons located inside the compound of the Military Police HQ, and the Ain Zara prison. Detainees are held in these prisons, as well as other facilities such as the offices of ISA, in prolonged incommunicado detention, in difficult conditions.

The Justice Minister revealed, in a televised session of the People's General Congress on 28th January 2010, that ISA was refusing to release some 300 citizens, who were either cleared by the courts (found not guilty of any wrong doing) or completed their imprisonment terms. In January 2010, the minister of Justice, Judge Mustapha Abdel-Jaleel, raised concerns in the People's General Congress (PGC) about abuses of power by the Internal Security Agency (ISA), an intelligence agency. He acknowledged that more than 300 individuals were arbitrarily detained by ISA. They were either cleared by the courts, or had completed their prison terms. He also told a Human Rights Watch delegation that the Justice Ministry has no authority over detention centres controlled by ISA.

Enforced Disappearances and Extrajudicial Executions

There are over 1200 victims of enforced disappearance, extrajudicial executions and deaths in custody as a result of torture. In many cases their families had had no news about them since their arrests decades prior. For instance, Lieutenant Colonel Adam al-Hawaz, was arrested in December 1969 and sentenced to death. His family did not have any contact with him since 1984. In March 1988 his family was informed of his death while in custody but was not provided any details. His body was not given to his family for burial nor were they informed of the location of his remains. The family of Sheikh Mohammed Abdelsalaam al-Bushti, has had no news from him since his abduction [arrest?] from the mosque, where he worked as an Imam, On 21st Novembaer 1980. In March 1988, his family was informed of his death. Neither was the body returned for proper burial nor was the family informed of the location of his grave. July 2008, in a televised speech, Seif al-Islam al-Gaddafi said that Sheikh al-Bushti had been killed in a local forest in Tripoli, but he did not reveal who carried out this extrajudicial execution. Mansour Kikhiya, a former foreign minister of Libya in the early seventies , a prominent human rights activist and founding member of the Libyan League for Human Rights based in Geneva, disappeared on 10th December 1993 in Cairo Egypt while attending a meeting of the General Assembly of the Arab Organization for Human Rights in his capacity as a member of its Board of Trustees. There has been no news about his whereabouts since his disappearance, it is feared that he was kidnapped by agents of the Libyan External Security Agency.

In response to demands by relatives of victims of enforced disappearances, and others feared to be victims of the mass killings in the military prison in Abu Saleem on 29th June 1996, ISA started, in late 2008 and early 2009, to contact families of the disappeared informing them of the death of their relatives in custody. According to the Justice Minister, in a meeting with Human Rights Watch in April 2009, some 750 to 800 families had already been contacted and a further 400~450 families remained to be contacted. These figures correspond to the estimated number of victims of the mass killings in Abu Saleem which is 1,200. The killings of detainees by law enforcement officials took place in the morning of June 29th 1996, a mere 8 to 10 hours after a riot by the detainees was resolved peacefully through negotiations between a delegation representing the detainees and Colonel Abdullah al-Sanousi, a high ranking officer in the security apparatus of the Libyan government. The killings were extrajudicial executions on a mass scale.

The Libyan authorities are engaged in a campaign of intimidation to dissuade relatives of victims of “Abu Saleem Massacre”, as they are known, to publicly campaign for a full investigation into the mass killings of June 1996. Intimidations include arrests of protesters, searching homes, confiscating computers and mobile phones, and placing active members of the committee co-ordinating the protests under intrusive surveillance.

D. Recommendations for action by the state under review

Human Rights Solidarity calls on the government to:

Legislative and institutional developments with serious impact on human rights safeguards

- To urgently draft a Constitution respectful of fundamental rights that will be submitted to the Libyan people for approval by referendum on the basis of secret ballot.
- To abolish the State Security Court, and all other extrajudicial courts
- To end discrimination against women in Libya. The Libyan government must comply with its obligations under the Convention on the Rights of the Child and the International Convention for the Elimination of all forms of Discrimination against Women; it must grant full access to education to all children residing in Libya regardless of nationality, and the right to citizenship must be granted to all children in Libya whose both or one of the parents is of Libyan citizenship.
- To take all necessary steps to protect the residents at the social welfare houses for women, launch official investigation into allegations of mistreatment of women in these institutions.
- To reform the "Centres of Rehabilitation and Reform of Women". This state of indefinite holding of women with social problems against their will, which amounts to indefinite detention, is unacceptable, it is inhumane and illegal no matter what are the intentions and excuses of the authorities.
- To abolish all laws and regulations that are contrary to the spirit and the letter of the International Covenant on Civil & Political Rights.
- Revoke law 19/2001 governing the freedom of associations and democratically draft a law incorporating international standards on the rights to freedom of association.

Promotion and protection of human rights on the ground

- To end all forms of illegal and arbitrary detention. All detention centres must be publically known and under the complete jurisdiction and control of the Justice Ministry.
- To ratify and join the International Convention on the Protection of All Persons from Enforced Disappearance.
- To set up a commission to carry out independent and impartial investigations into all deaths in custody which occurred in the past, including those which took place at the time of the 1996 events in Abu Saleem Prison