



**UPR Submission**  
**Libya**  
**April 2010**

**Freedom of Expression**

Over the past 5 years there has been somewhat greater freedom of expression on the internet and in the two private newspapers established in 2007. Journalists writing for Libyan news-websites based abroad were able to interview officials and report on sensitive political topics which had previously been taboo. However, in January 2010, the Libyan authorities blocked access to at least seven independent and opposition Libyan websites based abroad and to YouTube. Two private newspapers, *Oea* and *Quryna*, publish limited criticism of the Libyan authorities, but journalists say they face harassment by the authorities for doing so. Lawsuits for defamation, which carries criminal sanctions in Libya, are common, although none have thus far resulted in the imprisonment of journalists.

Libyan law severely curtails freedom of expression. Article 178 of the penal code carries penalties of up to life imprisonment for disseminating information considered to "tarnish [the country's] reputation or undermine confidence in it abroad." Negative comments about Libyan leader Colonel Mu' ammar al-Gaddafi are punished, and self-censorship is rife. There are still political prisoners in Libya such as Jamal El Haji, who security forces arrested in December 2009 on charges of insulting public officials for having submitted a complaint to the minister of justice about human rights violations he claims to have experienced during his previous imprisonment.

**Freedom of Association and Assembly**

In January 2010, Colonel Gaddafi said that the idea of civil society belonged to a "bourgeois culture" and had no place in Libya. Libya has no independent NGOs, and Libyan laws severely restrict freedom of association. Law 71 bans any group activity opposing the ideology of the 1969 revolution, and the penal code imposes the death penalty on those who join such groups. The government has refused to allow independent journalists' and lawyers' organizations. Law 19, "On Associations," requires a political body to approve all such organizations, does not allow appeals against negative decisions and allows for continuous governmental interference in the running of the organization. The law itself allows the government to revoke the authorization of an association at any time without needing to provide justification. The only organization able to criticize human rights violations publicly is the Human Rights Society of the Gaddafi Foundation, which is chaired by Saif al-Islam al-Gaddafi, the Libyan leader's son.

Freedom of assembly is severely restricted in Libya. On June 29, the General People's Committee issued a decision (312/2009) requiring 30-day advance approval from a newly established government committee to hold any meeting or event, and requiring the meeting organizers to provide a list of all participants and the issues to be discussed.

Attempting to organize a demonstration remains illegal. In February 2007 Libyan security agents arrested 14 organizers of a planned peaceful demonstration intended to commemorate the anniversary of a violent crackdown on demonstrators in Benghazi. Security forces detained them incommunicado until June 24, 2007 and the state security court sentenced them to sentences ranging between 12 and 25 years for "attempting to overthrow the political system." Security forces released them all between October 2008 and March 2009. Over the past year, the authorities have for the most part tolerated demonstrations in Benghazi by the families of a group of prisoners killed in Abu Salim prison in 1996 who have been calling for accountability. The families have faced intimidation by security forces and in March 2009, internal security officers arrested and detained four of the more active family members for four days.

### **Arbitrary Detention and Lack of Respect for the Rule of Law**

Over the past year Justice Secretary Mostafa Abdeljalil has publicly called for the release of several hundred prisoners whom the Internal Security Agency officials are refusing to free even though they have served their sentences or won acquittals in court. On March 24, internal security officials released 80 of these prisoners. Human Rights Watch estimates that around 250 of these prisoners remain imprisoned because, three months earlier, in December 2009, the head of internal security, Colonel al-Tohamy Khaled, confirmed to Human Rights Watch that his agency was detaining 330 prisoners whose sentences had ended or who had been acquitted on the grounds that the men posed a security risk. Those who remain in Abu Salim prison include Mahmoud Boushima, a dual British-Libyan citizen who was acquitted by a court in March 2008 and Abdelaziz Abu Bakr Merawis, acquitted in early 2009.

In December 2009, Human Rights Watch met with Abdeljalil, who confirmed that the Office of the General Prosecutor had ordered the release of these prisoners but that the Internal Security Agency had refused to comply. He also said the judiciary has no power to order an investigation of the Internal Security Agency unless the interior minister waives the immunity that covers its agents.

### **Impunity for the 1996 Abu Salim prison massacre**

The Libyan authorities have never made public any account of the events of June 29, 1996 in Abu Salim prison, where 1200 prisoners died on one day, nor have they held anyone responsible. Former prisoners have testified that security officers in the prison gunned down the prisoners who had gathered into the courtyard. In December 2008, Libyan authorities started informing the families of the death of their relatives, by issuing death certificates but without specifying the cause of death or the precise date. This followed the June and September 2008 decisions by the North Benghazi Court ordering the government to reveal the fate of those who had died. The Libyan authorities have offered compensation of 200,000 dinars (US\$162,000) to families who agree to relinquish all legal claims, but several hundred of the victims' families in Benghazi have refused to accept compensation on those terms and continue to call for disclosure of what occurred on the day of the killings and criminal accountability for those responsible. The families have faced harassment and intimidation by security officials to accept the compensation and cease demonstrating. The Libyan government has claimed since 2004 that it was investigating but Justice Secretary Abdeljalil confirmed to Human Rights Watch in April 2009 that no such investigation had ever taken place. On September 6, 2009, the acting secretary of defense established a seven-judge investigation panel, headed by a former military tribunal judge, to conduct an investigation. The panel was due to submit its report after

six months, but more than six months later there has been no announcement about it, and the families have continued to demonstrate in Benghazi.

### **Enforced Disappearance**

Over the past year, the authorities have informed at least 800 families that their loved ones perished at Abu Salim prison in 1996, offering compensation in exchange for relinquishing any legal claims. But many other Libyan “disappearance” cases remain unresolved. Egyptian security officials arrested two Libyan opposition members, Jaballah Hamed Matar and Izzat El Megarief, in Cairo in March 1990 and returned them to Libya. Libyan security detained them in Abu Salim prison, where they “disappeared.” Libyan authorities continue to deny all involvement in the “disappearance” of Imam Musa al-Sadr, a prominent Lebanese Shii cleric, and two of his companions, in Libya in August 1978. They were last seen on August 31, when the three set out from their Tripoli hotel for a meeting with Colonel Gaddafi. Libyan authorities have denied any involvement in the disappearances, saying that the meeting with Gaddafi never took place and that the three had left for Rome. Italian officials state that the three men never entered Italy.

### **Death in Custody**

In addition to the 1996 Abu Salim prison massacre, there are also more recent reports of death in custody.

Internal Security agents arrested Ismail Ibrahim Al Khazmi, born 1976, from his home in June 2006. Despite many attempts, his family was unable to obtain news of his whereabouts. In 2006 Al-Khazmi died under torture. On May 1, 2007 his family received a medical report saying he had died of kidney failure. In mid-March 2009 the Libyan authorities asked his family to take the body to bury it but the father refused, saying that he wants an autopsy and a proper investigation into his son’s death. At the time of writing, this has yet to take place.

### **Fair Trials**

The new State Security court, which the Higher Judicial Council created on August 19, 2007, employs procedures that do not comply with international standards on fair trial. It is used to try ‘political crimes.’ The decisions of the State Security Court are not publicly available to the defendants, their families or, frequently, to their lawyers. Former defendants before this court told Human Rights Watch that no appeal was available to them. The Internal Security Agency prevents lawyers from accompanying their clients during interrogations and the lawyers often are unable to get access to the case files necessary to prepare their defense. The State Security court will try cases of alleged violations of Law 71, which bans any group activity based on a political ideology opposed to the principles of the 1969 revolution that brought al-Gaddafi to power. The court is currently trying the case of writer Jamal El Haji who is accused of insulting public officials.

### **Death Penalty**

Death sentences continue to be handed out and executions continue to take place in Libya. Chief Justice of the Supreme Court Dr. Abdulrahman Abu Tuta told Human Rights Watch in April 2009 that around 35 to 40 people are sentenced to death in Libya every year but that only 5% to 7% of these sentences are carried out annually. As it stands, the only chance for a prisoner to escape having a death sentence carried out is if an agreement over blood money is reached. Libyan law No. 6 provides for a right of *Qisas* (retribution) to the families of the victim, a concept adopted from Shari’a law that resonates strongly in Libyan society, where tribal and familial ties remain strong. Therefore, the only way to get a death sentence commuted, other than through an order from the Higher Judicial Council – something that occurs only in

high-profile cases – is to get the family of the victim to agree to give up their right to *Qisas* in exchange for blood money. This system allows commutation only when someone can pay *Qisas*, thereby excluding all those without financial means. It has also proved to be unreliable since executions have been carried out while negotiations over a *Qisas* settlement were ongoing.

### **Migrants, Asylum Seekers and Refugees**

Libya continues to abuse and mistreat non-Libyan migrants caught trying to leave the country for Europe by boat. In May 2009 Human Rights Watch interviewed migrants in Malta and Italy who had been detained at some point in Libya. All reported that Libyan authorities had mistreated them and subjected them to indefinite detention, often in inhuman and degrading conditions. Interviewees described how Libyan guards beat them with wood sticks and metal rods, and detained them in severely overcrowded and unsanitary conditions. They also spoke about police corruption and of migrants being dumped in the desert near Libya's land borders. Libya has no asylum law, has not signed the 1951 Refugee Convention, and has no formal working agreement with the United Nations High Commissioner for Refugees (UNHCR). UNHCR has limited access to several migrant detention centers which the government can revoke at any time. There is no formal mechanism for individuals seeking protection in Libya. In January 2010, Libyan officials gave Eritrean embassy officials access to a number of migrant detention centers, including Misrata, Zawya, Garbule, Surman and Zleitan, where Eritrean asylum seekers were being held.

### **Women**

Libya continues to arbitrarily detain women and girls in "social rehabilitation" facilities for suspected transgressions of moral codes, locking them up indefinitely without judicial review. Portrayed as "protective" homes for wayward women and girls or those whose families rejected them, these facilities are de facto prisons. Many women and girls detained in these facilities have committed no crime, or have already served a sentence. Some are there for no other reason than that they were raped, and are now ostracized for staining their family's "honor." Libya's *zina* laws, which criminalize adultery or fornication, can lead to the detention of women and girls in social rehabilitation facilities. These laws, codified in the penal code, discourage rape victims from seeking justice by presenting them with the risk of facing prosecution themselves.

During a visit to Libya in 2005, Human Rights Watch found widespread denial among Libyan officials that violence against women exists in Libya, and a lack of adequate laws and services that leaves women who are victims of violence without effective remedies and means of filing complaints. In October 2009, a group of women who live in a state-run care residence for women and girls who were orphaned as children organized a rare demonstration calling for an end to sexual harassment they said they had experienced in the residence. On October 29, the General Prosecutor's Office opened an investigation into the claims and on October 31 charged the director of the residence with sexual harassment. However, the prosecutor did not pursue the investigation or indict director and subsequently released him.

Libyan law does not allow Libyan women married to non-Libyan men to pass on Libyan nationality to their children.

## **Recommendations**

**With respect to freedom of expression:**

- Repeal Law 71 of 1972, which bans any group activity based on a political ideology opposed to the principles of the 1969 al-Fateh Revolution, when Mu'ammarr al-Gaddafi led a military coup overthrowing the Libyan monarchy;
- Repeal articles of the penal code that criminalize free expression, including articles 166, 178, 206, 207, and ensure that the new draft penal code is revised to comply with international human rights law;
- Release all individuals imprisoned or detained solely for exercising their right to free expression.

**With respect to freedom of association and assembly:**

- Allow for the establishment of all independent organizations that wish to peacefully exercise freedom of association;
- Revoke the decision to refuse the registration of the Association for Justice and the Centre for Democracy, the organizations that a group of lawyers and journalists attempted to establish in 2008;
- Repeal Law 71 of 1972 and related articles of the penal code that criminalize free association and amend Law 19 to allow for the establishment of independent non-governmental organizations;
- Ensure that individuals seeking to establish associations are not harassed by security forces or prosecuted for the subsequent exercise of freedom of assembly;
- Revoke General People's Committee decision number 312/2009, which further restricts freedom of assembly and association with disproportionate and unnecessary requirements.

**With respect to arbitrary detention and lack of respect for the rule of law**

- Immediately release all prisoners acquitted by courts and those who have served their sentences;
- Implement all legal decisions issued by Libyan courts;
- Allow the Office of the General Prosecutor to conduct investigations regarding detention in Abu Salim and Ain Zara prisons and compensate all who have been arbitrarily detained;
- Facilitate the visit of the Working Group on Arbitrary Detention and allow it full access to all centers of detention including those controlled by the Internal Security Agency.

**With respect to impunity for the Abu Salim prison killing in 1996:**

- Make public the conclusion of any investigation that may have taken place into the Abu Salim incident and ensure that it is conducted by an independent and impartial judge and that the Internal Security Agency fully cooperates with the investigation;
- Identify those responsible for the killings and prosecute them to the fullest extent of the law in fair proceedings;
- Re-issue death certificates for the families with the correct date, place and cause of death;
- Immediately cease pressuring or threatening families into accepting compensation and, where requested, allow those who wish to consider compensation time to reflect;
- Allow families of victims of the Abu Salim massacre to freely demonstrate and to express their opinions about the process without intimidation or harassment from security forces.

**With respect to "disappearance" cases:**

- Immediately reveal the whereabouts and fate of all "disappeared" prisoners to their families
- Sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance;
- Issue an invitation to the Special Rapporteur on Extrajudicial Summary or Arbitrary Executions;

**With respect to fair trials and the state security court:**

- Ensure that a right of appeal is available to every defendant and clarify which court is competent to hear that appeal;
- Ensure that defendants have the right to a lawyer of their choice and sufficient access to their lawyers before their trial and that both private and state-appointed lawyers have equal and full access to the case documents;

**With respect to the death penalty:**

- Order an immediate moratorium on the death penalty;
- Commute all death sentences to terms of imprisonment;
- Eliminate the death penalty as a punishment under Libyan law;
- Become a party to the Second Optional Protocol of the International Covenant on Civil and Political Rights (ICCPR), which aims at the abolition of the death penalty.

**With respect to the rights of refugees, migrants and asylum seekers:**

- Ratify the 1951 Refugee Convention and its 1967 Protocol, and enact an asylum law to establish a fair and lawful asylum procedure in conformity with international standards and obligations, in particular, with the inclusion in national law of an absolute prohibition on refoulement.
- End the arbitrary detention of migrants, asylum seekers and refugees, and establish effective mechanisms for them to challenge their detention and/or expulsion.
- Improve conditions in all migration-related detention facilities to alleviate overcrowding, and provide adequate food, sanitation, and health care; and investigate allegations of abuse against migrants by police and by guards and prosecute officials responsible for abusing migrants.

**With respect to the rights of women:**

- Release all women and girls detained in social rehabilitation facilities who have not been charged with or convicted of a crime, and those who have served their sentence.
- Repeal Law No. 70 (Regarding the Establishment of the *Hadd* penalty for *Zina*, modifying some of the Provisions of the Penal Law) of 1973.
- Amend Libyan law to allow for Libyan women to pass on Libyan nationality to their children.

## Annex of Relevant HRW reporting

### [Truth and Justice Can't Wait](#)

#### **Human Rights Developments in Libya Amid Institutional Obstacles**

December 12, 2009

This 78-page report is based on research conducted by Human Rights Watch during a 10-day visit to Libya in April, the organization's most recent trip to the country. The report is also based on ongoing monitoring from outside the country. The report finds that while the internet and two new newspapers in the country have given journalists increased space to write openly on certain sensitive subjects, heavy criminal sanctions continue to stifle journalists and prohibit freedom of association. Lawsuits and prosecutions of journalists under the country's libel laws have increased, but so far no journalist has been sentenced to prison.

### [Pushed Back, Pushed Around](#)

#### **Italy's Forced Return of Boat Migrants and Asylum Seekers, Libya's Mistreatment of Migrants and Asylum Seekers**

September 21, 2009

This 92-page report examines the treatment of migrants, asylum seekers, and refugees in Libya through the eyes of those who have managed to leave and are now in Italy and Malta. It also documents Italy's practice of interdicting boats full of migrants on the high seas and pushing them back to Libya without the required screening.

### [Stemming the Flow](#)

#### **Abuses Against Migrants, Asylum Seekers and Refugees**

September 12, 2006

This 135-page report documents how Libyan authorities have arbitrarily arrested undocumented foreigners, mistreated them in detention, and forcibly returned them to countries where they could face persecution or torture, such as Eritrea and Somalia. From 2003 to 2005, the government repatriated roughly 145,000 foreigners, according to official Libyan figures.

### [Libya: June 1996 Killings at Abu Salim Prison](#)

June 28, 2006

In the summer of 1996, stories began to filter out of Libya about a mass killing in Tripoli's Abu Salim prison. The details remained scarce, and the government initially denied that an incident had taken place. Libyan groups outside the country said up to 1,200 prisoners had died.

### [Libya: A Threat to Society?](#)

#### **Arbitrary Detention of Women and Girls for "Social Rehabilitation"**

February 27, 2006

This 40-page report documents numerous and serious human rights abuses that women and girls suffer in "social rehabilitation" facilities in Libya. These include violations of their rights to liberty, freedom of movement, personal dignity, privacy and due process. Libyan authorities are holding many women and girls in these facilities who have committed no crime, or who have completed a sentence. Some are there for no reason other than that they were raped, and are now ostracized for staining their families' "honor." Officials transferred the majority of these women and girls to these facilities against their will, while those who came voluntarily did so because no genuine shelters for victims of violence exist in Libya.

[Libya: Words to Deeds](#)

## **The Urgent Need for Human Rights Reform**

January 24, 2006

This 84-page report is based primarily on Human Rights Watch's first-ever trip to Libya, made in mid-2005, which the organization praised as a welcome step towards transparency. The authorities provided access to a wide range of high-level officials, as well as police stations, an immigration detention center and five prisons, where 32 prisoners were interviewed in private. However, government guides escorted Human Rights Watch researchers at all other times and controlled unauthorized contact with Libyans and foreigners in the country.

### **Selected Press Releases:**

[Libya: Drop Charges against Journalist](#) October 27, 2009

**Reporter Prosecuted for Reporting Sexual Harassment Claims by Abuse Victims**

[Libya: Don't Send Eritreans Back to Risk of Torture](#) January 15, 2010

**Eritrean Officials Given Access to Detention Camps; Migrants Who Resist Report Beatings**

[Libya: Free Critic of Rights Violations](#) March 3, 2010

**Writer Facing State Security Court Trial Over Complaint to Justice Secretary**

[Libya: Reveal Fate of "Disappeared"](#) March 26, 2010

**Use Arab League Summit to Resolve Longstanding Cases**