



Libya

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Alkarama recalls that it concentrates its work on four priority areas: arbitrary detention, enforced and involuntary disappearances, torture, and extrajudicial executions. We base our work primarily on the documented individual cases we submit to UN Special Procedures and Treaty Bodies, as well as our contacts with local actors including victims, their families, lawyers and human rights defenders.

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1. Context

Occupied until 1945 by Italy and then until December 1951 by the United Kingdom and France, Libya regained its independence in accordance with a United Nations General Assembly Resolution. On 1 September 1969, Muammar Al-Qaddafi, with a group of young officers, overthrew King Idriss without bloodshed. He established a Republic headed by a Revolutionary Command Council (RCC). In 1977 the country was proclaimed the Socialist People's Libyan Arab Jamahiriya.

Due to his support for various revolutionary movements and his refusal to recognize the existence of the State of Israel, in 1978 the U.S. State Department declared that Libya would be the first state against which the United States would take retaliation measures because of its position on the Palestinian question. Since 1982, the United States decided to implement a trade embargo against Libya, which led to de facto boycott of Libyan oil. The conflict between the two countries was exacerbated after a bomb attack in April 1986 in the "La Belle" discotheque in Berlin, attributed to the Libyan regime. A few days later the United States bombed Tripoli and Benghazi, killing 40 people. In December 1988, the explosion of an American airliner Pan Am over the Scottish town of Lockerbie killed 270 victims, and in September 1989, a bomb caused the death of 170 people during the flight of a French airliner. Libya is regarded as responsible for both attacks.

On 15 April 1992 the UN Security Council voted on an international embargo (military and air) against Libya which was reinforced a year later. These sanctions had serious repercussions on the economy and eventually compelled the Libyan leadership to make concessions. In 1999 they turned in two suspects from the Lockerbie bombing to stand trial in the International Court of Justice. The sanctions imposed by the United Nations were soon suspended. Libya went further by promising to compensate the victims of Lockerbie and turn over its nuclear facilities to the International Atomic Energy Agency. Further the authorities began actively cooperating in the international fight against terrorism. The UN sanctions were lifted on 13 September 2003. The European Union decided to lift the arms embargo in October 2004, the country was withdrawn from the U.S. list of state sponsors of terrorism in 2006, and a framework agreement between the EU and Libya began to be negotiated in November 2008. Since 2005, tenders are open to foreign oil companies and forty of them have obtained exploration rights. Libya now has funds of \$136 billion against only \$8 billion in 2002.

Its ambitions for independence from the major Western powers for which it was ready to enter into confrontation were accompanied by the desire to control all political activity within the country. The Libyan regime is said to be based on a system of "direct democracy". In 1976, the General People's Congress was created, which is the formal decision-making organ. The country is divided into approximately 600 administrative units each of which includes a Basic People's Congress in which every citizen aged over 18 years participates. These congresses elect People's Committees, an executive body which appoints a representative to the General People's Congress, the national legislative body. It elects the "General People's Congress", which is the executive at the national level.

In reality, the power is in the hands of the "Revolutionary Committees" movement, controlled by the Office of the Revolutionary Committees which are appointed by Al-Gaddafi. The latter, while not serving in any particular function, directs the government while seeking to maintain the balance between tribes and other interest groups through these committees. These committees fulfil the actual executive functions locally by controlling all sectors of public life. Their power allows them to take any action they deem necessary to "protect the revolution" especially as they enjoy total impunity¹. Throughout the decades the opponents of the Libyan regime, whether they be from the left or Islamist, have been arrested, tortured, murdered and many of them have disappeared. While some have been tried, the Libyan People's Courts (which were not abolished until 2005) convicted them, often with heavy sentences, at trials which did not respect the minimum rules of

fairness. These practices have still not ceased, as attested to by the number of violations submitted to the UN human rights bodies, particularly by Alkarama.

Libya has ratified important international treaties protecting human rights including the International Covenant on Civil and Political Rights in 1988 and the Convention against Torture in 1989; yet many domestic laws in force are in flagrant conflict with their principles. To this day, Libya does not have a Constitution; the creation of political parties is prohibited and exposes offenders to severe criminal penalties; and its own domestic laws are routinely flouted. The government does not cooperate constructively with the UN conventional and extra-conventional human rights protection mechanisms. Reports presented to Treaty Bodies do not meet the guidelines regarding the form and content of reports. With regards to the final report presented to the Committee Against Torture in 1998, the Concluding Observations of the Committee were not made public in the country and their Recommendations have not been taken into account by Libya.

2. Repressive laws and international law flouted

The Libyan authorities announced the adoption of a new Penal Code for June 2004², which has still not been enacted. In the Concluding Observations that followed the examination of the last periodic report on Libya in November 2007, the Human Rights Committee requested information about this Penal Code. The Libyan authorities explained in August 2009 – more than 5 years later – that "the draft penal code was not adopted by the [General Peoples'] Congresses at their most recent session because they asked for some new amendments to be made to the texts. Since it is the People's Congresses which decide, the draft code cannot be amended without their approval and endorsement."³

In 1998, the UN Human Rights Committee expressed its "deep concern [for] the law enacted in 1997 known as the "Charter of Honour" which authorises collective punishment for those convicted of collective crimes (including " obstructing the people's authority...damaging public and private institutions"⁴). In its conclusions of 2007, the UN body said that "while noting the moratorium and the legal review of the "Charter of Honour" of 1997 authorising collective punishment, [it is] concerned that it had reportedly been applied to members of a community in Bani Walid."⁵ The Committee recommended a repeal of this charter.

Between the Constitutional Proclamation of 1969, the Great Green Charter of Human Rights adopted in 1988, Act No. 20 of 1991 on the "consolidation of freedom" and other provisions of the current Penal Code, the formation of associations or political parties and the non-violent expression of opposition are heavily penalized.

Act No. 71 of 1972 banned political parties with article 2 setting out that these parties represent a betrayal to the nation. Article 3 provides for the death penalty not only for creating associations prohibited by law, but also for membership or support for these associations. Numerous articles in the Penal Code, including 206, 208, 174, 175 and 176 carry the same meaning. As for sections 173, 178 and 207, they consider the call for the creation of an opposition group or dissemination of information to be "damaging to the reputation of the country", they also provide for a range of sentences including the death penalty.

With the Great Green Charter of Human Rights, it seemed that the protection of human rights had acquired some importance: the scope of the death penalty was reduced, torture and mistreatment of detainees were to be sanctioned and the right to a fair trial seemed assured. It was at this time that Libya ratified two important conventions on human rights. But in fact, apart from releasing some political prisoners, no significant change was observed in practice. In recent years many people have been arrested for their opinions (see below).

It should be recalled that the People's Court, a special court established by Act No. 5 of 1988 which judged and condemned thousands of political opponents in unfair trials without respecting the basic right to defence, was finally abolished in January 2005. Some of the Court's staff has been incorporated into the judiciary and its president, Hosni al-Wahaishi, was appointed head of the Committee on Legal Affairs and Human Rights in the General People's Congress⁶. The People's

Court, however, was replaced in August 2007 by another special court established to suppress non-authorized political activities: the State Security Court which sits behind closed doors in the prison of Abu Slim, Tripoli. This court, which has heard several cases of political nature, does not respect universally accepted standards for fair trial any more than the People's Court did.

While there are many laws which severely restrict freedoms, it must also be noted that there is no independence of the judiciary, who are subject to the orders from their guardians and politicians. Any hint of independence amongst the judges is severely repressed:

Mr EL ABANI Wanis Charef (AL OUERFELD), was a judge at the Court of First Instance in Benghazi for several years during which he received several warnings and threats of dismissal from the Ministry of Justice for not complying with the instructions of the authorities on court decisions he had to make. He was arrested in 1990 and taken to a secret location where he was subjected to very cruelty torture for 3 months before being led to the prison of Abu Slim (Tripoli). Mr El Abani was placed in solitary confinement in a special wing of the jail for 11 years. It was only on 15 December 2001, during his presentation before a magistrate, that he saw his wife for the first time after eleven years. Presented before the military court on 1 January 2002 he was condemned, as a result of a grossly unfair trial, to thirteen (13) years' imprisonment in total: 10 years for "failing to denounce" and 3 years for "possession of explosives", the latter charge being invoked for the first time while the judgement was read. However he was not released at the end of his sentence. He waited until 9 April 2008, 18 years after his arrest⁷ and after the Human Rights Committee (Com. N° 1640/2007) got involved, to finally be freed⁸.

3. Arbitrary arrest and detention, incommunicado detention and forced disappearance

There are several forms of arbitrary detention: incommunicado detention following arrest by the National Security Services (Al Amn Al Addakhil) or the external security services (Al Amn Al Kharridji); continued detention after completion of the sentence; continued imprisonment despite a court ruling acquitting the detainee or releasing him for medical reasons; and prolonged imprisonment without trial. The motivations for arbitrary detentions are also numerous: they may be arrested for crimes of opinion or conscience (considered "zandaqa" or heresy by the authorities); under the pretext of counter-terrorism measures, asylums-seekers have been subject to forced removal and collective persecution, as have foreigners, even those who are there legally. Whilst in detention, victims are often subjected to torture and ill treatment. Internal Security is the institution primarily responsible for incommunicado detention with its own detention centres. Secret detention also exists in prison: disappearance in prison which lasted up to 20 years.

The Libyan authorities indicate that under Article 26 of the Criminal Procedure Code, a suspect, if not freed by the officer who arrested him, must be presented before a prosecutor within 48 hours, who may question him within the next 24 hours.⁹ The indictment can last up to 6 days, after which the suspect must be brought before a court every 30 days to renew the warrant. In reality, detainees are often held for several years without being presented before a judicial authority.

On 17 December 2008, Alkarama submitted an individual complaint to the United Nations Human Rights Committee regarding Mr Abdenacer Younis Al Rabassi, taken from his home in Beni Walid by agents of the Internal Security in plain clothes, without a reason or a warrant being presented. On 5 January 2003, he was transferred to Tripoli and detained incommunicado for 6 months. He suffered extremely cruel acts of torture over more than a month in a secret detention centre under the control of the Internal Security Agency. He was accused of having "dishonoured the guide of the revolution", in accordance with article 164 of the Libyan criminal code. He was charged with having "sent an email to the newspaper the 'Arab Times' on 8 June 2002 at 8.35 and 54 seconds in which he expressed a critical opinion of the Libyan state leader. He was condemned to 15 years in prison and suffers very challenging detention conditions to this day."¹⁰

The example of the Aboussedra family and especially that of Dr. Mohammed Hassan Aboussedra shows the range of possible abuses: arbitrary arrest and detention for crimes of opinion, enforced disappearance, torture, unfair trials, detention after expiry of the sentence and restrictions on freedom of movement after release.

Dr. Mohamed Hassan Aboussedra was arrested along with his four brothers by the Internal Security Service on 16 January 1989, without judicial warrant and without knowing the reasons for his arrest. All of them were detained for three years in solitary confinement and tortured. After six years of incarceration in inhuman conditions, the four brothers were released without being prosecuted. Dr. Aboussedra was judged for the first

time in 2004. He was sentenced by the People's Court of Tripoli to life imprisonment following a closed trial in which he was only questioned about his political beliefs. After the abolition of this court, Dr. Aboussedra was re-tried on 2 June 2005 by a civil court and was sentenced this time to 10 years in prison. The presiding judge, having noted he had already spent 16 years in detention, ordered his release. However it was only on 7 June 2009, 4 years later, that he was finally freed after 20 years of arbitrary detention and after referral by our organization to the UN Committee on Human Rights (Com. N ° 1751/2007). He is, however, forbidden from leaving Tripoli.¹¹

Alkarama has documented numerous cases of enforced disappearance, of which it has informed UN bodies:

On 17 September 1995, Abdelmotaleb Abushaala, aged 20, was arrested by the agents of the Interior Security Services at the headquarters of the Higher Institute of Civil Aviation where he was a student. No judicial warrant was presented to him. Despite all the efforts of the family, they were not able to find out where he was detained. On 11 August 2009 Alkarama submitted an individual complaint to the Human Rights Committee on his behalf.¹²

The Libyan authorities have encouraged political opponents who fled abroad to return home by assuring them they would not be bothered. On their return to Libya, they were arrested.

Thus Dr. Idriss Aboufaied returned to Libya after 16 years of exile in Switzerland, where he was a refugee. Despite commitments from the highest authorities of the State, he was interrogated by security agents and his passport was confiscated on arrival in Tripoli on 30 September 2006. He was then arrested on 5 November, held incommunicado for 54 days before being released on 29 December 2006, without having been the subject of any legal procedure. He then issued a statement expressing his determination to continue his fight for democracy and called, with others, a peaceful demonstration to be held on 17 February 2007 in Tripoli. However, he was arrested the day before the demonstration with 13 other activists, all of whom were held incommunicado and tortured for several months. No lawyer was allowed access to him. On 10 June 2008, he was sentenced to 25 years imprisonment by the State Security Court following an unfair trial. Evacuated on 6 April 2008 to Sabratha hospital due to the worsening of his health in detention, he was finally released and was allowed to leave Libya in December 2008.¹³

Cases of collective punishment and family persecution are not uncommon and may even reach the point of extrajudicial killings or the arrest of minors as in the following example where children have been illegally detained and suffered mistreatment:

Khaled al-Khwildy, an officer of the Air Force, fled his country in 1996 following a wave of arrests and disappearances that effected some army officers. When authorities learned in April 1998 that he had fled abroad and had contacted his mother by telephone, they arrested all the men in his family: his father Amar, born in 1937, his brothers Abdussalam, 21 years, Majdy, 15, Tariq 13 and a fourth brother, Osama, who was barely 11 years. Another brother, Djemaa al-Khwildy, 27, was summarily executed in public. The following July the last brother, Mohammed al-Khwildy aged 24 who was fleeing after the arrest of the other members of his family, was in turn killed at his home by the Internal Security Services¹⁴. All the family members who were arrested, including minors, were detained incommunicado at the prison in Benghazi, abused and were released after more than a month of detention, whilst Abdussalam al-Khwildy was declared to have acted alone to help his brother escape. He was held incommunicado for 9 months during which he was brutally tortured before being transferred in January 1999 to the Abu Slim prison in Tripoli. After being detained for 5 years, he was released without trial in May 2003. He was then arrested a second time on 17 October 2004, for the same reason, and was sentenced on 7 August 2006 in a fast trial given the fact that he had been imprisoned for two years. He should have been released on 17 October 2006, but he was taken to another secret place of detention and disappeared for a year and a half. It must be remembered that the al-Khwildy family has not ceased to suffer persecution and retaliation by the authorities of the local "People's Committee" since Khaled escaped.

Amongst the Libyan nationals deported by force who suffered persecution upon arrival in Libya, Alkarama submitted to the Working Group on Enforced Disappearances the case of Mr Ali Al-Talhi arrested after his forced return from Switzerland in September 2007. Detained at the Internal Security centre, he disappeared until a communication was sent to the UN on 19 June 2008.¹⁵ He was subsequently sentenced to three years imprisonment in December 2008.

Many foreign nationals are detained in Libyan prisons, some secretly for fifteen years without being able to appeal their detention before a judicial authority.

4. Torture and extrajudicial executions

Libyan law prohibits the use of torture but does not define what this means. Article 435 of the Penal Code punishes the officer who uses or orders the use of torture on prisoners with a term of

three to ten years in prison. Act No. 20 of 1991 on the "consolidation of freedom" forbade the accused from being subjected to any form of physical or psychological torture. In reality, torture is systematically practiced in a climate of total impunity. It is also used to obtain confessions. The judges ignore it, they do not accept complaints and do not order investigations. The methods most often used include beatings, beatings on the soles of the feet (falaqa), electric shocks and suspension by the arms and feet. Deaths resulting from torture are not uncommon.

Ismail Al Khazmi, was arrested on 17 June 2006 by officers of the Internal Security Services and taken to an unknown destination where he was held incommunicado, according to some witnesses, in Asseka prison in Tripoli where he was severely tortured. On 29 June 2006, after several days of interrogation and torture, officers of the Internal Security Services savagely beat him in his cell and hung him from the ceiling. Having lost consciousness, he was taken by car to an unknown location. His family was informed of his death on 1 May 2007.¹⁶ Their requests for autopsy and investigation into the causes of death were unsuccessful.

Torture and abuse are not only practiced in police custody or detention centres belonging to the Internal and External Security Services but also in prisons where inmates continue to suffer torture and abuse. We must also remember that a massacre was perpetrated in the prison of Abu Slim, Tripoli on 23 June 1996 by the Libyan security services under the direction of the head of intelligence, who is still in office. During the massacre one thousand two hundred political prisoners were summarily executed. So far, the authorities have not released the findings of an investigation which they had promised to release on 15 February 2010. Instead, there is talk of demolishing the prison, thereby erasing all traces of the crime. At present, this massacre seems to serve the authorities as a pretext for extrajudicial executions and enforced disappearances which occurred in other circumstances.

Nearly 20 years after the arrest of Abdelhamid Al Daquele, his family, who were never able to visit him but who were told in 1995 by a fellow prisoner that he was alive and held in Abu Slim, was informed that his death occurred in 1996. However, they only have a death certificate dated 6 November 2008 stating that the victim died in Tripoli on 23 June 1996, which corresponds to the date of the massacre perpetrated at Abu Slim. They have no proof and cannot recover the body to arrange for an autopsy. The family expresses serious doubts regarding the date of death of Mr Al Daquele and fears his death may be more recent but that the authorities used the pretext of the events in Abu Slim prison to make them believe his death was at that time.¹⁷

5. Recommendations

1. Enact a Constitution that guarantees and protects the fundamental rights of citizens and is in conformity with principles laid down by international pacts and conventions ratified by the state.
2. Cancel all judgments rendered by emergency courts and release all persons sentenced after unfair trials or detained in cases where no trial has been held, or they have been acquitted or released for medical reasons.

3. Prohibit incommunicado detention in the premises of all security services and other places of detention and establish a system of independent control over all places of detention in the country.

4. Incorporate the crime of torture as defined by Art. 1 of the Convention into domestic law; establish independent investigations into allegations of torture; prosecute and convict those responsible for these acts; and compensate victims and/or their families.

5. Ensure that the composition of the judiciary is consistent with the Principles on the Independence of the judiciary, paying particular attention to the principle of immovability of judges, ensuring the complete removal of the interference of the Executive in the Judiciary.

6. Observe the right to a fair trial in practice, including abolishing the ability of the State Security and Military Courts to try civilians.

7. Establish an independent commission of inquiry into the massacre of Abu Slim, composed of individuals chosen by the families of victims.

- ¹ See for example Salem A. Salem al-Hasi, *The Freedom of Association in Libya*, Euro-Mediterranean Human Rights Network, 13 September 2007
- ² Amnesty International, *Libya: Time to make Human Rights a Reality* (AI Index : MDE 19/002/2004), 26 April 2004, p. 3
- ³ Information received from the Libyan Arab Jamahiriya on follow up to the concluding observations of the Human Rights Committee (CCPR/C/LYB/CO/4), (CCPR/C/LBY/CO/4/Add.1), 5 August 2009; p. 3 (para. 4)
- ⁴ Human Rights Committee, 64th Session, *Concluding Observations of the Human Rights Committee on the third periodic report of the Libyan Arab Jamahiriya*, CCPR/C/79/Add.101, 6 November 1998, para. 12
- ⁵ Human Rights Committee, 91st Session, *Concluding Observations of the Human Rights Committee on the fourth periodic report of the Libyan Arab Jamahiriya*, (CCPR/C/LBY/CO/4), 15 November 2007; para. 20
- ⁶ Human Rights Watch, *Libya: Words to Deeds, the Urgent Need for Human Rights Reform*, 24 January 2006, p. 25.
- ⁷ Alkarama press release, *Libya: Liberation of Wanis Charef El Abani after 18 years of detention including 11 years of disappearance*, 13 April 2008, http://en.alkarama.org/index.php?option=com_content&view=article&id=79:libya-liberation-of-wanis-el-abani-after-18-years-in-prison-of-which-11-years-of-disappearance&catid=27:communiqu&Itemid=138, (last accessed on 6 April 2010)
- ⁸ Alkarama press release, *Libya: Liberation of Wanis Charef El Abani after 18 years of detention including 11 years of disappearance*, 13 April 2008, http://en.alkarama.org/index.php?option=com_content&view=article&id=79:libya-liberation-of-wanis-el-abani-after-18-years-in-prison-of-which-11-years-of-disappearance&catid=27:communiqu&Itemid=138 (last accessed on 6 April 2010)
- ⁹ *The fourth periodic report of the Libyan Arab Jamahiriya presented to the Human Rights Committee pursuant to article 40 of the International Covenant on Civil and Political Rights*, 5 December 2006, (CCPR/C/LBY/4), 10 May 2007, para. 12(d)
- ¹⁰ Alkarama press release, *Libya : the UN Human Rights Committee called upon to intervene in the case of Abdenacer Younis Al Rabassi, arbitrarily detained since 2003*, 22 December 2008, http://en.alkarama.org/index.php?option=com_content&view=article&id=165:libya-the-un-human-rights-committee-called-upon-to-intervene-in-the-case-of-abdenacer-younis-al-rabassi-arbitrarily-detained-since-2003&catid=27:communiqu&Itemid=138 (last accessed on 6 April 2010)
- ¹¹ Alkarama press release, *Libya: The liberation of Dr. Aboussedra, arbitrarily detained since 1989*, 10 June 2009, http://en.alkarama.org/index.php?option=com_content&view=article&id=250:dr-aboussedra-released-arbitrarily-detained-since-1989&catid=27:communiqu&Itemid=138 (last accessed on 6 April 2010)
- ¹² Alkarama press release, *Libya: OHCHR called upon for disappearance case, Abushaala gone since 1995*, 17 August 2009, http://en.alkarama.org/index.php?option=com_content&view=article&id=283:libya-ohchr-called-upon-for-disappearance-case-abushaala-gone-since-1995&catid=27:communiqu&Itemid=138 (last accessed on 6 April 2010)
- ¹³ Alkarama press release, *Libya: Dr Idriss Aboufaied, released in October, arrives in Geneva*, 16 December 2008, http://en.alkarama.org/index.php?option=com_content&view=article&id=167:libya-dr-idriss-aboufaied-released-in-october-arrives-in-geneva&catid=27:communiqu&Itemid=138 (last accessed on 6 April 2010)
- ¹⁴ Alkarama press release, *Libya: The case of Abdussalam Il-Khwildy before the Human Rights Committee*, 7 July 2008, http://en.alkarama.org/index.php?option=com_content&view=article&id=120:libya-abdussalam-il-khwildys-case-before-the-human-rights-committee&catid=27:communiqu&Itemid=138 (last accessed on 6 April 2010)
- ¹⁵ Alkarama press release, *Libya: Disappearance of M. Ali Al Talhi after his forced removal from Switzerland*, 19 June 2008, http://en.alkarama.org/index.php?option=com_content&view=article&id=113:libya-disappearance-of-mr-ali-al-talhi-after-his-removal-by-force-from-switzerland-&catid=27:communiqu&Itemid=138 (last accessed on 6 April 2010)
- ¹⁶ Alkarama, *Libya: Enforced disappearance and torture followed by the death of M. Ismail Al Khazmi*, 7 November 2008, http://en.alkarama.org/index.php?option=com_content&view=article&id=157:libya-enforced-disappearance-and-torture-followed-by-the-death-of-mr-ismail-al-khazmi&catid=27:communiqu&Itemid=138 (last accessed on 6 April 2010)
- ¹⁷ Alkarama press release, *Libya: The Death in Custody in suspicious conditions of Mr Abdelhamid Al Daquel*, 13 November 2008, http://en.alkarama.org/index.php?option=com_content&view=article&id=158:libya-the-death-in-custody-in-suspicious-conditions-of-mr-abdelhamid-al-daquel&catid=27:communiqu&Itemid=138 (last accessed on 6 April 2010)