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**ANNEX 8.40**

LIBYA

# Words to Deeds

The Urgent Need for Human Rights Reform

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PART ONE OF A THREE-PART SERIES

HUMAN  
RIGHTS  
WATCH



January 2006

Volume 18, No. 1(E)

## Words to Deeds The Urgent Need for Human Rights Reform

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## I. Summary

This report addresses the current state of human rights in Libya. It documents some important changes in recent years, analyzes reforms currently under discussion, and highlights what the Libyan government must do to meet its obligations under international human rights law.

Despite some improvements, the government still bans political parties and groups, non-state-run media and independent civic organizations working on human rights or political affairs. Government critics are arrested and detained in violation of Libyan and international law, and the fate of many political prisoners remains unknown. Interrogators sometimes use torture to extract a confession.

The Libyan government says it needs time to reform, and that change will come within the context of the country's unique political system, known as *Jamahiriya*, or "state of the masses." Still, political will seems in short supply. Libyan leader Mu'ammar al-Qadhafi and his inner circle appear unwilling to implement genuine reform, especially in the areas of free expression and association, which might weaken their three-decade grip on power.

The report is based largely on research conducted during a visit to Libya by Human Rights Watch in April-May 2005—the organization's first to the country. The government's willingness to allow such visits after years of denying human rights groups entry is a positive sign. Human Rights Watch enjoyed access to top-level government officials, and was able to visit five prisons, where it conducted private interviews with prisoners and pre-trial detainees. Authorities were less forthcoming about access to Libyan citizens and foreigners in Libya who might harbor complaints. Libya's extensive security apparatus prevented our staff from making unauthorized contacts. The fear among ordinary Libyan citizens was palpable and intense, and even government officials were sometimes nervous to discuss the sensitive issue of human rights.

Despite the restrictions, a picture emerged of a country undergoing gradual change after years of strict repression and global isolation. Human Rights Watch hopes this report will encourage further reform and help bring Libya into compliance with international human rights norms.

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“The right to demonstrate is a right in the traditional sense. But that implies there are two sides, the rulers and the ruled. But when we talk about one group, there is no need.”

—Libyan official explaining why freedom of association and assembly are not required in a political system based on “popular power,” May 2005.

Civil and political rights in Libya are severely curtailed. Individuals are not free to express views critical of the government, the unique Jamahiriya political system, or the country’s leader, Mu`ammar al-Qadhafi. Those who do express criticism or try to organize opposition political groups face arbitrary detention and long prison terms after unfair trials. Despite improvements, torture remains a serious concern. A pervasive security apparatus monitors the population to a high degree.

Some of Libya’s laws are at odds with the country’s international human rights commitments, specifically the International Covenant on Civil and Political Rights. Most notably, Law 71 bans any group activity based on a political ideology opposed to the principles of the 1969 revolution that brought al-Qadhafi to power. Violators of the law can be put to death. This and other legislation effectively prohibit the establishment of political parties and genuinely independent nongovernmental organizations.

Torture is a crime under Libyan law, and the government has repeatedly claimed that it investigates and prosecutes cases in which torture is alleged. Despite these statements and legal guarantees, fifteen out of thirty-two individuals Human Rights Watch interviewed in prisons said that Libyan security forces had tortured them during interrogations, usually to extract a confession. Six of the alleged torture victims were migrant workers from sub-Saharan Africa who were arrested for the possession or dealing of drugs or alcohol. But Libyan political prisoners were also among the group. In only one case Human Rights Watch investigated (involving six people) are the authorities known to have conducted a criminal investigation, and in that case all ten alleged torturers were acquitted.

The most prominent political prisoner is Fathi al-Jahmi, who strongly criticized al-Qadhafi in interviews with international media in March 2004. The Internal Security Agency has been holding him without trial ever since, and in incommunicado detention since June 2005. Eighty-six members of the Muslim Brotherhood, a political and social organization publicly committed to peaceful political change, have been in prison since 1998 for violating Law 71, after trials that violated Libyan and international law. The government has sentenced its two leaders to death, although they and the other

members have been granted a retrial. Five Bulgarian nurses and a Palestinian doctor were sentenced to death for allegedly infecting more than 400 Libyan children with the HIV virus, despite credible claims of being tortured to extract confessions. In December 2005, the Supreme Court overturned the sentences and granted the defendants a new trial.

In the past, the government imprisoned political prisoners for ideological crimes “against the revolution.” Today the government primarily employs the rhetoric of anti-terrorism to imprison critics. Armed Islamic opposition groups exist, but the government has used them to justify the silencing of legitimate political dissent.

The media is strictly controlled. There are no private radio or television stations, and government authorities or the Revolutionary Committees Movement, a powerful ideological organization that promotes the values of the al-Fateh Revolution, control the country’s main newspapers. The only sources of uncensored news and discussion are satellite television programs and the Internet, both of which have proliferated in recent years. The government has occasionally blocked some Internet sites, and in 2005 an Internet writer, `Abd al-Raziq al-Mansuri, was sentenced to one-and-a-half years in prison, apparently due to his critical writings.

Freedom of association is also curtailed. Libyan law explicitly bans any group activity opposed to the principles of the al-Fateh Revolution, and violators of the law can be put to death. Libya has many organizations and associations, including at least three dealing with human rights, but all have ties of varying degrees with the government. There is no functioning civil society in the sense of independent organizations that express views or undertake actions that do not conform to the leadership’s views and goals. On at least three occasions in 2005, the government reportedly interfered in the functioning of professional unions. Some lawyers called for amendments to Law 19, On Associations, to facilitate the registration of nongovernmental organizations.

At the same time, Libya has taken some positive steps in recent years to improve human rights. In 2003 the government promised Libyans who had left the country for political reasons that they could return safely without fear of prosecution, although in one known case the authorities arrested a returnee (they said he had resumed his “terrorist activities.”) The government reduced the number of days authorities could hold a person in detention before appearing before a judge from forty-five to thirty.

In 2004 the government divided the General People’s Committee (Ministry) for Public Security and Justice into two separate bodies, in order to, in the words of one justice

official, “protect the independence of the judiciary.” Prisons were placed under the control of the new General People’s Committee for Justice. The country’s top legislative body, the General People’s Congress, created a Committee for Legal Affairs and Human Rights, although Libyan lawyers complained to Human Rights Watch that it was a cosmetic creation rather than a legitimate body to promote and protect human rights.

Libya periodically has opened itself to international scrutiny from human rights groups. Amnesty International sent a mission in February 2004, the organization’s first since 1988. And the U.S.-based Physicians for Human Rights sent a doctor one year later to examine the political prisoner Fathi al-Jahmi.

In January 2005 the government abolished the People’s Court and its prosecution office, an institution that had tried most political and security cases and was notorious for failing to distinguish between perpetrators of violent acts and government critics seeking peaceful political change. The court routinely violated defendants’ rights to a fair trial by limiting access to defense lawyers, allowing lengthy periods of pre-trial detention and accepting evidence based on forced confessions after torture. The cases before the court at the time of closure were transferred to the regular courts, but it remains to be seen whether these courts will provide the defendants with the fair trials that Libyan law guarantees. Most of the people already imprisoned by the People’s Court remain behind bars.

In September 2005, the government released five long-term political prisoners who were serving prison terms up to life for participation in a banned political group. Around the same time, a government committee recommended that 131 political prisoners be released because they no longer posed a threat to society, among them the eighty-six members of the Muslim Brotherhood. As of January 10, 2006, all of the 131 men remained in prison but the Supreme Court had ordered a retrial for the members of the Muslim Brotherhood.

The government also has pledged to examine some human rights abuses of the past. The head of Libya’s Internal Security Agency told Human Rights Watch that the government had formed a committee to investigate the 1996 deaths of prisoners in Abu Salim prison at the hands of guards. The government says that guards responded properly in the incident, which followed a failed revolt in which some prisoners escaped. Libyan human rights groups abroad and a former prisoner interviewed by Human Rights Watch say security forces executed hundreds of prisoners after the authorities had regained control of the prison.

Some of Libya's laws are currently under review by legal experts and, according to the Secretary of Justice (Minister of Justice), there is an "ambitious plan to reform legislation to bring it into line with international human rights standards."

Legal experts are drafting new penal and criminal procedure codes, and officials told Human Rights Watch that the General People's Congress would review the drafts by the end of 2005. As of January 10, 2006, no known review had taken place. The goal of the new draft penal code is to minimize as much as possible imprisonment as a punishment, the Secretary of Justice said. And the death penalty "will be reduced to the greatest possible extent." It would remain, he said, for the "most dangerous crimes" and for "terrorism."

The Libyan government did not provide Human Rights Watch with a current draft of the proposed penal code. Articles of a draft from 2004, however, suggest the government might enact a definition of terrorism so broad that it could be used to imprison people who are expressing peaceful political views.

Despite government claims that it will not execute anyone until the new penal code comes into effect, the state continues to execute those on death row, most recently two Turks and four Egyptians sentenced to death for murder. Human Rights Watch has called on the government to impose a moratorium on executions, and for the new penal code to abolish the death penalty altogether.

## **II. Methodology**

This report is based primarily on a three-week visit to Libya in April-May 2005. The Libyan government provided access to top-level officials, including the General Secretary of the General People's Congress (Prime Minister), the Secretary of Public Security (Interior), the Secretary of Justice, the Deputy Secretary of Foreign Liaison and International Cooperation (Foreign Affairs), the General Prosecutor, the Director of the Prison Authority, and the head of the Internal Security Agency. The organization also met judges, lawyers, police officials, immigration officials, academics, journalists, and charitable organizations.

Human Rights Watch visited five prisons, known as rehabilitation centers, and interviewed thirty-two prisoners and pre-trial detainees of its choice in one-on-one settings. Libyan officials guaranteed that none of the individuals who spoke with Human Rights Watch would suffer any repercussions for sharing their views.

Human Rights Watch had a much more difficult time speaking independently with Libyan citizens or foreigners in Libya. The delegation's host, the General People's Committee for Public Security, insisted that representatives of the office escort the delegation at all times, and explicitly said the government must arrange all meetings. In one case, the police arrested a Liberian man one hour after he spoke with Human Rights Watch without prior permission. The police released the man the next day after Human Rights Watch complained, and assured the organization that they had arrested him because he did not possess the proper residency permit, which was the case. But Human Rights Watch believes his arrest was due to his having spoken with the organization. The individual has since left Libya because he felt monitored and under threat.

### III. Recommendations

Human Rights Watch urges the Libyan government to accelerate human rights reform—to turn words into deeds—so that Libya meets its obligations under international human rights law.

On some issues, such as torture and use of the death penalty, the government has stated its commitment to reform, and the remaining issue is more rigorous implementation. In other areas, however, promises of reform have been stymied by official invocations of the inviolability of state ideology. However perfect Libyan officials may find that ideology, it should not be a basis for human rights violations, such as the arrest of people for expressing their views or seeking to form independent associations.

Many violations in Libya today are also justified as necessary measures in the fight against terrorism. Human Rights Watch urges Libyan authorities to use human rights standards as a yardstick: while those who plan and carry out violent attacks should be prosecuted, authorities must draw and maintain a clear distinction between perpetrators of violent acts and those who advocate peaceful political change, however radical their message might appear to Libyan officials. The government should not use the contemporary rhetoric of counter-terrorism to justify the suppression of legitimate political dissent.

In particular, Human Rights Watch calls on the government of Libya to:

#### ***Regarding the People's Court***

- Release all prisoners convicted by the People's Court for having peacefully expressed their political views;
- Retry all other cases tried by the People's Court since its inception with full transparency and due process guarantees. Such trials were marred by due-process violations, including long periods of pre-trial detention and unreasonable restrictions on access to lawyers;
- Investigate due process violations by the People's Court during its tenure and hold accountable judges, prosecutors, and other court officials who violated Libyan law.

### ***Regarding the Death Penalty***

- Abolish the death penalty in the new penal code currently being drafted, as called for in the Great Green Charter for Human Rights;
- Declare an immediate moratorium on executions until the new penal code comes into effect;
- 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.

### ***Regarding Political Prisoners***

- Immediately release the 131 individuals deemed political prisoners by the Libyan committee that examined the issue;
- Immediately release the political prisoner Fathi al-Jahmi, who was arrested for criticizing the government and insulting Mu`ammar al-Qadhafi;
- Immediately inform the family members of all prisoners, political and otherwise, of the location of their imprisoned relatives. If the prisoner is deceased, the government should provide a death certificate and, if possible, the body or mortal remains.

### ***Regarding 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;
- Repeal articles of the penal code that criminalize free expression;
- Release all individuals imprisoned or detained solely for exercising their right to free expression;
- Allow for the establishment of private media outlets. Libyan citizens should be free to receive and impart information through the media of their choice;
- Cooperate with journalists' associations to introduce a Law on Publications that facilitates a free press;
- In the state-run television, radio and press, provide a spectrum of news and programming that reflects alternative views;
- Cease blocking Internet websites that carry material protected by the rights to free expression and free information.
- Release the Internet writer `Abd al-Raziq al-Mansuri, who was sentenced to one-and-a-half years in prison, apparently due to his critical writings.



### ***Regarding Freedom of Association***

- Pass legislation that facilitates the registration of non-governmental organizations by a non-political body, with the right to appeal;
- Repeal Law 71 of 1972 and related articles of the penal code that criminalize free association;
- Allow unions and professional organizations to appoint their leadership without government interference;
- Allow all Libyan citizens to engage freely in human rights work, including by forming independent human rights groups.

### ***Regarding Torture***

- Promptly investigate all allegations of torture and ill-treatment in a thorough and impartial way;
- Ensure that confessions and other forms of evidence obtained by means of torture are not admissible in a court of law;
- Hold accountable all those found guilty of using torture or ill-treatment against prisoners and detainees;
- Sign and ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- Extend a standing invitation to all of the human rights specialists (“special procedures”) of the U.N. Commission on Human Rights, facilitate their visits to Libya, and implement their recommendations.

### ***Regarding the Draft Penal Code***

- Eliminate the death penalty as a punishment;
- Eliminate all articles that criminalize peaceful acts and forms of association and expression protected by international human rights law;
- Define “terrorism” in a focused and narrow way to exclude peaceful acts and expressions critical of the government.

### ***Regarding the Committee to Investigate the 1996 Deaths in Abu Salim Prison***

- Make public the names of the committee members and the manner in which they will work, including the time frame for their investigations; make public the findings of the Committee;

- Hold accountable all officials found to have used excessive force in Abu Salim, or in any other way to have violated Libyan law;
- Inform the families of killed prisoners about the cause of death, and, where possible, provide them with the mortal remains of their deceased relatives;
- Compensate the families of prisoners who are found to have died from the unlawful use of force by security forces.

***Regarding International Human Rights Treaties***

- Sign and ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol;
- Sign and ratify the Rome Statute of the International Criminal Court.

#### IV. Background

Libya, formally known as the Great Socialist People's Libyan Arab Jamahiriya, is a large country, 1,759,540 square kilometers (679,363 sq. miles), with relatively few people, just over 5.5 million.<sup>1</sup> The vast Sahara Desert encompasses more than 90 percent of the country, and the majority of the population lives on the Mediterranean coast.

Outside powers have long overrun the country's interior and coast, including the Phoenicians, Greeks, Romans and Byzantines. The Ottoman Empire ruled the area until Italy invaded in 1911, and named the country Libya (the ancient Greek term for North Africa west of Egypt).<sup>2</sup>

The Italians faced unexpected resistance from local tribes. They responded with brutality, setting up detention camps and deporting people to rocky islands off the Italian coast. According to Libyan historians, the occupying Italian forces used military planes in combat for the first time in Libya.<sup>3</sup>

During World War Two, Libya was the stage for large battles between the Axis and Allied powers. A dangerous legacy of the war is the millions of landmines planted by the Italians, Germans, British and French. According to Libyan officials, those four countries placed between fifteen and twenty million mines, and the de-mining process continues today.<sup>4</sup>

After the war, the country fell under the control of the British and French. It gained its independence in 1951—the first country to achieve independence through the United Nations—and a constitutional monarchy was formed under King Idris, who had returned from exile in Cairo five years before.

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<sup>1</sup> The vast majority of the population is either Arab or Berber, and almost all are Sunni Muslim.

<sup>2</sup> The Greek word comes from the Egyptian term "Lebu," which referred to the Berbers who lived East of the Nile River. They also used it to refer to all of Africa.

<sup>3</sup> Human Rights Watch interview with Prof. Dr. Muhammad T. Jarari, Director, Libyan Studies Centre, Tripoli, May 5, 2005. The Libyan Studies Centre has built an impressive archive of Libyan history, including an oral history project with 10,000 interviews.

<sup>4</sup> Human Rights Watch interview with Col. Zakaria Nuri, Director, Explosives Office, Public Administration for Civil Protection, Tripoli, May 7, 2005. According to Col. Nuri, his office is in need of demining equipment and training. As of December 2004, landmines and unexploded ordinance from World War Two had killed 2,368 people and wounded 1,762 others, he said.

In 1959, Libya successfully drilled oil in the desert, and today Libya has Africa's largest crude-oil reserves, with nearly forty billion barrels of proven reserves. The discovery catapulted the country out of poverty. With an annual GDP of approximately \$35 billion today, it is the second wealthiest country in Africa. At the same time, Libya's wealth is centralized in the hands of the elite, and corruption remains a major concern.

On September 1, 1969, a small group of military officers led a bloodless coup that toppled the pro-western King Idris, henceforth known as the al-Fateh Revolution. A Revolutionary Command Council (RCC) ran the country, headed by a twenty-eight-year-old officer, Mu`ammar al-Qadhafi. The RCC, eventually replaced by the Arab Socialist Union, abolished the monarchy and declared the Libyan Arab Republic. It promoted Arab unity, the liberation of Palestine, the removal of foreign militaries and social justice after eighteen years of corruption under the king.

The RCC adopted a Constitutional Proclamation on December 11, 1969, which guaranteed some rights, such as the right to work, health care and education, as well as religious freedom and the inviolability of the home. Freedom of opinion was guaranteed, but only "within the limits of public interest and the principles of the Revolution."<sup>5</sup> The proclamation was intended as a provisional measure until the adoption of a full constitution, but Libya is still governed under this proclamation and a series of subsequent laws deemed to have constitutional weight.

Al-Qadhafi quickly consolidated power to become the country's undisputed leader, and he retains that position today. Despite currently holding no official title, the man called "Brother Leader" and "Guide of the Revolution" controls all major aspects of Libya's political and economic life.

Throughout the 1970s al-Qadhafi developed his unique political philosophy, a hybrid of Socialism and Islam called the Third Universal Theory, which sought independence from communism and capitalism. In 1975 he wrote the Green Book, since translated into dozens of languages, which presents the theory of a system of government called Jamahiriya, or "state of the masses."

According to the Green Book, the Jamahiriya system is the final evolution of democracy. Parliaments are "a misrepresentation of the people," and parliamentary governments are

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<sup>5</sup> Constitutional Declaration of December 11, 1969, article 13.

“a misleading solution to the problem of democracy.” Political parties are considered “contemporary dictatorships.”<sup>6</sup>

Promoting the principle of “direct democracy,” the Jamahiriya obliges all citizens to participate in Basic People’s Congresses in their local districts, where they may debate all matters of government, from budgets to defense. For al-Qadhafi and the current Libyan government, this system is the most advanced form of democracy because citizens do not elect representatives but participate themselves directly in governmental affairs.

Consistent with this thinking, a new law banned political parties in 1972. Law 71, still in force today, bans any group activity based on a political ideology opposed to the principles of the al-Fateh Revolution. The authorities have imprisoned hundreds of Libyans for violating the law.

In 1973, police and security forces arrested hundreds of Libyans who opposed, or the authorities feared could oppose, the new system. In what some Libyans call a cultural revolution to “educate the masses,” police and security forces rounded up academics, lawyers, students, journalists, Trotskyists, communists, members of the Muslim Brotherhood and others considered “enemies of the revolution.” Some of them disappeared.

In 1977, Libya adopted the Declaration of the People’s Authority, which enshrined the direct democracy system as the “absolute and decisive solution to the problem of democracy.” It established the system of people’s congresses by which the country would implement direct democracy and changed the country’s name to the Great Socialist People’s Libyan Arab Jamahiriya.

According to the system, Basic People’s Congresses exist in every local administrative unit (*sha`biyya*). Each Basic People’s Congress elects a People’s Committee (*lajna sha`biyya lil-mahalla*) as an executive body that appoints a local representative to the General People’s Congress (*Mu’tamar al-Sha`b al-`Amm*), the equivalent of a national legislative assembly. The General People’s Congress is run by people’s committees, which are the equivalent of ministries. Each committee is run by a secretary, which is the equivalent of a minister.

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<sup>6</sup> The Green Book is available in English at <http://www.geocities.com/Athens/8744/readgb.htm>, as of December 16, 2005. The website of the World Center for the Study and Research of the Green Book, an important Libyan institution, is available at [www.greenbookstudies.com](http://www.greenbookstudies.com).

In addition, a parallel mechanism permeates all aspects of Libya's economic, social, and political life. Throughout the various people's congresses, workers' unions, universities, state companies, and the media, the powerful Revolutionary Committees Movement maintains true ideological and political control.<sup>7</sup>

Throughout the 1970s and 1980s, state repression increased in a wave of revolutionary fervor. Authorities labeled critics "stray dogs" and imprisoned or "disappeared" them. The state assumed control of religious institutions, which contributed to the rise in militant Islamic resistance to al-Qadhafi that emerged in the 1980s.

U.S. and British military forces and companies began leaving Libya almost immediately after 1969, and the Libyan government forced out other companies and seized their assets in the following years. In December 1979, the U.S. declared Libya a state-sponsor of terrorism, and the country remains on that list today. The Libyan embassy in Washington, called a People's Bureau, closed in May 1981.

In August of that year, Libyan fighter jets engaged U.S. Air Force planes flying in airspace north of Libya's coast. The U.S. F-14s shot the Libyan jets down. The U.S. subsequently banned U.S. citizens from traveling to Libya, prohibited Libyan crude oil imports and imposed other trade restrictions—restrictions that stayed in place until 2004.

Libyan relations with the United Kingdom soured after an incident in April 1984. During an opposition demonstration outside the People's Bureau in London, someone from inside the Bureau apparently shot and killed a British policewoman and wounded ten others.

In April 1986, a bomb exploded at the La Belle disco in Berlin, killing three people—two U.S. soldiers and a Turkish woman—and wounding approximately 250.<sup>8</sup> U.S. President Ronald Reagan blamed al-Qadhafi and ordered air raids on Tripoli and Benghazi, including on al-Qadhafi's residence. The strikes killed forty people, reportedly including

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<sup>7</sup> See the website of the Revolutionary Committees Movement in Arabic, English, French and Spanish at [www.rcmlibya.org](http://www.rcmlibya.org). According to the site, the movement "incites the masses to exercise power."

<sup>8</sup> On November 13, 2001, a German court convicted four people, including a former staff member of the Libyan People's Bureau in East Berlin, in connection with the bombing. Libya agreed to pay compensation to the non-U.S. victims in August 2004.

al-Qadhafi's adopted daughter Hana. The U.S. also imposed additional economic sanctions due to "Libyan complicity" in the Berlin attack.<sup>9</sup>

In 1988 Libya saw slight reform, including the release of political prisoners. In June, the General People's Congress adopted the Great Green Charter of Human Rights in the Jamahiriyan Era, a document inspired by Mu`ammar al-Qadhafi, who "incarnates through his thought and labor the aspirations of the oppressed and the enslaved throughout the world."<sup>10</sup> The Charter recognized some basic rights and prohibited any punishment that "would violate the dignity and the integrity of a human being." In particular, the Charter guaranteed the independence of the judiciary (article 9), freedom of thought (article 19), equality between men and women (article 21), and stated that the goal of Jamahiriya society is to abolish capital punishment—a goal not yet achieved. That year Libya became a state party to the first Optional Protocol of the International Covenant on Civil and Political Rights (ICCPR) and, in 1989, it signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

The door of reform closed quickly, and 1989 saw another wave of internal repression. According to Amnesty International, which had visited the country in 1988, the government instituted "mass arbitrary arrest and detention, 'disappearances,' torture, and the death penalty."<sup>11</sup>

One of the main causes of the crackdown was the return to Libya of Libyan citizens from Afghanistan, where they had gone to fight Soviet forces. Some of them returned home with hopes of overthrowing al-Qadhafi and installing a government based on *shari`a* (Islamic law). The returnees formed the basis for the armed Islamic resistance al-Qadhafi faces today.

Libya's international isolation increased around this time. In December 1988, Pan Am flight 103 blew up over Lockerbie, Scotland, killing 270 people. This was followed by the bombing of UTA flight 772 over Niger in 1989, killing 170. The U.S. and European governments blamed al-Qadhafi for the attacks.

In January 1992, the U.N. Security Council passed Resolution 731, which ordered Libya to surrender the suspects in the two plane bombings, cooperate with the investigations,

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<sup>9</sup> U.S. Department of State, *Background Note: Libya*, December 2004.

<sup>10</sup> Great Green Charter for Human Rights in the Jamahiriyan Era, Preamble.

<sup>11</sup> Amnesty International, *Libya: Time to Make Human Rights a Reality*, August 2004.

pay compensation to the victims' families, and cease all support for terrorism. This was followed in March 1992 by Security Council Resolution 748, which imposed an air and arms embargo on Libya. The embargo had a strong impact on Libya's economy, and was then strengthened by Security Council Resolution 883 in November 1993, which imposed a limited assets freeze and an embargo on select oil equipment.

By the mid-1990s, various Islamic groups in Libya were better organized, among them the Libyan Islamic Fighting Group (LIFG), and they engaged in military hostilities against the state, particularly in the country's east.<sup>12</sup> Al-Qadhafi survived an assassination attempt in 1996.

In June 1996 an incident at Abu Salim prison in Tripoli left a still unknown number of prisoners dead. According to a former prisoner interviewed by Human Rights Watch and Libyan human rights groups abroad, the guards responded to an uprising over prison conditions by going from cell to cell, shooting prisoners as they went, leaving hundreds of prisoners dead.<sup>13</sup> The government claims that the police responded appropriately after an uprising and an escape attempt in which approximately 400 prisoners escaped, some of them leaving Libya. As of August 2005, the government officially had not released information about the incident or the names of the dead.

The Libyan government told Human Rights Watch in May 2005 that it had established a committee to investigate the incident. According to the head of Libya's Internal Security Agency, Col. Tohamy Khaled, the committee will make its findings public when the work is done, but he did not specify a timeframe. The approximately 400 prisoners escaped Abu Salim in four incidents, Col. Khaled said.<sup>14</sup>

In 1998, al-Qadhafi's son, Seif al-Islam al-Qadhafi, aged thirty-three, founded the Qadhafi International Foundation for Charity Associations, since renamed the Qadhafi Foundation for Development, a nongovernmental organization with close ties to the government. The organization's human rights program has criticized human rights

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<sup>12</sup> Other militant Islamic groups fighting the Libyan government include: the Islamic Movement of Martyrs, Libyan Jihad Movement and Islamic Movement for Change.

<sup>13</sup> Human Rights Watch interview with Hussein al-Shafa'i, Washington D.C., June 29, 2004. The Libyan opposition group National Front for the Salvation of Libya has published a report on the killings. See National Front for the Salvation of Libya, "A Detailed Report of the Abu Sleem Prison Massacre in 1996," available at <http://www.nfsl-libya.com/Studies/5065-e.htm>, as of December 4, 2005.

<sup>14</sup> Human Rights Watch interview with Internal Security Agency head Col. Tohamy Khaled, Abu Salim prison, Tripoli, May 10, 2005. Col. Khaled said that prisoners escaped from Abu Salim on four occasions around that time: July 1995, December 1995, June 1996 and July 2001.



violations in the country, such as torture and the imprisonment of people for political views.

The next year, Libya improved its relations with Western Europe and the United States by surrendering two Libyan nationals suspected of blowing up the Pan Am plane over Lockerbie. A court with Scottish judges in The Netherlands subsequently acquitted one of the men and sentenced the other, 'Abd al-Basit al-Megrahi, to life in prison in 2001.<sup>15</sup>

In 2001 and 2002, the authorities released approximately 300 prisoners, some of whom the government had imprisoned due to peaceful political activity since 1973. The government also slowly began to inform families of relatives who had died in prison, although they rarely provided information on the cause of death or provided the mortal remains. According to Libyan groups abroad, more than 250 families are still missing relatives in prison.<sup>16</sup> According to the Qadhafi Foundation, there are "numerous cases where detainees lost their lives in situations and events that are bound by obscurity."<sup>17</sup>

Libya's relations with the U.S. warmed during this time. Negotiations on diplomatic relations had begun under the Clinton administration in the late-1990s and slowed when George W. Bush became president. They picked up again after the attacks by al-Qaeda in New York and Washington D.C. on September 11, 2001. Al-Qadhafi condemned the attacks and urged Libyans to donate blood. According to media reports, Tripoli gave the CIA files on Libyans with alleged links to international terrorism.<sup>18</sup> Intelligence ties between the two countries have continued to grow since that time, with the CIA opening a station in Libya, according to Seif al-Islam al-Qadhafi.<sup>19</sup> "We have contacts with our counterparts on the American side continuously," the Secretary of Public Security (Minister of Interior) Nasr al-Mabrouk told Human Rights Watch.<sup>20</sup>

One reason for the apparent turnaround was the need for foreign investment. After years of sanctions, Libya needed capital to develop its vast oil reserves. But the main motivation was al-Qadhafi's concern for the Islamic resistance he faced at home. The

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<sup>15</sup> A panel of Scottish judges tried the Libyans in the Netherlands under Scottish criminal law and procedure. In the summer of 2005, some Scottish officials began to question elements of the case.

<sup>16</sup> According to a group based in Geneva, Human Rights Solidarity, 258 families are missing relatives.

<sup>17</sup> Human Rights Society of the Al-Qadhafi Foundation, "Reservations and Demands," July 17, 2003.

<sup>18</sup> Ken Silverstein, "How Kadhafi Went from Foe to Ally," *Los Angeles Times*, September 4, 2005.

<sup>19</sup> Ken Silverstein, "Kadhafi's Son Calls for Closer Ties With U.S.," *Los Angeles Times*, November 4, 2005.

<sup>20</sup> Human Rights Watch interview with Secretary of Public Security Nasr al-Mabrouk, Tripoli, April 26, 2005. For a speech by Mu' ammar al-Qadhafi on terrorism, see [www.alfajrljadeedeng.com/tahlilE.html](http://www.alfajrljadeedeng.com/tahlilE.html), accessed October 25, 2005.

September 11 attacks offered him a chance to join the west's "War on Terror" and to justify security measures against these groups—and other critics—at home.

In this way, September 11 was a paradigm shift. The Libyan government had previously exerted control in the name of the al-Fateh Revolution, and arrested opponents because, the government said, they failed to understand the concepts of popular power and direct democracy. Since 2001, the government's rhetoric has hinged on anti-terrorism concerns. Government officials repeatedly told Human Rights Watch that all individuals in prison on political charges were "terrorists" who threatened the security of the state. An armed Islamic opposition does indeed exist, but the government has used the reality of these armed groups to justify silencing peaceful dissent in the name of its "anti-terror" fight.

On September 25, 2001, President Bush signed an executive order freezing the assets in the U.S. of al-Qadhafi's most serious domestic challenge, the Libyan Islamic Fighting Group, which is trying to overthrow him using violent means. In December 2004 the U.S. State Department placed the LIFG on its list of terrorist groups.<sup>21</sup> The State Department later elevated the LIFG to an al-Qaeda affiliate.

In return, Libyan officials have provided the U.S. and other countries with valuable intelligence about Libyans who had fought in Afghanistan and then followed Osama bin Laden to Sudan. The chief of Libya's External Security Agency, Musa Kusa, reportedly provided a list of Libyans who had trained with al-Qaeda. According to Secretary of Public Security al-Mabrouk, Libya is a "local partner" in the fight against terrorism. "We are more capable of understanding these people because we know the mentality of these people," he said.<sup>22</sup>

Evidence of the cooperation can be found in flight records Human Rights Watch obtained for two private planes leased by the CIA. The logs show fifteen flights through Tripoli's Mitiga airport, formerly part of Wheelus Air Base, which the U.S. ran until al-Qadhafi seized power. One of the planes made several round trips between Washington and Tripoli. The second plane flew in September 2004 from Tripoli to Guantanamo Bay, Cuba, where the U.S. government runs a detention facility.

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<sup>21</sup> John C. K. Daly, "Libya and al-Qaeda: A Complex Relationship," The Jamestown Foundation, Terrorism Monitor, Volume 3, Issue 6, March 24, 2005, available at <http://jamestown.org/terrorism/news/article.php?articleid=2369476>, as of December 14, 2005.

<sup>22</sup> Human Rights Watch interview with Secretary of Public Security Nasr al-Mabrouk, Tripoli, April 26, 2005.

In 2005, the CIA reportedly agreed to offer counter-terrorism training to Libyan security personnel. The U.S. also has reportedly delivered into Libyan custody some anti-al-Qadhafi Libyans it had captured in its global campaign against terrorism, as well as allow Libyan agents to interrogate Libyans held at the U.S. detention facility at Guantanamo Bay.<sup>23</sup> In November, the CIA's deputy director, Vice Adm. Albert M. Calland III, reportedly visited Tripoli for secret meetings with al-Qadhafi and Libyan intelligence officials on ways to expand Libya's role in fighting terrorism.<sup>24</sup>

In the past two years, the United States and Libya have also resolved the two main sticking points between them: Libya's weapons of mass destruction (WMD) and compensation for victims of the Pan Am and UTA bombings. In August 2003, Libya accepted "responsibility for the actions of Libyan officials" for both flights, and paid compensation to the families.<sup>25</sup> The U.N. lifted sanctions on September 12, 2003.

On December 19, 2003, Libya announced it would give up its WMD programs and limit its long-range missiles.<sup>26</sup> Libya said it would comply with the Non-Proliferation Treaty and the Biological Weapons Convention, sign the International Atomic Energy Agency Additional Protocol and adhere to the Chemical Weapons Convention. This led to what the State Department called "gradual, step-by-step normalization" of U.S.-Libyan relations.<sup>27</sup>

Libya's renunciation of WMD also led to an intelligence windfall for the United States. Libya provided the U.S. government with a list of black-market suppliers, front companies and transporters in the WMD market, a U.S. official said.<sup>28</sup>

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<sup>23</sup> Ken Silverstein, "How Kaddafi Went From Foe to Ally," *Los Angeles Times*, September 4, 2005.

<sup>24</sup> Ken Silverstein, "Top CIA Official Met With Kaddafi in Libya," *Los Angeles Times*, November 17, 2005.

<sup>25</sup> U.N. Security Council Resolution 1506. Libya agreed to pay the families of victims \$10 million each—\$4 million after the lifting of U.N. sanctions, another \$4 million after the lifting of U.S. sanctions based on the International Emergency Economic Powers Act (IEEPA) and the last \$2 million when the U.S. State Department takes Libya off its list of states sponsoring terrorism. As of December 2005, Libya had paid the first two installments but was withholding the final \$2 million because it remains on the State Department list.

<sup>26</sup> Libya agreed to limit its missiles, according to the Missile Technology Control Regime, to a range of at least 300 km and a payload of at least 500 kg.

<sup>27</sup> Statement by Acting Under Secretary for Political Affairs William J. Burns, U.S. House of Representatives Committee on International Relations, "Libya: Progress on the Path Toward Cautious Reengagement," March 16, 2005.

<sup>28</sup> Testimony of William J. Burns, Acting Under Secretary for Political Affairs, U.S. Department of State, Committee on International Relations in the U.S. House of Representatives, March 8, 2005, available at [http://www.house.gov/international\\_relations/109/bur031605.htm](http://www.house.gov/international_relations/109/bur031605.htm), as of December 1, 2005.

The United States opened an Interests Section in Tripoli on February 8, 2004, upgraded to a U.S. Liaison Office in June 2004. Libya opened its Interest Section in Washington on July 8, 2004. The United States lifted the travel ban and sanctions that had blocked trade and investment and unblocked Libya's frozen assets, opening the door for U.S. oil companies to return. Full diplomatic relations are currently on hold because Libya remains on the list of states that sponsor terrorism; in turn, it has not paid the victims' families the last installment of compensation. The United States is also concerned about an alleged Libyan plot to kill then-Saudi Crown Prince Abdullah.<sup>29</sup>

Libya's relations with Europe also have improved. In April 2004 al-Qadhafi visited Europe on an official trip for the first time in fifteen years. Tony Blair, Jaques Chirac, Gerhard Schroeder and Silvio Berlusconi have all visited Tripoli. Cooperation with Italy and the European Union has focused on stemming the flow of migrants and refugees who travel through Libya to Europe.

In August 2004, Libya agreed to pay \$35 million in compensation to more than 150 non-U.S. victims of the 1986 bomb attack on the La Belle disco in Berlin. Libya said it would pay compensation for the two U.S. deaths when Washington compensates Libya for the lives and property destruction from the U.S. air strikes on Tripoli and Benghazi after the disco attack.

In October 2005, the Libyan and British governments signed a Memorandum of Understanding that allows Britain to deport individuals to Libya if the Libyan government gives diplomatic assurances the deportees will not be subjected to torture. The U.K. had signed a similar agreement with Jordan in August. British home secretary Charles Clarke called the Libyan MOU an example of the "effective international cooperation that we need in order to confront and defeat the type of terrorism we now face."<sup>30</sup> Human Rights Watch and other human rights groups protested that the agreements with Jordan and Libya violate the international prohibition against sending persons to countries where they face a serious risk of torture.<sup>31</sup>

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<sup>29</sup> In July 2004, a U.S. federal court sentenced Abdulrahman M. Alamoudi, a U.S. citizen and founder of the American Muslim Council, to twenty-three years in prison for illegal business dealings with Libya related to a plot to kill then-Saudi Crown Prince Abdullah. The Saudi government arrested thirteen suspects in connection with the case, including four Libyan intelligence agents whom Abdullah pardoned in August after he became king. The two countries severed diplomatic ties in December 2004, but resumed them in December 2005.

<sup>30</sup> "UK Signs Libya Deportation Deal," BBC, October 18, 2005, available at [http://news.bbc.co.uk/1/hi/uk\\_politics/4353632.stm](http://news.bbc.co.uk/1/hi/uk_politics/4353632.stm), accessed October 25, 2005.

<sup>31</sup> Human Rights Watch, "U.K.: Torture a Risk in Libya Deportation Accord," October 18, 2005, available at <http://hrw.org/english/docs/2005/10/18/libya11890.htm>.

Over the past two years, the Libyan government has initiated some important reforms, such as the release of some political prisoners, improved prison conditions, and expanded human rights training for police. But Libya remains tightly controlled from the top, with little room for individuals to criticize the ruling ideology or government leaders, or to form independent organizations. Although there are increasing numbers of citizen's groups, such as unions, professional associations and charitable groups, they are all controlled to varying degrees by the government. The media is not free. The law states that individuals may express their opinions only in the people's congresses and in the state-controlled mass media, and only if the views are not contrary to the "people's authority" or the principles of the revolution. As the Great Green Charter for Human Rights states, "Democracy means popular power, not popular expression." Political prisoners remain in jail for having peacefully expressed critical views.

## V. The People's Court

On January 12, 2005, the General People's Congress passed a resolution to abolish Libya's extraordinary court, the People's Court (*Mahkamat al-Sha'b*), which had heard most political and security cases and had become notorious for politically motivated judgments and biased trials. Cases under the court's review at the time of its closure were transferred to regular criminal courts.

Human Rights Watch and other groups welcomed the court's abolition as an important step forward for human rights.<sup>32</sup> But the fate of hundreds of people in prison, convicted by the People's Court after potentially unfair trials, remains a major concern. Those convicted for the peaceful expression of political views should be immediately released and compensated for their time in prison. Others convicted by the People's Court should be given new trials in Libya's regular criminal courts with full transparency and due process guarantees.

Libya established the People's Court in 1988 to try economic, political, and security crimes against the state. It included an appeals court and a prosecution service, the Popular Prosecution Office. Many cases involved charges of illegal political activities that should have been protected under the rights to free association or speech, in particular, 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-Qadhafi to power. Some cases also were against state employees accused of graft.

Libyan law required members of the People's Court to be independent and "subject in their judgments to the law and their conscience."<sup>33</sup> Despite this, the court routinely violated defendants' rights to a fair trial by limiting access to defense lawyers, allowing lengthy periods of pre-trial detention and accepting evidence based on forced confessions after torture. Libyan lawyers said these violations also occur in the regular criminal courts, but they were more frequent and more severe in the People's Court due to the sensitivity of the cases and the court's inherently political nature. Defendants could appeal to the Supreme Court only in the case of a death sentence. By 2004, disturbed by ongoing violations of Libyan law, some Libyan lawyers refused to take cases before the People's Court.

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<sup>32</sup> Human Rights Watch, "Reforms Welcome, But Concerns Remain," May 23, 2005, and Amnesty International, "Libya: Abolition of People's Court is an Important Step," Public Statement, January 13, 2005.

<sup>33</sup> Law 5 of 1988, article 5.





In January 2005, the General People's Congress abolished Libya's extraordinary court, the People's Court, which had heard most political and security cases and was notorious for politically motivated judgments and biased trials. Cases under the court's review at the time of its closure were transferred to regular criminal courts, like this Court of Appeals in Benghazi.

(c) Fred Abrahams/Human Rights Watch 2005

"We couldn't even see the file in cases before the People's Court," one lawyer told Human Rights Watch. "The law didn't ban us, but it was the procedures of the authorities, which were arbitrary and depended on their mood."<sup>34</sup>

Human Rights Watch interviewed five prisoners who were tried and convicted by the People's Court. Four of them complained of torture during the investigation stage and due process violations in their case, such as restricted access to a lawyer. On October 12, 2005, Human Rights Watch asked the Libyan government if it had conducted investigations into these torture allegations but, as of January 10, 2006, the government had not replied.<sup>35</sup>

<sup>34</sup> Human Rights Watch interview with Libyan lawyer, Tripoli, April 28, 2005.

<sup>35</sup> Human Rights Watch memo to the Government of Libya, October 12, 2005.

Two examples were the prisoners Ahmad Muhammad Khair Faraj al-Zalawi and Ahmad `Abd al-Salam al-`Alim al-Sharif, currently serving life sentences for organizing a political group that opposed the principles of the al-Fateh Revolution. According to al-Sharif, interviewed by Human Rights Watch in Benghazi's al-Kuweifia prison, the authorities arrested him, al-Zalawi and twelve other men on July 21, 2000, on charges of using the Ahli Benghazi Football Club as a cover for their political group. Al-Sharif denied involvement in any political activity and said internal security forces compelled him to confess after three months of torture in Benghazi. On June 22, 2001, the People's Court sentenced him, al-Zalawi and a third man, `Abd al-Salam `Abd al-Salam Jum`a al-Jamaty, to death. The sentences were later commuted to life in prison but, on December 24, 2004, al-Sherif said, al-Gamaty committed suicide.

"We were convicted by the People's Court, which has been closed, but its sentence is still upon us," al-Sharif told Human Rights Watch.<sup>36</sup>

The case of 152 men arrested in 1998 for their membership in the Muslim Brotherhood demonstrates the shortcomings of the People's Court and its prosecution office. The authorities held the men for more than two years in secret detention without access to their families or lawyers. Some said they were tortured.<sup>37</sup>

The People's Court tried the case in March 2001. In February 2002, the court sentenced eleven of the men to ten years in prison and seventy-three of them to life. The two leaders of the brotherhood received the death penalty, and they are still on death row. Sixty-six of the defendants were acquitted. In October 2005, the Supreme Court ruled that the eighty-six Muslim Brotherhood members would receive a new trial, and the new trial was proceeding as this report went to press. On April 18, 2004, al-Qadhafi gave a speech to the Supreme Council for Judicial Authority and other high-ranking members of the judiciary, in which he called for a number of legal reforms, including the abolition of the People's Court. Nine months later, in its January 2005 session, the Basic People's Congress passed a resolution closing the court and its prosecution service.

During the Human Rights Watch visit to Libya in April-May 2005, justice officials explained that the government had transferred all cases before the People's Court as of

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<sup>36</sup> Human Rights Watch interview with Ahmad `Abd al-Salam al-`Alim al-Sharif, al-Kuweifia prison, Benghazi, April 23, 2005.

<sup>37</sup> Former head of the Muslim Brotherhood, Salim Abu Hanak, incarcerated in Abu Salim prison, told Human Rights Watch that government agents tortured him after his arrest in June 1998. (Human Rights Watch interview with Salim Abu Hanak, Abu Salim prison, Tripoli, May 10, 2005.) See also Amnesty International, *Libya: Time to Make Human Rights a Reality*, August 2004.



January 2005, whether they were in the trial phase or on appeal, to regular criminal courts. Cases that the People's Court already had ruled on, however, would not be reviewed. Libyan authorities did not provide country-wide figures on the number of cases transferred, but officials from the Benghazi district court said they had received "more than ten cases" from the Benghazi People's Court. Some of these cases went to the appeals court and some went to the court of first instance, they said.<sup>38</sup>

When explaining the court's closure, justice officials said the People's Court performed a particular role after the 1969 revolution and that it was no longer required. "The People's Court was established under special circumstances," one official said. He added, "the circumstances for this court were no longer in place."<sup>39</sup> According to Secretary of Justice 'Ali 'Umar Abu Bakr, the court was "in place for a certain historic period," although he did not elaborate on what particular characteristics that period had or how they had changed.<sup>40</sup>

The government also transferred judges and prosecutors from the People's Court to the criminal court system, justice officials said. Some court staff returned to non-legal jobs they had held prior to their assignment with the People's Court. A former president of the People's Court, Husni al-Wahaishi, became head of the newly formed Committee for Legal Affairs and Human Rights in the General People's Congress.

Some Libyan lawyers complained quietly and on condition of anonymity to Human Rights Watch about al-Wahaishi's appointment, expressing concern that, given his previous involvement in what they viewed as a political court that disrespected due process norms, he would not perform his tasks on the new human rights committee in an objective and professional way. "It places the credibility of the process in doubt," one lawyer said.<sup>41</sup> The Qadhafi Foundation was more outspoken, publicly criticizing his appointment.<sup>42</sup>

In late October 2005, 135 prisoners in Abu Salim prison reportedly staged a protest to demand that their cases get retried, as the Supreme Court had recently granted a new

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<sup>38</sup> Human Rights Watch interview with Benghazi justice officials, Benghazi, April 23, 2005.

<sup>39</sup> Human Rights Watch interview with Libyan lawyers and judges, Tripoli, April 26, 2005.

<sup>40</sup> Human Rights Watch interview with Secretary of Justice 'Ali 'Umar Abu Bakr, Tripoli, April 28, 2005.

<sup>41</sup> Human Rights Watch interview with Libyan lawyers, Tripoli, April 28, 2005.

<sup>42</sup> Libya Human and Political Development Forum, "2004 Libya Human Development Report," November 2, 2005. Available at [www.libyaforum.org/english/index.php?option=content&task=view&id=1186&Itemid=0&limit=1&limitstart=0](http://www.libyaforum.org/english/index.php?option=content&task=view&id=1186&Itemid=0&limit=1&limitstart=0), as of December 15, 2005.

trial for the eighty-six members of the Muslim Brotherhood. They had also been convicted by the People's Court, they said.<sup>43</sup>

In its meetings with Libyan officials, Human Rights Watch welcomed the closure of the People's Court, but urged the authorities to release all individuals convicted by the court for the peaceful expression of critical views. Others convicted by the court should be granted a new trial with full transparency and due process guarantees. Human Rights Watch subsequently asked the Libyan government how many people were in prison based on convictions by the People's Court, but, as of January 10, 2006, the government had not replied.<sup>44</sup>

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<sup>43</sup> "Kamal al-Marjari: Abu Salim Prisoners End Their Sit-in," *Akhbar Libya*, October 24, 2005, <http://www.akhbar-libya.com/modules.php?name=News&file=article&sid=22111>, accessed October 25, 2005.

<sup>44</sup> Human Rights Watch memo to the Government of Libya, October 12, 2005.

## VI. The Penal Code

In 2003, Libyan authorities announced efforts to amend the country's penal code, which came into effect in 1953 and had undergone only partial revisions since that time. The government formed committees of legal experts to review the code, as well as the code of criminal procedure.

According to Secretary of Justice `Ali `Umar Abu Bakr, the experts were due to submit a new penal code to the Basic Peoples Congresses for debate at the end of 2005. Under Libya's political system, each congress may approve or reject the proposal, or approve it with reservations. The code will come into force if approved by the General People's Congress. Libyan authorities did not provide Human Rights Watch with a draft of the proposed new code, despite multiple requests.

The amendments are based on "broad lines and concepts" from the Great Green Charter for Human Rights, Secretary Bakr said. In particular, the new code will attempt as much as possible to minimize imprisonment as a punishment, replacing it with financial fines. And the death penalty "will be reduced to the greatest possible extent." The death penalty would remain, he said, for the "most dangerous crimes" and for "terrorism."

Secretary Bakr did not explain how the new penal code would define terrorism aside from saying, "at the moment we consider terrorism to be anything that threatens the state." To be consistent with international standards, the new penal code should define terrorism precisely and narrowly, so as to exclude acts that are protected under the rights to free expression and association.

If reforms are to bring Libya's penal code into accordance with international human rights treaties it has signed, moreover, authorities will need to revise broadly worded articles in the existing code that unduly restrict freedom of assembly and expression. The following articles are of particular concern:

**Article 166** imposes the death penalty on anyone who talks to a foreign state or its employees or anyone else working for that state or arranges conspiracies with that state or that person with the intention to provoke or contribute to an attack against Libya.

**Article 167** orders imprisonment for anyone who, during peace, conspires with a foreign state or one of its employees with the intention to harm the Arab Jamahiriya of Libya's

military, political and diplomatic position. The same penalty applies to whoever intentionally destroys or hides documents that he knows favor the rights of the Arab Jamahiriya of Libya over a foreign country. The penalty for these kinds of crimes is life imprisonment if the crimes were committed in war time or if the offender is a public employee or undertaking a public responsibility or if the government assigned him any other responsibility.

**Article 178** orders life imprisonment for the dissemination of information considered to “tarnish [the country’s] reputation or undermine confidence in it abroad.”

**Article 206** imposes the death penalty for those who call “for the establishment of any grouping, organization or association proscribed by law,” and for those who belong to or support such an organization.

**Article 207** imposes the death penalty 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.”

**Article 208** orders 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.”

As mentioned above, the Libyan government did not provide Human Rights Watch with the current penal code draft, despite repeated requests. However, the government did provide a draft to an Amnesty International delegation that visited the country in February 2004. According to Amnesty, many articles in that draft were inconsistent with Libya’s commitment to international human rights law. Vague terms in some articles, such as “spreading rumors,” “insult,” and “harming the reputation of the country,” could lead to the death penalty for the peaceful expression of political views, Amnesty said.<sup>45</sup>

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<sup>45</sup> Amnesty International, *Libya: Time to Make Human Rights a Reality*, August 2004.

Amnesty highlighted a number of articles in the February 2004 penal code draft that could result in severe punishments, including death, for peaceful political activity, such as:

**Article 152** – Imprisonment for any Libyan national who, while abroad, publishes news or rumors 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** – Imprisonment for 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** – Imprisonment for anyone who spreads rumors against the governing system or who demonstrates in protest against the governing system. Terms used in this section of the law include “spreading rumors” and “insult.”

**Article 173** – The death penalty for 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** – Imprisonment of no less than ten years for anyone who promotes in the country principles or theories that aim at changing the governing system.

**Article 175** – Imprisonment for anyone (except for a person’s husband, children or grandchildren) with knowledge of the crimes in Articles 173-174.

**Article 176** – Imprisonment for 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.

In addition, **Article 260** in the draft includes a definition of terrorism that is vague, opening the door to the prosecution of individuals who are peacefully expressing political views. Provision 5 of the article, for example, 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 acts in the country or against its interests, even if abroad.”<sup>46</sup>

Because the Libyan government did not provide Human Rights Watch with the most current draft of the new penal code, it is not known if the articles above remain in the current draft.

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<sup>46</sup> Ibid.

## VII. The Death Penalty

Libya has long used the death penalty to punish a host of crimes, including acts that should be protected under the rights to freedom of association and expression. Article 206, for example, prescribes death for the establishment of any grouping, organization or association proscribed by law, and this article has been applied in conjunction with Law 71. Article 207 prescribes death for spreading within the country theories or principles that aim to change the basic principles of the constitutional laws 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 Libyan government says that a new penal code will limit the death penalty to a narrower category of crimes, but, when asked, did not provide a draft of the new code, making it impossible for Human Rights Watch to assess the changes under review. A draft from 2004 includes the death penalty for some vaguely defined crimes that should be protected under the rights to freedom of expression and association. Article 173 of the 2004 draft, for example, stipulates the death penalty for anyone who calls for the establishment of any association or party which is against the al-Fateh Revolution in purpose and means, or anyone who establishes, joins, administers or funds such an association or party.

Up until approximately 2000, executions were by hanging, but today the authorities use a firing line. The legal age limit for execution is eighteen.<sup>47</sup> The death penalty cannot be carried out on a pregnant woman or on a new mother until two months after she gives birth.<sup>48</sup>

In an October 12, 2005 memo to the Libyan government, Human Rights Watch asked how many people the government had put to death in the past two years, as well as how many people were on death row. As of January 10, 2006, the government had not replied.

Under Libyan law, the Supreme Court must confirm all death sentences, including those imposed by the People's Court when it was in existence; the Supreme Council for

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<sup>47</sup> Libyan Code of Criminal Procedure, article 81,

<sup>48</sup> Libyan Code of Criminal Procedure, article 436.

Judicial Authority must then consent before an execution is carried out.<sup>49</sup> Despite these levels of review, some executions in Libya may violate the country's obligations under the International Covenant for Civil and Political Rights, which obliges State Parties that have not abolished the death penalty to apply the punishment "only for the most serious crimes."<sup>50</sup>

Human Rights Watch interviewed one prisoner in Benghazi's al-Kuweifia Prison who said the authorities commuted his death sentence at the last moment to life in prison. According to Ahmad `Abd al-Salam al-`Alim al-Sharif, the People's Court convicted him and two other men in 2001 for organizing a political group that opposed the principles of the al-Fateh Revolution. The Supreme Court confirmed the death sentences but the Supreme Council for Judicial Authority spared the prisoners' lives at the last moment on February 10, 2002, after they had spent one hour blindfolded and bound to a wooden stake awaiting execution, al-Sharif said. According to al-Sharif, one of the three men, `Abd al-Salam `Abd al-Salam Jum`a al-Jamaty, committed suicide on December 24, 2004.<sup>51</sup>

The discussion to ban the death penalty began in 1988 with the enactment of the Great Green Charter for Human Rights, article 8 of which says: "The goal of the Jamahiryan society is to abolish capital punishment." Despite repeated government statements about achieving this goal, the death penalty remains in force, and it appears likely that the new penal code will keep capital punishment for some crimes.<sup>52</sup>

On April 18, 2004, al-Qadhafi gave a speech to the Supreme Council for Judicial Authority and other high-ranking members of the judiciary in which he called for a number of legal reforms, including a reduction in the number of crimes for which the death penalty is applied. Despite the leader's call, the Basic People's Congresses decided against abolishing capital punishment.

Al-Qadhafi repeated his call in a November 2004 speech to Libyan judges and law students that was broadcast on Libya's state television.<sup>53</sup> Abolishing the death penalty should stem from societal progress, he said, and it "should not be the result of

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<sup>49</sup> Law 51, article 131, amended by Law 10.

<sup>50</sup> ICCPR, Article 6(2).

<sup>51</sup> Human Rights Watch interview with Ahmad `Abd al-Salam al-`Alim al-Sharif, al-Kuweifia Prison, Benghazi, April 23, 2005.

<sup>52</sup> Law 20 (1991), Law on Enhancing Freedoms, article 4, prohibits the death penalty "except as a punishment or against he whose life represents danger or damage to society."

<sup>53</sup> Private radio and television stations, as well as newspapers, are banned.



economic, political or security pressures like the ones piled on Turkey to win a European Union membership.”<sup>54</sup> He also explained why the people’s congresses had rejected his idea, providing a glimpse into how the Leader uses the people’s congresses to approve or block measures he likes or dislikes:

I have several times called on the people’s committees to abolish the death penalty but the people’s committees did not approve, why? Because they are not yet convinced by this measure. “How can we abolish the death penalty if someone can stab me with a knife and escape the death sentence? Such an individual has to fear [retribution]. He must know that if he stabs me with a knife, he will be executed and will not be in a position to repeat [his crime]...” The Libyan people proved to be aware. Contrary to what al-Qadhafi said, the death penalty would not be abolished. Muammar says the death penalty needs to be abolished maybe given that we are a civilized country and maybe so that he can boast about us to Europe, the U.S., the U.N., Asia and Africa—that Libya is a civilized country which abolished the death penalty. If Muammar is thinking in this way, we think differently, in a more realistic way. The death penalty is to remain in place. I heard what they said in conferences and people’s committees, and conferences were held on the issue, and they answered me in this way. I was very pleased with their reply. They told me: “Did you think that the death penalty is a mere law? Our society has not yet reached a level of awareness for the death penalty to be abolished.”<sup>55</sup>

As explained in the chapter on the penal code, committees of legal experts are preparing a new penal code that, according to Secretary of Justice Bakr, will reduce the number of crimes for which the death penalty can be applied to “the greatest possible extent,” leaving it in place only for “terrorism” and “the most serious crimes.”

Secretary of Bakr did not know the number of people currently on death row, and a subsequent request to the government for that information went unanswered. According to an inmate on death row interviewed by Human Rights Watch in Tripoli’s Jdeida prison, that facility has ten units holding approximately 180 people who are sentenced to death.<sup>56</sup>

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<sup>54</sup> “Gaddafi Wants Death Penalty Scrapped,” Reuters, November 2, 2004.

<sup>55</sup> “Libyan Leader Lectures Legal Profession on Abolition of Death Penalty,” BBC Monitoring Middle East, broadcast on Libyan Television, November 1, 2004.

<sup>56</sup> Human Rights Watch interview with Ashraf Ahmad Jum’a, Tripoli, Jdeida prison, May 11, 2005.

Six of the prisoners on death row during Human Rights Watch's visit to Libya were five Bulgarian nurses and a Palestinian doctor sentenced to death in May 2004 for allegedly infecting 426 children with the HIV virus on purpose. On December 25, 2005, the Supreme Court overturned the death sentences and ordered a retrial. Human Rights Watch interviewed all six of the defendants, and each of them gave detailed and credible testimony of torture, including electric shocks, beatings to the body with cables and wooden sticks, and beatings on the soles of his or her feet. On June 7, 2005, a Tripoli court acquitted ten Libyans (eight policemen, a doctor and a translator) accused of using torture against the six defendants.

According to Secretary Bakr, prisoners on death row "might be spared" when the new penal code comes into effect. The new code cannot be applied retroactively (unless the execution is under review by the Supreme Court), but the Supreme Council for Judicial Authority can commute sentences on a case-by-case basis out of humanitarian concerns, he said. In the meantime, Secretary Bakr said, the government has imposed a de facto freeze on executions until the new penal code comes into effect.

Despite this claim, the Libyan government is continuing to execute prisoners. Two sources in Libya with knowledge of the cases who wished to remain anonymous told Human Rights Watch that the authorities had executed two Nigerians convicted of murder in April 2005.<sup>57</sup>

In mid-July, Libyan authorities executed four Egyptian citizens – 'Arafa 'Ali 'Abd al-Latif, Maged al-Sa'id Mohamed, Barakat 'Abd al-Zaher, and Basyouni Ahmed al-Tayeb – who were among fifteen Egyptians sentenced to death for murder in 2004. Human Rights Watch has no information about the executed men or the other prisoners in the case.<sup>58</sup>

Also in July, Libyan authorities executed two Turkish citizens, according to the Turkish Foreign Ministry. On July 14, the Ministry announced that Selim Aslan and Yunus Ozkan had been put to death for a murder committed in 1995.<sup>59</sup>

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<sup>57</sup> Human Rights Watch interviews, Tripoli, May 2005.

<sup>58</sup> Egyptian Organization for Human Rights, "Egyptian Organization for Human Rights, in its Campaign Against the Death Sentence, Condemns the Execution of Four Egyptians in Libya," July 21, 2005, and Libyan League for Human Rights, "Libya: Four Executions by Firing Squad," July 26, 2005. See also "4 Egyptians Executed in Libya without Fair Trial," Agence France Presse, July 21 2005.

<sup>59</sup> Anadolu Agency, July 14, 2005.

## VIII. Political Prisoners

“All that is left for him to do is hand us a prayer carpet and ask us to bow before his picture and worship him.”

—The political prisoner Fathi al-Jahmi in an interview with al-Hurra Television on March 16, 2004, ten days before his arrest.

The Libyan government denies that it incarcerates political prisoners. In a speech in the eastern city of Sirte on January 11, 2005, Mu`ammar al-Qadhafi said:

They [Western countries] are accusing us of having political prisoners; and I am sure this is an unjust accusation. I think that those who are in prisons have used religion, they are heretics. These are people who instead of fasting, praying and preaching good are turning religion into violence, coups d'etats, underground activities.<sup>60</sup>

The head of Libya's Internal Security Agency Col. Tohamy Khaled repeated this view when he told Human Rights Watch that people in prison for politically-related crimes were “terrorists” who had politicized Islam and sought the violent overthrow of the Libyan government. He said:

The elements arrested, currently in prison, are criminal terrorists whom we have put in prison to secure the lives of honest, free citizens. They had to be arrested and placed in prison so that the free citizen can rest assured that his security will not be threatened in his home, on the street or anywhere else.<sup>61</sup>

Despite these claims, scores of individuals are in prison for peacefully expressing criticism of the government or alternative political views. Most often the authorities charge offenders with violating Law 71, which bans political activity that opposes the principles of the al-Fateh Revolution. Article 3 of the law imposes the death penalty on those who form, join or support such groups.

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<sup>60</sup> “Libya Should Be Free of Political Prisoners, Says Al-Gadhafi,” BBC Monitoring Middle East, Libyan TV, January 11, 2005.

<sup>61</sup> Human Rights Watch interview with Col. Tohamy Khaled, Abu Salim prison, Tripoli, May 10, 2005.

According to the head of Libya's prison authority, Brigadier Belqassim Gargoom, Libya had 12,860 people in the country's thirty-four "correction and rehabilitation facilities" as of late April 2005, but he declined to say how many of these people were incarcerated for political crimes.<sup>62</sup> The number does not include those held in facilities run by the Internal Security Agency, such as Abu Salim prison in Tripoli. In a memo sent on October 12, 2005, Human Rights Watch asked the government how many people were in prison for having violated Law 71 but, as of January 10, 2006, the government had not replied.

While denying the existence of political prisoners, al-Qadhafi also has called for the establishment of a committee "to make sure that there is not one single political prisoner or a prisoner of conscience." In the January speech cited above, he said: "It is not possible that there should be one single prisoner of conscience. We must be sure of that."

The committee, which included members from the Qadhafi Foundation, concluded in late summer that the government should release 131 prisoners, among them the eighty-six prisoners from the Muslim Brotherhood, because they had renounced violence and were willing to reintegrate into Libyan society. According to the Qadhafi Foundation, however, individuals from the following groups should remain in prison because they pose a threat to society:

- Jama` al-Salafiyya (Salafi Group)—thirty-eight people
- Al-Takfir wa al-Hijra (Excommunication and Migration<sup>63</sup>)—thirty-nine people
- Jama` al-Istishahdiyya (Martyrs Group)—twenty-five people
- Jama` al-Muqatila (al-Muqatila Group)—182 people
- Tajamu` al-Islami (Islamic Grouping)—forty people
- Jama` al-Jihadiyya (al-Jihad Group)—eighty-eight people
- Al-Tabligh wa al-Da`wa (Propagation and Preaching)—one person.<sup>64</sup>

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<sup>62</sup> Human Rights Watch interview with Brig. Belqassim Gargoom, director of the prison authority, Benghazi, April 23, 2005.

<sup>63</sup> Other translations for al-Takfir wa al-Hijra include Repudiation and Renunciation and Atonement and Pilgrimage.

<sup>64</sup> Statement of the Al-Qadhafi International Foundation for Charity Associations, June 15, 2005. See [www.gaddaficharity.org/bayan15-06-2005.htm](http://www.gaddaficharity.org/bayan15-06-2005.htm), accessed October 6, 2005.

In an August 25, 2005 interview with al-Jazeera television, head of the association Seif al-Islam al-Qadhafi said the government would free the 131 prisoners in a matter of days:

[T]he number that will be released in the coming few days is 131, which includes members of the Muslim Brotherhood as well as members of other groups that have adopted violent means such as The Libyan Fighting Group and the Repudiation and Renunciation groups [*al-Takfir wa al-Hijra*]. Those individuals have changed their thought and convictions. There is an overall conviction that they will integrate in the society and abandon violence.<sup>65</sup>

On September 10 and 11, the authorities released five political prisoners serving terms up to life for membership in the banned Islamic Grouping: `Ali Be'aou, Tariq al-Dernawi, Tawfiq al-Jehani, Ramadan Shaglouf and Musa al-Ziwi. It is not clear if the five men, in prison since 1998, were among the 131 prisoners whose imminent release Seif al-Islam al-Qadhafi had announced. Reportedly, the authorities freed them only after they promised not to engage in political activity.<sup>66</sup> As of January 10, 2006, the authorities had not released any other political prisoners.

The standards the committee used to determine that 131 political prisoners should be released remain unclear. According to Seif al-Islam al-Qadhafi, one important criteria was that the prisoners pledged to respect Libyan law and to engage only in peaceful activity within the framework of Libya's political system. As he told al-Jazeera, the people to be released "have convinced us that they are interacting peacefully in society."

Secretary of Justice Bakr told Human Rights Watch that the committee set its own standards and manner of work. Human Rights Watch suggested that the committee and any future efforts to investigate the existence of political prisoners apply the international standards of free speech and association that Libya is obliged to uphold as a state party to the International Covenant on Civil and Political Rights. No one should be prosecuted or detained for the peaceful expression of political views, even those that are critical of the Libyan government or the Jamahiriya system. In addition, future committees should work in a transparent way, making public their standards and findings.

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<sup>65</sup> "Libyan Leader's Son on Call to Reopen Human Rights Files," BBC Monitoring Middle East, August 25, 2005, translated from al-Jazeera, Behind the News program, August 20, 2005.

<sup>66</sup> Amnesty International, "Libya: Releases Welcome but Other Prisoners of Conscience Should Also Be Freed," September 26, 2005.

On or around October 22, 2005, 135 other prisoners in Abu Salim convicted by the People's Court reportedly held a protest to demand that they also get new trials. According to a media report, the protest ended peacefully when the authorities agreed they would review the prisoners' files.<sup>67</sup>

Below are examples of some current political prisoners:

### ***Fathi al-Jahmi***

The most well-known political prisoner in Libya today is Fathi al-Jahmi, an engineer and former provincial governor, whom the Internal Security Agency has held for more than twenty-one months without trial at a special facility in Tripoli.<sup>68</sup>

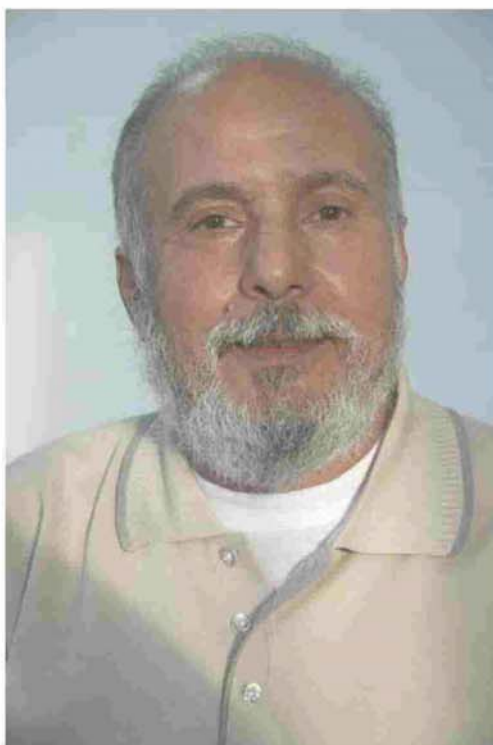
Internal security forces first arrested al-Jahmi, aged sixty-four, on October 19, 2002, after he spoke critically against the government and Mu`ammar al-Qadhafi at a Basic People's Congress in Tripoli, calling for the abolition of the Green Book, free elections in Libya, a free press, and the release of political prisoners. The People's Court subsequently sentenced him to five years in prison, apparently for defaming the country's leader and the Jamahiriya system.

On March 1, 2004, U.S. Senator Joseph Biden met al-Qadhafi and called for al-Jahmi's release. Nine days later, the appeals chamber of the People's Court heard al-Jahmi's case, and gave him a suspended sentence of one year. Al-Jahmi was released on March 12.

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<sup>67</sup> "Kamal al-Marjari: Abu Salim Prisoners End Their Sit-in," *Akhbar Libya*, October 24, 2005, <http://www.akhbar-libya.com/modules.php?name=News&file=article&sid=22111>, accessed October 25, 2005.

<sup>68</sup> Al-Jahmi resigned as Governor of the Gulf Province in 1977.



The Internal Security Agency has held Fathi al-Jahmi, 64, without a trial since March 2004. c) Fred Abrahams/Human Rights Watch 2005

In Washington, President Bush welcomed al-Jahmi's release. "Earlier today, the Libyan government released Fathi al-Jahmi," he said. "She's [sic] a local government official who was imprisoned in 2002 for advocating free speech and democracy. It's an encouraging step toward reform in Libya. You probably have heard, Libya is beginning to change her attitude about a lot of things."<sup>69</sup>

That same day, al-Jahmi gave an interview to the U.S.-funded al-Hurra Television in which he repeated his call for Libya's democratization. He gave another interview to the station on March 16, in which he called al-Qadhafi a dictator and said, "all that is left for him to do is hand us a prayer carpet and ask us to bow before his picture and worship him."<sup>70</sup> On March 25, he told al-Arabiyya Television, "I don't recognize the revolutionary committees, and I don't recognize al-Qadhafi as the leader of Libya."<sup>71</sup>

<sup>69</sup> "President, Mrs. Bush Mark Progress in Global Women's Human Rights," Office of the Press Secretary, March 12, 2004, available at <http://www.whitehouse.gov/news/releases/2004/03/20040312-5.html>, as of December 3, 2005.

<sup>70</sup> Interview with Fathi al-Jahmi on al-Hurra Television, March 16, 2004.

<sup>71</sup> Interview with Fathi al-Jahmi on al-Arabiyya Television, March 25, 2004.



The next day, security agents entered al-Jahmi's Tripoli house and arrested him, his wife Fawzia Abdullah Gogha and their eldest son Muhammad Fathi al-Jahmi. The arrest was for their own protection, officials said, due to public outrage over the interviews he had given.

The Internal Security Agency detained al-Jahmi and his family in an undisclosed location for six months, without access to relatives or lawyers. There were no known charges against them, and the government continued to claim that they were being held for their own safety—a claim repeated to Human Rights Watch about Fathi al-Jahmi in May 2005.

On September 23, 2004, the authorities released al-Jahmi's son Muhammad, and they released his wife Fawzia on November 4. At this writing in January 2006, Fathi al-Jahmi remained in detention.

The first international organization to visit al-Jahmi was the U.S.-based Physicians for Human Rights (PHR), which sent a doctor to examine him in February 2005. The organization found that al-Jahmi suffered from diabetes, hypertension, and coronary heart disease. His "often haphazard care," the group said, "has placed Mr. al-Jahmi at a significantly increased danger of a critical or fatal cardiovascular incident and severe kidney failure, among others."<sup>72</sup>

On May 10, 2005, Human Rights Watch visited al-Jahmi at his place of detention, run by internal security. The facility was a simple, one-room building with basic furniture, a satellite television, kitchen, and bathroom in a guarded compound near the coast. Al-Jahmi said he was free to walk around the compound during the day, but guards locked the door at night. The authorities had not informed him of Human Rights Watch's visit, he said, but he had anticipated guests when the guards began cleaning up.<sup>73</sup>

The government has not made public the charges against al-Jahmi, but he told Human Rights Watch that he faces charges on three counts under articles 166 and 167 of the penal code: trying to overthrow the government, insulting al-Qadhafi, and contacting

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<sup>72</sup> Physicians for Human Rights, "International Human Rights Groups Examine Seriously Ill Libyan Political Prisoner and Call for His Immediate Release," March 24, 2005. See the full medical assessment, "Medical Assessment of Mr. Fathi el-Jahmi," March 21, 2005, at [http://www.phrusa.org/campaigns/colleagues/pdfs/libya\\_briefing.pdf](http://www.phrusa.org/campaigns/colleagues/pdfs/libya_briefing.pdf), as of August 8, 2005.

<sup>73</sup> Human Rights Watch interview with Fathi al-Jahmi, Tripoli, May 10, 2005.



foreign authorities.<sup>74</sup> The third charge, he said, is due to conversations he had with a U.S. diplomat in Tripoli.

Al-Jahmi said he had been to court approximately ten times over the previous ten months, although he did not specify whether these sessions were part of his trial. Most likely they were hearings in front of a judge for the prosecution to request an extension of pre-trial detention, as required by Libyan law.

Al-Jahmi has refused a Libyan lawyer because “they can’t say anything when it comes to Mu`ammar al-Qadhafi,” and he demands international representation. He has refused to speak in court. He made clear that, if released, he would not hesitate to criticize al-Qadhafi again. His two immediate complaints were not being able to get newspapers or reading material and having limited visits from his family. He has not seen his youngest daughter since his arrest.

Al-Jahmi said his health was relatively stable and he gets the necessary medications. However, when Human Rights Watch spoke with him in May 2005, security officials had not allowed him to see a doctor since the February visit of Physicians for Human Rights, despite promises to the organization that he would be free to see a doctor of his choice. The authorities allowed him to see a doctor in a Tripoli hospital on the day of Human Rights Watch’s visit, he said.

After the visit, Human Rights Watch inspected al-Jahmi’s Tripoli home, which security forces had reportedly ransacked during the time when al-Jahmi’s wife and son were detained. The family had cleaned the house’s downstairs but the upstairs was still damaged with broken furniture and scattered papers. According to Fathi al-Jahmi, “they used it like animals under instructions from al-Qadhafi and his cousins. I lost everything I have in the house—all my documents and cash and money. They took everything my son has for his Internet café.”

According to the head of Libya’s Internal Security Agency Col. Tohamy Khaled, the government arrested al-Jahmi according to the law, and he will face a trial. He was holding al-Jahmi in a special detention facility for his own safety and because he is “mentally deranged.” He told Human Rights Watch:

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<sup>74</sup> Article 166 addresses “conspiring with a foreign state to provoke war against Libya.” Article 167 addresses “conspiring with foreigners to harm the country’s military and political position.”

I'm responsible for his health care, his detention, and I want to say this: if this man was not detained because he provoked people—they could have attacked him in his home. Therefore, he is facing trial...He's in special detention because he's mentally disturbed and we're worried he will cause a problem for us.<sup>75</sup>

According to al-Jahmi's family, unknown individuals tried to set the family's Tripoli house on fire on May 23, but a family member was able to douse the flame. The police confirmed the arson attempt, the family said.

The family also told Human Rights Watch in November that the authorities have forbidden all relatives to visit al-Jahmi for more than seven months. The last time they visited al-Jahmi was on or around June 5, 2005, despite multiple requests.<sup>76</sup> Human Rights Watch asked the Libyan government in October 2005 about al-Jahmi's medical and family visits but had received no reply as of January 10, 2006.<sup>77</sup>

Human Rights Watch raised Fathi al-Jahmi's case with Shukri Ghanem, the General Secretary of the General People's Congress. "I can assure you that the trial will be fair," he said.<sup>78</sup>

### ***Muslim Brotherhood***

In June 1998, security forces arrested 152 Libyan men, most of them academics and professionals, for their membership in Libya's Muslim Brotherhood. The authorities held the men for more than two years in secret detention without access to their families or lawyers. Some said they were tortured.<sup>79</sup>

The trial before the People's Court began in March 2001. Eleven months later, the court sentenced eleven of the men to ten years in prison and seventy-three of them to life in prison for violating Law 71. The two leaders of the brotherhood, Professors Abdullah Ahmad 'Izzedin and Salim Abu Hanak, received the death penalty, and they remain on death row as of January 2006. Sixty-six of the defendants were acquitted. Human Rights Watch interviewed Professors 'Izzedin and Hanak in May 2005 in Tripoli's Abu

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<sup>75</sup> Human Rights Watch interview with Col. Tohamy Khaled, Abu Salim prison, Tripoli, May 10, 2005.

<sup>76</sup> E-mail to Human Rights Watch from Muhammad al-Jahmi, November 14, 2005.

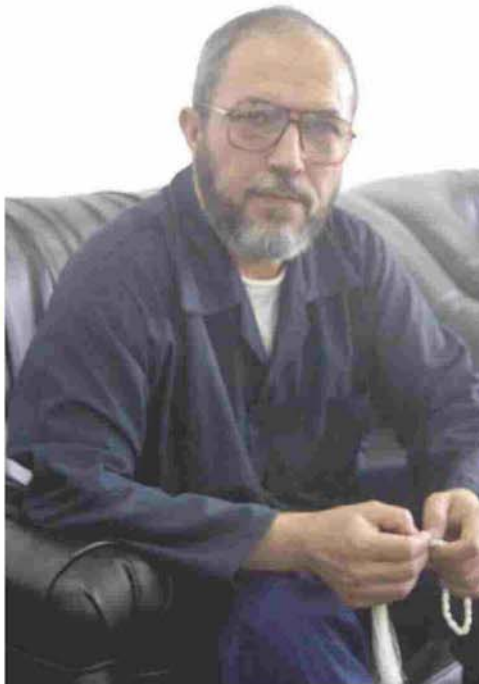
<sup>77</sup> Human Rights Watch memo to the Government of Libya, October 12, 2005.

<sup>78</sup> Human Rights Watch interview with Shukri Ghanim, Tripoli, April 28, 2005.

<sup>79</sup> Human Rights Watch interview with Salem Abu Hanak, Abu Salim prison, Tripoli, May 10, 2005. See also Amnesty International, *Libya: Time to Make Human Rights a Reality*, August 2004.

Salim prison. According to `Izzedin, previously a professor of nuclear engineering at al-Fateh University, the Muslim Brotherhood peacefully works to promote Islamic values in society. It is “based on tolerance and moderation and it condemns violence in all forms,” he said.<sup>80</sup>

This view was repeated by the current head of the Brotherhood, Sulayman `Abd al-Qadir, in an interview he gave for al-Jazeera in August 2005. “We have a peaceful program based on dialogue,” he said. Asked about Law 71, which the Brotherhood members were convicted of violating, `Abd al-Qadir said: “We must first consider the law itself, if it is indeed for the sake of human rights and public freedoms and then consider the work of the Muslim Brotherhood. This organization’s aim is to educate the individual and regain the identity of the nation.”<sup>81</sup>



Former head of the Muslim Brotherhood in Libya, Salem Abu Hanek, is on death row in Tripoli's Abu Salim prison for violating Law 71, which bans any group activity in opposition to the principles of the 1969 al-Fateh Revolution. © 2005 Fred Abrahams/Human Rights Watch

<sup>80</sup> Human Rights Watch interview with Abdullah Ahmed `Izzedin, Abu Salim prison, Tripoli, May 10, 2005.

<sup>81</sup> Al-Jazeera Television, August 3, 2005.



Abdullah Ahmed 'Izzedin, former deputy head of the Muslim Brotherhood in Libya, is on death row in Tripoli's Abu Salim prison. © 2005 Fred Abrahams/Human Rights Watch

Libyan security officials view the Muslim Brotherhood as a breeding ground for terrorists. "They don't call for direct violence," head of the Internal Security Agency Col. Tohamy Khaled told Human Rights Watch. "They spread an ideology until they're ready, and the next step is using violence." Their arrest was "a preemptive measure," he said.<sup>82</sup>

"We have no problem with the state," Professor 'Izzedin told Human Rights Watch in the director's office of the prison, which is run by the Internal Security Agency. "We call for reform for the benefit of society." He added, "We respect the government, its institutions and laws—we want to work with them."

After the interview, on May 8, a senior government official told Human Rights Watch that the authorities would release the eighty-six members of the Muslim Brotherhood "in the coming weeks." In August, Seif al-Islam al-Qadhafi told al-Jazeera that the brotherhood members were among the 131 political prisoners slated for release. "We will witness the release of prisoners from groups which no one would have thought

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<sup>82</sup> Human Rights Watch interview with Col. Tohamy Khaled, Abu Salim prison, Tripoli, May 10, 2005.

would be pardoned, such as the Muslim Brotherhood and other jihadist groups,” he said.<sup>83</sup>

On October 9, 2005, Libya’s Supreme Court granted the brotherhood members a retrial—apparently a compromise between government officials who had urged their release and those who demanded they stay.<sup>84</sup> The first session took place on November 8 in front of what a media report called a “special court” on the grounds of the Police Academy in Tripoli, where the People’s Court used to convene.<sup>85</sup> The presiding judge postponed the hearing until November 28 after a request by the defense. As of January 10, 2006, he had postponed the trial three more times.<sup>86</sup> In Human Rights Watch’s view, the authorities should immediately release the Muslim Brotherhood members or, if there is evidence that they used or planned to use violence, grant them a prompt and fair trial with international observers.

### ***Prisoners Who Have “Disappeared”***

Libyan organizations based outside Libya claim that dozens of political prisoners have gone missing. One group, Human Rights Solidarity, has published a list of 258 prisoners whose relatives have lost contact with them since their detention. The Qadhafi Foundation has also expressed concern, stating that there are “numerous cases where detainees lost their lives in situations and events that are bound by obscurity.”<sup>87</sup>

In one case during Human Rights Watch’s mission, the Libyan government said that a prisoner missing to his family since 1996 was dead. According to head of the Internal Security Agency Col. Khaled, the missing prisoner, Ahmad `Abd al-Qadir al-Thulthi, died of natural causes in prison. He did not provide the date or cause of death. Al-Thulthi’s brother told Human Rights Watch in November 2005 that the government had not provided further information about al-Thulthi’s fate. “We have not received any form of communication from the government,” said Ashraf al-Thulthi, who lives in the United States and was co-founder of the American Libyan Freedom Alliance. “I even

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<sup>83</sup> “Libyan Leader’s Son on Call to Reopen Human Rights Files,” BBC Monitoring Middle East, August 25, 2005, translated from al-Jazeera, Behind the News program, August 20, 2005.

<sup>84</sup> See Human Rights Watch, “Libya: Retrial of Political Prisoners a Step Forward,” October 12, 2005.

<sup>85</sup> “Postponement of the Muslim Brotherhood Members Until November 28,” Libya al-Youm, November 8, 2005. See <http://www.libya-alyoum.com/data.aspx/NEWS2005NOV08.aspx#3562>, accessed November 14, 2005.

<sup>86</sup> See, for example, “After Heated Debate for Two Hours, the Court Postponed Decision for the Muslim Brotherhood Case Until December 22,” December 12, 2005, available at <http://www.libya-alyoum.com/data.aspx/NEWS2005DEC12.aspx#3841>, accessed December 12, 2005.

<sup>87</sup> Human Rights Society of the Qadhafi Foundation, “Reservations and Demands,” July 17, 2003.

made an appeal through the U.S. congress and through various Libyan websites abroad, just to let us know if he is dead or alive.”<sup>88</sup>

According to Law 47 of 1975 on prisons, the government must immediately inform the family of an inmate in the case of death, and it must return the body on request.<sup>89</sup> The Internal Security Agency oversees Abu Salim prison, where Ahmad al-Thulthi was held, and it is not clear if the agency is bound by the law.

Born in 1955, Ahmad `Abd al-Qadir al-Thulthi studied in the United Kingdom between 1975 and 1985. He was politically active during this time as vice-chair of the Arab Student Union and active in a Libyan opposition group called al-Burkan Watani (National Volcano), which claimed responsibility for the killing of two Libyan officials abroad. He participated in demonstrations against the government, including the April 17, 1984 protest outside the Libyan embassy in London, during which someone apparently from inside the embassy shot and killed police officer Yvonne Fletcher and wounded ten others, including Ahmad.

The Libyan authorities first arrested al-Thulthi after his return on April 18, 1986, just after the U.S. military bombed Tripoli and Benghazi, accusing him of being an American agent. The authorities released him in July 1986 but rearrested him later that month on accusations that he had participated in an illegal political organization. A criminal court acquitted him in 1987 due to a lack of evidence but he remained in detention. His family visited him in Abu Salim prison until June 1996, when they lost contact.<sup>90</sup>

According to Col. Khaled, a court sentenced al-Thulthi for involvement in an armed opposition group. Internal security agents found seventy mines in his home, which he had planned to place under the cars of Libyan officials, he said. He provided Human Rights Watch with a video tape, apparently taken in 1986, which showed al-Thulthi confessing to his crimes, demonstrating how he planned to plant car bombs and admitting he is a U.S. agent.

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<sup>88</sup> Human Rights Watch telephone interview with Ashraf al-Thulthi, November 20, 2005.

<sup>89</sup> Law 47 (1975), article 48.

<sup>90</sup> For more information, see Amnesty International, *Libya: Time to Make Human Rights a Reality*, April 2004. Amnesty International delegates visited al-Thulthi in Abu Salim in June 1988. They tried again during the organization's February 2004 visit but were not allowed. Then-director of Abu Salim prison Milad Daman told them al-Thulthi was "alive and well" at a facility in Benghazi. The current director of Abu Salim was introduced to Human Rights Watch as Lt. Khalifa.

Human Rights Watch also heard credible reports from two sources in Libya who wanted to remain anonymous that the authorities were holding two political prisoners in Abu Salim prison, Abdullah `Abd al-Salam and Wensees al-Sharef, past their sentences. A Libyan lawyer who did not wish to be named said the families of the prisoners had no information on their relatives' whereabouts. Human Rights Watch asked the Libyan government about the two men on October 12, 2005, but the government had not responded as of January 10, 2006.



## IX. Torture

“I confessed during torture with electricity. They put small wires on my toes and on my thumbs. Sometimes they put one on my thumb and another on my tongue, neck or ear. It had a hand crank to make it go. They had two kinds of machines, one with a crank and one with buttons.”

—Testimony of Valentina Siropulo, one of six foreign medical workers accused of infecting 426 children with HIV, May 2005.

Under Libyan law, torture is a crime. The government has repeatedly claimed that it investigates and prosecutes cases in which torture is alleged. “We will not allow any police officer to subject any person to torture,” Secretary of Public Security Nasr al-Mabrouk told Human Rights Watch. “When we learn of a violation by a policeman we inform justice.”<sup>91</sup>

The head of Libya’s Internal Security Agency also said that his agents do not use force in interrogations. He said:

I do not expect to get information from torture. First, they all have training in how to deal with interrogations. Second, I do not trust information I get through violence. As a person who wants an honest report about the work of an organization, I would not feel comfortable getting information from force.<sup>92</sup>

Article 2 of the Great Green Charter of Human Rights proscribes any punishment that would “violate the dignity and the integrity of a human being.” It prohibits “any and all injuries, whether physical or moral, against the person of a prisoner.”

Article 17 of Law 20, On Enhancing Freedom, states: “It is prohibited to inflict any form of corporal or psychological punishment on the accused, or to treat him with severity or degradation, or in any manner which is damaging to his dignity as a human being.”

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<sup>91</sup> Human Rights Watch interview with Secretary of Public Security Nasr al-Mabrouk, Tripoli, April 26, 2005.

<sup>92</sup> Human Rights Watch interview with Col. Tohamy Khaled, Tripoli, May 10, 2005.



Article 435 of the penal code states that, “[A]ny public official who orders the torture of the accused or tortures them himself shall be punished by a prison term of three to ten years.” Article 341 of the code stipulates a prison sentence of ten years for those who carry out the order. Article 337 of the 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.”

The Libyan government says it has taken all possible steps to minimize torture. In an October 20, 2005 statement, in response to Human Rights Watch allegations of torture,<sup>93</sup> the government announced:

The Libyan people have enshrined in all their Basic People’s Congresses and reaffirmed in their fundamental documents such as the Declaration of the People’s Authority, the Great Green Charter for Human Rights and the Freedom Consolidation Act [also known as the Law on Enhancing Freedom] that degrading punishments must be abolished and all penalties that curb freedom must be restricted to a minimum. Prison is only for those whose freedom poses a danger to others. The harshest penalties have been prescribed for all who inflict any torture or mistreatment on detainees. However the competent authorities did not deny that violations by some individuals have been detected and appropriate measures were taken to hold them accountable and put them on trial.<sup>94</sup>

Despite these statements and legal guarantees, fifteen out of thirty-two individuals Human Rights Watch interviewed in prisons said that Libyan security authorities had tortured them during interrogations in recent years, usually to extract a confession (one case was from 1990). Six of the alleged torture victims were illegal migrants from sub-Saharan Africa who were arrested for the possession of or dealing drugs or alcohol and another six were the foreign medical workers charged in the Benghazi AIDS case (see below). The rest were Libyan political prisoners. Only in the case of the foreign medical workers are the authorities known to have conducted a criminal investigation, which resulted in acquittal of the ten alleged torturers. The Libyan government did not respond to a Human Rights Watch request for information about the other cases.

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<sup>93</sup> Human Rights Watch, “U.K.: Torture a Risk in Libya Deportation Accord,” October 18, 2005. Available at <http://hrw.org/english/docs/2005/10/18/libya11890.htm>, as of December 22, 2005.

<sup>94</sup> “Statement by Secretary for Information Affairs at the Foreign Liaison Secretariat,” October 20 2005.

### ***Libyan man, identity withheld***

A Libyan man who did not want to be identified said that security forces arrested him and then tortured him in the presence of his pregnant wife and son in a building of the Internal Security Agency. He told Human Rights Watch:

I was blindfolded and taken upstairs. I was shocked with electricity and made to sit on broken glass and nails. They were kicking and punching me until I confessed... I said no and they said "take him back." This went on for one week. After one week, they came at night and tied my hands to my back and my feet with a blindfold. They took me upstairs. They opened the door, and I saw my son and wife. There were five or six members of security with masks. They tied me to the chair and one of them said: "Do you want to sign or should we torture them?"<sup>95</sup>

According to the person, the interrogators took his son, who was ten months old and put a wire on the child's hand. "He screamed and his face turned red and he fell over not breathing," the prisoner said. He signed his confession shortly after that.

### ***Torture of non-Libyans***

Human Rights Watch interviewed six non-Libyan nationals in prison for possession of or dealing drugs or alcohol who said they were tortured, usually by the police to extract a confession. In most of the cases, the torture occurred at the hands of Libya's drug police, the *mukafaha*.

One man from sub-Saharan Africa imprisoned for possession of drugs told Human Rights Watch that members of the *mukafaha* in Tripoli beat him after his arrest in 2004. He said:

They hung me by a chain from the wall. There was a stick behind my knees, and my hands were tied to it. They hung me up on the wall. I stayed like that for forty-five minutes. They were beating me during that time. They told me "if we kill you, no one will know."<sup>96</sup>

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<sup>95</sup> Human Rights Watch interview, name, date and place withheld.

<sup>96</sup> Human Rights Watch interview, name, date and place withheld.

Another prisoner from sub-Saharan Africa, interviewed independently, gave a similar account. Libyan authorities held him in Zawiya police station without food or water for some days after his arrest in August 2003, he said. *Mukafaha* agents then tied his hands behind his back and used a piece of wood or an iron bar to hang him from the wall. This happened for two or three hours at a time, he said, and sometimes he was beaten too. After six days he signed a confession in Arabic that he said he could not read. “The first time I saw my lawyer was the second to last [court] session,” he said.<sup>97</sup>

Human Rights Watch visited the main police station in Zawiya, one of six stations in the town west of Tripoli. The commanding officer there said “the citizen has full freedom to complain [about torture].” He was not able to provide Human Rights Watch with information on how many complaints of abuse people had registered in Zawiya or how many police officers, if any, had been disciplined for abusing detainees.<sup>98</sup>

Another sub-Saharan African arrested for drug possession in May 2004 said the police held him in the Geria police station for three days without food or water. Then, in the *Mukafaha*, interrogators hung him for four hours with his hands behind his back. He explained:

They put an iron rod behind my back and they hung me. It was for about four hours. They beat me with a cable on my legs... They hung me every day. On the fourth day—it was Friday—I had to write my statement.<sup>99</sup>

According to the man, he did not know what the statement said. “I was afraid because I have my family and I don’t want to die,” he told Human Rights Watch. “Because I was afraid, anything they asked me to do, I did it. In the *Mukafaha*, I signed something under duress. I don’t know what it said.”

### ***Benghazi AIDS Case***

In early 1999, Libyan authorities arrested five Bulgarian nurses and a Palestinian doctor on charges that they purposely infected 426 children in the al-Fateh Children’s Hospital in Benghazi with the HIV virus. A Benghazi court sentenced them to death in May 2004. The court acquitted nine Libyans who worked at the hospital. In December 2005, the

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<sup>97</sup> Human Rights Watch interview, name, date and place withheld.

<sup>98</sup> Human Rights Watch interview with police officers in Zawiya’s main police station, Zawiya, May 2, 2005.

<sup>99</sup> Human Rights Watch interview, name, date and place withheld.

Supreme Court overturned the death sentences and ordered a retrial, saying there were “irregularities” in the arrest and interrogation of the medical workers.

The foreign medical workers say the infections were due to poor hygiene in the hospital. Luc Montagnier, a co-discoverer of the HIV virus, testified in the trial that the children were probably infected as a result of poor hygiene at the hospital, and that many of the children had been infected with HIV before the foreign health workers arrived in 1998. Libyan medical experts for the prosecution said the infections most likely resulted from injections.

Human Rights Watch interviewed all of the defendants in May 2005. Four of them gave detailed testimony of being subjected to electric shocks, beatings to the body with cables and wooden sticks, and beatings on the soles of their feet.

“I confessed during torture with electricity. They put small wires on my toes and on my thumbs,” one of the defendants, Valentina Siropulo, told Human Rights Watch. “Sometimes they put one on my thumb and another on my tongue, neck or ear. It had a hand crank to make it go. They had two kinds of machines, one with a crank and one with buttons.”<sup>100</sup>

Another defendant, Kristiana Valceva, said interrogators used a small machine with cables and a handle that produced electricity. “During the shocks and torture, they asked me where the AIDS came from and what is your role,” she said. Libyan interrogators also hit her with an electric stick on her breast and genital area, she said. “My confession was all in Arabic without translation,” she told Human Rights Watch. “We were ready to sign anything just to stop the torture.”<sup>101</sup>

The five Bulgarian nurses are incarcerated in a special wing of the women’s facility at Jdeida prison in Tripoli, where they now get regular visits from their lawyers and Bulgarian officials. The Palestinian doctor, Ashraf Ahmad Jum`a, is in the men’s section of the prison in the wing for those on death row.

“We had barbaric, sadistic torture for a crime we didn’t do,” he told Human Rights Watch during an interview conducted in the presence of a prison guard. “They used electric shocks, drugs, beatings, police dogs, sleep prevention.” He added, “The

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<sup>100</sup> Human Rights Watch interview with Valentina Siropulo, Jdeida prison, Tripoli, May 9, 2005.

<sup>101</sup> Human Rights Watch interview with Kristiana Valceva, Jdeida prison, Tripoli, May 9, 2005.

confession was like multiple choice, and when I gave a wrong answer they shocked me.” Interrogators also forced the defendants to shock each other, he said.<sup>102</sup>

Human Rights Watch also interviewed one of the ten Libyans who were tried in June 2005 for using torture against the foreign health workers. Jummia al-Mishri, a lead investigator in the case, insisted that Ashraf Ahmad Jum`a had confessed willingly, and that investigators had found two bottles with the HIV virus in Kristiana Valcheva’s house. “They were treated well and enjoyed all legal rights,” he said.<sup>103</sup>

Al-Mishri argued that the Bulgarians and Palestinian had complained of torture three years after their arrest, which suggests they are making up the story. Ashraf Ahmad Jum`a told Human Rights Watch that the defendants claimed torture during their first court session in 2000, but the judge dismissed the complaint. The government denied the group access to a lawyer until their first day in court, the defendants said.

On June 7, 2005, a Tripoli court acquitted al-Mishri and the nine others accused of using torture—in total eight policemen, a doctor and a translator.

The Supreme Court reviewed the medical workers’ case on November 15, 2005, but Judge `Ali al-Allout postponed the case until January 31, 2006. More than 100 relatives of the infected children, demanding the death sentence for the defendants, clashed with riot police outside the court, apparently after a police officer pushed a female protester to the ground. The crowd attacked diplomats observing the trial, forcing them back into the court.<sup>104</sup>

The court’s postponement may have been intended to allow the Libyan and Bulgarian governments, with assistance from the E.U. and U.S., to negotiate a settlement. Libyan officials have said the government will commute the death sentences if Bulgaria pays compensation to the families of the victims—an offer the Bulgarian government has refused. According to Bulgaria’s foreign minister from 2001 to 2005, the Libyan government offered to free the medical workers if Scotland released Abdelbaset Ali Mohamed al-Megrahi, the Libyan citizen serving life in prison for the 1988 airline bombing over Lockerbie.<sup>105</sup> The Libyan foreign minister denied the claim.<sup>106</sup>

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<sup>102</sup> Human Rights Watch interview with Ashraf Ahmad Jum`a, Jdeida prison, Tripoli, May 11, 2005.

<sup>103</sup> Human Rights Watch interview with Giumma al-Mishri, Tripoli, May 10, 2005.

<sup>104</sup> Khaled el-Deeb, “Libyan Court Postpones Verdict on Appeal of Five Bulgarians, One Palestinian in HIV Case,” Associated Press, November 15, 2005.

<sup>105</sup> “Libya’s Reported Death-row Deal,” Agence France-Presse, November 16, 2005.

On December 22, 2005, officials from Bulgaria, the United States, Great Britain and the European Union announced that they had agreed with Libya to establish a fund to assist the country's AIDS-infected children.<sup>107</sup> That same day, the Supreme Court said it had moved its review of the case up to December 25.

On December 25, the Supreme Court ruled to overturn the death sentences, and it granted the defendants a new trial in the Benghazi criminal court. The presiding judge cited "irregularities" in the medical workers' arrest and interrogation, suggesting that the court had accepted their claims of torture.<sup>108</sup> Libya's Secretary of Justice told the press that the new trial would be held "in one month" with new judges.<sup>109</sup> As of January 10, 2006, no trial date had been set.

Human Rights Watch also met with spokesmen from The Association for Child Victims of AIDS in Benghazi, who expressed deep frustration that the world was focusing on the foreign medical workers instead of the children who are dying one by one. They appealed for world attention and ongoing medical aid for the innocent victims. According to the association, forty-nine children had died as of May 2005. In addition to the 426 infected children, nineteen mothers are also infected with the virus, the spokesmen said.

"Tell the world that these children are innocent and suffering," Ramadan al-Faturi told Human Rights Watch. He demanded better training for Libyan doctors and psychological support for the families.<sup>110</sup>

### ***The Benghazi Football Club Case***

An allegation of torture come from the prisoner Ahmad `Abd al-Salam al-`Alim al-Sharif, serving a life sentence for organizing a political group that opposed the principles of the al-Fateh Revolution. According to al-Sharif, the authorities arrested him and thirteen other men on July 21, 2000, on charges of using the Ahli Benghazi Football Club as a cover for their political group. Al-Sharif denied involvement in any political activity and said internal security forces compelled him to confess after three months of

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<sup>106</sup> "Libyan Minister Denies Offering Bulgarian Nurses' Exchange for Terror Suspect," BBC Monitoring European, report from Bulgarian Khorizont Radio, November 28, 2005.

<sup>107</sup> The families of the infected children have demanded \$10 million in compensation for each infected child. The amount is equal to what the Libyan government paid the 270 victims of the Pan Am plane that exploded over Lockerbie.

<sup>108</sup> Khaled El-Deeb, "Retrial Ordered in Libya AIDS Case," Associated Press, December 26, 2005.

<sup>109</sup> "Don't Forget Us' Begs Jailed Bulgarian Nurse in Libya," Agence France-Presse, January 5, 2006.

<sup>110</sup> Human Rights Watch interview with Ramadan al-Faturi, Tripoli, May 11, 2005.

torture in Benghazi. On June 22, 2001, the People's Court sentenced him, al-Zalawi and a third man, `Abd al-Salam `Abd al-Salam Jum`a al-Jamaty, to death. The court later commuted the sentences to life in prison but, on December 24, 2004, al-Jamaty committed suicide.<sup>111</sup>

The Supreme Council for Judicial Authority commuted the men's death sentences at the last moment on February 10, 2002, after the prisoners had spent one hour blindfolded and bound to a wooden stake awaiting execution, al-Sherif said.

### ***Muslim Brotherhood Case***

As described elsewhere in this report, security forces arrested 152 individuals on charges of supporting or sympathizing with the Muslim Brotherhood in June 1998. They held the detainees in incommunicado detention until their trial before the People's Court in March 2001. Some of the detainees said they were tortured during that time.<sup>112</sup>

The head of the Muslim Brotherhood at the time of his arrest, Salem Abu Hanak, who was sentenced to death, said he also underwent torture. Professor Hanak said security forces arrested him from his home on June 5, 1998, and took him to the headquarters of the Revolutionary Committees Movement at al-Birka in Benghazi. "They beat me up and hung me up," he said. "When I remember this I can't complete..."<sup>113</sup>

In February 2002, the court sentenced eleven of the men to ten years in prison and seventy-three of them to life for violating Law 71. The two leaders of the brotherhood received the death penalty. Sixty-six of the defendants were acquitted.

According to a lawyer from the public defender, the Popular Lawyers' Office, who represented some of the accused, the authorities referred some of the defendants for medical exams. The sixty-six men acquitted, she said, were released because the court had confirmed the torture, but Human Rights Watch has not confirmed this is the case.<sup>114</sup> The Libyan government did not respond to a Human Rights Watch request for more information about the case.

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<sup>111</sup> Human Rights Watch interview with Ahmad `Abd al-Salam al-`Alim al-Sharif, al-Kuweifia prison, Benghazi, April 23, 2005.

<sup>112</sup> Amnesty International, *Libya: Time to Make Human Rights a Reality*, April 2004.

<sup>113</sup> Human Rights Watch interview with Salem Abu Hanak, Abu Salim prison, Tripoli, May 10, 2005.

<sup>114</sup> Ibid.

## X. Freedom of the Press

“Freedom of opinion is guaranteed within the limits of public interest and the principles of the Revolution.”

—Libya’s Constitutional Proclamation of December 11, 1969

The government runs and strictly controls all media in Libya. Some publications and programs gradually have started to address topics previously considered taboo, such as cases of police abuse, prison conditions and legal reform, and journalists are slowly calling for more freedom to do their work. But the government still monitors and controls all content, and it allows no unsanctioned criticism of its work or personalities. Private media is not allowed.

The government’s argument, repeated many times to Human Rights Watch by officials and editors of the major newspapers, is that Libyan citizens can freely express their ideas and opinions within the Basic People’s Congresses. The Jamahiriya system puts the government in the hands of the people and, therefore, the media belongs to them.

“Freedom of decision making is a step further than freedom of expression,” one justice official said. “It is not just freedom of expression but the right to make decisions and laws.”<sup>115</sup>

According to the editor of a main daily newspaper, *Al-Jamahiriyah*, free expression does not exist in other countries “because the media is owned by companies or individuals” who have their own interests. “Nationalizing the media to the people through the People’s Congresses gives them freedom of expression,” he said.<sup>116</sup>

“You look at the private media, and you consider it free. And in Libya it looks like the papers are state-owned,” said the editor of another daily paper, *al-Shames*. “But we are not papers for the officials or the People’s Congress.”<sup>117</sup>

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<sup>115</sup> Human Rights Watch meeting with judges, prosecutors and legal experts, Tripoli, April 26, 2005.

<sup>116</sup> Human Rights Watch interview with ‘Abd al-Razaq Mas’ud al-Dahash, editor-in-chief of *al-Jamahiriyah* newspaper, Tripoli, May 9, 2005.

<sup>117</sup> Human Rights Watch interview with Jumma’ al-Mirghany, editor-in-chief of *al-Shames* newspaper, Tripoli, May 9, 2005.



Despite these claims, a review of the main newspapers, the state-run television and the state-run press agency JANA during Human Rights Watch's visit in April-May 2005, as well as subsequent monitoring of these media outlets' websites, reveals a largely subservient and uncritical press that glorifies the government and Mu`ammar al-Qadhafi.<sup>118</sup> The media addresses sensitive topics like police abuse or improved relations with the United States only after they have been identified as acceptable for debate, often by al-Qadhafi himself. Criticism of the Jamahiriya system is unknown.

In addition, the government has imprisoned journalists and others who have expressed critical views. As documented above, the Internal Security Agency arrested and continues to detain Fathi al-Jahmi, after he gave interviews critical of al-Qadhafi to the international media. In January 2005 Internal Security Agency forces arrested an Internet writer named `Abd al-Raziq al-Mansuri, apparently due to his critical postings to a website based in the U.K.<sup>119</sup>

The government's strict control of the media contradicts Libya's obligations under international law. Article 9 of the African Charter on Human and Peoples' Rights, ratified by Libya in 1986, guarantees, "[e]very individual shall have the right to receive information," and that "every individual shall have the right to express and disseminate his opinions within the law."<sup>120</sup>

Article 19 of the International Covenant on Civil and Political Rights, to which Libya is a state party, sets out the minimum international standards for freedom of expression. It states: "Everyone shall have the right to hold opinions without interference; 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."<sup>121</sup>

Freedom of expression "carries with it special duties and obligations," and therefore may be subject to restrictions, but only "for respect of the rights or reputations of others; for

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<sup>118</sup> The websites for most newspapers and Libya's state-run broadcasting company are provided below. The press agency JANA is at [www.jamahiriyanews.com](http://www.jamahiriyanews.com).

<sup>119</sup> In May 2005, unknown assailants abducted, tortured and killed the journalist Daif al-Ghazal, although the government denied any role in his death and claimed to have arrested the suspects (see below).

<sup>120</sup> African (Banjul) Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Adopted June 27, 1981, entered into force October 21, 1986. See [http://www.africa-union.org/Official\\_documents/Treaties\\_%20Conventions\\_%20Protocols/Banjul%20Charter.pdf](http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/Banjul%20Charter.pdf), accessed September 29, 2005.

<sup>121</sup> International Covenant on Civil and Political Rights (ICCPR), article 19.

the protection of national security or of public order, or of public health and morals.”<sup>122</sup> All restrictions must be “provided by law” and be “necessary” to attain the purpose in question.<sup>123</sup> Restrictions must never exceed the specific purpose served or be so loosely formulated as to “put in jeopardy the right itself.”<sup>124</sup> The “special duties and responsibilities” to which article 19(2) refers may justify intervention by the state to ensure diversity of opinion and information and to prevent the formation of media monopolies. They may not, however, be invoked by the state as an excuse for imposing top-down controls over the media.<sup>125</sup>

Applicable Libyan law does not meet the international standard. The country’s Constitutional Declaration of 1969 includes a broadly worded limitation clause that opens the door to abuse. It states: “Freedom of opinion is guaranteed within the limits of public interest and the principles of the Revolution.”<sup>126</sup> The Great Green Charter for Human Rights passed in 1988 does not explicitly enshrine the principle of free speech or the right to information. Law 20, On Enhancing Freedom, adopted in 1991, states that “every citizen has the right to openly express his thoughts and opinions in the Peoples’ Congresses and in the Jamahiriya media” unless “he uses [that right] in violation of the people’s authority or for personal motives.”<sup>127</sup>

The two exceptions to the state’s control of the media are satellite television and the Internet. Satellite programs, especially Arabic news channels like al-Jazeera and al-Arabiyya, are widely watched. Despite government efforts to block some independent and opposition websites, Libyans gained access to a wide spectrum of uncensored news and views with the proliferation of the Internet in the late 1990s.

### ***The Print Media***

Libya has four main daily newspapers and dozens of other papers and periodicals of various sizes publish around the country. Each of the twenty-six governorates

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<sup>122</sup> ICCPR, article 19(3).

<sup>123</sup> Ibid.

<sup>124</sup> *General Comment 10, Freedom of Expression (Article 19)*, para. 4, Human Rights Committee, 19th sess., 1983, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.1, p. 11 (1994).

<sup>125</sup> Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (Kehl am Rhein, Germany: N.P. Engel, 1993), p. 350.

<sup>126</sup> Constitutional Proclamation of December 11, 1969, article 13.

<sup>127</sup> Law 20 (1991), On Enhancing Freedom, article 8.

(*sha`biyyat*)<sup>128</sup> has a local paper or magazine, as does every professional union and most research centers and university faculties. Some companies have bulletins. Some foreign publications are available, but the government occasionally restricts their distribution when articles critical of the Libyan government appear.

The print media is governed by the Law on Publications, No. 76 of 1972, as modified by Law 120 of 1972 and Law 75 of 1973. It reserves all publishing rights to two state entities, the General Corporation of Press, Professional Unions and Syndicates and Ad-dar al-Jamahiriyah for Publishing, Distribution and Advertising. According to the government, article 1 of the law allows citizens to express and disseminate their views, “within the framework of the principles, values and objectives of society.”<sup>129</sup>

Up until mid-2005 the state-run Ad-dar Al-Jamahiriyah for Publishing, Distribution and Advertising ran all newspaper and magazine distribution. In early May 2005, the company closed, and various newspapers are attempting to establish their own distribution systems, including the possible formation of a joint company. Like many aspects of Libya’s economy, the newspaper distribution system is transitioning slowly into private hands.

According to newspaper editors in Tripoli, legal experts currently are reviewing the Law on Publications. Official journalists and writers unions are also working on reform proposals, although their views on possible changes are mixed.

According to `Abd al-Razaq Mas`ud al-Dahash, editor-in-chief of the daily *al-Jamahiriyah*, a new law is needed to oblige the government to provide journalists with information. “Currently there is no problem with the flow of information,” he said, “but we do need to establish it legally.” He explained, “The journalists are requesting such a law because we want a stronger law that obliges the government to reply [to our requests for information].”<sup>130</sup>

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<sup>128</sup> The 26 governorates are: Ajdabiya, al-`Aziziyah, al-Fatih, al-Jabal al-Akhdar, al-Jufrah, al-Khums, al-Kufrah, al-Nuqat al-Khams, al-Shati`, Awbari, al-Zawiyah, Banghazi, Darnah, Ghadamis, Gharyan, Misratah, Murzuq, Sabha, Sawfajjin, Surt, Tarabulus, Tarhunah, Tubruq, Yafran, and Zlitan.

<sup>129</sup> Libyan Arab Jamahiriyah report to the Human Rights Committee, CCPR/C/28/Add.17, March 2, 1995. The report is available at <http://www.arabhumanrights.org/countries/libya/ccpr/ccpr-c-28-add17-95e.pdf>, accessed November 20, 2005. Human Rights Watch asked for but did not receive a copy of the Law on Publications.

<sup>130</sup> Human Rights Watch interview with `Abd al-Razaq Mas`ud al-Dahash, editor-in-chief of *al-Jamahiriyah* newspaper, Tripoli, May 9, 2005.

At a meeting on June 16, 2005, the Libyan Journalists Union called for a review of media laws. According to the official JANA news agency, after praising the Great Jamahiriya and al-Qadhafi, the group “called for the review of laws organizing journalists and media work, which are no longer relevant to the aspirations of Jamahiriya society, such as Publications Law number 76 from 1972.”<sup>131</sup>

Later that month, the head of the journalists’ union, Muhammad al-Bussifi, resigned. In a letter he sent to the U.K.-based website *Libya al-Youm* (Libya Today), he said one of the reasons for his resignation was the government’s unwillingness to change the laws governing media, as well as its refusal to allow an independent journalists organization. He was also waiting for approval to issue a new newspaper called “The Time,” he said.<sup>132</sup>

The Qadhafi Foundation has also called for changes to the law. In a 2003 statement, the foundation said that Law 120 (1972) and Law 75 (1973) unduly restrict the Law on Publications to the point that, “it is not permitted for normal individuals to publish private newspapers.” The foundation called for “the immediate release of a new publications law.”<sup>133</sup>

The editor-in-chief of the daily *al-Shames*, however, expressed concern that a new law would weaken journalists’ access to information, although he did not elaborate on that concern. “The publishing law is old but good. It has lots of privileges, and we are afraid we will lose them,” Jumma` al-Mirghany said. “We have participated in a number of discussions, and we are concerned the law will get worse.”<sup>134</sup>

These and other editors said that although citizens occasionally sued their publications for libel, this was not a problem that infringed on their work, and they had no complaints about the applicable law. In such cases, the libel charge goes first to a body called the General Committee of Journalists Responsibility, which is composed of journalists and lawyers. The committee hears the complaint, reviews the material and tries to achieve reconciliation. The deputy head of the journalists union, `Abd al-Salam Uwair, is the committee’s head. The complainants typically are private citizens and

<sup>131</sup> “The Statement of the First Gathering of Journalists and Media Workers Association,” JANA news agency, June 16, 2005.

<sup>132</sup> *Libya al-Youm*, June 21, 2005, see [www.libya-alyoum.com/data.aspx/NEWS2005JUN21.aspx#2490](http://www.libya-alyoum.com/data.aspx/NEWS2005JUN21.aspx#2490), accessed October 6, 2005.

<sup>133</sup> Al-Qadhafi International Foundation for Charity Associations, “Reservations and Demands,” July 17, 2003.

<sup>134</sup> Human Rights Watch interview with Jumma al-Mirghany, editor-in-chief of *al-Shames* newspaper, Tripoli, May 9, 2005.

sometimes companies or businesses. None of the editors knew of cases when a government official had sued.

The print media in Libya is primarily run by the Libyan Press Corporation (LPC), which was established in 1993.<sup>135</sup> It publishes at least seven periodicals, including three of the four main daily newspapers, *al-Jamahiriyah*, *al-Shames* and *al-Fajr al-Jadid*.

According to the general director of the LPC, Dr. Abadin al-Sharif, the corporation reports to the Public Institute for Jamahiriya Media. This body “does not devise our policies,” al-Sharif said. “Our policy is drawn on our political ideology, general thinking and Islamic traditions.”<sup>136</sup>

The LPC is a state institution, he said, but 90 percent of its funding comes from advertising. It is run by a board of directors, which includes the Dean of the Faculty of Arts and Media at al-Fateh University, head of the journalists’ union, head of the writers’ union, editors of nine newspapers and the General Director of the LPC.

The LPC’s main task is to publish a number of newspapers and magazines. These are:

- *Al-Shames* – daily newspaper ([www.alshames.com](http://www.alshames.com))
- *Al-Jamahiriyah* – daily newspaper ([www.aljamahiria.com](http://www.aljamahiria.com))
- *Al-Fajr al-Jadid* – daily newspaper ([www.alfajraljadeed.com](http://www.alfajraljadeed.com))
- *Al-Fajr al-Jadid* – bi-monthly English version of *Al-Fajr al-Jadid* ([www.alfajraljadeedeng.com](http://www.alfajraljadeedeng.com))
- *Al-Jamahiriyah al-Yom* – daily, web only ([www.ly2day.com](http://www.ly2day.com))
- *Kol al-Fonun* – bi-weekly newspaper on sports and arts ([www.kulalfonon.com](http://www.kulalfonon.com))
- *Al-Biyt* – monthly magazine on family ([www.albiytmag.com](http://www.albiytmag.com))
- *Al-Amal* – monthly magazine for children ([www.alamalmag.com](http://www.alamalmag.com))
- *Africa al-Jadida* – monthly magazine on Africa, temporarily suspended ([www.africaaljadida.com](http://www.africaaljadida.com))

<sup>135</sup> The Libyan Press Corporation website is at [www.libyanpress.com](http://www.libyanpress.com), as of December 15, 2005.

<sup>136</sup> Human Rights Watch interview with Dr. Abedin al-Sharif, general director of the Libyan Press Corporation, Tripoli May 5, 2005.

According to al-Sharif, the LPC does not interfere in the work of its various publications. “They are all independent—I cannot interfere,” he said.

The three newspaper editors Human Rights Watch met in May 2005 complained of a shortage of newsprint. The problem began in spring 2004, they said, and has sharply curtailed their print-runs.

### *Al-Jamahiriya Newspaper*

*Al-Jamahiriya* newspaper is one of the main daily papers, presenting a combination of news and opinion. It has a staff of approximately 100 people, among them thirty journalists. Foreign correspondents are based in Cairo, the West Bank, Algeria and Tunisia.

According to the paper’s editor-in-chief, ‘Abd al-Razaq Mas’ud al-Dahash, the paper seeks financial independence. Government support does not exceed 20 percent of the paper’s budget, he said. Half of the paper’s income comes from advertisements and half from sales.<sup>137</sup>

As of May 2005, *al-Jamahiriya*’s print-runs were down due to the lack of paper. From a normal daily run of 30,000, al-Dahash said, the paper was printing between 5,000 and 6,000 copies per day, and sometimes up to 10,000. He claimed that more than 130,000 people visit the paper’s website every day.

Citizens have occasionally sued the newspaper for libel, although none of the paper’s journalists or editors has been imprisoned on this charge. “I don’t know of any journalist in Libya imprisoned for this,” al-Dahash said.

### *Al-Shames Newspaper*

*Al-Shames* newspaper publishes a collection of news and opinion daily. According to the editor-in-chief, Jumma’ al-Mirghany, the paper is independent and focuses primarily on social affairs. He said:

Some believe we are a government paper, and they think our main job is to defend the state. But I think our paper is different because we are a

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<sup>137</sup> Human Rights Watch interview with ‘Abd al-Razaq Mas’ud al-Dahash, editor-in-chief of *al-Jamahiriya* newspaper, Tripoli, May 9, 2005.

social paper, owned by society. We report violations, and the government responds. We visited Jdeida prison and we have requested to visit Abu Salim. We have a department to receive complaints from prisoners. We have published interviews with prisoners and officials.<sup>138</sup>

The paper's staff includes about 114 people, with thirty-four journalists in the office and thirty-eight correspondents around the country and abroad, including reporters in Malta, Kiev and Yemen. Due to the newsprint deficiency, the daily print-run is down from approximately 15,000 to 4,000.

*Al-Shames* also aims for financial independence, al-Mirghany said, because "good journalism requires self-funding." The paper currently costs approximately 1.5 million dinars per year to publish (roughly 1.16 million U.S. dollars). A small percentage comes from the state, and the rest comes from ads.

The newspaper has been the subject of libel cases from citizens, he explained. "There are many libel cases. I go to court almost every week. It is companies mostly, plus individuals and institutions. In the last year, we faced three cases... I've been here for five years and we have not lost any case up to now. Sometimes we seek to reconcile through the General Committee of Journalists' Responsibility."

### *Al-Zahf al-Akhdar*

*Al-Zahf al-Akhdar*, ([www.azzahfalkhder.com](http://www.azzahfalkhder.com)), is a publishing house run by Libya's Revolutionary Committees Movement, the ideological organization that promotes the values of the al-Fateh Revolution and al-Qadhafi's Green Book, rather than the LPC. It publishes books, a monthly magazine and a series of specialized periodicals, but the main publication is the daily newspaper *Al-Zahf al-Akhdar* ("The Green Sweep"). Rather than hard news, it focuses on analysis and themes.

The editor of the paper, Dr. Hamid Abu Jumaira, was upfront about the publication's role as a supporter of the Jamahiriya political system. "Our role is mainly awareness and education to support the Third Universalist Theory," he said. "We are like nuns and priests: our role is to preach and educate." He continued, "You might call this paper an

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<sup>138</sup> Human Rights Watch interview with Jumma' al-Mirghany, editor-in-chief of *al-Shames* newspaper, Tripoli, May 9, 2005.

official paper but we don't think so. We call it the paper of the believers in a certain kind of society.”<sup>139</sup>

Financing comes from the Revolutionary Committees Movement, Dr. Jumaira said, but the paper tries to support itself through advertisements and some subscriptions. The print-run as of May 2005 was approximately 10,000 per day for the newspaper, and 6,000 monthly for the magazine.

Over the past two years, the Revolutionary Committees Movement has suspended the newspaper twice, prompting concerns that the government closed the paper due to articles it did not like.<sup>140</sup> It remains unclear if government authorities had approved the articles in question and then punished the paper after a backlash, or if the paper's editors independently strayed from the ideological line. Dr. Jumaira, a political science professor who was hired as editor after the second closure, explained that the Revolutionary Committees Movement had closed the paper because it had strayed ideologically. “I call my era a return to old values,” he said.

The first closure came on October 13, 2003, when a court ruled that some articles in the paper “had harmed the national interest and constituted an offence to the Great Jamahiriya's orientations and its civilized information address [civilized communication means].” The court claimed the articles were “a premeditated attempt by some writers to harm the Great Jamahiriya's relations with several fraternal and friendly countries.”<sup>141</sup>

According to one media account, an article in question had ridiculed Bahrain and Kuwait. Bahrain could not be considered “a state, a half-state or even a quarter-state,” the article reportedly said. And Kuwait was a “topographical error, which has never been corrected.”<sup>142</sup> The court's decision came during a period of tension between Libya and other Arab countries.

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<sup>139</sup> Human Rights Watch interview with Dr. Hamid Abu Jumaira, editor-in-chief of *al-Zahf al-Akhdar* newspaper, Tripoli, May 9, 2005.

<sup>140</sup> See Reporters sans Frontières, “Government Daily Closed for a Week,” January 29, 2004.

<sup>141</sup> “Libya: Court Suspends Publication of Al-Zahf al-Akhdar Newspaper,” BBC Monitoring Newsfile, translated from Libyan TV, October 14, 2003.

<sup>142</sup> “Official Daily ‘Al-Zahf Al-Akhdar’ Suspended,” All Africa, October 16, 2003.



The second closure came on January 26, 2004, when a court suspended the newspaper for one week for publishing articles that “call for the return to obsolete and failed ways renounced by the Libyan people.”<sup>143</sup>

According to foreign press reports, *al-Zahf al-Akhdar* had been encouraging domestic reform to match Libya’s new international approach, such as giving compensation to the victims of the Lockerbie bombing and renouncing weapons of mass destruction. A December 23, 2003, editorial entitled “Let’s Put Order in the House,” for example, called for reform in the economic and administrative sectors.<sup>144</sup> On January 22, 2004, an article called for Mu`ammar al-Qadhafi to formally become president of the state.

Under the headline, “The Time for a Libyan President Has Come,” the paper wrote that al-Qadhafi was a “cavalier, who came on his green horse... to set the worn-out state on fire and turn it into a revolution feared by the enemies and rejoiced by friends.” He succeeded, the paper said, and now “it has become essential that the rules of the game change in order to keep up with the reality of world developments....If that was the time of revolution, it is high time now for the state and for the fighting cavalier, who led the revolution, to get off his horse to build up a state and be its president.”<sup>145</sup>

The editor of the paper, Dr. Jumaira, told Human Rights Watch that this article calling on al-Qadhafi to become president reflected a “perverted ideology” and was the culmination of various writings that had betrayed the values the paper serves. “We were banned by the Revolutionary Committee,” he explained. “It was self-punishment when they felt the paper had drifted off course.” He told Human Rights Watch:

We cannot publish a paper that violates its principles... There were some articles in which it could be understood that some people wanted to change the Jamahiriya system, so we had an evaluation to devise a plan whereby the paper served the Jamahiriya system and did not oppose it.

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<sup>143</sup> “Libyan Court Suspends Newspaper for a Week,” BBC Monitoring Middle East, translated from Great Jamahiriya Radio, January 27, 2004.

<sup>144</sup> “Pro-government Newspaper Nudges Reforms in Libya,” Panafrican News Agency, December 23, 2003.

<sup>145</sup> “Libyan Paper Cited as Suggesting Libya Become State, al-Qadhafi President,” BBC Monitoring Middle East, January 27, 2004, translated from *al-Hayat* newspaper, January 25, 2004.

## **Broadcast Media**

There are no privately owned radio or television stations in Libya. The electronic media is run by the Libyan Jamahiriya Broadcasting Corporation, whose website describes itself as “the largest and main news provider in Libya.”<sup>146</sup> The government strictly controls programming to promote government successes and stifle dissent.

Most Libyans get their news from satellite television, which is widely available. Satellite dishes are ubiquitous throughout the country. In June 2005, a satellite program from London called *al-Democratia* broadcast the first-ever political debate between a prominent defender of the government and an activist in the political opposition. The government position was represented by Dr. Rajab Budabbous, General Director of the Jamahiriya Academy, prominent member of the Revolutionary Committees Movement, former Secretary of Propaganda and a leading ideologue of the Green Book. The opposition member was Muhammad Buisiar, a former political prisoner who lives in the United States. The lively and frank debate was followed widely by Libyans in Libya and abroad.<sup>147</sup>

## **The Internet**

The Internet has proliferated rapidly in Libya over the past five years. Internet cafes are common in cities and towns, and access at home is growing. Websites covering political, economic and social issues in Libya, as well as human rights, have grown steadily in countries abroad and are viewed at home. According to one report, close to one million people in Libya had used the Internet by 2004—roughly 17 percent of the population.<sup>148</sup>

At times, the Libyan government has tried to block some of the sites based abroad. When Human Rights Watch visited Libya in April-May it tried without success to access some popular websites. Two sites, Libya: News and Views (at the time [www.libya1.com](http://www.libya1.com)) and Akhbar Libya ([www.akhbar-libya.com](http://www.akhbar-libya.com)), could not be accessed from two Internet cafés in Tripoli.<sup>149</sup>

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<sup>146</sup> Website of the Libyan Jamahiriya Broadcasting Corporation, <http://en.ljbc.net>, accessed October 4, 2005.

<sup>147</sup> A transcript of the debate is available at [www.libyaforum.org/english/index.php?option=content&task=view&id=786&Itemid=30](http://www.libyaforum.org/english/index.php?option=content&task=view&id=786&Itemid=30), accessed October 7, 2005.

<sup>148</sup> “The Internet in the Arab World: A New Space of Repression?,” The Arabic Network for Human Rights Information, June 2004, available at [www.hrinfo.net/en/reports/net2004/index.shtml](http://www.hrinfo.net/en/reports/net2004/index.shtml), as of October 4, 2005.

<sup>149</sup> As of January 10, 2006, the Libya: News and Views website was at [www.libya-watanona.com](http://www.libya-watanona.com).

According to the editor of Akhbar Libya, Ashur Shamis, hackers he believes to be from the Libyan government have crashed his site at least four times over the past three years, most recently on June 13, 2005. “They unpublished all the articles on the site and wiped out the archive material,” he said. “They did a lot of damage to the database.” The site had a back-up and was running again within twenty-four hours.

According to Shamis, the reason for the hacks “has always been something we published that hit a raw nerve with the leader or the security people.”<sup>150</sup> Among other topics, the site has published articles on the 1969 military coup—claiming that al-Qadhafi hijacked the coup with tacit U.S. approval—and a series of articles on corruption in al-Qadhafi’s entourage, especially when he travels abroad.

Sites like Akhbar Libya, Libya Our Home ([www.libyanet.com](http://www.libyanet.com)), Libya al-Youm ([www.libya-alyoum.com](http://www.libya-alyoum.com)) and Libya: News and Views ([www.libya-watanona.com](http://www.libya-watanona.com)) provide a vibrant debate on topics previously taboo. Articles and letters from Libya talk about problems with unemployment, health care and sometimes human rights issues such as torture and police abuse.

In 2005, the government is known to have arrested one Internet journalist. His case is described below.

### ***Treatment of the Foreign Press***

There are very few foreign correspondents based in Tripoli; of the major international media, only al-Jazeera, the Associated Press, Agence France-Presse, BBC and Reuters have a permanent presence. These agencies must register with the Foreign Press Office, run by Jumma` Abu Khar. Permission is required for these correspondents to travel outside of Tripoli.

Libyan authorities monitor the coverage of Libya in the foreign press closely, and they sometimes register complaints to news outlets about their reporting. There are no reports of the government expelling a foreign correspondent in the past two years.

Journalists wishing to visit Libya reported great difficulty in obtaining a visa. When they do get permission, they are assigned a local guide who accompanies them during their stay and, most reporters believe, report their activities to the government. Journalists who have visited Libya say that Libyans often are scared to give critical opinions in the

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<sup>150</sup> Human Rights Watch e-mail from Ashur Shamis, June 15, 2005.

presence of guides, or even to journalists who are alone. Human Rights Watch observed similar self-censorship and sometimes outright fear in some of the people it met during its mission in April-May 2005.

Article 28 of the Law on Publications states that every foreign publication must be approved by the government's Publications Department before distribution. According to the government, the department can withhold permission if the publication is found to be "prejudicial to national or Arab unity or religious beliefs, incompatible with the principles and objectives of the Revolution or public morals, detrimental to public security or fallacious to such an extent as to confuse public opinion."<sup>151</sup>

### ***Journalist Arrested***

In 2005, the Libyan authorities are known to have imprisoned one journalist, `Abd al-Raziq al-Mansuri, who contributed to a website based in the United Kingdom. Al-Mansuri's arrest occurred on January 12, 2005, when agents of Libya's Internal Security Agency arrested him in his home town of Tobruk. He had recently written articles critical of the Libyan government on a U.K.-based website, but Libyan security officials told Human Rights Watch his arrest was unrelated to his journalistic work.

Al-Mansuri's arrest was first publicized by Reporters San Frontières, which announced on March 30 that security forces had arrested the "cyber-dissident."<sup>152</sup> Based on this information, Human Rights Watch requested to see al-Mansuri during its April-May 2005 mission to Libya.

Internal security officials delivered al-Mansuri to Abu Salim prison while Human Rights Watch was inspecting the facility and interviewing other prisoners. In a private interview conducted in the prison director's office, al-Mansuri confirmed that he had been arrested on January 12, and claimed that he had been held in incommunicado detention since that time.<sup>153</sup>

According to al-Mansuri, fifty-two years old and divorced with four children, internal security forces arrested him with a search warrant and confiscated his computer, floppy discs, CDs and papers. At the internal security headquarters in Tobruk, they questioned

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<sup>151</sup> Libyan Arab Jamahiriya report to the Human Rights Committee, CCPR/C/28/Add.17, March 2, 1995. The report is available at <http://www.arabhumanrights.org/countries/libya/ccpr/ccpr-c-28-add17-95e.pdf>, accessed November 20, 2005.

<sup>152</sup> Reporters San Frontières, "Cyber-dissident Reportedly Arrested in Tobruk," March 30, 2005.

<sup>153</sup> Human Rights Watch interview with `Abd al-Raziq al-Mansuri, Abu Salim prison, Tripoli, May 10, 2005.

him about articles he had written for the website [www.akhbar-libya.com](http://www.akhbar-libya.com), based in the United Kingdom. They got another warrant to search his home the next day, he said, and found an old pistol that had belonged to his father and twenty-five bullets that, he claimed, he had found on the beach while fishing.

On January 14, the authorities took al-Mansuri by car to the Internal Security Agency's Department of Terrorism and Heretics (*ʔandaka*) in Tripoli. Most of the interrogation, al-Mansuri said, was about his articles. Al-Mansuri said he received clothes from his brother approximately three weeks later but he never met him or anyone else from his family. Around April 14, the authorities transferred him to the internal security office in the Fashlum neighborhood of Tripoli, where security officials interrogated him again, both day and night. During his entire time in detention, he said, the authorities forbade him from seeing a lawyer, and they did not file any charges against him.

Libya's Internal Security Agency chief Col. Tohamy Khaled told Human Rights Watch that he was responsible for al-Mansuri's arrest. "This man was not arrested for an article or the Internet or the radio; he can work for twenty years," Col. Khaled said. "He was arrested because he had a gun without a license." Internal security officers rather than police were holding al-Mansuri, he said, because a weapon is "a job for internal security."<sup>154</sup>

According to al-Mansuri, he had written between forty and fifty articles for [www.akhbar-libya.com](http://www.akhbar-libya.com) since 2004. "I'm studying Libyan people and life from all sides," he told Human Rights Watch in English. "Why a Libyan has a beard, why they are maybe scared from someone, and why it's not time for democracy in Libya." He added: "What we want for Libya is that it becomes a better place, even through writing."

Al-Mansuri's last article before his arrest was posted on January 10. Entitled, "Will the Key-Holder Come Soon to That Hall in Sirte?," the article was a subtle critique of a debate between two government officials, the reformer Shukri Ghanim and the hardliner Ahmad Ibrahim, and expressed hope that al-Qadhafi would support the former.<sup>155</sup>

In early August, Human Rights Watch received reports that al-Mansuri had fallen from his top bunk in Abu Salim prison, breaking his pelvis. Prison authorities reportedly transferred him to the prison's medical facilities, where he apparently did receive the

<sup>154</sup> Human Rights Watch interview with Col. Tohamy Khaled, Abu Salim prison, Tripoli, May 10, 2005.

<sup>155</sup> For an English translation of the article and the original Arabic version, see the Reporters San Frontières website, [http://www.rsfr.org/article.php3?id\\_article=13890](http://www.rsfr.org/article.php3?id_article=13890), as of August 5, 2005.

attention he required. On August 9, 2005, Human Rights Watch wrote to the General People's Committees for Public Security and Foreign Liaison and International Cooperation to obtain more information, but as of January 10, 2006, the government has provided no information about al-Mansuri's case or health.<sup>156</sup>

On October 19, Akhbar Libya reported that a Tripoli court had sentenced al-Mansuri to one-and-a-half years in prison for the illegal possession of a weapon.<sup>157</sup>

### **Journalist Killed**

One journalist was killed in 2005, and the government's involvement remains unclear. The victim was Daif al-Ghazal, a thirty-one-year-old journalist who had been active in the Revolutionary Committees Movement and had written for the committee's *al-Zahf al-Akhdar*. He reportedly became disenchanted with the committee and began writing critical articles for a website based in the United Kingdom, Libya Jeel, which also ran on another site, Libya al-Youm. In particular, he had written about corruption in the movement.

Late in the evening of May 21, al-Ghazal was driving with a journalist friend Muhammad al-Mirghani in Benghazi, the editor of Libya al-Youm said, when two armed men allegedly from the Internal Security Agency took him from the car and told his colleague to leave.<sup>158</sup> The authorities found al-Ghazal's decomposing body with signs of torture and a gunshot to the head on the outskirts of Benghazi on June 2.

The Libyan government denied any involvement in the crimes. "It's too early to make any judgments regarding the identity of the culprits, especially since the victim had a good reputation," said Brig. Gen. Mohammed al-Khazaali, the head of security in Benghazi. "We, in cooperation with all of the security apparatuses, are seriously trying to find the culprits."<sup>159</sup>

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<sup>156</sup> Human Rights Watch letters to Mr. Saied Elsaoudi, Director General, General Relations and Cooperation, General People's Committee for Public Security, and Mr. Ramadan Irhiam Director, General Department of International Organizations, General People's Committee for Foreign Liaison and International Cooperation, August 9, 2005.

<sup>157</sup> "Writer 'Abd al-Raziq al-Mansuri Sentenced to One-and-a-half Years," Akhbar Libya, October 19, 2005. See <http://www.akhbar-libya.com/modules.php?name=News&file=article&sid=22040>, accessed October 25, 2005.

<sup>158</sup> "Libya Probes Death of Journalist Found Shot in Head," Associated Press, June 6, 2005.

<sup>159</sup> Ibid. See also "Libya Finds Missing Newsman's Body, Probes Killing," Reuters, June 6, 2005.

The Secretary of Justice blamed the abduction and murder on unknown kidnappers who posed as security personnel. "We deny any link with this incident," he told the press.<sup>160</sup>

On June 5, the official journalists' union issued a statement warning against "jumping to conclusions" before the investigation was complete. The union, which reportedly had previously withdrawn al-Ghazal's membership because of his critical writings, offered its condolences to the family and said it trusted the integrity of the investigation.<sup>161</sup> The head of the union, Muhammad al-Bussifi, resigned later that month, saying the union had issued the statement while he was out of the country.<sup>162</sup>

According to Sulaiman Dugha, editor of *Libya al-Youm*, al-Ghazal was formerly important in the Revolutionary Committees Movement but he had recently become critical of the committees. "I will be back if I am still safe," al-Ghazal reportedly wrote in two articles before his death.<sup>163</sup>

According to another editor at *Libya al-Youm*, al-Ghazal had been writing articles critical of the Revolutionary Committee for the past year, and he had issued an appeal to Libyan intellectuals to form a committee against corruption.<sup>164</sup>

On June 6, Human Rights Watch wrote to the General People's Committee for Foreign Liaison and International Cooperation requesting information about Daif al-Ghazal's death, noting that while the circumstances of his death remained unclear, the organization was concerned that he might have been punished on account of his writing, especially his criticism of corruption in the revolutionary committees.<sup>165</sup> As of January 10, 2006, the government had not replied.

In August 2005, Seif al-Islam al-Qadhafi told a journalist from al-Jazeera that the government had arrested two men in connection with al-Ghazal's death. He said:

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<sup>160</sup> "Libya Denies Hand in Dissident Newsman's Murder," Agence France-Presse, June 6, 2005.

<sup>161</sup> "Libya Probes Death of Journalist Found Shot in Head," Associated Press, June 6, 2005.

<sup>162</sup> *Libya al-Youm*, June 21, 2005, see [www.libya-alyoum.com/data.aspx/NEWS2005JUN21.aspx#2490](http://www.libya-alyoum.com/data.aspx/NEWS2005JUN21.aspx#2490), accessed October 6, 2005.

<sup>163</sup> "Libya Probes Death of Journalist Found Shot in Head," Associated Press, June 6, 2005.

<sup>164</sup> Reporters Without Borders, "Opposition Journalist Daif Al Ghazal Tortured to Death," June 6, 2005.

<sup>165</sup> Human Rights Watch letter to Mr. Ramadan Irhiam, Director, General Department of International Organizations, General People's Committee for Foreign Liaison and International Cooperation, June 6, 2005.

In the case of Daif al-Ghazal, I responded to the call made by his family asking me to follow-up with the case. The case was difficult, complex, and very mysterious in the beginning. We were able to unravel it thanks to the Libyan security apparatus. The case is known now. The person who led the writer on is in jail now. The person who has killed and hid the body is known. The strings of the case are known now. The people have confessed. One said he led him on and another said he killed him. All of them are in jail now and will be tried. These actions are entirely unacceptable. I believe this is a clear sign for anyone who plans to kill and then blame the government for his wrongdoings.<sup>166</sup>

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<sup>166</sup> "Libyan Leader's Son on Call to Reopen Human Rights Files," BBC Monitoring Middle East, August 25, 2005, translated from al-Jazeera program, "Behind the News," August 20, 2005.



## XI. Freedom of Association and Assembly

Freedom of association in Libya is severely curtailed. Libyan law explicitly bans any group activity based on a political ideology opposed to the principles of the al-Fateh Revolution, and violators of the law can be put to death. Libya has many organizations and associations, including at least three dealing with human rights, but all have ties of varying degrees with the government. There is no functioning civil society in the sense of independent organizations that can express views or undertake actions that do not conform to the leadership's views and goals.

The Libyan government maintains that freedom of association and assembly are not required in a political system based on "popular power." As one justice official said: "The right to demonstrate is a right in the traditional sense. But that implies there are two sides, the rulers and the ruled. But when we talk about one group, there is no need."<sup>167</sup>

The Libyan government's restrictions on freedom of association violate its commitments under international law. The International Covenant on Civil and Political Rights, ratified by Libya in 1989, guarantees the right to peaceful association. According to article 22, "No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others."

The most severe domestic legal restriction is contained in Law 71, described elsewhere in this report, which bans any group activity opposing the ideology of the 1969 revolution that brought al-Qadhafi to power. Article 3 of the law imposes the death penalty on those who form, join or support such groups. The Libyan authorities have imprisoned hundreds of people for violating this law, and some have been sentenced to death.<sup>168</sup> Likewise, 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," and for those who belong to or support such an organization.

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<sup>167</sup> Human Rights Watch meeting with Libyan justice officials, Tripoli, April 26, 2005.

<sup>168</sup> The Libyan government did not respond to a October 12, 2005 Human Rights Watch query on the number of people convicted for violating Law 71.

Under Libya's constitutional laws, only certain types of associations are allowed. Article 6 of the Great Green Charter for Human Rights says Libyans are free to form "associations, trade unions and leagues in order to defend their professional interests," but it does not address associations that deal with social or political themes. According to article 9 of the Law on Enhancing Freedom, "Citizens are free to establish and join trade unions, professional and social federations and leagues and charitable associations in order to protect their interests or achieve the legitimate objectives for which those institutions have been established."

Human Rights Watch met with members of a number of such associations during its visit to Libya that deal with health care, charity work and other social affairs. Three organizations, the Libyan Arab Committee for Human Rights, the Libyan Bar Association and the Qadhafi Foundation for Development deal with human rights issues, but mostly within the confines of acceptable debate. They criticize the government at times, especially the Qadhafi Foundation, which enjoys a high degree of protection due to its director's familial ties.

Libyan associations and nongovernmental organizations are regulated by Libyan Law 19 of 2003, which amended Law 111 of 1970. According to the law, the applying organization or association must present its mandate signed by all founders. The law requires a minimum of fifty founders with a registration fee of 50 dinars (roughly 39 U.S. dollars). If the organization plans to work country-wide, its application goes to the secretariat of the General People's Congress. If the proposed work is limited to a governorate, the application goes to the People's Congress of that governorate. If the work is international, it goes to the whole General People's Congress. There is no right to appeal a decision denying a group's application.

Some organizations told Human Rights Watch that the law should be changed to facilitate registration. The secretary general of the Libyan Arab Committee for Human Rights, Salem al-Fiqhy, who is also head of the Tripoli Appeals Court, complained that the law does not oblige the government to respond to applications within a certain time. "We want a defined time frame for the state to respond to our requests to establish an organization," he said. "The previous law, Law 111, had a defined timeframe for requests to establish an organization; now it's not defined." In addition, he said, a court should decide on an application rather than the government, and applicants should have the right to appeal a court's rejection. Lastly, the current law requires organizations to

file regular reports with the government about their activities and funding, and the authorities are highly suspicious of foreign funding, he said.<sup>169</sup>

Human Rights Watch received several reports of official interference in the work of professional associations and, in one case, of interference with efforts to form such an association. In June 2005, the head of the official journalists' union, Muhammad al-Bussifi, resigned from his post, citing, among other reasons, the government's refusal to allow an independent journalists' organization.<sup>170</sup> The Libyan government did not respond to a Human Rights Watch request for more information about al-Bussifi's request.<sup>171</sup>

In November 2005, the government reportedly interfered in the work of the official lawyers' union, raiding the union's Benghazi office and appointing union leaders against the membership's will. In protest, more than one hundred Libyan lawyers tried to meet at the union's headquarters in Tripoli. When the authorities denied them entrance, the lawyers held an impromptu meeting outside, issuing a strongly worded statement that criticized the government's interference in the union's affairs.<sup>172</sup>

As published on a Libyan website based abroad, the statement denounced the government's appointment of union leadership that is "not at all representative of the desires of the Jamahiriya's lawyers."<sup>173</sup> The statement made four main points:

1. The General People's Congress should pass a law to regulate the legal profession and give lawyers control over their union, particularly the right to "choose [the] secretariat from among the ranks of the members of the general conference."
2. The government should implement Libyan constitutional law, in particular article 6 of the Great Green Charter for Human Rights, which gives citizens the right to form unions and other professional associations. (Article 6 of the charter states: "The members of Jamahiriyan society are free to form

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<sup>169</sup> Human Rights Watch interview with members of the Libyan Arab Committee for Human Rights, Tripoli, May 3, 2005.

<sup>170</sup> Libya al-Youm, June 21, 2005, see [www.libya-alyoum.com/data/asp/NEWS2005JUN21.aspx#2490](http://www.libya-alyoum.com/data/asp/NEWS2005JUN21.aspx#2490), accessed October 6, 2005.

<sup>171</sup> Human Rights Watch memo to the Government of Libya, October 12, 2005.

<sup>172</sup> Libya al-Youm, November 8, 2005. See <http://www.libya-alyoum.com/data/asp/NEWS2005NOV08.aspx#3568>, accessed November 20, 2005.

<sup>173</sup> "The General Declaration Issued by the Lawyers of Tripoli, Number 1," Libya al-Youm, November 8, 2005. See <http://www.libya-alyoum.com/data/asp/NEWS2005NOV08.aspx#3568>, accessed November 20, 2005.

associations, trade unions and leagues in order to defend their professional interests.”)

3. The General People’s Congress should revoke all decisions that restrict the right of union members to choose their union leadership.
4. The current procedure for choosing the union’s general secretariat is unconstitutional and the lawyers refuse to recognize it.

The lawyers reportedly formed a committee to follow these issues, composed of: Jum`a Atiqa, Muhammad al-`Alam al-Rajihi, al-Siddiq al-Masrati, Mahmud Abu Halala, and Jamal Bin Fayid.

According to a report by Libyans in exile, the government also imposed hand-picked leaders on the official Libyan Writers’ League in November 2004. The Revolutionary Committees Movement intervened in the league’s election, the report said, by appointing a new chairman and removing those considered “disloyal.”<sup>174</sup>

The government also restricts freedom of assembly, in violation of article 21 of the ICCPR.<sup>175</sup> In particular, peaceful demonstrations or assemblies with themes deemed against the government or government policy are banned.

On June 25-26, 2005, the Libyan political opposition-in-exile held a congress in London. Meeting for the first time, about 300 opposition members from different organizations called for an end to the al-Qadhafi-led government by peaceful means and the establishment of a “constitutional and democratic state.”<sup>176</sup> In contrast, on June 28, hundreds of youths protested against in Tripoli the meeting. “You are a group of traitors, you are criminals and you are in the service of foreign forces,” they reportedly chanted as they displayed posters of al-Qadhafi.<sup>177</sup> The protesters were allowed to conduct the protest without interference from the government.

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<sup>174</sup> Libya Human and Political Development Forum, “2004 Libya Human Development Report,” November 2, 2005. Available at [www.libyaforum.org/english/index.php?option=content&task=view&id=1186&Itemid=0&limit=1&limitstart=0](http://www.libyaforum.org/english/index.php?option=content&task=view&id=1186&Itemid=0&limit=1&limitstart=0), as of December 15, 2005.

<sup>175</sup> Article 21 of the ICCPR, states: “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.”

<sup>176</sup> Statement of the National Conference of the Libyan Opposition, London, June 26, 2005. Available in English at [www.libya-nclo.org/English%20Page.htm](http://www.libya-nclo.org/English%20Page.htm), accessed October 12, 2005.

<sup>177</sup> “Hundreds Protest in Tripoli Over Libyan Opposition-in-exile Meeting,” Agence France-Presse, June 28, 2005.

## XII. Libyan Law and Human Rights

On December 11, 1969, post-monarchy Libya adopted a Constitutional Proclamation, intended as a provisional measure until a permanent constitution could be adopted.<sup>178</sup> At this writing, Libya still had no unified constitution, but was governed by the proclamation and a series of fundamental laws deemed to have constitutional weight. Taken together, they guarantee many basic human rights, although with notable exceptions, particularly regarding freedom of expression and association. In some cases, moreover, even ostensibly protected rights have been undermined by Libyan legislation criminalizing free association and speech.

Some Libyan lawyers criticized the lack of a unified constitution and told Human Rights Watch that a single document would enhance clarity and consistency in the law. According to one lawyer, there is “ideological resistance to this,” although he did not specify from whom.<sup>179</sup>

The Constitutional Proclamation provides for freedom of religion (article 2), the right to work (article 4), the inviolability of homes (article 12), the right to education (article 14), and the right to health care (article 15). Regarding the judiciary, article 27 says the aim of judicial decisions is “the protection of the principles of the community and the rights, dignity and freedom of individuals.” Article 28 guarantees the independence of judges. Article 31 states that individuals are innocent until proven guilty and provides them with a fair defense, as well as freedom from “mental or physical harm.” The right to free expression is more circumscribed. According to article 13, “Freedom of opinion is guaranteed within the limits of public interest and the principles of the Revolution.”

The other fundamental laws with constitutional weight are:<sup>180</sup>

- The Declaration of the People’s Authority, adopted March 2, 1977
- The Green Charter for Human Rights of the Jamahiriyan Era, adopted June 1988
- Law 20, On Enhancing Freedom, adopted 1991

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<sup>178</sup> Constitutional Proclamation of December 11, 1969, Preamble and article 37.

<sup>179</sup> Human Rights Watch interview with Libyan lawyer, Tripoli, May 5, 2005.

<sup>180</sup> All three constitutional laws are available in English at <http://www.unhcr.ch/cgi-bin/texis/vtx/rsd?search=c&ISO=LBY>, as of November 20, 2005.

According to Libyan lawyers and law professors, judicial processes must respect these laws, and citizens have the right to appeal if the government violates the rights they enshrine.<sup>181</sup>

The Declaration of the People's Authority established the system of people's congresses that forms the basis of Libya's "direct democracy." It does not directly address human rights.

More relevant to human rights is the Great Green Charter, which according to the Libyan government provides a guideline for any review of legislation. Law No. 5 of 1991, On Implementation of the Principles of the Great Green Charter for Human Rights in the Jamahiriya Era, states that all legislation in force prior to the promulgation of the Great Green Charter must be amended to become consistent with the principles set forth in the charter, and all new legislation must also be compatible with the charter.<sup>182</sup> According to the government, The Great Green Charter therefore "has legal force in regard to legislation promulgated subsequent or prior to Act No. 5 of 1991."<sup>183</sup> In addition, "any individual can challenge the legality of a legislative enactment that is inconsistent with the principles set forth in the document, whose provisions prevail over those of other legislation."<sup>184</sup>

The Great Green Charter prohibits any punishment that "would violate the dignity and the integrity of a human being." Article 9 guarantees the independence of the judiciary, article 19 guarantees freedom of thought, and article 21 guarantees equality between men and women. As explained above, the Charter also declares the abolition of capital punishment as a societal goal (article 8).

At the same time, some articles of the Great Green Charter contain broadly defined exceptions that may restrict some rights. Libyans are free in their private acts and their

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<sup>181</sup> Human Rights Watch interview with Libyan lawyers and law professors at al-Fateh University. Tripoli, May 5, 2005.

<sup>182</sup> Act No. 5 (1991), Implementation of the Principles of the Great Green Charter for Human Rights in the Jamahiriya Era, article 1. Article 2 of the law states that all legislation must be amended to be consistent with the Great Green Charter within a period of one year, or up to three years following a decision by the General People's Congress.

<sup>183</sup> Libyan Arab Jamahiriya report to the Human Rights Committee, CCPR/C/28/Add.17, March 2, 1995. The report is available at <http://www.arabhumanrights.org/countries/libya/ccpr/ccpr-c-28-add17-95e.pdf>, accessed November 20, 2005.

<sup>184</sup> Libyan Arab Jamahiriya report to the Committee Against Torture, CAT/C/44/Add.3, January 28, 1999. The report is available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CAT.C.44.Add.3.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CAT.C.44.Add.3.En?Opendocument), accessed September 11, 2005.

personal relationships, article 7 says, unless “the act or the relationship are harmful or prejudicial to society or are conflicting with its values.”

As in the Constitutional Proclamation, the Great Green Charter limits freedom of expression and association. Article 6 says Libyans are free to form “associations, trade unions and leagues in order to defend their professional interests,” but it does not address associations that deal with social or political themes.<sup>185</sup> No article of the Charter guarantees freedom of expression outside the system of People’s Congresses.

Law 20, On Enhancing Freedom, says defendants are innocent until proven guilty (article 17) and guarantees the independence of judges (article 31). Article 30 of the law states that, “everyone has the right to petition a court, in accordance with the law” and that “the court shall provide him with all the necessary safeguards.”<sup>186</sup>

Law 20, however, also qualifies the right to free expression. According to article 8, “Every citizen has the right to express and publicly proclaim his opinions and ideas to the people’s congresses and the information media of the Jamahiriya. No citizen shall be answerable for his exercise of this right unless he exploits it with a view to detracting from the people’s authority or for personal ends.” The article continues: “It is prohibited to advocate ideas or opinions clandestinely or to attempt to disseminate or impose them on others through enticement, force, intimidation, or fraud.”

Libya’s code of criminal procedure is largely up to international standards; violations mostly result from poor implementation of the law. The code guarantees the right to a lawyer. The police must have a warrant to make an arrest or to search a home. The police can hold a person for up to forty-eight hours, and the prosecution has up to six days to file charges, although a judge can extend this period for up to thirty days. Defendants have the right to be informed of the charges against them and to have access to a lawyer from the moment of arrest. They can hire a private attorney or get one appointed at no cost by the state.

In practice, the authorities do not always allow access to a lawyer. Of the thirty-two prisoners and pre-trial detainees interviewed by Human Rights Watch, more than a dozen said they did not have access to a lawyer during their interrogation. For some, the

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<sup>185</sup> According to article 9 of the Law on Enhancing Freedom, “Citizens are free to establish and join trade unions, professional and social federations and leagues and charitable associations in order to protect their interests or achieve the legitimate objectives for which those institutions have been established.”

<sup>186</sup> The independence of the judiciary is also guaranteed in the Organization of the Judiciary Act No. 55 of 1976.

first time they saw their lawyer was at their trial, and even then they were not allowed to discuss their case in private.

Libya's penal code is more problematic. As discussed in the chapter of this report about the code, some articles impose severe punishments, including death, for acts and expression that should be protected under the rights to free association and speech. The penal code is currently under revision but those parts of the draft made public in 2004 suggest that the changes do not go far enough to bring the code up to the international human rights standards Libya has pledged to uphold.



### **XIII. Libya and International Human Rights Law**

Libya is party to the seven core international human rights treaties, although not all of their optional protocols:

- The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), ratified by Libya in 1969
- The International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Libya in 1976
- The International Covenant on Civil and Political Rights (ICCPR), ratified by Libya in 1976
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified by Libya in 1989
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Libya in 1989
- The Convention on the Rights of the Child (CRC), ratified by Libya in 1993
- The Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), ratified by Libya in 2004

Libya is one of two Arab states (Algeria is the other) to have signed the first Optional Protocol to the ICCPR, which allows individuals to communicate directly to the committee overseeing the ICCPR regarding alleged breaches of the convention. It has not signed the second Optional Protocol, which pledges signatories to abolish the death penalty. It has also not signed the Optional Protocol to CAT, which allows visits to places of detention by the Committee against Torture.

When Libya acceded to CEDAW in 1989, it entered reservations to article 2 (on the right to non-discrimination) and article 16 (c) and (d) (on non-discrimination in all matters relating to marriage and family relations), stating that that the convention must be implemented in accordance with *shari`a* (Islamic law). In July 1995, Libya submitted a new general reservation that the treaty's implementation cannot conflict with personal status laws derived from *shari`a*. Such reservations undermine the object and purpose of the treaty and have been widely criticized by other governments, such as Denmark, Finland, Germany, Mexico, the Netherlands, Norway, and Sweden. In June 2004, Libya signed the first Optional Protocol to CEDAW, which allows the Committee on the Elimination of Discrimination against Women to receive and consider complaints from individuals or group.

Key human rights treaties not signed by Libya include the 1951 Convention on the Status of Refugees<sup>187</sup> and the Rome Statute of the International Criminal Court.<sup>188</sup>

The Libyan government has repeatedly claimed that the international treaties it has signed take precedence over Libyan law (with the exception of Libyan law that stems from *shari`a*, as described with CEDAW above). According to the government, every international treaty signed by Libya, ratified by the General People's Congress and published in the Official Gazette, "acquires binding force and takes legal precedence over the provisions of domestic legislation." In the event of conflict between the provisions of an international treaty to which Libya is a party and domestic legislation, "the provisions of the international treaty prevail over those of domestic legislation."<sup>189</sup>

Contradictions between Libyan and international law continue to exist, particularly regarding freedom of expression and association, and, in those cases, Libyan law has prevailed. Libyan lawyers interviewed by Human Rights Watch knew of no cases in which judges cited international law when making a decision. According to some judges and prosecutors, referencing international law is unnecessary because Libya's national legislation reflect all international obligations.<sup>190</sup> As demonstrated above, however, many provisions of Libyan law continue to be inconsistent with international human rights standards.

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<sup>187</sup> Libyan officials repeatedly claimed that Libya has only migrants, legal and illegal, and not refugees. A forthcoming Human Rights Watch report will address the country's treatment of migrants and refugees.

<sup>188</sup> An official at the General People's Committee for Foreign Liaison and International Cooperation said Libya was against the International Criminal Court because the "conditions are not entirely free." He pointed to the bilateral agreements the United States has signed with various countries to protect U.S. soldiers from prosecution. (Human Rights Watch interview with Ramadan Irhiam, Director, General Department of International Organizations, General People's Committee for Foreign Liaison and International Cooperation, Tripoli, May 1, 2005.)

<sup>189</sup> Libyan Arab Jamahiriya report to the Committee Against Torture, CAT/C/44/Add.3, January 28, 1999. The report is available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CAT.C.44.Add.3.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CAT.C.44.Add.3.En?Opendocument), accessed September 11, 2005. See also Libyan Arab Jamahiriya report to the Human Rights Committee, CCPR/C/102/Add.1, October 15, 1997, available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.102.Add.1.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.102.Add.1.En?Opendocument), accessed September 11, 2005.

<sup>190</sup> Human Rights Watch interview with Benghazi justice officials, Benghazi, April 24, 2005.

#### **XIV. Acknowledgements**

Human Rights Watch's three-week delegation to Libya in April-May 2005 was composed of Fred Abrahams, senior researcher in the Middle East and North Africa Division, Farida Deif, researcher in the Women's Rights Division, and Ophelia Field, acting director of the Refugee Program to Human Rights Watch. Sarah Leah Whitson, executive director of Human Rights Watch's Middle East and North Africa Division, and Widney Brown, deputy program director of Human Rights Watch, joined the mission for six and four days respectively. Fred Abrahams wrote the report. It was edited by Sarah Leah Whitson and Joe Saunders, deputy program director of Human Rights Watch. Wilder Tayler, legal and policy director to Human Rights Watch, provided a legal review. Assef Ashraf and Tarek Radwan, associates for the Middle East and North Africa Division, and Andrea Holley, manager of outreach and publications, prepared this report for production. Additional production assistance was provided by Fitzroy Hepkins, mail manager, and Jagdish Parikh, online communications content coordinator. Human Rights Watch interns Hanan Thabet and Omar Ebeid helped with research and translation.

Human Rights Watch thanks the Libyan government for facilitating the trip. The organization enjoyed access to top-level officials, as well as to police stations, immigration detention facilities and prisons. The delegation met a wide spectrum of individuals and organizations in government, law enforcement, the media, charity groups and academia. The government granted all requests to interview specific prisoners, but prohibited members of the delegation from meeting Libyans or foreigners in Libya without prior authorization. Human Rights Watch also thanks the many individuals in Libya and other countries who helped strengthen this report's accuracy and depth.

HUMAN RIGHTS WATCH  
350 Fifth Avenue, 34<sup>th</sup> Floor  
New York, NY 10118-3299

[www.hrw.org](http://www.hrw.org)

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## PART ONE OF A THREE-PART SERIES

PART TWO: THREAT TO SOCIETY? THE ARBITRARY DETENTION OF WOMEN AND GIRLS FOR “SOCIAL REHABILITATION”

PART THREE: STEMMING THE FLOW: ABUSES AGAINST MIGRANTS AND REFUGEES

# Words to Deeds

## The Urgent Need for Human Rights Reform

As Libya emerges from years of international isolation, human rights have slightly improved, but serious problems remain. *Words to Deeds* recognizes the positive changes but focuses on continued government attempts to restrict free expression and association, unfair trials and impunity for past crimes.

The government still bans political parties and groups, independent media and genuine nongovernmental organizations. Critics of the government or the country's long-time leader Mu`ammar al-Qadhafi are arrested and detained in violation of Libyan and international law, and the fate of many political prisoners remains unknown. Interrogators sometimes use torture to extract confessions.

The report is first in a three-part series on human rights in Libya, following Human Rights Watch's first-ever visit to the country. Future reports document the arbitrary detention of women and girls in “social rehabilitation centers” and the treatment of migrants and refugees.