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LIBYA

Truth and Justice Can't Wait

Human Rights Developments in Libya
Amid Institutional Obstacles

HUMAN
RIGHTS
WATCH



Truth and Justice Can't Wait

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Human Rights Watch
350 Fifth Avenue, 34th floor
New York, NY 10118-3299 USA
Tel: +1 212 290 4700, Fax: +1 212 736 1300
hrwnyc@hrw.org

Poststraße 4-5
10178 Berlin, Germany
Tel: +49 30 2593 06-10, Fax: +49 30 2593 0629
berlin@hrw.org

Avenue des Gaulois, 7
1040 Brussels, Belgium
Tel: + 32 (2) 732 2009, Fax: + 32 (2) 732 0471
hrwbe@hrw.org

64-66 Rue de Lausanne
1202 Geneva, Switzerland
Tel: +41 22 738 0481, Fax: +41 22 738 1791
hrwgva@hrw.org

2-12 Pentonville Road, 2nd Floor
London N1 9HF, UK
Tel: +44 20 7713 1995, Fax: +44 20 7713 1800
hrwuk@hrw.org

27 Rue de Lisbonne
75008 Paris, France
Tel: +33 (1) 43 59 55 35, Fax: +33 (1) 43 59 55 22
paris@hrw.org

1630 Connecticut Avenue, N.W., Suite 500
Washington, DC 20009 USA
Tel: +1 202 612 4321, Fax: +1 202 612 4333
hrwdc@hrw.org

Web Site Address: <http://www.hrw.org>



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Human Rights Developments in Libya Amid Institutional Obstacles

I. Summary	1
II. Recommendations	7
III. Methodology	10
IV. Background	12
International Re-integration	13
Reform Initiatives.....	17
V. Freedom of Expression	20
Prosecution of Journalists	23
Libya's International Obligations and Libyan Law.....	24
VI. Freedom of Assembly and Association	27
Freedom of Assembly.....	27
No Independent Nongovernmental Organizations	28
Freedom of Association Criminalized	30
The 2008 Attempt to Establish a Human Rights Organization	31
Libya's International Obligations	33
VII. Violations by the Internal Security Agency	34
Arbitrary Detention	35
Mahmoud Boushima.....	37
Abdellatif Al-Raqoubi	37
Political Prisoners.....	38
Abdelnasser al-Rabbasi	38
Mahmud Matar	40
Fathi al-Jahmi	40
Disappearance	42
Jaballa Hamed Matar and Izzat al-Megaryef	42
Mansur al-Kikhya	43
Imam Sayyed Musa Sadr	44
Death in Custody	44
Ismail Ibrahim Al Khazmi	44

VIII. Impunity for Gross Abuses	46
The 1996 Abu Salim Killings	46
From Official Denial to Grudging Acknowledgment	49
Offers of Compensation but Not Truth	52
Unprecedented Activism – the Demands of the Families	56
Libya’s Obligations Under International Law.....	59
IX. The State Security Court- A New People’s Court?	62
Abdelhakim Al-Khoweildy	64
Mohamed Ahmed Al-Shoro’eyya	64
Case of Idris Boufayed, Jamal el Haji and 12 Others	65
Case of Shukri Sahil.....	66
X. The Death Penalty.....	67
Acknowledgements.....	70
Annex : Letters to the Authorities.....	71
Letter to Libyan Secretary for Justice.....	71
Letter to Libyan Secretary for Public Security	74

I. Summary

“I need to talk about it, I need to feel that my voice is being heard, not just mine but that of all the families of the disappeared. For my family, every celebration, every holiday becomes a funeral because they are not with us.”

—Mohamed Hamil Ferjany to Human Rights Watch, USA, August 2009

“I couldn’t have spoken to you in 2005 the way I can today.”

—Libyan Lawyer interviewed by Human Rights Watch, Tripoli, April 2009

Over the past decade Libya dramatically transformed its international status from a pariah state under UN, EU and US sanctions to a country that, in 2009 alone, held the Presidency of the UN Security Council, the chair of the African Union and the Presidency of the UN General Assembly. But this transformation in Libya’s foreign policy has not galvanized an equivalent transformation of Libya’s human rights record which remains poor, despite some limited progress in recent years.

This report examines recent human rights developments in Libya, identifies key areas of concern and highlights steps the Libyan government must take to meet its obligations under international human rights law. Libya’s reintegration into the international community means that its human rights record has and will come under increasing scrutiny as the absolute control the Libyan government customarily exercised over the flow of information out of Libya continues to erode. Human Rights Watch believes this is an opportunity for human rights reform that the Libyan authorities should pursue and other governments should promote in their relations with Libya.

This report updates Human Rights Watch’s 2006 report on Libya, *Words to Deeds*, and focuses on the areas where there has been some limited progress, such as freedom of expression, as well as those that remain severely restricted, such as freedom of association. The report also addresses how the Internal Security Agency remains responsible for systematic violations of Libyan rights, including the detention of political prisoners, enforced disappearances and deaths in custody. This report does not examine the treatment of migrants, asylum seekers and refugees in Libya, most recently reviewed in Human Rights Watch’s 2009 report, *Pushed Back, Pushed Down: Italy’s Forced Return of Boat Migrants and Asylum Seekers, Libya’s Mistreatment of Migrants and Asylum Seekers*.

Overall, the past five years have witnessed an improvement in the human rights situation, though far less than promised or required. There are less frequent reports of arbitrary arrests and enforced disappearances compared to the two previous decades. There has been greater tolerance of freedom of expression and some progress in addressing gross violations of the past, though this remains very unpredictable. Limited steps toward increased tolerance of dissent indicate that at least some elements of the government recognize the need for reform. Two new private newspapers and the internet have created a new limited space for freedom of expression, and some unprecedented public demonstrations have been allowed to take place. The Justice Ministry has announced plans to reform the most repressive provisions of the penal code, though it has not yet made the proposed revisions public. The justice system at times has made independent decisions, ordering the government to pay compensation to people whose rights have been violated and, in some cases, the government has complied.

Yet, despite work to develop a new penal code, an essentially repressive legal framework remains in place, as does the ability of government security forces to act with impunity against dissent. Many trials, especially those before the State Security Court, still fail to meet international due process standards. Overall, unjustified limits on free expression and association remain the norm, including penal code provisions that criminalize "insulting public officials" or "opposing the ideology of the Revolution." Many relatives of prisoners killed in a 1996 incident at Abu Salim prison are still waiting to learn how their relatives died and to see those responsible punished. The jurisdiction of courts, the duties of government agencies, respect for legal rights of prisoners and adherence to the country's stated list of human rights often remain murky, erratic and contradictory.

The basis for this report is research conducted by Human Rights Watch during a ten-day visit to Libya in April 2009, the organization's most recent trip to the country, as well as general research and monitoring of the state of human rights in Libya from outside the country. Human Rights Watch met with the Secretary of Public Security and the Secretary of Justice and visited Abu Salim prison, where it interviewed six prisoners. Human Rights Watch also met with members of the Tripoli Bar Association and the Journalists' Syndicate, relatives of prisoners and a former political prisoner.

Freedom of expression remains severely restricted by the Libyan penal code. However, the past five years have witnessed a gradual opening of a new, still vulnerable, space for freedom of expression. Cracks in the wall that the government has set up against free expression are thin but evident. *Oea* and *Quryna*, two private newspapers established in August 2007, allow their journalists to write more critically about the government than was

previously tolerated in the press, though this criticism remains in line with the political agenda of Saif al-Islam al-Gaddafi, the son of Mu'ammar al-Gaddafi. Libyan correspondents for websites based abroad that frequently publish criticism of the government and news of human rights violations are allowed to operate in Libya and have even managed to obtain press cards. This gradual opening of space has brought with it an increase in criticism of government policies in the media. However, there has also been an increase in the number of prosecutions of journalists, although no journalist has been sentenced to prison so far.

There is no freedom of association in Libya because the concept of an independent civil society goes directly against Gaddafi's theory of governance by the masses. Law 71 still criminalizes political parties, and the penal code criminalizes the establishment of organizations that are "against the principles of the Libyan Jamahireya system." Law 19, "On Associations," requires a political body to approve all nongovernmental organizations, does not allow appeals against negative decisions and provides for continuous governmental interference in the running of the organization. The government has refused to allow independent journalists' and lawyers' organizations. The law itself allows the government to revoke the authorization of an association at any time without needing to provide justification. There are a number of semi-official organizations that do charitable work, providing services and organizing seminars, but none that publicly take critical stances against the government.

Libya has no independent nongovernmental organizations. The only organizations that can do human rights work, the most sensitive area of all in Libya, derive their political standing from their personal affiliation with the regime. The main organization that can publicly criticize human rights violations is the Gaddafi International Charity and Development Foundation (Gaddafi Foundation), chaired by Saif al-Islam al-Gaddafi. A second organization, Waatasemu, is run by Dr. Aisha al-Gaddafi, Mu'ammar al-Gaddafi's daughter, and has intervened in death penalty cases and women's rights issues. The International Organization for Peace, Care and Relief (IOPCR), run by Khaled Hamedi, the son of a member of the Revolutionary Command Council, is the only organization able to access migrant detention centers.

Attempting to set up a human rights organization is a risky venture with the potential for harassment by Libyan security and also criminal prosecution. In 2008, for example, a group of lawyers and journalists tried to set up two organizations dealing with human rights and democracy. The authorities initially approved their request, but the Internal Security Agency, the section of the General People's Committee (ministry) for Public Security in charge of controlling domestic political activity, subsequently blocked the process. The group

ultimately abandoned the initiative after the abduction and assault of one of the lawyers (who was a founding member of both organizations) for one day. The government says it is investigating the abduction.

The Internal Security Agency retains full control over two prisons in Libya, Abu Salim and Ain Zara, which are notorious for the arbitrary detention of political prisoners. According to the Secretary for Justice, there currently are approximately 500 prisoners who have served their sentence or who have been acquitted by Libyan courts, but remain imprisoned under orders of the Internal Security Agency. The Agency has refused to implement the decisions of the Libyan judiciary to release detainees, despite calls from the Libyan secretary of justice for their release. A number of prisoners remain disappeared, including high-profile Libyan opposition members who were last heard of in Abu Salim prison. The Internal Security Agency also continues to detain individuals who were sentenced by the People's Court, notorious for trying individuals for political crimes without access to defense lawyers, and since abolished in 2005. The lack of fairness in the trials of such detainees means they should be released or re-tried before an ordinary court.

In late June 1996 an estimated 1200 prisoners were killed in Tripoli's Abu Salim prison. For years the authorities denied this had taken place. Until late 2008, the vast majority of the families of the prisoners who were killed had received no information about them. Some families of detainees killed at the prison sued the government in court, seeking to learn what happened to their relatives.

In June 2008, the North Benghazi court ordered the General People's Committee (the cabinet), the General People's Committee (ministry) for Justice and the General People's Committee (ministry) for Public Security to inform the relatives of those who had died. The Libyan authorities told Human Rights Watch in 2004 that an investigation into the incident was under way; however, in April 2009 the Secretary of Justice confirmed to Human Rights Watch that no such investigation took place. In September 2009, the General People's Committee for Defense established an investigation panel composed of seven investigative judges and headed by a former military judge to investigate the Abu Salim killings 13 years after they occurred.

Following the decision of the North Benghazi court, starting in December 2008 Libyan authorities began issuing death certificates to the families, without acknowledging that they were related to the Abu Salim killings. These documents do not include the correct date, place or any cause of death. The authorities have offered compensation of 200,000 Libyan Dinars (\$162,300) in exchange for assurances that family members will not pursue further

legal claims in Libyan or international courts. Calling for truth, accountability and appropriate compensation, several hundred of the families formed a committee to demand the facts about what occurred on the day of the prison killings and the prosecution of those responsible. And most of the families in Benghazi have refused to accept compensation on those terms, insisting that they want to know the truth of what happened and to have those responsible prosecuted. Mohamed Hamil Ferjany, a spokesperson for the families now based in the US, told Human Rights Watch that for him, "the money is irrelevant. My family spent years suffering, not knowing where my brothers were, only to be given a piece of paper 15 years later saying they are dead and nothing more. We want justice."

Over the past months, some of the families insisting on accountability from the government have been demonstrating primarily in Benghazi, but also in Al Bayda and Derna. The government has, for the most part, allowed the families to demonstrate, and the Libyan press has covered their activities and demands. However, the families also have faced harassment from security forces and even, at times, arrest.

The 2005 abolition of the People's Court was greeted by human rights organizations as a welcome step on the path of reform. However, in August 2007 a new State Security Court was established bearing a worrying resemblance to the People's Court which often issued heavy sentences after unfair trials. Human Rights Watch has spoken to a number of defendants brought before this court who were not able to meet with their defense counsel ahead of the court session. Moreover, the court's decisions are not available to the public or even to the families of those sentenced. It is not clear whether there is a court that can review decisions by the State Security Court nor whether the right to appeal is granted to those it does sentence.

Despite statements by senior officials, including Libyan Leader Mu'ammar al-Gaddafi, that the country is working toward the abolition of the death penalty and that it is rarely applied, Libya continues to sentence people to death and to carry out death sentences. A system based on Islamic law and custom allows for a pardon only when the family of a murder victim is willing to grant one in exchange for financial compensation or so-called "blood money."

The steps Libya has taken to address some of its human rights problems do not go far enough in addressing the systemic and legal infrastructure that deprives Libyans of their basic human rights. Libya must ensure that it complies with all of its obligations under international human rights law and should immediately implement a number of reforms in policy, law and practice. The General People's Congress (the legislative assembly) should

repeal all provisions of the penal code and other laws such as Law 71 that violate freedom of expression and association, and that any new draft laws are fully in line with international human rights law. The Internal Security Agency should immediately release all prisoners detained for peacefully exercising their right to free expression or association and compensate them for their detention. In addition, Internal Security agents should immediately release the approximately 200 prisoners they are continuing to detain in Abu Salim prison despite the fact that Libyan courts have acquitted them and ordered their release or that they have completed their sentences.

Human Rights Watch further urges the People's Leadership Committees to immediately inform the families of prisoners who died in the 1996 Abu Salim prison massacre of the circumstances of the death of their relatives and give them the remains of their relatives to bury. The authorities must carry out a full and effective investigation and make public the findings. This should be immediately followed by the prosecution of those responsible for the summary execution of those prisoners. Under human rights law, the Libyan government is under an obligation to make reparation and must not pressure the families into accepting compensation instead of pursuing accountability. The families of prisoners who were killed in Abu Salim have the right to demonstrate peacefully and make demands to the Libyan authorities without intimidation and harassment from the security forces. In addition, in the context of Libya's increasing political and economic integration in the world community, Human Rights Watch urges all organizations and governments engaging with Libya to ensure that the promotion of human rights in Libya forms part of their relationship.

II. Recommendations

To the Libyan Government:

Human Rights Watch urges the Libyan authorities to implement the reforms that they have announced and to ensure that these are carried out in full compliance with international human rights law. In particular, Human Rights Watch calls on the Libyan government to:

With respect to freedom of expression:

- Repeal Law 71 of 1972, which bans any group activity based on a political ideology opposed to the principles of the 1969 al-Fateh Revolution when Mu'ammar al-Gaddafi led a military coup overthrowing the Libyan monarchy;
- Repeal articles of the penal code that criminalize free expression, including articles 166, 178, 206, 207, and ensure that the new draft penal code is revised to comply with international human rights law;
- Present a revised draft penal code to the Basic People's Congresses for discussion as soon as possible;¹
- Release all individuals imprisoned or detained solely for exercising their right to free expression.

With respect to freedom of association and assembly:

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

¹ The relevant legislative bodies. For more on the political system see Background.

With respect to prisons under the control of the Internal Security Agency:

- Immediately release all prisoners acquitted by courts;
- Immediately release all prisoners who have served their sentences;
- Implement all legal decisions issued by Libyan courts;
- Allow the Office of the General Prosecutor to conduct investigations regarding detention in Abu Salim and Ain Zara prisons;
- Quash all sentences against and immediately release all political prisoners who are imprisoned solely for the peaceful expression of their views or for activities protected by freedom of association and assembly;
- Compensate all who have been arbitrarily detained;
- Sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance;
- Issue an invitation to the Special Rapporteur on Extrajudicial Summary or Arbitrary Executions;
- Facilitate the visit of the Working Group on Arbitrary Detention and allow them full access to all centers of detention including those controlled by the Internal Security Agency.

With respect to the Abu Salim prison killing in 1996:

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

With respect to the State Security Court:

- Clarify the status of the State Security Court in the Libyan legal system;
- Ensure that a right of appeal is available to every defendant and clarify which court is competent to hear that appeal;
- Ensure that defendants have the right to a lawyer of their choice and sufficient access to their lawyers before the court sessions ;
- Ensure that both private and state-appointed lawyers have equal and full access to the case documents;
- Make all decisions rendered by the State Security Court publicly available, especially to the defendant and his family.

With respect to the Death Penalty:

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

To the European Union and its Member States

- Before finalizing the Framework Agreement with Libya, ensure that the Libyan government commits to improving its human rights record and respecting the rights of prisoners, journalists and families of victims of human rights violations;
- Consistent with the EU Guidelines on Human Rights Defenders, engage with the Libyan government to raise the rights of human rights defenders.

To the United Nations

- The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions should request a visit to Libya;
- The Working Group on Enforced or Involuntary Disappearances should request a visit to Libya;
- Members of the Human Rights Council should address the recommendations in this report to Libya during its upcoming Universal Periodic Review session.

III. Methodology

Information about human rights violations in Libya remains scarce due to continued state control of the media and the high risk associated with providing information to organizations based abroad. The print media in Libya and foreign correspondents based there rarely report on human rights violations. Lawyers, family members and friends of individuals whose rights have been violated often refrain from communicating with international organizations due to fear of repercussions.

This report is based primarily on a ten-day visit to Libya in April 2009, as well as interviews with Libyans abroad and general research on the country. During the visit Human Rights Watch met with the Secretary of the General People's Committee for Justice (Ministry of Justice); the Secretary of the General People's Committee for Public Security (Ministry of Interior); the head of the Internal Security Agency at the General People's Committee for Public Security; representatives of the General People's Committee for Foreign Liaison and International Cooperation (Ministry of Foreign Affairs) and the acting General Prosecutor. The organization also met with lawyers, journalists, former prisoners and families of prisoners. Human Rights Watch visited one prison, Abu Salim in Tripoli, and interviewed six prisoners, briefly meeting with and confirming the detention of an additional prisoner who refused to be interviewed. Prison authorities refused Human Rights Watch requests to interview seven other prisoners.

Despite three hours of negotiation with the Internal Security Agency officer in charge, Human Rights Watch was not able to secure interviews in private with any prisoners. The interviews took place in a courtyard where a guard hovered nearby to eavesdrop, refusing Human Rights Watch's request to move further away. This affects the overall value of the testimonies. The Libyan authorities denied Human Rights Watch access to Ain Zara, the other prison run by the Internal Security Agency.

Because of the fear of compromising the security of interviewees, Human Rights Watch only met individuals in public places and only initiated contact after ascertaining the willingness of those individuals to speak to Human Rights Watch in public. Human Rights Watch conducted two interviews with relatives of victims of human rights violations in Benghazi and a further four telephone interviews with other relatives. Human Rights Watch subsequently met with two brothers of prisoners who were killed in Abu Salim in London, UK in June 2009 and in Cleveland, Ohio in August 2009.

Human Rights Watch was not visibly followed by any security officials during the visit, but it was clear that Libyan security kept Human Rights Watch under surveillance.

In June 2009, Human Rights Watch sent letters to the Secretary of Justice and the Secretary of Public Security requesting further clarification on a number of issues and outstanding questions. At the time of publication of this report Human Rights Watch had not received a response to these letters despite repeated attempts to follow up. The letters are reproduced in the Appendix.

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 a population of just over 6 million.² The vast Sahara Desert encompasses more than 90 percent of the country, and the majority of the population lives on the Mediterranean coast. The United Nations Development Program ranks Libya 55 out of 182 countries on its Human Development Index.³

Throughout the 1970s and 1980s, police and security forces arrested hundreds of Libyans who opposed, or who the authorities feared could oppose, the new system. Authorities labeled critics "stray dogs" and rounded up academics, lawyers, students, journalists, Trotskyists, communists, members of the Muslim Brotherhood and others considered "enemies of the revolution," imprisoning or subjecting them to enforced disappearance.⁴ Another wave of internal repression came in 1989, with the government instituting "mass arbitrary arrest and detention, 'disappearances,' torture, and the death penalty."⁵ No form of dissent was tolerated and Libya openly espoused a policy of assassinating Libyan dissidents abroad.⁶

Libya's international isolation intensified in the late 1980s after a number of attacks abroad were attributed to Libyan agents. 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-Gaddafi 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, pay compensation to the victims' families, and cease all support for terrorism.

² United Nations Development Program Libya, Country Info, <http://www.undp-libya.org/countryinfo.php> (accessed Sept. 29, 2009).

³ United Nations Development Program Human Development Report 2009, Libyan Arab Jamahiriya, http://hdrstats.undp.org/en/countries/country_fact_sheets/cty_fs_LBY.html (accessed October 23, 2009).

⁴ The National Front for the Salvation of Libya's 1998 list of 2626 prisoners, which relies on several different sources, gives an overview of the different waves of arrest which took place, see National Front for the Salvation of Libya, *Human Rights Report*, December 1998, <http://www.libyanfsl.com> (accessed November 7, 2009).

⁵ For a list of prisoners arrested see Libya Human Rights Solidarity, "Mass Trial of 98 Prisoners of Conscience," June 18, 2001, http://www.lhrs.ch/english/default.asp?page1=v_bayan&id=4 (accessed September 29, 2009); Amnesty International, "Libya: Time to Make Human Rights a Reality," AI Index: MED 19/002/2004, April 26, 2004, <http://www.amnesty.org/en/library/asset/MDE19/002/2004/en/ofoco416-d631-11dd-ab95-a13b602c0642/mde190022004en.pdf> (accessed Sept. 29, 2009).

⁶ On the assassination of Libyan dissidents in the UK by Libyan security see Christopher Andrew, *The Defence of the Realm: The Authorized History of MI5*, (London: Allen Lane, 2009).

This was followed in March 1992 by Security Council Resolution 748, which imposed an air and arms embargo on Libya. The embargo had a negative impact on Libya's economy. It was further strengthened by Security Council Resolution 883 in November 1993 which imposed a limited asset freeze and an embargo on select oil equipment.

In 1999 Libya improved its relations with Western Europe and the United States by surrendering two Libyan nationals suspected of the Pan Am bombing. A Scottish court in the Netherlands subsequently acquitted one of the men and sentenced the other, `Abd al-Basit al-Megrahi, to life in prison in 2001. In a controversial decision, the Scottish Cabinet Secretary for Justice released al-Megrahi on August 20, 2009, citing his terminal illness, and returned him to Libya. Crowds at Tripoli airport waving Scottish flags greeted him upon return, an orchestrated affair which was condemned as a hero's welcome by much of the western media and by many governments.

International Re-integration

The turning point in Libya's relationship with the international community came in December 2003 when Libya announced it would give up its Weapons of Mass Destruction (WMD) programs and limit its long-range missiles.⁷ Libya said it would comply with the Nuclear Non-Proliferation Treaty and the Biological Weapons Convention, sign the International Atomic Energy Agency Additional Protocol and adhere to the Chemical Weapons Convention. In August 2003, Libya accepted "responsibility for the actions of Libyan officials" for the Pan Am and UTA bombings and agreed to pay compensation to the families.⁸ The US-Libya compensation deal was signed in August 2008⁹ and by November 2008 the families announced that they had received 100% of the compensation.¹⁰ As one State Department official put it, the past six years have witnessed a "gradual, step-by-step normalization" of U.S.-Libyan relations.¹¹

⁷ "Libyan WMD: Tripoli's statement in full," *BBC News Online*, December 20, 2003, <http://news.bbc.co.uk/2/hi/africa/3336139.stm> (accessed August 23, 2009).

⁸ United Nations Security Council, Resolution 1506 (2003), S/RES/1506 (2003) <http://www.unhcr.org/refworld/docid/3f8d2e164.html> (accessed September 29, 2009). 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.

⁹ US-Libya compensation deal sealed, *BBC News Online*, August 14, 2008, <http://news.bbc.co.uk/2/hi/americas/7561271.stm> (accessed July 2, 2009).

¹⁰ Matthew Weaver, "Families of Lockerbie bombing victims receive compensation from Libya," *The Guardian*, November 21, 2008, <http://www.guardian.co.uk/uk/2008/nov/21/lockerbie-libya> (accessed July 21, 2009).

¹¹ Statement by Acting Under Secretary for Political Affairs William J. Burns, at U.S. House of Representatives, Hearing Before the Committee on International Relations, "Libya: Progress on the Path Toward Cautious Reengagement," March 16, 2005, 109th Congress, No. 109-25, <http://www.foreignaffairs.house.gov/archives/109/20056.pdf> (accessed Sept. 29, 2009), p. 4.

In May 2006 then-U.S. Secretary of State Condoleezza Rice announced that the U.S. was “restoring full diplomatic relations with Libya” and would remove it from the list of state sponsors of terrorism where it had been since December 1979.¹² In August 2008 the US and Libya signed a claims settlement agreement, indemnifying each other against outstanding lawsuits for bombings attributed to Libya and US airstrikes in the 1990s. In September 2008 Condoleezza Rice became the first U.S. Secretary of State to visit Libya since 1953. On November 20, 2008, the US Senate confirmed Gene Cretz as U.S. Ambassador to Libya, the first American ambassador there in over 35 years.¹³

The thawing of relations between Libya and the U.S. has been particularly significant in terms of counter-terrorism cooperation. Libya is regarded as a partner in the fight against terrorism and continues to share intelligence on militant Islamists with Western governments.¹⁴ Since 2004, the US has rendered a number of Libyan former CIA detainees to Libya,¹⁵ five of whom Human Rights Watch was able to interview in April 2009. Human Rights Watch was the first organization to confirm their detention in Libya. In addition, on December 18, 2006, the US government returned Libyan citizen Mohamed al-Rimi from Guantanamo Bay to Libya, followed by Sofian Hamoodah on September 30, 2007.

On October 18, 2005 Libya and the United Kingdom signed a Memorandum of Understanding “to facilitate deportation of persons suspected of activities associated with terrorism,”¹⁶ which Human Rights Watch had said would put them at serious risk of torture.¹⁷ On April 27, 2007, the Special Immigration Appeals Commission ruled that the United Kingdom could not return two terrorism suspects to Libya due to the risk of torture and unfair trials, a decision confirmed in appeal on April 9, 2008.¹⁸

¹² “U.S. Diplomatic Relations with Libya,” U.S. Department of State, Office of the Spokesman, May 15, 2006, <http://2001-2009.state.gov/secretary/rm/2006/66235.htm> (accessed Sept. 29, 2009).

¹³ “Confirmation of Gene A. Cretz as U.S. Ambassador to Libya,” U.S. Department of State Office of the Spokesman, November 28, 2009, <http://www.america.gov/st/texttrans-english/2008/November/20081128140821EAifaSo.3752405.html> (accessed Aug. 12, 2009).

¹⁴ See Dana Moss and Simon Henderson, “Rebuilding U.S.-Libyan Relations Twenty Years after Lockerbie,” The Washington Institute for Near East Policy, Policy Watch#1435, November 25, 2008, <http://www.washingtoninstitute.org/templateC05.php?CID=2968> (accessed Sept. 29, 2009).

¹⁵ Human Rights Watch et al, *Off the Record: U.S. Responsibility for Enforced Disappearances in the “War On Terror,”* June 7, 2007, <http://www.hrw.org/legacy/backgrounders/usa/cto607/cto607web.pdf>, pp. 10, 14, 16, 17.

¹⁶ “UK signs memorandum of understanding with Libya,” Foreign and Commonwealth Office press release, Oct. 17, 2005, http://www.fco.gov.uk/resources/en/press-release/2005/10/fco_npr_181005_libyamou (accessed Sept. 29, 2009).

¹⁷ “U.K.: Torture a Risk in Libya Deportation Accord,” Human Rights Watch news release, October 17, 2005, <http://www.hrw.org/en/news/2005/10/17/uk-torture-risk-libya-deportation-accord> (accessed July 17, 2009).

¹⁸ *AS& DD (Libya) v Secretary of State for the Home Department*, Supreme Court of Judicature Court of Appeal, April 9, 2008, EWCA Civ 289, Case No T1/2007/0504, http://www.judiciary.gov.uk/docs/judgments_guidance/judgment_as_dd_libya_090408.pdf (accessed July 17, 2009). See

Other European governments and the European Union have also strengthened ties with Libya recently, driven by business interests and encouraged by Libya's cooperation in combating terrorism and illegal migration. EU sanctions against Libya were lifted in 2004 and Libya and the EU signed a memorandum of understanding on July 23, 2007. In November 2008, negotiations on an EU-Libya Framework Agreement covering areas such as "political dialogue, trade, energy, migrations and environment" began in Brussels.¹⁹ The negotiations are ongoing with another round scheduled to take place in November 2009.

The resolution of one of the main sticking points in EU-Libyan relations, the case of five Bulgarian nurses and a Palestinian doctor, also paved the way for improved relations. The health workers had been in prison since 1999, convicted of deliberately infecting 426 children with HIV. Their release in July 2007 came as a result of negotiations that intensified after Bulgaria's entry into the European Union in January of that year. The Libyan High Judicial Council commuted the healthcare workers' death sentences, following a deal with the European Union to upgrade Libyan-EU relations, which Libyan sources said included compensating the victims' families with a US\$1 million per child.²⁰

The intervention of French President Nicolas Sarkozy in the case ended with his then-wife Cecilia Sarkozy accompanying the nurses and doctor on their flight out of Libya,²¹ Mu'ammar al-Gaddafi was invited on a state visit to France in December 2007, his first visit to Europe in 34 years.²² He signed billions of dollars in contracts during his stays in France and Spain on that trip.²³ Earlier that year Russia's then-president Vladimir Putin signed multi-billion-dollar arms and energy deals during a visit to Libya in April, the first by a Russian president.

Italy and Libya solidified their close relationship with a number of agreements and joint initiatives. On August 30, 2008 both countries signed the "The Treaty of Friendship,

also "UK: Appeals Court Blocks National Security Deportation," Human Rights Watch news release, April 7, 2008, <http://www.hrw.org/en/news/2008/04/07/uk-appeals-court-blocks-national-security-deportations> (accessed July 17, 2009).

¹⁹ "EU-Libya: negotiations on future Framework Agreement start," European Union press release, November 12, 2008, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1687&format=HTML&aged=0&language=EN&guiLanguage=en> (accessed Sept. 29, 2009).

²⁰ "HIV Medics Released to Bulgaria," *BBC News Online*, July 24, 2007, <http://news.bbc.co.uk/1/hi/world/europe/6912965.stm> (accessed August 8, 2009).

²¹ Matthew Brunwasser and Elaine Sciolino, "Bulgarian nurses and Palestinian doctor freed from captivity," *New York Times*, July 24, 2007, available at <http://www.nytimes.com/2007/07/24/world/europe/24iht-nurses.5.6813495.html?pagewanted=all> (accessed August 3, 2009).

²² John Ward Anderson, "Gaddafi Visit Causes Stir in France," *Washington Post*, December 11, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/12/10/AR2007121001689.html> (accessed July 1, 2009).

²³ "Gaddafi visit seals French deals," *BBC News*, December 10, 2007, <http://news.bbc.co.uk/2/hi/africa/7135788.stm> (accessed July 1, 2009).

Partnership and Cooperation between the Italian Republic and Great Socialist People's Libyan Arab Jamahiriya" which called for "intensifying" cooperation in "fighting terrorism, organized crime, drug trafficking and illegal immigration."²⁴ In September 2008 Italian Prime Minister Silvio Berlusconi visited Libya, pledging US\$5 billion in reparations for "the damage inflicted" during Italy's colonial rule. Berlusconi said Italy would receive increased access to Libyan oil and gas and "fewer clandestine immigrants." On May 15, 2009 an agreement to conduct joint Libyan-Italian naval patrols of Libyan shores went into effect. In June 2009, Mu'ammar al-Gaddafi made his first state visit to Italy²⁵ and returned the following month to attend the G8 summit in L'Aquila, Italy. In September 2009, Human Rights Watch published a report *Pushed Back Pushed Around* describing the negative impact this agreement has had on the rights of refugees, asylum seekers and migrants.²⁶

In October 2007 Libya won a seat on the UN Security Council and it held the rotating presidency in January 2009.²⁷ In February 2009 Libyan leader Mu'ammar al-Gaddafi became chairman of the African Union at a summit in Addis Ababa, Ethiopia and on June 10, 2009 the General Assembly elected former Libyan secretary for African Affairs Ali Treki President of its sixty-fourth session. On September 23, 2009, Mu'ammar Gaddafi gave a 96-minute speech at the opening session of the UN General Assembly in which he criticized the UN system and the Security Council. However, he refrained from making provocative remarks towards the United States or the West in general, avoiding sensitive subjects such as the return of Megrahi, which indicates a desire on his part to maintain good relations with the West.

Libya is party to the seven core international human rights treaties, although not all of their optional protocols. It ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1976, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1989, the Convention against Torture and Other Cruel, Inhuman or Degrading

²⁴ "Gaddafi, Berlusconi sign accord worth billions," Reuters, August 30, 2008, <http://www.reuters.com/article/worldNews/idUSLU29214620080830> (accessed June 26, 2009). The Italian Senate ratified the agreement on February 3, 2009; Libya ratified it a month later. "Italy-Libya: Tripoli Ratifies Friendship Treaty" ANSamed, March 2, 2009, <http://www.ansamed.info/en/news/ME01.@AM49114.html> (accessed June 29, 2009).

²⁵ "Gaddafi in first visit to ex-colonial power Italy," Reuters, June 10, 2009, <http://uk.reuters.com/article/idUKLA99895320090610> (July 1, 2009).

²⁶ Human Rights Watch, *Libya/Italy: Pushed Back Pushed Around*, (New York, Human Rights Watch: September 21, 2009) <http://www.hrw.org/en/reports/2009/09/21/pushed-back-pushed-around-o> (accessed September 29, 2009).

²⁷ "Libya Heads UN Security Council," CNN News Online, January 3, 2008, <http://www.cnn.com/2008/WORLD/africa/01/03/libya.un/index.html> (accessed July 7, 2009).

Treatment or Punishment (CAT) in 1989, the African Charter on Human and Peoples' Rights in 1986, and the African Charter on the Rights and Welfare of the Child in 2003. Libya has taken strong positions against signing the 1951 Convention on the Status of Refugees and the Rome Statute of the International Criminal Court with Mu'ammar al-Gaddafi calling the latter a "new world terrorism."²⁸

Reform Initiatives

Human rights observers have, for years, criticized the Libyan penal code for violating freedom of expression and association and for excessively heavy sentences.²⁹ The Libyan authorities first announced their intention to amend the penal code in 2003. Then-Secretary of Justice `Ali `Umar Abu Bakr told Human Rights Watch in May 2005 that by the end of that year the experts were due to submit a new penal code to the Basic People's Congresses for debate.³⁰ A draft obtained by Amnesty International in 2004 contained many articles that were inconsistent with Libya's obligations under international human rights law. Vague terms in some articles, such as "spreading rumors," "insult," and "harming the reputation of the country," appeared as if they could lead to the death penalty being imposed for the peaceful expression of political views.³¹ In October 2005, Mu'ammar al-Gaddafi spoke before the Higher Judicial Council calling for a revision of the penal code; "I want the men and women of Libya to create their penal code so that this is the first time that a people creates its own penal code which will then run it."³²

Chief Justice of the Libyan Supreme Court, Dr. Abdulrahman Tuta, told Human Rights Watch in April 2009 that he chaired a committee composed of judges, lawyers and academics

²⁸ "Kadhafi slams ICC 'terrorism' in Bashir case," AFP, March 29, 2009, <http://www.google.com/hostednews/afp/article/ALeqM5h3uxqQ4jDSzliGZ5rM8hVvhiorbA> (accessed September 6, 2009).

²⁹ See Human Rights Watch, *Libya: Words to Deeds*, Volume 18, No.1(E), (New York: Human Rights Watch, January 24, 2006), <http://www.hrw.org/en/reports/2006/01/24/libya-words-deeds-o>, Chapter VI; Amnesty International, "Libya: Time to Make Human Rights a Reality," AI Index: MDE 19/002/2004, April 26, 2004, <http://www.amnesty.org/en/library/asset/MDE19/002/2004/en/ofoco416-d631-11dd-ab95-a13b602c0642/mde190022004en.pdf> (accessed Sept. 29, 2009), p. 3.

³⁰ According to the Libyan political 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.

³¹ Amnesty International, "Libya: Time to Make Human Rights a Reality," AI Index: MDE 19/002/2004, April 26, 2004, <http://www.amnesty.org/en/library/asset/MDE19/002/2004/en/ofoco416-d631-11dd-ab95-a13b602c0642/mde190022004en.pdf> (accessed Sept. 29, 2009), pp. 12-13.

³² "Latest Edition: Qaddafi calls for revision of Libyan penal code (Arabic)," *Al Arabiya*, October 30, 2005, <http://www.alarabiya.net/programs/2005/10/30/18170.html> (accessed Sept. 29, 2009).

which drafted a new penal code.³³ The Secretary of Justice Mostafa Abdeljalil told Human Rights Watch that the draft penal code would be formally presented in the summer of 2009 to the Basic People's Congresses for discussion. This would be the first step toward its adoption but as of the time of this writing this has yet to take place.³⁴ 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.

At a rare public meeting at the Tripoli Bar Association in April 2008, a number of Libyan lawyers openly criticized the latest version of the draft penal code for its continued repression of basic freedoms and the pervasiveness of the death penalty.³⁵ In January 2009, Human Rights Watch received the latest version of the draft penal code and in June 2009 sent the Libyan authorities its comments and recommendations on the proposed provisions to bring them into compliance with international human rights law. The new draft limits the number of provisions providing for the death penalty and reduces many of the sentences but retains provisions criminalizing freedom of expression and association.³⁶

Even the General People's Committee for Public Security seems aware of the need to evolve with the times; its website now has a form for "complaints to remedy any mistakes."³⁷ The Libyan Secretary of Public Security, General Abdelfattah al-Obeidi, sought to assure Human Rights Watch that he had issued a decision last year ordering all officers not to hit or humiliate citizens in any way during the performance of their duties. Yet he was unable to provide Human Rights Watch with any information on the number of complaints received about such treatment or the number of cases investigated by his ministry.³⁸ No information is available on the number of officers prosecuted but a lawyer told Human Rights Watch that the number is likely to be very low since "the General Prosecutor can't interrogate any officer without authorization from the Secretary of Public Security and he always refuses."³⁹

³³ Human Rights Watch interview with Dr. Abdulrahman Abu Tuta, Chief Justice of the Libyan Supreme Court, Tripoli, April 21, 2009.

³⁴ Human Rights Watch interview with Counselor Mostafa Abdeljalil, Secretary of Justice, Tripoli, April 26, 2009.

³⁵ "Lawyers Debate New Penal Code (Arabic)," *Libya al-Youm*, March 22, 2008, <http://www.libya-alyoum.com/look/article.tpl?IdLanguage=17&IdPublication=1&NrArticle=14853&NrIssue=1&NrSection=3> (accessed Sept. 29, 2009).

³⁶ For more discussion on the relevant provisions of the new draft penal code see Sections below on Freedom of Expression and Freedom of Association.

³⁷ See complaint form, [http://www.almiezan.gov.ly/form/contact\(2\).php](http://www.almiezan.gov.ly/form/contact(2).php) (accessed Sept. 29, 2009).

³⁸ Human Rights Watch interview with General Abdelfattah al-Obeidi, Secretary of Public Security, Tripoli, April 25, 2009.

³⁹ Human Rights Watch group interview with lawyers, Tripoli Bar Association, April 22, 2009.

Another sign that the General People's Committee for Public Security recognizes the need to show some effort towards displaying awareness of human rights is the apparent establishment of human rights training. In April 2009, Colonel Kamal El Dib told Human Rights Watch about the human rights training programs he began running at the General People's Committee for Public Security in 2004. He said up to 60,000 officers have been trained on issues including "human rights concepts, non-discrimination, security and legitimacy, the torture convention, how the police should deal with citizens and the Great Green Charter on Human Rights."⁴⁰ He said that this was a capacity-building project and that Libya had brought in expert trainers from the UK, the US and Egypt. Human Rights Watch could not verify the extent of this program or evaluate its content. While the impact of human rights training is often difficult to assess, especially where there is a culture of impunity for violations, it shows awareness on the part of the General People's Committee for Public Security of the need to have some form of human rights program on display.

Saif al-Islam al-Gaddafi, the son of Mu'ammar al-Gaddafi, is generally perceived as the leader or sometimes spokesperson for the "reformist" groups in Libyan government. His speeches in August to Libyan youth associations had become the platform for reform. He used these speeches to announce plans to draft a new constitution, a radical suggestion in the context of his father's vision of direct democracy. In August 2007 his speech "Libya - Truth for All" spoke candidly of some of the human rights violations of the past and of the right of families to learn about what had happened to their disappeared relatives.⁴¹ On August 22, 2008, however, Saif al-Islam announced that he was retiring from political life and would confine himself to his charitable activities through his foundation.⁴² Some analysts interpreted this as a sign of his receding power internally and therefore also that of the so-called reformist members of government. On October 12, however, two months after he escorted Abdelbaset al-Megrahi back to Libya, the People's Leadership Committees appointed Saif al-Islam al-Gaddafi as their general coordinator, effectively making him the second most important man in the country. The week before, Libyan Leader Mu'ammar al-Gaddafi had asked the People's Leadership Committees to find an official position for his son Saif to "allow him to implement reforms."⁴³

⁴⁰ Human Rights Watch Interview with Kamal el Dib, Training Director at the General People's Committee for Public Security, Tripoli, April 22, 2009.

⁴¹ Speech by Saif Al-Islam Gaddafi Chairman of GICDF "Libya...Truth for All, July 26, 2008, http://www.gdf.org.ly/index.php?lang=en&CAT_NO=114&MAIN_CAT_NO=9&Page=105&DATA_NO=251 (accessed September 7, 2009).

⁴² "Qaddafi's son declares he's leaving politics," Associated Press, August 22, 2008, http://www.nytimes.com/2008/08/22/world/africa/22iht-libya.5.15563698.html?_r=1 (accessed September 7, 2009).

⁴³ "Kadhafi Names Son Second-in-Command," *AFP*, October 13, 2009, http://news.yahoo.com/s/afp/20091013/wl_africa_afp/libyakadhafipolitics (accessed November 2, 2009).

V. Freedom of Expression

“Overall, it’s true, we have more freedom of expression. Before, we wouldn’t even try to express ourselves. Now we’re taking risks.”

—Libyan journalist, Tripoli, April 2009

“Things are much better but there can be a regression because there is no liberalization in the law.”

—Libyan journalist, Tripoli, April 2009

“The four red lines are the application of Islamic law, the Koran and its requirements, security and stability of Libya, its territorial integrity and Mu’ammarr Gaddafi.”

—Saif al-Islam al-Gaddafi, August 2007

The past five years have witnessed a gradual opening of a new, still vulnerable but nevertheless measurable, space for freedom of expression. The government retains control over most of the media in Libya and monitors and censors the new private media. The establishment of two private newspapers and a satellite TV station in August 2007 was initially embraced by journalists with great enthusiasm as they explored new boundaries of critical speech. Later, however, as government pushed back, journalists became more cautious and less optimistic about the sustainability of this freedom. The continued existence of repressive laws, which criminalize free speech, casts a heavy shadow over the press. The Press Prosecutor, one of Libya’s specialized prosecutors who also covers narcotics, the General Prosecutor and the State Security prosecutors have been playing an increasingly active role by initiating criminal investigations into cases where complaints of slander were brought against journalists. Many people Human Rights Watch met argued that there have been small but tangible developments in Libya over the past 5 years, with one lawyer telling Human Rights Watch “I couldn’t have spoken to you in 2005 the way I can today.”⁴⁴

⁴⁴ Human Rights Watch interview with Libyan journalists, Tripoli, April 21, 2009.

The establishment of two new private newspapers *Oea*⁴⁵ and *Quryna*⁴⁶ on August 20, 2007 created new avenues for a certain amount of criticism of officials which would have been unthinkable in previous years. Both newspapers are owned by Al Ghad, a company closely affiliated to Mu'ammarr al-Gaddafi's son Saif al-Islam al-Gaddafi, which also established satellite TV station *Al Libeyya*. Libyan authorities nationalized the latter in June 2009 and a new TV station *Al Wasat*. Articles have appeared criticizing the General Prosecutor for corruption, violating the law and failing to investigate complaints and the Benghazi local authorities for corruption.⁴⁷ On September 3, 2009, lawyer Mohamed Allagi wrote an article in *Oea* criticizing the lack of judicial independence in Libya.⁴⁸ These newspapers act as mouthpieces for the so-called 'reform' groups closely affiliated with Saif al-Islam al-Gaddafi's political position, but the fact that these criticisms have been voiced in a public forum reflects the existence of some tolerance towards limited political diversity.

Independent Libyan news websites based abroad, such as *Libya Al Youm*, *Al Manara* and *Jeel Libya*, which publish information that is critical of the government, are accessible in Libya and their correspondents are allowed to operate, though not without harassment. *Libya Al Youm*, an independent United Kingdom-based news website, is one of the primary references for anyone seeking news about what happens in Libya. Despite the fact that it frequently publishes articles critical of the government and news on the most sensitive of issues such as the Abu Salim demonstrations, it maintains two correspondents in Libya, based in Tripoli and Benghazi, respectively. The Tripoli correspondent, Fathi Ben Eissa, told Human Rights Watch that he has a press card and is able to interview Libyan officials and go to high-level press conferences despite the fact that *Libya al-Youm* is not registered in Libya and continues to publish articles critical of the political system and the authorities.⁴⁹

On November 22, 2008 Agence France-Press was the first global news agency to formally open a bureau in Tripoli with an accredited foreign correspondent and on February 24, 2009 international newspapers and magazines such as the International Herald Tribune and Newsweek became available for sale in Libya for the first time in a quarter of a century.

⁴⁵ See *Oea*, <http://www.oealibya.com/> (accessed August 23, 2009).

⁴⁶ See *Quryna*, <http://www.quryna.com/index.php> (accessed August 23, 2009).

⁴⁷ See Osama al-Said, "Al Muftari Al Aam," *Quryna*, February 10, 2009, available at <http://www.quryna.com/>

⁴⁸ Mohamed Allagi, "Justice is Harmed Oea, September 3, 2009, <http://www.oealibya.com/oea-sections/articles-and-sections/5941-2009-09-03-01-11-26>, (accessed September 5, 2009).

⁴⁹ Human Rights Watch interview with Fathi Ben Eissa, correspondent, *Libya Al-Youm*, Tripoli, April 26, 2009. For examples of such articles, see <http://www.libya-alyoum.com/look/article.tpl?IdLanguage=17&IdPublication=1&NrArticle=18851&NrIssue=1&NrSection=14> (accessed Sept. 29, 2009).

These changes have occurred in spite of the continued repressive legal framework and take on more significance when viewed in that context because journalists take significant risks by writing critically of government policies and abuses. The 1969 Constitutional Proclamation on December which guaranteed some rights, such as the right to work, health care and education, provides for freedom of opinion only “within the limits of public interest and the principles of the Revolution.”⁵⁰ Article 178 of the Libyan penal code orders life imprisonment for the dissemination of information considered to “tarnish [the country’s] reputation or undermine confidence in it abroad.” 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.” There are still political prisoners imprisoned under these provisions which criminalize free speech, such as the case of Abdelnasser al-Rabbasi discussed below in Section VII.

In a speech in August 2007, Saif al-Islam al-Gaddafi spoke openly of the limits to freedom of expression in Libya identifying four “red lines” which are “the application of Islamic law, the Koran and its requirements, security and stability of Libya, its territorial integrity and Mu’ammar Gaddafi.”⁵¹ The existence of these four lines was confirmed to Human Rights Watch by journalists and by officials such as the acting General Prosecutor.⁵² In November 2008, an unidentified caller on a live program on Benghazi Local Radio criticized Saif al-Islam saying “Who is this Saif al-Islam on whose behalf Libyan youth are demonstrating? And where were they when people were being publicly executed in the 1980s?”⁵³ As a result of this call, Younis al-Magbari, the director for Press and Broadcasting at the General People’s Committee for Media and Culture, ordered disciplinary measures to be taken against the broadcaster and producer of the program. In an interview to *Al Jazeera*, however, al-Magbari said he’d revoked that decision and apologized to the journalists. This came after the intervention of Saif al-Islam who said that since he was not a “red line” he could be

⁵⁰ The Green Book is available in English at <http://books.google.com> (accessed Sept. 29, 2009). 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 (accessed Sept. 29, 2009).

⁵¹ Saif al-Islam al-Gaddafi, speech given at the Second Meeting of the Youth of Benghazi, Benghazi, August 20, 2007, http://gdf.org.ly/index.php?lang=en&CAT_NO=114&MAIN_CAT_NO=9&Page=105&DATA_NO=252 (accessed August 15, 2009).

⁵² Human Rights Watch interview with Acting General Prosecutor, Tripoli, April 22.

⁵³ Quoted in “Saif al-Islam Defends the Right of Libyan Citizens to Criticize Him,” *Al Jazeera*, November 15, 2009, <http://www.aljazeera.net/News/archive/archive?Archived=1161467>, accessed July 18, 2009.

criticized.⁵⁴ As one journalist told Human Rights Watch “the problem is that you can never tell when a particular line is red.”⁵⁵

Human Rights Watch met with a group of journalists at the Tripoli Journalists’ Association, the largest section of the Journalists’ Syndicate, to discuss the state of freedom of expression in Libya. One journalist told Human Rights Watch that “there is a margin of freedom, but it’s not real freedom because it depends on the mood of the ministers. This freedom goes up and down.”⁵⁶ Another journalist interjected that “there are clear boundaries, and you lose your job if you go beyond them, or they will freeze your salary.”⁵⁷ The journalists, editors and even the acting General Prosecutor with whom Human Rights Watch met all spoke matter-of-factly about the four “red lines” identified by Saif al-Islam al-Gaddafi in August 2007. Nevertheless, one journalist said that “overall, it’s true, we have a bit more freedom of expression. Before, we wouldn’t even try to express ourselves. Now we’re taking risks.”⁵⁸

Prosecution of Journalists

This limited expansion of freedom of the press has brought with it a corresponding increase in the number of defamation claims brought against journalists. Overly broad provisions in the penal code criminalize free speech. Under the penal code and the 1972 press law, a defamation conviction carries a sentence of imprisonment, which cements journalists’ tendency towards self-censorship.

For example, journalist Tarek el-Houny, who writes for *Quryna*, wrote an article entitled “The Governor Is Not Governing” criticizing the lack of metal coins available in the country as a result of policies by the central bank of Libya. On November 30, 2008 the Press Prosecutor summoned him on charges of defamation after a complaint was filed by the central bank governor, Farahat Ben Qaddara, who claimed the article was slanderous. Tarek el-Houny told Human Rights Watch that he had criticized the financial policies of the governor and not the man himself but the prosecutor had questioned him about his article and subsequently told him to present himself once a week before the office of the prosecutor to sign in.⁵⁹ After two

⁵⁴ Ibid.

⁵⁵ Human Rights Watch interview with Libyan journalists, Tripoli, April 21, 2009.

⁵⁶ Human Rights Watch interview with Libyan journalists, Tripoli, April 21, 2009.

⁵⁷ Ibid.

⁵⁸ Human Rights Watch interview with a Libyan journalist, Tripoli, April 21, 2009.

⁵⁹ Human Rights Watch interview with Tarek al-Houni, Tripoli, April 21, 2009.

months of this he discovered that his case had been brought before a court. The trial was suspended after the intervention of Saif al-Islam al-Gaddafi. El-Houny told Human Rights Watch that such an experience would increase self-censorship even more, saying “this experience made me very nervous. I now think twice about every line I write and am very cautious.”⁶⁰

On January 11, 2009, the State Security Prosecutor summoned Garyounis University political science professor Fathi el Baaga on charges of “incitement against the Jamahireya system” for publishing an article on May 5, 2007 in *Quryna* entitled “Where is Libya Heading?” which criticized the current political system in Libya.⁶¹ He was released on bail on condition he sign in at the Benghazi Press Prosecutor’s office once a week. On January 16, *Libya Al Youm* reported that Public Prosecutor Mohamed al-Misrati dropped all the charges against him after the intervention of Saif el Islam al-Gaddafi.⁶²

On October 21, 2009, Mohamed al-Sareet, a Libyan journalist, wrote on *Jeel Libya*, an independent news website based in London, about a rare demonstration in Benghazi by women who live in a state-run care residence for women and girls who were orphaned as children, calling for an end to sexual harassment they said they had experienced in the center. The demonstrators were also demanding the return of the center’s former director. On October 22, local police summoned al-Sareet to the Hadaek police station for questioning. On October 26, the General Prosecutor’s Office summoned him for further questioning and charged him with criminal defamation, which carries a prison sentence. *Jeel Libya’s* director told Human Rights Watch that al-Sareet had received threats to burn down his house to intimidate him into retracting his article.⁶³ On October 29, however, the General Prosecutor’s office opened an investigation into the claims and on October 31 he charged the former head of the residence with sexual harassment. The Gaddafi Foundation also met with al-Sareet and assured him that the charges against him would be dropped.

Libya’s International Obligations and Libyan Law

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

⁶⁰ Human Rights Watch interview with Tarek al-Houni, Tripoli, April 21, 2009.

⁶¹ “New Charges Against El Baaga,” *Libya Al Youm*, January 11, 2009, <http://www.libya-alyoum.com/look/article.tpl?IdLanguage=17> (accessed July 3, 2009).

⁶² “After the Intervention of Saif al-Islam, Process Against El Baaga and Mehyar Cancelled,” *Libya Al Youm*, January 16, 2009, <http://www.libya-alyoum.com/> (accessed July 3, 2009).

⁶³ Human Rights Watch phone interview with Adel Sunalla, October 26, 2009.

Libya in 1986, guarantees that, “[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.” Article 19 of the International Covenant on Civil and Political Rights, to which Libya is a state party, sets out 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.”⁶⁴ Any limitations to this right must be necessary, proportionate and established by law.

Applicable Libyan law is far from meeting international standards. 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.”⁶⁵ 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 People’s Congresses and in the Jamahiriya [mass] media,” unless “he uses [that right] in violation of the people’s authority or for personal motives.”⁶⁶

The 2009 proposed draft penal code contains some overall improvement but still retains provisions that violate freedom of expression. Article 198 states that offending a public official shall be punishable by imprisonment. Article 155 provides for imprisonment for insulting Mu’ammar al-Gaddafi and Article 167 provides for life imprisonment for promoting principles with the aim of changing the Jamahiriya system using illegal means. The restrictions on freedom of expression found in Articles 155, 156, 159, 167, 198 and 230 go beyond what is permitted under international law and create an atmosphere which stifles free speech and criticism. The right to criticize one’s government has particularly high priority in the protections of international law because it is precisely one of the rights most likely to be met with harassment, abuse, and denial by governments. The Declaration of Principles on Freedom of Expression in Africa, adopted by the African Commission on Human

⁶⁴ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Libya in 1976, article 19.

⁶⁵ Constitutional Proclamation of December 11, 1969, Libya, article 13.

⁶⁶ Law 20 (1991), On Enhancing Freedom, article 8.

and Peoples' Rights in 2002, says states shall ensure their laws on defamation comply with the standard that “public figures shall be required to tolerate a greater degree of criticism.”⁶⁷

⁶⁷ Declaration of Principles on Freedom of Expression in Africa, African Commission on Human and Peoples' Rights, 32nd Session, 17 - 23 October, 2002: Banjul, The Gambia, Section XII.

VI. Freedom of Assembly and Association

“The state has swallowed up civil society and will not give space to human rights defenders.”

—Libyan lawyer, April 22, 2009

There is virtually no freedom of assembly or association in Libya because the concept of an independent civil society goes directly against Gaddafi’s theory of government by the masses without intermediary.⁶⁸ Law 71 bans any group activity opposing the ideology of the 1969 revolution and imposes the death penalty on those who form, join or support such groups.

Freedom of Assembly

Freedom of assembly is severely restricted in Libya. On June 29, the General People’s Committee issued a decision (312/2009) requiring 30-day advance approval from a newly established government committee to hold any meeting or event, and requiring the meeting organizers to provide a list of all participants and the issues to be discussed. Under international law, these requirements do not meet the standard of a necessary or proportionate limitation to freedom of assembly and association, for example as in Articles 10 and 11 of the African Charter.

Attempting to organize a demonstration remains illegal. In February 2007 Libyan security agents arrested 14 organizers of a planned peaceful demonstration intended to commemorate the anniversary of a violent crackdown on demonstrators in Benghazi. Security forces detained them incommunicado in Ain Zara and al-Al-Jdaida prisons until June 24, 2007 when they came before a court to face charges of “attempting to overthrow the political system” and “communication with enemy powers.”⁶⁹ Increasingly, however, some demonstrations are taking place despite these restrictions. In Benghazi, families of a group of prisoners killed in Abu Salim prison have held a number of public demonstrations. Although security officials continue to harass and intimidate those taking part in the demonstrations, the fact that they have taken place at all and that they have been covered in the media is unprecedented. (see Section IX Unprecedented Activism)

⁶⁸ For more on this see Dirk Vanderwalle, *A History of Modern Libya*, (Cambridge, UK: Cambridge University Press 2006), Chapter 5.

⁶⁹ For a full discussion of their trial see Section X - The State Security Court

No Independent Nongovernmental Organizations

Libya has no independent nongovernmental organizations. The government has refused to allow independent journalists' and lawyers' organizations. Law 19, "On Associations," requires a political body to approve all such organizations, does not allow appeals against negative decisions and allows for continuous governmental interference in the running of the organization. If the organization plans to work country-wide, its application goes to the secretariat of the General People's Congress.⁷⁰ 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 Committee. The law itself allows the government to revoke the authorization of an association at any time without needing to provide justification.

There are a number of semi-official organizations that do charitable work, providing services and organizing seminars, but none that publicly take critical stances against the government. The only organizations that do human rights work, the most sensitive area of all in Libya, are only able to do so because they derive their political standing from their personal affiliation with the regime. In effect, they perform the role of human rights commissions or ombudsmen that are part of the government but there are clear limits to what issues they are willing to take up and how much pressure they are willing to exert at any given time.

The main organization able to do human rights work in Libya is the Human Rights Society of the Gaddafi International Charity and Development Foundation (GDF), chaired by Saif al-Islam al-Gaddafi, a son of Colonel Mu'ammar al-Gaddafi. It has intervened in a number of cases to secure the release of political prisoners or facilitate the return of Libyan nationals.⁷¹ It has at times taken public stances against the authorities, such as its criticism of the General Prosecutor over the arrest of attorney Gum'a Atiga, former Secretary of the GDF's Human Rights Society. The GDF "strongly condemn[ed] this arbitrary action and request[ed] the Secretariat of the General People's Congress to hold accountable those who caused the arrest of the person concerned and to proceed to his release as soon as possible."⁷² On many other issues, though, it treads very cautiously and prefers to try to address cases and

⁷⁰ The country's top legislative body, the General People's Congress presides over all the basic people's congresses and the General People's Committees (ministries).

⁷¹ "The Foundation Succeeds in Obtaining Approval to Facilitate the Return of Eighteen Libyan Citizens Residing Abroad," Gaddafi International Charity and Development Foundation press release, Nov. 16, 2008, http://www.gdf.org.ly/index.php?lang=en&CAT_NO=2&Page=105&DATA_NO=419 (accessed Sept. 30, 2009).

⁷² "The Foundation Succeeds in Obtaining Approval to Facilitate the Return of Eighteen Libyan Citizens Residing Abroad," Gaddafi International Charity and Development Foundation press release, Nov. 16, 2008, http://www.gdf.org.ly/index.php?lang=en&CAT_NO=2&Page=105&DATA_NO=419 (accessed Sept. 30, 2009).

concerns in a non-public manner. With Saif al-Islam's appointment in October 2009 as General Coordinator of the People's Leadership Committees, the governmental nature of the Gaddafi Foundation is solidified.

Another organization that does some work on human rights is Waatasemu. Chaired by Aisha al-Gaddafi, a lawyer and the daughter of Colonel Mu'ammar al-Gaddafi, Waatasemu has intervened in death penalty cases, successfully arranging for the payment of blood money to reduce the sentence to life imprisonment.⁷³ (see Section XI below) The International Organization for Peace, Care and Relief (IOPCR), run by Khaled Hamedi, the son of a member of the Revolutionary Command Council, is the only organization able to access migrant detention centers.⁷⁴ It was only on the basis of a 2008 agreement with IOPCR that the office of the United Nations High Commissioner for Refugees (UNHCR) was able to gain access to Misrata to interview asylum seekers.⁷⁵

All professional syndicates and trade unions in Libya are state-controlled. However, within the Bar Association and the Journalists' Syndicate there are a number of individuals who express independent views and take positions critical of the government but try to work within the existing structures. However, opportunities remain limited. As one lawyer told Human Rights Watch "the state regards us with suspicion at the Tripoli Bar Association because we are the biggest."⁷⁶ Despite this, the lawyers at the Tripoli Bar Association have been trying to take an increasingly active role in monitoring and upholding human rights. The lawyers told Human Rights Watch that they recently established a fact-finding committee which had requested access to Ain Zara prison in April 2009 but the Internal Security Agency had refused. They remain hopeful of eventually being granted access since a human rights committee affiliated with the Bar Association had visited a prison in 1998.⁷⁷

On April 22, 2008 the Tripoli Bar Association held a seminar to discuss the new draft penal code. The lawyers rejected the draft calling for its revision and for a more inclusive

⁷³ See Section XI below. For an overview of Waatasemu's activities, see their website <http://www.waatasemu.org/charity/> (Arabic) (accessed Sept. 30, 2009).

⁷⁴ For more on the violations of rights of migrants in Libya see Human Rights Watch, *Libya/Italy: Pushed Back Pushed Around*, (New York, Human Rights Watch: September 21, 2009) <http://www.hrw.org/en/reports/2009/09/21/pushed-back-pushed-around-o> (accessed September 29, 2009).

⁷⁵ Under the agreement, the organizations will support the Libyan authorities in "designing and implementing comprehensive and protection-sensitive asylum management strategies with full respect for international and regional refugee and human rights principles." See "UNHCR signs agreement aimed at ensuring refugee protection in Libya," UNHCR, news stories, July 4, 2008, <http://www.unhcr.org/486e48534.html> (accessed July 30, 2009).

⁷⁶ Human Rights Watch group interview with lawyers, Tripoli Bar Association, April 22, 2009.

⁷⁷ Human Rights Watch group interview with lawyers, Tripoli Bar Association, April 22, 2009.

consultation process.⁷⁸ One lawyer told Human Rights Watch “everything you wrote in your last report [*Words to Deeds 2006*] about the repressive legal framework still applies.”⁷⁹

Freedom of Association Criminalized

The new draft penal code retains provisions that violate freedom of association. Article 166 criminalizes the establishment of any organization that is “against the Jamahiriya system” or “threatening its popular authority”, without further defining what that would include. Article 167 criminalizes all those who promote “changing the Jamahiriya system”, although it appears to be limited to those who do so “using violence or other illegal instruments.” These provisions are overly broad, not specifically defining the crime to allow for legal certainty, and they also restrict the rights of people to form associations or advocate for their views. As it stands, these provisions would encompass organizations or groups which undertake criticism of public policies by the government, as well as commentary on the human rights situation. They could even criminalize research institutes that produce findings that are critical of governmental policy. Similarly, Article 169 seeks to limit the freedom of Libyans to join or establish international organizations unless they receive permission from the government, without establishing the criteria for such permission. Under international law, while a government may require notification of the establishment of an association, requiring governmental permission to establish or join an association should be on the basis of criteria that are clear, objective and appealable.

Attempting to set up a human rights organization remains very risky, as the case of Shukri Sahil shows. In March 2004, Libyan businessman Shukri Sahil, together with some friends, decided to try to establish a human rights organization in Libya and started informal consultations about this with friends and contacts in Libya. His friends informed him that he would need to gain authorization from the Office of External Security, so he requested a meeting with that office in May 2004. Shukri Sahil told Human Rights Watch that the security officer he spoke to reacted with great anger when he told him that he wanted to set up an organization, accusing him of having “political ambitions” and being a “very dangerous person.” Shukri Sahil believes that all the subsequent harassment he suffered from state security were related to this initial incident.⁸⁰

⁷⁸ “Discussion about the new penal code begins tonight – rights defenders reveal 21 articles provide for death sentence,” *Libya Al Youm*, April 22, 2008, <http://www.libya-alyoum.com/look/article.tpl?IdLanguage=17&IdPublication=1&NrArticle=14853&NrIssue=1&NrSection=3> (accessed, Sept. 22, 2009).

⁷⁹ Human Rights Watch group interview with lawyers, Tripoli Bar Association, April 22, 2009.

⁸⁰ Human Rights Watch phone interview with Shukri Sahil, March 17, 2009.

Security forces arrested Shukri Sahil on 20 May 2004 and detained him in solitary confinement in the External Security prison for 13 months. He told Human Rights Watch that security officers tortured him every day for two weeks and every two-to-three days for the following three weeks. They beat him about the body, and especially on the soles of his feet (*falaka*) and brought a dog to attack him. In March 2005 he went before a judge for the first time. The judge charged him with violating Law 71, which bans any group activity based on a political ideology opposed to the principles of the 1969 al-Fateh Revolution. In June 2005, the authorities transferred him to Abu Salim prison, where they kept him in solitary confinement for two months.⁸¹ His trial before the State Security Court is described below in Section X.

The 2008 Attempt to Establish a Human Rights Organization

The most significant attempt to set up an independent human rights organization came in February 2008, when a group of lawyers, journalists and other Libyan professionals established two nongovernmental organizations called the Centre for Democracy and the Association for Justice and Human Rights. Their goals included spreading democratic values and making recommendations for legal reform to promote democratic activities and human rights.⁸²

On March 17, 2008, the 90 founding members of the Association for Justice and Human Rights sent their application for registration to the General People's Committee for Social Affairs. The Centre for Democracy sent its application to the General People's Committee for Social Affairs on May 4, 2008, and on May 25 the NGO Directorate at the General People's Committee for Social Affairs sent them a letter confirming approval of the application.⁸³ On May 4 *Libya Al Youm* reported that the NGO Directorate had sent the list of members of both organizations to the Internal Security Agency⁸⁴ and on May 19 the founding members announced that the Agency had stipulated the removal of 12 members of the Association for Justice from the list before allowing the organization to be established. The 12 members included former political prisoners, including Gum'a Atiga, a lawyer and former secretary of

⁸¹ Human Rights Watch phone interview with Shukri Sahil, March 17, 2009.

⁸² Human Rights Watch group interview with lawyers, Tripoli Bar Association, April 22, 2009 and Statute of the Centre for Democracy reproduced on *Libya al Youm*.

⁸³ Letter confirming application approval, General People's Committee for Social Affairs, reproduced in "Rights Activist Dhaw al-Mansuri announces the establishment of the Centre for Democracy and Association for Justice," *Libya Al Youm*, June 5, 2008, <http://www.libya-alyoum.com/look/article.tpl?IdLanguage=17&IdPublication=1&NrArticle=15763&NrIssue=1&NrSection=3> (accessed Sept. 30, 2009).

⁸⁴ "Founders of Centre for Democracy request registration and Nongovernmental Organizations Authority sends membership list to Internal Security," *Libya Al Youm*, May 4, 2008.

the Human Rights Society at the Gaddafi Foundation. In fact, Law 19 does not prescribe a role for Internal Security Agency approval in the establishment of organizations, stating in Article Six that “the establishment of an association on a national level occurs by decision of the General People’s Committee.” The head of Internal Security, Col. Al-Tohamy Khaled, denied that his agency had intervened, telling Human Rights Watch that “the Internal Security Agency does not have the right to intervene in the law and request certain members to be removed but it does have a duty to investigate the background of each individual and to check if they have a record.”⁸⁵

On June 10, the NGO Directorate at the General People’s Committee for Social Affairs revoked its initial authorization and officially refused the applications for registration of the Centre for Democracy and the Association for Justice and Human Rights, a move lawyers attributed to the intervention of the Internal Security Agency.⁸⁶

Lawyer Dhaw al-Mansuri, President of the Centre for Democracy, said he was stopped on June 30, 2008 at around 8 pm, in the street near his office by men in plainclothes, forced into a car, blindfolded, handcuffed and driven out of the city to an unknown location. He was beaten and told to abandon the attempt to set up the Centre for Democracy. On July 6, 2008 the Tripoli Bar Association held an emergency meeting to discuss the kidnapping.⁸⁷ The Bar Association sent a public letter to the Secretary of Justice and to Saif al-Islam al-Gaddafi, as chairman of the Gaddafi Foundation, protesting this incident and calling for an investigation. The head of Internal Security, Al-Tohamy Khaled, told Human Rights Watch that an investigation into the incident was still underway. However, he said that he didn’t believe the incident had occurred, saying “who is this Dhaw that the state would care about? I do not think that security would do that.”⁸⁸

⁸⁵ Human Rights Watch interview with Col. Al-Tohamy Khaled, head of Internal Security, Tripoli, April 25, 2009.

⁸⁶ “In an Unexpected Move the Government issues a Decision to Cancel the Centre for Democracy and Association for Justice,” *Libya Al Youm*, June 11, 2008, <http://www.libya-alyoum.com/look/article.tpl?IdLanguage=17&IdPublication=1&NrArticle=15892&NrIssue=1&NrSection=3>, (accessed August 10, 2009).

⁸⁷ Libya Al Youm, “His kidnappers threatened him over the Centre for Democracy – Tripoli Lawyers strongly protest the attack and call for an investigation,” July 2, 2008, <http://www.libya-alyoum.com/look/article.tpl?IdLanguage=17&IdPublication=1&NrArticle=16323&NrIssue=1&NrSection=3> (August 10, 2009).

⁸⁸ Human Rights Watch interview with Col. Al-Tohamy Khaled, head of Internal Security, Tripoli, April 25, 2009.

Shortly after the incident, the group abandoned their attempt to establish the two new organizations. As one lawyer put it, “This door, which was opened after Saif al-Islam’s speech in August 2006, was now closed.”⁸⁹

Libya’s International Obligations

As party to the African Charter on Human and People’s Rights, Libya is under an obligation to provide the right to free association, set out in Article 10. This is reflected in Article 22 of the ICCPR which further stipulates that any limitation must be “necessary in a democratic society.” “Necessary” restrictions must also be proportionate: that is, carefully balanced against the specific reason for the restriction being put in place.⁹⁰ The UN Human Rights Committee has repeatedly highlighted the importance of proportionality.⁹¹ In applying a limitation, a government should use no more restrictive means than is absolutely required. The African Commission has found “freedom of association is enunciated as an individual right and is first and foremost a duty for the State to abstain from interfering with the free formation of associations.”⁹²

These international obligations are also reflected in Article 6 of the Great Green Charter for Human Rights which says Libyans are free to form “associations, trade unions and leagues in order to defend their professional interests,” although 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.”

⁸⁹ Human Rights Watch group interview with lawyers, Tripoli Bar Association, April 22, 2009. For more on Saif al-Islam’s speech see IV. Background.

⁹⁰ Manfred Nowak, UN Covenant on Civil and Political Rights: CCPR Commentary (Kehl am Rein: N.P. Engel, 1993), pp. 386-387.

⁹¹ See, for example, Vladimir Petrovich Laptesevich v. Belarus, Communication 780/1997 of the Human Rights Committee. See also Richard Fries, “The Legal Environment of Civil Society,” The Global Civil Society Yearbook 2003, Centre for the Study of Global Governance, London School of Economics, 2003, chapter 9.

⁹² Communication 101/93, *Civil Liberties Organization in respect of the Nigerian Bar Association v. Nigeria*, Eighth Activity Report 1994-1995, Annex VI; *Documents of the African Commission*, 394.

VII. Violations by the Internal Security Agency

“What I want is to know what happened to my father. If he is alive, I wish to speak with him and see him. If he has broken the law, he ought to be tried and given a chance to defend himself. And if he is dead, then I want to know how, where and when it happened. I want a date, a detailed account and the location of his body.”⁹³

—Hisham Matar, July 2006

The structure, mandate and reporting lines of Libya’s various security agencies remain opaque, primarily because these institutions have a great deal of informal political power, and function without accountability or transparency. The Internal Security Agency and External Security Agency are formally under the authority of the General People’s Committee for Public Security.

The only publicly available statistics on Libya’s prison population date from June 2007 and indicate there were 12,748 prisoners distributed among 36 institutions.⁹⁴ These prisons fall under the jurisdiction of the General People’s Committee for Justice. However, the two most notorious prisons, Abu Salim and Ain Zara, known for housing political prisoners for years without trial, do not fall under the jurisdiction of the General People’s Committee for Justice but under the Internal Security Agency.⁹⁵

Since the authorities refuse to disclose any information, little is known about the prison populations of Abu Salim and Ain Zara. The only information comes from former prisoners who often are too intimidated to discuss their experiences. During its April 2009 trip to Libya, Human Rights Watch visited Abu Salim prison in Tripoli and was given a tour of the prison clinic.⁹⁶ When Human Rights Watch met with the Deputy Director of Internal Security in charge of the prison, and asked him about the prison population, he responded that he “did

⁹³ Hisham Matar, “I Just Want to Know What Happened to My Father,” *The Independent*, 16 July 2006, <http://www.independent.co.uk/news/world/africa/hisham-matar-i-just-want-to-know-what-happened-to-my-father-407444.html> (accessed October 6, 2009).

⁹⁴ International Centre for Prison Studies (King’s College, London), “World Prison Brief: Libya,” modified Sept. 2009, http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=28 (accessed Sept. 30, 2009).

⁹⁵ Human Rights Watch interview with Counselor Mostafa Abdeljalil, Secretary of Justice, Tripoli, April 26, 2009.

⁹⁶ See Section II- Methodology section on how Human Rights Watch gained access.

not know” how many prisoners were in Abu Salim because “it changed on a daily basis.”⁹⁷ When Human Rights Watch followed up by asking how many meals were prepared daily, he responded “we always make extra meals so that there is more than enough.”⁹⁸ His response is typical of the lack of transparency surrounding the Internal Security Agency.

Libyan prisons still contain hundreds of political prisoners who have not engaged in violent acts or advocated violence. Many of those imprisoned in Abu Salim belong to Islamist groups. Although some have advocated violence, many have not and none have received fair trials. Over the past two years, Libyan authorities have released 238 prisoners, 40 in March and most recently 88 in October. Overall, 136 of these prisoners were members of the Libyan Islamic Fighting Group, imprisoned after trials before the People’s Court or the State Security Court without due process for “membership in an illegal organization.” (see Section X.)

Arbitrary Detention

Hundreds of prisoners are detained by the Internal Security Agency without any legal basis. Over the past few years, an unprecedented confrontation between the General People’s Committee for Justice and the General People’s Committee for Public Security has developed over the failure of Internal Security to implement the decisions of Libyan courts. The Internal Security Agency continues to refuse to release from Abu Salim and Ain Zara prisons, prisoners who either have been acquitted by courts or who have already served their court-imposed sentences. Libyan Secretary of Justice Mostafa Abdeljalil confirmed to Human Rights Watch that “at least 200” prisoners who either had been acquitted or had served their sentences remain in Abu Salim and Ain Zara.⁹⁹ On November 2, 2009, in an interview with *Oea*, Secretary for Justice Mostafa Abdeljelil said that there were “more than 500 prisoners who were acquitted by courts in June 2008 and are yet to be released” and criticized the security services for failing to respect court decisions.¹⁰⁰

Secretary Abdeljalil told Human Rights Watch “these prisons are affiliated to Internal Security and the Ministry of Justice has no jurisdiction over them. The General Prosecutor’s office has ordered their release but this has not occurred ... the General Prosecutor cannot initiate an investigation into their continued detention.”¹⁰¹ The head of the Internal Security

⁹⁷ Human Rights Watch Interview with Deputy Director of the Internal Security Agency, Tripoli, April 27, 2009.

⁹⁸ *Ibid.*

⁹⁹ Human Rights Watch interview with Counselor Mostafa Abdeljalil, Secretary of Justice, Tripoli, April 26, 2009.

¹⁰⁰ “Oea meets Secretary for Justice Mostafa Abdeljalil for a Very Frank Interview,” *Oea*, November 2, 2009, <http://www.oelibrary.com/front-page/local-news/9155-2009-11-02-22-02-43> (accessed November 3, 2009).

¹⁰¹ Human Rights Watch Interview with Deputy Director of the Internal Security Agency, Tripoli, April 27, 2009.

Agency, Al-Tohamy Khaled, denied that there are any such prisoners. He told Human Rights Watch that the acquittal decisions issued in favor of some prisoners were now being appealed before the High Court. He said prisoners who had served their sentences remained imprisoned because the prosecutor had brought new charges against them.¹⁰²

Human Rights Watch has obtained a copy of a leaked letter written by the Secretary of Justice on June 26, 2008, addressed to the General Secretary (Prime Minister), which was also published on various Libyan websites. The letter stated that 130 of the group of 189 defendants in the case of the Libyan Islamic Fighting Group, criminal case No. 120 of 1998, all of whom had been imprisoned since 1995, should be released:

The court ruled on June 16, 2008 to sentence 19 of them to death by firing squad, 50 of them to life imprisonment, 15 others to sentences ranging between 10 and 15 years and acquitting 130 defendants of all charges. On this basis the State Security Prosecutor ordered the release of all those defendants found innocent and those who had already served the period of their sentence, but Internal Security has not implemented this decision to this day.¹⁰³

This publicized stance by the Secretary of Justice seems to have emboldened relatives of prisoners to publicly call for their release. On June 14, 2009, an *Al Jazeera* article quoted Saleh al Bakkoush, father of prisoner Anis Al Bakkoush,¹⁰⁴ calling for the release of his son, imprisoned since 1999 and subsequently acquitted of all charges by a court, who remains in Ain Zara prison. Another family member told Human Rights Watch “my brother was found innocent in 2005 by the Tripoli specialized court but he is still in Abu Salim. We keep hoping he will be released.”¹⁰⁵

Below are some examples of prisoners who are arbitrarily detained about whose cases Human Rights Watch was able to obtain information. Given the lack of transparency and secrecy of the system, it is extremely difficult to get detailed information about individual cases.

¹⁰² Human Rights Watch interview with Col. Al-Tohamy Khaled, head of Internal Security, Tripoli, April 25th 2009.

¹⁰³ Letter from Secretary of Justice to the Secretary of the General People's Committee, June 26, 2008.

¹⁰⁴ “Libyan Security Detains Prisoners acquitted by Judiciary,” *Al Jazeera*, June 14, 2009, <http://aljazeera.net/NR/exeres/AEC4E99C-8305-430F-A265-74F8AB5B6F8F.htm> (accessed June 26, 2009).

¹⁰⁵ Human Rights Watch interview with M.O., London, June 29, 2009.

Mahmoud Boushima

Mahmoud Boushima, a Libyan national born in 1962, returned to Libya on July 17, 2005 after receiving assurances from the Gaddafi Foundation that Libyan security officials would not arrest him upon his return. He had been living in the United Kingdom with his family since 1981 and held a UK passport. On July 28, 2005, Internal Security forces arrested and imprisoned him in Abu Salim. The State Security Prosecutor then charged him with membership in an illegal organization, in this case the Libyan Islamic Fighting Group, under Article 206 of the penal code and Articles 2,3 and 4 of Law 71. On March 18, 2006 the specialized court of appeal (*Mahkama Takhasusiyya*) acquitted him in case No. 411/2005. The Prosecutor appealed this decision on April 22, 2006 and on February 20, 2007, the court ruled again in Boushima's favour. His case eventually came before the Supreme Court, which ruled in his favour on March 30, 2008. He remains in Abu Salim prison.

His brother, who is based in Europe, told Human Rights Watch that Boushima is in poor health, suffering from asthma, Hepatitis B and depression. For eleven months, the family was refused permission to visit him. Between December 2006 and October 2007 guards turned them away at the gates of the prison without explanation.

Abdellatif Al-Raqoubi

Internal Security officers arrested Abdellatif al-Raqoubi, born 1975, on June 19, 2006 in Sabha while on his way to work. His family says they had no news of him or where he was detained for nearly a year. In May 2007, local authorities informed them that he had been arrested by the Heresy-Fighters (*zandaqa*), the security branch dealing with suspected Islamists, and that he was in Abu Salim prison.

Al-Raqoubi first appeared before a court on May 15, 2007, on charges of insulting Leader Mu'ammar al-Gaddafi and possession of weapons. The evidence against al-Raqoubi was the confessions of two other defendants who later told the judge that they had signed them under torture. On June 18, 2008, the State Security Court acquitted him along with 19 others in Case No. 314. The Internal Security Agency released al-Raqoubi from Abu Salim prison on October 15, 2009.

The continued detention of these prisoners is a violation of Article 9 of the ICCPR which states that "no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law", as well as Article 6 of the African Charter. The failure to release also violates Article 434 of the Libyan Penal code on the deprivation of liberty.

The continued detention of these prisoners in the absence of a court order authorizing it constitutes arbitrary detention and amounts to a violation of Article 9 of the ICCPR. It is also a violation of article 434 of the Libyan Penal code on deprivation of liberty.

Political Prisoners

“We don’t have any prisoners of conscience, we only have terrorists.”

—Head of Internal Security Col. Al-Tohamy Khaled, April 25, 2009

Libyan prisons still contain hundreds of prisoners, sentenced after unfair trials, for expression of their political views. Libya’s penal code and Law 71 criminalize activities protected by freedom of expression and freedom of association under international law. Earlier this year, Libya released the last of a group of 14 prisoners arrested for organizing a demonstration.¹⁰⁶ Human Rights Watch has written to the Libyan authorities to ask how many individuals remain imprisoned as a result of these provisions but at the time of publication has yet to receive a response. Because of the general lack of transparency surrounding the prisons controlled by the Internal Security Agency and the practice of incommunicado detention and enforced disappearance, it is impossible to assess how many political prisoners remain imprisoned in Libya. Two cases described below are typical of the policy of the Libyan authorities towards any expression of dissent. The case of Fathi al-Jahmi, one of the most prominent political prisoners, is addressed below and shows the inherent cruelty in the continued detention of such prisoners.

Abdelnasser al-Rabbasi

“I was imprisoned because of matters the Leader now says himself, criticizing the situation in my country. He now criticizes corruption and the economic situation. So I don’t know why I was imprisoned. I did not carry a gun, I carried a pen.”

Abdelnasser al-Rabbasi, 43, was a social security worker in Bani Walid, who also wrote on a freelance basis. One day he sent the *Arab Times*, a US-based newspaper, a short story, entitled *Chaos, Corruption and the Suicide of the Mind in Libya* (*Al Fawda Al Fawda, Al Fasad Al Fasad, wa Entihar Al Aql fi Libya maa Qeyam Okhra*), a play on the words of the title of a

¹⁰⁶ See Section X - The State Security Court for a discussion of their case. Human Rights Watch, “Two Prisoners Freed,” March 10, 2009, <http://www.hrw.org/en/news/2009/03/10/libya-two-political-prisoners-freed> (accessed August 23, 2009).

piece written by Colonel Mu'ammar al-Gaddafi. On January 3, 2003, Internal Security officers in plainclothes arrested him at his home and detained him incommunicado for six months.

Human Rights Watch interviewed al-Rabbasi in Abu Salim prison on April 27, 2009. Despite the fact that a guard kept eavesdropping on the interview, al-Rabbasi bravely told Human Rights Watch his story:

I was writing about corruption and human rights. I wrote about economic corruption in a novel. On the 18th of August 2003 I was sentenced to 15 years. I might just as well have carried a gun or blown myself up with explosives. I had no lawyer, nothing of that sort. I don't have anything to hide. I'm not part of any group or anything like that. All I had at home were some papers. I have no objection to you publicizing these events. I have nothing to lose.

Al Karama, a Geneva-based human rights organization, submitted his case to the UN Working Group on Arbitrary Detention, which in 2005 found that "the deprivation of liberty of Mr. Abdenacer [sic.] Younes Meftah Al Rabassi is arbitrary, being in contravention of articles 14 and 19 of the International Covenant on Civil and Political Rights."¹⁰⁷

On July 28, 2003, the People's Court, a court notorious for politically-motivated trials, sentenced al-Rabbasi to 15 years imprisonment for "dishonoring the guide of the revolution" (Mu'ammar al-Gaddafi), under article 164 of the penal code. The General People's Congress abolished the People's Court on January 12, 2005 and Libyan justice officials said that cases under review at the time were transferred to regular criminal courts.¹⁰⁸ Human Rights Watch has called on the government to retry all cases judged in the People's Court due to systematic due-process violations in the court, such as long periods of pre-trial detention and limited access to a lawyer.¹⁰⁹ As of September 2009, no court has reviewed Abdelnasser al-Rabbasi's case.

¹⁰⁷ *Abdenacer [sic.] Younes Meftah Al Rabassi v. Libyan Arab Jamahiriya*, United Nations Working Group on Arbitrary Detention, U.N. Doc. E/CN.4/2006/7/Add.1 at 76, May 10, 2005.

¹⁰⁸ For more on the People's Court see Human Rights Watch/Middle East, *Libya - Words to Deeds*, Volume 18, No.1(E), January 2006, <http://www.hrw.org/en/reports/2006/01/24/libya-words-deeds>, Chapter V.

¹⁰⁹ "Reforms Welcome, But Concerns Remain," Human Rights Watch news release, May 23, 2005. See also, "Libya: Abolition of People's Court is an Important Step," Amnesty International, Public Statement, January 13, 2005.

Mahmud Matar

Security officials arrested Mahmud Matar, along with his two nephews Saleh and Ali Abdel Salam Eshnaqet, in March 1990 and detained them in Abu Salim prison. For the first two years, prison authorities detained Matar in isolated confinement. More than 11 years after his arrest, the People's Prosecutor charged him and nine others under Law 71 with membership in an illegal organization whose principles are against the Fateh revolution and with the possession of weapons under the penal code. On February 5, 2002, the Permanent Military Court sentenced Matar along with Saleh and Ali Ashneqat and Hamed Said Khanfoor to life imprisonment, acquitted one, and the remaining five were given terms between 10-12 years. The trial was marred by a number of procedural irregularities. During the trial, defense lawyers argued that the confessions presented as evidence had been extracted under torture and should be dismissed. In addition, defendants' access to their lawyers was severely restricted.

Mahmud Matar is still imprisoned in Abu Salim prison. He has diabetes, high blood pressure, advanced cataract and for the past five months an inflamed prostate, but the Abu Salim prison authorities have not allowed him to see a doctor despite repeated requests.

Fathi al-Jahmi

On May 20, 2009, Libya's most prominent dissident, Fathi al-Jahmi, died in a Jordanian hospital after six and a half years in detention. He remained detained in Libya, under the control of the Internal Security Agency, up until two weeks before his death.

Internal security forces arrested al-Jahmi, an engineer and former provincial governor, on October 19, 2002, after he criticized the government and the Libyan leader, Mu`ammar al-Gaddafi, regarding free elections in Libya, a free press, and the release of political prisoners. A court sentenced him to five years in prison under articles 166 and 167 of the penal code: trying to overthrow the government; insulting al-Gaddafi; and contacting foreign authorities. On March 10, 2004, an appeals court gave al-Jahmi a suspended sentence of one year and ordered his release on March 12. That same day, al-Jahmi gave an interview to the US-funded al-Hurra television, in which he repeated his call for Libya's democratization. He gave another interview to the station four days later, in which he called al-Gaddafi 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." Two weeks later, on March 26, 2004, security agents arrested al-Jahmi a second time, and held him at a special facility on the coast near Tripoli.

Human Rights Watch visited al-Jahmi in May 2005 at the special facility in Tripoli. He said then that he faced charges on three counts under articles 166 and 167 of the penal code: trying to overthrow the government; insulting al-Gaddafi; and contacting foreign authorities. The third charge, he said, resulted from conversations he had had with a US diplomat in Tripoli. In September 2006, a court consigned al-Jahmi to a psychiatric hospital, saying he was 'mentally unfit.' During the roughly one year al-Jahmi spent at the psychiatric hospital, his health significantly declined, forcing his transfer to the Tripoli Medical Center in July 2007.

Human Rights Watch researchers visited al-Jahmi in the Tripoli Medical Center on April 25 and 26, 2009. The delegation noted a serious deterioration in his condition since Human Rights Watch last saw him in March 2008 in the Tripoli Medical Center: he appeared frail and emaciated, could barely speak, and could not lift his arms or head. When the researchers asked him if he was free to leave, he said, "No." When they asked him if he wanted to go home, he said, "Yes." Instead, Fathi al-Jahmi, 68, slipped into a coma on May 3 and was flown to the Amman Medical Center two days later, accompanied by his son. He underwent surgery on May 7 and died of unknown causes 13 days later. On May 21, 2009, his son arranged for his body to be flown back to Libya, where his family buried him.

Libyan officials had announced in March 2008 that al-Jahmi had been freed and could leave the hospital at any time but Human Rights Watch assesses that he was detained the entire time he was in the Tripoli Medical Center. When Human Rights Watch researchers visited him in March 2008, they noted the presence of guards outside his hospital room and that he and his family could not freely make decisions about his medical care, due to real or perceived pressure from the government. In April 2009, four men in plain clothes were in the room next door; al-Jahmi said they were usually stationed there. Security officers controlled access to visitors. The Libyan authorities therefore bore full responsibility for his well-being.

Human Rights Watch repeatedly called for the immediate and unconditional release of al-Jahmi, as a political prisoner imprisoned for the peaceful expression of his opinion. Even though al-Jahmi did not die in detention, his imprisonment contributed to the deterioration in his health.

Disappearance

“Internal Security is a sword hanging over the necks of the people of Libya. I only want the truth.”¹¹⁰

—Libyan relative of prisoner.

The practice of enforced disappearance by Internal Security continues in Libya. Over the past decades, Internal Security agents have regularly detained individuals incommunicado in prisons or in Internal Security offices. Libyan groups estimate that Libyan security officials have disappeared thousands of individuals over the past three decades.¹¹¹ Hundreds of those disappearance cases have been officially acknowledged this year in the context of the 1996 Abu Salim prison massacre discussion in Section IX below. Many others, however, have not been addressed and the families of the disappeared continue to suffer in ignorance.

It is common for security officials to detain those arrested at undisclosed locations without access to their families or to a lawyer, even if they are subsequently released after a few months. Many, however, are detained for several years and some for over a decade. For example, Mohamed Milad El Seheili told Human Rights Watch how Libyan security forces came to the family home on the night of November 18, 1998 and arrested him. They also arrested his two brothers Omar and Boubakr, who were in different apartments at the time. Mohamed Milad Al Seheili told Human Rights Watch that he was never charged or told why they arrested him. He was released in March 1999. To this day, however, Mohamed and his family have been unable to obtain any information about his two brothers and do not know where they are or what has become of them.¹¹²

The following are some of the most high-profile disappearance cases which remain unresolved:

Jaballa Hamed Matar and Izzat al-Megaryef

Prominent Libyan opposition members Jaballa Hamed Matar and Izzat al-Megaryef disappeared in Cairo on March 13, 1990. Both members of the National Front for the Salvation of Libya, they had sought refuge in Cairo from Gaddafi’s policy of targeted assassinations of those who declared their opposition to him.

¹¹⁰ Human Rights Watch interview with M.I., Tripoli, April 25, 2009

¹¹¹ See National Front for the Salvation of Libya, *Human Rights Report*, December 1998, <http://www.libyanfsl.com> (accessed November 7, 2009).

¹¹² Human Rights Watch phone interview with Mohamed Milad Al Seheili, May 26, 2009

Hisham Matar told Human Rights Watch that for two years after his father's disappearance in Cairo in March 1990, Egyptian security told the family that Jaballa Hamed Matar was in Egypt. In 1993 however, a friend of his father's brought the family in Cairo a letter in his father's handwriting. The letter was dated 1992 and confirmed that Jaballa Hamed Matar was imprisoned in Abu Salim prison and that Egyptian security officials had handed him over to Libyan security in March 1990. A second letter dated 1995 reached the family in 1996. In 2002, a prisoner who had just arrived at Abu Salim prison, sent a message to Matar's family, stating that he had seen Jaballa Hamed Matar in a high-security prison in Tripoli that year.¹¹³

The Matar family has never received a response from Libyan officials on the whereabouts of his father, despite letters over the years requesting information. In an autobiographical essay for *The Independent*, Hisham Matar wrote "Life attempts to teach us about loss: that one can still find peace in the finality of death. And yet, my loss gives no peace. My father is not incarcerated, yet he is not free; he is not dead, yet he is not alive either. My loss is self-renewing, insistent and incomplete."¹¹⁴

Youcif al-Megaryef, the son of Izzat al-Megaryef who now lives in the United States, told Human Rights Watch that "on March 13, 1990 Egyptian Intelligence officer Colonel Mohamad Hassan came to our home requesting my dad to accompany him for a routine meeting. My father left with him, never to be seen again."¹¹⁵ The family later received letters written in 1993 and an audio recording from Izzat saying that Egyptian security officers had interrogated him and then handed him over to Libyan intelligence on March 14, 1990. Libyan security officials took Izzat al-Megaryef along with Jaballa Matar and imprisoned them in Abu Salim prison. Former Abu Salim prisoners told al-Megaryef's family that they had communicated with Izzat al-Megaryef. The last news the family received of him was in April 1996. The Libyan authorities have never responded to the family's enquiries about Izzat al-Megaryef's whereabouts.

Mansur al-Kikhya

On 10 December 1993, Libyan opposition Mansur al-Kikhya was in Cairo for a meeting of the Arab Organization for Human Rights of which he was a board member. On that day he disappeared in Cairo and his friends believe that Egyptian security officials handed him over

¹¹³ Human Rights Watch interview with Hisham Matar, London, June 19, 2009.

¹¹⁴ Hisham Matar, "I Just Want to Know What Happened to My Father," *The Independent*, 16 July 2006, <http://www.independent.co.uk/news/world/africa/hisham-matar-i-just-want-to-know-what-happened-to-my-father-407444.html> (accessed October 6, 2009).

¹¹⁵ Human Rights Watch phone interview with Youcif Almegaryef, November 5, 2009.

to Libyan security. A former Libyan representative to the United Nations and subsequent foreign minister in the 1970s, al-Kikhya left Libya in 1980 to join the Libyan opposition abroad. In February 2009, Libyan website *Al Manara* reported that the North Benghazi Court held the first session in a case brought by al-Kikhya's family to address issues of inheritance and paperwork. This would be the first time a Libyan court addresses the disappearance of high-profile dissidents.

Imam Sayyed Musa Sadr

One of the most prominent of the disappearance cases is that of Lebanese Shii cleric Imam Sayyed Musa Sadr. On August 25, 1978, Imam Sadr arrived in Libya accompanied by Sheikh Mohamad Yacoub and journalist Abbas Badreddine for a meeting with Colonel Gaddafi. On August 31, the three set out from their hotel in Tripoli for the meeting and that was the last time they were seen. Colonel Gaddafi denied that the meeting ever took place and the Libyan authorities said that the three had left Libya for Rome. Libya later refused to meet a panel of investigators.

Death in Custody

Ismail Ibrahim Al Khazmi

Internal Security agents arrested Ismail Ibrahim Al Khazmi, born 1976, from his home in June 2006. Despite many attempts, his family was unable to obtain news of his whereabouts and al-Khazmi was disappeared. In 2006 Al-Khazmi died under torture. On May 1, 2007 his family received a medical report which said he had died of kidney failure. In mid-March 2009 they asked his family to take the body to bury it but the father refused, saying that he wants an autopsy and a proper investigation into his son's death.¹¹⁶

Under Article 2(3), Libya has a duty to investigate and prosecute all violations that amount to crimes, such as those against the right to life, the right to liberty and security of the person and the right to recognition before the law, which is violated in the case of an enforced disappearance. UN Human Rights Committee General Comment 31 says that failure of a state party to investigate can itself give rise to a separate breach of the Covenant.¹¹⁷ In addition, the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions state that "there shall be thorough, prompt and impartial

¹¹⁶ Human Rights Watch interview with K.I., April 5, 2009

¹¹⁷ UN Human Rights Committee, General Comment No. 31, Nature of the General Legal Obligation Imposed on State Parties to the Covenant (2187th meeting, May 26, 2004), UN Doc. CCPR/C/Rev.1/Add.13, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.21.Rev.1.Add.13.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.21.Rev.1.Add.13.En?Opendocument) (accessed Sept. 30, 2009).

investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances.”¹¹⁸ Libya is further required to take measures to prevent similar violations in the future.

¹¹⁸ UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

VIII. Impunity for Gross Abuses

The legacy of the abusive practices of the past decades in Libya is a heavy one.¹¹⁹ Most Libyan dissidents targeted by the regime have sought asylum abroad, though several remain disappeared. The Libyan government has yet to address the violations of the past through investigation or prosecution. One of the most serious incidents of gross human rights violations, one which has become emblematic in Libya, is the Abu Salim mass prison killing of 1200 prisoners in 1996.

The 1996 Abu Salim Killings

On June 28 and 29 1996 an estimated 1200 prisoners were killed in Abu Salim prison. This number was first made public by Hussein Al Shafa'i, a former prisoner who was working in the kitchen at Abu Salim and who calculated this figure by counting the number of meals he prepared prior to and after the incident.¹²⁰ The number was also confirmed by the Libyan Secretary of Justice to Human Rights Watch in April 2009¹²¹ and in a press release by the Gaddafi Foundation on August 10, 2009 which set the number at 1167.¹²²

In June 2004 and again in June 2006, Human Rights Watch interviewed Hussein al-Shafa'i, the former Abu Salim prisoner, now in the US, who says he witnessed the killings. While the organization could not independently verify his claims, many details are consistent with accounts by other former prisoners.

According to al-Shafa'i, the incident began around 4:40 p.m. on June 28, when prisoners in Block 4 seized a guard named Omar who was bringing their food. Hundreds of prisoners from blocks 3, 5 and 6 escaped their cells. They were angry over restricted family visits and poor living conditions, which had deteriorated after some prisoners escaped the previous year. Al-Shafa'i told Human Rights Watch:

¹¹⁹ See Section IV - Background for further information.

¹²⁰ Human Rights Watch, *Libya: June 1996 Killings at Abu Salim Prison*, June 28, 2006, http://www.hrw.org/legacy/english/docs/2006/06/28/libya13636_txt.htm.

¹²¹ Human Rights Watch interview with Counselor Mostafa Abdeljalil, Secretary of Justice, Tripoli, April 26, 2009.

¹²² "Press Release on Various Cases," Gaddafi International Charity and Development Foundation, August 10, 2009, http://www.gdf.org.ly/index.php?lang=ar&CAT_NO=4&MAIN_CAT_NO=4&Page=105&DATA_NO=553 (accessed August 17, 2009).

Five or seven minutes after it started, the guards on the roofs shot at the prisoners—shot at the prisoners who were in the open areas. There were 16 or 17 injured by bullets. The first to die was Mahmoud al-Mesiri. The prisoners took two guards hostage.

Half an hour later, al-Shafa'i said, two top security officials, Abdallah Sanussi, who is married to the sister of al-Gaddafi's wife, and Nasr al-Mabrouk arrived in a dark green Audi with a contingent of security personnel. Sanussi ordered the shooting to stop and told the prisoners to appoint four representatives for negotiations. The prisoners chose Muhammad al-Juweili, Muhammad Ghlayou, Miftah al-Dawadi, and Muhammad Bosadra.

According to al-Shafa'i, who said he observed and overheard the negotiations from the kitchen, the prisoners asked al-Sanussi for clean clothes, outside recreation, better medical care, family visits, and the right to have their cases heard before a court; many of the prisoners were in prison without trial. Al-Sanussi said he would address the physical conditions, but the prisoners had to return to their cells and release the two hostages. The prisoners agreed and released one guard named Atiya, but the guard Omar had died. Security personnel took the bodies of those killed and sent the wounded for medical care. About 120 other sick prisoners boarded three buses, ostensibly to go to the hospital. According to al-Shafa'i, he saw the buses take the prisoners to the back of the prison.

Around 5:00 a.m. on June 29, security forces moved some of the prisoners between the civilian and military sections of the prison. By 9:00 a.m. they had forced hundreds of prisoners from blocks 1, 3, 4, 5 and 6 into different courtyards. They moved the low security prisoners in block 2 to the military section and kept the prisoners in blocks 7 and 8, with individual cells, inside. Al-Shafa'i, who was behind the administration building with other kitchen workers at the time, told Human Rights Watch what happened next:

At 11:00, a grenade was thrown into one of the courtyards. I did not see who threw it but I am sure it was a grenade. I heard an explosion and right after a constant shooting started from heavy weapons and Kalashnikovs from the top of the roofs. The shooting continued from 11:00 until 1:35.

He continued:

I could not see the dead prisoners who were shot, but I could see those who were shooting. They were a special unit and wearing khaki military hats. Six were using Kalashnikovs.

I saw them—at least six men—on the roofs of the cellblocks. They were wearing beige khaki uniforms with green bandanas, a turban-like thing.

Around 2:00 p.m. the forces used pistols to “finish off those who were not dead.

Around 11 am the next day, June 30, security forces removed the bodies with wheelbarrows. They threw the bodies into trenches—2 to 3 meters deep, one meter wide and about 100 meters long—that had been dug for a new wall. “I was asked by the prison guards to wash the watches that were taken from the bodies of the dead prisoners and were covered in blood,” al-Shafai’i said.

One family member of an Abu Salim prisoner who died in the incident told Human Rights Watch that a former prisoner who had been in a different section of the prison at the time told him that:

He and others went into the cells of the men who had refused to move. He said they found hair and skin and blood of people splattered on the walls. They saw the piece of a jaw of one man on the floor. Even though they had cleaned up the bodies, they didn’t do a good job, so there were still remnants on the walls and floors.¹²³

The killing of 1200 prisoners at Abu Salim amounts to a violation of the right to life, in Article 6 of the International Covenant on Civil and Political Rights (ICPPR) and a fundamental principle of international law accepted by the international community. It may also amount to a crime against humanity, one of the most serious of crimes in international law.¹²⁴

¹²³ Human Rights Watch interview with M.I. Benghazi, April 24, 2009.

¹²⁴ To establish a crime against humanity, which is among the most serious crimes of concern to the international community as a whole, there would have to be evidence that murder was “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”¹²⁴ The elements to this are that the attack is committed as part of an attack against a civilian population, the prison population in this case, and that this was or was intended as part of a policy of attack against a civilian population.

In addition, in most cases the Abu Salim prisoners had been subject to arbitrary detention in violation of Article 9 of the ICCPR and to enforced disappearance.

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.¹²⁵ In October 2007, the UN Human Rights Committee found Libya responsible for the unlawful detention, torture, and enforced disappearance of Abu Baker El Hassy, who had been arbitrarily arrested and detained in Abu Salim in 1995 and whose whereabouts remained unknown 11 years later when his brother brought the claim before the committee.¹²⁶ On July 11, 2007, the UN Human Rights Committee also found Libya responsible for torture, disappearance and arbitrary execution in *El Alwani v Libya, Communication No. 1295/2004*.¹²⁷ It found that Libya had violated Article 6 of the ICCPR on the right to life:

The Committee observes that sometime in 2003, the author was provided with his brother's death certificate, without any explanation of the exact date, cause or whereabouts of his death or any information on investigations undertaken by the State party. In addition, the State party has not denied that the disappearance and subsequent death of the author's brother was caused by individuals belonging to the Government's security forces.

General Comment 6 on Article 6, states that "The protection against arbitrary deprivation of life which is explicitly required by the third sentence of Article 6 (1) is of paramount importance. The Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity."

From Official Denial to Grudging Acknowledgment

For years Libyan officials denied that the killings at Abu Salim had ever taken place. The first public acknowledgement came in April 2004 when Libyan leader Mu'ammar al-Gaddafi publicly stated that killings had taken place in Abu Salim, and said that prisoners' families

¹²⁵ Libya 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. In June 2004, Libya signed the first Optional Protocol to CEDAW, which allows the Committee on the Elimination of All Forms of Discrimination against Women to receive and consider complaints from individuals or groups.

¹²⁶ *Decision: El Hassy v. Libya*, United Nations Human Rights Committee, CCPR/C/91/D/1422/2005, October 24, 2007.

¹²⁷ *Decision: El Awani v. Libya*, United Nations Human Rights Committee, CCPR/C/90/D/1295/2004, July 11, 2007.

have the right to know what took place. On July 26, 2008 Saif al-Islam al-Gaddafi gave a speech in which he spoke of the Abu Salim killings saying that:

Investigations are complete and have been submitted to prosecution. Prosecution will begin its own investigations and summon people. This won't be long before the file goes to court and sentences will be pronounced. There will be respectable and impartial judges, and the court will be attended by observers. ... All people will be attending: the families, the press, and civil and human rights NGOs, ambassadors, and everyone will face the truth.¹²⁸

There has been no official account of the events at Abu Salim prison and there is no evidence that an investigation into the events ever took place. According to Libyan 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.¹²⁹ In May 2005, Internal Security Agency head Al-Tohamy Khaled told Human Rights Watch the government had opened an investigation into the 1996 incident. He denied that any crimes had taken place and told Human Rights Watch that "when the committee concludes its work, because it has already started, we'll give a detailed report answering all questions."¹³⁰

Four years later, on April 25, 2009, Human Rights Watch asked Secretary of Public Security General Abdelfattah al-Obeidi about the investigation and he replied that "it was still ongoing" and that it was now in the hands of the Secretary of Justice.¹³¹ A day later, however, when Human Rights Watch met with Secretary of Justice Mostafa Abdeljalil he said that "there has not been any investigation into this incident until this point."¹³²

The Secretary of Justice's admission to Human Rights Watch reflects the fact that he is one of the Libyan authorities seeking to address the issue through the legal framework. It also reflects the fact that even he has been unable to obtain all the relevant information about the Abu Salim killings from the Internal Security Agency. In April 2008, Secretary of Justice Mostafa Abdeljalil, gave an interview to *Libya Al Youm*. In it, he said his ministry had asked

¹²⁸ "Libya – Truth for All," Saif al-Islam al-Gaddafi speech, Tripoli, July 26, 2008, http://gdf.org.ly/index.php?lang=en&CAT_NO=114&MAIN_CAT_NO=9&Page=105&DATA_NO=251 (accessed Sept. 30, 2009).

¹²⁹ Law 47 (1975), article 48.

¹³⁰ "Libya: June 1996 Killings at Abu Salim Prison," Human Rights Watch news release, June 28, 2006, http://www.hrw.org/legacy/english/docs/2006/06/28/libya13636_txt.htm.

¹³¹ Human Rights Watch interview with General Abdelfattah al-Obeidi, Secretary of Public Security, Tripoli, April 25, 2009.

¹³² Human Rights Watch interview with Counselor Mostafa Abdeljalil, Secretary of Justice, Tripoli, April 26, 2009.

Internal Security for the list of those who died in the 1996 incident but had been unable to obtain the precise information.¹³³

In March 2007 a group of 30 families in Benghazi filed a civil claim before the North Benghazi Court to compel the Libyan government to reveal the fate of their detained relatives. This was the first collective action by families because, before that, as one of the family members involved told Human Rights Watch, “many of the families were too afraid to take action.”¹³⁴ Initially the court dismissed their claim on procedural grounds, ruling on June 24, 2007 that it did not have jurisdiction to review administrative decisions. The families appealed this and on April 19, 2008, the court ruled in their favor accepting jurisdiction. On June 8, 2008, the North Benghazi Court ruled in favor of the families:

The Court orders respondent 1, 2 and 3 [the Prime Minister, the Secretary of Public Security and the Secretary of Justice] to reveal the fate of the following detainees and their place of detention and the reasons for their detention and to officially inform the applicants of their fate.¹³⁵

The court did not, however, address the broader questions of accountability. It did not examine whether an investigation had taken place nor did it order those responsible to be prosecuted. The decision was a victory for the families because it was the first formal recognition of the legitimacy of their requests, but the court was still unable or unwilling to order a full investigation of the events at Abu Salim.

In a December 2008 interview with *Quryna*, one of the two privately owned newspapers in Libya, Libyan Secretary of Justice Mostafa Abdeljalil said that he had called upon the General People’s Committee (the cabinet) to implement the court decision.¹³⁶ It was following this court order that the government began in earnest the process of notifying families of the death of their relatives by issuing death certificates and offering compensation.

In the context of the continuing official blackout surrounding the Abu Salim killings, the release of prisoner Mohamed Bousidra in June 2009 is significant because, as one of the key

¹³³ “Minister of Justice: we asked security to give us the list of the dead in Abu Salim but did not receive it,” *Libya Al Youm*, April 24, 2008.

¹³⁴ Human Rights Watch phone interview with A.B., March 9, 2009.

¹³⁵ “North Benghazi Primary Court Ruling (Arabic),” June 8, 2008, reproduced on *Akhbar Libya*, http://www.akhbar-libyaonline.com/index.php?option=com_content&task=view&id=19275&Itemid=1 (accessed Sept. 30, 2009).

¹³⁶ “Secretary of the General People’s Committee for Justice on Abu Salim incident,” *Quryna*, December 1, 2008.

witnesses to a mass killing that the authorities denied ever happened, most people expected him to remain detained indefinitely. As an respected figure in the prison, Bousidra was one of the prisoner representatives who negotiated demands with senior security official Abdallah al-Sanussi and is believed to have witnessed the events that unfolded. Security forces arrested him, along with his four brothers, on January 19, 1989 in Al Baydaa and took him to Abu Salim prison. Bousidra's brothers were released after six years of detention without charge. In 1999, more than 10 years after his arrest, the People's Court tried and sentenced Bousidra to life imprisonment. After its abolition in January 2005, he was retried before a special court in June 2005 which reduced the sentence to 10 years. At that time he already had been imprisoned for 16 years and the presiding judge therefore ordered his release. But he continued to be detained at an Internal Security detention center before being moved in 2008 back to Abu Salim prison. His son Tarek was able to visit him on January 31, 2009 for the first time since May 21, 2005. Internal Security finally released Mohamed Bousidra from Abu Salim prison on June 7, 2009 and he moved to Benghazi where his family lives. Bousidra has not spoken out about what he witnessed.

Offers of Compensation but Not Truth

"My brother has been disappeared for 13 years. My father died as a result of the sadness. 'Justice is a right for us.'"¹³⁷

Libyan relative of Abu Salim victim, March 9, 2009

"They hide him and kill him and we don't know where his body is and then ask us to accept this money and reconcile with the state?"

Brother of Abu Salim victim, May 20, 2009

Between 2001 and 2006 the authorities notified around 112 families, a small fraction of the total number of disappeared prisoners, that a relative held in Abu Salim was dead, without providing the body or details on the cause of death.¹³⁸ However, until recently, most of the families had received no official notification about the fate of their loved ones. From January to March 2009, the government stepped up the process, providing verification to an estimated 351 families, of which 160 are in Benghazi, and the rest in Tripoli, Derna, Al Bayda and Misrata. Libyan Secretary of Justice Mostafa Abdeljalil told Human Rights Watch in April 2009 that, to date, the People's Leadership Committees had informed the relatives of some

¹³⁷ Human Rights Watch phone interview with A.B., March 9, 2009.

¹³⁸ Libya Human Rights Solidarity, "Abu Saleem Prison Massacre Libya" 28-29 June 1996.

800 to 820 victims of their deaths and had issued them with death certificates; families of 350 to 400 victims had not yet been informed.¹³⁹

In most cases, local police stations and offices of Internal Security have summoned surviving family members and informed them of the death of their relatives, providing them with official death certificates to sign. In some cases the families have been summoned to the local People's Leadership Committee and been informed by them.¹⁴⁰ The death certificates have not stated the cause or specified the place of death beyond saying 'Tripoli.' The dates of death specified have ranged between June, July or September but none that Human Rights Watch has seen have stated June 28 or 29.

Many of the prisoners who were killed in 1996 had been imprisoned in Abu Salim since 1989 or 1995, years in which mass arrests took place to crack down on perceived opposition. For years, many families did not even know for sure whether their relatives had been detained in Abu Salim because they had lost all contact with them at their time of arrest. To these families, their loved ones had disappeared.

Mohamed Hamil Ferjany, former spokesperson for the committee of families who is now in the U.S., told Human Rights Watch about his two brothers who were killed in Abu Salim:

My brothers Al-Sanussi and Khaled Ferjany were arrested in 1995. Every three months, my family would load up the car with clothes, food and bed linen and drive 12 hours from Benghazi to the prison, in Tripoli. We put the things in sacks with my brothers' names on them and left them at the gate of the prison. All this time we were leaving them things, we thought they were safe, all this time they were dead and the security guards were taking the clothes for themselves.¹⁴¹

Another family member told Human Rights Watch:

We knew that he'd been taken by Internal Security in Benghazi but after that we didn't know anything. I went, my brother went, my mother went to all the prisons - we didn't know where he was, and they refused to tell us. At the beginning of 1996 we heard about something that had happened in the

¹³⁹ Human Rights Watch interview with Counselor Mostafa Abdeljalil, Secretary of Justice, Tripoli, April 26, 2009.

¹⁴⁰ Human Rights Watch phone interview with M.S., May 24, 2009.

¹⁴¹ Human Rights Watch interview with Mohamed Hamil Ferjany, United States, August 13, 2009

prison, and then the story started to emerge after people were released. Fourteen years after his disappearance, in March 2009, Internal Security called us saying we should come to see them – when we were there they said here is your brother's death certificate and nothing more.¹⁴²

A third said:

My brother's wife was waiting for 10 years to know about the status of my brother, her husband. Then she died. They had a daughter, who was born right before they took him to prison. Now her grandmother, my sister-in-law's mother is raising her, but we are helping also. She never got to see her father. He never held her, never hugged her.¹⁴³

For some families the receipt of the death certificate was the first official acknowledgment of their detention and the destruction of all hope. In one day the Taiib family in Mistarah learned of the death of five of its members, the youngest of whom was 14 when he was arrested.¹⁴⁴

One family member from Benghazi met Human Rights Watch on April 24, 2009, at great personal risk to himself:

About one month ago... someone from internal security came to my door. He said, "Come with me." He didn't tell me why or what for. I was scared; I was shaking. Why were they calling me in? What was going to happen to me now? They asked for my ID card, wrote down the details. They took me to the neighborhood where the Internal Security buildings are located. They took me to an office.

Inside there was one man, and there was a gun – a rifle, a Kalashnikov I think, leaning against the wall. He did not give me his name. He was from internal security. He said, "I want to talk to you. Your brother is gone. Come sign this paper." I saw the paper. It was a death certificate. There was no

¹⁴² Human Rights Watch phone interview with M.A., May 20, 2009.

¹⁴³ Human Rights Watch interview with Fathi Terbil, Benghazi, April 24, 2009.

¹⁴⁴ "Misratah is informed of its dead in the Abu Salim massacre," *Libya Al Mostakbal*, February 18, 2009, http://www.libya-almostakbal.info/News2009/Feb2009/180209_misrata_busleem_victims.html (accessed Sept. 30, 2009).

reason given for the cause of his death. I became very upset. I said, “Even dogs get a reason for their death.” I refused to sign the paper.¹⁴⁵

Initially, the government offered families 120,000 dinars (US\$98,590) in compensation if the deceased detainee was single, and 130,000 (\$106,800) if he was married. By June 2009, however, the authorities increased the initial offer to 200,000 Libyan Dinars (\$164,300). A brother of an Abu Salim victim told Human Rights Watch that when his family refused the compensation on principle, Internal Security officers offered to double the amount and to try to facilitate the release of other family members imprisoned in Abu Salim.¹⁴⁶

The offer of compensation comes with strings attached: the families must give up any further legal claims. For some of the families who have suffered the pain of the disappearance of their relative, the money is not enough.¹⁴⁷ Many families have said that they have a right to justice and anything less than that is insufficient. Interestingly, the authorities have specified that families who accept compensation from the government must relinquish any further legal claims both internally and internationally, which indicates an awareness of the possibilities of seeking justice through international mechanisms.

Although several families in Tripoli and other cities appear to have accepted compensation, most of the families in Benghazi have refused, insisting that they want to know who the perpetrators were and to hold them legally responsible. The Libyan Secretary of Justice, Mostafa Abdeljalil, told Human Rights Watch in April 2009 that “the offers of compensation were made in the context of reconciliation. Around 30% of the families who had so far been informed of the death of their relatives have accepted the offer of compensation, 60% have refused because they think the amount is insufficient and 10% have refused on principle.”¹⁴⁸ On August 10, 2009 the Gaddafi Foundation issued a statement saying that 569 families had received compensation and that 598 families remained.¹⁴⁹ These are the only official statistics available at the time of writing and their inconsistency is a reflection of the difficulty of obtaining information from the Internal Security Agency.

¹⁴⁵ Human Rights Watch interview with M.I., Benghazi, April 24, 2009.

¹⁴⁶ Human Rights Watch interview with M.O., London, June 29, 2009.

¹⁴⁷ For more on the death penalty in Libya see Section XII - the Death Penalty.

¹⁴⁸ Human Rights Watch interview with Counselor Mostafa Abdeljalil, Secretary of Justice, Tripoli, April 26, 2009.

¹⁴⁹ “Press Release on Various Cases,” Gaddafi International Charity and Development Foundation, August 10, 2009, http://www.gdf.org.ly/index.php?lang=ar&CAT_NO=4&MAIN_CAT_NO=4&Page=105&DATA_NO=553 (accessed August 17, 2009).

One man received a death certificate from the People's Leadership Committee on May 24, 2009, informing him that his brother Fathi had died. He told Human Rights Watch that he rejected the offer of compensation of 120 thousand Dinars as "insufficient" because "they paid 10 million dollars for Lockerbie victims and they offer us 120,000 Libyan Dinars? We don't want their money, we want the truth and to bury our relatives."¹⁵⁰ Saad el Ferjany's son Salah was arrested on January 14th, 1989. Since that time Saad el El Ferjany was only able to visit him once in the first years in Abu Salim and he fears that his son was among those killed but has not received any official notification. He told a journalist that "since the Libyan state refuses to tell us of the fate of our children, we will ask the outside world for our rights... I want to know the fate of my son, and this offer of compensation is unjust."¹⁵¹

Unprecedented Activism – the Demands of the Families

As the families of Abu Salim victims became more vocal and organized over the years, they started taking action collectively. In April 2008, some families, who had already taken the case to court, went on to form the Coordination Committee of the Families of the Victims to represent their demands.¹⁵² In the context of Libyan laws, which severely restrict freedom of assembly and association and the lack of any independent NGOs, the creation of the committee was ground-breaking. One committee member told Human Rights Watch that they had tried to register it as a non-governmental organization but Internal Security refused this early on.¹⁵³

The committee also organized demonstrations by the families, at high risk since demonstrations are prohibited in Libya. The first demonstrations by the families started in Benghazi in June 2008, and have continued to take place every couple of months. They have varied from around 30 or 40 individuals to 150 on November 30, 2008.¹⁵⁴ In March 2009, one family member told Human Rights Watch about the intimidation they experience, how the more active members of the committee are summoned for interrogation and at the demonstrations "security forces turn out in force, they are filming all the family members who turn up. Senior security officials come to the demos and tell the older members to go home. All of our posters are about our sons, the truth, nothing against Gaddafi."¹⁵⁵

¹⁵⁰ Human Rights Watch phone interview with M.S., May 24, 2009.

¹⁵¹ "Families of lost prisoners reject compensation offer" *Al Jazeera* August 23, 2008 <http://www.aljazeera.net/NR/exeres/DoAC3A84-BD26-4AB9-8E82-B7AF403C8F8C.htm> (accessed on July 4, 2009).

¹⁵² Human Rights Watch phone Interview with Mohamed Hamil Ferjany, July 8, 2009.

¹⁵³ Human Rights Watch phone Interview with A.B., March 26, 2009.

¹⁵⁴ See news archive on *Libya Al Youm*, <http://www.libya-alyoum.com/>, accessed through 2009.

¹⁵⁵ Human Rights Watch phone interview with A.B., March 9, 2009.

Another family member told Human Rights Watch:

Every time I went to a demonstration I was preparing myself for arrest, my family were afraid for me. Internal Security called me once after a demonstration and threatened me with imprisonment. But I have nothing to fear, four of my brothers were imprisoned in Abu Salim and two of them died there. I am not afraid anymore. I need to talk about it; I feel that by talking to you, you can make my voice heard, not just my voice but that of all the families.¹⁵⁶

A third said that

Internal security prevents us from talking to people in Tripoli. They want everything to go through them. They don't like everything the Gaddafi Foundation is trying to do for the people. They follow us everywhere. They harass us all the time.

I love my country. My dream is to improve the educational system in this country. I want to get my PhD; I want to help my people. But they consider me a bad man, a bad citizen. Why? What have I done?¹⁵⁷

In March 2009, the committee published a list of demands by the families on Libyan websites abroad, calling upon the Libyan authorities to:¹⁵⁸

1. reveal the truth about the fate of their relatives
2. prosecute those responsible
3. hand over remains to the families or reveal burial place
4. issue proper death certificates with the correct dates and place of death
5. make an official apology in the media
6. release all other arbitrarily detained family members of Abu Salim victims
7. increase the compensation to that offered to Lockerbie victims

¹⁵⁶ Human Rights Watch interview with Mohamed Hamil Ferjany, United States, August 13, 2009

¹⁵⁷ Human Rights Watch interview with M.I., Benghazi, April 24, 2009.

¹⁵⁸ Letters, *Libya al Mostakbal*, www.libya-al-mostakbal.org (accessed September 30, 2009); Human Rights Watch phone interview with A.B., March 26, 2009.

One of the main coordinators of the committee, Mohamed Hamil al-Ferjany, who left Libya in March 2009 and is currently in the US, told Human Rights Watch that, at the beginning, senior security officials and ministers were engaging with the committee. Security officials invited him to Tripoli for consultations for two weeks in February 2009, in which he met with senior security official Abdallah al-Sanussi and the Secretary of Justice Mostafa Abdeljalil. It soon became clear, however, that there was no willingness on the part of the authorities to prosecute any of those responsible for the Abu Salim killings, he said. Since this was an unshakeable demand by the committee, negotiations broke down. "They think they can solve it through money and that's enough, so they've stopped dealing with the families," al-Ferjany told Human Rights Watch.¹⁵⁹

On March 25 and 26, 2009 Internal Security forces arrested four members of the families' committee in Benghazi.¹⁶⁰ On the evening of March 25, Internal Security officers arrested family members Hussein Al Madany and Fouad Ben Omran at their homes. Armed officers also searched, without warrant, the home of Fathi Terbil, a lawyer, who was away at the time, and confiscated his laptop. The next morning, at another demonstration by the group, security officers arrested Fathi Terbil. Terbil told Human Rights Watch that security officers asked him upon his arrest, "Why are you doing this Fathi, why in this illegal way? I said the state won't listen to me, I just want to know the truth, my niece has never seen her father."¹⁶¹ Internal security officers detained all three incommunicado for four days and released them on March 30, 2009 after a media outcry and the intervention of Saif al-Islam al-Gaddafi.

When Human Rights Watch raised concerns about these arrests with Colonel Al-Tohamy Khaled, the head of Internal Security, he said that they had "arrested the individuals who incited the violence" and that these family members had used "illegal means because they had not obtained permission to hold their demonstration."¹⁶²

Despite the threat of arrest and the atmosphere of intimidation, the demonstrations by the families have continued. Since March, families in al-Baida and Derna have also started organizing demonstrations in front of the Internal Security Agency offices. The biggest demonstration to date took place on June 29, 2009, on the anniversary of the killings, when

¹⁵⁹ Human Rights Watch phone Interview with Mohamed Hamil Ferjany, July 8, 2009.

¹⁶⁰ "Urgent Action: Arbitrary Arrest and Fear of Torture," Libya Human Rights Solidarity press release, March 28, 2009.

¹⁶¹ Human Rights Watch interview with Fathi Terbil, Benghazi, April 24, 2009.

¹⁶² Human Rights Watch interview with Colonel Col. Al-Tohamy Khaled, Head of the Internal Security Agency, Tripoli, April 25, 2009.

more than 200 men, women and children walked through the streets of Benghazi carrying banners and pictures of their dead relatives.

Video footage was posted online on *Al Manara* of women chanting:

“We don’t want money; we want the butchers.”

“Oh Gaddafi where are our children? We want the bodies of the martyred.”

“No, No, No – we will not sell the blood of our children.”¹⁶³

After these demonstrations Secretary of Justice Mostafa Abdeljalil said that those who did not accept the compensation offer were free to resort to the courts and the state would implement any final decision issued by the courts.¹⁶⁴

Libya’s Obligations Under International Law

Under international law, governments have an obligation to provide victims of human rights abuses with an effective remedy—including justice, truth, and adequate reparations—after they suffer a violation. As a state party to the ICCPR Libya has an obligation to provide an accessible, effective and enforceable remedy “determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.”

Victims and their families have a right to know the truth about violations they suffered. The UN General Assembly has endorsed the principle that victims’ right to remedies includes having access to relevant information concerning human rights violations.¹⁶⁵ International principles adopted by the former UN Commission on Human Rights state that “irrespective of any legal proceedings, victims, their families and relatives have the imprescriptible right to know the truth about the circumstances in which violations took place.”¹⁶⁶ International human rights bodies have emphasized the state’s obligation to provide information to

¹⁶³ Video posted on Al Manara at <http://www.almanaralink.com/new/index.php?scid=4&nid=16626> (accessed June 30, 2009).

¹⁶⁴ Muftah Abu Zaid, “In response to the demonstration by families of the Abu Salim incident, Counselor Mostafa Abdeljalil, Secretary of Justice tells Quryna ‘we have created a committee to resolve the issue in the context of reconciliation but those who do not accept its terms are free to resort to the courts,’” *Quryna*, June 30, 2009.

¹⁶⁵ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of international Human Rights Law and Serious Violations of International Humanitarian Law, March 21, 2006, adopted by the 60th session of the United Nations General Assembly, A/RES/60/147, paras. 11 (c) and 24.

¹⁶⁶ Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, October 2, 1997, adopted by the UN Commission on Human Rights, E/CN.4/Sub.2/1997/20/Rev.1, principle 3.

victims, particularly in cases of enforced disappearance. The UN Human Rights Committee has held that the extreme anguish inflicted upon relatives of the “disappeared” makes them direct victims of the violation as well.¹⁶⁷ In addition to informing the victims and their families, the state has an obligation to inform society in general about human rights abuses, particularly when the violations are serious.¹⁶⁸ This obligation derives partly from its duty to prevent future violations.

The duty to provide an effective remedy must also include returning the remains of those killed to their families to allow them to provide a proper burial. In the case of *Trujillo Oroza v. Bolivia* the Inter-American Court ruled that “the delivery of the mortal remains in cases of detained-disappeared persons is, in itself, an act of justice and reparation. It is an act of justice to know the whereabouts of the disappeared person and it is a form of reparation because it allows the victims to be honored, since the mortal remains of a person merit being treated with respect by their relatives, and so that the latter can bury them appropriately.”¹⁶⁹

Several international treaties, including the ICCPR and the African Charter, require that individuals be tried by “independent and impartial tribunals.”¹⁷⁰ International human rights bodies have consistently rejected the use of military prosecutors and courts in cases involving abuses against civilians, by stating that the jurisdiction of military courts should be limited to offenses that are strictly military in nature. Sets of principles presented before the former United Nations Human Rights Commission also recommend that human rights cases be transferred to civilian courts. the Draft Principles Governing the Administration of Justice through Military Tribunals, presented to the commission in January 2006, state that “in all circumstances, the jurisdiction of military courts should be set aside in favor of the jurisdiction of the ordinary courts to conduct inquiries into serious human rights violations

¹⁶⁷ The U.N. Human Rights Committee articulated this principle in the case *Quinteros v. Uruguay*, concluding that the mother of a “disappeared” person was entitled to compensation as a victim, for the suffering caused by the failure of the state to provide her with information. *Quinteros v. Uruguay*, U.N. Human Rights Committee, Case No. 107/1981: “The Committee understands the anguish and stress caused to the mother by the disappearance of her daughter and by the continuing uncertainty concerning her fate and whereabouts. The author has the right to know what has happened to her daughter. In these respects, she too is a victim of the violations of the Covenant suffered by her daughter in particular, of Article 7.”

¹⁶⁸ Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, October 2, 1997, adopted by the UN Commission on Human Rights, E/CN.4/Sub.2/1997/20/Rev.1, principle 1.

¹⁶⁹ *Trujillo Oroza v. Bolivia* (Reparations), judgement of 27 February 2002, para. 115, http://www.corteidh.or.cr/docs/casos/articulos/Seriec_92_ing.pdf, (accessed September 28, 2009. See also *Staselovich v. Belarus*, UN Human Rights Committee Communication, communication No. 887/1999, para. 9.2 (2003), <http://humanrights.law.monash.edu.au/undocs/887-1999.html> (accessed September 28, 2009).

¹⁷⁰ ICCPR, art. 14(1): “Everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.” African Charter on Human and Peoples’ Rights, art. 7(1) (b, d); art. 7 states that everyone shall have the “right to be presumed innocent until proved guilty by a competent court or tribunal” and the “right to be tried within a reasonable time by an impartial court or tribunal.”

such as extrajudicial executions, enforced disappearances and torture, and to prosecute and try persons accused of such crimes.”¹⁷¹

¹⁷¹ UN Human Rights Commission, “Civil and Political Rights, Including the Question of Independence of the Judiciary, Administration of Justice, Impunity,” Report of the special rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights, Emmanuel Decaux, E/CN.4/2006/58, January 13, 2006, principle 9.

IX. The State Security Court- A New People's Court?

Libya established the People's Court in 1988 to try 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-Gaddafi to power. The People's Court was widely criticized for politically-motivated trials that did not provide for the rights of defense or appeal and for accepting confessions extracted under torture.¹⁷²

Human Rights Watch and other groups welcomed the abolition of the People's Court in 2005¹⁷³ but stressed that those convicted for the peaceful expression of political views should be immediately released and compensated for their time in prison. Human Rights Watch has urged that all those convicted by the People's Court be given new trials in Libya's regular criminal courts, with full transparency and due process guarantees. The Chief Justice of the Libyan Supreme Court, Dr. Abdulrahman Abu Tuta, told Human Rights Watch that the People's Court was an exceptional court and that after its abolition all the cases were transferred to the normal courts.¹⁷⁴ The UN Human Rights Committee has expressed concern that this has not occurred, stating in its Concluding Observations to Libya's periodic report in November 2007 that "the convictions and sentences handed down by the People's Court should be reviewed by the State party's judicial authority in the light of the guarantees contained in article 14 of the Covenant."¹⁷⁵

The Higher Judicial Council, which has the power to review Supreme Court decisions and commute death sentences, created the State Security court on August 19, 2007 by decision

¹⁷² See Human Rights Watch, *Libya: Words to Deeds*, Volume 18, No. 1(E), (New York: Human Rights Watch, January 24, 2006), <http://www.hrw.org/en/reports/2006/01/24/libya-words-deeds-o>, Chapter V.

¹⁷³ "Reforms Welcome, But Concerns Remain," Human Rights Watch news release, May 23, 2005, <http://www.hrw.org/en/news/2005/05/22/libya-reforms-welcome-concerns-remain>; "Libya: Abolition of People's Court is an Important Step," Amnesty International public statement, AI Index: MDE 19/001/2005, January 13, 2005, <http://www.amnesty.org/en/library/asset/MDE19/001/2005/en/e4b98fc8-d532-11dd-8a23-d58a49cod652/mde190012005en.pdf> (accessed Sept. 30, 2009).

¹⁷⁴ Human Rights Watch interview with Dr. Abdulrahman Abu Tuta, Chief Justice of the Libyan Supreme Court, Tripoli, April 21, 2009.

¹⁷⁵ UN Human Rights Committee (HRC), *Consideration of reports submitted by States parties under article 40 of the Covenant : International Covenant on Civil and Political Rights : concluding observations of the Human Rights Committee : Libyan Arab Jamahiriya*, 15 November 2007, CCPR/C/LBY/CO/4, <http://www.unhcr.org/refworld/docid/474aa9ea2.html> (accessed 30 September 2009).

27 to address “crimes related to security.”¹⁷⁶ It was established in accordance with Law number 6 and decision No. 3 of the Higher Judicial Council on the creation of special courts. The UN Human Rights Committee has expressed concern about the new court, saying it is unclear about “the difference between the State Security Court and the former People’s Court.”¹⁷⁷

Libyan lawyers told Human Rights Watch that even though the People’s Court had been abolished in 2005, its laws are still in force and the new State Security Court is using the same procedures as the People’s Court.¹⁷⁸ Many of the State Security Court judges were formerly judges in the People’s Court. The decisions of the State Security Court are not publicly available to the defendants, their families or, frequently, to their lawyers. Former defendants before this court told Human Rights Watch that no appeal was available to them. Internal Security prevents lawyers from accompanying their clients during interrogations and the lawyers often are unable to get access to the case files necessary to prepare their defense. The State Security court will try cases of alleged violations of Law 71 which bans any group activity based on a political ideology opposed to the principles of the 1969 revolution that brought al-Gaddafi to power.

As party to the ICCPR, Libya is obliged under Article 14 to provide for the right to fair trial. This includes ensuring that the rights of defense are fully respected to ensure equality with the prosecution and that every defendant is granted the right to appeal the decision. The court must also ensure that confessions obtained under torture are not accepted as evidence in the courtroom. Human Rights Watch opposes the creation of special courts to try national security crimes. Such courts typically lack respect for the rights of defendants. Trials should be conducted before the normal criminal courts with all the procedural guarantees in international law.

Human Rights Watch has interviewed five prisoners tried and convicted by the State Security Court. The following are examples of cases decided by the State Security court which reveal a number of procedural irregularities that do not comply with international due process standards. Human Rights Watch calls upon the Libyan authorities to quash the sentences of or retry, with due process guarantees, all prisoners sentenced after unfair trials.

¹⁷⁶ Human Rights Watch interview with Counselor Mostafa Abdeljalil, Secretary of Justice, Tripoli, April 26, 2009.

¹⁷⁷ UN Human Rights Committee (HRC), *Consideration of reports submitted by States parties under article 40 of the Covenant : International Covenant on Civil and Political Rights : concluding observations of the Human Rights Committee : Libyan Arab Jamahiriya*, 15 November 2007, CCPR/C/LBY/CO/4, <http://www.unhcr.org/refworld/docid/474a9ea2.html> (accessed 30 September 2009).

¹⁷⁸ Human Rights Watch group interview with lawyers, Tripoli Bar Association, Tripoli, April 22, 2009.

Abdelhakim Al-Khoweildy

While on a research mission to Libya in April 2009, Human Rights Watch interviewed former CIA secret detainee Abdelhakim Al-Khoweildy (also known as Abdallah al-Sadeq). Al-Khoweildy is one of the leaders of the Libyan Islamic Fighting Group which for years sought to overthrow Gaddafi's rule but which recently renounced violence in August 2009 and negotiated the release of hundreds of its members from Abu Salim prison over the past years. Al-Khoweildy told Human Rights Watch that the State Security Court had sentenced him to death in 2008. Malaysian security officials had arrested him on March 3, 2004 and handed him over to the CIA which he says interrogated and tortured him in Thailand.¹⁷⁹ The CIA rendered Abdelhakim Al-Khoweildy to Libya on March 9, 2004.¹⁸⁰ He told Human Rights Watch:

After two years of interrogation by External Security, I was brought before the court. The court was in the new building, State Security. There were 13 charges against me for my activities in Libya. I was taken to court, they read out the charges to me, then took me back to prison. Six months later they informed me of the verdict. They appointed a lawyer from the People's Bureau (*muhamat shaabiya*) but I never saw his face. There were seven others in the same case, case No. 1. The fact that we actually had a trial is positive, but the one negative thing I would like to point out is that I was unable to meet a lawyer.¹⁸¹

Abdelhakim Al-Khoweildy remains imprisoned in Abu Salim prison.

Mohamed Ahmed Al-Shoro'eyya

On August 28, 2004, the CIA rendered Mohamed al-Shoro'eyya (also known as Hassan Rabi'i) to Libya after approximately 17 months in CIA custody. The State Security Court sentenced al-Shoro'eyya to life imprisonment for membership in an illegal organization, the Libyan

¹⁷⁹ His claims are consistent with what is known about the CIA's treatment of detainees, see Human Rights Watch, *Ghost Prisoner: Two Years in Secret CIA Detention*, February 26, 2007, <http://www.hrw.org/en/reports/2007/02/26/ghost-prisoner-0> (accessed November 7, 2009) and the Central Intelligence Agency Inspector General, *Counterterrorism Detention and Interrogation Activities (September 2001 - October 2003)*, May 7, 2004 https://www.cia.gov/library/reports/Executive%20Summary_OIG%20Report.pdf (accessed November 7, 2009).

¹⁸⁰ The CIA rendered an unknown number of detainees to countries such as Libya, Jordan, Egypt and Syria in the years following the 9/11 attacks. See Human Rights Watch, *Double Jeopardy*, April 7, 2008, <http://www.hrw.org/en/reports/2008/04/07/double-jeopardy> (accessed November 7, 2009).

¹⁸¹ Human Rights Watch interview with Abdelhakim Al Khoweildy, Abu Salim Prison, Tripoli, April 27, 2009.

Islamic Fighting Group, on June 16, 2006. He spoke to Human Rights Watch at Abu Salim prison in the presence of a guard who refused to leave, and said:

I was interrogated, then brought before the State Security court. I was sentenced to life imprisonment on 17 July 2006. I was assigned a state lawyer but I did not have the opportunity to sit down with him and talk to him. They charged me with membership in an illegal organization, the Libyan Islamic Fighting Group. It was case # 120.¹⁸²

Case of Idris Boufayed, Jamal el Haji and 12 Others

In February 2007 Libyan security agents arrested 14 organizers of a planned peaceful demonstration intended to commemorate the anniversary of a violent crackdown on demonstrators in Benghazi. Security forces detained them incommunicado in Ain Zara and Al-Jdaida prisons until 24 June 2007 when twelve of the group came before a court to face charges of "attempting to overthrow the political system" and "communication with enemy powers." Their case was transferred to the newly created State Security Court on November 6, 2007. The defendants had not been able to see their lawyers outside the courtroom¹⁸³ and this was one of the first requests they made to the judge. The judge agreed to grant their request ordering Libyan security to allow them to meet with the lawyers.¹⁸⁴ On June 10, 2008 the State Security Court sentenced the twelve men to prison terms of between six and 25 years.

Security forces had also arrested Jum'a Boufayed, the brother of Idris, and Abderrahman al-Qotaiwi along with the others, but they did not appear in court, prompting fears that they had been "disappeared." However, in May 2008 the authorities released Jum'a Boufayed without charge, and they released al-Qotaiwi, in mid-February 2009. The main organizer of the planned demonstration, Idris Boufayed, received a 25-year sentence, but was released from detention on medical grounds in October 2008 due to his advanced lung cancer. He travelled to Switzerland on 11 December 2008 for treatment. Libya released nine of the prisoners between June and December 2008 and the last two in March 2009.

The court had sentenced Jamal al-Haji, a writer who holds Danish citizenship, to 12 years of imprisonment. Libyan authorities rebuffed Danish government requests to visit him. Prison

¹⁸² Human Rights Watch interview with Mohamed Ahmed Al-Shoro'eyya, Abu Salim Prison, Tripoli, April 27, 2009.

¹⁸³ Human Rights Watch interview with Jamal el Haji, Tripoli, April 29, 2009.

¹⁸⁴ Human Rights Watch interview with Idris Boufayed, Geneva, April 6, 2009.

authorities placed Al-Haji in solitary confinement in November 2008 after he refused to end a hunger strike in protest against his continued detention.¹⁸⁵ The authorities eventually released him on March 10, 2009.

Case of Shukri Sahil

Internal Security officers arrested Shukri Sahil, whose case is described above in Section VII, in May 2004 for attempting to set up a human rights organization and detained him in Abu Salim prison. In January 2006 the Court of Appeals in Tripoli acquitted him. Sahil was released on February 28, 2006. After the public prosecutor appealed this decision, the Supreme Court ordered a retrial. The case was transferred to the State Security Court following its creation in August 2007. On June 6, 2008, the Prosecutor of the State Security Court issued a subpoena ordering Shukri Sahil to appear before the court on June 17. Sahil said he decided to leave Libya for Turkey on June 16, 2008 because he knew he would not get a fair trial before this court. On November 18, 2008 the State Security court sentenced him to death in absentia. Sahil told Human Rights Watch: "I was able to appoint a private lawyer who represented me in court, but after the death penalty sentence he stopped taking my calls. My family and friends were unable to obtain the decision from the court or from the lawyer."¹⁸⁶ Shukri Sahil is currently in Europe.

¹⁸⁵ Human Rights Watch interview with Jamal el Haji, Tripoli, April 29, 2009.

¹⁸⁶ Human Rights Watch phone interview with Shukri Sahil, June 25, 2009.

X. The Death Penalty

Despite assertions by some Libyan authorities that the nation is working toward elimination of the death penalty, death sentences continue to be handed out and executions continue to take place.

Chief Justice of the Supreme Court President Dr. Abdulrahman Abu Tuta told Human Rights Watch that around 35 to 40 people are sentenced to death in Libya every year but that only 5% to 7% of these sentences are carried out annually.¹⁸⁷ He said that:

Death sentences are never implemented until the Higher Judicial Council, which is chaired by the Secretary of Justice, has reviewed the decision by the lower court both substantively and procedurally. Even after the decision is ratified, the decision is not carried out except four years later because the Libyan penal code gives the families of the victim a right to issue a pardon in exchange for *diyya* (blood money). If a payment is agreed, the case is returned by the General Prosecutor to the court which first issued the ruling, and the sentence is replaced with life imprisonment. There are very few death sentences that are actually carried out because there are often pardons issued. It is through a process of social reconciliation that Libyan society works towards decreasing the death penalty.¹⁸⁸

Dr. Abdulrahman Abu Tuta said that around half of those sentenced to death were foreign nationals, either Egyptian migrant workers or irregular migrants from other African countries.

As it stands, the only chance for a prisoner to escape being sentenced to death is if an agreement over blood money is reached. Libyan law No. 6 provides for a right of *Qisas* (retribution) to the families of the victim, a concept adopted from Shari'a law which resonates strongly in Libyan society where tribal and familial ties remain strong. Therefore, the only way to get a death sentence commuted, other than through order of the Higher Judicial Council which only occurs in high profile cases, is to get the family of the victim to agree to give up their right to *Qisas* in exchange for blood money. This system allows commutation only when someone can pay, thereby excluding all those without financial

¹⁸⁷ Human Rights Watch interview with Dr. Abdulrahman Abu Tuta, Chief Justice of the Libyan Supreme Court, Tripoli, April 21.

¹⁸⁸ Human Rights Watch interview with Dr. Abdulrahman Abu Tuta, Chief Justice of the Libyan Supreme Court, Tripoli, April 21, 2009.

means. It has also proved to be unreliable since bureaucratic delays have at times led to premature executions while negotiations over a settlement were ongoing.

A large number of Egyptians are on death row in Libya. Their cases have been publicized because of attempts by the Egyptian foreign ministry to intervene on their behalf.¹⁸⁹ The Libyan authorities have carried out many executions, however, including another Egyptian national executed on November 10, 2008.¹⁹⁰ An Egyptian NGO, the Arab Centre for the Independence of the Judiciary and the Legal Profession has been working with Waatasemu, the organization run by Dr. Aisha al-Gaddafi, and has successfully arranged for *Diyya* (blood money) payments in a number of these cases.

The unreliable nature of this system is highlighted by the fact that there have been cases where the death sentence is carried out despite an agreement over blood money for reasons of bureaucratic delays. On July 29, 2009, Libyan authorities executed Egyptian national Fadl Ismail Heteita for murder after more than three years on death row. An agreement had been reached with the family of the victim to commute his death sentence in exchange for 30,000 Egyptian pounds (\$ 5,400) but the Libyan Prosecutor General did not recognize the document because it had not been authenticated by the Egyptian Foreign Ministry.

The discussion in Libya about banning the death penalty is alive but has progressed little since it began in 1988 with the enactment of the Great Green Charter for Human Rights. Article 8 of the charter says: "The goal of the Jamahiriyan society is to abolish capital punishment." On April 18, 2004, Mu'ammarr al-Gaddafi 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-Gaddafi repeated his call in a November 2004 speech to Libyan judges and law students that was broadcast on Libya's state television. Abolishing the death penalty should stem from societal progress, he said, and it "should not be the result of economic, political or security pressures like the ones piled on Turkey to win a European Union membership."¹⁹¹

¹⁸⁹ "Egyptian-Libyan Consular Delegation Meets to discuss the Issue of Egyptians on Death Row in Libya and the Situation of Egyptian Workers in Libya (Arabic)," *El Masry Al Youm*, December 11, 2008, <http://www.almasry-alyoum.com/article2.aspx?ArticleID=189931&IssueID=1251> (accessed Sept. 30, 2009).

¹⁹⁰ "Libya executes Egyptian prisoner... Those released thank the Egyptian Foreign Ministry for its intervention on their behalf (Arabic)," *El Masry Al Youm*, November 20, 2008, <http://www.almasry-alyoum.com/article2.aspx?ArticleID=187213> (accessed Sept. 30, 2009).

¹⁹¹ "Gaddafi Wants Death Penalty Scrapped," *Reuters*, November 2, 2004.

Despite these expressed positions, the Libyan penal code prescribes the death penalty for a broad range of crimes, including for actions which should be protected by the rights to freedom of association and expression. Article 3 of Law 71 criminalizes forming, joining or supporting any group activity opposing the ideology of the 1969 revolution that brought al-Gaddafi to power. 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. The UN Human Rights Committee noted with concern in its Concluding Comments to Libya's state report that "under current legislation the death penalty can be applied to offences which are vague and broadly defined and which cannot necessarily be characterized as the most serious crimes under article 6, paragraph 2, of the Covenant."¹⁹²

Proposed reforms to the Libyan penal code would narrow the application of the death penalty but would still retain it for a number of crimes such as the purchasing of unfit or hazardous weapons (Article 145), attacks on foreign heads of state (Article 172), murder (Article 273) and murder accompanied by highway robbery (Article 345). Human Rights Watch notes and welcomes the fact that there has been a reduction in the new draft of the crimes for which the death penalty can be imposed and that it has been replaced with life imprisonment in many cases. However it urges that the death penalty in any remaining provisions be replaced with imprisonment since this is a more humane and modern punishment and there is no evidence that the death penalty serves as a deterrent.

The current global trend is towards the abolition of the death penalty and is best reflected in the December 18, 2007 General Assembly resolution 62/149 calling for a worldwide moratorium on executions. The resolution was adopted by a majority of 104 member states in favor, 54 countries against and 29 abstentions. Human Rights Watch opposes the infliction of capital punishment in all circumstances because of its inherent cruelty and because it is most often carried out in a discriminatory manner.

¹⁹² UN Human Rights Committee (HRC), *Consideration of reports submitted by States parties under article 40 of the Covenant : International Covenant on Civil and Political Rights : concluding observations of the Human Rights Committee : Libyan Arab Jamahiriya*, 15 November 2007, CCPR/C/LBY/CO/4, <http://www.unhcr.org/refworld/docid/474aa9ea2.html> (accessed 30 September 2009), para. 13.

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Human Rights Watch's delegation to Libya in April 2009 was composed of Heba Morayef, researcher in the Middle East and North Africa Division, Sarah Leah Whitson, executive director of Human Rights Watch's Middle East and North Africa Division, and Bill Frelick, director of the Refugee Program at Human Rights Watch. Human Rights Watch thanks the Gaddafi Foundation for facilitating the trip and the Libyan authorities for the meetings they granted us and the visit to the Abu Salim prison.

Human Rights Watch also thanks the many individuals in Libya, the United Kingdom and other countries that helped strengthen this report's accuracy and depth. The organization especially thanks Libya Human Rights Solidarity for the assistance it has provided.

Annex : Letters to the Authorities

Letter to Libyan Secretary for Justice

Hi Excellency Mostafa Abdeljelil
Secretary of the General People's Committee
For Justice
Tripoli
Libyan Jamahireyya

June 25, 2009

Your Excellency,

I am writing to thank you once more for meeting with the Human Rights Watch delegation on April 26th. We greatly appreciated the opportunity to speak with you and your openness in responding to our questions, especially since we know that you were very busy on that day.

It is important for us to meet with Libyan officials and to understand the position of the General People's Committee for Justice on the various issues we raised. As we explained to you, Human Rights Watch's methodology includes speaking to officials, organizations and individuals about different issues so that we can obtain the most complete picture possible. We are currently in the process of drafting our report related to the mission and have some questions we would like to ask you. Some relate to issues we discussed while we met you, others to developments since that time. We would like to get a response from your office on these issues to enable us to fully reflect the views of the Libyan authorities in our report. For this reason we would appreciate receiving a response by July 5.

The issues and questions we would like to request further clarification on are the following: We understand from you and from other sources that there are a number of individuals who remain imprisoned in Abu Salim who have either served their sentences or have been acquitted by courts. We know that you explained that Abu Salim and Ain Zara prisons do not fall under the jurisdiction of the Ministry of Justice and would therefore like to know:

- What recourse do prisoners have to challenge their continued detention by Internal Security?

- What is the number of prisoners who have completed their sentences yet remain imprisoned in Abu Salim and Ain Zara?
- What is the number of prisoners who have been acquitted by courts yet remain imprisoned in Abu Salim and Ain Zara?
- What is the formal legal basis for their continued detention?

We are interested in learning more about the State Security Court and how it functions. We would be grateful to learn from you whether defendants before this court (1) may appeal the court's verdict and if so on what grounds and to which court; and (2) have the right to appoint lawyers of their own choosing.

- Could you provide us with the law that established the court and the code of penal procedure that applies to this court?
- Do defense lawyers have the right to access all elements in the files of defendants before the state security court?
- How many prisoners are currently imprisoned in Abu Salim or Ain Zara prisoners after convictions by the state security court?

We would also like to ensure that we fully understand the relationship between the People's Court and the State Security Court. Law Number 5 of 1988, which created the People's Court, is still on the website of the General People's Committee for Justice. Does this mean that the law is still in force? If so how, how does this relate to Law Number 7 of 1373, which abolished the People's Court and is also available on the same website?

- Are all cases that were previously brought before the People's Court now being referred to the State Security court?
- Were individuals serving sentences handed down by the People's Court given the possibility of a retrial after the abolition of the People's Court? If so which courts were competent to review the verdicts of the People's Court?

We discussed with you the process of informing the families of victims of the 1996 Abu Salim killings of the death of their relatives.

- Who is responsible for informing the family members? What information are they providing the families about the cause and the circumstances of death?
- Are the requests of the Committee of Families of Abu Salim victims being considered by the General People's Committee? And if so who is responsible for discussing and negotiating the Committee's demands with its members?
- What is the status of the investigation into the events that occurred at Abu Salim prison at the end of June 1996?

We understand that over the last couple of years a number of journalists have been brought before the Public Prosecutor or the Press Prosecutor.

- How many journalists have been prosecuted on charges of libel over the last two years?
- How many journalists have been convicted and what were the specific charges in those cases? How many journalists are currently imprisoned because of something they have written?
- Can the General Prosecutor or the Press Prosecutor initiate a case against a journalist without permission from the General People's Committee for Media?

One of the things we are very interested in is accountability: understanding what procedures exist for lodging complaints against police and internal or external security officers.

- Can the General People's Committee for Justice initiate an investigation into alleged violations committed by police officers or Internal Security officers? Or does this require approval from the General People's Committee for Security?
- How many police officers and how many security officers have been charged with torture, ill-treatment or arbitrary arrest and detention over the past 3 years ? How many of them have been convicted and what were their names, ranks and sentences?

We were very interested to hear of the attempt by Libyan citizens to set up two new non-governmental organizations, the Association for Truth and Justice and the Centre for Democracy.

- Is it true that Internal Security objected to the inclusion of twelve individuals as members in the Association and it was on that basis that the agency revoked the original authorization granted to the organization?
- We heard that one of the members of the Centre for Democracy was kidnapped in Tripoli on June 30, 2008 and beaten up. Was this incident investigated and has anyone been found responsible for this?
- How many new non-governmental organizations have been registered over the past 5 years?

Finally, we would also like to request a copy of the following legal texts:

- The draft refugee law
- The draft law on associations
- The law establishing the State Security Court and its statute and procedures.

We thank you very much for our meeting and hope to be able to return to Libya to discuss our reports with you in the near future.

* * *

Letter to Libyan Secretary for Public Security

His Excellency General Abdelfattah El-Abeidi
Secretary of the General People's Committee
For Public Security
Tripoli
Libyan Jamahireyya

June 25, 2009

Your Excellency,

I am writing to thank you for receiving us at your office on April 25, 2009. We greatly appreciated the opportunity to discuss with you issues of mutual concern.

I would also like to thank you for the meeting we had at the Public Relations Office the preceding week where we heard about the training in human rights and international law that your ministry provides to police and security officers and also about how your government addresses the issue of migration.

It is important for us to meet with Libyan officials and to understand the position of the General People's Committee for Public Security on the various issues we raised. As we explained to you, Human Rights Watch's methodology includes speaking to officials, organizations and individuals about various issues so that we can obtain the most complete picture possible.

We are currently in the process of drafting our report related to the mission and have some questions we would like to ask you for further clarification. Some relate to issues we discussed while we met you, others to developments since that time. We would like to get a response from your office on these issues to enable us to fully reflect the views of the Libyan authorities in our report. For this reason we would appreciate receiving a response by July 5.

The issues and questions we would like to request further clarification on are the following:

We understand that there are a number of individuals who remain imprisoned in Abu Salim who have either completed their sentences or have been acquitted by courts. We also understand that Abu Salim and Ain Zara prisons do not fall under the jurisdiction of the General People's Committee for Justice and would therefore like to know:

- What is the number of prisoners currently in Abu Salim prison?
- What is the number of prisoners who have served their sentences yet remain imprisoned in Abu Salim? What is the legal basis for their continued incarceration?
- What is the number of prisoners who have been acquitted by courts yet remain imprisoned in Abu Salim and Ain Zara? What is the legal basis for their continued incarceration?

We also discussed with you the issue of the killings at Abu Salim prison in 1996. We understand that Internal Security has informed a number of families of the death of their relatives. We have also heard that a number of families have refused the offer of compensation and insist upon their right to know the truth of what occurred.

- What is the number of prisoners who died in Abu Salim prison during the events that occurred at the end of June 1996? How many of their families have authorities formally notified of the death of a relative in those events?
- Why were family members of Abu Salim victims, Fouad Ben Omran, Hussein Al Madany, Farag al Sharrani and Fathi Terbil, arrested in Benghazi on March 26, 2009? What charges, if any, have been brought against them?
- Are authorities examining the demands of the families of Abu Salim victims who have refused the compensation and consulting with those families?

As you know, during our visit to Abu Salim prison on April 27, 2009 we briefly met with Ali al Fakheri, known as Ibn al Sheikh al Libi.

- When did authorities discover the death of Ibn al Sheikh al Libi?
- When did authorities initiate an investigation into his death and when did they conclude it?

We would like to request a copy or a summary of the findings of this investigation.

Regarding migrants and asylum seekers:

- How many boat migrants have been interdicted and returned to Libya since May 1st? What are their nationalities?
- Where have these boat migrants been detained? Is there a penalty in law for illegal entry or presence, and, if so, what is it? What is the legal basis for the detention of these migrants, and is there a limit to the time a migrant can be held in administrative detention? Have Libyan authorities granted or promised to the UN High Commissioner for Refugees access to all of the boat migrants who have been returned to Libya since May 1st?
- How many individuals have Libyan authorities deported by plane in 2006, 2007 and 2008? Please provide a breakdown of their nationalities.
- How many individuals have Libyan authorities deported via its land borders in 2006, 2007, and 2008? Please provide a breakdown of nationalities.

We would also like to know:

- Is Moroccan national Issam Morchid currently detained by External Security or any other security agency in Libya? If so, where is he being held and on what charges?
- Are Libyan women married to non-Libyan men prevented from handing down the Libyan nationality to their children? What is the domestic law that applies to this situation?
- Has the investigation into the alleged kidnapping of Daww Mansuri, which occurred on 30 June 2008 in Tripoli, been completed? If so, please provide us with the findings of that investigation.

One of the things we discussed when we met was the procedure for individuals to lodge complaints against police or security officers and what internal procedures within the General People's Committee may exist for this purpose before a case is transferred to the courts.

- What is the number of civilian complaints received by the General People's Committee for Security in 2008 and 2007?
- In 2006, 2007 and 2008, how many police officers have been tried, how many have been acquitted and how many convicted? Of those tried, how many of these cases were related to allegations of torture, ill-treatment, or other violations of human rights? Can the General Prosecutor initiate an investigation into abuses committed by internal security officers or does this require prior approval from your ministry?

Once again, we thank you very much for our meeting and hope to be able to return to Libya to discuss our reports with you in the near future.

Sincerely,

Sarah Leah Whitson
Director
Middle East and North Africa Division

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

www.hrw.org

H U M A N
R I G H T S
W A T C H

Truth and Justice Can't Wait

Human Rights Developments in Libya Amid Institutional Obstacles

Truth and Justice Can't Wait examines recent human rights developments in Libya, focusing on areas of limited progress, and the institutional barriers that attempts to improve human rights protection run up against. New newspapers have expanded the space for free expression, but penal code provisions continue to criminalize free speech; journalists face harassment and litigation for expressing critical views. There is virtually no freedom of association for Libyan citizens, including those wanting to establish their own human rights groups. The Justice Ministry has proposed revisions to the penal code, and has challenged many cases of arbitrary detention by the Internal Security Agency. But the Agency remains unaccountable, despite being responsible for systematic violations of Libyan rights, including the detention of political prisoners, enforced disappearances and deaths in custody. The government has finally begun moves to compensate families of the victims of the 1996 massacre of 1200 men at Abu Salim prison, but has failed to provide a public account of what happened, or to punish those responsible. The families of the victims have shown unprecedented activism and demonstrated publicly in Benghazi over the past year despite intimidation and occasional arrest.

The families of prisoners killed in the 1996 Abu Salim prison massacre hold up pictures of their disappeared relatives calling for truth and justice.

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