

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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Amnesty International welcomes the release of Hisham Ben Khayal

Amnesty International welcomes the release of Hisham Ben Khayal, a neurosurgeon who stood trial on criminal charges of medical negligence resulting in the death of an anti-al Gaddafi fighter during the conflict in Libya. While this is a positive first step, Amnesty International remains concerned at the prolonged detention of thousands of individuals arrested in relation to the 2011 armed conflict and held without trial, or access to a lawyer, in facilities under the control of militia or government authorities.

On 2 April 2013, a year after he was first detained, Hisham Ben Khayal was acquitted of all charges by the Tripoli Court of Appeals due to lack of evidence. He was released from Ain Zara Prison in Tripoli the same day.

Hisham Ben Khayal was abducted on 1 April 2012 from his workplace, the Mokhtar Clinic in Tripoli, by a militia who accused him of deliberately withholding medical treatment from their relative, Fathi Mohamed Abou Shanaf. The patient died on 26 May 2011 from a gunshot wound. Seemingly driven by revenge, the militiamen took Hisham Ben Khayal to their base in their hometown in Zawiya, 40 km west of Tripoli, where they held him incommunicado and beat him with whips and sticks for three days before handing him over to a detention facility.

Hisham Ben Khayal's trial lasted for six and a half months and was marred by numerous delays, protests and intimidation of members of the prosecution by the deceased patient's family. He consistently denied the charges and maintained in court that he was not the doctor in charge of the case, and that two operations had been performed in an attempt to save the patient's life.

Amnesty International welcomes the court's verdict as an important step towards the establishment of the rule of law in Libya. By acquitting Hisham Ben Khayal, the Libyan judiciary has demonstrated that it can serve justice and remain impartial at a time when heavily armed militias continue to seek revenge, abduct and arbitrarily detain hundreds of individuals. The judges in Hisham's case did not give in to pressure despite reports that they had faced intimidation by the relatives of the deceased patient.

The Libyan authorities must now take all necessary measures to uphold the court's decision and ensure Hisham Ben Khayal's safety by investigating his allegations of abuse at the hands of the "Martyr Fathi Mohamed Abou Shanaf" brigade and bringing the perpetrators to justice. Only two hours after the verdict, as Hisham and his family were still celebrating the news of his release, a member of the same militia which had abducted him in 2012 entered the Tripoli Court of Appeals, and allegedly threatened the judge who decided to release him and the prosecutor in his case. The man was escorted out of the court building by the police, but Hisham and his family fear that the militia will resort to violence as long as his abductors are not held accountable for their actions.

Under Libyan legislation, individuals whose rights have been violated may initiate a civil or criminal complaint. The right "to an effective remedy" is enshrined in Article 2 of the International Covenant on Civil and Political Rights (ICCPR) to which Libya is party. To uphold its obligations, Libya must investigate any case of human rights violation, and afford the means to victims to seek redress, including through the judicial system. Under Article 9 of the

ICCPR, Libya has also a duty to ensure the right of individuals to security, and protect them from abuse, threats to life and bodily integrity, including from private persons.

This incident highlights the threat that militias pose to Libya's judicial institutions and legal reform. On 31 March, militia members under the Supreme Security Committee, an umbrella of armed groups that refused to join the police or army following the conflict, attacked the Ministry of Justice in protest at the Ministry's plans to regain control of detention facilities currently run by militias. Although no injuries were reported, the militias directed threats at Salah al-Marghani, the Justice Minister.

Amnesty International welcomes the government's public statement following the attack in which the Prime Minister expressed the state's commitment to law, justice and security in Libya. If public confidence in state institutions is to be restored, the new Libyan authorities must also make it clear that human rights abuses will no longer be tolerated. Affording remedies to victims of torture and bringing their perpetrators to justice would be a very much needed second step in this process.

Background

Hisham Ben Khayal was brought to hospital for medical treatment on the fourth day of his detention in April 2012. This took place after he had complained to an interrogation officer at his semi-official detention facility that he had been arbitrarily arrested and tortured. Despite a medical report and his statement before an investigation officer, the Prosecution in Zawiya did not initiate an investigation until February 2013, when his family submitted a complaint. Despite this complaint, no legal action is known to have taken place against members of the militia responsible for Hisham Ben Khayal's alleged abduction and torture.

Amnesty International called in June 2012 for a review of the charges against Hisham Ben Khayal and an independent medical review into the cause of Fathi Mohammed Abou Shanaf's death.

Hisham Ben Khayal's case, which was initially treated as medical neglect, was moved in May 2012 to the Criminal Court in Zawiya after the presiding judge decided that the death of Fathi Mohamed Abou Shanaf should be considered murder under the Penal Code.

Amnesty International had expressed concerns last year that a trial in Zawiya, Fathi Abou Shanaf's hometown, could be used by his supporters and relatives as a way to exert pressure on the judiciary and undermine Hisham Ben Khayal's rights to a fair trial.

A month after the trial started on 2 September 2012, the Criminal Court in Zawiya decided that the case fell outside of its jurisdiction, and should be transferred to Tripoli in accordance with Article 190 of the Code of Criminal Procedure.