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## LIBYA

### Gross human rights violations amid secrecy and isolation



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INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 8DJ, UNITED KINGDOM

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### 1) INTRODUCTION

At the end of the 1980s Libya introduced quite significant legal reforms in the human rights field with the Leader of the Revolution, Colonel Mu'ammarr al-Qaddafi, taking the lead in denouncing the arbitrary practices of the past and calling for the respect of human rights in Libya. He ordered the release of many political prisoners and publicly stated that he was against the use of the death penalty<sup>1</sup>. The *Great Green Document on Human Rights in the Era of the Masses* (Great Green Document), approved in June 1988, consists of legislative guarantees protecting the individual's rights, outlaws torture and ill-treatment, and restricts the use of the death penalty. Libya also acceded to major international human rights treaties, including the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - (Convention against Torture) (May 1989) and became a State Party to the first Optional Protocol of the International Covenant on Civil and Political Rights (ICCPR) (also in May 1989). Libya had acceded to the ICCPR itself in 1970.

However over the last few years the human rights situation has seriously deteriorated with gross violations taking place systematically. These violations range from arbitrary arrest and torture to extrajudicial executions and "disappearances". Such abuses are taking place amid the diplomatic isolation of the country due to the UN sanctions and also the sporadic armed clashes between the security forces and underground armed Islamist groups. The UN sanctions against Libya were imposed in 1992 in response to the Libyan Government's refusal to hand over two Libyan nationals to UK or US authorities who wished to bring them to trial<sup>2</sup>. Since the beginning of

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<sup>1</sup>For more information on this see Amnesty International's June 1991 report entitled *Libya: Amnesty International's prisoner concerns in the light of recent legal reforms* (AI Index: MDE 19/02/91).

<sup>2</sup>The two men were accused of the 1988 bombing of a civilian airliner over Lockerbie (Scotland), killing 270 people. Libya wants the two men to be tried in a third country, whereas both the USA and the UK insist that the trial should take place either in Scotland or in the USA.

1995 there have been many reported armed clashes between the Libyan security forces and armed Islamist groups, including *al-Jama'a al-Islamiya al-Muqatila* (the Islamic Fighting Group). Most of these clashes have taken place in the eastern part of the country, including Benghazi and Derna, and have reportedly left dozens dead on both sides. Amnesty International has received no reports of civilians being targeted for killing by the armed Islamist groups.

There are no independent non-governmental organizations, or human rights groups or even an independent bar association in Libya. In 1989 the Government set up the "Arab Libyan Committee for Human Rights in the Age of the Masses"<sup>3</sup>. Amnesty International knows of no report on any human rights issues in Libya being published by this Committee. Libyan law prohibits the formation of any political parties and any criticism of the 1 September 1969 revolution, and the press is strictly controlled by the government. Any suspected government opponent is brutally punished. Recently the government introduced a new law which effectively forces people to inform on relatives, friends and members of the same tribe - or face collective punishment. In this climate of fear, few dare to talk about human rights violations.

It is against this backdrop that serious human rights violations are taking place with total impunity. Indeed they are sanctioned at the highest level, in flagrant violation of Libya's solemn obligations under international human rights treaties, including the ICCPR and the Convention against Torture. Arbitrary arrest of suspected government opponents continues to take place with those targeted for arrest not being given any explanation as to why they are wanted, nor are they shown any arrest warrant.

Hundreds of detainees are being held without charge or trial, some for at least 15 years. Some of them were charged, tried and acquitted by courts, but instead of being released they continue to be held, mostly in Abu Salim Prison in Tripoli. Others were simply never brought to trial or formally charged. The victims are from right across the political spectrum, from Islamists and Ba'athists to communists. However, most of those arrested and detained without charge or trial in the last few years appear to be suspected members of, or sympathizers with, Islamist groups.

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<sup>3</sup>The Chairman of the Committee is Mohammad 'Ali al-Jadi, President of the Supreme Court and former Minister of Justice.

Political detainees are routinely tortured physically and psychologically during interrogation and confessions extracted under torture are used against them. To date no investigation into torture has ever been reported and no one has ever been brought to trial, in clear violation of both Libyan law and Libya's obligations under the Convention against Torture.

Several detainees have died in custody in the last few years reportedly as a result of torture and ill-treatment and harsh prison conditions, including lack of medical care, poor hygiene and overcrowded cells. Most of them had been held for a number of years without charge or trial. Again no investigation into the circumstances surrounding their deaths is reported to have been carried out by the authorities.

A number of Libyans have "disappeared" inside but also outside the country in recent years. In Egypt three prominent members of the Libyan opposition "disappeared" from Cairo between 1990 and 1993. It is feared that they may have been handed over to the Libyan authorities by the Egyptian authorities. The Egyptian Government has denied responsibility for their "disappearances" but has never made public the results of its investigations. Inside Libya several people have "disappeared" and their fate or whereabouts have remained unknown.

Extrajudicial execution continues to be used against government opponents. A number of people have been reportedly killed both inside the country and abroad in circumstances which suggest that they may have been extrajudicially executed.

While a number of countries worldwide have moved towards abolishing or at least reducing the use of the death penalty, in accordance with Article 6 of the ICCPR, Libya has over the last few years increased its scope, in contradiction to pledges made by Colonel Mu'ammar al-Gaddafi to abolish it. Dozens of people have been executed in Libya in recent years, some for political reasons. Amnesty International knows of at least 38 officially announced executions carried out since 1992.

Families and tribes of suspected government opponents are being punished for the political activities of their relatives. This punishment takes many forms, including house destruction, taking

relatives as hostages until those sought by the security forces give themselves up, and other economic and political reprisals.

Scores of political prisoners are serving lengthy prison-terms after grossly unfair trials. Trials in Libya violate the most fundamental elements required for fair trial procedures, including the right to have a lawyer of one's own choice, the right to be presumed innocent until proven guilty and the right to be tried by an independent tribunal.

Libyan legislation provides for cruel judicial punishments, including flogging and the amputation of the hands. These punishments have reportedly not been implemented, but Amnesty International is concerned about recent calls from the Libyan Leader Colonel Mu'ammār al-Qaddafi for their implementation. The organization considers that the judicial punishments of amputation and flogging amount to torture or cruel, inhuman and degrading punishments.

Amnesty International has on many occasions written to the Libyan authorities urging them to end human rights violations by adopting the necessary legal and practical measures to ensure effective implementation of all the provisions contained in the ICCPR and the Convention against Torture, to which Libya acceded in 1970 and 1989, respectively. No response has been received from the Libyan Government in recent years and no practical steps have been introduced to stop human rights violations.

Amnesty International's human rights concerns in Libya are shared by the UN Human Rights Committee<sup>4</sup> which concluded in November 1994 that it was

“concerned at information it has received from United Nations and other reliable sources concerning summary or extrajudicial execution and torture perpetrated by the Libyan security forces. It deplores the introduction of cruel punishments such as flogging and amputation. The practice of arbitrary arrest and detention, the detention of persons sentenced after unfair trials and the length of pre-trial detention are also matters of serious concern. The Committee regrets the lack of information about

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<sup>4</sup>The body, made up of 18 international experts, that monitors the implementation of the ICCPR by states parties.

*certain identified people who are said to be held in incommunicado detention without trial for lengthy periods and of persons who oppose the government and are said to have disappeared”<sup>5</sup>.*

## 2) ARBITRARY ARREST AND DETENTION

### a) Arbitrary arrest

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<sup>5</sup>M/CCPR/C/52/COM/LIB/2. Para.9

Hundreds of suspected government opponents, particularly members or suspected members of, or sympathizers with, Islamist groups, continue to be subjected to arbitrary arrest and detention. Most of those arbitrarily arrested in recent years were held incommunicado during the first months of their detention during which they were reportedly tortured while being interrogated. They were not shown any arrest warrant from a judicial authority when they were arrested nor were they given any reason for their arrest. Although most ended up in Abu Salim Prison in Tripoli, it took their families weeks or even months to find out their whereabouts. These practices violate international standards as contained in the ICCPR<sup>6</sup>. Article 9(2) of the ICCPR states that "Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him". For example, *Al-Saghier al-Shafi'i*, a 35-year-old army officer, was arrested reportedly for political reasons from his parents' house in Zlitan, east of Tripoli, on 20 October 1994. He was reportedly celebrating the first week of his wedding when armed men wearing civilian clothes, believed to be from *al-Amn al-Dakhili* (the internal security), went to the house and took him away without presenting any arrest warrant or giving him a reason for his arrest. His family reportedly did not know his whereabouts until months later when they heard that he was being held in Abu Salim Prison. He is reportedly still held there without charge or trial.

Hundreds of traders and businessmen were arrested in the summer of 1996 and held without charge or trial. The official reason for their arrest was that they boosted their income by illegal means<sup>7</sup>.

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<sup>6</sup> The practice also contravenes Principle 13 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles) which states that "Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information and an explanation of his rights and how to avail himself of such rights".

<sup>7</sup>In June 1996 Colonel Mu'ammarr al-Qaddafi stated that army officers would be at the forefront in the war against corruption and smuggling. He stated that "corrupt people, smugglers, traders in the black market, this is the return of capitalism... At a time we are confronting the greatest colonial force... all those [corrupt] are with America, not with the revolution". He reportedly set

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However, some of them were reportedly arrested and detained on suspicion that they may have had links with underground Islamist groups fighting against the government.

Among those arrested were 'Abd al-Salam al-Turki, Mansur Ben Katou and Ziyad al-Muntasar (all from Tripoli), Mubarak al-Sussi, Mohammad Abu-Zeid al-Kawafi and 'Omran al-Ghawi (from Benghazi). They were said to have been suspected of having contacts with Islamist activists. In September 1996 Amnesty International wrote to the Libyan Government seeking information regarding the legal situation and the whereabouts of all those arrested in connection with the anti-corruption sweep, but has received no response so far. Amnesty International received reports that a large number of those arrested were subsequently released. However, several traders and businessmen continue to be held without charge or trial, reportedly because of their suspected contacts with Islamist activists. They include 'Abdallah Ibrahim al-Fathalli, a 50-year-old trader from Sabrata, and Salem Ben Younis also from Sabrata. They are reportedly held in Tajura Prison in Tripoli.

#### **b) Indefinite detention without trial**

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up 81 committees formed by army officers to start implementing the "Purification Law". The law was enacted in January 1994 to deal with corruption in the public and private sectors. According to Article 20 of the Law anyone found guilty of embezzlement would receive a punishment as laid down by the Law on Theft, i.e. the person could have his hand amputated. However, this law had reportedly not been implemented. Article 7 of the Law calls for the setting up of "Purification Committees". These committees are responsible for investigating any corruption allegations in the public and private sectors (Article 8). Colonel al-Gaddafi stated that "the military committees, the revolutionary committees, must intervene urgently to have a law implemented whenever it is not".

Hundreds of government opponents have been held without charge or trial, some for at least 15 years. For example, up to 100 people who were among hundreds arrested in the 1980s continue to be held without charge or trial<sup>8</sup>. They did not benefit from Colonel Mu‘ammar al-Gaddafi’s 1988 general amnesty<sup>9</sup>.

They include Rashid ‘Abd al-Hamid al-‘Urfia, a law graduate, who has been held without charge or trial since February 1982. He was reportedly arrested with 20 others on suspicion of having “founded an Islamist opposition group which aimed to overthrow the system of government”. The 20 were released in March 1988 following the general amnesty but Rashid al-‘Urfia continues to be held in Abu Salim Prison. In September 1995 the United Nations Working Group on Arbitrary Detention concluded that the “detention of Rashid el-Orfia [al-‘Urfia] is declared to be arbitrary being in contravention of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights...”<sup>10</sup>. The Working Group requested the Libyan Government to “take the necessary steps to remedy the situation” in order to bring it into conformity with the provisions of international standards, including the ICCPR. Despite the conclusion and request of the Working Group, Rashid al-‘Urfia continues to be held without charge or trial.

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<sup>8</sup>Most of them were arrested following the reported armed clash between members of an opposition group and the security forces in Bab al-‘Azizya in 1984. For more information on these arrests see Amnesty International’s June 1991 report on Libya cited in note 1 above.

<sup>9</sup>In March 1988 400 political prisoners, including prisoners of conscience, were released under the amnesty. Colonel Mu‘ammar al-Gaddafi stated at that time that people had been wrongly imprisoned and executed.

<sup>10</sup>E/CN.4/1996/40/add.1. page 105

'Omran 'Omar al-Turbi, a 46-year-old dentist married with two children, has been held without charge or trial since 28 May 1984, also on suspicion of belonging to an opposition group. He continues to be held in Abu Salim Prison.

Sa'ad Mohammad Salah al-Jazwi, a 37-year-old ground engineer from Benghazi, has been held without charge or trial in Abu Salim Prison since May 1984.

The continuing detention without charge or trial of the political prisoners mentioned above and scores of others clearly and flagrantly violates international fair trial standards. Article 9(4) of the ICCPR states that "Anyone deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful". Principle 11.1 of the Body of Principles stipulates that "A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority". Amnesty International calls on the Libyan Government to release all political prisoners who have been held without charge or trial if they are not to be charged promptly with any recognizably criminal offence and brought before courts capable of offering guarantees for fair trials in accordance with international standards.

Some detainees spent more than 10 years in prison without charge or trial before they were released. For example two people, Salem al-Dhib and Mohammad 'Ali al-Kabir, held in Abu Salim Prison without charge or trial since May 1984, were reportedly released in February 1997 on the occasion of 'Id al-Fitr. To date Amnesty International has received no reports of any compensation being given to anyone whose right not to be arbitrarily detained was seriously violated.

### c) Continuing detention following acquittal by courts

Several people continue to be held even though they were charged, tried and acquitted by the courts. Among those held are Youssef Hassan al-Ahaywal, Najm al-Din Mohammad al-Naquzi and Ahmad 'Abd al-Qadir al-Thulthi were arrested in 1986 and were charged with, among other things, membership of an illegal political organization, sabotage and possession of weapons. At the beginning of 1987 they were brought to trial before a Revolutionary Court in Tripoli. They were said to have been acquitted by the court due to lack of evidence but are still being held in Abu Salim Prison. The three had studied in the UK in the late seventies and early eighties before returning to Libya in the mid-1980s.

'Abdallah Menina, aged 43 and married with children, was said to have been arrested in May 1984, in the wake of the Bab al-'Azizya clash, along with three others. They were reportedly held until June 1985 when they were brought to trial on charges believed to be connected with the clash. In November all four were said to have been acquitted, but continued to be held illegally. In March 1988 the other three persons tried in the case were released but 'Abdallah Menina continued to be held in Abu Salim Prison. Amnesty International has received unconfirmed reports that he was released at the beginning of 1997. The organization had repeatedly called on the Libyan authorities to release him immediately and unconditionally if he was not charged with a recognizably criminal offence, but has received no reply and no official confirmation of his release.

### d) Imprisonment following forcible return

Several suspected opponents of the Libyan Government, especially members of or sympathizers with, Islamist groups, have in recent years been forcibly returned to Libya by countries such as Egypt, Tunisia and Sudan. They were arrested upon arrival in Libya and most of them are still held without charge or trial. For instance on 29 September 1992 Egypt forcibly returned at least 18 Libyans to Libya. Most of them had been in Pakistan and went to Egypt to visit

members of their families who travelled from Libya. At least seven of those returned to Libya had been arrested in Alexandria and held for one week. They were interrogated in connection with their stay in Pakistan<sup>11</sup> and then they were driven to the border and handed to the Libyan security authorities. In Libya they were initially held in a detention centre in the town of Amsa'ad near the Egyptian border before they were transferred to Tubruq and held in a house converted into a secret detention centre. There they were reportedly tortured during interrogation. Two of the detainees managed to escape. The remaining five, Zuhayr al-'Omrani, 'Imad Bou-Hgeig, 'Adel al-Dhabba'i, Fathi Mu'ammam and the fifth person known only as 'Abd al-Hamid, were later transferred to Abu Salim Prison in Tripoli. Among other Libyans handed over by the Egyptian authorities to Libya in September 1992 and who are still held in Abu Salim Prison without charge or trial are Meftah al-Dawwadi, a 35-year-old former medical student from Sabrata, Nouri Mukhtar Nasrat, a 32-year-old former army officer, Hassan al-Mabrouk al-Dabbashi, and Mohamad 'Ashour al-Warfalli, aged 29 from Tripoli.

At the beginning of 1997 Sudan was said to have forcibly returned several Libyans to Libya. They include 'Abdallah Mohammad Abu-Zqiya, Hassan al-Qaddafi al-Qammami, Mraji' al-'Aqquri, Mohammad al-Masrati, 'Abd al-Rahman al-Makkawi and Mansour 'Abd al-Karim al-Bur'asi. A few of them had allegedly escaped in November 1995 from Abu-Salim Prison where they had been held without charge or trial. They were reportedly arrested immediately after they entered Sudan and were held in a prison in Khartoum for many months before they were allegedly handed over to the Libyan Government. Sudan and Libya have signed a treaty whereby no opposition group from one country is allowed to operate in the other. The treaty also allows both countries to extradite people wanted by the authorities in either country.

Amnesty International opposes the forcible return of people to countries where they face serious human rights violations, including torture, in violation of the fundamental principle of non-refoulement

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<sup>11</sup>Hundreds of members of Islamist groups from the Middle East went voluntarily to Afghanistan in the 1980s and fought alongside Afghan armed Islamist groups against the Afghan Government forces and Soviet soldiers. When the Afghan war ended some Arab Islamists went back to their countries and have reportedly been involved in armed activities against their governments. Others have remained in Afghanistan or sought asylum in other countries.

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set out in Article 33(1) of the 1951 Geneva Convention relating to the Status of Refugees as well as in Article 3 of the Convention against Torture.

### **3) TORTURE AND ILL-TREATMENT**

#### **a) Legislative guarantees**

Libyan legislation prohibits the use of torture against detainees. For example, Article 435 of the Penal Code stipulates that any public servant found guilty of inflicting, or ordering the use of, torture against detainees will be sentenced to between three and 10 years' imprisonment. Law No 20 of 1991 (on the "Consolidation of Freedom") states that "... It is forbidden to subject the accused to any form of physical or psychological torture, treat him in a cruel or humiliating way, or [in a way that] undermines human dignity" (Article 17). Despite these guarantees torture is endemic in Libyan detention centres and prisons. In November 1994 the UN Committee against Torture expressed concern that in Libya "incommunicado detention continues to create conditions which may lead to violations of the Convention". It recommended that the "Libyan authorities guarantee the free access of a person deprived of his liberty to a lawyer, to a doctor of his choice and to his relatives at all stages". These recommendations, however, have been ignored by the Libyan authorities. The Committee also urged the Libyan Government to fight against the use of torture by "ensuring that those who committed the offence of torture are prosecuted in accordance with the law". Amnesty International is not aware of any cases where those responsible for inflicting torture have been prosecuted or of any independent investigation being carried out.

#### **b) Methods of torture and ill-treatment**

Torture is applied against detainees during interrogation to extract confessions which in turn are used to incriminate them. Methods include beatings (including *falaqa* - beating on the soles of the feet), hanging by the wrists from a ceiling or high windows or being suspended from a pole inserted between the knees and elbows, electric shocks, burning with cigarettes and being threatened and exposed to aggressive dogs which result in bite wounds. Psychological torture and ill-treatment include death threats and threats of abuse against the prisoner and his family, particularly female relatives. Another form of

such psychological abuse is to broadcast repeatedly, loudly and late into the night, taped political discourses in Abu Salim Prison where long-term political prisoners and detainees are held. This practice is believed to be used to deprive detainees of sleep. Another method consistently reported by former detainees is a form of position abuse commonly known in Libya as the "car torture", i.e. the detainee is left in an extremely small room that resembles a box and is forced to sit on an uncomfortable chair for weeks, with hands tied behind the back. Torture takes place in detention centres and in prisons. For example Abu Salim Prison is said to have underground rooms (underneath the prison administration building), which are used for interrogation and torture.

Twenty four students were reportedly tortured before being summarily tried and sentenced to various prison terms in December 1995. They were among scores of students from a secondary school in Bani Walid, south-east of Tripoli arrested following demonstrations in September 1995. The demonstrations were reportedly sparked by the local population being forced to attend a meeting in Bani Walid with members of the Revolutionary Committees and to sign a petition calling for the execution of several men arrested in connection with the armed rebellion of October 1993 (see section 9). The demonstrators allegedly set fire to some buildings and threw stones at members of the security forces. A large number of students were arrested and interrogated under torture, methods of which included being beaten with fists, electric shocks on different parts of the body, falaqa and being threatened with dogs. Some were released but 24 were summarily tried, in secret and without access to lawyers, in mid-December 1995. Among those sentenced were, 'Adel Mohammad al-Khazni, Salih Sulayman Haddoud, Faraj Sulayman al-Du'ayki, Sulayman Abu-Setta, 'Abdallah al-Mahdi Abu-Setta, Salah al-Din 'Iyad al-Shibani, Mohammad Hassan al-Barrani, Mohammad al-Mahtout al-Si'ani. The first five students were sentenced to eight years' imprisonment, the following two to nine years and the last one to five years. Charges against them allegedly included offending the Leader of the Revolution, committing acts against the 1 September 1969 Revolution and committing acts of sabotage. The 24 students are currently believed to be held incommunicado in al-Jdayda Prison, in an area called al-Farnaj just outside Tripoli.

### **c) Corporal punishments**

On 3 April 1993 Colonel Mu'ammār al-Gaddafi called for stricter implementation of the Shari'a Law (Islamic law), including cutting off the hands of thieves and public flogging of adulterers. He added that "thieves who stole from public rather than private funds, or who stole only small amounts, were getting away without punishment... I want a law to be introduced, or the original law to be amended, so that the hands of the thief, both male and female, be cut off regardless of the amount they have stolen... Also the man or the woman who commits adultery should be given 100 strokes of the whip and the whipping must be witnessed by a group of believers or on television..."<sup>12</sup>. He urged the Basic People's Congress, which was about to meet, to include the issue of implementing Shari'a law on its agenda. He made the same remarks again in November 1993. However, Libyan legislation already provided for corporal punishments, for example Law No 148 of 1972 (on Theft) makes theft punishable by cutting off of the right hand (Article 2) when certain conditions are met<sup>13</sup>. Law No. 52 of 1974 (on Fornication) stipulates that a person found guilty of fornication is punished with being given 80 lashes (Article 4). Law No. 70 of 1973 (on Adultery) makes an adulterer, a man or woman, liable to be given 100 strokes of the whip. The adulterer could also be punished by both flogging and imprisonment (Article 2). Until 1994 the consumption of alcohol was punishable by 40 lashes (Law 89 (Article 5) of 1974)<sup>14</sup>.

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<sup>12</sup>Reuter, the Associated Press, 3 April 1993.

<sup>13</sup>If the person is sane in mind, aged at least 18, and he or she stole the money or the object with the intention of keeping it, and the money or the object stolen belongs to someone else and that its value is at least 300 Libyan dinars at the time of the theft.

<sup>14</sup>This law was replaced in February 1994 by Law 4 (of 1994) which makes drinking alcohol punishable by a fine of not less than 1,000 Libyan dinars and not more than 3,000 dinars (Article 4). However, anyone who "distills alcoholic drinks or trades" may be punished by imprisonment and a fine of not less than 1,000 dinars and not more than 4,000 dinars (Article 3). One Libyan dinar is equivalent to 3 \$ US at the 1997 official rate.

To date Amnesty International has received no reports of these punishments being carried out either before or after Colonel Mu‘ammar al-Gaddafi’s statements. The organization considers that the judicial punishments of amputation and flogging amount to torture or cruel, inhuman and degrading treatment. As such, their implementation would violate Libya’s solemn obligations under the Convention against Torture and the ICCPR. Furthermore, in 1997 the UN Commission on Human Rights adopted a resolution<sup>15</sup> on torture and other cruel, inhuman or degrading treatment or punishment which reminds governments that corporal punishment can amount to cruel, inhuman or degrading punishment or even to torture. The UN Special Rapporteur on torture in his 1997 report stated that “corporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment enshrined inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights... and the Convention against Torture...”<sup>16</sup>.

#### 4) DEATHS IN CUSTODY

Several political detainees have died in custody over the last few years. Their deaths have reportedly been the result of torture and ill-treatment and harsh prison conditions, including lack of adequate medical care, overcrowded prison cells, poor diet and poor hygiene. Following arrest, detainees are routinely tortured during interrogation (see section 3). This often leaves lasting injuries for which detainees do not receive adequate medical treatment.

Among those who reportedly died in recent years were **Mohammad al-Fourtiya**, who was in his early seventies and who died at the end of 1994 or early 1995 in Abu Salim Prison. He was said to have been suffering from high blood pressure and diabetes and had reportedly not been receiving adequate medical care in the prison. He had been held without charge or trial since 1989. Two of his sons, Belqassem and Isma’il, were arrested with him and held in Abu Salim Prison. Isma’il was reportedly released in early 1995 but Belqassem is believed to be still held without charge or trial.

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<sup>15</sup>UN Commission on Human Rights 1997/38.

<sup>16</sup>E/CN.4/1997/7 page5, para.6.

**Al-Haddar Ben-Hayla**, in his mid-thirties and a former employee at the Libyan Airlines, was said to have died in 1994 reportedly because of lack of adequate medical care. He had been detained without charge or trial since 1989 and was said to have been suffering from paralysis in prison.

**Nouri Shalfit** allegedly died in prison in 1993 or 1994, but Amnesty International has no detail as to the causes of his death. He had been held without charge or trial since 1989. He was said to have been tortured repeatedly during the first months of his detention in Abu Salim Prison and was frequently denied food.

**Tawfiq 'Awadh Jaber al-Hariri**, aged about 50, was said to have died in prison in 1994. He had reportedly been suffering from heart problems. Following a grossly unfair trial he was sentenced to life imprisonment by a court in Benghazi in 1991 and had been imprisoned in al-Kuwayfiya Prison in Benghazi. Others include **Jamal al-'Arbi**, an 18-year-old secondary school student who was arrested in Tripoli in 1989 and who reportedly died in custody in 1992, and **Ahmad al-'Amari**, aged around 60 from Tripoli who was said to have died in 1993. The deaths of these three detainees may have been caused or precipitated by medical neglect.

**Gasmalla Osman Hamad Sharah**, a 33-year-old Sudanese national, reportedly died in custody in the summer of 1996 as a result of medical neglect. He was said to be suffering from ill-health and was under treatment in Tripoli Central Hospital when he was arrested by the security forces and taken to al-'Ataba Prison in Tripoli. He was then taken to al-Kufra Camp near the Sudan border where he died apparently because of lack of medical care in the camp. Hundreds of Sudanese and other African workers in Libya were arrested and ill-treated by Libyan security forces in June and July 1996. The workers were believed to have been rounded up from their work-places or their homes and put in two different detention centres, al-'Ataba Prison and al-Kufra camp.

The United Nations Standard Minimum Rules for the Treatment of Prisoners provide that prisons should have available a qualified medical officer with some knowledge of psychiatry and should "include a psychiatric service for the diagnosis and ... the treatment of states of mental abnormality" [22(1)] and that "sick prisoners who require specialist treatment shall be transferred to specialised institutions or

to civil hospitals" [22(2)]. Rule 25 (1) specifies that the medical officer should "daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed". Rule 91 permits an untried prisoner "to be visited and treated by his own doctor or dentist". The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that "A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge" (Principle 24).

## 5) "DISAPPEARANCES"

An increasing number of people, including prominent members of opposition groups, have "disappeared" in Libya in recent years. In three well known cases the victims "disappeared" in Egypt. "Disappearances" are clear violations of fundamental rights proclaimed in international human rights instruments. Article 3 of the Universal Declaration of Human Rights states that "Everyone has the right to life, liberty and security of person". These rights are violated when a "disappearance" takes place.

### a) Inside Libya

Amnesty International is aware of at least five people, Libyans and foreign nationals, who have "disappeared" in recent years and whose fate remains unknown. For example, **Kadhim Mutasher Malih**, a 38-year-old Iraqi national, "disappeared" in Libya in October 1993. He is believed to be a chronic asthmatic and requires an inhaler and injections. Before his "disappearance" he was a teacher in electrical

engineering at the Institute of Occupational Training and Mechanics in Obari, Libya. He was said to have been arrested at his workplace in Obari in around mid-October 1993.

**Ayman Salim Mohammad Dababish**, a 30-year-old Palestinian married with two children, was arrested on 18 September 1996 in Tubruq and his whereabouts have since remained unknown. He was trained as an agricultural engineer but was working in his father's garage in Tubruq at the time of arrest. He was reportedly suspected of having connections with a Libyan Islamist group after having given a lift in a vehicle to someone suspected of being a member of this group. Following his arrest, his family, including his parents, were forced to leave their house in Tubruq and were taken to the camp near Salloum<sup>17</sup> by the security forces. The family have had no news of Ayman Salim Mohammad Dababish since his arrest.

Amnesty International has received reports that several relatives of those who were arrested in connection with the October 1993 armed rebellion and who were executed in January 1997 (see section 9(a)), have "disappeared". For example, **Al-Mahdi 'Issa 'Aliwan**

<sup>17</sup>In September and October 1995 thousands of Palestinians, and Egyptian and Sudanese nationals working in Libya were forcibly expelled from Libya, allegedly because they were illegal immigrants. However, the expulsion of Palestinian workers, which included people working legally, was reportedly in protest at the peace agreement between the Palestinian Authority and the Israeli Government. Most of the Palestinians travelled to other countries, but at the end of 1996 at least 250 of them remained stranded in a refugee camp near Salloum in no-man's land between the Libyan and Egyptian border. In early 1997 the Libyan authorities stated that those stranded at the border could go back to Libya. However, the Palestinians reportedly stated that they would go back only if they were given firm guarantees that they could go back to their jobs and their homes. On 18 April 1997, at dawn, Libyan soldiers reportedly evacuated the Palestinians against their will and dismantled the camp. The Palestinians were taken by buses and have allegedly been put in another camp near Tubruq.

**Benweir**, a 40-year-old major in the armed forces, “disappeared”, reportedly following arrest in September 1995. He is the cousin of Major Ramadhan al-‘Ayhuri who was executed in January 1997. He is originally from Bani Walid but reportedly was not involved in any way with the October 1993 rebellion. His fate remains unknown.

**Salem ‘Ali al-Hadi**, a university student in Benghazi and nephew of Major Ramadhan al-‘Ayhuri, has been missing since November 1993. He may have been arrested because of the reported involvement of his uncle in the October 1993 armed rebellion (see section 9(a)).

Recently Amnesty International received information that **‘Abdallah Mohammad Mas‘ud al-Zubaidi**, an alleged member of the banned Islamic Liberation Party, has been missing since his reported arrest in 1982. He was born in 1952 and married with three daughters. Before his “disappearance” he was working as an engineer in Libya.

**b) “Disappearances” following arrest outside Libya**

Three prominent members of the Libyan opposition in exile “disappeared” between 1990 and 1993, all from Cairo and their fate or whereabouts remain unknown. **Jaballah Hamed Matar** and **‘Izzat Youssef al-Maqrif**, two well-known members of the opposition National Front for the Salvation of Libya (NFSL), “disappeared” in Cairo in March 1990 and their whereabouts since that time have remained unknown, although unconfirmed reports have suggested that they were both handed over to the Libyan authorities immediately following their reported arrests.

According to reports received by Amnesty International, the two were interrogated for several hours at the headquarters of the State Security Investigation Department (SSI) in Lazoghly Square in Cairo by SSI officers on 4 and 5 March 1990 and their passports were confiscated. On both occasions, they were told that the questioning

was a "routine procedure" and were allowed to return to their homes at the end of each day. Then, a week later, they were taken from their homes, reportedly by SSI officers. Since then, attempts by their families and leaders of the NFSL to ascertain their whereabouts have yielded no information.

Jaballah Hamed Matar, born in Ajdabiya in 1936 and married with children, was a major in the Libyan army when the 1969 military coup took place. He was arrested for a brief period and released in 1970. He was then appointed Counsellor at the Ministry of Foreign Affairs. In that capacity, he served at the Libyan Mission to the United Nations in New York. He resigned his post in 1972 and worked in Libya as a merchant and building contractor. In 1980 he left Libya for Egypt where he lived with his family until his "disappearance". He was a member of the Executive Committee of the NFSL. 'Izzat Youssef al-Magrif, born in Benghazi 1952 and married with children, was an officer in the Libyan army until 1973 when he was accused of taking part in an attempt to overthrow the government. He was then arrested, detained for a year and released uncharged. He then worked as a contractor and merchant. He had been living in Egypt since 1984, and was a member of the National Council of the NFSL.

Following their "disappearances", Amnesty International wrote to the Egyptian Minister of the Interior seeking clarification as to the fate and whereabouts of Jaballah Hamed Matar and 'Izzat Youssef al-Magrif, but to date has received no response from the Egyptian Government. On 7 April 1994 the Egyptian Government replied to an inquiry about the two people from the United Nations Working Group on Enforced or Involuntary Disappearances (WGEID), stating that the Egyptian Government had no information on the two people because they had not been accused in connection with any offences committed in Egypt. The

reply also stated that passports were not required for travel between Egypt and Libya and that it was therefore difficult to verify whether the two people were in the country. This response does not allay Amnesty International's concerns that the two people had indeed "disappeared" immediately after their reported arrest in Egypt and subsequent interrogation by SSI officers and that they may have been handed over to the Libyan authorities. The response assumes that the two may have gone voluntarily to Libya but this is unlikely because the two people reportedly had in the past received threats from agents of the Libyan Government and many Libyan exiles had been targeted for assassination throughout the 1980s.

In response to a further enquiry from the WGEID on the two "disappeared" the Egyptian Government stated on 25 October 1996 that the Government had no further information on the two people but adding that "according to the Egyptian law, it is only after a period of four years starting from the date of disappearance, that a death certificate concerning the subject [s] could be issued by the court if requested".

Mansur Kikhiya, a prominent Libyan diplomat and human rights activist and the Secretary General of the National Libyan Alliance, an opposition group based abroad, went missing in December 1993 from a hotel in Cairo. Reports suggest that he may have been abducted by Libyan Government agents and taken back to Libya. Before his "disappearance", Mansur Kikhiya was in Cairo attending the general conference of the Arab Organization for Human Rights. He was last seen on the evening of 10 December 1993 at the *al-Safir* Hotel, in Cairo.

Born in Benghazi in 1931, Mansur Kikhiya served as Libya's Foreign Minister between 1972 and 1974. In 1975, he was appointed Libya's Permanent Representative to the United Nations in New York, a post he held until September 1980 when he resigned in protest against the execution of political opponents by the Libyan Government that year. He is married with two children and is an insulin-dependant diabetic.

Immediately after his "disappearance", the Egyptian authorities stated that they had launched an investigation, and in July 1995 and November 1996, Amnesty International delegates visiting Egypt were told by the head of the Human Rights Unit within the Public Prosecutor's Office that the investigation into the "disappearance" of Mansur Kikhiya had been completed, and that Egypt had nothing to do with his "disappearance". The findings, as well the methods of such an investigation have never been made public. On 13 August 1996 the Egyptian authorities replied to an enquiry about Mansur Kikhiya from the WGEID saying that they had made every effort to shed light on his "disappearance" but had been unable to solve the mystery surrounding his fate.

The Arab Organization for Human Rights (AOHR), of which Mansur Kikhiya was a board member, commenting on the Egyptian Government's reply to the WGEID, said in a public statement that the last person to have seen Mansur Kikhiya before his "disappearance" was Youssef Salih Najm, a Libyan businessman, who travelled back to Libya on 12 December 1993. He visited Cairo again between 24 January and 4 February 1994 but was never questioned in connection with Mansur Kikhiya's "disappearance". The AOHR added that "Investigations have shown that the Department of Public Prosecutions [Public Prosecutor's Office] began to question witnesses to the incident on 1 January 1994. On 13 January 1994, the Department... requested the State security authorities [SSI] to summon... Mustafa Youssef Salih Najm.... The State security authorities

have not yet brought Youssef Najm before the Department of Public Prosecutions for questioning...". This was in spite of the fact that Mansur Kikhiya's lawyers submitted in April 1994 newspaper reports in which Youssef Salih Najm confirmed in interviews that he had been indeed in Cairo between 21 January and 4 February 1994. The AOHR concluded that "This seems to indicate that the Egyptian security authorities do not wish the truth to be revealed concerning the disappearance of Mansur Kikhiya and, therefore, prevented the last person to meet him from appearing before the Department of Public Prosecutions even though Mansur Kikhiya's defence counsel [lawyers] had insisted on the said person's appearance".

Amnesty International has repeatedly drawn the Libyan Government's attention to the fact that "disappearances" are not only acts of extreme cruelty; they also violate international standards on human rights. The UN Declaration on the Protection of All Persons from Enforced Disappearance<sup>18</sup> states that "No state shall practice, permit or tolerate enforced disappearances." Article 2(1). Article 13 of the Declaration calls for investigations to be carried out "as long as the fate of the victim of enforced disappearance remains unclarified".

## **6) POSSIBLE EXTRAJUDICIAL EXECUTIONS**

Dozens of Libyan dissidents inside and outside the country have been killed in circumstances suggesting that they were extrajudicially executed by members of the security forces or by agents working on behalf of the Libyan Government. In his speech to the General People's Congress<sup>19</sup> at Sirte on 5 June 1996 Colonel Mu'ammār al-Gaddafi warned those who might ignore decisions taken by the Congress. He stated that the People's Congress had coordinators everywhere in the country. He emphasized that a coordinator is "the one who would lead you to battle, because he is your leader in your region and would execute anyone who refused.... he is in charge of everything and nobody can say no to him. Anyone who said no would be seen as collaborating with the enemy. He [coordinator] has the right to shoot

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<sup>18</sup>Adopted by General Assembly resolution 47/133 of 18 December 1992.

<sup>19</sup>The General People's Congress is Libya's main policy-making body (the equivalent of a parliament). It is formed by representatives of the Basic People's Congresses. The Basic People's Congresses meet twice a year to prepare the annual meeting of the General People's Congress and to further discuss its resolutions.

him dead, often without trial or with a summary trial lasting no more than a few minutes...”.

#### **a) Inside the country**

Since the summer of 1995 when members of armed Islamist groups started clashing with the Libyan security forces, especially in north-eastern Libya, dozens of people from both sides have been killed. Some suspected Islamists were killed in circumstances suggesting that they may have been extrajudicially executed. For example, at least 24 escaped prisoners were reportedly killed by the security forces in northeastern Libya at the end of March 1996. It was alleged that some of the prisoners were armed. Those killed were reportedly among 400 prisoners who managed to escape from al-Kuwayfiya Prison, just outside Benghazi, on 21 March 1996 and fled to the mountainous region of Derna. The Libyan official news agency JANA stated that those killed by the Libyan security forces in Derna were members of a gang which smuggled heroin and other drugs to Libya from Israel. Amnesty International is not aware of any investigation being carried out into the circumstances surrounding the killings.

‘Adel Ghayth al-Warfalli, was reportedly extrajudicially executed on 15 July 1995 in an area called al-Rajma, south of Benghazi. He was reportedly an Islamist activist and sought by the security forces. He was in hiding and after some time he decided to go back to Benghazi, reportedly by taxi. When he saw that the security forces were organizing a road-block and that there was heavy traffic he opened the door and started walking back. Security officers saw him and ran after him. When he refused to stop they reportedly shot him dead.

Abu Bakr al-Fakhri, a 33-year-old engineer from Samannu near Sabha, was reportedly extrajudicially executed in the summer of 1996. He was reportedly driving his car and was stopped by army soldiers at a roadblock outside Sabha. He was said to have been shot at by a soldier after expressing his anger at the way he was questioned. He had allegedly been asked questions regarding Islamist activists. He was taken to a hospital in Sabha but died immediately upon arrival and his family were contacted and asked to go to the hospital and collect his body.

At the beginning of July 1996 dozens of political detainees in Abu Salim prison were killed in circumstances suggesting that they may have been extrajudicially executed. The incident started when Islamist detainees held in one wing of the prison organized a revolt reportedly in protest about the lack of medical care in the prison, inadequate hygiene, overcrowded cells and poor diet. The leaders of the mutineers were said to have managed to take two guards hostage after having taken their weapons, and refused to release them until their demand for an improvement in the prison conditions was met. Other guards outside the wing shot at the detainees, allegedly killing five detainees. They asked the detainees to hand over the weapons but when the latter refused they shot again at the detainees. Amnesty International has received reports that between 30 and 40 detainees were killed in this second attack. The government reportedly sent an official to negotiate with the mutineers during the second day. Scores of injured detainees were taken to a nearby hospital. The Government kept a news blackout about the incident.

All visits to Abu Salim Prison have been banned since the mutiny, and families of those killed have reportedly not been informed. The banning of visits contravenes international standards. Principle 15 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that "communication of the detainee or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days". Rule 37 of the Standard minimum rules for the treatment of prisoners stipulates that "Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits". Rule 44 para.1 states that "Upon the death or serious illness of, or serious injury to a prisoner, or his removal to an institution for the treatment of mental affections, the director shall at once inform the spouse, if the prisoner is married, or the nearest relative and shall in any event inform any other person previously designated by the prisoner".

In July 1996 Amnesty International called on the Libyan Government to ensure that a prompt, thorough and impartial investigation be set up to establish the circumstances in which dozens of detainees were killed in the prison and that the findings of the investigation and the names of those killed should be made public. To

date no response has been received from the Libyan authorities. The Libyan Government should ensure that its security forces abide by international standards relating to the use of lethal force. Article 2 of the UN Code of Conduct for Law Enforcement Officials <sup>20</sup>states "In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons". Article 3(c) stipulates that "...firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender...."

Amnesty International has received a copy of an official communication between two senior security officers in Libya which if authentic, further confirms that extrajudicial executions of government opponents are being carried out under direct orders from the authorities. The letter was sent on 25 May 1996 by the Director of the Sidi-Hussein Popular Security Centre (Benghazi) to the Director of Security of Benghazi region. It stated that "...at dawn on 25 May 1996 ... a "stray dog" called *al-Mislati* was eliminated by the security forces and ... another person called '*Abd 'Abd al-Salam al-Gharyani* was arrested outside a school building and then eliminated. The security and revolutionary forces that eliminated him then paraded his body through the streets until 1.30 pm and then returned the body to the same place [where the extrajudicial execution took place]. A third "stray dog" [known by his family name] *al-Karami* was also eliminated...".

## *b) Outside the country*

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<sup>20</sup>Adopted by the United Nations General Assembly on 17 December 1979 (resolution 34/169).

Dozens of Libyan dissidents were extrajudicially executed outside Libya during the 1980s, reportedly by agents working on behalf of the Libyan Government<sup>21</sup>. The policy of eliminating “stray dogs”, or opposition activists, was sanctioned at the highest level. In some cases Libyan officials made no secret of the fact that the assassinations were ordered from Libya and publicly welcomed them. In the 1990s far fewer cases of possible extrajudicial executions have been reported. Two people have been killed outside the country in the last two years in circumstances suggesting that they might have been killed under government orders. ‘Ali Mohammad Abu-Zeid, a 55-year-old dissident, was stabbed to death in his grocery shop in west London on 26 November 1995. Investigation of the circumstances surrounding his murder is still being conducted by the UK police. ‘Ali Mohammad Abu-Zeid was arrested in 1973 for political reasons and spent about two years in prison in Libya. He left Libya in 1977 and went into exile in Britain. In 1981 he was one of the founder members of the National Front for the Salvation of Libya. ‘Amer Hisham ‘Ali Mohammad, aged 23, was found dead in Sliema, just outside Valletta in Malta on 21 August 1996. He was reportedly stabbed to death and unconfirmed reports have suggested that individuals acting on behalf of the Libyan Government were responsible for his death. Amnesty International wrote to the Maltese authorities urging that a prompt, thorough and impartial investigation be conducted into the death of ‘Amer Hisham ‘Ali Mohammad. The Maltese authorities responded immediately stating that an investigation was being carried out, but as yet no further details have been received.

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<sup>21</sup>The first call for physical liquidation of opponents was made in February 1980 when the Third Congress of the Libyan Revolutionary Committees issued a declaration calling among other things for the “physical liquidation” of enemies of the 1969 revolution living abroad, and of elements within Libya considered to be obstructing “revolutionary change” in political or economic ways.

Such practices are in flagrant violation of international standards on human rights. Principle 1 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions<sup>22</sup> states that

“Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions. Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or by a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority”.

## 7) THE DEATH PENALTY

Amnesty International opposes the death penalty in all cases as a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment, as proclaimed in the Universal Declaration of Human Rights. While a number of countries worldwide have moved towards abolishing or at least reducing the use of the death penalty, in accordance with Article 6 of the ICCPR, Libya has over the last few years increased its scope. Dozens of people have been executed, often after summary trials, in recent years.

### a) Scope of the death penalty

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<sup>22</sup>Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989

The death penalty is provided for a wide range of offences contained in the Libyan Penal Code, including premeditated murder; acts against public safety such as causing epidemics or poisoning food or water resulting in death; and crimes against the state, including treason, attempting to change the form of government by violence and involvement in political parties or groups opposed to the principles of the new order<sup>23</sup>. This law can be used to execute prisoners of conscience, i.e. people arrested solely on account of their conscientiously-held beliefs and have not used or advocated violence. Amnesty International fears that some of those executed on political grounds in recent years may have included prisoners of conscience.

The death penalty is also provided for deliberate murder as a *qisas* (retribution)<sup>24</sup>. Libya's Code of Criminal Procedure (CCP) stipulates that capital offences are tried by the criminal section of courts of appeal. The CCP provides for review of death sentences by the Court of Cassation (Articles 385 bis and 400). All death sentences require ratification by the Secretariat of the General People's Congress (parliament). Death sentences issued by military courts in trials of military personnel are reviewed by the Supreme Military Court. Executions generally take place in prisons by hanging<sup>25</sup>, but military personnel are executed by firing-squad.

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<sup>23</sup>Law No 71 of 1972 defines party activities in a way which encompasses almost any form of group activity based on a political ideology opposed to the principles of the al-Fatih Revolution of 1 September 1969 and considers such activities as treason; it punishes with death all those involved in such activities, whether as leaders or as simple members, irrespective of whether or not violence is included. Article 3 of the law states that "The punishment is death for anyone who calls for the establishment of any grouping, organization or formation prohibited by this law, or establishes, organizes, administers or finances it, or provides a place for its meetings, or joins or encourages this by whatever means, or provides any assistance to it. It also includes anyone who receives or obtains directly or indirectly by whatever means money or benefits of any kind, or from any person or source, with the intention of establishing or preparing to establish the prohibited grouping, organization or formation. There shall be no difference in the severity of the punishment between the leader and the subordinate, however lowly his position may be within the party, grouping, organization, formation, unit, cell, and the like".

<sup>24</sup>Law No 6 of 1994 (Article 1) makes deliberate murder punishable by death as a *qisas* (retribution). The family or heirs of the victim may demand *qisas* in the form of the death of the perpetrator, or by financial settlement, or they may waive any claim to *qisas*. Previously deliberate murder was punishable by up to life imprisonment (Article 372 of the Penal Code).

<sup>25</sup>In the 1980s however several men were executed by hanging in public places.

### **b) Pledges to abolish the death penalty or reduce its use**

In March 1988 Colonel Mu‘ammar al-Gaddafi called for the abolition of the death penalty in Libya and its replacement with other punishments. The *Great Green Document* restricted the scope of the death penalty. Principle 8 of the *Great Green Document* states that “the members of Jamahiriyan [Libyan] society hold sacred the life of a human being and protect it. The goal of Jamahiriyan society is to abolish capital punishment. In view of this, the death penalty should only be ruled against an individual whose very existence constitutes a danger or is deleterious to society”. Article 4 of Law No 20 of 1991 (on the Consolidation of Freedom) states that “Life is a natural right of every human being therefore capital punishment must not be implemented except as a punishment, or on those whose lives constitute a threat or [cause] depravity to society. The perpetrator has the right to ask for the punishment to be reduced to many forms of redemption in exchange for saving his life. The court may accept that providing that was not harmful to society or contrary to human feelings”. Such provisions, however, appear to be consistently disregarded in practice.

### **c) Recent executions**

Since 1992, however, the death penalty has been used quite extensively. For example, on 10 November 1992 six men were executed after they had been convicted of criminal offences including rape and murder. The next day, pictures were shown on television of the six men prior to their execution. Those were the first executions to be officially announced since February 1987, when nine people, accused of politically motivated crimes, were executed. From November 1992 to March 1997 at least 38 executions had officially been announced. Some of them were shown on Libyan television. However, the true figure may be much higher since there have been numerous reports of secret executions taking place. In November 1994 the United Nations Human Rights Committee in its 52nd session expressed serious concern that “a large number of offences remain punishable by the death penalty in the Libyan Arab Jamahiriya, including economic crimes and other crimes which appear to go beyond the limitations of article 6(2) of the Covenant [ICCPR]”<sup>26</sup>. The

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<sup>26</sup>Article 6(2) of the ICCPR states that “In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law

Committee deplored “that there appears to be an increase in the number of executions in the last year”. In 1997 the UN Commission on Human Rights adopted a resolution on the death penalty<sup>27</sup> which “Calls upon all states parties to the International Covenant on Civil and Political Rights that have not yet done so to consider acceding to or ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death Penalty”<sup>28</sup>.

The exact number of prisoners currently on death row is not known to Amnesty International. At the end of August 1996 the Libyan authorities announced that 31 death sentences had been commuted to life imprisonment to mark the 28th anniversary of the 1 September revolution. Amnesty International wrote to the Libyan Government welcoming the commutation of these death sentences as a positive step and seeking details of all those who benefited, including their names, the charges against them and their current place of detention. As of April 1997 no response had been received from the government.

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in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court”.

<sup>27</sup>UN Commission on Human Rights 1997/12.

<sup>28</sup>The resolution also urges states not “to impose the death penalty for any but the most serious crimes, not to impose it for crimes committed by persons below eighteen years of age, to exclude pregnant women from capital punishment and to ensure the right to seek pardon or commutation of sentence”. It also calls on states “that have not yet abolished the death penalty progressively to restrict the number of offences for which the death penalty may be imposed”.

On 2 January 1997 eight men, six army officers and two civilians, were executed after the Supreme Military Court reportedly upheld their sentences. They were among scores of people arrested in October 1993 in connection with an armed rebellion (see section 9). The six army officers were shot while the two civilians were hanged. Immediately following these executions Colonel Mu'ammār al-Gaddafi stated that he had wanted the death penalty abolished in his country adding that "I wanted Libya to be the first Arab and Muslim country to abolish the death penalty and replace it by life imprisonment.... I proposed to the people's congresses that this penalty be abolished (but) they rejected it for those who threaten the security of society and the power of the people"<sup>29</sup>. He was seemingly referring to his call for the abolition of the death penalty made to the General People's Congress in March 1988. However, it was Colonel Mu'ammār al-Gaddafi himself who called for the execution of those alleged to be involved in the October 1993 rebellion. On 14 October 1993 after the reported rebellion and in a speech at a women's meeting in Misrata he said that "... we should seek traitors, those who pave the way for the Americans, and kill them". He had also called on several occasions for more use of the death penalty. In a speech broadcast by Libyan television on 30 June 1993 he called for widening the scope of the death penalty in Libya. He stated that "anyone who drinks alcohol should be charged with being an agent of the enemy [with whom we are] in a state of confrontation. The sentence for that could be death because alcohol is obtained from foreign embassies or companies".

In July 1996 the then General People's Committee for Justice and Public Security<sup>30</sup> stated that the death penalty will be applied to those "who speculate in food, clothes or housing during a state of war or blockade and may be applied for crimes related to drugs, alcohol and speculation in foreign currency". The new laws had been drafted at the general conference of the General People's Congress on 5 June 1996 and were published in the official gazette on 15 July, the date they came into effect.

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<sup>29</sup>AFP 3 January 1997.

<sup>30</sup>Following a government reshuffle on 9 March 1997 this ministry was split into two: the General People's Committee for Justice (Ministry of Justice) and the General People's Committee for Public Security (Ministry of Public Security or Interior).

## **8) COLLECTIVE PUNISHMENT**

On 9 March 1997 the General People's Congress approved a law known as "charter of honour" authorizing collective punishment for those found guilty of "collective crime". Collective crime includes "obstructing the people's authority..., instigating and practising tribal fanaticism..., possessing, trading in or smuggling unlicensed weapons..., and damaging public and private institutions...". Anyone who participates in these crimes "be it in planning them, instigating them, carrying them out, financing them, covering them up, harbouring or recruiting perpetrators..., refraining from carrying out their national duty of recognizing and identifying them [perpetrators] and handing them over to justice, and abstaining from disavowing criminals who are relatives, acquaintances or neighbours..." will be deprived of the right to participate in the local assemblies, and of public services such as electricity, water and telephone in addition to other state social and financial benefits. These measures will also be applied to any local assembly which "collaborates with criminals of such offences or cover up for them". According to the new law, collective punishment will be carried out on a community even when the identity of the person (s) concerned has not been established.

Families and even tribes of certain detainees have been pressurized to denounce their relatives who had been arrested and accused of plotting against the state. For example, at the end of August 1995 members of the Revolutionary Committees held a meeting in Bani Walid, eastern Libya, which the population was reportedly forced to attend and during the meeting they were required to sign a petition calling for the execution of those detained in connection with the October 1993 army rebellion. Some relatives of those detained who were later executed had reportedly been forced to appear on television to denounce their relatives and to disavow them. Immediately following the reported armed rebellion Colonel Mu'ammar al-Gaddafi stated that "no-one should be able to defend a traitor even if he is a son, a husband, a father or a brother; he should be disowned by everyone. He was doing a despicable job which is morally shameful and is a serious deed. Shameful to his family and tribe and a serious act which is detrimental to his country. Thus, no one should object to the routing of traitors". On 18 January 1994 Colonel Mu'ammar al-Gaddafi stated in a speech that "Anyone who is considering treason now thinks about it a thousand times, and even if

he manages to flee, and offers himself in sacrifice, he knows that his family, his home, his plantation and all his property will be destroyed, burned and walked on by the masses. The angry masses march over them and destroy them”.

In another speech given on 3 August 1994 he threatened that “When traitors are discovered within a tribe, the Libyan people automatically consider the whole tribe as traitors, they disdain it and humiliate it. Such a tribe should defend its honour; it should, from within, look for treason, detect it and contain it and disown any of its clans which are involved in treason...”.

Families of suspected government opponents have been subjected to various forms of punishment, including being held as hostages by the security forces until the person sought by the police gives himself up, having the family house destroyed or being forced to appear on television and denounce the “traitors”. For example in the early hours of 25 September 1995 plainclothes security men went to the house of ‘Abdallah al-Zayyani in Benghazi. They arrested him, his wife, two daughters and two grandchildren, all without arrest warrant. He was told they would not be released until his brother-in-law who was sought by the police gave himself up. ‘Abdallah al-Zayyani’s son, an alleged member of an Islamist group, had been killed a few days earlier in a farm outside Benghazi together with several others. The brother-in-law had been with this group and managed to escape. The fate of ‘Abdallah al-Zayyani and his family has remained unknown ever since. Nourya Ahmad al-Firjani, aged 21, and her six-month-old daughter ‘Aysha were arrested on 25 June 1995 in al-Qwarsha, just outside Benghazi and had reportedly been held without charge or trial. The arrest of Nourya al-Firjani and her daughter reportedly took place after her husband, Fadhel Sa‘ad al-Firjani, an alleged member of an armed Islamist group, had been killed by the security forces in a shoot-out in al-Qwarsha. Amnesty International has received unconfirmed reports that Nourya and her daughter were released at the end of 1996.

House destruction is another form of collective punishment and several prominent Libyan figures in exile have had their properties, including houses, in Libya destroyed, especially in the 1980s. The practice is still being carried out. For example, at the end of 1996 the security forces in Sabha bulldozed the family house of Khaled al-Fathi, an alleged Islamist wanted by the authorities.

Amnesty International opposes collective punishments of this kind on the grounds that they represent grave violations of basic rights, including freedom of conscience, freedom of association, freedom from discrimination, the right not to be subjected to cruel, inhuman or degrading punishment and the right to fair trial.

#### 9) UNFAIR TRIALS

Scores of political prisoners, including prisoners of conscience<sup>31</sup>, are currently serving prison sentences of up to life imprisonment after grossly unfair trials. Others were executed after such trials. In theory Libyan legislation provides some guarantees for fair trial procedures. For example, Article 17 of Law 20 (1991) on the Consolidation of Freedom states that "The Accused is innocent until he is found guilty by a judicial ruling...". Article 30 stipulates that "Every person has the right to have recourse to justice in accordance with the law and the court guarantees to him all the necessary warranties including a solicitor [lawyer]. He has the right to be assisted by a solicitor whom he chooses from outside the court, whose payment will be at his charge", and Article 31 states that "judges are independent in their decisions and there is no authority above them [in their decision-making] apart from the law". In practice however trials of political prisoners violate the most fundamental elements of international standards. Defendants' rights are abused from the time of arrest until conviction: they are held incommunicado for prolonged periods of time; they are routinely brutally tortured to extract confessions from them which are used as evidence in court; they are denied their right to have access to lawyers of their own choosing and to their families. The following two political cases provide an illustration of grossly unfair trial procedures before Libyan courts.

##### a) Case 1 - Military Trial

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<sup>31</sup>Five prisoners of conscience, 'Ali Mohammad al-'Akrami, al-'Ajili Mohammad 'Abd al-Rahman Al-Azhari, 'Ali Mohammad Al-Qajiji, Salih 'Omar Al-Qasbi and Mohammad al-Sadiq Al-Tarhouni continue to serve life imprisonment sentences. They were arrested in 1973 and unfairly tried in connection with their membership of an underground religious organization. (For more information see the report *Libya: Amnesty International's prisoner concerns in the light of recent reforms* (AI Index: MDE 19/02/91) p.23.

This case involved dozens of people, including army officers, who were arrested in the aftermath of a rebellion by army units around the city of Misrata in October 1993 and who were held in prolonged incommunicado detention in unknown secret locations. Four of them, Colonel Miftah Qarrum al-Warfalli, Major Khalil Salam Mohammad al-Jidiq, Major Ramadhan al-'Ayhuri and Sa'ad Misbah al-Amin al-Zubaydi, all arrested on 12 October 1993, appeared on Libyan television in early March 1994. While being interrogated at length on television they confessed to being American "spies" and that they had been recruited as US intelligence agents by members of the National Front for the Salvation of Libya. It was alleged they had been tortured into making these confessions. Charges against them included spying, treason, "instigation of violence, use of armed forces channels to achieve political and social goals" and "cooperation with the enemy to harm the interests of the country". All these charges are punishable by death. They were tried by a lower military court in 1995 which reportedly handed down prison terms of up to life imprisonment on at least twelve people. However, the Libyan authorities were said to have ordered a retrial on the grounds that the initial sentences were too lenient. The men were retried by a military court at the end of December 1995 and 12 were sentenced to death.

On 2 January 1997 Libyan television stated that eight men, six senior army officers and two civilians, were executed after the Supreme Military Court upheld their sentences. The court sentenced at least five men to prison terms and acquitted at least five others. The six army officers were Colonel Miftah Qarrum al-Wirfalli, Colonel Mostafa Abu al-Qassim Mas'ud al-Kikli, Lieutenant-Colonel Sa'ad Saleh Farag, Major Khalil Salam Mohammad al-Jidiq, Major Mostafa Ihbayl al-Firjani and Major Ramadhan al-'Ayhuri. The two civilians were Sa'ad Misbah al-Amin al-Zubaydi and Sulayman Ghayth Miftah. Those sentenced to prison terms include 'Ali Faraj Zayed, a civilian and teacher sentenced to 20 years' imprisonment, Fathi Hamed al-Zeribi, a pilot, and Lieutenant-Colonel Shtiwi Miftah al-Mabrouk, both sentenced to 15 years' imprisonment each, al-Wafi Nbayyeh, a 50-year-old former ambassador, sentenced to a 10-year prison term and Jum'a Shalfit, a teacher, sentenced to 5 years' imprisonment. Those acquitted by the court include Lieutenant-Colonels Mohammad al-Ghul and Younis Farhat, Flight-Captain Sadeq Shaghlouf, Captain Ramadhan Nasr and Major Salem Dhaw Bashir.

*Amnesty International strongly condemned the execution of the eight people. The organization had repeatedly requested information*

about the legal status and whereabouts of those arrested in connection with the October 1993 rebellion and sent urgent appeals after reports were received that they had been tortured, and then sentenced to death. The case of these people had been shrouded in secrecy from the time of their arrest. They had been held in unknown locations for more than three years, completely cut off from their families and the outside world, and every trial hearing had been held in camera. It has been alleged that they did not have any lawyers during their trial. The use of statements obtained by torture as evidence is a violation of Article 15 of the Convention against Torture which states that "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made".

In 1996 the UN Special Rapporteur on extrajudicial, summary or arbitrary executions expressed concern about "the apparent lack of respect for fair trial standards in trials leading to the imposition of capital punishment [in Libya] as well as disregard of the safeguards which guarantee protection of the rights of those facing the death penalty"<sup>32</sup>.

#### **b) Case 2 - Civilian Trial**

On 16 October 1990, Fakhri Younis 'Issa al-Fitouri, a 43-year-old director of a children's hospital in Benghazi, married with four children, was arrested together with his wife and young children, his father Younis 'Issa al-Fitouri, aged 68, his mother, three brothers and their wives. The al-Fitouri family were among a group of 52 people arrested at the same time in Benghazi and accused of attempting to overthrow the regime and of propagating subversive ideas from abroad. This accusation was reportedly based on taped telephone conversations that Fakhri al-Fitouri had had with a leading opposition figure in exile. The 52 people were reportedly held incommunicado in the headquarters of the *Hay'at Amn al-Jamahiriya* (Jamahiriya Security Institution). Some of them were said to have been tortured during interrogation. Methods of torture included the use of electric

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<sup>32</sup>UN Doc. E/CN.4/1996/4, page 72, para. 300. The Special Rapporteur had sent an urgent appeal to the Libyan Government requesting it to respect the life and physical integrity of people who were reportedly at imminent risk of execution. The Special Rapporteur regretted that "no reply has been received from the Government".

shocks on different parts of the body, threats of execution and threats of being attacked by dogs.

At the end of December 1990 those detained were reportedly transferred to al-Kuwayfiya Prison in Benghazi with the exception of a pilot who was taken to Abu Hdima Prison, a military prison also in Benghazi. All were brought before the People's Court in Benghazi on 19 January 1991. During this first session which was said to have lasted around 10 minutes the court appointed nine lawyers to defend small groups of people. Another court session took place in February 1991. During this session defendants allegedly heard people outside the court chanting revolutionary slogans and calling for the execution of the defendants because they were "stray dogs" and "anti-revolutionary" elements. On 13 March 1991 at the end of the third session of the trial the court acquitted all the defendants because of lack of evidence. All defendants were subsequently released. A few days after their release, however, at least 24 of the men previously acquitted, including Fakhri al-Fitouri, his father and his three brothers were rearrested reportedly after the Public Prosecution had lodged an appeal against the verdict. They remained in detention despite appeals from their lawyers that the detention was unlawful and that the defendants should be free while the appeal was being examined.

On 15 May 1991 the appeal division within the People's Court in Benghazi gave its verdict and sentenced 23 people, included Fakhri al-Fitouri, his father Younis 'Issa, his brothers 'Omran and Ahmad, to life imprisonment. Others sentenced to life imprisonment included Mohammad 'Abdallah al-Sahli, Mohey al-Din 'Abdallah Ma'rouf, Tariq Ahmad Bashir and 'Abd al-Latif Bashir Hussein. Two other brothers of Fakhri al-Fitouri, 'Omar and Radhwan, were sentenced to four years' imprisonment and have now been released. According to reports received by Amnesty International the only witness brought by the court was one of the defendants who stated that those sentenced had indeed been in contact with Libyan opposition members. He was subsequently acquitted and released. The prosecution allegedly relied on video-taped confessions by the defendants as evidence but these tapes were reportedly never shown to the lawyers. The confessions were said to have been taken during interrogation following torture. One of the defendants, Fakhri al-Fitouri, was said to have stated in court that he was tortured.

The defendants' lawyers lodged an appeal before the Supreme Court against the verdict, reportedly on the basis of the gross irregularities during the trial. In the summer of 1996, however, the Supreme Court reportedly ruled against the appeal and confirmed the sentences.

Procedures followed in this trial fell far short of international standards for fair trial. As in the first trial, statements gathered following torture as evidence violate Article 15 of the Convention against Torture. It was clear that the judiciary lacked independence in contravention of Principle 2 of the Basic Principles on the Independence of the Judiciary<sup>33</sup> which states that "The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason". Principle 6 stipulates that "The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected".

## 10) CONCLUSION

Amnesty International is outraged that the leader of a state which has acceded to international human rights treaties such as the ICCPR and the Convention against Torture, and who declared publicly that he wanted the death penalty to be abolished in Libya, should repeatedly call for the extrajudicial execution of any suspected opponent to his regime. His public threats to Libyan families and tribes have created a horrendous climate of fear in the country where each member of the society is pushed to report on other people's activities, otherwise they face the "collective punishment".

Gross human rights violations are being carried out by order of the highest authorities: hundreds of people have been arbitrarily arrested, without any judicial warrant and without being told of the reasons behind their arrest. Most were held incommunicado in the first months of detention during which they were routinely tortured. Scores of political detainees have been held without charge or trial,

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<sup>33</sup>Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

some for at least 15 years. Trials of other political prisoners have consistently fallen well short of international fair trial standards. The practice of "disappearance" and extrajudicial execution continues to be used to silence government opponents. While at the end of the 1980s Colonel Mu'ammarr al-Gaddafi publicly announced his opposition to the death penalty, in recent years he has been calling for the widening of its scope, and even apparently for extrajudicial executions. Dozens of people have been executed, some after grossly unfair trials. Families and even tribes of suspected government opponents may be ruthlessly punished, including by being detained as hostages, or by having their houses destroyed.

Amnesty International has written to the Libyan Government on numerous occasions urging it to act decisively to end human rights violations by adopting legal and practical safeguards to ensure effective implementation of all the provisions contained in international human rights treaties, including the ICCPR and the CAT, acceded to by Libya in 1970 and 1989, respectively. Its appeals remain without response.

## 11) RECOMMENDATIONS

In summary, Amnesty International calls on the Libyan Government to:

- \* introduce legislative and practical measures as a matter of urgency to bring Libya's law and human rights practice into conformity with international human rights treaties to which it is a state party;
- \* implement the recommendations set forth in 1994 by the Human Rights Committee and the Committee against Torture;
- \* ensure that detainees are brought before a judge immediately after arrest, that they are humanely treated in accordance with international standards, and have access to lawyers of their own choosing, families and medical care if necessary;
- \* immediately and unconditionally release all prisoners of conscience, i.e. people being held solely on account of their conscientiously-held beliefs, their identity attributes or relationship

to suspected government opponents, and have not used or advocated violence;

\* release all political detainees held without charge or trial for many years if they are not to be promptly charged with any recognizably criminal offence and brought before courts capable of offering guarantees for fair trials in accordance with international standards;

\* reform the Libyan judicial system, including compliance with international fair trial standards and reviewing unfair convictions;

\* set up prompt, thorough and impartial investigations into all allegations of torture and ensure that both the procedures followed and the findings of such investigations be made public within reasonable time;

\* provide fair and adequate compensation and rehabilitation for victims of torture, and ensure that any members of the security or other forces implicated in torture and ill-treatment of detainees and prisoners be brought to justice;

\* make a declaration under Article 22 of the Convention against Torture recognizing the competence of the Committee against Torture to consider communications from or on behalf of individuals subject to its jurisdiction who claim to be a victim of a violation the Convention;

\* repeal all laws relating to the use of corporal punishments;

\* ensure that prison conditions meet basic standards for the treatment of prisoners;

\* pending the abolition of the death penalty in law for all offences, commute all outstanding death sentences and ensure that it is never applied in violation of Article 6(2) of the ICCPR;

\* demonstrate total opposition to the practices of "disappearances" and extrajudicial judicial executions and inform all members of the police, military and other security forces that "disappearances" and extrajudicial executions will not be tolerated under any circumstances;

- \* ensure that law enforcement officials use force only when strictly necessary and only to the minimum extent required under the circumstances. Lethal force should not be used except when strictly unavoidable in order to protect life;
- \* ensure that all complaints and reports of extrajudicial executions are investigated promptly, impartially and effectively by an independent body which has the necessary powers and resources to carry out the investigation. The methods and findings of the investigation should be made public;
- \* ensure that those responsible for extrajudicial executions are brought to justice;
- \* ensure that prisoners are held only in publicly recognized places of detention. Up-to-date registers of all prisoners should be maintained in every place of detention and centrally. The information in these registers should be made available to relatives, lawyers, judges, official bodies trying to trace people who have been detained, and others with a legitimate interest. No one should be secretly detained.