

AI Index: PRE01/276/2012  
07 June 2012

## **Libyan surgeon accused of neglect faces spurious charges**

Libyan authorities must review the charges faced by a neurosurgeon accused of neglect over the death of an anti-Gaddafi fighter, Amnesty International said today ahead of protests in support of the detained medic.

Hisham Anour Ben Khayal categorically denies the accusation that he purposefully withheld medical treatment from Fathi Mohamed Abou Shanaf, who died on 26 May 2011 from a gunshot wound to the head.

Hisham Anour Ben Khayal was abducted in the capital Tripoli on 1 April by a militia group that includes several relatives of Fathi Mohamed Abou Shanaf. The doctor is on trial in the dead fighter's hometown, Al-Zawiya, where there is a swell of public feeling against him.

Protests are planned on Friday in the city of Derna in solidarity with Hisham Anour Ben Khayal, who says the militias tortured him in detention.

"What we are witnessing here is revenge, not justice. It is extremely dangerous when relatives of the deceased are the ones deciding on the fate of the alleged perpetrator," said Hassiba Hadj Sahraoui, Amnesty International's Middle East and North Africa Deputy Director.

"The Libyan authorities must ensure that Hisham Anour Ben Khayal is treated fairly and that an independent medical review into the cause of Fathi Mohamed Abou Shanaf's death and the treatment he received in hospital is conducted.

"All Hisham Anour Ben Khayal's torture allegations must also be properly investigated and remedied."

Fathi Mohamed Abou Shanaf died after being transferred to the Sbi'a Hospital, where Hisham Anour Ben Khayal headed the neurosurgery department, some 35 days after his initial injury.

Hisham Anour Ben Khayal said in court that he wasn't even the treating physician in the case, and that two operations were conducted at the Sbi'a Hospital in an attempt to save the patient.

However, the militia group named after the dead fighter accuses the doctor - who previously treated Colonel al-Gaddafi and is deemed by some to be an enemy of Libya's "17 February Revolution" - of medical neglect.

After being seized at his clinic in Tripoli, Hisham Anour Ben Khayal was held at the militia's base in the city of al-Zawiya, some 40 kilometres away, where he was detained incommunicado and beaten with whips and sticks.

The doctor's brother, Ashraf Anour Ben Khayal, eventually located him on 3 April and went to the militia's base to see his sibling. Instead, he was also reportedly detained and tortured.

After two days, the militia handed over the brother, Ashraf Anour Ben Khayal, to the judicial police and prosecution, who released him.

Hisham Anour Ben Khayal was later transferred to nearby Jedayem prison, charged with breaching

laws relating to medical conduct.

His torture claims have yet to be investigated despite strong photographic evidence supporting them, and he was not referred for medical examination.

Hisham Anour Ben Khayal's case was transferred to a criminal court on 28 May on the basis that Fathi Mohamed Abou Shanaf's death would have been the result of murder as defined by the Penal Code, rather than neglect.

In a meeting with Amnesty International this week, Libya's Public Prosecutor described the decision to transfer the case to a criminal court as "illegal". [

Hisham Anoura Ben Khayal's defence lawyer, who appealed that decision, has also questioned the decision to try the case in Al-Zawiya's court, as the alleged crime took place in Tripoli.

Amnesty International is concerned that a trial in Al-Zawiya with many of the deceased's supporters in and around the court, could intimidate judges and potential witnesses and jeopardize the trial's fairness.

"This trial is a test for the Libyan judiciary to show it is capable of serving justice, and of staying independent and impartial in the face of public pressure or intimidation," said Hassiba Hadj Sahraoui.

Amnesty International visited Jedayem prison on Tuesday asking to meet Hisham Anour Ben Khayal but was refused a private meeting by the prison's director, despite having obtained written authorization from the Head of the Judicial Police to visit prisons.

### **Background**

The case against Hisham Anour Ben Khayal was brought after a group of doctors signed a complaint alleging that he was an al-Gaddafi loyalist and that he carried out acts against the "17 February Revolution". His brother said that Hisham Anour Ben Khayal had previously treated Colonel al-Gaddafi, noting that he was not in a position to refuse. Hisham Anour Ben Khayal's colleague, Mohamed Al-Ziyadi, who was on call when the patient was admitted, is facing similar charge.