

EXTERNAL (for general distribution)

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Amnesty International
International Secretariat
1 Easton Street
London WC1X 8DJ
United Kingdom

14 March 1991

**@SUMMARY OF AMNESTY INTERNATIONAL'S
CONCERNS IN LIBYA**

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1. Introduction

In March 1988 Colonel Gaddafi released 400 political prisoners, including prisoners of conscience, under an amnesty. Many of them were serving long term prison sentences, including some who had been sentenced to death after trials which fell short of international standards for fair trial. Others included people who had been held without trial for many years, detained beyond the expiry of their sentences, or held despite trial and acquittal.

In taking this decision Colonel Gaddafi recognized that the released prisoners included people who were wrongly imprisoned.

In a speech before the General People's Congress (GPC), Libya's highest legislative authority, on 9 March 1988 he stated that "... some people who were in prison - even sentenced to death - are innocent ...". Further, in a similar address to the GPC on 3 March he indicated that in the past some people were sentenced to death by courts "... and perhaps regrettably ... were executed ...".

He blamed the occurrence of these human rights violations on the lack of adequate legal safeguards in the country's legislation and the abuse of authority by various state bodies.

In a speech on 28 March 1988, he referred to state of emergency measures practised by various authorities such as the military intelligence branch, military police, the investigation department, and the revolutionary committees, which "... used to make arrests, interrogate and issue verdicts."

At the same time he called for the introduction of legal reforms to prevent any recurrence of these human rights violations: a number of initiatives have since been undertaken to reform the legal system.

Amnesty International welcomed the releases of prisoners and the commutation of death sentences, and was encouraged by the legal reform initiatives in so far as they might have the effect of bringing Libya's legislation and practice into line with international human rights standards. In public statements and direct talks with Libyan officials during a visit to the country in June 1988, Amnesty International specifically pressed for an

end to arbitrary arrest and detention without trial, denial of the right to fair trial for political prisoners, and called for the introduction of safeguards against torture and ill-treatment.

The reforms undertaken so far, however, have not accomplished these objectives and moreover remain largely unimplemented. There are at least 469 political prisoners, including prisoners of conscience, who continue to be held for reasons or under conditions which are contrary to international human rights standards. The Libyan authorities have not disclosed information about them or redressed these violations despite repeated appeals from Amnesty International.

2. Legal reforms and Amnesty International concerns

The legal reforms undertaken since March 1988 focussed on changes to arrest and detention procedures and the system of courts. Some were initiated by Colonel Gaddafi himself, while others were decreed by the GPC. The stated intention of these reforms was to prevent any recurrence of pre-March 1988 human rights abuses.

So far, however, the reforms have failed to achieve that aim and prisoners of conscience and political prisoners continue as before to be subjected to arbitrary arrest and detention, and denial of the right to a prompt and fair trial. The authorities have also failed to amend laws which have been used to imprison people for the non-violent expression of their conscientiously held beliefs.

In a series of speeches in March 1988, Colonel Gaddafi recommended changes to arrest and detention powers, and abolition of the extraordinary courts.

With regard to arrest and detention, he drew attention to the plurality of authorities empowered to arrest and hold suspects in incommunicado detention. In a speech on 9 March 1988, he stated that "detention should take place only at the request of the public prosecutor" and criticised the use of incommunicado detention by saying that the system should be such that when someone is arrested: "his family knows and can visit him tomorrow and attend his trial. Everything should be clear." Referring to past cases in which families had not been informed of prisoners' executions he said in a speech of 28 March 1988, that:

"The Revolutionary Committees passed sentences against them and they were liquidated. What can we say? Generally the people who died in prison have gone. As for those who died naturally, it would have been better if they {the authorities} informed their next of kin. Let us hope that this will not be repeated in the future."

In the same speech Colonel Gaddafi announced the abolition of all extraordinary courts with the exception of the Permanent Revolutionary Court and the People's Court, introduced in 1980 and in 1969 respectively.

The extraordinary courts which were abolished were the *ad hoc* revolutionary courts formed by revolutionary committees (local

committees set up to support official policies) and the Basic People's Congress (BPC) (local assemblies) to try alleged political opponents. These courts had been operating since 1980 and had tried dozens of political prisoners, including prisoners of conscience. In some cases defendants were sentenced to death and executed. These courts did not abide by the rules of the Penal Code (PC), the Code of Criminal Procedure, or any known public laws. Defendants tried and convicted by these courts had no right of defence or appeal.

Amnesty International welcomed the abolition of these courts and to its knowledge no trials have since been held before them.

However, subsequent public statements by Colonel Gaddafi have raised a question whether the BPCs' role as special courts has indeed been ended. For example, in a speech before the GPC on 7 October 1989 Colonel Gaddafi reportedly said in reference to members of religious opposition groups:

"From now on the sentences issued by the People's Congresses for anyone who is found guilty of not knowing God properly will be to crush him immediately - there will be no retreat".

While announcing the retention of the Permanent Revolutionary Court and the People's Court, Colonel Gaddafi said that they would be reformed. Both of these courts had in the past tried and convicted political prisoners, including prisoners of conscience.

Some of those tried were sentenced to death and executed. Both courts were empowered to follow their own procedures without abiding by those set down in the Penal Code and the Code of Criminal Procedure. Defendants who appeared before them were denied the basic fair trial rights, such as the right to defence counsel and appeal. Since March 1988, the Permanent Revolutionary Court is believed to have become a disciplinary court with jurisdiction over members of the revolutionary committees only. No trials of political suspects are known to have been held before this court since March 1988.

The People's Court was restructured by Law 5 of 1988 which stipulates that it should abide by ordinary laws and provide for the right of appeal. The law also made the People's Court competent to examine alleged abuses committed by officials against individual freedoms, in addition to continuing as the court before which suspected political offenders are tried. In addition, the law limited preventive detention, previously unlimited, to a maximum period of 90 days.

Colonel Gaddafi's reform initiatives were followed by similar measures taken by the GPC. In June 1988, a document entitled the *Great Green Document on Human Rights in the Era of the Masses (Great Green Document)*, consisting of 27 principles was approved at an extraordinary session of the GPC. Among other things, this restricted the scope of the death penalty and provided that its total abolition should be an aim of Libyan society. In addition it prohibited degrading punishment and ill-treatment of prisoners, and proclaimed the right to a fair trial. This was followed by

the adoption in March 1989 of a Law on the Consolidation of Liberty (LCL), which aimed to codify the principles of the *Great Green Document* into specific rules to be legally binding for all state institutions.

In May 1989 Libya became a State Party to both the (First) Optional Protocol of the International Covenant on Civil and Political Rights (ICCPR) and to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Libya had previously become a State Party to the ICCPR on 15 May 1970, and to the African Charter on Human and People's Rights, on 19 July 1985.

Despite its ratifications of such international human rights instruments, the authorities in Libya have failed to date to bring domestic law and practice relating to arrest, detention and trial fully into line with international standards. Political suspects reportedly continue to be subjected to arbitrary arrest and detention by various authorities, including revolutionary committees, who routinely act without arrest warrants, and detain suspects without informing them of the reasons for their imprisonment or the nature of any charges against them.

At least 394 political suspects arrested between 1989 and 1990 are reported to be held *incommunicado*: their whereabouts are unknown. These, as well as dozens of others arrested before March 1988, are reportedly held without charge or trial in breach of a legal limit in preventive detention of 90 days.

In addition, dozens of political prisoners, including prisoners of conscience, sentenced after unfair trials by special courts, such as the Permanent Revolutionary Court and the People's Court, continue to be held. Following the March 1988 amnesty, the Libyan authorities undertook to review all political prisoners' cases but to date no such review is known to have taken place.

Certain legislation which, in the past, has been used to detain or imprison prisoners of conscience and other political prisoners remains in place and has not been amended. This includes the Revolutionary Command Council (RCC) Decision of 11 December 1969, officially known as the RCC Decision relating to the Protection of the Revolution; Law No. 71 of 1972 relating to the Crime of Party Activities; and articles from Part I, Chapter I of the Libyan Penal Code (PC) of 28 November 1953, as amended by Law 80 of 1975, relating to offences against the security of the state.

These provisions prescribe punishments for activities - including non-violent expression of conscientiously held beliefs, peaceful assembly and exercise of freedom of association - which are guaranteed by international human rights standards, in particular by Articles 19, 21 and 22 of the International Covenant on Civil and Political Rights.

3. Prisoner Cases

At least 469 political prisoners, including prisoners of conscience, are currently held in Libyan prisons. Some were arrested before the March 1988 amnesty, but the majority have been held since 1989 and early 1990.

3.1 Prisoners held since before March 1988

There are believed to be about 75 political prisoners who did not benefit from the March 1988 amnesty and who continue to be held.

Colonel Gaddafi described them as people who have been found guilty or were in the process of being prosecuted for "treason and connection with foreign quarters ...". They include five prisoners of conscience. Altogether, 51 are believed to be held without charge or trial; one prisoner is reputed to be still held although he was acquitted when brought to trial; and 18 are serving sentences imposed after unfair trials.

The five prisoners of conscience were all arrested in April 1973 following the declaration that month of the "popular revolution", which introduced the popular committees as Libya's primary administrative units. They were charged with membership of a political party, the Islamic Liberation Party (ILP), under Articles 1,2, and 3 of Law 71 of 1972, and with carrying out activities hostile to the authorities, under Articles 2 and 3 of the RCC Decision of 11 December 1969. They faced a number of trials: one took place *in camera* before the People's Court, which sentenced them in February 1977 to between five and 15 years' imprisonment. However, all sentences were amended to life imprisonment by the RCC. They were not allowed to appeal against either their conviction or sentences.

The 51 untried political detainees were arrested between 1974 and 1986, most of them after a clash between security forces and an armed opposition group at Bab al-Aziziya in May 1984. They are believed to be held as suspected opponents of the authorities or on suspicion of having links with opposition groups.

The prisoner who continues to be held, despite having been acquitted when brought to trial, was arrested in 1984. His trial, apparently on charges relating to illegal political activities, was held in 1985.

The 18 political prisoners, sentenced after unfair trials, comprise 14 civilians and four soldiers. Two of the civilians were arrested in 1984 and convicted in separate trials in 1984 and 1987 for allegedly having links with opposition groups abroad.

They appeared before courts composed of members of the Revolutionary Committees. The other 12 civilians are Islamic activists reportedly arrested in 1983 and subsequently convicted of membership of an illegal organization by a Revolutionary Committees' court. Their whereabouts remained unknown. The four soldiers were convicted of attempts to overthrow the government and sentenced to death in three separate military trials between 1970 and 1985. In all these trials, the defendants were reportedly denied legal counsel and any right of appeal. Their death sentences were commuted by Colonel Gaddafi in June 1988.

Sixty-three of the prisoners and detainees are believed to be held in Abu Salim Prison in Tripoli, while the fate of the other 12 is unknown. Most are reportedly allowed family visits, but some are apparently denied any contact with the outside world.

In 1988 the Libyan authorities undertook to review the cases of all 75, but to Amnesty International's knowledge no such review has yet taken place.

3.2 Prisoners held since 1989

At least 394 people arrested between January 1989 and April 1990 are reported to be held incommunicado without trial, and possibly without having been charged. With the exception of one prisoner who is believed to be held in Abu Salim Prison in Tripoli, their whereabouts are unknown to Amnesty International. It is said that their families also do not know their whereabouts.

Those held were arrested after two demonstrations and at least four armed clashes between opponents of the authorities and members of the security forces and the revolutionary committees. These incidents reportedly occurred in January and April 1989.

The two demonstrations reportedly took place in Tripoli. One is said to have taken place on 9 January 1989 and to have involved religious students at al-Fateh University in Tripoli. The other apparently took place during the second half of January, in protest against the authorities' decision to concede a world cup football qualifying match to Algeria. During the second demonstration security forces reportedly fired into the crowds killing at least one demonstrator. At least 211 people were reportedly arrested in Tripoli and surrounding towns after the demonstrations.

On 14 January security forces in Ajdabiya reportedly clashed with an armed religious group known as *al-Jihad*. The clash apparently resulted in deaths on both sides. At least 24 detainees are said to have been arrested in Ajdabiya following this clash, some in January and others in the following months.

Two other armed clashes between security forces and opponents of the authorities were reported to have occurred in January in Benghazi, shortly after the clash in Ajdabiya. One was said to have taken place near the motorway to Benghazi Airport. The other clash apparently took place at the house in Benghazi of Salim 'Umar Hifter and to have involved two opponents of the authorities who were hiding there and members of the security forces. The two opponents were reportedly killed and Salim 'Umar Hifter was arrested.

The fourth clash reportedly occurred in April 1989 and involved members of the Revolutionary Committees and students at Qar Yunis University in Benghazi. In addition to Salim 'Umar Hifter, at least 57 people are known to have been arrested in Benghazi after these clashes.

At least 28 other detainees are believed to have been arrested during 1989 in Derna, al-Bayda and Tobruq, and 9 in Misrata. The places of arrest of the remaining 63 of the 393, including 15 arrested in March or April 1990, is unknown.

Most of the 394 are believed not to have been involved in the clashes or any other violent activity. They are said to have been arrested because they were suspected of being active political opponents of the authorities, many belonging to or supporting religious groups. Such groups include the *Wahabiya*, the Muslim Brotherhood movement, *al-Jihad*, *al-Da'wa*, *al-Tabligh*, and the Islamic Liberation Party. In an address before members of Libyan Youth Camps on 19 July 1990, Colonel Gaddafi was reported to have told his audience: "If you find among you one who says: Da'wa or Jihad or ...or Ikhwan, then you should cut his head and throw it in the street as if you found a wolf, a fox or a scorpion."

Since June 1989 Amnesty International has been seeking information from the Libyan authorities about these prisoners but without response. The organization has also sought assurances without response that they are being treated humanely and given access to relatives, lawyers and medical attention.

4. Recommendations

Amnesty International continues to urge the Libyan authorities to take immediate steps to end human rights violations by ensuring:

- the immediate and unconditional release of all prisoners of conscience and the release of all other untried political detainees if they are not to be charged with recognizably criminal offences and given a prompt and fair trial in accordance with Article 14 of the ICCPR;
- the establishment of an urgent review of the cases of all political prisoners sentenced after unfair trials, with the aim of releasing all those who may have been convicted solely for the non-violent expression of their conscientiously held beliefs, and providing a fair trial for those who are alleged to have been involved in violent political activities;
- that all prisoners and untried detainees have easy and regular access to family, lawyers and medical facilities and are fully protected against torture or other cruel, inhuman or degrading treatment or punishment.

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APPENDIX

The RCC Decision of 11 December 1969

Article 1 prescribes the death penalty for armed insurrection against the State, while Article 2 lists four categories of non-armed activities hostile to the State and punishable, as a rule, by imprisonment from three to 15 years. These four categories of activities are:

- a) "inciting propaganda against the revolutionary republican system;
- b) "stirring hatred and disunity among social classes;
- c) "spreading rumours or reports which differ from the political or economic situation of the country;
- d) "demonstrating or striking with the aim of opposing or harming the revolutionary republican system."

Law No. 71 of 1972

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.

Article 2

"Party activity (*al-hizbiyyah*) constitutes treason and contradicts the working forces of the people which are represented in the Arab Socialist Union.

"By party activity it is meant any grouping, organization or formation, of whatever kind or number, which is based on a political concept opposed in its aims or means to the principles of the September al-Fatih revolution, or aims to endanger its constitutional foundations, whether openly or in secret, whether the concept on which it is based is written or unwritten, or its subscribers and supporters have or have not used material means."

Article 3

"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."

Article 6

"In all cases the court shall order the closure of the headquarters and branches of the formations prohibited by this law, and the confiscation of all property, goods, papers and other material used in committing the offence, as well as that which has accrued to the perpetrator in monetary terms or otherwise as a result of the crimes mentioned in this law."

Penal Code

i) Dissemination of hostile information

Article 175 prescribes imprisonment of between three and 15 years for:

"whoever deliberately spreads false or tendentious information, reports or rumours, or who, in time of war or similar {situation}, deliberately spreads agitating propaganda likely to damage war preparations for the defence of the country, or terrorize or undermine the nation's steadfastness."

Article 178 states that:

"The punishment is life imprisonment for any Libyan who spreads or communicates information or rumours, which are false or exaggerated or arouse concern about the internal situation in the Libyan Arab Republic in such a way as to damage its reputation, or shake confidence in it abroad, or who undertakes, in any form, an activity which would damage the country's interests."

Article 207 states that:

"The punishment is execution for whoever spreads within the country, by whatever means, theories or principles aiming to change the basic principles of the Constitution or the fundamental structures of the social system or to overthrow the state's political, social or economic structures or destroy any of the fundamental structures of the social system using violence, terrorism or any other unlawful means.

"The punishment is life imprisonment for whoever possesses books, leaflets, drawings or slogans or any other items, with the intention of encouraging the above-mentioned acts, or whoever encourages them by any other means.

"The punishment is life imprisonment for whoever receives or obtains directly or indirectly funds or benefits of whatever kind, by whatever means, from any person or source, whether at home or abroad, where this is by way of making propaganda for what is mentioned in this article."

ii) Illegal organizations

Article 206 of the Penal Code states that:

"The punishment is execution for whoever calls for the establishment of any grouping, organization or association proscribed by law, or who sets up, organizes, directs, funds or provides a place for its meetings, or who joins, or calls others to join it, by whatever means, or who offers any kind of assistance to it. {The same punishment applies to} anyone who, directly or indirectly, receives or obtains funds or benefits of whatever kind, by whatever means, from any person or source, with the intention of establishing, or preparing to establish the proscribed grouping, organization or association. The punishment is the same for both superiors and subordinates, irrespective of how low their rank in the grouping, organization, association or similar, or whether it is based at home or abroad."

iii) Formation and Membership of International Associations

Forming or joining an international association is banned under Article 208 of the Penal Code which states that:

"The punishment is imprisonment for whoever sets up, establishes, organizes or directs international non-political organizations, associations or bodies, or a branch thereof, without government authorization, or where such authorization is based on false or insufficient information.

"The punishment is up to three months' imprisonment and a fine of up to 200 dinars for whoever joins the above-mentioned organizations, associations or bodies, and for any Libyan resident in the country who joins or participates in any of

the above-mentioned bodies whose headquarters are abroad, in whatever manner, without government authorization."