

HUMAN RIGHTS WATCH

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HUMAN
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Subject: Fourth Periodic Report of the Libyan Arab Jamahiriya

Dear Members of the Human Rights Committee:

We are writing to bring to your attention the serious and ongoing violations of human rights in the Libyan Arab Jamahiriya (Libya), in connection with your review of Libya's fourth report on its implementation of the International Covenant on Civil and Political Rights (ICCPR). Human Rights Watch, an independent nongovernmental organization, made its first research visit to Libya in April–May 2005. Human Rights Watch enjoyed access to top-level government officials and was able to visit five prisons, where we conducted private interviews with prisoners and pre-trial detainees. Based largely on research conducted during this visit, Human Rights Watch issued a series of three reports on human rights in Libya: “Words to Deeds: The Urgent Need for Human Rights Reform,” “A Threat to Society? The Arbitrary Detention of Women and Girls for ‘Social Rehabilitation,’” and “Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees.”¹ These reports and subsequent press statements document abuses that continue to be cause for urgent concern.

The government's willingness to allow Human Rights Watch's investigative mission after years of denying entry to human rights groups was one of several recent positive developments. Also in 2005, for instance, Libya abolished the People's Court, which routinely violated defendants' rights to a fair trial and harshly sentenced proponents of peaceful political change (although an unknown number of people remain in prison based on its convictions). In an ongoing process, new penal and criminal procedure codes are being drafted. Most recently, the Libyan government released six Bulgarian and Palestinian healthcare workers after eight years of unjust imprisonment on charges of infecting children with HIV.

¹ These reports are available in full, respectively, at <http://hrw.org/reports/2006/libya0106/>; <http://hrw.org/reports/2006/libya0206/>; and <http://www.hrw.org/reports/2006/libya0906/>.

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The Libyan government has said it needs time to reform, and that change will come from within its unique political system.² Yet many of the same abuses that troubled the Human Rights Committee in 1998, in its Concluding observations on Libya's third periodic report, continue to persist nearly a decade later.³ The Libyan justice system continues to imprison scores of people arbitrarily and after unfair trials. Security officials torture and otherwise mistreat detainees with almost complete impunity. The government severely limits the rights to freedom of expression and association. It continues to arbitrarily detain women and girls in state "social rehabilitation" centers. Non-Libyan residents suffer from arbitrary detention and mistreatment, and potential refugees are liable to forcible repatriation without the possibility of making an asylum claim. Human rights reforms cannot come to Libya quickly enough. Below we highlight our primary concerns.

1. Suppression of civil and political rights⁴

a) Torture (Article 7)

Torture is a crime under Libyan law,⁵ and the government has repeatedly claimed that it investigates and prosecutes cases in which torture is alleged. Despite these statements and legal guarantees, fifteen out of 32 prisoners interviewed by Human Rights Watch in 2005 reported having been tortured during interrogations by Libyan security personnel in recent years. These prisoners included migrants from sub-Saharan Africa arrested for drug possession and political prisoners such as members of the Muslim Brotherhood, among others. Prisoners said that interrogators subjected them to electric shocks, hung them from walls, and beat them with clubs and wooden sticks. Confessions extracted through torture are admitted as evidence in court. During interviews in Tripoli's Jdeida prison in May 2005, four of the six foreign healthcare workers told us that they had confessed only after enduring

² See Human Rights Watch, *Words to Deeds: The Urgent Need for Human Rights Reform*, January 2006, p. 1. In its current report to the Committee, the Libyan government implies that reforms are no longer necessary, insofar as "the paucity of complaints" brought against Libya under the first Optional Protocol to the ICCPR reflects that "there have been no violations of the Covenant." "Fourth periodic report of states parties due in 2002: Libyan Arab Jamahiriya," 05/10/07, CCPR/C/LBY/4, paragraphs 3(a), 31.

³ In particular, the Committee noted a high incidence of arbitrary arrest and detention, the systematic use of torture and cruel, inhuman or degrading treatment or punishment, and numerous restrictions on the right to freedom of expression and in particular on the right to express opposition to or criticism of the government. "Concluding observations of the Human Rights Committee: Libyan Arab Jamahiriya," 06/11/98, CCPR/C/79/Add.101, paragraphs 7, 10, 15.

⁴ For this section see Human Rights Watch, *Words to Deeds: The Urgent Need for Human Rights Reform*, available at <http://hrw.org/reports/2006/libya0106/>; see also Human Rights Watch, *World Report 2007: Libya*, available at <http://hrw.org/englishwr2k7/docs/2007/01/11/libya14712.htm>.

⁵ These include article 2 of the Great Green Charter of Human Rights; article 17 of Law 20, On Enhancing Freedom; and articles 435, 341 and 337 of the penal code. Human Rights Watch, *Words to Deeds: The Urgent Need for Human Rights Reform*, pp. 48-49.

torture, including beatings, electric shock and sexual assault. Notwithstanding the criminalization of torture, only in the cases of the released health care workers are the authorities known to have conducted a criminal investigation. This investigation resulted in the acquittal of the ten officials alleged to have committed torture.

b) Political Prisoners and Enforced Disappearances (Articles 9, 14)

Dozens and perhaps hundreds of individuals remain in Libyan prisons for engaging in peaceful political activity. Libyan courts have imprisoned many for violating Law 71, which bans any group activity based on a political ideology opposed to the principles of the 1969 revolution that brought Libyan leader Mu'ammarr al-Qadhafi to power. Violators of Law 71 can be put to death. In a positive development, the government in March 2006 released 132 political prisoners. These included 86 members of the Muslim Brotherhood, a non-violent political and social organization, who had been in prison since 1998 after trials that violated Libyan and international law. Also released was `Abd al-Raziq al-Mansuri, a writer for a website based in the United Kingdom whom Libyan authorities had arrested in January 2005 and sentenced to one-and-a-half years in prison, apparently because of his writing. Nonetheless, opposition groups estimate that Libya has "disappeared" 250 political prisoners who remain unaccounted for.

Fathi al-Jahmi, a former provincial governor, is Libya's most prominent political prisoner. Internal security forces first arrested al-Jahmi in October 2002, after he criticized the government and al-Qadhafi,⁶ calling for the abolition of al-Qadhafi's Green Book, free elections in Libya, a free press, and the release of political prisoners. A court sentenced him to five years in prison. In March 2004, an appeals court gave al-Jahmi a suspended sentence of one year and ordered his release.

Shortly after his release, al-Jahmi gave interviews to foreign media in which he again called for Libya's democratization and criticized al-Qadhafi. Security agents promptly arrested him again, together with his wife and eldest son. The Internal Security Agency released the wife and son after more than six months' detention, but continues to hold al-Jahmi. His family has not been able to visit him since August 2006.

Al-Jahmi's trial began in late 2005 but has since stopped with the government providing no further information. His court-appointed lawyer told Human Rights Watch that al-Jahmi faces counts under penal code article 206, which imposes the death penalty on those who call "for the establishment of any grouping, organization or association proscribed by law," and on those who belong to or support such an organization.

⁶ Al-Qadhafi currently has no official title, but is called "Guide of the Revolution" or "Brother Leader." Human Rights Watch, *Words to Deeds: The Urgent Need for Human Rights Reform*, p. 12.

On February 15 and 16, 2007, Libyan security agents arrested 14 organizers of a planned demonstration, intended to peacefully commemorate the first anniversary of a violent clash between demonstrators and police in Benghazi, Libya's second-largest city.⁷ At least 12 and possibly all 14 detainees are currently on trial.⁸ They could face the death penalty for allegedly planning to overthrow the government, arms possession, and meeting with a foreign official (from the United States). To Human Rights Watch's knowledge, none of the men have called for or advocated violence.

Two of the men have "disappeared" since their arrest. The government has refused to describe the place of detention or provide access to `Abd al-Rahman al-Qotaiwi, a fourth-year medical student, and Jum`a Boufayed, brother of the demonstration's main organizer, Dr. Idris Boufayed.⁹ Among the other detainees is a Danish citizen, Jamal al-Haji, to whom Libya refuses to grant the Danish government access, in violation of the Vienna Convention on Consular Relations. Two other detainees, Ahmad Yusif al-`Ubaidi and Al-Sadiq Salih Humaid, are apparently not being treated for their medical ailments. Dr. Idris Boufayed, who was detained as the main organizer of the planned demonstration, is an outspoken critic of the Libyan leader. Internal security agents previously detained him in November 2006, after he wrote critical letters to Libyan opposition websites. Boufayed has advocated peaceful change to promote the rule of law and respect for human rights.¹⁰

c) Freedom of Expression (Article 19)

Freedom of expression is severely curtailed. Libya has no private radio or television stations. The country's main newspapers and magazines are controlled by government authorities or the Revolutionary Committees Movement, a powerful organization that promotes the values of the al-Fateh Revolution that brought al-Qadhafi to power in 1969. Although two private newspapers and a private television station have been established, the only truly uncensored media are satellite

⁷ Those arrested are: Al-Mahdi Humaid, Al-Sadiq Salih Humaid, Faraj Humaid, `Adil Humaid, `Ali Humaid, Ahmad Yusif al-`Ubaidi, `Ala' al-Dirsi, Jamal al-Haji, Dr. Idris Boufayed, Farid al-Zuwi, Bashir al-Haris, Al-Sadiq Qashut, Jum`a Boufayed, `Abd al-Rahman al-Qotaiwi. Human Rights Watch, "Libya: Men Face Possible Death for Planning Peaceful Demonstration, Two Others 'Disappeared' for Nearly Six Months," August 14, 2007, <http://hrw.org/english/docs/2007/08/14/libya16638.htm>.

⁸ A report from the last court session is available at http://www.libya-almotakbal.net/Alakhbar2007/July2007/feb_demo_trial160707.html.

⁹ Human Rights Watch, "Libya: Men Face Possible Death for Planning Peaceful Demonstration, Two Others 'Disappeared' for Nearly Six Months," *supra* note 7.

¹⁰ Human Rights Watch, "Libya: Security Agency Detains Critic; No Contact with Boufayed Since November 5," December 4, 2006, <http://hrw.org/english/docs/2006/12/04/libya14735.htm>. For an example of Dr. Boufayed's writing, see http://www.libyaalwafa.com/idrees_abufyed/public_announcement_112106.htm.

television programs and the Internet. Both have proliferated in recent years, although the government occasionally blocks websites.

d) Freedom of Association (Article 22)

Individuals have no freedom to gather or organize groups for the purpose of criticizing the government, the unique Jamahiriya political system,¹¹ or Mu'ammār al-Qadhafi. Those who do express criticism or try to organize opposition political groups face arbitrary detention and prison terms after unfair trials. A pervasive security apparatus extensively monitors the population, and self-censorship is rife.

An exception is the quasi-official Qadhafi Development Foundation, run by Mu'ammār al-Qadhafi's son, Seif al-Islam al-Qadhafi, who has criticized government corruption, the lack of representative government and free press, and called for a constitution. His foundation was also instrumental in the release of 132 political prisoners in March 2006.

However, Libya has no independent nongovernmental organizations. Law 19, "On Associations," requires a political body to approve organizations in order for them to operate. Law 19 neither requires the government to respond to applications within a certain time, nor allows applicants to appeal a negative decision. The government has refused to allow an independent journalists' organization, and reportedly raided the Benghazi office of the official lawyers' union in November 2005, appointing union leaders against the membership's will.¹²

e) Killings at Abu Salim Prison (Article 6)¹³

The year 2006 marked the tenth anniversary of large-scale killings in Tripoli's Abu Salim prison, which Human Rights Watch visited in May 2005. According to an ex-prisoner interviewed by Human Rights Watch, whose account matches a separate report by a Libyan opposition group, prisoners revolted on June 28, 1996, over prison conditions. Internal Security Agency forces killed "around 1,200 people" by throwing hand grenades and firing machine guns, the witness said. In 2001, Libyan authorities began to inform some families of Abu Salim prisoners that their family member had died, without providing the body or the cause of death. In April 2004, al-Qadhafi publicly acknowledged that killings had occurred, and in 2005 the government said it had established a committee to investigate the incident. To date, the committee

¹¹ The Jamahiriya, or "state of the masses," is characterized by "direct democracy," in which all citizens are participatory members of People's Committees. It follows, as Libya's Great Green Charter for Human Rights states, that "Democracy means popular power, not popular expression." Human Rights Watch, *Words to Deeds*, *supra* note 4, p. 13.

¹² Human Rights Watch, *Words to Deeds: The Urgent Need for Human Rights Reform*, pp. 74-76.

¹³ Human Rights Watch, "Libya: June 1996 Killings at Abu Salim Prison," June 28, 2006, <http://hrw.org/english/docs/2006/06/28/libya13636.htm>.

has not released any findings, including the number of people killed or the names of the dead.

f) The Death Penalty (Article 6)

Libyan law still permits the death penalty. In April 2005, the secretary of justice told Human Rights Watch that Libya had imposed a moratorium on the death penalty pending a revision of the penal code. Nevertheless, Libyan authorities executed two Nigerians, four Egyptians, and two Turkish citizens from April to July 2005. The lack of an independent judiciary and the use of torture to extract confessions, among other concerns (noted below), mean that Libya's imposition of the death penalty is causing the arbitrary deprivation of the right to life.

In addition, the death penalty exists as punishment for activity that should be protected under the rights of free assembly and expression, in violation of the ICCPR's restriction of capital punishment to "only the most serious crimes." Article 206 of the Libyan penal code imposes the death penalty on those who call "for the establishment of any grouping, organization or association proscribed by law," and on those who belong to or support such an organization. Article 166 provides that the death penalty may be imposed on anyone who talks to or conspires with a foreign official to provoke or contribute to an attack against Libya.

One of Libya's most prominent political prisoners, Fathi al-Jahmi (see below), faces a possible death sentence for slandering al-Qadhafi and talking with a foreign official.

According to Libyan officials, the government is continuing its review of the penal code and code of criminal procedure. The secretary of justice told Human Rights Watch in 2005 that under the new penal code, the death penalty would remain only for the "most dangerous crimes" and for "terrorism." The government has to date made public neither the draft penal code nor the draft code of criminal procedure, making it impossible to assess the changes under review. However, a review of a 2004 penal code draft suggests the government will accept a very broad definition of terrorism, which might be used to criminalize the expression of peaceful political views.

Questions for the Government of Libya

Libya should clarify the following issues during its upcoming presentation to the Human Rights Committee:

1. What is the status of the penal code and criminal code revisions? What steps is the government taking to ensure that the codes meet international human rights standards? Will the new penal code abolish the death penalty and, if not, for what crimes will capital punishment be applied?

2. How many members of the security forces have the authorities investigated and prosecuted for allegedly using torture against prisoners or detainees over the previous year? How many convictions or other punishments resulted?
3. What is the current status of Fathi al-Jahmi's trial? What charges does he face and when is the next court date?
4. What are the charges against Idris Boufayed and the 13 others arrested on February 15-16, 2007? When will they face trial?
5. What is the current location of "disappeared" persons `Abd al-Rahman al-Qotaiwi and Jum`a Boufayed, arrested on February 15-16, 2007?
6. What is the status of the government's investigation into the 1996 Abu Salim prison killings?

Recommendations to the Government of Libya

The Human Rights Committee should consider issuing the following recommendations to the Libyan government:

1. The Human Rights Committee recommends that Libya promptly, thoroughly and impartially investigate all allegations of torture and ill-treatment, and ensure that confessions and other evidence obtained by torture are not admissible in a court of law.
2. The Human Rights Committee recommends that Libya repeal Law 71 of 1972, and the articles of the penal code that criminalize free expression and free association.
3. The Human Rights Committee recommends that Libya fosters the establishment and regulation of independent private media.
4. The Human Rights Committee recommends that Libya enact legislation that facilitates the registration of non-governmental organizations by an independent body, with the right to appeal.
5. The Human Rights Committee recommends that all individuals imprisoned or detained for exercising their right to free expression be released, including Fathi al-Jahmi, and Idris Boufayed and the 13 others arrested with him.
6. The Human Rights Committee recommends that Libya immediately inform the families of `Abd al-Rahman al-Qotaiwi and Jum`a Boufayed of their location.

7. The Human Rights Committee recommends that Libya eliminate the death penalty as a punishment and define “terrorism” in a focused and narrow way to exclude peaceful acts and expressions critical of the government.
8. The Human Rights Committee recommends that Libya promptly inform all families of relatives who died in the 1996 violence in Abu Salim prison, and publicly release the results of the government committee’s investigation of the incident.

2. The Arbitrary Detention of Women and Girls

a) Arbitrary detention and cruel, inhuman or degrading treatment (Articles 9, 7)

The government of Libya is arbitrarily detaining women and girls it deems “vulnerable to engaging in moral misconduct” in the country’s “social rehabilitation” facilities, locking them up indefinitely without due process. In addition to violating the prohibition of arbitrary detention in Article 9 of the ICCPR, the conditions of prolonged solitary confinement in which the government holds these women and girls may rise to the level of cruel, inhuman or degrading treatment in violation of Article 7. In these facilities, the authorities are holding women and girls who have committed no crime, or who have completed a sentence. Some are there for no reason other than that they were raped, and are now ostracized for staining their families’ “honor.” Officials transferred the majority of these women and girls to these facilities against their will, while those who came voluntarily did so because no genuine shelters for victims of violence exist in Libya. The detainees have no opportunity to contest their confinement in a court of law, and typically have no legal representation. The exit requirements of “social rehabilitation” facilities are in themselves arbitrary and coercive. There is no way out unless a male relative takes custody of the woman or girl or she consents to marriage, often to a stranger who comes to the facility looking for a wife.

Human Rights Watch visited two “social rehabilitation” facilities in Libya in April and May 2005: the Social Welfare Home for Women in Tajoura, near Tripoli, and the Benghazi Home for Juvenile Girls. Some of the women and girls we interviewed were confined because they were accused—but not criminally convicted—of having had extramarital sex. Others had served prison sentences for engaging in extramarital sex, and were transferred to the facilities because no male family member would take custody of them following their release. Many had been raped, and then evicted from their homes by their families. While the number of detained women and girls in Libya’s “social rehabilitation” facilities is relatively small—often less than one hundred—the abusive nature of these facilities and the egregious violations that occur within them require immediate action.

b) Inhumane conditions of detention (Article 10)

As Human Rights Watch documented,¹⁴ the transfer of women and girls into “social rehabilitation” facilities is the beginning of a host of other abuses. Libyan authorities restrict their freedom of movement and subject them to punitive treatment including solitary confinement for trivial reasons. Women and girls are tested for communicable diseases without their consent and are forced to endure virginity examinations, a form of degrading treatment that violates ICCPR Article 10.¹⁵ Human Rights Watch is concerned that many of the detainees are denied their rights to due process, are not granted the opportunity to challenge the legality of their detention in a court of law, and are denied any form of legal representation. Some residents are as young as 16, but authorities provided no education at the time of our visit except weekly religious instruction.

c) Failure of due diligence (Article 2)

The confinement of rape victims in “social rehabilitation” facilities is emblematic of the Libyan state’s position towards violence against women—a position of denial of the phenomenon, tacit acceptance of domestic violence, and inadequate laws and services to provide proper protection and remedy to the victims. The notion persists that, rather than being a crime against the individual woman requiring appropriate judicial redress, rape is a crime against a women’s “honor” that shames her and her family. The risk that rape victims will themselves be prosecuted is also one of the problematic aspects of the criminalization of all extramarital sexual relations in Libya. Women and girls who attempt to press charges for rape risk being imprisoned for adultery or fornication if they are unable to meet the high threshold of evidence required in rape cases. Judges in Libya also have the authority to propose marriage between the rapist and the victim as a “social remedy” to the crime, further impeding the ability of rape victims to seek justice. While the real extent of violence against women in Libya is unknown, the government is failing to act with due

¹⁴ Human Rights Watch, *A Threat to Society? Arbitrary Detention of Women and Girls for “Social Rehabilitation*, February 2006, available at <http://hrw.org/reports/2006/libyao206/libyao206webwcover.pdf>.

¹⁵ Human Rights Watch has extensively documented that forced virginity examinations are a form of human rights abuse. In Afghanistan, we found that such examinations – which were conducted in a coercive setting, against women and girls’ will, and with no medical justification – were themselves a form of sexual abuse and a significant punishment. Human Rights Watch, *“We Want to Live as Humans”*: *Repression of Women and Girls in Western Afghanistan*, December 2002, p. 22, available at <http://www.hrw.org/reports/2002/afghnwmn1202/Afghnwmn1202.pdf>. In the West Bank and Gaza, in addition, we found that forced virginity examinations reflected an inherently discriminatory emphasis on female virginity. Experts have confirmed that the state of a woman’s hymen is not a reliable indicator of recent sexual intercourse or the nature, consensual or otherwise, of any such intercourse. Human Rights Watch, *A Question of Security: Violence Against Palestinian Women and Girls*, November 2006, pp. 66-69, available at <http://hrw.org/reports/2006/opt1106/6.htm>.

diligence in determining the extent of these crimes and responding appropriately to them when they do occur.¹⁶

Questions for the Government of Libya

Libya should clarify the following issues during its upcoming presentation to the Human Rights Committee:

1. What steps are being taken to release women and girls currently held in the country's "social rehabilitation" facilities who have committed no crime or who have completed a sentence? If no such steps are envisioned, does the Libyan government propose that these women and girls remain in these facilities indefinitely?
2. Does the government in any way restrict or prohibit officials from proposing the marriage of the perpetrator and the victim as a remedy in rape cases, and as a means for the rapist to avoid criminal liability? If so, what mechanisms are in place to monitor and punish the conduct of government officials in this area?
3. When administering virginity examinations, to what degree is informed consent sought by government officials and to what extent do women and girls in detention have the ability to provide it?
4. What concrete measures has the government taken to address violence against women? For example, has the government implemented any training programs directed at the police, health professionals, judges, or prosecutors who come into contact with victims of physical and sexual violence on how to deal with such cases appropriately? Has the government established clear and explicit guidelines of intervention in these cases in line with international standards?

Recommendations to the Government of Libya

The Human Rights Committee should consider issuing the following recommendations to the Libyan government:

¹⁶ The ICCPR specifically prohibits sex discrimination in articles 2(1), 3 and 26. As well, General Comment No. 31 states that "there may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities." *General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 26/05/2004, CCPR/C/21/Rev.1/Add.13, paragraph 8.

1. The Human Rights Committee recommends that Libya repeal regulations that condition a woman's release from any form of detention on a male relative claiming custody of her.
2. The Human Rights Committee recommends that Libya release all women and girls detained in "social rehabilitation" facilities who have not been charged with or convicted of a crime, and those who have served their sentence. This would require that the Libyan government take measures to ensure their full protection after their release.
3. The Human Rights Committee recommends that Libya establish voluntary shelters for women and girls at risk of violence, and their dependent children. These shelters should not compromise women's privacy, personal autonomy, and freedom of movement.
4. The Human Rights Committee recommends that Libya repeal Law No. 70 (Regarding the Establishment of the *Hadd* Penalty for *Zina* Modifying some of the Provisions of the Penal Law) of 1973. Pending repeal of the *zina* law, ensure that women accused of the crimes of adultery and fornication are afforded due process rights. When detained, authorities must inform them of the charges against them, formally charge them, and allow them to contact and meet with family members and legal counsel.
5. The Human Rights Committee recommends that Libya enact a specific set of laws explicitly criminalizing all forms of violence against women and repeal legal provisions that in intent or effect perpetuate or condone violence against women and girls.
6. The Human Rights Committee recommends that Libya prohibit judges from suggesting the marriage of the perpetrator and the victim as a remedy in rape cases.
7. The Human Rights Committee recommends that Libya cease immediately the practice of forcing detained women and girls to undergo virginity examinations against their will.
8. The Human Rights Committee recommends that Libya collect and disseminate, in a timely and transparent manner, comprehensive national statistics on violence against women, detailing the nature and degree of violence, rates of prosecution and conviction, and the average sentences and penalties.

3. Abuses Against Migrants, Asylum Seekers and Refugees

a) Background

Today Libya is far from the welcoming country for foreigners that al-Qadhafi said it would be in 1999, when, seeking a source of inexpensive labor, he encouraged sub-Saharan Africans to come.¹⁷ As of 2005 the Libyan government estimated that there were 600,000 “legal” foreign workers (those who registered with the authorities) in the country, as well as 1 to 1.2 million “illegal” migrants. Anti-foreigner sentiment in Libya, which has a population of approximately 5.3 million, has risen, spurred by a sense that migrants are causing economic disruption.¹⁸ Foreigners now face tight immigration controls, detention and deportation. From 2003 to 2005, the Libyan government repatriated roughly 145,000 foreigners, according to official figures. In interviews with 56 migrants, asylum seekers and refugees with experience in Libya in April and May 2005, Human Rights Watch documented that abuses against these individuals take place in a context of widespread hostility toward sub-Saharan Africans.¹⁹

b) Arbitrary detention (Article 9), inhuman treatment during detention (Article 7), and mistreatment during arrest and in detention (Article 10)

At various times over the past decade, and most recently since 2004, Libyan authorities have engaged in wide-scale and systematic arrests of undocumented migrants, asylum seekers and refugees. Slightly over half of the non-Libyans interviewed by Human Rights Watch reported that Libyan authorities arrested and detained them, and many of them complained that the authorities beat them upon arrest. Several described an atmosphere of pervasive corruption in which bribery was a common means of escape.²⁰ Foreigners in Libya also reported due process

¹⁷ Human Rights Watch, *Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees*, September 2006, p. 14, available at <http://www.hrw.org/reports/2006/libya0906/>.

¹⁸ The most serious incident was an attack by a mob against foreigners from Sudan and Chad in September 2000 in the town of Zawiyah, which killed up to 50 people, and led to large-scale arrests of foreigners as the authorities were ordered to stem the private sector’s hiring of non-Libyans. In interviews with Human Rights Watch, Libyan officials also blamed sub-Saharan Africans for a soaring crime rate and for introducing HIV/AIDS. Human Rights Watch, *Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees*, p. 63.

¹⁹ Despite this hostility towards sub-Saharan Africans, Human Rights Watch found that the European Union is cooperating with Libya on migration control without prioritizing protection. Italy, in particular, has in the past egregiously flouted international laws intended to protect migrants, asylum seekers and refugees by collectively expelling groups of people back to Libya, including 1,876 “illegal migrants” in 2005. Human Rights Watch, *Stemming the Flow*, p. 110.

²⁰ Widespread bribery alone could rise to the level of arbitrary detention. According to the Working Group on Arbitrary Detention, detention is considered “arbitrary” if it is not authorized by law or in accordance with law. It is also arbitrary when it is random, capricious, or not accompanied by fair procedures for legal review. United Nations Commission on Human Rights, *Report of the Working Group on Arbitrary Detention*, E/CN.4/2000/4, December 28, 1999.

violations, including the failure to be informed of the reason for their detention, prolonged pre-trial detentions, restricted access to lawyers, poor translation during trial, the inability to maintain an adequate defense, and the unavailability of legal review of their cases. Allegations of police violence during detention and deportation proceedings included torture and beatings. In three cases, witnesses reported that physical abuse by guards led to a person's death. Three interviewees reported that security officials threatened women detainees with sexual violence, and one witness saw what he believed was a rape. Those interviewed complained that detention and deportation facilities are overcrowded, unsanitary and do not provide adequate food. Nor were the detainees able to contact their families or embassies. While detention conditions for migrants and refugees have reportedly improved in recent years, the evidence suggests that many of these abuses persist.

c) Lack of an asylum screening process and refoulement (Article 7)

The Libyan government says it does not deport those with a legitimate claim of persecution or abuse in their home country. Some Libyan officials told Human Rights Watch that there were no refugees who would wish to seek asylum in the country. However, Human Rights Watch interviewed 17 individuals who had been unable to obtain protection in Libya, but received refugee status from UNHCR or subsequently from the Italian government. Without an asylum law and procedures, it remains unclear how individuals can effectively seek protection, what authority decides to give it, and on what criteria. Despite repeated promises to do so and the fact that *refoulement* (forcible return of asylum seekers and refugees) violates Libyan law, Libya refuses to introduce an asylum law or procedures.²¹ Libya has not ratified the 1951 Refugee Convention, and the government has made no attempt to identify refugees or others in need of international protection. Libya has no formal working agreement with the United Nations High Commissioner for Refugees (UNHCR). In a positive development, in 2006 the secretary of justice created a committee to draft a law on asylum, which Libya currently lacks; cooperation with UNHCR also improved. Nonetheless, the ongoing practice of *refoulement* violates Libya's obligations under Article 7 of the ICCPR, as interpreted by General Comment 20.²²

Libyan authorities continue forcibly to return foreigners to countries where they could face persecution or torture. Human Rights Watch received credible information that in July 2004, the Libyan government forcibly returned over 100 Eritreans, whom

²¹ Libya's Constitutional Proclamation from 1969 states, "the extradition of political refugees is prohibited." Law 20 of 1991, "On Enhancing Freedom," states that Libya "should not abandon ... refugees and their protection." Human Rights Watch, *Stemming the Flow*, pp. 3-4.

²² As General Comment 20 notes, "States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement". *General Comment No. 20: Article 7 (Forty-fourth session, 1992)*, *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 151 (2003), paragraph 7.

the Eritrean government arrested upon arrival and held in incommunicado detention. In August 2004, despite UNHCR protests, the Libyan government forcibly returned another 75 Eritreans, who forced their plane to land in Sudan, where 60 of them requested and were all granted refugee status. On July 8, 2007, Libya reportedly rounded up approximately 70 Eritrean men, many of whom may have fled conscription into the Eritrean military, for which they could face persecution if repatriated because Eritrea has no conscientious objector status and military offenders are frequently subjected to torture. Reportedly at the request of Eritrean government, the 70 men have had their photographs taken and were made to fill in forms giving their names and dates of birth. The detainees say that Libyan guards have repeatedly threatened them with deportation.²³

Questions for the Government of Libya

Libya should clarify the following issues during its upcoming presentation to the Human Rights Committee:

1. What procedures or criteria are used to ensure that the arrests of foreigners conform with international law and are not arbitrary?
2. What steps is Libya taking to ensure that the embassies of non-citizens are notified of their detention, and provided due process rights?
3. At what stage is Libya's draft asylum law? What steps is the government taking to ensure that it meets international standards?

Recommendations to the Government of Libya

The Human Rights Committee should consider issuing the following recommendations to the Libyan government:

1. The Human Rights Committee recommends that Libya introduce laws to respect the prohibition on *refoulement* and to establish an effective, fair and lawful asylum procedure.
2. The Human Rights Committee recommends that Libya monitor conditions in all detention facilities housing migrants and possible asylum seekers, ensure that conditions conform to international minimum standards, and criminally prosecute guards and other officials who physically abuse or otherwise mistreat detainees.

²³ See Amnesty International, "Libya/Eritrea, Forcible return," AI index MDE 19/014/2007 (September 4, 2007).

3. The Human Rights Committee recommends that Libya sign a Memorandum of Understanding with the United Nations High Commissioner for Refugees (UNHCR) and allow the agency to perform its functions freely in Libya, including by granting it unfettered access to all immigration detention facilities.
4. The Human Rights Committee recommends that Libya suspend all expulsions until effective and accessible mechanisms are in place by which non-nationals facing expulsion may challenge both their detention and deportation on human rights as well as immigration grounds.
5. The Human Rights Committee recommends that Libya present all migrants, asylum seekers and refugees taken into custody on non-immigration offenses promptly before a judicial authority, and charge them with a cognizable criminal offense, or release them.

Thank you for you attention to this serious matter.

Sincerely,



Sarah Leah Whitson
Executive Director of the Middle East and North Africa division