

Amnesty International

LIBYAN ARAB JAMAHIRIYA ADDENDUM TO BRIEFING TO THE UN HUMAN RIGHTS COMMITTEE

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Introduction

Amnesty International submits this addendum to update the Briefing it presented to the UN Human Rights Committee (HRC) in June 2007 (*Libyan Arab Jamahiriya: Briefing to the UN Human Rights Committee* [AI Index: MDE 19/008/2007]). The Briefing was submitted ahead of the HRC's pre-session meeting in July 2007, a preliminary to its upcoming examination of the Libyan Arab Jamahiriya's (Libya's) fourth periodic report on implementation of the International Covenant on Civil and Political Rights (ICCPR).

This addendum includes developments which have occurred since June 2007 in a number of the cases described in the Briefing, as well as updates on some of the issues outlined in the document. For ease of reference, the addendum uses the same headings as the original briefing.

Prohibition of torture and cruel, inhuman or degrading treatment or punishment

Articles 7, 10

Migrants, asylum-seekers and refugees

Amnesty International's June 2007 Briefing highlighted persistent allegations of migrants, asylum-seekers and refugees being exposed to torture and cruel, inhuman and degrading treatment on arrest or in detention. Since June 2007, the organization has learnt of further such allegations.

In September 2007, for example, Amnesty International received reports concerning some 70 Eritrean nationals who had fled Eritrea to seek refuge abroad and were reportedly being held in a detention facility in the Libyan town of Az Zawiyah, some 40km west of the capital, Tripoli. According to reports received from several of the detainees, all the approximately 70 Eritrean nationals were male, mainly aged in their twenties and were rounded up during the night of 8 July 2007. When they arrived at the detention facility, they said that they were told to strip naked and were beaten by guards with implements such as metal chains. Some were reportedly beaten on numerous subsequent occasions.

The detainees said that they had been threatened by the guards with deportation on a number of occasions. On 1 September, it is reported that they were made to fill in forms asking for their personal details, including their name and date of birth, and to have their photographs taken. They were told by guards at the detention facility that the forms and photographs had been requested by Eritrean embassy officials in Libya to allow them to issue travel documents for their deportation. To date, however, none of the detainees appears to have been deported.

Many of the approximately 70 Eritrean nationals are believed to have been conscripts, forced into military service in Eritrea for an indefinite period of time. Amnesty International believes that, if returned to their country, the Eritrean nationals would be at serious risk of being detained on arrival, tortured as punishment for “betraying” the country or fleeing military service, denied medical treatment and held incommunicado indefinitely without charge or trial.

A context of impunity

Amnesty International’s June 2007 Briefing outlined its concerns regarding the investigation and prosecution of 10 people in connection with the alleged torture or ill-treatment of the five Bulgarian nurses and a Palestinian doctor arrested in 1999 and sentenced to death for a second time on 19 December 2006. It also expressed concern about a defamation case brought against the medics in 2007 by four of those tried and acquitted in connection with the torture allegations. The Briefing mentioned that the medics were acquitted of the defamation charges on 27 May 2007, but the plaintiffs reportedly appealed against the verdict.

Amnesty International subsequently learnt that two separate defamation cases had been brought against the medics by security force personnel who had been tried and acquitted in connection with the alleged torture of the medics. The first case was brought by three, rather than four, plaintiffs and is the case referred to above. The second case, brought by a fourth plaintiff, came to court on 27 June 2007, before being adjourned until 18 July 2007, on which date the medics were again acquitted of the defamation charges against them.

On 17 July 2007 the six medics had their death sentences commuted, before being transferred to Bulgaria on 24 July 2007 and pardoned soon after their arrival by Bulgarian President Georgi Parvanov.

Protection against arbitrary expulsion

Article 13

Amnesty International’s June 2007 Briefing outlined its concerns regarding the deportation by the Libyan authorities of hundreds of Eritreans in the period under review. It also expressed concern that dozens of Eritrean nationals, some of whom were believed to be individuals who had fled Eritrea for fear of persecution on account of their political beliefs, were at risk of deportation.

Although to date, as far as Amnesty International is aware, none of the Eritrean detainees has been deported, the organization has since obtained information regarding the arrest and detention of dozens of other Eritrean nationals and learnt that the number of Eritrean nationals reportedly detained in Libya and at risk of forcible return is at least 500.

Some 70 Eritrean nationals who had fled Eritrea to seek refuge abroad were reportedly rounded up during the night of 8 July 2007 and taken to a detention facility in the Libyan town of Az Zawiyah, some 40km west of the capital, Tripoli. According to reports received from several of the detainees, all the approximately 70 Eritrean nationals were male and mainly aged in their twenties.

The detainees said that they were threatened by the guards with deportation on a number of occasions. On 1 September, it is reported that they were made to fill in forms asking for their personal details, including their name and date of birth, and to have their photographs taken. They were told by guards at the detention facility that the forms and photographs had been requested by Eritrean embassy officials in Libya to allow them to issue travel documents for their deportation. To Amnesty International’s knowledge, they have not had the opportunity of a review of their individual circumstances to ensure that their return

would not expose them to serious human rights abuses or to any judicial proceedings through which they could challenge their detention or the alleged decision to expel them.

Many of the approximately 70 Eritrean nationals are believed to have been conscripts, who were forced into military service in Eritrea for an indefinite period of time. Amnesty International believes that, if returned to their country, the Eritrean nationals would be at serious risk of being detained on arrival, tortured as punishment for “betraying” the country or fleeing military service, denied medical treatment and held incommunicado indefinitely without charge or trial. The UN High Commissioner for Refugees (UNHCR) has recommended that even rejected asylum-seekers from Eritrea should not be returned; advice which seems to have been generally observed internationally. (See also section on “Prohibition of torture and cruel, inhuman and degrading treatment or punishment” above.)

Trial procedures

Article 14

Special courts

Amnesty International’s June 2007 Briefing indicated that it had received reports that an ad hoc court was established to try some of the cases previously examined by the People’s Court, which was abolished in January 2005. One such case was that of the Muslim Brothers, which was retried after being reviewed by the Supreme Court.

Since then, Amnesty International has learnt that the trial of those allegedly responsible for the killing of journalist Daif al-Ghazal reportedly took place in an ad hoc court in Tripoli in June and July 2007 and that trial proceedings against Idriss Boufayed and 11 others may have been taking place in a similar establishment since June 2007. (See sections below on “Killing of journalist Daif al-Ghazal” and “Idriss Boufayed and 11 others” respectively.)

Amnesty International believes that the ad hoc courts reportedly established in both cases may have been “specialized” courts set up in accordance with Article 19 of Law No. 6 of 1374¹ on the Justice System, which stipulates:

“By decision of the [Supreme] Council [of Judicial Bodies], based on a submission from its President, appeal courts, first instance courts and summary courts specialized in particular types of cases may be established...”

Amnesty International has not been able to ascertain whether the “specialized” courts follow the judicial procedures set out in the Criminal Procedure Code or a special set of procedures.

Right to life

Article 6

Death penalty

Amnesty International’s June 2007 Briefing expressed concern that death sentences continued to be handed down after proceedings which breach international standards for fair trial. It referred, in particular, to the case of the five Bulgarian nurses and a Palestinian doctor sentenced to death by firing squad for a second time on 19 December 2006 after being convicted of knowingly infecting hundreds of Libyan children with HIV in a hospital in Benghazi in 1998.

¹ The year 1374 according to the Libyan calendar used in official documents at the time covered approximately the period from 11 April 2006 to 30 March 2007.

As was widely reported in the international media, the six medics had their death sentences commuted to life imprisonment by the Supreme Council of Judicial Bodies on 17 July 2007. They were then transferred to Bulgaria on 24 July 2007 under a prisoner exchange agreement between the two countries and pardoned soon after their arrival by Bulgarian President Georgi Parvanov. (See also section on “Prohibition of torture and cruel, inhuman and degrading treatment or punishment” above.)

Amnesty International continues to be concerned that the Libyan authorities do not, provide statistics on their use of the death penalty or ensure transparency in its imposition by other means.

Unlawful killings

Killing of journalist Daif al-Ghazal

Amnesty International’s June 2007 Briefing detailed the case of journalist **Daif al-Ghazal**, who was killed in circumstances which gave rise to concerns that he was extrajudicially executed for the content of his writing. It also made reference to an official investigation into the murder, in which security officers and witnesses had reportedly been questioned by the Benghazi Prosecutor’s Office.

Since then, three people were tried and convicted of murdering Daif al-Ghazal. They were reported to be members of the Revolutionary Guard and were sentenced on 19 July 2007 to death by firing squad. The trial reportedly took place in an ad hoc or “specialized” court in Tripoli because of its sensitive nature. It is not known whether the three prisoners have submitted appeals and, if so, whether these have been heard.

Freedom of expression and assembly

Articles 19, 21

The legal framework

Amnesty International’s June 2007 Briefing expressed serious concerns regarding restrictions on the right to freedom of expression in Libya, including legal restrictions on the freedom of the press which effectively prevented the formation of independent newspapers.

In August 2007 two new private daily newspapers *Oea* and *Cyrene* were launched, as was a new private satellite television channel Al-Libiya. All three media organs are owned by Al-Ghad Media Corporation, which had launched the radio station Al-Libiya FM in 2006, and appear to have distanced themselves from the existing state media, both in style and, to a certain extent, in content. For instance, the new dailies have criticized members of the government on economic issues. It remains to be seen, however, whether they will be able to tackle more sensitive issues.

It should be noted that Al-Ghad Media Corporation reportedly belongs to Saif al-Islam al-Gaddafi, one of the sons of Libyan leader Mu’ammar al-Gaddafi and believed to be a possible successor, raising questions about the degree to which the three new media organs can be considered independent.

Imprisonment and intimidation of dissident voices

Idriss Boufayed and 11 others

Amnesty International’s June 2007 Briefing detailed the case of Idriss Boufayed and 11 others arrested and detained in February 2007, apparently in view of their peaceful political

opposition to or criticism of the government. The Briefing stated that on 20 April 2007 six of the 12 men were reportedly charged by a court in the district of Tajoura in Tripoli with offences such as possession of weapons with the intention of carrying out subversive activities, incitement to demonstration and communication with enemy powers.

Amnesty International has since obtained information indicating that the remaining six were charged with similar offences to those mentioned above. According to reports received by the organization, trial proceedings against all 12 men began on 24 June 2007 and were ongoing as of early September. Some reports indicated that two additional men, Abderrahman al-Qatiwi and al-Sadeq Qashut, were also accused in the same case and were detained in Ain Zara Prison on similar charges to the 12 others.

Amnesty International has received conflicting information regarding the court before which the trial has been taking place. Initially, some reports indicated that the court was an ad hoc or “specialized” court in Tajoura. Subsequently, family members of the defendants reported that the trial was being held in a criminal court in the district of Bab Bin Ghashir in Tripoli and that the sessions were open to the public. Diplomatic sources told Amnesty International, however, that they were not able to obtain details of the location of the court and had been informed by officials that the trial was not open to the public, even if family members were allowed to attend the sessions.

Freedom from discrimination

Articles 26

Homosexuality

Consensual sexual relations appear to be criminalized between same sex partners and opposite sex partners outside of marriage. Provisions in Articles 407 and 408 of the Penal Code criminalize consensual sexual relations in gender-neutral language, and appear to form a legal basis for criminalizing consensual sexual relations between members of the same sex, as well as consensual sexual relations outside of marriage between members of the opposite sex. Statements by Libyan officials are relevant in this context.

Paragraph 4 of Article 407 states that “Anyone who has sexual intercourse with another person with their consent shall be punished, as shall their partner, by up to five years’ imprisonment.” Paragraph of Article 408 states that “Anyone who commits an indecent act on another person with their consent shall be punished, as shall their partner, by imprisonment.” Both paragraphs were added by Law No. 70 of 1973 Establishing the Punishment of Adultery and Modifying some Provisions of the Penal Code.

Although Amnesty International has been unable to access relevant case law, it understands that both articles can be used to punish consensual sexual relations between members of the same sex, as well as consensual sexual relations outside of marriage between members of the opposite sex.

Statements by Libyan officials appear to confirm that consensual sexual relations between members of the same sex are criminalized, while denying the existence of such behaviour in Libyan society. The response of a Libyan official to the UN Committee on the Rights of the Child in 1998 is illustrative in this regard. The official was recorded as saying “sexually deviant behaviour was viewed as both religiously and legally punishable in the Jamahiriya. Officially and socially, therefore, it did not exist. The Islamic religion and Libyan

law viewed such behaviour not as a matter of individual freedom but as a serious social concern.”²

Remedies for gross human rights violations of the past

Articles 2, 6, 16

Enforced disappearances and killings

Amnesty International’s June 2007 Briefing referred to events which occurred in June 1996 at Abu Salim Prison in Tripoli, during which an unknown, but allegedly large, number of prisoners died. It noted that a committee had been established to investigate the events, but expressed concern that no details had been made available about the investigation.

Since then, no further information has emerged about the investigation, as far as Amnesty International is aware. However, in a separate development, more than 20 families of people who went missing after being arrested by the security forces and were believed to have been in Abu Salim Prison during the events of 1996 learnt the outcome of a formal request they had submitted in March 2007 for the Public Prosecutor to oblige the Libyan authorities to reveal the fate and whereabouts of their relatives. The case was examined by the First Instance Court of North Benghazi, which reportedly declared on 24 June 2007 that the case did not fall within its jurisdiction. A legal representative of the families said that they would appeal the decision.

² Committee on the Rights of the Child. Summary record of the 434th meeting : Libyan Arab Jamahiriya. 13 January 1998. CRC/C/SR.434. Paragraph 49.