



**Libya's Compliance with The International Covenant on Civil and Political Rights
Suggested List of Issues Prior to Reporting Relating to the Death Penalty**

Submitted by The Advocates for Human Rights

a non-governmental organization in special consultative status with ECOSOC since 1996
and

The World Coalition Against the Death Penalty

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The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

The World Coalition Against the Death Penalty, an alliance of more than 160 NGOs, bar associations, local authorities and unions, was created in Rome on May 13, 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

EXECUTIVE SUMMARY

1. Since the Human Rights Committee's last review, human rights abuses in Libya have become worse and more widespread. Death penalty practices lack transparency, and insufficient government control over detention centers limits efforts to monitor and report detention conditions. Moreover, civil society organizations continue to report instances of widespread torture, arbitrary detention, enforced disappearances, often carried out by the Government of Libya and State-affiliated actors. People accused of crimes do not receive adequate legal representation, and the Libyan judiciary is often unable to operate effectively due to security concerns.

Libya fails to uphold its obligations under the International Covenant on Civil and Political Rights

I. The State has not yet ratified the Second Optional Protocol to the ICCPR aimed at the abolition of the death penalty and maintains the death penalty as a legal form of punishment.

2. The Human Rights Committee observed in its 2007 Concluding Observations that Libya's legal system allows for the application of the death penalty for vaguely defined offences that "cannot necessarily be characterized as the most serious crimes under article 6, paragraph 2, of the Covenant."¹The Committee further observed that the State delegation did not provide sufficient data regarding the number of individuals executed or sentenced to death in recent years.² The Committee recommended that Libya take urgent steps to reduce the number of crimes eligible for the death penalty, abolish the death penalty, consider the ratification of the Second Optional Protocol to the Covenant, and provide the Committee with more detailed data regarding death sentences imposed.³
3. Libya's 2015 State Party Report asserts that the Libyan Government has taken efforts to restrict the use of the death penalty. The report points to legal measures such as the payment of blood money and renunciation by guardians of their rights as successful examples of Libya's efforts to limit the use of the death penalty. The State Party Report also draws attention to the existing conflict between people who favor the abolition of the death penalty and people who advocate to maintain it.⁴
4. According to Human Rights Watch, since 2010 Libya has observed a de facto moratorium on executions,⁵ but both military and civilian courts in Libya continue to pronounce death

¹ Human Rights Committee, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding observations of the Human Rights Committee*, (15 Nov. 2007), U.N. Doc. CCPR/C/LBY/CO/4, ¶13.

² Human Rights Committee, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding observations of the Human Rights Committee*, (15 Nov. 2007), U.N. Doc. CCPR/C/LBY/CO/4, ¶13.

³ Human Rights Committee, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding observations of the Human Rights Committee*, (15 Nov. 2007), U.N. Doc. CCPR/C/LBY/CO/4, ¶13.

⁴ Human Rights Council, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/211: Libya*, (5 May 2015), U.N. Doc. A/HRC/WG.6/22/LBY/1, ¶76.

⁵ Human Rights Watch, "Libya: Events of 2019," Accessed 10 Aug. 2020, <https://www.hrw.org/world-report/2020/country-chapters/libya#699e6e>.

sentences.⁶ For example, in a mass trial on August 15, 2018, 45 defendants were sentenced to death for the alleged killing of protesters during the 2011 revolution.⁷

5. Over 30 articles of the Penal Code provide for the death penalty, including as a punishment for military offenses, establishing or participating in unlawful organizations, and committing crimes resulting in death.⁸ Several crimes eligible for the death penalty, including establishing or participating in unlawful organizations, terrorism, drug trafficking, and treason,⁹ do not necessarily amount to “most serious” crimes.¹⁰
6. Under Libyan law, the death sentence is mandatory for cases of aggravated murder or other crimes resulting in death (unless the perpetrator is pardoned by the family of the victim).¹¹
7. According to the Libyan Penal Code, individuals under the age of 18, people with mental illness, and people who commit offences against public health due to negligence are legally exempt from the death penalty.¹² The Criminal Procedure Code further stipulates that pregnant women under sentence of death should not be executed until two months after delivery.¹³ It is unclear if these laws are observed.
8. Libya has not ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights.¹⁴
9. It is unclear how many individuals are on death row in Libya. In 2019, at least 45 individuals were sentenced to death.¹⁵

⁶ Human Rights Council, *Summary of Stakeholders’ Information on Libya*, (28 Feb. 2020), U.N. Doc. A/HRC/WG.6/36/LBY/3, ¶16.

⁷ Human Rights Watch, “Libya: 45 Sentenced to Death for 2011 Killings,” Accessed Aug. 5, 2020, <https://www.hrw.org/news/2018/08/22/libya-45-sentenced-death-2011-killings>.

⁸ Human Rights Council, *Summary of Stakeholders’ Information on Libya*, (28 Feb. 2020), U.N. Doc. A/HRC/WG.6/36/LBY/3, ¶16. Available online at <https://undocs.org/A/HRC/WG.6/36/LBY/3>; for examples, see Penal Code [LBY] arts. 17, 19, 196-207. Available online at

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/97659/134630/F-1373419708/LBY97659%20Eng.pdf>

⁹ Human Rights Council, *Summary of Stakeholders’ Information on Libya*, (28 Feb. 2020), U.N. Doc. A/HRC/WG.6/36/LBY/3, ¶16. Available online at <https://undocs.org/A/HRC/WG.6/36/LBY/3>; Penal Code [LBY] arts. 165-172, 174-7, 206, 296, 305-6, 368. Available online at

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/97659/134630/F-1373419708/LBY97659%20Eng.pdf>.

¹⁰ Human Rights Council, “International Covenant on Civil and Political Rights,” Accessed August 5, 2020, art. 6, ¶ 2. Available online at <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

¹¹ Penal Code [LBY] arts. 368-372, 218. Available online at

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/97659/134630/F-1373419708/LBY97659%20Eng.pdf>.

¹² Penal Code [LBY] arts. 84, 316, 29, 81. Available online at

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/97659/134630/F-1373419708/LBY97659%20Eng.pdf>.

¹³ Criminal Procedure Code [LBY] arts. 436 and 444. Available online at

https://security-legislation.ly/sites/default/files/lois/292-Criminal%20Procedure%20Code_EN.pdf.

¹⁴ Human Rights Council, *Summary of Stakeholders’ Information on Libya*, (28 Feb. 2020), U.N. Doc. A/HRC/WG.6/36/LBY/3, ¶2. Available online at <https://undocs.org/A/HRC/WG.6/36/LBY/3>.

¹⁵ Amnesty International, *Death Sentences and Executions 2019*, (London: Amnesty International, 2020), 11. Available online at <https://www.amnesty.org/download/Documents/ACT5018472020ENGLISH.PDF>.

II. Detention Conditions violate national and international human rights standards.

10. In its 2007 Concluding Observations, the Committee expressed its concern about continuing reports of systematic use of torture and other forms of cruel, inhuman, and degrading treatment in detention facilities.¹⁶ The Committee urged the State Party to “take urgent and effective measures to stop the use of all forms of torture and cruel, inhuman or degrading treatment or punishment,” to investigate all allegations of torture and ill-treatment and prosecute those people responsible, and to “immediately stop the imposition of all corporal punishment and repeal legislation for its imposition.”¹⁷
11. In its 2015 State Party Report, the Government of Libya drew attention to the “institutional and security challenges” that complicate the process of improving detention conditions.¹⁸ The delegation emphasized that the Ministry of the Interior instructed all prisons to adhere to international standards and allowed the Working Group on Arbitrary Detention and other international NGOs to visit Libyan prisons.¹⁹ The working group has not yet visited the country and has had a request pending since 2008.²⁰
12. The Libyan Government also emphasized its full commitment to respecting and strengthening human rights. It drew attention to the implementation of the 2011 Constitutional Declaration, in which “Libya strived assiduously to embed this commitment.”²¹
13. Although the Constitutional Declaration and Libyan legislation prohibit torture, Amnesty International reports that torture and ill-treatment are widespread in detention centers, including instances of mock executions, beatings and floggings, prolonged solitary confinement, and sexual abuse.²²
14. The Office of the High Commissioner for Human Rights has compiled evidence of numerous cases of torture in detention centers. According to the 2020 OHCHR Compilation on Libya for the country’s third Universal Periodic Review, “individuals suffered beatings with plastic pipes or electrical cables, prolonged suspension in stress positions, solitary confinement, incommunicado detention and electrocution.”²³ OHCHR further reported that “torture had resulted in the death of detainees in various facilities, including at the Al-Birsis facility, the military police facility in Al-Abyar, the Military Intelligence Battalion base in Al-Rajma, Al-

¹⁶ Human Rights Committee, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding observations of the Human Rights Committee*, (15 Nov. 2007), U.N. Doc. CCPR/C/LBY/CO/4, ¶15.

¹⁷ Human Rights Committee, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding observations of the Human Rights Committee*, (15 Nov. 2007), U.N. Doc. CCPR/C/LBY/CO/4, ¶¶15, 16.

¹⁸ Human Rights Council, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/211: Libya*, (5 May 2015), U.N. Doc. A/HRC/WG.6/22/LBY/1, ¶74.

¹⁹ Human Rights Council, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/211: Libya*, (5 May 2015), U.N. Doc. A/HRC/WG.6/22/LBY/1, ¶74.

²⁰ Office of the High Commissioner for Human Rights, “Country Visits—Working Group on Arbitrary Detention,” Accessed Aug. 5, 2020, <https://www.ohchr.org/EN/Issues/Detention/Pages/Visits.aspx>.

²¹ Human Rights Council, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/211: Libya*, (5 May 2015), U.N. Doc. A/HRC/WG.6/22/LBY/1, ¶83.

²² Amnesty International, “Libya 2019,” Accessed 5 Aug. 2020, <https://www.amnesty.org/en/countries/middle-east-and-north-africa/libya/report-libya/>.

²³ Human Rights Council, *Compilation on Libya*, (12 Mar. 2020) U.N. Doc. A/HRC/WG.6/36/LBY/2, ¶18. Available online at

Sai'qa military base in Bu'atni, and in a facility reportedly operated by the Tripoli Revolutionaries Brigade.”²⁴

15. The U.S. Department of State reports that while police forces control certain detention facilities, the Libyan Government continues to rely primarily on independent armed groups to manage detention centers.²⁵ The State Department reported that prisoners face severe cruel and degrading treatment in these facilities, including beatings, electric shocks, burns, and rape.²⁶
16. The lack of full government control over detention facilities and the absence of a centralized system of record-keeping limit the information available on conditions within Libyan facilities.²⁷ Additionally, monitoring and training of prison staff by international organizations remains largely suspended.
17. The Penal Code of 1953 does not prohibit all forms of corporal punishment, and Human Rights Watch reported that “Gaddafi-era laws prescribe lashings and amputation of limbs” and that protection from such punishment for persons under 18 was insufficient.²⁸

III. The State refuses to offer adequate legal aid to people suspected of committing crimes.

18. In its 2007 Concluding Observations, the Committee reiterated its concern about reports that people are held in lengthy pre-trial detention without access to legal counsel. The Committee urged the State Party to take all necessary efforts to initiate independent judicial supervision of detention centers and to ensure prompt access to lawyers for people who are detained.²⁹
19. The State Party Report states that the Constitutional Declaration includes a chapter addressing rights and civil liberties, including the rights to a fair trial with legal safeguards.³⁰

²⁴ Human Rights Council, *Compilation on Libya*, (12 Mar. 2020) U.N. Doc. A/HRC/WG.6/36/LBY/2, ¶19. Available online at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/065/95/PDF/G2006595.pdf?OpenElement>.

²⁵ US Department of State, "2019 Country Reports on Human Rights Practices: Libya," Accessed 23 July 2020, <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/libya/>.

²⁶ US Department of State, "2019 Country Reports on Human Rights Practices: Libya," Accessed 23 July 2020, <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/libya/>.

²⁷ US Department of State, "2019 Country Reports on Human Rights Practices: Libya," Accessed 23 July 2020, <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/libya/>.

²⁸ Human Rights Council, *Summary of Stakeholders' Information on Libya*, (28 Feb. 2020), U.N. Doc. A/HRC/WG.6/36/LBY/3, ¶24.

²⁹ Human Rights Committee, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding observations of the Human Rights Committee*, (15 Nov. 2007), U.N. Doc. CCPR/C/LBY/CO/4, ¶19.

³⁰ Human Rights Council, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/211: Libya*, (5 May 2015), U.N. Doc. A/HRC/WG.6/22/LBY/1, ¶48.

20. According to Libyan law, detention can be extended only by a circuit court.³¹ Many people in detention face extended pretrial detention for up to one year.³² Few individuals who have been detained have access to legal counsel.³³
21. The U.S. State Department reports that thousands of people in detention do not have access to bail, lawyers, or information regarding the charges brought against them. The same report also notes that trials are often “operated sporadically depending on local security conditions.”³⁴
22. Human Rights Watch reports that civilian and military courts operate at reduced capacity because of insecurity. Consequently, prison authorities continue holding thousands of individuals in detention without charges.³⁵

IV. Suggested questions for the Government of Libya:

- What steps has the government taken to implement an official moratorium on the death penalty?
- What steps has the government taken to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights?
- How many people are currently under sentence of death? What crimes have they been convicted of? How long have they been imprisoned? Please describe the conditions of detention applicable to these individuals as compared with the ordinary prison population.
- Please provide disaggregated data broken down by age (including current age and age at the time of the offense), race and ethnicity, nationality, and sex relating to all persons sentenced to death or executed during the reporting period, including: the crimes of conviction; location and date of arrest; duration of pre-trial detention; date legal counsel was provided or obtained; location, date, and duration of trial; date of sentencing; location of post-trial detention; and location and date of execution, if applicable.
- Please identify all crimes for which the death penalty is a potential penalty. What steps has the Libyan Government taken to reduce the number of crimes eligible for the death penalty and to limit the application of the death penalty to the most serious crimes?

³¹ Code of Criminal Procedure [LB] art. 123. Available online at https://security-legislation.ly/sites/default/files/lois/292-Criminal%20Procedure%20Code_EN.pdf.

³² US Department of State, "2019 Country Reports on Human Rights Practices: Libya," Accessed 23 July 2020, <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/libya/>

³³ US Department of State, "2019 Country Reports on Human Rights Practices: Libya," Accessed 23 July 2020, <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/libya/>.

³⁴ US Department of State, "2019 Country Reports on Human Rights Practices: Libya," Accessed 23 July 2020, <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/libya/>.

³⁵ Human Rights Watch, "World Report 2020: Libya," Accessed 23 July 2020, <https://www.hrw.org/world-report/2020/country-chapters/libya#699e6e>.

- What steps has the Government of Libya taken to ensure that pregnant women, people with psycho-social disabilities, and individuals convicted of crimes committed while under the age of 18 are not sentenced to death?
- Under what circumstances is the death penalty a mandatory punishment?
- What steps has the Libyan Government taken to collaborate with civil society to sensitize the population about human rights issues related to the death penalty and about alternatives to the death penalty?
- How does the Libyan Government ensure that the system payment of blood money for murder does not result in the arbitrary application of the death penalty for people who are not able to make such payments?
- What steps has the Libyan Government taken to consolidate control over detention facilities in order to ensure human rights are being upheld?
- What efforts has the government made to ensure that people in detention can access adequate food and health care?
- What mechanisms are in place to monitor State prisons and respond to allegations of human rights violations in detention centers?
- What measures has the Government of Libya undertaken to ensure that torture is prohibited and that officials who engage in torture are held accountable?
- What has the government done to facilitate a visit from the Working Group on Arbitrary Detention and other independent bodies that monitor detention conditions?
- What concrete measures is the government taking to ensure that people in detention are not held for extended periods of time without charge or without proper judicial review?
- What relief is available to people who are detained on arbitrary charges or without charge?
- Please elaborate on the steps taken by the government to ensure respect for the right defendants to a fair trial and to adequate legal representation, particularly when they are at risk of being sentenced to death?