

AMNESTY INTERNATIONAL

Index: MDE 19/028/2011
13 September 2011

LIBYA: HUMAN RIGHTS AGENDA FOR CHANGE

After 42 years of brutal repression and nearly seven months of conflict, Libyans are today looking ahead to building a state based on the respect for human rights and the rule of law. In the last several months they have paid a heavy price standing against repression and injustice, demanding their right to live in dignity and to participate in the shaping of their future.

While in power Colonel Mu'ammarr al-Gaddafi ruled with an iron fist, stifling any form of political dissent and freedoms. His opponents faced harassment, arbitrary detention, torture and extrajudicial execution in Libya and abroad. Many have "disappeared". Libya lacked an independent civil society, a free press and political parties. Public institutions have been largely inefficient or, like the criminal justice system, turned into tools of repression. They are deeply mistrusted by Libyans. Corruption is endemic, and the country's oil wealth has benefited only a few.

Libyans have also suffered greatly during the conflict which erupted following the demonstrations in mid-February 2011. They have faced further human rights abuses in some cases pointing to war crimes and crimes against humanity. Many foreign nationals from Sub-Saharan African and other countries, already in a precarious situation before the conflict, have also been among the victims. They, along with black Libyans particularly from the Tawargha and Sabha regions and other areas deemed loyal to Colonel al-Gaddafi including Sirte and Bani Walid, remain particularly vulnerable to revenge attacks.

Other groups repressed under the rule of Colonel al-Gaddafi are now looking to the new Libyan authorities to protect and realize their human rights. They include the Amazigh community, who have long been suppressed in the use of their language and enjoyment of their culture. Discriminatory policies and practices have also targeted members of the Tabu community in Kufra.

The new Libyan authorities, represented by the National Transitional Council (NTC), face great challenges. They include the urgent task of re-establishing law and order throughout the country, building state institutions and breaking with the legacy of total impunity for human rights abuses.

The NTC has committed itself to building a democratic, multi-party state based on the respect for fundamental human rights. In August 2011 the NTC issued a Constitutional Declaration enshrining these and other principles, including respect for fundamental freedoms, non-discrimination for all citizens – including on grounds of gender, race and language – and the rights to a fair trial and to seek asylum.

Amnesty International welcomes these commitments by the new Libyan leadership and urges that they be translated into reality, with human rights as the cornerstone of political transition as well as the overall programme of institutional reform. The international community should assist Libya in this process.

As a contribution to the programme of human rights reform in Libya, Amnesty International presents the following Human Rights Agenda for Change to the new Libyan authorities.

AMNESTY INTERNATIONAL CALLS ON THE TRANSITIONAL LIBYAN AUTHORITIES TO:

Reform the security and law enforcement sector

- Bring all groups policing Libyan cities and conducting “arrests” of suspected loyalists of the former administration and suspected mercenaries under the oversight of the Ministry of Interior;
- Ensure that law enforcement and security agencies act in full compliance with the law; in particular, ensure that only members of the judicial police have the power to arrest, detain and interrogate, including by amending Article 13 of the Code of Criminal Procedure;
- Implement a process of disarmament, including of small arms; collect surplus weapons and munitions within the population, using a combination of collective or individual incentives designed to regulate, license and reduce as much as possible all civilian arms possession; also safely destroy surplus weapons and ammunition which is clearly in excess of national needs;
- Stop the proliferation of weapons. Take immediate steps to safely store all national stockpiles of the armed forces, police and any other security agency; mark all weapons and related articles to facilitate effective tracing and accountability and ensure an effective system of end-use certificates and licenses to control all imports and exports of arms and security equipment;
- Dismantle the Internal Security Agency and other security agencies that have perpetrated systematic human rights abuses;
- Reform security and law enforcement agencies to ensure that their policies, procedures and practices comply with international law and standards, including the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- Establish clearly-defined criteria and procedures for the recruitment and training of members of the security and law enforcement agencies, to ensure that they respect and protect human rights, and operate according to standards of professional conduct;
- Establish effective monitoring, complaints and disciplinary and oversight mechanisms to ensure that these agencies and their members are held accountable for failures to comply with human rights standards;
- Establish a vetting system to ensure that, pending investigation, law enforcement or security officials about whom there is evidence of serious human rights violations do not remain, or are not placed, in positions where they could repeat such violations.

Reform the criminal justice system

- Overhaul the criminal justice system, in particular abolish special courts and related institutions – including the State Security Court and Prosecution Office;
- Guarantee the independence of the judiciary, enshrining in law judges’ security of tenure, with effective safeguards against political interference; ensuring independent procedures for the selection of judicial officials ; and ensure that those appointed are individuals of integrity and ability with appropriate qualifications;
- Ensure that civilians are to be tried exclusively by ordinary courts, according to law, so that no civilian is tried in military, special or state security courts;
- Guarantee the right to fair trial at all stages, consistent with international instruments, in particular Article 14 of the International Covenant on Civil and Political Rights (ICCPR). Libyan law must ensure equality

3 LIBYA

HUMAN RIGHTS AGENDA FOR CHANGE

before the courts; the right to a fair and public hearing by a competent, independent and impartial court or tribunal established by law; the right to compensation in cases of miscarriage of justice in criminal cases; and the right not to be tried or punished again for an offence that has already been tried (*ne bis in idem*);

- Ensure the right of victims of human rights violations to full and effective reparation.

End arbitrary and incommunicado detention

- Release of all those arbitrarily detained, including in the context of the conflict, and ensure that arbitrary arrests and detentions cease immediately and that no one is deprived of their liberty except in accordance with procedures and on grounds prescribed by Libyan law in compliance with international law and standards;

- Ensure that no individuals are deprived of their liberty solely for the peaceful exercise of their right to freedom of conscience, thought, opinion, expression, association or assembly including those peacefully expressing support for Colonel Mu'ammar al-Gaddafi;

- Amend legislation to provide guarantees against arbitrary detention, including against prolonged pre-charge and pre-trial detention without access to legal counsel and without the possibility to challenge the legality of detention;

- Repeal articles 187 Bis A, B and C of the Code of Criminal Procedure which stipulate differential treatment for suspects accused of "offences against the State" under the Penal Code;

- Ensure that anyone detained is brought promptly before a judge or other judicial officer, and that mechanisms are in place to enable detainees to effectively challenge the legality of their detention;

- End the practice of prolonged incommunicado detention: ensure that detainees have prompt access to their family, independent medical attention and to a lawyer of their choice;

- Ensure that all detention facilities are brought under the control of the Ministry of Justice and under the supervision of the Department of Public Prosecutions. At all times, there should be regular, independent, unannounced and unrestricted access to all places where persons are deprived of their liberty, including by independent mechanisms.

Eradicate torture and other ill-treatment

- Publicly condemn torture and other ill-treatment, and make clear to security and law enforcement agencies that such abuses will not be tolerated under any circumstances;

- Define torture as a crime in the Libyan Penal Code, ensuring that the definition of torture is consistent with the definition in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and that Libyan law is fully consistent with the CAT. All forms of cruel, inhuman or degrading treatment or punishment should be prohibited;

- Conduct prompt, independent, impartial and effective investigations into all allegations of torture or other cruel, inhuman or degrading treatment or punishment, including where no formal complaint has been made, and if there is sufficient admissible evidence, prosecute those responsible in fair trials under legislation which provides for penalties commensurate with the gravity of the offence and without recourse to the death penalty;

- Repeal all legislation which allows for the application of corporal punishment, including flogging and amputation, including Law No. 70 of 1973, Law No. 52 of 1974 and Law No. 13 of 1425.

4 LIBYA HUMAN RIGHTS AGENDA FOR CHANGE

Respect and protect freedoms of expression, association and assembly

■ Enshrine in Libya's new Constitution and other laws the rights to freedom of expression, association and assembly, permitting only such limitations that are necessary and proportionate for a legitimate purpose as set out in international human rights law;

■ Repeal all legal provisions which criminalize activities amounting to the peaceful exercise of freedoms of expression, association and peaceful assembly, including Law No. 71 of 1972 on the Criminalization of Parties; and articles within the First Chapter of the Second Book of the Penal Code (Law No. 48 of 1956, which modifies a number of provisions of the Penal Code issued on 23 September 1956), relating to offenses "against the State", such as articles 178, 195, 206, 207 and 208;

■ Repeal or amend Law No. 19 of 1369 on the Re-organization of Civil Associations to allow for the establishment of independent organizations and political parties.

Uphold the rights of refugees, asylum-seekers and migrants

■ Ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and adopt asylum legislation consistent with international law and standards;

■ Conclude a memorandum of understanding with the Office of the United Nations High Commissioner for Refugees and immediately grant it unrestricted access throughout the country to anyone who may be a person of concern, in particular to all detention facilities where individuals in need of international protection may be held;

■ Not return, in any manner whatsoever, refugees, asylum-seekers and others in need of international protection to a country where they are at risk of persecution or other forms of serious harm, including grave human rights abuses. Immediately cease all arbitrary or collective expulsions;

■ Publicly condemn violent attacks against Sub-Saharan Africans;

■ Protect those suspected of being irregular migrants from exploitation, violence, intimidation and other abuse, and bring those responsible to justice;

■ Amend laws 6 of 1987 regarding the Organization of the Entry, Stay and Exit of foreigners in Libya and 19 of 2010 on Irregular Migration to guarantee that any foreign national, be they refugee, asylum-seeker or migrant, is only detained in connection with their immigration status on the basis of an individualized decision which is demonstrably lawful, necessary and proportionate to the objective to be achieved; that it is on grounds prescribed by law; and that it is for one of the reasons international and regional standards specifically recognize as legitimate.

Fight impunity

■ Establish effective independent mechanisms to establish the truth regarding human rights violations committed since September 1969. Such mechanisms should have powers of search and seizure and subpoena and access to archives and all necessary documents and resources to carry out their work effectively;

■ Amend national legislation to include crimes under international law, including genocide, crimes against humanity, war crimes, enforced disappearances, extrajudicial executions and torture. The definitions must be in accordance with international law. There should be no barriers to prosecutions of these crimes, such as amnesties, immunities and statutory limitations;

■ Investigate all crimes under international law and other serious human rights violations, including gender-based violence, committed in Libya. Prosecute suspected perpetrators where there is sufficient admissible evidence;

5 LIBYA

HUMAN RIGHTS AGENDA FOR CHANGE

■ Ensure that all victims of human rights violations are provided full and effective reparation – including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition – to address their suffering and help them to rebuild their lives. In particular, victims should be able to seek reparation before national courts. Reparation programs should also be established.

End discrimination on any grounds

■ Take effective measures to combat racism, xenophobia and discrimination, in particular against dark-skinned individuals, including by celebrating the diverse ethnic make-up of the Libyan population and the positive contribution of migrants, including from Sub-Saharan Africa, to Libyan society, economy and development;

■ End discriminatory measures against the Tabu community. In particular, end forced evictions; facilitate the issuance of birth certificates and driving licenses; and ensure that members of the Tabu can renew or extend passports and other identification documents;

■ End discrimination in law and practice against the Amazigh community. Ensure that Law No. 24 of 1369 (which prohibits the usage of languages other than Arabic in publications; official documents; public spaces; and private enterprises, as well as the use of “non-Arab, non-Muslim names”), is amended to respect international law and standards;

■ Review, amend or abolish all laws that discriminate on the basis of race; colour; religion; ethnicity; birth; sex; sexual orientation; gender identity; political or other opinion; national or social origin; property; or other status;

■ Ensure that women have equal access to truth, justice and reparation, including establishing specific strategies to address gender-based obstacles;

■ Repeal all discriminatory legislation with regard to marriage, divorce and inheritance, including Law No. 10 of 1984 on Marriage, Divorce and their Consequences;

■ Decriminalize sexual relations between consenting adults by amending Article 407 and 408 of the Libyan Penal Code and repealing Law No. 70 of 1973 on the Establishment of the *Had of Zina* and the Amendment of Several Articles of the Penal Code;

■ Lift all reservations to the Convention on the Elimination of All Forms of Discrimination against Women that contradict the object and purpose of the treaty;

■ Implement the February 2009 recommendation of the Committee on the Elimination of Discrimination against Women, which calls on the Libyan authorities to take all appropriate measures to increase women’s representation in the executive and legislative branches of government and their political representation.

Ensure the full realization of economic, social and cultural rights

■ Ensure, for the whole population, minimum essential levels of economic, social and cultural rights, such as the rights to food, water, sanitation, healthcare and housing and, where necessary, seek international co-operation and assistance to do so;

■ Ensure non-discrimination in access to essential public services, including water, sanitation and healthcare;

■ Review national laws and institutions to ensure that effective remedies are available to all victims of violations of economic, social and cultural rights.

Take steps to abolish the death penalty

- Immediately establish an official moratorium on executions, in line with UN General Assembly resolutions 62/149, 63/168 and 65/206, calling for a moratorium on executions with a view to abolishing the death penalty;
- Formally commute all death sentences;
- Ensure that in death penalty cases, the most rigorous internationally-recognized standards for fair trial are respected;
- Review all Libyan laws and the draft Penal Code to ensure that the death penalty is restricted to the “most serious crimes”, as required by the ICCPR, with a view to its total abolition.

Establish a national human rights institution

- Establish a national institution with a mandate to investigate and address human rights violations in accordance to the Principles relating to the Status of National Institutions (The Paris Principles).

Co-operate with UN mechanisms and ratify international treaties

- Co-operate fully with the International Criminal Court (ICC) investigations and with the Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya established by the UN Human Rights Council;
- Ratify the Rome Statute of the ICC and enact legislation providing for full co-operation with the ICC;
- Ratify the Optional Protocol to the CAT to establish a system of regular visits by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment;
- Ratify the International Convention on the Protection of All Persons from Enforced Disappearances including recognizing the competence of the Committee on Enforced Disappearances by making declarations pursuant to articles 31 and 32 of the Convention;
- Extend invitations to the Working Group on Enforced and Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and issue standing invitations to all UN mechanisms;
- Adopt best practices identified by the UN Office of Disarmament Affairs to control weapons and munitions, and ratify the international conventions to prohibit the transfer and use of inhumane weapons including anti-personnel mines and cluster munitions.