



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Fourth periodic reports of States parties due in 2002

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* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

I. INTRODUCTION

1. The International Covenant on Civil and Political Rights was adopted by the General Assembly on 16 December 1966. The Covenant entered into force on 23 March 1976 and the Libyan Arab Jamahiriya acceded to it on 15 May 1970.
2. Under article 40 of the Covenant, the States parties undertake to submit reports on the measures that they have taken to give effect to the rights recognized in the Covenant and on the progress made in the enjoyment of those rights. The Libyan Arab Jamahiriya has already submitted three periodic reports and this is its fourth.
3. The Libyan Arab Jamahiriya presents its compliments to the Human Rights Committee, expresses its deep gratitude for the Committee's comments on its third periodic report contained in document A/54/44, and would like to draw attention to the following information on its fourth periodic report:
 - (a) The Libyan Arab Jamahiriya affirms that its third periodic report accurately reflects the fact that it honours its obligations under the Covenant; most of the legislation and obligations to which its third periodic report refers are still being implemented and remain valid;
 - (b) Modifications have been made to some human rights frames of reference in order to ensure that the obligations which the Libyan Arab Jamahiriya has towards its nationals are fulfilled, and to respond to the observations of the Human Rights Committee on the third periodic report of the Libyan Arab Jamahiriya, as we shall show below.

II. MODIFICATIONS TO SOME HUMAN RIGHTS FRAMES OF REFERENCE

4. The Green Document on Human Rights and the Constitutional Proclamation represent noble principles which guide legislative policy. They have been incorporated into a law that is regarded as a kind of basic law, namely, the Promotion of Freedom Act No. 20 of 1991. Article 35 of the Act states that its provisions are basic provisions, and that no text which contradicts them may be adopted. Any text which is incompatible with those provisions shall be amended.
5. Naturally, a basic law has constitutional force and sits at the top of the legislative pyramid. There can be no infringement of such a law, because it guarantees respect for human rights and freedoms, including the civil and political rights recognized in the Covenant.
6. With regard to the observation by the Human Rights Committee concerning the allegations of the perpetration of extrajudicial, arbitrary or summary executions and of the high incidence of arbitrary arrest and detention, the Libyan Arab Jamahiriya is a State governed by the rule of law and where penalties cannot be imposed without reference to the law, i.e. outside the jurisdiction of the courts. The judiciary is the only authority with competence for delivering judgements of any kind. The right to life of citizens is protected by the law and the courts. The death penalty may only be imposed for the most serious crimes and for the reasons given below. In the Libyan Arab Jamahiriya, executions are not carried out outside of the judicial framework or without a verdict having been rendered by a competent court.

7. The Libyan Arab Jamahiriya has prepared a draft criminal code which aims at revising corporal punishments (the death penalty) and the penalty of deprivation of liberty. In this code, the scope of the death penalty is reduced and is confined to persons whose life poses a threat to others. This principle will be applied to murder offences, in accordance with the provisions on *qisas* (retribution) and *diyyah* (payment of blood money) in the Retribution Act No. 6 of 1993, as amended, and with the Great Green Document on Human Rights, the eighth principle of which states:

“The sons of Jamahiri society revere and preserve human life. The aim of Jamahiri society is to abolish the death penalty. Until that is achieved, the death penalty shall only be imposed on persons whose lives endanger or corrupt society. A person condemned to death as retribution may ask for a lighter sentence or to be allowed to pay *fidyah* (a ransom) in exchange for his life. The court may substitute the penalty, provided that this would not harm society or offend human sensitivities. They condemn reprehensible methods of execution such as the electric chair, lethal injections and poison gas.”

8. According to article 4 of the Promotion of Freedom Act No. 20 of 1991, issued on 1 January 1991, life is the natural right of every individual and the death penalty can only be imposed for the purposes of retribution or on someone whose life endangers or corrupts society.

9. There is nothing in the Great Green Document on Human Rights or the Promotion of Freedom Act that is prejudicial to human freedom and human dignity. Indeed, both texts give unprecedented recognition to these rights by calling for the abolition of the death penalty.

10. The legislature, taking account of the gravity of the death penalty, not only prescribes this penalty for the most serious crimes but also provides condemned persons with fundamental guarantees that are consistent with the relevant international treaties. These guarantees are included in the Code of Criminal Procedures, which provides, inter alia, that the Department of Public Prosecutions must refer appeals to the Court of Cassation (the supreme court) and that the Court must hear them, even if they are formally flawed. In addition, article 436 of the Libyan Code of Criminal Procedures prohibits the imposition of the death penalty on women who are pregnant or nursing a child, while article 81 of the Criminal Code prohibits the imposition of the death penalty on persons below 18 years of age.

11. The penalties of flogging and amputation are corporal punishments which are used in the Libyan Arab Jamahiriya pursuant to Act No. 70 of 1993, concerning the penalty for fornication, as amended, and Act No. 13 of 1995, concerning the penalties for stealing and armed robbery as amended.

12. With regard to the observation by the Committee about the excessive duration of remand in custody and undue prolongation of pretrial detention, we would like to inform you of the following facts:

(a) According to the Great Green Document on Human Rights in the Age of the Masses, the sons of Jamahiri society revere, protect and prohibit the curtailment of human freedom. Prison is only for those whose freedom endangers or corrupts others. The purpose of the penalty

is social reform and the protection of human values and society's interests. Society prohibits penalties that are prejudicial to human dignity and harmful to physical integrity, such as hard labour, prolonged imprisonment, etc.;

(b) According to article 14 of the Promotion of Freedom Act No. 20 of 1991:

- No one can be deprived of his freedom, searched or questioned unless he has been charged with committing an act that is punishable by law, pursuant to an order issued by a competent court, and in accordance with the conditions and time limits specified by law;
- Accused persons must be held in custody at a known location, which shall be disclosed to their relatives, for the shortest period of time required to conduct the investigation and secure evidence;

(c) According to article 17, paragraph 1, of the same Act, an accused person shall be presumed innocent until proved guilty by a court verdict; however, legal proceedings may be taken against him as long as he remains an accused person;

(d) The Code of Criminal Procedures establishes the procedures with which law enforcement officers (the police, others vested with similar functions pursuant to prevailing laws, and the Department of Public Prosecutions) must comply. According to article 26 of the Code, the officer must promptly hear the accused person's statement and, if the accused person says nothing that proves his innocence, must refer him, within 48 hours, to the Department of Public Prosecutions which must question the accused within 24 hours and then issue an order for his detention or release.

13. Article 51 bis of Act No. 23 of 2003, amending and adding provisions to the Drugs and Psychotropic Substances Act No. 7 of 1990, provides that:

(a) With regard to the offences enumerated in this Act, the accused shall be referred to the Department of Public Prosecutions within seven days from the date of the arrest. The Department of Public Prosecutions must question the accused upon referral and then issue an order for his placement in preventive detention or his release;

(b) A detention order issued by the Department of Public Prosecutions shall be valid for only 30 days. Where an extension is sought, the file must be submitted to a competent court, which will issue a detention or release order after hearing the statement of the accused. The duration of each term of preventive detention shall be up to 45 days, until the investigation is concluded.

14. Since preventive detention is an issue of the utmost importance as far as human freedom is concerned, as it has the effect of restricting individual liberty and depriving an individual of the right to live his life as he wishes while in detention, under arrest or on remand, the Libyan legislature has established a specific time limit on preventive detention, which cannot be exceeded.

15. The observation by the Human Rights Committee expresses serious doubts about the independence of the judiciary and the liberty of advocates to exercise their profession freely, without being in the employment of the State.
16. We would like to inform you that this observation is out of place, especially as the legislation and laws adopted by the Libyan Arab Jamahiriya explicitly recognize the judiciary's independence in discharging its functions and powers and issuing judgements without any interference from the State or any other quarter. As evidence of this, the Great Green Document on Human Rights enunciates the following principle: Jamahiri society guarantees the right to legal redress, the independence of the judiciary, and the right of every accused person to a fair and impartial trial.
17. The same document also states, in principle No. 26, that: "The sons of Jamahiri society are bound by the contents of this document and may not breach them. They reject any act that violates the principles and rights contained herein. Everyone has the right to apply to the courts in order to seek redress against any violation of the rights and freedoms accorded to him herein."
18. According to article 30 of the Promotion of Freedom Act No. 20 of 1991: "Everyone has the right to seek legal redress in accordance with the law. The courts shall afford all the requisite guarantees, including the right to legal representation. A person may engage a lawyer of his own choosing and pay the costs himself." Article 31 of the same Act states: "The judiciary is independent and is subject, in its judgements, to no authority other than the law." It follows that the members of judicial bodies (the judiciary) in the Libyan Arab Jamahiriya are fully independent and carry out their work and official duties without any interference from any quarter.
19. Judges render their verdicts independently and free from any influence other than the dictates of their conscience and the law. They are not monitored by the State or any external agency other than God. The Judicial Inspectorate reviews the work of judges in order to verify their performance and the seriousness with which they are conducting their duties and functions and to ensure compliance with the procedures that guarantee defendants the right to a fair trial.
20. The Inspectorate's judicial oversight function does not interfere with the delivery of judgements, since judges are independent and the judgements that they render are subject to no authority other than God and the dictates of their conscience.
21. As regards the liberty of advocates, we would like to inform you that, in order to guarantee impoverished individuals (i.e. persons who cannot afford a private lawyer) access to legal assistance, the Libyan Arab Jamahiriya has established a department of people's advocates which provides free assistance to anyone who wants it. There is also another group of private lawyers who have their own offices and practices and are members of the Bar Association, which is a full member of the Arab Federation of Lawyers and other relevant international organizations. We would also like to inform you that the Revolution Security Court has been abolished, as has the People's Court.

22. With regard to the form of democratic practice, differences in political systems, ranging from monarchies, to republics, to people's power exercised by people's congresses, are issues related to systems of government. In the Libyan Arab Jamahiriya, there is no secret ballot, but democracy is practised directly.
23. The Publications Act is one of the laws which has been proposed for amendment before the people's congresses at the upcoming 2005/2006 session.
24. The fact that Islam is the official religion does not prevent the adherents of other faiths from exercising their right to worship as guaranteed by Libyan law. This matter was clarified in the previous report.
25. The Libyan Criminal Code guarantees respect for the human person and prohibits all forms of physical and mental torture, without distinguishing between males and females. In articles 396 to 398, it prescribes penalties for anyone who commits an act that injures a family. It does not contain provisions on the protection of women, as this would be discriminatory and excessive; women, as human beings, are afforded the protection of the Criminal Code. It is surprising, therefore, to hear someone say that domestic violence and rape are not criminalized. These acts constitute the offence of unlawful wounding, regardless of who commits them, whether a man or a woman or a national or non-national, and regardless of whether the injury is slight, major or serious.
26. There is no need to criminalize assault or rape by a husband, since the current laws offer adequate protection. Women were given the right to demand a divorce on grounds of injury under the Marriage and Divorce Act No. 10 of 1984.
27. As for the treatment of women according to the provisions of the Islamic sharia on inheritance, international treaties have always respected their specificities. The chapter of the Holy Koran entitled "Women", which is the principal source of legislation, addresses the issue of inheritance in a manner that preserves the rights of all, whether male or female, or even the foetus in the mother's womb. In order to protect women's right to inherit, the legislature enacted a special law which makes it an offence to deny a woman her right to inherit. The law in question is the 1959 Act on the protection of women's right to inherit.
28. In addition to the above, the Libyan Personal Status Code has made some progress, making a man's right to take another wife contingent upon the agreement of his current wife or of a court. A court will not grant such a request, unless the husband adduces compelling reasons, such as the illness of his first wife or her inability to perform her duties (see article 13 of the above-mentioned Act No. 10 of 1984).
29. With regard to wages, the labour and civil service laws and the laws on private enterprise do not discriminate against women. The legislature treats civil servants, workers and entrepreneurs as human beings, based on purely objective criteria. Women are not denied the right to an equal wage or to promotion, rises and other benefits provided for in relevant laws.

30. Libyan women are not denied the right to freedom of movement, as confirmed by the prevailing laws (see above) and practice. No husband, father or brother can deny a woman the right to travel, to leave the country, and to move around the country; any allegation to the contrary is groundless.
31. As for the observation by the Human Rights Committee that Libyans are not aware of their right to use the Optional Protocol to the International Covenant on Civil and Political Rights, we should point out that the same paragraph recognizes that Libyan nationals are aware of their political and civil rights. Otherwise, how could there be communications about these rights? The absence of communications from citizens leads to logical conclusions different from those reached by the Committee, namely, that there have been no violations of the Covenant. This is the logical conclusion to be drawn from an analysis of the paucity of complaints.
32. With regard to observation by the Human Rights Committee concerning the absence of civil human rights associations, we should like to draw your attention to the following:
- (a) The Libyan Arab Committee for Human Rights in the Age of the Masses is a civil, non-governmental organization formed by a number of persons who are concerned with human rights. The Committee seeks to disseminate the concepts and principles of human rights and human freedoms, to deepen faith in, strengthen respect for, and to defend, those rights and freedoms, fighting for them by all legitimate means.
 - (b) The means which the Committee employs to achieve its goal of combating human rights violations include: investigating the facts; dispatching observers; disseminating their reports; doing everything possible to prevent, and to deal with the impact of, human rights violations; and providing legal assistance to those in need.
33. The Libyan Arab Committee for Human Rights has set itself the following goals:
- (a) To study, explore, disseminate and promote the concepts and principles of human rights and fundamental freedoms;
 - (b) To promote, by all means, human rights principles and concepts;
 - (c) To foster human rights and fundamental freedoms and raise awareness among citizens in order to consolidate such rights and freedoms;
 - (d) To provide citizens with legal assistance, where required, in cases involving human rights and fundamental freedoms, and to intervene with the competent institutions in connection with grievances relating to the violation of those rights and freedoms;
 - (e) To incorporate the principles of human rights and fundamental freedoms into academic curricula, to teach them at all educational establishments, and to disseminate them among people's organizations, unions and associations;
 - (f) To cooperate with Arab and international organizations, institutions, associations, trade unions and federations that are concerned with human rights and to liaise with them in pursuit of shared goals.

34. In addition, there is a human rights society which is a subsidiary of the Ghaddafi International Foundation for Charitable Associations. The society is a non-governmental organization which pursues the following objectives:

(a) To strive to protect, and ensure respect for, the human rights and fundamental freedoms of all members of society and to combat attempts to breach, violate or distort those rights and freedoms;

(b) To endeavour to promote and implement the principles and precepts set out in the Great Green Document, the Universal Declaration of Human Rights and the two international human rights covenants, as well as the principles embodied in basic laws and international instruments;

(c) To defend, by all proper and lawful means, all individuals whose rights have been violated or whose fundamental freedoms have been infringed, or who are subjected to any form of coercion, arbitrary treatment or torture;

(d) To consolidate the precepts and principles of fundamental public rights and the rule of law both through legislation and in practice, and to guarantee the right to a defence by ensuring the universal application of legal safeguards;

(e) To prepare special studies and research on human rights and to organize meetings, seminars and conventions to promote legal, political and moral concepts that help to achieve the aims of the society;

(f) To support bilateral and multilateral ties with trade unions and with counterpart regional and international institutions and organizations and to expand areas of cooperation and convergence in pursuance of the aims of the society.

35. There are also a number of non-governmental committees, including, for example, the Public Freedoms and Human Rights Committee of the Bar Association; the Public Freedoms Committee of the Union of Judicial Officials and Members of the Prosecution Service and the Freedoms Committee of the Libyan Authors and Writers' Union.
