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ON CIVIL AND  
POLITICAL RIGHTS**

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

Initial reports of States parties due in 1977

Addendum

LIBYAN ARAB REPUBLIC

[4 March 1977]

SUBJECT MATTER

This document provides the United Nations Secretariat with the following information:

- I. Measures adopted by the Libyan Arab Republic relating to or bearing on Human Rights, pursuant to article 40 of the International Covenant on Civil and Political Rights;
- II. Text, or resumé, of judgements issued by courts during 1976 on matters relating to the United Nations, the specialized agencies or IAEA;
- III. Texts of laws and regulations that have been issued during 1976 and relate to the legal status or to the immunities and privileges of the United Nations, the specialized agencies or the IAEA.

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A letter from the Acting Director of the Department of the United Nations and International Organizations, forwarded with a note from the Ministry of Justice on 29 December 1976, said that the United Nations General Assembly approved at its twenty-first session the International Covenant on Civil and Political Rights by its resolution 2200 (XXI) of 16 December 1976. The Ministry of Foreign Affairs has received a note from the Secretary-General informing the Government of the Libyan Arab Republic that the Covenant entered into force for the Libyan Arab

Republic as from 23 March 1976. The note further referred to article 40 of the Covenant, which stipulates that the States Parties to the Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized therein within one year of the entry into force of the Covenant for the States Parties concerned.

Accordingly, the Secretary-General requested the Government of the Libyan Arab Republic to submit to the Director of the Human Rights Division the annual report of the Libyan Arab Republic on the measures it has taken that may have a bearing on human rights, pursuant to article 40, in addition to an account of factors or difficulties, if any, that may hinder or affect the implementation of the Covenant.

Another enclosed note said that the United Nations Secretariat wished to issue the Legal Yearbook for 1976. The Secretary-General therefore requested the Government of the Libyan Arab Republic to contribute to this Yearbook by forwarding texts, or resumé, of judgements issued by courts during 1976 on matters relating to the United Nations, the specialized agencies and the IAEA; as well as texts of any laws or regulations that have been issued during 1976 and relating to the legal status, or to the privileges and immunities of the United Nations, the specialized agencies or the IAEA.

## I. MEASURES BEARING ON HUMAN RIGHTS

The annex to the Covenant contains several articles, including article 40, which provides that the States Parties to the Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized therein and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the Covenant for the States Parties concerned;

(b) Thereafter whenever the Committee so requests.

The rights established by the Covenant are listed in article 6 et seq. of part III. These rights include the inherent right of every human being to life; the application of death penalty; death sentence for the most serious crimes pursuant to a final judgement rendered by a competent court; and that sentence of death shall not be imposed on persons below 18 years of age and shall not be carried out on pregnant women.

- No one shall be subjected to torture or to cruel inhuman or degrading treatment or punishment.
- No one shall be held in slavery; slavery and slave trade shall be prohibited.
- Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.

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- Anyone arrested or detained shall be brought promptly before a judge and shall be entitled to trial within a reasonable time or to release.
- All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
- Accused persons shall be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.
- Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
- The essential aim of treatment of prisoners shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.
- Any person lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence, and freedom to leave any country.
- An alien may be legally expelled ... in pursuance of a decision reached in accordance with law.
- Equality before the courts; guarantees for the right to counsel; and provision of guarantees to ensure justice in the course of the trial.
- Everyone shall have the right to recognition as a person before the law.
- No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attack on his honour and reputation.
- The right to freedom of thought, conscience, expression and religion.
- Any propaganda for war shall be prohibited by law.
- Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.
- Everyone shall have the freedom of association, including the right to form and join trade unions for the protection of his interests.
- Protection of the family, and the recognition of the right of men and women of marriageable age to marry; and no marriage shall be entered into without free consent.
- Protection of the child; every child shall be registered immediately after birth and shall have a name.

- The right of every individual to have access, on general terms of equality, to public service in his country.
- All persons are equal before the law without any distinction on any ground such as race, colour, sex, language or religion.

All these principles are provided for in the laws applicable in the Libyan Arab Republic and observed by the courts. Following are the relevant legal provisions:

1. Principle of legality

This principle was laid down by the Constitutional Declaration issued by the September 1 Revolution on 11 December 1969. Article 31 of the Declaration reads as follows:

"Article 31

"(a) There shall be no charge or punishment except on the basis of a law."

The same principle has been enunciated in article 1 of the Penal Code:

Article 1

There shall be no charge or punishment except on the basis of a text.

2. Applicability of laws; the laws most suitable for the defendant; application of criminal law on basis of equality

Article 2 (P.C.)

A crime is punishable under the law applicable at the time it was committed.

However, if, after the criminal act was committed and before a final judgement was rendered, a law more favourable for the defendant was issued, this later law shall be applied.

If, after final judgement was rendered, a law was issued that makes the act for which the defendant has been convicted, unpunishable, the judgement and its criminal implications shall be quashed.

Article 4 (P.C.)

Provisions of this law apply to any Libyan or alien who commits, within Libyan territories, any of the crimes listed herein. Libyan aircraft or ships, wherever they may be and unless they are subject to a foreign law in accordance with international law, are considered Libyan territory.

Article 5 (P.C.)

Provisions of this law also apply to the following persons:

1. Whoever commits outside the country an act that renders him a perpetrator of or accomplice in a crime that was committed wholly or partly in Libya.
2. Whoever commits outside Libyan territory any of the following crimes:
  - (a) Any crime that violates the security of the State, as provided for in chapter one and chapter two of Book II of the law;
  - (b) Any crime of fraud as provided for in articles 334 and 335 of this law;
  - (c) Any crime of forging money;
  - (d) The crime of slavery.

Article 5 of the Constitutional Declaration issued after the September 1 Revolution affirmed the principle of equality before the law. It reads:

"ALL CITIZENS ARE EQUAL BEFORE THE LAW"

3. Prohibition of criminal prosecution a second time for the same crime

Article 7 (P.C.)

Public prosecution shall not be initiated against a person who was finally acquitted by a foreign court, or has been convicted by such a court and has completed his term, except in cases stipulated in article 5 of this law.

4. Proportions and control of penalties; legal limits of penalties; attenuating factors and causes for mercy

Article 27 (P.C.)

A judge may impose the penalty he deems appropriate within the limits established by the law. He shall consider carefully the reasons for his assessment of the penalty; but he may not exceed the limits established by the law for each crime, nor shall he impose a penalty less than the minimum established by the law, except where otherwise provided for by the law.

Article 28 (P.C.)

In assessing the penalty in conformity with the above article, the judge may consider the seriousness of the crime and the criminal's disposition to crime. The seriousness of the crime may be manifested by the following:

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1. The nature of the act committed, the means used to commit it, its aim, the time and the place of committing the act, and all other relevant circumstances;
2. The extent of the danger or damage caused by the act;
3. The degree of the criminal intent, whether the act was deliberate or not.

The criminal's disposition to crime may be shown by the following:

1. Motives for committing the crime, and the character of the criminal;
2. The conduct of the criminal at the time of committing the crime and thereafter;
3. Conditions of the personal, family and social life of the criminal.

#### Article 29 (P.C.)

The judge may, if the circumstances of the crime justify clemency, substitute or reduce the penalty as follows:

- Imprisonment for life instead of the death sentence. (Here it should be noted that article 6 of the Covenant allows the imposition of the death sentence in the case of serious crimes and after a final judgement is rendered. The article further establishes the convicted person's right to appeal for the reduction of the sentence.)
- Imprisonment, instead of imprisonment for life.
- Detention for a period of no less than six months, instead of imprisonment.

If the relevant conditions are fulfilled, a judge may, in any case, reduce penalties for felonies and misdemeanours to half the minimum established by the law.

5. Implementation of penalties in the light of humanitarian principles and with a view to reforming the convicted person

#### Article 41 (P.C.)

The manner a penalty is carried out should aim at reformation and education of the felon with a view to the realization of the ethical and social objectives of the penalty.

In the implementation of penalties that restrict liberty, humanitarian principles and principles of labour and reformation shall be observed.

6. Supervision of the implementation of penalties in special establishments for certain categories of prisoners

Article 42 (P.C.)

The implementation of penalties that restrict liberty shall be under the supervision of the judge and the General Parquet.

Article 43 (P.C.)

Those convicted of a misdemeanour or a felony shall serve the term of the penalty that restricts their liberty in special establishments divided into groups according to the following categories:

- (a) Inveterate, professional and perverted criminals;
- (b) Delinquents under 18 years of age;
- (c) Prisoners who receive an alleviated penalty due to a psychological defect; the deaf and mute; those intoxicated by drugs or alcohol; drug and alcohol addicts.

These shall be placed under special care for their treatment.

Women serve their terms of penalties restricting their freedom in establishments prepared for men.

Article 44 (P.C.)

The recurrence and the nature of the crimes committed shall be taken into consideration on the assignment of prisoners to special or ordinary prisons.

7. Death penalty

The criminal laws define the serious crimes for which criminals receive the death sentence. These provisions, however, contain guarantees which bind the court, and they relate to the seriousness of the crime, and whether the crime leads to the death of a human being. Other guarantees relate to delinquents under 18 years of age, and to pregnant women.

The judge may, according to these provisions, reduce the penalty to life imprisonment if he deems that the circumstances of the crime calls for such reduction. Following are the relevant provisions:

A. Serious crimes that call for the death sentence if the crime is established

Article 368 (P.C.)

Whoever kills a human being deliberately and with premeditation shall be punished by death.

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Article 372 (P.C.)

Whoever kills a human being deliberately but without premeditation shall be punished by imprisonment for life or imprisonment.

However, the perpetrator of such a crime is sentenced to death if his felony is preceded or followed by, or is near to, another felony, and if the intention of the felony is to prepare for, facilitate, or commit a misdemeanour, or to help others who committed such a misdemeanour to escape or avoid penalty.

B. Juveniles and the death sentence

Article 81 (P.C.)

If a responsible juvenile commits a felony punishable by death sentence or life imprisonment, these two penalties shall be substituted by imprisonment for no less than five years. The convicted juvenile shall serve the term of his penalty in a special establishment for juveniles who are criminally responsible, where he shall undergo a special programme for his education and reformation in such a manner as to prepare him to be a good member of society.

C. The consulting of the Mufti before passing death sentence

Article 245

The court shall seek, before passing the death sentence, the opinion of the Mufti of the Republic or of the district where it stands. The case file shall be transmitted to the Mufti; and if he does not give his opinion during the next ten days, the court may issue its judgement.

D. Procedures for the implementation of death sentence

Article 430 (Criminal Proceedings)

This article provides that the death penalty shall be implemented once the judgement is made final by the approval of the Revolutionary Command Council.

Article 432 (C.P.)

Relatives of the prisoner who is to be executed may see him on the day fixed for execution, provided the meeting takes place away from the place where the execution will be carried out. If the prisoner's religion calls for his confession or other rituals before death, all facilities shall be provided to enable a priest to see him.

Article 434 (C.P.)

The death penalty shall be implemented in the presence of a member of the General Parquet, the prison warden, the prison physician and another physician assigned by the General Parquet. The defence Counsel should always be allowed to



attend the execution. The verdict shall be read out to the prisoner at the place of execution within the hearing of those present.

If the prisoner wishes to make any statement, the representative of the General Parquet shall take the statement down. When the execution is carried out, the representative of the General Parquet shall write an account that includes the report of the physician certifying death and time of death.

Article 435 (C.P.)

The death penalty may not be carried out on official holidays or on a holiday established by the religion of the prisoner.

Article 436 (C.P.)

A pregnant woman shall not be executed except when two months have elapsed from the time of birth.

6. Crimes against the freedom of individuals

The Libyan legislation has taken into account the freedom of individuals, protecting their humanity, and safeguarding them from harm or attack, and respecting their honour.

Slavery is punishable as a felony in order to honour the freedom of the individual, and to prevent tormenting the individual, whether free or in prison. The whole of section 1, chapter IV, of Book III of the Penal Code, has been devoted to this purpose. Following are the provisions:

A. Crimes of slavery

Article 425 (P.C.)

Whoever enslaves or puts in a state similar to slavery another person is punished by imprisonment for a term of five to fifteen years.

Article 426 (P.C.)

Whoever deals or trades in slavery, or otherwise handles a person in a state of slavery or similar to slavery is punished by a prisonment term not exceeding ten years.

A term of three to twelve years of imprisonment shall be imposed on whoever handles, passes on, possesses, acquires or keeps a person in a state of slavery or similar to slavery.

Article 427 (P.C.)

Provisions of this section apply also if the act is committed against a Libyan abroad.

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Other crimes against personal freedom and mentioned in this chapter include:

B. Kidnapping

Article 428 (P.C.)

Whoever kidnaps, detains, imprisons or otherwise deprives another person of personal freedom by force, threat or deception shall be punished by a term of imprisonment not exceeding five years.

The term shall not exceed seven years if the act is committed:

- (a) Against ascendant or descendant relatives or a spouse;
- (b) By a public servant who thus goes beyond the authority vested in him by his post;
- (c) To receive something in return for release. If the purpose of the felon is attained, the term of prison shall not exceed eight years.

C. Use of violence to coerce others

Article 429 (P.C.)

Whoever forces, by violence or threat, another person to commit, endure, or not to commit an act, shall be punished by a prison term not exceeding two years.

- A prison term is imposed if the threat was meant to force another person to perform an act that constitutes a crime, or if the threat was in writing.
- If the culprit obtains an illegal benefit, the prison term shall not exceed \_\_\_\_\_ years.
- The term shall be increased by one third if the violence or threat were committed by force of arms, or undertaken by masked or disguised persons.

D. Threats

Article 430 (P.C.)

A penalty of no more than six months of imprisonment, or a fine not exceeding fifty pounds, shall be imposed on whoever threatens to bring illegal harm to another person. The case may be initiated only by a complaint from the injured party.

- In the case of a threat to commit a crime against the person or property, or to perform dishonourable acts, or other acts in any form mentioned in

the last paragraph of the above article, the penalty shall be a prison term of no more than one year. The law suit does not have to be initiated by a complaint from the injured party.

E. Abuse of power against individuals

Article 431 (P.C.)

Any public servant who, in the exercise of his functions, uses violence against any individuals in a manner that degrades them or otherwise causes them physical harm, shall be punished by imprisonment and by a fine of no more than one hundred and fifty pounds.

Unauthorized search and arrest of persons; unjustified restriction of personal freedom; torturing prisoners; breach of duty

Article 432 (P.C.)

Any public servant who searches another person, thus exceeding his powers, shall be punished by imprisonment.

Article 433 (P.C.)

Any public servant who arrests a person, thus exceeding his powers, shall be punished by imprisonment.

Article 434 (P.C.)

A penalty of a prison term and a fine of no more than fifty pounds shall be imposed on any public servant who is assigned to direct a prison or another establishment for the implementation of preventive measures if he admits therein any person without an order from the competent authorities, refuses to obey an order from such authorities for the release of a person, or prolongs without justification the term of a penalty or preventive measure.

Article 435 (P.C.)

Any public servant who orders or undertakes personally the torture of defendants shall be punished by a prison term ranging from three to ten years.

Additional legal provisions on the treatment of the prisoner will appear in the section on the prison laws.

Article 436 (P.C.)

A prison term of no more than two years shall be imposed on whoever enters an inhabited home or any other place prepared for residence without the consent of the person entitled to refuse such entry; and on whoever enters therein by stealth or trickery.

- The same penalty shall be imposed on whoever remains in such a place in spite of order to leave from the person entitled to refuse such entry; and on whoever remains therein by stealth or trickery.
- The lawsuit may be initiated only at the complaint of the injured party.
- The penalty shall be increased by no more than half if the act is carried out by using force against persons or objects, or if the trespasser has an obvious weapon.

#### Article 437 (P.C.)

A penalty of a prison term and a fine of no more than twenty pounds shall be imposed on any public servant who, taking advantage of his post, except in cases set forth by the law, and not observing rules established by the law, enters or remains unjustifiably and without consent, in the residence of any person.

Article 12 of the Constitutional Declaration issued after the September 1 Revolution states: "Homes are inviolable; they may not be entered or searched except in cases set forth by the law."

9. Family welfare; performance of family duties; attention to methods of reformation and education prevention of maltreatment of family members; payment of alimony; custody of the young; family structure

Libyan legislation has devoted attention to all the foregoing matters. This is in keeping with article 23 of the Covenant, which stipulates that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State. It is also in keeping with article 24 which provides for the right of every child to measures of protection. Following are the relevant provisions in the Libyan criminal law:

#### Article 396 (P.C.)

A detention term of no more than one year or a fine of no more than fifty pounds shall be imposed on any person who shirks his duty of support entailed by his parental status or by his obligation as a guardian or spouse by abandoning the family dwelling or behaving in a manner incompatible with proper conduct or ethics.

The penalty shall be increased by half if the perpetrator committed one of the following acts:

1. If he usurped or squandered the funds of his minor son, of those under his guardianship, or of his spouse;
2. If he deprived his minor or unemployable parents, children or spouse of their means of living, unless this happens legally and is not his fault.

Article 397 (P.C.)

A penalty of no more than one year of detention shall be imposed on any person who uses illegally any methods of correction or education against those under his authority or entrusted to him for education, care, supervision or apprenticeship in a vocation or craft, if such an act leads to physical or mental illness.

If the act results in any personal harm, the penalties indicated in articles 379, 380 and 381 shall be applied after being reduced by half. If the act leads to death, a penalty of no more than eight years of imprisonment shall be imposed. (These articles deal with crimes involving simple, grave and serious harm.)

Article 398 (P.C.)

Subject to the provisions of the preceding article, a penalty of detention shall be imposed on any person who maltreats a member of his family or a minor under fourteen years of age, or any other person under his authority or assigned to him for education, care or training.

If the act produces personal harm, the penalty shall be increased by half; if it produces death, the penalty shall be imprisonment.

Article 398 bis (P.C.)

1. Any person condemned by a court to pay alimony or other payments for education, housing or child care to a spouse, a child or parent and who fails to make such payment, when able to pay, for one month after his attention is drawn thereto, shall be punished by detention for no more than one year.

Article 398 bis 2 (P.C.)

A penalty of detention for no more than one year or a fine of no more than fifty pounds shall be imposed on any person who refuses to hand over a child to the person who has the right to demand the child according to a legal judgement or a decision issued in respect of the custody of the child, and on any person who kidnaps or arranges for others to kidnap a child from those who have the right to the child's custody, even if the act was committed without trickery or compulsion.

Article 404 (P.C.)

A penalty of no more than five years of imprisonment shall be imposed on any person who conceals a new-born baby or substitutes a baby for the purpose of obtaining a birth certificate, or gives erroneous information to the Department of the Registration of Births, or destroys or alters the personal data of the baby, or causes a birth to be falsely registered in the records of the above-mentioned Department.

Article 405 (P.C.)

A penalty of detention for no less than three months shall be imposed on any person who consigns a legitimate or recognized natural child to an orphanage or any other charitable institution, or hands the child to such an institution, concealing the true facts about the child.

Article 406 (P.C.)

A penalty of detention shall be imposed on any person who kidnaps from a parent or a guardian a minor who has attained the age of fourteen and refuses to return the minor to the parent or guardian if the act is committed with the consent of the minor.

If the act involves a child under fourteen years of age, or a mentally defective child, who manages to escape from those assigned to guard or observe him, the provisions of article 428 of this Act shall apply. (The article deals with the crime of kidnapping and has been mentioned above.)

Article 3 of the Constitutional Declaration issued by the September 1 Revolution says: "The family is the foundation of society, and is based on religion, ethics and patriotism."

10. Freedom of religion and sanctity of religious rites

Article 18 of the Covenant provides for freedom of worship, which is subject only to such limitations as are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others. The Constitutional Declaration issued by the September 1 Revolution provides for this principle as dealt with in the provisions of the criminal law that protects the performance of religious rites and prohibits the desecration of religions. The following are the relevant texts:

Article 2 of the Constitutional Declaration of the September 1 Revolution: "Islam is the religion of the State, and Arabic is the official language. The State shall protect the freedom to perform religious rites according to observed customs."

Article 289 (P.C.)

A penalty of no more than one year of detention or a fine of no more than fifty pounds shall be imposed on any person who disturbs the performance of religious rites in public or a religious celebration, or threatens to stop such rites or celebration by violence. The same penalties shall apply to any person who destroys, damages or desecrates buildings used for the performance of religious rites or other objects held sacred by the followers of a certain faith among the population.

## Article 290

The penalties stipulated in the preceding article shall apply to any person who publicly attacks a religion whose rites are performed in public. The provisions of this article cover:

(a) The publication or printing of a book sacred to the followers of a religion whose rites are performed in public if the text is deliberately distorted in a manner that changes the sense;

(b) The parodying of a religious celebration or rite in public with intent to mock or amuse the public.

## Article 291 (P.C.)

Any person who attacks in public the Islamic religion, which is the official religion of the State according to the Constitution, or utters words that are not respectful to God, the Prophet or other prophets of the religion, shall be punished by detention for no more than two years.

11. Non-interference with the privacy of individuals, and the protection of their honour and reputation

This is the subject of article 17 of the Covenant. Libyan legislation has been concerned with safeguarding the secrecy of individual correspondence and prohibiting persons from reading it or releasing its contents. The legislation further provides for penalties for the crimes of slander and libel. The following are the relevant provisions:

## Article 244 (P.C.)

A penalty of detention for no less than six months shall be imposed on every civil servant in the Department of Posts, Telephones and Telegraphs who conceals, detains, reads, or informs others of the contents of any message.

For the purposes of this article, message means letters, telephone calls, telegrams and other such means of communication.

If these acts are committed by other persons the penalty shall be detention for a term of no more than six months or a fine of no more than twenty-five pounds.

The same penalty shall be applied to any person who commits the act in respect of telegrams, telephone calls or letters addressed to the injured party.

The penalty shall be detention for a period of no more than one year or a fine of no more than forty pounds if the offence consists of attributing a certain incident.

Article 439 (P.C.)

A penalty of detention for no more than one year or a fine of no more than fifty pounds shall be imposed on any person who attacks the reputation of another person, by slandering him in the presence of others, in cases other than those set forth in the preceding article.

If libel consists of attributing a certain incident, the penalty shall be detention for no more than two years or a fine of no more than seventy pounds.

If libel is committed in newspapers or by other public means, or in a public document, the penalty shall be detention for no less than six months or a fine ranging between twenty and one hundred pounds.

If libel is committed against a political, administrative or judicial body, or the representative thereof, or against any other legal body, the penalties shall be increased by no more than one third.

Article 441 (P.C.)

No action shall be initiated in the case of the crimes referred to in articles 438 and 439 except upon a complaint by the injured party.

12. Freedom of opinion and thought

The Constitutional Declaration ensures freedom of opinion. Article 13 of the Declaration states: "Freedom of opinion is ensured within the limits of the interests of the people and the principles of the Revolution."

13. Freedom of work

Legislation deals with freedom of work. The Constitutional Declaration of the September 1 Revolution states that work is a right, duty and honour for each citizen able to work.

Article 4 of the Constitutional Declaration states: "Work in the Libyan Arab Republic is a right, duty and honour for each citizen able to work. Public service is an assignment. Public officials aim, in the discharge of their functions, to serve the people."

Article 359 (P.C.)

A penalty of detention for no more than six months or a fine of no more than fifty pounds shall be imposed on any person who uses force, violence, threats, terrorism or any other illegal measures with the intention of forcing others to abstain from work, or forcing an employer to employ or not to employ a certain person. The same penalty shall apply if the intention is to prevent a person from joining a trade union.



This provision shall apply if force, violence, terrorism or other illegal measures are used against the spouse or children of the injured party.

Illegal measures include, in particular, the following acts:

1. Preventing a person from working by concealing his tools or clothing or any other objects that he may be using, or preventing him from working in any other way;
2. Shadowing a person continually on his way to and from work,
3. Taking up a threatening position near the house or any other place where the person lives or works.

14. Liberty of person guaranteed by the law within limits set forth in the law

Persons arrested or held in provisional detention are to be treated in a humane manner with due respect for the inherent dignity of the human person. This principle, which is contained in the International Covenant, has been provided for in Libyan laws which presume every person to be innocent until he is proved guilty. The law further prohibits the arrest or detention of any person except upon an order from the legally competent authorities. It also regulates provisional detention by stipulating the cases where such detention is called for, and fixing its duration. The Prison Code contains several provisions on treatment in prison, and measures to be followed in respect of juvenile delinquents, dangerous criminals and women, all of which are legislative guarantees which preserve the dignity of the human person and prevent the infliction of torture, harm or inhumane or degrading treatment. The following are the relevant texts:

Article 31 of the Constitutional Declaration of the September 1 Revolution states: "1. There shall be no crime or punishment except on the basis of a law." (This same principle has been quoted above.) "(b) Punishment is personal; (c) the defendant is innocent until he is proved guilty; all necessary guarantees shall be provided so that he may exercise his right to counsel and defence, and the infliction of any physical or psychological harm on the defendant is prohibited."

Article 30 (Criminal Proceedings)

No person shall be arrested or detained except with an order to this effect from the legally competent authorities.

Article 31 (C.P.)

No person may be detained except in prisons designated for this purpose.

Article 33 (C.P.)

Every prisoner shall have the right to submit, in writing or orally, a complaint to the warden of the prison asking him to transmit it to the General

Parquet or the competent judge. The warden shall accept the complaint and transmit it forthwith, after entering it in a special book in the prison.

Any person who learns of a person who is detained illegally or in a place other than that designated for detention shall inform a member of the General Parquet or the competent judge. He shall conduct an investigation and order the release of the illegally detained prisoner after writing a statement on the matter.

#### Article 115 (C.P.)

If, after the defendant has been interrogated, or in the case of his escape, it becomes clear that evidence is adequate, and if the offence in question is a misdemeanour or a felony punishable by a term exceeding three months, the investigating magistrate may order that the defendant be held in provisional detention.

The defendant may be detained provisionally in all cases if he has no known residence in Libya, and if the offence is a misdemeanour punishable by detention.

#### Article 122 (C.P.)

Provisional detention invariably ends after fifteen days in detention. However, the magistrate may, after hearing the statements of the General Parquet and the defendant, order the extension of the provisional detention for a period or periods not exceeding a total of forty-five days. This shall apply if the investigation is carried out by the magistrate himself.

#### Article 123 (C.P.)

If the investigating magistrate deems it necessary to extend provisional detention beyond the period mentioned in the preceding article, the file on the case shall be presented to a court of first instance, composed of three judges, before the expiry of the aforementioned period. The court shall rule after hearing the statements of the General Parquet and the defendant. It may order the extension of the provisional detention for successive periods, each not exceeding forty-five days, until the investigation is completed.

#### Article 124 (C.P.)

The investigating magistrate may, at any time, either on his own initiative or upon a request from the defendant, and after hearing the statement of the General Parquet, order the temporary release of the defendant, if the magistrate himself ordered the provisional detention, provided the defendant pledges to present himself whenever asked, and not to escape from the penalty that may be imposed upon him.

#### Article 175 (C.P.)

A detention order issued by the General Parquet shall be valid only for a period of six days following the arrest of the defendant or his transfer to the Parquet if he was already arrested.

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#### Article 310 (C.P.)

If the circumstances require the provisional detention of a juvenile over fourteen years of age, he shall be consigned to a reform school or other place determined by the Government, or to a recognized charitable institution, unless the Parquet or the Court considers it sufficient to place him in the care of a reliable person.

Prison Code No. 47 of 1975 contains the following articles:

#### Article 1

Prisons are places for rehabilitation and education, and their purpose is to reform the conduct of those sentenced to penalties privative of liberty, and to further qualify them to become good members of society.

#### Article 2

Prisons are divided into three categories: (a) principal prisons; (b) local prisons, and (c) special open or semi-open prisons.

This last is a new type of prison intended for those condemned for crimes that do not indicate a dangerous criminal disposition; for those who have reached the age of sixty, out of consideration for their old age; and for those who have proved, during their term in other prisons, that their conduct is good and that they are worthy of special treatment. This type of prison differs from other prisons as regards external appearance, manner of administration, and guards. Such prisons look like ordinary work and accommodation establishments; guards are completely or partially removed, and psychological, remedial and cultural means are intensified.

#### Article 19

Inmates of every principal or local prison shall be divided into two categories, which shall be separated from each other in respect of treatment and accommodation. The first category shall include:

- (a) Persons held in provisional detention;
- (b) Persons convicted of political crimes;
- (c) Persons convicted of traffic misdemeanours or for wrongdoing;
- (d) Persons sentenced to simple terms for the first time;
- (e) Old convicts who are over sixty years of age;
- (f) Convicts over eighteen but under twenty-one years of age;
- (g) Persons sentenced to detention in implementation of judgements relating to financial matters.

The other category shall include all other convicts.

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## Article 20

Persons held in provisional detention may be held in places separated from other prison inmates. They may be held in furnished rooms if they pay for such rooms, within the limits of availability and according to the provisions of the regulations.

## Article 21

Persons held in provisional detention shall be allowed to bring their own food from outside the prison or to buy it inside the prison if this is not contrary to the requirements of health and security; otherwise they may receive the same rations as other inmates.

## Article 24

Women inmates shall be completely isolated from other inmates, and inmates under twenty-one years of age shall be isolated from those over twenty-one years of age.

## Article 25

As an exception to the provisions of article 4 of this law, the General Parquet may order that women held in provisional detention, women sentenced to penalties privative of liberty or women under surveillance shall be accommodated in social welfare establishments designated by the Ministry of Social Affairs and Social Security in agreement with the Ministry of the Interior for this purpose.

## Article 27

A pregnant inmate shall be accorded, as from the sixth month of her pregnancy, the kind of treatment determined by the competent physician in respect of nutrition, work and sleeping hours until she gives birth, and shall continue in the same status for forty days thereafter. The pregnant or breast-feeding inmate may receive this kind of treatment at any stage if the physician so decides.

## Article 28

The child shall remain with his inmate mother until he attains the age of two, at which time, if his mother does not wish to keep him with her, he may be handed over to his father or whoever has the right to his custody.

If the child has no father or relatives to care for him, the prison warden shall request the competent authorities to transfer the child to a nursery, after informing the mother and enabling her to see the child periodically according to the regulations.

## Article 37

Instruction shall be compulsory for illiterate inmates. The prison administration shall endeavour to educate other inmates and provide them with

vocational training - due regard being paid to their age, their aptitudes and the term of their penalty - according to established curricula in the various schools of the State. The Ministry of the Interior, jointly with the Ministry of Education, the Ministry of Justice and the Ministry of Labour and Civil Service, shall provide that which is required for education and training in each prison.

#### Article 43

In every prison there shall be a resident physician aided by an adequate number of assistants, who shall be assigned health work according to the regulations. All necessary medical equipment and capabilities shall be made available.

#### Article 52

An inmate shall have the right to correspondence and to receive visitors according to the regulations, without violating the provisions of the Law of Criminal Proceedings in respect of persons held in provisional detention.

#### Article 57

An inmate who has received a sentence privative of liberty shall be entitled to eight days annual leave, to be granted in periods not exceeding four days each, according to the conditions set forth in the regulations.

#### Article 435 (Penal Code)

Any public servant who undertakes personally, or orders, the torture of defendants shall be punished by imprisonment for a term ranging from three to ten years.

#### 15. Guarantees for access to courts

These guarantees are set forth in article 14 of the International Covenant. Libyan laws ensure free access to the courts and buttress this freedom with strict guarantees for the protection of the freedom of defence and realization of justice. The following are the relevant provisions:

Article 5 of the Constitutional Declaration of the September 1 Revolution says: "All citizens are equal before the law."

#### Article 27 of the Declaration

In their judgements, the courts shall seek to protect the principles of society and the rights, dignity and freedom of individuals.

#### Article 28 of the Declaration

Judges are independent, and shall be subject to no authority in their judgement except law and their conscience.

Article 30 of the Declaration

Each person has the right of recourse to the courts according to law.

Article 31 of the Declaration

The defendant is innocent until proved guilty, and all necessary guarantees shall be provided to ensure the exercise of his right to defence.

Article 162 (Criminal Proceedings)

The Chamber of Indictment shall automatically assign a counsel to each defendant charged with an offence for which he is referred to the Criminal Court, if the defendant has not selected his own counsel.

Article 240 (C.P.)

The defendant may bring a claim against the plaintiff in a civil rights case before the criminal court to obtain compensation for damage due to the initiation of the action, if applicable.

Article 241 (C.P.)

The proceedings shall be held in public. However, the court may, for reasons of public order or morals, order that the case be heard partly or wholly in camera, or prohibit certain categories of people from attending.

Article 243 (C.P.)

2. A defendant may not be removed from the court during the consideration of the case, unless he causes a disturbance that requires such removal. In that case, the proceedings will continue until they reach a point where he is able to attend. The court shall inform him of the proceedings that took place during his absence.

Article 244 (C.P.)

At the beginning of consideration of the case, the court shall call the adversary parties and the witnesses, and shall ask the defendant to state his first and last names, age, occupation, place of residence and place of birth. The charge shall be then read out according to the writ of referral to court or the summons, as appropriate.

Article 245 (C.P.)

After the witnesses for the prosecution have been heard, the witnesses for defence shall be heard, and the first question put to them shall be whether they knew the defendant.

## Article 257 (C.P.)

A defendant may not be interrogated in court unless he so agrees.

## Article 248

After hearing the witnesses for the prosecution and for the defence, the General Parquet and the defendant as well as other adversary parties may speak. In any case, the defendant shall be the last person to speak.

## Article 316 (C.P.)

A juvenile court shall be set up within the jurisdiction of every district court, and shall have a judge delegated to it.

## Article 321 (C.P.)

In cases of felony, a defendant before a juvenile court must have a counsel to defend him. If the defendant has not selected a counsel, the investigating magistrate, the General Parquet, the Chamber of Indictment or the court shall appoint a counsel for his defence, following the same procedures as before a criminal court.

## Article 350 (C.P.)

If a person convicted in absentia (by a criminal court) presents himself or is arrested before the penalty dropped due to passage of time, the judgement previously handed down either in respect of the penalty or of liabilities shall invariably be void, and the whole case shall be reconsidered by the court.

The legislation includes provisions regulating the challenging of judgements, whether through appeal or cassation, as well as causes, dates and cases of challenges in article 365 et seq of the Law of Criminal Proceedings.

## Article 365 (C.P.)

Judgements in a criminal action handed down by a district court in cases involving misdemeanours and contraventions may be appealed by:

1. The defendant, if his sentence involved anything other than payment of a fine and expenses, or payment of a fine of more than five pounds.
2. The General Parquet, if it calls for a sentence involving anything other than payment of a fine and expenses or a fine of more than five pounds, and the defendant is acquitted or receives a sentence different from what it called for. Otherwise, no appeal may be initiated either by the General Parquet or the defendant except for an error in the application or interpretation of the law.

Article 381 (C.P.)

The General Parquet, the defendant and the person responsible for civil rights as well as the plaintiff in regard to such rights may, in respect of their rights only, resort to cassation before a court of cassation of final judgements passed by the last order in the following cases:

1. If the challenged judgement was based on a violation of the law or an error in its application or interpretation;
2. If there is any defect in the judgement or irregularity in the proceedings thus affecting the judgement.

Article 384 (C.P.)

The General Parquet and the plaintiff in regard to and the person responsible for civil rights, may challenge through cassation a judgement handed down by a court in the absence of the defendant accused of a felony.

Article 402 (C.P.)

Reconsideration of final judgements in cases of misdemeanour and felony may be requested in the following cases:

1. If a defendant was convicted of murder and the person supposedly murdered was later found alive;
2. If a person was convicted for a certain offence and another person was later convicted for the same offence, and the two judgements were contradictory, so that the innocence of either of the two persons could be deduced;
3. If a witness or expert was penalized for perjury according to the provisions of the Penal Code, or if some document presented in the course of the consideration of the case, was shown to be fraudulent, and if the testimony, the report of the expert or the document had a bearing on the judgement;
4. If the judgement was based on another judgement handed down by a civil court or religious court and the judgement was later annulled;
5. If after judgement certain evidence appeared, or documents were submitted, that were not known at the time of the trial, which could establish the innocence of the convicted person.

16. Deportation and extradition

Article 13 of the International Covenant provides that an alien lawfully in the territory of a State may be expelled therefrom only in pursuance of a decision



reached in accordance with law. The Penal Code provides for deportation, the Law of Criminal Proceedings provides for the extradition of and recapture of criminals, and the Constitutional Declaration bans the extradition of political refugees. The following are some of the relevant provisions:

Article 11 of the Constitutional Declaration

The extradition of political refugees is prohibited.

Article 158 of the Penal Code

The judge shall order the deportation of any alien sentenced to imprisonment for a term of no less than ten years. An alien may be deported in other cases set forth in the law, and any alien who disobeys the deportation order shall be subject to laws relevant to disobedience of deportation orders issued by administrative authorities.

Article 493 bis (Criminal Proceedings)

Accused or convicted persons may be extradited if the following conditions are fulfilled:

1. If the act on the basis of which extradition has been requested is covered both by Libyan law and the law of the State requesting extradition;
2. If the crime or punishment has not been dropped in accordance with Libyan and foreign law;
3. If the law of both States allows the initiation of criminal proceedings;
4. If the request does not relate to a Libyan citizen;
5. If the crime is not a political crime or related to a political crime.

A political crime includes any crime that may have a bearing on State security, or relates to a political right of an individual, or any other crime whose main motive is political.

Article 495 (C.P.)

A person accused or convicted abroad may be extradited only after a decision to this effect has been obtained from the criminal court within whose jurisdiction the person whose extradition is requested resides. However, extradition may be implemented without referring the matter to the said court in the following cases:

1. If the extradition concerns one State and the person to be extradited did not oppose extradition, or asked personally to be extradited,

2. If the matter is confined to mere permission for the passage of a person accused or convicted abroad through Libyan territories, from a country that authorized his extradition to another country; and if the permission for extradition was issued after the intervention of the judicial authorities of the State concerned.

## II. SUPPLYING THE UNITED NATIONS SECRETARIAT WITH LAWS AND JUDGEMENTS

As to supplying the United Nations Secretariat with judgements by Libyan courts during 1976 relating to the United Nations, the specialized agencies or IAEA, and with laws and regulations that may have been issued during 1976 in relation to the legal status or the immunities and privileges of the United Nations, the specialized agencies or IAEA, the Centre has received no such judgements, laws or regulations.