

**INTERNATIONAL HUMAN RIGHTS NETWORK OF ACADEMIES AND SCHOLARLY  
SOCIETIES**  
**LIBYAN ARAB JAMAHIRIYA**  
**Submission to the U.N. Universal Periodic Review**  
**Ninth session of the UPR Working Group of the Human Rights Council**  
**April 2010**

The Libyan government has not fulfilled its human rights obligations and commitments with regard to political dissidents and prisoners of conscience. The government's handling of the case of Fathi el-Jahmi can be viewed as emblematic. Mr. Fathi el-Jahmi was one of Libya's most prominent political dissidents. His case is detailed below because it demonstrates some of the grave human rights violations that Libya metes out to its prisoners of conscience. Libyan authorities subjected Mr. el-Jahmi to intense harassment, held him in state custody for more than six and one half years for peacefully expressing his opinions, forcibly confined him in a psychiatric hospital without medical cause for over a year, and provided inadequate medical care until his death.

Fathi el-Jahmi graduated from the College of Engineering at Tripoli University in 1968 and worked briefly as a civil engineer in the Libyan Ministry of Public Works. After Colonel Mu'ammara al-Gaddafi assumed power in 1969, he appointed Mr. el-Jahmi to direct a government-owned construction company. Later, in 1970 and 1971 respectively, Mr. el-Jahmi was appointed governor of the Gulf province and head of the National Planning Committee in Tripoli. In late 1972, Mr. el-Jahmi resigned from the committee to start his own engineering business. In 1978, the Libyan government nationalized all private businesses and private properties, and Mr. el-Jahmi lost his business. This action prompted him to begin to voice his opposition to government policies and to criticize Colonel al-Gaddafi. From that point on, Mr. el-Jahmi used legal and peaceful means to express his criticism of the Libyan regime and to publicly call for political reforms. He reportedly emphasized that he spoke as an individual, independent of any political group. He wrote letters to Colonel al-Gaddafi and to international political figures about his opposition to tyranny and his support of freedom and free speech.

**Harassment and detention of political dissidents**

Mr. el-Jahmi's case illustrates a pattern of harassment and detention of political dissidents by Libyan authorities. First, in 1990, gunmen entered Mr. el-Jahmi's house, beat him, stabbed both him and his wife, and held his family hostage for several hours. This attack against Mr. el-Jahmi and his family allegedly was orchestrated by then Minister of Education Ahmad Ibrahim, Colonel al-Gaddafi's cousin, after Mr. el-Jahmi's successful challenge in court of a government ban on English instruction.

Second, Mr. el-Jahmi was detained on October 19, 2002, during the Basic People's Congress in al-Manshia, Bin Ashour, a suburb of Tripoli. At the congress, he reportedly stated that reform would never take place in Libya in the absence of a constitution, pluralism, and democracy. He reportedly also questioned how Libya could address issues it faced in a meaningful way while the country was "ruled by criminals." Libyan internal security forces arrested him in apparent response to these statements. He remained incarcerated until March 12, 2004.

Following his release from prison, harassment of Mr. el-Jahmi resumed. It was evident that he had been put under surveillance because there were at least 10 cars full of members of the Libyan security forces parked around his house at all times. On March 26, 2004, Mr. el-Jahmi reportedly was injured

when a group of pro-government demonstrators marched to his house and threatened to kill him. Later that same night, security agents arrested Mr. el-Jahmi for a second time. His wife and his eldest son were also detained without charge by the Internal Security Agency until their release on September 23 and November 4, 2004, respectively. Mr. el-Jahmi, however, remained in state custody until his death on May 20, 2009. Amnesty International considered Mr. el-Jahmi to be a “prisoner of conscience.”

### **Restrictions on freedom of thought, conscience, opinion and expression and freedom of association**

Libyan citizens who engage in peaceful activities critical of their government are subject to arrest and prosecution, although their actions are defended under the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), which Libya has ratified. As described above, Mr. el-Jahmi was detained twice, for a total of more than six and a half years, solely for the non-violent exercise of his right of freedom of expression.

After his first arrest in 2002, Mr. el-Jahmi was charged with “defaming the Leader of the Revolution” because of statements critical of Colonel al-Gaddafi that he made at the Basic People’s Congress. After Mr. el-Jahmi’s second arrest in 2004, all of the charges reported to have been brought against him—supporting a group, organization or association prohibited by law, trying to overthrow the Libyan government, insulting Colonel al-Gaddafi, contacting foreign authorities, and “scheming with a foreign state in peacetime”—stemmed from the peaceful exercise of his fundamental rights of freedom of expression and association. Specifically, Mr. el-Jahmi had met with U.S. diplomats and given interviews to the foreign media, in which he again criticized Colonel al-Gaddafi and called for political reform. Clearly, all of these activities fall under UDHR and ICCPR protection.

### **Protection of human rights in national legislation**

Articles 206 and 166 of Libya’s Penal Code permit the death penalty as punishment for activity that should be protected under the rights of free association and expression, in violation of the ICCPR’s restriction of capital punishment to “only the most serious crimes.” Although there was a lack of clarity about the exact nature of the charges faced by Mr. el-Jahmi after his second arrest in 2004, it is clear that he faced the death penalty or life imprisonment as punishment for his peaceful activities described above.

Soon after Mr. el-Jahmi’s 2004 arrest, his court-appointed lawyer reportedly told Human Rights Watch (HRW) that he had been charged under Article 206 of Libya’s Penal Code, among other offenses, but he did not know the details. Article 206 imposes the death penalty on those who call “for the establishment of any grouping, organization or association prohibited by law,” and on those who belong to or support such an entity. Later however, in May 2005, when HRW representatives visited Mr. el-Jahmi in a special detention facility in Tripoli, he said that he faced charges on three counts—trying to overthrow the Libyan government, insulting Colonel al-Gaddafi, and contacting foreign authorities—under Articles 166 and 167 of the Penal Code. Article 166 imposes the death penalty on anyone who talks to or conspires with a foreign official to provoke or contribute to an attack against Libya. Article 167 imposes life imprisonment for conspiring with a foreign official to harm Libya’s military, political, or diplomatic position.

### **Right to a fair and impartial trial within a reasonable time**

In Libya, the People’s Court routinely violated defendants’ rights to a fair trial and imposed harsh sentences on Mr. el-Jahmi and other proponents of peaceful political change. After his first arrest in

2002, Mr. el-Jahmi was tried twice on the same charge—“defaming the Leader of the Revolution”—by the People’s Court in two different districts within Tripoli. He reportedly received two separate sentences, one of five years’ imprisonment and the other, suspended, of eight months’ imprisonment. An appeals court ordered his release in early March 2004, after he had served one year in prison.

After Mr. el-Jahmi’s second arrest in 2004, a secret trial was held. The trial proceedings, which began in late 2005, more than a year and a half after his detention, failed to meet international standards of fairness. Following this secret trial, a court reportedly ruled in May 2006 that he was mentally unfit for trial and ordered him detained in a psychiatric hospital. The particular court before which Mr. el-Jahmi was tried and which issued this ruling is unknown. The trial was not public, and Mr. el-Jahmi’s family was not informed that it was taking place. Similarly, the court’s decision is not public, and Libyan authorities reportedly failed to inform his family about it. No legal remedies were made available to Mr. el-Jahmi to seek a review or an appeal of the decision issued by the court.

### **Misuse of psychiatry and medical diagnosis to justify detention of prisoners**

Libyan authorities repeatedly justified Mr. el-Jahmi’s detention and harsh conditions of confinement with claims that he was mentally ill. In 2005, the head of Libya’s Internal Security Agency, Colonel Tohamy Khaled, reportedly told HRW that Mr. el-Jahmi was being held in a special facility for his own safety because he was “mentally deranged.” Colonel al-Gaddafi’s son, Seif al-Islam, also reportedly said that Mr. el-Jahmi was being held for his own protection. During this time, Mr. el-Jahmi reportedly was in the custody of the Anti-Terror Branch of Libya’s Internal Security Agency on the outskirts of Tripoli.

In February 2005, Dr. Joost Den Otter, a Dutch medical doctor and prison health expert sent by Physicians for Human Rights (PHR) and the International Federation of Health and Human Rights Organizations (IFHHRO), traveled to Tripoli to perform a medical assessment of Mr. el-Jahmi. Dr. Den Otter evaluated the Libyan government’s assertions that Mr. el-Jahmi was mentally ill and found them to be baseless.

Three years later, Libyan authorities again made reference to Mr. el-Jahmi’s mental health. A February 2008 public statement issued by the al-Gaddafi International Foundation for Philanthropy and Development—headed by Mr. al-Islam—indicated that Mr. el-Jahmi had been transferred to Tripoli Medical Center, a state-run hospital, because he was “mentally deranged.”

The following month, on March 13 and 14, 2008, in the face of mounting international pressure to clarify Mr. el-Jahmi’s (mental and physical ) health status, Libyan authorities permitted Dr. Scott Allen—a second independent medical expert from PHR—to perform a mental status and physical exam of Mr. el-Jahmi. Dr. Allen found no evidence of significant mood or thought disorders and noted that Mr. el-Jahmi was not taking any psychiatric medications at the time of the evaluation. Mr. el-Jahmi reportedly told Dr. Allen and two HRW representatives that he had been held at a psychiatric hospital for roughly one year, immediately prior to his transfer to Tripoli Medical Center.

### **Torture and cruel and inhuman treatment**

According to Amnesty International, during the period that Mr. el-Jahmi was held in the special facility, allegedly for his own safety, he was not permitted to receive mail or read books or newspapers. He was held in incommunicado detention with only sporadic family visits. On those few occasions when Mr. el-Jahmi was permitted to visit his family, he was brought by vehicle to whatever

location the Internal Security Agency had arranged for the meeting to be held. Visits, which reportedly occurred in the presence of a security agent, varied in length from 15 to 40 minutes.

Based on his 2005 assessment, Dr. Den Otter reached the conclusion that Mr. el-Jahmi's isolated confinement and inadequate medical treatment constituted cruel, inhuman and degrading treatment.

For a lengthy period of time—from August 2006 until the beginning of 2008—Mr. el-Jahmi was not permitted family visits. According to a *Washington Post* article, during a visit by two of his sons in August 2006, Mr. el-Jahmi told them that his supply of medications had run out and had not been refilled. Subsequently, the family made numerous requests to the proper authorities to visit Mr. el-Jahmi in detention and be permitted to provide him with necessary medications. Regrettably, until early 2008, all of these requests reportedly were denied.

### **Inadequate medical treatment of prisoner and medical neglect**

Mr. el-Jahmi, who had been seriously ill before his initial detention by Libyan authorities in 2002, suffered a steady deterioration in his health during the more than six and a half years that he was in state custody. The decline in his health became more pronounced during Mr. el-Jahmi's second period of detention, which began in 2004.

Based on his medical assessment of Mr. el-Jahmi in 2005, Dr. Den Otter determined that he had been receiving only "sporadic and inadequate medical treatment," despite "suffering from several chronic and mutually adverse conditions (diabetes, hypertension, coronary artery disease) that are independently life threatening and difficult to control."

Early in 2008, a HRW press release stated that Mr. el-Jahmi "is seriously ill and in urgent need of medical care." The al-Gaddafi International Foundation for Philanthropy and Development—headed by Colonel al-Gaddafi's son, Mr. al-Islam—publicly denied HRW's claim in February 2008, and, a month later it wrongly asserted that Mr. el-Jahmi had been released and "was now in the care of his family."

In March 2008, the cardiologist who said that he had been treating Mr. el-Jahmi told Dr. Allen and the HRW representatives that, when his patient was brought to Tripoli Medical Center in July 2007, he was suffering from florid congestive heart failure, with symptoms of shortness of breath and swelling of the legs and ankles. Mr. el-Jahmi reportedly told the delegation that his health significantly declined during the roughly one-year period that he was held at a psychiatric hospital because the authorities denied him access to needed medications and a doctor, as well as family visits. Dr. Allen's medical evaluation of Mr. el-Jahmi found that he was suffering from coronary artery disease, congestive heart failure, hypertension, diabetes, and prostatic hypertrophy with an elevated PSA blood test. Dr. Allen determined that the medical treatment that Mr. el-Jahmi had received at Tripoli Medical Center from July 2007 until March 2008 met standards of care for his illnesses and was comparable to care that would be available abroad and that his improvement in cardiac function while at the facility had been dramatic. He concurred with Mr. el-Jahmi's cardiologist that he urgently needed a cardiac catheterization because, "There is a very real risk of an acute cardiac ischemic event, including heart attack or death." When Dr. Allen privately conveyed this fact to Mr. el-Jahmi, the patient reportedly said that he had limited trust in his current doctors and, therefore, would not consent to have this invasive procedure performed at Tripoli Medical Center. He expressed a clear preference to seek treatment abroad. In light of this, in his evaluation Dr. Allen noted that the issue of trust posed

a major obstacle because it is the foundation of successful medical care. Given that Mr. el-Jahmi appeared to be stable at that time, Dr. Allen reached the conclusion that care abroad would be the only option to remedy this problem.

Although the Libyan government claimed Mr. el-Jahmi was free, his repeated requests to go abroad for medical treatment were refused. He continued to be held under state custody at Tripoli Medical Center in a locked hospital room guarded by security officers, and visits by family members had to be approved by state security.

Credible reports indicate the Mr. el-Jahmi was denied critical medical care during the first four months of 2009. After HRW representatives visited Mr. el-Jahmi at Tripoli Medical Center on April 25 and 26, 2009, they reported that he was weak, emaciated, could barely speak, and could not lift his head or arms. Mr. el-Jahmi reportedly stated that he wanted to go home, but that he was not free to do so.

Despite his dire condition, Mr. el-Jahmi was not moved into intensive care as his family had requested. His family members brought the only food and drink he received each day and tended to his personal hygiene during the two hours a day that they were permitted to visit him in his room because health professionals at Tripoli Medical Center were not regularly performing these tasks. Although Mr. el-Jahmi, who the Libyan government claimed was free, had requested to go abroad for medical treatment for more than a year, the Libyan authorities waited to fly him to the Arab Medical Centre in Jordan until May 5, 2009, two days after he went into a coma. He never regained consciousness and died on May 20, 2009.

### **Recommendations for action by the State under review**

To uphold its commitments to human rights protection, the International Human Rights Network of Academies and Scholarly Societies calls on the government to:

*Guarantee the right to life, liberty, and security of person*

*Guarantee freedom of expression and assembly*

- Take all necessary measures to end restrictions on the rights to freedom of expression and peaceful assembly, in accordance with international human rights law.
- Ensure that members of Libya's internal security forces are made aware of their duty to protect the human rights of all individuals, including by ensuring that they are able to exercise their rights to freedom of expression and peaceful assembly.
- Invite the U.N. Special Rapporteur on the right to freedom of opinion and expression to visit Libya.
- Immediately and unconditionally release all prisoners of conscience.

*Respect the right to a fair and impartial trial for all persons under arrest within a reasonable time*

*Review Articles 166, 167, and 206 of Libya's Penal Code to determine their conformity with internationally recognized norms.*