

Written Submission for the Universal Periodic Review
UN Country Team in Libya
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Libya's first consideration by the UPR Working Group was in November 2010, before the intensive armed conflict which led to the overthrow of the regime of Colonel Muammar Qadhafi. The country has undergone a difficult transition since that time, struggling to address both the legacy of four decades of serious human rights violations and more contemporary abuses. Security structures and other state institutions, already weak under the previous regime, have further weakened or collapsed. The escalating violence in Libya since mid-May 2014 - particularly in Benghazi and Tripoli - has had dire effects on civilians and the country's infrastructure. Rather than disarming, armed groups have committed serious human rights abuses with impunity, including arbitrary arrests, arbitrary detention, torture and unlawful killings.

Discrimination against women

Women in Libya face discrimination in such areas as personal status, and the right to participate in public and political life, and they cannot pass their nationality to their children or spouses. In February 2013, the Supreme Court annulled an article within Law No 10 of 1984 on the Rules of Marriage, Divorce and their Effect, which had required men to obtain permission of the court if they were to marry a second wife. This provision had considerably restricted the practice of polygamy and its annulment paved the way for more polygamous marriages. On 30 April 2013, the Grand Mufti issued a *fatwa* prohibiting women from travelling without a male guardian. While Law No 24 of 2010 on Rules of Libyan Nationality grants Libyan nationality to anyone born in Libya to a Libyan mother and a father of unknown nationality, no legislation is currently in place to ensure the right of Libyan women married to men of a known foreign nationality to confer their Libyan nationality to their husbands or their children. While the children of such couples can apply for Libyan nationality once they reach adulthood, they are denied basic rights such as that to free education and subject to higher fees for medical treatment while they are children.

While a specialised committee was established in March 2014 to investigate and recommend reparations for incidents of sexual violence during the Qadhafi regime and the war of liberation, there is no appropriate complaint mechanism within the police or the Ministry of Health for incidents of sexual violence, and there is limited access to healthcare services and support. Libyan authorities still need to develop comprehensive legislation to address this issue in the wake of the war of liberation. Rather than providing for their support and protection, in some instances of rape, women have been accused of adultery or encouraged to marry the perpetrator to protect their honour. Libyan authorities have yet to establish a national women's machinery at the ministerial level for the promotion of gender equality in law and practice.

Right to life, liberty and security of the person

Since 2011, the UN has documented at least 38 deaths in custody where significant information suggests that they were the result of torture or extrajudicial killing.

There have also been a number of conflict-related killings, most recently in the context of the violence which broke out in Tripoli and Benghazi since mid-2014. In Benghazi in May 2014, retired General Khalifa Haftar announced an armed campaign, "Operation Dignity," against an alliance of Ansar al-Shari'a and other armed groups. Two months later in Tripoli, an alliance of armed groups from Misrata and other towns, together with Tripoli-based armed groups, launched "Operation Libya Dawn" against Zintan-affiliated armed groups allied with fighters from the Warshafana region

west of Tripoli. All parties to the recent conflicts have used weapons such as small arms, GRAD rockets, mortars and anti-aircraft guns in populated areas. The nature of the weapons being used, the means by which they have been used, and the impact on civilians (including the absence of opportunities provided to civilian populations to evacuate affected areas) suggest that many of the attacks were indiscriminate. As of 30 July, the Ministry of Health announced that 214 persons had been killed in Tripoli and 981 injured due to the fighting. On 28 August, they reported that 70 people had been killed in Benghazi. No details were provided to further disaggregate the figures in terms of civilians versus fighters or to provide information on the cause of death or injury. There is serious concern that these statistics are an underestimate of the actual situation.

There have been increasing reports of intimidation and murder of human rights defenders, media professionals, and other civil society activists. Individuals have been shot in the street while going to work or coming out of mosques after prayers. Many have received text messages or have been the subject of social media posts threatening them or their families with death. Prominent cases since May 2014 - all in Benghazi - include those of newspaper editor Muftah Abu Zeid; lawyer and human rights activist Salwa Bugaighis, whose husband was abducted and remains missing; and two young civil society activists, Tawfik Bensaoud, 18, and Sami al-Kawafi, 17.

In the wake of the 2011 conflict, thousands of persons remain missing, in addition to those who were forcibly disappeared during the Qadhafi regime. The National Transitional Council established the Ministry for the Affairs the Families of the Martyrs and the Missing in 2012, and the Ministry began registering missing persons, registering 2,644 as of December 2013. The ministry drafted a law to address the issue of missing persons including enforced disappearances, and in January 2014, the General National Congress promulgated Law No 1 of 2014 on the Care for Martyrs and Missing Persons of the 17 February Revolution. The law establishes the General Commission for Tracing and Identifying Missing Persons, to be affiliated with the Council of Ministers. The law also provides pensions and benefits such as medical care, government employment and symbolic reparation to the families of those killed or missing in the context of the revolution, although it specifically denies benefits to the families of those who opposed the revolution..

The situation of conflict-related detainees remains critical, as does that of places of detention. While the Government has sought to bring sites of detention controlled by armed groups under the control of the State, in practice these groups remain in effective control of many facilities. Since the outbreak of the conflict in mid-2014, a number of unofficial detention centres which had previously closed have renewed operations. Moreover, those detention centres under the control of the State faced substantial difficulty in ensuring adequate supplies of food and medicine for the detainees during this conflict. The problem of prolonged detention and interrogation at the hands of armed groups without experience or training in the handling of detainees remains severe. This is worsened by the absence of effective judicial oversight or accountability.

Torture and other ill-treatment is an ongoing and widespread concern in many detention centres since the revolution, and it has continued since the outbreak of the internal conflicts in mid-2014. As outlined in a joint UNSMIL/OHCHR report issued in October 2013, torture in detention in Libya is widespread and most frequent immediately after arrest and during the first few days of interrogation as a means to extract confessions and other information. Detainees frequently are held with no access to legal counsel and limited access to families.

Screening of detainees and the accompanying investigation remain a significant challenge for the public prosecution. Most recently, Law No 29 of 2013 on Transitional Justice established a 90-day deadline by which those being detained should either be charged or released, with a further 30 days provided in a subsequent amendment to the law. However, the judicial system was unable to meet

these deadlines, with the result that thousands of such individuals remain held without being charged. Detainees were also affected by the outbreak of violence in mid-2014: according to the Judicial Police, inmates in Tripoli and Benghazi had not been taken to their hearings, and many courts had stopped functioning.

In April 2013, the General National Congress adopted Law No 10 of 2013 on Criminalising Torture, Enforced Disappearances and Discrimination, which specifies that torture, enforced disappearance and discrimination are crimes and remain punishable as such. The law was intended to ensure that the amnesty adopted in Law No 38 of 2012 on Procedures Relating to the Transitional Phase would not extend to such serious human rights violations.

In the area of trafficking, Libya has no law on combating human trafficking. The current legal framework, in particular the Penal Code, contains provisions which penalise trafficking in persons but they are insufficient and need to be reviewed and brought in line with the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children. In October 2013, the Ministry of Justice requested support to review a draft law on combating human trafficking from UNODC. While outcomes of UNODC's review were discussed with the drafters and national experts in a joint workshop in October 2013, a more complete draft has not been produced.

Administration of justice, including impunity, and the rule of law

Following the revolution, the Supreme Judicial Council abolished the State security courts, which had been the core element of a parallel judicial system used for purposes of political repression under the Qadhafi regime. The Supreme Judicial Council was also reformed in order to bolster the independence of the judiciary. The Minister of Justice no longer serves as the Council chair, and the judicial body is exclusively composed of judges. The Constitutional Declaration prohibits the establishment of special courts.

The General National Congress amended the law on the status of the judiciary in May 2013, to allow for the election by peers of 11 out of 13 members of the Supreme Judicial Council. The law also provides for the Prosecutor General and the head of the Judicial Inspection to be *ex officio* members of the Council. One month earlier, the Congress had adopted a law abolishing the jurisdiction of military courts over civilians. While other reforms of the judiciary have been proposed since 2011, few of them were implemented. A reform of the Code of Criminal Procedures was commenced but never completed.

Security of the judiciary remains a serious concern in Libya. Since 2011, prosecutors and judges have been subject to frequent intimidation and attacks, and a number killed. In December 2012, the Prosecutor General was assaulted in his office by a number of members of an armed group for having ordered the arrest of one of its members. He was assassinated by unknown assailants in Derna in February 2014. Senior judges too have been assassinated, and courts bombed. As a result, judges organised a series of strikes to protest the ongoing insecurity. By late 2013, courts were suspended from functioning in the east of the country, including in such locations as Derna, Benghazi, and Sirte. The courts in Tripoli effectively stopped functioning in mid-2014 due to the outbreak of violence.

Since the revolution, a number of reparations measures have been established, such as the provision for compensation to former political prisoners, those for the missing or disappeared, and those killed in Abu Salim Prison in 1996. In December 2013, the General National Congress promulgated Law No 29 of 2013 on Transitional Justice, repealing and improving on a previous law on transitional justice. It established a Victims Compensation Fund and provides for reparations, including

compensation for material damage, memorialisation, treatment and rehabilitation. The UN has called on Libyan authorities to use Law 29 to adopt a comprehensive approach to reparations to ensure the viability of these endeavours and to avoid discrimination between different categories of victims.

A number of trials of senior former regime officials have commenced since the revolution. In May 2013, former Prime Minister al-Baghdadi al-Mahmoudi was charged with incitement to kill and corruption. Saif al-Islam Qadhafi is on trial in Zintan for national security offences relating to an alleged escape attempt during a visit by officials of the International Criminal Court in 2012. Two other former Qadhafi officials on trial in connection with the misuse of public funds relating to the Lockerbie compensation awards were acquitted in Tripoli in June 2013. The former Minister of Education and Information and five other former regime officials were sentenced to death by the criminal court (*Cour d'Assises*) in Misrata in July 2013 for inciting violence and the killing of demonstrators. There have been concerns with respect to the conduct of the trials in compliance with international human rights standards, including in relation to access to defence counsel.

Most prominently has been Case 630/2012 of 37 former senior and other regime officials, including Saif al-Islam Qadhafi and Abdullah al-Senussi on charges related to the 2011 conflict. This trial incorporated several of the regime figures charged earlier. The first hearing was in March 2014, and the trial is ongoing. Most of the defendants are held in al-Hadhba Correction and Rehabilitation Institution, which is also the site of the trial, although eight of them are detained in Misrata and Saif al-Islam Qadhafi remains in Zintan. Those outside of al-Hadhba are connected to the main court by video-link during some of the sessions. While all the defendants obtained attorneys over the course of first several sessions (either retained by their families or court-appointed), the defence counsel of Abdullah al-Senussi and Saif al-Islam have changed several times. After some delays, lawyers obtained copies of the case material, although they report difficulties in meeting privately with their clients.

In February 2011, the Security Council referred the situation in Libya to the Prosecutor of the International Criminal Court, and called on that the Libyan authorities to cooperate fully and provide any necessary assistance to the Court and the Prosecutor. Four months later, the Court issued arrest warrants against and requested the transfer to The Hague of Muammar Qadhafi, Saif al-Islam Qadhafi and Abdullah al-Senussi. While the case against Muammar Qadhafi was terminated following his death, the other two cases remained under active consideration by the Court. Libyan authorities challenged the admissibility of the cases. To date, both Saif al-Islam Qadhafi and Abdullah al-Senussi have been unable to access legal counsel representing them before the International Criminal Court. This is of particular concern given the May 2014 decision of the Appeals Chamber of the International Criminal Court upholding the admissibility of the case against Saif al-Islam Qadhafi, confirming that Libya must hand him over to the Court. In July 2014 the Appeals Chamber confirmed the inadmissibility of the Abdullah al-Senussi case before the International Criminal Court. Libya remains under an obligation to cooperate with the Court.

Law 29 establishes a new Fact-Finding and Reconciliation Commission which will address human rights violations committed under the former regime and since its fall. The Commission is mandated to, *inter alia*, set out a complete picture of the nature, reason and scope of the human rights violations committed; address the situation of displaced persons, missing persons, and detainees; and decide upon reparations for the victims. It has a four-year duration with the option for a one-year extension. The General National Congress established a committee to select a panel of candidates for the nine-member Board which heads the Commission, and in April 2014 they issued a public call for applications from candidates interested in serving on the Board. Due to the political deterioration and the announcement for elections for the House of Representatives to replace the

General National Congress, the committee was unable to complete its work and the Board has yet to be appointed.

The General National Congress also adopted in December 2013 a new law establishing a fact-finding committee to investigate the killings in Abu Salim Prison in 1996 and provide recommendations for reparations to the victims, but the committee was never appointed.

Of particular concern has been Law No 13 of 2013 on Political and Administrative Isolation, which was promulgated under threat by armed groups. The law details a wide range of political, administrative and other positions, affiliations and acts which form the grounds on which individuals associated with the Qadhafi regime should be excluded from public positions in the future. The grounds are vague, far-reaching, and disproportionate, and likely to violate the human rights of the individuals concerned, as they would be excluded for ten years. Members of the judiciary, fearing that large numbers would be affected, initially went on strike and made proposals for amendments to the General National Congress. Six challenges to the constitutionality of the law were submitted to the Supreme Court's constitutional chamber, including by the National Council for Civil Liberties and Human Rights. The Court was due to issue a decision on the matter on 26 June 2014, but in the wake of protests outside the court, no session was held. The court subsequently announced a decision would be issued on 22 February 2015. The House of Representatives has said that it may revisit the law, which continues to arbitrarily and adversely affect many Libyans, including some of those who led the revolution.

Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life

As noted previously, civil society activists, media professionals, and human rights defenders have been under increasing attack in Libya, especially by armed groups. Reports of intimidation, harassment, abduction, and murder have become more frequent, with many individuals subsequently curtailing their work or leaving the country, mostly to Tunisia or Egypt. Others have curtailed their activities or gone into hiding, seeking protection for themselves and their families. The climate of fear created by such attacks, coupled with impunity of those responsible, threatens to silence much needed voices in the country, and the space available for dissent appears to be narrowing.

Since the outbreak of violence in mid-2014, a number of activists, journalists and other public figures in Tripoli have been abducted, threatened or had their homes looted or burned since last July. One prominent human rights defender received text messages warning him to stop his advocacy work or else his children would be abducted and killed. Women are especially vulnerable and many have been pressured to abandon their public roles. One civil society activist reported that she had received several calls from armed groups threatening her if she did not cease writing about women's rights issues, she and her children would be killed. In October 2014, the National Council on Civil Liberties and Human Rights (NCCLHR), the national human rights institution, was threatened by armed men believed to be affiliated with Operation Libya Dawn. Such vulnerability is exacerbated by the absence of a functional and independent police force and a stable judiciary.

Some individuals appear to have been targeted because of their faith. In February 2014, the bodies of seven Egyptian Coptic Christians were found near Benghazi, and in the summer of 2014 a man from the Philippines was beheaded there reportedly for not being a Muslim. Religious sites have also been attacked: there have been numerous deliberate attacks from sectarian groups targeting Sufi *marabout* shrines since 2011. In October 2014, armed men looted and damaged the historic Othman Pasha Madrassa, which serves Tripoli's Sufi community. That same month, a group of

gunmen stormed and vandalised the Karamanli Mosque, one of Tripoli's most famous mosques built in 1738. Ceramic tiles and marble decorations in the interior of the mosque were removed, and the floor completely ripped out. Days later, attackers attempted to vandalise the Darghout Mosque, but the attack failed when local volunteers protected the building.

The original draft law for the 60-member Constitution Drafting Assembly (CDA) contained no provision for special measures for women. Women's organisations lobbied to get a block of 30 seats reserved, but the law was eventually amended to include six reserved seats. Growing threats and attacks against women activists contributed to their reluctance to run for election, as posters of female candidates were torn and destroyed, reducing their visibility, which was supplemented by the media's reluctance to support their campaigns.

Cultural rights

Article 1 of the Constitutional Declaration states that "The State shall guarantee the cultural rights for all components of the Libyan society and their languages shall be deemed national ones." The Ministry of Culture and Civil Society has taken steps to advocate the full integration of cultural rights and cultural diversity into the new Constitution. The Ministry and its specialized institutions implement cultural policies, in coordination with the Ministry of Local Governance as well as the local councils. Sectoral oversight authorities such as the Department of Antiquities are responsible for managing protected property.

In July 2013, the General National Congress adopted Law No 18 of 2013 on the Rights of Cultural and Linguistic Components, in response to concerns raised by the Amazigh, Tabu, and Tuareg populations. Law 18 recognizes the languages of the three communities as "linguistic and cultural components of Libyan society" and requires the State to support, promote and protect their cultural and linguistic heritage. A scientific institute dedicated to the Amazigh language, opened in Spring 2014 under the Libyan Research and Scientific Authority, promotes the conservation, development and diffusion of science and culture, encouraging international contacts and cooperation.

Minorities and indigenous peoples

The rights of the Amazigh, Tabu and Tuareg communities (officially referred to as "components" of Libyan society) have been prominent in the political debate and reform initiatives since the 2011 conflict. Exact figures are unclear, as the estimates provided by the communities themselves are substantially higher than those from Libyan authorities. Many among these communities also consider themselves indigenous peoples. As noted above, the General National Congress promulgated Law No 18 in response to the concerns raised by the communities.

There were no seats reserved for minorities in the July 2012 elections for the General National Congress, although several constituencies had a majority population of the Amazigh, Tabu, and Tuareg communities, who won several seats. There were some electoral problems due to issues with citizenship for minorities in the south, which were resolved by permitting registration based on certificates issued by the local council. The electoral law for the 60-member Constitution Drafting Assembly (CDA), adopted by the Congress in July 2013, reserved two seats each for the Amazigh, Tabu and Tuareg communities. However, the Amazigh boycotted the February 2014 election, refusing to participate in the elections unless their language rights are guaranteed. Their seats remain vacant. While the Tabu and Tuareg initially boycotted the polling, they voted one month later to elect their CDA representatives. The June 2014 elections for the House of Representatives adopted the same approach as that used for the General National Congress elections in 2012. Several seats in the Kufra area remain vacant in the wake of tensions between the Tabu community

in the area and their Arab neighbours.

Migrants, refugees and asylum-seekers

Migrants, refugees and asylum-seekers remain extremely vulnerable in Libya. Libya has not ratified the 1951 Convention relating to the Status of Refugees or its 1967 Protocol, and authorities have not established a proper protection framework. Detention of these individuals in Libya is widespread and prolonged, particularly affecting those from sub-Saharan Africa. Law No 19 of 2010 on Combatting Illegal Immigration states that “[a] penalty of imprisonment with labour and a fine of not more than 1,000 LYD (one thousand dinars) shall be inflicted on a foreign illegal immigrant. In all circumstances, an illegal foreign immigrant who is convicted with any crime stipulated herein shall be deported from Libya once he/she has served the due penalty period.”

Article 10 of the Constitutional Declaration refers to the right to asylum, however there has yet to be any implementing regulations or administrative measure to be put in place to guarantee this right. Border control measures are not sufficient to address this issue. There is an urgent need to introduce a registration and status determination process for refugees in close cooperation with UNHCR; to formalize the role of UNHCR; and to reduce the use of detention and improve conditions in detention centres, in accordance with international standards.

Ill-treatment and other abuses taking place in migrant detention centres are frequent. Such violations are further aggravated by poor health care and insufficient food and sanitary requirements, stemming from a lack of access and ability to provide adequate support and services to the migrants detained therein. They are also subject to forced labour or work exploitation.

The Department for Combatting Illegal Migration is an independent agency within the Ministry of the Interior, and is tasked with, *inter alia*, identifying so-called illegal migrants and accommodating and registering them in centres, repatriating them to their countries of origin, investigating human trafficking, and performing mobile patrols to combat illegal migration along the land borders. Large number of migrants arrive on a daily basis, with many seeing Europe as their final destination but a number choosing to stay in Libya.

Migrants' vulnerability has further increased in the context of the fighting which began in mid-2014, especially those in areas affected by the fighting but without the ability or means to leave. Some were killed by indiscriminate bombings. Hundreds attempted the perilous sea crossing from Libya, with the numbers dying at sea in 2014 estimated beyond 2,000. Some detention centres moved migrants to different areas, but others simply released migrants reportedly because of the shortages of basic goods. Many have sought to cross the borders into neighbouring countries, some of whom have intermittently imposed restrictions, such as requiring airline reservations for onward travel.

Internally displaced persons

In mid-2014, roughly 60,000 Libyans from a number of communities remained internally displaced due to the events of 2011. Those affected included persons from such groups as the Mashashiya, Gualish, Jaramla, S'ian, Tabu, and Tuareg. The largest group of those affected are 30,000 inhabitants of the town of Tawergha who were forcibly displaced in August 2011 by armed groups from Misrata. Misratans accuse Tawerghans of rape and other grave human rights abuses committed during the siege of Misrata by pro-Qadhafi forces. Since that time, Tawerghans were unable to return to their town and were subjected to continuous harassment. Members of armed groups have carried out raids against camps for internally displaced persons (IDPs) from Tawergha, resulting in unlawful killings and arbitrary arrests.

The Tawerghan local council had planned to return to their town in June 2013 but did not implement it in light of the Government's commitment to develop a plan for their return and to improve their present situation. There has been no progress on this matter since that time, and an overall strategy to ensure their return and protect their rights in the meantime is not yet in place.

This situation of internal displacement deteriorated further as a result of the conflict since July 2014. As of 25 August 2014, the UNCT estimated that 287,318 Libyans were internally displaced by the fighting within and around Tripoli and Benghazi. This includes several thousand who were previously displaced: a number of existing camps for internally displaced Tawerghans were in or near areas affected by the fighting, and were displaced a second time. On 30 August, al-Fallah camp was raided by forces affiliated with Operation Libya Dawn, with one person reportedly killed and three injured. Five men were allegedly abducted for several hours and beaten before being released.

Human rights and counter-terrorism

In September 2014, the House of Representatives adopted Law No 3 of 2014 on Counter-terrorism, which was based on a draft law which had earlier been under consideration by the General National Congress. The law adopts a broad definition of terrorist acts, and stipulates that any use of force, threat, or intimidation should aim at committing such acts as establishing, managing, joining, funding, or arming a terrorist organization; abducting a person who has international protection; forcibly entering the diplomatic facilities for the purpose of committing a terrorist act; publicising, promoting, or utilising deception to conduct a terrorist act verbally or in writing. It also establishes the Libyan Counter-Terrorism Committee, to be chaired by a judge, with an emphasis on promoting international cooperation.