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## **Human Rights Council**

### **Thirty-first session**

Agenda items 2 and 10

### **Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General**

### **Technical assistance and capacity-building**

## **Investigation by the Office of the United Nations High Commissioner for Human Rights on Libya: detailed findings<sup>\* \*\*</sup>**

### *Summary*

The present document contains the detailed findings of the investigation by the Office of the United Nations High Commissioner for Human Rights (OHCHR) on Libya. The principal findings and recommendations of OHCHR are provided in document A/HRC/31/47.

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\* Reproduced as received.

\*\* The information contained in this present document should be read in conjunction with the report of the investigation of the Office of the United Nations High Commissioner for Human Rights on Libya (A/HRC/31/47).

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## I. Introduction

### A. Mandate

1. On 27 March 2015, the Human Rights Council adopted its resolution 28/30, in which it requested the United Nations High Commissioner for Human Rights urgently to dispatch a mission to investigate violations and abuses of international human rights law committed in Libya since the beginning of 2014, and to establish the facts and circumstances of such abuses and violations with a view to avoiding impunity and ensuring full accountability, and to submit to the Council a written report on its findings, which should also contain an update on technical assistance, capacity-building and cooperation with the Government of Libya, with recommendations for future capacity-building needs that include but are not limited to the justice system and accountability. An oral update was presented to the Council on 29 September 2015, and was followed by an Interactive Dialogue on the human rights situation in Libya.

2. In accordance with the mandate, the mission focused the investigation on violations and abuses committed from 1 January 2014, and examined the actions of both State and non-State actors. During the investigation, the Office of the High Commissioner (OHCHR) received information concerning individuals with alleged responsibility for violations and abuses. Considering the importance of this information for its mandate, in particular in ensuring accountability, OHCHR has recorded this information. For reasons of witness protection, due process, and fair trial guarantees, individual names have not been included in this present report, and are retained on a strictly confidential basis by OHCHR.

3. OHCHR established priorities with regard to the alleged violations and abuses to be investigated. Particular consideration has been given to the gravity of alleged violations and abuses, and the extent to which incidents indicated a pattern of violations and abuses. Aware of the monitoring already carried out by UNSMIL and OHCHR and other organizations during 2014 and 2015,<sup>1</sup> this present report seeks to complement these assessments and recommendations. In view of the limits related to the investigation team's access to relevant persons and places some violations or abuses are identified as requiring further investigation.

### B. Methodology

4. As a result of the prevailing security situation in Libya, the Government of Tunisia agreed to host the OHCHR investigation team in Tunis. The team was deployed from July to December 2015.<sup>2</sup>

5. OHCHR began its work by reviewing available documentation in relation to the human rights situation in Libya, including Government reports, United Nations reports, international and Libyan non-governmental organization reports, press reports and audio-

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<sup>1</sup> Joint reports issued by OHCHR and UNSMIL include *Overview of Violations of International Human Rights and Humanitarian Law During the Ongoing Violence in Libya*, 4 September 2014, *Update of Violations of International Human Rights and Humanitarian Law During the Ongoing Violence in Libya (revised)*, 23 December 2014, and *Report on the Human Rights Situation in Libya*, 16 November 2015.

<sup>2</sup> The team consisted of 6 human rights-focused staff (a coordinator, three human rights investigators, a legal adviser, and a gender adviser) and translation, security, and administrative staff.

visual material, and reports of special procedure mandate holders and treaty bodies. This material was used to assist in mapping the nature of alleged violations and in developing further investigation leads.

6. A public call for submissions was issued on 29 July 2015, inviting interested States Members of the United Nations, groups and individuals to provide information to OHCHR related to its mandate. A copy of the call for submissions was disseminated to States Members of the United Nations on 31 August 2015 and redistributed in September 2015.<sup>3</sup> Specific invitations were issued to the national human rights institution of Libya, the National Council for Civil Liberties and Human Rights,<sup>4</sup> and special procedure mandate holders to share their expertise with OHCHR.<sup>5</sup> Outreach was also conducted with other relevant office holders of the United Nations including the offices of the Special Adviser on the Prevention of Genocide, the Special Adviser on the Responsibility to Protect, the Special Representative of the Secretary-General on Sexual Violence in Conflict, and the Special Representative of the Secretary-General for Children and Armed Conflict. Regular meetings were held with the United Nations Support Mission in Libya (UNSMIL) to provide for coordination of activities.

7. The Government of Libya<sup>6</sup> expressed its support for the investigation and offered assistance should the OHCHR investigation team conduct missions to Tobruk and Al-Baida for which the High Commissioner is grateful. Owing to the security situation, only a one-day visit to Tripoli was possible. A list of questions was dispatched to the Government, although no response had been received as at January 2016. OHCHR staff held meetings with a range of stakeholders (including United Nations entities, Government representatives, and non-governmental organization representatives, including human rights defenders) to explain the mandate of the investigation and to invite them to provide information.

8. Given the difficult security environment in Libya, the majority of fact-finding activities were undertaken through remote contact with persons in Libya, facilitating the travel of some victims and witnesses to Tunis, and missions. OHCHR undertook missions in Tunisia (Tunis, Djerba, Sfax, Sousse, Mahdia), and to Libya (Tripoli), Egypt (Cairo, Alexandria), Turkey (Istanbul), Jordan (Amman), and Italy (Rome, Catania and Mineo). The team also consulted satellite imagery provided by the UNITAR Operational Satellite Applications Programme (UNOSAT).

9. The investigation team met with more than 250 interlocutors, including more than 200 victims and witnesses. The environment for persons coming forward remained challenging, with many expressing concern about their safety and/or the safety of their families in Libya. A particular priority was placed on issues of witness protection. This extended to the decision not to include the names of victims and witnesses in this present report, except in the case of some specific high-profile assassinations and enforced disappearances where the details have already been widely reported and it was assessed there were no protection concerns.

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<sup>3</sup> Only one State responded to this call for submissions to note that it had no relevant information.

<sup>4</sup> OHCHR liaised with the National Council for Civil Liberties and Human Rights appointed by the National Transitional Council in 2011.

<sup>5</sup> A coordinated submission from special procedure mandate holders was received.

<sup>6</sup> At the time of the investigation, conducted from July to December 2015, there were two separate authorities in Libya. In the present report, the "Government of Libya" refers to the internationally recognized authorities at the time, which were based in Tobruk/Al-Baida.

10. As a result of the submissions process, OHCHR received 66 submissions, containing more than 900 individual complaint files.<sup>7</sup> Only a limited number of these cases have been able to be individually followed up in the time available. However, these cases have been used to assist in identifying trends and/or to corroborate other collected accounts. The scope of complaints received highlights the magnitude of ongoing violations and abuses being committed in Libya and the need for further investigations and follow-up.

11. While considering a range of information, OHCHR has placed a particular emphasis on first-hand accounts. Findings are made where it has been considered that there are “reasonable grounds to believe” that violations and abuses have occurred; that is whenever OHCHR has been satisfied that it has obtained a reliable body of information, consistent with other material, based upon which a reasonable and ordinarily prudent person would have reason to believe that such an incident or pattern of conduct has occurred.

### C. Challenges and constraints

12. OHCHR faced a number of significant challenges in carrying out its investigation. Foremost among these was the limited access to Libya owing to the ongoing fighting. Working within existing United Nations security parameters, the team was limited to travelling to Tripoli (Mitiga airport) for a one-day visit. The environment in Libya remained hostile for those coming forward with information, and in some cases, victims and witnesses initially agreed to speak with OHCHR but did not proceed with being interviewed, citing a distrust or scepticism about the United Nations based upon the international community’s previous engagement in Libya. The political divisions in Libya (reflected in dual authorities operating) and the limited operation of some institutions, including the National Council for Civil Liberties and Human Rights, also presented challenges.

13. Some thematic areas also proved particularly challenging to investigate. Despite having a specialist adviser on the topic, barriers surrounding the reporting of sexual violence (including stigma, family pressures, and trauma) made this topic difficult to explore by way of first-hand accounts. Without access to Libya, it was not possible to speak to persons currently in detention, or to carry out, for example, site visits to locations of attacks. The fact that most international organizations are undertaking their work on Libya outside of the country, or through local partners within specific security constraints, also limited points of referral to victims and witnesses. Statistical information on the situation in Libya, including gender-disaggregated data, also remains scarce. The absence of many organizations operating in the south of Libya or in areas controlled by groups pledging allegiance to Islamic State in Iraq and the Levant (ISIL) also created a pronounced dearth of secondary information relating to those areas.

14. Notwithstanding these constraints, OHCHR was able to gather a substantial body of information, leading to the finding that there are reasonable grounds to believe that gross violations of international human rights law, serious violations of international humanitarian law, and serious abuses of human rights have been committed in Libya. The High Commissioner stresses the need for ongoing international attention to ensure the effective, prompt, and thorough investigation of these violations and abuses, and that those responsible are held accountable.

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<sup>7</sup> The breakdown of subject matters and numbers of complaints (with individual complaints often containing more than one alleged violation) was: killing (78); armed attack (527); kidnapping (99); arrest/detention (109); torture (108); confiscation/appropriation of property (270); setting fire to houses (347); looting/theft (576); and other (222).

## **D. Acknowledgements**

15. Gratitude is expressed for all the assistance provided by so many in connection with the investigation. First and foremost, the High Commissioner wishes to express his profound appreciation to the victims, witnesses, human rights defenders, and other interlocutors who shared their experiences with the investigation team. The High Commissioner expresses his appreciation to the Government of Tunisia for hosting the team, and to all those who assisted in relation to OHCHR field missions, particularly the Governments of the States concerned: Libya, Egypt, Turkey, Jordan and Italy; the relevant United Nations Resident Coordinators; the United Nations Development Programme (UNDP); and the United Nations Department of Safety and Security. Special mention should be made of UNSMIL and its Human Rights, Transitional Justice, and Rule of Law Division which provided extensive assistance to the team. A number of other United Nations entities (including the United Nations Children's Fund (UNICEF) and the Office of the United Nations High Commissioner for Refugees (UNHCR)), intergovernmental organizations (including the International Organization for Migration (IOM)), and numerous national and international non-governmental organizations generously shared insights and background information in relation to the situation in Libya. The United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and the Operational Satellite Applications Programme (UNOSAT) also provided valuable assistance.

## **II. International legal framework**

16. The investigation was carried out considering Human Rights Council resolution 28/30 as a whole and taking into account the approach of previous investigative missions mandated by the Human Rights Council. The investigation was conducted within the framework of all relevant international legal norms, including international human rights law, international humanitarian law and international criminal law. The general legal framework used by OHCHR is set out in the following paragraphs, with more detail of the relevant legal norms presented within each individual Section of Chapter V which addresses specific violations and abuses.<sup>8</sup>

### **A. International human rights law**

17. Libya is obliged to respect, protect, promote, and fulfil the human rights of all persons within its territory and subject to its jurisdiction, without discrimination. This includes the obligation to ensure a prompt, adequate, and effective remedy to those whose rights have been violated, including the provision of reparations and guarantees of non-recurrence and to investigate and bring to justice perpetrators of gross violations.

18. Libya is a State party to eleven of the eighteen core human rights treaties: the International Covenant on Civil and Political Rights (ICCPR) and its first Optional Protocol (ICCPR-OP1); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT); the International Convention on the Elimination of all Forms of Racial Discrimination (CERD); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol; the International

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<sup>8</sup> The essence of the relevant international legal norms have been outlined without fully elaborating on all of the many overlapping areas of law.

Convention on the Protection of the Rights of All Migrant Workers and Their Families (ICRMW); and the Convention on the Rights of the Child (CRC) and its Optional Protocols on the Involvement of Children in Armed Conflict (OP-CRC-AC), and on the Sale of Children, Child Prostitution and Child Pornography (OP-CRC-SC). In addition, Libya has signed, but not ratified the Convention on the Rights of Persons with Disabilities (CRPD). Libya is also bound by relevant rules of international human rights law which form a part of customary international law.

19. There are a range of instruments that assist in understanding and delineating human rights obligations, including the Declaration on the Protection of Persons from Enforced Disappearances;<sup>9</sup> the Guiding Principles on Internal Displacement;<sup>10</sup> the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;<sup>11</sup> the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity;<sup>12</sup> and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.<sup>13</sup>

20. Libya has not submitted any declaration of a state of emergency under article 4 of ICCPR. Even were the Libyan authorities to do so, there are a wide range of rights which are either explicitly or implicitly non-derogable under the ICCPR.<sup>14</sup> International human rights law applies at all times.<sup>15</sup> The concurrent application of international humanitarian law and international human rights law in situations of armed conflict means that the provisions of the two bodies of law should be read together and reconciled as far as possible.

<sup>9</sup> Declaration on the Protection of Persons from Enforced Disappearances; adopted by General Assembly resolution 47/133, 18 December 1992.

<sup>10</sup> Guiding Principles on Internal Displacement, presented to the Commission on Human Rights, E/CN.4/1998/53/Add.2.

<sup>11</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>12</sup> Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity which was recognised in a consensus resolution of the United Nations Commission on Human Rights in 2005, E/CN.4/2005/102/Add.1. See also *Report of the independent expert to update the Set of Principles to combat impunity*, Diane Orentlicher, E/CN.4/2005/102, 8 February 2005.

<sup>13</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by General Assembly resolution 60/147 of 16 December 2005.

<sup>14</sup> ICCPR, art.4; Human Rights Committee, General Comment No. 29, States of emergency (Article 4), CCPR/C/21/Rev.1/Add.11.

<sup>15</sup> The International Court of Justice (ICJ), in its *Nuclear Weapons Advisory Opinion*, held that the protection of the International Covenant for Civil and Political Rights does not cease in situations of armed conflict. The Court later confirmed this position and identified three possible situations as regards the relationship between international humanitarian law and human rights law stating that "some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law". *Legal Consequences of the Construction of a Wall in the Occupied Palestinian territory*, Advisory Opinion, 9 July 2004, *I.C.J. Reports* 2004, para. 106. Human Rights Committee, General Comment No 31, Nature of the General Legal Obligation on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13 (2004); para. 11.

## B. International humanitarian law

21. With a non-international armed conflict occurring in Libya during the mandate period, OHCHR also took into account international humanitarian law.

22. International humanitarian law regulates the conduct of parties to an armed conflict. Libya is a party to the four Geneva Conventions of 12 August 1949. It is also a party to Additional Protocol I and II to the Geneva Conventions. Libya is also a party to a range of specialist conventions including the Geneva Protocol on Asphyxiating or Poisonous Gases, and of Bacteriological Methods 1925; the Convention on the Prohibition of Biological Weapons; the Convention prohibiting Chemical Weapons 1993; and the Hague Convention for the Protection of Cultural Property 1954, and its two protocols. In addition, all parties to the conflict are bound alike by the relevant rules of customary international law applicable in non-international armed conflict.

23. Common article 3 to the Geneva Conventions (applying to conflicts not of an international character) is applicable to the situation in Libya. In addition Additional Protocol II to the Geneva Conventions relating to the protection of victims of non-international armed conflict is applicable to the State forces and those armed groups with the requisite level of organization and control.<sup>16</sup> Common article 3 to the Geneva Conventions and Additional Protocol II contain protections applicable to civilians and other persons not taking a direct part in hostilities. Common article 3 binds all parties to the conflict to respect, as a minimum, that persons taking no active part in hostilities, including those placed *hors de combat*, shall be treated humanely, without any adverse distinction.<sup>17</sup> Parties to conflicts must, at all times, abide by the principles of distinction, proportionality and precautions in attack.<sup>18</sup> This means that parties must distinguish between civilian persons and objects on the one hand, and lawful military targets on the other, and that only military persons and objects are legitimate targets of attacks.<sup>19</sup> Attacks that are expected to cause incidental loss of life, injury to civilians, damage to civilian objects or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, are prohibited.<sup>20</sup> Parties must take all feasible precautionary measures to avoid and in any event to minimize incidental loss of civilian life, injury to civilians, and damage to civilian objects.<sup>21</sup>

24. States must apply fully the relevant norms of international humanitarian law and international human rights law to women and girls, and take special measures to protect women and girls from gender-based violence during armed conflict.<sup>22</sup>

<sup>16</sup> Additional Protocol II to the Geneva Conventions of 12 August 1949 (“Additional Protocol II”), art.1.

<sup>17</sup> Common article 3 to the Geneva Conventions prohibits violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture, taking of hostages, outrages upon personal dignity as well as the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, respecting the generally recognized principles of fair trial and due process.

<sup>18</sup> *ICRC Study on Customary International Humanitarian Law*, rules 1-24.

<sup>19</sup> *Ibid*, rule 7.

<sup>20</sup> *Ibid*, rule 14.

<sup>21</sup> *Ibid*, rules 15-24.

<sup>22</sup> Security Council resolution 1325 (2000); Security Council resolution 1820 (2008).



### C. International criminal law

25. International criminal law governs the situations in which individuals can be held individually criminally responsible for gross violations of international human rights law and serious violations of international humanitarian law which amount to crimes under international law. States have the primary obligation to ensure accountability for these crimes. To comply with this obligation, States must ensure that their domestic legislation incorporates the necessary legal basis to enable domestic courts to duly exercise jurisdiction over such crimes, in accordance with applicable principles of customary and treaty law.<sup>23</sup>

26. While Libya has not become a party to the Rome Statute of the International Criminal Court, the Security Council referred the situation of Libya since 15 February 2011 to the Prosecutor of the Court in its resolution 1970 (2011). The continuing jurisdiction of the Court over Libya including contemporary crimes has been affirmed by the Prosecutor of the International Criminal Court.<sup>24</sup> In successive resolutions, the Security Council has called for ongoing cooperation with the Court.<sup>25</sup>

### D. State duty to investigate and prosecute, and provide an effective remedy

27. As noted in this present report, States are obliged to investigate and prosecute gross violations of international human rights law and serious violations of international humanitarian law, in particular those that amount to crimes under international law.<sup>26</sup> States' investigations into such allegations must be carried out by independent and impartial bodies and be prompt, thorough, and effective.<sup>27</sup> To be in a position to prosecute cases where sufficient evidence exists, States must ensure that their domestic legislation has

<sup>23</sup> Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, principles 20, 21.

<sup>24</sup> See for instance, the affirmation that the International Criminal Court jurisdiction granted by virtue of Security Council resolution 1970 "prima facie extends to contemporary crimes committed on the territory of Libya": Ninth Report of the Prosecutor of the International Criminal Court to the UN Security Council pursuant to UNSCR 1970 (2011), 12 May 2015 para. 19; reaffirmed in the Tenth Report of the Prosecutor of the International Criminal Court to the Security Council pursuant to UNSCR 1970 (2011), 26 October 2015, para. 22.

<sup>25</sup> See for instance, Security Council resolution 2213 (2015) and Security Council resolution 2238 (2015).

<sup>26</sup> The duty to investigate human rights violations arises as a result of the duty of States to provide an effective remedy and provide effective protection of human rights, but is also made explicit in a number of human rights treaties: e.g. CAT, art.12. The duty to prosecute attaches to human rights violations amounting to crimes under either national or international criminal law and is explicitly referred to in a variety of treaties: e.g. Genocide Convention, art.1; CAT, arts. 4 and 7, and has been referred to more broadly by the Human Rights Committee, in General Comment No. 31, Nature of the General Legal Obligation on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13 (2004). The duty to investigate and prosecute serious violations of international humanitarian law is recognized in customary international law: see *ICRC Study on Customary International Humanitarian Law*, rule 158. The Preamble to the Rome Statute refers to the need to ensure crimes under international law must "not go unpunished" and whose "effective prosecution must be ensured". See also: United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, and the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity.

<sup>27</sup> Human Rights Committee, General Comment No. 31, para. 15. The Human Rights Committee has noted that a failure to investigate allegations could itself constitute a separate breach of the ICCPR.

the necessary legal basis to enable domestic courts to duly exercise jurisdiction over such crimes, in accordance with applicable principles of customary and treaty law.<sup>28</sup> States must also prosecute those with responsibility for crimes under international law and duly punish those convicted.<sup>29</sup>

28. As part of the duty to provide effective remedies, States are obliged to ensure reparation for the injuries suffered.<sup>30</sup> States must ensure the inalienable right to know the truth about violations and take other necessary steps to prevent a recurrence of violations.<sup>31</sup> Transitional justice measures need to be designed on an inclusive basis and guided by consultations with the victims. Attention must be devoted to ensuring they are gender-sensitive and consider the views and interests of children.<sup>32</sup>

#### D. Non-State actors

29. The present report adopts the approach that non-State actors who exercise government-like functions and control over a territory are obliged to respect human rights norms when their conduct affects the human rights of the individuals under their control.<sup>33</sup> Non-State armed groups that are party to an armed conflict are also bound by international humanitarian law. Further, relevant rules of customary international humanitarian law will apply to non-State armed groups that are party to an armed conflict. The scope of international criminal law extends to all individuals.

30. In the current Libyan context, the ability to establish the status of actors as either State or non-State entities is difficult, given the fragmented nature of State institutions and the inter-linkages between certain authorities and armed groups. This is described further in Chapters III and IV of this present report. This report has described where information indicating links between actors and the State is available (e.g. financial links or the

<sup>28</sup> Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, principles 20, 21.

<sup>29</sup> See Human Rights Committee, General Comment No. 31, paras. 15-19; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, principle 4; and the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, principle 19. Note also that statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law, which constitute crimes under international law. 1968 United Nations Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity; Basic Principles and Guidelines on the Right to a Remedy and Reparation, para. 6.

<sup>30</sup> Article 2(3), ICCPR; Human Rights Committee, General Comment No. 31, para.15; *ICRC Study on Customary International Humanitarian Law*, rule 150; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, principles 15-23; Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, principles 31-34.

<sup>31</sup> See Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, principles 35-38.

<sup>32</sup> See for example Guidance Note of the Secretary-General, Reparations for Conflict-related Sexual Violence (June 2014), and *Analytical study focusing on gender-based and sexual violence in relation to transitional justice*, A/HRC/27/21, 30 June 2014.

<sup>33</sup> See, for example, the *Report of the High Commissioner for Human Rights on the implementation of Human Rights Council Resolution 7/1*, 6 June 2008, A/HRC/8/17, para. 9; A/HRC/12/37, para. 7; A/HRC/17/45, para. 62; and A/HRC/25/21, para. 11.

endorsement of acts). However, additional investigation of the operation of armed groups, in particular, is crucial to attribute responsibility for violations and abuses.

### III. Context

31. 2014 and 2015 saw a dramatic decline in the political and security situation in Libya, with the outbreak of hostilities in the east, west and south of Libya. In addition, groups pledging allegiance to ISIL further emerged as a force, particularly in Derna, Sirte, and Benghazi. While there were some specific dynamics in 2014 and 2015, events in Libya have also to be considered against a longer term background.

#### 1. Legacy of the Qadhafi period and the armed conflict in 2011

32. The International Commission of Inquiry for Libya described how the Qadhafi period was characterised by decades of corruption, sustained repression to any opposition, and the perpetration of serious human rights violations, often by the very State agencies with the responsibility to uphold and protect those rights.<sup>34</sup> In 2011, an armed conflict developed after the Qadhafi regime used force against protestors in a reaction to Libyan citizens' attempts to exercise democratic freedoms. The situation escalated into an armed conflict between opposition armed groups and the Qadhafi regime. The North Atlantic Treaty Organization (NATO) intervened under a mandate provided by Security Council resolution 1973 (2011) to take all necessary measures to protect civilians and civilian populated areas. In October 2011, the National Transitional Council declared victory for the opposition armed groups. While the Qadhafi regime had been toppled, substantial challenges were left for a country with little trust in State institutions, no independent institutions, nor political parties, nor a judiciary able to provide justice and redress.

33. In the period from 2011 to 2013, Libya experienced political volatility and a precarious security situation. Little progress was made in relation to integrating "revolutionary" armed groups into an effective national army or police force.<sup>35</sup> In many areas, armed groups remained in control of detention facilities and carried out law enforcement functions. In some cases, they were authorized by State authorities to do so, with some armed groups theoretically brought under the Ministry of Justice, Ministry of Defence, or Ministry of Interior, even while the level of State control exercised was in reality minimal.<sup>36</sup> Ongoing tensions and competition for political power and influence at national and local levels became manifest in periodic fighting between various armed groups. As an illustration of the precariousness of the situation, then Prime Minister Ali Zeidan was abducted for several hours in Tripoli in October 2013.<sup>37</sup>

<sup>34</sup> For further information see *Report of the International Commission of Inquiry on Libya*, A/HRC/19/68, 8 March 2012, summary and paras. 10-13; and A/HRC/17/44, introduction.

<sup>35</sup> See for example, *Report of the Secretary-General on the United Nations Support Mission in Libya*, S/2014/131, 26 February 2014, para. 2.

<sup>36</sup> UNSMIL/OHCHR, *Torture and Deaths in Detention in Libya*, October 2013, p. 5.

<sup>37</sup> S/2014/131, para. 4.

## 2. 2014 and 2015

34. 2014 saw the most serious emergence of hostilities since 2011.<sup>38</sup> While the number of clashes and attacks are too numerous to outline in this present report, the major contours of the hostilities are described below:

### (a) The east

35. In the east, in May 2014, retired General Khalifa Haftar launched *Al Karamah* (“Operation Dignity”), reportedly to eradicate “radical...terrorist” groups from eastern Libya. An alliance of groups, including Ansar al-Sharia, joined the Benghazi Revolutionaries Shura Council to fight forces deployed under Operation Dignity. Concerns were raised about airstrikes deployed in built-up areas and other indiscriminate shelling.<sup>39</sup> Operation Dignity mounted a renewed offensive in Benghazi in mid-October 2014. Hostilities continued unabated, with increasing reliance on snipers, mortar fire, skirmishes and ambushes.<sup>40</sup> In August 2015, the Special Representative of the Secretary-General for Libya described the situation in the east as “a war of trenches with no imminent end foreseen”.<sup>41</sup> As at December 2015, hostilities were still ongoing.

### (b) The west

36. Six weeks of heavy fighting erupted in Tripoli in mid-July 2014, sparked initially by a reaction to an incident at a checkpoint in the Janzour area. Much of the initial fighting focused on Tripoli International Airport, with an attempt by armed groups affiliated with Misrata to wrest control of the airport from armed groups affiliated with Zintan.<sup>42</sup> An alliance of armed groups, primarily from Misrata, but also from other towns such as Al-Zawiya and Gheryan, together with Tripoli-based armed groups launched *Fajr Libya* (“Libya Dawn”) against the armed groups affiliated with Zintan. The campaign included airstrikes and shelling of populated areas in Tripoli, resulting in considerable casualties, and a massive displacement of persons.

37. By 24 August 2014, Libya Dawn fighters had gained control of the airport and other areas of Tripoli, forcing a withdrawal of armed groups affiliated with Zintan. Libya Dawn then expanded to the Warshafana region until Libya Dawn gained control over the region.<sup>43</sup> Weeks of heavy shelling of the Al-Aziziya and Suwani areas between late August and early October caused a severe humanitarian crisis with more than 120,000 persons displaced.<sup>44</sup> In the Nafusa Mountains, groups affiliated with Zintan launched a counter-offensive, attacking the towns of Kikla and Al-Qala’a. Air strikes were also carried out against Mitiga Airport

<sup>38</sup> *Report of the Secretary-General on the United Nations Mission Support in Libya*, S/2014/653, 5 September 2014, para. 2.

<sup>39</sup> UNSMIL/OHCHR, *Overview of Violations of International Human Rights and Humanitarian Law During the Ongoing Violence in Libya*, 4 September 2014, pp. 3-4.

<sup>40</sup> *Report of the Secretary-General on the United Nations Mission Support in Libya*, S/2015/144, 26 February 2015, para. 14.

<sup>41</sup> Briefing by the Special Representative of the Secretary-General for Libya and Head of UNSMIL to the Security Council, 26 August 2015, para. 3.

<sup>42</sup> Both the Misrata-based and Zintan-based armed groups were nominally under the control of the Ministry of Defence.

<sup>43</sup> OHCHR also received reports of some attacks on the Warshafana area earlier in 2014, though the main offensive dated from late August 2014. See also UNSMIL/OHCHR report, *Update on Violations of International Human Rights and Humanitarian Law during the Ongoing Violence in Libya (revised)*, 23 December 2014, p. 1.

<sup>44</sup> S/2015/144, para. 8.

in Tripoli, Misrata, and the Ras Jdair border area by the air force aligned with General Haftar.<sup>45</sup> Clashes continued into 2015, and included a military offensive by Warshafana forces to regain areas in the Warshafana tribal belt, including around Al-Aziziya.<sup>46</sup> Intermittent clashes have since continued, but a range of ceasefire agreements negotiated in 2015 reduced the intensity of clashes in western Libya.<sup>47</sup>

**(c) The south**

38. As of the beginning of 2014, the south of Libya was lacking in effective governance or security infrastructure. In this environment, tribal groups consolidated their control. Rivalries over political power, security, and resources escalated into localised conflicts. In January 2014, fighting broke out between the Tabu and Awlad Suleiman armed groups in Sabha. The then-parliament, the General National Congress declared a state of emergency and the Libyan National Army carried out airstrikes in order to regain control of the Tamanhind air force base. Sporadic fighting continued to take place in the south, particularly around the towns of Sabha, Al-Kufra and Awbari, involving Arab, Tabu, and Tuareg communities, many of whom were allied with either Operation Dignity or Libya Dawn.<sup>48</sup> In September 2014, further forces from Misrata were deployed to Sabha, which contributed to some reduction in hostilities.<sup>49</sup>

39. Reports in early 2015 indicated that armed conflict between Libya Dawn and Operation Dignity had spilled over to southern Libya. In early March 2015, fighting broke out in Barak al-Shati between the Misrata Third Force brigade and armed groups drawn largely from the local Al-Megharba and Al-Qadhadhifa tribes.<sup>50</sup> Negotiations between Misratan and Zintani elders resulted in the military base in Barak al-Shati being placed under local control of the Libyan National Army. Fighting between Tabu and Tuareg armed groups continued in Awbari, particularly focused on control of key oil facilities, roads and Government buildings, with Libya Dawn and Operation Dignity military coalitions seeking to influence tribal leaders.<sup>51</sup> Despite various ceasefire agreements, clashes have not abated.

**(d) Emergence of groups pledging allegiance to ISIL**

40. A new dynamic became apparent in Libya in late 2014 with groups pledging allegiance to ISIL seeking control of territory and engaging in brutal atrocities. The report of the Analytical Support and Sanctions Monitoring Team submitted pursuant to paragraph 13 of Security Council resolution 2214 (2015) referred to a core group of Libyans returning from Syria and creating the Al-Battar Brigade in 2012 to support ISIL in Syria and Iraq.<sup>52</sup> In 2014, many of its members returned to Libya and formed the Islamic Youth Shura

<sup>45</sup> *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Libya and on related technical support and capacity-building needs*, A/HRC/28/51, 12 January 2015, para. 4.

<sup>46</sup> *Report of the Secretary-General on the United Nations Support Mission in Libya*, S/2015/624, 13 August 2015, para. 25.

<sup>47</sup> *Ibid.*, paras. 25-27.

<sup>48</sup> A/HRC/28/51, para. 5.

<sup>49</sup> S/2014/653, para. 31.

<sup>50</sup> S/2015/624, para. 35.

<sup>51</sup> *Ibid.*, para. 36.

<sup>52</sup> *Report of the Analytical Support and Sanctions Monitoring Team submitted pursuant to paragraph 13 of Security Council resolution 2214 (2015) concerning the terrorism threat in Libya posed by the Islamic State in Iraq and the Levant, Ansar Al-Charia and all other Al-Qaida associates*, S/2015/891, 19 November 2015, para. 22.

Council in Derna which in October 2014 pledged allegiance to ISIL.<sup>53</sup> These groups declared eastern Libya as the Wilayat Barqa (Cyrenaica Province) of ISIL.

41. Derna, Benghazi and Sirte have been the particular focus of the military operations of these groups, with more recent movements into Ajdabiya, Sabratha and the south of Libya. Resistance to the groups pledging allegiance to ISIL has been met with brutal force and repression. Fighting between these groups and Misratan forces intensified around Sirte in March 2015, including through a series of airstrikes targeting the groups. When Misratan forces withdrew from Sirte (citing a lack of support from Tripoli authorities and other elements within Libya Dawn), the groups pledging allegiance to ISIL took control of the city.<sup>54</sup> June 2015 witnessed repeated airstrikes by Misratan forces. In Derna, heavy fighting took place in June 2015 between the Derna Mujahideen Shura Council and groups pledging allegiance to ISIL who were ejected from Derna but remain present in surrounding areas. Operations have been carried out by Operation Dignity in the area around Derna. Egypt and the United States of America have also carried out airstrikes targeting groups pledging allegiance to ISIL.<sup>55</sup>

**(e) Political developments**

42. As the hostilities in Libya intensified, competing political structures have been established.

43. The General National Congress was elected to serve as the parliament of Libya in 2012. Following controversy over its expiry date, an agreement was reached to amend the Constitutional Declaration so as to hold national elections in June 2014 to elect a new parliament. On 25 June 2014, voting took place for the new parliament, the House of Representatives, amidst some boycotts and violence.

44. Owing to the deteriorating political and security situation in Tripoli, the Government (led by Prime Minister Abdullah Al-Thani) left Tripoli and moved to Al-Baida in August 2014. The House of Representatives convened for the first time in Tobruk in August 2014,<sup>56</sup> and confirmed Abdullah Al-Thani as Prime Minister. The House of Representatives endorsed Operation Dignity.<sup>57</sup> The Libya Dawn coalition in turn challenged the legitimacy of the House of Representatives and called for the General National Congress to reconvene.<sup>58</sup> The Congress reconvened and appointed a rival government (led by Omar Al-Hasi). This Congress-appointed government took control of Tripoli-based ministries and other State institutions, leading to a situation of parallel ministries.

45. In November 2014, the Supreme Court declared unconstitutional the amendment of the Constitutional Declaration which had paved the way for elections to create the House of Representatives. The circumstances of the handing down of this judgement, and in particular whether it was subject to political or security pressures, have been the subject of debate.

<sup>53</sup> Ibid.

<sup>54</sup> S/2015/624, para. 30.

<sup>55</sup> See Aswat Masriya, "Egypt's Military Strikes ISIS in Libya", 16 February 2015, Egyptian Streets, and "U.S. Airstrike Targets Senior ISIL Leader in Libya", United States Department of Defense, 14 November 2015.

<sup>56</sup> S/2014/653, para 8.

<sup>57</sup> In November 2014, the House of Representatives issued a statement declaring that "Operation Dignity (and its commanders), is a legitimate military operation under the Commander of General Staff and the Interim Libyan Government deriving its legitimacy from the Libyan people...".

<sup>58</sup> S/2014/653, para. 4.

46. The term of the House of Representatives expired in October 2015. The House passed a resolution on 5 October 2015 allowing for its term to be extended.

47. As of the time of the functioning of the investigation team, Libya continued to be divided politically between the Government endorsed by the House of Representatives in the east (which is based in Al-Baida while the House is based in Tobruk) and the Government endorsed by the General National Congress (based in Tripoli), bifurcating the administration of government. The parallel structures extend to line ministries such as the Ministry of Defence, the Ministry of Interior and the Ministry of Justice.

48. Following a year-long political dialogue facilitated by UNSMIL, the Libyan Political Agreement was signed on 17 December 2015 with a view to bringing an end to the political impasse. It provided for the formation of a Government of National Accord and established a road map for a transition to a unified governance structure. Localised reconciliation efforts have also intensified, for example, between the Misratan and Tawerghan communities, and the Tabu and Tuareg communities. In addition to addressing the political divide, significant work remains to be undertaken in relation to tackling the proliferation of armed groups currently operating in Libya.

**(f) Humanitarian impact**

49. The impact of the armed conflicts and internal instability in Libya in 2014 and 2015 has been devastating. The Prosecutor of the International Criminal Court has referred to some 1,539 violent deaths during the period from April to August 2015, with 426 out of 634 separate incidents resulting in civilian deaths.<sup>59</sup> The Prosecutor also estimated that no less than 60 civilian deaths per month had been recorded in 2015.<sup>60</sup> As of May 2015, some 435,000 persons were believed to be internally displaced.<sup>61</sup> More than half of the population of Benghazi was estimated to have left the city,<sup>62</sup> and some 120,000 persons were estimated to have been displaced from the Warshafana area alone. 12,000 persons are estimated to have been displaced from the south since July 2015.<sup>63</sup> Large numbers have fled to nearby countries including Tunisia, Egypt and Turkey. Some communities who were internally displaced during the armed conflict in 2011, in particular members of the Tawerghan community remain unable to return to their homes. Access to services such as medical care has decreased, and a significant proportion of the population face food

<sup>59</sup> Tenth Report of the Prosecutor of the International Criminal Court to the Security Council pursuant to Council resolution 1970 (2011), para. 25. The report of the Prosecutor attributed 34 per cent of these civilian deaths to air assaults by the Libyan National Army, Libya Dawn and foreign forces and to ground assaults from all sides; 29 per cent to specific executions or assassinations; 12 per cent to suicide or car bomb attacks; and 25 per cent to unattributed violence or criminality.

<sup>60</sup> Ibid, para. 26.

<sup>61</sup> OCHA, *2015 Libya Humanitarian Needs Overview*, September 2015, p. 6. UNHCR has reported that numbers of displaced persons reached almost 450,000 in the space of less than a year from September 2014 to June 2015: UNHCR, "Numbers of internally displaced in Libya double since September", 30 June 2015. This displacement was also discussed in the Tenth Report of the Prosecutor of the International Criminal Court to the Security Council pursuant to Council resolution 1970 (2011), para. 39.

<sup>62</sup> As of June 2015, Benghazi was described by the UNHCR as the most affected area in Libya, with over 100,000 displaced individuals: UNHCR, *UNHCR Libya Operational Update June 2015*. This displacement was also discussed in the Tenth Report of the Prosecutor of the International Criminal Court to the Security Council pursuant to Council resolution 1970 (2011), para. 41.

<sup>63</sup> Tenth Report of the Prosecutor of the International Criminal Court to the Security Council pursuant to Council resolution 1970 (2011) para. 33; UNHCR, *UNHCR delivers aid to thousands in southern Libya as conflict rages*, 25 August 2015.

insecurity. There have been shortages of fuel, water, and electricity alongside extensive damage of necessary public infrastructure and a rise in criminal activity.<sup>64</sup>

#### **IV. Armed actors in Libya**

50. Libya does not have a straightforward delineation of State security forces and opposition forces. Instead, it has a complex set of armed actors, with varying degrees of association with the State and each other.

51. The current security arrangements need to be understood against the background of the security apparatus in place in Libya in previous years. The International Commission of Inquiry on Libya described an “amorphous” system in which Government forces involved “different structures operating in different capacities at different times and at different places”.<sup>65</sup> Power and operational commands shifted according to the directions given by Qadhafi and his cohorts to a variety of structures (such as the armed forces, Kata’eb/battalions, revolutionary committees and the revolutionary guard). During 2011, a loose coalition of brigades rose up against the Qadhafi forces, with the coalition significantly strengthened by defecting members from the Qadhafi forces. At the end of 2011, with the unilateral victory declaration by opposition forces, a large number of “revolutionary” armed groups (the armed groups that had fought against Qadhafi) organised along geographical and tribal lines, were effectively in control of large parts of the Libyan territory. The formal structures of the Libyan Army and Police were fractured.

52. Attempts made in the period from 2011 to 2014 to integrate armed groups into a central security apparatus under civilian authority were not successful. Armed groups were incorporated into transitional security forces, placed under the authority of either the Ministry of Defence (Libya Shield Force) or the Ministry of Interior (Supreme Security Committee). Other armed group members were incorporated into the Judicial Police (under the authority of the Ministry of Justice). As noted in this present report, through this affiliation, armed groups were officially mandated to carry out security or detention functions.<sup>66</sup> Armed groups received salaries from the State with payments administered through the Central Bank, but the State seemingly retained only nominal oversight or control. In reality, many armed groups appear to have continued to act with a high degree of autonomy, and maintained their own command structure. Revolutionary armed groups have a significant distrust of any security apparatus or personnel who were active in the Qadhafi regime, and have been quick to act, including through the use of force, when they have felt excluded from the decision-making process or otherwise disgruntled.

53. The number of armed groups and the membership thereof has increased dramatically. The number of “revolutionaries” (persons who fought in the 2011 conflict against the Qadhafi regime) was estimated to be approximately 25,000 to 30,000.<sup>67</sup> By 2013, the Warrior Affairs Commission of the Government had registered some 168,000 persons as revolutionaries.<sup>68</sup> Not all are necessarily currently active in armed groups. One Government committee reported that it was seeking to integrate 110,000 persons as of May

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<sup>64</sup> *Report of the Secretary-General on the United Nations Support Mission in Libya*, S/2014/653, 5 September 2014, para. 3.

<sup>65</sup> *Report of the International Commission of Inquiry into all alleged violations of international human rights law in the Libyan Arab Jamahiriya*, A/HRC/17/44, para. 36.

<sup>66</sup> See earlier in the present report at para. 33.

<sup>67</sup> Information provided by UNSMIL.

<sup>68</sup> Warrior Affairs Commission figures provided by UNSMIL.



2015.<sup>69</sup> The comparatively high salary paid to armed group members has provided a financial incentive for membership, while the deterioration in the security situation has also encouraged groups to revert to localised security formations. Notwithstanding the outbreak of hostilities, it was reported to OHCHR that the Central Bank in Tripoli continues to pay armed groups (even opposing armed groups) in a non-partisan manner.<sup>70</sup> In November 2015, UNSMIL/OHCHR reported that armed groups had proliferated, consolidating “effective control over large swaths of territory, strategic installations and State institutions”.<sup>71</sup>

54. It is apparent that armed groups are divided along various lines, such as tribal,<sup>72</sup> or ideological,<sup>73</sup> or by geographic affiliation.<sup>74</sup> Some armed groups pursue specific political agendas, others operate as local security, while others might be characterised as being focused on criminal enterprises.<sup>75</sup> Armed groups have themselves fractured, and allegiances and alliances between groups have shifted in the course of 2014 and 2015. Many armed groups are part of or act in support of either Operation Dignity or Libya Dawn. This present report uses the term “affiliated” in a generic sense to indicate a relationship of support, even if the precise parameters of the relationship, including any command and control aspects, are not known and require further examination.

55. The Libyan National Army has been further fragmented by the events of 2014 and 2015, as is evidenced by the competing appointments and command instructions issued by the House of Representatives and the General National Congress. In 2014, the Congress appointed Major General Abd al-Salam al-Obaidy as Commander of General Staff of the Libyan National Army. Major General al-Obaidy issued a statement ordering all forces of the Libyan National Army to fight against any military force moving towards Benghazi (a reference to Operation Dignity forces) after the launch of Operation Dignity.<sup>76</sup> In August 2014, the House of Representatives appointed Major General Abd al-Razik al-Nadoory as Commander of General Staff of the Libyan National Army. Major General al-Nadoory’s first statement announced that Libya Dawn forces and Ansar al-Sharia were terrorists, and that the Libyan National Army supported Operation Dignity.<sup>77</sup>

56. In March 2015, the House of Representatives created a new post in the army and appointed Khalifa Haftar as General Commander and promoted him to the rank of Lieutenant-General. The Tripoli-based authorities and the General National Congress, however, dispute the legitimacy of either this appointment or that of Major General al-Nadoory, and continue to support Major General al-Obaidy. Many of the brigades of the Libyan National Army in the western, central and southern regions of Libya remain under Major General al-Obaidy’s control, and a process was launched to integrate all revolutionary armed groups, including Libya Shield Forces, under his control in late 2014.

<sup>69</sup> Document obtained from UNSMIL.

<sup>70</sup> OHCHR has not been able to conduct further forensic examination of the State payroll, but the information has been confirmed by several interlocutors.

<sup>71</sup> UNSMIL/OHCHR, *Report on the Human Rights Situation in Libya*, 16 November 2015, p. 2.

<sup>72</sup> For example, the Awlad Sulieman, Tabu, and Tuareg tribal armed groups.

<sup>73</sup> For example, Ansar al-Sharia versus Awliaa al-Damm in the east of Libya.

<sup>74</sup> For example, Misratan versus Zintani armed groups.

<sup>75</sup> F Wehrey and P Cole, *Building Libya’s Security Sector*, Carnegie Endowment for International Peace, 6 August 2013, p. 2.

<sup>76</sup> [www.facebook.com/medialibyanarmy](http://www.facebook.com/medialibyanarmy)

<sup>77</sup> [www.alwasatnews.com/news/914816.htm](http://www.alwasatnews.com/news/914816.htm)

Meanwhile in the east, most existing Libyan National Army formations operate under the command of Lieutenant-General Khalifa Haftar.

57. Another factor fuelling the conduct of hostilities is the proliferation of weapons and ammunition. Large stockpiles of arms and ammunition from the Qadhafi period were left unsecured after the armed conflict in 2011. Many of these stockpiles were or have since been appropriated by armed groups. Additional weaponry has been brought in from outside Libya. The result is the highly visible presence of a wide range of weaponry in the hands of armed groups, from handguns and rifles, to machine-guns, grenade launchers, and even repurposed anti-aircraft artillery.

58. The number of security actors in Libya makes a comprehensive mapping difficult. An attempt to depict the major groupings involved in Operation Dignity and Libya Dawn in 2014 based on information collected by OHCHR is set out in Annex II.<sup>78</sup> More work is necessary in this area to understand the full range of actors, and the alliances and inter-linkages. However, some of the key groupings of armed actors seen in Libya during the mandate period are:

#### **Operation Dignity: forces aligned with General Khalifa Haftar**

59. In the east, (then retired) General Khalifa Haftar launched Operation Dignity against “terrorists” in Benghazi in May 2014. Despite having no formal appointment in the Libyan National Army at that time, commanders of several brigades joined him during the first stage of the operation including the Al-Sai’qa Brigades (commando forces) based in Bu’Atni, and the Air Force Brigade. By the second stage of the campaign, launched in October 2014, most of the remaining brigades of the Libyan National Army in the east had joined his forces, including Al-Zawiya Martyrs 21 Brigade based in Qarionis and the 204 Tank Brigade based in Al-Rahba. In addition, a variety of armed groups have also participated in the campaign. On the basis of the information received by OHCHR, this includes, for instance, Awliaa al-Damm and Shabab al-Manteq “Al-Sahawat”.

#### **Ansar al-Sharia<sup>79</sup> and Shura Councils opposed to Operation Dignity**

60. The dominant forces fighting against Operation Dignity in the east of Libya are the Benghazi Revolutionaries Shura Council and the Derna Mujahideen Shura Council. Within the Benghazi Revolutionaries Shura Council, there are a number of armed groups including Ansar al-Sharia, the Eastern Libya Shield, February 17th Martyrs Brigade, Rafallah al-Sahati Brigade, and Al-Zintan Martyrs. It was initially formed in June 2014 in specific response to Operation Dignity. In Derna, the Derna Mujahideen Shura Council was created in December 2014. It includes Derna-based Ansar al-Sharia and the Abu Salim Martyrs Brigade. Both Shura Councils are believed to be allied with some elements of Libya Dawn.

<sup>78</sup> See also Annex II for an indicative mapping of security and armed groups associated with Operation Dignity and Libya Dawn as at 2014 based on information received by OHCHR during the course of its investigation. The mapping does not cover all groupings. It instead seeks to cover major groupings associated with Operation Dignity and Libya Dawn highlighted during the investigation. It should also be noted that divisions continue to occur within groupings (e.g. within Libya Dawn groupings) so that the Annex reflects only a broad snapshot of the situation as at 2014, given some alliances/allegiances may have since changed.

<sup>79</sup> Ansar al-Sharia (Derna) and Ansar al-Sharia (Benghazi) are on the ISIL (Da’esh) and Al Qaida Sanctions List subject to sanctions imposed by the Security Council under resolution 1267 (1999) and successive resolutions, including resolution 2253 (2015).

## Libya Dawn

61. Among the groups in Libya Dawn are Libya Shield Forces which bring together a variety of revolutionary armed groups who see themselves as “guardians of the revolution”. Libya Shield Forces are divided into three main brigades named after their geographical locations: the eastern, central, and western Libya Shields. The western and Misrata-based central Libya Shield forces remained dominant in the Libya Dawn coalition in 2014. They incorporate into their fold, for example, forces from Zleiten, Al-Khoms, Misillata, Tarhouna, Jadu, the Nafusa Mountains (Gheryan, Kikla, Jadu and Nalut) and Al-Zawiya. Armed groups affiliated with Libya Dawn also include the Tripoli Revolutionaries Brigade, Deterrence and Assistance Force, the High Security Committee (Abu Salim Branch), and the Janzour Knights Brigade.

### Western armed groups (opposed to Libya Dawn)

62. Amongst the primary armed groups opposed to Libya Dawn are the Zintan-based “Al-Sawa’iq”, “Al-Qa’qa’a” and “Al-Madani” Brigades. The coalition also includes the Warshafana-based “Jaysh Al-Qaba’el” armed group, that allegedly includes within its membership some members of the army of the former Qadhafi regime. This coalition is broadly allied with Operation Dignity and General Haftar.

### Tribal groups in the south of Libya

63. In Sabha, the major armed conflicts have taken place between Tabu, Al-Qadhadhifa, and Al-Megharba armed groups opposed to the Awlad Suleiman armed group. In Al-Kufra, the conflict has been primarily between the Arab Al-Zwaya and the Tabu armed groups, with the Tabu accusing Al-Zwaya of favouring their own tribe in relation to, for instance, the provision of government services. Several armed clashes have focused on attempts to control strategic locations, such as oil fields or smuggling routes. Some level of alliances exists between tribal armed groups and either Operation Dignity or Libya Dawn, for example, it has been observed that the Tabu are generally aligned with Operation Dignity; while the Tuareg are generally aligned with Libya Dawn.

### Groups pledging allegiance to ISIL

64. Groups pledging allegiance to ISIL declared eastern Libya as the Wilayat Barqa (Cyrenaica Province) of ISIL, in which society is to be governed by a strict interpretation of Islamic Sharia. It has been estimated that groups pledging allegiance to ISIL number no more than 2,000 to 3,000 fighters in Libya.<sup>80</sup> At the height of its operations in Derna, they were said to command around 1,100 fighters in the city.<sup>81</sup> Many of them have since left for Sirte, where the groups are able to command around 1,500 fighters.<sup>82</sup>

65. All the aforementioned major groupings of armed actors have been implicated in human rights violations and abuses described in Chapter V of this present report.

<sup>80</sup> See *Report of the Analytical Support and Sanctions Monitoring Team submitted pursuant to paragraph 13 of Security Council resolution 2214 (2015) concerning the terrorism threat in Libya posed by the Islamic State in Iraq and the Levant, Ansar Al-Charia and all other Al-Qaida associates*, S/2015/891, 19 November 2015, para. 26, citing information from States Members of the United Nations.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

## V. Patterns of violations and abuses

### A. Unlawful killings and executions

#### 1. Introduction

66. The Human Rights Council expressed significant concern in relation to the unlawful killing of individuals in Libya in its resolution 28/30.<sup>83</sup> Through its investigation, OHCHR has documented a number of such unlawful killings, particularly in the form of extrajudicial executions of persons taken into detention or captivity, and assassinations. These acts appear to be undertaken with a callous disregard for human life in order to silence and dissuade others from voicing opposition to those exercising military or political control. They have also been used as a crude method to deal with those captured or detained. Cases of unlawful killings were reported in all conflict areas. A larger number of such killings were reported to OHCHR in the east of Libya than in other areas. However this should be considered in light of the intense ongoing hostilities in the east for most of the reporting period, the operation of groups pledging allegiance to ISIL in the eastern and central regions and, potentially, access-related limitations of OHCHR in relation to gathering information.

#### 2. Legal framework

67. International human rights law prohibits the arbitrary deprivation of life.<sup>84</sup> When a State actor employs lethal force, it must be both necessary (e.g. linked to a direct threat to life) and proportionate with no other means available such as warnings, capture, or incapacitation.<sup>85</sup> Force must be restricted to that necessary in the circumstances and lethal force used only in exceptional circumstances. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials detail the specific circumstances in which those with law enforcement functions may use lethal force. The State is responsible for violations committed by non-State actors operating in support of or as agents of State authorities. Where militias or paramilitary groups are used to guarantee security, States should bring them under an established chain of command/control and must ensure they comply with human rights obligations, such as respect for the right to life.<sup>86</sup> States also have a positive obligation to protect the right to life and prevent any violation thereof (by non-State actors), including by putting in place effective criminal justice systems of response.<sup>87</sup>

68. In situations of active ongoing hostilities, the prohibition on arbitrary deprivation of life needs to be considered by reference also to the rules of international humanitarian law. International humanitarian law requires parties to an armed conflict to respect the principles of distinction, proportionality and precautions in attack. Accordingly, it is unlawful to kill civilians and any persons not taking an active part in hostilities. It is prohibited to kill members of armed forces who have surrendered, or are otherwise *hors de combat* (e.g.

<sup>83</sup> Human Rights Council 28/30, para. 1.

<sup>84</sup> ICCPR, art. 6(1).

<sup>85</sup> See *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, Philip Alston, A/HRC/14/24/Add.6, para. 32.

<sup>86</sup> See Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, principle 2.

<sup>87</sup> Human Rights Committee, General Comment No. 6 on Article 6 (Right to Life), HRI/GEN/1/Rev.6 (1982)

captured fighters).<sup>88</sup> Murder of any person taking no active part in hostilities, is recognized as a war crime during non-international armed conflict.<sup>89</sup> Murder may also constitute a crime against humanity, if committed as part of a widespread or systematic attack against any civilian population, with knowledge of the attack.<sup>90</sup>

69. The application of these different rules to the situation in Libya depends on the precise context in which the situation occurs, and whether it occurs in the context of ongoing active hostilities.

### 3. Findings

#### (a) Executions of persons detained by forces aligned with Operation Dignity

70. OHCHR documented several cases in which persons alleged to be members or supporters of Ansar al-Sharia or Benghazi Revolutionaries Shura Council were executed after having been apprehended or captured by forces aligned with Operation Dignity. The commission of torture was also reported during the preceding period of detention.

71. In mid-October 2014, a 31 year old man was apprehended and detained while on his way to morning prayers at a mosque in Al-Baida. Information from several witnesses indicates that he was held in four different locations. During his detention, he was reportedly tortured and later executed in a facility operated by the military police in Al Rajma.<sup>91</sup> His corpse was found in the Sidi Khalifa cemetery some 40 kilometres away. His body was recovered and taken to Al-Marj hospital. A photograph of his body along with four others was posted on a social media webpage to help with his identification. The photo suggests that all five men had been executed. Their hands were tied behind their backs and they had been blindfolded. A doctor who examined the body of this man confirmed signs of torture.

72. In another case, a man was apprehended in October 2014 by several armed men affiliated with the military police and taken from his store in Al-Baida. He is understood to have been apprehended on charges of affiliation with Ansar al-Sharia. He was taken to Gernada detention facility where he was held for some 24 hours, before being transferred to a secret detention facility in Al-Baida, allegedly controlled by the military police. His whereabouts and fate remained unknown to his family until several weeks later when one of his friends posted a condolence notice on a social media web page, noting that his body had been found. The forensic report disclosed that he had been shot in the head and chest.

73. In early December 2014, a 40 year old man from the Al Hada'eq neighbourhood in Benghazi was apprehended by Brigade 36 of the Al-Sai'qa Brigades of the Libyan National Army on charges of illegal arms possession and of affiliation with Ansar al-Sharia. He was taken to an Al-Sai'qa Brigade site in the Bu'Atni neighbourhood. It is understood he was held incommunicado for several days. Family members were denied access to him, though were given some of his clothes bearing evidence of blood on them, and asked to bring new clothes for him. Some two weeks later, his family located his body in Benghazi Medical Centre. His body showed signs of torture. The forensic report disclosed that he died as a result of being shot in the head and chest. In another case investigated by OHCHR, the whereabouts of a man apprehended by Brigade 36 remained unknown to his family until mid-December 2014. His family were told that a photo of his corpse had been seen on the

<sup>88</sup> Additional Protocol II, art.4(2)(a) and Common art. 3 to the Geneva Conventions.

<sup>89</sup> Rome Statute, art. 8(2)(c)(i).

<sup>90</sup> Rome Statute, art.7(1)(a).

<sup>91</sup> The military police are part of the Libyan National Army.

internet webpage “Al-Abyaar, breaking news”. The same photo was later posted on the official webpage of Benghazi Medical Centre. When the family received his body from the hospital, severe injuries were noted to his face and head.

74. Two relatives were apprehended by members of the Libyan National Army at a checkpoint in October 2014. They had been on their way to their family home, having received a call informing them that it had been subjected to a rocket-propelled grenade attack. After their apprehension, both were detained, tortured and later executed. Their bodies were found in the industrial zone in Abu-Hdeyima on 16 October 2014. The death certificates of each disclose that they were shot dead, having sustained bullet wounds on several parts of their bodies.

75. OHCHR received an account from one member of the Libyan National Army that specific orders had been given to kill captured persons, suggesting that these executions may indicate a policy rather than the acts of rogue individuals. This soldier confirmed that his unit killed one Egyptian and one Yemeni man after their capture in the Al-Sabri neighbourhood in Benghazi in October 2014. They were brought to the naval base in Souq Al-Hoot. The soldier explained that after the two confessed to being members of Ansar al-Sharia, they were shot dead in accordance with orders given by their commander.

76. A similar fate was reported in relation to persons who surrendered. In one case four brothers who had been involved in fighting against Operation Dignity forces surrendered and were taken to “camp 21” in the Tabilino area, west of Benghazi. When they arrived at the camp, they were allegedly fired upon, with one brother being killed and the other three suffering injuries. Two other brothers were taken to a school building which was being used as a military base for Al-Sahawat. After this they were transferred to the Al-Birsis detention facility. One of the brothers was detained for 18 days and reported that he was subjected to torture involving the use of plastic hoses and electric cables. Two days after his release, the family learnt of the death of the other brother through an internet webpage. His body had been found in Al-Marj, some 60 to 70 kilometres away from the detention centre.

**(b) Assassinations by groups affiliated with Benghazi Revolutionaries Shura Council (particularly Ansar al-Sharia)**

77. OHCHR received many reports of killings by groups affiliated with Benghazi Revolutionaries Shura Council, in particular attributed by interviewees to have been committed by Ansar al-Sharia, primarily in Benghazi. Most of the cases related to the assassination of perceived opponents, including human rights defenders. OHCHR received a list of 229 persons said to have been assassinated by Benghazi Revolutionaries Shura Council in the period between 15 December 2013 and 30 November 2014. The majority were military and security personnel (further details of the circumstances of the deaths were not made available). The list also included five human rights defenders, five media workers, two judges, two civil servants, one tribal elder, one student, one doctor, two artists, 12 religious preachers (Sheikhs), and 27 other civilians. OHCHR has not been in a position to verify the list, although notes that some of the names on the list are consistent with other information received by OHCHR.

78. Of the cases investigated by OHCHR, one concerned a 61 year old man, who was shot dead while driving his car to his work in Benghazi in March 2014. At the time he was some 100 metres from his home. A car intercepted his car, before three masked gunmen jumped out of a second car. Two gunmen shot at and killed him. It is not known why he was targeted, however it was reported to OHCHR that as a result of his previous business activities, he had strong networks with senior officials of the Qadhafi regime, and hence, had been commonly perceived as pro-Qadhafi.

79. In April 2014, a well-known school headmaster was driving his car on the so-called “Third Circular Road”, close to the Arab Medical University near the centre of Benghazi. Gunmen in a car shot at and killed him. The medical report indicates that he sustained bullet injuries in the chest and abdomen, and he was pronounced dead on arrival at the hospital. The victim was a well-known advocate for the non-politicization of education, and the need to keep schools operating under all circumstances.

**(c) The west**

80. Although OHCHR has not received as many first-hand accounts from persons in the west of Libya as in the east, it has received information indicating the commission of similar violations and abuses there, in particular the execution of persons after their arrest or capture. Several cases of such executions by Libya Dawn were reported to OHCHR in relation to the fighting in the Warshafana region from August to September 2014. The restricted access of OHCHR to Warshafana as well as witnesses’ reluctance to provide details (given security concerns for their families) has reduced the ability of OHCHR to verify these cases. However, OHCHR notes the consistency of this alleged fact pattern with that seen elsewhere in Libya, and the reports of summary execution of captured fighters by both Libya Dawn and Warshafana armed groups by other monitoring organizations.<sup>92</sup>

**(d) Groups pledging allegiance to ISIL**

81. Numerous accounts have been received of killings carried out by groups pledging allegiance to ISIL. These relate in particular to public executions undertaken with a view to maximising public terror. International attention was generated by a video publicly released in February 2015 showing persons from groups alleging allegiance to ISIL beheading a group of men who were predominantly Egyptian Coptic Christians, in Sirte. In April 2015, another video on social media showed operatives beheading and shooting some 28 Ethiopian and Eritrean nationals.<sup>93</sup> OHCHR investigations have confirmed a broader use of executions and desecrations in areas controlled by these groups against persons taking no active part in the hostilities including those placed *hors de combat*.

82. OHCHR investigated the aforementioned case of Egyptian Coptic Christians and a Chadian man who were abducted and beheaded by groups pledging allegiance to ISIL in early 2015. Approximately 20 Egyptian Coptic Christians were abducted in two separate incidents. Seven were abducted on the afternoon of 28 December 2014 from a location approximately 40 kilometers east of Sirte. They had been travelling home to Al-Uwr village, in Al Minyaa in southern Egypt for the new year holidays. Two cars intercepted their vehicle and they were taken to an unknown destination. The second group of 13 individuals was taken from their houses in the Al-Ayadaat neighbourhood of Sirte in early January 2015. The armed men who raided their houses reportedly brought with them a list of Coptic Christians living there, and left unharmed Muslims living in the same houses. Amongst the victims of the beheading was also a Chadian man, though the circumstances of his abduction are not known.

83. A video of the beheadings was released in February 2015. The killers in the video identify themselves as being from the “Tripolitania Province of the Islamic State”, with one executioner stating “Oh people, recently you have seen us...chopping off the heads that have been carrying the cross for a long time...Today we are on the south of Rome, on the

<sup>92</sup> Amnesty International, *Amnesty International Report 2014/15: The State of the World’s Human Rights*, Libya Section, Index number: POL 10/0001/2015, 25 February 2015.

<sup>93</sup> For further similar reported cases, see UNSMIL/OHCHR, *Report on the Human Rights Situation in Libya*, 16 November 2015, p. 15.

land of Islam, Libya...”.<sup>94</sup> The on-line magazine of ISIL, DABIQ, contains numerous references to the killings, including an article that begins “This month, the soldiers of the Khilafah in Wilayat Tarabulus<sup>95</sup> captured 21 Coptic crusaders”.<sup>96</sup> It acknowledges the killings and provides a form of reasoning for why they chose to “target the Coptic crusaders”. The beheadings were claimed as revenge for “sisters who were tortured and murdered by the Coptic Church of Egypt” five years previously. It went on to state:

*“Therefore the Islamic State leadership decided to target the Catholic Christians of Baghdad so as to teach the taghut of the Copts – Shenouda – that the price of Muslim blood is costly and so accordingly, if his church persecuted any Muslimah in Egypt, he would be directly responsible for every single Christian killed anywhere in the world when the Islamic State sought it’s just revenge...”*<sup>97</sup>

84. The article concluded that:

*“...it is important for Muslims everywhere to know that there is no doubt in the great reward to be found on Judgment Day for those who spill the blood of these Coptic Crusaders wherever they may be found...”*<sup>98</sup>

85. One of the cases referred to OHCHR was that of one of the most prominent Salafi leaders of Sirte, Sheikh Khalid Bin Rajb al-Firjani. In August 2015, he was shot by members of an armed group that has pledged allegiance to ISIL as he was leaving a mosque in the city. Another Salafi Sheikh standing close to him sustained injuries in the same incident. Open sources noted that a week prior to the incident Sheikh al-Firjani denounced ISIL. The killing triggered armed clashes between residents of the city's Number Three neighbourhood (most of them belonging to the al-Firjani tribe) and Salafi groups on the one side, and groups pledging allegiance to ISIL on the other. Unconfirmed estimates received by UNSMIL/OHCHR placed the number of individuals killed at between 4 and 38.<sup>99</sup> Reports were also received that the bodies of four individuals killed were placed on poles on public display.<sup>100</sup>

86. In another case investigated by OHCHR, a man affiliated with the so called “Harawa Revolutionaries” was captured by a group pledging allegiance to ISIL at a checkpoint in Harawa. Witnesses reported the man was later executed and beheaded. His remains (together with those of another man killed at the checkpoint) were then taken around the city for public display. Many people were forced to stop to look at the beheaded bodies. The desecration of bodies post-mortem and placing them in public display was a feature of several cases reported to OHCHR. In one case, two Salafi fighters were executed following the clashes in the Number Three neighbourhood, and their bodies placed on public display at the main square of Al-Za’faran in Sirte. They were left there until noon the next day under

<sup>94</sup> See [www.nytimes.com/2015/02/16/world/middleeast/islamic-state-video-beheadings-of-21-egyptian-christians.html?\\_r=0](http://www.nytimes.com/2015/02/16/world/middleeast/islamic-state-video-beheadings-of-21-egyptian-christians.html?_r=0) ; [https://www.washingtonpost.com/world/middle\\_east/video-shows-purported-beheading-of-egyptian-christians-in-libya/2015/02/15/b8d0f092-b548-11e4-bc30-a4e75503948a\\_story.html](https://www.washingtonpost.com/world/middle_east/video-shows-purported-beheading-of-egyptian-christians-in-libya/2015/02/15/b8d0f092-b548-11e4-bc30-a4e75503948a_story.html)

<sup>95</sup> Groups pledging allegiance to ISIL have proclaimed western Libya as Wilayat Tarabulus.

<sup>96</sup> The extent of the exact linkages between those who issue the magazine and the armed groups that have pledged allegiance to ISIL and are operating in Libya remain unknown.

<sup>97</sup> “Revenge for the Muslimat Persecuted by the Coptic Crusaders of Egypt”: *DABIQ magazine*, Issue 7, 2015, pp. 30-32.

<sup>98</sup> Ibid.

<sup>99</sup> See [www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16329&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16329&LangID=E).

<sup>100</sup> Ibid.



the guardianship of several armed men from groups pledging allegiance to ISIL. Similar cases have been reported in the media as having taken place in Derna.

**(e) The south**

87. Unlawful killings have also taken place in the south of Libya. Several of the killings in Sabha took place in the context of individuals seeking to defend their homes from being raided, damaged or appropriated. A man from the Awlad Suleiman tribe reported that his house had been raided by Tabu armed men in February 2014. He was sitting inside eating his lunch with his family, when several Tabu armed men entered the house, and began destroying and damaging his property. When his adult sons tried to intervene, both were shot dead in front of the family. His nephew was similarly shot dead when Tabu armed men raided his house. In another case, a man was seeking to resist armed men from the Tabu and Al-Qadhadhifa armed groups taking his house for the purpose of using it as a site to launch attacks on Awlad Suleiman groups. The man's body was later found at his house having sustained bullet wounds. The house was damaged and in a state of disarray.

88. In another case reported to OHCHR, three men were driving their car south-west of Sabha in January 2014. When they alighted from their car to investigate apparent mechanical problems, around 12 Tabu armed men appeared asking them about their identity. After they disclosed their tribal affiliation as Awlad Suleiman, the Tabu armed men opened fire at them, injuring two of the three men. The three men were taken to the Cairo neighbourhood (Al-Tayouri) where they were surrounded by Tabu armed men and again fired upon. A Tabu elder was permitted to drive one of the men to hospital for treatment, and en route informed him that the other two had been killed. The whereabouts of the bodies of the two men killed remained unknown until they were found in an area assigned for garbage collection. OHCHR saw photographs of the two deceased men, one appearing to have had his throat slit, with signs of burns on his neck and right hand, and the other with stab wounds, also with signs of burns on his hand.

89. In another incident on 1 July 2014, a 53 year old man from Awlad Suleiman was reportedly shot dead by a number of armed men affiliated with Tabu and Al-Qadhadhifa tribes. The incident took place when the armed men stopped the victim while he was driving his car in the Sabha agricultural project. His family were ordered to leave the car and take refuge in one of the neighbouring houses. They heard five gunshots as they were heading to the designated house. The man had been shot in his head and neck. OHCHR received two photographs showing the wounds sustained.

90. OHCHR also received information of individuals from the Tabu community having been deliberately shot at by Awlad Suleiman armed group members. In an incident in January 2014, a 10 year old girl was shot dead with two bullets by armed men affiliated with Awlad Suleiman armed groups. The victim was travelling in a car with her family, and the shooting took place shortly after the car was passing Seif Square where more than 30 armed men were stationed. There was no fighting going on in the location, but it is alleged that the shots were fired directly at the car.

91. In relation to the fighting in Awbari, OHCHR received a list of 20 Tuareg men who were said to have been killed by Tabu armed men based on their tribal identity in the period between 22 September 2014 and 14 July 2015. A human rights defender provided OHCHR with a video which detailed an account of two Tuareg men who had been shot on Al-Bareed Street. They were reportedly unarmed and were turning back after having been warned of a Tabu sniper further ahead. The inability of OHCHR to access the south of Libya and many witnesses has, however, prevented it from being able to verify these cases.

**(f) Groups in focus**

92. Human rights defenders, journalists, judges and prosecutors have also been the targets of assassinations. Their cases are reported more fully in the corresponding sections of this present report, in particular Section H on human rights defenders and journalists, and Section G on administration of justice. There is a chilling similarity in the cases detailed therein. In addition to the tragedy of their individual deaths, the consequence has been to drastically curtail and restrict the activities of their peers.

**B. Attacks on civilians and civilian objects, and other protected persons and objects**

**1. Introduction**

93. Numerous reports have drawn attention to the potential violations of international human rights and humanitarian law being committed in Libya in the form of prohibited attacks on civilians, civilian objects or other protected persons or objects.<sup>101</sup> As described in Section A, there have been a number of intentionally targeted killings in violation of international law, including against captured fighters and civilians. OHCHR investigations have confirmed that many indiscriminate attacks have taken place, in highly populated residential areas, often involving the use of weapons not designed for the precise targeting necessary in such areas. Sufficient precautionary measures to protect the civilian population have not been taken. OHCHR has documented a number of attacks against or impacting on protected persons or objects such as medical personnel or facilities, and humanitarian workers. The picture which emerges is of frequent disregard for the core principles of international human rights and humanitarian law, with dire consequences for the affected communities. This was not limited to one geographical region of Libya, but was observed in most of the conflict-affected areas.

**2. Legal framework**

94. It is a fundamental principle of international humanitarian law that civilians and civilian objects are protected from attack. Parties may direct their attacks only against legitimate military objectives, showing respect for the principles of distinction, proportionality, and precautions in attack. International humanitarian law thus prohibits:

- (intentionally targeted) attacks against civilians or civilian objects, or other protected persons/objects; attacks are only permissible against military targets;<sup>102</sup>
- indiscriminate attacks failing to distinguish between civilians or civilian objects, and lawful military targets;<sup>103</sup>
- disproportionate attacks expected to cause an incidental loss of life, injury to civilians, and/or damage to civilian objects, which would be excessive vis-à-vis the concrete and direct military advantage anticipated.<sup>104</sup>

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<sup>101</sup> See for instance, UNSMIL/OHCHR, *Report of the Human Rights Situation in Libya*, 16 November 2015, p. 8.

<sup>102</sup> Additional Protocol II, art. 13(2). *ICRC Study on Customary International Humanitarian Law*, rules 1-10. Note that the Section on Unlawful Killings deals in particular with intentional killings of persons taking no active part in the hostilities including those placed *hors de combat*.

<sup>103</sup> *ICRC Study on Customary International Humanitarian Law*, rules 11 and 12.

<sup>104</sup> *Ibid*, rule 14.

95. The principle of distinction requires parties to a conflict to distinguish between civilians and civilian objects on the one hand, and lawful military targets on the other.<sup>105</sup> Attacks are only permissible against military targets.<sup>106</sup> If civilians directly participate in hostilities, they lose their protection only for such time as they directly participate in hostilities.<sup>107</sup> Attacks must also not treat as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects.<sup>108</sup> Such attacks are prohibited as indiscriminate.

96. Parties to the hostilities are required to take all feasible measures to avoid and in any event to minimize incidental loss of civilian life, injury to civilians, and damage to civilian objects.<sup>109</sup> Parties have an obligation to take such precautionary measures in relation to both the attacks they launch, as well as in relation to the protection of civilians from the effects of attacks within areas under their control. This includes an obligation to avoid locating military objectives within or near densely populated areas to the extent feasible, as well as taking all feasible measures to remove civilian persons and objects under the control of a party to the conflict from the vicinity of military objectives.<sup>110</sup>

97. International humanitarian law provides explicit protection for certain categories of personnel, recognising the importance of their functions. This includes religious, medical, and humanitarian personnel.<sup>111</sup> Such personnel are to be respected and protected. This means that they cannot be the object of attack, and their functions should not be impeded, other than for reasons of military necessity and taking into account the principles of distinction, proportionality, and precautions in attack. Protection only ceases should the personnel be involved outside their humanitarian function, in committing acts harmful to the enemy.<sup>112</sup> Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities constitutes a war crime.<sup>113</sup> It is also a war crime to intentionally direct attacks against protected persons who use the distinctive emblem of the Geneva Conventions (e.g. medical or religious personnel)<sup>114</sup> or

<sup>105</sup> The principle of distinction is implicit in Additional Protocol II, art. 13(2) and is recognised as part of customary international humanitarian law: see *ICRC Study on Customary International Humanitarian Law*, rule 1.

<sup>106</sup> In order for an object or building to be considered a military objective it must meet two cumulative criteria namely that (1) by its “nature, location, purpose or use [it] make[s] an effective contribution to military action” and, (2) the object’s “total or partial destruction, capture or neutralization in the circumstances ruling at the time, offer[s] a definite military advantage”. See *ICRC Study on Customary International Humanitarian Law*, rule 8.

<sup>107</sup> See Additional Protocol II, art. 13(3); *ICRC Study on Customary International Humanitarian Law*, rule 6.

<sup>108</sup> *ICRC Study on Customary International Humanitarian Law*, rule 13.

<sup>109</sup> Precautions in attack include verifying that the target is a military objective and that the attack respects the proportionality requirement; choosing weapons and timing for the attack with a view to avoiding or minimizing civilian casualties; issuing advance warnings when feasible; and suspending an attack if it becomes apparent that it does not respect the principle of proportionality. See *ICRC Study on Customary International Humanitarian Law*, rules 15-21.

<sup>110</sup> *Ibid*, rules 22-24.

<sup>111</sup> As to medical and religious personnel: see Additional Protocol II art. 9(1); and for humanitarian personnel, see *ICRC Study on Customary International Humanitarian Law*, rule 31.

<sup>112</sup> See example, in relation to medical personnel, Additional Protocol II, art. 11(2).

<sup>113</sup> Rome Statute, art. 8(2)(e)(i).

<sup>114</sup> Rome Statute, art.8(2)(e)(ii).

against personnel involved in a humanitarian assistance mission in accordance with the Charter of the United Nations.<sup>115</sup>

98. International humanitarian law provides protection from attack for civilian objects (such as towns, residential areas, houses, schools, and civilian transportation). Specific reference is made to certain objects as being protected from attack, including medical units and medical transports (whether military or civilian);<sup>116</sup> objects used for humanitarian relief operations;<sup>117</sup> cultural property, including places of worship;<sup>118</sup> and objects indispensable to the survival of the civilian population (e.g. food, crops, water installations).<sup>119</sup> Medical units have particularly heightened levels of protection. Prior to an attack against a medical unit which is being used to commit acts harmful to the enemy, a warning has to be issued setting, whenever appropriate, a reasonable time-limit. An attack can only take place after such warning has remained unheeded.<sup>120</sup>

99. Parties to the hostilities must allow and facilitate the rapid and unimpeded impartial humanitarian relief for civilians in need.<sup>121</sup> The intentional use of starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies, may constitute a war crime in light of customary international humanitarian law applicable in non-international armed conflict.<sup>122</sup>

100. International humanitarian law also provides limitations on the destruction and appropriation of property. It is thus a violation of international humanitarian law for a party to destroy or seize property of an adversary (unless imperatively demanded by the necessities of war),<sup>123</sup> or to engage in pillage (appropriating property for private use).<sup>124</sup> Either type of conduct may constitute a war crime.<sup>125</sup>

### 3. Findings

#### (a) Indiscriminate attacks

101. OHCHR investigated and obtained credible and consistent reports of indiscriminate attacks impacting on civilians and civilian areas during hostilities in 2014 and 2015. The number of such attacks has been particularly pronounced in the east, specifically in Benghazi, owing to the long term hostilities there. However, a general trend of such attacks is apparent across the cities that have experienced conflict. In some instances, whole

<sup>115</sup> Rome Statute, art. 8(2)(e)(iii).

<sup>116</sup> Additional Protocol II, art. 11(1).

<sup>117</sup> *ICRC Study on Customary International Humanitarian Law*, rule 32.

<sup>118</sup> *Ibid* rules 38-40; Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.

<sup>119</sup> Additional Protocol II, art. 14; *ICRC Study on Customary International Humanitarian Law*, rule 54.

<sup>120</sup> Additional Protocol II, art. 11(2); *ICRC Study on Customary International Humanitarian Law*, rule 28.

<sup>121</sup> *ICRC Study on Customary International Humanitarian Law*, rule 55.

<sup>122</sup> Rome Statute, 8(2)(c)(i). Starvation may also constitute a crime against humanity provided the other relevant requirements are met.

<sup>123</sup> *ICRC Study on Customary International Humanitarian Law*, rule 50.

<sup>124</sup> Additional Protocol II, art. 4(2)(g). It is also impermissible to fail to respect the property of displaced persons (including failing to protect against destruction or arbitrary and illegal appropriation, occupation or use of property left behind): see *ICRC Study on Customary International Humanitarian Law*, rule 133; Guiding Principles on Internal Displacement, principle 21(3).

<sup>125</sup> Rome Statute, arts 8(2)(e)(xii) and 8(2)(e)(v).

neighbourhoods appear to have been targeted, without distinguishing between military and civilian objectives.<sup>126</sup> At other times, misfiring or the use of weaponry unsuited for precise targeting appears to have been the dominant reasons for particular indiscriminate attacks. Heavy weaponry such as Grad rockets and rocket-propelled grenades, which are not appropriate for use in highly populated residential areas given that they cannot be targeted with sufficient precision, have been employed in built-up residential areas, leading to extensive damage of civilian buildings, and death and injury to civilians.<sup>127</sup> Without the ability to conduct site visits and undertake detailed investigations, OHCHR has not been able to determine which parties were responsible for many specific attacks (given that the type of weaponry being referred to, with the exception of air-strikes, is used by most parties). However, it has received reports of indiscriminate attacks in all conflict areas.

#### *The east*

102. In one incident a residential building in the Al-Hada'eq neighbourhood in Benghazi was hit by a rocket in the early evening of 26 April 2015. Two children in an apartment on an upper floor were killed. According to medical reports, both children sustained shrapnel injuries in their head, chest, abdomen and limbs. Although there had been some clashes between Operation Dignity forces and groups affiliated with the Benghazi Revolutionaries Shura Council in the Al-Laithi neighbourhood (several hundred metres away), it was reported that there were no armed clashes taking place on that day in the Al-Hada'eq neighbourhood, nor is OHCHR aware of any military objectives being pursued at that location. Those responsible for the attack remain unknown. The risk to the civilian community from such episodes was becoming sufficiently widespread to prompt warnings on social media, advising residents of the Al-Hada'eq, Al-Zawiya, and Abu Hdeyma neighbourhoods to stay away from the windows of their apartments and from areas adjacent to Al-Laithi neighbourhood so as to be able to protect themselves from stray bullets and indiscriminate shells.<sup>128</sup>

103. In another incident, three children were killed and two others were injured when a shell struck a house in Bal'oon, Al-Fuweihatt neighbourhood (western district) in Benghazi in May 2015. The shell landed in the house garden where the children were playing in the early evening. Again in this instance, OHCHR was informed that no fighting or other type of military activity was taking place in the neighbourhood on that day, nor is OHCHR aware of any known military objectives at the location, though fighting was taking place in the Al-Hawari neighbourhood located some two kilometres to the east.

104. The extent of indiscriminate attacks is illustrated through reference to another case documented by OHCHR. In this case, a woman sustained a bullet injury in her left thigh when she was on the rooftop of her building, putting laundry on a clothes-line. The artery of her left thigh was lacerated, and her left leg was subsequently amputated. The incident took place in the eastern Salmani neighbourhood in May 2015. At that time, the neighbourhood was reported to be calm, with no fighting taking place.

<sup>126</sup> OHCHR received satellite imagery relating to particular neighbourhoods showing high levels of destruction of residential buildings, e.g. the al-Laithi neighbourhood.

<sup>127</sup> Note that UNSMIL/OHCHR has previously provided information on weapons being used in the conflict in Libya. See Annex to UNSMIL/OHCHR, *Overview of Violations of International Human Rights and Humanitarian Law During the Ongoing Violence in Libya*, 4 September 2014.

<sup>128</sup> <https://goo.gl/uMYDFW>

*The west*

105. A number of reports concerning indiscriminate attacks impacting civilians and civilian objects during the fighting from July to August 2014 between Misratan and other armed groups affiliated with Libya Dawn and Zintani armed groups in Tripoli have been published. In a joint UNSMIL/OHCHR report issued in September 2014, for instance, individual cases mentioned included the killing of a middle-aged woman and a 25 year old man in the Ghut Al-Sha'al area, and the killing of a nine year old girl after a Grad rocket hit her house in the Al-Swani neighbourhood.<sup>129</sup> OHCHR investigations have confirmed similar cases. In one case, a company building located one kilometre north of Tripoli International Airport sustained damage owing to stray shelling and bullets. One employee was killed by a stray bullet entering the premises. Heavy fighting prevented an ambulance being able to access the premises, and it was two days before the company was able to arrange for the transport of his body by a private car. Satellite imagery provided by UNOSAT confirms damage to this building.

106. During the fighting in Warshafana, attacks were carried out in residential areas, resulting in a significant number of civilian casualties. Estimates provided to OHCHR have varied.<sup>130</sup> Amnesty International reported that at least 12 civilians from Warshafana were treated in Al-Rahma Hospital in the city of Mahdia in Tunisia in September 2014, for shrapnel injuries sustained as a result of the shelling of residential areas, or of stray bullets, between August and September 2014 by Libya Dawn.<sup>131</sup> OHCHR investigations confirmed that some indiscriminate attacks were carried out by Libya Dawn forces. In one case, for instance, a rocket hit a car containing a family seeking to escape the shelling in the Al-Hashan neighbourhood south of Warshafana. All four occupants were killed, along with three other civilian bystanders. Witnesses indicated that there was no military activity taking place in the area at the time, and that there were no opposition fighters present in the vicinity.

107. OHCHR received a number of reports related to attacks launched by armed groups affiliated with Zintan in Kikla and the surrounding Nafusa Mountains area. According to one interlocutor, in the intense fighting in October and November 2014, some 217 persons were killed (some 79 of whom were alleged to have been directly targeted on the basis of their origin) and 1,040 injured. The inability of the investigation team to visit Libya and a lack of information on the precise circumstances of the attacks means that it is not able to draw a conclusion in relation to these attacks. However armed groups affiliated with Zintan have also been reported to be using weaponry unsuited for precise targeting in highly populated residential areas such as Grad rockets, tanks, anti-aircraft weaponry, and mortar shells.

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<sup>129</sup> UNSMIL/OHCHR, *Overview of Violations of International Human Rights and Humanitarian Law During the Ongoing Violence in Libya*, 4 September 2014, p. 4. See also the Amnesty International, *Libya: Indiscriminate shelling of civilian areas in Tripoli and Benghazi amounts to war crimes*, Press Release, 6 August 2015

<sup>130</sup> Some sources from Warshafana reported to OHCHR that 40 to 50 persons were killed in the shelling in the area. Previous UNSMIL/OHCHR reports indicate that there were 100 deaths and 500 injured during the campaign: UNSMIL/OHCHR, *Update on the Violations on International Law and Humanitarian Law During the Ongoing Violence in Libya (revised)*, 23 December 2014, p.4.

<sup>131</sup> Amnesty International, *Rule of the Gun: Abductions, Torture and other Militia Abuses in Western Libya*, 30 October 2014, p. 7, Index number: MDE 19/009/2014.

*Suicide bomb attacks by members of groups pledging allegiance to ISIL*

108. OHCHR received information concerning suicide bomb attacks by members of groups pledging allegiance to ISIL against security targets, of such a nature as to constitute indiscriminate attacks. On 22 May 2015, for instance, a car bomb attack took place close to the Seventh of April School, a short distance from a security facility of the Hawara Revolutionaries. The attack injured two civilians. Another suicide car bomb attack took place in Al-Qoba, on 20 February 2015, outside the national security directorate. The initial explosion killed six security personnel.<sup>132</sup> People of the surrounding neighbourhoods ran towards the directorate to see what had happened. Less than two minutes later, while people were heading in the direction of the first explosion, another explosion took place (the precise cause is unknown). Responsibility was claimed by an armed group pledging allegiance to ISIL.<sup>133</sup> UNSMIL/OHCHR previously reported that at least 42 people were killed.<sup>134</sup> Among the civilian casualties were two young boys. One boy was killed and the other left with severe injuries requiring continuing hospitalisation.

109. Open source reports describe similar suicide bomb attacks elsewhere. On 9 August 2015, a suicide bomb attack was reportedly carried out east of Derna by a member of a group pledging allegiance to ISIL, killing 10 people, and injuring 21 others.<sup>135</sup> OHCHR however has not been able to make contact with witnesses from Derna to confirm this report.

*The south*

110. The south has not been spared from indiscriminate attacks. In one case investigated by OHCHR in December 2014, two Tabu children were playing in the hall of their house, in Al-Daisa neighbourhood, east of Awbari, when a shell struck their house. This caused a fire in the hall, and both children sustained severe burns as a result. No hostilities were reported in the neighbourhood at that time, nor is OHCHR aware of any military objectives being pursued at that location. It would appear that this family was instead the victim of an indiscriminate attack.

**(b) Attacks on protected persons and objects**

111. The conflict has also witnessed attacks against or otherwise impacting persons and objects given special protection under international humanitarian law, in particular ambulances, health facilities and workers, and humanitarian workers.

*Medical units and transports*

112. OHCHR received reports of several attacks against ambulances marked with the Red Crescent symbol. The cases involved ambulances operated by the Department for Emergencies and occurred on the outskirts of Al-Kufra, allegedly by an armed group called Brigade 448. The first took place in July 2015 and reportedly involved the attacking of an

<sup>132</sup> OHCHR received differing information concerning the first explosion: in particular whether the car detonated as planned, or whether it failed to detonate and was set off as a result of the firing of the security personnel.

<sup>133</sup> Dot Masr, "Islamic State claims responsibility for Al Qoba Explosion", 20 February 2015, News article, Arabic.

<sup>134</sup> UNSMIL/OHCHR, *Report on the Human Rights Situation in Libya*, 16 November 2015, p. 8.

<sup>135</sup> International Business Times, "Isis in Libya: Latest Islamic State suicide bomb attack in Derna kills 10 people", 10 August 2015, News article, available at <http://www.ibtimes.co.uk/isis-libya-latest-islamic-state-suicide-bomb-attack-derna-kills-10-people-1514869>.

ambulance, the looting of its contents, and the beating and harassment of the medical staff and patients inside the ambulance. The second attack took place in August 2015. It involved a similar attack, but also involved the abduction of the driver and medical personnel. The patient and her husband were abandoned on the side of the road in a critical medical condition. The driver and the medical staff were released at the end of November 2015. OHCHR has not been able to verify with the ambulance providers the details of this attack owing to lack of access.

113. On 25 July 2014, the Tripoli Medical Center was attacked by an armed group affiliated with Libya Dawn (who a witness described as the “Al-Tajeen Brigade”) with at least one doctor being abducted in order to treat injured members of the Brigade. According to information received from medical personnel, on 14 September 2014, Warshafana armed groups attacked Al-Zawiya hospital west of Tripoli, injuring a number of civilians, including a visitor and a nurse. The attack occurred at approximately 5 p.m., and was said to have involved a rocket, impacting in particular the first floor emergency department and reception areas, with further minor damage inflicted on the Intensive Care Unit on the second floor. A second rocket hit the hospital morgue around 5.30 p.m. It is reported that the attack was in retaliation for the hospital having treated approximately 12 wounded military personnel earlier in the day.

114. It was reported that in October 2014, Al-Zahraa, a town south-west of Janzour, shelling resulted in the partial destruction of Al-Zahraa City hospital. UNOSAT satellite imagery confirmed damage to an annex to the hospital. However, information received was insufficient to establish whether the hospital was deliberately targeted.

115. Similarly in the east, the protected status of hospitals has not always been respected by parties to the conflict. According to information received by UNSMIL/OHCHR, in Benghazi, three medical personnel and an ambulance driver were killed on 6 May 2015 as a result of armed clashes between Operation Dignity and Benghazi Revolutionaries Shura Council. Benghazi Medical Centre was shelled on several occasions between April and July 2015. One staff member was seriously injured in the context of the shelling, and property was damaged. On a different occasion on 5 July 2015, armed men loyal to Operation Dignity attacked the Benghazi Medical Centre, threatening the hospital staff and destroying furniture.<sup>136</sup> On 8 July 2015, the ground floor of Al-Jalaa hospital in Benghazi was destroyed as a result of shelling leading to the death of one civilian and the injury of three others.<sup>137</sup>

#### *Humanitarian workers*

116. On 5 June 2015, three humanitarian workers from the Sheikh al-Tahir al-Zawi Organization were abducted and held hostage by armed men from the Al-Megharba tribe, in the Shawaref area. The convoy which consisted of seven trucks delivering non-food items to Awbari was stopped by armed men who abducted the three workers, and released their other colleagues. The three were apparently abducted for the purpose of an exchange with a man captured by the First Brigade in Al-Zawiya. The three workers were released after negotiations with tribal leaders. The man captured by the First Brigade was released in exchange.

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<sup>136</sup> UNSMIL/OHCHR, *Report on the Human Rights Situation in Libya*, 16 November 2015, pp. 13-14.

<sup>137</sup> *Ibid.*, p. 13.



117. There are other reported cases of humanitarian workers being attacked, including a delegate of the International Committee of the Red Cross who was killed in Sirte on 4 June 2014 by unidentified armed men.<sup>138</sup>

**(c) Destruction, appropriation or looting of private property**

118. OHCHR received a number of reports of attacks on private property, in particular the burning of houses and property and looting. In many cases the attacks were seen as targeted against particular individuals on the basis of their place of origin and/or their perceived political affiliation. In one case in October 2014, a family living in Benghazi reported that seven trucks and five cars belonging to them were confiscated by the Awliaa al-Damm armed group which is affiliated with Operation Dignity. On the next day, the same family had their house raided, with documents taken concerning their ownership of a plot of land and house in Qanfooda (17 kilometres west of Benghazi) before the second floor of their house was destroyed by arson. The family believes these attacks, together with others committed against individuals in their family, were based on their Misratan origin.

119. The policy of Awliaa al-Damm was described by victims as uprooting families of western Libyan origin from Benghazi, with such families viewed as being pro-Libya Dawn and pro-political Islam, or affiliated either with Benghazi Revolutionaries Shura Council including Ansar al-Sharia or with ISIL. In this respect, OHCHR was referred to an audio recording on social media, said to be of a senior Awliaa al-Damm commander inciting youth to set fire to properties of families of western Libyan origin, because they are:

*“non-Libyans, who have no loyalty to Libya. They are the main reason of Libya’s destruction. They are the ones who brought Qataris and Turks to Libya. Look at Misratans who have been living in Libya for years, but their loyalty is still to Misrata, to the Turks, to the dogs over there...”*<sup>139</sup>

120. In the same vein, OHCHR was referred to a video clip also available on social media, said to be a recording of a commander of Awliaa al-Damm, threatening Misratans (referred to as Turks and Qataris) with punitive measures, including “throwing them to sea and burning them...”<sup>140</sup>

121. Another family originally from Misrata but residing in Benghazi reported that they had had several stores and residential buildings that they owned deliberately destroyed by Awliaa al-Damm in early 2015. The family believes that the destruction of its properties by Awliaa al-Damm was based on their western Libyan origin, as well as the desire of Awliaa al-Damm to take revenge on two relatives of the family who were allegedly involved in attacking protestors in their capacity as Libya Shield operatives during a demonstration on 8 June 2013. The family requested intervention by Operation Dignity forces to stop the attack without success.<sup>141</sup>

122. On 5 June 2014, Operation Dignity air forces carried out an air strike which targeted nine warehouses located close to Al-Saidaa Aishaa Mosque, in the Al-Hawari area, south-west of Benghazi. The warehouses were destroyed, one civilian was killed, and three others

<sup>138</sup> ICRC, “Libya: ICRC suspends activities after killing of employee”, Interview clip, 6 June 2014.

<sup>139</sup> <https://www.youtube.com/watch?v=hojdpC7pQH4>.

<sup>140</sup> <https://www.youtube.com/watch?v=01p5IBizB70>.

<sup>141</sup> Other witnesses referred to attacks on the property of persons from western Libya, including members of the Wisam, Bouaza, Bala’am tribes. In addition to their western origin, these tribes and families are perceived as anti-Qadhafi.

injured. OHCHR was informed that the air force justified their action on the basis that the warehouses were being used by Ansar al-Sharia to store weapons. Those connected with the warehouse deny this allegation, and have stated that the warehouses contained commercial goods and products, including appliances and motors. Instead, they allege that the attack was motivated by the desire of Operation Dignity to uproot all businessmen with Misratan origin from Benghazi, under the pretext of fighting Ansar al-Sharia. Although OHCHR has not been in a position to verify the legitimacy of the military objective, the way in which the attack was carried out raises serious questions about the extent to which the air force took all feasible precautions to protect civilians and civilian objects. The first two air strikes are understood to have been conducted at 3.45 p.m. and 4.45 p.m. respectively. No casualties were recorded as a result of these air strikes. Subsequently, many civilians went to the warehouse to rescue the remaining goods. At around 8.30 p.m., a further attack was carried out, reportedly involving some six rockets. As result, one civilian was killed and two other persons were injured requiring several months of treatment.

123. A similar targeting of private properties on the basis of owners' origins or perceived political affiliations was reported to have taken place during hostilities in Warshafana. Witnesses reported that some 70 to 80 houses were significantly damaged in Al-Sayad and Al-Maya neighbourhoods alone. Other houses had been partially damaged or looted and livestock looted. One witness referred to water-wells having been destroyed (including by throwing pumps and destroyed pipes into the wells). Another witness reported having returned to his house in Al-Maya in late September 2014 to discover his house burned, his cars destroyed and jewellery stolen. Tens of other houses and several farms and other businesses in the neighbourhood were either destroyed, burned, or looted. A third witness reported that his two-storey house in the Al-Hashan area was set on fire by armed groups affiliated with Libya Dawn in late August 2014, with his farm, a tractor, and some agricultural materials also being burned. A fourth witness reported that his house and four houses belonging to his sons and their families in the Al-Zahraa neighbourhood were burned by a group affiliated with Libya Dawn in late August 2014. In mid-October 2014, UNSMIL/OHCHR human rights officers observed houses and shops in the Al-Maya neighbourhood damaged or destroyed, with fires still smouldering.<sup>142</sup> The lack of access to Warshafana has made it difficult for the OHCHR investigation team to verify these allegations. However, strong similarities are noted between accounts and the verification of the extent of destruction at least in certain areas by UNSMIL/OHCHR.

#### *Groups pledging allegiance to ISIL*

124. Appropriation of property by groups pledging allegiance to ISIL was also reported to OHCHR. One victim, for instance, described how his house (located in the Al-Jaiza neighbourhood in Sirte), his brother's house located in the city's "Number Three neighbourhood", and his mother's apartment located in neighbourhood "656", were appropriated by these groups. He added that some 250 livestock, ten camels and two cars belonging to his cousin were also stolen. The individuals appear to have been targeted for their alleged participation in clashes against the groups.

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<sup>142</sup> UNSMIL/OHCHR, *Update on the Violations of International Human Rights Law and Humanitarian Law During the Ongoing Violence in Libya (revised)*, 23 December 2014, p. 4.

## C. Arbitrary detention, abductions and disappearances

### 1. Arbitrary detention

#### (a) Introduction

125. The Human Rights Council expressed grave concern at the rise in number of conflict-related detainees, including children, in its resolution 28/30.<sup>143</sup> The Council called upon the Government to urgently establish full and effective control over all detention centres, so that it could ensure that detainees are treated in accordance with international obligations, including fair trial guarantees and humane treatment.<sup>144</sup> The precise number of persons in detention is unknown. However, it is estimated that more than 9,000 persons are currently detained in facilities operated by the Ministry of Justice and the Department for Combatting Illegal Migration of the Ministry of the Interior alone.<sup>145</sup> This figure does not include the significant number of persons held elsewhere such as in facilities operated by the Ministry of the Interior, those under the control of the Ministry of Defence, and/or those operated by armed groups, and private actors including smugglers. OHCHR has interviewed a range of persons who have been detained in Libya in both formal and informal centres. Its investigation has led it to conclude that there has been widespread arbitrary detention of persons by both State officials and armed group members with detained persons having little (if any) recourse to judicial review or other rights of due process to provide redress.

#### (b) Legal framework

126. Under international human rights law, everyone has the right to be free from arbitrary arrest and detention.<sup>146</sup> A detention is arbitrary if it is not in accordance with national law (e.g. where it is not based on grounds established in a pre-existing law, or where essential procedural rules have not been followed). Even where sanctioned under domestic law, it will be considered arbitrary if it is otherwise inappropriate, unjust, unreasonable, or unnecessary in the circumstances.<sup>147</sup> Persons arrested have the right to be

<sup>143</sup> Human Rights Council resolution 28/30, para. 9.

<sup>144</sup> The issue of torture and other ill-treatment of those in detention is addressed in Section D.

<sup>145</sup> This is based on estimates of persons held in Ministry of Justice facilities in March 2014 and estimates of persons in facilities of the Department for Combatting Illegal Migration as at 2015. According to a census carried out by the Judicial Police between February and March 2014, some 6,200 persons (including 80 to 90 women, and 10 children) were held in Ministry of Justice detention facilities. See *Report of the Secretary-General on the United Nations Support Mission in Libya*, S/2014/653, 5 September 2014, para. 51. Further details were received through discussions with UNSMIL. It is believed that the figure in detention would have increased as a result of the violence in 2014 and 2015. As at May 2015, UNHCR and IOM estimated that 3,245 persons (including 329 women and 34 children) were held in facilities operated by the Department for Combatting Illegal Migration in western Libya. See *The situation of migrants in transit through Libya en route to Europe, Briefing Note*, UNSMIL, May 2015.

<sup>146</sup> ICCPR, art. 9(1). See Human Rights Committee, General Comment No 35, Article 9 (Liberty and security of person), CCPR/C/GC/35. See also the procedural safeguards for persons in detention under the Body of Principles of the Protection of all Persons under any Form of Detention or Imprisonment adopted the General Assembly in its resolution 47/173 on 9 December 1988.

<sup>147</sup> The Human Rights Committee has clarified that the meaning of the term “arbitrary” is not restricted to “against the law”, but “must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability”: Communication No. 305/1998, *Hugo van Alphen v The Netherlands*, Views adopted by the Human Rights Committee on 23 July 1990, para. 5.8. See also Human Rights Committee, General Comment No 35, para. 12. The Working Group on Arbitrary Detention has concluded that “arbitrariness must be assessed in the light of all the relevant

informed at the time of arrest of the reasons for the arrest and to be informed promptly of any charges against them.<sup>148</sup> It is also not to be the general rule that persons awaiting trial be detained in custody.<sup>149</sup> Where persons are arrested or detained on a criminal charge, they need to be brought before a judicial authority, and are entitled to trial within a reasonable period or to release.<sup>150</sup> All persons have the right to take proceedings before a court to seek review of the lawfulness of their detention and to be released should the detention be unlawful.<sup>151</sup>

127. States are obliged to take appropriate measures to protect the right to liberty against deprivation by third parties including protecting against abduction or detention by individual criminals or irregular groups (such as armed groups).<sup>152</sup> Where private individuals or entities are empowered or authorised by a State to exercise powers of arrest or detention, the State remains responsible for ensuring adherence to all relevant human rights standards. The State must therefore rigorously limit the powers given and provide strict and effective control to ensure the powers are not misused and do not lead to arbitrary or unlawful arrest or detention.<sup>153</sup>

128. Although international treaty law applicable to non-international armed conflict does not deal explicitly with the topic, the requirement that civilians and other protected persons be treated humanely is understood to require protection from arbitrary deprivation of liberty.<sup>154</sup> Under customary international law, any security related detention must be justified by the existence of a present, direct and imperative threat by the individual concerned, and is subject to strict procedural requirements including that the person may effectively challenge the lawfulness of the detention, that the detention does not last any longer than absolutely necessary, and that there be initial and periodic reviews by an independent body possessing the same attributes of independence and impartiality as the judiciary.<sup>155</sup>

129. Imprisonment or other severe deprivation of liberty in violation of fundamental rules of international law may constitute a crime against humanity if committed as part of a

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circumstances of a given detention". See Working Group on Arbitrary Detention, Deliberation No. 7, para. 54(b).

<sup>148</sup> ICCPR, art. 9(2). See also the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, principle 10.

<sup>149</sup> ICCPR, art. 9 (3).

<sup>150</sup> ICCPR, art. 9(3).

<sup>151</sup> ICCPR, art. 9(4). Note also the enforceable right to compensation for unlawful arrest or detention in art. 9(5).

<sup>152</sup> Human Rights Committee, General Comment No 35, para. 7.

<sup>153</sup> Ibid para. 8.

<sup>154</sup> The requirement that civilians and persons *hors de combat* are treated humanely is set out in Common article 3 to the Geneva Conventions and Additional Protocol II, art. 4(1), and is recognized as a rule applicable under customary international humanitarian law: see *ICRC Study on Customary International Humanitarian Law*, rule 87. As to the inclusion of the prohibition of arbitrary deprivation of liberty, see: *ICRC Study on Customary International Humanitarian Law*, rule 99.

<sup>155</sup> Human Rights Committee, General Comment No 35, para. 15. See also: "Expert Meeting on Procedural Safeguards for Security Detention in Non-International Armed Conflict" (2009) 91 *International Review of the Red Cross* 859. See also ICRC, "Strengthening Legal Protection for Persons Deprived of their Liberty in relation to Non-International Armed Conflict: Regional Consultations 2012-13: Background Paper", pp. 13-14. As to the applicable rules governing security related detention in international armed conflict, see Geneva Convention IV, arts 42, 43 and 78.

widespread or systematic attack against any civilian population, with knowledge of the attack.<sup>156</sup>

130. In the present report the term “detention” and its variants (“detainee”, “detention facilities”) is intended to reflect deprivation of liberty by both State and armed groups in view of the complex factual situation in Libya, in particular given that armed groups remain in control of many facilities, and that many armed groups were theoretically brought under the purview of the Ministries of the Interior, Defence or Justice during integration processes carried out after 2011. The term “conflict-related detainee” is used as a reference to persons detained as a result of the conflicts in Libya in 2011 or 2014 and 2015.

**(c) Facilities of detention**

131. There are four general categories of detention facilities operating in Libya. The first three categories are all ostensibly operated by separate State ministries, namely the Ministry of Justice, the Ministry of Defence and the Ministry of the Interior, though armed groups remain involved in many of the facilities. The fourth category consists of informal facilities in which persons are deprived of liberty, and held in facilities controlled by a range of entities, including armed groups, local community or tribal councils, criminals, and smugglers.<sup>157</sup>

132. Reference has been made earlier in this present report to the manner in which many armed groups were brought under the Ministry of Justice, Ministry of Defence, or the Ministry of the Interior. In 2013, UNSMIL/OHCHR noted that the formal facilities that armed groups controlled were categorized as officially under State authority, while the level of State control was often “nominal, with brigades frequently retaining their membership and command structures”.<sup>158</sup> In some cases, for example, management of facilities was observed to be “shared” between Judicial Police and armed groups. In other cases, the armed groups remained fully in control.<sup>159</sup> OHCHR has also noted some fluidity in the precise arrangements in relation to specific detention facilities. Some facilities have been regarded as under the control of a ministry at one point, then have become subject to control by an armed group, or vice-versa.

133. The first category of facilities comprises those operated by the Ministry of Justice. They are the most well-known, partly because they are operated by the Judicial Police who are part of the justice apparatus and responsible for providing security for court premises. This category includes formal prisons and correctional institutions, some of which have identifiable mandates for specific types of prisoners, such as women.

134. The second category of facilities comprises those operated by the Ministry of Defence. They are generally operated by the military police, purportedly for detention of military and security personnel. OHCHR, however, has documented cases involving civilians held in some of these facilities (including deaths in custody).

135. The third category of facilities comprises those operated by the Ministry of the Interior. Within this category are facilities operated by the Department for Combatting Illegal Migrants. It is believed there are approximately 19 facilities, all of them allocated to the detention of migrants. Further details of their operation are provided in Section I on migrants. Also within this category are other facilities connected with the Ministry of the

<sup>156</sup> Rome Statute, art. 7(1)(e).

<sup>157</sup> Facilities operated by smugglers are addressed in Section I of Chapter V.

<sup>158</sup> UNSMIL/OHCHR, *Torture and Deaths in Detention in Libya*, October 2013, p. 5.

<sup>159</sup> *Ibid.* pp. 2, 6.

Interior (e.g. connected with Criminal Investigation Departments, police directorates and stations).

136. Examples of facilities, in which armed groups remain in control of facilities which are ostensibly State facilities, are the two Abu Salim facilities in Tripoli, detention facilities at Mitiga military base in Tripoli, the Al-Birsis detention facility,<sup>160</sup> and other detention facilities in Al-Rajma, Abu-Hdeyma, and Tokra.

137. The fourth category of facilities comprises numerous and less well-known makeshift facilities scattered throughout the country where persons are deprived of liberty. The facilities are improvised, and operated by groups as diverse as armed groups, local community or tribal councils, smugglers, criminals, and vigilantes. The precise number of these facilities is unknown. Figures provided to OHCHR range from 17 to a hundred of such informal facilities, including make-shift sites, schools, civilian buildings and farms. The existence of these facilities has been acknowledged by the authorities. The Deputy Minister of Justice responsible for human rights was quoted in June 2015 as stating that even in territories under the control of the Government, there were “illegitimate facilities”, adding that the matter had been referred to the Chief Public Prosecutor for investigation.<sup>161</sup>

**(d) Findings**

138. OHCHR staff interviewed many former detainees who were arbitrarily detained by State officials or armed group members and denied their basic legal rights. Many were detained or abducted without lawful authority, or deprived of their liberty en masse by parties to the conflict. Frequently, persons are moved between various facilities with varying levels of oversight by authorities. Some were accused of committing crimes, such as being involved in hostile acts. Many reported that they were never informed of the reasons for their detention. Most spent a significant period of time in custody without being formally charged with any criminal offence. Virtually none had access to rights of due process, including legal review of their detention or any ability to challenge their detention, and were denied other rights, such as to contact their families. In some cases, the rationale for detaining persons was linked to a potential ransom or a prisoner exchange demand. As is further elaborated upon in Section D, torture and other forms of cruel, inhuman or degrading treatment or punishment have become routine in many detention facilities, with no real potential redress.

139. One case documented by OHCHR concerned a 54 year old man from Derna, who was detained in May 2014 at a military checkpoint located at the southern entrance of Al-Marj. Armed forces aligned with Operation Dignity apprehended him, along with his friend, as soon they identified themselves as being from Derna. He stated:

*“They took us to a military base in Al-Marj, and then they accused us of being members of ISIL just because we are from Derna. In the morning they handcuffed and blindfolded both of us and put us in the trunk of a military vehicle allocated to transfer the prisoners. They parked the car in the military yard under the sun and left us inside the car for six hours. We were burning inside the metal trunk and were suffocating while suffering heat stroke. The soldiers were cursing us and insulting us all the time while we were crying and screaming inside the car as we felt that we were going to die there. In the afternoon, they took us to the military police prison in Al-Abyar where we spent one day, before they transferred us again to Gernada prison. They put us with another detainee who was brutally tortured. We remained*

<sup>160</sup> In the case of the Al-Birsis detention facility, it is understood that the head of the armed group in control of the facility has been appointed to a position in the Ministry of the Interior.

<sup>161</sup> UNSMIL/OHCHR, *Report on the Human Rights Situation in Libya*, 16 November 2015, p. 16.

*in detention for 17 days without being brought before a judge or prosecutor. After 10 days in detention, they blindfolded both of us and interrogated us separately and then ordered us to sign the interrogation record while we were still blindfolded. Then they let us go to our homes a few days later”.*

140. The case of a 45 year old man from Benghazi interviewed by OHCHR is emblematic of the dire situation of many detained persons in Libya:

*“In the night of November 2014, four masked armed men in military uniform broke into my home in Benghazi. They ordered me to go with them. I asked them to identify themselves and to let me know why they wanted to arrest me. They informed me that they are from the “Al-Sa’eqa [army] Interrogation Unit” and I will be informed later of the reason for my arrest. I asked them if they had an arrest warrant, but they forced me to go with them. They handcuffed and blindfolded me and then drove me to an unknown place. As soon as I stepped out from their car, I was severely tortured and insulted by the guards while I was still blindfolded. Nobody informed me why I was arrested and why they were beating me like that. They then put me in a cell with more than 40 detainees. I asked them where we are, but all of them did not know. Nobody interrogated any of us on the next day, but on the day after, [the armed group commander] came to the cell with another 15 guards and started beating all of us randomly. This lasted for half an hour and then they left. We did not know why they tortured us like this and most of us were left bleeding on the ground without receiving any medical treatment”.*

141. Another detainee from Benghazi was apprehended in October 2014 by the Al-Sai’qa Brigades and was moved amongst several military interrogation units in and around Benghazi. He was accused of being involved with Ansar al-Sharia. He spent more than two months in detention and was denied any procedural rights or access to counsel. He was never brought to court and had no opportunity to challenge the legality of his detention.

142. Given that courts in many parts of Libya have stopped functioning, possibilities to have the legality of detention adjudicated by a court are limited. Even in cases where detainees have had access to some level of judicial review, orders issued by the courts for release have not necessarily been effective. In one case, for instance, OHCHR staff interviewed a man who was detained in the west of Libya. After judicial review proceedings were instituted by his lawyer, a judge ordered his release in January 2014. On his way home, however, the man was re-apprehended by the Tripoli Revolutionaries Brigade, which is affiliated with Libya Dawn, who returned him to the same facility.

143. The general lawlessness has provided an opportunity for different armed groups including criminal gangs to abduct and take into custody civilians, in order to seek ransom, or exchange them for those held by rival groups. Many members of armed groups, foreign workers or high-profile civilians have been targeted for these purposes.<sup>162</sup>

144. One man from Warshafana, for instance, reported to OHCHR that he was abducted in November 2014 by an armed group and taken to a facility in Sidi Bilal. He informed OHCHR:

*“We were not allowed to contact our family, or to receive legal aid. At some point, they negotiated my release with me, asking me to pay 200,000 Libyan Dinars if I*

<sup>162</sup> See for example, UNSMIL/OHCHR, *Report on the Human Rights Situation in Libya*, 16 November 2015, pp. 24-25, which describes how some foreigners have been arrested in apparent retaliation for action of the governments of their country of origin, and cites the case of over 60 Tunisian nationals held in Sabratha in apparent retaliation for the arrest of members of the Sabratha Municipal Council by the Tunisian authorities.

*wished to get released. I responded saying that I can't afford this sum. Negotiations lasted until December 2014, when I agreed to pay 70,000 [Libyan Dinars] in exchange for my release. On that day, they allowed me to call my family to ask them to bring the sum to Sidi Bilal prison. Next day... members of my family came to the prison where they paid the sum. Soon after they paid the sum, I was released".*

145. Another case related to the abduction of a man from Warshafana in April 2015 by an armed group affiliated with Libya Dawn. He was handed to another group and later released in exchange for the release of a Libya Dawn commander who had been captured by a Warshafana group.

146. Another victim interviewed by OHCHR staff recalled his abduction in September 2014 in Tripoli. He explained he had been abducted because of his Zintan origins. He reported:

*"Soon after the abduction, they forced me to call my family informing them that they should release ... [a] commander of Libya Revolutionaries Room, and I would then be released. They detained me in the Fourth Force Battalion base in Gheryan for more than two months waiting for the swap. I was severely tortured on different occasions without being interrogated or accused of any crime. On one occasion, the guards hit my head into a wall, so my nose was broken. Eventually, I was released on 24 January 2015 with another 10 detainees from Zintan in a swap for 46 people from Gheryan including [the commander]"*.

147. Reports received by OHCHR indicated that during the armed clashes in the south, many civilians were abducted, having been targeted on the basis of their tribal origin. In some cases the whereabouts of persons remains unknown, raising the issue of enforced disappearances.

## **2. Enforced disappearances**

### **(a) Introduction**

148. The act of enforced disappearance is recognized as an affront to human dignity, placing persons affected outside the protection of the law and inflicting severe suffering on persons disappeared and their families.<sup>163</sup> Enforced disappearance is regarded as a continuing violation which is not brought to an end until the person is accounted for. OHCHR documented many cases of enforced disappearance attributed to the State as well as to armed groups in Libya. In some cases, persons were eventually released. In other cases, families have spent days, months or even years looking for their relatives in different locations including hospitals, morgues, and official and unofficial facilities but to no avail.

### **(b) Legal framework**

149. An enforced disappearance occurs where a person is detained or otherwise deprived of liberty and those responsible refuse to acknowledge the deprivation of liberty or conceal the person's fate or whereabouts, placing the person outside the protection of the law.<sup>164</sup> Under international human rights law, enforced disappearances occur where the deprivation of liberty is undertaken by a State agent or a person or group acting with the authorization, support or acquiescence of the State.<sup>165</sup> Under international humanitarian law, enforced

<sup>163</sup> Declaration on the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly in Resolution 47/133, 18 December 1992, art. 1.

<sup>164</sup> The International Convention on the Protection of all Persons from Enforced Disappearance, art. 2.

<sup>165</sup> Ibid.



disappearance is prohibited and might be carried out by any party to a conflict.<sup>166</sup> Under international criminal law, individuals can be held responsible for an enforced disappearance undertaken by either the State or a political organization or persons acting with the support or acquiescence of such bodies, as part of a crime against humanity.<sup>167</sup>

150. Enforced disappearance represents a serious breach of both international human rights law and international humanitarian law. While Libya is not a party to the International Convention for the Protection of all Persons from Enforced Disappearance, it is a party to ICCPR, many provisions of which are infringed by enforced disappearance, including the rights to recognition as a person before the law, to security of the person and freedom from arbitrary detention (and associated procedural rights), and to respect for privacy, family, home and correspondence, and it further potentially violates the prohibitions on torture and other cruel, inhuman or degrading treatment or punishment, and the right to life.<sup>168</sup> The family of a victim of enforced disappearance may also suffer violations of the prohibition of torture and other ill-treatment by virtue of the anguish and stress caused to them by the disappearance and the uncertainty concerning the fate and whereabouts of the victim.<sup>169</sup>

151. Enforced disappearances also violate or threaten to violate a number of international humanitarian law provisions including the humane treatment of all persons not taking part in hostilities,<sup>170</sup> the prohibition on arbitrary deprivation of liberty,<sup>171</sup> and may lead to torture, cruel or inhuman treatment, and murder.<sup>172</sup> It is also inconsistent with parties' obligation to register persons they deprive of liberty, to respect family lives,<sup>173</sup> to take all feasible measures to account for persons reported missing as a result of armed conflict, and to provide family members with any information they have on their fate.<sup>174</sup> Enforced disappearance is recognized as an act which, if committed as part of a widespread or systematic attack against any civilian population, with knowledge of the attack, may constitute a crime against humanity.<sup>175</sup>

152. Under international human rights law, enforced disappearances occur where the act of detention is undertaken by a State agent or a person or group acting with the State's authorization, support or acquiescence.<sup>176</sup> Breaches of relevant international humanitarian

<sup>166</sup> *ICRC Study on Customary International Humanitarian Law*, rule 98.

<sup>167</sup> Rome Statute, art. 7(1)(i).

<sup>168</sup> These rights are protected by ICCPR, arts. 6, 7, 9, 16, and 17.

<sup>169</sup> Human Rights Committee, *Quinteros v Uruguay* (1983), CCPR/C/19/D/107/1981, para. 14.

<sup>170</sup> Common article 3 to the Geneva Conventions and Additional Protocol II, art. 4(1). In relation to customary international humanitarian law, see *ICRC Study on Customary International Humanitarian Law*, rule 87.

<sup>171</sup> This is regarded as pursuant to the requirement for humane treatment: see discussion under Arbitrary Detention.

<sup>172</sup> Common article 3 to the Geneva Conventions, and Additional Protocol II, art. 4(2)(a).

<sup>173</sup> While treaty law governing non-international armed conflict does not make specific reference to this requirement, it includes rules concerning family unity which presume respect for family life: Additional Protocol II, arts 4(3)(b) and 5(2)(a). See also *ICRC Study on Customary International Humanitarian Law*, rule 105.

<sup>174</sup> *ICRC Study on Customary International Humanitarian Law*, rule 117.

<sup>175</sup> Rome Statute, art. 7(1)(i). Note that under the definition of enforced disappearance provided in the Rome Statute, the intention must be to remove the person from the protection of the law for a prolonged period of time.

<sup>176</sup> *Ibid.*

law involved in enforced disappearances might be committed by any party to a conflict.<sup>177</sup> Under international criminal law, individuals can be held responsible for an enforced disappearance undertaken by either the State or a political organization or persons acting with the support or acquiescence of such bodies, as part of a crime against humanity.

(c) **Findings**

153. OHCHR investigated enforced disappearances attributed to State forces and armed groups<sup>178</sup> after the launch of Operation Dignity and Libya Dawn. Civilians have been taken from the streets for their political or tribal affiliation before being deprived of their liberty and held secretly, usually in deplorable conditions and subject to torture or other cruel, inhuman or degrading treatment or punishment.

154. Besides the cases described below, disappearances have been carried out in the west by the Deterrence and Assistance Force and Tripoli Revolutionaries Brigade armed groups which are affiliated with Libya Dawn, and in the east by Awliaa al-Damm and Al-Sahawat armed groups which are affiliated with Operation Dignity. Armed groups have continued to control secret or unrecognized detention facilities outside the remit of any judicial authority. Those detained by armed groups across the country were frequently held *incommunicado* (without being able to communicate with anyone other than his or her captors and co-detainees) for long periods.

155. Families of detained persons reported to OHCHR that they struggled for long periods to obtain information on their relatives' fate or whereabouts. One man was apprehended in February 2015 by the Tripoli-based Martyr Hamza Brigade, affiliated with Libya Dawn. He reported to OHCHR that:

*“During the first four days of my detention, I was completely incommunicado as I was not able to communicate with any person, call my family or at least know my whereabouts... I was receiving one meal per day, but in one occasion, I was left without food for two days. I was also not permitted to use the bathroom or to any outdoor time. I was hearing from time to time some people crying and shouting because of harsh torture they were suffering...Just on the seventh day, my family managed to find out my whereabouts through an unofficial way”.*

156. On 20 October 2014, Abd al-Nasser al-Jeroushi a prosecutor in South Benghazi Court was abducted by an armed group at a checkpoint close to the Arab Medical University in Belaon neighbourhood in Benghazi. This checkpoint was under the control of the Al-Sai'qa Brigades of the Libyan National Army. In April 2015, the Ministry of Justice informed UNSMIL that he was being held in Al-Marj at an unofficial detention facility.<sup>179</sup> When OHCHR raised the case with the Attorney-General's Office, it was indicated that despite inquiries made with Operation Dignity officials no confirmation of his whereabouts had been received.

157. Other cases reported to OHCHR related to the disappearance of persons in preceding years, but for whom either the search continues for the family, or information as to the whereabouts of the relative was obtained during the investigation reporting period. In one

<sup>177</sup> ICRC Study on Customary International Humanitarian Law, rule 98.

<sup>178</sup> In the present report, the term “disappearance” refers to enforced disappearances committed by the State as well as disappearances committed by armed groups. It is intended to reflect both the various legal regimes applicable to enforced disappearances and the factual complexity in Libya vis-à-vis the status of armed groups, many of which were theoretically brought under State ministries as described in Section C.

<sup>179</sup> UNSMIL/OHCHR, Report on the Human Rights Situation in Libya, 16 November 2015, p. 21.

such case, a man was apprehended in 2012, taken to Abu Salim prison, and then reportedly transferred to the Misrata-based Al-Saket prison. Both facilities were under the control of armed groups affiliated with Libya Dawn. When inquiries were made at Al-Saket prison, all knowledge of the man was disavowed. No information was forthcoming until a telephone call was received, indicating where the man was detained, and that he had been severely tortured and held in solitary confinement on several occasions. He was permitted to receive only one visit from his family in 2015. He died in detention a short time later.

158. OHCHR also received reports of abductions by groups pledging allegiance to ISIL in Sirte, but has not been in a position to further investigate these cases because of the lack of safe access to relevant persons in Sirte.

## D. Torture and other ill-treatment

### 1. Introduction

159. Serious concerns have been raised with regard to the treatment of persons in detention in Libya, including in relation to allegations of torture and other forms of cruel, inhuman or degrading treatment or punishment. In its resolution 28/30, the Human Rights Council expressed concern at reports of “torture and sexual and gender-based violence in detention centres”, calling upon the Government to establish full and effective control over all detention centres so that it could ensure that detainees, including foreign detainees, are treated in accordance with international obligations, including humane treatment.<sup>180</sup> UNSMIL/OHCHR also issued a joint report in October 2013 on torture and deaths in detention in Libya just prior to the commencement of the investigation mandate period.<sup>181</sup> In the course of its investigation, OHCHR documented numerous alleged cases of torture and other forms of cruel, inhuman or degrading treatment, particularly of individuals in detention facilities. The reports are not restricted to one facility, or one actor, but instead reveal alleged cases of torture and other ill-treatment in the majority of places of detention. In some cases, torture has resulted in the death of persons in custody. This Section deals primarily with torture of persons in the context of criminal justice and conflict-related detention. Further alleged cases of torture are addressed in Section E on gender-based violence and discrimination against women, and Section I on migrants.

### 2. Legal framework

160. International law contains an absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as set out *inter alia* in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and ICCPR.<sup>182</sup> The prohibition on torture is a peremptory norm of international law and cannot be limited or derogated from under any circumstances.<sup>183</sup>

161. Under CAT, torture is defined as the intentional infliction of severe pain or suffering (whether physical or mental), for a specific purpose (e.g. to obtain information or a confession, as punishment, to intimidate or coerce, or for any reason based on discrimination of any kind), by or at the instigation of a public official or other person acting in an official capacity (or with the consent or acquiescence of such).<sup>184</sup> International

<sup>180</sup> A/HRC/RES/28/30, para. 9.

<sup>181</sup> UNSMIL/OHCHR, *Torture and Deaths in Detention in Libya*, October 2013.

<sup>182</sup> ICCPR, art. 7.

<sup>183</sup> ICCPR, art. 4(2); CAT, art. 2(2).

<sup>184</sup> CAT, art. 1(1).

humanitarian law explicitly prohibits torture and cruel treatment of persons taking no active part or persons who have ceased to take part in hostilities.<sup>185</sup> Such conduct constitutes a war crime.<sup>186</sup> Separately, it may amount to a crime against humanity if committed as part of a widespread or systematic attack against civilians.<sup>187</sup>

### 3. Findings

162. OHCHR documented alleged cases of torture including severe beatings on detainees' bodies or the soles of their feet with plastic pipes or electrical cables, prolonged suspension in stress positions, solitary confinement, being held *incommunicado*, and electrocution. Detainees also suffered from a lack of sufficient food or drinking water, and were subjected to threats of a sexual nature and the extortion of payment in exchange for freedom.

163. Torture was frequently reported by detainees as having been perpetrated at the time of arrest or apprehension, during interrogations or questioning, or during their detention in a number of facilities operated by both State and armed groups. The facilities specifically mentioned by persons interviewed included in the west:

- Misrata-based Al-Saket prison
- Al-Jawiya Institution for Correction and Rehabilitation (Air-Force Detention Centre, Misrata)
- Abu Salim Detention Facility in Tripoli
- Al-Hadaba Prison in Tripoli
- Detention facility in Sabratha
- Tajoura detention facility of the Department of Combatting Crime (Ministry of the Interior) in Tajoura operated by the Tripoli Revolutionaries Brigade
- Military base of Bab Tajoura Battalion in Souq Al-Juma'a in Tajoura
- Jandouba Prison in Gheryan
- Fourth Force Battalion facility in Gheryan
- Detention facilities in Mitiga Airport operated by armed groups
- Detention facility in Al-Zawiya operated by the Al-Sai'qa Brigades of the Libyan National Army
- Mazraet Mansour al-Daw a makeshift facility operated by Tripoli Revolutionaries Brigade affiliated with Libya Dawn

In the east they included:

- Gernada Prison in Al-Marj
- Criminal Investigation Department of the Ministry of the Interior in Al-Marj
- Al-Rajma military camp
- Al-Fuweihat facility (controlled by the Al-Sai'qa Brigades of the Libyan National Army)

<sup>185</sup> Common article 3 to the Geneva Conventions; Additional Protocol II, art. 4(2) (a).

<sup>186</sup> Rome Statute, art. 8(2)(c)(i).

<sup>187</sup> Rome Statute, art. 7(1)(f).

- Al-Birsis facility (nominally under the control of the Department of Combatting Terrorism)
- Al-Kwaifieh Prison
- Military Police Facility in Al-Abyar
- Military Base controlled by the Al-Sai'qa Brigades of the Libyan National Army in Bu'Atni
- Hassan Ben Haitham School in Benghazi, a makeshift facility controlled by the Al-Sai'qa Brigades of the Libyan National Army
- Bodzeira Facility

164. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment sent urgent appeals to the Government of Libya in March and September 2014 concerning allegations of torture and other cruel, inhuman or degrading treatment or punishment in Libya in relation to two individual cases.<sup>188</sup>

165. One former detainee interviewed by OHCHR staff spoke of his capture in July 2013 by Al-Zawiya Brigade, an armed group affiliated with Libya Dawn. He was held in the First Company (Sariya Al Oula) detention facility in Al-Zawiya until his release in March 2014. He reported to OHCHR:

*“I was severely tortured during my detention on [an] almost daily basis; they used a plastic hose and batons to beat me. The guards were kicking and slapping me from time to time. I was kept in a room with another 12 detainees. They all suffered the same ill-treatment like me”.*

166. Another man informed OHCHR that he was apprehended in October 2014 by the 21st Al-Sai'qa Brigade of the Libyan National Army. He was accused of being involved with Ansar al-Sharia and taken to a school which had been converted to a military base. He informed OHCHR that:

*“Soon after I arrived at the school, I was severely beaten by the guards. They asked me to take my shoes off and walk on crushed glass which hurt me and led to severe pain and bleeding in my feet. They also continued beating me with a hose and [with] their gun butts on my body including my face. My nose was broken and I was severely bleeding. Nobody interrogated me and they continued insulting and torturing me from 10.00 to 19.00. Then they put me in a dirty toilet while I was still handcuffed. I was tortured again many times while I was in that toilet”.*

167. Another case related to a man who was abducted by the Tripoli Revolutionaries Brigade in April 2015 from his house in Tajoura, 20 kilometres east of Tripoli. He stated:

*“They took me to a location called Mazra'et Mansour Al Daw (Mansour Al Daw farm). I was severely beaten and some of the armed men would forcefully hit my head against concrete walls until I severely bled from my head, in the meantime they were firing gunshots into the concrete wall right next to my ears. I was threatened and beaten again until I fainted. I was taken on the following day to a second location named the Department of Combatting Crime [of the Ministry of the Interior] in Tajoura, which is located close to the airport. I was kept in solitary confinement in a very dark cell for a period of three to four days. I was beaten on*

<sup>188</sup> *Communications Report of Special Procedures*, A/HRC/28/85, 19 February 2015, p. 87; *Communications Report of Special Procedures*, A/HRC/27/72, 20 August 2014, p. 23. Protective measures are in place in relation to the identity of the complainants.

*multiple occasions for refusing to inform them of the location of my brother. I was also interrogated about my family's financial status and property. Three weeks later, I was released after elders from my tribe intervened and negotiated my release".*

168. During the investigation, a video of interrogation sessions in Al-Hadaba prison involving Saadi Qadhafi was publicly released. He is seen in this video being subjected to acts which could constitute torture. UNSMIL urged the General Prosecutor to carry out a prompt and effective investigation, and called for the removal of individuals appearing in the video from contact with inmates, pending the outcome of criminal investigations. The prosecution announced an investigation, and in response to UNSMIL's letter stated that arrests had been carried out without providing further details.<sup>189</sup>

169. Several cases involving public "confessions", particularly from persons detained in Al-Birsis prison, were highlighted to OHCHR. The circumstances surrounding the confessions and the content of the confessions indicate the strong likelihood of torture. In one such case, an individual was held in custody in several locations, and accused of murdering some 90 security and police officers. This man (whose relatives had been forced to flee owing to threats against them based on their western Libyan origins) later appeared on Libya First Channel, confessing to involvement in the murder of several security and police officers. The same video included the "confession" of a teenager from a family originally from Sirte, but living in Benghazi. He had been apprehended by the Anti-Terrorism Force armed group in late December 2014, and was similarly transferred between detention facilities. In the video, he is seen "confessing" to the murder of 17 security and police officers. On the same day the video was aired, the Awliaa al-Damm armed group set fire to the family's house. Neither men have been charged with an offence and remain in detention.

170. OHCHR received credible information relating to cases where torture or ill-treatment in detention resulted in the death of detainees. At least 10 deaths were reported in detention facilities, including the Al-Birsis facility, the military police facility in Al-Abyar, the Military Intelligence Brigade in Al-Rajma, Al-Sai'qa military base in Bu'Atni, and in a facility reportedly operated by the Tripoli Revolutionaries Brigade.

171. OHCHR has observed a lack of redress for alleged cases of torture and other ill-treatment. For example, OHCHR documented the case of a 38 year old man who was arrested in June 2014 by officers of the Criminal Investigation Department of Al-Marj which is part of the Ministry of the Interior. On the day after his arrest, his body, which reportedly showed signs of torture, was transferred to Al-Abyar hospital. The autopsy report concluded that severe internal bleeding had been the cause of his death. The Prosecutor from Al-Marj sought permission to question an official in relation to the incident. In this regard, a request was transmitted by the General Prosecutor of the Appeal Court of Benghazi to the Tobruk-based Ministry of Justice. OHCHR was informed that the Ministry of the Interior denied the request, and the case was closed.

## **E. Gender-based violence and discrimination against women**

### **1. Introduction**

172. The armed conflict in Libya has increased violence and discrimination against women in the country. Women and girls face multiple layers of discrimination and continue to suffer violations and abuses in addition to those encountered by the rest of the

<sup>189</sup> UNSMIL/OHCHR, *Report on the Human Rights Situation in Libya*, 16 November 2015, p. 17.

population. The assassinations, assaults, harassment and threats against women carried out by armed groups appear designed to send a broader message that women should not be vocal in the public sphere. Women and girls remain at risk of sexual and gender-based violence, particularly by armed groups. In several parts of Libya, the ability of women to exercise their fundamental rights and freedoms such as freedom of movement or the right to work, has been restricted not only as a result of the conflict, but as a result of requirements for accompaniment by “male guardians”. Women also continue to face specific barriers in relation to access to justice.

173. While reference to violations and abuses carried out against women can be found throughout this present Chapter, this Section seeks to highlight the particular gendered element of many violations and abuses.

## 2. Legal framework

174. Libya is party to a number of instruments that enshrine the fundamental principle of equality and non-discrimination. In both ICCPR<sup>190</sup> and ICESCR<sup>191</sup> there are clear provisions requiring that men and women enjoy all rights equally and without discrimination on the basis of sex. CEDAW provides a more detailed elaboration of rights pertaining to non-discrimination against women. The fundamental importance of non-discrimination is replicated in other human rights instruments. While international instruments refer to discrimination on the basis of sex, this present report uses the term “gender-based discrimination” to take into account the underlying social construction of roles between men and women that is evident in many reported violations against women in Libya.

175. Gender-based violence is a form of prohibited discrimination.<sup>192</sup> States are under an obligation to take appropriate measures to eliminate gender-based violence and act with due diligence to prevent, investigate, mediate, punish and redress sexual and gender-based violence, including that perpetrated by non-State actors.<sup>193</sup> Gender-based violence, in particular sexual violence, violates the prohibition on torture and cruel, inhuman or degrading treatment and also impairs other human rights including the right to the highest attainable standard of physical and mental health.

176. International humanitarian law expressly prohibits in Additional Protocol II “rape, enforced prostitution and any form of indecent assault”.<sup>194</sup> Common article 3 to the Geneva Conventions prohibits “violence to life and person, in particular ... cruel treatment and torture” and “outrages upon personal dignity, in particular, humiliating and degrading treatment”. Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation and other forms of sexual violence are recognised as amounting to war crimes

<sup>190</sup> ICCPR, arts. 2(1), 3 and 26.

<sup>191</sup> ICESCR, arts. 2(2) and 3.

<sup>192</sup> See CEDAW Committee General Recommendation No 19 (1992) on violence against women and No 30 (2013) on women in conflict prevention, conflict and post-conflict situations, CEDAW/C/GC/30, noting that violence against women and girls is a form of discrimination prohibited under CEDAW. See also Committee on Economic, Social and Cultural Rights, General Comment No 16, The equal right of men and women to the enjoyment of all economic, social and cultural rights, E/C.12/2005/4 (2005), para. 27 recognizing that gender-based violence is a form of discrimination that inhibits the ability to enjoy rights and freedoms, including economic, social and cultural rights, on a basis of equality.

<sup>193</sup> Ibid.

<sup>194</sup> Additional Protocol II, art. 4(2)(e).

under the Rome Statute<sup>195</sup> and may constitute a crime against humanity if part of a widespread or systematic attack on civilians.<sup>196</sup> The Security Council has urged parties to armed conflict to protect women and children from sexual violence. Security Council resolution 1325 (2000) calls on all parties to the conflict to take special measures to protect women and girls from rape and others forms of sexual abuse. Security Council resolution 1820 (2008) stresses that “sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict”.<sup>197</sup>

### 3. Findings

#### (a) Assassination and targeting of female activists

177. There has been a series of attacks by armed groups against women who promote equality, social justice, and accountability in Libya. The targets of attacks have included women who were members and founders of non-governmental organizations, women who were members or former members of parliament, and others who were members of civil society and outspoken in the media.

178. In one such case, lawyer and female activist Salwa Bugaighis<sup>198</sup> was assassinated on 25 June 2014 (on the same day as elections for the House of Representatives) in her house in Benghazi. The autopsy revealed that she was shot multiple times in the head and chest. Her husband was disappeared. A joint communication was sent by five special procedure mandate holders to the Government of Libya on the killing of Salwa Bugaighis and the disappearance of her husband. As at the time of writing, the Government is yet to respond.<sup>199</sup>

179. Fareeha Al-Berkawi, a former member of the General National Congress, was known for campaigning against corruption. She was shot dead in her car in Derna on 17 July 2014. Witnesses reported that armed individuals approached her car asking her “Are you Fareeha Al-Berkawi?” before shooting her three times in the chest. She died instantaneously.

180. Intissar Al-Hasaeri was another well-known female activist who organised protests against armed groups. She was a vocal supporter for democracy and secular government and had led many protests against the attacks of Tripoli airport and the seizure of Tripoli by Libya Dawn. She was found shot dead after having gone missing the day before on 24 February 2015. Her body, together with that of her aunt, was found in a car on the outskirts of Tripoli.

<sup>195</sup> Rome Statute, art. 8(2)(e)(vi).

<sup>196</sup> Rome Statute, art. 7(1)(g).

<sup>197</sup> The Security Council has adopted numerous resolutions with regard to women, peace and security, and sexual violence in conflict. See for example Security Council resolutions 1820 (2008), 1888 (2009), 1960 (2010), 2106 (2013) and 2122 (2013).

<sup>198</sup> In cases where the victim’s identity has been well-publicized and an assessment has been made, the name of the victim is disclosed in this present report.

<sup>199</sup> *Communications Report of Special Procedures*, A/HRC/28/85, 19 February 2015, Case No. LBY 2/2014. Special Rapporteur on Freedom of Peaceful Assembly and of Association, Special Rapporteur on Human Rights Defenders, Special Rapporteur on Summary Executions, Special Rapporteur on Violence against Women, its causes and consequences, Working Group on Discrimination against Women. The case of Salwa Bugaighis was also mentioned in a Press Release issued by OHCHR on 14 October 2014.



181. Other attacks against female human rights defenders and journalists have been described in this present report in Section H on human rights defenders and journalists. Such attacks, and the brutality of the methods used, appear designed to send a broader message that women should not be vocal in the public sphere.

**(b) Sexual and gender-based violence**

182. OHCHR has received credible reports of different armed groups committing sexual and gender-based violence against women, girls and boys, with complete impunity. Some of these accounts have been described in this present report in Section K on children, and Section I on migrants.

183. Owing to the stigma still attached to sexual assault, family pressure, and trauma, it remains difficult for the subject to be spoken of openly. Fears have also been expressed of retaliation. OHCHR staff spoke with a number of women who reported they were subjected to sexual violence but did not wish to provide detailed accounts and/or have their stories shared publicly. Further specialist investigation would be necessary to reveal the extent of sexual and gender-based violence which has occurred.<sup>200</sup> Notwithstanding these limitations, OHCHR documented a small number of first-hand accounts of sexual violence, particularly in the context of detention or captivity.

184. OHCHR documented the case of one woman who was abducted in Tripoli. She was on her way to work when abducted by armed men in a vehicle with tinted glass and taken to a location in a residential area on the outskirts of Tripoli. She was held there for a few days and later moved to another location after being drugged. She reported that she was repeatedly raped by an armed group leader for a period of over six months. The leader would always make sure that the room was completely dark when he came in, as he did not want to be identified. She was able to escape with the help of a member of the armed group who was originally from her neighbourhood. The woman stated that she saw six girls as young as 11 who were subjected to sexual violence by armed group members. After her escape, she realized that she was pregnant, and out of her fear of being exposed, she travelled to another country in order to terminate the pregnancy. In addition to the trauma from the rape, she feared the ongoing social impact of her experience: fearing that she would not be able to get married if exposed. She had also experienced considerable anxiety over exposure to a sexually transmitted disease, stating she almost had a nervous breakdown, "I waited for the HIV test for six months, and I couldn't even be happy when the doctor called me to say that I am free from AIDS".

185. Physicians interviewed by OHCHR staff have confirmed that their practices have carried out medical abortions for women who were raped by armed group members in Libya, while respecting confidentiality and not disclosing details of the women. They have recounted being told of forms of torture and sexual violence perpetrated against the women including being forced to undress and stand naked for hours, and being tied up to a bed and raped.

186. Most of the women that OHCHR have spoken with who have been subjected to sexual violence remain heavily traumatized. Suicide attempts are very common amongst this group, and survivors interviewed had visible signs of trauma and severe depression.

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<sup>200</sup> Similar difficulties were encountered during the International Commission of Inquiry on Libya: see *Report of the International Commission of Inquiry into all alleged violations of international human rights law in the Libyan Arab Jamahiriya*, A/HRC/17/44, para. 202.

**(c) Equality and non-discrimination**

187. Many women in Libya reported greater challenges to their fundamental rights in the environment of post-revolution Libya. Some drew attention to religious decrees and statements issued by the Grand Mufti of Libya, undermining equality and imposing restrictions on women. He has publically stated that “[CEDAW] states that any distinction, exclusion or restriction on the basis of sex is banned. This is the starting point of the disagreement between the Quran and CEDAW, as God says: the male is not like the female, yet they say men and women are equal”.<sup>201</sup> Such statements have been seen as evidence of the entrenchment of a rigid ideology that, when implemented, is harmful to women’s rights.

188. In relation to freedom of movement, for instance, women reported that even at airports and at border checkpoints in Libya, they had been asked about their male guardians. Some were warned not to travel without a male guardian otherwise they would be subject to punishment.<sup>202</sup> Some have had their travel rejected by security personnel and at times by armed group members because they were travelling without a male guardian. One woman reported that she was stopped by Ansar al-Sharia armed groups in the outskirts of Derna while driving her car and was forced to contact her brother to come and drive her rather than being permitted to drive home alone. She was threatened to be “lashed” the next time she was found alone on the streets. Her brother was reprimanded for not looking after “his property”. Another journalist in Tripoli was stopped by armed men loyal to the Deterrence and Assistance Force which is affiliated with Libya Dawn while driving her car with a male colleague on their way to a meeting. They forced her to stop at a corner then forcefully took her and her colleague to their headquarters, a house in a residential area. After prolonged questioning and accusations that she was a “woman of mixed virtues”, she was not released until her father came to their headquarters. Her father was verbally abused, and warned not to leave her “running the streets unattended again”.

189. Women have also reported difficulties in accessing basic services from the Government. Several cases documented by OHCHR in Tripoli concerned difficulties women faced in obtaining official documentation, such as the issuance of a passport or other identity documents, if women approached a civil servant without the presence of a male guardian.

190. In areas controlled by groups pledging allegiance to ISIL, some women have reportedly been confined to their home owing to the fear of being exposed to harassment, abduction, and servitude by members of those groups. According to reports, older girls and women are not allowed to leave their houses without being fully covered up, including covering their face (niqab). Some women have reported that they were no longer able to work or even be seen on the streets publicly - especially without a male guardian - out of fear of retaliation by groups pledging allegiance to ISIL or Ansar al-Sharia.

**(d) Access to justice**

191. OHCHR staff interviewed a number of women who said that they had no means to file complaints or seek remedies for violations or abuses committed against them. They assessed there to be a high level of risk of retaliation should they complain of the violations or abuses. A number of women stated that they would not approach a police station or other

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<sup>201</sup> See statement of the Grand Mufti of Libya, <http://tanasuh.com/online/leadingarticle.php?id=5279>.

<sup>202</sup> In Decree No.1587 of the Libyan Ifta Centre (27 December 2013), the Grand Mufti of Libya declared that “women are not allowed to travel alone. No woman should travel except with a mahram and no man enters where she is unless a mahram is with her: <http://ifta.ly/web/indes.php/2012-09-04-09-55-16/9-uncategorised/1792-2013-12-03-09-57-28>.

law enforcement facility as they could not be sure whether officials or armed groups were in charge, and that if they approached the facility they could be murdered or raped by armed group members.<sup>203</sup> One of the biggest concerns articulated by women whom OHCHR staff interviewed was that there would be continuing impunity for perpetrators of human rights violations and abuses.

## **F. Economic, social and cultural rights**

### **1. Introduction**

192. The escalation of fighting since 2014 has adversely affected access to economic, social and cultural rights including to housing, education, healthcare, and food. Warring groups have looted, damaged, and destroyed homes and other vital infrastructure. Roadblocks and security-related threats have significantly impeded the movement of essential goods such as food and medicine, and inhibited humanitarian assistance. The provision of services has also been affected by a lack of qualified personnel, and Government action or inaction in relation to emergency management and use of Government funds. Available funding has been primarily directed towards wages of civil servants. Significantly lesser appropriations have been directed towards service delivery and institution strengthening.<sup>204</sup> The situation has been compounded by the decision of the Central Bank to withhold payments to many Government entities and programmes to safeguard reserves, in light of the decline in Libya's national revenue.<sup>205</sup> All these factors have had a negative impact on individuals' access to services necessary to enjoy their rights.

193. Women, internally displaced persons, children, and migrants face particular difficulties in enjoying their economic, social, and cultural rights. Resources (including international resources and assistance) need to be urgently harnessed to create conditions for the re-building of necessary systems to underpin the enjoyment of economic, social, and cultural rights.

### **2. Legal framework**

194. Libya is a party to ICESCR which contains a range of guarantees, including the rights to work, education, physical and mental health, an adequate standard of living social security, family and cultural life.<sup>206</sup> States are obliged to take steps to the maximum of their

<sup>203</sup> See CEDAW General Recommendation No 33 on women's access to justice, CEDAW/C/GC/33, (2015).

<sup>204</sup> IMF, *Arab Countries in Transition: Economic Outlook and Key Challenges*, October 2014, p. 14. According to the Central Bank, in 2015, salaries constituted 57 per cent of the budget, while less than 7 per cent of the total expenditures were allocated to medical supplies, electricity, water and sewage, and public sanitation; see Statement on the 2015 Budget and Measures Taken Up to 30/9/2015. [http://cbl.gov.ly/eng/index.php?option=com\\_content&view=article&id=272&Itemid=177](http://cbl.gov.ly/eng/index.php?option=com_content&view=article&id=272&Itemid=177); retrieved on 17 December 2015

<sup>205</sup> IMF, *Regional Economic Outlook, Middle East and Central Asia*, October 2015, p. 70. Note that the Committee on Economic, Social and Cultural Rights has concluded that the adoption of deliberately retrogressive measures constitutes a prima facie violation of the ICESCR, and expressed concern to the authorities of the Democratic Republic of Congo about decrease of resources allocated to social sectors, including health and social protection, while raising funding for defence: See E/C.12/COD/CO/4 para. 16.

<sup>206</sup> The rights featured in this segment are particularly the right to health (ICESCR, art. 12), right to education (ICESCR, arts 13 and 14), and the right to food and water as part of the right to an adequate standard of living (ICESCR, art. 11).

available resources with a view to progressively realising these rights.<sup>207</sup> States are obliged to respect, protect and fulfil these rights. This includes refraining from any action that would interfere with the enjoyment of the rights, addressing actions by third parties which infringe upon the rights (including actions by armed groups), and taking all necessary measures to guarantee the enjoyment of these rights on a non-discriminatory basis. While an armed conflict may significantly undermine individuals' enjoyment of these rights (including through the destruction of infrastructure), States retain the obligation to prioritise access to these rights and do everything possible to at least realise the "core minimum" content of rights, including by facilitating access to humanitarian assistance.<sup>208</sup>

195. International humanitarian law also contains a range of rules that address aspects of economic, social and cultural rights. Amongst these are prohibitions on the use of starvation as a method of warfare,<sup>209</sup> and the prohibition on attacking, destroying or rendering useless objects indispensable to the survival of the civilian population (e.g. food, crops, and water installations).<sup>210</sup> Parties to armed conflicts must allow and facilitate rapid and unimpeded humanitarian relief for civilians in need.<sup>211</sup>

### 3. Findings

#### (a) Right to health

196. Prior to 2011, the Libyan authorities made major investments in the health sector that led to significant improvements in the delivery of healthcare, and in the general health of the population.<sup>212</sup> The armed conflict in 2011 adversely affected the health system, which had not properly recovered by the time hostilities broke out in 2014. The health sector has been further weakened during the reporting period of the investigation for several reasons. Healthcare facilities have been targeted, damaged and/or looted. Healthcare personnel have been harassed and abducted by different armed groups (see Section B on attacks on civilians and civilian objects, and other protected persons and objects). Many foreign medical personnel have left Libya owing to the violence. OCHA reported that over 60 per cent of hospitals have been inaccessible or closed in conflict areas between March to September 2015, especially in the eastern and southern regions.<sup>213</sup> The result is that as of September 2015, 1.9 million people in Libya required essential humanitarian aid in order to meet basic healthcare needs.<sup>214</sup>

197. Healthcare facilities that remain operational were impacted by a shortage of drugs and medical supplies. In Benghazi, the situation was exacerbated in July 2014 after a

<sup>207</sup> ICESCR, art. 2.

<sup>208</sup> For a good recent overview of States' obligations during armed conflict with respect to economic, social and cultural rights, see *Report of the High Commissioner for Human Rights*, E/2015/59, 19 May 2015. The Committee on Economic, Social and Cultural Rights has thus queried a number of States about their compliance with the ICESCR notwithstanding armed conflict situations such as Afghanistan, and the Democratic Republic of Congo. See E/2015/59, para. 14.

<sup>209</sup> Additional Protocol II, art. 14.

<sup>210</sup> Additional Protocol II, art. 14; *ICRC Study on Customary International Humanitarian Law*, rule 54.

<sup>211</sup> See *ICRC Study on Customary International Humanitarian Law*, rule 55.

<sup>212</sup> WHO, *Humanitarian crisis in Libya, Public health risk assessment and intervention*, 2015, p. 10.

<sup>213</sup> OCHA, *2015 Libya Humanitarian Needs Overview*, September 2015, p. 10. In August 2015, the Special Representative of the Secretary-General for Libya reported that 70 per cent of health facilities in Benghazi were either inaccessible or non-functional: Briefing by the Special Representative of the Secretary-General for Libya and Head of UNSMIL to the Security Council, 26 August 2015, para. 3.

<sup>214</sup> OCHA, *2015 Libya Humanitarian Needs Overview*, September 2015, p. 5.

warehouse of medical supplies was destroyed, affecting the supply for the entire eastern region. In the east, fighting also led to the destruction of the warehouse at Al-Hawari hospital.<sup>215</sup>

198. While these attacks and the difficulties associated with the security situation have been the dominant cause of shortages, the situation has been impacted by governmental decision-making and/or failures to take necessary action. According to information received, the Government has not taken steps to address, prevent, and ensure non-repetition of such attacks, and has further made limited investment to the infrastructure of the health sector in Libya. Furthermore, budget cuts implemented across Government departments have had a negative impact on the availability of health services within Libya.<sup>216</sup> The system is thus commonly described as collapsing. As in the Qadhafi era, the Government continues to pay healthcare expenses for some Libyan citizens to receive necessary overseas treatment, although the criteria for the selection of cases remains unclear.

199. Additionally, authorities have not addressed structural and administrative deficiencies on a timely basis. The World Health Organization (WHO) has referred to the absence of clear referral mechanisms, and guidelines, and a lack of effective coordination and crisis management skills among crisis (response) committees.<sup>217</sup> An increased risk of transmission of communicable diseases was reported in May 2015, and attributed in part to the absence of an early warning alert and response system, and the irregularity of reporting to the National Centre for Disease Control in earlier months.<sup>218</sup>

**(b) Right to education**

200. In 2005, Libya was considered the country with the highest literacy and educational enrolment rates in north Africa.<sup>219</sup> According to a study published in June 2015, half of the children in Libya are not attending school.<sup>220</sup>

201. Some 40 per cent of schools in Libya have been damaged since the armed conflict in 2011.<sup>221</sup> That number has further increased following the fighting in 2014 and 2015. In Benghazi, it is reported that 73 per cent of all schools are not functioning,<sup>222</sup> with schools having been either damaged, destroyed, occupied by internally displaced persons,<sup>223</sup> converted into military or detention facilities, or otherwise dangerous to reach.<sup>224</sup> Amongst the cases investigated by OHCHR was, for instance, the use of a primary school in Benghazi as a base and a detention facility by an armed group. UNOSAT satellite imagery of the school obtained as at August 2015 showed the presence of several cargo vehicles, possibly used for military purposes. Many children are residing in camps for internally

<sup>215</sup> WHO, *Humanitarian crisis in Libya, Public health risk assessment and intervention*, 2015, p. 13.

<sup>216</sup> OCHA, *Humanitarian Response Plan*, November 2015, pp. 18-19.

<sup>217</sup> WHO, *Humanitarian crisis in Libya, Public health risk assessment and intervention*, 2015, p. 14.

<sup>218</sup> *Ibid.*, pp. 13-14.

<sup>219</sup> Economic, Social and Cultural Rights Committee, Concluding Observations on the Libyan Arab Jamahiriya, E/C.12/LYB/CO/2, 25 January 2006 para. 6.

<sup>220</sup> SCELTA, *Save the Children Egypt-Libya-Tunisia Assessment*, Assessment report, 18 June 2015, p. 35.

<sup>221</sup> UNICEF, "Nationwide school assessment shows great need for investment in Libyan education sector", News Note, 2013.

<sup>222</sup> OCHA, *2015 Libya Humanitarian Needs Overview*, September 2015, p. 11.

<sup>223</sup> SCELTA, *Save the Children Egypt-Libya-Tunisia Assessment*, assessment report, 18 June 2015, p. 35.

<sup>224</sup> The specific concern about the targeting of schools in the Preamble of the OP-CRC-AC should be noted.

displaced persons, without access to proper education facilities. A recent study noted that children with disabilities have difficulties in accessing any form of education, and are often completely excluded from the formal education system.<sup>225</sup> OHCHR received very little information on the steps taken by the Government to address gaps in children's access to education. This issue is addressed in Section K on children.

**(c) Right to food and water**

202. The armed conflict has resulted in significant food insecurity affecting over 1.28 million people, including internally displaced persons. The most severe cases are in Benghazi and the south. This has resulted mainly from the disruption of commercial supply routes owing to the fighting, and has thus reduced the availability of food stuffs, increased prices, and increased the loss of livelihood for individuals and families which has compromised their ability to meet their needs.<sup>226</sup> Prices of staple foods such as rice, flour and sugar have risen sharply.

203. While many of the reasons for the food shortages are directly related to the conflict outside of immediate Government control, Government action and inaction has also played a role. WFP reported in November 2015 that the Government was reducing or cutting food subsidies.<sup>227</sup> When combined with the rise in prices of foodstuffs, families were reportedly needing to reduce portions or miss meals to cope.

204. The armed conflict has resulted in the disruption of main water networks,<sup>228</sup> affecting access to safe drinking water, and water adequate for sanitation and hygiene. In some cases this disruption appears to have been deliberate. In one case investigated by OHCHR in Al-Nasiriyah, armed groups were reported to have destroyed a water-well, by breaking the pumps and congesting the well, rendering it unusable. As with other aspects of the conflict which are disrupting access to economic and social rights, it is imperative that such actions are urgently addressed and remedied.

**(d) At risk and marginalised groups**

205. In addition to security threats, a number of social groups face particular difficulties in relation to their enjoyment of economic, social and cultural rights. Sections E and K of this present Chapter address specifically the challenges faced by women and children in this respect. As fighting in and around urban areas has led to the destruction of homes, and triggered large-scale displacement, the number of internally displaced persons has sharply increased from 80,000 in May 2014 to 435,000 in May 2015.<sup>229</sup> Many live with relatives or in make-shift accommodation, including schools and warehouses. They have often lost their livelihoods, and have experienced greater difficulty in accessing education and healthcare. Internally displaced persons wishing to return to their homes also lack access to mechanisms for property restitution, reconstruction of their homes, or compensation.<sup>230</sup> Migrants face discrimination in accessing services which can undermine their access to employment, housing, healthcare, and education. The absence of a legislative and protection framework for refugees exacerbates the situation.

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<sup>225</sup> SCELTA, *Save the Children Egypt-Libya-Tunisia Assessment*, assessment report, 18 June 2015, p. 36.

<sup>226</sup> OCHA, *2015 Libya Humanitarian Needs Overview*, September 2015, p. 11.

<sup>227</sup> WFP, *Libya Situation Report no. 4*, 10 November, pp. 1-2.  
<http://documents.wfp.org/stellent/groups/Public/documents/ep/WFP279311.pdf>.

<sup>228</sup> OCHA, *2015 Libya Humanitarian Needs Overview*, September 2015, p. 11.

<sup>229</sup> *Ibid.*, p. 6.

<sup>230</sup> *Ibid.*, p. 25.

**(e) Humanitarian assistance**

206. The delivery of much needed humanitarian aid has been hindered by the security situation, which is illustrated by several attacks by armed groups directed against humanitarian workers (as described in Section B). The conflict has also caused most of the international humanitarian aid community to relocate to neighbouring countries and manage their operations remotely. According to Sheikh al-Tahir al-Zawi Organization (an implementing partner of several international organizations for the distribution of food and non-food items), several areas cannot be accessed at all.<sup>231</sup> Most national and international organizations further cannot access areas controlled by groups pledging allegiance to ISIL. Many areas have seen a sharp decrease in basic goods and food, health, and sanitation supplies.

**G. Administration of justice****1. Introduction**

207. The Libyan judicial system has been the target of crippling, violent attacks with actors such as judges and prosecutors being subject to killings, assaults, abductions, and threats. Such attacks have caused the system to come to a halt in many areas of Libya, in particular the eastern and central regions, and have compromised the functioning of the courts that remain open. The system for providing security for judicial actors is inadequate, with armed groups continuing to exercise control over many facilities which are formally within the Ministry of Justice. Thousands of conflict-related detainees from the armed conflict in 2011 remain without access to judicial review, with the same fate experienced by those detained in 2014 and 2015. Key appointments with respect to judges and other judicial officials have become caught up in the broader political dispute in Libya. In the trials which are being carried out (such as the high profile trial of the former senior Qadhafi regime officials), significant concerns have been noted in relation to fair trial guarantees. The end result is a lack of genuine access to justice.

**2. Legal framework**

208. International human rights law provides guarantees to any person appearing before courts and tribunals and obliges States to ensure that any person whose rights or freedoms are violated has access to an available, prompt and effective remedy. In order to guarantee this, effective administration of justice is crucial. In both criminal and civil cases, persons have a right to a fair and public hearing by a competent, independent, and impartial tribunal established by law.<sup>232</sup> As noted in Section C on arbitrary detention, abductions, and disappearances, persons who are detained have a range of rights in relation to challenging the lawfulness of their detention, and those accused of a criminal offence have rights to trial within a reasonable time or release, and to compensation in the case of unlawful arrest or detention.<sup>233</sup> Detailed rights are provided with respect to ensuring a fair trial in both international human rights and humanitarian law.<sup>234</sup> More broadly, the protection of human

<sup>231</sup> Sheikh al-Tahir al-Zawi Organization submission

<sup>232</sup> ICCPR, art. 14(1).

<sup>233</sup> ICCPR, art. 9.

<sup>234</sup> See ICCPR, arts 14 and 15 for a listing of fair trial rights under international human rights law. For fair trial rights applicable under international humanitarian law, see Common article 3 to the Geneva Conventions, and Additional Protocol II, art. 6(2); *ICRC Study on Customary International Humanitarian Law*, rule 100.

rights requires a functioning judicial system in order that persons may access lawyers and courts to obtain remedies for violations and ensure the system does not in itself violate the rights of persons. Further standards have been developed to elaborate on what is required in order to respect the role of actors within the judicial system, including the independence of the judiciary.<sup>235</sup> This includes attention to appointment procedures for judges,<sup>236</sup> terms of office, conditions of service, security, and protections against conflicts of interest and intimidation.<sup>237</sup>

### 3. The judiciary and the courts

209. Attacks targeting the judiciary directly impact the administration of justice and the rule of law. The judiciary has been the target of intimidating and lethal attacks. Court premises have been bombed and judges and prosecutors<sup>238</sup> have been subjected to assassinations, assaults, and abductions. The attacks include a fatal bomb attack at the South Benghazi Court in January 2014, the assassination of a judge and former Prosecutor-General in Derna in February 2014, and the abduction of the Deputy Director General of the High Judicial Institute in April 2014. In August 2014, the offices of the Prosecutor-General and courts in central Tripoli were shelled. At times, attacks have been linked to specific demands, such as the detention or release of certain individuals, or to thwart the arrest and prosecution of members of armed groups.

210. Assassinations and abductions of judges and prosecutors have had a particularly debilitating effect. In some parts of Libya, courts have ceased functioning. In Tripoli, courts were forced to suspend activities during the hostilities in July and August 2014.<sup>239</sup> In Derna, Sirte and Benghazi, court operations were halted in 2014. It is reported that in South Benghazi, judges and prosecutors resolved to resume their work in June 2015, although it would appear that the functioning is significantly reduced. The court of North Benghazi, the other court in the city, has remained closed.<sup>240</sup> It has been difficult for OHCHR, UNSMIL, or other United Nations actors to gain comprehensive up-to-date information on the functioning of the courts across Libya. It is understood that some courts in the west are operational, though their focus is more on handling civil cases which are regarded as less sensitive than criminal justice matters.

<sup>235</sup> Basic Principles on the Independence of the Judiciary, endorsed by General Assembly resolution 40/32 (1985); and the Guidelines on the Role of Prosecutors and Basic Principles on the Role of Lawyers, both adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1990.

<sup>236</sup> Judges should not be appointed for “improper motives”: Basic Principles on the Independence of the Judiciary, principle 10. The Special Rapporteur on the independence of judges and lawyers has recommended that judges should preferably be appointed by an independent body that is composed, in a balanced way, of legislators, lawyers, academics and other interested parties, with serving judges comprising the majority of members: *Report of the Special Rapporteur on the independence of judges and lawyers*, A/HRC/11/41, 24 March 2009, para. 28.

<sup>237</sup> Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32 (2007), para. 19; Basic Principles on the Independence of the Judiciary, principle 11.

<sup>238</sup> Judges and prosecutors are protected as civilians under international humanitarian law.

<sup>239</sup> Note also that in August 2014, the Government announced that it had lost control of most ministries and Government facilities in Tripoli, including the Ministry of Justice: UNSMIL/OHCHR, *Overview of Violations of International Human Rights and Humanitarian Law During the Ongoing Violence in Libya*, 4 September 2014, p. 9.

<sup>240</sup> UNSMIL/OHCHR, *Report on the Human Rights Situation in Libya*, 16 November 2015, p. 29.



211. An official within the office of the Attorney-General informed OHCHR that the office is continuing to undertake investigations and issue arrest warrants. Further, the official reported that many arrest warrants have been issued against members of armed groups, although they have not yet been executed. Further action with respect to arresting and charging persons has been put on hold until the security situation improves. As an example of current limits on functioning, the Attorney-General has communicated with authorities in the east on the disappearance of prosecutor Abd al-Nasser al-Jeroushi, but has not received any information concerning his fate or whereabouts.

212. On the basis of the information received and reviewed, OHCHR considers that the system for providing security for judicial actors (and for those attending court houses and other facilities) is inadequate. The Judicial Police have the primary responsibility for maintaining the security of courts, however, their ranks include some 10,000 armed group members who were integrated during the demobilisation efforts after 2011 without comprehensive vetting.<sup>241</sup> It has been reported to OHCHR that some members of the Judicial Police retain primary allegiance to these armed groups. This compromises the ability of the Judicial Police as an institution to provide effective protection against the threat posed by armed groups.

213. UNSMIL/OHCHR previously reported that only about half of Judicial Police officers were estimated to have been reporting for duty during the fighting in 2014.<sup>242</sup> Even at full strength, the Judicial Police force lacks the capacity and equipment to repel well-armed attacks. In many facilities belonging to the Ministry of Justice, control appears to be exercised by localised armed groups rather than the Judicial Police.

214. UNSMIL/OHCHR has previously advised Libyan authorities on the need for threat assessments and appropriate security plans for the protection of the courts and the judiciary, with the support of at least the Ministries of the Interior and of Defence.<sup>243</sup> In the absence of proper protection, the system will not achieve the justice it is obliged to deliver. As a former Minister of Justice told OHCHR, “a frightened judge cannot rule”.

#### 4. Conflict-related detainees

215. Since the armed conflict in 2011, thousands of individuals have been detained, the vast majority of whom continue to be held without due process. As of March 2014, some 6,200 people were held in facilities under the control of the Ministry of Justice. Only 10 per cent of these individuals had been tried and were serving prison sentences.<sup>244</sup> Cases of detainees were to be screened by prosecutors so that they would either be charged and brought to trial or released. Even before the breakdown of judicial services in 2014, progress was minimal. Deadlines set by national legislation were not met on successive occasions.<sup>245</sup> The situation is not believed to have improved during 2015. During the

<sup>241</sup> It is understood that the vetting was limited to reviewing criminal records: UNSMIL/OHCHR, *Torture and Deaths in Detention in Libya*, October 2013, p. 6.

<sup>242</sup> UNSMIL/OHCHR, *Overview of Violations of International Human Rights and Humanitarian Law During the Ongoing Violence in Libya*, 4 September 2014, p. 9.

<sup>243</sup> *Technical Assistance for Libya in the field of human rights: Report of the United Nations High Commissioner for Human Rights*, A/HRC/25/42, 13 January 2014, p. 10.

<sup>244</sup> Interview with Former Minister of Justice. As UNSMIL has reported, this figure is derived from a census of prison inmates undertaken by Judicial Police in February and March 2014, which included information on charges, status of investigations, and period of detention: *Report of the Secretary-General on the United Nations Support Mission in Libya*, S/2014/653, 5 September 2014, para. 51.

<sup>245</sup> See UNSMIL/OHCHR, *Torture and Deaths in Detention in Libya*, October 2013, p. 5. Under Law 38 on “Special Procedures for the Transition Period” passed in May 2012, the Ministries of Interior and

conflicts in 2014 and 2015, the number of conflict-related detainees has increased. The level of arbitrary detention and the lack of access to judicial review are described in Section C.

## 5. Investigations and prosecutions of human rights violations and abuses

216. UNSMIL/OHCHR has previously reported that as a result of the collapse of the criminal justice system in many parts of Libya, victims have little recourse to seek protection, or to an effective remedy for violations and abuses.<sup>246</sup> It concluded that little action has been taken to open prompt, thorough, effective, impartial, and independent investigations and to bring perpetrators to justice.<sup>247</sup> This assessment is consistent with the findings in this present report.

217. Furthermore, serious shortcomings have been noted in relation to the criminal justice proceedings which have been conducted. In this regard, on 28 July 2015, the Tripoli Court of Assize issued its verdict in the trial of 37 senior Qadhafi regime officials on charges linked to crimes committed during the armed conflict in 2011. Saif al-Islam Qadhafi, former intelligence chief Abdullah al-Senussi,<sup>248</sup> the last prime minister of the Qadhafi regime Al-Baghdadi al-Mahmudi and six other defendants were sentenced to death by firing squad. Eight others received sentences of life imprisonment. The remainder of those convicted were sentenced to between five and 12 year prison terms. UNSMIL/OHCHR expressed serious concerns that proceedings fell short of international fair trial standards. The right to adequate defence was not upheld, complaints of torture by a number of defendants were not investigated, and the prosecution relied solely on the case file as evidence without presenting witnesses or documents in open court.<sup>249</sup>

## 6. Politicisation

218. The political divisions between the House of Representatives and the General National Congress have also had an impact on the judicial system. Notwithstanding its disputed status, the Congress has passed laws on the composition of the Supreme Judicial Council.<sup>250</sup> It also appointed a new President of the Supreme Court,<sup>251</sup> upon the retirement

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Defence were given two months to ensure the cases of all detainees held by armed groups were screened. The Law on Transitional Justice of September 2013 set a deadline of 90 days from promulgation, requiring detainees accused in relation to crimes under the previous regime to be either released or referred to the public prosecution.

<sup>246</sup> UNSMIL/OHCHR report, *Report on the Human Rights Situation in Libya*, 16 November 2015, p. 30.

<sup>247</sup> Ibid.

<sup>248</sup> In 2011, the International Criminal Court issued arrest warrants and requested the transfer of Abdullah al-Senussi and Saif al-Islam Qadhafi to The Hague. The Libyan authorities challenged the admissibility of the cases. On 21 May 2014, the Appeals Chamber confirmed that the case of Saif al-Islam Qadhafi was admissible before the Court. In contrast, in July 2014, the Appeals Chamber decided that Abdullah Al-Senussi's case was inadmissible before the Court. On 10 December 2014, the Pre-Trial Chamber found that Libya had failed to surrender Saif al-Islam Qadhafi to the Court, and referred the matter to the Security Council.

<sup>249</sup> See UNSMIL, *Concerns about Verdict in Trial of Gaddafi-era Officials*, 28 July, available at: <https://unsmil.unmissions.org/Default.aspx?ctl=Details&tabid=3543&mid=6187&ItemID=2099165>. See also press briefing issued by OHCHR available at: [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16271&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16271&LangID=E)

<sup>250</sup> Law No. 6 of 2015 amending Law No 6 on the Status of the Judiciary (General National Congress).

of the incumbent President, and appointed 36 judges in October 2015.<sup>252</sup> Owing to the political divisions, an official appointment of Attorney-General was not made in June 2014 upon retirement of the incumbent. Instead the most senior Prosecutor is acting as Attorney-General on an ad interim basis. In addition to disputed or neglected appointments, as outlined further in Chapter VII on the justice sector, some interlocutors expressed concern that judicial actors had become compromised by succumbing to pressure from armed groups in particular.

## H. Human rights defenders and journalists

### 1. Introduction

219. “Cities of Fear” is a poem written by Abdul Salam al-Mismary, a Libyan poet, lawyer, and human rights defender. It is not known whether in the poem he was describing his native city, Benghazi, but Abdul Salam al-Mismary suffered a high price for his activities, being assassinated in mid-2013. He is just one of the human rights defenders who have been targeted as a result of their work. The High Commissioner issued a specific call for the protection of human rights defenders in Libya in October 2014,<sup>253</sup> and UNSMIL/OHCHR produced a detailed report on their situation in March 2015.<sup>254</sup>

220. The findings of this investigation are consistent with these earlier reports in so far as it has documented a considerable number of violations and abuses carried out against human rights defenders in Libya in 2014 and 2015. These have included cases of assassinations, attempted murders, abductions, threats, and unlawful raids on offices. The fear created by such actions, coupled with the impunity enjoyed by the perpetrators, has forced many human rights defenders to go into hiding or to flee Libya, and threatens to silence independent voices within the country.

### 2. Legal framework

221. Human rights defenders is a term used to describe persons who, individually or with others, act to promote or protect human rights.<sup>255</sup> A human rights defender is not restricted to one profession, but may be any person or group of persons working to promote human rights: e.g. staff of a national human rights institution, or a human rights organization, human rights lawyers, journalists reporting on human rights issues, or doctors treating victims. Human rights defenders enjoy the same rights as other persons.

<sup>251</sup> On 20 May 2015, the General National Congress issued Decision No. 50-2015 appointing Judge Mohamed Al-Gamudi Al-Hafi as President of the Supreme Court, to replace the retiring incumbent President, Judge Kamal Dehan.

<sup>252</sup> General National Congress Decision No. 58 of 2015.

<sup>253</sup> See “UN rights chief Zeid condemns attacks on human rights defenders in Libya”, available at: [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15168](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15168).

<sup>254</sup> UNSMIL/OHCHR, *Human Rights Defenders Under Attack*, 25 March 2015. Concern about attacks on human rights activists, journalists, and members of civil society organizations was also referred to in Human Rights Council resolution 28/30, para. 1.

<sup>255</sup> See the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, adopted by General Assembly Resolution 53/144 of 10 December 1998, commonly known as the Declaration on Human Rights Defenders.

### 3. Findings

#### (a) Human rights defenders

222. OHCHR received a number of reports on the situation faced by human rights defenders, including lawyers, journalists, bloggers and other activists. Submissions received reported that since the beginning of 2014, some 13 human rights defenders had been killed, 36 arrested or abducted, and many others otherwise harassed, threatened or physically insulted. On the basis of the information received, it is clear that human rights defenders continue to be targeted in Libya and face grave threats to their lives as a result of their activities.

223. As described in Section A on unlawful killings and executions, a number of human rights defenders have been assassinated during the reporting period. Many of these cases have targeted high profile activists, producing a chilling effect on the work of their peers. One of the most prominent cases has been outlined earlier in this present report: the assassination of lawyer and human rights activist Salwa Bugaighis on 25 June 2014 (the same day as the elections for the House of Representatives). The autopsy revealed that she was shot multiple times in the head and chest. The main witness to the events was reportedly killed in police custody. To the knowledge of the OHCHR, no investigation has been launched into the witness' death. The Prosecutor who was initially working on Salwa Bugaighis' case was abducted at a checkpoint in Benghazi and remains disappeared. The perpetrators of the attack remain unidentified. Several other cases of prominent women activists who have been assassinated have been described in Section E on gender-based violence and discrimination against women.

224. Two human rights defenders Tawfik Ben Sa'ud and Sami al-Kawafi were assassinated late at night on 19 September 2014, when driving in the Al-Keesh neighbourhood, south of the centre of Benghazi. Three cars accelerated towards them, and a number of persons travelling in these cars opened fire. Some persons interviewed attribute responsibility to Ansar al-Sharia, noting that Tawfik Ben Sa'ud had previously spoken out against the brigades and anyone who justified their killings on Facebook as follows: "*For anyone who [is] still supporting the brigades, particularly Ansar al-Sharia, I wish to inform you that the anger of [the] street is a sweeping volcano, so take the side of the street, not the side against it. The history is ruthless. In my view, anyone [who] justifies the practices of killers is a partner of these killers*".<sup>256</sup>

225. OHCHR received reports of a number of other assassination attempts on human rights defenders. One instance concerned a human rights defender who had an explosive device placed on his car in Benghazi. The victim attributes responsibility to Ansar al-Sharia. In another case, a human rights defender referred to having survived an assassination attempt in Benghazi in July 2014. His son also reportedly survived an abduction attempt a few weeks after by Ansar al-Sharia. He has since left Libya.

226. The chilling effect of such assassinations on other human rights defenders is clear. One human rights defender reported receiving death threats, communicated by telephone calls and text messages or social media. The messages on social media seen by OHCHR were sent anonymously. Notwithstanding these threats, the human rights defender continued his activities in advocating for disbanding illegal armed groups, and empowering State security institutions. Yet, for him, the assassination of fellow human rights defender Tawfik Ben Sa'ud in September 2014 was the point at which he decided to flee, first his hometown and then Libya, to seek safety elsewhere.

<sup>256</sup> <https://www.facebook.com/#!/tawfik.bensaud/posts/10202049884921267?fref=nf>

227. Families of human rights defenders have also been victims of abuses. A 24 year old human rights defender from Benghazi reported that his family's house in Al-Laithi neighbourhood was looted and destroyed in November 2014 in response to his advocacy for the rule of law and the disbanding of illegal armed groups. He also received death threats, forcing him to move location. The human rights defender reported his belief that Ansar al-Sharia were responsible.

228. In a number of cases, OHCHR investigated threats against human rights defenders. One human rights defender from Tripoli had established a new association aimed at raising awareness on democracy and human rights principles in the community. Soon after their first activity, he received text messages warning him to stop his advocacy work, otherwise he would be abducted and killed. He reported that:

*“As soon I published statements on my Facebook account stating that I was against the shelling of civilian neighbourhoods during the Libya Dawn operation to control Tripoli Airport, I received more than 20 messages accusing me of being a collaborator with Haftar's forces Operation Dignity. My private car was then vandalized and a message was left on the car saying “The next is your head”. So I decided to flee the country immediately”.*

229. Another case documented by OHCHR was of the abduction of the head of a Tripoli-based human rights organization. He reported that he issued a statement asking the parliament to dismiss the General Mufti of Libya, Al-Sadiq al-Gheryani, and to lift his immunity. Soon after, he was abducted from the street in Tripoli, describing his experience as follows:

*“Four armed men stepped out from two civilian cars and attacked me while I was walking on the street. They opened fire in the air before approaching me, so I was completely terrified. I thought they wanted to kill me in public. They handcuffed me and covered my head with a plastic bag and put me in the backseat of one of their cars. They did not beat me while in the car but they cursed and accused me of being a collaborator. After driving for around half an hour, we arrived at a military base. I was not able to see the people or to identify my whereabouts. They just put me in a small cell, removed the bag and handcuffs and then left. During the first four days of my detention, I was completely incommunicado as I was not able to communicate with any person, call my family or at least know my whereabouts”.*

230. Another prominent human rights defender from Tripoli reported to OHCHR:

*“Due to my activities in human rights and my position against Libya Dawn, I received many threats on my mobile and recently my wife found a paper on my house's front door. The paper included my photo and three words describing me as an apostate, collaborator and secular in addition to two more words indicating that I'd be killed soon. A real bullet was also enclosed with the letter to confirm the seriousness of the threat. Therefore I decided to flee the county as soon as possible”.*

231. Women human rights defenders have reported similar threats against them, noting that the intimidation and harassment is designed not only to deter their own activity, but to deter other women from being vocal in the public sphere. This subject is explored further in Section E on gender-based violence and discrimination against women.

**(b) National Council of Civil Liberties and Human Rights**

232. The national human rights institution of Libya, the National Council of Civil Liberties and Human Rights (NCCLHR), has been subjected to continuing attacks and has been reduced to minimal functioning. As UNSMIL/OHCHR reported in October 2014, NCCLHR members and staff received threatening calls by persons claiming to be affiliated

with Libya Dawn. Armed men apparently associated with Libya Dawn later went to the Council's office requesting the handover of keys and official stamps. This request was refused. In a separate visit, armed men wished to question some senior staff and members of the NCCLHR who were absent at that time. Further threats were received by individual members and staff, causing several to leave Libya.<sup>257</sup> The Benghazi offices of NCCLHR were raided on 16 March 2015, and one of its staff members reported having survived an assassination attempt in January 2015.<sup>258</sup> Concern has previously been expressed by OHCHR in relation to the situation faced by the NCCLHR.<sup>259</sup>

233. Much of the public functioning of the NCCLHR has ceased with the Tripoli office closing in November 2014, and the Benghazi office having suspended operations in October 2014.<sup>260</sup> However, the NCCLHR is undertaking some activities. In May 2015, it submitted a report in relation to the Universal Periodic Review of Libya. In August 2015, the NCCLHR submitted two human rights reports to the House of Representatives. The reports addressed the situation in Sirte and Tarhouna. It is evident, however, that in light of the attacks and intimidation the NCCLHR is not presently able to effectively pursue its full mandate.

234. The situation has been further complicated by the political conflict between the House of Representatives and the General National Congress. The terms of incumbent Commissioners of the NCCLHR formally ended at the end of 2014. Repeated calls have been made for new appointments or extensions to be made pursuant to Law No. 5 of 2011. In September 2015, the House of Representatives Human Rights Committee issued a statement that incumbent commissioners should continue in their mandate until procedures for a new term are complete. In March 2015, the General National Congress adopted a decision appointing a new set of Commissioners for the NCCLHR (that is, creating a separate body). The Government (through the Permanent Mission of Libya to the United Nations in Geneva) requested that the Human Rights Council ignore the decision of the General National Congress. The body appointed by the General National Congress has issued a number of statements in the name of the NCCLHR.

**(c) Journalists**

235. Journalists, who may also be human rights defenders, play a key role in society in promoting accountability and as watchdogs of civil liberties and other issues of public interest and concern. Of particular importance to journalists in their work is freedom of expression, including the freedom to access and impart information and ideas of all kinds. Equally, however, they are entitled to the full range of protections relating to, for example, their liberty and security, freedom of movement, and the right to work. Furthermore, international human rights law requires that they be protected from other acts intended to dissuade journalists from their professional duties such as torture, arbitrary detention, enforced disappearance, and excessive punitive measures and penalties. Under international human rights law, imprisonment is never an appropriate penalty for defamation.<sup>261</sup> Under

<sup>257</sup> UNSMIL/OHCHR, *Update on Violations of International Human Rights and Humanitarian Law During the Ongoing Violence in Libya (Revised)*, 23 December 2014, p.3.

<sup>258</sup> UNSMIL/OHCHR, *Report on the Human Rights Situation in Libya*, 16 November 2015, p. 27.

<sup>259</sup> Concern was expressed at the intimidation directed against the NCCLHR in a press briefing of UNSMIL/OHCHR on 24 October 2014; the High Commissioner's report on Libya to the Human Rights Council presented in March 2015, and in a joint UNSMIL/OHCHR report on Human Rights Defenders in March 2015.

<sup>260</sup> UNSMIL/OHCHR, *Report on the Human Rights Situation in Libya*, 16 November 2015, p.27

<sup>261</sup> Human Rights Committee, General Comment No. 34 on Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, (2011), para. 47.

international humanitarian law, journalists, as part of the civilian population, are protected from attack.

236. Libya continues to be one of the most hostile countries for journalists. Reporters Without Borders ranked Libya 154 out of 180 countries in 2015 in this regard.<sup>262</sup> With the deterioration of the situation in 2014, journalists struggled with an increasingly difficult climate rendering objective news reporting a life-threatening endeavour. Journalists are particularly at risk if they are perceived as being critical of those exercising power in any given area of Libya. In the course of the investigation, OHCHR collected first-hand accounts, and relied on submissions received and on open source material in which journalists have themselves documented their stories. On the basis of the information available, OHCHR has concluded that journalists have faced serious harassment, intimidation, death threats and have been subject on occasion to arbitrary detention and attempted assassination. There are also several cases in which journalists have been killed in circumstances requiring further investigation.

237. Amongst open-source material is the account of Sirine Al-Amari, who worked as correspondent for France 24 in Tripoli. She left Libya in November 2014 after being repeatedly summoned and questioned by “Islamic groups” about her reports and receiving several threats.<sup>263</sup> In another case referred to OHCHR, on 27 August 2015, a journalist was detained for several hours by an armed group in Tripoli. He was questioned about a meeting he had attended in Tunisia convened by the United Nations, and threatened with being killed.

238. Several journalists reported intimidation, threats and even assassination attempts that they had faced. In one case, a 28 year old former correspondent with a television channel perceived as pro-Operation Dignity, reported that he survived an assassination attempt in April 2014. A car with darkened windows stopped near the taxi he had entered, and three bullets were fired, striking the front window of the taxi. This happened just days after he had reported on two lethal attacks attributed to Ansar al-Sharia, and had described them as a terrorist group. Prior to this, he had received several death threats either through his telephone or on social media.

239. In April 2015, UNSMIL/OHCHR was informed by the Deputy Minister of Justice that five detained persons had confessed to the killing of seven journalists in two separate incidents, including two Tunisian journalists, Soufiane Chourabi and Nadhir El-Ktari, who had gone missing in September 2014. No evidence of the killings was provided as it was claimed that the bodies were buried in an area under the control of extremist armed groups from Derna.<sup>264</sup> OHCHR was informed that colleagues of these Tunisian journalists were last able to make contact with them on 8 September 2014, four days after they were reportedly abducted. At the time of this last contact, they were informed that the journalists were being held in Ajdabiya by an armed group responsible for guarding oil fields.

240. The assassination of a television journalist, who was shot dead in his office in Benghazi in April 2015 was referred to OHCHR. UNSMIL/OHCHR received reports

<sup>262</sup> Reporters Without Borders, 2015 Press Freedom Index, available at <http://en.rsf.org/world-press-freedom-index-2015-12-02-2015,47573.html>.

<sup>263</sup> Interview with Sirine Al-Amari on Washington Post video, available at: [https://www.washingtonpost.com/video/national/now-im-not-able-to-live-safely-in-any-country-that-has-islamists-sirine-amari-form-tunisia/2015/09/10/7894ab02-57f2-11e5-9f54-1ea23f6e02f3\\_video.html](https://www.washingtonpost.com/video/national/now-im-not-able-to-live-safely-in-any-country-that-has-islamists-sirine-amari-form-tunisia/2015/09/10/7894ab02-57f2-11e5-9f54-1ea23f6e02f3_video.html); Reporters Without Borders. “Unable to work Journalists flee Libya because of violence”, Press release, 7 April 2015.

<sup>264</sup> UNSMIL/OHCHR, *Report on the Human Rights Situation in Libya*, 16 November 2015, p.28.

suggesting that this assassination was due to his reports on clashes in Benghazi, which were used by several satellite television channels.<sup>265</sup> Reports were also received that in November 2014, three bloggers, Mohamed Bettou, Mohammed al-Mesamari, and Siraj Ghatess, were found killed with their throats cut in Derna.<sup>266</sup> OHCHR received multiple reports of journalists and other members of the media who have been killed in unclear circumstances, sometimes after receiving threats in person or on social media, and other times for reasons that may not be related to their profession.

241. Premises of media stations have been raided and attacked. OHCHR received reports, for instance, on the raid of radio network of Ein-Media Corporation in Benghazi in November 2014 by unknown persons. At least one staff member was summoned for interrogation and detained by the Criminal Investigation Department of the Ministry of the Interior. The majority of staff have since fled Libya. The premises of Al-Asema TV in Tripoli was likewise reportedly attacked twice, on 23 and 24 August 2014 by an armed group affiliated with Libya Dawn. The group had accused the station of bias in favour of Operation Dignity.

242. A journalist from Benghazi reported to OHCHR that he was working as a presenter with a Benghazi television channel which was shelled, allegedly by Ansar al-Sharia, on 9 July 2014. He decided to leave the city as he started receiving death threats on social media. His house was looted and later burned.

243. Female journalists have faced particularly intense intimidation and threats - not only in relation to messages they broadcast, but for the very fact of being women who are vocal in the public sphere. Female journalists that OHCHR staff spoke with expressed their fear of appearing in public. Most are using pseudonyms to avoid identification and retaliation. They have received harsh public criticism, directed not so much at the content of their material, but against them as women. Some have been threatened for appearing without a veil. Some were also accused of "indecent appearance", while others were told that they had to stop working in the media or otherwise would face grave consequences. UNSMIL/OHCHR has previously reported that in February 2015, the photographs of 21 women, mainly journalists, activists, and political figures, were circulated on social media webpages. The photographs included inflammatory captions for their alleged support of Operation Dignity and for wearing "un-Islamic" attire. Several of the women featured have reported receiving persistent threats.<sup>267</sup>

244. Journalists also continue to face the threat of legal proceedings, including criminal prosecution for defamation and libel, for their writings on political matters. On 17 August 2014, Amara al-Khatabi, editor of the daily newspaper Al-Ummah, was sentenced in absentia to five years in prison, fined, and banned from practicing journalism in relation to a conviction for criminal libel. He was reportedly notified of this sentence on 17 November 2014. He had been arrested on 19 December 2012, and charged in January 2013 with insulting authorities<sup>268</sup> after the newspaper published a list of judges and prosecutors alleged to be corrupt. The article had accused the persons listed of illicit earnings, accepting bribes, and of loyalty to Qadhafi.

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<sup>265</sup> Ibid.

<sup>266</sup> Reporters Without Borders, "Unable to work, journalists flee Libya because of violence", Press Release, 7 April 2015.

<sup>267</sup> UNSMIL/OHCHR, *Report on the Human Rights Situation in Libya*, 16 November 2015, p. 29.

<sup>268</sup> Human Rights Watch, *War on the Media, Journalists under Attack in Libya*, 9 February 2015; Reporters Without Borders, "Court sentences editor in absentia for five years in prison", Press Release, 28 November 2014.



245. In addition to increased threats to journalists owing to the conflict, OHCHR also notes steps being taken by authorities to further curtail freedom of the press. On 22 January 2014, the General National Congress passed Decree No. 5 of 2014 banning satellite television stations critical of the Government and of the 2011 uprising.<sup>269</sup> Law No. 5 of 2014 amended article 195 of the Penal Code to stipulate that anyone committing an act “that prejudices the 17 February Revolution” shall be punished by imprisonment.<sup>270</sup> Articles 290 and 291 of the Penal Code stipulate punishments, including imprisonment, for perceived insults to or attacks on religion. Such broad and vague language could be used to arbitrarily curtail freedom of expression and opinion, which is contrary to international human rights law.

## **I. Migrants<sup>271</sup>**

### **1. Introduction**

246. Whether present in Libya as migrant workers or for reasons of transit through Libya (e.g. seeking asylum in a third country after fleeing from persecution in their home States), migrants in Libya are particularly at risk and are subject to exploitation and abuse by authorities, armed groups, and private actors such as smugglers. OHCHR has received reports of migrants being subjected to prolonged arbitrary detention or other deprivation of liberty, torture and other ill-treatment, forced labour or labour exploitation, trafficking, and sexual abuse. Sub-Saharan Africans are especially vulnerable to abuse as a result of racial discrimination. Migrant women are also at particular risk of sexual violence.

247. In the course of its investigation, OHCHR staff interviewed some 20 migrants who had been subjected to human rights violations or abuses in Libya, and supplemented these primary accounts with information from a range of organizations working directly in the field.

### **2. Legal framework**

248. Libya is a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Libya is also a party to key human rights treaties such as ICCPR and ICESCR which apply in general to all persons within the territory and under the jurisdiction of the State, regardless of nationality. Libya is not a signatory to the 1951 Convention relating to the Status of Refugees, nor to its 1967 Protocol. Libya is a party to the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa.

### **3. Findings**

#### **(a) Context**

249. Libya has long had a considerable population of migrant workers. It has been a transit country on the migration routes from east and west Africa to Europe. As of July 2014, UNHCR in Libya had registered more than 36,000 asylum-seekers and refugees,

<sup>269</sup> Resolution No. (5) of 2014 on electing the new Interim President of the State.

<sup>270</sup> Law No. (5) of 2014 amending Article 195 of the Penal Code.

<sup>271</sup> In the absence of a universal legal definition, OHCHR has defined an “international migrant” as “any person who is outside a State of which he or she is a citizen or national, or, in the case of a stateless person, his or her State of birth or habitual residence”. See OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, 2014, p. 4.

including Syrians, Palestinians, Iraqis and Eritreans.<sup>272</sup> The number of migrants arriving to Europe from Libya has substantially increased in recent years. UNHCR estimates that approximately 130,000 individuals arrived in Italy from Libya between January and October 2014.<sup>273</sup> From January to mid-October 2015, more than 140,000 migrants arrived in Italy by sea. The majority departed from Libya.<sup>274</sup>

250. Migrants travelling by land pass through various routes through Libya. Individuals from Sudan, Ethiopia, Eritrea, and Somalia, often travel the east African route, passing through the city of Al-Kufra. Individuals from west Africa often travel through Niger, while those from western Sudan and Cameroon often travel from Ndjamena, passing through Sabha. Individuals from Syria often travel via Algeria towards the northwest coast of Libya.

251. One challenge in ensuring appropriate treatment of refugees in Libya is the absence of a legal and policy framework. Libyan law criminalizes any foreign national being present in Libya without lawful authority. However, there are no clear procedures for those coming into Libya irregularly to regularize their status, obtain identification documents or ensure their protection as temporary residents,<sup>275</sup> leaving many potentially subject to detention or deportation. For those seeking asylum, there is no law dealing with the processing of refugee claims or to guarantee their rights in Libya. Reference to “asylum” in domestic legislation appears in the Constitutional Declaration of the National Transitional Council from 2011.<sup>276</sup> However, this has not yet been transposed into legislation.<sup>277</sup>

**(b) Lack of effective control over detention facilities**

252. A large number of migrants are currently detained in Libya. According to UNHCR and IOM, as of 4 May 2015, there were at least 3,245 migrants detained in facilities in western Libya alone, including 329 women and 34 children.<sup>278</sup>

253. While detention centres for migrants existed prior to the armed conflict in 2011, and were managed by the Ministry of the Interior, the Department for Combatting Illegal Migrants was established as a separate unit within the Ministry in 2012.<sup>279</sup> Although official confirmation has not been possible to obtain, a number of credible sources referred to administration by the Department for Combatting Illegal Migrants of some 19 facilities across the country, with a particular concentration in the west. International organizations and monitoring groups have faced challenges in accessing the centres as a result of the security situation, such that OHCHR was unable to confirm which facilities remain operational and which are closed. Since its establishment, the control of the Department for

<sup>272</sup> UNHCR, *UNHCR position on returns to Libya – update 1*, October 2015, p. 11. This paper notes that a more recent figure was not available owing to the lack of access of UNHCR to Libya and verification.

<sup>273</sup> UNHCR, *UNHCR position on returns to Libya*, November 2014, p. 4.

<sup>274</sup> UNHCR, *UNHCR position on returns to Libya – update 1*, October 2015, p. 13.

<sup>275</sup> MHub, IOM, *Detained Youth: the Fate of Young Migrants, Asylum Seekers and Refugees in Libya Today*, July 2015, p. 41.

<sup>276</sup> *Ibid.*, p. 45.

<sup>277</sup> UNHCR, *UNHCR position on returns to Libya – update 1*, October 2015, p. 11.

<sup>278</sup> UNSMIL, *The situation of migrants in transit through Libya en route to Europe*, Briefing Note, May 2015. Under international human rights law the detention of children is to be used only as a measure of last resort and for the shortest appropriate period of time: CRC, art. 37(b).

<sup>279</sup> Global Detention Project, *Libya Detention Profile*, Feb 2015; also for terms of reference of the Department for Combatting Illegal Migrants see MHub, IOM, *Detained Youth: the Fate of Young Migrants, Asylum Seekers and Refugees in Libya Today*, July 2015, p. 78.

Combatting Illegal Migrants over the detention facilities has itself been interrupted. In 2012, officials acknowledged to Amnesty International that “they had little involvement in the arrest and detention of migrants and that the Ministry of Interior has oversight over detention centres for migrants, but said that since the [2011] conflict the Ministry had had no capacity or resources to continue doing so”.<sup>280</sup>

254. In 2013, the Department for Combatting Illegal Migrants regained control of some of the detention facilities that had been taken over by armed groups in 2011.<sup>281</sup> Yet in 2014, a number of the facilities were closed, in particular in southern Libya, owing to the outbreak of violence and the lack of funding from the central government.<sup>282</sup> It was reported to OHCHR that many detention facilities of the Department are guarded by armed groups.

255. In parallel to the facilities of the Department for Combatting Illegal Migrants, are a number of unofficial or ad hoc detention facilities, controlled by various armed groups. Although OHCHR was informed of two additional unofficial detention facilities for migrants, the precise number is uncertain as these facilities are not declared.

256. In the course of this investigation, OHCHR was not been able to access migrant detention facilities inside Libya. Nor was it considered possible to speak with migrants who remained in Libya given their vulnerability. The focus has thus been on collecting first-hand accounts from individuals now residing outside Libya. Those individuals have shared their experiences in particular about their detention and treatment in the vicinity of Tripoli in the west, and Sabha in the south, during 2014 and 2015. The findings of OHCHR are consistent with the violations and abuses highlighted in previous UNSMIL/OHCHR reports and the reports of other organizations including IOM.<sup>283</sup>

257. In many cases, particularly involving non-Arabic speaking individuals, those who had been detained did not know the precise location of the facility in which they had been detained, or whether it was an official facility of the Department for Combatting Illegal Migrants or an informal facility. What appears to be common however is that migrants are frequently held arbitrarily, without access to due process and fair trial guarantees, and are subject to a wide range of other human rights violations and abuses. The duration of deprivation of liberty is indefinite, and there is a complete lack of judicial or other independent oversight or access to legal assistance.

258. In many cases, release is obtained by either being extorted to pay a “fee”, paying a bribe, or being freed by someone who will pay the appropriate sum. Many persons interviewed who had been detained or otherwise deprived of their liberty stated that they were requested to call family members to ask them to transfer money to secure their

<sup>280</sup> Global Detention Project, *Libya Detention Profile*, 2015.

<sup>281</sup> MHub, IOM, *Detained Youth: the Fate of Young Migrants, Asylum Seekers and Refugees in Libya today*, July 2015, p. 48.

<sup>282</sup> *Ibid.*

<sup>283</sup> In the first half of 2014, UNSMIL/OHCHR teams were able to access various detention centres for migrants in Libya, including in Abu Salim, Al-Zawiya, Al-Tewisha, Al-Hamra, Al-Khoms, Al-Gawiya, Burshada, Gatroun, Surman, Zoo Centre and Zleiten. See *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Libya and on related technical support and capacity-building needs*, A/HRC/28/51, 12 January 2015, p. 8. See also: MHub, IOM, *Detained Youth: the Fate of Young Migrants, Asylum Seekers and Refugees in Libya today*, July 2015.

release. According to a man who was detained in Sabha,<sup>284</sup> “they came to us every day. They would beat those who would not make the call”. After spending a month in detention, he was released once payment had been made. He said others remained in detention for up to nine months, unable to pay the sum requested. OHCHR staff spoke to other former detainees who were forced to undertake unpaid labour in exchange for their release.

259. Migrants held in detention do not have any real access to judicial process or guarantees. Monitoring systems either do not exist or are insufficient. Thus there is no oversight in relation to the uncontrolled discretion of the guards, or the commission of violations and abuses.

**(c) Conditions of detention**

260. Conditions of detention are inadequate, and feature chronic overcrowding, poor sanitation, insufficient access to healthcare, and inadequate quantity and quality of food.<sup>285</sup> A Somali man who had been held for two months in a detention centre near Tripoli in early 2015 said: “the detention room was very dirty, and we slept on the floor without any covers. Everyone was itching and had a skin disease”. An Eritrean man, who was held in Souk Al-Ahad detention facility<sup>286</sup> in May 2015, reported the same conditions: “it was too hot, and we were getting very little food. People were falling sick, but there was no medical care”. An Eritrean man held in an informal detention location in Bani Walid mid-2015 said that individuals were suffocating as a result of the overcrowding and absence of ventilation. The guards eventually broke an opening in the ceiling to provide some air.

261. Reports received by OHCHR suggest that ill-treatment at the hands of detention guards (sometimes amounting to torture) is widespread. A Somali woman recounted the beating she suffered in detention: “They counted us every day. If I could not stand fast enough, they would beat me. My left arm was injured and hurt because of the beating”. Children are also detained and not necessarily separated from adults. A former detainee who at the age of 17 was held in a facility in Sabha in 2014, described the physical abuse he suffered and witnessed:

*“Men in Khaki uniforms came and took us out of our rooms, forced some of us to take our clothes off, and beat us. They would throw water on us when we lose [consciousness]”.*

262. A Nigerian man who was held in a detention centre in Gheryan in early 2014 also described severe ill-treatment of detainees and an unlawful killing at the centre:

*“There was lots of beating. If the guards open the door, and the detainees do not move fast, the guards would flog them with a chain. Once, a man – I think he was Ethiopian – spilled his soup. One of the guards took out a gun and shot him dead in front of me. After this incident, I decided I must escape”.*

<sup>284</sup> It is not known whether the concerned facility was located where the official facility of the Department for Combatting Illegal Migrants is located, or whether it is an informal facility located elsewhere in Sabha.

<sup>285</sup> As to the requirement that persons deprived of their liberty be treated with humanity and with respect for their inherent dignity, see ICCPR, art. 10, which complements the prohibition on torture or cruel, inhuman or degrading treatment or punishment discussed in Section D.

<sup>286</sup> OHCHR received conflicting reports on whether or not this facility is under the control of the Department for Combatting Illegal Migrants.

**(d) Abuses by smugglers**

263. Migrants arriving from the south are particularly vulnerable as they make their way through the desert en route to northern Libya. During this phase of their trip, migrants are often subject to ill-treatment and extortion of payment in exchange for freedom by abusive smugglers, criminals, and armed groups at checkpoints. OHCHR received reports of the use of houses or other places (such as warehouses) by smugglers to hold individuals, depriving them of their liberty.

264. Migrants are treated differently according to race and religion. It was frequently reported that sub-Saharan Africans suffer racism in Libya, and that Christians face ill-treatment on the basis of their religion. Some migrants interviewed said that they were advised by their employer not to disclose their Christian faiths to ensure their safety. Others said that smugglers (as well as criminals and armed groups) harassed them whenever it was known that they were Christians.

265. In preparation for their departure via the sea to Europe, smugglers hold migrants in houses close to the coastal departure points. They are typically kept in these locations for weeks, and are not allowed to leave. Several of those interviewed reported ill-treatment, beatings, and shortages of food while they were held in these houses.

**(e) Labour-related violations**

266. Irregular migrants, who are generally paid a lower wage than average, are absorbed into the black market economy. In the absence of legal protection, even when a payment is agreed upon, employers may decide not to pay migrants after completion of their task, and might turn them over to detention facilities on the basis of their irregular status, to avoid paying the agreed sum.

267. Furthermore, unpaid labour in exchange for release from detention, facilitation of travel, or promises of protection by an employer is common place. A Nigerian man who was held captive in mid-2014 by a commander of an armed group based near Tripoli airport, said the commander had promised to release him once he had completed a task on a construction site. Upon seeing the significant extent of the task, his co-workers helped him escape.

**(f) Sexual violence**

268. OHCHR received credible reports with regard to the commission of sexual violence, including rape, against women in migrant detention facilities by guards, as well as by non-State actors such as smugglers and traffickers more broadly. According to reports received, sexual violence, occurring inside or outside of detention, was inflicted on both women and girls. The investigation is aware of reports, for instance, in relation to allegations of the rape of women in centres in Sabha, 'Ain Zara, and Abu Salim.<sup>287</sup>

**(g) Difficulties in leaving Libya**

269. Many migrants have sought to flee the violence by crossing the borders into neighbouring countries, some of which have intermittently imposed strict restrictions on entry. Others, including women, children, and older persons, have sought to leave by sea routes. The cities of Zuwara, Misrata, Sabratha, Garabulli, and Al-Khoms are points of departure for migrants traveling to Europe by sea.

<sup>287</sup> MHub, IOM, *Detained Youth: the Fate of Young Migrants, Asylum Seekers and Refugees in Libya today*, July 2015, p. 63.

270. Smugglers organise the travel of migrants to Europe by sea. Many journeys involve embarking on dangerously crowded and ill-equipped boats. Seeing the conditions of these boats, some have refused to embark, and were then met with violence by the smugglers. One witness traveling on this route in July 2014 reported that he saw five passengers killed by smugglers when they refused to board.

271. Thousands have died at sea. IOM has reported that 3,770 individuals died in 2015 attempting to cross the Mediterranean.<sup>288</sup> Amongst the causes of death is suffocation owing to conditions on board. A Sudanese woman who took the boat from Zuwara to Italy in August 2015 informed OHCHR that 35 individuals, forced to sit in a room on the lower deck with no ventilation, had perished on her boat.

## **J. Tawerghan community**

### **1. Introduction**

272. In addition to the difficulties internally displaced persons generally encounter in enjoying their rights, groups perceived as having supported the Qadhafi regime during 2011 are at particular ongoing risk. OHCHR has received particular complaints of violations and abuses from members of the Tawergha community whose experience of mass displacement goes back to August 2011. While 2015 has seen considerable progress in relation to the UNSMIL facilitated dialogue between the Misratan and Tawerghan communities to allow for safe returns, OHCHR received reports of significant challenges faced by this group during the 2014 and 2015 reporting period. Among these challenges were the adverse impact on livelihoods, ongoing discrimination on the basis of their identity, and a heightened risk of detention and ill-treatment, especially by Misrata-based armed groups.

### **2. Legal framework**

273. Internally displaced persons are entitled to enjoy all the human rights protected under international law. Similarly, under international humanitarian law, they enjoy the same rights as other persons taking no active part in the hostilities. The Guiding Principles on Internal Displacement bring together and provide clarification of relevant standards. Among the economic, social, cultural, civil, and political rights displaced persons retain are the right to basic humanitarian assistance (such as food, medicine, shelter), the right to life, liberty and security, the right to education, the right to an adequate standard of living, freedom of movement and residence, political rights such as the right to participate in public affairs and the right to participate in economic activities.<sup>289</sup> Property of displaced persons is protected from, for example, pillage, destruction or arbitrary acts of illegal appropriation. Authorities are obliged to establish the conditions and means allowing displaced persons voluntary, dignified and safe return, resettlement or local integration, including providing help in recovering lost property and possessions. When restitution is not possible, the Guiding Principles call for compensation or just reparation.<sup>290</sup>

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<sup>288</sup> IOM, *Mediterranean Sea – Data of Missing Migrants*; available at <http://missingmigrants.iom.int/mediterranean>. Note that in Human Rights Council resolution 28/30 attention was drawn to the increase in the deaths of migrants attempting to cross the Mediterranean Sea: Human Rights Council resolution 28/30, preamble.

<sup>289</sup> Guiding Principles on Internal Displacement, principles 10-23.

<sup>290</sup> *Ibid.*, principles 28-30.

### 3. Findings

274. Following the attack of Misrata-based armed groups on the town of Tawergha in August 2011, the town's population (estimated at 42,600) was displaced to various other locations in Libya or fled abroad. The Commission of Inquiry on Libya documented acts of murder, torture, and cruel treatment of Tawerghans by Misrata-based armed groups. In large part, this was seen as retaliatory action for the community's perceived support for the Qadhafi regime, and grave human rights abuses allegedly committed by some Tawerghans during the armed conflict. It may also have been fuelled by widespread discrimination against dark-skinned Libyans.<sup>291</sup> The town of Tawergha was subsequently destroyed, and Tawerghans have not been able to return to the town since then.<sup>292</sup> Thousands of Tawerghans are said to be scattered across the country, with estimates of some 15,000 in the eastern region, and thousands of others displaced in the western and southern regions. Displaced Tawerghans have been subject to re-displacement owing to ongoing armed fighting across the country. For example, on 17 October 2014, residents of the Gar Younes camp for the displaced were evacuated, re-displacing some 2,500 Tawerghans who sought temporary shelter elsewhere. More than 5,600 Tawerghans have been re-displaced from five camps in Benghazi since mid-October.<sup>293</sup>

275. OHCHR staff were told of the dire humanitarian situation facing many who are displaced. In Benghazi, hundreds of Tawerghans are sheltering in schools, with limited privacy, access to running water, and to sanitation. Similar reports were received about Tawerghans displaced in the south of Libya. Some have fled the country and report ongoing financial hardship.

276. Specific actions are said to have exacerbated their difficulties, such as the alleged confiscation by Misrata-based armed groups of academic documents of Tawerghan students, which has made it difficult for them to enrol into universities elsewhere. Reports have also been received that Tawerghan students are discriminated against by being denied educational grants to study overseas, as well as not receiving financial support for medical care overseas on a basis that is consistent with what is provided for members of other Libyan communities.

277. Access to adequate healthcare was raised by a number of Tawerghans as a matter of particular concern. For those in camps for internally displaced persons, access to health facilities outside of camps is limited owing to security risks, including the possibility of arbitrary arrest discussed below. Fear was also expressed of discriminatory practices by doctors and nurses working in some clinics and hospitals. Those raising concerns about the treatment of Tawerghans have faced reprisals. A Tawerghan man reported that he was fired from his workplace at a Government ministry in connection with his critical views on the practices of Misratans against Tawerghans. He noted that his supervisor was from Misrata.

278. Several Tawerghans reported a heightened risk of being arrested or apprehended and detained on the basis of their identity. Many Tawerghans are held in detention facilities by Misratan armed groups, even if the facilities are nominally under State control.<sup>294</sup> Some of

<sup>291</sup> *Report of the International Commission of Inquiry on Libya*, Advance Unedited Version, A/HRC/19/68, (2 March 2012), Annex 1 (full report), paras. 480, 335, 391, 485-488.

<sup>292</sup> UNSMIL/OHCHR, *Update on Violations of International Human Rights and Humanitarian Law during the Ongoing violence in Libya (Revised)*, p. 6.

<sup>293</sup> *Ibid.*

<sup>294</sup> In relation to formal detention facilities, references were made to Tamina detention facility (nominally under the control of the Ministry of Justice); the Internal Security Prison (Sijn Al-Amn Al-Dakheli, under the control of military intelligence); Sikt Prison (under the control of the military police); Air College prison (under the control of the Ministry of Justice); and Al-Wahda detention

these facilities are formal and public; others are secret. The Tawerghan/Misratan Joint Committee informed UNSMIL that some 1,000 Tawerghans are held in detention facilities run by Misratan armed groups.<sup>295</sup> OHCHR has received reports that detained Tawerghans have faced torture and other forms of ill-treatment, in some cases leading to death. One case documented by OHCHR concerned a 34 year old Tawerghan man from Benghazi who was arrested at a checkpoint erected at the entry of Misrata and taken to Al-Saket Prison. He was held incommunicado for some three months there. In early 2014, his family was informed through an intermediary (who had received a call from an employee at the prison) that the man had been shot dead in prison in the early morning of that day. Later inquiries suggested that the man had been transferred to another prison, and after arrival, was beaten. The victim sought to defend himself, and was shot dead in the resulting affray.

## K. Children

### 1. Introduction

279. The ongoing armed conflict has had a major impact on children's enjoyment of their rights in Libya: including their rights to life, to an adequate standard of living, to the highest attainable standard of health, to education and to protection of the family. Some of the impacts are noted in previous Sections of this Chapter, for example, in relation to indiscriminate attacks causing the death or injury of children, attempted abductions, the bombardment of houses, and the impact of the reduction of health care facilities. This Section describes findings in relation to two particular case-studies: the first is children's access to education and the second is use of children in hostilities. As well as being exposed to the threats posed by armed conflict, children in Libya continue to face significant challenges in enjoying their basic rights, and in some cases are exposed to extreme exploitation and abuse, including sexual violence and forcible recruitment into groups pledging allegiance to ISIL.

### 2. Legal framework

280. Libya is a party to the Convention on the Rights of the Child (CRC), which outlines a range of rights for children, including with respect to their education, health, and development. In the specific context of armed conflict, States are required under CRC to take all feasible measures to ensure protection and care of children who are affected by an armed conflict.<sup>296</sup> Libya has also acceded to the Optional Protocol to CRC on the involvement of children in armed conflict, thus accepting the prohibition on the recruitment or use of children in hostilities under 18 years of age by non-State armed groups and the obligation to take all feasible steps to prevent such recruitment or use in hostilities.<sup>297</sup> States are obliged to take all feasible measures to ensure that members of armed forces aged under 18 do not take a direct part in hostilities.<sup>298</sup> State parties are to ensure that persons under 18

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facility (under the control of the Supreme Security Committee affiliated with Libya Dawn). All are reportedly located in Misrata. OHCHR further received information that both Al-Wahda and Internal Security Prisons are no longer operating. In terms of secret detention facilities, references were made to three detention facilities; one controlled by Awlad Eissa Brigade, the second a pasta factory which was turned into a secret detention facility; and the third a residential building turned into a detention facility. All are reportedly located in Misrata, and controlled by Misrata-based armed groups.

<sup>295</sup> UNSMIL, Communication of 1 December 2015.

<sup>296</sup> CRC, art. 38 (4).

<sup>297</sup> OP-CRC-AC, arts. 4(1)-(2).

<sup>298</sup> OP-CRC-AC, art. 1.



years are not compulsorily recruited into their armed forces, and by virtue of its binding declaration deposited at the time of accession, Libya has recognized 18 years as the minimum age for voluntary recruitment into its armed forces. Under international humanitarian law, all parties to a non-international armed conflict are obliged to provide children with the care and aid they require.<sup>299</sup> International criminal law recognises as a war crime conscripting or enlisting children under the age of 15 years of age into armed forces or groups or using them to participate actively in hostilities.<sup>300</sup>

### 3. Findings

#### (a) Access to education

281. Children's access to education has been severely compromised by the conflict in Libya in 2014 and 2015. Numerous schools have been destroyed or damaged as a result of shelling and airstrikes. In many areas where schools remain standing and are still operating,<sup>301</sup> parents report that they refrain from sending their children to school out of fear of injury to them during attacks.

282. In some areas controlled by Ansar al-Sharia (e.g. on the outskirts of Derna), parents described being afraid to send their girls to school out of fear of abductions. Reports from Sirte and other areas controlled by groups pledging allegiance to ISIL, indicate that girls are no longer allowed to go to schools or are only permitted if wearing a full face veil. OHCHR has also received accounts of girls who were attacked and harassed by armed groups on their way to school in Tripoli.

#### (b) Recruitment of children and use in hostilities

283. OHCHR encountered challenges in gathering information on the recruitment and use of children in hostilities given limited access and the limited monitoring currently being undertaken in Libya.<sup>302</sup> Other organizations have reported that children have been recruited into armed groups.<sup>303</sup> In terms of information obtained from first-hand accounts, OHCHR received specific information on the forced recruitment and use of children by groups pledging allegiance to ISIL. OHCHR staff interviewed two boys of 10 and 14 years of age, who had been forcibly taken from their families and transferred to the locations of these groups. The children were forced to receive religious and military training. They underwent military training that lasted from two to four weeks and included how to use and load guns and different weapons and how to aim and shoot at targets using live ammunition which continued until they were able to do so competently. They were also forced to watch videos of beheadings. A grand Imam in the "madrasa" within the camp taught them to recite the Quran and explained to them that "killing infidels is [their] gateway to heaven".

<sup>299</sup> Additional Protocol II, art. 4(3).

<sup>300</sup> Rome Statute, art.8(2)(e)(vii).

<sup>301</sup> As outlined in Section F, schools have also been taken over for other purposes, e.g. for internally displaced person centres, or in some cases occupied by parties to the conflict.

<sup>302</sup> *Children and Armed Conflict: Report of the Secretary-General A/69/926 - S/2015/409*, 20 July 2015, notes that concerns persisted over the association of children with armed militias while noting that there was no information available to them on the recruitment and use of children (p. 20). UNICEF and UNSMIL have been relocated outside of Libya together with other United Nations agencies given the escalation of the armed conflict in Libya.

<sup>303</sup> SCelta, *Save the Children Egypt-Libya-Tunisia Assessment*, Assessment report, 18 June 2015, p. 7, 33-35.

284. According to the accounts received, these children were subjected to sexual abuse. One of them was “attached in service” to a foreign fighter. He was responsible for cleaning the fighter’s clothes and delivering food. He reported that most evenings “I knew what I had to do, I had to take my clothes off and turn around and bend over facing the wall”. The other boy recounted how he was raped by several of the fighters in order to “break me so that I will never say no”, in addition to being repeatedly raped with objects.

285. OHCHR also investigated a case in which a child was used to detonate a bomb in a vehicle by groups pledging allegiance to ISIL during clashes with the Derna Mujahideen Shura Council in June 2015.

286. Rather than resiling from the recruitment of children, groups pledging allegiance to ISIL appear to celebrate the practice. According to a press report on 4 December 2015, the “Islamic State... in... Sirte” celebrated the “graduation” of 85 boys all below the age of 16, describing them as the “Khilapha [Caliphate] Cubs”.<sup>304</sup> They were trained in conducting suicide attacks, using weapons, and booby-trapping. During the event, the young boys were dressed in army uniforms and were paraded. The event was announced through the local radio station and residents of Sirte were invited to attend. This incident appears to follow the example set by ISIL elsewhere, as evidenced in the publications of ISIL promoting the recruitment of children into the ranks of ISIL. In the March 2015 *DABIQ* magazine, for instance, the group had a special article featuring child soldiers in Iraq and Syria calling them “The Lion Cubs of the Khilapha”.<sup>305</sup>

## VI. Overall findings

287. On the basis of the information collected and analysed, there are reasonable grounds to conclude that there were widespread violations of international human rights law and international humanitarian law, and abuses of human rights in Libya throughout 2014 and 2015. These acts, which were committed by all parties to the conflict in Libya include those set out below.

### 1. Unlawful killings and executions

288. Most major groupings of armed actors have carried out unlawful killings, in particular executions of individuals taken captive or detained, and the assassination of those voicing dissent.

289. Forces aligned with Operation Dignity have executed some individuals alleged to be members or supporters of Ansar al-Sharia after their arrest or capture. Some fighters who surrendered have faced a similar fate. OHCHR received reports of similar executions carried by armed groups affiliated with Libya Dawn, but could not verify them owing to the limitations to access and information.

290. The assassination of perceived opponents to those exercising power have been frequent, particularly in Benghazi. In most cases the assassinations were attributed by interviewees to Ansar al-Sharia. Those targeted included political figures, human rights defenders, journalists, judicial actors, religious leaders, and alleged Qadhafi supporters

<sup>304</sup> See Saber Ayyub, “IS to graduate 85 suicide ‘Caliphate Cubs’ in Sirte tomorrow”, *Libya Herald*, 3 December 2015.

<sup>305</sup> See *DABIQ*, ISIL Monthly Magazine. Issue 8. March 2015, pp. 20-21. available at: <https://azelin.files.wordpress.com/2015/03/the-islamic-state-e2809cdc481biq-magazine-8e280b3.pdf>.

291. Groups pledging allegiance to ISIL have engaged in the public execution of civilians and others taking no active part in hostilities, in particular those placed *hors de combat*, mainly in Sirte and Derna, though also in other areas.

292. Unlawful killings have also taken place in the south, including the shooting of individuals defending their homes from raids or appropriation by rival tribal armed groups.

## **2. Attacks on civilians and civilian objects, and other protected persons and objects**

293. Many attacks during the armed conflict in Libya in 2014 and 2015 appear to have been indiscriminate in nature, impacting in particular on highly populated residential areas, including in Benghazi, Tripoli, Warshafana, the Nafusa Mountains area, and in the south of Libya. Sufficient precautions were not taken to protect civilians. Heavy weaponry such as Grad rockets, which are not appropriate for use in highly populated residential areas given that they cannot be targeted with sufficient precision, have been employed. OHCHR was unable to determine the parties responsible for many specific attacks owing to the limitations to access and information, and the similarity of the weapons being employed by the parties to the conflict in Libya. OHCHR did however receive reports of indiscriminate attacks in all conflict areas.

294. Attacks by armed groups have been directed against or otherwise had an impact on persons and objects given protection under international humanitarian law, including health facilities, ambulances and medical workers, and humanitarian workers. Humanitarian workers have been abducted or held hostage by armed groups.

295. Armed groups affiliated with Operation Dignity and those affiliated with Libya Dawn have deliberately destroyed and looted private property. Groups pledging allegiance to ISIL have also appropriated and destroyed private property when targeting perceived adversaries.

## **3. Arbitrary detention, abductions and disappearances**

296. Many individuals have been arbitrarily detained in Libya in 2014 and 2015, and held in facilities operated by the State and/or armed groups. Frequently, persons are arrested without charge. Some who were detained were unaware of the reason for their arrest or detention. Detainees are regularly deprived of the rights of due process and other rights, such as contact with their families or legal counsel.

297. Given the limited functioning of courts, there is little recourse to judicial review to challenge the legality of detentions. Even when recourse is available, court orders for release have not always been effective.

298. Individuals have been abducted for potential ransom or prisoner exchange. State forces and armed groups have also been responsible for a number of disappearances, including enforced disappearances, following the launch of Operation Dignity and Libya Dawn.

## **4. Torture and other ill-treatment**

299. Numerous alleged cases of torture and other forms of cruel, inhuman or degrading treatment have taken place, particularly of individuals in detention facilities controlled by the State and/or armed groups. Detainees have suffered severe beatings with plastic pipes or electrical cables, prolonged suspension in stress positions, solitary confinement, being held incommunicado, and electrocution. Some of the facilities where torture has been reported, including where torture has resulted in the death of detainees, have been listed in Chapter V, Section D on torture and other ill-treatment. Many detainees were also deprived of adequate food or water, and were subjected to threats of a sexual nature, and extortion of

payment in exchange for freedom. OHCHR also observed a lack of redress for numerous alleged cases of torture and other ill-treatment.

#### **5. Gender-based violence and discrimination against women**

300. There has been a series of attacks by armed groups against women. High-profile women activists promoting equality, social justice, and accountability in Libya have been assassinated. Such assassinations, along with other assaults, harassment and threats appear designed to send a broader message that women should not be vocal in the public sphere. Members of armed groups have committed sexual and gender-based violence, with OHCHR documenting cases against women, girls and boys. Further investigation is warranted on this topic in light of the difficulty in gathering information

301. In several parts of Libya, women's ability to exercise fundamental rights and freedoms such as freedom of movement and the right to work has been restricted by the requirement that they be accompanied by a "male guardian". This was particularly the case in areas controlled by Ansar al-Sharia and groups pledging allegiance to ISIL, but restrictions were also reported by women in Tripoli seeking access to civil services such as obtaining identification documents. Women have faced barriers in accessing justice arising out of their fear of retaliation by armed groups controlling relevant facilities and territories, in particular when reporting crimes committed by these groups.

#### **6. Economic, social and cultural rights**

302. Enjoyment of economic, social and cultural rights, including healthcare, food, and education has declined in Libya in 2014 and 2015. Women, internally displaced persons, children, and migrants have been particularly affected. Access to healthcare has been compromised by the ongoing conflict, including attacks on or impacting health facilities and workers, and the departure of many foreign medical personnel owing to the violence. However, it has also been impacted by the Government's limited investment in infrastructure, and programme delivery budget cuts. Access to education has been significantly curtailed, in particular in the east. Many schools have been either damaged, destroyed, occupied by internally displaced persons, converted into military or detention facilities, or are otherwise dangerous to reach. Children residing in camps for internally displaced persons, as well as children with disabilities have experienced particular difficulties in accessing education. Food prices have increased as supply routes have been interrupted, but access to food has also been affected by the Government decision to reduce or cut food subsidies in November 2015. Access to safe drinking water, sanitation, and hygiene has reduced as a result of the conflict, including on occasion, the deliberate action of armed groups.

#### **7. Administration of justice**

303. Judicial actors, in particular judges and prosecutors, have been subjected to killings, court bomb attacks, assaults, and abductions. Some attacks have been linked to the detention or release of certain individuals, or to thwart the arrest and prosecution of members of armed groups. As a result of such attacks, many courts stopped functioning. Owing to the collapse of the criminal justice system in many parts of Libya, victims of human rights violations and abuses have little recourse to seek protection, or to an effective remedy. Thousands of "conflict-related detainees" remain in detention without having had their cases properly examined to determine if sufficient evidence exists for them to be charged or released.

## **8. Human rights defenders and journalists**

304. Human rights defenders and journalists have been subjected to intimidation and attacks, including assassinations, particularly in Benghazi and Tripoli, and particularly by Ansar al-Sharia and armed groups affiliated with Libya Dawn. These attacks have forced many to go into hiding or to flee, and threaten to silence independent voices. Many attacks have targeted high-profile activists, producing a chilling effect limiting the work of other human rights defenders. The national human rights institution of Libya, the National Council of Civil Liberties and Human Rights, has been subjected to attacks and intimidation, reducing it to a minimal level of functioning. Journalists have also faced harassment and threats, with some subjected to arbitrary detention and attempted assassination. Journalists have also faced criminal prosecution for defamation and libel for their reporting on political matters.

## **9. Migrants**

305. A large number of migrants are currently detained in Libya in facilities operated by the Department for Combatting Illegal Migrants of the Ministry of the Interior, or armed groups, without access to judicial review of their cases. Others are deprived of their liberty by smugglers. The conditions in which persons are detained or deprived of their liberty are inadequate, with chronic overcrowding, poor sanitation and healthcare, insufficient food, and the commission of torture and other forms of ill-treatment. Migrant women have been subjected to sexual and gender-based violence both in and outside of the context of detention facilities. Migrants are subject to being exploited within the labour sector. Those deprived of liberty are subject to extortion of payment in exchange for freedom. Journeys across the Mediterranean often involve dangerously overcrowded and ill-equipped boats, resulting in many deaths. In addition to drowning, migrants have also suffocated as a result of conditions on board.

## **10. Tawerghan community**

306. Members of the Tawerghan community, internally displaced since 2011, have faced particular difficulties in relation to reduced livelihoods, ethnic discrimination, and limited access to education and health services. They have also reported arbitrary detention and ill-treatment, especially by Misrata-based armed groups. Dialogue between Misrata and Tawerghan communities on safe returns and reparations is now taking place.

## **11. Children**

307. Children in Libya have faced significant challenges to the enjoyment of their rights, including education. The issues limiting girls' access to education are particularly pronounced - especially in areas controlled by Ansar al-Sharia and groups pledging allegiance to ISIL. Difficulties have also been encountered in Tripoli. Groups pledging allegiance to ISIL have forcibly recruited and used children in hostilities, and in some cases, subjected them to sexual abuse.

## **12. Concluding observations**

308. Violations and abuses have not been limited to one area of Libya or to one actor; OHCHR documented such acts having also been perpetrated by State actors and armed groups, some of which affiliated with Libya Dawn or Operation Dignity. Other groups may be acting independently. Some actors were named with particular frequency during the investigation as being responsible for violations and abuses, including Operation Dignity forces and armed groups, such as the Al-Sai'qa Brigades of the Libyan National Army, and Awliaa al-Damm; armed groups affiliated with Libya Dawn; Ansar al-Sharia; groups pledging allegiance to ISIL; and tribal armed groups in the south. Allegations were

nonetheless not limited to these particular groups; other non-State actors, such as smugglers, also committed human rights abuses.

309. There appears to be no effective oversight or accountability in relation to the commission of violations and abuses in Libya. No party to the conflict appears to have been exercising its responsibilities to address violations or abuses, nor have State authorities exercised their responsibilities to provide effective remedies to victims, to prevent future violations or abuses, and to ensure non-repetition.

310. Many of the violations and abuses documented may amount to war crimes and other crimes under international law. With regard to war crimes, they included: subjecting persons taking no active part in hostilities to violence to life and person (including murder, mutilation, cruel treatment and torture); the taking of hostages; executions without any prior pronouncement of a judgment by a regularly constituted court; directing attacks against the civilian population; directing attacks against buildings, medical units and transport and personnel bearing the distinct emblems of the Geneva Convention; intentionally directing attacks against humanitarian personnel; pillaging; rape and other forms of sexual violence; the conscription or enlistment of children under the age of 15 years or using them to participate actively in hostilities; and destroying or seizing the property of an adversary.

311. The aforementioned acts should be immediately and fully investigated as part of a comprehensive criminal investigation, and those responsible should be brought to justice.

## **VII. Assessment of the justice sector, and moving towards accountability**

### **1. Assessment of the justice sector**

312. The justice system has been significantly compromised by the security situation and structural weaknesses. Section G on administration of justice in Chapter V of this present report described the specific threats facing judicial actors presently, including assassinations, bomb attacks and threats which have caused courts in many areas to cease functioning. Ending these threats and ensuring an adequate protection system is in place is of the utmost importance. Equally, there is a need to continue the process of reforming and strengthening the justice system. Both political will and significant national and international resources will be required to support this work.

313. To understand the pre-existing challenges within the justice sector, it is necessary to consider the politicisation and weakening of the system which occurred during the Qadhafi era. During that time, regular courts were often bypassed in favour of special courts and military court systems, in particular for political crimes. Special courts included the People's Court which was described by United Nations treaty bodies and many commentators as failing even to comply with minimum fair trial standards.<sup>306</sup> The later State Security Court was similarly regarded as repressive.<sup>307</sup> After the abolition of the People's Court, those who worked within it were reassigned to the ordinary court system, "carrying with them a legacy of arbitrary procedural practices".<sup>308</sup> Other judges were said to

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<sup>306</sup> Concluding Observations of the Human Rights Committee: Libyan Arab Jamahiriya, CCPR/C/LBY/CO/4, 15 November 2007, para. 22.

<sup>307</sup> ILAC, *Rule of Law Assessment Report: Libya 2013*, p. 22.

<sup>308</sup> International Crisis Group, *Trial by Error: Justice in the Post-Qadhafi Libya, Middle East/North Africa Report*, No. 140, 17 April 2013, p. 15.

have been appointed without legal training.<sup>309</sup> Judges, prosecutors, State-appointed lawyers, public defenders and Government lawyers were considered as part of one corps, and so could be transferred between functions, undermining notably the tenure of judges and creating particular challenges for the independence of the judiciary.

314. Executive control of the judiciary was maintained through a High Judicial Council, which was chaired by the Secretariat of Justice (equivalent to the current Ministry of Justice). Corruption was rampant and has continued to be regarded as a significant issue with Libya being ranked 166 out of 175 on Transparency International's Corruption Perception Index for 2014.<sup>310</sup> During the Qadhafi era, the private legal profession was abolished and replaced with "People's Lawyers" (employed by the Government to provide legal aid).<sup>311</sup> However, the private legal profession continued, and by the later years of the regime the Bar Associations were a powerful force within their communities.

315. From 2012 to 2014, a number of steps were taken to address this legacy. The Libyan authorities removed the Ministry of Justice from the High Judicial Council to separate the executive and the judiciary. The jurisdiction of military courts over civilians was abolished. The Constitutional Chamber of the Supreme Court formally overturned the law regulating the People's Court. Although the court had itself been abolished in 2005, the court ruling was important to bring about an end to the use of the People's Court's procedures by prosecutors.<sup>312</sup> A vetting process is understood to have commenced in relation to the judges, though was also reported to have progressed slowly.<sup>313</sup> The vetting question was to some extent overtaken by the passage of the law on political and administrative isolation of 2013 (which came into effect in June 2014), which provided for the exclusion of those associated with the Qadhafi regime and anyone who opposed the 2011 revolution from public life for a period of 10 years.<sup>314</sup>

316. Concerted planning and programming was undertaken by Libyan authorities in conjunction with international partners with a view to harnessing additional technical assistance and expertise. The range of international actors included UNSMIL/OHCHR, UNODC, UNDP; bilateral State partners and international non-governmental organizations. UNSMIL was tasked with coordination of international assistance to Libyan authorities and institutions. Particular assistance was provided in relation to the constitution-drafting process; screening of conflict-related detainees; transitional justice measures; legislative reform; training of judges and prosecutors; judicial reform; operation of the prosecution services; building the capacity of the Judicial Police; supporting the private legal profession; providing institutional support to the Ministry of Justice; and improving access to justice more broadly.<sup>315</sup>

<sup>309</sup> Ibid, p. 11.

<sup>310</sup> Transparency International Corruption Perception index, entry on Libya, available at: [www.transparency.org/country/#LBY](http://www.transparency.org/country/#LBY).

<sup>311</sup> ILAC, *Rule of Law Assessment Report: Libya 2013*, p. 23.

<sup>312</sup> International Crisis Group, *Trial by Error: Justice in the Post-Qadhafi Libya, Middle East/North Africa Report*, No. 140, 17 April 2013, p. 2.

<sup>313</sup> As to differing views expressed on whether the vetting carried out post 2011 was effective, see ILAC, *Rule of Law Assessment Report: Libya 2013*, pp. 36-37.

<sup>314</sup> The law on political and administrative isolation of 2013 is understood to have been revoked by the House of Representatives in February 2015, though is understood to be regarded as still operative by the General National Congress.

<sup>315</sup> Updates on technical assistance from UNSMIL/OHCHR can be found in *Technical Assistance for Libya in the field of human rights: Report of the United Nations High Commissioner for Human*

317. Although some progress was made prior to the outbreak of conflict, obstacles were also encountered. A recurring theme in many of the evaluations was the lack of reliable data to gauge current operations and evaluate functioning. In addition, some programmes faced difficulties in garnering sufficient buy-in from concerned actors.<sup>316</sup> Practical safety concerns were also raised as an inhibiting factor. In relation to one UNSMIL training programme, for instance, concerns were expressed by Libyan actors as to the implications of implementing full fair trial procedures, in particular foreseeing that a greater number of acquittals would prompt reprisals by interested armed groups.<sup>317</sup>

318. For any reform of the justice sector to be successful in Libya, support needs to emanate from the highest levels of the political and judicial systems in Libya. With the establishment of the Government of National Accord, it is anticipated that there will be renewed opportunity to review and reinstitute plans for coordinated technical assistance and capacity-building within the justice sector. Areas in which this technical assistance might be focused are further elaborated upon in this present report including in Annex III, specifically in relation to moving forward with respect to criminal justice accountability for those responsible for violations and abuses committed in 2014 and 2015.

## 2. Moving towards accountability

319. The sheer number of allegations of gross violations of international human rights law, serious violations of international humanitarian law, and serious abuses of human rights, and the fact that they have been committed by so many different parties in disparate geographical areas present enormous challenges, in particular in overcoming the prevailing impunity in Libya and securing accountability. To date, there have been very few investigations and no prosecutions of leaders or members of armed groups or armed forces relating to the events of 2014 and 2015.

320. International efforts are focused on the establishment of the Government of National Accord and bringing an end to the conflict. Justice will be vital to bring about a sustainable peace in Libya. In the Libyan Political Agreement, commitments have been made to end impunity. Strong leadership and support will be required to combat the significant resistance that might be anticipated to realising this commitment, in particular from influential groups or individuals implicated in the violations and abuses.

321. Criminal justice accountability in Libya is currently being pursued through both the International Criminal Court and the Libyan justice system.<sup>318</sup>

### (a) International Criminal Court

322. In its resolution 1970 (2011), the Security Council referred the situation of Libya to the Prosecutor of the International Criminal Court. On 25 July 2014, in the context of the worsening situation in Libya, the Prosecutor issued a statement that she “[would] not hesitate to investigate and prosecute those who commit crimes under the Court’s

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*Rights*, A/HRC/25/42, 13 January 2014; and *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Libya and on related technical support and capacity-building needs*, A/HRC/28/51, 12 January 2015.

<sup>316</sup> According to an interview with UNSMIL staff member.

<sup>317</sup> *Ibid.*

<sup>318</sup> Additional options for accountability exist outside either Libyan or international mechanisms: namely through the exercise of universal jurisdiction by other States. This would, however, depend on other States having the requisite legal frameworks in place to allow for such prosecutions, and for such States to have or gain custody over accused persons.



jurisdiction in Libya, irrespective of their official status or affiliation”.<sup>319</sup> In 2015, the Prosecutor has twice affirmed the belief that the crimes committed in 2014 and 2015 fall within the purview of the referral, including crimes committed by groups “purportedly affiliated with or representing the self-proclaimed” ISIL.<sup>320</sup> The Prosecutor also publicly stated, however, that capacity to pursue these cases has been hampered by resource constraints.<sup>321</sup> The High Commissioner supports resourcing the Court further to enable it to expand its investigations into events since 2014 as vital for breaking the cycle of impunity in Libya. It is however clear that the Court is not designed to address, and will never be able to pursue, such a large number of cases relating to crimes under international law arising in Libya.

**(b) Libyan justice system**

323. While the Libyan Government bears the primary responsibility for investigating and prosecuting those responsible for serious violations and abuses it would appear that the Libyan justice system does not at present have the means or capacity to conduct prompt, independent and credible investigations or to prosecute those responsible in a manner consistent with human rights.

324. At the very practical level, as this present report has noted, attacks on the justice system have severely limited its operation.<sup>322</sup> In some areas, particularly in the eastern and central regions, courts have completely stopped operating. Criminal justice proceedings have been particularly impacted as they attract more risk in terms of reprisal attacks.

325. The safety of judicial actors including judges, prosecutors, defence counsel, victims, and witnesses, cannot at present be assured. Even prior to the outbreak of hostilities in 2014, prosecutors and judges faced attacks, particularly where they ordered the release of former regime members or the arrest of members of armed groups. Attacks on judicial actors have intensified, including bomb attacks, assassinations, and disappearances. Cases relating to the events in 2014 and 2015 could be expected to involve significant security risks. Victims and witnesses remain vulnerable to retaliation.

326. A number of gross violations of international human rights law, serious violations of international humanitarian law, and serious abuses of human rights identified in this present report are acts which, if established in a court of law, may amount to crimes under international law. Such crimes should be tried as crimes under international law to demonstrate the gravity of the offences, to ensure appropriate prosecutions and sentencing, and to duly acknowledge the harm caused to the victims. Libya’s domestic legal framework is currently inadequate to deal with crimes under international law. Although there have been movements to augment the law, for instance, by criminalising torture and enforced

<sup>319</sup> UN News Service, *Troubled by escalating violence in Libya, ICC Prosecutor urges halt to fighting*, 25 July 2014, available at: <http://www.refworld.org/docid/53d640d44.html>

<sup>320</sup> Ninth Report of the Prosecutor of the International Criminal Court to the Security Council pursuant to Council resolution 1970 (2011), 12 May 2015, para. 19; reaffirmed in the Tenth Report of the Prosecutor of the International Criminal Court to the Security Council pursuant to Council resolution 1970 (2011), 26 October 2015, para. 22.

<sup>321</sup> Tenth Report of the Prosecutor of the International Criminal Court to the Security Council pursuant to Council resolution 1970 (2011), 16 October 2015, para. 43.

<sup>322</sup> See Chapter V, Section G on administration of justice.

disappearance,<sup>323</sup> and domestic criminal offences implicated in the violations, there is currently no coverage of crimes such as war crimes and crimes against humanity.

327. In some quarters, there is a lack of confidence in the ability of the justice system to render impartial justice, particularly in “political cases” relating to the conflict. A number of justice system officials bravely continue to carry out their functions. However, some are viewed as having compromised their independence by succumbing to pressure from armed groups.<sup>324</sup> Others have been accused of being politicised following recent events, such as the appointment of judges by the General National Congress whose own authority is disputed. Even if officials are not actually actively aligned with specific security or political interests, there is an issue of perception of bias in some quarters. Furthermore, in relation to the case of former Qadhafi regime senior officials, serious concerns were raised about the capacity of the justice system to provide for fair trials which respect human rights standards.<sup>325</sup>

328. Specific action by Libyan authorities together with targeted international assistance will be vital to overcome the aforementioned issues. Priority actions needed include addressing the current security threats to the administration of justice. It is vital for effective action to be taken with respect to the threat posed by armed groups in particular. In addition to bringing an end to hostilities in general, specific risk assessments and adequate security measures should be developed and implemented to ensure that judicial actors can exercise their functions in safety and without being subject to threats or coercion. Fundamental reform of the Judicial Police is required to ensure it can provide effective and impartial protection for judicial actors and court facilities. Such reform would include comprehensive vetting of Judicial Police personnel (particularly those integrated from armed groups) in accordance with standards of due process, and ensuring that the Judicial Police is provided with sufficient equipment and training. A robust system of victim and witness protection is also needed to allow individuals to come forward with information and engage in the proceedings.

329. Continued reform of the Penal Code and the Code of Criminal Procedure will be of particular importance to ensure that crimes under international law are criminalised under domestic law, and that there is provision for the differing modes of criminal responsibility recognised in international law (including command and superior responsibility). Reform is required for trial procedures to comply with international human rights standards. Relevant personnel could be further trained in the investigation, prosecution and adjudication of crimes under international law. Given the large number of cases arising in 2014 and 2015, effective case selection and management systems should be established.

330. Trust in the ability of the Libyan justice system to render justice must be re-established. Members of the judiciary and other judicial actors should undergo a further process of vetting in accordance with standards of due process, to remove and prevent the recruitment of individuals about whom there are reasonable grounds to believe that they have been involved in human rights violations or abuses, or are responsible for corruption, bias, or incompetence. More generally, further measures should be taken to ensure the independence of the judiciary and of investigations; to build the capacity of justice system

<sup>323</sup> UNSMIL/OHCHR, *Overview of Violations of International Human Rights and Humanitarian Law During the Ongoing Violence in Libya*, 4 September 2014, p. 11.

<sup>324</sup> Interview, former Minister of Justice.

<sup>325</sup> See UNSMIL, *Concerns about Verdict in Trial of Gaddafi-era Officials*, 28 July available at: <https://unsmil.unmissions.org/Default.aspx?ctl=Details&tabid=3543&mid=6187&ItemID=2099165>. See also press briefing issued by OHCHR available at: [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16271&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16271&LangID=E)

actors (including the Ministry of Justice); to strengthen the provision of legal services; to increase public access to laws; and to monitor performance. Annex III elaborates upon these and further possible measures. A coordinated and comprehensive plan of action addressing the justice sector should to be devised and implemented accordingly.

331. In order to maximise the quality and efficiency of proceedings and of technical assistance programmes in this area, the Government might consider creating a specialised judicial structure within Libyan courts to focus on crimes under international law. The structure would need to be supported by specifically appointed judges, prosecutors, investigators and lawyers. Its design would have to take into account the security concerns for those involved in the trials, including with regard to deciding on its location. Consideration could also be given to initially embedding foreign advisers or experts to work in tandem with Libyan officials.

332. Significant discussion would need to take place to further such efforts. The High Commissioner therefore supports the convening of a high-level meeting to bring together Libyan actors, international partners, and experts to discuss initiatives to foster accountability for the gross violations of international human rights law, serious violations of international humanitarian law, and serious abuses of human rights, including those that may amount to crimes under international law, that have been committed in Libya.

333. In addition to criminal investigations and prosecutions, steps should be taken to reinvigorate other transitional justice mechanisms, including truth-seeking, reparations, and institutional reform. Measures taken since 2011 (including the law on transitional justice, the law on political and administrative isolation and recent amnesty laws) should be reviewed to ensure compliance with international human rights standards and appropriate coverage of the events of 2014 and 2015.

**(c) Sanctions**

334. The High Commissioner also supports the listing of individuals responsible for planning, directing, or committing acts that violate applicable international human rights law or international humanitarian law, or acts that constitute human rights abuses, under the sanctions regime of the Security Council,<sup>326</sup> while urging that sanctions imposed be accompanied by rigorous procedural safeguards to guarantee minimum standards of due process.

## **VIII. Update on technical assistance**

335. A report of the High Commissioner to the Human Rights Council on the human rights situation and technical assistance and capacity-building needs was issued in January 2015.<sup>327</sup> The report provided an overview of the human rights situation and of technical assistance provided to support key institutions and civil society actors in Libya during the course of 2014. This Chapter of the present report contains a further update of key activities carried out since then, during which time OHCHR has continued to provide support to the

<sup>326</sup> See Security Council resolution 2213 (2015), para. 11.

<sup>327</sup> *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Libya and on related technical support and capacity-building needs*, A/HRC/28/51, 12 January 2015.

human rights mandate of UNSMIL. This update has been prepared with the assistance of the Human Rights, Transitional Justice and Rule of Law Division of UNSMIL.<sup>328</sup>

336. Despite having the scope of its activities curtailed by its relocation from Libya to Tunisia, and the increasingly entrenched political divisions affecting partner institutions, UNSMIL/OHCHR has remained in close contact with national counterparts, advising them on international human rights and rule of law standards.

337. Technical assistance was provided during the negotiations of the Libyan Political Agreement. As a result, a number of human rights provisions were incorporated in the Agreement, including commitments to end impunity; to remove all detainees from the control of armed groups and to ensure their judicial screening; to facilitate the voluntary return of the displaced to their homes in dignity and safety; to address the issue of the missing; and to resume the transitional justice process.

338. UNSMIL/OHCHR continued to support the Constitution Drafting Assembly with expert advice. In addition to giving written feedback on ensuring greater compliance of the draft Constitution with international human rights law and standards, UNSMIL/OHCHR provided advice in meetings with key members of the Assembly, including the heads of the committees on Rights and Liberties, Independent Authorities, and the Judiciary. Workshops were facilitated, including a workshop in Geneva from 23 to 25 February 2015 for members of the Assembly to discuss the inclusion of human rights principles in the Libyan Constitution. The workshop was organised by UNSMIL/OHCHR with the support of the Government of Switzerland and included a detailed review of the draft chapter on rights and liberties, as well as thematic discussions on related topics such as rights of minorities and indigenous persons, freedom of expression and opinion, women's rights, rights of migrants, and the right to life.

339. Close contact has continued with representatives of the judiciary and the prison sector, in order to assess the current needs and plan capacity-building support. In November 2015, UNSMIL/OHCHR organized a meeting in Tunis for Libyan directors of rehabilitation and correction institutions (prison managers) in Tunis. 14 prison managers from different parts of Libya participated, including the manager of the women's prison. Participants adopted a new Code of Ethics and Conduct during the meeting.

340. Despite the closure of some offices of NCCLHR, UNSMIL/OHCHR continued to work on strengthening its capacity with respect to human rights monitoring and reporting. In February 2015, UNSMIL/OHCHR facilitated sessions on human rights monitoring and documentation during a two-day workshop organized by the American Bar Association Rule of Law Initiative targeting 15 participants including members of NCCLHR, the Libyan Defenders Network, and several academics. In May 2015, UNSMIL/OHCHR also contributed to a three-day training workshop organized by the Cairo Institute for Human Rights Studies, which targeted Libyan civil society organizations. Around 20 Libyan human rights defenders participated with representation of NGOs, community based organizations, internally displaced person communities, journalists, and the NCCLHR. The workshop aimed to introduce the mandate of the investigation and train civil society organizations on effective tools in human rights monitoring, documentation and reporting. In July 2015, UNSMIL/OHCHR contributed to a three-day training workshop organized by

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<sup>328</sup> UNSMIL retains a coordinating role in relation to international assistance. OHCHR continues to provide support to the human rights mandate of UNSMIL, and the Director of the Human Rights, Transitional Justice and Rule of Law Division of UNSMIL represents the High Commissioner in Libya.

UNDP Libya for 20 civil society activists working in the fields of development, women's rights, humanitarian aid, child protection, and the rights of persons living with disabilities.

341. In order to increase the role of civil society in peace-building, on 19 to 20 August 2015, UNSMIL convened a meeting of Libyan civil society organizations and activists to learn of comparative practices, with inputs provided in relation to the experiences of Northern Ireland, Tunisia and Yemen. The meeting adopted a set of recommendations including on the establishment of timelines to operationalize the Political Agreement and regarding mechanisms for the independent monitoring of its implementation with the effective participation of civil society. Recommendations also focused on enabling civil society to play an effective role in ongoing peace-building.

342. Technical assistance was also provided to a joint committee formed by the two municipalities of Misrata and Tawergha aimed at facilitating the safe return of Tawerghans to their homes. Technical assistance focused on issues of reparations, accountability of perpetrators, and the reconstruction of Tawergha. A number of meetings of the Joint Committee have been facilitated by UNSMIL/OHCHR, with the support of the Government of Germany and the Government of Switzerland. This initiative addresses one of the most intractable legacies of the armed conflict in 2011. The process led in December 2015 to the adoption of a road map governing future returns.

343. Once a Government of National Accord is established it is expected that the United Nations will be able to increase its capacity-building activities.

## **IX. Recommendations**

**344. Recognizing the urgent need to bring an end to the widespread human rights violations and abuses being committed in Libya, and to provide for justice and accountability, the High Commissioner appeals to all parties to the conflict promptly to cease hostilities and to support the establishment of a Government of National Accord, to move towards a State based on respect for human rights and the rule of law.**

**345. Accordingly, the High Commissioner recommends that all parties to the conflict:**

**(a) Desist immediately from all violations of international human rights law and international humanitarian law and abuses of human rights, including those amounting to crimes under international law;**

**(b) Declare that such acts will not be tolerated and remove those suspected of such acts from active duty pending investigation.**

**346. The High Commissioner recommends that the Government of Libya:**

**(a) Ensure that all people within the territory of Libya whose rights have been violated are afforded an effective remedy;**

**(b) Ensure prompt, thorough and effective investigations by independent and impartial bodies of allegations of violations and abuses, and that those responsible are held accountable;**

**(c) Address urgently the proliferation of armed groups, including by instituting a programme of disarmament, demobilization and reintegration;**

**(d) Resume State-building activities as soon as feasible, with a particular focus on building inclusive institutions, effective law enforcement agencies, an**

independent and impartial justice sector and a unified armed force operating under civilian control;

(e) Institute a comprehensive vetting programme compliant with standards of due process to remove and prevent the recruitment into State services – including armed forces, law enforcement and judicial services – of individuals about whom there are reasonable grounds to believe they have been involved in violations of international human rights law or international humanitarian law, or abuses of human rights;

(f) Address the situation of conflict-related detainees, including by ensuring that the State is in control of all detention facilities, and that the cases of detainees are appropriately screened with a view to either charge or release them in accordance with international standards;

(g) Ensure the proper treatment of all individuals in detention or deprived of liberty, including by eliminating torture and other ill-treatment, including sexual violence; access must be ensured to medical treatment, sufficient food and water. Detainees should have access to legal counsel and courts to seek legal review, as well as to their families and other relevant individuals. International and national monitoring organizations should be permitted regular, unhindered and without-notice access to all places of detention;

(h) Support the independence of the National Council for Civil Liberties and Human Rights, and ensure its ability to operate safely and in accordance with international standards;

(i) Respect and promote the role of civil society, including by ensuring the protection of human rights defenders and journalists;

(j) Address urgently the situation of migrants to ensure that all individuals, regardless of their status, are able to enjoy their human rights, including by adopting and implementing an effective refugee status determination procedure and implementing alternatives to migration-related detention, and taking effective action to combat human trafficking;

(k) Facilitate the voluntary return of persons who are currently internally displaced, including the Tawerghan community, in a safe and dignified manner;

(l) Ensure respect for the rights of children, including by combating recruitment and the use of children by groups pledging allegiance to ISIL, and redressing gaps in children's enjoyment of rights, including the right to education;

(m) Take effective action to eliminate sexual and gender-based violence, including by implementing a gender-sensitive protection and reporting mechanism and providing rehabilitation services and access to justice for victims;

(n) Review budgetary arrangements that limit funding for programmes relating to economic and social rights (such as food, education and health care), and take immediate steps to remedy damage to facilities and to bolster systems of emergency response, including through coordinated international assistance;

(o) In relation to further criminal justice accountability measures:

(i) Extend full cooperation with and support for the International Criminal Court by assisting its investigations and complying with its rulings;

(ii) Consider the establishment of a specialized judicial structure within Libyan courts to focus specifically on crimes under international law, supported by specifically appointed judges, prosecutors, investigators

and lawyers, with the possibility of at least initially embedding foreign advisers or experts to work in tandem with Libyan officials;

- (p) **With regard to the justice sector:**
- (i) **Urgently ensure protection for judges, prosecutors and other justice system staff and courts;**
  - (ii) **Implement an effective witness protection programme;**
  - (iii) **Prioritize reform of the Penal Code and the Code of Criminal Procedure to encompass violations of international human rights and humanitarian law, including crimes under international law, and ensure that procedures are consistent with international human rights standards;**
  - (iv) **Institute a vetting programme of the judicial police, the judiciary and other justice system actors in accordance with standards of due process to remove and prevent the recruitment of individuals about whom there are reasonable grounds to believe that they have been involved in human rights violations or abuses, or are responsible for corruption, bias or incompetence;**
  - (v) **Devise and implement a plan of action to strengthen the justice sector, including in relation to the priority areas identified in Annex III of this present report;**

(q) **Review transitional justice measures introduced after 2011 with a view to ensuring compliance with international human rights standards, and appropriate coverage of events in 2014 and 2015. Future transitional justice initiatives should be based on genuine, inclusive national consultations, with a particular focus on victim communities.**

347. **The High Commissioner recommends that the international community:**

- (a) **Support the International Criminal Court, particularly by providing the Office of the Prosecutor with the resources necessary to investigate and prosecute the alleged crimes under international law committed in Libya since 2014;**
- (b) **Provide assistance to strengthen the capacity of the justice and related sectors, and provide support to transitional justice mechanisms that are compliant with international standards;**
- (c) **Support the convening of a high-level meeting in consultation with the Libyan authorities to bring together Libyan actors and international partners to discuss initiatives to increase accountability in Libya;**
- (d) **Prioritize support for a programme of demobilization, disarmament and reintegration of members of armed groups, to be conducted in compliance with international human rights standards;**
- (e) **Apply stringent screening procedures to recipients of technical assistance or other persons involved in peacekeeping or military exchanges or training programmes;**
- (f) **Ensure protection of and practical assistance to Libyan human rights defenders (including by facilitating emergency visas, temporary shelter and relocation where necessary), and consider the establishment of a fund to support human rights defenders at risk;**

(g) Ensure respect for the principle of non-refoulement, and provide protection, in accordance with international law, for those with a well-founded fear of persecution.

348. The High Commissioner recommends that the Human Rights Council:

(a) Continue to monitor developments in Libya and, to that end, to consider the establishment of a mandate of independent expert on Libya, to report to the Council on progress made towards accountability and on the situation of human rights;

(b) Encourage relevant special procedure mandate holders to make visits to Libya when feasible;

(c) Share a copy of the present report with the General Assembly and the Security Council for deliberation.

349. The High Commissioner recommends that the Security Council:

(a) Take action with respect to listing individuals responsible for violations or abuses under the current sanctions regime of the Security Council, while ensuring that any sanctions imposed are accompanied by rigorous procedural safeguards that guarantee minimum standards of due process;

(b) Increase the capacity of the Human Rights Division of UNSMIL to carry out monitoring and capacity-building activities, and mandate UNSMIL to undertake appropriate follow-up to the findings and recommendations contained in the present report.

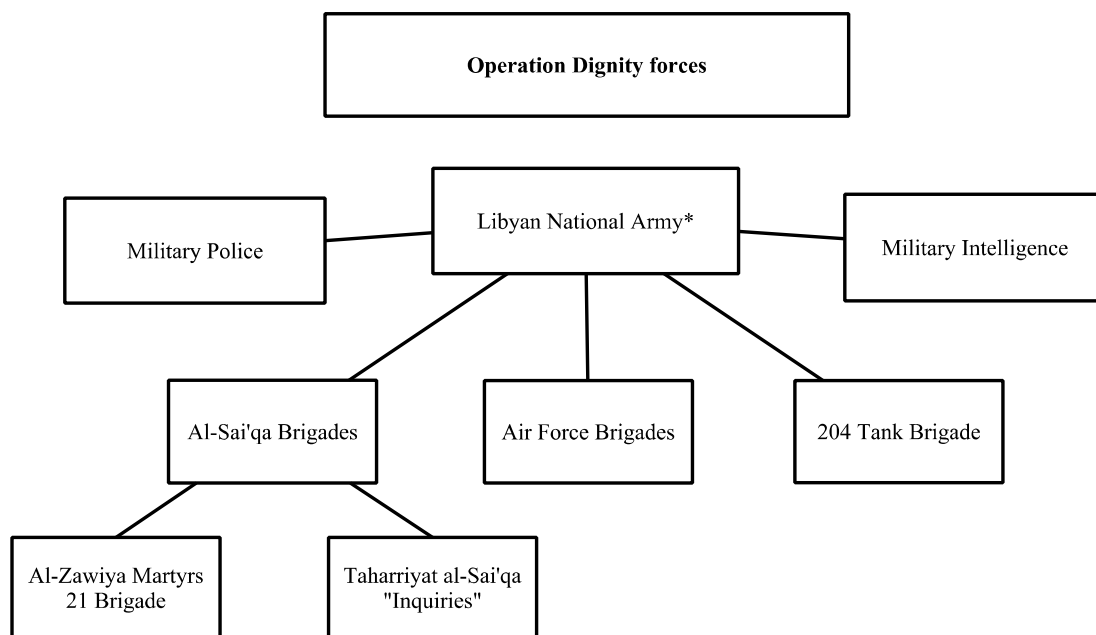
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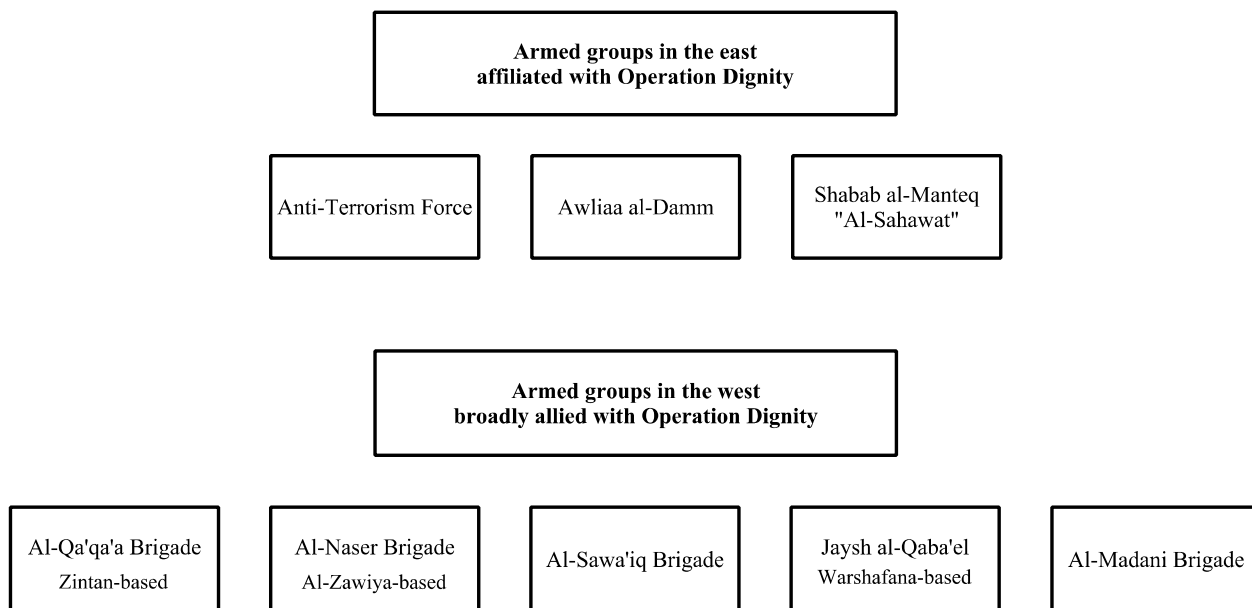


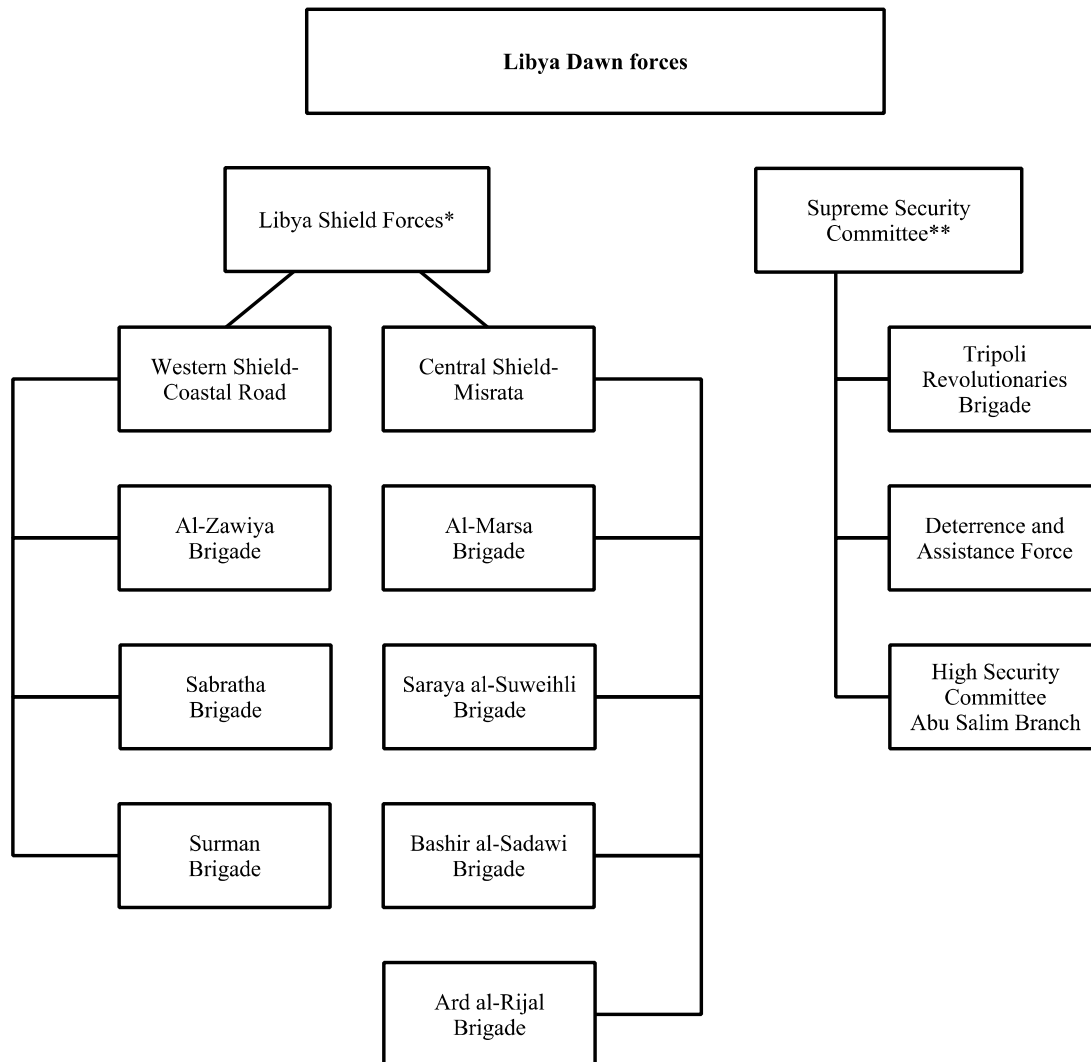
## II. Indicative mapping of security and armed groups associated with Operation Dignity and Libya Dawn as at 2014

This indicative mapping has been prepared based on information received during the investigation. There are a large number of armed actors, particularly armed groups, operating in Libya, and this mapping does not cover all groupings. It instead seeks to cover some of the major groupings associated with Operation Dignity and Libya Dawn highlighted during the investigation. A more detailed description is set out in Chapter IV of the present report. This mapping is also limited to describing the situation as at 2014, given some alliances/allegiances may have since changed. Further investigation would be needed to prepare an updated, detailed, and accurate mapping.



\*Forces under the control of General Khalifa Haftar. In 2015, Khalifa Haftar was appointed General Commander of the Libyan National Army by the House of Representatives.





\* These forces have been integrated into the army under the command of Abd al-Salam al-Obaidy Commander of General Staff, as recognised by the General National Congress.

\*\* These forces have been integrated into the Ministry of the Interior as recognised by the General National Congress.

**Armed groups in the west affiliated with Libya Dawn**

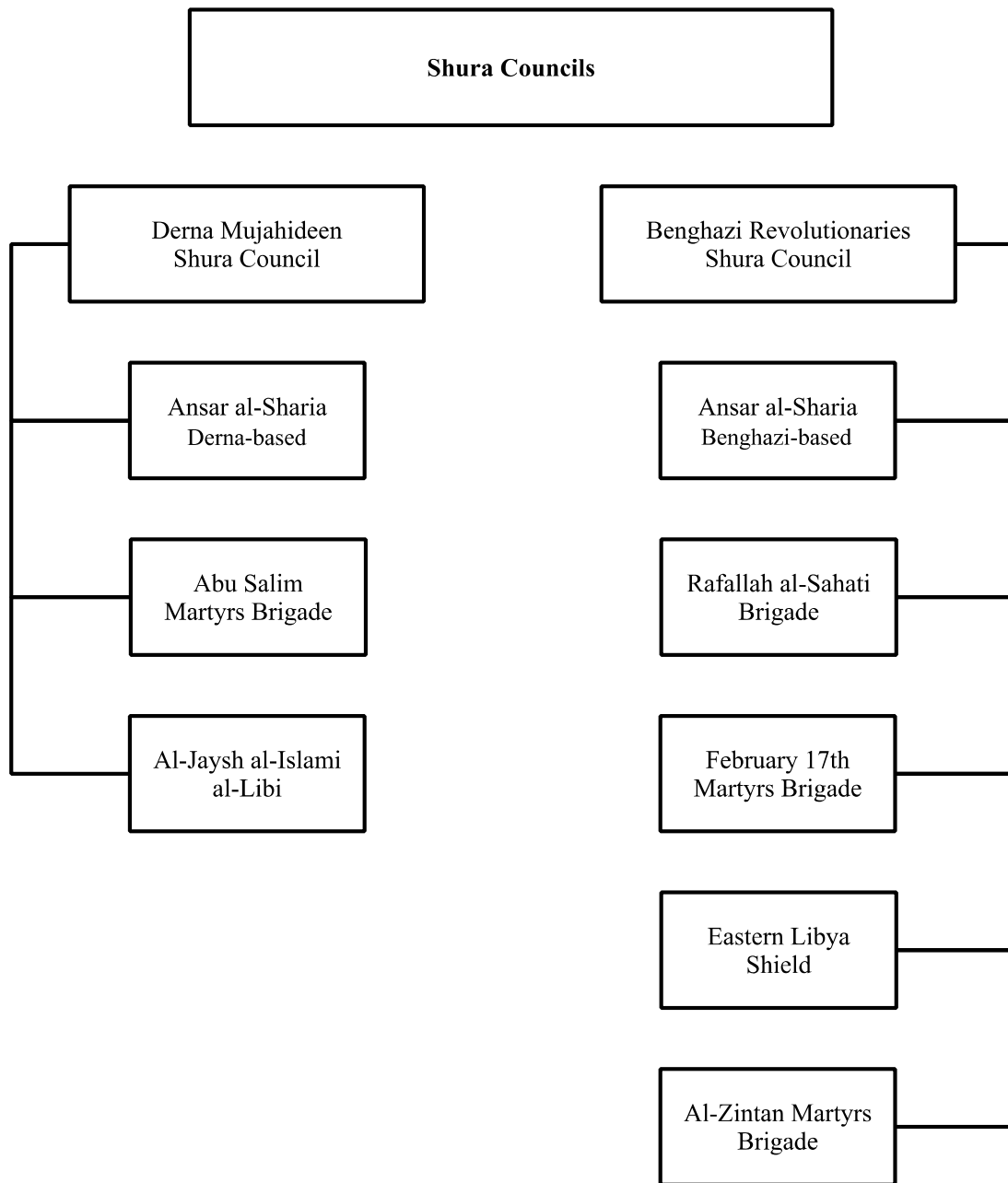
High Security Committee Twelfth Backup Brigade "Bab Tajoura Battalion"

Janzour Knights Brigade Tripoli-based

Martyr Hamza Brigade

National Mobile Force

Naloot Forces



### III. Priority areas for strengthening the justice sector

In order to strengthen the operation of the justice sector, it is recommended that particular attention be focused upon:

**(a) Ensuring a safe environment for all judicial actors**

- Security measures should be implemented to address the protection needs of judges, prosecutors, staff and those attending at court facilities. In order to do this, a comprehensive risk assessment needs to be undertaken and planning commenced accordingly. Crucial to this process will be addressing deficiencies within the Judicial Police, including through the vetting and capacity-building processes described below.

**(b) Ensuring the protection of victims and witnesses**

- A victim and witness protection programme should be implemented which mitigates threats faced by those coming forward with information concerning human rights violations and abuses. The programme should be tailored to ensure it is appropriate for all victims and witnesses, including victims of sexual and gender-based violence.

**(c) Implementing an effective vetting programme of justice system actors**

- A vetting programme of the Judicial Police, the judiciary and other justice system actors should be instituted in accordance with standards of due process to remove and prevent the recruitment of individuals about whom there are reasonable grounds to believe that they have been involved in human rights violations or abuses, or are responsible for corruption, bias, or incompetence. Whilst some vetting of personnel has been undertaken in previous years, OHCHR notes reports that, for example, the vetting of Judicial Police (including integrated armed group members) was not sufficiently comprehensive.

**(d) Addressing the situation of detainees**

- Conflict-related detainees currently under the control of armed groups should be transferred into the custody of the State. Unofficial places of detention should be closed. Detainees' cases should be individually screened by prosecutors, so that individuals are either charged where there is sufficient supporting evidence or released. Judicial review to consider the legality of detention should be made available to detainees.
- A detainee data management system should be established to manage information on persons held in all places of detention. The information should be independently verified, and include details of their detention from the time of arrest to any post-trial detention as appropriate. Information on the whereabouts of detainees should be made available to family members. A full list of places of detention should be made public.

**(e) Undertaking legal review and reform**

- National legislation and the Constitution should be reviewed and reformed as necessary to ensure compliance with international human rights standards, with priority afforded to the Penal Code, the Code of Criminal Procedure and the law on amnesty and other transitional justice-related laws such as the law on political and administrative isolation. In this regard consideration should be given to a moratorium on the use of the death penalty, or to limiting it to the most serious crimes in compliance with international law, with a view to its eventual abolition.
- National legislation should be adopted to ensure the criminalisation of crimes under international law and to ensure provision is made for the differing modes of criminal

responsibility recognised in international law (including command and superior responsibility). No statute of limitations or amnesty should apply to gross human rights violations or serious violations of international humanitarian law, including those amounting to crimes under international law. Any amnesties introduced should not impair victims' right to a remedy, including reparation, or victims' or societies' right to the truth.

- The military justice system should be reviewed and reformed as necessary to eliminate inconsistencies and overlap in jurisdiction with the civil justice system, and to ensure that civilians are not subject to a military justice system.

**(f) Ensuring the independence of the judiciary**

- The principle of judicial independence must not only be enshrined in law, but respected in practice. In this respect, a review should be undertaken to ensure appropriate systems for such matters as the appointment, removal, and conditions of service of judges.

**(g) Ensuring the independence of investigations**

- The office of the Attorney-General should operate through an independent budget, and should be mandated with the authority to undertake all necessary investigations without requiring permissions from other authorities.
- An independent oversight body reporting directly to the Attorney-General should be considered to receive and investigate complaints related to alleged violations by police and prison officials.

**(h) Strengthening the capacity of actors within the justice system**

- Training programmes for judges and prosecutors should be strengthened, through the High Judicial Institute, including in relation to continuing education for sitting judges and prosecutors. Further initiatives should be undertaken with respect to increasing knowledge of the practical application of international human rights law, international humanitarian law and international criminal law. Specialised training should also be provided on the topic of investigating, prosecuting and adjudicating crimes of sexual violence.
- The capacity of the Judicial Police should be strengthened through dedicated training programmes, as well as the provision of equipment.
- The capacity of the prosecution service (the office of the Attorney-General and associated offices) should be strengthened, including with respect to collection and analysis of information, case management, and integration of witness protection mechanisms.
- The capacity of the Ministry of Justice should be strengthened, in particular in the areas of policy development, human rights related review of legislation, administration and human resources. The capacity of the ministry to coordinate international assistance in the justice sector should also be strengthened.
- The forensic capacity of the sector should be increased to ensure it is adequately resourced including for DNA testing, forensic anthropology and archaeology.
- Efforts should be intensified to increase the number of women at all levels within the justice sector.

**(i) Strengthening the provision of legal services**

- Mechanisms and resources to provide for legal aid and/or services through public defenders should be increased.

- The private legal profession in Libya should be supported, including through initiatives to strengthen the Libyan Bar Association.

**(j) Increasing access to laws**

- Libyan laws and regulations should be held in public digital collection in order to improve accessibility. Any such collection could be maintained by the Ministry of Justice.

**(k) Strengthening the evidence base of current performance**

- Systems to collect and monitor data on key performance indicators within the justice sector should be enhanced to improve policy-development, monitoring, and evaluation processes.