

Submission to the Universal Periodic Review of LIBYA
May, 2020

Introduction

1. The May 2014 launch of the so-called Dignity campaign by Gen. Khalifa Hiftar, chief of the armed group known as Libya National Army (LNA) purportedly to 'root out terrorism' in eastern Libya, resulted in [political divisions and armed conflicts](#) that last until today. It has also led to the creation of initially three, currently two, competing entities that are vying for legitimacy in Libya: in the east, the Interim Government is supported by the [elected House of Representatives](#) (HoR) and the LNA, and in the west, the internationally-backed Government of National Accord (GNA), headed by Prime Minister Fayez Al-Serraj and supported by western-based armed groups. The LNA has expanded its control to include parts of the southern region in 2019.
2. The years since the last UPR in May 2015 have been marked with armed conflicts and political divisions. Armed groups, some of them affiliated with the GNA or the Interim Government and operating with near [impunity](#) since the end of the 2011 revolution, carried out [extrajudicial executions](#), held people in [long-term arbitrarily detention](#), and tortured, [forcibly displaced](#) and disappeared people. As a result, the UN estimates that at least [301,000](#) people are currently displaced around Libya.
3. As of [April 2019](#), Hiftar carried out an assault on Tripoli, resulting in protracted conflict in the capital's southern suburbs and some areas in the south of the country. As of September, the violence by all sides resulted in more than 100 civilians killed in Tripoli and surroundings, more than [120,000](#) internally displaced people and further disruptions to public services such as health and water. Armed groups mostly affiliated with the LNA have failed to take all feasible precautions during fighting in residential areas to spare civilians; they are allegedly responsible for attacks on civilian homes and infrastructure, including a migrant detention center, as well as on hospitals and emergency health workers and have allegedly committed unlawful killings. Fighters affiliated with the GNA have also failed to take all feasible precautions to protect civilians and have not removed everyone under their control, including those in custody, from the risk of exposure to armed hostilities. There are also credible allegations that GNA-linked fighters have forced migrants to participate in military-related activities or operations.
4. Ongoing clashes have further entrenched the political impasse and have resulted in a virtual freezing of the UN-brokered political process.
5. The domestic [criminal justice sector is dysfunctional](#) and has partially collapsed. Lawyers, judges and prosecutors have been subjected to attacks and pressure by armed groups as the country grapples with a security vacuum due to the existence of two governments, lack of a central authority, and protracted armed conflicts.
6. The International Criminal Court (ICC), which has jurisdiction over Libya, has issued an arrest warrant for only one person for crimes committed since the ouster of the Libyan strongman Muammar Gaddafi in 2011: LNA special forces commander Mahmoud al-Warfalli, whose current whereabouts and activities are unknown.
7. [Migrants and asylum seekers](#) continued to go to Libya for work or in transit to Europe. While in Libya they face arbitrary and abusive detention by the GNA Interior Ministry and abusive conditions in facilities controlled by smugglers and traffickers, including inhumane living conditions, beatings, forced labor, deprivation of food and water and sexual assault.

8. Libya still lacks a permanent constitution and the authority of the HOR, the sole legislative authority in the country, has been greatly weakened and marginalized due to infighting and political divisions. Despite the finalizing in July 2017 of a draft constitution by the Constitution Drafting Assembly elected in February 2014, the body responsible to organize elections in Libya, High National Elections Commission, failed to hold a referendum on the draft constitution planned for January 2019. This was mostly due to the prevailing insecurity, lack of allocation of a referendum budget by the GNA, and the need for the HOR to adjust the referendum law. No new date has been agreed on.
9. The HOR's role has been incapacitated by the armed conflicts and political divisions, and the existence of the High Council of the State- a consultative body in western Libya linked with the GNA. Due to the withdrawal of members and infighting, the HOR in its current form has often been unable to reach its legally mandated quorum to pass, amend or revoke legislation.
10. There have been no substantive legislative changes from the last UPR in May 2015, despite Libya's pledges to reform some laws and bring them in line with its international obligations. The internationally recognized Government of National Accord has not implemented any of the recommendations that they supported of the previous UPR cycle.
11. This submission focuses on areas that legislators should prioritize, including impunity, the death penalty, corporal punishment, the rights of displaced populations, the rights of migrants, refugees and asylum seekers, the rights of women, and freedom of expression, assembly and association.
12. The recommendations as set forth in this submission focus on core human rights concerns with regard to [Libya's outdated and repressive legislative framework](#). This submission aims to guide Libyan legislators in dismantling the abusive system, most of which is inherited from the previous Gaddafi government, and construct a new system based on protecting rights. Legislators will need to reform laws to bring them in compliance with Libya's international human rights obligations.

Impunity

13. Libya does not have laws dealing with key international crimes, such as war crimes, crimes against humanity and torture.
14. The [domestic criminal justice system has collapsed](#) at a national level, and where judicial proceedings are conducted, we have documented [grave violations of due process rights](#). The International Criminal Court (ICC) has a mandate in the country, but the court's reach will likely be limited to a handful of individuals considered to be most responsible for some of the most serious crimes. [Saif al-Islam Gaddafi](#) and [Mahmoud al-Werfalli](#), two ICC suspects and still believed to be in Libya, are fugitives. The whereabouts of [Al-Tuhamy Mohamed Khaled](#), a third fugitive wanted for war crimes, remain unknown.
15. The [special procedures Law \[38/2012\]](#) enacted in May 2012 gave anti-Gaddafi revolutionaries immunity against prosecution for serious crimes, including war crimes and crimes against humanity, if they were "necessary" to the success of the 2011 uprising. The culture of impunity propagated by such laws has led to such crimes being repeated.
16. **Recommendations to Libya:**
 - Strengthen and reform the judiciary to ensure speedy, transparent, impartial and independent criminal investigations of credible allegations of abuses by armed groups, regardless of the suspect's affiliation, and prosecute anyone implicated in crimes where there is credible evidence to do so;
 - Competent Libyan authorities with knowledge of the whereabouts of ICC suspects should cooperate with the ICC, including by surrendering Saif al-Islam Gaddafi and Mahmoud al-Werfalli to the court. United Nations Security Council Resolution 1970, which referred the situation in Libya to the ICC, requires the Libyan authorities to cooperate fully with the court, a binding requirement under the UN Charter, even though Libya is not a party to the treaty that established the court;
 - Amend Law 38/2012 on Some Special Procedures to exclude from amnesty those responsible for serious international crimes such as murder, torture, sexual violence, and forced displacement;

- Adopt a law that clearly defines international crimes and ensure they are retroactive to include crimes committed in 2011 onwards. Serious crimes include genocide, crimes against humanity, war crimes, torture, and enforced disappearance.

Women's Rights

17. Libyan law does not criminalize domestic violence. [Personal status laws](#) discriminate against women with respect to marriage, divorce, and inheritance. The penal code allows for a reduced sentence for a man who kills or injures his wife or another female relative because he suspects her of extramarital sexual relations. Rapists can escape prosecution if they marry their victim.

18. The [penal code](#) prohibits all sexual acts outside marriage, including between unmarried men and women as well as consensual same-sex relations, and punishes them with flogging and up to five years in prison.

19. Recommendations to Libya:

- Lift all reservations to the Convention to End All Discrimination Against Women (CEDAW);
- Guarantee full equality and eliminate all forms of discrimination against women, including by guaranteeing equal rights for men and women in the draft constitution;
- Criminalize domestic violence and ensure adequate protection to women and services for survivors including access to justice and specialized prosecutorial units;
- Repeal or amend current laws that discriminate against women, including articles in the Libyan Penal Code that allow for reduced sentences for perpetrators of "honor" crimes and allow those who commit rape, sexual and other offences to escape prosecution if they marry their victim (articles 375 and 424);
- Pass a personal status law that guarantees equality between women and men for all personal status matters, including marriage, divorce, custody of children, inheritance and passing on of nationality.

Freedom of Expression

20. [Journalists, media workers](#) and [activists](#) are regularly harassed and attacked by authorities and armed groups in all parts of the country and most independent journalists have as a result fled the country. The space for critical speech has shut almost completely.

21. Several provisions of the Libyan Penal Code still [criminalize the offenses of defamation and insult to religion](#). Penal code articles 195, 205 and 245 stipulate prison terms for "insulting" public officials, the Libyan nation or flag; article 207 of the penal code imposes the death penalty for "promoting theories or principles" that aim to overthrow the political, social or economic system.

22. Recommendations to Libya:

- Eliminate all criminal offenses of defamation, including libel and slander, in articles 195, 203, 205, 207, 220, 245, 438 and 439 of the Penal Code;
- In penal code articles 206 and 208, limit the criminalization of acts committed by local and international NGOs to the direct and immediate incitement to acts of violence or discrimination;
- Ensure that any legal limitations that are retained are necessary and proportionate and comport with Libya's international treaty obligations;
- Eliminate all criminal offenses of defamation and of insulting religion. Repeal articles 290 and 291 of the penal code.

Freedoms of Association and Assembly

23. Libya's Penal Code contains articles that [undermine freedom of association](#), such as broad and ambiguous definitions of criminal acts. The code provides the death penalty as a punishment for establishing or participating in unlawful organizations.

24. Libya's legislative framework currently [fails to guarantee the right to peaceful assembly](#). Law 65/2012 on guidelines for peaceful demonstrations, issued in December 2012, failed to include relevant guarantees and imposes severe restrictions on exercise of the right to assembly.

25. Despite the existence of several draft NGO laws, no such law has been passed.

26. Recommendations to Libya:

- In penal code article 206, repeal the death penalty levied as punishment for establishment or participation in unlawful organizations;
- Amend penal code articles 206 and 208 to explicitly allow for the free establishment of associations without any restriction on what such organizations advocate or promote;
- Repeal penal code article 210 that calls for dissolving and closing the offices of organizations deemed illegal and ensure that any dissolution of an NGO takes place only by judicial order and only as a result of the most egregious violations;
- Guarantee the right to peaceful assembly by revising Law 65/2012 and requiring any restrictions placed on a public gathering to be strictly necessary for protecting public order, public morals, or the rights and reputation of others;
- Remove criminal penalties for non-notification of peaceful assemblies;
- Adopt a law for civil society organizations (NGO law) and ensure consistency with international law and best practices.

Death Penalty

27. Over [30 articles](#) of the Penal Code provide for the death penalty. No death sentences have been carried out since 2010 although both military and civilian courts continued to pronounce them. Libya has not imposed a moratorium on capital punishment.
28. Under the Code of Criminal Procedures, the Supreme Court must confirm all death sentences, which are then referred to the High Judicial Council for approval before they are carried out.
29. Libya has not ratified the Second Optional Protocol of the International Covenant on Civil and Political Rights, which aims at the abolition of the death penalty.

30. Recommendations to Libya:

- Declare an immediate moratorium on executions and abolish the death penalty.
- Ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.

Corporal Punishment

31. Several Gaddafi-era laws prescribe [lashings and amputation of limbs](#) for prohibited acts such as extra-marital intercourse. The mere existence of these punishments in Libyan legislation is a clear violation of international law which prohibits cruel, inhuman or degrading punishments.

32. Recommendations to Libya:

- Abolish all corporal punishment provisions in Libyan legislation including Law No. 70 of 1973, Law No. 52 of 1974, and Law No. 13 of 1425, and replace them with proportionate sanctions.

Forced Displacement

33. Armed groups and officials, mostly from Misrata, have prevented 48,000 people from returning to the town to [Tawergha](#). They remain dispersed across the country. Tawergha suffered extensive damage, with looting and burning of residential and commercial buildings, after the fighting stopped in mid-2011, apparently to deter Tawerghans from returning. People from Tawergha were unable to visit, let alone return, to their homes until the signing of a peace charter in 2018.
34. Armed groups in the east, some loyal to Libyan National Army forces (LNA), are preventing thousands of internally displaced families from returning to their homes Benghazi, Ajdabiya and Derna and accuse the families broadly of “terrorism” or “supporting terrorism.” [Displaced people from Benghazi](#) interviewed by Human Rights Watch said LNA-linked groups have seized their property and tortured, forcibly disappeared, and arrested family members who remained in the city.

35. Recommendations to Libya:

- Through competent authorities, facilitate the voluntary, safe and dignified return of displaced to their homes and help them recover their homes, property and possessions;
- Through competent Libyan authorities, investigate and prosecute all those responsible for forcibly displacing people.

Migrants, Asylum Seekers and Refugees

36. Human Rights Watch has documented [inhumane living conditions in detention centers](#) run by the Directorate to Counter Illegal Migration (DCIM), a body under the GNA Interior Ministry, in detention centers across western Libya. Detainees have alleged that members of militias and guards tortured and otherwise abused migrants, asylum seekers and refugees, including with whippings, beatings, electric shocks, deprived them of food and water and forced them to work without pay. They also suffer inhumane treatment such as overcrowding, unsanitary conditions and violence, including sexual assault, beatings and whippings while held by smugglers and traffickers.
37. Outsourcing of migration controls to Libyan authorities by European Union (EU) institutions and member states, and the EU's collective abdication of responsibility for rescue in the Mediterranean Sea have contributed to the dire situation in Libya. Continued EU support to the Libyan Coast Guard, under the GNA, including through legitimizing its declaration of a vast search-and-rescue region, does little to increase safety and rescue capacity at sea and makes EU government complicit in abuse against migrants, asylum seekers and refugees in Libya.
38. Migrants, asylum seekers and refugees [face multiple risks and lack protection](#) due to the absence of a legal framework governing their rights. Libya has not ratified the 1951 Refugee Convention and its 1967 Protocol, nor has it enacted a draft asylum law.
39. Recommendations to Libya:
 - Shutter migrant detention centers and implement alternatives to detention;
 - Facilitate the evacuation of detained migrants and asylum seekers to safe places outside of Libya;
 - Ensure and allow swift response by European and other vessels, including nongovernmental rescue ships, to boats in distress in its search-and-rescue region and coordinate disembarkation in places of safety outside Libya;
 - Ratify the 1951 Refugee Convention and its 1967 Protocol and enact an asylum law that is consistent with international refugee law; establish a fair and lawful asylum procedure in conformity with international obligations, in particular an absolute prohibition on refoulement;
 - Codify its obligations as a party to the African Union Convention Governing the Specific Aspects of Refugee Problems in Africa and the 1981 African Charter on Human and Peoples' Rights, and in accordance with the AU Conventions guarantee that "no refugee shall be repatriated against his will" and the African Charter's assurance that all individuals have the right to seek asylum;
 - Formally recognize the UN Office of the High Commissioner for Refugees and support its efforts to provide international protection for refugees, asylum seekers, and other persons of concern on Libyan territory. Grant the UNHCR unfettered access to all places where non-nationals are detained in Libya, including the right to conduct interviews in private;
 - Ensure access to full and fair asylum procedures, including for asylum seekers in detention. In the absence of national refugee law and asylum procedures, ensure that the UNHCR has access to all asylum seekers to conduct refugee status determination interviews.