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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

Situation of human rights in Libya, and the effectiveness of technical assistance and capacity-building measures received by the Government of Libya

Report of the United Nations High Commissioner for Human Rights

Summary

In the present report, submitted to the Human Rights Council pursuant to Council resolution 40/27, the United Nations High Commissioner for Human Rights describes the situation of human rights in Libya from January to December 2019, and provides an overview of the work and technical assistance conducted by the Human Rights, Transitional Justice and Rule of Law Service of the United Nations Support Mission in Libya (UNSMIL) in cooperation with the Office of the High Commissioner (OHCHR).

The High Commissioner highlights key human rights issues relating to the protection of civilians in armed conflict, in particular its impact on women and children; the situation of migrants and refugees; the rights to freedom of opinion and expression; the administration of justice; and the support provided to victims of human rights violations.

The High Commissioner also describes capacity-building activities conducted by UNSMIL and the implementation of the human rights due diligence policy on United Nations support to non-United Nations security forces.

The High Commissioner concludes the report with recommendations for the Government of National Accord in Libya, all parties to the conflict and the international community.



I. Introduction

1. The present report is submitted to the Human Rights Council pursuant to resolution 40/27, in which the Council requested the United Nations High Commissioner for Human Rights to present a report on the situation of human rights in Libya, including on the implementation of technical assistance and capacity-building to support the efforts of the Government of National Accord to prevent and ensure accountability for human rights violations.
2. The report, which covers the period from January to December 2019, was prepared by the Office of the High Commissioner (OHCHR) in cooperation with the United Nations Support Mission in Libya (UNSMIL). It focuses on six priority areas, namely the protection of civilians in armed conflict, in particular its impact upon women and children; the situation of migrants and refugees; the rights to freedom of opinion and expression; support for victims of human rights violations; the administration of justice; and the implementation of the human rights due diligence policy on United Nations support to non-United Nations security forces. The report also provides an overview of the monitoring, documentation, advocacy and capacity-building carried out by UNSMIL/OHCHR to address those issues.
3. During the period under review, OHCHR continued to provide support to the human rights mandate of UNSMIL.

II. Context

4. The year began with an offensive of the Libyan National Army forces under the command of General Khalifa Haftar. LNA entered Sabhah in January, proceeding towards Murzuq, where it and its affiliates encountered resistance from local Tebu groups. During clashes on 22 February, approximately 50 people¹ were reportedly killed and 200 houses damaged in the southern region.
5. On 12 February, the Libyan National Army gained control of the remaining part of the old city of Derna following intense fighting with remnants of the Derna Protection Force in eastern Libya. Serious violations of international humanitarian law and human rights abuses, including the summary execution of combatants and civilian detainees, were reportedly committed by affiliates of the Libyan National Army. More than 100 bodies were recovered from the old city, including those of women and children (S/2019/682, para. 25). Moreover, the Libyan National Army affiliates reportedly launched a broad intimidation campaign inside the city, targeting the families and perceived associates of members of the Derna Protection Force (*ibid.*, para. 46). Arbitrary arrests and the forced displacement of civilians continued.
6. On 4 April, the Libyan National Army launched an offensive on Tripoli, preventing the holding of the national conference facilitated by the United Nations, scheduled from 14 to 16 April, and returning the country to renewed conflict. The offensive forced the Government of National Accord to mobilize its armed forces against the attack. Since 4 April, fighting between the Libyan National Army forces and the Government of National Accord has continued in and around Tripoli, with serious human rights abuses and violations of international humanitarian law committed by all parties, with total impunity. In July, the conflict spread beyond the capital, with air and drone strikes against Misrata, Sirte and Jufra. Since May, the conflict in southern Tripoli has escalated, with intensified airstrikes by fixed-wing aircraft and armed unmanned aerial vehicles, and

¹ Owing to constraints access to certain locations and the displacement of the local population, including local interlocutors, UNSMIL was not able to verify the civilian status of victims.

the increasing use of explosive weapons, including artillery, mortars, rockets and grenades, causing even more civilian casualties and damage to civilian infrastructure.

7. Since March, intercommunal violence and fighting between Tebu and Ahali communities in Murzuq increased.² In early June, 16 men were reported killed and 17 others, including four women, injured in such clashes. While these clashes were primarily of an intercommunal nature, the airstrikes against Murzuq on 4 August by the Libyan National Army sparked fighting between the Tebu and Ahali communities, resulting in killing, kidnapping, the burning of private houses and consequent displacement. As at August, 5,293 families had been displaced from Murzuq and surrounding areas (approximately 26,465 individuals), mainly from the Ahali community.³

8. On 10 August, in Benghazi, a vehicle-borne improvised explosive device detonated, targeting an UNSMIL convoy, killing three United Nations staff members and wounding 10 civilians, including a four-year-old boy and two United Nations staff members. No one claimed responsibility.

9. UNSMIL intensified engagement with international stakeholders in Libya aimed at implementing the three-step initiative, which the Special Representative of the Secretary-General for Libya presented to the Security Council on 29 July. Germany played an active role in the preparations of an international summit on Libya in Berlin. The goal of the process was to unify the positions of the currently divided international community in creating a suitable and enabling environment for an intra-Libyan dialogue to end violence and restart a political process. In this context, five senior official meetings of the Berlin process with the international community were chaired by Germany and UNSMIL to prepare the modalities of a cessation of hostilities, a return to the political process, the effective upholding of international human rights and international humanitarian law, the implementation of the arms embargo, the reform of the security sector, and economic reform. UNSMIL made substantial efforts to detail and operationalize these modalities.

10. Through the UNSMIL Human Rights, Transitional Justice and Rule of Law Division, OHCHR continued to monitor and report on the situation of human rights in Libya, including through a reduced presence in Tripoli and occasional missions to other parts of the country. UNSMIL/OHCHR engaged in regular dialogue with the authorities, armed groups, civil society actors and other stakeholders in Libya. Despite the challenges posed by the unpredictable security environment, restricted access to certain parts of Libya and political polarization, UNSMIL continued its efforts to provide technical support and capacity-building to key Libyan government institutions and civil society organizations in Tripoli, as well as in Tunisia.

11. On 17 October, Libya was elected as a member of the Human Rights Council for a three-year term, beginning on 1 January 2020.⁴ Libya pledged to, inter alia, support United Nations programmes that play an important role in the protection of human rights, establish a constructive dialogue with all civil society organizations and non-governmental organizations active in the field of human rights, and cooperate with OHCHR and the Human Rights Council (see A/74/107).

² Resentment by local Tebu against the Ahali dates back to January 2019, during the LNA offensive to gain control of Murzuq, when some Ahali aligned with the LNA attacked local Tebu, who had dominated the town since 2011.

³ See https://displacement.iom.int/system/tdf/reports/ET_August_2019_RA_Final.pdf?file=1&type=node&id=6973.

⁴ www.un.org/press/en/2019/ga12204.doc.htm.

III. Protection of civilians and of individuals hors de combat

A. Indiscriminate attacks and other violations of international humanitarian law

12. A number of armed conflicts involving multiple parties have been reported in Libya. The most recent ongoing round of hostilities following the march of the Libyan National Army on Tripoli mainly broke out in the context of a non-international armed conflict opposing the Government of National Accord, its affiliated armed groups and third States supporting it against the Libyan National Army. In addition, several airstrikes appear to have been conducted by foreign military aircraft in support of the Libyan National Army against the Government of National Accord and affiliated armed groups. This raises the question of whether, in addition to the non-international armed conflict, a parallel situation of international armed conflict may also exist between one or more third States supporting the Libyan National Army and Libya.

13. Between 1 January and 30 November, UNSMIL documented 582 civilian casualties (236 deaths and 346 injured), including 430 men, 54 boys, and 58 other males whose age could not be determined, 23 women and seven girls. Its ability to monitor and verify alleged violations was however limited by insecurity and access constraints to locations and institutions where human rights violations and abuses and violations of international humanitarian law had reportedly been committed. Thus, the incidents documented in the present report may only reflect a portion of the overall human rights violations and abuses and violations of international humanitarian law actually committed.

14. Airstrikes were the leading cause of civilian casualties during the period under review, accounting for 394 victims (182 deaths and 212 injured), including 302 men, seven women, 24 boys, and 53 males whose age could not be determined, followed by ground fighting, improvised explosive devices, abductions and killings. UNSMIL/OHCHR documented the highest number of civilian casualties in the western part of the country (171 deaths and 182 injured), followed by the southern part (97 deaths and 96 injured) and eastern areas (16 deaths and 85 injured). Most of the casualties were attributed to the Libyan National Army.

15. During the year, fighting to regain control of certain areas or to repel offensives by parties to the conflict intensified in and around civilian-populated areas. Airstrikes combined with indirect fire weapons during ground fighting, including artillery, mortars, rockets and grenades, caused the majority of the civilian casualties in civilian-populated areas. As indirect weapons cannot be guided to hit a specific target and have a wide area of impact, the risk of civilian casualties is very high when they are used in such areas. UNSMIL/OHCHR recorded 98 civilian casualties (29 deaths and 69 injured), including 64 men, 13 women, 14 boys, six girls, and one male whose age could not be determined, during ground fighting resulting from the use of indirect weapons.

16. The incidents documented by UNSMIL/OHCHR included attacks against civilians, including internally displaced persons, migrants and refugees, health-care workers, community and religious leaders, journalists, human rights defenders and government officials, and attacks on civilian objects, such as detention centres, schools, residential homes, factories, health-care facilities, water and electricity supplies and airports.

17. On 2 July, a fighter jet dropped two bombs on the Damam complex in Tajoura. The first bomb hit a vehicle repair workshop and maintenance facility. Ten minutes later, a second bomb hit a section of a detention facility, where 616 migrants and refugees were staying. The attack killed 53 migrants and refugees, including 47 men and six boys, and injured 87 others, all men. Those killed were reportedly citizens of Algeria, Bangladesh, Chad, Morocco, the Niger and Tunisia. UNSMIL/OHCHR condemned and expressed

shock at the incident.⁵ On 23 April, an armed group attacked the Qasr bin Gashir detention centre with small arms fire as migrants were celebrating a Christian festival, injuring two men and six boys aged between 15 and 17 years.

18. During the period under review, the World Health Organization (WHO) documented 61 conflict-related attacks against health-care facilities and personnel, a 69 per cent increase over the same period in 2018.⁶ These attacks hit 18 health facilities, 20 ambulances and 40 health personnel. On 11 October, an unidentified armed group kidnapped six doctors from the town of Zintan, Al Marqab region. They were released on 23 October.

19. On 18 November, an airstrike hit a biscuit factory in the Wadi Rabi' neighbourhood of Tripoli, killing at least seven civilian men and injuring 35 others, many of whom were migrants. On 28 November, airstrikes in Um al-Araneb killed 13 civilians (10 children and three women) and seriously injured nine others (six children and three women).

20. UNSMIL/OHCHR reiterates that the killing of persons taking no active part in the hostilities is explicitly prohibited by Common Article 3 of the Geneva Conventions and may amount to a war crime. UNSMIL/OHCHR also recalls that States have an obligation to investigate the use of lethal force in the context of law enforcement operations, as well as violations of the right to life committed during armed conflicts.⁷ In many resolutions on non-international armed conflict, the Security Council and the General Assembly call upon all parties to respect international human rights law.

B. Violations of the right to life, including unlawful killings

21. In 2019, UNSMIL/OHCHR received multiple reports alleging that armed groups were responsible for summary executions and other unlawful killings of civilians and captured fighters. Between 1 January and 30 November, UNSMIL/OHCHR documented 65 civilian victims (48 deaths and 17 injured), including 56 men, three women and six boys.

22. For instance, on 15 September, in Tarhouna, the Al-Kaniyat armed group, affiliated to the Libyan National Army, attacked the house of a civilian and opened fire, killing 16 members of a family (11 men, two women and three children). Reports indicated that the attack was retaliation for the celebrations relating to the death of Mohsen al Kani, a senior leader of the Al-Kaniyat armed group. Between April and August, UNSMIL documented the summary execution of at least 17 ex-combatants from different armed groups by Tarhouna armed groups.

23. Among other cases, UNSMIL/OHCHR documented an incident involving the abduction and killing of civilians. On 17 July, in the Al Hawari neighbourhood of Benghazi, the bodies of five civilian men were found, their hands tied with rope and with signs of beating on their backs. They had been kidnapped from the town separately two days earlier by an unidentified armed group from the Al-Laithy neighbourhood of Benghazi.

24. UNSMIL/OHCHR also documented summary executions in Benghazi. On 3 October, an unidentified armed group abducted a Sudanese woman from the market area. Her body was found in the Al Hawari neighbourhood three days later. The body of another Sudanese woman, who had also been abducted from the market area, on 7 October, was

⁵ See <https://unsmil.unmissions.org/unsmil-condemns-strongest-terms-attack-tajoura-causing-dozens-civilian-fatalities-and-calls> and www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24784&LangID=E.

⁶ In 2018, WHO documented 36 conflict-related attacks targeting health-care facilities and personnel.

⁷ See the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, paras. 9, 10 and 17.

found with gunshot injuries in the Jilyana area of the city on the following day. Reports indicated that both victims were killed for allegedly practicing witchcraft.

Support for victims

25. UNSMIL/OHCHR continued its advocacy for accountability for serious and systematic human rights violations and abuses committed by parties to the conflict, with the aim of protecting victims and ensuring the prosecution of perpetrators. UNSMIL/OHCHR also supported victims and their families, providing advice and advocating for remedies with government officials. It also supported civil society bodies working on protection cases through direct cooperation and capacity-building.

26. UNSMIL/OHCHR regularly received requests for medical care and mental health support for victims of human rights violations and abuses and violations of international humanitarian law, and referred individual cases of concern, where possible, to appropriate organizations. From March to November, UNSMIL/OHCHR supported a project funded by the European Union and managed by international non-governmental organizations, which provided psychosocial support and direct assistance to 18 Libyan survivors of torture and other forms of violence.

IV. Women's rights

27. Women are disproportionately affected by the broader effects of the armed conflict, which exacerbate their vulnerability to poverty, discrimination and violence. The loss of male family members, for example, results in critical socioeconomic situation for women and their family. Furthermore, their access to health services is severely impeded in locations of active hostilities, as service providers have either fled the conflict zones or cannot provide services due to the ongoing insecurity. UNSMIL/OHCHR noted that incidents of armed attack, ground fighting and airstrikes contributed to a heightened sense of fear among women for their physical safety and that of their family. Women thus tend to remain confined within their homes and villages with their families, or are forced to flee with their families.

28. Among other cases, UNSMIL/OHCHR documented that women were subjected to reprisals, enforced disappearance, sexual violence, prolonged arbitrary detention, torture and ill-treatment, and intimidation.

29. For instance, concerns about attempts to silence women and exclude them from political institutions continued. On 17 July, Siham Sergewa, a member of the House of Representatives, was abducted from her home in Benghazi by an armed group. A few hours before, in an interview on Al-Hadath television, she called for "an end to the bloodshed". She criticized General Haftar's assault on Tripoli, and called for a unity government of all parties, including the Muslim Brotherhood, to which some of the groups defending Tripoli belong. At the time of writing, the fate and whereabouts of Ms. Sergewa were still unknown. UNSMIL/OHCHR condemned the abduction and disappearance, calling upon relevant authorities to investigate and disclose her whereabouts.⁸

30. According to information received, migrant women and girls continue to be disproportionately affected by rape and other forms of sexual violence. UNSMIL/OHCHR continued to collect accounts from migrant women and girls stating that smugglers, traffickers, members of armed groups and detaining authorities had tortured and sexually abused them during travel through Libya and in migrant detention centres, where they are arbitrarily detained without due process or procedural safeguards and in conditions falling below international minimum standards.

⁸ <https://unsmil.unmissions.org/unsmil-statement-continued-enforced-disappearance-house-representative-member-siham-sergewa>.

31. Guards in prisons and detention centres continued to sexually abuse Libyan and foreign women inmates. UNSMIL/OHCHR is concerned about the absence of female guards in prisons and detention centres across the country. With the exception of Jdayda Women's Prison in Tripoli, no other detention facilities employ female guards. This situation is compounded by the unimpeded access of male guards to the cells of female inmates, which increases the risk of sexual abuse and exploitation. UNSMIL/OHCHR continued to receive alarming reports of sexual violence in prisons and detention centres against women, men and boys, including allegations of sexual violence and rape at Mitiga prison by the Special Deterrence Force (an armed group falling nominally under the responsibility of the Ministry of the Interior).

32. UNSMIL/OHCHR reiterates that it is imperative for the Government of National Accord to fully fund and implement the national action plan on Security Council resolution 1325 (2000) on women, peace and security, to protect women and girls from violence in law, policy and practice.

V. Groups in focus

A. Children

33. Between 1 January and 30 November, the armed conflict resulted in 77 child casualties (35 deaths and 42 injured) from the use of indiscriminate weapons, including mortars, rockets, grenades, explosive remnants of war and airstrikes in civilian-populated areas.

34. On 4 February, in the Kuweifiya area of Benghazi, three boys, aged between 9 and 15 years, were injured when an unexploded explosive ordnance detonated when they were collecting scrap metal. During the night of 17 February, in Murzuq, an unattributed airstrike on the Zawiat Zala complex killed a civilian man and injured two children. On 5 March, also in Murzuq, an unidentified armed group fired a rocket at a group of civilians watching a football game, killing three boys and injuring four others. On 8 April, in Qasr Bin Ghashir, five children were injured by a mortar round that dropped beside a tent where a funeral was being held. On 28 November, Libyan National Army airstrikes in Um al-Araneb killed 10 children and seriously injured six other children.

35. UNSMIL/OHCHR has received reports of children arbitrarily detained and deprived of liberty, including in several detention centres and prisons, without charge or trial, on account of their alleged family's links with Islamic State of Iraq and the Levant (ISIL) fighters. UNSMIL/OHCHR followed up on the cases of 62 children held at Al Jawiya prison, whose mothers were reportedly charged with membership of ISIL. UNSMIL/OHCHR is concerned regarding reports that these children may be subjected to arbitrary detention, together with a lack of medical care, hygiene and proper food. At the end of October, eight unaccompanied children from Egypt and Tunisia remained at the Libyan Red Crescent shelter in Misrata following their transfer from Sirte in late 2016, in the context of military operations against groups that had pledged allegiance to ISIL.

B. Migrants and refugees

36. Migrants and refugees in Libya continued to be routinely subjected to arbitrary detention, torture, including sexual violence, abduction for ransom, extortion, forced labour and unlawful killings. Perpetrators of these violations and abuses have in an overwhelming number of cases not been held to account, and include State officials, members of armed groups, smugglers, traffickers and members of criminal gangs.

37. As at 29 November, 4,500 migrants and refugees, including hundreds of children, were being held without any judicial process in official detention centres run by the Government and in unofficial detention centres controlled by armed groups. Among them,

an estimated 2,790 are exposed or in close proximity to the fighting in and around Tripoli. An additional unknown number of persons are reportedly held in other informal detention facilities in insecure situations across the country.

38. UNSMIL/OHCHR observed that, owing to the decrease in humanitarian search and rescue activities as a result of withdrawal by Operation Sophia of its naval assets in the Central Mediterranean in March 2019, and to the continued criminal and administrative proceedings against non-governmental organizations or other private entities deploying rescue vessels, sea routes for migrants and refugees departing Libya have been blocked and the death rate at sea has been increasing. In total, there were at least 743 known deaths in the Central Mediterranean in 2019, with the death rate steadily increased over each of the past three years. For instance, on 25 July, up to 150 migrants and refugees reportedly died at sea after their vessel capsized off the coast of Al Khoms in western Libya. The Libyan Coast Guard returned the 137 survivors to Libya, where their fate remained unknown as at the time of writing.

39. Between June and August, UNSMIL/OHCHR visited four migrant detention centres in Al-Zawiyah, Zintan, Gharyan and Tajoura. It found that the detaining authorities continued to detain migrants and refugees arbitrarily in overcrowded, inhuman and degrading conditions, with insufficient food, water and medical care and very poor sanitation. For instance, on 3 June, UNSMIL/OHCHR visited Zintan detention centre, where migrants and refugees were held in extremely overcrowded hangars, lacking safe drinking water, health care, sanitation and adequate food.

40. According to information obtained by UNSMIL/OHCHR, there were ongoing incidents of violence and the use of deadly force against migrants and refugees in detention by the detaining authorities, including after detainees protested against the inhumane conditions of their detention. UNSMIL/OHCHR gathered reports of deadly incidents in official migrant detention centres at Tariq al-Sikka, Qasr Bin Ghashir, Zawiya and Sabha. On 6 June, in Al-Nasr detention centre in Al-Zawiya, at least one Sudanese woman was killed and three other migrants injured by gunshots after such protests. On 29 July, underscoring the unabated violence, inhuman conditions and the arbitrary nature of the detention of migrants and refugees, the Special Representative of the Secretary-General for Libya called for the closure of all migrant detention centres in the country.⁹

41. Although the Ministry of the Interior ordered the Department for Combating Illegal Migration, on 1 August, to close three migrant detention centres (in Misrata, Tajoura and Khoms), Tajoura and Khoms detention centres remained open as at 6 December, and the Libyan Coast Guard continued to hand over migrants and refugees intercepted at sea to these centres. Between January and November, more than 8,600 migrants were intercepted at sea by the Libyan Coast Guard, many returned to official and unofficial detention centres, where they are routinely subjected to serious human rights violations and abuses, including prolonged arbitrary detention in inhuman conditions, enforced disappearance, trafficking, sexual violence, torture and ill-treatment. Between 30 April and 23 May, hundreds of rescued migrants were reported to have been sent to Khoms detention centre but were later listed as missing by the Libyan Coast Guard. On 7 June, OHCHR called upon the Government of National Accord to immediately launch an independent investigation to locate those missing.¹⁰ To date, no independent investigation has been launched. This situation is of serious concern, as migrants and refugees continue to be particularly vulnerable to trafficking or to being sold to smugglers, including for sexual exploitation.

42. UNSMIL/OHCHR also continued to receive reports of arbitrary deprivation of life and ill-treatment of migrants and refugees during their interception by the Libyan Coast Guard during operations at sea. On 19 September, one migrant was shot dead by coast

⁹ <https://news.un.org/en/story/2019/07/1043381>.

¹⁰ www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24681&LangID=E.

guards after being intercepted at sea and resisting being returned to detention upon disembarkation. On 26 October, alleged members of the Libyan Coast Guard threatened a humanitarian search and rescue vessel operated by a non-governmental organization, and fired shots in the air as the vessel attempted to rescue 90 migrants off the coast of Libya. These actions led many of the migrants to jump overboard before the vessel eventually rescued them.

C. Media professionals, activists and human rights defenders

43. The rights to the freedoms of expression, association and peaceful assembly remained restricted. From 1 January to 30 November, UNSMIL/OHCHR documented nine incidents involving violations of the right to freedom of expression. These incidents included the killing of at least one journalist and the injuring of two others; the arbitrary arrest and detention of three others; and acts of intimidation and harassment against at least 12 journalists. For instance, on 9 October, in Al-Aziza street in Tripoli, two photojournalists – one from Aljazeera, the other from Agence France Presse – were shot and injured, reportedly by armed groups affiliated to the Government of National Accord. On 27 August, a cameraman working at Libya al-Ahrar TV was arrested by an armed group affiliated to the Government and taken to Mitiga prison in Tripoli, where he was detained until 9 September.

44. On 7 March, the Presidential Council issued regulations on the Civil Society Commission, which impose burdensome registration and notification requirements for civil society organizations, the inspection and review of all documents by the Commission, and allow the Commission to cancel the registration and work permission of foreign civil society organizations on seven broad grounds. The regulations also contain stringent controls over foreign funding. These provisions are inconsistent with the State's international human rights obligations with regard to freedom of association.

45. Since the outbreak of conflict on 4 April, journalists and media workers in Tripoli continued to receive threats on account of their work, perceived as taking a side of one of the parties to the conflict. Armed groups affiliated with the Government of National Accord threatened eight correspondents of 218TV, to resign or be killed, accusing them of supporting the Libyan National Army. Two of the journalists consequently resigned.

46. Throughout the period under review, inflammatory language and incitement to violence and hate speech, both online and offline, continued to target individuals and communities based on their ethnicity, perceived beliefs or political views. This continued to fuel a climate of mistrust, fear and violence among different groups. UNSMIL/OHCHR referred at least 10 cases of alleged incitement to violence and hatred published on Facebook and Twitter to the social media companies.

D. Support for victims and related capacity-building

47. UNSMIL/OHCHR continued to support victims and their relatives by advocating with the Government and other counterparts, regularly briefing the international community and engaging with United Nations human rights mechanisms, including the Working Group on Arbitrary Detention, the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the situation of human rights defenders.

48. In April, UNSMIL/OHCHR organized in Tripoli a consultative meeting with 30 human rights activists and other civil society actors to discuss ways to address key protection concerns affecting them (including proposed revisions to the legal framework concerning civil society organizations) and the development of a protection strategy.

49. UNSMIL continued its efforts to provide technical support and capacity-building to key government institutions and civil society organizations. In October, it organized two

separate workshops on the universal periodic review process for government officials from the Ministries of Justice, the Interior and Foreign Affairs, and civil society representatives.

50. During the visit of the Special Rapporteur on human rights defenders in Tunis between 15 and 17 November, UNSMIL/OHCHR briefed him on the current situation of defenders in Libya, and the challenges and threats faced by civil society organizations, including a lack of legal protection, sustainable relocation, vocational trainings and work integration programmes. UNSMIL/OHCHR also discussed the support for asylum claims of defenders, particularly those in precarious and vulnerable situations in countries where they are relocated.

51. With regard to the right to freedom of expression and the obligation to prevent incitement to violence and hate speech, UNSMIL/OHCHR facilitated a session in two separate workshops for media professionals, organized in Cairo on 3 and 4 November, and in Tunis on 9 September.

VI. Administration of justice

A. Overview

52. The ongoing armed conflict continued to impede the functioning of the judicial system, limiting its ability to process cases of human rights violations or to bring those responsible to justice. Perpetrators of serious human rights violations and abuses continued to operate without fear of being held to account for their crimes.

53. Civilian and military courts in the east and south remained mostly closed, while they operate at low capacity in other parts of the country. Despite increasing demands by the public and civil society for the prosecution of perpetrators of serious violations of international humanitarian law and gross violations and abuses of human rights, UNSMIL/OHCHR is not aware of any prosecution of members of armed groups affiliated either to the Government of National Accord or the Libyan National Army for crimes relating to abuses committed since 2011. In January 2019, a Benghazi court martial revoked an arrest warrant against Mahmoud Al Werfalli, who was also reportedly promoted, although the International Criminal Court had issued two further warrants for his arrest for war crimes.¹¹ Saif al Islam Qadhafi, Mohamed Khaled Al Tuhamy and Mr. Al-Werfalli, all indicted by the International Criminal Court, remained at large.¹²

54. The elections for the third term of Supreme Judicial Council were held in July in Tripoli and seven other judicial zones across the country, despite tensions between East and West Libya. The first formal meeting of the newly elected Supreme Judicial Council was held in Tripoli on 6 October. The new Supreme Judicial Council comprises representatives from both eastern and western parts of the country. The newly elected Council members had rejected involvement in political issues.

55. Members of the judiciary continued to be attacked and threatened. On 24 October, an unidentified armed group raided the house of a judge in Benghazi, demanding the release of a person charged from detention. On 28 October, the Libyan Association of Members of the Judiciary issued a statement condemning the incident and demanding prosecution of the perpetrators.¹³

¹¹ www.icc-cpi.int/Pages/item.aspx?name=191106-stat-icc-otp-UNSC-libya.

¹² Ibid.

¹³ www.facebook.com/pages/category/Non-Governmental-Organization--NGO-/%D8%A7%D9%84%D8%AC%D9%85%D8%B9%D9%8A%D8%A9-%D8%A7%D9%84%D9%84%D9%8A%D8%A8%D9%8A%D8%A9-%D9%84%D8%A3%D8%B9%D8%B6%D8%A7%D8%A1-

B. Arbitrary detention, deprivation of liberty, torture and ill-treatment

56. During the period under review, an estimated 8,813 individuals were held in 28 official prisons under the authority of the Ministry of Justice, of whom an estimated 60 per cent were in pretrial detention. In total, 278 women were detained, including 184 non-Libyans, and 109 children were held in prisons in the custody of the Judicial Police. Others were detained in facilities nominally under the control of the Ministry of the Interior or the Ministry of Defence, or in facilities directly operated by armed groups. Those held still had little opportunity to challenge the legality of their detention or to seek redress for violations suffered.

57. In relation to detention facilities under the control of the Ministry of the Interior, UNSMIL/OHCHR continued to receive credible reports of arbitrary or unlawful detention, torture, enforced disappearances, overcrowded cells lacking sanitation and safe drinking water, medical neglect, and the denial of visits from families and lawyers by those in charge of prisons and other places of deprivation of liberty.

58. In 2019, UNSMIL and the United Nations Development Programme (UNDP) expanded tripartite cooperation with Libya to support the prison reform efforts of the Ministry of Justice and the Judicial Police. In August, the Ministry of Justice reopened Derna and Ain Zara A prisons with a view to addressing overcrowding, and established a new prison in Mellitah, Tripoli. The Ministry also established a clinic in Al Jdaida prison to improve the health care of prisoners, although the clinic was still not operational by the end of 2019.

59. UNSMIL/OHCHR continued to highlight the need to end arbitrary and prolonged pretrial detention and the importance of ensuring that all prisons operated by the Ministry of Justice should be under the exclusive control of professional and trained members of the Judicial Police, operating under the Ministry of Justice. It held regular meetings with the officials from the Ministry to follow up on the screening process and the transfer of inmates to official prisons, and to strengthen the supervision of official prisons by the Ministry.

60. UNSMIL/OHCHR also followed up on the judicial screening of detainees after the issuance by the Presidential Council of decrees 1301 and 1304, in September 2018. The decrees established a committee to screen detainees at Mitiga prison and conditions for the release of certain detainees held beyond the period set down by law, respectively. Moreover, decree 129 of the Supreme Judicial Council established a committee to review the cases of arbitrary detention in Mitiga prison. The committees commenced the review of detainees in the prison, which was believed to hold more than 3,600 detained persons. According to the investigations office of the Office of the Prosecutor General, an estimated 1,200 detainees were screened between September 2018 and December 2019, with around 500 released and others transferred to Al Jdaida prison during the same period. UNSMIL/OHCHR continued to encourage the Office of the Prosecutor General to provide regular public updates on progress in the screening process. On 11 December 2019, the Office reported that the committee had almost concluded its work and would submit a final report to the Government by the end of 2019. The final report still had been submitted at the time of writing.

61. UNSMIL/OHCHR continued to document accounts of civilians subjected to prolonged arbitrary and unlawful detention in Gernada and Kuweifiya prisons, under the control of the Libyan National Army in eastern Libya, where family visits were denied. Those concerned included medical professionals, civil society activists and religious leaders.

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62. Bureaucratic hurdles and the lack of cooperation of the authorities continued to severely limit the access of UNSMIL/OHCHR to detention facilities; it was thus unable to visit prisons under the control of the Ministry of Justice and the Judicial Police in the east. Although the Chief of staff of the Libyan National Army instructed the military prosecutor in Benghazi to facilitate visits in accordance with formal procedures in response to advocacy by UNSMIL in early July, the latter continued to face constraints on its access to prisons. In western Libya, UNSMIL was only able to visit Jdaida, Al Jawiya and Ain Zara A prisons.

Technical support

63. UNSMIL/OHCHR continued to provide advice to and advocate with the Government of National Accord, the Judicial Police and armed groups on ways to address issues relating to judicial process, including ending arbitrary detention, the transfer of detainees from unlawful places of detention to official prisons, due process rights and granting unimpeded access to human rights monitors to places of detention.

64. UNSMIL/OHCHR advocated with other United Nations entities and international organizations to screen recipients of technical assistance and capacity-building programmes organized for State authorities to ensure that those responsible for violations of human rights or violations of international humanitarian and refugee law are excluded from any support.

65. In October, UNSMIL and UNDP organized a workshop in Tunis to review the criminal justice system of Libya and to make recommendations on addressing the gaps. The workshop gathered 15 representatives from the Ministries of Justice and the Interior and the Office of the Prosecutor General.

C. Transitional justice

66. Little progress was made in implementing the provisions of the Libyan Political Agreement that commits parties to enforce law No. 29 of 2013 on transitional justice.

67. On 15 December, the Tripoli Appeals Court acquitted all defendants in the Abu Salim trial case relating to the massacre of 1,200 people in 1996, including former intelligence Abdullah Senussi.¹⁴ Five defendants who were acquitted died while on trial, while other defendants were acquitted on the basis of the statute of limitations, as contained in the Penal Code. UNSMIL notes that the case is subject to further appeal by the State, which would be an important step enabling the State's highest court to emphasize the inapplicability under international law of statutes of limitations to gross human rights violations.

68. On 11 and 12 November, the Appeal Chamber of the International Criminal Court held a televised hearing on Saif al Islam Qadhafi's challenge to the admissibility of his case before the Court. Representing the Government of National Accord, the Minister for Justice appeared in court, making a statement on Amnesty Law 6-2015,¹⁵ arguing that the case was indeed admissible before the Court. Following widespread reactions within the justice sector and criticism of his appearance, the Minister published a lengthy statement of his position. The Prosecutor of the Court reiterated its demand that Libya transfer Mr. Qadhafi.

69. On 25 September, the Special Representative of the Secretary-General for Libya, together with the United Nations Deputy High Commissioner for Human Rights, provided an oral update to the Human Rights Council during an interactive dialogue on Libya. Both underlined the fact that a mandate by the Council establishing an investigative mechanism

¹⁴ www.facebook.com/ObservatoryLY/videos/2647057822194273/.

¹⁵ The Amnesty Law excludes amnesty for crimes of terrorism, rape, torture, corruption and murder by race or ethnicity, but fails to rule out amnesties for other serious human rights violations, such as forced displacement, enforced disappearance and unlawful killing.

would be the simplest and strongest basis for promoting accountability for violations of international human rights and humanitarian law in Libya.

70. UNSMIL continued its work under a joint project with UNDP to support transitional justice and reconciliation at the local and national levels. The aim of the project is to support the Misrata-Tawergha joint committee in implementing a road map that includes supporting transitional justice processes and facilitating the return of internally displaced persons in safety and dignity; addressing allegations of past human right violations; addressing some of the fundamental causes of the conflict between the two communities; and promoting dialogue between them. Approximately 100 families of internally displaced persons have thus far returned to the city, among an estimated 43,000 who had been displaced since the 2011 armed conflict.

Technical support

71. UNSMIL/OHCHR continued to engage with the Office of the Prosecutor General and other officials on issues relating to fair trial standards, criminal law reform and accountability, and raised several individual cases of concern and patterns of abuse.

72. In July 2019, UNSMIL participated in a workshop organized in Tunis by the Public International Law and Policy Group on transitional justice in Libya. The workshop gathered representatives of the National Transitional Council fact-finding commission, of the judiciary and civil society organizations, with discussions focusing on the planning of awareness-raising activities on transitional justice.

73. On 22 and 23 June, UNSMIL and UNDP jointly organized a consultation workshop on the return of internally displaced Tawergha in Tunis. The event brought together representatives from Tripoli, Benghazi and other areas to champion a unified vision for their return.

74. On 27 and 28 June, UNSMIL and UNDP jointly organized a consultation workshop in Tunis for youth from Misrata and Tawergha to promote co-existence and to create common ground for reconciliation and social cohesion between young people.

VII. United Nations human rights due diligence policy

75. The United Nations system in Libya continued its efforts to implement the human rights due diligence policy on United Nations support to non-United Nations security forces (A/67/775-S/2013/110, annex). UNSMIL and the United Nations country team continued to provide advice and support to Libyan security forces with a view to mitigating the identified risks of grave violations of international humanitarian law, human rights law or refugee law by non-United Nations security forces that have been recipients of United Nations support.

76. In March, under the joint UNSMIL/UNDP project on policing and security, UNSMIL provided technical assistance to the Judicial Police to organize training for 14 police trainers on the new curricula developed by an expert, aiming to provide modern and practical training materials for new recruits, based on international standards.

77. In relation to United Nations support to the Libyan Coast Guard and the Department for Combating Illegal Migration, the country task force decided on 13 November to review relevant risk assessments and related mitigation measures in response to reports of continued grave violations and abuses of the human rights of migrants and refugees.

78. In November, the United Nations Office on Drugs and Crime initiated a risk assessment in accordance with the human rights due diligence policy in relation to a planned project on dismantling criminal networks in Libya involved in migrant smuggling and trafficking in persons and on building the capacity of non-United Nations security forces for this purpose.

VIII. Conclusions

79. In 2019, the ongoing armed conflict and overall deterioration in security in Libya had an adverse impact on the situation of human rights and further exacerbated political and economic uncertainty.

80. Armed groups, including those integrated under State institutions, continued to be primarily responsible for human rights violations and abuses and violations of international humanitarian law. National institutions were unable, and in some cases unwilling, to ensure accountability or to end impunity.

81. Migrants and refugees in Libya continued to be routinely subjected to a range of serious human rights abuses and violations, including arbitrary detention, torture, sexual violence, abduction for ransom, extortion, forced labour and unlawful killings. Perpetrators continued to operate with impunity.

82. Civic space remained subject to considerable constraints. Civil society actors, including human rights defenders, particularly women human rights defenders and journalists, continued to face threats, intimidation and harassment, and some were the victims of deadly attacks.

83. Following its interactive debate on Libya in 2019, the Human Rights Council has a unique opportunity in 2020 to take concrete steps to counter impunity and to promote accountability in Libya by establishing an international body to investigate human rights violations and abuses and violations of international humanitarian law committed in the country.

IX. Recommendations

84. The United Nations High Commissioner for Human Rights recommends that the Government of National Accord:

(a) Address the situation of detainees and all those deprived of liberty by ensuring that the State has exclusive control of all detention facilities and that all cases are processed promptly by independent judicial bodies, and also by ensuring the release of those arbitrarily detained and full respect for due process and fair trial standards, in accordance with Libyan law and international human rights law;

(b) Institute a process of disarmament, demobilization and reintegration of members of armed groups, together with a vetting programme, compliant with due process standards, to remove and prevent the recruitment into the State security forces of individuals concerning whom there are reasonable grounds to believe they have been involved in violations of international humanitarian law or human rights violations or abuses;

(c) Conduct prompt, independent, impartial, thorough and transparent investigations into serious violations of international humanitarian law and human rights violations or abuses, ensuring the right to justice, truth and reparations, appropriate care and protection for victims, and accountability for those responsible, in accordance with the law, and in full compliance with due process and fair trial standards;

(d) Ensure the immediate transfer of women detainees to facilities with sufficient female guards and other trained personnel; establish gender-appropriate health-care and other services for women and accompanying children in detention; and protect women detainees from torture and sexual abuse or exploitation;

(e) Urgently address the situation of migrants and refugees to ensure that the human rights of all individuals, regardless of their migration status, are protected and respected, including by decriminalizing irregular migration, adopting an effective refugee status determination procedure, immediately ending all situations of illegal and arbitrary detention by implementing human rights-compliant alternatives to detention, and bringing to justice those responsible for violations and abuses against migrants and refugees, whether they are State or non-State agents;

(f) Facilitate the voluntary, safe and dignified return of internally displaced persons, and protect them from revenge attacks and other forms of violence;

(g) Extend full cooperation to the International Criminal Court, including by facilitating unhindered access to relevant locations in Libya, witnesses and information, and complying with its decisions and orders.

85. The High Commissioner recommends that all parties to the conflict:

(a) Agree to a ceasefire and immediately desist from all acts constituting violations of international humanitarian law and human rights violations or abuses, including those constituting crimes under international law; in particular, immediately cease all attacks on civilians and civilian objects, and comply fully with all applicable principles of international humanitarian law, in particular the principles of distinction, proportionality and precaution; take steps to end summary executions and other unlawful killings; put an end to pillage and destruction and appropriation of property; and hold accountable those responsible;

(b) Declare that such acts will not be tolerated and remove those suspected of such acts from active duty, pending investigation and prosecution by judicial authorities, in accordance with the law;

(c) Facilitate the unfettered and unhindered access to places of detention and to all detainees by United Nations entities and other organizations providing humanitarian assistance and protection, and abstain from any retaliation against detainees speaking with United Nations and other delegations;

(d) Guarantee the protection of civil society actors, including journalists and human rights defenders, as civilians under international humanitarian law, and respect their right to monitor and report freely on the armed conflict, without fear of attack or reprisal for their work;

(e) Release immediately all those detained arbitrarily and unlawfully, and transfer all other persons deprived of their liberty to official prisons under the effective and exclusive control of the Judicial Police of the Ministry of Justice; conduct thorough and effective investigations to establish the fate and whereabouts of those forcibly disappeared; locate their remains when it is concluded that the person is no longer alive, and hand them over to their relatives; and provide reparation to the victims and/or their families;

(f) Take concrete steps to eliminate torture and ill-treatment, including rape and all forms of sexual violence, including acts committed by individuals operating in support of the State or as its agents.

86. The High Commissioner recommends that the international community:

(a) Encourage Libya to deliver on its pledges and commitments made as a member of the Human Rights Council to support United Nations programmes that play an important role in the protection of human rights, to establish a constructive dialogue with all civil society organizations and non-governmental organizations

active in the field of human rights at the national and regional levels, and to cooperate with OHCHR and the Human Rights Council;

(b) Provide the International Criminal Court with the resources and protection necessary to investigate, prosecute and try the alleged crimes under its jurisdiction that may have been perpetrated in Libya since 2011;

(c) Establish an international investigative body into human rights violations and abuses and violations of international humanitarian law that have been committed in the country;

(d) Advocate with parties to the conflict for women's effective and meaningful participation in informal and formal peace negotiations and the protection of their rights through future peace agreements;

(e) Ensure that the rights of victims, their families and witnesses are respected and protected in peace and reconciliation processes and settlements;

(f) Provide the Government with technical assistance and other support to reform the criminal justice system, including the penitentiary system, in accordance with international norms and standards;

(g) Assist the Government in releasing all those detained arbitrarily and others unlawfully deprived of their liberty, and to transfer all those lawfully deprived of their liberty to prisons under the effective and exclusive control of the Judicial Police of the Ministry of Justice;

(h) Support programmes of legal aid for those detained, including migrants and others at particular risk of grave human rights violations and abuses;

(i) Apply a due diligence framework to programmes that support Libyan security forces and stringent screening procedures of recipients of technical and other assistance to exclude those suspected of having been responsible for violations of international humanitarian law or human rights violations or abuses or international crimes;

(j) Offer effective protection and assistance to victims of human rights violations and abuses by ensuring adequate financial and other support to organizations working on legal aid, psychosocial and physical rehabilitation and counselling;

(k) Ensure that any cooperation and/or support provided under bilateral or regional migration management agreements with Libyan institutions is consistent with international human rights, refugee and other relevant international law obligations, and ensure effective and independent human rights monitoring of conditions in Libya, including to ensure that cooperation and/or support provided to Libya does not contribute to or facilitate, directly or indirectly, human rights violations;

(l) Ensure respect for the principle of non-refoulement, in accordance with international human rights and refugee law, and expand safe and regular channels for migrants and refugees.
