



Stakeholder Report to the United Nations Human Rights Council Universal Periodic Review- Libya

Internally Displaced Persons

Submitted by Mercy Association for Charitable and Humanitarian

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Key concerns

- The situation of Tawerghans, the largest group of Internally Displaced Persons (IDPs) in Libya has deteriorated since 2011.
- The Libyan state failed to provide protections for IDPs and safeguard their fundamental rights.
- Tawerghans continue to be targeted systematically by militias through abductions, killings, and attacks on IDP camps.

Introduction

1. This stakeholder report is a submission by Mercy Association for Charitable and Humanitarian (Alrahma). Alrahma is an independent Libyan organization, which provides medical and humanitarian aid for Tawerghan IDPs and promotes the rights of IDPs by fighting against racial discrimination against this group. Alrahma wishes to highlight key concerns affecting the rights of IDPs before the Human Rights Council for consideration in Libya's upcoming Universal Periodic Review (UPR).

2. The report will outline the key human rights violations committed against Tawerghan IDPs and will highlight the Libyan state's failure to guarantee fundamental rights of the Tawerghan people, including the right to freedom of movement and to determine residence, right to be free from torture and arbitrary detention, the right to due process and the right to recognition.

Background

3. On 11 August 2011, Misratan militia groups entered Tawergha, a town located approximately 40km from Misrata. Its inhabitants, estimated to consist of 35,000 people, were expelled from the city due to their perceived opposition to the 2011 Uprising and on the suspicion that they had committed crimes in the city of Misrata. The Tawerghans have subsequently been the target of indiscriminate reprisal attacks, assassinations, arbitrary detention and torture by militias. Violent raids on IDP camps regularly take place and result in the abduction. As early as 2011, more than 70 people were killed including 13 women and seven children. While other groups have also been internally displaced throughout Libya, Tawerghans have become the largest group of IDPs in Libya.

4. Over the past four years, Misratan militias, together with other militias, continued to target Tawerghans across Libya. Such attacks by Misratan brigades on Tawerghans are systematic and on going.
5. The prevalence of IDPs in Libya is a new human rights concern in Libya, as a direct consequence of the 2011 Uprising. As a result, Libya's last UPR report in 2010 made no specific recommendations relating to the need to offer protection for IDPs. However, Libya failed to implement four key general recommendations, which enjoyed its support, related to promoting the protection of human rights, which are also relevant to the current situation of IDPs. These include the consolidation of the rule of law, promoting dialogue and not resorting to force, promoting fundamental freedoms, promoting national human rights protections and acceding to international human rights conventions to which it has not yet acceded.
6. The Libyan state has rarely referenced the issues facing IDP groups, and the only law adopted in relation to IDPs is Law 29 of 2013 related to transitional justice. Article 5 of Law 29 lists the groups which are in need of the implementation of transitional justice in Libya including IDPs. Since its adoption in 2013, the Libyan state has not taken any effective steps to implement Law 29, including holding perpetrators who have committed crimes against the people of Tawergha accountable for these violations.
7. Libya declared that it would examine recommendation 95.1 to "accede to international human rights conventions not yet acceded," However, Libya has not taken strong steps to sign up to key conventions related to the protection of IDPs, such as the Rome Statute, the African Union Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa, the UN Guiding Principles on Internal Displacement and the UN Convention Relating to the Status of Refugees and its Protocol.

Enforced Displacement and Arbitrary Attacks

8. Tawerghans have sought shelter in camps across the country where they continue to survive in low living standards with limited resources. At present, there are an estimated 18,000 displaced Tawerghan persons in Benghazi, 13,000 in Tripoli, and 7,000 in and around Sebha. In total, they are scattered over 26 different campsites across Libya.
9. Tawerghans living in the camps have been subjected to regular raids and have been the target of systematic attacks by militia groups. Alrahma has recorded an average of two attacks per month over the past three years. The following brief timeline details key events which depict the nature and scale of these attacks:
 - On 6 February 2012, the IDP camp located in Janzour was raided by militias, resulting in the death of seven Tawerghans, including three children and an old woman.
 - In July 2012 an unknown armed man entered Al-Fallah camp in Tripoli which houses 1,200 displaced Tawerghans and opened fire, wounding one camp resident. Al-Fallah was attacked again on 16 November 2013 resulting in one resident being killed and three injured.
 - On 1 August 2014, two Tawerghan camps near Tripoli International Airport, Airport Road Camp as well as the Fallah Camp, were vacated by their residents after being caught up between heavy fighting between rival militias.
 - In August 2014, IDPs in Benghazi were also made vulnerable as a result of the heavy clashes between militia groups, which forced 80 families to flee the Sidi Faraj Camp.

10. Over the past four years, the state has failed to provide protection or legal remedies to stop the continuation of arbitrary attacks against IDPs. Despite the prevalence of threats, militia groups responsible for these offences have enjoyed total impunity. The only instance of a state actor publically intervening was on 18 November 2013, when the Justice Minister made a statement to the general prosecutor referring the killing at Al-Fallah Camp on 16 November 2013 for investigation. However, as of yet, no investigation has taken place.

11. The state has failed to provide protections or guarantees for the people of Tawergha in its domestic laws. Article 17 of the Constitutional Declaration of 3 August 2011 obliges the state to protect the safety of all persons. However, the occurrence of such attacks against Tawerghans threatens their right to life. Article 5 of Law 29 of 2013, provides that the issue of IDPs will be treated within the transitional justice framework. Since the adoption of the law, there has not been a national policy to respond to the issue of IDPs.

Freedom of Movement and Freedom to Choose Residence

12. Tawerghans have been prevented from returning to their hometown as the threat of militia groups carrying out further attacks remains prevalent. The state's failure to respond to such threats and take action against the incitement of violence by the militias is in breach of its obligations under Article 20(2) of the ICCPR.

13. The March 2012 report of the UN Human Rights Council's Commission of Inquiry on Libya (**Commission of Inquiry**) concluded that the actions of the Misrata militias in Tawergha indicate that crimes against humanity may have taken place. Attacks on Tawergha were not only concerted attacks but "The destruction of Tawergha has been done to render it uninhabitable," the report found. This in an apparent attempt to prevent all possibility for them to return.

15. Despite several attempts by various members of the community to return to Tawergha, the state has yet to facilitate this process by providing safe passage and taking other appropriate measures to ensure their safe transit. As a result, Tawerghans have been denied their right to free movement as provided by Article 12 of the International Covenant on Civil and Political Rights (**ICCPR**), to which Libya is a party, which obliges the state to permit everyone lawfully within the state the "liberty of movement and freedom to choose his residence."

16. Libyan authorities failed to expedite the decision of Tawerghan community leaders to return on 25 June 2013, and ensure the safety and dignity of all displaced persons in accordance with Law 29 of 2013 concerning transitional justice. The then Prime Minister issued a statement requesting that leaders postpone their return and promised that it would take no more than ten days to adopt measures to ensure the opportunity of all Tawerghans to return. The state failed to fulfill its promises under this statement. After seven months the Libyan government finally voted for a decision on 8 December 2013 to allow Tawerghan families to return home and authorising the creation of a committee to oversee this process. As of the time of writing this report, this committee has yet to be created and the state has not provided any measures to ensure the safe return of displaced persons to Tawergha.

Arbitrary Detention, Torture and Right to Due Process

13. Militias have arbitrarily arrested and detained hundreds of internally displaced Tawerghans, including women and children. Alrahma has documented 1027 incidents involving Tawerghans who

have been detained over the last three years, many of whom have been subjected to mistreatment and other serious human rights violations during their detention.

14. Arahma has also documented 350 cases of Tawerghans being subjected to torture over the last four years, although the actual number is likely to be much higher. Article 1 of The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), and Article 7 of the ICCPR oblige the state to ensure that no one should be ill-treated, intimidated or coerced for any reason based on discrimination of any kind. Despite UNCAT and ICCPR being ratified by Libya, with no reservations, the Libyan state has failed to uphold obligations to prohibit what amounts to collective punishment of Tawerghans.

15. Tawerghan children were also subjected to torture. In 2012, a 17-year-old boy from Tawergha was detained by a militia group and taken to Misrata where he was beaten with several different objects. This resulted in internal bleeding and eventually led to his death in prison after he was denied medical care. Arahma reported this incident to the General Prosecutor but no investigation was conducted. Women were also subjected to torture. In 2012, a woman was abducted by a militia group whilst she was accompanied by her sister, brother-in-law and their baby. She was tortured by burning. Although she was released, she suffered from severe physical and mental trauma.

16. Alarmingly, the majority of documented detention and torture cases took place in prisons controlled by militia groups affiliated with the Supreme Security Committee (SSC). The SSC is an official state security body, which was created by Order No. 20 of the National Transitional Council in October 2011 to provide a new security apparatus following the 2011 Uprising.

17. The fact that such facilities are under quasi-state authority highlights that the state has failed in its responsibility to maintain adequate human rights standards and protect its own citizens. Under Law 29 of 2013, the state is obliged to review, and either charge or release all detainees. In continuing to hold detainees without charge, the state has also violated Article 9 of the ICCPR which guarantees the right of detained persons to be promptly informed of the charges. The state has also failed to ensure detainees are brought promptly before a judge and tried within a reasonable time.

18. Law 38 of 2012 provides a complete amnesty for any “acts made necessary by the 17 February revolution” for its “success or protection”, whether such acts are of a military, security or civil nature. This law is a serious impediment to the establishment of the rule of law in Libya. This law provides total impunity for crimes committed under the umbrella of the 17 February Uprising. Law 38 contravenes international law as amnesties are illegal for serious crimes such as war crimes and crimes against humanity. UNCAT also requires the state to investigate and prosecute all those persons on its territory responsible for such acts of torture. The state failed to repeal this law which dangerously protects those who are committing human rights violations under the umbrella of revolutionary legitimacy. Libya is a state party to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, which requires it to remove all such limitations to the prosecution of grave crimes.

The Right to Housing and Recognition

22. The Libyan state has failed to provide adequate housing for IDPs. Shelters in IDP camps are in bad conditions, broken windows let in the cold air in winter; there is no heating and hardly any

furniture. Families of eight or more share one room, where they have to sleep, cook and eat. The water supply system breaks down regularly and water is carried in large plastic bottles across the compound. This contravenes Article 11 (1) of the International Covenant of Economic, Social and Cultural Rights to which Libya is a party. It is the state's responsibility to ensure "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."

23. The state has failed to substantiate its promises in providing housing for IDPs. In 2013, the state issued Decision 635 which gave permission to the Ministry of Housing to build 500 houses in Jufra to house IDPs. In addition, the Libyan state on 23 July 2014 decided to provide a further 40 houses to IDPs, without specifying which camps. The state is further obliged, by Law 29 of 2013 to provide reparations for citizens whom were badly affected during the transitional period. However, at the time of writing, the state has failed to build such housing for the IDPs and failed to provide any such reparations to any IDP community.

24. The Libyan state has adopted discriminatory laws on the missing. Law 1 of 2014 related to Martyrs' Families and the Missing in the 17 February Uprising, defines the "missing" as only those who fought *with* the 17 February Uprising and indirectly disqualifies anyone who is associated with the Gaddafi administration, including people from Tawergha. As a result, although Alrahma documented more than 400 Tawerghans missing over the last three years, only 38% of them were able successfully to register with the Ministry of Martyrs' Families and the Missing. Such a low percentage demonstrates the extent of this discrimination. This law is an obstacle to national reconciliation provided by Law 29 of 2013. It also facilitates arbitrary discrimination under the law, which is in violation of Article 16 of the ICCPR, which states that "everyone shall have the right to recognition everywhere as a person before the law."