

National Council for Civil Liberties and Human Rights (NCCLHR)

Universal Periodic Review Submission

State of Libya

22nd Session (Apr-May 2015)

The NCCLHR is the National Human Rights Institution in Libya; it was established on the 29th November 2011 by Law No. 5/2011 issued by the National Transitional Council.

The NCCLHR is an independent institution whose mandate is to promote the protection of civil liberties and human rights, entrench the values, promote awareness of, contribute to ensuring the practice of and monitor and deter violations of civil liberties and human rights and encourage and support civil society organizations protecting these values.

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- **Background:**

1. The dictatorship regime, which came to power through a military coup September 1969, ended on the 23rd August 2011 when the rebels stormed the Barracks of Bab al-Azizia, the home of the old dictator's office and command centre. This came as a result of the popular revolt which started as peaceful demonstrations in the city of Benghazi, on 15th February 2011, spread to other cities and developed into a bloody military confrontation, involving NATO air force and navy, after the dictator declared in a publicly televised speech that he would lead a cleansing campaign against those who challenged his reign. Despite repeated demands, from the international community, to leave power peacefully, he refused to stop the war and leave the country. The dictator himself was captured near his home town Sirte, on 20th October 2011. He was killed, possibly within a couple of hours of his capture. When he was captured, amateur videos showed him apparently well with the exception of bruises and scratches sustained from the airstrike by a NATO airplane which targeted his convey. No reports of official enquiry, into the circumstances of the death of the dictator, were published

2. The National Transitional Council (NTC), an unelected body which led the revolution, declared the liberation of Libya on 23rd October 2011, three days after the demise of the dictator.

3. The NTC adopted a Constitutional Declaration (CD), on 3rd August 2011, a brief constitutional document to lead the country during the transitional period. Article 30 of the CD drew a road map for the second transitional period; starting with national elections to elect the General National Congress (GNC), which will be responsible for appointing an interim government, run national elections to elect the 60 members Constituent Assembly "Committee of the Sixty" (C60) which will draft the new constitution, oversee the national referendum on the new constitution and run national elections to elect the parliament. The mandate of the GNC ends with the convening of the parliament, so does the second transitional period ends there.

4. On the 7th July 2012 national elections were held, for the first time since 1966, to elect the GNC. The elections were peaceful, transparent and well organized, and some 1.7 million voters participated in the elections. The NTC handed over the legislative authority to the GNC peacefully on the 20th August 2012.

5. The peaceful and orderly political process soon vanished and the political scene became marred with confrontation and power struggle. The GNC became under siege, constant attacks disrupting its works, some lasted few weeks. The political deadlock continued to worsen, and still on going.

6. On 20th February 2014 Libyans elected the Constitute Assembly (C60). The elections took place amid lingering security concerns. They were well organized but failed to achieve the desired inclusiveness, 13 seats were not elected, including five of the six seats designated for Amazigh, Touareg, and Tebu communities as well as one of the six seats reserved for women. The High

National Election Commission (HNEC) published on 5th May 2014 the results of 5 more seats, among them 2 for Tebu community.

7. On 25th June 2014, elections for the 200 members HoR took place. Low voter turnout, violence and accusations of voting fraud marred the elections.

8. In the First cycle of UPR, November 2010, diplomats of the previous regime represented Libya, but representatives of the NTC government, in March 2012, attended the follow up session after it was postponed in 2011 due to the war situation.

- **Preparation Methodology:**

9. This report is a result of consultation and cooperation within the NCCLHR. A public meeting, on the drafting of the National Report, was held on the 23rd/24th December 2013 in cooperation with the United Nations Development Program. Participants included members from the Select Committee on Human Rights & Civil Society at the GNC, representatives from the Ministry of Justice and representatives of local NGO's. The Ministry of Foreign Affairs was invited but no one showed up on the two days meeting.

10. A report of the recommendations and remarks from the 1st UPR Cycle (November 2010) were presented and the NCCLHR's own assessment of the human rights practices. The meeting gave a good opportunity to the participants, especially from NGO's, to make their comments on the reports and point out the issues that were not included.

11. Recommendations were made to the Ministry of Justice, at the end of meeting and a summary report was sent to all stakeholders including the Ministry of Foreign Affairs.

12. Unfortunately due to the worsening security situation in the country the NCCLHR was unable to continue these consultations.

- **Developments since last UPR:**

13. The overthrow of the dictatorship brought the adoption of a temporary constitution, the Constitutional Declaration (CD), which was the first constitution since the coup of September 1969 which suspended the Constitution of 1951. The adoption of the CD was a positive and constructive accomplishment.

14. Article 14 guaranteed the freedoms of opinion, expression, assembly, media, printing, publishing, communication, movement, both collective and individual, as well as the right of peaceful demonstrations and sit-ins.

15. The overthrow of the previous regime brought unprecedented freedoms for the general population. Many newspapers, radio channels and TV satellite channels were launched. Restrictions on freedom of association vanished, and people started setting up civil society organizations for all different causes very freely.

16. People were participating in free elections for the first time in over four decades, for the young generations it was the first time in their lifetime.

17. The CD promoted human rights. Article 7 committed the State to safeguard human rights and fundamental freedoms, strive to join international and regional declarations and conventions which protects these rights and freedoms and work on issuing covenants

18. The National Transitional Council (NTC) established the National Council for Civil Liberties and Human Rights (NCCLHR) by Law No. 5/2011 to be the independent National Human Rights Institutions. NCCLHR has submitted its application for accreditation to the ICC for compliance with the Paris Principles for NHRI. NCCLHR has enjoyed total autonomy to work on its mandate of promoting human rights, monitoring practices and intervening to prevent abuses. The lack of funds, both 2013 & 2014 Fiscal Budgets did not include provisions for the NCCHLR despite repeated requested submitted by the NCCLHR. The GNC failed the NCCLHR, the lack of funds has limited its ability to promote and protect human rights.

19. The NTC repealed several draconian laws and executive orders issued and used by the previous regime to systematically abuse human rights and deprive the population from its freedoms, notably Law No. 73/1972 “the Prohibition of Partisan Activity”, which basically prohibited any form of assembly, and Law No. 19/2001 “On Civil Associations”, which basically stifled civil society.

20. The GNC issued Law No. 2/2013, February 2013, to ratify the UN Convention on the Rights of Persons with Disabilities, and Law No. 10/2013, April 2013, to criminalize torture, forced disappearances and discrimination.

21. Though the Constitutional Declaration stated the equal enjoyment of civil and political rights for men and women, this was not respected in the national elections of GNC, the C60 and the HoR. The GNC elections law adopted a parallel dual system, 120 seats allocated for individual candidates and 80 seats for political parties and coalitions lists. The law, Article 15 of Law No.4/2012, demanded that the order of candidates, within a list, to be horizontally and vertically rotational between male & female candidates. Of the 80 seats allocated to lists, 32 women candidates became members of the GNC (40%) and only one woman candidate won a seat from the 120 seats contested by individual candidates (> 1%), so women made up (16.5%) of the GNC, below the global average of 22.3% and neither reflect the proportion of women in society in general nor the magnificent role played by Libyan women in the 17th February Revolution. In the elections for both the C60 and the HoR, the Lists system was dropped and a quota for women candidates was adopted. In the C60, 6 seats were allocated for women only candidates (10%), and in the HoR women got 32 seats (16%). The result of a single seat out of 120 seats, clearly highlight the tremendous cultural and social attitudes against women’s participation in public life. Without affirmative policies, women’s participation in public life will be very marginal.

- **Challenges:**

22. When the revolution started, the dictator threatened to distribute arms and ammunition, in an attempt to dissuade international community from intervening to protect the civilian population. This combined with the rapid fall of the regime in the eastern part of the country, which meant fall of military weapons and hardware into the hands of the demonstrators, led to widespread of weapons, especially after the fall of the regime in Tripoli, and this led in turn to the formation of scores of, far too many, armed groups and throughout the country. The spread of arms and these groups represent the greatest threat to the stability and security of the country. Without security and stability there will be no economic development, which further erode security and stability. The biggest challenge, and hence priority, is to resolve this issue.

23. The political feud, the antagonism between the GNC and the Interim Government, the lack of statesmanship, and the interference of internal and external parties, led to incoherent and inconsistent policy, and sometimes conflicting policies, to rein these armed groups, and integrate their members into the military and law enforcement agencies. The Central Government is too weak to exert its influence in many parts of the country, in some cities and regions the judiciary and law enforcement agencies do not exist or barely exist and function.

24. The armed conflict of 2011 saw heinous crimes committed some amount to crimes against humanity. For the first time in living memory, rape was used as a weapon of war, and it shocked and enraged the general population. The crimes committed in the war plus the legacy of the four decades of gross human rights violations, present a huge challenge for the country to progress forward. Thus, transitional justice must be applied to pave the way for national reconciliation; there shall be no peace without justice. The NTC issued Law No. 17/2012 “Establish Rules Concerning National Reconciliation and Transitional Justice”, but it was never implemented because it did not address accountability, it only addressed fact finding. The Justice Minister proposed a new law, after debates and discussions the GNC issued Law No. 29/2013 “Concerning Transitional Justice”, it was even worse than its predecessor. The proposed version by the Justice Minister, though requiring revision of the mechanisms to try the perpetrators of crimes, was the better one.

- **Recommendations:**

25. The adoption of Constitutional Declaration was a significant achievement. Libyan authorities, and all parties involved, should support and help the Constituent Assembly in its task to deliver a constitution that guarantees fundamental rights of the people, clearly separates powers between the Legislative, Executive and Judicial branches of the State, and insures the independence of the Judiciary. The cultural and linguistic rights of the Amazigh, Touareg, and Tebu communities should be protected in the constitution, to insure inclusiveness.

26. The fundamental rights of freedom of association, freedom of expression and other freedoms should be firmly enshrined in the Constitution.

27. The Libyan authorities should make sure, through affirmative policies, that Libyan women are fairly represented in the Legislative and Executive

branches of the State. The authorities should work extensively to educate the general population of the constructive role women can have in public life, and in parallel increase the training and development programs targeting women, to overcome the social and cultural misgivings about women's participation in public life.

28. The establishment of the National Council for Civil Liberties and Human Rights (NCCLHR), its mandate and independence as an NHI, should be enshrined in the Constitution, to guarantee its endurance and protect its independence. The GNC, and its successor, should support the NCCLHR by making sure that its budget is approved in due time.

29. The freedom to expression should not be taking as a license to transgress the rights of others. Over the past three years, unethical and some cases outright criminal use of the media was very manifest. A clear line between hate speech, defamation and character assassination, and freedom of expression should be drawn. The Authorities, while guaranteeing the fundamental right of freedom of expression and freedom of the media, should protect the rights of individuals and groups from unlawful use of the media.

30. Urgently adopt workable, practical and comprehensive programs to disband the armed groups by integrating their members, as individuals not as groups, into and across the regular armed forces and law enforcement agencies. The Authorities, and all political players in Libya, should approach this issue with all impartiality and honesty, the political divide and strife is the main factor, if not the sole one, behind the existence and continued existence of these armed groups. The continued existence of these different, multiple groups, constitutes the greatest threat, not just to the wellbeing of the Libyan people but to the very continuation of Libya as a sovereign and united country.