

**Stakeholder submission to the UN Human Rights Council
on the occasion of Libya's Universal Periodic Review
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**Submitted by: World Organization Against Torture (OMCT)
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I. Summary

This submission tracks the situation of (1) torture and ill-treatment, (2) arbitrary arrest and detention, (3) enforced disappearance, and (4) vulnerable populations – including internally displaced persons, migrants, and human rights defenders – in Libya from the start of the 2011 revolution to date. Each section includes an analysis of relevant legislation and recommendations for reform.

OMCT has maintained a presence in Tripoli since February 2012 to train Libyan lawyers to document cases of torture and ill-treatment, train prison officers on human rights standards, build public buy-in to the absolute prohibition of torture, and advocate for legislative and institutional reforms.

The central aim of this submission is to advance the Libyan State's adherence to its international obligations in the fight against torture. As a State Party to the UN Convention Against Torture (CAT), Libya must align its national legal framework with international standards and seek to ratify the Optional Protocol to CAT.¹ Specifically, Libya must engage fully with OHCHR and the Committee Against Torture, including by submitting its country reports in a regular manner (it last reported in 1999).

OMCT considers the prevention of torture to be the keystone of any future political agreement that could move Libya beyond the present political and security crisis. The key to a just and secure transition in Libya is ensuring that all armed groups are brought under effective State control and that a baseline consensus is established nationwide to respect the rule of law and reject torture.

Specifically, the State should properly criminalize torture and investigate instances where there are reasonable grounds to suspect that acts of torture or ill-treatment have occurred (even when no complaint has been made). The State is also required to bring perpetrators to justice, provide reparations to victims, and take concrete measures to prevent torture and ill-treatment, including by granting independent bodies the right to monitor the situation of detainees.

II. Torture and ill-treatment

The practice of torture was a systemic tool of political repression under the Qaddafi regime, and is fast becoming so once again. Since the revolution, torture has become more widespread, grotesque, and accepted in Libya. Particularly disturbing is that today's perpetrators were often yesterday's victims, fueling a vicious spiral of violence.

OMCT has helped Libyan lawyers to document more than 120 cases of torture and ill-treatment in Tripoli, Janzour, Tajoura, Tawergha, Mashashia, Bani Walid, Warshefana, Benghazi, Misrata, Zawia, Zintan, and Derna. The predominant pattern is that victims are subject to torture based on presumptions of belonging to or supporting the former regime. Torture is thus mainly perpetrated as part of a culture of revenge or to extract confessions. Often, armed groups arrest people at

¹ See OMCT's '10 Steps to End Torture', provided in the Annex.

their homes or at checkpoints, then take them to informal detention facilities where they are subjected to beating with rifles, metal bars, and belts; burning by electric shocks and cigarettes; mock execution; being hung upside-down for lengthy periods; rape and sexual assault; deprivation of sleep, water, and food; and solitary confinement. OMCT and its partners have also documented 15 cases of death in custody, including 4 cases of people from Mashashia detained by Zintani armed groups in Tripoli and 7 cases of people from Tawergha detained by Misratan armed groups in Misrata. In 11 of these cases, victims were tortured to death within the first 72 hours after arrest, including by heavy blows to the head with the butt of a rifle, electric shocks, and gunshot wounds, followed by denial of medical attention.

Libya has taken important steps to criminalize torture in alignment with international law, but the anti-torture legal framework remains fragile and incomplete. Law No. 10, passed by the General National Congress (GNC) in April 2013, defines torture, criminalizes it, and prescribes a minimum punishment of 5 years' imprisonment for perpetrators. Still, implementation of Law No. 10 is stalled, and even so, it fails to create a comprehensive anti-torture apparatus in conformity with international standards.

To this end, OMCT recommends that the law be amended in five ways to further align it with CAT.² First, there needs to be finer precision on the definition of torture, including a stipulation of intent and a clear reference to the principle of state responsibility, including torture by non-state actors. Second, the law should criminalize cruel, inhuman, or degrading treatment or punishment, as well as complicity, instigation, and attempts of torture or ill-treatment. Third, aggravating circumstances need to be listed objectively in full, detached from the revolutionary context, and prescribed correlative punishments. Fourth, amnesties, immunities, and indemnities should be excluded and statutes of limitation disappplied. Fifth, provisions should be added to establish universal jurisdiction in line with CAT.

OMCT further recommends that Libyan authorities:

1. Impartially investigate all allegations of torture, ill-treatment, and death in custody committed before, during, and since the 2011 revolution, through an independent organ equipped with financial and technical resources to obtain all necessary information, and promptly prosecute suspects and perpetrators through fair trials.
2. Provide victims and their families with full and adequate reparations, including, but not limited to, financial compensation and medical and psychological rehabilitation.
3. Empower the judiciary to implement Law No. 10 through a formal mechanism that offers full protection to victims and guarantees that perpetrators are punished.

III. Arbitrary arrest and detention

More than 8000 Libyans are said to be detained across the country without judicial oversight and therefore arbitrarily. More than 2000 of these detainees are believed to be in informal and unacknowledged detention facilities outside State control, and of the remaining 6000, only about

² See OMCT's comments on the draft of Law No. 10, provided in the Annex.

10 percent have been tried.³ OMCT has helped Libyan lawyers to document more than 90 cases of arbitrary arrest and detention, including of persons in Tripoli, Janzour, Tajoura, Tawergha, Mashashia, Bani Walid, Warshefana, Benghazi, Misrata, Zawia, Zintan, and Derna. These cases generally fall into two categories as follows:

(1) Arrest and detention by armed brigades

Armed brigades run sweeping arrest campaigns targeting civilians who are presumed to sympathize with the former regime, including members of certain ethnic and tribal populations. Many such victims of arbitrary arrest and detention are accused of having fought with Qaddafi forces or being members of the former police or national guard. After the revolution, armed brigades were granted expansive powers of arrest, interrogation, and detention, first by decree of the Ministry of Interior in December 2011 and later by Law No. 38 on Special Procedures, which the GNC issued in May 2012.⁴ Both Law No. 38 and Law No. 29 on Transitional Justice, which the GNC issued in September 2013, stipulated deadlines for armed groups to transfer detainees to the Ministries of Justice, Interior, and Defense – but neither was abided.⁵

While transitional government authorities have tried to bring detention facilities under their control, armed brigades continue to operate informal and unacknowledged jails across the country. It is within and around these jails that torture practices continue unabated. These makeshift jails, which often hold between 10 and 60 people, are set up in apartments, villas, old passport offices, farms, and even the Tripoli Zoo, with horrific conditions. While armed groups returned at least 19 major prisons to the authority of the Ministry of Justice over the past two years, this is often in name only and armed groups retain de facto control. OMCT has received reports from State officials who were themselves barred from entry to the prisons they oversee by the armed personnel who were really in charge. OMCT has also encountered cases of public prosecutors and judges ordering the release of certain detainees, but the prison management (which belongs to an armed brigade) refusing to execute these orders.

Another concern is the integration of armed brigades into State armed forces without training or vetting, itself a violation of Article 10 of CAT, which obliges Libya to train all law enforcement personnel involved in arrest or detention. The integration process allows militiamen to become State authorities while maintaining their personal and political vendettas, thereby legitimizing human rights violations committed by such personnel and making them State practice, rather than crimes of non-state actors.

(2) Excessive length of pre-trial detention

For those detainees held by the Judicial Police (the relevant State body) – be they conflict-related or otherwise – the justice system is dysfunctional. For example, OMCT and its partners have monitored the extension of pre-trial detention by judicial authorities to periods longer than one year in more than 20 cases, without any investigation or evidence. Such victims are regularly

³ Briefing by Tarek Mitri, Special Representative of the Secretary-General for Libya, Security Council meeting, 9 June 2014.

⁴ Decree 388, 28 December 2011; Article 2, Law No. 38/2012.

⁵ Article 1, Law No. 38/2012; Article 26, Law No. 29/2013.

held on remand as they await their trial, with some conflict-related detainees having been held continuously since 2011. Article 177 of the Code of Criminal Procedure, which provides for remand, is often interpreted to validate unlimited durations of detention, and suspects do not have the right of appeal, compromising their *habeas corpus* rights, as per Article 9 of the International Covenant on Civil and Political Rights.

OMCT recommends that Libyan authorities:

1. Formalize and professionalize State security forces, notably the Judicial Police, and bring non-state armed groups and the detention facilities they operate under effective civilian control.
2. Bring all detainees before a judicial authority in order to review the legality of their detention.
3. Create a registry of persons detained nationwide that includes names, arrival dates, and charges.
4. Make regular visits to all places of detention and authorize civil society to do the same; specifically, fully empower the National Council for Civil Liberties and Human Rights as a visiting authority to all places of detention.

IV. Enforced disappearance

Enforced disappearance of political opponents was a systematic practice during the Qaddafi regime. The fate and whereabouts of those disappeared during these 42 years remain largely undisclosed. Since the revolution, new cases of disappearances continue to be reported, especially of people presumed to be Qaddafi “loyalists” due to their membership of specific communities, such as the Tawergha, who are often arrested and then disappeared from their homes or at checkpoints without any notice given to their families as to their whereabouts or condition.

The number of missing persons in Libya dramatically increased during and after the 2011 civil war, as both pro-Qaddafi forces and rebels resorted to enforced disappearance and further mass violence. Today, an estimated 10,000 people are missing in Libya.⁶ During the revolution, State authorities engaged in a widespread pattern of arbitrary detention and enforced disappearances. As Qaddafi forces retreated from cities, they often employed lethal force in violation of international law against detainees and residents. The mortal remains of people thus massacred are generally buried in mass graves, as seen in Al-Khoms, Al-Qaala, Yarmouk, Gharghour, Bab Al-Azizya, Bani Walid, Sirte, and elsewhere.⁷

⁶ As estimated by the Ministry of Martyrs and Missing Persons in June 2012. The figure includes not only people who went missing during the 2011 revolution but also victims of hostilities with Egypt, Uganda, and Chad dating back to the 1970s and 1980s, as well as victims of the Abu Salim prison massacre.

⁷ See Report of the International Commission of Inquiry on Libya, paragraphs 25, 155-157, 161-169, 178, 186-189, 197.

There are an estimated 200 mass graves spread around the country, largely dug during the 2011 civil war, containing an estimated 6000 unidentified bodies.⁸ There are likely more mass graves that have not yet been discovered. These graves are not secured by any authority, which is of utmost concern for both identification of the bodies and collection of evidence.

Besides the disappearances perpetrated by Qaddafi forces, a number of persons whose whereabouts remain unknown have gone missing at the hands of armed groups. Armed brigades, notably in Misrata, have prevented public authorities from investigating the events concerning some of the mass graves, of which the brigades themselves are suspected perpetrators. A number of them operate informal and unacknowledged detention centers beyond the reach of any monitors and outside the protection of the law, making it easy for cases of arbitrary detention to become cases of enforced disappearance.

Regarding domestic legislation, Law No. 10, which criminalizes torture, also criminalizes enforced disappearance. Libya, however, is not party to the 2006 International Convention on the Protection of People from Enforced Disappearance, and the national legislation is lacking in this regard. Specifically, it is critical to define enforced disappearance in line with Article 2 of the 2006 Convention and as a crime against humanity when it is committed as part of a widespread or systematic attack on a civilian population, as per Article 7 of the Rome Statute.

OMCT recommends that Libyan authorities:

1. Initiate independent, impartial, and effective investigations on cases of enforced disappearance committed before, during, and since the 2011 revolution, and where sufficient proof exists, try and punish those responsible through fair trials.
2. Take all measures necessary to preserve mortal remains and other evidence buried in mass graves in order to help the identification of missing persons and the collection of forensic evidence.
3. Ratify the 2006 International Covenant on the Protection of People from Enforced Disappearance and amend the national legal framework on enforced disappearances accordingly.

V. Vulnerable populations

(1) Internally displaced persons

Grave human rights violations against members of ethnic and racial minorities are ubiquitous. Almost 60,000 people were displaced internally after the 2011 revolution, and the majority of them now live in camps in and around Tripoli and Benghazi. Internally displaced persons (IDPs) from Tawergha, Mashashia, Gawalesh, and Bani Walid are at the highest risk of arbitrary arrest and detention, harassment and discrimination, and torture and extrajudicial killing as part of a post-revolutionary culture of revenge. An archetypal example is the standoff between Misratan armed groups and the people of Tawergha, who number 35,000 and were uprooted from their homes upon the revolution. Misratan armed groups accuse the Tawergha, who fought alongside

⁸ As estimated by the Ministry of Martyrs and Missing Persons and the Ministry of Interior in April 2013.

Qaddafi in 2011, of committing grotesque crimes during the war, and have used their military advantage to exercise collective punishment on the Tawergha for crimes that individuals may have committed. Since the revolution, Misratan armed groups have engaged in the widespread arrest of the Tawergha – or people presumed to be from Tawergha because of their dark skin – from checkpoints and camps across Libya, and have proceeded to abuse, disappear, or kill them. Especially in times of aggravated conflict, like the current crisis, IDP camps around Tripoli have been attacked by armed vehicles and residents have been abducted and murdered indiscriminately. Whole communities have been newly displaced (e.g., the Warshefana). The State is also complicit in violating the rights of IDPs as it has proven unable to guarantee the safe and dignified return of these populations to their homelands, as per Principles 28-30 of the UN Guiding Principles on Internal Displacement.

OMCT recommends that Libyan authorities:

1. Activate a transitional justice process that addresses the rights of all victims and builds consensus around the rejection of torture in order to lay the groundwork for national-level reconciliation.
2. Accelerate the safe, dignified, and timely return of IDPs to their homes.

(2) Migrants

At least 4000 migrants from across Africa but especially the Horn are held in 18 detention centers operated by the Ministry of Interior. OMCT and its partners have documented 30 cases of migrant detention in Sabrata and Sorman and found widespread evidence of ill-treatment and dismal medical care (especially for skin infections and mental illness). OMCT has also encountered credible claims of slavery-like practices and forced labor being run out of these facilities, but has been unable to independently verify these claims.

OMCT recommends that Libyan authorities:

1. Ratify and implement the Geneva Convention on Refugees of 1951 and its 1967 Protocol, including full cooperation with UNHCR.
2. Establish a legal framework allowing migrants to request asylum and assure that they are not arrested during the examination of their requests.

(3) Human rights defenders

Human rights defenders have been specific targets of violence since the last quarter of 2012. Attacks shot up in 2013 and have been worsening steadily up to the current crisis. OMCT and its partners have brought more than 70 cases of torture and death in custody before the Office of the General Prosecutor, and have found that these cases are systematically ignored. Fear paralyzes judicial authorities, as dozens of judges and prosecutors have received death threats or been assassinated for exerting judicial powers, such as ordering the release of detainees held by armed groups, and hundreds more have been subject to intimidation and harassment. This amounts to a violation of international law, as Article 12 of CAT obliges the State to ensure that its competent authorities can promptly and impartially investigate cases of torture. Then, lawyers who have

brought cases forward against armed groups perpetrating torture and ill-treatment, including lawyers working with OMCT and its partners, have been threatened with and subjected to violence – as have their families. Journalists have also been subjected to persecution, assault, and murder on a wide scale. In recent weeks, armed groups have been searching for their political opponents, among them activists, lawyers, and journalists, in public places like courthouses and also at their homes.

OMCT recommends that Libyan authorities:

1. Investigate all cases of assassination, especially of human rights defenders, since the 2011 revolution, identify perpetrators, and bring them to justice.
2. Ensure the complete security of judicial authorities.
3. Ensure the effective protection of human rights defenders, bring to justice those responsible for attacks against them, and develop an effective mechanism to protect them in partnership with the National Council for Civil Liberties and Human Rights.