



## **LFJL's REPORT FOR THE THIRD UNIVERSAL PERIODIC REVIEW OF**

### **LIBYA**

**36<sup>th</sup> session of the UPR Working Group**

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## **AUTHOR OF THE REPORT**

Lawyers for Justice in Libya (**LFJL**) is a Libyan and international independent non-governmental organisation and UK-registered charity that is dedicated to strengthening the rule of law and human rights in Libya.

LFJL was established in 2011 and has maintained an uninterrupted presence in Libya since. LFJL works on and in Libya with a growing network of lawyers, activists and grassroots communities across and outside the country.

LFJL seeks justice in Libya through advocacy and outreach, accountability, transitional justice initiatives and capacity building, underpinned by our own independent research.

## INTRODUCTION

1. During its second Universal Periodic Review (UPR) in May 2015 (the **second UPR**), Libya accepted 171 out of the 212 recommendations made by Member States. In November 2017, Libya was due to provide an update on the status of implementation of the recommendations it received during the second UPR but failed to do so.
2. Lawyers for Justice in Libya's (LFJL) submission focuses on four main areas of concern that LFJL considers pressing. These are (1) the targeting of civilians and civilian objects in light of the resumption of the conflict in April 2019; (2) migration and asylum policies; (3) the rights of women and the gendered impact of the conflict since 2011; and (4) enforced disappearances. The submission analyses Libya's implementation of the UPR recommendations related to these areas since the second UPR. It highlights the limited implementation of these recommendations and the issues that remain to be addressed.

### I. Targeting of Civilians and Civilian Objects

3. Since 4 April 2019, when the self-proclaimed Libyan Armed Arab Forces (LAAF, also commonly known as the Libyan National Army or LNA), launched its offensive on Tripoli, Libya has faced an upsurge in violence between the LAAF and armed groups affiliated with it and those supporting the United Nations-backed Government of National Accord (GNA). As of October, fighting has now entered its seventh month and, as of 15 July 2019, has resulted in 1093 people killed, including 106 civilians and 5752 injured, including 294 civilians.<sup>1</sup>
4. In its second UPR, Libya accepted all 14 recommendations relating to the respect for international humanitarian law,<sup>2</sup> including to "cease (...) attacks on civilians"<sup>3</sup> and to "guarantee the safety of humanitarian workers in conflict zones."<sup>4</sup> Despite this, all parties to the conflict have been responsible for the indiscriminate targeting of civilians<sup>5</sup> and civilian objects including airports, medical personnel and facilities, in a clear violation of international humanitarian law, and in a manner which could amount to war crimes.<sup>6</sup> Systematic attacks to Mitiga airport, Tripoli's only functioning civilian airport, have resulted in the cancellation of flights, for days at time, eventually leading to the complete shutdown of the airport in September.<sup>7</sup> This significantly affects the mobility of civilians and the transfer of much needed humanitarian aid.

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<sup>1</sup> World Health Organisation on Twitter, July 2019, <https://twitter.com/WHOLIBYA/status/1150785254564802565>.

<sup>2</sup> *Report of the Working Group of the Universal Periodic Review on Libya*, July 2015, A/HRC/30/16, para. 137.107 – 137.115, 137.131, 137.146, 137.157, 137.160, recommendations by Argentina, Japan, Germany, Australia, New Zealand, Chile, Portugal, Thailand, Ireland, Angola, Cyprus, Spain, Czech Republic, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/162/91/PDF/G1516291.pdf?OpenElement>.

<sup>3</sup> *Ibid.* para. 137.108, recommendation by Japan.

<sup>4</sup> *Ibid.* para. 137.114, recommendation by Thailand.

<sup>5</sup> LFJL, alongside the Coalition and activists in Libya, is working to document ongoing violations occurring since April. One of LFJL's partners interviewed a 43-year-old man who became displaced in April. The man recalled returning to his home in May, when fighting subsided, to find the air conditioning running on full power. When searching the house for possible new residents, the man found one room full of corpses and turned into a makeshift morgue. Such examples showcase the reality of five months of militia fighting amongst civilians.

<sup>6</sup> On 16 April 2019, the Prosecutor of the International Criminal Court, reiterated her commitment to investigating potential war crimes in Libya. Available here: <https://www.icc-cpi.int/Pages/item.aspx?name=190416-otp-stat-libya>.

<sup>7</sup> In the space of three months since July 2019, Mitiga airport was targeted nine times: on 20 July, 29 July, 3 August, 14 August, 15-16 August, 1 September, 9 September and 17 September.

5. Despite the civilian casualty toll, the flow of advanced weapons<sup>8</sup> into the country continues openly in blatant violations of the UN arms embargo.<sup>9</sup> Heavy weaponry is entering Libya and into the hands of unaccountable armed groups untraced. Weaponry in the hands of such armed groups results in systematic indiscriminate attacks and the targeting of civilians and civilian objects causing the displacement of over 105,000 people since clashes started in April.<sup>10</sup>

## II. Migration and Asylum Policies

6. During its second UPR, Libya accepted ten recommendations to protect the human rights of migrants and refugees in Libya,<sup>11</sup> including a recommendation to put an end to the arbitrary detention of third-country nationals.<sup>12</sup> However, despite its commitment to take measures to guarantee the rights of migrants and refugees, Libya has not made any progress in the improvement of the situation. Instead, since 2015 the situation has deteriorated. Libya has continued to sign cooperation agreements with Italy aiming to limit the number of migrants and refugees arriving on Italian shores while failing to guarantee their human rights in Libya.<sup>13</sup>

### A) *Libyan Legal Framework*

7. Despite accepting a recommendation to end the arbitrary detention of third-country nationals in its second UPR,<sup>14</sup> Libyan law still fails to recognise refugee status. Law 19 of 2010 on Combatting Irregular Migration (**Law 19 of 2010**) remains the legislation which regulates migration in Libya. This law, affecting an estimated 700,000 migrants, refugees and asylum-seekers in Libya,<sup>15</sup> criminalises irregular entry, exit and stay. In the absence of a domestic asylum law, all those entering Libya are perceived as undocumented illegal migrants. Libyan law continues to deem asylum seekers as criminals, should they enter Libyan territory through illegal routes and/or without documents for identification.<sup>16</sup>

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<sup>8</sup> UN Security Council, *Report of the Secretary General*, 26 August 2019, S/2019/682, available at: [https://reliefweb.int/sites/reliefweb.int/files/resources/S\\_2019\\_682\\_E.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/S_2019_682_E.pdf).

<sup>9</sup> UN Security Council, *Letter dated 5 September 2018 from the Panel of Experts on Libya established pursuant to resolution 1973 (2011) addressed to the President of the Security Council*, 5 September 2018, S/2018/812 available at: [https://www.un.org/ga/search/view\\_doc.asp?symbol=%20S/2018/812](https://www.un.org/ga/search/view_doc.asp?symbol=%20S/2018/812).

<sup>10</sup> UNHCR on Twitter, 1 September 2019, <https://twitter.com/UNHCRLibya/status/1168084210466377729>.

<sup>11</sup> *Report of the Working Group of the Universal Periodic Review on Libya*, July 2015, A/HRC/30/16, para. 137.129, 137.184-137.192, recommendations by Chile, Chad, Philippines, Rwanda, Honduras, Uganda, Costa Rica, Kazakhstan, Switzerland, Canada.

<sup>12</sup> *Ibid.*, para. 137.129, recommendation by Chile.

<sup>13</sup> *Memorandum of understanding on Cooperation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic*, 2 February 2017, available at: [https://eumigrationlawblog.eu/wp-content/uploads/2017/10/MEMORANDUM\\_translation\\_finalversion.doc.pdf](https://eumigrationlawblog.eu/wp-content/uploads/2017/10/MEMORANDUM_translation_finalversion.doc.pdf). For more information see LFJL's submission to Italy's third UPR cycle, available here: <https://www.upr-info.org/en/review/Italy>.

<sup>14</sup> *Report of the Working Group of the Universal Periodic Review on Libya*, July 2015, A/HRC/30/16, para. 137.129, 137.184-137.192, recommendations by Chile, Chad, Philippines, Rwanda, Honduras, Uganda, Costa Rica, Kazakhstan, Switzerland, Canada.

<sup>15</sup> IOM estimates between 700,000 and 1 million migrants and refugees inside Libya, mainly coming from Egypt, Niger, Sudan, Nigeria, Bangladesh, Syria, and Mali. Available here: <https://www.iom.int/countries/libya>.

<sup>16</sup> Article 6 of Law no. 19 of 2010 on combating irregular migration: "illegal migrants will be placed in detention and condemned to forced labour in jail or a fine of 1000 Libyan dinars and be expelled from the Libyan territory after serving sentence; Article 11 of Law no. 19 of 2010 on combating irregular migration: "all foreigners residing in Libya had to legalise their stay in Libya within a period of two months after entry into force of the law; otherwise they were to be considered as illegal migrants and were to be subject to penalties. For more information on these laws see: Amnesty International, *'Libya Is Full of Cruelty': Stories of Abduction, Sexual Violence and Abuse from Migrants and Refugees*, 2015.

8. These policies infringe upon international law on the rights of refugees including the basic principle of asylum and international protection. Furthermore, Libya has not ratified the 1951 Convention on the Status of Refugees, nor has it formally recognised the UN High Commissioner for Refugees (UNHCR).

### ***B) Mistreatment of migrants by Libyan authorities***

9. Since 2014, through the European Union (EU) Naval Force Mediterranean (EUNAVFOR MED - also known as Operation Sophia) the EU and European countries have provided training and support to the Libyan Coast Guard (LCG) on search and rescue procedures, in the form of technological and technical support as well as equipment.<sup>17</sup>
10. The mistreatment of migrants and refugees by the LCG, a body which falls under the Ministry of Defence of the GNA, has been heavily documented over the past years and often amounts to grave human rights violations.<sup>18</sup> On one occasion, the LCG is reported to have deliberately sunk boats using firearms.<sup>19</sup> On 19 September 2019, a migrant died from a bullet wound to the stomach after members of the LCG fired in the air at a rescued group returned to Tripoli.<sup>20</sup>
11. LCG officers often use violence including beatings and shooting with live ammunition to force migrants and refugees onto LCG boats to return them back to Libya,<sup>21</sup> where they are then immediately transferred to detention centres<sup>22</sup> under Libya's Directorate for Combatting Illegal Migration (DCIM), part of the Ministry of Interior.<sup>23</sup> Here, migrants and refugees face arbitrary and indefinite detention with no judicial oversight.<sup>24</sup>

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<sup>17</sup> Amnesty International, *Between the Devil and Deep Blue Sea*, 8 August 2018, p. 9, available at: <https://www.amnesty.org/download/Documents/EUR3089062018ENGLISH.pdf>; European Commission, *EU cooperation on migration in Libya, EU Trust Fund for Africa - North of Africa window*, December 2018, available at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/eutf-noa-libya.pdf>.

<sup>18</sup> See for example, UNSMIL, *Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya*, Libya Migration Report, 20 December 2018, p. 18, available at: <https://www.ohchr.org/Documents/Countries/LY/LibyaMigrationReport.pdf>.

<sup>19</sup> UN Security Council, *Letter Dated 1 June 2017 from the Panel of Experts on Libya*, June 2017, paras 104-105, available at: <http://www.refworld.org/docid/5b641bee4.html>.

<sup>20</sup> IOM, *IOM deplors death of migrant, killed Thursday upon disembarkation in Tripoli*, 19 September 2019, available at: <https://www.iom.int/news/iom-deplors-death-migrant-killed-thursday-killed-thursday-upon-disembarkation-tripoli>.

<sup>21</sup> Human Rights Watch, *EU: Shifting Rescue to Libya Risks Lives*, 19 June 2017, available at: <https://www.hrw.org/news/2017/06/19/eu-shifting-rescue-libya-risks-lives>.

<sup>22</sup> In its 2019 report on the human rights situation in Libya, the Office of the High Commissioner for Human Rights (OHCHR) recommended that the EU and Member States of the UN Human Rights Council “urgently reconsider their operational support to the LCG, an entity which endangered the lives of migrants in distress at sea and returned them to arbitrary detention and torture in Libyan centres. See more in OHCHR, *Human Rights Council holds general debate on technical assistance and capacity building*, 21 March 2019, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24387&LangID=E>; UNGA, *Situation of human rights in Libya, including the implementation of technical assistance and capacity-building and efforts to prevent and ensure accountability for violations and abuses of human rights, Report of the United Nations High Commissioner for Human Rights*, 4 February 2019, A/HRC/40/46, available at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?c=104&su=110](http://ap.ohchr.org/documents/dpage_e.aspx?c=104&su=110).

<sup>23</sup> Ibid UNGA, *Situation of human rights in Libya, including the implementation of technical assistance and capacity-building and efforts to prevent and ensure accountability for violations and abuses of human rights, Report of the United Nations High Commissioner for Human*, p. 4.

<sup>24</sup> UNHCR, *UNHCR Position on Returns to Libya (Update II)*, September 2018, p. 12, available at: <https://www.refworld.org/pdfid/5b8d02314.pdf>.

### ***C) DCIM Detention Centres***

12. LFJL's partners working on the ground have systematically reported the dire situation in DCIM centres including over-crowding and lack of ventilation, natural light and adequate sanitation.<sup>25</sup> Migrants in these centres have also reported skin diseases, infections, and acute watery diarrhoea, symptoms of severe malnourishment and dehydration. This has been corroborated by other organisations working on the ground.<sup>26</sup>
13. Migrants and refugees often face extortion by armed groups controlling DCIM centres, being forced to pay ransom to secure their freedom.<sup>27</sup> Others are often sold off to employers and face bonded labour.<sup>28</sup>
14. In the current context of renewed hostilities, detention centres have been targeted. On 2 July 2019, an aerial attack on an official DCIM centre in Tajoura killed 46 migrants and refugees and injured 130.<sup>29</sup> This attack underscores the extremely serious consequences of Libya and Europe's shared policy of intercepting migrants and refugees and returning them to Libya. Libya is deemed an unsafe port, where upon disembarkation migrants and refugees are immediately transferred to detention and risk being tortured or killed in indiscriminate or targeted attacks.

### **III. Restrictions to the rights of women**

15. In its second UPR cycle, Libya accepted 30 out of 33 recommendations aimed towards guaranteeing the equal rights of women and to prohibit discrimination and violence against them.<sup>30</sup> However, Libyan women continue to face restrictions to their rights in the personal and public spheres.

#### ***A) Restriction of personal freedoms and weak legal protection of women victims of violence***

16. Despite its commitment to "(...) improv[ing], by legislative and social measures, the status of women and ensure gender equality",<sup>31</sup> Libya has failed to amend its legislative framework to promote gender equality. Only one month after the adoption of the outcome of Libya's UPR, on 15 October 2015, the General National Congress adopted Law 14 of 2015 related to marriage,

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<sup>25</sup> Information collected on the ground by the Independent Organisation for Human Rights since 2015.

<sup>26</sup> MSF, *Libya: Providing healthcare to detained refugees and migrants*, 14 December 2016, available at: <https://www.msf.org/libya-providing-healthcare-detained-refugees-and-migrants>.

<sup>27</sup> Amnesty International, "Europe's shameful failure to end the torture and abuse of refugees and migrants in Libya", 7 March 2019, available at: <https://www.amnesty.org/en/latest/news/2019/03/europes-shameful-failure-to-end-the-torture-and-abuse-of-refugees-and-migrants-in-libya/>.

<sup>28</sup> Amnesty International, *Libya's Dark Web of Collusion*, 2017, available at: <https://www.amnesty.org/download/Documents/MDE1975612017ENGLISH.PDF>.

<sup>29</sup> UNSMIL, "UNSMIL condemns in the strongest terms the attack in Tajoura causing dozens of civilian fatalities and calls for denunciation by the international community", 3 July 2019, available at: <https://unsmil.unmissions.org/unsmil-condemns-strongest-terms-attack-tajoura-causing-dozens-civilian-fatalities-and-calls>.

<sup>30</sup> *Report of the Working Group of the Universal Periodic Review on Libya*, July 2015, A/HRC/30/16, para. 137.35, 137.36, 137.48, 137.69, 137.74, 137.75-137.89, 137.116, 137.132, 137.150, 137.163, 137.164, 137.178-137.180, 137.187, 137.192, recommendations by Cyprus, Slovenia, Czech Republic, Canada, France, Honduras, Namibia, Nepal, Bahrain, Colombia, Burundi, Mexico, Denmark, Serbia, Kenya, Argentina, Poland, Portugal, UK, Netherlands, Latvia, Slovenia, Lithuania, Luxembourg, Rwanda, South Africa, Austria, Honduras, Canada.

<sup>31</sup> *Report of the Working Group of the Universal Periodic Review on Libya*, July 2015, A/HRC/30/16, para. 137.80, recommendation by Burundi.

divorce and its legal consequences,<sup>32</sup> which amends Law 10 of 1984 on Personal Status. In addition to existing discriminatory provisions in Law 10 of 1984, including drawing a distinction with regards to marital responsibilities on the basis of gender, the amendments in Law 14 of 2015 present further setbacks to gender equality and non-discrimination.<sup>33</sup> The most concerning amendments include: Article 6 reducing the legal age for marriage from 20 to 18 with discretion given to the courts to permit marriage at a younger age; Article 14 annulling the ability of a woman to witness a marriage contract; Article 18 stipulating a number of responsibilities of the wife towards her husband, which are not required to be reciprocated by the husband; and Article 28 granting unilateral power to the husband to initiate a divorce.<sup>34</sup>

17. Libya has not revoked Article 375 of the Penal Code. This law provides that a man who kills a female relative, immediately upon finding her engaged in adultery, has a reduced sentence of eight years in prison.<sup>35</sup> Libya has also not addressed the manner in which its Penal Code understands rape, regarded not as a crime against the person of the victim, but as a crime against honour and morals.<sup>36</sup> Not only does its recognition as such reduce the maximum sentence possible,<sup>37</sup> the Penal Code further allows perpetrators to escape punishment altogether by marrying the victim.<sup>38</sup> This understanding potentially triggers retaliation and promotes honour-based violence, which is particularly damaging given Libya has no law addressing domestic violence.<sup>39</sup>
18. Libya's *zina* laws, which criminalise adultery and intercourse outside marriage, support the detention of women and girls who have been raped<sup>40</sup> in government-run Social Rehabilitation Centres.<sup>41</sup> This law discourages women from reporting the crime and restricts their liberty. Generally, the Libyan legal framework reinforces the culture of sexual and gender-based violence (SGBV) in Libya.

### ***B) Gendered impact of the conflict***

19. Women activists have been subjected to SGBV and threats including physical assault, abductions, sexual violence, as well as gender-related slurs and smear campaigns designed to undermine them and undercut the legitimacy of their work.<sup>42</sup> This has effectively forced women out of public life.

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<sup>32</sup> Translation by LFJL. Law available in Arabic at: <http://aladel.gov.ly/home/wp-content/uploads/2015/12/لسنة-14-ر-قم-قانون-10-ر-قم-القانون-أحكام-بعض-بتعديل-م-2015-وآثار-هما-والطلاق-بإلزام-الخاصة-الأحكام-بشأن-م-1984-لسنة-10-ر-قم-القانون-أحكام-بعض-بتعديل-م-2015.pdf>.

<sup>33</sup> Law 14 of 2015 related to marriage, divorce and its legal consequences, issued on 14 October 2015, by the now-defunct General National Congress.

<sup>34</sup> Ibid.

<sup>35</sup> Article 375 of the Penal Code, available at: [https://security-legislation.ly/sites/default/files/lois/290-Penal%20Code\\_EN.pdf](https://security-legislation.ly/sites/default/files/lois/290-Penal%20Code_EN.pdf).

<sup>36</sup> Article 407 of the Penal Code criminalises rape as an offence against honour and morals. Available in Arabic here: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/97659/115997/F-671669284/LBY97659%20Ara.pdf>.

<sup>37</sup> Ibid. The Libyan Penal Code does not recognise marital rape.

<sup>38</sup> Article 424 of the Penal Code.

<sup>39</sup> Other than Law no.10 of 1984 which defines sexual violence as a crime against freedom, honour and morality.

<sup>40</sup> Law no.70 (1973) refers to women and girls who have “transgressed moral code” but does not define the term, only providing the following categories: “raped adolescent girls; misled adolescent girls whose decency was assaulted; women accused of prostitution about whom the court did not make a decision; women abandoned by their families because of illegal pregnancy; homeless women; and divorced women abandoned by their families.”

<sup>41</sup> Article 1, Internal Bylaw, Social Rehabilitation Home for Protecting Women [Al-layha al-dahilaya lilbayt al-ijtima'i lihamayat al-mar'a]. More information on: UNDP, *Gender Justice & The Law*, 2018, available at <https://www.undp.org/content/dam/rbas/doc/Gender%20Justice/English/Full%20reports/Libya%20Country%20Assessment%20-%20English.pdf>.

<sup>42</sup> The WHRD Coalition in the Middle East and North Africa, *The Status of Human Rights Defenders in Libya*, 2017, available at: <https://whrdmena.org/wp-content/uploads/2017/06/Libya-Eng.pdf>.

20. Female migrants and refugees are also particularly vulnerable to SGBV. According to 1,300 first-hand interviews conducted by OHCHR and the United Nations Support Mission in Libya (UNSMIL), most migrant and refugee women and girls have been systematically gang-raped by traffickers or have witnessed others be taken away to be abused along their journeys.<sup>43</sup> Migrant and refugee women, who are held in detention centres run entirely by male guards, are also strip-searched and exposed to sexual violence, including rape.<sup>44</sup>
21. The state's inability to control the activities of armed groups and militias has left women vulnerable and hindered the possibility of accountability. In the absence of a central state authority, women have been forced to ensure their safety, by adhering to a specific dress code, traveling with a male guardian, or restricting movements to daytime. This profoundly limits women's freedom of movement and their ability to engage fully in public life.

#### IV. Enforced Disappearances and abductions

22. During its second UPR, Libya accepted all 11 recommendations to address the recurrence of arbitrary detention, torture and enforced disappearance in the country,<sup>45</sup> including that to ratify the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).<sup>46</sup> Further, Libya committed to “strengthen efforts to investigate all allegations of torture, summary executions, enforced disappearance and other abuses, and to bring those responsible to justice.”<sup>47</sup> However, to this date, Libya has failed to ratify the ICPPED and to update Law 10 of 2013 concerning the criminalization of torture, forced abduction, and discrimination (**Law 10 of 2013**).<sup>48</sup> Law 10 of 2013 fails to provide a definition of enforced disappearances in line with the definition outlined in the ICPPED. This is particularly problematic as the Libyan Penal Code also fails to provide such a definition.
23. Further, the definition of torture set out in Law 10 of 2013 does not comply with the definition of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) which Libya ratified in 1989, as it fails to present the prohibition of torture and other ill-treatment as a non-derogable right.<sup>49</sup>
24. Additionally, Libyan law does not provide a ceiling for the duration of pre-trial detention.<sup>50</sup> Courts and judges are legally allowed to extend pre-trial detention periods indefinitely for periods of 45 days at a time until the end of investigations.<sup>51</sup> This is particularly damaging as enforced

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<sup>43</sup> UNSMIL, *Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya*, December 2018, available at: <https://unsmil.unmissions.org/sites/default/files/libya-migration-report-18dec2018.pdf>.

<sup>44</sup> Ibid.

<sup>45</sup> *Report of the Working Group of the Universal Periodic Review on Libya*, July 2015, A/HRC/30/16, para. 137.5-137.8, 137.119, 137.120, 137.148, 137.149, recommendations by Benin, Mali, Cabo Verde, Uruguay, Sierra Leone, France, Lebanon, Italy, Lithuania.

<sup>46</sup> Ibid, para. 137.4-137.8 and 137.17, recommendation by Madagascar, Benin, Mali, Cabo Verde, Uruguay, Sierra Leone and Chile.

<sup>47</sup> Ibid, para. 137.148, recommendation by Italy.

<sup>48</sup> Law 10 of 2013 concerning the criminalization of torture, forced abduction, and discrimination, issued on 14 April 2013, available at: <https://www.loc.gov/law/foreign-news/article/libya-law-criminalizing-torture-abduction-and-discrimination-passed/>.

<sup>49</sup> Libya is a state party to the ICCPR, which states in its Article 4 that the prohibition of torture and other ill-treatment is absolute and cannot be compromised at times of conflict or emergencies.

<sup>50</sup> Libyan Code of Criminal Procedure, 1953, art. 123.

<sup>51</sup> Ibid.

disappearances and torture usually happen during the first periods of detention.<sup>52</sup> Further, for crimes committed against the state including “terrorism related charges”, Libyan law expands the power of the police to hold a detainee for a duration of seven days without presenting the detainee to the judiciary.<sup>53</sup>

25. The shortcomings of Law 10 of 2013 are symptomatic of the general framework of Libyan law. Although the Libyan legal system contains some (limited) safeguards against arbitrary detention, torture and other ill-treatment, enforced disappearances and abductions,<sup>54</sup> such safeguards are undermined by legal gaps. This, coupled with the breakdown in the rule of law, has allowed for the practice to remain widespread.
26. The upsurge in violence in April 2019 saw a sharp increase in the number of enforced disappearances in Libya.<sup>55</sup> In the first month of fighting, UNSMIL reported at least seven officials and employees being abducted by parties to the conflict and subjected to periods of enforced disappearances in east and west Libya.<sup>56</sup> Journalists have also been subjected to increased threats, intimidation and violence, often in connection with their reporting on the conflict. Two journalists working for Libya Al-Ahrar TV channel were abducted by an armed group affiliated with the LAAF on 2 May 2019 while they were covering the hostilities in Tripoli. Their fates remained unknown until 25 May 2019 when they were released.<sup>57</sup>
27. On 17 July 2019, women rights defender and Libyan parliamentarian Seham Sergewa was abducted from her home in Benghazi. Sergewa was taken after militias stormed her house, shot her husband twice in the leg, and injured her son before taking the lawmaker to an unknown location. Her faith remains unknown. Sergewa had previously expressed political views critical of the LAAF offensive on Tripoli and had called for the formation of a civilian state.
28. We are aware of one former Guantánamo Bay detainee who has been held under conditions that amount to enforced disappearance and arbitrary detention during the review period: Mr Salem Gheryby. Mr Gheryby disappeared on arrival into Tripoli’s Mitiga Airport on 4 April 2018. Despite continued requests, the Libyans state failed to inform his family and lawyer of his location, the legal basis for his detention or of his fate. He remained disappeared until granted family visitation on 29 September 2019. Mr. Gheryby has not been informed of the legal basis for his detention or the charges against him and has not been given an effective opportunity to challenge his detention by an independent judicial body. He is held at Mitiga airport prison in Tripoli, which is controlled by the Radaa militia (or Special Deterrence Force) and is notorious for enforced disappearances and torture.<sup>58</sup>

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<sup>52</sup> Open Society Justice Initiative, ‘Pretrial Detention and Torture: Why Pretrial Detainees Face the Greatest Risk’, 2011, available at: <https://www.justiceinitiative.org/uploads/4c3491a1-f7a1-48b2-9afd-3cd0a4f220f6/pretrial-detention-and-torture-06222011.pdf>.

<sup>53</sup> Libyan Code of Criminal Procedure, 1953, art. 26.

<sup>54</sup> See Law 10 of 2013.

<sup>55</sup> UNSMIL, *UNSMIL expresses deep concern at increased abductions, arbitrary detention and enforced disappearance cases since the outbreak of fighting in Tripoli*, May 2019, available at <https://unsmil.unmissions.org/unsmil-expresses-deep-concern-increased-abductions-arbitrary-detention-and-enforced-disappearance>.

<sup>56</sup> Ibid.

<sup>57</sup> France24, ‘Two journalists released in Libya’, 25 May 2019, available at: <https://www.france24.com/en/20190525-two-journalists-released-libya-tv-channel>.

<sup>58</sup> Amnesty International, ‘Libya: Decree integrating Radaa forces into a new security apparatus overlooks need for accountability’, 21 June 2018, available at: <https://www.amnesty.org/download/Documents/MDE1986292018ENGLISH.pdf>.

29. Militias and armed groups have subjected thousands of people, including children, to enforced disappearances which are usually accompanied by torture and other ill-treatment.<sup>59</sup> Most often, militias and other armed groups target individuals based on their real or perceived political opinions, ethnicity, tribal affiliations, or for financial gains.

## **RECOMMENDATIONS OF ACTION BY THE STATE UNDER REVIEW:**

LFJL calls on the state of Libya to:

### **Targeting of civilians:**

- Guarantee the protection of all civilians and civilian objects from attacks and ensure that those responsible for violations of international humanitarian law are held accountable;
- Support the investigations by the International Criminal Court (ICC) into possible war crimes and crimes against humanity, as required by UN Security Council Resolution 1970 (2011)<sup>60</sup>;
- Support the establishment of an independent accountability mechanism by the UN Human Rights Council to investigate war crimes and identify perpetrators to end the cycle of impunity.

### **Rights of migrants and refugees:**

- Guarantee the rights of migrants and refugees in Libya and put an end to their automatic detention;
- Prosecute and hold accountable those responsible for crimes against migrants and refugees;
- Ratify the 1951 Convention on the Status of Refugees and the 1967 Protocol.

### **Rights of women:**

- Protect women, particularly human rights defenders, and ensure the full, equal and meaningful participation of women in public and political life, free from reprisals;
- Amend the legislative framework to promote gender equality, in particular, the legislation on honour-based crimes enshrined in the Penal Code;
- Guarantee the full implementation of UNSC Resolution 1325 on women, peace and security.

### **Enforced disappearances, arbitrary detentions and abductions:**

- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance;
- Amend the legislative framework to be in compliance with international standards, including definitions of enforced disappearance and torture;
- Reveal the location of the victims of enforced disappearances, including Ms. Seham Sergewa;
- Disclose the legal basis of detention of the victims of enforced disappearances and facilitate access to their lawyers or release them if there is no legal basis of detention including for Mr. Salem Gheryby;
- End arbitrary detentions, and guarantee that those in detention facilities, including the facility at Mitiga Airport, will be treated in line with international standards.

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<sup>59</sup> OHCHR/UNSMIL, *Abuse Behind Bars: Arbitrary and unlawful detention in Libya*, April 2018, available here: [https://www.ohchr.org/Documents/Countries/LY/AbuseBehindBarsArbitraryUnlawful\\_EN.pdf](https://www.ohchr.org/Documents/Countries/LY/AbuseBehindBarsArbitraryUnlawful_EN.pdf).

<sup>60</sup> UN Security Council, Resolution 1970 (2011). The resolution refers the situation in Libya since 15 February 2011 to the ICC.