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Technical assistance and capacity-building

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

Summary

In her report, submitted pursuant to resolution 37/41 of the Human Rights Council, the High Commissioner describes the situation of human rights in Libya and the support provided to key Libyan institutions with regard to the protection of civilians and individuals hors de combat, as well as women, children, migrants and civil society actors, and addresses the administration of justice, transitional justice and the implementation of the human rights due diligence policy on United Nations support to non-United Nations security forces. She concludes with recommendations addressed to all parties to the conflict, the Government of Libya, the international community and the Council.

* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.



I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 37/41, in which the Council requested the United Nations High Commissioner for Human Rights to present a report on the human rights situation in Libya, including on the implementation of technical assistance and capacity-building, and on efforts to prevent and ensure accountability for violations and abuses of human rights. The report covers the period from 1 January to 31 December 2018.

2. The report was prepared in cooperation with the United Nations Support Mission in Libya (UNSMIL). The Office of the United Nations High Commissioner for Human Rights (OHCHR) continued to provide support to the implementation of the human rights mandate of UNSMIL. The Director of the UNSMIL Human Rights, Transitional Justice and Rule of Law Division represents the High Commissioner for Human Rights in Libya.

II. Context

3. The Presidency Council of the Government of National Accord, established under the Libyan Political Agreement signed on 17 December 2015, continued to struggle to assert its control over the country and to provide basic public services, amid continuing political divisions and sporadic armed conflict. As at November 2018, discussions were ongoing between the House of Representatives and the High Council of the State on restructuring the Presidency Council, as required by the Agreement.

4. During the period under review, the Special Representative of the Secretary-General for Libya and Head of UNSMIL intensified his efforts towards the implementation of the United Nations action plan. The plan, presented to the General Assembly in September 2017, proposed holding a national referendum on the constitution and parliamentary and presidential elections by late 2018. At a conference on Libya hosted by the President of France on 29 May, representatives of the main parties agreed to hold elections on 10 December. However, on 12 and 13 November, the Government of Italy hosted an international meeting on Libya at which it was agreed that the elections could be held between March and June 2019 after a new broad-based national dialogue.

5. The House of Representatives debated the adoption of a referendum law to pave the way for a national vote on the draft constitution that was endorsed by the Constitution Drafting Assembly in July 2017. Following a vote in the House of Representatives on 26 November 2018 passing two amendments to the Constitutional Declaration, the House officially published amendments 10 and 11 on 28 November 2018 and issued the referendum law, which was approved in September. The process of updating electoral rolls was completed at the end of March. Municipal elections took place in a number of Libyan cities and towns.

6. In 2018, UNSMIL supported the national conference process, which brought together an estimated 7,000 Libyan men and women in more than 40 towns and cities across the country to discuss their aspirations and concerns regarding the country's political future. UNSMIL also focused its efforts on working towards the unification of national institutions, tackling the country's predatory economy and the introduction of economic reform.

7. Hundreds of armed groups have continued to operate throughout Libya outside effective State command and control structures, even though many were nominally integrated into the ministries of defence, interior and justice and were on the government payroll. These groups control borders and strategic installations, as well as prisons and detention facilities holding thousands of people. Efforts by UNSMIL to encourage the Government to remove law enforcement powers from such armed groups, as foreseen in the Libyan Political Agreement, stalled until fighting in Tripoli broke out on 24 August. Since then, several bodies have been established to reactivate this process.

8. The situation of lawlessness in that part of the country became a matter of growing concern. Common crimes and acts of political violence continued unabated as the economic

situation deteriorated further amid the breakdown of public services, including regular water and power cuts.

9. In August, the Libyan National Army consolidated its control over eastern Libya, including most of the city of Derna, following weeks of fierce fighting that erupted in May.¹ In June, the Libyan National Army countered an offensive by armed groups to seize control of the oil crescent area. Throughout 2018, it also continued to increase its presence in southern Libya.

10. In 2018, groups pledging allegiance to the Islamic State in Iraq and the Levant (ISIL) carried out several deadly attacks in Tripoli and other regions, including Ajdabiya, Jufra, Kufra and Zliten. On 2 May, such groups claimed responsibility for an attack on the High National Election Commission headquarters in Tripoli which left at least 12 men and 1 woman dead and 6 others injured. On 10 September, two people died and six were injured in another complex attack on the Tripoli headquarters of the National Oil Corporation.

11. After over a year of relative calm in Tripoli, fierce fighting broke out on 26 August when armed groups from outside the capital vied to wrest control from powerful Tripoli-based armed groups and increase pressure on the Presidency Council. A ceasefire agreement between parties to the conflict, reached under the auspices of UNSMIL on 4 September and supplemented by a consolidation agreement on 9 September, brought a temporary lull in the fighting, which subsided once more at the end of September when a reconciliation agreement was reached between Tripoli-based and Tarhuna-based armed groups.

12. The violence confirmed the fragility of the Presidency Council and the urgent need for the disarmament, demobilization and reintegration of armed groups. On 16 September, the Presidency Council established a committee mandated to propose measures to secure the capital and transfer control of critical infrastructure and other strategic locations from armed groups to national police, army and other security institutions.

13. OHCHR, through the UNSMIL Human Rights, Transitional Justice and Rule of Law Division, continued to monitor and report on the situation of human rights in Libya, including through a 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 and other stakeholders in Libya. Despite challenges due to 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 government institutions and civil society organizations in Tripoli or Tunis.

14. The Special Rapporteur on the human rights of internally displaced persons conducted a visit to Libya between 25 and 31 January 2018. In her report (A/HRC/38/39/Add.2), presented to the Human Rights Council at its thirty-eighth session, she expressed concerns about the absence of protection mechanisms and durable solutions and about impunity for human rights violations committed against internally displaced persons. She commended the Government's political will to address their situation, calling for the development of a comprehensive legal and policy road map in line with international law and standards to protect and assist them. Little progress has been made in addressing her recommendations. The Government has yet to agree to the requests for visits made in 2018 by the Special Rapporteur on contemporary forms of slavery, including its causes and consequences and the Working Group on Arbitrary Detention, in line with Libya's standing invitation to all special procedures of the Council.

¹ The city had previously been controlled by the Derna Mujahidin Shura Council, a coalition of Islamist-leaning armed groups who, in 2015, ousted groups that had pledged allegiance to Islamic State in Iraq and the Levant (ISIL).

III. Protection of civilians and individuals hors de combat

A. Indiscriminate attacks and other violations of international humanitarian law²

15. Throughout 2018, armed groups, including those formally integrated under State institutions, continued to carry out indiscriminate attacks, often in heavily populated residential areas, heedless of their impact on civilians or civilian objects. Such attacks included the use of weapons, including mortars, artillery, Grad rockets and improvised explosive devices. Explosive remnants of war also continued to cause casualties among children and other civilians, particularly in areas that witnessed protracted conflict such as Benghazi.

16. From 1 January to 30 November 2018, UNSMIL/OHCHR documented 514 civilian casualties: 183 killed (143 men, 11 women and 29 children) and 331 injured (272 men, 24 women and 35 children). The largest numbers of civilian casualties were recorded in Tripoli, Benghazi, Sabha and Derna. The leading causes of death were indiscriminate use of gunfire, shelling, explosive remnants of war, airstrikes and improvised explosive devices.

17. Incidents documented by UNSMIL/OHCHR included attacks on places of worship, camps for internally displaced persons, detention facilities and banks. For instance, in January and February, two mosques were bombed in Benghazi during prayers, causing the death of at least 31 civilians and injuring over 170. No party claimed responsibility for the attacks. On 21 February, Special Deterrence Force fighters recklessly fired shots inside a crowded bank in the area of Warshafana, killing at least two civilians and injuring two. During fighting in Tripoli in September, the Al-Fallah 2 camp hosting Tawerghan internally displaced persons was shelled, reportedly by rockets, leading to the death of 2 residents and injuring 15.

18. Hospitals and other civilian objects were also attacked. From 1 January to 30 November 2018, 27 attacks on medical facilities took place in Tripoli, Benghazi, Derna and Sabha, including instances when armed groups threatened or physically assaulted medical personnel during the performance of their professional duties, looted medical supplies and confiscated medical vehicles.

19. On 7 May, the Libyan National Army launched a military operation to oust the Derna Mujahidin Shura Council.³ Fighting led to civilian casualties, damage and destruction of civilian objects, including schools, mosques and private homes, and the displacement of thousands of families to safer areas in the city or further afield. Most civilian casualties were caused by indiscriminate fire and unguided weapons used by the Libyan National Army in residential areas, as well as crossfires and explosive remnants of war. The Libyan National Army announced the “liberation” of the city on 28 June 2018. Injured fighters as well as their relatives thereafter remained trapped in areas of active conflict without sufficient food, water or access to medical treatment while armed groups affiliated to the Libyan National Army engaged in pillage and deliberate destruction or appropriation of property after taking control of Derna, in some cases targeting homes of relatives of alleged Derna Protection Force fighters.

20. In February, tensions between tribes and armed tribal forces in Sabha erupted into fierce fighting, lasting for some three months. The use of indiscriminate fire in densely populated areas led to civilian casualties, forced displacement and damage to civilian infrastructure. Snipers also reportedly targeted civilians of Arab, Tebu and Tuareg ethnicities in their homes, on the road, and even at the city’s only public hospital.

21. Scattered in camps for internally displaced persons and host communities across Libya since the armed conflict in 2011, the Tawerghan community was subjected to attacks

² For more information on the obligations of Libya under international law and the legal framework in relation to the country’s non-international armed conflict, see A/HRC/37/46, paras. 11–13.

³ The Derna Mujahidin Shura Council renamed itself Derna Protection Force.

by armed groups, including armed incursions into the Tarik al-Matar camp in July and shelling of the Al-Fallah 2 camp in August.

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

22. In 2018, UNSMIL/OHCHR received reports alleging that armed groups were responsible for summary executions and other unlawful killings of civilians and captured fighters. On 12 April, OHCHR and UNSMIL published a report entitled *Abuse Behind Bars: Arbitrary and Unlawful Detention in Libya*, which referred to several cases of enforced disappearances (see paras. 59 ff).

23. On 24 January, still images and a video appeared on social media purportedly depicting a field commander with Libyan National Army forces, Mahmoud al-Werfalli, shooting point-blank 10 blindfolded men dressed in blue overalls as they knelt with their hands tied behind their backs, in Benghazi. Their bodies were then loaded into the back of a pick-up truck in front of a large crowd of onlookers.⁴ Mahmoud al-Werfalli, the subject of two arrest warrants issued by the International Criminal Court for the war crime of murder,⁵ is believed to remain at large, despite announcements by the Army of his arrest in July 2018.

24. Among other cases UNSMIL/OHCHR documented in eastern Libya, seven bodies were found in two separate locations in Benghazi between 24 and 26 January. The bodies of two men with gunshot wounds were found on a rubbish dump on 24 January; they were blindfolded and their hands were tied behind their backs. On 26 January, five bodies were found in the area of Al-Lithi, all bearing gunshot wounds, including to the head. Next to the bodies, sheets of paper were found bearing the inscription “*khawarij*”,⁶ the men’s names and addresses and the crimes they had allegedly committed against the “army and police”. The papers also contained warnings to families not to hold funeral services for the deceased. According to information gathered by UNSMIL/OHCHR, several of the victims had been taken from their homes by groups of masked armed men between 23 and 25 January. Despite announcements of investigations by the Libyan National Army, no findings have been made public and no arrests or prosecutions are known to have been instituted.

25. In Derna, the bodies of three men bearing gunshot wounds were brought to the Herish Hospital on 25 January, when the city was under the control of the Derna Mujahidin Shura Council. A video posted on Facebook pages affiliated to the Shura Council showed at least one victim being interrogated by an unidentified individual about his alleged support for the Libyan National Army. During fighting in Derna between the Army and the Derna Protection Force in June, a video emerged on social media depicting the beating and summary execution of a captured man, allegedly by fighters affiliated with the Army, in the area of Sahel al-Sharki. The following day, the Army announced that there would be investigations into the incident recorded in the video, but no information was shared on progress or findings.

26. UNSMIL/OHCHR also documented cases of summary executions and other unlawful killings in western Libya. For instance, on 24 February, medical professionals and other local sources reported the killings upon capture of two fighters affiliated to the Hnish armed group in Al-Zawiya (including a 17-year-old boy), apparently by members of a rival local armed group.

27. On 24 April, a patient in Tebu was forcibly removed from the Sabha Medical Centre intensive care unit by men believed to be affiliated to the Awlad Sliman armed tribal forces. The man was in recovery after undergoing surgery for gunshot injuries to his chest and abdomen, reportedly sustained in an armed robbery. He subsequently disappeared and his whereabouts remain unknown.

28. UNSMIL/OHCHR also received information on kidnappings and killings by armed groups and criminal gangs. For instance, on 7 April, the remains of three siblings from the

⁴ In at least five videos that emerged in 2017, Mahmoud al-Werfalli was seen to be either directly carrying out executions or giving orders to that effect.

⁵ International Criminal Court, *The Prosecutor v. Mahmoud Mustafa Busayf Al-Werfalli*, case No. ICC-01/11-01/17.

⁶ Those considered to have strayed from the correct religious path.

Shirshari family were found in a forest south of Surman. The two boys and a girl were aged between 7 and 12 at the time of their abduction in December 2015. The exact causes of death have yet to be established.

Support to victims

29. UNSMIL issued monthly reports on civilian casualties and unlawful killings in Libya and held regular briefings with the international community. UNSMIL/OHCHR supported victims and their families, providing advice and advocating for remedies with government officials, de facto authorities and armed groups at all levels. It also supported civil society working on protection cases, through direct cooperation and capacity-building.

30. 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 December 2017 to April 2018, UNSMIL supported an OHCHR-funded project managed by Tunisian organizations for the provision of mental health support, including psychosocial support sessions and direct assistance for 14 Libyan survivors of torture and violence.

IV. Women's rights

31. Discrimination against women persisted in both law and practice, particularly in matters related to marriage, divorce, inheritance and nationality. Armed groups in control of land borders and airports subjected women to travel restrictions and intimidation, requiring them to travel with a male "guardian". In 2018, UNSMIL/OHCHR received reports of intimidation, including social media attacks, against women activists – including those living abroad – for calling for equal rights. UNSMIL/OHCHR also documented cases of women's rights defenders and other women stopped and harassed at checkpoints by members of armed groups for not wearing a veil. The control exercised by armed groups, including those inspired by Rabee al-Madkhali, a Saudi salafist, and the general climate of lawlessness disproportionately affected women, restricting their freedom of movement, participation in the public sphere, and choice of dress and behaviour.

32. Women were held in prolonged arbitrary detention for political and social reasons as well as on the basis of criminal accusations, including in facilities without female guards, exposing them to sexual abuse and exploitation. UNSMIL/OHCHR documented allegations of torture and ill-treatment of women detainees, including of a sexual nature, at the Jdeida women's prison and Al-Jawiya prison (nominally under the Ministry of Justice), the Mitiga detention facility (under the Special Deterrence Force), the Central Security/Abu Salim detention facility and other places of detention (nominally under the control of the Ministry of the Interior). Nearly 30 foreign women arrested for being family members of alleged terrorists or having been held in Sirte during the military operation against ISIL remained held at the Al-Jawiya prison in Misrata without charge or trial since their capture by armed groups in November/December 2016.

33. In 2018, OHCHR/UNSMIL collected accounts of migrant women and girls who had been raped and otherwise sexually abused by State and non-State actors, either during their journeys through Libya or in both official and unofficial migrant detention centres. Victims described being taken away by armed men from accommodations and cells shared with others and being raped repeatedly by multiple perpetrators. Those who tried to resist would be beaten, threatened at gunpoint and denied food and water. Some migrant women and girls travelling alone were forced into prostitution at so-called "connection houses" for periods reaching up to 16 months.

34. Women and girls, including victims of forced prostitution and rape, accused of engaging in sexual relations outside of marriage were subjected to invasive "virginity tests" by judicial order, regardless of their consent. Victims of rape were unable to terminate unwanted pregnancies as abortion is criminalized in all circumstances in Libya.

V. Groups in focus

A. Children

35. Between 1 January and 30 November 2018, 29 children were killed and 35 injured during hostilities as a result of the indiscriminate use of weapons in residential areas by all parties to the conflict, including in crossfires and from explosive remnants of war.

36. UNSMIL/OHCHR received reports of the arbitrary detention or unlawful deprivation of liberty of children. For instance, in May, the Unit for Combating Terrorism in Abu Salim, an armed group nominally under the Ministry of the Interior, detained four members of the same family, including a 17-year-old, without an arrest warrant. The child remained detained without referral to the prosecution and was denied regular family visits. The Special Deterrence Force also arbitrarily detained three children aged under 5, together with their parents, after arresting them in Zliten on 3 February. Relatives and lawyers of detained children have been denied access to them. At least five children were held in Al-Jawiya prison, without charge or trial, on account of their alleged family links to fighters who had pledged allegiance to ISIL in Sirte. Several children were denied access to their mothers held in the women's section of the same prison. In some facilities, children were detained together with adults.

37. As at the end of 2018, 20 unaccompanied children from Tunisia, Egypt and other African countries 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

38. Libyan legislation, policy and practice contravene the State's obligations under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Organization of African Unity Convention governing the Specific Aspects of Refugee Problems in Africa. Libya criminalizes irregular migration, has no asylum determination system and does not formally recognize the mandate of the Office of the United Nations High Commissioner for Refugees (UNHCR), although it permits it to operate with restrictions.

39. On 20 December, UNSMIL and OHCHR issued a joint report, titled "Desperate and dangerous: report on the human rights situation of migrants and refugees in Libya". Among the findings of the report were that migrants systematically faced gross human rights violations and abuses, including unlawful killings, arbitrary detention and unlawful deprivation of liberty in horrid conditions, torture and other ill-treatment, rape and other sexual violence, forced prostitution, forced labour and exploitation. Perpetrators included State officials, members of armed groups, smugglers, traffickers and other criminal gangs. The authorities have been unable, and in some cases unwilling, to ensure effective protection for migrants and to provide them with remedy and redress for violations and abuses suffered.

40. Thousands of migrants⁷ were held indefinitely in official detention centres run by the Department for Combating Illegal Migration under the Ministry of the Interior, with no judicial process. In 2018, UNSMIL/OHCHR visited seven Department-run detention centres in Tripoli, Al-Khoms and Misrata, observing inhuman detention conditions that, in some cases, cumulatively amounted to torture. UNSMIL/OHCHR also received numerous and consistent reports of torture, including beatings, electric shocks and sexual abuse, and of forced labour of detainees. Since April, bureaucratic hurdles rendered UNSMIL access to detention facilities unpredictable and irregular. For instance, in April 2018, the Ministry of Foreign Affairs instructed all Libyan officials not to meet any foreign non-governmental

⁷ Numbers generally fluctuated between about 4,000 and 9,000, with a notable rise during summer months when thousands of migrants were intercepted/rescued at sea by the Libyan Coast Guard and brought back to face indefinite detention in Libya.

organizations (NGOs) or United Nations agencies unless the Ministry was notified. On 30 April, UNSMIL staff were turned back at the gate of the Tarik al-Sikka detention centre by officials despite having the required authorizations, while on 16 May they were denied access to the Zuwara detention facility by the town mayor.

41. UNSMIL/OHCHR documented the use of physical violence and threatening language by Libyan Coast Guard officials during search-and-rescue operations in Libyan and international waters. In a meeting with UNSMIL in October, Coast Guard officials justified the use of force against migrants as necessary to protect lives at sea, arguing that migrants resisted return to Libya. As of early October, the last rescue boat operated by an NGO, the Aquarius, lost its Panama registration, leaving migrants and refugees exposed to even greater risks. A standoff in November, when migrants rescued by a freighter refused to disembark in Misrata and were forcibly removed after several days by security forces affiliated to the Ministry of the Interior and the Ministry for Defence, including the Libyan Coast Guard, the Department for Combating Illegal Migration and other security agencies, using tear gas, rubber bullets and live ammunition, illustrated new challenges.

C. Media professionals, activists and human rights defenders

42. The rights to the freedoms of expression, association and peaceful assembly remained restricted, and media workers, human rights defenders and other activists were subjected to arbitrary detention, unlawful deprivation of liberty, intimidation and threats. In areas under the control of the Government of National Accord, foreign journalists and Libyan correspondents of foreign media organizations faced difficulties in obtaining accreditation.

43. Media workers who criticized armed groups or reported on human rights issues or corruption were particularly targeted. For instance, on 22 October, media worker and blogger Al-Mukhtar al-Halak, who worked on stories of corruption by local officials, appeared before prosecutors accused of defamation and spreading false information; he was subsequently released on bail. He had been detained since 11 October at the Al-Ajilat police station where he was allegedly ill-treated. Armed groups also targeted prominent media figures. Two organizers of an annual media award, Suliman Gashout and Mohammed Yaghubi, were arbitrarily detained from 29 April to 15 July at the Mitiga detention facility controlled by the Special Deterrence Force.

44. Activists and relatives of victims of human rights violations seeking to publicly voice their grievances received threats on social media or by telephone. In October, relatives of civilians from Derna detained in Libyan National Army prisons were warned, allegedly by fighters allied with the Army, not to organize protests against their relatives' incommunicado detention. Two Tripoli-based activists were detained and beaten by unidentified armed men, reportedly in connection with their involvement in protests, including those calling for the disarmament of armed groups.

45. While article 26 (6) of the Libyan Political Agreement commits parties to support the functioning of the National Council for Civil Liberties and Human Rights – the national human rights institution – the term of the Council elapsed in late 2014 without appointment of a new board. In August, a general administrative director of the Council was appointed, reportedly by the Presidency Council. The legality of the appointment was questioned, as law No. 5/2011 establishing the Council provides that commissioners must be appointed by the National Transitional Council, which is interpreted to be the legislative branch.

46. Several decisions by the Ministry of Foreign Affairs and the Civil Society Commission – a body under the Presidency Council – were adopted in early 2018 aimed at further restricting the work of NGOs. In February 2018, the Commission instructed Libyan civil society organizations not to take part in any activities organized by international organizations or NGOs in Libya or abroad without informing the Commission at least two weeks before the scheduled event.

D. Support to victims and capacity-building

47. UNSMIL/OHCHR worked to directly 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.

48. Between 7 and 10 May, in Tripoli, UNSMIL organized workshops for human rights defenders and lawyers to enhance their knowledge and expertise of human rights monitoring and reporting techniques and the use of international human rights mechanisms, including special procedures.

49. On 12 May, UNSMIL facilitated a workshop to improve coordination among national civil society organizations working on the human rights of migrants and extending their work to cover remote locations within Libya. The meeting led to the establishment of a coalition, the Rights Group for Migration, which aims at improving monitoring of detention facilities, raising community awareness and enhancing the capacities of civil society.

50. Between 17 and 19 April, UNSMIL organized a workshop on legal aid and psychological rehabilitation for victims of human rights violations in Libya, gathering 25 participants engaged in the protection and promotion of human rights in Libya and/or providing direct support to survivors. Participants discussed and agreed on concrete steps to improve referral systems and service provision for survivors.

51. On 4 September, UNSMIL brought together Libyan human rights NGOs and members of the international community to discuss ways to address legal, policy and operational challenges faced by human rights NGOs in Libya.

52. Media professionals, activists and human rights defenders at risk in Libya lacked financial and other essential support and other protections to enable them to conduct their work safely and efficiently. Further ongoing capacity-building for human rights defenders, particularly women defenders, is needed.

VI. Administration of justice

A. Overview

53. The ability of the judiciary to process conflict-related and other politically sensitive cases remained limited. Members of the judiciary and the Judicial Police⁸ continued to face attacks, threats and other violence, including unlawful deprivation of liberty. On 17 March, unidentified gunmen in Tripoli took a judge hostage, releasing him three days later. On 24 September, Ayad Njim, the Director of the Ain Zara (B) prison (nominally under the Ministry of Justice), unlawfully detained four members of the Judicial Police for several hours. They had gone to the prison to inform him of his transfer to a different position. Mr. Njim is a member of the powerful Tripoli Revolutionaries Brigade armed group, nominally under the Ministry of the Interior (see para. 63).

54. Criminal proceedings that did take place in 2018 were often marred by breaches of fair trial rights. On 15 August, a Tripoli court sentenced 45 men to death in connection with alleged crimes committed during the armed conflict in 2011. Several defendants complained that they had been subjected to torture and other ill-treatment during the initial period of their detention. Court proceedings took place inside the Ain Zara (A) prison.

55. The inability of the justice system to function effectively has led to widespread impunity, particularly for abuses perpetrated by armed groups. UNSMIL/OHCHR is unaware of any prosecution of armed group members, including those affiliated to the State, for crimes

⁸ The Judicial Police is under the authority of the Ministry of Justice, with responsibility for, inter alia, managing prisons, enforcing court decisions, maintaining the security of courts and apprehending fugitives.

related to abuses committed since 2011, including in cases where the State announced investigations and vowed that those responsible would be brought to justice.

B. Obstacles to the implementation of the Libyan Political Agreement

56. The implementation of the provisions of the Libyan Political Agreement related to the administration of justice and establishment of the rule of law remained stalled until September 2018, as armed groups refused to release persons held in their custody without a legal basis or to hand them over to the judicial authorities.

57. On 17 September, the Presidency Council established a committee mandated to review the lawfulness of the detention of some 3,600 detainees held at the Mitiga detention facility controlled by the Special Deterrence Force armed group. Also in September, the Office of the Prosecutor General set up a committee with a similar mandate. According to the Office, 800 detainees had been screened by 7 November; 300 of them were reportedly released while the remainder, including some 40 women, were transferred to prisons under the Ministry of Justice. On 6 November, UNSMIL/OHCHR visited Jdeida prison, with the support of the Minister of Justice. Half of the detainees there had recently been transferred from Mitiga as part of the screening process. Some release orders by the committees have not been implemented by the Special Deterrence Force. Moreover, the review process remains limited to Mitiga prison and does not include all categories of detainees such as those accused of drug-related crime, homicide or terrorism.

58. The Libyan Political Agreement granted the authority to arrest and detain exclusively to law enforcement bodies established by law.⁹ On 7 May, the Presidency Council adopted decree No. 555 of 2018, renaming the Special Deterrence Force “Deterrence Body for Combating Organized Crime and Terrorism” and granting it a nationwide remit, an independent budget and extensive powers, including of arrest, detention and surveillance. National and international stakeholders, including the High Commissioner for Human Rights, raised concerns about the decree but these remained unanswered. On 10 May, Prime Minister Fayyaz Serraj sent the decree to the Ministry of the Interior for review. However, the result of the review has not been made public and the decree remains in force.

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

59. In their report *Abuse Behind Bars: Arbitrary and Unlawful Detention in Libya*, OHCHR and UNSMIL found that arbitrary detention, unlawful deprivation of liberty, enforced disappearances and torture and other ill-treatment remained systematic across the country. In 2018, UNSMIL conducted nine visits to prisons and detention facilities in western Libya, including in Gharyan, Misrata, Tarhuna and Tripoli. Visits were suspended between April and November due to difficulties in obtaining authorizations for access. UNSMIL was unable to conduct any visits to prisons and detention centres in eastern Libya, despite numerous requests to the Libyan National Army.

60. Armed groups, including those acting on behalf of the State or the de facto authorities in the east, carried out arbitrary arrests and detentions. Victims included individuals targeted for their tribal or family identity, opinion, or for political or financial gains.

61. According to the Judicial Police, as of end November, approximately 6,400 detainees were held in 26 official prisons.¹⁰ Some 75 per cent were in pretrial detention, including hundreds detained since the 2011 armed conflict. The number of detainees held in facilities run by the Ministry of Defence, the Ministry of the Interior or directly by armed groups remains unknown.

62. Most of those held by armed groups were either never brought before judicial authorities or were referred to judicial authorities after several delays. Detainees were often

⁹ Articles 26 (2), (3) and (4) and 44.

¹⁰ Information provided to UNSMIL at a meeting with officials from the Ministry of Justice held on 16 November 2018.

held incommunicado for prolonged periods, were subjected to torture or ill-treatment and were coerced into making confessions. In eastern Libya, civilians, including medical professionals, local officials and activists, detained solely on account of their opposition to the Libyan National Army, were held at the military wing of the Gernada prison and denied access to relatives and lawyers.

63. In 2018, UNSMIL/OHCHR documented patterns of torture, ill-treatment, denial of adequate medical treatment and inhuman prison conditions in several detention facilities, including the Gernada prison in Al-Baida; Al-Kuweifiya prison in Benghazi; Al-Jawiya prison; the Department for Combating Illegal Migration facility in Misrata; the Surman General Investigations Directorate; the Ain Zara (B) and Jdeida women's prisons; and detention facilities controlled by the Special Deterrence Force, the Central Security/Abu Salim armed group, the Unit for Combating Terrorism in Abu Salim, the Tripoli Revolutionaries Brigade, the General Intelligence Apparatus, the Bab Tajoura armed group and the Nawassi armed group in Tripoli. Patterns of torture included beatings, cigarette burns, electrocution, death threats, denial of medical treatment, suspension in stress positions and confinement in small, suffocating spaces. UNSMIL/OHCHR continued to receive reports of deaths in custody.

64. Despite repeated requests, UNSMIL was denied access to the Mitiga detention facility controlled by the Special Deterrence Force. Nonetheless, it continued to document serious human rights violations committed at the facility through interviews with relatives of inmates, witnesses, medical professionals and released persons, as well as forensic reports. Reported violations included prolonged arbitrary and incommunicado detention, enforced disappearances and torture. UNSMIL repeatedly raised concerns about these allegations in official written communications and meetings with Special Deterrence Force officials, the Office of the Prosecutor General, the Prime Minister, the Minister of Justice, the Minister of the Interior and relevant government committees.

Technical support

65. On 26 and 27 April, UNSMIL/OHCHR organized a seminar in Tunisia on ways to enforce applicable Libyan legislation and relevant international law and standards on prisons and to counter violations committed by armed groups, including unlawful and arbitrary detention. The seminar was attended by representatives from the Office of the Prosecutor General, the Office of the Military Prosecutor, the judiciary, the ministries of the interior, foreign affairs, international cooperation and justice, the Judicial Police and civil society organizations. On 15 May, in the framework of efforts to enhance cooperation and coordination between the Government and the international community in the fields of human rights and rule of law, UNSMIL convened a meeting of the Justice and Human Rights Working Group,¹¹ co-chaired with the Minister of Justice. The meeting gathered representatives of the ministries of the interior, planning, justice and social affairs, the High Judiciary Institute and diplomatic representatives. Participants identified 12 priority areas for action, including support for the Judicial Police and official prisons and the establishment of mechanisms to combat money laundering and corruption while recovering stolen assets.

66. UNSMIL continued to provide advice to and advocate with the Government of National Accord, the Judicial Police and armed groups on the implementation of recommendations contained in the report *Abuse Behind Bars*, including on ending arbitrary detention, moving those lawfully detained from unofficial places of detention to official prisons and granting unimpeded access to human rights monitors to places of detention. UNSMIL also advocated for the international community to screen recipients of technical assistance and capacity-building programmes to ensure that those suspected of violations of human rights, humanitarian and refugee law are excluded from any support.

¹¹ The Working Group is part of the coordination structure between the Government of Libya and the international community, comprising working groups in different sectors.

D. Transitional justice

67. Little progress was made in the implementation of provisions of the Libyan Political Agreement that committed parties to implement law No. 29 of 2013 on transitional justice.

68. In its resolution 1970 (2011), the Security Council referred the situation of Libya to the Prosecutor of the International Criminal Court, giving it jurisdiction over crimes committed in Libya since 15 February 2011. Three persons are subject to arrest warrants by the Court and remain at large: Saif al-Islam Qadhafi,¹² Mahmoud al-Werfalli (see para. 23) and Khaled Touhami.¹³ UNSMIL/OHCHR has been urging all parties to cooperate with the Court and to surrender the suspects to it.

69. On 3 June, local officials from Misrata and Tawergha signed a reconciliation charter, which fell far short of international human rights standards. In particular, it does not secure the unconditional and safe return of the estimated 40,000 Tawerghan internally displaced persons forcibly displaced since the armed conflict in 2011. Its preamble reproduces a one-sided narrative of the conflict, only referencing crimes allegedly committed by the Tawergha community. The charter further undermines the Tawerghans' rights to freedom of expression and association, places returns and security at the mercy of armed groups from Misrata and excludes some Tawerghans from the possibility of returning to their home town. Despite these restrictions and the lack of infrastructure and services in Tawergha, a small number of families did return.

Technical support

70. 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 a number of individual cases of concern and patterns of abuse.

71. On 15 and 16 October, UNSMIL and the United Nations Development Programme (UNDP) organized an expert meeting on transitional justice in Tunis to discuss legislation and mechanisms in place for transitional justice as well as ways to relaunch a process that has been stalled for several years. The discussions addressed the need to establish a fact-finding commission, given the central role it would play in the transitional justice process. Participants agreed on the need to amend the 2013 Transitional Justice Law currently in force and proposed alternative or additional language on most articles.

72. On 29 October, UNSMIL participated in a workshop organized in Tunis by the University of Benghazi and the University of Leiden (Netherlands) on transitional justice in Libya. The workshop gathered representatives of academia, the judiciary and NGOs, who highlighted the shortcomings of the current legislation and the need to ensure that the transitional justice process would address the sociopolitical reality and national identity to contribute to reconciliation.

73. On 5 November, UNSMIL attended an expert discussion at the Ministry of Justice on a draft executive regulation on the 2013 Transitional Justice Law. There was consensus that the law was outdated and weak. UNSMIL noted concerns about the definitions of crimes, the omission of gender-based violence and child recruitment, and ambiguity regarding the administrative or quasi-judicial nature of the future fact-finding commission and the method for granting reparations to victims. Conveners expressed readiness to consider comments and recommendations and to hold similar events in the future. UNSMIL reiterated its willingness

¹² Saif al-Islam Qadhafi is the subject of an arrest warrant issued by the Court in 2011 for crimes against humanity and war crimes. His release from detention by armed groups in Zintan was widely reported in June 2017, but his fate and whereabouts remain unclear. See International Criminal Court, *The Prosecutor v. Saif Al-Islam Gaddafi*, case No. ICC-01/11-01/11.

¹³ On 24 April, the Court unsealed an arrest warrant for Khaled al-Tohamy for crimes against humanity and war crimes, including murder and persecution committed during the 2011 armed conflict. See International Criminal Court, *The Prosecutor v. Al-Tuhamy Mohamed Khaled*, case No. ICC-01/11-01/13.

to support the process and called for greater participation of women in discussions on transitional justice.

VII. United Nations human rights due diligence policy

74. The United Nations 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).¹⁴ In its capacity as secretariat of the task force on the implementation of the policy in Libya, the Human Rights, Rule of Law and Transitional Justice Division of UNSMIL provided substantive guidance on its application and technical expertise in the evaluation of information in relation to the human rights record of potential recipients of operational support. Mitigating measures were undertaken in relation to support to the Libyan Coast Guard and the Department for Combating Illegal Migration, including increased monitoring of compliance with human rights law by recipients of support and screening to exclude anyone with a problematic human rights record, while enhancing accountability.

75. In August, the United Nations in Libya endorsed a risk assessment and adopted mitigating measures in relation to support to the Department for Combating Illegal Migration. Mitigation measures included high-level advocacy, human rights monitoring and reporting, and exclusion from training and material support of members and commanders of the Department when there are substantial reasons to suspect their involvement in human rights violations.

76. On 12 October, the United Nations in Libya endorsed a risk assessment, mitigating measures and an action plan in the framework of a joint project by UNSMIL and UNDP on policing and security. Measures included vetting of recipients of support, oversight and monitoring, and relevant training for unit commanders and other senior officers, including on human rights. The United Nations is discussing a new project that may involve operational support to the General Administration for Coastal Security by the International Office for Migration and UNHCR.

VIII. Conclusions and recommendations

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

78. Recognizing the urgent need to bring to an end widespread human rights violations and abuses committed in a climate of impunity, the High Commissioner appeals to all parties to the conflict to cease all hostilities and support the revised United Nations action plan to end the political stalemate.

79. The High Commissioner regrets that little progress has been made in implementing recommendations of her predecessor and reiterates calls on all parties to the conflict, including those with de facto control of territory in Libya, to:

(a) Desist immediately from all acts constituting violations of international humanitarian law and violations or abuses of international human rights law, including those constituting crimes under international law; in particular, they should cease

¹⁴ The human rights due diligence policy, adopted in 2011, requires all United Nations entities to be diligent in ensuring that support to non-United Nations security forces is provided in a manner that is in compliant with, and promotes respect for, international human rights and humanitarian law. This requires United Nations entities providing support to: (a) carry out a risk assessment evaluating the potential risks and benefits involved in the provision or withholding of support; (b) engage transparently with the receiving entities about the legal obligations of the United Nations and core principles governing the provision of support; and (c) develop an effective implementation framework.

immediately all attacks on civilians and comply fully with all applicable principles of international humanitarian law, notably the principles of distinction, proportionality and precaution, and 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) 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 a thorough and effective investigation in order 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 the relatives; and provide reparations to the victims and/or their families;

(d) Facilitate the unfettered and unhindered access to places of detention and 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 delegation;

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

80. The High Commissioner recommends that the Government of Libya:

(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 by ensuring 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 and a vetting programme, compliant with due process standards, to remove or 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 violations or abuses of international human rights law;

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

(d) Ensure that the right to due process of detainees is fully respected and protected, including the right to access legal counsel;

(e) Transfer 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;

(f) Extend full cooperation to the International Criminal Court by facilitating its unhindered access to relevant locations in Libya, witnesses and information and ensuring full compliance with its rulings;

(g) Urgently address the situation of migrants to ensure that the rights of all individuals, regardless of their status, are protected and respected, including by decriminalizing irregular migration, adopting an effective refugee status determination procedure and immediately implementing alternatives to detention, and bring to justice

those responsible for violations and abuses against migrants whether they are State or non-State agents;

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

81. The High Commissioner recommends that the international community:

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

(b) Assist the Government of Libya to release 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;

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

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

(e) 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 being responsible for violations of international humanitarian law or violations or abuses of international human rights law or international crimes;

(f) Offer effective protection and assistance to victims of human rights violations, including torture, by ensuring adequate financial and other support to organizations working on psychological and physical rehabilitation and counselling;

(g) 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 the conditions in Libya, including to ensure that cooperation and/or support provided to Libya is not contributing to or facilitating, directly or indirectly, human rights violations;

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

82. The High Commissioner recommends that the Human Rights Council remain seized of the progress made towards the situation of human rights and accountability in Libya.
