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### Technical assistance and capacity-building

## Report of the Independent Fact-Finding Mission on Libya\*

### *Summary*

The present report is the final report by the Independent Fact-Finding Mission on Libya, which was requested by the Human Rights Council in its resolution 50/23. The Mission was established to document, in an independent and impartial manner, alleged violations and abuses of international human rights law and international humanitarian law by all parties in Libya since the beginning of 2016.

The Mission has found reasonable grounds to believe that crimes against humanity were committed against Libyans and migrants throughout Libya in the context of deprivation of liberty. Notably, the Mission documented and made findings on numerous cases of, inter alia, arbitrary detention, murder, torture, rape, enslavement, sexual slavery, extrajudicial killing and enforced disappearance, confirming their widespread practice in Libya.

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\* The present report was submitted after the deadline in order to reflect the most recent information.

## I. Introduction

1. The present report is the final report by the Independent Fact-Finding Mission on Libya, which was requested by the Human Rights Council in its resolution 50/23. The Mission was established pursuant to Council resolution 43/39, in which the United Nations High Commissioner for Human Rights was requested to designate experts to document, in an independent and impartial manner, alleged violations and abuses of international human rights law and international humanitarian law by all parties in Libya since the beginning of 2016. Mohammad Auajjar, Tracy Robinson and Chaloka Beyani were appointed as experts. The Mission previously presented three reports<sup>1</sup> and a conference room paper on the situation in Tarhuna<sup>2</sup> to the Council.

2. Allegations of violations and abuses have rightly warranted the attention of the Human Rights Council. Indeed, the Mission has found reasonable grounds to believe that since 2016 crimes against humanity have been committed against Libyans and migrants throughout Libya in the context of deprivation of liberty. Notably, the Mission documented and made findings on numerous cases of, inter alia, arbitrary detention, murder, torture, rape, enslavement and enforced disappearance, confirming their widespread practice in Libya. In its assessment of evidence on the treatment of migrants, the Mission concluded that there were reasonable grounds to believe that sexual slavery, as an additional underlying act of crime against humanity, was committed against migrants. The State remains under an obligation to investigate allegations of human rights violations and crimes in areas under its control in accordance with international standards.

3. The rapid, deep and ongoing absorption of armed groups and their leadership into State-affiliated structures and institutions, including the Libyan Arab Armed Forces, and the spread of Salafist-leaning conservative ideologies are of significant concern to the Mission.<sup>3</sup> The Mission found that State authorities and affiliated entities, such as the Deterrence Apparatus for Combating Organized Crime and Terrorism, the Libyan Arab Armed Forces, the Internal Security Agency, and the Stability Support Apparatus, and their leadership, were repeatedly involved in violations and abuses arising in the context of detention. Persons were detained for their actual or perceived sexual orientation and gender identity, criticism of the State and affiliated actors, and expression of divergent political, religious and social views and norms, including their opposition to patriarchy and sexism. Moreover, in the view of the Mission, the practice of conservative Salafist-leaning ideologies compounded the shrinking of civic space.

4. During its last mandate period, the Mission strengthened the factual evidence and legal analysis of the involvement of States, groups and individuals in the violations and abuses that it documented. In this regard, the Mission found that crimes against humanity were committed against migrants in places of detention under the actual or nominal control of Libya's Directorate for Combating Illegal Migration, the Libyan Coast Guard and the Stability Support Apparatus. These entities received technical, logistical and monetary support from the European Union and its member States for, inter alia, the interception and return of migrants.

5. The violations and abuses investigated by the Mission were connected primarily to the consolidation of power and wealth by militias and other State-affiliated groups through, for instance, the misappropriation of public funds. It is beyond question that significant revenue arising from the widescale exploitation of vulnerable irregular migrants incentivized the continuation of the violations documented.

6. The Mission's mandate is ending when the human rights situation in Libya is deteriorating, parallel State authorities are emerging and the legislative, executive and security sector reforms needed to uphold the rule of law and unify the country are far from being realized. In this polarizing context, armed groups that have been implicated in

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<sup>1</sup> A/HRC/48/83, A/HRC/49/4 and A/HRC/50/63.

<sup>2</sup> A/HRC/50/CRP.3.

<sup>3</sup> See S/2017/466.

allegations of torture, arbitrary detention, trafficking and sexual violence remain unaccountable.

7. The practices and patterns of gross violations continue unabated, and there is little evidence that meaningful steps are being taken to reverse this troubling trajectory and bring recourse to victims. The Mission calls on the Human Rights Council to establish a sufficiently resourced, independent international investigation mechanism. The Mission also calls on the Office of the United Nations High Commissioner for Human Rights to establish a distinct and autonomous mechanism with an ongoing mandate to monitor and report on gross human rights violations in Libya, with a view to supporting Libyan reconciliation efforts and assisting the Libyan authorities in achieving transitional justice and accountability.

## **II. Methodology**

### **A. Mandate and scope of the investigations**

8. The mandate of the Mission, as outlined in Human Rights Council resolution 43/39, is broad and general, encompassing all of the geographical area of Libya and violations and abuses of all types and degrees of gravity committed by any actors. The Mission has interpreted its mandate to encompass violations and abuses of a continuing nature that commenced before the beginning of 2016, such as enforced disappearance. It has also interpreted its mandate to cover violations and abuses committed on the Libyan territory, including its territorial waters, and acts that were initiated outside the Libyan borders but continued within its territory.<sup>4</sup>

9. The Mission's investigations were informed by three objective criteria: (a) the gravity and widespread or systematic nature of violations; (b) violations, abuses and crimes against vulnerable groups that are subjected to multiple forms of victimization; and (c) violations, abuses and crimes that especially hamper the transition of Libya to the rule of law and democratic elections. In keeping with Human Rights Council resolution 43/39, the Mission also investigated sexual and gender-based violence and violations and abuses against women. Particular attention was given to the gendered dimensions of the violations and abuses identified.

10. The Human Rights Council recognized the need for accountability in Libya when it established the Mission.<sup>5</sup> The Mission adopted a broad view of accountability and acknowledged victims' rights to truth and effective remedy and guarantees of non-recurrence as essential components of human rights and transitional justice. The Mission also drew on international criminal law and compiled a list of individuals allegedly responsible for documented violations and abuses. The list will be deposited, as part of the Mission's evidentiary holdings, with the United Nations High Commissioner for Human Rights.

### **B. Methods of work and investigation activities**

11. Since its establishment, the Mission has carried out more than 400 interviews, primarily with witnesses and victims, and collected more than 2,800 discrete items of information. A large proportion of the items was in the form of reports, meeting notes, legislation, maps and photographic and audiovisual materials.

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<sup>4</sup> This is a methodology that has been adopted by previous fact-finding missions (see, for example, A/HRC/25/CRP.1, para. 20 and footnote 8).

<sup>5</sup> In resolution 43/39, the Human Rights Council urges, for example, all leaders to declare that violations and abuses of human rights or violations of international humanitarian law by their fighters will not be tolerated and that individuals responsible for such acts will be removed from duty and will be held accountable (para. 33); calls upon the Government of National Accord to increase its efforts to hold those responsible for violations or abuses of international human rights law and international humanitarian law accountable (para. 37); and requests the United Nations High Commissioner for Human Rights to ensure accountability (paras. 39 and 40).

12. Investigation and reporting activities were guided by the Mission's commitment to safeguarding the well-being and safety of the individuals and groups with which it interacted, and Mission staff adhered scrupulously to the "do no harm" principle in all their activities. Investigators arranged interviews and the transmission of information in safe places and over secure platforms and referred victims to protection and assistance programmes as appropriate and when feasible.

13. The Mission did not interview persons unless they agreed to be interviewed, and it sought informed consent from sources to use and share their information in its reports and with external stakeholders. The identities of victims and witnesses in the present report have been disclosed with their knowledge and after secondary consent was obtained.

14. The Mission undertook 13 missions, three of which were conducted during the last mandate extension period. The Mission went to Tripoli on six separate occasions<sup>6</sup> and to Benghazi on one occasion.<sup>7</sup> One of the last missions was a lengthy investigative mission to Tripoli, from 21 October to 21 November 2022. Investigators also travelled to Italy, Rwanda, Malta and the Netherlands,<sup>8</sup> as well as to other countries.

### **C. Standard of proof**

15. Consistent with most other United Nations fact-finding missions and commissions of inquiry, the Mission applied the "reasonable grounds to believe" evidentiary standard when making factual and legal determinations on patterns, incidents and cases. The standard was deemed met when a reliable body of primary information was obtained that was corroborated by at least one other independent source, which could lead a reasonable and ordinarily prudent person to believe that the patterns, incidents and cases had occurred. At least one credible first-hand source of information and one other independent and credible source of information were relied upon to verify individual incidents and cases contained in the present report.

16. The Mission found that the evidentiary standard was met with respect to violations involving torture, cruel, inhuman or degrading treatment, enforced disappearance, and sexual and gender-based violence, and the conditions in which those violations occurred, where detailed, reliable and credible first-hand sources of information were corroborated by evidence establishing patterns of similar incidents in the area of investigation.

17. The Mission identified patterns based on several pieces of first-hand evidence that were consistent with and corroborated by the overall body of evidence collected. The Mission discerned patterns from suspected perpetrators, time-periods, localities, victim profiles, *modi operandi* and motives.

18. Unlike the criminal standard of proof, the reasonable grounds basis does not require the Mission to make findings to the exclusion of all other reasonable inferences. Considering the stigma attached to the violations and abuses documented, the public nature of its work and the presumption of innocence, the Mission resorted to the higher evidentiary standard of balance of probabilities when compiling its list of allegedly responsible individuals.

### **D. Challenges and cooperation with authorities in Libya**

19. The Mission did its utmost to discharge its mandate fully, but was confronted with a myriad of resource-, access- and security-related challenges that inadvertently impeded the scope and continuity of its work. These challenges arose from the time of the decision to establish and dispatch the Mission and continued until the end of its mandate.

20. In its resolution 43/39 of 22 June 2020, the Human Rights Council requested the United Nations High Commissioner for Human Rights to establish and dispatch a fact-finding mission on Libya, but the coronavirus disease (COVID-19) pandemic, the United

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<sup>6</sup> In July 2021, August 2021, May 2022, October–November 2022, November 2022 and January 2023.

<sup>7</sup> In March 2022.

<sup>8</sup> In July 2021, April 2022, March 2022 and December 2022, respectively.

Nations budgetary liquidity crisis and a suspension of recruitment delayed the formation of the Mission secretariat and the commencement of investigations. The secretariat became fully operational in June 2021. While the intention was to recruit 18 staff members for the secretariat, it was composed of less than 10 staff members for lengthy periods of time and suffered a chronic shortage of investigators during critical stages of the investigation.

21. The Mission's endeavours to base its investigation team in Libya proved unfeasible owing to limited United Nations accommodation in Libya and security challenges,<sup>9</sup> and access to Libyan territory depended upon the cooperation of numerous authorities in Libya. While cooperation with authorities in Libya improved, the Mission struggled to obtain the permissions necessary to gain unhindered access to all parts of the Libyan territory, without delay.<sup>10</sup>

22. The Libyan Arab Armed Forces did not grant the Mission's requests to visit areas of southern Libya (Fazzan) under its control. In May 2022, the Government of National Unity denied the Mission permission to depart from Tripoli to enter the areas of southern Libya under the control of the Libyan Arab Armed Forces, and the Libyan Arab Armed Forces denied it authorization to access Sabha. Both authorities cited security concerns. In October 2022, the Libyan Arab Armed Forces withdrew the authorization to access Sabha that the Mission had received after significant delay. The Mission sent an official letter to the Libyan Arab Armed Forces protesting the withdrawal of authorization, but never received a reply.

23. The Mission submitted several requests to the Presidential Council of the Government of National Unity, the Ministry of the Interior, the Ministry of Justice, the Ministry of Social Affairs and the Ministry of Public Health, to visit prisons and places where persons were deprived of their liberties. The Mission did not receive official responses to its requests.

24. Despite the calls by the Human Rights Council for the Libyan authorities to allow the members of the Mission to meet and speak freely and privately, when they so request, with whomever they wish to meet or speak with, the climate of fear surrounding witnesses and civil society frequently hampered the Mission's engagements. There were instances when groups and individuals declined to meet with the Mission in particular locations, or at all, because of the fear of reprisal.

### **III. Principal findings of violations and abuses of international humanitarian and human rights law**

#### **A. Conduct of hostilities and armed clashes**

##### **Murzuq**

25. The Mission investigated violations allegedly committed in and around Murzuq in the months of February, March and August 2019 against the backdrop of a Libyan Arab Armed Forces military operation supported by affiliated armed groups and resisted by local armed forces that allegedly received support from the Government of National Accord. The declared objective of the operation was to restore stability and cleanse southern Libya of purported terrorists and criminals. The Tebu were in control of the Murzuq city administration at the time of the launch of the operation, and the situation between the al-Ahali and Tebu communities in southern Libya had been tense since 2011.

26. The Mission found reasonable grounds to believe that during the military operation and ensuing violence, acts were committed that amount to human rights violations and may potentially constitute war crimes as violations of international humanitarian law. These include incidents of killing, corpse desecration, enforced disappearance, pillaging and destruction of civilian objects.

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<sup>9</sup> Secretariat staff members were based in Tunisia.

<sup>10</sup> See Human Rights Council resolutions 43/39 and 50/23.

27. On 1 February 2019, Libyan Arab Armed Forces and affiliated armed groups, including the Tariq Bin Ziyad Brigade and the 128th battalion with members of the Awlad Sulayman and Zway communities, advanced from Sabha towards Murzuq. For over 20 days, the Tebu-led South Protection Force, formed in February 2019, fought the advance of the Libyan Arab Armed Forces and its affiliated groups on the city of Ghudwa. After a first and failed attempt to enter Murzuq City on 21 February, the Libyan Arab Armed Forces established control over Murzuq on 23 February 2019, and the situation reportedly stabilized temporarily.

28. Evidence obtained by the Mission established that there were reasonable grounds to believe that the Libyan Arab Armed Forces and its affiliated groups killed members of the Tebu community in February 2019 and that fighting triggered displacements. The Mission was, however, not in a position to verify the exact number of casualties and the circumstances of the deaths. Video footage dated 18 March 2019 shows eight dead bodies, two of them handcuffed, of alleged Tebu members off a main road approximately six kilometres north of Murzuq City. The Mission also found that a member of the local police, the Security Director of Murzuq, was a victim of extrajudicial killing.

29. The Mission found that Tebu homes and properties, including hundreds of cars, were destroyed and looted in the first days of the entry of the Libyan Arab Armed Forces and its affiliated groups into Murzuq. Furthermore, the Mission established that a minimum of 10 members of the Tebu community had disappeared in or around the month of February.

30. The Libyan Arab Armed Forces moved towards Tripoli in March 2019, where they joined the military campaign to seize the capital of the country, which was controlled by the Government of National Accord. Following withdrawal by the Libyan Arab Armed Forces, members of the Tebu community gradually returned to Murzuq.

31. The Mission found reasonable grounds to believe that, on 8 March 2019, two children, aged 5 and 14, from the al-Ahali community were killed by gunshots to the head in the presence of their relatives in a family home in Murzuq. According to the evidence, Tebu men killed the children because their father was fighting for the Libyan Arab Armed Forces.

32. Fighting between al-Ahali and Tebu communities intensified in August 2019. Reports indicate that more than 90 civilians were killed and 200 were injured in Murzuq. There was large-scale destruction, with approximately 60 apartments reportedly burned down and looted in the al-Daman neighbourhood. Witnesses described how Murzuq became a ghost town. By 20 August, a total of 1,890 families from Murzuq had been displaced.

33. The Mission found reasonable grounds to believe that, on 1 August 2019, a Tebu taxi driver was found dead in a burned car. He was tied and significant parts of his body were charred. The burning of the body was described as “the highest insult to the deceased and his family in Tebu traditions”. The Mission also collected evidence on a separate but similar incident of a Tebu man found burned to death in a car, with his hands tied, in early August 2019.

34. There were also killings, disappearances and abductions of al-Ahali members during this period. The Mission received reports of 21 cases of alleged disappearances and abductions, mostly in August. These included the cases of at least two al-Ahali men in their seventies who were allegedly abducted by the South Protection Force and disappeared. The Mission also found reasonable grounds to believe that on 7 August, a civilian from the al-Ahali community was shot in his car in front of his wife and children at a checkpoint. According to witnesses, the 13-year-old son jumped on his father’s dead body, took over the steering wheel and drove family members to safety. The Mission found reasonable grounds to believe that the father’s right to life was violated and that he may be a victim of murder as a war crime.

### **Armed clashes in Tripoli**

35. On or around 27 August 2022, armed clashes erupted in Tripoli, including in civilian populated areas. Fathi Ali Bashagha reiterated his intention to enter the Tripoli and his call for Abdul Hamid Dbeibha to peacefully hand over power. The Government of National Unity declared a state of emergency in Tripoli and mobilized armed forces.

36. Armed groups employed medium to heavy weaponry during the fighting, some of which took place near civilian hospitals. Medical facilities were reportedly damaged during the clashes, and one witness informed the Mission that medical personnel were not able to reach civilians in need of medical attention safely. The Mission also received reports of damage to at least one cultural site. Such acts, which entail a risk to the lives of civilians and the medical personnel and facilities that are indispensable for the survival of the civilian population, may amount to violations of the right to life.

#### **Mercenaries and landmines**

37. The Mission investigated violations allegedly committed by mercenaries and foreign fighters from Chad, the Russian Federation, the Sudan, the Syrian Arab Republic and other countries. The evidence collected by the Mission allowed it to make findings in relation to allegations of international law violations by Wagner Group agents in southern Tripoli during the armed conflict in 2019 and 2020. The evidence demonstrated a heavier than initially calculated contamination of unexploded Russian-made ordnance and commonly used Wagner landmines and other military explosives in manifestly civilian areas of southern Tripoli between May and July 2020. The Mission also confirmed the placement of military explosives in homes, inside sofas and bathroom fixtures, for example, and other civilian areas, which led to death and injury of civilians. Investigations reinforced the Mission's previous finding that Wagner personnel may have violated the international law principle of proportionality and the obligation to minimize the indiscriminate effects of mines and other explosives. By not clearing the ordnance, Wagner personnel and the Libyan Arab Armed Forces may also have violated the right to life. In addition, the use of mercenaries by Wagner Group agents in Libya may constitute the crime of mercenarism under the 1977 Organization of African Unity Convention for the elimination of mercenarism in Africa, to which Libya is a State party.

38. The Mission interviewed a victim whose family members were unlawfully arrested and detained after Wagner forces entered their home in southern Tripoli. After being held for approximately 24 hours at various nearby locations, where they were subjected to various forms of physical and psychological abuse, Wagner fighters summarily executed by gunfire three members of the victim's family and maimed a brother. The victim pretended to have been shot and killed. The Mission found reasonable grounds to believe that the Wagner fighters involved in this case committed the war crimes of murder, torture and cruel treatment.

#### **Airstrike on the Tripoli military academy**

39. The Mission continued to investigate the airstrike on the military academy in Hadabah, Tripoli.<sup>11</sup> It found reasonable grounds to believe that academy students were not taking a direct part in the hostilities, that they were protected from attack and that the attack on the Academy amounted to a serious violation of international humanitarian law and a war crime. Further investigation is necessary to identify those responsible for the attack.

## **B. Migrants<sup>12</sup>**

40. More than 670,000 migrants from over 41 countries were present in Libya during the last mandate extension period, and the number of migrants in Libya has been increasing since 2021.<sup>13</sup> Libya serves as a point of departure and transit country for many of those bound for Europe. All the migrants interviewed shared similar accounts of an abhorrent cycle of violence. The cycle started with the migrants' entry into Libya, often with the involvement of smugglers, and led to their capture, recapture and repeated transfers to official or unofficial places of detention without recourse to judicial review. Racial discrimination against migrants was a persistent undercurrent throughout the cases documented by the Mission.

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<sup>11</sup> For details on the weapon used, see S/2021/229.

<sup>12</sup> The term "migrant" encompasses refugees, asylum-seekers and migrants.

<sup>13</sup> See International Organization for Migration (IOM), "IOM Libya Migrant Report Round 43, July–August 2022" (2022).

41. The Mission interviewed more than 100 migrants over the course of its investigations, including in cases of alleged trafficking and deprivation of liberty for ransom in connection with smuggling and trafficking. The Mission established, on the basis of this evidence, that there are reasonable grounds to believe that migrants across Libya are victims of crimes against humanity and that acts of murder, enforced disappearance, torture, enslavement, sexual violence, rape and other inhumane acts are committed in connection with their arbitrary detention.<sup>14</sup> The Mission also concluded a holistic assessment of all the evidence collected and found reasonable grounds to believe that the crime against humanity of sexual slavery, previously unreported by the Mission, had been committed in the trafficking hubs of Bani Walid and Sabratah during the Mission's mandate.

42. The cases investigated by the Mission during the reporting period confirmed that there were reasonable grounds to believe that the underlying acts of crimes against humanity were committed in detention centres of the Directorate for Combating Illegal Migration in Tariq al-Matar, Abu Salim, Ayn Zarah, Abu Isa, Gharyan, Tariq al-Sikka, Mabani, Salah al-Din and Zawiyah, as well as non-official places of detention in al-Shwarif, Bani Walid, Sabratah, Zuwarah and Sabha. The Mission identified a particularly significant role played by the Stability Support Apparatus in crimes against humanity through their cooperation with the Libyan Coast Guard in Zawiyah and their control of the detention centres of Abu Salim and Ayn Zarah.

43. The Directorate for Combating Illegal Migration is the official entity of the Libyan Ministry of the Interior responsible for migrant detention centres across Libya. The Council of Ministers of the Government of National Unity appointed Mohamed al-Khoja, the head of the al-Khoja militia and Tariq al-Sikka detention centre, as head of the Directorate for Combating Illegal Migration in January 2022. The Stability Support Apparatus was established in January 2021 by the Presidential Council. It is made up of an alliance of armed groups and is led by militia leader Abdel Ghani al-Kikli, also known as "Ghneiwa".

44. The ongoing, systematic and widespread character of the crimes documented by the Mission strongly suggests that personnel and officials of the Directorate for Combating Illegal Migration, at all levels, are implicated. In addition, the Mission found reasonable grounds to believe that high-ranking staff of the Libyan Coast Guard, the Stability Support Apparatus and the Directorate for Combating Illegal Migration colluded with traffickers and smugglers, which are reportedly connected to militia groups,<sup>15</sup> in the context of the interception and deprivation of liberty of migrants. The Mission also found reasonable grounds to believe that guards demanded and received payment for the release of migrants. Trafficking, enslavement, forced labour, imprisonment, extortion and smuggling generated significant revenue for individuals, groups and State institutions.

45. The Mission also collected evidence of collusion between the Libyan Coast Guard and those in charge of al-Nasr detention centre in Zawiyah. Abd al-Rahman al-Milad, also known as "Bija", the head of the regional unit of the Libyan Coast Guard in Zawiyah, is on the Security Council sanctions list for involvement in trafficking and smuggling.<sup>16</sup>

46. Libyan authorities, including the Directorate for Combating Illegal Migration, the Libyan Coast Guard and the Stability Support Apparatus, and third States have been on notice for years regarding the ongoing widespread and systematic attacks on migrants, including violations occurring at sea, in detention centres, along trafficking and smuggling routes and in trafficking hubs.<sup>17</sup> Nonetheless, in accordance with memorandums of understanding between Libya and third States, the Libyan authorities have continued their policy of intercepting and returning migrants to Libya, where their mistreatment resumes. Based on the substantial evidence and reports before it, the Mission has grounds to believe that the European Union and its member States, directly or indirectly, provided monetary and technical support and equipment, such as boats, to the Libyan Coast Guard and the

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<sup>14</sup> See A/HRC/50/63.

<sup>15</sup> S/2018/812 and S/2018/812/Corr.1.

<sup>16</sup> See United Nations, Security Council consolidated list and Security Council resolution 1970 (2011).

<sup>17</sup> See A/HRC/48/83, A/HRC/49/4 and A/HRC/50/63.



Directorate for Combating Illegal Migration that was used in the context of interception and detention of migrants.

47. Interviewees that escaped captivity and attempted to reach Europe eventually tried to cross the Mediterranean Sea. In the words of one migrant that was held in Maya, Ayn Zarah and Gharyan detention centres, “our concern is not dying in the water, but our concern is to go back to the prison where we will be oppressed and tortured by guards”. Immigration control by Libya and European States must be exercised consistent with their international law obligations, especially the principle of non-refoulement, and in accordance with the Global Compact for Safe, Orderly and Regular Migration.

### **Torture**

48. There is overwhelming evidence that migrants were systematically tortured in detention centres under the nominal or actual control of the Directorate for Combating Illegal Migration, including Tariq al-Matar, Tariq al-Sikka, Abu Isa and Gharyan. The Mission also found evidence of torture in trafficking hubs in Bani Walid and Sabratha. The appalling mistreatment of migrants resulted in long-term physical and emotional harm.

49. Suicides among migrants, which can be an indication of torture, were reported to the Mission. In one incident documented, a boy, allegedly tortured and suffering from severe headaches, hung himself in Ayn Zarah. His lifeless body was left hanging in front of other migrants for at least one and a half days before it was taken down. A witness said that guards ordered them not to take photos.

### **Rape**

50. The Mission spoke to numerous survivors and witnesses of rape. It found, on this basis, reasonable grounds to believe that rape as a crime against humanity was committed in places of detention in Mabani, al-Shwarif, Zuwarah, Sabratha, Sabha and Bani Walid. Migrants were routinely raped, with one male witness describing how, “during the nights, the guards [of Bani Walid] come in the dark with the torch and approach the ladies, pick any and rape her. They order us to sleep and cover ourselves with the mattress as they take the lady away”. Pregnancies are a commonplace outcome of rape, and migrants reported having seen women give birth in detention without professional medical support.

51. Migrant survivors faced insurmountable challenges in accessing safe and adequate sexual and reproductive health services and assistance programmes that could offer them protection and address the harm inflicted and consequential pregnancies and births. Since the irregular entry and stay of migrants is criminalized in Libya, migrant survivors risk prosecution and punishment if they approach Libyan authorities and medical facilities.

### **Enslavement, including sexual slavery**

52. There are reasonable grounds to believe that migrants were enslaved in detention centres of the Directorate for Combating Illegal Migration in Abu Salim, Zawiyah and Mabani, as well as in places of detention in al-Shwarif, Bani Walid, Sabratha, Zuwarah and Sabha. The Mission considered that enslavement, including sexual slavery, had occurred when, for example, there was an element of ownership or there were actions imposing a similar deprivation of liberty. The Mission found that sexual slavery was committed in Sabratha and Bani Walid.

### **Other inhumane acts, including starvation**

53. Migrants were held in inhumane conditions and severely mistreated in centres of the Directorate for Combating Illegal Migration and by traffickers. An overwhelming number of migrants testified to the lack of mattresses and sleeping accommodations, overcrowding, a severe shortage of lavatories, the continued presence of crawling insects such as lice, inadequate quantities and quality of food and water, and the lack of medical care. Migrants that spoke with the Mission described how migrants were often starved in places of detention.

## C. Enforced disappearance

54. Enforced disappearance is a particularly egregious violation of international human rights law, which may constitute a crime against humanity. Enforced disappearance places the direct victim outside the protection of the law and victimizes family members of the victim. Cases investigated by the Mission confirmed that enforced disappearances frequently occur in the Libyan context alongside arbitrary detention.

55. The Mission found that, during the temporal scope of its mandate, persons were subjected to enforced disappearance in Libya by, or through affiliated armed groups of, the Government of National Unity led by Abdul Hamid Dbeibah and the Libyan Arab Armed Forces led by Khalifa Haftar. Notably, the Mission documented during the last mandate period the abduction, enforced disappearance and arbitrary detention of three men in the Libyan Arab Armed Forces-controlled Gernada prison. The Mission found reasonable grounds to believe that they were victims of imprisonment, enforced disappearance and other inhuman acts, as crimes against humanity in connection with the exercise of their freedom of expression. These cases reinforced the Mission's previous finding that crimes against humanity have been committed in Gernada prison "to repress freedom of expression, thought and association with the aim to silence ideological opponents, journalists, activists and actual or perceived critics of the [Libyan National Army]".<sup>18</sup>

56. Two of the cases concerned Ahmed Mustafa and Ali Omar, known as Ali Alaspli, who are both online critics of leaders of the Libyan Arab Armed Forces in eastern Libya. The men were taken by armed members of the Libyan Arab Armed Forces under coercive circumstances on related occasions in March 2016. They were held captive in the home of then-Libyan National Army commander Ahmad al-Ghourour for three nights before they were taken to Gernada prison and placed in solitary confinement in a secret wing that was reportedly guarded by men that subscribed to the Madkhali-Salafist ideology. The victims were beaten and were not provided with sufficient food or basic amenities. Family members were informed of the detainees' whereabouts after approximately three months. The men were released after four months in detention.

57. The Mission also documented the enforced disappearance of persons because of their place of origin and family links. In an incident investigated by the Mission, armed men searching for individuals from eastern Libya at a café in Tripoli abducted approximately six men. The Mission found that at least one of the victims from eastern Libya was taken to Mitiga airport, where he was interrogated about other persons from eastern Libya living in Tripoli and tortured over a two-day period. The victim was shackled and hung upside down, in the so-called balanco position, his hair was burnt with a lighter and his reproductive organs were hit and squeezed with pliers. The victim was subsequently transferred to a prison within the Mitiga airport complex, where the cruel and inhuman treatment continued. The victim was held incommunicado until 2017. He was only permitted to call his family one year and 10 months after his abduction from the café. His father, who had inquired about the victim and filed complaints about his disappearance, died before his son could contact the family. There are reasonable grounds to believe that the victim was subjected to enforced disappearance for close to two years and arbitrary detention for seven years, as crimes against humanity. The victim was released from Mitiga prison in 2022.

58. The Mitiga airport complex, including places of detention located therein, remains under Radaa's control. Radaa is an armed group that was formally integrated into the Deterrence Apparatus for Combating Organized Crime and Terrorism by decision of the Presidential Council of the Government of National Accord in 2018.<sup>19</sup> The Deterrence Apparatus for Combating Organized Crime and Terrorism was reorganized by decision of the Government of National Accord in 2020.<sup>20</sup>

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<sup>18</sup> A/HRC/50/63, para. 40.

<sup>19</sup> Government of National Accord, Presidential Council decision No. 555 (2018).

<sup>20</sup> Government of National Accord, Presidential Council decision No. 578 (2020).

59. The Mission reported in 2022 on several incidents of the crime against humanity of enforced disappearance in Tarhuna.<sup>21</sup> The Mission made a new legal finding on crimes against humanity in Tarhuna in the case of Zahra Maatouq. Ms. Maatouq was summoned in December 2019 to the Tarhuna police station to provide proof of her husband's identity. He had been taken from their home days earlier. According to witnesses, Ms. Maatouq met her husband at the police station but appeared shaken in her last communication with her family. Ms. Maatouq's body was exhumed from a mass grave in 2020. It is established that she died from gunshot wounds to the head, torso and pelvis. The Mission found reasonable grounds to believe that Ms. Maatouq was a victim of enforced disappearance as a crime against humanity and murder as a crime against humanity and a war crime.

#### **D. Violations in the context of deprivation of liberty**

60. The pervasive and widespread deprivation of liberty inflicted on Libyans and other non-migrants in detention centres across the country has been a fixture of all the Mission's reports. Since its establishment, the Mission has conducted over 134 interviews with current and former detainees, their relatives, insider witnesses and other individuals with respect to over 41 detention sites throughout Libya. The Mission also obtained large amounts of corroborating and other pieces of evidence regarding violations of international law occurring at those detention centres, including "secret prisons". The Government placed the total number of detainees at 18,523, but evidence collected by the Mission indicated that the true number of individuals arbitrarily detained is likely much higher.

61. In its final mandate period, the Mission substantiated its prior finding that there are reasonable grounds to believe that the crimes against humanity of murder, torture, imprisonment, rape, enforced disappearance and other inhumane acts have been committed in several places of detention in western, eastern and southern Libya since 2016. The Mission documented a prevalence of the underlying acts of crimes against humanity in Mitiga detention complex in Tripoli, which is controlled by Radaa, in al-Kwaifiya and Gernada prisons, which are run by the Libyan Arab Armed Forces, and in detention centres under Stability Support Apparatus control.

62. The victims of detention-related violations and abuse came from every segment of Libyan society and included children, adult men and women, human rights defenders, political participants, civil society representatives, members of military or security forces, legal professionals and persons of perceived or actual diverse sexual orientations and gender identities. Nearly all of the victims and witnesses the Mission interviewed were never confronted with the evidence against them and were held without charge. As detailed in prior Mission reports, the conditions of detention throughout Libyan detention centres were persistently deplorable, with detainees subjected regularly to torture and solitary confinement and held incommunicado. Detainees were also denied adequate access to water, food, toilets, sanitation, light, exercise, medical care, legal counsel and communication with family members.

63. Detainees have been subjected to systematic torture, in particular in detention centres within the Mitiga airport complex. According to one detainee held there for more than three years, detainees were "onboarded" in a "room resembling a hospital for the insane, where beating is mandatory [...] and blood flows". The victim was never charged of a crime and no investigation was opened into his arbitrary detention.

64. The Mission investigated the arbitrary detention of Abdul Hakim al-Mashri in a Mitiga detention centre since his illegal abduction on 16 October 2016 under vague allegations of being affiliated with Da'esh. Such accusations were common against people from Sirte, and the victim has never been confronted with evidence supporting this allegation. A witness explained that his family waited in line for upwards of 14 hours to speak with the victim.

65. In another similar case, a colonel in the Libyan army, Osama Muhammad Salih al-Ghafir, was arrested and detained on 7 December 2016 near Sidrah by Libyan Arab Armed

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<sup>21</sup> See A/HRC/50/CRP.3 and A/HRC/48/83.

Forces. He appeared as a prisoner on the Libya Alhadath television channel at the time of his arrest. A family member met with an eyewitness who told him that he saw Colonel al-Ghafir in a prison operated by Tariq Bin Ziyad Brigade in early 2017 in the Sidi Faraj area near Benghazi. He was stripped of his clothes and tortured outside in the rain and thereafter dragged by a car. Colonel al-Ghafir's whereabouts remain unconfirmed.

66. The Mission collected compelling evidence of families of detainees held in Mitiga and Judaydah prisons being forced to purchase all items for their detained relatives from a private shop at Judaydah prison that is allegedly owned by Colonel Osama Njeim. Colonel Njeim is the director of an official section of the Mitiga detention centre complex and a member of Radaa. He has also been the head of the Operations and Security Department of the Judicial Police since the issuance of a directive to that effect by the then Minister of Justice, Mohammed Lamlum. There are reasonable grounds to believe that government public funds were misappropriated in detention centres within the Mitiga airport complex and that the illicit financial gain incentivized arbitrary detention as a tool of oppression and repression.

## **E. Violations of the rights to assembly, association, expression and belief**

67. The Mission continued to investigate violations of the rights to expression, assembly, association and belief in Libya. The Mission's investigations underscored that Libyan authorities, notably the Internal Security Agency, are curtailing the rights to assembly, association, expression and belief to ensure obedience, entrench self-serving values and norms, and punish criticism against authorities and their leadership. The Internal Security Agency is a civil institution of the Libyan State with country-wide jurisdiction headquartered in Tariq al-Sikka in Tripoli. The Mission understood that Internal Security Agency branches operate under the influence of authorities in eastern and western Libya, depending on their location.

68. The Mission found that persons were tortured, raped, arbitrarily detained and subjected to enforced disappearance after expressing their views on women's rights and gender equality, sexual and gender diversity, the rights of indigenous groups and religion. Attacks against, inter alia, human rights defenders, women's rights activists, journalists and civil society associations have created an atmosphere of fear that has sent persons into self-censorship, hiding or exile at a time when it is necessary to create an atmosphere that is conducive to free and fair elections.

69. The case of Jaber Zain is emblematic of the use of physical measures and laws to oppress. He is a Sudanese male who immigrated to Libya at the age of six and amassed a significant online following because of his posts and public talks on racism, freedom of religion and women's rights. Mr. Zain was subjected to enforced disappearance for 20 months and arbitrarily detained for longer than two years after his abduction in Tripoli on 25 September 2016 by armed members of the Second Special Support Forces of the Ministry of the Interior from Tripoli. During his time in detention, Mr. Zain was interrogated about his writings, views on religion, relationship with international organizations and embassies, and position on women. He was also accused of not being a Muslim and corrupting Libyan society. Mr. Zain was sexually assaulted, beaten with sticks, gas pipes, fists and knees, and interrogators threatened to rape his sisters. In one incident, interrogators attempted to rape him with a 12-centimetres-long bullet. In May 2018, Mr. Zain was brought before a judge and charged with "offending the State's religion", "trying to destroy the conservative Libyan society" and "immoral practice". Mr. Zain denied the charges and was deported in November 2018. The Mission found reasonable grounds to believe that Mr. Zain's rights to freedom of association, assembly, expression and belief have been violated and that he is a victim of arbitrary detention, enforced disappearance, torture and arbitrary expulsion.

### **Suppression of Tanweer Movement and its members**

70. In 2022, the Internal Security Agency published on its Facebook page and website "confession" videos of men, seemingly under duress, pronouncing that they and others were

members of Tanweer Movement, atheists, agnostics, feminists and infidels.<sup>22</sup> In December 2022, four of the men were sentenced to three-year imprisonment “with hard labour” and fined by a domestic court in Tripoli. The Mission is concerned that the evidence relied upon was extracted under coercive circumstances without lawyers present. The Mission is also concerned that the legal provisions relied upon are inconsistent with the principle of legality and international human rights law.

### **Legislation incompatible with fundamental freedoms**

71. The rights to manifest one’s belief and freedom of expression, association and assembly may be restricted, subject to necessity, justification and proportionality. Some of the vague terminology used in Libyan legislation is incompatible with the right to freedom of expression, which requires that laws must be sufficiently precise to enable an individual to regulate his or her behaviour.<sup>23</sup> The Libyan Penal Code, for example, stipulates the death penalty for any views or principles that aim to overthrow the political, social or economic order of the State<sup>24</sup> and proscribes blasphemy.<sup>25</sup> Similarly, the Law on Telecommunications holds that the publishing of information and data that “harms the political, economic, social or cultural heritage of Libyan Arab society” is punishable.<sup>26</sup>

72. The Mission is alarmed by the Anti-Cybercrime Law that came into effect in October 2022, which could exacerbate an already constricted and heavily monitored civic space online. The law affords the Libyan authorities extensive discretionary powers to restrict and criminalize online freedom of expression, opinion and belief on the basis of “public order and morality”.<sup>27</sup>

73. Civil society organizations were also impacted directly by Presidential Council decision No. 286 of 2019, in which the Council imposed stringent reporting procedures on civil society organizations and limited activities of association in Libya.<sup>28</sup>

## **F. Women**

74. Women are systematically discriminated against in Libya, and the situation of women has markedly deteriorated since the establishment of the Mission. This situation has been compounded by the militarization of Libya, the proliferation of armed groups whose powers continuously increase and the weakening of State institutions.

75. Alarming, the Mission received information of an increase in domestic violence in the context of the availability of weapons, trauma suffered by abusers, the COVID-19 pandemic and security-imposed movement restrictions. In July 2022, a spate of “honour-related” femicides shook the country in what has been referred to as “the bloody week”. Around the Eid al-Adha week alone, at least six women were killed by their husbands, fathers, brothers or fiancées. The public outcry surrounding these killings led to arrests; however, perpetrators of violence against women are rarely prosecuted or handed sentences that are commensurate with the gravity of the offence.

76. There is no comprehensive law on combating violence against women in Libya. Nor does Libya have a national action plan for the implementation of Security Council resolution 1325 (2000). Cooperation between the United Nations and Libya on issues concerning women has suffered a setback. The October 2021 memorandum of understanding between the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and the Minister of State for Women’s Affairs, which contained a standard reference to the 1979 Convention on the Elimination of All Forms of Discrimination against Women, caused an uproar, and an investigation was opened against the Minister of the State on

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<sup>22</sup> A/HRC/50/63, para. 65.

<sup>23</sup> See Human Rights Committee, general comment No. 34 (2011).

<sup>24</sup> Libya, Penal Code (1953), art. 207.

<sup>25</sup> *Ibid.*, art. 291.

<sup>26</sup> Libya, Law on Telecommunications No. 22 (2010), art. 35.

<sup>27</sup> Libya, Anti-Cybercrime Law No. 5 (2022), art. 4.

<sup>28</sup> Government of National Accord, Presidential Council decision No. 286 (2019).

Women's Affairs. The decision to sign the memorandum of understanding was cancelled in September 2022.

77. The vilification of the Minister of the State for Women's Affairs, one of the few women holding senior public office, was reprehensible and discouraged women's political participation. The attack against the Minister of the State for Women's Affairs is not isolated. The Mission observed similar online vitriol against the Minister for Foreign Affairs and the Minister of Justice, both of whom are women.

78. Another matter of concern to the Mission is the discriminatory treatment of Libyan women married to non-Libyans. Libyan women should possess the right to transfer their nationality to their children on an equal basis with men. They should also be permitted to maintain their national identity number and their right to run for political office if they marry non-Libyan men. The unequal treatment of Libyan women amounts to a violation under international human rights law.

79. The Mission followed up on the local authorities' responses to the enforced disappearance of Siham Sergiwa nearly four years ago and the extrajudicial killing of Hanan Barassi in 2020. The Mission has reasonable grounds to believe that the Libyan Arab Armed Forces leadership failed to take reasonable measures to submit those cases to competent authorities for effective, genuine and independent investigation and prosecution.

80. Ms. Sergiwa was abducted from her home in the heavily secured Bu Hadimah district of Benghazi during the afternoon by 25 to 30 armed men wearing masks and uniforms. She had given an interview the day before her abduction in which she opposed the Libyan Arab Armed Forces attack on Tripoli. Benghazi is effectively and tightly controlled by the Libyan Arab Armed Forces and its commander, Khalifa Haftar. The scale and sophistication of the operation suggest that the top Libyan Arab Armed Forces leadership knew or should have known of the abduction and fate of Ms. Sergiwa.

81. Ms. Barassi was gunned down in broad daylight by two armed and masked men in the centre of Benghazi. She announced to her 70,000 followers on the day before her killing that she would release information about Saddam Haftar, the son of Khalifa Haftar. While Omar Mraja al-Megerhi is formally the head of the Tariq Bin Ziyad Brigade, evidence shows that the group is controlled by Saddam Haftar.

## **G. Sexual and gender-based violence**

82. There is no protection or accountability for victims of sexual and gender-based violence in Libya. Women, detainees, migrants and persons of diverse sexual orientations and gender identities are particularly vulnerable to sexual and gender-based violence in Libya because of a combination of pervasive patriarchal norms and gender inequality, a lack of institutional arrangements that guarantee safe reporting on sexual violence and assistance to victims, and ineffective or non-existent legal recourse.

83. The Mission's recent investigations underscored that sexual and gender-based violence continues to be widely employed by Libyan State actors and the Libyan Arab Armed Forces to force confessions, punish, subjugate, terrify and silence journalists, activists, detainees, migrants and women, including on the basis of persons' actual or perceived sexual orientation and gender identity.<sup>29</sup> The Internal Security Agency and the Deterrence Apparatus for Combating Organized Crime and Terrorism, which are formally part of the State, have been implicated in such violence.<sup>30</sup> Conservative Salafist-leaning ideologies have been used to justify and motivate sexual and gender-based violence.

84. In an emblematic case documented by the Mission, two young Libyan men, perceived to be gay, were held up and coerced by heavily armed men to unlock and provide access to their phones. The two young men were taken to the Mitiga airport complex and handed over to Radaa. There, a bearded man in traditional clothing – described as a sheikh – severely

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<sup>29</sup> Sexual and gender-based violence against migrants is addressed in section III.B.

<sup>30</sup> Amnesty International, "Libya: The Internal Security Agency intensifies crackdown on freedom of expression", 23 March 2022.

tortured both victims and hurled foul language at them, denigrating their sexual orientation. One of the victims was released the same day, while the other was kept for four days. The man that was kept in detention informed the Mission that he was later ordered, at gunpoint, to undress the lower part of his body and was raped by the guards. The victim was asked in detention for information about other gay men. Both survivors subsequently fled Libya.

85. Libyan legislation excuses sexual and gender-based violence in Libya and gives rise to double victimization. For example, rape and other forms of sexual assault are not criminalized in Libya in accordance with international law and standards.<sup>31</sup> Libya's Penal Code provision on "sexual intercourse with another by force, threat or deceit" has been interpreted as the vaginal or anal penetration by the male reproductive organ and does not take into account coercive circumstances or cover marital rape.<sup>32</sup> Sexual relations between consenting adults, whether they are same-sex or sexual relations outside marriage, are punishable. Moreover, the law provides for the exoneration of the perpetrator should he marry the victim and remain married to the victim for three years.<sup>33</sup>

86. Nearly all survivors interviewed refrained from lodging complaints out of fear of reprisal, arrest or extortion. A case concerning a Libyan female journalist who reported being repeatedly raped and tortured during her detention highlighted the difficulties encountered by survivors of sexual violence. The victim was threatened that Radaa would arrest her for prostitution and deem her "spoiled" if she complained that she had been raped. When the victim suspected that she was pregnant, she pretended to need blood tests to confirm the pregnancy and self-administered medication to terminate it. Abortion is a criminal offense in Libya, unless necessary to preserve the mother's life. In another case, a Sudanese asylum-seeker was arrested after giving birth at a public hospital. Despite her claim that the child was conceived through rape, the victim was accused of engaging in sexual relations outside of marriage, an act criminalized in Libya.

## **H. Children**

87. The Mission has previously reported on violations committed against children in Libya. For example, the Mission established in its first report to the Human Rights Council that there were reasonable grounds to believe that Syrian children aged 15 to 18 years were recruited into armed groups from late 2019. It also reported in this regard that Libya may have failed to comply with its obligations under the African Charter on the Rights and Welfare of the Child and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.<sup>34</sup>

88. The Mission has since received information that Syrian children are still being recruited into armed groups and that children of minority groups of Libya that lack citizenship and are of undetermined legal status are at risk of becoming involved in fighting. It also continued to receive reports about children held in arbitrary detention with their parents or non-familial detainees, as well as harm suffered to children during armed clashes and hostilities because of unexploded ordnance, among other things. While the Mission could not independently corroborate and investigate such reports, the Mission underscores the need for further investigation of violations against children and their rights.

## **I. Internally displaced persons**

89. The Mission welcomed the development of a national Durable Solutions Strategy and the approval of funds to support reconstruction of several areas damaged during the conflicts and provide compensation for loss of property to the concerned persons. The Mission observed that, despite these encouraging steps, no funding was disbursed for the purpose of reconstruction and that, in general, limited efforts were made to create the conditions needed

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<sup>31</sup> See A/HRC/47/26/Add.1.

<sup>32</sup> Penal Code, art. 407.

<sup>33</sup> Ibid., art. 424.

<sup>34</sup> A/HRC/48/83, para. 67.

for people to return in a voluntary and dignified manner. Damage to houses and administrative buildings, as well as limited access to basic services, remained key obstacles to their return. Many of the inhabitants from Murzuq who fled between February and August 2019 remain displaced and will only be able to return if significant investments are made to restore administrative buildings and housing and provide services for their livelihoods. In the same vein, Tawurgha, which saw the mass displacement of some 40,000 people in 2011, remains largely uninhabitable, and very few displaced persons have returned despite an agreement to that end signed in 2018. The presence of unexploded ordnance has been reported in many areas, posing a risk to the safety of those who would like to return.

90. The largest group of internally displaced persons came from Benghazi, with hundreds of thousands of people displaced between 2014 and 2017 during the violence between the Libyan Arab Armed Forces and various non-State armed groups such as Da'esh. While many have returned, the Mission learned that some internally displaced persons remain unable to return to their areas of origin in Benghazi and Darnah, owing to a risk of persecution or retaliation from militias.

91. The majority of internally displaced persons found safety in the main urban centres, such as Benghazi, Misrata and Tripoli. There is increasing evidence that many in these locations have integrated locally and may be unwilling to return. Internally displaced persons should have the same access to services and livelihood opportunities as host communities. Although there has been some progress in that regard, the Mission received accounts of internally displaced persons being discriminated against and left unable to avail themselves of their rights. Moreover, very few gender-specific services were available for women and girls. The Mission also received reports of cases of eviction in places such as Sidi al-Sayeh, Dawa Eslameya and Bani Walid.

92. National reconciliation, including transitional justice, is a condition for the resolution of internal displacement in Libya. The Mission did not receive any information that the authorities had provided internally displaced persons with effective remedies for displacement-related violations, including access to justice and reparations for harm suffered, or that they had taken the necessary steps to ensure that perpetrators of violations would be held accountable.

93. It is imperative that Libya ratify the African Union Convention for the Protection and Assistance of Internally Displaced Persons of 2019, which it has signed, with a view to providing effective measures for the protection and resolution of the situation of internally displaced persons, based on a normative framework.

## **J. Attacks against legal professionals and challenges to the rule of law**

94. The Mission investigated attacks against legal professionals and identified challenges to the rule of law in Libya. Although the Libyan judiciary is relatively cohesive, the Mission found reasonable grounds to believe that acts had been committed that undermined the independence of the judiciary and curtailed the rule of law. An independent, impartial, competent and effective judicial system is essential if victims are to be able to seek and receive remedies and accountability at the domestic level.

95. The Mission documented the alleged arbitrary detention, enforced disappearance and (attempted) killing of several judges and prosecutors. The Mission also documented cases of detainees being denied access to lawyers and received reports of judges being replaced to fix an outcome, sentences that were adapted to serve certain interests and cases that were not brought to trial owing to tribal affiliations. Attacks against members of the legal profession were reported in Benghazi, Tripoli, Sirte and Sabha.

96. For example, the Mission documented the case of a lawyer in Tripoli who was litigating civil cases, the majority of which were lawsuits against the Government for compensation for victims of crimes committed by militias who were on the government payroll. He was also speaking out against child recruitment by militias. The victim was abducted from the streets in Tripoli in April 2019, detained and interrogated. The perpetrators agreed to release him on the condition that he did not proceed with the lawsuits and refrained



from speaking publicly about child recruitment. The victim was released after one day. He soon afterward left Libya and has never returned.

97. In another emblematic case from 2021, a female lawyer in Benghazi was kidnapped from the street near Ajdabiya Court, arbitrarily detained in inhumane conditions and subjected to enforced disappearance for two days by the Internal Security Agency before being thrown on the street, handcuffed and blindfolded. In August 2022, another lawyer was harshly beaten by Radaa elements inside a Tripoli courtroom, in front of judges, kidnapped and then held by Radaa in Mitiga prison for about eight hours, before being released following pressure from external entities.

98. The Mission found that there was no domestic legislation establishing protection measures for witnesses and victims. Nor was there a Libyan security or military force capable of providing security protection to the courts, prosecutors' offices and the judiciary in accordance with international practice. In fact, the Judicial Police operations room, which is part of the Judicial Police and is tasked with providing judicial security, was implicated in attacks on judicial personnel.

99. Victims seeking justice through domestic avenues encountered considerable obstacles. For example, those who sought to lodge complaints with the public prosecution in Tripoli, after having fled to territory outside the control of the Libyan Arab Armed Forces, reported that prosecutors told them they lacked jurisdiction to investigate alleged Tariq Bin Ziyad Brigade crimes. It was further reported that no criminal cases were heard in Fazzan between 2011 and 2019 and that police stations closed by 2 p.m.

#### **Military trials of civilians**

100. The Libyan Arab Armed Forces have been operating a parallel military justice system in areas under their control. The House of Representatives, allied with the Libyan Arab Armed Forces since 2014, enacted a law in 2016 extending the personal and subject-matter jurisdiction of the military judiciary over civilians who are members of militias and those who commit "terrorist acts". Trials of civilians before military courts violate international human rights law, including the African Charter on Human and Peoples' Rights, as they often do not satisfy the requirements of judicial independence, impartiality and competence under the right to a fair trial.

## **IV. Recommendations**

101. **All of the Mission's previous recommendations remain relevant and must be implemented.**

102. **The Mission calls on the authorities of Libya:**

(a) **To investigate and prosecute individuals allegedly responsible for violations and abuses of international humanitarian and human rights law and domestic criminal law, in accordance with due process guarantees and the principle of legality. To this end, they should exclude amnesty for gross human rights violations and international crimes and provide a safe working environment for judges, lawyers and prosecutors;**

(b) **To abide by the pledge made to the Human Rights Council in 2022 to use the findings and recommendations of the Mission as a baseline for Libya's future reports to the Council under the universal periodic review and human rights treaty bodies;**

(c) **To undertake effective disarmament, demobilization, reintegration and rehabilitation measures to establish integrated armed and security forces in keeping with international standards and practices;**

(d) **To restructure the State security sector and subject it to an independent civilian oversight mechanism that operates in accordance with international law standards;**

(e) To cease all military trials of civilians and halt the implementation of judgments issued by military courts against civilians;

(f) To end the criminalization of irregular entry and stay of migrants in Libya and immediately release arbitrarily detained migrants, including by amending Law No. 19 on Combating Irregular Migration of 2010. Where migrant detention is justified, ensure that women and men are separated and are kept in humane and dignified conditions;

(g) To dismantle secret prisons and immediately release all persons arbitrarily detained;

(h) To cooperate fully with the United Nations human rights system and implement recommendations made by all United Nations special procedures mandate holders and facilitate their unhindered and safe access to all parts of Libya and places of detention, as requested;

(i) To cooperate fully with and facilitate unhindered and safe access to the International Criminal Court;

(j) To ensure the enjoyment of fundamental rights, including the free and safe exchange of diverse opinions and information;

(k) To protect and promote the rights of women, minorities, persons of diverse sexual orientations and gender identities, civil society activists, journalists and human rights defenders and encourage their participation in political and public life.

(l) To amend provisions of the Libyan Penal Code and the Publications Law to the extent necessary to align them with international human rights law;

(m) To amend the Anti-Cybercrime Law, the Law on Civic Associations, media regulations, including decision No. 811 (2022), and the Publications Law to the extent necessary to align them with international human rights law;

(n) To remedy and abolish undue restrictions imposed on national and international civil society organizations in Libya;

(o) To strengthen efforts to organize free, fair and transparent elections;

(p) To take remedial action to realize victims' rights to truth, justice and reparations, and to that end:

(i) To develop and adopt a holistic national human rights plan of action that reflects international human rights law and standards and addresses all findings and recommendations made by the Mission and international human rights bodies;

(ii) To enact legislation and develop a system to protect victims and witnesses from reprisal;

(iii) To develop a comprehensive, inclusive, victim-centred and detailed road map on transitional justice and accountability for Libya;

(iv) To amend article 417 of the Code of Criminal Procedure to allow for civil proceedings even in the absence of a criminal conviction;

(q) To eliminate all forms of discrimination against women, including by taking appropriate measures to modify practices that marginalize women in public and private spheres;

(r) To ensure that comprehensive legislation protects, prevents, and punishes violence against women, bring the legal definition of rape in line with international law and standards and repeal provisions, such as article 424 of the Libyan Penal Code, that mitigate or absolve the perpetrator of responsibility for rape;

(s) To ensure that internally displaced persons can make voluntary and informed decisions about the type of durable solutions they pursue, including return to

**their places of origin, and guarantee that internally displaced persons have access to their rights and entitlements in their areas of displacement without any discrimination;**

**(t) To ensure that all unexploded ordnance is removed;**

**(u) To continue searching for the missing and remaining mass graves, including by using the Mission's findings in that regard on Tarhuna, and, to that end, take steps to ratify the International Convention for the Protection of All Persons from Enforced Disappearance;**

**(v) To take steps to implement the national Durable Solutions Strategy and other relevant frameworks for the resolution of internal displacement, including by allocating the necessary funding and investing in the reconstruction of areas of origin of internally displaced persons.**

**103. The Mission calls on the United Nations, the international community and third States:**

**(a) To urge the Human Rights Council to establish an independent, international investigation mechanism and to call on the Office of the United Nations High Commissioner for Human Rights to establish a distinct and autonomous mechanism with an ongoing mandate to monitor and report on gross human rights violations in Libya, with a view to supporting Libyan reconciliation efforts and assisting the Libyan authorities in achieving transitional justice and accountability. In this regard, the Mission calls on the United Nations, the international community and third States to extend to the mechanisms the resources necessary for them to undertake their tasks in an efficient and effective manner;**

**(b) To apply a strict human rights due diligence policy to their support to authorities in Libya, especially with respect to the Libyan State security sector;**

**(c) To increase resources and other support to the United Nations Support Mission in Libya to promote and protect human rights pursuant to Security Council resolution 2542 (2020);**

**(d) To assist Libya in developing and implementing a national human rights action plan by, inter alia, providing it with technical and capacity-building support;**

**(e) To exercise universal jurisdiction over international crimes committed in Libya, including over mercenaries and foreign fighters;**

**(f) To cooperate with the Office of the Prosecutor of the International Criminal Court investigation of the situation in Libya, including by surrendering individuals for whom an arrest warrant has been issued;**

**(g) To abide by the customary international law principle of non-refoulement and cease all direct and indirect support to Libyan actors involved in crimes against humanity and gross human rights violations against migrants, such as the Directorate for Combating Illegal Migration, the Stability Support Apparatus and the Libyan Coast Guard;**

**(h) To regulate migration in accordance with international law and the Global Compact for Safe, Orderly and Regular Migration.**

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