



# Universal Periodic Review: Libya

Second Cycle

## Submission to the Summary of Stakeholders' Information

**Alkarama Foundation – September 2014**

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## 1 General Information and Context

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1. Populated by approximately 6.5 million people over 1,759,540 km<sup>2</sup>, Libya experienced 42 years of dictatorship under the Gaddafi regime; following the political changes that occurred in the two neighbouring countries, the Libyan people rose up in turn on 15 February 2011. Peaceful at its beginning, the protest movement rapidly transformed into an armed conflict following the violent repression of the civilian population<sup>1</sup>.

2. Beginning in Benghazi on 15 February 2011 following the arrest of Fethi Terbel, a lawyer and human rights activist, the revolt extended quickly to the rest of the country, divided between revolutionaries and loyalists within the army. On 5 March 2011, a National Transitional Council was created, presided over by Moustafa Abdul-Jalil. It quickly gained international recognition, and in September 2011 its representatives were officially invited to sit on the United Nations.

3. On 17 March 2011, the United Nations Security Council adopted Resolution 1973, invoking Chapter 7 of the UN Charter, approving an armed intervention in Libya. This Resolution was implemented two days later by the air intervention of NATO under UN auspices that lasted until the fall of the regime in October 2011.

4. At the end of August 2011, the rebels took Tripoli, and on 20 October Gaddafi was captured and killed near Sirte. The president of the NTC officially proclaimed the liberation of Libya on 23 October 2011, and announced a death toll of 25,000<sup>2</sup>.

5. In July 2012, parliamentary elections were held to elect the General National Congress, which took office a month later. Several changes in heads of government followed over the next two years, reflecting the political instability of the transition period and the degradation of the security situation caused by the successive governments' inability to control it. Under pressure from leaders of the Libyan revolution, the Parliament adopted the "Law of Political Exclusion," which banned anyone who had performed official duties under the Gaddafi dictatorship.

6. On 7 February 2014, protestors who opposed the GNC demanded its dissolution, as its mandate was to end that day. The president of the GNC announced that elections would be held as soon as possible.

7. In March 2014, the GNC elected Ahmed Mitig Prime Minister following the resignation of Abdullah Al-Thani, the interim head of government. This election was invalidated three months later by the Supreme Court, which declared it unconstitutional<sup>3</sup>.

8. The self-proclaimed Chief of Staff of the Army since 2011 and former commander of the expeditionary Libyan force to Chad, General Khalifa Haftar, who is considered close to the United States and CIA<sup>4</sup>, formed his own militias in eastern Libya. In May 2014, he launched a military campaign that he calls "Operation Dignity," with the goal of "purging the cradle of the revolution of terrorists." This campaign, which lasts to this day, has been characterised by numerous atrocities against civilians, some of whom were summarily executed after being tortured<sup>5</sup>, notably in Al Abyar and Al Merj. Civilian casualties have also occurred in Benghazi, where some neighbourhoods were bombed by the air forces based in Tobruk.

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<sup>1</sup> "Libya: Blood repression of protests, first appearance by Gaddafi," *Le Monde*, 21 February 2011, [http://www.lemonde.fr/afrique/article/2011/02/21/libye-de-nouvelles-voix-s-elevent-contre-kadhafi-le-bilan-s-alourdit\\_1483323\\_3212.html](http://www.lemonde.fr/afrique/article/2011/02/21/libye-de-nouvelles-voix-s-elevent-contre-kadhafi-le-bilan-s-alourdit_1483323_3212.html) (accessed 30 July 2014).

<sup>2</sup> "25,000 killed in Libyan revolution: NTC," Press TV, 20 September 2011, <http://www.presstv.com/detail/200254.html> (accessed 20 August 2014).

<sup>3</sup> Libya: Malteg's election invalidated," *BBC Africa*, 09 2014, [http://www.bbc.co.uk/afrique/region/2014/06/140609\\_libye\\_premierministre.html](http://www.bbc.co.uk/afrique/region/2014/06/140609_libye_premierministre.html) (accessed 20 August 2014).

<sup>4</sup> "The new headquarters of the Libyan state under tension," *Le Figaro*, 18 November 2011, <http://www.lefigaro.fr/international/2011/11/18/01003-20111118ARTFIG00674-le-nouvel-etat-major-libyen-sous-tension.php> (accessed 20 August 2014).

<sup>5</sup> "Libya: Ex-General Haftar in an assault on Islamists," *Le Figaro*, le 19 May 2014, <http://www.lefigaro.fr/international/2014/05/19/01003-20140519ARTFIG00359-libye-l-ex-general-haftar-a-l-assaut-des-islamistes.php> (accessed 20 August 2014).

9. In June 2014, the new Parliament was elected in the midst of violence and tensions exacerbated by several unclaimed political assassinations. Violent confrontations broke out between armed groups allied to Haftar, notably the militia of Zenten and the brigades affiliated with GNC, for control of Tripoli airport. After several weeks of fighting and an aerial bombardment carried out by the Emirati air force and supported by Egypt, the forces allied to General Haftar were forced to retreat from the capital.

10. On 25 August, the Congress named Omar al-Hassi Prime Minister and gave him several days to form a government. Having no real authority in the country, Abdallah al-Thani presented his resignation on 28 August to the Parliament in Tobruk seated in parallel to the Congress in Tripoli.

### **1.1 Scope of International Obligations**

11. Libya is a party to the principal international human rights mechanisms, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention against Torture. The state has not ratified the International Convention for the Protection of All Persons from Enforced Disappearances and the Optional Protocol to the Convention against Torture. Libya has also not made declarations under Article 21 and 22 of the Convention against Torture.

#### **12. Recommendations:**

- a. Ratify the International Convention for the Protection of All Persons from Enforced Disappearances and the Optional Protocol to the Convention against Torture. Make declarations under Articles 21 and 22 of the Convention against Torture.

### **1.2 Constitutional and Legal Context**

13. On 3 August 2011, the National Transitional Council published the provisional Constitutional Declaration in Benghazi. The document has been amended three times since 2011.

14. The first article stipulates that "Libya is an independent democratic state where all of the powers are derived from the people." The Constitution also guarantees a multiparty political system<sup>6</sup> and establishes a list of fundamental rights and freedoms protected in Articles 7-16. Articles 17 and following set out the guiding principles of the transitional process.

15. A constitutional drafting committee consisting of 60 persons is responsible for presenting its draft of the Constitution to the GNC at the latest 60 days<sup>7</sup> after its first meeting.

16. Following the revolution and the political changes in the country, Libyan law has undergone important amendments. A law guaranteeing the rights of linguistic minorities was passed by the GNC in 2013 as well as a law criminalising torture and enforced disappearances<sup>8</sup>.

#### **17. Recommendations:**

- a. Integrate a more exhaustive list of fundamental rights and freedoms into constitutional texts.
- b. Bring national legislation into conformity with the international Conventions ratified by Libya.

### **1.3 Institutional, Infrastructural, and Policy Context of Human Rights**

18. During the review of Libya in 2010, the state party accepted the recommendation to "Intensify its efforts to reinforce the rule of law and the national institutions for the protection of human rights."

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<sup>6</sup> Article 4 of the draft Libyan Constitution.

<sup>7</sup> Article 30 of the Constitutional Declaration.

<sup>8</sup> Law No. 10 criminalising torture, enforced disappearance, and discrimination, adopted on 09 April 2013 by the GNC during its 79<sup>th</sup> ordinary session.

19. In December 2011, the National Council of Civil Liberties and Human Rights was created by the National Transitional Council to assume the role of the national human rights institution. Officially established in January 2013, this Council has yet to play an effective role.

20. A human rights committee was created in the Congress and was established to ensure the protection of human rights and to make recommendations for legislative measures.

21. Given the instability in the country, however, the human rights institutions face many obstacles to the effective implementation of their mandates. This is also true in the case of the UNSMIL, which said that the performance of its duties has been made very difficult due to the tensions and violence destabilising the country<sup>9</sup>.

**22. Recommendations:**

- a. Establish a national human rights institution in conformity with the Paris Principles and give it the ability to play an effective role in the protection of human rights.

## **2 Cooperation with the Human Rights Mechanisms**

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### **2.1 Cooperation with Treaty Bodies**

23. In the course of the previous review, Libya accepted the recommendation to "Continue its active cooperation with the UN mechanisms and present its periodic reports to the treaty bodies, as appropriate."

24. Libya has not, however, upheld its commitment to submit its national reports. The state report to the Committee against Torture, postponed since 2002, and due on 14 June 2014, has never been submitted. The periodic report to the Human Rights Committee, due on 10 October 10, has also never been submitted.

25. Alkarama is also concerned by the failure to comply with the decisions of the Human Rights Committee in individual case, particularly the decisions of the Committees regarding the cases of Messrs Mussa Ben Ali<sup>10</sup> and Ismail Al Khazmi<sup>11</sup> in response to complaints filed by Alkarama.

**26. Recommendations:**

- a. Submit all overdue reports and implement the concluding observations of the treaty bodies.
- b. Implement the individual decisions issued by the Human Rights Committee.

### **2.2 Cooperation with Special Procedures' Mandate Holders**

27. On 15 March 2012, Libya addressed a permanent invitation to the human rights Special Procedures bodies. The Special Rapporteur on the Freedom of Expression, the Working Group on Arbitrary Detention, and the Working Group on Enforced and Involuntary Disappearances have requested visits which have been accepted; none of them has however undertaken a visit to this day.

28. Cooperation with several Special Procedures is still deficient. The report of the Working Group on Arbitrary Detention, for example, stated that the Libyan government had not responded to the communication regarding the case of Sayyed Qaddafi Dam<sup>12</sup>. Following the Opinion of the Working Group on the arbitrary nature of his detention, the Libyan government never acted to release him.

**29. Recommendations:**

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<sup>9</sup> The United Nations Support Mission in Libya was established to "assist and support efforts by Libya to restore public order and security and promote the rule of law." See: "The Security Council creates a Support Mission in Libya," *UN News Centre*, 16 September 2011, <http://www.un.org/apps/news/storyF.asp?NewsID=26327#.VABzY1ezlvk> (accessed 29 August 2014).

<sup>10</sup> Decision adopted by the Human Rights Committee in July 2013 relative to Communication No. 1832/2008 (CCPR/C/108/D1832/2008).

<sup>11</sup> Decision adopted by the Human Rights Committee in November 2012 relative to Communication No.1805/2008 (CCPR/C/106/D/1805/2008).

<sup>12</sup> Human Rights Council, 22<sup>nd</sup> session, Report of the Working Group on Arbitrary Detention, (A/HRC/22/44), 24 December 2012, p.10.

- a. Implement the Opinions of the Working Group on Arbitrary Detention and cooperate with all of the mandate holders of the Special Procedures as to improve the human rights situation in the country.

### **3 Compliance With International Human Rights Obligations**

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#### **3.1 Equality and Non-Discrimination**

30. The Constitutional Declaration states in its Article 6 that “Libyans are equal before the law” and enjoy “equal civil and political rights without discrimination due to religion, doctrine, language, wealth, race, kinship, political opinions, social status, or tribal, familial or regional affiliation.”

31. This constitutional guarantee excludes the numerous foreign residents in the country who are often victims of discrimination in violation of the principle of equality of treatment enshrined in Article 26 of the International Covenant on Civil and Political Rights. Even if the exercise of some political rights can be limited to nationals, one cannot deny non-citizens equal treatment in the exercise of certain fundamental rights.

32. Article 8 of the Constitutional Declaration also provides for “equal opportunities” for all “citizens” to “guarantee an adequate standard of living, right to work, to education, to health protection and social security.” It guarantees the right to private property and the equitable distribution of national wealth for all citizens and for the different regions of the country.

33. In the past, the Amazigh, Toubou, and Tuareg minorities were not recognised. Law No. 18 on the Rights of Cultural and Linguistic Minorities recognises each of their language as an integral part of the linguistic and cultural heritage of the country. It also guarantees that minority languages will also be taught in the national education system<sup>13</sup>.

#### **34. Recommendations:**

- a. Guarantee in law and fact the equality of all citizens without discrimination on the basis of Article 2 para. 1 of the International Covenant on Civil and Political Rights and in conformity with Article 26.

#### **3.2 Right to Life, Liberty, and Security**

35. Despite the political will to respect fundamental human rights, the rights to life, liberty, and security are not protected by the state. Several armed militias refused to disarm during and after the revolution and continue to exercise effective control over certain regions. Several places of detention continue to operate outside of government control. Armed militias arrest citizens and hold them in their own detention centres. Alkarama has visited several of these places and found that the conditions of detention vary significantly from one place to another.

36. Summary executions have been committed by the numerous forces on the ground are of particularly grave concern; a number of unclaimed political assassinations have also taken place, predominantly in the east of the country.

37. Well-established practice under the Gaddafi regime, torture remains practiced in several detention centres, especially those falling outside of the control of the government. UNSMIL found that the issue of torture has not been resolved even when detention centres are under the control of the authorities<sup>14</sup>, and cited 27 cases of deaths under torture between late 2011 and 2013 in different detention centres.

38. These cases have been more numerous in the east of the country since General Haftar launched Operation “Dignity” in March 2014. Several cases of death under torture were reported. Mr Tariq Al-Dersi, abducted in Al Marj to the east of Benghazi the night of 10 June 2014 for having

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<sup>13</sup> “The Berber culture makes its way,” *Courrier international*, 07 December 2012, <http://www.courrierinternational.com/article/2012/12/07/la-culture-berbere-fait-son-chemin-en-libye> (accessed 20 August 2014).

<sup>14</sup> United Nations Support Mission in Libya and the High Commissioner for Human Rights, *Torture and deaths in detention in Libya*, October 2013, p.6.

openly criticised Operation "Dignity" and the crimes committed by the forces of Colonel Haftar, was found dead the next day, his body bearing visible signs of torture<sup>15</sup>.

39. Despite the legal prohibition of enforced disappearances, these remain widely practiced as well. A number of cases remain unresolved, even though the perpetrators of these crimes are known and continue to act with impunity.

40. In June 2014, Alkarama resubmitted the case of two men abducted by the forces of General Haftar. After disappearing for several days, the two victims reappeared and described inhuman conditions of detention and the systematic practice of torture in the places where they were held in secret.

**41. Recommendation:**

- a. Put an end to the internal conflict, guarantee the security of the population, and retake control of the places of detention.
- b. Put an end to violations of the right to life, liberty, and physical integrity, and prosecute all those responsible for these violations.

**3.3 Administration of Justice, Including Impunity and the Rule of Law**

42. While the Libyan legislature has adopted different laws to address human rights abuses, these legal instruments are not implemented. The Congress adopted a law in 2013 criminalising torture, enforced disappearances and discrimination. This law sanctions these violations with severe punishments in conformity with Article 4 of the Convention against Torture. Despite the continued practice of torture and enforced disappearance by different perpetrators, however, those responsible are neither persecuted nor punished.

**43. Recommendations:**

- a. Guarantee the respect of legal provisions and ensure their systematic application.

**3.4 Freedom of Expression, Association, and Peaceful Assembly, and the Right to Participate in Public and Political Life**

44. Following the revolution, several newspapers and private television channels have emerged in a climate of relative freedom. Nonetheless, the security situation of the country has imposed a self-censure especially given the assassinations and kidnappings of journalists<sup>16</sup>.

45. In early 2014, the Libyan legislature amended the penal law and criminalised all "attacks on the revolution" under pain of imprisonment<sup>17</sup>. This provision may serve as a pretext to limit the freedom of the press or to repress political dissidence.

**46. Recommendations:**

- a. Guarantee the respect for freedom of expression and peaceful assembly and punish in an appropriate manner any violations of these rights.

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<sup>15</sup> Akhbar Libya 24, (Death of Sheikh Tariq Al-Dersi in the town of Al-Marj) وفاة الشيخ طارق الدرسي " في مدينة المرج في طر و فغامضة 13 June 2014, <http://www.akhbarlibya24.net/?p=11092> (accessed 20 August 2014).

<sup>16</sup> High Commissioner for Human Rights, *Briefing notes on Libya and Nigeria*, 18 February 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14257&LangID=E> (accessed 20 August 2014).

<sup>17</sup> "Libya extends draconian laws of Gaddafi era," Reporters without Borders, [http://fr.rsf.org/libye-la-libye-proroge-les-lois-19-02-2014\\_45892.html](http://fr.rsf.org/libye-la-libye-proroge-les-lois-19-02-2014_45892.html) (accessed 20 August 2014).