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مركز القاهرة لدراسات حقوق الإنسان



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## Civil society organisations welcome Libya's UN human rights review and call on the State of Libya to accept and implement recommendations

On Friday, the United Nations Human Rights Council (HRC) adopted the report of the second Universal Periodic Review (UPR) of the human rights situation in Libya. The UPR comes at a pivotal time for Libya to reflect on its human rights records in light of the abuses that have taken place over the past four and a half years.

85 UN Member States (the **States**) made recommendations to Libya during the session in addition to eight that sent questions in advance. A total of 202 recommendations were made to Libya in relation to the state of human rights in the country. We welcome the recommendations put forward, many of which reference key human rights concerns. We further call on the State of Libya to accept all recommendations put forward by states to improve Libya's human rights record, and to put in place, with a clear timeline, a national plan of implementation for those recommendations.

### Among the recommendations made were to:

- act in accordance with the principles of international human rights and humanitarian law during the current conflict, including while fighting terrorism;
- involve civil society organisations actively and directly in the implementation;
- draft an agenda on transitional justice and accountability which includes prompt and transparent investigations into human rights violations with the aim to hold all perpetrators accountable;
- end the prevailing culture of impunity and provide real redress and reparation for victims;

- cooperate with the to the UN Office of the High Commissioner on Human Rights (**OHCHR**) investigation mission mandated to look into human rights violations committed throughout 2014;
- protect media practitioners and civil society activists;
- promote the participation of women in society and protect them from all forms of violence;
- ensure rights of internally displaced persons (**IDPs**) to return to their place of origin;
- end discrimination on the basis of nationality, ethnicity and religion;
- accede to international conventions to which Libya has not yet acceded; and
- abolish of the death penalty.

We acknowledge the submission of Libya's State Report (the **State Report**) to the review. We also commend the State Report's concluding remarks stating that it hopes to achieve greater promotion of human rights through cooperation with Libyan Civil Society Organisations (**CSOs**) and international organisations. It remains disappointing, however, that the State of Libya failed to conduct any national consultations with Libyan civil society, in order to consider their concerns, prior to submitting the State Report.

In addition, since Libya's first UPR cycle in November 2010, the Libyan state has failed to implement the vast majority of the recommendations accepted. We note the security challenges referenced in the State Report, including widespread use of weapons, armed groups outside State control and terrorist attacks. Further, the Libyan authorities acknowledged the serious violations committed since 2011 that greatly contributed to the deterioration of human rights and the security situation. As this is the case, steps must be taken to address these failures, as well as ongoing human rights violations, and to ensure that those responsible for these crimes are held accountable.

The State Report lists a number of legislative developments, which it states promote and protect human rights. However, some of the legislative developments listed are selectively mentioned, remain unimplemented, or do not conform to international human rights standards.

We call on the state to accept and implement recommendations made to it in the review, especially in relation to the below:

### **1. Ending torture, enforced disappearances and discrimination:**

Key among these legislative developments is Law 10 of 2013 related to criminalizing torture, enforced disappearances and discrimination. We are concerned that several aspects of the definition of torture under article 2 of the law are not aligned with the definition provided in Article 1 of United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**UNCAT**), to which Libya is a State Party. This results in a narrowing of the scope of its application, including by restricting torture to acts committed against detainees. It therefore fails to provide a sound basis on which to build a comprehensive anti-torture framework. Libya has not ratified the additional protocol of UNCAT despite an urgent need to ensure regular visits to detention facilities by national and international human rights monitors. It is vital that the State of Libya adopts a comprehensive anti-torture strategy. The latest figures show that 53% of persons in detention in Libya have faced torture,<sup>1</sup> demonstrating the need for

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<sup>1</sup> DIGNITY Publication Series No. 8: Consequences of Torture and Organized Violence: Libya Needs Assessment Survey, 2014  
<https://www.amnesty.org/en/articles/news/2015/05/libya-horrific-abuse-driving-migrants-to-risk-lives-in-mediterranean-crossings/>

such a strategy. In addition, we reiterate the recommendations made to Libya to apply a moratorium with the view to abolishing the death penalty.

## **2. Transitional justice measures:**

The State Report also referenced the adoption of Law 29 of 2013 related to transitional justice as an achievement. The law includes a provision for a fact-finding commission and measures to address conflict-related detainees being held unlawfully, in militia-run facilities. Although this is a key law for Libya's transition, the deadline of 2 March 2014 for transferring all detainees into state custody and of releasing those who have not been charged has passed with no action and no plan. There has not been any significant progress in the implementation of this law.

## **3. Freedom of peaceful assembly:**

The State Report also refers to the progress made in relation to freedom of assembly, which it stated was evidenced by the adoption of Law 65 of 2012 related to the regulation of free assembly. Nevertheless, Articles 4, 5 and 10 of the law impose arbitrary restrictions on protestors, including the imposition of criminal sanctions for gatherings in violation of procedural requirements of the law such as obtaining permission in advance of any assembly. To address such shortcomings, the State of Libya must amend this law as well as implement recommendations made by Estonia, France and Latvia to amend or repeal all provisions in the Libyan Penal Code which impose restrictions on freedom of expression, association and assembly, especially those which prescribe the death penalty.

## **4. Rights of minorities, cultural and linguistic components:**

Law 18 of 2013 related to the rights of cultural and linguistic components was also referenced as a progressive legislative development in the State Report. However, some of the provisions of the law are yet to be implemented and others remain ambiguous. Article 1 of the law states that the "language of the Amazigh, Tuaregh and Tebu, are part of the linguistic and cultural components of Libyan society." The phrase "part of the linguistic and cultural components of Libyan society" is vague and can be open to interpretation. This makes it difficult to determine the legal status of these languages and the state's role in protecting and promoting them. Article 2 of Law 18 of 2013 states that "all ethno-linguistic components have the right to learn their language as a voluntary option in schools in their original communities or others." However, the state has taken no effective steps to implement this provision in a positive manner. Article 5 states that the High Education Ministry and Scientific Research is responsible for creating centres for scientific or historical research that are responsible for the protection of cultural and linguistic identity of the Tebu, Amazigh and Tuaregh. Although this is the case, the State of Libya has yet to implement any of these provisions.

Since 2012, there have been widespread attacks against minorities and sites of religious minorities. Despite this, the State of Libya failed to protect these sites from recurring attacks. Most recently, a total of at least 49 Christians, mostly from Egypt and Ethiopia, were beheaded and shot in three mass summary killings. In this regard, the State of Libya should implement recommendations made by France, to fight against discrimination based on nationality, ethnicity or religion and, as recommended by Cyprus, to ensure that the future Libyan constitution protects minority rights.

## **5. Freedom of expression and association:**

In relation to the Penal Code, Article 195 was specifically referenced in the recommendations put forward by states. Law 5 of 2014 amended Article 195 of the Penal Code to include “the criminalisation of any action, which may harm or prejudice the February 17 Revolution, as well as insulting remarks publicly directed at the executive, judiciary, or legislature or any of their members, or insulting the Nation’s flag”. As well as repealing such restrictive Penal Code articles, the State of Libya must also repeal other legal measures that restrict freedom of press. In particular, Law 15 of 2012 restricts freedom of the press by prohibiting media discussion of religious opinions (fatwas) issued by the National Council of Islamic Jurisprudence (Dar Al-Ifta), seriously curtailing the media’s freedom. Decree 5 of 2014 calls for the cessation and ban of the broadcast of several satellite channels in Libya, which are deemed “hostile to the February 17 revolution,” should also be repealed. Such a decree acts as a serious impediment to the plurality and independence of the media. The State Report made no mention of these matters.

In regards to freedom of association, neither the State Report nor the recommendations made during the review referenced protections for CSOs. The State of Libya must repeal the current law on civil society, Law 19 of 2001, and adopt a law that is consistent with international freedom of association standards. Freedom of association provisions of the constitutional recommendations<sup>2</sup> issued by the Constitutional Drafting Assembly (**CDA**) also place restrictions on the operation of civil society, notably regarding registration and funding, which should also be removed.

## **6. Women’s rights:**

Notable recommendations made by states in relation to the human rights of women are: to adopt a national strategy to combat violence against women, to enhance the participation of women in political and public life, and to review all laws and practices that discriminate on the basis of gender and bring them in line with international standards. Currently, violence against women in Libya is not adequately criminalised. Sexual violence is seen as a crime against a women’s honour rather than her physical being. The State of Libya has so far failed to play an effective role in the elimination of violence against women, most notably illustrated by its representatives not signing the Joint Statement to Promote and End Gender-Based Violence at the 57th Session of the Commission on the Status of Women. This marks a disappointing and regressive move by the State of Libya. It is also a step away from Libya’s commendable accession to the Convention on the Elimination of All Forms of Discrimination Against Women (**CEDAW**). We urge Libya to implement the recommendation put forward by Greece to lift reservations in CEDAW.

Additionally, Portugal requested that Libya implement Law 24 of 2010, to allow Libyan women to pass their nationality to their children. Currently, this law remains unimplemented. Libyan men, by contrast, are able to confer their nationality on their children irrespective of the nationality of their wives. This discriminatory treatment is also reflected in the constitutional recommendations. Article 10, which regulates nationality and access to, and revocation of,

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<sup>2</sup> On 24 December 2014, Libya’s Constitutional Drafting Assembly (CDA) published its first set of recommendations drafted by its individual thematic committees. They can be accessed in English through this link: <http://www.constitutionnet.org/vl/item/libya--initial--draft--constitution--2014--english>. Lawyers for Justice in Libya’s commentary on Chapter 1 can be accessed through this link (<http://www.libyanjustice.org/downloads/Publications/committee--1--form--of--state--and--fundamental--cornerstones.pdf>) and its joint commentary with REDRESS in relation to assessment of anti-torture mechanisms can be accessed through this link (<http://www.libyanjustice.org/downloads/Publications/anti--torture--commentary-----final-----pdf.pdf>).

citizenship, states that Libyan nationality will only pass from a Libyan father, violating the constitution's own provision for gender equality.

Religious and societal restrictions against women in Libya has also increased discrimination against them over the past three years. Between 2013 and 2015, over 35 fatwas have been issued by Dar Al-iftaa that restrict the human rights of women. Such fatwas include banning women from travelling without a male chaperone. Although these fatwas are technically non-binding, they are influential in Libyan society and have been implemented by various state institutions on an arbitrary basis.

#### **7. The situation of international displaced persons:**

In relations to internally displaced persons (IDPs), six states requested the State of Libya to adopt a strategy to ensure the safe return of IDPs to their places of origin. Despite the efforts outlined in the State Report regarding measures to alleviate the suffering of IDPs, such as providing adequate housing, there has not been any progress in this regard since 2011. There are now over 500,000 IDPs in Libya. Libya failed to ensure the safe return of IDPs, to provide adequate housing and to prevent violent raids on IDP camps. Over the past three years, there has been an average of two attacks per month against IDP camps in Libya.<sup>3</sup> We acknowledge the positive nature of the agreement reached by the municipalities of Misrata and Tawergha in January 2015. The agreement includes establishing a committee to visit prisons in the city of Misrata and to review the charges against Tawerghans in prisons. Despite the fact that several local councils, including the Tawergha Local Council, did visit such prisons in Misrata, this was not a comprehensive strategy as access to these prisons was limited and sporadic. Therefore, more comprehensive strategies to address the human rights of IDPS are needed.

#### **8. Rights of persons with disabilities:**

The State Report also highlights that the State of Libya acceded to the Convention on the Rights of Persons with Disabilities. In reality, however, the State of Libya has yet to deposit the instrument of ratification.<sup>4</sup> Disabled persons in Libya witnessed little to no progress in relation to their rights and treatment since recommendations were made in Libya's last UPR. Contrary to the State Report's statement that legislative and practical progress for persons with disabilities has taken place, the State of Libya has taken few substantive steps to integrate persons with disabilities in society, to improve education materials for those with special needs or to adopt special measure to reduce transportation or education costs for those with disabilities. Further Article 1 of Law 4 of 2013 related to people with disabilities from the liberation battle, which the State Report does not mention, created a new class of people with disability, those who sustained permanent disability fighting for the 2011 uprising and against the previous regime and those who sustained injuries as civilians from attacks by that regime. This new class received enhanced benefits as compared to other disabled persons. Such a distinction highlights inequality in the treatment of people with disabilities as well as discriminating between them on the basis of political association. The State of Libya has a duty to protect and promote all Libyans' rights and not to contextualise such protections based on political affiliations or any other discriminatory bases.

#### **9. Migrants and refugees crisis**

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<sup>3</sup> Mercy Association for Charitable and Humanitarian Aid (Alrahma) UPR report

<sup>4</sup> Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Libya and on related technical support and capacity-building needs, 12 January 2015

In addition, inhuman and degrading treatment has also been experienced by migrants and refugees. Refugees and migrants across Libya face rape, torture and abduction for ransom by traffickers and smugglers, as well as systematic exploitation by their employers, religious persecution and other abuses by armed groups and criminal gangs.<sup>5</sup> Through the absence of a clear immigration framework, Libya has systematically failed to ensure adequate human rights protections for the immigrant populations residing or transiting through its borders. An estimated 1,750 migrants are believed to have drowned in the Mediterranean this year, many of them departing from Libya.<sup>6</sup> We urge the State of Libya to recognise the human rights of its immigrant populations, such as their right not to return to places where their lives, freedom, or fundamental human dignity may be threatened, and to enhance the security of its borders. States such as Germany, Canada and the Czech Republic requested Libya to become a signatory of the 1951 Refugee Convention, which provides the fundamental provisions necessary to define and recognise the rights of persons unable to return to their country of origin. The State of Libya has an obligation to enforce human rights and refugee law if it seeks to become a country that upholds the rule of law and provides access to justice for those most vulnerable. We call on Libya to ratify the convention and to enact domestic provisions to create a legitimate framework to manage migration.

#### **10. Respect of human rights and humanitarian law:**

The State Report referenced terrorism as one of the obstacles to achieving security. In this context, the State of Libya adopted Law 3 of 2014 related to combatting terrorism. This law does not align with Libya's obligations under international law and the human rights treaties which it has ratified. Key concerns with the law are the broad definition of 'terrorist acts,' which can be used arbitrarily to limit freedoms, as well as disproportionate punishments for acts "that harm national unity," which are worryingly vague. Any restriction on human rights must be legal and proportionate. We reiterate the recommendation made by Sweden that the State of Libya must respect the principle of human rights and the rule of law in the fight against terrorism.

In light of the above, we urge the State of Libya to amend or repeal laws which continue to acquiesce the actions of those who wish to undermine human rights especially in the areas of freedom of expression, freedom of press, women's rights, rights of IDPs, minority rights, disability rights, freedom from torture and rights of migrants and asylum seekers.

The undersigned organisations also call upon the Libyan State to strengthen the national human rights institution in accordance to the Paris Principles in order to achieve a meaningful realisation of these recommendations. On the international level, we urge the State of Libya to cooperate with the OHCHR to implement the UN technical assistance and capacity building resolution adopted in March of this year (A/HRC/28/L.7/Rev.1). We particularly urge the State of Libya to cooperate in relation to the mission planned to be dispatched in June to investigate violations and abuses of international human rights law that have been committed in Libya since the beginning of 2014.

We also note the ongoing political dialogues facilitated by the United Nations Support Mission in Libya (**UNSMIL**), as acknowledged during the review, and we urge parties involved in the dialogues to reflect on the violations that have been occurring since 2011. There is a need to put in place, as a condition for any political settlement, strong, binding and inclusive

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<sup>5</sup> <https://www.amnesty.org/en/articles/news/2015/05/libya-horrific-abuse-driving-migrants-to-risk-lives-in-mediterranean-crossings/>

<sup>6</sup> <http://www.timesofmalta.com/articles/view/20150514/local/moas-rescues-561-migrants-in-biggest-single-operation.568182>

accountability measures. This is vital for any effective transition to democracy and the rule of law to take place.

Finally, the undersigned organisations call on the State of Libya to accept and take real steps to implement all recommendations, in consultation with national and international CSOs. We call on the State of Libya to turn the public commitments it has made during the review into actions and to ensure that human rights form the cornerstone of all legal measures and practices.

**Signatures:**

1. Cairo institute for human rights studies
2. Lawyers for Justice in Libya
3. *Al Nissa Qadimat* Movement (the Women are Coming Movement)
4. Mercy Association for Charitable and Humanitarian Aid (Alrahma)
5. National Libyan Organisation for the Development of People with Disabilities
6. Libyan Association for Tebu Culture
7. Libyan Center for Freedom of Press