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## Stakeholder Report to the United Nations Human Rights Council Universal Periodic Review- Libya

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### Joint NGO submission on key human rights issues in Libya

Submitted by the Libyan Centre for Freedom Of Press (**LCFP**), Mercy Association for Charitable and Humanitarian (**Alrahma**), Lawyers for Justice in Libya (**LFJL**), the National Libyan Organisation for the Development of People with Disabilities, the Libyan Association for Tebu Culture (**LATC**), *Al Nisaa Qadimat* Movement (the **Women are Coming Movement**) and the Victims Organization For Human Rights (together, the **Coalition of Libyan Human Rights Organisations** or the **Coalition**).

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### Keys Concerns

- Out of 120 Member State recommendations submitted during Libya's last Universal Periodic Review (**UPR**), the Libyan state has failed to implement the majority of the 65 recommendations that enjoyed its support.
- New laws that restrict further fundamental freedoms have been adopted by the transitional administrations.
- Amendments to the Constitutional Declaration have undermined the rule of law in Libya.
- Accountability for human rights abuses remains absent and measures to combat impunity are largely unimplemented.
- Women's rights continue to be hampered in Libya by fatwas issued by Dar Al-Iftaa, which have significantly undermined human rights, particularly freedom of expression and women's rights.
- Migrants and refugees continue to have limited rights due to the absence of a clear framework to manage migration.
- Ongoing inequality and discrimination against minority groups remain prevalent.
- The right to education and access to health remain inadequate.
- Libya has yet to ratify a number of key international human rights conventions and protocols and continues to adopt measures and act in a manner that contravenes its existing obligations.

## Introduction

1. This stakeholder report is a joint submission by the Coalition of Libyan Human Rights Organisations, a network of seven Libyan independent non-governmental organisations formed for the purposes of promoting Libyan human rights concerns at an international level.
2. The Coalition wishes to highlight concerns surrounding the human rights situation in Libya over the past four years before the Human Rights Council for consideration in Libya's upcoming Universal Periodic Review (the **UPR**) in 2015. This report aims to complement the individual reports submitted by six of the members of the Coalition by indicating additional shared concerns related to human rights.<sup>1</sup>

## Constitutional and Legislative Framework

3. On 3 August 2011, the National Transitional Council (**NTC**) adopted a Constitutional Declaration (the **Constitutional Declaration**) to serve as a provisional framework of rights and system of governance until a permanent constitution could be drafted and ratified.
4. The Constitutional Declaration was a significant milestone in Libya's transitional efforts, yet the process by which it was drafted and adopted failed to be transparent or inclusive of the Libyan public. This resulted in various sections of Libyan society feeling alienated and unrepresented by this interim document.
5. The Constitutional Declaration provides a much-needed basis for the protection of human rights, which had previously been largely absent from Libya. However, the protection provided is not comprehensive nor to the standard required of Libya's international human rights obligations. It notably fails to protect various human rights, especially economic, social and cultural rights, in any substantive way. As a result, the rights of ethnic and cultural minorities, persons with disabilities and women lack sufficient protection. The Constitutional Declaration also offers no guidance as to how human right protections will be enforced when national law does not comply with international standards.
6. The Constitutional Declaration has undergone seven amendments since it was adopted, several of which have undermined human rights standards.
7. On 9 April 2013, the General National Congress (**GNC**) amended Article 6 in an attempt to eliminate the ability of the judiciary to review the constitutionality of the, at the time, draft Political Isolation Law. The amendment stated that "it will not be considered a breach of this Constitutional Declaration to pass a law that isolates some persons from taking sovereign, leadership or senior administrative positions in government for a temporary period and such law will not breach the human rights" of those who wish to bring a judicial review. This amendment is in violation of Article 25 of the International

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<sup>1</sup> An individual report has not been submitted by the Victims Organization For Human Rights.

Covenant on Civil and Political Rights (**ICCPR**), which ensures the right of citizens to take part in the conduct of public affairs without unreasonable restrictions.

8. The amendment also undermines the principle of separation of power by enabling the legislature to curtail unjustifiably the powers of the judiciary. The amendment does not allow for judicial review on the constitutionality of the political isolation law, and as such also contradicts and conflicts with the other provisions protected by the Constitutional Declaration, such as Article 33 which safeguards the right of resorting to the judiciary.
9. On 10 April 2013, the GNC passed a further amendment to the Constitutional Declaration to reduce the necessary number of member votes needed to pass the Political Isolation Law from two-thirds of those voting to a simple majority of those voting. This amendment was justified on the grounds that it was a practical measure to overcome the absence of members of the GNC, but the effect of the amendment was to allow those that supported the Political Isolation Law to enact it with minimal support. This sets a worrying precedent for future law making, whereby Libya's legislature feel empowered to amend a constitution at will in order to pass unpopular or controversial laws and to prevent their future judicial review.
10. The state has also failed to provide a clear consultative or transparent drafting process when considering new laws, which has led to a number of human rights concerns and political unrest in Libya. For example on 16 July 2013, the GNC passed a law to govern the election process for the Constitutional Drafting Assembly (**CDA**); this determined important aspects of the election, such as the suitability of candidates, the voting system used and measures to ensure the inclusion of specific groups. As this process failed to consult various parties prior to its enactment, various ethnic and cultural minority groups declared that it was not representative of their interests and that they would boycott the elections and not recognise the eventual constitution drafted. Furthermore, the lack of inclusion led to the elections themselves becoming highly politicised and, in places, marred by violence. This prevented many constituents from attending polling stations and electing representatives to the drafting body.

## **Equality and Non-Discrimination**

### Women's rights

11. Religious and societal discrimination against women in Libya has increased over the past three years. In February 2012, the NTC re-established The National Council of Islamic Jurisprudence (*Dar Al-Ifta*) as an independent institution that reports directly to the executive. It has authority to issue Islamic legal opinions and advice on daily affairs. Religious legal opinions (Fatwas) issued by the Grand Mufti, on the behalf of Dar Al-Ifta, have led to the deterioration of women's rights in Libya.
12. In March 2013, the Grand Mufti issued a Fatwa against the UN Commission on the Status of Women 56<sup>th</sup> Sessions agreed conclusions on the elimination and prevention of all forms of violence against women and girls (Agreed Conclusions) on the grounds that it was incompatible with Sharia. Dar Al Iftaa issued a statement stating that the convention has "destructive and unfair articles, the least dangerous of which is blowing up the family

and undermining its integrity, a call to moral decay, in addition to openly breaking the laws of the Quran and Sunnah.” The Grand Mufti criticized the Agreed Conclusions’ call for equality between men and women, its provisions for inheritance, and what it said about sexual freedoms and the rights of children who are born out of wedlock. Although Libya is already a state party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Grand Mufti warned the legislators against approving the convention. As a result, the GNC’s Islamic Affairs Committee reportedly issued a statement that the charter “does not take into consideration the cultural and religious particularities of Arab people.” This is a dangerous setback for women’s rights in Libya and hinders steps Libya has provided it would examine under the first half of recommendation 95.8 to, “In line with the recommendations of the Committee on the Elimination of Discrimination against Women, adopt a national plan to eliminate stereotypes regarding the role of women in society, and speed up the reform process to guarantee equality between men and women.”

13. Also in March 2013, the Grand Mufti reportedly called on the Government to prohibit Libyan women from marrying foreign men. In April 2013, the Ministry of Social Affairs reportedly suspended issuing marriage licenses to Libyan women seeking to marry foreigners and wedding registrars declined to marry Libyan women and foreign men.
14. In December 2013, a fatwa was released to ban Libyan women from travelling without a male chaperone, which contravenes women’s freedom of movement.
15. The lack of any mechanism or supervisory authority, as well as lack of accountability for the opinions of Dar Al-Iftaa and issued Fatwas, is dangerous to women’s rights because of the significant influence and political weight it has developed on other state bodies. Accountability measures for Dar Al-Ifta have been weakened by legal protections. Law 15 of 2012 prohibits media discussion of fatwas. The law stipulates that all members of society must respect fatwas issued by Dar Al-Ifta and that fatwas may not be discussed in the media.
16. Libya has failed to implement recommendation 93.27 to “Continue its special efforts to empower women in various areas, in particular in the labour market,” which enjoyed its support. Labour Law Number 58 of 1970 places limitations on the type of work women can do. Article 95 stipulates that women may not be employed in “on arduous or dangerous work or such other types of work as may be prescribed by order of the Minister of Labour and Social Affairs”. Article 96 provides that Libyan women may not work more than 48 hours a week including over time, nor can they work between 8 p.m. and 7 a.m. unless authorized by order of the Minister of Labour and Social Affairs. This is contrary to article 11 of CEDAW which protects against discrimination against women in the field of employment. Legal restrictions on the type of work women can do and the hours worked forces Libyan women into certain fields traditionally associated with females, such as education, health services, and secretarial or cleaning work. These fields pay less, undermining women’s economic stability and independence, which is important in promoting other women’s rights.

## Minorities

17. There were no recommendations specifically addressing minority rights in Libya's last UPR. This is problematic given the grave situation of minorities during the period of review of the last UPR in 2010 and over the last four years.

### *Political minorities: collective punishment*

18. The Libyan state has failed to provide a remedy to the exclusion of groups deemed to be associated with the Gaddafi regime. It has acquiesced this by providing financial and armed support to some of the militias, who seem to be involved in acts of collective punishment against such perceived groups.

19. On 25 September 2012, the GNC under decision 7, authorised the ministries of the interior and defence to use force to arrest certain suspects including those responsible for the alleged torture and killing of Omran Shaaban, the man believed to have captured Gaddafi on 20 October 2011. The GNC also demanded the release of other detainees held in Bani Walid. In October 2012, members of the Libyan army, as well as armed militias engaged in armed combat in Bani Walid, a city perceived as loyal to the Gaddafi regime, for three consecutive weeks. During this time, citizens of Bani Walid were denied food supply, medical personnel, fuel, and water.<sup>2</sup> Several dozen fighters and civilians were killed and hundreds wounded. In the aftermath of the fighting, the Defence Minister and the International Red Cross individually reported that between 25,000-40,000 people were displaced as a result of the conflict. Refugees returning to their homes and journalists looking to enter the city were prohibited from entering Bani Walid by militias operating the checkpoints on the outskirts of the city in October 2012.

20. The Libyan state continued to fail to prevent or stop attacks by militias against towns associated with the Gaddafi regime, notably the town of Tawergha. Most recently, evidence exists of collective punishment against areas populated by the Warshefana tribe. This tribe has been attacked since 19 December of 2013. Militias stormed Warshefana land, which is 40 kilometers from Tripoli, with thousands of men armed with heavy, medium, and light weapons, including guns, tanks, armoured vehicles, and rocket launchers. The militias plundered the city, killing 21 people and injuring more than 100. No investigations have taken place to hold perpetrators accountable for this criminal activity. Since August 2014, there have been armed groups performing door-to-door sweeps in Warshefana in order to abduct and/or kill those perceived to be of different tribal and political affiliation, as well as loot the properties. Such attacks do not comply effectively with Article 6 of the ICCPR, which promotes that "every human has the inherent right to life", and as such should not be arbitrarily deprived of his life.

21. The Libyan state has not taken effective steps in addressing such crimes conducted by militias, neither practically nor at the legislative level. The state's attempts to regularise non-state actors without creating mechanisms to ensure accountability is a major problem. For

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<sup>2</sup> "Ongoing Human Rights Situation in Libya," *LFJL and CIHRS*, <<http://www.cihrs.org/wp-content/uploads/2013/02/Ongoing-Human-Rights-Situation-in-Libya.pdf>>; and "Libya, "Residents of Bani Walid at Risk", *Human Rights Watch*, 24 October 2012, <<http://www.hrw.org/news/2012/10/24/libya-residents-bani-walid-risk>>

example, non-state actors carry out certain state functions such as running prisons and guarding high profile prisoners (e.g. Saif Gaddafi), are frequently funded by the state, and receive arms distributed by the state.

22. The state has nurtured the impunity for non-state actors. This can be seen in Law 38 of 2012 which effectively provides for forward looking amnesties for “actions made necessary by the February 2011 revolution.” As no limitation is set out in the law as to what such actions would include or not include, it may be interpreted to include human rights violations. The acquiescence of the state and the culture of impunity means that no deterrent exists for militias and makes it likely for such forms of collective punishments will continue as a form of vigilante justice.

### *Religious minorities*

23. Libya has a Sunni Muslim majority of approximately 97%. However, the country is home to a number of religious minorities. These include Sufi and Ibadi Muslims, Hindus, Christians, Agnostics, Roman Catholics, and Anglicans.

24. Since 2012, there have been attacks against religious minority sites. Sufi religious shrines have notably been targeted across the country resulting in the destruction of several mosques and tombs. Such attacks include the destruction of the Hamid Hudeiri Shrine in Sebha on 9 May 2013 and the destruction of the Al-Andalusi Mausoleum in Tajoura, Tripoli. This is in violation of Article 18 of the ICCPR, which imposes on the Libyan state an obligation to ensure freedom of religion in the country. There were strong allegations that the Supreme Security Council (SSC) of the Libyan state, a security force associated with the government at the time, was involved in these acts. No investigations regarding these events took place, further highlighting the culture of impunity nurtured by the state. Further, no measures were put in place to protect religious sites to prevent further attack.

25. The Libyan state has not addressed the issue to recognise other religious minorities in Libya. There are no provisions in the Constitutional Declaration that specifically protect religious freedom, even though Libya is bound by international obligations to protect the rights of religious minorities.

26. As part of a field research on freedom of religion in Libya, Coalition member LFJL spoke with Christian, Jewish and Agnostic Libyans, who felt they were unable to declare, or practice, their beliefs for fear of reprisal. This highlights the Libyan state’s failure to ensure that all can exercise their right to religious freedom. .

### **Freedom of Expression: silencing activists and human rights defenders (HRDs)**

27. Dozens of HRDs and activists have been targeted as part of attacks perpetrated by armed non-state actors. Notable activists include Abdulsalam Mesmari who was assassinated in July 2013 and Salwa Bughaighis, a women’s rights activist, who was killed in June 2014 by gunmen who broke into her home. In July 2014, Fariha Al Berkawi, a former GNC representative from Derna, and also a prominent activist, was killed by militias. More

recently, in September 2014, 18 year old activist, Tawfiq Bensaud and 17 year old activist Sami Elkawafi were assassinated by armed gunmen in Benghazi.

28. The state's investigations into these assassinations to ensure that perpetrators are held accountable either have not been independent and thorough, or have not been conducted at all. The state has also not taken any active measures to guarantee the security of activists and HRDs and to ensure that they are able to organize and assemble to express their views without threat to their lives.

### **Right to Education**

29. There were 10 recommendations concerning the right to education in Libya's last UPR report that enjoyed Libya's support. However, Libya has yet to implement any of them substantively.

30. The delay in implementing recommendation 93.53 to "Pursue ongoing action in favour of training for qualified teaching staff, and provide education opportunities for all segments and social groups in various regions" is of particular concern. There is a lack of trained teaching staff in state schools and universities, and the level of nepotism involved in the appointment of teachers is significant. This impacts the quality of education received and the wellbeing of students.

31, Libya has failed to meet its obligations under Articles 29 and 31 of the Convention on the Rights of the Child (CRC) to protect children's rights to play and to help development talents and abilities. There is a real lack of creative lessons such as art and music in state schools.

32. The state has also failed to ensure equal access to education for everyone, as provided by Article 26(1) of the UDHR. In rural areas, poor public transport hinders access to education facilities. This problem is particularly important for female students who are not allowed to travel alone. Girls are also limited in getting education due to family restrictions. 34. In April 2013, the Grand Mufti called for gender segregation at universities and offices, saying a mixed gender environment "encourages unethical behaviour." Every person has the right to choose whether to attend a mixed-gender or segregated school. However, as the state fails to provide adequate education facilities which can accommodate both genders, there is a higher probability that more girls will stay at home as it might not be feasible for them to attend such schools or travel to them. This highlights how unplanned segregation may come at the cost of access to education for female students.

33. Additionally, a barrier to education exists for children from minority groups, as education in minority languages is still not secured in state schools. Despite the existing positive obligation on the state under Law 18 of 2013 to provide teaching staff and books for teaching minority languages, the state has failed to take positive steps to train teachers or create appropriate curricula.

34. Tawerghan students have experienced discriminatory treatment in state funded schools, which has notably included harassment from teachers. Due to this, Tawerghan families have been forced to set up their own schools in IDP camps, of which there are six schools in total, three in the Tripoli camps and three in the Benghazi. There are no schools in other camps.

However, these schools lack basic supplies such as books and trained teaching staff and do not receive support or official recognition from the Ministry of Education. Schools in IDP camps have also been used as shelter when IDP camps experienced overcrowding. For example, since August 2014, the school of Gharyounis Camp in Benghazi is being used as shelter due to overcrowding in the camp. This further disrupts the access of Tawerghans to education.

### **Right to Health**

35. There were two recommendations concerning the right to health which enjoyed the support of Libya. The Libyan state has failed to provide access to medical care for all persons, especially those living in rural areas.

36. Libyan public and private health services provide a very low standard of care. This is particularly the case in smaller or more remote locations. It is estimated that, as of 2012, approximately 50,000 Libyans were receiving treatment outside of the country for their injuries resulting from the 2011 Uprising, due to lack of national capacity to treat such cases. The need to travel to receive healthcare can in some cases have a detrimental impact on long-term wellbeing of patients and even result in death for ailments that would be easily treatable if cared for quickly. Research conducted by Coalition member LFJL in 2012 highlighted how a citizen from the Nafusa Mountains had to have his leg amputated following an infection to a simple cut because by the time he arrived in Tripoli no other treatment could be provided.

37. As 80% of Libya's healthcare personnel are foreign nationals, fighting and insecurity has led to their departure and has resulted in shortages in medical staff and supplies, worsening what are frequently already critical situations.

38. Child healthcare is a key concern raised in towns with oil refineries and cement factories. In Khoms and Jalu, children have health problems from widespread environmental pollution. In rural towns such as Bayyada, Cabaw, Sinown, Regdaleen and Zwara, interviewees stated that paediatricians are hard to find.

39. In addition, there is a lack of hospitals or clinics with specialist medical equipment. This has led to the deaths of many newborn babies, due to lack of incubators. Such a problem forces citizens to travel with their children to nearby towns to get medical care. This is made difficult due to poor transport services, the lack of a basic ambulance system and lack of infrastructure more generally.

40. Libya has failed to provide adequate state healthcare to people with disabilities. There are, at present, only three state health centres across the whole country that specialise in treating mental illnesses, with 452 patients registered to these facilities. Services to treat chronic conditions and disabilities in Libya are extremely poor. The state has thus far failed to provide any facility providing sexual health services for people with disabilities. There is also a lack of specialist doctors and health care staff for specific disabilities such as autism.



41. Tawerghans also face obstacles in accessing medical care due to discrimination because of their perceived political association. This resulted in Tawerghans being denied access to medical care in state hospitals. Law 4 of 2013, related to those with permanent disabilities as a result of the Uprising, grants those who fought *with* the 17 February Uprising benefits and special medical care. The Law indirectly excludes Tawerghans from such benefits due to the perception they are against the Uprising. Such discriminatory laws contradict Article 8 of the Constitutional Declaration, which provides that “the State shall guarantee for every citizen equal opportunities and shall provide an appropriate standard of living. The State shall also guarantee the right of work, education medical care, and social security.”

### **Abuse of Foreign Nationals, Refugees and Migrants**

42. Foreign nationals face a higher risk of abuse in post-conflict Libya due to the increased proliferation of weapons and overall lack of accountability. Foreign nationals have been subjected to widespread inhumane treatment, including arbitrary arrest and severe forms of torture.

43. Thousands of foreign nationals, including women and children, are being held indefinitely in detention centres or by militiamen in makeshift prisons, where they face inadequate living conditions and are denied access to judicial processes or avenues for redress for improper treatment. Libyan law permits indefinite detention for violators of visa and migration regulations. Most detainees have not been given an opportunity to challenge their detention.

44. Through the absence of a clear immigration framework, Libya has systematically failed to ensure adequate human rights protections for the migrant populations residing or transiting through its borders and allowing a significant number of migrants to travel to Europe by boats, endangering their lives. For example, on 3 October 2013, a boat carrying 500 immigrants sank after setting sail from Misrata to the Italian island of Lampedusa. More than 230 people died during the ordeal. More recently, on 30 September 2014, 70 migrants died whilst the boat carrying dozens of migrants drowned off the coast of Libya. As of August 2014 the UNHCR recorded 88,000 people are estimated to have arrived in Italy by boat so far in 2014 – including 11,000 over two weeks in July 2014 – of whom about 77,000 are believed to have departed from Libya. Torture and ill-treatment has also been reported in detention facilities holding migrants.

45. Although Libya stated that it will examine recommendation 95.4 to “consider becoming a party to the 1951 Convention relating to the Status of Refugees and the Protocol,” Libya has yet to do so. The NTC reaffirmed the Treaty of Friendship, Partnership and Co-operation with Italy (the **Friendship Treaty**) on the control of migration in April 2012. This agreement attempts to establish Italian-Libyan co-operation in combating ‘illegal migration’ but has failed to provide substantive measures to improve the safety situation of those arriving on

boats, which affects tens of thousands of immigrants every year.<sup>3</sup> Libya has failed to implement effectively four recommendations related to cooperating with its neighbours to find a solution to such a challenge.

46. The Libyan state failed 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 enhance the security of its borders.

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<sup>3</sup> “Human Rights and Migration Control”, *Amnesty International*, 2012, <http://www.amnesty.org/en/library/asset/EUR01/013/2012/en/bc2ed705-d497-4a50-8c47-5995d3e2eb64/eur010132012en.pdf>