



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

The Prohibition of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment in Libya

Submitted by Lawyers for Justice in Libya, the Redress Trust, and DIGNITY Danish Institute
Against Torture

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Keys Concerns

- Libyan domestic laws and safeguards against torture and other cruel, inhuman or degrading treatment or punishment fail to comply with international standards. In 2013, Libya adopted Law 10 of 2013 Criminalising Torture, Enforced Disappearances and Discrimination. However, the Law does not fully comply with international standards.
- Throughout the last four years the systematic use of torture throughout Libya has been reported in both state and militia run detention facilities. Torture continues to be used as a form of punishment.
- Members of various groups, including migrants, internally displaced persons, human rights activists, journalists, lawyers, judges, political opponents, continue to be targeted for arbitrary arrests, enforced disappearances, unlawful killings, torture and ill-treatment.
- The state has failed to ensure that all detention facilities are under the control of the state, notwithstanding Decision 53 of 2013 and Decision 27 of 2013 which called on Ministries of Defence, Interior and Justice to transfer all detainees to state custody, and are adequately monitored.
- There are no adequate safeguards in place to ensure protection of detainees, particularly members of targeted groups. Individuals continue to be arbitrarily detained, without access to lawyers, and are not brought before a judge promptly.
- There is no effective access to justice for victims of torture; to date, victims have not received any reparation for the harms they have suffered. The administration of justice has been adversely affected by the ongoing crisis in Libya since May 2014, as many state functions have been suspended.
- Over the last four years, no alleged perpetrators of torture have been held accountable. The state has not established any mechanism to ensure the prompt, impartial and effective investigation of allegations of torture. As a result, there have been no prosecutions of torture.
- Transitional justice mechanisms have been adopted by the state, yet they have not been implemented. Following the 2011 uprising, transitional justice became a key feature of the Libyan state, with the National Transitional Council (NTC) and GNC calling for its support. Laws adopted in this regard, however, have failed to be fully implemented.
- Corporal punishment continues to be widely used, both as a disciplinary measure in schools, as well as a form of judicial punishment.
- The state has failed to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Introduction

This stakeholder report is a joint submission by Lawyers for Justice in Libya (**LFJL**), the Redress Trust (**REDRESS**) and DIGNITY Danish Institute Against Torture (**DIGNITY**). LFJL is an independent non-governmental organisation and charity, incorporated for the public benefit in order to defend and promote human rights in Libya. REDRESS is a human rights organisation that helps torture survivors obtain justice and reparation. It works with survivors to help restore their dignity and to make perpetrators of torture accountable. DIGNITY is a self-governing institution independent of party politics. In Denmark, DIGNITY treats refugees who have survived torture and it undertakes research in torture and torture sequelae. By doing so, DIGNITY has gained specialised knowledge and experience on the basis of which the interventions of DIGNITY's partners in the South are developed and targeted.

Together, the undersigned organisations, wish to highlight concerns surrounding the right to be free from torture, and other cruel, inhuman, or degrading treatment or punishment before the Human Rights Council for consideration in Libya's upcoming Universal Periodic Review (**UPR**) 2015.

Following the last UPR session on Libya in 2010, the undersigned organisations note that Libya has failed to adhere adequately to the 11 torture-specific recommendations set out in the Report of the Working Group on the Universal Periodic Review (**UPR Report**). Torture and ill-treatment continued following the political changes in Libya. Yet the state has failed to put in place effective mechanisms to provide safeguards against torture and ill-treatment, including by taking measures to ensure accountability of the alleged perpetrators of torture and justice for its victims. Laws enacted since the 2000 UPR session fail to comply with international standards, and have not been effectively implemented. One of the key concerns has been torture by militias whose status is often unclear. The state has failed to bring these actors under its control, and continues to allow these groups to exercise state functions and duties. Escalation of human rights violations since 2011, which have not been subject to any investigations or prosecutions, has significantly contributed to the culture of impunity in Libya. Recent clashes between rival militia groups in Libya since May 2014 have resulted in a rise of targeted violence and ill-treatment of individuals. Continuing insecurity in Libya has further undermined prospects for the effective exercise of the rights of torture victims, as many state functions have been suspended in its wake.

Structure of Detention Facilities

1. The previous UPR session in 2010 did not have any recommendations on the structuring of detention facilities. However, since then the political and security environment has changed dramatically. In the process of overthrowing the Gaddafi administration, many state institutions collapsed or were significantly weakened, including the police, judicial system, and prison facilities. In 2011 most detention facilities fell under the control of militia groups.
2. Since 2011, the state has negotiated the handover of some facilities to the state authorities. Although the state has made some efforts to bring facilities under its control, facilities continue to be run by militia groups with nominal or no formal connection to any state institution. Hundreds of militia groups arose during and after the 2011 uprising, with some initially taking up arms to overthrow Gaddafi. Since then, some militia groups have refused to disarm and do not answer to any state authority. The General National Congress (**GNC**) passed several decisions to disband armed

groups, following clashes in Tripoli when militias mainly from Misrata attacked peaceful protestors¹. These clashes resulted in the death of 51 people and more than 500 persons were injured on 8 June 2013. This prompted the government to adopt Decision 53 of June 2013, which called on the Prime Minister to present a proposal for the integration of armed brigades into the military and to disband “all illegal armed brigades and formations”. It also called on the judiciary to conduct an investigation into the attack on the protestors. The earlier Decision 27 of March 2013 had required “illegal armed formations” and militia groups in Tripoli and its suburbs to be removed from Tripoli. These decisions have, however, not been fully implemented as only certain militia groups have been disbanded. In the meantime, the state continues to attempt to bring militia groups under the overall authority of the state however in so doing, it has failed to create mechanisms to ensure that these groups can be held accountable for abuses. Torture and ill-treatment have been reported in detention facilities under the control of both militia groups and state authorities. There are no reliable figures on the total number of detention facilities in Libya, and this has been further hindered by lack of access given to the facilities. However, according to the Ministry of Justice as of September 2013, 37 detention facilities were under the authority of the Ministry of Justice. There are no clear statistics of how many detention facilities fall under the authority of militia groups.

Instances and Prevalence of Torture

3. Torture and ill-treatment has been prevalent in Libya in different contexts since the 2011 uprising. While there were 11 torture-specific recommendations made in the 2010 UPR report, only two recommendations were noted to have been in the process of being implemented. Two recommendations showed no support, and the remaining seven recommendations were to be examined by Libya. However, Libya has failed to provide responses to the recommendations. Torture remains prevalent in Libya, most often occurring in detention facilities, particularly upon arrest and during interrogation as a means to extract confessions or other information, but has also been a feature of the ongoing conflict. Conflict-related torture relates to torture which has been prevalent against those associated, or deemed to be associated, with the ongoing conflict since 2011. Detainees are held without access to lawyers, and at times families are not informed of their location for lengthy and potentially indefinite periods of time, and arrests are often arbitrary. In a national survey conducted by DIGNITY in 2013, close to 20% of the respondents reported that household members had been, or still are, disappeared. The Working Group on Arbitrary Detention has also noted that the detention of Saif al-Islam Gaddafi was in contravention of article 14 ICCPR. The detention of Saif was also held to be arbitrary by the African Commission on Human and Peoples’ Rights.

4. Between June 2011 and March 2012, the International Commission of Inquiry in Libya (**Commission of Inquiry**) visited 20 (official and unofficial) detention facilities. The Commission of Inquiry noted that in respect of the facilities in control of *thumar* (revolutionaries) it interviewed more than 100 current and former Libyan and foreign detainees. There was compelling evidence of torture².

5. Between August 2011 and January 2012 Médecins San Frontières (**MSF**) treated 115 people who had torture-related injuries. In January 2012 alone, MSF treated a group of 14 detainees who

¹ Laws in Libya are issued solely by the legislature (parliament). A Decision, on the other hand, can be issued by other agencies of the state such as the Minister or Deputy Minister. As such, a Decision has a weaker legal standing than a Law.

²http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A_HRC_19_68_en.doc

returned to a detention facility from an interrogation centre. Of the 14, 9 showed obvious signs of torture. In January 2012, MSF suspended its operations in detention centres in Misrata because detainees were being tortured and denied urgent medical care³. In January 2012 Amnesty International delegates also met detainees being held in and around Tripoli, Misrata and Gheryan who showed visible marks indicating torture inflicted in the previous weeks⁴.

6. The United Nations Support Mission in Libya (UNSMIL) reported at least 27 cases of deaths in custody between late 2011 and October 2013 where significant information suggested that torture was the cause of death⁵. 61 victims of torture reported their cases to the Libyan National Council for Civil Liberties and Human Rights in 2013⁶.

7. In 2014, Human Rights Watch reported that of 138 detainees interviewed in 9 of the 19 migrant detention facilities run by the Interior Ministry's Department for Combating Illegal Migration, 93 reported torture and ill-treatment⁷. The youngest of these detainees was a 14 year old boy. In August 2014, Human Rights Solidarity claimed that at least 40 prisoners at the Saiqa Special Forces base in Benghazi's Butani district were tortured⁸.

8. Various forms of torture have been reported. According to the Commission of Inquiry and UNSMIL, the most frequent and systematic forms of torture which have been reported include being beaten on the soles of the feet; beaten all over the body with whips, cables, plastic hoses, metal chains, bars and wooden sticks; electric shocks with live wires or taser like weapons; hung upside down and beaten for hours; burned with cigarettes; hot liquids poured on them; and exposure to burning metals. DIGNITY conducted a national survey in Libya in 2013 and 5.7% of the population reported to have ever been detained, arrested or imprisoned. Of these 53% reported having been exposed to torture or violence during their arrest. The most common method reported was beatings (46%) followed by positional torture or suspension (20%), and suffocation (16%). Electrical torture was reported by 13%, thermal torture by 5% and sexual torture by 5%. A total of 67% reported being humiliated and threatened during their detention.

9. In March 2014 the United Nations Security Council passed resolution 2095 expressing grave concern over mistreatment and torture prevalent in Libya. In March 2014, the Human Rights Council (HRC) passed resolution 25/37 which urged the government to investigate "all allegations of torture and other ill-treatment"⁹.

Members of particular groups subject to torture

10. Torture has also been specifically used against certain groups. This includes migrant groups, minority groups, internally displaced persons (IDPs), journalists, political activists, human rights activists and political opponents. Journalists, political and human rights activists and others are targeted due to their reporting of often controversial issues, including highlighting violations committed by militia groups. However, the continuing impunity has emboldened militias to target

³ <http://www.msf.org.uk/article/libya-detainees-tortured-and-denied-medical-care>

⁴ <http://www.amnesty.org/en/news/libya-deaths-detainees-amid-widespread-torture-2012-01-26>

⁵ <http://unsmil.unmissions.org/Portals/unsmil/Documents/Torture%20Report%20Libya%20En%2001Oct2013.pdf>

⁶ <https://www.facebook.com/LibyanHumanRightsCouncil/photos/a.594307473955769.1073741920.476190299100821/594307690622414/?type=3&theater>; <http://ncclhr.org/>

⁷ <http://www.hrw.org/news/2014/06/22/libya-whipped-beaten-and-hung-trees>

⁸ <http://daccess-dds-ny.un.org/doc/UNDOC/LTD/G14/124/46/PDF/G1412446.pdf?OpenElement>

those critical of them. Further, many persons are arbitrarily detained on the basis of belonging to certain tribal groups, including Warfalla, Tawergha, and Mashishia. The Commission of Inquiry documented that such detainees were frequently subjected to torture.

11. On 12 August 2011, Misrata militia groups and other armed groups entered Tawergha, a town located 38km from Misrata, and took full control by 14 August 2011. In attacking the Tawerghans, armed groups imprisoned and tortured 1,500 men, many of whom were then assassinated. In interviews conducted with 26 Tawerghans in detention in and around Misrata and 35 displaced people in Tripoli, Heisha and Hun, those interviewed gave accounts of some Misrata militias shooting unarmed Tawerghans, and of arbitrary arrests, electric shocks and beatings of Tawerghan detainees, which in several cases led to death. Tawerghans have been attacked primarily for their perceived opposition to the 2011 uprising. Most of the Tawerghan detainees are held in state controlled facilities. Tawerghans continue to be internally displaced, and subject to attacks. In May 2013, a peaceful demonstration by Tawerghans calling for the GNC to recognise their decision to return to their hometown was attacked by armed men who shot at demonstrators. The majority of Tawerghans are now housed between five camps in Tripoli. They remain vulnerable to arbitrary and unlawful attacks. On 16 November 2013, for example, the Al-Fattah camp in Tripoli, which houses 1,200 displaced Tawerghans, was attacked by armed groups mainly from Misrata resulting in one resident being killed and three injured.

12. In addition, Nalut *thuwar* have reportedly tortured the inhabitants of Tiji and Badr, Arabs, primarily in the Amazigh region. Representatives of the Warfallah Tribe reported to Amnesty International in 2012, that they had been trying to obtain information on the fate and whereabouts of 113 persons missing since 2011, all from Bani Walid. The state has not provided any mechanism to safeguard minority groups from attacks. Further, perpetrators of these violations have yet to be prosecuted. In DIGNITY's national survey, it was reported that close to 30% of the study population was or had been displaced since 17 February 2011. War-like violence was common among the displaced persons: 13% had experience shootings, 9% shelling, 9% beatings and 0.2% reported sexual abuse. In addition to those reported being directly exposed to these acts, between 30-40% of the population reported witnessing such acts.

13. Journalists have also been repeatedly subject to torture over the last four years. Since 2011, eight Libyan journalists and five foreign journalists were killed. According to the Libyan Centre for Freedom of Press, over the past four years, 65 cases have been documented which include assassination attempts, kidnappings and cases of torture. Also, 20 cases of arbitrary detention of journalists by state and non-state forces have been documented, and 90 cases of harassment of journalists. For example, in March 2011, three BBC journalists were arrested and tortured. It was reported that they were held in a cage while others were tortured around them, shots were fired past their heads, and one journalist reported that he was repeatedly attacked with fists, boots, rifle butts, a stick and rope. Other foreign individuals have also been subjected to attacks, ill-treatment and torture. On 22 April 2013, Yousef Bargoum, a former journalist collecting public information for the civil registry in Benghazi, was kidnapped by armed militia after a radio broadcast on Al-Manar in which he disclosed obvious irregularities in municipal documents. He was held for three days, during which he was severely beaten and tortured with electric shocks. Cases of torture also include the targeting of women. In June 2014, Naseeb Miloud, a reporter for TV station Al-Wataniya, was abducted and murdered. Her throat was cut and her body showed obvious signs of torture. Further, on 1 August 2014 three employees of Al-Assema TV were abducted in Tripoli's Martyrs' Square after covering a demonstration protesting against the fighting in the capital.

14. Protestors have also been subjected to arbitrary detention and acts of torture. On 26 August 2012, a peaceful protest against the demolition of the Al-Sha'ab mosque took place, and protestors were obstructed from protesting by the Supreme Security Council (SCC) who intended to continue the demolition of the mosque. Several demonstrators were physically threatened and intimidated, with a man in SSC uniform allegedly verbally intimidating protestors and at one point threatening to get his gun and "kill them". Ashraf Jerbi, who took part in the protest, was physically intimidated by people involved in the destruction of the shrine when he tried to address them, and allegedly subjected to torture by SSC officers after being detained.

15. Asylum-seekers, refugees and migrants represent a particularly vulnerable group, which has been subject, on a number of occasions, to ill-treatment and torture in Libyan detention centres. In interviews with detainees, conducted independently in April and May 2013 by Amnesty International, it emerged that abuses had been perpetrated by militia men and security officers both in detention and during arrest. In the Sabha centre, abuses often consisted in beating with cables and hoses and were applied both randomly during food distribution and as punitive measures for alleged breaking of the centre's rules. In a separate report from April 2014 by Human Rights Watch, 93 detainees from eight different centres revealed having been regularly subject to abuses which amount to torture.

16. There have also been cases of torture and ill-treatment of human rights defenders. One instance has been the assault of human rights lawyer Hanan Al-Newaisery and her father, children's rights activist, Mustafa Al-Newaisery, following a case hearing at Misrata's Zarouk courthouse on 4 June 2013. Mr Al-Newaisery, in particular, who had intervened to protect her daughter from the assault, was repeatedly beaten in the parking lot of the courthouse, given electric shocks and kidnapped. He was released several hours later and showed further scorching, bruises and numerous other signs of beating. This assault came after several threats previously made to Ms Al-Newaisery, highlighting the climate of fear in which Libyan human rights defenders have been working over the past years. In June 2014, Salwa Bugaighis, a leading women's human rights activist, was assassinated and her husband was abducted. Her guard Saleh Abdul Qader, who was the only other witness to the crime, died from torture following being detained for investigation.

International Obligations

17. Libya ratified the United Nations International Covenant on Civil and Political Rights (ICCPR) on May 1970, with no reservations.

18. The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) was ratified by Libya in May 1989, with no reservations.

19. Libya is yet to become a signatory to the Optional Protocol of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT). This is contrary to Recommendations 95.2 and 95.23 of the previous session, which Libya noted it would examine, which provided that Libya should accede to OP-CAT.

20. Libya is not party to the International Convention for the Protection of All Persons from Enforced Disappearances (ICPPED). Libya did not accept Recommendation 96.1 and 96.2 of the previous UPR to "investigate all alleged enforced disappearances, and acceded to the International Convention for the Protection of All Person from Enforced Disappearance".

Domestic Protections Against Torture and Ill-treatment

21. In the previous UPR session, Libya “considered that the following specific recommendations had already been implemented or were in the process of being implemented.” This included Recommendation 93.2 which stated that Libya should adopt and implement a definition of torture consistent with UNCAT, and Recommendation 93.3 that stated that Libya should adopt domestic legislation to abolish torture.

22. On 9 April 2013, the GNC adopted the Law Criminalising Torture, Enforced Disappearances and Discrimination, in accordance with Recommendation 93.3 to “adopt domestic legislation to absolutely abolish practices of torture on its territory”. However, the Law fails adequately to prohibit torture in all circumstances.

23. The definition of torture under the Law is inconsistent with the definition provided in UNCAT. Article 2 of the Law defines torture as “Anyone who personally inflicted or ordered another person to inflict pain or suffering whether physical or mental, on a detainee under his control for such purposes as obtaining from him a confession for an act he has or has not committed, or for any reason based on discrimination of any kind or revenge for any cause”. While the definition contains several elements set out in article 1 UNCAT, it is confined to “detainees”, which unduly limits its scope of application, does not recognise the “third person” element, and fails to adhere to all the purposes set out in article 1.

24. The Law does not provide protection against refoulement (being sent to a country where a person faces a genuine risk of torture, article 3 UNCAT). Libya has also, contrary to Recommendation 95.4, which Libya stated it would examine, not ratified the 1951 United Nations Convention relating to the Status of Refugees which protects against the refoulement of refugees under Article 33(1)

Other Legal Protection and Safeguards against Torture

25. There is no explicit mention of torture in the 2011 Draft Constitutional Declaration for the Transitional Period. The document does, however, note that the state “shall safeguard human rights and fundamental freedoms, endeavour to join the regional and international declarations and covenants which protect these rights and freedoms”. While Libya has acceded to both regional and international declarations and covenants prior to 2011, since then it has failed to ratify others, notably, OPCAT, ICCPPED, and the United Nations Convention on the Status of Refugees. The Constitutional Drafting Assembly is still in the process of drafting a new Constitution, and it is unclear whether the prohibition of torture will be mentioned directly in the text.

26. The state has failed to ensure that torture victims are granted access to lawyers and medical professionals while in custody. To date, many detainees have been refused access and continue to be detained without official charge. This is contrary to article 112 of the Penal Code which states that a person can be detained for only 24 hours, and after that time must be transferred. Since the 2011 uprising, there are numerous individuals detained without charge, and without access to a lawyer. The state has not complied with accepted Recommendation 93.40 to “immediately release all individuals detained without legal basis, including those that have completed their terms and those acquitted by courts”. In September 2013, the Ministry of Justice reported that there was an estimated 8,000 conflict-related detainees who had not been formally charged. The failure of the state to bring detainees before a judge violates the principle of *habeas corpus*.

27. Law 38 of 2013 on Special Procedures for the Transition Period placed a two month deadline on the Ministries of Interior and of Defence to ensure that all detainees are screened by prosecutors so they would be either charged and brought to trial or released. In September 2013, the GNC issued the

Law 29 of 2013 Related to Transitional Justice in which it stated that all conflict-related detainees were to be released or referred to the public prosecutor within 90 days of the promulgation of the law. This has not been done, although the deadline has long since passed.

28. Libya does not have in place any visiting mechanism for detention facilities, and access of detainees to civil society bodies and non-governmental organisations have been limited, contrary to Recommendation 95.22 which Libya had accepted to examine. Libya has not created an independent body to investigate detention centres.

Access to Justice

29. Throughout the last four years, the effectiveness of the judicial system has been undermined by the state's failure to ensure effective internal security and the disarmament of militia groups. Lawyers, judges, prosecutors, witnesses and victims have been targeted, and subjected to kidnappings and assassination. Since February 2014, the judicial system has been effectively suspended, due to the escalating security threats. In 2014 alone, 6 judges have been assassinated. In 2013, three senior judges were also unlawfully killed: Mohammed Naguib Huwaida, Murad Alarouby and Humma Aljawi. This has impeded victims' ability to access justice for torture due to a genuine fear of reprisals. The absence of security has also meant that there have been severe and often indefinite delays in the cases that had been commenced.

30. There has been no reparation for current or past violations of torture in Libya over the past four years. This has also been hindered by the fact that there is no specific legal framework for torture victims to seek reparation. The state has also failed to provide effective rehabilitation services for individuals subject to violations. According to the survey conducted by DIGNITY the need of reparations is great, as close to 60% of the respondents wanted legal remedy, compensation and justice.

31. On 19 February 2014, the Libyan Minister of Justice adopted the Decree on Sexual Violence, which provides victims of rape during the 2011 uprising with the right to receive compensation, health care, training, education and employment opportunities, and access to housing. It also provides for the state to establish shelters for those rejected by families and legal support in bringing perpetrators to justice. In addition, benefits are to be provided for families of victims and children born following rape. Although the decree is a notable step, it remains unenforceable under the law as it has yet to be implemented and is unclear whether there is any monetary support for the decree.

Transitional Justice

32. Transitional justice efforts have been made by the state to prosecute crimes committed prior and during the 2011 uprising. In February 2012, the NTC adopted Law 17 of 2012. On 8 December 2013, the GNC adopted Law 29 of 2013 which replaced NTC Law 17 of 2012. This established a mechanism to deliver justice and reparations to victims. However, to date, this Law has not been used. Indeed, Members of the Fact-Finding and Reconciliation Commission, the body tasked with presenting a full picture of human rights violations during the Gaddafi era and since then, have yet to be recruited.

33. On 19 September 2013, the Libyan Supreme Court pre-trial hearing of 37 Gaddafi associated individuals, accused of committing gross human rights violations, began. The trial continues to be at the procedural phase and evidence has yet to be heard. However, crimes committed by militia groups during this period have yet to be prosecuted. The effective implementation of transitional justice

laws has, however, been undermined by the enactment of Law 38 of 2013 which includes a provision granting an effective amnesty for “any acts made necessary by the 17 February revolution” and for the revolution’s “success or protection.” This bars accountability for those who committed crimes in the uprising, and as such violates international law.

Ensuring Accountability

34. Recommendation 95.23, which Libya stated it would examine, provides that Libya should bring perpetrators to justice. However, Libya did not show support for Recommendation 96.9 which obligated Libya to “reinforce measures to ensure the full investigation of allegations of torture, disappearances and arbitrary detention, and that it full prosecutes and appropriately punishes persons responsible”. Nevertheless, there has been no accountability for crimes of torture, enforced disappearances or ill-treatment since 2011. No effective investigative mechanisms have been put in place and no cases have been brought before the Libyan courts.

35. Libya has also failed to cooperate with the International Criminal Court (ICC) by not handing over Saif al-Islam to the Court. This is notwithstanding UNSC Resolution 1970 (2011), which provides that Libya should cooperate with the Prosecutor and the ICC. In May 2013, ICC Pre-trial Chamber I rejected Libya’s request to try Saif Gaddafi in Libya and ordered his surrender to the ICC. The ICC Appeals Chamber’s decision on 21 May 2014 reaffirmed the admissibility of the case against Saif Gaddafi, and rejected the appeal brought by the state. In the case of Abdullah Al Senussi, there have been concerns about the capacity of Libya to effectively carry out the prosecution and to respect his right to a fair trial.

Abu Salim Massacre

36. Recommendation 95.26, which Libya agreed to examine, obliged Libya to “release publicly the findings of the Libyan Government’s investigations into the Abu Salim prison killings of 1996”. It has now been eighteen years since the Abu Salim Prison killing, in which approximately 1,200 prisoners are believed to have been extrajudicially killed. This has yet to be fully and independently investigated, and the names of victims has yet to be published or information given to the families.

Training and Education

37. The Libyan state has failed to comply fully with Recommendation 93.39 which provides for the continuing development of training methods and education for police, prison guards and the judiciary in areas of human rights. Lack of training and education of the police force and prison guards may be seen as contributing to the prevailing practice of torture, as there continues to be a lack of understanding of the acceptability of torture. For example, in LFJL’s constitutional tour Destoori, participants in Benghazi noted that “some people deserve to be tortured” and even that “some people make you angry, so you torture them”. Whether the act is justifiable is often defined by reference to the identity of perpetrators and subjects. Following LFJL’s explanation that freedom from torture is an absolute right, some who were interviewed, including members of the security forces, confessed they had used torture and committed acts of ill-treatment, as they were unaware of the absolute prohibition. Indeed, when discussing with participants the meaning of torture, over 64% were of the opinion that freedom from torture should not be an absolute right and more than 40% felt that there were instances where torture was in fact justified.

38. As mentioned, certain detention facilities are under the control of armed militia groups. The State has yet to bring all facilities under the control of the Ministry of Justice. While some facilities have

been brought under the control of the State, the vetting of armed groups is often minimal or non-existent. Such groups have no formal training.

International Assistance and Interventions

39. According to Recommendation 95.10, 95.11, and 95.12 of the previous UPR session, which Libya are yet to examine, Libya has to “invite to its territory, as a priority, the Working Group on arbitrary detention and the Special Rapporteur on torture, in particular to investigate arbitrary detention and the holding in detention of persons who have served their sentences, as well as torture and ill-treatment, and put an end to such practices”. It is not clear whether Libya has accepted this Recommendation, however it has failed to fulfil this completely.

40. The Special Rapporteur on torture has not visited Libya yet, although the visit has been pending since 2005.

41. A request has been made by the UN Working Group on Arbitrary Detention, however this visit is yet to take place.

42. Access to detention facilities by UNSMIL has been limited. Indeed, escalating violence in Libya since May 2014, has led to the evacuation of UNSMIL from Libya, and they are yet to return. Under Recommendation 95.22 the Libyan state should “ensure independent access by international humanitarian agencies to assess the well-being of prisoners detained without trial, or in continued detention following the commuting of their sentences”. However, limited access has been given to humanitarian agencies. Access has also been hindered by the attacks and threats against humanitarian and human rights workers.

Corporal Punishment

43. Recommendation 95.25 of the last UPR review noted that Libya should “abolish corporal punishment, both in law and in practice”. Libya has failed to implement this recommendation adequately. Although corporal punishment in schools is prohibited under domestic laws, corporal punishment is still entrenched in schools as evidenced during the LFJL constitutional tour.¹⁰ Libya became party to the United Nations Convention on the Rights of the Child (CRC) in 1993, with no reservations. Various provisions relating to corporal punishment have violated articles 6, 19, 38 and 37 of CRC.

44. Certain laws do not explicitly prohibit corporal punishment in childrearing: provisions against violence and abuse in Act No. 17 (1992), Penal Code (1953), Child Protection Act (1997), The 1969 Constitution, and the Promotion of Freedom Act No. 20. This is in contradiction to Recommendation 93.12 which stated that Libya will “take appropriate measures to ensure that all children enjoy all human rights, without discrimination”.

45. Judicial corporal punishment is also lawful, with no explicit prohibition of such punishment in respect of child offenders. Such sanctioned punishments are set out in laws including, Law No. 70 (1973) concerning sexual offences permitting flogging and amputation, Law No. 13 (amended 1995) concerning theft and robbery, and Law No 52 (1974) concerning sexual slander. This is also contrary to Libya’s obligations under UNCAT and ICCPR.

¹⁰ School Discipline Ordinance for Schools, Regulations concerning Primary and Preparatory (Basic) Education, Regulations concerning Secondary (Intermediate) Education (1979) and Regulation concerning Student Discipline (1983).