

The 3rd Universal Periodic Review of Libya

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Commissioner for Human Rights

Joint submission by (in alphabetical order):

Aman Organization Against Discrimination; CORDAID; Haqi for Libyan Female Workers; “I am a Libyan Woman, but my Child is a Foreigner” Association for Charity and Civil Work; Makers of Hope; Human Security Collective, and Tamazight Women’s Movement.



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Information on the Coalition Members:

Aman Organization Against Discrimination (AOAD): is a Libyan Toubou human rights NGO focusing on the rights of the indigenous people. ADAO also ensures proper reporting on other human rights violations, including rights' violations of illegal migrants. In addition, the organization also promotes women empowerment and gender equality. During its first conference that took place in January 2012, AOAD worked to report human rights violations, particularly of indigenous people and vulnerable groups. AOAD has also established relations with various local and international NGOs to strengthen mutual networking and cooperation in relevant issues.

CORDAID: is an international organization for relief and development with its global office based in The Hague. Cordaid has been fighting poverty and exclusion in the world's most fragile societies and conflict-stricken areas for a century. Cordaid supports people in vulnerable regions and areas of conflict to build flourishing communities by creating opportunities and delivering innovative solutions to complex problems. Cordaid positions to include women and youth not just as beneficiaries, but as partners and leaders in the process of building peace, development and enhancing security within their community.

Haqi for Libyan Female Workers (HLFW): is a Libyan non-governmental organisation that aims to promote Libyan women working in legal professions. HLFW facilitates the encounter and exchange of Libyan women legal practitioners and experts, thus providing a platform for exchange and dialogue. In a supportive and safe space, participants are able to share expertise and experiences as well as to discuss common challenges and issues. HLFW aims to become a regional leading organisation that facilitates the advancement of Libyan women working in the legal field throughout the country.

Human Security Collective (HSC): works to improve human security, human rights and human dignity. Its work specifically focuses on disadvantaged communities and people in contexts that are characterized by complex systemic conflicts, social exclusion of minority groups, and/or potential crises that may erupt as a consequence of violent extremism and lack of governance and leadership to deal with those.

“I am a Libyan Woman, but my Child is a Foreigner” Association for Charity and Civil Work: is a civil society organization based in the municipality of Ghat, south-western Libya. It defends the rights of Libyan women, who are married to non-Libyan nationals, to grant their children Libyan nationality. This association is a member of a number of Libyan civil society coalitions that attempt to promote the rights of women and children, human rights, gender equality, as well as human security. The organization educates, trains and economically empowers women and their children through a series of training programs and workshops so they can support themselves and legally defend their rights.

Makers of Hope (MoH): is a youth-led organization that advocates for youth inclusion and participation in many sectors in Libya. The organization works on promoting and supporting peace-building initiatives and tackling vital issues such as Gender Based Violence and Human security, as well as conducting trainings both in Libya and Morocco.

Tamazight Women’s Movement (TWM): is an indigenous feminist organization that focuses on women’s issues from an intersectional perspective. Tamazight Women’s Movement promotes political participation on the local level, addresses gender-based violence and works with women affected by conflict. The main issues are addressed with research, capacity building and advocacy, and so an array of activities are arranged in Libya.

KEY CONCERNS

- Libyan women are consistently discriminated through legislation and laws that perpetuate gender inequality between men and women and exacerbate gender-based violence, despite the countries' commitment to several international conventions.
- The Arms Trade Treaty has not been adequately implemented. The continued proliferation of arms and subsequent violations of the arms' embargo as well as the increasing number of armed groups has created an environment that is rife with impunity.
- Human and Women Rights Defenders still face systematic attacks and persecutions from all parties of the conflict, in an attempt to silence them.
- The Toubou, Tuareg and the Amazigh are officially not recognized as indigenous peoples of Libya. These groups are largely excluded from political participation and peace processes and are restricted in their freedom of movement.
- Due to the humanitarian crisis in Libya authorities have failed to protect migrants and Internally Displaced People (IDPs) and denied them basic human rights.

INTRODUCTION

The present report is a joint document prepared on behalf of seven national and international civil society organizations engaged in Libya. The five national organizations that are part of the coalition and are based in Libya, represent the Eastern, Southern and Western parts of the country. Each organization brings a unique and significant level of expertise on different issues related to Libya. The coalition would like to thank sister organizations and activists in Libya, who provided important support over the course of the drafting of this report.

The report relies on first-hand information collected through in-depth community interviews conducted by the coalition as well as input from meetings and focus groups in Libya. This report also consists of an extensive review of previous UPR reports, UN reports, news articles, and Libyan legal framework.

We acknowledge the Government of Libya's efforts to participate in the UPR process since its inception in 2010. During the previous cycle of UPR in 2015, Libya has supported 171 of 202 recommendations, however, little has been achieved since then.

The coalition welcomes the opportunity to engage with the Universal Periodic Review (UPR) of Libya for the first time this year. The report will focus on (1) developments in the Libyan context and follow up to the preceding UPR second cycle; (2) the gendered impact of the protracted armed conflict in Libya and the communities most affected; and (3) our recommendations to the Government of Libya on these specific issues.

LEGISLATION

1. During the 2nd UPR cycle (2015), 21 recommendations were made in relation to women's rights and discrimination, covering topics such as domestic violence, personal status laws and nationality laws. We applaud the Libyan government for accepting all 21 of these

recommendations. However, in the past years, little progress has been made and most recommendations have not been fully implemented. In addition, Libya is a party to the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Optional Protocol of the Convention (2004). Nevertheless, Libya consistently discriminates women by allowing certain laws and legislation that perpetuate unequal treatment of women and exacerbate gender-based violence.

2. Although domestic violence is criminalized under the Criminal Law, there are no enforcing mechanisms in place and there are no specific penalties. Article 375 of the Penal Code calls for domestic violence to be penalized only if a man beats his wife to “the extent that her injuries require hospitalization”¹. In fact, based on this law, a man who “merely” assaults his wife without causing bodily harm shall not be held accountable.
3. According to Libyan Penal code, a man whose so-called “honour-motivated” violence results in severe injuries to his wife may be imprisoned for no more than two years. The same level of violence could result in a maximum of 7.5 years imprisonment if the attack was not motivated by so-called ‘honour’.
4. Article 424 of the Penal Code provides that in the case of rape, all criminal procedures against the perpetrator will drop if the victim agrees to marry him. The victim’s consent is needed for such a marriage, but societal and family pressure often leaves a victim with no option but to marry her rapist. Marital rape is not recognized as a crime in Libya as there is no legislation to address this issue.
5. Libyan law also discriminates against Libyan women married to foreign nationals. Article 3 defines a Libyan national as “one who is born to a Libyan father, or to a Libyan mother and a father who is stateless or whose nationality is unknown”. There is no mention in article 3 of children born to a Libyan mother who is married to a man who has a nationality other than Libyan². Even though Article 11 of the Law No. 24 of 2010 on the Provision of Libyan Nationality extends Libyan nationality to children born to Libyan mothers and foreign fathers, it stipulates that only Libyan women married to foreign nationals must obtain approval from a committee of the Libyan Ministry of Social Affairs and the External Security Service. The procedures to gain such approval remain ambiguous.
6. In addition, Libyan women married to foreign men have been denied access documentation and the National Electronic Identification Number.
7. According to the Personal Status Law No.10 of 1984, which is still in effect in the Eastern part of the country, the minimum marriage age is set at 20 years old. Nevertheless, due to internal political divisions, the Western part of the country has approved the new law No.14 of 2015, which sets the marriage age at 18 years old. Furthermore, Libyan legislators have granted the Judge on Urgent Matters in the Personal Status Department in the District Court the authority to give marriage permission to those under 18 years old at his own discretion.³ In this case the judge is the only person who has the complete authority after the consent of the father to issue the marriage decision. The judge does not need any prior

¹https://www.unodc.org/res/cld/document/lby/1953/penal_code_html/Libyan_Penal_Code_Excerpts.pdf

²<https://euromedmonitor.org/uploads/reports/libyanwomanENG.pdf>

³<http://www.legal-agenda.com/en/article.php?id=5551>

verification of the interest and specific circumstances around each case, or if the minor's physical and psychological health allows her to take the marriage responsibility.

Recommendations on Legislation:

8. Accede to the Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW).
9. Amend the law criminalizing domestic violence and rape to include marital rape.
10. Amend the Penal Code to clarify the definition of sexual violence towards women and girls as a crime against a woman / girl as an individual and not against her "honour" or the "honour" of her husband / family.
11. Amend the Marriage Law No. 15 of 1984 so that it guarantees the right of Libyan women and their freedom to choose their partner in accordance with the international conventions ratified by Libya.
12. Amend the Nationality Law No. 24 of 2010, to ensure that children born to Libyan women married to foreign nationals can fully enjoy their right to nationality.
13. Amend Article 3 of the Nationality Law so that all Libyan women can pass on their nationality to their children, regardless of the nationality of their spouse. Such amendment should also guarantee identical rights for Libyan men and women in all nationality matters, with no exceptions.
14. Amend the law No.14 of 2015 and No.10 of 1984 to prohibit any marriages under the age of 18.

ARMED CONFLICT AND GENDER-BASED VIOLENCE

15. This coalition welcomes the stated commitment by the Government of Libya to ratify and strictly implement the Arms Trade Treaty, as suggested by New Zealand in the Second Cycle of the UPR of Libya⁴. However, during the past four years, the continued proliferation of arms and subsequent violations of the arms' embargo⁵ as well as the increasing number of armed groups has created an environment that is rife with impunity.
16. Militia members continue to use these arms to exert control over communities and are responsible for targeted persecutions and serious human rights violations, which are deepening grievances among some categories of the population and ultimately threatening long-term peace and stability in Libya.
17. In February 2019, the military assault in Murzuq claimed the lives of twenty-four civilians of the Toubou indigenous group. In addition, thirty-four civilians were forcefully disappeared, as reported by local sources in Murzuq.
18. Most armed groups involved in the armed conflict are affiliated either with the Government of National Accord or the Libyan National Army.⁶

⁴Second Cycle Recommendation 137.22

⁵<https://www.undocs.org/S/2018/812>

⁶<https://www.undocs.org/S/2018/812>

19. Access to arms is not exclusive to armed groups. Almost every Libyan household has at least one gun⁷. The severe lack of security and a paralyzed government have led to a widespread proliferation of weapons. In addition, we have witnessed a strong connection between (former) fighters and the use of small arms in domestic violence.

Recommendations on Armed Conflict and Gender Based Violence:

20. Ratify and strictly implement the Arms Trade Treaty without delay, giving particular attention to implementing measures to prevent the proliferation and illicit trafficking of all types of conventional arms.

21. Amend Law 38 of 2012, which provides total impunity to militia members who violate international humanitarian law and commit human rights abuses, by including accountability for crimes committed in accordance with international law.

22. Investigate, monitor and hold those responsible for human rights violations, including Sexual and Gender Based Violence (SGBV). The safety, dignity, and long-term needs of survivors of human rights violations should be at the heart of such efforts. Civil Society Organizations (CSOs), including local women's groups, should be supported to provide services.

23. Strengthen the arms embargo by monitoring and reporting violations to the Human Rights Council as well as UNSC.

WOMEN HUMAN RIGHTS DEFENDERS

24. In the last UPR Cycle, the Government of Libya supported the recommendation by the Netherlands to “Ensure the safety of all vulnerable groups, including women, journalists, human rights defenders [...]”⁸.

25. Unfortunately, human rights' defenders (HRD), and women human rights' defenders in particular, still face attacks and persecution from all parties to the conflict. The attacks and intimidation of women human rights' defenders and politicians reached an all-time high in 2014-2015 where MP Fariha Al Brieky's car was bombed in her hometown Derna.

26. Human Rights' Advocate Salwa Bughaghis was assassinated at her home in Benghazi. Other cases include the execution of human rights' defender Intissar Al Hasiri in Tripoli in 2015. These cases clearly show that the use of violence against women human rights' advocates and politicians is a systematic and vicious attempt to silence women activists and political figures.

27. The recent abduction of MP Seham Sergewa is another example. Her fate is still unknown. The criminalization of the work of WHRD and women civil society organizations has led to severe restrictions on freedom of movement, assembly, and speech. Numerous women's organizations have stopped their work due to such harassment and violence.

⁷<https://www.mic.com/articles/83019/after-decades-with-almost-no-guns-almost-every-libyan-household-has-one>

⁸Recommendation 137.116

Recommendations on Women Human Rights Defenders:

28. Stop attacks on human rights' defenders and make sure that perpetrators are held accountable for crimes committed by launching an investigation on all cases, in accordance with international standards.
29. Take judicial and administrative measures to tackle impunity of all armed groups.
30. Ensure access to justice for victims and their families by ratifying and implementing laws that protect human rights defenders.
31. Ensure the protection of human rights' defenders by developing appropriate protection policies, programmes and mechanisms to ensure the safety and security of human rights' defenders. This should be done in consultation with civil society organizations and with the technical advice from relevant international agencies.

SEXUAL GENDER BASED VIOLENCE

32. In the second UPR cycle, the Government of Libya supported 21 recommendations related to discrimination against women, including three recommendations specifically mentioning sexual gender-based violence (S)GBV. The coalition welcomes the acceptance of the recommendations; however, there have been few changes in legislation and practice since 2015 to combat Sexual Gender-Based Violence.
33. In December 2016, a video has been posted on social media by an armed group in Tripoli, showing a woman being raped multiple times by militia members. Notwithstanding that the Government of Libya has issued a condemnation letter, no investigations have been undertaken and no perpetrators have been brought to justice. Impunity is widespread, especially when it comes to (S)GBV crimes.
34. In 2018, we collected hundreds of stories from Libyans across the country about their experiences of sexual and gender-based violence, which disproportionately affects women and girls. The majority of stories shared by both men and women reveal a common pattern of physical violence, rape, sexual harassment, verbal abuse, abductions, and domestic violence.
35. Due to the widespread presence and use of weapons in every household, there are many cases of domestic violence which escalate to a deadly outcome. Farah Idris Mustfa was found dead behind a clinic in southeast Benghazi. According to the forensic medical report, the 19 year old woman was drowned to death, with stabs and bruises on body and face. The husband used his weapon to threaten the murdered victim.
36. (S)GBV remains largely underreported due to the stigma associated with it and lack of confidentiality when reporting attacks. The notion of "family honour" withholds women from speaking up about sexual violence and increases their fear of retaliation and rejection by their families and their communities.
37. The coalition welcomes the establishment of the Office of Human Rights in the Ministry of Interior to deal with alleged human rights violations. However, in many cases, survivors highlighted the lack of knowledge and training of police officers in respect to (S)GBV in general and how to deal with survivors in particular. One documented testimony from a

respondent described the sexual assault she experienced from a police officer while reporting her case of sexual violence.

38. In addition, a number of female and male prisoners are subjected to sexual torture, ill-treatment and rape by State and non-State actors. This has exposed the victims to humiliation, psychological trauma, and has often times resulted in pregnancy with limited services barely available to them.
39. In 2013, a policy proposal drafted by the former Justice Minister Salah al-Marghani includes reparations for survivors of conflict-related sexual violence as well as victims of sexual violence during Gaddafi's regime. The acceptance of the policy remains in question and the Government has yet to establish specific complaint mechanisms and provide reparations to the victims.
40. The Truth-Finding and Reconciliation Commission, established by the National Transitional Council in pursuant to Justice Law 2013, provided compensations to a limited number of survivors of (S)GBV. Due to missing gender-segregated data and lack of transparency, it is very difficult to assess the effectiveness of the compensations.
41. In a consultation conducted by a member of our coalition, respondents that experienced or are still experiencing sexual violence noted that it is not clear which authorities or sectors they need to report to. Survivors/victims often times find it difficult to find information on the existing services and resources available for them. This is particularly the case in indigenous and rural communities.

Recommendations on Sexual Gender Based Violence :

42. We strongly urge the Government of Libya to develop a 5-year multi-sectoral national action plan and strategy for (S)GBV prevention and responses in line with obligations under national and international law. This should be done through the Ministry of Women, the Ministry of Social Affairs, the Ministry of Health, and the Ministry of Education in close collaboration with a diverse group of Libyan civil society organizations.
43. We urge the Government to ensure a survivor-centred approach in all interventions related to (S)GBV.
44. We strongly urge the Government of Libya to ensure support to the services that are in place for (S)GBV survivors, specifically Psycho-Social Support Team (PSST) in Tripoli, Zuwara and Sabha. Such services provide psychological support and counselling. The support should include, but should not be limited to, providing trainings to the staff members of the Psycho-Social Support Teams, and providing financial support for national awareness on the Hotlines for survivors/victims.
45. We encourage the Government of Libya to establish training frameworks on (S)GBV to social workers and health providers of the Ministry of Social Affairs and the Ministry of Health across Libya. This is to decrease the prevalence of harmful norms that enable (S)GBV and to increase confidentiality and professionalism amongst service providers.
46. The Government is urged to establish educational and awareness raising programs to ensure that information on available services and support to survivors / victims of (S)GBV is adequately disseminated. This must be conducted in coordination with women-led civil society organizations and other relevant government bodies.

47. We call for the end of impunity around (S)GBV cases and for the handling of those cases according to international human rights standards. In reference to recommendation 137.74, 137.79 and 137.89 from the 2nd cycle review (UPR 2015).
48. We urge the Ministry of Interior to ensure meaningful participation of female police officers during the review, investigation, implementation and follow up of all alleged complaints, particularly (S)GBV cases, at the newly established Office of Human Rights.
49. In conjunction with ratified treaty bodies and national laws, we urge the Government of Libya to immediately provide redress and fair reparations to the standing cases of survivors/victims of (S)GBV.
50. Enforce measures to criminalize gender-based violence in the Libyan Penal Code.

REPRODUCTIVE HEALTH AND RIGHTS

51. The ongoing political and security situation, has contributed to the further weakening of the health sector in Libya, especially in rural areas in the East, South and the West of the country (Nafusa-Mountains). Many health facilities became inaccessible due to the lack of functioning infrastructure and security constraint that restricted the mobility. Hospitals are also targeted by militias cause of their strategic locations. Because of this women and girls have little or no access to proper medical care.
52. Stigma and lack of awareness have led to many misconceptions and negative attitudes towards HPV vaccine, cancer and contraception, negatively affecting women's health and wellbeing.

Recommendations on Reproductive Health and Rights:

53. We encourage the Libyan government to assess and improve reproductive health care services, goods, and facilities specifically in rural areas, displaced camps, and detention centres.
54. We encourage the Ministry of Justice and the Ministry of Health to work together to repeal and modify the existing laws and legislations that are limiting access to Sexual and Reproductive Health Services.
55. The Libyan government needs to provide access to education regarding sexual and reproductive health for both men and women.

INDIGENOUS PEOPLES

56. After playing a fundamental role in the overthrow of Qaddafi's regime in November 2011, indigenous peoples remain largely excluded from the political peace process in Libya. The Government of Libya has not yet recognized the Toubou, Tuareg and the Amazigh as indigenous peoples of Libya, a right that has been granted by the international laws and obligations accepted by Libya.
57. In 2013, the General National Congress (GNC) rejected a draft bill that states the recognition of the Tamazight language as an official language to the State alongside Arabic. The struggle to affirm linguistic rights remain a recurrent concern for indigenous people.

58. The coalition welcomes the support of the Government in including the Tamazight language at primary schools and opening the Amazigh Studies in the University of Zuwara in close coordination with the Amazigh authorities. However, there are many financial and technical constraints faced by indigenous peoples to maintain the teaching of their language at schools. As explained by our informant, the textbooks in indigenous languages were not provided/printed for the school start and many of the teachers commented that they had not received their salaries.
59. Indigenous peoples have boycotted the constitutional process in 2014. The Toubou, Tuareg, and Amazigh strongly disagreed with the decisions procedure of the Constitutional Drafting Assembly (CDA), demanding that CDA decisions be agreed upon by consensus instead of two-thirds plus one of the majority to ensure their meaningful participation.⁹ As a result, the indigenous peoples did not participate in the development of the current draft of the Constitution.
60. The historical plight of indigenous communities in Libya, who have faced physical violence, rape, sexual harassment, verbal abuse, abduction, and domestic violence has yet to be addressed in a meaningful way. An important number of indigenous people do not speak the official language of the State. Therefore, and as a result of a lack of adequate translation mechanisms of Tamazight and Tebu languages, survivors/victims of violence are unable to report and bring up their cases to the authorities.

Recommendations on Indigenous peoples:

61. We urge the government of Libya to stop the designation of indigenous peoples as “components” and instead to recognize the Amazigh, Tuareg and Toubou as indigenous peoples and fully grant them their rights.
62. We urge the Government to ensure the meaningful participation of indigenous peoples in the political process by granting a quota of 20% for indigenous peoples’ participation in the upcoming national conference.
63. We encourage the Government of Libya to amend the governance procedure of the Constitutional Drafting Assembly (CDA) and to adopt measures based on consensus to ensure the meaningful participation of indigenous peoples in the constitutional process.
64. We urge the Government of Libya make the Tamazight/Tamahaq language as well as the Tebou language official languages alongside the Arabic language. We also urge the Government of Libya to provide adequate translation services to (S)GBV survivors/victims from indigenous communities.

INTERNALLY DISPLACED PEOPLES (IDPS)

65. We welcome the reactivation of the National Committee of International Humanitarian Law in the Ministry of Justice. However, the humanitarian and emergency response in Libya remain very weak.

⁹https://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/libya-06112014-final-rpt.pdf

66. Approximately 104,875 people (51% women¹⁰) were forced to escape their homes amidst the recent clashes in Tripoli (as in August 2019). Approximately 26,465 individuals¹¹ have been displaced in Murzuq (as in September 2019). The majority of internally displaced families and individuals reside in rented accommodations, and the rest are scattered in the different nearby shelters. Most of these IDPs are from the Toubou indigenous people, who have been evacuated from their historical lands.
67. Many IDPs inhabit unsafe camps and school buildings that are often caught in crossfire.
68. The internally displaced population also suffers from lack of access to services depending on their geographical locations within the country.
69. Many displaced women married to non-Libya men have been denied humanitarian assistance on the basis of lacking possession of legal documents and the National Electronic Identification Number, a criteria set out by the Government.

Recommendations on Internally Displaced Peoples (IDPs):

70. Take all necessary measures to protect camps, where IDPs have seek refuge, from being targeted by armed militia and other actors. and from being caught in the crossfire.
71. The Libyan government should adopt a budget to carry out an extensive assessment of IDPs' needs throughout the country.
72. Ensure the integration of IDPs in their host communities by supporting development programmes.
73. We urge the Government to immediately provide the National Electronic Identification Number (and other legal documents) to Libyan women married to non-Libyan men in compliance with national and international laws.

MIGRANTS

74. 48% of the 1 million international migrants in Libya are women, most of them come from West Africa or the Horn of Arica. Migrants lack legal protection under the law and there are no mechanisms in place to protect them from (S)GBV, human trafficking (while in custody of those supported by the government) and the ongoing discrimination because of their skin colour.
75. Migrants are for the most part denied basic human rights such as safe shelter, food and medicine. Migrant and refugee women as well as young girls and boys are especially vulnerable to violence. Many have been abducted, trafficked, and subjected to sexual violence and other forms of abuse. Victims reported having experienced sexual violence while being trafficked in Libya and in detention, often violated by different perpetrators, including by armed groups as well as state actors¹².

¹⁰ <https://displacement.iom.int/reports/tripoli-flash-update-20-27-june-2019?close=true>

¹¹ <https://displacement.iom.int/reports/murzuq-flash-update-21-september-2019>

¹² <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/04/report-s-2019-280/Annual-report-2018.pdf>

Recommendations on Migrants:

76. Immediate closure of all Libyan detention facilities as already called for by Mr. Guterres.
77. Immediate evacuation of migrants from Libyan territory.
78. Scaling up of bilateral deals with countries for relocation and resettlement of refugees in Libya, such as the Libya-Rwanda agreement.
79. Prosecution of those responsible for slave trade, abuse and other Human Rights violations.

SUGGESTIONS FOR FURTHER QUESTIONS IN ADVANCE:

80. How does the Libyan Government plan to include women in the next round of peace talks and to ensure that a gender perspective is meaningfully included?
81. What actions have been taken by Libyan Government to combat sexual gender-based violence?
82. How will the Libyan Government ensure that the basic needs of IDPs, are met, inter alia regarding safety and preventing gender-based violence?
83. How does the Libyan Government will ensure the participation of indigenous peoples in the constitutional process?