



# **Abuse Behind Bars: Arbitrary and unlawful detention in Libya**

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**Office of the United Nations High Commissioner for Human Rights  
in cooperation with the United Nations Support Mission in Libya**

## Contents

Glossary of terms .....	2
<b>Executive Summary</b> .....	3
1. Introduction .....	6
2. Methodology .....	6
3. Background .....	8
3.1 Arbitrary detention in Libya.....	8
3.1.1 From 2011 - 2014.....	8
3.1.2 Since 2014.....	9
3.2 Related political and security developments .....	9
3.3 Detention facilities.....	11
4. Applicable legal framework .....	12
4.1 International law .....	12
4.2 National law .....	15
5. An abusive detention regime .....	16
5.1. Who is at risk of unlawful detention? .....	16
5.2 Arbitrary arrest and detention.....	20
5.2.1 Unlawful Arrest.....	20
5.2.2 Appearance before judicial authorities and other legal safeguards .....	21
5.2.3 Failure to bring defendants to court.....	22
5.2.4 “2011-conflict related” detainees .....	23
6. Televised confessions and the presumption of innocence.....	26
7. Incommunicado detention and enforced disappearance.....	27
8. Torture.....	28
8.1 Detention conditions.....	30
9. Deaths in custody.....	32
9.1 Western Libya .....	32
9.2 Eastern Libya.....	33
10. Detained women and girls.....	35
11. Conclusion and recommendations .....	37

## Glossary of terms

BDB	Benghazi Defense Brigade
BRSC	Benghazi Revolutionaries Shura Council
CS/AS	Central Security/Abu Salim armed group
DMSC	Derna Mujahedeen Shura Council
GIA	General Intelligence Agency
GIS	General Intelligence Service
GNA	Government of National Accord
GNC	General National Congress
HOR	House of Representatives
LNA	Libyan National Army
LPA	Libyan Political Agreement
PC	Presidency Council
SDF	Special Deterrence Force
TRB	Tripoli Revolutionaries Brigade
UNSMIL HRD	United Nations Support Mission in Libya, Human Rights, Transitional Justice and Rule of Law Division

## Executive Summary

Armed groups across Libya, including those affiliated with the State, hold thousands of men, women and children in prolonged arbitrary and unlawful detention, and subject them to torture and other human rights violations and abuses. Victims have little or no recourse to judicial remedy or reparations, while members of armed groups enjoy total impunity.

This report is published by the Office of the United Nations High Commissioner for Human Rights (OHCHR), in cooperation with the United Nations Support Mission in Libya (UNSMIL). It summarizes the main human rights concerns in the context of detention in Libya since the signing of the Libyan Political Agreement (LPA) on 17 December 2015. Findings in this report are based on first-hand accounts and other information gathered by OHCHR/UNSMIL from a broad range of sources inside Libya, visits to prisons and other detention facilities, review of legal and medical documents, and analysis of photographic and audiovisual evidence.

The Libyan Government has failed to effectively tackle the patterns of abuse in detention despite continued advocacy on this issue by UNSMIL, since its establishment at the end of 2011, and OHCHR. Efforts to implement LPA provisions to release or bring to court those detained without legal basis and to transfer all those lawfully detained to official prisons were met with resistance from armed groups, and further hindered by political and security challenges. Rather than reining in armed groups and integrating their members under State command and control structures, successive Libyan governments have increasingly allowed them to assume law enforcement functions, including arrests and detention; paid them salaries; and provided them with equipment and uniforms. As a result, armed groups' power has grown unchecked and they have remained free of effective government oversight. To the best of OHCHR/UNSMIL's knowledge, at the time of writing, no commanders or members of armed groups have been held accountable for human rights violations or abuses committed since the 2011 armed conflict, further emboldening them and entrenching their sense of impunity.

Since renewed armed hostilities broke out in 2014, armed groups on all sides have rounded-up suspected opponents, critics, activists, medical professionals, journalists and politicians. Hostage taking for the purpose of prisoner exchanges or for ransom are also common. Men, women and children across Libya are arbitrarily detained or unlawfully deprived of their liberty based on their tribal or family links and perceived political affiliations. Those detained arbitrarily include individuals held in relation to the 2011 armed conflict, many without charge, trial or sentence for over six years.

In October 2017, some 6,500 people were estimated to be held in official prisons overseen by the Judicial Police of the Ministry of Justice, while thousands more are held in a multitude of other facilities nominally under the Ministries of Interior or Defence or run directly by armed groups. These facilities are notorious for endemic torture and other human rights violations or abuses. For instance, the detention facility at Mitiga airbase in Tripoli is run by the Special Deterrence Force (SDF) armed group, allied to the internationally recognized Government of National Accord (GNA) and nominally under the Ministry of Interior. It is likely the largest detention facility in western Libya and holds an estimated 2,600 men, women and children, most without access to

judicial authorities. Detainees are subjected to torture, unlawful killing, denial of adequate medical treatment and poor detention conditions. In Kuweifiya prison, the largest detention facility in eastern Libya, at least 1,800 individuals are estimated to be held in three separate sections under the control of the Judicial Police; the Libyan National Army, a military coalition in control of most of eastern Libya not aligned to the internationally recognized government; and an intelligence agency. Those detained in the latter two sections face prolonged arbitrary and incommunicado detention, torture and other ill-treatment, and sub-standard detention conditions.

The Mitiga and Kuweifiya detention facilities, in particular, are prominently featured in this report, given the availability of credible information, the number of individual complaints received and corroborated, and the scale and gravity of violations documented in relation to the two facilities. The report also highlights a range of human rights concerns in seven other prisons, namely: Ain Zara (B), al-Hadba, al-Jawiya, Jdeida, Gernada, Tomina, and Surman. The report also includes examples of arbitrary detention or other unlawful deprivation of liberty in 13 facilities run by armed groups including the Abu Salim/Central Security, the Benghazi General Intelligence, the Benghazi Revolutionaries Shura Council, the Criminal Investigation Department in Abu Salim, the Derna Mujahedeen Shura Council, the Department of Combatting Organized Crime-Central Branch Misrata, the Department of Combatting Terrorism in Benghazi, Presidential Security (al-amn al-ri'asi) in Tripoli, the Support Force 17 in Tripoli, the Second Support Brigade in Tripoli, the Security Committee of Misrata, the Tripoli Revolutionaries Brigade and the 116 Battalion/Deterrence Force in Sabha. Several additional cases of unlawful deprivation of liberty by armed groups in al-Zawiya, Warshafana and Tripoli are also outlined in this report.

Individuals detained by armed groups, including those under the nominal oversight of the State, are not informed of their rights or granted them. Most have never appeared in front of courts. Instead, members of armed groups, and in rarer cases prosecutors, carry out the interrogations without the presence of defence lawyers. In some cases, forced “confessions” are extracted and then broadcast on Libyan TV channels, undermining the presumption of innocence and exposing relatives to revenge attacks.

Detainees are frequently held in detention conditions that fall far short of international minimum standards for the treatment of prisoners. In some cases, conditions are so inhuman that they amount to torture and other ill-treatment. Detainees are crammed into small cells lacking light and ventilation, and without adequate washing and sanitation facilities. Some are placed in prolonged solitary confinement in cells that are so small there is no room to stretch out their legs. Such conditions aggravate pre-existing medical conditions and lead to the spread of infections and gastro-intestinal ailments. In some cases, poor detention conditions, coupled with medical neglect, lead to deaths, including from otherwise treatable conditions. In contravention of international standards, children are held together with adults in similar squalid conditions.

Armed groups routinely deny detainees any contact with the outside world in the initial period of their detention. In some cases, detainees are held incommunicado for up to two years in conditions amounting to enforced disappearance. When detained incommunicado, individuals are most vulnerable to torture and other egregious human rights violations.

Torture and ill-treatment are systematic in detention facilities across Libya, particularly in the initial period of detention and during interrogations. Most commonly used methods of torture include beatings with various objects such as metal bars and water pipes, flogging on the soles of the feet, suspension in stress position, burning with cigarettes or hot rods, and the administration of electric shocks. Some detainees have been beaten to death. For instance, a man in his fifties was found dead four days after being summoned for questioning, in July 2017, by a Tripoli-based armed group nominally affiliated to the Ministry of Interior. In 2017, 37 bodies bearing torture marks were brought to Tripoli hospitals alone.

There are serious risks for those forcibly disappeared by armed groups. The bodies of hundreds of individuals taken by armed groups have been uncovered in streets, hospitals, and rubbish dumps, many with bound limbs, marks of torture and gunshot wounds. OHCHR/UNSMIL found that armed groups across the country have summarily executed or otherwise unlawfully killed individuals deprived of their liberty.

While the number of female detainees is less than male, women are unlawfully deprived of their liberty often because of family affiliations or for prisoner exchanges, and are held in facilities without female guards, exposing them to the risk of sexual abuse. OHCHR/UNSMIL documented cases of torture and ill-treatment of women, including beatings, flogging, hair pulling, insults and threats of a sexual nature at the Mitiga detention facility under the SDF, the Central Security/Abu Salim and other places of detention nominally under the control of the Ministry of Interior. In some facilities, women detainees are forced to strip and are subjected to invasive cavity searches by male guards or under the gaze of male officials.

As Libya is party to several core United Nations human rights treaties, the Libyan State is bound to respect, protect and fulfil the human rights of all individuals in any territory under its jurisdiction. All parties to the conflict are also bound by international humanitarian law. Non-State actors who exercise government-like functions and control over territory are also obliged to respect human rights norms.

The widespread prolonged arbitrary and unlawful detention and endemic human rights abuses in custody in Libya require urgent action by the Libyan authorities, with support from the international community. Such action needs to provide redress to victims and their families, and prevent the repetition of such crimes. The authorities must translate their commitment to addressing the situation of prolonged arbitrary and unlawful detention through concrete measures, committing relevant institutions to specific deadlines and laying out sanctions for failure to meet them. As a first step, the State and non-State actors that effectively control territory and exercise government-like functions must release those detained arbitrarily or otherwise unlawfully deprived of their liberty. All those lawfully detained must be transferred to official prisons under effective and exclusive State control.

OHCHR/UNSMIL calls upon the GNA to formulate a strategy and plan of action to end arbitrary and unlawful detention in consultation with relevant national stakeholders and members of the

international community. Authorities must also publicly and unequivocally condemn torture, ill-treatment and summary executions of those detained, and ensure accountability for such crimes. Failure to act will not only inflict additional suffering on thousands of detainees and their families and lead to further loss of life. It will also be detrimental to any stabilization, peacebuilding and reconciliation efforts.

## 1. Introduction

This report is published by the Office of the United Nations High Commissioner for Human Rights (OHCHR)<sup>1</sup>, in cooperation with the United Nations Support Mission in Libya (UNSMIL).<sup>2</sup> It summarizes the main human rights concerns in the context of detention in Libya from 17 December 2015, when the LPA was signed,<sup>3</sup> until 1 January 2018. While the LPA includes provisions aimed at addressing the situation of thousands of individuals detained arbitrarily for prolonged periods of time, their implementation has stalled.

This report assesses the situation of detainees in Libya in the light of international human rights law and international humanitarian law as well as national legislation.

## 2. Methodology

Findings in this report are primarily based on monitoring conducted by UNSMIL's Human Rights, Transitional Justice, and Rule of Law Division (HRD). Since 2011, HRD has carried-out regular visits to prisons and other detention facilities across Libya. Since December 2015, HRD has visited the al-Hadba Prison, the al-Jdeida Women's Prison, the Ain Zara A and B (previously known as al-Baraka) prisons, the Special Deterrence Force (SDF)<sup>4</sup> detention facility in Mitiga airbase and the Central Security/Abu Salim (CS/AS)<sup>5</sup> detention facility in Tripoli; the al-Jawiya and Tomina prisons in Misrata; the Tobruk prison; and the Deterrence Force/Brigade 116 detention facility in Sabha. HRD staff met with prison administrators and toured facilities and, when confidentiality conditions were met, interviewed detainees in private.

Operational and security constraints, and in some instances denial of access by detaining authorities, prevented United Nations staff from conducting visits to all detention facilities across

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<sup>1</sup> The Director of the Human Rights, Transitional Justice and Rule of Law Division of United Nations Support Mission in Libya is the representative of the United Nations High Commissioner for Human Rights in Libya.

<sup>2</sup> UNSMIL's mandate, most recently extended by the United Nations Security Council on 14 September 2017 (Resolution 2376 of 2017), includes the undertaking of "human rights monitoring and reporting", as well as "support to key institutions".

<sup>3</sup> The Libyan Political Agreement was adopted in December 2015 following multiple rounds of talks between Libyan stakeholders facilitated by UNSMIL, with the aim of resolving Libya's crisis politically. The LPA led to the formation of the Presidency Council, which proceeded with the establishment of a Government of National Accord (GNA), the only internationally-recognized government in Libya since December 2015.

<sup>4</sup> For more information on the SDF, see BOX 1 on Mitiga Detention Facility on page 18.

<sup>5</sup> In 2016, the Abu Salim armed group, headed by Commander Abdel Ghani al-Kikli, was renamed the Central Security/Abu Salim (CS/AS), and is nominally under the Ministry of Interior. It has been in effective control of the neighbourhood of Abu Salim since the end of the 2011 armed conflict. The CS/AS continues to be led by Abdel Ghani al-Kikli, and is allied to the internationally recognized GNA.

Libya, or from undertaking follow-up visits to specific detention facilities of concern, such as the Mitiga detention facility. Nonetheless, HRD gathered and cross-checked first-hand accounts and other information from a broad range of sources in and outside of Libya, including former detainees, relatives of detainees, human rights defenders and other civil society actors, lawyers, prosecutors and other judicial officials, current and former officials, employees of local government, medical professionals, community leaders, witnesses, and others. Where possible and relevant, HRD reviewed medical and police records, forensic reports, court documents and photographic and audiovisual evidence. Some sources were subjected to, or feared threats, intimidation, and/or reprisals. Consequently, the names and other identifying information of most individual cases do not figure in this report.

HRD has been providing policy advice and technical assistance to the justice sector, including prosecutorial authorities and the Judicial Police, on the treatment of persons deprived of their liberty, judicial screening of detainees,<sup>6</sup> and legal, institutional and prison reform. UNSMIL has repeatedly and directly raised concerns regarding abuses in the context of detention in official communications and meetings with armed groups and prison authorities, as well as the Office of the Prosecutor General, the President of the Presidency Council, and the Ministries of Justice and Interior. On 10 October 2017, during meetings held in Tripoli with government officials including the Prime Minister and the Minister of Justice, the United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, raised concerns regarding prolonged arbitrary detention and torture.<sup>7</sup>

This report does not provide a comprehensive account of the human rights situation in all detention facilities in Libya,<sup>8</sup> but presents findings of concern with emblematic examples. Specific facilities are featured in this report, in particular the Mitiga detention facility and the Kuweifiya prison complex, because of the availability of credible information, the number of individual complaints received and corroborated, and the scale and gravity of violations documented in relation to these facilities.

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<sup>6</sup> The review of a detainee's legal and factual basis of detention by a judicial body to determine whether a detainee should be released or brought to trial.

<sup>7</sup> OHCHR, *Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein at the end of visit to Libya*, 12 October 2017 available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22228>

<sup>8</sup> The detention of migrants, asylum-seekers and refugees on immigration grounds in facilities controlled by the Department of Combatting Illegal Migration under the Ministry of Interior is beyond the scope of this report, which focuses on detentions in the criminal justice system. In December 2016, UNSMIL and OHCHR published a joint report addressing human rights violations and abuses against migrants, including in the context of detention: "*Detained and Dehumanized*": *Report on Human Rights Abuses Against Migrants in Libya*", available at: [https://unsmil.unmissions.org/sites/default/files/migrants\\_report-en.pdf](https://unsmil.unmissions.org/sites/default/files/migrants_report-en.pdf). On 14 November 2017, the UN High Commissioner for Human Rights issued a statement on the detention of migrants in Libya under the title: "UN human rights chief: Suffering of migrants in Libya outrage to conscience of humanity", available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22393&LangID=E>.



### 3. Background

#### 3.1 Arbitrary detention in Libya

##### 3.1.1 From 2011 - 2014

Prolonged arbitrary or otherwise unlawful detention and systematic human rights violations in custodial contexts have become hallmarks of post-2011 Libya, amid the failure of successive governments to effectively tackle patterns of abuse.

During the 2011 armed conflict, a multitude of armed groups sprang up across Libya in opposition to the 40-year-rule of Mu'ammār Qadhafī. As they took territory, they increasingly assumed law enforcement and custodial functions. During and after the 2011 armed conflict, these armed groups seized thousands of pro-regime soldiers and other fighters,<sup>9</sup> government employees, persons from communities or areas deemed to have supported Qadhafī and other suspected loyalists or sympathizers of his regime, frequently with no or little evidence of individual criminal responsibility. Armed groups held detainees in regular prisons, as well as makeshift facilities, including military barracks, schools, homes, farms and abandoned government buildings. Detainees were held outside the domestic legal framework and were vulnerable to torture, including beatings to death, and summary executions.

Since 2012, successive governments attempted to rein in armed groups, bring detention facilities under State oversight and reactivate the criminal justice system. The task proved challenging given the weakness of State institutions and the resistance of armed groups. The process of negotiating the integration of armed groups into State institutions, including the Ministries of Justice, Defence and Interior, took place without vetting aimed at ensuring the removal of those with abusive records. Entire armed groups were renamed and given official status within State institutions. As a result, newly integrated armed groups have retained their own command and control structures and have operated largely independently of State oversight or accountability. In addition to recognition and legitimacy, the State has provided members of armed groups with salaries, weapons and other equipment, further entrenching their power and impunity for human rights violations.<sup>10</sup> Members of law enforcement institutions who returned to work following the end of the 2011-armed conflict were also not screened in a systematic way to ensure removal of those with abusive records.

Since 2012, multiple laws were passed seeking to tackle the situation of 2011 “conflict-related” detainees held without charge or trial, setting deadlines for judicial authorities to screen detainees to decide whether to charge them and bring them to trial or release them.<sup>11</sup> A plethora of committees composed of military and civilian prosecutors, as well as law enforcement officials,

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<sup>9</sup> Civilians who joined pro-Qadhafī military formations were known as “volunteers” (mutatawi'in).

<sup>10</sup> Between 2012 and 2014, State-affiliated armed groups attacked or encircled the Ministries of Justice, Interior and Foreign Affairs, seemingly to put pressure on the authorities to take a particular course of action.

<sup>11</sup> See Section 4 on the Applicable Legal Framework for further details.

were formed across the country and tasked with the review of “conflict-related” cases. Despite these efforts, deadlines were routinely flouted and little progress was made in allowing detainees to challenge the legality of their detention.

In late 2013, the Ministry of Justice estimated that some 8,000 “conflict-related” detainees were held in Libya.

### 3.1.2. Since 2014

The renewal of armed hostilities across Libya in 2014 further exacerbated an already dire situation and increased the number of “conflict-related” and political detainees. The period witnessed widespread unlawful deprivation of liberty including tit-for-tat hostage taking based on family or tribal links as well as actual or perceived political affiliations. With the growth and territorial gains of armed groups designated by the Security Council as terrorist entities,<sup>12</sup> other armed groups, some of which had been integrated into State structures, carried out mass arrests and detention of individuals for “terrorism”, frequently with little factual evidence of their involvement in violence and other crimes. Abuses in detention continued to occur with impunity.

The LPA, signed in December 2015, recognized the urgent need to address the situation of thousands of “conflict-related” detainees. It required armed groups to release persons held in their custody without legal basis or hand them over to the judicial authorities within 30 days of the appointed government assuming its functions. It also required judicial authorities to bring detainees before courts or release them within another 60 days, and to provide effective protection and safeguards against abuse.<sup>13</sup> The LPA further entrusted the GNA to ensure that the authority to detain or arrest persons would be strictly limited to statutory law enforcement bodies.<sup>14</sup> However, little progress has been made in the implementation of these provisions, and, at the time of writing this report, thousands of people remain arbitrarily detained without protection and redress.

## 3.2 Related political and security developments

The Presidency Council established by the LPA began operating from Tripoli in April 2016, but continued to struggle to assert its control over the capital and the rest of the country. By May 2017, it consolidated its control over Tripoli, with support from powerful Tripoli-based armed groups, including the Tripoli Revolutionaries Brigade (TRB), the CS/AS and the SDF.<sup>15</sup> While the GNA established by the Presidency Council had yet to be endorsed by the House of Representatives as

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<sup>12</sup> For example, groups who pledged allegiance to the so-called Islamic State (IS) and Ansar al-Shari’a. Security Council Committee pursuant to resolutions 1267 (1999) 1989 (2011) and 2253 (2015) concerning ISIL (Da’esh) Al-Qaida and associated individuals groups undertakings and entities.

<sup>13</sup> Article 26 of the LPA.

<sup>14</sup> Article 44 of the LPA.

<sup>15</sup> The “Government of National Salvation” led by Khalifa al-Gweil and allied armed groups were in control of key Tripoli institutions until the arrival of the Presidency Council in April 2016. It sought to undermine the PC and launched a number of armed attacks targeting State institutions. After a series of military losses, it was weakened and ousted from Tripoli and its southern suburbs by May 2017.

of 1 January 2018,<sup>16</sup> as foreseen by the LPA, it is the internationally recognized government of Libya.

As of 1 January 2018, most of eastern Libya was under the control of the Libyan National Army (LNA),<sup>17</sup> a military coalition composed of career soldiers and voluntary recruits, and supported by several armed groups established along geographical, tribal and ideological lines.<sup>18</sup> In March 2015, the House of Representatives appointed then retired General Khalifa Haftar to the newly created position of Commander General of the LNA. General Haftar had launched Operation Dignity in early 2014 with the self-declared aim of rooting out “terrorism”. The LNA is supported by the “Interim Government” under “Prime Minister” Abdallah al-Thinni, based in the eastern city of al-Baida.<sup>19</sup>

Since the renewed outbreak of armed hostilities in 2014, the deteriorating security environment and sporadic armed confrontations have led to some court closures; while judges, prosecutors and other judicial staff have become the target of violent attacks and threats. On 18 September 2017, in an incident indicative of challenges faced by the justice sector, an armed group in the western city of Gharyan physically assaulted a prosecutor at the Gharyan Court Complex, took official court documents and forcibly removed defendants from the court.

Decisions by judicial authorities, such as arrest warrants, summons to court or release orders, are often not enforced due to the resistance of armed groups. While a number of courts reopened in 2016 and 2017, particularly in eastern Libya, the judiciary appears to mainly process civil, personal status and regular criminal law cases,<sup>20</sup> while cases bearing political or security-related sensitivities, including “conflict related” ones, are usually stalled.

In a meeting with UNSMIL in June 2017, Mohamed Abdelwahid Abdelhamid, the GNA-appointed Minister of Justice, who assumed his functions in late March 2017, acknowledged the importance of addressing the issue of unlawful detention and confirmed his commitment to address human rights concerns in the context of detention in compliance with international law. The Ministry’s priorities for 2017, shared with UNSMIL on 23 August 2017, included transferring all

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<sup>16</sup> Libya’s last elected parliament, which assumed its functions in August 2014. It is based in the eastern city of Tobruk. The House of Representatives endorsed the LPA on 25 January 2015, with the exception of Article 8 of its additional provisions.

<sup>17</sup> With the exception of the city of Derna, which is under the control of a number of armed groups under the umbrella of the Derna Mujahedeen Shura Council (DMSC) and fighters from various Islamist-leaning armed groups, including the Abu Salim armed group, who have ousted the so-called IS from Derna in 2015.

<sup>18</sup> There are also allegations that the LNA has used mercenaries from neighbouring countries. While this has not been fully documented, the Panel of Experts on Libya have documented some links. See *Final Report of the Panel of Experts on Libya pursuant to resolution 1973 (2011)*, 1 June 2017, S/2017/466 (paras. 83-84).

<sup>19</sup> After some six weeks of fighting, a coalition of armed groups under the banner of “Libya Dawn” took control of Tripoli. The “Interim Government” of the incumbent Prime Minister Abdallah al-Thinni relocated to al-Baida in eastern Libya, where it remains to date. The House of Representatives subsequently swore in this government. The “Interim Government” was recognized internationally until the establishment of the GNA in December 2015. This political polarization also affected institutions such as the Judicial Police, which in eastern Libya reports to the Minister of Justice of the “Interim Government”.

<sup>20</sup> At the same time, there is often a huge backlog of criminal cases that can affect how promptly they are processed.

facilities under the effective oversight of the Judicial Police and judiciary, ending torture and other custodial abuses, and holding perpetrators accountable.

### 3.3 Detention facilities

No accurate figures are available on the number of detainees and functioning detention facilities in Libya. In October 2017, the Judicial Police estimated that around 6,500 people were held in 26 prisons under their full or partial control. Statistics are neither available for facilities nominally under the Ministries of Interior and Defence, nor for those run directly by armed groups.

A variety of detention facilities are operational, with different levels of State control. They can be categorized into the following broad types:

1. **Facilities nominally under the control of national institutions, but partially or fully under the control of armed groups**, who ran these facilities before their nominal integration into relevant ministries. These include:

1.1 Prisons under the Judicial Police of the Ministry of Justice, used to hold different categories of detainees, including those accused or convicted of ordinary crimes, as well as “conflict-related” detainees and individuals held on security or political grounds;

1.2 Facilities under the Ministry of Interior, such as the SDF’s detention facility in Mitiga and the CS/AS detention facility in Abu Salim, which, under Libyan law, are only authorized to hold detainees for short periods of time,<sup>21</sup> but in practice hold them for prolonged periods;

1.3 Prisons under the Ministry of Defence, such as the Sikit prison in Misrata, used to detain military personnel as well as civilians deprived of their liberty in relation to the conflict or national security;<sup>22</sup>

1.4 Facilities run by intelligence agencies, affiliated to State institutions, such as the General Intelligence Service (GIS) under the oversight of the Presidency Council.

2. **Unacknowledged detention facilities controlled directly by armed groups with no formal connection to State institutions**, although in some instances, they seem to operate with the knowledge, if not acquiescence of State institutions, and periodically transfer detainees to official facilities. These include makeshift facilities, such as barracks, homes, farms, and abandoned buildings.

Libya’s political crisis and institutional split has further complicated the status of detention facilities.<sup>23</sup> In eastern Libya, part of the corrections system remains tenuously linked to the national

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<sup>21</sup> See Legal Framework for further details.

<sup>22</sup> There is no explicit prohibition in Libyan law for the detention of civilians in military prisons.

<sup>23</sup> See Background for further information.

criminal justice system, while a plethora of new detention facilities were established by armed groups, some nominally under the authority of the unrecognized “Interim Government” and affiliated institutions. In eastern Libya’s two largest prisons, those held in relation to ordinary crimes are held by the Judicial Police, and appear in front of courts. On the other hand, individuals held in relation to the conflict or on security grounds are held in separate wings of the same prisons controlled by armed groups, at times with the knowledge and involvement of the Military Police and military prosecutors.<sup>24</sup> Armed groups allied to the LNA guard both prisons.

#### 4. Applicable legal framework

##### 4.1 International law

International human rights law prohibits violations to the right to life, arbitrary detention, torture and enforced disappearance. Libya is party to seven core United Nations human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. As a party to these conventions, Libya is bound to respect, protect and fulfil the human rights of all persons in any territory under its jurisdiction.

Article nine of the ICCPR sets out the prohibition of arbitrary detention. In its General Comment 35, the United Nations Human Rights Committee outlines as egregious examples of arbitrary detention “detaining family members of an alleged criminal who are not themselves accused of any wrongdoing, the holding of hostages and arrests for the purpose of extorting bribes or other similar criminal purposes”. The Committee specified that detention is also considered arbitrary when individuals are detained as punishment for the legitimate exercise of rights enshrined in the Covenant, including freedom of opinion and expression (article 19 ICCPR).<sup>25</sup> Deprivation of liberty after a manifestly unfair trial<sup>26</sup> or without a legal basis is also considered arbitrary.<sup>27</sup> The rights to be promptly<sup>28</sup> brought in front of a judge or another judicial authority and to challenge the legal and factual basis of detention are also enshrined under international law.<sup>29</sup> Furthermore, the Committee stipulates that pre-trial detention should be “an exception and as short as possible” and can only be considered legal when based on an individualized determination of its

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<sup>24</sup> For instance, the Gernada Prison in al-Baida, a Correction and Rehabilitation Institution under the Judicial Police during the rule of Mu’ammarr al-Qhadafi, is currently composed of separate wings under the oversight of different bodies: a military section under the control of the LNA’s Chief-of-Staff and Military Governor for Derna-Ben Jawad, Abdel Razek al-Nazouri, a wing run by the GIA, commonly referred to as the Internal Security Agency, and a section used by a Madkhali Salafi armed group. For information on the al-Kuweifiya Prison, see page 20.

<sup>25</sup> Human Rights Committee, General Comment 35, paragraph 17.

<sup>26</sup> Article 14 of the International Covenant on Civil and Political Rights sets out fair trial standards to include the rights to a fair and public hearing, to the presumption of innocence, to be informed of the nature and cause of charges, to be tried without undue delay, and to adequate defence.

<sup>27</sup> Human Rights Committee, General Comment 35, paragraph 11 and 17.

<sup>28</sup> The United Nations Human Rights Committee considers that any delay over 48 hours for adults and 24 hours for juveniles must be justified and exceptional. General Comment 35, paragraph 33.

<sup>29</sup> ICCPR, article 9.4. Human Rights Committee, General Comment 35, paragraph 25.

reasonableness and necessity, and after consideration of alternatives.<sup>30</sup> International law also stipulates the need for a periodic judicial review of pretrial detention.<sup>31</sup>

According to the Human Rights Committee, the State is also responsible for ensuring that entities, such as armed groups, that are empowered or authorized by it to carry out arrests and detention do so in line with international human rights standards.<sup>32</sup>

International humanitarian law, which applies concurrently with international human rights law in situations of armed conflict, also contains due process guarantees and prohibits torture, the taking of hostages, and arbitrary deprivation of liberty, including detention based on a person's individual or group identity.<sup>33</sup>

Libya is party to the four 1949 Geneva Conventions and their Additional Protocols I and II. Article 3 Common to the four Conventions binds all parties to a conflict to respect, as a minimum, that persons taking no direct part in hostilities as well as those placed *hors de combat* shall be treated humanely, without any adverse distinction.<sup>34</sup>

During armed conflict, the procedural safeguards applicable to individuals detained in connection with criminal proceedings remain in place. The permissibility of detention that is not related to criminal proceedings, but effected on grounds of security related to the conflict, is strictly limited. Such detention includes internment initiated or ordered by the executive branch. In the view of the United Nations Working Group on Arbitrary Detention, internment in situations of non-international armed conflict may only be permitted in times of public emergency which threatens the life of the nation and the existence of which is officially proclaimed.<sup>35</sup> Any consequent deviation from procedural safeguards for the protection against arbitrary detention must be prescribed by domestic law and be in conformity with the principles of the non-derogability of the right to challenge the legality of the confinement before an independent and impartial body, initially as well as periodically,<sup>36</sup> and the right to be informed of the reasons for detention. The burden of proof of establishing the legal basis, as well as the reasonableness, necessity and

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<sup>30</sup> Human Rights Committee, General Comment 8, paragraph 3.

<sup>31</sup> Human Rights Committee, General Comments 35, paragraph 38.

<sup>32</sup> Human Rights Committee, General Comment 35, paragraph 8.

<sup>33</sup> Article 6, Protocol Additional to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 8 June 1977.

<sup>34</sup> Common Article 3 prohibits violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture, taking of hostages, outrages upon personal dignity as well as the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, respecting the generally recognized principles of fair trial and due process.

<sup>35</sup> Report of the Working Group on Arbitrary Detention - United Nations Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court (A/HRC/30/37), Principle 16, Paragraph 31, see also paragraph 91, p.21.

<sup>36</sup> Report of the Working Group on Arbitrary Detention - United Nations Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court, Guideline 7, paragraph 61 and 65 (A/HRC/30/37); Human Rights Committee, General comment No. 35, Article 9 (Liberty and security of person), CCPR/C/GC/35, para. 15.

proportionality of the detention lies with the detaining power.<sup>37</sup> Moreover, detainees must be registered and held in officially recognized places of detention.<sup>38</sup>

Such detention or internment must follow a thorough evaluation of whether a high threshold was met for applying “imperative reasons of security” for each person detained.<sup>39</sup> This is understood to mean reasons directly related to the armed conflict.<sup>40</sup> Administrative detention or internment may not be used as an alternative to criminal proceedings “as a general deterrent to the future activity of another person” or for “intelligence gathering.”<sup>41</sup>

Non-State actors who exercise government-like functions and control over a territory are obliged to respect human rights norms when their conduct affects the human rights of individuals under their control.<sup>42</sup> Non-State armed groups that are party to an armed conflict are also bound by international humanitarian law. Furthermore, relevant rules of customary international humanitarian law apply to non-State armed groups that are party to an armed conflict.

On 26 February 2011, the United Nations Security Council referred the situation in Libya since 15 February 2011 to the International Criminal Court (resolution 1970 of 2011). Under the Rome Statute of the International Criminal Court, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, when committed as part of a widespread or systematic attack on a civilian population, may constitute a crime against humanity.<sup>43</sup>

Those participating in conduct amounting to war crimes or crimes against humanity, as well as civilian superiors and commanders of armed groups who order the commission of such crimes or fail to take reasonable and necessary measures to prevent or punish their commission by subordinates under their effective control, or fail to submit the matter to the competent authorities

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<sup>37</sup> Report of the Working Group on Arbitrary Detention - United Nations Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court, Principle 13, paragraph 21 (A/HRC/30/37); Human Rights Committee, General comment No. 35, Article 9 (Liberty and security of person), CCPR/C/GC/35, para. 15.

<sup>38</sup> Human Rights Committee, General Comment 35, paragraphs 58 and 65; ICRC customary IHL rule no.123 available at [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule123](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule123)

<sup>39</sup> Human Rights Committee, General comment No. 35, Article 9 (Liberty and security of person), CCPR/C/GC/35, para. 15; see also Jelena Pejic, “Procedural Principles and Safeguards for Internment/Administrative Detention in Situations of Armed Conflict and other Violence”, International Review of the Red Cross June 2005, available at [https://www.icrc.org/eng/assets/files/other/icrc\\_002\\_0892.pdf](https://www.icrc.org/eng/assets/files/other/icrc_002_0892.pdf)

<sup>40</sup> Expert Meeting on Procedural Safeguards for Security Detention in Non-International Armed Conflict Chatham House & ICRC, London, 22-23 September 2008, p. 4.

<sup>41</sup> International Committee of the Red Cross, Strengthening Legal Protection for Persons deprived of their Liberty in relation to Non-International Armed Conflict Regional Consultations 2012-13 Background Paper, available at <https://www.icrc.org/eng/assets/files/2013/strengthening-legal-protection-detention-consultations-2012-2013-icrc.pdf> and; International Committee of the Red Cross, Internment Basic Rules and Challenges, Opinion Paper, November 2014, page 9, available at <https://www.icrc.org/en/document/internment-armed-conflict-basic-rules-and-challenges>. See also Jelena Pejic, “Procedural Principles and Safeguards for Internment/Administrative Detention in Situations of Armed Conflict and other Violence”, International Review of the Red Cross June 2005.

<sup>42</sup> A/HRC/31/CRP.3 para. 29.

<sup>43</sup> Article 7(e), Rome Statute of the International Criminal Court.

for investigation and prosecution, may be criminally liable, including before the International Criminal Court.<sup>44</sup>

#### 4.2 National law<sup>45</sup>

Libyan law also contains safeguards against arbitrary detention and torture. For instance, the Code of Criminal Procedures requires an arrest warrant to be issued by the competent judicial authority, unless the person is caught in *flagrant délit*.<sup>46</sup> It further stipulates that detainees shall only be held in “prisons designed for that purpose.”<sup>47</sup> Libyan law also criminalizes torture.<sup>48</sup> Law No. 10 of 2013 criminalizes ordering, committing or acquiescing to torture, defined as “any act that inflicts physical or mental suffering for the purpose of extracting confessions, seeking revenge, or because of discrimination or any other motive.”

According to the Code of Criminal Procedures, only law enforcement officials with powers of police officers (as mandated by the law) can carry out arrests, investigate certain types of criminal offences and gather evidence.<sup>49</sup> They include members of the Ministry of Interior and armed forces at borders.

Libyan legislation does not specify the maximum period of pre-trial detention. A suspect can only be held for 48 hours before being brought in front of judicial authorities, unless accused of crimes against the State, in which case the period can be extended up to seven days.<sup>50</sup> However, judges can extend pre-trial detention indefinitely for periods of no more than 45 days at a time “until completion of the investigation”.<sup>51</sup>

Law No. 38 of 2012 Concerning Some Procedures for the Transitional Phase, adopted by the National Transitional Council<sup>52</sup> on 2 May 2012, required the referral of 2011 conflict-related detainees to judicial authorities, within two months of its promulgation, but the law was not effectively implemented.<sup>53</sup> Of concern is article 2, which legitimized actions by armed groups, including arbitrary arrest and unlawful interrogations: “*minutes taken by the thuwar*<sup>54</sup> *with regard to establishing facts, witness testimonies and statements of detained supporters of the former*

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<sup>44</sup> Articles 25 and 28, Rome Statute of the International Criminal Court.

<sup>45</sup> For additional information on relevant Libyan laws, see UNSMIL/OHCHR, *Report on the trial of 37 members of the Qaddafi regime*, 21 February 2017 available at: [http://www.ohchr.org/Documents/Countries/LY/Trial37FormerMembersQadhafiRegime\\_EN.pdf](http://www.ohchr.org/Documents/Countries/LY/Trial37FormerMembersQadhafiRegime_EN.pdf)

<sup>46</sup> Articles 27 and 30 of the Code of Criminal Procedures.

<sup>47</sup> Article 31 of the Code of Criminal Procedures.

<sup>48</sup> Article 435 of the Libyan Penal Code and Law No. 10 of 2013 Criminalizing Torture, Forced Disappearance and Discrimination.

<sup>49</sup> Article 13 of the Code of Criminal Procedures.

<sup>50</sup> Article 112 of the Code of Criminal Procedures and Article 1 of Law No. 3 of 2013.

<sup>51</sup> Article 123 of the Code of Criminal Procedures.

<sup>52</sup> The Transitional National Council had legislative powers until the election of the General National Congress.

<sup>53</sup> Article 1 of Law 38 of 2012.

<sup>54</sup> Thuwar (revolutionaries) was the common term used to describe men who took up arms against the regime of Mu' ammar Qadhafi.



*regime shall be as valid as the gathering of evidence carried out by police officers in accordance with the Code of Criminal Procedures, provided that they are considered trustworthy by the trial judge based on the judge's discretionary power of evaluation.*"<sup>55</sup>

In another attempt to address the situation of conflict-related detainees, the General National Congress (GNC), Libya's parliament at the time, passed Law No. 29 of 2013 on Transitional Justice, which in article 26 provided a new three-month deadline, from December 2013, for the judicial release of detainees or their referral to the public prosecution. However, the process remained largely unimplemented.

Law No. 9 of 2014 issued by the GNC in March 2014 set yet another deadline as follows: "*The Ministers of Justice, Interior, and Defence, or those mandated by them, must each take the necessary measures to end the detention of accused persons associated with the former regime. Within a maximum of 120 days from the date on which this law is issued, such detainees must be referred to the relevant prosecution... or released.*"<sup>56</sup> Again, this law has not been effectively implemented.

## 5. An abusive detention regime

### 5.1. Who is at risk of unlawful detention?

Armed groups across Libya, including those nominally under the authority of State institutions, continue to systematically engage in unlawful deprivations of liberty. Men, women and children across the country are vulnerable based on their individual or group identity. While categories of vulnerable persons differ somewhat depending on which armed groups are in de facto control of a given geographical area (as detailed below), the patterns of abuse in the context of detention are largely similar across the country.

Armed groups across Libya regularly seize and hold suspected opponents or critics, including political figures, human rights defenders, journalists and media workers outside the framework of the law. For example, on 30 March 2016, a journalist was taken by armed groups in Tripoli and questioned regarding his social media posts. While detained, he recounted being beaten with a stick and attacked by a dog. In another example, on 8 October 2017, an armed group affiliated to the LNA arrested four journalists, their driver and another woman in Hun, some 640 kilometers southeast of Tripoli. They were released two days later after being questioned about their work and political affiliations.

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<sup>55</sup>Article 15 of the Convention against Torture prohibits admitting into evidence information extracted under torture except in proceedings against a person accused of torture "as evidence that the statement was made". See section 4.1 "International law" for further details on international law on arbitrary detention and torture. Law 38 gave blanket immunity and legitimized actions by armed groups amounting to war crimes and serious violations of human rights. Article 4 stipulated: "There shall be no punishment for what the 17 February revolution has deemed necessary in terms of any necessary military, security or civil actions carried out by the *thumar* for the success or protection of the Revolution."

<sup>56</sup> Article 1 of Law 9 of 2014.

Individuals from certain geographic or tribal origins or perceived to have certain political affiliations are also vulnerable to arbitrary arrest and detention. For instance, in western Libya, internally displaced persons (IDPs) from eastern Libya are often rounded up following “terrorist” incidents. Since December 2015, at least dozens of IDPs, who fled Benghazi and surrounding areas following Operation Dignity operations, were taken in Tripoli and Misrata on accusations of belonging to “terrorist” groups. For example, in August 2017, the Department of Combatting Organized Crime – Central Branch in Misrata arrested two brothers, IDPs from Benghazi, from their rented apartment in Misrata. One was released after six weeks in detention without any judicial process, while the other was transferred from the Department of Combatting Organized Crime to al-Jawiya Prison in mid-November 2017. At the time of writing, he remains in the prison and has not been referred to the prosecution.

Others are allegedly held for financial or political gains or personal vendettas, including by armed groups affiliated to State institutions.<sup>57</sup> For instance, on 5 November 2016, at about 2 a.m., six armed men belonging to the Support Forces 17 (al-Firqa 17) under the Ministry of Interior dragged a man from his home and drove him to their base at the Hamza camp in Tripoli. There, he was hit with an axe on his head, burned with cigarettes, punched in the face, and beaten all over his body. He was released three days later after his relatives delivered a vehicle as ransom. He alleged that he was targeted due to a pre-existing enmity with an officer employed by the Ministry of Interior.

The rise of lawlessness, coupled with the proliferation of weapons, also provides fertile ground for unlawful deprivation of liberty in the form of criminal kidnappings. Armed groups and criminal gangs abduct and hold victims, including children, to extort money from their relatives. In some cases, alleged victims are killed before payments are made. For instance, on 20 October 2016, the body of a four-year-old girl was found some two weeks after her abduction from her home in the area of Warshafana. According to a forensic report reviewed by HRD, she died from asphyxia and had sustained bruises to the head.

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<sup>57</sup> In some instances, such cases would amount to hostage taking under international humanitarian law, as well as unlawful deprivation of liberty or arbitrary detention under international human rights law.

**Box: Featured detention facility - Mitiga**

The Special Deterrence Force (SDF) runs one of the largest detention facilities in Tripoli at the Mitiga airbase. The exact number of detainees held there is unknown. Despite repeated requests,<sup>58</sup> HRD was only allowed to visit the facility once, in May 2016, but was not authorized to interview detainees in private. According to statistics provided by SDF to HRD during that visit, there were 1,500 male and 200 female detainees in Mitiga, including children. According to information received from a member of the Office of the Prosecutor General, at the end of November 2017, there were 2,600 detainees in Mitiga. Information gathered by HRD indicates three broad categories of detainees in Mitiga detention facility: those accused of ordinary crimes including theft, drug-related offences and prostitution; those suspected of involvement in “terrorism” related offences; and juveniles and youth brought by their parents or guardians, apparently for disciplinary reasons. Information gathered also indicates that “terrorism” suspects are at particular risk of severe abuse.

The SDF has aligned itself to the internationally recognized Presidency Council, and is nominally under the authority of its Ministry of Interior.<sup>59</sup> It receives support, including salaries, uniforms and equipment, from the State, but effectively maintains its own command structures and operates with a significant level of autonomy. The cost of meals provided by a catering company for detainees held in Mitiga comes from the budget of the Ministry of Justice. On 29 October, Judicial Police officials told HRD that a section of the Mitiga detention facility would be transferred to the Judicial Police, renamed “the New Tripoli Prison”, and would hold 450 detainees. Despite numerous requests, HRD has been unable to obtain the official decision by the Ministry of Interior regarding such a handover. By the time of writing, the SDF remained in effective control of the entire Mitiga detention facility.

The implementation of an agreement reached in 2015 between the SDF and the Office of Prosecutor General, to review the cases of detainees and determine the legality of their detention, has faced severe delays. In April 2017, the Head of the Investigations at the Office of the Prosecutor General confirmed to HRD staff the review of 100 cases under this agreement. HRD has learned that, since mid-May 2017, several detainees’ files have been transferred by SDF to the prosecution, but no additional details have been provided.

Since December 2015, HRD has documented grave human rights violations committed at the Mitiga detention facility, such as prolonged arbitrary and incommunicado detention, torture, prolonged solitary confinement, inhuman detention conditions, deaths in custody and summary executions. UNSMIL repeatedly raised concerns in official communications and meetings with SDF officials, the Office of the Prosecutor General, the President of the Presidency Council of the GNA, and the Ministries of Justice and Interior.

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<sup>58</sup> Since 2015, HRD requested visits in writing at least seven times. The latest such request was sent on 14 August 2017 [UNSMIL/HRD/2017-43]. On 27 July 2017, HRD went to the facility, following an agreement for a visit with Mr. Riyadh al-Saadi, Head of public relations for SDF, but was told at the gate that the visit had been cancelled. On 21 November, HRD returned to the facility, following an agreement with the Head of the Judicial Police to visit, but was again denied access.

<sup>59</sup> The GNA has publicly praised the efforts of SDF in combatting crime. See the official Facebook Page of the Media Office of the President of the Presidency Council of the Government of National Accord, 7 January 2017 statement, available at [https://www.facebook.com/GNAMedia/?hc\\_ref=PAGES\\_TIMELINE&fref=nf](https://www.facebook.com/GNAMedia/?hc_ref=PAGES_TIMELINE&fref=nf)

In the context of protracted fighting in eastern Libya, the LNA and its allies<sup>60</sup> regularly seize fighters, their supporters, family members of rival armed groups, and individuals deemed to be critical or insufficiently supportive of the LNA.<sup>61</sup>

The LNA and its allies target for detention men, women and children due to their family, tribal, or political affiliations, at times taking them hostage for the sole purpose of pressuring their relatives to hand themselves over or to exchange them with fighters held by rivals. For instance, the Department of Combating Terrorism in Benghazi,<sup>62</sup> reportedly detained 10 relatives of a commander opposed to the LNA without charge or trial for over three months in 2017. Similarly, in the context of military operations conducted in September 2016 and March 2017, the LNA and allies carried out mass arrests of men and boys in the Oil Crescent region, targeting suspected opponents, frequently solely on the basis of their tribal identity. National and international pressure has contributed to the release of the vast majority of the alleged victims within weeks or months.

The LNA and allied armed groups also target and apprehend media workers, activists and others perceived as critical of, or not sufficiently loyal to the LNA. On 25 March 2017, members of the Benghazi General Intelligence Agency (GIA) briefly detained and questioned two men, allegedly due to comments they had made on social media regarding alleged human rights violations committed by the LNA in Benghazi.

Detention based on actual or perceived religious belief also appears to be on the rise in eastern Libya, perpetrated by Salafi armed groups. An imam taken by an armed group in al-Baida in June 2016 remains held at the al-Kuweifiya prison without any legal basis. According to available information, he had refused requests by LNA allies to alter his sermons to be supportive of the LNA.

In the eastern city of Derna, the DMSC has also shown little tolerance for dissent, detaining perceived critics and holding them in unofficial facilities outside the framework of the law.<sup>63</sup>

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<sup>60</sup> Allies include neighbourhood-based military formations, armed groups composed of family members of victims of “terrorism” dubbed as Awliya al-Dam (blood relatives), and Salafi-leaning fighters.

<sup>61</sup> These include the Benghazi Revolutionaries Shura Council (BRSC), the so-called IS and the Benghazi Defense Brigade (BDB). The BRSC is a coalition of armed groups including the Libya Shield forces, Ansar al-Shari’a and others, established in February 2011 in opposition to the rule of Mu’ammarr al-Qadhafi. The BRSC emerged in 2014 in opposition to Operation Dignity. The armed group BDB was formed in June 2016, with the declared aim of ending abuses in Benghazi and securing the return of IDPs. Mainly composed of commanders and fighters from eastern Libya, it is believed to have strong links with the BRSC. Since its establishment, it engaged in fierce clashes with the LNA over territorial control in the Oil Crescent region, as well as southern Libya.

<sup>62</sup> The Department of Combating Terrorism and Destructive Phenomena under the command of Colonel Adel Marfowa is currently under the LNA structure. The Department of Combatting Terrorism under the command of Faraj Ga’im was a different armed group, nominally under the authority of the “Interim” government’s Ministry of Interior in 2014 and 2015.

<sup>63</sup> See footnote 17 for further details on DMSC.

### **Box: Featured detention facility- al-Kuweifiya Prison**

Before the 2011 armed conflict, the al-Kuweifiya Correction and Rehabilitation Institution was under the oversight of the Judicial Police of the Ministry of Justice. Today, the al-Kuweifiya Prison is the largest detention facility in eastern Libya, composed of at least three separate sections. Individuals suspected of ordinary crimes are held in a wing under the oversight of the Judicial Police, while fighters and civilians accused of security or “terrorism”-related offences are detained in a “military wing” under the direct control of the LNA or in an “internal security wing” run by the GIA. Women are also held in a separate section at al-Kuweifiya prison, either in relation to the conflict or on charges or convictions of committing ordinary crimes.

The exact number of detainees at the al-Kuweifiya Prison is unknown. UNSMIL has been unable to visit the facility since its evacuation from eastern Libya in May 2014. In a meeting with UNSMIL in August 2017, the Judicial Police estimated that there were about 1,800 detainees held in al-Kuweifiya.<sup>64</sup> The LNA and allied armed groups guard the entire prison compound.

Since late 2014, HRD has documented prolonged arbitrary and incommunicado detention, torture, ill-treatment, and inhuman detention conditions at the facility, in particular at the GIA wing. HRD has raised concerns in writing and other official communications with relevant authorities.<sup>65</sup>

## 5.2 Arbitrary arrest and detention

### 5.2.1 Unlawful Arrest

Armed groups across Libya apprehend individuals illegally (without a warrant or legal authority) or take them hostage. Those arrested by armed groups nominally under the State or exercising government-like functions are rarely informed of the reasons for their arrest. Illegal arrests have often been accompanied by unlawful appropriation of valuables and destruction of property. In a number of cases documented by HRD, armed groups have also used violence against suspects and relatives who attempted to resist apprehension or asked questions.

In Tripoli, the SDF, the CS/AS, the TRB and other armed groups apprehend suspects from their homes, workplaces, checkpoints or streets, without presenting arrest or search warrants. They frequently refuse to identify themselves.

Victims and witnesses have described large forces of heavily armed men forcing their way into homes, destroying furniture and other belongings, confiscating laptops, telephones and other

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<sup>64</sup> The Judicial Police came up with this estimate based on meals they provide to the prison population.

<sup>65</sup> The House of Representatives endorsed the LNA in November 2014 as a legitimate military formation under the “Interim Libyan Government”, which was recognized internationally until the establishment of the GNA in December 2015. Before that date, UNSMIL raised concerns regarding abuses with relevant Ministries of the “Interim Libyan Government”. Subsequently, UNSMIL mainly raised its concerns directly with prison authorities as well as the military and general prosecution.

valuables. For instance, witnesses recounted to HRD how, in early 2016, a group of armed men (some masked) fired at their home without warning despite the presence of an entire family inside. After breaking into and searching the house without a warrant and without revealing their identities, they left, taking three men, several vehicles, money and electronic equipment. Months later, relatives found the three men at the Mitiga detention facility run by the SDF. In another example of an illegal arrest, armed men affiliated to the TRB took two relatives from their Tripoli home in October 2017, without presenting an arrest warrant. One was released 10 days later, but, at the time of writing, the other remains held at an unofficial detention facility in Tripoli.

In other parts of western Libya, armed groups also detain individuals unlawfully. On 1 September 2017, local armed groups seized three men from their homes or the vicinity of the al-Harsha neighbourhood of al-Zawiya, in response to a pro-Qadhafi march and ensuing violence some hours earlier. The three men were initially held in private homes and other unofficial locations in al-Harsha, before being transferred to a police station in al-Zawiya. One of the men was released after a week without appearing in front of judicial authorities. At the time of writing, the others remain in detention and have not been informed of any charges, nor referred to judicial authorities.

There is a similar pattern of unlawful arrests in eastern Libya. In an example from March 2017, dozens of men and boys from the Magharba tribe were rounded up by armed groups allied to the LNA in the towns of Ajdabiya, Bishir and Brega, in the context of military operations in the Oil Crescent area, on account of their alleged lack of support to the LNA.<sup>66</sup> A man from Ajdabiya detained in early March 2017 told HRD: *“I was at home when it was raided by a large force of armed men in military dress. At least seven entered inside the house, and I counted eight armoured vehicles outside. They did not present a search or arrest warrant and took me to a former government building now used as a detention [centre] in Ajdabiya. They confiscated my laptop as well as my watch, rings and phone... These items were never returned”*. After four days spent in two different facilities in eastern Libya, he was transferred to the al-Kuweifiya Prison’s “military wing”, where he was held for about six weeks, without appearing in front of judicial authorities. He was eventually released together with other men from the Magharba tribe following the intervention of tribal elders and leaders.

### 5.2.2 Appearance before judicial authorities and other legal safeguards

Those detained are neither informed of their rights, nor granted them. Most conflict or security-related detainees detained since December 2015 have yet to appear in front of courts. Therefore, they have not had their continued detention reviewed. Some reported being taken for questioning by security officials and, in rare cases, by military or civilian prosecutors, without the presence of a lawyer. Detainees are not informed of their right to request legal representation, and are not able to meet with lawyers in private. They rarely know the exact reasons for their arrest, or the nature or existence of charges against them.

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<sup>66</sup> Ibrahim Jadran, former Commander of the Petroleum Facilities Guard in the Oil Crescent, is from the Magharba tribe. Fighters loyal to Jadran have engaged in hostilities over control of the Oil Crescent with the LNA in September 2016, and were suspected by the LNA of supporting the BDB in its ultimately failed attempt to wrestle control of the territory from the LNA in March 2017.

Government officials are not immune to such treatment. The Head of the Abu Salim Department of Combatting Illegal Migration under the Ministry of Interior, Ramadan al-Rayes, was detained from 8 June 2017 to 12 November 2017 by the CS/AS on suspicion of corruption, without referral to judicial authorities. He first saw a prosecutor on 12 November and was provisionally released on 12 December, pending the outcome of his trial. Throughout his detention, he was permitted one family visit, on 24 June 2017. Another Government official was taken from his home in Tripoli in June 2017 to an unknown location reportedly controlled by the TRB. He did not appear before judicial authorities and was denied family and lawyer visits, until his release six months later.

HRD also documented the case of a lawyer taken by an LNA allied armed group from a Benghazi street, in December 2016, who has not appeared in front of a judicial body. Upon his arrest, he was taken to the “security wing” of the al-Kuweifiya prison and denied contact with his relatives or lawyers. Family members were first able to visit him in April 2017 after his transfer to the “military wing” of the prison. Relatives allege that he was never informed of the charges against him.

In some cases, detainees, including civilians and children, held in the “military wing” of the al-Kuweifiya prison have appeared in front of a committee of civilian and military prosecutors for questioning inside the prison facility. For instance, a military prosecutor, without the presence of a lawyer, questioned a 15-year-old-boy arrested in March 2016. The student was accused by prison officials of communicating with an anti-LNA fighter through social media and providing information on LNA’s locations, however, he remains unaware of any formal charges against him.

In the southwestern city of Sabha, alleged terrorism suspects are also held without charge or trial by the 116 Battalion/Deterrence Force. In June 2016, when HRD visited the detention facility run by that armed group, there were 89 detainees held in dire condition. Police officers told HRD that members of the armed group were carrying out investigations directly. To date, detainees have not been referred to judicial authorities, and lawyers have had no access to the detention facility.

Misrata-based armed groups, including those nominally under the Ministry of Justice, also continue to detain individuals arbitrarily. On 10 March 2017, three men from Sirte disappeared following their detention by Misrata-based armed groups as they were driving home. For four months, their relatives had no knowledge about their whereabouts. At the time of writing, two of the men remain in detention at the al-Jawiya prison without having been brought before judicial authorities. They are yet to be informed of the charges against them but relatives suspect their detention to be linked to their alleged support of the former regime. The third man was released without any judicial process.

### 5.2.3 Failure to bring defendants to court

The precarious security environment, coupled with the weakness of State institutions, impedes the functioning of the criminal justice system, even for the small proportion of detainees that are held in accordance with Libyan law, referred for trial and due to appear in court. For instance, in early 2017, Judicial Police officials in Surman Prison recounted to HRD being unable to transport



detainees by road to the nearest criminal court in the city of al-Zawiya, some 20 kilometers away, due to the unpredictable security situation and frequent road closures. This has led to the prolonged pre-trial detention of detainees. As of September 2017, between 200 and 250 detainees were held at Surman Prison, including those arrested in relation to the 2011 armed conflict.

A woman detained since 2013 at the al-Jdeida Women's Prison in Tripoli on drug-related charges has consistently missed her court sessions at the al-Zawiya Criminal Court, some 50 kilometers away, due to the failure of the authorities to bring her to court. They have justified their inaction on security grounds and unavailability of transportation. As a result, the hearings have continued to be periodically adjourned while she has remained detained.

#### 5.2.4 “2011-conflict related” detainees

Since December 2015, dozens of 2011 “conflict-related” detainees have been released in reconciliation gestures between communities<sup>67</sup> and/or upon serving their sentences or after undergoing judicial review. However, others continue to languish in prison, many without charge, trial or sentence.<sup>68</sup>

In 2017, an estimated 75 percent of those held in Judicial Police prisons including 2011 and 2014 conflict-related detainees were still in pre-trial detention across Libya, including in Tripoli, Benghazi, Misrata, Surman, al-Zawiya and Zintan.

Since the end of the 2011 armed conflict, the trials that did take place have raised concerns regarding breaches of fair trial standards, including the right to adequate legal representation of one's choosing, and cross-examination of prosecution witnesses. The right against self-incrimination was also routinely flouted. Proceedings were frequently marred by the failure of judicial authorities to investigate complaints of alleged torture or to exclude evidence obtained through alleged torture or coercion.<sup>69</sup>

In April 2016, the United Nations Working Group on Arbitrary Detention found the detention of 12 senior figures in the Qaddafi regime arbitrary based on severe breaches of their right to a fair trial.<sup>70</sup> At the time of the decision, most of the 12 individuals and other suspected Qadhafi loyalists were held at the al-Hadba Prison in Tripoli. This facility was nominally under the oversight of the Ministry of Justice, but in effect under the command of an armed group led by Khaled al-Sherif

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<sup>67</sup> Since the launch of the Misrata-Tawergha dialogue in 2015, facilitated by UNSMIL, dozens of Tawerghan detainees were released from Misrata prisons.

<sup>68</sup> Exact statistics are not available given the difficulties of obtaining accurate information due to the fragmentation of institutions, the multitude of facilities used to hold conflict-related detainees, and failure to keep proper detainee registries and records.

<sup>69</sup> For more information see, UNSMIL/OHCHR, *Report on the Trial of 37 Former Members of the Qaddafi Regime Figures*, 21 February 2017, available at:

[http://www.ohchr.org/Documents/Countries/LY/Trial37FormerMembersQadhafiRegime\\_EN.pdf](http://www.ohchr.org/Documents/Countries/LY/Trial37FormerMembersQadhafiRegime_EN.pdf)

<sup>70</sup> HRC, Working Group on Arbitrary Detention, Opinion 4/2016, Opinions adopted by the Working Group on Arbitrary Detention at its seventy-fifth session, 18-27 April 2016, available at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/WGAD/2016/4](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/WGAD/2016/4)



until May 2017, when armed groups loyal to the GNA overran the al-Hadba Prison and transferred detainees to unspecified locations.<sup>71</sup> In November 2017, during a visit to the Ain Zara (B) prison, HRD was able to ascertain the detention of 77 individuals accused of involvement in the 1996 Abu Salim Prison killings, previously held in al-Hadba prison.<sup>72</sup> They described being held for three months in a detention facility in the area of Sidi al-Masri of Tripoli under the control of the TRB prior to their transfer to Ain Zara (B). The exact whereabouts and fate of the remaining detainees, including senior figures of the former regime, remains unclear. Some family members were permitted visits, but were instructed not to reveal the place of detention on “security grounds.”<sup>73</sup> On 5 December 2017, in a meeting with HRD, the head of investigations in the Office of the Prosecutor General noted that the remaining detainees were held at a facility near Mahari Hotel in Tripoli, allegedly under the control of the Judicial Police. He did not disclose the exact name or location of the facility.

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<sup>71</sup> At the time of HRD’s last visit to al-Hadba Prison, on 17 May 2017, officials reported that 161 detainees were held there, including 77 in relation to the 1996 Abu Salim Prison killings.

<sup>72</sup> In one of the most shocking atrocities committed during the 40-year-rule of Mu’ammar al-Qadhafi, over 1,200 prisoners were believed to have been extra-judicially executed by security forces in June 1996 following a prison riot. For years, the Qhadafi government denied the incident and refused to provide any information to victims’ next-of-kin. Families of victims of the Abu Salim Prison killings were at the forefront of protests against the Qhadafi regime in February 2011.

<sup>73</sup> UNSMIL’s written request to Prime Minister Fayeaz al-Sarraj in June 2017 calling for the transfer of all detainees previously held at the al-Hadba Prison to a place of detention under the control of the Ministry of Justice and seeking access for its monitors to visit detainees went unanswered.

**Box: Released 2011 conflict-related detainees – absence of reparations**

*“It is like these years of suffering never happened”*

An internally displaced Tawerghan man spent six years in detention without charge or trial in various facilities in Misrata, including the Security Committee facility, the Wehda school<sup>74</sup> and the al-Jawiya Prison. Upon his release in December 2016, he told HRD: *“I feel like my life has been wasted. I was 17 when I was first captured, a school student. Now, I am 23 with no education, degree and no future. Throughout my years in prison, I was questioned by dozens of people [militia men] ... Only once, in 2013, I was seen by a prosecutor. I waited another three years before appearing in front of another prosecutor. Once he saw my case-file, he immediately signed my release order. I did not receive any piece of paper showing that I was detained unfairly for all these years. It is like these years of suffering never happened.”*

Like hundreds of other Tawerghan men and boys, this man was rounded-up from Tripoli in August 2011 by Misrata-based armed groups, and brought to Misrata on allegations of supporting the former regime.<sup>75</sup>

Another former Tawerghan detainee reported seeing a prosecutor once, shortly prior to his release from the Tomina prison in Misrata, in April 2017, after nearly five years in custody at numerous facilities in Benghazi and Misrata. He was reportedly tortured while in the custody of the Misrata Security Committee, the Military Intelligence in Misrata, and the Tomina prison. Following his release, he was unable to obtain any document certifying his detention and release without charge. These two cases are not unique. Moreover, no released detainees interviewed by HRD were provided with documentation confirming their detention or indicating the grounds for release. The absence of such documentation exposes people to double jeopardy or re-arrest and detention by other armed groups on similar grounds. It also creates difficulties in justifying their prolonged absence to employers or educational facilities, and undermines their right to seek redress and reparations for prolonged unlawful detention and other harm suffered.

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<sup>74</sup> The Wehda school was used as a detention facility for 2011 “conflict-related” detainees prior to their transfer to al-Jawiya prison, inaugurated in August 2013, in an old Ministry of Defence base.

<sup>75</sup> Misrata-based armed groups accused the Tawergha community of supporting Qadhafi forces during the 2011 armed conflict, and used the Tawergha area to launch indiscriminate attacks against the then besieged city of Misrata and committing war crimes against its fighters and civilians, including enforced disappearances, torture and rape. After Misrata-based armed groups captured the area of Tawergha in August 2011 and the entire population fled fearing revenge attacks, militiamen from Misrata pursued Tawerghan men across the country, seizing hundreds and bringing them back to detention in Misrata.

## 6. Televised confessions and the presumption of innocence

In addition to severe delays in referring detainees to judicial authorities and other breaches of fair trial standards, the presumption of innocence for detainees held in several facilities across Libya has been undermined through public broadcast of “confessions”.<sup>76</sup>

The SDF periodically posts videos of detainees’ “confessions” on its social media pages. Such videos are then frequently picked up and aired on Libyan TV Channels. The practice not only undermines detainees’ right to a fair trial and raises concerns regarding their alleged torture during interrogations that results in detainees making coerced confessions, but also endangers their relatives, exposing them to the risk of revenge attacks and reprisals. For instance, in May 2016, a video broadcast by several Libyan TV Channels, including al-Rasmiya TV, depicted the interrogations of three brothers held in Mitiga. In the video<sup>77</sup>, they “confessed” to planning and organizing an attack on 7 January 2016 on a coastguard training centre in Zliten.<sup>78</sup> Shortly after the broadcast, family members of the victims of the attack threatened detainees’ relatives. A relative’s home was set on fire, while others fled in terror of further attacks.

On 18 February 2017, the Libyan TV Channel al-Hadath broadcast a video of the interrogation of 18-year-old Jassem Misbah, a suspected BRSC fighter. In the video,<sup>79</sup> seen by HRD staff, Misbah acknowledged participating in a number of armed confrontations against the LNA in Benghazi and was compelled to name alleged BRSC supporters in the cities of Misrata and Benghazi. He also confirmed his apprehension by the Department of Combating Terrorism in the area of al-Teriyah together with three other men. According to Mr. Misbah’s relatives, the recording of his interrogation was broadcast three times a day for three consecutive days on the al-Hadath TV channel, allegedly resulting in intimidation and threats against the family in their neighbourhood and at work.

HRD documented the case of seven men forced to make “confessions” on camera, broadcast on the TV Channel Libya Awalan or posted on Facebook between February 2015 and February 2016. The Department of Combating Terrorism armed group in Benghazi (then under the command of Faraj Ga’im, who was appointed Deputy Interior Minister by the GNA in August 2017) apprehended the men separately in 2014 and 2015.<sup>80</sup> In the videos, they purportedly “confessed” to committing various crimes, including murder and indiscriminate attacks in Benghazi. Following the airing of the videos, a number of detainees’ relatives fled their homes in Benghazi, fearing revenge attacks. Several family homes were set ablaze. In April 2017, the United Nations Working

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<sup>76</sup> See Working Group on Arbitrary Detention, Opinions adopted by the Working Group on Arbitrary Detention in its seventy-eighth session, 19-28 April 2017, paragraph 44, available at :

[http://www.ohchr.org/Documents/Issues/Detention/Opinions/Session78/A\\_HRC\\_WGAD\\_2017\\_6.pdf](http://www.ohchr.org/Documents/Issues/Detention/Opinions/Session78/A_HRC_WGAD_2017_6.pdf)

<sup>77</sup> Part of the video is available on YouTube at: <https://www.youtube.com/watch?v=AFtYfGjBU54>

<sup>78</sup> See UNSMIL, “Martin Kobler Strongly Condemns Terrorist Attack in the Libyan City of Zliten”, 7 January 2016, available at <https://unsmil.unmissions.org/martin-kobler-strongly-condemns-terrorist-attack-libyan-city-zliten>

<sup>79</sup> Part of the video is available at the Alkdwah Facebook page:

<https://www.facebook.com/alkdwah/videos/703183983183574/>

<sup>80</sup> Faraj Ga’im joined Operation Dignity in 2014, fighting alongside LNA forces and allies. Nonetheless, tensions with the General Commander of the LNA emerged over territorial control and leadership positions.

Group on Arbitrary Detention found that the seven men were held arbitrarily, given the lack of legal basis for their detention and breaches of their fair trial rights, including the right to challenge the legality of their detention before a judge, to access a lawyer, to be informed of the charges against them, and to be given the presumption of innocence.<sup>81</sup> At the time of writing, the seven men remain detained at the al-Kuweifiya Prison without charge or trial. Two of them were children at the time of their arrest.

The Department of Combatting Organized Crime-Central Branch in Misrata, nominally under the oversight of the Ministry of Interior, also periodically posts video “confessions” on its Facebook page. For instance, on 19 August 2017, it posted two videos of IDPs from Benghazi, captured in Misrata, allegedly “confessing” to belonging to and carrying-out operations for the so-called IS.<sup>82</sup>

## 7. Incommunicado detention and enforced disappearance

Armed groups including those affiliated to the State and other detaining authorities routinely deny detainees any contact with the outside world in the initial period of their detention and sometimes refuse to confirm to family members the whereabouts of their loved ones. Detainees can be held incommunicado for prolonged periods of time, up to two years in some cases documented by HRD, under conditions amounting to enforced disappearances.

Distraught families search for their detained family members, travel to known detention facilities, plead for the help of acquaintances with connections to armed groups, security or intelligence bodies, and exchange information with other families of detainees or missing persons. Few seek remedy at police stations or prosecution offices, fearing reprisals and, in some cases, doubting the effectiveness of these institutions in dealing with powerful armed groups. Some relatives are further deterred by armed groups guarding prosecution and court complexes. When families procure information, it is usually through former detainees or detention staff unofficially sharing information.<sup>83</sup> In rare cases, detainees are permitted to make telephone calls, including upon transfer to official prisons, after spending months in unofficial detention facilities.

While long-term detainees, including those held in relation to the 2011 armed conflict, are usually permitted regular family visits, detaining authorities frequently deny these rights to newcomers for long periods, at times under the pretext of “ongoing investigations”.

When detained incommunicado, individuals are most vulnerable to egregious human rights violations including torture and summary executions.

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<sup>81</sup> See Working Group on Arbitrary Detention, Opinions adopted by the Working Group on Arbitrary Detention in its seventy-eighth session, 19-28 April 2017, available at :

[http://www.ohchr.org/Documents/Issues/Detention/Opinions/Session78/A\\_HRC\\_WGAD\\_2017\\_6.pdf](http://www.ohchr.org/Documents/Issues/Detention/Opinions/Session78/A_HRC_WGAD_2017_6.pdf)

<sup>82</sup> See the Department’s Facebook Page [https://www.facebook.com/ادارة-مكافحة-الجريمة-مصراة-1909427129282643/?hc\\_ref=ARSdWA17ArVI2WqV1ru3NJPL6LnIb4MEPNbf3Wm4Ni\\_VufPbZs\\_n7ijgcBaiG814UW8&fref=nf](https://www.facebook.com/ادارة-مكافحة-الجريمة-مصراة-1909427129282643/?hc_ref=ARSdWA17ArVI2WqV1ru3NJPL6LnIb4MEPNbf3Wm4Ni_VufPbZs_n7ijgcBaiG814UW8&fref=nf)

<sup>83</sup> Many desperate relatives rely on extended social and tribal networks and personal connections to receive information, including through employees at detention facilities.

A relative of a man held at the Mitiga detention centre since February 2015 told HRD staff: *“I first saw him nine months after his arrest. He told me that they held him in solitary confinement and threatened him at gunpoint. I barely recognized him. He had a long beard and long hair. He was emaciated. He lifted his clothes and showed me his wounds; some of his skin was scrapped off... He also said he was sleeping directly on the floor of the cell. It seems like he got into trouble for complaining, because during the following visit he refused to show his body and claimed to be doing very, very well, even though he looked frail and weak.”*

In another case, since 18 February 2017, family members have not been able to communicate with businessman Hosny Ashor al-Mesmary, in Benghazi. Allegedly, he was apprehended by members of an armed group affiliated to the LNA. Officials at the al-Kuweifiya Prison confirmed al-Mesmary’s detention in the GIA wing of the prison, but denied him family visits. Requests to the military prosecution and Abdel Razek al-Nazouri, the Military Governor for Derna-Ben Jawad and LNA’s Chief-of- Staff, to allow visits and clarify the grounds for al-Mesmary’s detention have not yielded results.

In another case in eastern Libya, in June 2017, a man in his twenties was held incommunicado in solitary confinement for over 20 days at the Gernada Prison, apparently due to his father’s activism and criticism of the LNA. According to relatives, guards at the facility threatened an elderly family member at gunpoint, warning him to no longer enquire about the missing man’s whereabouts or risk being shot.

Some of those taken by armed groups remain forcibly disappeared. This is the case of Tripoli-based activist, Jaber Zain, whose whereabouts and fate remain unknown since his abduction on 26 September 2016, near a café in Tripoli, after attending a seminar on women’s rights. Witnesses indicated that members of the Second Support Brigade nominally under the Ministry of Interior took him, but the armed group denied holding him.<sup>84</sup>

## 8. Torture

Testimonies, forensic and medical reports as well as photographs gathered by HRD indicate the systematic nature of torture and ill-treatment in detention facilities across Libya. The overwhelming majority of former detainees interviewed by HRD staff said that they were either directly subjected to torture or ill-treatment, or witnessed others being allegedly subjected to it.

Security or “conflict-related” detainees are most vulnerable to torture, particularly in the initial period of their detention, and during interrogations. They usually appear to be tortured with the aim of extracting “confessions” or other information, to punish them for alleged offences and to degrade or humiliate them. In some cases, former detainees reported being transferred from their regular place of detention to other facilities for interrogations and to be allegedly tortured.

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<sup>84</sup> On 30 December 2016, the Working Group on Enforced and Involuntary Disappearance transmitted Jaber Zain’s case to the Government of Libya, under its urgent action procedure.

Most commonly documented torture methods include beatings on the head and the body with various objects, including metal bars, water-pipes and rifle butts; whipping on the soles of the feet (method known as *falaqa*); kicking and punching; suspension in stress positions for prolonged periods of time; electrocution; burning with cigarettes or hot rods; and the pulling of beards.

In January 2016, an IDP from eastern Libya released from Mitiga detention centre, without any legal process, recounted his ordeal to HRD: *“I was held in the ‘security wing’ (al qate’ al-amni). Even though I suffer from a disability [details withheld], I was suspended from the ceiling by metal chains and beaten until I lost consciousness. Every night I would hear screams of others being tortured... I developed an eye infection in prison, but was denied medical treatment to make me suffer more. Until now, I cannot see properly.”* His testimony is consistent with other detainees’ accounts, including those detainees released in 2017. Between May 2015 and May 2017, a foreign national who was held without charge or trial in Mitiga, told HRD that he was beaten with shovels and suspended in a position called “roasted chicken” from a metal hook attached to a ceiling in a room, known by the detainees as the “butchery”. He said that afterwards, he was unable to walk, did not receive any medical treatment, and was assisted by other detainees to eat and use sanitation facilities. He showed United Nations staff scars consistent with his testimony.

In another case documented in Tripoli, a man in his thirties described the torture he endured at an unofficial place of detention in Nasser Forest. In October 2016, he was taken by the Martyr Youssef al-Bouni armed group and handed over to the Presidential Security (al-Amn al-Riasi) armed group, affiliated to the defunct General National Congress.<sup>85</sup> During his six months in captivity without charge or trial, he was beaten with hoses and metal bars; punched and kicked. On several occasions, he was blindfolded and had his hands and feet tied before being suspended upside down by his lower limbs from the ceiling and electrocuted. Reportedly, his captors were seeking information about a rival armed group. Being denied sufficient food and water, he lost some 70 kilogrammes in body mass while in custody. Since his release, he struggles to walk unassisted and suffers from damage to his sight and hearing.

Another man from western Libya, taken from a street in Tripoli in June 2016, described his treatment by armed men he later identified as belonging to the Ministry of Interior: *“I was forced into a small dark room, and not given any food or water for the first 24 hours. The next day, I was just given some milk. The room was completely bare, and there was no toilet. I had to urinate in an empty bottle... In the three months I was held there, I was taken out blindfolded for beatings with PPR (term commonly used in Libya for a type of water pipe).”* HRD examined a medical report indicating the visibility of scars on the man’s back. Although he filed a complaint to the Office of the Prosecutor General (seen by HRD), no investigations into his case have been carried out to HRD’s knowledge.

A former detainee, who had been held at an unofficial detention facility in eastern Libya before being transferred to the al-Kuweifiya Prison in early 2017, described inhuman detention conditions

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<sup>85</sup> Libya’s first post-2011 elected parliament. Its term ended following the elections for the House of Representatives in June 2014.

and torture: *“I was held in what seemed to be an old defence factory, used as military barracks by the LNA... I was put in a cell, which had blood stained walls and human hair smeared on the ground. We were about 27 people detained in a 3x3 metre cell. We were given one large bottle [of water] to drink and then we had to use the same bottle to urinate. Some people were beaten with PPR (water pipes). There was a young boy, about 14 years old, who was crying for his mother. He was taken because his uncle is a fighter. I saw him being hit in front of me.”*

In December 2016, an activist from Derna, who was taken from the street by armed men affiliated to the DMSC, alleged he was tortured. He recounted being dragged out of his car, blindfolded, and driven to a detention facility in western Derna. There, he was severely beaten with a plastic hose on the soles of his feet and hit with the backs of rifles and metal bars. He was also denied food or water for two days. He was freed after signing a statement without reading it. He believes his detention was linked to his political opinions and criticism of the DMSC.

Torture is also reported in southern Libya. Information gathered by HRD indicates that a man held at the Deterrence Force/116 Battalion since September 2016 had “confessed” to “terrorism related” activities under torture including beatings and electric shocks.

2011 “conflict-related” detainees released since December 2015 have also recounted torture and ill-treatment during their prolonged detention. A 49-year-old Government employee arrested in August 2011 and released in November 2016, without charge or trial, recounted being subjected to torture at the Tomina prison in Misrata. He alleged that prison guards raped him, flogged him until he lost consciousness, hung him upside down for hours and burnt him with a hot iron including on his back and genitals. He described being forced to strip naked and engage in sexual acts with a canine. For two years, he was held in solitary confinement in a cell so small that he was not able to stretch out his legs. Throughout his detention, he reported witnessing 10 detainees’ deaths in custody because of alleged torture, a summary execution, lack of food and water, and denial of medical assistance.<sup>86</sup> When HRD met him several months after his release, he could not walk unassisted, stuttered, and had a severe hand tremor. Detainees held with him corroborated his account.

Most victims of torture carry physical and psychological scars from their ordeals, but have little or no access to specialized assistance, including mental health treatment, physiotherapy and psychosocial support, let alone judicial redress.

## 8.1 Detention conditions

While detention conditions vary across detention facilities, in most cases, they fall far short of the international minimum standards for the treatment of prisoners. In some facilities, abysmal detention conditions in themselves amount to torture and other ill-treatment. Most complaints

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<sup>86</sup> According to accounts, the conditions and treatment at the Tomina Prison have improved since the death, in 2015, of Issa Issa, the Director of the prison and commander of a local armed group.

regarding conditions were reported by detainees held in facilities nominally under the Ministry of Interior or directly by armed groups.

For instance, at the Mitiga detention facility, detainees were crammed into small overcrowded cells lacking light and ventilation, adequate washing and sanitation facilities. None of the detainees had beds at the time of HRD's visit in May 2016, and some were not provided mattresses or blankets. Detainees reported having to sleep in shifts given the lack of space. Some detainees, particularly those accused of "terrorism" related offences, were held in solitary confinement cells for prolonged periods of time and denied access to basic necessities.

Solitary confinement is also used at the al-Kuweifiya Prison. Detainees described being held in small cells, where they could not stretch out their legs. One detainee recalled how mice and insects emerged from a hole in the ground that was used as a toilet. He described experiencing breathing difficulties given the lack of ventilation and the strong stench. He was given a small bottle of water daily, to use for drinking and washing. Testimonies indicate that in the GIA wing of the prison, up to 20-30 detainees are detained in each cell, with insufficient room to move or lie down. Access to the outdoors is also severely restricted, as are family visits, a lifeline to detainees' needing food, personal hygiene products and medicine.

Detainees across Libya also complained about the poor nutritional value of the food provided and insufficient drinking water. Some detainees were denied outdoor recreation or exercise time and had not had access to direct sunlight for the duration of their detention. As a result, they developed severe muscle and joint pain, and other preventable conditions.

Detention conditions aggravate pre-existing and chronic medical conditions and lead to the spread of skin and eye infections and gastro-intestinal ailments. Most regular prisons have small clinics with medical staff, but former detainees and relatives of detainees repeatedly reported that they had limited access to, and poor quality medical care. In some cases, poor detention conditions, coupled with medical neglect, has led to deaths in custody, including from otherwise treatable conditions.

For instance, at least one 2011 "conflict-related" detainee reportedly died from medical neglect and lack of sufficient food and medicine in late 2016 while in custody of the BRSC since October 2014. He was among the tens of detainees taken by the BRSC and allies from the Abuhdima Military Prison in Benghazi in October 2014 and transferred to different locations then under BRSC control in Benghazi, such as homes and abandoned buildings in Qawarsha and Ganfouda. Against the backdrop of protracted armed conflict in Benghazi, these detainees were largely cut off from the outside world until they fled and handed themselves over to the LNA between December 2016 and March 2017.

Of particular concern is the detention of children together with the adult population, in similar squalid conditions. According to information received, three boys, aged about 14, who had been captured in the context of military operations against the so-called IS in Sirte, are held in al-Jawiya prison in a separate cell located in the adult male wing of the prison. Another seven boys, aged



around 10-11, are also held in a separate cell in a different bloc. Some were denied regular contact with their mothers held in the women' wing of the prison.

In al-Kuweifiya prison, children are held with adults, reportedly due to lack of space to separate them.

## 9. Deaths in custody

Since December 2015, HRD has consistently received allegations of deaths in custody due to alleged torture or summary executions across Libya. In October 2013, UNSMIL and OHCHR published a joint report, *Torture and Deaths in Custody*, highlighting deaths in detention centres under the nominal authority of the State, but effectively under armed groups' control. In response, the then Minister of Justice, Salah al-Marghani, made a commitment to investigate the allegations and bring those allegedly responsible to justice.<sup>87</sup> However, OHCHR/UNSMIL is not aware of any member of armed groups brought to trial for committing or ordering torture, including when it resulted in fatalities. This climate of impunity has allowed such violations and abuses to continue unabated.

### 9.1 Western Libya

In the course of 2017, at least 37 bodies bearing signs of torture were brought to Tripoli hospitals. They included the body of a man in his fifties who, in June 2017, had reportedly been summoned for questioning by an armed group under the oversight of the Ministry of Interior. Four days later, his relatives were informed of his death. A forensic report examined by HRD indicated that the victim was "subjected to beatings and torture prior to his death."

Other armed groups, particularly those nominally under the Ministry of Interior, have been implicated in the unlawful killings of detainees. Access and well-founded fears by witnesses, victims' relatives and medical professionals have impeded HRD's ability to fully verify numerous allegations of custodial deaths in Tripoli, including at the Mitiga detention centre. Nonetheless, HRD was able to document deaths in custody. In one case, in June 2016, a man in his twenties died about three days after his detention by the SDF in Mitiga. Bruises covered his body; he had broken limbs and sustained multiple gunshot wounds. In July 2016, the body of another victim was found in Tripoli, showing signs of severe beating. Strong evidence suggests he was beaten to death while in the custody of the CS/AS armed group, who had reportedly apprehended him two weeks before.

HRD also documented unlawful killings of detainees held in the Ain Zara (B) prison, nominally under the oversight of the Ministry of Justice, but at the time under *de facto* control of the

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<sup>87</sup> UNSMIL and OHCHR, *Torture and Deaths in Detention in Libya*, October 2013 available at <http://www.ohchr.org/Documents/Countries/LY/TortureDeathsDetentionLibya.pdf>. Between the end of 2011 and the publication of the 2013 report, 16 other cases were recorded by UNSMIL for which significant information was gathered to suggest that torture was the cause of death in custody. The report detailed 11 cases of death in custody in 2013 in detention centres under the nominal authority of the Government.

“Ruweimy” armed group. On 10 June 2016, the bodies of 12 detainees from the prison were found at three different locations in Tripoli bearing signs of torture and gunshot wounds. A day earlier, the Office of the Prosecutor General in Tripoli had cleared the 12 detainees of murder charges during the 2011 armed-conflict. Claims by the prison administration that the detainees were released on 9 June were disputed by detainees’ relatives. According to OHCHR/UNSMIL’s knowledge, while the Office of the Prosecutor General opened an investigation into the incident, no arrests or prosecutions have taken place.<sup>88</sup>

Another death in custody in unclear circumstances was documented in Misrata. On 6 November 2017, the body of a commander with the BRSC was brought to a Misrata hospital. On 31 August 2017, he had been seized by the Department of Combatting Organized Crime-Central Branch in Misrata, nominally under the oversight of the Ministry of Interior. He was reportedly transferred to al-Jawiya prison shortly before his death. An initial autopsy report dated 7 November concluded that he died due to a “breathing failure”. After relatives challenged its result, the prosecution ordered a second autopsy. The conclusions of the second autopsy have not yet been shared with the victim’s family or lawyer.

## 9.2 Eastern Libya

Deaths in custody as a result of alleged torture or summary executions of individuals deprived of their liberty or captured by armed men allied to the LNA, days or months after they were seized, also continued unabated in eastern Libya.

On 26 October 2017, the bodies of 36 men were found in al-Abyar, some 60 kilometres north-east of Benghazi, an area under the control of the LNA. Several victims bore gunshot wounds and signs of torture and had their hands tied. Armed men, in some cases identified by relatives as allied to the LNA, had reportedly taken several men from their homes in Benghazi days or months preceding the recovery of their bodies. At least 25 victims were identified by relatives, several of whom were reportedly threatened by unidentified armed men in person or via telephone calls not to hold public burial ceremonies. On 28 October, the General Commander of the LNA ordered the General Military Prosecutor in the east to investigate the circumstances of the deaths, but no information has been provided on the investigations thus far.<sup>89</sup>

On 7 August 2017, the bodies of six men were found in the area of Shibna, in Benghazi. At least two bodies bore gunshot wounds and torture marks. Both victims had been taken by unidentified armed men, in April and July 2017, respectively, from Benghazi neighbourhoods controlled by the LNA and its allies. One of the victims had returned to Benghazi after three years of displacement in the hope of rebuilding his life. About 10 days following his return, five masked armed men

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<sup>88</sup> The director of the Ain Zara B Prison was changed in 2017, and, in the course of HRD visits to the facility in November 2017, some detainees reported an improvement in detention conditions. On 1 January 2018, a prisoner has reportedly died as a result of torture following prison guards’ attempts to put an end to a hunger strike by detainees protesting detention conditions and delays in the legal process. Other detainees were also reportedly beaten by guards.

<sup>89</sup> For more information on the incident, see also HRW, “Libya: Mass Extra Judicial Execution”, 29 November 2017, available at :<https://www.hrw.org/news/2017/11/29/libya-mass-extra-judicial-execution>

forced their way into his home during the night, dragging him away. His family had no information about his whereabouts, until his body was found on 7 August.

During 2017, at least seven videos emerged on social media depicting LNA forces purportedly carrying out alleged summary executions of suspected BRSC fighters and other opponents. In at least five videos, a field commander with the Special Forces in Benghazi, Mahmoud al-Werfalli, was allegedly depicted to be either directly carrying out the executions or giving orders. On 18 July, OHCHR called on the LNA to investigate the allegations, and suspend Mahmoud al-Werfalli from his duties pending the conclusion of investigations. On 15 August, the Pre-Trial Chamber 1 of the International Criminal Court indicted and issued an arrest warrant for Mahmoud al-Werfalli, on one count of a war crime.<sup>90</sup> At the time of writing, reports indicated that Mahmoud al-Werfalli remained at large and has been involved in additional crimes following his arrest warrant.<sup>91</sup>

In the course of 2016, the bodies of victims in what appears to be alleged summary executions and torture were uncovered in Benghazi streets. On 21 July 2016, the bodies of 14 people were found in a rubbish dump in the Al-Leithi neighbourhood, while on 29 October 2016, 10 bodies were found in another rubbish dump in the Shibna neighbourhood. Reports indicated bound limbs, signs of torture and gunshot wounds, many in the head. Unidentified armed groups, apparently aligned to the LNA, had reportedly detained at least five of the victims. Reportedly, the office of the Ministry of Interior of the “Interim Government” opened an investigation into the 2016 killings, but has not made public any of its findings.

On 11 December 2016, the body of a 16 year-old boy bearing multiple gunshots wounds was found in Benghazi. Reportedly, he had been taken some two weeks earlier from the street, and was allegedly held in the al-Kuweifiya prison. According to a forensic report seen by HRD, his death was caused by multiple firearm injuries. The victim had been detained at the former Birsis facility, which was under the oversight of the then Commander of the Department of Combating Terrorism, Faraj Ga'im.

Another death in custody in unclear circumstances was recorded in Derna. On 4 September 2017, a 26-year-old imam and student in Islamic jurisprudence died while in the custody of the DMSC. On 6 September, the DMSC issued a statement acknowledging his detention on suspicion of passing information to the LNA, but denied allegations that he had died because of torture or ill-treatment. Information obtained by HRD indicates the victim had been subjected to beatings while in custody.<sup>92</sup>

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<sup>90</sup> ICC, Prosecutor vs. Mahmoud Moustafa Busayf al-Werfalli, 15 August 2017, available at <https://www.icc-cpi.int/libya/al-werfalli>

<sup>91</sup> See ICC, “Statement to the United Nations Security Council on the Situation in Libya, pursuant to UNSCR 1970 (2011)”, 8 November 2017, available at: [https://www.icc-cpi.int/Pages/item.aspx?name=otp\\_lib\\_unsc](https://www.icc-cpi.int/Pages/item.aspx?name=otp_lib_unsc)

<sup>92</sup> In cases of deaths in custody, the burden of proof is on the State to demonstrate that the death was not caused by actions or omissions of their agents. Absent such proof, the responsibility of the death rests with the authorities.

## 10. Detained women and girls

HRD documented numerous cases involving women unlawfully deprived of their liberty, often because of family links or for the purpose of prisoner exchanges. Like male detainees, women were held for prolonged periods of time without any legal basis and without being afforded the opportunity to challenge the lawfulness of their detention.

Egyptian national Farida Ali Abdul Hamid was detained unlawfully for 13 months in eastern Libya. In May 2015, forces allied to the LNA arrested her together with her 38-year-old son at a checkpoint in the area of Budizira, in Benghazi. After being held for three days incommunicado at a facility in Budizira, she was transferred to al-Kuweifiya Prison, where she was held for more than a year until her transfer to an LNA commander. She was eventually released in a prisoner swap with LNA fighters in June 2016. She was never formally charged or afforded the opportunity to challenge the legality of her detention. HRD had repeatedly raised concerns to relevant authorities regarding her arbitrary detention and deteriorating health whilst in prison. At the time of her arrest, Farida Abdul Hamid was 65 years old and suffered from stomach cancer, asthma, chronic high blood pressure and diabetes. In detention, her health deteriorated as authorities failed to provide her with prompt and adequate medical treatment. On 30 October 2016, she passed away, after undergoing three surgeries following her release on 9 June 2016. In April 2016, the Working Group on Arbitrary Detention adopted an opinion that Farida Abdul Hamid and her son were detained arbitrarily, based on non-observance of international standards for fair trial.<sup>93</sup>

The LNA and allied armed groups unlawfully deprived other civilian women and girls of their liberty for the purpose of exchanging them with fighters and extracting information about other parties to the conflict. Between 18 and 20 March 2017, the LNA seized a group of civilians, including men, women and children, following their escape from Block 12 in Ganfouda, then under the control of the BRSC and besieged by the LNA. Eight women and five girls were eventually transferred to the al-Kuweifiya Prison where they were questioned by intelligence agencies, including on their male relatives' involvement in the conflict. They were released in two batches, on 29 March and 20 April 2017 respectively, in the context of prisoner exchanges with LNA elements captured by the Benghazi Defence Brigades during fighting in the Oil Crescent in March 2017.

In the context of military operations in Sirte against fighters who pledged allegiance to the so-called Islamic State (IS), at least 117 Libyan and foreign women were detained by the Misrata security forces in November and December 2016 and transferred to the al-Jawiya prison. Those held included survivors of rape and other abuses by fighters loyal to the so-called IS. 31 women were released in April 2017 after having been cleared of terrorism-related activities by a prosecutorial committee. Another 20 Libyan women were released following orders by the Office of the Prosecutor General issued between 22 November and 1 January 2018. Those released were

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<sup>93</sup> Opinions adopted by the Working Group on Arbitrary Detention at its seventy-fifth session, Opinion No. 3/2016 concerning Farida Ali Abdul Hamid and Salim Mohamed Musa (Libya), 18-27 April 2017, available at [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/WGAD/2016/3](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/WGAD/2016/3). Her son remains detained at the al-Kuweifiya prison.

required to be handed over to two sponsors from their immediate families. Their releases were also conditional upon their and their sponsors' commitment for them to reside in either Tripoli or Misrata and for them to report to the Office of the Prosecutor General on a monthly basis or whenever summoned. The other women detained in the context of military operations in Sirte remain in detention without being formally charged or referred for trial. The lack of access to lawyers and periodic denials of family visits are ongoing concerns. HRD also received alarming reports by credible sources of beatings and sexual assaults, particularly during their initial period of detention. On 20 August 2017, family members of Libyan women detained in al-Jawiya submitted a complaint to the Office of the Prosecutor General regarding their prolonged pre-trial detention, the absence of female guards, poor detention conditions and inadequate access to healthcare.

Women across Libya are held in facilities without female guards, exposing them to increased risks of sexual harassment and violence. In western Libya, the al-Jdeida Women's Prison in Tripoli remains the sole facility with female guards, while hundreds of women continue to be held at the Mitiga detention facility and the al-Jawiya Prison. In eastern Libya, the al-Kuweifiya Prison employs women guards, but women detainees nonetheless reported being interrogated, including at night, by male GIA officials without the presence of female officers.

A woman in her thirties, who was held for several days at Mitiga detention facility in late 2015, described being strip-searched by another woman detainee under the gaze of male guards. When she protested, she was reportedly beaten with a hose, insulted and touched on her breast and buttocks. Migrant women arrested in a number of publicized raids by the SDF in the Tripoli neighbourhood of Gergaresh, in early 2017,<sup>94</sup> also recounted being strip-searched by male guards in Mitiga, who forced them to undress and bend over before carrying out invasive cavity searches.

In addition to alleged sexual violence, detained women have also been subjected to alleged torture and ill-treatment in facilities under the Ministry of Interior, particularly immediately upon their arrest and prior to their transfer to regular prisons. Since December 2015, HRD has received allegations of torture and ill-treatment, including beatings, whipping, hair-pulling, insults and threats of a sexual nature committed at the Criminal Investigation Department of Abu Salim, the CS/AS, the Markaz al-Madina (Central City) police station, the Mitiga detention facility, and the al-Kuweifiya Prison. On 10 September, reportedly, four women detainees were allegedly assaulted at the al-Jdeida Women's Prison, in the context of a prisoner demonstration against changes in the administration of the facility. The situation in the al-Jdeida Women's Prison deteriorated since November 2017 when the SDF began securing the perimeter of the prison and interfering in its day-to-day functioning. For instance, SDF members have conducted a number of inspections of women's cells, including late at night, searching for prohibited items. In the course of such searches, they beat women detainees including with the backs of rifles and placed inmates in solitary confinement.

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<sup>94</sup> See SDF's official Facebook page for 7, 13 and 15 January 2017 posts, available at <https://ar-ar.facebook.com/%D9%82%D9%88%D8%A9-%D8%A7%D9%84%D8%B1%D8%AF%D8%B9-%D8%A7%D9%84%D8%AE%D8%A7%D8%B5%D8%A9-1021745154586317/>

In August 2017, a 20-year-old Libyan woman detained for four days at a facility under the Ministry of Interior, recounted to HRD of being slapped, having her hair pulled, and being forced to remove her shoes before lashes were inflicted on the soles of her feet.

In early 2016, a 21-year-old foreign national, who has lived in Libya her whole life, was held for 25 days at the CS/AS facility where she was reportedly beaten with water pipes by four guards. She was arrested without warrant on accusations of committing “adultery”<sup>95</sup> and was searched by men upon her arrival to the facility. A 24-year-old Nigerian woman detained by SDF on suspicion of “prostitution” from January 2017 to May 2017 recounted being taken out of her cell on two occasions, ordered to stand facing a wall, and flogged on her back with water pipes and sticks.

Former detainees at the al-Kuweifiya Prison recalled being slapped, kicked and threatened during interrogations by members of the GIA. Others alleged that they were insulted and labelled as “Daeshi” (belonging to Daesh, Arabic acronym for the so-called IS) because of suspected affiliations of their male relatives with the BRSC.

## 11. Conclusion and recommendations

Widespread prolonged arbitrary and unlawful detention and endemic human rights abuses in custody have plagued post-2011 Libya. The efforts of successive authorities to address concerns has been resisted by armed groups, and have been further undermined by ongoing political and security challenges. The reliance of transitional authorities on salary payments to and public praise for armed groups has empowered the latter and entrenched their sense of impunity. Various influential political and military actors (including those affiliated with the State) routinely ignore widespread abuses in the context of detention, unless committed by their rivals.

According to OHCHR/UNSMIL, despite the scale and extent of custodial abuses, no armed group commander or member has been brought to justice for allegedly committing human rights violations since the 2011 armed conflict. While the GNA does not appear to have effective control over most armed groups carrying out unlawful deprivation of liberty, by providing support and authorizing certain armed groups to exercise powers of arrest and detention, the Government is responsible for ensuring their compliance with domestic and international norms and standards, in particular, international human rights law.

Re-establishing the rule of law requires political will from the GNA and other parties in *de facto* control in different parts of Libya, and support from the international community. Authorities must prioritize the release of all those detained arbitrarily, provide humane treatment and conditions for those detained lawfully, and ensure all are afforded due process rights. Releasing those unlawfully detained would greatly reduce the prison population, free up resources to improve infrastructure and conditions in prisons, and facilitate the task of judicial bodies. Authorities must also signal a zero-tolerance policy for torture and unlawful killings in custody, and ensure accountability for

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<sup>95</sup> Sexual relations outside marriage between consenting adults are criminalized and prosecuted in Libya. Women and girls are believed to be disproportionately affected. Further, non-married women denying charges of “adultery” are forced to undergo demeaning, degrading and unscientific “virginity tests.”

past, alleged abuses. Failure to do so will not only inflict additional suffering on thousands of detainees and their families and lead to further loss of life, but will also be detrimental to any stabilization, peacebuilding and reconciliation efforts.

Based on findings outlined in this report, OHCHR and UNSMIL make the following recommendations:

**To all State and non-state entities that deprive persons of liberty:**

- Immediately and unconditionally release all those detained arbitrarily or otherwise unlawfully deprived of their liberty, including (1) hostages and others detained solely on account of their family links, political affiliations and tribal origin and/or for purposes of prisoner exchanges and/or for ransom; (2) all those detained solely for exercising their rights to freedom of expression, peaceful assembly, association, or conscience; (3) all other individuals detained without a factual and legal basis of their detention.
- Transfer all those lawfully deprived of their liberty to official prisons under the effective and exclusive control of the Judicial Police of the Ministry of Justice, or in the case of military personnel, the Military Police of the Ministry of Defence. The State should take measures to put an end to all unofficial detention facilities run by state-affiliated detaining powers, and non-state actors.

**To the GNA:**

- Formulate a strategy and plan of action to end arbitrary detention in consultation with relevant national stakeholders, including judges, prosecutors, lawyers, human rights activists, law enforcement and security officials; as well as relevant United Nations entities and other members of the international community. The plan should outline concrete measures to be taken, to commit relevant authorities to specific deadlines, and lay out sanctions for failure to meet them. The plan should aim to:
  - Without further delay, devise and implement a prosecutorial strategy to ensure that all detainees are screened by independent judicial bodies to determine whether they should be immediately released or referred for trial to face criminal charges in proceedings meeting international fair trial standards. Given the large number of detainees and facilities, priority for screening should be given to vulnerable groups including children, women at risk of abuse, pregnant women, and 2011 conflict-related detainees held for over six years without sentencing.
  - Provide all those released with documentation indicating the length and place of their detention and information on whether they were released without charge or trial or on their charges and sentences.

- Ensure commensurate reparations for all those subjected to unlawful deprivation of liberty.
  - Pending amendments to the Code of Criminal Procedures, issue guidance on maximum permissible detention periods before a detainee is released or brought before a judge and charged, and if charged with a criminal offence, maximum periods before a defendant is brought to trial or released.
  - In line with the LPA, begin a process to remove law enforcement powers from armed groups, prioritizing those with long records of committing human rights violations and/or those who refuse to handover detainees to State custody.
- In view of the systematic torture of detainees, the head of the Presidency Council should publicly and unequivocally condemn torture and ill-treatment, and order all armed groups and law enforcement, military, security and intelligence personnel and commanders to stop torturing, ill-treating and abusing detainees. All allegations of torture must be immediately referred to the relevant judicial authorities for investigation.
  - Instruct law enforcement officials to bring persons deprived of their liberty before a judicial authority within 48 hours (following their arrest) as per Libyan law, in particular, the Code of Criminal Procedures.
  - Put in place measures to guarantee that all those deprived of their liberty have the means to communicate externally and have immediate and unfettered access to their families and lawyers of their choosing.
  - Order for detainees to be held in dignified and humane conditions, and install independent monitoring mechanisms. At a minimum, as per the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), detainees must (1) have access to adequate and specialized medical care; (2) have sufficient food and drinking water (3) be granted recreational time outdoors; and (4) have access to basic necessities including bedding, clothing and items of personal hygiene.
  - As a matter of urgency, transfer women detainees to facilities with sufficient female guards and other trained personnel, and establish gender specific healthcare and other services for women and accompanying children. Taking into account the history of discrimination and victimization of women as well their caregiving responsibilities, develop and implement non-custodial alternatives to detention, particularly for women held in relation to alleged non-violent offences. Encourage women to join the Judicial Police and put in place measures to combat workplace discrimination.



- Establish, the fate and whereabouts of alleged victims of enforced disappearance, and take the measures necessary to ensure that relatives of persons deprived of liberty are informed without delay of the fate and whereabouts of their next of kin.
- Ensure that children are detained as a measure of last resort, and are separated from adults, unless held with a relative. Cease the practice of placing children in solitary confinement.
- Provide unfettered access, including for unscheduled visits, to recognized international oversight mechanisms that monitor detention conditions and treatment of all prisons and detention facilities.
- Instruct all heads of detention facilities to keep accurate records of detainees, including each person's legal status (if brought before a judge, referred to trial or convicted), which should be open for inspection to officials at the Ministry of Justice, the Office of the Prosecutor General, and relevant international organizations.
- Prioritize technical support and capacity building for the Judicial Police, other law enforcement agencies and the judiciary, including on the establishment of a fair vetting and recruitment process to ensure that those suspected of involvement in alleged human rights abuses are excluded; and the provision of further specialized training, including on international minimum standards for the treatment of prisoners.

**To the Office of the Prosecutor General:**

- Render inadmissible as evidence any statements made under torture or duress, including broadcast videos of "confessions", in any criminal proceedings.
- Conduct full, impartial and independent investigations into all allegations of unlawful killings in custody, torture and ill-treatment with a view to bring those responsible to justice. Create measures to protect victims and witnesses from any attacks or intimidation. Pending investigations and prosecutions, individuals against whom there are reasonable suspicions of committing, ordering or participating in torture and other crimes should be removed from active duty.
- Conduct unannounced visits to prisons and other detention facilities to ensure that no individuals are detained without a legal basis and to prevent further torture or ill-treatment.
- Issue a circular instructing prosecutors to use non-custodial alternatives to pre-trial detention, including judicial monitoring, house arrest, or release on bail.

**To the international community:**

- Provide technical, capacity building and other support to the Government to immediately and unconditionally release all those detained arbitrarily or otherwise unlawfully and to transfer all those lawfully deprived of their liberty to official prisons under the effective and exclusive control of the Judicial Police of the Ministry of Justice, or in the case of military personnel, the Military Police of the Ministry of Defence.
- Support the Government in devising and implementing a strategy and plan of action to end arbitrary detention, respect due process rights and prevent violations and abuses in custody.
- Offer effective protection and assistance to torture victims and their families, including by providing adequate financial and other support to organizations working on psychological support and physical rehabilitation and counselling.
- In line with the LPA, encourage the GNA to begin a process to remove law enforcement powers from armed groups, prioritizing those with long records of allegedly committing human rights violations and/or those who refuse to transfer detainees into State custody.
- In the absence of progress on fighting impunity for grave human rights violations and international crimes, consider supporting Libya through the creation of additional accountability mechanisms, such as joint international Libyan tribunals, with the aim of complementing the International Criminal Court and national courts.
- Provide the GNA and affiliated institutions with technical assistance and other support to reform Libya's criminal justice system including its prison system, in line with international norms and standards.