

# TORTURE AND DEATHS IN DETENTION IN LIBYA

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## *Summary*

Torture and other ill-treatment in Libya is an on-going and widespread concern in many detention centres, despite the efforts of the Libyan authorities which are committed at the highest level to ending torture and to ensuring the proper functioning of the criminal justice system.

Since 2012 the Government has sought to bring under the authority of the State the armed brigades which emerged during the 2011 armed conflict, and which are in control of most detention facilities where torture takes place. The Government has affiliated brigades to specific ministries, even though in many cases the brigades have retained actual control of the detention centres. In April 2013 Libya also adopted a law criminalizing torture, enforced disappearances and discrimination and in September 2013 a new law on transitional justice requires all conflict-related detainees to be released or referred to the public prosecutor within 90 days of the promulgation of the law.

However, torture continues today in Libya. It is most frequent immediately upon arrest and during the first days of interrogation as a means to extract confessions or other information. Detainees are usually held without access to lawyers and occasional access to families, if any. The vast majority of an estimated 8,000 conflict-related detainees is also held without due process.

From late 2011, the United Nations Support Mission in Libya (UNSMIL) has recorded 27 cases of deaths in custody where there is significant information to suggest that torture was the cause, and is aware of allegations about additional cases which it has not been able to fully investigate. Eleven of the 27 cases, detailed in this report, took place in 2013, all in detention centres under the nominal authority of the Government but effectively under the authority of armed brigades.

The current situation of prolonged detention and interrogation at the hands of armed brigades without experience or training in the handling of detainees or in conducting criminal investigations, and no effective judicial oversight, is a major factor in facilitating the torture or other ill-treatment of detainees. On the other hand, UNSMIL has observed that a proper handover of detention facilities to experienced and trained officers of the Judicial Police usually results in improved conditions as well as better treatment of detainees.

According to its mandate, UNSMIL's primary role is to assist Libyans in promoting human rights, a fundamental objective of those who rebelled against the Qadhafi regime and a national priority of Libya's current authorities. In fulfilment of its mandate and in cooperation with the Office of the UN High Commissioner for Human Rights (OHCHR), UNSMIL has supported Libyan efforts against arbitrary detention and torture including by monitoring detention centres, advising on judicial reform, and building the capacity of Libya's corrections system. UNSMIL and the OHCHR are alarmed that if appropriate action

is not taken, there is a danger that torture will become institutionalized within the new Libya, rather than making a clean break with the human rights violations of the past when arbitrary detention and torture were systematic.

UNSMIL and the OHCHR recommend that the Libyan authorities and the armed brigades accelerate the process of handing over detainees to the effective control of State authorities, and in the meantime take measures to protect detainees against torture or other ill-treatment. The Libyan authorities should adopt a strategy to screen and where appropriate release or charge and prosecute conflict-related detainees. They should also build the capacity of the criminal justice system to safeguard detainees against any form of abuse and end impunity for on-going violations.

### ***UNSMIL's mandate and working methods***

UNSMIL was established by the Security Council with a mandate most recently renewed in resolution 2095 of 14 March 2013. The Security Council, in full accordance with the principles of national ownership and Libya's national priorities, has tasked UNSMIL to provide assistance in a number of areas, including supporting Libyan efforts to:

“Promote the rule of law and monitor and protect human rights, in accordance with Libya's international legal obligations, particularly those of women and people belonging to vulnerable groups, such as children, minorities and migrants, including through assisting the Libyan Government to ensure the humane treatment of and due process for detainees and to reform and build transparent and accountable justice and correctional systems”.

In fulfilment of its human rights mandate, UNSMIL's Human Rights Division also represents the OHCHR, the UN lead agency on human rights.

From the beginning of its deployment in Libya, UNSMIL has sought to assist Libyans in addressing on-going grave human rights abuses, in addition to dealing with the legacy of the massive violations of the Qadhafi regime. As part of this work, UNSMIL has frequently visited detention centres, cooperating with Libyan civil society organizations, documenting abuses and intervening with the relevant authorities to improve the treatment of detainees. The objectives of this work are to prevent further abuses against detainees and ensure that they be afforded all fair trial guarantees, while simultaneously supporting the reform of the security institutions, prison administration and the judiciary so that perpetrators can be held accountable and further abuses prevented. However, UNSMIL does not have an executive mandate and therefore does not carry out criminal investigations – these remain the responsibility of the appropriate judicial authorities. UNSMIL supports the efforts of the national counterparts through policy advice and technical assistance.

### ***Methodology for this report***

This report, published by UNSMIL in cooperation with the OHCHR, is based on first-hand and other information gathered by UNSMIL in the course of its monitoring activities. Over the last two years, UNSMIL has conducted multiple visits to nearly 30 detention centres, mostly in western Libya, where the largest concentration of detainees is found, focusing in particular on Zawiya, Misrata and Tripoli which have the largest numbers. Security considerations have curtailed UNSMIL's ability to monitor detentions in eastern Libya, while southern Libya has far lower numbers of detainees.

In the course of this work, UNSMIL monitors have had variable access to detention centres, and thanks those who allowed visits or otherwise cooperated. UNSMIL monitors have visited hundreds of detainees and interviewed dozens in private, particularly those most vulnerable to torture or other ill-treatment. A number of the interviewed detainees had visible wounds, bruises and other marks consistent with allegations of torture.

Additional information gathered includes testimonies from other detainees and family members; medical reports (in cases of deaths in custody, a preliminary forensic report is issued to the family indicating the cause of death, and is usually followed later by a more detailed final report); and information from Libyan civil society organizations, as well as the United Nations International Commission of Inquiry on Libya, established in 2011 by the Human Rights Council. In some cases, members of armed brigades holding detainees have freely admitted, if not tried to justify, the physical abuse of detainees.

UNSMIL wishes to acknowledge the courage of many of those who have come forward to denounce human rights abuses, some despite serious intimidation attempts. In light of the risk of retaliation against current or former detainees, their families, or witnesses and others who provided information, only cases of deaths in custody are fully covered in this report. In cases of other current or former detainees, details that would enable their identification, including for example location and dates, have been omitted.

In publishing this information as well as its recommendations, UNSMIL seeks to contribute to a public debate on the need to break with the past, put an end to these abuses, and make urgent progress towards the establishment of the rule of law in Libya.

### *Detentions in Libya*

From 1969 until to 2011 Libya was ruled by a dictatorship run by Muammar Qadhafi which used arbitrary detention, torture and assassinations on a widespread scale as a matter of official policy. The Revolution of 17 February 2011 was primarily a reaction to these and other human rights violations; by the end of 2011 it had succeeded in overthrowing the Qadhafi regime. In the process, many State institutions collapsed or were significantly weakened, including the police, judiciary and prison services. The numerous armed brigades who fought and defeated Qadhafi's forces formed local military councils which took on the role of law enforcement, including detaining people.

Libya's legislature and Government, particularly the General National Congress and the Government in power since the national elections of July 2012, have included human rights and the establishment of the rule of law as one of Libya's national priorities. However, despite their efforts (detailed below), the armed brigades remain in effective control of territory and State functions, including detention and interrogation, and many have swelled their ranks since the Revolution. Some two years after the end of hostilities, the central authorities are still seeking to assume full control over all detainees.

The process of disbanding the armed brigades and reintegrating their members into civilian life or integrating them into the new State institutions is still facing major difficulties despite various decisions by the legislature and the Government. In March 2013, the General National Congress issued Decision 27 ordering all "illegal armed formations" (armed groups not affiliated to a Government ministry) to leave Tripoli, as well as ordering the repositioning outside Tripoli of "the forces affiliated to the ministries of Defence and the Interior". In June 2013, the General National Congress issued Decision 53 instructing the Government to disband all "illegal armed brigades and formations" throughout Libya and to present a plan

for the integration of individual members of “armed formations affiliated to the army and national security” by the end of 2013. If implemented, these decisions would have the effect of transferring control of all detention facilities held by armed brigades – whether currently considered legal or illegal – to the State.

These decisions followed Law 38 on “Special Procedures for the Transition Period”, passed by the National Transitional Council (Libya’s legislative body at the time) in May 2012. This law set a deadline of two months for the Ministries of Interior and Defence to ensure that the cases of all detainees held by armed brigades be screened by civilian or military prosecutors so that they would either be charged and brought to trial or released. By September 2013, few detainees have been screened by prosecutors, and the vast majority remain in detention without access to any judicial process. A new Law on Transitional Justice, passed on 22 September 2013, sets a deadline of 90 days from the date of its promulgation for the Ministries of Justice, Interior and Defence to end the detention of those accused in relation to crimes under the previous regime, requiring detainees to be released or referred to the public prosecution.

By September 2013, the total number of conflict-related detainees in Libya was generally estimated to be around 8,000. This figure has remained fairly constant since the declaration of liberation in October 2011. Accurate figures, including a breakdown by detaining agency, are not available.

### *Places of detention and detaining authority*

In the course of the Revolution, most detention facilities fell under the control of the armed brigades. The prisons which remained under the full control of the Judicial Police (Libya’s prison service under the Ministry of Justice) were mostly in the east of Libya, where members of the Judicial Police joined the Revolution since the beginning. The process of negotiating the handover of detention facilities to the State authorities and the integration of armed brigade members into the Judicial Police resulted in a diverse array of management and control arrangements for detention facilities. Accordingly, the detention facilities in Libya can be viewed in terms of a spectrum:

- (a) At one end of the spectrum are facilities under the authority of the State, specifically the Judicial Police or the Military Police whose members were already in service before the revolution or have been individually recruited both from within and outside of the armed brigades. This concerns mainly prisons, such as Kuweifiya prison in Benghazi and Jdeida prison in Tripoli, both under the authority of the Judicial Police.
- (b) In the middle of the spectrum are many facilities fully or partially under the authority of armed brigades, which have been brought under the Ministry of Justice by joining the Judicial Police, or the Ministry of Defence as part of the military justice system, or the Ministry of the Interior. This includes most facilities visited by UNSMIL, for example a detention centre at the Mitiga Airport military base in Tripoli under the authority of the Supreme Security Committee (SSC) – Tripoli Branch under the Ministry of the Interior and as of June 2013 by the Ministry of Defence; the Correction and Rehabilitation Institution in Tomina in Misrata and the Majer Correction and Rehabilitation Institution in Zliten, both under the authority of the Judicial Police.

While all the facilities in this category are officially under State authority, the effective control by the relevant Ministries on such facilities varies and is often little more than nominal, with brigades frequently retaining their membership and command structures.

In some, there is a *modus operandi* whereby the Judicial Police manages the prison, while the brigades are responsible for the external security of the prison. In many cases, UNSMIL has witnessed an arrangement between the Judicial Police and the armed brigades whereby the Judicial Police shares with the brigades the management of the prison. In other cases, the brigades remain fully in control of the prison, despite the nominal handover.

- (c) At the other end of the spectrum are facilities run entirely by armed brigades with no formal connection to any State institution and no control by the Government. This includes a plethora of makeshift places of detention, including apartments where detainees are secretly held, farms used as prisons and former administrative buildings converted to prisons by the brigades.

In addition, the vetting of brigade members integrated in State institutions, such as the Judicial Police and Military Police, has been minimal or non-existent. In the case of the Judicial Police, the vetting process for the 10,000 former brigade members already integrated has been limited to criminal records. Former brigade members have received either very basic training or no training at all in the handling of detainees.

In September 2013, the Ministry of Justice reported that of the estimated 8,000 conflict-related detainees, 4,000 are under the custody of the Judicial Police (a total of 6,400 detainees, including those held for common crimes, are held by the Judicial Police). The remaining 4,000 conflict-related detainees are being held by the Military Police under the Ministry of Defence; by the SSC and the Combating Crime Department, both composed mainly of armed brigades and operating under the Ministry of the Interior; and by armed brigades not affiliated to any Ministry. The highest concentration of conflict-related detainees of around 2700 is in some seven facilities in Misrata.

Although reliable figures on the total number of detention facilities in Libya are not available, 37 detention facilities were under the authority of the Ministry of Justice as of September 2013, according to the Ministry, the vast majority having been handed over by armed brigades. The Ministry of Justice has also renovated buildings to be used as new prisons, such as the al-Jawwiyyah prison in Misrata, inaugurated in August 2013 and expected to come fully into operation by the end of 2013.

The current situation of prolonged detention and interrogation at the hands of armed brigades without experience or training in the handling of detainees or conducting criminal investigations, and no effective judicial oversight, is a major factor in facilitating the torture or other ill-treatment of detainees.

### ***Torture and other ill-treatment***

The deaths in custody included in this report form part of a much broader pattern of torture and other ill-treatment of detainees. The number and nature of the cases documented, as well as the continuing allegations of serious mistreatment, indicate that such abuse of detainees in Libya is an on-going and widespread concern in many detention centres, and that this problem does not necessarily end when Libyan State authorities nominally take over detention facilities but armed brigades remain in effective control.

On the other hand, UNSMIL has observed that a proper handover of detention facilities to experienced and trained officers of the Judicial Police usually results in improved conditions as well as better treatment of detainees. For instance, the treatment of detainees in al-Wahda

and al-Huda Correction and Rehabilitation Institutions in Misrata, and Majer Correction and Rehabilitation Institution in Zliten, which UNSMIL visited several times during the last two years, significantly improved when the Judicial and Military Police took over.

According to the information available to UNSMIL, torture is most frequent immediately upon arrest and during the first days of interrogation as a means to extract confessions or other information. Detainees are usually held without access to lawyers, and families may not know the whereabouts of their relatives for days, weeks, or even months. In some cases reported to UNSMIL, the whereabouts of individuals remain unknown.

Those arrested are taken from their homes, workplaces, streets or checkpoints. Detainees are frequently moved from one makeshift place of detention (some may even be officially recognized as being under a specific ministry) to another before being transferred for longer periods to proper prisons. They include individuals suspected of having fought on the side of or otherwise having supported Qadhafi's regime, and their family members. Some have been detained apparently on the basis of belonging to certain tribal or ethnic groups, including Warfalla, Tawergha, and Mashashia, as these groups are collectively perceived by some as having supported the former regime. Given the arbitrary nature of the arrests and lack of judicial oversight, cases of personal score-settling are not uncommon.

Detainees told UNSMIL that they were constrained in contorted positions; beaten on the soles of their feet (falaqa); beaten all over the body with whips, cables, plastic hoses, metal chains, bars and wooden sticks; and given electric shocks with live wires or taser-like weapons. Several said they were hanged upside down and beaten for hours, burned with cigarettes, had hot liquids poured on them, and were exposed to burning metals.

For example, a man in his late twenties was detained for five months in a detention facility under the authority of an armed brigade under the authority of the Ministry of Defence. He told UNSMIL that he was asked to confess that he had been involved in the fighting during the conflict, killing anti-Qadhafi fighters and looting homes. He said that during his detention he was beaten with an array of implements including whips and wooden sticks, and given electric shocks with live wires while water was poured on him. He was deprived of sleep and given little food and water. He was not able to walk and, according to a medical certificate, he had suffered "muscle laceration as well psychological trauma."

Other detainees reported rape by having sticks or bottles inserted into their anuses, or said they were beaten on their genitals. In one case, a man in his late forties held by an armed brigade under the authority of the SSC told UNSMIL that he was kept in solitary confinement for four months and beaten with a metal bar, chains and water hoses. He said he suffered four broken fingers and a broken leg. He also said that he was forced to sit on a glass bottle several times and had a large bullet forcibly introduced into his anus, causing bleeding for several days. He added that other cell mates had similar symptoms when they came back from solitary confinement, but they never talked about it because they found it shameful.

A man in his late thirties told UNSMIL that he was arrested while walking back home from work. According to his account, he was taken by armed people believed to belong to the SSC. He said he was blindfolded and taken to an unknown location where he was held for three days in a toilet. He told UNSMIL that it was dark and he could not see anything, and was forced to sleep on urine and faeces. He said he was left without water and food for three days and had to drink his my own urine to survive. The man told UNSMIL that he was moved several times to different makeshift detention facilities. He said that when he was taken for

interrogation he was beaten with wooden sticks and kicked at least for two hours while blindfolded and handcuffed, and hanged upside down and beaten with sticks and metal chains. He said he was asked repeatedly to confess to crimes.

A 20 year-old man told UNSMIL that he spent about 20 days in solitary confinement in the custody of an armed brigade. He said he was kept without clothes, forced to sleep on the floor without mattress or a blanket, and given little food and water. He said he was electrocuted, burnt with cigarettes and beaten with sticks and hoses including on his genitals. UNSMIL saw marks of burns as well as scars all over his body.

Among those visited by UNSMIL were detainees with not just broken limbs but also disabilities, such as deafness and blindness apparently caused by their treatment. Some detainees who said they had been recently beaten could barely walk. Several detainees developed chronic diseases apparently because of lack of adequate nutrition, ventilation and sunlight; exposure to humidity; and poor detention conditions in general. Others suffered from poor medical care, and several died in custody apparently as a result of lack of adequate medical treatment.

### *Deaths in custody*

Throughout the period of its presence in Libya, UNSMIL recorded a total of 27 deaths in custody where there is significant information to suggest that torture was the cause. Sixteen took place between late 2011 until the end of 2012. They include seven deaths which took place in facilities under the authority of Ali Ibn Abi Taleb, al-Fursan, Ahrar Libya and Rad al-Madalim brigades in Zawiya and four deaths in April and May 2012 in facilities under the authority of the SCC— Misrata. UNSMIL issued a press release on 1 May 2012 when three detainees died on the same day, on 13 April, in the same detention facility in Misrata, calling for a full investigation and the establishment of an effective internal inspection mechanism. Two other deaths took place in Ain Zara and Rweimi in Tripoli in 2012. UNSMIL has received information of several other alleged cases of deaths under torture in Tripoli and other parts of the country during this period but has not been able to fully document them.

The eleven cases detailed below are deaths in custody between January and June 2013 where there is significant information to suggest that torture was the cause. The information obtained by UNSMIL includes eyewitness accounts and, in ten of the cases, forensic medical reports as well as photographs of the deceased. Not all the information at UNSMIL's disposal is disclosed in this report as some of the witnesses and others who provided the information fear for their safety. Six of the deaths took place in facilities under the authority of the SSC. While UNSMIL believes these accounts to be credible on the basis of other information and documentation, a thorough investigation is required to fully establish the facts and responsibilities.

- On 17 June, Ali Mas'ud Ahmad al-Etri, a 51 year-old man, died in custody in the Mitiga detention facility under the authority of the SSC – Tripoli Branch. The preliminary forensic report stated that “the death is caused by a cerebral bleeding and cardiac arrest; the corpse had several traumatic bruises. The death was caused by beatings and torture”. According to his family, the victim was arrested on 14 June by members of the SSC – Tripoli Branch at his house in the Dahra neighborhood while drinking alcohol with his friends – drinking alcohol is illegal in Libya. Following his arrest, his relatives had no information as to his whereabouts and were refused access to Mitiga despite several requests. The head of the SSC – Tripoli Branch confirmed to UNSMIL that the victim

had died as a result of beatings and informed UNSMIL that four of the detention facilities guards had been arrested and were being investigated in connection with this death.

- On 27 March, Abdelhakim Belaid al-Tajuri, a 46 year-old man, died on his way to the hospital in Misrata. The preliminary forensic report indicates that “Abdelhakim died as a result of widespread traumatic injuries to his body and bleeding inside the head cavity”. An eyewitness said that Abdelhakim had a swollen face and fresh injuries to his face, hands and feet. Abdelhakim had been arrested on 23 March from his house in Tripoli by members of the Ard al-Rijal brigade located in the Salahaddin area of Tripoli who told UNSMIL they do not work under the authority of any ministry. His father made several attempts to locate him and was eventually told by the Ard al-Rijal brigade that he had been transferred to the Combating Crime Department in Misrata, without indicating at which location. On 31 March his father received a call from a friend in Misrata that his son’s body was at the morgue in Mujama’ al-Iyadat Hospital in Misrata. UNSMIL has received inconsistent accounts by the Combating Crime Department of his fate. The deputy head of the Combating Crime Department confirmed to UNSMIL that Abdelhakim al-Tajuri was in their custody for a few days in Misrata on suspicion of having killed a man from Misrata during the conflict but was then released for lack of evidence. After the victim’s release they do not know what happened to him until 27 March, when he was found at the gate of the Combating Crime Department, lying on the ground. He was transferred to the hospital by members of the Department but he died before arrival. UNSMIL has received information indicating that the Combating Crime Department handed Abdelhakim al-Tajuri over to an armed brigade in Misrata who tortured him.
- On 26 March, Miftah Emhamed Mohamed al-Etiwesh, a 45 year-old man, was found dead in the Abu Salim neighborhood in Tripoli. An autopsy was carried out on his body on the same day at the hospital. The deceased was last seen in a detention facility under the authority of the SSC – Tripoli Branch in Abu Salim. According to the forensic report, “the death resulted from beatings that caused heart and lung failure and several bruises on the head, torso and limbs”. Miftah al-Etiwesh had been arrested on 27 February by the al-Sad brigade located in the Tariq al-Matar neighborhood in Tripoli. The brigade operates under the authority of the Crime Combating Department. He was released on 8 March but was rearrested by the same brigade a day later, and handed over to a detention facility in the Abu Salim area under the authority of the SSC – Tripoli Branch. According to information available to UNSMIL, he was beaten for at least two days while in the custody of the al-Sad brigade and was also tortured in the Abu Salim detention facility. When he was last seen alive he reportedly had scars and fresh marks from beatings on head, hands and feet.
- On 10 March, Miftah Mohamed Miftah, a 34 year-old man from Msallatta, died in al-Qala’ detention facility, controlled by the Msallata Military Council which operates under the authority of the Ministry of Defence. The head of the Military Council told UNSMIL that Miftah died from natural causes after having his breakfast, and that he had breathing problems. However, the forensic report states that “the victim sustained wounds and bruises to his head, back and feet consistent with severe beatings and electric shocks”. Pictures made available to UNSMIL show bruises and wounds on different parts of his body.

- On 10 March, the body of al-Mabruk Khalifa Sa'd Abu al-Kheir, a 56 year-old man, was found on the beach close to Mitiga base. According to the preliminary forensic report "the death resulted from several gunshots". Pictures taken of the body made available to UNSMIL show the victim with his hands tied. According to the family, the body was also covered in bruises. Al-Mabruk al-Kheir had been arrested 15 days prior to his death and held at the Mitiga base in a detention facility under the authority of the Yusuf al-Buni brigade operating under the umbrella of SSC. Neither his family nor his lawyer were allowed access to him despite repeated requests. UNSMIL visited the Youssef al-Bouni brigade to inquire about the case and was told by the head of the brigade that the military prosecution was investigating the case without providing further details.
- On 10 March, the family Isa al-Ahwal, a 30 year-old man from Zliten, was informed that Isa had died that day and that his body was in the morgue in hospital in Misrata. He had been arrested on 21 February on a street close to his home by SSC members from Zliten and Misrata. The family did not have any access to the victim and did not know where he was detained. The preliminary medical report indicates that "there were traumatic injuries all over the body". UNSMIL has pictures of the body showing bruises and recent wounds. In Early April, the victim's brother was abducted by armed men in Mistrata while visiting the city to inquire about the case. He said he was held in an unknown farm and was asked by his captors to drop the case, and was released 28 days later.
- On 28 February, Hasan al-Mabruk al-Triki, a 39 year-old doctor working in a detention facility under the authority of the al-Isnad II brigade, which operates under the control of the SSC in the Ain Zara neighbourhood of Tripoli, died in custody while on duty there. According to his family, Dr. Hasan went to the detention facility as usual in order to treat detainees held at al-Isnad II. He had called his family to tell them that he was being detained at his workplace, but when the family called back one and-a-half hours later, they were told by an al-Isnad II member that he had died. His body was taken to Zawiya Street Hospital in Tripoli by members of the brigade. According to the preliminary forensic report "the victim sustained severe traumatic injuries to his body and particularly to his head and face. His death was caused by internal bleeding".
- On 28 February, Yunes Ahmed al-Bishi, age unknown, died in al-Khadra hospital in Tripoli, three days after his admission. Yunes al-Bishi had been arrested by the Combating Crime Department and the SSC in the Krimiya neighbourhood in Tripoli. He was arrested with three other men and accused of driving a stolen car. According to a doctor who treated him at the hospital, he died from kidney failure as well as muscle damage resulting from torture carried out for several days. His legs would have required amputation. SSC members confirmed to UNSMIL that he had been detained at one of the SSC detention facilities in Tripoli, but did not specify where.
- On 20 February Anas Faraj al-Dib, a 26 year-old man, died in a clinic in Tunisia. The medical report states that "the death was caused by kidney failure and internal bleeding caused by torture". Anas al-Dib was arrested in Tripoli on 31 January 2013 and detained by the al-Khaffash brigade in the Gharghur area in Tripoli for nine days. His family negotiated his release on 9 February and told UNSMIL that Anas al-Dib displayed several bruises and open wounds when he was released. He was immediately taken to the Central Hospital in Zawiya Street in Tripoli. Two days later he was transferred to a clinic in Tunisia for intensive care but died. The al-Khaffash brigade was not affiliated to a ministry and left the area after this incident.

- On 13 or 17 February, Naji La'mari Mohamed al-Tajuri, a 43 year-old man from Suq al-Juma' in Tripoli, died in al-Dafniya Correction and Rehabilitation Institution under the authority of the Judicial Police in Misrata. He was transferred to al-Dafniya from Kulliyat al-Banat, a detention centre under the authority of the Tajammu' Saraya al-Thuwwar (Gathering of Revolutionaries Brigades), under the authority of the Ministry of Defence, where he had spent eight days. Eyewitness told UNSMIL that he was beaten before being transferred to al-Dafniya, where he was beaten again. The head of al-Dafniya told UNSMIL that the victim committed suicide by hanging himself in his cell. The preliminary medical report indicated that Naji La'mari died on 13 February – UNSMIL has additional information corroborating that date – as a result of hanging. However, the final report indicated that he died on 17 February by strangulation.
- On 10 January, the body of Mansur Salem al-Bdiwi, a 54 year-old man, was left outside the entrance of Mujama' al-Iyadat Hospital in Misrata. According to the preliminary medical report, “the death was not due to natural causes but due to injuries on his head, stomach and back”. Mansur al-Bdiwi was last seen by his family on 29 December 2012, while detained at a detention facility under the authority of the Katiba al-Ittihad al-Amniya under the authority of the Judicial Police. The head of the brigade told UNSMIL that Mansur al-Bdiwi was handed over to his brigade by the SSC in Zliten, because the Military Council in Misrata had issued an arrest warrant against him. The victim, a former police officer, was suspected of committing crimes against people in Misrata during the conflict. He was then transferred to the Combating Crime Department in al-Kulliya al-Jawwiyyah in Misrata. UNSMIL’s attempts to meet with the head of the Department in Misrata were unsuccessful, although the deputy head denied knowledge of the case and promised to inquire.

### ***Libyan national legislation***

While arbitrary detention and torture under the Qadhafi regime were systematic, Libyan law dating to before the Revolution provides safeguards for detainees. Article 14 of Law No. 20 of 1991 on the Promotion of Freedoms states: “No one can be deprived of his freedom, searched or questioned unless he has been charged with committing an act that is punishable by law, pursuant to an order issued by a competent court, and in accordance with the conditions and time limits specified by law”.

Safeguards provided for by the Code of Criminal Procedure include the requirement for security officers to hold a warrant from the competent authority when arresting or detaining a suspect (Article 30); the requirement to detain suspects only in “prisons designed for that purpose” (Article 31); the right of detainees to challenge the legality of their detention (Article 33); the right to have a lawyer present during interrogation in criminal cases (Article 106); and the right to be assigned a lawyer if none was appointed by the defendant (Article 321). The limit for referring suspects to the General Prosecution is 48 hours, extending to seven days for certain offence including those “against the State” (Article 26).

Article 435 of the Penal Code stipulates three to 10 years’ imprisonment for “any public official who orders the torture of or tortures an accused”; although this provision is limited to public officials and its formulation does not cover victims who are not being formally accused. Further relevant provisions are Articles 379 to 381 of the Penal Code, punishing “causing harm to another person leading to a sickness” with up to one year’s imprisonment

and a fine of 50 Libyan Dinars (LYD) if the sickness lasts less than 10 days (Article 379); up to two years' imprisonment and a fine of LYD 100 if it causes a sickness that threatens life or causes paralysis of less than 40 days (article 380); and up to five years' imprisonment if it causes an incurable sickness, the loss of an organ or part of the body or other disability (Article 381).

Following the 2011 Revolution, the provisions of the Penal Code and Code of Criminal Procedure have not been changed significantly, but wide ranging powers of investigation, arrest, interrogation and detention have been accorded to armed brigades affiliated to the Ministry of the Interior. The SSC has been given such powers by Ministry of Interior Decree 388 issued on 28 December 2011.

In an attempt to resolve the situation of large-scale detentions without judicial process, the National Transitional Council in May 2012 passed Law 38 of 2012 requiring the Ministries of Interior and Defence to take custody of all detainees held by armed groups by 12 July 2012, and to refer cases to the prosecution or allow for their release. Law 38 also specifies that there shall be no penalty for "military, security, or civil acts dictated by the February 17 Revolution that were performed by revolutionaries with the goal of promoting or protecting the revolution." However, the law does not specify which acts should fall under what is effectively an amnesty provision, and some members of brigades told UNSMIL that they believed the law exempted them from any responsibilities for crimes committed against detainees.

Most recently, Law 10 of 2013 entitled "Criminalising Torture, Enforced Disappearances and Discrimination", adopted by the General National Congress on 14 April 2013, clarifies that torture, enforced disappearances and discrimination are crimes and remain punishable as such. While the law overall lacks detailed provisions, it does specify in Article 2 that anyone who "commits torture or orders someone else to commit physical or mental suffering against a detainee under his or her custody to elicit a forced confession of a crime he or she may or may not have committed, or for discrimination of any form, or for revenge of whatever motive shall be imprisoned for a period of no less than five years." Article 2 also prescribes the same prison term for anyone "who keeps silent on torture while having the ability to stop it." The same article stipulates that if torture results in "grave harm" the punishment is no less than eight years; ten for "grave harm" and if the victim dies the offence is punishable by life imprisonment. Under Article 5, "political, executive, and administrative officials as well as military commanders or their officers-in-charge" are also liable for acts of torture, among others, committed by those under their control if the superior does not take the necessary measures to prevent or expose the act if able to do so, or to refer it to the relevant authorities.

### ***Libya's international legal obligations***

As a State party to the 1966 UN International Covenant on Civil and Political Rights, Libya has an obligation to prevent arbitrary arrest and detention and allow anyone deprived of their liberty an effective opportunity to challenge the lawfulness of their detention before a court (Article 9). Those arrested are to be promptly informed of any charges against them and brought before the judicial authorities within a reasonable time. The Covenant also enshrines the right to life stating that "No one shall be arbitrarily deprived of his life" (Article 6), prohibits torture (Article 7) and states that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person" (Article 10).

The 1976 Optional Protocol to the International Covenant on Civil and Political Rights, to which Libya is also a State Party, enables individuals to submit communications, alleging violations of any of the rights set forth in the Covenant, to the Human Rights Committee, the body of independent experts that monitors the implementation of the Covenant.

The 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires Libya to criminalize torture and investigate instances where there are reasonable grounds to suspect that acts of torture or other ill-treatment have occurred, even when no official complaint has been made. The State is also required to bring those responsible to justice, provide reparation to the victims and take concrete measures to prevent torture or other ill-treatment, including by granting independent bodies the right to monitor the situation of detainees.

The 2002 Optional Protocol to the Convention against Torture, if ratified by Libya, would allow for inspections of all detention centres by an international body, as well as requiring Libya to provide access to detention centres to independent Libyan bodies.

Libya is also a State party to the 1981 African Charter on Human and Peoples' Rights and has ratified the Protocol establishing the African Court for Human and Peoples' Rights. The African Charter prohibits torture and cruel, inhuman or degrading treatment (Article 5) as well as arbitrary arrest and detention (Article 6) and enshrines the right to a fair trial (Article 7). Libya is not among the States who made a declaration accepting the admissibility of cases instituted directly by individuals or non-Governmental organizations.

Also relevant to the situation in Libya are the 1977 UN Standard Minimum Rules for the Treatment of Prisoners and the 1990 Basic Principles for the Treatment of Prisoners, which also prohibit torture and other ill-treatment and lay down rules relating to detainees' hygiene, access to medical services, food, discipline and punishment.

With regard to deaths in custody, of importance is the 1988 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which requires an inquiry to be held into all cases of death or disappearance of a detained or imprisoned person (Principle 34).

### ***Measures taken by the Libyan authorities to address arbitrary detentions and torture***

The Libyan authorities have clearly and repeatedly stated that arbitrary detentions and torture are absolutely unacceptable. The Libyan Government is committed at the highest level to secure the handover of detainees to the State, to end torture, and to restore the proper functioning of law enforcement agencies and the judiciary.

As part of a strategy to reassert control over detentions, the Government since 2012 has sought to bring armed brigades involved in detentions under the official authority of the State by affiliating them to the Ministries of Justice, Defence or the Interior, even though in many cases the armed brigades have retained the actual control of the detention centres.

The Government of Prime Minister Ali Zeidan which took office in November 2012 has built on these efforts and developed a strategy to restore the authority and functioning of the State as well as tackling the human rights abuses relating to detentions in Libya. As articulated by Minister of Justice Salah al-Marghani, the strategy includes:

- Raising awareness among the armed brigades and the security forces, as well as the general public and civil society organizations, of the need to address grave human rights violations. The Ministry of Justice has made significant efforts to improve the situation in the Major Correction and Rehabilitation Institution in Zliten, where more than 500 conflict-related detainees are held. According to detainees and the prison administration, beatings were halted in July and several detainees were transferred to the hospital for medical treatment. Those detained in solitary confinement were transferred to collective cells.
- Bringing detention facilities under the effective and full control of the Judicial Police and other Government agencies with powers of detention. On 13 August 2013, UNSMIL attended the opening of the Correction and Rehabilitation Institution at the al-Kulliyyah al-Jawwiyyah (Airforce College) in Misrata, a detention facility intended to improve conditions for detainees in Misrata and with the capacity to house around 1000 detainees. The opening of this facility fulfils an important commitment by the Ministry of Justice to retake control of detentions, and represents a successful collaboration between that Ministry and the Misrata Local Council to establish the rule of law and the authority of the State. Detainees in Misrata are due to be gradually transferred to this new facility, which is under the authority of the Judicial Police. Around 100 detainees had already been transferred from al-Wahda prison in mid-August.
- Recruiting thousands of new recruits to the Judicial Police to ensure full control and management of detention centres. According to the Ministry of Justice, the Judicial Police has integrated 10,000 armed brigades members in its service, 4,000 of whom in 2013, reaching full absorption capacity.
- Investigating abuses and holding perpetrators accountable. The Ministry of Justice has welcomed the efforts of UNSMIL and local NGOs in monitoring detentions and documenting abuses. However, until now UNSMIL is not aware of any completed investigation into any of the deaths in custody mentioned in this report, although the Ministry of Justice has informed UNSMIL that it was compiling relevant information.
- Transfer prosecutors from one location to the other. In order to strengthen capacity where it is mostly needed. A proposal to transfer prosecutors from eastern Libya to Misrata was considered but then abandoned fearing for the safety of the prosecutors.
- Adopting a law on transitional justice to deal with the crimes of the Qadhafi regime, including through fair trials – a new law on transitional justice was adopted by the General National Congress in September 2013.
- Adopting other relevant legislation. Particularly significant is the law removing the jurisdiction of military courts on civilians and the law criminalizing torture, enforced disappearances and discrimination, both adopted in April 2013. A law supporting victims of sexual violence was under consideration in August 2013 after having been submitted to the General National Congress by the Minister of Justice.

UNSMIL welcomes both the political will manifested by the Libyan Government and the General National Congress to restore the function of the State and to end human rights abuses, and the actual progress made in these areas. It is also encouraged by the public support for these endeavours manifested by civil society organizations and the public at large.

UNSMIL is also aware of the challenges still facing the authorities, particularly the resistance by the armed brigades to disband or at least hand over their detainees. In April and May 2013 several ministries, including the Ministry of Justice and the Interior, were besieged by armed brigades making political demands on the General National Congress and the Government. The overall security situation in the country remains precarious and affects among others the judiciary with intimidation and attacks on prosecutors, judges and court houses. Most recently, the President of the Court of Appeal in Derna was assassinated outside the courthouse on 16 June, and a retired senior judge was assassinated in Benghazi on 19 August, possibly as an act of revenge by a criminal that had been sent to prison by the victim.

Finally, the imminent implementation of the Political and Administrative Isolation Law adopted in May 2013 – banning from public life for 10 years those who occupied a wide-ranging category of positions under the former regime – may further weaken institutions, such as the judiciary, in addition to violating the civil and political rights of those affected. These are significant challenges requiring political as well as technical solutions.

### ***UNSMIL's support to Libyan efforts in building State and civil society capacity***

In addition to the monitoring function of UNSMIL's Human Rights Division, which assists the Libyan authorities with information and advice on the situation in detention facilities it visits, UNSMIL has been involved in a range of other activities in support of, and in close cooperation with, the Libyan authorities as well as civil society.

UNSMIL has been providing institutional support to the Judicial Police, specifically by familiarizing its officers with international human rights and rule of law standards with particular emphasis on the treatment of detainees. It has carried out a thorough assessment of the organizational and training needs of the Judicial Police, providing training and supporting the establishment of two future specialized training centres in Tripoli and al-Baida / Gernada. UNSMIL is also assisting the Ministry of Justice in restructuring the organization of the Judicial Police, focusing on enhancing the accountability of prison managers, and has underlined the importance of carrying out a proper vetting process before integrating members of the armed brigades, especially at the management level.

UNSMIL is also working with the military justice system to ensure knowledge of international human rights and rule of law standards. It has welcomed the abolition of the military jurisdiction on civilians and is working to ensure that conflicts of jurisdiction between the civilian and military justice systems do not lead to the unnecessary extension of the period of detention.

Finally, UNSMIL – with the support of OHCHR – has provided advice on legislation and on the development of a prosecutorial strategy to carry out the long required judicial screening of the current detainees as well as dealing with the crimes of the former regime. It is also seeking to promote a human-rights based approach to prison reform involving officials as well as civil society, and is supporting civil society groups and activists in human rights monitoring and advocacy.

### ***Conclusion and Recommendations***

Torture was a crime under the former Qadhafi regime, although it was practised with impunity and in a systematic way, as were other grave human rights violations such as arbitrary detention, enforced disappearances and extrajudicial killings. Torture remains a crime today under Libyan and international law and cannot be justified in any way. Those

individuals who have ordered, carried out or acquiesced to torture must be held accountable if the rule of law is to be established in Libya, according to Libya's own national priorities. Libya today has an opportunity to make a clean break with the human rights violations of the past and lay solid and lasting foundations for a just society based on human rights.

The situation regarding torture in Libya remains alarming. While there seems to be progress in some detention centres and the Ministry of Justice indicates a reduction in the number of torture allegations, torture continues to take place in multiple facilities, including facilities nominally under the authority of the Ministries of Justice, Defence and the Interior. The situation of lengthy arbitrary detention by armed brigades continues to facilitate torture, and detainees have died in circumstances strongly suggesting that torture was the cause. If appropriate action is not taken, there is a danger that torture will become institutionalized within the new Libya. This would run against the very goals of the 17 February Revolution and its promise of a Libya free of human rights violations.

At the same time, there is a need to address the concerns of armed brigades who do not trust the authorities, and the judicial system in particular, to be able to deliver justice for the crimes committed under the Qadhafi regime. Restoring public trust in the judiciary through a proper vetting process, clear prosecutorial strategy and building the capacity of the Judicial Police to handle all detentions is part of the solution. The Law on Transitional Justice adopted on 22 September 2013, providing for comprehensive truth seeking, reparations and the resolutions of the issue of conflict-related detentions, provides new impetus to these efforts.

In this context, UNSMIL and the OHCHR make the following specific recommendations to address the issue of torture and other ill-treatment in Libya:

#### **Accelerate the process of handing over detainees to State-controlled facilities**

- The Libyan authorities and the armed brigades should take steps to expedite the handover of all detention facilities to the exclusive and effective control of the Judicial Police or the Military Police. The Ministries of Justice, Defence and the Interior should continue to cooperate closely to ensure all detention facilities currently controlled by armed brigades are transferred to the State.
- Former brigade members integrated in the security forces of the State should not be allowed to continue to be involved in the handling of detainees unless they have individually become part of the Judicial or Military Police through a proper recruitment and vetting process.
- The Libyan authorities, possibly the Ministry of Justice, should develop a database for all detainees with the full cooperation of the armed brigades holding detainees. There should be no secret place of detention or hidden detainees.
- Within the context of a transitional justice strategy, the Libyan authorities should adopt a prosecutorial strategy to screen speedily and effectively the conflict-related detainees, so that those against whom there is sufficient admissible evidence are tried fairly, and those against whom there is no such evidence are released without further delay.
- Similarly, the Libyan authorities should adopt a prosecutorial strategy to deal with the crimes under the former regime, deciding for example which crimes should be tried as a priority. There should be no amnesty for war crimes or crimes against humanity.

### **Build the capacity of the State institutions to handle and safeguard all detainees**

- The Libyan authorities should accelerate the building of the capacity of the Judicial Police, the Military Police, other law enforcement agencies and the judiciary through:
  - the establishment of a fair vetting and recruitment process to ensure that those suspected of involvement in human rights abuses are not part of the new criminal justice system;
  - the provision of further specialized training;
  - and the building or rehabilitation of prison facilities.
- The Libyan authorities should ensure that adequate safeguards against torture and other ill-treatment are in place, in line with Libyan law as well as the Standard Minimum Rules for the Treatment of Prisoners and other relevant international standards.
- The Libyan authorities should take swift and proper action to investigate allegations of torture. They should suspend from their positions those under investigation until the investigation is completed, and prosecute promptly and in fair trials those against whom there is sufficient evidence of criminal behaviour. Cases of deaths in custody should be prioritized for investigation and prosecution.
- The Libyan authorities should improve conditions in detention centres under their official control, especially with regard to health care.
- The General National Congress should ratify the Optional Protocol to the Convention against Torture as well as the International Convention for the Protection of All Persons from Enforced Disappearances.

### **Adopt interim safeguards for the treatment of detainees**

- Pending their transfer to full effective State control, detainees held by armed brigades should be treated humanely. Heads of detention facilities should make clear that torture and any other forms of ill-treatment will not be tolerated: brigade members against whom there are credible allegations of torture should be removed from any dealings with detainees pending the outcome of criminal investigation by the State authorities.
- Detainees should be allowed regular visits from their relatives and lawyers. Meetings between the detainees and their lawyers as well as with the National Council on Civil Liberties and Human Rights, and the Human Rights Division of UNSMIL, must be allowed to be held in confidence.
- There should be careful records of all detentions and of all transfers of detainees between places of detention, so as to reduce the risk of enforced disappearances.
- The Ministry of Justice should organize regular inspections for facilities that are not yet fully under its control.

### **Annex: List of selected detention facilities visited by UNSMIL**

- The Majer Correction and Rehabilitation Institution in Zliten, under the control of SSC – Zliten Branch. The prison was officially handed over to the Judicial Police in January 2013. All conflict-related detainees held in the Kadush facility were transferred to the Majer facility in March 2013;
- The al-Khoms Institution for Correction and Rehabilitation in al-Khoms under the authority of the Ministry of Justice;
- The al-Khoms Military Prison under the authority of the Ministry of Defence;
- The al-Qala detention facility under the authority of the Military Council in Msallata under the authority of the Ministry of Defence;
- The Correction and Rehabilitation Institution in Tomina (a neighbourhood in Misrata) under the authority of the Ministry of Justice;
- The al-Dafniya Correction and Rehabilitation Institution in Misrata under the authority of the Ministry of Justice;
- The detention facilities belonging to al-Isnad brigades and the SSC – Tripoli Branch in Mitiga, Tripoli, under the authority of the Ministry of Interior;
- The Tripoli – al-Raisi Correction and Rehabilitation Institution, formerly known as al-Baraka and previously as al-Rweimi prison. It was under the control of the SCC – Tripoli Branch until March 2013 when it was handed over to the Judicial Police;
- The al-Nawasi and Abu Salim facilities under the control of the SSC – Tripoli Branch under the authority of the Ministry of the Interior;
- The Jedayem, al-Janubi and al-Jazira Institutions for Correction and Rehabilitation in Zawiya under the authority of Ministry of Justice;
- The al-Sdada detention facility under the 28 May Brigade controlled by Libya Shield, Central Command, under the Ministry of Defence in Bani Walid;
- The al-Hadhba Correction and Rehabilitation Institution in Tripoli under the Judicial Police;
- The al-Manara Prison controlled by the Military Police in Zintan;
- The al-Jibs detention facility controlled by the Crime Combating Department in Tripoli;
- The Tadamon Correction and Rehabilitation Institution in Tajura under the authority of the Ministry of Justice;
- The Janduba Correction and Rehabilitation Institution in Gheriyan under the authority of the Ministry of Justice;
- The Katibat al-Ittihad al-Amniya in Misrata, under the Judicial Police, which is tasked to secure and protect the Courts and the Prosecution Offices, but has been widely involved in arrests, detentions and preliminary investigations;
- Al-Wihda Correction and Rehabilitation Institution in Misrata under the Ministry of Justice;
- The SSC detention facility in Tripoli Street, in Misrata, under the authority of the Ministry of the Interior;
- The Istikhbarat al-Jaysh al-Watani in Misrata under the authority of the Ministry of Defence;
- The Sikt Prison in Misrata under the authority of the Ministry of Defence.