

# Unforgotten: Enforced Disappearance in Libya

September 2020



محامون من أجل العدالة في ليبيا



# ABOUT US

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Lawyers for Justice in Libya is a Libyan and international independent non-governmental organisation and UK-registered charity. We work on and in Libya with a growing network of lawyers, activists and grassroots communities across and outside the country. Our vision is of a Libya which embodies the values and principles of human rights and the rule of law and is a society committed to justice. We seek justice in Libya through advocacy and outreach, accountability, transitional justice initiatives and capacity building, underpinned by our own independent research. Our work is rooted in a rights-based approach: we believe that all engagement and policies must be founded on a framework of human rights and ensure that individuals and communities can participate fully as a fundamental part of leading dignified lives.

## ABOUT THE ENFORCED DISAPPEARANCES IN AFRICA PROJECT

Since February 2019, LFJL has partnered with Redress to work on a three-year project entitled “Combatting Enforced Disappearances in Africa” alongside MENA Rights Group, Zimbabwe Lawyers for Human Rights and the African Centre for Justice and Peace Studies. Focusing on Algeria, Libya, Sudan and Zimbabwe, the project aims to end enforced disappearances in Africa through advocacy, casework, regional standard-setting, awareness raising, capacity building and supporting victims in their efforts to access to justice, truth and reparations. This report was produced as part of this project.

The images in this report were created by Dominika Ożyńska.

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# I. INTRODUCTION

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This report provides an overview of enforced disappearances in Libya since the uprising that led to the overthrow of Gaddafi in October 2011. The report also discusses what constitutes an enforced disappearance under Libyan domestic law and how this compares to the international legal definition. The report provides information about the perpetrators responsible for carrying out enforced disappearances in Libya and the profiles of people commonly targeted. It also outlines some of the key places of detention where disappeared persons are frequently held. The scale and scope of enforced disappearances and torture and other ill-treatment linked to enforced disappearances is examined, including with reference to individual cases. The report also analyses the domestic, regional, and international legal frameworks governing the prohibition of torture and other ill-treatment and enforced disappearances and Libya's obligations to respect, protect and fulfil its international and national legal obligations. The report ends with conclusions and makes recommendations to the Government of National Accord, the House of Representatives, the Interim Government, the Libyan Arab Armed Forces, the Supreme Council of State, the Presidential Council and the international community on urgent and necessary actions to eradicate the crime of enforced disappearance, hold those responsible to account and ensure redress for the victims.

## II. METHODOLOGY

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This report is based on information collected by LFJL through desk-based and investigative research including interviews with victims and their families, activists, lawyers, eyewitnesses, and human rights defenders (HRDs). LFJL also interviewed members of international non-governmental organisations (INGOs) working on Libya, as well as local civil society organisations (CSOs). Further, LFJL reviewed information from online sources including reports of INGOs, international and national news outlets, government public statements and social media platforms including Facebook, Twitter and YouTube. The report also includes information that LFJL and Libyan partners submitted for the 2019 Universal Periodic Review of the United Nations (UN) Human Rights Council (UNHRC).

LFJL recognises that while not covered in this report, refugees and migrants in Libya are subject to violent crimes and human rights abuses including enforced disappearances, torture and other ill-treatment. However, this report will not cover enforced disappearance against migrants. We plan to conduct a separate study that captures the use of enforced disappearances against refugees and migrants in Libya.

This report will only cover enforced disappearances as defined under international law and therefore excludes kidnappings and cases of missing persons as they fall outside the scope of this report.

LFJL expresses its gratitude to all those who have contributed information to this report. The identity of some interviewees, as well as the places and dates of interviews, have been withheld to protect the personal safety of those concerned in a context where HRDs continue to be targeted and attacked by state and non-state actors across the country.

# III. WIDESPREAD PATTERN OF ENFORCED DISAPPEARANCES AND TORTURE AND OTHER ILL-TREATMENT

## WHAT IS AN ENFORCED DISAPPEARANCE?

The International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED)<sup>1</sup> sets out three core elements for an enforced disappearance:

- There is an arrest, detention, abduction or any other form of deprivation of liberty;
- That conduct is carried out by agents of the state or by persons or groups of persons acting with the authorisation, support, or acquiescence of the state; and
- The conduct is followed either by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such person outside the protection of the law.

Enforced disappearances affect not only the individuals disappeared but also their families and friends, who are often forced to spend years in anguish before they discover the fate of the disappeared person. Article 24 of the ICPPED defines victims of enforced disappearances as “the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.” This definition is deemed to include the relatives of the disappeared person. In Libya, women, whether wives, daughters or mothers, are particularly affected by the disappearance of their male relatives. In addition to the emotional and psychological impact the disappearance has on the family members, often women lose the main breadwinner of the household. Further, family members trying to reveal the truth about the disappeared often face threats and intimidation from the state, which in some cases could in themselves amount to torture and other ill-treatment.

Libya is not a state party to the ICPPED, which came into force in December 2010. However, as a state party to the International Covenant on Civil and Political Rights (ICCPR), Libya is obliged to prevent arbitrary arrest and detention; to respect the rights of those arrested to be promptly informed of the charges against them; to bring them before the judicial authorities within a reasonable time; and to allow them to challenge the lawfulness of their detention (Article 9). These rights protect similar rights to those protected by the prohibition on enforced disappearance.

<sup>1</sup> UN General Assembly, *International Convention for the Protection of All Persons from Enforced Disappearance*, 20 December 2006, article 2, available at: <https://www.ohchr.org/en/hrbodies/ced/pages/conventionced.aspx>.

Since the overthrow of Gaddafi in October 2011, enforced disappearances have continued<sup>2</sup> across the country. Thousands of people have been deprived of their fundamental human rights and subjected to enforced disappearances, torture and other ill-treatment and prolonged detention.<sup>3</sup> Some of those disappeared have eventually been found in prisons and detention centres, whereas others have never been found or their bodies have been left in streets, rubbish bins or in the sea. Both governments in the East and West of Libya and their affiliated militias have frequently carried out this heinous crime, destroying thousands of lives. Families of the disappeared often avoid reporting the incidents of enforced disappearances to the authorities due to fear of retaliation and intimidation from those authorities or affiliated militias.

The Libyan state<sup>4</sup> and affiliated militias routinely abduct people from streets, cafes, checkpoints, homes, and places of work. They usually raid and search the victims' homes before taking them to undisclosed locations, confiscating phones, papers, laptops or any other equipment that they think may contain information about the political affiliation or human rights activism of the victims. They also force the victims through intimidation and torture to disclose the passwords of their email and social media accounts to identify their political affiliations. The abductions are usually conducted in the middle of the night or early hours of the morning by heavily armed men. They hold the victims under conditions of enforced disappearance with no access to lawyers or families and outside the oversight of the judiciary.

Torture and other ill-treatment are particularly prevalent in the initial periods of detention when detainees are interrogated by state agents or their affiliated militias. Torture and other ill-treatment are used to intimidate, extract confessions, or obtain information about third parties and as retaliation or as a discriminatory punishment against some groups. In some cases, torture and ill-

<sup>2</sup> UN Office of the High Commissioner for Human Rights (OHCHR), *Abuse Behind Bars: Arbitrary and unlawful detention in Libya*, April 2018, available at: [https://www.ohchr.org/Documents/Countries/LY/AbuseBehindBarsArbitraryUnlawful\\_EN.pdf](https://www.ohchr.org/Documents/Countries/LY/AbuseBehindBarsArbitraryUnlawful_EN.pdf).

<sup>3</sup> Ibid, p. 10.

<sup>4</sup> The term “Libyan state” in this Report refers to the consecutive governments that came into office since 2011 whether in the East or West of Libya and all institutions affiliated with them, either directly or indirectly or through receipt of public funds, including (but not limited to) the National Transitional Council, General National Congress, the Government of National Accord (GNA), House of Representatives, Interim Government, the Libyan Arab Armed Forces (LAAF), the Supreme Council of State and the Presidential Council.

treatment has resulted in the death of detainees in custody.<sup>5</sup> Lack of food, water, and access to health care or vital medical assistance also contribute to death in custody.<sup>6</sup> Hundreds of individuals taken by militias and subjected to enforced disappearance have been extra-judicially killed and their bodies found at a later date. Female victims of enforced disappearances are also subject to torture and other ill-treatment. Women's vulnerability is increased as they are often held in facilities without female guards. Families are sometimes able to get information about their loved ones from former detainees who were held alongside them or unofficially through the guards at the detention centre or prison.<sup>7</sup>

## A) PERPETRATORS OF ENFORCED DISAPPEARANCES

Enforced disappearances in Libya should be considered against the background of the rise of different militias since the 2011 uprising. Following Gaddafi's fall, these militias spread across the country and took control over large territories, strategic installations and state institutions.

Since 2012, more than 10,000 fighters from different militias have been integrated into formal security institutions such as the Ministry of Justice (MoJ), Ministry of Interior (MoI), Ministry of Defence (MoD) and the Intelligence Services (IS).<sup>8</sup> As a result, they were given law enforcement and custodial functions including carrying out arrests, interrogations and investigations,<sup>9</sup> and are paid by the Libyan state.<sup>10</sup> There was no vetting process to exclude individuals who had been implicated in committing serious violations of international human rights and humanitarian law. Following their integration into governmental bodies, militias appear to have continued to operate with significant autonomy, including by maintaining their own chain of command structures.<sup>11</sup>

In the East, the main actors are the Libyan Arab Armed Forces (LAAF), commonly known as Libyan National Army, which are composed of both militias and officials affiliated with the former Gaddafi regime. They are affiliated with the Interim Government and the House of Representatives (HoR) in the East. The LAAF are paid by the Interim Government and have a chain of command that is headed by Field Marshal Khalifa Haftar. The militias integrated into

the LAAF include the Benghazi General Intelligence, the Benghazi Revolutionaries Shura Council and the Department for Combatting Terrorism in Benghazi.<sup>12</sup> Militias in the East are responsible for a wide range of human rights abuses including enforced disappearances and torture and other ill-treatment and extra-judicial killings.<sup>13</sup>

In the West, the main players are the internationally recognized Government of National Accord (GNA) and its affiliated militias. The most well-known militias affiliated with the GNA in the West are the Special Deterrent Forces of the MoI (also known as *Radaa*), the Abu Salim Central Security, the Criminal Investigation Department in Abu Salim, the Department for Combatting Organised Crime-Central Branch Misrata, the Presidential Security (*alamn al-r'asi*) in Tripoli, Support Force 17 in Tripoli, the Second Support Brigade in Tripoli, the Security Committee of Misrata, and the Tripoli Revolutionaries Brigade. These militias are also responsible for committing serious human rights violations including torture and other ill-treatment and enforced disappearances.

## B) PROFILES OF PEOPLE MOST FREQUENTLY TARGETED

The profiles of people frequently targeted for enforced disappearance include those who hold real or perceived political opinions that are critical of either government or its affiliated militias. Further, advocates for human rights are also subjected to enforced disappearances because of their human rights work that exposes the abuses committed by the governments or their affiliated militias. Moreover, since 2011, there has been a pattern of targeting people because of their identity and skin colour, such as in the case of people originating from the city of Tawergha.

### Real or perceived political opinion

Those who hold real or perceived political opinions or positions critical of, or contrary to, one or both sides of the armed conflict are often targeted. For example, those who are supportive of one side of the armed conflict, including politicians, are routinely targeted and subjected to gross human rights violations including torture, other ill-treatment, enforced disappearances, and in some cases extra-judicial killings at the hands of the rival government or its affiliated militias.

**Seham Sergiwa:** Perhaps the most well-known case of enforced disappearance in Libya is the case of the lawmaker and women's human rights defender Seham Sergiwa. On 17 July 2019 an armed group abducted Sergiwa from her home in Benghazi. They shot her husband twice in the leg before taking her to an unknown location. To this day, her fate remains unknown. In the days leading up to her abduction, Sergiwa had been openly critical of the LAAF offensive on Tripoli and had called for the formation of a civilian state. Following her abduction, the words "The army is a red line" were graffitied on the walls of her home. It is not known who abducted Sergiwa, but militias aligned with the LAAF have been implicated. It has been suggested that it

5 Ibid, p. 5.

6 Ibid, pp. 30-31.

7 *Abuse Behind Bars*, p. 27.

8 Information collected through phone call interview with UNSMIL on 10 July 2019.

9 Law No. 38 of 2012 Concerning Some Procedures for the Transitional Phase, article. 2.

10 'Libya's Central Bank causing 'civil war' by paying rival militias, UK Envoy Says', The Telegraph, 8 February 2016, available at: <https://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/12146453/Libya-central-bank-causing-civil-war-by-paying-warring-militias-says-UK-envoy.html>.

11 UN Office of the High Commissioner for Human Rights (OHCHR), *Abuse Behind Bars: Arbitrary and unlawful detention in Libya*, April 2018, pp. 8-9, available at: [https://www.ohchr.org/Documents/Countries/LY/AbuseBehindBarsArbitraryUnlawful\\_EN.pdf](https://www.ohchr.org/Documents/Countries/LY/AbuseBehindBarsArbitraryUnlawful_EN.pdf).

12 Ibid, p.19.

13 Ibid, p.33.





was a militia aligned to the military police force, specifically Brigade Number 106, headed and run by Khaled Haftar, the son of Khalifa Haftar.<sup>14</sup> On 12 July 2020, a phone call was leaked in which two HoR members said that they believed that Sergiwa had been killed after her abduction.<sup>15</sup>

**Ali Zidan:** Former Libyan Prime Minister Ali Zidan was abducted on 13 August 2017 by a militia called the Tripoli Revolutionaries Brigade, which is affiliated with the MoI in the West. His whereabouts remained unknown, and the Tripoli Revolutionaries Brigade did not acknowledge that Zidan was in their custody until they released him on 22 August 2017 after several calls for his release.<sup>16</sup> His disappearance followed statements he had made calling for the disarming of militias.

**Abdel Moez Banoun:** The political activist Abdel Moez Banoun was abducted in July 2014 and, to date, his whereabouts remain unknown. Banoun was involved in establishing a civil society movement against the extension of the General National Congress.<sup>17</sup> He also called for the dismantling of militias and

the establishment of a unified national army. It is believed that his disappearance is linked to his political activities.<sup>18</sup> In 2017, armed men raided Banoun's father's house in Tripoli while he was out with his wife, leaving a large knife inside the house as a form of intimidation.<sup>19</sup>

### Human rights activism

Some victims are targeted for peacefully exercising their right to freedom of expression or based on their human rights work.<sup>20</sup> For example, critics including HRDs, activists, journalists, lawyers, and employees of CSOs are often targeted because of expressing their views and exposing human rights abuses that are considered critical of one side of the conflict.

**Jabir Zain:** One of the most well-known cases of enforced disappearance in Libya is the case of human rights defender and women's rights activist, Jabir Zain, a Sudanese national and former resident of Tripoli. He was kidnapped from a café in Tripoli on 25 September 2016. No one knew who abducted him or where he had been taken. Zain is an outspoken blogger and regularly participates in conferences and meetings on human rights and social issues. Zain's family's efforts to find him were impeded by the GNA and affiliated militias. The GNA and their

14 LFJL, 'Silencing speech: The abduction of lawmaker Seham Sergewa is the latest attack on free speech in Libya,' 19 July 2019, available at: <https://www.libyanjustice.org/news/silencing-speech-the-abduction-of-lawmaker-seham-sergawy-is-the-latest-attack-on-free-speech-in-libya>.

15 February Channel, 'Issa Al-Oraibi tells the details of the killing of Seham Sergiwa,' 2020, available at: <https://www.youtube.com/watch?v=bxtCopa9Ilk&feature=youtu.be>

16 'Former Libyan prime minister released after being kidnapped in Tripoli,' The Telegraph, 22 August 2017, available at: <https://www.telegraph.co.uk/news/2017/08/22/family-seek-answers-former-libyan-prime-minister-kidnapped-tripoli/>.

17 The General National Congress was the legislative body in Libya for two years between August 2012 and August 2014. It was replaced with the House of Representatives on 4 August 2014.

18 Amnesty International, 'Vanished off the Face of the Earth,' *Abducted Civilians in Libya*, August 2015, p.5, available at: [https://www.amnesty.org.uk/files/2015-08\\_-\\_libya\\_-\\_vanished\\_off\\_the\\_face\\_of\\_the\\_earth\\_-\\_formatted\\_-\\_final.pdf?W1OiTgZkqdG24IjbeNnuGMiMjKvcNlj=](https://www.amnesty.org.uk/files/2015-08_-_libya_-_vanished_off_the_face_of_the_earth_-_formatted_-_final.pdf?W1OiTgZkqdG24IjbeNnuGMiMjKvcNlj=).

19 Almarsad, 'Unidentified people break into the house of the father of the kidnapped activist Abdel-Moez Bannou and leave him a message,' 19 February 2018, available at <https://almarsad.co/2018/02/19/>.

20 Ibid, p. 3.

affiliated militias did not disclose any information about his location or fate when the family contacted different government institutions. It was only through their own contacts that the family was able to find out that Zain was being held by a militia called the Second Support Brigade which is integrated under the MoI of the GNA. Zain was not able to speak with a lawyer or his family in an official manner for over a year following his disappearance. Due to the family's efforts and protests in front of various government institutions, Zain was transferred to the custody of the IS, who interrogated him again and referred him to the judiciary who renewed his detention until he was deported to Sudan in November 2018. While Zain was in the custody of the Second Support Brigade, he was tortured, including by whipping and severe beating and he received threats against his family.

**Reda al-Boum:** Journalist and human rights defender, Reda Elhadi Fheil al-Boum was arrested by the IS in December 2019 at Mitiga Airport in Tripoli upon arrival from Tunisia. He was arrested based on a warrant from the Public Prosecutor and was detained at al-Jadida prison for 14 days. The MoI of the GNA refused to acknowledge his arrest. His whereabouts were confirmed later in December by the IS before he was released.<sup>21</sup>

## Identity

Some Libyan communities are also subjected to enforced disappearances and other serious human rights violations because of their identity and race. Members of the Tebu community, who are a non-Arab tribe residing in the border areas between Libya, Chad, Niger and Algeria, have been subjected to enforced disappearances. They are black and frequently persecuted because of their race and tribal origin. People originating from the city of Tawergha in North West Libya have also been persecuted due to their identity. People from Tawergha were perceived to be loyal to the Gaddafi regime. In an act of collective punishment, *Thuwar*<sup>22</sup> from Misrata forcibly displaced the entire population of approximately 40,000 people, ordering them to leave the city in a matter of two days over 11 and 12 August 2011. As 80% of the population of Tawergha is black, they were also targeted for their identity and were persecuted across the country. In 2012, the International Commission of Inquiry on Libya found in its report that the abuses committed by *Thuwar* against the Tawergha population were committed

21 Panapress, 'Libyan journalist Ridha Fheil al-Boum released after 12 days of detention,' 27 December 2019, available at: [https://www.panapress.com/Libyan-journalist-Ridha-Fheil-al-a\\_630620832-lang2-free\\_news.html](https://www.panapress.com/Libyan-journalist-Ridha-Fheil-al-a_630620832-lang2-free_news.html).

22 *Thuwar* (revolutionaries) was the common term used to describe men who took up arms against the regime of Gaddafi.

in a widespread and systematic manner which could amount to crimes against humanity.<sup>23</sup>

On 27 December 2014, members of a militia entered a café in Tripoli where Mr. X was working as a waiter. Members of the militia told Mr. X that they knew that he was Tawerghan. They left the café, only to return twenty minutes later with another member of the militia. This member recognized Mr. X and confirmed that he was Tawerghan. They beat Mr. X and told the owner of the café to end Mr. X's employment before they left. At a later date, an unmarked car, which Mr. X's family believed to be used by militias, carrying armed men arrived at Mr. X's family home in Tripoli. The armed persons entered and searched Mr. X's family home. They abducted Mr. X during this raid and drove away with him. Around 10 to 14 days later, a person repeatedly called and threatened members of Mr. X's family. The family identified the caller through Caller-ID then searched the name online and linked it to a Facebook page. The Facebook page was under the name of a man whom the family recognized as a neighbour in Misrata. They believe that this man was implicated with the militia that abducted Mr. X. Mr. X's whereabouts remain unknown.

Mr. Z was a soldier in the military under the Gaddafi regime until the armed conflict started in the city of Tawergha in 2011 whereupon he fled to the outskirts of Tripoli. In late 2012, the Ministry of Defence issued a call with a list of names of individuals who were ordered to re-join the military. Mr. Z's name was listed among them. Mr. Z went to a military compound in Tripoli to make himself available to the military and has been disappeared since then. A well-connected contact of the family went to the same military compound to which Mr. Z had gone to enlist. He was allowed to enter and saw Mr. Z inside with marks of torture on his face and his body. The family contact said members of the militia inside the camp used abusive language towards Mr. Z and emphasised his skin-colour.

## C) DURATION AND PLACES OF DETENTION

Enforced disappearances happen in official and unofficial places of detention. Official places of detention include prisons and detention centres under the control of the Judicial Police of the MoJ, the MoI (such as the Abu Salim prison), the MoD (such as the Sikit prison in Misrata) or facilities run by the IS.<sup>24</sup> These facilities are officially under the control of national institutions but are partly or fully under the *de facto* control of militias. Militias also operate unofficial places of detention, including makeshift facilities housed in barracks, farms, and homes.

23 UN Human Rights Council, *Report of the International Commission of Inquiry on Libya*, A/HRC/19/68, 2 March 2012, para. 63, available at: <https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A.HRC.19.68.pdf>.

24 *Abuse Behind Bars*, pp. 4-5, 11.



Enforced disappearances and other human rights violations are committed in both official and unofficial places of detention. The UN Support Mission in Libya (UNSMIL) estimates that periods of enforced disappearance have reached up to two years in such detention facilities.<sup>25</sup> In other cases, the disappeared persons have never reappeared, such as in the case of Abdel Moez Banoun.

#### D) THE NUMBER OF VICTIMS OF ENFORCED DISAPPEARANCE IN LIBYA

No accurate figures are available on the number of people who have been subjected to enforced disappearance in Libya before or after 2011. The Libyan authorities do not provide statistics on the numbers of people disappeared, and CSOs are not able to collect this information because of the many barriers they face, including security risks and intimidation by the Libyan state and affiliated militias. They are not able to visit detention centres or communicate with militias because this will expose them to many risks that cannot be mitigated. Libyan civil society also faces great risks from militias when they try to defend and represent the disappeared and advocate for their rights to be placed under the protection of the law.

UNSMIL estimates that there are several thousand people held in detention facilities run by militias across Libya.<sup>26</sup> It has documented that thousands of victims are often denied access to lawyers or families. Militias also deny that they hold people in their custody or refuse to disclose information as to their whereabouts and fate. These violations could amount to enforced disappearances.

UNSMIL reports that in 2017, the Investigations Unit of the MoI stated that it had received reports of 189 disappearances in March and another 68 in April of women, men and children in Tripoli alone.<sup>27</sup> However, the real number of people disappeared across the country since 2011 is likely to be significantly higher. Further, families of the disappeared often avoid reporting enforced disappearances to the authorities due to fear of retaliation and intimidation from militias.

#### E) ENFORCED DISAPPEARANCE FOLLOWED BY EXTRA-JUDICIAL KILLINGS

In some instances, people abducted and subjected to enforced disappearance do not return, and their bodies are found later. The bodies of hundreds of individuals taken by militias and subjected to enforced disappearance have been discovered in streets, morgues, and rubbish dumps, many with bound limbs, marks of torture and gunshot wounds.<sup>28</sup>

On 17 August 2019, five bodies were found near Bab Al-Hawari Cemetery in Benghazi. The Victims Organization for Human Rights, a local civil society organization, stated that the victims had been arrested by a militia led by Mahmoud al-Werfalli, a commander in the LAAF, during the aftermath of the Al-Hawari Cemetery bombing which took place on 11 July 2019.<sup>29</sup>

In 2016, the bodies of several victims of what appeared to have been summary executions and torture were uncovered in Benghazi. On 21 July 2016, the bodies of 14 men were found in a rubbish dump in the al-Leithi neighbourhood in Benghazi, while on 29 October 2016, another 10 bodies were found in another rubbish dump in the Shibna neighbourhood in Benghazi.<sup>30</sup> Most of the victims had previously been kidnapped by militias affiliated with the LAAF, detained under conditions of enforced disappearance, tortured and then killed.<sup>31</sup>

25 *Abuse Behind Bars*, p. 4.

26 *Abuse Behind Bars*, p.9.

27 Human Rights Watch, 'Libya: Enforced Disappearance of Tripoli Activist, Abductions Soar in Climate of Impunity', 7 May 2017, available at: <https://www.hrw.org/news/2017/05/07/libya-enforced-disappearance-tripoli-activist>.

28 *Abuse Behind Bars*, p.5, available at: [https://www.ohchr.org/Documents/Countries/LY/AbuseBehindBarsArbitraryUnlawful\\_EN.pdf](https://www.ohchr.org/Documents/Countries/LY/AbuseBehindBarsArbitraryUnlawful_EN.pdf).

29 <https://www.facebook.com/victimsofhr/photos/a.703409363040638/2292602407454651/?type=3&theater>  
<http://alwasat.ly/news/libya/251626>.

30 *Abuse Behind Bars*, p.34, available at: [https://www.ohchr.org/Documents/Countries/LY/AbuseBehindBarsArbitraryUnlawful\\_EN.pdf](https://www.ohchr.org/Documents/Countries/LY/AbuseBehindBarsArbitraryUnlawful_EN.pdf).

31 *Ibid*.

## IV. DOMESTIC REMEDIES

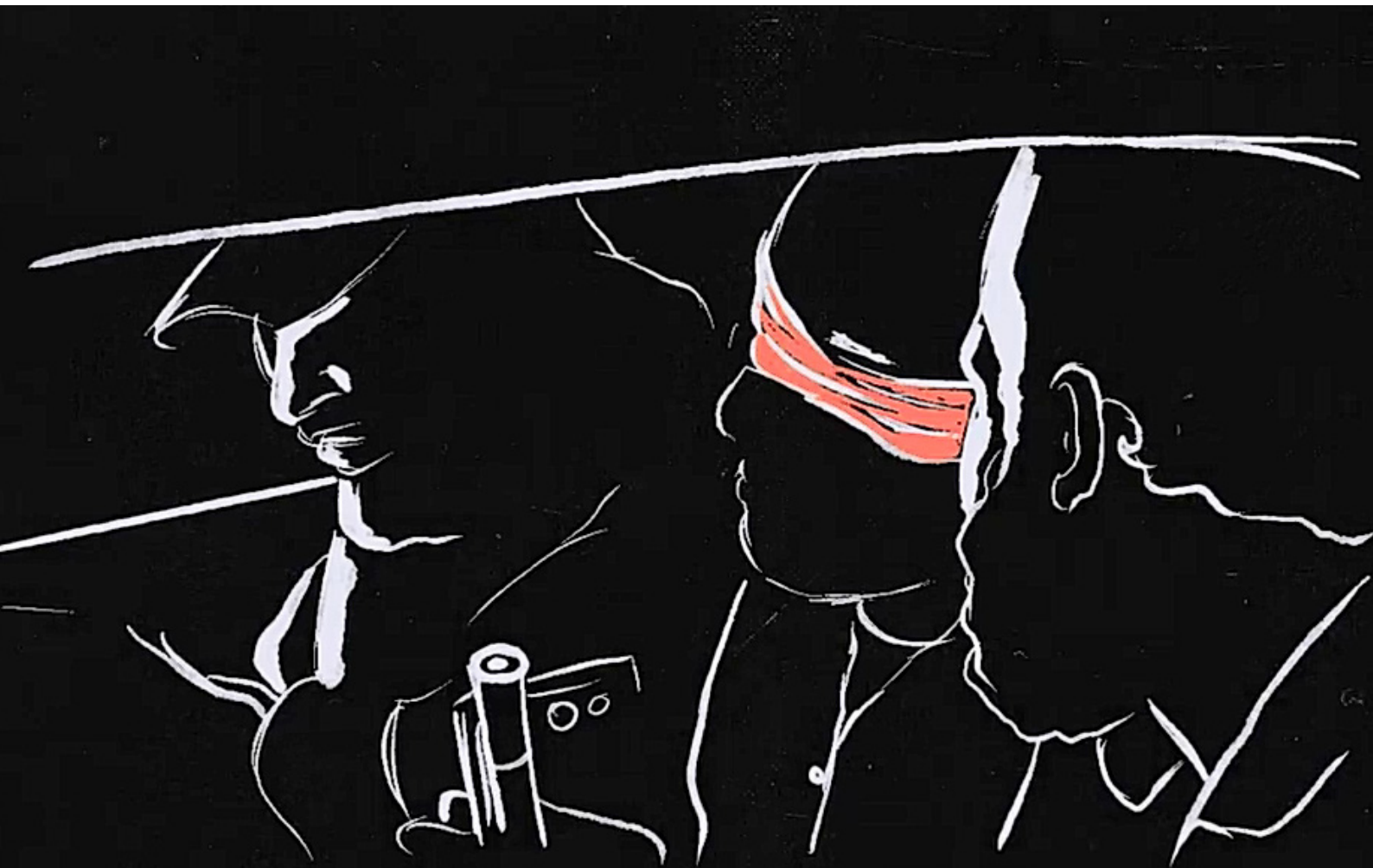
The criminal justice system in Libya is ineffective and not operational. The dominance of militias in the country has severely undermined the rule of law and paved the way for the current environment of impunity. Furthermore, the prevalence of armed conflict has caused the deterioration of the security situation across Libya, causing many courts to close.<sup>32</sup> Judges, prosecutors and other judicial staff have become the target of violent attacks and threats. Decisions by judicial authorities such as arrest warrants, court summons or release orders are often not enforced due to the resistance of militias. As a result, cases that are politically sensitive or security-related, including conflict and human rights-related cases, stall. The judiciary processes the least sensitive cases, such as civil, personal status and regular criminal law cases.

On 18 September 2017, in an incident indicative of the challenges faced by the justice sector, a militia 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.<sup>33</sup>

Although Libyan laws on the prevention of unlawful arrest, torture and other ill-treatment and enforced disappearances contain some safeguards, these laws require crucial amendments to comply with international standards, and in any case, are not respected or enforced. Families of the disappeared often do not report incidents of enforced disappearances to police or prosecutors because they fear militia retaliation, or because they are not confident that the criminal justice system will locate the disappeared, provide redress for the victims and their families, and hold those responsible to account.

<sup>32</sup> International Commission of Jurists, *Accountability for Serious Crimes under International Law in Libya: An Assessment of the Criminal Justice System*, July 2019, p. 9, available at: <https://www.icj.org/wp-content/uploads/2019/07/Libya-Accountability-serious-crimes-Publications-Reports-Thematic-reports-2019-ENG.pdf>.

<sup>33</sup> *Abuse Behind Bars*, p.10.



## V. LEGAL FRAMEWORK

### A) DOMESTIC LAWS

The Libyan Code of Criminal Procedure requires officials carrying out arrests to possess an arrest warrant issued by a competent judicial authority.<sup>34</sup> It further provides that detainees shall only be held in official places of detention.<sup>35</sup>

Furthermore, the Code of Criminal Procedure only confers the power of arrest on law enforcement officials such as police officers who can carry out investigations, gather evidence and present reports and the detainee to the public prosecution authorities or investigating judges.<sup>36</sup> Moreover, Libyan law states that any detainee shall be presented to a judicial authority for investigations within 48 hours of the time of their arrest.<sup>37</sup>

Nevertheless, Libyan law has some clear shortcomings, particularly in relation to the presumption of innocence and the prohibition of enforced disappearances. For example, Libyan law does not provide a limit for the duration of pre-trial detention. It allows courts and judges to extend pre-trial detention indefinitely for periods of 45 days at a time until the end of the investigations, which undermines the presumption of innocence.<sup>38</sup> Pre-trial detention should be used as a last resort and should not be used indefinitely,

to offer safeguards against arbitrary detention. For crimes committed against the state, Libyan law expands the power of the police to hold a detainee for seven days without presenting the detainee to the judiciary.<sup>39</sup> Enforced disappearances and torture are more likely to take place during the initial period of detention. Therefore, empowering the police to hold detainees for seven days without presenting them to a judicial authority facilitates enforced disappearances and torture and other ill-treatment.

Further, Law No. 38 of 2012 Concerning Some Procedures for the Transitional Phase required the referral of all 2011 conflict-related detainees to judicial authorities within two months from the date of its enactment. However, the law has yet to be properly enforced in this regard, and many detainees are still in the custody of militias. Further, article two of Law No. 38 of 2012 legalises the unlawful actions of militias, including arbitrary arrests and unlawful investigations, by giving reports and other evidence-related documents that they produce the same legal status as those produced by judicial authorities.<sup>40</sup>

#### Prohibition of Enforced Disappearances under Libyan Law

Law No. 10 of 2013 on the Criminalisation of Torture, Forced Disappearances and Discrimination provides in its first article

34 Code of Criminal Procedure, 1953, article 24.

35 Code of Criminal Procedure, 1953, article 31.

36 Code of Criminal Procedure, 1953, articles 11, 13.

37 Code of Criminal Procedure, 1953, article 25.

38 Code of Criminal Procedure, 1953, article 123.

39 Code of Criminal Procedure, 1953, article 26; *Abuse Behind Bars*, p.15.

40 Law No. 38 of 2012 Concerning Some Procedures for the Transitional Phase, article 2, available at: <https://security-legislation.ly/node/31621>.





that “whoever kidnaps or detains a human being or deprives the same of any of his personal freedoms, whether by force, threats or deceit, shall be punished with imprisonment.” It is worth noting that the term “enforced disappearance” is not explicitly defined, nor does it appear in the text of the law beyond its title. It therefore appears to conflate disappearances with abductions and kidnappings under common criminal law. This is highlighted by the fact that article 1 of Law No. 10 of 2013 appears to track the language of article 428 of the Penal Code of 1953 which states: “Anyone who abducts, detains, confines, or deprives a person or his personal liberty by force, threat, or deceit shall be punished by imprisonment.”

Further, article 1 of Law No. 10 of 2013 falls short on two of the three features of the definition of enforced disappearances outlined in the ICPPED. Firstly, it does not require the involvement of the state or its affiliates in committing the crime. Secondly, it does not require the perpetrator to refuse the disclosure of information on the fate of the disappeared person or the location of the disappeared. Moreover, the law does not consider the families or relatives of the disappeared, who often face threats and intimidation when they try to reveal the truth, as victims.

### Prohibition of Torture and other ill-treatment under Libyan Law

Torture and other ill-treatment are mostly governed and prohibited under the Penal Code of 1953 and Law No. 10 of 2013. Torture is defined under Law No. 10 of 2013 as:

*“anyone who inflicts or orders another person to inflict physical or mental pain on a detainee under his control in order to extract a confession for any act that such detainee has or has not committed, or because of discrimination, regardless of its type, or revenge, regardless of its motive.”*

The Penal Code of 1953 does not define torture but sets a punishment for committing torture that ranges from three to ten years imprisonment.<sup>41</sup> Libyan law, however, fails to provide that safety from torture and other ill-treatment are non-derogable rights that cannot be compromised at times of internal or external conflict and other emergencies. Having said that, Libya is a state party to the ICCPR, which states in article 4 that the prohibition of torture and other ill-treatment is absolute and cannot be compromised at times of conflict or emergencies. Further, the law does not include the state element, which is inconsistent with the Convention Against Torture (CAT) to which Libya is a party.

## B) REGIONAL FRAMEWORK

### Libya's regional obligations

Libya ratified the African Charter on Human and Peoples' Rights (the African Charter) on 19 July 1986. The African Charter does not include a specific provision prohibiting enforced disappearances. However, article 3 provides for the right to equality before the

41 Penal Code, 1953, article 435, available at: [https://security-legislation.ly/sites/default/files/lois/290-Penal%20Code\\_EN.pdf](https://security-legislation.ly/sites/default/files/lois/290-Penal%20Code_EN.pdf).

law and equal protection of the law. Further, article 4 provides for respect for life and the integrity of the person, article 5 prohibits torture and cruel, inhumane and degrading treatment, article 6 provides for the right to liberty and security of the person and article 7 guarantees the right to a fair trial.<sup>42</sup>

Libya has a duty to respect, promote and ensure the protection of these rights. The African Charter does not include a derogation clause. Therefore, even in emergency situations, limitations of the rights and freedoms enshrined cannot be justified.<sup>43</sup>

The African Commission on Human and Peoples' Rights (the African Commission) adopted guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (the Guidelines)<sup>44</sup> concerning the above-mentioned rights closely linked to enforced disappearance. The African Commission stated in the Guidelines that deprivation of liberty must always be conducted according to the law, which should be consistent with international standards.<sup>45</sup> It further mentioned that any arrest that fails to conform with legal requirements violates the right to liberty and security of the person.<sup>46</sup>

## C) INTERNATIONAL FRAMEWORK

### Relevant treaties and Libya's obligations

The ICPPED is the most relevant treaty as it sets the international standards in terms of prevention of, and protection from, enforced disappearances. Unfortunately, Libya has yet to sign and ratify the ICPPED. In February 2009, the Committee on the Elimination of Discrimination Against Women issued concluding observations recommending that Libya ratify the ICPPED.<sup>47</sup>

Nonetheless, Libya has ratified multiple human rights conventions by which it has committed to protect a set of human rights which are often violated when enforced disappearances take place. These include the ICCPR, CAT, and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).<sup>48</sup>

42 African Charter on Human and Peoples' Rights, 1986.

43 Serment L, 'The Absence of a derogation clause from the African Charter on Human and Peoples' Rights: a critical discussion,' *African Human Rights Law Journal*, 2007, vol. 7, no. 1, p. 152.

44 African Commission on Human and Peoples' Rights, *Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa*, 28 July 2016, available at: <https://www.refworld.org/docid/5799fac04.html>.

45 Ibid.

46 Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan, AHRLR, para. 103 (ACHPR 2015).

47 CEDAW, *Concluding observations of the Committee on the Elimination of Discrimination against Women*, 2009, CEDAW/C/LBY/CO/5, available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.aspx?enc=6QkG1d%2fPPRiCAqhKb7yhsxlfhYepfYmW0eRMA3oVt8J1CL5D0jq1UoNEAQjFcz1ekUyWMai5MWrD89dRantq7kYyhD9cQdkNgymO50yePa0jFseQqxAnnUx59YilKy>.

48 Libya acceded to the ICCPR on 15 May 1970; Libya ratified the CAT on 16 May 1989 but has yet to ratify the Optional Protocol of the CAT, through which States Parties accept the jurisdiction of the Committee against Torture to review individual torture cases. Libya ratified CEDAW on 16 May 1989.

There are several articles in the ICCPR that protect rights that are closely connected with enforced disappearance, such as the right to life (article 6), the right to recognition as a person before the law (article 16), the prohibition of torture, cruel, inhuman or degrading treatment or punishment (article 7), the right to liberty and security of person (article 9), and the right to a fair trial (article 14).

Libya is obliged to protect the right to life in article 6 of the ICCPR. The UN Human Rights Committee, responsible for monitoring the implementation of the ICCPR, pointed out that the right to life should be interpreted broadly as it is intended to protect individuals “from acts and omissions that are intended or may be expected to cause their unnatural or premature death.”<sup>49</sup> Enforced disappearances are incompatible with the right to life as they place individuals outside the protection of the law and pose serious risks to life. The right to recognition as a person before the law under article 16 is known as “the right to have rights.” However, enforced disappearance result in the denial of the right to exist before the law and to enjoy all other rights.<sup>50</sup>

In addition, Libya is bound by article 9 of the ICCPR to respect the right to liberty and security of person. This includes procedural guarantees against arbitrary arrest and detention, such as the right to be informed at the time of arrest of the reasons for arrest and to be promptly informed of any charges, and the right to challenge the lawfulness of the detention. Any person detained should be brought before a judge or other officer authorized by law to exercise judicial powers promptly.<sup>51</sup> The Human Rights Committee is of the view that “delays should not exceed a few days from the time of arrest.”<sup>52</sup> These guarantees are essential to protecting detainees against the risk of torture or ill-treatment because of the lack of judicial control. Furthermore, these procedural guarantees protect the liberty of the person during armed conflict.<sup>53</sup>

Libya also has international obligations under article 7 of the ICCPR and article 2 of the CAT not only to criminalize torture but to prevent, investigate and prosecute acts of torture and other ill-treatment. To fulfil its obligations, Libya is required to create programmes to train and supervise police officers and security forces. It is also required to put in place preventive measures to ensure that detainees are held legally, and that incommunicado detention is reduced to a minimum, limiting opportunities for abuse.

Libya is also obliged to ensure that complaints and suspected cases of torture are investigated and to compensate victims of torture according to article 14 of the CAT. Article 14 of the ICCPR guarantees the right to a fair trial, a complex right that involves crucial elements of the rule of law, such as the right to a fair and public hearing, to be informed of the charges, the presumption of innocence, to be tried without excessive delay and the right to counsel. If any of these guarantees are not respected, the right to a fair trial is violated.

Finally, the UN Security Council referred the Libyan situation to the International Criminal Court (ICC) in resolution 1970 of 2011,<sup>54</sup> giving the ICC jurisdiction over crimes committed in Libya. Therefore, Libya is bound by the Rome Statute of the International Criminal Court<sup>55</sup> and specifically, article 7(1)(I), which recognises that enforced disappearances when committed in a widespread or systematic manner constitute a crime against humanity.

Individuals from Libya also have access to several other international accountability mechanisms under international treaties to which Libya is a party. Libya is a party to the First Optional Protocol to the ICCPR, which allows the Human Rights Committee to receive individual complaints from Libya on violations of the ICCPR. Libya also signed the Optional Protocol to CEDAW, which enables individuals or groups of individuals under the jurisdiction of the Libyan state to submit complaints to the Committee on the Elimination of Discrimination against Women on violations of CEDAW.

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49 Human Rights Committee, *General Comment 36 on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, 2018, para. 3.

50 Working Group on Enforced or Involuntary Disappearances, *General Comment on the right to recognition as a person before the law in the context of enforced disappearances*, 2012, para. 1.

51 Human Rights Committee, *General Comment 35 on article 9 (liberty and security of person)*, 2014, para. 32.

52 Ibid, para.33.

53 Ibid, para. 67.

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54 UN Security Council, *Security Council Refers Libya to ICC*, 27 February 2011, S/RES/1970 (2011), available at: [https://www.undocs.org/S/RES/1970%20\(2011\)](https://www.undocs.org/S/RES/1970%20(2011)).

55 UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, available at: <https://www.refworld.org/docid/3ae6b3a84.html>.



## VI. CONCLUSIONS AND RECOMMENDATIONS

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Torture and enforced disappearances have been widespread in Libya since 2011. People are targeted for different purposes, including their real or perceived political views, human rights activism and identity. The Libyan state and affiliated militias have disappeared thousands of people across the country with total impunity. Judges and prosecutors have been targeted with several attacks on the independence of the judiciary since 2011. The dominance of militias has undermined the rule of law and facilitated the current environment of impunity.

**LFJL urges the Government of National Accord, the House of Representatives, the Interim Government, the Libyan Arab Armed Forces, the Supreme Council of State, the Presidential Council and affiliated militias to:**

- Immediately and unconditionally release all persons held under conditions of enforced disappearance solely for peacefully exercising their right to freedom of expression, for their tribal links or identity.
- Immediately disclose information about the whereabouts and fate of those held under conditions of enforced disappearance and believed to have committed a recognisable crime under international law, grant them full access to lawyers and their families and try them in accordance with international fair trial standards.
- Immediately end militia control over detention facilities, ensuring that all detention facilities controlled by militias are transferred to the exclusive control of the MoJ, MoD or MoI adhering to the rule of law and judicial oversight, and establish a vetting system for the integration of members of militias into national institutions which excludes those involved in human rights violations.
- Publicly acknowledge the widespread pattern of enforced disappearances, torture, and other ill-treatment, instruct all law enforcement officials to refrain from the use of torture and enforced disappearances and ensure that all detainees be referred to the judiciary within 48 hours of their arrest in accordance with the Code of Criminal Procedure.
- Develop a comprehensive official database of all persons subjected to enforced disappearances to provide the families of the disappeared with information on their relatives.
- Ensure that all families of the disappeared have access to redress and reparations.
- Amend articles in the Penal Code of 1953 and the Code of Criminal Procedure that allow for committing the crime of enforced disappearance and torture including by allowing militias or government authorities to hold detainees beyond 48 hours without access to the judiciary, including article 26 of the Code of Criminal Procedure that allows the police to hold detainees for seven days if an alleged crime was committed against the state.
- Ratify, without delay, the ICPPED and declare the acceptance of article 31 of the ICPPED allowing individuals to submit complaints to the Committee on Enforced Disappearances.
- Adopt a definition of enforced disappearances in domestic law that is consistent with the definition outlined in the ICPPED.
- Adopt a definition of torture and other ill-treatment that is consistent with the definition outlined in the CAT and clearly state that the right not to be tortured or subject to other ill-treatment is non-derogable in times of armed conflict or any other emergencies.
- Ratify without delay the Optional Protocol to CAT for establishing national preventive mechanisms.
- Offer the Fact-Finding Mission (FFM) established by the UNHRC by resolution [A/HRC/43/L.40](#) unhindered access to the country to investigate the pattern of enforced disappearances, unlawful detention and torture and other ill-treatment, including (but not limited to) the ability to interview government officials and members of militias that carry out enforced disappearances.
- Ensure the FFM has access to all official and unofficial records and documents held by government officials, the Ministry for the Affairs of the Families of the Martyrs and Missing Persons, the militias affiliated with the Libyan state and all records of the MoI and the prosecution office.
- Guarantee the FFM unhindered access to victims to interview them and obtain information, further guaranteeing that those victims must be protected from any acts of retaliation by government officials, militias and armed groups.

**LFJL urges the international community, specifically the UN Human Rights Council and the UN High Commissioner for Human Rights, in relation to the continued and systematic enforced disappearance of persons to:**

- Urgently finalise the establishment of the FFM without further delay.
- Ensure the temporal mandate of the FFM is extended beyond one year to ensure effective and meaningful investigations into violations of human rights and international humanitarian law committed since 2016.
- Provide the FFM with the necessary resources, including the staff and budget necessary, to ensure an effective body that can carry out independent investigations without hindrance or delay.

**LFJL urges the newly formed FFM to:**

- Include in its work an investigation into the pattern of enforced disappearances and identify the perpetrators of arbitrary detention, enforced disappearances, torture and other ill-treatment, and to preserve the evidence and make it available to all current and future accountability mechanisms.

**LFJL urges the International Criminal Court to:**

- Exercise its jurisdiction established over Libya by resolution 1970 of 2011 to investigate the pattern of enforced disappearances as a potential crime against humanity and identify the perpetrators of arbitrary detention, enforced disappearances, torture and other ill-treatment and issue necessary arrest warrants for the purpose of bringing those responsible to account.

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