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# “The Endless Wait”

Long-term Arbitrary Detentions and Torture in Western Libya



# **The Endless Wait**

**Long-Term Arbitrary Detentions and Torture in Western Libya**

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## Long-Term Arbitrary Detentions and Torture in Western Libya

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## Summary

Consecutive interim governments and authorities in Libya have failed to investigate, prosecute, charge and end the arbitrary detention of thousands of people held in relation to the 2011 uprising against former Libyan leader Muammar Gaddafi.

Based on visits in September 2015 to four detention facilities in Tripoli and Misrata and interviews with 120 detainees—most in pre-charge detention—this report finds that 1,975 out of 2,479 detainees have languished in prisons for up to four years without being brought before a judge, receiving any form of judicial review or being charged with an offense, and without any apparent legal basis for their detention. Prolonged detention without judicial reviews is a grave violation of international law and may amount to a crime against humanity.

When Human Rights Watch visited only about 25 percent of detainees in the facilities—which are controlled by the Justice Ministry of the self-proclaimed government based in Tripoli, and administered by the Judicial Police that reports to the ministry—were prisoners serving sentences after being convicted of a crime by a court, according to records provided by prison authorities. None of those interviewed had access to a lawyer upon arrest or during interrogation. Almost all sentenced detainees complained of lack of adequate legal representation, including confidential consultations with lawyers, although some of the few who faced trial had legal representation during proceedings.

Detainees, including children, in all of the facilities visited provided credible and consistent accounts of ill-treatment, in some cases apparently visible to researchers, such as beatings on the soles of the feet with plastic pipe, electrical cable, chains, sticks, fists, and even horsewhips; suspension from doors or ceilings for hours; electrical shocks; and being held in solitary confinement for up to seven weeks, which may amount to torture in certain circumstances. During interviews, detainees referred to other detention facilities in western Libya, including in Tripoli and Misrata, where they said they had recently suffered tortured or ill-treatment.

Confronted with allegations of ill-treatment in prisons, Ibrahim Bashiya, the Tripoli-based general prosecutor, said, “I do not condone torture, but there is torture in most prisons

around the world, in particular against rebellious detainees.”<sup>1</sup> Mustafa al-Gleib, justice minister of the self-proclaimed government in Tripoli, said incidents of torture were “acts of individuals, not a phenomenon,” but that he would “take measures and ensure that perpetrators are punished” if “advised of such acts.”<sup>2</sup>

Detention conditions varied in the different prisons but were particularly bad at al-Huda Prison in Misrata, where Human Rights researchers observed overcrowding in most sections, broken sanitary installations, a lack of railings in the exposed stairways, poor hygiene, and poorly ventilated, damp cells. Detainees also complained about food quality.

Most detainees interviewed by Human Rights Watch were suspected sympathizers, volunteer fighters, and members of Gaddafi’s security forces, according to the authorities; others were accused by the authorities of crimes, such as murder and theft. A small number were suspected by the authorities of “terrorism” or of belonging to extremist groups such as Islamic State (also known as ISIS).

Libyan factions have been engulfed in armed conflicts in the east and west of the country since July 2014, resulting in mass internal displacement of civilians, unlawful killings, indiscriminate attacks on civilians and civilian infrastructure, and arbitrary detentions.<sup>3</sup> Efforts by the United Nations, begun in September 2014, to broker a deal for a unity government have so far failed.<sup>4</sup>

The lack of a central government authority has resulted in a widespread breakdown in law and order and in the collapse of an already dysfunctional justice system in many parts of the country, including a near stand-still of legal proceedings.<sup>5</sup>

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<sup>1</sup> Human Rights Watch meeting with Ibrahim Bashiya, general prosecutor, Tripoli, September 22, 2015.

<sup>2</sup> Human Rights Watch meeting with Mustafa al-Gleib, justice minister of the self-proclaimed government, Tripoli, September 19, 2015.

<sup>3</sup> “Libya: Spiraling Militia Attacks May Be War Crimes,” Human Rights Watch news release, September 8, 2014, <https://www.hrw.org/news/2014/09/08/libya-spiraling-militia-attacks-may-be-war-crimes>.

<sup>4</sup> Two de facto governments are vying for legitimacy in Libya. One, the internationally recognized government, is based in the eastern cities of Tobruk and al-Bayda and is backed by the Libyan National Army and allied militias. Another, the self-proclaimed government (also known as the National Salvation Government), is supported by an armed militia alliance and controls Tripoli and most of western Libya.

<sup>5</sup> Hanan Salah (Human Rights Watch), “Libya’s Justice Pandemonium,” commentary, *Jurist*, April 14, 2014, <https://www.hrw.org/news/2014/04/14/libyas-justice-pandemonium>.

In April 2015, Human Rights Watch documented widespread torture and arbitrary detentions in prisons in eastern Libya under the control of the internationally recognized government and forces allied with it.<sup>6</sup> Despite the widespread and systematic nature of these detentions across Libya and repeated promises since 2011, including passing laws committing to certain dates for release of detainees, authorities continued to flout Libyan and international law, and provided no legal basis for these detentions and did not seek to put an end to them.

- To remedy this gross violation, Libya’s general prosecutor based in Tripoli should order the immediate release of all those detained for longer than one year, who have not yet been charged, or whose detention has not been approved by a court.
- Libya’s criminal justice authorities should issue immediate public guidance on maximum detention periods before a person is brought before a judge or released, and if in pretrial detention, maximum periods before a person is tried or released. The Justice Ministry should ensure all detention centers are open to inspection.
- The General Prosecutor should issue an immediate moratorium on any court-issued death sentences or corporal punishments, including floggings, due to the inhumane and cruel nature of these punishments. Civil and military courts in Libya have been imposing death sentences since the end of the 2011 conflict, although at time of writing no known death penalty had been carried out since 2010.

The International Criminal Court (ICC) has jurisdiction over war crimes, crimes against humanity, and genocide committed in Libya since February 15, 2011. Those who commit, order, assist, or have command responsibility for war crimes or crimes against humanity are subject to prosecution by domestic courts or the ICC. Citing instability in Libya and lack of resources as obstacles, Fatou Bensouda, the court’s prosecutor, has limited probes into alleged crimes by former officials of the Gaddafi government during the 2011 revolution. Human Rights Watch has repeatedly urged the ICC prosecutor to pursue an additional investigation into ongoing violations in Libya.<sup>7</sup>

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<sup>6</sup> Libya: Widespread Torture in Detention,” Human Rights Watch news release, June 17, 2015, <https://www.hrw.org/news/2015/06/17/libya-widespread-torture-detention>.

<sup>7</sup> “Libya: New ICC Investigation Needed Amid Crisis,” Human Rights Watch news release, May 11, 2015, <https://www.hrw.org/news/2015/05/11/libya-new-icc-investigation-needed-amid-crisis>.



- ICC member states and the UN Security Council should ensure that the court's prosecutor has sufficient diplomatic support and resources to pursue additional investigations into ongoing serious crimes within her jurisdiction. The ICC prosecutor should continue her efforts to open further investigations into these grave abuses, including torture and arbitrary detentions.
- Security Council members should accelerate implementation of the existing arms embargo and targeted sanctions in Libya. The council's 1970 sanctions committee should impose individual targeted sanctions against those responsible for planning, directing, or committing acts that violate applicable international human rights law or international humanitarian law in Libya, especially abuses in detention facilities.
- The investigation on Libya that the Office of the High Commissioner on Human Rights began conducting in July 2015 at the behest of the UN Human Rights Council should probe and report on patterns of arbitrary detentions, torture, and other ill-treatment in detention facilities, with a view to helping ensure that perpetrators are held to account domestically and internationally.

# Recommendations

## To the General Prosecutor

- Order the immediate release of all those detained for longer than one year without facing trial; those who have not yet been charged; or those whose detention has not been approved by a court.
- Announce to all courts and prosecutions that defendants currently on trial should be granted their full due-process rights including private and unfettered access to lawyers, access to all documents in their case file, and the right to defend themselves during the trial and at pretrial proceedings.
- Issue immediate public guidance on maximum detention periods before a person should be brought before a judge or released, and if in pretrial detention, issue guidance on maximum detention periods before a person is tried or released.
- Issue an immediate moratorium on any death sentences issued by courts.
- Issue an immediate moratorium on corporal punishments handed down by courts including floggings and *qassas* [amputation of limbs].
- Investigate any allegations of torture and due process violations with a view to holding perpetrators accountable and make public the findings.
- Require that detaining authorities keep a record, open for inspection of every detainee, including the legal basis for their detention, and whether and when the detainee was brought before a judge. The record should include a date of expiry of authority to detain, about which the detainee and his/her representatives should be informed.

## To the Justice Ministry of the Self-Proclaimed Government

- Announce publicly that torture, including beatings in any form, will not be tolerated and that public officials or those acting under their supervision shall be held criminally responsible for any such act.
- Remove any guard or prison staff member who is found upon investigation to have ordered, committed or participated in an act of torture.
- Ensure that if authorities impose solitary confinement as a disciplinary measure on detainees, it is reserved for the most serious offenses, is strictly limited in duration, takes place in spaces that are not inhumane or degrading, and where competent

medical experts regularly monitor the detainees and it is not used when there is a risk of harm to the mental health of the detainee.

- Ensure all such detention centers are open to inspection by local and international monitors.
- Ensure children are only detained as a measure of last resort, and for the shortest possible time; are held apart from the adult prison population, unless they are accompanied by a relative; and are not subjected to solitary confinement.
- Renovate or shut down al-Huda Prison in Misrata, where conditions are currently not suitable for detaining persons, and ensure that if any inmates are relocated rather than released, they should be moved to a facility where family visits are feasible in terms of distance and security.
- As a priority, ensure each prison has one functioning medical facility that can provide basic medical care, and that inmates needing more advanced care have access to such treatment or are released.

### **To the UN Support Mission in Libya**

- Ensure that any future Government of National Accord has the necessary constitutional guarantees and laws in place to address detention issues including maximum periods for people to be held in detention before they are charged, the automatic release of all those held longer than a year without being charged by a court, and the criminalization of any unlawful detention.

### **To the Prosecutor of the ICC**

- Pursue an additional investigation into ongoing violations in Libya beyond the scope of the current investigation, to include those implicated in ongoing war crimes and crimes against humanity such as arbitrary detentions and torture.

### **To the OHCHR Investigation on Libya**

- Document patterns of arbitrary detentions, torture, and other ill-treatment in detention facilities in Libya, with a view to holding perpetrators to account by domestic or international courts.
- Recommend immediate revisions of the Libyan Constitutional Covenant, and law to eliminate arbitrary detention and ensure all detention is based on clear law and subject to judicial review.

## To Members of the UN Security Council

- The council's 1970 sanctions committee should impose individual targeted sanctions against those responsible for planning, directing, or committing, acts that violate applicable international human rights law or international humanitarian law in Libya, especially abuses in detention facilities.
- Ensure that the ICC prosecutor has sufficient support to conduct additional investigations into ongoing crimes under her jurisdiction.

## Methodology

In September 2015, two Human Rights Watch researchers visited four detention facilities in Tripoli and Misrata controlled by the Justice Ministry of the self-proclaimed government based in Tripoli, and administered by the Judicial Police, which reports to the Justice Ministry.

Researchers visited Ain Zara and al-Baraka prisons in Tripoli, and al-Jawiyyah and al-Huda prisons in Misrata and met detainees individually, without guards present.

Of the 120 detainees interviewed by researchers in the four facilities, 96 detainees were in pre-charge detention, four were on trial and 20 had been sentenced, including five who were sentenced to death. Those held in pre-charge detention said a prosecutor and not a judge extended their detention, which is in violation of international law. 79 of those interviewed described treatment that amounts to torture on arrest, during interrogation, or at some point during their detention. 63 of those interviewed said they witnessed other detainees being tortured at the prison where they were held. Researchers conducted the interviews with detainees in Arabic.

At the time of visit, there were only three women held at al-Jawiyyah Prison in Misrata who were held in a separate section; none of the other three prisons had female detainees. Researchers did not speak with any of the three women.

Unstable security conditions, including an attack claimed by the extremist group Islamic State, also known as ISIS, against a prison in Tripoli while the delegation was visiting another prison, and time constraints prevented the researchers from visiting other detention facilities in western Libya.

On September 15, researchers conducted a separate visit to several former officials of the Gaddafi government held at al-Hadba Prison in Tripoli, and reported separately on their

detention conditions and the extent to which authorities had respected their due-process rights.<sup>8</sup>

Ibrahim Bashiya, the general prosecutor based in Tripoli, authorized the visits to detention facilities in Tripoli and Misrata, which are under the control of the Justice Ministry of the self-proclaimed government. Mohamed Bisha, head of the Judicial Police, the body responsible for administering detention facilities under the Justice Ministry and responsible for court security, facilitated the prison visits.

Human Rights Watch researchers were able to meet with the detainees in private, in their cells, in the prison hallways and courtyards, without the physical presence of guards or other prison staff. Prison authorities mostly respected Human Rights Watch's detention visiting procedures, although on some occasions researchers had to request that prison staff remove themselves from the vicinity of where interviews were taking place.

Despite the privacy of meetings, many detainees were intimidated by the authorities and general state of insecurity and said they feared retribution by guards and prison authorities after the delegation left. While detainees consented to publishing the information they provided us, Human Rights Watch decided as a precautionary measure not to name detainees.

The unsettled security situation, the nervousness of detainees, and the fact that many had been held for years and had no documents related to their cases, made it challenging to conduct interviews and to corroborate interviews with court or medical records.

After the visits, Human Rights Watch separately briefed Bashiya, Bisha and Justice Minister Mustafa al-Gleib on its findings. During these meetings, researchers discussed specific torture methods allegedly used by guards and interrogators in the different prisons, shortcomings in detention conditions, and due process violations.

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<sup>8</sup> "Libya: Gaddafi Son Speaks From Jail," Human Rights Watch news release, October 26, 2015, <https://www.hrw.org/news/2015/10/26/libya-gaddafi-son-speaks-jail>.

Out of concern for the safety of detainees after the delegation's departure, researchers refrained in these meetings from naming detainees who made allegations, and from repeating allegations that were specific enough to have made it easy to identify their source.

While researchers visited prison clinics and noted some of the complaints of prisoners about access to medical care, the delegation did not include a healthcare expert and this report does not attempt to evaluate the state of prison healthcare.

## I. Detention Visits

### Ain Zara Prison, Tripoli

Ain Zara is a large compound dating to the Gaddafi era, housing convicted prisoners, sentenced mostly for regular crimes such as theft, and a number of detainees held in relation to the 2011 conflict.

After touring the prison facilities, including the kitchen area and clinic, researchers met with detainees in courtyards located within the different prison sections. At the time of visit on September 16, there were 661 detainees in total held at Ain Zara Prison, including six children. Nineteen had had been sentenced to death, seven to life in prison, and one to *qassas* (amputation of one or more limbs), according to prison authorities.

Human Rights Watch interviewed 33 detainees individually, some of whom complained about detention conditions including the quality of food and lack of sufficient water for washing at times. Detainees also said that while family visits occurred regularly, they lasted only 10 minutes. Human Rights Watch visited an on-site clinic that, according to authorities, provided inmates with both medical and dental care. Detainees said they had access to medical care at the prison. The prison director and clinic staff said there was a general shortage of medical supplies for chronic and contagious diseases, including HIV and tuberculosis, across Libya.

The director of Ain Zara Prison told Human Rights Watch some sentenced detainees were rewarded for good behavior by being granted “vacations,” whereby they could leave the prison for up to three days. Some detainees confirmed that such vacations took place.

Of the 33 inmates interviewed, the 31 who were in pre-charge detention complained above all about the slow pace, or complete lack, of judicial procedures in their cases. Four of those interviewed were children, of whom all were in pretrial detention. The prison director told Human Rights Watch that the endless extension of detentions by the prosecutors was the biggest issue his administration faced. He said, as an example, “There’s one Sudanese national who’s been detained for two years without any judicial procedures, and all of this because he was caught drinking alcohol and was intoxicated.”



Human Rights Watch heard many allegations of torture and other ill-treatment by the guards. Some detainees alleged that the guards allowed family members of purported victims to slip into the prison and beat them.

Detainees said guards beat them usually to punish them for fighting or harboring prohibited items such as mobile phones or unauthorized pills. According to 13 detainees, the guards frequently used pipes or cables to beat, often directing the blows to the soles of their feet (*falaqa*), forcibly shaved heads, poured water on detainees and then beat them, suspended detainees by their arms or feet and beat them and beat detainees with plastic pipe on their bodies. To punish inmates, guards put them in solitary confinement and in some cases reduced meal rations or forcibly shaved heads. The detainees did not say whether they believed the guards were imposing these punishments on their own initiative or were following orders.

A detainee who said he had been arrested in 2011 for "misleading the authorities" by concealing that a relative had fought with Gaddafi forces during the uprising, said he had not been formally charged with any crime yet and that he had been ill-treated after arrest, as well as at Ain Zara Prison. The detainee is part of a large group of men arrested during 2011 and 2012 in the Abu Salim neighborhood, perceived to be pro-Gaddafi during the uprising:

I did not participate in the fighting during the revolution, I was too busy protecting my house. I was severely tortured after my arrest by the Abu Salim Military Council and my eye is now permanently injured from the beatings. At this prison, I was last punished in the summer because of a misunderstanding. They took me out of the cell, slapped me and beat me with plastic pipe and cables. I don't have a lawyer now to follow my case as my family cannot afford one. At the prosecutor's office, they won't let me speak and won't allow me to defend myself. I just want a prosecutor who will listen to me.

One detainee who said he had been arrested in 2012 upon his return to Libya for allegedly distributing weapons during the 2011 revolution, said his case had been continually

adjourned due to lack of evidence, although his detention was re-ordered in each hearing, and that he had been ill-treated at the prison:

The judge in my case is under pressure from the militias. Every time there is a session he postpones my case and extends my detention. There are people [militias] outside of the prison who want us [the group from Abu Salim] to remain in detention. The prison administration is OK, but some guards are not good. They accuse us of being pro-Gaddafi, they insult us and swear at us. There is also violence in the prison. I try not to make any problems but I am punished from time to time. Just a few months ago I was punished by being suspended by my hands.

Another detainee who said he had been arrested in 2012 on murder charges told Human Rights Watch that the judge in his case kept on postponing the trial and extending his detention. He said the guards ill-treated him:

The guards found a mobile phone with me and put me in solitary confinement for 13 days. They shaved my head and gave me one meal per day. They continuously insulted me and beat me with plastic pipe after pouring water on me. Guards usually beat you with a stick, cable, or a plastic pipe on your body or the soles of your feet if they find any prohibited items. You can only get out of a beating if you have someone on good terms with the guards willing to speak on your behalf. There is punishment everywhere in this prison and they target the minors detained at the prison for abuse.

## **Al-Baraka Prison, Tripoli**

Al-Baraka prison, adjacent to Ain Zara Prison, was notorious during Gaddafi's rule, when it was known as al-Roueimy Political Prison and mostly housed political opponents. The prison is divided into six sectors, including one isolation sector for detainees with contagious diseases. Human Rights Watch visited individual cells in some sectors. Facilities accessible to inmates included a clinic, a sewing workshop, and a small shop.

Researchers met with detainees in courtyards attached to the individual sectors. There were 465 detainees in total, including 35 sentenced detainees, at the time of Human Rights Watch's visit on September 17, according to the prison authorities. Detainees included 28 men who were held for their alleged roles in the 1996 Abu Salim Prison massacre, when prison officials under the Gaddafi government shot and killed around 1200 detainees.<sup>9</sup> Most detainees though were held in relation to their alleged roles in the 2011 uprising.

Researchers documented poor detention conditions in some sectors, including poor sanitary installations. The nurse in charge of the prison's dispensary said his staff could perform preliminary diagnoses and laboratory work, and some dental care. He said there was a shortage of psychiatric medication as well as of hypertension, HIV, and hepatitis drugs. Detainees complained about the lack of specialist doctors as well as frequent interruptions in running water, lack of access to fresh air, and the prohibition of smoking. Detainees complained about the physical barrier that separated them from their relatives during family visits, which prison director said was for "security purposes."

Human Rights Watch interviewed 26 detainees individually. Although guards were not present, many detainees seemed intimidated and afraid to be seen speaking with researchers. Detainees also said most lawyers were too afraid to visit their clients at the prison, unless they had good contacts with the guards.

Twelve detainees said guards frequently suspended detainees from their arms for long hours, or beat them with cables and plastic pipe, or administered electrical shocks on them. Detainees also said guards often locked them in solitary confinement, in at least one case allegedly for seven weeks (see below), and punished detainees by locking them in their ward for days at a time, denying them their usual opportunities to go to the courtyard for recreation. Two detainees have alleged broken limbs or teeth as a direct result of torture by the guards.

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<sup>9</sup> "Libya: Abu Salim Prison Massacre Remembered," Human Rights Watch news release, June 27, 2012, <https://www.hrw.org/news/2012/06/27/libya-abu-salim-prison-massacre-remembered>.

One detainee interviewed said he had been arrested in 2011 by a militia from Misrata. In 2014, he said, the prosecutor accused him of killing persons during the 2011 conflict, concealing the bodies of victims, and carrying weapons without a license. He has not been formally charged by a court. He described his experiences:

When I am taken to the prosecutor's office, the prison guards enter the room with me carrying their weapons. The lawyers are afraid and even the investigative judge is afraid of them. One month ago, some detainees were taken out of their cell, I witnessed them being suspended, beaten and electro-shocked. The guards had dogs and somehow I managed to get out of it, but I am afraid I will be punished. In this prison we don't consider ourselves to be in a prison under a government, we are detained by those individuals who run the prison.

Another detainee told Human Rights Watch that militia members arrested him in Tripoli during the 2011 conflict and forced him to confess to being pro-Gaddafi. He said he was first presented to a prosecutor in 2014 but has yet to be formally charged:

After my arrest, I was beaten with sticks until I confessed that I was involved in inciting protests and possessing weapons illegally. I was forced to sign documents without being allowed to read them first. I don't have a lawyer and the investigation just gets postponed. The guards beat prisoners here without any reason. If they find cigarettes or catch you fighting with someone, they will beat you. During Ramadan this year, guards beat one detainee so severely they broke his leg. I have been punished in this prison as well. I was locked up in solitary confinement in a cell not larger than 1.5 square meters for seven weeks.

Another detainee arrested in 2012 on suspicion of supporting Gaddafi and belonging to an "illegal organization aimed at destabilizing the country," told Human Rights Watch he had been tortured to sign a "confession." Despite several sessions in court, the judge continued to postpone his case, he said:

Since March 2013, the prosecutor's office has summoned me around 30 times for interrogations. Now that my case is at court, the judge keeps on postponing my case and I am not allowed to address the judge at all. Earlier in my detention at Mitiga military base, they said they would release me if I bribed the militia. While I couldn't pay, others who did went free. Here in al-Baraka prison, guards tied my arms to a stick and suspended me upside down from my feet and beat me. Because of this torture, I fingerprinted a statement in which I admitted to belonging to this illegal organization.

One detainee arrested in May 2012 by a militia in Tripoli at the time known as the National Guard and based at the al-Hadba facility, said he had yet to be charged with a crime and that he'd been ill-treated during his initial arrest and detention. The detainee, a member of the former Gaddafi Military Police and a suspect in the 1996 Abu Salim Prison Massacre, said:

After my arrest, they held me seven months at the National Guard Academy [currently known as al-Hadba Prison], where I was frequently blindfolded and beaten with plastic pipe. The beatings were so strong at times that I finally confessed to participating in killings [at Abu Salim prison in 1996]. I was only presented to a prosecutor in February 2015. He accused me of participating in the [Abu Salim] killings in 1996, just because I was present at the compound at the time. When I tried to defend myself the prosecutor told me, "You are lying." The prosecutor has been extending my detention since the first session and there is no charge yet.

## **Al-Jawiyyah Prison, Misrata**

Al-Jawiyyah is a new prison facility that the interim government opened in August 2013. It is located within the compound of the Air Force academy in Misrata. Human Rights Watch visited sections 3 and 4, which holds both sentenced and pre-charge detainees, as well as section C, which holds detainees, including those not yet charged, who were accused of "terrorism." Researchers met with detainees in their cells and in the hallways of individual sections.

At the time of Human Rights Watch's visit on September 20, there were 821 detainees in total at al-Jawiyyah, including 685 held without being charged by the prosecution, and

another 120 sentenced detainees, according to the prison authorities. Prison authorities did not specify the status of the remaining 16 detainees.

Human Rights Watch interviewed 42 detainees. Of the total 821 detainees, 720 were held in relation to the 2011 conflict on “political’ grounds,” 22 were held on suspicion of “terrorism,” and 20 were held for regular crimes such as theft, according to the prison authorities. Among the 120 sentenced detainees, six were sentenced to death, one woman was sentenced to flogging and one man was sentenced to *Qassas* [amputation of limbs]. Three women and three children in total were held at the prison, prison authorities said.

Detainees complained that the drinking water was too salty and so they had to buy their own drinking water. They also complained about the quality of medical care. Human Rights Watch visited the medical facility located in section C, which resembled those found in all the sections, according to the prison authorities. Medical staff said that the dispensary was able to provide only primary care and lacked X-ray equipment and a laboratory. Medical staff also said there was a shortage of medication, particularly for chronic diseases, and families often had to provide or supplement the necessary drugs. Some detainees said their families were unable to visit them in Misrata as they feared for their safety due to the general insecurity in the country.

Ill-treatment and torture appear to be pervasive at al-Jawiyah. Human Rights Watch met with seventeen detainees who said guards and staff had beaten them. They showed researchers marks consistent with severe and recent torture, such as welts on their faces, backs, chests, and limbs, as well as burn marks. Fourteen detainees said guards had beat them with fists, iron rods, plastic pipes or electric cables all over their bodies and the soles of their feet. Twenty-seven said they witnessed others being beaten.

Detainees also said that guards used solitary confinement as a punishment and sometimes threatened to execute them. Children held at al-Jawiyah told Human Rights Watch that they too had been tortured (see below). The prison director, told researchers the only permitted form of punishment was “trotting,” (forced jogging around the yard), and transferring detainees from one section to another. This is in contradiction to allegations of detainees who said they were beaten and sent to solitary confinement as a punishment. He said “as long as a detainee breaks no rules, nothing will happen to him.” He also said he had fired some guards accused of torture.

The prison director told Human Rights Watch of a court-ordered flogging administered to a woman in August 2015 who was sentenced by a Misrata court to one year in prison and 100 lashes for adultery.<sup>10</sup> According to the same director, it was the first flogging punishment carried out at al-Jawiyah. They said that the doctor who was present ordered the flogging to stop after 80 lashes for fear of the woman's health. The prison director said the remaining 20 lashes were not administered at a later stage.

Human Rights Watch interviewed a detainee who said he had been held since 2011 on an accusation of possessing a machine gun without a license during the revolution. He said during his four years of detention he had never been presented to a judge or prosecutor. He also said he was subjected to ill-treatment:

I have repeatedly asked the prison administration to present me to a judge, but despite multiple promises, it hasn't happened. Here at this prison [al-Jawiyah] it only takes the slightest mistake and you will be beaten. There is a difference between the guard shifts, but most detainees are ill-treated. A few months ago, I was beaten together with other detainees. The guards used plastic pipe and cables, they also insulted and swore at us. All of this happened because the guards did not like the way we [detainees] answered a question.

Another detainee said he was arrested in Tripoli in 2011 and tortured because he was from the town of Tawergha. He says he has not yet been charged with any crime. In 2011, Misrata militias forcefully displaced around 35,000 people from Tawergha whom they accuse of supporting Gaddafi and of committing serious crimes in Misrata during the 2011 revolution:<sup>11</sup>

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<sup>10</sup> Criminalization of consensual adult sexual relationships breaches a variety of human rights under international law, including the rights to privacy, non-discrimination, physical autonomy, and health. Such offences are often applied in a way that discriminates on the basis of sex: women are disproportionately impacted due to prevailing social attitudes and because pregnancy serves as "evidence" of the offense. As such, it constitutes a breach of Libya's obligations under the Convention on the Elimination of All forms of Discrimination against Women (CEDAW).

<sup>11</sup> "Libya: Displaced People from Tawergha Barred From Return," Human Rights Watch news release, June 27, 2013, <https://www.hrw.org/news/2013/06/27/libya-displaced-people-tawergha-barred-return>.

After I left Tawergha because of the conflict, I became displaced in Tripoli. I was arrested on the street in the Abu Salim neighborhood in September 2011 by an armed group from Misrata because I am dark-skinned and from Tawergha. They severely beat me and I still have marks on my back from the torture. I was also beaten at this prison [al-Jawiyah] when I first arrived. I have not seen a prosecutor even once since I was detained. I was only interrogated once in 2011 at Mitiga military base in Tripoli by an armed group that had nothing to do with the prosecution. This armed group accused me of belonging to the intelligence service [of the Gaddafi government] and of possessing a weapon. I did possess a weapon, because I am a policeman.

A detainee said that members of Brigade 70, a militia in Misrata, and guards at al-Jawiyah Prison tortured him after his arrest in 2015. Human Rights Watch observed marks on his back, face and limbs, consistent with the account he gave of being tortured. His right leg was in a cast, he had blue marks under one eye and had difficulties moving due to his physical condition:

Upon my arrest in September 2015, I was transferred to Brigade 70's base in Misrata where brigade members beat my right leg until it broke. They handcuffed me and tied my arms to my feet and then beat me on my back and upper arms. They used a hot iron rod to burn my left upper arm and also my back. They beat the back of my head with a stone and used electric shocks on my left toe. At al-Jawiyah prison, guards beat me on my face and on my already broken leg. They made me lay on my back and one guard stepped on my abdomen and kicked me with his other foot. I have asthma and a heart condition.

Another detainee, an adult male, arrested in 2015 on suspicion of "terrorism" said that guards beat him often:

I was arrested four and-a-half months ago in an area close to Misrata. I was first held for 10 or 11 days in an isolation cell at a location that I cannot identify. I started to hallucinate in that cell. At al-Jawiyah Prison there is



always one shift of guards that beats me. Just yesterday, they beat me with cables and plastic pipe on my face, my abdomen, chest and back. They also beat me with cables and plastic pipe on my upper arm just above the wrist. I have not been questioned by a prosecutor yet.

Researchers observed blue marks under the man's left eye, red welts on his back, upper arms and thighs, and what appeared to be bloodstains on his shirt.

Human Rights Watch met with a detainee arrested in October 2011 who is serving a life sentence for incitement and sedition in support of the Gaddafi government, and for possessing weapons without a license. The detainee said he had been forced to confess under duress and that his due process rights had been violated. He also complained of ill-treatment at al-Jawiyyah:

I did not have a lawyer during the interrogation phase. The prosecutor who interrogated me did not allow me to revise my testimony and threatened me so I had to sign without reading it. During the trial, I had a private lawyer for only two sessions. I repeatedly asked the judge to allow me to hire another lawyer, but the judge appointed a public lawyer instead who did not really represent me. I tried to communicate with the lawyer during the sessions, but he only said, 'The accusations against you are clear.' During oral argument in the trial, the judge did not allow me to defend myself ... The guards punish detainees at this prison [al-Jawiyyah]. They beat you and lock you up in solitary confinement, they swear at detainees. Last month a guard hit me after a minor altercation. He then handcuffed me and made me jog around the courtyard.

### **Al-Huda Prison, Misrata**

Al-Huda Prison, located in central Misrata, was used by an intelligence apparatus during Qaddafi's rule, when it was known as "Internal Security." The buildings, which were not designed for use as a prison, are old and run-down.

Human Rights Watch's visit to Al-Huda included the kitchen, solitary confinement section, individual cells, the clinic, and the administrative building. Researchers met with inmates of the "political section" in an open courtyard and in individual cells.

At the time of the visit on September 21, Al-Huda held 532 detainees, including three children, 141 sentenced detainees, 36 being held provisionally, under interrogation by the General Prosecutor but not yet charged, and the rest all pre-charge, according to prison authorities. Among the 532, there were 445 who authorities accused of siding with the former Gaddafi government during the 2011 revolution and 51 held for common law crimes, according to the prison authorities. Researchers interviewed 20 detainees.

Detention conditions in the section for political detainees appeared to be inhumane and degrading. Researchers documented overcrowding in most sections, broken sanitary installations, the absence of railings in the exposed stairways even on the higher floors, which could result in a detainee falling from a great height, poor hygiene and damp cells with poor aeration. Mohamed Bisha, head of the Judicial Police, acknowledged to Human Rights Watch the unsuitability of the facility as a prison and said it needed to be "cancelled." Detainees mostly complained about the detention conditions as well as the prison food quality. Researchers visited the medical facilities at the prison, which included a dental chair, an X-ray machine, and a laboratory. The prison director, told researchers there was a general shortage of medication for chronic diseases such as hepatitis and that detainees' families were sometimes able to provide the necessary drugs.

Detainees also complained that the prison administration did not allow them any leisure items such as TV, radio, playing cards, or games. Cigarettes were also banned, they said. They also said there was a strict religious regime at the prison as the administration only allowed religious books, forced detainees to pray, made a beard mandatory for all detainees, and imposed further rules, such as requiring that trousers be above ankles and banning t-shirts with drawings. Detainees in the political section said their conditions of detention differed greatly from those for the common law detainees who had access to TV, phones, and better quality food.

Detainees said that while they were allowed visits by family, some families found it difficult to visit frequently because they lived far away or because they feared coming to Misrata for political reasons, they said. The prison director said that detainees held in the

political section, those related to the 2011 revolution, were allowed family visits every 15 days due to their large number that made it difficult to control them during the visits and the risk of flight. Detainees held in the section for regular crimes, such as murder and theft section, were allowed family visits once a week, he said.

Al-Huda's prison director acknowledged to Human Rights Watch the existence of a strict regime for the political detainees, saying he was under pressure from public opinion:

Some leisure items such as TVs are allowed by law, but we prohibit them. The general situation [in Libya] is exceptional as men were killed. Public opinion does not accept that we allow access to leisure items. If I allow installing of TVs I will be accused of betraying the revolution and I am concerned that someone could attack the prison as a result.

Torture and other ill-treatment was commonplace at the prison, according to ten detainees Human Rights Watch interviewed, for those who did not adhere to the rules imposed by the administration. Fourteen detainees said beatings on the soles of feet, and beatings with sticks and cables were the most common form of punishment. They also said the guards would flog detainees sometimes using a horse whip and would subject detainees to prolonged solitary confinement, reduced food rations and forced standing position for long hours. The prison director told researchers the most common form of punishment of detainees was solitary confinement lasting 7-10 days and suspension of family visits.

A former member of the Gaddafi forces, who said he was arrested in 2011 and detained for the past four years without any judicial procedures, described ill-treatment at al-Huda:

The only time I was interrogated was immediately after my arrest, and it was by the Military Police in Misrata. Until now, I have never been presented to a prosecutor or a judge and I don't have a lawyer. I don't even know when they will summon me. If you're punished in this prison it means you will be beaten on the soles of your feet, you will be taken to solitary confinement for 5 to 10 days, and you will only get bread and water from the well, not bottled water. You will also have to work. I was punished recently and beaten on the soles of my feet and then stayed in solitary confinement. In

this prison, they consider *falaqa* [beatings on sole of feet] to be just a punishment, not torture.

One detainee arrested in 2011 said he was never presented to a prosecutor or formally charged with a crime:

I was arrested in the area of al-Kararim, which is adjacent to Misrata, because I am from Tawergha. After my arrest, I was transferred between different facilities used as interrogation centers, including the Saadoun School and the Military Police facility in Misrata. I was beaten at al-Huda Prison. While in detention at the Military Police, I did get a release order from them, but they refused to release me because no one from my family was able to come and pick me up from Misrata. So they keep me in prison. I have never appeared before a prosecutor or a judge and although I have a lawyer, she only visited me once. There are many other detainees from Tawergha who are in the same situation as me.

Mustafa Gleib, justice minister of the self-proclaimed government in Tripoli, contradicted allegations that people with a release order remained in prison, saying, “We release every detainee with a release order from the prosecutor.”<sup>12</sup>

Another detainee, a soldier with the former Gaddafi forces who was arrested in 2011, told Human Rights Watch he had been sentenced to 13 years in prison after guards in Tripoli and Misrata tortured him to extract a confession to committing crimes during the revolution:

I fought for 3 days in March 2011 and ended up getting 13 years in prison. After my arrest, I was severely beaten with a whip and plastic pipe during ten days at the Revolutionary Union Brigade in Misrata. During interrogation in Tripoli and Misrata, I was beaten and threatened. The prosecutor in charge of my case warned me, ‘If you do not confess, we will send you to the Military

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<sup>12</sup> Human Rights Watch meeting with Mustafa al-Gleib, Justice Minister self-proclaimed government in Tripoli, September 19, 2015

Police to beat you.’ So I told him, ‘Write whatever you want.’ They ended up using this testimony against me. I was sentenced, among other things, for ‘prolonging the lifetime of the regime, suppression of the revolutionaries, wearing the military uniform and abuse of position.’ I had a lawyer during the proceedings but he said nothing at all, just took my money. I was frequently punished at al-Huda Prison for hiding cigarettes, a radio and playing cards. I was beaten and put in solitary confinement. My last punishment was two weeks ago. The beatings were not normal beatings. I got around 200 lashes on the soles of the feet. Sometimes they use horse whips.

## **Other Detention Facilities**

During interviews, detainees referred to other detention facilities in western Libya where they said they had recently suffered tortured or ill-treatment. The facilities included the Misrata Brigade 70 base, Tomina Prison close to Misrata, several locations of Brigade 166 from Misrata, the ‘Revolutionaries Union’ Brigade, and the Misrata Military Intelligence facility.

Detainees also mentioned facilities no longer in use that militias used to interrogate persons in custody. Facilities included the dissolved Supreme Security Committee facilities in Misrata and Zliten, and two schools in Misrata, al-Wahda and Saadoun, that were used for detentions.

Detainees also mentioned detention facilities in Tripoli where they said they had been tortured or otherwise ill-treated, including the Islamic Dawa headquarters, the Abu Salim Military Council, detention facilities at Mitiga military base and a facility previously known as “al-Nasser office.” Several detainees also described torture and abuse in places of detention in Misrata that they were not able to identify because they were blindfolded when taken there.

## II. Children in Detention

The Tripoli-based government does not operate a detention facility, for persons younger than 18.<sup>13</sup> Instead, authorities detain children in prisons along with adults, putting them at risk of abuse both by guards and adult detainees. Children detainees interviewed by Human Rights Watch said they were subjected to torture and other ill-treatment and they do not receive better physical conditions of detention than other inmates. They said they had no educational opportunities, despite incarceration for up to 12 months.

Human Rights Watch interviewed three children at a detention facility in Misrata, the youngest of whom gave his age as 14, each of whom was accused of supporting the extremist group ISIS. The three were held together with the adult male population in the same cells. All three told researchers they were arrested in March 2015 in different locations in or around the city of Sirte by the 166 Brigade, a Misrata-based armed group operating under the Defense Ministry of the self-proclaimed government.

Each child, interviewed separately spoke of being tortured by members of the armed group upon arrest and during interrogation and detention by guards in various facilities in Misrata. All three said they were forced under torture to confess to being members of ISIS. All three said they had had no contact with their families since their arrest and that they had been held in solitary confinement for part of their detention. All three said a member of the prosecution had interrogated them without the presence of a lawyer at the prison but that they had not seen a judge.

One of the three children described his ordeal:

In March, I was arrested by Brigade 166 around the town of Ben Jawwad, where the brigade kept me for seven days. During that time, I was tortured daily for three to four hours each time. They used to handcuff me and tie a rope around my belly and then suspend me from the ceiling and beat me.

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<sup>13</sup> Mohamed Bisha, head of the Judicial Police, told Human Rights Watch that the Ministry of Social Affairs was in charge of opening prisons for children yet had failed to do so.

They used cables, plastic pipe and sticks, and beat me on my face and my genitals while accusing me of being with ISIS. One of the brigade members tried to rape me but the commander in charge stopped him. I was transferred to the 'Revolutionary Union Brigade' in Misrata where they beat me with plastic pipe on my back, upper arms and upper thighs. At this prison the prosecutor threatened me with beatings and solitary confinement telling me to 'confess.'

### III. Legal Standards

All state authorities in Libya are required to comply with international human rights law applicable in the country. The ICC has jurisdiction over crimes against humanity, genocide and war crimes committed on the territory of Libya since March 2011. In addition all parties to the armed conflicts in Libya, including non-state armed groups, are obligated to observe international humanitarian law (IHL), also known as the laws of war, applicable in armed conflict.

Under international and Libyan law, detention is subject to strict due process, in particular informing the person of the reasons for arrest, basing detention on clear domestic law, prompt charge or release, prompt appearance before a judge rule on the legality of detention, and regular opportunities if held in long-term detention to challenge the lawfulness of the detention. Failure to respect such procedural safeguards makes a detention arbitrary. Under international law pretrial detention should be the exception not the rule.

The Universal Declaration of Human Rights states in article 9, “No one shall be subjected to arbitrary arrest, detention or exile.” Article 9 of the International Covenant on Civil and Political Rights (ICCPR), which Libya ratified in 1970, specifies, “No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”

The UN Working Group on Arbitrary Detention has determined that detention is arbitrary when the detaining authority fails to observe, wholly or in part, the norms related to the right to due process, including for a prompt hearing before a judge following the initial detention.<sup>14</sup> Principle 11 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that a detainee must be “given an effective

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<sup>14</sup> Working Group on Arbitrary Detention, “Report of the Working Group on Arbitrary Detention: A compilation of national, regional and international laws, regulations and practices on the right to challenge the lawfulness of detention before court,” June 2014, [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A\\_HRC\\_27\\_47\\_ENG.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A_HRC_27_47_ENG.doc) (accessed November 25, 2015).



opportunity to be heard promptly by a judicial or other authority,” and that a judicial or other authority should be empowered to review the decision to continue detention.<sup>15</sup>

Libyan authorities are required to provide for the protection of basic rights to due process. Under human rights law, detainees are entitled to judicial review of the legality of their detention prior to, and during trial, and all the rights to a fair trial, including the right to be tried and convicted for a criminal offense only by a court of law. Unacknowledged detention is prohibited and may amount to enforced disappearance.<sup>16</sup>

Article 14 of the ICCPR affirms the most basic fair trial rights. Anyone detained shall be brought promptly before a judge or person exercising judicial power.<sup>17</sup> Governments must provide a fair hearing before a legally constituted, competent, independent, and impartial judicial body. The rights of the accused include adequate opportunity to prepare a case, present arguments and evidence, and challenge or respond to opposing arguments or evidence; the right to consult and be represented by a legal representative; and the right to a trial without undue delay and to an appeal to a higher judicial body.

Libya has also ratified the African Charter on Human and Peoples’ Rights. The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, drawn up by the African Commission on Human and Peoples’ Rights, stipulate that a person can only be detained according to the law and by people authorized by law to detain prisoners, and that every detainee should be brought before a judicial authority.<sup>18</sup>

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<sup>15</sup> United Nations General Assembly, “Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,” Resolution 43/173 (1988), A/RES/43/173 (1988), <http://www.un.org/documents/ga/res/43/a43r173.htm> (accessed November 25, 2015).

<sup>16</sup> Libya has not signed or ratified the International Convention for the Protection of All Persons from Enforced Disappearance <http://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx> (accessed November 30, 2015).

<sup>17</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, article 14. <https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf> (accessed November 30, 2015).

<sup>18</sup> African Commission on Human and Peoples’ Rights. 2003. Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa. Banjul: African Commission on Human and Peoples’ Rights, [http://www.achpr.org/files/instruments/principles-guidelines-right-fair-trial/achpr33\\_guide\\_fair\\_trial\\_legal\\_assistance\\_2003\\_eng.pdf](http://www.achpr.org/files/instruments/principles-guidelines-right-fair-trial/achpr33_guide_fair_trial_legal_assistance_2003_eng.pdf) (accessed November 25, 2015).

The same principles state: “No circumstances whatsoever, whether a threat of war, a state of international or internal armed conflict, internal political instability or any other public emergency, may be invoked to justify derogations from the right to a fair trial.” Anyone deprived of liberty must be provided with adequate food, water, clothing, shelter, and medical attention. Children deprived of their liberty, unless with their families, must have quarters separate from adults. Detained women must be held in quarters separate from those for men.

The UN Rules for the Protection of Juveniles Deprived of their Liberty, along with the UN Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) provide authoritative guidance on the treatment of children in conflict with the law.<sup>19</sup> The UN Rules for the Protection of Juveniles prohibit:

All disciplinary measures constituting cruel, inhuman or degrading treatment ... including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose.<sup>20</sup>

The UN special rapporteur on torture has concluded that “the imposition of solitary confinement, of any duration, on children constitutes cruel, inhuman or degrading treatment or punishment or even torture,” because of the psychological harm it inflicts.<sup>21</sup>

The UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) establish standards to which all UN member states should adhere in protecting the rights of women in detention.<sup>22</sup> Rule 2 requires that the standards be applied impartially, without

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<sup>19</sup> UN Rules for the Protection of Juveniles Deprived of their Liberty, adopted December 14, 1990, G.A. Res. 45/113, annex, 45 U.N. GAOR Supp. (No. 49A) at 205, U.N. Doc. A/45/49 (1990); UN Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), adopted November 29, 1985, G.A. Res. 40/33, annex, 40 U.N. GAOR Supp. (No. 53) at 207, U.N. Doc. A/40/53 (1985).

<sup>20</sup> UN Rules for the Protection of Juveniles Deprived of their Liberty, para. 67.

<sup>21</sup> UN Commission on Human Rights, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/28/68, March 5, 2015, at para. 44, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/043/37/PDF/G1504337.pdf?OpenElement> (accessed November 25, 2015).

“discrimination on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status;” Rule 11 requires that men and women “be detained in separate institutions; in an institution which receives both men and women, the whole of the premises allocated to women shall be entirely separate;” and Rule 81 provides that “the part of the prison set aside for women shall be under the authority of a responsible woman staff member who shall have the custody of the keys of all that part of the prison.”<sup>23</sup>

The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) supplements this, including for instance, women’s specific hygiene needs.<sup>24</sup>

The ICCPR limits the circumstances in which a state can impose the death penalty. The United Nations Human Rights Committee, the body that interprets the ICCPR, has said that, “in cases of trials leading to the imposition of the death penalty, scrupulous respect of the guarantees of fair trial is particularly important.”<sup>25</sup>

Human Rights Watch opposes the death penalty in all circumstances as an inherently cruel and inhumane punishment. Libya should join the many countries already committed to the UN General Assembly’s December 18, 2007 resolution calling for a moratorium on executions, part of a global trend toward abolishing the death penalty.

International law prohibits any form of torture. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, obligates Libya to investigate and prosecute all those responsible for torture in its territory.<sup>26</sup> Both the ICCPR and the

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<sup>22</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules), adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of July 31, 1957, and 2076 (LXII) of May 13, 1977.

<sup>23</sup> Ibid.

<sup>24</sup> United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), Resolution 2010/16, July 22, 2010, <https://www.un.org/en/ecosoc/docs/2010/res%202010-16.pdf> (accessed November 30, 2015).

<sup>25</sup> Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007).

<sup>26</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987. <http://www.un.org/documents/ga/res/39/a39ro46.htm> (accessed November 30, 2015).

Convention against torture prohibit anyone from being compelled to testify against themselves or to confess guilt.

The Convention Against Torture obligates states to ensure that any statement “made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”<sup>27</sup>

No exceptional circumstances may justify torture and ill-treatment, and international law requires that anyone responsible for it be investigated and prosecuted.

Article 7 of the ICCPR states, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment [...]” Corporal punishment, including beatings, flogging and amputation of limbs violate this prohibition.

While international human rights law does not prohibit solitary confinement as such, prolonged solitary confinement can be inconsistent with respect for inmates’ humanity.<sup>28</sup> International treaty bodies and human rights experts—including the Human Rights Committee,<sup>29</sup> the Committee against Torture,<sup>30</sup> and both the current and former UN special rapporteurs on torture<sup>31</sup>—have concluded that depending on the specific conditions, the duration, and the prisoners on whom it is imposed, solitary confinement may amount to cruel, inhuman, or degrading treatment that violates human rights and may amount to torture.

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<sup>27</sup> Ibid.

<sup>28</sup> See UN Human Rights Committee, General Comment 20, Article 7, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994), para. 6.; UN Human Rights Committee, Consideration of reports submitted by States parties under Article 40 of the Covenant, Concluding observations of the Human Rights Committee, United States of America, UN Doc. CCPR/C/USA/CO/3 (2006); UN Committee Against Torture, Consideration of reports submitted by States parties under Article 19 of the Convention, Conclusions and Recommendations of the Committee Against Torture, United States of America, UN Doc. CAT/C/USA/CO/2, 2006; UN General Assembly, Torture and other cruel, inhuman or degrading treatment or punishment: Note by the Secretary-General, U.N. Doc. A/63/175, July 28, 2008, p. 18-21.

<sup>29</sup> UN Human Rights Committee, General Comment 20, Article 7, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994).

<sup>30</sup> UN Committee Against Torture, Consideration of reports submitted by States parties under Article 19 of the Convention, Conclusions and Recommendations of the Committee Against Torture, United States of America, U.N. Doc. CAT/C/USA/CO/2 (2006).

<sup>31</sup> UN General Assembly, Torture and other cruel, inhuman or degrading treatment or punishment: Note by the Secretary-General, U.N. Doc. A/63/175, July 28, 2008, p. 18-21.

International humanitarian law applicable during non-international armed conflicts, requires parties to the conflict to protect anyone in custody, against “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture” and “outrages upon personal dignity, in particular humiliating and degrading treatment.” No sentences may be handed down except by a “regularly constituted court” that meets international fair trial standards. Violating this provision may amount to a war crime.

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# “The Endless Wait”

## Long-term Arbitrary Detentions and Torture in Western Libya

Consecutive interim governments and authorities in Libya have failed to put an end to the long-term arbitrary detention of thousands of people held in relation to the 2011 uprising against former leader Muammar Gaddafi. Detainees are often subjected to torture and other ill-treatment.

*The Endless Wait* is based on more than 100 interviews with detainees, and access to four prisons in September 2015 that are under the control of the Justice Ministry of the self-proclaimed government based in Tripoli: Ain Zara and al-Baraka prisons in Tripoli, and al-Jawiyyah and al-Huda prisons in Misrata.

The report finds that thousands of detainees have languished in prisons for up to four years without being charged with an offense, appearing before a judge, or receiving judicial review. Only a small number of detainees who faced trial had legal representation during the proceedings, and none of those convicted in a trial and sentenced to prison had access to a lawyer upon arrest or during interrogation. Detainees also provided credible and consistent accounts of torture and other ill-treatment, including beatings, sometimes with cables and whips, and use of electric shocks. Some, including minors, said they were held in solitary confinement for up to seven weeks, which may amount to torture in certain circumstances.

Human Rights Watch calls on the prosecutor of the International Criminal Court, who has a mandate in Libya, to open an investigation into these grave abuses. Security Council members should accelerate implementation of the existing arms embargo and individual targeted sanctions in Libya.



*Al-Jawiyyah prison in Misrata, northwest Libya, is a detention center holding mostly former fighters, sympathizers, and members of the Gaddafi security forces.*

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