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**Detailed findings of the Independent Fact-Finding Mission on
Libya***

Summary

The present paper contains the detailed findings of the Independent Fact-Finding Mission on Libya, and it is presented at the 52nd session of the Human Rights Council. It is focused on the exploitation of migrants and repression of dissent in Libya since 2016.

The Mission found reasonable grounds to believe that the exploitation of migrants entailed violations of international human rights law and international humanitarian law and the commission of crimes against humanity. Furthermore, the smuggling, trafficking, enslavement, forced labour, imprisonment, and extortion of migrants generated significant revenue for individuals, armed groups, and State institutions. State affiliated entities in Libya received technical, logistical, and monetary support from the European Union and its member States for inter alia the interception and return of migrants to Libya.

The repression of dissent was manifest in cases involving violations of the rights to the fundamental freedoms of expression, association, assembly, and belief. Persons were inter alia arbitrarily detained, killed, tortured, and subjected to sexual and gender-based violence for their expression of divergent political, religious, and social views and norms, including their opposition to patriarchy and sexism, their criticism of the State and affiliated actors, and their actual or perceived sexual orientations and gender identities. In this regard, the rapid, deep, and ongoing absorption of armed groups and their leadership into State structures and institutions, including the LAAF, and the spread of Salafist-leaning conservative ideologies were observed with concern.

Conduct and patterns of gross violations of international human rights law and international humanitarian law described in the present report continue unabated. Structural, fundamental reforms of the Libyan constitutional and legislative framework, executive branch, and security sectors are necessary to uphold the rule of law and bring an end to the repression of fundamental human rights and freedoms of Libyans and the exploitation of migrants.

* The information contained in the present document should be read in conjunction with the official report of the Independent Fact-Finding Mission on Libya (A/HRC/52/83), submitted to the Human Rights Council at its fifty-second session, pursuant to Council resolution 50/23.

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I. Introduction

1. The present report contains the detailed findings of the Independent Fact-Finding Mission on Libya, and it is presented at the 52nd session of the Human Rights Council, alongside the Mission's final report mandated in resolution 50/23.¹ The Human Rights Council established the Mission to document, in an independent and impartial manner, alleged violations and abuses of international human rights and humanitarian law by all parties in Libya since the beginning of 2016.² The Human Rights Council extended the Mission's mandate for a final, non-extendable period of nine months in July 2022 to allow it to submit its final report and concluding recommendations.³

2. The present report is focused on the exploitation of migrants⁴ and repression of dissent, two themes which constitute a considerable part of the large body of evidence collected by the Mission. The exploitation of migrants and repression of dissent are linked in that they facilitated consolidations of power and wealth by authorities that exercise effective control of different parts of Libya and State affiliated armed groups. This occurred at a time when the legislative, executive and security sector reforms needed to uphold the rule of law and unify the country are far from being realised.

3. Notably, the Mission found reasonable grounds to believe that the exploitation of migrants entailed violations of international human rights law and international humanitarian law and the commission of crimes against humanity. Furthermore, the exploitation of migrants, in the forms of smuggling, trafficking, enslavement, forced labour, imprisonment, and extortion of migrants generated significant revenue for individuals, armed groups, and State institutions. State affiliated entities in Libya also received technical, logistical, and monetary support from the European Union and its member States for inter alia the interception and return of migrants to Libya.

4. The repression of dissent was manifest in cases involving violations of the rights to the fundamental freedoms of expression, association, assembly, and belief. Based on the evidence collected, persons were inter alia arbitrarily detained, killed, tortured, and subjected to sexual and gender-based violence for their expression of divergent political, religious, and social views and norms, including their opposition to patriarchy and sexism, their criticism of the State and affiliated actors, and their actual or perceived sexual orientations and gender identities.

5. In this regard, the rapid, deep, and ongoing absorption of armed groups and their leadership into State structures and institutions, including the LAAF, and the spread of Salafist-leaning conservative ideologies are of significant concern to the Mission.⁵ The Mission found that State authorities and affiliated entities, such as Libya's Deterrence Apparatus for Combating Terrorism and Organized Crime (DACOT, also known as Radaa), the Libyan Arab Armed Forces (LAAF), the Internal Security Agency (ISA), and the Stability Support Apparatus (SSA), and their leadership, were repeatedly involved in violations and abuses of human rights arising in the context of arbitrary detention.

6. Allegations of violations and abuses of international human rights law and international humanitarian law have rightly warranted the Council's attention. The Mission has found reasonable grounds to believe that crimes against humanity were committed against Libyans and migrants in connection with their arbitrary deprivation of liberty across the Libyan territory since 2016. Notably, the Mission documented and made findings on numerous cases of inter alia arbitrary detention, murder, torture, rape, enslavement, and enforced disappearance, confirming their widespread violations in Libya. The Mission also concluded a holistic assessment of evidence on the treatment of migrants and established reasonable grounds to believe that sexual slavery, as an additional underlying act of crimes against humanity, was committed against migrants. The State remains under an obligation to

¹ A/HRC/52/83.

² A/HRC/RES/43/39.

³ A/HRC/50/L.23.

⁴ Unless otherwise specified, the term "migrant" encompasses migrants, asylum seekers and refugees.

⁵ S/2017/466.

investigate allegations of human rights violations and crimes committed in areas under its effective control in accordance with international standards.

7. The present report of the detailed findings of the Mission builds cumulatively on violations and abuses previously reported on in the Mission's four reports to the Human Rights Council⁶ and a conference room paper on Tarhuna.⁷ These reports detail a wider range of violations and abuses committed in Libya since 2016 and contain thematic sections on the human rights situation of groups of society that are particularly vulnerable to violations, such as internally displaced persons, children, and women.

II. Establishment and mandate of the Mission

8. On 22 June 2020, the Human Rights Council requested, through resolution 43/39, the United Nations High Commissioner for Human Rights to immediately establish and dispatch a fact-finding mission to Libya. The Mission was called upon to establish, in an independent and impartial manner, the:

facts and circumstances of the situation of human rights throughout Libya, and to collect and review relevant information, to document alleged violations and abuses of international human rights law and international humanitarian law by all parties in Libya since the beginning of 2016, including any gendered dimensions of such violations and abuses, and to preserve evidence with a view to ensuring that perpetrators of violations or abuses of international human rights law and international humanitarian law are held accountable.⁸

9. Accordingly, the High Commissioner announced on 22 August 2020 the appointment of Mohammad Auajjar (Chair), Tracy Robinson, and Chaloka Beyani as experts of the Mission.

10. The Mission, which was asked to carry out its work in cooperation with the Libyan authorities, the League of Arab States, the African Union, and the United Nations Support Mission in Libya,⁹ was instituted initially for a period of one year and requested to report on its findings to the Human Rights Council at its 45th session.¹⁰ Noting, however, that certain activities mandated could not be carried out in 2020 due to a liquidity crisis and the outbreak of the COVID-19 pandemic, the Human Rights Council decided to extend the Mission's mandate until its 48th session.¹¹ The Human Rights Council has since adopted two more resolutions extending the mandate of the Mission until March 2023.¹²

11. The last resolution extending the Missions mandate, dated 4 July 2022, requested the Missions to:

- present to [the Human Rights Council], its final report on the situation of human rights in Libya with a particular focus on its concrete and concluding recommendations for the Libyan authorities in the priority areas of:
 - (a) Achieving transitional justice and national reconciliation;
 - (b) Strengthening national human rights institutions and the national action plan for human rights to follow-up on the investigation of the fact-finding

⁶ A/HRC/52/83; A/HRC/48/83; A/HRC/49/4; A/HRC/50/63.

⁷ A/HRC/50/CRP.3.

⁸ A/HRC/RES/43/39.

⁹ A/HRC/RES/43/39.

¹⁰ "Requests the fact-finding mission to present an oral update on its work and findings to the Human Rights Council at its forty-fifth session during an interactive dialogue, with the participation of the Special Representative of the Secretary-General for Libya, and to present to the Council, during an interactive dialogue at its forty-sixth session, a comprehensive written report on the situation of human rights in Libya, including on efforts to prevent and ensure accountability for violations and abuses of human rights and recommendations for follow-up." A/HRC/RES/43/39, para.45.

¹¹ A/HRC/DEC/45/113.

¹² A/HRC/RES/48/25 and A/HRC/50/L.23.

mission and recommendations made by the treaty bodies and in the context of the universal periodic review;

(c) Strengthening the rule of law, including supporting judicial processes and law enforcement.¹³

12. The mandate of the Mission as outlined in Human Rights Council resolution 43/39 is broad and general, encompassing all of the geographical area of Libya and violations and abuses of international human rights law and international humanitarian law committed by any actors. The Mission interpreted its mandate to encompass violations and abuses of a continuing nature that commenced before the beginning of 2016, such as enforced disappearance. It has also interpreted its mandate to cover violations and abuses committed on the Libyan territory, including its territorial waters, and acts that were initiated outside the Libyan borders but continued within its territory.¹⁴

13. When the Human Rights Council established the Mission, it recognized the need for accountability in Libya.¹⁵ Notably, resolution 43/39 stated that the objective of the Mission's mandate to preserve evidence is to have those responsible held accountable.¹⁶ The Human Rights Council requested the Mission to also provide an oral update on "efforts to prevent and ensure accountability for violations and abuses of human rights and recommendations for follow-up."¹⁷ The Mission interpreted its mandate to involve international criminal law where the gravity of the abuses and violations reached the threshold of international criminal responsibility. It included in its investigation the identification of those most responsible for violations and abuses under investigation.¹⁸

14. The beginning of the Mission's mandate period followed chronologically other UN-mandated investigations into violations of international law committed in the context of Libya since 2011. The Human Rights Council formed in 2011 an independent commission of inquiry to investigate all alleged violations of international human rights law in Libya, to identify those most responsible, and to make recommendations on accountability measures.¹⁹ That commission concluded its work in 2014 and found, in accordance with its standard of proof, that Qadhafi forces and anti-Qadhafi forces had committed serious violations of international law, including international crimes.²⁰ In 2015, the High Commissioner was requested to dispatch another mission, this time to investigate violations and abuses of international human rights law committed in Libya since the beginning of 2014, in coordination with the United Nations Support Mission in Libya.²¹ The United Nations High Commissioner's mission found that "there are reasonable grounds to conclude that there were widespread violations of international human rights law and international humanitarian law, and abuses of human rights in Libya throughout 2014 and 2015".²²

¹³ A/HRC/50/L.23., para.2.

¹⁴ See A/HRC/25/CRP.1, para.20 and fn.8.

¹⁵ Resolution 43/39 contains several provisions on accountability. It urges, for example, all leaders to "declare that violations and abuses of human rights or violations of international humanitarian law by their fighters will not be tolerated and that individuals responsible for such acts will be removed from duty and will be held accountable". It calls upon the Government of National Accord to "increase its efforts to hold those responsible for violations or abuses of international human rights law and international humanitarian law accountable." And it requests the UN High Commissioner for Human Rights to ensuring accountability. A/HRC/RES/43/39, preamble, paras.33, 37, and 39-40.

¹⁶ A/HRC/RES/43/39, para.43(a).

¹⁷ A/HRC/RES/43/39, para.45.

¹⁸ The Mission took this position during its first mandate period. See A/HRC/48/83.

¹⁹ A/HRC/S-15/1.

²⁰ A/HRC/19/68.

²¹ A/HRC/RES/28/30.

²² A/HRC/31/47, para.60.

III. Methodology

A. Scope of the investigation and criteria for selection

15. The Mission's investigations were informed by three objective criteria: (a) the gravity and widespread or systematic nature of violations, (b) violations, abuses, and crimes against vulnerable groups that are subjected to multiple forms of victimization, and (c) violations, abuses, and crimes that especially hamper Libya's transition to the rule of law and democratic elections.

16. In keeping with resolution 43/39, the Mission focused its investigations on sexual and gender-based violence and violations and abuses against women throughout its mandate. Particular attention was given to gendered dimensions of the violations and abuses identified.²³

17. The Mission adopted a broad view of accountability and acknowledged victims' rights to truth and effective remedy and guarantees of non-reoccurrence as essential components of human rights and transitional justice.²⁴ The Mission also drew on international criminal law and compiled a preserved list of individuals allegedly responsible for certain documented violations and abuses. The list will be deposited, as part of the Mission's evidentiary holdings, with the United Nations High Commissioner for Human Rights.

B. Methods of work and investigation activities

18. Since its establishment, the Mission has carried out more than 400 interviews, primarily with witnesses and victims, and collected more than 2,800 discrete items of information. A large proportion of the items was in the form of reports, meeting notes, legislation, maps, and photographic and audiovisual imagery.

19. Investigation and reporting activities were guided by the Mission's commitment to safeguard the well-being and safety of the individuals and groups with which it interacted, and Mission staff adhered scrupulously to the "do no harm" principle in all their activities. Investigators arranged interviews and the transmission of information in safe places and over secure platforms and referred victims to protection and assistance programs as appropriate and when feasible.

20. The Mission did not interview persons unless they agreed to be interviewed and it sought informed consent from sources to use and share their information in its reports and with external stakeholders. The identities of victims and witnesses in the present report have been disclosed with their knowledge and after secondary consent was obtained.

21. The Mission undertook 13 missions, three of which were conducted during the last mandate extension period. The Mission went to Tripoli on six separate occasions²⁵ and to

²³ Resolution 43/39 specifically requested the Mission to cover gendered dimensions of violations and abuses falling within its mandate. Furthermore, numerous provisions of the resolution mention the impact of violations and abuses on women, including but not limited to the context of migration, detention, airstrikes, and enforced disappearances. The resolution also requested the Libyan "Government of National Accord, the international community, the United Nations and all parties to the conflict in Libya to facilitate the full, equal and effective participation of women in activities relating to the prevention and resolution of the armed conflict, the maintenance of peace and security and post-conflict peacebuilding." A/HRC/RES/43/39, preamble, paras.13, 25, 29, 31, and 35.

²⁴ Resolution 43/39 contains several provisions on accountability. It urges, for example, all leaders to "declare that violations and abuses of human rights or violations of international humanitarian law by their fighters will not be tolerated and that individuals responsible for such acts will be removed from duty and will be held accountable". It calls upon the Government of National Accord to "increase its efforts to hold those responsible for violations or abuses of international human rights law and international humanitarian law accountable." And it requests the UN High Commissioner for Human Rights to ensure accountability. A/HRC/RES/43/39, preamble, paras.33, 37, and 39-40.

²⁵ July 2021, August 2021, May 2022, October-November 2022, November 2022, and January 2023.

Benghazi on one occasion.²⁶ One of the last missions was a lengthy investigative mission to Tripoli, from 21 October to 21 November 2022. Investigators also travelled to Italy²⁷, Rwanda²⁸, Malta²⁹, the Netherlands³⁰, as well as to other countries.

22. In addition to its regular interactions with relevant groups, the Mission made three open calls for submissions to the public to solicit information.³¹ The Mission invited on its dedicated page of the Human Rights Council website, individuals, groups, and organizations to provide it with information relevant to its mandate.³² Furthermore, the Mission organized at least eight roundtable meetings with civil society, including two in October 2022 and two in January 2023.

C. Standard of proof

23. Consistent with most other United Nations fact-finding missions and commissions of inquiry, the Mission applied the “reasonable grounds to believe” evidentiary standard when making factual and legal determinations on patterns, incidents, and cases. The standard was deemed met when a reliable body of primary information was obtained that was corroborated by at least one other independent source, which could lead a reasonable and ordinarily prudent person to believe that the patterns, incidents, and cases had occurred.

24. In assessing the reliability of primary and secondary sources, the Mission considered the position of the witness in relation to the subject of the information, when and how the witness obtained the information, the witness’ capacity to recall events, and potential biases and/or motives on the part of the source. In assessing the credibility of information, the Mission took account of the level of detail and specificity in the information collected and its plausibility. It also examined consistency and coherence within one source’s assertions (internal consistency) and compared information received by one source with information derived from other sources (external consistency), while having regard to memory impairment by trauma.

25. Information collected was either categorized as first-hand or second-hand information. Interviews by the Mission with victims and witnesses, satellite imagery, observations by investigators, laws and regulations, and policies were regarded as first-hand information. In general, interviews conducted by reliable and credible organizations, reports and documents by non-governmental organizations and the United Nations, academic research papers, and media reports were considered second-hand information.

26. The Mission found that the evidentiary standard was met with respect to violations involving torture, cruel, inhuman or degrading treatment, enforced disappearance, and sexual and gender-based violence, and the conditions in which those violations occurred where detailed, reliable, and credible first-hand sources of information were corroborated by evidence establishing patterns of similar incidents in the area of investigation.

27. The Mission identified patterns based on several pieces of first-hand evidence that were consistent with and corroborated by the overall body of evidence collected. The Mission discerned patterns from inter alia, time-periods, localities, victim profiles (based on gender, age, and ethnic, religious, racial and political grounds), modus operandi, and motives.

28. Unlike the criminal standard of proof, the “reasonable grounds” basis does not require the Mission to make findings to the exclusion of all other reasonable inferences. Considering the stigma attached to the violations and abuses documented, the public nature of its work, and the presumption of innocence, the Mission resorted to the higher evidentiary standard of

²⁶ March 2022.

²⁷ July 2021.

²⁸ April 2022.

²⁹ March 2022.

³⁰ December 2022.

³¹ January 2021, December 2021, and August 2022.

³² The call for submissions was issued on the Mission’s dedicated website of the Human Rights Council. The Mission urged those invited to submit “new or complementary information and documentation relevant to its mandate as soon as possible,” but no later than 31 December 2022.

balance of probabilities when compiling its list of individuals allegedly responsible for the violations and abuses that the Mission documented.

D. Challenges and cooperation

29. The Mission did its utmost to discharge its mandate fully but was confronted with a myriad of resource-, access-, and security-related challenges that inadvertently impeded the scope and continuity of its work. These challenges arose from the time of the decision to establish and dispatch the Mission and continued until the end of its mandate.

30. In its resolution 43/39 of 22 June 2020, the Human Rights Council requested the United Nations High Commissioner for Human Rights to establish and dispatch a fact-finding mission on Libya, but the coronavirus disease (COVID-19) pandemic, the United Nations budgetary liquidity crisis and a suspension of recruitment delayed the formation of the Mission secretariat and the commencement of investigations. The secretariat became fully operational in June 2021. While the intention was to recruit 18 staff members for the secretariat, it was composed of less than 10 staff members for lengthy periods of time and suffered a chronic shortage of investigators during critical stages of the investigation.³³

A. Access-related challenges

31. The Mission's endeavours to base its investigation team in Libya proved unfeasible owing to limited United Nations accommodation in Libya and security challenges.³⁴ Access to Libyan territory and other countries depended upon the cooperation of authorities primarily in Libya, the Republic of Tunisia, and the Swiss Confederation, with the assistance of the United Nations.

32. The Mission extends its appreciation to the Libyan Permanent Mission in Geneva and the Libyan Ministry for Foreign Affairs for facilitating the Mission's travels to Libya. The Mission is also grateful to the United Nations Resident Coordinator to Libya, and the United Nations Support Mission in Libya, including its Human Rights Section, for their continued support to it. Furthermore, the Mission extends its gratitude to the Republic of Tunisia for hosting the Secretariat.

33. Cooperation with authorities in Libya was not, however, without complication. While cooperation with authorities in Libya improved, the Mission struggled to obtain the permissions necessary to gain unhindered access to all parts of the Libyan territory, without delay.³⁵

34. The LAAF did not grant the Mission's several requests to visit southern Libya (Fazzan), under its control. In May 2022, the Government of National Unity (GNU) denied the Mission permission to depart from Tripoli to enter the areas of southern Libya under the control by the LAAF, and the LAAF contemporaneously denied it authorization to access Sabha. Both authorities cited security concerns. In October 2022, the LAAF withdrew the authorization to Sabha that the Mission had received after significant delays. The Mission sent an official letter to the LAAF protesting the withdrawal of authorization, but never received any reply.

35. The Mission submitted several requests to the Presidential Council of the GNU, the Ministry of the Interior, the Ministry of Justice, the Ministry of Social Affairs, and the Ministry of Public Health, to visit several prisons and places where persons were deprived of their liberty. The Mission did not receive official responses to its requests.

36. Despite the calls by the Human Rights Council for the Libyan authorities to allow the members of the Mission to meet and speak freely and privately, when they so request, with whomever they wish to meet or speak, the climate of fear surrounding witnesses and civil society frequently hampered the Mission's engagements. There were instances when groups

³³ See also A/HRC/48/83, para.14.

³⁴ Secretariat staff members were based in Tunisia.

³⁵ A/HRC/50/L.23 and A/HRC/RES/43/39.

and individuals declined to meet with the Mission in particular locations, or at all, because of the fear of reprisals.

37. In this regard, the Mission is grateful to civil society groups, affected communities, victims, and witnesses that engaged with it and shared high-quality and pointed information and feedback over the years. It was of great importance for the Mission to maintain open lines of communication with all concerned by its work.

IV. Applicable law

38. Pursuant to its mandate, the Mission centered its work around international human rights law and international humanitarian law. The applicable international human rights law and international humanitarian standards were drawn from the treaties that Libya had ratified and customary international law. International human rights obligations were further delineated by reference to non-binding, soft law instruments. The Mission considered Libyan law where it was found relevant to its assessment.

39. Although the Mission's subject-matter mandate, as expressed in resolution 43/39, did not explicitly include international criminal law or questions of individual responsibility, the Mission did give regard to it for reasons specified below.

A. International human rights law

40. International human rights law obliges States to continually respect, protect, and fulfil human rights where they exercise effective control. States are the primary duty bearers of international human rights obligations, and they can be held responsible for human rights violations committed by their organs (for example, the legislative or executive branch) or by their agents (for example, civil servants, the police, the armed forces). The State is also responsible for the actions of non-state actors that may be attributed to it, such as militia groups that operate with its endorsement or acquiescence, even where those actions are committed outside the scope of the official's apparent authority.

41. The Mission did not, however, view international human rights law solely within the construct of State responsibility. Rather, the Mission concurred with the position that both State and non-State actors have human rights obligations under customary international law over territory over which they exercise effective control and carry out government-like functions. Similarly, it accepted that all parties to non-international armed conflicts, including non-State actors, are bound by customary international law under those circumstances.

42. Libya is bound by the United Nations Charter and has committed itself to advance "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."³⁶ Libya is also a State Party to many of the principal international human rights treaties, chiefly the International Covenant on Civil and Political Rights and its first Optional Protocol; the International Covenant on Economic, Social and Cultural Rights; the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment; the International Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol; the International Convention on the Protection of the Rights of All Migrant Workers and Their Families; the Convention on the Rights of the Child and its Optional Protocols on the Involvement of Children in Armed Conflict; and the Convention on the Rights of Persons with Disabilities. In ratifying these treaties, Libya expressed its consent to be bound by the obligations articulated therein and accepted that its domestic laws cannot be invoked to justify a failure to comply.³⁷

³⁶ United Nations Charter, Articles 55 and 56.

³⁷ Vienna Convention on the Law of Treaties, Article 27.

43. Libya has not signed or ratified the Convention for the Protection of All Persons from Enforced Disappearance, but several provisions of the International Covenant on Civil and Political Rights are infringed by enforced disappearance.³⁸ In any case, enforced disappearance was considered to have attained the status of *jus cogens*.

44. Libya also committed itself to abide by provisions of regional human rights treaties, including the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child, and the Arab Charter on Human Rights. It also accepted the jurisdiction of the African Court on Human and Peoples' Rights.

45. When making its findings, the Mission took account of the content of the international and regional treaties ratified, as well as General Comments and jurisprudence issued by the corresponding treaty bodies such as courts and committees, Special Rapporteurs and working groups, as applicable.

46. Additionally, the Mission relied on soft law instruments in its analysis of the applicable human rights law, including the Declaration on the Protection of Persons from Enforced Disappearances; the Guiding Principles on Internal Displacement; the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity; the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; the Standard Minimum Rules for the Treatment of Prisoners³⁹; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, both supplementing the United Nations Convention against Transnational Organized Crime; and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict.

B. International humanitarian law

47. International humanitarian law regulates the conduct of parties engaged in an armed conflict. Given that the alleged violations of international humanitarian law in Libya took place in the context of either an armed conflict opposing the Libyan State's armed forces against a non-State armed group, or an armed conflict involving two or more non-State armed groups, the Mission applied international customary law and treaty rules relevant to non-international armed conflicts since 2016.

48. Parties to non-international armed conflicts are obliged to, at a minimum, treat persons taking no active part in hostilities and those hors de combat humanely, without any adverse distinction. Violence to life and person is prohibited, in particular murder of all kinds, mutilation, cruel treatment and torture, taking of hostages, outrages upon personal dignity as well as the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, respecting the generally recognized principles of fair trial and due process.

49. Furthermore, parties to armed conflicts must always abide by the principles of distinction, proportionality and precautions in attack. Attacks are prohibited where they are expected to cause incidental loss of life, injury to civilians, damage to civilian objects or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated. Parties must also take all feasible precautionary measures to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects.

³⁸ International Covenant on Civil and Political Rights, Articles 6, 7, 9, 16, and 17.

³⁹ Also known as the Nelson Mandela Rules.

50. Libya, the de facto authorities, and foreign States are responsible for all violations of international humanitarian law committed by their armed forces or those acting under their instruction, direction, or control.

51. Violations of international humanitarian law may constitute war crimes. In the context of non-international armed conflicts, they are serious violations of common article 3 of the Geneva Conventions of 1949. The Mission qualified violations as war crimes where a nexus to an armed conflict was established.

C. International criminal law

52. To appropriately characterize the human rights and international humanitarian law violations occurring in Libya, the Mission considered and applied where appropriate international criminal law. Notably, crimes against humanity have generally been referred to as “systematic or mass violations of human rights” and underlying acts of crimes against humanity (for example, torture, enforced disappearance, imprisonment, and slavery) are violations incorporated into international human rights treaties, most of which are binding on Libya.

53. The Mission adopted a broad view of accountability that extended beyond individual criminal responsibility and recognized victims’ rights to truth and effective remedy/reparation, including guarantees of non-reoccurrence as essential components of transitional justice. The Mission thus approached the accountability aspect of its mandate in recognition of the fact that it was neither a judicial nor a prosecutorial body. It could not make final determinations of individual criminal responsibility. That said, it could determine whether its evidence establish reasonable grounds to believe that violations of international human rights law and international humanitarian law had occurred.

54. The Mission accordingly made legal findings on crimes against humanity and war crimes consistent with its evidentiary standard.

V. Political context

55. The current situation in Libya can be traced back to the Muammar Qadhafi regime and its fall during a civil war that erupted after peaceful demonstrations. The peaceful demonstrations aimed at “achieving reforms in governance and more particularly seeking to see the regime evolve into a democratic form of government subject to the rule of law and upholding human rights”.⁴⁰ The first Libyan parliamentary elections were subsequently held on 7 July 2012.⁴¹ Afterwards, the National Transitional Council handed over power to the newly elected General National Congress tasked with forming an interim government and drafting a permanent constitution to be approved by referendum.⁴²

56. In February 2014, the Constitution Drafting Assembly was elected by popular vote.⁴³ It adopted in 2017 a draft constitutional declaration with the intention to put it to a popular vote.⁴⁴ A referendum on the draft constitutional declaration had not been held by the end of the Mission’s mandate.

A. Transition from General National Congress to the Libyan Political Agreement

57. The General National Congress established a roadmap committee to address the transitional period after 7 February 2014.⁴⁵ On 3 February 2014, the General National

⁴⁰ A/HRC/17/44, para.234.

⁴¹ SC/10704-AFR/2416.

⁴² Security Council, September 2012 Monthly Forecast.

⁴³ S/2014/131.

⁴⁴ S/2021/726, para.3.

⁴⁵ S/2014/131, para.3.

Congress stipulated that it would continue to exist until its authority could be transferred to a constitutionally elected legislative body, subject to the completion of the constitution process.⁴⁶ The General National Congress' decision was opposed by Khalifa Haftar in particular, a former military commander of and chief of staff to Qadhafi. Haftar voiced his opposition in a speech on 14 February in which he also, in absence of a formal appointment at the time, announced the roadmap of the Libyan National Army (LNA).⁴⁷

58. These developments set the stage for numerous violent clashes and armed conflicts in and around 2014 and 2015, that were divided along geographical areas of Libya and characterized by shifting alliances. One of the major armed conflicts erupted in May 2014 when Khalifa Haftar launched Operation Dignity in eastern Libya to eradicate so-called "radical terrorist" groups from eastern Libya.⁴⁸ Haftar's forces were joined by other brigades.⁴⁹ Around the same time, armed groups in West Libya aligned with the General National Congress in Tripoli formed the Libya Dawn coalition to counter Operation Dignity and evict Zintan-based brigades from Tripoli.⁵⁰ Operation Dignity and Libya Dawn engaged in hostilities, that spread into Tripoli, Benghazi, and southern Libya.⁵¹

59. The House of Representatives (HOR) was formed following a June election provided for by the General National Congress.⁵² The HOR convened for the first time on 4 August 2014 in the east of Libya, in Tobruk,⁵³ and later declared its support for Operation Dignity.⁵⁴

60. Libya Dawn called upon the former General National Congress to reconvene, claiming that the transitional caretaker government and the newly elected HOR had violated the Constitutional Declaration and consequently lost legitimacy.⁵⁵ Sections of the Government of National Congress reconstituted itself, then created a parallel government (Government of National Salvation) that took control of Tripoli-based ministries and other State institutions. It supported the Libya Dawn campaign.⁵⁶

61. On 17 December 2015, the Libyan Political Agreement, also known as the "Skhirat Agreement", was signed. The Libyan Political Agreement rests on four main principles, namely "ensuring the democratic rights of the Libyan people, the need for a consensus government based on the principle of the separation of powers, oversight and balance between them, and the need to empower State institutions like the Government of National Accord (GNA) so that they can address the serious challenges ahead, respect for the Libyan judiciary and its independence".⁵⁷ The agreement provided for the formation of the GNA with a Presidency Council, the High Council of State, and a roadmap for a transition to a unified government structure.⁵⁸ It also affirmed the HOR as the legislative body during

⁴⁶ S/2014/131, para.6.

⁴⁷ A/HRC/31/CRP.3, para.59.

⁴⁸ A/HRC/31/CRP3, para.35; A/HRC/31/47.

⁴⁹ A/HRC/31/CRP3, para.59.

⁵⁰ S/2014/653, para. 17.

⁵¹ A/HRC/31/CRP.3, paras.35-37 and 39.

⁵² Security Council, June 2014 Monthly Forecast.

⁵³ S/2014/653, para.8.

⁵⁴ In November 2014, the House of Representatives issued a statement declaring that "Operation Dignity (and its commanders), is a legitimate military operation under the Commander of General Staff and the Interim Libyan Government deriving its legitimacy from the Libyan people...".

⁵⁵ S/2014/653, para.4; Security Council SRSB Briefing, 27 August 2014.

⁵⁶ S/2014/653, para.4; A/HRC/31/CRP.3, para.44.

⁵⁷ The undersigned of the Skhirat Agreement expressed their "Commitment to the importance of drafting a permanent constitution for Libya that achieves the ambitions and aspirations of the Libyan people towards building the state of institutions based on the rule of law and respect of human rights [...] Commitment to the principle of respect of the judiciary and its independence and ensuring its integrity and impartiality [and...] Commitment that the House of Representatives is the only legislative authority in the country during the transitional period". Skhirat Agreement, Governing Principle 4, 9, and 10.

⁵⁸ A/HRC/50/63; A/HRC/31/CRP3, para.48.

transitional period.⁵⁹ Although the HOR endorsed the Libyan Political Agreement on 25 January 2016, it did not accept the GNA.⁶⁰

B. The Libyan Political Agreement and 2020 ceasefire

62. Despite the signing of the Libyan Political Agreement, the GNA struggled to gain the support of all parties. This lack of stability influenced the resurgence of fighting of varying intensity, in the east, west and south of the country, including a non-international armed conflict from April 2019 to June 2020 between the LAAF and the GNA.⁶¹

63. In April 2019, the LAAF initiated a military campaign to seize control of the Tripoli, which was effectively under the control of the GNA.⁶² After 14 months of intense fighting the offensive against Tripoli came to an end in June 2020.⁶³

64. Notwithstanding the United Nations imposed arms embargo, parties to the conflict received military support from foreign actors.⁶⁴ These included Turkey and Qatar on the GNA side, and Egypt, Jordan, Saudi Arabia, and the United Arab Emirates on the LAAF side. Different Chadian and Sudanese armed groups supported both sides⁶⁵, and there is a reliable body of information indicating that individuals associated with ChVK Wagner, a company registered in Russia, were present in Libya in support of the LAAF.⁶⁶

65. Between January and October 2020, the high-level Berlin conference and 5+5 Joint Military meetings were held on the resolution of the conflict in Libya with parties and concerned international actors.⁶⁷ These events eventually paved the way for the conclusion of the Agreement for a Complete and Permanent Ceasefire by forces affiliated with the GNA and the LAAF on 3 October 2020 and the creation of the Libyan-led ceasefire monitoring mechanism⁶⁸.

C. From 2020 ceasefire until present-day

66. Based on Security Council resolution 2510 of 2020, the first round of the Libyan Political Dialogue Forum took place in Tunis from 7 to 15 November 2020.⁶⁹ This forum adopted on 15 November 2020 the Roadmap for the "Preparatory Phase for a Comprehensive Solution" based on Article 64 of the Libyan Political Agreement providing for the establishment of the Government of National Unity (GNU) and the convening of presidential and parliamentary elections in December 2021.⁷⁰ Following a vote in the HOR in March 2021, the GNU was installed⁷¹ and mandated to prepare for elections at the end of 2021.⁷²

67. Two days prior to the planned elections in December 2021, the High National Elections Commission declared that it could not organise the elections due to inadequacies in the electoral legislation and irregularities in the judicial process relating to the eligibility of candidates.⁷³

⁵⁹ Libyan Political Agreement (LPA) as signed on 17 December 2015; SC/12185, 23 December 2015.

⁶⁰ A/HRC/50/63, para.6; S/RES/2323(2016).

⁶¹ A/HRC/50/63, para.7.

⁶² S/2019/682 para.2.

⁶³ S/2020/832 para.4.

⁶⁴ See S/RES/2510 (2020), paras. 9-10.

⁶⁵ Security Council Report, Council Adopts Resolution on the Berlin Conference on Libya, 13 February 2020.

⁶⁶ A/HRC/48/83, para. 38.

⁶⁷ A/HRC/48/83.

⁶⁸ A/HRC/50/63, para.7; S/RES/2570 (2021).

⁶⁹ UNSMIL, Libyan Political Dialogue Forum.

⁷⁰ A/HRC/50/63.

⁷¹ A/HRC/50/63.

⁷² UNSMIL, Common Country Analysis, 2021, p. 22.

⁷³ A/HRC/50/63.

68. In February 2022, the HOR appointed, through a contested vote, the former Minister of Interior Fathi Bashaga to form a new Government of National Stability. It argued that the mandate of the GNU had expired because of its failure to organize timely elections.⁷⁴

69. The deadlocked political situation in Libya was exacerbated by the appointment of the Government of National Stability and the still-existent internationally recognised GNU led by Abdul Hamid Dbeibah.⁷⁵ This division, also led to armed clashes between forces loyal to the two rival governments, as in Tripoli in May and August 2022, with the latter being the worst outbreak of violence in two years.⁷⁶

VI. Financial and economic situation in Libya

70. Libya has one of the largest known oil and gas reserves in Africa and the potential for wealth is significant. However, the volatile political situation in Libya since 2011, coupled with the outbreak of the COVID-19 pandemic and recurrent armed conflicts both in Libya and abroad, including in Ukraine, dramatically impacted the Libyan economic-financial fabric, economic growth, and affordability of essential goods.⁷⁷ Economic-financial inequality led to an increase in malnourishment and low-quality diets,⁷⁸ particularly affecting vulnerable households.⁷⁹ In 2021, the GDP per capita estimates were about half of their value in 2010.⁸⁰

71. In 2021, Libya was ranked 172 out of 180 countries in Transparency International's Corruption Perception Index indicating a very high level of corruption.⁸¹ The acutely undiversified economy of Libya is predominantly dependent on oil and gas exports, over which access and ownership is highly contentious.⁸² In 2020 the export of fuels made up 73 per cent of the exports from Libya.⁸³ While the majority of the population is located in the North-West of the country, natural resources, including oil and water, are largely concentrated in the East and South.⁸⁴

72. The Central Bank of Libya (CBL) receives financing from the National Oil Company.⁸⁵ The Libyan treasury generates income by sovereign revenues primarily from oil, gas and derivatives trade. It also generates revenues from inter alia taxes and other fees on economic activities, customs, telecom charges, CBL profit distribution, fuel sale in the local market, and public services fees.⁸⁶ The Libyan State has also received funding from the EU⁸⁷ and its member States, including Italy.⁸⁸

VII. Repression of fundamental freedoms

73. A considerably high proportion of all the cases investigated by the Mission since it was dispatched concern the repression of dissent. The Mission observed from the evidence

⁷⁴ S/2022/409, paras. 3-4.

⁷⁵ A/HRC/50/63, paras. 8-9.

⁷⁶ Security Council Report, Libya: Briefing and Consultations, 29 August 2022.

⁷⁷ The World Bank, Libya Economic Monitor, September 2022.

⁷⁸ The World Bank.

⁷⁹ UNSMIL, Common Country Analysis, 2021, p. 4.

⁸⁰ The World Bank, Libya Economic Monitor, September 2022.

⁸¹ Transparency International, 2021 Corruption Perceptions Index.

⁸² The World Bank, Press Release: Libya is Aspiring for Recovery and Healing, but Challenges Abound, 22 April 2021.

⁸³ United Nations Conference on Trade and Development, Country Profile Libya.

⁸⁴ UNSMIL, Common Country Analysis, 2021, p. 22.

⁸⁵ UNSMIL, Common Country Analysis, 2021, p. 22.

⁸⁶ 2021 Annual Report of the Libyan Audit Bureau.

⁸⁷ European Union, Support on Migration in Libya, EU Emergency Trust Fund for Africa North of Africa window, June 2021.

⁸⁸ European Union, Ref. Ares(2020)3662236, Annex IV to the Agreement establishing the European Union Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa and its internal rules, 10 July 2020.

that it collected that violations of the rights to freedom of expression, assembly, association, and belief were committed at a large scale by the State and affiliated actors as part of their consolidation of control over a particular geographical area, group, alliance, revenue stream, or natural resource.

74. The repression of dissent occurred through the arbitrary killing, torture, rape, arbitrary detention, and enforced disappearance of persons because of their actual or perceived sexual orientation or gender identity, their criticism of the State and its affiliated armed groups, and their expression of divergent political, religious, and social views and norms, including their opposition to patriarchy and sexism. It was also evident from the plethora of restrictions placed upon civil society. By example, the Civil Society Commission (CSC), supported by legally the Supreme Judicial Council, further tightened in early 2023 the criteria for obtaining and gaining recognition of registration, potentially rendering existing registrations invalid. The CSC has also been demanding that civil society organisations receive permission to engage with foreign missions.

75. Relatedly, the Mission witnessed a hardening of the public discourse around authorities' position on women's rights and gender equality. Activism around gender equality has been quelled and both women and men were subjected to sexual and gender-based violence if they were perceived to behave in socially, culturally, and religiously unacceptable ways.

76. A significant number of the cases documented by the Mission were connected to an increased adherence to conservative Salafist-leaning ideologies. Witnesses recalled to the Mission the presence of so-called "Madkhali-Salafist" followers during interrogation and detention and the invocation of religious values during the infliction of torture and sexual and gender-based violence. Armed actors, in particular those that ascribe to Salafist-leaning ideologies, have gained ground in Libya. The Mission noted in this regard the deep, extensive, and ongoing absorption of militias and other armed groups into the State apparatus that violate international law for the purpose of entrenching or establishing total control and power over Libyans and Libyan territory.

77. Notably, the Mission found that State affiliated entities such as Libya's Deterrence Apparatus for Combating Organized Crime and Terrorism (DACOT, also known as Radaa), the Libyan Arab Armed Forces (LAAF), the Internal Security Agency (ISA), and the Stability Support Apparatus (SSA) were repeatedly involved in violations and abuses that affected the enjoyment of fundamental freedoms. As provided in detail in section XI, all these bodies are linked to the Libyan State.

78. The arrest, detention, and punishment of individuals for their alleged membership of the Tanweer movement is emblematic of Libya's gradually shrinking civic space. According to its now defunct website, the Tanweer is an organisation working to spread the principles of human rights, equality, and non-discrimination. Between November 2021 and March 2022, seven young activists, including a migrants' rights defender, had "confessions" recorded on video in which they declared that they are members of Tanweer, atheists, agnostics, feminists, and seculars. The recordings also implicated persons that were not arrested and detained. These video recordings, which appear to have been recorded under duress, were posted on ISA's Facebook page and website.

79. In December 2022, four of the men that appeared on the ISA recordings were sentenced to three-year imprisonment "with hard labour" and fined by a domestic court in Tripoli. The Mission is concerned that the evidence relied upon was extracted under coercive circumstances, and without lawyers present. The Mission is also concerned that the legal provisions used to convict the men are inconsistent with the principle of legality and international human rights law.

80. The right to hold a belief or not is absolute and cannot be derogated or abrogated during a state of emergency or armed conflict. However, manifestation of one's belief, freedom of expression, association, and assembly may be restricted exceptionally, subject to necessity, justification, and proportionality. In the case of the right to hold a belief, the restriction is contingent upon its absolute and non-derogable nature. Considering this, some of the vague terminology used in Libyan legislation, including the Publications Law, is

incompatible with the principle of legality and the right to freedom of expression which require that laws are sufficiently precise to enable an individual to regulate his or her behaviour.⁸⁹ The Libyan Penal Code, for example, stipulates the death penalty for “any views or principles” that aim to overthrow the political, social, or economic order of the State⁹⁰ and proscribes blasphemy.⁹¹ Similarly, the Law on Telecommunications holds that the publishing of information and data that “harms the political, economic, social, or cultural heritage of Libyan Arab society” is punishable.⁹²

81. The Mission is particularly alarmed by the Anti-Cybercrime law that came into effect in October 2022. It affords the Libyan authorities’ extensive discretionary powers to restrict and criminalize online freedom of expression, opinion, and belief because of “public order and morality”.⁹³ The Mission received reports that the law was relied upon on for the arrest and detention of Ahlam al-Yamani and Haneen al-Abdali in February 2022. A statement by the Ministry of the Interior held that the women were arrested for “violating public morals and insulting the status of chaste and dignified Libyan women in our conservative society”. The law could exacerbate an already constricted and heavily monitored online space and provide another legal avenue through which to punish persons that do not conform to the norms and views of the authorities.

82. The above referenced legislation and attacks against inter alia human rights defenders, women rights activists, journalists, and civil society associations have already created an atmosphere of fear that has led to self-censorship and sent persons into hiding or exile.

A. Arbitrary arrest and unlawful detention

83. The pervasive and widespread deprivation of liberty inflicted on Libyans and other non-migrants in detention centres across the country has been a feature of all the Mission’s reports. Since its establishment, the Mission conducted over 134 interviews with current and former detainees, their relatives, insider witnesses, and/or other individuals with respect to over 41 sites of detention throughout Libya. The Mission also obtained large amounts of corroborating and other pieces of evidence regarding violations of international law occurring at these detention centres, including “secret prisons”. In total, Government numbers place the official number of detainees at 18,523, but evidence collected by the Mission indicated that the true number of individuals detained is likely much higher.

84. The vast number of cases of deprivation of liberty documented by the Mission were arbitrary. A common method of arrest entailed the interception of victims by groups of masked and armed men at home or in public spaces, including on the streets or at airports. The identity of the group arresting the victim could occasionally be deduced from markings on the vehicle used to transfer the victim to a place of detention. The Mission also documented cases where the group identified itself to the victim. The arbitrary arrest occurred under coercion, physical violence, intimidation, with victims typically blindfolded and/or handcuffed. Victims were not presented arrest or search warrants, nor were they informed of their rights.

85. Almost all the victims and witnesses the Mission interviewed were never confronted with evidence against them and held without charge. Detainees interviewed were held arbitrarily for periods of hours to years. In some cases, victims were subsequently brought up on baseless “terrorism” charges, and tried in proceedings that fall short of due process guarantees.

86. The arbitrary arrest of a retired businessman is emblematic. The victim, who had begun to write frequently online on the poor living conditions and lack of salaries of people in Libya, was arbitrarily arrested in 2022 under violent circumstances. The victim was exiting a mosque after Friday prayers, when confronted by eleven people, some wearing civilian

⁸⁹ CCPR/C/GC/34.

⁹⁰ Libya, Penal Code (1953), Article 207.

⁹¹ Libya, Penal Code (1953), Article 291.

⁹² Libya, Law on Telecommunications No. 22 (2010), Article 35.

⁹³ Libya, Anti-Cybercrime Law No. 5 (2022), Article 4.

clothes and others wearing military uniforms. As the men attempted to seize the victim, other worshippers began to defend the victim and a melee ensued. The perpetrators shot into the ground and air to disperse the worshippers. The commotion ended with the victim incapacitated on the ground whereupon he was dragged by his feet into the back of a pickup truck that eventually departed with him. The victim was held at different locations, including al-Kwaifiya prison. Family members of the victim were unaware of the victim's whereabouts for an extended period of time. The victim was released in 2023.

87. Likewise, the case of Issa Buhedma illustrates the practice of arbitrary detention against persons because of their political activity and views. Mr. Buhedma, who is from Benghazi, has been detained in Mitiga detention centre complex since 2017. He was detained incommunicado for 45 days and tortured. He remains held in inhumane conditions. Mr. Buhedma's family has repeatedly urged the relevant authorities, including the Attorney General and the Chair of the Presidential Council, to either charge and try or release the victim, to no avail.

88. Arbitrary arrest and detention were used on a large scale across Libya, with the knowledge of the authorities in control of detention centres. For example, senior officials at Mitiga detention centre complex in Tripoli, which is under the control of Radaa, organized in 2017 and 2018 so-called "sorting lines" made up of thousands of individuals in which senior officials interviewed detainees about the details of their cases. The detainees were asked why they were detained in the first place. Only the 2018 sorting line resulted in the release of detainees. While the precise reasons for the "sorting lines" remained unclear, they demonstrated that prison officials either did not know why detainees were being held or were indifferent to their unjust detention.

89. Libyan judicial authorities have also been aware of the illegal practices of arbitrary arrest and unlawful detention. Mission investigators received many accounts of release orders issued by the appropriate Libyan authorities that were either not honoured or only carried out at a much later date, typically after enough political pressure was applied on prison officials. It was common practice among prison administrations to ignore Libyan judicial and prosecutorial orders for release.

90. An advocate for detainees' rights explained that detainees held at Mitiga detention centre complex were (a) either not presented to the Public Prosecution at all, (b) were presented to the Public Prosecution, and received a decision declaring their innocence and ordering their release that was not implemented, or (c) were presented to civilian courts and then transferred to military courts.

B. Enforced disappearance

91. Cases investigated by the Mission confirmed that enforced disappearances frequently occurred in the Libyan context alongside arbitrary detention. The Mission found that persons were subjected to enforced disappearance in Libya within the temporal scope of its mandate by, or through affiliated armed groups of, the GNU led by Abdul Hamid Dbeibah, and the LAAF, led by Khalifa Haftar. Enforced disappearances documented by the Mission occurred in response to perceived criticism against groups and leadership in control over a particular area, on the basis of the victim's origin (perceived alliance to or agreement with a group in control of an area solely based on birthplace), or the victim's perceived family ties to groups or their leadership.

92. In this regard, the Mission continued to investigate the enforced disappearance of Siham Sergiwa throughout its mandate extensions. Ms. Sergiwa was an elected independent member of the Libyan HOR when she was abducted from her home in the heavily secured Bu Hadimah district of Benghazi during the afternoon of 17 July 2019 by around 25-30 armed men wearing masks and uniforms. Violent confrontations erupted between the intruders and family during the search for and abduction of Ms. Sergiwa. Ms. Sergiwa had given an interview the day before her abduction in which she inter alia opposed the LAAF attack on Tripoli.

93. Benghazi was effectively and tightly controlled by the LAAF and its commander Khalifa Haftar at the time of the abduction of Ms. Sergiwa. The scale and sophistication of the operation suggest that the top LAAF leadership knew or should have known of the abduction and fate of the victim. The Mission found reasonable grounds to believe that LAAF leadership failed to take reasonable measures to submit these cases to competent authorities for effective, genuine, and independent investigation and prosecution.

94. The Mission also investigated the enforced disappearance of Mansour Mahmoud Atti, a human rights activist, head of the Red Crescent Committee and Civil Society Commission of Adjabiyah, and producer of a popular television series. On 3 June 2021, Mr. Atti was abducted and detained by LAAF affiliated Brigade 302. His family's request for information from the brigade was not met. Only in August 2021, did the General Command of the LAAF inform Mr. Atti's family that they were detaining him, that he was alive, and that he would not be released until after the election set to occur in December 2021. Mr. Atti was released on 2 April 2022.

95. The Mission established that Mr. Atti was blindfolded and handcuffed, kept in solitary confinement and in inhumane conditions. He was detained, without due process, in a Brigade 302 prison in Ganfouda before being transferred to a prison operated by the Tariq bin Ziyad brigade (TBZ). He was arbitrarily detained by the TBZ for approximately six months, during which he was held in solitary confinement. The Mission found reasonable grounds to believe that Mr. Atti was a victim of arbitrary detention, torture and enforced disappearance. His family was also deprived of the right to know about his fate and whereabouts until two months after his abduction.

96. The Mission also made a finding on enforced disappearance and arbitrary detention of a TV personality in 2022 by TBZ for airing comments critical of a politician. Family members did not know of the victim's whereabouts for the first three months. They were too intimidated to make a formal complaint but did search local security agencies. The victim, who was held in several locations, including Gernada prison, was subjected to various forms of torture and inhumane conditions. The victim was released after 100 days.

97. Another two cases of enforced disappearance in the LAAF-controlled Gernada prison concerned Ahmed Mustafa and Ali Omar, known as Ali Alaspli. Both men, who were online critics of LAAF leaders, were abducted by armed LAAF members under coercive circumstances in two distinct but interrelated incidents in March 2016. They were held captive at the home of then-LNA commander Ahmad al-Ghourour for three nights before they were taken to Gernada prison and placed in solitary confinement in a secret wing, reportedly guarded by men that subscribed to the "Madkhali-Salafist" ideology. The victims were beaten and deprived of sufficient food and basic amenities. Family members were informed of the detainees' whereabouts after around three months. The victims were eventually released after four months in detention. The Mission collected significant evidence on the detention of individuals similarly held incommunicado, in secret sections of larger prisons, such as in Gernada prison, or in seemingly stand-alone secret prisons.

98. The Mission also documented the enforced disappearance of persons because of their place of origin and family links. In an incident investigated by the Mission, armed men searching for individuals from eastern Libya at a café in Tripoli abducted around six men. The Mission found that at least one of the victims from eastern Libya was taken to Mitiga airport where he was interrogated about other persons from the east living in Tripoli and tortured over a two-day period. The victim was shackled and hung upside down, in the so-called balanco position, his hair was burnt with a lighter, and his reproductive organs were hit and squeezed with pliers. The victim was subsequently transferred to a prison within the Mitiga airport complex where there was a continuation of the cruel and inhuman treatment. The victim was held incommunicado until 2017. He was only permitted to call his family after one year and ten months of his abduction from the café. His father, who had inquired about the victim and filed complaints on his disappearance, died before his son could contact the family. There are reasonable grounds to believe that victim was subjected to enforced disappearance, for close to two years and arbitrary detention for seven years, as crimes against humanity. The victim was released from Mitiga prison in 2022.

99. The Mission reported on several incidents of the crime against humanity of enforced disappearance in Tarhuna in 2022.⁹⁴ From the evidence uncovered, the Mission found that victims were disappeared or killed around 2019-2020 by members of the al-Kaniyat militia for a range of reasons including, inter alia, family ties to persons with perceived or actual affiliation with the 2011 Libyan revolution against the Qadhafi regime and opposition to the LAAF. Between 2015 and 2018, the al-Kaniyat militia carried out similar crimes, including enforced disappearances and killings, at the behest of successive governments in Tripoli against perceived or actual opponents to those governments. Regardless of their allegiances, the al-Kaniyat leadership instilled fear and maintained unchallenged control over the population in and around Tarhuna using widespread criminality, most acutely enforced disappearances and extrajudicial killings. Over 200 persons remain missing in Tarhuna.

100. The Mission made a finding on enforced disappearance of Zahra Maatouq because of her perceived family ties during its last mandate extension. Ms. Maatouq was summoned in December 2019 to the Tarhuna police station to provide proof of her husband's identity who was taken from their home days earlier. According to witnesses, Ms. Maatouq met her husband at the police station but appeared shaken in her last communication with her family. Ms. Maatouq's body was exhumed from a mass-grave in 2020. It is established that she died from gunshot wounds to the head, torso, and pelvis. The Mission found reasonable grounds to believe that Ms. Maatouq was a victim of enforced disappearance as a crime against humanity and murder as a crime against humanity and war crime.

C. Torture and other cruel, inhuman or degrading treatment

101. Nearly all former Libyan detainees and family members of detainees that were interviewed by the Mission reported treatment that may amount to torture, cruel, inhuman or degrading treatment. The widescale infliction of torture, cruel, inhuman or degrading treatment was recorded in all prisons investigated by the Mission, irrespective of prison location and entity in control of the detainees. There are reasonable grounds to believe that the SSA, Radaa, ISA, LAAF and affiliated groups systematically subjected detainees to torture, cruel, inhuman, or degrading treatment since 2016.

102. Combinations of similar harmful techniques were applied during interrogations across prisons in Libya. These included flogging with sharp or hard instruments such as PPR pipes, electrocution, punching, kicking, placing detainees' bodies in forced positions for lengthy periods of time, primarily by hanging them upside down in the balanco position, and extended solitary confinement. The Mission also documented the use and threat of sexual assault during interrogation, elaborated on in section VII.D.

103. Several detainees reported to the Mission that they had their head shaved during interrogation, or were threatened to have it shaved, as a measure of causing humiliation and harm. Denigrating language was routinely hurled at detainees, who were accused of being spies, non-believers, acting in contravention with religious and social norms and values, and harmful to society.

104. Conditions in detention were consistently inhumane. Detainees described overcrowded cells, confinement to exceptionally small spaces, shortages in basic amenities including lavatories, substandard and insufficient quantities of food, water deficiency, and the spread of infectious diseases such as scabies. Detainees also complained of a lack of sunlight, small windows, if any, an overall inadequate circulation of fresh air, revolting odour, and limited opportunities to physical exercise.

105. The case of a victim of torture in detention for his involvement in and opinions on the need for COVID-19 health restrictions illustrated the range of techniques that cause physical and emotional suffering, also against persons exercising their fundamental freedoms. The victim was stopped on his way from work in October 2021, close to al-Marj in East Libya, by two Toyota Hilux cars with tinted windows, blindfolded and taken by force to al-Marj prison. Al-Marj prison is under de facto control of the LAAF. After spending two days in a 1 by 2 metres cell, three bearded men, two of them in military attire and one wearing a

⁹⁴ A/HRC/50/CRP.3. See also A/HRC/48/83.

jalabiyya, took the victim out of the cell and flogged his feet about forty times. The victim was told that the reason for the flogging was incitement to close mosques under the pretext of COVID-19. The victim crawled from the pain back into his cell where he stayed until the men in military attire returned later in the day and took him to another place within the prison. At the other location, the men hit the victim for around ten minutes with a PPR pipe while chanting “you are a secular, you are a stray dog, you are a spy”. They then shaved the victim’s head. The victim was released after four months. He reported posttraumatic symptoms and physical pain caused by the torture.

106. In another case similarly motivated by a perceived divergence from religious and social norms and values, a young artist was tortured by a GNA loyal brigade in Sert for organizing a cultural activity during a sacred religious period. The victim was hit, kicked, suspended in the balanco and falaka positions, and had his hair razored off. He also informed the Mission that members of the brigade brought a coffin and buried him alive in it. Interrogators repeatedly questioned the victim about his sexual orientation and accused him of intending to destroy the Islamic values. The victim was released after a few days, after falsely confessing under duress to supporting persons of diverse sexual orientation and gender-identities and promising to repent.

107. Another emblematic case investigated by the Mission concerned a Libyan man in his twenties who was abducted, tortured, and sexually harassed for wearing tattoos in 2022. The victim was stopped on the streets in Tripoli by a group of armed and masked men, questioned about his tattoo and adherence to Islam, and driven to an unidentified detention centre where he was held together with others in a cell comparable to a “dog cage”. The victim described how several men beat him with a stick on his entire body, told him to eat a big bowl of ice cubes, and repeatedly touched his genitalia over a two-day period. During the physical torture, the victim was asked about the tattoos, his religious beliefs, and his sexual orientation. He told the Mission that he now hides his tattoos and is weary about leaving his home after his release from detention.

108. Although most of the victims interviewed were male adults, the Mission also documented the torture, cruel, inhuman or degrading treatment of women. In one case, a woman in her twenties was stopped in 2021 by ISA at a checkpoint in al-Marj and detained over allegations about her family members’ affiliation to Da’esh. In detention, she was repeatedly hit on her back with a metal chair, beaten, and threatened with rape. An interrogator called the victim a “whore”, sexually assaulted her, including by grabbing her breasts, and threatened to falsely accuse her in the investigation report of having daily, sexual intercourse with an investigator.

109. The Mission found reasonable grounds to believe that child detainees have also been tortured. In addition to the case of torture of a minor by Radaa recounted in paragraphs 117-118, the Mission made a finding of torture in detention of a 15-year boy in the east. The boy was taken from his school by ISA in Benghazi in 2016 and detained without charge in different locations until 2021 for allegedly communicating with a member of a “terrorist organization”. The boy was first taken to al-Nadja police station where he was instructed to undress and lie in his underwear on the ground and beaten with PPR pipes and electric wires. The boy was also subjected to mock executions; he was told to kneel in front of a dug-out hole as interrogators placed a gun to his head and made to believe that a car would run over him. When the victim’s father arrived at the police station, the interrogators beat up the father and son in front of each other. The victim described to the Mission how intimidating it was, hearing each other's screams. He also told the Mission that interrogators insulted his father in front of him and spit in his face.

110. The child was subsequently transferred to al-Kwaifiya prison in the east of Libya. There, he was moved between prison sections, and at times placed in solitary confinement and in cells with non-familial adult detainees. According to the victim, the treatment of prisoners deteriorated in 2019. Family visits were cancelled, punishments increased, and private belongings were confiscated. The victim explained that guards would come into detainees’ cells at 10 o’clock at night and order them to go outside in the open air. When the guards were drunk, detainees would be forced to go out in the rain and roll in mud at night. The victim reported inter alia overcrowding, insufficient amounts of food, deprivation of water, and no access to education. There are reasonable grounds to believe that numerous

children have been held at al-Kwaifiya prison. According to the evidence, the prison used to have wings for child detainees.

D. Sexual and gender-based violence

111. The Mission’s investigations underscored that sexual and gender-based violence is widely employed by Libyan State-affiliated actors, such as Radaa and ISA, as well as the LAAF to force confessions, punish, subjugate, terrify, and silence journalists, activists, detainees, migrants, and women, including on the basis of persons’ actual or perceived sexual orientation and gender identity.⁹⁵ The Mission documented the use of sexual and gender-based violence against both males and females.

112. Based on the collected evidence, acts of sexual and gender-based violence in the Libyan context included rape by sexual organ or an instrument, beating to the genitalia, touching of the genitalia and breasts, threats of rape, threats of rape of family members, and forced undressing. Such acts also included interrogations about sexual preferences, sexual history, and sexual orientation, as well as the use of denigrating language and accusations of a sexual nature.

113. In addition to cases of sexual violence recounted in section VII.C, the Mission documented the case of a young male journalist and advocate for women and the rights of persons of diverse sexual orientations and gender identities. The victim reported that he was arbitrarily arrested and detained in the east of Libya for several days during the beginning of 2019. While in detention, the victim, who was called an “an enemy of god”, suffered beatings to his genitalia, was hit with metal bars, and electrocuted. The victim was repeatedly threatened to be raped and killed and told that his family would be burnt should he speak up after his release from detention. The severe mental impact led him to consider suicide.

114. In another similar case, a woman activist advocating for women’s rights was summoned by ISA in the east in 2020 for questioning. During the day-long interrogation, the victim was asked about the human rights organization she established, its activities, including on women’s rights and elections, the origin of her funding as well as her travels. The victim described to the Mission being beaten, asked to remove her shirt and burned with a hot metal rod, insulted, and called “damaged”. The victim’s morality was questioned, and she described having been sexually harassed. Following her release, she received threats and pornographic messages and images on her phone and Facebook account.

115. The Mission also documented the enforced disappearance, torture and sexual assault of Jaber Zain, for similar reasons as those of others mentioned above. Mr. Zain is a Sudanese male who immigrated to Libya at the age of six and amassed a significant online following because of his posts and public talks on racism, freedom of religion, and women’s rights. Mr. Zain was subjected to enforced disappearance for 20 months and arbitrarily detained for longer than two years after his abduction in Tripoli on 25 September 2016 by armed members of the Second Special Support Forces of the Ministry of Interior in Tripoli. During his time in detention, Mr. Zain was interrogated about his writings, views on religion, relationship with international organisations and embassies, and position on women. He was also accused of not being a Muslim and corrupting Libyan society. Mr. Zain was sexually assaulted, beaten with sticks, gas pipes, fists, and knees, and interrogators threatened to rape his sisters. In one incident, interrogators attempted to rape him with a 12 centimetres long bullet. In May 2018, Mr. Zain was brought before a judge and charged with “offending the State’s religion”, “trying to destroy the conservative Libyan society”, and “immoral practice”. Mr. Zain denied the charges and was deported in November 2018.

116. In another emblematic case documented by the Mission, two young Libyan men, perceived to be gay, were held up and coerced by heavily armed men to unlock and provide access to their phones. The two young men were taken to the Mitiga airport complex and handed over to Radaa. There, a bearded man in traditional clothing – described as a sheikh – severely tortured both victims and hurled foul language, denigrating their sexual orientation. One of the victims was released the same day while the other was kept for four days. The

⁹⁵ Sexual and gender-based violence against migrants is addressed primarily in section VIII.D.

man that was kept in detention informed the Mission that he was later ordered, under gunpoint, to undress the lower part of his body and raped by the guards. The victim was asked in detention for information about other gay men. Both survivors subsequently fled Libya.

117. The Mission also documented the torture and sexual assault of a gay young man by Radaa because of his homosexuality. In one incident in 2017, the then minor was contacted over the phone by a man who introduced himself as Radaa and requested his attendance at Mitiga airport over photos seen on the phone of another person suggesting his homosexuality. The minor appeared at Mitiga airport complex as requested, where he was taken into a separate room and interrogated. During the interrogation, the victim was called “faggot”, grabbed by the hair, slapped, and questioned about his sexual preferences. The victim begged the interrogators to let him out so he could return to school but was told that that he did not need an education and would “rot in jail”. The victim was also asked to identify other persons that were gay. After a while, the interrogators blindfolded the victim and transferred him to a nearby building. There, they hit the back of his knees, causing the victim to fall, and shaved his head. They then proceeded to beat the victim with a hard plastic hose on his feet, tied his legs, pulled out his toenails using a metal object, and flogged him hundreds of times. The victim was forced to run in circles and accused of “disobeying the order of god”. The minor was held by Radaa for approximately 10 to 12 hours, before being released.

118. The victim was detained again by Radaa in 2019. The victim was first brought to a man who identified himself as a “sheikh” responsible for legal and religious affairs and lectured the victim about religion. For approximately ten days, the victim was repeatedly sexually assaulted, including raped, and tortured in different rooms and holding cells by Radaa. During his detention, the victim was shot at with ammunition while blindfolded. He also told the Mission that he could feel a gun pointed at his head, had his jaw and cheekbones punched and kicked, and that he was beaten with hoses. The victim further described being forced to perform oral sex and was penetrated anally with another man’s sexual organ. He also shared that he was touched on his genitalia several times.

119. Nearly all survivors interviewed refrained from lodging complaints out of fear of reprisals, arrest, or extortion. A case concerning a Libyan female journalist who reported being repeatedly raped and tortured during her detention highlighted the difficulties encountered by survivors of sexual violence. The victim was threatened that Radaa would arrest her for prostitution and deem her “spoiled” if she complained that she had been raped. When the victim suspected that she had got pregnant she pretended to need blood tests to confirm the pregnancy and self-administered medication to terminate it. Sexual relations between consenting adults, be it same-sex or sexual relations outside marriage,⁹⁶ as well as abortion, are punishable by law. Furthermore, Libyan law provides for the exoneration of the perpetrator should he marry the victim and remain married to the victim for three years.⁹⁷

E. Arbitrary deprivation of life

120. The Mission documented the arbitrary killing of hundreds of persons in Libya since 2016 under different circumstances, including during hostilities and violent clashes. Most of the killings investigated by the Mission occurred as part of larger-scale incidents that resulted in the deprivation of many lives. By example, the Mission made findings on extrajudicial killings in Murzuq during February, March, and August 2019 at the backdrop of an LAAF military operation supported by affiliated armed groups and resisted by local armed forces that allegedly received support from the GNA.⁹⁸ The Mission also made a finding of war crimes in relation to killings by airstrike of students of the military academy in al-Hadaba, Tripoli.⁹⁹ As explained in section VII.B on enforced disappearance, the Mission further made findings on extrajudicial killings and mass-graves in Tarhuna over 2019-2020.¹⁰⁰

⁹⁶ Libyan Penal Code, Article 407.

⁹⁷ Libyan Penal Code, Article 424.

⁹⁸ A/HRC/52/83.

⁹⁹ A/HRC/52/83. For details on the weapon used, see S/2021/229 and S/2019/914.

¹⁰⁰ A/HRC/50/CRP.3.

121. In addition to these incidents, the Mission documented a particular episode of killings as crimes against humanity committed near al-Abyar, approximately 50 kilometres east of Benghazi. On the morning of 26 October 2017, local authorities were alerted to the bodies of 36 men at an execution site. The Mission believes that the men had been systematically arrested and detained without due process by LAAF affiliated armed groups, specifically the TBZ. These violent abductions occurred at different times during 2017, from over a month to just the day before the bodies of all 36 victims were discovered. The Mission interviewed a witness who lost two family members in this massacre and who informed the Mission that the witness' family was politically active in the area, including that the two family members ultimately killed had peacefully taken part in the 2011 Libyan revolution. The witness elaborated upon years of harassment of the witness' family by local military and militia forces, including arrest, detention, torture, and destruction of property. The witness was alerted of the two family members being arrested on or about the same day of the massacre itself. After checking with local security and military agencies for their loved ones, the family finally learned of the death of their two family members upon a check at the hospital where the corpses of al-Abyar massacre victims were held.

122. The Mission also investigated the killing of Hanan Barassi in 2020 and found that she was the victim of extrajudicial killing. Ms. Barassi was gunned down in broad daylight by two armed and masked men in the centre of Benghazi. She announced to her 70,000 followers on the day before her killing that she would release information about Saddam Haftar, the son of Khalifa Haftar. Although Omar Mraja al-Megerhi is formally the head of TBZ, evidence provides that the group is controlled by Saddam Haftar.

VIII. Exploitation of migrants

123. More than 670,000 migrants from over 41 countries were present in Libya during the last mandate extension period, and the number of migrants in Libya has been increasing since 2021.¹⁰¹ Libya serves as a point of departure and transit for many of the migrants bound for Europe. All the migrants interviewed shared similar accounts of an abhorrent cycle of violence. The cycle started with the migrants' entry into Libya, often with the involvement of smugglers, and invariably involved their capture, re-capture, and repeated transfers to official or unofficial places of detention without recourse to judicial review. Racial discrimination against migrants was a persistent undercurrent throughout the cases documented by the Mission, as well.

124. The Mission interviewed more than 100 migrants over the course of its investigations, including in cases of alleged trafficking and deprivation of liberty for ransom in connection with smuggling and trafficking. Based on this evidence, the Mission established that there are reasonable grounds to believe that migrants across Libya are victims of crimes against humanity and that acts of murder, enforced disappearance, torture, enslavement, sexual slavery, rape, and other inhumane acts are committed in connection with their arbitrary detention, during, for example, trafficking and interception.¹⁰²

125. Notably, the exploitation of migrants, in the forms of trafficking, enslavement, sexual slavery, forced labour, imprisonment, extortion, theft of migrants' private belongings, and smuggling generated significant revenue for individuals, groups, and State actors. There are reasonable grounds to believe, in this regard, that such exploitation incentivized the continuation of the violations documented and facilitated the consolidation of power and wealth by the State and affiliated groups.

126. The cases investigated by the Mission during its last mandate extension confirmed that there are reasonable grounds to believe that the mentioned underlying acts of crimes against humanity were committed in DCIM centres in Tariq al-Matar, Abu Salim, Ayn Zarah, Abu Isa, Gharyan, Tariq al-Sikka, Mabani, Salah Al-Din, and Az-Zawiya, as well as non-official places of detention in al-Shwarif, Bani Walid, Sabratah, Zuwara, and Sabha. The

¹⁰¹ International Organization for Migration, 'IOM Libya Migrant Report Round 43, July-August 2022', 2022.

¹⁰² A/HRC/50/63.

Mission identified a particularly significant role played by the Stability Support Apparatus (SSA) in crimes against humanity through their cooperation with the LCG in Az-Zawiya, and their control of the detention centres of Abu Slim and Ayn Zarah.

127. The ongoing, systematic, and widespread character of the crimes documented by the Mission strongly suggests that personnel and officials of the DCIM, at all levels of the hierarchy, are implicated. In addition, the Mission found reasonable grounds to believe that high-ranking staff of the LCG, SSA, and DCIM staff colluded with traffickers and smugglers, which are reportedly connected to militia groups,¹⁰³ in the context of the interception and deprivation of liberty of migrants.

128. The Mission's investigations also uncovered evidence on collusion between the LCG and those in charge of al-Nasr detention centre in Az-Zawiya. Abd al-Rahman al-Milad, also known as "Bija", is the head of the regional unit of the LCG in Az-Zawiya. He is on the UN Security Council sanctions lists for involvement in trafficking and smuggling.¹⁰⁴

129. Libyan authorities, including the DCIM, the LCG and the SSA, and third States, for instance Malta and Italy, have been on notice for years about the ongoing widespread and systematic attack on migrants, constituted by violations occurring at sea, in detention centres, along trafficking and smuggling routes, and in trafficking hubs.¹⁰⁵ Nonetheless, in accordance with memorandums of understanding between Libya and third States, the Libyan authorities have continued their policy of intercepting and returning migrants to Libya, where their mistreatment resumes, in violation of the principle of non-refoulement. Based on the substantial evidence and reports before it, the Mission found grounds to believe that the European Union and its member States, directly or indirectly, provided monetary, technical, and logistical support to the LCG and DCIM that was used in the context of interception and detention of migrants. Evidence collected by the Mission also demonstrated that the EU and/or its member States supplied Libyan authorities with inter alia rubber boats for coastal patrolling, as well as SUV vehicles, busses, ambulances, and radio-satellite communication devices.

130. Interviewees that escaped captivity and attempted to reach Europe eventually tried to cross the Mediterranean Sea. In the words of one migrant that was held in al-Maya, Ayn Zarah, and Gharyan detention centres, "[o]ur concern is not dying in the water, but our concern is to go back to the prison where we will be oppressed and tortured by guards". Libya's and European States' immigration control must be exercised consistently with their international law obligations, especially the principle of non-refoulement, and have regard to the Global Compact for Safe, Orderly and Regular Migration..

A. Arbitrary deprivation of liberty

131. With a few exceptions, violations and abuses committed against migrants in Libya that were documented by the Mission stemmed from or occurred in connection with their deprivation of liberty without recourse to judicial review and access to asylum procedures. Migrants were detained in official places of detention under the nominal control of the DCIM and unofficial places of detention under the control of armed groups and criminal gangs engaged in smuggling and trafficking. They were taken into detention after they were intercepted at sea or following their smuggling or trafficking through the country's border crossings, in particular the southern frontier. The period of detention of migrants varied from days to months. The deprivation of migrants' liberty was arbitrary in that migrants were not charged, convicted, or sentenced to imprisonment following a fair and public hearing, and the absence of procedural safeguards and legal oversight. The detention of migrants in trafficking hubs was inherently arbitrary, with the actors involved operating fully outside the scope of the law.

132. Migrants described an ever-revolving door of capture, release, re-capture, escape, and interception. Typically, migrants made their way out of places of detention following the

¹⁰³ S/2018/812.

¹⁰⁴ UN Security Council sanctions lists. UN Security Council resolution 1970 (2011).

¹⁰⁵ A/HRC/48/83; A/HRC/49/4; A/HRC/50/63.

payment of ransom, a successful escape, or en masse discharge, only to be captured again by the same actor that had detained them or another group. As an intelligence officer in Az-Zawiya told the Mission, “[t]he officers in the shelters ask the migrants’ families for ransom to release them, and sometimes [...] arrests them again and transfers [them] to the same agency where they do the same”.

133. Outside of being arrested individually or in small to medium-sized groups, it was common for migrants to be arrested and detained in large-scale raids of residential areas where migrants were present. For example, in the early morning hours of 1 October 2021, a large contingent of Government and Radaa security forces besieged an area of Gargaresh. Using drones to spot migrants escaping to the sea and elsewhere, these forces conducted a ransacking of the area that resulted in the arrest of an estimated 4000 migrants as well as the widespread seizure of migrants’ property (such as money and mobile phones). Forces resorted to physical violence, including stabbings and gunshots, during the operation on Gargaresh. Once arrested and boarded onto busses, the migrants were distributed among detention centres in the vicinity, such as Gharyan, Tarik al-Sikka, Bir Ghanam, Ayn Zarah, and Abu Slim.

134. In the aftermath of the Gargaresh raid, hundreds of migrants protested and camped in front of the UN High Commissioner for Refugees’ office in Tripoli. The protest was disbanded on 10 January 2022 when government security forces violently arrested hundreds of migrants, boarded them onto busses, and sent them to nearby detention facilities, primarily in Ayn Zarah. One affected migrant told the Mission that approximately 30 busses parked nearby, and the encamped migrants were told they had ten minutes to leave. After that time elapsed, the security forces attacked them physically and burned their tents prior to forcing them onto the buses. The Mission documented the killing of a Sudanese migrant by security forces in the vicinity of the UN High Commissioner for Refugee’s office in Tripoli during the sit-in.

135. Another frequent method of arrest and detention of migrants involved their interception at sea as they attempted to cross the Mediterranean Sea from departure points off the Libyan coast. An overwhelming number of interviewed migrants described to the Mission that they had attempted to escape detention and cross into Europe several times, some five to ten times over. Persons migrating to Europe were loaded, at times against their will, onto varied kinds of boats. Some of the boats were barely seaworthy and overloaded by smugglers and traffickers, ultimately resulting in their sinking at sea and a loss of life.

136. During the process of LCG interception and disembarkation, migrants were exposed to a range of abusive tactics that could turn fatal. Migrants described to the Mission how LCG ships made seemingly deliberate unsafe manoeuvres, causing migrant boats to capsize and migrants to fall into the water and drown. The Mission also found reasonable grounds to believe that personnel on LCG ships shot at or near boats carrying migrants, causing migrants to jump into the water, seeking temporary safety. Migrants were often physically and verbally assaulted and threatened by LCG personnel and other security officials during their transfer onto LCG ships and forced return to Libya. The Mission also found reasonable grounds to believe that LCG personnel frequently stole migrants’ private property, such as phones and money, during interception.

137. One witness told the Mission about an attempt by migrants to sail to Malta whereupon they were intercepted by black helicopters that filmed them for about 20 minutes. A few hours later, an LCG ship arrived and started to load the estimated 108 migrants onto it, during which LCG personnel threatened to shoot any migrants that attempted to escape. A newborn baby fell into the water during this process while the baby was “thrown” from the migrant boat to the ship. Once at the disembark point in Tripoli, they were met with a large contingent of security forces with their faces covered and wearing black uniforms, which a witness said made it seem as though they were terrorists. After being boarded onto DCIM busses that awaited them, the migrants had further items taken from them, such as passports and rings. Migrants were subsequently split up by nationalities and taken to different detention centres. A witness mentioned that a captain approached the migrants and offered to release those that could pay 100 to 200 United States dollars, a deal that the witness said was not even honoured for those who did pay.

138. Since 2016, EU member States and EU agencies have implemented a policy of returning migrants and asylum seekers or refugees to Libya by increasing capacity-building and coordination support to Libyan actors, especially the LCG. Libya and third States, such as Italy and Malta, entered memorandum of understandings to this effect. In accordance with such memorandums of understanding, the Libyan authorities received support for the interception and return of migrants to Libya if they attempted to arrive at European shores. Under the 2020 Malta-Libya memorandum, for example, the Maltese government would finance two coordination centres in Valletta and Tripoli to coordinate activities aimed at suppressing irregular immigration across the Mediterranean.

139. The European Union Naval Forces Operation's mission and mandate was specifically amended in June 2016 to include the provision of training and capacity-building to the LCG and Libyan Navy. Frontex has been critical in providing aerial surveillance through various operations. Those involved in the arbitrary deprivation of liberty of migrants must have known that migrants detained were civilians, that they were arrested and detained solely on the basis of their immigration, without considering their international legal status, and that they were routinely subjected to violations and abuses in detention.

140. Relatedly, the Mission noted the suspension and restriction of rescue operations concerning migrants departing Libya by sea, carried out by medical, humanitarian and aid organizations. The Mission received substantial allegations of attacks against such organizations and individuals involved in rescue operations, such as legal action taken against them and the confiscation of vessels and other lifesaving equipment.

B. Torture and other cruel, inhuman or degrading treatment against migrants

141. There is overwhelming evidence that migrants were systematically tortured in the Tariq al-Matar, Tariq al-Sikka, Abu Isa, and Gharyan DCIM-run detention centres, as well as in the Bani Walid and Sabratah trafficking hubs. Most migrants interviewed told the Mission that they had been subjected to or witnessed acts that may amount to torture, cruel, inhuman or degrading treatment. Migrants frequently reported beatings with fists or objects, flogging, burning, stabbing, electrocution, and shooting with live bullets to instil fear, cause pain, or punish them. Migrants also appeared to have suffered psychological torture from, for example, having to watch the ill-treatment of relatives and others. A Sudanese migrant held at Bani Walid described the feeling among migrants that guards “treated dogs better than [them]”.

142. Both women and men were tortured and subjected to cruel, inhuman, or degrading treatment. In a case representative of the brutal treatment of women migrants, a young Ethiopian survivor of several incidents of rape in Bani Walid lost her unborn child because of the beatings she suffered in Ain Zawara.

143. Based on its investigation, torture and other forms of ill-treatment were frequently committed in the context of ransom demanded by traffickers. Numerous migrant survivors informed the Mission that traffickers, including in Bani Walid, severely beat migrants that could not pay them. In several cases documented by the Mission, traffickers burnt plastic onto the skin of migrants who could not pay ransom. In one incident investigated by the Mission, a young Sudanese migrant was set on fire by traffickers when he could not pay the ransom. The victim died from his injuries.

144. Migrant children were amongst those ill-treated when ransom was not paid. Traffickers forced child migrants to call their parents to pay ransom, under the threat that their child would otherwise be harmed. A migrant from Mali, and held in Sabratah as a child, told the Mission that “every morning they beat you with a whip. Then they call you, one by one, and you go to phone your parents. There you feel the smell of death”.

145. Forensic examinations arranged by the Mission attested to the ill-treatment of migrants deprived of their liberty, and the immediate and long-term physical and emotional harm suffered. There are reasonable grounds to believe that migrants were denied medical treatment while in detention. Considering that irregular entry and stay of migrants is

criminalized in Libya, migrant survivors risk prosecution and punishment if they approach Libyan authorities and medical facilities for whatever reason.

146. Cases of suicide by hanging or the consumption of chemical liquids such as shampoos were reported to the Mission. In one of the incidents documented by the Mission, a boy, allegedly tortured and suffering from severe headaches, hung himself in Ayn Zarah. His lifeless body was left hanging in front of other migrants for at least one and a half-day before it was taken down. A witness said that guards ordered them not to take photos.

147. The Mission found reasonable grounds to believe that migrants were systematically detained under inhumane conditions in both DCIM centres and places of detention controlled by traffickers. An overwhelming number of migrants testified to the lack of mattresses and sleeping accommodations, overcrowding, a severe shortage of lavatories, lavatories that were never cleaned, the continued presence of crawling insects such as lice, the sharing of quarters with detainees with infectious diseases, and inadequate quantities and quality of food and water.

148. Migrants that were interviewed by the Mission described being starved in places of detention. The DCIM centre in Abu Isa was called “one of the worst prisons” in this regard. A Sudanese migrant held there explained that “because of the lack of food, we sometimes do not go to the toilet for 18 days”. Another migrant held at Bani Walid told the Mission that no food was provided and that the “bones of many detainees were visible in their weak bodies”.

C. Enslavement, sexual slavery, and forced labour

149. The Mission found reasonable grounds to believe that migrants were enslaved in places of detention in Abu Slim, Az-Zawiya, Mabani, al-Shwarif, Bani Walid, Sabratah Zuwara, and Sabha, some of which fall under the actual or nominal control of the DCIM. The Mission also found reasonable grounds to believe that sexual slavery was committed in Bani Walid and Sabratah and that forced labour was committed in Tariq al-Matar and Ayn Zarah. Enslavement, sexual slavery, or forced labour were alleged to be committed in most places of detention investigated by the Mission but it proved difficult for the Mission to collect information about the precise details of the transactions that made up the violations. Often, migrants themselves, who were frequently moved between groups, individuals, and locations, were not aware that they had been sold or bought until after the fact, when confronted with a new set of circumstances and abuse.

150. The Mission considered that enslavement, including sexual slavery, had occurred when, for example, there was an element of ownership or there were actions imposing a similar deprivation of liberty. Forced labour could indicate enslavement. When the perpetrator also forced the victim to engage in acts of a sexual nature, the Mission considered sexual slavery to have been committed.

151. The case of a survivor of sexual slavery from the Ivory Coast encapsulated the suffering of migrants in Sabratah. The woman, in her thirties, was raped several times in Sabratah while detained by traffickers and held for ransom. She became pregnant after she had sexual intercourse with a man who agreed to help. She did it to “pay him back, to survive”. The woman told the Mission that she could now “heal talking about it” and that she today “could see the benefit of telling the [Mission] the pain [...] to cry and liberate [herself] of the pain”. She said she “never wanted a baby in such a place. You regret having a baby in Libya. I had lost my dignity. My self-image. It is painful, deplorable. You see men suffer too. There is no dignity in Libya. They did it to men with objects.”

152. In another case documented by the Mission, a child from Guinea was taken to Sabratah and subjected to sexual slavery. She described women being told to undress and keep their hands and feet apart and then raped. She told the Mission that “women are sexual objects there. Some women are used as prostitutes but are not paid. They are like slaves”. The girl was sodomised when she was sent to do domestic work for a man outside the building where migrants were kept. She and many other migrants interviewed by the Mission, recounted that boys were taken to work and harmed if they claimed payment for their labour.

153. The Mission collected evidence of women, men, boys, and girls being forced to work in factories producing ammunition, construction, cleaning services, and agriculture. Forced labour was at times carried out in exchange for promises of subsequent release. In an emblematic case of enslavement and forced labour, a child from Mali was taken to a farm and made to work with the animals. The boy was told, when he confronted a man at the farm about why he could not leave, that he had been bought by him.

154. Further investigation is necessary to uncover the extent of the widescale nature of the violations and their transboundary elements. More investigations are also needed to understand the details of the transactions around the sale and purchase of human beings in Libya, and precisely the actors involved.

D. Sexual and gender-based violence against migrants

155. In addition to the sexual and gender-based violence reported on in VIII.B and C, the Mission made findings on rape and other acts of a sexual nature as crimes against humanity in places of detention in Mabani, al-Shwarif, Zuwarah, Sabha, Sabratah, and Bani Walid. The Mission spoke to numerous survivors and witnesses of rape in both official and non-official places of detention.

156. Most of the survivors of the rape documented by the Mission were women and girls, but men and boys were also found to have been raped. Rape cases investigated by the Mission involved the penetration by the male sexual organ. The Mission also received accounts of rape with unspecified objects. Based on the evidence, rape was committed for the exploitation and punishment of migrants and/or the gratification of the perpetrator.

157. Rape occurred under coercive circumstances, when victims were deprived of liberty and under the control of the perpetrators, and at times at gunpoint. In most cases, the perpetrators were guards belonging to either trafficking groups or personnel of State-authorities. According to witnesses, migrants were raped in front of their children or taken away from their spouses to be raped. The Mission further found that migrants were in some instances photographed and recorded while being raped and that the footage was used to demand ransom from family members of the survivors. Migrant women also told the Mission that they had sexual intercourse with guards and other detention officials in exchange for food, water, or other basic amenities. In several cases, victims were promised to be released in exchange for sexual acts.

158. Victims interviewed were oftentimes raped routinely by either the same perpetrator or different men over extended periods of time, and occasionally at different locations. As described by a male witness of rape of women in Bani Walid, “during the nights, the guards come in the dark with the torch and approach the ladies, pick any and rape her. They order us to sleep and cover ourselves with the mattress as they take the lady away”. In another case investigated by the Mission, an Eritrean victim reported that “drunk smugglers used to rape female migrants every day, except during Ramadan”. Several victims described to the Mission that they were raped several times a week by different men. In the words of another Eritrean survivor, “no one sees you as a human. From a little boy to an old man, they have the right to beat and to rape us”.

159. Sexual violence against migrants was not limited to rape. The Mission found reasonable grounds to believe that women’s breasts were maimed in Bani Walid. Migrants described having seen women’s breasts set on fire and their nipples connected to electrical wires causing burns.

160. Pregnancies are a common outcome of rape, and migrants reported having seen women give birth in detention without professional medical support and under highly unsanitary conditions. Migrant women also reported to the Mission that they had suffered miscarriages without the assistance of professional medical support.

161. Migrant survivors faced insurmountable challenges in accessing safe and adequate sexual and reproductive health services and assistance programs that could offer them protection and address the harm inflicted and consequential pregnancies and births. In a case documented by the Mission, a Sudanese asylum seeker was arrested after giving birth at a

public hospital. Despite her claim that the child was conceived through rape, the victim was accused of engaging in sexual relations outside marriage, an act criminalized in Libya.

E. Murder

162. The Mission received considerable information from migrants about the death of migrants in Libya. Migrants reported deaths as an outcome of inter alia the torture that they were subjected to, starvation, and drowning at sea. Migrants also reportedly died after being shot at by guards. Although it was difficult for the Mission to verify and establish the circumstances of all incidents of deaths reported to it, the Mission found reasonable grounds to believe that murder was committed in both official and unofficial places of migrant detention.

163. The Mission made findings of murder as crimes against humanity in places of detention in Abu Salim, Az-Zawiya, Mabani, al-Shwarif, Bani Walid, and Zuwara. Two of the incidents of murder took place in Abu Salim and Mabani in 2021. During these incidents, guards aimlessly fired live ammunition at migrants resulting in the loss of migrant lives.

164. The Mission received allegations of several killings and mass graves in Bani Walid. The Mission found reasonable grounds to believe that migrants died and were buried at Bani Walid. Reported causes of death included medical negligence and gunfire. An Eritrean migrant held in Bani Walid told to the Mission that “we used to sleep in the same place where dead bodies were scattered. We were adapted to the situation. Even when somebody dies, we compete to take off their clothes”.

IX. Attacks against judges and lawyers and challenges to the rule of law

165. The Mission investigated attacks against legal professionals and identified challenges to the rule of law in Libya. Although the Libyan judiciary is relatively cohesive, the Mission found reasonable grounds to believe that acts had been committed that undermined the independence of the judiciary and curtailed the rule of law. An independent, impartial, competent and effective judicial system is essential if victims are to be able to seek and receive remedies and accountability at the domestic level.

166. The Mission documented the alleged arbitrary detention, enforced disappearance and violation of the right to life of several judges and prosecutors. The Mission also documented cases of detainees being denied access to lawyers and received reports of judges being replaced to fix an outcome, sentences that were adapted to serve certain interests and cases that were not brought to trial owing to tribal affiliations. Attacks against members of the legal profession were reported in Benghazi, Tripoli, Sirte, and Sabha.

167. For example, the Mission documented the case of a lawyer in Tripoli who was litigating civil cases, the majority of which were lawsuits against the Government for compensation for victims of crimes committed by militias who were on the government payroll. He was also speaking out against child recruitment by militias. The victim was abducted from the streets in Tripoli in April 2019, detained and interrogated. The perpetrators agreed to release him on the condition that he did not proceed with the lawsuits and refrained from speaking publicly about child recruitment. The victim was released after one day. He soon afterward left Libya and has never returned.

168. In another emblematic case from 2021, a female lawyer in Benghazi was kidnapped from the street near Ajdabiya Court, arbitrarily detained in inhumane conditions and subjected to enforced disappearance for two days by the Internal Security Agency before being thrown on the street, handcuffed and blindfolded. In August 2022, another lawyer was harshly beaten by Radaa elements inside a Tripoli courtroom, in front of judges, kidnapped and then held by Radaa in Mitiga prison for about eight hours, before being released following pressure from external entities.

169. The Mission found that there was no domestic legislation establishing protection measures for witnesses and victims. Nor was there a Libyan security or military force capable of providing security protection to the courts, prosecutors' offices and the judiciary in accordance with international practice. In fact, the Judicial Police operations room, which is part of the Judicial Police and tasked with providing judicial security, was implicated in attacks on judicial personnel.

170. Victims seeking justice through domestic avenues encountered considerable difficulties. For example, those who sought to lodge complaints with the public prosecution in Tripoli, after having fled to territory outside the control of the LAAF, reported that prosecutors told them they lacked jurisdiction to investigate alleged TBZ crimes. It was further reported that no criminal cases were heard in Fazzan between 2011 and 2019 and that police stations closed by 2 p.m.

A. Military trials of civilians

171. The LAAF has been operating a parallel military justice system in areas under its control. The HOR, allied with the LAAF since 2014, enacted a law in 2016 extending the personal and subject-matter jurisdiction of the military judiciary over civilians who are members of militias and those who commit "terrorist acts". Trials of civilians before military courts violate international human rights law, including the African Charter on Human and Peoples' Rights, as they often do not satisfy the requirements of judicial independence, impartiality, and competence under the right to a fair trial.

172. The Mission investigated the case of Iftikhar Boudra, a civilian, who was tried and convicted by a military court in east Libya. Ms. Boudra had been critical of LAAF leadership on social media. Ms. Boudra and her husband were taken by ISA from their home in Benghazi in November 2018. While her husband was released, Ms. Boudra, was brought before a military court and sentenced to death. The sentence was subsequently commuted to ten years on appeal. The Mission received information that Ms. Boudra has been ill-treated in detention in al-Kwaifiya and that she is in bad health. The Mission obtained a list of 30 people that received the death penalty by military court in Benghazi.

173. In another similar case, the Mission interviewed a former detainee accused of terrorism and belonging to Da'esh. The victim was detained from 2015 until 2019, after inter alia criticizing Khalifa Haftar on social media. The victim was brought before a military court in mid-May and sentenced initially to three and a half years imprisonment. The trial took place over seven sessions and for the first three sessions the victim did not have legal representation.

174. The Mission received reports that defence attorneys for civilians brought before military courts have been threatened and harassed, including by officers in military courts.

X. Legal findings of crimes against humanity

175. In addition to the findings of violations of international human rights law and international humanitarian law in relation to individual cases and incidents mentioned in sections VII through VIII, the Mission found reasonable grounds to believe that crimes against humanity were committed against Libyans and migrants throughout Libya in the context of arbitrary deprivation of liberty since the beginning of 2016.

176. In reaching its findings on crimes against humanity, the Mission applied the commonly accepted definition of crimes against humanity under customary international law, meaning criminal acts committed as part of a widespread or systematic attack against any civilian population, with knowledge of the attack. Although the Mission referred to the

definition in the Rome Statute, it did not adopt the organisational policy requirement (of the “attack” component of the chapeau) as formulated in Article 7(2)(a).¹⁰⁶

177. As part of the definition of crimes against humanity applied by the Mission, underlying acts had to form part of a larger attack against a civilian population, without necessarily being “limited to the use of armed force”. An attack was considered widespread if it involved “massive, frequent, large-scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims”. The requirement of a systematic attack was met where there was “organized action, following a regular pattern, on the basis of a common policy” that involved substantial public or private resources.

178. As for the underlying acts of crimes against humanity, the Mission gave regard to the definitions listed in the annex of the present report.

A. Crimes against humanity committed against migrants

179. Based on its evidentiary holdings, the Mission found reasonable grounds to believe that the Ministry of the Interior, the DCIM together with armed groups in de facto control of migrants deprived of liberty, committed crimes against humanity. This finding was made vis-à-vis migrants held in Tariq al-Matar, Abu Isa, Gharyan, Tariq al-Sikka, Az-Zawiyya, Salah al-Din, Mabani, and al-Shwarif. Furthermore, the Mission found reasonable grounds to believe that the SSA is responsible for crimes against humanity in Ayn Zarah and Abu Salim migrant detention centres. The Mission also established reasonable grounds to believe that crimes against humanity were committed in Bani Walid, Sabratah, Zuwara and Sabha.

180. Specifically, the Mission found that there is an ongoing attack, consisting of a course of conduct based on the fulfilment of the actus reus requirements of the underlying acts of imprisonment and other inhumane acts against thousands of migrants. The victims of the attack and the underlying acts were civilians.

181. The Mission further found reasonable grounds to believe that the attack was both widespread and systematic. The extraordinarily high number of victims in detention centres, numbering in the thousands located across a wide geographical area, demonstrated the widespread nature of the attack. While it is not necessary for the attack to also be of a systematic nature, the Mission found reasonable grounds to believe that the attack was systematic too. In this regard, the Mission noted the multitude of underlying acts described in section VIII and committed by the DCIM, SSA, and other groups in control of detention centres in the context of a policy, manifest in Libyan legislation, that criminalizes migration and denies individuals their rights to seek asylum. Migrants were not able, under the Libyan domestic legal framework, to challenge the fact, duration, or conditions of detention.

182. The Mission also found reasonable grounds to believe that traffickers and criminal gangs committed crimes against humanity against migrants in trafficking hubs in Bani Walid, Sabratah, Zuwara, and Sabha. Thousands of migrants are smuggled into Libya every year via Sabha and Kufra in the south and south-east of Libya respectively, and many end up in Tripoli via the trafficking hub of Bani Walid after being sold to traffickers and/or in one of the trafficking hubs on the coastline west of Tripoli, particularly Zuwara and Sabratah.

183. The incidents identified by the Mission and detailed in section VIII were not isolated, but clearly part of a broader initiative by criminal gangs and traffickers to profit from the criminalization of migration and the extreme physical, psychological, and economic vulnerability of migrants and asylum seekers. The Mission identified a pattern of abduction, harbouring and transfer of migrants, many of whom were sold and subsequently exploited physically and sexually, such that there exists a clearly identifiable non-accidental repetition of similar criminal conduct on a regular basis. The scale and systematicity of migrant trafficking indicated that the criminal groups and networks of traffickers are acting with a certain degree of organisation and coordination.

¹⁰⁶ See the annex of the report for an elaboration on the definitions of crimes against humanity and war crimes relied upon by the Mission.

184. Lawlessness in certain parts of the country, particularly in the south, where such networks exercise a certain degree of control, or benefit from cooperation from armed groups who are in effective control of territory, renders migrants especially vulnerable to abduction and ransom.

185. In addition, the Mission considered that sea interceptions and pullbacks amounted to imprisonment or other severe deprivation of physical liberty as crimes against humanity, committed as part of a widespread and systematic attack against migrants and refugees attempting to leave Libya.

186. The arbitrary deprivation of liberty of the migrants, asylum seekers or refugees was committed against their will and they were denied the option to refuse or challenge their interception at sea, return to and disembarkation in Libya, and detention. Migrants, asylum seekers or refugees were apprehended, detained, and disembarked in Libya solely to prevent their entry into Europe as a corollary of both European immigration policy and the economic agenda of migration in Libya via their subsequent detention and exploitation.

187. The underlying acts that were found to be committed as part of crimes against humanity against migrants in Libya since 2016 included imprisonment and other severe deprivation of physical liberty, torture, murder, enslavement, sexual slavery, rape and other acts of sexual violence, as well as other inhumane acts.

B. Crimes against humanity committed in the detention of Libyans

188. As previously reported by the Mission, there are reasonable grounds to believe that crimes against humanity were committed in Mitiga detention complex (Tripoli), as well as in Gernada and al-Kwaifiya prisons (Benghazi). These places of detention hold thousands of detainees. The Mission identified three separate widespread and systematic attacks corresponding to each prison. They were considered separate due to the fragmentation of the State, the different actors involved and their spheres of power. Nonetheless, all three attacks shared the same anatomy and involved the same connected underlying acts with the same motivation, nature, and modus operandi.

189. The ongoing “attack”, for the purposes of qualifying the violations as crimes against humanity, were considered constituted by the actus reus of arbitrary detention, and of other inhumane acts.

190. Most of the detainees held at detention centres in Mitiga, Gernada, and al-Kwaifiya are civilians. Similarly, most detention cases documented by the Mission related to civilians. Detainees in these prisons are therefore the “civilian population” that is the object of the ongoing attack. The Mission did not consider that the presence of conflict-related detainees and detainees detained based on vague allegations of ‘terrorism’ and tried by military courts disturbed this characterization because conflict-related detainees were rendered hors de combat at the time of the attack by virtue of their arbitrary detention and individuals brought before military courts remained civilians despite being subjected to military jurisdiction.

191. In terms of arbitrary detention, described in section VII.A, the Mission’s investigation revealed a consistent modus operandi from the time of abduction to the time of detention. Victims were almost never informed of the reasons for their arrest or provided with information on the charges against them. Some detainees were imprisoned for years, without appearing before a judge and as discussed in paragraphs 88-89, release orders were frequently ignored.

192. As illustrated in section VII, most of the individuals interviewed were victimized because of their dissent through the legitimate exercise of their rights, enshrined in the International Covenant on Civil and Political Rights, especially Article 19 (freedom of expression). In many cases, their only transgression was the expression of a political opinion, the holding of a religious belief, the challenging of social norms, or the exercise of other human rights guaranteed to them under international law. Others were detained based on their perceived affiliations to opposing groups or ideologies.

193. As part of the arbitrary detention was the consistent ill-treatment of detainees, as elaborated on in section VII.C. Not one of the victims interviewed had been held in acceptable conditions of detention.

194. The Mission established reasonable grounds to believe that at least the underlying acts of torture, murder, enforced disappearance, and persecution were committed in Libya since 2016. On persecution, the Mission found that detainees were singled out for punishment involving prolonged arbitrary detention, enforced disappearance, torture, and other gross human rights violations on the grounds of their actual or perceived religious or political convictions.

XI. Responsibility

195. A State is responsible for all acts that are attributable to it and constitute a breach of an international obligation.¹⁰⁷ The Mission established that acts and conduct outlined in the present report violated Libya's international obligations under international treaty and customary law. In addition, under international customary law, acts are attributable to the State when they are committed by a State organ or persons or entities exercising elements of governmental authority.¹⁰⁸ In the case of conduct of non-State individuals or groups, the State still incurs responsibility where these persons or groups act on the instruction of or under the direction or control of the State, or when State agents acknowledge and adopt the conduct of non-State groups.¹⁰⁹ The State is also responsible when it fails to take all reasonable, necessary measures to prevent the non-State actor from committing the acts and to protect its population from the conduct of non-State actors.

196. In addition, the Mission collected reliable and consistent elements which indicate the responsibility of some individuals for crimes against humanity in Libya. Those identified as likely responsible for crimes against humanity consist of direct perpetrators and more senior officials, such as military commanders or civilian leaders. These individuals could ultimately be held criminally responsible if their acts were committed as part of the widespread or systematic attack and they acted with knowledge that their conduct was part of such an attack.

197. Assigning criminal responsibility to specific individuals requires an extensive, focused investigation into, *inter alia*, the actions and states of mind of specific alleged perpetrators or other participants and will require additional fact-finding and investigation.

198. Nonetheless, where evidence gathered by the Mission indicated, on the balance of probabilities, that certain individuals committed crimes against humanity, these were duly recorded in a preserved list. The list includes the names of suspects, information about the potential suspect's position or role a summary of evidence compiled by the Mission relating to the potential suspect, examples of the underlying relevant allegations, and the Mission's characterization of their possible liability. The list will be deposited, as part of the Mission's evidentiary holdings, with the United Nations High Commissioner for Human Rights.

A. Libyan State responsibility for crimes against humanity in Mitiga

199. The Mission found reasonable grounds to believe that Radaa committed crimes against humanity in Mitiga prison. The Mission found that the State of Libya is responsible for Radaa's conduct, based on the doctrine of State responsibility.

200. Radaa was established by Abdel Raouf Kara in 2013 and mandated by Council of Ministers' decision 224 of 2013 to ensure security and combat crime under the Ministry of the Interior. Radaa,¹¹⁰ an established armed group, was integrated into and became synonymous with DACOT.

¹⁰⁷ Article 2 of the International Law Commission Articles on State Responsibility (General Assembly resolution 56/83).

¹⁰⁸ See ILC Articles, arts. 4 and 5.

¹⁰⁹ See ILC Articles, arts. 8 and 11.

¹¹⁰ Also known as the Special Deterrence Force.

201. DACOT was established by GNA Presidential Council decision in 2018 as an agency formally affiliated with the Ministry of the Interior.¹¹¹ DACOT was given the competence to inter alia contribute to border security, counter criminalized organized crimes, secure elections, and cooperate to combat transboundary drug smuggling gangs.¹¹²

202. In December of 2020, the Presidential Council reorganised DACOT in decision 578, seemingly giving Radaa remit rivalling that of the Ministry of the Interior while retaining the group's oversight under the Presidency Council. Article 3 of decision 578 describes its mandate as encompassing combatting smuggling, organised crime, border protection, drug trafficking and counterterrorism. Radaa controls Mitiga prison, where, as the Mission established, crimes against humanity are committed.

203. From 2019, offshoots of Radaa were absorbed into the Ministry of Justice (as the Judicial Security Apparatus) and into the Ministry of Defence (as the 444 Brigade). The Judicial Security Apparatus has since shadowed Libya's official Judicial Police, asserting its control over several State detention facilities and prisons.

204. Radaa is administratively under the nominal authority of the Presidency Council, and its members and equipment are funded by the Government of Libya. However, it maintains its own command structure and operates with a significant level of autonomy. Abdel Raouf Kara remains the commander of Radaa.

205. Radaa is therefore to be considered either a State organ or an entity that has been empowered to exercise elements of governmental authority, making its acts attributable to the State of Libya under international law.

B. Libyan State responsibility for crimes against humanity in prisons in the east (ISA and LAAF)

206. The Mission found that there are reasonable grounds to believe that the LAAF, given its overall authority over prisons in the east, committed crimes against humanity in Gernada and al-Kwaifiya prisons. These crimes have been perpetrated by members of the TBZ and the ISA in the east.

207. TBZ is a brigade under the LAAF. Officially, the group is controlled by Omar Mraja al-Megerhi pursuant to a decision of the General Command of the Armed Forces. There are reasonable grounds to believe, however, that TBZ is under the effective control of Saddam Haftar, the son of Khalifa Haftar. The brigade controls military barracks in Benghazi and its operational deployment spans most of the areas under the control of the LAAF. TBZ has control over detention facilities in eastern Libya including military sections of prisons in al-Kwaifiya and Gernada.

208. The LAAF is a parallel armed force established by the HOR. In March 2015, the HOR established the post of "General Commander of the Armed Forces" with a wide mandate incorporating that of the Minister of Defence and appointing General Khalifa Haftar to the post. The LAAF maintains its own command structure and operates with a significant level of autonomy. However, the LAAF is funded by the Government of Libya and the salaries of members of the LAAF are disbursed by the Government in Tripoli.

209. ISA is a civil institution of the Libyan State established by a Council of Ministers decision. ISA has country-wide jurisdiction and is headquartered in Tariq al-Sikka in Tripoli. The Mission understood that ISA branches operate under the influence of authorities in east and west Libya, depending on their location. Funding to ISA branches in the east is channelled from the Government in Tripoli through the LAAF. ISA branches operating in the east are headed by Major General Ousama Mohammed al-Dersi since November 2022. ISA in the west is headed by General Lotfi al-Hariri since January 2021. The Mission collected evidence suggesting increased cooperation between ISA operating in the east and west.

¹¹¹ GNA Presidential Council Decision No. 555 (2018).

¹¹² GNA Presidential Council Decision No. 555 (2018).

210. The Mission found reasonable grounds to believe that the LAAF and ISA are either to be considered State organs or entities that have been empowered to exercise elements of governmental authority, making its acts attributable to the State of Libya under international law.

C. Libyan State responsibility for crimes against humanity against migrants

a. Department for Combatting Illegal Migration

211. The DCIM was created as a governmental agency by virtue of decision 386 of 2014. It is an official entity of the Libyan Ministry of the Interior responsible for migrant detention centres across Libya.

212. The DCIM's jurisdiction is Libya-wide and on-land. Its core functions are to inter alia oversee and run the country's migrant detention centres, gather intelligence on human smuggling, and set up operations relevant to human traffickers and migrant smugglers.

213. The current head of the DCIM is Mohamed al-Khoja, appointed in January 2022 by the Council of Ministers of the GNU through decision 742 of 2021. Mr. al-Khoja is in effective control of the Tariq al-Sikka detention centre.

b. Stability Support Apparatus

214. The Mission found reasonable grounds to believe that the SSA is responsible for crimes against humanity committed in the migrant detention centres under their control, in particular Abu Salim, Ayn Zarah, and Abu Isa, as well as crimes against humanity committed by its DCSIM in connection with violent sea interceptions off the coast of Zawiya, as the SSA has also become increasingly engaged in such activities.¹¹³

215. The SSA was established in January 2021 by GNA Presidential Council decision.¹¹⁴ The SSA is made up of an alliance of armed groups and led by militia leader Abdel Ghani al-Kikli, also known as "Ghneiwa". The SSA's competence is broadly to protect the security of the State. It sits under the Presidential Council. Presidential Council decision 38 guaranteed the SSA a source of "independent" income, with little to no oversight, through the Presidential Council.¹¹⁵

216. One component of the SSA is the Department for Combatting Settlement and Illegal Migration (DCSIM). The DCSIM was established by the SSA in December 2021 for the purpose of formalizing its engagement in anti-migration efforts. While its mandate and the formal process behind its formation are unclear, the DCSIM effectively encroaches on the DCIM. Other SSA-affiliated units include the Zawiya Refinery coast guard (also known as the "Zawiya LCG"), which has a sector of the LCG under its control.

217. The Mission found reasonable grounds to believe that the SSA is to be considered either a State organ or an entity that has been empowered to exercise elements of governmental authority, making its acts attributable to the State of Libya under international law.

c. Libyan Coast Guard

218. The most relevant Libyan actor in interceptions at sea is the Libyan Coast Guard, a branch of the Libyan Navy under the Ministry of Defence.

219. Like many other Libyan State institutions, the LCG has apparently become intertwined with militias and armed groups and has worked in close coordination with the smuggling and trafficking networks in Libya. For example, the Az-Zawiya Refinery Coast Guard, a branch of the LCG led by Abd Al-Rahman Milad, is reported to return migrants and

¹¹³ S/2022/427

¹¹⁴ GNA Presidential Council Decision No. 38 (2021).

¹¹⁵ S/2021/229.

refugees intercepted at sea to the al-Nasr detention centre.¹¹⁶ The Mission found that crimes against humanity were committed at relevant detention centres and in relation to sea interceptions, pullbacks, and returns.

220. The Mission found reasonable grounds to believe that the LCG is to be considered either a State organ or an entity that has been empowered to exercise elements of governmental authority, making its acts attributable to the State of Libya under international law.

XII. Conclusions and recommendations

221. Conduct and patterns of gross violations of international human rights law and international humanitarian law described in the present report continue unabated, and there is little evidence that meaningful steps are being taken to reverse this troubling trajectory and bring recourse to victims. Structural, fundamental reforms of the Libyan constitutional and legislative framework, executive branch, and security sectors are necessary to uphold the rule of law and bring an end to the repression of fundamental human rights and freedoms of Libyans and the exploitation of migrants. Furthermore, Libyans and other persons, including migrants, are in desperate need of accountability. Accountability should encompass the right to effective remedy for harm suffered by both the State and individuals at all levels of the hierarchy.

222. To that end, all of the Mission's previous recommendations remain relevant and must be implemented.

223 **The Mission also calls on the authorities of Libya:**

(a) To investigate and prosecute individuals allegedly responsible for violations and abuses of international humanitarian and human rights law and domestic criminal law, in accordance with due process guarantees and the principle of legality. To this end, they should exclude amnesty for gross human rights violations and international crimes and provide a safe working environment for judges, lawyers and prosecutors;

(b) To abide by the pledge made to the Human Rights Council in 2022 to use the findings and recommendations of the Mission as a baseline for Libya's future reports to the Council under the universal periodic review and human rights treaty bodies;

(c) To undertake effective disarmament, demobilization, reintegration and rehabilitation measures to establish integrated armed and security forces in keeping with international standards and practices;

(d) To restructure the State security sector and subject it to an independent civilian oversight mechanism that operates in accordance with international law standards;

(e) To cease all military trials of civilians and halt the implementation of judgments issued by military courts against civilians;

(f) To end the criminalization of irregular entry and stay of migrants in Libya and immediately release arbitrarily detained migrants, including by amending Law No. 19 on Combating Irregular Migration of 2010. Where migrant detention is justified, ensure that women and men are separated and are kept in humane and dignified conditions;

(g) To dismantle secret prisons and immediately release all persons arbitrarily detained;

(h) To cooperate fully with the United Nations human rights system and implement recommendations made by all United Nations special procedures

¹¹⁶ S/2017/466.

mandate holders and facilitate their unhindered and safe access to all parts of Libya and places of detention, as requested;

(i) To cooperate fully with and facilitate unhindered and safe access to the International Criminal Court;

(j) To ensure the enjoyment of fundamental rights, including the free and safe exchange of diverse opinions and information, including by refraining from engaging in smear campaigns against individuals and civil society;

(k) To protect and promote the rights of women, minorities, persons of diverse sexual orientations and gender identities, civil society activists, journalists and human right defenders and encourage their participation in political and public life.

(l) To amend provisions of the Libyan Penal Code and the Publications Law to the extent necessary to align them with international human rights law;

(m) To amend the Anti-Cybercrime Law, the Law on Civic Associations, media regulations, including decision No. 811 (2022), and the Publications Law to the extent necessary to align them with international human rights law;

(n) To remedy and abolish undue restrictions imposed on national and international civil society organizations in Libya, including the decision adopted by the Civil Society Commission in February 2023 on the licensing of civil society organizations operating in Libya and the advisory opinion by the Supreme Judicial Council of March 2023;

(o) To strengthen efforts to organize free, fair and transparent elections;

(p) To take remedial action to realize victims' rights to truth, justice and reparations, and to that end:

(i) To develop and adopt a holistic national human rights plan of action that reflects international human rights law and standards and addresses all findings and recommendations made by the Mission and international human rights bodies;

(ii) To enact legislation and develop a system to protect victims and witnesses from reprisal;

(iii) To develop a comprehensive, inclusive, victim-centred and detailed road map on transitional justice and accountability for Libya;

(iv) To amend article 417 of the Code of Criminal Procedure to allow for civil proceedings even in the absence of a criminal conviction.

(q) To eliminate all forms of discrimination against women, including by taking appropriate measures to modify practices that marginalize women in public and private spheres;

(r) To ensure that comprehensive legislation protects, prevents, and punishes violence against women, bring the legal definition of rape in line with international law and standards and repeal provisions, such as article 424 of the Libyan Penal Code, that mitigate or absolve the perpetrator of responsibility for rape;

(s) To ensure that internally displaced persons can make voluntary and informed decisions about the type of durable solutions they pursue, including return to their places of origin, and guarantee that internally displaced persons have access to their rights and entitlements in their areas of displacement without any discrimination;

(t) To ensure that all unexploded ordnance is removed;

(u) To continue searching for the missing and remaining mass graves, including by using the Mission's findings in that regard on Tarhuna, and, to that

end, take steps to ratify the International Convention for the Protection of All Persons from Enforced Disappearance;

(v) To take steps to implement the national Durable Solutions Strategy and other relevant frameworks for the resolution of internal displacement, including by allocating the necessary funding and investing in the reconstruction of areas of origin of internally displaced persons;

(w) To strengthen the independence of the National Human Rights Institute, including by implementing the Principles Relating to the Status of National Human Rights Institutions.

218. The Mission calls on the United Nations, the international community and third States:

(a) To urge the Human Rights Council to establish an independent, international investigation mechanism and to call on the Office of the United Nations High Commissioner for Human Rights to establish a distinct and autonomous mechanism with an ongoing mandate to monitor and report on gross human rights violations in Libya, with a view to supporting Libyan reconciliation efforts and assisting the Libyan authorities in achieving transitional justice and accountability. In this regard, the Mission calls on the United Nations, the international community and third States to extend to the proposed mechanisms the resources necessary for them to undertake their tasks in an efficient and effective manner;

(b) To apply a strict human rights due diligence policy to their support to authorities in Libya, especially with respect to the Libyan State security sector;

(c) To increase resources and other support to the United Nations Support Mission in Libya to promote and protect human rights pursuant to Security Council resolution 2542 (2020);

(d) To assist Libya in developing and implementing a national human rights action plan by, inter alia, providing it with technical and capacity-building support;

(e) To exercise universal jurisdiction over international crimes committed in Libya, including over mercenaries and foreign fighters;

(f) To cooperate with the Office of the Prosecutor of the International Criminal Court investigation of the situation in Libya, including by surrendering individuals for whom an arrest warrant has been issued;

(g) To abide by the customary international law principle of non-refoulement and cease all direct and indirect support to Libyan actors involved in crimes against humanity and gross human rights violations against migrants, such as the Directorate for Combating Illegal Migration, the Stability Support Apparatus and the Libyan Coast Guard;

(h) To regulate migration in accordance with international law and the Global Compact for Safe, Orderly and Regular Migration.

I. Definition of crimes against humanity

219. Broadly, the definition of crimes against humanity in Article 7 of the Rome Statute to the International Criminal Court (ICC) reflects that accepted in general international law. It is unknown which variant of this offence may ultimately be utilised in relation to crimes committed in Libya. For its part, the Mission based its investigations on the definition of crimes against humanity under the Rome Statute, however it did not adopt the ICC's State or organisational policy requirement (of the "attack" component of the chapeau) as formulated in Article 7(2)(a) as a distinct contextual element for two reasons. The first is that there are some indications in ICC jurisprudence of a nascent shift away from such a requirement¹¹⁷ and secondly, considering the drafting history of the ICC Statute, the rationale underlying the inclusion of a policy element in the definition was to "help distinguish between what is of concern to the international community on the one hand and, on the other, the sort of crimes that should remain the exclusive concern of domestic jurisdictions".¹¹⁸ This normative limitation, effectively limiting the ICC's jurisdiction, does not apply to the Mission. Furthermore, the Mission has also departed from the ICC in that it has not applied the "prolonged" requirement with respect to enforced disappearance as a crime against humanity.

220. The prohibition of crimes against humanity is recognized as a principle of jus cogens and is universally applicable.¹¹⁹ Crimes against humanity entail gross human rights violations of a scale and level of organisation that shock the conscience of humanity.

221. Article 7(1) of the ICC Statute, which largely reflects customary international law, defines crimes against humanity as any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment;
- (f) Torture;
- (g) Rape and forms of sexual violence;
- (h) Persecution on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;

¹¹⁷ There is a concern that a certain interpretation that has been given to "organisational policy" in Article 7(2)(a) of the Rome Statute is ultimately inconsistent with its object and purpose. See for example ICC, *Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06-2666-Anx5, ANNEX 5: Partly concurring opinion of Judge Chile Eboe-Osuji, 30 March 2021, paras. 142-143; ICC, *Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06-2666-Anx3, ANNEX 3: Separate opinion of Judge Luz Del Carmen Ibáñez Carranza on Mr Ntaganda's appeal, 30 March 2021, para. 156; ICC, *Prosecutor v. Ruto and Sang*, ICC-01/09-01/11, Public redacted version of Decision on Defence Applications for Judgments of Acquittal, 5 April 2016, pp. 58 ff.

¹¹⁸ Mettraux, *International Crimes: Law and Practice: Volume II: Crimes Against Humanity*, 2020, p. 292.

¹¹⁹ International Law Commission (ILC), Draft Articles on Crimes Against Humanity, Preamble; ILC, Peremptory Norms of General International Law (jus cogens): Text of the Draft Conclusions and Draft Annex Provisionally Adopted by the Drafting Committee on First Reading, UN Doc. A/CN.4/L.936, 29 May 2019, Draft Conclusion 3.

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

222. Pursuant to Article 7(2)(a) of the Statute, an “[a]ttack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.¹²⁰

A. Article 7 chapeau requirements

a. Attack

223. An “attack” for the purposes of crimes against humanity has been described as “a course of conduct involving the commission of acts of violence”.¹²¹ A “course of conduct” signifies a “systemic aspect” to the attack, describing “a series or overall flow of events as opposed to a mere aggregate of random acts. The ‘multiple commission of acts’ sets a quantitative threshold involving a certain number of acts falling within the course of conduct”.¹²²

224. The notion of “attack” encompasses any form of mistreatment of a civilian population¹²³ that includes multiple commission of acts referred to in Article 7(1).¹²⁴ The attack need not necessarily be military in nature, and it may involve any form of violence against a civilian population.¹²⁵ An attack may precede, outlast, or continue during an armed conflict, without necessarily being part thereof.¹²⁶ It is an event in which the enumerated crimes must form part.¹²⁷

b. Directed against a civilian population

225. The International Criminal Tribunal for the former Yugoslavia (ICTY) held that “the emphasis is not on the individual victim but rather on the collective, the individual being victimised not because of [their] individual attributes but rather because of [their] membership of a targeted civilian population”¹²⁸ Article 7 of the ICC Statute does not require a separate finding that the civilian population was the primary object of the attack.¹²⁹

226. The term “civilian” refers to persons who are not members of any armed forces or other legitimate combatants.¹³⁰ The term ‘civilian population’ means that the population must simply be predominantly civilian in nature.¹³¹ Members of armed forces placed hors de

¹²⁰ Rome Statute, Article 7(2)(a). See also Elements of Crimes, Introduction to Article 7 of the Statute, para. 3.

¹²¹ ICTR, *Prosecutor v. Ephrem Setako*, ICTR-04-81-T, Judgement and Sentence, 25 February 2010, para. 476.

¹²² ICC, *Prosecutor v. Laurent Gbagbo*, ICC-02/11-01/11, Decision on the confirmation of charges, 12 June 2014, para. 209.

¹²³ ICTR, *Prosecutor v. Ferdinand Nahimana*, ICTR-99-52-A, Judgement, 28 November 2007, para. 916.

¹²⁴ ICTY, *Prosecutor v. Milan Lukić et al.*, IT-98-32/1-T, Judgement, 20 July 2009, para. 873.

¹²⁵ ICC, *Prosecutor v. Germain Katanga*, ICC-01/04-01/07, Judgment pursuant to Article 74 of the Statute, 7 March 2014, para. 1101.

¹²⁶ ICTY, *Prosecutor v. Dragoljub Kunarac et al.*, IT-96-23 & IT-96-23/1-A, Appeal Judgement, 12 June 2002, para. 86.

¹²⁷ ICTR, *Prosecutor v. Clément Kayishema et al.*, ICTR-95-1-T, Judgement, 21 May 1999, para. 122.

¹²⁸ ICTY, *Prosecutor v. Dusko Tadić*, IT-94-1-T, Sentencing Judgment, 14 July 1997, para. 644.

¹²⁹ ICC, *Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06, Appeals Judgment, 30 March 2021, paras. 7 and 424.

¹³⁰ Fourth Geneva Conventions, Article 3, Additional Protocol I, Article 50.

¹³¹ ICTY, *Prosecutor v. Dario Kordić et al.*, IT-95-14/2-T, Judgement, 26 February 2001, para. 180; ICTR, *Prosecutor v. Ignace Bagilishema*, ICTR-95-1A-T, Judgement, 7 June 2001, para. 79; ICTR, *Prosecutor v. Laurent Semanza*, ICTR-97-20-T, Judgement and Sentence, 15 May 2003, para. 330.

combat by sickness, wounds, detention, or any other cause, may also be victims of acts amounting to crimes against humanity.¹³²

227. Relevant factors include the means and methods used in the course of the attack; the number and status of the victims; the discriminatory nature, if any, of the attack, in terms of a pattern related to the national, ethnic, racial or religious identity of victims; and the nature of the crimes committed in its course¹³³ and evidence of the scale of the crimes committed in the course of the attack.¹³⁴

c. Widespread or systematic character of the attack

228. Under both the Rome Statute (Article 7(1)) and customary international law, the attack against the civilian population as a whole – as opposed to the individual underlying crimes – must be either widespread or systematic in nature.¹³⁵ Although the two criteria are disjunctive rather than cumulative, they are often difficult to separate since a widespread attack targeting a large number of victims is generally predicated on some degree of coordination, planning or organisation.

229. The term “widespread” refers to the large-scale nature of the attack, its geographic scope, and the number and multiplicity of civilians against whom the attack is directed.¹³⁶ It may be established by the cumulative effect of a multiplicity of smaller, discrete acts, or the singular effect of an inhumane act of extraordinary magnitude.¹³⁷

230. The ICC Trial Chamber III in Bemba held the term “widespread” to denote an attack that is massive, frequent, carried out collectively with considerable seriousness and directed against a multiplicity of victims,¹³⁸ or “an attack carried out over a large geographical area or an attack in a small geographical area directed against a large number of civilians”.¹³⁹ Hence, a key feature of the “widespread” standard is that it is intended to exclude isolated acts of violence,¹⁴⁰ such as “murder directed against individual victims by persons acting of their

¹³² ICTY, *Prosecutor v. Milan Martić*, IT-95-11-A, Judgement, 8 October 2008, paras. 303-314; ICTY, *Prosecutor v. Tihomir Blaškić*, IT-95-14-T, Judgement, 3 March 2000, para. 214.

¹³³ ICTY, *Prosecutor v. Mile Mrksić et al.*, IT-95-13/1-T, Judgement, 27 September 2007, para. 440.

¹³⁴ ICTY, *Prosecutor v. Milomir Stakić*, IT-97-24-T, Judgement, 31 July 2003; *Kunarac et al.*, Appeal Judgement, para. 94.

¹³⁵ ICTR, *Prosecutor v. Sylvestre Gacumbitsi*, ICTR-2001-64-A, Judgement, 7 July 2006, para. 102.

¹³⁶ ICTY, *Prosecutor v. Dragoljub Kunarac et al.*, IT-96-23-T & IT-96-23-/1-T, Trial Judgement, 22 February 2001, para. 428; ICTY, *Prosecutor v. Vidoje Blagojević et al.*, IT-02-60-T, Judgement, 17 January 2005, paras. 545-546; ICTY, *Prosecutor v. Dario Kordić et al.*, IT-95-14/2-A, Judgement, 17 December 2004, para. 94; ICC, *Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08, Judgment pursuant to Article 74 of the Statute, 21 March 2016, para. 163; *Katanga*, Judgment pursuant to Article 74 of the Statute, para. 1123; ICC, *Prosecutor v. Katanga et al.*, ICC-01/04-01/07, Decision on the confirmation of charges, 30 September 2008, para. 394; ICC, *Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06, Decision pursuant to Article 61(7)(a) and (b) of the Rome Statute on the charges of the Prosecutor against Bosco Ntaganda, 9 June 2014, para. 24; See also *Draft Code of Crimes against Humanity*, commentary to Art. 18, para. 4 ([‘o]n a large scale’ means ‘that the acts are directed against a multiplicity of victims. This requirement excludes an isolated inhumane act committed by a perpetrator acting on his own initiative and directed against a single victim’).

¹³⁷ ICTY, *Prosecutor v. Vidoje Blagojević et al.*, IT-02-60-T, Judgement, 17 January 2005, para. 545.

¹³⁸ *Bemba*, Judgment pursuant to Article 74 of the Statute, para. 163; ICTR, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, para. 580.

¹³⁹ ICC, *Prosecutor v. Jean-Pierre Bemba*, ICC-01/05-01/08-424, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, para.83.

¹⁴⁰ ICC, *Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06, Decision on the Prosecutor’s application under Article 58, 13 July 2012, para. 19; ICC, *Prosecutor v. Ahmad Muhammad Harun et al.*, ICC-02/05-01/07, Decision on the prosecution application under Article 58(7) of the Statute, 27 April 2007, para. 62; ICTR, *Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, ICTR-96-3-T, Judgement and Sentence, 6 December 1999, paras. 67-69; *Kayishema et al.*, Trial Judgment, paras.122–123; ILC, *Draft Code of Crimes against the Peace and Security of Mankind*, Report of the Commission to the General Assembly on the work of its forty-third session, A/46/10 (1991), Yearbook of the International Law Commission, 1991, vol. II, Part Two, Commentary to Article 21, pp. 47 and 103.

own volition rather than as part of a broader initiative”.¹⁴¹ The assessment as to whether an attack is widespread is “neither exclusively quantitative nor geographical, [and] must be carried out on the basis of the individual facts”.¹⁴²

231. “Systematic” refers to the “organised nature of the acts of violence and the improbability of their random occurrence”¹⁴³ in furtherance of a common policy, which follows a regular pattern and results in a continuous commission of acts or as ‘patterns of crimes’ such that the crimes constitute a non-accidental repetition of similar criminal conduct on a regular basis.¹⁴⁴ It requires “organized action, following a regular pattern, on the basis of a common policy and involves substantial public or private resources”.

232. In determining whether an attack is systematic and to identify patterns of crimes, the following are taken into account: (i) identical acts took place or similarities in criminal practices can be identified; (ii) the same *modus operandi* (and/or means or methods) was employed or (iii) victims were treated in a similar manner across a wide geographic area.¹⁴⁵ Further indicators of the systematic nature of an attack include that: (i) the violations are in line with an underlying political objective; (ii) there is an ideology to destroy, persecute or weaken a community, including on the basis of national/ethnic/racial or religious grounds; (iii) high-level political and/or military authorities are implicated in the definition and establishment of a methodical plan to commit violations; (iv) propaganda, indoctrination or psychological oppression are used to create an environment in which crimes will occur; (v) criminal acts are being perpetrated on a very large scale and follow a regular pattern making it improbable that the acts could occur randomly; (vi) there is a repeated and continuous commission of inhumane acts linked to one another; and (vii) organized efforts are made to conceal the crimes committed.¹⁴⁷

233. Neither the underlying attack nor the acts of the accused need be supported by any form of state or organisational plan or policy. Nor is a plan or policy a necessary element of proof that the underlying attack was systematic in character;¹⁴⁸ nonetheless may serve as evidence of the systematic character of the attack. This policy may be made by an organ of the State but can also be formulated “by groups of persons who govern a specific territory or by any organisation with the capability to commit a widespread or systematic attack against a civilian population”.¹⁴⁹ A policy can therefore be “inferred by discernment of, *inter alia*, repeated actions occurring according to a same sequence, or the existence of preparations or collective mobilisation orchestrated and coordinated by that State or organisation”¹⁵⁰ or from a variety of factors which taken together, establish that a policy existed.

¹⁴¹ ILC, Draft Articles on Prevention and Punishment of Crimes Against Humanity with Commentaries, 2019, para. 12.

¹⁴² ICC, Situation in the Republic of Kenya, ICC-01/09, Decision pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, para. 95.

¹⁴³ ICTY, *Prosecutor v. Kordić et al*, IT-95-14/2-A, Appeal Judgement, 17 December 2004, para. 94; ICC, *Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06, Judgment, 8 July 2019, para. 692; *Gbagbo*, Decision on the Confirmation of Charges, para. 222; *Katanga*, Judgment pursuant to Article 74 of the Statute, para. 1123; *Katanga et al*, Decision on the Confirmation of Charges, para. 394; *Harun et al.*, Decision on the prosecution application under Article 58(7) of the Statute, para. 62.

¹⁴⁴ *Katanga et al*, ICC-01/04-01/07, Decision on the confirmation of charges, para. 397; See also, *Ntaganda*, Judgment, para. 692; *Katanga*, Judgment pursuant to Article 74 of the Statute, para. 1123; *Ntaganda*, Decision on the confirmation of charges, para. 24.

¹⁴⁵ ICTR, *Prosecutor v. Alfred Musema*, ICTR-96-13-T, Judgement and Sentence, 27 January 2000, para. 204; *Akayesu*, Trial Judgement, para. 580.

¹⁴⁶ *Ntaganda*, Judgment, para. 693; *Katanga*, Judgment pursuant to Article 74 of the Statute, para. 1113; *Kunarac et al*, Appeal Judgement, para. 95.

¹⁴⁷ ICTY, *Prosecutor v. Blaškić*, Trial Judgment, para. 204; ICTY, *Prosecutor v. Vlastimir Đorđević*, IT-05-87/1-T, Public Judgement, paras. 1262-1380; *Kordić et al.*, Appeal Judgement, paras. 98 and 179; *Katanga*, Decision on the Confirmation of Charges, para. 397.

¹⁴⁸ *Kunarac et al*, Appeal Judgement, para. 98.

¹⁴⁹ *Bemba*, Decision Pursuant to Article 61(7)(a) and (B) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, para. 81.

¹⁵⁰ *Katanga*, Judgment pursuant to Article 74 of the Statute, para. 1109.

B. Applicable Underlying Acts

a. Murder

234. The crime of murder under international criminal law requires unlawfully causing the death of a person.¹⁵¹ The crime of murder can be caused by either an act or an omission.¹⁵² In terms of the mental element, the perpetrator must either act with the subjective purpose of causing such death or serious injury or awareness that the death would be the consequence of the relevant conduct.¹⁵³

b. Enslavement

235. The exercise of any or all of the powers ordinarily attaching to the right of ownership over a person amounts to enslavement,¹⁵⁴ meaning “the use, enjoyment and disposal of a person who is regarded as property, by placing him or her in a situation of dependence which entails his or her deprivation of any form of autonomy”.¹⁵⁵

236. Thus, forced labour can amount to enslavement if it is accompanied by aggravating circumstances that effectively destroy the juridical personhood of the victim.¹⁵⁶ Forced labour can therefore rise to the level of enslavement, even without any additional evidence of mistreatment.¹⁵⁷ To determine if forced labour reaches the threshold, the question is whether “the relevant persons had no choice as to whether they would work”.¹⁵⁸

237. Relevant circumstances include detention or captivity; the degree of control exercised over the victim’s autonomy; freedom of choice or freedom of movement, including measures taken to prevent or deter escape; fear of violence; abuse of power; duration, conditions and intensity of forced labour; victims’ vulnerability; subjection to cruel treatment and abuse; and intense control of sexuality.¹⁵⁹

228. The Elements of Crimes for Article 7(1)(c) require that “the perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty”. This element reflects the jurisprudence of the ICC and the ad hoc international criminal tribunals on the crime of enslavement as a crime against humanity.¹⁶⁰

¹⁵¹ Elements of Crimes, Article 7 (1) (a).

¹⁵² Elements of Crimes, Article 7(1)(a), footnote 7; ICTR, *Prosecutor v. Clément Kayishema and Obed Ruzindana*, ICTR-95-1-T, Judgment, 21 May 1999, paras. 136-140.

¹⁵³ See Rome Statute, Article 30; *Katanga*, ICC-01/04-01/07, Decision on the Confirmation of Charges of 30 September 2008, para. 423. Intentionally causing serious injury in reckless disregard of the risk for human life can amount to murder: ICTY, *Prosecutor v. Mucic et al*, IT-96-21-T, Judgment, 16 November 1998, para. 439; *Akayesu*, Trial Judgment, para. 589

¹⁵⁴ Rome Statute, Article 7 (2) (c); *Kunarac et al*, Trial Judgement, para. 539; *Kunarac et al*, Appeal Judgement, para. 117; SCSL, *Prosecutor v. Charles Ghankay Taylor*, SCSL-03-01-T, Judgment, 18 May 2012, para. 446.

¹⁵⁵ ICC, *Prosecutor v. Katanga*, ICC-01/04-01/07-3436-tENG, Judgment, 7 March 2014, para. 975.

¹⁵⁶ See Elements of Crimes, Assembly of States Parties to the Rome Statute of the International Criminal Court, 1st Sess., Sept. 3–10, 2002, Article 7 (2) (c), footnote 10; *Kunarac et al*, Trial Judgment, para. 541; *Kunarac et al*, Appeal Judgement, para. 117; SCSL, *Prosecutor v. Charles Ghankay Taylor*, SCSL-03-1-T, Judgment Summary, 26 April 2012, para. 448.

¹⁵⁷ ECCC, *Prosecutor v. Kaing Guek Eav*, 001/18-07-2007- ECCC/SC, Appeal Judgment, 3 February 2012, para. 126; *Kunarac et al*, Trial Judgment, para. 541

¹⁵⁸ *Taylor*, Judgment, para. 448; ICTY, *Prosecutor v. Krnojelac*, IT-97-25-T, Judgment, 15 March 2002, para. 359; *Trial of Major War Criminals before the International Military Tribunal*, Nuremberg, 14 November 1945 – 1 October 1946, Vol. 22 (1947), pp. 565-566; *Trial of Major War Criminals before the International Military Tribunal*, Nuremberg, 14 November 1945 – 1 October 1946, Vol. 22 (1947), at p. 579.

¹⁵⁹ *Taylor*, Judgment Summary, para. 447; *Kunarac et al*, Appeal Judgment, para. 119.

¹⁶⁰ ICC, *The Prosecutor v. Dominic Ongwen*, ICC-02/04-01/15, Trial Judgment, 4 February 2021, para. 2712; *Ntaganda*, Judgment, para. 952; *Katanga*, Trial Judgment, para. 976. Similarly, Extraordinary Chambers in the Courts of Cambodia, Case 001 (“Duch”), Judgment, Trial Chamber (26 July 2010),

239. In *Katanga*, Trial Chamber II understood the powers attaching to the right of ownership as “the use, enjoyment and disposal of a person who is regarded as property, by placing him or her in a situation of dependence which entails his or her deprivation of any form of autonomy”.¹⁶¹ Thus, the exertion of such powers can only be established on a case-by-case basis and the list of examples included in the Elements of Crimes is not exhaustive.¹⁶²

240. Further, the Elements of Crimes provide that “such deprivation of liberty may, in some circumstances, include exacting forced labour or otherwise reducing a person to a servile status as defined in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956.¹⁶³ It is also understood that the conduct described in this element includes trafficking in persons, in particular women and children”.¹⁶⁴

241. The ICC explicitly recognised the following criteria in determining the exercise of powers attaching to the right of ownership: (i) control or restrictions of someone’s movement and, more generally, measures taken to prevent or deter escape; (ii) control of physical environment; (iii) psychological control or pressure; (iv) force, threat of force or coercion; (v) duration of the exercise of powers attaching to the right of ownership; (vi) assertion of exclusivity; (vii) subjection to cruel treatment and abuse; (viii) control of sexuality; (ix) forced labour or subjecting the person to servile status; and (x) the person’s vulnerability and the socio-economic conditions in which the power is exerted.¹⁶⁵

242. Further, the imposition of a “similar deprivation of liberty” as required by the Elements of Crimes may take various forms, encompassing ‘situations in which the victims may not have been physically confined, but were otherwise unable to leave as they would have nowhere else to go and fear for their lives.’¹⁶⁶

243. Nonetheless, previous ICC jurisprudence has identified several circumstances under which a deprivation of liberty may amount to the exercise of powers attached to the right of ownership. In *Ntaganda*, Trial Chamber IV established that the accused committed sexual slavery since, following the abduction of a victim and the deprivation of their liberty that ensued, he exercised powers attached to the right of ownership over the victim. The capture was understood to be the demonstration of the accused’s initial exercise of powers attached to the rights of ownership over a person.¹⁶⁷ However, without elaborating further on two other female victims that were also captured, the Trial Chamber considered that their capture was not a deprivation of liberty tantamount to exercising powers attaching to the rights of ownership over the victims.¹⁶⁸

244. Although monetary exchanges or commercial transactions are not a requirement for the crime of enslavement, they are prime indicators of the exercise of powers attaching to the rights of ownership.¹⁶⁹

245. The crime of trafficking in persons and the crime of enslavement as a crime against humanity partly overlap. Despite the differences in legal characterisation, both crimes rely on the same underlying conduct.¹⁷⁰ In this sense, insofar as human trafficking indicates the

para. 342; *Kunarac et al*, Appeal Judgment, para. 119; SCSL, *Taylor*, Judgement, para. 447; SCSL, *Prosecutor v. Issa Hassan Sesay et al.*, SCSL-04-15-T, Trial Judgement, 2 March 2009, para. 199.

¹⁶¹ *Katanga*, Trial Judgment, para. 975.

¹⁶² *Ongwen*, Trial Judgment, para. 2711; *Ntaganda*, Judgment, para. 952; *Katanga*, Trial Judgment, paras. 975-976.

¹⁶³ Article 1 of the 1956 Supplementary Convention defines that the following conduct reduces a person to a servile status: debt bondage; serfdom; different forms of forced marriage; and child exploitation.

¹⁶⁴ Elements of Crimes, Article 7(1)(c), fn. 11.

¹⁶⁵ *Ongwen*, Trial Judgment, para. 2712; *Ntaganda*, Judgment, para. 952; *Katanga*, Trial Judgment, para. 976.

¹⁶⁶ *Ongwen*, Trial Judgment, para. 2713, fn 7156 citing *Ntaganda*, Judgment, para. 952.

¹⁶⁷ *Ntaganda*, Judgment, para. 961.

¹⁶⁸ *Ntaganda*, Judgment, paras. 956-961.

¹⁶⁹ *Ongwen*, Trial Judgment, para. 2143ff.; *Kunarac et al*, Appeal Judgment, para. 119.

¹⁷⁰ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Article 3(a).

exercise of powers attaching to a right of ownership, the conduct also fulfils the material elements of enslavement.

c. Imprisonment

246. Imprisonment as a crime against humanity requires that an individual is arbitrarily deprived of his or her liberty, and that this deprivation is done intentionally or in the reasonable knowledge that arbitrary deprivation of liberty is likely to occur.¹⁷¹ Not every infringement of liberty forms the material element of the underlying offence; the deprivation of liberty must be of similar gravity and seriousness as the other crimes enumerated as crimes against humanity.¹⁷² A deprivation of liberty amounts to imprisonment if it is arbitrary and therefore illegal, with the term 'arbitrary' establishing the requirement that the deprivation be without due process of law.¹⁷³

247. In assessing whether imprisonment constitutes a crime against humanity, relevant factors are whether the initial arrest was unlawful by considering, for example, whether it was based on a valid arrest warrant, whether the detainees were informed of the reasons for their detention, whether the detainees were ever formally charged, whether they were informed of any procedural rights, and whether any period of detention was lawful.¹⁷⁴

248. The Working Group on Arbitrary Detention has classified secret detention as being per se arbitrary as it is clearly impossible to invoke any legal basis justifying the deprivation of liberty, and its very nature may result in indefinite periods of detention.¹⁷⁵ The practice of secret detention ipso facto violates the guarantees enshrined in Articles 9 (right to liberty) and 14 (right to a fair trial) of the International Covenant on Civil and Political Rights (ICCPR), or in most cases, automatically or inherently entails such consequences that amount to a violation. Under IHRL, every instance of secret detention by a state or de facto state authority also amounts to a case of enforced disappearance¹⁷⁶ and also violates the prohibition against torture and other forms of ill-treatment¹⁷⁷ including because every instance of secret detention is by definition incommunicado detention.¹⁷⁸ Indefinite or prolonged solitary confinement¹⁷⁹ - in excess of 15 consecutive days¹⁸⁰ - as a restriction or disciplinary sanction may amount to torture or other cruel, inhuman or degrading treatment or punishment.¹⁸¹ Confinement under inhumane conditions can be included in the underlying acts of "imprisonment" and "other inhumane acts" and also meets the definition of a persecutory act.¹⁸²

¹⁷¹ ICTY, *Prosecutor v. Milorad Krnojelac*, IT-97-25-T, Judgement, 15 March 2002, para. 124.

¹⁷² ECCC, *Kaing Guek Eav alias Duch*, 001/18-07-2007/ECCC/TC, Judgement, 26 July 2010, para. 349.

¹⁷³ *Kordić et al.*, Trial Judgement, para. 302. See also ICTR, *Prosecutor v. André Ntagerura*, ICTR-99-46-T, Judgement and Sentence, 25 February 2004, para. 702.

¹⁷⁴ *Kordić et al.*, Trial Judgement, 26 February 2001, para. 280; ICTY, *Prosecutor v. Zdravko Mucić et al.*, IT-96-21-T, Judgement, 16 November 1998, para. 327; *Krnojelac*, Trial Judgement, paras. 117-118.

¹⁷⁵ 2010 joint study on global practices in relation to secret detention in the context of countering terrorism, issued by four UN Special Procedures, A/HRC/13/42, 20 May 2010, paras. 18-23.

¹⁷⁶ E/CN.4/1997/34: The Working Group on Enforced or Involuntary Disappearances confirmed in its general comment on Article 10 of the Declaration on the Protection of All Persons from Enforced Disappearance that under no circumstances, including states of war or public emergency, can any State interest be invoked to justify or legitimize secret centres or places of detention which, by definition, would violate the Declaration, without exception.

¹⁷⁷ 2010 joint study on global practices in relation to secret detention in the context of countering terrorism, issued by four UN Special Procedures, A/HRC/13/42, 20 May 2010, paras. 34-35.

¹⁷⁸ 2010 joint study on global practices in relation to secret detention in the context of countering terrorism, issued by four UN Special Procedures, A/HRC/13/42, page 2.

¹⁷⁹ Confinement of prisoners for 22 hours or more a day without meaningful human contact: Nelson Mandela Rules, Rule 44.

¹⁸⁰ Nelson Mandela Rules, Rule 44.

¹⁸¹ Nelson Mandela Rules, Rule 43.

¹⁸² ICTY, *Prosecutor v. Miroslav Kvočka et al.*, IT-98-30/1-T, Trial Judgement, 2 November 2001, para. 189.

d. Torture

249. Under the Rome Statute, torture as a crime against humanity means the intentional infliction of severe pain and suffering, whether physical or mental, upon a person in the custody or under the control of the accused.¹⁸³ Under the Rome Statute, the crime against humanity of torture does not require the act to be committed with a specific purpose, or by a public official.¹⁸⁴

250. The material elements of this crime are (1) the infliction of severe pain and suffering, whether physical or mental; and (2) that the infliction is on a person in the custody or under the control of the accused. Although there is no definition of the threshold of “severe”, “an important degree of pain and suffering has to be reached”.¹⁸⁵ The objective severity of the harm inflicted must be first assessed, before considering subjective criteria such as the physical or mental effect on the victim.¹⁸⁶ When assessing the seriousness of acts charged as torture, one must “take into account all the circumstances of the case, including the nature and context of the infliction of pain, the premeditation and institutionalisation of the ill-treatment, the physical condition of the victim, the manner and method used, and the position of inferiority of the victim. The extent that an individual has been mistreated over a prolonged period of time will also be relevant”.¹⁸⁷ Intentionally subjecting persons to extremely inhumane conditions of detention can also constitute ‘other inhumane acts’ as a crime against humanity.¹⁸⁸

251. Acts considered to amount to “severe pain or suffering” for the purpose of torture include: severe beatings, punches and kicks; rape, attempted rape and other forms of sexual violence; electric shocks; and deprivation of sleep, food or water.¹⁸⁹ Examples of treatment causing mental suffering include: mock executions, prolonged solitary confinement and threats of death or violence and being forced to watch others being killed, tortured or raped.¹⁹⁰

252. The very fact of being detained as a disappeared person, isolated from one’s family for a long period is certainly a violation of the right to humane conditions of detention and the prohibition of torture.¹⁹¹ According to the Special Rapporteur on Torture, “to make someone disappear is a form of prohibited torture or ill-treatment, clearly as regards the relatives of the disappeared person and arguably in respect of the disappeared person or him/herself”.¹⁹² Under the Convention against Torture, “torture” means any act by which

¹⁸³ Rome Statute, Article 7(2)(e).

¹⁸⁴ The ICC Elements of Crimes requires the “purpose” element with respect to torture as a war crime but not as a crime against humanity (ICC Elements of Crimes, p. 7, footnote 14, stating: “It is understood that no specific purpose need be proved for this crime”). The ICTY and ICTR jurisprudence consider the purpose element as the distinguishing feature of torture as opposed to ill treatment. See *Akayesu*, Trial Judgment, paras. 593-595; *Mucić et al.*, Trial Judgment, para. 459; ICTY, *Prosecutor v. Anto Furundžija*, IT-95-17/1-T, Judgment, 10 December 1998, para. 161; *Krnjelac*, Trial Judgment, para. 180.

¹⁸⁵ *Bemba*, Decision Pursuant to Article 61(7)(a) and (B) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, para. 193.

¹⁸⁶ *Kvočka et al.*, Trial Judgment, paras. 142-143.

¹⁸⁷ *Krnjelac*, Trial Judgment, para. 182.

¹⁸⁸ See *Kaing Guek Eav alias Duch*, Judgment, para. 372. The court found that conditions of detention amounted to inhumane acts that included shackling and chaining, blindfolding and handcuffing when being moved outside the cells, severe beatings and corporal punishments, detention in overly small or overcrowded cells, lack of adequate food, hygiene and medical care. See also *Kvočka et al.*, Trial Judgment, paras. 190 and 191, affirmed by ICTY, *Prosecutor v. Miroslav Kvočka et al.*, IT-98-30/1-A, Appeal Judgment, 28 February 2005, paras. 324-325. The ICTY considered that the conditions prevailing in internment camp amounted to crimes against humanity: “gross overcrowding in small rooms without ventilation, requiring the detainees to beg for water, and forcing them to relieve bodily functions in their clothes... constant berating, demoralizing, and threatening of detainees, including the guards’ coercive demands for money from detainees, and the housing of detainees in lice-infected and cramped facilities.”

¹⁸⁹ For further examples, see A/HRC/13/39/Add.5, para.51.

¹⁹⁰ United Nations Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, para.6.

¹⁹¹ A/56/156, para.10.

¹⁹² A/56/156, para.14.

severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

253. As to the mental element, Article 7(2)(e) of the ICC requires that the infliction of pain and suffering must be intentional. This means that Article 30 of the Rome Statute, which sets up a general requirement for the double elements of intent and knowledge, is not applicable here.¹⁹³ It is therefore sufficient that the perpetrator intended to inflict pain or suffering, and that the victim endured severe pain or suffering.¹⁹⁴

e. Rape, sexual slavery, enforced prostitution and other sexual violence

254. Crimes against humanity encompass rape.¹⁹⁵ International criminal law considers as rape any unjustified coercive invasion of the genital opening of the victim with a part of the perpetrator's body.¹⁹⁶ This can include cavity searches that do not meet strict standards of legality, necessity, and proportionality.¹⁹⁷ Instances where female detainees are pressed into "consensual" sexual relations to avoid forced labour, or to receive food and other advantages, may also amount to rape as defined under international law, because the perpetrators take advantage of the coercive circumstances of detention and the resulting vulnerability of female detainees.¹⁹⁸

255. The Rome Statute explicitly states that trafficking can amount to an international crime in the form of enslavement and sexual slavery¹⁹⁹ as crimes against humanity. Sexual slavery is a form of slavery, and its prohibition is a jus cogens norm.²⁰⁰ Sexual slavery is part of the trafficking of women and girls for sexual exploitation.²⁰¹ The crime of sexual slavery requires the right of ownership over the victims. This element also constitutes the main requirement of the broader crime of enslavement (see above). In Ongwen, Trial Chamber IX analysed charges of both enslavement and sexual slavery, finding that the objective element of exercise of powers attaching to the right of ownership of the victims was fulfilled given

¹⁹³ This was confirmed by the ICC Pre-Trial Chamber in *Bemba*, which concluded that the term "intentional" in Article 7(2)(e) excluded the separate requirement of knowledge set out in Article 30(3): *Bemba*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, para. 194.

¹⁹⁴ *Bemba*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, para.194.

¹⁹⁵ Rome Statute, Article 7 (1) (g).

¹⁹⁶ See Elements of Crime, Assembly of States Parties to the Rome Statute of the International Criminal Court, 1st Session, September 3–10, 2002, Article 7(1)(g)-1, para.1. See also ICTY, *Prosecutor v. Furundzija*, IT-95-17/1-T, Trial Judgment, 10 December 1998, para. 185; SCSL, *Prosecutor v. Seasay et al*, SCSL-04-15-T, 2 March 2009, para. 145; SCSL, *Prosecutor v. Brima et al*, CSL-2004-16-T, Trial Judgment, para. 693. *Akayesu*, Trial Judgement, para. 688. See also *id.*, where the International Criminal Tribunal for Rwanda finds that thrusting a piece of wood into a dying woman's vagina constitutes rape. As confirmed in the ICC trial judgment against Bosco Ntaganda, this means that the conduct includes same-sex penetration, and encompasses both male and/or female perpetrators and victims": *Ntaganda*, Judgment, para. 933.

¹⁹⁷ World Medical Association, "Statement on Body Searches of Prisoners, adopted by the 45th World Medical Assembly held in Budapest, Hungary", October 1993.

¹⁹⁸ Taking advantage of coercive circumstances as a factor giving rise to rape has been recognized by the jurisprudence of the ICTY Appeals Chamber and the official interpretation of rape under the Rome Statute. See *Kunarac et al*, Appeal Judgement, para. 129 [finding that the lack of consent on the part of victim characteristic of rape also exists where the perpetrator is "taking advantage of coercive circumstances without relying on physical force"].

¹⁹⁹ Article 7(1)(g);

²⁰⁰ UN Sub-Commission on Human Rights, Special Rapporteur on the Situation of Systematic Rape, Sexual Slavery and Slavery-like Practices during Wartime, Final report (cited in Vol. II, Ch. 32, § 1885, ICRC, Customary IHL Database).

²⁰¹ Report of the Special Rapporteur on trafficking in persons, especially women and children, UN Doc A/71/303, 5 August 2016, para.33.

that the accused ‘deprived these women of their personal liberty, restricted and dictated their movement, including by threats and subjecting them to armed guard, subjected them to forced labour, and physically and psychologically abused them’.²⁰²

256. Enforced prostitution is the act of forcing a person to engage in one or more acts of a sexual nature with another person, with the intent to obtain pecuniary or other advantage.²⁰³ The language and drafting history²⁰⁴ indicates that the ‘other advantage’ obtained through enforced prostitution does not necessarily need to be received by the perpetrator; it can be received or meant to be received by the victim or a third person.

257. The crime of “any other forms of sexual violence” is a broad category meant to cover acts of sexual violence that do not necessarily correspond to the other enumerated crimes, but that are so serious that they may equally constitute a crime against humanity. The conduct must be of a gravity comparable to the other offences in Article 7(1)(g). Gravity factors include publicity of the act(s), multiple perpetrators, repetition of the act(s), particular vulnerability of the victim, use of weapon, and long-term consequences of the act.²⁰⁵ It can be physical or non-physical.²⁰⁶ The threat or fear of rape in the context of detention can constitute sexual violence,²⁰⁷ as can forced nudity²⁰⁸ and body searches.

258. For the crimes of rape, sexual slavery, and enforced prostitution, Article 7(1)(g) of the Rome Statute does not set out specific requirements for mens rea and therefore, Article 30 applies. For the crime of sexual violence to be established, the Elements of Crimes require that the perpetrator be “aware of the factual circumstances that established the gravity of the conduct”.²⁰⁹

f. Enforced disappearance

259. Enforced disappearance as a crime against humanity entails the arrest, detention or abduction of a person, accompanied by a refusal to acknowledge it or to give information on the whereabouts of the person.²¹⁰ The detention and refusal to give information must have been by or with the authorisation, support or acquiescence of a State or political organisation, and the perpetrator must have “intended to remove [the victim] from the protection of the law for a prolonged period of time”.²¹¹ However, the wording ‘prolonged’ is a normative limitation acting as a jurisdictional threshold²¹² for the ICC that does not bind the Mission, thus enforced disappearances of any duration have been included in this report.²¹³

260. Secret detention, the refusal to provide information/provision of false information/intimidation of those requesting information, and the concealment of victims’ corpses in mass graves, prolonging their enforced disappearance, evidences an intention to remove the persons from the protection of the law.

²⁰² *Ongwen*, Trial Judgment, para. 3053.

²⁰³ ICC Statute, Article 7 (1) (g)-3.

²⁰⁴ Valerie Oosterveld, *Sexual Slavery and the International Criminal Court: Advancing International Law*, 25 MICH. J. INT’L L. 605 (2004).

²⁰⁵ Elements of Crimes, Article 7(1)(g)-6.

²⁰⁶ *Akayesu*, Trial Judgment, para. 688.

²⁰⁷ *Brdjanin*, Trial Judgment, para. 516.

²⁰⁸ *Kunarac et al*, Trial Judgment, paras. 766-774, 782, and 88; *Akayesu*, Trial Judgment, paras. 688, 697; *Kvočka et al.*, Trial Judgment, para. 170.

²⁰⁹ Elements of Crimes, Article 7(1)(g)-6.

²¹⁰ Elements of Crimes, Article 7(1)(ii) para 1.

²¹¹ Elements of Crimes, Article 7(1)(ii) paras 5-6.

²¹² WGEID, *General comment on enforced disappearance as a crime against humanity*, A/HRC/13/31, 21 December 2009, para. 39.

²¹³ The WGEID has often referred to “short-term disappearances” indicating that “*there is no time limit, no matter how short, for an enforced disappearance to occur*”, as the first hours of deprivation of liberty are often those during which violations and abuses, including torture and cruel, inhuman or degrading treatment, occur. See, for instance, A/HRC/39/46, para. 143.

g. Persecution

261. The *actus reus* of persecution as a crime against humanity is the gross or blatant denial, on discriminatory grounds, of a fundamental right, laid down in international customary or treaty law, reaching the same level of gravity as and committed in connection with one or more underlying acts. The requisite *mens rea* is the specific intent to discriminate against the victims on account of their racial or religious characteristics or *political affiliation* as well as knowledge of the widespread or systematic nature of the attack on civilians.²¹⁴ The *mens rea* for persecutions “is the specific intent to cause injury to a human being because he belongs to a particular community or group”. There is no requirement in law that the perpetrator possesses a ‘persecutory intent’ over and above a discriminatory intent.²¹⁵

262. The targeted group does not only comprise persons who personally carry the (religious, racial or political) criteria of the group. The targeted group must be interpreted broadly and may include such persons who are defined by the perpetrator as belonging to the victim group due to their close affiliations or sympathies for the victim group such that the victims are discriminated in fact for who or what they are on the basis of the perception of the perpetrator.²¹⁶ Discrimination on the basis of a person’s political ideology satisfies the requirement of ‘political’ grounds.²¹⁷ The targeting of inhabitants of areas perceived as supporting an opposing group has been held to be persecutory.²¹⁸

h. Other inhumane acts

263. Under Article 7(1)(k) of the ICC Statute, other inhumane acts are considered a residual category of crimes against humanity such that acts not encompassed by the underlying acts prescribed in Article 7(1)(a) - (j) may be characterised as other inhumane acts, provided they fulfil the criteria set out in the Elements of Crimes.

264. Conduct may be characterised as an inhumane act if the act or its effect caused great suffering or serious injury.²¹⁹ Factors to be considered include “the nature of the act or omission, the context in which it occurs, its duration and/or repetition, the physical, mental and moral effects of the act on the victim, as well as the personal circumstances of the victim, including age, sex, and health”.²²⁰ Secondly, the inhumane act must be “of a character similar to any other act referred to in Article 7, paragraph 1, of the Statute” and assessed in light of the nature and gravity of the acts.²²¹

265. Other inhumane acts encompass serious violations of customary international law and of human rights.²²² In this regard, the ICTY stated that “parameters for the interpretation of ‘other inhumane acts’ can be identified in international standards on human rights [...] the infringement of which may amount, depending on the accompanying circumstances, to a

²¹⁴ ICTY, *Prosecutor v. Zoran Kupreškić et al.*, Case No. IT-95-16-T, Judgement, 14 January 2000, paras. 770-784.

²¹⁵ *Kordić et al.* Appeal Judgement, 17 December 2004, para. 111.

²¹⁶ ICTY, *Prosecutor v. Mladen Naletilić et al.*, Case No. IT-98-34-T, Judgement, 31 March 2003, para. 636.

²¹⁷ *Akayesu*, Trial Judgement, para. 583.

²¹⁸ “The Chamber considers that there are substantial grounds to believe that at least 348 victims of the killings, rapes and injuries committed by the pro-Gbagbo forces in the course of the five incidents analysed above were targeted by reason of their identity as perceived supporters of Alassane Ouattara. This conclusion of the Chamber is supported by the facts, outlined above, that during the five events under consideration, the pro-Gbagbo forces targeted participants at pro-Ouattara demonstrations, or inhabitants of areas perceived as supporting Alassane Ouattara, namely Abobo and certain neighbourhoods of Yopougon (Doukoure, Mami Fatai and Lem)”: ICC, *Prosecutor v. Charles Blé Goudé*, Case No. ICC-02/11-02/11, Decision on the confirmation of charges against Charles Blé Goudé, 11 December 2014, para. 122.

²¹⁹ Elements of Crimes, Article 7 (1)(k).

²²⁰ ICTY, *Prosecutor v. Milorad Krnojelac*, Trial Judgment, 15 March 2002, para. 131.

²²¹ Elements of Crimes, Article 7 (1)(k); Katanga, Decision on the Confirmation of Charges, para. 451.

²²² ICC, Situation in the Democratic Republic of the Congo, *Prosecutor v. Germain Katanga*, Decision on the Confirmation of Charges, Pre-Trial Chamber I (30 September 2008), para. 448.

crime against humanity”.²²³ The violation must be sufficiently severe to distinguish it from an isolated deprivation of rights.²²⁴ For example, forced nudity has been recognized as an inhumane act that can give rise to crimes against humanity²²⁵ as has sexual molestation.²²⁶ The acts that rise to the level of inhumane acts should be determined on a case-by-case basis.²²⁷

266. With regard to the mental element, Article 7(1)(k) of the Rome Statute does not set out specific requirements, and therefore, Article 30 applies. The Elements of Crimes add that the perpetrator must have been ‘aware of the factual circumstances that established the character of the act’ such that the perpetrator was aware that he/she was committing a severe violation of human rights and/or customary international law

C. The mental element for crimes against humanity

267. As the Elements of Crimes under the Rome Statute state, it is required that, “the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population”. Therefore, the required nexus between the acts of an accused and the attack consists of two elements: (a) the commission of an act which, by its nature or consequences, is objectively part of the attack; and (b) knowledge on the part of the accused that there is an attack on the civilian population and that their acts are part thereof²²⁸ or are intended to be a part thereof.

268. In relation to (a), the acts need not be committed in the midst of the attack to be sufficiently connected to it.²²⁹ An act therefore committed before or after the main attack could still be considered to be part of it, provided that the act was not isolated from it.²³⁰ Acts are considered part of the attack if the acts share common features, such as nature, consequences, characteristics, and targets²³¹ and are consistent with the general motives and a modus operandi.²³² The requirements in (b) are not such that proof is required that the perpetrator had knowledge of all the attack’s details or characteristics;²³³ it is sufficient that the perpetrator knew of the overall context within which his or her acts took place,²³⁴ which could be evidenced by, for example, the perpetrator’s participation in the attack²³⁵ or in the preparation of the attack.²³⁶

²²³ ICTY, *Prosecutor v. Zoran Kupreškić et al.*, IT-95-16-T, Judgement (TC), 14 January 2000, para. 566.

²²⁴ *Ongwen*, Trial Judgment, para. 2748

²²⁵ See *Akayesu*, Judgment, paras. 688, 697 [specifically finding that forcing victims to undress and perform exercises while fully nude in a public setting amounts to an inhumane act].

²²⁶ Recognized as an inhumane act involving sexual violence: ICTY, *Prosecutor v. Kvočka et al.*, IT-98-30/1-T, Judgment, 2 November 2001, para. 180.

²²⁷ *Prosecutor v. Clément Kayishema and Obed Ruzindana*, ICTR-95-1-T, Judgement (TC), 21 May 1999, para. 151.

²²⁸ *Kunarac et al.*, Appeal Judgement, para. 99.

²²⁹ *Kunarac et al.*, Appeal Judgement, para. 102.

²³⁰ *Kunarac et al.*, Appeal Judgement, para. 102.

²³¹ ICTR, *Prosecutor v. Kajelijeli*, Trial Judgement, 1 December 2003; ICTY, *Kunarac et al.*, Trial Judgment; *Gbagbo*, Decision on the confirmation of charges.

²³² *Bemba*, Judgment pursuant to Article 74 of the Statute.

²³³ *Kunarac et al.*, Trial Judgment, para. 434.

²³⁴ ICTY, *Prosecutor v. Mitar Vasiljević*, IT-98-32-A, Judgment, 25 February 2004, paras. 20, 28; Elements of Crimes, General Introduction, para. 3.

²³⁵ ICTY, *Prosecutor v. Goran Jelisić*, IT-95-10-T, Judgement, 14 December 1999.

²³⁶ ICC, *Prosecutor v. Charles Blé Goudé*, ICC-02/11-02/11, Decision on the confirmation of charges against Blé Goudé, 11 December 2014.

II Definition of war crimes

269. War crimes encompass any serious violation of international humanitarian law committed in the course of an international or non-international armed conflict, which entails the individual criminal responsibility of the person breaching that law.²³⁷

270. Article 8(2)(c) of the ICC Statute defines war crimes in the case of an armed conflict not of an international character as serious violations of Article 3 common to the four Geneva Conventions of 12 August 1949, including murder, cruel treatment and torture committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat.²³⁸

271. To establish whether a crime qualifies as a “war crime”, certain pre-conditions must be met:

- (a) The existence of an armed conflict (international or non-international); and
- (b) A nexus between the alleged violation and the armed conflict.

272. The classification of a situation of armed violence under international law is an objective legal test. A non-international armed conflict exists “whenever there is protracted armed violence between governmental authorities and organized armed groups or between such groups within a State”.²³⁹ This definition encompasses two core, cumulative criteria, which distinguish a non-international armed conflict from internal tensions or disturbances: (i) the intensity of the armed violence and (ii) the level of organization of the armed group(s) involved. ICTY jurisprudence reflects several indicative factors²⁴⁰ to assess whether these criteria have been met.²⁴¹

273. The armed conflict need not have been causal to the commission of the crime charged but must have played a substantial part in the perpetrator’s ability to commit that crime. It is not required that the alleged crimes occur at a time and in a place where fighting is taking place. Relevant factors include whether the perpetrator was a combatant, whether the victim

²³⁷ ICTY, *Prosecutor v. Dusko Tadić*, IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 94.

²³⁸ See also Additional Protocol II, Common Article 3 and Article 4.

²³⁹ *Tadić*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, para. 70. The same two criteria have been adopted by: *Issa Hassan Sesay et al.*, Trial Judgement, para. 95; ICC, *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06, Decision on the confirmation of charges, 29 January 2007, para. 233; Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka, 31 March 2011, para. 181; Report of the International Commission of Inquiry to Investigate All Alleged Violations of International Human Rights Law in the Libyan Arab Jamahiriya, UN Doc A/HRC/17/44, 1 June 2011, para. 63f.

²⁴⁰ The number, duration, and intensity of individual confrontations. This includes occupations, besieging or blocking of towns, the closure of roads, and the existence of front lines; The type of military equipment and weapons used, including the number and caliber of munitions fired; Efforts by an armed group to better arm itself can be taken into account; The number of persons and types of forces partaking in the fighting; The number of casualties and the extent of material destruction caused; The number of civilians fleeing the zone of hostilities; The frequency of fighting over time and the spreading over territory; The reaction by the government, e.g. an increase in the number of government forces or general mobilization, the use of its armed forces instead of the police, the claiming of the rights of a belligerent, the recognition of an armed group as a belligerent, the labelling of the situation as “civil war” or similar terms, the declaration of a state of emergency or the reliance on rules of international humanitarian law; The reaction and involvement of the international community. This can include the situation being on the agenda of the Security Council or the General Assembly, the deployment of peacekeeping missions, calls of the international community for the respect of international humanitarian law; or whether attempts are made to broker ceasefire agreements.

²⁴¹ *Limaj et al.*, Trial Judgement, para. 90; ICTY, *Prosecutor v. Ramush Haradinaj et al.*, IT-04-84-T, Judgement, 3 April 2008, paras. 49 and 60; ICTY, *Prosecutor v. Ljube Boškoski et al.*, IT-04-82-T, Judgement, 10 July 2008, paras. 149 and 177.

was a non-combatant, whether the victim was a member of the opposing party, and whether the act may be said to have served the ultimate goal of a military campaign.²⁴²

²⁴² *Boškoski et al.*, Trial Judgement, para. 293.