

It is time for the GNA to define its Position vis-à-vis the Gross Violations of Human Rights at Mitiga Prison

More than four years have passed since the Government of National Accord (GNA) took office in Tripoli, and the militias operating under the mantra of the GNA, are still receiving salaries and benefits, despite violating the human rights of thousands of detainees. The GNA, especially the Ministries of Interior and Justice, must stop evading their responsibilities and move to end these violations, or publicly declare that they do not have any authority over these militias.

On several previous occasions, Human Rights Solidarity (HRS) sent letters to the Presidential Council and the Ministries of Justice and Interior, demanding the transfer of all detainees from Mitiga prison, which is controlled by the Special Deterrence Force (SDF) of the Ministry of Interior, to prisons that are actually controlled and operated by the Judicial Police of the Ministry of Justice. But, the GNA ignored HRS's requests, continued to make promises it never fulfilled, and the grave violations continued unabated.

On July 16, 2020, the Ministry of Interior announced¹ the "launch of a security campaign to reveal the fate of the forcibly disappeared". HRS, while welcoming the announcement, expresses its hope that this announcement will not be like previous ones, just promises of investigations, reviews, and reforms, without any actions on the ground.

The Ministry of Interior called on everyone, who has a forcibly disappeared relative, to go to the nearest police station, or contact directly the Office of the Ministry of Interior to report the enforced disappearance. This is important, and HRS, whenever it received a report on a case, always instructed and urged the victims of violations to file a report at a police station or the Office of the General Attorney (OGA). HRS echoes the call made by the Ministry of Interior, and calls on everyone, who or a relative of his/her was a victim of violence or any of his/her basic rights were violated, to file the incident by the competent authorities, whether the police or the public prosecutor.

If the Ministry of the Interior is serious² about its campaign to uncover the fate of the forcibly disappeared and identify the persons and entities involved in these criminal acts, then it must start by the addressing the violators within the ranks of the Ministry of Interior, specifically the SDF. This Ministry of Interior force is responsible for dozens,

perhaps hundreds, of crimes of torture, enforced disappearances, and arbitrary and unlawful detentions.

According to the most recent report by the Office of the United Nations High Commissioner for Human Rights (OHCHR)³, the number of detainees at Mitiga prison, controlled by the SDF, is estimated at about 3,600 detainees, including women and children. No one knows the exact number of detainees at Mitiga airbase or their places of detention, the GNA's Presidential Council admitted that it has no idea how many detainees at Mitiga⁴, and no independent national or international body was allowed to visit the prison, and that includes the United Nations Support Mission in Libya (UNSMIL).

In all the cases reviewed by HRS, the SDF did not identify itself when it carried out the arrest, did not explain to the arrested person the reasons for the arrest, and did not show an arrest warrant issued by a judicial authority, and this is in violation of the provisions of the Libyan Criminal Procedures Law⁵. Most of the arrests were carried out by masked men, and often come in unmarked vehicles (no insignia of the force involved). The SDF, especially in the first period of detention, frequently holds detainees in incommunicado, no communication with the outside world, and the detainee may remain isolated from the outside world for months or more, amounting to enforced disappearance, his/her family have no knowledge of his/he fate or whereabouts. When held incommunicado, detainees are more vulnerable to torture and other serious human rights violations.

Torture and ill-treatment are systematically practiced at Mitiga prison. The most common methods of torture include beatings with various objects such as metal bars, water pipes [PPR], flogging on the soles of the feet [falga], suspension in a painful position, burning with cigarettes or hot rods, and electric shocks. The testimonies of some detainees have repeatedly reported deaths in custody, either due death under torture, or deliberate medical negligence and malnutrition. The OHCHR also reported that women being subjected to sexual harassment and sexual assault, there are no female guards at Mitiga prison.

The SDF, which receives budget from the public treasury⁶, for every prisoner it has in its custody, does not provide adequate food or medical care. It also requires the families of the detainees, those who want to bring food, clothes, and even drinking water, to purchase these supplies from a market owned by the SDF at Al-Jadida Prison (in Tripoli) at prices higher than the average prices of the shops. It also sends text messages on the mobile phone informing the families of the presence of a "medical" prescription at its pharmacy, also at Al-Jadida Prison. The family comes and pays the price of the medicine, and then the SDF deliver medicine to the detainee at Mitiga

prison. It also requires families to pay the costs of medical treatment at private clinics and hospitals in the event that the detainee is transferred for treatment in one of these clinics. Bearing in mind that a large number of the families of the detainees live in other cities, thus many of them incur additional hardship and costs to supply their detained relatives with essential items, and some are unable to do so.

In addition to the unlawful deprivation of liberty, and incommunicado detention and in inhumane conditions, the SDF exploits the anxiety and concern of the detainees' families for the safety of their relatives, burdening them with additional financial costs that many of them are unable to provide. What the SDF is doing amounts to extortion.

At Mitiga Prison, all the workers, who prepare food and distribute it to the cells, do the cleaning work, do construction and maintenance work, and transport goods and equipment, are immigrants, most of them from Africa and Bangladesh. The SDF arrests them on charges of "illegal" immigration and employs them without pay⁷.

The SDF is responsible for all the gross violations of International Human Rights Law (IHRL) committed by the SDF, which include but are not limited to: kidnapping, arbitrary detention, incommunicado detention, extortion, enforced disappearance, torture, killing under torture, and murder due to deliberate medical negligence. But also, the Ministry of Interior bears legal responsibility of these crimes, considering that the SDF is affiliated with the Ministry of Interior; the Ministry of Justice bears legal responsibility of these crimes, considering that Mitiga Prison "the Main Tripoli Correction and Rehabilitation Institution" is under the authority of the Ministry of Justice; and the GNA Presidential Council, considering that this Council issued Decree⁸ No. (555) of 2018 "on establishing the Deterrence Agency to combat organized crime and terrorism".

Human Rights Solidarity calls on the Government of National Accord:

1. Allow a medical team, doctors and nurses of both sexes, to visit Mitiga Prison, accompanied by representatives from the Ministries of Interior, Justice, Health, the Libyan Red Crescent and the Human Rights Division of the United Nations Support Mission in Libya, to examine inmates and transfer the cases which need medical care to hospitals,
2. Inspect and document the conditions of detention in terms of cleanliness, facilities and catering,
3. Review the records of Mitiga Prison, and compare them with testimonies of detainees and relatives, and prepare a complete list of the detainees who are still in detention, all those who were detained and released, all those who died in detention, whether due to illness, or killed under torture, or extrajudicially killed,

4. Transfer all women to the women's section of al-Jadida prison, which is supervised by female guards.
5. Transfer all juvenile detainees to the juvenile institutions,
6. Transfer all male detainees to prisons that are actually supervised by the Judicial Police,
7. Review the cases of all detainees, starting with women accompanied by their children, and immediately release all those whom there are no legal causes to that would permit their detention, and guarantee the right to reparation,
8. Guarantee accountability for those responsible of violations of International Human Rights Law,
9. Annul Presidential Council Resolution No. (555)⁹ of 2018, disband the Special Deterrence Force and other armed groups, and reintegrate their members as individuals and not as groups in the various security services, in accordance with a comprehensive strategy for security sector reform¹⁰.

HRS also calls on the Supreme Judicial Council to publish the results of the work of the "Committee to Review Cases of Arbitrary Detention at Mitiga Prison", which it established in accordance with Resolution No. 129, and to reveal the committee's recommendations,

And calls on the Office of the Prosecutor of the International Criminal Court to open an investigation into the grave violations Of International Human Rights Law at Mitiga Prison,

Calls on the Office of United Nations High Commissioner for Human Rights to demand from the Government of National Accord ensuring that the Fact Finding Mission, established by Human Rights Council Resolution No. (43 / L.40), is enabled to enter and search Mitiga Prison in Tripoli and al-Jawiya Prison in Misrata and the rest of the prisons in the Western Region, and

Calls on the Panel of Experts on Libya, established pursuant to Security Council Resolution No. 1973 (2011), to examine the grave violations of International Human Rights Law at Mitiga Prison, and to make the necessary recommendations to the Libya Sanctions Committee.

HRS reminds the Presidency Council, the Ministry of Justice and the Ministry of Interior of the following:

- That no exceptional circumstance whatsoever, whether related to a state of war or the threat of war, internal political instability, or any other exceptional case, may be invoked to justify serious violations such as arbitrary detention, torture and enforced disappearance,

- International law prohibits Arbitrary Detention and criminalizes Torture and Enforced Disappearances¹¹,
- That national law includes safeguards against arbitrary detention and criminalizes torture,
- That international law regards arbitrary detention, torture and enforced disappearance as crimes against humanity¹², whenever they are committed on a large scale or systematic way,
- That international law holds military and civilian leaders criminally responsible for crimes committed by their subordinates¹³, and
- According to international law, the official capacity, or any immunities or special procedural rules that may be related to the official capacity, shall not be taken into consideration in holding those responsible accountable¹⁴.

The Government of National Accord must assume its responsibility to protect the citizens and residents of Libya from these armed groups and stop giving these groups legitimacy under names of various agencies and entities which are acting as if they are above the law.

Solidarity Organization for Human Rights Tripoli, Libya

¹ Media Office of the Minister of Interior (Facebook): "[Statement of the Ministry of Interior on the launch of a security campaign to reveal the fate of the forcibly disappeared](#)", July 16, 2020, Arabic.

² Among victims of Enforced Disappearances, whom the SDF or members of the SDF are responsible for disappearance: Ground Engineer Khalid EBLAL, abducted at his place of work Mitiga airport in May 2015; Sheikh Dr. Nader al-UMRANI, kidnapped by an armed group near his home in al-Hadhba in October 2016; Businessman Abdul Latif, disappeared in Khulat al-Firjan in November 2016. The three men have disappeared since their abductions, their families do not have any information on the fate of their disappeared relatives.

³ Human Rights Council, 43rd Regular Session, Report of the United Nations High Commissioner for Human Rights: "[Situation of human rights in Libya, and the effectiveness of technical assistance and capacity-building measures received by the Government of Libya](#)", January 23, 2020.

⁴ Media Office of the Chairman of the GNA's Presidential Council: "Government of National Accord Presidential Council Decree number (1307) of 2018 "Regarding some Provisions of Decree No. (1301) of 2018", September 17, 2018. Article (2): "The committee formed by Article No. (1) of this Decree shall undertake the investigation of the situation of detainees in the main Tripoli correction and rehabilitation institution **at Mitiga air base and any other place of detention that may be there**, and verify the procedures for their arrest and imprisonment and the extent of their compliance with the criminal legislation in force".

⁵ [Libyan Criminal Procedures Code](#), Article (30) "No individual may be arrested or detained without an order from the legally competent authority.", see also articles (27) and (28). Also, Article (31) of the said Law "Individuals may only be detained in prisons designed for this purpose. Prison wardens may only accept detainees pursuant to an order signed by the competent authority and may not keep them for longer than the period set for this order". Furthermore, Libyan law criminalises torture and enforced disappearance, Law No. (10) of 2013 "[On the criminalisation of torture, forced disappearance and discrimination](#)".

⁶ According to various sources, the SDF gets from the GNA not less than 75.00 Libyan Dinar per detainee per day, some put the budget to 100 LD. Assuming the number of detainees at Mitiga is ~3000, this means the SDF receives a monthly budget of approx. 7.5 Million Libyan Dinars. Detention centers (of migrants) and prisons is a lucrative business for the militias, and official agencies, throughout Libya.

⁷ HRS have accessed testimonies by illegal migrants, in which they spoke about their arbitrary detention and exploitation at Mitiga prison.

⁸ Presidential Council Decree No. (555) of 2018 "to create the Deterrence Agency to combat Organized Crime and Terrorism", May 7, 2018, triggered widespread controversy and was met with national and international criticism. Human Rights Solidarity, in its report (link), dated May 15, 2018, counted numerous violations in the articles of Decree (555/2018) of articles of the [Constitutional Declaration](#), [Libyan Penal Code](#), the [Law of the State's Financial System](#) and the amendments contained therein, [Law No. 7 of 2012 On the Establishment of the Libyan Intelligence Service](#), and [Law No. \(10\) of 1992 on Security and Police and its amendments](#). Reporters Without Borders "[Decree gives blank cheque to Libyan militiamen who persecute journalists](#)" and Amnesty International "[Libya: Decree Integrating Radaa Forces into a New Security Apparatus Overlooks need for Accountability](#)" criticized the Decree (555).

⁹ Decree No. (555) of 2018 authorized members of the SDF to spy and eavesdrop on wired and wireless communications and on social media networks, without permission from the judicial authorities. This violates Article (13) the Constitutional Declaration "*Correspondence, telephone calls and other means of communication are inviolable, and their secrecy shall be guaranteed. They may not be confiscated, examined or monitored except by a causal judicial warrant and for a definite period in accordance with the provisions of the law*". The Decree authorized the SDF to dispose of "what is confiscated from funds, real estate, and movable assets related to the crimes" and consider them as part of the SDF's financial resources. This is in violation of Article (16) of the Constitutional Declaration "*Property shall be inviolable. No owner may be prevented from disposing of his property except within the limits of the law*", and the Libyan Penal Code, which restricted confiscation after a conviction, and limited to objects "that were used, or prepared, to commit the crime" or those "making, using, carrying, possessing or disposing of them is a crime", and that these provisions are applied to the ones involved in the crime. Decree (555) legalized eavesdropping, placing communications under surveillance, and searching mobile phones and computers, and checking their contents, including documents, messages, and pictures, is frequently and routinely practiced at checkpoints and airports. Furthermore, this Decree legalized the confiscation of money, valuable objects, and vehicles from homes whenever they were raided. All the cases reviewed by the HRS, in which the SDF was involved, and others, HRS did not find a single case in which the SDF returned what it confiscated.

¹⁰ UNSMIL: "[UNSMIL and GNA Ministry of Interior discuss Security Sector Reform, and Disarmament, Demobilization and Reintegration](#)", July 12, 2020.

¹¹ Libya is a party to seven corner stone treaties and conventions, which represent the fundamental basis of International Human Rights Law, established by the United Nations to safeguard human rights, including the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. As a State party to these conventions, Libya is obligated to respect, protect and guarantee human rights for all persons within the territories under its jurisdiction.

¹² The [Rome Statute of the International Criminal Court](#); Article (7) "Crimes against Humanity, paragraphs(1-e), (1-f) and (1-i).

¹³ ¹³ The [Rome Statute of the International Criminal Court](#); Article (25) "Individual criminal responsibility", paragraph (2-b); Article (28) "Responsibility of commanders and other superiors". OHCHR "[Abuse Behind Bars: Arbitrary and unlawful detention in Libya](#)": "Those participating in conduct amounting to war crimes or crimes against humanity, as well as civilian superiors and commanders of armed groups who order the commission of such crimes or fail to take reasonable and necessary measures to prevent or punish their commission by subordinates under their effective control, or fail to submit the matter to the competent authorities for investigation and prosecution, may be criminally liable, including before the International Criminal Court"

¹⁴ The [Rome Statute of the International Criminal Court](#); Article (27) "Irrelevance of official capacity".